

SENATE

Monday, July 05, 2021

The Senate met at 10.00 a.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have received a request for leave of absence from Sen. Anil Roberts who is ill. The leave has been granted.

FINANCE BILL, 2021

Bill to make provision of a financial nature and other related matters, brought from the House of Representatives [*The Minister of Finance*]; read the first time

Motion made: That the next stage be taken on Tuesday, July 06, 2021. [*Hon. C. Rambharat*]

Question put and agreed to.

PAPERS LAID

1. Annual Report of First Citizens Bank Limited for the financial year ended September 30, 2020. [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]
2. Annual Administrative Report of the National Investment Fund Holding Company Limited as at December 31, 2020. [*Sen. The Hon. C. Rambharat*]
3. Audited Financial Statements of First Citizens Holding Limited for the financial year ended September 30, 2020. [*Sen. The Hon. C. Rambharat*]
Annual Report and Consolidated Financial Statement of Accounts for the Central Bank of Trinidad and Tobago for the year ended September 30, 2020. [*Sen. The Hon. C. Rambharat*]

UNREVISED

4. Report on the withdrawals from the Trinidad and Tobago Heritage and Stabilisation Fund under Section 15A (3) of the Heritage and Stabilisation Fund Act, Chap. 70:09 for the period October 2020 to April 2021. [*Sen. The Hon. C. Rambharat*]
5. Family Proceedings (Amendment) Rules, 2021. [*Sen. The Hon. C. Rambharat*]
6. Waste Management Rules, 2021. [*Sen. The Hon. C. Rambharat*]

JOINT SELECT COMMITTEE REPORTS

(Presentation)

Land and Physical Infrastructure

Measures for Ensuring Water Security

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

First Report of the Joint Select Committee on Land and Physical Infrastructure, First Session (2020/2021), Twelfth Parliament, on a Continuation inquiry into the Measures for ensuring Water Security in Trinidad and Tobago with reference to the Eleventh Report of the Committee in the Fifth Session (2019/2020) of the Eleventh Parliament.

Shipping Bill, 2020

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I have the honour to present the following report as listed on the Order Paper in the name of the hon. Randall Mitchell:

Report of the Joint Select Committee appointed to consider and report on the Shipping Bill, 2020, First Session (2020/2021), Twelfth Parliament.

Local Authorities, Service Commissions and Statutory

Authorities (including the THA)

Airports Authority COVID-19 Restrictions Sen. Nigel de Freitas: Thank you, Madam President. I have the honour to present the following report as listed on the Order Paper in the name of Sen. Dr. Varma Deyalsingh:

First Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA) on an Inquiry into the Health and Safety practices and arrangements of the Airports Authority of Trinidad and Tobago (AATT) in light of COVID-19 restrictions, First Session (2020/2021), Twelfth Parliament.

Committee of Privileges

Report of the Committee of Privileges in the First Session (2020/2021) of the Twelfth Parliament.

Fisheries Management (No. 2) Bill, 2020

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I have the honour to present the following reports as listed on the Order Paper in my name:

Report of the Joint Select Committee appointed to consider and report on the Fisheries Management (No. 2) Bill, 2020, First Session (2020/2021), Twelfth Parliament.

Representation of the People (Amdt.) (No. 2) Bill, 2020

Report of the Joint Select Committee appointed to consider and report on the Representation of the People (Amendment) (No. 2) Bill, 2020, First Session (2020/2021), Twelfth Parliament.

Miscellaneous Provisions (Local Government Reform) Bill, 2020

Report of the Joint Select Committee appointed to consider and report on the Miscellaneous Provisions (Local Government Reform) Bill, 2020, First Session (2020/2021), Twelfth Parliament.

Madam President: Minister, can you also—may I call on you to present the report, it is in the name of Sen. Thompson-Ahye, but she is not here, but I think you are on the Committee?

Finance and Legal Affairs

Ease of Doing Business in Trinidad and Tobago

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. Madam President, I have the honour to present the following report as listed on the Order Paper in the name of Sen. Hazel Thompson-Ahye:

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.

Social Services and Public Administration

Effects of Hybrid Learning System on Student Performance

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

First Report of the Joint Select Committee on Social Services and Public Administration on an inquiry into the effects of the hybrid learning system on student performance in Government and Government-assisted schools during the revised COVID-19 restrictions, First Session (2020/2021), Twelfth Parliament.

ORAL ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, there are five questions on notice. The Government will respond to three of the five, and we are indicating that we are not

in a position to respond today to Question Nos. 110 and 129. Thank you.

Madam President: With respect to Question 129, are you making any request, 129? It is the first time that it is coming up.

Sen. The Hon. C. Rambharat: Oh, Madam President, I was under the impression it was deferred previously. So, I am respectfully asking that 129 be deferred for two weeks. Thank you.

Madam President: Question 129 is deferred for two weeks. Sen. Mark.

Sen. Mark: Madam President, may I seek your indulgence to invoke Standing Order 27?

Madam President: Well, you do that at the end.

Sen. Mark: Okay.

Madam President: So, that is fine. You can do it at the end.

Sen. Mark: So, which questions do I—

Madam President: You will be asking Question 119.

Sen. The Hon. C. Rambharat: Madam President, my apologies.

Madam President: Just one second. Yes, Leader of Government Business.

Sen. The Hon. C. Rambharat: My apologies, Madam President. The ones I am respectfully indicating that we are not in a position to respond to are 110 and 119. My apologies. So, we will be responding to 129, 30 and 31. Thank you.

The following questions stood on the Order Paper in the name of Sen. Wade Mark.

EFCL—\$100 million Levy

(Details of)

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

As regard the levy in the sum of one million dollars on the Education Facilities Company Limited (EFCL) by a contractor, can the Minister indicate the following:

- (i) how many contractors are still owed moneys by the EFCL for works completed prior to December 31, 2020; and
- (ii) what is the sum of said moneys owed?

**EFCL—\$100 million Levy
(Status of)**

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

In light of the disappointment expressed by residents of East Port of Spain over the failure of the Community Recovery Committee to provide meaningful and concrete proposals, can the Prime Minister advise as to when will the Committee's final report be submitted to the Cabinet?

Questions, by leave, deferred.

**Windsor Park Couva
(Measures Taken to Prevent Drowning)**

129. Sen. Wade Mark asked the hon. Minister of Rural Development and Local Government:

In light of the March 21, 2021, drowning of a man in an area without signage, at a sand pit pond in Windsor Park, Couva, can the Minister indicate what immediate measures will be taken to prevent recurrence of this incident?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. Madam President, by way of background information, the Windsor Park Sand Pit is located in Couva and it was one of four sand pits under the management of the Estate Management and

Business Development Company Limited and operated by private contractors. It should be noted that these sand pits operated without land leases and mining licences among other things. Madam President, this particular sand pit was mined in such a manner that large and deep craters were dug on the site on almost every cubic foot of sand that could be mined was mined from the site. Without leases and licences, recourse against the operators was not available. These craters became ponds, and represent a significant danger to the public, particularly trespassers.

Madam President, with the termination of the mining activities that the Windsor Park Sand Pit, the site falls under the purview of the Commissioner of State Lands. The Estate Management and Business Development Company, although not having property interest in the site, provides security of state lands to the Commissioner, at this time.

In light of the incident that occurred on March 21, 2021, increased patrols were put in place, and the EMBD intends to assist with some additional measures. The signage which once existed at the site, those are going to be reinstated, and there are other initiatives that would be taken to prevent what happened previously, and to indicate to members of the public the risk that exists on the site, having regard to the depth of those craters. So that, Madam President, this is what is intended. Thank you.

Sen. Mark: Yes. Thank you, Madam President. Can the hon. Minister indicate whether the Government intends to collaborate with—well, I should put it another way, Madam President. Is there an intention to have discussions between the Ministry of Agriculture, Land and Fisheries and the Ministry of Energy and Energy Industries with a view to dealing with those illegal individual companies that are operating without leases or licences at this particular site, Madam President?

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

as I indicated, there is no quarrying on this site anymore. In fact, of the EMBD sites, and my friend is very familiar because he dealt with this matter in a joint select committee before, the only site that is being quarried is now the subject of a lease that has been granted to EMBD and a mining licence granted by the Ministry of Energy and Energy Industries, and through a bidding process is operated by a private contractor, and the other sites which were once quarries, have no quarrying taking place.

The issue with them is the extent to which the State can remediate the sites, having regard to the extent of the mining. The mining was not conducted in accordance with a mining licence or a land lease, and it means that the Ministry of Energy and Energy Industries, does not come into the picture. It is a matter for the State to deal with when it is in a position to do that.

Sen. Mark: Madam President, can the Minister indicate whether the Government intends to take any action to, at least, reorganize that area, given the dangers that are posed by these large craters? And with the best attempt in the world of placing security, there is always this danger that citizens can, in fact, penetrate those security barriers?

Sen. The Hon. C. Rambharat: Yes, Madam President. As I indicated before, the EMBD is assisting the Commissioner of State Lands in reinstalling the signage which would provide the warnings and with the patrols. And, in the ideal situation, the site, the dangerous areas could be fenced. But, again, we know that it is easy to cut those things or scale those things, and the long-term plan may be to remediate the site and maybe over time fill in those craters that have been established. And, as they do in spent quarries in Trinidad and Tobago and elsewhere, replant the area and bring it back into vegetation, so it no longer presents that risk. But that is really something that would take financial resources and planning.

Sen. Mark: Madam President, can I ask the hon. Minister, in terms of the security presence on the site, can he share with this Senate what is the specific arrangements in place for security to be present there to dissuade persons from using these particular areas for swimming or other activities? Can the hon. Minister share with us?

Sen. The Hon. C. Rambharat: Madam President, what I have described was an increase in the regular patrols, so there is no security based on the site. The site is patrolled and since May, March sorry, there has been no further incident at the site, but the site is patrolled. There is no fixed security presence on the site.

Sen. Mark: Madam President, can I ask the hon. Minister whether there is any intention on the part of the Government to hold a public meeting or some kind of engagement with the population surrounding that particular area to educate them of the dangers involved in this misuse of these facilities that can be very deadly and dangerous?

Sen. The Hon. C. Rambharat: Madam President, I would say that at present, there is no plan to do that, but I am happy to take my friend's suggestion on board. I would ask the Commissioner of State Lands to engage the public, particularly in that area on the dangers at the site. Thank you.

Madam President: Next question. Sen. Mark?

**Hewasky Quest Global Ltd/SkyQuest Technology Group
(Supply of Oxford-AstraZeneca Vaccines)**

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

As regard the proposed supply of up to 3 million doses of the Oxford-AstraZeneca vaccines to this country by Hewasky Quest Global Ltd/SkyQuest Technology Group of Queen's Road, Central, Hong Kong, can the Minister advise as to the following:

- (i) whether said company has authorized Vary Medical & Scientific Company Limited of 122-124 Frederick Street, Port-of-Spain to submit a bid for the supply of the abovementioned three million doses; and
- (ii) whether said company or its agent have received the Ministry's approval to provide the supply?

The Minister of Health (Hon. Terrance Deyalsingh): Thank you very much, Madam President. Good morning to you and good morning to Members of this honourable Chamber. Just for context, the question is about the provision of AstraZeneca vaccines to Trinidad and Tobago by a private enterprise. The answer: No, the Ministry of Health has no knowledge of VARY Medical & Scientific Company Limited being the authorized dealer for Hewasky Quest Global Limited and/or SkyQuest Technology Group.

And, to part (ii), no approval has been granted for any local distributor to be involved in the importation of COVID-19 vaccines from COVAX, the African Council or any other arrangement, at this time. Since 1993, the National Insurance Property Development Company Limited, NIPDEC, is the agent for the procurement, storage and distribution of vaccines on behalf of the Government of the Republic of Trinidad and Tobago. In this instance, the procurement of the COVID-19 vaccines, whether from COVAX, the African Council and/or any other arrangement, will follow the same traditional procedure and practice as stated. Thank you very much, Madam President.

Sen. Mark: Thank you, Madam President. Can the hon. Minister indicate, through you, whether at any material point in time any applications were made to the Ministry or to the Government as it relates to these agencies or companies to supply these doses of AstraZeneca to the Government of Trinidad and Tobago?

Hon. T. Deyalsingh: Thank you. There is one application, as I indicated to the

Lower House on Friday, I believe, that this same company VARY Medical has, in fact, applied to the Chemistry, Food and Drugs and we have responded listing the requirements that they need to follow.

Sen. Mark: Can I ask the hon. Minister, through you, Madam President, when this application by the company he mentioned was made?

Hon. T. Deyalsingh: That application would have been made within—I do not have the exact date—the last two weeks to a month.

Sen. Mark: Thank you, Madam President.

Madam President: Next question, Sen. Mark.

Q-Management System at Licensing Offices

(Bid by Brick House Security)

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

Can the Minister indicate whether a firm known as Brick House Security, which provides 24-hour security at the Licensing Office in Caroni, has won a bid to introduce the Q-management system at Licensing Offices throughout Trinidad and Tobago?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, in 2020, the Ministry of Works and Transport would have gone out for the procurement of a Q-Management System. It was a public tender. There were four tenderers and Brick House was not one of the bidders for the contract. So the answer for that is that no, they have not gotten a contract to supply the Q-Management System for the Licensing Office, Trinidad and Tobago. Thank you.

Sen. Mark: Can the hon. Minister indicate, Madam President, whether this company is associated in any way in the provision of the kind of services outlined in this question at this material point in time at the Licensing Office Madam

President?

Madam President: No, Sen. Mark, based on the question posed and the answer given, that question does not arise.

Sen. Mark: All right. Well, I will pause at this time. Okay.

Madam President: Sen. Mark, there was—yes.

Sen. Mark: Madam President, at this time, with your leave, I would like to invoke Standing Order 27(15) as it relates to Question No. 110 and Question 119, respectively.

Madam President: So, Standing Order 27(15) is hereby invoked for both questions.

**COMMISSIONER AND DEPUTY COMMISSIONER
OF POLICE (SELECTION PROCESS) ORDER, 2021
(ANNULMENT OF)**

Sen. Wade Mark: Thank you very much, Madam President. Madam President, I beg to move the following Motion standing in any name:

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

And whereas the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2021 was published on June 17, 2021 by Legal Notice No. 183;

And whereas the Order, among other things, significantly diminishes the role of the Police Service Commission;

Be it resolved that the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2021 be annulled.

Madam President, I would like to begin by stating that upon the publication of this particular Order by the Government, Madam President, the hon. Attorney General proceeded to advise the country through a statement in the *Sunday Express* dated June the 20th, 2021, headlined “Government moves to simplify selection of top cop”. Now, Madam President, I think this headline might have been somewhat misleading, if I may use that term, and it should have really been “Government moves to interfere with the selection of the top cop”.

Madam President, in looking at this particular Order that is before this honourable House, this Motion, and in the context of the Order, I would like to refer, just briefly, to today’s editorial in the *Trinidad Daily Express* headlined “Flying blind without data”. And, Madam President, just as how this editorial accuses the Government of “flying blind without data” as it relates to the COVID-19 pandemic and taking arbitrary, capricious and whimsical decisions, so too, Madam President, with the Selection Order, because we in this Parliament and the people of this country are without information that can justify the proposed changes that the Government intends to pursue with this new Selection Order of a Police Commissioner and a Deputy Commissioner of Police.

And, Madam President, may I say also from the outset, we are not alone in expressing our concern as it relates to this recent development. The former chairman of the Police Service Commission, Prof. Ramesh Deosaran, has put on record his concerns about this selection process and, of course, the Trinidad and Tobago Police Service Social and Welfare Association, through its President, one Mr. Gideon—Acting Inspector, I should say—Gideon Dickson, both in the *Trinidad Guardian* of which I have a copy, as well as in an interview on Friday morning, last Friday, on CNC3, where he too expressed his alarm over this whole

matter.

Madam President, I want to indicate that this is not the first time that a PNM Government has attempted to adjust, amend, change and alter the selection process as it relates to the Commissioner of Police as well as a Deputy Commissioner of Police. Madam President, if you may recall, in 2015, when this Government arrived on the compound of White Hall, the first action that was taken by the Government, among others, was to amend the Order of 2009 with a new Order of 2015. And, Madam President, if you would recall, that new Order of 2015, sought to insert directly into the process of the work of an independent, autonomous, constitutionally protected and entrenched institution under our Constitution known as the Police Service Commission.

That, Madam President, saw where the Government at the time, sought to introduce what you call, Madam President—the Minister was allowed in this Order, to trigger the recruitment process and the selection of the firm which, Madam President, constituted a direct interference in the selection process and the independence of the Police Service Commission.

10.30 a.m.

This matter was taken to court, Madam President, and some time on the 14th day of July 2016, a decision was handed down by Justice Peter A. Rajkumar on this entire matter. So one would have thought, Madam President, after this attempt to insert the Executive influence in the selection process via recruitment, and not only of a firm but indirectly influencing the outcome of the selection of a Commissioner of Police and a Deputy Commissioner of Police, one would have thought, Madam President, that the Government would have learnt its lesson; do not interfere with the independence and autonomy of the Police Service

Commission. But, you know, there is a saying, Madam President, those who cannot hear will eventually end up feeling.

So this matter was settled in the courts of Trinidad and Tobago. And during my presentation, Madam President, I will identify some very important passages in this, Justice Rajkumar's decision and judgment on this entire matter. But, Madam President, it does not end there. We have had a situation where back in 1993 the then Prime Minister attempted to dismiss the Commissioner of Police, then Jules Bernard, and when that did not work, when that was rejected by the then Police Service Commission headed by Mr. Kenneth Lalla, who has passed on to the great beyond and may his soul rest in peace, Madam President, the then Government sought to amend the Constitution to undermine, subvert, erode and undermine the independence of the Police Service Commission. It was brought to the Parliament and it was roundly defeated in the both Houses of Parliament.

So, Madam President, what I am saying to you is that these incursions into the independence and autonomy of the Police Service Commission is not new. It is a matter of practice on the part of this Government to attempt to erode the independence of the Judiciary. Madam President, I would want to indicate to this honourable Senate, through you, that when the 2015 Order was brought into being by the Government, there was in fact, after the judgment, the decision of the court to allow the Police Service Commission to be the agency to trigger the recruitment process and to employ a firm to assist it in its work. We have a new order, Madam President, which is the 2021 Order, and in this Order the Government has done the following—and this is why I am amazed. We are amazed, Madam President, and even shocked that an Attorney General can go on public television and also have printed in the newspapers, statements to the effect that this Order of 2021 seeks to

simplify the process, when we know, Madam President, upon closer examination, it is not to simplify the process. It is, Madam President, aimed at interfering in the selection of a Police Commissioner and a Deputy Police Commissioner.

Madam President, hear how this is being done. It is done in a very surreptitious, subtle and stealthy manner. Madam President, we know when it comes to the Police Commissioner and the Deputy, the only institution under our Constitution that is assigned the responsibility of appointing and confirming in office, these critical office holders, is in fact the Police Service Commission. So, Madam President, what did the 2021 Order which we are seeking to annul, attempt to—well, what has it done? Rather than simplify the process, as was falsely advocated and articulated by our Attorney General, what this 2021 Order really does is, Madam President, remove from the Order of 2021, which was in the judge's order and decision of 2016, the engagement of a firm by the Police Service Commission. So by this Order what the Government has done is signal to the Police Service Commission, "You are on your own. We are not providing you with any resources to hire a firm that can help you in the assessment, in the recruitment, in the interviewing process, so that you can give us your thinking on who is the best candidate at the end of the day." And, Madam President, take into account, at the end of the day the only agency or institution that has the power to recommend a Police Commissioner for confirmation, appointment and confirmation, is the Police Service Commission; no one else.

So the first thing that this Government, in a very surreptitious way, has attempted to undermine, subvert, contaminate, pollute the independence of this very important institution under our Constitution is, Madam President, remove this firm that I have just mentioned. So, Madam President, what is the situation? What

have they changed, the Government that is, in this Order? So, Madam President, the first thing, the process that is before us in this 2021 Order, remove the firm which provides independent HR expertise to evaluate the officers best qualified for the position. Madam President, if I may remind this honourable Senate, through you, in 2015 the firm that was recruited by the Police Service Commission was KPMG; that was the last firm that was used. Madam President, the firm has now been removed.

Madam President, what does this firm or any firm that is recruited with HR expertise assist the Commission in doing when it comes to the selection of a Commissioner of Police? Madam President, the firm would help provide to the Commission, a ranked list of candidates to the Police Service Commission. So they will assist the Commission in providing it with a ranked list of candidates to select from, Madam President. When that is done, Madam President, the Police Service Commission—the independent, autonomous, constitutionally-protected Police Service Commission—they then generate what is called, Madam President, an Order of Merit List with the highest ranked candidate on top of the list and then the other candidates based on their ranks.

Madam President, it is important that we pay attention to this particular aspect of the Police Service Commission's work. Madam President, it generates, after the whole process, an order of merit list with the highest ranked or highest graded candidate on top of the list and then the other candidates based on their ranks. Now, Madam President, we have to ask the question, does the PSC, without recruiting a firm with the limited resources at its disposal, does that firm—does that Commission, rather, have the HR expertise to properly evaluate the candidates for the post of Commissioner of Police or Deputy Commissioner of Police?

Madam President, would there be a natural bias for any particular candidate?—a bias for and against as the PSC has a constitutional right to evaluate the sitting COP annually and interact with that person?

Madam President, we would like to draw to your attention what another change that has taken place. So apart from, Madam President, the Government bringing an order removing the ability of the Police Service Commission to recruit a firm to assist it, what else has the Government done in this Order that we are seeking to annul today? I do not know, Madam President, how the resource-strapped Police Service Commission will be able to conduct the kind of thorough work that is necessary to identify a COP and other Deputy COPs. Madam President, you know what the Order says:

After mysteriously attempting to arrive at a merit list, there will be no longer any highest ranked or graded candidate on top of the list.

So the Government has removed from the judge's order of 2016 and the order of 2015, amended by the court's decision, this highest ranked or graded candidate.

So what would happen, Madam President, normally, after they would have done their work, that is the Police Service Commission, this list or merit, the Order of Merit List, Madam President, will now be sent to Her Excellency the President of the Republic. Madam President, what normally would have been done is that the President will then send the name of the top ranked or graded individual to the House of Representatives for approval. A debate will commence, Madam President, and if there is no agreement, the other candidate, in order of merit, will be brought to the House for debate. Madam President, that is the process that we now have under the current arrangement. What has the Government done in this 2021 Order?

Madam President, the 2021 Order, what does it do? Instead of sending, Madam President, one name at a time to the President, the Police Service Commission has now been mandated to now send the entire list to the President. Madam President, that is a recipe for utter confusion. Why is the Government seeking to remove, Madam President, the order of merit as it relates to the highest ranked or graded officer who would have topped the merit list and allow the President to transmit same to the House of Representatives for debate? Why is the Government, Madam President, seeking to put the President in this unenviable situation where Her Excellency will now have—if it is five persons, Madam President, on the order of merit list, all will be sent to Her Excellency and what is Her Excellency to do when she gets not one name to send to the House of Representatives but five names to be sent to the House of Representatives? What should Her Excellency do, Madam President, in those circumstances?

Madam President, under section 80 of our Constitution, Her Excellency acts on the advice of the Cabinet, so where there is rank confusion, as it will occur with all of these lists, all of these names, rather, being sent to the President of the Republic, what is the President to do in those circumstances, Madam President? The President will have to rely on the advice of the Cabinet under section 80 of the Constitution and the Cabinet is headed by the Prime Minister. So if there are five names, Madam President, on the order of merit and all are sent to Her Excellency and the President does not have the power to choose which name to send, she will have to seek the advice of the Cabinet under section 80 of the Constitution. And there is where, Madam President, the Government of Trinidad and Tobago will intervene in the process of the selection of a Commissioner of Police and they will be taking away that independence and autonomous role of the Police Service

Commission which is entrenched and enshrined under section 123 of our Constitution.

It will be, Madam President, a literal subversion of our Constitution. It will imperil our democracy. It will, Madam President, endanger the rights and freedoms of our citizens of this country. And this is the matter, Madam President, that the Government needs to deal with. Why has the Government taken this stance? Why has the Government put the President in this compromising position, when you know, Madam President, the practice in the past and the law as handed down by Justice Peter Rajkumar made it very clear that only, and only the Police Service Commission has the power to appoint and to confirm the top COP in our country and the Deputy Commissioners of Police?

So, Madam President, this is what we are seeking to address by bringing this Motion to this honourable Senate to have the Senate annul the Motion and let the Government go back to the drawing board and preserve and protect the independence of the Police Service Commission. Madam President, what this Government is trying to do is to force the Commission to nominate all persons on the merit list and to prevent the independent Commission from nominating who the Commission thinks is best suited for the appointment for the post of Commissioner of Police and Deputy Commissioners of Police. Madam President, this has to be—and I do not want to accuse the Government, Madam President, of deliberately, premeditatively, calculatedly attempting to undermine the independence of the autonomous institution called the Police Service Commission.

I believe, Madam President, it may have been an oversight on the part of the Government based on their zealotry to get this thing addressed. It could not be; it cannot be a premeditated attempt by this Government to select their own Police

Commissioner. I do not believe the Government will want to undermine the institution and the Constitution at the same time. I do not believe that. I want the Government to come this evening or this morning, or during the course of the day and indicate how the President will identify, Madam President, the first ranked/graded officer on the Order of Merit List. Now, Madam President, may I indicate to you and this honourable House that the 2021 Order that we are debating does not give the President any discretion to determine which candidate name is brought first. So the list is sent by the Police Service Commission that has now become the poster child of the Government to the President, and the President does not have any discretion to determine which candidate name is brought first. So is it the President now acting in accordance with the advice of the Cabinet to submit names to the Parliament?

Madam President, in our Constitution where the President is not given a specific discretion to act, she will act under section 80 of our Constitution on the advice of the Cabinet. So the Cabinet in effect will select the Police Commissioner and then inform the Police Service Commission to appoint their choice. I want to tell the Government of this country, we do not have a police state. This is not a police state that the Government can choose their own Police Commissioner and their own Deputy Police Commissioner. That was placed in our Constitution to insulate any ruling party from that kind of influence and power over a Police Commissioner. And, Madam President, I will refer to the *Endell Thomas v The Attorney General* case, judgment, delivered by that very eminent and outstanding jurist who has now passed on, I think, Lord Diplock. If he is still alive, I am sorry. But he is the individual who had addressed this case back then.

Madam President, the same Cabinet where many of them—Madam

President, let me just deal with another matter because I do not want to go there. Madam President, I want to indicate, as I said earlier, and I want to reference the importance of the Commissioner of Police and the independence of the selection of the Commissioner of Police. Madam President, the life of our democracy depends on us getting this right. We cannot allow the Government to interfere with the selection of a Commissioner of Police. We cannot allow that. Madam President, the day we allow any political party to have the right to select a Commissioner of Police, that is the end of our democracy. We will have a police state in Trinidad and Tobago. So the Government can now direct the police because they have now selected the police, “Go and lock up the entire Opposition. Go and lock up trade unionists. Go and lock up any university lecturer that you are not happy with. Go and lock up any judge that you are not happy with.” This is what this would mean. We are talking about the life and death of our nation. We are talking about our democracy that the PNM under this measure, Madam President, is seeking to undermine.

We cannot permit that. And we call on the Attorney General to withdraw this Order and to have the Police Service Commission exercise as is enshrined under the Constitution, its duly independent functions in selecting, appointing and confirming a Police Commissioner and others, Madam President, that is the Deputy Commissioners. Madam President, may I share with you this very important statement which I think is rich in content and gives us an understanding of the dangers of what is before this honourable Senate today. Lord Diplock in the case of *Endell Thomas v The Attorney General* stated, and I quote, Madam President:

“Under a party system of government such as exists in Trinidad and Tobago

and was expected to exist after independence in other Commonwealth countries whose constitutions follow the Westminster model, dismissal at pleasure would make it possible to operate what in the United States at one time became known as the “spoils” system upon a change of government, and would even enable a Government, composed of the leaders of the political party that happened to be in power, to dismiss all members of the public service who were not members of the ruling party and prepared to treat the proper performance of their public duties as subordinate to the furtherance of that party’s political aims.”

He goes on, Madam President, in this very important statement in the judgment to say, and I quote:

“In the case of an armed police force with the potentiality for harassment that such a force possesses, the power of summary dismissal opens up the prospect of converting it into what in effect might function as a private army of the political party that had obtained a majority of the seats in Parliament at the last election.”

Madam President, I read this into the record so we can all understand and appreciate the dangers involved in this particular matter that is before this honourable House.

Madam President, I want to share with you a statement issued by the Police Social Welfare Association of the police service. And the headline in the papers, Madam President, of Wednesday, June 30, 2021, states—on page 8 that is, Madam President, states—the headline is, “TTPSWA concerned about changes to COP selection process”, and it goes on, Madam President, to say that:

“The Trinidad and Tobago Police Social and Welfare Association...remains deeply concerned about the recent changes to the process of selecting both Police and Deputy Police Commissioners.”

They went on to say in this article that:

“One amendment allows the Police Service Commission (PSC) to create a shortlist of suitable candidates for the top positions, which is then submitted to the President, instead of having the candidates’ names brought before the Parliament to be debated.”

So, Madam President, the Police Social and Welfare Association said they are calling or they are seeking a meeting with the Attorney General as well as the Police Service Commission on this matter; so grave have they viewed this matter, Madam President, that they are seeking an audience.

11.00 a.m.

Madam President, what is the real concern of this Association? Madam President, you would recall—it was some time as I recall in 2018, I think, February the 2nd, 2018, the Parliament of this country established what is called a special select committee to consider and report on the process followed in relation to the notifications pursuant to section 123 of the Constitution.

Madam President, you would recall in 2018 the Government was not satisfied with what they considered to be the process that was conducted by the Police Service Commission in selecting the then Deodath—I think it is Lalchan, if I am not mistaken, but I will get the name for you shortly, Madam President—the Government was not happy with the process. They said that the process was not proper, it was not fair, and, therefore, they decided to review and to revisit that process. So, Madam President, this process came in the form of what is called

recommendations.

On page 41 of that report, the committee concluded, and I quote—

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

Sen. W. Mark: Yes. Madam President, I am quoting with your leave:

“The Committee believes that the direct involvement of members of the PSC in the assessment stage of the process was not what was contemplated in the Order made pursuant to the Constitution.”

That is what the committee concluded. It also said:

“...having regard to the observations and findings set out above, the Committee considers that in many respects the manner in which the entire process was conducted by the PSC was defective and unreliable and may expose the PSC to allegations of arbitrariness and lack of transparency.

The Committee recognises that there was not full consensus in relation to the conclusion set out above insofar as a minority of members believe there was no fundamental breach of the law beginning with an open tender and ending with a strategy that allowed for a unanimous method of selection, and that the flaws in the process were not fundamental so as to render it unfair and arbitrary.”

The recommendation of that committee was that the Order made pursuant to section 123(2) of the Constitution should be subject to urgent review with the view to the establishment of well-defined guidelines for the selection of a COP and a Deputy Commissioner of Police.

So, Madam President, here it is a select committee said, you have to establish proper guidelines, because the then sitting Government said they were unhappy with the process. No proper guidelines have been established. Instead, the

Government has come to this Parliament, laid a legal notice in order to interfere in the selection process of the next Commissioner of Police. Madam President, that is against the Constitution. It is against the judgment of Justice Peter Rajkumar, who in a judgment made it very clear that the Police Service Commission, even though there were amendments to it in 2006, still remains autonomous and constitutionally entrenched, and protected. Therefore, no Executive, no ruling party, no government, can force or seek to bend the will of the Police Service Commission to do its bidding.

And, therefore, I want to advise that we have brought this Motion in order for this Senate to annul this Legal Notice 183 so that the Government can get back to the drawing board, withdraw this Motion, get back to the drawing board, retain our independence as it relates to the Police Service Commission, allow the Police Service Commission to hire a firm to assist it in its process of selection, and to allow the Police Service Commission to send to the President the highest ranked and graded officer who would have topped the list, that is the Order of Merit List, and that name should then be sent to the Parliament, that is, the House of Representatives, for deliberation, either to approve or not to approve. But we cannot put the President of this Republic in this unenviable position where Her Excellency does not have any discretion in dealing with these matters and, therefore, finally, it will be left to the Prime Minister and his Cabinet to advise the President as to which name should come to the House of Representatives for approval.

That is wrong, Madam President, that is indefensible, that is inexcusable. Madam President, with these few words, I beg to move. Thank you so very much.

Madam President: Someone needs to second the Motion.

Sen. Lutchmedial: I beg to second the Motion and reserve my right to speak at a later time in the debate.

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

Question proposed.

Madam President: Attorney General.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):
Thank you Madam President, and if you just remind me, it is 40 minutes?

Madam President: Yes, you have 40 minutes.

Hon. F. Al-Rawi: Much obliged, thank you, Madam President. Madam President, it gives me great pleasure to respond to the Motion brought by the hon. Sen. Mark. I propose to deal with the issues raised in the Motion, and to give the assurance that we are well within proper form and fashion towards causing one of the most important events that any country can ask for, and that is the constitutionally correct process for a Commissioner of Police in this country.

The issue of crime and the security of our citizens is ever foremost amongst the conscious reflections, and even unconscious and subconscious reflections of our citizens. The very essence of safety, that well-being that we all want to have, that warmth of knowing the security of our citizens are under control, that our children are safe, that our brothers and sisters are safe, that our parents are safe, is what keeps us with deep concern.

Sen. Mark has brought a Motion; perhaps it is standard and well within democratic right for the Opposition to seek to do this. Five years and six months ago, in January—sorry, yes in January 2016, there was a Motion to annul the last process that was brought. Five years and six months later, we are at it again.

