

SENATE

Tuesday, January 25, 2022

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

URGENT QUESTIONS**CEPEP Contractor Teams****(Number of Affected Employees)**

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Rural Development and Local Government: Can the Minister indicate how many employees will be affected by the recent policy decision taken by the Government to reduce the number of teams attached to each CEPEP contractor?

Madam President: Minister of Rural Development and Local Government.

Hon. Senator: [*Desk thumping*]

Madam President: Minister, I remind you, you have two minutes.

The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein): Thank you very much, Madam President, I want to thank Sen. Mark for the question. Madam President, let me make it clear that, contrary to newspaper reports, that the CEPEP Company is not reducing its workforce by two-thirds. Madam President, the Community-Based Environmental Protection and Enhancement Programme stands firm by its vision statement of:

“Securing the future by protecting and enhancing the physical environment while building our communities through entrepreneurship.”

Its corporate strategy is built on five priorities:

- Core business and entrepreneurship.
- Community and stakeholder involvement.

- Business transformation.
- Organizational development.
- Revenue growth.

CEPEP's core mandate continues to be, firstly, the protection and enhancement of the environment thereby mitigating public health risk, life, like mosquito breeding grounds. Secondly, but closest to heart, the generation of employment and entrepreneurship across all communities.

Recently, Madam President, three contractor teams comprising of 30 workers each were reduced to 10. These three teams, Madam President, do not include the whole of CEPEP. This, Madam President, resulted in 60 employees being temporarily displaced. We expect, as this happens within CEPEP from time to time, all 60 workers will be reintegrated into the programme. Madam President, as we continue to battle the ravages of an ongoing pandemic, we continue to place the safety and protection of all workers under the CEPEP Company Limited at the centre of our decision making. Thank you, Madam President.

Hon. Senators: [*Desk thumping*]

Sen. Mark: Can the Minister indicate to this honourable Senate where this situation occurred seeing that it is not widespread? Can I ask the Minister to clear the air for us as to where this reduction took place?

Sen. The Hon. K. Hosein: Normally, Sen. Mark, they have environmental work areas, and this happened in the eastern area of the country.

Sen. Mark: Thank you, Madam.

CEPEP Contractors

(Reduction of Teams)

Sen. Jayanti Lutchmedial: Thank you, Madam President. Minister, I know that part of my question would have already been answered, but just for the record: Can

the Minister state the reasons why CEPEP contractors were given the instructions to reduce the teams from three to one?

Madam President: Minister of Rural Development and Local Government.

The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein): Thank you once again, and thanks to the Senator for the question. Following an assessment it was decided to redeploy workers to achieve equity across the environmental work areas. As stated before, this is a temporary displacement. Workers will be reintegrated into the programme, and approximately 60 workers were affected.

Sen. Lutchmedial: Thank you, Madam President, a supplemental? Thank you. The 60 workers you indicated that would have been affected and you said they were redeployed, do you anticipate that they would be redeployed in different areas from where they are previously stationed?

Sen. The Hon. K. Hosein: Thank you, Madam President, and thanks for the question again. They will be redeployed as I said and they would be redeployed within the environmental work area as before.

Madam President: Sen. Lutchmedial, that is it?

Sen. Lutchmedial: Yes, Madam.

Madam President: Next question, Sen. Mark.

Fire at Gasparillo Home

(Steps Taken to Assist)

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Social Development and Family Services: In light of the recent fire which completely destroyed a home in Gasparillo, can the Minister indicate what steps will be taken to assist the family that was rendered homeless?

Madam President: Minister of Social Development and Family Services.

Hon. Senator: [*Desk thumping*]

The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox): Thank you, Madam President. Following a report of the fire which destroyed the home of a 58-year-old women and her son on January the 23rd, the Ministry of Social Development and Family Services stepped in to provide assistance to the family. Earlier today officers attached to the National Family Services Division, Division of Ageing, as well as our National Social Development Programme visited the family and immediately assessed the damage so that assistance could be provided. Fortunately, no one was injured at the house when the fire occurred. Mrs. Mohammed stated that she lost food and clothing in the fire, everything else was completely lost, and she is in possession of only a few personal items. She is currently residing with a neighbour from across the street temporarily.

The family is on the Ministry's public assistance database and has since been offered counselling and psychosocial support by the National Family Services Division of the Ministry. The victims were also referred to the Social Welfare Division for rental assistance as well as assistance to replace furniture and household items destroyed by the fire. Through the Social Welfare Division household items up to a maximum of \$10,000 may also be replaced. The family was briefed on the Housing Repairs Grant offered by the Ministry which amounts to a maximum of \$20,000 available to persons who were affected by a disaster. Affected persons may claim for minor house repairs in the sum of \$20,000 worth of materials from the Ministry's National Social Development Programme. The family was also given a food hamper during the visit, and the Ministry will continue to work with the family in order to assist with bringing some sense of normalcy to the situation. Thank you.

**Collapse of Mosquito Creek Roadway
(Arrangements re Commuters)**

Sen. Wade Mark: Yes, thank you, Madam President. To the Minister of Works and Transport: In light of the recent collapse of the roadway at Mosquito Creek, can Minister indicate the arrangements to be put in place to ensure that commuters are not negatively affected.

Madam President: Minister of Works and Transport.

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President, and thank you Sen. Mark for the opportunity to clarify the failure of the slope at the Mosquito Creek. Madam President, the construction of the Mosquito Creek incorporates 2.4 kilometres of northbound and southbound carriageway. Approximately two kilometres of the southbound carriageway has been successfully opened to traffic since 2019. Within the ongoing construction zone of the 2.4 kilometre northbound carriageway, an allocation 180 metres failure zone has occurred. This construction zone is not completed and has not been opened to traffic, and therefore does not create an impact for the existing flow of traffic at the Mosquito Creek, nor does it pose any immediate threat to vehicular traffic on the road users on the south trunk road. Thank you.

Madam President: Sen. Mark, the time for urgent questions has expired.

ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. Madam President, there are four questions for oral answer today, the Government intends to respond to three. No. 53 was previously deferred, Madam President, and Government is not in a position to respond to it today. And there are two written questions which were also deferred previously. These are very complex questions and the responses are being

worked on and accordingly, Madam President, we are not in a position to respond today to these written questions. I thank you.

ORAL ANSWERS TO QUESTIONS

Fire at Port of Spain Supermarket

(Remedy of Inability to Obtain Hydrant Water)

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

In light of the November 2021 fire at a Port-of-Spain supermarket when the Fire Service were unable to obtain water through nearby fire hydrants, can the Minister indicate whether this situation has been remedied?

Madam President: Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. Madam President, the report of the Water and Sewerage Authority on the fire which occurred at a Port of Spain supermarket on Saturday 13 November, 2021, indicates, among other things, that WASA on being notified of the occurrence of the fire immediately boosted water pressure on the high pressure fire hydrants in lower Port of Spain and notified the fire services accordingly. As a consequence, the fire service appliances combating the fire were able to refill from fresh water hydrants on Wrightson Road and Dock Road, St. Vincent Street and South Quay and Abercromby Street and South Quay. Additionally, WASA trucks collectively supplied 18,000 gallons of water to the fire service appliances involved in suppressing the fire. Madam President, it should be noted that fire hydrants fall under the responsibility of the Trinidad and Tobago Fire Service, not the Ministry of Public Utilities, and the majority of the hydrants in lower Port of Spain are actually serviced under the old saltwater system, and in part that is the reason why we have some challenges in that part of the country because of the issues with the old saltwater system. In this case, any deficiency

there was compensated by the quick action of WASA by boosting the water pressure and also using the water truck to supply an additional 18,000 gallons. Having said that, Madam President, the Ministries of Public Utilities and National Security are working to develop a programme relating to fire hydrants throughout the country to ensure that they are able to provide the water and can respond when required to, and then specifically to work to address the issues with the old saltwater mains in lower Port of Spain. Thank you very much.

Sen. Mark: Madam President, can the Minister indicate what concrete measures are being taken by the Government to address this saltwater crisis that will impact and continues to impact on the supply of water via the fire hydrant system. Can the hon. Minister explain to this Senate what measures are being taken to fast track that particular challenge?

Sen. The Hon. C. Rambharat: Madam President, I would not say it is a crisis, I would say that it is a problem. And the Ministries of Public Utilities and National Security are collaborating to develop and implement a comprehensive programme to ensure that fire hydrants throughout the country are fully functional in the event of an emergency, commencing with an audit to determine the operability of hydrants in the town, cities and boroughs around the country, and an examination of the feasibility of continuing the old saltwater main system in Port of Spain, or installing a new solution using grey water or potable water as found appropriate. In the first instance it is proposed to implement a preventive maintenance programme for fire hydrants comprising of regular testing, inspection and scheduled maintenance. Thank you.

Madam President: Sen. Mark.

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

Madam President: Next question, Sen. Mark.

COVID-19 Cases in Tobago
(Operationalization of Roxborough Hospital)

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

Given the increase in the number of COVID-19 cases in Tobago, and the fact that the Roxborough Hospital remains closed due a shortage of medical personnel, can the Minister indicate when will said hospital be operationalised?

Madam President: Minister of Health.

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. The Tobago House of Assembly— [*Technical difficulties*] — under the jurisdiction the Tobago House of Assembly, Roxborough Hospital is in the process of recruiting staff for the Roxborough Hospital. Roxborough Hospital—[*Technical difficulties*] The THA has also advised that Dr. Nathaniel Duke has been appointed Chief of Staff of the hospital, and a commissioning team under his leadership is proceeding to operational the hospital, including recruitment of staff. Barring unforeseen circumstances, the THA has advised that the hospital will be operationalized in the first half of the calendar year 2022.

Sen. Mark: Can the Minister indicate, with the operationalization of this hospital, can the Minister indicate to us whether he has information to share with this honourable Parliament, the Senate, how will this opening of this very important hospital serve to ease up the crisis affecting the people of Tobago, particularly in the case of COVID-19 cases? Can you share with us your vision or what information you would have collected from the THA on this matter?

Hon. T. Deyalsingh: Thank you. So, we must be careful how we use the word “crisis”, we are in a global pandemic as all countries around the world. The additional space at the Roxborough Hospital will in no short measure add to

hospital bed capacity, ICU capacity. So it is envisaged that when it is operationalized it will indeed have a very positive impact on the treatment of COVID in Tobago. However, what we must do as a national community is not only look to the addition of hospital beds and hospital spaces and more ambulances. But if we are to beat back this virus we must get our vaccination rates in both islands up. And that is the plea that I would like to give from this podium this afternoon, that the addition of more resources is not the end game. The end game has to be more and more vaccinations. Thank you very much, Madam President.

Madam President: Sen. Mark.

Projected Increase in COVID-19 Cases

(Measures taken to reverse trend)

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

In light of the Ministry of Health's projection that, at the current rate, this country's COVID-19 cases may rise to approximately 1,000 cases per day by the end of November 2021, can the Minister outline what specific measures are being pursued by the relevant authorities to reverse this trend?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you. The Ministry of Health, as part of our standard reporting, uses a seven-day rolling average as an indicator of the COVID-19 case load as it gives a more accurate reflection over a period of time. In this light, whilst individual days may reach 1,000, as predicted and has happened recently, the rolling monthly average of COVID-19 cases for each of the following months from September to December is as follows:

- September 2021, 195.
- October 2021, 214.
- November 2021, 468; and

- December 2021, 621.

It never reached a 1,000.

In this regard, the following measures were implemented to reduce the COVID-19 cases per day.

1. Continuous re-enforcement of adherence to Public Health Regulations inclusive of mask wearing, restrictions of gatherings and washing of hands testing, ongoing testing, contact tracing, self-isolating and quarantine at public and public health facilities of infected and exposed individuals;
2. A robust communication programme for the uptake of vaccines to 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 such as CARPHA, PAHO and UWI;
3. Continuous education efforts by the regional health authorities and the private sector to target both individuals and businesses as to the benefits of the COVID-19 vaccines; and
4. The reliance on new spokespersons and opinion leaders outside the Ministry of Health to encourage persons to be vaccinated based on the ease of access and availability.

Thank you very much, Madam President.

Sen. Mark: Madam President, can the hon. Minister indicate in the Government's attempt to attract new spokespersons to at least seek to educate and convince citizens to accept the vaccines in the interest of their health, can the Minister indicate how successful the Government has been in this particular endeavour?

Hon. T. Deyalsingh: So I think the best way to answer that is to give figures;

evidence speaks for itself. Even though in December you had a rolling seven-day average of 621, and for January to date it is in the 600s, you know what has gone down? Hospital occupancy. From December 27th to 25th January, on December 27th you had 543 persons in hospital. One month later, because of the success of using new spokespersons and vaccinating 685,376 persons, we have had a decrease in hospitals, persons lying on beds from 543 to 421. So 122 less persons are in our hospitals.

So that is not only clinical evidence, but data that shows clearly that the Government's policy of using new spokespersons and vaccines is in fact the way to go. As I just indicated for Tobago, the same thing applies to Trinidad. And could you imagine, Madam President, if more and more persons got vaccinated, this number which decreased from 563 in hospitals on December 27th to the 25th of January, 421, a decrease of 122. If more persons believe what we are saying about the usefulness of vaccinations, much less persons can be in our hospital system. So I use this opportunity again to urge the unvaccinated to do the right thing, listen to the science and get vaccinated.

Sen. Mark: Madam President, having regard to what the hon. Minister has said in terms of the number of persons who have not been hospitalized, or there has been a reduction in the hospitalization numbers, can the Minister explain why the number of cases have increased during the said period whilst the number of persons hospitalized has been reduced? Can the Minister explain to us?

Hon. T. Deyalsingh: As we said from the very onset of the vaccination programme, and this is the misconception, and I thank you for raising it, it gives an opportunity. Vaccines do not prevent you from possibly becoming infected. And we said that from day one. But we held out three promises for vaccinations:

1. It will significantly reduce your chance of being infected;

2. It will significantly reduce your chance of being hospitalized, which you have the evidence here for; and
3. It will significantly reduce your chance of getting you in an ICU/HDU setting.

That is the promise of vaccinations. It will help break the chain of transmission. It would not prevent all transmission. And we have said that clearly.

So again, I produce the evidence that 685,376 persons are vaccinated, 49 per cent of population. And the number of persons needing hospital care has gone down significantly. That is the promise of vaccinations, and I urge that other 51 per cent of the population who is not vaccinated to listen to the science, follow your mind and get vaccinated. The evidence I have produced is there.

Madam President: Sen. Mark.

Sen. Mark: No, I am cool. I just want to follow up on something. I am through with the questions.

Madam President: Sure.

WRITTEN ANSWERS TO QUESTIONS

(Standing Order 27(16))

Sen. Wade Mark: Madam President, in light of the fact that the two written questions were due since the 30th of December or thereabout, if I am not correct—if I am correct, rather, I would like to ask your good self to invoke Standing Order 27 subsection (16) or, yeah, Standing Order 16, no, Standing Order 27, Madam President, subsection (16), to address this outstanding matter that we have before us, that is question No. 45 for written answer, and question No. 46, which were both due, Madam President, on the 30th of December, 2021.

Madam President: So, in respect of questions Nos. 45 and 46, Standing Order 27(16) is hereby invoked. Standing Order 27 sub (15) has been invoked.

TECHNICAL DIFFICULTIES

Madam President: Sen. Roberts.

Sen. Anil Roberts: Madam President, I see there is a problem with this microphone on this side, it is popping and very distracting. Maybe we could allow everyone to use that side until they rectify it, please?

Madam President: Sen. Roberts, I will be addressing that very shortly. Thank you.

[Pause]

Madam President: Hon. Senators, I just want to indicate there is a problem with the audio and it is being addressed as we speak, so that I will be monitoring the situation. Sen. Mark.

2.00 p.m.

**COMMISSIONER OF POLICE AND DEPUTY COMMISSIONER OF
POLICE (SELECTION PROCESS) (NO. 2) (AMDT.) ORDER, 2021
(ANNULMENT OF)**

Sen. Wade Mark: Thank you.

Hon. Senators: *[Desk thumping]*

Sen. W. Mark: Madam President, I think I am missing my—*[Pause]* Thank you, Madam President. Madam President, I beg to move the following Motion standing in my name:

Whereas it is provided by section 123(2) of the Constitution that the Commissioner and Deputy Commissioner of Police be selected by criteria and procedure prescribed by Order of the President subject to negative resolution of Parliament;

And whereas the Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No. 2) Order, 2021 and the Commissioner of

Police and Deputy Commissioner of Police (Selection Process) (No. 2) (Amendment) Order, 2021, were published on November 25 and 26, 2021 by Legal Notices Nos. 277 and 278 respectively;

And whereas the Orders, among other things, significantly diminish the role of the Police Service Commission;

Be it resolved that the Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No. 2) Order, 2021 and the Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No. 2) (Amendment) Order, 2021 be annulled.

Madam President, we are here today not for the first time, to bring to your attention and through you to the people of this nation another incursion, if not erosion, into the independence and autonomous institution under our Constitution known as the Police Service Commission by this Government.

Madam President, in its quest for conquest of institutions of state, even in the face of several court judgments, including the High Court, the Court of Appeal and the Privy Council, there appears to be a relentless assault on these institutions, particularly the Police Service Commission by this administration aimed at influencing, interfering, gerrymandering and manipulating the role, powers and functions of the Police Service Commission, that persist.

Madam President, it appears that this Government knows no bounds. Madam President, before I get into these two notices I want to refresh your memory, and through you, Senators' memories. It was in 2005/2006 that a UNC/PNM bipartisan approach was taken to amend sections of the Constitution in order to bring about a modernization of our police service and to do so through improved management of its operations, all aimed at ensuring and improving the safety and security of our citizens.

Madam President, I remember the honourable then Leader of the Opposition, Basdeo Panday, indicating, and it is in the *Hansard* record, that when we are dealing with lawmaking—and what we have before us, Madam President, is subsidiary or what is called secondary legislation. And the former Leader of the Opposition, former Prime Minister, Mr. Basdeo Panday, indicated that there were certain principles that we should use to guide us when we are dealing with lawmaking. Three fundamental principles were outlined. One:

“...laws must not lead to an abuse of power.”—Secondly, laws should never—“...lead to the introduction of violence into the political system and...”—thirdly, laws—“...should in no way facilitate discrimination of any kind, but rather should promote meritocracy.”

Madam President, I raise these to put into some perspective what we are about to address.

Madam President, it was Lord Acton who once remarked:

“Power...corrupts, and absolute power corrupts absolutely.”

Madam President, it was on 25th of November, 2021, that we were alerted through the *Gazette* of a Legal Notice issued by the Government. It is Legal Notice No. 177 and in that four page document, Madam President, the Government acting under 123(2) of our Constitution, and, Madam President, I will be making reference to our Constitution from time to time so that colleagues who are following this debate will be able to appreciate exactly where we are coming from.

Madam President, you will see under section 123(2) of our Constitution that it states and I quote:

“The Police Service Commission shall nominate persons for appointment to the offices specified in subsection (1)(a) and section 22(1) of the Police Service Act...in accordance with”—Madam President—“the criteria and

procedure prescribed by Order of the President, subject to negative resolution...”

Madam President, when the word “President” is used in 123(2) it does not refer to Her Excellency, it refers to the Cabinet. So when you go to this particular Order that we have before us, you will see at the end of this Notice the document being signed by one C. Henley, Secretary to the Cabinet. So it is the Executive arm of the State through the Cabinet that is responsible for invoking the criteria and procedure involved in this selection criteria and procedure as it relates to the nomination of a Commissioner of Police and a Deputy Commissioner of Police.

Madam President, you also have to take into account that these Orders were issued against or on the heels of Justice Nadia Kangaloo’s judgment which was issued on the 14th of October, 2021. In that judgment the judge deemed the Order of 2009, Order No. 2, I think 103 Legal Notice was ultra-virus the Constitution, illegal, unlawful and unconstitutional. And this Order that came in the Legal Notice 277 went a bit further and annulled not only that Order of 2009, but it also revoked, Madam President, Legal Notice 183, which was piloted in June of 2021, by the hon. Attorney General who defended that particular Legal Notice when I brought a Motion to annul same. My Motion was defeated and the Attorney General stood his ground saying that this was proper. The very Attorney General’s Government in this 277 has now revoked completely, not only paragraph 4, but every section of that Legal Notice 183.

So, Madam President, when we look at the first Legal Notice of 277 it appears on the surface to be reasonably consistent, reasonably consistent with the judgment issued by the then Justice Nadia Kangaloo on October 14th, I think, 2021. However, Madam President, this document of—that is Legal Notice No. 277, dealt not only with the appointment of a substantive Police Commissioner and his three

deputies, that is Deputy Commissioner of Police, but it also, Madam President, dealt with how the Police Service Commission should go about addressing acting appointments in the absence, either on illness or the person being out of the country or a vacancy has arisen in terms of the Commissioner of Police Office, as well as the absence on the grounds of illness or somebody being out of the country who should act for what is called Deputy Commissioners of Police. So Legal Notice No. 277 addressed those two critical areas, substantive appointments as well as acting appointments.

Madam President, may I again reference you to our Constitution, and that is our Constitution 123(1)(a), it reads:

“The Police Service Commission shall have the power to—

- (a) appoint persons to hold or act in the office of Commissioner and Deputy Commissioner of Police;”

So the Order is deriving its power and strength from 123(2) of our Constitution.

