SENATE

Tuesday, June 13, 2023

The Senate met at 10.00 a.m.

PRAYERS

[MR. PRESIDENT in the Chair]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted a leave of absence to Sen. The Hon. Renuka Sagramsingh-Sooklal, and Sen. Amrita Deonarine, both of whom are out of the country, and to Sen. Anthony Vieira SC, who is ill.

SENATORS’ APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from Her Excellency the President Christine Carla Kangaloo, O.R.T.T.

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/Christine Kangaloo

President.

TO: MR. MICHAEL SEALES

WHEREAS Senator the Honourable Renuka Sagramsingh-Sooklal is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW THEREFORE, I, CHRISTINE CARLA KANGALOO, 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
Senators’ Appointment

accordance with the advice of the acting Prime Minister, do hereby appoint you, MICHAEL SEALES to be a member of the Senate temporarily, with effect from 13th June, 2023 and continuing during the absence from Trinidad and Tobago of Senator the Honourable Renuka Sagramsingh-Sooklal.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann’s, this 12th day of June, 2023.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/Christine Kangaloo

President.

TO: MR. JOHN HEATH, S.C.

WHEREAS Senator Amrita Deonarine is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW THEREFORE, I, CHRISTINE CARLA KANGALOO, 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, JOHN HEATH, S.C. to be a member of the Senate temporarily, with effect from 13th June, 2023 and continuing during the absence of Senator Amrita Deonarine from Trinidad and Tobago.

UNREVISED
Senators’ Appointment

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann’s, this 12th day of June, 2023.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/Christine Kangaloo
President.

TO: DR. MARGARET BURGESS

WHEREAS Senator Anthony Vieira SC is incapable of performing his duties as a Senator by reason of illness:

NOW THEREFORE, I, CHRISTINE CARLA KANGALOO, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Prime Minister, do hereby appoint you, Margaret Burgess to be a member of the Senate temporarily, with effect from 13th June, 2023 and continuing during the absence of Senator Anthony Vieira, S.C. by reason of illness.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of
Senators’ Appointment

4

Senators’ Appointment

the President, St. Ann’s, this 12th day of June, 2023.”

OATH OF ALLEGIANCE

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

Michael Seales, John Heath SC, and Dr. Margaret Burgess.

JOINT SELECT COMMITTEE REPORT

Human Rights, Equality and Diversity

Examination of the Implementation of the Recommendations of the Report by the Independent Investigation Team appointed to Investigate Reports of Child Abuse at Children’s Homes

(Presentation)

Sen. Dr. Muhammad Yunus Ibrahim: Thank you, Mr. President. Mr. President, I have the honour to present the following report as listed on the Order Paper in my name:


URGENT QUESTIONS

Mr. President: Leader of Government Business.

The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne): Mr. President, there are two urgent questions that we have received notice on. One for education, the Government is prepared to respond. One for
finance, we request of you that that urgent question be stood down to a point later in the proceedings today. Thank you, Mr. President.

**Mr. President:** Hon. Senators, the request by the Leader of Government business for urgent question No. 1 is so granted to be stood down to later in the proceedings. Sen. Mark, the procedure has been put and the question has been stood down to later in the proceedings.

**Sen. Mark:** [Inaudible]

**Mr. President:** Are you—

**Sen. Mark:** Mr. President, asking to—before you put the question I raised my hand so that before you ruled. [Inaudible] an opportunity but you ruled and [Inaudible]

**Mr. President:** Because the procedure is normal Sen. Mark.

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

**Mr. President:** Be brief.

**Sen. Mark:** Mr. President, I would like you to rule on this matter. Rule, rule on this matter. Mr. President, I know our Constitution is supreme but I know as the President of the Senate, when you approve an urgent question, no matter what a Minister might be doing, he has to drop that or those things and come to this Parliament.

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

**Sen. Mark:** I am disappointed Mr. President, and I would like a clear ruling on this matter.

**Hon. Senators:** [Crosstalk]

**Mr. President:** Sen. Mark, have a seat.

**Hon. Senators:** [Crosstalk]
Mr. President: Senators, Senators, Senators, I require no assistance and there are simple rules. When I am on my legs, the Member speaking takes his seat and there will be silence in the Chamber. Sen. Mark, I have already ruled and this question would be stood down to later in the proceedings. I am now inviting you to ask the second urgent question on notice. Sen. Mark.

Widespread Flooding in Barrackpore and Moruga

(Measures taken regarding affected CXC and CAPE students)

Sen. Mark: We will deal with this matter at another level. Mr. President, unacceptable. Mr. President, through you to the hon. Minister of Education.

In light of widespread flooding in the Barrackpore and Moruga communities causing students to miss their CSEC and CAPE exams, can the Minister advise what measures are being taken to ensure that the students are not disadvantaged?

Mr. President: The Minister in the Ministry of Education:

Hon. Senators: [Desk thumping]

The Minister in the Ministry of Education (Hon. Lisa Morris-Julian): Thank you, Mr. President. Mr. President, in light of the inclement weather experienced on Monday the 12th of June 2023 and the flooding which ensued, the Ministry of Education made arrangements to facilitate the students who had difficulty getting to their centres to sit the CSEC examination. These matters were handled on a school-by-school and in some cases a student-by-student basis as the need arose. However, despite their best efforts, all students scheduled to sit the CXC examinations yesterday were not able to make it to an examination centre.

The Caribbean Examination Council does not schedule makeup examinations so in cases like these, which have occurred previously, the Ministry of Education collects verified student specific data from schools and makes representation to CXC for compassionate consideration on behalf of the students.
who were not able to sit their examinations. This has resulted in previous years in a prorated examination grade based on their performance in the examination papers they would have been able to sit and their SBA grade. Principals were requested yesterday to send in the information relating to the students who missed examinations due to flooding and this is presently being received and collated by the Ministry of Education for submission to CXC. Parents of the students so affected were advised to liaise with this school principals to ensure that their children are on the list, which is submitted to CXC and the Ministry of Education. Thank you.

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

**Mr. President:** Sen. Mark.

**Sen. Mark:** Mr. President, through you to the hon. Minister. Is the Minister aware as we speak, flood waters are extremely high in Barrackpore, Moruga and Penal and there is every likelihood, Mr. President, that students will not be able to travel to the examination centre. Can I ask the Minister, through you, what urgent steps are being taken to mobilize the army, right, and members of the protective services to use their huge, powerful equipment to traverse these high waters—

**Mr. President:** So Sen. Mark, that is something more like a statement.

**Sen. Mark:** All right, all right, okay.

**Mr. President:** So I have gotten the question—

**Sen. Mark:** Yes.

**Mr. President:** The Minister in the Ministry of Education would have answered in her original answer to the question posed. Do you have another supplemental Sen. Mark?

10.15 a.m.

**Sen. Mark:** Hon. President, can the Minister indicate, having regard to advanced
knowledge from the Met office two days ago that we were going to have extreme weather conditions, and knowing fully well that CSEC and CAPE were being held from yesterday, can the Minister indicate what steps were taken by the Ministry to ensure that, for instance, contingency measures and/or plans are put in place, so those areas that are going to be affected, the students would have been able to travel to their centres in order to do the exams? Mr. President, can I ask through you?

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

**Mr. President:** Minister in the Ministry of Education.

**Hon. L. Morris-Julian:** Mr. President, through you, I heard a statement and I did not hear the question. Could I just hear the Senator again, please? What was the question?

**Mr. President:** Sen. Mark, could you repeat the question succinctly, please?

**Sen. Mark:** Succinctly, Sir, succinctly. Yes.

**Sen. Roberts:** [Inaudible]

**Mr. President:** Sen. Roberts, please allow Sen. Mark to ask the question.

**Sen. Mark:** Through the hon. President to the hon. Minister, can you indicate whether in light of the advanced knowledge to all of us given by the Met office of the severe weather conditions that occurred yesterday, and continues today until about 5.00 p.m., according to the Met office, could you indicate to this honourable Senate whether the Ministry took any contingency measures to address these developments that have now occurred, and continues, Mr. President, as we speak?

**Mr. President:** Minister in the Ministry of Education.

**Hon. L. Morris-Julian:** Through you, Mr. President, I will prepare that information and I will submit it to Sen. Mark in the very near future regarding the contingency that was in place. But, Mr. President, during the rainy season, we
normally have natural disasters and the very first statement that I made, through you, Mr. President, is what takes place. We have contingency plans regarding CXC, where we usually use the prorated marks of the students prior. Thank you.

**ANSWERS TO QUESTIONS.**

**Mr. President:** Leader of Government Business.

**The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne):** Thank you, Mr. President. There are six questions for oral response and one for written response. The Government is prepared to answer all the questions on the Order Paper. Thank you.

**WRITTEN ANSWER TO QUESTION**

**Student Support Services Division**
**(Details of Special Needs Children)**

114. **Sen. Dr. Paul Richards** asked the hon. Minister of Education:

As regard the children referred to the Student Support Services Division, can the Minister provide the following information for each year during the period January 2018 to April 2023:

(i) how many children were diagnosed with special needs and disabilities;

(ii) what were the categories of special needs and disabilities identified;

(iii) what were the recommended courses of treatment; and

(iv) how many of these children received treatment?

_Vide end of sitting for written answer._

**ORAL ANSWERS TO QUESTIONS**

**Scrap Metal Act, 2022**
**(Proclamation of)**

68. **Sen. Wade Mark** asked the hon. Attorney General and Minister of Legal
In light of concerns expressed by the Trinidad and Tobago Scrap Iron Dealers Association on the proclamation of the Scrap Metal Act, 2022, can the Attorney General advise when will the Act be proclaimed?

The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Thank you, Mr. President. This is a curious question since it is a matter of public record that on Friday 10, February, 2023, four months ago, the Office of the Attorney General and Ministry of Legal Affairs, and the Ministry of Trade and Industry held a media conference to provide an update on the Cabinet-approved proclamation of the Act.

At that media conference, the public was informed that Cabinet had decided that the Act would be partially proclaimed on Friday 24, February, 2023, through section 39 thereof. Section 39 of the Act incorporates a transitional provision within the framework of the Act. This provision bestows upon all dealers holding valid scrap dealers licences issued under the previous legislation the status of being deemed valid until April 14, 2023, for the purpose of continuity and smooth transition.

After these developments, the following sections of the Scrap Metal Act were proclaimed, thereby commencing their legal effect as of February 24th. These were sections 1; 2; 3(2); 5; 9(b), (d) and (e); 17(1), (3), (4) and (5); 18(1) and (3); 19; 21; 23(1); 24(1), (2), (3), (4) and (6); 25; 26; 34; 35; 36; 37; 38; 39; 40 and 41, and the Second Schedule of the Act.

Thereafter, the Ministry of Trade and Industry issued an advisory in the Guardian daily newspaper of Sunday 12th, February, to bring awareness to the public of the partial proclamation of the Act, and to inform all stakeholders in the scrap metal industry of the requirements to operate.
Further, by means of a formal letter dated 14th April, 2023, two months ago, the Ministry of Trade and Industry provided notification to stakeholders that the complete implementation of the Act required several actions, including the appointment of scrap metal inspectors, the formulation of AML/CFT/PF risk assessment questionnaire for the scrap metal industry, and the drafting of regulations.

I am pleased to advise that the Ministry of Public Administration, in collaboration with my Ministry, has successfully completed all of these tasks. On the 14th April, in accordance with section 40 of the Act, the Ministry of Trade and Industry finalized the draft of the Scrap Metal Regulations, and these regulations are now under review by the Legislative Review Committee, as is customary.

Importantly, I ask this House to note that the proclamation of section 3(1) of the Act, which concerns the important issue of the issuance of a collector’s licence, is contingent upon applicants obtaining a certificate of character from the Trinidad and Tobago Police Service.

In conclusion, I reiterate, the Government is committed to the full implementation of the remaining sections of the Act in the shortest possible time, but this requires the full cooperation of and compliance by industry stakeholders. Thank you, Mr. President.

Mr. President: Sen. Mark.

Sen. Mark:  Yes. Thank you, Mr. President. Can I ask the Attorney General whether the Government, through his office, is experiencing challenges with getting stakeholders together, with a view to fully proclaiming the remaining sections of the Act? Can I ask the Attorney General?

Sen. The Hon. R. Armour SC: The Government is experiencing no challenges with getting collectors together or dealers together.
Mr. President: Sen. Mark.

Sen. Mark: Can you therefore advise this honourable Senate when this Government intends to bring all the stakeholders together, with a view to proclaiming the remaining sections of the Act at its earliest possible opportunity?

Mr. President: Attorney General.

Sen. The Hon. R. Armour SC: Thank you, Mr. President. I do not understand the question, when does the Government intend to bring all stakeholders together. All stakeholders have been consulted throughout the passage and proclamation of this Act on a continuing basis.

Hon. Senators: [Desk thumping]

Sen. The Hon. R. Armour SC: The only thing that is outstanding is the certificate of character from the police which will allow us to proclaim the section in respect of collectors, and the draft regulations which are currently engaging the attention of the Legislative Review Committee, as I have already explained.

Hon. Senators: [Desk thumping]

Sen. Mark: Can I ask, through you, to the Attorney General, whether the issuing of certificates of good character is or may be contributing to the hold-up of the export of, let us say, scrap metal which apparently are held up, as we speak, at the port? So can you tell us whether there is a link between the issuing of certificates of good character and the failure of the Government to allow the scrap dealers to continue their exportation of metal? That is what I would like to clarify.

Mr. President: Attorney General.

Sen. The Hon. R. Armour SC: Thank you, Mr President, if I may attempt to answer the several questions asked. Firstly, there is no hold-up in the export of scrap metal. The export of scrap metal continues on the basis of the deemed certificates that have been issued to dealers, continuing from the last Act which
was repealed, but continued under the transition provision.

Secondly, with respect to the certificates of character, I do not know nor do I ever expect to be able to speak on behalf of the police service of this country. And lastly, there is no confusion in the collection or exporting of scrap metal. Thank you.

Mr. President: Sen. Mark.

Sen. Mark: Yeah. I think this is my final question.

Hon. Senator: [Interruption]

Sen. Mark: You are disturbing us, this hon. Member.

Mr. President: Sen. Mark, ask the question.

Sen. Mark: But I asked her.

Mr. President: Sen. Mark.


Mr. President: Have a seat.


Mr. President: I understand that. Please just ask your question.

Sen. Mark: May I ask the honourable and distinguished Attorney General the following, Attorney General, are you aware of concerns, rumblings among members of the scrap iron dealers as it concerns the Government’s failure to address fundamental issues confronting their membership, with the possibility of a threat being issued to disrupt operations of that industry? Is the Attorney General aware of such discontent that is growing, Mr. President, among the scrap iron dealers? Can I ask through you, Mr. President?

Mr. President: That question does not arise, Sen. Mark. Next question on the Order Paper.

Sen. Mark: Yes. Thank you, Mr. President.
Vindra Naipaul-Coolman Case  
(Details of High Court Decision)

69. **Sen. Wade Mark** asked the hon. Attorney General and Minister of Legal Affairs:

In light of the January 2023 High Court decision to award approximately $20M in damages to the nine (9) persons who were charged for the kidnapping and murder of businesswoman, Vindra Naipaul-Coolman, can the Attorney General advise as to the following:

(i) the rationale for the State’s failure to file defences to the malicious prosecution claims which led to the award of damages; and

(ii) what action, if any, does the State intend to take in light of the aforementioned Court decision?

**The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC):** Thank you, Mr. President. Regarding part (i) of the question, it is a matter of public record, which Sen. Wade Mark must know, that the Office of the Attorney General and Ministry of Legal Affairs has initiated an investigation into the circumstances surrounding the State’s failure to file a defence in a civil action claiming malicious prosecution, which was brought by nine former accused who were charged and subject to a criminal trial for the kidnapping and murder of businesswoman, Vindra Naipaul-Coolman.

Sen. Mark must also be well aware that the investigative team comprises lead investigator, Mr. Justice Stanley John (Retired) and Mrs. Pamela Schuller Hinds.

Further, it is a matter of public record that on Saturday 11, February 2023, lead investigator, Mr. Justice Stanley John, delivered a public statement informing the populace of the terms of reference which govern the said investigation. Sen.
Mark must also know that part (i) of his question falls within the terms of reference and therefore the remit of the investigative team.

Finally, it is a matter of public record as well that on the advice of the retained lead counsel, Mr. Rolston Nelson SC, an application was filed on 27 March, 2023, in the High Court on behalf of the State, in the matter of CV2020-01243, *Shervon Peters & Ors v The Attorney General*, to set aside both the default judgment and the award of damages made against the State in favour of those claimants.

This substantive matter is ongoing before the High Court and therefore, obviously, is sub judice. Sen. Mark must know that it is a breach of Standing Order 47 to pursue any matter which relates to active proceedings in any court of record until the proceedings are ended by judgment or discontinuance. Thank you, Mr. President.

**Mr. President:** Sen. Mark.

**Sen. Mark:** A number of things that you said I do not know, or I should know. I will leave that to the judgment of the President. May I ask, through you, hon. President, to the Attorney General, can you tell this honourable Senate what is the current status of the investigation being conducted by the Retired Justice Stanley John into the missing file? Can you give this honourable Senate what is the current status?

**Sen. Roberts:** [Inaudible]

**Mr. President:** Sen. Roberts, please allow Sen. Mark to ask his question so we can hear it. Sen. Mark, continue.

**Sen. Mark:** Hon. Senator—hon. Attorney General, through the President, can you clarify for this honourable Senate the question I have posed to you? Do you want me to repeat it or you got it?
Sen. The Hon. R. Armour SC: Please repeat it. I believe there was an interruption and I did not hear the question.

Sen. Mark: You are a very difficult Attorney General.

Mr. President: Sen. Mark, ask the question. Time is running.

Sen. Mark: But I understand you.

Mr. President: Ask the question, Sen. Mark.

Sen. Mark: Mr. President, may I ask you—through you, Mr. President—sorry for pointing my fingers. I want to point it at—

Mr. President: Sen. Mark.

Sen. Mark: Sorry, Sir. Sorry, Sir. Mr. President, may I ask the hon. Attorney General, the distinguished Attorney General, outstanding Attorney General, extraordinary—

Mr. President: Sen. Mark—

Sen. Mark: Can I—

Mr. President: Sen. Mark. Sen. Mark, have a seat. Asking a question is a simple thing. Pose the question in the format that we all know a question is to be posed, so that the proceedings can continue. There is a clock, as you are well aware of, as it relates to these proceedings.

Sen. Mark: Thank you, Mr. President. My apologies to you again. Mr. President, through you, can I ask the hon. Attorney General, succinctly, what is the status of the investigation into the missing file?

Sen. The Hon. R. Armour SC: Thank you, Mr. President. In answer to Sen. Mark, on the last public pronouncements made by Mr. Justice John, he had indicated that he expected to conclude his investigation by the end of June. Today is, I believe, the 13th June, so I would expect that we will get the investigative report by the 31st June. Beyond that, I am not able to speak to the status of
investigation. I do not get involved.

10.30 a.m.

Sen. Mark: Mr. President, to the hon. Attorney General and distinguished Attorney General, can I ask the hon. Attorney General, having regard to the fact that the missing file mysteriously appeared once more in the office of the Solicitor General or your office, can you indicate why this retired justice is seeking so long an extension to submit his final report? As you said, until the end of June, in light of the rediscovery of the missing file, can you share with this honourable House the basis and rationale for this extended period of time for said investigation?

Mr. President: Attorney General.

Sen. The Hon. R. Armour SC: Thank you very much, Mr. President. I am not aware that Justice John has sought an extension. What I am aware of is that there are nine points of reference in his terms of reference and in his public pronouncements. When he spoke to that, he had indicated the outside end of the conclusion of his investigation which he is within.

Mr. President: Sen. Mark.

Sen. Mark: Can I ask the distinguished and extraordinary Attorney General—

Mr. President: Sen. Mark, leave out the extras please, just ask the question.

Sen. Mark: Okay. Can I ask the hon. Attorney General—can the Attorney General advise this honourable Senate, what will be the final cost to the beleaguered taxpayers for this investigation into the missing file? Can I ask the hon. Attorney General?

Mr. President: That question does not arise Sen. Mark. Final question.

Sen. Mark: Can I ask the Attorney General, what was the justification for the payment of close to $1 million to both Justice Rolston Nelson and retired Justice Stanley John for conducting an investigation into a missing file which has been
discovered? Can you justify the rationale for this close to $1 million and counting to these two honorary and distinguished judges?

**Mr. President:** That question does not arise Sen. Mark.

**Sen. Mark:** Does not.

**Mr. President:** Next question on the Order Paper.

### Price Increase of Eggs

**(Provision of Subsidies)**

70. **Sen. Wade Mark** asked the hon. Minister of Trade and Industry:

Given the recent increase in the price of eggs, can the Minister advise as to the following:

(i) whether Government is considering the provision of subsidies to assist egg farmers; and

(ii) what other measures, if any, are being taken to provide assistance to egg farmers and reduce the price of eggs?

**Mr. President:** Minister in the Ministry of Agriculture, Land and Fisheries.

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

**The Minister in the Ministry of Agriculture, Land and Fisheries (Sen. The Hon. Avinash Singh):** Thank you Mr. President. I am pleased to answer this question on the Order Paper on behalf of both of my colleagues, the Minister of Trade and Industry and the Minister of Agriculture, Land and Fisheries. Mr. President, the Ministry of Agriculture, Land and Fisheries currently offers several services to registered farmers, including egg producers. These services are subsidized by the Government and are at no cost to said farmers, which aims to reduce their incurred production costs.

Some of these services offered are as follows: veterinary services, preventative medicine; disease surveillance and hatchery monitoring; extension
services; husbandry and management advice; lectures and presentation on poultry rearing; site visits and reports by the Ministry for all Agricultural Development Bank loan applications; guidance on the importation protocols to assist farmers in obtaining eggs or chicks for hatching or rearing; verification of poultry imports and farm follow-up visits. Veterinary officers and animal production and health staff are also available to assist all of these farmers.

It should also be noted that all registered farmers are entitled to Government subsidies and incentives on established inputs. Moreover, all farmers, whether they are registered with the Ministry of Agriculture, Land and Fisheries or not, are encouraged to apply for the agricultural finance support programme as we commonly call it, the Agro-Incentive Grant through which they can access up to a maximum of $100,000 for their business expansion models.

10.35 a.m.

The Ministry of Agriculture, Land and Fisheries intends to review its policies with the intention to address the growing concerns of our stakeholders in these economic times and remain committed to supporting our local egg farmers and the wider farming community. Thank you, Mr. President.

Mr. President: Sen. Mark.

Sen. Mark: Yes, Mr. President. May I ask the honourable—you are hon. Minister, my friend—can you indicate to this Senate, to what extent the various measures outlined by your good self have contributed to the reduction, if there has been a reduction, in the price of eggs to the ordinary consumers in this country?

Mr. President: Minister in the Ministry.

Sen. The Hon. A. Singh: Thank you, Mr. President. What I can say, Mr. President, a lot of the inputs regarding the production of eggs in Trinidad and Tobago has to do with the foreign inputs which are our corn, our grain, our inputs
to the feed manufacturing process as this is the largest component in egg production. Some of these inputs, Mr. President, Trinidad and Tobago really in the international scheme is price takers, for example, corn, soya, wheat middling. What I can say is that, these prices internationally have been impacted by various reasons, one, the Russian/Ukraine conflict, transportation costs, as well as avian influenza in the US where almost 50 million birds last year were destroyed to that disease and that virus which totally impacted all egg production in the world, so it is not just limited to Trinidad and Tobago.

What I can say is, as we are outing of the COVID protocols worldwide and shipping costs is kinda, I should say, going back to some form of normalcy, the input cost on the whole, Mr. President, is slowly going back down and I intend to also have conversations with the producers because another point to note in the AIP programme, the Agricultural Incentive Programme is, any input related to the poultry sector that is not currently subsidized, these farmers are well aware of the process to simply write the chief technical officer of the Ministry of Agriculture, Land and Fisheries identifying the input, it could be in machinery, equipment, any form of technology that they want to employ to reduce their cost of production, they can write to the Ministry’s CTO and we have a mechanism, it is a multi-Ministry approach, Ministry of Trade and Industry issues a Minister’s licence to have duty relief on all these inputs.

So it is a holistic approach. The Government is working with our stakeholders, our partner Ministry, Ministry of Trade and Industry, Ministry of Agriculture, Land and Fisheries continues to monitor the situation. And I will go one step further, Mr. President, and indicate, we understood this whole issue of the input cost, gain, corn and soya and one of the conversations the hon. Prime Minister would have had in Guyana in that recent visit is trying to source these
inputs from right here in Caricom territory where Guyana is going to assist in corn and soya production that we can have, you know, further collaboration on. Thank you, Mr. President.

**Mr. President:** Sen. Mark.

**Sen. Mark:** Yeah. Can I ask the distinguished Minister whether—let me recast my question. In light of the decision to review the policy of the Government as it relates to assisting farmers in egg production and maybe other areas, can you provide to this honourable Senate a time frame for same review, Mr. President?

**Mr. President:** Minister in the Ministry.

**Sen. The Hon. A. Singh:** Thank you, Mr. President. What I can give the assurance is that, this is something that we feel very strongly of, Sen. Mark, through you, Mr. President, and it is an ongoing process because the Agricultural Incentive Programme is continuously upgraded and it takes into consideration the modern technology that is becoming available as time goes by. So the AIP programme is a work in progress and I must say through this honourable House that we are in active consultation with our stakeholders at all times from the primary producers to the agro-processors trying to make their lives a lot easier with the intervention of our partner Ministries and more so with Minister Kazim Hosein’s direct intervention of consultation. Thank you.

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

**Mr. President:** Sen. Mark.

**Sen. Mark:** Yeah. Mr. President, can I ask the hon. Minister, given the fact that there has been, even though incrementally a return to normalcy in terms of transportation costs, like the freight cost, right, and the production of corn, soya and grain as the hon. Minister has said, Mr. President, can the hon. Minister indicate what kind of time frame would he consider for these inputs, reduction in
Oral Answers to Questions

2023.06.13

input costs to really benefit the consumers through lower prices for eggs, for example, Mr. President?

Mr. President: Minister in the Ministry.

Sen. The Hon. A. Singh: Thank you, Mr. President. Mr. President, through this House, it would be difficult to really predict that because nobody’s experience or nobody really planned for COVID, Mr. President, and would have decimated the entire supply chain protocols that dictate, you know, productions costs and so on. So it would not be wise for me to comment, Mr. President, because that is something challenging. You know, it is evolving over time but I can say we are actively engaging our stakeholders and we are always dealing with our primary producers—

Hon. Senators: [Desk thumping]

Sen. The Hon. A. Singh:—the farmers, the most important people in this country, I would say, to make their lives easy. And the changes, Sen. Mark, through you, Mr. President, is making the whole farmer registration process easier. And the ease of doing business, with help from Minister Paula Gopee-Scoon, the Minister of Trade and Industry, because her Ministry also has quite an extensive package of grant funding that is available to our farming population.

Hon. Senators: [Desk thumping]

Sen. The Hon. A. Singh: And I would also say that the farmers are now being given the respect by this Government that they have not been given over the last administration. Thank you.

Hon. Senators: [Desk thumping]

Mr. President: Sen. Mark.

Hon. Senators: [Crosstalk]

Sen. Mark: And my final question.
Hon. Senators: [Crosstalk]
Mr. President: Sen. Mark, ask the question—
Sen. Mark: I am being disturbed, Sir.
Mr. President: Focus and ask the question, please.
Sen. Mark: Yeah. I am going to focus on you.
Mr. President: Yes.
Sen. Mark: Mr. President, may I ask through you, Mr. President, given the fact that there is a tendency for prices to always go up and never come down in this country, can the hon. Minister indicate how confident he is that with a gradual reduction in the cost of inputs will eventually benefit the consumers through lower prices? Is the Minister—can the Minister give any indication and assurance of prices being reduced given the gradual reduction in the cost of inputs that will ultimately benefit the consuming public, Mr. President?
Mr. President: That question does not arise, Sen. Mark. Next question on the Order Paper.
Sen. Mark: Thank you, Mr. President.
Mr. President: Oh, Sen. Richards. Sorry.
Sen. Dr. Richards: Thank you.

Home Invasions
(Measures to Address)

120. Sen. Dr. Paul Richards asked the hon. Minister of National Security:
Given reports of an increase in the number of home invasions over the past four (4) months, can the Minister indicate the following:
   (i) which areas/communities have experienced said increase;
   (ii) what targeted measures are being taken to address the increased number of home invasions in the areas/communities identified at (i); and
(iii) has there been an increase in any other crimes over the past six (6) months?

**Mr. President:** The Minister of National Security.

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

**The Minister of National Security (Hon. Fitzgerald Hinds):** Thank you, Mr. President. According to information provided by the Commissioner of Police with respect to part (i) of the Senator’s question as it relates to robberies and burglaries conducted in homes and called home invasions, these statistics show that they have not increased overall, for, as the record shows, there were 145 such events over the last four months as compared to 185 such events as at the same period in 2022. However, we are mindful that that statistic gives no comfort to the victims of this very heinous and horrible crime and the experience that they suffered as a consequence of it. However, the specific areas or communities—in specific areas and communities there may have been increases for the four-month period as described in the question, February, 2023 to May, 2023 by the Senator.

`The provisional figures for communities within the following police districts where increases were recorded are as follows:

- Cunupia area, an increase from five in 2022 to 12 in 2023;
- St. Joseph, an increase from nine to 11 for the same period; and
- Barataria, from nine to 10 for the same period.

The Trinidad and Tobago Police Service continues to be very concerned about the incidents of home invasions and continues to undertake measures to address this serious problem. Several strategies aimed at assisting with the deterrence and suppression of such criminal violations including home invasions have been deployed. A special team has been designated to respond to home invasions across the country. The team comprises of intelligence officers, CID
personnel, and analysts. In addition, efforts are well under way to enhance their training and to bolster the equipment and other resources that they need.

As it relates to part three of the Senator’s question, the Trinidad and Tobago Police Service has advised that the provisional data for occurrences of serious crimes over the last six months compared to the corresponding period in 2022 indicates a decrease of approximately 10 per cent as follows:

- Murders, an increase from 257 to 280.
And we are talking about the six-month period from December 2021 to May 2022 as compared to December 2022 to May 2023 the six-month period the Senator spoke about.

- For wounding and shooting, a decrease from 372 in 2022, to 307;
- Rapes, incest and other sexual offences, a decrease from 422 to 389;
- Serious indecency, a decrease from 21 to nine;
- Kidnapping, 59 to 50;
- Kidnapping for ransom, two to zero;
- Burglaries and break-ins, 862 down to 712;
- Robberies, 1,189 down to 1,151;
- Fraud offences, 228 down to 275;
- General larceny, 1,060 down to 872;
- An increase however in larceny motor vehicles, from 457 to 477;
- A decrease from 79 to 43 in respect of larceny from dwelling houses;
- Narcotic offences showed an increase from 166 to 192;
- Possession of firearm and ammunition, a decrease from 597 to 507;
- Other serious crimes, a decrease from 606 to 532.

So there have been, Mr. President, three categories of those crimes where we have witnessed increases and these are murders, larceny of motor vehicles and
narcotic offences. Overall for the same period we had 6,377 in 2021 to 2022, the six-month period, and 2022 to 2023, 5,796. So we have seen a general decrease in serious crimes but for the three categories as I have highlighted them. May I thank you, Mr. President?

**Mr. President:** Sen. Richards.

**Sen. Dr. Richards:** Thank you, Minister. Through you, Mr. President, can the Minister clarify if the data given is for the corresponding period of the previous year? Or for the six-month period immediately preceding the last six months.

**Mr. President:** Minister of National Security.

**Hon. F. Hinds:** I gave figures for the six-month period, the last six months as compared to that six-month period in the preceding year.

**Mr. President:** Sen. Richards.

**Sen. Dr. Richards:** Can the Minister indicate if the TTPS has been able to do an analysis of what may be the vulnerabilities or driving factors in the data presented regarding Cunupia, St. James and Barataria in the even marginal increase in home invasions?

**Mr. President:** Minister.

**Hon. F. Hinds:** The figures as I have relayed them would have come from the police crime analysis—Crime and Problem Analysis Unit. I also indicated that, in respect of home invasions, there are analysts operating inside of the team of law enforcement treating with it. So the answer to the Senator’s question is indeed, yes.

**Mr. President:** Sen. Richards.

**Sen. Dr. Richards:** Thank you, Mr. President. Can the Minister indicate if regarding murders which, if I remember correctly, the Minister indicated is one of the categories where we have seen increases, if CAPA, the police Crime and
Problem Analysis Unit has been able to do an analysis as to the driving factors related to those increases in murders which is the troubling statistic in my people’s mind in the country?

Mr. President: Minister.

10.50 a.m.

Hon. F. Hinds: We have oftentimes, and within recent times, indicated some of indicators we have seen in this regard. For one thing, the prevalence of assault weapons, automatic weapons as compared to previous times where you might have had revolvers and pistols. Now, with automatic weapons, we have seen more double murders in the last 72 hours in this country—96 hours. We are seen several—about three double murders. That is as a result of the prevalence of and the use of automatic weapons with 5.56 and 7.62 ammunition on use. That is one of the factors.

Increased criminal gang activities: so the police service has, in this regard, established gang units in every single one of the 10 police divisions across the country, focused on gang reduction as well. We have also introduced, with the help of our partners in the United States, a Gang Reduction and Community Empowerment programme, which we call GRACE, to encourage communities to become more resilient to the presence and the proliferation of gang activity. Because we understand at the base of this that these kinds of activities could never proliferate unless the people are minimally resistant, so we are taking action to ensure that those things are done. So those are some of the very complex issues that might explain an increase in murders, Mr. President.

Sen. Dr. Richards: Thank you, Mr. President, finally, for the Minister: Can the Minister give us a sense of what strategies are being employed by the police? Another category that you indicated that showed an increase is car theft, larceny of
motor vehicles, and we have seen a lot of that reported in the media. What strategies are being employed by the TTPS to curtail that and bring the perpetrators to justice?

Mr. President: Minister.

Hon. F. Hinds: This kind of analysis, as I shared in respect of home invasions and the other crimes here, really always—and using the analyst within the police service, it provides them with an opportunity to look more astutely and more acutely at particular crimes. And yes, the car thefts have been emerging again and they are treating with it in similar models, that is to say analyzing it and focusing on it.

And I want to take the opportunity to congratulate the Trinidad and Tobago Police Service. Recently they had a major success with a car—permit me a colloquialism, “a car tiefing ring”, and they were able to break it, and to great success. So the answer to the Senator’s question is yes, and focus is being paid on the crimes, as they raise their heads as being more frequent in the society. Thank you very much.

Mr. President: Sen. Dr. Richards, next question on the Order Paper.

SEA, Secondary School Transitioning, and Concordat Changes (Status Update of Committee Report)

121. Sen. Dr. Paul Richards asked the hon. Minister of Education:

Given that on February 08, 2022, the former Leader of Government Business in the Senate advised that the Cabinet-Appointed Committee established to further review and recommend Changes to the Conduct of the SEA and Transition to Secondary School, and the Concordat was scheduled to report to Cabinet in August 2022, can the Minister provide an update on the status of said Report, including the following:

(i) whether the Committee has completed its review;
Oral Answers to Questions

(ii) if the answer to (i) is in the affirmative, when will the Report be made public; and

(iii) if the answer to (i) is in the negative, what are the reason(s) for the delay in completion and submission?

Mr. President: Minister in the Ministry of Education.

Hon. Senators: [Desk thumping]

The Minister in the Ministry of Education (Hon. Lisa Morris-Julian): Mr. President, I am pleased to inform you that the Cabinet-appointed Committee has completed its review of the changes to the conduct of the SEA and transition to secondary school, and the Concordat. I am also pleased to state, Mr. President, the report is currently before the Cabinet, the recommendations have been reviewed and the decision of the Cabinet will be made public in due course.

Mr. President: Sen. Dr. Richards.

Sen. Dr. Richards: Thank you. Through you, Mr. President—thank you, Madam Minister, for that, what I consider good news—can the Minister indicate if there is a timeline that the Cabinet will take to assess the report, and if the report will be made public?

Mr. President: Minister.

Hon. L. Morris-Julien: Mr. President, it would be made public once the Cabinet has completed its deliberations, and I cannot presume to put a deadline on something that is as weighty as this. But I can assure, through you, Mr. President, the Senator, it is receiving the attention that it deserves and it would be available in due course.

Mr. President: Sen. Dr. Richards.

Sen. Dr. Richards: Thank you. Well, can I move on to the next question given the Minister’s response to that question?
Mr. President: Say again?

Sen. Dr. Richards: Can I move on to the next question given the Minister’s response?

Mr. President: Yes.

Sen. Dr. Richards: Thank you, Minister.

Modernisation and Service Improvement Division
(Details of)

122. Sen. Dr. Paul Richards asked the hon. Minister of Public Administration:

As regard the mandate of the Modernisation and Service Improvement Division of the Ministry, can the Minister provide the following:

(i) the names of the Ministries and other Government agencies where services were improved during the period January 2022 to May 2023; and

(ii) an update on the Government’s plans to improve service delivery in the Public Service?

Mr. President: Minister of Public Administration.

Hon. Senators: [Desk thumping]

The Minister of Public Administration (Sen. The Hon. Allyson West): Thank you, Mr. President, I trust you can hear and understand me. During the period January 2022 to May 2023, the Modernisation and Service Improvement Division continued its implementation of the pilot phase of the public sector performance management system. Four Ministries, departments and agencies were active participants and completed the first two stages of the PSPMS cycle, initial and assess, and commenced stages three and four, engage and plan respectively. The names of the MDAs where services are improved are as follows:

- South-West Regional Health Authority, in respect of the Medical Records Department,
• Eastern Regional Health Authority, with respect to the Pharmacy Department, Sangre Grande Hospital;
• Ministry of Public Administration, Public Management Consulting Division; and
• Ministry of Social Development and Family Services, the Social Welfare Division.

The Government’s plans to improve service delivery in the public service under the MPA’s MSID involves the following initiatives:

• Public Sector Scorecard project to improve performance management of MDAs to be initiated before the end of fiscal 2023.
• Citizen feedback system to allow users of government services to provide complaints, compliments, suggestions for improvement and to rate government services, also aiming for launch before the end of 2023. The Electronic Human Capital Management project is a long-term technology plan aimed at modernizing the delivery of HR services to public officers and improving the effectiveness and efficiency of HCM for improved public service delivery across GORTT. The Ministry of Public Administration, in providing support for this mandate, has actioned the documentation and comparison of functional requirements of all IHRIS modules with other HCM software solutions. The Government is aiming to deliver an upgraded solution in fiscal 2024.
• Change management training for the public service to increase the success of several transformation projects related to actual services being delivered by MDAs. This started earlier this year and continues into fiscal 2023.
• In addition to the above, the Ministry also has a programme relating to
increasing and upgrading government office accommodation to have spaces better suited to delivering services.

And finally, Mr. President, let me just underscore that these projects are in respect of the MSID programme. They are not related to all of the other improvement initiatives occurring throughout the government services.

Mr. President: Sen. Dr. Richards.

Sen. Dr. Richards: Thank you, Mr. President. Thank you, Minister, for the response. Can the Minister indicate what were the reasons chosen for these particular agencies to participate in, if I could described it is a pilot project?

Sen. The Hon. A. West: Thank you, Mr. President. It was a combination of the agencies that were most ready to participate and the agencies filling and responsive to our invitation across GORTT to engage. We also tried to ensure that there was a variety in terms of the entities coming on board.

Mr. President: Sen. Dr. Richards.

Sen. Dr. Richards: If the rationale was Ministries or agencies that were most ready to come on board, is the Minister or the Government worried that it may not be as effective in terms of ascertaining the impact of the protocol of those agencies because of those already ready to come on board?

Mr. President: Minister.

Sen. The Hon. A. West: Yes, Mr. President, ready does not mean that they were at a stage of delivery that made the programme ineffective. It meant the people who were prepared and able to come on board. But I will say to you, through you, Mr. President, that we are currently reassessing the programme to do a broader roll-out. Because, in my respectful view, the pilot segment of the programme has been too extended and we want to increase the impact, so we are currently in the process of amending the programme to make it more effective across the public
Sen. Dr. Richards: [Inaudible]—through you, Mr. President, in terms of the evaluation metrics that you identified and the measures for improvement, how much weighting was given to the public feedback in terms of the service delivery of those agencies identified and the actual impact on public satisfaction?

Mr. President: Minister.

Sen. The Hon. A. West: Through you, Mr. President, while the intention is to ascribe significant weight to public feedback—because the system for garnering and assessing that feedback is not yet in place, that is a project in progress—there is not significant weight being given at this time. But as I indicated in my initial response, we are seeking to roll-out that programme before the end of this year. And as such once the programme is properly rolled out, appropriate weight will be given to that, because we consider that an important aspect of the programme.

Mr. President: Sen. Dr. Richards.

Sen. Dr. Richards: Thank you. Can the Minister indicate if an independent company or agency was used in the application of the protocol and evaluation of the results obtained?

Sen. The Hon. A. West: Sorry, Mr. President, I missed the question.

Sen. Dr. Richards: Sorry. The question is if an independent agency or company was involved in applying the protocol to these four agencies and assessing the outcomes.

Sen. The Hon. A. West: Mr. President, the Ministry engaged consultants to assist us with the roll-out and assessment of the programme and its effectiveness.

Sen. Dr. Richards: Thank you.

ARBITRATION BILL, 2023

Order for second reading read.
The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Thank you, Mr. President. Mr. President, I beg to move:

That Bill to repeal and replace the Arbitration Act, Chap. 5:01, to provide a modern legal framework to facilitate domestic and international trade and commerce by encouraging the use of arbitration as a means of resolving disputes for related matters, be now read a second time.

Mr. President, I consider myself privileged to stand here today to pilot the Arbitration Bill, 2023. This Bill is of great importance to Trinidad and Tobago. It can breathe new life into our commercial climate and attract business, international business, and promote the ease of doing business in our jurisdiction. With this Bill, Mr. President, the aim is to introduce a legal framework which facilitates the use of arbitration as a means of resolving disputes. Provision is made in this Bill for both domestic and international arbitration. Undoubtedly, updating our current legislation will largely benefit trade and commerce in Trinidad and Tobago by signalling to the local and the international community that we have met the goal standard, the international benchmark in this era.

Mr. President, this Bill seeks to introduce Trinidad and Tobago’s arbitration legislation by modernizing the legislation to incorporate the internationally accepted model, that is to say the United Nations Commission on International Trade Law, UNCITRAL, to use the acronym, the UNCITRAL model law on arbitration as adopted on June 21, 1985 and amended on July 07, 2006.