Sen. Mark's argument is based, if I put it quite simply, as I understand the hon. Senator's argument, it is based on the following: Number one, the

constitutional integrity, immunity and autonomy of the Police Service Commission should be paramount. Number two, Sen. Mark's conspiracy theory is that because the removal of a firm to select a candidate has been put into effect in the Order, Sen. Mark's conspiracy theory is that somehow the Order before us becomes unconstitutional. Sen. Mark's further conspiracy theory is that the Cabinet will interfere with the process that Her Excellency the President must engage in, in submitting names to the Parliament, and Sen. Mark sets up a straw man and then seeks to murder it with a logic that says that this is all improper. That is effectively Sen. Mark's submission. So let us deal with the submission.

Sen. Mark grounding his submission on the back of the judgment of then Mr. Justice in the High Court, Peter Rajkumar, in the case of *Harridath Maharaj v the Attorney General and the Police Service Commission*. So let us go to the judgment, but let us start with the Constitution.

Section 2 of the Constitution says that it is the supreme law. The Constitution is built upon an essential operating arm called service commissions. Service commissions are the grounding by which our society is deemed to be protected, because service commissions, be they the Public Service Commission, the Teaching Service Commission, or in this case the Police Service Commission, the service commissions are given the task of ensuring an insulation of the public service away from the will of an executive or government. That is what a service commission is designed to do.

The process of appointing a service commission, in this case, the Police Service Commission, is set out in section 122 of the Constitution. Section 122 sets up an independent Police Service Commission, chairman, members. There is a quarantine period that the members must have in terms of service. They may be

removed only in certain circumstances, and the service commission is set up—the Police Service Commission—so that it is autonomous. Now, we have had the benefit of some very significant considerations as to what insulation ought to look like, what autonomy of the service commission ought to look like.

Sen. Mark is correct. The leading cases are Endell Thomas and Cooper and Balbosa. The 2006 case of Cooper and Balbosa looked from the constitutional perspective at the Police Service Commission squarely. It looked at whether an executive's use of an examination board was an unfair interference in the autonomy of a service commission. And yes, Lord Diplock's statements, which we all learnt at law school, and yes Mr. Endell Thomas, having taught us, Clarence Rambharat and I, both at law school at St. Augustine campus, we were regaled with the virtues of ensuring that no government should use the public service as its own army, effectively, in whatever form it may be.

So in the constitutional construct, we are here today, section 123 of the Constitution, which was amended in 2006 by Act of Parliament, the Constitution (Amdt.) Act, 2006, that constitutional amendment Act and then later an amendment in 2007, we got, Madam President, section 123 of the Constitution.

Section 123 says the Police Service Commission shall have the have the power to:

“...appoint persons to hold or act in the office of Commissioner and Deputy Commissioner of Police;”

Then it goes on to monitor the efficiency, prepare annual performance appraisals, et cetera.

Subsection (2):

“The Police Service Commission shall nominate persons for appointment to

the offices specified in subsection (1)(a)”—that is the Commissioner or Deputy Commissioner—“and section 22(1) of the Police Service Act...”

What is that? Section 22(1) of the Police Service Act says that you can bring somebody outside the police service to become a police officer. So the Constitution, section 123(2), says that the Police Service Commission shall nominate persons to the offices of Commissioner or Deputy Commissioner, and can also nominate persons to act from outside the establishment of the police service. Because the last time that there was a Police Commissioner coming from the service was actually a very long time ago. That, Madam Speaker, is set out by the fact that the last person to hold that office, I believe it was—I will get the name for you in a moment—Mr. Trevor Paul, and that was many years ago, coming from the police service itself.

When we look to this position, Madam President, the fact is that Mr. Trevor Paul in November 2007 was the last person to hold that office. So section 123(2) says the Police Service Commission, and only the Police Service Commission, can appoint a Commissioner of Police, a Deputy Commissioner of Police, from within the ranks of the police or outside the ranks of the police, by using section 22 of the Police Service Act.

It says then, subsection (3):

“The Police Service Commission shall submit to the President a list of the names of the persons nominated for appointment to the offices of Commissioner...of Police.”

So the Police Service Commission has the authority and autonomy to nominate, appoint Commissioner of Police to act or hold office. Acting could be temporary, holding office permanent. The Constitution says the Police Service Commission

shall submit to the President the list of names. The President shall issue a notification in respect of each nominated under subsection (3), and the notification shall be subject to affirmative resolution of the House of Representatives. It is only after the process of consideration by the House engages, that the House produces someone that the majority says should be Commissioner of Police, it returns to the Police Service Commission, and the Police Service Commission makes an appointment as it sees fit.

Sen. Mark's conspiracy theory comes to life in subsection (3) of the Constitution. Sen. Mark says here that the Police Service Commission shall submit to the President a list of names---now it is plural. Sen. Mark jumps to section 80 of the Constitution, and automatically constructs the UNC conspiracy theory, not for the first time, and says that because "President" means "Cabinet", that the Cabinet is going to tell the President who the Commissioner of Police should be on that list, who should be on the list. That is Sen. Mark's argument. So let us deal with the law in black and white in the Constitution, versus the conspiracy theory of Sen. Wade Mark.

The law, section 123 of the Constitution says clearly, Police Service Commission, power to appoint, hold or act in the office of Commissioner of Police. Police Service Commission, conduct that exercise. Police Service Commission, send the list of all the names, not one name, all the names to the President. Section 80 of the Constitution says this:

"In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet, or a Minister acting under the general authority of the Cabinet, except in cases where other provision is made by this Constitution..."

I stress that.

“...or such other law, and without prejudice to the generality of this exception, in cases where by this Constitution or such other law he is required to act—

(a) in his discretion;”

I underline that.

“(b) after consultation with any person or authority other than the Cabinet;”

But here is the one.

“(c) in accordance with the advice of any person or authority other than the Cabinet.”

Quite simply, the conspiracy theory that Sen. Mark offers dies immediately right here in section 80 of the Constitution; dead on arrival. Despite the noise and fury and drama of Sen. Mark’s contribution, it is dead on arrival, because section 80(1)(c), and (a) you could argue, provide the fact that he must act in accordance with the advice of any person other than the Cabinet. Who is the advice? The advice is in section 123 of the Constitution which says that the Police Service Commission is the only entity to appoint a Commissioner of Police. And who has upheld that? Lord Diplock in *Endell Thomas*, Lord Hope of Craigwell in *Cooper and Balbosa*, Mr. Justice of Appeal Rajkumar, as he said sat in the High Court in *Harridath Maraj*, and here is what *Harridath Maharaj* had to say. I am grateful that Sen. Lutchmedial is here because she appeared in that case as well and can testify to the judgment. Here is what the honourable Mr. Justice Rajkumar had to say. The honourable judge, quite poignantly said the following:

“The 2015 Order is subsidiary legislation and must be *intra vires* the

Constitution.”

This is at paragraph 76 of the judgment. What does that mean? Intra vires means you must be inside the Constitution, the supreme law. You must not offend the Constitution and therefore be ultra vires:

“The 2015 Order is subsidiary legislation and must be intra vires the Constitution. If that Order infringes upon the role of the Police Service Commission itself to the extent of removing its discretion, or any part of such discretion to appoint, or select, then it must be ultra vires the Constitution.

The Constitution expressly vests the power of...appointment to the offices of Commissioner and Deputy Commissioner of Police (by the mechanism of nomination for appointment subject to the approval of the House of Representatives) in the Police Service Commission, as recognized in *Thomas*, and never altered by the 2006 amendment. Such power of appointment necessarily includes the power of the Commission to select for appointment. Limiting the Commission’s access to the selection pool is nowhere indicated, contemplated or authorised by the Constitution.”

So the honourable judge says that the subsidiary legislation, which is what Sen. Mark has come to annul today, the Order before us is what Sen. Mark has come to annul today, the Order before us says the following: That the Police Service Commission, and only the Police Service Commission and no one else is to cause the appointment of a Commissioner of Police or a Deputy Commissioner of Police, to act or hold, under section 123 of the Constitution, the offices there described.

The fact is that the Order also says that:

“The selection process...shall be conducted by the Police Service

Commission in the following manner:

- a) the Commission shall conduct a recruitment process, including inviting applications for positions;”—the Commission.
- “b) the Commission, from the applications received, shall select the most suitable candidates for the assessment process;”---only the Commission.
- “ c) the Commission shall ensure that the candidates referred to in paragraph (b) are subjected to security vetting and recent professional vetting;
- d) the Commission shall conduct the assessment referred to in paragraph (b), and shall have regard to
 - (i) the qualifications of the candidates;
 - (ii) a medical examination...;
 - (iii) the Security and Professional Vetting Report;
- e) the Commission shall then take into account all information on the candidates and thereafter establish an Order of Merit List indicating the highest graded candidate, followed by the other candidates in descending order of merit...”

Only the Commission is to do that.

- “f) the Commission shall submit to the President the names of the persons listed on the Order of Merit List in accordance with the procedure set out in section 123 of the Constitution.”

And then it goes on to say in paragraph 4:

“Where either the post of Commissioner of Police or Deputy Commissioner of Police is vacant or about to become vacant, the Commission may submit

to the President a list of suitably qualified persons from amongst the ranks of the police service, including those on contract or previously on contract, as nominees to act in the offices of Commissioner of Police or Deputy Commissioner, pending the conclusion...”

Now, Madam President, permit me to go a little further.

In Mr. Justice Rajkumar’s judgment, and in us looking at whether this Order is ultra vires, because that is what we are required to do, if the Order is intra vires or constitutionally within the parameters of section 123 of the Constitution, if there is no fetter upon the decision or discretion or autonomy of the Police Service Commission, if there is a process where the Police Service Commission, and only the Police Service Commission acts, well then we are good to go.

Now Sen. Mark’s further conspiracy theory is that have you have to use a firm, and you are denying the firm. Well, where in this Order does it say that the firm cannot be a choice or exercise of discretion? Where? Where in the Order, other than in the conspiracy theories of ranting and raving conspiracy theorists, does it say that the autonomy to do as you wish is not there? Cooper and Balbosa, Endell Thomas, Mr. Justice Rajkumar in Harridath Maharaj, all recognize that the Director of Personnel Administration, as the effective Permanent Secretary for the Police Service Commission, has the power to take instructions and cause anything to happen.

The simple obligation of any Government is to pay the bill. Where in this Order does it say that the Government will not pay what the Police Commissioner, processed via the Police Service Commission, is required? Where? The only person that says that is Sen. Mark and the UNC.

Let us look to what the honourable judge said. Look at paragraph 81 of the

Harridath Maharaj judgment:

“Further there is no reason in logic why an independent Police Service Commission cannot itself trigger the process for recruitment of a Commissioner of Police or Deputy Commissioner of Police.”

What does this Order do? This Order says that that Commission does it itself.

Madam President, 2015, paragraph 97 in respect of the 2015 Order:

“The firm shall select...”

Here is what Justice Rajkumar had to say, as he then was:

“The 2015 Order purports to grant to a firm, rather than the constitutionally created Police Service Commission, the power to select the most suitable candidates for the assessment process.”

Let me repeat that:

“The 2015 Order purports to grant to a firm, rather than the constitutionally created Police Service Commission, the power to select the most suitable candidates for the assessment process.”

Madam President, taking note of what the learned judge had to say here, the Order before us now, which Sen. Mark is very upset about, in the conspiracy theory that he lives in, in the argument presented, this Order takes conscious reflection of the very judgment offered to guide us, because what we do in this Order is to say that the Police Service Commission, and only the Police Service Commission, asks.

Now, Madam President, let us turn to the practicalities of the situation. What are we talking about? It is all esoteric and wonderful to talk a whole bunch of law, intra vires and ultra vires, and this and that. What does this mean to the average citizen? What are we talking about? We know that in the period 2006 come forward, several processes were issued as subsidiary legislation orders under the

Constitution, which set about how you go about creating this appointment, bringing it to Parliament. We know that the use of a foreign firm cost the taxpayers twenty-something million dollars, and took seven years to get nowhere. That is why past Commissioner of Police, Stephen Williams, was in that very difficult and hard circumstance of having to act for seven years in a row, after Gibbs and Ewatski were fired by the UNC Government—fired.

We came in 2015, we amended the Order. It went to court; a judgment came which said that the Order was in effect subject to being amended. We did not appeal the Order, even though we would have completely succeeded on appeal, so says counsel that acted in that matter.

11.30 a.m.

In not appealing that order, why did we not appeal the order? Because we wanted to start the process. The country deserved a Commissioner of Police. We said, “enough on the acting”. Past Attorney General Anand Ramlogan said that if they are acting, they will want to act better and will do better, and so no step was taken.

Madam President, the aspects of the 2015 Order that were struck out, the firm being triggered by the Minister of National Security, that was put into effect, it could have said “may” instead of “shall”. That trigger was done because the Director of Personnel Administration had taken no steps for years, and the Government said they need a Commissioner of Police. You cannot instruct the Director of Personnel Administration, so we put it in the Order. The judge struck out the reference to the Central Tenders Board Act. That was in the previous orders. That was in the previous orders. “That eh no big win.” That is what you call cutting off fluff, respectfully. The judge accepted that the Police Service

Commission and only the Police Service Commission, so we did not appeal. But here is what it translated to.

It translated to the following. October 2016 is when the firm came into effect; KPMG, October 2016. That is when the Order was put out, the advertisement to get a firm. It was not until July 2017 that KPMG was secured as the firm. The nominations to the President happened in January 2018. July 2018, we had the debate on appointing by affirmative resolution. So it took us 2015, 2016, 2017, 2018, four years and millions of dollars to get Commissioner Griffith appointed. On August 16, 2021, Commissioner Griffith's contract comes to an end. It is a three-year term, there is no extension inside of the contract because the appointment did not ask for one and therefore, it is incumbent for the Police Service Commission to start its process again. A responsible Government having been told by the judge that the process must be a Police Service Commission with full autonomy, knowing that it took four years to get Commissioner Griffith appointed or a commissioner appointed by a legitimate process, knowing that it cost millions of dollars to get there, simply took an order, simplified the order by basically saying, listen, the Police Service Commission, you go and do your "ting"; that is a technical term now. Go and do your "ting"; T-I-N-G. Go and appoint a Commissioner of Police, procure via a transparent process in your own discretion. Now, permit me to stick a pin. May I ask what time is full time?

Madam President: You finish at 11.46 and some seconds after that.

Hon. F. Al-Rawi: Thank you, Madam President. Madam President, I want to tell you how autonomous the Police Service Commission is. Let us go to the process of the appointment of Commissioner Griffith. KPMG was procured as the firm. In the KPMG interview list stage produced—because they produced a list, they gave it to

the Police Service Commission, there were advertisements for Commissioner of Police and Deputy Commissioner of Police. KPMG went through an interview stage list one and an interview stage list two. Listen to the results.

The list that came from KPMG going in number one order down, the points are as totaled: Gary Griffith, 81.94 per cent; Stephen Williams, 76.22 per cent; Michael Seales, 70.74 per cent; Anand Ramesar, 70.35 per cent; Wayne Hayde, 69.38 per cent; McDonald Jacobs, 65.54 per cent; Harrikrishen Baldeo, 62.5 per cent; Glen Hackett, 62.42 per cent; Ahloy Hunt, 56.4 per cent; Irwin Hackshaw, 55.67 per cent; Vincel Edwards, 53.83 per cent; Erla Christopher, 52 per cent; Mathew Andrews, 49.28 per cent; Wayne Thongs, 45.77 per cent.

Stage two at the Police Service Commission's interview process, here is the ranking. Number one, Gary Griffith, 70.29 per cent. Number 2, Stephen Williams, 69.17 per cent. Number three, Wayne Hayde, 62.41 per cent. Number four, Glen Hackett, 60.36 per cent. What we know is that the Police Service Commission in its full autonomy merged the list of the Deputy Commissioner of Police and the Commissioner, up jumps Dulalchan. Nowhere on that list from the firm, nowhere on the list Mr. Deodath Dulalchan comes in number one. Never applied for the job of Commissioner of Police, comes in number one on the list that I just read to you, the KPMG list and the PSC list.

Now, I make no complaint about that because the Police Service Commission in its full autonomy was entitled to do that, "doh mine" Gary Griffith came first twice. Who did the UNC vote for? Could you remind me again? The same name that Sen. Mark cannot remember today, pretending that he does not remember the name Dulalchan, because what happened was they said no to Gary Griffith. That is a matter of record. I have no horse in the race nor does the

Government because we cannot. The Police Service Commission is the one to consider that.

The Parliament amended the veto of the Prime Minister. In the 1967 Constitution there was a veto of the Prime Minister. The Parliament in 2006 amended the process so that the transparency of any veto—because a government has a majority and only the House of Representatives selects the nominee, so that that will be public; say why you do not want the person. And that happened. If Commissioner Griffith applies, if John Brown applies, if anybody applies for the job of Commissioner of Police, then let the Police Service Commission and only the Police Service Commission engage in that process. Is that what Sen. Mark is standing against? Sound, fury, anger, conspiracy theories. Reading into section 80 of the Constitution what is not there, ignoring section 80 of the Constitution that says that the President must act upon the advice in subsections (c) and (a) of what the Constitution says, the Police Service Commission. Cooper and Balbosa in 2006, Lord Hope of Craighead, Lord Diplock in the Endell Thomas case, all certifying the autonomy of the Police Service Commission. But today we are regaled by Sen. Wade Mark telling us that we should listen to that conspiracy theory. No, Madam President, with the greatest of respect.

The submission before us today as I answer this conspiracy theory is as follows. Number one, the autonomy of the Police Service Commission is absolute and so underwritten by eminent judgments of the Privy Council and our own High Court.

Number two, the Order before us which is subsidiary legislation pursuant to section 123 of the Constitution, leaves the autonomy and exclusive autonomy of the Police Service Commission undisturbed. Further, Madam President, there is

nothing by way of Executive involvement in that subsidiary legislation. In fact, the submission of all of the names to Her Excellency the President, and all of those names coming to the Parliament is to fully support the autonomy of the Police Service Commission. The simple desire of this Government being aware of the expiry a commissioner of police's current tenure of office is to allow the Constitution to go to work. The Constitution says there must be a process. The Constitution says that that process is to be handled by the Police Service Commission. The Constitution says in section 80 of the Constitution, that the President, in this case Her Excellency the President must act, (a) effectively in her own discretion. It matters not that you have to say that in the independence of the Constitution section 123 of the structures for the Police Service Commission, and (c), the President is bound to act with the advice of the Police Service Commission.

When you read section 80 of the Constitution and section 123 of the Constitution, when you read Cooper and Balbosa, when you read Endell Thomas, when you read *Harridath Maharaj v the Attorney General and the Police Service Commission*, that is what it says. None of those distinguished voices echo any of the submissions made by Sen. Wade Mark; stands on his own, not for the first time.

Madam President, if there is an issue, we have a functioning democracy. Our Constitution provides for a separation of powers. We have demonstrated in Cooper and Balbosa, in Endell Thomas and in Harridath Maharaj that the courts are there to assist us. This is not a threat. This is a safeguard in the Constitution, Madam President. And therefore, I reject the conspiracy theories of Sen. Wade Mark and the UNC. [*Desk thumping*] I reject the attempt to delay the process or frustrate the process that the Police Service Commission must engage in to produce a nominee

or a list of nominees in accordance with the Constitution for submission to Her Excellency the President who then will submit it to the Parliament in the House of Representatives where a debate for affirmative resolution of a nominee will happen.

In this regard, the Police Service Commission could do what it wishes. The Director of Personnel Administration carries out the instructions. The Government is bound to pay for what it is asked to pay, there are no questions there. As Attorney General I get invoices from the DPP, I cannot ask what it is about, I have to pay it. The Board of Inland Revenue may say something; you have to pay it. There is no discretion there, you just have to do it. So this argument that there will be a frustration is just, respectfully, it is a nonstarter, it is dead on arrival. That conspiracy theory ought never to see the light of day.

Madam President, thank you for the opportunity to contribute to this Motion and I hope that my submissions have echoed well in this Chamber. Thank you.

[Desk thumping]

Madam President: Sen. Vieira.

Sen. Anthony Vieira: Thank you, Madam President. If one were to Google the Trinidad and Tobago Police Service, one would see that it:

“...is both a civil and a para-military body...organised into 9 Divisions...18 Branches, Squads and Units.”

There are:

“Over 6500 Police Officers in varying ranks and Special Reserved Police”
—that—“support the mandate of the Service.”

There are:

“Community Police...Special Branch, Guard and Emergency

Branch...Court and Process...

Fraud Squad...

Organized Crime and Narcotics Unit..."

—and several other specialized branches who are collectively tasked with:

“The maintenance of Law and Order” —public order and safety.

The—“prevention and detection of crime”

The—“prosecution of offenders”

—and generally enforcing the law. The police service is also entrusted with various licensing and regulatory activities, as we debated just recently on the gambling and betting Bill.

Because of the great power that the police can wield over the lives, the liberties, safety and rights of citizens, it is critical that they are accountable for their policies and behaviour, and at the top of this multifaceted, hierarchical paramilitary structure sits the Commissioner of Police. He is the chief of the complex undertaking that policing has become in the 21st Century.

Now, as the highest-ranking officer within the police service, the Police Commissioner’s vision, his values, they set the tone for successful or unsuccessful policing in Trinidad and Tobago. If we want a safe community, free from crime, free from disorder, the persons appointed to serve as the Commissioner of Police and the Deputy Commissioner of Police are critical factors for the stability of the country. As Sen. Gordon Draper, Minister in the Office of the Prime Minister so aptly put it when debating the Constitution (Amdt.) Bill in March 1994, and I quote:

“We need to understand that while we can put resources into a service, the efficiency and effectiveness of that resource will be a function of how well it

is managed. Therefore, the individuals who are put in positions to manage become extremely important in determining whether those resources bear fruit or not.”

The Commissioner of Police is independent of Government. Under the Constitution at section 123A he is given:

“...complete power to manage the Police Service...”

In the performance of his functions he is required to act in accordance with the Police Service Act and applicable regulations. Accordingly, the Commissioner of Police holds one of the most powerful and influential positions in the Republic of Trinidad and Tobago. So it is critical we get the best man for the job. That person should be possessed of important qualities such as honesty, integrity, courage and leadership. That person is expected to maintain the highest standards of professional behaviour. Additionally, that person’s appointment must be free of any taint or perception of corruption, conflicts of interests and misplaced loyalties.

That is why under the Constitution, the Commissioner’s and the Deputy Commissioners’ appointments are made by the Police Service Commission, an independent and impartial body established in accordance with section 122 of the Constitution. And it is also why the process used when making such appointments should be transparent, fair and effective.

So in bringing this Motion, Sen. Mark seeks to ensure that the integrity of this important process has not been compromised. As such, this is not a frivolous Motion because it requires Parliament to fulfil its oversight obligations as gatekeeper of the rights of citizens and as an institution duty bound to ensure the supremacy of the Constitution.

Some years ago, the calypsonian King Austin poignantly asked, “Who will

guard the guards”? The answer to that question still relevant today, is that it falls to us. This is a sacred responsibility we are duty bound to take seriously. So I therefore have no difficulty with Sen. Mark asking us to consider whether there is any bad intent or irregularity regarding Legal Notice 183 of 2021, which changes the criteria and procedure for selection and which revokes the Selection Process Order of 2015. But this Order still has to be read in conjunction with the qualification and criteria Order of 2015, with sections 122 and 123 of the Constitution and section 22 of the Police Service Act.

Now, before comparing this year’s Selection Process Order to the 2015 Selection Process Order, let me first put on record my dissatisfaction with the fact that the Police Commissioner’s contract failed to have a provision for renewal. Now, as far as I am concerned, for this post, for the things that need to be done by a police commissioner, a term of three years is on the short side. And while I understand why a tight rein may be desirable, it seems to me that if the incumbent is performing well, having an option for a renewal is in everyone’s best interest, especially if it would avoid procedural tangles, unnecessary expense and it offers continued stability.

I am also concerned that in typical fashion these measures are being implemented at the eleventh hour. If the Commissioner’s contract is ending in August, then why are we only now taking action? Given the bureaucratic constraints, these wheels should have been put into motion many months ago. The powers that be have to do better when it comes to the administration of contracts.

Now, it is interesting to note that while regulation 20 of the Police Service Commission regulations sets out the principles of selection for promotion, in particular the experience, the merit and ability, the educational qualifications and

the relative efficiency of such officers, I find that in terms of the wording of the last qualification and criteria order, the 2015 Order, there has in fact been a scaling down since the first Order in 2007. In 2007, the core criteria for appointments included having leadership skills, management skills, communication skills, and the requisite vision which will enable the candidate to guide the police service in the specific direction that will serve the best interest of the organization and the nation.

In 2015 however, while qualifications and experience remain the same as in 2007 Order, the core criteria was reduced by the candidate just needing to have not less than 10 years' experience of increasing responsibility in law enforcement, not being a bankrupt and not having a criminal conviction. This year's Order however, only affects process. The qualification and selection criteria established in 2015 remains the same.

And what is the change in the process being brought about by this year's Order when compared to the process that was established in 2015? Well, as we have heard, what is being changed is the requirement for the Police Service Commission to contract a firm for conducting the recruitment process including inviting applications for the positions.

The 2015 Order required the Police Service Commission to basically outsource the recruitment, with the selected firm having to submit a short list of candidates together with a report on its assessment on the entire process. Well, as we have heard, the 2015 process proved to be a very expensive undertaking costing taxpayers some \$27 million with little or nothing to show for it.

Now, given that the role and the mandate of the Police Service Commission under section 123(1) of the Constitution is to appoint persons to hold or act in the

office of Commissioner and Deputy Commissioner of Police, I really have no problem with this year's process eliminating the need for an intermediary to do essentially what the Commission was set up to do.

This Order is made pursuant to section 123(2) of the Constitution as cited by Sen. Mark in his Motion. What does it say?

“The Police Service Commission shall nominate persons for appointment to the offices...”—specified—“in subsection 1(a) and section 22(1) of the Police Service Act...in accordance with the criteria and procedure prescribed by Order of the President, subject to negative resolution of Parliament.”

So the Constitution provides for orders such as this. In fact, such orders have routinely been made over the years. I have seen orders made in 2007, 2009 and, of course, we have the famous 2015 Order. These orders are subsidiary legislation and they have to comply with the Constitution.

When I look at the Order I see nothing in it that conflicts with any substantial provision of the Constitution. Yes, it varies the 2015 Order but that 2015 Order varied the 2009 Order which in turn varied the 2007 Order. Sen. Mark takes issue with section 3(f) which he sees as opening the door for Cabinet to influence the selection. Well, what does the section say and how will it play out? Section 123— (f)—yeah:

“The Police Service Commission shall submit to the President, a list of the names of the persons nominated for appointment to the offices of Commissioner or Deputy Commissioner of Police.”

Yeah? That is the Constitution, 123(3), and it is word for word virtually for the Order section 3(f).

“the Commission shall submit to the President the names of the persons listed on the Order of Merit List in accordance with the procedure set out in section 123 of the Constitution.”

So let us look at 123 of the Constitution because this is paramount, 123(4) says:

“The President shall issue a Notification in respect of each person nominated under subsection (3) and the Notification shall be subject to affirmative resolution of the House of Representatives.”

And then subsection (5) says:

“The Police Service Commission shall appoint the Commissioner or Deputy Commissioner of Police only after the House of Representatives approves the Notification in respect of the relevant office.”

So, I see nothing in the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order of 2021 which dilutes, compromises or significantly diminishes the role of the Police Service Commission as feared by Sen. Mark. Fidelity to the principles enshrined in the Constitution is unaffected as in keeping with its mandate, it is the Police Service Commission who will be selecting, who will be appointing the Commissioner and the Deputy Commissioner of Police. And that appointment can only be made after the House of Representatives approves the notification in respect of the office.

So let me be clear. I respect Sen. Mark's views and I have no quarrel with the points he has raised but I do defer with the conclusions that he draws. Yes, I accept that the process has been simplified but it does not undermine, it does not fetter the Police Service Commission from carrying out its functions. It does not undermine or fetter the House of Representatives from carrying out its functions. Sen. Mark has raised legitimate concerns but if his Motion succeeds and this 2021

Order is annulled, I shudder to consider; I shudder to consider the Police Service Commission having to go out to tender at this late stage to get a firm to advertise here and abroad. We have been there, done that. It did not work out well the last time.

12.00 noon

And the country just does not have another \$27 million to waste, certainly not in this time of pandemic and when the country needs certainty and stability; 2021 is already stressful enough. We do not need a protracted, uncertain and overly expensive process for the appointment of a Police Commissioner and Deputy Police Commissioner. So while I commend Sen. Mark for bringing this to public attention and for catapulting the issue into people's awareness, on balance, and having regard for all the circumstances. I am inclined not to support the Motion. The country deserve a less lengthy, a less expensive and simpler process.

Most importantly, I believe that the Police Service Commission has the experience, it has the capability to do what it was set up to do. This Order does not diminish or undermine that role. I have full faith and confidence in the Police Service Commission to do its job impartially and properly, to fulfil its mandate and to uphold the law. I thank you. [*Desk thumping*]

Mr. Vice-President: Sen. Lutchmedial.

[MADAM PRESIDENT *in the Chair*]

Sen. Jayanti Lutchmedial: Thank you, Madam President. Madam President, can I just ask, do I have 30 minutes?

Madam President: Yes.

Sen. J. Lutchmedial: Thanks. Madam President, let me just start off by correcting a few things that have been said here today. Firstly—and I respect the position

adopted by my learned friend, Sen. Vieira. But, Madam President, us being in July and the Commissioner of Police having his contract ending in August, and the necessity to ensure that we have a Commissioner of Police appointed, and the desire of the citizens of this country to ensure that that process is done quickly, is not a reason to accept any shortcut process that the Government put forward here today. So let me just say that upfront.

I agree entirely with Sen. Vieira that if it is the existing process was found to be too lengthy, too convoluted and too expensive, in the last three years, while we had a sitting Commissioner of Police on contract, these proposals could have been made. It could have been dealt with. It could have been trashed out. But instead, you left a process in place that you put in in 2015, which was modified, and now you have come at eleventh hour to modify a process and to make substantial changes to it, and it is on that basis that we feel that we need to look at it very carefully. It is not enough for us to say that, “Look, our backs are upon against the wall, the contract comes to an end next month and therefore, we must act with expedition here today.”

Now, I think it is also—I am amazed that the Attorney General has come here and relied so heavily on Harridath Maharaj. One would have thought that it was the Attorney General who had argued in favour of Mr. Harridath Maharaj in the High Court. He accuses the UNC of having, what? Conspiracy theories and so on. But, Madam President, it is worth remembering that the Attorney General was the one who tried in 2015 to—this said Attorney General and this said Government brought an Order that was held to be an illegal and unconstitutional incursion upon the independence of the PSC. They voted against when we brought the Order to negative that Order. We brought the Motion to negative it in 2015, they voted

against it. And Mr. Harridath Maharaj, as a responsible citizen, a past police officer, then took the matter to the court because he was concerned, and rightly so.

And the AG, on the one hand, he is flip-flopping because on the one hand, he is praising this judgement of Justice Rajkumar and all of the guidance that we got, and tracing the history from Cooper and Balbosa and then going back to Endell Thomas and so on, and ending with Justice Rajkumar's judgment in Harridath Maharaj. But then he says that, "Well, you know, if we had appealed it, we would have win, you know." So what you are trying to say is that the judgment is wrong. That is what he is trying to say. But yet he is relying on the guidance of the judge.

And I find it hilarious that he is saving face here about his High Court loss in 2015, one of his first of a few losses that has come about to say that, well, you know, we had advice that if—that is if you play a full-time football game for 90 minutes and you lose and then you turn around and you say, "Well, doh worry, you know, my coach had tell me well if I had only play for 10 more minutes, I was scoring 10 goals." Well, if you had advice to that effect, I would have said you should have appealed it. And if you do not agree with the advice given and the judgment of Justice Rajkumar, do not now come to rely on it here. And if you are relying on it, do not rely on it erroneously.

You are quoting, for example, paragraph 81 of the judgment. And he is right, I was involved in this matter, intricately involved in it, so I remember it very clearly, and I remember exactly what the Government had tried to do. Paragraph 81 of the judgment says that they see:

"...no reason in logic why an independent..."—PSC—"cannot itself trigger the process for the recruitment of the Commissioner of Police..."—and—

“Deputy Commissioner of Police.”

Justice Rajkumar did not say they should do it themselves. He said they should be able to trigger it. And the reason he said that is because the 2015 Order that this Attorney General fought us on in court, that he thought was right and he tried to uphold, inserted the Minister of National Security into the process as the person to trigger this process. There are some other matters that Justice Rajkumar had to pronounce upon, that when it was taken to court, he found that it was illegal and unconstitutional, and that is the fact that the firm at the time was the entity that would be shortlisting candidates.

Now, why am I going through all of this? Because in 2015, the Attorney General argued strenuously for the input of this firm into the process. They made it mandatory in their 2015 Order that this firm—I think the phrase used—and I have the defendants—the Attorney General’s submissions filed by his attorneys here in front of me, that the firm, it long recognized and they went through all of why and quoting Sankar from the Privy Council, why nothing is wrong with having the firm, and why it was necessary to have the firm, to take out all the candidates who did not meet the criteria. They went so far as to say that the firm should shortlist, not the PSC, and we had to have that struck out by the court.

