

**SENATE***Friday, June 30, 2023*

The Senate met at 1.30 p.m.

**PRAYERS**[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Mr. President:** Hon. Senators, I have granted a leave of absence to Sen. Jearlean John, who is out of the country, and Sen. Charrise Seepersad, 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: MS. KARUNAA BISRAMSINGH

WHEREAS Senator Jearlean John 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)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, KARUNAA BISRAMSINGH to be a member of the Senate temporarily, with

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effect from 30<sup>th</sup> June, 2023 and continuing during the absence of Senator Jearlean John by reason of her absence from Trinidad and Tobago.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 30<sup>th</sup> 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. JOSH DRAYTON

WHEREAS Senator Charrise Trot Seepersad is incapable of performing her 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)(b) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOSH DRAYTON to be a member of the Senate temporarily, with effect from 30<sup>th</sup> June, 2023 and continuing during the absence of Senator Charrise Trot Seepersad by reason of illness.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 30<sup>th</sup> day of June, 2023."

**UNREVISED**

## OATH OF ALLEGIANCE

*Senators Karunaa Bisram Singh and Josh Drayton took and subscribed the Oath of Allegiance as required by law.*

## ADMINISTRATION OF JUSTICE

### (INDICTABLE PROCEEDINGS) (AMDT.) BILL, 2023

Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011), brought from the House of Representatives [*The Attorney General and Minister of Legal Affairs*]; read the first time.

*Motion made:* That the next stage be taken later in the proceedings. [*Hon. R. Armour SC*]

*Question put and agreed to.*

## PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Airports Authority of Trinidad and Tobago for the year ended December 31, 2018. [*The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne)*] Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Airports Authority of Trinidad and Tobago for the year ended December 31, 2019. [*Sen. The Hon Dr. A. Browne*]
2. Ministerial Response of the Ministry of Housing and Urban Development to the Eighth Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA) on a Follow-Up Examination into the recommendations contained in the First Report of the Committee on the Administration and Operations of the Land Settlement Agency in Relation to Squatter Regularisation (11th Parliament 2015-2020). [*Sen. The Hon. Dr. A. Browne*]

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3. Ministerial Response of the Ministry of Sport and Community Development to the Ninth Report of the Public Accounts (Enterprises) Committee on the examination of the Audited Financial Statements of the National Commission for Self-Help for the Financial Year 2016 and Follow-Up on the Implementation of the Recommendations in the Committee's 14th Report from the 11th Parliament. [*Sen. The Hon. Dr. A. Browne*]

### **JOINT SELECT COMMITTEE REPORTS**

#### **Shipping Bill, 2020**

##### **(Presentation)**

**The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell):** Thank you very much, Mr. President. Mr. President, I have the honour to present the following report as listed on the Order Paper in my name: Report of the Joint Select Committee appointed to consider and report on the Shipping Bill, 2020, Third Session (2022/2023), Twelfth Parliament.

#### **Local Authorities, Service Commissions and Statutory Authorities (including the THA) Institutional Strengthening Initiatives of the Service Commissions Department**

##### **(Presentation)**

**Sen. Varma Deyalsingh:** Thank you, Mr. President. Mr. President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

Seventh Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA), Third Session

(2022/2023), Twelfth Parliament on an Examination of the Institutional Strengthening Initiatives of the Service Commissions Department.

### **URGENT QUESTIONS**

#### **Destroyed Roof at Building 4, Trou Macaque**

#### **(Temporary Housing/Financial Support to Residents)**

**Sen. Wade Mark:** Thank you, Mr. President. To the hon. Minister of Housing and Urban Development: Given the HDC's commitment to repair the destroyed roof at Building 4, Trou Macaque by July 02, 2023, can the Minister indicate whether any temporary housing or immediate financial support will be provided to displaced residents in the interim?

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

**The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne):** Thank you, Mr. President.

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

**Sen. The Hon. Dr. A. Browne:** Responding on behalf of the Minister of Housing and Urban Development to this Urgent Question, the answer to the question posed is yes. The 15 individuals, comprising four families, affected within Trou Macaque were offered on Tuesday, 27 June, 2023, the provision of temporary accommodation at a nearby location. However, the residents offered instead to stay with close relatives and friends. One particular neighbour housed a family of two. I am pleased to report that today roof repairs did commence at the location with the erection of scaffolding very soon after the incident, with an estimated completion date for all of the repairs of 21 July, 2023.

The Housing Development Corporation put out a media release which provides, Mr. President, the public with a comprehensive accounting of the response to this particular unfortunate development. Thank you very much.

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

**Sen. Mark:** Yeah, Mr. President, through you, to the hon. Minister: Hon. Minister, can you inform this Senate the nature, or should I put it another way, Mr. President, what type or kind of accommodation was provided by the HDC to the 15 or 16 displaced residents of building 4 at Trou Macaque? Can the Minister identify?

**Mr. President:** Minister.

**Sen. The Hon. Dr. A. Browne:** Well, Mr. President, just to reaffirm, with respect to the question and the answer, there was no accommodation taken up. So if the supplemental is what was provided, the response has already been indicated, that the individuals took up accommodation with family and friends, as happens from time to time after temporary unfortunate circumstances. With respect to what was offered, if that is being sought, emergency shelter accommodations were immediately offered at a nearby community centre, as has been applied in past issues of natural disasters and unfortunate circumstances. Thank you, Mr. President.

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

**Sen. Dr. Richards:** Thank you, Mr. President. Through you, to the Minister: Can the Minister indicate or the Ministry indicate if a structural audit has been done by the Ministry on similar buildings, given this is the hurricane season and similar issues may arise posing a challenge to safety of clients?

**Mr. President:** Minister.

**Sen. The Hon. Dr. A. Browne:** Mr. President, I am not in a position to comment on a structural audit, but I am certain that the Ministry would take note of the question as posed by the Senator. What I can indicate, as has already been referenced, immediate work has been initiated on this particular location and a

completion date has been offered. Thank you, Mr. President.

### **ANSWERS TO QUESTIONS**

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

**The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne):** Mr. President, there are three questions on the Order Paper for oral response. The Government is in a position to answer two of them and we seek a deferral of two weeks on Question No. 81. Thank you.

### **ORAL ANSWERS TO QUESTIONS**

*The following question stood on the Order Paper in the name of Sen. Wade Mark:*

#### **NGC and Downstream Energy Sector's Operation (Implications of EOG's Prices)**

**81.** Could the hon. Minister of Energy and Energy Industries state:

In light of February 2023 reports on the prices charged by EOG Resources to the National Gas Company of Trinidad and Tobago (NGC) for the supply of gas, can the Minister advise what are the implications of these prices on the overall operations of the NGC and the downstream energy sector?

*Question, by leave, deferred.*

**1.45 p.m.**

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

**Sen. Mark:** Mr. President, seeing that this Parliament may not be here next week and we are going to recess, this will become, you know, redundant because we coming back in September. So I am wondering if the Minister could not really get this answer to us before the close of today. I just wanted to bring that to your attention.

**Mr. President:** Sen. Mark, a request was made and the request was so granted.  
Sen. Mark.

**Sen. Mark:** Thank you, Mr. President.

### **Vacant Post of Inspector of Missions**

#### **(Details of)**

**80. Sen. Wade Mark** asked the hon. Minister of Foreign and CARICOM Affairs:

Given that the post of Inspector of Missions has been vacant since 2019, can the Minister indicate:

- (i) when will said post be filled; and
- (ii) what are the reason(s) for the delay in filling the post?

**The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne):** Thank you, Mr. President. The Ministry of Foreign and CARICOM Affairs is seeking to identify an appropriate candidate to fill the post of Inspector of Missions. It is not possible at this stage to state precisely when that process will be completed but every effort is being made to do so as quickly as possible. In the interim, the Ministry of Foreign and CARICOM Affairs has ensured via internal arrangements that key functions of that post are being dealt with appropriately.

An appropriate candidate—with respect to part (ii) of the question, an appropriate candidate has not yet been identified. This particular position requires some significant knowledge and experience specific to the Ministry's operations and the Ministry must therefore ensure that it identifies a candidate with the relevant extensive expertise. Thank you, Mr. President.

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

**Sen. Mark:** Through you, Mr. President, to the hon. Minister: Hon. Minister, why has it taken almost four years to locate, as the hon. Minister has said, the



expertise required to fill and to fit for purpose this particular office? Can the Minister explain, Mr. President, why it has taken almost four years to fill such an important office in the Ministry of Foreign and CARICOM Affairs?

**Mr. President:** Minister.

**Sen. The Hon. Dr. A. Browne:** Thank you, Mr. President, and thank you to the Senator for repeating the question—the supplemental twice. Basically, Mr. President, as indicated, this position requires specific, peculiar knowledge and expertise relevant to the Ministry's operations and therefore, such a search must be conducted carefully and is ongoing at this time.

With respect to the time frame posed in the supplemental question, I can respond specifically in the more recent period and to assure the poser of the question that such an undertaking is underway. As indicated, we last had an Inspector of Missions in 2019 and efforts are being made to fill this position.

I assure that in the interim, during that reference period, a technical team has been put in place, led by a senior foreign service officer—a dedicated public servant—supported by three technical staff members and associated administrative staff, to ensure that the functions of this division are appropriately carried out and the missions have been receiving the relevant support. Thank you, Mr. President.

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

**Sen. Mark:** Mr. President, through you, to the hon. Minister: Hon. Minister, can you indicate what form or forms are being executed to attract this personnel to fill this office? In other words, Mr. President, is the Government pursuing public advertisement, as an example, to fill this post? Because he said ongoing efforts are being made. So all I am asking, Mr. President, is what are these ongoing efforts?

**Sen. The Hon. Dr. A. Browne:** Thank you very much, Mr. President. Within the supplemental, there was a suggestion. That certainly is an avenue being considered

for this post and several other posts of a sensitive nature in support of the Ministry's functions. At this time, the search is ongoing via other means. There is consideration being given to the option of a public advertisement. Thank you, Mr. President.

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

**Sen. Mark:** Can I ask, through you, Mr. President, for the Minister to identify for this honourable Senate what are the other means that are being pursued by the Ministry of Foreign and CARICOM Affairs to access and make available to the Ministry that important office-holder? What are the means that are being pursued?

**Mr. President:** Minister?

**Sen. The Hon. Dr. A. Browne:** Mr. President, you know, it is an interesting question because my recollection of the last time another administration filled this position, it had nothing to do with public advertisement. So the Member should be familiar that in filling such lead positions, very often there is reliance on awareness and knowledge of persons with experience within the system; reference to retired officers and other individuals of the citizenry who have the capacity and the experience that can be considered. So that involves careful consideration, vetting, enquiries among the cadre of officers within the Ministry, and others that we are associated with through the work of the Ministry of Foreign and CARICOM Affairs. Thank you, Mr. President.

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

**Sen. Mark:** Mr. President, through you, again: Hon. Minister, through the hon. President, given the importance and significance of this office to the functioning of the Ministry of Foreign and CARICOM Affairs, can the Minister identify to this honourable Senate what are the essential skill sets required of this office-holder to

carry out those responsibilities necessary within the framework of the Ministry of Foreign and CARICOM Affairs? Can he share with us?

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

### **Police Equipment in Possession of Criminals**

#### **(Actions Taken to Address)**

**82. Sen. Wade Mark** asked the hon. Minister of National Security:

Can the Minister indicate what action, if any, is being taken by the Government to address the increase in the number of Police equipment being found in the possession of criminals?

