

SENATE*Tuesday, June 28, 2022*

The Senate met at 1.30 p.m.

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

Madam President: Hon. Senators, leave of absence has been granted to Sen. The Hon. Nigel de Freitas and Sen. The Hon. Avinash Singh, both of whom are out of the country, and to Sen. Jayanti Lutchmedial.

SENATORS' APPOINTMENT

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

“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. YOKYMMA BETHELMY

WHEREAS Senator the Honourable Nigel de Freitas is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44 (1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with

UNREVISED

the advice of the acting Prime Minister, do hereby appoint you, YOKYMMMA BETHELMY to be a member of the Senate temporarily, with effect from 28th June, 2022 and continuing during the absence from Trinidad and Tobago of Senator the Honourable Nigel de Freitas.

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 28th day of June, 2022.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/Paula-Mae Weekes

President.

TO: MR. HARVEY BORRIS

WHEREAS Senator the Honourable Avinash Singh is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the acting Prime Minister, do hereby appoint you, HARVEY BORRIS to be a member of the Senate temporarily, with effect from the 28th June, 2022 and continuing during the absence from Trinidad and Tobago of Senator the Honourable Avinash Singh.

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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 28th day of June, 2022.”

OATH OF ALLEGIANCE

Senators Yokymma Bethelmy and Harvey Borris took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Ministerial Response of the Office of the Attorney General and Ministry of Legal Affairs to the First Report of the Joint Select Committee on Finance and Legal Affairs on an inquiry into the Ease of Doing Business in Trinidad and Tobago. [*The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC)*]
 Ministerial Response of the Office of the Attorney General and Ministry of Legal Affairs to the 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. [*Sen. The Hon. R. Armour SC*]
2. Ministerial Response of the Office of the Attorney General and Ministry of Legal Affairs to the Second Report of the Joint Select Committee on Social Services and Public Administration on an examination of unemployment during the COVID-19 pandemic and the State's capacity to provide support to persons who became unemployed as a result of the pandemic. [*Sen. The Hon. R. Armour SC*]

3. Ministerial Response of the Ministry of Works and Transport to the Second Report of the Joint Select Committee on State Enterprises on an inquiry into the operations of the National Infrastructure Development Company Limited (NIDCO) including its compulsory land acquisition in relation to major projects. [*The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon)*]
4. Ministerial Response of the Ministry of Social Development and Family Services to the Second report of the Joint Select Committee on Social Services and Public Administration, on an examination of unemployment during the COVID 19 pandemic, and the State's capacity to provide support to persons who became unemployed as a result of the pandemic. [*The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox)*]
5. Ministerial Response of the Ministry of Trade and Industry to the Second Report of the Joint Select Committee on Social Services and Public Administration on an examination of unemployment during the COVID-19 pandemic and the State's capacity to provide support to persons who became unemployed as a result of the pandemic. [*Sen. The Hon. P. Gopee-Scoon*]
6. Ministerial Response of the Ministry of Public Utilities to the Third Report of the Joint Select Committee on State Enterprises on an inquiry into the operations of the Trinidad and Tobago Solid Waste Management Company Limited (SWMCOL) with specific focus on the proposed measures to assist in achieving the objectives of the National Environmental Policy and Trinidad and Tobago's progress towards achieving the United Nations Sustainable Development Goals (SDGs). [*Sen. The Hon. P. Gopee-Scoon*]

7. Ministerial Response of the Ministry of Planning and Development to the Second Report of the Joint Select Committee on Social Services and Public Administration on an examination of unemployment during the COVID-19 pandemic and the State's capacity to provide support to persons who became unemployed as a result of the pandemic. [*Sen. The Hon. P. Gopee-Scoon*]
8. Ministerial Response of the Ministry of Labour to the Second Report of the Joint Select Committee on Social Services and Public Administration on an examination of unemployment during the COVID-19 pandemic and the State's capacity to provide support to persons who became unemployed as a result of the pandemic. [*Sen. The Hon. P. Gopee-Scoon*]
8. Corporation Tax (Small and Medium Enterprises Loan Guarantee Programme) (Extension of Exemption) (No. 2) Order, 2022. [*Sen. The Hon. P. Gopee-Scoon*]

JOINT SELECT COMMITTEE REPORTS

Madam President: Hon. Senators, we will revert to this item later in the proceedings.

URGENT QUESTIONS

Forres Park Landfill Accident

(Investigation into)

Sen. Wade Mark: Thank you, Madam President. To the Minister of Labour: In light of the accident which occurred at the Forres Park Landfill, resulting in the death of a worker, can the Minister indicate whether an investigation has been launched into said accident by the Occupational Safety and Health Authority and Agency?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): On the 24th of June, 2022 an individual, David Charles, was conducting unauthorized

scavenger work behind a Caterpillar D8 tractor operated by a contractor, Norris Enterprises. The tractor came into contact with Mr. Charles and he sustained crushing injuries to the pelvis and chest. Mr. Charles succumbed to his injuries on June 27th.

The accident was reported by SWMCOL to OSHA as they are considered the occupier, that is, SWMCOL. The fatality report was submitted to OSHA yesterday, and an inspector has been assigned to investigate and to determine the facts. Further action will be determined on completion of the preliminary investigation. Thank you.

Madam President: Sen Mark.

Sen. Mark: Yeah. Madam President, through you, can I ask the hon. Minister: What standard operating procedures were in effect at the particular instance of the accident?

Madam President: No, Sen Mark, that question does not arise.

Sen. Mark: Can the Minister indicate whether the Occupational Safety and Health Agency or Authority, that has launched this investigation, has indicated a time frame for the submission of its findings and report on it?

Madam President: Minister.

Sen. The Hon. P. Gopee-Scoon: I do not have an indication but I know that someone has been assigned. I can give you that assurance that the preliminary investigation is well on its way.

Madam President: Next question, Sen. Mark.

Penal/Debe Regional Corporation

(Measures to address fuel shortage)

Sen. Wade Mark: To the Minister of Rural Development and Local Government: Given the impending tropical storm and the shortage of fuel at the Penal/Debe

Regional Corporation which can severely hamper disaster response, can the Minister indicate what immediate measures are being taken to address this issue?

Madam President: Minister of Rural Development and Local Government.

The Minister of Rural Development and Local Government (Hon. Faris Al-Rawi): Thank you, Madam President.

Hon. Senators: [*Desk thumping*]

Hon. F. Al-Rawi: Madam President, as we all know, diesel is a consumable and consumables require replenishment. As of right now, there are 1,100 gallons of diesel at the corporation. The delivery happened today. These were works put into place.

Hon. Senators: [*Desk thumping*]

Hon. F. Al-Rawi: Further, there are arrangements made with a gas station to supply fuel on credit. I sincerely regret that I had to leave the field to come to answer this question because we have a landfall expected at approximately six o'clock.

Madam President: Sen Mark.

Sen. Mark: Yeah. Can the hon. Attorney—Minister, I call you Attorney General because I think we want you back. Madam President, may I just pose the question to the hon. Minister of Rural Development and Local Government. Hon. Minister, can you indicate when this decision was taken to get NP, as you said, to deliver 1,000 gallons of diesel to this particular corporation in light of the statement that was made only last evening by the Chairman of the Penal/Debe Regional Corporation?

Madam President: Minister.

Hon. F. Al-Rawi: Thank you, Madam President. As Members may know, corporations manage themselves. There is an autonomy to purchase consumables.

The question is: Do you have the money for it? And the issue of money is one that is easily addressed. Money is available, either in the vote Head and if it is depleted, by way of virement, meaning you transfer it from one Head to the other.

The decision was taken over the course of the last couple of days and executed today so that they are in full possession of over 1,100 gallons with credit supply available. All other corporations, if I take this opportunity, are fully prepared for eventualities at this point. We appreciate the communication between the corporations and head office, and we undertake to continue to provide all support that is necessary.

Sen. Mark: Madam President, I am thankful.

Madam President: Sen. Richards.

Tropical Cyclone No. 2 Warning
Potential Flooding and Associated Dangers
(Measures to address)

Sen. Paul Richards: Thank you, Madam President, good afternoon colleagues. To the Minister of Rural Development and Local Government: Given public concerns over the national Tropical Cyclone No. 2 warning, can the Minister advise as to what measures are being taken to effectively respond to potential flooding and associated dangers?

The Minister of Rural Development and Local Government (Hon. Faris Al-Rawi): I thank the hon. Senator for the question. Madam President, the interministerial team, set up by the Acting Prime Minister, includes: the Ministry of Rural Development and Local Government, with the lead on deck; Ministry of National Security; Ministry of Public Utilities; Ministry of Works and Transport; Ministry of communications. Added on to that in other coordinates are the Ministry of Housing and Urban Development, and several other Ministries.

We have taken aggressive steps through all 14 corporations and the Disaster Management Unit and the ODPM to coordinate the arrangements. We have reported to the nation as recent as just a couple of hours ago on national television. We have warned that whilst we have done our very best to prepare that the eventualities of flooding will be real, the system is intended to arrive into Trinidad, front winds, front heavy rains, by six o'clock this evening. It is for that reason that we have, as a nation—the Prime Minister instructed that public servants are to have permission to leave work at 12 o'clock.

So, we just want to urge preparation and enough space and time. We would deal with flooding issues by way of direct response. After event, we have mitigated as best as we can, through the Ministry of Works and Transport, clearing division, and of course, the exercise conducted by the Ministry which I run for the last several weeks, all running back to back.

Madam President: Sen. Richards.

Sen. Richards: Thank you, Madam President. Thank you for the answer Minister. Given the fluidity of the situation or the volatility of the situation, can the Minister update the Parliament on, specifically, what other impacts the population can expect, in what areas or what specific parts of the country, if they are to be more affected than others?

Madam President: Sen. Richards, I will not allow that question.

Sen. Richards: Okay. Thank you, Madam President. Can the Minister indicate then if agencies and response mechanisms are adequate enough to deal with, God forbid, catastrophic effects, including what we saw, example Greenvale, given what the Minister has indicated in his first response?

Madam President: Minister.

Hon. F. Al-Rawi: Thank you. I thank the hon. Senator for the question. We have pulled everything on high alert. We addressed the nation on Sunday at the beginning—well before the beginning of the rainy season. As you are well aware, in the month of March, when I came into this Ministry, we commenced an immediate exercise of clean and survey. We have done 10 corporations to date. Just to graphically inform, we have collected 14 times the height of the Twin Towers in rubbish and refuse.

Hon. Senators: [*Desk thumping*]

Hon. F. Al-Rawi: Let me repeat that, 14 times the height of the Twin Towers. That is no small exercise. The Ministry of Works and Transport has also been engaged, since January, in the desilting and river cleaning exercises.