So, lo and behold, come now in 2021, we see this whittled down Order that absolutely does not necessitate the use of the firm, and for what? Because of cost? That is the argument here? You want a shorter process? You want a cheaper process? Well, you know, as they say in local parlance, “sometimes cheap ting no good, good ting no cheap”. I do not know that something as important as the appointment of the Commissioner of Police, the person responsible for the security and safety of the citizens of this country, that we should be looking to save money

by whittling down a process and allowing a process to be somewhat, I do not know, as he said, simpler. Because, Madam President, with that process, and if you want to have this whittled down process, you must look at several different aspects and what is the capability, the capacity of the persons who would now be charged with the process.

Now, in answer to Sen. Mark, the AG is saying that, “Well, there is nothing in the Order that prevents the Police Service Commission from using a firm.” That may be so, but the flip side to that argument is, there is nothing that mandates them to use it either. They can say, “Well, listen, we are going to do this whole thing in house with whatever resources we have.” And I will come to that in a short while about their resources. Because the resourcing, the structure, the composition of the PSC was actually the subject of review between 2011 and 2013, and there was a report presented. How do I know this? Because the Attorney General relied on that report in his evidence in the Harridath Maharaj matter. That was something that was filed on his behalf by his attorneys, the same ones who advised him that he should appeal and win, that he could win. And they filed that report, and that report is a treasure trove of recommendations of what the PSC should look like.

And I think it is incumbent upon the Government to tell us how many of those recommendations—it was a multi-sectoral team, they were in Opposition, they participated in that process and sat on that Committee. In fact, the report is signed by one of our senatorial colleagues, the hon. Minister, Ms. Donna Cox, who represented the Opposition in that report. They signed that report with all of those recommendations for the PSC and I will go through them.

But the point is this. Let us look at what has taken place with these Orders for Selection Process from 2009 come forward. In 2009, you had a selection

process involving the firm. It talked about what should be included in the firm's report to the Commission. The results of the assessment process, the applications, the biography, their scores, feedback, medical examinations, security vetting. All of these things were included in the 2009 report. In 2015, they sought to place—they kept those things that should be included in the report but what they said is only shortlisted candidates by the firm should go the PSC. The court held that is illegal. But what is important is that the Commission in the amended Order of 2015, paragraph 3(f), says that:

“The Commission shall select the highest graded candidates on the Order of Merit List and submit that candidate's name to the President in accordance with the procedure set out in section 123...”

Now, the AG is putting his interpretation on section 80 and says that, well, the President will have to act—she does not have to act on the advice of the Cabinet because section 80 says that, where someone else advises. But let us look at this 2021 Order in detail and what it says. It goes back to say here now when the Commission does its recruitment process and whatever:

“The commission shall submit...the names of the persons listed on the Order of Merit List in accordance with the procedure set out in section 123...”

So if the entire list is going to the President, where does it say that the highest ranked person on that merit list is the name that the President must submit to the Parliament? And if it is that that is the intention and that is how the Attorney General reads it to be and understands that it must operate, well then, insert it into this Order. Insert it into the Order that whoever is the highest ranked person by the Police Service Commission that tops on that Order of Merit List. That is the name that the President must send to the Parliament for confirmation in the House.

Because I cannot see the logic or the reasoning behind changing that “a name” from 2015—one name of the person selected must be submitted to the President, to submitting the whole list to the President, unless it is that you want to have some discretion to be exercised there, or that the President must consult with someone else, or that the President must act on the advice of somebody else other than the PSC. If the PSC produces the merit list, then it should only be the number one person on that list that should go to the President, and that is the name that should come to the Parliament. Nobody else. So I think that it is absolutely necessary. If you are saying that we have a conspiracy theory, and that is not the theory, and that is not how it is going to work, amend the Order to reflect that. [*Desk thumping*]

So, Madam President, very quickly, I just want to mention a couple other things. When we consider, for example, as the Attorney General says, nothing in the Order prevents the PSC from hiring the firm and so on, but they can also do it themselves, it is necessary for us to look at this report. In the Attorney General’s affidavit filed in the Harridath Maharaj matter, this is what his Permanent Secretary stated in evidence. And this is a public document, public record, the case is completed. They put into evidence:

A multisectoral team was appointed, comprising Members of Parliament representing both sides of the House, experts in the field of law, organizational development, human resource management and was chaired by the Chairman of the PSC. The team was created to consider providing greater autonomy, relevance and clarity to the constitutional mandates and functions of the Police Service Commission.

As noted in this report. They annexed the entire report to their affidavit, and it is brilliant. I mean, really, really good reading if you go through it.

What are some of the recommendations of this report? Firstly, it recommended restructuring the Police Service Commission. This report is dated the 19th of March, 2013. It recommended a restructuring of the Police Service Commission so that they have legislative autonomy as well. It made reference to legal incorporation and referenced examples such as the Office of the Ombudsman, the Auditor General and the Integrity Commission. All of these things geared towards insulating the PSC from interference and for them to have an independent mandate. They recommended financial autonomy. They recommended a restructuring and they had a whole new staff complement.

And most importantly, one of the major things that they recommended in this report, they listed and they gave job descriptions of 18 new positions that they thought should be created for the PSC, including an assistant director in charge of recruitment and selection, and three recruitment specialists. Has that been done to date? Has it been done? Because they have cherry picked out of Harridath Maharaj, Cooper and Balbosa, wherever, and this report, what they want, which is to say, “Okay, let the PSC do the whole process.” No independent firm, no recommendations in the Orders that say what you must present, what the firm must present to the PSC and other—what is the phrase the Attorney General says? “Go do your ting”. Right. So everybody, “go do your ting” and nowhere in any of the Orders are we seeing what is the process that the PSC will follow. And does the PSC have the staff—the specialist staff? You do not just—you are not hiring people to run a parlour. You are hiring the Commissioner of Police. That is a very—I mean, as you said, if you spend millions of dollars before in doing so, does that not tell you something?

If an international, renowned, one of the “Big Four” firms, had previously

had conduct of this exercise, does that not tell you something about the importance of this process? You are now just telling the PSC, “go and do your thing”, and you do not know if they have the resources, the competence, the staff or anything else to conduct this process. And then you say, “Well, it is okay, if they want to hire a firm, they could, you know. We did not tell them they cannot hire a firm. We just did not make it mandatory to do so.”

Well, Madam President, as the Attorney General has said, the Government has to pay the bill. So if the funds are not made available and they cannot get it done, and they cannot recruit the firm because the funds are not made available, then what will they do? “Ent” they have to do the thing themselves, in house? And that is exactly the risk that we run, that by withholding funding the Executive will essentially force the Police Service Commission to use whatever resources they have, which according to this report, is not that great and is not that much, and they do not have the recruitment specialist that they need. But the Executive can actually, by withholding the funding, force them to use what they have and have a process played out in accordance with this whittled down Order. And that is an injustice to the people of this country who deserve the absolute best process. We deserve the most resources. We deserve the best resources in ensuring that the Commissioner of Police who is selected is the best person for the job. [*Desk thumping*]

In addition to that, Madam President, we have to look at the question of whether there can be a conflict with the PSC managing this entire process. Under the Constitution, the powers of the PSC also relate to monitoring the efficiency and effectiveness and preparing the annual performance appraisals, and so on, in relation to the Police Commissioner. If you have an incumbent Police

Commissioner who has been assessed over a period of time by this said Police Service Commission who is now reapplying for the job—let us just say in hypothetical terms—and they have given him glowing reviews for three years, is there not an inherent bias in favour of him over other candidates? If I sit down in the PSC for three years and say, “Mr. George, you is the best thing since slice bread. You are the best Police Commissioner, a hundred out of a hundred,” can I then come and say in an interview process, “What am I expected to say about Mr. George?”

It is the same thing if I, as the Police Service Commission, have constantly had issues with Mr. George and I have had to discipline him, or I have had to, you know—I have given poor appraisals and so on, can Mr. George now feel secure when he reapplies for an appointment that he would get a fair and unbiased, be subjected to a fair and unbiased recruitment process? You see, that is the value of the firm, of the independent firm. They will prepare a report. They are not the ones who were monitoring and evaluating him over the three-year period. The firm actually is the entity best placed to review the performance appraisal of an incumbent Police Commissioner and ask questions of the PSC, and all of this is in the 2015 Order, that they must liaise with the PSC. And it was there from before as well in the 2009 Order.

So the firm can actually look at the performance appraisals and say, “Well, listen, we noticed in year three, just before the end of his term, Mr. George got a negative appraisal in respect of this criteria, can you tell us why this was done?” And all of those things could factor into their report, so you have a proper, fair HR process. This is an HR process. It is not solely a national security issue. It is a fair human resource process. It is a very specialized area and that is why you had a

firm, not just because they have the competency to do it, but you also wanted to have the most unbiased approach to the recruitment process.

Madam President, it does not, you know—it does not need to be said about much more—I think everybody has gone through the list of cases about the importance of the constitutional independence of the Police Service Commission. Yes, we all have read Endell Thomas and the threat of a private army, and I do not know if that really resonates enough with Members in this House and with the public of how dangerous it could be when you have the interference of anyone in the process of appointing a Commissioner of Police and what could happen.

Madam President, it is frightening when one reads the submissions that were put forward by the Attorney General in the Harridath Maharaj case, who tried to argue that based on the 2006 amendments to the Constitution, that there was now—and I can read it for you, what was said. Submissions filed on June 14, 2016, on behalf of the Attorney General:

It is respectfully submitted that it is no longer possible to speak in unqualified terms about the principle of insulation of the police service from political influence. Responsibility for the appointment of the top officers in the service is now shared between the Commission, the Cabinet and the Legislature.

This is a Government that has argued that we had to go court and argue against them because they do not respect the independence of the Police Service Commission, and they have tried before to get involved in the process. And now, we must also consider whether or not this—particularly this process with an entire merit list, the requirement that a merit list, not the top candidates, but the merit list be sent to the President. What is the effect and the impact of that requirement that

comes here in this Order today? Apart from saving money, as they have said, by removing the process of having a firm. I see no, absolutely no justification why the Order of 2015 argued for so strenuously by the Attorney General back then, why it is necessary to depart from that Order?

He goes through the process of it being too lengthy and it taking too much of time. Well, you know what? You should have thought about that in 2018, when the last Commissioner had been appointed, whether you needed to change the process. You do not come now at the eleventh hour and say, “Listen, time is against us. I need a simple process.” And slip into there—slip it in, that not only the top ranked candidate by the PSC must go to the President but an entire merit list. It is dangerous. It is unnecessary at this point in time and I do not believe that it is in the best interest of the population, in the interest of saving money, that we whittle away at this process, and that we make this process less stringent in terms of the appointment of such an important officeholder as the Commissioner and including Deputy Commissioners of Police.

With those few words, Madam President, I thank you. [*Desk thumping*]

Sen. Nigel de Freitas: Thank you, Madam President, for the opportunity to contribute to the Motion that is currently engaging this honourable Chamber, which is the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2021.

Madam President, I begin, and I propose not to take too long because I think a lot has been said by speakers that have gone before me on both sides about this particular Order and the merits and the non-merits which the Opposition has put forward in their contributions. But what I would do at this point is just reiterate the key points that Sen. Mark has made in relation to moving his Motion, which

essentially was the reasoning for the removal of the firm which was a mandatory process put forward in 2015, in relation to the selection of a Commissioner of Police and a Deputy Commissioner of Police.

The other point that he made was in relation to the process by way of putting forward one name by the President to the House of Representatives, which is the highest graded name on the Order of Merit List, and that being reduced to putting forward all of the names on the Order of Merit List. And he went on to indicate that there was some sort of untoward process thereby indicating that the autonomy of the Police Service Commission was being attacked because now the Cabinet would be able to come in and suggest to the President what name should be put forward to the House of Representatives. And I would treat with that argument put forward by Sen. Mark and reiterated by Sen. Lutchmedial.

So, Madam President, I would start by responding to Sen. Lutchmedial in relation to the firm. And she was basically saying that the argument for the firm in 2015 was put forward, and fought for so hard, and now we are coming in 2021 to remove that process. Now, I agree with Sen. Vieira when he indicated that we have gone through that process between 2015 to now, realizing that the cost of utilizing a firm was exorbitant, and you have to take into account the prevailing economic situation and the fact that do you really want to go through that process again and invite such a cost? Now, one of Sen. Mark's arguments in moving this Motion was for the autonomy of the Police Service Commission. And what I would say is what greater autonomy can you give to the Police Service Commission than the ability to choose whether they want to use a firm or not, dependent on the circumstances that they find in relation to the choice of a Police Commissioner and Deputy Police Commissioner.

They can now look at the varying—variables put before them by way of the types of candidates that apply for the position by way of economic circumstances and decide whether the use of a firm is warranted or not. And that is a choice that should be left with them, which is the Police Service Commission, to do that. Removing the mandatory act of having to go through a firm is not in any way untoward whatsoever or an attack on that Police Service Commission. So I agree with this particular Order, in that we simplify the process, allow for the Police Service Commission to go through its process of selecting its candidates, and if they decide, based on the variables that are before them, that they choose to use a firm, then they can definitely do so. But it is not something that you want to make mandatory in that regard, given that they are the ones that are best known in relation to the variables that are before them. So let them make that decision, and it does nothing, Sen. Mark, to the autonomy of the Police Service Commission to be able to do that.

12.30 p.m.

Let me move now, Madam President, to the argument put forward by Sen. Mark in relation to the name on the Order of Merit List. Now what Sen. Mark is speaking to in the Order that is before us today comes at section 3 and it reads:

“(f) the Commission shall submit to the President the names of the persons listed on the Order of Merit List in accordance with the procedure set out in section 123 of the Constitution.”

Now, one of the things I have noticed over the years debating in this particular Chamber is that the Attorney General always says, that when you looking at laws you have to take everything as it flows by way of the clauses that come.

And so, Sen. Mark looked at that particular clause and then looked at what

was there in 2015 when it actually prescribed to the specific name, the highest graded person, that the President would have to put forward and asked the question as to why would you have to send the names of the entire Order of Merit List now. And then went on as I indicated earlier in my contribution, that in some way or form of fashion, by some pathway, and he called the section, I think it was section 80 of the Constitution, indicated that the Cabinet would now be able to interject here and send to the President the names that must be sent to the House of Representatives.

What I would say to Sen. Mark is that if you go back to the Constitution and you follow on from that particular section, which is section 4(1), it actually goes on to prescribe how the Order of Merit List is to be used. So for those listening, in that process you would have the Police Service Commission selecting your candidates in relation to populate the Order of Merit List and it goes on to indicate that the person with the highest score is on top and you come down on that list in descending order. It would then go on to indicate that that list would be sent to the President and then the President would, before, send the names to the House of Representatives. But what that section 4 in the Constitution says is that the House of Representatives is to debate the highest graded person on that list. So even if the Order now states that you are sending the names on that list, the list is populated in a very specific manner, the highest graded come down to the lowest graded, but when it gets to the House of Representatives, it is only the highest graded that must be debated at first. It then goes on to indicate the procedure that must take place, whereby if the highest graded candidate in the Order of Merit List is not selected then you move to the next person on that list, and then if that person is not selected you move to the next and the next and the next and if that list is exhausted with

nobody being selected, it then goes on in the Constitution to indicate that the process must be recommenced.

So I am not understanding when Sen. Mark says that there is some interjection that can take place between the Order of Merit List being sent to the House of Representatives, when it is very clear that when that list is received by the House of Representatives how it is to be debated. So you cannot somewhere along the line take the number three person on the Order of Merit and somehow have that person jump forward for the House of Representatives to debate it because it is very, very clear that the number one person on that list is to be debated by the House of Representatives and you must debate them coming down in the order of the Order of Merit List in that House of Representatives if the number one person is rejected.

And when I was listening to Sen. Mark trying to make that argument, I was wondering what is it exactly he was trying to say. I was hoping that he was not suggesting that something untoward would happen at the Office of the President in relation to that list. It is very clear, it is an Order of Merit List. So that even if it is not prescriptive to say the very first name must be sent, it is an Order of Merit List, the number one name on the list is the best person for the job. That is what order of merit means. So it is not to say that if you take the third person and put that name forward, not that it could be debated because the rules clearly state how it is to be debated, but somebody would have to explain how the number three person ended up there without following this procedure.

So Sen. Mark, you have to take it as it flows and there is no possibility for any interjection to undermine that list because the procedure is very, very clear. How it should be received in the House of Representatives, how it should be

debated in the House of Representatives, the order by which it should be debated. So it is not needed that it should be prescribed that the top name on that list is the one to be sent. And Sen. Lutchmedial asked for a reasoning as to why all of the names would be sent instead of one. And the whole process of this Order today is to simplify, Madam President.

And so when I take it from an operationality standpoint and I look at what the process prevailed before, so we said send one name, so how does that work? So you send the one name and that comes by Order to the House of Representatives. The House of Representatives takes that name and they debate it. That is a whole day process. If that name is rejected because of the way things flow in the Constitution and it indicates that you go to the second name on the list, because only one name was sent by way of that Order, you know what happens. That debate ends, it now goes back to where it came from to indicate it was rejected, another Order is sent for the next name on the list and then you debate another day.

From my standpoint, if it is that an Order is sent with all the names on the list and the way it flows out here in the Constitution indicating that the House of Representatives is allowed as they go through the Order of Merit List to start with the top one. If it is you have all of the names, then by way of procedure it could be simplified in the sense that if you do not go with the top name then you continue on to the next name to debate until you get to the name that is approved by way of the process outlined here. Simplification of process.

Because Sen. Vieira made it absolutely clear in his contribution that when treating with this particular matter of appointing a Commissioner of Police you want stability, you do not want a convoluted process. We have gone through convoluted processes before in relation to the Commissioner of Police. We have

had Commissioner of Police acting for several years at a time. I remember there was a debate in an earlier Parliament in relation to that particular process where arguments were being made as to why an Acting Commissioner of Police is better than a substantive Commissioner of Police. And that cannot be right.

So there is nothing wrong with the Order put forward today that simplifies the process, that allows the Police Service Commission to do what it has to do as it has done in the past, because remember this is occurring from as far back as we could go. Allow them to do the jobs that they are there for to determine whether they want to use a firm or not, depending on the variables that are before them and the circumstances that prevail. Take that process, send it to the House of Representatives so that the House of Representatives can go through its process and get the job done as quickly as possible so that you can have a substantive Commissioner of Police to execute what needs to be executed so that we can properly treat with crime and criminality in this country. There is nothing here that is untoward. So I am not sure why Sen. Mark would have brought that Motion to annul and then taken us down a pathway that seems very far from what is before us, in order to try and concoct or to create something that is untoward which is just far from the truth.

So, Madam President, as I indicated, that was the crux of what Sen. Mark brought forward for us today. Those were his two major points. Those were the points responded to by Members on this Government side and by Sen. Vieira, and just to Sen. Vieira because he actually made a point that I would respond to specifically which was not—it was relevant to the Bill but it exactly was not in response to any of the points that Sen. Mark made. And that was that in the contract for a Commissioner of Police, there should be a renewal clause to even

simplify the process further. Basically stating that if it is you have a Commissioner of Police that is doing a great job then why go through the whole entire process of inviting applicants again. You should have a clause in the contract indicating you could just renew and move forward.

And what I would say to Sen. Vieira is why not go further. If it is that this process is one that is so intensive, why have a contract in the first place? Why not make that a relatively permanent position? So you go through the process, find your Commissioner of Police, they are vetted, you have your assessments done, you would have your clause to remove if that becomes necessary, but then you do not start this process over every three years. Now, you have a substantive Commissioner of Police, you have the continuity, you have the stability of execution of process, so make that position permanent one time. And you would not need a renewal clause, Sen. Vieira, in relation to that because it is an independent office anyway. And there would be great benefits to having a Commissioner of Police as permanent. You would not have to spend the money every three years, firm or no firm in relation to finding a Commissioner of Police.

So that is the only thing I would add to that comment by Sen. Vieira, Madam President, but as I indicated what Sen. Mark has put forward today by way of his Motion does not make sense. There was no reason to move the Motion, the process has been simplified and, in my opinion, Madam President, it should be approved to the benefit of the people of Trinidad and Tobago. With those few words, I thank you. [*Desk thumping*]

Sen. Dr. Maria Dillon-Remy: Thank you, Madam President, for allowing me to take part in this debate on the Motion presented by Sen. Mark. And initially when I read this Motion and when I read the Order I thought really and truly there is a lot

in this. And Sen. Mark's Motion which we have already read says:

"Be it resolved that the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2021 be annulled."

And as I listened to the Attorney General, I listened to all the presenters, including Sen. de Freitas just now, I really thought that there was a lot in this that the removal, specifically the removal of the firm which was in the Order before, which was in the Order also of 2009, that removal was something that was significant. But the Motion does say that the—the Motion says that:

"And whereas the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2021 was published on June 17, 2021 by Legal Notice No. 183;

And whereas the Order, among other things, significantly diminishes the role of the Police Service Commission;

Be it resolved that the...Order...be annulled."

And really reading through the Order there is no evidence that the role of the Police Service Commission is in anyway diminished, [*Desk thumping*] because the whole process is being controlled by the Police Service Commission.

Madam President, I have one question for the Attorney General, and that is based on an interview that he had with the *Express* on the, on the—it was—just one second, Madam President, on June, the *Express* newspaper on June the 19th. The Attorney General explained that:

"The Government is moving to scrap the long-winded process of appointing a Police Commissioner...and Deputy Police Commissioners."

Why would this be said that the Government is moving to scrap the long-winded appointment when the statement is that it is up to the Service

Commissioner & Deputy Commissioner
of Police Order, 2021
Sen. Dr. Dillon Remy (cont'd)

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Commission as to whether they use a firm or not and whether they use any process like that or not? Yes, Attorney General, I yield.

Hon. Al-Rawi: Thank you, hon. Senator. I just wish to caution that the editorialization of articles sometimes attribute words that are not mine.

Sen. Dr. M. Dillon-Remy: Okay.

Hon. Al-Rawi: And that is a very important point, and I note that in particular with respect to the *Express* at times.

Sen. Dr. M. Dillon-Remy: So you did not make that statement?

Hon. Al-Rawi: Well, I could not say—certainly what I have said here today in this House is what I would have said then, but editors very often put their own slant on the positions as they are entitled to.

Sen. Dr. M. Dillon-Remy: All right. So that was my concern. If it is that you are saying that the Commission has the sole right and that right includes the right to select a firm if they so desire, then the business about the length of time and stuff like that should not be a statement being made by the Attorney General since it is the Commissioner's, the Police Service Commission's purview to do as they choose as far as selecting a Commissioner of Police.

The statement also said the 2021:

“...legal notice...”—is intended to—“simplifies the process by which...”—the Police Commissioner—“and his deputies are selected and appointed.

In a nutshell, there would no longer be international advertisements for the posts. Instead, invitations would be...”—made, et cetera.

Madam President, if the Commission is making the appointment, then the Commission should be given the authority, well which it has in law, and therefore if they do require, and I really do agree that the removal of a firm—well when I

thought it was removed I said you are removing a significant process in the appointment of a very senior officer within the service of the Trinidad and Tobago and that should not be done. But as I said, I accept that they do have the right to do this if they so desire and therefore I am not accepting that the power and authority is being undermined by this Order.

The other point I would like to make is that—as already made I think by Sen. Lutchmedial, the issue of the, why is this being brought one month before the Commissioner of Police, the Commissioner of Police's appointment ends in a month's time. If this has to go through a process where it takes the selection of a firm, et cetera, it should not be, the Order should be brought at this time. It should have been brought months before. Actually, it was known when the Commissioner of Police was appointed that his appointment would end on a certain date and therefore there was enough time to bring to the Parliament what the Order there, particularly if there was such a significant change being made in the process. So again I just think the way we seem to operate in Trinidad and Tobago and that is not acceptable.

The other point I would like to make, Madam President, I really did think that I really had something to say this morning when I saw that this thing was being pulled away and that the process was being removed from the Service Commission I was very much against it. But I do accept the statement that the Attorney General made. The other question I would ask the Attorney General whether the statement that was made, where, in the same article, in the *Express* it said:

“In those circumstances and in the Police Service Commission's review of its general structures the recommendations came that the process

should be further simplified and that further simplification was effectively saying listen it is clear law that the Police Service Commission has the exclusive jurisdiction, all that we really want is for the notice to effectively allow us to commence and do what we want to do in the simplest methodology possible and then we under the parameters of the Constitution must do what we must do.”

Yes, Attorney General.

Hon. Al-Rawi: Thank you again, hon. Senator, as I do not have the right of reply, thank you so much. I can confirm that in presenting the Order as we did, that consultations were had with senior counsel for the Police Service Commission who confirmed via the Director of Personal Administration and otherwise, that a request for simplification was in order specifically by allowing the maximum amount of autonomy by removing the aspects of the firm. So this originated from the Police Service Commission, learned senior counsel for the Police Service Commission. We had conversations keeping ourselves away from the Commission and this request was done, their request was quite simple, please give us full autonomy and let us get on with our job.

Sen. Dr. M. Dillon-Remy: Thank you, Attorney General. Madam President, it is in the purview of the Service Commission to appoint the Commissioner of Police. It is my hope that we would not have the kind of confusion that we have had in past where there has been all the toing and froing around the appointment of such a senior and important officer, particularly where we are right now in our development as a nation. It is my hope that the Police Service Commission does what it needs to do in making sure we get an appropriate person selected for the next phase of the Commissioner’s mandate. I thank you, Madam President. [*Desk*

thumping]

Sen. Paul Richards: Thank you, Madam President, for the opportunity to make what will be, given what has been discussed before, debated before, a short contribution to this Motion by Sen. Mark which I think has value in terms of the discussion of this important issue of the appointment of a Commissioner of Police. And it is Sen. Mark's Motion to annul the Selection Process Order, 2021.

A lot has been said this morning about simplification of the process, and very often we associate simplification of the process automatically and incorrectly so, with dumbing down the process and I do not think the intention or the objective is that. I think in this case given the history, and tumultuous history at that, involved in the appointment of Commissioners of Police in the past and Deputy Commissioners of Police, I think the issue of simplification and efficiency comes into play which is very important. We have seen in the past and it has been referenced before today about the acting position of then Commissioner Williams on several different occasions, I think spanning three different administrations and the inability to appoint him substantially and the possible effect that may have had on his performance in discussion in the wider public domain. So I think the issue of simplification coming into play in the context of the remit of the Police Service Commission is a very important discussion for Trinidad and Tobago.

And one of the issues I think I want to highlight that may not have been highlighted as much as the process and the legalese of it, it may have been touched on by Sen. Lutchmedial earlier on, is the issue of performance appraisal and HR function inherent in the function and remit of the Police Service Commission. And if I could quote section (e):

“prepare an annual performance appraisal report in such forms as may

be prescribed by the Police Service Commission”—with respect to—“the information of...Commissioner and Deputy...and”—also in terms of—

“regularly and consistently monitor the efficiency and effectiveness of the functions of...Commissioner of Police and...Deputy Commissioners of Police.”

I think one of the things we have to be careful of in this country is that we set up institutions, and important institutions, and in setting them up we in some instances circumvent their effectiveness and their remit, their constitutional remit, and we have to be careful about that. And I think it has been well ventilated before in terms of the mandatory or non-mandatory ability of the Police Service Commission as in the 2021 Order to be able to option this firm or not and that is within now clearly the remit of the Commission. And the issue of—I agree with Sen. Vieira in terms of activating another convoluted process if the Commission itself does not feel it is warranted but the option remaining there if the Commission in its wisdom feels it is warranted.

Recently I had the opportunity to chair a Joint Select Committee of National Security and the Police Service Commission came before that Committee and one of the issues we have to really be aware of in terms of the autonomy, independence and the function of the Police Service Commission, in addition to maintaining its independence, is its resources, and I know Sen. Lutchmedial spoke on it, touched on it earlier on. But one of the concerns they voiced in being able to effectively carrying out their mandate is extremely limited resources. And if in looking at one of their mandates in terms of looking at the trust and approval rating of the Commissioner of Police and deputies and I could quote from *Express* article by Alexander Bruzual:

“Cop...rating 80%...”—TTPS—“59%”—in terms of the disparity in the present office holder as opposed to the rest of the service.

And they are trying—the Commission that is, trying to investigate and explore whether or not there were issues related to performance. And they were very candid in saying at that point that they were not able because of limitations in resources to go as deeply as they would have liked to in terms of fulfilling their mandate.

So I think what has been said before today, Madam President, through you, is the exploration of whether or not the independence and or autonomy of the Police Service Commission has been compromised by the Order and from all the discussions and debate as presented today, my humble opinion is that has not. As a matter of fact, it has been returned to the Police Service Commission in terms of the option to use a firm or not if they feel in their experience and their wisdom that it is necessary.

Sen. Lutchmedial also spoke about what she believed was a conflict of interest if the Commission had been assessing a particular person all through their tenure and then having to make a decision about that person’s reappointment. Well, I tend to disagree with that because I think it is part of their constitutional remit to continue or continuously assess the performance of someone so that at the end of that tenure, they can more effectively either contribute to a report on whether that person should be reappointed themselves or provide that report to a firm, an HR firm, if they feel to go down that road. So I think it is not mutually exclusive that they do their jobs during the tenure of the individual, the office holder and then have the ability to use that experience and that assessment. At the end of the tenure, whether or not the person, the office holder submits him or

herself for reappointment or whether the HR firm is optioned in terms of being able to provide documented information as to how that office holder performed during their tenure. So I think we need to be careful about that in terms of whether or not it is a conflict of interest or not.

In terms of a—my conclusion on, because I did say I will be short given what we have ahead of us today, we have to be very careful in Trinidad and Tobago that we do not create institutions and then literally starve them of resources to the point that they cannot function critically and effectively. And I think one of the bigger challenges facing the Police Service Commission is adequate resources to do their job effectively, because that to me is a bigger challenge today than what is presented here as a presumed curtailing or circumventing of their constitutional remit. I think that to me needs to be looked at more carefully. And the present Commissioners would have looked at the history of the Commissions in some instances having been embroiled at different stages in controversy and they would be more diplomatic in not having a tendency to drag themselves into public debate and controversy asking for resources. And so entering into the public domain a kind of discord with the Executive about resources and their effectiveness. So I think I will do that for them on this occasion and ask that they be given the level of resources they need so that those resources can support their independence and autonomy effectively.

1.00 p.m.

We have asked for it for the Judiciary, we have asked for it for several other independent institutions in terms of them being able to maintain their independence, autonomy and fulfil their remit, and I think this Commission, given its remit in appointing and accessing the leadership in the T&T Police Service at

this time in our country's history, is very, very important. So I will be happy to advocate on their behalf. I looked at it carefully and I listened to many of the contributors earlier on, and I really, like some of my colleagues, do not see the offense as suggested by Sen. Mark's Motion, and with that, Madam President, I thank you. [*Desk thumping*]

Madam President: Sen. Nakhid.

Sen. David Nakhid: Madam President, thank you for allowing me to join this debate on the Motion carried by the hon. Sen. Wade Mark. Madam President, the value of transparency in our democracy, with all the legal talk that took place, sometimes that is what these issues come down to, how much do we value transparency in our democracy? So we have heard about all the Legal Notices and I went through after this most recent incarnation, of the whether the Legal Notice, and I took it all the way back to the one in 2015, 2009, 2007, and this one as presented by the hon. Attorney General actually, for want of a better word, is probably the most loose Order that we have presented and I think that is essential to the debate and what Sen. Mark expresses concern about. Now, it is easy to talk about political conspiracies and conspiracy theories, but our concern must be: can these conspiracy theories become distinct possibilities? And here it began and somehow fortunately or unfortunately because of my experience I can attest personally to that happening. Because if I was to tell this honourable Chamber that a coach could be brought up on charges and police brought to his house because he did not play the son of a Commissioner of Police who was politically influenced and connected, you all will say no that is a political conspiracy theory. But that happened to me in 2017. I took my academy to Spain, did not play a boy who was upset, whose father was the Commissioner of Police which I did not know, whose

partner in business was a judge, a district judge in Sidon in Lebanon, who was directly connected to the leader of a political party. So upon my return from Madrid, I had police waiting at my house. So let us not talk about conspiracy theories and so. These are distinct possibilities that can happen when there is political influence and connection, and that is what our concern and the concern of my colleague is about. So we cannot be dismissive of that.

Madam President, and I hate again to bring the football comparisons again, but I remember as everyone here remembers, the coach that took us to the 2006 World Cup, Leo Beenhakker, who coached me when I played in Switzerland, telling me one time, “Be weary of anybody who tries to fix something that is not broken. Is either they do not know what they are doing or they have some kind of inherent benefit in trying to fix something that is not broken.” And then my question to hon. Attorney General will be obviously: Has there been at any point in time any record of any Police Service Commission members being dissatisfied with the process that we had before? I heard him just recently allude to having conversations with Senior Counsel to the PSC. What does that mean? What does that mean? We want to know has anybody shown dissatisfaction to all of a sudden come with this Order that eliminates a layer of protection, security, and transparency to the citizens of Trinidad and Tobago? And nobody on that side seems to find a problem with it.

As a matter of fact, we heard Sen. Vieira say, “Let’s get rid of—we do not need an intermediary”, which is the firm, which to me I need some kind of clarification. Because if you are talking about, as Sen. Vieira said, Sen. de Freitas said, and all the other Senators, that one of the most important appointments in our democracy, and then what? Well, let us eliminate one of the layers that provides

security, protection, and transparency for the citizens of that country who can be affected by that, it makes no sense. That is political expediency at its worst.