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

**The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne):** Thank you, Mr. President. Mr. President, at the outset, it should be noted that while pieces of equipment, including items of uniform, have been discovered at crime scenes by the Trinidad and Tobago Police Service, TTPS, bearing the word “police” or containing markings such as police emblems, not all such items are necessarily the property of the TTPS. Nevertheless, the Commissioner of Police has advised that the TTPS is currently taking several steps to address the issue of police equipment being found at crime scenes, including the conduct of:

1. Thorough investigations into all cases where these items are discovered to determine the ownership and source of the items.
2. An audit of all arms and ammunition issued to divisions, branches, sections and units of the TTPS.

Thus far, no irregularities have been identified but the process remains ongoing.

3. A re-examination of the TTPS' procurement practices as it relates to the procurement of firearms and ammunition.
4. A review of its standing orders related to the distribution of items of uniform as well as the development of new strategies to ensure that police officers are compliant with those standing orders, properly securing their items of kit and uniform.

And:

5. An audit of all items of uniform issued which is anticipated to be concluded by the 31<sup>st</sup> of March, 2023.

**Sen. Mark:** You indicated March, you know. It has to be May.

**Sen. The Hon. Dr. A. Browne:** Yes, let me reread. And:

5. An audit of all items of uniform issued which is anticipated to be concluded in the near future.

It is expected that any discrepancies identified by the audit will be thoroughly investigated and forwarded to the complaints division for consideration and appropriate disciplinary action as necessary, Mr. President.

Additionally, the Commissioner of Police has further advised that instructions have been given for the ascribing of all items of uniforms assigned to police officers with their full name and regimental number to facilitate proper identification and tracking of these items in the future.

The TTPS also plans to hold discussions with security companies as it relates to the use of uniforms resembling that of the TTPS. And therein, Mr. President, lies a comprehensive answer to the question.

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

**Sen. Mark:** Mr. President, through you, to the hon. Minister: Having regard to the frequency and regularity of police uniform, arms, ammunition being found on

crime scenes in this country, can the Minister advise honourable House whether the Government, given the rogue element that exists in the police service—

**Mr. President:** Get to the question, Sen. Mark.

**Sen. Mark:** I am getting to it, Sir. Can the Minister advise, through you, whether the Commissioner of Police is contemplating establishing an independent forensic criminal investigation into this matter? It is a very serious matter.

**Mr. President:** Minister.

**Sen. The Hon. Dr. A. Browne:** Mr. President, if the poser of the question would have listened very carefully, he would have identified that several audits are currently underway, being undertaken by the TTPS, led by the Commissioner of Police, who has given very specific assurances and information in response to this question. Of note—it should be noted that no irregularities have been identified but that this process is ongoing. We can be assured that if there is any indication of irregularity in these ongoing audits, then further steps would be taken as contemplated. Thank you, Mr. President.

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

**Sen. Mark:** Mr. President, again, through you, seeing that citizens have been murdered by police bullets—

**Hon. Senators:** [*Interruption*]

**Sen. Mark:** “Alleged”, “alleged”—“allegedly”, “allegedly”, right?

**Mr. President:** [*Inaudible*]

**Sen. Mark:** Yes, Mr. President, I am going to the question. Mr. President, I would like to ask the hon. Minister if he share with this honourable House how many specific audits are being currently conducted? We hear several. Can he identify how many audits are being conducted?

**Mr. President:** Minister.

**Sen. The Hon. Dr. A. Browne:** Mr. President, I profess the response to the last supplemental by saying if the Member had listened carefully. But there was a specific indication of five responses, two of which are audits. I will further specify:

An audit of all arms and ammunition issued to divisions, branches and sections and units of the TTPS.

That is one, Mr. President. And the second audit is:

A specific audit of all items of uniform issued which is anticipated to be concluded in the near future.

It is expected that any discrepancies identified will be further investigated and forwarded to additional divisions, such as the complaints division, for disciplinary action where such is deemed necessary. Thank you, Mr. President.

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

**Sen. Mark:** Mr. President, through you, again: Hon. Minister, through the President, given, as I said, the regularity of this occurrence in this country, can the Minister indicate whether the Government is contemplating seeking external assistance and intervention to get to the bottom of this frightening, disturbing and troubling situation in our nation?

**2.00 p.m.**

**Sen. The Hon. Dr. A. Browne:** Mr. President, the Government has taken note of the phenomenon as described; has received the responses and actions from the Commissioner of Police and the indications that have been identified in the response to this question. I would want to further elaborate that many of the items that are ascribed and bear the word “police” do not necessarily stem from the Trinidad and Tobago Police Service.

So in the adjectives used—the dramatic adjectives used by the Senator should not assume that all of these items originate within the TTPS. And that area

is the subject of investigations and audits, as identified at this time, to make those determinations.

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

**Sen. Mark:** Mr. President, can I ask, through you, to the hon. Minister, how soon in the near future will these reports into the—these audits, rather, be completed? It is a bit vague.

**Mr. President:** Minister.

**Sen. Mark:** So could the Minister give us a specific time frame for the completion of these reports?

**Mr. President:** Minister.

**Sen. The Hon. Dr. A. Browne:** Thank you, Mr. President. Just by the nature of an audit into an exercise like this, the Member should have sufficient experience to recognize that it would be impossible to put a specific end date to a process such as this. Depending on information revealed, items disclosed, evidence identified, then an audit can be further elaborated. So it is very difficult. We are assured that these matters are ongoing, receiving the appropriate attention and will be concluded in the near future. That is as specific as the Government can indicate at this time.

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

## **JOINT SELECT COMMITTEE**

### **Shipping Bill, 2020**

#### **(Extension of Time)**

**The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne):** Mr. President, having regard to the Report of the Joint Select Committee appointed to consider and report on the Shipping Bill, 2020, Third Session (2022/2023) Twelfth Parliament, I beg to move that in the Fourth Session

of the Twelfth Parliament, a committee be re-established to consider and report on said Bill and that this committee be mandated to adopt the work of the committee appointed in the Third Session.

*Question put and agreed to.*

### **STANDING ORDER 77(3)**

#### **Continuation of Bills in the Fourth Session**

**The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne):** Thank you, Mr. President. In accordance with Standing Order 77(3), I beg to move that the following Bills be restored to the Order Paper in the Fourth Session (2023/2024) of the Twelfth Parliament: the Private Security Industry Bill, 2022, and the Supplemental Police (Amdt.) Bill, 2022.

*Question put and agreed to.*

**Mr. President:** Attorney General.

### **ADMINISTRATION OF JUSTICE (INDICTABLE PROCEEDINGS)**

#### **(AMDT.) BILL, 2023**

**The Attorney General and Minister of Legal Affairs (Sen. The Hon. R. Armour SC):** Thank you, Mr. President. I beg to move:

That a Bill to amend the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011), be now read a second time.

And may I put at the masthead of everything that I will say today, Mr. President, the fact that we are today considering legislation to abolish preliminary enquires which concerns the pretrial stage of the criminal trial process. We must not lose sight of that in the context of all that will be said and the significant moment that we now are at in this august Chamber.

Mr. President, the Bill before the Parliament is a significant tool in reducing the endemic delay in the criminal trial process. The statistics demonstrate that as at



March 2023, there are approximately 37,933 pending indictable matters at the district courts. This means that there are 37,933 criminal offences, serious criminal offences, including murders, attempted murders, robberies, rapes, trafficking in persons, misbehaviour in public office and other types of fraud which are currently pending at the pretrial stage. A pretrial stage, which in the norm in Trinidad and Tobago over the past several years, going into more than a decade, ordinarily takes two to three years on certain occasions, including matters which are still current, as much as 15 years.

These numbers do not merely represent pending matters or charges. They represent thousands of persons whose lives have been disrupted, who wait in abeyance for some form of progress and/or closure to serious criminal matters and charges which have followed them like a shadow for many years.

Every one of those 37,933 matters, Mr. President, involves an accused person or multiple accused persons; a victim, sometimes multiple victims; tens of witnesses; interested family members; and, of course, the affected public. This is the reality of our criminal justice pretrial system. To add to this staggering number is the average of 8,835 indictable matters filed annually which now join the queue of the 37,933 pending matters.

Critically, we accept that the work of conducting preliminary enquiries is shared between the Office of the Director of Public Prosecutions and the Trinidad and Tobago Police Service. At current, the Office of the DPP has under its conduct approximately 2,120 preliminary enquiries. For the period 2013 to 2023, the office has concluded 900 preliminary enquiries.

We have requested statistics from the Trinidad and Tobago Police Service, and the data from the Court and Process Branch of the Trinidad and Tobago Police Service reflects that there are currently 1,326 preliminary enquiries under the

purview of that branch.

In looking at these statistics, with an overall average of 37,933 pending matters and an additional approximate 8,835 matters joining the list every year, it is clear that the pretrial stage of our criminal justice system is in dire need of complete overhaul. This is an undisputed fact and cannot be allowed to continue.

There can be no dithering, in my respectful submission. There can be no interference in the discussion and the decision-making process which we are going to engage in by introducing personal or political differences. We have to put those aside because the people of this country demand better, demand decision and demand action on our part.

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

**Sen. The Hon. R. Armour SC:** From the outset, may I say, from as early as 2015, the Government has prioritized the abolition of preliminary enquiries as a significant step in the improvement of the criminal justice system.

In 2022, we made a final call, including previous calls to stakeholders and received feedback from the Office of the Director of Public Prosecutions, the Judiciary, the Public Defenders' Department, the Trinidad and Tobago Police Service, and engaged in substantial consultation processes from the Law Association of Trinidad and Tobago, from the Criminal Bar Association.

From 2021, Mr. President, the reconstituted Criminal Justice Committee, chaired by the honourable Chief Justice, has continued and engaged that process of consultation. That committee is composed of, among the other heads of departments, the Attorney General, the Chief Magistrate, the President of the Law Association, the Commissioners of Police and Prisons, the Chief Public Defender, and the Director of Public Prosecutions.

The time has come, enriched by that process of consultation and significant

hard work, Mr. President, for us to engage today to pass the Bill, which is before this House, and to abolish the lethargic and indolent system of preliminary enquiries, and move to a fast track trial process.

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

**Sen. The Hon. R. Armour SC:** The current pretrial system is governed by the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01. In 2005, we saw the introduction of paper committals, which was an attempt then to improve the system. The harsh reality of those paper committals have led to the use of written statements and documentary evidence, and the use, and one might even say the abuse, of multiple cross-examination, multiple pretrial processes that have allowed for inordinate delay in the disposition of preliminary enquiries, with 88 per cent of preliminary enquiries into capital matters taking over two years to completion.

It has led to undue incarceration of accused persons, many of whom are eventually found not to have had a prima facie case made out against them after close to a decade of imprisonment. It has led to the obvious depletion in the quality of evidence, both at the preliminary and subsequent trial stages, to the failing memory of eye witnesses and to the increase in the number of witnesses who have died or cannot be located to provide testimony and subject themselves to cross-examination, which cross-examination is sometimes prolix and conducive of even further delay.

We begin our conversation on this piece of legislation before this House today, Mr. President, by reminding ourselves that we have the ruling of our highest court, that it is not in any way unconstitutional to abolish preliminary enquiries. The case in point out of Antigua is *Hilroy Humphreys v The Attorney General of Antigua and Barbuda*, 2008, UKPC, in which the Privy Council held that the:

“...(...defendants in criminal proceedings) do not have a vested right to any

particular procedure and there will generally be nothing unfair in applying whatever procedure is in force when the case comes to court.”

