SENATE

Tuesday, April 20, 2022

The Senate met at 10.00 a.m.

PRAYERS

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

LEAVE OF ABSENCE

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

Hon. Senators, leave of absence has been granted to Sen. The Hon. Dr. Amery Browne, Sen. The Hon. Reginald Armour SC, and Sen. Anthony Vieira, all of whom are out of the country.

SENATORS' APPOINTMENT

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

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Christine Kangaloo
Acting President.

TO: MR. NDALE YOUNG

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

NOW, THEREFORE, I, CHRISTINE KANGALOO, acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NDALE YOUNG, to be temporarily a member of the Senate, with effect from 20th April, 2022 and continuing during the acting appointment of Senator the Honourable Christine Kangaloo as President of the Republic of Trinidad and Tobago.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 19th day of April, 2022."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Christine Kangaloo

Acting President.

TO: MR. AUGUSTUS THOMAS

WHEREAS Senator the Honourable Dr. Amery Browne is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

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

appoint you, AUGUSTUS THOMAS to be a member of the Senate temporarily, with effect from 20th April, 2022 and continuing during the absence of Senator the Honourable Dr. Amery Browne from Trinidad and Tobago.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 19th day of April, 2022."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Christine Kangaloo

Acting President.

TO: MR. HARVEY BORRIS

WHEREAS Senator the Honourable Reginald T. A. Armour, SC, is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW THEREFORE, I, CHRISTINE KANGALOO, acting President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, HARVEY BORRIS to be a member of the Senate temporarily, with effect from 20th April, 2022 and continuing during the absence out of the country of Senator the Honourable Reginald T. A. Armour, SC.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 19th day of April, 2022."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes
President.

TO: MR. JOHN HEATH

WHEREAS Senator Anthony D. Vieira is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOHN HEATH to be a member of the Senate temporarily, with effect from 20th April, 2022 and continuing during the absence of Senator Anthony D. Vieira from Trinidad and Tobago.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 12th day of April, 2022."

AFFIRMATION OF ALLEGIANCE

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

OATH OF ALLEGIANCE

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

Augustus Thomas, Harvey Borris and John Heath.

COMPANIES (AMDT.) BILL, 2022

Bill to amend the Companies Act, Chap. 81:01 to make provision for the role of the Chief State Solicitor as the Official Receiver [*The Attorney General*]; read the first time.

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

Question put and agreed to.

PAPERS LAID

1. Ministerial Response of the Ministry of Public Administration to the First Report of the Joint Select Committee on Finance and Legal Affairs on an inquiry into the Ease of Doing Business in Trinidad and Tobago, First Session (2020/2021), Twelfth Parliament. [*The Minister of Public Administration* (*Sen. The Hon. Allyson West*)]

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Public Transport Service Corporation for the year ended September 30, 2018. [*The Minister of Trade and Industry* (*Sen. The Hon. Paula Gopee-Scoon*)]

Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Telecommunications Authority of Trinidad and Tobago for the year ended September 30, 2014. [*Sen. The Hon. P. Gopee-Scoon*]

3. Response of the Auditor General of the Republic of Trinidad and Tobago to the Thirtieth Report of the Public Accounts Committee on the examination of the concerns raised in the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the Financial Years 2016, 2017 and 2018 with specific reference to the Ministry of Energy and Energy Industries (MEEI) and follow up on the implementation of the recommendations in the Fourth, Fourteenth and Twentieth Reports of the Public Accounts Committee. [*Sen. The Hon. P. Gopee-Scoon*]

4. Ministerial Response of the Ministry of Finance to the Second Report of the Public Accounts Committee on an examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the financial year 2020. [*Sen. The Hon. P. Gopee-Scoon*]

5. Ministerial Response of the Ministry of Health to the Interim Report of the Public Administration and Appropriations Committee on the response of the Public Authorities to the COVID-19 Pandemic in Trinidad and Tobago. [*Sen. The Hon. P. Gopee-Scoon*]

6. Ministerial Response of the Ministry of Health to the Third Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA) on an inquiry into the Administration of the Children's Life Fund Authority. [*Sen. The Hon. P. Gopee-Scoon*]

7. Ministerial Response of the Ministry of Education to the Fourth Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA) on an inquiry into the role of NIHERST as it pertains to the development of the STEM in Trinidad and Tobago. [*Sen. The Hon. P. Gopee-Scoon*]

8. The Family Proceedings (Amendment) (No. 2) Rules, 2022. [*Sen. The Hon. P. Gopee-Scoon*]

10. The Criminal Procedure (Amendment) Rules, 2022. [*Sen. The Hon. P. Gopee-Scoon*]

11. The Civil Proceedings (Amendment) (No. 2) Rules, 2022. [*Sen. The Hon. P. Gopee-Scoon*]

12. The Children Court (Amendment) Rules, 2022. [*Sen. The Hon. P. Gopee-Scoon*]

13. Annual Report on the Freedom of Information Act, Chap. 22:02 for the year 2009. [*Sen. The Hon. P. Gopee-Scoon*]

14. Annual Report on the Freedom of Information Act, Chap. 22:02 for the year 2010. [*Sen. The Hon. P. Gopee-Scoon*]

15. Annual Report on the Freedom of Information Act, Chap. 22:02 for the year 2016. [*Sen. The Hon. P. Gopee-Scoon*]

16. Annual Report on the Freedom of Information Act, Chap. 22:02 for the year 2017. [*Sen. The Hon. P. Gopee-Scoon*]

17. Annual Report on the Freedom of Information Act, Chap. 22:02 for the year 2018. [*Sen. The Hon. P. Gopee-Scoon*]

JOINT SELECT COMMITITEE REPORT

Local Authorities, Service Commissions and Statutory Authorities (including the THA)
Criminal Injuries Compensation Board
(Presentation)

The Minister in the Ministry of Agriculture, Land and Fisheries (Sen. The Hon. Nigel de Freitas): Thank you, Mr. Vice-President. Mr. Vice-President, I have the honour to present the following report as listed on the Order Paper in the name of Sen. Dr. Varma Deyalsingh:

> Fifth Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA) on an inquiry into the Efficiency and Effectiveness of the Criminal Injuries Compensation Board.

URGENT QUESTIONS
Xeloda
(Procurement of)

Sen. Wade Mark: Thank you, Mr. Vice-President. To the Minister of Health: Can the Minister indicate when will public health care institutions procure the essential chemotherapy drug Xeloda?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you, Mr. Vice-President. And, Mr. Vice-President, I offer you my personal congratulations on your appointment as Vice-President of this august Chamber.

Mr. Vice-President, this question is based on several false premises and it is not surprising. It was answered already on March 22nd, in response to a question posed by Sen. John. False premise number one, public health institutions do not generally procure drugs. Drugs for the country are procured via NIPDEC, via a tender process. False premise number two, there is no shortage of the drug in

Trinidad and Tobago as I identified on March 22nd. I did say at that time 1,180 tablets were identified in the country and distributed. I also indicated at that time that we are expecting a shipment of 150,000 tablets and those tablets have in fact arrived. They arrived on March 31st, and are being or have been distributed across the public health care system. So, again, it is based on false premises.

But Mr. Vice-President, I must say that the COVID-19 has posed so many logistical challenges for everything, pharmaceuticals, steel, cars, microchips, everything. I really want to single out one person who deserves a lot of commendation, the Acting Principal Pharmacist Aneesa Siboo-Doodnath who has gone beyond the call of duty to keep our supply chains open in very, very trying times. So, thank you very much, Mr. Vice-President.

Hon. Senators: [*Desk thumping*]

Mr. Vice-President: Sen. Wade Mark, Question No. 2.

Acting Chief Executive Officer of WASA
(Suspension of)

Sen. Wade Mark: To the Minister of Public Utilities.

Hon. Senators: [*Desk thumping*]

Mr. Vice-President: You may ask the question. Proceed.

Sen. Mark: I can ask the question?

Mr. Vice-President: Please do.

Sen. Mark:

Can the Minister state the reasons for the recent suspension of the Acting Chief Executive Officer of the Water and Sewerage Authority by the board?

The Minister of Public Utilities (Hon. Marvin Gonzales): Thank you, Mr. Vice-President. Mr. Vice-President, this matter is engaging the attention of the board, as was previously indicated. The matter is under investigation and therefore it will be

irresponsible, it will be foolhardy, it will be reckless of the Minister of Public Utilities to come out in public and speak on matters that are actively under the investigation of the Board of Commissioners of the Water and Sewerage Authority.

Hon. Senators: [*Desk thumping*]

Sen. Mark: Mr. Vice-President, can the Minister indicate whether the decision of the board at 8.30, on the Wednesday before Holy Thursday, Mr. Sherland Sheppard, Chief Executive Officer, Acting, was summoned by the board to sign off on the retrenchment of over 3,000 WASA employees and Mr. Sherland Sheppard refused? Can I ask the hon. Minister if he can clarify that position for the public?

Mr. Vice-President: Sen. Mark, based on the answer of the Minister, I will not allow that question.

Sen. Mark: Can the Minister indicate or verify and/or confirm whether some irregularities involving Mr. Sherland Sheppard is under investigation by the board of WASA, that can have criminal implications?

Mr. Vice-President: Senator, based on the first answer being under the investigation of the board, in the fullness of his answer, I will not allow that question.

Sen. Mark: Do I have another question, Sir?

Mr. Vice-President: No, you do not.

Sen. Mark: Okay. You are on the mark, Sir. No pun intended, Sir.

Mr. Vice-President: Move on to question 3.

Sen. Mark: Yes, Sir, I am guided.

Association of Maxi-Taxi School Transport Concessionaires

(Details of Impasse with Ministry of Education)

Sen. Wade Mark: To the Minister of Education—can I speak, Sir?

Mr. Vice-President: Please do.

Sen. Mark: Right.

Given the impasse brewing between the Association of Maxi Taxi School Transport Concessionaires (AMTSTC) and the Ministry of Education on the resumption of the school transport service, can the Minister state what actions are being taken to rectify this situation?

Mr. Vice-President: Acting Leader of Government Business.

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you, Mr. Vice-President. The school transportation services are managed by the Ministry of Education in collaboration with the PTSC. For term 3 in the academic year 2021/2022, these services began in Trinidad on April 19, 2022, with 44 routes being serviced. The PTSC is actively sourcing drivers for additional routes and has indicated that by the end of next week most, if not all routes, would be serviced once drivers are available.

The Ministry of Education has remitted $1.2 million in payment to the PTSC in this academic year for school transport services and the remaining invoices, totalling $184,000, are being processed for payment. Thank you.

Sen. Mark: Mr. Vice-President, can I ask the hon. Minister whether the $1.2 million remitted to the Ministry of Education to service the needs of the maxi-taxi school transport concessionaires is the final total?

Sen. The Hon. P. Gopee-Scoon: As I indicated to you, there is another $184,000 being processed for additional payments and this will bring the payments outstanding to an end.

Sen. Mark: Mr. Vice-President, may I ask the hon. Minister whether she is aware that there is a large outstanding sum owed to maxi-taxi school transport concessionaires since 2019? Can the Minister indicate whether those outstanding

payments will be met by this $1.2 million, in addition to the $184,000 that the hon. Minister mentioned?

Sen. The Hon. P. Gopee-Scoon: From all indications, and as I have it, all payments outstanding would in fact be covered, and this is for the school transportation services.

Sen. Mark: Thank you, Mr. Vice-President.

Sen. The Hon. P. Gopee-Scoon: Thank you.

ANSWERS TO QUESTIONS

Mr. Vice-President: Acting Leader of Government Business.

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you, Mr. Vice-President. I am very pleased to say that all six oral questions on the Order Paper will be answered today. I also have the pleasure to announce that the Written Question 117, and this is the question placed to the Minister of Tourism, Culture and the Arts, is ready for circulation and will be circulated today. Thank you.

Mr. Vice-President: Sen. Wade Mark.

WRITTEN ANSWER TO QUESTION

A Taste of Carnival 2022

(Details of)

117. Sen. Paul Richards asked the hon. Minister of Tourism, Culture and the Arts:

Regarding the National Carnival Commission's "A Taste of Carnival 2022" events, can the Minister provide:

i. the final breakdown of how the $15 million allocation for these events was spent;

ii. the number of persons who logged on to the online portals to the various shows;

iii. the number of tickets sold for the events; and

iv. the amount of revenue derived from these events?

Vide end of sitting for written answer.

ORAL ANSWERS TO QUESTIONS

Release of Bodies

(COVID-19 Deaths)

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

Having regard to reported concerns of grieving families claiming delays in the release of the bodies of their loved ones suspected of having died from COVID-19, does the Government intend to approve the use of private laboratories to administer PCR tests in cases where COVID-19 is the suspected cause of death?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much again, Mr. Vice-President. I am advised that there is no delay at present in the release of bodies suspected of having died from COVID-19 due to a lack of a PCR test. Key reasons identified by the regional health authorities for the delay in the release of bodies to families are that the next of kin being in quarantine and unavailable to claim the body at that time and the pending arrangements being made by families with the funeral homes for their loved ones. Thank you very much, Mr. Vice-President.

Sen. Mark: Mr. Vice-President, may I?

Mr. Vice-President: You may.

Sen. Mark: Hon. Minister, through the hon. Vice-President, can you share with this honourable Senate what can done to address this burden that is being placed on

the families of loved ones as they seek to get their family members into the country to be part of the final rites administered to their loved ones which is leading, as you know, to this escalating in the cost of fees at the funeral homes? Can anything be done by the Ministry, through your good offices, to address this matter?

10.30 a.m.

Hon. T. Deyalsingh: Mr. Vice-President, the question asked was about the provision of COVID-19 tests. There is currently no backlog that I am aware of, of bodies being released to families. So the question that you are asking has no basis.

Sen. Mark: Mr. Vice-President, I thank the hon. Minister. Let me go on to question No. 70.

School Feeding Programme

(Resumption of)

70. Sen. Wade Mark asked the hon. Minister of Education:

In light of the rising cost of food and the negative effect on vulnerable families, can the Minister indicate when will the Government be resuming the School Feeding Programme?

Mr. Vice-President: Acting Leader of Government Business.

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you, Mr. Vice-President. The School Feeding Programme resumed in all schools with students in physical attendance in February 2022. Thank you.

Sen. Mark: Mr. Vice-President, can the hon. Minister indicate what is the quantum or volume of food that is distributed to the various schools in Trinidad Tobago and would that cover in this instance, the early childhood centers, primary schools as well as secondary schools?

Sen. The Hon. P. Gopee-Scoon: As I said, the School Feeding Programme resumed in all schools. As it relates to the quantum that you are asking of, that would be best placed in another question.

Sen. Mark: Thank you. Mr. Vice-President, can I go on to the next question?

Mr. Vice-President: You may.

Digital Vaccination Card System

(Details of)

71. Sen. Wade Mark asked the hon. Minister of Digital Transformation:

In light of the proposed introduction of a digital vaccination card system, can the Minister provide the following:

(i) the "unexpected issues" that have caused a delay in the introduction of a digital vaccination card system;

(ii) the tendering process for the procurement of the system; and

(iii) the name of the company which was awarded the contract to develop same?