Madam President, I think there is a reason that there has been no expressed dissatisfaction from any members of the PSC previously, that that provision mandatory to have a firm because it provides a certain level of expertise, that maybe the PSC members would not have. It provides that. Why would you want to take that away and then talk about the cost, we had 27 million? Madam President, I could bring up a million things here that I have seen costing more than 27 million that this Government has put in place that we do not need at this point in time. There is 23 million that I could talk about right now. There are new police cars all over the place, OPVs, all kind of things, building unnecessary stuff in a guava season. But they want to talk about 27 million like, yes, that is something that was so prohibitive that it could not be afforded especially as everyone seems to acknowledge for one of the most critical positions that requires—I think Sen. Vieira alluded to—a level of integrity, performance, and transparency that is critical to our democracy.

So then how can we nonchalantly say, no it was too expensive and forget that, forget the firm, and the PSC, well we will keep. Yes we know, but we had no problem with the autonomy, or the experience, or the expertise of the PSC. Our problem is when you try to circumvent the authority experience and performance of the PSC by talking about the order of merit. You know why not take it, it will automatically—there is no automatic, Sen. de Freitas. Law, legislation, notices are made in a certain manner has to constricted. It cannot be expansive. It cannot be on the discretion of somebody, well I will decide, you know what, we will include a firm. No, this time we will include a firm. And as for the manner whether we are

too late because the contract of the COP is up in August, we could discuss that as well. But in my opinion the discussion hinges around if we had that order of merit let us not talk about convulsion and it should not be a convoluted process, and then start to talk about well if we give five names and the first one will automatically be the one discussed, but then you are conflicting yourself. There is a reason that one name is given because it said “shall” and that is the reason one name is given and the President therefore has to act on that.

So if we talk about in one side of our mouth, the PSC, the incompetence, and having the expertise and they offer one name, then why you come and say, “Well no, they should be able to offer five.” Why? Why? Why are you fixing something that is broken? Why are you talking about their expertise, and their performance, and their trust in them, and their integrity, and at the same time say you know what then, leave it up to the President to make that decision together with who? The possibility of the Cabinet. And you do not want us to be worried about political interference? You are bordering on hypocrisy there. You are bordering on hypocrisy there. The reason and the way you protect transparency in a democracy if you put value on it, is if you make the legislation so ironclad, so tight, that it does not allow for discretion and possible influence or interference. And that is my problem with this AG, and I am on record as stating that this AG is a very hardworking fella. He is a very hard-working fella. I give him that, but to what end?

You cannot tell me you look at something, you do not come and you say “yuh know what fellas”—and I will be colloquial like he tried to be—“you know what fellas, you know what, we picking somebody for one of the highest post in the land, so let us whittle away some of the layers that ensure that we get the best

of the best, the crème de la crème.” “Nah, we will wait till lavway. Is like we are picking ah man for de fete”—for a fete match side. No! And I “doh” understand really how they could come and argue on semantics the order of merit, number one, three. So we will go with number one. Why? That laxity cannot be allowed. Something is essentially wrong with the AG’s—our hon. AG’s interpretation of what we are talking about. We cannot let the semantics of this thing, Madam President, block the transparency and the impartiality that we need in selecting a commissioner of police or the deputy.

And indeed, Madam President—and this is as important, the perception of impartiality, and I want to go a little bit to Sen. de Freitas’ contribution when he talks about that, about those five names and giving those names. Just the mere hint of perception of partiality, do you know especially in the situation this country is in right now, do you know the kind of discord and disharmony, just that perception of partiality from the Government can cause? And I mean that not only from this Government, any government. People are on tenterhooks right now. People are walking on pins and needles right now. Why would you want to mess with a process that is impartial? You cannot be alone to say, “Well it cannot be long winded.” Well, the AG just said that he never said that. Well, he did not say he did not say. He said it was probably misinterpreted.

So exactly the convolution that Sen. de Freitas said he wants to avoid, he prescribed it. All what he said prescribes it. And my point in such a legal process, you cannot have that kind of expansive behaviour. You cannot be so lax. Well they can go this way or maybe not go this way. No! We have to be as tight as possible in order to ensure that that is not even the perception of partiality. And his last point, which I found—well, I do not want to say I find he is a good boy—making

the Commissioner of Police permanent. You want to make a role like that, that at any point in time given the circumstances of history, you want to make that permanent? Come on, man! Why this kind of political pandering and expediency? That is a position that could never or should never be permanent. Tell me three years, five years, okay, but permanent?

So, Madam President, I think my hon. Senator colleague, Sen. Lutchmedial went through all the legal things that I thought were quite appropriate. I would just like to reiterate because everyone seemed to go at Sen. Mark's Motion and they quoted—I think, yes, the hon. AG quoted section 80, but section 80 actually confirms Sen. Mark's point. Because Sen. Mark fundamentally, he has no problem with the duties of the PSC. Our problem, and his problem, is with the contamination of the process that can politically be co-opted and traversed by the Government. And again, we make the point and that holds for any Government, and that is why we have to make sure that everything has to be as it is. It cannot be a laissez-faire attitude to this appointment.

So, Madam President, I do not want to go over what has been said before, but I would like to make the point, last time, and really ask this hon. AG with all his effort and hard work, why not in this time deal with something that deals with the current issues that affect our country rather than change something, that in truth and fact, needs no change? It is a stringent process, all layers protected. I do not know how to make and summarize—and I say this without any attempt to belittle my colleague, is this a distraction? Why? Do we not have a million more pressing things to see about including maybe a million vaccinations to procure? You know, as I say, this is a, “We-go-get Government. We go get them next week, week after.”

Madam President, I know it may seem and they try to depict my hon. colleague, Sen. Mark as being with sound and fury, in truth and in fact sometimes sound and fury is needed to protect our democracy. So again I ask: How much do we value transparency in our democracy? And I really hope that at some point in time the people on that side will tell us is it 27 million; is it 23, but give us some idea of why this Motion substantially should not be accepted. Give us an idea, something more substantive than what you all have said. The AG has said form and fashion and I know he is about form and fashion, but give us a little more substance and what and why this Motion should not be accepted. Because we are going down a very, very dangerous slope, Madam President, where if we begin to accept absurdities it is a very thin line to then committing atrocities. And I thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Deyalsingh.

Sen. Dr. Varma Deyalsingh: Madam President, thank you for allowing me to take part in this Motion that Sen. Mark moved. And I must say, Madam, I too was alarmed, as Sen. Remy had mentioned, about the fact that could the Government be somehow interfering in the process of the Commissioner of Police. So that raised an alarm bell because the position of the Commissioner of Police is an independent position that the Constitution has given him in that post, and any sort of means or methods to try and belittle the independence of this post or to try to influence persons in this post could lead to disastrous results. Madam, even before we had to look at the fact that if you have the Government could influence the police service, or the Police Commissioner this could really have effects that could be against certain persons who do not support the Government.

In the past we saw a Member of Parliament, Sadiq Baksh, his water tank had

missiles and cocaine, up to now we never really got answers who put it there. Was he being set up? I do not know. In the past also we had another Police Commissioner, Randolph Burroughs, some persons said he was actually a tool of the then Prime Minister, Dr. Eric Williams. It was mentioned especially when he went after the freedom fighters, the guerrillas that we had up in the hills, and it seemed that anyone who opposed the Government may have been shot and killed without any sort of investigation going on. So the tool of a commissioner of police into the hands, being a tool to any Government, it is a dangerous, dangerous situation that we can have.

But, Madam, as it is now I listened to the submissions given so far. I have listened to the Attorney General and the real concern I have, is it really that by this new Order, is it that the Government could really try to control, to subvert the functions of the Police Service Commission? And I do not really think, Madam, that this is so because looking at the Order, what it really removes is their need to hire a firm to look into the hiring process. Now, as Sen. Lutchmedial mentioned, it is probably better to have somebody without any sort of a bias filling in this process. And that is so. Because the Police Service Commission may have given a candidate to be the Commissioner of Police, it may have been vetoed by the Prime Minister, the number four position may have reached up. So would they have a bias for the present commission of police or any persons who they would have had knowledge before and had an assessment done before? So it may have that in being biased. But you see, Madam, the persons in this Commission, you know, I have looked at the fact how they function, what they did, how they manage their affairs, and the fact that they were chosen by the President in her judgment to try to choose the best persons there. I think I have faith in the present Chair, Ms. Bliss

Seepersad, and her team to be doing the work that was given to them in an independent manner. I have faith in them and I think they have the ability if they think some of their positions are being vetoed to even come out after and even voice it because they have that independent authority to do so.

So, Madam, I have to commend this present Government for at least stopping that long convoluted process that we had before. That was just where the country had been without a police commissioner for seven years, that process where a lot of money was spent. Millions of dollars was spent that could have gone into health, buying cameras, doing a lot of other good for the nation. Even giving to victims of crime, those moneys could gone to that. Persons who even policemen had gone to houses and destroyed articles in their searching efforts could have been given to fix back that those houses and those homes. So, Madam, that money I do not think with the COVID economy that we have, as mentioned by Sen. Vieira, I do not think we could afford to waste moneys in any sort of a process. Second reason Sen. Vieira mentioned is the length of time.

Now, granted you know, the process could have been started earlier, but the fact is we are here now and the fact is we have to ensure that there is no sort of a gap again. We have to ensure that the population realized that there is a person in that position and we are going to be attacking crime with full force. So therefore, looking at the convoluted process we had, looking at the moneys spent, I think this Order that was debated, I think I even—when I see this Order, I say well it is not going to do much harm. The Police Service Commission by themselves are intelligent persons, they could look at the processes that were done before by any sort of body that they had hired and see if they can implement that same process.

The problem I have, Madam, is that I think they need to be more funded. I

think they need that process where they need the staff. They would need to have a full complement of staff to monitor, to investigate, and I think it would be we are giving them this duty but yet still we expect them to have all the answers available to choose the best candidate. But if they are restrained by the finances of their Commission, I think this is something that that would not do great justice to them. So yes, there is a position where the Government may try to fire a police commissioner or influence. Mr. Kenneth Lalla, a past chairman, had to resist attempts by the previous Prime Minister then, the late Patrick Manning, for trying to get rid of Jules Bernard who described himself as “toothless bulldog” after. But you see at the end of the day the Prime Minister then would have known the shortcomings in the systems. He may have realized, you know, we need to do something. He did try to bring in Scotland Yard, but he was resisted. So how do we judge this? We have to judge it really on the Prime Minister wanting what is best for the country, the Police Service Commission wanting the independence, but at the end of the day we have to judge it. Would the citizens be served well, or were they being served well? Was crime being in a sense escalating around the time? And I think crime then was in a bad way and it has gone in a worse way, so we have to have things in place and we have to look at what we are going to do in this time to get somebody on board by the August deadline.

So as I stand here, I would want to say that I—remember even recently the post of Deputy Commissioner of Police was up, the Police Service Commission gave certain persons also who they recommended and I do not think there was any big hiccups. The only problem I had there I think someone had mentioned it—I think it was Prof. Deosaran had mentioned, how come the list or the names of the Deputy Commissioners of Police who were being shortlisted, how come that

reached the press? So this is something I think the Police Service Commission may need to, you know, answer that, how did this name reach out? Because there was a big argument in the press of certain persons who were being offered to that position.

1.30 p.m.

But you know, even though Prof. Deosaran had come out against the fact that, you know, the Police Service Commission did not have that check to keep that, the list, their shortlist away from the press, I do not think it is such a bad idea, Madam President, because I am thinking if you have candidates out in the press, the public could now take part in any sort of discussion. So the public could come in and mention well, candidate X was involved in something, candidate Y had some past history and things that the Police Service Commission may not be privy to could come out in the argument and give them that opportunity to investigate further.

So I think that I may have to say that we have to give that Police Service Commission blessings to try and get this Act going, to get this function going, very important function. I still would have liked more development into why did the head of the police union, why is he opposing in this. I was looking for more information from that. Be as it may, I am thinking we are even looking further down in our debate here today at the mutual assistance Bill to be passed and that Bill is an important Bill too because police could investigate persons and if—

Madam President: So Sen. Deyalsingh, if I could just caution you about anticipating a debate. We are going to deal with that later on today.

Sen. Dr. V. Deyalsingh: I am just mentioning it. The independence of a Police Commissioner is important in a lot of the legislation.

So did Justice Peter Rajkumar's judgment raise any warning bells? I would say yes. Peter Rajkumar did come out and say that the Government should not overstep its authority. The National Security Minister should not have any sort of influence. So we did get a little warning from Justice Rajkumar and I think we should really have to understand that politicians may want to influence persons. The Judiciary did show that it is now putting the Executive under some checks and balances and say, listen, we have no choice but to go according to certain plans, go according to certain protocols. So at the end of the day, the fact that the court did give certain guidelines, I am thinking that we have to be aware that the Government would have been under scrutiny and should always be aware of any sort of legal guidelines that have been given.

So seven years was too long. I am thinking it was even unfair to the Acting Commissioner at the time, Mr. Williams, to be left there in a position for a long time and I am thinking if we have to have this Order enacted, I am thinking we have to realize that the Police Service Commission can give a fair process. As I said, have faith in them. I think if they are in control, they can speak out of that and even though we get a Police Commissioner who somehow persons feel are being controlled and you know will be involved in any sort of activity, an independent Police Complaints Authority is another important body that could be as a check and balance. So there is a check and balance for a Police Commissioner who may be in league with any sort of Government there that, you know, if you see he is doing some things that are probably not right, something that is against the grade of democracy, going after certain figures, there is always that body as a body to oversee this.

So with that, Madam President, I think the checks and balances are there, I

have faith in this Commission and I think we need very quickly to appoint a Police Commissioner, that you know, if they decide to give whoever a chance again, it is up to them, it is their prerogative to recommend and at the end of the day, Her Excellency would have to give that list to the Cabinet and the Prime Minister will decide. Some people question the veto power, should it exist? That is a question for another debate. So thank you, Madam President, for allowing me to partake.
[Desk thumping]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President, for the opportunity to join in this debate on this Motion. The Motion is rooted in Sen. Mark's contention that the Order, among other things, among other changes, significantly diminishes the role of the Police Service Commission and on that basis and that basis alone, we should conclude this debate because nothing has been put forward as evidence that what is proposed as the changes diminishes the role of the Commission. And in understanding what brought us here, it must be referenced to two other documents which have not been mentioned so far. This did not just appear out of nowhere. In my mind, there is a context to it: 2014, 2018.

The first thing is that there is no— It is strange when—and I support the AG's description of this as conspiracy theory—and I will go back to Sen. Mark's contribution on a previous Motion to annul and in that, there is a lot of conspiracy theories. The full range that Sen. Mark gave us, he did not give us the full range today, he gave us some conspiracy theory.

And as I heard, you know, the allegations of the machinations of the Government and wanting to determine who becomes Commissioner, these are very strange times that this Government supported the appointment of a former UNC

Senator and Minister of National Security. We have never had, in the country's history so far—we have had public servants. It took a long time and it was a lot of confusion when Overand Padmore became the first serving public servant to be appointed a Minister having been educated abroad, very scholarly and still extremely bright, was appointed a Minister and there was controversy then, the thought of a public servant coming into the realm. And the thought of a former Minister of National Security being appointed Commissioner of Police under the watch of a party that was then in Opposition is something that may never happen in this country again and that is the extent to which the Government has not personalized and not sought to craft a process that achieves a particular objective. That alone to me is evidence of the sincerity with which the Government has pursued this particular matter.

Because this particular matter is deep, disturbing, dangerous—to use one of the Sen. Mark's words—and troubling. And, if you want to understand how troubling it is, I remember—I do not like to quote the newspaper too much but I remember glancing at a *Newsday* headline December 18, 2018, when most people were getting ready for Christmas and the reference in the headline was—sorry, March 29, 2018. Something else happened in December. March 29, 2018, headline was:

“Williams to get 13th...appointment today”

And if you remember, you may have forgotten, Stephen Williams was appointed to act on 13 occasions. Thirteen occasions. That is a long time to be acting and the difficulty was rooted in the process, the process that we, as legislators created. We created it and we are the ones to fix it because we created the problem.

And it was then Minister—the first document that I want to add to the debate

is this one. On December 18, 2014, it is Minister of National Security as he was then, Sen. The Hon. Gary Griffith, who issued a very lengthy press release, very lengthy, four pages, setting out the process for the appointment of Commissioner and Deputy Commissioner anchoring it as it should be in section 123 of the Constitution and also in the second part of the release, setting out the problems with the process. So he identified some of what we found no argument with: that the Government is not responsible for the appointment of the Commissioner, it is the Police Service Commission under 123(1) that makes the appointment. It must be carried out in accordance with the Constitution. He referred to the 2009 Orders which were then in effect.

The fourth point he made is that the candidate must go through a rigorous assessment but in retrospect, when you look at what turned out to be the process, it was convoluted, it was time consuming and it seemed to lead to nowhere because while two sets of money was spending and we had this objective—we once had Penn State working on it—had this objective of achieving transparency, we achieved nothing. Stephen Williams would not have acted as Commissioner of Police 13 times if we had a process that made sense. And in the search for transparency and for always believing that we are not able to manage our own affairs, we give it to others who cannot manage it for us. The search for transparency. So every time you talk in this Parliament and we quarrel about giving a Minister power, we want to give it to this body and that body—

Sen. Vieira, whilst thinking about this Motion on the weekend, I thought about you and your Motion and what we said about Service Commissions. I have said over and over, I am not saying anything about the Police Service Commission but I am saying that the urge sometimes to give authority where it belongs,

Executive authority, is because those that we classify as independent and reliable and the proper ones many times do not carry out the job and the temptation is to give it to something that resides closer to the political authority. That is the temptation.

So that then Minister Griffith sets it out, makes the fifth point about the acting appointment because this also addresses the acting appointment. And Sen. Vieira, I was in the Cabinet that approved the contract and there may have been a lot of considerations going on at the time, I could tell you the main consideration was giving this country a Commissioner of Police. That was the main consideration and you make a very, very valid point and the Order seeks to fix that going forward and having a less convoluted process for the acting position.

Sen. Griffith, as he was then, then made a point about the acting position, talking about the limited pool. Now limited could be “ah good thing”, it could be “ah bad thing”. Limited might be because the “pool ain’t so good”, you wish you had a wider opportunity or limited may mean that you do have a group of experienced officers who have been performing at the level of deputy or acting and they are the ones most suited for the acting position. But that decision resides with the Police Service Commission.

And then he uses the words that we are familiar with and I quote. He says:

“In an effort to make the selection process with respect to a substantive appointment less cumbersome...”

This is Griffith:

“...the Government has put measures in place to simplify the protracted and convoluted process for selecting persons to hold the two highest offices in the Police Service.”

This is Griffith, Sen. Griffith speaking certainly on behalf of my six friends who sit opposite me today. He was not on “ah” frolic of his own. He is articulating the policy of the Government that he served at the time. And again, you have to reflect, in 2014—I do not know if he ever contemplated that he would leave the life of a Minister of National Security and become a Commissioner of Police one day. And then he goes on and this is language we understand because we have been through this two or three times already. He says, I quote:

“Minister Griffith describes the current process as burdensome and excessively expensive as the Director of Personnel Administration is required to select a firm to conduct the assessment process.”

And then he goes on to say, I continue to quote:

“It is recommended that this requirement be removed...”

That is the requirement of the firm. That is what we are debating here today. This is then Minister of National Security Gary Griffith in a UNC Cabinet speaking obviously for my six friends opposite me today.

“It is recommended that this requirement is removed and the...”—Police Service Commission—“be responsible for conducting the assessment process. This is intended not only to simplify the process but also to reduce the financial costs that could be incurred by recruiting a firm to conduct the assessment process which in the past has been a foreign one.”

Unquote, and then he says—goes on. Sen. Gary Griffith as he then was, goes on to say:

“...changes to the existing process...”—requires—“Constitutional amendment.”

And he goes on to things that we have not discussed here today because it is not

before us. The issue of not having a deputy—the Commission itself:

“The Constitution makes no provision for a Deputy Chairman or a quorum which can act in the absence of a fully constituted Commission.”

Because remember we went through a process when there was no chairman of the Commission and the Commission could not function and he goes on to talk about things that we have spoken about today.

So my first point is to say that my friends ought to be no strangers to what is before us. My friends should not be reluctant to support this Order, support here to reject any request to annul it because this, what we are doing today, is rooted in what was recognized by the then Minister of National Security in 2014, obviously on behalf of the Government at the time.

And then, Madam President, I think we have forgotten that in the process of when the names started to go to the other place, I think we have forgotten that at a stage in the process, the House convened a select committee and the select committee conducted an enquiry into the process used to arrive at the merit list and the recommendations that came to the House because the question before the House was the reliability of the process and the role of the Police Service Commission.

And today, we talk about independence of the Commission and Sen. Mark, in his Motion, is saying that we have reduced, we have diminished the role of Police Service Commission. It is quite the opposite because I am not going to go into Harridath Maharaj except to make one point on it. I am not going to go into it. But I would say that the 2018 Report of the select committee in three lines was along the line of the Harridath Maharaj decision and those three, the conclusion—they arrived at three conclusions. The third one being to record that the views of

the committee were majority views and there was a minority that held a different view. But the first conclusion and I quote:

“The Committee believes that the direct involvement of members of the...”—Police Service Commission—“in the assessment stage of the process was not what was contemplated in the Order made pursuant to the Constitution.”

And that is what troubled the House Members who spoke and that is what concerned the process and the issue was this.

When the firm was engaged, the issue and it has been canvassed here, it seems as though it was not clear whether the members of the commission were required or even empowered to be involved in the deliberations of the firm and it would be fair to say that it seems as though they were handing a finished product to the Police Service Commission and the Service Commissions, apart from not being involved in the process, there was not a role for them to be involved in the process and it could colour the final decision and the recommendations. That was the simple fact you know. The way in which the work, the extent to which the work was outsourced created the opportunity to undermine the independence.

You see, the process must be controlled by the commission and the decision-making must belong to them and if you do not have that, then you are not independent. Independent is not airy-fairy and based on conspiracy theories. Independence has to do with an ability to control the process and—not an ability, but you are the one making the final determination. You are making the final determination and that is what was at heart.

And this select committee in a very, very good 43-page report that I will recommend to you to read to refresh, it actually engaged all of the key persons.

They operated in the context of the Harridath Maharaj decision because it was available to them and they referred via the Director of Personnel Administration's submissions, they referenced the court's decision and at the end, this committee arrived at the same conclusion that Sen. Griffith, as he was then, arrived at in 2014.

And very important to understand that those two things brought us here today and two things brought us here today in the context of our attempts to give the country a Commissioner and Deputy Commissioner because that is what because it is played out in the House with the recommendations being put forward and two being refused and a selection being made on the third attempt and it is out of that came the need not to diminish but to make it absolutely clear that the Commission is in charge of this process.

And that is why, contrary to what my colleague Sen. Lutchmedial advocates, that we must put into the process that the names coming forward, the merit list, must dictate that you pick a number one. Well, the public service has operated a merit list throughout its life. I think everybody knows what a merit list is and everybody knows the process and as my colleague Sen. de Freitas has set out very nicely, it is underpinned by the Constitution itself. The process is underpinned by the Constitution itself and it is understood that the merit list is used. And if you look at the language—that is why I would say that there is no need to amend the Order. If you look at the language of the Order, you would see in 3(e), it says:

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

So it is clear that the order of merit is determined by one thing and one thing alone

and that is the highest grade and that list then goes on to another place. And (f) says:

“the Commission shall submit to the President the names of the persons listed on the Order of Merit List in accordance with the procedure set out in section 123 of the Constitution.”

And that is what my colleague Sen. de Freitas set out for us, that this operates in the context of the entirety of section 123 for which there is no role for a Cabinet and no role for a Minister and even no role for a President. No role for the President and the President has made nominations. In fact, July 2018, the President made a nomination to the Parliament and that nomination, Madam President, was dated July 30, 2018, Legal Notice No. 108 and the Notification from the Her Excellency the President says:

“Made by the President under section 123(4) of the Constitution...subject to affirmative resolution of the House of Representatives:”

And it reads:

“Pursuant to 123(4) of the Constitution of the Republic of Trinidad and Tobago, it is hereby notified that the Police Service Commission, in accordance with section 123(2) of the said Constitution, has nominated...GARY GRIFFITH...”—to the—“appointment...”—of—“the office of Commissioner of Police.”

So this thing works as set out in 123 supported by the various Orders that have changed over the years and nothing here diminishes but it actually, given those words of convoluted and cumbersome and so on and extensive, brings us to a process that puts complete control in the hands of the Police Service Commission.

And I will just quickly go back to my friend Sen. Mark, 2016, when he filed

a similar Motion to annul the Order at the time and the usual language is here. It does not take us long to get there:

“...secretive...stealth...subterfuge...dangerous...”

Then he goes on to the usual:

“...no...dialogue, no discussion, no consultation...”

And you know what. It takes my friend 1,800 words, 1,833 to be exact—Sen. Bacchus, I know you like numbers—to get to where Sen. Mark, my friend, my very good friend says:

“Let us go to”—the—“Order...”

Eighteen hundred and something words down the line and out came the crux of the matter. He kept threatening to call some names and then 2,300 words later, he says:

“We are hearing names like Harold Phillip as the man...they want to make Commissioner of Police. We do not know. We want...”—somebody on—
“the Government to indicate...We heard...McDonald Jacob...Senior Superintendent...We heard...Vincel Edwards.”

So you see the conspiracy—hon. AG, conspiracy theory, once Sen. Mark is with us, we will have these conspiracy theories. It is nothing new.

Before that when there was an annulment under the hands of Martin Joseph, then serving in the House and Minister of National Security, it was Subhas Panday who prosecuted the case for the annulment and I read his *Hansard* three or four times and I do not know at what point Panday ever did get to the point [*Laughter*] but there was not the colourful language of my friend Sen. Mark, but Panday prosecuted a similar case of the number of murders and “the this” and “the that” and so on and never really descended to—and I guess that is what my friends got tied up with and allowed Stephen Williams 13 acting appointments.

They got tied up with the conspiracies and the things lying in the dark shadows, and so on, and did not confront the matter.

2.00 p.m.

But it is our pleasure today, Madam President, to have been courageous enough to follow then Minister of National Security, Sen. Griffith, to follow the select committee, which, in a real sense, examined the problems of 2018 and made the simple recommendations in the form of giving the responsibility to the Police Service Commission where it belongs. And I am very happy to hear that my friends on the Independent Bench, and I am sure I have convinced some on the Opposition, including my friend Sen. Mark, I know he is capable of changing his mind. It is not too late to withdraw it and I thank you very much, Madam President.

ARRANGEMENT OF BUSINESS

Madam President: Sen. Mark. Sen. Mark, I have called on you, but we can swear in the temporary Senator. Do you need us to do that before you wind up?

Sen. Mark: Yes, I would like that.

Madam President: You want the temporary Senator to—

Sen. Mark: I know. I would like her to be sworn in first.

Madam President: And to make her contribution?

Sen. Mark: Yes.

Madam President: Hon. Senators, we will revert to the Order Paper, and it is item 3 on the Order Paper. I am now in receipt of correspondence from Her Excellency, The President, Paula-Mae Weekes ORTT.

SENATOR'S APPOINTMENT

Madam President:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President

TO: MS. RENUKA RAMBHAJAN

WHEREAS Senator Anil Roberts is incapable of performing his duties as a Senator by reason of illness:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice with the Leader of the Opposition, do hereby appoint you, RENUKA RAMBHAJAN, to be a member of the Senate temporarily, with effect from 5th July, 2021 and continuing during the absence of Senator Anil Roberts by reason of illness.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 5th day of July, 2021.”

OATH OF ALLEGIANCE

Senator Renuka Rambhajan took and subscribed the Oath of Allegiance as required by law.

ARRANGEMENT OF BUSINESS

Madam President: Hon. Senators, we are reverting to some earlier parts of the

UNREVISED

Order Paper. So this is why the Clerk has just announced this.

QUARANTINE (AMDT.) BILL, 2021

Bill to amend the Quarantine Act, Chap. 28:05 [*The Attorney General*]; read the first time.

Motion made: That the next stage be taken on Wednesday, July 07, 2021.
[*Hon. F. Al-Rawi*]

Question put and agreed to.

JOINT SELECT COMMITTEE REPORT

Shipping Bill, 2020

(Presentation)

The Minister of Tourism, Culture and the Arts (Hon. Randall Mitchell):

Madam President, I have the honour to present the following report as listed in the Order Paper in my name:

Report of the Joint Select Committee appointed to consider and report on the Shipping Bill, 2020, (First Session 2020/2021), Twelfth Parliament.

Madam President: Okay, just by way of explanation, because I see that Sen. Mark is asking the question. Earlier in the proceedings, the Leader of Government Business sought to lay the report but is not a member of that particular committee. So that to rectify the records, we have asked the Minister to do so.

So hon. Senators, we will now revert to the business that we were conducting. Sen. Rambhajan.

COMMISSIONER AND DEPUTY COMMISSIONER OF POLICE

(SELECTION PROCESS) ORDER, 2021

(ANNULMENT OF)

Sen. Renuka Rambhajan: [*Desk thumping*] Deeply obliged, Madam President. Good afternoon, fellow Members. Now, on this Motion to annul the Order as put

before this honourable Chamber by the hon. Attorney General, is, for lack of better terminology, in my respectful view, a plethora of contradictions and sleight of hand. And I will explain why I say it is contradictions and sleight of hand.

I want to join Sen. Remy in her contribution when she asked the question: Why now? It cannot be that the renewal of the position for the Commissioner and the Deputy Commissioner of Police, positions that are integral to the security, care and protection of the citizenry, it cannot be that we want to change the process a mere two months before the expiration. That cannot sit well with the citizenry. And while we commend the recognition that there is a need to simplify the process, this cannot be an issue that came upon the mind of the Attorney General only this year. I would refuse to believe that. So why the delay?

Many of the Senators on the Government Benches stood up and spoke about the importance of the independence of the Police Service Commission. They spoke about the importance of the Office of the Commissioner of Police and Deputy Commissioner of Police. So this important position, and I dare say that the role of the Commissioner of Police has gained a great deal of public notoriety. This is perhaps the most informed citizens have been about the happenings of the TTPS. And it is something that is recommended because, as we have said on this side, my friend Sen. Nakhid, transparency and accountability are requirements of these two offices.

So while there has been acceptance from everybody that this office is extremely important, the process for the selection of this office is of extreme importance, and yet we bring it a mere week, a few weeks before the contract comes up for renewal. I have said it before in this honourable House and at the risk of repeating myself I say it again, because it is appropriate, “hurry bird doh build

good nest". Why are we rushing to substantially change the selection process for a constitutional position that grants power to that individual, that affects the day-to-day life of the citizenry? Should we not exercise some sort of caution and care when we look at what could be the potential repercussions of a bad fit in an office such as this? Where do we go if there are issues raised after the fact?

And that is why this Motion to annul the Order is important, because it forces us to question the legitimacy of the process placed before this honourable Chamber. And yes, it is very legalese, when we look at it, because the arguments will revolve around the law and the potential repercussions of misinterpretation of this Order. Simply put, the 2021 Order as presented by the hon. Attorney General seeks to remove the use of a third party firm. And we have heard it in this house that KPMG was the original firm that was used when the tendering process was instituted by the previous order.

But, when we consider the 2021 Order, does simpler mean better? Does simpler mean easier in terms of what is required in this Order? Is simpler more efficient? The answer is: we will not know until after the fact, and that is very scary. Yes, change is necessary but we do not want to implement change on the back foot. You want to implement change knowing exactly what your change is going to bring about, and what is the effect of that change.

The effect of this Order is that the Police Service Commission will have the independence and autonomy to make an Order of Merit List. We have no quarrel with that. That is in keeping with Harridath Maharaj and all of the learning cited by the hon. Attorney General, that the Police Service Commission will prepare an Order of Merit List.

But then, that Order of Merit List is sent to the President, according to this

Order of 2021, where:

“the Commission shall submit to the President the names of the persons listed on the order of merit list...”

And then what happens? Does transparency stop there? No, it does not. It is then before this honourable House. And there will be debate on the names provided on the Order of Merit List. So while there is great argument as to the necessity of simplifying, have we simplified too much? Have we taken out things that should still be in there?

The reason I raise that question is this. When we compare the previous order that was relied upon, which implemented the use of a firm, and we compare it with that of the 2021 proposed Order, you will see, under the 2015 Order, under clause 3(d)(iii), the candidates who would apply will submit to the Commission certain documents and then the Commission shall prepare a list, having considered the application, the resume, the medical examination report and the security and professional vetting report. This is in the 2015 Order. But there are two things in the 2015 Order that I want to itemize assessor's scores and assessor's feedback. So in 2015, when the Commission provided its information for it to eventually be debated before Parliament, included in that submission was the application of the candidate, the biography or resume, the assessor's scores and assessor's feedback, the medical examination report and the security and professional vetting report.

In the 2021 Order, those two things are absent: the assessor's scores and the assessor's feedback. And I know many will be quick to say well, there is no need for an assessor's score or assessor's feedback in that report because there is no third party who is doing the assessment, since it is the Commission. But if that is indeed the case, in addition to the Order of Merit List, should some report not be

generated for this House? Should this House not have before it, when it is preparing to debate that Order of Merit List, what was considered by the Commission to provide said list and why it is the order of merit is from highest to lowest? Would that not be an answer to many of our concerns in this House as to accountability and transparency?

The hon. Attorney General in his contribution indicated scores and reports that were provided by KPMG. But I am not about making this debate personal at all. It is about the office and the not the individual. And the Office of the Commissioner of Police is an office of accountability and transparency. Therefore, his process of appointment should be equally accountable and transparent. [*Desk thumping*] So it is not about conspiracy theory and the suggestion of pulling things that do not exist. The very purpose of the debate is to argue the merits of the proposal.

