

**SENATE***Tuesday, January 11, 2022*

The Senate met at 10.00 a.m.

**PRAYERS**[MADAM PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Madam President:** Happy New Year to everyone. Hon. Senators, I have granted leave of absence to Sen. The Hon. Hassel Bacchus and Sen. Anil Roberts who are ill, and to Sen. David Nakhid and Sen. Evans Welch who are out of the country.

**S E N A T O R S '    A P P O I N T M E N T**

**Madam President:** Hon. Senators, I will ask that we revert to this item of the business later in the proceedings.

**TRIBUTES****(MR. ALWIN CHOW)**

**Madam President:** Hon. Senators, former Senator Alwin Chow passed away on Thursday, December the 9<sup>th</sup>, 2021. I now invite Members to offer tributes. Sen. Mark.

**Sen. Wade Mark:** Thank you, Madam President. Madam President, as a longstanding Member of this honourable Senate, I never had the privilege or opportunity of meeting the former Senator, Alwin Chow. I know of him based on my trade union background representing the workers at the Trinidad Guardian as a managing director of that said company. A professional chartered accountant by profession, Alwin Chow served not only at the level of the Trinidad Broadcasting Company, but also at the Trinidad Express and as the CEO of Trinity Housing Limited.

I believe it was between November 27, 1981, to October 29, 1986, that he

served as an Independent Senator. I know from the records provided to us he made sterling contributions during the various sessions of that Parliament where he served in a very positive way, being a member of the Public Accounts Committee and contributing to several important measures, several important budgets and Bills that were brought to this Parliament during the period of his service to our country.

A very frank, no-holds-barred individual, Alwin Chow to me was a very good soul. He was a very powerful individual when he made his contributions according to the records before us and I really, on behalf of the United National Congress, would like to record our sadness over his passing. We would like to extend to his family, to his wife, to his friends and associates, you know, our collective condolences on the passing of Alwin Chow, a son of the soil, a gentleman and an individual who made and recorded sterling contributions during his period as he served as a Senator. May his soul rest in peace, Madam President.

**Madam President:** Sen. Lezama-Lee Sing.

**Sen. Laurel Lezama-Lee Sing:** Thank you, Madam President. Trinidad and Tobago lost a giant in the media industry upon the passing of the late Alwin Stephen Chow. Upon his passing on December the 9<sup>th</sup>, 2021, in New York, media veterans, current practitioners, former colleagues, his mentees, his associates, his friends and all of those in the media and in the wider national community were all plunged into great mourning. It was a colossal loss for his family, the industry and the country.

According to Jones P. Madeira:

“Alwin Chow was the person responsible for rejuvenating the idea of the freedom of press in...”—Trinidad and Tobago.

He was—“...regarded as the consummate media man...”

His was an illustrious professional career. He was a certified chartered accountant, the Managing Director of Trinidad Guardian Media Limited, the General Manager of the Trinidad Express and the CEO of Trinity Housing. Although being a distinguished captain of industry, he was appointed as an Independent Senator during the Second Republican Parliament from 1981 to 1986. All records show that he served on numerous parliamentary committees with distinction and debated robustly in numerous debates on many Bills and on many Motions.

Sen. Chow was, of course, the husband of our former Miss Universe Janelle “Penny” Commissiong. His family is a very prominent family from the eastern community of Sangre Grande, a family that produced the likes of Arlene Chow, Mary Moore and even Felice Aisha Chow, national Olympic rower. But Arlene and Mary were stalwarts in the energy industry and they were among other siblings, children and grandchildren of the Chow family.

Alwin Chow is noted as an innovative and entrepreneurial spirit who introduced UWI grads into the Trinidad Guardian as management trainees and these grads would go on to be seasoned journalists. His was a tremendous contribution on the national landscape. On behalf of the Government and the People’s National Movement, we extend our sincerest condolences to his wife; to his adopted daughter, Sasha and to his entire family. We thank them for helping let his light shine on Trinidad and Tobago. May his soul find eternal peace. Thank you.

**Madam President:** Sen. Richards.

**Sen. Paul Richards:** Good morning, colleagues. Thank you, Madam President. It is my deep honour to pay tribute to a media giant, Alwin Stephen Chow, who served in the Parliament of Trinidad and Tobago as an Independent Senator. He

was married, as my colleagues have indicated, to Janelle “Penny” Commissiong-Chow and has a daughter, Sasha. Mr. Chow was fastidious in his belief that the media, as the fourth estate, was one of the most important pillars for development in Trinidad and Tobago. And in his roles as a chartered accountant; Managing Director of the Trinidad Publishing Company, now Guardian Media Limited, GML, and Chairman of the Trinidad Broadcasting Company, he upheld the ideals of professional and important media practice. He was also the CEO of Trinity Housing Limited.

Mr. Chow served in the Senate between 1981 and 1986 and contributed to several important Bills with great detail and profundity. He contributed on the Dental Profession Bill, the Finance (Amdt.) Bill, the Financial Institutions (Non-Banking) Bill, the Income Tax (Amdt.) Bill, Supplementary Appropriation Bill between 1979 and 1980. Between 1980 and '81, he contributed to the chattel buildings Bill, Education (Amdt.) Bill, health services Bill and the Tobago House of Assembly Bill, among many others.

He also in—between 1980 and '81, he contributed to the Integrity Commission legislation, the Petroleum Taxes (Amdt.) Bill, the Securities Industry Bill, Supplementary Appropriation Bill and the Unit Trust Corporation. Of course, his contributions went way beyond those I have identified. He was a mentor to many in the media and I myself had the distinct honour of interfacing with him on many occasions and having the opportunity and the honour to visit his home. And his wife’s Carnival fete had become legendary. And he was the consummate host and always interfaced with members of the media, his friends and family with great dignity. He was also a great sporting enthusiast—many may not know that—and for his entire life, professionally and otherwise, supported Trinidad and Tobago as a patriot.

On behalf of the Members of the Independent Bench, I convey my deepest condolences to his wife, Penny, whom I am honoured to call a friend, and his daughter, Sasha. May his soul rest in peace. At this time, I would also like to take the opportunity to pass condolences to the family and colleagues of Deon Lendore who we learnt passed away tragically early yesterday. I thank you, Madam President.

**Madam President:** Hon. Senators, a life like former Senator Chow's is not easy to encapsulate in a few words and I am immensely grateful for the tributes that have come before mine and that have added invaluable reflections on his life. A chartered accountant by profession, he took on the additional responsibilities of being an Independent Senator. Such was his devotion to his country. And as if serving in this capacity in the nation's democracy was not enough, former Senator Chow also dedicated his life to another critical bastion of democracy, the press. Among his many accomplishments there, he was credited with modernizing the nation's press rooms with the introduction of game-changing technology. In no small way he helped usher the nation's press into the modern technological world. For his service to democracy, former Senator Chow has a nation's gratitude.

**(MR. BASHARAT ALI)**

**Madam President:** Hon, Senators, former Senator Basharat Ali passed away on Friday, December the 24<sup>th</sup>, 2021. I now invite Members to offer tributes. Minister in the Ministry of Agriculture, Land and Fisheries.

**The Minister in the Ministry of Agriculture, Land and Fisheries (Sen. The Hon. Avinash Singh):** Thank you, Madam President. On behalf of the Government Bench, I humbly wish to pay tribute and thank former Independent Senator and statesman, the late Mr. Basharat Ali, who physically left us on December 24, 2021. Born on the 10<sup>th</sup> June, 1933, to a simple farming family in

Aranguez and having 13 siblings who all contributed to the success of Mr. Basharat Ali. A true family man, Mr. Ali was married to Joyce Ali and had two daughters, Nazmeen and Yasmin. With a passion for academia and the energy sector, Mr. Ali attended St. Mary's College on a government scholarship where he pursued his studies and excelled. He later won a Shell scholarship to study chemical engineering. As a giant himself, he had peers with intellects like Lloyd Best and Ken Julien.

Mr. Ali earned the title and status of an energy expert after working with Shell for over 30 years. He also worked at the National Energy Corporation, Ministry of Petroleum, lectured part time at the University of the West Indies, just to name a few. Distinguishing himself in all capacities, professionally and socially, he was appointed to act temporarily as an Independent Senator on June 10, 2003. He was later appointed an Independent Senator in December 2003, 2007 and 2010. From all research, readings and conversations with my peers, Madam President, Mr. Ali can truly be described as non-partisan, brilliant, humble, hard-working, always prepared for debate and a true gentleman. His vision and contribution to the development of Trinidad and Tobago is worthy of recognition. And being awarded the Chaconia Medal Silver was well deserved and welcoming.

Today, we are called upon to recognize Mr. Basharat Ali and sincerely thank him, his family, and Almighty for loaning him for the greater good of our country and humanity. May his soul find eternal peace and may his family, friends and loved ones find the strength to continue on. May his name and legacy live on. Thank you, Madam President.

**Madam President:** Sen. Mark.

**Sen. Wade Mark:** Thank you, Madam President. Madam President, where I sit today as Leader of Opposition Business in this honourable Senate, just behind me,

a row down after Sen. Richards, sat Sen. Basharat Ali. At times he sat where Sen. Richards is sitting today to hold the fort. I recalled him, Madam President, as a very humble, decent, honest, civil individual. And when you read his story, his beginnings, his struggles as a young man leaving the shores of this country on a scholarship to study at the Manchester University and emerging as a chemical engineer, what that demonstrated is that even though he came from a huge family, the record would show that with the support of his parents, Basharat was able to shine.

He was a scholar, a teacher, a lecturer. And as my colleague said, he was completely non-partisan, a professional making his contributions in this Parliament towards to the genuine development of our nation. We had several discussions, several exchanges whilst he sat as an Independent Senator and I can always remember, Madam President, his very quiet, unassuming spirit and his willingness to offer advice whenever requested even though he was an Independent Senator. So I myself was a bit shocked when I heard of his passing. So on this very sad occasion, I would like to, on behalf of the United National Congress, offer our sincerest and deepest condolences to his wife Joyce and his children, his family, his friends and associates. May Basharat Ali receive the peace and rest that he deserves and may he, like his ancestors, rise in perpetual glory. Thank you, Madam President.

**Madam President:** Sen. Teemal.

**Sen. Deeroop Teemal:** Thank you, Madam President. It is indeed an honour to be asked to pay tribute to former Independent Senator, Basharat Ali. Mr. Ali hailed from Aranguez and when he departed this worldly realm he was 88 years of age, and he has left to mourn his wife, Joyce Ali and two children, Nazmeen and Yasmin. Basharat Ali graduated from the University of Manchester in the year

1957 with a degree in chemical engineering and shaped his professional career afterwards by serving Shell Trinidad and Tobago Limited on overseas assignments, working at the Ministry of Petroleum and Mines, also the National Energy Corporation, and also served as a board member of the IDC. From 1990 onwards, he was chairman of Joyce E. Ali and Company Limited.

Mr. Basharat Ali first entered Parliament as a temporary Senator, Independent, in the Eighth Parliament on June 10, 2003, and he was later appointed an Independent Senator by His Excellency Professor George Maxwell Richards. He thus served as an Independent Senator temporary in 2003 and was appointed Independent Senator from December 2003 to September 2007. He also served from December 2007 to April 2010, and from June 2010 to August 2012.

Mr. Basharat Ali was a very important member of the Public Accounts (Enterprises) Committee and what is of note that he attended all the sessions of that Committee of the Parliament. He also served on the Committee of Privileges in the First Session of the Senate. His maiden contribution was on the Kidnapping Bill, 2003, and he contributed to at least 19 other Bills including the Anti-Gang Bill of 2010, the Bail (Amdt.) Bill of 2010, the Interception of Communications Bill, 2010, and the Trafficking in Persons Bill, 2011. Mr. Basharat Ali also made significant contributions to Motions that were debated, some including a Motion to adopt the Second Interim Report on Public Procurement and Central Tenders Board, Motion to affirm the Census (2011) Order, and a Motion on the State of the Economy.

A *Newsday* article on December 28, 2021, by Elizabeth Gonzales remembered Mr. Basharat Ali as an:

“...energy giant...”—and a—“gentleman”

And he also engaged and was an avid enthusiast of local art and culture,



classical music, preservation of the environment, and a keen interest in the national heritage of Trinidad and Tobago. On behalf of all Senators on the Independent Bench, past and present, deepest condolences to the family of Basharat Ali and we salute this genuine son of the soil for his contributions to the development of the nation of Trinidad and Tobago. Thank you.

**Madam President:** Hon. Senators, former Senator Basharat Ali was in this Chamber and in his life what all of us would do well to aspire to become. He was a giant in his field. His voice on energy matters carried enormous sway. There were few who could match his in depth knowledge of the matters about which he spoke. Had he chosen, he could have spoken and carried himself in a manner that declared his obvious superiority in these areas. Yet, he wore the crown of knowledge and authority so lightly that the crown itself was almost imperceptible. His was a quiet and unassuming manner that belied the passion and the power that lay beneath his gentle and dignified surface.

When our nation's youth go in search of examples of how to blend achievement with humility, of how to combine conviction with class, and of how to integrate intensity with utter lack of pretension, they need look no further than to the life and the example of former Senator Ali. Hon. Senators, that example is not only for our youth, but for all of us. The Senate is grateful beyond measure for former Ali's contribution and example. For both, he has a nation thanks.

Hon. Senators, I will ask to please stand so that we can observe a minute of silence in honour of both former Senator Alwin Chow and former Senator Basharat Ali.

*The Senate stood.*

**Madam President:** Thank you and please be seated. Hon. Senators, the Clerk of the Senate will convey to the family of Mr. Alwin Chow and the family of Mr. Basharat Ali all the sentiments that have been expressed here today.

**ARRANGEMENT OF BUSINESS**

**Madam President:** Hon. Senators, we shall now revert to the earlier item of business.

**S E N A T O R S ’    A P P O I N T M E N T**

**Madam President:**

“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. NDALE YOUNG

WHEREAS Senator the Honourable Hassel Bacchus is incapable of performing his 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)(a) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Prime Minister, do hereby appoint you, NDALE YOUNG to be a member of the Senate temporarily, with effect from 11<sup>th</sup> January, 2022 and continuing during the absence of Senator the Honourable Hassel Bacchus 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 11<sup>th</sup> day of January, 2022.”

**UNREVISED**

**10.30 a.m.**

“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. SEAN SOBERS

WHEREAS Senator David Nakhid 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)(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, SEAN SOBERS to be a member of the Senate temporarily, with effect from 11<sup>th</sup> January, 2022 and continuing during the absence of Senator David Nakhid from Trinidad and Tobago.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 11<sup>th</sup> day of January, 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

**UNREVISED**

Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MS MARSHA WALKER

WHEREAS Senator Anil Roberts is incapable of performing his 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, MARSHA WALKER to be a member of the Senate temporarily, with effect from 11<sup>th</sup> January, 2022 and continuing during the absence of Senator Anil Roberts 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 11<sup>th</sup> day of January, 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: DR. MARGARET BURGESS

**UNREVISED**

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, MARGARET BURGESS to be a member of the Senate temporarily, with effect from 11<sup>th</sup> January, 2022 and continuing during the absence of Senator Evans Welch from Trinidad and Tobago.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 11<sup>th</sup> day of January, 2022."

#### **AFFIRMATION OF ALLEGIANCE**

*Senator Ndale Young took and subscribed the Affirmation of Allegiance as required by law.*

#### **OATH OF ALLEGIANCE**

*The following Senators took and subscribed the Oath of Allegiance as required by law:*

Sean Sobers, Ms. Marsha Walker and Dr. Margaret Burgess.

#### **PAPERS LAID**

1. Annual Audited Financial Statements of Rural Development Company of Trinidad and Tobago Limited for the financial year ended September 30, 2020. [The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)]

2. Annual Audited Financial Statements of National Information and Communication Technology Company Limited for the financial year ended September 30, 2020. [*Sen. The Hon. C. Rambharat*]
3. Annual Audited Financial Statements of the National Training Agency for the financial year ended September 30, 2012. [*Sen. The Hon. C. Rambharat*]
4. Annual Audited Financial Statements of Caroni (1975) Limited for the financial year ended June 30, 2020. [*Sen. The Hon. C. Rambharat*]
5. Annual Audited Financial Statements of the Power Generation Company of Trinidad and Tobago for the financial year ended December 31, 2010. [*Sen. The Hon. C. Rambharat*]
6. Report of the Auditor General of the Republic of Trinidad and Tobago on the Consolidated Financial Statements of the Trinidad and Tobago Unit Trust Corporation for the year ended December 31, 2020. [*Sen. The Hon. C. Rambharat*]
7. Annual Report of the Financial Intelligence Unit of Trinidad and Tobago for the year ended September 30, 2021. [*Sen. The Hon. C. Rambharat*]
8. Annual Administrative Report of the Accreditation Council of Trinidad and Tobago for the period October 01, 2015 to September 30, 2016. [*Sen. The Hon. C. Rambharat*]
9. Annual Administrative Report of the Accreditation Council of Trinidad and Tobago for the period October 01, 2018 to September 30, 2019. [*Sen. The Hon. C. Rambharat*]
10. Annual Administrative Report of the Power Generation Company of Trinidad and Tobago Limited for the year 2008. [*Sen. The Hon. C. Rambharat*]
11. Annual Administrative Report of the Power Generation Company of Trinidad and Tobago Limited for the year 2009. [*Sen. The Hon. C. Rambharat*]

12. Annual Administrative Report of the Power Generation Company of Trinidad and Tobago Limited for the year 2010. [*Sen. The Hon. C. Rambharat*]

13. Annual Administrative Report of the Power Generation Company of Trinidad and Tobago Limited for the year 2011. [*Sen. The Hon. C. Rambharat*]

14. Annual Administrative Report of the Power Generation Company of Trinidad and Tobago Limited for the year 2012. [*Sen. The Hon. C. Rambharat*]

15. Annual Administrative Report of the Power Generation Company of Trinidad and Tobago Limited for the year 2013. [*Sen. The Hon. C. Rambharat*]

### **URGENT QUESTIONS**

#### **Financial Funeral Support to Vulnerable Families**

#### **(COVID-19)**

**Sen. Wade Mark:** Thank you, Madam President. To the Minister of Social Development and Family Services: Given the rise in cost of funerals, is the Government prepared to provide financial support including an increase in the number of funeral grants to assist vulnerable families who have lost loved ones due to COVID-19?

**Madam President:** Minister of Social Development and Family Services.

**Hon. Member:** [*Desk thumping*]

**The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox):** Thank you, Madam President. There is no cap on the number of grants that is provided for persons, vulnerable persons. The funeral grant is paid by the Ministry and provides financial support for the burial of persons where families have difficulty providing for the full cost. It is therefore intended to supplement resources and this grant is usually issued to needy families whose means are determined by a means test.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, can the Minister indicate to this honourable Senate whether she is aware that families are being called upon to pay exorbitant costs associated with burial for their families in the region of 10, 15, 20, \$30,000? Is the Minister aware of these high costs associated with funeral and burials and cremation?

**Madam President:** That question is not allowed.

**Sen. Mark:** Can I ask the hon. Minister if she can identify the additional grants she mentioned a short while ago that the vulnerable, the poor can access in assisting their families in their burial or cremation cost?

**Madam President:** Sen. Mark, what is the question?

**Sen. Mark:** I am asking the hon. Minister, she said that there are several additional grants available to families, I am asking the hon. Minister if she can share with this honourable Senate those additional grants, so that the families of these loved ones can access them for the purpose of burying or cremating their loved ones.

**Madam President:** Minister.

**Sen. The Hon. D. Cox:** Madam President, I did not speak of additional grants, I spoke about the funeral grants which are available for persons in need and this is granted when an assessment is done.

**Madam President:** Next question, Sen. Mark.

### **COVID-19 Deaths and Release of Bodies**

#### **(Measures Implemented)**

**Sen. Wade Mark:** To the Minister of Health: In light of the increase in the number of COVID-19 deaths and the long-waiting period for the release of bodies, can the Minister indicate what measures are being implemented by the Government to address this issue?



**Madam President:** The Minister of Health.

**The Minister of Health (Hon. Terrence Deyalsingh):** Thank you very much, Madam President, and may I say Happy New Year to you and honourable Members of this Chamber.

Madam President, in checking with the RHAs this morning, the average storage time for bodies of the deceased—and condolences to all—varies from about one to five days at South West; at Eastern, there is no undue delay; North Central is about one to five days again, and North West, there is no undue delay. However, most of the cases where bodies are delayed outside of this average time of one to five days, unquestionably does happen and when we investigate the reasons, it is because the next of kin listed on the admission form is now in quarantine for 14 days. So that has thrown up a problem. It is the fault of no one, not the deceased, not the next of kin, not the RHA. It is just because the listed next of kin is in quarantine and legally, we cannot release the body to anyone else even though other family members may be asking for that release.

What we have done so far is knowing that the Ministry of Health has an overarching responsibility in executing that responsibility, we are liaising with local government, the funeral home association and the RHAs, we do morning body checks at all the mortuaries, we call relatives as much as possible. We liaise with the wards where the persons come from so all proper documentation is in place so that when the funeral homes do come for the bodies, there is not that administrative delay. So that is what we are doing and that is the main reason. The main reason is when persons are waiting for their PCR test to come out of quarantine and we are dealing with that holistically with all the stakeholders. Thank you very much, Madam President.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, can the Minister indicate in light of these delays that may arise from what you have just indicated, is the Minister aware that there is an associated cost being borne by families?

**Madam President:** Minister.

**Hon. T. Deyalsingh:** Yes, that we do and I think that question was recently answered by the Minister of Social Development and Family Services, but we do not charge—the RHAs do not charge persons for storing the bodies.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, having regard to the fact that these bodies have to be tested via the PCR arrangement, the question that I would like to ask the Minister: Has the Government given any consideration to engaging private laboratories in that exercise in terms of PCR testing in conjunction with the funeral homes?

**Madam President:** Minister.

**Hon. T. Deyalsingh:** The delays which happen mainly at South West have nothing to do with testing, it has to do with the next of kin being quarantined so the application of the solution that you are proposing does not find a problem, the problem is the next of kin is in quarantine. It has nothing to do with testing the deceased. So what you are suggesting does not find a problem, the problem is with the next of kin and we could only release the body to the listed next of kin for legal reasons as we could appreciate.

### **ANSWERS TO QUESTIONS**

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Thank you, Madam President. We have eight questions for oral response today and two for written response. The Government will respond to seven out of the eight for oral response and we are asking for a deferral

respectfully of number 53 for two weeks. We are also asking for deferral of the two written questions for response also for two weeks. Thank you.

**Madam President:** So Question No. 53 and Questions Nos. 45 and 46 are deferred for two weeks.

### ORAL ANSWERS TO QUESTIONS

*The following question stood on the Order Paper in the name of Sen. Damian Lyder:*

#### THA-owned Hotels

##### (Opening of)

**53.** Can the hon. Prime Minister indicate when will the following THA-owned hotels be opened for business:

- (i) Sanctuary Villas; and
- (ii) Manta Lodge?

*Question, by leave, deferred.*

#### Statement Made by Minister

##### (Retraction of said Statement)

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

In light of the September 2021 statement made by the Minister that 40 per cent of the members of the protective services seem to be doing all the work, which was subsequently rejected by the President of the Trinidad and Tobago Police Service Social and Welfare Association, can the Minister indicate whether he intends to retract said statement?

**The Minister of National Security (Hon. Fitzgerald Hinds):** Madam President, regretful as I am to leave my busy schedule to answer this, what I consider to be a very empty and banal question, I must respond to you in answer to question 20. The Minister of National Security certainly does not propose to retract this

statement in view of the fact that it was not designed or intended to be a criticism but rather an observation by this Minister.

**Sen. Mark:** Madam President, can the hon. Minister indicate what were the factors that informed his observations as it relates to condemning police officers in the context of his statement?

**Madam President:** Sen. Mark, that question does not arise from the question that was posed and the answer given.

**Sen. Mark:** Well, Madam President, can the Minister share with this Senate whether his statement that 40 per cent of the members of the protective services seem to be doing all the work? Can the Minister indicate how he arrived at this particular position?

**Madam President:** Sen. Mark, that question too does not arise.

**Sen. Mark:** So, Madam President, can I ask therefore, is the Minister prepared to apologize to the police service for that very outrageous statement that he made in condemnation of the police service of this country?

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

**Sen. Mark:** Well I would ask the Minister in future do not attack the police service as he has done.

**Hon. Members:** [*Desk thumping*]

**Sen. Mark:** Madam President, may I go on, please, to another question please?

**Madam President:** Sen. Mark, the last statement was just that, a statement?

**Sen. Mark:** Yes, so I am going on to the next question now.

**Madam President:** Well, yes you should.

### **Property Valuation Roll**

## **( G o v e r n m e n t ' s I n t e n t i o n t o S u s**

**21. Sen. Wade Mark** asked the hon. Minister of Finance:

Given the growing concerns of citizens owing to the Government's accelerated initiative to populate the property valuation roll, can the Minister advise whether the Government will consider suspending the filing of said information on property and land ownership?

**The Minister of Public Administration (Sen. The Hon. Allyson West):** Thank you, Madam President. The Government does not intend to suspend the gathering and the filing of returns of property as it would result in a wastage of scarce resources, time and effort.

Further, as evidenced by clause 78 of the Local Government Reform Bill, currently before the Parliament, it is the intention of the Government to empower local government corporations, regardless of their political affiliations, to collect and retain residential property tax. This measure is designed to provide local government corporations with a significant and sustainable income stream for their projects and programmes. Any move to suspend of the process of population of the valuation rolls would therefore undermine this initiative and weaken the local government reform process. Thank you, Madam President.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, can I ask the hon. Minister whether it is the intention of the Government to allocate 100 per cent of the property tax to local government bodies as enunciated by the hon. Minister a short while ago?

**Madam President:** Minister.

**Sen. The Hon. A. West:** Madam President, I did not enunciate a percentage but as the Government would have indicated during the debates on this matter, the intention is to allocate residential property tax to local government.

**Sen. Mark:** Madam President, may I ask the hon. Minister what time frame does the Government anticipate for the completion of the population of the valuation

roll?

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

**Sen. Mark:** Madam President, can the Minister indicate what will it take for the Government to reconsider its position in seeking to impose this draconian property tax which people cannot afford to bear? Can the Minister give this Parliament an undertaking that the Government will review its position?

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

**Sen. Mark:** How many more do I have?

**Madam President:** Well, you have one more.

**Sen. Mark:** That is allowed?

**Madam President:** That—

**Sen. Mark:** That will be allowed?

**Madam President:** You can raise one more question and hopefully it will be relevant to the question that was posed and the answer that was given.

**Sen. Mark:** Yes, well can I ask the Minister seeing that the Government does not intend to suspend this whole thrust to populate the valuation roll, can the Minister provide to this honourable Parliament, through you, the time frame that will be required to have this population roll—the valuation population roll completed, Madam President, through you?

**Sen. The Hon. A. West:** Madam President, I am unable to provide that information at this time. We have a current exercise ongoing and at the end of that period, we will be in a better position to indicate when we think we would have attained the minimum number of valuations required to commence the collection of property tax.

**Madam President:** Next question, Sen. Mark.

**Sen. Mark:** Question No. 27 to the Minister of Works and Transport.

**Madam President:** Number 22.

**Sen. Mark:** 22, I beg your pardon.

### **Landslides-Dislocation of Residents**

#### **(Measures Taken)**

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

In light of the landslides, allegedly caused by quarrying activities, which have led to the dislocation of at least three (3) families at Diamond Road, Belle Vue in California, can the Minister indicate what measures are being taken to assist these residents in locating alternative accommodation and receiving compensation?

**The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):** Thank you, Madam President. The Ministry of Works and Transport has no control over or responsibility for matters relating to the relocation of or payment of compensation to persons adversely affected by activities of quarry operators. I thank you.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, is the Minister aware of this development that took place at this particular community given the important role that his Ministry has to play in this matter?

**Madam President:** That question is not allowed.

**Sen. Mark:** Is the Minister liaising with the relevant Ministries to provide some assistance to these families who are adversely affected by this quarrying activity being carried out by a company well known to the Minister?

**Madam President:** That question is also not allowed.

**Sen. Mark:** Can the Minister indicate, Madam President, through you, whether he intends, given what I had asked, to liaise with the appropriate Minister with a view

to getting to the bottom of this matter?

**Madam President:** Minister.

**Sen. The Hon. R. Sinanan:** Madam President, I do not know what role the hon. Senator sees the Ministry of Works playing in this matter. We have absolutely no role in this matter so I do not know what role the hon. Senator is asking me about. We have no role to play in this matter. We are not responsible for quarries or for relocation or compensation so—

**Sen. Mark:** Madam President, may I go on please?

**Madam President:** Yes.

**Sen. Mark:** Question No. 34 to the Minister of Health.

**Madam President:** Yes. Could you just indicate that you are asking this on behalf of Sen. John?

**Sen. Mark:** Oh yes. Madam President, I beg your pardon, on behalf of Sen. Jearlean John, I am asking Question No. 34 to the Minister of Health.

### **Vaccination Fears and Concerns**

#### **(Implementation of New Strategies)**

**34. Sen. Wade Mark** on behalf of Sen. Jearlean John asked the hon. Minister of Health:

Can the Minister indicate whether the Government has implemented new strategies aimed at assuaging the fears and concerns of the public and encouraging them to become vaccinated against COVID-19?

**The Minister of Health (Hon. Terrence Deyalsingh):** Thank you very much, again, Madam President. Initially, public communication regarding the benefits of vaccination was based on findings of a vaccine hesitancy study or some studies conducted by the University of the West Indies; Caribbean Public Health Agency, CARPHA, and Market Facts and Opinion. However, over time, our strategy has



been adjusted to deal with different segments of the population in accordance with their particular needs. The overall strategy has been to continuously reassure the public that COVID-19 vaccines are safe and effective and have been tested and trialled in all phases, one to four, and are subject to World Health Organization SAGE approval process.

The key message is aimed at reinforcing in the public's mind that our child immunization programme is part of our national health care protocol inclusive of vaccinations against childhood diseases such as measles, polio and yellow fever. This has led to no known cases of these diseases in Trinidad and Tobago. Also, it must be noted that diseases such as polio and small pox have been eradicated due to vaccinations. As the nature of the pandemic has evolved, the communication programme has also evolved to reassure persons that vaccines save lives and offer the best protection against the COVID-19 virus. All these initiatives are validated based on surveys conducted and reports that provide sound technical evidence from key organizations again, such as CARPHA, PAHO and UWI.

In addition, to ensure continued uptake of our vaccination programme by as many citizens, residents and visitors as it is possible, our COVID-19 vaccines have been made easily available and accessible through a national network of health centres and mass vaccination sites. As of January 09, 2022, the number of persons who have received their first dose of a two-dose regime is 670,713; those who are fully vaccinated, 674,618 representing 48.2 per cent of the population and the number of persons who have received their booster shots is 90,315. Thank you very much, Madam President.

**Sen. Mark:** Thank you, Madam President. May I ask the hon. Minister with the upcoming I should say, vaccine quasi-safe zone policy, could the Minister indicate to this House whether he has witnessed, given the strategies that he has outlined,

any substantial uptick in the vaccine let us say demand for vaccines by the population? Has the Minister seen, you know, any positive responses coming from the population?

**11.00 a.m.**

**Hon. T. Deyalsingh:** Thank you.

**Madam President:** Minister.

**Hon. T. Deyalsingh:** Yes, thank you. And as I have said publicly, we have noticed a 50 per cent increase in persons accessing vaccines, first dose. Whether it is the first dose of a two-dose regime or the Johnson & Johnson vaccine. But I think what the country needs now is some solidarity, and I think if we need to increase our rates, the saying goes, “a picture paints a thousand words”. Madam President, through you, would Sen. Mark agree to a collective picture of all six UNC Senators and all 16 PNM Senators displaying their vaccination cards and send a message to this population? Because we have indicated we are vaccinated. Collective leadership calls for us to put aside our swords and words and show solidarity.

**Hon. Senators:** [*Desk thumping*]

**Hon. T. Deyalsingh:** Would Sen. Mark agree to a picture of the six UNC Senators and the PNM Senators sending a message to this country that we want vaccinations?

**Madam President:** Sen. Mark.

**Sen. Mark:** May I ask—I am coming back to the relevance of this matter. Can I ask the hon. Minister, since he has claimed in his statement that vaccines are safe and effective, is the Minister prepared, and his Government, to indemnify individuals who take the vaccine and they have adverse reactions? Can the Minister put on the record whether the Government is prepared to indemnify and stand liability for workers who may suffer adverse effects as a result of taking the

vaccine?

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Minister.

**Hon. T. Deyalsingh:** Thank you. So the hon. Attorney General has spoken to that issue more than once, and he is on record as saying what that is. But I have noticed that the hon. Senator has studiously steered clear of my call for a collective picture—

**Hon. Senators:** [*Desk thumping*]

**Hon. T. Deyalsingh:**—asking that the UNC six Senators join with the PNM Senators to send a signal to this country that as leaders—

**Sen. Mark:** [*Inaudible*]

**Hon. T. Deyalsingh:**—we encourage vaccination.

**Madam President:** Sen. Mark. Sen. Mark, Sen. Lyder. Sen. Mark, you asked a question and an answer is being given. Will you please—please wait until the Minister is finished and you can ask your other question. Minister, are you finished?

**Hon. T. Deyalsingh:** Yes, Ma'am. Thank you.

**Sen. Mark:** You “doh” ask questions.

**Madam President:** Sen. Mark, you also do—

**Sen Mark:** [*Inaudible*]

**Madam President:** Sen. Mark, you also should not be engaging and saying what people can and cannot do in the Chamber. Can you leave that—

**Sen. Mark:** [*Inaudible*]

**Madam President:** Thank you very much. Sen. Vieira has a question.

**Sen. Vieira:** Thank you, Madam President. Hon. Minister, does the Ministry of Health monitor, trace, and record adverse reactions to the vaccine?

**Hon. T. Deyalsingh:** Yes. And as we have said publicly since the start of the mass vaccination programmes, all adverse events as opposed to side effects are traced, monitored, and reported to PAHO, WHO. And as the Chief Medical Officer and myself have said publicly numerous times, in the administration of over 1.3 million doses of vaccines less than five to 10 known adverse events have been reported and not one has resulted in death. So, the message is, vaccines are safe. And compare that to the daily fatality count of 15, 20, 30, but not one death due to vaccines. And yes, we are bound to report these to WHO and PAHO, and which we have done. And we have stated this publicly on numerous occasions. Thank you very much.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, can I continue?

**Madam President:** Sorry?

**Sen. Mark:** Can I continue?

**Madam President:** You have two more questions.

**Sen. Mark:** Yes, Madam President, can I continue?

**Madam President:** Yes, yes.

**Sen. Mark:** Thank you. Madam President, can the Minister share with this honourable Senate how many public servants in this country remain unvaccinated, right, and run the risk of being furloughed?

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

**Sen. Mark:** Madam President, in light of the changing environment where one can be infected even when vaccinated and being given the booster shot, how is the Minister's message going to address those persons who will make reference to this phenomenon in terms of that struggle and strategy to encourage people to become vaccinated? Can the Minister share with this honourable Senate how he intends to

approach that?

**Madam President:** Minister.

**Hon. T. Deyalsingh:** Thank you very much. So I will have no figures about the public service. What I have said publicly is that since we started the two dedicated sites for public officers on Monday the 3<sup>rd</sup>—

**Madam President:** No. Minister, I do not think that is the question that was posed. The question that was posed was about the strategy for persons who are vaccinated and who have gotten the booster and may still get COVID? Am I not?—yes. That is the question that was asked.

**Hon. T. Deyalsingh:** Okay. Sorry, sorry. So the strategy worldwide for people who have been boosted who may still get breakthrough infections is they must continue to adhere to the public health guidelines, which is, wearing masks, washing of hands, social distancing, and avoiding crowds. What the vaccines and the booster promises is that even if you do get a breakthrough infection it is going to be mild, it may not land you in a hospital, it may not land you in an ICU, and your chances of succumbing to the disease is severely, severely, limited. The vaccine is not a 100 per cent cure but it certainly reduces significantly. And with the Omicron variant, the research is showing that you need a booster. But I still want my colleague to state whether they are willing to join with us in a collective photograph—

**Madam President:** No. Minister—

**Hon. T. Deyalsingh:**—to show that all Senators are vaccinated.

**Hon. Senators:** [*Crosstalk*]

**Sen. Mark:** You out of place.

**Madam President:** Thank you. Sen. Mark, your time is now finished. We move on to the next question. Sen. Richards.

**C o u n t r y ' s   L o w   V a c c i n a t i o n   L e v e l**  
**(Measures Implemented)**

**35. Sen. Paul Richards** asked the hon. Minister of Health:

Given Trinidad and Tobago's increasing COVID-19 mortality rate, including a recorded 48 deaths between November 20—21, 2021, attributable to this country's low vaccination levels and high levels of obesity and diabetes, can the Minister indicate what measures are being implemented to:

- (i) increase vaccination levels; and
- (ii) reduce the prevalence of diabetes and obesity?