The Minister of Digital Transformation (Sen. The Hon. Hassel Bacchus): Thank you, Mr. Vice-President. The objective of the digital vaccination card system, also known as the COVID-19 vaccination E-certificate initiative, is to enable persons who have been fully vaccinated against the COVID-19 virus to be issued with a digital certificate that can be verified or validated by third party stakeholders. An added benefit of the introduction of this vaccination certificate is that it can be used during international travel in instances where presentation of a digital vaccine card or validation, is either a norm or is a mandatory requirement in a few countries where that is happening, or we have heard so.

The E-certificate will include a QR code that will contain the information on the vaccinated individual as entered in the vaccination database of the Ministry of

Health and the information will be embedded in the QR code. It is important to ensure the security and integrity of the system and that could contain information—information that is contained within. There are two aspects of this:

1. The need to ensure confidentiality of the personal data of the E-certificate recipient; and
2. The need to protect the integrity of the E-certificate from attempts to illicitly forge it or amend it as has happened with other things.

The issues that contributed to the delay, specifically were, three of them primarily: one, the emergence in December 2021 of a global security vulnerability known as Log4j. This required assessment and fix implementation where this was applicable. Just so for information through you, Mr. Vice-President, the Log4j vulnerability allows malicious attackers to execute code remotely on any targeted computer. It is an open source software and it is log in for Java and so on. So, it is quite dangerous as it was at that time and had to be addressed.

Another one, of course, is the unacceptable level of data inconsistency in the database to be queried and this required, again, investigation and cleanup.

And lastly, additional work was required by one of the potential suppliers that results from changes made in the vaccination database.

As far as item 2, the COVID vaccination E-certificate is being deployed as a public/private partnership and in this context two companies who are currently supplying technological solutions to the Government, who had already developed similar solutions in their portfolios, offered to provide required systems at no cost. In order to increase the chances of success, the two companies were engaged to adapt their systems for potential deployment of the E-certificate and the companies were Crimson Logic and RioMed—just so you know who the companies were.

CrimsonLogic is a Singaporean software company solution that developed an ICT solution for the Port of Singapore, has extensive experience with Trinidad and Tobago environment and has developed the TTBizLink business facilitation suite for the Ministry of Trade.

RioMed is a UK based health sector ICT solution company that has developed the health information management system for the Ministry of Health, and RioMed was engaged to develop the Trinidad and Tobago ICT solution for the management of the National COVID-19 Vaccination Programme.

As far as item 3, following the user testing process, the RioMed version of the vaccination E-certificate was selected for a number of reasons including but not limited to, reduced integration requirements, website independence and of course, additional functionality. No costs have been incurred by the Government in the development of the digital vaccination card system as both Crimson Logic, RioMed developed their respective solutions free of charge. Thank you, Mr. Vice-President.

Sen. Mark: Mr. Vice-President, yeah. Mr. Vice-President, can I ask the hon. Minister when he envisages that particular process to receive some level of permanence. Right now it appears to be temporary in a trial and error basis. Can you share with this honourable Senate any time frame for the permanent introduction and application of the digital vaccination card system? Hon. Minister.

Sen. The Hon. H. Bacchus: Thank you, Mr. Vice-President. The factors that went into the delay, the main one that remains that we are trying to address to ensure that when we do put this it will mean that we do not have any issues, really remains the inconsistency in the data. And we have been working at that fairly well, in conjunction with a number of people including RioMed and officials at the Ministry of Health. If we can get to an acceptable level, as well as depending on

whether or not other countries require—and that may speed us up even further, if other countries require QR code-type validation. In other words, that your vaccination status is validated by the Trinidad and Tobago Government, those things would push us faster in that direction. The domestic use of it is somewhat muted at this point. So my thing is, the time frame is really built around our ability to finish and get to a point of acceptable levels. I really cannot tell you that in terms of a day or two days, but we are making significant progress.

Sen. Mark: Mr. Vice-President, in respect of the inconsistency involving data, hon. Minister, through the Vice-President, can you indicate whether there is some—that we have some challenges, I should say, with the Data Protection Act as it relates to personal data extraction, could that be one of the reasons for the inconsistencies, can you clarify?

Mr. Vice-President: Sen. Mark.

Sen. Mark: Yes.

Mr. Vice-President: I will not allow that question based upon the answer of the Minister.

Sen. Mark: The hon. Minister spoke about global security vulnerabilities earlier. Can the hon. Minister share with this Senate exactly what are some of those challenges in terms of global security vulnerabilities?

Sen. The Hon. H. Bacchus: The one in question, as I mentioned during my answer previously, the one that was of specific interest to us, there are always global security issues that will affect any solution. In this case, the one that was of primary concern to us was Log4j. It created issues worldwide. And one of the things that the Ministry of Digital Transformation was not prepared to do was to launch a system that involves people's personal medical records and/or things that can be used otherwise, unless that was addressed by both the hardware providers

and the people who were providing the software. That one in particular is there but every day, we try to manage the security threat to Trinidad and Tobago.

Sen. Mark: Can the Minister indicate to us, what is the status of that situation in terms of seeking to ensure the security of citizens' personal medical data given what he just said?

Sen. The Hon. H. Bacchus: In terms of the specific threat of Log4j that was addressed, the specific software vendor had provided fixes, the hardware vendors associated with what we work with have also implemented those fixes and we are confident and quite clear that this particular threat has been addressed. Other threats emerge daily and we continue to work with that through the Ministry of National Security with C CERT and other members of the security cybersecurity apparatus within the Ministry of Digital Transformation and the Ministry of Health.

Sen. Mark: Thank you, Mr. Vice-President.

Sen. The Hon. H. Bacchus: Thank you, Mr. Vice-President.

National Insurance System Reform (Details of)

110. Sen. Charrise Seepersad asked the hon. Minister of Finance:

Given the NIB's continued advocacy for reform of the National Insurance System (NIS), can the Minister advise as to:

(i) what are the Government's plans, if any, to assist in the reformation of the NIS;

(ii) whether said reformation would require legislative amendments; and

(iii) how soon will such legislation be brought to the Parliament?

The Acting Prime Minister and Minister of Finance (Hon. Colm Imbert): Thank you, Mr. Vice-President. The Government is guided by the

recommendations of the various Actuarial Reports on the National Insurance System, among other factors in its oversight of the system. While the recommendations of the Tenth Actuarial Report may appear feasible on the face of it, each recommendation has an impact on contributors to the National Insurance System. These recommendations must also be considered in the context of more recent developments since the publication of the Tenth Report.

The following observations and developments are now relevant. Firstly, the recommendations in the Tenth Actuarial Report were pre-COVID and the economy of Trinidad and Tobago has been affected by measures taken to mitigate the spread of the virus. Regional and global economies have contracted, global inflation has skyrocketed and supply chain disruptions have intensified with attendant effects on the Trinidad and Tobago economy. Government revenue has been severely reduced since 2020, while Government expenditure on social programmes has increased significantly.

The impact of COVID-19 on the wider society and economy needs to be comprehensively reviewed as there are long term social and economic effects. In particular, the IMF has projected that global growth is expected to moderate from 5.9 per cent in 2021 to 4.4 per cent in 2022, half a percentage point lower for 2022 than in the October World Economic Outlook.

Elevated inflation is expected to persist for longer than envisaged in the October World Economic Outlook with ongoing supply chain disruptions and high energy prices continuing in 2022 and risks to the global baseline are tilted to the downside. The emergence of new COVID-19 variants could prolong the pandemic and induce renewed economic disruptions.

In view of these factors, while the Government appreciates the need for reform of the National Insurance System, caution is key to ensuring that the

reforms can be operationalized at minimum cost to the citizenry. In this regard, the Ministry of Finance, having considered the recommendations of the Actuary and developments in the domestic and international environment, commenced consultations with the national trade unions with respect to increasing the retirement age. If this initiative is successfully implemented, it will improve the National Insurance Board's capacity to meet its long-term obligations in terms of benefits and improve the level of contributions to the National Insurance Fund.

In addition, the Ministry has advised the National Insurance Board to establish a funding policy with clear objectives to govern adjustments to, the parameters of, and the factors that affect the system. It is likely that any reform of the National Insurance System would require legislative amendments, but the length of time before such legislation can be brought to Parliament cannot be precisely determined at this time. Okay?

Sen. Seepersad: Thank you, Mr. Vice-President, thank you, Minister. Minister, do the reforms include legislation to better deal with delinquent employers, because that would have an impact on the funds going into the investment fund.

Hon. C. Imbert: Yes, that is a serious area of concern.

Sen. Seepersad: So the legislation would include means to deal with delinquent employers in a legal way?

Hon. C. Imbert: Certainly.

Sen. Seepersad: Okay.

Hon. C. Imbert: We need to strengthen that aspect of the existing legislation.

Sen. Seepersad: Yes. Minister, will the Government be reviewing the NIS contribution rates in light of what you mentioned in your summary answer to the question?

Hon. C. Imbert: That is a last resort. I have said this before, in answer to similar questions. The last thing we will do is increase contribution rates, we are trying the other methods first, which is the negotiations, discussions, consultations, you could put whatever description you want on them, with stakeholders, the trade unions—after we finish consulting with the trade unions, we will go to the employers and then the wider population with respect to the increase in the retirement age. And as I said, if that is successful, that should go a long way to dealing with the problem. We also continue to look at the self-employed, but that is a very expensive proposition and I want to re-emphasize that an increase in contribution rates would be a last resort.

Sen. Seepersad: Minister, my last question dealt with the self-employed individual, if you would be looking at either a separate fund or some other mechanisms to include—to take into account self-employed persons having some kind of pension at their retirement age, whatever that may be.

Hon. C. Imbert: Well, at present, they do not contribute to the fund. So that there is no pension for them to receive because it is a contributory pension plan. The problem with bringing the self-employed into the system is the concept of grandfathering, where there is a request that if self-employed persons come in, remember they will come in at different ages. So, a person may come in in their mid-50s and would not have had sufficient years of contributions to achieve a pension. At the present time, we require 750 contributions, which is a little short of 15 years. So that if you bring new categories of persons in, many of them would not have made the 15 years to qualify for a pension. So that the cost to Government is to make up that deficit and it is very expensive. And that is one of the reasons why it has not yet been implemented by any government over the last 20/30 years because of that significant cost in the hundreds of millions of dollars. So it is

something that we continue to look at and there are options that can be considered, but it is the initial cost of that that has prevented various governments from implementing it. So we continue to look at it. Okay?

Sen. Seepersad: Thank you, Minister.

Mr. Vice-President: Thank you, Acting Prime Minister and Minister of Finance. Minister of Trade and Industry, you may answer from the chair.

Growth of Local Business NIS Contributions
(Measures to Address)

111. Sen. Charrise Seepersad asked the hon. Minister of Trade and Industry:

In light of a decline in the number of employers that contribute to the NIS and a 3.74 per cent decrease in contribution income per the 2021 NIB Report, can the Minister indicate what measures are being put in place to encourage the growth of local businesses in the short to medium-term?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you, Mr. Vice-President. The Minister of Finance in his presentation to Parliament on February 10, 2022, underscored the strong performance of the National Insurance Fund. The National Insurance Board of Trinidad Tobago in its Annual Report for financial year July 01, 2020 to June 30, 2021 highlighted that for financial year 2021 the number of contributors in the National Insurance System was recorded at 446,116, increasing by 41,919 contributors or 10.4 per cent from 404,197 in 2020, while the number of beneficiaries increased by .9 per cent, from 204,613 in 2020, to 206,569 in 2021. It should be noted that despite the challenges of pandemic restrictions, contribution income collected for the year ending June 30, 2021, was $4.51 billion, which was $277 million more than or 6.5 per cent above the projected estimate of $4.23 billion.

With regard to the performance of the National Insurance Fund, NIB's investment returns in 2021, were exceptional, with an overall investment portfolio return of 14.2 per cent and this resulted in a net increase in the fund in 2020/2021 by 7.4 per cent, or $2.13 billion, pushing the net value of the fund to $30.78 billion.

In summary, this indicates that the performance of the fund is strong despite subdued domestic and international rate environments and uncertain market conditions due to impacts from the COVID-19 pandemic.

Government initiatives. The Government continues to implement a number of measures to encourage the growth of local businesses in line with its *National Development Strategy 2016-2030 Vision 2030* and Roadmap to Recovery reports. Under the Public Service Investment Programme 2021/2022, the Government is advancing a number of projects and programmes to drive structural transformation aimed at diversifying the economy, creating an enabling environment, an increasing economic growth and development.

Increased local business growth is expected to result in increased employment and can positively impact the number of contributors and contribution income for the National Insurance Fund. And these initiatives fall under the following key areas:

- Enhanced market access;
- Increased access to finance;
- Increased investment opportunities; and
- Business development initiatives.

Under enhanced market access, enhanced market access for businesses in the micro, small and medium enterprise sector, MSMEs, can help in scaling the

production of goods and service offerings by MSMEs, which will encourage business growth.

The Export Booster Initiative, implemented by exporTT was launched in February 2021, with the objective of doubling the country's manufacturing exports by 2024. That EBI focuses on export promotion, capacity building and institutional strengthening, and the main activities are trade missions, international certification from the food and beverage standards and product compliance, capacity building programmes, co-financing arrangements.

(b): increased access to finance. Measures to increase access to finance will stimulate growth specifically in the MSME sector, which will not only create new businesses but also improve business activity in sectors geared towards increasing employment. The Ministry of Trade and Industry's initiatives include the Grant Fund Facility. The Grant Fund, as you know, was established in 2017 and was further enhanced in August 2019. It is administered by the Ministry of Trade and Industry in collaboration with exporTT Limited. SMEs in eight designated sectors are financially assisted with the acquisition of new capital requirements expenditure, including machinery, equipment, and in some cases, software tools and patents for new technology. Also, the Research and Development Facility. The revised RDF, which was approved in 09 October, 2017, seeks to promote increased business and trade and engender innovation and competition, especially among small and medium sized enterprises across all non-energy sectors.

Other Government initiatives geared towards increasing access to finance. The National Entrepreneurship Development Company Limited, NEDCO's grant facility, the Entrepreneurial Relief Grant, the SME Stimulus Loan Facility which is the Government guaranteed loan programme, the Small Business Liquidity

Support Facility which is the credit union soft loans, lots of funding also for tradesmen and craftsmen.

Under increased investment opportunities: creation of economic spaces and of course there are three key industrial parks, the Moruga Agro-Processing and Light Industrial Park, Tamana InTech Park and the Phoenix Park Industrial Estate; and under Business Development Initiatives there is among other things, Scale UP Trinidad and Tobago initiative, the film Production Expenditure Rebate Programme and the Steelpan Manufacturing Grant Fund Facility. Thank you.

Mr. Vice-President: And there will be no further questions on that. Sen. Seepersad.

Government's Legislative Agenda Twelfth Parliament (Presentation of)

128. Sen. Charrise Seepersad asked the hon. Attorney General and Minister of Legal Affairs:

Can the Attorney General advise when the Government's Legislative Agenda for the Twelfth Parliament (2020-2025) will be presented to the Parliament?