Now, we know that low-lying areas will be affected. It is what I refer to as “usual suspects”. What we have done is to ensure that we are actively communicating. All emergency shelters and positions are open. All Disaster Management Units are in active gear, in front coordination with the Ministry of Rural Development and Local Government. We have layered on all the resources. All 712 municipal police are out, the TTPS are out, the TTDF out.

In terms of mitigation, the flooding mechanisms, all pumps have been certified as working. Manpower arrangement for those pumps, will it be enough? We can only understand that man can plan but that God acts. So, what we can do is, as best as possible, prepare, hope that the mitigation measures are effective and to get ourselves ready as best as possible.

If I may end by urging everyone in Trinidad and Tobago to please coordinate early. It is important that you get home early, that you make your arrangements early and that if there are issues, your line of communication is to the regional corporations. We have produced a master list of all contact points and

sites. We have delivered thousands of sandbags and we are continuing to do that. And emergency reliefs are ready. So, we will prepare, prepare, prepare, but still pray.

Sen. Richards: One more Madam President?

Madam President: No, that is it. And the time for urgent questions, in any event, has expired. Acting Leader of Government Business.

ORAL ANSWERS TO QUESTIONS

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon):

Madam President, I am pleased to say that Government is in a position to answer all oral questions on the Order Paper today.

Hon. Senators: [*Desk thumping*]

Water and Sewerage Authority

(Procurement of Private Security Firm)

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

Can the Minister state whether the Water and Sewerage Authority (WASA) procured the services of a private security firm to protect its offices as the Authority embarks on its retrenchment exercise?

The Minister of Public Utilities (Hon. Marvin Gonzales): Thank you very much, Madam President. Madam President, WASA is an essential service in Trinidad and Tobago and as such, any security arrangements concerning the operations of the Authority or that of its offices and or/officers will not and should not be disclosed in the public domain.

I wish to add, Madam President, that any premature or untimely disclosure would compromise any security arrangements that are already in place or will be put in place in the near future.

Madam President: Sen. Mark.

Sen. Mark: Madam President, if the Minister can outline the law in Trinidad and Tobago that prohibits him as, hon. Minister, from disclosing the procurement of services of a private security firm to protect the assets of the Authority? I would ask him to share that section of the law so that the population can be aware.

Madam President: Sen. Mark, I would not allow that question.

Sen. Mark: Can the Minister indicate whether his office was involved directly in this procurement process? Can the Minister indicate whether his office was directly involved in the procurement of these services by this private security firm?

Madam President: Minister.

Hon. M. Gonzales: Madam President, the procurement of security services in the Water and Sewerage Authority was procured in accordance with the tender rules of the Water and Sewerage Authority.

Sen. Mark: Can the Minister indicate, Madam President, whether this particular private security firm was procured on the insistence of the office of the Minister of Public Utilities? Can the Minister share with this House whether that is in fact so?

Madam President: Sen. Mark, I will not allow that question.

Sen. Mark: Madam President, can the Minister indicate whether the procedure to procure private security services for the office of the Minister was in violation of the procurement laws governing WASA's tendering procedures?

Madam President: Sen. Mark, I will not allow that question. Next question, Sen. Mark.

Sen. Mark: Just thank you, Madam President.

Water and Sewerage Authority

(Retrenchment Exercise)

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

Can the Minister indicate whether the Water and Sewerage Authority has embarked on a retrenchment exercise involving over two hundred (200) contract workers?

The Minister of Public Utilities (Hon. Marvin Gonzales): Thank you very much, Madam President. Madam President, the Water and Sewerage Authority has not engaged in any retrenchment exercise concerning its employees.

Madam President: Sen. Mark.

Sen. Mark: Can I ask the hon. Minister, in light of the transformation plan of WASA, whether the Government is about to embark in the near future or imminently, the retrenchment of any contract workers engaged with the Water and Sewerage Authority?

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

Sen. Mark: Madam President, can the Minister categorically state, for purposes of this House, that the Water and Sewage Authority will not be embarking on any retrenchment of contract workers?

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

Sen. Mark: So, can I ask the Minister, through you, whether the Minister and WASA will be meeting with the relevant trade unions with a view to restructuring WASA, particularly as it relates to the severing of workers, Madam President?

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

Sen. Mark: Do I have any further?

Madam President: You have one more.

Sen. Mark: Madam President, I would like to ask the Minister whether, for instance, there is any intention on the part of the Government to sever any persons who are in the employ of the Authority in the coming period.

Madam President: That question also does not arise. So, can we move on to the next question?

Sen. Mark: Can I ask the third question, Madam President, Question No. 120, I believe?

Madam President: Yes.

**Investigating Accidents Involving Loss of Lives
(Ministry's Procedures)**

120. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:
Can the Minister state the Ministry's procedures for investigating accidents involving the loss of lives?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon):

Thank you very much. When an accident or incident occurs within the energy sector of the Ministry of Energy and Energy Industries, they would immediately conduct an investigation—sorry, when an accident or incident occurs within the energy sector, the Ministry of Energy and Energy Industries would independently conduct an investigation to determine the root cause of the accident.

A team of suitable technical officers would be established to conduct the investigation. The team is tasked with establishing the facts, inclusive of getting the background information of the job, the work assignment, the job events leading up to the accident, determination of the root causes and the contributing causes of the accident.

The process involves full information gathering, site inspection, conduct of interviews and obtaining witness statements, accident cause identification and, where appropriate, review of the reports of relevant statutory agencies. And on completion of the investigation, the Ministry of Energy and Energy Industries

prepares an accident report which provides an account of the accident, together with recommendations that can reduce risk and prevent a recurrence. Thank you.

2.00 p.m.

Sen. Mark: Madam President, can I ask the hon. Minister, in the case of the situation involving the four dead divers, involving those divers: Can the Minister indicate prior to the appointment of members to head a commission of enquiry, whether this independent committee as outlined by the Minister was, indeed, appointed by the Ministry of Energy and Energy Industries?

Sen. The Hon. P. Gopee-Scoon: Sen. Mark, you asked a very general question to which I answered in kind. Thank you.

Sen. Mark: I will ask a specific question now, seeing that it was general. Can you indicate to this hon. Senate whether the independent committee that the Ministry normally would have appointed, in the instance of the Paria incident or accident, was an independent committee appointed? That is the specific question.

Sen. The Hon. P. Gopee-Scoon: That may be the specific question but, as I said, you asked a general question and I am keeping my confines to the question asked. You may pose another question.

Sen. Mark: Madam President, so is the Minister indicating to this honourable House, through you, that no independent committee was appointed by the Ministry of Energy and Energy Industries, consistent with its procedures whenever an accident occurs in the industry? Is the Minister admitting that no independent committee was appointed? Can I ask the Minister, through you, Madam President, to clear the air on this?

Madam President: Sen. Mark that—yes, I heard the question, but that question is not allowed.

Sen. Mark: Madam President, can the Minister give an undertaking to report to

this honourable Senate whether the Ministry, indeed, appointed an independent committee to look into the circumstances surrounding the deaths of these four divers in the Paria accident, Madam President?

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

Sen. Wade Mark: Madam President—

Madam President: I think you have used up your time. You have.

Sen. Mark: I was on the third one, Ma'am.

Madam President: So, next question, Sen. Richards.

Sen. Mark: I do not have any more?

Children's Homes and Residences (Proclamation of Licensing Requirements)

185. Sen. Paul Richards asked the hon. Prime Minister:

Can the Prime Minister advise when will the legislation to mandate the licensing requirements for children's homes and residences be fully proclaimed?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon):

Thank you very much, Madam President. Madam President, the package of children's legislation which included, the Children's Authority Act, the Children's Community Residences, Foster Care and Nurseries Act, the Children Act and the Adoption of Children Act, was proclaimed in May 2015, to enable the operationalization of a new child protection system in Trinidad and Tobago to be managed by the Children's Authority.

The Children's Community Residences, Foster Care and Nurseries Act, hereinafter the Act, set out a regulatory framework for community residences which is, essentially, a licences and monitoring regime. Section (3)(1), as amended, prohibits a person from operating a children's homes without residence

licence, whilst section (3)(2), as amended, provides that:

“No child shall be cared for”—in a children’s home—“unless a residence licence has been issued in respect of that”—home. Section 17 establishes an offence for operating a children’s home without a residence licence or for a breach of the conditions of the licence and sets out the penalties for the offence. In order to be issued a residence licence by the Children’s Authority, children’s homes must meet the standards prescribed in the regulations, and these standards were first prescribed in the Children’s Community Residences Regulations, 2014, which has been replaced by the much more comprehensive Children’s Community Residences Children Homes Regulations, 2018. The standards prescribed in the regulations addressed a range of issues related to, inter alia, the premises, the welfare of the children in the homes, safety and security, the keeping of records and a complaint system. Each standard is measured against benchmarks, which must also be satisfied before a licence can be issued.

At the time of proclamation of the package of children’s legislation in May 2015, the residential childcare sector was unregulated. As such, many of the homes needed time and assistance in order to become fully compliant with the licensing requirements, and to facilitate this and to avoid the displacement of a significant number of children, the sections have not been proclaimed.

Nevertheless, the Children’s Authority has worked assiduously to enable many homes to achieve licensing status and, to date, 18 homes have been licensed. However, it is important to note that since it commenced operations, the Children’s Authority has been carrying out its monitoring function and has been monitoring both licensed and unlicensed homes to ensure the well-being of the children resident in these homes.

Section 17 creates an offence for operating a community residence without a

licence and is, therefore, linked to subsections (1) and (2) of section 3 hence, it would be proclaimed together with these two subsections. A proposed time frame for proclamation has been determined as March 2023. This projection is made based on the need for careful consideration of a few mitigating circumstances, prior to the proclamation of the sector. On the one hand, if the proclamation is made too soon, a large number of children will be immediately displaced. An estimated total of 310 children may be immediately displaced. On the other hand, the total capacity, if already overburdened, children residences accommodation will also be reduced by 383 places.

It is, therefore, recognized that there is need to give community residences some additional months to become fully compliant and to meet licensing requirements. The Office of the Prime Minister, Gender and Child Affairs Division, will also need additional time to provide the needed support to the unlicensed children's homes as far as possible to ensure that they achieve compliance. Thank you.

Hon. Senators: [*Desk thumping*]

Sen. Richards: Thank you for the comprehensive answer Minister. The Minister indicated 18 homes are presently licensed and have met compliance requirements. Can the Minister indicate how many homes, under the radar of the Office of the Prime Minister, have not been licensed.

Sen. The Hon. P. Gopee-Scoon: There are 13 private unlicensed homes, private ones. In addition, the State homes: St. Dominic's, St. Mary's and St. Jude's are also unlicensed.