**The Minister of Health (Hon. Terrence Deyalsingh):** Thank you very much, Madam President. Several measures are being implemented to increase vaccination levels, including a critical review of the number of studies and reports submitted to the Ministry of Health to determine the reasons for vaccine hesitancy across the country, including, one, a survey report completed in May 2021 by Market Facts & Opinion's consumer economic study on Trinidad and Tobago, which indicated that only 35 per cent of the population was willing to take the vaccines at that time. It must be noted today we are at 48 per cent.

A report from the Caribbean Public Health Agency (CARPHA), on "COVID-19 Vaccine Acceptance Among Active Social Media Users in the Caribbean", completed in July 2021, which by contrast indicated that only 15 per cent of the sample population, that is, social media users, were vaccine hesitant, and only 11 per cent reported that they would not take the COVID-19 vaccines when they became available at that time.

A journal article published on August 19, 2021, from the *Lancet Regional Health of the Americas, Volume Three*, entitled, "Public trust, information sources

and vaccine willingness related to the COVID-19 pandemic in Trinidad and Tobago: an online cross-sectional survey”, which indicated that 62 per cent of the sample population were willing to take the vaccines. The Faculty of Social Sciences, University of the West Indies (UWI) has also been reengaged to advise on strategies to be implemented. There are continuous education efforts by the RHAs. Further, the Ministry of Health is utilizing new spokespersons and opinion leaders.

Regarding the second part of the question, several measures are being implemented to reduce the prevalence of diabetes and obesity, including, one, in 2016 the launch of the HSSP Loan Health Services Support Programme with a focus on prevention, treatment and care of non-diseases in Trinidad and Tobago. The creation of an NCD Director position within the Ministry of Health to lead policy implementation. In April 2017, the prohibition of the sale of serving of sugar-sweetened non-alcoholic beverages with added sugars by manufacturers and other producers in all government and government-assisted schools.

In April 2017, as part of Government policy and mandate, some private sector producers voluntarily reduced their sugar levels in juices and beverages. In January 2018, the launch of an aggressive health care screening programme for cancer, diabetes, heart, and hypertension to reduce heart disease and hypertension, to reduce their prevalence.

In December 2018, and this is important, the launch of the Trinidad and Tobago Moves Initiative. In July 2019, the launch of the Hearts Initiative. Another very important one, in October 2020, the launch of the Gestational Diabetes Screening Programme with training being completed on the use of improved quality control procedures in laboratory management, and use of an interactive online platform for medical staff within all RHAs, the procurement and installation

of physical activity equipment for 11 youth facilities for the community-based Health Youth Wellness TT Initiative.

And finally, the procurement of physical activity equipment for schools, be all schools, being completed with delivery of these equipment commencing by February 2022 for all government and government-assisted primary and government-assisted schools.

The finalization of a national nutrition standard, increased physical activity and health education in schools to reduce childhood obesity. The development of educational campaigns promoting the benefits of locally produced alternatives to cater to lifestyles such as veganism, gluten-free, and fish, to reduce the incidents of non-communicable diseases.

And lastly, the reengineering of the chronic disease programme CDAP to make pharmaceuticals more accessible for the treatment of care of non-communicable diseases.

**Madam President:** Sen. Richards.

**Sen. Richards:** Thank you, Madam President. With regard to part (i) of the question in the Minister's answer, regarding the increase in vaccination levels, given the Ministers response, has the Ministry been able to garner research or initiate research to determine the main reasons for vaccine hesitancy, since our levels are about 48 to 50 per cent with a view to crafting different types of communication strategies to deal with those resistant persons?

**Hon. T. Deyalsingh:** Thank you very much, excellent question.

**Madam President:** Minister.

**Hon. T. Deyalsingh:** Madam President, in doing all the research globally and locally, the issues of vaccine hesitancy seem to have remained the same over the past year. One, people are questioning the safety and efficacy. Two, they want to



know why these vaccines were delivered so quickly, although all World Health Organization and spokespersons have addressed these things. And three, we have to look at the issue of social media

On Sunday the 19<sup>th</sup> of December, the Trinidad *Guardian*, very good article, “Far-right using COVID-19 theories to grow reach,”—their study. And it spoke about:

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“COVID-19 has served as a catalyst for radicalization...It allows conspiracy theorists or extremists to create simple narratives framing it...”—as it does.

Today, the *Guardian* again on that same page:

“Pope on COVID vaccines says healthcare is a ‘moral obligation’”

And this is where we have to go. We have to use these opinion leaders like the Pope, like our local religious leaders that we have engaged.

“Pope Francis suggested yesterday that getting vaccinated against...”  
 COVID “...was a ‘moral obligation’ and denounced how people had been swayed by ‘baseless information’ to refuse one of the most effective measures to save lives during the pandemic.”

And this is what we are faced with globally, that social media, especially Facebook and the way their algorithms are set up, drives people to read more and more anti-vaccine content. So we are working, we are at 48.2 per cent, but we are working every day. And I am glad that roughly about 1,000 to 1,500 persons a day—it could be more—I have said so publicly, are taking up the advantage of being vaccinated. Thank you very much.

**Madam President:** Sen. Richards.

**Sen. Richards:** Thank you, Madam President. In regard to part (ii) of the question related to reduction of diabetes and obesity, the Minister outlined several initiatives over the last couple years that have been initiated to deal with the issue of tracking obesity levels in Trinidad and Tobago, particularly in children. Can the Minister

indicate if the initiatives have borne fruit with data suggesting obesity levels are falling?

**Hon. T. Deyalsingh:** So, before the pandemic—I am glad Sen. Richards asked the question—when we had put the ban on sugar sweetened beverages in school, the survey at that time, prior the pandemic, showed that children were drinking 25 per cent less soft drinks. That will translate into less obesity. But with the pandemic now, they went back home, they went back into an environment where we know what happens in our kitchens. I am glad that students are coming back out to school. So they are back in an environment where they get proper nutrition and where they do not have access to these sugar sweetened beverages.

We have to do what was called Senator something called a “step survey” to really find out the nuts and bolts. However, over the past two years the pandemic prevented us from doing that step survey. I am hoping that in 2022, the latter half, assuming things go back to some degree of normalcy, we can get back into the schools and do that step survey to hopefully see that those measures had some positive effect, even though children, some of them, were at home and out of the environment in the schools, which encourage them to eat better and not drink sugar sweetened beverages.

**Madam President:** Sen. Richards.

**Sen. Richards:** Thank you. Thank you, Minister, for the response. Given the globally available data that suasion does not tend to work and the jurisdictions have seen progress in reduction of general population obesity, and childhood obesity have taken the route of mandatory reduction of sugar level in foods available, particularly to children, is that an option the Ministry is willing to consider at this time?

**Hon. T. Deyalsingh:** So at the Ministry level when I was first appointed Minister

of Health, suasion did work. As I said, if you look at the packages of one of the major juice manufactures in Trinidad and Tobago—and we spoke to them. We asked them to voluntarily reduce the levels of sugar in your drinks. And that manufacturer responded brilliantly. You will see printed on the front of their carton, “no added sugar”. So moral suasion did work and that is the route we are going. Other soft drink manufacturers have in fact reduced their levels of sugar in their drinks, and we continue to work with them to do that. So there is a role for moral suasion before we go other routes.

**Madam President:** Sen. Richards.

**Sen. Richards:** I think I have one more. Do I?

**Madam President:** Yes.

**Sen. Richards:** Thank you. Final question, Minister. With regard to the issue of pregnant women and gestational diabetes, has the Ministry done any research to see how prevalent it is in Trinidad and Tobago, one, and the impact it is having on the issues related to COVID-19 affecting women who are pregnant? Thank you.

**Madam President:** Minister.

**Hon. T. Deyalsingh:** Thank you. So the issue of gestational diabetes, and for the layperson, gestational, that is when a woman is pregnant, the research tells us that a pregnant woman has a 50 per cent risk of developing Type 2 diabetes that is non-insulin dependent diabetes. And we deliver about 13-15,000 babies per year, 90 per cent of which is in the public healthcare system. The research would also tell you the child of that diabetic mother, 50 per cent of them stand a 50 per cent chance of being a Type 2 diabetic in the long-term. And in 2018 our National Standardization Diabetes in Pregnancy Policy set out that, to deal with both mothers who have COVID, and mothers who have no COVID.

Our pregnant women, COVID and non-COVID, for the first time in this

country since 2018 are now being screened twice for diabetes during their pregnancy. What that does, it has helped us decrease two things. One, maternal mortality. Two, perinatal mortality rates. So the programme is working, and this is one of the signature components of our NCD programme, non-communicable diseases programme, our gestational diabetes programme which we launched in 2018. So we are gathering the data and I have given you some of the data about the prevalence of diabetes in our pregnant population. Thank you very much.

**Madam President:** Sen. Walker.

**Sen. Walker:** Thank you, Madam President. Hon. Minister, you mentioned social media as a large culprit for vaccine hesitancy; you also spoke of persons questioning the safety and efficacy of the vaccine. Would the Minister consider using social media more heavily to share data such as the number of persons with side effects, and even categorize those effects versus the very few that you initially mentioned who have had major adverse reactions?

**Madam President:** Minister.

**Hon. T. Deyalsingh:** Thank you. So we have made no secret of the fact that any drug, any vaccination has side effects, minor side effects. It is counterintuitive to blow that up out of proportion. You get little pain in injection site, a little fever. To escalate that does not make sense for any vaccine anywhere in the world. It is not done anywhere in the world. So I do not see the need for it, most respectfully.

**Madam President:** Next question, Sen. Lyder.

### **Carnival 2022**

#### **(Details of)**

**52 Sen. Damian Lyder** asked the hon. Minister of Tourism, Culture and the Arts:

Given the statement by the Attorney General that Carnival 2022 will be the “mother of all Carnivals”, can the Minister provide the following information:

- (i) has the Government been engaging with Carnival stakeholders;
- (ii) having regard to the COVID-19 pandemic, what form will Carnival 2022 celebrations take; and
- (iii) what is the budget for the hosting of Carnival 2022?

**The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell):** Thank you very much, Madam President. With respect to part (i) of the response, yes, the Ministry of Tourism, Culture and the Arts has been engaging with carnival stakeholders on a continual basis on this matter, including, but not limited to: The National Carnival Commission; PanTrinbago; TUCO; the Trinidad and Tobago Carnival Bands Association; the Trinidad and Tobago Promoters Association; representatives of Chutney Soca stakeholders; the Ministry of Health; Ministry of Digital Transformation; Ministry of the Attorney General and Legal Affairs; Ministry of National Security; Tourism Trinidad Limited; Tobago Tourism Agency Limited; Tobago Festivals Commission Limited.

With respect to part (ii), following several discussions and review of proposals in the context of the rapidly changing circumstances associated with and arising from the COVID-19 pandemic, in particular the arrival of new variants and the current elevated levels of infection and hospitalization, no firm decision has yet been taken regarding the hosting of Carnival type activities in 2022. However, we expect that a decision will be forthcoming in the near future.

With respect to part (iii) and having regard to the response in part (ii) of the question, no budget estimate has been identified at this time for the hosting of Carnival type activities in 2022.

**Madam President:** Sen. Lyder.

**Sen. Lyder:** Madam President, through you, can the hon. Minister identify through his consultations and through many meetings with promoters, et cetera, have any promoters received or are earmarked to receive any level of sponsorship in any form by the Government or any other Government institution?

**Madam President:** Sen. Lyder, that question does not arise.

**Sen. Lyder:** Okay. Madam President, in the consultations and given the state of the pandemic today, has there been a decision by the Government that should Carnival actually happen in 2022, will the venues used be considered safe zones? Has that arisen in the consultations?

**Madam President:** Minister.

**Sen. The Hon. R. Mitchell:** That has arisen in the consultations that there be predetermined, preapproved safe zone type venues.

**Madam President:** Sen. Lyder.

**Sen. Lyder:** Madam President, given the fact that the Minister cannot indicate that there will be much or any activity for Carnival 2022, will the Minister, and given the fact that many carnival stakeholders will indeed not be experiencing any financial benefits given that we have not heard any activities and—

**Madam President:** Sen. Lyder, if I could just ask you to pose your question please?

**Sen. Lyder:** Thank you, yeah. Would the Minister come to this Senate or admit to this Senate and by extension to the population, that the statement made by the hon. Attorney General that this would be the mother of carnivals was indeed misleading?

**Madam President:** Sen. Lyder, that question is not allowed.

**Sen. Lyder:** But Madam President it was in the Order Paper as a statement.

**Madam President:** That supplemental question is not allowed.

**Sen. Lyder:** Okay. Well thank you, Madam. There is not much more for me to ask the Minister given the lack of response. Thank you, Madam President.

**Madam President:** Next question, Sen. Lyder.

### **ANR Robinson International Airport Project**

#### **(Details of)**

**54. Sen. Damian Lyder** asked the hon. Minister of Works and Transport:

Can the Minister provide the following information as regard the \$1.2 billion budgeted for the ANR. Robinson International Airport project:

- (i) the cost of land acquisition for said project;
- (ii) the clearing of land; and
- (iii) the construction of hoarding?

**The Minister of Public Administration (Sen. The Hon. Allyson West):** Thank you, Madam President. Madam President, in regard to the \$1.2 billion budgeted for the ANR Robinson International Airport project, the following information is provided. The estimated cost of land acquisition for the new airport terminal and associated works at the ANR Robinson International Airport is \$300 million. The contract sum for clearing of land acquired and to be acquired for the project is US \$1 million; that is \$6.8 million. To date approximately 80 per cent of this sum has been claimed via the project certification process. The cost of hoarding of the site is covered under the contractors proposed cost for the general provisions and project requirements item of work, which is required to support the execution of the permanent works for the project. This is similar to what is commonly referred to as the preliminaries item on major projects. To date the contractor has made no specific claim for hoarding under this item. Thank you, Madam President.

**Madam President:** Sen. Lyder.

**Sen. Lyder:** Thank you, Madam President. Through you, can the hon. Minister indicate how many families have been displaced from their homes as a result of the land acquisition governed by this \$1.2 billion Tobago airport terminal project?

**Madam President:** Sen. Lyder, that question does not arise.

**Sen. Lyder:** Okay, thank you. Madam President, through you, can the hon. Minister indicate whether or not in the Ministry of Works and Transport or in any Ministry they are in the possession of a feasibility study that has been conducted to justify the budget of this total spend of \$1.2 billion of taxpayers' money on this project?

**Madam President:** Sen. Lyder, that question does not arise based on the question that has been posed and the answer that has been given.

**Sen. Lyder:** Okay. Madam President, can the hon. Minister confirm to this Senate the quantity and names of international airlines who have been officially confirmed air travel to this Tobago airport to utilize this new \$1.2 billion terminal?

**Madam President:** Sen. Lyder, that question does not arise.

**Sen. Lyder:** Madam President, can the Minister detail payments to individual contractors by name on this project thus far? And if not, would the Minister give us a Government assurance that they can be provided within two weeks?

**Madam President:** So you just asked for two questions there. You just asked two and neither will be allowed.

**Sen. Lyder:** Thank you, Madam President, I expected that.

**Madam President:** No. Sen. Lyder, I call on you to make an apology for that last comment.

**Sen. Lyder:** I apologize to you sincerely, Madam President.

**Madam President:** Thank you very much.



**NATIONAL ACADEMY FOR THE PERFORMING ARTS BILL, 2022**

Bill to provide for the establishment of the National Academy for the Performing Arts and for the management and control thereof and for related matters [*The Minister of Tourism, Culture and the Arts*]; read the first time.

**SOUTHERN ACADEMY FOR THE PERFORMING ARTS BILL, 2022**

Bill to provide for the establishment of the Southern Academy for the Performing Arts and for the management and control thereof and for related matters [*The Minister of Tourism, Culture and the Arts*]; read the first time.

**SEXUAL OFFENCES (AMDT.) (NO. 3) 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. And I take this opportunity to wish you and all hon. Senators a very Happy New Year with the expectation and hope that we can continue to do good business for the people of the Republic of Trinidad and Tobago as we proceed to make law.

Madam President, I beg to move:

That a Bill to amend the Sexual Offences Act, Chap 11:28, be now read a second time.

Madam President, the Government approaches the honourable Senate with the fervent hope and desire that we can continue to pass law to protect our most vulnerable. The Bill before us, Madam President, is one to amend the Sexual Offences Act. The Sexual Offences Act is Act No. 27 of 1986.

And this particular Act which is now some 69 sections long, if you look at the history of the Act coming first of all for the repeal and replacement of laws in 1986

relating to sexual crimes, procurement, abduction and prostitution of persons and to kindred offences. That is what the Sexual Offences Act in 1986 was said to do.

**11.30 a.m.**

If you look at the history of the development of the Sexual Offences Act, the removal of marital rape as a concept which was debated back and forth—can persons in marriage commit rape, watching our society treat with those things, understanding how we treat with children, understanding how we treat with persons who are differently abled. If you look at the Act in its consolidated form, and I should say that the Laws of the Republic of Trinidad and Tobago on the website, we have dedicated our time to updating those laws so that the amendments are now current across all of the laws. And if you look to this, you will notice that there has been a significant reform of the Sexual Offences Act in the time that I have had as Attorney General. In 2017, then 2019, then 2021 and now in 2022, we have made major steps to protecting the vulnerable.

The Bill before us is seemingly short, it is six clauses long including the short title, the commencement clause. We seek to amend the interpretation section of the Act—that is section 2 of the Act. We seek to add four new sections to the Sexual Offences Act—a new 22A, a new 22B, a new 22C and a new 22D. And what is this about? Bearing in mind that we have been incapable as a Parliament of passing the cybercrime laws in the Republic of Trinidad and Tobago, bearing in mind that we went to a joint select committee and could not get the agreement of the Opposition to pass the cybercrime laws. Looking at the platform of the vulnerable in Trinidad and Tobago, taking account of jurisprudence in particular, there is a very important case that I had put on the record and that is a High Court case under the hand of Mr. Justice Frank Seepersad. It is CV2014-01949, *Therese*

*Ho v Lendl Simmons*. This case, as it was produced on the 26<sup>th</sup> of October, 2015, set out material which we as a Government took into account as we sought to prosecute amendments to the law to introduce cybercrime. Why? The new sections proposed by this Bill, treat with two concepts, one, voyeurism—voyeurism, and I will come to its definition in a short while as the elements of the crime are set out in the new section 22A—is one aspect and then the second one is now referred to, and Mr. Justice Seepersad referred to it as quite properly what it is commonly called now “revenge pornography”. That is the new sections 22B, C.

So we are putting in three aspects into two topics and we are also introducing a methodology for compensation. Why? If you read the judgment, and I really recommend this judgment to all hon. Senators—if you read the judgment of Mr. Justice Seepersad and you note that the judge has recognized that the law of confidence only goes so far in the civil realm and that whilst we can invoke equitable remedies and even damages, the judge properly identifies the fact that there is a major lacuna in the Laws of Trinidad and Tobago, as it relates to privacy and the criminalization of privacy. Now, on the one hand, we do have the Constitution of the Republic of Trinidad and Tobago, which recognizes the qualified right to private life in section 4 but if you are looking for an actionable remedy, the civil law stands apart from the criminal law and in the criminal law, we are looking around the world and Trinidad and Tobago is no exception to vulnerable people, in particular children, being the victims of the most savage of criminality portrayed in the digital world.

Taking an intimate image of someone, sharing an intimate image without their consent, threatening people to share intimate images, video recordings, altering images, so that you are literally changing people’s faces and putting them

on bodies. As I saw, quite interestingly on BBC this week alone, the very tragic story of an Egyptian girl, a young teenager who was the victim of two young men, altering images of her to the point where she committed suicide.

Now, I have used a very far country, Egypt, but I can say with certainty that we have had children in this country who are the victims of bullying, cyber bullying, committing suicide. And whilst we could not, and cannot get the Opposition to support cybercrime legislation which would have dealt with this, as we had it in the legislation that we took to a joint select committee on which failed, in these circumstances, we come again in the body of the Sexual Offences Act to try again. And why is that, Madam President? If we look at the statistical information available to us, I can tell you, Madam President, for the period 2017, '18, '19, '20 and '21, there have been 2,282 reported sexual offences. Let me repeat that, 2,282, of which 647 have been detected. So reported, 2,282; detected, 647, we have a 28.3 per cent detection rate. And when we looked at that bracket broadly of sexual offences and we looked to an examination of the current law, it is true that some aspects of the current law can touch and concern this issue, after all, we do have the Offences Against the Person Act, Chap. 11:08, in the offence of harassment but harassment requires a course of conduct, you must do it more than once.

We do have the Sexual Offences Act with the offence of indecent assault, which can perhaps capture a peeping Tom or a pervert, but again with limitations, and we do have the Constitution, again with its qualified constitutional rights, and then the issue of having to go to court and prosecute your right as the case of *Therese Ho v Lendl Simmons* set out, means that you have to pay a lawyer, ask for damages, go for aggravation, go through the indignity of an entire process at the

end of the day for a dollar judgment, which may not go that far, particularly, if you are vulnerable.

So let us deal with the law. What are we proposing? The Bill before us as I said, has:

1. Voyeurism;
2. Taking and sharing of intimate images;
3. Sharing of intimate images; and
4. A methodology for compensation in the criminal realm.

The Bill also goes into consequential amendments, very importantly into the Children Act and in the Children Act we are replicating the offences of voyeurism, taking and sharing intimate images, and sharing intimate images and compensation but we are not removing or conflating these offences with child pornography. Very importantly, we keep child pornography as a separate aspect.

Now, at first read I am sure everybody in this Chamber is attracted to supporting this kind of law, I am sure of that. But I can say, Madam President, that this is quite complicated, there are some complicated issues in this Bill and I will flag it up front now, my own view is that this really ought to be referred to a special select committee of the Senate. And I will explain why as I go through the provisions of the Bill because we need to make sure that the particulars work themselves out right. Now, recently people are somewhat confused at taking a step for policy decisions and then coming with prescriptions. I would like to explain that the law in some circumstances requires you to state a policy, provide a proposal in my philosophy—and you know what I am going to say—of “just start”, you ought to at least start at a point and then work your way through where appropriate in a consultative process in getting the details right.

Madam President, we, in developing this Bill, sought the assistance of many entities. I wrote to the Trinidad Tobago Police Service, the DPP's Office, the Judiciary, the Public Defenders Department, prisons, Law Association of Trinidad and Tobago, the Children's Authority, the Ministry of National Security, Police Complaints Authority, Criminal Bar Association, the British High Commission, Candlelight Movement, the University of the West Indies Research Department, CariMAN which is an NGO, Rape Crisis Society, Women of Substance and Coalition Against Domestic Violence.

We did not receive submissions from the DPP, the Judiciary, the prisons, the Criminal Bar Association, the Candlelight Movement, quite surprisingly—the University of the West Indies Research Department, CariMAN, Women of Substance and Coalition Against Domestic Violence. None of them—none of those entities responded. We wrote on numerous occasions, asking for their submissions, and inviting them to please come in and bring their submissions forward.

I would like to remind that on two occasions in this Senate, on June 15, 2021, and—that was in the Senate, sorry, and once in the House on July 29, 2021—forgive me, both in the Senate, June 15, 2021, and on another occasion, July 09, 2021, that was in the House, forgive me, I indicated to this Senate and to the House, that these were amendments that were being considered and that we were in the course of looking at it. We were looking at it in three aspects:

1. The concept of voyeurism and revenge pornography as we do today and compensation for adults and for children;
2. Further amendments to the sex offenders registers; and
3. That we were looking at aspects of bail and also in that context, we were looking at a register for sexual offenders on a charge.

A very contentious issue whether you should have someone go on a register of charges, as opposed to somebody who has been convicted. And I can tell you that there was not an appetite for that from the majority of stakeholders, understandably so, but we still had to ask the question. And I would like to say this in relation to work in general: please understand that when we make statements of policy, it is for us to then work our way through what the ultimate result looks like, and today, as we look at this particular approach, let us start with voyeurism.

So, Madam President, may I ask what time I end, Madam President, in full time?

**Madam President:** You finish at 13 minutes past 12.00.

**Hon. F. Al-Rawi:** Thank you.

**Madam President:** You have some seconds after that.

**Hon. F. Al-Rawi:** Thank you. In voyeurism it is important, perhaps in all, let us start with the anchoring provisions of the interpretation section, clause 4 the Bill, which amends section 2 of the Act. You will note, Madam President, that we have introduced what “computer data storage medium” is, what a “computer system” is, and the word “device” jumps out at you in the “computer system”. And then we have a definition of “device”. We go to “internet service provider” and in that context I can tell you that we borrowed from the cybercrime legislation that we could not pass. We were very satisfied based upon the expert evidence in the Joint Select Committees that we had a broad and robust position, bearing in mind that your telephone is a device, it is a computer system in today’s world. We then have the definition of “intimate image” and it is a visual recording. A visual recording includes a “still”, because you can have a snapshot of a recording—that is an intimate image of a:

- “(a) ...person engaged in a sexual act;
- (b) the person in a manner or context that is sexual; or
- (c) the private parts of the person.”

And in coming up with these definitions, I would like to say that we looked at the laws from around the world in particular the Commonwealth context, we looked at Australia, we looked at New Zealand, we looked at the United Kingdom and I would like at this moment to please express my gratitude to the hard-working team at the Office of the Attorney General. The very many persons at that team at the criminal justice team led by Mrs. Farzana Nazir-Mohammed and Rhea Brereton and that entire team for really trawling all of the laws that were relevant in connection.

We were very close to the English model, when we look at the context of what we are describing, and what we sought to do is to capture the cybercrime aspects into this Bill, we seek to dis-apply the law for people in lawful exercise of their function. So you see the definition of a “law enforcement officer”, this came from a definition which we used in the Anti-Gang Act, if you are looking for the precedent. We then describe what a “private act” is. “Private parts”, and yes, this is one for concern. Have we got it right in this formula? That is open to discussion:

- “(a) ...genitals, pubic area or buttocks of a person; or
- (b) the breasts of a female person, whether or not the breasts are sexually developed.”

We looked at the Trinidad and Tobago context of what we call standard bareback culture amongst our males, how we treat with this issue. We looked at a “sexual act” and then we went down to “share” and we took all of the iterations of what sharing involves. And again, a:



“visual recording’...a—

- (a) photograph or film;
- (b) video recording; or
- (c) live-stream,”

Why? We are not confined only to the electronic environment, you still have old school photographs that can happen, the naked eye and old school technology.

So, clause 5 is where we introduced the new 22A, that is the first one; that is voyeurism. Voyeurism as a concept we have taken is to capture quite simply put, the peeping Tom. This is usually a precursor activity, from law enforcement’s observation, where observing someone so as to get:

“...sexual gratification for himself or another person, or causing humiliation or distress to the person...”

—knowing that you are observing the person doing a private act, and that they do not consent, or viewing:

“...whether with or without...equipment...”

—because you can put cameras into places and effectively live-stream persons while they are in privacy of their mind and circumstance. Looking:

“...beneath...clothing...”

- (i) ...intention of enabling himself or another person to...”—view—

“(A) ...private parts of that person...”

(B) the under-wear covering...”

- (ii) without the consent of the person; and
- (iii) without reasonably believing that the person consents to being observed; or

(c) takes, captures, records, streams, stores, publishes or transmits...visual recording of the private parts of a person without...consent...in circumstances...that person has a reasonable expectation...”—of—“doing a private act.”

All of those things have found themselves in multiple jurisdictions as activity that usually leads to rape, to violence, to humiliation, to distress. Now, bear in mind and I have to tell you this, we spent months looking at the Trinidad and Tobago context of culture. Does this apply to carnival? Well, not really, because if you are baring your body in circumstances that you are in public, you do not have a reasonable understanding that you are in private. So our culture, we took care to make sure we were separating out from this position, because the last thing that you want to do and hence the need for care, hence the recommendation for a special select committee, we need to make sure that the good intentions of law do not find themselves reduced to ridicule by having circumstances that are not easy to see, when you look to apply the law.

We are saying that these offences are so serious in some circumstances that we ought to have both summary and indictable that is triable either way and that we are prescribing a heavy matter for that:

“...two hundred and fifty thousand dollars...two years...”

—imprisonment on the summary end. And:

“...seven hundred and fifty thousand dollars...”

—and five years’ imprisonment on the indictable end.

We are applying this to the Children Act. We do need to contemplate in our discussions where we draw the line with children, experimentation—how do we factor the voice of the child as opposed to the consent of the parent? How do we

treat with younger children or older children? How do we balance the Romeo clause, where you accept that there is going to be sexual activity amongst children? So the balancing act in this law is, I will say it openly, a very hard one. I am sure the legitimate aim is clear, I am sure the measures are proportionate but we certainly do need the views of all Senators as to where we draw the line on some of the issues.

When we look to the disapplication of voyeurism, we are making sure that law enforcement officers in the course of their duties are not caught. We are making sure that persons who are dealing with legal proceedings or preventing and investigating or prosecuting crime, or something in the interest of justice is not affected. There is a very—

**Sen. Richards:** Thanks for giving way, through you, Madam President, and the big question: How is the media impacted by this?

**Hon. F. Al-Rawi:** Sure. I will come to it in a second, I, such little time here. There is a very large issue that I do wish to hear from hon. Senators on—tied into what you have just asked, Sen. Richards. You will note that there is a subsection (e) of 22A, “in the public interest”. We use that expression “in the public interest” coming out of other jurisdictions, where qualifications of public interest were provided in some examples that we saw, “the public interest” in essence, seeks to capture what the media may be involved in, after all, “whistleblowing” by the media is legitimate and ought to be supported. And sometimes there may be imagery that is caught into that bracket and it is specifically if you look to 22—the new section 22A in clause 4—clause 5, sorry. If you look to the expression 22A, subsection (2), subsection (3), if you look at subsection (3)(e) you will see “in the public interest”. What we intended by that expression—and I have to tell you that

for instance, the Law Association recommended that we delete “in the public interest”. Their recommendation is do not put “the public interest”, the English law has it. But finding that balancing line for the media, or for other legitimate circumstances that we could not adumbrate in the law was why we included “the public interest”. You will see “the public interest” exception in taking and sharing and also in sharing. So that is something that needs a little bit of exploration, it is not an easy line. It is one of the reasons that the Media Association has been vehemently opposed to the cybercrime legislation in certain iterations. And both Sen. Richards and Sen. Vieira served on that Joint Select Committee with me and know how hard we fought to try and find the balance. Now, the rest of the world has cybercrime law, everywhere else in the world has cybercrime law, but Trinidad and Tobago has none other than the Computer Misuse Act, which is quite archaic. So let us go to section 22B.

Section 22B is taking and sharing an intimate image. It is to be distinguished from 22C which is sharing an intimate image. There is a live issue inside of this section. We have provided in 22B, in subsections (7) and (8) for the disapplication of the law for the internet service provider. Large question: Should we dis-apply for sharing in 22C? Should that stand alone? This is why we brought it to the Senate to hear and ventilate these issues because, do we want a general aspect—it arguably does not apply to voyeurism because of the sexual gratification qualification in the definition of voyeurism. But if you look to taking and sharing in the taking and sharing, the new 22B; you:

- “(a) ...knowingly takes and shares an intimate image of another person without...consent...

(b) for the purpose of causing humiliation or distress to another person, he knowingly takes and shares...”

—those are the circumstances in the Lendl Simmons and Therese Ho case.

“(c) for the purpose of obtaining sexual gratification for himself or another...he...takes and shares...intimate image...without...consent...reasonably believing...the person...”—did not consent—not—believing that the person consented, sorry.

Listen to this one:

“(d) he knowingly threatens to share an intimate image of another person in circumstances...he intends to cause the depicted person to fear that the threat will be carried out or he is reckless as to whether the depicted person will fear...”

This one:

“(e) he knowingly alters an image of a person to make it appear that the image of the depicted person is an intimate image and shares that altered image without...consent of the depicted person...”

Are these alien concepts in Trinidad and Tobago? Can we not all speak to seeing ridiculous, terrifying, dangerous assassinations of character on an almost minute by minute basis in this country? Where do we draw the line, hon. Senators? When do we begin to protect, hon. Senators? How do we ensure that our most vulnerable are protected? I am a person in public life expected as we are all in this Chamber to have a thicker skin than others. But if you are not built with a thicker skin or expected to, this can be a tragedy because we are not all built from the same constitution or have had the same experience to learn to process the trauma that is associated with character assassination. And this Bill seeks to preserve the

rights of the vulnerable because litigation on the civil front is an expensive and time-consuming aspect.

A criminal law is by far more persuasive but hon. Senators, how do we treat with the innocent infringement? How do you treat with the—I stand before you here, Madam President, I have 2,625 WhatsApp messages and some of them have over 900 messages inside of each one. I do not know what is inside of many of the messages, as many of us find ourselves. Yes, persons in public life have to answer the phone—you answer calls from people you do not know, your number is public—thanks to my good friend Devant Maharaj and I have no problems with that—people engage in sending you messages on a constant basis. In this country, it is an issue if you answer your phone or you do not answer your phone. But do you know what is on your phone? How do we treat with innocent infringer? How do you treat with pornography of the type captured here? And this is not meant to be prudish and say that pornography is being outlawed, no, that is not what this is. It is if a depicted person who expected to be in the privacy of their affairs finds themselves the victim, there is a careful line in the law.

So the law does contemplate in its construct the innocent infringer, I am using that term well, I know Sen. Vieira knows it very well. It is a concept in copyright that we use all the time in intellectual property, but you need to di-apply the law in innocent infringement circumstances, which is why 22B seeks to exculpate an internet service provider an ISP from infringement of the law, and perhaps that ought to be expanded into 22C and put into a standalone provision as well.

If we look, Madam President, to 22C. So 22B, in clause 5, is taking and sharing, recklessness, altering an image knowing that you are doing what you are

doing, Madam President, and people hide behind fake labels, fake profiles, anonymity. But you know what, this law goes so far as to say, “yeah, you could be hiding behind something that is put out by a wicked soul too afraid to do it for themselves in their open name but you go ahead and breach this law and let us see what happens”.

It is just like when we dealt with the law on tipping off, in amending the law for tipping off in the fashion that this Government has, we stopped a lot of unnecessary publication on matters that are before the Trinidad and Tobago Police Service.

Not because you want to suppress things but you want to protect and in allowing for this sharing of something, you have to think twice. You have to think twice. You have the right and remedy against a media house because you know who the media house is, but who in today’s world is a journalist or is a commentator or is a political activists or just a concerned citizen? It is wide and how we regulate ourselves is part of this law. Are all of the answers in this law? No, Madam President, all of the answers are not and I say so openly. This is an attempt to find a fix for cybercrime law that we cannot pass because of the Opposition.

### **12.00 noon**

So, sharing, 22C:

“...a person commits an offence if he knowingly shares an intimate image of a depicted person—

(a) without the consent of the depicted person...”

Has this happened before? I actually recall, Madam President, standing up in this Senate in protection of somebody who is a political opponent and said to the nation, “Stop it. Stop sharing and savaging an innocent person’s position.” I was

excoriated in some political circles for defending an opponent. I make no apology for that, it was wrong. And in today's world, when we recognize that every young person has a phone and has a camera—and if you read Justice Seepersad's judgment, he introduced the common nature of another term called, “sexting”, where it is now acceptable that you can share intimate images amongst some generations. How do we protect those generations from themselves? Because remember, you just do not perhaps appreciate the gravity of the circumstance you may find yourself in and therefore, we as a Parliament have to take steps to assist in protecting our vulnerable.

What happens if you lose your phone, somebody hacks your media account, somebody gets your Cloud account and download your private pictures? These are all very real, scary examples of what can happen to everybody in this country. But what happens if it is a child or someone, an adult that just cannot take the emotional pressure of that abuse, that embarrassment? I am sure Sen. Dr. Deyalsingh will tell us stories in his realm that he may have come across in his own professional interactions of how real the circumstance is. Perhaps Sen. Thompson-Ahye, who has given her life to protecting vulnerable children, will know from the Children's Authority and other matters what this involves. My dear friend, Sen. Sobers, a practising attorney-at-law; Sen. Lutchmedial, whomever it may be, Sen. Renuka Sagramsingh-Sooklal—I mean, there are so many practitioners in here that have living experience of how real this matter can be.

So have we fought the line the best way possible? Do we go far enough in section 22D? Section 22D allows for a court to:

“...order a person who is convicted of an offence under...22A, 22B or 22C—



(a) to pay to the complainant adequate compensation which shall be a charge on the property of the person so convicted;”

It is a very powerful provision:

“(b) to take reasonable actions to remove, retract, recover, delete or destroy any intimate image taken...”

Remember this is ex post facto. So have we another opportunity should we also introduce interlocutory applications? That is where we went into the internet service providers. If you look at 22B, subsection (7), subsection (8):

“Notwithstanding subsection (7), an internet service provider shall comply with any court order, injunction, writ or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement based on any written law.”

That is a dramatic improvement of the law. A dramatic improvement of the law to locate a civil injunctive remedy inside a criminal law provision. Understand how far-reaching we wish to be. The question is a matter of balance.

I confess, Madam President, we spent a lot of time looking at this law over and over and over again to where it got to the point of going to Cabinet, letting the Cabinet know some of the things that we wrestled with and the Cabinet said, “You know what, AG, we hear you. Take it to the Senate, let us ventilate it and let us take it to a special select committee so we can explore the merits, concerns, perhaps dangers of where we ought to draw the line.”