Hon. Senators: [*Desk thumping*]

The Acting Attorney General and Minister of Legal Affairs and Minister of Rural Development and Local Government (Hon. Faris Al-Rawi): Thank you, Mr. Vice-President, and again I offer my personal congratulations, at the seat in which you now sit. Congratulations, Sir. To the hon. Senator, the Government of the Republic of Trinidad and Tobago is committed to creating and implementing and updating for the people of Trinidad and Tobago a full and transparent system. Regrettably, the Coronavirus pandemic hit the Office of the Attorney General quite

significantly, and therefore, the collation of material to populate a legislative agenda has been significantly impacted and delayed.

I would remind that it is not usual for legislative agendas to be part of a statement of a government. It is only under this Government that we have had a consistent statement of legislative agenda. That notwithstanding, and whilst we are making best efforts to regain the momentum to publish an official agenda for the years ahead, I can tell you that the Legislative Review Committee which I sit as the Chair of, is settling very broad areas at present, there is work on the deck, and I can at least deal with six broad areas. Law enforcement and criminal justice; under that there are amendments to the anti-terrorism legislation package. There is a proposed amendment to the Offences Against the Person Act, the Firearms Act, the Trafficking in Persons Act. There is a proposal for a controlled deliveries Bill. There are proposals for summary offences amendments, and for criminal records there is a Bill in draft form.

With respect to law reform and judicial system, I can also say that the Attorney General's Office has settled the Law Reform (Amdt.) Bill, the Electronic Payments into and out of Court (Amdt.) Bill, the Evidence (Amdt.) Bill, the Arbitration Bill, the Companies (Amdt.) Bill, the Civil and Probate Divisions and the Tax Appeal Board (Amdt.) Bill.

With respect to sexual offences we have also settled a sexual harassment Bill, the Sexual Offences (Amdt.) (No. 4) Bill. With respect to trade and the economy, we have the consumer protection Bill, the Anti-Dumping and Countervailing Duties (Amdt.) Bill. With respect to the Global Forum, EU and FATF packages, we have the miscellaneous provisions, trustees, income tax, companies, Mutual Administrative Assistance in Tax Matters Bill, the base erosion and profit sharing BEPS Bill, double taxation Bill, the transfer pricing and

calculating liability, the common reporting standards Bill, the Special Economic Zones subsidiary legislation and the Mutual Administrative Assistance in Tax Matters. Those could not be published until the Global Forum, EU and other entities, of course, settled upon these matters.

Lastly, with respect to digital transformation, and again, this is just a snippet of the work going on, we have the electronic evidence Bill, the Exchequer and Audit (Amdt.) Regulations, the Computer Misuse Bill and the electronic payment Bill. A vast amount of stakeholder input to these things in the pandemic caused delays and therefore we did not have settled versions to populate on a final list, lest you have a list that is constantly shifting. Thank you, Mr. Vice-President.

11.00 a.m.

Sen. Seepersad: Thank you, hon. Minister. Through you, Mr. Vice-President, I did not get a sense of when we will have some information published that we could follow. And I understand the problems that have occurred, but could you not do it on say a quarterly rolling basis that, at least, we have some idea of what is in the pipeline?

Hon. F. Al-Rawi: Thank you, Mr. Vice-President. Regrettably, it would not be possible. The vast amount of legislation that I just read for you comes out of the Office of the Attorney General alone. There is a whole of government where legislation has to be pushed. It is the delay caused by the pandemic. We are now literally in the first month, two years later post that. So, these are very unusual times and remember that the process of confirming the policy and the final legislation so that it is on the agenda is the work product we are looking for, not the anticipation of thematic areas.

We are looking for fixed positions to put on the agenda and those fixed positions require input from various areas that have been delayed and therefore, I

am unable at present to give a precise date for the population of a legislative agenda, reminding that when I last published a legislative agenda in the previous portfolio that I held, that was the first time in a decade that that had been done. So, it is often a difficult product.

Mr. Vice-President: No further questions?

COMPANIES (AMDT.) BILL, 2022

The Acting Attorney General and Minister of Legal Affairs and Minister of Local Government and Rural Development (Hon. Faris Al-Rawi): Thank you, Mr. Vice-President. I beg to move:

> That a Bill to amend the Companies Act, Chap. 81:01 to make provision for the role of the Chief State Solicitor as the Official Receiver, be now read a second time.

Mr. Vice-President, the Bill before us is a very short one indeed. It is all of five clauses long, the first of which is the short title, being that this Act may be cited as the Companies (Amdt.) Act, 2022. The second clause is that the Act means the Companies Act. It is the interpretation section. The third proposes the insertion of a definition of "Official Receiver", quite simply put in that context into section 4 of the parent Act that is the Companies Act, to mean the Chief State Solicitor. The fourth clause is to repeal the provision in section 366 of the Companies Act and the last clause is to repeal subparagraph (4) of section 462 of the Act.

Permit me, therefore, in this short Bill, to explain exactly what we are doing, what brought us here and what this debate involves. Quite frankly, Mr. Vice-President, this is a very narrow debate on two simple points. In 2019, Mr. Vice-President, we birthed a particular piece of law, and that is Act No. 6 of 2019. In that, we proposed an amendment to the Companies Act. In the sections of that particular Act, we dealt with a very important series of clarifications required for

the Financial Action Task Force and for Global Forum and the European Union purposes. We introduced the prohibition against bearer share instruments. We introduced beneficial ownership across the realm. We introduced beneficial ownership and bearer share prohibitions in external companies as well.

Importantly, in introducing beneficial ownership, we were dealing with the scourge against money laundering and, in particular, we were unveiling equitable ownership, that is people that really own a share in a company or the value of companies. Whilst they were not described as the legal owners, they were entitled to be called the beneficial owners.

In section 10 of that 2019 Act, we caused an amendment to section 462 of the Companies Act. Now, section 462 of the Companies Act is a specific provision which deals with that aspect of law where assets of a company are left over. Section 462 says:

> "Where, after a company has been dissolved, there remains any outstanding property, real or personal..."—et cetera, that that becomes vested in the Official Receiver.

And therefore, in section 463, we put in for the purposes of—sorry, in section 462(4), we introduced a definition which said:

> "'For the purposes of this section…"—that is section 462 and for 463—"'the Official Receiver shall be the Chief State Solicitor.'"

Understanding that amendment, we were focused upon recommendations then coming from the Financial Action Task Force. I will remind that Trinidad and Tobago was undergoing its Fifth Round Mutual Evaluation and we were scheduled at the CFATF table and at the FATF table to have an on-site examination in January 2020. These amendments were considered appropriate and we graduated with flying colours out of the FATF fifth round on-site evaluation as a result of

which Trinidad and Tobago was taken off of the grey list and we were put into regular reporting at CFATF. The purpose there, in treating with a very targeted definition of Official Receiver confined to section 462 and section 463, was to ensure that companies which are struck off the register for whatever matter or whatever position of dissolution happens, that they could go, their assets could go to the Official Receiver.

Now, Mr. Vice-President, I should tell you that there are 89,544 companies on the registry of companies. There ae 9,315 non-profit companies on top of that. There are 593 external companies beyond that and there are 11,705 registered non-profit organizations, again, something which we introduced in 2019. It gives us a total of approximately 176,769 companies and of that number, near 30,000 of those companies are liable to be struck off. And therefore, it was important in causing the amendments in 2019 to section 462 that we birthed the Official Receiver as the Chief State Solicitor. The Chief State Solicitor is a chief legal officer, reflected upon in the Constitution as a chief legal officer. One of the functions of the Chief State Solicitor is to manage dissolutions, insolvencies, winding up, et cetera, apart from the civil law functions in assisting the Solicitor General's department, preparation of leases, the financial side of the equation.

Today, Mr. Vice-President, I give notice that the Government has been going through the Companies Act. There are a series of amendments that we have yet to bring, largely upon the biggest package will be, number one, on the operationalization of the Companies Registration Online System, referred to as CROS. So, I am giving notice that Attorney General will advance that legislation which we have already prepared. That legislation is to abandon all paper filings at the Companies Registry. In conducting that exercise for digital online services with full online filing, leaving behind paper filing which is eminent, we discovered the

lacuna in the legislation as it relates to the definition that we applied for the Official Receiver.

Now, Mr. Vice-President, the second side of this equation and the rationale for this Bill comes because in 2014, there was a partial proclamation of a particular law. It is referred to as the Bankruptcy and Insolvency Act, 2006. It was partially proclaimed in 2014. Part XI of that Act was not proclaimed and still is not proclaimed. That relates to international insolvency issues. But when we cross-checked the amendments that we are doing, we realized that it was by far more appropriate in the definition section of the Act, that is section 4 of the parent law, to include a definition of Official Receiver.

We therefore propose in clauses 3, 4 and 5 to harmonize Official Receiver as a definition, meaning the Chief State Solicitor, move it out of the sectional definitions found at section 462, repeal section 366. And section 366, again, related to a sectional definition, section 366 of the parent law is in the marginal note described as:

"Meaning of 'Official Receiver'"

And it says:

> "For the purpose of this Act, 'Official Receiver' means the Official Receiver attached to the Court for bankruptcy purposes, and includes any Assistant Official Receiver."

Now, even though section 366 says that the definition is for the purposes of the Act, architecturally, from a drafting perspective, the advice is that we ought to put the definition of Official Receiver into section 4 of the parent law which is where the definition applies for the full Act. And in looking at section 366, in light of the proclamation in 2014 of the Bankruptcy and Insolvency Act, it is prudent, at this point, bearing in mind the allocation of State resources, that we include a

definition of Official Receiver to mean the Chief State Solicitor because the Official Receiver only comes up, Mr. Vice-President, when the Official Receiver is selected.

I want to remind that the court in any proceeding still has the latitude to appoint any other person as the legislation may set out. But this is for the purposes of Official Receiver, number one, in the context of section 462 to receive assets from companies that are struck off so that there is an orderly distribution of assets, bearing in mind that a company can bring itself back onto the register within 20 years of being struck off; number two, in a very narrow sense, to ensure that the Official Receiver means the Chief State Solicitor because section 366, when it was drafted—remember, the Companies Act is an Act of 1995, that is Chap. 81:01.

In 2008, when the Bankruptcy and Insolvency legislation came about, the definition changed away from what the definition used to be in the repealed law, which was the 1916 law. The 1916 law is the Bankruptcy Act of 1916, and what you see section 366 of the Act is, in effect, a regurgitation a different way of section 73(1) of the 1916 law. So, we have had an opportunity to tidy up the approach. This exercise came about as we are preparing for more significant amendments to the Companies Act, to abandon paper and to move to full online systems. What I can say in relation to that is that the CROS system has been tested for nearly two years now. So, the system is entirely built out and we are ready to launch those reforms. The last piece of positioning that will come about—

Sen. Mark: Attorney General—[*Inaudible*]

Hon. F. Al-Rawi: Yes, please.

Sen. Mark: Attorney General, could you clarify for us? Are you suggesting that there will be further amendments being circulated as it relates to the Bankruptcy and Insolvency Act to make it very clear who is the receiver and who is not the

receiver?

Hon. F. Al-Rawi: Thank you.

Sen. Mark: Is that going to be circulated?

Hon. F. Al-Rawi: No, Sir. If I may clarify—thank you for your question, Sen. Mark—I was giving, in my usual way, a heads-up that the Companies Act has further amendments, number one, to take care of digital transformation and number two, from the Global Forum, in answer to Sen. Seepersad, I indicated a little while ago that the Global Forum EU package has some amendments to the Companies Act to go. So, I am just giving a courtesy heads-up that there are two further amendments to the Companies Act.

In preparing for those things, we noticed the definitional constraint because we were looking at how assets are to be managed when a company is struck off—that is section 462—and we spotted the opportunity to do this. This Bill, if I stated quite simply, is one which we would normally do after a long day's sitting where we do a short debate. Obviously, this is not to curtail any of the contributions of hon. Senators but it really is a quite simple amendment in scope. And therefore, in answer to Sen. Mark's question, there are no proposed circulations to the Bankruptcy and Insolvency by way of consequential amendments because it does not need to be amended. What happened was, there was a conflict between the 1916 Bankruptcy Act when it was repealed by the 2008 Bankruptcy and Insolvency Act, and upon proclamation in 2014, it was just simply missed in the proclamation. So back in 2014, the double-checking of the Companies Act was not an exercise which picked up a need for a consequential amendment but in the work that we are doing with the EU and Global Forum and FATF, we noticed the definitional fix.

I was giving an explanation as to why in 2019 we amended section 462 to

put it in the section, and that was because at the time when we were dealing with the strike out, the FATF was concerned, okay, if you have struck off a company, who is going to manage the return of the assets in the circumstances where it may happen? And that is on striking off applications or dissolution, not necessarily bankruptcy or insolvency.

So, Mr. Vice-President, that is the rationale for the legislation. I thank the honourable Senate for the opportunity to give a very short contribution today. I think today we are going to make a little bit of history in sitting in two Houses on the same day. So, I know that we have a fixture at 1.30 in the House of Representatives. In those few words and comments, Mr. Vice-President, I therefore beg to move.

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

Sen. Jayanti Lutchmedial: Thank you, Mr. Vice-President, and I think it may be my first opportunity to congratulate you on your appointment and your elevation to sit as Vice-President of this honourable House. So, my congratulations. And thank you very much for the opportunity to make a contribution on this very short but, I think, important Bill that we are dealing with here today because it deals with the office of the Official Receiver and its function under the Companies Act. Now, because this is a very short Bill, it seems quite innocuous but I believe that there are a few pertinent issues, which we need to raise in the interest of us carrying out our role and function here to make laws for the peace, order and good governance of Trinidad and Tobago.

Now, this is a very specialized area of law and it involves a lot of terminology and reference to proceedings and so on, before the court as set out in our Companies Act. So, I just want to try to make it very simply for the benefit of the viewing and listening public. But what is the Official Receiver? And it is

simply this. It is a public servant who is described as an officer of the court who has certain very important functions and duties both under the Bankruptcy and Insolvency Act, which repealed and replaced the 1916 Bankruptcy Act, and they also have a lot of functions and play a very integral role in the operation of Companies Act, specifically where you have winding up petitions presented to the court and so on.

Now, we are dealing here with the Companies Act, and we really are here because the Acting Attorney General talked, you know, a lot about the 2019 Companies (Amdt.) Act which he piloted. But he left out one very important thing which is that when that Bill was piloted, you know, he stated both here in this place and in the other House that it was to cure the lacuna that arose as a result of the repeal of the Bankruptcy Act. But here we are again because apparently there was a lacuna in the cure for the lacuna and, essentially, what happened is that they got it wrong because the amendment introduced by the 2019 amendment to the Companies Act is now being repealed and they are making another amendment.

So, again, we think that—I just point that out to say that when—drafting is a really specialized skill and perhaps we need to avoid these circumstances and situations by being a little more careful when we are bringing amendments because this is something that ought to have been treated with and could have easily been treated with in the 2019 amendment and we could have had this debate since then. But as much as we are here and we are dealing with it, let us look at some critical issues involving the role of the Official Receiver.

Mr. Vice-President, the Chief State Solicitor being named as the Official Receiver by virtue of this amendment will have to discharge all of the duties and functions outlined in the Companies Act and this includes, for example, examining a statement of affairs that is presented—when presented to them and they must

report to the court after making the necessary enquiries.