Section 53 of our Constitution, Mr. President, charges us with the responsibility to:

“...make laws for the peace, order and good government of Trinidad and Tobago...”

And that is what we are here about today.

Mr. President, the Bill before us, if I may speak with some measure of emphasis, involves us taking a hard look at our systems and introducing a new system which is going to be allowing defendants, accused persons, the right to a fair trial; allowing a fulsome role for the Office of the Director of Public Prosecutions, the independent office charged with the conduct of prosecutions under our system; and is going to divide the trial, the pretrial process, substantively into two compartments, the initial hearing and the sufficiency hearing.

**2.15 p.m.**

I will come to that.

But may I, in anticipation of comments which I have no doubt will be made, may I say, Mr. President, that in the process of coming to this House with this Bill, among other persons who have been consulted on this piece of legislation, I have listed them all, but I would emphasize the Office of the Director of Public Prosecutions has been consulted. Several letters have been written to him inviting his input and he has made input. And may I say, Mr. President, with reference to the Office of the Director of Public Prosecutions, that I continue to engage with that office an important part of the criminal justice system in order to ensure that we make progress in improving our criminal justice system.

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

**Sen. The Hon. R. Armour SC:** I have personally participated in meetings with the Director of Public Prosecutions and the chairperson of the Judicial and Legal Service Commission, as recently as April 2023, to address some of the challenges. I am informed that interviews for state counsel were conducted as recently as early May 2023, and of course I give the assurance to the public, the citizenry of this country, that the Office of the Attorney General and the Ministry of Legal Affairs continues to place to the Office of the Director of Public Prosecutions, the independent office, at a most pivotal stage in the—

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

**Sen. The Hon. R. Armour SC:**—improvement of our criminal justice system.

Mr. President, I would move to the clauses of the Bill. I will emphasize some at the outset. Clause 4 of the Bill before us, among other things, which deals with definitions, introduces the concept of “electronic filing” which reduces our archaic paper-based systems.

Clause 15 introduces the early filing of the indictment, that most important document which commences really the process of the criminal trial and which has been for far too long delayed at the latter end of the process. We are now bringing it in to the first stage of the criminal trial process. And clause 15 will deal with the scheduling order. I will come to that and will get to the sufficiency hearing. What we are seeking to do by this Bill is to reduce the extent to which the pretrial stage of a criminal trial becomes mired in a lengthy and unduly delayed process, as if it were the trial itself when it is not. Because all that the pretrial stage is intended to do is to satisfy, under the system that exists now, the magistrate, and under the system that we are going to introduce under this Bill that is before this House, the master, that a sufficient prima facie case is being made out, at which stage the case is transferred to the High Court judge so that the actual criminal trial can get

moving.

And if we do what we are going to accomplish under the Bill that is before this House, we will move, Mr. President—and I emphasize this, we will move a sea change in our criminal trial process. Because we will move from a process by which persons are incarcerated during the pre-trial phase for up to three years, sometimes as much as 10 years, to a period of, hopefully, not more than six months. At which stage, if a prima facie case is being made out, the case goes to trial and is dealt with at the trial stage.

Mr. President, the Bill before this House is long; 45 clauses long. And I am hoping not spend an undue period of time going through the clauses, clause by clause, but rather to highlight the relevant clauses, the more important clauses. So an example of the highlight is clause 2 of Bill which provides for a proclamation clause. And that proclamation clause is important because what it means is that after—and I say this with confidence and optimism—we pass this Bill this evening into law, a period of time will be permitted before proclamation so as to enable further consultation, training and sensitization. So that when the Bill is finally proclaimed, all shoulders are to the wheel of an improved criminal justice machinery.

We have a definition section, Mr. President, clause 4. And clause 4 of that definition section deals with a number of different definitions. The term “appropriate adult” is one of the terms used in the definition section which simply means, with reference to section 3 of the Children Act, that appropriate adults who are listed in section 3 will be available to accompany the children who come before the courts under different offences before the different Children Courts.

It also includes, clause 4, an expansion of the “prosecutor.” Because what this Bill seeks to do, through clause 4 as it introduces the concept of “police

prosecutor”, is to encourage, by an amendment to section 64A of the Police Service Act, police prosecutors to comply with the requirements of the Legal Profession Act so that fully legally qualified police officers can function as prosecutors to assist and support the Office of the Director of Public Prosecutions in prosecuting cases at the indictable stage, at the initial hearing and at the sufficiency stage.

Mr. President, clause 5 of the Bill before us seeks to amend section 4 of the preliminary enquiries Act and, among other things, it empowers magistrates to determine those cases in certain circumstances which are to be determined in accordance with the new Act when we pass it, or whether they will remain before the magistrate at the stage before this Act came into force.

Mr. President, clause 6 seeks to amend section 5 of the Act. And that clause 6, section 5, was further amended in the House of Representatives before we came here today. And may I just emphasize that the purpose of that amendment, which I brought before the House of Representatives, was to ensure that premises, which are referred to in section 5, when they are to be searched or seized, have the protection of due process and the protection of law if ultimately the master under this new legislation were to authorize a search of premises which are not named in the search warrant but have to be satisfied. The master has to be satisfied that the provisions of subsection (1) of section 5 are satisfied and that was the purpose of the amendment we which we brought in the House of Representatives. There were other amendments that were made to section 5, which is identified at clause 6, and we will address those in due course, Mr. President.

We also make provision, Mr. President, for the initial hearing stage of the preliminary trial stage, and the initial hearing stage, Mr. President, is a very important stage. And I would invite—I have asked for Members of this Senate to

be provided with the consolidated version of the legislation which is being amended.

**2.25 p.m.**

And the initial hearing stage of the trial is introduced at section 11 of the Act, and that is a section which is being amended in significant terms. So if Members would stay with me as I look at section 11, which is being amended under clauses 15 through to 19 of the Bill before this House. That initial hearing stage brings significant features to the improvement, Mr. President, of the trial, the pretrial process.

Significantly, what is introduced by the amendment to section 2(h)(iii) is that the prosecutor—and I am now at section 2(h)(iii) of the consolidated—the unofficial consolidated Bill:

The prosecutor shall file in the High Court and serve on the accused the indictment and all witness statements and other documentary evidence that he intends to use at the sufficiency hearing, which date shall be no later than three months for the making of the scheduling order or such longer period as the master thinks fit.

The significance there is, is that the indictment is being introduced at the very beginning of the process.

We have cases before our courts right now, Mr. President, in which persons are on remand yard for three years and the indictment has not yet been served. It is mandatory, from the minute this case comes before the master, when you look at the amendment that is being proposed, that the indictment shall be served by the prosecutor on the accused, all witness statements—and I have already addressed that—and that if he intends to use it at the sufficiency hearing, the sufficiency hearing date shall be no later than three months from the date of the making of



scheduling order which the master is managing at this very early stage.

(iv) the accused shall file in the High Court and serve on the prosecutor any witness statements and other documentary evidence that he intends to use at the sufficiency hearing, which date shall be no later than twenty-eight days.

So, again, strict timelines are being introduced.

(v) the sufficiency hearing shall commence...

And we will get to the sufficiency hearing when we come sections 19 through to 37 of the consolidated version.

(v) the sufficiency hearing shall commence, which date shall be no later than twenty-eight days or such longer period as the master thinks fit from the date specified under subparagraph (iv)

So we see that, with the introduction of the amendment that is brought by clause 15, that the indictment is filed immediately. We immediately introduce a timeline under robust court management by the master to ensure that the trial is taken forward in an expedited manner.

I cannot stress too much, Mr. President, the importance of the filing of this indictment at the initial hearing stage in ensuring that the pretrial proceedings are conducted with greater efficiency. And significantly, Mr. President, this does not interfere with the Director of Public Prosecution's ability to amend, add or withdraw accounts on the indictment as needed.

So, Madam President, that is, in my respectful submission, one of the most significant introductions—one of the most significant amendments that is being made by the clauses 15 through to 19 of the—11 through to 19 of the unofficial consolidated Act, which is introduced from clause 15 of the Bill before this House.

And then we get, Mr. President, to clause 20 to through to 27. Clauses 22 through to 27 then introduces the sufficiency hearing. And at this stage, what we

have before the master at the sufficiency hearing stage is the indictment and all of the witness statements and other documentary evidence which have been filed by the prosecutor and the defence, the accused persons assisted by legal aid. All of that is prescribed in the earlier sections of the unofficial consolidation. And at this stage, the master will address the sufficiency hearing on the paper before her or him without engaging in the protracted preliminary enquiry process which currently bedevils our criminal justice system of lengthy cross-examination, prolix cross-examination, a multiplicity of witness statements that are introduced over time.

Clauses 20 to 37 of the Bill provide for the sufficiency hearing. Mr. President, clause 20 of the Bill will amend section 19, and clause 19 will improve the language by deleting and substituting certain chapeaus in order to improve the language and ensure that the procedure is properly explained. The clause will also repeal subsections (6), (7) and (8), and substitute new subsections (6), (7), (7A) in order to adequately deal with adjournments at a sufficiency hearing; another ill that bedevils our criminal justice system, undue adjournments that are allowed in the absence of a robust judicial management. One of the things that this Bill is introducing is a very robust judicial management process.

Clause 21 of the Bill will insert after section 19, Mr. President, a new section 19A, dealing with witnesses and witness statements as it pertains to the sufficiency hearing. It is proposed that the attendance of a witness shall not be required at a sufficiency hearing unless on application the master makes an order for the attendance of a witness who filed an unsworn statement. This, Mr. President, is a pivotal change to the way pretrial procedures are conducted. The addition of oral evidence, by way of further evidence and cross-examination, has been identified as a major cause for the protraction of the current preliminary enquiry process.

Clause 23 of the Bill, Mr. President, will amend section 21 of the Act by deleting subsection (2) and paragraphs (c) and (d), and inserting new paragraphs (c) and (d):

“...to ensure that there is clarity in procedure as it relates to the admissibility of prosecution witness statements. This clause would also amend section 21(3) and 21(3A) by deleting the words ‘adult of choice’ and substituting the words ‘appropriate adult’...”

And I have already addressed that with reference to clause 4 and the definition “appropriate adult” which one finds in section 3 of the Children Act.

“...and deleting the words ‘or any other person qualified’...substituting the words ‘child psychologist, social worker, counsellor or other person who is similar quality’, respectively.”

Clause 23 of the Bill, Mr. President, will delete (da) in relation to section 21(4)(a) and substitute a new (da):

“...in order to clarify the procedure as it relates to a statement...by a person who does not speak fluent English.”

Additionally, this clause will amend 21(5) by repealing it and amend section 21(8) by repealing and substituting a new section 21(8):

“...which pertains to a transcript of proceedings and evidence obtained under the treaty to be admissible as evidence in a sufficiency hearing.”

Clause 24 of the Bill will amend section 23 of the Act by deleting a paragraph (b) and substituting a new paragraph (b) to clarify the procedure and:

“...to provide for the Criminal Procedure Act...”—relating—“...to orders under section 25, concerning a Master’s final decision at a sufficiency hearing.”