So, Madam President, when we looked at Legal Notice No. 277 the Government appeared to be going down a path that appeared on the surface to be consistent with Justice Nadia Kangaloo’s judgment and decisions to revoke Legal Notice of 2009, No. 2, 103, I think, Madam President, as well as making paragraph 4 of Legal Notice No. 183 of June of 2021, superfluous. But the Government has gone a step further to revoke that entire Legal Notice 183.

So, Madam President, if you go to page 1 of Legal Notice 277, you will see where an attempt is made by the Cabinet, not the Police Service Commission, I want to make it very clear. These criteria that is before us today were not drawn up by the Police Service Commission. They were drawn up, Madam President, by the Cabinet led by the Prime Minister. So the Prime Minister and his Cabinet decided for the Police Service Commission, in accordance with 123(2) of our Constitution,

how the Police Service Commission, which is supposedly an independent institution under our Constitution, how they should go about selecting a Police Commissioner and his deputies.

And, Madam President, as we go to page 3 of this Legal Notice you will see under subsection, let us say section 4 or you want to call it clause 4, Madam President, go to subsection (2) and you will see, Madam President, and I will quote:

“For the purposes of acting appointments to the office of Commissioner of Police, the Commission”—that is the Police Service Commission—“shall establish and maintain an Order of Merit List which shall list, in descending order of seniority, the officers who—

- (a) are holding or acting in the office of Deputy Commissioner of Police or Assistant Commissioner of Police; and
- (b) possess the qualifications and experience required for appointment to the office of Commissioner of Police.”

So, Madam President, in section 4(2) the Government in its notice indicated that if you were to act for a Police Commissioner or act for a Deputy Police Commissioner a merit list shall be established by the Commission in descending order of seniority. Madam President, when you come to the substantive appointment of a Commissioner of Police on page 2 of this same Legal Notice it states and I quote, in (e):

“the Commission shall...take into account all”—A-L-L—“information on the candidates and thereafter establish an Order of Merit List indicating the highest graded candidate, followed by the other candidates in descending order of merit;”

Madam President, because of legal uncertainty in this particular provision I

have concluded that when this Legal Notice referred to all information of the candidate I am positive it would incorporate seniority in this particular exercise. So my argument is that seniority is included when you are determining the substantive holder or the appointment of the Commissioner of Police, that is recorded in section 3(e), (1)(e) and when you go to 4(2), the government went a step further, that is the Executive, and they went on to outline in detail that everything that is being done by the Commission should be done on the basis of an order of seniority.

It appeared in 4(2) of this Legal Notice, it appeared in 4(2)(b) of this Legal Notice when it says that the Commission shall select the most senior officer, it was also reiterated in section 4(4), again the most senior officer and then when you go, Madam President, to 5(2) it is repeated again in descending order of seniority. And when you go down, Madam President, to 5(2)(b) it is repeated there, it is repeated in 4. And, Madam President, we felt at that time it appears that the Government was adhering to the law and to the Constitution.

But, Madam President, within less than 24 hours whilst our Attorney General, who I missed deeply last week when he was not here, whilst our distinguished Attorney General was conducting state business in the United Kingdom the Acting Attorney General, Stuart Young, issued or was responsible for guiding the Cabinet in issuing ultimately these two Legal Notices 277. And, Madam President, within 24 hours of notice, Legal Notice 277 being issued, talking about seniority in descending order, the Government of Trinidad and Tobago in the absence of the Attorney General amended in less than 24 hours and issued a new Legal Notice, Legal Notice No. 278. And, Madam President, in Legal Notice 278, when we go to section 3 hear how it reads, in section 4 of the Order. Madam President, if you go to section 4 of the Order, here is what 278 is saying to

this Order 277:

“(a) in subclause (2)...”—the government says delete—“the words ‘, in descending order of seniority,’;”

So in 277, Madam President, we have descending order of seniority. In 278 the Government moves another Legal Notice and they deleted seniority in 278. Madam President, it did not stop at 4, at 3 as it relates to section 4, it went to section 4(b), wherever:

“...‘the most senior officer on the Order of Merit List’...”—appears, delete that, gut that, remove that.

When you go to sub (4), the “most senior officer on”, remove that, delete that. And, Madam President, it went to section 5 and “in descending order of seniority”, delete. In sub (3) the words “the most senior officer on the order of merit list” be deleted, Madam President and so on and so on. And when we go to what is called section 4(c), Madam President, the “most senior officer on” be deleted.

So, Madam President, we became very concerned. Why would the Executive, the Government, seek to amend an Order that was issued 24 hours ago where the Government recognized the importance of seniority as a principle for elevation in the police service. Why would the Government all of a sudden, Madam President, delete that in this new Legal Notice 278.

So, Madam President, I became and the Opposition became concerned about this. Why would the Government do such a thing? Because this is very serious business. You are talking about, Madam President, the police service and you are talking about the Commissioner of Police. I do not want to burden you with refreshing your memory but I want to let you know that there has been a pattern of conduct on the part of this Government in the past and now in the present to influence, interfere, manipulate, gerrymander the whole process as it relates to the

selection and the appointment of a Commissioner of Police and I dare say, Madam President, a Deputy Commissioner of Police. These matters had to go to court when we discovered what the Government was attempting. And, Madam President, I have two judgments before me: Justice Rajkumar, *Harridath Maharaj v the Attorney General*. There is the Balbosa case as well, there is the Justice Nadia Kangaloo case and the most famous case of all is the *Endell Thomas v the Attorney General* in 1982. That is the classical case of interference which begun then.

So, Madam President, you would recall when an independent service commission, Police Service Commission recommended a police officer to become Police Commissioner he was number one on the Order of Merit List. The list came to the Government in the House of Representatives and, Madam President, the Government rejected that individual, a fella called Deodat Dulalchan—yes, Dulalchan was rejected by the Government. And, Madam President, a process the Government engaged in in order to justify why this gentleman could not become Commissioner of Police. Thereafter, you recall that Stephan Williams was rejected in that exercise later, subsequent. And then you had a new Commissioner being appointed. The new Commissioner has come into being, now the new Commissioner has left. That is the last Police Commissioner, and now you have another one acting in his stead.

Madam President, so there is a pattern of conduct on the part of this administration to attempt to do whatever they can to influence through legalisms the independent constitutionally entrenched, quasi-judicial, autonomous Police Service Commission so that they can go in a direction that the Government wishes it to go.

So, Madam President, here we are, the Government has removed seniority. Madam President, what are the implications of that? If you are going to remove

seniority on the basis of elevation for someone to act in either the Office of Commissioner of Police or Deputy Commissioner of Police. Madam President, what is going to guide the Police Service Commission in determining elevation if on the basis of equality of qualifications, the basis of experience between two individuals who have the rank of Deputy Commissioner of Police but one of them is more senior to the other, the more senior one according to the Constitution, is supposed to be given the position or the green light to act as Commissioner of Police. But now, Madam President, in this Legal Notice 278 the Government has deleted and gutted seniority. What is the Police Service Commission to do? Who is the Police Service Commission to appoint, to act in the office of Commissioner of Police? Or in the event that the Deputy Commissioner of Police is out of the country who is going to be acting for that Deputy Commissioner of Police?

2.30 p.m.

Madam President, this approach by the Government is a recipe for confusion and chaos in the police service.

Hon. Senators: [*Desk thumping*]

Sen. W. Mark: That is a dangerous, disturbing, troubling and concerning matter that we need to address. Madam President, if I am a police officer and I am looking at the police service as a career path and I am operating in accordance with the Police Service Act, I am not allowing any politician to manipulate me. I am working in accordance with the law. My loyalty is to the law. My loyalty is to the Constitution. My loyalty is to the people. “Not to no Prime minister, not to no party”. And, Madam President, I have a chance to be promoted, to act as Commissioner of Police. You know what the Government is saying to Trinidad and Tobago and that police officer? You see your years of service in the police service? It does not matter any longer.

I can take a junior officer who has less service than you in the police service and because of these criteria that I have instructed the Police Service Commission to follow, Madam President, what it means is that myself as a career police officer will be bypassed and a junior police officer will take my stead because that junior police officer, maybe, Madam President—I am not saying is—maybe that police officer that is going to take his place and act as Commissioner of Police, he has a party card. He is loyal, Madam President, to the ruling party—whichever ruling party, be it the UNC, be it the PNM—and that person is given the green light, Madam President, to become Acting Commissioner of Police. Madam President, that is a recipe for chaos. You are going to demotivate the police and the police service.

We must operate by rules, Madam President. We cannot operate *vaille que vaille*. And what the Government is doing, Madam President, in this particular Legal Notice 278, is operating *vaille que vaille* and they are doing whatever they want to achieve—never forget, they are trying to achieve a particular objective and the objective is to select and to get the Police Commission to appoint a Police Commissioner of their liking so that the Police Commissioner will be able to dance to the drumbeat of the Prime Minister, whichever the Prime Minister, whoever is the Prime Minister, whichever party is in power, it does not matter. We are dealing with principles here, Madam President, not party. And whoever is in power as party we must obey the Constitution and the Police Commissioner is supposed to be independent of any political party and any Prime Minister. And that is the danger, Madam President, of this annulment to 277 through 278.

Madam President, I have looked very carefully as a bush lawyer. I have looked very carefully at our Constitution and, Madam President, when I looked at our Constitution I want to share with you and if you can follow me, Madam

President, I want you to go to what is called section 129(1) of our Constitution; 129(1) of our Constitution says and I read:

“Subject to subsection (3), a Service Commission”—which includes the Police Service Commission—“may, with the consent of the Prime Minister, by regulation or otherwise regulate its own procedure, including the procedure for consultation...”

So, Madam President, 129(1) says the Police Service Commission:

“...with the consent of the Prime Minister...”—shall make their own regulations.

Madam President, 129(1).

Madam President, I go to what is called the Police Service Commission Regulations. Follow me very carefully, Madam President, we go to the Police Service Commission Regulations. These regulations are appended to the Constitution. These regulations are part of the Constitution. These regulations came into being as a result of 129(1) of our Constitution. I am positing to you, Madam President, and to my hon. colleagues in this honourable Senate and to the people of Trinidad and Tobago, that no subsidiary legislation, no secondary legislation can trump our Constitution. I want to repeat, Madam President, no subsidiary legislation, which is what the Legal Notices are, can trump the supreme law of the land which is the Constitution of the Republic of Trinidad and Tobago. And any law that does that, in accordance with Part II of our Constitution, is ultra vires, it is void, it is illegal, it is unconstitutional and it should be annulled and withdrawn today.

Hon. Senators: [*Desk thumping*]

Sen. W. Mark: Madam President, let me edify this honourable House. Madam President, go to the Police Service Regulations which is constitutionally protected

under 129(1) of our Constitution and hear what it says under article 24(1) and (2). I read:

“(1) Where an acting appointment falls to be made otherwise than as a prelude to a substantive appointment, the”—police—“officer appointed shall—

(a) as a general rule be the senior”—police—“officer...eligible for such acting appointment;”

May I reread this, Madam President? What this is saying is that outside of a substantive appointment to the position of Commissioner of Police, any acting appointment falling under the jurisdiction of the Police Service Commission there is a general rule that it be done on the basis of the most senior police officer eligible for such acting appointment. And it says in (b):

“assume and discharge the duties and responsibilities of the office to which he is appointed to act.”

Madam President, it goes on in subsection (2) of 24 to state, and I quote.

“In...”—making—“an acting appointment...”—under subregulation (1)—“the Commission shall examine whether the exigencies of the...service would best be served by...”—appointing a police—“officer...next in line of seniority”—from another division—“to act when there is”—a police—“officer in the same...”—division—“who is capable of performing of the duties of the higher grade, and in such examination the question of additional Government expenditure for travelling and subsistence allowances and other expenditure shall be borne in mind.”

Madam President, the research has led the Opposition to this particular provision under the Police Service Regulations and Regulation 24 makes it as the former Prime Minister, not the Attorney General—I see some people giving paternity to

this expression to the Attorney General. It was the former Prime Minister, Patrick Manning, who talked about pellucidly—he always kept saying I want to make it pellucidly clear—Patrick Manning. Well, I want to borrow from him today. I would like on behalf of the Opposition to make it pellucidly clear, Madam President, that section 24 or you could call it article 24(1) and (2) of the Police Service Commission Regulations makes it abundantly clear, Madam President—

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

Sen. W. Mark: Yes. Thank you, Madam President—that the Police Service Commission has its own regulation and the Police Service Commission determines, when you deal with acting appointments, that a general rule shall be seniority. So no executive can bring subsidiary legislation to trump the Constitution and to trump, Madam President, what is called subsidiary legislation or to trump the Constitution. So that is our position, Madam President.

Madam President, if you go the Public Service Regulations and you look at what is called the prisons and the police—the fire rather, under the Public Service Regulations, if you go to article 26 of that, you go to (1), you have the same provision, a general rule for the senior officer in the Ministry. So wherever you turn, you are seeing the principles of selection for acting appointment must include seniority. So the Government never indicated to Trinidad and Tobago why they excised this provision. It is against that background that we have brought this measure and we call on the Government to annul and withdraw this matter.

Madam President, let me say in closing, it is for the Commission—that is the Police Service Commission—and the Police Commission alone to appoint, not only to hold office but to act in offices, police officers, not the Government, not the Executive. And that is well established in the Balbosa judgment, Madam President.

You also have to look at what took place in the Rajkumar judgment, Madam

President. Therefore, it appears that the Government of Trinidad and Tobago is labouring under the misapprehension as to who is truly responsible for appointing, promoting and providing persons the opportunity to act in positions and the Executive seems to be on a course to manipulate and try to direct the Police Service Commission in doing its work. Madam President, if you go to paragraph 76 of the judgment in Rajkumar, it is very clear on the role of the Police Service Commission and therefore, the principle of political insulation must be emphasized and that is what we are promoting and emphasizing in our Motion concerning Orders 277 and 278.

In closing, Madam President, I want to ask the Attorney General quite frontally, since the judgment of Justice Nadia Kangaloo to revoke and to make illegal and unconstitutional Legal Notice 103 of 2009 (No. 2) Order, what is to happen with all those illegal decisions taken between the period 2009 to October 14, 2021? Is the Government going to bring legislation to retroactively validate those illegal decisions or is the Government going to leave it hanging in the atmosphere so somebody might have to take legal action for any action that might have been taken between the period 2009 and 2021?

So, Madam President, these are some of our concerns as it surrounds this particular matter. We believe that the Government is on a course, Madam President, to attempt to further its ambition to manipulate. And in closing, Madam President, the AG must also let us know what has happened to Andre Norton whose notification came here and it never went forward. Let him clear the air on that. Madam President, with these few words on this very important matter, I would like to beg to move at this time. Thank you very much, Madam President.

Hon. Senators: [*Desk thumping*]

Madam President: Someone has to second the Motion.

Sen. John: Madam President, I beg to second the Motion and reserve the right to speak at a later stage.

Madam President: The Motion has been seconded by Sen. John.

Question proposed.

Madam President: Attorney General

Hon. Senators: [*Desk thumping*]

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):

Thank you. Thank you, Madam President. May I just enquire the speaking time in this House, please?

Madam President: You have 40 minutes.

Hon. F. Al-Rawi: Thank you very much. Madam President, I must say that Sen. Mark's contribution today was very measured and I certainly do relish the opportunity to join this debate because I think it is important that the *Hansard* reflects answers to the many questions put by Sen. Mark. It is not often that I say what I just said but I will tell you why I have said that this is a measured purpose. The Motion before us is properly before us pursuant to the Interpretation Act. It is pursuant to section 75(7) of the Interpretation Act where negating a subsidiary piece of law is within the purpose of our Parliament and therefore, with these Orders having been published as they were, we are properly here to consider whether the Parliament, as a whole, ought to consider that this subsidiary legislation is in some way tripping the Constitution of the Republic of Trinidad and Tobago.

Now, it would be proper to revoke Orders or negative them, as we say in the Interpretation Act, if the Orders were offensive to the Constitution. That is the test that we are here for. What inside of these two Orders, that is those Orders published by Legal Notice No. 277 and Legal Notice 278, are repulsive to the

Constitution of the Republic of Trinidad and Tobago? The Constitution of the Republic of Trinidad and Tobago that we are treating with, the sections of the Constitution, the material section—Sen. Mark alluded to them—is section 123 of the Constitution where we deal with the power of the Police Service Commission to embark upon a process prescribed by the Constitution to select a Commissioner of Police or a Deputy Commissioner of Police, or an Acting Commissioner of Police or an Acting Deputy Commissioner of Police. That is what section 123 does. The rule of law in interpreting the Police Service Commission’s role and function and, therefore, how we are to address these two Orders that we are looking at is to see what inside of these Orders may or may not be repulsive to the Constitution.

So let us start immediately by looking at the Orders. Legal Notice No. 277 is the Order made under the Constitution of the Republic of Trinidad and Tobago. It is made by the President pursuant to section 123(2) of the Constitution and the first paragraph 1 is the name of the Order or Citation. The second paragraph is the Interpretation:

“...this Order, ‘Commission’ means the Police Service Commission established under section 122...”

And then you have paragraph 3 and then paragraph 4.

Paragraph 3 is the “Selection process” that we must look at when we are looking for the offices of Commissioner of Police and Deputy Commissioner of Police. So paragraph 3 sets out that:

“(a) the Commission”—and only the Commission—“shall conduct a recruitment process, including inviting applications for the positions...advertising...”—the—“vacancy...”—it says

- (i) in...two daily newspapers...

- (ii) on at least three days within a period of seven days;
- (b) the Commission, from those applications received, shall select the most suitable candidates for the assessment process;
- (c) the Commission shall ensure that the candidates...are subjected to security vetting and recent professional vetting;
- (d) the Commission shall conduct the assessment referred to in paragraph (b), and shall have regard to—
 - (i) ...qualifications and experience of the candidate;
 - (ii) ...medical examination report; and
 - (iii) ...Security and Professional Vetting Report.
- (e) the Commission”—must—“then take into account all information on the candidates and thereafter establish an Order of Merit List indicating the highest graded candidate...”—and then a—“descending order...”—on the merit list.
- “(f) the Commission shall select the highest graded candidate...submit that candidate’s name to the President in accordance with the procedure set out in...123...”

What does 123 say? You need to bring the list to the Parliament, the nominee, and then there must be a debate in the House of Representatives and that candidate must be approved in the full glare of the Parliament part and, therefore, the nation.

It then goes on to say what happens when the Order of Merit List is exhausted and how you proceed. So let us look at paragraph 3 within the law. Number one, Sen. Mark is correct. The leading dicta coming from the Endell Thomas case is what guides us. In the Endell Thomas case, of course, we are treating with the very clear principle of making sure that we are protecting the process from political interference. That is the very reason why section 123 of the

Constitution was amended in 2006. Prior to the amendment in 2006, the Prime Minister enjoyed a veto in respect of the appointment of a Commissioner of Police or Deputy Commissioner of Police. But in Endell Thomas it is true to say that the whole purpose of Chapter 7 of the Constitution—and I am quoting from the Endell Thomas case:

“...which bears the rubric ‘The Public Service’ is to insulate members of the civil service, the teaching service and the police service of Trinidad and Tobago from political influence exercised upon them directly by the Government of the day. The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service.”

Fortunately for us, Endell Thomas establishing that.

We have had the benefit of two judgments of our court. The first is in the case of the Harridath Maharaj judgment which as we all well know was born as a result of a constitutional challenge to strike down the 2015 Order which we as a Parliament made. The Opposition, led by the Leader of the Opposition, approached the court to strike out the entire 2015 Order on the ground that it was ultra vires or offensive to the Constitution. The court did not agree with the fulsome submissions. The court upheld the constitutionality of the 2015 Order. The court did declare that certain sections of the Order were ultra vires: number one, the direction that the Minister start the process by asking the Police Service Commission to do what it should, that was removed by way of the judge amending the law; number two, the use of the Central Tenders Board Act, section 20A provision was struck out. Those are the only two substantive reasons that fell in the

Harridath Maharaj case.

In that case it is important to note that the court upheld the constitutionality of the 2015 Order. And why is that relevant? Because the 2015 Order finds itself in large part in paragraph 3 of Legal Notice No. 277. If you do a comparison of the wording between paragraph 3 of the 277 Order, which Sen. Mark says we ought to strike down today by negating it, and you compare the Harridath Maharaj judgment you will note that there has been only a simplification and no deviation away from that wording. So therefore, we are within constitutionality. Why do I say that? Because of the second judgment. The second judgment is the Ravi Balgobin-Maharaj case. Our colleague, Sen. Lutchmedial, participated in that case and would know, as did I participate as Attorney General as the defendant in that matter, the Ravi Balgobin-Maharaj case in the challenge in the court, that Legal Notice passed by this Government and upheld by this Senate was not challenged on the basis of constitutionality.