The Bill not only complies with the UNCITRAL model law, but it also closely follows the Impact Justice Model Arbitration Bill, 2022. This harmonization with the regional and internationally accepted standards for arbitration will encourage increased trade and commerce in our twin-island Republic. The question arises relevantly, Mr. President, as we engage in this
Arbitration Bill, 2023

Sen. the Hon. R. Armour SC

discussion today, what is arbitration? Arbitration, Mr. President, refers to a method of alternative dispute resolution which facilitates the resolution of disputes which are submitted to an arbitrator or arbitrators for a binding and enforceable determination of the dispute which has arisen between the parties. By the arbitration process, importantly, the parties to that dispute consent to an arbitration agreement as part of their commercial engagement with each other, with the intention of not going to court. Rather, it is a consensual alternative agreed by the parties in preference to engaging in time consuming and expensive litigation in the national courts.

11.05 a.m.

Arbitration is therefore facilitated by:

(a) the consent of the parties;

(b) the selection of arbitrators by the parties;

(c) the procedure being neutral;

(d) the procedure being private and confidential; and

(f) the finality of the decision of an arbitrator.

Arbitration, Mr. President, has increasingly become the preferred method of resolving disputes worldwide as opposed to engaging in litigation. The process is recognized as an attractive alternative to litigation for the following reasons:

- The parties enjoy a faster resolution to their disputes as the process is simplified.

- A reduced resolution time results in lower cost associated with determining the dispute.

- The arbitration process is itself more flexible, in that it allows for the parties to agree on all aspects of the procedure.

UNREVISED
Arbitration Bill, 2023

Sen. the Hon. R. Armour SC (cont’d)

- Arbitration allows for the parties to select a person or panel whose expertise is directly relevant to the specific dispute.
- The parties can rely on the finality of the award since a court’s intervention is limited.

Arbitration is usually conducted in private as a confidential process allowing for confidential information such as trade secrets to be kept private while the dispute is engaged, and, in due course, resolved. There are international arbitration rules that parties can agree to beforehand.

In promoting this Bill today before this honourable Senate, Mr. President, I say with confidence that Trinidad and Tobago has the competence to become a seat of arbitration since there are capable persons who can sit as arbitrators in this country. As at the 1st of June 2023, the chair of the Trinidad and Tobago Chapter of the Chartered Institute of Arbitrators (CIArb) confirms that the Chapter has 80 members which include associates, members and fellows who can function within the arbitration process that will be enabled once this Bill passes into law.

Mr. President, this country’s arbitration legislation currently is governed by the Arbitration Act, Chap. 5:01, which was enacted in 1939 and last amended in 1997. The 1939 Act is itself based on earlier arbitration legislation namely the UK Arbitration Acts of 1889 and 1934. The 1939 Act, Chap. 5:01 of Trinidad and Tobago, Mr. President, is antiquated and does not get past the front door of modern alternative dispute resolution aimed at embedding the ease of doing business for this country’s commercial life. I do not think with respect, Mr. President, that I need to persuade this august Chamber that Trinidad and Tobago should not remain embedded in a 1939 legislative mechanism for doing business in 2023.

Hon. Senators: [Desk thumping]

Trade Law (UNCITRAL) is the internationally accepted model for arbitration legislation, Mr. President. It is the goal standard.

UNCITRAL was itself established in 1966 by United Nations General Assembly Resolution, and the General Assembly recognized that disparities in national laws governing international trade created obstacles to the flow of trade and it regarded the commission as the vehicle by which the United Nations could play a more active role in reducing or removing those obstacles. The General Assembly gave the commission the general mandate to further the progressive harmonization and unification of the law of international trade.

The commission has since become the core legal body of the United Nations system in the field of international trade law. That law, the UNCITRAL model law, was developed to harmonize arbitration and to address the inadequacies and disparities in national laws on arbitration and has come to represent the internationally accepted legislative standard. As pinpointed by UNCITRAL, in an increasingly economically interdependent world, the importance of an improved legal framework for the facilitation of international trade and investment is widely and universally acknowledged.

The model law covers all stages of the arbitral award process from the arbitration agreement to the recognition and enforcement of the arbitral award. To date, Mr. President, legislation based on or influenced heavily by the UNCITRAL Model Law has been adopted in 87 states in a total of 120 jurisdictions. Such jurisdictions include among others, Australia, Barbados, the British Virgin Islands, Canada, Hong Kong, India, Jamaica, Malaysia, Singapore, United Kingdom and the United States of America. UNCITRAL is the established body that assists, harmonizes and unifies jurisdictions that promote arbitration since 1966. Such assistance also includes the publication of arbitration rules.
I am able today, Mr. President, to assure this Senate that my office extended an invitation to the UNCITRAL Secretariat to consider the very Bill presently before this Senate as according with the UNCITRAL Model Law, and by letter dated the 6th June, 2023, the UNCITRAL Secretariat commented on the actual Bill presently before us and advised, with your leave, Mr. President, quote:

We are very pleased to see that one of the objectives of the Bill, clause 5, is to adopt the UNCITRAL Model Law on international commercial arbitration which is being adopted by a number of jurisdictions to achieve harmonization. Having conducted a review of the Bill, we can confirm that the Bill is indeed in line with the model law and, if enacted as such, Trinidad and Tobago could appear among the list of jurisdictions that have adopted the model law.

Hon. Senators: [Desk thumping]

Sen. The Hon. R. Armour SC: The reference there to Trinidad and Tobago appearing among the list of jurisdictions, Mr. President, is because when once this Bill passes into law there is a schedule to the UNCITRAL Model Law that is constantly updated and Trinidad and Tobago will become the listed 121st jurisdiction which has adopted this model law.

IMPACT Justice, Mr. President, is a Caricom regional civil society justice sector reform project funded by the Government of Canada. The project goal of IMPACT Justice is:

“To strengthen legal frameworks, improve legal professionalism and the sharing of legal information, and facilitate increased knowledge and use of Alternative Dispute Resolution (ADR) mechanisms in CARICOM Member States.”

This Arbitration Bill also closely follows the IMPACT Justice Model Arbitration
Bill, 2022 as provided at the explanatory memorandum to that Bill. That Bill states itself as the model law proposed by IMPACT Justice in order to modernize and harmonize the arbitration laws in the Caribbean region and is based for the most part on the UNCITRAL Model Law.

Mr. President, by the passage of this Arbitration Bill, 2023 into law, Trinidad and Tobago is better positioning itself to, among other things, negotiate contracts including international contracts, to attract business including international business at a regional level to have increased ease of doing business within the Caribbean, and to help build capacity in the region for arbitrators and the profession. With the passage of this Bill then, located as we are in the gateway between Europe and the Americas, and as we build out our already strong commercial links to Guyana and our other Caricom neighbours, Trinidad and Tobago will be sending a very strong signal that we continue to be a centre for commercial international business. Arbitration is used in a plethora of areas such as the energy sector, in the construction industry, sport, telecommunications, and in land disputes to name only a few. An immediate and well-known example, FIDIC, the International Federation of Consulting Engineers, is the global representative body for national associations of consulting engineers.

In contracts, all contracts, for construction projects, the FIDIC rules provide standard clauses for arbitration. It will therefore be possible in the FIDIC rules that can be introduced into construction contracts in this country, that Trinidad and Tobago with the passage of this legislation will not only be signalling that it is consistent with the international gold standard, but can have its companies insert clauses into those contracts for the seat of arbitration arising out of any dispute in a FIDIC context to be right here in Trinidad and Tobago. The recognition that Trinidad is UNCITRAL compliant, therefore, paves the way for the international
community and the Government of Trinidad and Tobago. The commercial community and the Government of Trinidad and Tobago to identify this country as the seat of arbitration in negotiating our commercial contracts since arbitration being conducted in Trinidad and Tobago to resolve commercial disputes will be capable of being promoted as a viable option right here.

Mr. President, this Bill, the Arbitration Bill, 2023, has been informed by, among other things, a policy that was prepared by the Law Reform Commission of the Office of the Attorney General and Ministry of Legal Affairs. It was also extensively informed by a process of consultation with stakeholders on this Bill, an important part of the process engaged in by my office. A draft Bill was first produced in 2019 and stakeholders were invited to submit comments on it. The comments as submitted by stakeholders were considered by the Office of the Chief Parliamentary Counsel, and a new draft from the 2019 draft was produced in 2021 and continued to evolve. The Bill was further reviewed inclusive of the consideration of the comparative arbitration legislation out of Jamaica, Barbados, and the British Virgin Islands, following the model IMPACT Justice arbitration law.

The revised Bill was then submitted for further review by the stakeholders, Mr. President, in August 2021, and comments received from those who responded have been considered. Those who were reached out to include the Trinidad and Tobago Chapter of Chartered Institute of Arbitrators; the Association of Trinidad and Tobago Insurance Companies; the Ministry of Trade and Industry; the Judiciary of the Republic of Trinidad and Tobago; the Trinidad and Tobago Chamber of Commerce; Bankers Association of Trinidad and Tobago; the Office of the Director of Public Prosecutions; the Financial Intelligence Unit of Trinidad and Tobago; the Law Association of Trinidad and Tobago; the Registrar General’s
Department; Trinidad and Tobago Contractors Association and the Trinidad and Tobago Police Service.

What are the benefits, Mr. President, which will accrue from this new legislation? We have already touched on some of them. A modern arbitration regime will signal to the international community that we are a jurisdiction that is well-suited for international trade, business and foreign investment with increased ease of doing business within our jurisdiction. An updated arbitration Act will herald the requisite recognition that disputes can be resolved through a modern, efficient, and internationally recognized arbitration procedure that can be utilized in respect of transnational contracts.

There will be savings for our local court system since arbitration will be the significant benefit that resolving commercial disputes through arbitration allows the High Court in its commercial jurisdiction to concentrate on other commercial disputes and, therefore, saves the time and resources available to the local courts. This is particularly relevant where a commercial dispute may not be ideally suited for adjudication on account of the scale, complexity and unfamiliarity of an issue within our jurisdiction. Foreign international companies considering whether to invest or do business in Trinidad and Tobago will be more inclined to do so if there is modern legislation that facilitates arbitration to the same standard as the UNCITRAL Model Law. Further it will be attractive to foreign investors, Mr. President, and companies if there is a mechanism to settle disputes through arbitration rather than expensive, time consuming litigation in the courts in Trinidad and Tobago.

Local companies are also increasingly turning toward arbitration given the advantages over litigation where time and cost are concerned. A modern arbitration Act therefore benefits our local international stakeholders who conduct
business within Trinidad and Tobago. Trinidad and Tobago, Mr. President, has the potential to become as a result a centre for international arbitration.

11.20 a.m.

For some time now, Mr. President, there has been a lot of competition among an increasing number of jurisdictions to be chosen as the seat for the arbitration of disputes. Regionally in 2015, Jamaica established the Jamaica International Arbitration Center Limited and has been lobbying the international arbitration community as a viable arbitration centre in the Caribbean. Likewise, the British Virgin Islands International Arbitration Centre was launched in 2017. A modern arbitration Act will undoubtedly aid in positioning Trinidad and Tobago as a preferred place for international arbitration. The Bill signals that as a nation we are suited to conducting international arbitration and will allow foreign representatives to appear before a court or the arbitral tribunal and to have rights of audience.

Furthermore, and we will see when we get to examine the Bill, there are provisions for tax exemptions and on fees charged and expenses incurred by any arbitrator or foreign representative in an international arbitrator which last for a continuous period of 30 days or less so that expedition is encouraged in a period of 365 days in any annual period.

Trinidad and Tobago, Mr. President, as I have said before, and it cannot be emphasized too much, is in a unique geographic location being a Caribbean island in the gateway from north and Latin America to Europe. Flowing from this, there can be significant derivative economic benefits provided we attract parties from Central, Latin America, South America and North America to settle their arbitral disputes in Trinidad and Tobago when they are contracting with us. Should this
Bill be brought into law, there would therefore be an opportunity for the development of that arbitration centre.

Indeed, Mr. President, the Port of Spain International Waterfront Centre was originally intended as a beacon for international investors. There is a publication that I could come to but I would not trouble you, August 26th, 2021 in which the right honourable late Prime Minister Patrick Manning spoke to that International Waterfront Centre becoming the beacon for international trade and commerce. That is the vision which we are now giving reality to by the passage of this Bill into legislation.

Mr. President, it will speak to the diversification of our economy coupled with the need to earn more foreign exchange as well as to arrest the plight of foreign exchange, in this regard, it is ever more important to attract foreign investments from different sectors. Arbitration matters are currently being sent to other jurisdictions such as New York, United States of America and the United Kingdom. The designation of Trinidad and Tobago as an arbitration centre once this Bill passes into law will contribute to the earning of foreign exchange when we establish ourselves as a preferred option for arbitration through, one, attracting Caribbean base disputes from countries such as Guyana and other Caricom nations, attracting South and Latin American base disputes and identification as a training centre for arbitration.

Mr. President, I could speak at length but I will turn at this stage to look at the Bill for the purpose of assisting Members of this honourable Senate to understand the significance of the legislation that we are seeking to ask this Senate to bring into effect as the law of Trinidad and Tobago. The Bill is in 10 Parts.

Part I of the Bill, Mr. President, most importantly, at clause 5 speaks to the objectives of the Bill and it is quite clear from the objectives of the Bill everything
that I have already been speaking to and you will recall that it was that clause which the UNCITRAL Secretariat in their letter of the 6th of June paid particular attention to. So when we look at clause 5 of the Bill:

“The objects of this Act are to:

(a) facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes;
(b) facilitate and obtain the fair and speedy resolution of disputes by arbitration without unnecessary delay or expense;
(c) facilitate the use of arbitration agreements in domestic and international matters;
(d) facilitate the recognition and enforcement of arbitral awards; and”

And this was pointed to by the Secretariat, to:

“(e) adopt the UNCITRAL Model Law.”

We will see, for example, Mr. President, in Part I that the Act and one would not find this in the 1939 legislation, the Act in its definition section defines what we now understand to be “data message” and “electronic communication”. So “data message” is defined in this Bill as:

“…information generated, sent, received or stored by electronic, magnetic, optical or similar means, including electronic data interchange (EDI), electronic email, telegram, telex or telecopy;”

That is just one example, Mr. President, why I have said that I do not consider that I need to persuade this honourable Senate that we should decline to pass this Bill into law and remain embedded in the 1939 legislation which presently is the law that obtains in Trinidad and Tobago.

Mr. President, Part II of the Bill—and may I pause before I go to Part II? May I just spend a little time on clauses 8 and 9 of the Bill. Clauses 8 to 9:
“(8) In matters governed by this Act, a Court shall not intervene except as provided in this Act.”

And clause 9 tells us:

“The functions referred to in sections 14…”—and a number of sections are given—“shall be performed by the Court.”

We will look at when we go through the Bill in detail but may I just speak to the significance of these two sections? The significance of these two clauses is to give effect to the UNCITRAL Model Law that essentially allows the parties by consent to determine among themselves that they will have recourse to arbitration for the speedy, confidential, expert resolution of their disputes and to the extent that they can do so save as is otherwise expressly provided by this Act and the expressly provided is articulate and clear. Clause 8:

“…a Court shall not intervene except as provided in this Act.”

And the intention behind that which speaks to the intent of UNCITRAL Model Law is to give contracting parties the confidence that by having chosen and having opted for a process of commercial arbitration in the arbitration framework that this piece of legislation is setting up, the disputes will not get mired in the lengthy expensive protracted process that now obtains so unfortunately in the Supreme Court of this country. So what this Bill is speaking to in its vision and its declaration to the international community is the expeditious resolution of commercial disputes so that parties can with confidence know that they will not only be able to resolve their disputes within an expeditious period of time but can get on with doing business with each other within that short space of time when once the dispute has been resolved at arbitration. And that is the significance of clauses 8 and 9 among others in this legislation that we are asking the Senate today to pass.
If we look at Part II of the Bill, Mr. President, Part II deals with the arbitration agreement and we see that clause 10 defines the form of the arbitration agreement and again, there are some significant passages in here that tell us that we could not possibly even imagine accomplishing this in the 1939 time warp that Arbitration Act, Chap. 5:01 has us courting.

So we will see not only that an arbitration agreement—and I am at clause 10—speaks to the fact that it must be in writing, but we will see that as an example at clause 10(4):

“The requirement that an arbitration agreement be in writing is met by electronic communication, which contains the terms of arbitration agreement, if the information contained therein is accessible so as to be useable for subsequent reference.”

And throughout this Bill, you will see that it recognizes that the reality in which we live, trade, engage in commerce today, is propelled and developed through the medium of electronic communication and therefore the legislation recognizes that contracts can be formed by an exchange of emails in no time at all provided, according to normal contract law, the terms of those contracts are sufficiently clear so as to be enforceable. So without dwelling unduly, I emphasize the modern concept that this legislation, this Bill, is asking the Senate to embrace so as to put Trinidad and Tobago on a platform from which it can attract significant international commerce and business.

Mr. President, Part III of the Bill speaks to the composition of the arbitral tribunal and you see that clause 13 tells us immediately, and this is the core of what arbitration is about:

“The parties are free to determine the number of arbitrators…”

So it is the parties to the contract who in the first instance are going to choose those
persons who will enable them to resolve disputes which may arise in the currency of the performance of the contract. So that they will go in the area of energy, in the area of telecommunications, in other highly specialized areas, they will be able to select by agreement one or more arbitrators who are specialized and skilled in the area of the contract so as to be able effectively to give justice to a fair determination of the dispute which has arisen.

And Part III, clause 13 goes on to tell us that if the parties fail to be able to choose their arbitrators, that is one of the limited instances, and you see at clause 14 in which one might go to the court to ask the court to appoint an arbitrator if the parties are unable to agree. So it is not that the court is being entirely excluded but the function and role of the court is limited to allow primacy for the agreement of the contracting parties not only to contract but to resolve the disputes which may or may not arise and that goes very significantly to the composition of the arbitrators.

We will see at clause 14 of the Bill that there is explicit inclusion that:

“A person shall not be precluded by reason of his nationality from acting as an arbitrator…”

So the significance there is, is that international businesses coming to do business in Trinidad and Tobago will have the confidence of knowing that they can approach the other party to the dispute to say let us bring in someone from outside of Trinidad who has a degree of specialization in this area in which our dispute has arisen so that we are confident that the dispute will not only be expeditiously resolved but resolved by someone who has the specialized competence in the area of our dispute and the prime examples are telecommunications, intellectual property, energy contracts where you require a level of expertise.

You will see clauses 14 to 18, Mr. President, allowing for a procedure for grounds of challenge of an arbitrator on the basis of justifiable doubts as to his or
her impartiality or independence or qualifications and the procedure for such a challenge are set out at clauses 15 and 16.

Clause 17 addresses the circumstances where there is failure of arbitrator to perform his functions or fails to act without delay. Clause 18 addresses the appointment of a substitute arbitrator and clauses 19 through 20 deal with the recommendations, situation in which there is the possibility of an umpire who will be chosen to assist in the resolution process where I read from clause 19:

“Where the parties have agreed there is to be an umpire, they are free to agree as to what the functions of the umpire are to be…”

11:35 a.m.

Part IV of the Bill before this Senate, Mr. President, speaks to the “Jurisdiction of the Arbitral Tribunal”. And the jurisdiction there, it is emphasized at clause 21:

“(1) An arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.”

And there are provisions in this Bill, Mr. President, which speak again to the issue of expedition, even where there may be disputes that arise where the arbitral panel is being asked to ascertain whether it has proper jurisdiction, the process continues in the interim. And that speaks to one of the areas that became quite pervasive in the commercial litigation—I recall when I was in the private practice and Chief Justice de la Bastide was Chief Justice of this country—the area known as “collateral attacks”. It became quite prevalent in the civil courts whenever a dispute arose, an interim dispute, to bring side winds into court, to get the court to
determine dispute A or B, and to delay the final determination of the actual dispute that went to the High Courts.

And I recall Chief Justice de la Bastide was very keen to produce rules that would eliminate, and judgments that would eliminate those collateral attacks. Well, built into this jurisdiction of the arbitral tribunal, in the Bill that we are asking this Senate to pass, are safeguards against collateral attacks. Because even if you bring challenges, while the arbitral panel is sitting, you are—the arbitral panel continues to sit to adjudicate and eventually will in due course determine the side challenge that has been brought without impeding the process of the tribunal getting on with its work.

Mr. President, Part V deals with “Interim Measures and Preliminary Orders”, and that is an important part of the interim protection that can be afforded to parties whilst the tribunal is adjudicating on the dispute. So that clause 22 says:

“(1) Unless otherwise agreed by the parties, an arbitral tribunal may, at the request of a party, grant interim measures.”

And there is detailed provision made for interim measures and preliminary orders to be made by the arbitral panel, whilst the dispute is ongoing, to provide for protection with adequate security being provided by the party who is asking for interim measures, so as to ensure that the process is not abused.

Mr. President, clauses 22 through to 32 of the Bill deal with those interim measures and preliminary orders, and are quite detailed to protect the parties from any interim damage that may occur while the disputes are engaging the attention of the arbitrator, and are comparable and even improved on the processes that have
been developed by the common law in our civil courts to ensure that throughout the arbitral process, parties are adequately protected and are confident to ensure at the end of the arbitral process that they have got due process and the protection of the law.

When we go to Part VI, Mr. President, “Conduct of Arbitral Proceedings”, we see that equal treatment is accorded to the parties, clause 33. Clause 34 allows the parties to agree on the procedure that they will employ in the manner in which the tribunal conducts its business. Clause 35 allows, in today’s world, not, I dare say in the world of 1939, for virtual hearings to be conducted in arbitration so that parties can—one party to the contract can remain in London and be assured of the fact that in the seat of arbitration taking place in Trinidad and Tobago, that party is getting a fair hearing.

Clause 39(1) allows for the parties to agree on the language to be used in arbitration proceedings. Because we recognize that in the international world in which we live, not everyone speaks the same language, so that the parties can make agreement for the language in which the arbitral tribunal will engage the fair adjudication of the dispute.

11.40 a.m.

Part VII of the Bill allows for the making of awards and determination of proceedings. Some notable features, clause 46, the arbitral tribunal is to decide a dispute in accordance with rules chosen by the parties as applicable to the substance of the dispute or the law of the State with which the subject matter of the proceedings is most closely connected.

Clause 47, any decision of the arbitral tribunal where there is more than one
arbitrator is to be made by a majority of all of its members.

Clause 49, there is provision for the form and content of the award to be in writing and signed by the arbitrator or majority of arbitrators.

Clause 50, every written agreement is to be deemed to include a provision that the cost of the arbitration shall be in the discretion of the arbitral tribunal.

And at clause 51 it is provided that the arbitral tribunal has the power to award interest.

Mr. President: Attorney General, you have five more minutes.

Sen. The Hon. R. Armour SC: Thank you very much, Mr. President. We see Part VIII, recourse against the award, takes us to clause 55. And I would emphasize with reference to clause 55, the number of circumstances in which the parties are allowed to ask the court. This is where the court is allowed an interventionist role; the number of instances in which, and I look now at clause 55, recourse to a court against an award may be made only by an application for setting aside in accordance with subsections (2) and (3). And that the subsections (2) and (3) set out the circumstances in which the award may be set aside.

Mr. President, Part IX deals with recognition and enforcement of awards. And then, we go finally to clause 10. In the totality and the complete overview of this Bill, which is before the House, Mr. President, I would like to emphasize that the urgent implementation of a modern arbitration regime is required, consistent with the UNCITRAL model law, if Trinidad and Tobago is to get in line and stay in line with the growing trend of in favour of the resolution of commercial and other disputes by non-judicial mechanisms. It is vital that modern arbitration laws of Trinidad and Tobago are enacted, if we are to be considered a place that is good for international trade and business and for attracting foreign investment.

Mr. President, as I wind up, I look forward to the invaluable contributions of
Hon. Senators on this Bill, and in the circumstances, I beg to move. Thank you.

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

**Mr. President:** Hon. Senators, before I put the question, permit me to welcome the students the Rio Claro East Secondary School that are joining us today in the public gallery.

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

*Question proposed.*

**Mr. President:** Sen. Lutchmedial.

**Sen. Jayanti Lutchmedial:** Thank you, Mr. President, for the opportunity to contribute on this Bill here today before us, which seeks to modernize our legislative framework for arbitration proceedings.

Mr. President, alternative dispute resolution is undoubtedly, worldwide, recognized as something which we ought to embrace in order to save precious judicial time, to arrive at more amicable solutions to disputes, and it has served—the various forms of ADR has really served to do us well, particularly, for example, in the areas of family law when mediation has been adopted to a large extent. And so, it is incumbent upon us as a country to move forward with ADR, and particularly with this Bill we are looking at commercial arrangements and having arbitration become more significant and important and regulated in a modern framework so that it could be encouraged.

Unlike mediation where parties are assisted at arriving at an agreement, arbitration employs the use of a neutral third party who will adjudicate on a matter, much like a court hearing, because you still file statements, witness statements, your statement of case, defenses, and so on. But they are allowed to adjudicate the matter and they have more flexibility, in terms of the admissibility of evidence and weight given to evidence. And they are not confined to some of the strictures that
you would find in traditional litigation processes.

And so, depending on the nature of the contract that is executed between the parties, usually at the time that they are, for example, enter into a construction contract. They may include clauses, which would specify things about the arbitration and they may agree or disagree to be bound by the final arbitration award.

Now, the thing about arbitration is that there is a lot of flexibility, and that is something that makes it attractive to the parties. Because they get the opportunity to sort of set their own terms and conditions. And there also many other benefits. And some of them I will discuss, for the benefit of the public and people who would be interested in the area. Because it is still not, I think, fully understood about all of the benefits that could accrue to parties in commercial arrangements when they adopt arbitration. And it is our duty to sell arbitration as an alternative to the persons who could benefit from it.

Now, when you have—two of the main advantages that are really sold to the public on arbitration relates to cost and time. Because it is seen as something that can happen much quicker, and you can get a matter let us say for a typical breach of contract claim through the courts. And given the stated of what we are facing right now, with our Judiciary having a massive backlog of cases that need to be cleared, complex commercial arbitrations and complex commercial cases could actually be adjudicated upon much quicker through a means of arbitration. But, the cost of arbitration is also something that is raised from time to time.

Now, and I would get to it a little bit typically, because we do have to ensure that the cost factor is something that we look at and we ensure that if Trinidad wants to become an attractive seat of arbitration, that we monitor and that we put things in place to ensure that cost-wise it becomes attractive for people to not just

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locally engage in arbitration but to attract people to come here and utilize Trinidad and Tobago as the seat of arbitration.

Now, the Judiciary's last available annual report speaks to the importance of ADR as a whole, because in fact, they listed it and listed the promotion of ADR going forward as one of their significant goals. I could not find statistics in that report about the number of matters resolved, for example, commercial cases by means of referral to an arbitrator. Those statistics were not available from the Judiciary, unfortunately. But they did report a very high clearance rate for mediation, when it came to things such as what we call running down actions. And that is important, and I think that it really does speak to the fact that if we promote and encourage this type of alternative dispute resolution, that we can bear fruit and improve our clearance rate for commercial disputes.

In fact, what he could have happening is that these matters do not reach the court at all. So rather than having matters filed in the court and utilizing court resources and then being referred to arbitration, and so on, we can, if we have this modern usable implemented framework that really does encourage and really does enhance the attractiveness of arbitration, we can see matters actually not reaching the steps of the Hall of Justice at all. And that is, of course, what we would want in a case such as this.

So, having this strong modern legislative framework is important to the country. Because the strength of your laws and the implemented framework can make the difference in how attractive the country will be as well for investment. In fact, when you look at the ease of doing business, one of the indicators that a country is judged by, the way they describe it is time and cost to resolve a commercial dispute and the quality of judicial processes. And that is unfortunately one of the areas that we have ranked lower than many of our Caribbean neighbours

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in recent times. So, hopefully, with this legislation, if we get it right, we could improve on that particular rating. Because we have in fact, ranked lower than the Latin American and Caribbean average on that particular indicator. And so, we want to improve on those things, because that in itself will say. Because people are hesitant to invest in a country if they believe that they would not be able to access swift justice in the event of a commercial type of dispute.

So if we get this right, it could actually help us in more than one way, in terms of not just attracting people to come in and utilize our arbitration services, but to promote foreign investors, foreign direct investment and to attract foreign direct investment, because persons will have more confidence to invest in a country where there is a substantial and working system to expeditiously resolve disputes. Disputes seem to be quite inevitable when you are dealing with multimillion-dollar contracts, construction and all these very complicated commercial financing arrangements and all of that. They always have issues which arise.

One of the things that I did not hear mentioned, but it is important to note is that you could also have, before the arbitration process, an adjudication process that is built-in to many of the contracts. And the adjudication process is then subject to something that could be set aside by an arbitrator or a court later on, because that is the proviso that include in the adjudication process. And many construction-type contracts that I have seen include adjudication. So, we have to take responsibility as a country to promote those types of clauses in contracts. Because there is no law, this law, and there is no other law that can force people to go into arbitration. It is a voluntary thing. And even though standard form contracts from FIDIC and those things include arbitration clauses, those could also be modified.
As the Attorney General said, it could be modified to include Trinidad would be the seat of the arbitration or you could modify it and take it out altogether. It is not very common, particularly when you are dealing with cross-border type contracts. And the reason for that is, because internationally again, it is recognised and it is something that generally people want to have in their contracts.

But I have noticed, for example, typical clauses that refer to our existing arbitration law, when you are dealing with lease arrangements, commercial lease arrangements. For example, you may have the parties, because you are dealing with people who sometimes are on unequal footing. And it is not always attractive to tell, let us say, for example, a smaller business, which may be leasing commercial space or equipment, or something like that, from a much larger enterprise to say: Well listen, you are signing a lease or some sort of contract now, and you are agreeing to go the route of arbitration before you can get to the court. Because there is some sense of comfort that people take in knowing that they can file a claim in the court and seek justice. They are, perhaps later on, disappointed when they realize how long it takes for the matter to go through the court process.

But getting them to agree at the early stage of the contract when everything is nice and rosy and you are happy to get into this arrangement with your business partner, and so on, that if things were to go downhill, you will in fact have as your first stop, so to speak, an arbitration and that you are agreeing to be bound by that arbitration. It may not be so attractive, especially small to medium-size businesses that are growing, because they may not understand and they may be hesitant to say: “Well I am going to be bound by a decision by someone that we would have to agree on”. They may feel that the imbalance in power between the two parties may affect the outcome of the award. And they make take some comfort in feeling
that no, I would prefer to go to a judge.

So, I have actually, in my personal experience, seen where people asked that that arbitration clause be taken out from sometimes, you know, commercial lease arrangements and all of that, because they simply do not want to, at the get-go, bind themselves to something that is not a court. Because a court of law and a judge carries with it a certain amount of confidence that people may have. And so, we have to build confidence in the arbitration process, if it is you want it to become that popular and to become something that people will adopt easily in all types of contracts as an alternative to typical court processes.

**11.55 a.m.**

Apart from the benefits of time and cost, the benefit really of other benefits that could redound to parties involving who opt to engage in arbitration is really that the selected arbitrator could be trained in the particular field, which is the field of the dispute. So, for example, you may have someone who is an arbitrator who would be a specialist in construction law. You can have an arbitrator who might have experience in complex international commercial arrangements.

We unfortunately, and this is something that I would hope would be given consideration in due course, we do not have specialized commercial courts in Trinidad and Tobago like they have in United Kingdom. In the United Kingdom the commercial court, you know, has a panel of really highly specialized and trained commercial law judges, and they would sit in the High Court and adjudicate on matters of this nature.

In Trinidad and Tobago, if you file a commercial dispute you go before any judge in the civil arena who is on the civil—who has a civil court docket in front of them, and you may end up before a judge who has no experience in commercial law. You may end up before a judge who has had a practice in family law or
public law but has never really done something specific to construction, or has never done anything related to commercial contracts and so on. And if you were to go the route of arbitration you can actually—because the parties are allowed to select and agree upon the arbitrator, and if you utilize services available for arbitration in Trinidad and Tobago, then you can in fact achieve the benefit of having a very specialized person to sit down and adjudicate upon your matter, and that can be very helpful as well.

I say that then, to say however, that it is important to ensure if we want this to work that we do not have any sort of bar to persons becoming trained arbitrators, that we have a formal system of recognizing and registering our arbitrators, and that we open it up to an extent that you have arbitrators trained in many different fields so that you do not end up with a sort of a cartel of arbitrators, because that would of course result in increased cost. And then you lose the benefits that you want here or that you are touting of arbitration. Because as long as something is controlled, some sort of service, whether it is a product, or a service, or whatever it is, is controlled by a small group of people, then you know they can control the cost. And we do not want that cost, we also do not want a limit on the range of experiences that the arbitrators may in fact have.

So that would of course make the whole arbitration more attractive if you have that wide range of persons available in different fields whether it is construction, experience with FIDIC contracts, you know, international commercial arrangements, financing and so on. Then you want to have those things available in Trinidad and Tobago to make it attractive to people to use it and to attract people to come here and adjudicate on those matters.

Certification for arbitrators is something that is also important if you want to build confidence, and so, hopefully coming out of this Bill being promoted and
aired today, that there would be steps taken to assure the public of the certification and the veracity—the quality of certification that is afforded to our local arbitrators in order to make it attractive in that regard.

Now, if you want a Bill to work there are two things that I noted in the Bill that I would want to speak on, and that is the clause 55, which deals with the setting aside of the award, and also the issue of confidentiality. Before I get to that though, I just want to talk about a little bit as I was speaking about buy-in and having confidence in the arbitrators themselves. And the issue of buy-in comes a lot from consultation.

Now the Attorney General did mention that there was consultation in the Bill coming back to 2019, and he listed a number of persons who were consulted. Whilst we have no reason to doubt what the Attorney General said in terms of the submissions and being taken into consideration, we do not know what the comments were coming from any of the parties. We have not heard. There was not a, as far as I am aware, a public consultation on the adoption of this UNCITRAL model legislation. I have not heard—at least it did not to my knowledge in terms of the impact justice project and their model, I do not know how much consultation they had on that law. Because I understand from what the Attorney General way saying and from my own research, that it is closely modelled on that particular model law.

So locally, again, you want arbitration and you are promoting arbitration as an alternative you want to get buy-in. I noticed from the list of stakeholders listed by the Attorney General, I did not hear the JCC listed there for example. They represent a number of bodies and you know I would have liked to hear their contribution. I did hear him mention the Trinidad and Tobago Contractors Association. Well they are members of the JCC, I believe. But you know we still
do not know what their concerns were.

And I wonder if this Bill, because of the fact that it will affect so many stakeholders and it would affect so many persons, and because you want to and the only way that it will really become attractive and get buy-in is if you hear people’s concerns. I wonder if this Bill would not have been something that might have been suitable for a joint select committee of both Houses to sit and consider. Because that is really the means whereby all of us, and all parliamentarians, could sit and listen to the concerns raised by the stakeholders.

As it is right now, we are given the names of persons who were consulted or asked to provide feedback on the proposed Bill, but we do not know what the feedback was. And we do not know what if anything was actioned after that feedback was sent. I have no reason to doubt what the Attorney General says in terms of it being taken on board, but I think I would like to—and I think other persons here would have liked to have the opportunity to interrogate the concerns of stakeholders in this, because that will give us the assurance as well. And again, I have noticed joint select committees attract quite a bit of—I never thought people used to pay attention to these things, but I think Sen. Richards could agree with me, we sit on one particular committee that attracts quite a lot of attention.

And I am always—because I have sat on a few JSCs where we deal with legislation and, you know, I am very impressed by the level of public interest and feedback that we get when we dealing with legislation. So a matter like this, perhaps we should have or maybe the Government may still wish to consider whether or not they wish to refer it to a JSC, because all of the various stakeholders would have the opportunity to come before us.

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

**Sen. J. Lutchmedial:** All of the stakeholders may have the opportunity to come
before us and we could hear their concerns, determine if they are legitimate, whether you know they are not, and if we could perhaps give you know find a way to give assurance to the stakeholders who we want to utilize this Bill.

You see, talking about that classic objection, Mr. President, it was not too long ago that we stood here listening to a Bill being promoted in this House by the Government saying that had they had buy-in and touting all the benefits of it only to have land in our hands on that morning objections from the Law Association of Trinidad and Tobago. So we have reason to doubt them and as much as I say—

Hon. Senators: [Desk thumping]

Sen. J. Lutchmedial: As much as I say, that I have no reason to doubt the Attorney General when he says that from 2019 to now, they have had consultations and they were taken on board, I have no reason to doubt.

Sometimes we have reason to doubt you know, when they say that all of the concerns—and sometimes it is not possible to address all of the concerns and that is fine. I understand that because I have again sat on JSCs where I have heard several unreasonable concerns being raised by stakeholders. But the Parliament as a whole should be allowed to be the judge of that, and the only way to do that is through a JSC.

Hon. Senators: [Desk thumping]

Hon. Senator: Let us not veil things in secrecy.

Sen. J. Lutchmedial: If concerns were raised and they were addressed by all of the stakeholders who are an important part of the operationalization and the success of this legislation, then there is nothing to hide, full candor should be the order of the day. So there is no reason to hide from that and to look at it in that regard.

Mr. President, since 2017 Jamaica adopted UNCITRAL model legislation,
Arbitration Bill, 2023  
Sen. Lutchmedial (cont’d)

and you know up to last year, I think it was, yes, the 13th of December to 2022, an article carried in the Jamaican newspaper the *Gleaner*, titled and with your kind leave I would read—

**Sen. Mark:** On a point of order, Standing Order 51(1)(e), (f), and (g) respectively. Thank you.

**Mr. President:** So the Standing Order being raised hon. Senators is one of there being silence in the Chamber while a member is contributing. So I would ask that we just control the level of talk that is happening where there is mumbling that may raise to the point of slight disturbance to the Member speaking. Continue, Sen. Lutchmedial.

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

**Sen. J. Lutchmedial:** Thank you Mr. President. Yes, Mr. President, and with your leave I would just read a little bit from this article published in the *Gleaner* on the 13th of December 2022, and it is captioned, and of course we relate to our Caribbean neighbours because we all have similar experiences, our culture is very similar and so on. And the caption is:

“Arbitration a hard sell to Jamaicans”

And you know, when I read this article it really it resonated with me because many of the concerns raised in the article I could see them as being concerns here that we have to address. So we must learn from what they say. And it spoke about the fact that it says, you know:

“Even though Jamaicans enjoy an impressive track record in conflict resolution using…(ADR) strategies, they are yet to be convinced of its effectiveness as an alternative to the well-established courtroom proceedings, Minister of Justice Delroy Chuck disclosed on Thursday. In fact, he admitted that it was a very hard sell to his countrymen.”
So passing the law is one thing, but selling it, really selling it because again as I repeat, there is no mandatory rule that you must resort to arbitration or that you must include an arbitration clause in your private contractual arrangements. And if we want more people this adopt it, we really do have to sell it.

Now, it went on to say that you know perhaps the Judiciary, and I did note the Attorney General saying that the Judiciary should not be left out of it, that they would be, you know, they can refer and all of that. But I think that there needs to be more incentivization and perhaps the Government after passing this law can look at other countries and jurisdictions as to how else they can incentivize arbitration for parties. So do not just say, “Listen you guarantee to get this thing done cheaper and quicker than if you go to the High Court.” Because that may not be enough. As I said before, the Court is clothed with a certain level of respect and dignity, and it is looked at as you know the route to go. And if you are making something literally alternative to the court system, it has to be made equally attractive.

So for example, if parties go to the court but there is an arbitration clause in their contract that may be optional or something like that, and they opt to go that route, there should be some way that they could perhaps recover some cost or that the court can afford them some—we have to be creative, we have to be creative to incentivize things. Whether it is some kind of tax incentive whatever it is. So just try to incentivize this because we do not want to suffer the same route as Jamaica having, you know, they have invested in this legislation since 2017, they have adopted it, they have advertised themselves as an international seat of arbitration, and looked to develop themselves in the Caribbean as the—I think from what I have been reading, the foremost provider of these services, but they cannot even get enough locals according to their own Minister of Justice to buy into the
process.

So that being said, I want to look a little bit now at the issue of some of the specific clauses that I noted, and my other colleagues would spend some time on some of the others, but particularly the confidentiality clause. Now, confidentiality is another benefit that many people find of arbitration because it allows you to conduct the proceedings in private, which is unlike court proceedings, which are generally speaking only in exceptional cases you have closed proceedings. But when you are dealing with disputes that involve trade secrets, pricing information, and those kinds of things, it is attractive to have confidentiality.

The issue here and the issue which arose in a matter previously is the fact that in this country one of the largest procurers of services, whether it is construction or otherwise and enters into contractual agreements is the State.

12.10 p.m.
And if you have wholly-owned state enterprises entering into contracts in which there is an arbitration clause and then going the route of arbitration, the confidentiality clauses could then serve as a shield to prevent the dissemination of information which may be of interest to the public and that, Mr. President, is something of concern to us. Because you see, we do not want a situation to arise where as much as arbitration has benefits—and I have spent the first half of my contribution, I would say, touting the benefits of arbitration because I am in agreement with much of what has been said about it—I do not believe that our laws, our local, you know, statutory provisions which encourage, promote and basically, you know, solidify within our legal system the concepts of transparency and accountability when it comes to the expenditure of public funds, should be trumped by any confidentiality that may arise out of arbitration.

**Hon. Senators:** [Desk thumping]
Sen. J. Lutchmedial: And there was an attempt to do just that with respect to an arbitration that took place between Petrotrin at the time, a wholly-owned state enterprise belonging to the people of Trinidad and Tobago, and a company by the name of WGTL. Because there was an arbitration which Petrotrin won, and then there was the decision thereafter based on what had taken place in the arbitration proceedings, and documents supposedly which were filed as part of those arbitration proceedings. Decisions were taken by the Government and the board of Petrotrin in relation to litigation and it had a very strong political flavour, I would say, to those proceedings, and it was a matter of public interest. And when you had a litigant—and I will hear my learned friend say, “I come to Ravi down de debate”. But when you had a particular public interest litigant go—

Hon. Senator: Ravi?

Sen. J. Lutchmedial: Yes, it was Ravi, of course, standing in defence of democracy as usual.

Hon. Senators: [Desk thumping]

Sen. J. Lutchmedial: And we had the foremost public interest litigant in the country at the moment, Mr. Ravi Balgobin Maharaj, filing a freedom of information request. Right? He is good enough to force you to call an election. You could “steups” how much you want.

Hon. Senators: [Desk thumping]

Sen. J. Lutchmedial: Right? So you could “steups” how much you want.

Hon. Senators: [Desk thumping]

Sen. J. Lutchmedial: No amount of “steupsing” will change the fact that he forced the whole PNM Government to call an election on the 14th of August. But that being said, Mr. Ravi Balgobin Maharaj went to the—had to file a freedom of information request to seek disclosure because he was very concerned about the
decision of Petrotrin relying on information in these cloistered proceedings to
discontinue the case against Malcolm Jones and that $1.3 billion loss that Petrotrin
suffered in the WGTL project, and the fact that whilst that litigation was, you
know, there and continued before the court, that this was a person who was, you
know, appointed to a standing committee on energy and all of that.