Now, Madam President, the consequential amendments that are contained in clause 6 are a repeat of voyeurism—sorry, definitions, voyeurism, taking and sharing or sharing. We have to apply it to the realm of the child. A child is someone under 18 years of age. Now, the children’s law is a little difficult to

manage because discretion and voice of the child are very real issues in children's law.

The voice of the child is the fact where the child has a legitimate position, can give consent, can give reflections. We have children that drive, they are 17 years old. We have the "Romeo clause" in the Children Act that allows an exculpation of liability for sexual interactions amongst children or persons who are just out of childhood with a three-year chain link. Do we divide it between the older child and the younger child? Because if you look to section 44, there is going to be an anomaly where you are asking for the consent of the parent or guardian or person with the responsibility for the child when the child can have consent that can be factored. Not an alien concept if you look to things like Gillick consent for medical treatment above 16. Our law recognizes an older child and a younger child, ages 14 and above.

So we dealt with it in the cannabis decriminalization issue where we dealt with child responsibility. We looked at over 15, we looked at over 16, et cetera, so perhaps Sen. Deyalsingh and Sen. Dillon-Remy, and of course all honourable Senators may have a view on consent and the voice of the child; Sen. Thompson-Ahye, Sen. Lutchmedial, Sen. Sagrarsingh-Sooklall, Sen. Mitchell. Where do we bring—Sen. Browne—where do we bring consent, informed consent? Where do we bring privacy? What if the child is traumatized in certain circumstances? These are for exploration in the consequential amendments.

So, Madam President, if I put it in summary, this is another step in the protection of the vulnerable. This law is brought to the fore when many people legitimately ask for protection for the vulnerable. We have seen marches, commendable advocates for protecting the vulnerable. But if you drill down to

what people are asking you for, very often you cannot get a submission. They say, “Do more. Do better. Protect”, but what have we done as a Government?—sex offenders registry, domestic violence, child protection, abolition of child marriage, revenge pornography, voyeurism, restrictions on bail, anti-gang to treat with children issues, the creation of a Children Court, the Family and Children Division. Five minutes? Thank you.

**Madam President:** Attorney General, you now have five minutes.

**Hon. F. Al-Rawi:** The creation of a Family and Children Division, the anonymizing of children’s records, drug treatment for children, children proceedings rules, child advocate, public defenders, the ability to obtain a domestic violence protection order from a police station at midnight on a Sunday. We have more on deck.

The amendments to the Motor Vehicles and Road Traffic Act to treat with the issue of PH is going to come to Parliament. How we treat with real-time digitization issues to have protection is coming to the Parliament but, Madam President, I respectfully believe that the pursuit of ultimate perfection can sabotage the needed protection at a point in time and this is why as Attorney General my recommendation, which has been accepted by the Cabinet on six, going on seven years of law has been to divide it into portions and just start. To all of the advocates, as honourable as they all are in the society who are champions for protecting the rights of the vulnerable, I wish to say, thank you for your submissions. They were well noted and I certainly intend to share them with all persons in the Senate, but we do need to just start.

A good place to start today in protecting the vulnerable is to say that revenge pornography is wrong; threatening and abusing people, altering images,

harassment, embarrassment, abuse of confidence is wrong. We must draw the line in the sand. These are not usual times, Madam President, there is a peak in society. There is a fever. There is a pitch. Our country is hurting. The world is hurting. It is easy to be in despair. It is easy to be in despair because we are praying for the better days to return, the normalcy to return.

I would just like to say, and the Prime Minister said this the other day, there is a saying in a song that we use in our political party, “I never get weary yet”. Sometimes it is dark, sometimes it is heavy, you just need to make sure you persevere and say it will get better. I am a glass is half full kind of guy. I genuinely look forward to the recommendations of all hon. Senators today and it is with great pleasure, Madam President, that I beg to move.

**Hon. Senators:** [*Desk thumping*]

*Question proposed.*

**Madam President:** Sen. Lutchmedial.

**Hon. Senators:** [*Desk thumping*]

**Sen. Jayanti Lutchmedial:** Thank you. Thank you, Madam President, for the opportunity to contribute on this Bill before us here today, the Sexual Offences (Amdt.) (No. 3) Bill of 2021.

Madam President, this Bill seeks to criminalize—well, what I call, “non-consensual voyeurism”, also the invasion of privacy and—well, the term that is being used is, “revenge pornography”, but I do to have an issue with that term because—and part of what I will speak about—the use of the word, “revenge”, I find it seems to imply that the person who has committed the act of sharing an intimate image without consent is doing so as an act of revenge and it is almost like you are saying that the victim has done something. So I do not like that term,

“revenge pornography”. I look at this and the actions that are described here and which it is the intention of this Bill to address, as a form of sexual abuse and that is what it is, and we must never water it down to be anything less than what it really is and that is a form of sexual abuse. And so it is very rightly placed in the Sexual Offences Act because it is a sexual offence when some of these acts are committed.

We live in this digital world and things like “peeping Toms” and the invasion of privacy and betrayal of confidence are not new issues but they are made so much worse by the fact that we live in this digital world. As the saying is, everyone has a camera phone, everyone has access to the Internet. The bane of my existence is something called “WhatsApp forwarding”. That is a regular morning aggregation to me but it is something that has resulted in what could be the destruction of someone’s life in a matter of seconds. It is a very serious issue, Madam President, and it is not one to be treated lightly. And so I would agree with the Attorney General that there are very, you know—there are a lot of serious issues that perhaps need to be trashed out a bit more and that perhaps this Bill does belong in a special select committee so that we could specifically address our minds to the exculpatory sections and provisions of this Bill and ensure that the law that is passed does what it is intended to do and accomplishes that aim that it is intended to protect those particularly—well, protect everyone because anyone can be a victim of the crimes described here. And I think that it is, you know—but as the Attorney General has said, there is a focus on persons who may particularly—may be particularly vulnerable and so we want to address our minds in great detail to those sorts of issues that come up.

Some of the acts that are described in this legislation are still very taboo in our semi sort of conservative society. Even though carnival we see revelry on the

streets and so on, we still live in a very conservative society and so we do not discuss some of these things like the consensual participation in the capturing of images and so on. But these things are now not as uncommon as they used to be and so it is very important for us to protect the rights, the privacy rights of persons who may wish to engage in activity such as—as the AG said and as Justice Seepersad mentioned in his judgment, “sexting”, and other types of communication which involves capturing of images, but you do it with the expectation of your privacy not being invaded or betrayed by the person who you are engaging with.

So I do feel that sometimes now we have to consider how we are going to effectively implement legislation. We stand here time and time again and the Attorney General boasted about the major steps and the accomplishments that have been made in terms of passing laws. But as someone who stood in the criminal courts for quite some time and, you know, dealt with victims and so on, I will tell you, a law and a statute book never saved a woman’s life. It never prevented the shame. It never prevented the embarrassment. It never prevented the hurt. Whether you are dealing with these types of offences, violent sexual offences, whatever it is, those things do not make a difference. It is implementation. And so the first question I want to ask is: Do we have the capacity and the capability to really detect and convict persons of the crimes that we are seeking to address in this Bill? Because it is all well and good to stand here, debate this Bill, take it to committee, come back, whatever it is, and put a law into effect, but if no one is ever convicted, if we cannot even detect the source or prove it in court, what are we going to do?

We have a very poor detection rate in this country for crime and I think the Attorney General mentioned some of the statistics. And I also looked at the CAPA

data. Sexual offences on the whole last year, 301 reported offences, 91 detected. And years from now when you are able to report on those 91 detected cases for conviction—I think in 2020, I heard of a 1 per cent conviction rate as it related to sexual offences. I saw it reported somewhere but I cannot quote the source at this point in sometime. But I know from experience it is extremely low and there are a number of reasons for that. So passing laws in itself without taking the relevant steps to effectively implement them, to ensure that they can be detected, to ensure that they can be effectively prosecuted really is, as we say, “Spinning top in mud”. Yes, it is a start but it is just not good enough and so we need to move on from that point. And we need to see and we need to hear and as a Parliament, it is our responsibility to advocate for these things and that is what I am doing here today. I am seriously advocating that we must ensure that laws are implemented and passed. Technology has posed too much of a challenge for us for too long. We still do not have the effective use of CCTV cameras to prevent violent crimes or detect violent crimes. We do not have enough CCTV cameras. We hear about things like contracts being cancelled for CCTV cameras being repaired and women being kidnapped and all of these things.

Now, in a country where violent crimes take place on the street and they cannot be detected and solved and prosecuted properly because of the lack of the use of technology, we are here debating and passing a law dealing with persons sharing intimate images which may take place over, you know, an encrypted site. It may be shared via a social media site which is based and controlled outside of this jurisdiction. It may be images downloaded from the Cloud and do we have the capacity—does our Cyber Crime Unit, for example, in Trinidad and Tobago, in the police service, have the training, the technology and the capacity to really

effectively implement this legislation? And that is what I want to hear about. Because for far too long, in my mind, there are certain things reported and if you believe what is reported in the newspaper, which you do not always—you should not always, but if you do, sometimes it seems as though basic use of technology to detect crime is just not being done in this country. So what is going to be different in this case with these offences that we are seeking to criminalize? That is the first issue that I want to raise.

The second thing is that whilst getting a start in the Parliament and bringing a Bill to the Parliament is—it is the start that you want to see happening, why does it take so long to implement the legislation? Why does it take so long sometimes to proclaim legislation? Why does it take so long to bring regulations if it is necessary? We stood here after there was a wave of public outcry about violence against women to pass the pepper spray legislation. That is something that had been raised for a very long time. It finally came. The regulations are there but up to today, not a single person in this country has a licence to carry pepper spray. How many women—and again, we are talking about people who are vulnerable and so, of course men can carry pepper spray too for their own protection. But how many women might have been the victim of sexual offences, sexual crimes since we passed that legislation and still do not have the option of accessing pepper spray? We take too long to implement things and again when we set the targets in law, we have to have that level of follow through.

So, Madam President, in us trying to address the issues that arise here as well, I think part of what is necessary is to conduct awareness. An awareness campaign in the United Kingdom took place in 2015, when they criminalized some of the same issues here, the sharing of intimate images without consent and the



taking of those images as well without consent. And part of the awareness campaign—because, you see, when you take the awareness and you put it together with the effective implementation of the law, then you have real and meaningful change. Real and meaningful change in a society will never come from this piece of paper that would find its way into the red books one day. It will never happen. A real and meaningful change means that people must be aware of how to protect yourself, how you can be found to be infringing this law and also they must know that they will face consequences. And that is where the effective implementation of the law comes in. But for people to understand what would constitute these offences and how and why they should not be doing it, you need an effective awareness campaign about these things.

I recall, and the Attorney General has raised that matter, and Mr. Justice Frank Seepersad had given judgment and awarded compensation; \$150,000 I think was the compensation awarded to the young lady who brought a civil action for the sharing of intimate images. And one media house in Trinidad and Tobago thought it was quite clever to use a very cruel and heartless pun of the victim's—and I call her the victim because that is what she is—the victim's surname, and the headline of the front page of the newspaper was, “Ho”—of course referring to the complainant in that matter—“Ho sues West Indies cricketer”. And the media went on to report an all the detail—in greater detail than I have heard any or—I have seen many matters reported in the media about the details of the relationship between this woman and the person who ultimately shared her images. Why is that relevant? I still do not even know, but it was an act—a most disgraceful, disgusting act of victim shaming by a mainstream media house in this country and that to me speaks volumes to how our culture still does not recognize some of these criminal

actions that this Bill includes as something that is wrong.

We still ask yourselves what someone does to deserve these things. We still find it—it is a good bacchanal sometimes to talk about and that is where the sharing comes in because people like the bacchanal. And we have to—the only way we are going to have that cultural change is through awareness and through addressing some of the underlying issues that arise from time to time. So I heard—I read an editorial one time where the person described an implementation deficit in our legal system and I think that part of addressing that implementation deficit is not just rolling out the law and ensuring that it is applied evenly and across the board and effectively, but it is in also addressing the societal change that you expect and something like awareness and targeting the underlying causes of these crimes is very important as well.

When you look at some of the crimes being committed here, it speaks a lot to issues like relationships, the breakdown of relationships, people being unable to cope with rejection and so on, and this is why they may resort to committing some of the crimes here. And again, we say time and time again, that these are things that have to be addressed not through law but through other mechanisms. So I just want to get quickly now into the provisions of the Bill because there are a couple of suggestions. And as I said, I endorse the requirement or the suggestion, sorry, that it goes to a special select committee and I will raise some of the things here that I will hope to have the opportunity to bring up at that point in time.

With respect to the act of voyeurism, we have focused specifically about viewing and we have done so with excluding, perhaps not intentionally, in all of these sections, audio recordings. We may think now in this day and age everybody has a video and so audio recordings are not so common anymore and if the

person's image is not depicted then it does not cause damage. Well, I know that some people have very distinctive voices. People in public life, for example, have very distinctive voices which is very easily recognizable by the public. And just as "sexting" has become a thing, voice notes have also become a thing and people sometimes share voice notes which may contain intimate conversation, people may record intimate conversations and it is possible to detect someone's voice. So by excluding audio and focusing on capturing, recording, streaming, publishing, visual recordings, I feel that we are missing a little bit of a—missing the mark there a bit because we also need to, I think, include audio recordings.

I have looked at other jurisdictions, specifically the United States which state by state they have their own laws and certain states, they have actually dealt with recording, broadcasting sounds or events because it is also possible, I think, to shame, to cause—or to harass or to threaten someone with releasing an audio recording. So that is the first point I want to make in the definition section. Because of the seriousness of the offences that we are dealing with here and the ultimate damage, psychological and emotional and otherwise, that could be done to a person who is the victim in any of these cases, I am particularly concerned about the exculpatory sections for all three of the offences that are created here: the voyeurism, the taking and the sharing and then the sharing—the forwarding, as I would call it, of the intimate images. So, for example, I think we need a little more clarity in, let us say—well, I am dealing with the one that deals with voyeurism, subsection (3), that is 22A(3)—yes, correct—22A(3)(b):

“...an authorized person...”

You are not guilty—you need to not be guilty of an offence if you are:

“carried out by an authorized person for medical, forensic, scientific or educational purposes;”

Who is an authorized person? I think that we need some clarification as to who an authorized person is because it would be a tragedy if a person were to be able to raise a defence against a charge under this law saying that they believe themselves to be authorized to do these things and therefore there was no mens rea in the commission of the offence because they believe that they were authorized to do these things. So we need some clarification on what is an authorized person, specifically for educational purposes.

I cannot contemplate circumstances but I am open to hearing from the Attorney General in his wind up what was contemplated as an authorized person who could engage in voyeurism or the taking and sharing of images and so on for educational purposes. So I think we would have to clarify that there. In subsection (d), in this same section, you are dealing with legal proceedings. I do not do family law and one of the reasons I do not do family law is because I cannot stand the amount of bacchanal that people engage in when they are getting divorced. And again, video recordings, security cameras, surveillance and simple phones have made—and social media have made it unbearable sometimes.

### **12.30 p.m.**

I do not know how sometimes the judges in the Family Court are able to sift through all of these things, but if you go through the average divorce petition now, it is pages and pages and pages of screenshots and videos and pictures. Legal proceedings would include, and I think we have to—I am concerned about whether family law proceedings, such as divorce and so on, would be captured here. Because a person should not be allowed to engage, I believe, in acts of sharing or

recording or doing certain things and be able to raise a defence, if the purpose is legal proceedings such as divorce proceedings, because that could get extremely nasty, as we know that some of these proceedings tend to get, raising a defence such as that.

I am sorry that the Attorney General said that the Law Association, I think, did not respond—or he did, I cannot remember, but I would like to hear if they had a view on family law proceedings, not involving children, because of course that is separate, but matrimonial proceedings. I think we need to see if there would be an exculpatory provision for matrimonial proceedings, and whether that should apply, because I am very concerned about that.

The Attorney General said that someone raised an objection to the public interest. I also agree with that. I do not believe that this public interest—it is too subjective, it is too broad. To give someone, particularly the media, a free pass or the option to raise a defence against performing or committing these acts of taking and sharing images without consent and so on, because they believe it to be in the public interest, is to me a watering down of this legislation and defeating it. There is absolutely no reason for us to move away from what we know to be responsible journalism in this country.

I had the misfortune of having to write a very long letter to a media house in Trinidad and Tobago, which took an altered image off of a “bacchanalist” social media site that had to do with me. Not an intimate—let me make that clear—not an intimate image, but an altered image for some political gain and they published it. They published it in a mainstream newspaper in this country, without asking for a comment, as is common in defamation law, we know that. Without asking if it is true, without doing any proper source checking or verification. So I am absolutely

against—particularly if this public interest provision is geared towards protecting the media, I am absolutely against it, because I cannot, again—I do not feel that we need to water down this law and it would be defeating the purpose of this legislation for giving people protection.

You see, part of this is not just about convicting the offender, you know, but it is about protecting the victim. It is about protecting the person who will suffer at the end of the day, and no amount of money—I know people who have suffered from the sharing of their intimate images. I know someone who did not attend law school for an entire term because she was a victim of that type of malicious conduct from an ex-boyfriend. So do not create loopholes and do not create laws that give people the option to raise defences which really may be the one-off circumstance. There are other things that could be done, I believe, and again maybe it could be thrashed out later on, to allow for the media to raise matters in the public interest.

What we are talking about here is private sexual conduct that people may engage in, in the privacy of their home or any other place, but they do so with the expectation of privacy, and 99 per cent of the things that would be captured by this Bill, or that this Bill is meant to address, is nobody's business and ought not to be in the public domain.

Now, as we go on to the section 22B, I want to raise a matter here under subsection (1)(c), where we deal with:

“for the purpose of obtaining sexual gratification for himself or another person,...”—someone—“knowingly takes and shares an intimate image...”

I do not know why the requirement is there for sharing, because a person ought to be guilty of an offence if they simply take the image and keep it for themselves,

because it is was for their own sexual gratification. So I think that might just be a drafting issue there, but the inclusion of “and sharing”—it could be “or sharing”, but I think the “or sharing” would be captured by 22C. So I would ask that that word “and” be deleted from subsection (c) as well.

The issue in subsection (e) deals with the altered image, and again it reads:

“He knowingly alters an image of a person to make it appear that the image of the depicted person is an intimate image and shares that altered image without the consent...reasonably believing...”—to depict the person.

It may be that that altered image and the threat of the share of the altered image ought to be an offence as well. You see, the threat is dealt with under subsection (d), because you can have the image, a real image, and threaten to share it, and that way commit an offence under this section. But it is also to me, if you alter the image, you can also use it for blackmail. So that altering of the image we have to find a way to incorporate subsections (d) and (e), so that it could be a real image or an altered image that is used for threat and blackmail, Madam President because, again, these things do happen and it is just not spoken about enough.

I want to say again that—I think it is replicated, the authorized person and the public interest and the legal proceedings. It is replicated in 22B and C, but there is also in a subsection (4) here in 22B that deals with, again, the legal professionals. I raise the same issue of matrimonial proceedings, and I find that creating again an exculpatory section for legal advice and legal proceedings. Because if someone has an image, let us say of a spouse, and they are going through a divorce—and I am just trying to make this as real as possible, so that the viewing and listening public could understand it. You have an intimate image of your spouse engaging in sexual activity with someone else, and you use that as the

basis of, let us say, an allegation of adultery and so on, and you consult with 10 different attorneys, and you provide it to them, and the attorneys have secretaries in their offices and people who go through their files, and everyone is seeing this image.

So I would suggest, and again it could be fleshed out, that if an intimate image has to be used or shared or filed as part of court proceedings, or something like that, that there must be an application made. There must be some sort of notification to the person. It cannot be that I am served with divorce proceedings, and one of the annexures to the affidavit of my spouse is some intimate image that was captured. I do not believe that those things in the context of legal proceedings are permissible and ought to be taken out of this piece of law.

I understand the use of those types of images and why they may be relevant to proceedings and evidence and proof and all of that, but the balance of protecting a person—even people who get divorced need to be protected. Even people who are adulterers need to be protected, and so we need to strike a better balance here, rather than simply saying that it does not apply to all of these persons.

Madam President, as I get very quickly now to section 22C, and this is dealing strictly with the sharing, in particular with the exculpatory section here, I am concerned about subsection (3)(c) that deals with, “carried out for the purpose of security monitoring”. Again, if you are monitoring someone for security purposes, you are monitoring the premises, or there is a notification that you are monitoring the premises, then I cannot see that there is any reasonable—why would it be reasonable to share an image? Why would it be reasonable? If you did not take the image, that you need to share it, unless you are sharing it with law enforcements.



So I think that this exculpatory section here is far too wide, and I would suggest a balance and a more reasonable approach, and a protection to be that all reasonable attempts should be made to obtain the consent of the person before it is shared, if it is that you are engaging in monitoring for the purposes of security.

There is already a section, that is subsection (d), that deals with preventing, detecting and investigating and prosecuting crimes. So it is not like a security monitoring person would not be protected if it is that they have detected a crime and so they need to share the image. So this subsection (c)—and, again, I am open to hearing what was the thinking behind including here in the sharing of an image, but if it is that it has to stay in this Bill, and the Attorney General is adamant that it must stay in the Bill, I see that a clause asking that reasonable efforts be made to obtain consent could have and create a little more balance to be included in that section.

Subsection (22)(d) deals with the power of the court, Madam President, to order compensation. How do you really compensate someone who has been the victim of one of these crimes? It goes far beyond monetary compensation, although that is somewhat of a start because, of course, people can lose their jobs, people can suffer from reputational damage. If you are a professional and you are a victim of some of the acts complained of here, you really do have an uphill battle in terms of your reputation in the very small society that we live in. Again, I know people who have been victims of those types of actions, and it has not been easy for them, but I want to go even further now.

There is something that stood out to me with respect to the power of the courts. More and more we are empowering judicial officers to make a variety of orders. The Mental Health Act, under section 13, allows the court to make an order

for treatments. Voyeurism, and that is dealt with in this Bill—not voyeurism that people consent to, where they go to places that allow you to engage in that type of activity, but the non consensual type of voyeurism, the peeping Toms—that can actually be a precursor to other types of violent sexual offences. So if someone is convicted of an offence of voyeurism, I wish to recommend that the court could also have the power here to refer someone for a psychological evaluation.

Our Mental Health Act is in need of a revamping. I think it is a bit outdated, and what we consider to be mental illness is not broad enough to capture, I think, persons who may engage in some of the offences contained here.

Apart from the voyeurism, if you engage in what we call the “revenge pornography”—although I do not like it, but if you are a person who is so malicious, and you are so incapable of coping with, let us say, rejection or the end of a relationship or something like that, that you feel the need to hack or to somehow acquire images of a person and then share it to embarrass them, then I think you probably need a little bit of an evaluation. You need some treatment, you need some counselling, because all is not well with you, if that is your approach to certain things.

So I would like to discuss further in section 22D, making it perhaps, you know—I do not want to use the term “mandatory”, because making anything mandatory for a judicial officer is not something that I am in favour of, but having the courts, and I have seen it in other laws, including a section where the court may refer the person for a psychological evaluation before passing sentence on them. Because some of the crimes that we are dealing with in this Act really do have a psychological element to it, and we perhaps need to have that sort of evaluation done.

Madam President, in the few moments that I have left, I just want to say that we do require societal change if we want to minimize incidents like this. The media has a role to play. Our persons in public life, our citizens, our religious leaders, we do not have enough conversations about some of the things that are included here. It is still taboo. The approach that we take to persons engaging in consensual acts which are recorded and photographed and things like that, is still that, well you know, it is not something we want to talk about. We do not educate our children about it. We do not educate them about the dangers of it.

So do we sit in a classroom or in Sunday school or anywhere else and tell our children and our young people, “When yuh in love, everything is nice, but when de love is no longer there, this is could happen to you and you could become a victim”, and that is what we really need. Because all of these nice laws which would impose very stiff penalties on an offender, would not undo the psychological damage to a victim. It would not undo the harm that may come to them professionally or personally. It certainly will not prevent or address, as the Attorney General has raised, a case of suicide. Where someone is so affected by what has happened to them, that they may go down that road, unfortunately it happens, and we have to really make steps towards addressing those things if we want to see real and meaningful change.

I have to reiterate that being able to remove and to take some of what is already put out there, or as challenging as it may be, we need to take a step. If the Government is serious about a thrust towards digitalization, it is not just about services to the public and so on, it is about crime as well. The digital thrust must address crime, because how you can, in some ways, mitigate against the impact that some of these crimes would have on the victim, is if you are able to shut it

down, if you are able to remove the image. If you are able to go to the internet service provider quickly and stop the image from being shared, or to block it, or to track the person down and be able to delete the source, or something like that, those are things that—it is possible. It is possible.

In fact, I believe in the United States they have their Federal Trade Commission that actually works in tandem with local law enforcement, to deal with issues such as this, because I think they regulate the ISPs and so on. That is really the move that we want to see, so that we would have less cases like this, that we would have less persons becoming victims and having to deal with the onward effect of this.

Lastly, I just want to mention that as with all sexual offences, and I have said this before, specialized courts to deal with sexual offences is a must. It is a must, because the length of time the circumstances in which sexual offence matters are prosecuted in this country right now, is one of the main reasons why we have such a low conviction rate. People simply get fed up. No woman or man or anybody who is subjected to the type of embarrassment that would be caused by the commission of one of these offences, wants to come to a court 10 years later and give evidence and rehash the entire matter all over again.

Our justice system is burdened. It is slow, but in the case of sexual offences the emotional and the sensitive nature of the offence requires access to speedy justice, otherwise we would find ourselves over and over again, even if we raise our detection rate, having a very low conviction rate as it pertains to sexual offences. So I want to reiterate that specialized courts to deal with sexual offences, including the offences contemplated in this Bill, including rape, including incest or any other type of sexual offence, it really is required. Not just to create the

environment for the speed of it, but also to create a more comfortable environment for the victims of crimes, because again that would encourage them.

The Children Court, that was the intention of it. I cannot say how well it is working, I do not practise in that arena very much, but that same thinking, if it is that you want to raise your conviction rates with sexual offences, it needs to be applied. You need to create the environment where the victim feels comfortable. You need to create an environment where victims feel comfortable to make reports to begin with. So, again, in the implementation of laws like this, you really have to have synergy amongst the various arms of law enforcement that may have to work together, and synergy with your prosecutorial bodies and so to ensure that justice is done for victims of these types of very dangerous and vicious crimes that may be committed against them.

With respect to children and the application to children, I know one of my colleagues will focus a little bit more on that. I just want to say that the issue of consent by children who may engage in the taking of images and participate in it, is not something that I think we need to deal with because consent is consent, and consent to participation in any sort of sexual act should not really extend below the age of 18 years old. But a bigger issue that we have and one that I do not know how it will be addressed, and it is something that popped into my mind as the Attorney General was speaking, is where the parents may suppress, or the guardian may suppress and not report something like this.

There is a provision in the Sexual Offences Act, and I hope that it would work together with what is included here in the Children Act, so that if these crimes are committed against children, the non-reporting or the non-consenting to disclosing the source of the material, whether it is digital or otherwise, would also

constitute an offence. Because far too many times we have situations where things happen that are deemed to be embarrassing to a family, and so the crimes are not dealt with, and are not reported and are not treated in the manner in which they ought to be. But one of my colleagues I know will tackle more the issue of children in this Bill.

So with those few words, Madam President, I thank you for the opportunity to comment.

**Madam President:** Sen. Thompson-Ahye.

**Sen. Hazel Thompson-Ahye:** Thank you, Madam President. I wish to also thank the hon. Attorney General for bringing this Bill to Parliament.

When I read the Bill, some words came to mind from a song: It is only the beginning. It is only the beginning, and I was very pleased this morning to hear the Attorney General speak of his intention to send this Bill to a special select committee.

This is a short Bill, a mere six clauses, but it will go a long way to bring relief to the suffering of mainly women and children caused by acts conceived by depraved minds and executed with fiendish delight as revenge porn. It seeks to provide protection from nefarious activities carried out with ghoulish relish to satisfy lust for financial gain, to ruin reputation and destroy childhood innocence.

Madam President, I cannot describe this Bill as timely, it is 14 years too late for my friend. She has given me permission to tell her story, with one request, that I do not call her name. I will therefore call her Jenny. Jenny is a single mother of two children, who are now adults, and like my mother who actually bore that name, she was a Jenny of all trades, who unlike my dad could fix anything electrical, plumbing, rear animals, grow crops, a talented seamstress. Jenny is

phenomenal at all of these things. I greatly admired her talent.

I used to organize a nativity play in my garage annually on the night of the Feast of the Holy Innocents, December 28<sup>th</sup>, and one year I was looking for some more shepherds and someone suggested I invite Jenny's son to participate. There was no shortage of girls for angels, but the boys all wanted to be the innkeeper, to wear a long gown, carry a lighted candle and shout, "no room, no room", when Joseph came knocking. Jenny not only allowed her son to join the cast of the shepherds, but she also helped to sew the costumes for some last minute angels. After that we became friends. She was truly an angel to many persons.

I was living abroad when Jenny disappeared. On one of my visits to Trinidad, a mutual friend saw me calling at Jenny's home, and informed me that Jenny was in jail. I was shocked. I decided to visit Jenny at the Women's Prison. There she shared with me that she had been in a relationship, which had ended, and the man had threatened to send to her estranged husband, her children's father, some intimate photos he had taken of her, without her consent or knowledge, while they were on holiday in New York.

She said she had begged him not to do so, but he had insisted that he was going to do it. She said to me, "I lost it". She went berserk. Armed with a cutlass, a knife and some glass bottles, she went to his home and used all of her implements of war on him. He was severely injured. Jenny was arrested, charged, prosecuted and sentenced to four years hard labour. She seemed resigned to her fate when I visited her, and was grateful for my visit and reading material. Her case had taken six years to be determined and for that she was glad it was over.

Now had this law which is being contemplated been in place, Jenny could have reported the crime committed against her by her former lover and he could

have been charged under section 22B(1) for the offences. A number of offences have been created under this section, not all of which might be applicable to Jenny's case.

These offences are that:

- “(a) he knowingly takes and shares an intimate image of another person without the consent of the depicted person for the taking and sharing of the intimate image and without reasonably believing that the depicted person consents;
- (b) for the purpose of causing humiliation or distress to another person, he knowingly takes and shares an intimate image of that person without the consent of the depicted person;
- (c) for the purpose of obtaining sexual gratification for himself or another person he knowingly takes and shares an intimate image of a person without the consent of the depicted person and without reasonably believing that the depicted person consents;

That is of less relevance.

- “(d) he knowingly threatens to share an intimate image of another person in circumstances in which he intends to cause the depicted person to fear that the threat will be carried out or he is reckless as to whether the taking and sharing of an intimate image without consent depicted person will fear that the threat will be carried out; or
- (e) he knowingly alters an image of a person to make it appear that the image of the depicted person is an intimate image and shares that altered image without the consent of the depicted person and without reasonably believing that the depicted person consents.”



Now I see offences under (a), (b) and (d) relevant, and (c) and (e) less relevant.

Now, on summary conviction he would have been liable to a fine of \$250,000 and imprisonment for two years, or if convicted in the High Court, to a fine of \$50,000 and imprisonment for five years. These severe penalties, one might think, should act as a deterrent. However, I must say that a substantial body of literature suggests that general deterrence is not effective at preventing would-be offenders for a variety of reasons. Sometimes when the penalties are raised they become defiant. Sometimes because of the delay in the matter coming for trial, it becomes less important, and at times you find that the convicted felon did not even know what the penalties were. So it is really a fallacy to think that when you increase the penalties that people are generally going to become less timid about carrying out their plans.

Section 22B(3) provides some defences:

- “(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—
- (a) performed by a law enforcement officer in the lawful execution of his duty;
  - (b) carried out by an authorized person for medical, forensic scientific or educational purposes;”

So in Jenny’s case, the perpetrator was in the medical field. He was a nurse, but his authorized taking of an intimate image of her while she was asleep was not for medical purpose, but for the purpose of blackmailing her in the event, which later happened, that she wanted to end the relationship.

Another defence is that the act was:

- “(c) carried out for the purposes of security monitoring—

- (i) by a person monitoring his home; or
- (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;”

In this regard, householders and business owners would be well advised to ensure, as far as possible, that they hire reputable companies to install security equipment on your premises. “Who going to guard de guards” is not just a line in a calypso, but a real concern as we make rapid progress on the march to becoming a nation of tricksters, thieves and fraudsters, I am sorry to say.

**1.00 p.m.**

Another defence provided is that the actions constitute:

“(d) acts that the person reasonably believed were necessary for the purposes of—

preventing, detecting, investigating or prosecuting crime;

legal proceedings; or

(iii) the administration of justice; or

(e) in the public interest.”

And I agree with Sen. Lutchmedial that one has to careful with these provisions. I would recommend that professional training be provided for law officers on this aspect of the legislation as I can envisage additional work being engaged in by the Police Complaints Authority and the Professional Standards Bureau for potential breaches under this section.

Under section 22B(4):

“(4) A person does not commit an offence under this section if he shares an intimate image with a professional legal adviser—

in connection with the giving by the legal adviser of legal advice to the person;

- (b) in contemplation of, or in connection with, legal proceedings; or
- (c) for the purpose of legal proceedings.”

Defences provided to the legal adviser if he shares an intimate image other matter in circumstances that is detailed in clause 22B(5), namely:

“(a) with, or with a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or

- (b) with any person—
  - (i) in contemplation of, or in connection with, legal proceedings; and
  - (ii) for the purpose of those proceedings.”

So really one would have to show that these things fall—well, the actions fall within these provisions of the law.

These offences are new, will be new when enacted and it would be advisable that once the law is passed that for the benefit of the law students that they form these laws, these provisions form part their classes in the course on ethnics, rights and obligations of the legal profession. Arrangements will have to made for this course to be taught, this aspect of the course to be taught through the continuing legal education programme of the Law Association for the benefit of law students who do not attend Hugh Wooding Law School but are admitted to practise under our existing law which breach the treaty establishing legal education in the Caribbean region.

Exactly 38 years ago a gentleman whom I knew well stopped his car for me on Duke Street. I was standing there waiting for a taxi to take me to court at NIPDEC house.

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

No sooner that I sat in his car there and he passed to me a fat envelope and said, “I have something to show you”. Confused, I opened the envelope and found a number of intimate photos of him with one of my colleagues. I became quite upset and asked him to stop the car. I told him exactly what I thought of him and his behaviour and flung the photos back at him. I was a lawyer, yes, but he did not want legal advice and certainly was not contemplating legal proceedings, neither was he sharing the photos in connection with or for the purpose of legal proceedings. He was just a nasty malicious person who exemplified the saying that, “hell hath no fury” and it should not be a woman but a man scorned. I wish this law was on the books then so he could have been prosecuted under clause 22C.

Section 22C provides that:

“22C. (1) Subject to subsection (3), a person commits an offence if he knowingly shares an intimate image of a depicted person—

(a) without the consent of the depicted person and without reasonably believing that the depicted person consents; or

(b) in circumstances in which the depicted person has a reasonable expectation that—

(i) he was doing a private act;

(ii) his private parts would not be visible to the public; or

his intimate image would not be shared without his express permission,

regardless of whether the intimate image of the depicted person was taken in a public or private place.”

Section 22C(2) provides for a penalty for the offence.

“(a) summary conviction”—again,—“to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or

(b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.”

And these penalties are uniform throughout the legislation. And again, the question of deterrence must be remembered. And I will refer here to an article by David Anderson. And he wrote about “The Deterrence Hypothesis and...Pickpocket’s Hanging” in 2002 for subsection (2) American Law and Economics Review page 295 C305. So in other words, here you have a pick-pocket being hanged and people coming to witness the hanging and picking pockets, so therefore it certainly was not a deterrence.

So as I said section 22C(3) sets out the defences which were identical to those provided for in section 22B(3), the acts were:

“(a) performed by a law enforcement officer in the lawful execution of his...”—duties;

(b) carried out...for medical, forensic, scientific or educational purposes;

(c) carried out...

(i) by a person monitoring...”

—premises or doing surveillance on the premises or they were reasonably necessary for...

“(i) preventing, detecting...or prosecuting crime;”

(ii) for—“legal proceedings; or

(iii) the administration of justice; or

(e) in the public interest.”

And again, the area of the public interest and I agree needs some elucidation.

Section 22D(1) provides remedies for the complainants:

“The Court or body may order a person who is convicted of an offence under sections 22A, 22B”—and—“22C—”

—to do the following:

“(a) to pay to the complainant adequate compensation...

(b) to take reasonable actions to remove, retract, recover delete or destroy any intimate image taken or shared by the person within a period specified by the Court.”

But you know when something goes on the Internet, it is really is there forever, sadly.

Section 22D(2) preserves:

“...the right of the complainant to claim compensation in any Court, save that the Court that awards further compensation may take the order under subsection (1) into account when it makes a further award.”

And, Mr. Vice-President, I recall here, which has been mentioned before, the celebrated judgment of the hon. Mr. Justice Frank Seepersad in *Therese Ho v Lendl Simmons* claim No. CV2014-01949 which was delivered on 26<sup>th</sup> of October, 2015. In that case the claimant had alleged and I read verbatim from the judgment:

That—“...the parties were engaged in a sexual relationship and during the course of the same several photographs were taken by them, some of these photographs depicted the Claimant nude and in two of the photographs depicted her engaging in a”—sexual act—“with the Defendant. After their relationship ended some of the photos were allegedly shown to other persons and as a result the Claimant instituted the instant action and sought...”