In fact, the claimant, Ravi Balgobin-Maharaj, went to the High Court and said, "This Legal Notice is perfectly correct." They asked for the appointment of Commissioner Griffith to be revoked on the basis that essentially there had been a failure by the Police Service Commission and the Office of the President to have an affirmative resolution of the appointment. They did not challenge the constitutionality of Legal Notice 183. In fact, that is very relevant to this debate because paragraph 3 of Legal Notice No. 277 repeats the substance of the Legal Notice 183. That is what it does. So if we look to Sen. Mark's invitation that we are to annul, negative, Legal Notice No. 277, paragraph 1 is in perfect order, paragraph 2 is in perfect order, paragraph 3 has been upheld in effect by the judgment in Harridath Maharaj, Mr. Justice Peter Rajkumar as he then was, and secondly, by the dicta confirming the constitutionality in the Ravi Balgobin-

Maharaj case where Madam Justice Nadia Kangeloo upheld the constitutionality of Legal Notice 183, which is the Legal Notice that finds itself in paragraph 3 of this Order.

The next paragraph to look at is paragraph 4 of this Order. Paragraph 4 of this Order says:

“(1) Notwithstanding clause 3, the selection process for acting appointments to the office of Commissioner of Police shall be as provided in this clause.”

And 277, this Legal Notice, went on to establish:

“(2) For the purpose of acting appointments to the office of Commissioner of Police, the Commission shall establish and maintain an Order of Merit List which shall list, in descending order of seniority, the officers who—

- (a) are holding or acting in the office of Deputy Commissioner of Police or Assistant Commissioner of Police; and
- (b)” who—“possess the qualifications and experience required for the appointment...”of—“office of Commissioner of Police.”

In the circumstances:

“(3) Where—

- (a) the Commissioner is or is likely to be—
 - (i) absent from Trinidad and Tobago;
 - (ii) on vacation leave; or
 - (iii) unable by reason of illness or other reason to perform the functions...”

3.00 p.m.

“the Office of the Commissioner of Police is or is likely to become

vacant,

the Commission shall select the most senior officer on the Order of Merit List and submit that officer's name to the President in accordance with the procedure set out in 123 of the Constitution.

Where, in relation to subclause (3), the House of Representatives does not approve the most senior officer on the Order of Merit List..."—et cetera, you go ahead.

Now, the very next Legal Notice that appears is 178 and 178 amended what I have just read out in 277 by removing references to the "most senior officer" and let me explain why that was done. It is a fact that the Acting Attorney General Minister Young—

Madam President: Sen. Thompson-Ahye, you are asking the Attorney General to give way?

Sen. Thompson-Ahye: I just want to ask him—

Madam President: No, I think he has to consent first. Attorney General.

Hon. F. Al-Rawi: Sure. I have very little time so could the hon. Senator ask a quick question?

Sen. Thompson-Ahye: You said 178, I am asking you: Do you in fact mean 278?

Hon. F. Al-Rawi: I thank you. 278.

Sen. Thompson-Ahye: Thank you.

Hon. F. Al-Rawi: So after 277, 278. So, the 278 Order removes the reference to senior officers and let me explain why. Minister Young, acting as Attorney General, did take the note to Cabinet in my absence. Upon my return, the very night that this was published, Minister Young and I had a conversation and I referred him to advice that the Office of the Attorney General has that this particular reference to seniority in Senior Counsel's considered opinion, counsel

advising us as he has, the reference to seniority would constitute an unfair fetter or undue fetter upon the discretion of the Police Service Commission. Let me explain why. The Harridath Maharaj case established—as has many cases, Cooper and Balbosa, et cetera, et cetera—that there must be an absolute discretion in the hands of the Police Service Commission.

If we look to the 2009 Order which paragraph 4 is intended to put into life, you must remember in the Ravi Balgobin Maharaj case, the claimant via his attorneys sought to rely upon the 2009 Order as being constitutional. It is in paragraph 40 of their fixed date claim. As Attorney General, I accepted the submissions of the claimant that the appointment of Griffith should have come to the Parliament for affirmative resolution. The judge starts her judgment by saying quite remarkably the Attorney General agrees with the claimant, but I drew to the court's attention that the 2009 Order was, if we look at the law again, if you look at the 2009 Order, it was ultra vires the Constitution because it granted to the Police Service Commission the ability to appoint a Commissioner of Police to act without reference to the Parliament and therefore in defiance of section 123 of the Constitution. I was compelled with that issue being raised to consider it.

Now, is this a case where everybody agreed? No. The Police Service Commission, via very eminent counsel Mr. Russell Martineau, did not agree with that position; held the view that acting appointments are different from substantive appointments; held the view that it would be obscene to ask somebody to have moved the Parliament to be appointed for one day if the Commissioner was out of the country. But the point is, the case that came before Madam Justice Kangaloo raised for first time the procedure for an acting appointment. And the 2009 Order which paragraph 4 of this Legal Notice as amended, Legal Notice No. 277, paragraph 4 deals with what was in Legal Notice 103 of 2009 which was struck out

by Justice Kangaloo because she agreed with the Attorney General's submissions that that Legal Notice No. 103 of 2009 which allowed the Police Service Commission to appoint a Commissioner of Police to act without reference to the Parliament, that that was ultra vires.

Now, Sen. Mark asked a very important question. So for 16 years, we had—15 years, we had the position of the 2006 amendment to the Constitution. From 2009, successive governments—a PNM Government, a UNC Government, a PNM Government—saw hundreds of acting appointments made pursuant to the Legal Notice No. 103 of 2009. Those appointments are in law deemed to be valid, notwithstanding the strikeout of the notice by way of operation of law and therefore, the advice is that there is no need to bring validating legislation to cure those facilities because the law will take care of the validity of the actions taken.

It is important to note that Ravi Balgobin Maharaj, that case, in the arguments in that case, as it is clear in the fixed date claim form, counsel and senior counsel for Ravi Balgobin Maharaj did not share the view that Legal Notice No. 103 of 2009 was unlawful, but the court obviously and correctly agreed that it was. So paragraph 4 treats with the replacement of Legal Notice from 2009, it says that you must allow ACPs, Assistant Commissioners of Police and DCPs, Deputy Commissioners of Police, the ability to act in the Commissioner of Police, provided that they meet the criterion which is set out by way of Legal Notices that are in effect that you have a degree, et cetera, et cetera, is prescribed and that is solely for the Police Service Commission to consider who is the most appropriate person to act from that pool of people.

Why is the reference to the regulations of seniority not appropriate? Number one, if we were to direct in law for the first time that you had to go by way of seniority, the 2009 Order does not provide for seniority. The 2009 Order says:

“The Commission, may, as it thinks fit, appoint to act in the office of Commissioner of Police, a person holding or acting in the office of Deputy Commissioner of Police where—

- (a) the Commissioner is absent...
- (b) ...the office...is vacant...”

There is no reference to seniority here. If we were to include a reference to seniority, as Legal Notice 277 did, we would be fettering the discretion of the Police Service Commission, the Harridath Maharaj case, the Ravi Balgobin Maharaj case, the Cooper and Balbosa case and umpteen cases, the Endell Thomas case, all set out that the discretion of the Police Service Commission is to be unfettered. If we were to adopt the fettering of the Police Service Commission’s discretion by mandating that it must appoint the most senior person, we would be ultra vires the decisions of the Constitution and the decisions of the court. It is as simple as that.

The reference to the Police Service Commission regulations having been made by Sen. Mark as he correctly put on to the record, where there is reference to seniority, Sen. Mark is correct. Those regulations which are subsidiary to the legislation and certainly inferior to the constitutional provisions of section 123, they can stand apart from itself but these Legal Notices, 277 and 278, spring from the Constitution itself and these Legal Notices cannot incorporate a fetter upon the discretion of the Police Service Commission by mandating that the most senior person must be appointed by the Commission. After all, is it not logical that there could arise a situation where there are multiple Assistant Commissioners of Police, multiple Deputy Commissioners of Police and that the best person ought to be appointed for the job? That is the role and functionality of the Police Service Commission. Not to simply pick the person who has been in the job the longest.

The person who has been in the job the longest may not be the best person for the job. And therefore, to accept the submission that these Legal Notices are nefarious, are improper, are ultra vires, is to accept a submission which must be rejected most respectfully.

I am grateful to Sen. Mark for raising this issue and the many sub-issues that have flown from his contribution because it allows for ventilation. This is the reason that section 77 of the Interpretation Act exists; why a motion to negative can be brought, so that there is ventilation. In fact, if you look to the dicta, you will see that it is these kinds of processes, motions such as this that bring our democracy to life. So I do warmly accept the debate on this occasion but I must draw the distinction that we ought not to confuse the subsidiary legislation of the regulations, the Police Service Regulations with these Orders which flow from section 123 of the Constitution because the purpose of these Orders, 277 and 278, are the following.

Number one, so that we can harmonize what the law is without having to go and read amendments. Why? Justice Kangaloo, in her wisdom, made a decision which we did not appeal even though we could have as to part of it, Justice Kangaloo's decision upheld the constitutionality of Legal Notice 183. The honourable judge, in quite an unusual ground, it is not known to me certainly and to attorneys, declared that a certain part of that Legal Notice was superfluous. That it is not a term that is recognized. That was the ground that we could have appealed but because the judge had effectively amended Legal Notice 183 saying that look, the last paragraph was not necessary because the body takes care of it, we would have put the Parliament in a difficult position of having to read the notice without it being amended.

Secondly, because the court struck down Legal Notice No. 103 of 2009,

declaring it to be unconstitutional at the request of the Attorney General by the direction of Her Excellency the President to raise the issue in court, we would be in the position where we would have to go and read several pieces of law. So the intention in publishing Legal Notice 277 as amended by 278 is number one, to have one law available for the public to consume, attorneys to consume, the court to consume. Number two, it is intended to replicate what has been upheld as constitutional, that is paragraph 3 of Legal Notice 277, that has been determined by the case of Harridath Maharaj and the Ravi Balgobin Maharaj case, that is good law. The last point is in relation to paragraph 4. It is intended to bring to life the method for acting appointments that Legal Notice 103 of 2009 dealt with but because that was struck down as being unconstitutional, we are compelled therefore to put it into the body of the law.

Now, hon. Senators, it is a fact that the mandatory requirement that acting appointments must be done by way of an affirmative resolution of the House is difficult. In fact, it is obscene in certain circumstances because it means that if somebody has to act for a day, you have to move the House. What is required ultimately would be a constitutional amendment to section 123 to allow for short-term appointments without moving the Parliament. That will require a constitutional majority; that will require a significant discussion. As yet, we are not in a very warm place where we have had submissions accepted by the Opposition but that is a conversation that will be had because section 123 of the Constitution certainly does require an amendment by way of constitutionally supported majority legislation to cause acting appointments to be made in circumstances where it is reasonable, one day out, one week out, et cetera.

So, Madam President, this is an important debate. I thank the hon. Senator for raising this issue. The summary submissions are quite clear. This is certainly a

position where we understand that the law continues to evolve and to work. After all, Legal Notice 103 of 2009 stood for years, hundreds of acting appointments were made on the back of it. The claimant in that matter represented by Mr. Ramlogan and Sen. Lutchmedial, they in their fixed date claim form upheld the constitutionality of Legal Notice 103. It is in paragraph 40 of their fixed date claim form. The court has now ruled that that is not proper.

Madam President, that is what our Constitution is there for. It is a living, breathing, working mechanism. That is what our courts are there for, to interpret the law within the separation of powers and due process principles. This is par for the course. In the same way, we expect judgments from the Privy Council shortly on some very important matters. For instance, the savings law clause section 6 which the Chandler case will treat with, this is what the law is about.

Madam President, these Legal Notices 277 and 278 are properly *intra vires*. They are constitutionally in the right place. They simplify the law insofar as they repeat what has already been approved in judgments of our own High Court to be good law. They bring to life the methodology for acting appointments. We cannot include the seniority reference because that will be a fetter on the discretion of the Police Service Commission making it unconstitutional. It was only upon my return to the country that I was able to address that issue with the acting Attorney General who shares the same view that I do and we immediately corrected it, in fact, overnight upon my arrival. That is how a Government works. We sit and we make sure we check all of the angles and I wish to say to hon. Senators that I genuinely believe that we have safe law before us. I thank Sen. Mark for raising these issues on the Parliament floor and I thank you for the opportunity to contribute.

Hon. Senators: [*Desk thumping*]

Madam President: Sen. Vieira. No? Sen. Thompson-Ahye.

Sen. Hazel Thompson-Ahye: Thank you, Madam President, for this opportunity to speak on the Motion brought by Sen. Wade Mark to annul two Orders, namely Legal Notice 277, the Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No.2) Order, 2021, and Legal Notice 278, the Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No. 2) (Amdt.) Order, 2021. Now, these Legal Notices replace Legal Notice No. 103, the Commissioner of Police and Deputy Commissioner of Police (Acting Appointments) (Selection Process) (No. 2) Order, 2009, and Legal Notice No. 183, the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2021. The genesis for these Legal Notices 103 and 183 being supplanted was there being deemed invalid by Madam Justice Kangaloo in her judgment delivered on October 14, 2021. I will return to this judgment subsequently.

Madam President, the offices of Commissioner of Police and Deputy Commissioner of Police are extremely important public offices. As such, the officeholder should not only be qualified by academic qualifications and requisite experience but must be guided by the highest principles, highest ethical principles which pertain to all office public holders and in this regard, I commend for emulation the Nolan principles created in the UK by Justice Nolan chaired committee and these are the seven principles of public life namely: one, selflessness; two, integrity; three, objectivity; four, accountability; five, openness; six, honesty; and seven, leadership. On another occasion when we debate another issue, I may expand on these principles.

Now, Madam President, I do not think for a moment that there is anyone in our country who would not wish that the best person be appointed to the offices of Commissioner and Deputy Commissioner of Police. What we also require and

deem just as important is that the correct procedures be followed in the appointment process. We want, we need an effective and efficient police service. One that protects and serves us not in name only, but in reality. One that makes us feel safe. One that does not cause us to have difficulty in determining who is police and who is thief, who is criminal posing as police and who is not only upholding the law but is a law-abiding citizen and who engenders in the citizenry trust and confidence.

Now, the powers given to the Commissioner of Police are enormous. When we look at section 123A of the Constitution, we see that:

- “(1) ...the Commissioner of Police shall have the complete power to manage the Police Service and is required to ensure that the human, financial and material resources available to the Service are used in an efficient and effective manner.
- (2) The Commissioner of Police should have the power to—
 - (a) appoint persons to hold or act in an office in the Police Service, other than an officer referred to in section 123(1)(a)...”—which is the top positions—“including the power to make appointments on promotion and to confirm appointments;
 - (b) transfer any police officer; and
 - (c) remove from office and exercise disciplinary control over police officers, other than an officer referred to in section 123(1)(a).”

So we really have placed in the hands of the Commissioner some onerous functions.

What many must be wondering though is why over the years this appointment process for a Commissioner of Police and his essential Deputy has been so problematic, so categorized by confusion, engendered so much frustration

and occasion more change than a 24-hour lizard. As testimony to my view of our country and indeed of all countries on the importance of the offices of Commissioner and Deputy Commissioner of Police, the drafters of our Constitution created and our Parliament enacted special provisions for appointment to these positions. One would have thought that that would have been the end of the story as is the case in most jurisdictions but we are a special country.

The Constitution of the Republic of Trinidad and Tobago under section 122 creates a Police Service Commission to be appointed by the President after consultation with the Prime Minister and Leader of the Opposition. It confers on the Police Service Commission the power to nominate persons qualified and experienced in the disciplines of law, finance, sociology or management to be appointed as members of the Police Service Commission. This provision guides the President in her selection process. She cannot go outside of these parameters; she must act in accordance with them. This is what the Privy Council opined in a decided case in respect of another service commission and another President referred to earlier by Sen. Mark I believe.

The Constitution further provides for the President to issue a notification in respect of each person nominated for appointment. This notification is subject to affirmative resolution of the House of Representatives and once the House approves the notification, the appointment is made. Under section 123(1)(a) of the Constitution, the Police Service Commission is given the power to, among other things, appoint persons to hold or act in the offices of Commissioner and Deputy Commissioner of Police. It also empowers the Commission to remove from office and exercise disciplinary control over persons holding or acting in the offices specified above.

Under section 123(2), the Police Service Commission nominates persons for

appointments to the offices of Commissioner and Deputy Commissioner of Police in accordance with the criteria and procedure prescribed by order of the President subject to negative resolution of Parliament. I must emphasize here that the criteria and procedure are not specified in the Constitution. What the Constitution does is require that these must be made by order of the President and be subject to negative resolution. Section 123(3) of the Constitution requires the Police Service Commission to submit to the President a list of names of the persons nominated to the offices of the Commissioner or Deputy Commissioner of Police. Section 123(4) requires the President to issue a notification in respect of each person nominated under subsection (3). This notification is in turn subject to affirmative resolution of the House of Representatives.

Now, when I come to section 123(5), I think it is a very important provision and I wonder somehow if it escaped the Mover of the Motion because that section 123(5) stipulates that:

“The Police Service Commission...appoint the Commissioner or Deputy Commissioner...”

But, and I emphasize:

“only after the House of Representatives approve the Notification in respect of the relevant office.”

So one must ask: Where does power lie? The words “only after”, what do those words mean?

Over the years, we have had several Orders made by the President under section 123 of the Constitution, to name a few, we have had Legal Notice No. 103, Commissioner of Police and Deputy Commissioner of Police (Acting Appointments) (Selection Process) (No. 2) Order, 2009, which dealt with acting appointments, now revoked; Legal Notice No. 218, the Commissioner of Police

and Deputy Commissioner of Police (Selection Process) Order, 2015. We have had Legal Notice 2019, Appointment of Commissioner of Police and Deputy Commissioner of Police (Qualification and Selection Criteria) Order, 2015. We have had Legal Notice No. 183, the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2021; Legal Notice 277, the Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No. 2) Order, 2021 which is engaging us today; Legal Notice 278, the Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No. 2) (Amdt.) Order, 2021. I am not claiming that this is an exhaustive list but these were some attempts to fulfil the requirements of section 123(2).

Now, some, as the judge's rulings show, have not been in accordance with the requirements of the law and arose out of a misinterpretation of the law. Some have had to be carefully considered and really what has happened over the years is that—in fact, in the last few years, is that they seem to give a particular order a perception of being ad hominem to facilitate the flavour of the day but as these things go, when taste changes or indigestion steps in, we may have to change our diet even when the popular view is that it is the best thing since slice bread because we are looking for the best in the particular circumstances that we are.

So in the High Court case that I referred to above, there was—what the court had to do is to interpret the Constitution of Trinidad and Tobago as it relates to this whole process. So we heard about the application of Ravi Balgobin Maharaj and we had interested parties like the Attorney General and the Commissioner of Police entering into the debate. At the end of the day, what did the judge rule? The judge ruled that it is declared:

“That upon the true construction of section 123 of the Constitution of the Republic of Trinidad and Tobago, the procedure for the appointment of a

person to the office of Commissioner of Police and Deputy Commissioner of Police set out in section 123(2) to (5) applies to the appointment of persons”—not only to substantive positions but—“to act in the Office of Commissioner of Police or Deputy Commissioner of Police at any time when the office of the Commissioner of Police or Deputy Commissioner of Police is vacant or the holder thereof is unable (whether by reason of absence or infirmity of mind or body or any other cause) to perform the functions of that office;”

3.30 p.m.

“It...declared that the appointment of Mr. Gary Griffith to act as Commissioner of Police from 18th of August 2021, is void and unconstitutional as being contrary to section 123 of the Constitution.

It declared that the Commissioner of Police and Deputy Commissioner of Police (Acting Appointments) (Selection Process) (No. 2) Order, 2009 is unconstitutional and void being contrary to or ultra-vires the provisions of section 123 of the Constitution.

It”—also—“declared that paragraph 4 of the Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No. 2) (Amendment) Order 2021 is superfluous and...struck”—it—“out in light of the provisions of section 123 (2)-(5) of the Constitution.”

Paragraph 4 of Legal Notice No. 183 reads as follows:

“Where either the post of Commissioner of Police or Deputy Commissioner of Police is vacant, or is about to become vacant, the Commission may submit to the President a list of suitably qualified persons from among the ranks of the Police Service, including those on contract or previously on contract, as nominees to act in the offices of Commissioner of Police or Deputy

Commissioner of Police, pending the conclusion of the procedure prescribed in paragraph 3.”

The Government’s response to fill the void occasioned by the nullification of those Orders was the enactment of Legal Notices 277 and 278 and these latter Notices are what Sen. Mark has brought this Motion to have the Senate annulled.

I have looked at the whole situation very carefully and at the end of the day, I ask myself, is there a need to annul these latest orders? In what way have they failed to comply with a constitutional remit? Have they significantly diminished the role of the Police Service Commission? I looked at 277 and I looked at the selection process, which really, I see is a very important remit of the Police Service Commission and I ask myself, are these things happening? When you look at 3 (1) of 277 it says:

- “(a) the Commission shall conduct a recruitment process, including inviting applications for the positions by advertising each vacancy—
 - (i) in at least two daily newspapers circulating in Trinidad and Tobago;...
 - (ii) on at least three days within a period of seven days;
- (b)” that—“the Commission, from the applications received, shall select the most suitable candidates for the assessment process;
- (c)” that—“the Commission shall ensure that the candidates referred to in paragraph (b), are subjected to security vetting and recent professional vetting;
- (d)” that—“the Commission shall conduct the assessment referred to in paragraph (b), and shall have regard to—
 - (i) the qualification and experience of the candidate;
 - (ii) a medical examination report; and

(iii) the Security and Professional Vetting Report;”

Now, at the end of the day, I have heard suggestions that it was wrong to remove the seniority. But anyone who has been in fact in management, anyone who has been an employee who has been in the working world for a long time, must realize that seniority and sticking to the principle of seniority is what has created a lot of problems over the years, both in the private sector and in Government bodies. You have people who are there, they are given a position because they are the most senior and the organization does not progress. It happens in the teaching service as well, you have somebody appointed and nothing happens to move the school forward. When you remove that person out—I spoke about it in a particular situation in another budget, immediately, you see the changes that can happen.