So there were public concerns and again, we had to go all the way to the
Privy Council because they dismissed—they did not even wish to grant leave at the
local level for, you know, judicial review and the Privy Council ended up ruling
that, you know, that it is a very arguable case when you are arguing the section 35
public interest override in the Freedom of Information Act when it comes to
balancing that need for transparency and accountability against the rules of
confidentiality in cases. In that case it was the LCIA, London Court of
International Arbitration, Rules. And the argument being put forward in that case
was really that, look, you cannot contract yourself out of statutory provisions that
embrace accountability and transparency. And that was the concern in that matter.

Now, by the time leave was granted, before the judicial review matter could
see its way through the court, the documents were in fact disclosed but I think it is
important to look at that judgment and what the Privy Council says. Because they
said here at paragraph 46 of the judgment in that matter—and this is, forgive me,
2019 UKPC 21, Privy Council matter at clause 46. It says:

“So far as concerns possible benefits for the public interest of disclosure
of...”—and the persons are named—“...statements, the Board considers that
it is arguable that they are of significant weight, with a view to securing
transparency and accountability in relation to relevant decisions in a number
of respects. Without seeking to be in any way exhaustive, the Board refers to
the following possible public interest benefits of disclosure: (a) to enable the
public to understand and, if appropriate, criticise decisions taken by Petrotrin in embarking on the joint venture and in entering into the guarantee which have proved to be so costly to it; (b) to enable the public to be fully informed about those matters and Mr. Jones’s involvement in them so that they could, if appropriate, criticise or oppose the appointment of Mr. Jones to roles within government with a focus on energy matters, such as his appointment as a member of the Cabinet Standing Committee on Energy; and (c) to enable the public to understand, and if appropriate criticise, the decisions to bring the civil claim against Mr. Jones in the first place and then to abandon it.”

Because this matter was a very convoluted one, it was one of grave public concern. So the Privy Council set out how much public interest you may have in a case like this, and it was a case specifically dealing with arbitration where confidentiality was invoked.

Now, what we have here with confidentiality, by way of clause 60, there was no—nothing in the old law, the 1930s law, that dealt with confidentiality. But we have now in this particular proposed Bill, by clause 60, that:

“(1) Arbitral proceedings shall be private and confidential.”

It goes on to say that:

“(2) Disclosure...relating to the arbitration shall be actionable...”—if there is—“...a breach...unless...”

And then there are very specific areas that say that there is a, you know—it could be permitted and would not be actionable, because it is actionable breach if in fact there is a leak of the confidential information. And these things that are specified here, these circumstances in clause 60(2) (a) to (g), you know, it does say:

“(e) is in the public interest;”

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So, I am just concerned—well, I do not—I am not concerned but I really do want to ensure that it is understood that no rules—because we do not have rules yet made under this particular, you know, legislation—but that no rules should be made or anything should be done that would circumscribe freedom of information. Because I do believe that freedom of information, as it relates to public entities, wholly-owned state enterprises, because they are such large participants in contractual arrangements, we must never ever, ever allow any law to circumscribe that transparency that is afforded to the citizens of Trinidad and Tobago—

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

**Sen. J. Lutchmedial:** —by good UNC law called the Freedom of Information Act.

So after that, Mr. President, the second area that I would like to look at is clause 55 and that is the setting aside—recourse against awards. Right? This is in Part VIII of the Bill. Now, the previous clause 19 of the old legislation dealt with the ability to set aside an arbitral award. And this particular clause proposed in this Bill is a lot more specific in terms of the grounds upon which the party could make the application and you are required to furnish proof that you meet one of these grounds. For reference, I will just read the clause 19 as it exists—I am sorry, section 19 as it exists in the Arbitration Act right now. Section 19 says:

“(1) Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him, but before making such order, the arbitrator or umpire may, if the Courts so directs, be given an opportunity showing cause against such order.

(2) Where an arbitrator or an umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the Court may set the award aside.”
So that “improperly procured” is very broad. It is extremely broad in terms of the grounds by which one party may be able to approach the court to have the award set aside on our Arbitration Act. What you have here now is a lot more specific and I am concerned that we do not limit the ability of a party to—

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

**Sen. J. Lutchmedial:** Okay. Whoa. That time fly—yes, that we do not afford parties the full range of opportunities to go before the court and set aside an award. Again, Mr. President, it is not in our too distant memory that there was a lot of uproar in this country about an arbitration award to a company by the name of AV Drilling, again, involving Petrotrin.

**Hon. Senator:** What?

**Sen. J. Lutchmedial:** And it came to the public’s attention that the attorney acting for Petrotrin had advised that the application should be made to set aside the award, and that advice was not followed, and alternative advice was sought, and so on, and so forth.

So I say all of that to say that the ability of a party to go before the court, we ought not to circumscribe those things too narrowly. I know we are following model legislation. But again, when you are dealing with, in our local circumstances, a number of state-owned enterprises—you see, the problem we have with these state-owned enterprises that have specific roles and functions is that we treat them as though they are private entities, but they belong to the people of Trinidad and Tobago.

**Sen. Lyder:** Yeah. Not to the PNM.

**Sen. J. Lutchmedial:** And they ought to be seeking not a political objective, and they ought not to be seen to be pursuing political objectives but they ought to be seen as pursuing the interests of the people of Trinidad and Tobago. And there was
a lot of uproar regarding that matter. And I want to say that today, what I consider to be the criteria set out for an award to be set aside under clause 55(2), I find them to be quite narrow. I find them to be very restrictive and as much as it may seem attractive to have a situation where, you know, persons can feel that they would confidently be able to conclude their dispute by way of the arbitration, we do not want in cases involving state enterprises and so on that you have so much restriction in terms of the ability to apply to set aside the award.

Mr. President, in closing, I just wish to say that we are not opposed to any form of ADR. We are not opposed to anything that will promote Trinidad and Tobago as a centre for arbitration. And although we may have some catching up to do, in terms of with, you know, Caribbean neighbours who have tried to get much more ahead of us and to market themselves in that regard, I want to say that it is possible, it could be done, but we want a strong framework. We also want a framework that will support, again, the interests of the citizens of Trinidad and Tobago.

Something that I found to be very interesting and I just want to make very quick mention of is a Jamaican attorney who has served as Attorney General, I believe, in the Turks and Caicos Islands, or one of those islands, has actually introduced a completely virtual arbitration platform and he has been doing it—it is been rolled out through the centre for arbitration in Jamaica, and it is called I-NEUTRAL. And it allows—if I can, and I will just want to read a little bit about it. It was discussed in Jamaica Observer and it is something that was developed by Christopher Malcolm called the “digital peacemaker”. And, you know, I hope to see that if we are really going to market Trinidad and Tobago as a centre for arbitration and encourage people locally to get involved in arbitration and to adopt arbitration, that we could also be creative in the use of this type of technology to
now take it beyond the courtroom setting, to take it beyond any sort of, you know, traditional methods because, you know, we have to adopt this type of technology. And if our regional counterparts are already doing it, then we have a lot of, you know—we have some catching up to do if you want to be competitive.

And, Mr. President, I would close by saying, however, that there is no substitute for consultation and buying. And I reiterate that, again, if we want to really get this right and get it working and make it attractive, we should have—the Parliament should have the opportunity to really consult in a deeper and more meaningful way with our stakeholders. I thank you.

Hon. Senators: [Desk thumping]

12.25 p.m.

Sen. Charrise Seepersad: Mr. President, thank you for the opportunity to contribute to the debate on the Arbitration Bill, 2023 and other related matters.

As defined, arbitration is a form of alternate dispute resolution in which the claimant seeks redress from the respondent through an independent arbitrator. The court is usually not involved, but the matter can be referred for arbitration by the court, or the arbitrator may seek the court’s involvement when the arbitration process fails.

Arbitration in Trinidad and Tobago is currently governed by the Arbitration Act Chap. 5:01, enacted in 1939, and based on English arbitration legislation of 1889 and 1934. It does not reflect modern best practices, and it is not in line with international commercial legislation. In fact, quite a few of our laws fall into this category and require updating and/or replacing.

The current Arbitration Act provides that an arbitration agreement is:
“…irrevocable except by the leave of the” High “Court and shall have the same effect in all respects as if it was an order of Court.”

Trade and industrial practices have changed dramatically since 1939, but our laws relating to arbitration have not been modernized. In 1939, which is 83 years ago, there were no computers, photocopiers, cell phones or the Internet, just to name a few, but our arbitration laws remained trapped in the early 1900s.

Mr. President, the Bill before us is based on the United Nations Commission on International Trade Law, UNCITRAL Model, and you can find it in clauses 2 and clause 5(a) of the Bill. UNCITRAL was established in 1966, pursuant to a resolution of the General Assembly of the United Nations. Its mandate is to:

“…further the progressive harmonization and unification of the law of international trade.”

And in that respect to bear in mind:

“…the interests of all peoples, and particularly those of the developing countries, in the extensive development of international trade.”

Pursuant to that mandate, UNCITRAL formed a committee of expert jurists that formulated a model law which was adopted on June 21, 1985. The objective would be that it would be adopted by many worldwide jurisdictions to standardize and harmonize the laws relating to arbitration and dispute resolution. Since then the model law was amended on July 7th, 2006, has been adopted by 86 divergent legal and economic States in a total of 119 jurisdictions, including Jamaica, Barbados, the British Virgin Islands, Australia, India, Hong Kong, Singapore, Canada and the United States.
Arbitration has become a standard requirement in most modern contracts for the resolution of disputes. If Trinidad and Tobago intends to attract international trade and investment, and become a more attractive venue for international arbitrations to be held, it is important that our arbitration laws are recognized and approved by UNCITRAL, as being in line with the model law and certified by the Secretariat, and included in the list of jurisdictions that have adopted the model law.

Mr. President, businesses, including international investors, demand neutral, timely, cost-efficient, enforceable and predictable arbitration and dispute resolution mechanisms. Modern arbitration legislation will encourage disputants to select arbitration as a means of resolving their disputes and differences, thereby relieving the courts of hundreds, if not thousands of matters, that would otherwise have to be litigated. The backlog of cases awaiting trial will be invariably reduced—clause 5 of the Bill.

Mr. President, businesses are not prepared to wait two or more years to have their cases heard and then face the possibility of an appeal resulting in further delay and possibly compromising operations. Businesses would prefer an independent, neutral person with subject matter and dispute resolution experience, to hear the evidence and submissions of parties and then have an expert arbitrator rule on the matter, based on the provisions for dispute settlements, which are included in the contract.

According to the 2019 World Bank Doing Business Report, Trinidad and Tobago ranks 174 out of 190 countries in the ease of enforcing contracts. It takes
1,340 days, or about three years, eight months, to resolve a commercial dispute in Trinidad and Tobago whereas in Latin American and the Caribbean region, it takes 768.5 days, or two years two months, to resolve commercial disputes in the first instant courts.

Arbitration offers several benefits over litigation. One, speed and efficiency. Arbitration is generally faster than litigation. The parties involved can select their arbitrator or arbitrators who will dedicate specific times to the case. This allows for more streamlined proceedings and quicker resolution, compared to the often lengthy court process. Clause 5 of the Bill.

Two: flexibility and informality. Arbitration offers greater flexibility in terms of scheduling and procedures. Parties can agree on the time, date and location of the arbitration, making it more convenient for all involved. The process is generally less formal than litigation, which can lead to a more relaxed atmosphere; clauses 33 to 45 of the Bill.

Three—expertise and specialization. Parties can choose the arbitrators with specific expertise and knowledge in the subject matter of the dispute. This allows for decisions to be made by individuals who have a deeper understanding of the industry or technical aspects involved, potentially leading to more informed and well-reasoned outcomes. Judges have expertise in law but do not generally have deep knowledge in industry or have the technical expertise; clauses 13 to 20 of the Bill.

Clauses 19 and 20, use of an umpire. Mr. President, the use of an umpire is not part of the UNCITRAL model. I would be grateful if the hon. Attorney
General would provide his thinking on deviating from the UNCITRAL model and including the use of an umpire in the Bill.

Four, confidentiality. Arbitration proceedings are typically private and confidential. Unlike court cases, which are generally open to the public, arbitration offers a greater level of confidentiality. This can be particularly beneficial for disputes involving sensitive or confidential information that the parties prefer to keep out of the public domain; clause 10 of the Bill.

Five, cost effectiveness. While arbitration does involve costs, it can be often more cost-effective compared to litigation. The streamlined nature of the process and the ability to choose arbitrators can help reduce expenses, as compared to discovery, court fees and other litigation-related costs; clause 50 to 54 of the Bill.

Six, finality and enforceability. Arbitration awards are usually final and binding, providing certainty to the parties involved. Arbitral awards enjoy greater enforceability under the New York Convention on the Recognition and Enforcement of Arbitral Awards; clauses 48, 56 and 57 of the Bill.

Seven, preserving business relationships. In commercial disputes, arbitration can help maintain business relationships between parties. As arbitration offers a more cooperative and less adversarial environment, it can provide opportunities for the parties to preserve their working relationship while resolving their differences.

However, Mr. President, while I generally support arbitration over litigation to settle disputes, there are some potential disadvantages to consider. One, limited recourse to appeal. In arbitration the right to appeal an arbitrator’s decision is
generally more restricting than in litigation. The grounds for challenging an arbitration award are typically limited and usually involve demonstrating serious procedural irregularities, or arbitrator misconduct. This limited recourse to appeal can limit the opportunity to correct potential errors or obtain a different outcome.

Two, lack of formal discovery. Compared to litigation, arbitration often has more limited discovery procedures. This means that parties may have less access to information and evidence that could be crucial to their case. This could potentially result in a less comprehensive presentation of facts and a reduced ability to uncover critical evidence.

Three, cost allocation. While arbitration can be more cost-effective than litigation, it is not always the case. The cost of an arbitration could still be significant, especially if complex issues or multiple arbitrators are involved. Additionally, arbitrators often charge fees based on their hourly rates, which can add up over the cost of the proceedings. The parties are generally responsibility for paying these costs, which can be a disadvantage for parties with limited resources.

Four, limited precedential value. Unlike court judgments, arbitration awards typically do not establish binding legal precedents. This means that subsequent arbitrators are not necessarily bound to follow the reasoning or outcome of previous arbitration cases. Consequently, arbitration may lack the consistency and predictability that could be achieved through a well-developed body of legal precedence in the court system.

Five, lack of public scrutiny and transparency. While confidentiality can be
seen as an advantage, it can be a disadvantage in certain situations. The private nature of arbitrations means that the proceedings and the decisions are not available to the public. This lack of public scrutiny and transparency can raise concerns about accountability and fairness, particularly in disputes that involve matters of public interest.

Six, limited remedies and relief. In some cases, arbitration may not offer the same range of remedies and relief as the court system. For example, certain equitable remedies, or injunctive relief, may not be available in arbitration. Depending on the nature of the dispute, this limitation could be a disadvantage if the parties require specific types of relief that are not within the scope of the arbitration.

Mr. President, while arbitration can be a viable method of dispute resolution in many cases, there are certain circumstances where it may not be recommended. I will provide a few situations where arbitration may not be the most suitable option.

One, inequality of bargaining power. If there is a significant power imbalance between the parties involved, arbitration may not be the best choice. The party with less bargaining power may feel pressured to agree to arbitration terms that are unfavourable or biased against them. In such cases, a court proceeding with established rules and procedures may provide a more level playing field.

Two, public interest and legal precedent. When a dispute involves matters of public interest or the interpretation of important legal principles, litigation may
be preferable. Court judgments establish binding precedence that can guide future cases and ensure consistency in the application of the law. Arbitration on the other hand does not create legal precedence, and may not adequately address broader legal issues.

Mr. President, notwithstanding the provisions of section 60, I am concerned that any of the parties have the ability to deliberately conceal matters in the public’s interest using arbitration.

Three, the need for immediate injunctive relief. If a party requires immediate injunctive relief, such as a court order to stop certain actions, or to preserve assets, arbitration may not be the most effective option. Courts have the authority to grant such relief promptly, whereas the process in arbitration may not be as expeditious, potentially resulting in a delay that could be detrimental to the requesting party.

Four, complex matters of law or public policy. Arbitration may not be suitable for disputes involving completion legal issues or matters of public policy. Courts are equipped with established legal systems, extensive rules, and a Judiciary experienced in handling intricate legal matters. The flexibility and informality of arbitration may not provide the same level of legal expertise and comprehensive analysis required for complex cases.

12.40 p.m.

Five, limited discovery and evidentiary issues. If a dispute necessitates extensive discovery procedures or access to third party evidence, arbitrations limited discovery process may be inadequate. Courts typically offer more robust
mechanisms for gathering evidence including the subpoena power and broader discovery tools. In such cases, litigation may be more appropriate to ensure thorough examination of the evidence.

Six, need for appellate review. If the parties desire more extensive review process or believe that there may be significant legal errors in the decision, litigation may be preferred. Arbitration awards generally have limited grounds for appeal, while court judgments may be subjective to extensive appellate review.

It is important to note that the suitability of arbitration depends on the specific circumstances of each case. Careful consideration needs to be given to the party’s goals, complexity of the disputes and the nature of the issues involved when deciding whether arbitration is appropriate to resolve the dispute.

In my view, it is necessary to update our ancient arbitration laws and processes in keeping with modern international practice. This is a necessity so that Trinidad and Tobago enhances its position in the ease of doing business index, becomes a more attractive place for international investors and becomes a seat for international arbitrations. Thank you, Mr. President.

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

**Mr. President:** Hon. Senators, before I call on the next speaker, permit me to revert to item eight on the Order Paper. Sen. Mark.

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

**URGENT QUESTION**

**Heritage and Stabilisation Fund**

**(Monitoring of portfolios to prevent further loss)**

**Sen. Wade Mark:** To the hon. Minister of Finance: In light of the US$913.5M loss suffered by the Heritage and Stabilisation Fund in 2022, can the Minister indicate the specific investment portfolio areas which resulted in the losses and
whether Government continues to monitor same to prevent further losses? Mr. President.

The Minister of Finance (Hon. Colm Imbert): Thank you very much, Mr. President, and let me apologize for not being available at 10.00 a.m. I have a team here from the Fiscal Affairs Division of the IMF providing very important technical assistance.

The information that Sen. Mark requires is available in the 2022 report of the Heritage and Stabilisation Fund which covers the period October 1st, 2021 to September 30th, 2022. It is a public document, because it was laid in Parliament by me in February of this year, four months ago. It will be available from the Parliament and in fact it should be available to all Senators.

12:45 p.m.

Specifically, the concept that the loss in 2022 is a catastrophe, I would ask the hon. Senator, do not be like the Express, please. I would read the data for the comprehensive income of the fund. I can start with 2015, the comprehensive income for that year was $120 million; 2016, the comprehensive income was US $305 million; 2017, the comprehensive income was US $429 million; 2018, the comprehensive income was US $203 million—these are all positive numbers—2019, the comprehensive income was US $288 million; 2020, the comprehensive income, positive income, US $457 million; 2021, the positive comprehensive income, US $624 million. So if you take just those years that I just called out there from 2015 to 2021—

Mr. President: Minister, the time frame for the answer has expired.

Hon. C. Imbert: Thank you.

Mr. President: Sen. Mark.

Sen. Mark: Yeah. Mr. President, you know, I feel a sense—or I will put it
another way, the weight of history seems to be weighing on me because I am looking at whether we have a Houdini—

**Mr. President:** No. Sen. Mark, just a question. Again, I have repeated—

**Sen. Mark:** Okay.

**Mr. President:**—ad nauseam that there is a time frame for these proceedings. So just please pose the question as succinctly as possible.

**Sen. Mark:** Can I ask the hon. Minister whether I am seeing a magician before me? I just want to ask the hon. Minister, as ultimately responsible for this Heritage and Stabilisation Fund, how can he explain to the people of this country the disappearance of close to TT $6 billion? Let the Minister, through you, tell the people of this country how he—

**Mr. President:** So, Sen. Mark, it sounds a lot more like a statement as opposed to a question.

**Sen. Mark:** Can I ask—

**Mr. President:** So you have asked the question. I have got it. Minister of Finance.

**Hon. C. Imbert:** Thank you very much, Mr. President. I was reading out those figures there because if you total them you will get in excess of US $2 billion—2 billion with a “b”. The comprehensive income so far for 2023 is in the order of US $700 million. So if you add the comprehensive income over the period I just mentioned, 2015 to 2023, and you subtract the loss in 2022, you will get somewhere in excess of US $2 million or TT $12 billion. The whole point is that one has to look at these things from a long-term perspective. As I said, do not be like the *Express*. The fund has earned $12 million over the last five years.

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

**Mr. President:** Minister, the time Urgent Questions has now expired in its
totality. So we shall now revert back to the proceedings that was occurring prior to the reverting to item eight. Minister of Trade and Industry.

Hon. Senators: [Desk thumping]

**ARBITRATION BILL, 2023**

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

Before I even start, Mr. President, point of order 51(e), (g) and (f).

Mr. President: Okay. So we have heard what that Standing Order refers to earlier and I would just ask once again that we maintain a certain level of silence to allow the Member contributing to make their contribution. Continue, Minister of Trade and Industry.

Sen. The Hon. P. Gopee-Scoon: Thank you very much, Mr. President. And let me say how pleased I am to be able, and honoured to be able to say some words on this particular Bill which I can say from outset that I support as the Minister of Trade and Industry 100 per cent. So I am happy to contribute to the Bill which in the first instance would:

“…repeal and replace the Arbitration Act, Chap. 5:01…”

And in the second, provide what would be a very:

“…modern legal framework to facilitate domestic and international trade and commerce by encouraging the use of arbitration as a means of resolving disputes and for related matters.”

And you would know that one of the core responsibilities of the Ministry of Trade and Industry is to grow trade, business and investment. And as such, much of the activities that we are engaged in are geared towards creating this very facilitative and supportive environment for business through all sorts of initiatives and programmes, but it is all also through the development of modern and appropriate legislation and this is what we have come here today to do. And I can
say that this Bill will support business and investment activities and trading activities and so on.

This Bill will seek to improve the trade and investment climate in Trinidad and Tobago and, of course, it will assist with all of the Ministry’s efforts to holistically upgrade the framework for attracting investment and also exports as well—increasing our exports. As it stands, we are continuing to expand and increase our efforts in terms of expanding the exports regionally and internationally. And once you are speaking about internationally, there is every likelihood that there would be agreements entered into, so it is not only just about investments, it is also for all the—the entire gamut of business activities. Because once you are talking about beyond the region, internationally, you are likely to get into commercial agreements and therefore as a natural consequence of this increase in internal and cross-border commercial activity, there is the likelihood of having increased disputes, potential disputes, which would normally would occur in the course of doing business.

And we know, of course—and many speakers before me have spoken to the reasons why arbitration ought to be chosen as against the normal course of action through the courts. And I will not go there necessarily, but just to add my voice to the fact that international arbitration, commercial arbitration is increasingly the preferred choice for businesses. And I almost said large businesses and multinational corporations, but I would hasten to add that this also would be useful to SMEs as well and in terms of their choice for remedy where there are issues in their contractual arrangement and so on. Okay?

So generally, you know, I would say that it is definitely the preferred course of action, especially where we look at the circumstances around international litigation. Usually the outcomes can be unpredictable and unreliable, it could be
costly and it could be riddled with time delays and so on, again, supporting the Bill which we have come here to discuss today.

I just want to go to, Mr. President, the paper that was published by the World Bank in 2013, setting out the results of a study in respect of arbitrating and mediating disputes in 100 economies and, among other things, the effect on foreign direct investment. And the study posited that economies with better systems for the arbitration and mediation of disputes tend to receive more FDI inflows. All the more reason why we should, in fact, support the Bill which is before us, Mr. President.

And it would be recalled that a medium-term goal for Trinidad and Tobago as outlined in Vision 2030—and I leave cannot leave Vision 2030 out of the picture—in the National Development Strategy of Trinidad and Tobago under Theme IV, in particular “Building Globally Competitive Businesses”, is for Trinidad and Tobago to be:

“A premier investment location”.

And for businesses to be the:

“…producers of a wide range of products and services…”—and so on.

And the short-term aspiration is for Trinidad and Tobago to be:

“A more attractive destination for investment and for trade”.

And for the:

“…business environment…”—to be—“…conducive to entrepreneurship and innovation”.

And to contribute towards the economy as well.

So with that said, I can just strictly go—I can go straight to the objectives of the Bill which fits well into our national objectives. And speakers before me would have attached themselves to clause 5 of the Bill which provides a snapshot

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of what the Bill seeks to do, and I will just truncate these objectives and to say it will facilitate—it is the facilitation of domestic and international trade and commerce. It is the facilitation and achievement of a fair and speedy resolution of disputes by arbitration without unnecessary delay or expense. It is the facilitation of the use of arbitration agreements in domestic and international affairs. It is the facilitation of the recognition and enforcement of arbitral awards. And finally, the adoption of the UNCITRAL model law. And I go right into—there is no need for me to speak any more—any longer about the why one would favour the arbitration system as against the courts or so, and I am not going to go into that.

But again, let us recognize, Mr. President, that the majority of contracts that cross borders into international markets implement mechanisms to settle disputes through international, commercial arbitration. That is the modern construct of these kinds of agreements. So the importance of commercial arbitration and the need for the Bill like this arises from the difficulties that local and international firms are facing when they use the domestic courts in another country’s jurisdiction to enforce cross-border contracts. Hence, arbitration is usually embedded. It is a mechanism that is embedded into their agreements, especially with regard to all of these cross-border agreements.

And so I can tell you that there are—I have put together nine reasons why this Bill would be of benefit to trade, business and investment. And one—and we spoke earlier about the flexibility, a previous speaker, but I will truncate here. Arbitration is a robust yet flexible alternative to resolve commercial disputes and it is—again, I made the point that Trinidad and Tobago would receive greater economic benefits and reduce barriers to trade where domestic and international trading and investment partners are assured that their disputes can be efficiently handled and dispute settlements easily reinforced.
And the Bill affords users a really viable and effective alternative to litigation to settle domestic and international disputes of a commercial nature. And it provides a modernized and harmonized approach to arbitration in Trinidad and Tobago, and it offers an escape from the long-winded litigious process before the court. And the current Act—need I say, the current Act before us is inadequate. It is also inconsistent with international practices and it presents a slew of problems which seem to deter parties from utilizing with—from utilizing it as a tool for dispute settlements.

And there are all sorts of problems. And one of the major ones that I picked up in my research is the fact that the arbitration agreement—this is within the current law—is not separable from the main contract. And what this means is that where a contract contained an arbitration clause, and an arbitral tribunal found that the contract itself is invalid and unenforceable, the arbitration clause could not be separated from the rest of contract and it will then would be considered invalid and enforceable.

1.00 p.m.

So, again, that is the reason why one would be attracted to the arbitration approach but in a more strengthened piece of legislation. Clause 21 of the Bill would remedy this in that it provides an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. In other words, indirect contrast to the old piece of legislation. It provides, as I said, clause 21 that the clause that forms part of the contract shall be treated as an agreement independent of the other terms of the contract, and that where an arbitrator tribunal finds a contract is null and void it is not automatic that the arbitration clause is also null and void. So that is a huge plus.

And the other kinds of problems that you have with the existing legislation,
which we will now replace and repeal, is that arbitrators do not have the power to determine their jurisdiction. Arbitrators lack powers to grant orders of interim relief, and in the absence of agreement by the parties the default number of arbitrators is one, and there is no reference to the appointment of an umpire to resolve deadlocks in the appointment of arbitrators. And the grounds for setting aside an award are limited to misconduct by the arbitrator and the improper conduct of the arbitration of the award. There are excessive opportunities for interference by the court, again, under the old system, such as the power of the court to set aside the appointment of an arbitrator in certain circumstances, et cetera, et cetera.

And therefore with the passage of this Bill, arbitration will provide parties to dispute with a more flexible process, allowing them therefore to choose to follow rules of a recognized institution, also to design their own procedural framework which is tailored to the particular trade dispute at hand, and also be empowered to select the number and the identity of the arbitrators that they wish to appoint.

[M*R. VICE-PRESIDENT in the Chair]

And ultimately, they would have some input or control as compared to litigation where the legal system and its processes are fixed and the parties have no control of the date of hearings, the adjournments, the filing of documents, et cetera. So, again, this robust arbitration framework that we are putting in place now would send a strong message to our investors and our traders and our business persons, again, that our business environment is much more stable and efficient and fair, and of course I think this will make all the parties feel a little bit more secure when they are dealing with their—especially with their overseas suppliers, financiers and franchisers and so on.

The second benefit I would go to would be the intervention by subject matter
experts in trade or business and investment, and by its very nature trade and investment it is wide and varied and complex, and disputes can arise from anywhere and it can be quite complex and technical in nature, and very few persons could really understand and appreciate the catalysts that would give rise to these kinds of disputes, and how would you remedy these grievances without adding damage to the commercial relationship. Because ideally the parties would want to deal with the issue at hand while preserving the commercial relationship, and this is what the new legislation will allow you to do.

Arbitration, again, in this case, and I am speaking about the intervention by subject matter, it would be overseen by an arbitrator who usually possesses some kind of expertise in the subject matter at hand where under the court system a judge probably would lack that kind of expertise, and parties to the dispute will have a wide discretion when choosing the arbitrator and they can seek to establish the credentials of a potential arbitrator before appointment to ensure that the person has sufficient expertise in trade, or investment, or in business as with regard to the particular dispute. And that particular screening and assessment process can help in avoiding delays and costs associated with the extensive technical briefing of a less experienced arbitrator.

And clause 43 of the Bill provides for the appointment of experts by the arbitral tribunal to report to it on a specific issue which would have to be determined by the arbitral tribunal, or require a party to give the expert any relevant information, or to produce or provide access to any relevant documents, goods or property for inspection by the expert. So I mean with the appropriate expert, whether it be trade, whether it be investment or business, again, this intervention would lead to successful outcomes with the particular dispute at hand, and again greater speed.
Arbitration Bill, 2023

Sen. the Hon. P. Gopee-Scoon (cont’d)

The other benefit that I would go to, the third benefit would be the strengthening of the overall arbitration laws in Trinidad and Tobago. And you know, Mr. Vice-President, we are a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the New York Convention. Trinidad and Tobago would have enacted the arbitration, foreign arbitral awards, which was passed in 1996 and which gives the New York some effect in Trinidad and Tobago. And that means that an award pursuant to an arbitration agreement in a state that is party to the New York Convention that award can be enforced in Trinidad and Tobago, and further Trinidad and Tobago also gave effect to it ratification of the international centre for settlement of investment disputes convention through this enactment of the Investment Dispute Awards (Enforcement) Act which was passed in 1968 and facilitates the enforcement of awards in certain investment disputes. So once this Bill is passed, and subsequently enacted it will provide for a very robust legislative scheme governing and regulating arbitration in Trinidad and Tobago. And again, this is an alternative feature as domestic and international investors will have a secure means by which to arbitrate and to enforce their cross-border disputes and so on.

The other benefit, again, I would go to awards, and Part VII of the Bill provides extensive details and the making of an award and on determination of proceedings. And again this would be of interest to all of the parties involved in any trader, commerce or investment dispute in Trinidad and Tobago, and because it will offer guidelines in terms of rules and guidelines that would be used by the arbitral tribunal to determine that dispute, it will aid in determining how decisions will be made by the arbitral tribunal, there will be guidelines which are to adhere to where settlement is agreed during the course of arbitral proceedings. It would determine the form and content of the award, it would determine the cost of the
arbitration, it would determine the cost associated with aborted arbitration, and it would also give guidance as to when terminating an arbitral proceedings, and it will also govern time limits as well as the process by which an award or an additional award may be corrected and interpreted.

So again clause 51 of the Bill also provides adequate details on the possibility of interest on the award, and I do not think that it is important for me to go in any further on this. But another plus, again, but with the recognition and enforcement of awards. And therefore once a winning party is successfully obtained an arbitration award, if the unsuccessful party does not voluntarily want to comply with it there are steps to be taken to enforce it, and therefore two noteworthy clauses of the Bill which speaks to enforcement of awards would be clause 30, and of course clause 36.

And again clause 30 of the Bill states that where interim measures are issued by an arbitral tribunal it will be recognized as binding and enforceable upon application. Clause 56 also provides for the fulfilment of the subjective as it stipulates that an award irrespective of the country in which it was made shall be recognizes as binding and upon application in writing to the competent court shall be enforced provided it does not fall within one of the exceptions detailed at clause 57. So again, it gives you that additional support with regard to recognition and enforcement of awards. We spoke earlier, someone spoke earlier about confidentiality. Confidentiality could only be a plus, and as it stands today with arbitration steadily emerging as an alternative to litigation for resolving disputes, commercial disputes, confidentiality continues to remain one of its most extenuating features. And a commercial arbitration proceeding differs from traditional litigation in the sense that both parties agree not to disclose anything in relation to the dispute and the arbitration proceedings, including documents,
transcripts, notes of the evidence in the arbitration and the award, and therefore—I think it is very important because, again, as I said before, that companies really want to preserve their commercial arrangements and agreements so it only where a dispute arises they want to be able to deal with that and move forward to their continuing commercial arrangement.

So that it is fact that most companies and businesses would not want to publicly be associated with having the matter settled before the court, especially nurses when it can result in loss of goodwill or so. It can happen. Putting the matter through the court, dragging it in the public domain really can erode a company’s goodwill, and therefore goodwill relates to business and profits, et cetera. So this Bill in its construct provides these companies and businesses with a better mechanism and a good alternative with the prime method—yes, speed and limitation of cost and so on, but a high degree of confidentiality. And clause 60 of the Bill, Mr. Vice-President, will provide for arbitral proceedings to be held privately and confidentiality as opposed to the court proceedings which are open to the public. And it further bolsters this clause 60 by the imposition of sanctions whereby if there is a disclosure either by a tribunal or a party to the proceedings it would be actionable as a breach of obligation of confidence unless a disclosure is authorized or required.

So therefore another plus, and generally I would say that this would aid against affecting a company’s reputational damage and so on. So very, very important. Overall, another plus would be the lower transaction cost. It would enable, of course, to strengthen the enforcement of commercial contrast, the passage of this Bill, and generally with proceedings where there are experts involved. You have chosen the arbitrators, et cetera, the time is constrained and therefore generally there is lower transaction cost ascribed to arbitration. Then
another plus would be the whole question of foreign representation. And I mean there are litigation to resolve cross-border disputes, let us admit, can be quite daunting for parties, whether you are a national or international investor and so on.

So the Bill before us seeks to eliminate this barrier to investment in terms of having to contract counsel in a particular jurisdiction which is going to be quite expensive and so on, and, of course finding counsel with the particular expertise as well. So this Bill eliminates this barrier to investment by allowing the parties to investment and business to choose a foreign representative who is not required to be entered into legal practice in Trinidad and Tobago, and that is a huge plus. So that according to clause 58, parties can choose a foreign legal representative, and such a representative is not required to be enrolled as an attorney at law under the laws of Trinidad and Tobago since for the purposes of their bill, their appearance in an arbitration will not constitute legal practice as defined by the Legal Profession Act. The representative will also be exempt from payment of taxes and fees once the arbitration last for a continuous period of 30 days or less within one calendar year.

I mean this provision will encourage international companies to look towards arbitration as a really viable option to dispute resolution instead of looking immediately towards litigation. It will be expensive, and therefore international firms can retain their trusted counsel from anywhere in the world and not have to rely on going through the process to find legal representation in a foreign country. And as I said, cost would be substantially reduced also, but there is that caveat of a period of 30 days or less in a period of the 365 days of the year where that person would be exempt. Again, the ninth prospect and ninth benefit that I would go to is the fact that this new arbitration legislative framework creates an opportunity for the development of professionals.
So, Mr. Vice-President, the Bill represents a change in legislative framework which will require adaptation and adjustment by our professionals, for example, our lawyers, our engineers, chartered surveyors, which will all—and they are all likely to be participants in this process. And therefore, in the Bill and the arbitration in and of itself would offer many exciting prospects for our professionals to become specialized in this niche area to sit as arbitrators or to appear before an arbitrator, and really it can spur the development of a new cadre of holistic and flexible dispute professionals.

And I want say, Mr. Vice-President, that there has already been an increase in the trading of persons to become arbitrators across the region, including in Trinidad and Tobago, and as in my research I found out that as of 2019 there were about 191 members of the Caribbean Branch of the Chartered Institute of Arbitrators working across the region, including lawyers and engineers and chartered surveyors and so on. And the Trinidad and Tobago Chapter of the Caribbean Branch as of 2019 had a membership of approximately 60 fellows, members and associates, and I am sure by now that figure has grown many times over because there are a number of interested professionals, that I myself know, have found the area exciting and have found themselves being trained to be able to enter this field.

1.15 p.m.

I spoke earlier about the fact that this may seemingly be attractive to large businesses, and large commercial entities, and potential investors and so on, but I want to highlight this utility to small and medium-sized enterprises as well. And a recent study developed by the Commonwealth Secretariat Office of Civil and Criminal Justice Reform on international commercial arbitration shows that SMEs in the Commonwealth—and I think it is an interesting statistic—which make up 95
per cent to 99 per cent of the private sector are often reluctant to trade beyond their national borders, and that is in fact so. So I say that because I live it all the time as a result of the anxiety, and the very intimidating circumstances and the costly task of having to tackle a commercial dispute should a commercial dispute arise with suppliers or buyers in another jurisdiction. And so it is that when we are going along on trade missions and so on I make a point of ensuring that the SMEs come along with us and they understand the laws and the business environment particularly those outside the Caricom areas and so on. Again, we want our SMEs to trade beyond the region to external countries. I am talking about the [Inaudible] for example, where we—when I say beyond the Caricom region. Again, usually you will find this, the whole question of the dispute, will dissuade or deter SMEs engaging in extensive commercial business activities and so on outside of Trinidad and Tobago. But again, I think that this construct of the Bill would bring some ease to SMEs in terms of the ability to solve these disputes when they arise a little bit more easily than in the traditional—I would say the traditional way would allow.

Another study done in 2019 by Petra Butler and Georgia Whelan entitled, “Does dispute resolution regime in Europe really serve MSMEs”, found, Mr. Vice-President, that international commercial arbitration will be able to fulfil the SMEs cross-border dispute resolution needs to a greater extent than the current default mechanism of cross-border litigation. So this is to be hailed as a benefit. This legislation here today has a benefit to all SMEs as they seek to extend their wings outside of Trinidad and Tobago and beyond the region as well. Yeah? I also looked at some of the local case law in respect of arbitration. In fact, I had asked myself in doing the research, tell me about some of the local cases and so on. But it might have been the Minister, of course—you know this is confidential in nature
so obviously you cannot find it. It is not available unless, of course, the matters are reported in the press or for some reason the matter then has to be taken before the courts and so on. But in any event there are cases.

Sen. Jayanti Lutchmedial would have selected those that she wish to speak about and there are others. I do not think I need to go into very many of them, but there would have been the case of *Mootilal Ramhit and Sons Contracted Limited vs EFCL*, where in that case the court was required to determine whether a stay should be granted in accordance with section 7 of the current Arbitration Act or the inherent jurisdiction of the court after the first defendant argued that the claims before the court ought to be referred to arbitration as agreed by their parties. And the learnings from this at paragraph 17 of the judgment, the court concluded that in all of the circumstances of the case it did not consider that there were any bars to the court granting and exercising its discretion to grant a stay of the proceedings to permit the matter to move forward expeditiously to arbitration and to return to the court swiftly thereafter if the arbitration was unsuccessful. Some learnings therefore from some matters before the court.

I saw cases related to sport as well and so on. I need not go into that. But I looked generally at arbitration in the Caribbean as Minister of Trade and Industry with a keen interest. In the region, I would tell you, I went to the CSME to understand and to bring to this House the relevance of arbitration. So, Mr. Vice-President, paragraph 2 of Article 74 of the Revised Treaty of Chaguaramas, establishing in the Caribbean community including the Caricom Single Market and Economy, mandates member states to harmonize their laws and administrative practices in respect of commercial arbitration. And someone highlighted before, we are a little bit behind. I am speaking about the region. There are countries that have moved ahead, but at the same time we are all called to move in sync with the
Revised Treaty of Chaguaramas and more particularly the Caricom Single Market and Economy. And so we are all encouraged to harmonize our laws and administrative practices in respect of commercial arbitration.

I can directly and I quote paragraph 1 of Article 223 of the Revised Treaty, directs member states and I quote:

To—“…encourage and facilitate…”—to the maximum extent possible—
“…the use of arbitration and other modes of…disputes settlement for the private settlement of private commercial disputes among Community nationals as well as among Community nationals and nationals of third States. “

And further paragraph 2 of Article 223 mandates:

“Each Member…”—to—“…provide appropriate procedures in its legislation to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

And this is why we are here today and I am sure that there is still party in this honoured place today that would not support the Bill which is before us, of course, given the construct as well given by the CSME within the RTC. So clause 5 of Arbitration Bill calls for the facilitation of:

“domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes”
—and in this way we would be positioned to fulfil our mandate under Article 223 of the Revised Treaty.

I think some of the persons who spoke before me, they would have made reference to Caribbean jurisdictions in a general way that the fact that we are lagging behind. I mean we are really called upon to support this Bill which is before us and move swiftly towards implementation of this very modern
framework. I mean we are playing some catch-up. There are only a few countries within the region that have moved towards the setting of these arbitration centres, but I want to say that there have been some inroads and I will take the positives including Trinidad and Tobago in terms of the establishment of bodies to provide and to promote arbitration services.

I want to say that, and I must point out, the dispute resolution centre of Trinidad and Tobago was developed by the Trinidad and Tobago Chamber of Commerce and officially launched some time in 1996. So it is quite some time now that we have been involved in ADR, and it was launched then by the then Chief Justice Michael de la Bastide. The centre aimed to be the premier institution for the promotion and operation of ADR training system within Trinidad and Tobago, and since then, of course, that centre offers parties a choice of local and international arbitrators and many of whom are retired High Court and Court of Appeal judges and so on. The centre has a longstanding representation on the International Court of Arbitration first led by—so there have been some positives—Mr. Justice Warner; then, of course, after that the hon. Justice of Appeal Roger Hamel-Smith; with senior local attorneys and former justices like Madam Justice Annestine Sealey, hon Justice of Appeal Humphrey Stollmeyer and the hon. Justice Lionel Jones having been appointed to sit on the International Court of Arbitration.

So there have been—

**Mr. Vice-President:** Minister, you have just under five minutes.

**Sen. The Hon. P. Gopee-Scoon:** Thank you. So there have been some inroads made by Trinidad and Tobago and some successes. But today what is before us is the need to upgrade our arbitration legislation and I am sure that we will all support it and, of course, and, by that example encourage many of our Caribbean
neighbours apart from the BVI, and Barbados, and Jamaica, to get on board and to put in place this very piece of healthy legislation.