Under sections 367 and 368 of the Companies Act, for example, you have a number of things that have to be done. Now, the court relies very heavily on the Official Receiver and their reports when they are dealing with winding up petitions, when they are making decisions that will affect all stakeholders of a company. Finding yourself in a position of insolvency is not an easy thing for a company and perhaps coming before the court to be declared bankrupt or to wind up, whether it is voluntarily or whether it is being on the petition of a creditor, it is very important because you have to weigh and balance the interest of many people, employees, creditors who have a ranking of priority and so on. And again, as I said, it is a very highly specialized area of law and certainly not my area. But there are people who practise in this field and one of the things that they raise all of the time is the capacity of the Official Receiver.

So, when we looked at what the Official Receiver must do, for example, under 367—and if with your—I would just like to quote a little bit. They have a role under 367(1), to make other enquiries when they receive the statement of affairs to look into the particulars of the:

> "…assets, debts…liabilities, the names…"—and—"residences, and occupation of…creditors, the securities held…"

And it has the catch-all phrase:

> "…such further or other information as may be prescribed or as the Official Receiver may require."

So, it is not simply and office that must receive documents and transmit to the court. They have a sort of an investigative role that they must play in these types of proceedings. And they can require people—when they are preparing their report to submit to the court, they can require persons to present themselves and

conduct something like interviews, and it is there as well in the winding up rules that form part of this Act.

And when they have to prepare—the Official Receiver, under 368, has to prepare the report, the preliminary report that they submit to the court. They must also—they may also, and they have a discretion, if they think fit, give an opinion on fraud committed by any person either in the formulation of the company or in relation to the operations of the company and so on. And again, it is very wide, the desecration, because it says here in 368(2):

> "…and any other matters which in his opinion it is desirable to bring to the notice of the Court."

So, in these winding up proceedings, the role of the Official Receiver is very important and therefore, we must not take it lightly when we decide that we must appoint or name someone to act as the Official Receiver. The Official Receiver under the Companies Act, if the court does not appoint a liquidator, will also carry out the role and function of a liquidator.

So, Mr. Vice-President, I just want to look at a couple of things here and that is, what is the role and function as originally intended and envisioned under the 1916 legislation, that is the old Bankruptcy Act, which was repealed and replaced. Because the role of the Official Receiver in that law was simply carried over into the Companies Act and I think we need to look at the capacity of the Office of the Chief State Solicitor and their ability to carry out these roles and functions. And then, I think, I would take the opportunity to perhaps make some suggestions for improvements based on what exists in other countries and what exists here now in the process that we have already embarked upon. Since 1995 it started with the Companies Act but we have embarked upon a process of modernizing our corporate and commercial laws, and I think that there is room now for

improvements on this position that even though it has existed in practice of the Chief State Solicitor being the Official Receiver, there are peculiar circumstances right now which forces us to examine whether or not this is the appropriate way that we should operate.

So, in looking at the role and function of the—as intended, the 1916 Bankruptcy Act spoke about an Official Receiver and that person being:

> "…an officer of the Court in its jurisdiction in bankruptcy, and judicial notice shall be taken of any appointment of a Receiver pursuant to this section."

That definition was carried into section 366 which we are now repealing, which describes the Official Receiver as:

> "…the Official Receiver attached to the court for bankruptcy purposes..."

What does that mean? What does it mean to be attached to the court and be an officer of the court? Well, for one, it really relates to a certain amount of independence of that office because, you see, and as I went through the sections before, the Official Receiver is reporting to the court in an advisory capacity and, generally, like when you refer to—in more my area, when you refer to people who practise in the criminal law, the prosecutors and so on, you said, well, you are an officer of the court, you are a minister of justice, you are not partial to any person and so you are independent. But the fact is that we have a situation now where—and, you know, we all know that the Government is a creditor involved in certain types of liquidation proceedings that are before the courts, so much so that the Government in its capacity as a creditor, there is a web, a tangled web between the Government who is trying to recover the debt from a bailout, the debt owe to the State, to the people of Trinidad and Tobago coming out of the bailout of CL Financial, they have proceedings against the liquidators over fees. You have issues

now where you may have, at some point in time, a role for the Official Receiver and what you can have happening is himself advising himself and, you know, providing information to the court about himself. And so that conflict of interest, certainly, is something that we have to think about in our context.

And this really was something that I found interesting because I do not think it is unique to us, and so I had the opportunity to look at a couple of other jurisdictions and, of course, the jurisdiction that is most pertinent to us would be the jurisdiction of Canada because our Companies Act, our Bankruptcy and Insolvency Act, and all of those new pieces of corporate and commercial pieces of legislation were modelled on the Canadian model. And when I examined the role of the Official Receiver in some of these other Commonwealth jurisdictions, you found that we did not have a situation where officers or attorneys seated in a Ministry of the Attorney General, or in any Ministry for that matter of fact, would be acting as the Official Receiver simply because, again, in all of those jurisdictions what was envisioned is a person who is an officer of the court and a person who really, according to—since 1916, was attached to the courts. This is a—it is somewhat like a separation of powers issue. It is an issue of independence. It is an issue of confidence of the investors and creditors and everyone in our financial system.

And one of the major things that we introduced in the Bankruptcy and Insolvency Act which I—I do not want to—[*Inaudible*]—but, you know, my mom who worked at the Ministry of the Attorney General for about 30 years, this was the last piece of legislation she worked on before she retired. So, I used to hear about it so much and all the time. But one of the things that I think that was really different and introduced by this law was the creation of that Office of the Supervisor of Insolvency which sits, of course, in the Ministry of Finance but it is

functioning as a regulator. And I have to ask the question: Is it not better for us to utilize, for example, the Supervisor of Insolvency who has the task of licensing for persons who will be insolvency practitioners and trustees and so on, would it not be better to have the Office of the Official Receiver seated in that regulatory authority so that you have that removal when it comes to litigation and other matters which may be affecting—which the Government itself may be involved in?

If the Government as a creditor of a financial institution, which I could say hypothetically—but we know it is not hypothetic. It is not a hypothetical situation—has to embark upon litigation, you may have people seated within that very same department of the Chief State Solicitor instructing whether internal or external attorneys in the conduct of that litigation.

11.30 a.m.

In fact, I think that the majority shareholders of the CL Financial Group had issued a pre-action protocol letter when the Government had announced that it would be putting up—

Hon. Al-Rawi: Mr. Vice-President, I respectfully interrupt on a caution on the sub judice rule. There are some matters—I do understand the general principles but if my learned friend could perhaps receive your guidance.

Mr. Vice-President: Sen. Lutchmedial, on this matter we are reminded of Standing Order 47—

Sen. J. Lutchmedial: Yes.

Mr. Vice-President:—as it applies to matters of sub judice.

Sen. J. Lutchmedial: Yes. And thank you for the reminder, Mr. Vice-President. And I would remind the Attorney General that the sub judice rule applied to here, this is in the content of it. I am talking about a pre-action protocol letter that was reported in the media that was issued—

Hon. Al-Rawi: I am sorry, Mr. Vice-President, may I perhaps just assist again in Standing Order 47? I am not referring to a pre-action protocol, I am referring to extent litigation and there are hundreds of matters if you look at it one way or a few matters another way. I mean it most respectfully.

Sen. J. Lutchmedial: Yes. Well, I am guided.

Mr. Vice-President: Sen. Lutchmedial, can you move on from this, please?

Sen. J. Lutchmedial: Sure. I am guided, Mr. Vice-President, and I am happy that the Attorney General has placed on the record that there are—

Sen. Mark: [*Inaudible*]

Sen. J. Lutchmedial:—there is a lot of litigation.

Sen. Mark: [*Inaudible*]—47, can you guide this honourable Senate, when we talk about the sub judice rule are we referring to matters before a judge or are we referring to matters before a jury who can be influenced? I think what the Attorney General is referring to are matters before a judge. So I think we have to be very careful how we utilize the sub judice rule and not muzzle people—

Hon. Senator: Correct.

Sen. Mark:—when they are speaking.

Hon. Senator: [*Inaudible*]—Presiding Officer—

Sen. Mark: [*Inaudible*]—the President.

Mr. Vice-President: Sen. Mark, I do appreciate your comments, however as the Attorney General did mention to us, it is a wide scope of companies and matters that are in front of us which will overlap both of what you are saying. So I ask the Senator to move on and we will remain guided accordingly.

Sen. J. Lutchmedial: Yes. Thank you, Mr. Vice-President. Mr. Vice-President, the Attorney General—acting Attorney General, sorry—is, you know, he has taken—he has immersed himself into his new role as Minister of Rural

Development and Local Government so much, he come back for "ah lil" 10 days so he could identify with, you know, his new role and function—

Sen. Gopee-Scoon: Point of order—

Sen. J. Lutchmedial:—and he is seeking to make—

Sen. Gopee-Scoon: Point of order—

Sen. J. Lutchmedial:—a point—

Sen. Gopee-Scoon: Point of order!

Sen. J. Lutchmedial: Point of order about what?

Sen. Gopee-Scoon:—46(6).

Hon. Senator: [*Inaudible*]

Sen. J. Lutchmedial: Yes. But he is—

Mr. Vice-President: Senator—

Sen. J. Lutchmedial:—but he is—

Mr. Vice-President: Senator, Senator—Sen. Lutchmedial—

Sen. J. Lutchmedial: Sorry, I am guided.

Mr. Vice-President: Senator—

Sen. J. Lutchmedial: Yeah.

Mr. Vice-President:—your comments are absolutely unnecessary for the purpose of this debate and there is nothing that actually spurred on such a matter. I ask that you stick to the topic and let us focus to the very short concise Bill at hand.

Sen. J. Lutchmedial: Yeah. Mr. Vice-President, the convenient and I would say, erroneous use of the sub judice rule to curtail a debate in this House is most unfortunate—

Mr. Vice-President: This is—and we have—

Sen. J. Lutchmedial: However—

Mr. Vice-President: Senator—

Sen. J. Lutchmedial:—I will move on.

Mr. Vice-President: Sen. Lutchmedial.

Sen. J. Lutchmedial: Yes, please.

Mr. Vice-President: I have made a ruling on 47. It has been further clarified by your colleague and there is absolutely no need to continue on the matter, but if you wish to continue on the Bill, please proceed.

Sen. J. Lutchmedial: Yes. So that in jurisdictions that take the role of the Official Receiver seriously and who do not wish to have a conflict of interest arising when the Government hypothetically may become a creditor and may hypothetically have matters before a court in which there may be a conflict of interest, you have design. For example, in Canada there is the Office of the Superintendent of Bankruptcy which our Supervisor of Insolvency was modelled exactly and almost identically against. And the Superintendent of Bankruptcy who licensed the trustees and who are trained and licensed and are considered officers of the court will seek the interest of all stakeholders, including persons who file for bankruptcy in the creditors and so on. So that is one example and I think it is the most pertinent example that we have here for the use of that office of the Supervisor of Insolvency where the office of the Official Receiver may be better placed.

In the United Kingdom—again, I am using this an another example of a jurisdiction where you would not and where they take the issue of conflict of interest very seriously. The insolvency service has a board that they report to and they have both managerial and financial autonomy, so the persons who would carry out the role and function of the Official Receiver in these countries, they are not dependent on the Ministry. They do not sit in the same building as the persons who may involve—may be hypothetically involved in litigation on behalf of the State.

Mr. Vice-President, the persons who are employed in the office of the Chief State Solicitor are under direct influence of the Attorney General. And, yes, they may be officers of the court. They are lawyers, all lawyers are officers of the court, and I am not casting any aspersions to say that they will be influenced or that they would not be independent and so on. But it is not just about, you know, the individual person who may be carrying out the function and whether they have the, you know, the integrity and so on to carry out their functions independently, but it is also about how—the appearance of independence.

You want someone carrying out the functions of an Official Receiver who is completely removed from the Government and litigation and any sort of influence because of the important role that they fulfil in advising the court. And I respectfully say that that role and function being placed and being, you know, placed into legislation as being vested in the Chief State Solicitor given the circumstances that I am happy the Attorney General talked about the wide range of matters before the court, I think it is only, you know, expected that people must consider that role and function right now. And we could try to avoid it as much as we want to, it is there and it may very well rear its head later on down the road.

Again, let me use Australia as another very pertinent example. In Australia they have placed their Official Receiver in the Financial Security Authority. Again, a very completely independent body. They do not have to report to any Minister. They have financial autonomy and so on and I think that there is—you know, these are three of the most advanced countries in terms of their—the Commonwealth countries in terms of the development of their law and so if in fact these models exist, I do not see why having been brought back here to clean up the messy and poor legislative drafting that presented itself in 2019, that we do not take the opportunity—it is a lost opportunity, in fact, to really critically examine whether or

not we want to retain the Chief State Solicitor and vest those functions by way of litigation in that office given what is happening.

The winding up rules under the Companies Act for example, you know, there is a significant amount of, you know, roles and functions defined for the Official Receiver, but the Official Receiver can also—let me just give a simple example—come to an arrangement with creditors. What is to happen when—or what could possibly happen when a public servant sitting in a Ministry of Government can make arrangements with a creditor who is the Government who can come up with a compromise arrangement? And, yes, the court has—again, as I said and I was mentioning before, I think, oversight of the liquidation processes that come before it and they supervise these things. And even sometimes what the court—you know, the decisions that they make are challenged by creditors which is the Government itself. Even though the court may be acting on advice of an Official Receiver you can find yourself in a situation where there is a massive conflict of interest. So I think that in, you know, very—to summarize, I would say that this matter deserves a little more attention.

Very quickly on the capacity of the Chief State Solicitor's department, a very hard-working group of lawyers in that department. I know most of them from over the years but what I also know is that there is a very high turnover rate. There is also, you know, the brain drain that is experienced in the public service, not just amongst lawyers but in, you know, a lot of professionals who enter the Ministries, including the Ministry of the Attorney General and they gain a couple of years' experience and then they leave for greener pastures. Although I would say that private practice is not necessarily a greener pasture but, you know, the conditions and the workload and the remuneration offered by the State is often insufficient to—

Sen. Gopee-Scoon: Point of order—[*Inaudible*]—46(1).

Mr. Vice-President: Sen. Lutchmedial—

Sen. J. Lutchmedial: "Um-hmm."

Mr. Vice-President:—as you have already stated you were winding up and I will just ask you to keep it—everything relevant.

Sen. J. Lutchmedial: Yes. So that when you have a departure of your most experienced attorneys, then you have very junior lawyers populating a vast majority of Government Departments, specifically the Chief State Solicitor's department. And this was made out, you know—and this is something that is known to everyone but it was also something that was dealt with recently in the ease of doing business enquiry conducted before the Joint Select Committee on Finance and Legal Affairs. You know, the Chief State Solicitor and the Solicitor General both appeared in that committee and they talked about issues of staffing.

They talked about sufficient manpower to effectively conduct their matters. And in fact, it was my learned friend and the hon. Member for Port of Spain South who raised a number of issues in that committee meeting about, you know, the ability of the State in the conduct of litigation and the Chief State Solicitor's department's ability to meet the timelines and requirements under the rules. And the response that we got from the Chief State Solicitor and the Solicitor General in that particular committee is that, look, they really do not have attractive terms and conditions.