So the most senior person is not—that is not the best criterion for appointment, and really to be hamstrung by saying we must have that person who is the most senior to act in a particular way, to occupy a position—not a position, really, I do not accept that. I can give examples but some of these are personal and I would refrain from them on this occasion. But we have to be very careful.

I heard it said today that this is a recipe for disaster, I have heard is a recipe for chaos and I do not see the disaster, I do not see the chaos and I wondered where those recipes came from. Surely somebody is not as good as I am and using the wrong recipes or not getting the correct mix to produce a well—a delicious dish, something that can nourish and really send our society in the direction that we want it to go.

I heard “my loyalty is to the Constitution” and I go back to the Constitution, where the Constitution says, and the words 123(5):

“(5) The Police Service Commission...appoint the Commissioner or Deputy Commissioner”—but—“only after the House of Representative approves the notification in respect of the relevant office.”

Does that provide the Police Service Commission with the last word? Can that be interpreted to mean that one must go with exactly the list—with exactly what the Police Service Commission has put before us or, is it that these words mean something only after the House of Representatives approves the notification in respect of the relevant office?

So, Madam President, try as I might, in all the circumstances, and I have tried, I find that I cannot, having read the law, having read the Constitution, and with my experience, I cannot support this Motion to annul these orders. I thank you.

Hon. Senators: [*Desk thumping*]

Madam President: Sen. Roberts.

Hon. Senators: [*Desk thumping*]

Sen. Anil Roberts: Thank you, Madam President. Having spent my entire life in competitive sport, maybe I am naïve but I truly believe respect and honour, the longstanding global tradition of fair competition, let the best prevail, work hard, be disciplined, strong minded, push yourself to the max, respect the result of a fair, equitable, impartially judged competition. So observing, analyzing, researching, debating the various levels of executive overreach, intervention, interfering, interfacing, and influencing the process for the appointment of an independent Commissioner of Police by the independent Police Service Commission has left me baffled, bemused, bewildered and embarrassed for the Members of the PNM Government who have been involved in this process, shame on them all.

The PNM seeks to control. As I prepared for this debate, a statement made in this Senate by the hon. Independent Sen. Vieira, as we debated and discussed the committee stage, a Bill to create boards and a corporation for NAPA and SAPA. The Independent Senator noted, why so much Ministerial control, too much control, why you want to control, let qualified people do their jobs, select them and let them flourish. Those words just kept hitting me as I went through and analyzed this process, control, control, control. I picked up my Constitution, 1976 Edition, Republican Constitution, and I tried to see what was the spirit of the law, because we talk about section 123(2) and the Government is trying to attempt to say that what they are doing is normal, and fits in and it is not unconstitutional.

But when I read my Constitution and try to think about the spirit of the law, the spirit of the Constitution, the spirit of democracy and the spirit of freedom, I see it being trampled upon on every avenue. I do not share the view of my former Independent colleague, because I can see it throughout, from the preamble of this Constitution to different sections, elements that have taken place to bring us here, to discuss or debate Legal Notice 277, Legal Notice 278 and to void it and annul it. The mere fact that we are here shows that something is awry, it is a lot of effort, a lot of time, a lot of energy, a lot of intellectual capital being wasted, as our people need us to focus on laws that will assist them, protect them and keep them safe.

A Constitution created a democracy that we believe we have and one of those tenets is the separation of powers. Separation of Powers is critical for a democracy, so that the executive branch can control certain aspects of life, make decisions that the Government, a Cabinet, may believe are in the best interest of the people. But there are checks and balances, that an independent institution like the police, is a critical element of a democracy and must not be tampered with in any form or fashion. And the mere fact that we are here today, and we can go

cumulatively to say that over one week of debate, discussion, parliamentary time has been spent on ins and outs, changes, manifestations, drafts of orders, pulling back Orders, amendments to Orders all to impact a process that should be independent, that alone should give us all time to pause.

Democracy is on one end of the continuum of political systems, the other end is authoritarianism. And we in Trinidad and Tobago are in a dictatorship, masquerading as a democracy. I read and I recall reading *The Great Political Theories* edited by Michael Curtis, on page 222, where Burckhardt, the German political thinker, spoke about force and freedom and when I read this, I was in shock this was written analyzing political institutions and geopolitical positions and democracies, and leaderships and Government back in the 19th Century, and he said, and I quote:

The growth—Burckhardt, Force and Freedom. The growth of the power of the state.

In the 19th Century, it might have appeared as if the state were merely a police force, protecting this multitudinous activity, i.e. industrialization in England, world trade extension of colonialization, et cetera, which at one time looked at the state—to the state—for cooperation in many directions but ultimately only required of it, the abolition of restrictions. And on the other hand, the state as independently of all this development, as the temporary circumstances permitted, proclaimed its power as a heritage to be increased with might and main whatever possible. It reduced the rights of the ties. It reduced the rights of the lower orders to a mere fiction. There were and still are dynasties, bureaucracies and militarism, which are firmly resolved to establish their own programmes and not to submit to dictation. At the same time, political thought claims for the state an ever increasing

and more comprehensive power of coercion so that, it may be in the position to put into practice the completely theoretical political programmes which political thinkers periodically draw up, the most turbulent individuals demanding the most extreme control of the individual and the community.

And here we are today, seated here debating legal notice after legal notice amended legal notice, merit list, collapse of a police service commission, appointment of a new police service commission, throwing out and discarding of a merit list to create a new one all with the underlying thread of control.

You know, I am a sports fan so allow me to put this into sports terms for the people to understand what is taking place. Because sometimes when you talk about legalese and Constitution, the people get lost but when you break it down for them they can understand it. It is as if we are all in a stadium. The whole population is watching with great anticipation a football—a match. It is the 85th minute of the championship match and the VAR is checking the last play by the great striker Double G. Did he handled the ball deliberately, or did the ball play his hand? The VAR checks the result and they said it was not deliberate so they leave this big striker Double G in the game based on merit of the review. The crowd is excited, and play is about to resume. All of a sudden, the gaffer, the manager raises his hand, signaling to the referee to stick a small pin in the game to pause, he calls for substitution.

Star Boy Johnny is to come off the field and in comes the main man that the gaffer has faith in, he has been substituted to all positions over the season. He played from goalie, to striker, to defender, to forward, to water boy, to physio. He dances his way onto the field—comes in this superstar that has the confidence of the gaffer and in the most unorthodox manner, right footing, then left footing, straight up to the referee. He is talking to the referee and the entire crowd is

watching and wondering, what could this conversation be. All of a sudden the referee decides he is going to review that last play, he makes the signal for his VAR review and he himself runs across to look at the video as the game—and this results in the changing of the rules as the game is going on. After checking the VAR, the referee who had already ruled comes back and sends Double G off the field, he changes his decision based on a discussion with the substitute who came in. He takes the small pin out and resumes the game with 10 players on the field, leaving the whole crowd helplessly confused, literally at a loss.

And this is what is taking place in Trinidad and Tobago. We have a system and a process and the rules are being changed while the game is still going on and yet it is not a game. It is very serious business that impacts the lives of our citizens that we are entrusted with keeping the care of, presenting them with a system that creates the opportunity for safety and security and upholding the Constitution throughout. But yet today, I come here and I could not believe because we are seeing a situation where an Acting Attorney General revokes the Order drafted by the substantive Attorney General and today the substantive Attorney General tries to defend the Acting Attorney General's Legal Notice; quite amazing.

We are here now all of a sudden debating that seniority has no place. But what is seniority? The whole concept of seniority was based on merit, because it would assume—one would assume that promotion through a police service or an army in forces that exists with ranks that one would be promoted and become senior due to good performance, based on merit, and they move up in the ranks. Now, all of a sudden we are here debating that this Government, this PNM Government believes that “seniority” is not a criteria therefore, the historical promotion process throughout the police service is negated and debunked and therefore, one's track record for decades is ignored and can we approve this and

why is this necessary? Why change the rules of the game while the game is still going on? The constitutional crisis which enveloped this country for weeks on end came about from a weak position that led to a weakening of the Constitution for weeks and weeks, making the police service weak in the face of a growing crime monster. This weak argument may appease—

Madam President: Sen. Roberts, I just want to draw your attention that you are treating with the Motion brought by Sen. Mark to annul the two Legal Notices, but what you are now embarking on, you are straying from Sen. Mark's Motion, so I will ask you to come back to it please.

Sen. A. Roberts: Thank you very much, Madam President. This weak argument may appease Sen. Paula Gopee-Scoon, who is the Minister of Trade and Industry, it may be weeks before the president of the police welfare association condemns this process in May weeks away. The preamble to the Constitution of Trinidad and Tobago used to oust an incumbent UNC Government to install another PNM Government by a President who was personally motivated so to do—

Madam President: Sen. Roberts, I ask you, please, to heed my advice and deal with the Motion at hand. Please.

Sen. A. Roberts: Thank you, Madam, I am dealing with the Motion and the constitutionality as brought into the discussion about the Orders, Ma'am.

Madam President: Well, Sen. Roberts, I have asked you to please try and be relevant to the Motion. So clearly, I am not of the view that right now you are being relevant. I would ask you please to confine yourself to the matter at hand.

Sen. A. Roberts: Thank you, Ma'am. The Motion we are here to do today is to annul the ordered Legal Notice 277 and 278 amended to impact the independent process of the Police Service Commission. Sen. Mark and the United National Congress believe that these legal notices and the quagmire and imbroglios that

brought us to this position are and go against the Constitution which is the supreme law of the land. The preamble of the Constitution states at section (a)—

“...a society of free men and free institutions...”

—is what we want to create here in Trinidad and Tobago. But yet the PNM has started to change this, especially in this version of the PNM, to take control where the Ministers control the TTRA, the Revenue Authority, appoint the board, appoint the investigator general, appoint all the directors general. They are putting doctors on boards and influencing independent institutions through promotion and profit based on appointments to executive positions.

We saw in the economic zones that there were interests of the power of the Minister, whatever Minister is in charge to determine conditions for businesses. In the NAPA and SAPA corporate bodies, even Sen. Vieira had to talk about the control—

Madam President: Sen. Roberts, Sen. Roberts.

Sen. A. Roberts: Yes Ma'am.

Madam President: Please, you are embarking on debates that have been concluded and you are also making—you are not linking anything that you are saying, you are speaking very generally and you are not linking anything to the two notices that Sen. Mark has sought to annul.

Sen. A. Roberts: The two notices that Sen. Mark wants annulled. It is the position of the United National Congress that these are ultra vires, that these go against the Constitution, that they should be annulled and rejected because they infringe upon the rights of the people of Trinidad and Tobago through their incongruous nature to the Constitution. I have just shown by section (a) of the Constitution and now by section (b) of the preamble which states:

“...there should be opportunity for advancement on the basis of...merit, ability and integrity...”

Merit and ability. We are seeing that in these two legal notices, one, merit of all citizens who were not in the institution of the police have been negated and they will not be due for selection as contract workers. People on contract would not be considered for the substantive job nor to act and that eliminates all a lot of qualified citizens in the Republic of Trinidad and Tobago, which before these notices could have applied.

Secondly, the amendment, Legal Notice 278 removes seniority and seniority is, in essence, a merit based system because coming through the ranks one receives promotion because of performance, discipline, hard work and ability. To remove seniority in Legal Notice 278 goes against section (b) of the preamble of the Constitution. And this was used to thwart a merit list simply because the Member or the leader of the executive arm of the Government, where we operate in a democracy, where there is separation of powers lost confidence in our human being.

Ability matters not to the PNM, simply look at the PNM Cabinet, scholarships have been made, it turned and transformed into bursaries. Scholarships are based on merit, bursaries are based on subjective processes and decisions. Financial institutions in Trinidad and Tobago with long standing track records lose tender after tender under this PNM Government to—

Madam President: Sen. Roberts, you were on the right track and now you have gone off again. So I would ask you to get back on the track. Okay?

Sen. A. Roberts: Thank you, Ma'am. I am showing that merit, merit is part and forms part of the Constitution of Trinidad and Tobago, as it is in the preamble and throughout, and that this Government in its decisions, not only in Legal Notice 277

and amended 278 but in other decisions has shown that their track record is to remove merit and create a different system of political control throughout, through their policies, through the practices, through contractors, through contractors who are subcontracted to build central blocks at the hospital in Port of Spain and the contract has collapsed because of that, and it goes on and on. Merit is a very important part of Trinidad and Tobago, and merit should form a part of all of us who are here.

I could remember in 1988, for example, I was playing national under 19 football training, and they were selecting the team and cutting it down to 18. Some members of that team were Dwight York, Colvin Hutchinson, Conner Hislop, coming down the line. I was unable to make the final 18 so I decided to go back into swimming. I got into the pool and I trained and I made the national team for the CARIFTA championships in Jamaica. I had beaten by the date of selection, on merit, a young man named Lawrence Albada and so I was selected for the national team. Ten days later at the national short course championships, Lawrence Albada beat me to a pulp coming and going in every race but yet the national team they said had been selected. I went to the president of the association and I said on merit, Lawrence Albada needs to wear the red, white and black, I am taking myself off of the team to make a space available for him. That is how important merit is.

4.00 p.m.

So if we have a merit list that our citizens or citizens have gone through a process and the merit list is duly authorized and approved by a majority of the Police Service Commission and therefore alive, well and legal for an Executive, for a government to intervene through a Legal Notice to impact the merit list—

Madam President: Sen. Roberts, you are not dealing with the Legal Notices that are the subject of the Motion; you are not and I will ask you, please, this is—I do

not know how many times I have asked you but I will ask you, please, to be relevant to Legal Notices 277 and 278.

Sen. A. Roberts: Legal Notice 277 removes a section of the population from applying to and receiving a job of high merit, a job that one has to work for their entire career. Legal Notice 278 clearly removes the process and principle of seniority, which is merit, to ensure that people who may have earned an opportunity to perform a duty in this country are not allowed so to do. I am saying that Legal Notices 277 and 278 go against the Constitution of Trinidad and Tobago, as I just quoted from the section which stated, and I quote:

“...there should be opportunity for advancement on the basis...of merit, ability and integrity;”

I proffer that merit, ability and integrity are espoused in the principle of seniority and therefore Legal Notice 278 goes against the Constitution of the Republic of Trinidad and Tobago.

We have seen it in this Government. In our history we have had Attorneys General of great ilk, great silk, brilliance, Karl Hudson-Phillips, Anthony Smart, Russel Martineau, Keith Sobion, Ramesh Maharaj, Sir Ellis Clarke, Selwyn Richardson, Anthony Smart, Anand Ramlogan, and now we are forced here with an Attorney General who cannot spell “Blanchisseuse”, and prints and drafts laws, brings them to the Parliament; thwarts the Constitution—

Sen. Gopee-Scoon: Point of order, 46(4).

Madam President: Sen. Roberts, I uphold the Standing Order. I uphold the objection. I will ask you, please, this matter that is before us is not about the Attorney General, so I will ask you, please, in your last few minutes to come to the matter at hand; come back to it.

Sen. A. Roberts: Thank you very much. This matter at hand is about merit and the

current Attorney General does not merit the position. What is wrong with—

Madam President: Sen. Roberts, I will ask you, please, to withdraw that statement.

Sen. A. Roberts: I withdraw, Madam President. What is wrong with “merit”? Why so much energy and effort? Why so much thought and parliamentary gymnastics with regard to the appointment of a Commissioner of Police? Section (c) of the preamble continues:

“...all persons may...”—to our Constitution of which these two Legal Notices are starkly in opposite, in Opposition to the principles, the spirit—

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

Sen. A. Roberts: Thank you:

—the spirit and the concept of our republican Constitution.

The preamble, section (c) says:

“...all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;”

When one plays games and shenanigans in the process of selection and removes merit and removes seniority, and creates a situation where political interference leads to the selection of the leadership of the police force, the police service one would understand that the population will lose confidence in such a service. That is why this process was created to be independent; the independent Police Service Commission, and what has occurred over the last three months has left the population aghast and without trust in the leadership of the police service. A pristine process brings trust; a tainted process engenders disrespect, and it is our position that Legal Notice 277 and Legal Notice 278 taint the independent process of the selection of a Commissioner of Police. Policing requires community

policing. It requires citizens to come forward with trust but when people feel that there is political interference in the police service, the police service will suffer.

Section 2 of this Constitution is the supreme law of the land and any other law that is inconsistent with this Constitution is void to the extent of the inconsistency. Based on all antecedents bringing us to this stage today, I proffer that Legal Notice 277 is void; amended Legal Notice 278 is void. The collapse and subsequent rapid replacement of the Police Service Commission is void. The rejection of a properly, legally constituted and approved merit list is void. The current leadership which owes its elevation to the compromised nutrition of the poisoned tree, from the rancid root manifested in the hardened heart of a lost, confused and dangerous dictator is void. The PNM is void. The PNM must go and that is mandatory.

Hon. Members: [*Desk thumping*]

Sen. A. Roberts: I leave you with this critical question, what would be so urgent, so important or critical to make a Prime Minister, a Cabinet and/or two Attorneys General, substantive and acting, flout existing laws, the Constitution, the principle of separation of powers, the principles of fairness, merit and propriety in this blatant, glaring manner, knowing full well that the population is watching, listening, discerning and understanding exactly what is being perpetrated by this dictatorial, oppressive PNM Government, and that they have responded politically in Tobago already—

Sen. Mitchell: Madam President, 46(4) and 46(6)—

Sen. A. Roberts:—and shall similarly—

Sen. Mitchell:—please, on a point of order.

Madam President: Sen. Roberts, once again I uphold the objection. You have two more minutes.

Sen. A. Roberts: Thank you, Madam President. The people of Tobago have already spoken and shall similarly—the people shall similarly respond in Trinidad when given the opportunity so to do.

Why would a government take such a risk to interfere in an independent process? Why does a government need to control the police? Why would a government require Legal Notices 277 and 278 to prevent someone from attaining a job that they duly deserve so to be, based on the merit list? Why? I ask, why? And I leave it for the population to answer that question. Thank you, Madam President.

Hon. Senators: [*Desk thumping*]

Madam President: Minister of Agriculture, Land and Fisheries.

Hon. Senators: [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I thank you for the opportunity to join in this debate on this Motion. I thank Sen. Roberts for his numerous sports references and I will use one myself. I want to apologize to Sen. Sobers because clearly his captain today did not see that he should really be high up in the batting order to have made a contribution, because my friend, Sen. Roberts, had nothing to say today and I really feel that Sen. Sobers may have done a better job. This Motion raises one issue and one issue alone and on that basis it could be quickly dismissed, and that one issue is whether the Orders before us, 277 and 278, actually diminish the role of the Police Service Commission. The Motion says significantly, and I am just saying that the simple question is, if it diminishes it at all. And I would argue to the contrary, using the logic of Sen. Mark himself, these Orders improve the position of the Police Service Commission and improve it significantly.

Sen. Mark in his attempt to build something more than those five important

words in his Motion gave us the usual hodgepodge, saying that the criteria was not drawn up by the Police Service Commission but by the Cabinet led by the Prime Minister; saying that as though it is something wrong. Well, that is exactly what the Constitution provides. Talking about seniority as though that is something so valued and honoured in our environment today, that it is wrong to interfere with it. Well, Sen. Thompson-Ahye was right, this issue of acting only arises in one section of one Notice and it is not the first time. It is just another time in which the criteria for dealing with positions in the police service has been addressed, and I will deal with that.

Sen. Mark has talked about destroying the quasi-judicial Police Service Commission, destroying the requirement of seniority and the usual chaos and it being dangerous and so on, but there is nothing—and I am about to say eight things on Sen. Mark's presentation. The first is that—I listened carefully—Sen. Mark failed to demonstrate how Legal Notices 277 and 278 significantly diminish the role of Police Service Commission. He failed to do that, and on that basis alone I should stop but it would be dangerous if I did not continue. I see Sen. Sobers is back in the Chamber. I am so sorry, Sen. Chambers—Sobers, sorry. The second is, it fails to demonstrate a failure of the Government to adhere to the Constitution. In fact, the Government has fully complied with the Constitution.

Sen. Mark did not recognize that section 123 of the Constitution is clear, and as Sen. Thompson-Ahye properly pointed out, the responsibility and the responsibilities in respect of the police service, the Police Commissioner, the Deputy Police Commissioner, the appointment process, the responsibilities shift through the Constitution. And Sen. Thompson-Ahye correctly pointed out, there is that moment—there is that moment when the power of the Police Service Commission awaits the authority of the House of Representatives. And I say that to

make the point that the authority of the Police Service Commission is not absolute in respect of the police service. It is not absolute and it is through a process that the power of the Police Service Commission has been reduced over the years and reduced with full support of my friends on the Opposition side, including Sen. Mark as I will demonstrate.