Clause 25 of the Bill, Mr. President, will amend section 24 of the Act by

inserting in subsection (1) the words “on the indictment” which concerns the discharge of the accused. This clause will repeal subsections (4) to (11) of section 24 of the Act and substitutes it with new subsections (4) to (6):

“...in order to allow the Director of Public Prosecutions to appeal the decision of a Master if the...”—Director—“...is of the opinion that the accused ought not to have been discharged...”

It also allows:

“...for the appeal from a Master’s decision to the Court of Appeal in accordance with section 65C of the Supreme Court of Judicature Act.”

I pause there just to emphasize this point, Mr. President, because in the other place much was said about the fact that the jurisdiction of the independent Director under section 90 of the Constitution was being eroded to the extent that the master was being given the power to second-guess the decision of the Director of Public Prosecutions. And what this section does is to allow the Director of Public Prosecutions to appeal to the Court of Appeal in accordance with section 65C of the Supreme Court of Judicature Act if the master has made a decision with respect to the sufficiency hearing that the Director is not happy with. So there is no erosion of the function of the Director, because to the extent that he is allowed to appeal the decision to the Court of Appeal, the Court of Appeal will be able to review the decision of the master. And if the Director makes out a successful appeal, will restore the decision of the Director.

Clause 26 of the Bill, Mr. President, will amend section 25 of the Act by repealing subsection (1), substituting new subsections to deal with an offence under the Criminal Procedure Act. It allows for the indictment to be amended accordingly. The clause also amends section 25 by repealing subsections (2) and (3), deleting and substituting words in subsections (4) and (5):

“...to ensure clarity of language as it pertains to the Criminal Procedure Act.”

Clause 27 of the Bill will amend section 26 of the Act:

“...to clarify the language relating to the procedure of transmission, custody of documents and exhibits relating to a case.”

Mr. President, clauses 28, 29 and 30 of the Bill will amend section 26A of the Act by repealing section 26A, which has now become obsolete; would amend section 26B of the Act by repealing section 26B; and amend section 26C of the Act by repealing the current section 26C.

Section 26C allowed for the DPP to determine which case is to be dealt with summarily or indictably after the completion of an entire sufficiency hearing. And this, in our respectful view, defeats the purpose of this fast trial law. While this has been repealed, the idea is that the DPP has early notification of whether or not a matter will be dealt with summarily or indictably and does not have to wait until after an entire sufficiency hearing is completed to exercise that power. In our respectful view, this a waste of judicial, prosecutorial and other resources.

Clause 31 of the Act will amend section 27 of the Act by repealing that section 27. This effectively removes Schedule 4 matters which were exempted from discharge. This is better aligned now as the indictment is now being filed at the beginning of the sufficiency hearing process, so there is no longer a need to have a schedule which exempts matters from discharge due to delayed filing of the indictment.

Clause 32 of the Bill will:

“...amend section 28 of the Act by...deleting paragraph (c) of section 28(1) and inserting a new subsection (1A) to account for where a Master...”—is—  
“...referred an accused to a Judge for sentencing...”—following an early

guilty plea—“...and the Director of Public Prosecutions...”—must—“...be given notice of that referral.”

Clause 32 of the Bill amends section 28 by repealing subsection (2), substituting a new subsection to allow for when a master refers an accused to judge for sentencing for the statement of the accused to be reviewed in evidence upon its mere production without further proof.

Clause 36 of the Bill will amend 29(2)(b) by allowing:

“...the oath of a credible witness, whose attendance is not reasonably practicable as result of being out of Trinidad and Tobago...”

And for that person:

“...to be secured...”

That person’s evidence:

“...to be secured either physically or by electronic means. The clause will also amend section 29 of the Act by repealing subsection (7).”

Clause 37 of the Bill will amend section 30 of the Act by repealing subsections (1) through (6), substituting subsection (6) with a new subsection:

“...to account for the indictable offence being dealt with by the High Court in accordance with the Criminal Procedure Act.”

And I emphasize the points throughout, Mr. President, that the Criminal Procedure Act, an involved, detailed piece of legislation, remains in place as the legislation which regulates the trial at the assizes where the real trial takes place after the preliminary pretrial stage has been expedited by the amendments that we bring by reason of this Bill.

**2.40 p.m.**

Clause 38 of the Bill, Mr. President, will amend section 32A of the Act by deleting and substituting words to clarify the procedure, deleting subsection (5)

substituting a new subsection (5) to state that:

“When notice is given to the Registrar under subsection (3), the Registrar shall issue a notice to the accused to appear before a Master on the date specified in the notice.”

Clause 39 of the Bill will amend the Act by inserting a new section 32B to deal with anonymization of documents for a variety of reasons. For example, the protection of witnesses, importantly here the original version of the document, is always retained for court and internal purposes. And again, in the other place, Mr. President, a lot of time was spent criticizing the anonymization process on the mistaken assumption that this had to do with anonymizing of witnesses. This is not the anonymizing of witnesses. It is the anonymization of documents the witnesses—the witness statements have been served but there are vulnerable persons—and it is all spelt out in the legislation—persons who have to be protected and therefore there is a process of anonymization of documents in order to give some comfort to persons who are identified in what can sometimes be a very harsh spotlight of the criminal justice system

Clause 40 of the Bill will amend the Act by amending section 33(2):

“...deleting the words, ‘...neither the prosecutor nor the accused elects to have the case determined in accordance with this Act’ and substituting the words ‘no order is made under section 32A’ in order to allow for savings under the Indictable Offences (Preliminary Enquiry) Act.”

Clauses 41 through 44 of the Bill will amend sections 34 throughout. Clause 42 of the Bill will amend Schedule 5 by deleting Form 1, substituting a new form. Clause 43 of the Bill will repeal Schedule 6. Clause 44 of the Bill will amend Schedule 7 to the Act by repealing Schedule 7 and substituting a new Schedule 7

And finally, Mr. President, clause 45 of the Bill deals with consequential

amendments as a result of the passage of this legislation: the Summary Courts Act, the Criminal Procedure Act, the Criminal Procedure (Change of Venue) Rules, the Police Service Act, and the Family and Children Division Act

Mr. President, this Bill, when we pass it today, will complement a host of reforms which this Government has already brought to the Parliament and has brought to this country, and I can identify a few: the backlog identification at all levels of the court and prosecutorial division; the creation of divisions of court; the introduction of judge alone trials; the decriminalization of road traffic offences; the introduction of new plea bargaining legislation; the increase in judicial capacity and support systems; the creation of a public defender system; the enhancement of the prosecutorial system; the introduction of Criminal Procedure Rules; the implementation of a fully computerized case management structure

Mr. President, when we look at the benefits to be gained by the passage of this Act, I could give an example in terms of timeline. The new trial procedure from charge to discharge or committal for trial is approximately six months as opposed to two to three years, or in some cases as much as 15 years. Search warrant: the constable is to complete and file the report in the High Court within 14 days. The accused appears and is brought before a master for an initial hearing. At the initial hearing, the prosecutor is to file and serve on the accused the indictment no later than three months. The master, of course, has a discretion. At the initial hearing, the accused must file and serve evidence on the prosecutor no later than 28 days after the prosecutor has filed and served the indictment, of course with the master having a discretion. In the case of adjournments, the adjournment shall be for no longer than 28 days unless with the consent of the parties. The accused must serve notice of his alibi within 28 days from the initial hearing. The sufficiency hearing must commence no later than 28 days after the accused files



and serves evidence, of course with the master preserving a discretion to manage the fairness of the process. And at the sufficiency hearing, where an accused is remanded to stand trial, an adjournment shall not be for more than 28 clear days.

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

**Sen. The Hon. R. Armour SC:** Thank you very much, Mr. President. At the sufficiency hearing, the accused can be discharged by the master on the written request of the DPP and must transmit within 14 days the record of the sufficiency hearing. Again, if at the sufficiency hearing the accused admits guilt, he must appear before a judge for sentencing within three months. The trial witness statements must be tendered 21 days before trial. At trial, the DPP shall, at least 28 days before the date fixed for trial, give notice to the registrar of the information on witnesses whom he desires to attend at the trial of an accused at the High Court. And that is the stage at which one then introduces the fairness of the process involving cross-examination of witnesses and the like.

Mr. President, the reality is that we really simply do not have a choice. If we are to progress our criminal justice system, we have to move out of the lethargic and indolent system which has been characterized by the preliminary enquiry stage, which I said at the beginning and I repeat now as the masthead of my submissions, is no more than the pretrial stage. What we are seeking to do is to shorten the pretrial stage to give an accused person his entitlement to a fair hearing at the assizes if he is committed. And if he is not committed, because a prime facie case has not being made out then within six months from when he was charged and brought before the master, he can walk free and get on with his life.

Mr. President, with leave of this court—with this House, I beg to move.

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

*Question proposed.*

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

**Sen. Jayanti Lutchmedial:** Thank you, Mr. President. Mr. President, I am pleased today—this afternoon to join in this debate and make a few comments about the proposed amendments to the Administration of Justice (Indictable Proceedings) Act which we have over the years shortened to AJIPA.

And, Mr. President, the state of the criminal justice system in Trinidad and Tobago is well known, I think, to everyone in here, and certainly to most persons who are in the public. It is a topic of grave concern. It is something that has been discussed—I do not want to say ad nauseam because I do believe that further discussion is needed, but it is a topic that continuously rears its head, whether it is from the Law Association, the ordinary man on the street complaining about what are the problems facing the country right now when we are discussing the scourge of crime and our inability to deal with crime. Because, of course, the speed with which we are able to convict or release persons from custody or discharge them from appearing before the court has a direct impact on our ability to have rehabilitative processes implemented in relation to those who need it. It has a direct impact in our ability to keep the country safe when the right persons are in fact convicted. And when perhaps—because we have to respect the presumption of innocence and the rights of persons accused, you may in some cases have persons who are repeat offenders being out on bail whilst they await their day before the court, and that in itself is not conducive to a country that is run properly. It is not conducive to a country that has to tackle a scourge of crime and so, therefore, we are committed to ensuring that the criminal justice system improves. As a high-level policy, I would say, we support any improvement to the speed with which the criminal justice system can operate. We do wish to see matters move through the system faster, both to protect the public at large, to seek the interest of

victims, as well as to balance against the rights of accused persons.

The statistics provided here today, where there are some 38,000 matters—close to 38,000 matters pending before the Magistrates' Court, the district courts, as they are now called in Trinidad and Tobago, is certainly a state of affairs that needs to be addressed.

Where I would part ways perhaps with the Attorney General is that I do not necessarily characterize what takes place in the pretrial phase as totally irrelevant perhaps, and maybe there being prolix cross-examination and an abuse of pretrial processes. Because, you see, if you understand correctly what happens at the preliminary enquiry stage—and I think it is important for us to compare what happens now with what will happen under this Bill in order to understand its value, and to properly, I think, analyze the concerns that we would raise here today. We have a very heavy reliance still on witness evidence, and that is a fact. In fact when the DPP appeared before the Joint Select Committee on National Security quite recently, he made a point which he thought was quite unusual, that when he began prosecuting many, many years ago and started as a prosecutor he actually had more cases coming before him where police officers asked for advice to charge where there was fingerprint evidence and evidence that did not depend on the veracity of witnesses, as opposed to now where you have cases built entirely on eyewitness evidence or the veracity of a witness who may come forward and say something. And that is the reason why you have such prolonged cross-examination in many cases that I have seen at the preliminary enquiry stage.