So, as I said before, a very highly specialized area of law, you have persons who are insolvency practitioners because this is such a specialized area of law and it is these type of people that you want to attract and you want to retain and you want to have carrying out the role of the Official Receiver given its importance in the legal proceedings that will be present before the court. And quite simply stating

that the Official Receiver means the Chief State Solicitor having a small group of people sitting within that department to carry out these functions when you do not have the office of the Official Receiver being a separate entity or a separate body or an actual created office in the public service that will, you know, be able to employ persons, to assist and to carry out the functions at a higher level, you are depriving the court of the benefits of, you know, expert advice.

You are perhaps creating opportunities to contract people out to carry out the role and function and to basically brief out that role and function because you do not have the capacity in-house to do it. And you are also depriving—I would say the overall financial system, which is investors, creditors, shareholders, everyone, of having confidence in the ability to have expert people carry out the very important role and function under both our bankruptcy and insolvency legislation and our Companies Act.

So with those few words, Mr. Vice-President, I hope that what we have said here today will, you know, resonate with—I do not have much hope that it will resonate with those opposite but I hope that the viewing and listening public and those who have the power to influence and perhaps make representations would consider whether or not this is a "well-intended" and whether or not it is an "appropriate", and whether or not, given our circumstances that we exist in today in a modern world with a modern—with a push and a drive to have a modern system of corporate and commercial laws and so on, whether this amendment makes any sense whatsoever or whether, as I said, it is a missed opportunity to really consider the role of the Official Receiver and where it ought to be placed. I thank you.

Hon. Senators: [*Desk thumping*]

Mr. Vice-President: Sen. Dr.Varma Deyalsingh.

Hon. Senators: [*Desk thumping*]

Sen. Dr. Varma Deyalsingh: Thank you, Mr. Vice-President. And again I want to offer my congratulations on your ascendency to this post and I see you have been doing an excellent job and I appreciate the job that you have to do in this Senate this morning to, you know, maintain order and actually to make sure that we stick within our allocated time and topic. But, Mr. Vice-President, I was pleased to hear the Attorney General mention the fact that, you know, that this Bill came about due to the 2019 Companies (Amdt.) Act, having a lacuna that we need to correct. And also he made mention of the 2014 Bankruptcy Bill that, you know, that the Government actually—I think they brought it in force and this Bill was there since 2006. So at the outset I must say, I want to congratulate the Government for that 2014 Bankruptcy Bill because, you see, at that stage we had a system where when a company was going into bankruptcy it was a sort of hostile takeover. It was a sort of condition where the creditors were the ones who would have been the persons who may have had the upper hand, or even as the case was in—well, is in Jamaica where in Jamaica the situation is such that, you know, where you have the trustee, I think you call—in the practice in Jamaica you have what you call the "Trustee in Bankruptcy". And when you look at the cases where there were companies that were bankrupt and insolvent, we always found that the creditors seemed to have the upper hand to get what they want and the debtors were pushed out and small companies had to fold up and we saw a shift in this.

And as the AG mentioned, in 2014 this shift came about and it is, in my opinion, an excellent initiative on the Government because this was pre-pandemic and it was a recognition that there would have been companies who would have been forced to close up due to either any sort of financial problems and it was a Bill that actually sought to make an ease on those companies that had folded up. So

it was really on the 23rd of May, 2014, the Bankruptcy and Insolvency Act was proclaimed and the BIA's primary aim was really used to the rehabilitation of some of the individual debtors who found themselves in financial strain. So this was a—I think one of the Senators mentioned—Sen. Lutchmedial mentioned the Canadian system and I think there was a report in the Canadian system, the Tasia report which actually moved towards helping the debtors more than, you know, to get some sort of a balance and some sort of—help them so they would not fall into financial hardship and at least help them to regroup, reorganize and recover as opposed to becoming insolvent.

So therefore, that move was in 2014 and it was a move, I think, the Government was moved in the right direction and the 2019 legislation served to continue that chain of event. It served to make it a bit easier. And so what I may say that the need for insolvency reform is something that the World Bank Group—remember the 2014 data. We have always been hearing that Trinidad and Tobago is ranked the 67th of 189 counties in terms of the ease of doing business and starting a business, and also what we hardly hear from that report is there is something called the insolvency recovery ranking and we stand at 114, so it is a bit worse. And I think these pieces of legislation here are really to help us get our act together in terms of insolvency, in terms of financial rehabilitation, bankruptcy and even in terms of getting the Official Receiver in a manner where we can have it more codified and people will say, "Well, this it is how it is. We are trying to correct what the 2019 legislation left out."

So I am pleased that with this, I am thinking our ranking of 114 will improve and the weak ranking was really linked to increased difficulty in getting credit and then possibility of enforcing business contracts. So therefore, if we have, as mentioned by the Attorney General, this 2014 as what I would consider a start and

now 2019, and here we are today. And Sen. Lutchmedial made mention the fact that, you know, it was probably sloppy draftsmanship and probably things were left out and in a sense, yes, we are probably here today to somehow correct that, but this is part of our duty. When things turn up and we see there are other pieces of legislation there needs to be, you know, somehow changed to keep in tandem with what happened in 2019, this is why we are here today and this is our job. So I have no problem in being here trying to see if we can change that definition.

So when I looked at the old 1916 Bankruptcy Act, the appointment of the Official Receiver was made under section 73 and that section provided as follows—Companies (Amdt.) Bill, it follows—73(1) states:

> "There shall be in the public service an Official Receiver of debtors' estates. Such receiver shall be an officer of the Court in its jurisdiction…"—of—"…bankruptcy, and"—the—"judicial notice shall be taken of any appointment of a Receiver pursuant to this section."

And also (2) actually speaks about:

> "A person acting as Receiver shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of the Receiver, and all the estates, rights, and powers vested in the Receiver shall, during the tenure of office of an acting Receiver and without any conveyance or transfer, vest in such acting Receiver."

So that piece of legislation definitely mentioned the fact that it shall be an officer. The Receiver shall be an officer of the court. So this was changed and we are here trying to change this in the sense that we are trying to say because of the definition we had before with "the Official Receiver shall be the Chief State Solicitor", we need to bring other pieces of legislation in tandem with this. So we are here to do this. And something crossed my mind, and as Sen. Lutchmedial did

mention the fact that this post has to be an independent post and I must agree with her in that aspect that—and as she mentioned quite—you know, she gave an example where if the Government is a creditor and they are called and the Chief—you know, that department, the Official Receiver being the Chief State Solicitor, could somebody now really say that might be a conflict of interest. So it crossed my mind and her suggestion which she actually said we could look at the fact that the—you know, put that office in the Supervisor of Insolvency, this might be something for a further debate. This might be something for a future—for the AG in the future to see, could we bring this in to give it appearance at least of a greater independent role? So in a sense it had crossed my mind that if we are taking away the—you know, I was wondering are we taking away the rights of the court to appoint the receivers as they see fit, but I think the AG had mentioned they would still have that right. So it crossed my mind, would we be overstepping and trying to put a level of telling the Judiciary, "You have to just stick with the Chief State Solicitor", but the AG mentioned it is still there for the courts to decide if they want to choose somebody outside or not.

Now, the thing is the pattern has always been, somebody from the Chief State Solicitor would be the one who really would be the Official Receiver and that has been there. So it is really putting into law what has been there before and it is really ensuring that we are doing the right thing and ensuring that we would be in the future looking at any ways to improve it, as Sen. Lutchmedial had mentioned. I also make mention to the fact that the—Sen. Lutchmedial also made mention to the fact that the office of the Chief State Solicitor office, you know, it is a bit—they are a bit understaffed and I just want to read in an article that was in the *Newsday* where—it was an article in the *Newsday*, "Lawyers Driving Taxis", Saturday the 16th of January, 2021, and in that article my fellow Independent Senator

Thompson-Ahye was actually the chair and she actually said that:

> "…some attorneys were frustrated in the Public Service by facing blame from judges when swamped by the proverbial 100 cases, to the extent they would feel to flee from such jobs."

Sen. Lutchmedial mentioned we need quality persons there and I agree with her.

> "JSC member…"

—in the article, it continues, Keith Scotland also said:

> They had—"…such a staff shortage poses a real risk to the State to meet strict deadlines imposed by law courts under civil proceedings rules, making it 'a matter of extreme urgency.'"

And the Chief State Solicitor—[*Interruption*]—sure.

Sen. Gopee-Scoon: Point of order, 46(1).

Sen. Mark: [*Inaudible*]—We have a deadline?

Mr. Vice-President: Sen. Dr., I would just ask that you keep it a little tighter.

Sen. Dr. V. Deyalsingh: Sure.

Mr. Vice-President: I gave you a lot of leeway at the very beginning. You were actually focusing more on bankruptcy and insolvency. While we are focusing on the Companies Act, I ask you to keep the—

Sen. Dr. V. Deyalsingh: Yeah. Sure. All right. Thank you.

Mr. Vice-President:—[*Inaudible*]—relevant to the point.

Sen. Dr. V. Deyalsingh: It is just that I was going on what the debate when Sen. Lutchmedial mentioned we needed more staff, this is something that I just wanted to quote that we are now giving the office of the Receiver there now—if we are now codifying it, we would have to ensure—you know, as she mentioned there were, you know, there were a lot of other functions. They have to do the roles, to detect fraud, et cetera, so we really need that department to be running properly.

And why I was quoting this article, it was really the:

> "Chief State Solicitor Sean Julien told the JSC several court matters had fallen through the cracks owing to some of his staff having difficulties managing their matters."

So the point I really wanted to make, Sir, is that, yes, we are here today to do this and what we really need to do also is ensure that we have adequate staff. We also have to appreciate the fact that it is a department where it is a highly specialized area because sometimes this post may have attorneys who may have to have a background in accounting, a background in detecting fraud. So it is really an injustice if we have that department but we do not really full it to the capacity, number one; and number two, get the expertise on board and get the training on board. So that is all I am trying to say if we could get that on board. I mean, there are a lot of young attorneys, Sir, that are frustrated; they are looking for jobs, some are depressed without jobs, some are anxious when they have to go to court and they suffer from burnout and these things.

So we need to put things together and I am hoping, even though the Solicitor General did make that statement, I am hoping we can get some improvements in that. Because the role, Sir, of the Chief State Solicitor, it is really—you know, he provides legal service to other Government Ministries, Departments, you know, the legal services provided to the public, contracts, conveyancing, administrative, general, public trustees, mental health applications as the Official Receiver. So definitely as mentioned by the AG, this is a post mentioned in the Constitution so we really need to give the power and the ability for this important post to have the staff to do their duties.

So I would say, I am extremely happy to be here today to take part in this discussion. I have seen, as I say, the trend where the Government moved from

2014 trying to, you know, help and with the ease of business I am saying, we need—I have seen the Minister in trade actually, you know, a lot of encouragement given to small businesses. I have seen the fact that small businesses are getting loans and would now be able to carry out their business, but with the loans we have to say with the economy, global economy with the pandemic, "Will these small businesses survive"? This is the problem we have.

12.00 noon

A small business may take a loan, taxpayers' dollars, and they would be there trying to survive and if somehow they have to declare bankruptcy, we really need somebody who could also be on their side, somebody who could look out for their interest. That is why the 2014 legislation gives that sort of support to the debtors also, but we also need somebody in that post to look at the creditors, to make sure they are not getting outsmarted by any sort of—somebody who sets up a little business, disperses of the funds and then declares bankruptcy. This is why the Government's role in looking at whatever small business applies for loans and get loans, that they are able to manage that in a way that it would not be a burden to the taxpayers later on.

So, I support this Bill, I think there is a need for it and in future if there is any other pieces of legislation that we need to wrap up and tighten up, there is not a problem in being here to support it because I think as we go along, we may see other pieces of legislation that need those little amendments or fixing, and as an Independent Senator, I am here to support the Government to tighten up that legislation to the benefit of the population. Thank you.

Hon. Senators: [*Desk thumping*]

Mr. Vice-President: Sen. Mark, as you make your way to the Chamber, let me—Proceed, Sen. Thompson-Ahye.

Sen. Thompson-Ahye: I thought the AG was about to wind up but we are going to have another speaker, so maybe I will ask my question after. Thank you.

Mr. Vice-President: Yes.

Sen. Wade Mark: Thank you, Mr. Vice-President. The Bill before this honourable Senate is to amend the Companies Act, Chap. 81:01, to make provision for the role of the Chief State Solicitor as the Official Receiver.

May I say from the outset that I am disappointed by the absence of the newly appointed Attorney General who I was anxiously and eagerly looking forward to hearing and listening on this very important matter before us. However, I want to welcome back the resurrected, old Attorney General, like Christ, who is with us today.

Mr. Vice-President, may I say from the outset, this is dangerous, troubling, disturbing and concerning legislation that is before this honourable Senate today. Upon a deeper analysis of the contents of this so-called simple amendment or set of amendments, you will realize, Mr. Vice-President, that the rule of law and the rights of private property owners can jump up in a Carnival band if we are not careful with what we are doing today.

Mr. Vice-President, I will demonstrate in my limited time permitted to me today, to show you and this honourable House—Senate that is, the functions of the Official Receiver as is being envisaged by the amendment before us today. We have to go back into what the Attorney General said, the Acting, in his opening remarks, as it concerns the amendments contained in the legislation before us.

Mr. Vice-President, we are being told by the Attorney General, Acting, that this Bill that is before us is aimed at addressing and filling some lacuna created by the repeal of the 1916 Bankruptcy Act, when the current Bankruptcy and Insolvency Act entered into fulsome operation back in 2014.

We are being further informed by the Attorney General that the appointment of the Official Receiver would have been made under section 73 of the 1916 Bankruptcy Act, which no longer exists. But it is very important to learn and to appreciate that those who do not appreciate the mistakes of the past are doomed to repeating them. I want to draw to your attention section 73(1) of the repealed Bankruptcy Act, when the colonialists were in charge of T&T and what they had envisaged for the particular officeholder that is now before us known as the "Official Receiver".

Mr. Vice-President, 73(1) of the Bankruptcy Act of 1916 states, and I quote:

> "There shall be in the public service an Official Receiver of debtors' estates. Such Receiver shall be an officer of the Court in its jurisdiction in bankruptcy, and judicial notice shall be taken of any appointment of a Receiver pursuant to this section."

Mr. Vice-President, 73(2) goes on to say:

> "A person acting as Receiver shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of the Receiver, and all the estates, rights, and powers vested in the Receiver shall, during the tenure of office of an acting Receiver and without any conveyance or transfer, vest in such acting Receiver."

Mr. Vice-President, the Companies Act was amended, as was indicated earlier, in 2019. The then Attorney General piloted that amendment and you would see that when you go to that amendment of 2019, Mr. Vice-President, that it was very clear what was envisaged at that time.

The Government in section 10 of this 2019 amendment Act—and if you go to the Bill that is before this honourable House, Mr. Vice-President, you will see where the following is taking place. If you go to clause 3, it states that:

"The Act is amended in section 4 by inserting after the definition of 'officer', the following new definition:

'Official Receiver' means the Chief State Solicitor;'."

But in clause 4, it goes on:

"Section 366 of the Act is repealed."

Now, Mr. Vice-President, you go to clause 5:

"Section 462 of the Act is amended by repealing subsection (4)."