—various relief including injunctive relief”

“d. Damages for a breach of confidence.

e. Aggravated Damages”

—course and an order for destruction of the nude photographs.

The judge awarded the claimant the sum of \$150,000 which was inclusive of an award for aggravated damages, costs:

“A perpetual injunction...to restrain and/or prohibit the Defendant his servants or agents from disseminating, uploading posting and/or publishing nude and/or sexually explicit photographs of the Claimant and/or photographs that depict her performing the act of...”—whatever—“whether by way of internet, cellular phone or any other form of social media or by any other means whatsoever.”

So you see who are restrained?—specific persons. What about other persons who were not in the contemplation of the court? In the course of his judgment the judge said:

“It is rather unfortunate that a young and talented cricketer like the Defendant behaved in such a manner. Upon the shoulders of those who hold positions of power, prestige and publicity there rests an onerous responsibility to adhere to the highest standards of moral and civilized conduct especially since the nation’s children look towards them to set the standard of acceptable conduct. As a society we have to understand to undertake a critical review, reprioritise and refocus. The objectification of women continues to be viewed as being culturally acceptable as is evident in our soca and chutney music. We must ask ourselves the question, ‘how are we to build a developed nation when we encourage and celebrate disrespect?’ Respect for individuals regardless of gender, ethnicity, sexual orientation, for the law and for authority, must define the way we live and

interact with each other.”

Had this Act been passed, Ms. Ho would have also been able to claim compensation under section 22D(1) section to 22D(2).

Mr. Vice-President, women are fair games for these heinous crimes. We have had instances of women who have brought glory to our country by achieving international fame being humiliated in this way. They have been persons seeking to serve and serving in the political arena who have been brought to shame for acts of indiscretion albeit carried out in private. When will it end?

This Sexual Offences (Amdt). (No. 3) Bill creates consequential amendments to other pieces of legislation, thus the Children Act, Chap. 46:01, which was previously amended substantially over and over again to include several sexual offences now has a Part 8A which creates a new offence of voyeurism. Section 44A(1) reads as follows:

“Subject to subsection (3), a person commits the offence of voyeurism if, for the purpose of obtaining sexual gratification for himself or another person, or causing humiliation or distress to a child, he knowingly—

(a) observes, whether with or without the use of equipment, that child doing a private act;”

(b) He “views, whether with or without the use of equipment beneath the clothing of that child and does so with the intention of enabling himself or another person to observe—

(i) the private parts of that child, whether fully or partially exposed or covered with underwear; or

(ii) the underwear covering the private parts of that child; or

takes, captures, records streams, stores, publishes or transmits through a



device or computer system, a visual recording of the private parts of a child.”

Now, at this point one must consider that it is not only adults who commit these crimes.

Sexual crimes are also committed by children. About a century ago almost, when I was age 11 I was sent to take lessons in a boys’ school. And in the time, at that time there was a practice, I am not sure if it has been outlawed or if it still exists—some idle boys placing little mirrors on the floor of the classroom where the girls would pass—really was to make them very uncomfortable. So the girls would have to try to negotiate to pass far away from the mirrors as possible so that their underwear would not been shown.

“(2) A person who commits an offence...”

—the law says:

“...subsection (1) is liable on—

(a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or

(b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.”

Now, I ask the question: Are these penalties going to be subject, you know, are children going to be subject to these penalties? Because I do not see anything here in the law which excepts children in any way or waters down the penalties or the remedies when you are dealing with child offenders. So that is certainly a matter that one will have to thrash out in the committee stage—not the committee stage but the Special Select Committee that the Attorney General is recommending and which we heartily endorse.

Subsection (3) says:

“(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—

(a) performed by a law enforcement officer in the lawful execution of his duty with the consent of the child’s parent, guardian or a person with responsibility for the child;

(b) carried out by an authorized person for medical, forensic scientific or educational purposes with the consent of the child’s parent, guardian or a person with responsibility for the child; or

(c) carried out for the purposes of security monitoring—

(i) by a person monitoring his home; or

(ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance; or

(d) acts that the person reasonably believed were necessary for the purposes of—

(i) preventing, detecting investigating or prosecuting crime;

(ii) legal proceedings; or

(iii) the administration of justice; or

(e) in the public interest.”

And it would interesting to make that leap from these exceptions with the use of equipment beneath the clothing of that child. How is that, you know, how do we marry those sections? It is a mystery to me, so I look forward to learning from the Attorney General as so how this is going to operate. And again, it talks about premises being surveillance:

“(d) acts that the person reasonably believed were necessary for the

purposes of—

- (i) preventing, detecting investigating or prosecuting crime;
- (ii) legal proceedings; or
- (iii) the administration of justice; or
- (e) in the public interest.

Subject to subsections (3), (4) and (5), a person commits an offence if...

—for the purpose.

“(b) for the purpose of causing humiliation or distress to...—”child—  
 “...he knowingly takes and shares an intimate image of that...”—child.

“(c) for the purpose of obtaining sexual gratification for himself or another person he knowingly takes and shares an intimate image of a...”—child—“or

(d) he knowingly threatens to share an intimate image of a ...”— child—  
 “...in circumstances in which he intends to cause the depicted-child-to fear that the threat will be carried out or he is reckless as to whether the depicted-child-will fear that the threat will be carried out; or

- (e) he knowingly alters an image of a...”—child—“...to make it appear that the image of the depicted”—child—“is an intimate image and shares that altered image...”

And I remember taking the children, my children to Disney Land or Disney World or both at some point and there was a booth where you could go and attach any picture to your face. So they would take the picture and then you would see some very interesting, the other part, you know, that did not belong to you, and really you could get yourself in trouble that way.

“(2) A person who commits an offence under subsection (1) is liable on—

- (a) summary conviction to a fine of two hundred and fifty thousand

dollars and to imprisonment for two years; or

(b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.”

And:

“(3) A person does not commit an offence under this section...”

So again, you have the same sort of provisions.

“...the acts that are alleged to constitute the offence are—  
performed by a law enforcement officer in the lawful execution of his duty with the consent of the child’s parent, guardian or a person with responsibility for the child;”

And how do you gauge consent when there is inequality between the law officer and in fact the parent of the child and sometimes, you know, that law officers may be acting for one of the parties unknown to you. So some strange permutations can happen here. Or:

“(b) carried out by an authorized person for medical, forensic, scientific, or educational purposes with the consent of the child’s parent, guardian or a person with responsibility for the child;”

And even in the medical field we have people whose actions are suspect. And this is not idle talk. It has happened that certain examinations are carried out that are totally unnecessary.

“(c) carried out for the purposes of security monitoring—  
by a person monitoring his home; or

(ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;

(d) acts that the person reasonably believed were necessary for the purposes of—

(i) preventing, detecting investigating or prosecuting crime;”

—for—

(ii) legal proceedings; or

(iii) the administration of justice;”

And again we have that phrase.

“(e) in the public interest.

(4) A person does not commit an offence”—again—“under this section if he shares an intimate image with a professional legal adviser—

(a) in connection with the giving by the legal adviser of legal advice to the person;”

And we have the same gamut of protection and defences that occurred before.

So then we have:

“...subsection (5):

—which says:

“...does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose.

(7) Subject to subsection (8), an internet service provider which provides a conduit for the transmission of information, shall not be responsible for—

(a) monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or

(b) actively seeking facts or circumstances indicating illegal activity in

order to avoid criminal liability...

“(8) Notwithstanding subsection (7) an internet service provider shall comply with any court order, injunction, writ or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement based on any written law.”

How much time do I have left, Mr. Vice-President?

**Mr. Vice-President:** You end 1.31.

**Sen. H. Thompson-Ahye:** Thank you. So subject to 44C(1) says:

“(1) Subject to subsection (3) a person commits an offence if he knowingly shares an intimate image of a depicted child in circumstances in which the depicted child has a reasonable expectation that—

- (a) he was doing a private act;
- (b) his private parts would not be visible to the public; or
- (c) his intimate image would not be shared,

regardless of whether the intimate image of the depicted child was taken in a public or private place.

(2) A person who commits an offence under subsection (1) is liable on—

- (a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.”

And the usual defences were officer of the law and security monitoring and so on. And it talks here about:

“...adequate compensation which shall be a charge on the property of the person so convicted; and

to take reasonable actions to remove, retract, recover delete or destroy any intimate image taken or shared by the person within a period specified by the Court.”

And again I would say that it is very difficult to retrieve all of the images once they are out there.

“(2) The provisions of subsection (1) shall not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order under subsection (1) into account when it makes a further award.”

—and so on.

So this Bill really brings us into the 21<sup>st</sup> Century. Long after the Internet horse has bolted we are trying to recover. But it fails to take into consideration, as I said before, that sexual offences are committed by children also against other children.

Now, Kingsley Napley in an article titled “Sexual offences committed by children against other children”, he says, “is on the rise - shocking or inevitable?” This article was published on 10<sup>th</sup> of February, 2017. I will make it available to *Hansard*. And the author:

“...revealed that the number of children that the police are investigating for committing child sexual offences has almost doubled in last four years.”

I sought to get statistics from our people here in Trinidad, different agencies without success.

Now, he wrote:

“As far as youth offending is concerned, it is evident that one of the main causes behind the reported increase is the ubiquity of modern technology and

smartphones and the increasing simplicity by users, including children, can use it to interact with others. Whilst the ease with which people can interact with each other in the modern era is broadly perceived as beneficial to society it has almost undoubtedly opened a Pandora's box when it comes to the commission of sexual offences.”

So:

“Taken together”—he said—“with the falling average age that young people are first exposed to technology (recent research indicates that on an average, children get their first smart phone aged 10.3 years, just in time to be criminally liable for any errors of judgment committed by these Digital Natives) Barnado's evidence...”

You know, Barnado's. You know, they have a charity, a very well-known charity in UK.

“...confirms our experience as Youth Crime specialists that the use of this technology has led to many young people and children finding themselves in difficult circumstances.”

And:

“These can arise as a result of having committed an offence, having fallen victim to an offence, or in some cases, both.”

Now, we come here in this Parliament and we have a sacred duty. I think we were provided with a book called *Child protection, A handbook for parliamentarians* and there is a checklist action which states:

“What parliaments and their members can do.”

And it specifies that:

“National legislation sets the principles, objectives and priorities for national



action to ensure child protection and creates the machinery for carrying out that action.”

And:

“It is therefore crucial that Members of Parliament take the following steps:”

And the first step is to:

“Ensure that Parliament adopts national legislation that corresponds with the international legal instruments to which”—our—“State is a party.”

And I have been urging for all the time I have been here for Government to take—pay cognizance to the fact that we have, in fact, ratified the Convention on the Rights of Child since 1991 and there are things that are outstanding.

I would also urge that we adopt the optional protocol to the CRC on the sale of children, child prostitution and child pornography and bring our laws in accordance with these provisions so that we will really be where we are supposed to be.

The Guidelines for Policy Makers on Child Online Protection states that:

“A decade ago, approximately 182 million access the Internet globally—and almost all of them live the developed world.

...by early 2009, there were over 1.5 billion Internet users worldwide, with over 400 million of those having access to broadband. Today, while not ubiquitous Internet users are truly worldwide with over 600 million users in Asia, 130 million in Latin America and the Caribbean, and 50 million in Africa.”

So we really should follow the guidelines for Guidelines for Policy Makers on Child Online Protection. We should take as our sacred duty bringing our laws in line with the convention and we must always remember that children are children and we have been pussyfooting for years not providing sex education for children

but they are getting it anyway and they are getting it many times from the wrong people.

We pay lip service to a number of things including restorative justice. But what the world is showing is that they are moving towards restorative justice and especially in terms of child justice and we ought to be looking at that. We ought to be looking at not criminalizing children. So in addition to raising the age of criminal responsibility we ought to be looking to do the best that we can for children.

A few days ago we celebrated, and just yesterday there was a big celebration of the life, not the death but the life of Arch. Desmond Tutu and we remember him for the Truth and Reconciliation Commission.

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

**Sen. H. Thompson-Ahye:** Thank you very much, Mr. Vice President. And one of the things that he was celebrated for was the Truth and Reconciliation Commission. And we ought to look to see that we treat with children and other people in the society in a way that will bring healing to everybody, all the persons who are affected by the crime, the perpetrator, the victim and the members of the society. So it is time that we stop talking and do something about it and try to understand that in the society punishment, punishment, punishment is not getting us very far and we have to understand why things are happening, why are people are acting as they do and how we can bring about a change. I am very grateful for the youth Ministry and the work that they are doing but much more needs to be done. So let us stop talking about restorative justice, see what is happening in other parts of the Caribbean. They are going full speed ahead while we are just talking and let us get on board to try to stem this tide of criminality by looking at every

person as a potential good person whose life can be turned around, trying to understand, not why do that, why you so bad. But happened to you? How can we heal you? How can we help you? Especially the children of our nation. Thank you, Mr. Vice-President. [*Desk thumping*]

**Mr. Vice-President:** Minister of Social Development and Family Services. [*Desk thumping*]

**1.30 p.m.**

**The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox):** Thank you, Mr. Vice-President. Allow me to extend best wishes and the abundance of God's blessings upon you and everyone in this august Chamber. It augers well for us, Mr. Vice-President, that the first piece of legislation before the House this year is to protect the most vulnerable amongst us, including our women and children. It is a new year and we on this side have come with renewed resolve to do what we have been called to do, to serve the best interest of those who are unable to defend themselves; to be the voice for the voiceless and to represent the collective conscience of our nation.

Mr. Vice-President, there were many people in this society who breathed a deep sigh of relief when this Government outlawed underage marriages, thereby offering a measure of protection to our young girls who in many cases were being forced to marry men who were more than twice their ages. Similar praises resounded from some women's groups and associations when profound amendments to the Domestic Violence Act were successfully piloted through this Chamber and the other place. The passage of the electronic monitoring Act which gave women and their children an added layer of protection against potential harm was the icing on the cake for many, as now victims of domestic violence could be

forewarned as to the possibility of their attacker being in close proximity to them. In fact, as stated in a media briefing on November the 5<sup>th</sup>, 2021, by the manager of the Victim and Witness Support Unit, there were 669 domestic violence reports by women in 2021, which was an increase of 2020's figure of 649. Furthermore, the reported number of rapes, incests and other sexual offences increased from 661 in 2020 to 842 in 2021, according to statistics obtained from the Crime and Problem Analysis Branch of the Trinidad and Tobago Police Service. I want to once again categorically state that one case of violence against a woman is too many. These amendments to the Domestic Violence Act, Children Act, and the passage of the electronic monitoring Act are evidence enough of a Government committed to protecting the most vulnerable amongst us, to doing right by the thousands of victims who previously had no legislative recourse for their suffering, living often in a perpetual victimhood unable to embrace the possibility of new life opportunities as their attackers often remained too close for comfort.

So, Mr. Vice-President, the sacredness of life honoured in every religious tradition represented in this Chamber grounds our belief in the ultimate meaning and value of our women and children. Indeed, this sanctity of life compels us to be a voice of conscience. When we fail to protect women and children, we betray their trust in us, deny our humanity, risk our future and abandon these beliefs which we have long held sacred. It is for this reason that I encourage all Members of this Chamber to give their unequivocal support to the amendments being proposed here today. The amendments have been drafted to deal with current realities, with scenarios in mind that were thought impossible 10 to 15 years ago, but which have now become common place. These amendments bring us in line with legislation enacted in the United Kingdom in 2019 and Singapore in 2020,

and are consistent both with the Sustainable Development Goals articulated by the United Nations and the *Vision 2030 National Development Strategy* of this Government. The Sustainable Development Goals targets 5.2 and 5.3 call for the elimination of all forms of violence against women and the elimination of all harmful practices, such as child, early, and forced marriage and female genital mutilation respectively.

These proposed amendments, Mr. Vice-President, are aligned to Goal 6 of *Vision 2030*, which speaks specifically to the protection and support of the family. Not unlike the rest of the world, our institutions and communities make regular use of the Internet and the associated information and communication technology that are now part of our everyday life. Social media platforms like Facebook, WhatsApp, Twitter, Instagram and the plethora of other channels are often used to communicate and to showcase events, projects and gatherings online. This positive and creative use of the Internet cannot obscure the threat posed by the misuse of this medium and related technologies to harm women and children. And when we examine the threats, particularly those contemplated in new sections 22B and C, they are perpetrated in large measure by persons in whom victims invested copious amounts of trust, to whom victims shared their most vulnerable selves only to have that trust betrayed for selfish gains. Reports from our women and girls suggest that this is an all too common occurrence, but without legislative backing many victims suffer in silence. The success of the “Me Too” movement, for example, which focuses on the experiences of sexual violence survivors is largely due to the fact that sexual harassment, sexual assault and sexual exploitation in their many forms impact persons every day. By sharing their own experiences the movement’s proponents highlight just how common sexual exploitation has become, affecting

all strata of every society.

Clause 4 of this Bill seeks to amend section 2 of the parent Act by inserting definitions of the following: “computer data storage medium”, “computer system”, “device”, “internal service provider”, “intimate image”, “law enforcement officer”, “private act”, “private parts”, “sexual act”, “share”, and “visual recording”. At first glimpse it would appear that such granular detail is unnecessary, but, Mr. Vice-President, it is absolutely imperative that these definitions be included in the legislation so as to remove any doubt and empower the enforcers of the legislation with absolute certainty about the legality of their actions. We are of the view, Mr. Vice-President, that by clearly defining these terms and enshrining them into law there will be no room for doubt on anyone’s part regarding the various elements of the offence. In this way it will facilitate a more efficient interpretation of the law and thus make enforcement more practical.

Section 22A is what we would refer to as the “peeping Tom” section. This amendment seeks to criminalize a practice which many in the past have deemed normal behaviour for some men. And you may recall the song by Super P, “Everybody Peeping”. While the song hilariously expounds on the behaviour we colloquially call “macoing”, the fact remains that some people in society have now evolved to taking photos or recording videos of others in a state of undress. Most smart phones now come equipped with high resolution cameras that enable photos and videos to be captured from a distance with astonishing clarity, and can be wielded as a weapon in voyeurism. Consequently, many live with the fear that these recorded videos and images can be taken and posted online or disseminated to others without their knowledge.

Mr. President, voyeurism is not new to Trinidad and Tobago, and there are

many stories of schoolboy pranks of what we now know as up-skirting, and this was referred to by Sen. Thompson-Ahye, where mirrors are placed on shoes to view under the skirts worn by their female colleagues, or mirrors being placed in strategic locations in bathrooms so that others get a first-hand view of persons in their nakedness. Such practices often preclude later assaults when some of these boys grow up. And according to some psychiatric studies published by the American Psychiatric Association, 20 per cent of people involved in voyeurism will go on to commit more serious sexual assault offences. In November 2016, the regional Life in Leggings movement saw countless women recounting harrowing daily experiences of sexual harassment and assault, which included occurrences of such peeping Tom behaviour on Facebook. This new section 22A would establish amongst other things that a person commits the offence of voyeurism if he knowingly observes another person doing a private act without their consent to obtain sexual gratification for himself or someone else, or to cause humiliation or distress to another person, specifically in situations where the other person would have a reasonable expectation of privacy. As tiny hidden cameras have become more readily available, crimes of voyeurism have become easier to commit. Such acts have been known to occur in public transportation, bathrooms and dressing rooms in schools and workplaces with the targets being primarily women and children.

It was reported in the Trinidad and Tobago *Newsday* on January the 13<sup>th</sup>, 2018, that 300 employees of a state enterprise based in Point Lisas walked off the job when one of their colleagues discovered three hidden cameras in electrical wiring in a room used by female employees to change. This discovery highlights the very real and pervasive threat to privacy in our society, which remains

unpunished in the absence of the necessary legislation to prosecute the offender. This new inclusion of section of 22A is in line with the United Kingdom's Voyeurism (Offences) Act, 2019. The Act in the United Kingdom came into force to amend the Sexual Offences Act of 2003, where two new offences were inserted at section 67A, criminalizing certain acts of voyeurism. The Act adds clear and explicit protection against the offence. Guyana also has the Sexual Offences Act, No. 7 of 2010, and this Act has similar provisions protecting vulnerable adults and children against sexual offences, including the offence of voyeurism.

Mr. Vice-President, the criminalization of voyeurism in this Sexual Offences Bill, No. 3, is very important to the Ministry of Social Development and Family Services, which has the responsibility of overseeing the protection of the vulnerable in society, such as the elderly, those who are underprivileged, exploited and abused and persons with disability. Victims of voyeurism often speak not only of their humiliation but more so of the violation of their private spaces, or spaces in which they believed they were safe. Cognizant of this, the Ministry applauds the Attorney General and his staff for this bold step in making voyeurism a criminal offence, as it will certainly help improve the social protection of women and children. Mr. Vice-President, the days of the peeping Toms are numbered. In a Protecting Ourselves blog spot article entitled "Protect Yourself from Voyeurism", dated April the 5<sup>th</sup>, 2017, the author stated that in Trinidad and Tobago there were no laws that criminalized voyeurism, and urged persons to protect themselves from same. The author recounted an occurrence of voyeurism at a popular bar in Woodbrook where a peeping Tom was lurking around and taking photos of women whilst they were using the bathroom. The person was caught and handed over to the police but was not charged as the Sexual Offences Act at that time did not



encapsulate voyeurism. Therefore, this proposed amendment would ensure that women who find themselves in these situations can finally get some form of redress and justice.

Mr. Vice-President, the second and most substantial amendment are contained in the new sections 22B and C, or the revenge porn section. I believe everyone in this Chamber grew up hearing the old adage, “hell hath no fury as a woman scorned”, and I heard Sen. Thompson-Ahye change it to, “hell hath no fury as a man scorned”. And many have used this to describe a woman’s behaviour after she was jilted by her lover. But, Mr. Vice-President, the author of that phrase never contemplated the Trinbagonian man of the digital age, nor some men of the world in general. Because this is neither to trivialize its occurrence nor condone it. But the instances of women engaging in revenge porn are few and far between. Revenge porn is generally defined as revealing sexually explicit images or videos of a person on the Internet or any other social media platform, typically by a former sexual partner without their consent, and in order to cause him or her distress or embarrassment. And it is for this precise reason that through this move to criminalize revenge porn the Government has demonstrated yet again that the protection of women is of paramount importance, and no stone will be left unturned in this process.

Section 22B creates the offence of taking and sharing or threatening to share intimate images without consent, while section 22C deals principally with the sharing of intimate photographs. And this new section 22B provides for five categories of offences:

- < Where an intimate image is taken and shared without consent;
- < Where an intimate image is taken and shared for the purpose of

humiliating or causing distress to a person;

- ◁ Where an intimate image is taken and shared for the purpose of obtaining sexual gratification;
- ◁ Where there are threats to share an intimate image; or
- ◁ Where a person knowingly alters an image of a person to make it appear that the image of the depicted person is an intimate one.

So, Mr. Vice-President, whilst it may not be common practice among the baby-boomer generation of the 1960s and '70s, it appears that it is now the norm for couples to share intimate images and videos with each other during the course of their relationship in an activity known as sexting. In some circumstances though, when the relationship ends on a bad note these images and/or videos are disseminated to others in a practice termed “revenge porn”. The proposed section 22B therefore covers revenge porn and makes it an offence. In essence, this new offence seeks to criminalize revenge porn where one of the parties to the relationship sometimes for revenge or to humiliate the other party may circulate the intimate images on social media platforms. Women in these situations often feel betrayed, sad, depressed, ridiculed and could suffer great reputational risk. As such, this proposed amendment is critical in protecting women who find themselves in these vulnerable situations.

Mr. Vice-President, under the current legislation a person finding themselves in this predicament only has recourse through a civil action suit, wherein they will seek damages and other reliefs for breach of confidence, harassment or defamation. This Chamber would undoubtedly recall the famous case of the 2015, which was mentioned by Sen. Lutchmedial and Sen. Thompson-Ahye. This case was adjudicated by High Court Justice Frank Seepersad. The court heard evidence that

the parties were engaged in an intimate relationship, and during the course of the relationship several photographs were taken by them. And some of these photographs depicted the claimant nude, and two of the photographs showed her intimately engaged with the defendant. After their relationship ended some of the photos were allegedly shown to other persons. The claimant testified that she took nude photos of herself and sent same via WhatsApp to the defendant's phone for his private use when he was out of the country, and she stated that she had concerns over the future of their relationship and ended it. She claimed that the purpose of the subsequent disclosure of the images was to embarrass and shame her. In his judgement the learned judge lamented that, and I quote:

“While it may appear that an individual's sexual exploits should be afforded some protection on account of privacy, the law in this jurisdiction has however not developed so as to recognize any such right.”

Justice Seepersad went on to state that, and I quote:

“The law has to be dynamic and has to develop in such a way to ensure that it remains relevant and it must be recognised that there is an obligation of conscience which requires that videos, photographs and/or recordings that capture private intimate relations, should be clothed with a quality of confidentiality.”

He also stated that:

“Online conversations and the dissemination of information over the internet initiate an open ended forum. The internet is a comprehensive and cohesive data base and there is really no anonymity in relation to the use of same. Photographs uploaded unto the internet can be retrieved forever. The impact upon an individual's privacy is tremendous and the absence of clear and

cohesive legislation to protect our citizens' privacy, and to punish those who violate the rights of others, can cause us to descend into a bottomless pit of anarchy.”

Mr. Vice-President, fast forward to today: the exercise in which we are engaged is to ensure that as a society we do not descend into a bottomless pit of anarchy, and that the law retains its dynamism and relevance to the current realities of the 21<sup>st</sup> Century. New section 22D provides for monetary compensation to be paid by the perpetrator to the victim separate and apart from a fine and term of imprisonment. In the case alluded to earlier, Justice Seepersad ordered the defendant to pay the claimant the sum of \$150,000 inclusive of an award for aggravated damages. He also granted a perpetual injunction so as to restrain and/or prohibit the defendant, his servants and/or agents from disseminating, uploading, posting and/or publishing nude or sexually explicit photos of the claimant, and/or photos that depict her performing any sexual act whether by way of the Internet, cellular phone, or any other form of social media, or by any other means whatsoever.

So, Mr. Vice-President, the intent of new section 22D is to accomplish in the criminal domain precisely what the learned judge ordered in the civil domain. Section 22D demands both compensation to the victim and destruction of the photos and videos by the defendants. We on this side believe that the inclusion of this amendment is a critical pillar of this new legislation as it will deter detractors, it will deter perpetrators from sharing, publishing, disseminating, uploading and posting sexual images of persons without their consent. While the amendments to which I have already spoken are profound, both in their substance and in their potential impact, the inclusion of a new clause 6 in this amended legislation is

proof positive of this Government's declared intention that no child should be left behind. Clause 6 of this new Bill sets out consequential amendments to the Children Act, Chap. 46:01, to insert a new Part VIIIA which would provide for the offence of voyeurism in relation to children. The provisions of this new part would be similar to the proposed sections 22A, 22B, 22C and 22D of the Sexual Offences Act.

So, Mr. Vice-President, this proposed amendment is also of paramount importance and receives the Ministry's full endorsement, especially as it recognizes the absolute need to protect our nation's children from predators. This is important, because there appears to be a very casual practice of sharing inappropriate images and videos of children on social media platforms. This amendment should make society more aware that the innocence of children ought to be protected and not exploited. The proposed offences make it difficult for an adult to claim innocence or lack of knowledge if he or she willingly shares inappropriate images and/or videos of children. The Ministry of Social Development and Family Services stands ready to continue providing the necessary psychosocial support to persons in need and victims of sexual offences through its national family services division. The Ministry will continue to collaborate and network with the relevant stakeholders to ensure that once this legislation is passed it will be the catalyst for reducing the number and frequency of offences identified in this Bill. The Ministry will redouble its efforts to advocate for the protection of the rights of our society's vulnerable persons. And we believe that this Bill, once passed and enacted into law, will be one of the keys through which their rights will be protected.

Mr. Vice-President, the case for strengthening the current Sexual Offences

Sexual Offences (Amdt.)  
(No.3) Bill, 2021  
Sen. The Hon. D. Cox (cont'd)

2022.01.11

Act has been clearly made by the Attorney General in his presentation. Voyeurism or peeping Tom behaviour and revenge porn cannot be tolerated in the modern society we are trying to build. I urge all my colleagues therefore to lend their support to this Bill so that when there are no more tomorrows in our lives we can say with truth and pride and no regrets that we left Trinidad and Tobago a better place than we met it, and that the privilege of our time here was not in vain. Martin Luther King Jr. said—

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

**Sen. The Hon. D. Cox:** Thank you—and I quote:

“Our lives begin to end the day we become silent about things that matter.”

And, Mr. Vice-President, the amendments to this Bill matter. I thank you.

**Hon. Senators:** [*Desk thumping*]

**Sen. Jearlean John:** Thank you, Mr. Vice-President, for the privilege of joining this debate. It is unfortunate however that we are debating this amendment Bill, and given the subject area without the benefit of national discussion, and that was raised by I think by Sen. Lutchmedial and Sen. Ahye, and I think the Attorney General has indicated that would be addressed because this Bill is supposed to be presented to a joint select committee. That will be welcomed, because in light of what is happening in our society, and I must say every contribution so far has been very, very good solid contributions, addressing these matters. So there is a lot of interest on all sides of the House relative to addressing these issues.

Mr. Vice-President, sometimes we have to protect people from themselves, because a lot of these young people, as Sen. Cox inferred just now, the baby boomers did not have this problem, but with the rise in digitalization and social media, part of the national landscape or the global landscape is the sharing of these

photographs, these things are normalized. It is normal behaviour, but it can end in such pain. So to ensure that people who are inclined to the behaviours that one is trying to remedy or mitigate against with the amendment in these Bills, I think it is very important, and everyone should work very hard with respect to ensuring that a message is sent that these behaviours are not to be tolerated and a broader conversation is just as important. Mr. President, our women, girls and even men need to feel safe, and again, I think the hon. Attorney General, through you, has missed an opportunity by continuing to come with these legislation, a little piece at a time. I do not know if it is in line to what he thinks is the evolving scenario, but it is not that there is no urgency, indeed there is a crisis, but, you know, what is the point in not having that wider conversation, because there are several points on areas of other deviancy that have been raised by Senators as this debate has progressed.

Mr. Vice-President, I have just on every occasion I have stood in this Parliament, asked where is the messaging, the public campaign to treat, to teach, to inform, you know, how are we proceeding with these Bills when they are passed in terms of educating the wider society? Because the sort of sexual deviancy that this Bill highlights is important for our society to think about more generally or more specifically, because if there is to be a real change in the attitudes towards women it will be because we have change people's attitudes towards that kind of behaviour or normalizing that kind of behaviour. I hope that in his response the hon. Attorney General, through you, may be able to tell us how he is working on, or how the Government will take forward sex and relationship education which should be made mandatory for all school age children.

Mr. Vice-President, the implementation could also further the cause of

ensuring that people understand why sexual harassment, sexual deviancy is wrong as well as it being wrong in law, as what is being proposed here today. By inserting the new sections 22A, 22B, 22C and 22D, and all of the contributions today would have addressed these various sections, so, Mr. Vice-President, I would not read them again, but it is rare today to find a young person or anyone for that matter without a mobile phone in their hand, and this was presented earlier today by the various Senators. The trend is to record everything, from pictures of meals to recordings of altercations and upload them to social media platforms, or to share pictures and recordings of daily experiences with friends. Mr. Vice-President, in these circumstances it is increasingly important for people engaging in sexual activity to understand and respect the private nature of intimate relationships or relations.

Failing to respect the privacy of a sexual partner potentially can go beyond being insensitive or inconsiderate to being illegal.

**2.00 p.m.**

In the absence of our local data, sometimes you have to go to see what is happening internationally but technology can be misused by those seeking to harm or frighten people. So, for instance, the same technology that allows you to find your lost smartphone can be used by someone wanting to track or stalk someone else. Many victims are tracked and monitored through their phones or tablets by spyware, so actually stalkers do not even need to physically be in the space. They get a tracking device from the victim and they can monitor them. And the proliferation of tracking devices like Apple, the tag or the tile which helps you find your wallet, your keys, your luggage has also led to an increase in the spheres of stalking. So peeping Tom is a lot more sophisticated. Nobody has to pull any



curtains anymore. They are right there and with a little device one can be stalked or spied upon. So these small inexpensive tags can potentially make it very easy for a stalker to hide one in the victim's car or personal possessions and then be able to track their victim's whereabouts.

So, Mr. Vice-President, the issue of safety cannot be solved by technology alone because whilst technology such as safety apps on phones and smartwatches can play a role in helping women feel safer on the streets, et cetera, these interventions are temporary sticking plasters which ignore the real cause of male violence against women and it is reported widely and too frequently. Our women feel unsafe on our streets not because of a lack of street lighting or safety apps, but because of the culture of sexism and misogyny which makes violence against women and girls all too common and it must be tolerated no longer. We must not tolerate this because far too often many women in our society continue to suffer at the hands of violent men. They are belittled, disbelieved and dismissed sometimes even by the own persons who are there to protect them and the very services that are supposed to protect.

So, Mr. Vice-President, we must focus on challenging the sexist attitudes that are deeply rooted in various services and systems so that women can walk home feeling confident that they are safe and protected. Just—I think over the long—well, the Christmas holidays, I was looking, I think, on Sky TV and I saw this ad, “Is this okay?” And, you know, they enacting several scenes and the voice of the announcer said, “If your behaviour is making women feel uncomfortable or unsafe, our message is simple, it is not okay.” And I felt it was a simple message. It resonated because it was true and we need more of that. We are not seeing—well, we need some of that because we are not seeing any of it in Trinidad and Tobago. I

mean, just like that you are looking at the news and this just came on and it just resonated with me. This is not okay. I think sometimes our men and boys need to be told this is not okay or be reminded because some of these things—they do not do it sometimes because they are bad or wicked, but sometimes it could be a prank. But they do not realize the harm that they are causing and it is only education that will cause them to understand what the consequences of their actions are.

So, Mr. Vice-President, the amendment to the Bill that we are discussing that is, it makes this voyeurism an offence and there are two ways to define voyeurism, as a behaviour and as a sexual disorder. And it really tells you who the person is within the Bill and that the type of behaviour may extend not only to the making of voyeuristic images, but may include distribution of visual representation to others. And that is—Mr. Vice-President, it appears this is normal behaviour where people share personal, intimate pictures of themselves via social media without thinking that there will be a day of accounting until they see this thing being shared very widely. They just send someone any kind of pictures as if they are saying good morning. So the voyeurism offence broadly has three elements which need to be proven actually: one, disclosure of a private sexual photograph or film; two, without the consent of the person depicted and with the intention of causing that individual distress.

So some guidance is given in the case of *R v Richards*, in a case in England and the courts of England and Wales—the Appeal Court of England and Wales settled in January 2020, in which the appellant was found with recordings of himself engaging in sexual acts with three women in their bedrooms. The issue at trial was whether or not there had been a private act on each occasion which involved the reasonable expectation on the part of other persons of privacy from

being filmed. The Court of Appeal stated:

“Whether a person is doing a private act in a place which, in the circumstances, would reasonably be expected to provide privacy will depend inevitably on the context.”

So, Mr. Vice-President, I did not hear the hon. Attorney General reference this one but another term which has entered our lexicon, and today I heard it repeated here by several of our Senators, is “upskirting” where—well, I never knew that is what it is called because when we were going to school, just as I think Sen. Cox described, there were boys who would put a mirror on their shoes and so on. But in 2018/2019, in the UK, there was a law which had been passed and the terms was “upskirting”.

“The act of skirting is generally defined as taking a sexually intrusive photograph of someone without their permission.

It is not a recent phenomenon. There have been incidents in which people (invariable men) have placed camera on their shoes and photographed”—well, when I was going to school it was a mirror—“‘up’ a woman’s skirt for...”—voyeuristic—“purposes. Other instances have involved placing cameras under stairs where women in skirts or dresses were likely to pass...

The broader category of ‘upskirting’ can also include indecent filming of anyone without their knowledge...convertly filming women undressing in their bedrooms, or installing a camera in a dressing room, public toilet...or a changing room.”

So this, I think, with the Joint Select Committee can be a subject on the agenda and be considered to bring into this particular piece of legislation.

So, Mr. Vice-President, with every new electronic device that comes on the

market, comes the possibility of inappropriate use and thus the creation of a new criminal offence or new criminal offences. We saw that with the advent of small listening devices. With this technology it is now possible to record private conversations, so legislatures have had to create offences under the law to deal with any inappropriate use. The same thing happened with small drones which made it possible to capture images of people in compromising positions even from a distance. And in recent years, lawmakers have been faced with the same potential for inappropriate use with mobile phones. Such devices are ubiquitous and improved technology has allowed people to record and photograph others at a moment's notice, often impulsively without proper thought. And what is happening here is we are going to bring it into the law as an offence.

So there have been legislatures all across the globe working on similar pieces of legislation to criminalize the same kinds of behaviour. As I said, in the UK, they have Voyeurism Offence Act of 2019, where they created a specific offence of “upskirting”:

“...where the purpose is to obtain sexual gratification or to cause humiliation, distress or alarm.”