As I conclude, I spoke about the advantages of efficiency, and speed, and cost effectiveness, confidentiality, finality, enforcibility, expertise, flexibility, neutrality, and all of this, and I would say that adoption of this UNCITRAL Model Law would encourage all of our businesses and our domestic and international partners, our regional partners, to look toward arbitration as a preferred form of commercial disputes settlement and so on. So instead of spending years tied up in our courts and so on, disagreement can be resolved speedily and efficiently by referring to an arbitral tribunal as agreed on by all of the parties. And, of course, the chosen arbitrators as I said before, can have, or is expected to have, or will be designed to have the choice, would be that of someone who has specialized knowledge and, therefore, encouraging early agreement to the dispute at hand and so on.

Of course, this is going to help us to open up all sorts of prospects, and this Bill, in addition to the other constructs within the Ministry of Trade and Industry, the new initiatives like the special economic zones initiative and also the new trade and investment promotion agency, all of these new mechanisms will in fact be attractive to international investors and also our local investors as well and really would encourage extensive trading activity, and by so doing we have the private sector contributing greater to our economy. And that at the end of the day is always the result that we want, which would at the end of the day comes down to the benefit of the people of Trinidad and Tobago.

At the end of the day when we pass this legislation, again we would be positioning our country to be a modern location for international arbitration in the Caribbean, Mr. Vice-President, and I want to thank you.
Sen. the Hon. P. Gopee-Scoon (cont’d)

Hon. Senators: [Desk thumping]

Mr. Vice-President: Sen. Mark.

Hon. Senators: [Desk thumping]

Sen. Wade Mark: Mr. Vice-President, as I rise to contribute to this particular Bill, known as the Arbitration Bill, I want to begin by posing a question which I will seek to resolve at the end of my contribution or before the end. I hope that this Senate and, by extension, the Parliament is not being used by unknown and unseen forces to promote their own private, selfish agenda. I say no more at this time.

Mr. Vice-President, this Bill is supposed to contain some 10 parts and some 68 clauses. It was tabled on May the 23rd. When I checked the time frame it would make us 21 days from that date. It took the Government five years, draft after draft, in order to arrive at the Bill that is before us today. But we are being asked to speed up, to pass this measure today, a very voluminous, complex, detailed piece of legislation that took the Government five years, and they give us, the lawmakers, Mr. Vice-President, less than 20 days.

With no research staff, we had to fight on our own to do serious research.

1.30 p.m.

Mr. Vice-President, you know, when we were dealing with the land acquisition measures some time ago, I brought to your attention and this honourable House’s attention about a television programme back in the ’80s known as the “Highway to Heaven” and I said the highway that was being built from Cumuto to Guaico to Toco, “we going” through Manzanilla some time later on, is really known as the “Highway to Heaven”. Because we have evidence to show where “big sawatee and papies” bought up lands along the Guaico Main Road before the construction of the highway got going—

Sen. Dr. Browne: Point of order, Mr. Vice-President.
Sen. W. Mark: —and we have the evidence here.

Sen. Dr. Browne: Standing Order 46(1), please.

Mr. Vice-President: Sen. Mark, as much as you have now started your contribution and you are introducing, you need to bring it into the Bill. And I understand it is an introduction, but let me just add that within that debate, those claims that you are making were responded to already.

Sen. W. Mark: I am not going to do that, Sir. I do not know why my friend is so jumpy.

Sen. Lyder: He has something to hide or what?

Sen. Roberts: [Inaudible]

Sen. W. Mark: Okay. I want to ask you, Mr. Vice-President—and I want to quote a Standing Order for the benefit of this honourable Senate because this Senate and us here in the Opposition will not be used by anybody—

Hon. Senators: [Desk thumping]

Sen. W. Mark:—to promote their own private agenda. So I want to ask, Mr. Vice-President, through you, under Standing Order 42(5), I wanted to ask the Attorney General who piloted this Bill today why he did not declare—

Hon. Senators: [Interruption]

Sen. W. Mark:—why did the Attorney General not declare his interest in this Bill? Why he did not do it? That is a contempt of this honourable Parliament.

Hon. Senators: [Interruption]

Sen. W. Mark: If you have a previous, or a current financial or pecuniary interest in any company that promoted arbitration—

Mr. Vice-President: Sen. Mark.

Sen. W. Mark:—in this country, I am asking—

Mr. Vice-President: Have a seat, have a seat.
Sen. W. Mark:—why the Attorney General did not—

Mr. Vice-President: Sen. Mark, I am on my feet.

Hon. Senators: [ Interruption ]

Sen. W. Mark: It is the Standing Order—[ Inaudible ]

Mr. Vice-President: Are you raising a Standing Order or are you speaking?

Sen. W. Mark: Yes, I am asking you to rule.

Mr. Vice-President: Have a seat, Sen. Mark.

Sen. W. Mark: I am asking you to rule on Standing Order 42(5).

Mr. Vice-President: Have a seat, Sen. Mark.

Sen. W. Mark: Because the Attorney General—

Mr. Vice-President: Have a seat, Sen. Mark.

Sen. W. Mark:—is in fact—

Mr. Vice-President: Have a seat in silence, Sen. Mark.

Sen. W. Mark: [ Inaudible ]

Mr. Vice-President: I would like you to take a seat, yes.

Sen. W. Mark: “Buh meh chair turn.” I will fall.

Mr. Vice-President: Sen. Mark, can you take a seat, please?

Sen. W. Mark: I will take my seat.

Mr. Vice-President: Sen. Mark, within the remit of the introduction of the Bill by the hon. Attorney General, all matters would have come to past, that needed to come to past. If it is needed that he needs to clarify, you can ask so in summation.

Sen. W. Mark: Thank you, Sir.

Mr. Vice-President: But your comments are bordering on another Standing Order of imputing improper motives. Kindly get to the task at hand and discuss the 68 clauses and the 10 paragraphs, please.

Sen. W. Mark: Mr. Vice-President, I have evidence that I am standing by. You
could take me to the privilege committees because I have it.

**Sen. Lyder:** Yes.

**Sen. Nakhid:** Bring it, Sir.

**Sen. W. Mark:** I have evidence, Mr. Vice-President, to show where our Attorney General, who piloted this Bill—

**Sen. Roberts:** Not ours, “dem”.

**Sen. W. Mark:**—was the Chairman of a company called Dialogue Solutions.

**Sen. Roberts:** True or false?

**Hon. Senators:** What?

**Sen. W. Mark:** Dialogue Solutions. And I have the evidence here. I have the evidence here, Mr. President, and that is why I invoked 42(5) because I wanted to know why the Attorney General—

**Sen. Mitchell:** Mr. Vice-President, on a point of order, please. Mr. President, on a point of order, 46(6). The Attorney General is the titular head of the bar, the Attorney General is a senior counsel of long standing. And this is a matter of law—arbitration is a matter of law. Obviously, he has an interest in the matter in his position as Attorney General.

**Mr. Vice-President:** 46(6) upheld, Sen. Mark.

**Hon. Senators:** [Interruption]

**Mr. Vice-President:** 46(6) upheld.

**Sen. Mark:** [Inaudible]

**Mr. Vice-President:** Okay. Can you move on to your next point, please?

**Hon. Senators:** [Interruption]

**Sen. W. Mark:** Mr. Vice-President, this is the Senate of Trinidad and Tobago, this is the Senate. And I am telling this honourable Senate that in 2019, the Attorney General in private practice, hon. Member, Minister of Tourism, Culture
and the Arts, Mr. Vice-President, was the Chairman of a company called Dialogue Solutions. And Dialogue Solutions—

Sen. Roberts: Who else is in that company?

Sen. W. Mark: Mr. Vice-President, Dialogue Solutions—

Sen. Roberts: Shame.

Sen. W. Mark: —was launched according to the information that I have been before me—

Sen. Roberts: Shame.


Hon. Senators: Wow.

Sen. W. Mark: And you know who was the Chairman of it?

Sen. Lyder: Who was it?

Hon. Senators: Who?

Sen. W. Mark: Reginald Armour, the Attorney General.


Hon. Senators: [Desk thumping]


Sen. Roberts: Shame.

Mr. Vice-President: As raised before by yourself, Senator, Standing Orders 51(1)(e), (f) and (g). Kindly allow the Member to make his contribution in silence.

Sen. W. Mark: So, Mr. Vice-President, I am not casting any aspersions, I am here with facts. Facts I have here.

Sen. Lutchmedial: Who else is in that company?

Sen. Roberts: Who else is on the board?

Sen. W. Mark: So, Mr. Vice-President, I am saying they cannot take this Senate
for granted. The Attorney General had a duty and a responsibility under Standing Order 42(5) to declare and disclose his interest.

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

**Sen. W. Mark:** Not as the Attorney General, but as a former member of a company that promoted arbitration. That is what I am arguing here. And what I am saying, Mr. Vice-President, is that I have a statement when this company was launched and the date I have here is on the 11th of October, 2019. That is when this company was launched. And the chairman of the company, according to what I have before me, is now our Attorney General.

**Sen. Lezama-Lee Sing:** He is not the chairman now.

**Sen. W. Mark:** Well, all right, all I am saying is that he was there before and I am saying that whenever happened in the past, you have to declare it now. That is what I am saying, Mr. Vice-President.

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

**Sen. W. Mark:** I have nothing against the Attorney General, you know. All I am saying is that declare your interest; say, “Look, in the past, hon. Members of this Senate, I was the chairman of Dialogue Solutions and that company that I led offered arbitration services, mediation services, alternative dispute matters.”

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

**Sen. W. Mark:** That is all I am saying. And when I looked at some of the—I would like the Attorney General when he is winding up to tell us if that company is still alive, “if it dead or if somebody buy it out”.

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

**Sen. W. Mark:** I want the Attorney General at the end of this debate to tell Trinidad and Tobago if Dialogue Solutions is still alive, “it dead or somebody else buy it out”.

**UNREVISIED**
Mr. Vice-President, “hear what going on nah”. I was shocked when I saw the membership of the board of directors.

**Sen. Lyder:** Tell us who.

**Sen. W. Mark:** I saw the Independent Senator, Sen. Vieira SC, Anthony Vieira as a director on this board.

**Hon. Senator:** What?

**Hon. Senators:** No.

**Sen. W. Mark:** “Ah cyah believe it”. He is a director on the board.

**Sen. Dr. Browne:** Mr. Vice-President—

**Sen. W. Mark:** Right? And I am saying, Mr. Vice-President—

**Sen. Dr. Browne:** —on a point of order.

**Hon. Senators:** [ Interruption]

**Sen. Dr. Browne:** Mr. Vice-President, on a point of order 46(6):

“No Senator shall make an imputation of improper motive against any Member…”

**Hon. Senators:** [ Interruption]

**Mr. Vice-President:** Senators, Senators, Senators, a Member is on his feet raising a point of order. Can we allow him to do so?

**Sen. Dr. Browne:** Thank you, Mr. Vice-President.

“…or an offensive reference to a Member’s private affairs.”

Mr. President, Sen. Mark has now gone ad nauseam into exactly this, with respect to two Senators who are currently Members of this Chamber.

**Hon. Senators:** [ Crosstalk]

**Sen. Lutchmedial:** [ Inaudible]

**Sen. Dr. Browne:** He can bring a substantive Motion—

**Mr. Vice-President:** Sen. Mark, you are treading on a dangerous slope. I ask that
you bring it back to the debate, as it applies to the debate; 46(6) in this case is upheld. You are not just carrying an individual but you are carrying a portion of the Senate into the disrepute at this moment.

**Sen. W. Mark:** Mr. Vice-President, may I say I am prepared for any Member to take me to the Committee of Privileges.

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

**Sen. W. Mark:** Any Member, I am prepared, take me to the Committee of Privileges because I have the evidence here.

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

**Sen. W. Mark:** I have the evidence here. I have the evidence.

**Hon. Senators:** [Interruption]

**Sen. Lezama-Lee Sing:** Mr. Vice-President, on a point of order.

**Mr. Vice-President:** Sen. Mark, the volume and the use of language is unsenatorial at this stage.

**Sen. W. Mark:** I apologize to you, Sir.

**Mr. Vice-President:** Can you have respect for the Chamber that we are in—

**Sen. W. Mark:** I apologize to you, Sir.

**Mr. Vice-President:**—through the Chair, please.

**Sen. W. Mark:** Yes, Sir. So, Mr. Vice-President, all I am saying is that I was just putting to you and bringing to your attention that we are debating a very serious matter, and it was incumbent upon our hon. Attorney General to just indicate to this House that he was formally associated with a company. That is all—and declare his interest. That is all.

**Mr. Vice-President:** Sen. W. Mark, careful when you are sitting please. Many Standing Orders have been raised for the point that you are belabouring. I ask that you move on from this point. It has been taken into record and I am sure a
response or an answer will come forthwith.

**Sen. W. Mark:** So as I move on, Mr. Vice-President, one Elizabeth Solomon, who is a judge of the Industrial Court, is also a member of the board of directors of this body. So all I am asking is that these are matters that ought to have been declared.

Mr. Vice-President, I just want to quote a statement for this honourable Senate without referring to the name of anyone but I am quoting a statement, just a statement.

**Mr. Vice-President:** Sen. Mark, as you are very well aware, 46(8) does not allow for the—

**Sen. W. Mark:** I am quoting a statement—[Inaudible]

**Mr. Vice-President:**—does not allow for the use and calling of names of judges—

**Sen. W. Mark:** No, I did not call “no” judge.

**Mr. Vice-President:**—any point in time in any debate.

**Sen. W. Mark:** I am not calling a judge, I am just saying—

**Mr. Vice-President:** I am giving you a stern warning of the Standing Order 46(8).

**Sen. W. Mark:** Your point is taken, Sir. I am guided, Sir, I am guided. I am quoting from a document I have here and I want Members of this honourable Senate, including your good self, Sir, to pay attention. We will not be used.

**Sen. Roberts:** Never, never.

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

**Sen. Roberts:** [Inaudible]

**Sen. W. Mark:** Mr. Vice-President, I quote:

    To this end…

Listen carefully.
Arbitration Bill, 2023
Sen. Mark (cont’d)

**Sen. Roberts:** [Inaudible]

**Sen. W. Mark:**

…it is worth pointing out that members of our board have been key…

Listen to this, eh.

**Sen. Dr. Browne:** Mr. Vice-President—

**Sen. W. Mark:**

…members of our board have been key to drafting the Arbitration Bill—

**Mr. Vice-President:** Sen. Mark, Sen. Mark.

**Sen. W. Mark:**

—of Trinidad and Tobago.

**Sen. Lutchmedial:** “Nah”.

**Mr. Vice-President:** Sen. Mark.

**Sen. W. Mark:** They have been key to drafting—

**Mr. Vice-President:** Sen. Mark, Sen. Mark, have a seat.

**Sen. W. Mark:**—the Arbitration Bill that we are dealing with.

**Sen. Roberts:** [Inaudible]

[MR. PRESIDENT in the Chair]

**Mr. President:** Sen. Mark, the Standing Orders that have been raised in relation to what is before us, as put forward by the Vice-President of the Senate, please adhere to them. Continue.

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

**Sen. W. Mark:** And I am guided Sir. Mr. President, I am glad you are back. Because you will understand what I am doing here. I am not casting any aspersions on anybody. I am just dealing with some facts and if I am wrong, you are there to guide me, and I appreciate that. What I am saying, Mr. President,
without calling names, I am quoting from a document. And I can share this
document with the entire Senate.

**Hon. Senator:** Please, I want a copy.

**Sen. Lutchmedial:** Share it with the media first.

**Sen. W. Mark:** Right? Where we are being told in a document coming from the
lips of an individual right, that the Members of our board have been key to drafting
the arbitration Bill for Trinidad and Tobago.

**Hon. Senators:** Wow.

**Sen. W. Mark:** Which will modernize the legal framework for arbitration in
Trinidad and Tobago.

**Sen. Lyder:** So that is the consultation?

**Hon. Senators:** *(Crosstalk)*

**Sen. W. Mark:** So, I am quoting from a document Mr. President, showing that we
are dealing something called the Arbitration Bill, and we are being told in a
document in 2019—

**Sen. Dr. Browne:** Mr. President, on a point of order.

**Sen. W. Mark:**—its company was responsible for drafting, drafting.

**Hon. Senators:** *(Crosstalk and desk thumping)*

**Mr. President:** Let there be silence in this Chamber. This type of behaviour will
not be tolerated. On many occasions I have indicated that there is a simple
procedure to follow. When a point of order is being raised, there will be silence, it
is raised, and then dispensed with by the Chair. Nothing else will be tolerated.

Point of order.
Sen. Dr. Browne: Mr. President, Senator Mark persists to violate Standing Order 46(6), all of this is under the rubric of imputing improper motives particularly, Mr. President, as he has not indicated the document from which he is quoting.

Hon Senator: He was about to.

Mr. President: So, what we are dealing with before us is the Arbitration Bill. Sen. Mark, what you are speaking to, be very, very careful because it does fall under the rubric of imputing improper motives, because that is the essence of what you are saying and putting forward. Tread extremely carefully.

Sen. W. Mark: Mr. President, I think I have said enough on this matter to allow the Attorney General the opportunity when he is winding up, to make a confession to this House.

Hon. Senators: [Desk thumping]

Sen. W. Mark: Mr. President, I would not pursue this matter any further, what—

Sen. Dr. Browne: Mr. President, on a point of order.

Mr. President: Have a seat Sen. Mark.

Sen. W. Mark: Sorry sir.

Mr. President: Have a seat.

Sen. W. Mark: Yes, I am going—

Mr. President: Sen. Mark, I just spoke to the procedure. Have a seat Sen. Mark—

Sen. W. Mark: Yes, well I am fixing the seat. The seat is facing a different direction, if I go down I might collapse. So I just have to be fixing the seat to sit down Sir. That is all.
Mr. President: Point of order.

Sen. Dr. Browne: Mr. President, Standing Order 46(6), Sen. Mark that has persisted in his deliberate imputation of improper motives in this Chamber.

1.50 p.m.

Mr. President: So Sen. Mark, 46(6) has been raised. Move on from that point. It is not to be repeated in any way, form or fashion.

Sen. W. Mark: Mr. President, you know some time ago when I was speaking, I spoke about a concept called state capture, where the private sector, in collusion with the Government and politicians, conspire in decision-making in an effort to promote private interest at expense of public interests. And I also made the point that it takes many forms and one of the manifestations is legislation. And what I was attempting to do, based on my research, I was trying to determine, for instance, how this Bill arrived here. And I did my research and I came upon the matters that I brought to your attention, which I am not going to go through because you have advised me to stick to what I am saying.

But Mr. President, I want to tell this honourable Senate, through you, this Opposition Bench will not be used and abused and cornered in promoting legislation that has a private agenda origination. Mr. President, my understanding is that this industry is valued at over $25 billion. That is the prospect. And the question here, I think my colleague, Sen. Jayanti, when she was speaking on arbitration, she was making the point we have to avoid cartel formations. And Mr. President, what we are seeing on our landscape in Trinidad and Tobago is one or two companies that are involved in arbitration or what you call alternative dispute resolution, which is a term that captures mediation, arbitration in T&T.

I have a second one, it has nothing do with any Member of Parliament here. I have a second one here that tells me, Mr. President, that we need to understand
that there is a company in Trinidad and Tobago called ADR Services Limited, and they have a second company called B&D Transformative Solutions. And when you look at the bio of these companies, they are all specializing in arbitration, mediation or what I would want to call ADR services. And when I look at the team here “I see a fella” called Prof. Jerry Brooks. He is leading this company. And you have a host of other people whose names I would not call because they are not Members of Parliament. So what I am asking this Government, what I am asking this Government, what is the policy haste? And the AG was very specific when he was winding up, Mr. President. He said this thing is urgent and we need to address this matter——

**Mr. President:** Sen. Mark.

**Sen. W. Mark:** —urgently and have it passed.

**Mr. President:** Have a seat. The essence of your arguments thus far are going down a line of imputation. Before us we have a Bill with 68 clauses, and in a debate, it is expected that you would state your opinions, based on the clauses in the Bill before us. You have been speaking for some time now and as I have indicated, everything that you have said is going down one particular line. I would ask you now to get to the clauses of the Bill. And state your opinions on that.

**Sen. W. Mark:** Mr. President, may I ask for your guidance on this matter? I understand when we are dealing with Bills second reading, we deal with the merits and the principles, which is really the policy of the Bill. Now, en passant, we look at the clauses. But when we go to the committee stage of the Bill, that is when we deal with the clauses in detail. Before that, my understanding is that the merits and the principles and the policy of the Bill is what we are dealing with.

**Mr. President:** Okay. So one, this is not a debate. You are not debating me. Two, I have indicated that the essence of what you are saying is in breach of the
Standing Orders. And I have guided you and invited you to get to the Bill by way of the clauses and the contents therein moving forward. This is the final warning on that.

**Sen. W. Mark:** Mr. President, I am guided by your warning. I am guided. I say no more on this, except outside I would say more.

Mr. President, let me indicate to you, 68 clauses in this Bill, 10 Parts. In this Bill, I ask the Attorney General: Where is the code of ethics for the arbitrators? I see none. When I look at comparative legislation, I am seeing where they have codes of ethic. When I look at the Mediation Act that was passed in 2004, I see a code of ethics. So, Mr. President, I am asking the question: Where is the code of ethics? I would like to ask, Mr. President, through your good self, let us go on to what is called, Mr. President, as you would want to direct me and advise me, and I take your advice, let us go to clauses 63 to 68, Mr. President. Mr. President, are you following me?

**Mr. President:** Say again.

**Sen. W. Mark:** Are you following me?

**Mr. President:** Yes, I am following you. I am hearing you.

**Sen. W. Mark:** Okay. So when we go between 64 to 68, I see where the Attorney General has arrogated unto himself the power to make rules and regulations. But the Parliament seems to be just a tribune on the way. So we are asked to approve 68 clauses, 10 Parts, Mr. President.

**Mr. President:** Just be mindful of brandishing the paperwork. As you are well aware, in order to do so, you would need the prior approval of the Chair.

**Sen. W. Mark:** I am not showing. No, this is the Bill.

**Mr. President:** Sen. Mark, that is not allowed. You know how to do it, so just make sure you do not brandish it.

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Sen. W. Mark: Okay, okay. Thank you. Mr. President, what I am saying is that in clause 65, it states that:

"The Attorney General may make regulations generally for giving effect to the purposes of this Act."

But in many civil suits and many matters, where the Attorney General is involved, the citizens on civil matters would sue the Attorney General. So the Attorney General is conflicted.

So I am saying, Mr. President, when we look at clause 65 of the Bill, the Attorney General wants to make regulations without any oversight, without any supervision. And the Attorney General is conflicting, under the law. Because if there is a civil suit in the court and the Government has not paid me money for my work, Mr. President, I sue the Attorney General. And if in that contract, Mr. President, there is a provision that talks about arbitration, I will then have to subject by company to arbitration, because it is in the law. It is in the contract, which is a law. The question here, Mr. President: How can the Attorney General be in a conflicting situation and then gives himself the authority to make regulations? It does not make sense. So I am suggesting, Mr. President, that we delete that completely. And if he is not deleting it, bring the entire Parliament into it. In other words, if the AG wishes to make regulations, Mr. President, he does that with an affirmative resolution of the both Parliaments. Let us be involved in it, and not just the Executive, through Attorney General. So that is an area that I would like to ask the Attorney General to consider.

Mr. President, in going through this Bill, I also observed that there is no provision for an annual report. And I would like to suggest, with your leave, Mr. President, that the Attorney General considers inserting into the legislation an annual report. So that as the Parliament has given life to this piece of legislation to
modernize and to reform arbitration matters in our country, both at a domestic and international level, Mr. President. We should be privy to either an annual administrative report, to see how we are progressing as a nation, since we give the permission to go ahead with it, within a legal framework, Mr. President. So that is the point I am making, an annual report.

And the other area, Mr. President, I would like to suggest for the Attorney General’s consideration, Mr. President, has to do with a review of the legislation. You would recall that we first passed arbitration law in 1939. That is the Act that we are seeking to replace and repeal in this Bill that is before us. The next time you have what is called an amendment, was in 1981. And then we had another amendment in 1996/1997, where we brought legislation called Arbitration (Foreign Arbitral Awards) Act of 1996/1997, which gave effect to what is called the New York Convention. The New York Convention is the convention of 1958, that allows all states to engage in arbitration in spite of languages.

Luckily Trinidad and Tobago, Mr. President, based on my research, acceded to that convention since 1966 with two reservations. So we have been in the forefront of moving towards arbitration as a means of settling international disputes. And that is why we signed off on the convention known as the New York Convention. We signed off on that, and that is manifested here.

So what I am saying, Mr. President, the last time we brought amendments to our legislation all arbitration before this day where we are debating the Arbitration Bill of 2023 was in 1996. I am suggesting, Mr. President, we do not have to wait for 26 years to come back to review. So I am suggesting to the Government, through the Attorney General and the Government team, kindly insert, Mr. President, a provision in the legislation that will subject this law to review every three years. So that is another provision I am suggesting to enhance and upgrade
Mr. President, if we are to promote arbitration as a means, Mr. President, as a means of settling international, commercial disputes between parties, there are three essential bedrocks that we need to pay attention to. We need to pay attention to political stability in our country. We always have to be promoting political stability. That is a very important ingredient in promoting arbitration as a means of settling disputes between parties.

Another important area, Mr. President, that we need to attention to is the respect for the rule of law. There was recently a project called the Justice Project and the Justice Project is an international document, Mr. President, which shows that our principle of the rule of law, the scale, the ranking of our country, is going down and going down and going down and not up.

2.05 p.m.

So how are we going to seek to promote arbitration when the rule of law is being shown internationally, Mr. President, as one that is under threat in Trinidad and Tobago? So it is a contradiction. So that is the second ingredient, Mr. President, we need to promote if we are considering this arbitration. And not only arbitration, Mr. President, the hon. Attorney General said that we wish to promote Trinidad and Tobago as an international arbitration centre where we could attract foreigners to our country to engage in discussions on matters in dispute for settlement purposes. So if we are to attract foreign investors to our country and use Trinidad and Tobago as an international arbitration centre, I am saying, Mr. President, political stability, respect for the rule of law and most importantly, the independent—the existence of an independent and impartial Judiciary in our country. That is another fundamental principle that you have to focus on, Mr. President, as we seek to promote arbitration as a means, Mr. President, of seeking
to settle disputes internationally within our borders.

Mr. President, I think the hon. Attorney General said when he was speaking that all our FIDIC contracts have this provision on arbitration. The Trinidad and Tobago Government spends between $25 to $30 billion a year in the acquisition and the procurement of goods and services. And they do that, Mr. President, through central government, through local government, and through the state enterprise sector—

Mr. President: Sen. Mark, you have one more minute.

Sen. W. Mark:—state enterprise sector. So that is an area that I would like to ensure that the Government does not use the state enterprise sector, does not use its authority to funnel these matters to selected companies and firms that are associated with the ruling party. That is what we have to avoid, Mr. President, that is my concern.

And finally, the hon. Attorney General talked about attracting foreigners to earn foreign exchange. But you know what, Mr. President? If you have the choice, and that is right, to bring in a foreigner as opposed to a local, what is going to happen? We are going to a drain on our foreign exchange. So on the one hand we want to attract and earn foreign exchange, on the other hand we might be draining foreign exchange.

Mr. President, this is a very important Bill. In closing, I call on the Government to have this matter referred to a joint select committee—

Hon. Senators: [Desk thumping]

Sen. W. Mark:—so that the public and interest groups can come forward and give their perspective on the matter. Mr. President, I thank you.

Hon. Senators: [Desk thumping]

Mr. President: Sen. Teemal.

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Hon. Senators: [Desk thumping]

Sen. Deoroor Teemal: Mr. President, I do thank you for the opportunity to contribute to this Bill before us. Mr. President, we have all heard about the many benefits to be derived from structured arbitration, particularly where the conditions of agreement for arbitration are well outlined, succinct, and can be easily interpreted, not by the arbitrators only, but actually by the many parties who engage in contractual arrangements with each other for mutual benefit. So I would not really go much into that because I think that has been well covered.

But, Mr. President, with your permission I will go straight into the Bill itself before us. And I will go to clause 4(2) which deals with the application of the Act. And clause 4(2) speaks about the provisions of this Act:

“...apply only if the place of arbitration is in Trinidad and Tobago.”
“...except sections 11, 12, 30, 31, 32, 56, and 57…”

Now, Mr. President, with regard to clause 11 of the Bill, the essence of the clause tells us that that the court can refer the parties to arbitration in matters which is the subject of an arbitration agreement. Also, clauses 12, 30, 31, and 32 deals with the court granting an interim measure of protection.

Now, the hon. Attorney General did mention in his presentation that the interim measures are indeed a marked benefit to parties under this Bill. But coming back to clause 11, the question I have is, you know, by not allowing this clause to be applicable to domestic arbitration, are we not depriving the parties who seek resolution under domestic arbitration the opportunity where the courts can refer the parties to arbitration? Are we denying the parties subject to domestic arbitration this feature of the Bill before us?

And although the provisions of clauses 22 to 29 allows for interim measures and preliminary orders, we need to note this is by the arbitral panel only when it
comes to the domestic arbitration. And the role of the court is not being allowed for domestic arbitration, again regarding interim measures and preliminary orders except for those powers being granted to the arbitral panel. So the question is, why? Why are we denying the parties engaged in domestic arbitration this facility under the Bill, or this recourse under the Bill?

Now, similarly, clauses 56 and 57 deal with “Recognition and Enforcement of Awards”, and the role of court in these matters. Again, the question is raised in the matter of domestic arbitration, where is the resort of the court—where is the resort available to the parties of the arbitration to the court for recognition of an enforcement of awards? Because, to me, this deals purely with international arbitration. And with regard to recourse for recognition and enforcement of awards, what are the clauses that are giving our local parties the resort that is necessary to the court?

Mr. President, I would like to go to clause 5(e). Now, clause 5 deals with the objectives of the Act, and subclause (e) states:

“adopt…”

Amongst the five objects that are listed in clause 5, clause 5(e) states:

“adopt the UNCITRAL Model Law.”

Now, in terms of the adaptation of the UNCITRAL Model Law, of course, there is no objection because the entire Arbitration Bill before us is based on this UNCITRAL Model Law. But my question is, why do we not qualify this statement here about the adoption of the UNCITRAL Model Law? And I am proposing that following that statement there, “adopt the UNCITRAL Model Law”, we should add “subject to the provisions of this Act.”

Now, the reason why I am saying, “subject to the provisions of this Act” is because the Bill before us, there are significant additions to the UNCITRAL Model
Arbitration Bill, 2023

Sen. Teemal (cont’d)

Law, instance, the umpire, the usage of an umpire. And if we are adopting a Model Law, I think it is always important that we distinguish that it is not just a blanket adoption but it should be subject to the provisions of this Act.

In addition, you know, all laws are subject to revisions over a period of time. So I am sure that the UNCITRAL Model Law is going to be revised on a regular basis. So the future revisions of a Model Law, if we are using that as a basic object in this legislation to state that we should adopt the UNCITRAL Model Law, taking into account possible future revisions to the Model Law, I think as a safeguard we should add, “subject to the provisions of this Act.”

Mr. President, I would like to go to clauses 8 and 9 of the Bill before us. And it provides for the—it is stated here that these clauses provide for the intervention of the court through:

“...sections 14, 16, 17, 21, 38, 44, 55, 60, 61, and 62...”

Now, Mr. President, what I am trying to really wrap my head around is that, I mean, one of the clear objectives of going to arbitration is to really avoid having to go to court when a matter could be settled out of court, for many reasons, and one of them being it would help with the declogging the burden on the courts of Trinidad and Tobago by many cases that could be handled by arbitration. But we have the arbitral panel, we have also a provision for a possible umpire, and then we have the court. So in the whole process we have these three entities. And by going through this Bill within the short time that was afforded to us, I cannot but help but think, you know, the synergy between these three respective entities and the possible areas of overlap and conflict about their respective roles, and whether by preventing the intervention of the court through the sections that I have outlined there, whether or not it is a disservice to the parties that seek arbitration, that seek the route of arbitration.
And in clause 14, it deals with appointment of a third arbitrator and the sole arbitrator, and the role of the court there. Now, in the process of the selection of the arbitrator, we are providing for the intervention of the court. And really and truly I am just wondering whether or not we can relook at all the clauses that are listed in 8 and 9 with regard to minimizing the intervention of the court, or eliminating the intervention of the court in these matters. Because clause 17 states that, where there are no procedures to challenging an arbitrator, the court intervenes when procedures for resolving the challenge by the arbitral panel are not successful. I mean, why do we have this when we have provisions for an umpire?—either in the arbitration panel or to replace the arbitral panel, and yet still we have the role for the court here, and whether we should not relieve the court of that burden.

2.20 p.m.

Then section 17, failure or impossibility to act on the part of any arbitrator. Again, you know, the comment comes back the same. I mean, is it a bit redundant here, particularly when the Bill is introducing an umpire that is not in the UNCITRAL Model Law? And is it an overkill? I am asking. Then the jurisdiction of the arbitral tribunal, in clause 21, is:

The court to rule on a plea by either party regarding the jurisdiction of the arbitral panel after the plea is considered by the panel.

Again, a question of redundancy to some extent, in my opinion. Then clause 38, “Consolidation of arbitrations

Where...”—the Court solely decides to consolidate—“two or more...”—arbitrations—“...on application of any party to...”—the arbitration—“...proceedings.”
Now, what I note here is that the arbitral panel has no role in this section of the Act. And my question is: Why? You may have two or more arbitral proceedings going on and, you know, the arbitral panel, and maybe the hon. Attorney General can clarify this if I am getting it wrong, but there is no role for the arbitral panel in the process of—or the arbitral panels, I should say, in the process of bringing about a consolidation so, you can have one arbitral hearing to consider this combined situation. So the lack of the role for the arbitral panel there. And clause 44, where:

“...the Court”—can be asked to provide—“assistance in the taking of evidence...”

Now, maybe the intent of this provision is good, because the arbitral panel may not have the resources or they may have to contract or outsource this service, particularly in terms of when you want to think there will be a concern about confidentiality as well. But you know, are we not placing a burden on the court here? Because in terms of taking of evidence, the burden on the court, I mean, at present under the tremendous workload of the court, I mean, legislating for the court, to be asked to provide assistance in the taking of the evidence. I am just questioning, whether we really need to legislate that, or the arbitral panel could have the powers to seek, you know, the taking of evidence by service providers, including the court if they so want to.

So, Mr. President, with regard to clauses 8 and 9, and all of those respective clauses, I am suggesting that maybe upon further review, that the role of the court, if the objective is to minimize the burden on the court, that the role of the court, this extensive role of the court still, in arbitration proceedings could possibly be reviewed, to minimize the input and the burden on the courts of Trinidad and Tobago.
Mr. President, I go to clause 12 and the question of—clause 12, deals with, “...a Court”—being able to issue—“an interim measure of protection and for a Court to grant such measure.”

And my question is, here, maybe it is elsewhere and hon. Attorney General could advise. But this question of interim measure from the court, is there a forerunner to it? In that an arbitration panel has to be appointed, and deliberations by the arbitral panel have to start and a party based on the proceedings of the arbitral panel can say well, let me trigger this condition that is being allowed for in clause 12 so that the court can intervene regarding interim measures.

Mr. President, Part III, Composition of the Arbitral panel. Clause 14, deals with the parties agreeing to a procedure for appointing an arbitral tribunal and failing which, where an arbitral tribunal cannot be appointed, clause 14 (3) says that:

“...each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator.”

Now, in an arbitration with a sole arbitrator it goes on:

“if the party...”—is unable—“to agree on the...arbitrator...”—the arbitrator—“shall be...”—appointed—“upon request of a party, by the Court.”

Now, what I think is missing here, Mr. President, is in a situation where we have a panel with three arbitrators. Now, it gives the power to the two arbitrators, one from the respective party to appoint a third arbitrator but, Mr. President, I am not seeing any mention being made of who would be the Chair of that arbitration panel. It is not mentioned specifically here and I think it needs to be mentioned out of the panel, who would be the Chair of that arbitration panel or who would be the presiding arbitrator of that panel?
Now, we may take it for granted and say, well, of course, is the third arbitrator that has been appointed by the two arbitrators, but I am suggesting we cannot take it for granted that any panel comprising of three arbitrators or more, the legislation should have guidelines for the appointment of a presiding arbitrator, or a chairman of the panel. And then I am proposing I am suggesting, seeing that the whole concept of an umpire has been introduced as a possible arbitrator, is rather than have a situation where we have a third arbitrator and then we have to appoint an umpire in addition to a third arbitrator. Why not have the third arbitrator function as an umpire? Why can that not be considered where you have the third arbitrator also functioning as an umpire because the third arbitrator has not been appointed by the parties but they are being appointed by the two arbitrators that have been selected by the committee.

Now, Mr. President, Sen. Lutchmedial did raise in her contribution some—she did mention about competence, and qualifications of arbitrators and this Bill is silent on qualifications of arbitrators. And I am wondering why, because I mean, quite a few pieces of legislation come to this Senate on appointment of board members, members, you know, specialists and all of these things. And almost all of the legislation that has come before us would seek to legislate qualifications of arbitrators. Now we can say that it will be covered in the regulations that are catered for in clause 65. But we have to bear in mind that clause 65 of the regulations, states that:

“The Attorney General “may” not “shall”, “may”—issue—“regulations”—under this particular—“Act.”

And I cannot help but remember, when we looked at the Valuation of Land Act, last week or the week before, where it also catered for—the original Act—also catered for the Minister issuing regulations but the Minister may consider issuing
regulations. And what we realized was, you know, in decades had passed since that legislation was in effect, and no regulations were issued at all. None whatsoever. So, this thing about that the Attorney General “may” issue regulations, particularly when the Bill before us is deficient in speaking about the qualifications of arbitrators, you know. I consider that to be a rather serious matter, because, there are other arbitration manuals outside there, that place have heavy emphasis on qualifications, and competence of arbitrators and the hon. Attorney General did mention FIDIC, the International Federation of Consulting Engineers being the benchmark, being the base contractual document for almost all our procurement contracts, particularly, in which the state is involved, because we more or less use that as the model conditions of contract for procurement of goods and services. And, you know, that document in particular, I mean, there are several, but throughout the various FIDIC conditions of contract for design/build, for construction, and for procurement of equipment and all of those things, you know, just some of the basic qualifications, you know, and I would just like to probably mention a few of them to bring across, you know, to strengthen what I am saying that really the qualification should be legislated, or at least the key qualifications should be legislated. And one of them is that:

The arbitrator shall have no financial interests or otherwise in either of the parties, except in those circumstances, except for payment for services that will be done by the parties to the arbitration.

And then also:

The arbitrator shall not previously have been employed as a consultant or an employee of either of the parties except in those circumstances which have been disclosed in writing to the parties prior to the appointment of the arbitrator.
Then the arbitrator shall have disclosed in writing to the parties prior to his appointment, any professional or personal relationships with any director, officer, or employee of the parties or any prior involvement in the project.

**Sen. Armour SC:** Mr. President, sorry to interrupt the Senator, but can I just have a reference to the section you are referring to please? I am not following.

**Sen. D. Teemal:** Mr. President, this is from the FIDIC Conditions of Contract for Design Build. I do not have the exact clause and I am not quoting verbatim from the particular document.

**Sen. Armour SC:** No, I apologize. Through you, Mr. President, I thought learned Senator was referring to the Bill. So I was asking which section of the Bill was being referred to. My apologies.

**Sen. D. Teemal:** Okay—

**Mr. President:** Senator Teemal have a seat. AG just repeat what you were saying.

**Sen. Armour SC:** I thought that the learned Senator was referring to the Bill so I had interrupted to ask if he could tell me which section of the Bill he was referring to. My apologies.

**Sen. D. Teemal:** Okay, thank you AG. And, I mean, I could go on and keep adding things, but I will just add that:

The arbitrator shall not be entered into discussions or make any agreement with any of the parties regarding employment, or regarding any other benefits after ceasing to be an arbitrator.

2.35 p.m.

So hon. AG I just mentioned those because I am making the point about qualification of arbitrators, and whether as legislators we should leave it to regulations that may be done, or whether or not the legislation should really
consider inserting a clause that covers qualifications of arbitrators, and maybe cross reference it. Because you did mention in your contribution about the Chartered Institute of Arbitrators and their presence here in Trinidad and Tobago, and their membership being up to in Trinidad and Tobago 80 or so. I think it would consolidate what you were saying about making Trinidad and Tobago a centre for arbitration, if this whole aspect of qualifications, the choosing of arbitrators, is nailed down a bit more than what it is in the Bill before us.

Mr. President, I would like to go to clause 16(4) that deals with challenges before the court. What is stated at the end of clause 16(4) is that while such a request, and we are talking about a request for the court to decide to challenge:

“…which decision shall not be subject to appeal, and while such request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.”

Now I notice this is a standard feature of the Bill before us, because in several instances in this Bill when a matter comes before the court by any party that provisions in the Bill before us allows for the arbitration panel to continue, allows for the arbitration panel to make an award, to make decisions, to issue interim measures, to issue preliminary orders, despite the challenge in the court.

I am questioning, because of non-familiarity with certain drafting of legislation in this particular case—a matter comes before the court by any of the parties, but we are still legislating that the arbitral panel should continue and should, even to the point of making an award and, in a case where an award is made, and the court finds that the ground for the challenge from either of the
parties is valid, and decides to uphold the challenge from the parties, in such a case what is the recourse for the party? Because the arbitral panel would have already made an award, and whether or not that really complicates the issue?

Now, I would like to go to clause 19 that deals with the functions of the umpire and, again, my question hon. AG is the selection of the umpire, because clause 19 deals extensively with the functions of the umpire under this Bill. But the selection of the umpire, again, the Bill is silent on it. Is it the intention that it be covered under the regulations? But really and truly, if we are bringing in an umpire with the powers that I am seeing being provided for in the Bill before us, if we are bringing in an umpire with the powers to even veto what has been done by the arbitral panel, and make decisions and issue awards solely, whether or not the selection of that umpire we should have legislation covering that. Because it is indeed an exceedingly powerful role that is being given to the umpire.

I have to come back to the point I was making earlier. Why are we imposing this requirement on parties that are not willing to have an umpire? Now I could understand in a case where the arbitration agreement—when there is one that is catered for in clause 19. I could understand that, because the parties have agreed to have an umpire, in addition to a sole arbitrator or a panel of arbitrators. But when there is no agreement, when there is no provision for umpires in an arbitration agreement prior to any arbitration proceedings, why are we seeking to impose an umpire on the arbitration proceedings? This is like a third tier in the entire thing, and whether or not it really denies the parties, by their selection of their arbitrator, whether or not it infringes on the rights of those parties to some extent?
I would really like to hear from the hon. Attorney General about the thinking behind the introduction of an umpire. I think Sen. Seepersad in her construction also mentioned this, the whole question of an umpire, and whether or not, although there are genuine intentions, the introduction of an umpire would complicate the process of arbitration, and not help in terms of the objectives that we have heard about the benefits of arbitration.