Because in many of those cases it is quite possible to attack the veracity of the witness at the preliminary enquiry stage through cross-examination and have the case dismissed. And I would have liked today, because we do not have that information, but I would have like to see or like to hear how many of these cases—

and I agree with the Attorney General that many people stay perhaps incarcerated or have a charge pending over their head for sometimes up to 10 years. The well-known case dealing with the no bail for murder matter, Akili Charles; Akili Charles waited nine years incarcerated without bail only to be released at the end of a preliminary enquiry because there was not sufficient evidence to move forward to an indictable—to indict him for murder. And that—when we deprive people of that time of their life is, of course, undesirable and wholly unjustifiable. But I would like to know how many matters after cross-examination, as the Attorney General described it as prolix cross-examination—I have seen some very extensive cross-examination at the preliminary enquiry stage, but it often results in a person not being ultimately indicted.

So when you remove that cross-examination from the preliminary enquiry stage, when you are dealing with several cases and many cases—and the DPP himself has said a lot of the cases now hinge on eyewitness testimony or other types of testimony, but it is witnesses—it is witnesses to give evidence, not so much on forensic evidence, scientific evidence, DNA, CCTV, et cetera. Cross-examination plays an important part in determining whether or not the prima facie case is made out. Because it may very well be that you can pass the stage of saying—on the documentary evidence and on the witness statements, you can actually cross this hurdle of sufficiency based on those statements alone. But without that evidence being tested, you may very well have cases that will collapse or may collapse when they get in front of a jury.

So I raise that concern simply to say that what happens now in a preliminary enquiry is not totally irrelevant and it is not totally, you know, just a waste of time and so on. And although it does take a lot of time, it does serve a purpose in many cases because it results in matters—a lot of cases not even reaching the High Court

due to the insufficiency, unreliability and just, you know, simple collapse of a prosecution case under cross-examination at the state of the preliminary enquiry.

The other thing that I want to mention—because the Attorney General stated that this law will be proclaimed and one of the reasons for that is because, of course, they would have—gave a period of time for training and the rolling out of all the administrative procedures and so on. I only hope that this piece of legislation does not find itself sitting next to other pieces of legislation, that we have sat here, that we have debated extensively, and that we have spent a lot of time analyzing and commenting on and consulting on, that is yet to be proclaimed, that were touted—those pieces of legislation that were touted to bringing massive reform and overhaul of our criminal justice system. I would make mention of the Evidence (Amdt.) Act, 2020, which was assented to since February of 2021, but has not yet been proclaimed.

When the former Attorney General brought that piece of legislation to this House, Mr. President, I remember saying that, you know, you are trying to fly before you could even creep and that there were so many other issues to be addressed in the criminal justice system, and with policing, et cetera, that could assist with securing convictions, that could assist with having matters move more expeditiously through the courts. And he said, “No, no, no, this will revolutionize, and it is the Opposition”—that we “doh support no” crime-fighting Bill, we “doh”—well, we supported it. I believe we supported it in the other House and so on, and it is yet to be proclaimed today, since 2021, being assented to.

**255 p.m.**

And I really do hope that we are not going to go down the same road with this piece of law that is again being touted as something that is going to overhaul our criminal justice system. Because we acknowledged—we all agree inside of

here and everywhere, and I think everyone in the country agrees, that an overhaul is necessary and something has to be done. So we really do hope that before bringing legislation, that the Government would have identified specifically what needs to be done; what has to be put in place; what are the training needs; who are the people that need to be trained; and what kind of staffing requirements they are going to need in order to get this piece of legislation operationalized. Because we cannot afford to delay and wait whilst we have what the Government is saying is good legislation that will achieve a particular end—just sitting down waiting and we do not know what is happening with it here today. If we are speaking about things that need to be done with urgency, then we expect that sense of urgency from the Government when they are treating with it.

Mr. President, when I—I want to comment on a few provisions of this piece of legislation. And the first thing is that, again—and this is why I spoke about the proclamation and waiting on proclamation and resourcing. It is because everything in the criminal justice system, procedure is very important and you have to follow procedures, but procedures require the people to get it done and it requires resources. And without resources, you can bring the best law to do away with preliminary enquiries, to get past the lengthy pretrial procedures, to get past extensive cross-examination at the stage of the preliminary enquiry or sufficiency hearing, or whatever it is, but you still require resources to get this done.

If we look at what has to take place at the initial hearing under the amended section 11, you do require the prosecution to do quite a lot. And the Attorney General mentioned that they are starting to interview persons for the position of the state counsel and so on, but it was not very long ago that the Director of Public Prosecutions basically said that the entire system might collapse. And we have, again, through joint select committees of Parliament; through questions being

posed; and, quite unusually, through media interviews being done with persons who hold very high office in this country, we have identified a number of problems, human resource problems, within the Office of the DPP.

And unless we address those—because you will interview people today for State Counsel I or II, or whatever it is; you will staff the office; you may have another—and I spoke about this in the budget debate last year, where the creation of a number of positions and expanded positions in the Judiciary ended up sucking all of the most senior staff out of the Office of the Director of Public Prosecutions. And even the expansion of the Public Defenders' Department took a lot of resources out the DPP, and they went there and then you had the DPP's Office basically operating with bare bone staff.

So if you interview today and you do not have proper planning, you do not have proper restructuring, you do not have perhaps the allocation of a core human resource function within that office that could be responsive to the changes that they are seeing and the change in their needs and so on— because, you know, again the Director mentioned that when the Criminal Procedure Rules were introduced, that put a whole different spin on how things had to be done at that office and I do not think that any proper analysis was done in terms of what the needs of that office would be when you make changes and how to be responsive to those needs. So that without a policy being adopted by the Office of the Attorney General and Ministry of Legal Affairs, which is the line Ministry for that particular department, which is critical to the criminal justice system—and again, the system has a number of moving parts to it and you cannot improve different parts—we cannot improve the courts and expect that with procedures being changed, such as through this Bill, that those procedures will work smoothly if one inherent component of the system is not operating well. Because it has to all flow and

operate together and there is an interdependence of all the different components in the system, and it will not work properly unless you do that. So resourcing is very important.

Police officers who do prosecute matters, many of the matters that come before the court require training. That is something that we have been speaking about over and over again. A lot of the matters and a lot of the—I would say a lot of the challenges posed at the district courts and even when you go before the masters now, it stems from the fact that there are police officers who are in charge; it stems from the fact that the appearance of the complaint police officers who are in charge of preparing all of these things and getting it into the court, so that the court can actually move forward with the matter, that simply is not happening and we are not seeing enough disciplinary action being taken.

The Criminal Procedure Rules, although it introduced a sort of a management and case management system for the criminal system, the way we have it on the civil side, it does not have the type of penalties attached to persons who do not comply with directions of the court. And the reason for that—and I raised that issue recently again when we had the members of the administrative side of the Judiciary before us. And the reason and the thinking behind it is because you do not want at the end of the day the victim to suffer as a result of perhaps a prosecutor, or a defence attorney, or a police officer not doing what they are supposed to do. But without sanctions in the Criminal Procedure Rules we, unfortunately, have a dereliction of duty in many occasions on all sides, whether it is the prosecution, the defence, the police, whoever it may be. And until we address that dereliction of duty in a particular way and we take action to address it, again these procedural things that have to take effect and have to work in our favour would not generally happen.



So getting into the clauses of the Bill, the first thing is that I see the introduction of “appropriate adult”. “Appropriate adult” was introduced into the Children Act. And you have now introduced a role for an appropriate adult which, I believe, is modelled on what we call PACE in the United Kingdom. Because PACE, which is a very advanced version of what we have here as our Judges’ Rules, deals with how police officers interact with suspects or even witnesses, and how you take statements from them, how you interrogate them, et cetera.

Now, introducing the “appropriate adult” which will include, I think, social workers, welfare workers, a justice of the peace, attorney or any other responsible person, and who the child or the minor is comfortable with, into this piece of legislation can, of course, assist the prosecution with ensuring—and this is the purpose of it in the United Kingdom. You want to ensure fairness; you want to ensure that when you get to the stage of a trial that it is less likely that statements taken from a minor would be subject to doubt in the minds of the judicial officer or the jury, or whoever it is, because you had the appropriate adult being there to seek the interest of the child.

Again, resourcing is one issue because you want in all cases to be ensured that the appropriate adult is in fact available. I feel that we need to clarify the role of that appropriate adult because I am not sure that right now—I have done what we used to call duty counsel. I do not know if it is still called that—duty counsel through the Legal Aid and Advisory Authority, where legal aid would be called upon to send an attorney to a police station once there is a child who is in custody. So I have sat with a lot of children who have been arrested and brought into a police station to be questioned, and I have seen the social workers interact with them. And the first thing is that there are social workers who are present at all of the Children Courts now that are operational at Fyzabad and Port of Spain, and so

on. But getting a social worker to come in to a police station and treat with a child and so on, I do not know that we have enough of that available.

I do not know that even if the police are aware of how to go about having or accessing a trained social worker to come to the police station where there is an issue with the child. Because the types of crimes involving children, where children are arrested and brought before a police officer to be interrogated and interviewed, I have seen everything ranging from murder, robbery, sexual offences—they are very serious offences—and in a lot of those cases you have circumstances which require the input of a very highly-trained social worker. So we need to improve the access of those social workers and we need to ensure that they understand their role if they are going to be brought into this procedure now and to be part of the procedure as appropriate adults, and introduce them into this system where an appropriate adult is to play a role in the administration of justice and in this whole process of taking statements and so on, and moving forward to expedite matters.

The other thing I wanted to comment on, please, Mr. President, would be the issuing of a warrant and the amendments made here with a search warrant. I have taken note that there are provisions here where the master—and this would be the amended section 5, “Power to issue the search warrant” by a master. So the master has to be:

...satisfied by proof on oath that there is reasonable ground suspecting.

And they are taking—and we go down the road there of issuing the warrant. It is very similar to the normal law of issuing a warrant. But it says that they:

may at any time issue a warrant under his hand authorizing any constable or any person accompanying him.

And then the section goes on—and I am looking at the unofficial consolidation that

was provided to us. It goes on to speak about, for the purpose of obtaining communications data, stored data and so on, and these are types of data that can be obtained by a warrant under the Interception of Communications Act.

So I am very concerned about the possibility that the powers granted to a master in this particular provision to issue the warrant to intercept private communications is really quite a much lower standard than what pertains under the Interception of Communications Act. Because under section 8 of the Interception of Communications Act, there is a very high standard. First to begin with, under the Interception of Communications Act, only the authorized officer is allowed to go to a judge for a warrant in order to get that to intercept private communications. And this is certainly a much lower standard because it is not an authorized officer. And an “authorised officer” in the Interception of Communications Act is defined very clearly as:

“...the Chief of Defence Staff, the Commissioner of Police or the Director of the...”—SSA.

So those three persons can go to a judge—they can go *ex parte*, but they must go before the judge in order to get that warrant.

Here you have a master, who is beneath the level of a judge, being able to issue a warrant to any person, even a constable. So this, to me, is a watering down of the protections included in the Interception of Communications Act. You know, it is very—I think it is troubling. I do not think that it is—you know, at the end of the day, we are here to make laws for the peace, order and good governance of Trinidad and Tobago. And when you have two pieces of legislation that could potentially be conflicting with each other in terms of the procedure, and what you can obtain, and how you can obtain it, and creating a new avenue through this piece of legislation whereby you can get around another existing piece of

legislation, I do not think that that really bodes well for good governance of Trinidad and Tobago. So if it is that there is some protection to be offered or if it is that, you know, it will not be applicable to private communications, and that the Interception of Communications Act and the standards set therein is still to be applicable, then I would like some clarification on that.