Sen. Richards: Thank you. Can the Minister indicate if the OPM has put additional monitoring systems in place for the unlicensed homes identified, given the fact that they clearly have not met compliance standards and are yet to be

licensed?

Sen. The Hon. P. Gopee-Scoon: I could give you the assurance that there are monthly monitoring mechanisms in place. They do monitor monthly. However, they do, in fact, do more than that to ensure that they can get the homes up to the standard that is required. But, of course, there is no fixed schedule and, understandably so. But every effort is being made and with additional monitoring as is necessary.

Sen. Richards: I have one more, Madam President.

Madam President: Sorry?

Sen. Richards: I have one more question in this regard.

Madam President: You have two more.

Sen. Richards: Two more? I would just like one more question. Can the Minister indicate then if the OPM is comfortable with the care being given to children at these homes?

Sen. The Hon. P. Gopee-Scoon: I am sorry. Can you repeat?

Sen. Richards: Can the Minister indicate if the Office of the Prime Minister is comfortable with the safety requirements being met and the safety of the children at these 13 homes?

Madam President: Sen. Richards, I would not allow that question.

Sen. Richards: Thank you. Can I move to the next question, Madam President?

Madam President: Yes, yes.

Sen. Richards: Question Number 186.

Sen. Mark: Madam President, may I ask a follow-up question?

Madam President: Sure. I will call on Sen. Nakhid after. It is fine. You can ask your question.

Sen. Mark: Yeah. Madam President, through you, I would like to ask the hon.

Minister: When does the Government intend to proclaim the relevant sections of the Act so that licensed or unlicensed homes can come under the jurisdiction of the licensing authority? Can you tell this honourable Senate, is there a time frame for that process to take place?

Madam President: Sen. Mark, I believe that was contained in the answer given by the Minister.

Sen. Mark: It was?

Madam President: Yes.

Sen. Mark: I did not hear it. Sorry, but I am guided by you. Okay.

Madam President: Sen. Nakhid?

Sen. Nakhid: Thank you, Madam President. I would just like to ask the Minister, she mentioned several names who are there that are in the system for decades. I would just like her to give some clarity why the Government has not addressed their licensing until now? She mentioned St. Dominic's and other homes in the system for decades.

Sen. The Hon. P. Gopee-Scoon: I can give you the assurance that Government is making every effort to ensure and, again, to put everything in place to ensure that all of the children's homes, whether private or State, are brought up to standard and full proclamation done, as I said before, by March, 2023.

Madam President: Next question. Sen. Richards.

Allegations of Abuse in Children's Homes

(Details of)

186. Sen. Paul Richards asked the hon. Prime Minister:

Given the findings of the December 2021 report into allegations of abuse in children's homes, can the Minister indicate the following:

- (i) whether children living in the homes identified in the report have been provided with counselling; whether persons who may be involved in the abuse of children at these homes have been sent on administrative leave pending the outcome of investigations; and
- (ii) whether care protocols at these homes have been audited to ensure that the appropriate standard of care is being maintained?

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon):

Thank you, Madam President. In instances where there are reports of abuse in children residences or homes, the children identified are provided with counselling by the staff within the welfare department at the home. When there is no welfare department, the child is seen by a psychologist from the Authority or referred to an external provider.

In instances—to part (ii) of your question—where the allegations of abuse are related to staff, it is the practice to send persons on leave pending the outcome of the investigation. However, in one instance, pending the outcome of the investigatory process, the employee against whom abuse was alleged, relative to a child, had been placed in a section that does not deal with children.

With regard to part (ii), the Authority is continuing to monitor the observance of the care protocols of the homes to ensure that care standards are maintained. There are benchmarks or standards which are used to determine the standard of care being provided by the homes. They are utilized during the monitoring visits conducted by the Licensing and Monitoring Unit and, at the end of each visit to the homes, they are informed of any non-conformance which have been observed and the need for remedying same. In such instances, and based on the type of non-conformance, the Authority may work with the homes to help them attend that standard of care. Where there are allegations of abuse, an investigation is

conducted and recommendations for actions made to the homes. Thank you.

Madam President: Sen. Richards?

Sen. Richards: Yes, Madam President, thank you. The Minister indicated that one person has been transferred to an area that is not in contact with children, and that the practice has been to suspend persons pending the outcome of investigation. Can the Minister confirm that all persons who had been identified as being alleged to have been involved in abuses have been removed or suspended?

Sen. The Hon. P. Gopee-Scoon: What I can confirm to you is that, as I said in the response, there is one instance in which, at a particular facility, where one member of staff was moved from a children's ward to an adult ward, and that was at the Lady Hochoy Home, and that matter is still under police investigation.

Madam President: Sen. Richards?

Sen. Richards: Yes, Madam President, thank you and no more questions, Madam President.

BAIL (AMDT.) (EXTENSION OF DURATION) BILL, 2022

Bill to amend the Bail (Amdt.) Act, 2019 (Act No. 17 of 2019), 2022 [*The Attorney General*]; read the first time.

PRIVATE SECURITY INDUSTRY BILL, 2022

Bill seeks to make provision for the regulation of the private security industry [*The Minister of National Security*]; read the first time.

SUPPLEMENTAL POLICE (AMDT.) BILL, 2022

Bill seeks to amend the Supplemental Police Act, Chap. 15:02 ("the Act") to create a clear divide between security officers and Estate Constables and to provide further for the regulation of Estate Constables under the Act [*The Minister of National Security*]; read the first time.

BAIL (AMDT.) (EXTENSION OF DURATION) BILL, 2022

The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Madam President, in accordance with Standing Order 62(1)(b), I beg to move that the next stage of the Bail (Amdt.) (Extension of Duration) Bill, 2022, be taken on Monday July 04, 2022.

Question put and agreed to.

SPECIAL SELECT COMMITTEE**(Appointment of)**

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Madam President, pursuant to the Motion approved in the Senate on February 22, 2022, I beg to move that a Special Select Committee be established to consider and report on a code of ethical conduct and behaviour for Senators by Friday, July 08, 2022, and that the following Senators be appointed to serve on the committee:

Ms. Christine Kangaloo	Chairman
Mrs. Paula Gopee-Scoon	Member
Dr. Muhammad Ibrahim	Member
Mr. Anthony Vieira	Member

Question put and agreed to.

ARRANGEMENT OF BUSINESS

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Madam President, may I ask a question? I am a little bit confused about something. Under item 13, Introduction of Bills, there were three Bills to be introduced. Did I hear one or did you read all three?

Madam President: All three were read.

Sen. The Hon. P. Gopee-Scoon: Oh. Sorry for that temporary lapse in judgment. Madam President, I have been in contact with the leader and coordinator of the

Benches opposite and, as a result, I wish to indicate that in accordance with Standing Order 117, an agreement was reached in relation to today's Senate proceedings. The Benches agreed that having regard to the nationwide tropical cyclone No. 2 warning, released by the Trinidad and Tobago Metrological Services, that today's sitting should be concluded no later than 4.30 p.m.

Agreed to.

**RECOGNITION OF THE CARIBBEAN COURT OF JUSTICE
AS THE FINAL APPELLATE COURT**

[Second Day]

Order read for resuming adjourned debate on question [May 25, 2022]:

Be it resolved that this Senate agree that the Caribbean Court of Justice be recognized as the final Court of Appeal for Trinidad and Tobago and that the appropriate amendments be made to alter the Constitution of Trinidad and Tobago so as to entrench the court as its final court of appeal. [*Sen. A. Vieira*]

Question again proposed.

Madam President: There have already been six speakers on this Motion, including the mover of the Motion. Sen. Dr. Dillon-Remy.

Hon. Senators: [*Desk thumping*]

Sen. Dr. Maria Dillon-Remy: Thank you, Madam President, for allowing me to make a brief contribution to this Motion which was placed by our colleague, Sen. Anthony Vieira, regarding the recognition of the Caribbean Court of Justice as the final Court of Appeal for Trinidad and Tobago. Madam President, in preparing my contribution, I noted that there are more literature and opinions on this topic than I think there are *Hansards* for the Senate in any given year. However, the literature helped clarified, in some ways, the pros and passion for advocating for the implementation of the CCJ as the final Court of Appeal in Trinidad and Tobago

and the fears that led to arguments against such a move.

Today, I wish to delve briefly into both sides of the argument and offer what I hope would be a balanced synopsis from which, hopefully, we can arrive at a reasonable conclusion, and one that is in the best interest of the citizens of our beloved country. Madam President, there seems to be a trial being conducted in the public space by professionals and laypeople alike as to which is better as the final court of appeal for Caribbean people: The CCJ or the Privy Council? A stalwart of the legal profession, Prof. Rose-Marie B. Antoine, weighed in on this discussion, detailing her views in an article entitled: “Waiting to Exhale: Commonwealth Caribbean Law and Legal Systems” which was published in Article 3, Issue 2, Volume 29 of the *Nova Law Review* in 2005. She cited the cost of justice and indigenous jurisprudence as reasons why the CCJ should be implemented as the final Court of Appeal for Trinidad and Tobago.

An article by Andrew N. Maharajh entitled: “A Horizontally and Vertically Comparative Study of the Caribbean’s First Independent and Interdependent Court” was published in Volume 47 of the *Cornell International Journal* in 2014, and did wonders to unravel just how this issue of cost bears negatively on a citizen’s access to justice. At pages 742 to 743 of the article, he explained:

“As a starting point, fixed costs and the cost of filing an appeal with the Privy Council is more than five times greater than filing an appeal with the CCJ.”

In situations where the CCJ deemed filing costs too burdensome on an individual litigant, it has been willing to waive them completely. The Privy Council offers this aid on a much more limited basis. Moreover, the Court has implemented a system that would moderate the costs counsels can recover from a

losing litigant. Madam President, justice should never be seen as only a rich man's entitlement, particularly, appealing to the final Court of Appeal, especially when there is another option by which justice can be accessed faster, good quality, by persons of lesser means, i.e, the Caribbean Court of Justice. Madam President, this option is owed to the citizens of Trinidad and Tobago.

Hon. Senators: [*Desk thumping*]

Sen. Dr. M. Dillon-Remy: At the annual dinner of the Rotary Club of Georgetown on February 24, 2007, the Rt. Hon. Mr. Justice Michael de la Bastide, President of the Caribbean Court of Justice, explained the Member States submitted and affirmed the court's jurisdiction by signing and ratifying the Revised Treaty of Chaguaramas. This makes the implementation of this court compulsory. More than that, Justice de la Bastide stated this court is also made as an exclusive jurisdiction as well.