I come to clause 21(10), where it is stated that an application—this is concerning competence of arbitral tribunals to rule on jurisdictions. Again, what I am seeing here is that the arbitral tribunal may continue the arbitration proceedings and make an award. So even if under the provisions of the Bill the competence of the arbitral tribunal to rule on jurisdictions is being challenged by either party in a court, here we are saying that the arbitral tribunal can continue on the proceedings and make an award.

Again I ask the question, the arbitral panel continues with the proceedings, they make an award, and then we come and find out that the court has ruled against—in favour of the party challenging the jurisdiction of the arbitration panel. Now, I also ask it in the context of costs for the parties, because if the costs for parties are being shared, or if the conditions are such if the award goes against either party, they have to stand all of their arbitration costs. We have a situation where an arbitration party has gone to the court to challenge the jurisdiction, and we are saying it is okay for the arbitration panel to continue, incurring costs, and continue even to the point of an award.

In a similar vein in which I mentioned early about another aspect of
challenges in court, why are we giving the arbitral tribunal this privilege to continue with proceedings and make an award, when the matter has been raised in court? Now I could understand that it could be to address mischief, possible mischief, I could understand that. Because if somebody wants to put a spoke in the wheel of the arbitration proceedings, they go to the court, they make their plea under the respective sections of this Bill, and that can tie up the whole arbitration process for a very long period of time.

But if there is more to it—I was certain that I could hear from the hon. Attorney General if there is more to it than just a question of dealing with mischief that is deliberately aimed at delaying the process. But at the same time, there are consequences of course for the respective parties.

Mr. President: Senator, you have five more minutes.

Sen. D. Teemal: Yes, I am wrapping up. The hon. Attorney General did make mention of FIDIC. One of the features of the FIDIC conditions of contracts that is utilized, as I said, extensively is that there are provisions for a dispute adjudication board. Maybe to some extent it is covered in the Mediation Act, but as a forerunner to the arbitration, I mean, whilst we highlight the benefits of arbitration, relieving the burden that is put on the court, allowing professionals and experts in the respective fields to contribute to a matter that is being adjudicated on that need not have the full intervention of a court, the possibility of getting matters resolved within a faster time frame, you know, whether or not as a forerunner there should be some mention of alternative dispute resolution.

We are very familiar with it in the construction industry, in that, there is a
dispute adjudication board catered for in the FIDIC conditions of contract, in which a matter could be settled even before it goes to arbitration. So it is something to think about.

In closing, Mr. President, I come back to clause 65 and the whole question of regulations. I think putting that “Attorney General may issue regulations”, I think there is enough in this Bill that still has to be worked out, still has to be defined, particularly in terms of qualifications, selection of arbitrators, the umpire and all of these things. I would support that this particular section be amended to say that “the Attorney General shall issue regulations, subject to the affirmative resolution of this Parliament”.

Now, I have noticed that previous legislation, that particular aspect is being left out. But I am of the view that it does not always have to be there, but then when we are dealing with legislation in which there are certain grey areas, particularly in some of the areas that I have outlined, that in such cases regulations should be considered in a way that it has to be placed before the Parliament. Mr. President, I thank you.

Mr. President: Hon. Senators, before I call the next speaker, at this point I would just like to remind Senators that should there be any proposed amendments to this Bill that is before, to do circulate it before we begin committee stage. Minister of Tourism, Culture and the Arts.

The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell): Thank you very much, Mr. President. It is not unusual or ironic that the UNC, the Opposition would have a dispute with a Bill to improve dispute
resolution in this country. Mr. President, Sen. Mark has beat a hasty retreat from the Chamber, but his contribution can only be described as disingenuous and dangerous.

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

**Sen. The Hon. R. Mitchell:** Mr. President, the Opposition always speaks from two sides of their mouths. We heard from Sen. Lutchmedial, and one of Sen. Lutchmedial’s major points was the lack of consultation—consultation, where is the consultation? The consultation is here, I will get to that—but where is the consultation?

What we have before us is a Bill and a policy done by some private stakeholders and put to the Government for the improvement and the modernization of arbitration in Trinidad and Tobago. But that does not stop Sen. Mark, Mr. President, from trying to scandalize, under the cover of parliamentary privilege, persons within this Chamber and persons outside of this Chamber, and here is how he has done it.

This Dialogue Solutions Limited—the Attorney General may have been a part of a company called Dialogue Solutions Limited. I do not know, but all attorneys in this Chamber and outside of this Chamber may have been involved in arbitration at some point in time. Similarly, we may be involved in contract drafting at some point in time. Anybody inside of here can hold the position of an arbitrator, and let me tell you why.

**2.50 p.m.**

Attorneys at law will turn themselves into a company because arbitration is a
commercial—a dispute resolution process in the area of industry and commerce. You form yourself into a company because, as we see from the Bill, companies pay for this arbitration process, they pay the arbitrators. You charge VAT, you issue a bill to companies and that is how it works. So an individual, as an attorney–at-law, would be very smart, would be very intelligent to form themselves into a company to be able to deliver and provide this service in commercial transactions for commercial dispute resolution. But what Sen. Mark did very, very dangerously is to conflate Dialogue Solutions Limited with the Dispute Resolution Centre. And the Dispute Resolution Centre, Mr. President, they are the ones who had provided the arbitration policy for Trinidad and Tobago, which I hold in my hand.

Dispute Resolution—and they delivered this, Mr. President, on the 9th day of November, 2018: draft policy for the improvement of the arbitration process in Trinidad and Tobago. And Sen. Mark has a knack for attacking persons who are his intellectual superiors in this place under the cover of parliamentary privilege. But Mr. President, let me tell you who are the persons, the stakeholders, who are involved in this DRC arbitration committee: Dennis Gurley of senior counsel; Stephanie Daly of senior counsel; Humphrey Stollmeyer, Retired Justice of Appeal; Salma Rahaman, attorney-at-law; Independent Senator Anthony Vieira, attorney–at-law and ADR practitioner; Robert Cedeno, attorney-at-law and ADR practitioner; Elizabeth Solomon, Executive Director of DRC; Varuna Chattoo, Office of the Attorney General and Ministry of Legal Affairs—so it was not just the independent private stakeholders, also persons from the Office of the Attorney General and Ministry Legal Affairs—Veronica Sahadeo, Office of the Chief Parliamentary Counsel; Shireen Khan-Hyder Ali, Law Reform Commission.
These are the persons who put forward a draft policy to the Government of Trinidad and Tobago for the improvement of the arbitration proceedings here, in this country, via the Arbitration Bill, 2023. And in doing so, they adopted draft model legislation by the United Nations commonly referred to as UNCITRAL. That is what is done. But Sen. Mark comes here and conflates the two institutions, the company and this DRC, Dispute Resolution Centre, to scandalize the Attorney General. “Ah shame”. I know it is election season, you know, but there are some things that should be beneath us, infra dig as you may, in this Chamber. There are some things that should be beneath us.

2.55p.m.

Sen. Mark also made the argument that this Government may try to funnel matters of arbitration to members of the ruling party.

Sen. Gopee-Scoon: What?

Sen. The Hon. R. Mitchell: Not having read the Bill, of course, clause 14 says that both parties must agree to the appointment of arbitrators. Both parties must agree because that is the nature of the law of contract. That is the nature of contract, both parties set the terms of their engagements, set the terms and conditions of the contract. And, of course, now they set the terms for dispute resolution.

I will respond as well to Sen. Deoroop Teemal because I think Sen. Teemal is missing the point that, yes, there may be very large contractual matters where you need a qualified attorney-at-law in the form of senior counsel or other experts. But then there are small matters, a roofing contract, a box drain contract, where in those small contracts you would put a term of the contract where both parties agree to submit their disputes to an arbitrator and therefore, anybody can be arbitrator. Sen. Teemal, as an experienced civil engineer, they may decide that he be an
arbitrator and agree terms for the arbitration of these matters. Anybody inside of here can be an arbitrator. It is the purpose of the Bill. It is not just for very large commercial contracts. Of course, there is a real benefit to that but it is for any type of contracts, small contracts even.

Sen. Lutchmedial tried to, of course, “Ravi-down” the debate because we are in election mode. But as much as Sen. Lutchmedial tries to “Ravi-down” the debate and claim that Mr. Ravi brought the elections upon us, when the results are told—when the results are counted after the bell tolls, Ravi may have brought the end and the death knell to the Member for Siparia and the leader of the UNC.

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

**Sen. The Hon. R. Mitchell:** Because elections were brought but the elections were brought and the UNC caught flat-footed. They are not ready for any elections and that is why we are having defection after defection from the UNC to the PNM.

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

**Sen. The Hon. R. Mitchell:** Sen. Lutchmedial made a point and I want to agree wholeheartedly with Sen. Lutchmedial. Sen. Lutchmedial made the point that with respect to confidentiality of arbitral proceedings, there is an argument for those proceedings to remain confidential. But in matters of public interest that clause should not ouster other clauses, sorry, other sections in other Acts that work in favour of the public interest. And Sen. Lutchmedial gave an example of the World GTL plant.

**Sen. Gopee-Scoon:** Yeah.

**Sen. The Hon. R. Mitchell:** But I agree with her. I agree with Sen. Lutchmedial. Because had we had contracts where arbitration clauses were listed in those contracts and the concomitant confidentiality clauses that go along with that, we would have never heard, Mr. President, of the matter of a conspiracy between a
number of companies, housing Minister as he then was Dr. Roodal Moonilal, former EMBD CEO Gary Parmesar, former divisional manager Madoo Balroop and engineer Andrew Walker, a conspiracy to corruptly obtain contracts. You would not have heard of that. We would not have heard of just before a general election in 2015 the Minister as he then was and he still is the Member for Oropouche East conspiring just before the election of 2015 to give out inflated contracts to the disadvantage of, we, the taxpayer in Trinidad and Tobago. What may have happened is a dispute for payment may have gone to an arbitration proceeding and those proceedings sealed. So, I am happy for that.

I am also happy that no confidentiality clause prevented the public from knowing about the Piarco scandal where $662 million in cost overruns were corruptly obtained. And I thank Sen. John for being a part of “bussing de mark” and opening the thing up because had there been confidentiality in the public interest, we would not have known that a $500 door ended up costing the taxpayers $80,000.

**Senator:** Wow.

**Sen. The Hon. R. Mitchell:** We would not have known that. So I agree with Sen. Lutchmedial that these matters should not work to ouster provisions in the public interest.

Sen. Lutchmedial called for consultation. Now, Mr. President, when the UNC oftentimes have nothing to say, they go to consultation, the argument for consultation. Where is the consultation? Where is the consultation? Send it to a joint select committee. Mr. President, consultation, if they did not hear it from the Attorney General I will repeat it and put it on the record. Consultations, the Arbitration Bill, 2023 were held with stakeholders in August of 2021 and comments were received from. And hear the stakeholders: the Trinidad and
Sen. the Hon. R. Mitchell (cont’d)

Tobago Chapter of Charter Institute of Arbitrators; the Association of Trinidad and Tobago Insurance Companies; the Ministry of Trade and Industry, the Judiciary of the Republic of Trinidad and Tobago; Trinidad and Tobago Chamber of Industry and Commerce; the Bankers Association of Trinidad and Tobago; the Director of Public Prosecutions; the FIU; the Law Association of Trinidad and Tobago; the Registrar General’s Department; the Trinidad and Tobago Contractors Association and the Trinidad and Tobago Police Service.

**Sen. Gopee-Scoons:** They want more than that?

**Sen. The Hon. R. Mitchell:** They want more consultation than that. What more consultation you want from that? It is consultations, consultations. You send the Bill, you ask for comments. That is a standard practice in the development of policy and the consultation was done. But when you have nothing to say, you come to this Parliament and you ask for consultation, consultation. Send it to a joint select committee. This is model law. Model law from the United Nations, model law further developed into the Caricom IMPACT justice model that we are now adopting.

[M.R. VICE-PRESIDENT, *in the Chair*]

And to go back to the point of the Attorney General, acting as though the Attorney General has done something sinister, the Attorney General was doing arbitration in accordance with the 1939 Act. There was a present Arbitration Act in place and practicing in arbitration as attorneys-at-law do. But Sen. Mark would stop at nothing to scandalize people in this place.

Mr. Vice-President, this Bill, as I state, is model legislation. In other words, it is a standardized legislative framework that has been adopted by a number of states, a number of countries worldwide. And it is important, it is important for the United Nations to develop this standard framework of legislation because of the
globalized nature of trade and commerce. And it is necessary to have a universal system governing the law, practice and procedure of arbitration.

So, of course, it was said before, arbitration is a form of alternative dispute resolution. Alternative dispute resolution. Of course, we know the courts of law are the dominant method for resolving disputes that emerge in society between individuals, corporations and even states and it is for this reason, Mr. Vice-President, that we have attorneys-at-law. Anytime, of course, as attorneys-at-law we all hear some joke or some derogatory remark about attorneys-at-law and my rebuttal is always swift. If persons, corporations, states, but it is all natural people, if persons were able to resolve their own disputes and conflicts, there really would be no need for attorneys-at-law. But, of course, human nature, conflicts arise, there are disputes and we need the courts and we need attorneys-at-law for that. Whether it be divorce—there are conflicts where divorce, family matters, negligence and, of course, trade and commercial matters. But this is not new to us in this society. We have known alternative dispute resolution methods albeit informal methods. We have had the panchayat system of dispute and conflict resolution in this country for a long time. And we have also had—we also have families, large families who have informal methods and mechanisms for resolving disputes. But, of course, in a society, in modern society that is very competitive individualist and, of course, litigious, in a society where the average Standard 4 pupil knows what a pre-action protocol letter is and what it does, the court systems have, of course, become flooded with litigation. So alternative dispute resolution mechanisms have become increasingly more important because of—to reduce the number of cases that occupy the courts and as other Senators have said, to save judicial time that these matters take to go through the court process. And there are other advantages that I can come to which is,
privacy, there is privacy, there is speed, there is cost and, of course, convenience and these disputes are resolved in a cooperative environment.

There are other dispute resolution matters in other areas of law and if I should not disturb Sen. Mark, so I would identify myself as being a part of some of these other dispute resolution methods. In terms of mediation, in family law you have an alternative dispute resolution method called mediation where these matters can be very contentious, very emotionally charged and the courts have adopted this mechanism to refer parties to mediation so that parties can seek to settle their disputes in a calm environment and understand that an assessment of their cases because in family law we know that the child is paramount and it is in the public interest to ensure that the family matters are proceeded with in a very amicable way.

In the Ministry of Labour as well there are provisions and procedures for conciliation to aggrieved parties as a first step before advancing to the Industrial Court. You go to the Ministry of Labour, you sit with a conciliator and you go through the matters before it becomes even more contentious and the merits of each side of the case are discussed and persons are often allowed to settle outside of the court matter.

3.10 p.m.

Mr. Vice-President, of course in the law of contract we have arbitration, and the law of contract is distinguished from other areas of law. The law of contract, uniquely, you have both parties setting the terms and conditions of their engagement. Both parties set the terms and conditions of their engagement, and those are the obligations that both parties must discharge. And of course now what we have more into the contract law is the insertion of these clauses that deal with the agreement by both parties on how to settle disputes might those disputes arise.
And contract and trade is the lifeblood of any economy, and therefore it really is in the public interest that trade is efficient, certain and predictable, and therefore the settlement of quick disputes—the quick settlement of disputes in a cooperative environment is extremely important.

So why do we need to update this law? As was stated by other persons in here, it is a 1939 law that we are dealing with. Since 1939 there have been enumerable advances in technology, in the course of dealing, in the course that people do business, and therefore there is the need to update the law. There has always been—there has also been, rather, globalization, technological evolution, cross-border trade. So it is absolutely necessary that we update this law because of the inadequacies in the prevailing legislation. For example, one of the inadequacies, it leaves too much opportunity for intervention and challenge by courts, including appeals from the decision of the arbitrators. It also does not contain any provision for the short form expedited hearing and determination, which is addressed in clause 41 of the Bill, which provides that arbitral tribunals can decide to hold either oral hearings or conduct proceedings simply on the basis of documents and other materials.

In terms of implementing a modern approach, we adopt this UNCITRAL model law, and in clause 5, to respond to Sen. Teemal, clause 5 names the UNCITRAL model of law in its objects clause. The modernization of arbitration proceedings in this Bill you also have the allowance for virtual hearings in clause 35, the place of arbitration to be determined by the parties, or the arbitral tribunal, again, clause 35, and, Mr. Vice-President, those are some of the inadequacies and the reasons for implementing this modern piece of legislation. Of course, where cost is concerned arbitration versus litigation, arbitration is the clear winner, as litigation, the cost of litigation, far outweighs the cost of arbitration, especially in
this modern UNCITRAL Bill.

Speed, this Bill will bring a speedy resolution to disputes where the rules contained within the legislation allow for that speed. Again, convenience and cooperation, the process is much simpler and much more convenient for the parties involved, the hearing is held in private so there is no wrangling of court calendars and court dates, et cetera, jurisdiction does not apply, and the very rigid rules of court process also do not apply. And of course we spoke about privacy. It is private trade secrets can be protected, and privacy is generally beneficial to parties to a contract so that it does not get out and parties are not ridiculed and develop bad reputations, et cetera et cetera.

So, Mr. Vice-President, there is not much more to say. This is model law developed by the United Nations. This is law that improves the way we resolve trade disputes in Trinidad and Tobago. There are opportunities for us to develop ourselves, and, Mr. Vice-President, I would recall also the move into the Waterfront, Tower D. So there is ample space for these types of arbitral proceedings to proceed. There is space for us to be designated as an arbitration centre in the southern Caribbean or in the Caribbean, the dominant one. So, I would commend this Bill to the Senate. I support it. I support the swift resolution to disputes and the improvement to our ease of doing business. With those few words, Mr. Vice-President, I thank you.

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

**Mr. Vice-President:** Sen. Jearlean John.

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

**Sen. Jearlean John:** Thank you very much, Mr. Vice-President, for the opportunity to contribute to this Bill, the Arbitration Bill, 2023, where in the preamble, Mr. Vice-President, it states that the Bill is:

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“...to provide a modern legal framework to facilitate domestic and international trade and commerce by encouraging the use of arbitration as a means of resolving disputes.”

And all the speakers prior to me would have set that out as one of the positives coming out of this Bill, should it be implemented in the interest of Trinidad and Tobago. But, Mr. Vice-President, clause 5 of the Bill identifies the objectives of the proposed Act as to:

“(a) facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes;
(b) facilitate and obtain the fair and speedy resolution of disputes by arbitration without unnecessary delay or expense;
(c) facilitate the use of arbitration agreements in domestic and international matters; and
(d) facilitate the recognition and enforcement of arbitral awards.”

And the last speaker, the Minister of Tourism, Culture and the Arts, and I think the Attorney General in introducing the Minister of Trade and Industry, Sen. Jayanti would have spoken about the ease of doing business, and basically, you know, it is noteworthy, Mr. Vice-President, and relevant to this Bill that the last time they would have done our ranking on this ease of doing business, the World Bank ranking, we were placed at 105 out of 190 countries who participated in the surveys. And there are 41 indicators, and we are in terms of dealing with construction permits, we are ranked at 126, and that is one of the key areas where there will be the need and requirement for the intervention of this policy of arbitration or this, whatever is laid out in this law as the methodology with respect to arbitration.

So if we have to yield the benefits that are being put forward here certainly
in terms of all of these indicators coming out of the ease of doing business, whether it is dealing with construction permits which is ranked 126th, Trinidad and Tobago starting a business, we are ranked 79, getting electricity, 43, registering property, 150; getting credit, the lifeblood of business, 67; trading across borders, because we are talking about arbitral as a facilitatory tool for resolving dispute. So trading across borders we are ranked 134. And therefore, this is where sometimes we have to start at the fundamentals, it is good to come and have this facilitatory law, but what are we going to use it—how are we going to apply it if indeed our ease of doing business is really not so easy?

So among other things, Mr. Vice-President, we are asked to adopt the UNCITRAL model which was adopted by the United Nations Commission on internal trade law, and of course it came into effect in 1985 and amended further on the 07th of July 2006 at the Commission’s 39th session on—just as the Minister of Trade and Industry was saying, it is really to apply this model law to our environment, and how do we make it—the idea now is how to make this fit for purpose in this local jurisdiction. You know, are we just going to say one size fits all. Certainly, it has been used in Jamaica, they have now adopted that law in Jamaica in 2017 and really as the key features of this model it includes access, recognition, relief and cooperation. I think the Attorney General would have indicated that there would have been some kind of consultation with Jamaica which is probably helpful given that we are all Caribbean states.

Mr. Vice-President, in clause 10 of the bill it speaks to the definition and form of an arbitration agreement, and the arbitration agreements can be in the form of a clause in the contract, which is very common issue in the commercial contracts or as a separate agreement. And one has to say, it is not only the large companies that are bounded by contracts but also our small and medium-sized
companies, and we have to look at their readiness to accept arbitration, because you know sometimes it is very hard to wean ourselves away from what we know. So people have a dispute they go to the court, the civil courts, and now you are asking them to go to arbitration and there are rules of engagement certainly, including the, what you call it? I think it is in clause 60, the confidentiality, and we know in Trinidad everything leaks out. Nothing is sacrosanct, and people do not hold themselves sometimes to a very high standard, everybody knows everything. And I believe this is where folks would have kind of put a flag with respect to:

“Arbitral proceedings shall be private and confidential.”

So we have to look at who are we applying or are we trying to, well, induce or recommend this system of settling disputes, and as I said it is not only the large companies, it is not only the international companies, it will also be our small and medium-sized companies, and I do not know to what extent this arbitration is a trusted feature of our resolving contractual disputes or resolving contractual obligations. So, Mr. Vice-President, it must be in writing. Well, I mean, we have it in— I think, clause 10(2), and 10(4) allows for electronic communication to be considered as in writing, does that mean a WhatsApp, or will that be specified further when the Attorney General would have written up the other part of the law, the operationalizing the law. I do not know what is considered “in writing”. I do not think it was really defined in the Bill as it were. However, as the hon. Attorney General—I am talking about whether he would have it further described in the regulations later on. However, perhaps the hon. Attorney General can explain the need for 10(5) which says that:

“An arbitration agreement is also deemed to be in writing if it is contained in an exchange of statements of claim and defence”—pleadings—
“in which the existence of an agreement is alleged by one party...

Does that mean that this thing is going to be asymmetrical? Who will determine that this now, whatever it is, whatever in the statement of claim could lend itself to be called an arbitration, an agreement? You know, I think these things are a little murky and not so clear, because if one can say, well okay, I wrote something to you and because of that this now becomes, or we can convert this, or leverage it as some element of what? An arbitration agreement.

So respectfully, Mr. Vice-President, this standard I think it is too weak, because pleadings can range from a small bundle to a large bundle with hundreds of pages, because it depends on if it is maybe a large firm with a robust legal department, or they have money to pay for legal support, competence, then, because people engage—

3.25 p.m.

—when you are engaged in a contract, especially large, complex contracts, you are contracted with people for maybe hundreds of millions of dollars and then people for maybe just millions of dollars and lower down depending on what the service is. So we have to look at that to ensure that our contractors, wherever, micro, medium, small, large, they are not disadvantaged if this method of settling disputes really catches on. And as we said, we have no fundamental issue with the idea of updating our arbitration infrastructure, but certainly we want to ensure that there is no one who is left behind or disadvantaged. So some clarity will be welcomed here.

Under Part III, clause 13 of the Bill, “Composition of Arbitral Tribunal”:

“...parties are free to determine the number of arbitrators, but where there is no such determination, the number...”—selected—“...shall be three.”

Well, all right. I suppose that now is the law if this Bill is passed. And clause 14

UNREVISED
Arbitration Bill, 2023

Sen. John (cont’d)

allows for persons of any nationality to act as an arbitrator, which is helpful in doing business internationally because I suppose one can—based on where—if it is an international company, one can perhaps choose an arbitrator from the country where one of the contractees originates. And where there is—sorry.

Clause 14 allows for persons of nationality to act as an arbitrator which is helpful in doing business internationally and where international arbitrators may be utilized. By doing this one must ask or consider the international requirements by jurisdiction to act as an arbitrator. Must we look at perhaps including that person or those persons who have been deemed to be insolvent, charged or convicted previously on financial or white-collar crime, or corruption? Are these people supposed to be barred as arbitrators? Are we going to put some kind of definition in terms of who are the folks who can engage in this exercise and who will be deemed to be persona non grata?

Now, Mr Vice-President, clause 15 deals with grounds of challenge when arbitrators’ independence or impartiality comes into question. And again, this does not deal with other issues, such as whether they are insolvent, et cetera. Mr. Vice-President, barred from appeal, I note that with regard to appointment of arbitrators the court’s initial intervention would be deemed as final. In a sense, I can see that persons with means could possibly appeal for years upon years to hold off an arbitration award and delay an inevitable outcome, and I think this was addressed in some manner by the Attorney General but it will be helpful if again we can hear about that. However, with respect to clause 16(4), where the independence and impartiality of an arbitrator is challenged, I believe that the right of appeal should exist as this can have a significant impact on the outcome. In any case, appeals are not automatic and must qualify before being heard.

Mr. Vice-President, under Part IV, clause 21(9):
“Where the arbitral tribunal rules on a plea as a preliminary question that it has jurisdiction, any party may, within thirty days after having received notice of that ruling, request the Court to decide the matter and the decision of the Court shall not be subject to appeal.”

Once again, the right to appeal is removed here where some further consideration ought to be given. Can the Attorney General elaborate on the need to remove the right to appeal to more of the substantial aspect of the Bill?

Mr. Vice-President, this Bill impacts on a few pieces of existing legislation, for example, the challenge proceedings contained in the Public Procurement and Disposal of Public Property Act at section 63. There are existing arbitral rules, as in construction contracts, standard adjudication proceedings that are more transparent in its approach than the law presenting before us. If you take the standard construction contract used as a matter of policy, in all public sector construction projects, FIDIC is the form of contracts used. And you examine the current approach to challenge a determination, it is clearly stated in these FIDIC documents. For example, the joint selection of a competent adjudicator by contracting parties who are inversed in law and construction, that is the rule. The timelines for submission of documents and decision-making and the process for review is also very specific, and the process can be mapped out and each step has a specific duration.

Perhaps these elements of the law will be—again, we will hear more about it from the Attorney General. So these challenged proceedings in the Public Procurement and Disposal of Public Property Act, they overlap and can actually weaken the existing framework on construction contracts during the implementation period as it takes precedent over the FIDIC conditions. And one has to look at this because it is a policy that the public sector uses the FIDIC form
of contract, and this form of contract is a French language—the FIDIC is a French language acronym. I would not say it in my poor French, but in English it is the International Federation of Consulting Engineers which was started in 1930 by the trio of France, Belgium, Switzerland, and now the UK is part of that.

So, Mr. Vice-President, that is the form of contracts that we use. So I am asking, is it that there will be written into new contracts that notwithstanding the existence of the FIDIC Red Book at clause 20 where is says that arbitration shall be conducted in a manner set out in an accordance with the Arbitration Act—is it that that they are going to use that now to say, well, instead of what is laid out in the FIDIC Red Book at clause 20, that they will have a clause that says that arbitration shall be conducted in a manner set out in and in accordance with the Arbitration Act of Trinidad and Tobago? Because if this is so—the Attorney General would have spoken about consultation and some of the other speakers before would also have flagged that, but I am sure I did not hear him—maybe I am wrong—talk about consulting with the Joint Consultative Council.

I mean, there are some of the organizations that fall under them like the Association of Professional Engineers—I think I heard that—of Trinidad and Tobago, Trinidad and Tobago Contractors Association, Trinidad and Tobago Institute of Architects, Trinidad and Tobago Society of Planners, because the JCC has entered into a tripartite agreement with the FIDIC federation and one of its providers called the European Construction Ventures Limited, they provide training in the Caribbean on all FIDIC forms of contract. I am saying this in relation to the arbitration clause within the FIDIC contract. And so far, based on the website of the JCC, they have trained over 1,800 persons. So I am sure there must be consultation with the JCC in the implementation of this updated arbitration law.

UNREVISED
Mr. Vice-President, if I am to kind of read into the record within the Senate an essay—well, not the whole essay, of course—by Mr. Peter O’Malley and it is dated November 2020, and he wrote—the heading is:

“A new ‘UNCITRAL Model Law on International Commercial Adjudication’….How beneficial could it be?”

And he said:

“For those jurisdictions that have yet to implement adjudication a new UNCITRAL Model Law on International Adjudication, adopted either in part or in whole, will assist in providing a template for national legislation.”

Not unlike what we are doing here. He said:

“It is likely that any new Model Law on International Commercial Adjudication…which makes no distinction between ‘foreign’ or ‘domestic’ procedures. The Model Law on arbitration states that recognition and enforcement on ‘international’ awards, whether ‘foreign’ or ‘domestic’, should be governed by the same provisions, thus being beneficial in both consistency and clarity.”

So, Mr. Vice-President, there is a lot of commentary on enforceability because even if we make a determination in a local court and we have a contractor—I mean, with a company registered in the USA, the UK, China, wherever, the point is we have to look at whether we can—the enforceability of the adjudication decision. Are we going to—is this going to be easy to enforce this decision in different jurisdictions? And this would have come to FIDIC and in response they have issued a guidance memorandum and that was on April of 2013, with an amended clause to the clause 20 called clause 20.7 that expressly provides for not final dispute adjudication board decisions to be enforced through arbitration being consistent with temporary binding decision of adjudication.
So, Mr. Vice-President, I must indicate that arbitration is now, as we have all agreed in this Senate, that it is a method or a dispute resolution methodology that has become—sometimes it is—well, something to consider certainly, but it has become more distant from those parties with small or modest claim, and I think that point was also made in the Chamber earlier. For many users of international commercial arbitration, the preference is to utilize arbitration in conjunction with another dispute method. This approach is promoted in the FIDIC suite and they have a kind of step down dispute resolution where in the clauses where the objection—the objective, sorry, is to secure resolution without the necessity of arbitration. Because I suppose using this method of arbitration as a tool that is widely used and sought after, this is something that, one, will have to kind of wean folks who are not used to it through education and communication to ensure that when this Bill is passed, it is really used and one can get the benefit that is being proposed here, in terms of cost savings and time savings. Because in some of the readings you are not seeing that, that there is any savings in cost or time as it were.

So, Mr. Vice-President, another thing I was asking, whether the adjudicators or whether the functions and the process is governed by this Adjudication Bill, will fall under the procurement administrator. I think that is another question that we will want answered. So we have no fundamental disagreement, but we are a little bit weary that the practice of this adjudication, putting it forward within our community will require some more work, some more consultation with the parties who will be mainly impacted upon and certainly a little more engagement. And that is not to frustrate anything. It is to ensure that when we pass laws, it is good and useful laws, and not laws just to benefit a few.

Because, I recall, Mr. Vice-President, before we come to this Parliament, the Opposition Senators, we usually have a caucus to just go through what is before us
and who will speak on what. And each time, unfortunately, people will be looking at it with suspicion, wondering who will benefit. Is this piece of legislation ad hominem? Always. And listening to Sen. Mark today, it was really a remarkable contribution. Mr. Vice-President, I want to thank you for the opportunity.

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

**Mr. Vice-President:** Sen. Hazel Thompson-Ahye.

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

**Sen. Hazel Thompson-Ahye:** Thank you, Mr. Vice-President, for the opportunity to speak on the Arbitration Bill, 2023. Mr. Vice-President, this Bill transported me back to the 1980s. I was feeling as though I were in a maelstrom, or in the eyewall of a hurricane, wishing instead to be in the eye of the hurricane where it was calmer and I would feel safe. Having lived through hurricanes in the Bahamas, I know of what I speak. So here I am in the 1980s representing a corporate client, a finance company, that had caused many to come to grief. As the face of the company’s lawyer in the courts, I became the target for all the hate generated by the losses suffered by investors. I had received death threats.

**3.40 p.m.**

Colleagues at the Bar whose clients and even family members had lost money they had invested had choice words for me. One senior lawyer, not an SC but from a big law firm that produced two of the newly-minted senior counsels sought to chastise me after I had successfully resisted his garnishee order saying that that hardware he was representing was supposed to build his house for him. I had put that in jeopardy.

Another lawyer friend told me angrily as we were leaving court after I had her winding-up petition dismissed, the judge was overly helpful to you. I was experiencing the worst of litigation and longed to be away from the court. Does it
have to be like that? I asked myself. I was exhausted by all the fighting. It did not help.

But I also had a number of domestic violence injunctions. One of my colleagues had been murdered by her husband. There was yet no domestic violence stand-alone laws. I just wanted to leave. As an answer to a prayer, there landed on my desk an arbitration matter. What a difference alternative to litigation makes. It was like “ah” breath of fresh air. The sheer volume of written material was intimidating but after the initial shock seemed manageable, I was able to wade through the pile of documents, meet with counsel before the date for hearing of the appointment.

First, both parties went to court, agreed on the arbitrator and other administrative matters and to abide by the decision of the arbitrator. The subject matter of the contract was one that was near to my heart. It was for the construction of the Hugh Wooding Law School. Our clients were NIPDEC and the other side was a construction company, I will not name it.

Nils Christie, foremost criminologist, wrote in *British Journal of Criminology* in January 1977 of “Conflicts as Property”. He thought that conflicts belonged to the parties involved, who gave them to the State. Arbitration is a means by which parties retain control of that conflict. It has been described as a century-old method of alternative dispute resolution predating colonization, like other time-worn dispute mechanisms like mediation and restorative justice, which are two things that are very close to my heart, arbitration is becoming increasingly popular as the way forward to resolving dispute without the court’s intervention and in the process unclogging the overburdened court.

And incidentally, it is not only the criminal justice system that is clogged you know, it is also the civil justice system where, save some high-profile matters
litigants are in limbo waiting for matters to be heard, waiting for judgments to be delivered and when judgments are delivered, waiting for over two years in one case for a three-line order to be written up. Civil lawyers and their clients are suffering mainly in silence but we need to raise our voices to the rooftops instead of grumbling amongst each other. What is happening with estates that are on desks waiting for reviews for years? Very senior lawyer has told me that there is need to incentivize certain things. It is a sad indictment on our justice system.

This Arbitration Act is another response to Nappy Mayers’ cry to “bring back the old time days, bring back them old time ways” and you know it has been said that the first arbitration was done by Solomon when the two mothers were claiming that the baby was theirs. The arbitration that I spoke of was concluded in short order. I do not recall attending more than two or three sessions unlike in the court system where forum shopping is well-nigh impossible. We were able to choose an arbitrator to adjudicate on the dispute based on that person’s expertise and general suitability.

We were able to set the agenda for the meetings, to freely decide on the venue and discovery of documents. At the end of the day, the matter was adjudicated on the basis of the construction of and fulfilment of the terms of the contract. Considerable costs were saved because of the speed with which the matter was first determined and the reason for the decision was clear to all.

So I have had first-hand view of the benefits of arbitration process, not only the speed with which the matter was determined, less time meant lower cost. It was not subject to complex civil proceeding rules, privacy of proceedings was welcome and provide a more relaxed atmosphere. It was a decided advantage to have the matter adjudicated by a subject matter expert chosen by us and in whose ability we had full confidence.
So today, we debate the Arbitration Bill. I cannot say as in the recent past that this is a short Bill, it is very comprehensive. A great deal of work has gone into its formulation. Legal drafting is one area of work where you are allowed to copy with impunity. In his last message to me, the late Peter Telfer shared with me he used to get licks in school for copying. It was because he could not see the board and had to look in the book of the boy next to him. His vision impairment was recognized very late. Legal draftsmen’s valid excuse is that they want the best law and there is no need to reinvent the wheel.

The Bill stated objective is clearly spelt out in the long title:

“An Act to repeal and replace the Arbitration Act, Chap 5:01, to provide a modern legal framework to facilitate domestic and international trade and commerce by encouraging the use of arbitration as a means of resolving disputes and for related matters.”


Clause 2 is the Interpretation section. Mr. Vice-President, this section illustrates my point of our draftsperson improving the law. When you examine the definition of “arbitration” in the Interpretation section of the United Nations Commission on International Trade Model Law on International Commercial Arbitration which is Article 2 and the Impact Justice Model Arbitration Bill, 2022 which is section 3, you will observe that they are in identical terms. They both state:

“‘arbitration’ means any arbitration whether or not administered by a permanent arbitral institution;”

That is circumlocution of the highest order. Are you any wiser having read that definition? I think not. Compare that definition to one in our draft Bill which reads:
“‘arbitration’ means a process of settling a dispute between parties before an arbitral tribunal, whether or not that process is administered by a permanent arbitral institution;”

So we do have the ability to make things better than the regional and international institutions, a fine example of that.

Clause 3 states that the:

“…Act binds the State.”

And this implies the State is to abide by the terms of the Act and clause 4 talks about the applicability of the proposed Act. Clause 5 sets out its objects which are very clear and relevant. We have heard them before. Clause 6 deals with receipt of written and electronic communication which brings us into the 21st century and what is deemed to be actual and what is deemed receipt.

Clause 7 speaks to waiver of a party’s right to object to the other party’s derogation from the arbitration agreement if the first party fails to object in a timely manner. So you have to be on your toes. Clause 8 removes the arbitration from the purview of the court save in circumstances specified in the Act. Clause 9 details the functions to be performed by the court. Clause 10 specifies the form of the arbitration agreement which is fairly flexible. Again, it deals not only with written but also electronic form.

Clause 11 speaks for the court’s referral of a matter for arbitration which is the subject of an arbitration agreement unless it finds the agreement null and void, inoperative or incapable of being performed. Now this law shows that although there is freedom of contract, that does not mean that the court’s jurisdiction is ousted when there is need to do justice between the parties. However, there is provision for the arbitration to begin and be concluded while the matter is pending before the court.
Clause 12 provides for a party to request and the court to grant interim measures of protection and I think some people would have missed the point that the parties approach the court and request the interim measure. So it is not imposed on them.

Clauses 13 to 20 deal with the composition of arbitration tribunal which the parties can freely determine and if they are not able to agree, the court can determine based on qualifications, impartiality and independence, the detailed grounds for the challenge of the arbitrator and methods of doing so. The circumstances for removal of the arbitrator, the appointment of a substitute arbitrator and the role of an umpire when the arbitrators fail to agree and an application is made to the court that an umpire replace the arbitrator.

And if you look at clause 19, you see that the parties invite so the umpire is not imposed on them. When you look at the provision, you see that. Clause 21 details the jurisdiction of the arbitral tribunal and check that eh. You spelt arbitral one place and just below, you have it spelt in the correct way. All right, so you have the “r” where it should not be and some places you leave it out. You know I will pick up those things much to your chagrin.

22, the “Interim Measures and Preliminary Orders” and includes the conditions under which they can granted.

Clauses 33 to 45 set out the principles, the practices and procedure for the conduct of arbitral proceedings. And one can discern that these are governed by the need to give guidance while allowing the parties freedom of contract so the phrase you will see “unless otherwise agreed by the parties” and like phrases which appear frequently as a recurring decimal.

Clauses 46 to 54 deal with the “Making of Award and Termination of Proceedings” and detailed matters such governing law, terms of award, form of
award, payment of cost, interest and termination. So I am afraid that sometimes where others may see obstacles and impositions, I see a willingness to assist.

Clause 55 sets out circumstances for having the award set aside such as incapacity of a party, invalidity due to law applied, the time period for doing so, the lack of proper notice outside the scope of arbitration agreement in conflict with the law or public policy.

And 56 and 57 relate to recognition and enforcement of awards including the circumstances in which the award may be binding which are largely reflective of the circumstances under which the award may be set aside by a party under clause 55.

When you look at 58 to 68, they are general provisions dealing with foreign representation, immunity of the arbitrator, privacy and confidentiality of proceedings, privacy of proceedings, restrictions on reporting and the effect of proceeding on the death of the arbitrator and the death of the person appointing the arbitrator.

Now there was mentioned about disclosure in the legislation which is 60 by a previous speaker who had some concerns and in that regard, I would like to refer to the Arbitration Act, 2009 of the Bahamas. I do not think it was in our pile of legislation. And section 20 of the Bahamas Act says—the heading is:

“Arbitral tribunal may allow disclosure.

(1) This section applies if—

(a) a question arises in any arbitral proceedings as to whether confidential information should be disclosed other than it authorised under section 19(a) to (d); and

(b) at least one of the parties agrees to refer that question to arbitral tribunal concerned.
(2) The arbitral tribunal, after giving each of the parties an opportunity to be heard, may make or refuse to make an order allowing all or any of the parties to disclose confidential information.”

When you look at section 21, it says:

“When the Supreme Court may allow or prohibit disclosure.”

And it says:

“(1) The Supreme Court may make an order allowing a party to disclose any confidential information—

(a) on the application of that party, which application may be made only if the mandate of the arbitral tribunal has been terminated; or

(b) on an appeal by the party, after an order under section 20(2) allowing that party to disclose the confidential information has been refused by an arbitral tribunal.

(2) The Supreme Court may make an order under subsection (1) only if—

(a) it is satisfied, in the circumstances of the particular case, that the public interest in preserving the confidentiality of arbitral proceedings is outweighed by other considerations that render it desirable in the public interest for the confidential information to be disclosed; and

(b) the disclosure is no more than what is reasonably required to serve the other considerations referred to in paragraph (a).

3:55 p.m.

“(3) The Supreme Court may make an order prohibiting a party (party A) from disclosing confidential information on an appeal by another party
(party B) who unsuccessfully opposed an application by party A for an order under section 20(2) allowing party A to disclose confidential information.

(4) The Supreme Court may make an order under this section only if it has given each of the parties an opportunity to be heard. “

(5) The Supreme Court may make an order under this section —

(a) unconditionally; or

(b) subject to any conditions it thinks fit.

(6) To avoid doubt, the Supreme Court may, in imposing any conditions under subsection (5)(b), include a condition that the order ceases to have effect at a specified stage of the appeal proceedings.

(7) The decision of the Supreme Court under this section is final.”

So, Mr. Vice-President, there is flexibility in going the route of arbitration, there is confidentiality, there is saving of time, there is saving of cost, and I began by talking about the stressful situation that I was in, it certainly saves lawyers stress when you can have a matter determined without too much delay. On my way here, I made a call to the Bahamas, and I spoke to Justice Nottage, who is a retired judge, very much involved in arbitration. And she informed me that Bahamas just passed a law, they just amended their law to make the Bahamas an international commercial centre.

So, a lot is happening in the Bahamas, they are very enthusiastic. she says, you know, a lot of people are using the arbitration process, so that we can see what is happening in the various jurisdictions as far as arbitration is concerned. In an article, *The History of Arbitration Practice and Law* by Frank Emerson, he says
that in one of the national presidential election:

““Major Parties Sign Code of Fair Campaign Practices and Agree to Arbitrate Claims of Violations,’ followed by a news story indicating that the fair campaign practices code had been signed by both the Chairman of the Democratic National Committee and by his Republican counterpart.”