The fourth point I would make in relation to Sen. Mark's presentation is this, section 129 of the Constitution does not help Sen. Mark's argument. He knows that. Section 129 refers to the regulation-making power of the Police Service Commission, but Sen. Mark did not point out two things. The first is that, that regulation-making power in 129 is:

“Subject to...the Prime Minister...”

It is stated there very clearly, very clearly, but more importantly that regulation-making power does not extend to the criteria for the selection of a Commissioner or Deputy Commissioner of Police. There is nothing there. In reading section 129, that does not descend into a selection criteria for a Police Commissioner or a Deputy Police Commissioner.

The fifth thing I would say in relation to Sen. Mark's presentation is this, Legal Notice 278, she seeks to annul, deals only with sections 4 and 5 of Legal Notice 277. You see, the main area in relation to the selection of the Police Commissioner is contained in section 3 of Legal Notice 277, and 278 does not interfere with 277. And that is important because it is in section 3 that we recognize it is the Commission, the Police Service Commission that plays the role in the selection of the Commissioner of Police. It is the Police Service Commission. And to tell me that 277 or 278 diminishes the role of the Police Service Commission, you have to show me that 278 interferes with section 3 of 277. You have to show me that and it is impossible for Sen. Mark to show that,

because even with 278 the power of the Police Service Commission continues to exist. Ultimately—ultimately, as Sen. Thompson-Ahye correctly pointed out, ultimately that power is subject to how the House of Representatives treats with a notification issued to it by Her Excellency the President.

The sixth point in relation to Sen. Mark's presentation is this, he talks about the removal of seniority and I say, that removal of seniority is only in relation to an acting appointment. As I said before, section 3 of 277 is preserved. The issue of seniority—and both Sen. Mark and Sen. Roberts either missed that, misunderstood that but deliberately miscommunicated that. The issue of seniority does not arise in the selection of a Commissioner of Police in this country. It does not arise and that is clear in 277. The issue of seniority arose, as the AG pointed out, in 277 and 278 does nothing more than remove the references in 4 and 5 of 277 to this issue of seniority. And interfering with seniority has been a long process in this country; we recognize that, and not much of it was dealt with in the Legislature. It was dealt with in the courthouse and the Legislature has had to comply because Trinidad, like many other colonial and Commonwealth countries has treated seniority across its public sector as the criteria for promotion within the public service and within the public sector and over a period of time seniority as a criteria has been reduced. And it did not start—it did not start with 278; it did not start there. It did not start with 277. It did not start with 278. In relation to the police service we are in about the twentieth year of significant dismantling of the old criteria and the promotion of a modern criteria for selection. And our friends in the Opposition have been active participants in that process.

The seventh thing I would say is that there is absolutely nothing in Sen. Mark's presentation, as I have said, in 277, in 278 or in any constitutional amendment relating to the Police Service Commission or in any piece of

legislation since 2006 that diminishes the role of the Police Service Commission. We do not have it now under our government, we did not have it under the Patrick Manning government and we did not have it under any government in-between there. I could say that categorically. So Sen. Mark's Motion fails throughout and there is no basis—there is no basis for us to deal with this Motion in any other way but to dismiss it.

You see, the evolution of this law relating to the police service, the significant evolution and the removal of seniority is rooted in the Constitution (Amdt.) Bill of 2006. And I know the Bill well, because under the Patrick Manning government it was not easy—it was not easy to sell the change to even the members of the public and it was not easy to sell the change within the police service. But I could tell you this, because by that time, 2006, I had been lecturing for more than a decade and I had seen, in my time at UWI as a lecturer, had seen many police officers in my classrooms, many police officers. I had seen at my colleague, Keith Beckles' school, many police officers. And I had taught—and sometimes—in many cases taught free, police officers A level law because I knew that the criteria had changed across the public service and including the police service, that it was no longer seniority. That in 2006, the amendment introduced on 20 April, 2007, assented on 20 June, 2007, changed the way in which police officers were promoted into the First Division and removed seniority and used a simple expression, the result of the promotional assessment process.

So we go back to 2006; it is not Minister Young and it is not the AG, Al-Rawi, we go back to 2006 and before and we see the dismantling of the long-existing seniority process and the replacement by a merit process in the case of the 2006 Bill, passed in 2007 and brought into law, it was on the basis of points. And one of the most important things in that was that a police officer who obtained a

university degree put himself or herself in a very strong position for entry into the First Division. It did not start now, it started way back then, and my friends then in Opposition supported that amendment. Around the same time, 16 May, 2007, the House was considering and eventually the Parliament approved the Police Service Regulations.

A lot of things in the Regulations were not new but the police around that time were having—they were able to get comprehensive, written, Parliament-sanctioned regulations to regulate the way in which a lot of matters, including the promotion process, transfer process was handled in the police service. And most importantly—most importantly, Act No. 6 of 2006—and that is the very important delegation to the Commissioner of Police, because prior to Act No. 6, 2006, it is the Police Service Commission that handled all matters of promotion, transfers, discipline in the police service. And you know something, when Dwayne Gibbs was appointed Police Commissioner in Trinidad and Tobago and he was on the flight from Alberta to Trinidad and Tobago, I, writing in the *Express* made this point, that Dwayne Gibbs was a third level police officer in the city police force that he was leaving to come here.

The force was about 20 to 25 per cent of the size of our local police service and I said that a police officer who had worked in human resources for so much of his life and who had never managed a force as big as the Trinidad and Tobago police force did not have much chance of success. And it is on that basis and that thinking, the size of our police force—in fact, the police officers who were on vacation and study leave from our police force were more than the police force that Dwayne Gibbs worked in, in Alberta. And it is on the basis of the size of our police force that in 2006 the move was made to give the Commissioner of Police complete authority over a huge section of the police service. And you know what,

if that did not diminish—if that did not diminish the Police Service Commission, well, nothing will. If Sen. Mark who was in the Senate at the time and supported fully the delegation of the power to the Commissioner of Police, if he did not see that at that time as diminishing the authority, the power of the Police Service Commission, then he cannot view 277 and 278 as diminishing the role of the Police Service Commission. He could not see that because that is the reality.

From 2006 it became clear that if Trinidad and Tobago had any chance of dealing with crime and criminality and criminals, then the police service had to be modernized and in modernizing the police service we had to move away from the criteria for promotion. We had to give those university graduates in law, criminology and other things relating to functioning in a police service the opportunity. We had to give the Police Service Commission a free hand in the selection of a Commissioner, and we had to give a Commissioner of Police, charged with delivering and being accountable to the Police Service Commission, having to submit periodic reports to the Police Service Commission, we had to give the Commissioner the authority to manage the men and women under him or her. And as I say, if that was not diminishing the role then, then this cannot be diminishing the role now, 277 and 278. And in all the arguments, including Sen. Roberts' attempt, I have heard no reference to what the Constitution really says in relation to the Police Service Commission. But I would say this, 123(1) is very clear and Sen. Mark cannot show me where 277, where 278 or where anything that exists from 2015 to now interferes with those powers under 123(1).

4.30 p.m.

And 123(1) is clear. The appointment of persons to hold or act in the Office of the Commissioner or Deputy Commissioner falls to the Police Service Commission. It is the Police Service Commission but even that, even 123(1) is not

absolute because as I have said, it is subject to the notification being submitted to the House and the House approving. As Sen. Mark currently pointed out, and there are other officers who he could have referred to, a notification was made in respect of Deodath Dulalchan, and the notification was received, and it was debated, and it was not approved. The Police Service Commission could do nothing because it is the Constitution that provides for that power of the Commission and it is the Constitution that makes it subject to that power of the House.

The process for the Commissioner of Police and Deputy Commissioner, Sen. Mark cannot show any interference with 123(2) because 123(2) sets out the process that has been followed. There is a nomination. It is in accordance with a criteria, procedure that is prescribed by Order, and that is what 277 and 278 does because the criteria for selection is not set out in the Constitution. It is not there in 123. The criteria is prescribed by Order under 123(2) of the Constitution, and that is what 277 and 278 properly does.

It is not unconstitutional. Who else will set the criteria? At no point Sen. Mark has been able to say that the Police Service Commission, however constituted, did not contribute to their creation of that criteria; at no point. But the creation of the criteria, the prescription by Order can only be performed by the Executive. If you have to change that, then you have to amend 123(2), because that is where the authority of the Executive derives its power.

The other elements of the process of selecting a Commissioner or Deputy Commissioner, at no point Sen. Mark has shown us that 123, the submission of the list to the President by the Police Service Commission and the issue of the notification by the President has been interfered with; at no point. Nowhere in his Motion and nowhere in his submission and, I dare say, nowhere in his winding up would he be able to demonstrate that.

Madam President: Minister, you have five more minutes.

Sen. The Hon. C. Rambharat: So, Madam President, this Motion gives us an opportunity to once again shine a light on the police service, the Police Service Commission, the Police Commissioner, the Deputy Police Commissioner and the process. But looking at 277, no one can question—no one can question that paragraph 3 of 277, at the time of its making and to this day, properly sets out the criteria and the role of the Commission. The role is set out very clearly, 3(1)(a), the Commission conducts the recruitment; 3(1)(b), when the applications are received, it is the Commission that selects the most suitable candidate and on the basis of that—it is in 3—that the Order of Merit List is created and nowhere has Sen. Mark been able to show that that has been interfered with and that is the area that deals with the selection of a Commissioner of Police.

In 278, we see the changes, and those changes are in respect of one thing and one thing only, it is the acting appointment. Those changes in relation to the acting appointment does not diminish the role of the Commission. Because what was there before in 277 was a requirement that the Commission deal with an Order based on seniority. In other words, it was constraining the Commission. It was doing what even Sen. Roberts said should not be done. Because in 2006, my friends in the Opposition were talking about meritocracy, were talking about giving everybody the opportunity. That is exactly what Sen. Roberts said. Somebody was better than him and he stepped away and gave the person his position and it does not—278 does the opposite of diminishing. It gives, in relation to the acting appointment, the Police Service Commission a completely free hand in order to determine which officer should act and the order of precedence and so on, without regard to seniority. And that does not—as I close—that does not diminish it but it actually enhances the role of the Police Service Commission and

it continues along the way from the Bill in 2006, right up to today, on the work to modernize the police service, modernize the Police Service Commission and modernize the way in which we allow the police service to be managed and to function in dealing with crime. Thank you very much, Madam President.

Madam President: Sen. Deyalsingh.

Sen. Dr. Varma Deyalsingh: Thank you, Madam President, for allowing me to partake in this discussion today. First, I might say this topic here today is very important to the ordinary citizens because, you see, crime is a serious issue in our country. You know, the fear of crime is there. You know, we have a climate of fear in the country, where people are fearing COVID, they fear crime. The failure to have a Commissioner of Police or a Deputy Commissioner of Police appointed in a timely manner, the failure to have these important positions led to a lot of confusion, debate, things in the public domain we had before where persons were really worrying about, you know, why all of this has to happen and we had to deal with the pandemic and with crime, yet still in the public debate there were issues with the Police Service Commission, persons making certain allegations.

So for the benefit of the country, we would need really to have the appointments of these important persons handled in a timely manner, handled in a manner that it would show the population at large that, you know, we are actually on board with this fight against crime. So it is for the benefit of the citizens.

This section 277 and 278, you know, persons may ask: Will it really be diminishing the powers of the Police Service Commission? I think this is the real problem that some persons may have. It was expressed that some persons may think it would, some persons would say it would not really diminish.

And really speaking, when I looked at the legislation, Madam President, I realized that if you are expanding the age of the persons to be able to be chosen,

this, in my opinion, may be a good thing. Why I think so is that if the Police Service Commission is restrained in having to pick the most senior members of the police service to be in a list, a merit list, we have to realize sometimes you may have difficulties if you have certain members chosen at the same time, then you have to make a decision who is more senior. The both of them joined the service at the same time. You may have cases where persons may be a senior member but about to retire. So if he is about to retire, what would you do in a case like that? So those are decisions.

Even if you have a senior member who you may have had allegations come into the private domain of the Commission, that this individual, there are some things in his character or his dealing before that may be sensitive, you do not want it to be publicly noted. If his name is left out on this senior list, that would lead to speculation. That would lead to embarrassment. I am saying it gives the Commission actually a leeway to choose, not just the most senior persons but also persons from around the ranks who may not be at that senior level. So I think giving that leeway to them is an advantage.

But, Madam, we have to realize the whole process of choosing a Police Commissioner, for years we had problems with this. We had instances where, as mentioned by Sen. Rambharat, when the Canadians came in here, we had problems when they came in here. The Leader of the Opposition then, who is the present Prime Minister, he had some sort of objections to it: Why do we have to go outside to choose outsiders to come in here? And the police representatives, their union at the time, the police, they actually objected to that.

However, the Police Service Commission at the time did have Canadians on the list. And remember, when they came with this and those individuals came here, some persons thought it was a breath of fresh air. Those persons brought in a First

World mentality, how to have greater service to the people.

Madam President: Sen. Deyalsingh, if I may. We have had quite a number of speakers on the issue. And the issue as articulated by Sen. Mark, it is his Motion, is to annul these two Legal Notices. So I would ask you please to try and be a little more specific to the Legal Notices and to the Motion filed by Sen. Mark.

Sen. Dr. V. Deyalsingh: Thank you, Madam. So, Madam, what I was trying to get at, even at that instance, I am trying to say that changes that we have given to the Police Service Commission, how to deal with their procurement, how to deal with their choice of the commissioner, it happened before. Because even after that, there was also another Legal Notice where it actually placed the burden on them now to choose just local persons. So definitely you had instances where they actually got directives later on that it has to be a national. So even when that directive was given to them, it was not in any way meant to stymie their independence. It was to direct them on policy, that we would rather have a local or a national of Trinidad and Tobago.

So in the past there were changes, there were directions given to them and it was not really given to them in any sort of a way to curb their independence. It was to give them an idea how we should let things run in the country for our own nationals.

So, Madam, what I am saying is that we have the Legal Notices 277 and 278 on the agenda today and we have to realize that some of the concerns raised were the fact if we are interfering with this, would we interfere with the runnings of the Police Service Commission? Will we somehow be able to somehow influence their decisions in terms of their ability to be controlled by the powers that be?

Now, Madam, I would like to just—if you allow me to read in the *Guardian* newspaper. It was a Friday, November 26, 2021, where there is an article by Gail

Alexander. She reported a:

“New law made to select new Police Commissioner”

In this article it was made mention about some of the criticisms that came about when this Legal Notice 277 came about. In the article she said:

“The new Legal Notice 277 facilitates a fresh search for a CoP and Deputy CoP. This means the merit list for Commissioner of Police done by the previous PSC will no longer apply.

The notice also changes the process to appoint an acting CoP, limiting that to certain ranks of officers in the T&T Police Service and not contracted people.”

Now, Madam, some of the comments made against this was the former Police Commissioner, who:

“...slammed”—as she wrote—“...slammed the changes, calling it ‘desperation by certain individuals’ in making the changes to criteria, including, ‘drafting a notice deliberately to ensure Gary Griffith can’t act as Commissioner.’”

So this was some of the criticisms that came about by the former, that somehow we were trying now to get rid of him because he was a contracted person. So under the new notice, only officers holding or those acting in the office of Deputy CoP or Assistant Commissioner of Police would now be considered.

So therefore, also in the article it said:

“In an immediate reaction to the new Legal Notice 277, Opposition Senator Wade Mark said it was a move to debar former Commissioner Griffith from being a CoP contender.”

Now, Madam, what we have here is that Sen. Mark also said:

“The pettiness was so blatant in this new notice—they made sure to remove

the aspect for contracted people to act as CoP, limiting it to DCPs.”

Madam President: Sen. Deyalsingh, I know that you are making reference to a newspaper report that made reference to the Legal Notice but you are spending a little too much time on who said what, as opposed to dealing with what is before us. So, Sen. Mark, quoting what he said as referenced in that, is not relevant because he has already moved the Motion here. So I will ask you to tie in, please.

Sen. Dr. V. Deyalsingh: Sure. So, Madam, what I am looking at is that this article suggested that the Opposition then or Sen. Mark’s position was that they were seemingly backing the appointment of Mr. Griffith. And, you know, I find it strange, Madam, that even Notices that came before, when in 2018, his appointment was actually tabled, the Opposition then resisted it. They actually did not vote. So you had instances where sometimes when the Government is in power there is one thing, when the Opposition in power there is another thing happening.

In all of this, it is really the population who sometimes want to know what is happening. It is a state of confusion, where you are backing a candidate at one stage and at another stage, you are not backing them. And it goes on both sides. It goes on both sides because even persons had accused this Government when they were in Opposition, when Mr. James Philbert was going to be appointed. Again, he was left dangling.

So the whole idea of having the 277 and 278 come about, it was actually due to the brilliant judgment of Justice Kangaloo who actually tried to clear up the state of confusion that the country found themselves in. So we have to be thankful that Ravi Balgobin-Maharaj and his attorney actually sought to clarify some of the issues that were plaguing the nation there, where you had a state of confusion. You had, as people may say, “kuchoor” happening, problems happening. And that judgment actually listed certain aspects that, you know—certain aspects, certain

legal orders before as being unconstitutional, illegal.

So, therefore, I think Government's attempt today in bringing this is to somehow serve to look at what the Judiciary had said, look at what the judge had said, look at what the fact that the state of confusion was eventually being tackled in the judicial arena. And having regard to that, the Government, I think, had the added responsibility now to make the process as clear, as easy as possible. Because in the past, what actually had transpired, Madam President, was a disservice from both Government and Opposition, disservice to the person, to the population who for years were looking for some quick remedy to this appointment of the Commissioner and the Deputy Commissioner of Police.

So this—here today we are looking at this and I am thinking that any piece of legislation which can clear up the state of confusion—any piece of legislation which can actually get the Public Service Commission to do its function better, to perform its function better, it is a plus. The allegations that some may think that the Police Service Commission may be somehow being tampered with, I think it is an injustice to say that because the members there headed by retired Justice Jones and her committee—I mean, if we think that they could be somehow influenced, I think we are making a mistake. Because we are giving them guidelines. Those persons could look at the age of—the seniority. They could decide on their own now. They can pick somebody young. And those persons, I think, we are actually widening their ability to choose individuals. We are actually giving them that power and in a sense, I am thinking we are going to give them the power to choose the best candidate that they could put forward.

The problem we would still have is if you are looking at control, if the part of the argument is control, when those names come to Parliament we will still have the fact that you could be somehow with the parliamentary majority, the

Government in power could have its day, no matter whatever, because we have seen before with Stephen Williams. His name was there and a previous member, I think it was Pastor Dottin who was at the Police Service Commission at the time, threatened to resign. He said, look, after all our hard work, we put our names forward, people, you know—you politicians are not accepting these names.

So the fact of governmental control, it will still be here for the majority or the Government in power but the idea is the candidates coming forward, the list coming forward, the merit list coming forward, we should have confidence in the new Police Service Commission for bringing this list forward. That is not to say we should have lost faith in the old Police Commission for all the activities, Madam, because remember—I think it was today's newspapers, there was an article stating they acted as a matter of necessity when they were chosen. So—

Madam President: Sen. Deyalsingh, I just want to draw you back to what we are dealing with and to ask you to not deviate from the matter at hand.

Sen. Dr. V. Deyalsingh: Sure. So, Madam, I also would like to bring to the point—I think someone had mentioned since the judgment transpired, what would have happened to all the matters with the Police Commissioner and the Deputy Police Commissioner—and I think a speaker mentioned that. But I think Justice Nadia Kangaloo in her judgment said that even though—she also quoted the doctrine of necessity where those persons would also—their decisions that they made when they were in office, you know, would also be kept because she pointed to two legal principles, the de facto officer principle and doctrine of necessity to preserve their actions and decisions.

So I see, Madam President, a move here in the right direction. I see a move here to make the process easier. I think the process—I do not see anything sinister in it. I think if we go to question, you know, question the fact that the Police

Service Commission may now be somehow tainted or somehow be controlled, I think we would be doing injustice to those officers there.

So in all, Madam, I would say I would like to give my support to this and I have seen nothing in this to have me having any major concern. One thing, Madam, I must say is when I looked at the new Legal Notices, I still think it might be a mistake sometimes not to be able to look elsewhere because sometimes you may need persons coming in with a mindset that could help our situation down here. I think probably the AG may have to consider that, that ever so often, yes, we need locals but we also need the persons with a First World mentality to come down here to give us some sort of guidance and also have us on a global way where we can get those persons who probably may be more independent because they would have not been within the system under any sort of guides of any sort of politicians before. People could say they know these politicians.

So, in conclusion, I have to say this brings clarity. It brings a little more certainty in these important processes. I pray that the persons now occupying the Police Service Commission now know the important role they have to play for the country and those persons who are so chosen, as the Deputy Commissioner of Police and Commissioner of Police, will eventually realize that they owe it to each citizen to be fair and independent and to fight in our battle against these criminals. Thank you, Madam.

Madam President: Sen. Lutchmedial.

Sen. Jayanti Lutchmedial: Thank you, Madam President, for the opportunity to contribute on this Motion today. Before I begin, Madam President—and you would notice that I am sniffing. I can assure you that it only happens when I am in the coldness of the Chamber but out of an abundance of caution, I will keep my mask on.