Madam President, the idea of a unified system of justice indicative of Caribbean jurisprudence, with an understanding of our intricate nuances and representative of the Caribbean's identity and culture, was enveloped in the construction of Caricom. The idea was to birth a Caribbean Court as part of that whole system. The founders of Caricom CSME did it, they succeeded, and the Caribbean Court of Justice was born in 2005.

It is the only court in the world that has the authority to interpret and apply the Revised Treaty of Chaguaramas. Any legal matter surrounding the CSME must come before the CCJ for resolution. Not only that, but the contracting states also agreed to implement the Caribbean Court of Justice as a final court of appeal in replacement of the Privy Council. This is what I mean when I say, access to the

CCJ is owed to the citizens. Madam President, to date, Trinidad and Tobago continues to be in breach of the said agreement. My question is why?

I read and I listened to the arguments against the implementation of the CCJ, and the overwhelming concern seems to be whether justice will be dispensed impartially by this court. Madam President, the CCJ is funded from the proceeds of a trust fund established by Caricom Member States and not the Government. Additionally, the judges and staff of the court are selected by the independent Regional Judicial and Legal Services Commission, and a rigorous selection process is carried out, including background investigations and intensive interviews.

Moreover, the judges of the CCJ have a life tenure until the age of 72, thus, they are able to make decisions without considering their judicial term renewal, one way or another. Appointment of the President of the court is made by virtue of a majority vote of three-quarters of contracting states and because of this Caricom put a safeguard in place, directing that he or she may only serve for one non-renewable seven-year term, within which any form of public misbehaviour or abuse of the office could be addressed. Transparency procedures were built-in to keep the judges accountable. Madam President, the structures and operations of CCJ seem to have been created in such a way to buffer the possibility of influence.

Andrew Maharajh even commented in the same article mentioned earlier that:

“...beyond borrowing systems of other courts”—the CCJ—“has created bold new systems of its own, such as the Trust Fund, the Commission and the mixed system of judicial tenure. This amalgam of old and new has created a framework poised to build the CCJ into a successful regional court.”

With the questions regarding impartiality satisfactorily answered in my mind, the next question arises whether our problem has to do more with an inferiority complex than anything else. Is it that we do not value the intellect of our own people and see the merit in what they have to offer? If that is the case, then I think we must shift our thinking from this ideology that everything foreign is better and everything local is second class. We must display pride for what is indigenous to us, otherwise we stymie the progress of our own people.

I quote, again, from Sir Shridath, who was talking about what was happening at that time in the system. He said:

“Do I need to remind you that from our Caribbean shores we have sent Judges to the International Court of Justice, to the Presidency of the United Nations Tribunal on the Law of the Sea; to the International Criminal Court and the International Court for the former Yugoslavia and, of course, to the International Criminal Tribunal for Rwanda from which the new President of the CCJ comes after two terms of distinguished Presidency.”

Madam President, our jurists in the Caribbean are bright and they can do the job. Why are we not allowing them to do it? As it stands, most of our legal professionals will never get the opportunity to appear before the highest appellate court and, therefore, never obtain the learning that can only come from practice. Additionally, they will also never have an opportunity to be promoted to sit on the bench as a judge of the highest appellate court for their country. I deem this to be a disservice to our people who have such wealth and treasure of intellect.

Hon. Senators: [*Desk thumping*]

Sen. Dr. M. Dillon-Remy: Another point is to be made. While we are running to the Privy Council, they are suggesting that we do not. Sir Shridath, Chancellor

Emeritus of the University of the West Indies, regional statesman, and former Commonwealth Secretary-General, while delivering the first distinguished lecture to the Trinidad and Tobago Judicial Education Institute in September of 2011, and I quote him, he said:

“Our embarrassment in this matter should have been compounded by the observations by the eminent President of the new Supreme Court of Britain, Lord Phillips, deploring how the time of his country’s highest judges—now Justices of the new Supreme Court—will continue to be taken up with appeals to the Privy Council. ‘In an ideal world’, Lord Phillips is reported to have said, ‘former Commonwealth countries—including those in the Caribbean—would stop using the Privy Council’—think of our people in the, sorry—‘and set up their own final courts instead’”.

This is what Jurists of the Privy Council think of our people in the Caribbean, coming to them as a final court of appeal, literally “cap in hand”, and as though we do not have something that is as good as theirs or, at least, we are seeking to become as good as them.

Madam President, I think, a part of the problem being faced in Trinidad and Tobago, is the challenge in our leadership and how we make decisions. I am concerned, for instance, the change that needs to be made in our legislation for the Privy Council to be replaced—for the CCJ to replace the Privy Council as the final court of appeal requires both Government and Opposition support, and so far this has escaped us. For example, the current Opposition Leader, when she was Prime Minister, supported the implementation of the court, at that time, though in a limited capacity, yet even that limited capacity is not yet a reality.

Now, we hear dissenting voices from the Opposition. What has changed since 2012? Is it because you were in Government then and you are in Opposition now? Was implementation good for that time but not for now?

Hon. Senators: [*Desk thumping*]

Sen. Dr. M. Dillon-Remy: If nothing has significantly changed, then let us please make the decisions based on merit and on substance. Our previous leaders signed on to an agreement which we need to put into our law books. We should do it now.

Hon. Senators: [*Desk thumping*]

Sen. Dr. M. Dillon-Remy: In her paper entitled “Replacing the Privy Council with the Caribbean Court of Justice In the OECS Countries”, Isabel C. Davila, stated that:

“The institutionalization of the Caribbean Court of Justice assumes political, economic, nationalistic and even emotional overtones and is inextricably bound up with the issues of independence and sovereignty.”

Madam President, I agree with that statement, our systems should reflect our identity. Trinidad and Tobago cut ties from Britain in 1962, and further ties were cut in 1974, when we achieved Republican status. We now have a new identity as a country, as a subset of the Caribbean region, so why is it that our justice system does not? Madam President, I support the Motion. Thank you.

Hon. Senators: [*Desk thumping*]

Our previous leaders signed on to an agreement which we need to put into our laws books. We should do it now.

2.30 p.m.

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

Hon. Senators: [*Desk thumping*]

The Minister in the Office of the Attorney General and Ministry of Legal Affairs (Sen. The Hon. Renuka Sagramsingh-Sooklal): Madam President, I thank you most sincerely for recognizing me in this debate. Madam President, if I may steal a few seconds from the Senate's time, and in light of our tropical cyclone, No. 2 warning, I just want to simply join in emphasizing, Madam President, to the citizens of Trinidad and Tobago the importance of making the necessary arrangements to ensure their safety and security. Trinidad and Tobago, please, now is not the time for "zessing" and certainly not the time for storm parties. Please be safe, Trinidad and Tobago. Madam President, to that end, I want to jump directly into the debate and, you know, add my two pence to this very critical and important debate. To that end, I want to begin by congratulating Sen. Vieira for always being a forward-thinking Independent Senator.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Sagramsingh-Sooklal: A Senator who is devoid of politics and certainly, in my estimation, a true patriot to Trinidad and Tobago and someone who recognizes the importance of our growth as a nation away from, in this instance, the Privy Council and our colonial master. So congratulations, Sen. Vieira. So certainly I stand in support and join in the chorus with my other colleagues on the Government Bench as we add our support to this very, very critical, very critical Motion.

You know, Madam President, the hon. Patrick Manning, may God rest his beautiful soul, on April the 16th, 2005, on the historic occasion marking the inauguration of the Caribbean Court of Justice said this, and I quote:

“It was the late eminent Regional jurist, Sir Telford Georges, who observed that to have independent countries referring legal jurisdiction to their former colonial masters is tantamount to ‘a grown man who demonstrates his independence but continues to live in his parents’ house.’

...it is with great pleasure that I inform you that we have now found excellent accommodation, and we are moving out.”

Today, Madam President, I want to put on the record my support for Sen. Vieira’s Motion, my support to the Prime Minister, Dr. Keith Christopher Rowley, my support to the hon. Attorney General to fulfill this country’s treaty obligation to acceding to the CCJ as our final Court of Appeal to replace, Madam President, the judicial committee of the Privy Council. The time is now and I wish to say to Trinidad and Tobago and to the Members of this Senate, we have found an excellent accommodation and we are moving out.

Madam President, to that end, I want to focus on an article that I found in preparation for this particular debate. The Duke E. Pollard in his book, Madam President, *The Caribbean Court of Justice*—and this is for the purpose of the *Hansard*—*Closing the Circle of Independence*, 204, (2004), stated:

The establishment of the Caribbean Court of Justice in its appellate jurisdiction will signal the birth of autonomous judicial decision-making in member states of the Caribbean community and closed circles of independence, which commenced as early as 1962, in a real sense too, the establishment of the court will mark the culmination in initiatives to create our own regional institutions to facilitate and promote the development of an indigenous jurisprudence reflective of the moral, political, social and economic imperatives of our region and which commenced with the

establishment of the Council of Legal Education in 1970.

Madam President, to that end, I would like to highlight two critical points. Every time, Madam President, a case is before the CCJ and a judgment is delivered we are aware that these judges are shaping and molding this region's jurisprudence. This is also one of the goals of the CCJ.

Madam President, in a paper entitled, "The Caribbean Court of Justice and the Evolution of Caribbean Development", presented by Right Hon. Sir Dennis Byron, then President of the CCJ, at the 15th Annual Sir Arthur Lewis Institute of Social and Economic Studies Conference in April, 2014, stated:

One of the—"...aim of the Court, as expressed in its Strategic Plan, is to be...innovative..."—"...innovative...in the sense of...fostering jurisprudence that is reflective of our history, values and traditions, and consistent with..."—the—"...international..."—law and—"...norms."

Madam President, the CCJ in its appellate jurisdiction, as we are all aware, has addressed various issues, ranging from civil, criminal and constitutional law; areas ranging from death penalty to labour rights and other human rights areas. Armand Claude de Mestral, in "The Constitutional Functions of the Caribbean Court of Justice", June 16, 2015, in a journal entitled, "McGill Journal of Dispute Resolution", Volume 1, No. 2, 2015, at page 70, Madam President, states:

"Analysis of the many other decisions of the CCJ under its appellate jurisdiction reveals that the court is indeed marking a highly constructive contribution not only to the law of the three countries that have accepted its appellate jurisdiction, but also to the Caribbean region as a whole. The impact of its appellate jurisdiction will surely be felt even more as it is gradually adopted by other Caribbean states."

In the same paper, Madam President, I referred to earlier, Sir Dennis Byron, he went on to further say that:

In the CCJ's—"...appellate jurisdiction, the Court has been able to clarify important doctrinal elements..."—even in the—"...Guyanese...land law system...which is unique..."—to Guyana, which is unique to our region.