And he ends:

“It therefore can be seen that arbitration is today, as it was in yesteryears, a dynamic institution for the peaceful settlement of discord, differences, and disputes.”

In the society today, there is much discord, there are many disputes, and there is a lot of distrust, a lot of differences. We can use arbitration to resolve a lot of the problems that keep us awake at night. We do not have to follow the laws slavishly. We can in fact look at what we have, look at what we can do, and make the best law possible. But, you know, we cannot stop the clock. Alternative dispute resolution is not going to recede. It is going to continue to grow. We who practice also in the family and other court, we know about the settlement of disputes, we know a number of things are happening in mediation, and we have to use these practices, we have to use these ways of dealing with disputes, so that we can resolve our matters in fairness to all concerned, amicably, quickly, cheaply, and for the good of not just the parties, but the entire country. I thank you, Mr. Vice-President.

Hon. Senators: [Desk thumping]

4.00 p.m.

Sen. Dr. Varma Deyalsingh: Thank you, Mr. Vice-President, for the privilege to
be taking part in this discussion. And as I start, I must say that the Attorney General mentioned it was a privilege to bring this Bill to Parliament. Because he made mention of it that so long that we were overdue for this piece of legislation to be updated, that it was a privilege. And I also must say I feel an honour and a privilege to be part of this. It is long overdue.

So, on one hand, I have to say thank you, Mr. Attorney General, for bringing it. I mean, we have heard about—since 1937, we had the whole idea of arbitration come to force. And persons mentioned that this started in 1937. We must remember it is just not the UN. It was before the UN, the League of Nations, I think, in 1924 after the First World War. They actually got together and decided we had to do something in terms of arbitration, in terms of settling disputes. So therefore, it really caught on where we found in 1937, when the legislators looked at this and then different countries started to come on board with this. And I think in 1939, we came on board with this also here.

So therefore, definitely I heard he mentioned that the Bill today serves to modernize. And it does serve to modernize. Because how could we be thinking about a world with artificial intelligence; with new modalities, in terms of getting contracts, cutting contracts; computerized world—so, therefore, definitely it is a time that we needed to catch up. And here we are today to give our blessings to this.

So I have heard also that there was the harmonization that is needed in terms of looking at other pieces of arbitration Acts that are existing elsewhere. And the whole function of this is that persons, international traders, would be able to come into our country and have a greater sense of purpose, in the sense that they would now be able to fit in to the global pieces of legislation.

So therefore, the Minister of Trade and Industry, I think she showed
some excitement in the fact that this is being passed here. She mentioned the fact that there were nine positive things that can come out of this. And again, definitely, it will help the small business. It will help the small business to be able to solve their issues, to be able to manage their disputes in a better manner. And hopefully, it will encourage businesses to come here and fulfil the dream, as I heard mention of our late Prime Minister, Patrick Manning, who actually wanted the waterfront to be a business hub.

But you see, even though this is a dream and this is something that we would hope that we could attract business—we need to attract business—we have to understand why would persons come here? I mean, we heard that Jamaica has a well-functioning body now. We heard from Sen. Lutchmedial that there was an attorney who had set up an online aspect where you can now have this arbitration occur totally. So the modernization, we have to keep up with this here.

We heard that the Bahamas is also now going to be setting up as a hub. So we now will have competition. You know, even though we have this hope, we can come in here, the competition that exists out there, we will have to figure, would people want to come here? Will they stay with what exists out there before?

So the other point I want to make mention to is that we heard Trinidad is the gateway of the Americas. So definitely, where we are positioned, we might be at an advantage to hear disputes from Latin America, South America, to hear the disputes along the Caricom region. And this may be something that we may take comfort in, that we are positioned in that area.

But remember two things will go against us if people have to come down here. Crime is one, where people may be hesitant to come down here to do any sort of arbitration. And the second thing too, besides the crime, the fact is, if we are looking at trying to go into the Latin American market, the Latin American
market, they have been well established. They have been moving ahead and they have been in the game where they actually—they have adopted the New York-styled convention. And they actually have ratified—18 countries in Latin America have actually ratified the New York—are signatories also to the Panama Convention. The International Chamber of Commerce, the ICC, seems to be the most preferred site where they still go to. So therefore, we have to look at it in a realistic way. Would Latin American countries come here? I am not so convinced. I mean, there are other preferred sites: London, Singapore, Hong Kong, Paris, Geneva. Those were the most preferred sites where, globally, persons would say they would rather go to those established sites. So we would have some competition. We would have some reasons why persons may want to come here. So that might be a little challenging for us.

Because, you see, Latin America is really developing as an ambitious hub now for this arbitration. And when you look at the fact that Latin America has been—and even Brazil is a country that is now in the economic front, it is deciding to do business. We are looking at the BRICS community coming together. They may be doing business with other agencies. Therefore, you find that when they have their business problems, they may have to decide who they are going to. Will they come to little Trinidad? Unless we can get the arbitrators, international arbitrators, down here to be part of our establishment. Will they now have a language barrier? Because if you are doing business with Russia, China, et cetera, business places are opening up and you find that you have that level of arbitration to be handled. You may think that other countries may benefit more from us.

So therefore, I look at the fact that I think it is an ambitious venture mentioned, to try to get us to be that international hub. But even so, even though we want it so and we want our country to be up there, we are doing the right thing
here by modernizing, by keeping it—making it up to date. We are doing the right
thing here with this piece of legislation to at least help the local companies who
would choose arbitration as well as international companies. So we are putting
things in place. We have been long overdue, and I am saying Jamaica has beat us
to it and at least we are now coming up to standard.

So when I look, we definitely—I think it was made mention that we may
actually save foreign exchange. We can get foreign exchange if we can get here as
an international hub. But two things we may have to look against this. I mean,
besides, one, we may not be that attractive, but two, you know, there is now the
online arbitration that is set up. And we heard Jamaica had something going good
and we are hearing that there are different avenues, different countries also will be
adopting this online method, where it is more convenient. So you may not really
get persons coming into the country, in terms of that influx of persons here.

I must mention the New York Convention did give guidelines that
worldwide these arbitrators and those councils look to some sort of guidelines.
And then that was in 1958 and that was the Convention on the Recognition and
Enforcement of Foreign Arbitral Awards. Then, in 1975, there was the Panama
Convention, where the Inter-American Convention on International Commercial
Arbitration came. So it is there. It has been part of our law little even before that,
in 1939, as we know. So it is just a matter of updating it.

So two things that I looked at when I was preparing for this. I made mention
to the fact that there are the advantages. And we have heard the advantages. But I
just want to look at certain disadvantages that may occur. And I heard from Sen.
Lutchmedial and also Sen. Mark that, you know, somehow you may have—
arbitration could actually be involved in some matters that may not be transparent.
So it could act as a cloak to transparency. And we have to appreciate, Mr.
Vice-President, in Trinidad and Tobago and worldwide, there are businesses that occur, the construction industry. And all over, there is always that level of persons pointing fingers, the allegations of corruption. So therefore, we have to look at the fact that do we now create this sort of arbitration, where contracts—you are not able to look at these contracts. We are not able to monitor them. Sen. Seepersad did mention.

So, in a sense, it would be depriving individuals to be able to look at a contract to see if there is anything that occurred. And I am not talking about private contracts. If it is private contracts, I am saying I see no objections with two companies wanting to go in and have their discussions in secret. But I take offence if it is a contract where you are using taxpayers’ money. And it was made mention that sometimes the state enterprises we had, their business runnings in the past left a lot to be desired.

So if you now we have arbitration as a form—and Sen. Mitchell did mention the fact that some things were exposed. So if arbitration as a form comes into being, we may be at a disadvantage to not have any clear and transparent sort of purview of what went on.

And I would like, Sir, with your permission, to look at an article. It is from Insights, May 11, 2016:

“Bribery and Corruption in International Arbitration”.

And I mentioned this. Here we are, we are treading on good legislation. I have no problem with it. We are going in some legislation. We are modernizing legislation. But then, we have to know there are warnings before; warnings out there in the international scene where we have to know that whatever we are doing, we can put certain guidelines, certain safeguards, in place. And I would just like to briefly read through this article. It is May 11, 2016:
“Corruption in international business is becoming endemic. Transparency International’s latest Global Corruption Report highlights that nearly two in five business executives say they have been asked to pay a bribe when dealing with public institutions. One in five claim to have lost business because of bribes by a competitor. More than a third feel that corruption is getting worse. Corruption stifles free and fair competition, and undermines democracy. Little surprise that it should be the subject of universal condemnation.”

So this article went on to say that:

“There are concerns that parties to contracts procured through corruption may choose arbitration as the preferred form of dispute resolution because the process is confidential and consensual, and because arbitrators are traditionally reluctant to investigate corruption on their own initiative.”

So this is where we have to be guided; how we are going to look at those bodies.

And if allegations run that state enterprises have not been coming up to mark, probably we may have to say that arbitration with other firms, without—if it is a state enterprise, we may have to put something in place there so the allegation would not be made that something went on there, it is in arbitration because they are going to hide it. The public would not know and it is taxpayers’ money that would be misused.

4.15 p.m.

The article says so if it is true that this happens now, that these companies choose this form:

“…that creates a very real risk that corrupt contracts can be legitimised and enforced through arbitration.”
So this is something I think we have to be aware of because again it mentions:

“…historically there has been a general reluctance by arbitral tribunals to deal with bribery and corruption issues where they do not form a substantive part of the case before them. Arbitrators do not always feel comfortable investigating signs of corruption, particularly where (as will frequently be the case where both parties to the arbitration have been involved in the corruption) neither of the parties raises the issue. Arbitrators are often concerned that the consensual nature of the process, and of their appointment, means that they cannot self-initiate investigations.”

So therefore, it may be a disservice sometimes arbitration could be a disservice if you have this sort of thinking. And it made mention:

“Arbitrators sometimes feel that they lack the powers to force parties to hand over incriminating material (unlike domestic courts), and are therefore limited to simply drawing adverse inferences from a failure to produce documents where a party is requested to do so.”

So there are dangers that I wanted to mention. They mentioned two situations where red flags, where the tribunals themselves become suspicious and the tribunals themselves “…may wish to initiate investigations…” you know, to try to look at it so when they see red flags happening, but:

“Their concerns will include whether they have the necessary procedural powers to do so, what evidence and standard of proof they should require before making any factual findings of corruption,”

So red flags raised in the proceedings, also when:

“…one of the parties, usually the respondent, alleges corruption. Allegations of corruption are generally either made during the arbitration proceedings, or at the enforcement stage”
So therefore, we have to be careful that somehow that arbitration is not seen as a shelter for corruption. So this is all we have to look at. And let us say you have instances where you—how could we mitigate against this? Well, simple.

In Canada, Mr. Vice-President, they had a trend where they were once considered one of the least corrupt countries, and there was an open tendering for any contracts over $100,000. So therefore, if we are thinking we going to have arbitration but we are worried that something amiss may be there, why not have it in any sort of state contracts or any sort of contract, we have open bidding, open contracts. It is taxpayer’s money we need to know where it is being spent, how it is being spent. Forget the idea but people say, “Well, they may have business deals.” No. At this stage, I think transparency is much more important.

So open contract, open biddings, that probably you may have—as I say published. You have published online, so persons can say look this contractor is going to get this. This is what they are bidding, this is what part of it is. So this is a stage we have to reach and therefore, remember the problem we had too is as I say a problem could be solved by this open bidding contract that I mentioned and except you know if you have this advantage, I heard mentioned is trade secrets in certain cases. You do not want that trade secret in open courts. I think persons with trade secrets are an exception where arbitration should be there.

But in terms of starving off the corruption the open contracts I think could help that, as well as the fact that why not have—if per chance we do not decide to go that way with an open contract, we know the state body is entering to contract with some persons or some contractual firm. It is there see, we see the contract, we see the fine details. So if we decided not to go with open contract, the other thing we could look at is since it is a closed arbitration sort of court. It is closed. Nobody could know what is going on. Nobody could know if any deals were
made. Nobody could know if there were any sort of allegations or bribery and which again is a disadvantage, I am saying to transparency.

Why not have a time limit? A time limit in the sense that in the United States there are official documents where you have official documents, secret documents, you know, they have like a ten-year period where state documents may be classified. If we are going to arbitration and there is the possibility that it is a court matter, and you have a suspicion something may occur, then why not have a limitation say, three years after, five years after where that whatever was discussed there, what came to light there, what was put across there, could be now declassified or actually put out there three, five years after, where persons could now judge, hey, that company that came here that did businesses look what was said about them. So therefore, we raise a red flag to that company who are in the global market.

So you may get a Brazilian company coming here, you may hear things about them. Five years after the fact, granted if we go this way, or three years after the fact. But then, it will now alert others globally that if this same company is doing business elsewhere has done business elsewhere, we need to look at that company, we need to red flag that company, we need to go into the business of that company and scrutinize them more.

Remember we also have to appreciate the fact that the OECD, the Organization for Economic Corporation and Development, that body—signatories to that body actually look to see if there are any corrupt practices, if there is any sort of bribery or corruption. And all signatories to that body would probably frown on secret contracts that are not being—that are sheltering I am saying, some persons who are involved in bribery. So even for a time frame, I am suggesting, we should have to look at that avenue.
So I must say when I looked at the fact that this piece of law came to us, I realized, okay, what is the discussion in the global scene? What are they thinking about? Because this has been raised before about arbitration could be hiding corrupt practices. And this is where we need to explore, because the World Bank in collaboration with the UN has put forward the idea of an international anti-corruption forum, which will provide an international arbitration mechanism allowing for decisions on the commercial effects of corruption and bribery. So this is one aspect in the future that is already in discussion, where we are looking at arbitration as a good way forward, because we are seeing all the advantages that was mentioned by the Minister of Trade and Industry. But again, we have to realize that in that system that we are creating that has freed up the court from you know, the backlog, it is actually a faster track, all the advantages. We fast-track the element of corruption is how we need to look at what the World Bank is thinking. And also, some academics have also recommended forming either a court or an arbitral tribunal that would review public sector contracts and international commercial transactions to identify corruption. So the issue of corruption definitely is something that we need to look at.

Also, I must say when I looked at this I wanted to figure out what was the advantage of arbitration? Are there any sort of advantages? And as I looked, I actually saw a survey that was done to speak on it. Because if I am going to say, “Well, I am back in this legislation. I am backing it because of the modernization that is required due to the fact that you have to modernize to keep up with the technology.” But there is an article, the School of International Arbitration of Queen Mary University of London. They did a 2021 International Arbitration Survey and they were looking at arbitration in a changing world. And in it they did mention, hey, this is the way to go forward and they explore how international
arbitration has adapted to demands. So they interviewed a pool of persons internationally arbitrators in house counsel from both public and private sectors, and private practitioners, and the conclusion that they came to was really they actually said and this is where I looked at the advantages. They said that the:

“Current choices and future adaptations”

When they looked at they at least realized that:

“International arbitration is the respondents’ preferred method of resolving cross-border disputes for 90% of respondents, either on a stand-alone basis (31%) or in conjunction with ADR (59%).

The five most preferred seats for arbitration are London, Singapore, Hong Kong, Paris and Geneva.”

So we will be having a hard time to find our way there. And they say:

“Greater support for arbitration by local courts and judiciary’, ‘increased neutrality and impartiality of the local legal system’, and ‘better track record in enforcing agreements to arbitrate and arbitral awards’ are the key adaptations that would make other arbitral seats more attractive”

So basically, we have to win over the attorneys. We have to win over the courts. We have to let persons know that this may be something that we could go at. And you know, if we are now fighting for a place in the world one of their fall backs that they saw and this is where I think we can do it. So this survey actually named a fall back that they saw and they mentioned that there is a problem where the use of technology, the virtual reality. So not all countries may have that availability but we have to thank our Minister of information technology for his work he is doing but more so, we have to develop our cybercrime laws.

Because you see, with persons now being able if you have a patent that you have under review, you are disputing it, you definitely have the cybersecurity come
Arbitration Bill, 2023

Sen. Dr. Deyalsingh (cont’d)

into place here. So this is something that the Attorney General may have to now come in with some cybersecurity legislation, which is on the agenda, but to put it in such a way that we know that persons would not be able to hack in to these meetings. Because if you are having a meeting with arbitrators here, and then one in London, one wherever else in the world, we need to know that we have that security.

So coming hand in hand with this legislation, we have to develop that IT professional secure factor. Because even in this survey it was mentioned:

“Only around a quarter of respondents said they have ‘frequently’ or ‘always’ seen cyber security measures being put place in their international arbitrations. The majority”—which is 57 per cent—“encountered such measures in less than a half of their cases.”

So even in all those arbitration bodies worldwide, there still is a lack of the cyber security. So therefore, we have to—I mean, they need to also buck up their game.

Now again, this survey also looked at—it made mention here too that more than—and strange enough they looked at diversity where they said that.

“More than half of respondents…”

So this is really is a survey among persons, who use these international bodies, but:

“More than half of respondents agree that progress has been made in terms of gender diversity on arbitral tribunals…”

So there were lack of women but:

“…over the past three years…there has been some progress. However, less than a third of respondents believe there has been progress in respect of geographic, age, cultural and, particularly, ethnic diversity.”

So we are looking at questions now on the tribunals, on the makeup of their—probably where they come from, their culture, their diversity. Because if
you have an arbitration with some Chinese company and some other company, who knows, the Chinese company may feel the court might be in favour of or the tribunal, might be in favour of a pro-American or pro-British because if it is the ICC. So who knows, to make the participants more at ease, we may have to look at this fact that was mentioned in the survey that persons saw something to improve.

4.30 p.m.
And here is where we could improve, because we now could offer our university graduates in the law faculty. We should have an arbitration element attached to that. We should have—and the University of the West Indies is one of the top universities in the world we are top there. So, if we now could have an arbitration school, for those persons to come all over the world they will be trained here, this is one up I think, for the University of the West studies, plus, if we have a trained cadre of our own arbitrators, where we now see a lack of persons saying that there may be a lack in ethnic diversity, we may be that channel, we could supply persons there. So therefore, this deficiency that was noted in this survey done by this international arbitration survey, we could use it to our advantage. We could now, as I am saying train persons, we could now have those cadre of persons who we could now be able to supply. We also see, as I mentioned, we need to increase the use of virtual hearing rooms, because this was something again, was found lacking in this in this survey that was done.

Another thing I want to mention, though, is the fact that—the fact is, if you are having the arbitration and persons willingly go towards that format, right, so parties agree. I have to make mention, though, that there were concerns in some parts of the United States where they found that when persons were actually going to get contracts, you had mandatory arbitration forced on them. So therefore, let us
say I am unemployed, but I am going with a company, you found that I now, will be forced to say, well, my level of any sort of grievance has to be through an arbitrator rather than the courts. And they found that this went against the grain of good labour relations. And what was made mention though, is the fact that, I think it was Michigan, one of those states decided that forced arbitration cannot be part of the employment contract. And this is something we have to think clearly. Would this open the doorway where people could now take advantage of workers,? You know, workers they are trying hard to get a job, they cannot get a job and somehow, we would be able to try and force them into this. So this is where the United States had reached and this is where there was now a pushback in terms of the rights of the workers to see if we could somehow prevent any sort of forced—sort of arbitration put on any sort of contracts.

So this is something that I am hoping that I can, you know, that we may have to look at this, because in-house arbitration mandatory may not be something that will somehow go down well with workers, with the unions. So, this is something we may need more discussion on.

[MR. PRESIDENT in the Chair]

So, at this stage I must say that I was also thrilled in the fact that today we are moving with this model legislation. I am also saying that in the public interest we have to get that level of transparency somehow in there and I am thinking it is time to update this and the fact is, we have to know that even though it is there, even though we plan to be a hub, an international hub there may be limitations. There may be challenges. There may be as competition as Bahamas as we heard Sen. Thompson-Ahye, mentioned. So we heard that being in our geographic location may give us that opening into Latin America, but Latin America has really already shown a preference for the ICC and I strongly doubt they may want to
come here, but we can benefit by again being a hub to train those persons. I mentioned about the deprivation of civil rights that I am hoping that—

Mr. President: Senator, you have five more minutes.

Sen. Dr. V. Deyalsingh: Thank you, Mr. President. And the state that I had mentioned is— The fact is the Detroit Law Review in the Fall of 1983 had an article, “Arbitration and the Public Employee – An Alternative...to Strike.” So while some may see as an example it is a way to prevent unrest. Compulsory and binding arbitration may be also be looked in a way that the workers and the labour rights may be frowning on and therefore, persons may decide, look, we need to go into this a little more.

There was also an article, the EPI, the arbitration epidemic.

“Mandatory arbitration deprives workers and consumers of their rights” 2015 Report, and it was a “Briefing...414,” where they actually made mention—so California was the state actually, where they said that employers can no longer require employees on job application to sign an arbitration agreement. And I think we may have to come strong with this if we want to prevent that sort of abuse. And the mandatory consumer and employment arbitration is different from consensual and commercial arbitration. So this is something I think we may need to watch out for. And I must say that all in all, I would think that I have to support this. I think that in conclusion, I want to say that it takes more than this law to do this, because it actually takes the Foreign Affairs Ministry to go in and market us. It actually takes the Education Ministry to produce arbitrators. It actually takes the trade—Ministry of Trade and Industry to come in and tell persons, we are now better to do business. It takes—so it takes an effort—it takes the information technology to ensure that we could be in line with Jamaica or even better, or even better than some of those arbitration bodies that already exists. And then so
therefore, I think that all in all, I am supporting this legislation. I commend the Government for bringing it here today. And I just put my—

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

**Sen. Dr. V. Deyalsingh:** yeah. I think its time, and I just had to make mention my few little cautions that I would have given. Thank you, Mr. President.

**Mr. President:** Sen. Richards.

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

**Sen. Dr. Paul Richards:** Thank you very much, Mr. President, for allowing me to join the debate. I will not be 40 minutes or 30 minutes hopefully, just under 20 minutes because a lot has been said already since I think we started the actual debate about two minutes after 11.00. Mr. President, I consider this progressive legislation, progressive law.

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

**Sen. Dr. P. Richards:** Given the fact that we are about 10 years shy of the 100 year old 1939 Bill that we are operating under which is unacceptable at any realm even if we want to be a modern society and taken seriously. I also commend the approach and it is not the first time I have seen it, but I think it is becoming a trend by the Government to include stated objectives in the Bill, which I think is very admirable, going forward. I think that is the way we should go.

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

**Sen. Dr. P. Richards:** So we know exactly what the Bill the law, in large respect is intended to accomplish in this state, in Part I, clause 5, the objectives of the Act,

“(a) to facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes”

“(b) facilitate and obtain the fair and speedy resolution of dispute disputes by arbitration without unnecessary delay or expense”
Two of the stated issues before with time and costs, and:

“(c) facilitate the use of arbitration agreements in domestic and international matters”

Also very important:

“(d) facilitate the recognition and enforcement of arbitral awards, and

(e) adopt the”—what is the gold standard—“UNCITRAL Model Law”

—which is what is used around the globe and certainly in use already in other Caribbean countries. The opportunity also to improve the ease of doing business and to expedite these negotiations in complex commercial negotiations with both as we said before in the objectives, domestic and international partners.

My understanding is that someone told me not too long ago, there was a matter in Trinidad and Tobago, with an international partner that cost the local partner TT$4 million a day because it had to be sent to London, it was quoted in pounds in terms of the cost. So you can imagine that been going on for 10 days or a month, the cost to the local entity, and that sort of expense can be saved in Trinidad Tobago, in addition to unclogging the local courts which we know have challenges already. It has the potential also to improve our competitiveness as a business centre, our ease of doing business, and we have the potential if we get it right, as many have said before to become the centre for arbitration in the region.

Mr. President, the AG identified some broad parameters within which departments will engage in this proposed law including consent and participation, which is voluntary—selection of arbitrators, including experts, which is also very important, because many times matters go to the courts and the judges are not experts in the particular subject area, and the cost to bring in experts in those situations end up being exorbitant and the trial is sometimes delayed in quite an extensive manner, to try to find these experts in the context of the criminal justice
system as it exists now, in the civil arena. Consensual unusual proceedings, private and confidential and fidelity to decisions or finality of decisions.

The potential for virtual proceedings also is in alignment with modern thinking for business practices in Trinidad Tobago, and certainly in establishing us as a centre for arbitration and business which has been a long touted objective of various different administrations in Trinidad and Tobago, and this can help us move closer to that and by extension to being a business centre and an arbitration centre, bringing investment into Trinidad and Tobago in a big way, sustainable investments in Trinidad Tobago. So they also other tangible offshoots of this for the Trinidad and Tobago economy.

The issue of alternative dispute resolution, ADR, may very well also set an example across other domains of the country. We are very litigious society and if by example we see the business community taking this step in Trinidad and Tobago, maybe it can trickle to other areas where we have a lot of conflict in the country and we use that sort of alternative dispute resolution approach in many of the contentious issues facing Trinidad Tobago. So I think we can also gain in that by setting an example in one sector, but it being an example to other sectors, not to be confrontational—maybe we could even employ it in this honourable Chamber at some point.

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

**Sen. Dr. P. Richards:** And we are also aware in Trinidad and Tobago, that the judiciary has been championing ADR and mediation in many matters, as opposed to litigation, which bodes well for us as a country. Many have identified—and when I first and this was a lot of homework, I have to tell you all, through Mr. President, this, going through this and trying to identify—because part of our job, or the main part of our job, though, it may be straightforward to many, is to
scrutinize the legislation, the Bill, to make sure that there are no gaps, to make sure that the objectives are being attained to make sure that no one benefits inordinately more than another.

4.45 p.m.

So in terms of doing due diligence, you really have to go through and read and reread and understand. So on first reading, I had grave concerns about Part X, which many others have raised, Sen. Seepersad, Sen. Lutchmedial. The Minister of Tourism, Culture and the Arts also referenced it with clause 60, and the potential for—well, nefarious activity. You may call me a cynic, but we have seen the issue of state enterprises and entities in several different administrations siphoned off billions of dollars corruptly in this country. Let us not pretend, we all know it.

So being very meticulous about the potential for that, I think it is also part of our jobs here as legislators. It may slip the Government, it may slip any other person but I pay particular attention to the potential—I am not imputing improper motive or intention, but you never know who may be in a position to exploit a gap in legislation, and I think we have to be careful with that.

So I had concerns about clause 60, like many others, but when you read it in its entirety, and it reads:

“Arbitral proceedings shall be private or confidential.”

That is part (1).

“(2) Disclosure by the arbitral tribunal or a party, of confidential information relating to the arbitration shall be actionable as a breach of an obligation of confidence unless the disclosure...”

And there are the provisos, so that there are openings for disclosure under specific circumstances:
“(a) is authorised, expressly or impliedly, by the parties or can reasonably be considered as having been so authorised;
(b) is required by the arbitral tribunal or is otherwise made to assist or enable the arbitral tribunal to conduct the arbitration;”

Because you do not want, they need to tell another party for expertise and they end up in a breach because of that. So it is allowed under that condition.

“(c) is required –
   (i) in order to comply with any enactment or rule of law;”

Very important. So a part is cleaved out there for other aspects of the legislative framework to intervene if a breach is required under that specific condition.

“(ii) for the proper performance of the public functions of the discloser; or
   (ii) in order to enable any public body or officeholder to perform public functions properly;”

And I will go down, pass the others, to (e):

“(e) is in the public interest;
(f) is necessary in the interests of justice;”

Now, those are openings for breach of the disclosure and confidentiality provisions in the Act. And while they are there, and admirable that they are there, we all know how litigious this society has become, because somebody will have to actually test it. Because who will determine what is in the public interest when two parties are negotiating?

Someone may say, “I suspect something onerous is going on.” For example, if we have a state enterprise negotiating with an international partner in a particular circumstance and they both have nefarious intentions, one side chooses one arbitrator, the other side chooses the other arbitrator, and they collude to choose a
third arbitrator who will further their interests. That is a possibility.

In that circumstance, an outside entity or person who may have information that something is terribly wrong and may put the State at a disadvantage needs to be able to intervene in the public interest. But who makes that intervention, and who decides that that is in the public interest to intervene, according to the provisions of the law? That is where the little nebulous area comes in, and that is where some people may still have concerns because we all know how creative we are in Trinidad and Tobago, or how creative we have been in stealing from the public. And I will say it plainly, it is stealing. While this, as I said before, is progressive law, we have to be au courant with our history. It has been our history, and we cannot pretend it has not happened before and it may not happen again. So we have to protect the public interest.

So my suggestion is that for negotiations that involve state entities or state enterprises, or the State in any way, that we insert some sort of provision that one of the arbitrators, or more, in terms of the third one, may be nominated by an independent professional organization or civil society organization that has the public trust at heart. That way at least one individual in the room cannot be swayed, or hopefully cannot be swayed to engage or facilitate dishonest action. I think that may be something that we may want to consider, so that we do not end up having to litigate this, with someone bringing a charge of impropriety and then having to take it to court, and the High Court and the Privy Council, to determine if the public interest has been served, and if an intervention through the public interest clause should be triggered. Because I can see where we are in society and that people have legitimate concerns about propriety in public affairs, particularly, as I think it was Sen. Mark who would have indicated $25 billion, $30 billion in state services procured by the State every year. So we have to protect the public
interest, and we have to put as many safeguards as possible to protect it.

As I indicated, I think I went through quite a bit of detail to indicate in good faith that a lot has been put in here to mitigate that, but I think we can possibly go one step further in terms of ensuring the public interest, given our history in Trinidad and Tobago.

Mr. President, also, one of the issues that I have not seen addressed is the issue of conflict of interest. And maybe I missed it because, as I said, it is a voluminous 67-clause Bill. But when you look at the Bill, I do not see provisions for declarations of conflicts of interest beforehand or during the proceedings, or conflicts of interest that may arise during the proceedings related to an arbitrator. So someone may fail to disclose, and what is the penalty for that? Because it is one thing to put the provision for conflict of interest in the law, it is another thing to discourage it with a hefty penalty or fine. Because a conflict of interest with multimillion-dollar deals is a serious issue. It also opens the door for potential corruption, and we have to guard against that fervently in the public interest once again.

So I think some type of clarity—through you, to the hon. Attorney General when he is wrapping up, if we could get some sort of clarity on that conflict of interest issue where chosen arbitrators are concerned from each of the parties, and also the potential third arbitrator, which is supposed to be agreed upon, or more arbitrators, by the parties engaged in the negotiation.

So, as I said, I was not going to be particularly long. I just wanted to identify and put on record that I think this is progressive legislation. It is needed in Trinidad and Tobago, not only to modernize the framework and to update the 1939 law, but to put us on competitive footing with other players in the region, in terms of our business environment in Trinidad and Tobago. I have identified the areas of
Arbitration Bill, 2023

Sen. Dr. Richards (cont’d)

concern, as others have, and potential remedies for those. With those few words, Mr. President, I thank you.

Hon. Senators: [Desk thumping]

Mr. President: Attorney General.

Hon. Senators: [Desk thumping]

The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Thank you very much, Mr. President, and thank you to my colleagues who have contributed to this debate today.

I would first wish to express my appreciation, as I seem to be getting into the habit of doing, to my colleagues on the Independent Bench for the thoughtful, careful, studied commitment to nation contributions.

Hon. Senators: [Desk thumping]

Sen. The Hon. R. Amour SC: And so I would like, first of all, to address some of the remarks that have been made today by my Independent colleagues, to reassure them that some of the concerns which have been addressed are already taken care of in the Bill which the Government wishes this House to pass, and to reassure them further that in one particular instance, which I will come to, I have listened carefully to the comments and I will make a further contribution.

First of all, if I may, Mr. President, address some of the comments of learned Sen. Seepersad, who went into some detail on some of her concerns, which I think happily I am able to address by a careful review of clauses of the Bill which is before us today. She listed, as I took note, seven or eight concerns, some of which were subdivided, and I will attempt to deal with concerns two to seven first. I will deal with concern number one last, because when I come to deal with concern number one, I will want to address one of the concerns that has also been addressed by her Independent colleague, Sen. Teemal.

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So turning first to the concern raised with respect to lack of formal discovery provided for in the Bill, which was the second of the concerns addressed by Sen. Teemal. I think those concerns, if I may say, through you Mr. President, can be addressed when we read clauses 44, 45 and 28 of the Bill together. Because if what we are concerned with is a lack of process for formal discovery in the arbitration procedure, when we look at clauses 44 and 45—first of all, it is very interesting that the draftspersons, UNCITRAL, who at the end of the day are the principal draftspersons, it is very interesting what is said in the Bill.

So clause 44 tells us:

“An arbitral tribunal or...”—importantly—“a party...”

Remembering always that we are concerned here with giving effect to the contractual intention of the parties to the agreement.

“An arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the Court assistance in taking evidence and the Court may execute the request within its competence and according to its rules”—that is to say the court’s rules—“on taking evidence.”

45(1):

“A party to arbitral proceedings may use the same Court procedures as are available in relation to legal proceedings to secure the attendance before the tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.

(2) The Court procedures under subsection (1) may only be done with the permission of the tribunal or the agreement of the other parties.

(3) The Court procedures may only be used if—

(a) the witness is in Trinidad and Tobago; and

(b) the arbitral proceedings are being conducted in Trinidad and
(4) A person shall not be compelled by virtue of this section to produce any document or other material evidence which he could not be compelled to produce in legal proceedings.”

We remind ourselves, Mr. President, that “Court” used as that word only “Court”—because there are other passages that refer to “state court” or “competent Court”, we will come to that. But we remind ourselves from the definition section of the Bill that “Court” is defined to mean the Supreme Court of Judicature.

So when we read clauses 44 and 45, we are reassured, for purposes of formal disclosure and formal discovery purposes, that either at the instance of the arbitral tribunal or at the request of one or other of the parties to the arbitration, can ask the court, the Supreme Court of Trinidad and Tobago, to invoke all of its procedural force to ensure relevantly, within the contexts of the dispute that is taking place, that there is formal discovery of process in the course of the arbitration.

5.00 p.m.

And there is also clause 28 of this Bill which deals with disclosure, 28 reads, sub-clause (1):

“An arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.”

And it continues at sub-clause (2) that deals with the interim measures and the preliminary orders. But the point there, without belabouring it unduly, is that both the tribunal and the court, at the request of a party, are able to invoke disclosure procedures full and ample formal discovery within the rules of the court’s evidentiary proceedings. So that, I hope, addresses the first concern—number two of Sen. Seeppersad.
Her second concern was that it will not always be cost-effective for parties to agreements to be able to undertake the cost of arbitral proceedings. Well that is a truism, that is a reality. It is often not the case that parties can earn enough money to afford expensive lawyers to go to court. We will have to deal with that as best as we can, but ultimately at the end of the day, the legislation that we are asking this Senate to pass is not to exclude access to justice but to improve access to justice. And we will have to deal with to availability of parties to be able to afford to access the arbitral proceedings within the framework of the agreements which they have signed. One would assume when they enter into the agreements, they have some means by which they would expect to be able to enforce the agreements which they have voluntarily and consensually entered into.

Sen. Teemal made the point as well, point number four, that there is limited precedent value in arbitral proceedings because the awards of the arbitrators unlike a court decision is not a precedent which can be relied on and that is correct. But there are two sides to every coin and the flip side to the coin of the absence of precedent is the encouragement of the arbitral process to allow for flexibility from case to case on every occasion that parties to an agreement invoke the arbitration clause in their agreement and seek to appoint arbitrators who will be regulated by the provisions of this legislation when we pass it into law.

And of course, respecting the fact that the precedent value of an award of an arbitrator in principle is limited by the fact that the parties to the agreement also ex necessitate have agreed that the proceedings of the arbitral tribunal will be confidential. So it is both sides of the coin and we accept that the awards of the arbitrator will not be published so as to be precedent. But we have every confidence that given the fact that parties to contract have agreed to this process, given the fact that they have the flexibility outside of the norm, which is available
in a court of judicature to select arbitrators with reference to their specialized expertise, that we can expect in the norm, there will always be exceptions to the norm. We can expect in the norm that the parties to the arbitration agreements who have invoked the arbitral procedures will result in getting what they consider to have been justice done to them.

5.05 p.m.

The lack of, the fifth point that was raised by Sen. Seepersad was the lack of public scrutiny and transparency. And I would suggest that the very sections that I have referred to in the context of confidentiality because the process will remain ultimately confidential. But in the course of the process while the parties are engaging the jurisdiction of the arbitrator and engaging the procedures to allow them access to justice, I would confidentially expect that the sections that I just spent some time on in respect of formal discovery, clauses 28, 44 and 45 will conduce to a degree of public scrutiny and transparency inter partes, those parties who are before the arbitration tribunal in order to get justice. And, of course, we will have to rely on, which is a point that I will come to when I address one of the points raised by Senators Deyalsingh and Richards, we will have to rely on the integrity of the arbitrators who are chosen by the parties and therefore, in consequence, the integrity of the process.

We live in, regrettably, an age where mistrust has almost become a norm of our existence but I am not one of those who sees doom at the end of the corridor and I think we have to continue to work towards improving our conditions. And therefore, enabling this legislation which will be passed into law to allow for greater access to justice in spite of our imperfections we are improving the whole lot.

And one of the other points that was made by Sen. Seepersad had to do with
the concern that she raised about the confidentiality of the process. And that is a flag post of the process. So that I can understand the concern that emanates from the confidentiality provision because in our society it could be used as a synonym for secrecy and all that is ill with secrecy. But ultimately at the end of the day, on the basis that I have just articulated, I think that it conduces to a process that will allow an honest exchange of positions with a commitment to moving forward. And that allows—takes me directly to a point which was made by my colleague, the Minister of Trade and Industry, which I applaud, and it is the simple point that she made when she was making, my colleague Sen. Gopee-Scoon, when she was making her contribution, that the parties will engage in the arbitral process while preserving their relationship. And that is one of the unique features of the alternative dispute resolution process because in an alternative dispute resolution process what we seek to discourage is gloves off, fight at all cost and walk away the victor and leave the vanquished sprawled on the floor with a not breath of life left in her or his body. That is not the process of alternative dispute resolution. The process of alternative dispute resolution is to recognize and respect the fact that people will have differences but their differences need not destroy them nor be used as tools to destroy each other. You can engage your differences, resolve them and in the commercial business environment you can continue to do business with each other.

So, I applaud Sen. Gopee-Scoon, my colleague the Minister of Trade and Industry, for reminding us of that, that parties will engage in the arbitral process while preserving their relationship. And that speaks to the essential need for the process to be preserved in a condition of confidentiality so that howsoever the dispute is resolved, at the end of process the parties can shake hands and hopefully can continue to engage with each other in their commercial relations for the
betterment of their individual enterprise and for the national societal betterment.

Sen. Seepersad spoke to a couple other things that I will just wish to address briefly. The potential disadvantages, the limited appeal, was one of the concerns that she raised. And that raises an important point in the frame and the ethos of this legislation because we recognize that in this legislation when we pass it, as I hope we will, the court is given a limited role by way of appeals. And that is deliberate and is the choice of the parties who ultimately have chosen an alternative option of the arbitral process because what we recognize is that the court process can be time consuming and it can give an unfair advantage to parties who are engaged in the litigation process. I have been an advocate for 40 years. You can get quite involved in the dispute without the resolution in sight and yet walk away the victor because ultimately the adversarial process does not necessarily reward truth, it rewards strategic and skilful manoeuvring and that is what we are seeking to avoid by encouraging frank and candid exchanges in the interest of persons continuing to do business. And that is why the appeals are limited but it does not mean that you do not have access to court.

Throughout this Bill, and I dealt with it in my opening, there are any number of instances in which the Bill makes explicit provision for the parties to have access to the supervisory jurisdiction of the court but limiting it to first instance level of the High Court and not taking it to the level of the Court of Appeal. So that is the limitation but it is not that the discretion and the jurisdiction of the High Court to correct patent errors is being excluded. And therefore, when we talk about limited appeal, we have to accept that the courts can be availed but not to the extent of appeals all the way to the Court of Appeal and the Privy Council or the Caribbean Court of Justice depending on which jurisdiction we come from within Caricom because ultimately we want an early resolution of the dispute so that
parties can continue to do business.

It is, for instance, significant that in the encouragement that is given, and I have dealt with it already, I will not repeat myself, in the encouragement that is given for arbitrators and foreign representatives to come into Trinidad, the seat of arbitration under this Bill, you are allowed to get the result in within 30 days. And if you get the result in on a fair process within 30 days, you get tax exemptions for getting the work done briskly because ultimately what we want is for people to continue to do business with each other.

There were other very telling contributions from some of my other colleagues on the bench and I will turn to those now with the limited time that I have left. Sen. Paul Richards made, as is a habit of his that I look forward to been privy to, telling contributions. So that he made a point that is of interest when he spoke to the fact that he hoped that the advancement that we will be making in Trinidad and Tobago by adopting the alternative dispute resolution route will trickle down and will persuade others in our society to recognize that progress is going to be made by those of us who are able to resolve our differences with amicable embrace as opposed adversarial disgrace.

And it reminded me to remind this House, Sen. Richards’ contribution on the advantage of alternative dispute resolution that there is a pedigree that this society can be proud of in terms of alternative dispute resolution. And that pedigree, Mr. President, is taken from as far back as 1966, the Industrial Relations Act of Trinidad and Tobago. That was Trinidad and Tobago’s early embrace of alternative dispute resolutions because you will see in section 12 of the Industrial Relations Act that parties are encouraged even in the face of acrid disputes between employers and trade unions to seek conciliation before the Industrial Court of Trinidad and Tobago. And that is legislation that has been on our law
books since 1965. And there is actually a division in the Ministry of Labour, the Conciliatory, Advisory and Advocacy Division, that is responsible for managing the resolution of labour conflict in the society including the private sector, state enterprises sector and specific public sector entities. And one of the services offered by that division is dispute resolution where conciliation proceedings are conducted between employers and unions, in rights examples, dismissals, suspensions, warning letters, et cetera, and interest disputes.

So our resort to alternative dispute resolution in this country has been trickling up since 1965, and what we are doing today with the passage of this Bill into law will be to give flower and blossom to an early desire of this society to be better able to resolve its disputes without unnecessary conflict.

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

**Sen. The Hon. R. Armour SC:** Sen. Richards also spoke to clause 60 of the Bill. And I was pleased to hear him, as he did, interpret the clause in the way that he did and it is very interesting because the disclosure that is spoken to in clause 62, when it is read carefully, 60 subclause (2) that is, when it is read carefully is not a prohibition against disclosure because subclause (2) ends or begins unless the disclosure and then certain things are authorized. So one could almost read it in the converse to mean, notwithstanding subclause (1), that is to say:

“Arbitral proceedings shall be private and confidential…”

Notwithstanding that, disclosure may be permitted in the circumstances outlined at sub (a) through to sub (g) of subclause (2) in the discretion of the arbitral party or a party to the dispute. So again that is significant. And I was heartened to hear Sen. Richards speak to his interpretation of clause 62 correctly as he did.