And where we see potential for the independence of the Police Service Commission to be affected, we are obligated to raise it. And any attempt to minimize a legitimate concern does not make it go away. And I want to say that to all the Members of the honourable Chamber. Simply saying it cannot happen, does not mean it may not happen. And if we can anticipate it, ought we not to fix it?

The hon. Attorney General, in his contribution said that if it is the process is wrong, there is the court there to assist us. So the hon. Attorney General is saying if we have an issue with the appointment process, or the selection process, or the terms of the Order, that we can challenge it in court. He said that today in the House, because I was listening. And yet when we challenge it, the hon. Attorney General is upset. But we are simply following his instruction. If it is bad from inception but it still passes, then we have to go before the honourable courts and

challenge it there. So if that is to happen, and the hon. Attorney General is saying well, challenge it there, do not come and complain after and say that we are obstructionist. We are merely doing that which you suggested.

Having said that, both the hon. Attorney General, Minister Rambharat and Sen. de Freitas spoke about the cost-saving effect of simplifying this process, the removal of this third party firm. But the hon. Attorney General, in his contribution, which predated theirs—when I say predated, it was earlier in time today—the hon. Attorney General said the Police Service Commission can use a firm if it wants to.

This is why I talk about contradiction and sleight of hand. There is contradiction. Because the hon. Attorney General is saying everything that is in the 2015 Order can be done if the Police Service Commission chooses to do so. So if the Police Service Commission chooses to use a third party firm in the very same manner as was done before, according to the words of the hon. Attorney General, he will just have to pay. This is what he said. He said Government will pay the Bill. So if Government is paying the Bill and accepts that the Police Service Commission has the ability to use a third party firm, how then are you also, out of the other side of your mouth, telling us you are saving money? So, you have to look at—[*Crosstalk*]

Madam President: Sen. Lutchmedial, please.

Sen. R. Rambhajan: You have to look at, not just the thing, but the appearance of the thing. In law, bias does not need to be proven. All you have to show is the appearance of bias. So in the same way, we do not have to show influence, improper or otherwise, all we have to show is the potential for influence in the selection process, and that is what we are raising. And to give it the name of “it is a conspiracy theory” and slide it to the side, does not make it go away. It is a

legitimate issue, voiced not only by the Opposition Senators, but voiced by those on the streets.

Because as I said earlier in my contribution, we have a Commissioner of Police and a current TTPS where the views of the public, they are sought all the time. So they will want to know who is going to sit in that position. And we do not have any trouble with the independence of the Police Service Commission. We just want to ensure that that independence is so sacrosanct that no matter who is on that Order of Merit List, it comes before the House, it is debated and the right person is appointed. We are not asking for favours. We are not asking for any sort of accommodation. We are raising a legitimate issue that we feel needs to be answered.

Because when you look at the history of the appointment of the Commissioner of Police, it is a very sad state of affairs, with respect, as a citizen of this country. The hon. Clarence Rambharat, in his contribution, spoke to the statements of Sen. Griffith, as he then was in this House, asking for the removal of the firm to make it simpler and more efficient.

So what we have is a statement; I want to break it down so I can understand it as well. What we have is a statement from the incumbent in the position, in 2014, adopting the process that will give him the position now. Even when I say it I find it confusing to wrap my head around it. Because to me that is not something that supports the Government position, that this should not be annulled. It is something to consider, yes. But do we really want to say that the man who is supposed to get the position, if he applies for it, and submits to the selection process, the fact that he says a firm should not hire the person who now turns out to be him, that is persuasive? I respectfully do not think so. I think what is more persuasive is, I

believe it was, I want to get it right, it was Minister Rambharat who said Stephen Williams, as he then was, was acting in the position of Commissioner of Police for several years, several years. And I ask myself the question, well, who was in Government for those several years when he was acting? Why was the process not simplified then, so that you do not have someone acting?

Be that as it may, we now move to 2021, where we have appointed a Commissioner of Police. And having appointed him, the question now remains: Do we want to continue with that system, or do we want to scrap it completely and leave it entirely up to the Police Service Commission? Well, according to Harridath Maharaj, that is entirely within the constitutional remit of the Police Service Commission. Their independence is not to be touched.

But when we look at all of the authorities cited by the hon. Attorney General, Endell Thomas, 1982 case that established the recognition of constitutional rights and freedoms in relation to public authorities; Balbosa and Harridath Maharaj, cases that the hon. Attorney General took us through.

But I wonder if there was consideration in this honourable House of a Privy Council decision in 2019? *Jamaicans for Justice v the Police Service Commission and another* 2019, UKPC 12. This case has to deal with an NGO in Jamaica challenging the Police Service Commission's decision regarding the appointment of an officer from a Superintendent to a Senior Superintendent because of allegations that were made in the public domain. And it speaks to the constitutional remit of their Police Service Commission and how and what powers they have.

If we are creating an order listing out what is the role and function of the Police Service Commission, I would respectfully recommend that we have a read of this decision because the Privy Council is binding. And it is the most recent

decision on this matter outside of Harridath Maharaj, Endell Thomas and Cooper and Balbosa. So this is what I would recommend, respectfully to the hon. Attorney General. Because the question that the court had to decide, the Privy Council:

“The issue in this case is what steps the Police Service Commission... which is charged with deciding upon the appointment and promotion of police officers, should take to inform itself about officers recommended for promotion who have been involved in fatal incidents before making its decisions.”

So I recommend this only because the Privy Council—I heard about Lord Diplock and all of the judges that the hon. Attorney General spoke of. Well, this is Baroness Hale who is very well respected—[*Interruption*]—Lady Hale, yeah. So because we know she was in Suratt, we know you will read this. [*Laughter and desk thumping*] So at paragraph 22 of this decision, Jamaicans for Justice, the court considered the Caribbean perspective when it comes to the Constitution and public authorities.

And there is very useful guidance. You know a lawyer is a lawyer when we “highlight up de place”. So all of this is what is important, but I am not going to read all of it because I will not have the time to do so.

2.30 p.m.

But I commend it simply because it answers this constitutional issue on the independence of the Police Service Commission by looking at what are the powers of the Commission itself. And that is the thrust of my contribution today. While we are on paper giving the Commission powers for selection and we have simplified it, have we simplified it so much that we actually take away responsibilities they should have? Have we in simplifying the use of the third party, the firm, have we

taken out things that would actually assist in the selection process, such as the scores and feedback in the preparation in the order of merit list? These are considerations I would want this honourable House to consider when determining whether or not to annul this Order.

You see, the Order is simple. It says the Commission shall conduct the process. The Commission shall select the persons to be assessed. The Commission shall conduct the assessment and then prepare an Order of Merit List. It sounds really simple. But on what basis are they doing any of these things? Should we specify some of their roles and functions and considerations here? Should we specify some of the factors that ought to be considered in the preparation of the Order of Merit List? Should we factor in here that some of the senior officers who are being considered for these positions may have judicial findings against them? Has that been incorporated into the Police Service Commission's assessment of how the selection is to take place? We have a security and professional vetting report. Does that vetting report take into account a judge making a comment about the conduct of a police officer who is now in the position of being—

Madam President: Sen. Rambhajan—

Sen. R. Rambhajan: Yes?

Madam President: You have five more minutes.

Sen. R. Rambhajan: I am grateful please, Madam President. Do we want to have that person nominated to the position of Deputy Commissioner of Police when there is something in writing against him? Where is the legal obligation and the Police Service Commission to consider that? We cannot sacrifice quality for quickness of time. We cannot sacrifice legitimate concerns just because we denigrate the idea that there might be an issue with the independence of the Police

Service Commission.

I want to suggest, most respectfully, that while the process needs to be simple, simple does not mean better. While we might want to give the Police Service Commission autonomy, the fullest autonomy can always be exercised within the parameters provided. So if we say, “X, Y, Z ought to be considered,” that is not usurping on the independence of the Police Service Commission. Instead, what it is doing is providing avenues and opportunity for conversation to ensure transparency and accountability in the selection of one of the most important persons in our hierarchy.

So I want to thank everyone for listening to me. Madam President, I thank you for the time and, as always, I am grateful for the opportunity to appear in this House. I am obliged.

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

Sen. Wade Mark: Thank you very much, Madam President. Madam President, in bringing this debate on this Motion to—bringing it to some conclusion, may I say that I would like to register my thanks and appreciation to all the contributors to this very important Motion which we have brought here for debate and consideration.

I would like to thank Sen. Vieira; of course, the Attorney General; my colleagues on the Opposition Bench who have spoken. I would like to also thank the Independent Senators who have spoken. And, Madam President, in total, we have had about 11 speakers, including myself, on this matter, spanning all Benches of this honourable Senate.

Madam President, we have done our duty. We have carried out our responsibility to this Senate and, by extension, to the nation. We are concerned

about maintaining the almost sacred spaces that exist and surround the Police Service Commission. And we have attempted in this debate to ensure that everything is done to ring fence this important institution under our Constitution.

Madam President, I want to borrow from my colleague's contribution—that is Sen. David Nakhid—when he said that, “If it is not broke, why try to fix it?” And I want to really indicate that based on all that we have said, whether it came from Sen. Nigel de Freitas, whether it came from my colleague on the Independent Bench, the reality is that there is no price that we can pay or we can attach to the sustenance and preservation of our democracy and our democratic values, and the literal democratic fabric of our society.

We have heard a lot of talk, Madam President, or a lot of contributions surrounding the cost of this firm and the length of time it would take to arrive at a position to determine the final selection of the Commissioner of Police as well as his deputy. But, Madam President, nowhere have we heard about the kind of fees that are given to lawyers in this country that amount to tens of millions of dollars. But when it comes to retaining, preserving, advancing, promoting, our democracy, we are hearing about \$27 million and we cannot afford that. We are hearing about, it takes too long, Madam President, to prosecute these matters. But, Madam President, we have to be very serious about what this Motion is about.

We talk about the Police Service Commission in this context, Madam President, and we also speak to the issue of the autonomy and independence of the very said Commission. But, Madam President, nobody, apart from one Senator on the Opposition Bench, has spoken to the issue of the ability of the Police Service Commission to carry out its duties, and functions, and responsibilities.

We have been following this exercise very carefully. The last firm that was

engaged in this exercise, in assisting the Police Service Commission, Madam President, is KPMG. You know how much their price tag was?—\$4 million. But we get the impression from our colleagues today about this number of \$27 million. Where that came from? The last firm, based on our research, cost the taxpayers just under \$4 million. But, Madam President, as if it is a scare tactic in order to demonize firms that may come forward or that may be used.

And, Madam President, what about the operational capacity of the Police Service Commission? Any one of our colleagues has looked at this issue, Madam President? We talked about for instance making the process simple, simplifying the process. Madam President, do you know that, as we speak today, almost 90 to 95 per cent of the limited staff at the disposal of the Police Service Commission is on contract? There is no security of tenure for these persons who perform vital duties, functions and responsibilities at the level of the Police Service Commission.

And, Madam President, if it is, as we are told by the Attorney General, that the Police Service Commission can engage its own firm and just inform the Government and the Government will pay for it, why is the Government removing that from the Order? If that is so, why not leave it in the Order? You remove it from the Order, Madam President, and what is the Police Service Commission to do? Whimsically decide to go and employ a firm, and then come to the Attorney General or to some other agency and say, “We want money”? I thought it would be more efficient, Madam President, as was done in the 2015/2016 Order, to put into this Order of 2021, which revokes the Order of 2015, that same ability of the Police Service Commission to engage a firm.

But, Madam President, we have left it out. And my colleague, Sen. Renuka indicated in her contribution that the 2021 Order has left out vital data for

Members of the House of Representatives to examine. It does not come to our House, Madam President, so we are not going to be debating the notification. But we are informed by Sen. Renuka Rambhajan that the assessors or the assessment scores that were there in the 2015 Order have been deleted and the assessment feedback that was there in the 2015 Order has been removed. Why did the Attorney General and the Government remove the assessment scores, that indices that was therefore before? Why?

Madam President, we believe that we must take into account the fact that the Police Service Commission may not have the internal human resource staff to conduct its own assessment exercise in terms of the selection of a Commissioner of Police. And so, this is so important, Madam President, that—and I would like somebody from the Attorney General's Office to indicate, Madam President, whether the staff that provides support to the Police Service Commission, 95 per cent of them have been on contract on a month-to-month basis since 2019. Because there have been no renewals of contracts for any extended period of time for these workers, these employees, that give vital support to the Police Service Commission which is an independent institution. You know, Madam President, what that has resulted in? Literal attrition. When people leave, Madam President, because of frustration, they are not replaced. So I raise the issue, Madam President, of the operational capacity of this independent institution under our Constitution to carry out this very critical function that it has to carry out.

Madam President, I also want to get to another important point that I believe that my colleagues may have overlooked and it has to do, with a statement issued by Prof. Ramesh Deosaran, a former Chairman of the Committee. I have a copy of the statement. And, Madam President, the former Chairman of the Police Service

Commission was making reference to the very Order that we are debating today, the Legal Notice 183. And he was very careful because he is a very clinical and analytical individual. And in the first sentence of this statement, he says:

That there are two related matters before the Parliament and the public. One is the appointment of the COP and the other is a proposed amendment to the Police Service Commission by Legal Notice 183.

Why would Prof. Deosaran point out to an amendment to the Police Service Commission as contained in Legal Notice 183?

Madam President, again, it comes to the point that we are were making very early in our contribution that the Government is seeking in a very subtle way to influence the Police Service Commission in the execution of its functions. And I want to appeal, because Madam President, I do not understand also when the Attorney General tells us that his office has had discussions within the Police Service Commission, Senior Counsel or lawyer, who is a Senior Counsel and they have indicated to the Attorney General—and he could tell me if I am wrong—that, you see, what was in the 2015 Order, in terms of this firm, we want our full autonomy back. And I do not know if it was meant when the AG spoke that the firm that was there before, whether the Police Service Commission through its lawyer who is a Senior Counsel was advocating the—either removal of the firm that they normally would recruit to help them out and allow them to be responsible for their own selection, their own assessment, their own interviews, because this would give them back full autonomy. I am not too sure, Madam President.

Madam President, as I am on this particular point, may I ask the Attorney General, where did this request come from? Who requested this new Order? Was it the Police Service Commission or was it the Cabinet? Where did this Order come

from? Who called for a simplification of the process? The Executive arm of the State or the independent Police Service Commission? If it is the independent Police Service Commission, I am asking for the Police Service Commission to put out a public statement indicating that they approached the Executive, through the Attorney General, asking for this new executive arrangement through this Legal Order. We need to know, Madam President, who is responsible for this particular Order. We need to know this.

Hon. Al Rawi: Would the Senator give way for an immediate answer?

Sen. W. Mark: You could use 46—

Hon. Al Rawi: Or you do not want an answer?

Sen. W. Mark:—46(2). He can respond when I am through because I “doh” have time, right? You could invoke 46(2) and speak. Okay? Or 44(2).

Madam President: All that time “yuh” taking about 46(2), just continue.

Sen. W. Mark: Yes, yes. I think 48(2)—no it is 44; 44.

Madam President: [*Inaudible*]

Sen. W. Mark: Thank you, Madam President. I will proceed. So Madam President, the question here is what—Madam President, I want make it very clear that this particular statement made by Prof. Deosaran calls for transparency and we support it. The Police Service Commission will take their decisions, but the public of Trinidad and Tobago and parliamentarians would not be privy as it relates to the criteria that would have been used. So what did the Attorney General not bring this Order where we could have include or have included in the Order, Madam President, the need for some degree of greater transparency in the whole exercise? So we will know what is informing—what decisions are being taken and how these decisions will impact on these officeholders who are very critical to peace, and

stability, and national security in our country. But we did not get that.

Madam President, I want ask the following questions, and nobody raised this, and I think I need to raise it as the mover of this Motion. Madam President, you are aware that a process was conducted about two years ago—two to three years ago. I think it was about 2018/2019. And, Madam President, when that process was conducted, a Police Commissioner was approved and confirmed and appointed. Madam President, you would recall during that same period, three Deputy Police Commissioners' notifications came before the Parliament. One is no longer relevant because one individual is now before the courts. But there is another individual who applied for the post of Deputy Commissioner of Police. I think his name is Norton.

The Police Service Social and Welfare Association is very concerned, Madam President, that this individual who went through all the necessary stages required to have his name submitted to the House of Representatives, only for the House to approve that name, Madam President, we have not done that. But you know, Madam President, what has happened? We are now debating an Order, that is already law, and the question that is asked that I wish to pose is, what will happen to that particular Deputy Commissioner of Police's notification? Would it now fall by the wayside, Madam President? That is an issue that the Police Service Social and Welfare Association would like to clarify. And there were 12 persons who were short-listed and nobody has contacted these officers and nobody has contacted the Deputy Commissioner of Police Norton on this matter.

So, Madam President, we are debating on order to revoke the 2015 Order that threw up three Deputy Commissioners of Police. Only one has been appointed, that is Deputy Commissioner Jacob. One is outstanding, I think it is Inspector

Norton or Superintendent Norton. And then one could not make it because, as I said, there is a matter before the court.

Madam President, it would be good for the Government to invoke 44(2) and speak to the issue because it is real. Madam President, would this Order that we are dealing with actually overthrow all that has happened in the previous arrangement? And what will happen to the Deputy Police Commissioner? So I raise this matter, Madam President, because I believe it is one of grave interest and there is need for clarification from the Government on this issue.

Madam President, my colleagues who have spoken—I do not support the Attorney General's and his colleagues' intervention. I believe that this Government, because of their history, cannot be trusted.

3.00 p.m.

And for the Attorney General to bring this Motion at the time that he brought this Motion, it leaves a lot of questions hanging and there are a lot of questions that we need to still pose and a lot of answers that are still needed by the Government to clear the air on these very issues that we are prosecuting.

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

Sen. W. Mark: Madam President, the Attorney General, and his Government must come clean and tell us what is the real objective behind this—these amendments to the Order of 2015? Why are they revoking 2015? Why are they putting all the names in one box and sending it to the President and not one at a time? Why are they putting pressure on the Police Service Commission? Not to send one, not to send two, not to send three, not to send four, but to send if there are five names all to the President and what is the President to do?

Madam President, we believe there is more in the mortar than the pestle and the Attorney General and his Government must come clean and tell us what is their real intention? Is the intention of the Government to remove the current sitting Police Commissioner and put someone else and this is why this Order is before us today? What is the objective? We support the current Commissioner of Police. We support them, support him. And we want to know what is the mischief behind this piece of legislation? Why is the Government seeking to change the Order when there is no need to change the Order, Madam President, given Justice Peter Rajkumar decision on the 14th of July, 2016? Is there more in the mortar than the pestle? Is there a conspiracy on the part of the Government to deal with their friend and put somebody in to replace? What is the objective? Tell the country the truth. Do not mamaguy the country. Let us know what your real intentions are. Half of the Cabinet saying, Gary Griffith must go; half of the Government saying Gary Griffith must stay. What is the objective? We need to be clear on this matter because you are not going to take us for ride. We need to be very clear on what your real intentions are. And Madam President, they must come clean, they must tell the country the truth. What are the intentions of the Government? Are they committed to removing the current Commissioner of Police?

And, Madam President, in closing, let me indicate I want to support Sen. Vieira. He said something; I want to support him. They should have had a provision in Gary Griffith's contract for renewal. Right now there is no renewal provision in that contract. So they have the distinguished Commissioner of Police at their fingertips, and they can do whatever they want with him, because there is no renewal provision in the contract. What is the real objective?

Madam President, I call on the Government to come clean, let the country know what they are about and I beg to move. Thank you very much, Madam President.

Question put.

Sen. Mark: We want a division for that.

Madam President: I will allow three minutes for all Members to return to the Chamber.

Sen. Mark: We are supporting the Commissioner of Police.

Madam President: Sen. Mark, you have finished your contribution.

Sen. Mark: Yes. Sorry, sorry.

Madam President: Okay, go ahead.

The Senate divided: Ayes 6 Noes 23

AYES

Mark, W.

John, Ms. J.

Lutchmedial Ms. J.

Nakhid, D.

Lyder, D.

Rambhajan Ms. R.

Noes

Rambharat, Hon. C

Gopee-Scoon, Hon. P

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Mitchell, Hon. R.

Cox, Hon. D.

de Freitas, N.

Singh, Hon. A

Sagramsingh-Sooklal, Hon. R.

Bacchus, Hon. H.

Lezama-Lee Sing, Hon. L

Bethelmy, Ms. K

Ibrahim, Dr. M.

Richards, P.

Vieira, A.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, D.

Thompson-Ahye Mrs. H.

Dillon-Remy Dr. M.

Welch E.

Motion negatived.

Madam President: Attorney General. [*Desk thumping*]

MUTUAL ASSISTANCE IN CRIMINAL MATTERS (AMDT.) 2021

Order for second reading read.

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

Thank you, Madam President. Madam President, I beg to move:

That a Bill to amend the Mutual Assistance in Criminal Matters Act, Chap.

11:24, be now read a second time.

Madam President, if you would remind me again, it is forty minutes, yes?

Madam President: Forty-five.

Hon. F. Al-Rawi: Forty-five minutes, much obliged. Madam President, the Mutual Assistance and Criminal Matters Act, Chap. 11:24, is an Act of Parliament No. 39 of 1997. It was amended in 2001, 2004, 2005 in 2018 and lastly, by Act No. 25 of 2020. This particular Act we seek to amend today in a few short clauses, but clauses which are extremely important to the structure of cooperation in the international arena as it relates to criminal matters. The Bill before us, including the short title and the interpretation section, is five clauses long. And, Madam President, if I could ask you to note, what we seek to do today is to broaden the operation of mutual assistance in criminal matters in an attempt to level the playing field.

Now, the parent law is built around the Harare Scheme. And the Harare Scheme, as it is referred to, the scheme in the legislation in the interpretation section, is the international arenas agreement that jurisdictions around the world, countries around the world ought to cooperate with each other, such that the pursuit of wrongdoing across the globe can be treated with by a form of reciprocity. That reciprocity in our law, in adopting the Harare Scheme is divided between Commonwealth countries and non-Commonwealth countries. And if you look to the structure of the parent law, and you look to the application of the Act in section 4, we start off by recognizing that:

“The Attorney General may, by Order, direct that the application of this Act in relation to a particular Commonwealth country shall be subject to such conditions, exceptions or qualifications as are specified in the Order and in that event this Act shall apply accordingly.”

And then, Madam President, if you go to the provisions of Part IV, the “Application of the Act to Countries other than Commonwealth Countries”, you get to section 32, you will see that we are treating with a:

“‘non-commonwealth country’ means a country other than one included in the definition of ‘Commonwealth country’ in section 2(1);”

And with this cleave in the world, I can say this now, Madam President, we are at the Office of the Attorney General engaged in an overall review of the mutual assistance in criminal matters legislation, because when you look to how the law has developed, and you rank it up to the globalization of the world, in particular, the multi-treaty globalization effect that we have seen, there is a definite need to review our legislation and I will point to just a few of the examples that stand as good precedent.

We have the Mutual Assistance in Criminal Matters Act 1985 of Canada. We have the legislation coming out in Australia, the Mutual Assistance in Criminal Matters Act 1987. We have the Crime International Cooperation Act 2003, of the United Kingdom. But when you look to the manner and structure of mutual cooperation; you look to what has happened with the European Union; you look at what has happened with the Global Forum of Bodies; you look at what has happened in the European Commission; you look at what has happened in the Financial Action Task Force; there has been a globalization. And what I found compelling when I looked at the Canadian law is that the application of this law, the law in Canada, applies to all jurisdictions quite simply.

I look at section 2 definitions agreement in the law of Canada.

“agreement means

a treaty, convention or other international agreement that is in force, to which Canada is a party and that contains a provision respecting mutual legal assistance in criminal matters,”

Quite simple. There is no more this archaic Commonwealth distinction between—

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

—as I welcome you, Mr. Vice-President to the Chair, there is no more this archaic distinction between Commonwealth and non-commonwealth because the world has long gone past that, particularly in a digital environment, in the world where intellectual property also has aspects of criminality attached to it, it is global. And therefore, today we take an immediate step in amending the non-commonwealth aspects of the law, by allowing us the ability to open the door, and in this case here, the multilateral doors towards application of reciprocity for criminal matters.

Now, the parent law, if I can explain the importance of this, the parent law effectively captures in its schedule, we have mutual legal assistance via treaties, we have with the United Kingdom, we have with Canada. Those are the two Commonwealth countries where we have treaties and we have the United States of America, which is a non-commonwealth country and that is also a treaty.

What we have in the rest of the world in operation, Mr. Vice-President, is an important concept. Trinidad and Tobago has been assessed by the Global Forum, by the European Commission and by the Financial Action Task Force as being in need of some significant commitment, demonstrable commitment to reciprocity in matters, if a foreign country asks you for help in securing evidence and securing witnesses, in securing participation, movement of prisoners, in securing search orders, seizure orders. If a foreign country be it Commonwealth or non-commonwealth asks you for assistance, there is an agreement in international law and there is now a binding commitment by way of mutual evaluation, tracking of

outcomes and processes that says, you ought to dismantle all boundaries, effectively. You ought to do that whilst preserving safeguards. You cannot use mutual assistance for political witch hunting; you cannot use mutual assistance in many matters that the Harare Scheme and other schemes post that; and also, the regulations to the parent Acts set out to say that the Central Authority has a right to ensure that you are not being prosecuted or hunted or investigated for improper purpose. So there are safeguards.

In Act No. 25 of 2020, we took the step that the Financial Action Task Force asked us to do, we deconstructed, we removed section 22(2)(k), which was the ability of the State to say that they will not assist for tax evasion or tax matters. That was a material deficiency in our Financial Action Task Force recommendations coming to us, we had to take that step; we were very pleased to do it. As a result of taking that step, we were lifted out of the grey list and the ICRG, the International Cooperation Review Group listing of Trinidad and Tobago, and we graduated.

But at the same time, we are still under inspection by the Global Forum and the European Commission and we have to treat with those aspects. But in any event, I can tell you now, and this is not with any ad hominem purpose, as the Central Authority, the Attorney General sits as the Central Authority under the Mutual Assistance in Criminal Matters Act, I am in receipt of constant requests for assistance and I have an obligation on behalf of Trinidad and Tobago to facilitate that response, with due process, with fairness, with regard, and there is a material deficiency at present in this law, in that we are constrained in the manner in which we can help non-commonwealth countries: the whole of Europe, the whole of Asia, the whole of Southeast Asia, the Middle East, the whole of Latin America

and the United States of America, the vast majority of them parts of Africa, stand—Russian Federation stand as non-commonwealth countries.

And, Mr. Vice-President, when we looked to the fact that Trinidad and Tobago is a participant in the following conventions: number one, the UN Convention against drugs 1988; number two, the UN Convention against Corruption 2005; number three, the United Nations Convention Against Transnational Organized Crime in 2000; number four, the UN Rome Statute of the International Criminal Court 2002; number five, the Inter American Convention on Mutual Assistance in Criminal Matters Act, 1992; number six, the Inter American Convention Against Illicit Manufacturing and Trafficking of Firearms, 1998. When you look to us being a treaty and convention member of those areas, when you look to our tax information exchange United States legislation; you look to the Inter-Governmental Agreement with FATCA in mind, that is, the foreign transactions with the United States of America, information exchange; you look to the Tax Information Exchange Legislation that underwrites and supports the Global Forum.

When you look into the multilateral treaties that we are engaging in with the European Union to meet Global Forum satisfaction; when you look to the double taxation treaties that Trinidad and Tobago has with Brazil, Canada, Caricom, China, Denmark, France, Germany, India, Italy, Luxembourg, Norway, Spain, Sweden, Switzerland, United Kingdom, United States of America and Venezuela, you understand that we have multiple obligations coming at us. You look to our acceptance of intellectual property rights conventions, in their multiple forms, be it under the WIPO, be it in the Rome, be it in any one of the conventions, Marrakech, Beijing, and you have an obligation to uphold via criminal process, intellectual property rights, TRIPS. You look at all of these obligations, we are a globalized

environment, but our Mutual Assistance in Criminal Matters Act says, listen, we could help you if you are in the Commonwealth, and we are severely limited in the non-commonwealth. So that is just unacceptable.

Quite frankly, I find it staggering that this has not been the focus of previous governments. It is something that we paid attention to, since 2015 to be clear about it, but in looking at this particular structure, what we seek to do today to put it in its simplest form possible, we seek to bring to life the ability to use multilateral conventions which treat with mutual assistance in criminal matters as a subset of the convention. So you can use TRIPS, you can use Rome, you can use Marrakech, you can use the UN conventions against corruption, et cetera, you can use the Global Forum, you can use FATCA, we seek to use all of those conventions, including double taxation relief treaties, and multilateral treaties, that refer to the obligation for assistance in the mutual reciprocity of criminal matter treatment.

And therefore, we seek to amend section 32 of the parent law by amending the definition of the word “treaty”, and inserting after that the fact that it includes a multilateral treaty. I have just given you a whole shopping list of multilateral treaties. And in section 33, we add in a new subsection (1A), borrowing from the precedent of section 40 of the existing Act. Section 40 of the existing Act came in 2001; section 40 brought to life the use of multilateral or treaty obligations anchored in drug trafficking offences. Subsection (1A) of 40, section 40, says:

“40 (1) Where a treaty has been concluded...”

—you can declare a treaty to have force, et cetera. So we borrowed from the precedent in section 40 of the parent law and we have transported it now to section 33. Section 33 deals with the non-commonwealth obligations and it falls squarely under Part IV, which in title says “Application of Act to Countries other than Commonwealth Countries”. And what we are proposing to do here, in the first part

in section 32, we define “treaty” as including a multilateral treaty. In section 33, we propose to add the new subsection (1A) and we say here—

“(1A) Where Trinidad and Tobago and a non-commonwealth country are both parties to a treaty...”

—so, you can use any one of the multilateral treaties there—

“concluded whether before or after the commencement of this Act, and which includes provisions dealing with criminal matters...”

In other words then, it does not have to be the primary focus that it is just about mutual assistance. So, it:

“includes provisions dealing with criminal matters and there is no arrangement for mutual assistance in criminal matters between Trinidad and Tobago and that country, then upon the application of that country for assistance, the Attorney General may, by Order, subject to negative resolution of the Parliament, declare the treaty, as an arrangement to provide for mutual assistance in criminal matters in respect of criminal matters falling within the scope of that treaty between Trinidad and Tobago and that other country.”

And then we put the caution that the treaty should only last as long as the treaty is alive. And this, therefore, provides an immediate solution to allow our dualistic law to go to work. Why? A treaty is not made law in our country unless it is brought to life by local legislation. So, we take the rule of law in Trinidad and Tobago, we bring the multilateral treaty to life within the confines of this law, so that we can provide mutual assistance in criminal matters via this particular section. This allows us Mr. Deputy, sorry, Mr. Vice-President, this allows us to take care of some significant observations, significant observations. It is a matter

of record that this country has a number of cross jurisdictional matters under consideration. It is in the public domain.

It is a matter of record that the Financial Intelligence Unit in its last annual report, ending September 30, 2020, told this country that we have received for the last year 1,831 suspicious transaction reports and suspicious activity reports representing an 80 per cent, eight zero per cent increase from the previous reporting period. And that, that number of suspicious transactions and suspicious activity reports represented 27 billion with a B, \$27 billion and that nearly 50 per cent of that was for tax evasion alone; 50 per cent of that, money laundering, drug trafficking, et cetera.

Now, Mr. Vice-President, it is by no stretch of the imagination an exaggeration to say that 27 billion Trinidad and Tobago dollars is a lot of money. And when we see the outflow of money as we move towards digital currency, as we move to cross border flows of money, as we look at tax evasion versus tax avoidance, as we look at the concept of transfer pricing. Just in the realm of taxation alone, if you look to the world of intellectual property, as we become a digital environment and a digital country, if we look at the aspects and prospects available to Trinidad and Tobago to become a hub and centre arrangement for data. What do we have? We have molecules of oil and gas, molecules of oil and gas that can be used to generate electricity, electricity that can be used to generate the newest form of gold on this earth, or diamond on this earth, or precious commodity on this earth, that is data. Trinidad and Tobago sits next door to some of the largest oil fields on the planet, and is a participant in that. We have excellent prospects of our own probable, possible and proven reserves, putting us in a condition where, our country is one of two countries on the Earth, where some of the largest multinationals have not cut back on development, Qatar and Trinidad and Tobago.

And therefore, if we are serious about allowing for protection of our resources, recognizing that we are in a global environment, recognizing that Fintech is here to stay, recognizing that digitization is here to stay, recognizing that criminal activity happens in the world of intellectual property, and you need only look at what is going on with the share pricing on the global market in relation to any one of the crypto aspects. We need to take immediate steps to allow for reciprocal treatment of our non-commonwealth partners, because they by far outnumber the Commonwealth partners, especially when you look at it from a trading and commodities perspective.

And this law, as simple as it appears in amending sections 32 of the Act and 33 of the Act, this law is an epically important piece of law for Trinidad and Tobago, epically important. It allows us to not only tick the boxes in the mutual assessment criterion that we are required to go through, as we will go through the Fifth Round Mutual Evaluation that the FATF has in store for us, as we will go through the CFATF revision exercise where we ask for reclassification of our standing at CFATF, as we will address the European Commission and the Global Forum. And I am very grateful that Sen. Lutchmedial is here because she would associate very well with all of these matters, having served at the FIU herself, and the TTSEC and other places.

3.30 p.m.

But, what we are talking about here is something that not only meets our international obligations from a technical compliance point of view, but it allows us to meet the immediate outcomes, the IOs, the places where you have to be deemed to be efficient. Because it is all well and good to have technical compliance, you have a law, but you have to have an operational performance that is measurable in this regard.