So, Madam President, this is one of the many reasons, at least based on the learning that I have presented, and the literature that is available, why we stand in support of the development of regional jurisprudence. Adopting and supporting this Motion is not a political gimmick. Adopting and supporting this Motion is, as I began, the time has come for us as a nation to move out of our parents' home.

Madam President, the CCJ esteemed judges are best positioned, in my respectful submission, to understand the realities that we face here in this region, and more specifically in Trinidad and Tobago. Recently, Madam President, hot off the press, as I may say, in an article that was in the newspaper on Saturday, June 25, 2022, the *Trinidad Guardian*, to be clear; the article entitled, "Ramesh: The people must decide if to replace Privy Council with the CCJ", written by Raphael John-Lall, and it is stated:

"A former finance minister and law lecturer Karen Nunez-Tesheira, who also spoke at the seminar, gave the opinion that it is time the country starts to think about leaving the Privy Council as it is a foreign institution that does not understand the cultural intricacies of T&T, and also the costs to go to the Privy Council is out of the reach of the majority of T&T population.

I am one..."

—referring to Mrs. Nunez-Teshiera:

“I am one of those who believes that the time has come to take...”—a—
“...leap of faith and to make the CCJ our final court of appeal.””

Madam President, and that is why I support Sen. Vieira’s Motion because here we have, even in 2020, conversations continuing relative to the importance of us breaking our ties from the Privy Council and of course turning to something that is ours, something that would be uniquely Caribbean, something that would be uniquely regional.

Madam President, chapter 4, page 46, of the Caribbean Court of Justice, an article entitled, “The Caribbean Court of Justice: The History and Analysis of the debate”, presented by Hugh Rawlins, lecturer, at the Faculty of Law, the UWI, published in the Caribbean Community, 2000, Guyana. This paper states, Madam President:

“There has been an interesting assertion...”—of justice that—“...that justice cannot be divorced from...local circumstances in which a case arises. An essential requirement of this assertion is that adjudicators should be familiar with those circumstances and, ideally, should themselves spring from... The truth is, however, that the value which many persons in the Caribbean place upon decisions of the Privy Council, as well as their respect and confidence in its administration of justice, is in part, incidental to its location, far removed from the Caribbean”

So, Madam President, this is an academic debate and has been ongoing for many, very, very many years. As Sen. Vieira stated in his contribution, there is much literature on the CCJ, and me, being the nerd that I am, thoroughly enjoy preparing for this particular debate. Madam President, there are so many luminaries, some whose thoughts and contributions I have put on record today and

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I took the time to do so, to show, Madam President, that there is support throughout the region and locally that the CCJ's best position to foster and develop this jurisdiction's jurisprudence because of their understanding of our unique and varied legal matters.

So, Madam President, as I get into the crux of my debate, it has been said that the Parliament, of course—it has been said that the Parliament is the highest court of the land and if that is indeed true, Madam President, that makes you the honourable judge and Members of this honourable Senator, ladies and gentlemen of the jury, together with members of the public. So if I am to approach this particular debate as if this was indeed the highest court of the land, my intention, as I would do in any court, of course, Madam President, would be to provide evidence to this court and evidence to the jury as it relates to this particular part—recital sorry—of Sen. Vieira's Motion. In Sen. Vieira's Motion, the hon. Senator said:

“And whereas the unique and varied legal matters which arise in the Caribbean are far removed and foreign to the society, culture and habits of the Judicial Committee of the Privy Council, as sentiment echoed by Privy Council judges and senior British legal figures;”

That, Madam President, is the part of Sen. Vieira's recital that I intend to focus on and in an attempt to do so, I wish to present evidence to this honourable Senate as to why, focusing on four landmark decisions, Madam President, taking this honourable Senate through those four landmark decisions, emphasizing where it was critical for these matters to be tried before a court, such as the CCJ, they understanding the peculiarities of our Caribbean-ness and what makes us Caribbean. You know, Madam President, just yesterday—and I want to also use the opportunity to offer my sincere condolences to Justice of Appeal Judge

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Malcolm Holdip, who laid to rest his 35-year-old daughter yesterday. Arielle, was my very, very good friend. And the reason why I am bringing up Arielle, and I want to read her name into the *Hansard*, Madam President, is because—a very personal story,

Arielle walked and was at my side throughout the length and breadth of the 2020 general election. She stayed separate and apart from politics but I am her friend so she supported me. And during that election, it was the first time I exposed myself to the public and during the course of that election campaign, Madam President, on several occasions, of course, there would have been the trolls who attacked me based on the fact that I was too fat. There were those who attacked me on my eyebrow and my make-up; “talk about attacks.” And I recall on one occasion during the election campaign, I went to her and I was in tears and I said to her, “I cannot take this anymore”; like, “Stop posting pictures of me”, because people were continuing to talk about how fat I am. And this friend of mine said to me—she said, “Be your unique self.” She said to me, “Be your authentic self. Do not allow anyone’s perception of you to change who you are.” And why I bring up that concept, why I bring up that idea of authenticity, Madam President, is because when we look at the Caribbean we are indeed an authentic region.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Sagramsingh-Sooklal: We are indeed an authentic nation. And I believe it is critical as it relates to our law because of how authentic we are, it is important for us to adopt the CCJ as our final appellate court because we would have judges sitting there who understand the peculiarities and the authenticity of us as a people and of us as a region.

Hon. Senators: [*Desk thumping*]

Hon. R. Sagramsingh-Sooklal: So, Madam President, as I indicated, my focus in this debate would be of somewhat academic in which I would focus on four decisions coming out of the CCJ in which I respectfully submit to this honourable court, to this honourable Senate, to the people of Trinidad and Tobago that had these matters been tried before the Privy Council, we may not have had the decisions we had coming out of these decisions, reason being, the CCJ better understood our peculiarities, better understood our authenticity as a Caribbean people.

Those decisions, Madam President—firstly, it is the case of *Katrina Smith v Albert Anthony Peter Selby*; it is a 2017 case, CCJ 13. Then there is the case of *Ramdass v Jairam* and others, CCJ, 2008 case, CCJ No. 6. Then there is *Maya Leaders Alliance v The Attorney General of Belize*, a 2015 decision, Madam President; *McEwan*, [2018] CCJ Case. These decisions, Madam President, which to my mind focused on certain unique aspects of us as a Caribbean nation, because these are cases spanning from Guyana to Barbados to Belize, different jurisdictions in which we required—which I respectfully submit, Madam President, having judges who understood the Caribbean identity, and as Sen. Vieira eloquently puts it in his recital, understood the unique and varied—sorry—the culture, the society and habits of our Caribbean people.

Now, Madam President, I may respectfully begin with the case of *Katrina Smith v Albert Anthony*. Now, the facts of this case, Madam President, and in looking at these cases for us to understand why I am putting this on the record, I would be required to go through the facts, the issues and the law and analysis of these cases. Because, of course, by the time I get to the law and analysis, we will understand what the court took into consideration that was so uniquely Caribbean

that allowed them to make a particular decision. Now, Madam President, in this particular case—this is a Bajan case, it came out of Barbados; the facts of that case, the deceased, Albert Selby died intestate. And for the non-lawyers amongst us, he died without a will, which meant that this estate had to be administered in accordance with the Succession Act and the rules of intestacy.

The deceased, Madam President, had no children, was pre-deceased by his parents and survived by his siblings, including the respondent, Mr. Albert Anthony Selby. The deceased was an unmarried man at the time of his death, however he lived together with the appellant, Ms. Smith, a man and women for more than five years, since April 2000, until he died. Now, Madam President, the case reads:

On the 6th of August, 2020, the Court of Appeal, Barbados, declared Ms. Smith as a spouse, however the respondent, being the deceased's brother, appealed against the ruling.

When the appeal was heard on the 14th of January, 2016, the Court of Appeal reversed the decision that Katrina was not the spouse of the deceased whereby it rejected the decision of the trial judge that the word “single” in section 2(3) of the Act included a married man who was separated from his wife and rejected also the alternate rationale that the term “single” was descriptive of a status of the parties had at the time of the death of the deceased.

Now, the issue coming out—and this is just bare-bone facts—the issue in this matter that the court must or the court had to determine, Madam President, was whether Ms. Smith, who had been living with Mr. Selby as a man and wife, immediately preceding his death was his spouse as defined in section 2(3) of Succession Act, Chap. 249 of Barbados, which prescribed that:

“...reference to a ‘spouse’ includes

- (a) a single woman who was living together with a single man as his wife for a period of not less than 5 years immediately preceding the date of his death;”

So this matter when it went to the appeal, as I said before, it was a matter really that required interpretation of the law. The controversy of this matter, Madam President, centres on the issue of whether the deceased was a single man immediately after preceding his death. The controversy in this case, Madam President, is derived from the view that there is a rigid distinction between literal and purposive approaches to the interpretation of the statutes.

Now, let me turn to the law and the analysis. The CCJ, Madam President, in this matter had to examine the principles of statutory interpretation of the Bajan Succession Act, adopting and implying Lord Bingham dicta in the case of *R v Secretary of State for Health*, on the *West Indian Law Reports*, where it was held that the principles which the judges must apply when interpreting statutes, included respect for the language of the Parliament, the context of the legislation, the primacy of the obligation to give effect to the intention of the Parliament. The CCJ, decided, Madam President, that the primary function of a court was to give words the meaning Parliament intended and was discerned by understanding the objective of the legislation; the change that it was aimed at producing and its purpose. Now, Madam President, the CCJ looked at another case, Hey don's case which is still relevant today, and highlighted that it is the duty, Madam President, of a court to consider the mischief and intended remedies which made it necessary to pass legislation and to add force to the intended cure according to the intent of Parliament for the benefit of its people.

Now, the CCJ also considered comments from academics in its

interpretation exercise about the social—and this was actually found in the *Obiter dicta*, the *Obiter* comments of the case. So the CCJ also considered comments from academics about the social and historical context within which the Act was enacted and found, Madam President, that the Act was a social legislation, a social legislation to address one of the realities of a Caribbean society that had not been reflected in the common law or statute inherited or adopted from England, whereby persons living together as man and wife but were not married to each other and their children had not been recognized in the colonial legal and judicial regime with unfair results. Therefore, the right to inherit was dependent on the status of marriage. In the case, Madam President, the CCJ noted that:

On the death of a partner in a non-marital union in the absence of a will, the survivor had no right to inherit or otherwise benefit from the deceased estate regardless of the quality or duration of that union. Conversely, a person who was married to a deceased could inherit regardless of the quality or the duration of the marriage.