The second thing is that in this particular section, this section 5, it does not go into detail about what are the grounds for intercepting private communications and stored data and so on. It just speaks to where the master is satisfied on proof on oath that they may issue the warrant and that they can, you know—it is a much lower standard. In the Interception of Communications Act, the judge is not allowed to issue the warrant under section 8(2) unless they are satisfied that it is:

- “(i) in the interests of national security; or
- (ii) for the protection or detection of...”—an—“...offence where there are reasonable grounds for believing that such an offence has been, is being or is about to be committed;
- (b) information obtained...is likely to assist in investigations...”—and so on.

So I believe that the standards in interception of communications, for even getting to the stage of obtaining that warrant, are a bit higher than what pertains in this particular piece of legislation. And, of course, when you are dealing with private communications, stored data and so on, you want the absolute highest standard because you are interfering with fundamental rights.

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

**3.10 p.m.**

**Sen. J. Lutchmedial:** You are interfering with the rights of freedom and we should not be for the sake of, you know—I do not even know because I do not

even think that making this applicable here, when you already have a law that governs the interception of communications in specific circumstances, that it is necessary to have it in this law.

If the purpose of this law is to make, you know, cases move faster through the court and abolish preliminary enquiries, I do not see a reason why we have to include the interception of private communications when warrants are to be issued by masters and so on. The normal procedure under the Interception of Communications Act should continue to pertain because they have been used and they are being used currently by law enforcement. And unless somebody can say or somebody can produce a reason why it is interception of communications in that particular standard is not working, then that has no place in this particular piece of legislation.

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

**Sen. J. Lutchmedial:** The other point that I wanted some clarification on and I wanted to raise is the issue of the sufficiency hearing after an indictment is filed. And I know that the Attorney General made mention of the, you know—saying that it interferes with the DPP's powers and so on, and yes, the DPP will continue to have the power to withdraw or amend the indictment and all of that. Let us talk about how it works right now.

Right now, the prosecution 99 per cent of the time through the police comes before the magistrate and they say, "This is the evidence we have, these are the witness statements". Because we have paper committals, we do not always call the witnesses, you can file—you do not have to take evidence in chief. You just bring your witness statements, you can file them and then the defence attorney has an opportunity to select which witnesses they want to cross-examine. This was actually a quite remarkable improvement from what pertained before.

When I first started as a prosecutor in 2006, we used to have to lead all the evidence viva voce in a preliminary enquiry. I have had to lead evidence of people who saw the body, found it, called the police. Then I had to lead the evidence of the person who drove the ambulance because the man was wounded and he died en route, when all of these things really—nobody was disputing that the man was dead. We had to call the DMO to say that I came, I saw the body and I pronounced the man dead. No longer we do all of that. We file the statements, you select who you want to cross-examine.

At the end of the cross-examination, you can make submissions, et cetera, and the magistrate will then determine whether there is prime facie evidence and commit the person to stand trial. And the DPP, upon reviewing all of the evidence, together with the cross-examination that takes place in the preliminary enquiry, will file the indictment, and he does not necessarily have to indict only on the charges that were initially brought by the police but any charge that may be brought out.

So I have actually worked on matters where, for example, someone is charged with wounding with intent and the police would prosecute the matter and by the time we get the bundle of proceedings from the Magistrates' Court and we look through it and we get advice and you consult with the DPP, the DPP would say, "No, this is an attempted murder", because he believes that it is a much higher, you know—the way—all of the peculiarities of the matter would lead to that particular conclusion. In sexual offence cases, you may have a number of other charges that would be included on the indictments because of the nature of what transpires and what is said in the viva voce evidence that comes out in the Magistrates' Court.

So what we are going to have now though, when you have at the initial

hearing—and the Attorney General thinks that it is a great improvement that the indictment will be filed at the beginning of the process and the DPP will be directed and he will be given dates and so on at the initial hearing to file the indictments. Then the indictment, which is the sole purview of the DPP now who reads all of the evidence, who reads the witness statements, who reviews the forensic evidence and the analysis reports and all of that, he determines what charges he believes should be on the indictment. So after he is completed with that process, you are now subjecting his discretion to bring these particular charges on the indictment to a sufficiency hearing, which kind of is the same thing except that you are hoping without cross-examination and so on that it will move quicker and because you are setting timelines, but will still have a complete examination of all of the evidence.

Now, I will tell you a couple of challenges with this and again, I refer to when the DPP himself appeared before the JSC recently, and I hope everybody had a chance to listen to that because it identified a number of challenges that you are going to face. In the preliminary enquiry currently right now, in the majority of cases, you do not have the forensic reports. What you have is a police officer saying, for example, “We took the victim to the hospital, we got this sample, swabs”, et cetera, et cetera, and it is submitted and they will produce a receipt showing that it is submitted to the Forensic Science Centre. We do not have it at the time of the preliminary enquiry in many of those cases. It is only when the DPP—the entire bundle of committal proceedings gets to the DPP’s Office and he is in possession of all the witness statements and he gets the final forensic report, that he can properly analyze it.

Because you know something? Sometimes in a particular case dealing with a firearm or something like that, the forensic report might come back and say

something else which will change what the indictment will be. You may have to withdraw the entire thing, you may have to amend what you want to charge the person with, you may add additional charges. Those forensic reports play a very important point.

So for the DPP to proffer to indictment at the beginning of the proceedings for one may pose a challenge if we do not have all those other things coming, you know, faster and so on for him to be able to make a decision and then you are going to subject the indictment to a sufficiency hearing. A sufficiency hearing, in this case, may very well turn out to be just like a preliminary enquiry minus, I guess, cross-examination. But if you can examine all of the documentary evidence, will the documentary evidence be available? Because that is part of the challenge you have and that is part of the delay, and the DPP himself identified that as one of the delays and for the reasons—and people have been attempting to file judicial reviews and so on, of course the court ruled that they could not do it, but in most cases attempting to file judicial review matters to say that the delay in filing the indictment between the committal by a magistrate and the DPP filing the indictment violate their rights.

But what is going to happen now? How is the DPP to proffer an indictment when it is he is not in possession of all the information at beginning of the trial that would normally inform his decision? And then, what purpose will the sufficiency hearing serve when you start it immediately after or within 28 days and so on, if you do not have the all the information to really determine? You are going to come to the same conclusion of having a prima facie case. And if the information becomes available later on at the trial, it may very well be that the trial may collapse, it may be that you need to amend the indictment and so on. And so it could be a very untidy process.



So I do not know why—if the DPP goes straight towards filing an indictment and we want to move away from the preliminary enquiries for indictable offences, if it is necessary to subject the indictment filed by the DPP to a sufficiency hearing. And I gather that the thinking behind it is you still want to ensure that you have a prima facie case. But if you are giving the DPP the discretion and it is his sole discretion to file an indictment, then he should be satisfied that there is a prima facie case that could move straight into the High Court. So what is the purpose of coming back now to go through that sufficiency hearing? I am concerned about that because I am concerned that you will now have a master questioning his decision to have that indictment filed.

The Criminal Procedure Act, which deals with the filing of indictments and so on, it is says at section 13:

“Every indictment shall contain, and shall be sufficient if it contains, a statement of a specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.”

And it says:

“(2) Notwithstanding any rule of law or practice, an indictment shall, subject to this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the Rules under this Act.”

But that is exactly what we are going to do now when we have a sufficiency hearing, because the master who is at the sufficiency hearing will essentially be objecting. So I do not know if we have considered whether amendments to the Criminal Procedure Act would be necessary now if you are going to subject the indictment of the DPP to review by a master coming after the filing of the indictment.

It may be a much tidier process to have a sufficient hearing within the specified time. I have no problem with 28 days and so on, once it could get done, I hope, with the proper resources. But that direction at the end of that sufficiency hearing—once the master is satisfied that they have crossed the threshold of prime facie, that a direction be given at the end of the sufficiency hearing that the indictment be filed within a specified time, like 28 days or so on. But to file the indictment upfront and then subject it to a sufficiency hearing, I cannot see the logic, the reasoning or sense behind that, and I do believe that there may be a conflict between that and what it says in the Criminal Procedure Act. So I would flag that again for the consideration of the Attorney General.

And, Mr. President, I just want to say that we may sound like broken records and people will complain and so on about us, eh, but this is why sometimes we ask for these Bills to be sent to a joint select committee. Because, you see, listening to the list of people who would have commented on this Bill and sent comments does nothing for anybody outside of the Government because we do not know what they say. We did not get a chance to ask the DPP what is his view. He may very well disagree with me and say, “Well, no”. And being the person, you know, that he is, he may very well give you a long explanation as to why he believes it will work but we ought to have that opportunity.

And when you are bringing major changes to the criminal justice system and something like this that affects the rights of accused persons, victims and so on, we want to make sure we get it right. And the process of consultation is not a process that belongs solely to the remit of the Government.

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

**Sen. J. Lutchmedial:** If you are asking the Parliament and all parliamentarians whose job it is to sit here and make law with you, instead of complaining every day

that we do not support you and every opportunity—because sometimes I feel like they try to create opportunities to complain about us. So they want to create an opportunity to complain and say, “The Opposition did not support us on this and the Opposition”—if you give the Opposition the opportunity to sit and interrogate the stakeholders in some of these pieces of legislation, then we may very well be able to be more supportive and have less, you know, comments to make on it and criticism when we get to this stage because we would have been partners in the process.

So the Government needs to decide if it is they want us to be partners in the process with them and allow us the opportunity to interrogate these things, and the avenue for doing so exists through joint select committees or special select committees of the Parliament and it can be done. So this whole concept of the conflict between the Criminal Procedure Act, the indictments and when they are filed, and whether or not an indictment should be subject to a sufficiency hearing was something that could have been very properly interrogated if we had wider parliamentary consultation with stakeholders on this particular Bill.

Mr. President, let me move on now to the issue of the—what we call the election of a summary matter. Right, summary for what we call either-way offences. The amended section 12 of this Bill will now mean that the DPP or a person acting under his instructions will inform the master that a case is to be dealt with summarily. This ties in with a debate that we have ongoing in this House about trial by judge alone or judge and jury. When you have a matter that is tried either-way, it is very rare, it is quite rare, and I would say this, it is very, very rare but—

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

**Sen. J. Lutchmedial:** Sure—but the election is put to a person. When the

recommendation comes from the prosecution, the defendant is permitted to elect whether he would like to have his matter tried summarily before the magistrate or master or district judge, or whatever you call them now, and—or whether he wants to take his chances in the High Court before, as it still is right now, a judge and a jury, and this Bill is essentially removing that election. Because it is saying that the DPP will decide, “I want to go summarily”. And as rare as it might be that someone will say, “No, I do not want to come and have my case finished here before a magistrate alone, I want you to see whether or not it is sufficient and let them file their indictment and take me to the High Court before a judge and jury”, that is still the right of the accused and the accused should be allowed. And I do not agree—I really do not agree that the prosecution alone should be allowed to determine whether or not on how this matter should be tried.