So, Mr. Deputy—Mr. Vice-President, forgive me. I am confusing the Presiding Officers between the House and the Senate at times. Mr. Vice-President, this law is critically important law. I would like to say that there are further amendments to the Mutual Assistance in Criminal Matters Act that we are looking at. But, as I have repeatedly said, the Parliament is here to work, and once we have settled one thing that is green lighted to go, we will treat with that, and there may be other things that are coming ahead. It is my philosophy—you know what I am about to say—it is the prudence of “just start”. Just start goes a long, long way. It avoids analysis paralysis. Just start helps us in matters, for instance, look at the Public Defenders Division, if you are going to look to the defence of rights in criminal matters?

Mr. Vice-President, by way of comparison in criminal matters, in 2015, we had no Public Defenders Division. Today I can tell you, for example, having opened the Public Defenders Division, that of the 1,260 people on charge for murder in criminal matters in Trinidad and Tobago, 788 of them are represented by the Public Defender. If you for a moment understand the impact of what I have just said, operationalization in just start goes a long, long way to changing your society.
[Desk thumping]

So, Mr. Vice-President, I commend this legislation as anchored in international perspective. There is a very legitimate aim associated with this law. There is a serious connection to proportionality in terms of the measures that we are taking. There is ample precedent, not only within the law as it stands in section 40 of the Act, the parent Act, but also in terms of the reciprocity that we are bound to observe in our international obligations.

I wish to underwrite the support for this legislation by pointing out to the fact that this is much more than just hard crimes, because hard crimes today are

digital crimes. Hard crimes today are cybercrimes. Hard crimes today include ransomware that shut down pipelines, that turn off electricity, that sabotage national security. Hard crimes today can involve the collapse of an economy, if you are in a digital environment, as we saw El Salvador take a very bold step to put some of its reserves in crypto currency in terms of the backing of its currency arrangements. This is where Fintech is, if you look at it from that point. This is where intellectual property is, this is where trafficking in drugs is, this is where bribery, money laundering, corruption and perversion of the cause of justice resides. It is all around us.

We have an obligation to help those who ask us for assistance. We have an obligation to put ourselves in a position to ask other people to help us, but that in the international community is underwritten or provided by the simple and timeless arrangement of reciprocity. You must have reciprocity. In our laws, the reciprocal arrangements come to life in a dualistic concept of law by incorporating treaty law as local law. It must be on your statute books.

The amendment to section 32 and the amendment to section 33 of the Act provides that legitimate basis. I look forward to contributions of my learned colleagues opposite. I certainly look forward to any improvements that hon. colleagues may recommend, if there are any, and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Jayanti Lutchmedial: Thank you. Thank you, Mr. Vice-President. Mr. Vice-President, I do not propose to be very long. This is a very short Bill. It is just three or four clauses that make some amendments to what exists in our Mutual Assistance in Criminal Matters Act, No. 39 of 1997, which was amended a few times, and really is meant to ensure that you can have the exchange of information from the investigative stage of criminal matters, all the way up to criminal

prosecutions and that you can also have process, criminal processes that can take place cross-border. So you have things like down to the service of warrants, and although extradition is separate and apart from what is contained here, it is a form of mutual assistance as well, where we can take part in extradition. All of these things, I agree with the Attorney General, very important and, even more so, important now when there is just, you know, an explosion I would say, of crime that crosses borders.

Now, treaties are really the role and function of the Executive, and in order—you know, so the Executive takes the decision as the Crown would have done in previous times under the British system to enter into treaties on behalf of the people of this country, and in order for the rights and duties and obligations contained in those treaties to come into our national law, the Parliament must play a role. So, the first point I want to make here is the role of the Parliament, because what is proposed here is that:

“...the Attorney General may, by Order subject to negative resolution of Parliament declare the treaty as an arrangement to provide for mutual assistance in criminal matters...”—to be applicable.

So that what is contained here in this law, passed by our Parliament, can now be extended to countries who are part of multilateral treaties. And so the Bill seeks to amend the definition of the word “treaty” in the particular section that deals with non-commonwealth countries, so that a treaty will include a multilateral treaty. And as the Attorney General has outlined, we are signatories to a number of multilateral treaties.

So, where we are part of one of those multilateral treaties and there are other non-commonwealth countries, which we would have already entered into and which we could enter into subsequently, and there is a provision to deal with any

criminal matters, we do not have to now negotiate or enter into. There is no process, like what would pertain with a normal bilateral treaty or with, let us say, for example, the treaties that we have in existence with the United States, with Canada and with the United Kingdom for mutual assistance. Whatever applies in that treaty, the Attorney General can pass an Order. And I take the point that, of course, under this law, you can have exceptions and so on contained in the Order. But, essentially, the duties and obligations and whatever rights that we may acquire by virtue of this arrangement is in the total remit of the Attorney General acting as the Central Authority, and that can have certain repercussions for the citizens of this country.

You see, not all countries have a political Attorney General. And I say that without any, you know—I am not speaking about the person. I am speaking about the office. Many countries do not have a politician. Right here in the Commonwealth Caribbean, you find that they actually advertise the position of Attorney General and people can apply for that position. I know a lot of Trinidadians who have applied for the position of Attorney General, let us say, for example, in the British Virgin Islands, in Dominica and in other countries, but when you have a political person sitting in the office, in the chair of Attorney General—whoever is in Government and whoever the Attorney General might be—you want to be extra careful with the mechanism that you are using to bind the citizens of this country to certain things with other countries and to have certain rights and obligations which may be contained in a multilateral treaty. Because, of course, again, as I say, we do not, under the British system, have any parliamentary role in the negotiations or the engagement in treaties. It is something that stays solely with the Executive and that is part of our colonial heritage, so to speak.

So, I came across a very interesting article written by Mr. Winston

Anderson, who is now a judge at the Caribbean Court of Justice, and many of us who went to Cave Hill would remember him. And he wrote this article—it was published in the *Caribbean Law Review*—and he examined the whole treaty-making process in Caribbean law and about, you know, how our Constitutions function with that in this treaty-making process.

He examined, for example, outside of the Commonwealth—and I think this is very important for us to look at. Because if we are going to say that we want to do business, for want of a better phrase, with people outside of the Commonwealth, let us look at what they have, because we want to be on equal footing. We want to ensure that our citizens have the same benefits that they may have. And I just want to quote from the article now by Justice Winston Anderson who says:

“In the vast majority of democratic countries outside the Commonwealth, express provision is made for the treaty making competence. For the most part, the power to conclude treaties is reserved to the executive but is made subject to constitutional provisions guaranteeing legislative participation. The role of the executive arises largely from its traditional function in policy making in external affairs. Here, it is essential that the state speaks with one voice.”

And then later on he says:

“Parliamentary participation, on the other hand, had to be justified on other grounds. In this regard, the adoption, in 1789, of the Constitution of the United States of America, marked an important watershed. Fear of executive autocracy impelled the founding fathers of the American constitution to provide for the first time that the head of state could not enter into treaties alone. Under Article II, section 2, the President has power ‘by and with the

advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.”

Now, back in 1789, the Senate was something like a Cabinet in the United States. He goes on:

“By the end of the 19th century the conception of the senate as a cabinet with which the president consulted had been replaced by a senate that was popularly elected.”

And, as you know, when you have the US elections, they have two Senators per state and they are elected. So, now you have elected representatives in the United States Legislature actually having input into their treaty-making process.

“With that development”—he goes on to say—“came assertion of the influence of representative democracy over treaty making. By contrast, the theorists of the French Revolution grasped the essential problem of treaty making immediately. The French Constitution provided for legislative participation because it was realized at the time of the Revolution that ‘a treaty obliges the nation and the citizens, those governing and those governed.’”

So, you see, outside of the Commonwealth, there is a large role envisioned for the Legislature, because of what you are seeking to impose upon the people that you are governing. It is not strictly an Executive function. Following the British model, Caribbean Constitutions really do not have any sort of provision like that. And, again, Justice Anderson says:

“United Kingdom common law and practice emphasize the exclusivity of the executive in foreign affairs.”—and we accept that—“Treaty making is an exercise of the prerogative powers by the Crown through the executive branch...There is no legal requirement that parliament be consulted or be

otherwise involved, although this position in strict law has been mollified by several constitutional conventions developed within the context of the British system.”

Not having a written constitution, the British have their conventions that they follow now, so that it is not so much an Executive decision alone. And Justice Anderson says:

“Unfortunately, Caribbean states have adopted the strict rule but not the conventions that make the rule tolerable.”

So, we have this British system where the Executive alone negotiates treaties and enters into treaties, but we do not have those conventions whereby there is a check and a balance on what is happening when the Executive enters into these treaties. Now, why is all of this important? I am sorry to be so academic, but I think it is an academic sort of Bill and debate. It is important because of the definition of what is “criminal proceedings” in this law. Criminal proceedings, in this Act, which we are seeking to amend, includes anything from the investigation stage, as I said before, even on a mere suspicion that a criminal act has been committed. Even if there is just an investigation that has been commenced, a state can request legal assistance from us.

So, when the Attorney General receives that Order, sitting as the central authority, and he makes an Order, it takes immediate effect with absolutely no oversight from the Parliament, because it is done subject to negative resolution. Now, what does that mean for us? It means that a political person is really going to determine whether or not we engage in mutual legal assistance under a particular treaty, under a particular clause, a treaty that the Parliament and that the people of this country really had no input into. It was solely an Executive decision. So we want to be cautious about that.

One other—and I think this is the first time I have ever done so much academic reading here—but another interesting article that I came across, more recent than Justice Anderson’s, is it describes the South African experience, and it is an article written by Gerhard Kemp from the University of Stellenbosch—I hope I pronounced that correctly—entitled “Mutual Legal Assistance in Criminal Matters and the Risk of Abuse of Process: A Human Rights Perspective” and he went through all of that. He looked at and the South African experience and he says here that:

“...the Harare Scheme on Mutual Assistance in Criminal Matters (a Commonwealth scheme that provides that member states must provide mutual assistance via domestic legislation) was amended to provide for specific aspects of due process like the protection against self-incrimination and legal privilege.”

Now, those are features of Commonwealth Caribbean Constitutions, again, part of our British legacy because, of course, they recognized those constitutional principles.

When we are entering into bilateral or multilateral treaties, do we know what each and every country—what their system of protection is like? And this particular author from—it is the South African university—goes on to say that:

“...the criminal justice system is often embedded in a system of constitutional safeguards for accused and detained persons.”

And I would go further to say that it also has constitutional safeguards in our system for people who are suspects.

“In short, constitutional democracies normally view criminal justice not as a system aimed at punishing criminals at all costs but rather as a rights-based approach to punish the guilty, after a fair trial. Since the criminal justice

system is indeed systemic in nature one should view the pre-trial process as part of the whole in order to evaluate in the end the fairness of the process.” So, you cannot under any circumstances look at the outcome and say, well listen, we are catching just the guilty person and that is what is important here. We have convicted someone of a crime that has taken place or we have extradited or we have assisted somebody in another country to convict someone. You want to look at the whole process. Do the other countries who are parties to these treaties who we want to now, as I say, do business with, do they have the same constitutional safeguards that we have here for people who are suspected of committing crimes, people who may be accused and so on? And we want to know how that will work. Because, you see, when you get in the realm of international law, the whole dynamic changes. When you want to cooperate with other countries, you know, it is a foreign-relations type issue. It is not just a criminal justice issue by itself. So what are the considerations that are going to go into the decision to make an Order under this proposed amended and inserted section 33(1A)? These are important considerations for us to have when we are looking at this.

The other thing that I want to raise is that we have, in fact, a number of laws which provide for the exchange of information. So the FIU, for example, is part of the Egmont Group, and under the FIU Act that are authorized to exchange financial intelligence and that is what they do. They do not investigate. They collect the intelligence and they analyze it. So they have that system in place.

Under the Anti-Terrorism Act, you know, there is an almost very similar clause. I think it is section 30 similar to this that says that:

“Where Trinidad and Tobago becomes a party to a treaty and there is in force, an arrangement between the Government of Trinidad and Tobago and another State which is a party to that treaty, for mutual assistance in criminal

matters, the arrangement shall be deemed, for the purposes of the Mutual Assistance in Criminal Matters Act, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of that treaty.”

So, I just want to know, if we have things that deal with financial intelligence, we have provisions that deal with terrorism. I know the last Parliament passed a Mutual Assistance in Tax Matters Act. Is it necessary for us to now have this in place, at this point in time? And I raise the issue of, this point in time, because as the Attorney General has said, there is a lot that needs to be done with this Mutual Legal Assistance Treaty to bring it into the modern world. So, is this small fix that he is proposing here, is there a specific purpose behind it? He says he gets a lot of requests. Is there some specific request that he wants to treat with that is why we have this amendment coming here? Because we have so many other laws in place that can deal with the exchange of information—terrorism, tax evasion, you know, financial intelligence, all of these things. Customs, there is even one—I think there is a provision in one of these miscellaneous provision laws, Act No. 2 of 2018. They amended the Customs Act:

“Declaration of treaty in force

Where a treaty has been concluded between Trinidad and Tobago and any other territory in relation to the provision of mutual assistance between or amongst Customs Administrations, the Minister may by Order, subject to negative resolution of Parliament, declare that the treaty shall have the force of law...”

So, you have all of these provisions in place for so many different things. Is it necessary for us to bring this little adjustment right now? Is there some specific reason? Would it not be a more prudent use of parliamentary time to, as he says,

you need maybe an overhaul of the entire system. Where are we going with it? Is it that we can expect it to come sometime soon? Because it is of concern to everyone that we want to have the best possible law to not just enable us to share information, but to also receive information, and is in that receiving of information that I think we would have a problem. Because whereas we might be very quick to want to pass Orders and declare things so that we can share information with the outside world, and outside of the Commonwealth as this amendment permits, if we were to make those requests, I think we would have some serious challenges, and I would get into that in a little while.

Mr. Vice-President, in relation to, as I said, conflicts of laws and countries that do not have laws that are like, for example, human rights laws that equate to ours or countries that have a higher standard with respect to human rights protections, you can have some issues arising and this is why, for example, again, I would advocate for a greater role for the Legislature in determining—as we have seen outside of the Commonwealth that they have done—where the country will position itself in terms of agreeing to have reciprocity with other states.

When you are entering into a multilateral treaty, these are sometimes, you know, 110, 120 countries. I heard the Minister of Health say 212 countries using Sinopharm. Well, I know it only have 195 countries in the world and I do not want to invent anymore. But all 195 countries could be in a multinational treaty. And, you know, are we going to examine each and every single one of these countries when a request comes in so that we can decide how we proceed?

Let us take an example of China. There are serious accusations against the People's Republic of China with respect to human rights violations against an ethnic minority of Muslims who are in, according to the international media, being housed in something resembling a concentration camp. Now if, for example,

someone in Trinidad who is a sympathizer were to engage in—and I am happy that the Attorney General recognized things like email and data exchange and all of that. Data is the priceless currency now—let us say they were to exchange in some sort of email exchange or funding for a charitable organization—and this is a real thing. This is a real live thing that can happen—and China were to say that you have breached one of their laws because you are funding this organization that they deemed to be terrorist in nature and part of this group of people that they have in camps or something like that. Are we going to facilitate a request because we are part of a multinational treaty? And are we satisfied that the Attorney General alone, without any input from the Legislature, will make that determination? It is, you know, there are so many implications for these things going on and on and on. Something as simple as an email can trigger a criminal act in another country.

There was an example with this person, Margaret Thatcher's son. I think his name is Mark, Mark Thatcher. He was held, I think, in Equatorial Guinea, for financing an attempted coup and an application was made in the court in South Africa for mutual assistance to have him interrogated and he had to file constitutional claims and so on, and I really cannot remember the final outcome of it. But, you know, I think he struck a deal and he paid a fine or something like that. But he said he had absolutely no idea that he had been caught in this web of people that had been trying to finance this coup to take place in Equatorial Guinea. And, of course, they are a very oil-rich country. So, there was a lot of concern that was taking place there.

So, when you open up citizens of this country—and I mean, of course, there is nothing wrong with reciprocity—but you must ensure that there are human rights safeguards. You must acknowledge that not all countries that enter into multinational treaties that they have the same types of protections that we have,

that they have the same standards that we have.

When you are doing bilateral treaties, it is a lot easier because, of course, there is a process and the Ministry of Caricom and Foreign Affairs would have a process by which they would analyze the treaty and negotiate and so on, and they could even, you know, include safeguards into those treaties. But these multilateral treaties, small countries like Trinidad and Tobago, have very little input into what is contained in those treaties. So, we may find ourselves having obligations that we, you know, may not wish to have put upon us.

Mr. Vice-President, as we move on now, it is not only when you have treaties do you have obligations to other countries, but you also want to make sure that you can benefit from those treaties. And one of the significant drawbacks that I see, looking at all of the international literature and so on with respect to information exchange and mutual legal assistance, for us to be able to benefit is really what one author called digital unfitness. “Digital Unfitness in Mutual Legal Assistance”. We are yet to fully proclaim our Data Protection Act, and when countries want to—when we make a request to a country for mutual legal assistance in criminal matters, especially if it has to do with data and so on, that is something that can actually hamper our ability to receive mutual legal assistance.

4.00 p.m.

Now, the Attorney General talked about operational effectiveness—and, yes, this is the trend now by FATF, CFATF, Global Forum, everybody; they want to look at your operational effectiveness. So coming and passing a law says nothing. I know in the other place they made much about it and, you know, they said that they came to pass that tax, mutual tax, criminal tax law, you know, in a huff because what will happen— “What will happen, you know, to us as a country, we will lose our correspondent banking and so on.” But we are still blacklisted. Last

night I went on the Global Forum website and I looked under “Exchange of Information on Request”—that is one of the things that they facilitate under the Global Forum, the OECD, and when you look up Trinidad and Tobago, EOIR rating, so that is Exchange of Information on Request rating round 1, non-compliant; EOIR rating round 2 scheduled for 2021, and the footnote:

“The jurisdiction applied for the EOIR Fast-Track Review, but the progress it demonstrated was not sufficient to justify and upgrade of its rating beyond ‘Non-Compliant’.”

So I hear the Attorney General, you know, talking about all these things that are being done and how he is passing the laws and all the laws that he has brought and which round and which criteria and all of that, but we are still non-compliant. We are still non-compliant with Global Forum.

We would also run into another stumbling block if we try, for example, to access data from other countries. The United States has something called CLOUD, the CLOUD Act, and CLOUD is not the cloud like the Apple Cloud but it actually stands for Clarifying Lawful Overseas Use of Data Act. The reason for this is because—and what the law really treats with is the fact that companies, and all of us using Hotmail, Outlook, whatever, Microsoft, Apple, we understand that our data is being stored in emails, in whatever else we are using, but where the data is physically stored on a server might be outside of the United States of America.

So they are now moving towards a system of speed and efficiency with respect to mutual assistance when it comes to things like data. They want to have cross-border access and one of the things that they are going to look at is how good your data protection system is in the country before they decide that they are going to do, you know, exchange information with you. So it does not—they want to preserve their sovereignty; they also want to ensure that you will have sufficient

systems in place to protect the data that they share with you and that is where we may very well fall short. So when the Attorney General speaks about the effectiveness, there is a lot of work to do, not just this Act to cater for things like cryptocurrency and block chain, and all these other things that are happening now so that we could exchange information, but if we want to receive this information—if we have serious crimes of a cross-border technical data-driven nature taking place on our soil and we request assistance from countries outside the Commonwealth or even within the Commonwealth, we can run into some stumbling blocks because we do not have sufficient data protection here in Trinidad and Tobago that can allow us to be on the same level as some of these countries.

You see, you cannot want to—it is like you cannot want to play first division football but you have, you know, a fete match side playing, and that is kind of what we have going on here. We want to have laws in place that would put us on an equal footing and the laws would be there on paper to put us on equal footing with other countries where we could exchange information with them; we can provide them with information and we can receive the information as well to assist us locally with our investigations. But people are not going to want to play with you if you are not up to scratch. Nobody is going to allow you into their league because you just simply do not have the competence, the capability, and your other supporting laws that need to be in place.

So, Mr. Vice-President, there is a lot of work to be done in this area of mutual legal assistance. This stopgap measure is what I would call it, included in this piece of legislation to allow us to make the orders. My concern is there is no parliamentary scrutiny really, it is a negative resolution order that would be made. And as I went through the process, as I indicated, non-commonwealth countries

really do place a lot of emphasis on parliamentary scrutiny when it comes to treaties, something which we do not have based on our British system that we have adopted, and it is important for us to jealously guard our sovereignty. It is important for us to ensure that none of the rights, constitutional rights and freedoms that we have enshrined into what we call our Bill of Rights in our Constitution, could be compromised when we engage with other countries who may wish to do investigations.

Not every country in the world is a democracy. Not every country in the world has the protections that we have and we want to be careful that we are not simply—the Attorney General used the term “check off the boxes”; yes, I know how it is. I was involved in the Fourth Round Mutual Evaluation for CFATF and I know what it is like to sit and you just try to check the boxes off, but we cannot simply as a Parliament say that we want to check boxes off and you do not know what those check boxes mean and you not understand the far-reaching consequences that is just trying to put something into your law to check off a box and to get a good rating, what those consequences can be later on down the road.

So given that our treaty-making process is strictly within the remit of the Executive and given that, you know, we are now looking at multilateral treaties that are already in existence, my one suggestion would be that these orders that the Attorney General proposed to make under section—the new section 33(1A), that they be subject to affirmative resolution so that Parliament would have some greater input before they take effect and that we could examine the repercussions on the citizenry, as elected and appointed officials that, you know, what would be the impact on the citizens of this country. With those few words, I thank you.

Mr. Vice-President: Sen. Deyalsingh. [*Desk thumping*]

Sen. Dr. Varma Deyalsingh: Thank you, Mr. Vice-President. Mr. Vice-President,

how much time do I have?

Mr. Vice-President: You have 40 minutes, I think.

Sen. Dr. V. Deyalsingh: Forty minutes, okay.

Mr. Vice-President: Yes, 40 minutes.

Sen. Dr. V. Deyalsingh: Mr. Vice-President, thank you for allowing me to present on this topic this afternoon. And I must say, Mr. Vice-President, the Attorney General did specify certain needs that we have to as a country get together in certain sort of obligations, financial obligations that we may need to come in terms with to get greater acceptance in the international community. So I listened to the Attorney General's need and I also listened to Sen. Lutchmedial's, you know, her three main points, I think, I gathered from her contribution was the AG's powers. You know, is the AG's powers, they are, somehow makes a little uncomfortable. Then the China's issue in the fact that if China asked for some sort of information, would we be able to give it, and also, do we really need this legislation at this point, because she made mention that, you know, other legislations would come and is there some sort of other motive why it is coming at this point. And she also mentioned again one other thing, the operational effectiveness, would it be there?

So what I may say, you know, we got a good history, you know, of the American Constitution, and Senators and all that from Sen. Lutchmedial. And a bit of history, I must say, these matters that—mutual assistance, a history of it really, the letters rogatory could not be transmitted directly between the courts but had to be done via diplomatic channels and you found that the laws actually changed because the diplomatic channels was slow. And in 1905 the Civil Procedure Convention signed by the Hague, they actually got 22 countries to come on board and we saw really an evolution after where other countries came on board with the Hague Evidence Convention in 1970 and even before that other conventions that

tried to get other states to come on board to give this mutual assistance. But international cooperation is now really the cornerstone of good governance because we have seen laws passed where we need that sort of cooperation. And we had this Mutual Assurance Bill came—I think it was 1997, and it was amended four times after that.

So we seek today really to expand the countries, non-commonwealth countries, by amending section 33 of the Act and, you know, we have to ask, do we really need this piece of legislation? And do we need it or could it have waited as Sen. Lutchmedial stated? I think we—at this point I have to look at reasons why we need it and I think we need it to really to keep up with the global criminals. COVID-19 has shown us that we are not isolated, and just as a virus could penetrate borders so too can the virus of corruption; crime has been crossing borders. So for a while now we are dealing with global criminality. Crime like the pandemic is borderless, so cybercrime, money laundering, grooming, finance, terrorist financing; all those discreditable conducts, you now, pornography attempted murder, drug trafficking, all those are reasons why I think we need to follow the money. Because remember we did follow the money in the past “eh” without this present legislation. Remember in the past John O’Halloran, moneys were gotten from him when he went to Canada and he—and even a former prime minister had a bank account in the UK, so the moneys were actually—somehow we were able to go after certain individuals. Good. So we need to keep up with criminals.

The Secretary General of the United Nations, Kofi Annan said in 2004:

“Criminal groups have wasted no time in embracing today’s globalized economy and the sophisticated technology that goes with it.”

Dirty money can be moved from one jurisdiction to another by just a mere click of

a button so we really have to see that if we can get at the corruption and keep up with the criminals that is so.

Sen. Lutchmedial mentioned China and she mentioned one way where the Chinese Government can ask for certain information from persons who make a breach in our—in according to their certain laws that they may have, but I want to follow it in the opposite direction then. You see, remember business persons—governments are doing more and more business with China and there are always allegations of corruption that may occur with the Chinese Government. So, therefore, I just would like to read in, Mr. Vice-President, it is from a CMI Insight 2019, Arve Ofstad article, “Zambia’s looming debt crisis - is China to Blame?” And in this article, you see:

“There is limited transparency...with little accurate data on loan conditions...creating incentives for kickbacks and inflated project costs...despite Government denials ‘hidden loans’...”

Also, Sir, I may say that there is also, “Is The BRIA Corruption Magnet?” This article was from ASEAN Post on the 10th of October, 2018, where they looked at the China’s Belt and Road Initiative, and it was mentioned here that you have certain levels of corruption that could exist; kickbacks that could occur, large numbers of kickbacks that could occur and:

“This increases the likelihood of corruption when massive funds come to town.”

So there is always that link. There is always that caution when we are dealing with the Chinese establishment as mentioned in these two articles. So, yes, we have to be cautious. And what I am looking at is if there is in fact a deal that has gone with certain governments and the Chinese Government and we are trying to follow that money, would China be willing to give up that sort of information?

Is China caught up in any sort of the multinational treaties we have? And some may say, yes, but China is actually—and I would follow this further down the line where China actually—when we looked at a Global Forum on Transparency Exchange of Information for Tax purposes which we, you know, we know we have to go on board here, the OECD member countries, China is not really a full member. China is one of the many non-member economies which the OECD has working relationships in addition to member countries. And in October 1995 the OECD Council agreed on a programme of dialogue and cooperation, so that does not mean China has bought in or has promised to give information. So even though China has now joined a group of 14 other countries, including India, which are really not—they are not really members. So if we are going to look at this, there will be some loopholes. If there are contracts with China, we may not be able to get it and follow that money. So it is just something that we may have to look at that in the other piece of legislation that comes with mutual assistance that the Attorney General says may come.

So looking again, the need for international acceptance is my second reason. So the corruption, following the money is one reason; the need for international acceptance, as we have seen; we are already on the blacklist. We have to somehow get our country in a level of, you know, a level out there where in the international scheme we will somehow be able to be a shining star again. The Trinidad and Tobago Transparency International Chairman, Dion Abdool, actually had a listing where he looked in the Caribbean region and Barbados scored the highest with 64 out of 100, looking at corruption; and Saint Vincent and the Grenadines, 95; St. Lucia, 56; Dominica, 55; Trinidad was the third lowest scoring country in the region, with only Venezuela and Suriname receiving lower scores. So we have to do better and if this legislation here allows that further accountability, I say we

have to go at it. But remember it was since October, 2014, the then Minister of Finance, Larry Howai, he actually went to Berlin and they required Trinidad and Tobago to enter 17 separate treaties with countries to go on the Global Forum.

Now, remember this legislation here seems to go, you know, fast-track that in a way. Instead of having to have 17 individual sort of treaties signed, we can now go with any sort of multilateral convention treaty that we have. So it will basically save time and be able to fit us into this greater conventions that other countries have. I also heard Sen. Lutchmedial caution about certain human rights violations because we have to know if those multilateral treaties would also put us on a disadvantage to other countries who may not have good human rights issue, who may be asking us for certain information. But I looked at even Canada, there is the Mutual Legal Assistance in Criminal Matters which came into force in 1998, so Canada saw there was a need to come into this. And even when you looked at the fact that, you know, criminal proceedings, like instituted or investigations which have commenced in Trinidad and Tobago or elsewhere, in section 2 of this proposed legislation, once you have those criminal proceedings instituted, either here or elsewhere, there should be some mutual exchange of the information. And this is what I also have a little caution about because, you see, all the police will have to do is say, "We are now starting a process against Mr. X." And if they say they are going to do something with Mr. X, and we just had a debate about the independence of the Police Commissioner, so what I am saying here is if somehow you have a police service that is nudged by a political person to say, "Let us go after Mr. X." So you just say you are going to start a proceeding, you have no sort of listing that these are the reasons or any sort of great detail that why we are going after Mr. X.

So the police will just have to say, "I am going after Mr. X.". We make an

application to the AG and you can go into somebody's bank account, be it an Opposition person, be it someone you do not like, somebody who does not support the Government. So that might be an inherent danger where I am thinking, if the police has to come with some sort of a criteria why they are going to investigate somebody. And also, not just a criteria, but if asked, "Why are you investigating this person?", at least be able to show the population if, you know, that it is really not anything politically motivated.

So again, we have to start a process that where we are not having any sort of political interference or public debate which could come about that. You see, certain cases you find that the Government may not pursue in vigour. If a Government supporter is involved, other cases, Government may say, "Let us go after it because this is not somebody we supported." So to get out of that, we have to get something there that we could—it could be above board that nobody could point fingers toward. I am not implying any sort of motives in this present administration, what I am saying, we have to realize that there were certain court matters recently, the Malcolm Jones matter, the other matter that went to the Privy Council recently where persons who may not like the judgment, they quickly point fingers at the Attorney General and the Government and say, "Well, you did not put your full legal team to battle this." or "Certain information was not had." So to avoid that same scenario happening in cases like this, we have to be careful. Sometime I am thinking the DPP should be the one to sanction such police requests to see if there is evidence needed. If a request is made from, you know, the police want to investigate, the DPP should be one to suggest, "Should we go after this person?"; should we now ask—when he is screened then go to the AG to see if we need sort of an exchange of information for this person if he has an account aboard.

So I am looking at the fact that, you know, section 4 says:

“The Attorney General may, by Order, direct that the application of this Act in relation to a particular Commonwealth country shall be subject to such conditions, exceptions or qualifications as are specified in the Order, and in that event this Act shall apply accordingly.”

So therefore, we may have to cater something into this where any enquiries, I am saying, should not give the Attorney General the sole responsibility, because, you see, if he refuses to go after somebody that even if the police wants to go after somebody, and the police wants to go after a certain individual but somehow that individual may be a party supporter or whatever, you find that if the Attorney General refuses, we have to know why. There has to be some way of transparent refusal. Why are you going after certain people and not other people? So I think we have to cater that into here. You see, we have a culture of political enabling sometimes where we may turn a blind eye to certain people.

So in my humble opinion, I think the DPP may have to come into that and I am thinking we have to at least give that certain safeguard. Now, I also looked at the fact that even when we had treaties existing, Mr. Vice-President. Let us say we have treaties existing in the past and we had plenty treaties in the past, you know, the United Nations; the United States had a lot of treaties with us before and we wondered when we signed on to those treaties, we always had the expectations that it would work. I felt very gratified when I realized we had the UN Convention Against Drugs in 1998, the UN Convention Against Transnational Organized Crime in 2000, International Criminal Court, you know, a lot of treaties came on board; a lot of conventions came on board, but even though it came there, we did not really see much results because we are still in a situation where we have to keep advancing. So is it that we are making law but somehow we are not executing

it properly, but it has to be something that is not just with Trinidad, it has to be something globally because other countries now have to try to keep changing their laws to catch up, to keep up; to do things to at least try and hold individuals who are breaching all these conventions.

So even though we have all these conventions, I still found that we had a failure in keeping it. Mr. Vice-President, even in 2014, I remember in February, 2014—I think it was the 23rd to the 24th, there was the Arms Trade Treaty met in Trinidad and Tobago and the then Government—I think, Mr. Dookeran was, I think, a main player there where they wanted to set up the Arms Trade Treaty. They wanted to set up that body in Trinidad and I do not think we got through with that but at least since then we were trying to see if we could limit the arms trade. And since then after that I think the ATT was signed by 130 countries and ratified by 62 on, I think, December the 20th—the 24th, 2014. The United States has signed but is not ratified. The point I want to make, Mr. Vice-President, is even though somebody goes with a treaty and signs on to a treaty, they can always renege on it after, because even on the 26th of April, 2019, US President, Donald Trump, announced that the US would withdraw from the ATT, saying that the treaty threatened the American decision-making—sovereign decision-making over weapon export deals.

Mr. Vice-President, if this ATT treaty had come on board and gotten the full teeth—if this collaboration between nations had come on board, we would not have seen all the guns arriving in our country. You see, the guns that are keep coming in, most of those guns they come from the north. You see, just as how the Americans say that the drug trade goes from South America, goes from the Caribbean, goes up to there, similarly the gun trade comes from the United States, crosses the Mexican wall; there are a lot of gun shops on the United States side of

the Mexican wall, goes through Central America and reaches down here or sometimes via Jamaica. So in a way if we really had full cooperation since then, we would have seen less gun killings in Trinidad and Tobago. And, you see, this is why sometimes we may have to try to see if the new President of the United States somehow comes back on board to this treaty and somehow to give our Caribbean countries and other countries which get all these small arms that are coming in; all these small light weapons that could have been controlled by this treaty, we would have been in a better way.