Whether it is an empty-shell marriage or not, based on the law you were entitled pursuant to that archaic colonial law. You were entitled, Madam President, to benefit whether the survivor and the deceased had been living at the time of death in another non-marital union. And as we say, local parlance, “Whether you was horning or not and yuh had ah outside relationship or not”, based on that archaic law, you could have benefited. So the CCJ in this case, in looking at the social circumstances said, “We will not have it”; in essence, “We will not have it because the reality, as we know in the Caribbean, there are many common law relationships in which man and women live better than married husband and wife”, and the CCJ in understanding our unique realities understood that it was important to give

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recognition to women and persons in Barbados who lived in this kind of relationship.

Now, and in conclusion, Madam President, the CCJ reviewed section 2(3) of the Succession Act, 249, as a whole and found that section 2(3) changed the definition of “spouse” for the purpose of inheritance under the Act to include a single person who was not married to and who cohabitated with the deceased for five years immediately preceding the death, provided the deceased was not married to someone else. The court, Madam President, decided that the mischief the Act intended to remedy and the solution it prescribed—meaning the CCJ—were clear. The rights of the survivor of a non-marital union to benefit from the estate of the deceased partner was not dependent on the status of the marriage but on the duration of the cohabitation with the deceased immediately preceding death. In this case, the statutory period of cohabitation for five years, immediately before the death of the deceased was determinative of the right to inherit as a spouse as this could have been used as a credible indicator of a commitment to a true union comparable to a formal marriage. So, Madam President, I particularly, having practiced in the Family Court and having had to deal with so many women who would have come to me who had cohabitational relationships and who were told by their spouse, their cohabitational spouse at the time that, “You was not getting a thing because you was never married to me”—one can imagine how pleased I was when I was in practice to know that this was the kind of learning that was coming out of the CCJ, a court that truly understands the peculiar—and I started by saying, the authenticity of us as a Caribbean people.

So this is one of case that I have presented to this honourable court with the hope that at least when it comes to voting on this Motion, we would be able to do

so, understanding that this case—that the CCJ has played a critical role in developing our jurisprudence, yes, but more so, it is best positioned to make said decisions because what we would have is our own people, Caribbean brothers and sisters; Caribbean luminaries sitting there, called upon to make a decision. This is not an emotional—because I know the Opposition in the previous debate spoke about this, in speaking about Sen. Vieira’s opening statement, spoke about, you know, this is not just an emotional debate—but we have to—unfortunately, in this debate we have to put some emotions in it and we have to understand that the CCJ would be best positioned, as I said before, based on understanding our unique Caribbean-ness to make certain decisions.

3.00 p.m.

Now, as I would have indicated in my introduction, Madam President, throughout the course of this contribution I would look at cases. The other case that I want to turn to is the case of *Ramdass v Jairam et Al*, [2008] CCJ. This is a Guyanese case and, again, the part of Sen. Vieira’s recital that I would be focusing on is:

“And whereas the unique and varied legal matters which arise in the Caribbean are far removed and foreign to the society, culture and habits of the Judicial Committee of the Privy Council, as sentiment echoed by Privy Council judges and senior British legal figures;”

Now, in this case again, if I may respectfully take this honourable Senate through the length and breadth of this case.

Madam President, generally, the facts of this case. The appellant, Ramdass and the first respondent, Loki, were brother and sister. Loki inherited land from her husband and had agreed to sell to her brother 36 acres for the sum of \$30,000.

Subsequent to this, Loki also entered—say for the “smartmanism” that is also uniquely ours as a Caribbean people sometimes—Loki also entered into an agreement of a sale with Ali Mohammed, under which she sold for the sum of \$125,000, all of the land which she had inherited from her husband, including the 36 acres which she had earlier sold to poor Ramdass. This resulted in litigation, Madam President, when Ramdass was granted an injunction by the court restraining Mohammed from entering his portion of land.

In his pleadings, Ramdass alleged that Loki and Mohammed fraudulently passed transport—because that is what transfers are referred to in the Guyanese jurisdiction, it is not referred to as a deed, it is referred to as transport—to Mohammed in order to defraud him of property.

Ramdass filed action against Loki, Mohammed and the Registrar of Deeds seeking specific performance of his agreement with Loki and revocation of Mohammed’s transport. In essence, the revocation of Mohammed’s deed based on fraud.

Now, the issue raised in this particular case was whether equitable interests in land in Guyana are recognized or can be acquired, having regard to the development of the law of immovable property in Guyana, particularly in relation to a purchaser who is put in possession under an agreement of sale. Immovable properties are like chattel, chattel houses that we are aware of, that is so unique to the Caribbean as well.

Now, let us turn to the law and analysis in this particular case. Guyana has a hybrid land law system, and those who would have practised in other jurisdictions would understand, or even just through law school, because I have not practised in Guyana. But just in going through law school and having Guyanese friends, you

understand that their land law system is a mixture of the Roman-Dutch law and English common law, which is unique and, by far, more complex than I believe any land law system that exists in the entire world. So complex in its own right.

In its appellate jurisdiction, Madam President, the CCJ has been able to clarify important doctrinal elements of the Guyanese land law, offering clarity, legal certainty and stability to the Guyanese community on many of these land issues, and *Ramdass v Jairam* being one of those cases.

Now, the court in this case would have had to examine section 3 of the Civil Law of Guyana Act, Chap. 6:01 to subsection (d), which states:

“the common law of Guyana shall be the common law of England as at the date aforesaid including therewith...”—well, you know how these things are drafted—“the doctrines of equity as then administered or at any time hereafter administered by the courts of justice in England, and the High Court shall administer the doctrines of equity in the same manner as the High Court of Justice in England administers them at the date aforesaid or at any time hereafter.”

So that is an excerpt actually taken from section 3 subsection (b) of the Civil Law of Guyana Act.

Now, subsection (b) of that same section—so we have section 3 subsection (b) of that same law states:

“the English common law of real property shall not apply to immovable property in Guyana...”

And then it goes on to say in subsection (d):

“There shall be as heretofore one common law for both immovable and movable property, and all questions relating to immovable property within

Guyana and to movable property subject to the law of Guyana shall be adjudged, determined, construed and enforced, as far as possible, according to the principles of the common law of England applicable to personal property...”

So here we had wholesale in this particular Act, section 3 of the Civil Law of Guyana Act, adopting and mandating legislatively that once cases in Guyana—so it means irrespective of how unique your case was, if you relied upon the laws to the letter, or the law that was on the books, decisions could only be made based on what happened, how the British would have applied the law in their circumstances. So this, in essence, was the “jhanjat” that the court was faced, the CCJ was faced when this case came before it.

Therefore, through this provision, it is provided expressly based on what I just said, that the English common law of real property was not to apply to immovable property in Guyana, and that there was to be one common law for both immovable and movable property, meaning chattel houses, with the proviso that immovable property may be held in full ownership, which shall be the only ownership of immovable property recognized by the common law.

Now, the concept, as I indicated before, of chattel houses known to the English law, notably in the case of *Elitestone Ltd v Morris*, which questioned whether a bungalow situated on top of concrete blocks, but was not attached to them, form part and parcel of the land itself. This is a peculiar phenomenon in the Caribbean society, and most Caribbean territories have given it statutory recognition. It was held in *Elitestone* that if it cannot be removed without being destroyed, then it is more than likely a fixture.

Therefore, though the judges of the Privy Council in this particular case—

Recognition of the Caribbean Court of
Justice as the Final Appellate Court
Sen. The Hon. R. Sagramsingh-Sooklal (cont'd)

though they understand the concept of chattel houses which is still existing and is very common to us in the Caribbean, there are key societal issues unique to us to consider, arising out of the issues of chattel houses.

Madam President: Minister, you have five more minutes.

Sen. The Hon. R. Sagramsingh-Sooklal: Thank you, Madam President. Arising out of the issues of chattel houses, movable property, which they may not appreciate and relate to, such as fraud, such as land grabbing, such as bribery and collusion. It must further be noted that certain aspects of the English law will not reflect on our needs, cultural traditions and regional objectives.

Through the CCJ, Madam President, we can be proud as region that the people of the Caribbean region will now be placed in a position to take control of the administration of its own justice, as has been the case in relation to other aspects of our regional responsibilities.

Madam President, a prime example of land fraud occurring in Trinidad and Tobago is the Caroni (1975) Limited land issues surrounding fraudsters and people offering deals for sale, which we are dealing with as a national and regional issue, especially in relation to unregistered deeds, which are deemed to be fraudulent and void. With this in mind, I ask the simple question: Can a judge in the Privy Council fully understand and have an appreciation for our culture, and determine whether a chattel house on blocks in a community in Georgetown, Guyana, belongs to the occupant or the owner of the land? And my answer to that is, no. Or, can judges of the Privy Council appreciate and knowledgeably determine matters related let us say to sou sou that exists in Trinidad, which have been common especially in rural communities in Trinidad and Tobago? My answer to that is no.

Actually, in preparation for this particular matter, I saw that there was a matter some time ago, I think it was in Princes Town, where a lady brought a matter for obeah against her neighbour for practising obeah, and that was actually the case. It is a matter based on obeah.

I remember when I was practising law, there was actually a counsel, and of course I will not mention his name, who said he had to—it was a murder trial, and he was attempting to run a defence based on obeah, “dat de man geh a shaft from ah obeah man”, and therefore when he was acting, he was acting in a particular—I am sorry to laugh—but he was acting in a particular way, because he was under the influence of obeah. You could imagine cases—now of course in the UK they have dealt with witchcraft, but that Act that dealt with witchcraft I understand has been repealed, so therefore there is no law at all in the UK that deals with the issue of witchcraft. But in our Summary Courts Act, even in Trinidad and Tobago, there is recognition to issues of, well, for want of a better word, obeah matters.

So, Madam President, all that being said, I know time is against me, and unfortunately I do not have the time to go through the other cases that I intended to put on the record.

Sen. Nakhid: [*Inaudible*]

Madam President: Sen. Nakhid—just one second. Sen. Nakhid, please apologize for that statement. Please rise and apologize.

Sen. Nakhid: Apologies, Madam President.

Madam President: Thank you. Continue, Minister.

Sen. The Hon. R. Sagramsingh-Sooklal: Thank you, Madam President. I do not know if certain people in here are under obeah too. “Dey” acting in a—anyway, I will move away from that.

Madam President, the point that I want to make most respectfully is that, of course, I stand in support of Sen. Vieira's Motion, recognizing that we are peculiar and we are authentic as a people, and as the then Prime Minister Manning said, the time has come, we have found an excellent accommodation, and like it or not we are moving out. I thank you, Madam President.

Hon. Senators: [*Desk thumping*]

Madam President: Sen. Roberts.