That brings me to one of the points that was made by Sen. Deyalsingh because he, with justification, raised the concern about corruption. And I want to
Arbitration Bill, 2023

Sen. The Hon R. Amour SC (cont’d)

reassure Sen. Deyalsingh as I reassure Sen. Richards and all of the Senators who have the true interest of this country at heart and are interested in legislation that will promote the national interest. That even in the evolving reality of the arbitral tribunal, there is the recognition that the all pervasive corruption about which we are all concerned cannot be taken for granted nor ignored by a fair justice system of which the arbitral proceedings will be part.

5.20 p.m.

And with your leave, Mr. President, I would refer this House to an article out of the International Bar Association. That article is headed—if I may, it is headed “Addressing corruption allegations in international commercial arbitration and investment arbitration”, dated Friday 21, October, 2022, by Stéphane de Navacelle of Navacelle, Paris; Salomé Garnier of Paris, and David Duran Hernandez of Paris. Paragraph 1, with your leave, states:

“Corruption is as disapproved as it is widespread, both in the public and private sectors.”

It is a long article and there are two other articles—I commend it in its entirety to my colleagues. There are two other articles that are of interest by way of reassurance to the Senators who are concerned to ensure that the confidentiality of the arbitration process shall not derail the transparency and accountability, which all persons concerned to expose corruption must remain focused on.

Paragraph 15:

“Another possibility for arbitral tribunals to bar investor’s claims has been to apply the ‘clean hands’ doctrine, which requires that the claimant should have a proper conduct. Indeed, ‘if some form of illegal or improper conduct
is found on the part of the investor, his or her hands will be ‘unclean,’ his claims will be barred and any loss suffered will lie where it falls.’ This doctrine was used by arbitrators to avoid granting access ‘to international Arbitration to resolve disputes, because it is evident that its act had a fraudulent origin and, as provided by the legal maxim, ‘nobody can benefit from his own fraud to absence of fraud in his conduct at the time of formulating his claims’.”

And paragraph 28:

“Effectively, as arbitrators have become increasingly active in the fight against corruption…”

I repeat that:

“Effectively, as arbitrators have become increasingly active in the fight against corruption, they need to be careful in rendering enforceable awards that do not violate international public policy. Therefore, an award in which allegations of corruption are ignored or in which an unlawful act is legitimized in contravention of these principles runs the risk of being overturned.”

So we have an international consciousness in the learning that is being applied to judge, assure and interrogate the conduct of arbitrators, that they are on notice not to permit corruption to derail the process which they are engaged in.

I dare say that as we pass this legislation into law, we will, as I have already committed, keep it under review. And if there are further amendments that need to be brought to the table, we will be returning to the Parliament, we will keep it
under review, but for the time being I would urge the Members of the Senate to
support the Government’s efforts to pass this legislation into law.

With respect to Sen. Teemal—how much more time do I have, Mr.
President, if I may ask?

Mr. President: You end at 5.38.

Teemal, I want to spend a little time reassuring Sen. Teemal with respect to the
concerns that he addressed, all legitimate concerns, starting with clause 4, which he
was concerned about, 4(2) in particular. I would recommend that we read clause 4
in its entirety, because I understood Sen. Teemal’s concern to be that clause 4(2)
was placing domestic arbitration at something of a disadvantage in terms of the
unenforceability of the Act in relation to domestic arbitration. I hope that I did not
misunderstand the learned Senator. And if I did, I will give way to be clarified.
Clause 4 reads in its entirety, 4(1):

“This Act applies to domestic arbitration and international arbitration,
subject to any agreement in force between Trinidad and Tobago and any
other State or States.”

So we begin with the clear articulate expressed provision that says:

“This Act applies to domestic arbitration and international arbitration…”

We remind ourselves that the immediate proceeding section, clause 3, tells us:

“This Act binds the State.”

So the Act is all-encompassing. It does seek to apply to any particular class or
body of persons to the exclusion of others, except where it makes particular
exception, and that is where subclause (2) then takes us, the subclause which caused Sen. Teemal some concern. It reads:

“The provisions of this Act, except sections 11, 12, 30, 31, 32, 56 and 57, apply only if the place of arbitration is in Trinidad and Tobago.”

And subclause (3) goes on to say:

“This Act shall not affect any other written law of Trinidad and Tobago by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only in accordance with provisions other than those of this Act.”

Read in its entirety, we begin with the understanding that the court to which we are going to turn when we look at clauses 11 through to those clauses, which are accepted, is not the Supreme Court of Judicature which is defined as the court in the definition section of the legislation. So what subclause (2) is saying is that bearing in mind that this is a piece of legislation that is going to apply in Trinidad and Tobago, where Trinidad and Tobago is the seat of the arbitration, in limited circumstances where it will be called on for application to circumstances arising out of Trinidad and Tobago, the Act may not apply. Because the national law of the countries outside of Trinidad and Tobago will have to be allowed to apply according to those national laws.

So if we go immediately to clause 11, we see that clause 11, one of the excepted clauses, says:

“A Court before which an action is brought in a matter which is the subject of an arbitration agreements shall, if a party so requests…”—et cetera.
And we see that that clause, read in its entirety, refers in the first instance to a court in which an action is brought on an agreement. The agreement could be an agreement struck anywhere. It could be an agreement struck in Paris, which is subject to the national laws of Paris, or it could be an agreement struck in Venezuela, according to the laws of Venezuela, wherever. It begins:

“A Court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests…refer the…” — dispute—“…to arbitration.”

So what happens is that if it applies in Trinidad, this Act will apply to regulate the dispute according to the court’s jurisdiction, the Supreme Court of Judicature. But if it is in a court outside of Trinidad, well then the court outside of Trinidad will have the appropriate jurisdiction.

When we turn to the other subclauses, clause 12:

“It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a Court, an interim measure for protection and for a Court to grant such measure.”

And that is, again, consistent with the fact that you are dealing there generally with an arbitration agreement which could be an arbitration agreement subject to the national laws of Trinidad and Tobago, enforceable in Trinidad by our courts or in a country other than Trinidad and Tobago.

That point is made even clearer when we go to clause 30, the clause next excepted by the clause 4(2). It says, “Recognition and enforcement”:

“Subject to section 31, an interim measure”—et cetera—“issued by an
arbitral tribunal shall, irrespective of the country in which it was issued, be –
(a) recognised as binding; and
(b) unless otherwise provided by the arbitral tribunal, enforced, upon application to the competent Court.”

So the draftsman here is using a turn of phrase to delineate and underscore the fact that he is not referring to court in the normal course, as defined as the Supreme Court of Judicature definition section of this legislation, but to the competent court, that is to say the competent court of the state in which the arbitration agreement is going to be capable of enforcement. And that is why those clauses are accepted by clause 4(2). If we were to look at clause 30(3):

“The Court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security…”

So there is a distinction made between the Supreme Court of Judicature enforcing its jurisdiction in the jurisdiction of Trinidad and Tobago, that is the general application of clause 4(2), except when applicability of court’s jurisdiction arises in other national laws to be enforced by those other national courts. So I hope I have addressed in some small measure the concern which Sen. Teemal had on clause 4(2). It cannot be read on its own, it must be read in its entirety, not only in relation to the section in its entirety, but on the cannons of construction it must be read within the framework of the Act as a whole.

Sen. Teemal also had a concern about clause 5(e), the objects clause, which says it incorporates the UNICITRAL law, and he was expressing the concern that
perhaps it should go on to say, “subject to the provisions of this Act.” Well, I can understand the concern and it is a legitimate concern, because you cannot have a national law that incorporates a model law outside of the country and make the national law subject to the changes and the exigencies of that international law.

But that is not what is happening here. Because at the date at which we pass this Bill and it becomes the law of the State of Trinidad and Tobago, so much of the UNCITRAL model, as we adopted, is what becomes the law of this State. And always, going into the future, the law will be always speaking to continue to apply for purposes of enforcement in Trinidad and Tobago according to that law. If UNCITRAL were to change their model in 2025, we would have to come back to this Parliament to ask the Parliament to allow us to amend our international—our national law, the Arbitration Bill, 2023, to keep pace with the amendments that UNCITRAL may be promoting in the future.

So we start with the fact that this is the law, it binds the State, it applies to all domestic and international arbitration within Trinidad and Tobago and without, and it is to be applied at the date of its passage going into the future, to apply that which we inherited from UNCITRAL at the date of its passage. And the clauses that Sen. Teemal expressed concerns about are also addressed, clauses 8 and 9, by understanding that the Supreme Court of Judicature of Trinidad and Tobago is the court that will continue to have the limited jurisdiction in its supervisory jurisdiction to compel adherence to the laws of Trinidad and Tobago.

And there is an interesting judgement, with your leave, Mr. President, which has emerged out of this jurisdiction, dated the 14th of December, 2022, on the
existing Act, Arbitration Act, Chap. 5:01, which we will expect when we pass this Bill into law will be repealed. And it is the decision, the OAS decision, civil action 2022-01832, a judgement of Mr. Justice Frank Seepersad, dated the 14th of December, 2022. And he was called on to apply section 19. Sen. Lutchmedial spoke to section 19 of the Arbitration Act.

Even in the very limited circumstances of section 19 of the Arbitration Act, as it presently obtains, this is what the judge, Mr. Justice Frank Seepersad, had to say as a matter of proper statutory construction to paragraph 24 in construing the provisions of the arbitration agreement regulated by that law:

“The court also has an inherent jurisdiction to set aside an award when the following factors apply, namely if it is:

a. subject to an error on the face of the award;
b. wholly or in part in excess of jurisdiction;
c. subject to a patent substantive defect; or
d. subject to an admitted mistake.”

Two points emerged from that dictum in the judgement of Justice Seepersad.

5.35 p.m.

A supreme court has and is endowed with the amplitude of what is known as the powers inherent in a supreme court, and will always have the jurisdiction to apply the law as it stands either at common law or statute.

Mr President: AG, you have three more minutes.

Sen. The Hon. R. Armour SC: Thank you, Mr. President. The significance of that is that in the absence of a complete ouster clause, and sections 8 and 9 of this Bill are not complete ouster clauses. They expressly speak to and continue to
apply the jurisdiction of the Supreme Court of Judicature. The jurisdiction as an inherent court of jurisdiction will continue to apply. So that in answer to Sen. Teemal’s concerns about clauses 8 and 9, I affirm the fact that our court will continue to be able to exercise the amplitude of its jurisdiction.

Mr. President, I am an optimistic positively minded person and I am loathed ever to rise unless I am given good cause to rise to take objection to anything that is available to be said by any of our citizenry in the freedom of speech which we are blessed to express in this country and particularly protected in this hallowed hall in exercising. But as I end, and I ask this House to embrace the Bill that is before it, the Arbitration Bill, 2023, on Standing Order 46(8) in which, “Judges of the Supreme Court...or other persons performing judicial functions shall not be raised except upon a substantive motion moved for the purpose”. I want to go on record to say I abhor the irresponsible and dangerous comments of Sen. Mark today. Leave my wife out of it.

Hon. Senators: [Desk thumping]

Sen. The Hon. R. Armour SC: Do not call my wife’s name as a judge of the Industrial Court of Trinidad and Tobago in this Chamber in your political gayelle.

Hon. Senators: [Desk thumping]

Sen. The Hon. R. Armour SC: Mr. President, I beg to move. Thank you very much.

Hon. Senators: [Desk thumping]

Question put.

Hon. Senators: [Interruption]

Mr President: I will start again.

Question put and agreed to.

Bill accordingly read a second time.
Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Hon. Senators, there are 68 clauses in this Bill and we have amendments from the Attorney General, from Sen. Teemal, as well as Sen. Lutchmedial. And just as a point of reminder, when Senators are putting their amendments in writing it is to be forwarded to the Clerk of the Senate first, who will then forward it to all Senators, just to make sure that all Senators are in receipt of it. So I will ask the question: Are all Senators in receipt of the three sets of amendments as put forward by the Senators I have just called out? Yes?

Sen. Mark: We have the Attorney General, we have our sister Jayanti, but we do not have Sen. Teemal.

Mr. Chairman: You do not have Sen. Teemal. Okay. So all amendments have been circulated electronically, I will now ask Sen. Mark and team to just verify that you have it in your email. Yes? Okay. Great. So we can begin.

Clause 1 ordered to stand part of the Bill.

Clause 2.

Question proposed: That clause 2 stand part of the Bill.

Delete definition “arbitrator”.

Mr. Chairman: Attorney General.

Sen. Armour SC: Thank you very much, Mr. Chairman. I would like to propose that the definition “arbitrator” in clause 2 be deleted please.

Mr. Chairman: Okay. Sen. Mark.

Sen. Mark: I just wanted to get clarification, Chair, and that has to do with the confidence that we would like to build re: our international relations particularly when foreigners are coming to T&T. And I make specific reference to “data message” and “electronic communication” under definition because I think you are
under clause 2.

So what I am proposing, and I would like the Attorney General to clarify, is that in the absence of the proclamation of the Data Protection Act and the Electronic Transaction Act, how would our foreign colleagues who are coming here to be engaged in arbitral matters, or arbitration matters, how are they going to feel if, for instance, you are dealing with data messages as well as matters of communication of an electronic communication nature but the law that governs these things have not been proclaimed in Trinidad and Tobago? So I just wanted to ask, through you, Mr. Chairman, to the Attorney General, whether in the absence of the proclamation of these two pieces of legislation would that contribute a lack of confidence?

Mr. Chairman: Okay. So Sen. Mark, you are asking for clarification from—
Sen. Mark: No, just clarification from the Attorney General.

Mr. Chairman: Okay. Attorney General.

Sen. Armour SC: The clarification that I can give to Sen. Mark is that persons who enter Trinidad and Tobago, whether they be foreign investors or otherwise, will be expected to comply with the law as proclaimed at the point of their entry. If the law has been proclaimed, that is the law. If it is not yet been proclaimed then it is not the law, and they will no doubt get proper advice on their requirement to comply with our national laws.

Mr. Chairman: Any other comments or questions as it relates to clause 2 and the proposed amendment by the Attorney General? Okay. So hon. Senators the question is that clause 2, be amended, as circulated by the Attorney General.

Question put and agreed to.

Clause 2, as amended, ordered to stand part of the Bill.
Clause 3 ordered to stand part of the Bill.
Clause 4.

*Question proposed:* That clause 4 stand part of the Bill.

**Mr. Chairman:** Sen. Teemal.

**Sen. Teemal:** Mr. Chairman, I had prepared this amendment prior to the wrap up of the AG, and in the context of what—he did address this extensively in his wrap up, so I am withdrawing this proposed amendment.

*Amendment withdrawn.*

**Mr. Chairman:** So you withdraw? So the proposed amendment to clause 4 put forward by Sen. Teemal is so withdrawn. As such, I shall proceed with the question.

*Question put and agreed to.*

*Clause 4 ordered to stand part of the Bill.*

Clause 5.

*Question proposed:* That clause 5 stand part of the Bill.

**Mr. Chairman:** Sen. Teemal.

**Sen. Teemal:** Mr, Chairman, the hon. Attorney General did address this concern that I raised in my contribution. Now although his wrap up did address the concern rather extensively, I still want to be on the side of caution and probably still ask for this amendment to be considered subject to the provisions of Bill after the word “law”.

**Mr. Chairman:** Okay. Attorney General.

**Sen. Armour SC:** Thank you, Mr. Chair. I can understand the concerns of Sen. Teemal, but I think that—and I am not a draftsperson, so, of course, I will bow to the draftsperson. So can I just have one minute please? [Pause] Thank you for that opportunity, Mr. Chairman. Whilst I appreciate the concerns of Sen. Teemal, my initial instinct has just been advised by those who are better at drafting than I
am, and the question that I asked which I now utter as a statement is, the amendment which is being suggested respectfully is superfluous, because everything in the Act is subject to the provisions of the Act and particularly in light of the very clear language, earlier language of sections 3 and 4 of the Act. I do not think these words are necessary.

Mr. Chairman: Sen. Teemal, is it your wish to have this question put for the Senate still?

Sen. Teemal: No, Chairman, I will withdraw. There is sufficient coverage I think in the Act. It is just that I just wanted to be extra careful.

Amendment withdrawn.

Mr. Chairman: Okay. So hon. Senators, the proposed amendment by Sen. Teemal at clause 5 has been withdrawn and as such I shall now put the question.

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clauses 6 to 13 ordered to stand part of the Bill.

Clause 14.

Question proposed: That clause 14 stand part of the Bill.

Mr. Chairman: Sen. Teemal.

Sen. Teemal: Chairman, what I am proposing is that that we insert the words “who shall also be the presiding arbitrator of the arbitral tribunal” after the words “third arbitrator”. I am of the view that if we do have an arbitration panel, a tribunal consisting of three persons, then we should clearly identify who is going to chair that panel or who is going to be the presiding arbitrator.

5.50 p.m.

Particularly in the light that each party nominates one arbitrator and the two arbitrators nominate the third arbitrator but it is not clear who would be the
presiding arbitrator in that tribunal panel. So this is the reason for the proposed amendment.

**Sen. Armour SC:** May I have a minute to consult with my team please? [Pause]

**Mr. Chairman:** Attorney General.

**Sen. Armour SC:** Thank you, Mr. Chair. Bearing in mind that this is a Bill that is drafted employing the UNCITRAL model, and bearing in mind that the parties to the agreement are the driving force to invoke the arbitration and thereafter to invoke, subject of course to the jurisdiction of the tribunal to invoke the procedures that will be apply, we do not consider that this suggested amendment is necessary and it could in fact collide with the model, the UNCITRAL model which gives pre-eminence to the wishes of the parties to control their procedure and therefore we would not agree to this amendment.

**Mr. Chairman:** Sen. Teemal. Oh, Sen. Dr. Richards.

**Sen. Dr. Richards:** Thank you. Thank you, through you, Mr. Chairman, in the absence, hon. Attorney General, of inclusion of Sen. Teemal’s suggestion, suggested amendment, is it that is a free-flowing discussion at these levels or can they nominate someone to be guiding the discussions the arbitrators who are agreed to?

**Mr. Chairman:** Attorney General.

**Sen. Armour SC:** It would have to be a discussion that would have to take place amongst the arbitrators who have been chosen by the parties to resolve how they procedure procedurally to that point.

**Mr. Chairman:** Sen. Mark.

**Sen. Mark:** Chair, as it relates to 14(6), I should say, subclause (b), Attorney General, could you explain this provision here as it relates to the advisability of appointing an arbitrator of a nationality other than those of the parties? Who is
going to decide that? And when you talk about a person of another nationality, I am not too sure if we are looking outside of the jurisdiction of Trinidad and Tobago or we are looking within the Caribbean. I am not too sure so I am just trying to clarify this because it is a bit confusing as it stands.

Sen. Armour SC: Well, thank you, Sen. Mark. As I read clause 14(6), the language of the clause speaks for it itself.

“The Court, in appointing an arbitrator, shall—”

And then (a) is prescribed:

“have due regard to any qualifications…”

Et cetera and (b):

“in the case of a sole or third arbitrator…”

The court shall:

“…also take into the account the advisability of appointing an arbitrator of a nationality other that those of the parties.”

So it is a discretion given to the court bearing in mind that we are dealing with domestic or international arbitration, bearing in mind that the parties at that particular point in time maybe a French company with a Trinidadian company, the court may take into consideration that if the parties want to consider a French national to be one of the arbitrators, then that is appointed. It is in discretion of the court on the facts presented before her or him at the point in time.

Sen. Mark: Thank you, Mr. Chairman.

Mr. Chairman: Okay. Sen. Teemal.

Sen. Teemal: Yeah. I want to come back to my proposed amendment. I mean I hear what the hon. Attorney General is saying but being involved in one or two arbitration matters in the past, it is really a humbug and to me a backward step that if you do not have someone who can chair that tribunal, it could turn out to be
rather a messy affair, particularly when the arbitrators, they are appointed by either party and may be not willing to give way in certain instances.

So where the two arbitrators, one nominated by each party, they meet under the provisions of this clause to appoint a third arbitrator, I think it is a very safe approach seeing that the two parties and the arbitrators of the two parties have appointed a third arbitrator for that arbitrator to be a presiding arbitrator, more for an efficient functioning of the panel, a structured way of working together. Not that the presiding arbitrator derives any additional powers because he or she is the presiding arbitrator but it is just a question of chairing the panel.

Sen. Welch: Well can I suggest then—

Mr. Chairman: Sen. Welch, just one second. Are you adding to the proposed amendment of Sen Teemal?

Sen. Welch: Yes I am just—

Mr. Chairman: Proceed.

Sen. Welch: As opposed to the words “shall be the presiding arbitrator” because that suggests he is the presiding person but what about it shall be the chairman of the arbitration because the chairman merely coordinates but does not have any superior power over the other two as such. And I think Sen. Teemal’s point is valid in terms of tidiness of the proceedings but I would not use the words “presiding arbitrator” because it suggests that he has some greater function than the others.

Mr. Chairman: Okay. Sen. Lutchmedial.

Sen. Lutchmedial: Thank you, Mr. Chairman. I agree that perhaps the suggested term by Sen. Welch is better so it does not suggest superiority but perhaps because you want to leave it open to the parties to sort of contractually agree to the structure, perhaps you could say that “each party shall appoint one arbitrator and
the two arbitrators shall appoint the third arbitrator who shall be the chairman unless otherwise agreed by the parties”, because you leave it open to the parties in their contractual agreement to then decide who will be the chairman of coordinating arbitrator or whatever term you use. But in the event that is not specified in their contractual arrangement, well then the third arbitrator appointed by both of them will assume that role. It is a sort of a, you know, you leave it open to them to not have that procedure but if it is in the fault of anything being agreed, this is will be the procedure where the third one will be automatically the Chairman.

**Mr. Chairman:** Attorney General.

**Sen. Armour SC:** Thank you, Mr. Chairman. And I have had the time and I apologize to you, Mr. Chairman and to my colleagues because I read the amendment, the proposed amendment literally coming off my legs into this seat and I have had the time to look at it more carefully in the context of clause 14(3) as a whole and I think that what we are missing and I say this respectfully is that subclause (3)(a)(i) which is what Sen. Teemal is seeking to amend has to be read with subclause (3)(a)(ii) because what (3)(a)(i) says is:

“(i) each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third arbitrator; and

(ii) if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the Court…”

So that the contingency which Sen. Teemal is trying to guard with at (a)(i) to have a presiding arbitrator appointed is taken care of by (a)(ii) because if the two
arbitrators fail to agree, the third arbitrator, 30 days after the appointment, the appointment of that third arbitrator shall be made on the request of a party by the court.

**Sen. Dr. Dillon-Remy:** No, Chair. I do not agree with that. Sorry.

**Mr. Chairman:** Okay. Sen. Richards.

**Sen. Dr. Richards:** Thank you. Through you, Mr. Chairman, that is not what I understand Sen. Teemal to be suggesting. He is not suggesting there is a difficulty with appointing the third arbitrator with the process outlined. He is suggesting that there may be merit in having the two arbitrators from either side decide on a chairman to guide proceedings and according to Senator—is it Lutchmedial or Welch—that may or may not decide to assign a chairman to guide proceedings, not to decide upon a third arbitrator if they cannot decide. I do not think if that is the intention unless I am wrong.

**Mr. Chairman:** Sen. Teemal.

**Sen. Teemal:** Thanks, Sen. Richards, for the clarifications but I would agree with what Sen. Richards was putting forward because it reflects my intention in this proposed amendment. Sen. Welch has—if the term “presiding” has connotations from a legal perspective, I think, as he has suggested, Chairman, is a much more safer word and then Sen. Lutchmedial, I cannot recall her exact wording but if we add what she had proposed about unless—yeah.

**Mr. Chairman:** Okay, one second Sen. Mark. So I will take the Minister of Tourism, then I will take Sen. Mark and then I will have the Attorney General have his final say. So Minister of Tourism.

**Sen. Mitchell:** Thank you very much. I would like to refer us to Part VI, clause 34(1) where it says:

“Subject to the provisions of this Act, parties may agree on the procedure to
be followed by the arbitral tribunal in conducting the proceedings.”

So I think it is totally up to the parties to agree on how they proceed. Whether they want to proceed as the third arbitrator as a chairman or in any other way. It is a contractual sort of arrangement that these provisions are seeking to guide. So it has to be read in line with clause 34(1) in my respectful submission.

**Sen. Mark:** Chairman, I think that what Sen. Teemal is saying is that to avoid unnecessary confusion because remember as I understand it and I could be guided and corrected, when we are talking about mediation, we are talking informality. When we are talking about arbitration, it appears from our understanding of what is before us, a more formal kind of arrangement, of course, not at the level of a court or the judicial system. However, you do not want parties to be in a state of confusion as it relates to taking decisions to appoint someone to either chair the tribunal and if you do not have that specified in the law, based on what Sen. Teemal said, it could lead to a lot of confusion.

So we may not use the word “presiding” but we should use language that would indicate that the third party to be appointed as an arbitrator or to assume the role of chairman of proceedings of the tribunal. So the law could be very clear and predictable. That is how I am seeing it based on what is being said as well.

**Mr. Chairman:** Attorney General, your final comments.

**Sen. Armour SC:** May I through you, Mr. Chair, ask Sen. Lutchmedial to just repeat the recommendation she had made please?

**Sen. Lutchmedial:** So it should read:

Each party shall appoint one arbitrator and the two arbitrators who are appointed shall appoint the third arbitrator who shall be the presiding arbitrator of the arbitral tribunal unless otherwise specified by or unless otherwise agreed to by the parties.

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So you leave room for the parties to have their contractual procedure agreed and only when their contractual arrangement is silence, then the proposal that Sen. Teemal is putting forward would kick in as the automatic.

6:05 p.m.

Sen. Armour SC: Yes, I would be prepared to accept that with the introduction of “chairman” from Sen. Welch in place of “presiding arbitrator”, and the guarded words at the end by Sen. Lutchmedial.

Mr. Chairman: So that being said procedurally what we shall do is treat with Sen. Teemal’s proposed amendment as he has circulated, unless you withdraw that Sen. Teemal, pending the subsequent amendment as put forward by, I guess it would be Sen. Lutchmedial. I do not see what else there is to say, Sen. Mark, because we are moving to now treat and dispense with this particular clause.

Sen. Mark: Well, I will—just to add to what you have said, rather than rush it, may I suggest, through you, to the Attorney General, that we stand down this provision, get this thing in writing and make sure the hon. Attorney General—

Mr. Chairman: Is that amendable to everybody?

Sen. Mark:—is satisfied before we rush it—

Mr. Chairman: Yes?

Sen. Mark:—you know?

Mr. Chairman: Okay. Then we shall do that. We will stand down that particular clause, get the wording of the proposed amendment correct. But like I said, I just want to dispense with Sen. Teemal’s proposed amendment. So is it that you withdraw your amendment as proposed, pending the proper wording of the forthcoming amendment for this particular clause?
Sen. Teemal: Yes.

Mr. Chairman: Because your proposed amendment is worded very specifically and has to be dispensed with.

Sen. Teemal: No. I will withdraw in the context of the discussion and depending wording that is forthcoming.

Amendment withdrawn.

Mr. Chairman: All right. So done. Sen. Teemal’s proposed amendment for clause 14 is so withdrawn. We will also stand down this clause at this point in time to get the proper wording of an amendment as put forward by Sen. Lutchmedial.

Clause 14 deferred.

Clauses 15 to 18 ordered to stand part of the Bill.

Clause 19.

Question proposed: That clause 19 stand part of the Bill.

19 Delete clause 19.

Mr. Chairman: Attorney General.

Sen. Armour SC: Thank you, Mr. Chairman. I intimated earlier in my wind up that I had listened to the contributions of Senators Seepersad and Teemal, and in the context of the concerns raised by them, and having regard to the fact that clause 19 was a clause that had been recommended to us by the Judiciary, I am prepared to withdraw that clause, to delete clause 19 in its entirety.

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clause 20.

Question proposed: That clause 20 stand part of the Bill.
20 Delete clause 20.

**Mr. Chairman:** Attorney General.

**Sen. Armour SC:** Thank you, Mr. Chairman. And again, as I said, having reflected on the contributions of Senators Seepersad and Teemal, following on my deletion of clause 19, I would also ask to delete, for the same reasons, clause 20.

*Question put and agreed to.*

*Clause 20, as amended, ordered to stand part of the Bill.*

**Mr. Chairman:** Okay. So we are now moving to clauses 21 to 54, as there are no proposed amendments before me in relation to those clauses, and as such we take them en bloc. Clerk?

*Clauses 21 to 54.*

*Question proposed:* That clauses 21 to 54 now stand part of the Bill.

**Sen. Armour SC:** Mr. Chairman, with your leave, can I just ask for clarification? The final amendment that I have proposed, following on my deletion of 19 and 20, is for the clauses to be renumbered so that—

**Mr. Chairman:** Yeah. That will be treated with.

**Sen. Armour SC:** Yes.

**Mr. Chairman:** That will be treated with as a matter of—

**Clerk:** Consequential amendments.

**Sen. Armour SC:** Yes, thank you.

**Mr. Chairman:** Yes. There you go.

*Clauses 21 to 54 ordered to stand part of the Bill.*

6.10 p.m.

*Clause 55.*
Question proposed: That clause 55 stand part of the Bill.

Mr. Chairman: Sen. Lutchmedial.

Sen. Lutchmedial: Thank you, Chair. We are proposing the inclusion of two additional grounds, so to speak, upon which the award could be set aside. The wording here, we looked at some comparative legislation, I think in the Cayman Islands. I understand the point made in the winding up about the inherent jurisdiction of the court. And, of course, inherent jurisdiction of the court may cover these things. But I feel for certainty, we can include that the making of the award induced by or affected by fraud, corruption or misconduct. Misconduct being, I believe the term that is used in section 19 of the present Act, where the arbitrator might have misconducted themselves. I think it is always wise to include a breach of the rules of natural justice so that there is prejudice to a party.

Again, it would be open to a party to argue that a breach of natural justice occurred and to appeal to the inherent jurisdiction of the court to set aside the award on that ground. But if you want to have certainty in your law as the grounds upon which the award can be set aside, I would suggest that these are two additional grounds be included in clause 55.

Mr. Chairman: Okay, so, you treated with all of the problem, yeah. Attorney General.

Sen. Armour SC: Thank you very much, Mr. Chairman. I do not accept the suggested amendments. And Sen. Lutchmedial has already pointed to one of the reasons, that is to say, the preserved residual inherent jurisdiction of the court, in my view, will always continue to apply.

Secondly, and in any event, I have already spent some time in my winding up pointing to the learning, which is now part of the accepted law that gives to arbitrators a power to deal with corrupt or fraudulent conduct misconduct, and all
of that is already provided for. So, I do not see the necessity for that.

And thirdly, and very importantly, what we are seeking to ask this House to pass this evening is a model law that is uniform across the jurisdictions, based on the UNCITRAL model law. Except for compelling reason, and I do not see this being compelling, I would not wish to alter or deviate from the model law that UNCITRAL recommends.


Sen. Mark: Mr. Chairman, through you to the Attorney General, in the Cayman Islands they have also incorporated the UNCITRAL Model Law in their legislation, which they have updated at the end of 2022. So, I fail to see the inconsistency with the attempt by the Attorney General not to consider these additional provisions in an attempt, Mr. Chairman, to ensure that there is some degree of certainty.

So, that when people are before a tribunal they would know the grounds that they can use to set aside a particular award. And I am saying that this is part of the modernization process. And unless it is inconsistent with the UNCITRAL Model Law, I would ask the Attorney General to reconsider his position on this matter.

Mr. Chairman: Sen. Lutchmedial, do you have anything to add?

Sen. Lutchmedial: No. Chairman, I think it is clear that a model law is just that; it is a model. It does not have to be cut and paste wholesale. It is open to us to specify, as the Cayman Islands have done, if we think it is worthwhile to include other provisions.

The law that the Attorney General is referring to is a first instance decision, which is subject to be overturned later. We could have varying decisions coming from that. So I would not rely on a first instance decision on the applicability of fraud, and so on, to set aside judgment. And again, I reiterate that certainty in the

UNREVISED
way your legislation is set out, it reinforces again confidence in the piece of legislation.

Mr. Chairman: Okay. Attorney General, any final comments?

Sen. Armour SC: Yes. Thank you very much, Mr. Chairman. I heard the remarks of Sen. Lutchmedial and Sen. Mark. I am not prepared to accept Sen. Mark’s assertion of what the model law consists of in the Cayman Islands. What I will rely on is at the 6th June, 2023 we had circulated this model law to the UNCITRAL Secretariat, and in their response to us, which I have read into the record, they did not suggest to us that we had omitted something from the model law, which is to be found anywhere else. And, therefore, I would be prepared to continue to rely on that which we have before the Parliament. Thank you.

Sen. Teemal: Mr. Chairman.

Mr. Chairman: Sen. Teemal.

Sen. Teemal: Yes. If you just allow me just one intervention, hon. AG. I know we are working with a model law, the UNCITRAL model law. But should not adequate consideration be given to conditions of particular application with regard to the jurisdiction that we are in, and the conditions, historical conditions, and factual conditions concerning fraud and corruption, and all those things?

And the model law should be conditioned by the Act that we are passing to reflect those concerns. This is why I think the amendments that are being proposed here by Sen. Lutchmedial merits, I think, consideration.

Mr. Chairman: Any response AG, or the response—one second Sen. Mark—remains the same?

Sen. Armour SC: My response remains the same.

Mr. Chairman: Sen. Mark.

Sen. Mark: Mr. Chairman this is my final intervention. Mr. Chairman, I think
that the point that was made by Sen. Teemal is one that is worthy of consideration. Because you have to take into account the objective cultural concrete environment that we are in. And whilst we have a model law, and as the AG said, he has passed on this law to the Secretariat of UNCITRAL and they have said: Well look, no problem. But that does not mean to say, Mr. Chairman, that we as a sovereign, democratic Republic, going through this thing with a fine tooth comb, are seeking to enhance the law to ensure that there is balance in what we are doing. So, I really think it is something that the Hon. Attorney General should revisit.

**Mr. Chairman:** Attorney General, is the response the same or is there anything else to add?

**Sen. Armour SC:** One final response Sir. Just to make the point, while I respect the point made by Sen. Teemal about the cultural realities, this is precisely why the UNCITRAL Model Law has recommended one uniform model. Because if each nation that went to adopt the UNCITRAL Model Law, sought to make a variation to reflect their cultural dynamics, we would be very far from having a model law enforceable across nations to produce the result which we want to produce, an attractive destination for all investors to feel confident that they can rely on a law that is applied with consistency.

On top of which, and when we look at the particular amendments that are being suggested, dealing with fraud, corruption or misconduct, breach of rules of natural justice; that is already subsumed within the (a), The language of the clause, clause 55. Subclause (2), (3), and (4), In my view, deal with issues of natural justice and the inherent jurisdiction of the court, as I have read out in my winding up, will also allow a court of superior jurisdiction to be able to deal with evolving cultural issues of corruption as they emerge in the domestic court. So, I would not agree to this amendment. Thank you.
Sen. Mark: Mr. Chairman.

Mr. Chairman: Sen. Mark, we have had sufficient back and forth with this matter. At this point I will put the question, as it relates to Sen. Lutchmedial’s proposed amendment.

*Question on amendment, [Sen. J. Lutchmedial] put and negatived.*

*Clause 55 ordered to stand part of the Bill.*

*Clauses 56 to 64 ordered to stand part of the Bill.*

Clause 65.

*Question proposed:* That clause 65 stand part of the Bill.

Mr. Chairman: I will start with the proposed amendment by Sen. Teemal. And then we would dispense with that and then treat with the proposed amendment by Sen. Lutchmedial. Sen. Teemal.

Sen. Teemal: Yes, Chairman, I am proposing that the word “may” that comes after “Attorney General” should be changed to “shall”. And after the word “Act” we add the words “which shall include qualification criteria for the appointment of arbitrators under section 14 and the appointment of the umpire under section 19”.

But considering that the clauses that relate to the umpire has been removed, then after “section 14 and the appointment of an umpire under section 19” would also have to be removed. The reason for this is that I know that, in terms of regulations, what is being allowed here is that the Attorney General may. Now, in the whole context of separation of powers, I mean we are being asked to pass legislation on the basis of regulations that may be passed. And I think there are gaps in what is being proposed, particularly in the context of the qualification of arbitrators. And this is the reason for this proposed amendment.

Mr. Chairman: Attorney General.

Sen. Armour SC: Thank you, Mr. Chairman. In dealing with the proposed
substitution of “shall” for the word “may” in clause 65, I do not agree with the proposed amendment and I do not agree with it for two reasons. I do not agree with the proposed amendment for two reasons. First of all, the use of the word “may” is deliberate, which gives a discretion to the Attorney General, whether or not he will consider it necessary or expedient to propose making regulations for giving effect to the purposes of the Act.

That discretion, in the context of the totality of the Bill, will be understandably informed by clause 46(1), among other clauses. Clause 46(1), which is a very important section, says:

“An arbitral tribunal shall decide a dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute...”

It goes back to the grundnorm of this model law. That is to say, the process is driven by the parties. The parties may decide for themselves to make rules for the regulation of their particular arbitration that has been invoked under their particular agreement, which may render it entirely unnecessary, almost otiose for the Attorney General to consider making any regulations at all. So, to substitute the word “shall” and make it an imperative on the part of the Attorney General runs against the expressed provisions and the spirit and intendment of the model law as captured by 46(1). Thank you.

Mr. Chairman: Okay, Sen. Teemal, any further comments?

Sen. Teemal: Yes. I understand in terms of the provisions of 46(1). But, Hon. Attorney General, 46(1) would deal primarily with the procedures and the functions of the arbitral tribunal, and how they go about their business. But in terms of the selection of the arbitrators, that was my main concern. And if we are going to address the selection of arbitrators, possibly in regulations, particularly
since it is not really referred to here in the Bill, this was attempting to capture the due diligence that would be done in the selection of arbitrators, and not necessarily the functioning of the panel.

6.25 p.m.

Mr. Chairman: Attorney General. Final—

Sen. Armour SC: Thank you, Mr. Chairman. I was dealing in the first instance with the change of the word “may” to “shall.” When we come to the addition of the words, which shall include “qualification criteria for the appointment of arbitrators under section 14.” I do not consider that necessary, and I would stay with the model law prescription of the UNCITRAL Model Law. Thank you.


Sen. Mark: Mr. Chairman, no where in our Republican Constitution is there a provision for the executive arm or organ of the State to be a law-making organ. It is the Parliament of the Republic of Trinidad and Tobago that has given that authority to the executive arm, and is the Parliament to take it back if we so desire. We are in charge of law making under the Constitution.

I start off with this introduction to let you know that the Attorney General cannot arrogate onto himself a function, or a power to make law, or laws through regulations, which is known as secondary or subsidy legislation, Mr. Chairman, and then leave out the Parliament that is debating the very law that he wants to pass. The Attorney General, Mr. Chairman, is saying that the Parliament that is responsible for law making will have no oversight responsibility for legislation that the Executive arm of the State is making.

So now, Mr. Chair, let me just add an additional—let me just put an additional point on the table. The Attorney General is conflicted. The hon.
Arbitration Bill, 2023  

221  2023.06.13

Attorney General is conflicted. And I will tell you why I am saying so. I made the point earlier that any matter if somebody takes legal action on a civil scale for moneys that are outstanding by the State; they do not sue the Prime Minister or the Executive. The Attorney General is the one that is sued.

Now, could you imagine, Mr. Chair, you have in a contract a provision for arbitration involving the same contractor that has sued the Attorney General, and the Attorney General is being given the power on his own, Mr. Chairman, to make regulations. That cannot be fair. It cannot be ethical. And I am saying that if the Attorney General wishes to do so, we want to protect him. And you protect him by subjecting the regulations to affirmative resolution, so the entire Parliament would be in charge and not the Attorney General alone.

The Attorney General is exposing himself to lawsuits and I am saying, Mr. Chairman, I would like to hon. Attorney General to give this thing considerable thought before we go forward with it. And therefore, I am saying is either it is left out, Mr. Chair, completely and let the courts, let the Supreme Court draw up the rules as an independent body rather than have the Attorney General singularly, solely, doing that without any supervision or oversight of the Parliament, which is the only law-making body under our Constitution. That is my submission for the Attorney General’s consideration.

Mr. Chairman: Attorney General.

Sen. Armour SC: Mr. Chairman, thank you. So as not to cause Sen. Mark any undue stress this late in the evening, I would propose we make clause 65, “the Attorney General may, subject to negative resolution, make regulations generally for giving effect to the purposes of the Act.” So that the regulations will be laid and they would have, the Opposition if they consider after sight of the regulations, that there is reason why it should be rejected they would have the requisite period
of time to reject.

**Mr. Mark:** Mr. Chair.

**Mr. Chairman:** Sen. Mark.

**Sen. Mark:** Mr. Chairman, I have put on record over and over we on this side do not like that kind of secondary legislation, and we would want the Attorney General, given his graciousness, to reconsider. Because the reason why I am saying so, Mr. Chair, Attorney General, we are trying to protect your office. We are trying to protect the Office of the Attorney General. And if the Parliament, Mr. Chairman, is given—

**Hon. Senators:** [**Interruption**]

**Mr. Chairman:** Please let Sen. Mark make his case.

**Mr. Mark:** Yeah. Mr. Chairman, if the Parliament is given that overall authority, then the Attorney General is protected, because he comes to the Parliament with an affirmative resolution for the regulations, it is debated among us in the both places rather than have us now bring a matter after the fact.

So, Mr. Chairman, it is my considered view it should be affirmative and not negative. That is my final submission to you.

**Mr. Chairman:** Attorney General.

**Sen. Armour SC:** Subject to the negative resolution, I stand by that. Thank you.

**Mr. Chairman:** Okay. So in treating with this I propose that we deal with the proposed amendment as put forward by Sen. Lutchmedial first, and then Attorney General you are indicating that you will subsequently put an amendment using “negative” as opposed to “affirmative” which I would then put after—

**Sen. Armour SC:** Correct.

**Mr. Chairman:**—we have dealt with Sen. Lutchmedial’s amendment.

**Sen. Mark:** If I may—[**Inaudible**]

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Mr. Chairman: Sure.

Sen. Mark: Why does the Attorney General not consider deleting the word “affirmative” in Sen. Lutchmedial’s contribution and replace it with “negative” rather than go through all this hullabaloo? I mean to say, I am reluctant—

Mr. Chairman: Well it is not for the Attorney General to do that. It is for the proposer of the amendment. So if Sen. Lutchmedial is willing to do that then we can do that and then just put it as one.

Mr. Mark: Although we are reluctantly—

Mr. Chairman: Sen. Mark.


Mr. Chairman: Sen. Mark, there is no need to redebate it.

Sen. Mark: Yes, I am not redebating it. I will ask Sen. Lutchmedial to further amend.