So it basically mirrors what is being done here today.

Mr. Vice-President, so by taking decisive action and working with other campaigners, we can ensure that more people are protected from this degrading and humiliating practice. Section 22A(2) speaks to:

“A person who commits an offence under subsection (1) is liable...”—to:  
And it speaks of the penalty for carrying out this offence but, of course, one will have to have a conviction. 22A(3)(c)(ii):

“in premises where there are signs prominently displayed informing persons

that the premises or designated portions of the premises are under surveillance;”

That is in the proposed law now.

These are—“Some common activity in society...”—which include—“visual surveillance of others”.

Because:

“Security cameras”—are in a very common place and—“are...used in public and private facilities, as well as commercial establishments, such as retailers and restaurants.”

So:

“It can be argued that including a mental element of intentionally committing the offence ‘for a sexual purpose’ would prevent individuals who use surveillance for a legitimate purpose such as to protect property, from being convicted of a voyeurism offence. This is not to suggest, of course, that surveillance for security purposes is justified in any and all circumstances. The question for discussion, however, is whether or not there should be a defence for the commission of voyeurism offences, such as a public good defence.”

And earlier today, Sen. Lutchmedial would have referenced that. Because:

“Such a defence has been used in other contexts, and may or may not be appropriate for both branches of the voyeurism offence and/or for the distribution of voyeuristic materials.”

So a public good defence is set out in subsection 22A(3)(d) that:

“acts that the person reasonably believed were necessary for the purposes of—

- (i) preventing, detecting investigating or prosecuting crime;
- (ii) legal proceedings; or
- (iii) the administration of justice; or
- (e) in the public interest.”

Mr. Vice-President, in a settled case in the Supreme Court of Canada, *R v Sharpe*, Chief Justice McLachlin on January 26, 2001, they released his judgment in what will probably be always known as the “kiddie porn” case.

“John Robin Sharpe had been charged with two counts of possessing child pornography, contrary to...”—section—“...163.1(4) of the Criminal Code and two counts of possession of child pornography for the purposes of distribution or sale, contrary to...”—section—“...163.1(3). Sharpe argued that these sections of the Code infringed his freedom of expression as guaranteed...”—well, under their—“...Canadian Charter of Rights and Freedoms. The trial judge accepted that there was an infringement of freedom of expression, that the infringement could not be justified in a free and democratic society...”

So there are always pros and cons in these issues and the penalties here some people may say—I think I heard Sen. Thompson-Ahye argue that maybe for the children it should be a little more given, I suppose, their innocence and the fact that people are really preying on them.

So, Mr. Vice-President, today, in debating this Bill which really borders on sexual harassment, consensual sexual behaviour and in particular issues to do with image-based sexual abuse, we must be clear about it because the law is still wanting in many of these areas. But it is very likely a step forward, if only we are not only passing these laws but also there is implementation, and there would have

been reference to the pepper spray and even the sexual offences registry that these are all a work in progress and nothing much is being done.

So a review of all non-consensual taking and sharing of private, intimate sexual images, including threats and altered images such as revenge porn—and that was referenced—and what is known as deepfake pornography, as well as further legislation to future proof and modernize the law because, you know, we have to be working ahead of well what we now have, this will protect more victims in an age when the present legislation simple fails to reflect the prevalence of such offences, their impact on victims and the nature of technology and how it is moving ahead. The primary test for our legislation is for it to be effective. I believe it can be strengthened if we consider motivation factors, notification requirements and the distribution of images.

Mr. Vice-President, just this year I think I saw a headline somewhere we had 33 women murdered in 2021. That can in no way, shape or form be good and a lot of these crimes, our young girls, little children literally, are just disappearing and a lot of it has to do with some of what we are talking about here, sexual harassment, sexual offences and so on. It is really a blot on our society that more is not being done in terms of—yes, we come and there are some very good contributions, et cetera, we are very aware, we are very passionate, but we are not going that distance in ensuring that we can protect or mitigate from the same thing or other young women falling prey to the same ills.

We might be too late to help persons like Andrea Bharatt, Ashanti Riley, Sharday Emmanuel who—I spoke to her father just yesterday because in preparing for this debate, I remembered this young girl who, in 2018, left home and never returned from Mamoral. Last year, during the whole candle light episode, her

father had called me to say they were going to do a march just in—well, they do not even know if to do it in memory of the poor lost Sharday but they were doing this to just keep her light burning and to keep an awareness in their village in Mamoral. Because the father was called and there were certain items found but up to now they are waiting on a DNA lab, I think, that is non-functional. And these are the things that are very, very challenging, disturbing and vexing because, you know, we are here talking about new laws to help, to prevent, to mitigate, but the existing laws are not really being used in any way to really assist us in not having 31 young lives lost.

So the hon. Attorney General would have referenced a song he claimed as their party song, “Never get weary yet”. You know, I have heard that song growing up in Tobago in the Pentecostal church also, but I want the Attorney General to get tired of hearing about young girls disappearing. You know, we may not be able to save all, but if it is the law could really work and we can have these discussions and young men can be taught that things are not okay or what is not okay because sometimes they really need that guidance, we may go a long way in ensuring that you know we are not crying over Ashanti, or Andrea, or poor Sharday, you know, because we got tired of hearing about it and we did something about it. Mr. Vice-President, I thank you.

**Hon. Senators:** [*Desk thumping*]

**Mr. Vice-President:** Sen. Dillon-Remy.

**Hon. Senators:** [*Desk thumping*]

**Sen. Dr. Maria Dillon-Remy:** Thank you, Mr. Vice-President. On this our first meeting for the Senate for the year 2022, I just wish everyone in the Senate and also all of our nation a very productive 2022. We have indeed come out of two



very difficult years, '21—I mean, 2020 and 2021, and we are facing a 2022 that right now does not look very good. But I am absolutely certain that the way we handle ourselves as legislatures here, both here and in the House, would go a long way in making things very much better for our nation and that is my wish for Trinidad and Tobago for the year 2022. I am going to, as usual, be very brief. I have a few comments to make about the Bill. I am very happy that this Bill is being brought so early in the new year and I understand that the Attorney General intends to have to send to a special select committee for further prosecution, let us say, so that they would get something better.

Going through the Bill, I realized that there are some things that recurred and the first one I would like to mention is in the definition—clause 4. It was mentioned by Sen. Lutchmedial and clause 4, the definition of—at least it was said “visual recording”. I too agree that, because of the reason that she gave, you can have audio recordings that can cause people harm because, as you said, we all know that people’s voices can be identified and you can have very sexually explicit things being said in an audio recording. So everywhere in this Bill that—just the word “visual recordings”, I recommend that it be changed and that it is considered that we also include “audio recordings”, and that would occur in several sections further down in the Bill.

The second area I would like to mention is where it—so we are dealing with clause 5. That clause 5—just one second. Clause 5(3), dealing with exceptions. So clause 5(3). And the exceptions that I want to talk about here are actually exceptions that deal with the Internet, the persons who are carrying out for the purpose of security monitoring, that these persons will be exempted from legal proceedings because the reason for the capturing of images would be for security

monitoring either:

- “(i) ...by...”—the—“...person monitoring his or her home; or
- (ii) in premises where...”—the—“signs are prominently displayed informing the persons that the premises or designated portions of the premises are under surveillance;”

My concern here is these people storing the images may just use these images not for the purpose for which they—in other words, they are just asked to store the images, what happens if they use these images for other purposes? They should be—in other words, they should not be given a blanket protection just because they are carrying out for the purpose of security monitoring, that they should be exempted because they may be able to use these images for other things.

I have one other concern about the persons who are carrying out the monitoring and being exempted, and the question here is: What happens if you collect images not for your own area that you are monitoring? In other words, I have a security camera in my home but my security camera can pick up images in another person's compound and in that person's compound, that person may be in a position where they are compromised and my camera picks it up. I am picking it up for—I am using my camera for security monitoring but I pick up images in another person's compound and we know that that kind of thing is used right now for criminal activity. Cameras are used when criminal acts are committed, that the police get images from the persons whose cameras that may in the area and they may be used for the purpose. If that happens and it not for criminal activity but the images are captured and can be used for other purposes, will these people be considered exempt from a crime? And I am saying that that should not be, and therefore, this particular exemption should be looked at again.

The exemption also for:

“...authorized medical, forensic, scientific and educational purposes;” I understand the reason why this could be there but when these images are captured and shared between these people, I think it has to be made very clear, particularly for medical persons. I know it was mentioned already among legal personnel, but also for medical, images should only be used for those purposes and if it is not—for instance, I may want to share medical images with another colleague and that colleague has no right to access those images because they are not involved in the case at all. If that is done, I should not be protected for that. And therefore, it should not be a blanket that—well, it did say, yes, it is an authorized person for medical, forensic. So the person could be authorized but using the images for a different purpose and therefore, it should not be a blanket exemption.

We talked about—at least other persons who went before talked about sharing images for legal purposes. I have one question: How would these images be shared? And it can be shared—for instance, the Attorney General talked about on his phone and many things being shared by WhatsApp. Again, it was mentioned, if I am sharing with different legal personnel and I share it with several persons, I have no idea what happens to those images when they go to that person who they share it with. And therefore, is there some way of saying—I know—I think it was Sen. Lutchmedial talked about asking that people should have to apply for a permit from the court to have these things shared, but I am not too sure how that would work in a situation where you are actually working and you need to share information that you have to go to a court to get permission. I am not sure but I am concerned that it has to be done in a way where you can guarantee that there are some kind of tracing as to what is happening and that the people who are

concerned, who are getting these images are indeed authorized to do so.

So both the medical, forensic persons—well, also the law enforcement agents, the same thing can be said for them. They may be lawfully executing their duties but just in case they go outside of that then they have to be not protected by the law. And goes for both the—as it deals with the voyeurism and also as it deals also with the children because they Children Act repeats the same exemptions for those purposes.

The other area, Mr. Vice-President, I would like to deal with is the one that the section—forgive me. Right. When you are talking about penalties, and I think Sen. John mentioned it in her contribution, the penalties here for both the children and for the adults are the same. In other words, what you say:

“(2) A person who commits an offence under subsection (1) is liable—  
...—to

“(a)...summary conviction to a fine of two hundred...”

And I am dealing here with section 22A(2) about the offence—commits an offence under the Children Act:

“A person who commits an offence under subsection (1) is liable on—

- (a) summary conviction to a fine of two hundred and fifty thousand dollars and...imprisonment for two years; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years...”—which was the same penalty that you had for adults.

I too agree that you must look at this a bit different for the children and there must be, I think, a higher penalty here because of the impact that this is going to have for the children's lives is not the same.

**2.30 p.m.**

Mr. Vice-President, the other area I would like to just mention— I am dealing with section 44A again—section 44B actually, subsection (5):

“A professional legal adviser does not commit an offence under this section if he shares an intimate image...”

Well, actually that point was made already because of the fact that we are talking about who this person is authorized to share the images with and making sure that they are not shared with anyone else to make sure that the person’s rights are not being violated.

Mr. Vice-President, I think that is all I want to make. I would be very interested in what happens when this goes to a select committee of the Parliament because there are many other areas that should be discussed here and this is a very important area for going forward for our legal representation of children. I thank you very much, Sir.

**Hon. Senators:** [*Desk thumping*]

**The Minister in the Office of the Attorney General and Legal Affairs (Sen. The Hon. Renuka Sagramsingh-Sooklal):** Mr. Vice-President, I thank you for the opportunity to contribute to the Bill that appears before us today. You know, I want to take this opportunity to particularly speak to the population and to the people of Trinidad and Tobago as I, of course, stand by the Government in support of this Bill. Now, laws are not static as we are aware, laws are very dynamic and it is my personal belief that we would be failing miserably as legislators if we adopt a strictly conservative approach when drafting laws and this is, of course, my personal opinion. Mr. Vice-President, it is also my view that offences such as revenge pornography which is dealt with in clause 5 of this Bill does not only try

to shame women, but what it does, Mr. Vice-President, is that it also tries to silence women and as responsible legislators, it is of course our responsibility to stand against this.

Mr. Vice-President, to my mind, consent is what happens when you give permission. Theft and assault are acts which happen when people take it from you despite saying no. So, for example, a young lady has taken a nude photo and she has chosen who gets to see them, so yes that is the fact. But I submit that this action does not make that young lady a fool and that action does not mean that that young lady is asking for trouble or is deserving of an assault, especially when we examine sometimes the circumstances and the context in which certain photos and images may be shared by a young woman, especially in a romantic relationship. And this is one of the fundamental reasons, Mr. Vice-President, why I stand in support of the criminalization of voyeurism, the criminalization of what we have termed in this Senate today as revenge pornography. Women are not to be silenced, women are not to be blackmailed by decisions that they took relative to sharing photos and sharing videos in confidence and we stand in support of protecting vulnerable women.

Mr. Vice-President, what I want to do before I get into the crux of my contribution to this end, I want to join with the hon. Attorney General and of course put on the public record a sincere thanks and appreciation to our young, our dynamic out-of-box thinking attorneys of the Criminal Justice Unit of the Office of the Attorney General and the Ministry of Legal Affairs. To the CJU Unit, I respectfully say and I place on the record you certainly understood the assignment. This Bill, of course, is in its embryonic stage but it is the beginning of something that I am certain that if we work together as a Senate, we can produce something

that we will all be proud of.

[MADAM PRESIDENT *in the Chair*]

Madam President, you know I heard the comment being made by the hon. Senator John relative to consultation and I also know that the Attorney General in his piloting of the Bill, he would have focused on the numerous stakeholders whom the Office of the Attorney General would have written to during the preparation of this particular Bill. What I would also like to add is that a national survey was also conducted by the Office of the Attorney General and there was wide feedback. Now, this survey ran from May 26 to November 26, 2021, and what I actually have in my hand is the survey report. The results of this survey are also still present on our social media pages and anyone who may be interested in having a look, it is there.

And this is just for me to clear the air on the point being suggested that again we have come to this Parliament without consultation and presenting a law. This is furthest from the truth. So we have written to key stakeholders, those who were interested, they chose to write and respond to us. And then we would have also made a sincere attempt to reach out to the members of the public by that survey that was available to the public for the duration of the 26<sup>th</sup> of May to November 26, 2021, in which we were able to solicit the views and the opinions of the public. So just to clear the record on that point, Madam President, it is furthest from the truth to even suggest that we have come to this Parliament with a legislation in the absence of consultation.

Now, Madam President, before I get into the crux of my contribution and my contribution is—at least if I set out what I hope to achieve today in my contribution, I would try to look at the practical aspect of compensation and this is,

of course, for the benefit of the listening public and how compensation would work and what would be operating within the court's mind when granting compensation in a matter such as this.

But before I do that, Madam President, I want to address some concerns that, of course, were raised by my colleagues in their individual contributions. Now, if I could firstly turn to the hon. Senator, Sen. Lutchmedial, I recall noting in her contribution, she made the point—she was speaking of, the hon. Senator, spoke about legal proceedings and she indicated that legal proceedings would include and these are her words: I am concerned whether family law proceedings such as divorce will be captured here. She would like to hear if we had a view on family law proceedings not involving children but for matrimonial proceedings—if there will be a provision for matrimonial proceedings.

Now, Madam President, the reason why I want to spend some time looking at legal proceedings and the protection that is provided for evidence that is led in legal proceedings, especially matters that are sensitive like this, like those offences that are created in the Bill that appears before us, is simply because, oftentimes, remember the purpose of us introducing this Bill and this legislation is so that victims of this offence are encouraged, they are encouraged to go to the court and to bring a claim or they are encouraged to go to the court so that we can have a successful prosecution of offenders.

However, if the man on the street or a vulnerable person is fearful that by instituting legal proceedings, the candle is going to cost more than the funeral and by that, I am referring to not the cost of the proceedings but I am referring to “then all my business is going to be out there on the road”. If that is the perception of the public, what we may actually have is that even though we create good law, persons



may actually be afraid to still use the law and the remedies of the law that are available. And at this point, Madam President, and of course for the benefit of the public, I want to look at protection for evidence that is provided in other pieces of law so that if and when, and of course when this law is passed after the select committee stage and so on, that members of the public can rest assured that at least evidence and information, there is a layer of protection that is provided by the law as it relates to these matters.

Now, the Attorney General and several of my colleagues in the Senate would have looked at the Lendl Simmons case and the Lendl Simmons case, of course, it was taken in a civil arena but in that very case, the dicta that came—and this, of course, addresses also the concern and I will get back to Sen. Lutchmedial's point and question about matrimonial proceedings but I am starting looking at civil proceedings. In this particular case of Lendl Simmons, the dicta that came out of that case, I recall Justice Frank Seepersad, he ordered and I could read from the actual judgment from the case. He ordered that all photograph exhibits in the matter be placed in a sealed envelope until the limited time for filing of an appeal. Upon the expiration of same, if no appeal has been filed, the photographs are to be destroyed by the Registrar. If appeals are filed, the photographs shall remain sealed until any further order is issued by the appellate court. And I am saying this, as I said before, for the benefit of the listening and viewing public.

So what the honourable judge in this matter did is that he is what practitioners of the law like myself, we call “sealed the proceedings” and sealing the proceedings is that the evidence in that proceeding is actually sealed and it is kept by the Registrar General so that that is an effort to protect evidence from

entering into the public domain. So, for example, in matters like the Lendl Simmons case, there would have of course been photos, all kinds of photos and of course, a person pursuing this matter, the inherent fear is, okay, I go to court with this matter, the court staff has access to it and then eventually there is a leak into the public. A court has the jurisdiction from the civil standpoint that a judge can order that these proceedings are sealed and that is a layer of protection that while there is no specific rule in the civil court, it has been a longstanding practice and even if we revert to rule 1.1 of the CPR which is the overriding objectives and so on of the CPR, the court has to deal with matters of course in a fair manner and by sealing proceedings, of course, is one way in which the general public can rest assured, do not be afraid. If and when this legislation comes into being, do not be afraid to invoke the jurisdiction of the court because it is only when you do that, you can take a stand and we can bring an end to these perpetrators. So that is so from the civil point of view.

Now, the Bill that appears before us on the other hand, Madam President, what it does is that it criminalizes—we all know that it is different from that civil threshold because it criminalizes voyeurism, revenge porn and the question now is whether in a criminal setting, if I have decided, if I am a victim of revenge pornography, if I am a victim of voyeurism, if I decide to pursue this matter and I am now a VC, a virtual complainant in this matter, what layer of protection am I provided with and layer of protection again is as it relates to the evidence, as it relates to the public having access to the evidence that is led in that matter.

And I am saying this especially because I was a practitioner for many years and that is usually one of the fundamental fears of a VC in a matter that okay, I decide to pursue this matter and I made reference to it already that “I just doh wah

meh business out there and I doh wah my photos being leaked by ah court” in legal proceedings. So to the members of the public as we look at the criminal law now, this is where we look at the interoperability of law argument with this Bill that we have and the Criminal Procedure Rules.

In the Criminal Procedure Rules, Madam President, there is particularly rule 14.2 and this rule 14.2 again, in criminal proceedings, it deals with the sealing of proceedings. And this is very critical and the rule actually states that:

“The prosecution shall disclose material under rule 14.1(b), unless the Magistrate or Judge orders that such material should not be disclosed in the public interest.”

So even if you have criminal matters in which this evidence is given and you are fearful, a VC is fearful that “oh my God, my information may be leaked”, an application can be made pursuant to the Criminal Procedure Rules so that the evidence and the matter itself can be sealed and that is another layer of protection that is provided to the virtual complainant.

And I cannot emphasize again the reason I am taking the task of going through this is because I know for sure if and when this law comes into being, there are going to be vulnerable young women, young children, there are going to be people who are still afraid to use the law and I am saying to you do not be afraid. Do not be afraid because it is only when you use the law and those provisions provided in the law, you will be protected and we can bring an end to some of these monsters that exist in our society.

Now, to answer the hon. Sen. Lutchmedial who focused on matrimonial proceedings, I had the benefit of, of course, practising in the Family Court and at the Family Court level, Madam President, there is also that layer of protection for

evidence and sensitive evidence that is provided. So for example, if we look at— not for example, the law is, Madam President, section 5 of the family law and Children Act. This was a 2016, it was proclaimed on February 27, 2018. This also, that section, section 20(5) of this law, what it does is that it allows for a family court and I will read. It allows for:

“...a Family Court Judge...Master...”—to also—“seal...a...proceeding...” Also, there is a restriction on the publication of proceedings involving children which we are aware of. The courts can order copies of a ruling to be redacted prior to publication. Similarly, it can seal the copies of transcripts and other relevant documents. This is within the discretion of the Judge or the Master of the court.

And so to answer the hon. Senator’s concern, I do not believe it was necessary in this Bill that appears before us to actually prescribe a process whereby this evidence—a process for legal proceedings because there are other areas of law that will protect evidence even in the family law arena, whether it is divorce, whether it is a matter involving a child and as I said, I have placed on the record the parts of the family law Act that also provides that layer of protection for evidence, sensitive evidence that may be entered or may be adduced in a matter as evidence.

And again, Madam President, as I have said and I know I may sound repetitive but this is simply I want the members of the public to understand that. There was no need really, at least as it relates to legal proceedings, for us to go through the task of giving additional provisions to protect the evidence because we have to bear in mind that there is the Criminal Procedure Rules, we have to bear in mind that there is the family law Act, we have to bear in mind there is the Civil Proceedings Rules and all of this deals with what we term in practice as sealing

proceedings so you can seal the evidence and sealing the evidence refers to protecting the evidence from entering into the public domain and I respectfully believe that this was critical at least for the members of the public to understand the layer of protection that is provided by other areas of the law.

Now, I know the hon. Sen. Lutchmedial, she also spoke about whether or not—she questioned whether or not the police would have the ability, for example, the Cyber Crime Unit to shut down the sharing of images and all of that. And of course, that is a procedural point and I agree there with respect to, you know, we have to make sure that there is an alignment as the Attorney General always says with the plant, machinery, people, processes and the law.

But the Bill that appears before us also provides, apart from the police physically taking down images, the Bill that appears before us in its current incarnation provides an injunctive remedy that can also be granted by the court and that injunctive remedy is found in proposed section 22D(1)(b) and that is where the court can make an order that the defendant immediately takes down whatever images and all of that that are provided. So yes, the police plays a part and the Cyber Crime Unit will play a part in whether they have the technology to shut down. But we are not here to discuss the police at this point, we are here to discuss the law that appears before us and in the law that appears before us, we are giving the court, the judicial officer, the power to also grant an injunction which will result in the immediate removal of these documents, of any kind of sensitive evidence, well, these pictures and so on that would be shared on social media. So that was the extent of certain points that were raised by the hon. Senator that I wanted to address.

Now Sen. John, I know in her contribution, she spoke about the necessity for

sex and health education and you know she questioned the Government on its position as it relates to sex and health education. And the reason why I want to address this is because I had the benefit of, of course, serving with my colleague, the Attorney General, in our recent Universal Periodic Review with the United Nations that dealt with human rights and this was something that in preparation for this Universal Periodic Review, I had the benefit of, you know, having to read and bring myself up to speed with laws and our policy documents as it relates to sex and health education.

Now, I agree that there is not a sex and health education curriculum in Trinidad and Tobago just yet but what we do have is a health and family life curriculum in the Ministry of Education. Now, of course, there is a distinction between health and family life and sex education, I understand this but the benefit I had in preparing for this Universal Periodic Review, when I myself questioned if we are moving towards modernizing laws and I myself, I am an advocate of laws not being static but rather dynamic, I myself would have questioned but where are we at on introducing sex ed into school and then you would think that I would have remembered this because I was a teacher for umpteen years. One of the major challenges is with the consultative process and the stakeholders involved because the education system—and let us not be blinded to that fact.

We exist in a multi-diverse society and in Trinidad and Tobago, for example, if you look at the education sector, we have different boards: the Hindu, the Muslim, the Presbyterian, the Catholic just to name a few. And if it is that we have to even look at the introduction of sex education into schools, that is a consultative process that is going to have to be exhausted and more than that, you are going to have to get persons to be in alignment, you are going to have to get

Sen. The Hon. R. Sagrarsingh-Sooklal (cont'd)

persons to look beyond traditional views and opinions and support such legislation or support such policy.

And certainly I am not expressing the view of the Ministry of Education at all but this is just from a legal perspective when I was preparing as I said before for the Universal Periodic Review on that point as it relates to sex education and I believe it was necessary to address it, because you see I know the undertone of that again, that comment, it is as if we are just sitting idly as a Government and we are not introducing legislation so we bring a Bill on voyeurism but yet we have not done something as simple as sex education in school and it is not a simple task. And that is what I wanted to address, the fact that these things, they require serious consultation.

So that would have been the extent of certain comments made by my colleagues, Madam President, that I wanted to address. Madam President, if I may respectfully ask, how much time is full time? How much time do I have again?

**Madam President:** You finish at three minutes past three so you have about six minutes.

**Sen. The Hon. R. Sagrarsingh-Sooklal:** Thank you very much, Madam President. I know I would now have to speed through my contribution but as I said, my focus really now is on the compensation aspects. Now, Madam President, again, the case of *Therese Ho v Lendl Simmons*, it was spoken about already by the Attorney General and yes, I know Sen. Lutchmedial and the hon. Attorney General went into some detail with this case so, of course, to avoid tedious repetition, I would not get into detail. We already know and this Senate is aware and the public is aware that this is a civil matter.

In the Lendl Simmons case, however, the honourable judge would have also

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focused on an Australian case *Giller v Procopets* and that case would have spoken to what operates within the court's mind when assessing damages and when assessing compensation for a matter like this. Now, the Simmons case as I would have earlier explained and those before me, it is civil case. The present law on the other hand that appears before us, Madam President, what we are looking at is the redress that can now be found is in the criminal law and of course, it can either be tried indictably or summarily.

Now despite this matter, Madam President, being heard summarily or indictably, the proposed section 20 of this Bill—yeah, section 22D, sorry, of the Bill allows for an approach in that a person who has been convicted, a criminal court can then put on a civil hat and determine compensation in this matter and can determine compensation, of course, with the VC in the matter.

**Madam President:** Minister, you have five more minutes.

**Sen. The Hon. R. Sagrarsingh-Sooklal:** Thank you, Madam President. Now, again, I want to look at a very practical approach. I want to look at this very practically as to how compensation is going to operate in the court. Now, firstly, understand that what we have done here by giving a criminal court the ability to grant compensation, it is not novel, it is not new. It already exists in other pieces of law. Right? So for example, if we look at section 30D of the Offences Against the Person Act, you have a criminal court having the jurisdiction to grant compensation; section 25 of the Summary Courts Act, you have that there; section 4 and 4A of this said Sexual Offences Act, a criminal court has the ability to grant compensation.

Now, how does compensation and how will compensation work? Madam President, you are looking at a person has now been convicted of an offence. So



you have been convicted of the offence and at that stage of the conviction at the point of sentencing, the court can ask the question to the parties present, to the prosecution and the defence: So tell me, what is your position on compensation? If the court does not raise the issue, then the prosecution can, of course, raise the issue of compensation and it is at this stage, Madam President, that the court is now called upon to make that decision on compensation. But how does the court arrive at determining what type of compensation in criminal proceedings? How does the court determine this?

**3.00 p.m.**

Now upon the prosecution, Madam President, making an oral application, as I would have earlier alluded to, the magistrate can call upon the prosecution to assist the court by disclosing documents that can be used to assess said damages. And again, to explain this, we have to look at the Criminal Procedure Rules. Madam President, if we look at rule 3.5 for example of the Criminal Procedure Rules, it says that:

“Each party shall—

- (a) actively assist the court in fulfilling its duty under rule 3.1 whether or not the court has made a direction; and...

Rule 3.5(3) of the Criminal Procedure Rules also states:

“...each party shall—

- (c) make appropriate arrangements to present any written or other material...

So the criminal court, in other words, after a conviction is made, is now called upon, as I said before, to make an order on compensation. The Criminal Procedure Rules indicate how do we start this process. And the court can therefore, pursuant

to the rules, can make any other request from the prosecution in the parties available to present any evidence that would of course assist the court in coming to its decision relative to how much compensation ought to be given.

Now, Madam President, one of the differences though in this particular Bill that appears before us and other pieces of law in which a criminal court can grant compensation is that issue of a cap, right. So, for example, section 24 of Summary Offences Act it speaks to the offence of fraud. This particular section, Madam President, it speaks to the offence of “fraudulent conversion”, and it says that a person liable under this section:

“...may also be ordered to pay to the party aggrieved a sum not exceeding two thousand dollars by way of compensation.”

So, this is a criminal court and a criminal court that can grant compensation. But in the Summary Courts Act there is cap that is provided meaning that a magistrate cannot order beyond a certain amount, right. However, this Bill that appears before us there is not a cap and that is not a bad thing. And the reason why I am saying it is not a bad thing, Madam President, is because there are other guidance, for example the Petty Civil Courts Act, Summary Courts Act, that allows the court, that gives this court, Madam President, the opportunity to decide on compensation based, of course, on the evidence that is presented.

Of course time did not permit me, Madam President, to address all of the issues that I would have hoped to speak about, but you know, Madam President, again, I wish to reinforce that I stand in support of this Bill, it is good law but certainly with the work at the select committee stage, I am sure we will be able to produce a piece of legislation that we will be proud of. Thank you, Madam President.

Sexual Offences (Amdt.)  
(No.3) Bill, 2021

2022.01.11

Sen. The Hon. R. Sagrarsingh-Sooklal (cont'd)

**Hon. Senators:** [*Desk thumping*]

**Sen. Sean Sobers:** Thank you, Madam President, for recognizing me this afternoon and giving me the opportunity to also contribute on this Bill which is engaging the House's attention, the Sexual Offences (Amdt.) (No. 3) Bill, 2021. Now, a lot have already been said on the Bill of itself so that I would focus on specific areas that I think are extremely important for persons within the Chamber to take into consideration, and also for the listening and viewing public at home.

The Bill deals with a lot of the behaviour and seeks to criminalize a lot of behaviour that we are all too familiar with in Trinidad and Tobago. Some of it we have known since growing up within our twin-island republic State, loosely being called "peeping Tom" as other Senators would have coined it and repeated it, and for the younger persons within our society being aware as to this upskirting situation as well too, and the revenge porn situation that has been spoken about as well.

These particular issues however, Madam President, they—what this Bill seeks to do, and I listened to what the hon. Sen. Sagrarsingh-Sooklal was saying, the Bill in essence provides for larger opportunity for persons within our society who would have been disenfranchised because of the reliefs that previously existed or currently exist right now. So if someone would have found themselves in this particular situation, generally they would seek some type of advice. And I believe I would have heard the hon. Attorney General, I think also Sen. Sagrarsingh-Sooklal, and one or two others touched on the fact that some type of relief could in fact be found under the Offences Against the Person Act, particularly section 30A and 30A(1)(a)(i) which states:

“For the purpose of this section—

- (a) ‘harassment’ of a person includes alarming the person or causing the person distress by engaging in a course of conduct such as—
- (i) following, making visual recordings of, stopping or accosting the person;”

I have not been practising that long as some other persons within this Chamber, but I can attest that I have seen many persons attempt to bring matters like this to the criminal courts with little success because of some of the demands that are made pursuant to this particular Act. So if that fails, what is left for someone else in this particular situation as we currently sit here today? The hon. Attorney General spoke about it. You have to go and retain a lawyer. You have to go and check a firm, and firm and lawyer is big money. So many persons who are victims of these particular acts by merely being unable to purchase justice are shut out. And even if we go as far as considering that someone gets the ability to retain counsel to begin to prosecute a matter against a defendant, there are other hurdles to cross. Procuring the services of expert witnesses to give evidence in matters like these are extremely expensive. Because from what I have been told there are finite persons within this country who are poised and capable of producing that evidence within a court of law. And many Senators here today would have spoken at length about the dicta and the judgment in the *Therese Ho v Lendl Simmons* case.

But there is also another case that recently engaged the High Court of Trinidad and Tobago, and that is the *Ornella Boodoo v Vychalle Singh* matter. And what was the common thread in both matters, or what was highlighted in both matters, is the need for certain types of proof and evidence to be illuminated. Evidence and proof that I would have mentioned before that comes at an extremely

high price. And so, we are in a very plausible position to offer to many persons within this country another avenue where justice can be had, that would not cost a dollar—except, well, our taxpaying dollars to the Trinidad and Tobago Police Service.

But what is tethered directly to the nature of the evidence being procured in a civil matter in the Ornella Boodoo or the Therese Ho matter may very well run within the presentation of these matters if and when they do come to a criminal court. And that directly brings me to a discussion that has been touched on by Sen. Lutchmedial and also touched on by the hon. Sen. Sagrainsingh-Sooklal. What needs to be proved is that whatever sensitive information, be it in the form of video or pictures, it needs to be proved that it is in the possession of the potential or, in fact, the defendant, and that the defendant used these particular sensitive information, whether he transferred or shared or whatever without the consent or permission of the victim.

We live in an age and in a time now where nearly every single crime perpetrated within this country, every single crime perpetrated within the world, has some form of digital footprint. And it brings into question whether the capacity, the ability, the resources are present at the Cybercrime Unit of Trinidad and Tobago to treat with an added function, a welcomed added function, but whether the resources are there, apart from physical equipment, whether the human resource capability is there. Because woe would be on to us as a country if legislation like this is birthed and many, many, many, persons, young and old, would visit the TTPS seeking assistance, seeking justice and because of a lack of proper assistance and implementation with respect to building up the resource infrastructure at that particular unit, these matters would fall to the wayside.

The hon. Attorney General would have touched on the detection rate associated with these sexual offences, and I must admit it was a low figure that was presented. I suspect that there may be many things that would have blended in to presenting such a figure, but if that particular rate is currently low then one would naturally assume that the conviction rate is also equally low. And unfortunately, those will not be comforting words to victims who would be lining up in front of the Cybercrime Unit looking for assistance, and then when we check on these issues years later we recognize that that conviction and detection rate still remains low.

So in terms of a wrapping up presentation today, I would really, really want to seek some type of guidance, some type of clarity from the hon. Attorney General that steps are being made to ensure that the TTPS Cybercrime Unit has a fighting chance once this particular piece of legislation is implemented to bring about real justice for persons so affected.

Now, as I would have mentioned at the genesis of my contribution, much has been said on this particular piece of legislation, this well intentioned piece of legislation, that I think everyone in this Chamber intends to support. But there are in fact, and the Attorney General made it quite clear in his presentation, there are some moving pieces, some variables that needs further discussion and hence the introduction or the indication rather about shifting this particular piece of legislation, this Bill, to the special select committee.

When I looked at the legislation I paid close attention to particular clauses and so I would draw the honourable House's attention through you, Madam President, to clause 5, section 22A(3)(c), and these particular sections are what can be use loosely considered the defenses that may become available or that would be

available to a potential defendant who runs afoul of these particular actions. And so it says:

“A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—”

And I go straight to (c) because the first two deals with the action of a law enforcement individual, the actions of an unauthorized person and (c) specifically speaks to:

“...carried out for the purposes of security monitoring—”

Now when you read the entirety of (c), the manner in which I read it and what I took from it, it is split up into two particular sections. You have one which appears to be standalone which states:

“by a person monitoring his home...”

And then you have:

“...or...”

And—

“(ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;”

So I may very well be correct in saying that there are two separate situations there. My difficulty is that it is in fact disjointed and if you read clause (i) alone which says:

“by a person monitoring his home”

I have a problem there.

Throughout the length and breadth of Trinidad and Tobago many, many homes within this country have CCTV cameras recording everything, every nook

and cranny of “yuh” house. And in some of those homes there are also CCTV cameras in the interior of the house. That is fine. “Dais” your house. If you want to monitor what going on inside your house, you are free to do so. But if a visitor comes into your home and intends to use our bathroom to commit a private act, relieve themselves or whatever, it should be that you, the owner of the home, who has a camera for whatever reason in your bathroom, has to indicate to that visitor that listen, the bathroom is an area that there is some type of recording.

But the manner in which this is, or it appears to be disjointed, this homeowner does not have to indicate that to you. And for whatever reason he may wish to advance that he has this camera there, after you have relieved yourself. Let us say you recognize that you are being filmed, really and truly there is no action that can be meted out to this homeowner for what I would want to say amounts to him spying on you whilst relieving yourself. And I think what should happen here is that this particular clause should in fact be amended to read:

by a person monitoring his home where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance.

That it is not one or two, it is just one alone.

Following on from that at (d) I know that—I believe it would have been Sen. Lutchmedial and also Sen. Dr. Dillon-Remy had some brief discussions on this particular point. And, it speaks to an individual who reasonably believed that what they were doing was necessary for specific purposes, preventing, detecting, investigating, or prosecuting crime. And when I read that particular clause I was a little bit confused because the actions that are being spoken of here equate to law enforcement actions. Actions that would be adopted, would be pursued, would be



executed by law enforcement officials.

And if that is the case located a bit further up at (a) there is already a section that treats with actions that are to be executed by law enforcement officers. So I am wondering whether or not this really speaks to a private individual doing matters or actions like this. And if so, at what point in time does a private citizen recognize that their recording of a situation is unnecessary, in terms of furthering whatever detection or investigation that they are doing? I believe that is a bit too wide as well.