Hon. Senators: [*Desk thumping*]

Sen. Anil Roberts: Thank you, Madam President. It is indeed a pleasure to follow the learned attorney and the Minister in the Office of the Attorney General and Ministry of Legal Affairs. I see that she just finally made a case by bringing up obeah, for the hon. Prime Minister now to probably head the CCJ, but I heard the hon. Senator speaking about—

Sen. Lezama-Lee Sing: Madam President, on a point of order. The Senator is imputing improper motives against this Senator by saying that she is bringing forward a case of obeah for the Prime Minister.

Madam President: Sen. Roberts, please continue.

Sen. A. Roberts: [*Laughter*] Thank you, Madam. Oh, my goodness. The hon. Senator spoke about emotion, and said that Sen. Vieira brought in emotion, and the CCJ evokes emotion. Let me agree with that, because when I was listening to the hon. Independent Sen. Vieira, and he was talking about passionate, about patriotism, about believing in ourselves, and knowing that we can chart our destiny and so on, I actually started to feel that because I too believe in that.

I agree that we in Trinidad and Tobago can achieve greatness in any sphere, wherever we set our minds to. In fact, I have been part and parcel of that in

Olympic swimming in Trinidad and Tobago for the last 35 years. So I certainly do not share the belief of Independent Sen. Dr. Dillon-Remy that if I do not support the move to the CCJ that somehow I am unpatriotic, and I do not believe in the brilliance of my people, because I certainly to. So, therefore, that argument will be a non-starter.

So while we get emotional, we must understand that this argument is a very critical one, and our last speaker, the hon. Senator, the Minister in the Office of the Attorney General and Ministry of Legal Affairs, gave us some good cases, some interesting cases, where the CCJ, due to their culture and their understanding, adjudicated brilliantly on certain matters. That is not the issue, however.

We are not here to determine whether the CCJ and our learned judges or our people are qualified to sit in a court, or whether the Privy Council—it appears from the last argument that if you do not eat roti you will not be able to hear an argument on the curry power utilized to produce a good beef roti, because it is quite clear that no matter what the court, lawyers, attorneys, learned people who get briefed by their clients go to these courts and make arguments, what is clear and what is the point that we need is that how are these arguments heard, through what sort of ears, what sort of filter.

The problem in Trinidad and Tobago and the Caribbean is that unfortunately, after 60/62 years of independence, our societies are small, and we tend to agree with the founding father of the PNM, Dr. Eric Eustace Williams who, when he brought us to independence, left the Privy Council because he said Trinidad and Tobago is a small place. Everyone knows everyone and everyone exists and attends cocktail parties, and that is the essence of our debate here.

Is it possible, is there evidence in our judicial history that political

interference can infiltrate a court and lead to decisions that may not be in the best interest of the nation, or may be tainted by bias. I am surprised that the hon. learned attorney, Minister in the Office of the Attorney General and Ministry of Legal Affairs did not quote a case from yesterday. I thought she would go there and try to convince me that that Privy Council judgment which I would go into and analyze shortly to make my point, show me where, why and how the CCJ would have been a better place for that case and that judgment that was just handed out by the Board of the Privy Council.

I understand sou sou and different intricacies of land, and that is very good. No one here is coming to make an argument that our people are unqualified. We are making a case that we need and must hold on to the Privy Council, because the very essence is that they are separated by the Atlantic, and in that Atlantic Ocean and that distance comes some impartiality, fairness and listening without the veneer of red or yellow, and therefore justice can truly be blind and justice can be fair and impartial. That is the argument.

So the mere fact that the PNM, the People's National Movement, is clamouring for the CCJ, is actually an argument against the CCJ. The mere fact that we are seeing and hearing about the culture of Trinidad and Tobago, I take hon. Members back to an article printed in the *Newsday*, July 28, 2014, because if you want to talk about culture we must be realistic about all our culture, positive and negative.

There is an article in 2014, July 28, where a report was done by then Registrar of the court, Mr. Jackson, in which he complained of a myriad of issues going on at the CCJ, one of them being about our culture, because as you all know, we in this august House, in the Lower House we get—during Carnival we

celebrate, and whoever is in government we get VIP tickets and so on. That is the norm. But a judge in the CCJ instructed his driver at that time to sell these tickets. The driver, printed in the *Newsday*, decided and thought that that was unethical. So he told the honourable judge, “No, I will not do that”. “That is for you and your wife only, and they are non-transferable.” He was fired, and then another driver was allowed to be hired at US \$1,300. This is the problem. Understand that when we have this sort of infiltration into a court, we must be very careful. Especially in cases that may involve politics. As Dr. Williams said, all of us are so close together, that politics impacts everything and politics can warp judgment. Mr. Jackson also went on to report a litany of woes.

Madam President: Sen. Roberts, I have to caution you here. I just caution you to Standing Order 46(8) which speaks about bringing the conduct of members of the Judiciary, and by extension it would be the CCJ, into this debate. So I would have to ask you to veer away from this line that you are pursuing.

Sen. A. Roberts: [*Inaudible*] one judge—so thank you, Madam President, but the report was also discussing the general administration of the CCJ. Is that okay?

Sen. Mitchell: No.

Sen. A. Roberts: I did not ask you.

Madam President: Sen. Roberts, I will ask you please, whatever that report is, and just because it is a report does not mean that you can come here and speak about it. So I have given you the warning. You can continue, and I will caution you as you go along.

Sen. A. Roberts: Thank you, Madam President. What I am saying, I will not go, but to come here and pretend that everything Caribbean, and because it is of us, and we are proud of ourselves, to blind ourselves and to dip our head in the sand to

suggest that all of our institutions are functioning well, is to really go down a dangerous path.

In Trinidad and Tobago, part of our culture is to understand that independent institutions have a track record and a history of being tainted by politics. So we must be careful, especially when handling the Judiciary, because that seems to be the last bastion of a place where citizens can rest assured that somehow when they argue and they make their case, that a fair judgment will come. It is not perfect, nowhere in the world is it perfect, but in all of our institutions, it is the one place that we could feel confident. Therefore, when handling it or making decisions, we must thwart our emotions and go to facts, realities and information.

Independent Sen. Dr. Dillon-Remy said that the Member for Siparia when she was Prime Minister wanted to move towards the CCJ in a limited application, but the hon. Senator failed to tell us what was that limited application. It was in matters of a criminal nature, because our history and our culture would show that in criminal matters there is less affinity or less possibility of political interference or political influence, or political benefit, to be accrued from these decisions. So, therefore, agreeing and understanding that our learned legal professionals are of the highest order, the hon. Kamla Persad-Bissessar, on the 50th anniversary of our independence was suggesting a move towards limited utilization of the CCJ. So to come here today and cast aspersions on the hon. Leader of the Opposition, saying that she has changed her position because she is not Prime Minister, was a bit unfortunate. So I will move on from that.

The hon. Senator also spoke today highly of merit, and said that we deserve merit and so on. I totally agree, but once you stand for a principle of merit, you have to stand all the time for merit. You cannot have a selective morality when it

comes to merit because the exact same Senator did not believe in merit when we called the Electoral College to discuss merit, she was not of—

Madam President: Sen. Roberts, you are going along a line that I will ask you to please desist, and you are responding to statements made in this debate, but I would ask you not to be making any of the Senators who have spoken the focus, in that sense. Okay?

Sen. A. Roberts: Yes, Ma'am. I am just responding to some little points, and moving on quickly. The mere fact that this Motion came from the Independent Bench is worrisome, because it should not come from an Independent Bench, because the Independent Bench—

Madam President: Sen. Roberts, no. Sen. Roberts, again I have to caution you, because you are imputing certain things, and I will ask you not to do that. Anybody is free to file whatever Motion he or she wishes to file. So I will ask you to move on from that point please.

Sen. A. Roberts: Madam President, I am certainly not imputing anything on any Senator. I am making a general point as stated in the ruling of the Privy Council, paragraph 72, in *Dominic Suraj v The Attorney General of Trinidad and Tobago*, where the Privy Council said that a special majority legislation should not be required in all cases, because it would give a veto power to a minority of the unelected Members of the Senate.

So the Privy Council said that the Constitution is selected by the people, and if it is to be removed, it ought to be done so by the people, by the duly elected representatives. It is in that vein that I am saying that the constitutionality, something so serious, needs to come. Whether some people like politics or do not like politics, politics represents the will of the people. The PNM is the Government

now, because the people voted for them. The UNC is the Opposition because 309,000 people voted for the UNC. Independent Senators have not been elected, they have been selected. So that is my simple point.

There are a myriad of problems faced by the Judiciary in Trinidad and Tobago, everybody knows it. The attorneys here know it better than all of us. Understaffing, lack of funding, inordinate delays, archaic records, lack of suitable accountability, and this leads to justice being delayed, and justice delayed is justice denied. Yet we are here to debate whether to abolish the Privy Council in favour of the CCJ. We have many other problems in our Judiciary to handle, before we come to spend all of this time.

The people need to feel secure in Trinidad and Tobago. To believe in the total and complete impartiality of the justice system. Unfortunately, the Judiciary in Trinidad and Tobago is rotting from the poison of Balisier juice.

Madam President: No, Sen. Roberts, please. I already cautioned you on the particular and relevant Standing Order. Please do not let me have to do it again.

Sen. A. Roberts: Thank you, Madam President. I see there are a lot of screams over there, but if we look back when we are speaking about politics and political interference, is it a mere coincidence that in our history, our history of a two-party system, that the people who have been brought before the Court of Appeal, who were politicians or politically aligned, and were charged and brought forward and eventually freed by the—

Madam President: Sen. Roberts, Sen. Roberts, you are castings aspersions on the administration of justice, and I will ask you please, remember I have spoken to you about the Standing Order. Okay?

Sen. A. Roberts: Madam President, I will just say that the following people, who

were unfortunate enough to go through our court system here, but were vindicated by the Privy Council include Satnarine Sharma, Basdeo Panday, Finbar Gangar, Brian Kuei Tung, Dhanraj Singh, Vijay Naraynsingh, Tim Gopeesingh and Ish Galbaransingh. I cannot sing, because I got thrown out of the choir, but that leaves it right there to be said, all of these were UNC, most East Indian, all vindicated by the Privy Council.

Sen. Mitchell: Madam President—

Madam President: No, it is fine. Sen. Roberts you are going down a road that—

Sen. A. Roberts: [*Inaudible*]

Madam President:—no, no, no, and please this is my final warning to you. I cannot warn you any further because I have been doing it too often. So I will ask you please, desist from this line that you are—this course that you are pursuing. Please.