Who determines your guilt and innocence is still something—although there is no right within our Constitution, you still have a right to a fair trial, and part of that fairness of the trial is the fairness of the procedure. And if it is that there is a charge and you are charged with something which can be tried either-way, I believe that the accused, they enjoy it now and it is not something that we should just take away willy-nilly, but we should permit the accused to still have that opportunity because some people still want to take their chance before a judge or before a jury, and do not want to just have their matter determined before a magistrate at the district court.

**3:25 p.m.**

And there could be a multiplicity of reasons for that please, Mr. President.

And so this particular aspect of it, the amended section 12, which gives the prosecution the sole discretion to determine where an either-way offence ought to be heard, interferes with that right of the accused, something that currently an

accused person enjoys when it comes to these types of offences. And as rare as it may be, I believe that it ought to be preserved in this piece of legislation. And a simple amendment where the DPP can make the recommendation—and instead the master shall put the election to the accused person and then forthwith order that it be transferred once the person elects and agrees with the prosecution's recommendations, or they could keep it before the court and go through the sufficiency hearing and so on, and then get to a trial.

I understand the need and the desire, and I agree with it in principle that we want to move matters through the court as quickly as possible. But anytime you are dealing with persons' rights when they are charged with a criminal offence or the right of a victim—because as I mentioned before, and I spoke a lot of about the right of even the victim, when you choose the place of trial and how that trial is conducted and who is the forum that is going to determine guilt and innocence, you do not only talk about the accused, you also talk about the victim. And it may very well be that in some cases the prosecution, you know—well, in a case like this the prosecution may consider the rights of the victim but what about the accused? The accused still has those rights. And the balancing of all rights, in order to get this thing correct, is very important.

And so when we are—as much as this Bill deals, to a large extent, with procedure, if we do not get the procedure right, none of it we will get right. And if we do not get the resourcing to move that procedure forward right, then it will come to naught. And as I said before, I really hope that this piece of legislation will be carefully considered, carefully implemented, the right amount of training and resourcing will be made available for those who have to do it so that we get it right and that it can improve the administration of justice in Trinidad and Tobago which is what we all want at the end of day. I thank you.

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

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

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

**Sen. Hazel Thompson-Ahye:** Mr. President, I thank you for the opportunity to speak on the Administration of Justice (Indictable Proceedings) (Amdt.) Bill, 2023.

“This Bill seeks to amend the Administration of Justice (Indictable Proceedings) Act, 2011...”—to—“...provide for the abolition of preliminary enquiries and for the conduct of initial and sufficiency hearings by a Master of the High Court.”

Disappointed, dejected, depressed, disconsolate, despondent and downhearted, I walked out of the Tunapuna Magistrates’ Court one day. It was my first and my last preliminary enquiry. I had been representing a 17-year-old boy who had been charged with murder. The victim was the son of a police officer. My case was based on self-defence. After I made my no case submission, the experienced prosecutor from the Office of the DPP, in the finest traditions of the bar, had said to the presiding magistrate that she agreed with my submission that the prosecution had not negative self-defence. The magistrate nevertheless decided the case must go to the High Court.

On my return to my office, my secretary looked at me and realized things had not gone well. She knew I would talk when I was good and ready, but needed space. Soon after I sat at my desk, the phone rang. She entered my office and said, “Mrs. A, you have to take this call, the person is sounding really distressed and insists he must talk to you”. Reluctantly I took the call. The caller was incoherent. I gathered he was a police officer from the Tunapuna court. His words made no sense to me. I tried to calm him but he kept repeating, “I seeing my gratuity and my pension running up St. Vincent Street”. Was he mad? He was one of the cadre

of police officers in the Tunapuna and Arima court who thought I was there to assist them with all their personal and professional problems. I kept referring them to Dr. Bonterre, but they wanted to talk to me.

Finally, I was able to put the pieces together, he had had the charge of my client until his return to prison. Feeling sorry for the youth and knowing he was my client, he decided to take the boy for a drink to cheer him up. I trust it was a non-alcoholic drink. My client decided to make a run for it hence the officer's cry about his gratuity and pension running up St. Vincent Street because he could have lost everything. Luckily, the policeman was able to catch him. I told him what I thought of his actions and I promised to talk my client. The next day I visited my client in prison and scolded him. He said he was sorry, he did not mean to put the police in trouble, but he knew it would be a long time before his court case would be called in the High Court. Each time he came to court he said his little nephews and nieces would line up outside on the pavement by the court to wave to him and call out, "Uncle, uncle". He knew he would be caught but he wanted to get another charge to start back coming to court every eight days so he could see his family who could not visit him in prison.

This case illustrates his understanding that it takes years after a preliminary enquiry for a case to come to trial, so he was willing to risk everything. It in fact took three years and it also illustrates that juveniles do not think of long-term consequences but think in the now. And that is why our stubborn stance in refusing to increase the age of criminal responsibility from age seven is so tragically wrong.

In case you are wondering what happened to my client, he was acquitted by a jury in one of the speediest verdicts in history. I also learned that some police officers are very honest, as the evidence of victim's father and mother was crucial

in this case. Two years ago, he visited my office, I did not recognize him. He told me he was now 50 years old, had returned from abroad and had been trying to find me. His case is one I will never forget. I recall the head of the community police saying to me, “I am ashamed of my police officers, your law students did more work than my police officers to gather evidence for this case”.

This Bill seeking as it does to abolish preliminary enquiries is timely and of great importance, especially to youths who wait years for their matters to be heard. In this regard, I recall a teenager who had been charged with a sexual offence. In the intervening years—six years—between the PI and the trial, he had been out on bail. He was living an exemplary life. He was married with children and had a good job. He was sentenced to a term of imprisonment. His case evoked a great deal of negative comments on delays in our court system.

The reduction and abolition of preliminary enquiries, or as is sometimes called committal hearings, is not a Trinidad and Tobago initiative, but a worldwide movement. Governments, the Judiciary and ordinary citizens agonize over delays in the criminal justice system, the lengthy trials, the protection of vulnerable witnesses, cost and other concerns. And this has prompted movement towards the judicial case management models, sufficiency hearings, change of venue orders, remote appearances and disclosure, which are viewed as more efficient and effective methods of moving along the wheels of justice. Review of legislation in countries as disparate as Canada, United Kingdom, Australia, Switzerland, Germany, Portugal and others; and in the Caribbean, Jamaica, Guyana, the Bahamas and Barbados reveal an onward march towards abolition of preliminary enquiries.

In the interpretation clause 3 of the Bill, I have two queries. The first is the definition of “appropriate adult”. The Bill states:



“‘appropriate adult’ has the meaning assigned in section 3 of the Children Act;”

I could find no definition of “appropriate adult” in section 3 of the Children Act or the Children’s Authority Act. But I did see it in the definition section of the Children Court Rules, 2018.

**3:35 p.m.**

Is it that there is—and also the Evidence (Amdt.) Act. So is it that there was amendment to the Children Act or some other Act where there is a consequential amendment? Please clarify. But to say section 3 of the Act and then you cannot find it there, at least, is puzzling.

The second definition is—that I have a problem with is the definition of “prison”. Why would you include “rehabilitation centre” under the definition of “prison”, when the international instruments say a child should not be sentenced to prison? To save typing a few more words? For the want of a shoe, a horse was lost. So let us not do that.

With regard to “prosecutors” in the definition section, why are we including “police prosecutors”? Have we not abandoned their use? There has been talk about that for quite a while. What is the status?

I am particularly pleased with section 5(3) regarding seizure of items during a search warrant and the requirement for a signed report, signed by both the warrant officer and the owner. This will eliminate some of the complaints repeatedly made over the years of items going missing while in police custody, and disparity between what was reportedly seized and what the householder claims was in fact taken.

Section 6(1D) speaks to complaints in respect of an accused who is a child. It states that:

- “(a) the complaint shall be made to a Judge; and
- (b) if the Judge determines that the matter is to be dealt with indictably, the matter shall be assigned to a Master to be dealt with in accordance with this Act.”

Mr. President, what guides the master in his or her dealing with a child’s matter at this stage? There are no principles in law or practice in this area of the Bill, which makes me feel confident in that it tells me that the person determining the matter is cognizant of and acting under child justice principles. Compare this with clause 21 which I will refer to later as containing the desirable provisions.

I would have been happy though to see something like section 4 of the Guyana Juvenile Justice Act, 2018, which reads, that is section 4:

- “(1) It shall be presumed that no child under the age of fourteen shall be capable of or guilty of committing an offence.
- (2) Where a child is charged the Director of Public Prosecutions, the Prosecutor or the attorney-at-law representing the child shall request of the court that an evaluation of the child be done and the court shall order that the evaluation be conducted by a suitably qualified person at the expense of the State.
- (3) Where an order has been made by the court under subsection (2), the person identified to conduct an evaluation of the child shall furnish the court with a written report of the evaluation within thirty days of the date of the order.
- (4) The evaluation shall include an assessment of the cognitive, emotional, psychological and social development of the child.
- (5) The person who conducts the evaluation may be called to attend the court proceedings and to give evidence and, if called, shall be remunerated by the

State.

(6) If the presumption is rebutted the child shall be treated as a juvenile and dealt with in accordance with the provisions of this Act.

(7) If the presumption is not rebutted the court shall refer the child to the Director of the Childcare and Protection Agency to be dealt with under the Protection of Children Act and the Director of Public Prosecutions shall withdraw the charge.”

There is some hope though in section 10A, which gives the Children Court jurisdiction to deal with children matters, especially 10A(b) which provides for programmes for children, and I know that there are many programmes in the Children Court. But there is little to give me comfort in the fact that in children-charged matters, account is taken of the *doli incapax* rule by either the presiding officer or the person conducting the assessment—it does not seem to be taken.

Jamaica’s Committal Proceedings Act specifically requires that the assessment of the child by a person who is considered qualified is to determine whether the child, who is *doli incapax*, that means incapable of crime, in Jamaica’s case between 12 and 14 years, understands the nature of the oath, and if the child does not understand the nature of the oath, whether he possesses sufficient intelligence to justify the reception of the evidence and understands the duty of telling the truth.

When, however, one comes to section 21(3) and (3A), we see that child witnesses are well protected in our law with safeguards for assessment of competence, that I would wish to see extended also to child offenders.

Section 24, which provides for an appeal by the Director of Public Prosecution in cases of discharge of an accused by a master, is an important safeguard in the law of which I approve. The timelines in the Bill, which the

Attorney General spoke of a while ago, will certainly help to move the process forward.

John Johnson, Deputy Commissioner of the Australian Federal Police, Australian Capital Territory, wrote a paper, "A Case for abolition". And in that paper he quotes a study, if I may, by PriceWaterhouseCoopers that reveal that:

Estimates of the core savings in having a guilty plea taken earlier in proceedings showed committal proceedings were financially beneficial.

The study said:

The figures did not even take into consideration the Crown's preparation cost, the accused financial cost or the emotional cost arising from a late guilty plea.

I can see some criminal law attorneys here bemoaning the loss of fees.

In that same paper, some of the effects of longer trial waiting lists that he quoted were: deterioration of evidence; memories fade; prolonged stress on victims of crime; unnecessary stress on the accused; reduction in deterrent effects of the justice system; leniency in sentences, that is delays included in penalty; inconvenience to witnesses; loss of respect for the justice system by society; and tendency to rely more on plea bargaining. And, you know, the effect of delays on the penalty is something that I have been watching in this jurisdiction, especially in sex offenders cases. And we have to be very careful about the messages that we are sending to victims, in particular the victims of domestic violence.