So, Mr. Vice-President, when we go to the 2019 Act, we are seeing where subsection (4), which is section 10 of the 2019 Act, states, and I quote:

"The Act is amended in section 462 by inserting after subsection (3) the following new section:"

Mr. Vice-President, that subsection (4) reads as follows:

"'For the purposes of this section and section 463, the Official Receiver shall be the Chief State Solicitor.'"

So, what we are being told, in 2019, the Government of the day introduced an amendment to the Companies Act, making the Official Receiver to be the Chief State Solicitor and that was confined to sections of the Companies Act.

Now, what is extremely strange in this debate on this amendment to the Companies Act of 2022 is simply this. Mr. Vice-President, 2019, 2020, 2021—we are in April of 2022, the Government comes now to delete and repeal this very section that I have outlined to you. So, why is the Government repealing subsection (4) of 462? What is the case? What is driving, Mr. Vice-President, this decision of the Government to amend subsection (4) of 462? Why, Mr. Vice-President? I do not think the Acting Attorney General has made out a case to this honourable Senate as to the reason or rationale for such a drastic amendment. This was confined to section 462 and section 366.

So, the Attorney General is telling us that we need to correct a lacuna that the Government purportedly has created. What is this lacuna, Mr. Vice-President, that the Attorney General is referring to? The Attorney General is referring to the lacuna as follows. The Attorney General—Mr. Vice-President, I brought this red book. This red book deals with what is called the Companies Act. The Companies Act was passed in 1995. There have been several amendments to it. The latest was in 2019. We have 588 sections of this Act according—524 sections, three Schedules to this Act. That is about over 627 pages long.

Mr. Vice-President, what is being proposed in this Bill before us? The Government is asking this Senate to agree to amend section 4 to begin with. And when you look at the legislation, you will see in clause 3 my reference to section 4. Section 4 says—it deals with what is called the definition or the interpretation section, and the Government, Mr. Vice-President, is seeking to insert after the definition of "officer" in section 4, "Official Receiver". So, after "officer" in section 4 of the Act, the Government is proposing that we insert "Official Receiver", and what does Official Receiver means? It means the Chief State Solicitor. That is what it means.

Now, why is the Government seeking to put the Official Receiver in this interpretation section for definition purposes? Do you know why, Mr. Vice-President? If there are 200 references in the Companies Act to the Official Receiver, we have to delete and repeal those 288 sections or definitions and put in their place "Chief State Solicitor" wherever "Official Receiver" appears. Mr. Vice-President, that is unhealthy, that is harmful and we are asking the Government to explain its decision. Why is the Government seeking to insert in the definition section "Official Receiver" to mean the Chief State Solicitor?

Mr. Vice-President, more than this, let me take you to 462 of this legislation,

so you will have a better understanding of what is before this honourable Senate today. Mr. Vice-President, I beg your pardon, go to 366 of this Act. Under the title, "Official Receiver", hear what this Act is telling us; 366:

> "For the purpose of this Act, 'Official Receiver' means the Official Receiver attached to the Court for bankruptcy purposes, and includes any Assistant Official Receiver."

In the Act before us—in the Bill before us, the Government, through the Attorney General, is asking us to repeal section 366. Why is the Government seeking to repeal section 366? Section 366 says:

> "…the Official Receiver attached to the Court for bankruptcy purposes, and includes any Assistant Official Receiver."

The question that the Attorney General must answer when he is winding up this debate: Why is the Government seeking to remove section 366 by removing "Official Receiver" to mean an officer attached to the court, which I take to mean an officer of the Judiciary, an officer of the judicial arm of the State who will have competence, who will be professional, who will impartial, who will not be bias. I am not casting aspersions on any officeholder. I am saying that we live in a democracy and there is something called the "rule of law".

I am also arguing there is something called "property" and "property rights" that you are entitled to, that the Constitution safeguards because it is an entrenched right of you and I, and any citizen, to own property and not to be deprived thereof, unless you have due process. Mr. Vice-President, I ask you to consider the following. And the Attorney General when he is winding up can advise me whether I am wrong and whether he can guide me if I am wrong.

Mr. Vice-President, I have been advised that the Chief State Solicitor, who we are being asked today to make the Official Receiver—the Official Receiver

means the Chief State Solicitor. Mr. Vice-President, what are the functions, what are the duties of the Chief State Solicitor who is being asked, through this amendment, to become the Official Receiver of any liquidation, bankruptcy, insolvency, receivership process in which assets are involved and where you are talking about property rights are involved?

May I share with this honourable House the following: under the general direction of the Attorney General—Mr. Vice-President, you understand? Under the general direction of the Attorney General, who is a political appointee by the Executive arm of the State, the incumbent functions, that is the Chief State Solicitor, as the principal provider of responsible professional legal services in the area of civil law to all Government departments and Ministries, with the main objective of ensuring their conformity or compliance with the law, in the execution of their functions and to represent the interest of the State in civil matters before the Court, this includes planning, organizing and directing the work of this department.

Mr. Vice-President, this is a serious matter and this is why the Attorney General needs to clear the air on this matter. Why is the Government seeking to make the Official Receiver the Chief State Solicitor? Mr. Vice-President, this is explosive and pregnant with conflicts of interest, and in conflicts of interest who will prevail?

Mr. Vice-President, if you have property or I have property, and it goes into compulsory liquidation, and it goes before the court, and this amendment is passed, the court has to refer to the law, and the law is saying in the Companies Act that Official Receiver means the Chief State Solicitor. It therefore means to say that the State is going to be directly involved in determining how your assets are going to be distributed and this cannot be right. It violates and undermines the rule of law. It

violates and undermines property rights. That is why I am asking the Attorney General to withdraw this amendment. This amendment that is before this honourable House will do more harm than good, Mr. Vice-President, and I call on the Attorney General to revisit this particular provision that is before this honourable Senate today.

Mr. Vice-President, may I also remind this honourable House and Senate that when you talk about liquidator—remember, we are talking about bankruptcy here and we are talking about liquidators. We are talking about asset management. We are talking about how we are going to divide the assets among creditors and therefore, it is important that the role of the Official Receiver is critical.

Mr. Vice-President, I take you and this honourable Senate to 370, section 370(1) of the Companies Act, so you get a better understanding of the role of this Official Receiver who is now being deemed as the Chief State Solicitor. Hear what 370(1) says:

> "Subject to the provision of this section, the Court may appoint a liquidator provisionally at any time after the presentation of a winding up petition, and either the Official Receiver or any other fit person may be appointed."

Mr. Vice-President, you understand this? Mr. Vice-President, right now the Attorney General must tell this Parliament whether the Government is seeking to dispose of the provisional liquidators that are now before the courts—

Sen. Mitchell: Mr. Vice-President—

Sen. W. Mark:—and there is a matter that is before the court—

Sen. Mitchell: Mr. Vice-President—

Sen. W. Mark:—dealing with this—is there a plan to deal with it?

Sen. Mitchell: Mr. Vice-President, on a point of order, please, 46(1), he just made and rubbished his own argument.

Sen. W. Mark: [*Inaudible*]

Mr. Vice-President: Sen. Mark.

Sen. W. Mark: [*Inaudible*]

Mr. Vice-President: Sen. Mark, for the last 15 minutes—

Sen. W. Mark: [*Inaudible*]

Mr. Vice-President: We know. And I been allowing you to go through with your flow, but for the last 15 minutes you have been asking the same question to the Attorney General for when he winds up the argument, which should come soon after yourself. I have given you a lot of leeway to go all over the law but you are asking the same question. I myself was tempted to stand up and question you on tedious repetitiveness, even within your own contribution. I ask that within the next six minutes of your remaining time, that you zone in to any other issue, but that issue, in summation of your contribution.

Sen. W. Mark: Yes. So, Mr. Vice-President, I take your point but remember what we are saying to this honourable Senate, through you, is that when we look at 370, we look at 371 of the Companies Act, we are seeing where the Official Receiver can become the provisional liquidator and could continue to act until another person becomes liquidator and is capable of acting as such. That is why I am asking the question, Mr. Vice-President, whether this amendment to bring about the Official Receiver as the Chief State Solicitor is the designed to achieve this objective in 371(1) of the Act, and it is incumbent upon the Government to clear the air on this matter.

Mr. Vice-President, I would tell you that when you look at what we are dealing with today, it does three things, and the Attorney General needs to pay attention and needs to respond. One, the Attorney General must tell this Parliament how this particular provision that they are seeking to introduce in this Parliament is

not going to generate conflicts of interest, and when they do, how is the Government going to those conflicts of interest. The second point that we want the Attorney General to pay attention to is the separation of powers principle, in terms of the independence of the Judiciary in this matter of appointing liquidators as officers of the court. We would like the Attorney General to clear this matter.

We want the Attorney General to indicate also, how will this measure impact on private property rights in our nation and how will this not impact or undermine the rule of law. And, Mr. Vice-President, I am asking the Attorney General if he can tell this honourable Senate whether this legislation before us is not tantamount to ad hominem legislation. Is this targeted or is this aimed at a particular group in our society that is before the courts at this time? Let the Attorney General clear the air on these matters so we can get this thing clarified once and for all, Mr. Vice-President.

We do not appreciate the changes in the manner that these changes are being made and I want to reiterate in the few minutes that I have to close, I want to ask the Attorney General to justify why these amendments are being introduced, to put a state employee in charge of official receivership of liquidated companies, companies in receivership, companies in insolvency, companies experiencing bankruptcy or going towards bankruptcy proceedings and why the Government did not go towards the Canadian legislation, the UK legislation and the Australian legislation to have independent officeholders in charge of these particular areas of operations, when a company goes in that direction.

12.30 p.m.

Why is the Government insisting on a state employee that is a creature of the Office of the Attorney General of our country? That is dangerous, Mr. Vice-President. And that is why we are asking the Government to revisit its

position on this matter and the Government needs to clear the air on this matter. We are not in support of the construction of these amendments at this particular moment. We would like the Government to meet and to treat with this matter and to bring about some degree of balance in the minds of citizens, in the minds of employers.

Mr. Vice-President, I want to let you know in closing, in the event of a conflict of interest, look what is taking place as we speak as I wind down, with something called the EFCL, $600 million owed to contractors and consultants—

Sen. Mitchell: Mr. Vice-President, 46(1).

Sen. W. Mark:—Mr. Vice-President, and the Government is looking and saying—

Sen. Mitchell: 46(1)—

Mr. Vice-President: Sen. Mark.

Sen. W. Mark: Mr. Vice-President—

Sen. Mitchell:—and 53(1)(b).

Sen. W. Mark: Mr. Vice-President—

Mr. Vice-President: Sen. Mark.

Sen. W. Mark: Yes.

Mr. Vice-President: You have one more minute.

Sen. W. Mark: Mr. Vice-President, I would well close.

Mr. Vice-President: I would like you to wind up now because—

Sen. W. Mark: Yes. And I will do that now.

Mr. Vice-President:—what you have just done, you have put a whole different spin.

Sen. W. Mark: Yes. Yes.

Mr. Vice-President: And it is a matter of relevance at this moment.

Sen. W. Mark: Yes. Mr. Vice-President, may I take my minute?

Mr. Vice-President: If you are making a summation in the next 50 seconds.

Sen. W. Mark: May I take my minute?

Mr. Vice-President: You may.

Sen. W. Mark: Yeah. Mr. Vice-President, in closing—

Sen. Mitchell: Mr. Vice-President.

Sen. W. Mark: All we would like to say in closing—

Sen. Mitchell: Mr. Vice-President, I am on a point—

Sen. W. Mark: Mr. Vice-President, I am closing.

Mr. Vice-President: Just let the—

Sen. Mitchell: I am on a point of order, please, 53(1)(b), tedious repetition.

Sen. W. Mark: Mr. Vice-President—

Mr. Vice-President: I have already ruled on that for the good Senator, however, I am asking him to wind up with the remaining—

Sen. W. Mark: Mr. Vice-President, I would like the Acting Attorney General to please pay attention to 370, 371, 372, 373 of the Companies Act and determine what are the conflicts of interests that will arise with this particular public officer who is a creature of the Attorney General's Office playing this role of official receivership. Mr. Vice-President, I thank you very much.

Mr. Vice-President: Attorney General.

The Acting Attorney General and Minister of Legal Affairs and Minister of Rural Development and Local Government (Hon. Faris Al-Rawi): Thank you, Mr. Vice-President.

Hon. Senators: [*Desk thumping*].

Hon. F. Al-Rawi: Mr. Vice-President, before I begin I believe that Sen. Thompson-Ahye has a question to pose. Senator, if you wish to do that now.

Sen. Thompson-Ahye: Yes, please. I wanted to ask you, through you, Mr. Vice-President, whether the Attorney General in crafting this law which is, of course, as he said that there had been previous amendments, whether in crafting this law he actually looked at the Canadian provision to see how they have dealt with the changes in their bankruptcy laws and so on.

I am also asking whether in fact he looked to see how Barbados, you know, over the last few years has dealt with their bankruptcy laws and, in fact, they have put in the Office of Supervisor of Insolvency. Because the concerns raised here this morning are valid concerns. So that, you know, there is always time to do it over but hardly time to do it right and perhaps what we can do, if I may so suggest—

Hon. F. Al-Rawi: Thank you, hon Senator.

Sen. Thompson-Ahye:—is that we tarry a while—

Hon. F. Al-Rawi: Thank you.

Sen. Thompson-Ahye:—and look at what has happened in Barbados so that the concerns can be addressed and we can get it right so we do not have to come back and amend and amend.

Hon. F. Al-Rawi: Thank you so much.

Sen. Thompson-Ahye: Thank you.

Hon. F. Al-Rawi: Thank you, Mr. Vice-President. Mr. Vice-President, I am very pleased to answer the submissions made by hon. Senators opposite. In immediate answer to Sen. Thompson-Ahye, I can say, yes, we have looked at the recent amendments in a number of Commonwealth jurisdictions to treat with bankruptcy and insolvency. We have looked at Barbados and we have looked at Canada. And, Mr. Vice-President, I can say the bankruptcy and insolvency legislation which has featured in this debate is a collateral issue that we are treating with today. This law is not solely about bankruptcy and insolvency. In putting in the Official Receiver

we are saying that the Official Receiver definition is to apply in the context of the Companies Act. In the Companies Act it is not mandatory, as Sen. Mark presents the argument, that the Official Receiver is automatically included.

My colleague Sen. Mitchell stood in a very lucid point of order to say that Sen. Mark was contradicting his own argument. And let me demonstrate what I mean by what I just said and let me expand upon what Sen. Mitchell put to the table. You see, Mr. Vice-President, in the Companies Act Sen. Mark went, quite remarkably to section 370 of the Act. 370 says:

> "Subject to the provisions of this section, the Court may appoint a liquidator provisionally at any time after the presentation of a winding up petition, and either the Official Receiver or any other…person may be appointed."

It is not mandatory. Sen. Mark made a very boldfaced submission to say, that if you look to the Companies Act, he counted it, he said, 288 references to Official Receiver automatically means that you have to read that as Chief State Solicitor implying in his submission that the court does not have an election in its inherent jurisdiction and in exercise of its statutory considerations to appoint someone else. And let me make the example clear.

If we look to the Companies Act which we are amending and we look to section 367 which follows section 366 which we are deleting, we are repealing it, section 366 says, the Official Receiver is:

> "…the Official Receiver attached to the Court for bankruptcy purposes, and includes…"—an—"Assistant Official Receiver."