Sen. A. Roberts: Madam President, while I hear you, the course that we are debating here, and we are discussing a very serious matter, it is whether we are going to believe in the culture and feel that all citizens will be confident in the CCJ being the final Court of Appeal, or whether the Privy Council provides some of the citizenry with added comfort about the possibility of impartiality in the judicial system. And I put it to you here, that all of these people were vindicated by the Privy Council and, therefore, they would feel comfortable that the Privy Council is able to hear arguments, hear legal arguments, take facts and come to an impartial decision and, therefore, the Privy Council should be maintained so that all the people in Trinidad and Tobago can feel secure.

Hon. Senators: [*Desk thumping*]

3.30 p.m.

This is a debate. This is not here—this is not politics. This is not an emotion. It is not just simple red and yellow. It is a debate. I am providing facts. I am providing a different side that some others may not see because, as you know, our eyes and ears are always coloured by our politics, so some may not see. So if you listen now you can hear the other side, the other half and maybe you may change your desire and your decision. That is what a debate is about. Sen. Vieira stated that there is no history or evidence of political interference in our judicial system. I wish that were so, Sir, but just told you some—Right? I wish you were right. So we move.

There are many cases that if you look and you read the judgments and understand, the *UNC v the EBC* in 2015 the Maha Sabha radio licence case. One would wonder what the big deal is about—why not give people a radio licence who go through the proper process. But when read that and you go through the appeal stages, you will be shocked. But they had to go to the Privy Council. And what happened in Privy Council? Vindication. This is very important.

Former—when we read, for example, and in *Newsday* all of a sudden, the *Newsday* got it correct and it was a very good editorial on Tuesday, June 12th. I would not read the headline because it is unnecessary, but the key part was that they were discussing conflict of interest. Okay? And they brought it down and when you read this you understand how apparent bias is a very real thing and it does not have to be actual bias. Okay? It was enough in the case of—it was enough for the Lord Chief Justice of England Lord Hewart in 1923 to squash the conviction, saying:

“It is not merely of some importance but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be

seen to be done.”

Lord Hewart added:

“Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.”

Very important.

Sen. Gopee-Scoon: Madam President, you are giving us a—

Sen. A. Roberts: *Newsday* editorial Tuesday, June 12th, page 12. Okay? I could give you it after.

So when we see this, we have to understand that in Trinidad and Tobago politics is involved in everything and our Judiciary has maintained and stood firm and can be a bastion of fairness and impartiality and we must be very careful. Part of that process is the board of the Privy Council and to remove that without really understanding all the feelings of the citizens and the people will be irresponsible.

We must remember, for example, while we espouse the virtues of our judicial officers, in Trinidad and Tobago we heard a learned judge, when he moved to a different place, state that it does not matter whether something was real or existed in the case of email but the contents of that which did not exist needed to be investigated.

Now, any logical, reasonable human being will say, that is the most ridiculous, ludicrous position ever uttered. But this was uttered. We then have to ask ourselves, why would a learned individual claim that something that did not exist, it is irrelevant. We must investigate the contents of that which did not exist. What would make a human being reach that illogical conclusion when one would consider that to reach where that learned judge had reached he had to be very intelligent, very disciplined, passed exams and had a world of experience. And I

put it to you that that is the taint of politics and we have to be very careful. We have to protect our people from that. Let me move on. All right.

Now, this is a case that I would have liked the hon. Minister in the Office of the Attorney General to analyze for me, because this one is fresh. This one is part and parcel, this one is the essence of that of which we are talking. And if she came here and analyzed that judgment and showed me, I would be willing to listen and understand how the Privy Council should be eliminated in favour of the CCJ. But right there on June 27th we have the board of the Privy Council in the case of *John Henry-Smith*—who is now deceased and another—*v the Attorney General of Trinidad and Tobago* and others, judgment delivered on June 27, 2022 unanimously delivered by judge, Lord Hodge, Lord Sales, Lord Leggatt, Lord Burrows and Lord Malcolm. This judgment is critical because it involves a case of which we are speaking. The cases that have politics in it whether one side is in Government or another is irrelevant. What we are saying is, we must guard against the taint of politics. When we see in this Piarco case, corruption case that was squashed on the 27th by the Privy Council in paragraph 86, the Lord Justices, the Privy Council, the board unanimously stated—

“When all the various sources...”

Now, one must realize this case had been argued through our system, our intellectuals, our brilliance, our best, and yet the Privy Council saw it obliquely opposite.

Mr. Mitchell: Madam President. Madam President, 46(8) please and there are connected matters to that matter as well presently ongoing.

Madam President: Sen. Roberts, I will allow you to continue but I am listening. Just remember my previous caution to you.

Sen. A. Roberts: So, the board of the Privy Council stated:

“When all the various sources of concern are considered together the observer would be likely to agree with the appellants’ submission that by January 2008 the then Chief Magistrate was hopelessly compromised.”

This is what we have to protect against.

Sen. Gopee-Scoon: Madam President, 46(8) again. I think we are bringing the Judiciary into—

Madam President: I have allowed Sen. Roberts because some of what he is speaking on is on the public record and I am carefully monitoring what he is saying to make sure that it does not go beyond what has been on the public record. Okay?

Sen. A. Roberts: Thank you, Madam President. Let me make it clear to the population at large, there is no pleasure or I am not trying to bring the Judiciary into any disrepute. In fact, in Trinidad and Tobago it may be the one institution where everyone could get a fair shake most of the time. So let us deal with the issues and let us not run and hide from it, Madam Minister. This is a judgment that I am sure that you read which was recently delivered by the board of the Privy Council. We are debating a very serious Motion that says, should we get rid of the Privy Council instead replace it with the CCJ. So please. So I move on.

In paragraph 85, the board of the Privy Council said:

“The above is sufficient for allowing both appeals.

The constitutional claim succeeds because a tribunal which is seen to be impartial is part and parcel of both due process under section 4...and a fair hearing in terms of section 5.”

Speaking about our Constitution because the Constitution of Trinidad and Tobago.

“However, as will be apparent, if there were any doubt on the matter the

observer would have a number of other important issues to assess.”

They:

“...would include ‘the absence of any reasoning for the Chief Magistrate’s dismissal of the recusal application and the transparent attempt to avoid scrutiny by labelling it as frivolous and vexatious.’”

Here is a critical point because one would always say that when you are making an argument you must not be afraid. You must listen, hear and rebut. When someone has to say, “do it my way, it is the high way” and cannot explain it means that the decision cannot be based on facts and reasoning. It is based on emotion and when emotion is evoked, one could tend to read that politics or some other influence is taking place and this is very important.

In paragraph 83 they said and this is dealing with apparent bias and actual bias. The lords agreed. Similarly, in paragraph 104 it is suggested that the appellants failed to demonstrate that the observer would conclude that the chief magistrate was predisposed to determine matters against the appellants or their co-accused.

“In recognition that actual bias is usually difficult to prove, no such demonstration is necessary, merely that there is a real possibility that the judge lacks impartiality.”

Go back to Dr. Williams because the PNM today is arguing against Dr. Williams. This was his point that even though he understood the politics and he wanted to be in power and some people like myself may say he wanted to control institutions, at least, at this point he knew that the Judiciary must be left alone. The Judiciary must be as impartial as possible. Maybe he understood that the process was slow and that political benefits would have accrued before any real judgment. But he was

against the removal of the Privy Council. So I need some of the PNM today to tell me why they disagree with their founding father.

Hon. Members: [*Desk thumping*]

Sen. A. Roberts: In paragraph 81 and 73, paragraph 81 they said and this is very important:

“But here for all the reasons given on behalf of the appellants, the connection is plain and obvious.”

Look at the language, listen to the words. If something is plain and obvious, how come we got it wrong? You have to answer that because it is plain, it is obvious, but yet we got it wrong. So something intervened. What that is, I do not know. That is for you all to decide.

Madam President: No. No. No. That is where, Sen. Roberts, I have to intervene here. That conclusion that you are drawing, you are casting aspersions. I will ask you, please, when you are reading from the judgment, fine. But when you put your—that particular slant on it, you are imputing improper motives.

Sen. A. Roberts: Okay, Madam President, I am guided. Thank you.

“But here, for all the reasons given on behalf of the appellants, the connection is plain and obvious. It follows that the Board does not accept the Court of Appeal’s view”—in paragraph 97—“that the appellants’ case on apparent bias involves an extraordinary degree of speculation.”

In paragraph 73 of the judgment it states:

“No doubt there may be cases where circumstances peculiar to the particular country”—Madam Minister—“from which the case comes, perhaps local customs, attitudes or conditions, are of direct significance and are matters which the local courts are better placed to assess than the Board.”

Which is the argument made by the hon. Minister in the Office of the Attorney General. Granted:

“However no such factors are in play in the present case. Indeed, counsel’s submission on this matter never progressed beyond a high level of abstract generality.”

Yet we got it wrong. So while there is a basis and a solid argument for cultural understanding, heritage and culture, we must also understand that you must find a balance. My goodness, two minutes? I could go for another hour. We could find a balance between culture, arguments, decision-making but the overriding factor must be impartiality. It must be.

You see, sometimes you sit on that side and you think you will be there forever. But you all will not and you will need to understand that we must make laws that are fair and balanced throughout and must not make way for anyone who may not be as honourable as some of the Senators here. So we have to be very careful.

In paragraph 77 it states unanimously:

“Given the lengthy recital of the background circumstances it will be apparent that by now that there were numerous potential causes for concern.”

Numerous.

“Concentrating for the moment on just one of them, namely the Chief Magistrate being beholden to the Attorney General, by January 2008, and in particular after the Mustill inquiry revelations, it was clear that no benign construction was available in respect of his receipt and banking of \$400,000. By then the full extent of his

indebtedness to the Attorney General could be appreciated. It is not difficult to imagine his gratitude. He had the Attorney General to thank for resolving his serious financial problems and for shutting down an investigation into his reprehensible conduct.”

I put it to you that this could not ever occur with the Privy Council.

Sen. Gopee-Scoon: Madam President.

Sen. A. Roberts: We do not have that connection.

Madam President: Sen. Roberts, the adjournment is being sought.

ADJOURNMENT

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): I wish to move the adjournment. Having regard to the agreement by all three Benches, we will end today’s debate at 3.45 given that storm warning number eight orange alert remains in effect. And therefore with that in mind, Madam President, I beg to move that this Senate do now adjourn to Thursday, 30th June, 2022 at 2.30 p.m. when, as I have indicated before, we will debate the National Insurance (Amdt.) Bill.

And may I also remind this honourable House that we will meet on Monday 4th of July at 10.00 a.m. to discuss the bail—to debate the Bail (Amdt.) Bill and following from that, Wednesday 6th July at 10.00 a.m. to debate the Private Security Industry Bill, 2022 and the Supplemental Police (Amdt.) Bill, 2022. Thank you.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 3.46 p.m.