Mr. Chairman: Sen. Lutchmedial are you willing to further amend your proposed amendment to change affirmative to negative?

Sen. Lutchmedial: Reluctantly, yes please, Mr. Chairman.

Mr. Chairman: Okay. So therefore, I shall put the question as follows, by Sen. Lutchmedial to read:

Insert after the word “Act” the words “subject to the negative resolution of Parliament”

Question put and agreed to.

Clause 65, as amended, ordered to stand part of the Bill.

Clauses 66 to 68 ordered to stand part of the Bill.

Question put and agreed to.

Clause 14 reintroduced.

Mr. Chairman: Hon. Senators, the question is that clause 14 be amended as
follows:

In subclause 3(a) (i) by inserting the words “who shall also be the Chairman of the arbitral tribunal unless otherwise agreed to by the parties” after the words “third arbitrator”

*Question put and agreed to.*

Clause 14, as amended, ordered to stand part of the Bill.

**Mr. Chairman:** Minister of Tourism, Culture and the Arts, is there an issue?

**Sen. Mitchell:** Through you to the Attorney General, if I could direct the Attorney General to clause 47(2). I hate to detain the proceedings. Now, going back to any initial comment on the Bill, I believe that in clause 34 there is a certain amount of flexibility and latitude that the provisions give the parties. Now in 47(2) it makes mention of a “presiding arbitrator.” So I am not sure if the insertion of the word “Chairman” would now confuse the matters?

**Mr. Chairman:** Attorney General.

**Sen. Mitchell:** And further, in examining both model Bills the one by the IMPACT Justice and the UNCITRAL model, they both do not have reference of a Chairman. Both allow for that flexibility of the parties to determine their own procedure.

**Sen. Welch:** Well perhaps we can deal with that by, although it is a bit late in the day to suggest it, 47 where the word “presiding arbitrator” appears changing that to “Chairman” as well. I think that might be the most practical solution.

**Mr. Chairman:** Attorney General.

**Sen. Armour SC:** Yes. Thank you very much, Mr. Chairman. May I express my gratitude to the Minister of Tourism, Culture, and the Arts, Sen. Mitchell. This would be governed by an old phrase known to common law lawyers known as the slip rule. I think that to be safe we should stay with the language that Sen. Teemal
had first proposed “presiding arbitrator” instead of the word “Chairman”, so that the language is consistent throughout the Act. So that the amendment which we just approved should really read “who shall be the presiding arbitrator of the arbitral tribunal unless otherwise agreed by the parties.”

Mr. Welch: But to achieve consistency as well, Attorney General, if 47 is changed from “presiding arbitrator” to “Chairman” one would achieve consistency by that means as well. You see, the difficulty I have with the words “presiding arbitrator” because all the arbitrators are really presiding. All the arbitrators are equally presiding. But if you want to say, one, for tidiness guides the proceedings. Not that that person has any final decision, but every tribunal should have a Chairman. He does not have any greater say than the other members of the tribunal. He merely guided procedures to keep things tidy, and I think every tribunal should have a Chairman, whether it be in this arbitration situation or otherwise.

And that Chairman, for other minor things, could be the person to decide on a particular issue. So I would say one should achieve consistency by perhaps looking at 47 being amended to be consistent with Sen. Lutchmedial’s.

Sen. Armour SC: Thank you Mr. Chair, and thank you Sen. Welch. I think the consistency is better accomplished by staying with the language that already exists in other parts of the Act, and I do not think that any ambiguities introduced by keeping consistency. Because when we read the amendment that we would now be effecting to clause 14(3)(a)(1) it would mean that we would read:

“Shall appoint the third arbitrator who shall be”

So clearly, the third arbitrator shall be the presiding arbitrator. So there is no potential there for inconsistency. The third arbitrator shall be the presiding arbitrator and that is consistent with language used elsewhere this the Act. So you are maintaining consistency throughout the Act.

UNREVISED
Sen. Welch: Are they all presiding arbitrators?

Sen. Armour SC: No. The third arbitrator shall preside among the three, as in effect the Chairman, but I would prefer to remain with the language.

6.40 p.m.

Sen. Welch: Because it seems to me that all members of the tribunal are presiding arbitrators.

Sen. Armour SC: No. That is—the presiding arbitrator is the language of UNCITRAL and the two other arbitrators are deciding that the third shall be the presiding, so it is a consensus among them, I think it follows.

Mr. Chairman: Okay. So I think that the Attorney General has made his final comments—

Sen. Armour SC: Thank you.

Mr. Chairman: —in relation to what is being discussed here at clause 14 revisited. So what I will put the question now and I would ask all Senators to follow quite carefully as this is important to ensure that the procedure is done correctly. So that being said, hon. Senators, the question is that clause 14 be amended as follows, as put forward by Sen. Lutchmedial in subclause 3(a)(i) by:

Inserting the words “who shall also be the presiding arbitrator of the arbitral tribunal unless otherwise agreed to by the parties” after the words “third arbitrator”

Question agreed to.

Question again put and agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

New clause 69.

New Clause “If at any time the UNCITRAL Model Law is amended, the Minister shall review this Act in order the determine whether
Arbitration Bill, 2023

any amendments should be made to this Act.”

New clause 69 read the first time.

Question proposed: That new clause 69 be read a second time.

Mr. Chairman: Sen. Mark.

Sen. Mark: I do not know if it is the correct time but I wanted to ask, through you, to the Attorney General, whether Attorney General would like to consider the issue of a code of conduct or ethics for these officers.

Mr. Chairman: Is that something different, Sen. Mark? Yes, Sen. Mark, is that something different? Because we dealing with new clause.

Sen. Mark: No, no. All right. Okay.

Mr. Chairman: New clause, as put forward by Sen. Lutchmedial. So Sen. Lutchmedial?

Sen. Lutchmedial: Yes. Chairman, again, this is a clause we found in other comparative legislation within the region. I believe one of the contributors from the Independent Bench raised the issue as to changes being made to the UNCITRAL Model Law and updates and so on, and keeping our law abreast so. This clause is really just to reinforce the point that if the model law is changed, we would have the obligation to look at it and to bring our law up to speed so that we remain consistent with what is taking place around the world in other jurisdictions.

Mr. Chairman: Sen. Mark.

Sen. Mark: And even the Attorney General himself indicated earlier on in his contribution that if there is need to amend the law, consistent with changes to the UNCITRAL Model Law, he would come back to Parliament. So all we are saying, Mr. Chair, is that this legislation, because of its importance to what we are trying to achieve, should be held or be kept under constant review. And in that context, I
really believe that the Attorney General should consider this amendment, this new clause, so that, for instance, we could review ever so often, whether it is every three years or two years or five years, it is something that is worthy of consideration. So, Mr. Chairman, I support this clause and I ask the Attorney General to look at it.

Mr. Chairman: Attorney General.

Sen. Armour SC: Thank you very much, Mr. Chairman. Mr. Chairman, the new clause as proposed is an aspirational mandate that is consistent with the duty that I consider I have to the Government as Attorney General. I always keep the laws under review that is why we have a Law Revision Commission and a Law Reform Commission. And I do not consider it necessary or prudent to put a mandatory clause into any legislation to make that legislation mandatorily to be kept under review by the Attorney General. That is my job and we have departments to continuously do that. Thank you.

Mr. Chairman: Sen. Mark.

Sen. Mark: Yeah. Hon. Attorney General, you would know that we do not have updated laws, even though as you—


Sen. Mark: —since 2016. And even though you were not in office at the time, the reality is that our laws have not been revised since 2016. So even though you have that, it does not exist. So it is something that we need to really be serious about.

Mr. Chairman: Okay. So, Attorney General, your response is the same?

Sen. Armour SC: Yes. Thank you very much, Mr. Chairman.

Mr. Chairman: Okay.

*Question put and agreed to.*

*Question proposed:* That the new clause be added to the Bill.
Question put and negatived.

Mr. Chairman: Hon. Senators, the question is that the Bill, as amended, be now reported to the Senate. Those in favour say aye, those against say no—

Sen. Dr. Dillon-Remy: Chair, did you renumber the Bill—renumber the clauses?

Mr. Chairman: It is consequential in terms of its renumbering but if Senators would like me to—

Clerk: You could just mention it.

Mr. Chairman: Okay. All right, well—

Sen. Dr. Dillon-Remy: Okay.

Mr. Chairman: Hon. Senators, just to let you know, that clauses 21 to 68 will be numbered as clauses 19 to 66 accordingly. Okay? So the Bill, I will put the question again, just for procedural matters.

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

Senate resumed.

Bill reported, with amendment, read the third time and passed.

ADJOURNMENT

Mr. President: Leader of Government Business.

The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne): Mr. President, I beg to move that this Senate do now adjourn to a date to be fixed.

Mr. President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised on the Motion for the adjournment. Sen. Dr. Richards.

Bullying and Cyberbullying in Schools
    (Government’s addressing of)

UNREVISED
Sen. Dr. Paul Richards: Thank you, Mr. President. The Motion is for the Government to address the issue of bullying and cyberbullying in the nation’s schools.

Mr. President, according to The Education Hub, 2019:

“Bullying is a form of mean, hurtful behaviour that can actually happen to anyone at any time.”

And not limited to age groups.

“Not all aggressive or harmful behaviour is considered bullying.”

The issue of child bullying or school bullying is even more pervasive in many jurisdictions.

“The definition of bullying has four essential characteristics:

• The behaviour is mean and harmful. Bullying causes short- and long-term negative outcomes for the victim.”

Or victims.

“• The behaviour is repeated, persistent and ongoing.”

And it is:

“…not a one off incident and is not a normal part of growing up.”

As we like to sometimes think in Trinidad and Tobago, or other jurisdictions.

“• The behaviour is carried out on purpose with the intent to cause harm, fear, distress to another person.”

Or child. It:

“…can be in the form of physical, emotional, psychological, academic, or social harm…”—including hurt—“…to a person’s reputation, their personal belongings…feelings…safety and”—feeling of—“wellbeing at school.”

“• There is a perceived or real power imbalance between the perpetrator and the victim based on factors…”—including—“…age, physical
size...strength, gender, gender identity, ethnicity...”—perceived—
“intelligence, physical resources...”—including—“weapons, social
status...popularity, or disability.”
Alana James 2010, a PhD researcher in the University of London, indicated:
“Bullying as a pervasive type of aggression, which often occurs in schools.”
It:
“...refers to peer-to-peer bullying within the school context.”
Key findings of a study she conducted, and her colleagues conducted, including
bullying around the world reported:
“...victimisation rates”—are—“between 9 and 32 per cent...
• Verbal abuse is the most commonly reported type of bullying, but
‘cyberbullying’ which...happens outside the school, is becoming
increasingly significant...”—and dangerous.
“• Victimisation decreases with age, although there is an initial peak during
the transition from primary to secondary school.”

In the Trinidad and Tobago context, over the years, we engaged in
behaviours that were at the time accepted culturally. We have colloquial
expressions called “picong,” and we phrase it like “a little picong never hurt
anyone”. So we accepted it for many years but we realized, through research after
many years, these bouts of “picong” or “ole” talk or verbal abuse had medium and
long-term devastating effects on the psychology and well-being of the victims.

We now know that untold damage to thousands of students locally and
million globally who have been negatively affected by bullying. In an article
written by Valerie Marsh, October 2018, out of the Center for Urban Education
Success, indicated:
“• 20 – 29 per cent of students are involved in bullying (either as a...victim or...)” — a perpetrator.

“• Bullying occurs through the grades, peaking during adolescence and middle school years.”

As the earlier study indicated primary and secondary schools, it is a transitioned to those.

“• Cyberbullying occurs...” — more and more frequently as the Internet becomes more pervasive.

And:

“• At-risk student populations for increased bullying...include students with disabilities and students who identify as LGBTQ.”

Contributing Factors” — include:

“• Bystanders can have a powerful effect on either stopping or encouraging bullying, depending on the peer group norm they ascribe to.

• Teachers can...intensify, encourage or limit bullying depending on their approach.”

And the policies in place at the school.

“• Bullying perpetrators and victims share...the same risk factors...”

Persons who are bullied tend to, sometimes in some instances, go on to be bullies themselves as an externalizing behaviour.

In “A study on the impact of bullying on adolescents at Holy Faith Convent, Couva”, by D. M. Ram, Savi Alli et al., 2015 by UWI Open Campus, focused on bullying as a global concern in the past five years in Trinidad Tobago since the—before the study was carried out in 2015, which included physical; verbal; hidden, covert cyberbullying, imposing significant short and long-term consequences on victims, as well as the bully. At Holy Faith Convent, at that time, school bullying
affected adolescents from Form 1 class level all the way to Form 6. The research indicated that five of 10 students encountered bullying of some kind during their school term.

Also dealing with—an article titled, “Dealing with Child Bullying’, published on the 11th of February, 2020, by Dr. Paula Robinson, she indicated:

A person is bullied when he or she is exposed to repeatedly and overtime negative actions on the part of one or another student or a group of students in some instances.

“School violence, bullying leaves scars for life”, an article by Raphael John Lall, February 26, 2022, in the Sunday Guardian, which quoted our esteemed colleague, Dr. Varma Deyalsingh, as indicating and underscoring the negative effects of bullying in Trinidad and Tobago.

I will end by underscoring two examples of devastating effects on young people, published by silverliningtt.com, which is titled: “Breaking Trinidad and Tobago’s Tradition of Bullying”.

6.55 p.m.

One is called Jenny—not her real name:

“For sixteen year old Jenny, the bullying began at the beginning of high school and persisted every day.”

She was a Form 4 student, and had been bullied on multiple occasions because she was taller than most girls at her school. She was called “giant” and others made fun of her name. Many nights she cried herself to sleep. With no assistance from her teachers or school administrators, and too afraid to speak to her family for fear they would go into the school and make it worse, she often had suicidal thoughts. Her ray of hope came in the form of her sister who was a guidance counsellor, and she disclosed her fear, and that intervention proved important in actually saving her
Adam—not his name—was a Form 3 student with a passion for the arts. At the age of 15, he loved dance and drama, and practised at the performing arts school. He shared his experience at the primary school level, which in turn, because of his love as a boy for dance and drama, led to him being ridiculed by his peers at school. He was also bullied because of his weight and because of a speech impediment he had. He also recalled being in a state of depression for as long as he could remember, which affected him into his young adulthood.

This is a phenomenon that we are not taking, to me, seriously enough in Trinidad and Tobago, and it has become even more pervasive with the anonymity provided by the Internet. In the past students had to go into the schoolyard or into school classes to be bullied, now they can be attacked anonymously online, their reputations and self-esteem destroyed, leading to medium and long-term damage to their psyche, and also impacting negatively, their academic performance and their socialization.

I am aware that there have been interventions by the Student Support Services through the Ministry of Education, but I am getting more and more reports of bullying becoming more pervasive at every level in primary and secondary schools throughout the country. I am hoping that there is some sustained, strategic intervention provided by the Ministry to deal with this action, because it can lead to an escalation by the perpetrators into more violent actions in their teens and young adulthood, and also devastating effects for the victims, if not remediated and counselled on a sustained and focused basis.

Mr. President, I thank you.

Mr. President: Minister in the Ministry of Education.

The Minister in the Ministry of Education (Hon. Lisa Morris-Julian): Thank
you, Mr. President. I know the goodly Senator feels very passionately about this topic, because we would have spoken about his passion for education. As I stand before this House, I want to first highlight that hurt people hurt people, and hurt children hurt children.

We at the Ministry of Education, while we focus on the victims, we also focus on the bullies, because they too need help. It is a vicious cycle of hurting others. Some bully just because they have been bullied. Some because they want to be seen or perceived as powerful and popular, and unfortunately some because they learned this behaviour at home.

Unfortunately, this issue of bullying is not new to any country or society, but one that requires a response and a hands-on approach from all sectors from society.

At the policy level, the Ministry has developed, approved and issued policy guidelines in the National School Code of Conduct 2018 and the National School Discipline Matrix 2022. Collectively these guidelines address various forms of bullying: cyber, social, physical and verbal.

The NSCOC clearly states:

“The Ministry of Education prohibits all forms of bullying. This prohibition applies to all school personnel. It pertains to activities within the school and extends to external school-related activities as well as commuting or walking to and from school. Incidents of bullying must be addressed promptly and effectively by schools while...”—protecting the confidentiality of the process.

The NSDM identifies bullying as a major infraction and outlines the consequences for first second and third offences.

The Ministry will and has continued to implement ongoing measures implemented by the Ministry to deal with the issue, and these are as follows:
(a) The frequent monitoring of this infraction with the accompanying consequences. This includes memos to remind principals they must report/treat with all instances of bullying which are reported and observed at schools.

(b) Provision of counselling by the personnel of the Student Support Services Division to both victim and perpetrators.

Twenty-six secondary schools which have the highest levels of school infractions, including bullying, have been assigned dedicated social support workers and guidance officers over the last academic year, to ensure that more attention is paid to the students who require support for behavioural transformation. Up to three Learning Support Assistants have been assigned to these schools to support the principal in school operations, including student supervision.

Mr. President, the implementation of restorative practices in 10 pilot schools, which aims at transforming negative behaviours, and assisting students to manage conflict, resolve disputes and build communities through different practices by focusing on repairing any harm that has been done. And two, to address conflicts through, not just communication, but also by group therapy.

Although it is not always the case, bullying is also associated with low levels of academic achievement, as pointed out by the Senator, and this is also being addressed through the following ongoing initiatives:

The after school support education programme, which targets approximately 8,000 students at Standard 3, 4, 5 in 80 selected primary schools in foundation subjects; the training of approximately 400 teachers, principals, school supervisors and curriculum officers in remedial mathematics, writing and reading comprehension, with a special focus on remediation which began in June 2023 in
selected 80 schools; the introduction of the vacation revision programmes at both primary and secondary levels, which will seek to minimize the learning loss as students at Standards 4, 5 and Form I, will receive five weeks of instructions from highly qualified and trained teachers in mathematics writing and reading; our Turn up, Don’t Give Up mentoring and the 40 Under 40 programmes. These programmes are all aimed at inspiring students to stay the course, push forward and learn better by seeing better, despite the academic or social or economic challenges they currently face. These mentoring sessions form part of the Vacation Revision Programme and continue into the school term. Members of the Defence Force and the TTPS have already confirmed their participation in these programmes.

Mr. President, we understand the effects of bullying can be long lasting for victims, including fear, anxiety, depression, thoughts of suicide. The decreased academic achievements, the fear caused by being a victim, can make it very difficult for someone to focus at school.

What we hope through the Ministry of Education, and through our programmes, is to create safe spaces in all our schools. Mr. President, however, we need to understand, and it needs to be quite clear, that children learn from their environments, and it cannot only be the Ministry of Education, but we all as citizens of this country are supposed to lead by example, even in this particular Chamber.

When we learn to treat people with kindness and compassion, and we treat our children well, the bullying will stop. But in the meantime, I would like to stress, the Ministry of Education is constantly working on improving the situation.

I thank you very much.

Mr. President: Sen. Mark.
2023 Atlantic Hurricane Season
(Government’s Preparation for)

Sen. Wade Mark: Mr. President, I have brought to this honourable Senate, a matter on the Motion for the adjournment calling on the Government to provide an update on its plans and programmes in preparation for the upcoming—because it is here already—the 2023 Atlantic hurricane season.

Now, Mr. President, the public of Trinidad and Tobago, with all the dire predictions that are being made, even though we are told it is going to be a normal season, we have already begun to experience some abnormalities. We just have to throw our minds back to what has happened in the last 48 hours, and what is continuing to happen in different parts of the island, resulting in children, students, not being able to proceed to do their CSEC and CAPE exams over the last two days, particularly in the Barrackpore, Moruga and, I think, Tableland area, Penal/Debe area.

Mr. President, I have not heard—maybe you have, maybe my other colleagues have heard—some action, some programme, some preparation, some planning, coming out of the Office of Disaster Preparedness and Management, the so-called ODPM.

Sen. Lyder: “Dey still around?”

Sen. W. Mark: Now the question that is being asked is whether this ODPM is functioning in Trinidad and Tobago today, because we have seen what has taken place, Mr. President, and there have been no responses, none whatsoever. You would have thought in this period of uncertainty and unpredictability, with all the waters that are flowing all over the country, there would have been the army, the Defence Force out there providing students with the necessary transportation.

Hon. Senator: “Not PNM.”
Sen. W. Mark: Not PNM!

Sen. Lutchmedial: Thank God for UNC.

Sen. W. Mark: It is the UNC that had to hire trucks to get the children from Penal, from Barrackpore, to Moruga. Where was the army? Where was the Defence Force?

Hon. Senator: Falling asleep.

Sen. W. Mark: Mr. President, I just read in tomorrow’s Newsday advanced information that has reached us—this is coming out tomorrow, but we are getting it now—where the Met Office is predicting, or has issued, a yellow level high winds alert, and that is expected, according to the information that I have in my possession, to commence at 8.00 a.m. tomorrow, and expected to end, according to this Met Office release on Friday at 2.00 p.m. in the evening.

Now, Mr. President, you know the kind of challenges that we are facing with the “floodings” that are taking place. Many homes have been inundated. Farmers’ crops have been destroyed, poultry being destroyed. We saw recently some 10,000 poultry products being destroyed, farmers experiencing hardship. So what we are seeking to do is to get the Government of Trinidad and Tobago to be a little more sensitive, and to be on a state of high alert, because they, according to the Member for Tobago West, the PNM is in charge. If the PNM is in charge, why is it we had all this disaster over the last 48 hours and still to come? So I am appealing.

This is a very simple and straightforward matter that I have brought to the attention of this honourable Senate, and that is to get the Government to speak—to speak, to address the people, to allow this leaderless ODPM to have a leader, because there is weakness at the level of the ODPM.

I do not know if the former army commander or Chief of Defence Staff, his name is, I think, Col. Smart, I think that is the last time, I recall, he was in charge,
that gentleman. I do not know what is happening, Sir, but we are concerned. Not only as the alternative Government, but as an Opposition we are concerned, Mr. President, that we are not hearing anything from the Government. The people are not hearing anything from the Government. The ODPM is silent, and we know that the season, even though they told us “would be normal”, we are seeing that is not the case.

Therefore, I have brought this matter on the Motion on the Adjournment for the Government to share with this country, and share with the citizens throughout Trinidad, because Tobago has its own TEMA. I think they are very—in fact they are the most efficiently run disaster preparedness organization in Trinidad and Tobago. I think we could learn a lot of lessons from TEMA in Tobago, I must tell you.

7.10 p.m.
And therefore our focus is on Trinidad, so I would like to ask the hon. Minister to really explain to Trinidad and Tobago, what decisions have been taken? What plans have emerged? What preparations are being made to alert and prepare the country and its citizens for this situation that we are facing almost on a daily basis in the last couple hours, in the last couple days in Trinidad and expected to worsen in the coming hours according to the information that I have shared with this honourable Senate.

So as I said, Mr. President, it is a very simple and straightforward matter, and it is designed to get from the Government a status position to update the country, through the Senate, as to its plans and programmes as it relates to preparing Trinidad in particular for the upcoming 2023 Atlantic hurricane season. So that is my submission just to allow the Government to tell us what their plans are, what their programmes are and to have it on a consistent basis so that the
nation could be prepared.

So for example, Mr. President, in closing, if a category one hurricane were to hit Trinidad and Tobago, we should know in advance because you have to refresh people’s memory. If a category two hurricane were to hit us, what should people do? So I am just giving these things as examples, because the people are not alerted to what is taking place in our country as it relates to the coming 2023 Atlantic hurricane season.

I must say finally, Mr. President, in closing that the MET Office has been keeping us abreast and that is how we get information, but the ODPM, that is supposed to be preparing us, they are not doing that. So Mr. President, I thank you for allowing me to raise this issue so that we can get an answer.

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

**Mr. President:** Minister of National Security.

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

**The Minister of National Security (Hon. Fitzgerald Hinds):** Thank you Mr. President. I sat here in dismay and disappointment at the flimsiness, the softness, of the presentation made by the Senator. One would think that his presentation was water-soaked yesterday somewhere, in a drain perhaps. I am disappointed. A serious matter such as this, a country like every other country in the world having to deal with the outflows of climate change, I am disappointed that the Senator will come here this evening to trivialize this matter in the way that he has embarrassingly done.

He made three points in all of the time available to him, that children did not get to do their exams. I do not want that Senator talking about too much exams in this Senate, especially when I am here.

**Hon. Senators:** [Desk thumping]
Hon. F. Hinds: He will distract me and it will take me to the Arthur Lok Jack Institution. He also spoke about the army, where was the army? It is as if he does not know that the first responders in these kinds of crises would be the regional corporations who were out there doing what they had to do in accordance with the national response plan.

He made another flimsy point about the farmers experiencing hardships. Yes farmers experience hardships. When it rains and it floods farmers lose crops everywhere in the world, but he behaves as though it is only in Trinidad, trivializing this thing.

And finally, and his big point, was that the ODPM could not be found. But, he was able to tell us at the beginning of his presentation, that he is aware that there is a particular alert to be published tomorrow by the Government.

Hon. Senators: [Desk thumping]

7.15 p.m.

Hon. F. Hinds: He knows in advance and still comes here frosty as always to ask what is happening. Let me tell him a few things. Let me tell him a few things. The Government of Trinidad and Tobago, through all of its Ministries, Departments and agencies undertook and continues to undertake several initiatives to prepare for the Atlantic hurricane season which began on the 1st of June. I want to tell you, Mr. President, truthfully, that since I took the office of Minister of National Security, I have admired the operation and functioning of the ODPM under the leadership of Ret. Maj. Gen. Smart, quite honestly. But they are here to just demean everything, condemn everything, criticize everything, repose, depose, oppose, dispose, but propose nothing.

Hon. Senators: [Desk thumping]

Hon. F. Hinds: These preparations were informed by Cabinet’s decision in 2020
to establish a National Disaster Prevention and Preparedness Multi-sectoral Committee and declared the month of May, which precedes the hurricane season, to be the National Disaster Prevention and Preparedness Month, which we have just finished observing. While disaster prevention and preparedness is a year-round activity for us, May is used as a whole-of-society call to action for organizations and persons at all levels to become involved in disaster prevention and preparedness activities in order to reduce the risk of potential impacts.

A number of initiatives were undertaken this year, as they were last year. Let me name a few of them for you:

- Expansion of the community flood early warning systems;

I was in Diego Martin recently when another one was established to gauge the levels of water that comes in the Diego Martin River. That happened just about weeks ago. The Senator clearly does not know that.

- Wet and hurricane season readiness checklists are established;
- Prepositioning of emergency disaster stores, meaning warehouses in certain places for when the circumstances warrant their application;
- Preparation of Trinidad and Tobago’s response through a regional tabletop exercise synergy, 2023, which took place on the 24th of May;

Where was the Senator?

**Hon. Senator:** He was sleeping.

**Hon. F. Hinds:**

- Updating the Office of Disaster Preparedness and Management’s 2023 hurricane season operational plan;
- Development of a national adaptation plan, public education and information.
The ODPM and other stakeholders, we were on the Brian Lara Promenade when this was launched. They would have gone to San Fernando and Tobago too, as they did last year. Where was the Senator?

The National Disaster Prevention and Preparedness Month was a very successful event with 40 activities being the executed: the launch of the Public Alert Notification System, which they call PANS; evacuation drills; community outreaches and fairs; webinars and training; social media and educational videos.

Let me tell you a little bit more about each of them. The PANS is a mass notification system and it is an innovative technology to warn our citizens and visitors of national-level disasters and emergencies and provide timely updates to protect lives. All of this in advance, so that they can shift and make arrangements as the circumstances might warrant.

In terms of evacuation drills, in conjunction with the Ministry of Education and the Trinidad and Tobago Fire Service, preparedness lectures and evacuation drills were conducted at 11 primary schools across Trinidad, and three in Tobago. In addition, for the first time ever, a full-scale community emergency response simulation exercise was conducted for the Piparo Mud Volcano. You see the level of thought?

In addition to this, WASA conducted a chlorine leak drill at the Caroni Water Treatment Plant in Piarco and this aimed to straighten emergency and safety procedures at that facility. These exercises will be continuing over the next few months, with emphasis being placed on wet and hurricane season preparedness as part of the Government’s multi-hazard approach. Where was the Senator?

**Hon. Senator:** Sleeping.

**Hon. F. Hinds:** Was he on his own in a room with a bib?

**Sen. Mark:** I did not give instructions to kidnap Brent Thomas.
Hon. F. Hinds: Mr. President—


Hon. F. Hinds: Mr. President, to educate the public on preparedness, eight large community fairs and outreach events were held across Trinidad and Tobago in the month of May alone to boost disaster knowledge and preparedness to make communities more resilient.

Mr. President: Minister, you have two more minutes.

Hon. F. Hinds: Indeed. Webinars and training, as I told you, Mr. President. So, Mr. President, there is so much more to be said. I am quite prepared to forward this long and impressive list of government preparedness to Senator and his team—

Hon. Senators: [Desk thumping]

Hon. F. Hinds:—hoping that having taken two minutes to read it, they will stop dogging Trinidad and Tobago—

Sen. Mark: [Inaudible]

Hon. F. Hinds:—and give thanks for the fact that so far we have not lost a single—


Hon. F. Hinds: Thank you very warmly, Mr. President. And notwithstanding his false and deceptive cries about how much disaster and everything went to mayhem, one family, as far as I am aware, had to be evacuated yesterday and not a single life was lost or any personal injuries sustained. I am quite prepared to pass this impressive list to the Senator—

Hon. Senators: [Desk thumping]

Hon. F. Hinds:—and it might put good sense upon him, rather than demean the
country in the way they always do. Thank you very much. Mr. President.

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

**Sen. Mark:** You talking to me?

**Mr. President:** Sen. Mark.

**Sen. Mark:** “Out ah line”.

**Mr. President:** Sen. Mark.

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**Labour Day Greetings**

**Mr. President:** Hon. Senators, at this time, I invite greetings on the occasion of Labour Day to be celebrated on Monday, the 19\textsuperscript{th} of June, 2023. Minister of Digital Transformation.

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

**The Minister of Digital Transformation (Sen. The Hon. Hassel Bacchus):** Thank you, Mr. President, for this opportunity to bring greetings. On behalf of the Government Bench and on behalf of the entire Government, it is my honour and privilege to extend greetings and best wishes to the labour movement and to all workers and citizens of Trinidad and Tobago as our country prepares to celebrate Labour Day next Monday, the 19\textsuperscript{th} of June.

It was on that day, June 19\textsuperscript{th}, in 1973, that this annual holiday was first declared. History reminds us that the labour uprising, also known as the Butler riots, in June of 1937 marked the start of the modern trade union movement in this country, as we know it.

Labour Day affords the solemn recognition to the many contributors—made by many contributions made by labour organizations and by labour activists in their quest to improve labour conditions and legislation over the years and, of course, prominent labour figures feature normally at the time of year. And we know many of them, I will mention a few, obviously this list is not exhaustive:
Labour Day Greetings

Sen. the Hon. H. Bacchus (cont’d)

Tubal Uriah “Buzz” Butler, Captain Cipriani, George Weekes, Elma Francois, Adrian Rienzi, Daisy Crick, Albert Gomes and, of course, there are many, many, many more, and they have made an indelible mark on the labour landscape of Trinidad and Tobago.

Our country like the region and, of course, the world is experiencing a period of rapid and profound change. The way we live, the way we socialize, the way we interact with each other, and the way we work and conduct business are all being simultaneously revolutionized.

Against this backdrop, we, and the labour movement included, must take concerted action to do a few things. We want to build a resilient Trinidad and Tobago in the face of change. We want to provide a safety net for the most vulnerable of our citizens to make sure that they receive the resources, support and training needed for success. We want to take advantage of every opportunity to strengthen and grow our economy and, of course, we want to unlock the vast potential of our people.

Mr. President, these uncertain times are not unlike in the early 20th Century when workers recognized that success was built on hard work. With the conviction that a unifying force get together and do things to overcome all challenges, they worked shoulder to shoulder towards a common vision.

Our Labour Day celebration this year presents an opportunity for our citizens, our team Trinidad and Tobago that is, to come together in an active partnership to take ownership of our challenges so that together we can overcome them, as we fix our eyes firmly on the vision of a strong, safe, prosperous, secure twin-island Republic that takes full advantage of the blessings that our creator has heaped upon us.

The history of the labour movement contains many important lessons. This
is one, I think, we should take note of, the popular saying that says:

“If you do not know from where you”—have—“come...then you don’t
know where you are, and if you don’t know where you are, then you”—probably—“don’t know where you’re going.”

The labour movement was born out of a struggle in the 1930s and emerged victorious because of the partnerships that were built and the willingness to stay the course. I am a firm believer that now more than ever we recognize that the tripartite relationships that were established then and now, through the founders of the labour movement, explored common solutions that these seemingly intractable challenges, they used them to solve them.

Given our current prevailing circumstances, that relationship has involved and it is no longer about negotiating a balance between competing interests, but rather it is about forging genuine partnerships to explore and implement solutions that are fit for purpose in a fast-paced, constantly evolving and very dynamic environment. A reinvented tripartite process could present a new way to explore the delivery of end-to-end workplace and national solutions through the pursuit of appropriate and genuine partnerships.

As we celebrate Labour Day 2023, let us also use the opportunity to continue forging these partnerships that will take our beloved country of Trinidad and Tobago to the next level of development. On behalf of the Government of Trinidad and Tobago, I extend best wishes to the labour movement and to all workers and citizens as we celebrate Labour Day. May God bless this industrious nation. Mr. President, I thank you.

Hon. Senator: Oh, yes.
Hon. Senators: [Desk thumping]
Mr. President: Sen. Mark.
Sen. Wade Mark: Thank you, Mr. President.

Hon. Senators: [Interruption]

Sen. Mark: “Doh” worry about them. “I eh able”. Mr. President, Monday, June the 19th, 2023 will mark—no pun intended—the 86th anniversary, as my colleague from Tobago said, the hon. Hassel Bacchus, will represent the 86th anniversary of the founding—and my brother Seales would know about that, Sen. Seales would know. He was a former president of a union—of the modern trade union movement in our nation. The Butler movement that emerged in the ’30s culminating, Mr. President, in the uprising and revolution of 1937, brought fundamental changes to the working conditions of the ordinary people in our land. So Butler led that movement.

And throughout the years, Mr. President, we have had very important figures leading the labour movement and seeking to use the union movement to improve the quality of life and the standard of living of the ordinary working class man and woman in this land. You know, it is extremely disappointing that after 86 years of the founding of the modern trade union movement, that the labour movement today, Mr. President, as we speak, controls less than 20 per cent—I dare say, it may even be less than 20 per cent of the organized labour force in this nation, in this country of Trinidad and Tobago.

And, Mr. President, over the last few years, under this administration, the labour movement has experienced a series of the setbacks, right?—in our country. For example, Mr. President, as we celebrate—as we prepare, I should say, to celebrate the 86th anniversary of the founding—of the modern trade union movement, it would be remiss of me if I do not bring to your attention and this honourable Senate’s attention some of the challenges facing the modern labour movement, the modern working class forces in our land.

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Mr. President, there is a continued disrespect and disregard for the trade union movement in our nation. That is one of the challenges that we are facing in Trinidad and Tobago. Mr. President, there appears to be an end to what is called the free and fair collective bargaining process in light of the latest public sector negotiations that have concluded at another level. Mr. President, as we speak, we need to understand the challenges as we commemorate the 86th anniversary of the founding, of the modern trade union movement.

Collective agreements, Mr. President, seemed to be out of the window as we speak today. There is an undermining of the collective bargaining process. Mr. President, workers face mass retrenchment in our nation, and there is a privatization of the process taking place in many industries under the guise of what is call restructuring. Mr. President, there is no real commitment as we celebrate and commemorate the 86th anniversary of the founding of Trade Union Movement. There is no real commitment in spite of what my colleague said to tripartism in our nation. There is none whatsoever.

And, Mr. President, what has taken place as we celebrate and commemorate the 86th anniversary of the modern trade union movement is a proliferation of contract labour throughout the public sector. I have dubbed and said contract labour is equivalent to slave labour in our country. So, Mr. President, what I would say is that there is a growing level of attack on our workers in our country and the democratic institutions in our land. So on behalf, as I commemorate, as I celebrate, as I extend militant solidarity greetings to the working class and the
modern trade union movement, as we prepare to celebrate the 86th anniversary of
the founding of the modern trade union movement, may I on behalf of the
alternative government, may I on behalf of the hon. Leader of the Opposition, soon
to become Prime Minister of this nation once again, may I on behalf, Mr.
President, of the Opposition Bench, may, I say, through you, Mr. President, to the
working class, to the labour movement, militant solidarity greetings as we prepare
for celebrating the 86th anniversary of the labour movement.

And, Mr. President, I want to extend to you and your family a wonderful and
happy Labour Day 2023, and I extend to the nation of Trinidad and Tobago and the
people of T&T happy Labour Day greetings as we celebrate the 86th anniversary
of the founding of the modern trade union movement in the Republic of Trinidad
and Tobago. I thank you, Mr. President, for giving me the opportunity.

Hon. Senators: [Desk thumping]

Mr. President: Sen. Richards.

Sen. Paul Richards: Thank you, Mr. President. May I begin with a quotation
from Dr. Leighton Jackson, renowned luminary and former lecturer in law across
the Caribbean, this past weekend at the Industrial Courts Symposium in Port of
Spain. He opined, and I quote:

The Caribbean, and in fact the western world, was built on the labour of
slaves from the African continent in the transatlantic slave trade and
indentured service trade from the Indian subcontinent.

Labour in Dr Eric Williams’ seminal thesis “Capitalism and Slavery” was
underscored as being a driving force for development across the world and also
debunked the humanitarian ideals and motives behind the abolition of slavery and the importance of labour as a commodity in production. Over the years, value of labour has been primarily determined by, in large part, persons who are outside the working class, private sector, public sector to the state, government’s business and international market forces, yet labour remains the most important component, production and by extension GDP and national development.

Labour Day celebrations in Trinidad and Tobago were declared as an annual holiday in 1973, celebrated on June 19th. It was the anniversary of the day of the Butler Oilfield Riots which took place in 1937. Prior to this, there were ongoing tension between workers and employers in many sectors, these were characterized by situations of worker abuse and the payment for labour, racism, economic depression and a considerable fall in living standards of the working class. Between 1934 and 1937 workers became more influenced by a need for change resulting in strikes and riots in the sugar plantations and in the oilfields, and in September 1937, the Oilfield Workers Trade Union also became the first registered trade union in the country representing the rights of the workers in the petroleum industry.

The social unrest extended through the Caribbean and gave rise to several prominent labour leaders in Trinidad and Tobago including Tuba Uriah “Buzz” Butler, also Captain Andrew Arthur Cipriani, George Weekes, Albert Maria Gomes, Adrian Kola Rienzi, Elma Francois, C.L.R. James, among many others. During a labour dispute in the Port of Spain Wharf in November 1999, Captain Cipriani called the workers to withhold their labour resulting in the first important
industrial strike in Trinidad and Tobago. George Weekes who was also a well-known trade unionist, possessed a powerful political leadership style and moved people towards a confidence to stand up for what is just and right. He gave them a vision of planting the seeds of liberation to move beyond salaries and working conditions along the road to self-development identity, worldview economics and also government.

Adrian Kola Rienzi served as a mayor in San Fernando in November of 1939 and administered the borough for three consecutive terms until November 1942. He was a member of the Franchise Committee which was appointed in 1941 and strongly advocated Universal Adult Suffrage. St. Vincent-born Elma Francois became a founding member of the National Unemployed Movement. Its more radical successor the Negro Welfare Cultural and Social Association which she devoted the rest of her life to fighting for the rights of workers. And of course, Tubal Uriah “Buzz” Butler a Grenadian immigrant who worked in the oilfield was instrumental in the development of the labour movement which emphasized the importance of collective unionism and treating workers discontent and the abuses they faced by employers. Butler was awarded the country’s then highest honour the Trinity Cross, and the main highway had been renamed in his honour. Today the statue of Butler stands at the Fyzabad junction also known as Charlie King Junction, the place where police attempted to arrest him on June 19th the day of the historic 1937 riots.

Over the years labour’s struggle has become a shining example of how a divided society can find common ground and unite, in the words of the Mighty
Sparrow in the calypso many years ago:

Indians and Negroes unite.

We have won the battle for human rights.

Showing that we can come together in the common interest of the people of Trinidad and Tobago. It is an example of how we can make progress as a nation by uniting on what is in the interest of all the people of Trinidad and Tobago, and labour drove this, underscoring our nation’s motto “Together we Aspire Together we Achieve”.

On behalf of the Members of the Independent Bench I would like to wish the labour movement and by extension the people of Trinidad and Tobago a happy, productive Labour Day and Godspeed and safety. Thank you, Mr. President.

Hon. Senators: [Desk thumping]

Mr. President: Hon. Senators, before I join you in bringing greetings permit me to remind all Senators that when I invite greetings the intention is for those greetings to be positive in nature towards imparting cheer and goodwill to the celebratory sector of society. So once again I just remind Senators that when we bring these greetings that they are intended to bring cheer and goodwill to the sector of society that is celebrating.

Hon. Senators, I am honoured to join the previous speakers in bringing greetings on the occasion of Labour Day. On Monday, June the 19th, 2023 our nation will commemorate the 86th anniversary of the modern trade union movement as we recognize Labour Day. The 1937 labour riots is a watershed moment in our history. Many notable leading figures emerged during this snapshot in history,
Labour Day Greetings

Mr. President (cont’d)

such as Uriah “Buzz” Butler, Captain Arthur Andrew Cipriani, George Weekes, Adrian Kola Rienzi, C.L.R. James, and a host of other powerful figures. Notwithstanding the admirable contribution of these pioneers of industrial relations the labour riots also resulted in great loss. Even some 87 years later we continue to remember Corporal Charlie King, Sub Inspector William Bradburn and the nine civilians who tragically lost their lives as a result of these riots. Let us never forget that the aftermath of the 1937 labour riots and the subsequent protest brought about major transformations in labour movements such as the legal recognition of trade unions, the right to strike and the right to engage in the collective bargaining process.

These significant transformations live on in our public institutions and the bylaws, regulations, rules and orders that are approved right here in this august Chamber. I am also heartened to recall the annual march with the hundreds of labour rights enthusiasts that gather in Fyzabad on this day. Our fellow citizens stride arm in arm and lift their voices in unity from Avocat Junction to Fyzabad Junction hailing the achievements of the labour riots and exalting the memory of the brave men and women that achieved them. This procession culminates the statute of Uriah “Buzz” Butler where marchers listen almost reverently to the various speeches about where we are as a country, where we are now and where we aim to be. It is therefore with a depth of respect and with gratitude that I join Senators in wishing all citizens of Trinidad and Tobago and members of the labour movement a reflective, peaceful and enjoyable Labour Day 2023.

Hon. Senators: [Desk thumping]
Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.42 p.m.