And then well we have the issue with respect to public interest which I think many persons have spoken on. And I too have a bit of a difficulty with that and I would hope through the fleshing out of that issue in the select committee some type of expansion can be made there and it is even more specific than just indicating in the public interest.

Now, moving on to clause, well section 22B which treats with:

“Taking and sharing of an intimate image without consent.”

Specifically, when one traverses and peruses the defenses again that are available for that particular section, there is the introduction of a subsection (4) which treats with relationships or a relationship, a professional relationship between the potential defendant and his or her lawyer.

Now, the first thing that I recognize here is that that particular relationship as a defence is not found anywhere else, which I thought to be extremely confusing. I would want some type of reason to be advanced as to why specifically in the offence of taking and sharing as opposed to voyeurism, as opposed to upskirting, as opposed to just sharing, there is not a defined position or an expanded position on a relationship with a legal professional. And I will say how I feel about that

now. I have heard from many other persons today speak about their difficulties with such a relationship being built into the law.

Your relationship with your lawyer is a confidential relationship, and so I appreciate that there are other offences that can come out, there are other sections that would or activities that protect sensitive material that can come out of a court matter. But let us get this straight, if a lawyer—your lawyer—breaches your confidentiality and your confidentiality comes about where you have been charged with an offence, under the Constitution you are allowed to have a legal representative, and whatever that offence is, be it voyeurism, taking and sharing, or sharing, whatever it is you have the material that would have been given to you pursuant to disclosure when the matter comes up. How else are you going to properly defend yourself?—not by furnishing the same lawyer with that information. And he or she has a duty to keep that information confidential. There are consequences and sanctions against lawyers who do not do that. And so that I do not understand the flurry of discussion, respectfully, as to why this has been placed within the law.

I mean initially I thought that legal proceedings and the Administration of Justice covered this situation, this relationship with a potential defendant furnishing his lawyer with information that has been disclosed to him by the State, pursuant to the charge that has been brought against him. Why the needs to specifically talk about that relationship under (4)? I understand the need for (5). The lawyer has to prepare your defense; documentation has to be filed; there are going to be interactions with the lawyer and his staff. There are going to be interaction with filed documents with the lawyer and court staff, and the JSO, and the magistrate, and the judge. So all of these people will have access to that

sensitive information and material. And it is not something new.

Yes, we are dealing with sexual pictures and videos and what not, but what other gory material that these persons have to interact with on a day-to-day basis? So I do not understand the craze, the obsession, the issue with a lawyer or persons within that realm having to treat with this material. They have been doing it all the time, they will continue to deal with it. And you have a right to liaise with your lawyer concerning those issues. But specifically here, why is it placed here alone? And if it is in fact placed here alone for a specific reason, well, I expect that it will be advanced. And how different it is to place it here and what is the explanation or the definition then for “legal proceedings”?

Which brings me to an entirely different situation, legal proceedings. There was a matter in a private institution where an employee of that institution would have taken out certain pictures of herself. She was in a relationship with another employee at the institution and she shared those images with that employee. Now, when she took the pictures, she was clad in a uniform belonging to that particular institution. The relationship came to an end and those pictures found themselves on the phone of the CEO of the organization.

Now, when you are employing people generally good industrial practice dictates that you would give these people their contract, their job description will be there, they would have an employee code of conduct which will dictate what the company will stand for and what you could in fact be sacked for. And so, the CEO, now in possession of this material, he has to make a decision. So what does he do? Most middle to large organizations have an HR or an Industrial Relations Department and the CEO would have to be guided by advice coming from that department. So he had to go and liaise with them and share that information, share

the picture. Based upon what we have here that CEO could be charged. Because the HR and IR department, from what I have read, appears not to be covered here, it is not a legal proceeding. It is an issue, an industrial relation issue that arose. So we need to really drill down and look at this holistically. So I would really want some assistance there as to why this clause is specifically placed here? What is the difference with the clause and legal proceedings which is littered throughout the Bill and Administration of Justice?

Now, I also looked at clause 22—well not clause 22, 22C(1). Now 22C(1) is an attempt to criminalize sharing an intimate image. I want to place this squarely on the record. I am totally in support of taking a stronger more stringent approach to the activities the actions within this particular Bill. I, growing up as a young man, would have been friends with some persons who have been properly well affected by individuals committing these types of acts.

Now 22B treats with criminalizing “Taking and sharing...” of the image. Whereas 22C treats with “sharing” criminalizing sharing of the image. It is understandable or expected that a person who takes the image should reasonably know or actually know whether or not he has consent to take and actually share the image. There is a nexus there between the person taking the image and the person depicted in the image, a very, very close nexus, “rell” close. But when you deal with situations where things go viral, as the young people say, and an image is shared hundreds if not thousands of times—

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

**Sen. S. Sobers:** Yes, please, Madam President. Right, and an image is shared hundreds of not thousands of times, the nexus or proximity between the 400<sup>th</sup> person who shared the image and the person depicted in the image does not exist.

It is extremely far. And I am wondering whether or not real justice would be served in criminalizing someone found within that particular situation. That is just my two cents on the issue.

Now, the hon. Attorney General also touched on the issue of carnival and what not and built into this 22C(1) there is this issue with C(1)(b)(iii) which states:

“his intimate image would not be shared without his express permission, regardless of whether the intimate image of the depicted person was taken in a public or private place.”

Which is totally different from what we have been dealing with all the time. Actions taking place in a private place. This particular clause widens it greatly. Because you are talking about private acts or acts in a public place as well. And based upon definitions found earlier on with respect to how persons could be clad, the hon. Attorney General is right. Some, some persons are clad accordingly around carnival time, and these are actions and activities that are taking place in a public place. So what would be the situation of someone taking a photo of someone during carnival time and sharing that image? We have to look at that.

**3.30 p.m.**

Now, just trying to wrap up quickly. I also looked at section 44A which deals with penalties, the same types of penalties but as it relates to children and I am a young father and prior to being a father, it is and has always been my position, any actions that have consequences and those actions that are being meted out against adults, the consequences are X that is fine but when you have the same actions being meted out to children, the consequences should never be the same, they should be exponentially higher and so a sanction being carried across from the previous part of the Bill of \$250,000 or \$750,000 and being mirrored for children

should never stand. We have a real opportunity to—well, persons involved in the select committee will have a real opportunity to again, as I mentioned at the genesis of my contribution, to bring hopefully disenfranchised persons within the public and give them the justice that they deserve that has escaped them solely because of economic circumstances. With these few words Madam President, I thank you.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Sen. Deyalsingh.

**Hon. Senators:** [*Desk thumping*]

**Sen. Dr. Varma Deyalsingh:** Thank you, Madam. Madam, could you tell me what time I will be finishing?

**Madam President:** Well, if you take your full 30 minutes, you should finish at three minutes past 4.00.

**Sen. Dr. V. Deyalsingh:** Okay. Sure, thank you. Madam, I am very pleased to be partaking in this discussion today because, you see, I have dealt with persons in the past that have actually a disorder called the voyeuristic disorder where it is a psychiatric condition. And I have also heard the plight of the community, you know, members of the community who sometimes have to deal with individuals, like a person who actually is in the community a peeping Tom, causing distress. So on—and both sides I have had the knowledge that what could transpire. But I would like to start by looking at the words of the Mighty Sparrow when he sang this calypso, “Carlton Peeping at Me”. And this calypso, so I just want to quote a few things:

“Murder! Murder!

Help save me!” this girl started to cry

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A man in the keyhole peeping  
 Look ah see he eye  
 Well I ain't staying here no longer  
 I am going away  
 I got no privacy in here  
 Aye, aye, Carlton move from dey!  
 Carlton is a peeping Tom  
 Where he get this habit from?  
 Yes, I come inside to rest"

So it goes on;

"I regret the day I come  
 To live on Laventille Hill!  
 All the time she quarreling  
 Carlton peeping still  
 Where he get this habit from?  
 Well I didn't know that this woman  
 Had two bad john son  
 Always beating people with iron  
 And walking with gun..."

So you see since then, people had guns, eh, not just a recent thing—

"Well...they come and they got the news  
 They didn't care whether true or lie  
 Soap water with salt and pepper  
 And they throw it in Carlton eye..."

So this 1959 calypso from Mighty Sparrow showed that since then, peeping Tom was a problem.

Now, the peeping Tom term is not a local term, it is from England where some tailor peeped at Lady Godiva travelling on a horse naked—driving a horse in nude, she resisted her husband's attempt to raise taxes so she told all the countrymen that she is going to ride naked and do not look at her but she is doing this as a protest for her husband raising the taxes. Her husband was a governor and Tom peeped and since then it—I think the legend had it well, he went blind or something and this “peeping Tom” came. So it is an old problem since 1959. And you see, the thing is, this problem has caused—two reasons here, the calypso actually asked why this is so. And this is so because some people may have the disorder and it is in the minority and also, it actually shows that the sons wanted to go and teach this guy a lesson. So it showed that you would have had violence if we do not put things together in place. And so I welcome this piece of legislation because it will actually help us now—help the police in their activities to try to see if the law is now behind them they can apprehend the peeping Tom. So the AG said he wanted it to go to a joint select committee, a few members said so but we need this as soon as possible.

I remember four years ago, in PLIPDECO in one of the changing rooms, 300 persons walked out the job after the union leader, I think it was Mr. Anisette, he actually said they found three spy devices, hidden cameras in the plugs in the changing room. So since then persons were upset, they do not know what is happening, where is the legislation, but finally it came here. And you know, the fact is, the peeping Toms were there. You know, I have an instance where this gentleman, he actually goes in and peeps at individuals but he also actually shows



people his private, he is an exhibitionist, so it runs in a trend. And he went into this area, and he harassed eight families. A grandmother was looking out the window, he flashed her, then he went peeping at a young child and it actually caused problems where the police held him and the neighborhood eventually got together and they beat him up because they found that he was a nuisance.

When he came to our hospital and we treated him, actually he went to the magistrate and the magistrate set him home and said come to the clinics for treatment. So he would come to us and we would start to treat him but, Madam, what I am saying is that even though we were treating him with antidepressants, which we accessorized which is part of the treatment, you know, we found that some people are resistant to treatment and yet still we had him back into community causing great community distress. And why I brought in this, is because part of the legislation where in terms of the fines, you know, you are going to fine them a certain amount of money and the jail sentences, some people were asking for more. Because you see, sometimes the villagers say they could not sleep, they kept, you know, lost that feeling of privacy, and anger. All these things they described and the anger was also sometimes meted to the doctors when they came to complain to us why we cannot do something with this gentleman, why we cannot keep him locked away, why we cannot keep him from society.

So, we, as doctors also would look at the police and say, listen, hold him for another crime, he might have been trespassing, he might have been sometimes, indecent exposure, all these things. So it kept like we kept throwing the ball in each other's court and sometimes as a psychiatrist, it is difficult to treat individuals who sometimes are resistant to treatment and sometimes we have to go far out and even

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give anti-testosterone treatment in some individuals, if they decide they want that treatment—it is a kind of bargaining, but it has a lot of blood tests after.

So, therefore, when I look at what is offered here, I saw Sen. Lutchmedial also mentioned she too was a victim of a newspaper, where they had her in a sort of situation where she was not so pleased and Madam, it is not just here, it is worldwide.

On December 03, 2021, a Florida man threatened to leak a politician's topless photo which he somehow got from her social media page and it was a Democratic Senator Lauren Book, who actually had to carry this guy to court and try to get some sort of legal sanctions. And what I—why I mentioned this case is the gentleman was placed on a \$60,000 bond and he also was ordered not to have any contact with the Senator, plus he was prohibited from not using the internet. And this is something—why I am bringing this is probably the Attorney General may have to say is that also something we can also have in our legislation, somehow that the judges now would be able to put that sanction on these individuals, which can have a plus or minus because I am going to the negative side just now. Plus, you would not be able to get these individuals, you would not be able to put out any sort of porn, any sort of photos but the negative is, we are found out in Google, millions of people now go to the voyeur sites, millions, from a few years ago, so it is increasing.

So some physicians are of the view that, is it that having it there will prevent people from actually going and doing the act or will it encourage individuals who go into the act will now want to go out and make their own photos, so that is up for debate. But what I must say, Madam, it is a very important issue because even the *Times of India*, March 08, 2021, there was a—the state there, “Karnataka govt

planning law to protect politicians from blackmail”, where a politician was actually blackmailed by a lady who he called a honey trap, who actually tried to bring disgrace to him and prevent him from running for office.

So it is all over, so it is needed. It is needed to prevent the sexual exploitation of citizens, but we have to balance it with the patients afflicted with the voyeuristic disorder to see how we can also help a victim. Because those persons who may have this disorder though in the minority of the majority of persons who are voyeurism, just a few of them will have this disorder, but those persons we really need to help treat them with whatever way possible. So—and this, Madam, is—this crime I must say is far more common than all of us will think because a lot of cases the victims do not know they are being reviewed or recorded.

So I want to say to the AG, most respectfully, that there was a case in Tampa, where a husband actually taped his wife sleeping and he used that—she found it actually in his computer and she carried it to the police. And it was a case where they were going to split up, but he had this on her to blackmail her, he drugged her, she was sleeping. But what was significant about this case, the police investigation revealed that 14 years before he did a similar thing with his ex-wife. And why this is important, there was a Williams Rule evidence where the judge said that you have permission with these individuals to go back into their computer—to go back into their system to see if they had done this act before.

So I do not know if this would be covered here, if it is something that it is up to some discretion, where we would be able to have the leeway to look at these individuals. And it was mentioned by the Attorney General that even though you have—and another Senator—that even though you have this crime of voyeurism it

also is on a spectrum of disorders where it can be a gateway to more serious crimes like rape. And this is something why we have to take it serious, this is why we have to set the sanction, so we would not be opening the gateway for somebody to move from this into another disorder. The literature has shown that in certain cases, people get more emboldened and move on to other things.

So I want to say that this piece of legislation here looks at the—looks at certain definitions and I want to start out with some of the definitions I saw and that—thoughts that I had with it. So I must look at the fact, Madam, that when I looked at the definition of law enforcement, so the “law enforcement officer” would be the one who may be like a constable, a police officer appointed under the Police Service Act, a constable defined a member of the special reserve police, an employee of the strategic service agency, a member of the municipal police service and:

“a member of any other agency of the State in which investigative and intelligence gathering powers, similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested;”

So it is a lot of persons who may be able to have images, who get images or, you know, to—in their possession. And I feel a little uncomfortable with this in the sense that, granted, the police officers have to do their jobs, they may have these pieces of footage available, given to them in some cases by the victims but in the United States, Madam, some time ago it was alleged and I think our Sen. Ahye mentioned that we have to make sure the police officers are not—are very cautious with their footage, because you see it could get out of hand and she made mention that you may have the public service association—the Police Complaints Authority having more work. So we have to make sure that we do not have any sort of police

overreach and we have to have safeguards in place where police officers themselves may not be able to get obtained footage, causing problems to—causing a misuse of the problems.

And what I make mention is the fact that in the United States, I think it was President at the time, President Ford at the time had to actually have a commission of inquiry where he looked into the activities of police officers and he looked into the activities of the CIA, claiming that—it was in 1975, Madam, that President Ford said that the CIA was engaged with getting illegal activities as large scale spying on the American citizens, engaging in illegal wiretaps, aiming their illegal activities to Americans who openly disagreed with the Government.

So we have to have safeguards in place that police would not overreach—would not overextend. We have to remember in the past, Madam, there were cases where there was information, was gained from people's phone from I think it was the SIA, it was where the last President of—I think President Max Richards, the Chief Justice then, a few journalists, a few judges, and a few politicians themselves were under some sort of illegal surveillance. So we have to ensure that if we are going to allow police and all those other persons under them to be engaged in any activity, we must have some way to protect individuals from not just illegal spying, but if the police may be using information like that, to their benefit and you have to make mention of the fact that the word “sexpionage” is a term where it is used where individuals may use agencies, state agencies may use footage that they obtained from politicians or anybody else to sort of blackmail them so, we have to be careful. We have to be careful to make sure that those operations do not exist, that people would not be—in authority would not be using those footage.

And I was trying to question why do we—why would we want a member of the municipal police also to be given those powers. But I see cases where—there were cases I think, in even in the United States and Walmart where a gentleman came in and he actually started to take pictures of young girls. And he took pictures of young girls and it was really one of the guards was able to apprehend him and look in his phone and said, hey, this is illegal and called the police and they got the gentleman from that case. So in cases like that, I see there even, you know, there may be a need to have other persons there but we have to just be assured that there is no sort of abuse.

So if we are going to even in cases where police officers may want to monitor activity, and I think it was mentioned in the United States, sometimes they may have a case where they are looking at sex images of prostitutes engaged in their trade to try to entrap them when they are actually paying their money to get them. So police may apply for a warrant to do certain things like that but the individual involved should also be protected where the—you know, it is clear when you are getting that warrant it is to get a particular purpose and as you know, and destruction of any other evidence of other persons involved should be something that we have to be aware of.

Madam, I looked at also the definition of a “private act”, and a “private act”, it means an act done by a person where the person is in a place which in the circumstances would reasonably be expected to provide privacy. And you know, we are looking at okay, a home, sometimes a home probably an office may be a private act because you know certain people may have affairs there. But when you are looking at the actual private act we have to understand there was a case where it involved actually a Trinidadian, it was a—and I just want to quote from this

article came from Giant Bomb forum, “Peeping-Tom Olympian From Trinidad Gets 21 Years For Rape”. And why I quote this, Madam, is two things. It shows that:

“A former Olympic sprinter has been sentenced to 21 years in prison after pleading guilty to raping a woman in a New York park. Prosecutors say 31-year-old Alvin Henry was dubbed the Lover’s Lane Rapist for secretly recording a woman having sex in the park with her boyfriend.”

So, Madam, what I want to say here, we see here that he was a voyeur but he then he went to rape, so therefore, it can go on to more serious crimes so this is why to nip it in the bud is important, this is why this piece of legislation is important. But we also see that in Alvin’s case it was a park, so we have to say if somebody tapes somebody in a car, if somebody tapes them in a—as I say in a park or Lover’s Lane—I remember long ago people used to park up in Lady Young Hill, that was a known area and cars were there, windows were all steamed up. But you know, so we have to clarify public/ private what you intend to do and I just need some clarification after if somebody is in a car in certain designated areas, sometimes you could have been in a drive-in cinema long time in Kay Donna—if somebody takes a picture. Now, we have to balance what you are doing in public, we are exposing persons to your body to exposing people to sexual act, exposing children to sexual act. But so we will have to look at—I think it is a manner of looking at the timing, when you do it, where you are doing it, what you doing it, where you doing it, all these things are important. And why I mentioned this case is the fact that it did—he did attack women in the park and actually what he did, he showed women—he followed women and threatened to show the video

on the last victim, he threatened to show the video, make it public unless she had sex with him.

So these things could definitely get out of hand but the definition of public I think we—I just wanted some more clarification if it would be private or public, where will it—where will this take us further. Some people mentioned Carnival time it would be you know, people would be in the road, you have to kind of balance what is going on there. And I want to mention also, the fact that when I looked at the definition of “private parts” and “private parts” meant:

- “the genitals, the pubic area...buttocks of a person; or
- (b) the breasts of a female person, whether or not...breasts are sexually developed.”

And this was important because one of the first cases in Canada, where someone was charged for voyeurism involved a teacher who had a pen, who was taking cameras of girls’ breasts, girls in his class. And we really call that—you call that down-blousing. And Madam, that case in Canada, he got away in the first instance where he said it was for security reasons when the girls want to fight and answer back. But when it went on appeal, obviously, they got him there and they charged him and they said that that was a case where he invaded their privacy.

So I was happy to see the breasts of a female person included but I wonder if for instance, we want to encourage breastfeeding and somebody is in a mall or even a corner of their place breastfeeding would that—somebody taking a picture there—we have to clarify probably certain guidelines where you could breastfeed if it is certain areas. So all that comes into play, what could happen if someone takes a picture of somebody breastfeeding. What is the intention? You see,



Madam, parts of the legislation here, cause me some concern where if I look at clause 5:

“The Act is amended by inserting after section 22 the following sections:”

And that is:

“22A.(1) Subject to subsection (3), a person commits the offence of voyeurism if, for the purpose of obtaining sexual gratification for himself...”

—and sometimes that is hard to prove. I mean, if you catch somebody in the act with a napkin, or having a, you know, himself, you know, in the act of self-gratification, you can catch that. But again, sometimes you may not know what is going on in his mind, or even providing it for another person, “or causing humiliation or distress to a person”. And this is where I was happy that last section was added because it moved from the normal definition of voyeurism for sexual gratification of yourself or another and it went on to the now the victim being humiliated.

So again, probably that was the victim shaming that we would have seen the necessity for this to come about where you can use this piece of footage to humiliate these persons. And Madam, quite honestly there, as the AG mentioned there are cases now where a lot of young girls globally, they are committing suicide when persons take photos of themselves. So the adult males or sometimes young guys will induce them to take photos of themselves topless, they put it on their social media, and they think it is private and it comes back to haunt them, where they threaten them, they would expose them to the school, their father. So definitely this part of that, adding on this to the legislation, it is something that will somehow stymie this, I would call it an epidemic because it is very common in

cases of cyber bullying, where you would have the young girls now being put under that sort of stress where they are willing to kill themselves and rather than get exposure.

So, and I also looked at, again, 22A(b), where it looked at:

“(b) views, whether with or without the use of equipment, beneath the clothing of that person and...so—”

Also, again, it looks at the—what we tend to call up-skirting, where it looked at the underwear or under the skirt and I think, Sen. Ahye did mention that in schools children sometimes do that for fun. But we have to—they do it for fun and sometimes too the teachers are there or whatnot. But we have to know that children have to learn that society is frowning on this. So if you want a dare that you could take a picture, you could take a mirror and whatnot, this piece of legislation should serve to educate persons that, okay, you have a prank, it is not acceptable and sometimes it is a sickness where people go out in public and actually look up people’s skirts, and we have to show that we would now be taking this serious in society.

And when I looked at the fact that in cases of voyeurism, if I have a patient coming to me, Madam, we would have seen in the past where most voyeurs really, they engage in at least one other sexual deviant behavior and there is evidence that it occurs at an early stage among a continuum, I mentioned that, and approximately 20 per cent of voyeurs have committed sexual assault and rape. So it is dangerous, so we need to put it in its place. The AG has every reason to put it and to try and stymie this and I just want to make mention that there is a piece of research coming out from *Harvard Review*, 2000—*Harvard Review of Psychiatry*, 2004, where they were trying to say that—we have now like a voyeur world, a voyeur nation, where

63 per cent of persons are voyeurs—they were trying to say when they did a research on a sample study. So they say it is in the majority and a lot of persons do not see it as a problem. So they were now saying we have to start to question the ethics and the logic behind it. And some researchers say that—another set of researchers so 65 per cent of males claim they would enjoy this activity, and 50—and then most common sexual law breaking behavior.

But of the persons who engage in this activity Madam, it is not many really because I think Sen. Lutchmedial was saying that what sort of defence do we give, it is not many who are, we would consider—

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

**Sen. Dr. V. Deyalsingh:** Thanks, Madam. Not many would consider belonging to this disorder. But the prevalence of this disorder is 12 per cent in men and 4 per cent in women, that is the disorder I was talking about. And the disorder is simply different from the act because the disorder tends to last over six months where persons have a distress and being at least 18 years old where they have a distress where they think it is difficult to have this urge, and they cannot help it and they are going and they are actually distressed about it.

We have to appreciate while we may want to go after certain individuals, those with the disorder definitely need help and some of those would have been people who are sexually abused, have substance abuse, have hyper sexuality, and those with hyper sexuality, this is part of their spectrum where they will now go and look and show themselves.

Madam, I want to make reference to the fact that when we were looking at the part with the children when it was made mention that the children itself, there should be a greater penalty and I think Sen. Sobers said that and I agree with him.

And I must say that with the cyber bullying and suicide, it is very important that we have this and I just want to make mention to a case for the Attorney General, how far-reaching this could be.

**4.00 p.m.**

There is a case—and I was trying to look at it—there was a case recently in the United States where—for those who like rock music, there is a band called Nirvana and there is an album called “Nevermind” album where there is a little baby dipped under water, running over—there is a dollar bill next to that baby. And that album—it is a well-known album. It is well known for those who like that sort of music from Nirvana. But what is strange is the little baby there is now an adult and it was in August 25, 2021, he decided that, you know, he was now going to—he is now 30 and that four-month-old child is now an adult, 30 years old and he is now trying to sue the record company on the damage—making damages for also the band members, saying that he has, you know—it has affected him and caused extreme, permanent, emotional distress since the photograph was taken. And he is asking damages from the defendants and band members. So why I mentioned this case, Madam, obviously this child could not have given consent and so long after he would now bring this, so is it in any way here there is some sort of limitation where a child who probably would have gotten a picture taken years ago and it was misused would now be able to go after the perpetrator?

Now, granted the mother in that—the parents in that case got \$300 I think for that photo. But I guess the child now decided on his own he would have—if he had some parents who were misplaced in their guidance, if he wanted to take action or a child wanted to take action, if there is any way that he can still take action under this piece of legislation.

I want to just make mention, Madam, that there are cases where persons who have been victims of this have never recovered, in the sense that they go through life not being able to have a good relationship with, you know, their partners. They go through life with an anxiety thinking they are always—they go through life, you know, even not respecting authority because they think they were in their own home and the safety. So it is really a traumatic event for the individuals who have been spied upon, individuals whose images have been put online and some of them, they have to take therapy because they never recovered. Some of them would always be in that level of stress. And when you have to now balance the individuals who have been victims of this as well as look at the rights of the few people who have the disorder, not the general one out there, sometimes we really have to see what is best for the population at large because the community out there may be getting beaten up from other social events. And if somehow we could get these laws here to at least take some of those individuals off the streets, give them treatment, those who may have to get some sort of a punishment—and I found that the punishment again, imprisonment for five years, was a bit, you know, small in the sense that when I looked at other places in the United States, I see 35 years; in some cases, 20 years, people get imprisoned for accumulated—

**Madam President:** Sen. Deyalsingh, your time has expired.

**Sen. Dr. V. Deyalsingh:** Yeah. Thank you, Madam. So at this stage, Madam, I congratulate the AG for bringing this and I look forward to it in a committee.

**Madam President:** Minister of Agriculture, Land and Fisheries.

**Hon. Senators:** [*Desk thumping*]

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Thank you very much, Madam President, for the opportunity to contribute to the debate on this Bill in respect of an Act to amend the Sexual Offences Act. Madam President, I will open with three very quick reflections on the matter of sexual offences. The first is to say, growing up in Enid Village, Rio Claro, as early as a three-year-old, I knew that one of the things in life I was not likely to be was a peeping Tom because I grew up in a village that was serviced by outdoor bathrooms made of—the one to bathe in was made of galvanize. And as a three-year-old, I heard the adults talking about the village peeping Tom, peeping over one of these galvanize bathrooms and falling, losing an important body part, small but important body part in the process, and I vowed that peeping Tom was not for me and I still have all my body parts intact.

The second reflection is—and I am sure, Madam President, you may also recall. When I was at Cave Hill, criminal law, and we got to this issue of rape, we covered some cases which—pre-independence in the region, in particular cases out of what was then known as British Guiana and it was common in these cases. Many of them addressed on appeal for what I would describe as the, “She look for it” defence, where even then judicial officers were thinking that a woman clad in what we will—what I would summarize as “sexy clothing” attracted such attention that in rape cases a judicial officer could say, “She look for it”.

And the third thing I would reflect on is something that I think we should pay careful attention to. For that period when I lectured in Canada in law to students drawn from countries around the world, in constitutional law I knew that I had one area that was going to be very problematic for these students and that has to do with an important constitutional case dealing with child pornography.

I think there is no question amongst us in the way in which the law should treat child pornography but in the case of *R. v Sharpe*, a Supreme Court of Canada judgment from 2001, the court ruled that the possession of child pornography should not be contrary to criminal law. The court ruled six to three; six judges supported and three judges dissented that having child porn in your possession was covered under the freedom of expression protection of the Canadian Charter. It was very difficult to explain that to students whose cultures were different. And I am making the point that it varies across the world and it varies in our country as we deal with legality and we deal with culture and we deal with the way our society has evolved. And the work on the Sexual Offences Act which is now 35 years old really reflects an evolution but quite possibly a very slow and painful evolution.

That 1986 legislation has seen about four or five amendments so far: 1994, in 2000, 2012, and amendments made very recently by us. And as the hon. Attorney General pointed out, that 1986, as I have said in a previous debate, legislation attracted a lot of attention over what was then referred to as clause 4. In fact, the whole Bill became all about clause 4 and it represented a significant evolution in the law and very controversial. You would not think—it is unthinkable now that in a marriage or a cohabitation arrangement, a wife or a spouse could not be protected in the manner in which clause 4 set out to do and eventually did. It is unthinkable now but at that time, '86, 35 years ago, it attracted a lot of controversy and thankfully the existing Bill in section 4(5) deals with the issue of spousal rape.

The amendments contained in Act 31 of 2000 were very far-reaching, the work of then Attorney General, Ramesh Lawrence Maharaj, a far longer piece of—a far longer Bill than this one, 20 clauses, and dealt with three important areas: the introduction of the offence of grievous sexual assault and placing that new offence

on the same level as rape; two, the power to arrest without a warrant in respect of certain offences under the Sexual Offences Act; and thirdly and very importantly, the mandatory reporting of suspected abuse of minors. That was 2000, 22 years ago. And, Madam President, you will recall that on this issue of reporting of abuse of minors, it is an area that we returned to in a previous Sexual Offences Bill and eventually passed it to amend the legislation but it is something that was initiated in that amendment of 2000. In fact, a significant part of that Bill dealt with the process by which the gathering of evidence and presentation of evidence and so on in the prosecution of the offences for failure to report was covered.

And then, Madam President, in the 2015 to 2021 period, there have been three significant attempts at further amendment of the Sexual Offences Act itself. One most familiar and memorable to many of us would be the work we found in Act No. 19 of 2019. And so contentious was that Bill, it was eventually referred to a committee for further consideration and for further consultation. My recollection is that I chaired that Committee alongside some of the Senators who are still here with us. And the most important thing we did in that amendment was once and for all to deal with the issue of the national sex offenders register and it attracted a lot of discussion; a lot of discussion. In fact, in that debate I reminded all of us that Trinidad and Tobago was actually one of the first countries to establish a national sex offenders register but never managed to operationalize it.

The law was there but it really had no effect. And what we were doing was to—in the context of a modern environment and with the practice available to us from around the world is to establish once and for all a working national sex offenders registry—register. The next piece of work—and I would say, Madam President, for those who may not recall, one of the most controversial parts of that



Bill was this issue of going so far as to place a stamp in the passport of a convicted sex offender so that those countries for which there are prohibitions—the entry into that country of convicted persons, persons convicted of sexual offences, the country will be alerted. I remember my colleague, Sen. Chote, being adamant, very strong in her opposition to it.

The next piece of legislation we have considered in this period, Madam President—the next piece to be considered, I should say, I would not go into it, is what we call the Sexual Offences (No. 2) Bill, and that is to clean up some work that had to be done on our previous work so that it meets the requirements based on advice of judicial officers. That Bill is in the other place and intends to deal with some aspects of the register and the website.

And the third component of our work in this 2015—2021 period is this Bill before us and I would say, Madam President, that this Bill has three objectives. From the outset of the Bill in the definition section, I would say that the Bill seeks to modernize the existing legislation. And as I have traced the evolution of this 35-year-old Act, you would see that on every amendment there have been improvements to the definition section and this suite of improvements really deals in the main with the technology.

I would say as a second objective that this Bill puts in place an additional level of protection particularly for minors. And thirdly, I would say, when you read the language of the Bill, you would see the Bill works hard to strike the balance between public interest and the work that we would like to do in protecting the public. It tries to strike the balance. The offences that are created are not strict liability offences. You would see present there, in the creation of the offence, you would see several hurdles that a prosecutor must go over in order to establish the

existence of the offence. And you would see exceptions which are meant to, in some cases, preserve the status quo; in some cases, allow people to do their jobs that they are lawfully supposed to do. So I would say these are the three objectives: modernization, additional level of protection and striking the balance.

In respect of modernization, I have already referred to the definition section and the definition—and the changes are not strange. Everywhere we have touched on creating criminal offences in a modern environment, whether it is in the SSA legislation, the Cybercrime Bill, some of the anti-terrorism and some of the money laundering Bills we have had to deal with. We have had to cater in the definitions for the technology that is now available. And that is part of the modernization that I referred to and that is what is done in clause 4.

The second element of modernization is in respect of modernizing the public policy. And I would say this, Madam President, what this Bill tries to do, compared to our previous amendments of the 1986 Act, most of those amendments were squarely on sexual offences committed, an act committed by one person in respect of another person; in many cases, the offence being created because of the age of the person or because of the lack of consent. But this Bill really deals with a combination of sexual offences and privacy consideration. So from a public policy point of view, the Government, for example, we could have dealt with some of these offences, the cybercrime legislation.

There are things in this Bill that could easily fit into cybercrime legislation, but the cybercrime legislation has languished in the Joint Select Committee. It has languished. And despite the prosecution of that work done by the Government, in my time, in my seventh year now, we have not been able to bring that legislation forward. It could be dealt with in specific legislation dealing with privacy and

dealing with privacy in the context, not on the civil side but on the criminal side. And we have not sat and twiddled our thumbs or wondered what we could do but we have found a way of bringing this Bill (No. 3). That is a combination of dealing with sexual offences and privacy consideration.

And the third thing in relation to modernization is what I referred to as the additional level of protection. Because we could go back, we could go through the summary offences, the ancient, over 100 years old—we could go back through the summary offences and we could go through other elements of criminal law, including the common law, and try to find protection but the point is that, as I said, culture is important and there are behaviours that we believe are cultural practices in this country that we do not see it as being offensive. And I forgive anybody for thinking that some of these things—it is easy to think that this is too far-reaching, it is too broad and some of these things are cultural. So I could understand that. Our first look of this with the hon. AG and his team, the issue of Carnival came up and as we drilled down into how legislation like this will work, different people involved started to flag things that may not have been objectionable. But in 2022, a lot of things that were not objectionable, when the peeping Tom was climbing the galvanize in the bathroom and now object—not only objectionable but required protection. The public requires protection and people require protection from themselves. And we have wrangled with it and we have come to the point where we feel comfortable that the Bill before us really strikes the balance and introduces that additional level of protection where some conduct is set out in a way that the offences that are created are very clear, the elements of the offences are identified, the penalties are identified and the public will not have much difficulty of understanding where in 2022 the line is supposed to be drawn. And the risk in this

legislation is always that it is too broad or that it creates offences that are unenforceable.

In fact, I would not wait for you to do that. I will tell you that those offences which used the expression for the purpose of obtaining sexual gratification carries a huge burden of proof; a huge burden of proof and practitioners would know that, but it is there to strike the balance. There must be a purpose. There must be a complaint that is being addressed, a mischief that is being addressed, an improper practice that is being addressed and I know that that is going to be a significant burden that a prosecutor takes on. The other element of that for the purpose of causing humiliation of distress, I think, is likely to be less burdensome but similarly, the purpose has been identified, what requires protection. Because we know that when these things are done, when they are created, and most importantly when they are shared, the intention is to humiliate and humiliate persons including persons who hold public office. That is the extent to which humiliation goes and the intention of causing distress.

So that that level of protection, critical, important, but I dare say is likely to be burdensome at the level of prosecution and perhaps that is why the AG in his presentation has suggested that it is the sort of Bill that should go to a committee for, not only wider but deeper consideration and perhaps that is the best approach for dealing with it. Because as a team we wrangled and I raised a lot of questions about, for example, “private parts”. Now, 25 years ago, I think I knew what “private parts” were but what about those that are artificial? What about those things that are used to enhance, to give you more or less than God gave you? Where does that fit in?

On a simple issue of “buttocks”, for example, we spent—and, hon. AG, we

Sen. The Hon. C. Rambharat (cont'd)

spent hours on whether the buttocks could be shown or not shown and if it should have a difference between the adult buttocks and the baby buttocks. But honestly, if it was fashionable for parents to take out nude photos of babies and display them all over the place, 25 years ago, as a baby I do not—as an adult, we did not even have access to a camera at home, far less a baby. Thank God.

**Madam President:** Minister, you have five more minutes.

**Sen. The Hon. C. Rambharat:** In 2022, the thinking has significantly evolved to the point that in some jurisdictions you would not even contemplate having a device visible, a device capable of taking photos anywhere children are; bathing in a public pool or on the beach, in a public place and so on, because photos involving children in underwear are considered in some jurisdictions to be child pornography. And the taking, possession and sharing involve the risk of significant criminal liability. The question is always: “Should we go there? Should we go there now?”, because things that we thought were funny are no longer funny and people who we thought did not require protection, like newborns and two-year-olds, bathing in a little pool at home, in 2022, there is a significant view that these things require protection.