Madam President, where do I begin? My perspective on this issue is, of course, a little different from everyone else's, having been intimately involved in the two cases that have been cited here, or I should say, misquoted here sometimes, and that is *Harridath Maharaj v the Attorney General* and the recent case of *Ravi Balgobin-Maharaj v Attorney General*.

Before I start to correct all that has been said about those two matters, most erroneously, and I have to say it is really disappointing to hear the law, as set out in judgments from distinguished judges, and as someone said, judgments which have brought so much clarity, both of them, statutory interpretation claims brought by litigants, public interest litigants, to correct missteps made in the appointment processes. But before I get to those things, I just want to raise some issues with respect to the present Order that is here before us for debate and this issue of seniority.

I have to congratulate Sen. Mark for giving a very thorough and comprehensive overview of the issues that relate to this matter. I think that it only redounds to the benefit of this country and the public at large to have these matters ventilated because they must understand. Somebody, I think it was just the previous speaker, said that when we had all this "kuchoor" taking place last year, the public was left in a state of utter confusion as to what exactly was happening with the appointment of a Commissioner of Police.

Now, many appointments are made in the public service, but none of them attract as much attention as the appointment of a Commissioner of Police, and there is a reason for that. It has to do with the amount of power that this person has and the amount of impact that they can have on the lives of ordinary citizens. So the independence, the neutrality, the transparency of that appointment process is of fundamental importance to the average man and woman in this country. That is

why these Orders that set out those processes are so important and it is why we have to examine them very carefully.

5.00 p.m.

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

And we do not want even more missteps being made. Because I do not need to remind anybody of the disaster that we had on our hands last year based on bad legal advice, bad drafting, a misunderstanding of the Constitution and how subsidiary legislation works by many persons in Government and those holding appointed—those appointed by the Government in the Service Commission where we had for the first time in our history no Commissioner of Police. Do we want to send this country back down that road? I do not think so. Nobody wants that. Not Government, Opposition, nobody. That was a disaster. And so if we want to avoid these disasters, we have to very critically examine these Orders that are here before us.

Minister Rambharat made reference to the fact that seniority has been removed over time and whittled away. And that is true to some extent. But even after the 2006 amendments, these very significant amendments that really changed the whole role and function of the Police Service Commission and removed the power of veto, although some people, you know, through their actions have basically given themselves back the power veto. Essentially that is what happens when you—when a merit list goes missing, you give yourself back the power of veto.

But nevertheless, even after the 2006 amendments, in 2007 the qualification and selection criteria Orders that were made still made an allowance for the Service Commission to consider seniority and experience. So, for example, in Legal Notice —let me give you the number—it is 165 of 2007 and, again, I think

the, this exact clause was replicated in 2009 where they set out the selection process criteria and so on, there was an allowance made for people who did not have the criteria and marginal note to this Order, it talks about serving officers. And it said:

“Where an officer does not hold the qualifications stipulated under paragraph 2(a) but meets the core criteria listed in paragraph 3 and has twenty years’ experience or more in the Police Service, he shall nonetheless be considered as a candidate for appointment.”

Now, this deals with, of course, the appointments of a permanent Commissioner of Police. But, you see, even back then it was recognized that experience goes a long way in the police service. And as someone who has worked very closely with police in my previous incarnations and still interacting with officers in court every day and so on, I could tell you, there is a lot of value to be placed on experience and seniority in the police service and the removal or the less waiting that is given to seniority, to me, really does not always produce the best candidate. I agree that sometimes the reliance solely on seniority may mean that the person that who has just been sitting in the chair for the longest period of time eventually gets elevated. But you have to have to balance because in something like policing, there is nothing that teaches you policing, you know. There is nothing that teaches you how to be a police officer other than field work, investigative work.

You see that man who sit down writing in a station diary, like Sergeant Adams and them? That, you have to be able to do that, to be able to learn how to do police work and how to do investigative work. So there is a lot to be said for seniority and I think that it recognized even after 2006 that you must give some allowance for seniority. Because what you have happening and I say this without fear of contradiction, is that there are officers, young officers who might have

about 10 years' experience or something like that but they have more degrees than all of us in here put together because they have spent 10 years on study leave. They move from one study leave to the next study leave. They work in administrative office positions within the TTPS. The chief clerk's office or one of those offices where it is basically paper pushing, they never have field experience but they are studying. They are studying. They take—there is a programme at Cipriani College. And I have nothing against people studying. Do not get me wrong. But that emphasis solely on qualifications now and that greater emphasis being placed on qualifications really sometimes does a disservice in terms of selecting the best person for the role, for promotion and it will ultimately filter into the roles of Commissioner and Deputy Commissioner of Police.

I want to point out one very important thing when it comes to this particular Order of 277. Clause 3 deals with the process of the appointment of Commissioner and Deputy Commissioner and there is no reference there to seniority and so on because there is a process, there is a process that they have to go through for grading and so on. They get the applications, they do the assessment, they do the vetting, medical, security vetting report, all of this and then the Commission does its merit list. What is a merit list? After you go through the entire process, you rank your candidates; one, two, three, four, five, six, seven, eight, nine.

When you come to acting appointments, what clause 4 really says is that—when you are dealing with acting they establish and maintain an Order of Merit List which shall lists and now in the amended version officers who hold these particular offices—so, I believe, there are three Deputy Commissioners of Police and, I think, in terms of ACPs there are about eight or so. So you have essentially eight, nine, 10, 11 people who will be on this list and they have to possess the qualifications and experience required for the appointment of Commissioner of

Police. So if they all possess these criteria listed in clause 3, they make the list. So out of the 11, let us say you have seven of them that have this and they have the—they are currently holding the office of DCP or ACP. But how do you rank those seven people? There is no interview process. There is no process for a medical.

There is nothing in clause 4 that says that they have to go through security vetting. There is nothing in clause 4 that says, they have to do an interview. There is nothing in clause 4 that says these people who will eligible to act whether as a DCP acting as Commissioner, or an ACP to act as DCP that they have to go through that promotional assessment process. So how do you rank them if not by reference to seniority? It is as simple as that, you know. And yes, we are talking about other things and about the motives and how it was changed in the middle of the night and the dead of night and all of that that happens. But on a common-sense level, on a practical level do you know what you are going to have? You are going to have anywhere between one and 11 names who meet the criteria set out in clause 4(2)—yes—clause 4(2), holding an office, possessing the qualifications and experience and the Commission will then just randomly choose a name. And what you will have is, out of those 11 people when one is chosen to act, the other 10 could challenge it, because on what basis? What is the basis upon which they will make that decision, if not seniority?

So the day that the Police Service Commission has the names of all the people who meet the criteria in 4(2) (a) and (b) in front of them, I mean, what it is going to be? A pick a pan? You will pick one out of the hat? They will just have to choose one of the 11. And the other 10 can go and file judicial review. They will challenge it. They will want to know on what basis, because how else do you rank these people? So from removing seniority, perhaps I will give the benefit of the doubt that perhaps it was not thought out properly.

We have seen many pieces of legislation particularly when it comes this selection process for a Commissioner of Police not well thought out when they are made. They need to stop drafting in the middle of the night and fixing things in the middle of the night. But clearly nobody thought about how the Police Service Commission is to differentiate between one and the other. The answer is found, and as Sen. Mark rightly said, in other regulations that deal with the appointment of public officers. You look at seniority. That is like the tie breaker that exists in the Public Service Regulations and he quoted it. I am not going to waste time going back into it. He quoted it for you here today.

So, I am asking Members of this House from a common-sense perspective, forget the bacchanal, the politics, the “lackaray”, the all of those things. From the common-sense perspective, do you think this thing can work? Or will it create a situation where you could have more litigation coming forward, where you could have a Service Commission having to tell itself, well out of necessity I might choose this one or that one. Where you could have members of the Police Service Commission actually, you know, being challenged and their discretion and how they exercise that discretion and so on being, I mean, forced to account before the court. I cannot—if you do a search, a simple search on the Judiciary, the law library website or anywhere about the amount of times police officers have challenged merit lists and appointments and promotion lists and so on, I mean, it is never ending.

I remember a time I was involved in a matter where there was an injunction blocking an injunction or there were two sets of injunctions blocking different groups of people who wanted to be promoted in police service. It was a total and complete mess. And the last thing you want to do and I say this over and over and over, the last thing we want to do as a Parliament is to allow a piece of law, be it

primary or subsidiary legislation, to go out there into existence and create havoc, create circumstances ripe for litigation and, you know, when it comes to something as important as our police service to create uncertainty in the minds of the public as to whether or not there is some sort of ulterior motive involved here. Because, you see, and I know that the Government and the Government Bench and speakers and so on the Ministers and the Attorney General will say, that no, we are like conspiracy theorists. We always think that there is something, you know, some bad intention and this is just, you know, we are trying to simplify, and this is for the good of the country and all of that. But take these—take this debate in its context of what has transpired.

This is the third time this Government is trying to tinker with the process. The last two times they had to go before the court and I do not know how the State taking a position, having litigation brought against it, having a judgment striking out portions of the legislative instruments that the State produced, being ordered to pay the litigants costs could still stand here today and praise, heap praise upon themselves for the Order was deemed constitutional.

I do not know that Members opposite understand the meaning of the words *ultra vires*. If something is held to be *ultra vires*, it means that it is beyond the scope of the power of the maker of the decision. It is out with the parameters of the Constitution. It is unconstitutional. To say that the court upheld the constitutionality of the Order because certain aspects of the Orders remain. That is misleading. It is misleading the public, the Parliament and anybody else who does not know. But I drafted that Harridath Maharaj claim and every single—every single point that we raised about aspects of that 2015 Order that we said violated the Constitution, violated the Central Tenders Board Act, every single aspect of it was upheld by the court and so the amended the Order. They literally, if you look

at the judgment, draw lines through all the offending parts of it.

So, I do not know where the Attorney General—I do not know—I think the fireworks is affecting him. I do not know how he comes to this Parliament and tries to avoid the reality. The reality of the situation is that, on two occasions these Orders were found to be offensive. Whether you use the words superfluous or not, the point is, based on the advice of the Attorney General and his considered legal opinion given through the media, we had the acting appointment of Mr. Griffith revoked.

So the importance of this and whether or not the Government is doing this thing properly and whether or not this Order will stand up to scrutiny, it must be at the forefront of everyone's mind. It must be at the forefront of our mind and any right-thinking citizen of this country because we have gone through the experience twice and we do not want to go through it a third time. So again, if anybody, anybody to tell me, how do you differentiate those candidates when you remove seniority from the requirement contained in clause 4 of Order No. 277 of the 2011.

I do not intend to use all of my time but I just want to wind up saying one thing. It is recognized in the Police Service Regulations which, unlike these Orders that are made in the middle of the night and amended in the middle of the night by the Government and take effect right away and would be the law in effect unless the Opposition brings a Motion to negative, the regulations, the Police Service Regulations are subject to affirmative resolution. They have to be approved by the Parliament. And that, in my respectful view, gives it a lot more validity and force. It went through that process in 2000 and, I think it was, seven when they were passed.

And one particular provision, very important provision, those regulations that deal with conduct of officers. It talks about the officer in the Second Division

who is in charge of the station and his responsibilities and so on for a station and the district and the conduct and efficiency of all the officers under his charge. A very serious, a very serious duty. I do not know if anybody ever observed when you walk into a police station and you see the notices on the wall and thing and it says SDOIC, Second Division Officer in Charge. That is a very important position that you hold in any particular police station. Whoever is that SDOIC he is the man on the ground. He is the man, or woman, to make daily operational decisions in a particular police station. And let me quote from Regulation 133(4) that says:

“In the absence of an officer referred to in sub-regulation (2)...”

Sub-regulation (2) speaks about the First Division Officer who will be responsible the state of his command and so on. Right? And it says:

“In the absence of the officer referred to in sub-regulation (2) or (3), the authority and responsibility of that officer shall devolve upon the next in seniority unless the Commissioner otherwise specifically directs.”

So our Police Service Regulations drafted, brought to the House, debated, passed, subject to affirmative resolution recognizes the role of seniority in the TTPS. So I have said a lot of why I think it is important but here it is, here it is right here written into the Police Service Regulations of the importance of seniority. The police service is an institution that operates on instructions from seniors and that senior when they talk about my seniors, anybody who knows a police officer, I think there is one of my colleagues who mentioned before on the other side that her father is a police officer so she would know, she would grow up hearing, my seniors, my seniors say this, my seniors say that. That is how the police service operates.

And seniority is rank but also, you see that thing they call regimental number, they respect that in the police service. It is the culture of the police

service. So it is not just part of the—it not just a logistical problem for the Service Commission to be able to grade and rank these persons who qualify to act under clause 4. But it is also—it goes against the grain of what is really the culture of the police service, that seniority matters.

So if the Government is serious about having a process that can work, having a process that would not be subject to challenge, having a process that will not result in more—and I have to keep using the word because I have not heard it for such a long time that Sen. Deyalsingh used—“kuchoor” and bacchanal and just, you know, complete upheaval in our police service, I think they need to give some serious consideration to whether or not it is right to remove seniority as a requirement from this process. I do not at all, I do not at all agree that including seniority is a fetter on the discretion of the commission because, you see, right here in this section you are limiting the persons who the commission can place on a merit list. They must have that particular rank. They must have been promoted to the rank of DCP or ACP to even get onto that list. But the commission must have a way to assess them. It is not whether, you know, who comes number one when out of the 11 of them that qualifies you have seven who qualify to be on this list? How “yuh” pick number one? Because you like how he looks? Or because we will have another situation where you will have allegations of political interference and instructions being given. Because that is what the country is afraid of.

That is what the Opposition is afraid of. That is why when a Government Minister signs an Order today and within 24 hours he changes it, the Opposition is alerted. We literally, and I think many people in this country literally stopped and said, but is it that whoever was number one, two, and three on the list did not meet with the approval of somebody, so they decided to change the Order because they really want five and six to be appointed. These are the types of speculation—

Mr. Vice-President: Senator, as much as you are making your statements and you should have about just about five more minutes in your contribution, be careful about imputing improper motives in relation to the list and any attempts to do anything to the list.

Sen. J. Lutchmedial: I am guided.

Mr. Vice-President: Okay? Continue.

Sen. J. Lutchmedial: I am guided. And my point is that, you want to avoid that type of speculation. You want to avoid the feeling amongst the population that there is some nefarious intent. You do not want persons living through the experience that we lived through last year of a clause that was basically what we call in law ad hominem and created an opportunity for an acting appointment for someone being then ruled out of order and superfluous and really constitutional or the actions of the commission pursuant to that Order unconstitutional. The same population, the same people following that matter living through it, you do not want the situation where they have to now question what are the intentions of the Government. Is it that there is some intention and I am not casting any aspersions and I am not saying that I like to wait until evidence presents itself which it has done quite adequately in the past. But in the interim I have to say that the manner in which this amendment came, the fact that it makes absolutely no sense and the fact that it is impractical for the purposes for which it is intended, it leans in the direction of making someone believe that there is something amiss and there is some other intention here.

So, again, with the greatest of respect to the drafters and those who may have given their advice and opinions on this matter, I say it is unworkable and it ought to be reconsidered and this notice, this legal Order ought to be revoked, withdrawn and some serious consideration given as to how that acting process

ought to really take place. Thank you very much.

Hon. Senators: [*Desk thumping*]

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

Sen. Dr. Maria Dillon-Remy: Thank you, Mr. Vice-President, for allowing me to join in this debate where the hon. Sen. Mark has asked the Senate to consider the Motion:

“Be it resolved that the Commissioner of Police and the Deputy Commissioner of Police (Selection Process) (No. 2) Order, 2021 and the Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No. 2) (Amendment) Order, 2021 be annulled.” Mr. Vice-President, we are here again debating an issue that we debated in this House on July 05, 2021. And when I reviewed that Motion it is similar to what we debated on July 05, 2021. The only things that are different, the only words that are different are the numbers of the Legal Notices, Legal Notices 277 and 278 have replaced Legal Notice, I think, it was 183 at that time. Sorry. I do not remember the Legal Notice number then but the only difference is the Legal Notice number.

Mr. Vice-President, the—my concern today is when we debated that Motion by Sen. Mark which was—he wanted to annul the then Legal Notice of 2021 then, all the things that we debated at that time were of no relevance when it came to be challenged in the court. I am saying that because, when I heard that in August of that year, last year that Justice Kangaloo had annulled the notice of—it was two—Legal Notice 103 of 2009 and Legal Notice 183 of 2021 which is the one we debated in July, I said, I wonder where we went wrong. And I looked back at what was brought to the Parliament, the Senate at that time, was the same thing that the Legal Notice overstepped the powers of the Police Service Commission. And I remember going through the Motion and I did not think that there was any

overstepping of the Police Service Commission's power and that is the same thing we are debating again today. When I look back at the judgment Justice Kangaloo and in part it said:

“It is declared that the Commissioner of Police and Deputy Commissioner of Police (Acting Appointments) (Selection Process) (No. 2) Order,”—of—
“2009 is unconstitutional and void being contrary to or ultra vires the provisions of Section 123 of the Constitution.”

And:

“It is declared that paragraph 4 of the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2021 is superfluous and hereby struck out in light of the provisions of section 123 (2) – (5) of the Constitution.”

The point here is that last paragraph which says that with the Order we debated, all she said about that Order was that section, that paragraph 4 was superfluous. In other words, there was no evidence in my mind that what was said in that Order diminished or interfered with the power of the Service Commission. We are here again to do the same thing.

And, Mr. Vice-President, I agree with Sen. Hazel Thompson-Ahye who talked about our processes being mired in confusion. Why as a small nation we cannot get it right? And as Sen. Lutchmedial just said, in other words, we seem to be going around in circles giving opportunities for things to be taken to court and at the end of the day all the confusion about whether we have a Commissioner of Police, Deputy Commissioner of Police or not, it is just not acceptable and I would hope that what we are doing today does not result in something like what happened last August.

Mr. Vice-President, I have to ask this question. I heard Sen. Rambharat talk

about the fact that seniority—he said, the Act 6 of 2006 about the delegation of the powers of managing the police service to the Commissioner of Police was something that was done to modernize the police service. And we are here in 2022—sorry. We are here in 2021 with an Order 277 that talks about seniority which has to be removed by another Order 278 the next day.

5.30 p.m.

Mr. Vice-President, I am just concerned about something like that. In other words, if there is history about seniority not being an issue or not being so important now why is an Order being made in November of 2021 where seniority is put as—it was put here in the clause as it referred to the selection of the Acting Deputy Commissioner of Police. So in Legal Notice No. 277, clause No. 4 that deals with the selection of an acting appointment to the office of Commissioner of Police, and it says subclause (2) talks about listing in descending order of seniority, and as was said already, all the issues about descending order of seniority they have been removed in the amendment order 278. Why did it reach there after so many years of modernizing of the police service? I just have that question to ask, and the reason I am asking that is, as Sen. Lutchmedial just said, we do not want anymore, at least we would prefer not to have, knowing that the responsibility of the Commissioner of Police is so important, and it does not look good. And it just does not look good for the Government, but it does not look good for the Parliament, and I am asking, why something like that would have got into the Order that had to be rescinded the next day?

Mr. Vice-President, I would cut my contribution short. I noted all the clauses of this Order 277, and as the Attorney General said, was similar to Orders that were done before. For instance, when we came in 2021, July, it was to make right the wrongs of the Order of 2015, and these things that are here in this Order 277

are in keeping with the judgment that was given at that point in time by Justice Rajcoomar. And these things are here in this Order, and again I do not see that there is any evidence there that they are removing the powers of the Police Service Commission.

Mr. Vice-President, the other area that I would mention is that in consultation with a senior police officer in Tobago about the thoughts about these Legal Notices, because I thought it was important that we have removed here seniority, and as Sen. Lutchmedial said, this something that is important within the police service. I asked for the opinion and the senior officer said that section 277 sets out the procedures to be followed by the Police Service Commission in selecting persons to fill the post of COP and Deputy Commissioner of Police, both substantively and for the purpose of acting. And that clause 4 of the notice deals specifically with the acting appointments in both offices, and Legal Notice 278 sought to amend clause 4 of Notice 277. And he said the amendments sought to give the police service the level of discretionary powers which either did not exist sufficiently or at all.

And as the Attorney General has said before, many of the previous judgments against the Government were precisely to give the Police Service Commission the autonomy that it needed. So in this particular Order, the officer is saying, it does give the Police Service Commission the laterality that it needed in carrying out their functions. In other words, they can select a person whom they think fit and qualify to act. They do not have to go with seniority and he thought that was a good thing, because the Police Service Commission is a creature of statute and must follow the law, and is not empowered to exercise wide discretionary powers. In other words, they have to do as they have been given by the Constitution, and therefore 278 sought—this is the opinion—to remove the

yoke from around the neck of the service commission and sought to allow it to exercise the level of discretion. And he thought that this was no doubt a crucial thing for the Police Service Commission, and that the amendments were a good thing.