So this law in mutual assistance in criminal matters, we have to look at what it could achieve. Could it achieve what we want to achieve? Let us look at Panama for instance. Mr. Vice-President, if you remember Panama, yes, Panama may sign on to a multinational treaty that we have and we could make sort of representations to get moneys that went Panama. And if you remember, Sir, in the past we had a top-ranking member of the ruling party, Francis Prevatt, who went to Panama but we could have probably followed the money, but if we did not have an extradition treaty we would not have been able to bring him in. So he could have lived for the king for the rest of his life, carrying money out of the country; the untouchable bank man. And if certain politicians' daughters wanted money, they could have gotten it from him, fed with citizens' money.

So somehow there is still the need for us to look at our extradition treaties to get some more teeth in this. And, you see, the Panama instance, globally, countries woke up one morning when there was something called the Panama Papers when it was leaked by the press. Now this is the importance of a free press; the free press actually leaked a lot of accounts that were hidden in Panama and this was a revelation from these Panama Papers. It was, I think, five years ago where you had 11 million documents were leaked and it actually woke up the leaders of certain

countries. It woke up the people because even Iceland's former Prime Minister was caught up in this web. And it is the power of the independent press was needed to at least go after these individuals who hid their money in the Panama Papers.

So you would have thought the Panama Papers which would have led to greater need for this legislation globally—we would have thought that that Panama Papers would have somehow caused a dent in what was going on. But here we are just recently, after we had the Panama Papers, we also had something called the Paradise Papers, something now, another set of documents leaked, offshore financial system. And what was amazing, it was persons in the Trump administration, persons in President Barack's administration. All those persons were there in this Paradise Papers mentioned, even the Canadian Prime Minister had an offshore account.

So the hands of corruption are spread right through.

4.30 p.m.

We have seen elements of papers leaked that showed offshore accounts, and this legislation, if it really gets the teeth, if we have the political will, I am thinking we could really make a dent, but it has to have that political will. The offshore industry makes the poor poorer and is deepening the wealth inequality. So, therefore, we have to look at the legislation being able to have the teeth to go after these individuals, to get that cooperation between nations.

The papers that were leaked, as I mentioned, woke up some of the population across the world, because the population across the world, when the Panama Papers came out and Paradise Papers came out, they realized that persons and corporations and individuals were hiding money, taking it away from the persons. So there may be an awakening, and there may be great support for this legislation that the AG is attempting to bring, but we have to give it that push, that

teeth. We have to give it that influence of going after persons who breach the law.

Will it benefit us? Yes, because you see, Mr. Vice-President, the fact that it will benefit us to put us back on a good setting on the international scene, in the sense to have acceptance for the Global Forum and transparency, beside that, as Max Senhouse used to say, “We need the money”, and I am sure our Finance Minister would be able to use this to go after those individuals who would have been taking money out of the country, getting tax free, you know. At least, get back some economy coming into our country, get back some funds coming into our country, funds that went all over the world.

Mr. Vice-President, I remember this legislation, do we really need it? But I remember the NAR Government got persons to come in without fancy legislation. Yet still, years after we could not find where the Chairman of UDeCOTT lived in Florida. We could not find where Beetham water treatment plant, the person who was in charge of that company lives in Canada. Why? I mean, we have the ability to track these people and get those people. But I am saying we may have political enablers within the system who may prevent any sort of legislation we get from working to the full benefit of the people.

We also looked at the fact that this legislation has other parts in it, where you can go into the manner in which we treat escaping, arrests of persons, et cetera. So you have all that factored in, how we can get to those persons, because I looked at the intrusive aspects as set out in the parent law in Parts II, III, and also miscellaneous aspects beginning in Parts V and VI. So, therefore, there are already those sections. But, Sir, I am saying that if we look at the history, Interpol. Interpol existed before. Interpol is an organization, 194 member countries, so it is a lot of member countries, and Interpol had that duty with the police officers, where it was a police network that was already existing. I was fortunate to meet two officers

from Interpol when I lived next door to Kenny Mohammed, the Assistant Commissioner of Police. I heard those persons talk, and they were persons who had plans, who could have crossed borders, who could have followed the money, who could have done a lot of work, and you know what one of their fall-backs was? They said even though they try to be politically neutral, sometimes the powers that be may have prevented them. So even though you would have had other agencies before, we would always have certain factors which would prevent them from getting their full potential.

I was very, you know, reminded—the Attorney General reminded us that the FIU's annual report, where you had more reporting occurring, and the country was saved \$27 billion I think he said, that was picked up by the FIU. All these, I think we have to praise the AG for bringing legislation before, which could have followed the money, which could have helped against this sort of theft of our money, moneys going abroad, following the money. We have to really be thankful we have those pieces of legislations, and I am thinking that this could be added on to that and we could actually have a greater benefit.

Mr. Vice-President, I admit that the Global Forum scheme could, in fact, trap offenders that are related to tax matters and fall within the criminal ambit, once we start to exchange this information we could get to them. But something, Attorney General, I mentioned the fact that, you know, corruption may go cross-generation. Somebody may take some money to a country and their children could benefit from it. Somehow I am thinking why are there statutes of limitations for these certain types of crimes. Because, you see, if somebody takes money abroad, if somebody somehow gets that money there, taxpayers' money and it is theirs, I think the law should evolve, the country should evolve to say, let us move on with this. Let us try and see if we could do away with statutes of limitation. So even

though you steal money, nobody else could be able to get it, another generation cannot gain.

So I think similar law to what was asked here. Remember when we looked at section 33(1A), (1B), the amendment, similar law to this already existed in the Anti-Terrorism Act, where section 30(2) of the Anti-Terrorism Act also brought in the fact that you could ask for mutual assistance in criminal matters with treaties that already existed. So we have had the terrorism Act already getting the whole gist of this.

I look at the First Schedule also spoke about certain aspects of certain requests made under this Act by a Commonwealth country shall:

- “(a) specify the assistance requested;
- (b) be initiated by a Judge, Magistrate, the Director of Public Prosecutions or a law enforcement agency;”

And I already gave my reservation of “law enforcement agency” being nudged to start a proceeding. So I think something there we would have to look at any sort of caution, that we could prevent any sort of misuse. This law actually can actually help us go after the pirate vaccines that are coming in, that are seen globally. Pfizer International had also mentioned that there are fake COVID-19 vaccines with a Pfizer label on it has gone to Mexico; it has also gone to Poland. So even in the fight against these individuals, these criminals, actually it is really a global public health crime and a risk. We can use this in case any sort of drugs come in here that are pirate drugs, to go after these individuals.

[MADAM PRESIDENT *in the Chair*]

Madam President, I want to just quote an article by Will Fitzgibbon, February 25, 2021. The International Consortium of Investigative Journalists actually looked at a report. It was entitled:

“Lawyers, accountants and other professionals play a key role in cross-border financial crime...”

And the OECD warns in their report that a lot of wealthy nations are urged to target and disrupt the enablers. They actually say there is a lot of threats and risks posed by lawyers, accountants and other facilitators who are actually enabling these crimes to occur. I did remember when lawyers would often try to hide behind client attorney privilege. Probably the time has come for the Attorney General to look how we can somehow stymie this.

I have heard in the past certain leaders say about lawyer criminals and criminal lawyers, but this article does actually, in fact, support this. It does support this and it does support the fact that there are persons in certain positions who enable this transfer of money, and these are the persons we need to go after.

Madam President, there is a report I would like to read in also, where it makes mention of a few Caribbean countries. Why I want to make mention to this, because you see, we have the Caribbean as being named as an enabler in some of these offshore accounts. This article, I would like to read it, it is by Rocco Fazari, an ICIJ article, where it is captioned:

“Offshore Trove Exposes Trump-Russia links and Piggy Banks of the Wealthiest 1 Percent”

It did claim here that there is a lot of money that will be coming in into the Caribbean countries offshore banking. They make mention of countries that are Bermuda, Antigua and Barbuda, Barbados also there was something with an explosive company of a Canadian engineer who tried to build a supergun for Iraq dictator Saddam Hosein—Bermuda. Why I mentioned this, Madam President, is that, you see, it is our Prime Minister who is in charge of Caricom, may have to use his position to get these countries to come on board. It is something that stains

the Caribbean as having offshore banking, and this legislation, we have to get those countries to come on board with this mutual assistance, and to ensure that to take the same route that we have been taking in passing these FATCA legislation, that the Attorney General has brought us. Because this same article mentioned persons of influence, a Mexican priest who founded an order, the Legionnaires of Christ, who had millions of dollars there. Queen Noor of Jordan had money again in some offshore country, Canada Foreign Minister. So the list goes on and on. So we have to see.

We have to not only go after the persons who evade tax, and this could certainly help us get that money, we also have to go after the NGOs or the NPOs. The Government did come in with some NPO legislation before, because certain NPOs, according to this article, are used as fronts to send money out there. We have to also look to the fact that these Caribbean countries—

Madam President: Sen. Deyalsingh, if I may, you are giving a lot of information, and the information is very interesting, but I need you to tie in that information to the specific Bill that is before us.

Sen. Dr. V. Deyalsingh: Thank you, Madam President. So, Madam President, this Bill, when Sen. Lutchmedial questioned, do we really need it at this stage, well, we had instances where Trinidad and Tobago was able, without this Bill, to go after certain individuals. Just recently I remember there was a raid in Point Fortin, where we with the cooperation of the Venezuelan Government and police service, we were able to get a guy labelled “El Culon”, who was really a leadership of the Evander gang. So it was really the cross-national, between us and Venezuela we were able to go after this guy. We were able to capture this guy, without any need for this legislation. So we have had success before. Our police have had success before. Our police have had the areas that we could use without this sort of

legislation.

I am saying that—

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

Sen. Dr. V. Deyalsingh: You know, we had these successes. As I close, Madam President, I just want to make mention to the fact that years ago, Randolph Burroughs in an article on December 05, 2005, to the *T&T Mirror*, made mention to the fact that our miles and miles of unprotected coasts he spoke about. He looked at the US currency as the mainstay of a thriving drug industry. He mentioned sophisticated weapons appearing, steep rise in drug-related crimes. He mentioned the fact that he had an operation called, FAN, Firearms, Ammunition, Narcotics, all that we had since then. But the strange thing he mentioned though, is the fact that there were nationals of Trinidad and Tobago in league with Cubans, in league with Venezuelans, in league with Colombians, in league with other countries, in leagues with businesses in Miami, and if he probably had the power then, or more power to follow that money—I mean, he had the Interpol then, but if he had that greater amount of somehow, law behind him, I am thinking since then we had all these problems existing. He had made mention of a customs officer operating out of the preventative branch, and also a proprietor of a haberdashery store on Henry Street, having money abroad, having money in Miami. He listed places and businesses.

So even then, we would have had money leaving the country. If this legislation could now somehow put a cap to some of it, I think we would have been doing a justice to the taxpaying persons who need that money to develop our country, to help our medical supplies and whatnot. So I am looking at the fact that there has to be political will, because he had mentioned before in this same article that even though the powers that be knew about all of this money moving, there

was no political will to go after them. There was no political will to follow that money.

I am saying, if the Attorney General now has the political will, because the Commissioner of Police at the time, Burroughs, did actually make mention that he actually told the National Security Minister at the time, and nothing was done, it was allowed to flourish. So if we have our Attorney General now, willing to take this piece of legislation, willing to pass more pieces of this legislation coming in, as he mentioned, I support this Bill. I think we could do much more out of this Bill, just not with tax dodgers or drug dealers, but with corrupt few who politically enable. I welcome the AG's statement that more parts of this Bill will soon come. So we can change society as the AG said, and it can probably start with us really putting teeth into this piece of legislation. Thank you, Madam President.

Madam President: Sen. Vieira.

Sen. Anthony Vieira: Thank you, Madam President. While this Bill is just three clauses, we should not underestimate its power and its impact. The good it seeks is self-evident, and unless one is involved in serious transnational crime, it should not trouble or occasion distress to the average law-abiding citizen.

It is no exaggeration to say that today the world is a village. Every country and all its parts, whether urban or rural, has been brought closer together by the Internet, by electronic communications, easy travel and transnational commerce. Indeed, the COVID pandemic has shown just how easy it was for an infection, having its origins literally on the other side of the planet, was able to spread rapidly throughout the world, affecting virtually every citizen in the world.

Commercial brands are no longer content to just be national. Today, the aspirational reach is global. Just recently we saw how the application for a trademark in one country had a profound impact and resonance on us, even though

the event took place thousands of miles away. Crime too has globalized, and organized crime in particular does not recognize national boundaries. Whether it is drugs, arms, human trafficking, corporate fraud, counterfeit goods, large scale financial crime, intellectual property offences or corrupt public officials, chances are that the players and the offences are transnational in nature.

Moreover, as we have heard, the new technologies have ushered in new forms of crime. A criminal can sit today in one country and disrupt a computer system in another country thousands of miles away, just as a con man can scam his victim into wiring funds to an offshore bank account. Serious transnational crime can cause people to lose their life savings, and as we have heard it can threaten national security, economic stability and our democratic institutions.

If one hopes to effectively combat serious transnational crime, then our state authorities need to be able to share information, to engage with and to cooperate with their counterparts on an international scale. If one accepts that co-operation between states and state authorities at the international level is essential to effectively combat serious transnational crime, the question then arises: How can one go about doing this, given the sovereignty of states, given that traditionally countries exercise criminal jurisdiction where the crime takes place in its territory, and given that different countries usually have substantial differences regarding evidence gathering, formalities and their court procedures?

Prior to the mutual assistance treaties and requests for assistance made by Commonwealth countries under the parent legislation, and I refer to it as “MLAT”. The traditional tool for mutual assistance was via letters rogatory. That is to say, formal requests from the judicial authority from one state to a judicial authority of another state, in which the requested judicial authority is asked to perform one or more specific actions, usually related to the collection of evidence and

interviewing witnesses on behalf of the requesting judicial authority.

There is provision under our Civil Proceedings Rules. For example, if you look at Part 34.19 and Part 77, whereby state authorities, and even private litigants, can apply to the High Court to make orders for the examination of witnesses before courts or tribunals abroad. I have done it in family law matters, for the gathering of documents and evidence and for making translations. But such orders are entirely in the court's discretion, and can be involved, lengthy and expensive. Moreover, since letters rogatory are essentially a matter of comity between the courts, the granting of such orders can be unpredictable.

The mutual legal assistance treaty regime ushered in a user-friendly, agile and predictable basis for international cooperation, and this is now the preferred approach.

Now, you should note that section 5 of the parent Act, of MLAT, does not derogate from existing laws and other forms of cooperation. It says:

“Nothing in this Act derogates from existing forms of co-operation or prevents the development of other forms of co-operation, whether formal or informal, in respect of criminal matters between Trinidad and Tobago or any enforcement agencies or prosecuting authorities in Trinidad and Tobago and the International Criminal Police Organisation or any such agencies or authorities outside of Trinidad and Tobago.”

So whether it is under FIU, anti-terrorism, data protection or letters rogatory. There are still other ways in which you can get information and, indeed, letters rogatory are still an option for getting evidence abroad, but more as a fall-back position, where the mutual legal assistance treaties are not available.

Now, the mutual legal assistance treaty regime has been around since the mid-1990s. It is tried and tested, and it has certainly made cooperation easier and

faster within the countries of the Commonwealth. This may be an appropriate time to observe that the parent Act already has certain built-in checks and balances. I was hearing from some of the earlier contributors concerns about, well, you know, if we are dealing with China or some oppressive regime, there are already in the parent Act appropriate safeguards designed to ensure that the rights of an accused person are not seriously or unduly prejudiced.

I am not going to read all but, for example, sections 22(2) under the parent Act and (3), set out some of the circumstances where a request shall be refused. If in the opinion of the Central Authority, for example:

“the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;”

So if the offence is of a political character, the request for assistance can be refused. Or:

“(c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s race, sex, religion, nationality, place of origin or political opinions;”

Go down lower at (g):

“(g) the request is for the transfer of a prisoner under section 27(1) but the prisoner does not consent to his transfer;

(h) the request is for assistance of a kind which cannot be given under this Act, or would require steps to be taken for its implementation that could not be lawfully taken;

(i) the implementation of the request would require an individual to act or refrain from acting in a certain way, and the individual is not

willing to do so and cannot be lawfully compelled to do so;

- (j) the request relates to an offence which in the requesting country is an offence only under military law or a law relating to military obligations;”

And last, but not least, I have left a lot of them out, you could refuse the request if it would be contrary to the Laws of Trinidad and Tobago. So there are checks and balances in the parent Act.

Unfortunately, there is also a gap in the parent Act, and that gap has to do with the fact that crime exists outside of the Commonwealth, and while mutual assistance is available via existing bilateral agreements between Trinidad and Tobago and countries like Canada, the United Nations and the United States, the facility is not readily available where requests are made by non-commonwealth countries, and where no bilateral treaty exists between Trinidad and Tobago and the requesting non-commonwealth country, and so this can be problematic.

It can be problematic where you are dealing with countries in the European Union, or as Sen. Deyalsingh talked about, the Fonseca release of papers. A country like Panama, Mexico, Colombia, China, Russia, where those countries are concerned there could be difficulties involved in acceding to the requests. So that is what this legislation is about.

This amendment seeks to address that shortcoming, especially having regard to the time, money and uncertainty involved when investigating and pursuing offenders in non-commonwealth countries via letters rogatory, and given the challenges involved in negotiating, drafting and agreeing on bilateral treaties, which can also be costly, as well as time and resources-consuming, assuming it is even possible to have a bilateral treaty with every country in the world.

So I agree with the hon. Attorney General that we need to get beyond the

archaic cleave between Commonwealth and non-commonwealth countries; that a major deficiency under the current law and system in being able to comply with requests for assistance when we are under an obligation, certainly a moral obligation to assist those who ask for assistance.

This Bill provides for passive application of the Mutual Assistance in Criminal Matters Act to all foreign countries, rather than requiring the test to be specifically applied to particular countries by regulation. As indicated in the Explanatory Note, it will allow Trinidad and Tobago to provide assistance through mutual legal assistance requests from non-commonwealth countries, where no bilateral treaty has been entered into between Trinidad and Tobago and the requesting non-commonwealth country. So by amending the definition of “treaty” to include multinational conventions, we are, in fact, opening the multilateral door.

The changes occasioned by this Bill will enable assistance to be provided and requested much more expeditiously than presently obtains, and it is in keeping with international best practice. This legislation is designed to ensure cooperation with the international community in the sharing of information, and intelligence, for the obtaining of evidence and to provide and obtain formal government to government assistance in criminal investigations and prosecutions.

5.00 p.m.

As indicated in the parent Act, the range of assistance which can be provided includes the identification and location of persons; the obtaining of evidence, documents and other articles; the making of arrangements for persons to give evidence or to otherwise assist in investigations; the service of documents; the execution of requests for search and seizure, the forfeiture or confiscation of tainted property; the recovery of pecuniary penalties in respect of offences; the restraining of dealings in property or the freezing of assets that may be forfeited or

confiscated; the transfer of prisoners.

This country needs to ensure that criminals cannot evade prosecution and confiscation action just because the evidence or the proceeds of their crimes happen to be in a different country. The globalization of crime requires the globalization of government-to-government assistance in criminal investigations and prosecutions. Madam President, I thank you. [*Desk thumping*]

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

Sen. Jearlean John: Thank you, Madam President, for the opportunity to join the debate of this Bill an Act to amend the Mutual Assistance in Criminal Matters.

Madam President, I have listened to what is a very substantial debate and the Explanatory Note to the Bill indicates that its purpose, should it be passed in this House, is to amend three clauses, as have been said by those who preceded me, and it allows:

“...Trinidad and Tobago to provide assistance through mutual legal assistance requests from non-Commonwealth countries where...”—there now exists no bilateral treaty.

But as has been said prior too, it is really to get into multilateralism.

Madam President, the issue of non-commonwealth treaties with non-commonwealth—or cooperation with non-commonwealth countries had been in the parent—had been placed in the parent Act, and what we are doing really is to strengthen this Act and make it more expeditious based on what the hon. Attorney General has said to this House. So, in piloting these amendments, the hon. Attorney General has provided a historical perspective to the Bill and has placed on record that the scheme relating to mutual legal assistance in criminal matters was originally adopted by Commonwealth Law Ministers at the 1986 meeting in Harare, Zimbabwe.

Madam President, the Commonwealth produced model legislation, as we know in this regard, and the hon. Attorney General has said, given that there has been various amendments and improvement and he has draft legislation before him in the Ministry of the Attorney General and Legal Affairs. And based on what I am seeing here and how clumsy the amendment is, really and truly, we should have had before us the repeal and replacement of this Bill, to be quite honest, Madam President.

In reading the parent Act and what is proposed as amendment and in light of the hon. Attorney General's concern that the current legislation, even with the proposed amendments, is deficient. And Sen. Vieira just mentioned it, especially relative to the use of modern technologies. I will add such as factoring information technology, interception of communication, the digital environment, the manner in which cybercrime affects all of criminality across the globe. Just recently we saw where, it is alleged that—well, it was alleged that Russia—persons or agents were coming out of Russia would have had to—the US oil fields and so on and their pipelines, and that would have had a knock-on effect, and we see that from time to time in the news. So, Madam President, this is 2021 and the world is a totally different place from 1990 in Harare when this whole issue of mutual assistance came about in criminal matters.

Madam President, before us is this amendment, as I said, which started where Trinidad and Tobago and the non-Commonwealth countries are both parties. So it is not as if this was not in the parent Act but it is an effort, according to the Attorney General, where things are a little easy because in that Act we also had where:

“...the Attorney General...by Order subject to a negative resolution of Parliament...”

And I will come to that because I have a little something to say about that also.

But in an effort to set standards in obtaining mutual legal assistance, you know, one would have heard all of the—well, the positives but there have been—there are groups who have set standards because one would want to ensure that people's rights are not trampled on and you have some “except for persons” who are deemed—you cannot really—it cannot affect people because of their race and political affiliations, et cetera. But:

“The International Association of Prosecutors (IAP) established in June 1995 at the United Nations office in Vienna, has created a basic guide for use by prosecutors in obtaining mutual legal assistance. The guide is intended to be a simple route map for achieving the mutual legal assistance and set out useful principles and three basic rules to be followed.”

And this goes whether you are Commonwealth or non-commonwealth.

“Rule 1. The contents of the requests you send should be completed with care. Confidentiality may not always be possible and if it is required, this must be made clear on the face of the document.

Rule 2. Ask another State to do for you only what your law enables you to do and only where the request will result in additional evidence of value to the prosecution. In doing so, respect common rules relating to certainty, confidentiality, disclosure, dual criminality, defamation, human rights, proportionality...”— and the AG did talk about proportionality and reciprocity in his—when he made his remarks earlier.

And:

“Rule 3. Check the contents of your request, ensuring that all necessary particulars are clearly included and that all necessary annexes are attached.”

Madam President, the other provisions of the amendment proposes any order

by the Attorney General be subject to negative resolution as in the parent Act. And I am of the opinion that that really gives the Attorney General extraordinary powers without necessary oversight because there you have just a negative resolution of Parliament.

Madam President, there are jurisdictions where the Attorney General is not even the central authority because they want to ensure that there is no cause for—well, to raise this issue of bias. Earlier on, Sen. Lutchmedial would have mentioned that the Attorney General in our jurisdiction is a creature of politics. And as she had said before, I cast no aspersion, but there are jurisdictions in which the Attorney General, for instance, in Sri Lanka, another Commonwealth jurisdiction, in their mutual assistance in criminal matters, Madam President, amendment Act No. 24 of 2018 in section 4:

“4 (1) The Secretary to the Ministry of the Minister, shall be the Central Authority for the purposes of the Act (hereinafter referred to as the ‘Central Authority’).”

So they have dealt with the issue of political bias or the perception of political bias.

So in addition, we have where this order is simply by negative resolution of Parliament. There is no gazetting of the order and it would have really strengthened this amendment if there was an affirmative resolution of Parliament instead, Madam President, and of course, some gazetting which would bring—give more scrutiny, transparency to these deliberate actions in law. It would provide oversight over the particular treaties that will be enforcing for the mutual exchanging, in addition to mitigating against the legal challenges which the Attorney General references very frequently.

Madam President, when I said the amendment as presented just made the Bill a little clumsy—with your permission please, I just want to read a little bit of

what the Parliament of the Democratic Socialist Republic of Sri Lanka would have done with a comparative Bill:

“The Minister may by Order”—clause 2 of their Bill—“published in the *Gazette* declare that the provisions of this Act shall apply to—

- (a) every country that is a party to an international or regional Convention or other agreement which is in the interest of mutual assistance in criminal matters, to which Sri Lanka has become a party, whether before or after the date of commencement of this Act;”

We have some of the language in the amendment but just as the hon. Attorney General had referenced, where one had to use the term “Commonwealth” or “non-commonwealth countries”, in this regard, they would have—this would have been dealt with in this piece of legislation.

Just—section (b) of this clause 2.

- “(b) a country which has entered into an agreement with Sri Lanka for mutual assistance in criminal matters;”

And:

- “(c) a country which has not entered into any agreement with Sri Lanka, where the Minister may determine that it is in the best interests of the sovereign nations that Sri Lanka extends and obtains assistance on the basis of reciprocity;”

And the last one, Madam President, (d) is very interesting, where they have gone further than even the State and they have said—

- “(d) an intergovernmental organization combating corruption, money laundering or financing of terrorism, on such terms and conditions as may be necessary and on the assurance of reciprocity.”

So it is very broad-based but it really makes for good law. So, Madam President,

the—as I said, this is not a new phenomenon. In my research, I came across a payment with—sorry, a paper which bore no dates of when it was authored but it referenced the year 2002. The title of it is, “Mutual Legal Assistance in Criminal Matters in Trinidad and Tobago”. Madam President, it spoke about the introduction and gave a same historical perspective. But, Madam President, what I found to be interesting, even if was in 2002, it said:

“However...”

They were talking about the Central Authority in Trinidad and Tobago and they said—the report said:

“However, the majority of requests that have come so far into the Central Authority Department are from the United Kingdom, the United States of America, Canada, Germany, Netherlands, Israel, Singapore, Norway, Spain and several Caribbean Countries.”

So from as far back as then and even prior to, given that this Act has been in existence for what?—since the Act 37 of 1997, since then one has been dealing with this issue. And the Attorney General, in laying the amendments said that, since 2016, he has been paying attention to these amendments or making it easier to treat with countries with which the—the non-commonwealth countries or those so described.

So therefore, there was enough time, I believe, to have brought a Bill that was just not a cut and paste as it were. Because, Madam President, international crime knows no boundaries, as Sen. Vieira said.

“...and for member states to have a realistic chance to curb organized crime they must disregard the traditional notion of sovereignty and cooperate with other countries to prevent the transnational criminal securing amnesty in a member country...”—or a non-member country.

Cybercrimes are committed sometimes from the kitchen counter and would have seen that particularly, even though people were locked down during the pandemic, it did not mean that crime stopped—or cross-border crime stopped because some organized crime would have been constrained by social distances and the shutdown but there were cybercrime scams, fraud, disinformation and other cyber-enabled crimes which became or which has become a growth in industry, and these are very serious and basically folks do not have to leave their homes to be a part of that.

Finally, the FBI, very recently, has issued a warning that children who are homeschooled play games online and use social media during school closure, and they may be targeted and groomed by sexual predators as they spend extended time online.

So this, you know—it is important that one can exchange information, have reciprocity, et cetera, but we still have to put in the safeguards. I mean, the hon. Attorney General said that he did not want to put boundaries up but it cannot be that people's rights are being trampled on in the interest of making it easy. Right? We still have to abide by the laws of Trinidad and Tobago, and I sure the hon. Attorney General is very well aware.

So what is before us, the speakers before me have said that it has moved the goal post. I do not know if it is significantly, because there are other jurisdictions where they have amended significantly this mutual assistance law and it is working, I am sure, a lot better than what we will have here because it is still a very clumsy piece of legislation because of its age and the number of amendments.

So, again, I really urge the Attorney General to move quickly or expeditiously in updating this legislation in terms of a repeal of the legislation so you can bring it quickly into the 21st Century. Madam President, I thank you for

the opportunity. [*Desk thumping*]

Madam President: Attorney General.

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

Hon. Al-Rawi: Madam, I will give way to my learned friend if—

Madam President: Just one second. Sen. Mark, I do not know about your speaking. I looked on this side—

Sen. Mark: [*Inaudible*]

Madam President: No, Sen. Mark and Attorney General, I am on my legs, please. I looked and you know, you above everybody else ask, you know you have to catch the eye of the Presiding Officer. I looked and that is why I called on the Attorney General.

Sen. Mark: Sorry about that, Madam President.

Madam President: Yes.

Sen. Mark: But what I indicated—[*Inaudible*]

Madam President: It has nothing to do with the Leader of Government Business. It has to do with whom I recognize, who catches the eye of the Presiding Officer.

Sen. Mark: [*Inaudible*]

Madam President: But Sen. Nakhid did not put on his mike or make any attempt to catch the eye of the Presiding Officer.

Sen. Mark: [*Inaudible*]—seeing that Sen. John has just spoken, the other person to have spoken would have been Senator—

Madam President: Sen. Mark. No. Listen. Listen. There are rules and therefore, I am really—I am reluctant—I have called on the Attorney General because no one on your Bench sought to catch my eye. So even if you—I am not sure I am understanding what you are saying.

Sen. Mark: [*Inaudible*]

Madam President: Between whom? The understanding has to be whatever understanding Attorney General has to be conveyed to me. And no such understanding has been conveyed to me and therefore, I am looking at your Bench to see—and behind—to see if anyone wishes to speak after Sen. John. No one indicated that.

Sen. Mark: [*Inaudible*]*—*but I did indicate to the hon. Leader of Government Business that we have five speakers today, and I told him the order that they were coming. Sen. Renuka is supposed to be next.

Madam President: And where is Sen. Rambhajan?

Sen. Mark: Well, I am saying that she is—

Madam President: What I am saying, Sen. Mark—no, no. I have repeatedly said in this in this Chamber that sometimes a list is given to me with names but that you have to be in a position to rise when—after one speaker has finished. That is what I have been saying. So am I supposed to wait for Sen. Rambhajan? Is that it?

Sen. Mark: I apologize and with your leave I may ask—with your leave, because of a little mix up, I can provide you from now on with a list from now on but I would ask for your indulgence and allow Sen. Nakhid to speak and then I will fetch Sen. Renuka, and I am last. So we have three more speakers on our side, Madam President. So—

Madam President: Sen. Mark, on this occasion, I am sorry but I have called on the Attorney General. I recognized the Attorney General and I really need to say that everyone in this Chamber has enough experience. This has happened before. You are to let—put on your mike so that I can recognize you to speak. Okay? Attorney General. [*Desk thumping*]

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Thank you, Madam President, I wish to thank all hon. Senators for their

contributions today on a matter that I think that we have full agreement on. It seems that there is a round form of consensus that the law is one which is designed, the measures in this Bill, for a legitimate aim, that they go as far as they ought to in terms of proportionality and that they are just and right in a society that cherishes democracy in the fashion that we do, certainly within the context of our constitutional reflections on that.

I can just say for certification, Madam President, that we do intend to commit to further amendments of this law, this parent law. There have been no submissions that I am really called to answer, Madam President. And in those circumstances, I beg to move. [*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.

Madam Chairman: Yes, Sen. Mark?

Sen. Mark: [*Inaudible*]*—*because I have a couple of amendments I would have liked to suggest during my contribution. But having regard to what has transpired, we did not have the opportunity to do so. So I would like to be guided by you. I have not typed them up as yet but I do have them before me and I will have to explain to you the purpose of these amendments that I am proposing.

Madam Chairman: May I ask what clauses you propose to amend?

Sen. Mark: Well, under—

Madam Chairman: The Bill has five clauses, Sen. Mark. Clauses 1 and 2 deal with the short title of the Bill and do you intend to amend those?

Sen. Mark: I am suggesting, Madam Chair, that one of the clauses that we want to address is the one that deals with the negative resolution.

Madam Chairman: Sure—

Sen. Mark: And then—

Madam Chairman: So clauses 1 and 2.

Sen. Mark: That is one. And then, there is a new clause—

Madam Chairman: Just one second then. Yes.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed: That clause 3 stand part of the Bill.

Sen. Mark: Yes, Madam Chair, we are proposing that we delete in clause 3 because of the—

Madam Chairman: No. Just tell me what you are proposing first and then you will give the explanation.

Sen. Mark: Yeah. We are proposing that we delete “negative” and replace it with the word “affirmative”.

Madam Chairman: Negative? This is not that clause 3. That is clause 4. Am I not—

Sen. Mark: Well, I do not know if I am on the same—

Madam Chairman: Attorney General?

Mr. Al-Rawi: Madam Chair, clause 3 is the definition section for the word “treaty”.

Madam Chairman: Right.

Mr. Al-Rawi: Going to multiple treaty. There is no negative or affirmative resolution here.

Madam Chairman: Sure. So, yeah?

Sen. Mark: Probably I have the wrong—

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4.

Question proposed: That clause 4 stand part of the Bill.

Sen. Mark: That is the one that deals with—

Madam Chairman: Yes.

Sen. Mark:

“Where Trinidad and Tobago...”—Madam Chair?

Madam Chairman: Yes.

Sen. Mark: I am suggesting that we delete the word “negative” appearing in line 1, 2, 3, 4, 5, 6, 7, 8, 9 and replace it with the word “affirmative”. That is in line 9, if I am not mistaken.

Madam Chairman: So, hon. Senators—okay, Attorney General?

Mr. Al-Rawi: Yes, Madam Chair.