**4.30p.m.**

The last thing I would go to is something I taught my children very early, this thing called “sharing”. When you go through the offences, you would see in many cases taking and sharing go together, and that is really meant to, for now, leave this issue of taking as mainly a private act, though in some cases we have made some elements of taking to be criminal conduct. But by and large, taking remains, in some aspects, a private, private act, but sharing—when my children were young boys, my first two children, boys, I said to them, you know it is a joke

Sen. The Hon. C. Rambharat (cont'd)

among friends to have photos and so on, but the moment you have control of it, sent to you and you send it on, you are now in the realm of not only child pornography, but a distributor of child pornography, sharing. Because very early they teach you in life, do not create it in the first place. Do not create the photo, do not take the image in the first place, and if you take it, do not share it. But you know when you take it, unfortunately the intention is always to share it. Throughout this legislation you see taking and sharing going together, and it is in the taking and the sharing that the problems lie.

Madam President, I am happy to have had the opportunity to contribute to this debate. It is a very important debate because it is part of the evolution of this 35-year-old legislation. This Bill takes us, in my view, on to further new ground in dealing not with core sexual conduct, but also with the element called privacy, and it raises significant public policy discussions that if we settle it now we would know how to chart the further evolution of this Sexual Offences Act. Thank you very much.

**Madam President:** Sen. Walker.

**Sen. Marsha Walker:** Thank you, Madam President, for the opportunity to contribute to this very important Bill, an Act to amend the Sexual Offences Act, Chap. 11:28.

Please permit me, Madam President, to use the opportunity to also thank the honourable political leader, Mrs. Kamla Persad-Bissessar SC, for placing confidence in my ability to represent the United National Congress in yet another role.

Madam President, my journey into activism began very accidentally when a play date with my daughter resulted in the little girl coming to me and saying,

“Auntie, I have been raped”. I had said to her, you know, one, “Do you know I now have to report it?” Two, “Did you tell your teacher?” I started to ask her questions. And people said to her, when you started to question her, “Yuh joking. Yuh looking for attention.” And that began my journey, because it was beyond me that we could laugh it off, play it off, think that she is just seeking attention. In my view, if someone said that just to seek attention, then give them the attention they need. So that was my journey, my start.

So, of course, to be asked to sit in, in the Senate today, and to then hear that this is the Bill that is being amended, you can understand that I could only call this God’s providence. So thank you to the Attorney General for bringing such an amendment. It is a Bill that is dear to me.

Madam President, now that I have given you that bit of context, it is my hope that you would understand why my first point of contention with this Bill is actually the consequential amendment to the Children Act, Chap. 46:01. Of course, many great points have already been raised in this debate, so I will try my very best not to commit the offence of tedious repetition in my maiden contribution.

Firstly, where the Bill deals with the punishment of those who commit the act against children, which would be section 44A subsection (2), and as my colleagues Sen. Sobers and Sen. Deyalsingh, they both raised the concern that the penalty for an act committed against children certainly cannot be the same as an act committed against an adult. I think it is fair to say that in certain forms of adult entertainment in today’s culture, it is common and fairly accepted. That same entertainment with children, I hope and I think, still brings on a certain amount, a fair amount, of public rage. So that alone is an indication to us that we must ensure that our legislation reflects the differences and the severity of the act being

committed against children versus adults.

Madam President, through you I would like to recommend to the hon. Attorney General that the penalty suggested in section 44A subsection (2) of the Children Act be increased, to send a strong message that voyeurism will not be tolerated against children in Trinidad and Tobago. I would like to add that once, of course, the national register of sexual offenders becomes fully operational, that in the Act we ensure that that forms part of the penalty.

Perpetrators of such an act, various stakeholders, I know myself as a parent, I need to know—I think that this—Sen. Lutchmedial called this act an act of sexual abuse. I think anyone that commits this act against children is guilty of committing an act of paedophilia. So we need this to go into that register. Our stakeholders must be aware, our teachers, everyone must be aware of these perpetrators.

Staying on the sections which relate to penalties, which are sections 22A, B, C and, of course, subsection (3) in all those cases, I wonder if these penalties would lead to an overall improvement in our society. I know that this has been something raised, because just the last presenter spoke about that culture issue.

The late Desmond Tutu, he urged us that we must not simply pull people out of the river, but we must go upstream and we must find out why they are falling into the river in the first place. There comes a time when we simply must say enough is enough. These laws that try to take into consideration our culture, sometimes we need to look at our society, and we need to say maybe, just maybe, some part of our culture has not served us well and we have to take that bold step to say enough is enough.

Permit me at this time, Madam President, to read an excerpt on voyeuristic disorder which, of course, that term was raised by Sen. Deyalsingh. It is an article



dated January04, 2022, so it is very recent and it was published in *Psychology Today*. I quote:

“No specific cause has been determined for voyeuristic disorder. However, certain risk factors tend to coincide with a person becoming a voyeur, including substance abuse, sexual abuse, and being hypersexualized.”

I am quoting again now:

“Voyeurs rarely admit themselves to treatment but may be referred by a parent, spouse, or the legal system when they are caught breaking the law. Treatment for voyeuristic disorder typically involves psychotherapy, support groups, and medication. Early treatment may also include teaching the voyeur socially appropriate behaviors, such as respecting others’ privacy, and training them to avoid locations where they will be more tempted to engage in the act.”

The article further went on to suggest various treatments, possible causes, et cetera, but from this article and from all the various contributors here today, what is clear is that these clauses must empower the courts to not only administer justice, but a type of discipline that would leave our perpetrators in a better mental state, and thereby benefit society as a whole.

Our law must go beyond seeking to protect the most vulnerable, but treat and help heal those who in the first place we failed, because they were once the most vulnerable and they have now become the perpetrators. So we must move past just protecting the vulnerable, but admit that sometimes we fail them and we are prepared to say, “I am sorry. We are not going to just call you a monster and lock you up in jail, but we are going to commit to healing”. That is where I would like to see our laws push that type of sentencing. Too often it is lock you up and

throw you away, forget about you.

Through these laws we would like to see an official diagnosis of voyeurism disorder, so we can determine whether it is one-off, how far it is, et cetera. Sen. Deyalsingh would have spoken about that, so I will move on from that point very quickly. But one thing that is clear, I do think, and I will urge all my colleagues here today, that we do have an opportunity to pass law that would really, really see a better society. When one person is abused, whether we want to admit it or not, if we have failed one, we have failed all. One person impacts the entire of society in some form or fashion.

Madam President, with your permission I now move on to clause 5, sections 22A, B and C, subsections (3) and the consequential amendment of section 44A subsection (3) in the Children Act, where the Bill deals with exceptions. Again, of course, coming this late into the presentation, we would have had a lot of discussion. I know divorce proceedings came up. Teachers recording in school came up. People relieving themselves in bathrooms, and I have had many different examples very similar. So permit me to just give some of my examples.

Imagine a former beauty queen having her personal acts leaked to the public, and while in the hands of our law enforcement officers, their viewing moves from lawful execution of their duty towards personal gratification, quite subconsciously. It is a human thing. Even though its viewing is permitted for purposes of the investigation, it is my humble opinion that this clause be amended to allow for a conscious or subconscious addition to the purpose.

We see a similar handling of public meetings—and you all know I know about protesting. We see a similar handling of public meetings in the Summary Offences Act, whereby any public meeting that turns into a march, you now

commit an offence. You went there, you thought you were in a public meeting, you did not need the permit, but for whatever reason if this public meeting becomes a march, and you have no permit, you have now moved from a very legal activity to committing an offence. So there must be something in these exceptions generally, and I mean we see it in sections A, B, C and whatnot. So I am not going to go through each one, but there must be something that allows for us moving from, okay, this is what it was designed for, if you find yourself moving into personal gratification, cease or realize you are moving into an offence.

I would suggest—I am not a lawyer, but I would suggest maybe words like “solely”, and I support the committee stage idea as well, so we can flesh it out there.

Madam President, I would like to clarify how the Attorney General envisions subsection 3C(2) working. I know Sen. Sobers raised this, so I am just going to give a little twist on it. I will quote just this section:

“(ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;”

Permit me to, again, use an example to explain my concern. What if my partner at the time has a general sign outside his home, as many of us do, “Premises under surveillance”. At that time it did not dawn on me that the bathrooms would be under surveillance. Would he be within his right to assume I gave consent, considering he had a sign letting me know that the house was under surveillance? With a partner it may be more than just relieving yourself. Picture a lady having a shower. How will the courts treat with the issue of his word against mine? With me, yes, okay, there is a reasonable level of me thinking I have

privacy, but then he gets to say, “But I put a sign. She should have known that my house has cameras”. So I would be interested in hearing from the Attorney General as to how we would deal with that. Possibly, I may have a suggestion. Can we replace where we see “consent”, can we possibly include the word “written”? Because our last presenter would have said, you know, we are in an age where, and many people said it, this idea of sharing, taking pictures seems to be very commonplace. What we would have defined as private years ago, just does not seem to be private anymore.

I have a two-year old, and she runs around in “diapees”, and we do not take pictures of her in her “diapees”, because she is female and it just seems to us that that is inappropriate. Having said so, there are “diapee” pictures with little girls exposed all the time, and it seems to be cute. So we definitely see that there is a very vast difference in our perceptions and in what we define as this privacy. So that reasonable expectation of privacy could very well be vague for the year 2022. What is reasonable to me, clearly is not reasonable to some.

One final point on these clauses, Madam President, but this time specifically as it relates to 44A subsection (3)(a) of the Children Act. I wonder if a person with responsibility for the child, that is the quotation, so it speaks of a parent, a guardian or a person with responsibility for the child, can this be defined further or, of course, the hon. Attorney General can clear it verbally? Does this line allow for teachers, during school hours for example—because we would have seen, we would have heard the teacher with the taking pictures from Sen. Deyalsingh? I would be definitely interested in knowing exactly who are these people and, of course, maybe we should flesh out some examples, really give this Bill—

I understand the hon. Attorney General’s plight with—the need for

perfection sometimes stops any sort of execution. But we certainly, in such an important Bill, we really, really, really need to spend the time to flesh these things out. We do not want loopholes. I mean, in working things out even with my own self I thought to myself, in the situation with the police officer, what if he just puts his hand up in the air, and you have a really good defence lawyer who says, “But the law said he was allowed”. Even though it is admitted, he is not even trying anymore, but the law said I am allowed, because we realize that there was a loophole.

Finally, Madam President, my final question to the hon. Attorney General deals with 22A(1), where it states, and I read:

“Subject to subsection (3), a person commits the offence of voyeurism if, for the purpose of obtaining sexual gratification for himself or another person or causing humiliation or distress to a person, he knowingly—”

And the Bill goes on to list everything. My question, Madam President, is this: In as much as we have taken the time to define “private act”, “private parts”, “sexual acts” and so on, should we also consider at this point defining “personal sexual gratification”? Of course, we have just heard that there is a huge burden of proof. Maybe it is time for us to just be detailed. I know the lawyers will have to guide as to why, but certainly as a mother, as a female we want protection, and these laws do not seem to give it to us. They do not seem to get the desired outcome, because it is just too vague, and there are great lawyers that seem to be able to find loopholes.

I want to just give one more example as to why I feel it important to define. I taught a sexual education class a few years ago, and they were secondary school children. When we were speaking, I could not believe the varying ideas of what the

final act looked like in their head. Some were, thank God, innocently thinking this is what the act is. Some were thinking that unless it was absolutely completed, there was no act. We are in an age where real, real, real definitions are needed, and anyone on the ground would be able to tell you that it is just too far, it is too far reaching.

As I close, Madam President, let me once again thank you and my colleagues for allowing me to contribute to this debate. Adverse sexual experiences can have a lifelong impact on individuals. Our domestic violence rates, our crime rates, our childhood abuse rates, they all stand to prove to us that this Bill must be amended through meticulous, humble, open-minded and cordial dialogue. Our citizens, our society, its potential rapid decay depends on us getting this Bill right.

Thank you, Madam President, and thank you to my colleagues.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Before I call on the next speaker, permit me to congratulate Sen. Walker, on everyone's behalf, on her maiden contribution.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Sen. Richards.

**Sen. Paul Richards:** Thank you, Madam President, for recognizing me and allowing me the opportunity to make a contribution to this, the Sexual Offences (Amdt.) (No. 3) Bill, 2021, which includes six clauses. First the short title; second, the commencement; third, the interpretation; fourth, section 2 amended; five new sections, 22A, 22B, 22C and 22D inserted and consequential amendments in clause 6.

I must admit that that I am heartened. Unless I missed something, I have not heard anyone who has made a contribution today opposed to this Bill, and I think

that is a good development to start the year.

**Hon. Senators:** [*Desk thumping*]

**Sen. P. Richards:** That we could all agree that this type of legislation is needed. Members would have had varying views on the applications of the clause and the implications for those applications of these clauses, but I really have not heard anyone who is saying that this is not needed, or this is inappropriate at this time, and I think that augurs well.

I will tell you that what I get from this and other Bills of this nature, is that society has realized that the definitions of violence and abuse are evolving, as they have to, as society has evolved. Because we have now embarked upon the age where technology and technological advancements are integral and ubiquitous in every—not even almost—in every aspect of our lives on a day-to-day basis. Imagine yourself absent of new technologies on a daily basis.

I would add that we are middle aged and older people in this honourable House. So one can imagine the ages 10, 15, 20 and how much more ubiquitous these technologies are in their lives, and while technologies have advantages, technologies have also presented us with serious challenges in society in trying to maintain law and order.

You know, what struck me during this is the presumption of many that moral codes and values are universal in this country, or in any other country. I am saying that in the context, particularly of the generational differences. Minister Rambharat in his contribution spoke about his advice to his sons, and several other speakers have spoken about the fact, and I know Sen. Rambharat referenced it, do not take the picture in the first place—in terms of persons and their own conduct of themselves—and do not take the picture of others. But in the age of Kim

Kardashian and Cardi B, that is nothing to a 15-year-old. It is absolutely irrelevant. Nudity, selfies, whether partially clothed or naked, it means absolutely—it does not have the same impact on them as it has on us.

Yes, we have a responsibility as the elders in society to protect them from themselves, but I will tell you, if you speak to any 15-year-old and unfortunately a 12-year-old, they would tell you, “Wha you getting on so for, it is only a picture. Why you carrying on so, it is only a video. Dey go forget that in three weeks.” And that is the challenge we face here, because while we are trying to make and amend laws to protect them, they are oblivious to the long-term dangers, and quite frankly, the long-term dangers to them may not be as relevant in 15 years, because of how technology is evolving and how they view their lives in the context of their culture and their generation. Because to them Kim Kardashian, and I use the term lightly—I hope I am not offensive—went from a sex tape to a billionaire. Cardi B went from an exotic dancer to a superstar.

So to them they are making a connection between what we may consider immoral and unacceptable, to that is a gateway to something “bigger”. We have to be aware of the differences and how we perceive these issues, to the differences in how they perceive these issues. That is not to say that we should shirk our responsibility to protect them as much as possible, but we have to be cognizant of these differences in perception in their sociology. They are a totally different generation.

So, to Minister Rambharat saying to his sons, and he did the right thing, be careful when you receive the picture, it is a different thing. To them, it is almost normal unfortunately, because of how social media and pop culture, and what they are exposed to, in a very connected world in their generation is concerned.



**5.00 p.m.**

You know, one of the things that struck me in doing research for this, and I will quote generally from two articles. Let me identify them now for *Hansard* because I know I give them some challenges sometimes, is one, *Oxford Journal of Legal Studies* 2017, pages 1 to 28 and it is titled “Image-Based Sexual Abuse” by Clare McGlynn and Erika Rackley. And I will also be quoting from “The sharing of intimate images without consent—“Revenge porn’, Legal Aid...”—New South Wales, Australia submission to the Department of Justice 2016.

And one of the references in this that really struck me in terms of how we look at this and its impact particularly on girls and women because a lot of our conversations and contributions here have centred on the abuses meted out to women and girls and the violations against them and their integrity is— A clause in the *Oxford Journal of Legal Studies* which focuses on:

“Violating personal and bodily integrity.”

And I like that phrase because we have a responsibility to uphold that, legally and otherwise. And it went on to quote a paragraph and I quote the impact of the violation this personal and bodily integrity. Quote:

“The impact on victim-survivors is profound, with many fearing physical assaults, as well as suffering incessant online abuse.”

So in addition to the initial trauma and abuse, the abuse continues because of the way society views and society in some cases participates in the continued sharing of this image or this video and further re-victimizing this individual.

“Not surprisingly sustained and often serious adverse mental health effects result, including panic attacks and”—thoughts of—“suicide. A study by the US Cyber Civil Rights Initiative found that over 80 per cent of...”

—and I kind of agree with Sen. Lutchmedial’s assessment of the term “revenge porn” because revenge porn implies that someone did something in the first place that someone felt that they had to take revenge, when that is not often the case or in many cases not the case at all. And:

“...victim survivors experienced severe emotional distress and anxiety. For young people,” in particular “the pressures of being victimised can be intense with many examples of suicide”—idealization, suicide itself—“as well as extensive studies showing profound impacts on their educational and emotional development.

The professional costs to victim survivors are also severe.”

And we have seen references to persons in Trinidad, Tobago who were the victims of such attempts and such violations in terms of people deliberately trying to destroy them and humiliate them personally and professionally.

“Many are dismissed from their current employment and/or struggle to find work as a result of an online presence dominated by private sexual images and abuse. Understandably, victim-survivors often retreat from public spaces, both online and off. They ‘leave jobs’”—or are fired. “...they change schools...” They “...retreat from public discourse...” They “...refrain from expressing their opinions and withdraw from social”—and traditional—“media, all of which can lead to further serious adverse consequences for their family...”

In some cases their family by extension is abused. From:

“...social, professional and even their sexual lives.”

So, I indicated that or I quoted that to indicate the wide range of harms that come from image, intimate partner—image, sorry, abuse and the sharing and storing

such content.

Madam President, I also want to focus a bit on the issue of defining private images. And in the Bill itself the term “private images” and “private act” and other definitional issues. First of all, “device” in the present context in this Bill:

“...means any electronic programmable device used, whether by itself or as part of a computer network, an electronic communications network or any other device or equipment, or any part thereof, to perform pre-determined arithmetic, logical, routing or storage operations and includes—

- (a) an input device;
- (b) an output device;
- (c) a processing device;
- (d) computer data storage medium;
- (e) a program; or
- (f) equipment,”

And I know “equipment” is left to include a plethora of other possibilities as technology evolves. But I want to suggest we also include, because it is very commonplace these days in terms of this kind of invasion, drones and/or infrared-surveillance devices.

There is also definitional disparity in some jurisdictions and a differentiation made between “intimate image” and “invasive image”. And I think the suggestion or the position by the hon. Attorney General in terms of his wanting to send this to a special select committee is fully endorsed by myself and I know by several other speakers before because of the number of issues that need to be fleshed out in this particular Bill.

There is also in many of the jurisdictions quite a strong and fervent debate in

the definition of “private act” and they went as far as to define “public space” in the context of these issues as articulated in the Bill here. So while we may think a public space is a public space, we know what it means. I think Senator, and her name escapes me now, I apologize, who just spoke before me—Clark?

**Madam President:** Sen. Walker.

**Sen. P. Richards:** Sen. Walker. Sorry. Sen. Walker, I apologize. Sen. Walker spoke of the need to be particularly specific and a little more overarching in terms of the definitions because of the intricacies and the evolution of the perception of these issues from generation to generation. So while we may think it means one thing now, another generation, the younger persons, may think it is completely a different thing in their minds, and I think being very specific about the definitions, while it may not have been important before, it is even more important now because a lot of these issues are closely linked to technological advances and technologies always evolving.

Private act, part (c), this is a grammatical construction issue. And a private act means, I quote:

“...an act done by a person where the person is in a place which, in the circumstances, would reasonably be expected to provide privacy...—

- (a) the private parts of the person are fully or partially exposed or covered only with underwear;
- (b) the person is using the toilet, showering or bathing; or
- (c) the person is doing a sexual act;”

I would change “doing” to “performing” or “engaged in a public act”.

And also the issue of—and this has come in the realm of New South Wales Australia and other jurisdictions where the abuse is tied, and I think it is a very

important concept to start, to be included possibly in our jurisdiction. The infringement of dignity and privacy. And they tie dignity to privacy very closely. And I quote:

“An individual’s dignity is, therefore, ‘dishonoured through a failure to show respect, through the treatment of others’”—or by others—“‘as less than creatures of inherent worth’. Image-based sexual abuse violates the dignity of victim-survivors by its deliberate infringement of their self-worth and failure to treat them with respect.”

And why I think that is an important note to take, it is because it is very explicit about the connection between a person’s self-esteem and a person’s self or self-respect and self-worth and dignity. And I think in any society if we want to change some of the trends we are seeing, it is important to underscore the importance and the sanctity of someone’s personal dignity and sense of self-worth.

“Dignity...”

It goes on to state:

“...is inherent in the individual, it has to be ‘nourished and maintained by society and the law’.”

And I think that is a profound statement, that society has a responsibility to nourish an individual’s dignity and individual’s sense of self-worth and maintained also by the law which this Bill is seeking to do in large respect. Waldron, one of the writers argued, quote:

“‘we are required in our public dealings’ not only to act in a way that—“not to act in a way”—sorry—“that undermines...another’s”—one—“dignity’ to provide ‘assurance’ to all in society that they are deserving of equal respect and dignity. This ‘dignity-based assurance’ is both a public good provided”

—by— “...all...”—and for all to the all to—“...benefit”—of every—  
 “individual.”

And I think that philosophy that is explicit in some of the laws in Australia and New South Wales is very—it is that it demonstrates their understanding of the importance of the individual person’s dignity and the right that persons have for society to treat them in a particular way in the maintenance, nourishing and the furtherance of that dignity.

Madam President, one of the other issues I have in terms of the Bill itself is in clause 5, 22C. And C states—and let me read the first part so it has some context.

“22A. (1) Subject to subsection (3), a person commits the offence of voyeurism if, for the purpose of obtaining sexual gratification for himself or another person or causing humiliation or distress to a person, he knowingly—”

And I have an issue with the lack of definition of “sexual gratification”, it may seem obvious. But as Sen. Deyalsingh said earlier on, persons who are subject to some mental conditions may not be in the full control of their faculties and their idea of sexual gratification may be different to ours because of their pathology. Now, we need to keep that in mind and, as I said before, different persons would have vastly different interpretations of what sexual gratification is. So I think it may seem as obvious to us but it needs to be defined more clearly in the context of this Bill. And (c) states:

“(c) takes, captures, records, streams, stores, publishes or transmits through a device or computer system, a visual recording of the private parts of a person without the consent of that person...”

“Consent” is clearly defined in the Australian and New South Wales law and in the

UK law. That issue of consent is not left up to wide interpretation. Consent is either specifically written consent or verbal consent directly and in a very clear manner. So the issue of consent is also the subject of a lot of debate in terms of persons understanding what this law is intended to do and their responsibility as members of society because, as persons have said before, in the absence of that overt clarity there can be loopholes which persons can exploit.

One of the issues I also have is in clause 5 subsection 22A which focuses on law enforcement and Part III—subsection (3) says, sorry.

“(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—

- (a) performed by a law enforcement officer in the lawful execution of his duty;
- (b) carried out...”

And:

“(c) carried out for the purposes of security monitoring—”

One of my concerns and I know it specifically says in the execution of his duty. What happens if the alleged perpetrator is part and party directly to the situation? One may imagine he would be recusing himself but because of what we have seen in the past in terms of altercations between various arms of national security, we have to be careful with leaving this as open as it is and not leaving it subject to possible abuse.

Madam President, one of the other issues it would be remiss of me not to deal with and I raised it quickly with the Attorney General, the hon. Attorney General when he was piloting the Bill is the issue of in the public interest and how the media may or not be affected by this. And I had the honour to sit on the Joint

Select Committee on cybercrime and I will tell you, we spent several sessions, hours after hours, interfacing with members of the media, of which I am a part, trying to define in the context of this in the public interest debate what a journalist is in Trinidad and Tobago. Now, we know what a journalist is generally by definition. But who qualified, let me put it, to be a journalist in the context of everyone with a cell phone and a computer being a reporter now, everyone who has access to Facebook, Instagram, Tik Tok, Twitter being a media practitioner, training or not, experienced or not, and who would fall in this in the public interest caveat. Because anyone, we have had a debate, I think, it was last year or the year before as to who should qualify as a journalist in the Ministry of Health “pressers” because some people were considered bloggers and some people were considered “legitimate journalists” and some big media houses wanting more space, et cetera.

So in the context of Trinidad/Tobago who would qualify to the issue of “in the public interest”. And according to the Freedom of Information Act, I am just trying to draw the parallel here.

“Public interest”

—and I am quoting from it. Part A:

“...affects a large number of people...”

—in the country. Something that affects a large number of people of the country to—

“...sheds light on public”—expenditure and how—“funds are spent.”

Three:

“deals with a matter...of public controversy.”

Four:

“help” persons “make more informed”



—decisions by being more educated about a particular topic.

In the general sense, internationally “in the public interest” varies from jurisdictions to jurisdictions. But generally it is furthered in the welfare or well-being of the general public which contributes to the person’s ability to function as a valued and informed member of the community.

Now, I will tell you. I have seen somethings in the newspapers in the last two years, conjecture, speculation, mauve langue, bacchanal, pictures that purport to be one thing and ending up at the front page that have no grounding in fact on the front page of major newspapers. So when it ends up on the front page of a major newspapers, it qualifies as controversy and in the public interest whether it has a grounding in fact or not. When it ends up on social media, in the context of this Bill we are debating, and the protection of persons from intimate image abuse, anyone can create mischief if they so desire by making something—and you know how salacious we can be in our country. We love bacchanal. So imagine a public person, and as the hon. Attorney General said, we have signed up for this in many respects. But that does not diminish our rights to dignity and respect like any other citizen. It means that we are hold to a higher accord and account, which is fine. But very often, because we are a public person we are subject to more scrutiny and more bacchanal, whether true or not, whether accurate or not.

So imagine someone feeling, for a theory sake, deciding they want to target somebody for whatever reason and they create a fake picture or they get a suggestive image or a suggestive video and they share it widely and they just describe as, well that is a public person and this is in the public interest. On the other hand, media persons, because of the nature of their practice, have to be protected. So I understand the other side of it too because we receive information

unsolicited from scores of people who are seeking to protect the public interest.

So imagine I go to sleep and get up four o'clock in the morning and they have videos of somebody, a public person, on my phone, which is very intimate and I have it on my phone now so I have contravened the storage part of it. I take it to an editor or a lawyer in the company to see if it is worthy of publication, if the company can be protected because that is how it works. Very often you go to the attorneys in the company and they say, well somebody sent me this on—let me not call a name—on X Minister or an X politician or an X businessman. And they say, well it seems to show X and Y doing A and B. Can we publish it? I have now shared it with my editor, with the managing director, and with company's attorneys. I have contravened several clauses in this Bill. So I understand the media's side of it too in seeking to be protected in doing very important work—

**Madam President:** Sen. Richards, you have five more minutes.

**Sen. P. Richards:** Thank you, Madam President—in the interest of building a democracy. So again, I endorse the Attorney General's position to send this to a special select committee because these are not easy issues to flesh out on the floor here or in a committee stage, you know.

And in my last few minutes, and my colleague Sen. Deyalsingh raised it and I think Sen.—I apologize again. Sen. Walker, sorry, raised it also, is that we have to start looking and I have raised this before in terms of crafting legislation at not only being punitive but being, including mandatory rehabilitation clauses. It makes no sense because someone is 19 years old and one year over the legal age of adulthood, legal adulthood in Trinidad and Tobago or even a 15-year-old or even a 32 year old, commits a crime for whatever reason because no behaviour falls out of the sky. There is some antecedent behaviour that would have precipitated or

influenced his or her deviant behaviour and we, through the laws, sanction, punish, jail with no clause for mandatory rehabilitative justice in here. And we are doing this over and over and over again and expecting different results when the people come out prison or come out of confinement. It makes absolutely no sense in the long term because is the person is going to come back out, that is why we have such high recidivism rates because we are absent of a real rehabilitative programme in our criminal justice system in Trinidad and Tobago.

And do not tell me that one exists because you know I have done a lot of work in the penal system in Trinidad/Tobago and in the education system. It is all but absent in a real sense. And if we are making laws to protect people, part of the protection needs to be about protecting them from recurring offences from the persons themselves and that cannot happen without an active consistent evolving rehabilitative clause in these Bills. It has to be part of the law to make it mandatory and not optional.

So, Madam President, with those, which was supposed to be a few words [*Laughter*] because and I understand, this is a very passionate Bill for many people because it addresses issues that relates to vulnerable sections of our society. So I appreciate this Bill being brought now. I endorse it is being sent to a special select committee and I look forward to us continuing to make law that positively impacts and protects the citizens of Trinidad/Tobago. And, Madam President, I thank you.

**Hon. Senators:** [*Desk thumping*]

**Madam President:** Sen. Mark.

**Sen. Wade Mark:** Yes. Thank you very much, Madam President. Madam President, may I also join you in congratulating our Senator, temporary Senator, Sen. Marsha Walker on her brilliant contribution.

**Hon. Senators:** [*Desk thumping*]

**Sen. W. Mark:** Madam President, I would like to make a few remarks on this Bill that is before us. And Sen. Paul Richards, as well as my colleague Sen. Marsha Walker, made reference to the need for us to recognize and fully appreciate the need to drill down to get the root of the challenges that we face in our society. And we have argued time and time again that we have to be more developmental and less punitive in all that we do in an effort to bring about the kind of society that we all envision for our nation. So to do so, as I said, Madam President, we have to fully appreciate the importance of understanding and fully appreciating why these behaviours are what they are. They do not come out of space. They come within our domain and we have to look at mental, psychological challenges, emotional challenges. We also have to look at power relations within our nation among and between men and women as the root cause of some of these challenges.

So we have a Bill before us today dealing with another attempt by the Attorney General to amend the Sexual Offences Act. Now, I know that the Attorney General is an embattled Attorney General. I know he is under a lot of pressure politically and otherwise and he is attempting to bring about some justice, some equity and fairness in this particular area of our society, where we are trying to devise ways and means of ensuring that our women and girls and children are given and enjoy the greatest protection as it relates to their safety, their security and to ensure equity, equality and justice particularly, Madam President, in the context of gender equality. Because all of these matters that we are dealing with they come under the broad rubric of title of the Bill which is the Sexual Offences (Amdt.) (No. 3) Bill.

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

So, sexual offences and sexual violence must be rooted and has to be seen as

being rooted in the in the inequality, the gender inequality in our society. And until we recognize that herein lies the root causes of the challenges that we face and come up with the relevant and necessary solutions and recommendations and put the resources behind them to bring about changes, Mr. Vice-President, we will be spinning top in mud. We will be going around in circles. We will be bringing Bill after Bill with draconian impositions, whether it is larger fines, longer jail sentences, it will not, at the end of the day, solve the problem.

Mr. Vice-President, it will bring some probably interim relief because nobody can argue that in a society that is growing up, that is evolving, you will need to combine at times the punitive with the developmental. But in the final analysis we must go developmental, Mr. Vice-President.

**5.30 p.m.**

So here it is, we are on this new journey that the Attorney General did indicate in his previous interventions. He did indicate that he was going in this direction. We are happy that he is here. He has arrived and he is continuing his journey, not with the support of his colleagues because I think they want to remove him from the Cabinet. But, you have my support, you can cross the floor and become an Independent Senator.

**Hon. Senators:** [*Laughter*]

**Sen. W. Mark:** Mr. Vice-President, may I continue? Mr. Vice-President, I want to indicate that, look, the Attorney General has done what he considers to be the best, so he has brought measure after measure to protect women.

**Hon. Senators:** [*Desk thumping*]

**Sen. W. Mark:** So we cannot say that he has not made an effort, but he has fallen short. He has fallen short because enforcement, implementation, execution,

operationalization of these measures are vital and crucial. We, Mr. Vice-President, are debating the Sexual Offences (Amdt.) (No. 3) Bill, 2021. But do you know that in the other place a Bill that we have consumed already, we have debated, concluded and passed, is languishing in the other House, but we are now in another part of the journey dealing with another Bill, so we would have thought by now the Sexual Offences (Amdt.) (No. 2) Bill would have been proclaimed and operationalized so the public, the National public Sex Offenders Registry would have taken life, taken on its own life so that women could have had that kind of sense of justice in our country, but alas, we are yet to arrive at that point.

The Attorney General came to this Parliament. He got our support. We had some challenges, but we gave him support for pepper spray to help our women defend themselves against a segment in our society of men who take advantage of our women. They are literally, as Sen. Sagrarsingh said, literally living monsters among us who do not have any respect and appreciation of our womenfolk. And therefore we supported the Attorney General even though we had some reservations to bring legislation, to bring into effect this measure. Up to this time pepper spray remains, as my colleague the Minister of Agriculture, Land and Fisheries said to us, I think he was talking about scorpion pepper. He said, “scorpion pepper more dangerous than pepper spray”, I think, or words to that effect. So I ask the Attorney General, Mr. Vice-President, as we plunge into another important debate, when is the Government going to proclaim, operationalize and make available pepper spray for our womenfolk? I would like to know when that would come.

**Sen. Mitchell:** Mr. Vice-President, 46(1), I mean, we are not debating that Bill. We are debating a different Bill.

Sexual Offences (Amdt.)  
(No.3) Bill, 2021  
Sen. Mark (cont'd)

**Sen. W. Mark:** So, Mr. Vice-President—

**Mr. Vice-President:** There is a Standing Order, Sen. Mark.

**Sen. Mitchell:** Mr. Vice-President, 46(1).

**Mr. Vice-President:** Sen. Mitchell, 46(1).

**Sen. Mitchell:** 46(1), please.

**Mr. Vice-President:** Okay, so Sen. Mark.

**Hon. Senators:** [*Inaudible*]

**Mr. Vice-President:** Sen. Mark. Sen. Mark!

**Sen. W. Mark:** Are you going to declare Carnival for 2022 or not?

**Mr. Vice-President:** Sen. Mark!

**Sen. W. Mark:** I do—the Chair cannot—

**Mr. Vice-President:** Sen. Mark!

**Hon. Senators:** [*Crosstalk*]

**Sen. Mitchell:** “I playing the mark.”

**Sen. W. Mark:** Mr. Vice-President, I think my colleague—

**Mr. Vice-President:** Sen. Mark, I am on my legs, Sen. Mitchell has raised a Standing Order. First and foremost you do not point at any Senator in this Chamber. You address your comments to me when I am on my legs. In relation to the Standing Order raised, I uphold the Standing Order, you have made that point, you are now invited to move forward.

**Sen. W. Mark:** So, Mr. Vice-President, as I said, this is a very important matter before us, and I am sorry that my colleague from San Fernando—I go to say East, but I think they removed him.

**Hon. Senators:** [*Laughter*]

**Sen. W. Mark:** He is no longer a member for San Fernando East. You lost your

seat.

**Hon. Senators:** [*Laughter*]

**Sen. W. Mark:** So, Mr. Vice-President, let me continue please. Mr. Vice-President, let me indicate to you that—I think, Mr. Vice-President, it was our Justice, I think I want to follow in the footsteps of the Attorney General, because he did make reference to a very important judgment delivered by Justice Frank Seepersad. And you know he made reference on page 13 of this report of this judgment and we have to agree fully with him, Mr. Vice-President, and that is why we are here today, because legislation does not exist in our country to deal with this concept of voyeurism that we are now dealing with here today. So, coming on the heels of this judgment and the cry of the judge for us to bring legislation to deal with that matter, the Attorney General has answered the cry of Justice Frank Seepersad, and we are dealing with this matter before us today, Mr. Vice-President. Mr. Vice-President, I would like to ask the Attorney General, and I want to support him, not necessarily because we are friends—

**Hon. Senators:** [*Laughter*]

**Sen. W. Mark:** I want to see the back of the Attorney General and the back of the PNM. But I want to make it very clear, Mr. Vice-President, that—

**Hon. Senators:** [*Laughter*]

**Sen. W. Mark:**—this particular measure that is here today, I want to tell the Attorney General that there are some areas I would like to suggest for his consideration, and I am very supportive, it is rare, because I do not support the PNM. I want to see the back of the PNM. But in this instance having this matter referred to a special Senate select committee, although I would have preferred a joint select committee of the both Houses to deal with this matter, we will give



them limited support for this measure. Because I believe when we go into committee, Mr. Vice-President, at the level of the Special Select Committee, there are areas that we would like this committee to pay attention to.

Mr. Vice-President, the measure in this Bill is dealing not only with adults, but it deals also with children, and the Children's Authority Act is referenced in this regard. And I would like the Attorney General and whoever is involved in this committee to pay attention to section 20 of the Children's Authority Act. I think there are three separate areas of that section, of the Act that is pertinent and relevant to children and relevant to what we are dealing with today, Mr. Vice-President. So I would like to ask the committee, even before it is established, to pay attention to section 20 of the Children's Authority Act.

Mr. Vice-President, I would also like to suggest that in clause 4 which deals with definitions, I would like to suggest after the word—and that is, let me just get the section, Mr. Vice-President, the definition I should say in this clause 4, I think, of the Bill. Mr. Vice-President, if you go to clause 4 of the Bill where there are several definitions, on page 4 of my document or my Bill, there is a definition of “sexual act”. Because, Mr. Vice-President, as you know, when we are dealing with this matter we would want to ensure that the language is not vague, it is not ambiguous, it is not confusing. So, I would like to suggest after the word “purpose” we add “or stated intent”. I believe it is very important to have that added to that particular definition so that there would be clarity in this piece of legislation.