I wanted to say, in clause 4 of Order No. 277 that talks about acting appointments what I understood the removal of the issue of seniority from that clause or from everywhere that it is mentioned from those clauses, to me it never said that the commission cannot select somebody who is senior. It is giving them the powers that they can if they want to, based on the criteria that they have in front of them for selection, the powers that they have given to them. I do not understand how we can say on one hand, you want to stifle the commission by telling them what to do on one hand and then when you give them freedom to do something you are saying that—you are not allowing them to be guided by the law. In other words, you want to put the seniority in to guide them and on another note you are saying give them the laterality. It does not make sense to me, Mr. Vice-President, and I am just asking that from my observation of the law, and I am not a lawyer, I know there are many more experienced people here. This Order 277 does not diminish the power of the Police Service Commission, which is what the Motion says, and therefore I cannot support the Motion. Mr. Vice-President, I thank you.

Hon. Senators: [*Desk thumping*]

Mr. Vice-President: Sen. Sobers.

Sen. Sean Sobers: Good day and thank you very much, Mr. Vice-President, for acknowledging me and giving me an opportunity to make a minor intervention here this afternoon on this particular Motion that is currently engaging the attention of the Senate. Now, this is an important Motion that has in fact been brought by the

Opposition for many reasons which have been traversed by many speakers throughout today's proceedings. It is squarely tethered and linked to certain scenarios that have well traversed the media during the period of June to maybe November of last year, all of which, I think, everyone within this Chamber and persons listening and viewing at home are quite au courant with. And that particular situation, those events that transpired last year, are extremely important, and so the forces coming out of such an event, I think, are in fact with some type of debate.

I was commenting to some persons recently that whilst that situation was ongoing, I do not think many persons within the public truly understood exactly what was taking place. You see, you have a situation where there is the Constitution that indicates how a particular individual, an individual of extreme import, an individual with an essential role and responsibility to captain, to pilot, to manage another very important structure and organization within our country, one that has a responsibility to ensure that law and order enforced within our country, that there is peace within our borders, an institution that must be seen as fair and independent and free from political interference. And what transpired during that particular period I think thrust a lot of persons and forced a lot of persons to think about this in a very negative way, that those very same tenants that I spoke about that this institution is supposed to be constructed upon, kept together upon were affected in a very real way, that I think for most of us we may not have seen within our lifetime. And, it is connected rather to trying to understand how such a situation or the genesis of such a situation was enacted.

So, Sen. Mark and others would have spoken about the Constitution and what the Constitution says and whatnot and whatnot and whatnot, and the Police Service Commission has an extremely important role. We all know this. It has been

said several times during the course of debate today. And what the Constitution indicates in short order with respect to the appointment of this individual, this Commissioner of Police, acting or permanent as the case may be, is simply that this service commission, just like other service commissions, would have this role, they would create a list and the person when tops that list they would forward that list rather to the Parliament for debate, and the person who tops that list would be sent to the President, and you know, you would eventually have a Commissioner of Police. And that is in its simplest fashion.

And, the procedure by which such an appointment or recruitment exercise is governed is through these Legal Notices which is referred to in the Constitution as the Order. And I think what a lot of persons failed to realize back then and what they understand or appreciate now, is that these legal orders are in fact created by the Government or the administration of the day. And prior to the events of June thereabouts in 2021, you would have had two Orders generally that would have governed how a Police Commissioner, acting or permanent would have been appointed. And that would have been an Order in 2009 and one in 2015. And they were Orders that were tried, tested, the courts had difficulties with the 2015 Order, which would have been illuminated in a particular case that was already probably spoken about within this debate. But before that, that was the system that was being utilized.

And we would have had many Commissioners of Police and Deputy Commissioners of Police being appointed accordingly. And then you had a situation where in 2021 with that Order of 183 that was birthed, caused significant issues. And in our opinion as a responsible Opposition those issues, with the greatest of respect, were carried over into the 277 and 278 Orders which we are discussing here today. In terms of my submissions, my issue really and truly is

this: There is a significant segment of the population, Mr. Vice-President, that believes that what has transpired over time may not have been what the framers of our Constitution envisioned when they dealt with that section 123 as it pertains to the Police Service Commission. There is a significant segment of the population that believe that there is or there should be a significant degree of independence in terms of appointing someone as important as a Police Commissioner. And with the fluxion of time and the growth of society understanding then that that role and function is really dictated by the administration, I think for a lot of persons within our country is very new. It is something that has been on the books for quite some time, but it is still quite a new concept for many persons within society.

And, in my opinion when I looked at the 2015 Order and I juxtaposed that with what obtains now, or what obtained in the 183 Order of 2021 and the 277 and 278 Orders, that if there was any belief that the system in and of itself, the recruitment process in and of itself was totally independent, in my opinion, it has been felled or even eroded totally. When I looked at what transpired in 2015 compared to the 183 of 2021 or the 277 and 278 of 2021, there is the removal of this concept of the firm. That the firm would have been entrusted subsequent to the application process under the Central Tenders Board to carry out the recruitment and appointment exercises. A firm with significant repute going through a rigorous exercise within the public domain would be entrusted with this activity. A firm with the level of resources and expertise to conduct such an exercise. And their activities would have been overlooked and guided by the Police Service Commission. A report would have been produced for the Police Service Commission to also check and ensure that the things that were being done were actually being done. Security vetting and whatnot would have also been a part and function of that firm, and this concept of the firm in my opinion lent to a belief

then that there was a significant degree of independence away from any administration. And what has come before us, in triplicate rather, the 183, the 277 and the 278 is a complete erosion of this firm.

The firm would have also been charged with the responsibility to prepare a dossier so that when the matter would have come before the Parliament, parliamentarians would have had the ability to review the dossier and debate accordingly, and that was removed in the 183 of 2021 Order and then replaced—

Mr. Vice-President: Senator.

Sen. S. Sobers: Yes.

Mr. Vice-President: I have given some leeway in the start of your contribution because as it is expected some sort of a context would need to be created. At this juncture and where you are coming in the debate when that context runs on the way it has so far, you run into tedious repetition. So we have heard about 183, we have heard about everything that has come before. What we are dealing with before us is 277 and 278. So I am going to ask you at this point if you have new points that have not been stated before in relation to these two Legal Notices—this Motion, sorry, that Sen. Mark has raised bring them forward now, because what will happen is you will run afoul of tedious repetition.

Sen. S. Sobers: Guided. And so what you had happening with respect to these situations now not being included in the 183 Order, it was eventually replaced and a similar dossier position was put in 277 and was not affected by 278.

I also had an opportunity in terms of briefly looking at 173 and 277, I recognized that in comparison there is this element of restricting the commission in 277 to utilize advertising the position in local newspapers. Now, I would have listened to the good Uncle Sen. Clarence Rambharat where he spoke about persons from foreign countries coming to Trinidad and Tobago to take up that position of

Police Commissioner, and how difficult such a role would have been, and a position for them to adopt, but I would have to disagree. I think giving, be it the firm or the commission, the latitude to allow for persons of international and regional expertise to participate in the application and recruitment process would have added considerably to the HR in terms of Commissioner Police Commissioner and Deputy Commissioner of Police. And in terms of reviewing that particular position I recognize that in the firm aspect, the firm would have had a website. When I tried to see whether or not in this particular situation what steps or measures would have been available for the commission now to invite persons of regional or international repute to apply, the service commission does not have a website. They have a service commission secretariat, and one would hope then that that secretariat has the level of resources to ensure a smooth recruitment process. Because this is what these two Orders would have now placed upon, when thrust upon the commission, to conduct all these activities that are well-named in these two Orders as opposed to the Orders previously.

In terms of the 2009 Order which was really and truly only properly well affected by the 277 Order. I mean it has been spoken about by other contributors here this evening, that there was an attempt that was made by Order 183, and that attempt would have failed. The courts did not find favour with it. And so an attempt was made in 277 to treat with that properly and frontally. I do in fact have some issues with that. Now, one of the issues that the court had with the 2009 Order, which was attempted to be fixed in the 277 Order, is that there was no room for parliamentary debate of persons in those acting positions in the 2009 Order. And albeit, yes, it was in contrast with the Constitution, it could have been fixed. Do I think that the 277 Order fixes it in my opinion? No. You have situations where persons would be attempting to act in a position, Commissioner of Police or

Deputy Commissioner of Police. In some instances the turnaround time for that acting position could be as little as one or even two days. And what the 277 Order envisions now is that a list also has to be prepared for those persons to assume those roles and responsibilities.

Whereas what took place in 2009 is that if you wanted to act as Commissioner of Police it would have been the most senior person holding the position of Deputy Commissioner of Police or acting in the position of Deputy Commissioner of Police would have been entrusted in that role. And equally as it pertains to persons who had to act as DCP, it would have been the person most senior either holding the position of ACP or acting in the position of ACP on the advice of the Commissioner of Police, or in consultation with the Commissioner of Police would have been given that opportunity to act. And so the turnaround time would have been realistic. What is envisioned here in my humble opinion is not. And yes the court would have indicated certain things that have been hashed by many other speakers here today, but it still does not form part of what I think is a realistic representation of what actually happens within the service. And I can very well imagine whenever such a time arises there will be some difficulties. And so if there is an opportunity to fix the situation it should be done on the floor of the Parliament. Now, in an attempt, as I said my intervention here this evening would have been quite minor, so I do not intend to detain any persons much longer.

The crux of the Motion is this, Mr. Vice-President. We believe that it is high time for persons to understand that the level of transparency that is supposed to be associated with the process, in our respectful view, does not exist. That there is significant interference within the process that should not exist, and that what transpired in 2021 is ever allowed to happen again you are going to be putting the country at significant risk. You cannot have a situation, with the greatest of

respect, Mr. Vice-President, where a process or a procedure is supposed to be transparent, void of political interference, taking place in the year of 2021. Taking place rather actually as far back as the year 2018 or '19 when an appointment process was taking place, an individual may have been fifth or fourth or whatever on the list, did not find favour, or the other persons higher up did not find favour with the Government, those four would have been felled and one would have been thrust to the top, and then three years later, as the old people say, you have to eat your vomit, and turn around and call the same person disrespectful, and go through a level of gymnastics unseen in this country to treat with that situation. And that is all we as a responsible Opposition, that is all we are trying to put unto the floor of the Parliament, to put on the *Hansard*, to put on the record, and most importantly to create those seeds in the minds of the listening and viewing public so that they properly appreciate what would have transpired within this Chamber. Wherever change could be made, we hope that it is effected properly and going forward, no pun intended, sober minds get to work get the job and actually get the job done. I thank you.

Hon. Senators: [*Desk thumping*]

Mr. Vice-President: Sen. Vieira.

Hon. Senators: [*Desk thumping*]

Sen. Anthony Vieira: Thank you, Mr. Vice-President. Given the state of crime in the country the public is justifiably concerned that the best person for the job is appointed as Commissioner of Police. Now, I am not for or against any particular candidate. Happy to leave those determinations to the Police Service Commission and to the Parliament. The issue really is whether these notices are a clever way to gerrymander or manipulate the system thereby allowing the Government to get a commissioner of its choice. My role as an Independent Senator is to weigh the pros

and cons of the Motion and then to vote accordingly. So this is an important Motion, because it enables us to deal frontally with the selection and appointment of our Police Service Commission, and it also enables the public to hear about these two Legal Notices, their purpose, and to gain a better understanding of the issues, so we have to thank Sen. Mark for bringing it to the fore.

The Motion requires us to consider two narratives, Sen. Mark's narrative that this is an attempt by Government through legalism to undermined and manipulate the Police Service Commission.

[MADAM PRESIDENT *in the Chair*]

And the Attorney General's counter narrative that this is an attempt to better regulate the selection process in keeping with the Constitution and applicable jurisprudence. Is this, as Sen. Mark posits, an unlawful attempt by the Government to prescribe how the Police Service Commission should go about selecting the Commissioner and Deputy Commissioners in abrogation of the Police Service Commission's prerogative? Or is this as the Attorney General points out, not about trying to manipulate the Police Service Commission, but about ensuring that the commission is able to select the best person for the job, among other things by removing the fetter of seniority and ensuring that the criteria and procedures are constitutionally in order?

6.00 p.m.

During the debate a number of cases were referred to treating with the role of the Commissions and their independence. I am not going to rehash those cases. Suffice to say, I do not see these Orders clashing with the case law or undermining the independence of the Police Service Commission. In any event, if one reads the relevant sections clearly, there are no breaches of the Constitution. As other speakers have pointed out, the critical section is section 123 of the Constitution,

and I will also look at section 129 and regulation 24 of the Police Service Commission Regulations because these were cited by Sen. Mark.

Let me start by drawing reference to section 123(9) which makes clear that the Police Service Commission may prescribe the procedure for termination. Now, if there was another subsection which made clear that the Police Service Commission shall prescribe the criteria and procedure for appointments, that would be the end of the matter. But there is no such provision.

In fact, subsection (2) says that:

“The Police Service Commission shall nominate persons for appointment...in accordance with the criteria and procedure prescribed by Order of the President...”

And as Sen. Mark rightfully pointed out, what you are really saying here is as prescribed by the Cabinet.

“...subject to negative resolution of Parliament.”

So the salient point here is that the Constitution recognizes that the criteria and procedure for appointment is not made by the Police Service Commission but by an Order of the President and the check and balance is Parliament. If it is unpalatable, it can be negated by the Parliament.

Interestingly, Sen. Mark cited section 129 which recognizes that a service commission can regulate its own procedure by regulation or otherwise. But if you read that section, it also says that requires the consent of the Prime Minister. So had the Police Service Commission come up with its own criteria and procedures for the appointment process it would have required the approval of the Prime Minister and without such approval those procedures and processes would be unconstitutional. So accordingly, I see nothing in the Orders which breach the Constitution where that is concerned.

Turning now to the issue of seniority of which we have heard much. Sen. Mark posits that seniority should not be removed as the determinative factor and that was echoed by Sen. Lutchmedial. And he cites regulation 24 of the Police Service Commission Regulations in support. Well, I agree with Sen. Rambharat who points out that regulation 24 does not arise in relation to the appointment of the Police Commissioner. But for me the more important consideration relates to what the Attorney General properly touched on, the fettering of discretion point.

Now, what is a fettering of discretion? A fettering of discretion occurs when a decision maker is bound by a particular policy. So if I have a decision to make and I am supposed to have a wide discretion and there is something that fetters me, prevents me from really exercising my discretion as I feel I should or I would like to do, that is a fettering of discretion and it can come in all kinds of ways. So if seniority is the determinative factor, it means that the Commissioners are not free to consider all the relevant factors and the specific circumstances in relation to each candidate. If the principle of seniority is the determinative factor, it undermines the whole recruitment process and the selection of the most suitable candidate.

Now, do not get me wrong, seniority matters and there is nothing here that says that seniority will not be considered. I expect that the Commissioners will weight seniority as a factor but it will not be solely determinative. So by removing seniority as the determinative factor we are in fact empowering the Police Service Commission, we are giving them the leeway, we are giving them a broad discretion in selecting the best candidate. So I fully support the removal of this fettering of discretion.

In conclusion, there is a lot of noise about Government trying to gain control or influence the appointment of the Police Commissioner. But honestly I see

nothing in these Orders that conflict with the Constitution or that will undermine the role and independence of the Police Service Commission. In fact, when you read the Order it reiterates that it is the Commission which conducts the recruitment process; it is the Commission which ensures that the candidates are subjected to security vetting; it is the Commission that conducts the assessment; it is the Commission who shall select the most suitable candidates and ultimately the best candidate, the highest graded candidate. So, I do not see these Orders as an attempt by the Executive to gain control over or to unduly influence the appointment of the Police Commissioner, rather they are about ensuring that the Police Service Commission has a clear and unfettered path in carrying out the selection process.

We have a new Police Service Commission manned by the some very eminent persons whose probity is beyond reproach. This will help them to do their jobs without blinkers or interference. What matters now is that they get on with it. I thank you.

Hon. Senators: [*Desk thumping*]

Sen. Wade Mark: Yes, thank you, Madam President. Madam President, may I ask how many—

Madam President: You have 30 minutes.

Sen. W. Mark: Okay, thank you, Madam President. Madam President, I would like to begin by thanking all of the speakers who have contributed to this Motion which seeks to have Legal Notices 277 and 278 annulled. We had at least, we had the Attorney General, we had Sen. Hazel Thompson-Ahye, Sen. Roberts, the hon. Clarence Rambharat, Sen. Varma Deyalsingh, Sen. Jayanti Lutchmedial, Dr. Dillon-Remy, Sen. Sean Sobers and the last speaker, Sen. Vieira.

Madam President, I want to say from the very outset that the last time I

brought a matter, a Motion I should say, to have Legal Notice 183 annulled, like today, it did not find favour with my colleagues on the Independent Bench. But I must say that history has absolved me. Because not only did Justice Nadia Kangaloo say paragraph 4 was superfluous and had to be struck out, the Government of Trinidad and Tobago has now deemed Legal Notice 183 as literally irrelevant by its revocation. So if Legal Notice No. 183 was good, then the Government would have kept it; the Government chose to remove it completely, Madam President.

So I want to indicate from the outset that we are not the courts, only the courts can decide these matters whether we are wrong and my colleagues on the Government Bench and Independent Bench are right. But our responsibility, Madam President, is to ensure that all of us are on the same page, we want to ensure that there is no influence, there is no interference, there is no manipulation, there is no gerrymandering by the ruling party, whichever one is in power, in determining who shall be the next Commissioner of Police.

Madam President, I want to say that in the case of Sen. Dr. Dillon-Remy, Sen. Dr. Dillon-Remy made reference to some discussion she had with some unnamed police officer on this whole matter of whether this question of seniority is relevant and the person told her in essence this is something that they need to look at and deal with and they believe that the Police Service Commission should really take into account factors other than, because that thing is more or less, that is, the seniority concept seemed to be a bit outdated to some extent.

Madam President, in the Police Service Act, section 131, in spite of all that we have been told today, it is entrenched in law that seniority as an element in determining whether someone should be elevated to one rank to the next is the law of the land. And in spite of what my colleague Sen. Rambharat would have us

believe in terms of the 2006 discussions, bipartisan discussions, the law of the land remains that seniority must be considered, Madam President, when you are dealing with acting appointments in the police service. It involves not only acting appointment at the level of the Commissioner of Police, the Deputy Commissioner of Police, but other ranks in the police service.

So I reject completely the argument that has been proffered that seniority is not essentially relevant to what we are dealing with. And, Madam President, may I also indicate when my colleague Sen. Rambharat made reference to myself supporting the 2006 bipartisan legislative arrangements he was absolutely correct. We supported it. But I want to remind you, Madam President, hon. Madam President, and through you to the hon. Clarence Rambharat, that when you go to *Hansard* records that led to that final agreement and passage of the legislation, you would have seen, Madam President, that those negotiations were very difficult, very challenging. And many things that we wanted as an Opposition in that piece of legislation, that is now part of the Constitution, we did not get them. We wanted to have the power to appoint two members to the service commission and the PNM should appoint three. We did not get through. But in the spirit of bipartisanship, Madam President, we agreed.

So, to give the impression through my hon. friend that we agreed to everything and therefore what am I talking about as it relates to seniority, you already agreed to that in 2006 and it happened even before you agreed in 2006. And I am saying that I want to refer my colleague to the *Hansard* record and the *Hansard* record would show that the then Prime Minister indicated that these were difficult negotiations. And he even went, he is even on the record as saying, Madam President, and I just want to remind my colleagues even the former Prime Minister, and that is why when the hon. Attorney General in his contribution made

reference to acting appointments in the police service and he went on to say that if somebody is acting for a day given the revocation of 103, Legal Notice No. 103 of 2009, you have to come to the Parliament to get approval. And he said that would be wasting time and therefore there is need for what?—bipartisan negotiations.

And maybe we can deal with these matters of acting on a short-term basis rather than on a daily basis because that would be very—it would consume a lot of time. And I said, look, this would be a wonderful opportunity for us to reform the Constitution. So I, from a personal point of view I would welcome such discussions, Madam President, because there are many things we want inside this Constitution that are not currently in here and I think that the negotiation would give us the opportunity to bring those to the attention of the Government.

I remember, Madam President, Mr. Manning at that time did not want affirmative resolution as it relates to notification and the Parliament engaging. He fought against that. But again, in the spirit of the occasion he had to give in because we did not give into that as it relates to removal. He wanted negative, we maintain affirmative. And, Madam President, just to clarify one small point so I can put in the record the need for clarification and somewhat an understanding of the challenges. And I was very happy as well when the Attorney General said the law is a living organism, it is dynamic, it is not static and here in the *Hansard* record on page 5 of the 15th of March, 2006, between the hours of 5.30 p.m. to 5.57 p.m., I want to quote what the former Prime Minister, former Prime Minister, Patrick Manning, may his soul rest in peace said. And I quote, Madam President:

“Mr. Speaker, that this approach does not represent...us an ideal, rather it is a compromised approach to which we have agreed to subscribe and we will see over time, with the effluxion of time, how well the system works... how well it does not work.”

And he said:

“If it turns out that the system is not meeting the aspirations of hon. Members of this House, then we believe we possess the maturity, again, to sit around a table...and continue our search”—Madam President—“for an approach that more closely meets the requirements of Parliament within the context of the society in which this Parliament operates.”

Madam President, I raise this to let you know that this is a work in progress and it is totally wrong for anyone to give the impression to this Senate that everything was hunky dory. No, everything was not hunky dory, everything was not all acceptable.