Let me deal with the issue before I jump off of the repeal here of this so-called allegation of ministerial control and conflict of interest and public officers, et cetera. Sen. Mark referred to the fact that the Chief State Solicitor falls under the Office of the Attorney General. Yes. That has been so since

Independence, since 1976 in republicanism and even before that, Mr. Vice-President, in our colonial construct albeit that the Attorney General was a different type of officeholder then, the Chief State Solicitor has acted that way.

Secondly, Mr. Vice-President, in what I consider to be a unworthy attack against the integrity of the office of the Chief State Solicitor and I say that quite sincerely, I remind that Sen. Mark's argument fails in saying that there is a conflict of interest because if that is so, why is the Chief State Solicitor in law the person appointed as the public trustee? The public Trustee Ordinance, Ch. 8 No. 4, 1950 editions of the Laws of Trinidad and Tobago sets the Chief State Solicitor as the public trustee. If Sen. Mark's argument is correct, then under the five years and three months that his government under Mrs. Persad-Bissessar led this country, they should have abolished the Chief State Solicitor's acting in law as the public trustee.

Sen. Mark omits that the Chief State Solicitor sits as one of five public officers on the Central Tenders Board. If it was such a conflict of interest, this officer holder should have been abolished by the UNC Government in the five years and three months that they were in office.

Sen. Mark conveniently omits an archaic piece of law that is the 1939 Trading with the Enemy Act where under section 10(1) the Chief State Solicitor is appointed to preserve enemy property, again, a public officer. But let us get to the Companies Act which we are amending. Let us get to section 366. We are proposing to remove that definition. I remind that the Chief State Solicitor is an attorney-at-law and therefore an officer of the court like any other officer of the court. I remind that the Chief State Solicitor is subject to the constitutional reflection of section 136 of the Constitution where the tenure and salary and office of the public officer, Chief State Solicitor, is reflected on as a senior legal officer, a

chief legal officer. I remind, Mr. Vice-President, that in section 367, this is the language:

> "Where the Court has made a winding up order or appointed a provisional liquidator, there shall, unless the Court otherwise orders, be made out and submitted to the Official Receiver…"

That is a discretion in the court, Mr. Vice-President. Anybody that has practised in winding up in insolvency, in liquidation as I have for a number of years, will tell you that the court has the ultimate discretion to entertain any objections, Mr. Vice-President.

Mr. Vice-President, when we look to section—let us go to the Second Schedule of the Companies Act which is the winding up rules. When we get to the Second Schedule, the Companies Winding Up Rules, let me, for example, point out to you in answer to Sen. Mark's argument and Sen. Lutchmedial's argument, let me point out, if you look to the appointment of a provisional liquidator in rule 24 and you note that:

> "After the presentation of a petition, upon the application of a creditor, or…contributory…" —et cetera, a company may go through winding up.

Listen to subsection (4):

> "Where any person other than the Official Receiver has been appointed Provisional Liquidator and the Official Receiver has taken any steps…"—et cetera, the—"…Provisional Liquidator shall pay…Official Receiver…"

Again, it is a reflection of the fact that it is in the court's discretion to appoint anyone in the capacity of liquidator, in the capacity other than Official Receiver. If there is an objection to the Official Receiver being the Chief State Solicitor, that application can be made. But let me tell you how confusing my colleagues opposite on the Opposition Benches arguments are.

We heard reference to the Bankruptcy and Insolvency Act. Mr. Vice-President, what I find remarkable is that my colleagues opposite will not read the law. And if you go to the Bankruptcy and Insolvency Act and you go to section 175, Mr. Vice-President, and we look to that particular provision, let us see what that actually says. Section 175 falls under Part IX of the administrator—and it is entitled Administrative Officials. Section 175 creates the appointment of supervisor and here is what it says:

> "For the purposes of this Act, there shall be a Supervisor of Insolvency who shall be responsible to the Minister…"

Let me repeat that. The—

> "…Supervisor of Insolvency…shall be responsible to the Minister for the general administration of this Act and whose office shall be a public office."

Stick a pin. We heard Sen. Lutchmedial say let us go deeper into reflection and let us get the supervisor of insolvency in. What is the difference between a public officer under section 175 reporting to a Minister, and the Chief State Solicitor who is a public officer reflected in the Constitution appointing—reporting to the Attorney General? When the Chief State Solicitor as Official Receiver has the obligation in law to report to the court. The court has the supervisory jurisdiction on liquidation, on winding up, on insolvency. It is not the Attorney General who is there willy-nilly pulling the strings of the Official Receiver because in the due process environment of winding up, liquidation, insolvency, the creditors are before the court and the creditors are given an opportunity to be heard. So for Sen. Mark to say it is draconian and this is the end of the world and there is a conspiracy afoot, Mr. Vice-President, is the hon. Senator casting aspersions on the entire Judiciary apart from the Chief State Solicitor's department? Is the hon. Senator forgetting that the supervisory and inherent jurisdiction of the court

operates at all times without fetter under the separation of powers principle?

Mr. Vice-President, in Sen. Lutchmedial's recommendation that we use the Supervisor of Insolvency:

> "The Supervisor "—of Insolvency—"shall supervise the administration of all estates and matters to which…"—the Bankruptcy and Insolvency—"Act applies."

That is section 175(2).

> "175(3). The Supervisor shall, without limiting the authority…—
>
> (a) receive applications for licences to act as trustees under…"—the—Act…"

Trustees are appointed to receive property that goes into winding up, et cetera.

> (b) where not otherwise provided…require the deposit of…guaranty"—of—"bonds…"—et cetera.
>
> "(c) from time of time make or cause to be made such inspection or investigation of estates..."

How do my friends opposite seriously and in sober terms say to the world use the Supervisor of Insolvency in the context of winding up when the Supervisor of Insolvency is an administrative official with an entirely different portfolio? I mean, for heaven's sake, Mr. Vice-President, do they even bother to consider the circumstances and the locus and the roles and responsibilities of the officers? Is the question now afoot? Yes, please.

Sen. Thompson-Ahye: I heard you say—mention here, that the court could appoint the official, the Chief State Solicitor as a liquidator. That is what you said? Is it not?

Hon. F. Al-Rawi: I was referring to the provisions of provisional liquidation in the law.

Sen. Thompson-Ahye: Because you seem, you know, the Attorney General seems, like Sen. Mark, to make no differentiation between a receiver and a liquidator—

Hon. F. Al-Rawi: Thank you, Senator.

Sen. Thompson-Ahye:—and that is so important.

Hon. F. Al-Rawi: Senator, I am sorry. I have such little time in winding up—

Sen. Thompson-Ahye: Yeah but—

Hon. F. Al-Rawi:—and unfortunately you elected not to speak. So forgive me for re-interrupting. I am not conflating or confusing. I was drawing reference to the liberty of the court in the statue that we are dealing with, the Companies Act, the Bankruptcy and Insolvency proceedings Act and the Winding Up Rules in the Second Schedule to the Companies Act to have the discretion to appoint the Official Receiver or someone else in multiple capacities be it in liquidation, be it in receipt, be it in winding up, obviously there are different roles that we are speaking about. But we are not to conflate Sen. Mark's argument which is that you have to read this as a mandatory, you must appoint the Chief State Solicitor as receiver.

And therefore, Mr. Vice-President, I am saying that the mischiefs raised by my colleagues opposite are to be met by the due process of the court, are to be met by the safeguards and balances of the legislation which we are amending. It is to be met by the fact that there is an overriding discretion.

And was dealing with the Sen. Lutchmedial's recommendation that we look at the supervisor of insolvency as opposed to the Chief State Solicitor after Sen. Lutchmedial raised the position of the conflict of interest. And I answered that by saying well, where is the conflict of interest argument to be drawn in the line in the sand, if the Official Receiver is a public officer and the supervisor of insolvency is a public officer equally? If the supervisor reports to a Minister and if the Chief

State Solicitor operates under the Attorney General but has the distinction of reporting to the court and being subject to the supervision of filed proceedings subject to objection by creditors or other persons before the court in whatever capacity.

Mr. Vice-President, permit me to say in answer to Sen. Mark's conspiracy theory about replacement of officers, et cetera, and liquidators, there is no such position. We are dealing with the law in general purport. I reject the argument that this law is ad hominem in any fashion, Mr. Vice-President. I am saying for the record that this law is much more than—the Bill that we have before us is much more than insolvency and liquidation. It is equally in the context of section 366, of section 246, et cetera. We are dealing with, Mr. Vice-President, we are dealing with the position of assets that are left over on striking out. We are dealing with the law of general application because the role of the Official Receiver is much more than just insolvency. There are multiple factions and issues inside of that.

Mr. Vice-President, as to the allegation that the law is sloppy drafting in 2019, please permit me to just reject that out of hand. Let me explain the construct of the argument by my friends opposite. In 2019 we came with a very narrow sectional definition to put for the purposes of dissolution of companies the Official Receiver in. This lacuna in the law came about in 2014 when the 2007 Bankruptcy and Insolvency Act, Chap. 9:70 was proclaimed. And anytime you are engaged in a proclamation you have an obligation to check the impact of proclamation. But not surprising, Mr. Vice-President, that is how section 34 was born in the preliminary enquiry administration of justice realm where you do not check, perhaps on purpose, the impact of laws when they are proclaimed. But in 2014 if you think there, hon. Sen. Mark, through you, Mr. Vice-President, that it was sloppy, well then turn to your own government in 2014 for not having checked the

law.

Hon. Senators: [*Desk thumping*]

Hon. F. Al-Rawi: And, Mr. Vice-President, I have on a number of occasions explained the Government's position that we are here as a Parliament to continuously make law for the peace, order and good governance of our country. And, Mr. Vice-President, I have already given the heads up that there are further amendments to the Companies Act, one in the Global Forum/EU context and another in the ease of doing business and elimination of paper and going to online filings and therefore the law is continuously under review.

Mr. Vice-President, may I end my contribution by saying, it is always a pleasure to be before the hon. Members of this House to provide explanation as it is properly required. I will say that the laws are under constant review. The general provisions of the bankruptcy and insolvency provisions being the Canadian model are very apposite to our interests. There is no conflict there. But we ought not to conflate the roles and functions of administrative officers, as for instance, under that law with what we are dealing with today.

In final submission on the conflict of interest point, there is none. There is an insulation by the JLSC to public officers as we are well aware. And, Mr. Vice-President, I believe that that is the summation of answers to issues posed by my friends opposite and therefore, I beg to move.

Hon. Senators: [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 5 ordered to stand part of the Bill.

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

Senate resumed.

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

Mr. Vice-President: Acting Leader of Government Business.

ADJOURNMENT

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Mr. Vice-President, I beg to move that this Senate do now adjourn to Tuesday, April 26, 2022 at 1.30p.m. And on that day we will deal with Private Members' Business and with the understanding of the other side, we would continue the Motion raised by Sen. Amrita Deonarine and hopefully progress to completion. Thank you.

Mr. Vice-President: Noted. Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised on the Motion for the Adjournment of the Senate. Sen. Charrise Seepersad.

Transfer Pricing

(Need for Government to Provide Status Report)

Sen. Charrise Seepersad: Mr. Vice-President, the matter I wish to speak on today is the need for the Government to provide a status report on legislation to guard against transfer pricing.

We need to reduce Trinidad and Tobago's vulnerability to revenue leakage which could be significant due to transfer pricing by multinational energy companies. One of the mechanisms to reduce this vulnerability is through transfer pricing legislation.

Mr. Vice-President, the Government should enact legislation that mandates companies operating in the entire local hydrocarbon value chain that is upstream, midstream and downstream to submit accurate information, establish clearly defined penalties for the deliberate reporting of false information or deliberately

misrepresenting information and create a dispute resolution system to allow energy companies to raise and settle disputes with the Government regarding prices. These practices can be found in Norway, Angola, Colombia, India and Indonesia.

I have some additional recommendations. One, Trinidad and Tobago should have a hydrocarbon revenue authority to set a fair price for hydrocarbons. The entity should have the responsibility to monitor the price of crude oil, natural gas and downstream products in various markets.

1.00 p.m.

Section 6A of the Petroleum Taxes Act established the Permanent Petroleum Pricing Committee to determine a fair market price for petroleum taxation. In 2018, this committee was reactivated following several years of dormancy and its jurisdiction is to determine the prices for petroleum. I believe there is room to expand its authority to include the review of prices of natural gas and petroleum products—sorry, and petrochemical products.

Two, implement advanced pricing agreements. Advanced pricing agreements provides an option to address transfer pricing for say five years. The Government and the multinational companies can negotiate transfer pricing for various transactions. The agreement should include a reporting framework, actions and penalties if any party is found to be in breach of the agreement and, of course, a dispute resolution procedure.

Three, establish a reporting and monitoring framework to address the absence of transparency in transactions. Multinational companies must submit a master report every five years. The report should include relevant information on the multinational group, including: the parent company; its subsidiaries; related divisions; the jurisdictions in which the companies operate; the tax rates in these

jurisdictions; the company's source of income, costs and deductions; an annual report local specifying the local company's income statement, balance sheet and cash flow; the price at which the commodity was sold on the international markets; the interdivision services; and the cost of the services and the contracts to support these services.

Four, address natural gas netback prices. The Government should enter into an advanced pricing agreement with the natural gas exporting companies where both parties can negotiate the price which will be used to derive the netback price to the wellhead for the Government. This option would be attractive to both parties since they can negotiate the best prices. According to the ECLAC publication, "Navigating transfer pricing risk in the oil and gas sector: Essential elements of a policy framework for Trinidad and Tobago and Guyana":

> "Under the current arrangement…Trinidad and Tobago is not allowed to fetch higher natural gas prices in other markets when they fluctuate, subsequently resulting in a loss of potential revenue."

This study estimates that between 2010 and 2014, when:

> "…natural gas prices were high…revenue collections…"—in Trinidad and Tobago—"could have been five times higher.
>
> In 2018…"—when—"the prices were low, the government could have received revenue that was approximately six times higher than actual receipts."

This quantified to:

> "…US $2.6 billion in revenue loss from the natural gas sector alone."

For the entire energy sector, the estimated loss is US 7.9 billion to $13.7 billion.

Mr. Vice-President, that extra revenue could have a positive impact on

Trinidad and Tobago's GDP if we had received it and could have been of tremendous benefit in our post-COVID-19 economic recovery. Countries like Trinidad and Tobago depend on multinational energy companies to produce and monetize its natural gas resources. Doing business with sophisticated multinational, vertically-integrated energy companies with fragmented but interconnected global value chains creates many opportunities of the manipulation of taxable income.

Mr. Vice-President, I thank you.

Hon. Senators: [*Desk thumping*]

Mr. Vice-President: Minister in the Ministry of Finance.

Hon. Senators: [*Desk thumping*]

The Minister in the Ministry of Finance (Hon. Brian Manning): Mr. Vice-President, thank you. Let me also begin by thanking Sen. Seepersad for this extremely important question or raising this important issue. Transfer pricing represents the price that one division in a company charges another division for goods and services provided. Transfer pricing allows for the establishment of prices for the goods and services exchanged between subsidiaries, affiliates or commonly controlled companies that are part of the same larger enterprise. It is an accounting practice.