Mr. Vice-President, if you go to section 22A, or I should say clause 22A of the legislation, I think it is important to add the words, and I want to propose the following words “or is under the age of consent”. Mr. Vice-President, it is very necessary to define what the age of consent is, because we are dealing with an

industry, we are dealing with child pornography, which is growing in both Trinidad and Tobago, and it is a way of earning money. So this issue of consent is very, very important in the context of parents, in the context of guardians, and therefore I would ask the hon. Attorney General to pay attention to this particular matter. Because in this same new section 22A(2), where the person or where the offence is committed by a person under the age of consent the parent or guardian or person responsible for that individual should be the one held liable. So again, Mr. Vice-President, we are suggesting to the Attorney General that we pay attention to this age of consent and who will be held liable in those circumstances. So it is a matter I would like the Attorney General to pay some attention to in dealing with this section of consent.

Mr. Vice-President, we have some concerns and I am hoping again, at the level of the committee, we will address the matter of monitoring, especially in the home. We want to ensure that there is no exploitation, there is no abuse of this particular process, and therefore it is important that we pay attention to the whole question of monitoring as obtained in the legislation that we are debating before us, Mr. Vice-President. There is in fact, Mr. Vice-President, a provision or a clause in the legislation that talks about:

“A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—

- (a) performed by a law enforcement officer in the lawful execution of his duty;
- (b) carried out by an authorized person for medical, forensic, scientific or educational purposes;”

Now, these things, Mr. Vice-President, need to be defined and clarified to avoid

any doubts about their meaning and their application.

[MADAM PRESIDENT *in the Chair*]

Then there is the whole issue, Madam President, of carrying out for the purposes of security monitoring by a person monitoring one's home as the case may be. Again, we need to have clarity on these matters, because a lot of confusion can be generated if these expressions are not properly defined in legislation. And that is why I would like to reiterate, Madam President, that it is very useful to have this matter sent to this special select committee so that we can hammer out a lot of areas that remain unclear, remain vague and somewhat ambiguous. And at the level of the Joint Select Committee I believe that justice will be done to address these concerns and these matters, Madam Vice-President—Madam President, rather.

Madam President, this matter that we are dealing with we recognized that it is important that for purposes of clarity and for us to ensure that whatever we do, it is clear to the legislator and to those people who are going to operationalize the legislation, that we put certain definitions in place. My colleague who spoke earlier made mention of concepts like sexual gratification. We talk about sexual gratification purposes, and nowhere in the legislation that I have seen thus far any reference or definition pertaining to this particular concept that is used so frequently in the legislation, in the Bill before us. So that is another area, Madam President—

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

**Sen. W. Mark:** Yeah. Madam President, that is another area I believe that the committee would do well to pay attention to. And, Madam President, the whole question about private home ownership, because there is a provision that talks

about homes and the monitoring of homes, and therefore it is important for us to pay attention to private home ownership, and maybe in that context we may have to notify visitors coming to our private homes of the use of cameras on those premises.

So again, we need to clarify and bring to bear experiences on these matters, particularly in other jurisdictions, so that innocent people are not caught, the guilty ones are punished in that regard. So, Madam President, I think I wanted to make, as I said, a limited intervention to provide some clarification, but I think I have used up most of my time. I think I have made the points that I would like to make. I believe that when this matter is referred, at the end of the process we will take the opportunity, Madam President, to invite stakeholders to come forward. I know the Attorney General did indicate that discussions/comments were received from a number of individuals and organizations, but I believe it is important for us to give them another opportunity before this select committee to come forward in the event, Madam President, they would like to further clarify their submission.

So, Madam President, with these words, these few words, rather, I would like to thank you very much.

**Hon. Senators:** [*Desk thumping*]

**The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):**

Thank you very much, Madam President. Madam President, may I immediately express my profound gratitude on behalf of the Government for what I consider to be a most refreshing debate today, excellent submissions coming from all contributors on the Government Bench, the Opposition Bench and also the Independent Bench. I wish to congratulate Sen. Walker for a very strident and confident first contribution.

**Hon. Senators:** [*Desk thumping*]

**Hon. F. Al-Rawi:** I think that she acquitted herself in fine fashion, and it was certainly refreshing to listen to her in action today. I welcome my friend Sen. Sobers back to the bench. He was missing in action in San Fernando West for a little while, but good to have him back with us.

**Sen. Mark:** He is coming to replace—[*Inaudible*]

**Hon. F. Al-Rawi:** Madam President, we are I think today united in the purpose of providing protection for the most vulnerable. Sen. Richards really brought it home, that we are really dealing with a number of cultures, all at the same time. What is normal for some, what is age appropriate for someone else, what is now viewed to be blasé, the intersection of the issues of the media core, journalistic core, how the young person views issues of nudity and sharing of images versus someone who is slightly older in the track, is certainly something that we as a society are really wrestling with.

I have to say that at the Legislative Review Committee chaired by Sen. Rambharat, we have a great deal of assistance in that we encourage all of the young people on that committee to speak up. And on this particular package of laws, because this Bill is one of several Bills that we have designed to treat with the vulnerable, bail restrictions. There are other amendments to the Sexual Offences Act that we have carved out, two other amendments. This is only one of them. And in treating with it we really encouraged people who were the youngest in the room to speak up. Because we did not want to be wrestling with issues from just the perspectives that we have as older practitioners, or as people who have been in the dance a little while.

And if I may immediately just correct some of the misconception that Sen. Mark put on the record, I do not think purposefully. I think it is because the Parliament's records were not updated until today. Sen. Mark made reference to the fact that we had passed

law, and he alleged that the laws were languishing, probably because the Parliament record had not been brought up to date. We pointed it out to them. For the record the sexual offences amendments we did in 2019, were in fact proclaimed on the 31<sup>st</sup> of January, 2020. That is in action already. And for the record the other amendment to the Sexual Offences Act, and that is the third amendment that we made, that is the 2021 Bill, that was proclaimed August 18, 2021, and that is in effect.

In relation to the work that is going on with the operationalization of those registers, I can certainly say that those registers are in proper effect. The Trinidad and Tobago Police Service has its online database, that is the private register. You recall that there are now two registers. There is a public website that you have access to for sex offenders, and then the TTPS has a register of all offenders. And I can tell you that upon the most recent release of a sexual offender, a serial sexual offender, that information went on immediately to the TTPS website, and there is a much better tracking mechanism going on. We have written to the Commissioner of Police to ensure that the websites are continuously managed, because we have a sharing of information. From the Judiciary we constantly check to make sure that these things are being coordinated. In terms of the protection of vulnerable, I think it is a useful submission, Sen. Mark asked about the status of the pepper spray, permit me to put that into the mix in terms of operationalization. We have dealt with the pepper spray structures. As you know, we passed the parent law. We did the amendments to the Firearms Act, we established the committee to work on the contents of order, the subsidiary legislation, the rules, et cetera. They have all been drafted. They are with the Commissioner of Police, as is the build out of the forms and positions, but at the office of the Attorney General we completed all of our work. We have written again, third occasion, to the TTPS to remind them that this is something for immediate publication, and I am told that I

should have a response during the course of this week. The order in respect of that—the order was published by the Minister of National Security, that is the 2021 Order, and he has already identified the strength of pepper spray, the volumetrics, et cetera.

So let us get to the treatment of some of the very large issues that many Senators raised. Are we just going to pass another law, catch someone else, are we going to go upstream, as Sen. Walker put it in reflecting upon Archbishop Desmond Tutu, may God rest his soul. Are we going to find out what caused people to be in the river as opposed to just fishing them out? Sen. Richards reflected upon it as well. Well, I would like to remind that the combined approach for solutions that we have taken in the Government has been very much materially associated with the changes that we have made at the Judiciary.

Now, I want hon. Senators who are practitioners to reflect upon the fact that in 2015 when I came in as Attorney General, we do remember as practitioners running to the registry to catch the cashier because we had to pay a stamp to file documents. If you were statute limitation troubled and you were rushing to meet the limitation period and three o'clock passed you "and the cashier gone, you dead". When we were having the battle of going for a case management conference for 10 minutes in San Fernando to drive back up to Port of Spain to have another case management conference, to go to Arima, to get on a plane to go to Scarborough to attend at the Magistrates' Court or the courts in those jurisdictions, we were helter skelter all over the place, and then came the Criminal Division, the Family and Children Division, the Criminal Procedure Rules, the Family Proceedings Rules that were amplified, the children's proceedings rules, the anonymization, the drug treatment court, and I would like to remind hon. Senators that in the Criminal Division section 24 of that Act is where we birthed specialists courts. And the same way the drug treatment court has been born and peer resolution has been

born so that we treat with the root causes of crime, it is the same way sexual offences are intended, as the hon. Chief Justice has said quite publicly, and as I say now, to be brought to life in a very different way in the specialists courts for sexual offences.

I can tell you that the Judiciary has already begun the move of the Civil Division into Tower D where the Parliament used to be. That court is being occupied. There are people already operating from that place. And as we move at the end of this month, all things being equal, into the civil courts being moved to the waterfront, the criminal courts come to life. I have heard people ask whether we need a night court. Well, what about night court. And I will remind we have night court as it is. Because you can access a judge from a laptop in a police station for a domestic violence order at Sunday night midnight, that is Monday morning 12.00 a.m. We go to court as it is right now late in the evening, seven o'clock, eight o'clock, habeas corpus. Matters are proceeding now virtually, and I remember vividly when we were passing the criminal division Bill and there was opposition to the criminal division Bill. Let me remind, the Law Association of the Republic of Trinidad and Tobago wrote to me and publicly said that they did not support the Criminal Division.

**6.00 p.m.**

They raised constitutional issues with it. And I had to reply to them and say, "Listen, you accepted the Children Division, and the only difference between the Criminal Division and the Children Division is that under 18 goes in the Criminal Division for children, over 18 goes in the Criminal Division. What is the difference?" And then we were met with silence. Now practitioners literally are rejoicing that they can go to the court in the fashion that they do from their offices, on their laptops or from their homes where they have home offices now, without



justice being interrupted by the difficulties of moving from place to place for five minutes at a time in appearance. And the sexual offences are going to be found in a specialist court for sexual offences.

In 2015, we did not have Criminal Procedure Rules; we did not have virtual appearances; we did not have the filing at midnight, 24 hours a day; we did not have the specialist courts; we did not have the Criminal Division for children; we did not have peer resolution; we did not have the drug treatment court. What we do have right now is an opportunity to further improve the system. And I would like to say we have completed the parole legislation. We will be coming to Parliament with parole legislation and associated with parole legislation is treatment in incarceration. For years we have been talking about what goes on in the prisons. Sen. Richards very correctly spoke about the recidivism rate but if we are not going in to speak to the root causes in the incarceration cycle then we are missing the boat which is why we are there with the parole legislation; much spoken about but it will come the same way, and I am sure the older practitioners will know this.

You remember, year after year, decade after decade, we spoke about a public defender. We have a public defenders division that is prospering in Trinidad and Tobago. There are approximately 1,260 people in remand for murder; in remand for murder. Do you know that the public defenders represent approximately 788 of them already and that approximately over 500 people have indicated to the public defenders that they are willing to plead guilty to murder felony? Do you understand the statistical impact of that injustice? Today in our system, in answer to the questions on operationalization, in our Magistrates' Court we used to have 146,000 cases in the Magistracy every year; 12 divisions, 43 magistrates. Today there are three divisions: north, south, Tobago. We merged the jurisdictions of the

High Court and the Magistracy. We created district courts. We have magistrate registrars, no longer a functionary Clerk of the Peace. And in the administration of justice that number of 146,000 cases, we took out 104,000 cases which were motor vehicle and road traffic. And what happened?

By section 20A, section 20B and section 20C of the Motor Vehicles and Road Traffic Act, we changed “offences” to “violations” and we had a 65-year low in road traffic deaths. Sixty-five years ago there were bull carts and donkey carts on the road and we had less deaths last year than 65 years ago. But you see, our country does not sell good news. We do not appreciate the value of change necessarily and that is okay. It just means we have to work harder at communication. Perhaps COVID got in the way, perhaps the difficulties of our circumstances are there but I am saying all of this, in dealing with the operational issues of the court in treating with this legislation, to say that the system is radically different.

Now, Sen. Thompson-Ahye and I have perhaps a difference of view on the treatment of children and in particular—and I commend Sen. Thompson-Ahye for her advocacy and passion on the issue of the age of discretion. In some jurisdictions, and the hon. Senator raised it today, the age of discretion is certainly above eight which is our law in Trinidad and Tobago.

**Sen. Thompson-Ahye:** Seven.

**Hon. F. Al-Rawi:** Seven going on to eight. The point is if you raise the age of discretion, it means that your children are not going into the new system. Understand what the Children Division does. It anonymizes records, it puts children into rehabilitated programmes immediately, it takes them out of conflict with the law. And the question is: Do we want to have no interaction with the law

or do we want to have some interaction with the law? That is something we need to explore a little bit further. But I can tell you there are very heartfelt views for and against. And therefore, that is a conversation that will continue but the important thing is that the system is radically different today. It is not perfect but it is radically improved today.

The association in the specialist courts and the type and remedies that we have, in particular for children, as we amend in clause 6 of the Bill, the consequential amendments provide for voyeurism, taking and sharing intimate images, sharing intimate images and then compensation in the suite of the Children Act. But in looking at that particular provision I want to remind that in the Children Court the range of remedies in the Children Act, section 54 of the Children Act, other sections of the Children Act, even when we are dealing with incarceration in child rehabilitation centres, there is an entirely different system in place because we no longer have the system of you are incarcerated and you cannot get out, lest we forget we amended the law. As Attorney General, I piloted the law to ensure that the Commissioner of Prisons, the managers of child rehabilitation centres and children homes can actually have children go out, and go to school, and receive treatment, and receive counselling, and receive care. We are in a different environment, hon. Senators.

I should add that we have further amendments as we treat with prisoners on the remand side. There are amendments to the prisons rules that we have drafted and we are in a completion of an exercise, in combination with the Canadian Government, for the work and the structure in our prisons. It comes back to the maxim of plant and machinery, people, processes and law. And what I can say, if you look at where the children's package is, if you look at the Sexual Offences Act

as we amended today, you look at the fact that we had a register for sex offenders since 1999. And for 20 years—because in 2019 we amended it—not one person was put on the register because the law was just not properly constructed. I can tell you that our systems are up and running.

The digitization programme is critical to where we go and that digitization programme is already working. You see it in the courts. That is a remarkable achievement for the Republic of Trinidad and Tobago. And the hon. Chief Justice who has been the architect of reform at the Judiciary in driving that push is to be commended. The Government has done its part. The Judiciary is doing its part.

So let us get to a couple of the observations on the Bill. So we definitely believe, whilst the Bill has a great legitimate aim, whilst we all agree that we want to do more, there are four cornerstone issues that we have to address. We have to address the issue of the voice of the child. Who gives consent? At what age can consent be from the child as opposed to the person with responsibility for the child? Where do we deal with the issue of disapplication of the law? Do we deal with it in the individual sections 22A, 22B, 22C? Do we carve out the disapplication? What do I mean by that? You shall not commit an offence if it is your lawyer who is dealing with the matter; if it is law enforcement who is dealing with the matter; if it is in certain circumstances appropriate. Those are matters that we can architecturally remove from the individual sections and put into sweeping clauses in the section to say: “With respect to 22A, B and C, you shall not be committing an offence in the following circumstances for the following persons.”

I think that the issue that is largest to canvas is going to be the public interest issue. Because if I give you the example that comes from Canada and from the United Kingdom and you blend it—the Law Association also raised the public

interest issue but I want to remind that there was a case recently of a child who was drugged, parts of the child visible, naked in part, clothes falling off. The child's anatomy was visible—teenager. In the video taken, the person who was with the child claimed to be the child's parent, if you recall, father. That video may or may not traverse some of what this law is about but that video, which allowed law enforcement to go to work, was in the public interest. So we had to contemplate a provision of finding a way for circumstances outside the stricture of the law and leaving it to the discretion of the court.

Now, Sen. Walker asked for more detail in the law. What we have proposed is in keeping with the architecture of the Sexual Offences Act and that is framework legislation where the actus reus, the elements of the crime, the acting part of it, is specified in the nature of how a crime should be specified, with mental intention of knowledge being required in these circumstances because you have to protect against the innocent infringer. But when we get to the public interest argument and you look to the Canadian and UK laws, we did note, particularly in England, that there is a code for Crown Prosecutors and that they did include some of the factors such as these: whether the offence is likely to be repeated; the extent to which the offence was premeditated; whether the victim was targeted; whether the offence was motivated by sexual gratification, et cetera. And I will remind that in the Sexual Offences Act, we amended it in 2019 to allow the rules of the Supreme Court to speak so that we can have rules of the Supreme Court to assist us on directing elements now that we have Criminal Procedure Rules.

I want to remind that we had no Criminal Procedure Rules prior to my tenure as Attorney General. It was in this Government's tenure that we developed these rules and these rules make for important improvements in the law. So this

law is intended to be further particularized by the Rules of the Supreme Court and there is also the regulatory provisions that we can have by way of subsidiary legislation. So this is not intended to be a vague description of law. It is intended to work in tandem with subsidiary legislation either in the form of regulations or in the form of the Rules of Supreme Court which already have been operationalized in the form of Criminal Procedure Rules, whether they are related in the children arena or adults in the Criminal Procedure Rules on the adult side.

Madam President, the other submissions by hon. Senators are specific: nomenclature, technology, the inclusion of audio, the description of authorised persons, et cetera. These are things which we will traverse with proper explanation. For instance, we took the authorized persons from the concept of qualified persons and we brought that from another piece of law when we were dealing with children, where we defined who the child could speak to as a person, who could assist the child in difficult circumstances. So there are rooted, well-anchored explanations as to why we have taken the terms and conditions that we have brought forward. And therefore, Madam President, I believe that in the course of a special select committee we can get into exploring those mechanisms.

Now, why not a joint select committee? I respectfully believe that this Senate has it within its grasp to conduct this work in a more efficient fashion than in an entire joint select committee. We have done it successfully before. If you recall the work we did on plea bargaining. We did a phenomenal piece of work on plea bargaining as a special select committee and therefore, I think it well within the realm of tolerance for us to urge—

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

**Hon. F. Al-Rawi:** Thank you, Madam President—the production of this work in a

special select committee. We will not be losing any of our effort in that regard.

There are a number of precedents that we will, of course, bring forward. We have had the benefit of a lot of stakeholder consideration but now we really need to get down to some of the nitty-gritty. Is this in its form appropriate for Trinidad and Tobago? In our discussions at the Law Revision Commission, we were talking about our standpipe culture. As a scout at 1<sup>st</sup> Presentation Sea Scouts in San Fernando, “ah fed up bathe under standpipe”. Literally, it was an experience of life in San Fernando. Is that appropriate? Are you in public, are you not? What about communal areas? Sen. Rambharat was not joking when he said we spent a lot of time on babies. Your child is without covering, the baby’s bottom is shown in a picture, it was in a house. It is why we dealt with the surveillance for homes because we live in close communities and somebody has a surveillance camera in their yard and somebody is in their other home nearby and the camera has sight of it. Well, that was not an actual purposeful infringement. Was it an innocent infringer?

Are we going to go into private life issues and trigger three-fifths majorities? Are we going to require cameras to be identified in private homes if they are meant to be covert camera for security purposes or not? All of those are issues that are not novel to Trinidad and Tobago. There is precedent and there is reason, but we have to look at this in a section 13-type consideration of the Constitution. Is this reasonably justifiable? Even though we do not need a special majority, is this reasonably justifiable in a society that respects democracy in the way Trinidad and Tobago respects democracy?

So, Madam President, it has been honestly a privilege today to sit amongst all Senators again on, I think, a very unified purpose that we all share. I wish to

thank hon. Senators for their sterling contributions. I know that Minister Mitchell was itching to speak today because he did a lot of work at the law revision end of the committee but gave way in the interest of time. So there were many others who perhaps wished to speak today and I am confident that when we come back out of committee that we would have a better product. In those circumstances, Madam President, I beg to move.

**Hon. Senators:** [*Desk thumping*]

*Question put and agreed to.*

*Bill accordingly read a second time.*

**Madam President:** Leader of Government Business.

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Madam President, in accordance with Standing Order 66(1), I beg to move that a Bill entitled an Act to amend the Sexual Offences Act, Chap. 11:28, be referred to a special select committee of the Senate hereby established to consider and report on the Bill by Tuesday, February 01, 2022, and that the following Senators be appointed to serve on the Committee:

Mr. Clarence Rambharat                      Chairman

Mr. Randall Mitchell                      Member

Mrs. Renuka Sagramsingh-Sooklal      Member

Ms. Jayanti Lutchmedial              Member

Mr. Paul Richards                      Member

Thank you.

*Question put and agreed to.*

## ADJOURNMENT

**Madam President:** Leader of Government Business.



**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Madam President, I beg to move that this Senate do now adjourn to Tuesday, January 18, 2022, at 10.00 a.m. On that day, Madam President, we propose to debate the Bill for an Act to repeal the Livestock and Livestock Products Board Act; the NAPA Bill—the National Academy for the Performing Arts Bill, 2022; and the Southern Academy for the Performing Arts Bill, 2022. Thank you.

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

### **Licensing Division**

#### **(Recall of 700,000 Drivers' Permits)**

**Hon. Senators:** [*Desk thumping*]

**Sen. Wade Mark:** Thank you, Madam President. Madam President, the first matter I would like to raise deals with the need for the Government to provide reasons for the proposed recall by the Licensing Division of approximately 700,000 drivers' permits in Trinidad and Tobago. Madam President, I wish to refer this honourable Senate to an article in the *Trinidad and Tobago Guardian* newspaper dated Saturday, December 04, 2021, entitled on—headlined I should say:

“Licensing recalling 700,000 drivers' permits...fraudulent activity tainting system”

So in this particular article we are being advised that because of fraudulent activities involving not only, according to this article, Venezuelans and Trinidad and Tobago nationals, we are told by the Transport Commissioner that there is going to be a recalling of these 700,000 permits.

In fact, according to this article, Madam President, Mr. Clarke, Clive Clarke,

Transport Commissioner, indicated that the registered database at the Licensing Office revealed 700,000 registered drivers. And in terms of fake permits, we were told by Mr. Clarke that there were roughly 700 fake permits. Mr. Clarke, Transport Commissioner, proceeded to inform us that by the end of December 2021, all these permits would be recalled and I guess by the end of January of 2022, the issuing of new permits will take place with more security features.

Now, Madam Vice—Madam President, rather, I beg your pardon, the reality is that if there is evidence—and I am not the police so I cannot pronounce on the matter. But if there is evidence of fraud or fraudulent activity involving foreigners, including Venezuelans, displaying drivers' permits with sometimes similar registration numbers of vehicles and ghost pictures accompanying those permits, then it is cause for alarm. And what is even more concerning from what we have read is that nationals of our country seem to be in collusion in this process and even citizens from other Caricom countries seem to be enjoying and accessing drivers' permits.

The question that I am raising this evening in the interest of the public and the driving population is exactly when is this going to take place? Because we were told by the Transport Commissioner by the end of December and then something would have taken place at the end of this month. We are a little way from the end of this month. But by the end of December, there was no recalling of the drivers' permits. I guess COVID-19 could be blamed for it. So I would like to ask on behalf of the United National Congress: Can the Minister, Madam President, based on this report, provide this honourable Senate with a status report? Give us an update on what is taking place. Citizens are anxious because when they read this thing, they want to know, Madam President, if this is a rehashing of what took place with the recalling of the dollars, whether it is 20, whether it is 10,

whether it is five, whether it is \$1, whether it is \$100 replacing the cotton with the polymer notes?

So we would like to know from the hon. Minister of Works and Transport, what is the status or status report on this development? Will the Transport Ministry, through the Licensing Office, be recalling the 700,000 drivers' permits? And given the fact that the deadline has passed and there has been no recalling, has the whole matter collapsed or is the Government pursuing the matter, Madam President? And when will the matter be pursued, when will it be concluded? Because not only, Madam President, are we experiencing these kinds of traumas with foreigners having access to our driver's permit, according to this report, but there are many other incidents taking place where foreigners have ID cards. So this is a very serious matter and I have taken the opportunity, on behalf of the UNC, Madam President, to bring this to your attention and to the attention of the general population so that the hon. Minister of Works and Transport can provide this honourable Senate with some update, some status report. Where are we with this particular initiative given the serious nature of it?

Madam President, may I indicate that we were told by the Transport Commissioner that there has been an upsurge in duplicate numbers where persons are having false drivers' permits being created on the outside. That is what we are being told. And the Transport Commissioner went on further to state, and I quote:

“In order for that to look as close as possible to our records, they are basically using what we call our number range. But that is in no way on our records.”

He went on further, Madam President, to talk about ghost photos. I do not know what that means. Maybe the Minister could clear the air for us on this matter.

**6.30 p.m.**

So, Madam President, I have brought this matter to the attention of this honourable Senate, through your good self so that the people of this country can get a status report from the Minister of Works and Transport on this 700,000 driver's permits that are supposed to be recalled at the end of December. What is the position with that, and, Madam President, in closing, what is the status of the fraudulent activity and the fake work permits? Thank you very much, Madam President.

**Hon. Senators:** [*Desk thumping*]

**The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):** Thank you, Madam President. I am very thankful for the opportunity to speak on this Motion brought by Sen. Wade Mark and the Motion is the need for the Government to provide reasons for the proposed recall by the Licensing Division of approximately 700,000 driver's permits in Trinidad and Tobago. And in responding to this Motion, it is important to put on the records and to remind the population as to why this process is taking place and how it came about at the Licensing Division and we must go back to 2015 when the People's National Movement came into office and what we met.

We met a Licensing Division that was supposed to be transformed with three separate offices, a head office in Caroni and a fully digitized Licensing Division. Unfortunately, a loan of I think it was close to 300 million was taken for that purpose and I think close to about 280 million was spent and all that could have been shown was a shell in Caroni. What we were faced with was a balance of \$20 million to complete a project which would have brought the Licencing Division into the modern era and we decided that we were going to do it because what we found was a note to be taken to Cabinet for an additional 400 million to complete the project. We decided that in no way we were going to do that and we had to

utilize that 20 million that was remaining to actually fully digitize the Licensing Division, open the Caroni office and have other offices like Sangre Grande and so, and upgrade of the San Fernando and Arima offices done and we set about to do that.

What have we achieved so far? The digitization and centralization of the driver's permit records. Now, that started sometime in 2012 and for some strange reason—that started some time in 2008 and for some strange reason, it was shut down in 2011 and everything went back to manual. We had to restart that, we have been able so far to complete that. Digitization of the application forms. Now we can go online and pull forms online whereas you had to go down to licensing office and have physical forms. Digitization of the application forms, implementation of an internal electronic processing for driver's permit and vehicle transactions, implementation of the electronic registration of vehicles, implementation of an internal point of sale electronic system and implementation of the licensing mobile bus units. Several initiatives to bring the licensing office into the modern era and what we can look forward to this year, Madam President, is the online vehicle registration meaning that you can register your vehicles online, no need to go to the licensing office anymore. Online driver's permit provisional system meaning that you can actually get your learner's permit and so online. Online vehicle transfer system, it means that you can transfer your vehicles online and the issuance of a new driver's permit system.

Madam President, what the Transport Commissioner said was a validation of 700,000 permits. Unfortunately, it came out into the newspaper as a recall and Sen. Mark said that the Transport Commissioner said that will happen in 2021, the end of 2021. The Transport Commissioner said the process will start in 2021, the end of 2021. Unfortunately, because of some of the equipment that they had to get,

they had to push it back to February. What does this mean? A lot of the records at the licensing office would have been manual in the past. There are a lot of permits. There are about 743,000 driver's permits currently existing on the registration list; 96,650 have not been renewed for the last 20 years; 302,814 driver's permits are due for renewal over the next two years and you have about 344,000 permits due to be renewed subsequent to that.

What this new permit that we propose to issue will do is that it will bring us into line where the driver's permit now will have specific security marks on it. It is not that you have to bring back in your driver's permit. When you go to renew your permit, you will get the new permit and because this permit and the new systems at licensing office, we expect that 302,000 permits will be issued within the next two years just by people coming in to renew their permits. The rest of the permits will be done online, so you do not have to come back with your permit. And that is why every transaction you do now at licensing office, you have to bring a utility bill to show proof of your residency because the aim at the licensing office is to do your transaction online, you will only have to go to a licensing office if there is a problem with your records.

So this is really a revalidation of the records at licensing office. So it is not to recall 700,000 permits at the end of 2021 and to complete by January 2022. It has nothing to do with that. This is to simplify the operations at licensing office to bring it in tune with the era that we are living in to finalize the computerization of the licensing office so that transactions at licensing office could be made simpler. There are a lot of permits at licensing office that are duplicated—not at licensing office but outside of licensing office because of the material and so that is used for the driver's permit. This does not only happen here in Trinidad, it happens around the world. So what you are doing is you are using now a driver's permit that has

security features in it and once you go on to renew your permit, this will be the new permit that you are getting. When you have to renew your permit down the road, you do not have to necessarily go back to licensing office once your records are correct, you can do it from home. You can now renew your driver's permit from home with the new permits.

So all we are doing here is transforming the licensing office to where it should have been had the work that started in 2008 being continued. Unfortunately, it was stopped, we had to restart the process in 2017 and as I said, we have accomplished a significant amount of the processes online, this year we will continue on that. I can tell you on Friday this week, the new mobile buses will be out in the rural areas where people will not have to move from Matelot to come to Sangre Grande or Arima or Port of Spain anymore, the licensing office will be going into these areas from Friday, that will be launched and in keeping with the services.

The Attorney General spoke about the U-turn system that was implemented and again, I want to compliment the TTPS, the Judiciary, Ministry of Works and TTPost. In 2021, we had the lowest road fatalities in 65 years. In 2020, it was 50 years and we were very proud of that. In 2021, we had the lowest road fatality. So the licensing office, they are doing their part to bring us into the new realm of how services should be provided. I want to compliment them and I want to give Sen. Mark and the population the assurance that the licensing office is on track to bring digitization to the forefront in transport in Trinidad and Tobago. I thank you.

**Hon. Senators:** [*Desk thumping*]

### **Restructuring of WASA**

( **G o v e r n m e n t ' s I n t e n t i o n** )

**Sen. Wade Mark:** Thank you, Madam President. The second matter deals with the

restructuring of WASA and the implications of this activity on the Authority's workforce. Now, Madam President, we need to have another status report from the Minister of Public Utilities as it relates to where we are. Madam President, I want to let you know and bring to your attention that there was a Cabinet sub-committee report on WASA and that Cabinet sub-committee concluded from my information that WASA is too expensive to maintain, too dysfunctional to fix and should consequently be phased out and in its place, it is being recommended and I stand to be corrected. It is being recommended that a water management company will replace WASA and that company will be registered under the Companies Act. And we are not too sure if it is going to be a private-public partnership or is it going to be a privately-driven arrangement.

So we need to Government to clarify whether their intention is to the close down what we know as WASA today and have WASA replaced by a private company registered under the Companies Act. Meaning that the Government intends to privatize WASA and consequently, Madam President, privatize water in our country. So we need to get clarification from the Minister of Public Utilities on this matter.

Now, Madam President, in this so-called restructuring, the Government has been less than honest. There is a report from the IADB that the Government commissioned and there were plans to borrow moneys from the IADB in order to restructure WASA. Well, that is now history. The former Minister of Public Utilities has been fired, he left, he now works at Ansa McAL. The report from the IADB has been put on a shelf and the Government has put a new plan in place to restructure WASA. Their plan, Madam President, entails the removal of close to 3,000 workers from WASA. Right now, as we speak, Madam President, there are about 5,000 and above workers at WASA. My estimation is about 5,400 workers.



The Government is of the view that they do not need at least 3,000 of them. So is it the intention of the Government to retrench, to fire, to dismiss 3,000 WASA workers?

And, Madam President, when is the Government going to close down WASA? So WASA, as a statutory body, is going to be no more. Let the Government tell us that is not so. Let the Government tell Trinidad and Tobago that they have no intention of privatizing WASA and registering WASA as a private company. Who does the Government have in mind to take over WASA from the private sector? We need answers. Workers need answers. The people need answers. And do not come and tell us that the process is ongoing. No, the process—you have a plan, the Government has a plan for WASA and their plan is not only to retrench 3,000 workers but their plan also is to increase water rates in the country through the RIC. So not only are we going to face retrenchment, dismissal, firing of these workers but the poor of our country will be called upon to pay higher water rates.

So we would like the Minister of Public Utilities and I find, Madam President, that this particular Minister of Public Utilities has a tendency when matters are put on this agenda with your approval, he never appears. He is never in this Parliament. So the question here, Madam President, whilst we will take from the Minister of Agriculture what he has to say, we want to get the Minister of Public Utilities in the Parliament so he can answer.

**Hon. Senators:** [*Desk thumping*]

**Sen. W. Mark:** Do not hide behind the Minister of Agriculture. So we are concerned because the Government is not coming clean with the workers and the people on the future of WASA and I hope that the Minister who is lined up to respond to this Motion that he would come clean and tell the country what is the

current status of WASA. Whether the Government intends to dismiss over 3,000 workers in the coming months and whether in the coming months, the Government intends to privatize the Water and Sewerage Authority. That is why I have brought this matter to this honourable House so that the people can get answers, get clarification, come clean, tell the masses, tell Trinidad and Tobago what is the plan of the Government of this country to deal with the Water and Sewerage Authority. Madam President, I thank you.

**Hon. Senators:** [*Desk thumping*]

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Thank you very much, Madam President, for the opportunity to respond to this ludicrous Motion that Sen. Mark—I am trying to get the words—misrepresented, presented fables, misconstrued, confused, “confuffled”. I thought his experience and expertise in industrial relations would have helped him with the language.

So let me just say in response, the first is that the former Minister of Public Utilities, I imagine that he is referring to my colleague, Robert Le Hunte resigned his position, was never fired and he never left, he resigned. Sen. Mark refers to funding from the IADB secured by the Government, let me just remind him that it is the UNC in the period 2010 to 2015 who secured funding from the IADB for the purpose of addressing the staffing numbers and the overstaffing through a separation programme and having spent the 260 million, they managed to have more workers on WASA’s payroll than before the separation programme.

The third thing I want to say is the work being done in WASA by this administration is not a matter of guesswork and I am very disappointed in Sen. Mark. It is a matter of public record that a committee was appointed to consider the operations of WASA. That committee reported in 2020 in the form of a report that

is 134 pages, 134 pages and it is not a report that is hidden away, it is a report that was laid in this Parliament and it is available for anybody wishing to access the facts and not listen to the fables presented by Sen. Mark.

And that report in particular addresses eight key areas in WASA: the governance issues, the org structure, the organizational culture, technical analysis, financial analysis, the issue of customer service and WASA's use or lack of use of technology. It is difficult to summarize that report in 10 minutes and I commend that report to every citizen of this country, in particular, my colleague Sen. Mark.

And if Sen. Mark feels that that is a political creation, well let me remind him that his political colleague, the then Member of Parliament Dr. Bhoë Tewarie, who chaired a Public Accounts Committee that also considered WASA and in the Thirty-First Report of the PAC, in the Fifth Session of the Eleventh Parliament, a report was tendered and that Report deals with the financials of WASA for the 2008 to 2013 period. The Report is dated July 1st, 2020 and that report which preceded the Government's sub-committee report actually supports what the Government's report says in relation in particular to finances for an Authority that had historically failed to even provide accounts to the PAC.

So WASA's challenges relate not only to the failure of our colleagues on the other side to use IADB's money to address the staffing issues as was required but WASA problems extend to technical issues, very apparent in the country today. The leaks did not appear just like that. The failure particularly in south Trinidad to change out those asbestos pipes, particularly in the corridor from Princes Town to Mayaro, failure to deal with the technical issues and the infrastructure is at the heart of the WASA's problems today. The Government has not hidden the reality that it is not possible for WASA to continue the way it is going and the Government's intention is also not hidden. The options are contained in that Report

and the preferred option or the recommended option has been identified. And whether it involves partial privatization, complete privatization, reduction in staff, the use of the private sector, whatever model, the Government has been very clear that it intends to be transparent.

And the Minister is not hiding, it is that Minister of Public Utilities who presented himself during the budget debate last year, he made his contribution in this House and addressed among other things the WASA issue. So he has been available and as a Minister been very clear on what the direction of WASA will be. And the Government has said consistently and that Minister has said consistently that the Government will adhere to the requirements of good industrial relations practice, will honour the collective agreements and will deal with not only WASA employees but the issue of water availability and water distribution in this country in a manner that it has not been addressed by successive governments. It is not going to be capricious, it is going to be transparent and it is not going to be political because this matter has plagued several administrations without regard of which party was in the lead. But it is the intention of this Government to settle this issue just like we were bold enough to deal with the Petrotrin matter and we also dealt with that with the greatest of transparency and respect to the collective bargaining arrangements. Thank you.

**Hon. Senators:** [*Desk thumping*]

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.56 p.m.*