Madam President, I want to go to this point about the fettering that was made by my colleague Sen. Vieira of the Commission. And the argument was put forward that this 277 and 278 is not fettering the discretion. In fact, it is expanding, it is enhancing the discretion and that we have excellent people at the level of the Commission headed by a former Appeal Court judge. Madam President, may I remind this honourable Senate that under 123(2) of this Constitution the Executive arm of the State has the power through the selection criteria and procedure for the nomination of a Commissioner of Police and a Deputy Commissioner of Police, three of them. They have the exclusive power to determine the criteria and the procedure which again is reflected in Legal Notices 277 and 278.

So, Madam President, if we are being told by the hon. Minister of Agriculture, Land and Fisheries as well as the Attorney General and supported by Sen. Vieira indirectly, that 129(1) of the Constitution allows the Commission to make regulation with the consent of the Prime Minister which is absolutely true, the question has to be asked, is that in the Police Service Regulations which is appended to the Constitution, what are those Regulations for, Madam President?

Who do these Regulations refer to or apply to?

Madam President, I would argue that under the Constitution of our country, and I refer to 123(1)(a), that deals with the appointment to hold or to act in the offices of the Commissioner of Police and the Deputy Commissioner of Police, the power to appoint those officeholders only by the Police Service Commission. If that is so, Madam President, and police service is bound, Police Service Commission, under 123(2) to follow the criteria and procedure as outlined by the Executive, Madam President, if the Executive placed in an order, 277, descending order of seniority and within 24 hours removed it, what does that tell you?

Madam President, in the Legal Notice of 2015, Justice Rajkumar left the Commission to engage a firm to help it in the assessment and recruitment exercise. In Legal Notice 183 it was removed. I asked then to the Attorney General whether that is going to hamper the Commission from doing its work. The response was, no, the Commission can still proceed to hire a firm, both for the substantive as well as maybe the acting.

Madam President, I made it very clear that time we should have put or left in the Legal Notice, the power of the Commission to select a firm of choice to help it. That was removed. Madam President, in the 277 and 278 that we have before us, again the Government has left out the ability of the Police Service Commission to select a firm. I may be wrong but my information is that the Police Service Commission has been conducting its interviews for Acting Police Commissioner, for the Deputy Acting Police Commissioner, not on the basis of any firm, but they are doing it on their own steam with the support, I guess, from the Secretariat which is the DPA. If I am wrong, I am prepared to give way, but that is the information I have in my possession.

So if, Madam President, it is correct what I have said, then by leaving out

the firm and leaving it up to the discretion of the Police Service Commission to engage a firm, the Police Service Commission for all intents and purposes, it is alleged, has not done so. Yes, but, Madam President, they have the discretion, we are told, to do so, but they have not done so. So it is the same argument that is being made here, the Government has put into 277 seniority and then came back in less than 24 hours and they removed it and then we are being told that that is not fettering the discretion of the Police Service Commission to do their job, it is expanding their discretion. How can you be expanding the discretion of the Police Service Commission when you have removed it?

But, Madam President, you know why there will be a clash in the laws here, in the Police Service Commission Regulations which were passed in this Parliament and the last set of amendments came in 2006, and the Police Service Commission is responsible for the appointment, for acting purposes of the Commissioner of Police and the Deputy Commissioner of Police; in those very regulations, Madam President, there is a general rule that talks about seniority. So if there is a general rule that talks about seniority under 129(1), which gives them the power to make regulations, the Regulations are attached to the Constitution. But then in 123(2) the Government has the power to determine the criteria and the procedure and the Government is saying in these two Legal Notices, Madam President, that you the police commission is not directed to consider seniority, how are they going to exercise their discretion if 123(1) trumps 129(1)?

So at the end of the process the Government is directing the show, the Government is directing the Police Service Commission what to do and who to select and who to put to act and who not to put to act, Madam President. And we are saying in this Parliament, essentially, Madam President, this is okay?

6.30 p.m.

Madam President, the Parliament will not be able to determine this. Only the courts of our country, up to the Privy Council, will determine this and it will show again whether we were right or we were wrong. But we will not stand idly by and allow these Motions, these Legal Notices, to go unchallenged to allow the present Executive to determine who will act as a Commissioner of Police, who will act as a Deputy Police Commissioner, Madam President. We will not permit that. And history, as it has already absolved us in round one, it will absolve us in round two. So, Madam President, let me just deal with this point because this is a point that I championed during my contribution and my colleagues who contributed to this Motion sought to debunk this idea of seniority, almost to say that seniority has no place in the mobility or the upward strides of a police officer who is elevated from one rank to another based on his hard work, his experience and qualifications.

Madam President, and may I say something immediately? Let me disabuse from the minds of my colleagues, I am not at any time saying, Madam President, that seniority is the only criterion that must be used to determine someone's elevation from one level to another to act. I cannot be saying that. I will be a madman, Madam President. Seniority is one element. Qualifications is one, experience is two but what I am saying is that what we are putting in this Order is to tell the Police Service Commission do not consider seniority. That is what the Order is saying. But the regulations, Madam President, that is the Police Service Commission Regulations, 24(1), is saying as a general rule seniority will be considered. So what will prevail? Who will prevail? Legal Notices 277 and 278 or will it be the Police Service Commission Regulations which is appended to the Constitution? Which will prevail?

Madam President, in the event of confusion there will be need for legal clarification. There will be need for legal certainty because right now the Legal

Notices are ambiguous, Madam President, and the only way that matter will be resolved is in the courts of Trinidad and Tobago to determine whether the Executive has—there has been an incursion—

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

Sen. W. Mark: Yeah—once again by the Executive in determining who will become Commissioner of Police, who will become a Deputy Commissioner of Police, who will act as a Commissioner of Police, who will not act as a Deputy Commissioner of Police. Madam President, today in Trinidad and Tobago, because of Executive interference, we do not have a substantive Police Commissioner in our country for the first time for a few years well. And that came about, Madam President, because of the gerrymandering, the interference, the manipulation of the whole process, the interference, the influence, and we are seeing this occurring once again in these two Legal Notices.

Madam President, we will not stand idly by and allow the PNM Government to manipulate the process to determine who will be our next Commissioner of Police or who will act as a Deputy. The court will have to intervene and settle this matter once and for all. Madam President, we had a duty. The courts will know when we go before them that we came to this Parliament, we executed this case. The Parliament took a decision, was not in favour of annulment, hence the reason we have to come to the court to get the court to give us direction on this matter and only the court can decide this matter at the end of the day.

Madam President, I want to thank you for giving me the opportunity and, through you, I want to thank all my colleagues who have participated. I fundamentally disagree with all of my Independent colleagues on this matter. I respect their views but I disagree with them on their submission. We fundamentally disagree with the Attorney General and the Minister of Agriculture,

Land and Fisheries on his submission or their submissions. It is consistent with what they did in July of 2021, in terms of their submissions when I brought a similar annulment Motion. It is being repeated today, we have no problem with that. We did our duty. The population would have clarity. They will look at what has happened in the Parliament and they will make a determination. At the end of the day, we have only one thing to do, Madam President, that is our duty to our country, to the Parliament, to the people, to the community. We have done our duty and, Madam President, once again I beg to move and I thank you very much.

Hon. Senators: [*Desk thumping*]

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

Hon. Senators: [*Desk thumping*]

The Minister in the Office of the Attorney General and Ministry of Legal Affairs (Sen. The Hon. Renuka Sagramsingh-Sooklal): Madam President, respectfully I stand on Standing Order 44(2), exercising the Government's right to respond. Madam President, I thank you most sincerely for the opportunity to make a very quick contribution to this debate. I have had the opportunity to sit and listen to the contributions made by those opposite and most certainly by the Independent Bench. Madam President, while my contribution certainly is not going to be long at all, because I know the Attorney General and Minister Rambharat would have, you know, traversed the Government's position, I felt it was necessary just as a matter for the record to add my two pence to this very critical Motion that has been brought by Sen. Mark. And why I refer to it as a critical Motion is because there was so much misinformation and misguidance presented by those opposite, that I felt the need to rise and make a very simple contribution.

Now, Madam President, the effect of the Commissioner of Police and

Deputy Commissioner of Police (Selection Process) (No. 2) Order, 2021 and the (Amdt.) Order, 2021 on the Commission's exercise of its powers relating to the appointment of the Commissioner and Deputy Commissioner of Police is what in essence is before us today. Madam President, as a matter of the record, those powers, like those in section 123(1) of the 1976 Constitution of Trinidad and Tobago, includes:

- (1) Power to appoint persons to hold or act in...”—the—“office...”—of the Commissioner or Deputy Commissioner of Police, and the power as we all know to make—“...appointments...”—on promotion and to confirm—“...appointments...”—as well as the power, Madam President—“...to remove...”—from office—“...and exercise disciplinary control over persons holding or acting in...”—the—“...offices...”— of the Commissioner and Deputy Commissioner of Police.

Now, Madam President, in respect of each of these autonomous Commissions, the Constitution, and I say, the Constitution contains provisions to secure its independence from both the Executive and the Legislature, and this is very necessary for us to understand. Further to that, Madam President, the role and function and constitutional independence of the Police Service Commission established under the 1962 Constitution were also considered in great, great detail in a case that lawyers are very much familiar with, the case of *Thomas v the Attorney General of Trinidad and Tobago*, an appeal case in—in that case, sorry, Madam President. So there was this case, sorry, that was considered in great detail and as I said before, that case is *Thomas v the Attorney General of Trinidad and Tobago*. Of course, it is a case that is referred too often in our jurisdiction.

Now, this particular case, Madam President, Lord Diplock actually stated the

functions of the Police Service Commission fall into two classes:

“(1) to appoint”—police—“officers to the”—public service— “including their transfer and promotion and confirmation in appointments and (2) to remove and exercise disciplinary control over them.”

Now, Madam President, although Thomas dealt with the 1962 Constitution, it is necessary for the record to state that:

“...the Privy Council per Lord Diplock expressly observed and noted at 120E that its comments in relation to the constitutionally protected autonomy of that and other Service Commissions”—and note, other Service Commissions—“were equally applicable to the 1976 Constitution.”

And this is something that I felt it was imperative to place on the record, that case, and some of the dicta coming out of that particular case now.

Now, Madam President, in relation to the Police Service Commission, the principles established in Thomas, in relation to the 1962 Constitution, survives even today after the Constitution was amended in 2016. Now, I know Sen. Lutchmedial would have also mentioned—because she was indeed a part of that *Harridath Maharaj* case. And I myself want to add a little something on my interpretation and the interpretation of the *Harridath Maharaj v the Attorney General of Trinidad and Tobago* case. Now this, Madam President, in a nutshell, it dealt with the constitutional jurisdiction of the Police Service Commission and whether the Order was unjustifiable and an unlawful fetter, an interference with the independence, jurisdiction, power, role and function of the Police Service Commission.

Now, in that case which I just pulled, at paragraph 27 of that case, Madam President, on one hand there is the function—and at paragraph 27 it states:

“On...one hand there is the function of appointing officers to the police

service including their promotion and transfer.”

In this case it—“...is a matter exclusively for the Police Service Commission. On the other hand there are the terms of service which are to be included in the contract of the individual police officer. The Police Service Commission does not employ the police officer. His contract is...”—within—“the executive.”

Now, it was concluded in the case, Madam President, a few things: one, the amendment of the Constitution in 2006 did not remove the Police Service Commission’s independence or autonomy in relation to the appointment to offices of the Commissioner of Police and Deputy Commissioner of Police. The case in a nutshell also said:

“...the Order, providing as it does for the role of the Minister in triggering the recruitment process is...”—in that respect—“ultra vires the Constitution...”

Now, Madam President, let us put that into context in the matter—in the Motion that appears before us. Now, Madam President, as I said, let us put this into context of where we are today. The Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No. 2) Order, 2021, and the Commissioner of Police and Deputy Commissioner of Police (Selection Process) (No. 2) (Amdt.) Order, 2021, says—and I want to reiterate this—says specifically that:

“...it is the...”—Police Service Commission in its role—“...in its sole...”—sorry—“...discretion that can appoint a person to act in the office of Commissioner of Police or Deputy Commissioner of Police. However, its discretion is limited only with respect to the pool of candidates...”

“However...”—note—“its discretion is limited only in respect to the pool of candidates from which to choose an appropriate person to act as the

Commissioner of Police...”—or—“Deputy Commissioner of Police...”

Now, Madam President, in the interest of this Government, in the interest of the PNM Government, in the interest of the Government for all the people of Trinidad and Tobago in practising good governance and upholding the separation of power, the Orders therefore do not diminish the role of the Police Service Commission. We therefore cannot force them to act, Madam President. We are not here to force the Police Service Commission to act. They are there functioning autonomously without the influence, without the influence of anyone, Madam President, other than themselves.

So, as I close, Madam President, I wish to emphasize that we, the Government is saying should someone be appointed, they should hold the necessary qualifications and experience and special training for that position. I also reiterate by saying Sen. Mark’s Motion, it fails miserably. Madam President, with those few words, I thank you most sincerely for the opportunity—

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Sagramsingh-Sooklal:—to make a small the contribution to this debate.

Hon. Senators: [*Desk thumping*]

Question put.

Sen. Mark: Division.

Madam President: Hon. Senators, you will remember that because we do not have everyone in the Chamber I will allow three minutes for all Members to return to the Chamber. Hon. Senators, I wish to advise that I have granted permission to Sen. The Hon. Amery Browne, Minister of Foreign and Caricom Affairs; Sen. The Hon. Hassel Bacchus, Minister of Digital Transformation, to participate in these proceedings virtually and these Senators will therefore be called upon to vote.

The Senate divided: Ayes 6 Noes 21

AYES

Mark, W.

John, Ms. J.

Lutchmedial, Ms. J

Lyder, D.

Roberts, A.

Sober, S.

NOES

Rambharat, Hon. C.

Gopee-Scoon, Hon. P.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Browne, Hon. Dr. A.

Randall, Hon. M.

Cox, Hon. D.

De Freitas, N.

Singh, Hon. A.

Sagramsingh-Sooklall, Hon. R.

Bacchus, Hon. H.

Lezama-Lee Singh, Mrs. L.

Bethelmy, Ms. Y.

Ibrahim, Dr. M.

Richards, P.

Vieira, A.

Deyalsingh, Dr. V.

Seepersad, Ms. C.

Teemal, D.

Burgess, Dr. M.

Hon. Senators: [*Desk thumping*]

Motion negatived.

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 House do now adjourn to tomorrow, Wednesday, 26 January, 2022, at 10.00 a.m. Tomorrow, Madam President, we will deal with the Finance (Variation of Appropriation) Bill, 2022. Thank you.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for one matter to be raised. Sen. Mark.

Hon. Senator: [*Desk thumping*]

Wendy Fitzwilliam Paediatric Hospital

(Delay of Cancer Treatment)

Sen. Wade Mark: Thank you, Madam President. Madam President, the matter deals with and I quote, the need for the Government to address delays in the treatment of children affected with cancer because of the non-functioning PCR machine at the Mount Hope Hospital. Madam President, based on my last investigation the two PCR machines used to test both parents and cancer children are not fully functional at the JBS cancer children's ward at the Wendy Fitzwilliam children hospital at Mount Hope. At the moment, based on my understanding, there is only PCR machine currently working—

Madam President: May I remind Members that we are still having a sitting. Continue, Senator.

Sen. W. Mark: At the moment, based on my understanding, Madam President, there is only one PCR machine working at this children's hospital to service both children and parents or adults.

Madam President, when samples are taken, they take a long time for results to come in. It is our view that samples taken must be prioritized in the system in order to promote greater levels of efficiency, Madam President. My understanding, and I stand to be corrected, that untimely treatment of cancer children can lead to relapses which can pose serious dangers to the very lives of these innocent cancer children. It is therefore imperative that all steps and measures be taken by the hospital administration and the Government to prioritize the processing of these samples so that the treatment protocols can be scrupulously followed.

At the moment, Madam President, I have been informed that there exists only one PCR machine operational to satisfy the needs of both parents and cancer children at the Wendy Fitzwilliam Paediatric Hospital. My further understanding is that this single PCR machine is also being used for the entire patient population. This is unacceptable. Madam President, this, as I said, is totally unacceptable. There should be a minimum of five PCR machines in this society, at that particular hospital, functioning on a daily basis in order to ensure that citizens, particularly children suffering with cancer, can have access and, Madam President, particularly also during this pandemic period.

Another area of grave concern, Madam President, is the inability of parents and cancer children being able to take their samples involving both the PCR and the antigen swabs at the same time and on the same day. Now, because of the failure of those in authority to treat with the proper functioning of the machines at

the hospital, parents and cancer children are now being asked or requested to take the PCR on one day and return three days later to do an antigen test in order to access treatment at the facility. Again, this is absolutely unacceptable. This results, Madam President, in severe dislocation and hardship for both parents and cancer children who are now being forced to engage in extra expenses which they can least afford at this point in time.

Parents, Madam President, who happen to be working parents are forced to take a least two days off their jobs in order to access testing at both levels, namely the PCR and the antigen test. Madam President, it is to be noted that many of the cancer children reside in the southern parts of this country and have to trek sometimes hours to reach their destination.

7.00 p.m.

Madam President, another issue plaguing children with cancer in this country, again, is tied to the PCR results. When they become ill with a fever, that is the cancer children or anything at all, they are tested on what is called the emergency department where both PCR and antigen samples are taken and then moved to another paediatric ward that is not oncology-oriented posing life-threatening conditions to these children as the nurses and doctors in these medical and surgical wards may lack the knowledge and experience to handle what is called, Madam President, the ports or port-a-cath by which the children receive medicines in their bodies. Madam President, this can cause these ports to become infected and they can do grievous harm to these children and their organs.

In those circumstances, Madam President, I am calling on the Government to do the following immediately. The Government should immediately upon these children taking PCR samples, these samples should be immediately processed and these children be consequently moved to their oncology ward where they can

receive their medical treatment by trained personnel on the spot and thereby avoid in the process the possible loss of life and unnecessary suffering that these cancer children can experience and undergo.

So, Madam President, I have brought this matter to the attention of the Government for its intervention and consideration to ensure that cancer children and their parents are given priority at the particular hospital where they are treated, that is the Eric Williams Medical Sciences Complex and I am talking about the JBF at the Wendy Fitzwilliam Paediatric Hospital. 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. Before I respond to Sen. Mark, I want to just say that two of our colleagues recently just created history a short time ago by participating in these proceedings virtually. I want to thank you, Madam President, and the Clerk and the staff of the Parliament for facilitating this.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. C. Rambharat: And I know many of my colleagues would like to see it be a permanent part of the proceedings of this House and this Parliament. Thank you very much.

Madam President, I am personally aware of the difficulties initially faced by the parents and the children who are cancer patients and it had to do with the fact that the PCR machine within the NCRHA, North Central Regional Health Authority, was down on Tuesday 28 December, 2021, but in the interim, Madam President, there are procedures, there are protocols for those instances where critical equipment becomes non-functional in the public sector and that protocol gives the opportunity, among other things, to have testing done in the private facilities and that has been a longstanding arrangement. In this case, there would

have been initial difficulties as I said because the arrangements within that particular NCRHA facility in respect of that particular PCR machine would have been disrupted. Madam President, the Minister of Health assures that those families were able to have the test done within 24 hours and the results obtained.

Because of the breakdown of the machine, the procedures involving those particular patients were postponed on Tuesday 28 December, 2021, and were performed two days later on Thursday, December 30th, 2021. Of course, it seems like a short time, Madam President, but I want to recognize, no disrespect to the families, the patients, the parents, that for a child dealing with the effects of cancer, a two-day delay would be almost equivalent to a lifetime for them and we recognize that these things happen.

Madam President, again, the PCR machine malfunctioned on Tuesday, January 4th, 2022, and those procedures which were affected were postponed on that day and were performed two days later on Thursday, January 6th, 2022 and in none of these circumstances, the treatment and care of the patients were significantly compromised. But again, I acknowledge that any delay in these circumstances is a delay of significance to the parents and the patients themselves. As of January 12, 2022, Madam President, I am happy to say that the PCR machine was repaired and become fully functional and the patients both at the operating theatre and the admissions to the wards were receiving the PCR test results and follow-up treatment in a timely manner.

Madam President, as I close, I just want to say that with the advent of COVID-19, Trinidad and Tobago was one of those few countries that established a parallel health care system around the world. Those countries which established such a system found themselves overwhelmed by COVID and in many cases, the system that existed to treat non-COVID patients prior to the advent of COVID

overwhelmed and in Canada for example, in Ontario alone, late last year, Ontario for example said there was a backlog of one million procedures, non-COVID procedures relating to the pandemic. We have been able to manage so far. Of course, the PCR is something that is also required for COVID patients and the rapid antigen testing is also required for the COVID patients. And while there have been some dislocations and some delays relating to the non-COVID patients, we manage to deal with a significant amount of the workload while dealing with the COVID patients. In fact, we have been able, Madam President, to make use of several of the private facilities including the St. Augustine Medical Lab, Caribbean Forensic, Victoria Labs, Apex Diagnostics, BorderLife Medical Lab, Medical Associates and some others and we have been able to continue dealing with both COVID-19 and non-COVID-19 including those children who are cancer patients and require this critical care. Thank you very much, Madam President.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.08 p.m.