Mr. Vice-President, companies can use transfer pricing to reduce the overall tax burden of the parent company. There are no specific transfer pricing rules currently in Trinidad and Tobago. However, the legislation empowers—the existing legislation empowers the tax authority to disregard any transactions that it views as artificial or fictitious. This general power has been utilized by the tax authority in dealing with related parties and large multinational companies to

evaluate whether transactions are above board.

Mr. Vice-President, according to an ECLAC report in 2021, Trinidad and Tobago lost almost $18 billion in revenues from LNG due to transfer pricing between the years 2010 to 2018. Clearly, this is an extremely significant issue. ECLAC or the Economic Commission for Latin America and the Caribbean went on to advise that it is important or:

> "It is imperative that any framework to address potential transfer pricing in… Trinidad and Tobago should encourage"—or—"even require the conduct of transactions by multinationals using the arm's length principle to address, inter alia, potential shifting in the destination markets…"

The matter of the introduction of transfer pricing legislation in Trinidad and Tobago is currently before the Cabinet for consideration. It should be noted that over the period 2017 to 2019, the Ministry of Finance held numerous consultations with regional and international institutions, namely the Inter-American Centre of Tax Administrations or CIAT and the World Bank Group. The objective was to establish new policy and legal administrative framework to regulate transfer pricing and to strengthen the Inland Revenue Division's ability to monitor transfer pricing transactions.

Further, in September 2018, the Ministry of Finance hosted a World Bank scoping mission to adequately identify and inform policy priorities. Having also considered the approach utilized by our regional counterpart, Jamaica, it has been proposed to Cabinet that Trinidad and Tobago pursue the introduction of transfer pricing legislation in a similar vein to the approach taken by our Caricom colleagues in Jamaica.

Transfer pricing legislation in Jamaica: the steps taken by Tax

Administration Jamaica or the TAJ in the implementation of a transfer pricing regime included: one, effective primary legislation, subsidiary legislation or documentation; advanced pricing agreements and forms to be prescribed; the creation of a transfer pricing specialist dedicated team; strengthening of technical transfer pricing skills; effective risk assessment and case selection processes; effective audit processes and governance procedures; identification of taxpayers subject to the transfer pricing regime; and a broadened tax information exchange network to facilitate administrative cooperation between authorities.

In 2011, the Jamaican Cabinet approved the introduction of transfer pricing rules. However, the Bill was not tabled in the Jamaican Parliament until May 05, 2015, and was debated and passed in November 2015 as the Income Tax (Amdt.) (No. 2) Bill, 2015, having incorporated and suggested amendments of external stakeholders. The Bill also benefitted from consultations with private sector groups. The main areas of Jamaica's transfer pricing legislation included the following:

1. Reference to the arm's-length principle or ALP;
2. Definition of connected parties;
3. Definition of connected transactions;
4. Taxpayers compliance criteria;
5. Transfer pricing methods;
6. Formal obligations or a documentation criteria considering compliance burden;
7. Penalty provisions; and
8. The introduction of advanced pricing agreements geared towards alleviating the uncertainty of arm's-length pricing of international

transactions.

In 1970, Jamaica introduced the ALP in its Income Tax Act. The 2015 income tax amendments provided clarity and certainty to taxpayers on the acceptable methods of determining the transfer price based on the ALP and greater details on the documentation requirements, aligned Jamaica's transfer pricing rules with international best practice and removed subjectivity in the administration of transfer pricing rules. While it has always been the taxpayer's obligation to account for connected party transactions on an arm's-length basis, the initial burden to determine whether the transactions were in accordance with the ALP rested with the Commissioner General. The 2015 amendments to the Income Tax Act placed the onus on the taxpayer to declare his business activities for the year, to inform the Commissioner General of the basis used to arrive at the declared transfer prices.

It should be noted that the transfer pricing regulations were introduced for the 2015 year of assessment beginning January 01, 2015. This was described in the law as a trial period to allow entities to become more acquainted with the revised reporting requirements during which no penalties were accrued. The full implementation was scheduled for the 2016 year of assessment filed as at March 31, 2017, with penalties only taking effect in 2017. Transfer pricing documentation was not required for the 2015 year of assessment. Based on the provisions of the Income Tax (Transfer Pricing Documentation) Regulations, 2015, only companies with a gross annual revenue of JMD 500 million or more in the previous year of assessment are required to keep transfer pricing documentation. These are documents specifically listed in the legislation which must be contemporaneous with the connected party transactions. Transfer pricing documentation became due

on March 15, 2016.

In support of the introduction of transfer pricing legislation, Jamaica instituted a two-year upskilling programme for local tax administrators with responsibility for the implementation of the transfer pricing provisions. This was aimed at clarifying provisions of the Income Tax Act, concerning taxpayers engaged in transactions with related parties. Training in transfer pricing of the technical and legal staff of the TAJ was conducted with technical assistance provided by the Organisation of Economic Co-operation and Development, or the OECD, and the World Bank Group.

It was also noted that the Taxation Policy and Revenue Appeals Division of the Ministry of Finance played key roles in the process. Subsequent to the passage of the Income Tax (Amdt.) (No. 2) Bill, 2015, sensitization sessions were conducted which included engagement with external stakeholders. These sessions commenced in January of 2016. The Ministry of Finance has been keeping abreast of the progress and results of Jamaica's transfer pricing regime. Reports received from the TAJ indicated that Jamaica's transfer pricing regime has experienced positive, sustainable results with a dramatic 15 per cent increase in revenue collection for corporation income tax or CIT in the quarter subsequent to the full implementation of transfer pricing regulations in 2016.

Mr. Vice-President: Minister, you have one more minute.

Hon. B. Manning: Thank you. It is also noteworthy that revenue targets for CIT have been met for all subsequent fiscal years. In October 2021, TAJ advised that for fiscal year 2020 to '21, JMD $66 billion was collected for CIT which was JMD $4 billion over the annual target of JMD $62 billion Jamaican. Of the CIT collected, 29.2 billion was directly linked to transfer pricing. Based on Jamaica's

positive results, it has been proposed that a similar approach be adopted by Trinidad and Tobago. This recommendation is presently under consideration. Thank you.

Hon. Senators: [*Desk thumping*]

Mr. Vice-President: Sen. Mark.

Hon. Senators: [*Desk thumping*]

Appointment of State Boards

(Failure to Fully Constitute)

Sen. Wade Mark: Thank you, Mr. Vice-President. Mr. Vice-President, I have brought a matter on the Motion for the Adjournment dealing with the failure of the Government to fully constitute boards of T&TEC, TGU, PowerGen as well as TSTT, given their strategic importance.

Mr. Vice-President, the public is asking why has the Government not taken measures, appropriate measures that is, to have these very important boards appointed. They are very strategic to our development, not only in the energy sector but, of course, in the telecommunications sector and the electricity sector. The question here is that the Government needs to explain why after several months these boards are yet to be appointed.

Now, in the case of T&TEC, Mr. Vice-President, we knew that there was a major blackout in the month of February of 2022, and that board at that time did not have—T&TEC rather did not have a board constituted of commissioners. We have since learnt that the Government belatedly, when they knew this Motion had been filed, hastily approved at the Cabinet level appointments at the level of T&TEC, but the directors of T&TEC are yet to receive their instruments from the

Office of the President. But this is after—that came, Mr. Vice-President, after four months because since December of 2021, T&TEC has been without a board. And it was only recently, as I said, the Government took a decision to address this matter, conscious of the fact that this event was to take place shortly, that is this matter on the Motion for the Adjournment.

Mr. Vice-President, we are not talking about T&TEC—T&TEC not only had to deal with the power blackout without any policymakers in place, outside of the Minister taking responsibility, but T&TEC apparently has to deal with a major matter involving BP Lightsource where we have 738 acres of land being given—Caroni land that is—to BP Lighthouse for a project involving solar energy. Now, right now we have learnt that there is a tariff of some US 4 cents per kilowatt which is being negotiated, and this will be a cost that T&TEC will have to bear. But in the absence of a board, this situation is very, very, very urgent and serious. And then, Mr. Vice-President, not to mention there is an event taking place at the hydrogen level involving the Julien's, the—Ken Julien that is, Philip Julien. Again, that is related to T&TEC and we need to know—action should be taken and some direction given by the board of management or the Board of Commissioners of T&TEC.

Now, Mr. Vice-President, in addition to the absence of that board, as we speak, because they are yet to receive their instruments, PowerGen is yet to be properly constituted. As you know, Mr. Vice-President, PowerGen is owned 51 per cent by MaruEnergy limited, which is a Japanese company, and there is a 39 per cent shareholding involving NEL—government that is—and NEL, a 10 per cent holding. So, for T&TEC—for PowerGen rather, to be properly constituted, the T&TEC board must be appointed. So, right now, as we speak, from the

information I have, and the Government can clarify this information, the PowerGen board is yet to be appointed because the T&TEC board is not properly constituted which is, as I said, four months after those board of commissioners' appointment expired.

Mr. Vice-President, we also have a situation involving TGU. TGU is yet to be appointed. TGU, as you know, is part of the National Investment Fund Holding Company Limited, a company that was created by its sole shareholder, that is the Government of Trinidad and Tobago. And therefore, this board which is—this company which is almost 100 per cent state-owned, we understand has been without a board for a considerable period of time and we need the Government to clear the air as to why strategic bodies and boards such as these—T&TEC, PowerGen, TGU—are yet to have their boards fully constituted, Mr. Vice-President.

Mr. Vice-President, in the case of TSTT, which is a very important telecommunications board in our country, we have a situation where TSTT is 51 per cent owned by the Government of Trinidad and Tobago and 49 per cent owned by Cable & Wireless. We understand that the Government of this country has appointed, as we speak, six members to the board of this body called TSTT. I think the latest arrival on the compound is a gentleman by the name of Mr. Howard Dottin. He is now the sixth member to be appointed on the TSTT board. So, Mr. Vice-President, the board is not fully constituted because there are nine member of the TSTT board and right now, as we speak, five plus one, we have six, three more still to be appointed.

So, I have brought this Motion to the attention of this honourable Senate so that the Government could explain why it has taken so long, so many months to

appoint these strategically important boards, critical to energy, critical to telecommunications, critical to electricity in our country. So, I am asking the Government, whoever is the spokesman today, to explain to the people of Trinidad and Tobago, and to explain to this Parliament, why this matter has taken the Government so long. It is reckless, bordering on the irresponsible for the Government not to have taken measures to appoint or to reappoint these boards that were in existence since they came into existence in the elections of 2015 and they were back in August of 2020, and yet still these boards have not been appointed, fully constituted that is, Mr. Vice-President.

So, we are calling on the Government to clear the air today as to when they are going to complete the proper constitution of these boards. And in the case of TSTT, we would like to know what the intention of the Government is for this very important state entity, state enterprise and its future. We are hearing all kinds of rumours about TSTT.

Mr. Vice-President: Sen. Mark, you have just under one minute.

Sen. W. Mark: We are hearing all kinds of rumours about TSTT and we are asking the Government to clear the air on TSTT. Why is Cable & Wireless still not able to dispose of its 49 per cent in TSTT and give back to the people of this country 100 per cent ownership of TSTT? These are issues that the public is seeking clarification on and we call on the Government to clear the air on these very important utilities, inclusive of TGU. Thank you, Mr. Vice-President.

Hon. Senators: [*Desk thumping*]

Mr. Vice-President: Minister of Public Utilities.

Hon. Senators: [*Desk thumping*]

The Minister of Public Utilities (Hon. Marvin Gonzales): Thank you very

much, Mr. Vice-President. Mr. Vice-President, every time I come to this august Chamber to respond to Sen. Mark, it is always quite clear to me that the wording of his Motion and the arguments that he advances in support of his Motion, they somehow do not corroborate. They are somehow missing the mark. I do not understand—I was asked to come to respond to a Motion on the failure of the Government to fully constitute boards of T&TEC, TGU, PowerGen, TSTT, et cetera, and yet still in support of that Motion, Sen. Mark, in his usual style, attempts to bring all kinds of extraneous matters to confuse the population—

Hon. Senators: [*Desk thumping*]

Hon. M. Gonzales:—and often times based on innuendos, falsehood and typical UNC behaviour.

Hon. Senators: [*Desk thumping*]

Hon. M. Gonzales: So, Mr. Vice-President, I will respond to the Motion that I was asked to come here to address. The Government is fully cognizant of the fundamental role plagued by the boards of directors in the corporate governance and performance of state enterprises. For this reason, every effort is being made to ensure that various state boards are well composed and that members are equipped with the diverse range of skills, expertise, perspectives, knowledge to allow them to discharge their fiduciary duties and to uphold good corporate standards. And let me also say at this point, Mr. Vice-President, that Sen. Mark should be aware that when the law provides for the appointment of boards of directors, they have minimum directors to be appointed as well as maximum directors to be appointed. Once a board meets the threshold of minimum appointments, the board is duly constituted.

Hon. Manning: [*Desk thumping*]

Hon. M. Gonzales: And I would expect that if Sen. Mark is not clear on the law, he is sitting next to esteemed colleagues at the bar who should—or rather he should consult their advice before coming to this Senate to mislead the people of Trinidad and Tobago.

Hon. Senators: [*Desk thumping*]

Hon. M. Gonzales: With respect to the Telecommunications Services of Trinidad and Tobago, Mr. Vice-President, the by-law provides for a maximum of nine directors and a minimum of three. Currently, there are six directors on the board of TSTT and therefore, TSTT has a duly constituted board.

Hon. Senators: [*Desk thumping*]

Hon. M. Gonzales: With respect to the Trinidad Generation Unlimited, TGU, the by-laws provide for a maximum of seven directors and a minimum of two directors. Currently, there are five directors. Mr. Vice-President, this board is duly constituted.

Hon. Senators: [*Desk thumping*]

Hon. M. Gonzales: With respect to the Trinidad and Tobago Electricity Commission, Mr. Vice-President, section 4 of the Trinidad and Tobago Electricity Commission Act, Chap 54:70, provides for the commission to:

> "…consist of no fewer than five nor more than nine members appointed by the President."

On March 24, 2022, Cabinet agreed to the appointment of a new board of commissioners for T&TEC comprising of nine members. The instruments of appointments from the President were recently received by the Minister of Public Utilities and would be delivered to the members of the board later this week.

With respect to PowerGen, T&TEC is the beneficial owner of all the issued

class A shares in the capital of PowerGen which represents 51 per cent of the shareholding. MaruEnergy and National Enterprises Limited are the beneficial owners of the class B shares which represents 39 per cent and 10 per cent of the shareholder respectively. The by-laws provide for nine directors, five of whom are appointed by the class A shareholding or shareholder, that is the Trinidad and Tobago Electricity Commission, the tenure of the appointment of which is coterminus with that of the T&TEC board. And the class B shareholder appoints the other four directors. The chairman of the board is a class A director and currently, MaruEnergy holds three directors and NEL, one.

The board of T&TEC via resolution appoints the eight directors who would have previously demitted office at the expiration of the board of T&TEC. Having regard to the imminent appointment of the board of T&TEC, the remaining five directors on the board of PowerGen will be appointed in due course. I thank you, Mr. Vice-President.

Hon. Senators: [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 1.29 p.m.