Sen. Mark: Would you like an explanation for it? Remember you told me that you will need an explanation for it.

Madam Chairman: Sure. Yes.

Sen. Mark: So you want the Attorney General to talk first?

Madam Chairman: No. No. You go ahead and—

Sen. Mark: Madam Chair, because of the broad sweep and the far-reaching nature of this proposal, the amendment, where the AG is seeking to arrogate onto himself under the system of multilateralism rather than through bilateral treaties, that power to engage what is called “non-commonwealth countries”, whether it is Venezuela or China or France, we believe that these matters are very weighty, it deals with criminal matters. And normally, Madam Chair, in Jamaica and—well, in particular Jamaica, these are matters that are subject to bilateral treaties. But we understand that the reason why we are not going with bilateral is because we have

been advised that under the multilateralism, if there are provisions in those treaties, that non-commonwealth countries can engage in with us and a request is made, the Attorney General will comply but he is proposing that it be subject to negative.

So we are saying because of the weighty nature of this arrangement, which really would have required a bilateral treaty, we would like to have greater oversight of this arrangement and therefore we are asking, Madam Chair, that we delete “negative” and replace it with the word “affirmative”. Madam Chair?

Madam Chairman: Yes. Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. May I assist Sen. Mark in his reflections. First of all, if we look to section 40 of the parent Act from which the precedent for the amendment is section 33 is drawn, introduced by then Attorney General Ramesh Lawrence Maharaj under a UNC government, you will see that the position is subject to negative resolution for the use of multilateral treaty and treaties.

Secondly, any treaty to have force of law in Trinidad and Tobago must become an Act of Parliament. So the fact that we are using multilateral treaty, a bilateral treaty, it is under the dualistic system of laws, it must be subjected to a full debate by Act of Parliament. So there is no Attorney General arrogating onto himself by negative resolution, the incorporation of a treaty. All of that is inapplicable because to get to the treaty, you have to incorporate it into law by an Act of Parliament. All that this does is to say that, by way of order subject to negative resolution, that treaty can be used for mutual legal assistance and that is already contained within the treaty, so there is nothing untoward in this. It is in fact perfectly acceptable and all of the boxes have been proverbially ticked.

5.30 p.m.

Sen. Mark: Madam Chair, there is a provision, which is a new clause, that I

would like you to consider after clause 3. It is attached to 33. I am trying to—

Madam Chairman: Sen. Mark, all right, just one second. You first indicated that you were seeking, from the floor, to amend clause 4.

Sen. Mark: That is the first one.

Madam Chairman: Right. So, you are now telling me that you need to have a new clause inserted. Is that it?

Sen. Mark: That is after we complete it.

Madam Chairman: Because new clauses are really done after the completion of all of the clauses in this Bill.

Sen. Mark: Yes.

Madam Chairman: So what I would advise you to do is to formulate your new clause so that I can have a look at it, because I also have to determine whether it is relevant to the matter at all before I put it to the committee. Okay?

Sen. Mark: Can I read it for you?

Madam Chairman: Not right now because I am dealing with your amendment to clause 4, which I am now going to put to the committee.

Sen. Mark: As soon as you are through.

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

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 5 ordered to stand part of the Bill.

Madam Chairman: Sen. Mark, could you just let me know your new clause, your proposed new clause?

Sen. Mark: Yes, I would like to share it with you.

Madam Chairman: Sure.

Sen. Mark: Madam Chair, I think it is important for us, particularly when they

are going with this particular provision, or section, or clause, that we consider—and I want to take it out of the Jamaican mutual assistance piece of legislation, and it reads, Madam Chair:

“The Minister may from time to time, by order, compile and publish in the *Gazette* a list of foreign states with which relevant treaties binding on”—Trinidad and Tobago—“are in force; and, without prejudice to any other form of proof of the existence of such a treaty, such a list shall, in any proceedings, be conclusive evidence that a relevant treaty is in force between”—Trinidad and Tobago—“and each foreign state named in the list.”

Madam President, as you know, Madam Chair, rather, we are seeking to engage non-commonwealth countries under multilateral treaties. I think we ought to have a provision in the legislation that would give not only the Parliament but the country an appreciation of the list of foreign states with which relevant treaties, that is multilateral treaties, are binding on Trinidad and Tobago. So I am suggesting that we seek to consider having that as an inclusion in the legislation.

Madam Chairman: So you are speaking about a list of all countries. This particular amendment which is before the Chamber, which is before the Senate today, deals with non-commonwealth countries. Correct?

Sen. Mark: When I say foreign states I am talking about foreign states within that context of the—

Madam Chairman: And therefore, from what I am hearing, Sen. Mark, what you seem to be proposing is not really relevant to this Bill, but you seem to be wanting to make an amendment to the parent Act, which really what you are seeking does not fall within, it goes further than the remit of this Bill.

Sen. Mark: Okay.

Madam Chairman: So that in light of what you have proposed, I do not think it is something that needs to go to the committee and being relevant to this particular Bill. Okay?

Sen. Mark: Okay.

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.

Madam President: Is it that the Attorney General would begin the second Bill, or Leader of Government Business?

Sen. Rambharat: The Attorney General will pilot the next Bill.

Madam President: Attorney General.

**MISCELLANEOUS PROVISIONS (SPECIAL RESERVE POLICE
AND POLICE COMPLAINTS AUTHORITY) BILL, 2020**

Order for second reading read.

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

Thank you, Madam President. Madam President, I beg to move:

That a Bill entitled an Act to amend the Special Reserve Police Act, Chap. 15:03 and the Police Complaints Authority Act, Chap. 15:05, be now read a second time.

Madam President, it gives me great pleasure to bring to this House, to bring to this Senate the Bill coming from the House of Representatives. As we know Parliament makes laws for the peace, order and good government of society, so says section 53 of the Constitution. As we know the Constitution is the supreme law of the land. As we know the Preamble of our Constitution, and indeed our rights as enshrined in sections 4 and 5 guarantee that we will be reflective of, and work such as to promote laws that safeguard one of the most cherished of the

rights in sections 4 and 5. That is the right to life, be it private life, be it liberty as well as a co-relative of rights.

In section 5 of the Constitution we also have the safeguards of the form of due process that we enjoy: the burden of proof, the reversal of that burden, the right against self-incrimination. And whilst we contract as a state, as citizens with the State to give up certain aspects of our rights, to trade them on a conditional basis, part of the balance of democracy involves us ensuring that there is accountability from those who have the privileges and powers bestowed upon them.

Section 123 of the Constitution, section 123A of the Constitution, in looking at the police service as a creature of the Constitution, we find powers given to the Commissioner of Police, powers given to the Police Service Commission where the Police Service Commission can in fact look at the performance, matters of discipline, matters of accounting, keeping the Commissioner and Deputy Commissioner of Police in line, annual reports, et cetera. Section 123A of the Constitution gives the Commissioner of Police the power of management and accountability for the ranks below him. There is a tie back to section 123 of the Constitution, in that matters can go to the Police Service Commission.

We then have section 90 of the Constitution where the Office of the Director of Public Prosecutions comes to life. Our 1976 Constitution cleaved away from the Attorney General, the criminal management. The Office of the Director of Public Prosecutions came to full life with the powers to commence prosecution, to take over prosecution, and to end prosecution, if necessary. We see in the context of our Constitution the Judiciary, the Supreme Court, constituting the High Court, the Court of Appeal, the right to the Privy Council. We see

section 14 of our Constitution, the right to challenge any infringement of your rights, and we see that the Constitution allows the laws of Trinidad and Tobago to be developed so that we can have prescriptive management of all of these rights and fulcrums in the Constitution.

So what do we have? We have this Bill before us, Madam President. We seek to amend the legislation of the Special Reserve Police Act, Chap. 15:03, and the Police Complaints Authority Act, Chap. 15:05. And architecturally, the Police Complaints Authority Act, as an Act of Parliament, is one of the most powerful pieces of law to bring balance into perspective. The powers and functions set out in the Police Complaints Authority structure set this body up into motion, require this body to engage in certain management under its functions described in law. And in treating with its powers at law, the Police Complaints Authority has an obligation set out in statute.

And I turn, Madam President, to the Police Complaints Authority Act. When we look to the powers and functions under Part III, the functions of the authority in section 21, the powers of the authority in section 22, the exercise of the functions; how investigations are conducted under Part IV of the legislation; investigations by the independent autonomous Police Complaints Authority into the activities of the Trinidad and Tobago Police Service, and captured in that, Special Reserve Police for the definition of “police officer”. This body is established to look at police corruption. A police officer is defined as meaning a member of the police service, a member of the municipal police force established under the Municipal Police Corporations Act, a member of the Special Reserve Police.

So the police service has that definition. But when we get into to what “serious police misconduct” is, as a definition, and we look to the fact that you

have to have regard to the police service and you must have regard to regulations to be promulgated under these bodies, and then when you get to section 22 of the Act, and you look to the powers of the Authority, we realize that there is a lacuna in the law.

The lacuna which we seek to solve today is to introduce the full spectrum of supervision to the police service as we know it today. And what is that intended to be? We must cover the Special Reserve Police; we must cover the municipal police. We must keep true to the architecture of the legislation. And what is that? That in the event that the Police Complaints Authority engages in an investigation, the outcome of the investigation is one of two kinds: A recommendation to the Commissioner of Police to carry out disciplinary action in accordance with the regulations. But the second and very important obligation is a recommendation to the Director of Public Prosecutions to treat with the laying of criminal charges, charges for criminal offences for serious matters.

What we have in the law at present, is we have the lack of inclusion via the person with authority over the municipal police, and that is the Assistant Commissioner of Police in charge of municipal police, we have a lacuna in that the Commissioner of Police does not have the statutory line of sight to the municipal police. So this law proposes an amendment to fix that. This law proposes to recognize that the regulations have not been promulgated for Special Reserve Police. Whilst we have the municipal police regulations, whilst we have had judicial consideration of those regulations, we do not have the reference to regulations, so there is nothing to test the Special Reserve Police by. And so in clause 2 we propose that the Special Reserve Police are measured against the regulations which are in existence, and specifically we are introducing two specific regulations: Section 136 and section 150(2) of the Police Service

Regulations made under section 78 of the Police Service Act.

I should indicate, Madam President, that we have amendments to make to this Bill. We have received submissions from the Law Association. We have done proofreading in relation to this Bill, and we have also considered recommendations coming from the Police Service Commission, and I gave an undertaking in the House of Representatives, and I keep to my undertakings, to have a special look at the role of the Director of Public Prosecutions, and therefore we will circulate amendments at committee stage. In fact, today if we can, to look at the proposed amendments to this Bill. But what we say here today is that we must pinpoint until regulations are made to the Special Reserve Police, we take the regulations under the Police Service Act, and we specifically apply regulation 136 and regulation 150(2).

We propose, therefore, Madam President, that the Police Complaints Authority, in clause 3 you will see the addition of Assistant Commissioner. We have to include that definition to ensure that the person with responsibility for the municipal police can take the disciplinary action required, fixing that lacuna. We treat with the harmonization of the modern terminology in clause 3 by fixing the municipal police force to municipal police service, because that is what it is called now. We propose to fix at committee stage the definition of “serious police misconduct”, and in that, specifically we are propose to use that the disciplinary offences should be in the alternative, 136 or 150(2), because they are disjunctive. They are not both. So we are correcting an anomaly which occurred in the amendment in the House.

We propose, Madam President, to amend the fact that we are dealing with selections as opposed to appointments, and that is a very simple amendment in clause 3. In clause 3 we also propose to treat with the need to have to rely upon

the law of necessity. Because the Police Complaints Authority is only comprised when it is filled to the capacity that the law says it must. And we have had instances in this jurisdiction where the director has been left alone, either through death or resignation of the deputies, and therefore an argument has arisen that the Authority is not properly constituted and therefore could not act. We recognize that the law of necessity can go to work and fix that. That is there. But it is untidy to leave it in that state, and so we propose the addition of a new section 13A as in “Alpha” in clause 3 where we provide that the Authority is properly constituted for a period not exceeding three months following the death, resignation or revocation of the appointment of the director or deputy director.

Madam President, we propose an amendment to paragraph (d) of clause 3. We will be asking you to consider adding more than just the fix towards service and municipal police service that we need to actually put in the specie of the Special Reserve Police in this clause. Again, we propose a repetition in Roman (ii), fixing and broadening the concept of service away from service or municipal police service, and specifically adding in the Special Reserve Police. Why? Because out of an abundance of caution we want to make sure that the Special Reserve Police that are in abundant supply—right here in our Parliament we have the Special Reserve Police that provide yeoman service for us—we need to make sure that the Special Reserve Police, the municipal police and the Trinidad and Tobago Police Service, apart from supplemental police which is rural and estate police, that they are subject to supervision by the Assistant Commissioners of Police for disciplinary matters, the Commissioner of Police in the case of the regular TTPS, and the Director of Public Prosecutions in all circumstances.

Madam President, we propose to amend at committee stage, what is described at paragraph (g), that is the Authority to provide it with a written

decision or update, and this is to keep an undertaking that we gave to the House of Representatives.

The question came in the House of Representatives, okay, why are you not asking the Director of Public Prosecutions to tell you what is happening? Let us go back to the architecture of the law. The architecture of the law is for police misconduct, for serious police misconduct, the matter is investigated, the Commissioner of Police or the Assistant Commissioner of Police goes to work for disciplinary matters. The PCA makes recommendations to them and therefore they go to work. The argument came about, in Trinidad and Tobago society people said, well the police have all of this power, we have gone to the Authority, we have made a complaint, they have investigated, their annual report says that they have referred it to the Commissioner of Police, to the Assistant Commissioner of Police, to the Director of Public Prosecutions, and then nothing happens. Silence on the front.

You have to knock on the door, you have to go for judicial review, you ask for mandamus to say, tell me what is going on. And therefore, back to the social contract, back to the balance of rights, is it fair to leave the society in a dark hole where there is no accountability from the Commissioner of Police, the Assistant Commissioner of Police, or, with the greatest of respect, the Director of Public Prosecutions? It is a very serious issue which is now met by a proposed amendment at committee stage, with the new section 44A as in “Alpha”, as we propose. And what we propose at committee stage will be that:

“The Commissioner, Assistant Commissioner, Director of Public Prosecutions or the Commission, shall within three months from the date of the Authority making a recommendation under section 44(2), provide the Authority with—

- (a) a written statement, with reasons, on any action which has been taken or is proposed to be taken or not taken, in respect of a recommendation; or
- (b) an update on the progress of a matter which is the subject of a recommendation.”

In subsection (2) we say:

Where the Authority has not received a written statement or written update in accordance with subsection (1), firstly, the Authority may make such further request for information, as may be necessary, and the Commissioner, Assistant Commissioner, Director of Public Prosecutions, or the Commission, shall, without delay provide the required information.

We say further:

Where the Authority has received a written statement or written update in accordance with subsection (1), and requires further information in respect of a matter, the Authority may make such further request for information as may be necessary, and the Commissioner or Assistant Commissioner, Director of Public Prosecutions or the Commission shall without delay provide the required information.

That even though these words are quite direct, they recognize the autonomy of these institutions. Because I would like to say quite publicly here, having worked with the Director of Public Prosecutions, that I have the utmost faith that Trinidad and Tobago is blessed to have the Director of Public Prosecutions in the form of the current director, and the previous director, and the director before that, going back into line, because there has never been a situation in this country where there has been a specter of doubt as to the integrity of these honourable office holders.

Similarly, Commissioners of Police, et cetera, often come under the

spotlight. But setting aside the good virtues of the office holders that we as a nation have been lucky to have, accountability is still required. Because we must recognize as we introduce body cameras, as we introduce GPS tracking, as we put in RF tag IDs onto plates to know where the police are, as we tell people in society, pull out your telephone and record what is happening and send it in. In a world of technology and transparency, there has to be accountability. And therefore we accept the recommendations that we ought to include in this version of the Bill at committee stage, the broadening of the accountability aspects without intruding upon autonomy and direction of the Office of the Director of Public Prosecutions as well.

Madam President, when we look to the statistical information coming out of the Police Complaints Authority, what we can say is that the Police Complaints Authority that we have today, with the series of amendments that we have caused, I want to remind, Madam President, we have allowed the Commissioner of Police, the Assistant Commissioner of Police to be subject to an improved and broadened Police Complaints Authority. We have amended the Income Tax Act, the Financial Institutions Act, the Securities Act. We have amended the Financial Intelligence Unit Act, the Central Bank Act, to allow the Police Complaints Authority to receive witness statements, to have production orders, so that allegations of police corruption can be dealt with in the same way as any allegation of corruption, because there is always the concept in that very famous part of our culture of “who is guarding the guard”.

And in those circumstances I would just like to recommend for consideration, the fact that we have had criminal investigations, including shooting, fatal and non-fatal death by dangerous driving, disciplinary offences, neglect of duty, dis-credible conduct across divisions. I recommend the statistical

information coming from the Police Complaints Authority for all.

Madam President, I think that the Bill before us has a very strong legitimate aim, that it is certainly a proportionate piece of legislation, that it is something that achieves the balance in society that is required, so that the citizenry of this country can rest assured that there are mechanisms for accountability. We do not over extend and intrude upon the offices of the Commissioner, Assistant Commissioner or Director of Public Prosecutions in such a manner as to be offensive to the autonomy of those offices as set out in the Constitution and statutory laws, nor to be offensive to the democracy of this country within the parameter of rights and the separation of powers principles that we enjoy.

I look forward, Madam President, to the contributions of all hon. Senators. I will ask that the Government's proposed amendments at this pint be circulated immediately, even though we reserve the right to consider further amendments coming from contributions arising in the Senate from hon. Members. And in those circumstances, Madam President, I beg to move. [*Desk thumping*]

Question proposed.

ADJOURNMENT

Madam President: Leader of Government Business.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I beg to move that this Senate do now adjourn to Tuesday, July 06, 2021, at 10.00 a.m. Madam President, at that sitting we propose to deal with the Finance Bill, and on completion of the debate on that—completion of that Bill, time permitting, we would return to the Bill that is now before us, the Miscellaneous Provisions Bill. Thank you.

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

International Institutions and Organizations**(Loans/Donations received)**

Sen. Wade Mark: Thank you, Madam President. Madam President, there is need for the Government to clarify, if not properly account for information that has been in circulation concerning over \$2 billion that the Government has received, or is in receipt of, as it relates to loans and donations from international institutions and organizations for assisting in the management of the COVID-19 pandemic over the last few months.

6.00 p.m.

Madam President, we have been informed, and the Minister of Finance is here and he can clarify, that as it relates to external support the Government of Trinidad and Tobago has received loans that could easily amount to well over \$2.2 billion inclusive of donations. For example, Madam President, we have been advised that the Government has borrowed some US \$100 million from the Inter American Bank and that is to deal with not only budgetary support, but to assist in supplying liquidity and also assisting the most vulnerable.

We have also been advised that the Government has received US \$50 million from the IADB for COVID relief and COVID related matters. The IADB has also provided this Government with some US \$24 million and we understand that has either come in or still to come in, but that is going to be made available which is equivalent to \$160 million. On the World Bank front we have been advised that the Government has received a loan amounting to US \$20 million to bolster the Ministry of Health expenditure in the areas of vaccination programme, hospital equipment, PPE and other medical supplies. The Government has also borrowed US \$150 million from CAF with \$100 million to be employed as a policy loan and some US 50 million which turns out to be \$335 million for the treatment and care

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for hospitalized patients, non-pharmaceutical consumable, biomedical equipment as well as PPE material and supplies.

Madam President, the Government has also recently borrowed some \$204 million from the Chinese Development Bank. We do not know what is the state of that loan, but that amounts to about \$1.4 billion or thereabouts. We need the Government to clarify where we are with that loan. The United States Embassy has also donated something like about US \$400,000 to the Government of Trinidad and Tobago. The European Union has also contributed, Madam President, and their sum is in a package for Venezuelan refugees and migrants, children in six nations, including Trinidad and Tobago. So we would have gotten some of that allocation.

Madam President, there are a lot of cross contributions as it relates to the Canadian Government, the European Union, dealing with funds for COVID-19 support. CARPHA has also received some US \$8.6 million in the form of a grant from the European Union. So the Government has been receiving, indirectly, funds from Canada, from PAHO and, Madam President, also the United Nations. As it relates to the United Nations, we have been informed that on March the 14th the Ministry of Planning and Development received some US \$3.1 million in a grant from the United Nations to support Government's efforts in the challenges caused by COVID-19. So, Madam President, that is about TT \$24 million.

And as we go on, Madam President, when we tally up these figures we go to the United States of America where some—the Government has received some US \$475,000, which is almost over \$3 million, and of course from the Development Bank of Latin America they have donated some US \$400,000 that came in the form of that sum of 2.7 million.

We also have been advised that on April the 15th, 2020, CAF also approved some US \$50 million in loans, in a loan I should say, to mitigate the COVID-19

health crisis in our country. This amounted, Madam President, to some \$335 million. So what we have had over the last period when we add up the funds, it is close to about \$2.3 billion that the Government have accessed over the last few months or I should say over the last year and six months.

So what is being requested of the Minister of Finance is to provide this honourable Senate with a detail breakdown of the loans that have been received thus far for COVID relief; COVID management and COVID support. And if he can provide this Parliament with an understanding of where that money has been spent, where has that money gone. And, Madam President, that does not include the drawdown from the HSF which is another matter completely. We are dealing with external loans from the World Bank the IADB and the CAF as examples, along with other donations from the United States and the United Nations.

So, we need clarification on this sum of money, it is \$2.3 billion and I look forward to the Minister of Finance providing clarity on this matter. I thank you very much, Madam President.

The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President. The Ministry of Finance has sourced loan financing from a number of international agencies, including the Corporacion Andina de Fomento, (CAF) also called the Andean Development Bank; the Inter American Development Bank, also called the IADB; the International Bank for Reconstruction Development, also commonly known as the World Bank and we are in the process of finalizing a loan from the China Development Bank. The loan financing already sourced include the following: US \$150 million from CAF, the Andean Development Bank; US \$139 million from the IADB; US \$20 million from the World Bank and we are in the process, as I indicated earlier, of finalizing a loan of €170 million from the China Development Bank which would be just over US \$200 million.

If you add up all of that the loans we have already finalized and sourced are approximately \$2.2 billion and the loan from the China Development Bank if converted to Trinidad and Tobago dollars would be approximately \$1.4 billion. The loan from the China Development Bank is for budgetary support and also for COVID related matters. Of the 2.2 billion that we have already finalized, disbursements totalling 1.4 billion have been received; US 100 million and US 109.8 million were received from CAF and from the IADB respectively. If you add the 1.4 billion from the China Development Bank to the undisbursed amounts of the loans from CAF, IADB and World Bank you would get a total of approximately 2.1 billion remaining to be disbursed but of the loans that we have actually finalized \$700 million.

I can give some more details as follows: From CAF we had a contingent credit line, US 50 million and that remains to be disbursed. That is specifically for COVID related health matters. We also have a contingent credit line from CAF, US 100 million for budgetary support within the COVID period, the entire amount has been disbursed to the Government. We have a policy-based loan again for budgetary support and to support our efforts during the pandemic from the IADB, the entire US 100 million has been disbursed.

We have a reformulation loan which is taking existing loans that may have some flexibility for reformulation and reorganization and that total is US 24.5 million, that is from the IADB that has not yet been disbursed. We have a fast-track loan from the World Bank, US 20 million not yet disbursed. That is specifically for COVID related matters. There is also a reformulation amendment of the loan contract for the health services support programme, an older loan, from the IADB, US 14.6 million of which US 9.8 million has been disbursed leaving 4.8 to be disbursed and the CDB loan of €170 million has not yet been disbursed. That

will be disbursed in due course, we are currently finalizing that.

In terms of grants we have received US .75 million, US 750,000 or TT 5.1 million assisting in the management of the pandemic incorporated, well, comprising the following: US \$650,000. Let me repeat that, US \$650,000 from CAF and US \$100,000 from the IADB. In terms of that total the US \$750,000 in grants to date, 680,000 has been disbursed and just about US 70,000, just around half a million TT, still remain to be received from these agencies. In terms of donations, I am advised that the United Nations has donated US \$3,437,000 to the country. However, this donation package has gone to a multiplicity of agencies, many of them in the private sector directly from the UN to these agencies and not to the Government. There are some aspects of these donations that have gone to the Government and I could just give you some examples: the regional health authorities have received US 354,000 to recruit nurses. Again, the regional health authorities have received US 120,000 to procure PPE and again the RHAs have received US 500,000 for medical equipment to support the COVID-19 response. The total amount I am advised that came from the UN for a variety of different things in terms of benefits in kind, in terms of procurement of equipment, et cetera, is about US 1.6 million. The remainder of the donations coming from the United Nations have gone to NGOs directly.

In terms of what we have spent, at last count, we have spent about TT \$21 million on procuring vaccines and in the Ministry of Health itself over the period the figure that I received from the Budgets Division over the last 15 months or so we have spent \$6.7 billion supporting the Ministry of Health in all its facets including the parallel health care system.

With respect to other matters these are all well-known, well ventilated in this Parliament. I can just give some examples. We have income and food support, we

spent 390 million so far; salary relief, 140 million; other grants, cultural grants for example, 15 million; business support measures; VAT refunds; tax refunds; VAT bonds, et cetera, SME loan programme; NIDCO facility; grant facility, that comes up to \$4.15 billion.

Basically that is it, Madam President, those are the details. We have received, well finalized \$2.2 billion in loans of which we received 1.4, we have a balance to get and we are currently finalizing a loan from the China Development Bank of 1.4 billion. And all of these loan facilities, grants, donations, et cetera, having used in various forms to support the service of Trinidad and Tobago, and in particular the COVID--19 response and in particular the Ministry of Health and the procurement of vaccines and so on. I thank you, Madam President.

Financial Oversight in Tobago
(Government's Interim Measures)

Sen. Dr. Maria Dillon-Remy: [*Desk thumping*] Madam President, I thank you for the opportunity to bring this matter on the adjournment. To the Minister of Finance, asking for the need for the Government to outline the interim measures being implemented for financial oversight in Tobago in accordance with the Tobago House of Assembly Act, Chap. 25:03, having regard to the fact that the Assembly legislature has not been properly constituted since January 2021.

Madam President, following the results of the Tobago House of Assembly election on 25 of January, 2021, the Assemblymen were duly sworn in by the President on January 28th and the next step in the proceedings was for the constitution of the Assembly legislature. As we know that process was never completed and as a result the previous Executive Council continues to administrate over the island's affairs in accordance to section 34(4) of the Tobago House of Assembly Act, which reads:

“The Executive Council shall continue to discharge its functions during any period that the Assembly stands dissolved.”

It was not the intention of the Executive Council, it was not the intention of the Act for the Executive Council to stay in office for this length of time. However, as the saying goes, it is what it is. Madam President, the Tobago House of Assembly Act reads the section 41(1):

“The Secretary shall”—this is the Secretary of Finance—“shall in each financial year submit to the Assembly for its approval, draft estimates of revenue and expenditure respecting all functions of the Assembly for the next financial year.

- (2) The Assembly shall approve the draft estimates submitted in accordance with subsection (1), with such modifications as it thinks fit.
- (3) The Chief Secretary shall transmit for consideration and approval by Cabinet, the draft estimates approved by the Assembly in accordance with subsection (2).”

Madam President, each year there is usually a debate in the Assembly legislature by the 30th of June where the *Draft Estimates of Expenditure* would have been debated for the next financial year and that has not happened. Section 42 of the Act says:

“Where the Assembly fails to complete consideration of its draft estimates in time to allow the Chief Secretary to proceed in accordance with section 41(3), (4) and (5), there shall be allowed an extension for a period of one week.

- (2) Where the Chief Secretary is unable to submit the estimates within the period referred to in subsection (1), the Minister shall proceed to prepare such draft estimates as he thinks fit and may take into account any draft

estimates subsequently submitted by the Assembly.”

Madam President, the question to Minister is, how would the hon. Minister get the estimates for the financial year for 2022 for Tobago in this situation that is so crucial and is certainly unprecedented. As we know what is happening right now in the economy and as a result of the pandemic the situation in terms of the tourism, the agricultural sector, to name a few, and the priorities that the Tobago House of Assembly needs to take or make known to the people of Tobago in terms of what the plans are for the next financial year. And that is not available right now to the Minister or I am not sure if the Minister has this available to him and the question is, how would the Minister undertake to get this arrangement for the draft estimates for Tobago for the next financial year?

I know this problem was not created by the Government and by the Minister, but that is what is happening right now, it is the first time it has happened since the Assembly legislature has been constituted and we are now in a situation and the question is to the Minister, what systems would be put in place? Madam President, I thank you.

The Minister of Finance (Hon. Colm Imbert): Thank you very much. First let me state that the budgetary allocations to the Tobago House of Assembly are based on the recommendations of the Dispute Resolution Commission which recommended that a percentage in the range 4.03 per cent to 6.9 per cent of the national budget, 4.03 being the minimum be allocated to cover both the recurrent and the development allocation for each financial year, such percentage to be reviewed from year to year in light of the prevailing circumstances.

The central government has, since this occurred, and I believe it occurred under a government that was not the PNM, this dispute over the amount that should be allocated to Tobago. Since this range has been set with 4.03 as the

minimum and 6.9 per cent as the upper limit of the national total, this is the formula that has been used to allocate funding to the Assembly for each financial year. I might dare say that we in this Government have given the Tobago House of Assembly a little bit more than they received from the UNC. The UNC always give them the barest minimum, 4.03,000. We have always given Tobago a little bit more usually in the vicinity of 4.3.

So moneys are appropriated by the Parliament to the Tobago House of Assembly for both the THA's recurrent expenditure and its development programme, on an annual basis at the start of each fiscal year. The draft estimates are laid in this Parliament and in the other place we have a Standing Finance Committee and we go through each item in each Head, in each Ministry, in each agency, line by line and questions are asked about the proposed allocation on each item, whether it is goods and services, personnel expenditure, various divisions of the House of Assembly, item by item and in fact the question has been quite comprehensive in the last several years. And when that is all said and done the Parliament would then approve the estimates of the Tobago House of Assembly which come in a bound volume that is laid in the Parliament.

The Ministry of Finance would then make a subvention available to the THA, to the THA Fund, Tobago House of Assembly fund which is established under section 141D of the Constitution and the subvention is sent to the THA via the Central Administrative Services Tobago, CAST, which is under the Office of the Prime Minister. CAST applies for the release of funds from the Budgets Division, the Ministry of Finance. The Budget Division reviews the request, examines it together with the Comptroller of Accounts to prepare a grant of credit and then releases the funds to CAST and then CAST issues a cheque to the THA on a regular basis.

The answer to the specific point that the hon. Senator made towards the middle of her contribution, in the absence of draft estimates being debated and approved by the House of Assembly, the law anticipating quite probably way back in 1997 when it was created, the law anticipated there might be a reason, for some reason, where the Assembly would be unable to complete its deliberations with respect to the draft estimates and therefore gave the Minister of Finance the power to determine the estimates. And that is exactly what is going to happen now.

There is an Executive Council in place but there is no Assembly per se to which estimates can be submitted, debated and approved as the case may be. So that it falls now to the Minister of Finance to determine what the allocation for the Tobago House of Assembly would be in fiscal 2022 and we would be guided by the range that was established by the Dispute Resolution Commission. I have been in touch with the Executive Council of the Assembly, with the Chief Secretary, the Secretary for Finance and so on, and I have asked them to submit to the Ministry of Finance there—I would have to say informal requirements for fiscal 2022 which we will then compare against the actual expenditure in 2021, 2020, 2019 and so on. And the Parliament would then be asked to approve a percentage for the Tobago House of Assembly within the range of 4.03 per cent and 6.9 per cent based on that informal submission coming from the Executive Council and I am sure it will all work out at the end of day as it has in years previously, because quite often the House of Assembly would approve a very large sum of money. I am sure those of us who keep in touch with these things will know that from time to time the House of Assembly will debate their own submissions, four billion and five billion, very large numbers, but what can be given is what is within this range established by the Dispute Resolution Commission not just from a legal point of view, from a practical and cash availability point of view and all of the line items are all there,

all of the projects of the THA, all of their programmes, they are all well established and well detailed in all of the estimates of expenditure that have been laid in this House and this Senate over the last five or six years.

With respect to oversight, the oversight of the THA expenditure lies with the Auditor General who reports to Parliament annually on the operations of the THA in accordance with section 46 of the THA Act and in accordance with section 116 of the Constitution. The Auditor General is also empowered to do special audits of the THA at any time as was done recently which made the news. The THA is also instructed to ensure that all expenditure and commitments are reflected in the monthly return of expenditure which all agencies, all entities, including the THA are required to submit to the Budget Division, Ministry of Finance by the third working day of the following month.

So every entity, whether it is a Judiciary, whether it is a tribunal, whether it is Elections and Boundaries Commission or the Tobago House of Assembly, all of these entities are required to submit every month, by the third working day of the following month, their expenditure for the previous month and their commitments made in terms of contracts and in terms of other commitment and so on. So that the Minister of Finance has a very good understanding of the expenditure of the THA on a monthly basis in accordance with the approved, line items approved by the Parliament during the budget exercise and during the Standing Finance Committee in the other place. The Auditor General has the responsibility to scrutinize, investigate, and audit expenditure, and I just want to repeat that it will fall to the Minister of Finance if there is no functioning Assembly by the time the annual budget exercise comes around or now as a matter of fact because of the dates that the hon. Senator actually referred to in her submission, that we will have informal discussions with the Executive Council and I am sure we will be able to prepare an

appropriate submission to the Parliament for the budgetary allocation for the THA in fiscal 2022. Thank you. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.30 p.m.