All in all, this Bill seems to be on the right track as far as international standards are concerned. It has brought us into the 21<sup>st</sup> Century, thinking about improvement of our justice system. So once this Bill is passed, it is no longer open to the accused to reserve his plea as at a preliminary enquiry. It will certainly change the way matters are conducted in our criminal courts. It remains to be seen

though, as some naysayers have predicted if it will change, if it is change or exchange, if the backlog in fact will be transferred from one arena to the next.

I thank you, Mr. President.

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

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

**The Minister in the Office of the Attorney General and Ministry of Legal Affairs (Sen. The Hon. Renuka Sagramsingh-Sooklal):** Mr. President, I thank you most sincerely to jump into this debate, of course, you know, joining in with the Attorney General and echoing how critical, how important this legislation is in improving the criminal justice system.

Mr. President, of course, I have to use the opportunity in my contribution—or part of my contribution will be to, of course, address certain comments and questions, and more so comments and statements that were placed on the record by Sen. Lutchmedial. And then, of course, try to address certain questions asked by Sen. Thompson-Ahye. And that is the place I will begin before I jump into the crux of my contribution.

I believe this is the best place to start because, of course, the AG would have given us a great—you know, he would have done an excellent delivery in his piloting by going through the length and breadth of the legislation. And more so, I appreciated that he focused on the clauses in the Bill that seek to really bring about a radical reform in the criminal justice system.

Now, you know, Mr. President, I would have to say, I mean, most respectfully, today in preparing to answer to some of the comments made by Sen. Lutchmedial was indeed quite easy. And the reason for that is because I am not sure if her learned friend in the House of Representatives—I am not sure who

prepared whose speech because the exact questions—it was a copy and paste, unfortunately, for the Opposition, but fortunately for me, in preparing for this debate. Because the exact questions and concerns that were raised by Mr. Hosein in the House of Representatives, it was simply echoed through Sen. Lutchmedial. So, as I said, I am not sure if it is one speechwriter, “who writing who speech”, if it is a copy and paste that takes place on that side, but it certainly, Mr. President, makes it easier for us on the Government Bench in preparing for this debate because we always can foresee what questions and what concerns they are going to raise.

And, of course, that being said, Mr. President, there are six issues that I will seek—six concerns that were raised by the Senator, that were also raised in another place, which I would attempt to, you know, rectify and add my two pence to. And I am sure, of course, the Attorney General in his winding up will deal with other issues and, of course, other Members of this Government Bench, as they jump in, they will deal with those issues as they come up.

One of the issues—and I want to jump into that issue first, is that—because, of course, learned Sen. Thompson-Ahye would have raised that question. She would have asked the question—the comment was made on not seeing the definition for “appropriate adult” in the Children Act. The Act was amended, Mr. President, by Act No.15 of 2018. And by virtue of section 10, it amended section 3 of the Children Act to insert the definition of “appropriate adult”. So I just wanted to, you know, mention that for the benefit of Sen. Thompson-Ahye, and go a little further because Sen. Lutchmedial, in her contribution, also raised the issue and her concern of the term “appropriate adult”.

And as I would have alluded to earlier, Mr. President, by virtue of section 10, it amended section 3 of the Children Act to insert a definition. And for the

purpose of the record, Mr. President, what I can say is that pursuant—the “appropriate adult” is used in section 3 of the Children Act. And for the purpose of the record, for us to understand that there is clarity relative to this definition that already exists in the Children Act, I would read into the record what it has been defined as or what it is defined as in section 3 of the Children Act. And it means:

“a person eighteen years of age and over who is a—

- (a) social worker;
  - (b) welfare officer;
  - (c) Justice of the Peace;
  - (d) an Attorney-at-law;
  - (e) any other responsible person with whom the child is comfortable;
- or”

There is also:

“(f) in the case of a person with a disability, the appropriate professional,

but does not include—

- (g) an accomplice;”

And then we have:

“(h) a person, not being a parent, with previous convictions relating to a child or affecting that child within the last ten years;”

Then we have:

“(i) a person, not being a parent on probation;

(j)—a person—“...of the police service or any employee in the police service other than—

- (i) a family member;

And then we have:

Sen. The Hon. R. Sagramsingh-Sooklal (cont'd)

- (ii) a person who is well-known to the child;
- (iii) a person with whom the child is comfortable;”

And then, that entire section—while section 3—I am reading it into the record, Mr. President, because the term “appropriate adult”, for the purpose of the record, is clearly and properly defined in the Children Act. And what we would have done, in this particular legislation, Mr. President, we would have simply transposed that definition into the Bill that appears before this Senate today.

So, you know, for the benefit of, of course, Sen. Thompson-Ahye and, of course, for the benefit of the statement made by Sen. Lutchmedial—

**Sen. Thompson-Ahye:** If I may—[*Inaudible*]

**Sen. The Hon. R. Sagramsingh-Sooklal:** Of course.

**Sen. Thompson-Ahye:** Are there any provisions for amending the laws online? I have said in this Parliament more than once that researching the laws of Trinidad and Tobago is a researcher’s nightmare. We have people all over the world who are checking laws. And you can go to other jurisdictions and you can see updates in the law. What is wrong? Is there nobody with that responsibility in Trinidad and Tobago?

**Sen. The Hon. R. Sagramsingh-Sooklal:** If I may respond? Of course, there are persons with the responsibility. But, of course, Senator, you know sometimes there is a real challenge in micromanaging persons with certain responsibilities and ensuring that they do what they ought to do. And that certainly—personally I can apologize for that trauma that you would face and, of course, colleagues at the bench may face in doing their research. And hence the reason, hon. Senator, I thought it was necessary just for your benefit, of course, to identify the piece of law that would have brought that necessary amendment. And I am sure, given the modus operandi of the AG who currently serves, I know he will go back to the



office, and I will equally do my part, Senator, to ensure that the needful is done. So that at least we can assist researchers like yourself and, of course, the wider Trinidad and Tobago, in locating the necessary legislation when researching. But I do hope that the bit that I would have provided can now just respectfully guide you to where the amendments do exist.

**3.50 p.m.**

And just to continue, Mr. President, of course, the “appropriate adult” has been adequately dealt with in the Children Act and what we have done in this legislation is simply transpose that definition here. So that was one of the queries, of course, that was raised by Sen. Thompson-Ahye, and it was also an issue that was raised by Sen. Lutchmedial in her contribution.

If I may go on to another point made by Sen. Lutchmedial, Mr. President, you know, Sen. Lutchmedial stated that the criminal justice system is a topic of grave concern, which I agree with the Senator. She also said it is a topic that continually rears its head, but then went on to speak about not agreeing with the Attorney General about, you know, the necessity to have cross-examination and lengthy cross-examination at a preliminary enquiry stage. If I may, I do not want to misquote the Senator and these were the verbatim notes that I took. Sen. Lutchmedial stated that she did not necessarily characterize what takes place in the pretrial place as totally irrelevant. She spoke of there being a prolix of cross-examination and an abuse of pretrial processes, and that at a PI stage we have a heavy reliance still on witness evidence.

You know, Mr. President, considering the purport and the intention of this Bill, which is to inter alia improve the efficiency of the criminal justice system, respectfully, Mr. President, Sen. Lutchmedial’s argument holds absolutely no weight. And I will say that because we are here to retain cross-examination, Mr.

President, at the level of—we are here—at the PI stage, it would continue—if, sorry, if we are here to continue cross-examination at that the PI stage, respectfully, I place on the record, Mr. President, that it will to a great extent stifle the rate in which we are able to move these matters through the system.

And, you know, just from a very personal experience, Mr. President, and also in the benefit and the interest of the accused persons that appear before the court, you know—the AG, of course, in his piloting would have spoken—when he dealt with the issue of cross-examination particularly at the PI stage, something came to my mind immediately. Yes, a PI, in essence, is a pretrial; the trial before the trial on the indictment. And you know there is one very reason why the accused person spends an exorbitant amount of money in hiring the best counsel that they could possibly find to represent them at the PI stage. And this is not the trial, this is just to determine if you have a trial to answer to, it is because of the issue of cross-examination.

And the reason for that is because, Mr. President, if you have bad cross-examination taking place at the stage of the PI, what you have is the accused is now locked into that evidence and there is no way of getting out of that evidence, that bad cross that he is locked into at a PI stage. And then, he is committed and this is what goes on to the High Court—this is what goes on, sorry, to the trial stage.

And personally, in instructing Mrs. Elder on certain matters, I have seen where not even senior being *crème de la crème* in criminal law, based on what happened at the PI stage, it was absolutely difficult to try to even present a decent case for your accused person when the matter on the indictment was actually heard.

And that is just something, at least in the interest of the accused as well, Mr.

President, that I personally, when with AG would have spoken in his piloting, would have mentioned and spoken about, you know, cross-examination that takes place at the preliminary enquiry stage, I can say, adding my own little two pence, that I believe that that botched cross at the PI stage, it actually negatively impacts on the accused person when they actually now have to answer, when they are committed and there is now a trial on the indictment.

And as a consequence of that, Mr. President, from just that very personal experience in that personal place, I believe—beyond just the whole argument of, you know, not having lengthy cross—and the system—moving through the system quicker; beyond that argument which, of course, is one of the fundamental reasons why we want to abolish these preliminary enquiries, I believe in the interest of the accused as well, Mr. President, by not opening a window for him to have botched cross-examinations. And, of course, he is committed and then he has a fairer chance, of course, at the trial of the indictment, to be able to lead his evidence and, of course, to be able to lead his case. And I just wanted you know, just based on my experience, Mr. President, to put that on the record.

Now, Sen. Lutchmedial, Mr. President, spoke about her concerns—she raised her concerns on the proclamation clause that exists in this particular piece of legislation and, of course, mentioned, you know—in talking about the proclamation, you know, the Senator would have spoken about, in essence, she is hoping we do not wait too long before the Bill is proclaimed. And in her contribution she would have spoken about the issue of resourcing and she mentioned—I know for sure, I took note of that—the issue of staffing requirements in order for AJIPA, in order for this Bill to be able—for us to breathe life into this Bill.

You know, Mr. President, just for the purpose of the record again, I know on

the Judiciary's website, for example, in my preparation for this Bill I would have seen that the Judiciary stated that currently there is an audit of 19 masters of the court. And it is public information that is available on the Judiciary's website. But what I was even particularly pleased with is that I saw, I came across an advertisement that was placed on the website as well where the Judiciary has already started advertising for positions of masters. And that, to me, shows that the Judiciary has already been proactive and steps are already being taken to ensure that their current complement and their current audit of masters will be filled by the time that proclamation comes along.

You know, Mr. President, I want to also say that the issue of, you know, staffing at the Judiciary, the issue of the DPP, what has to happen at the DPP, most respectfully, I want to state that that ought not to be a stumbling block in the passage of this Bill today. The Judiciary and the JLSC, of course they have their— as I said, I am proud. I want to applaud the Judiciary in particular because I saw that advertisement that is already out where they are recruiting masters. There is the whole job spec, the whole advertisement that speaks to the salary, the terms, the conditions, the requirements. I want to say I am pleased that that has already taken place and it is in stream.

I believe, and I am not doing PR for the Judiciary, but I think applications close by, I think, the 3<sup>rd</sup> of July. So I am hoping that the persons who are qualified and who wish to serve as masters, you know, can go on to the Judiciary's website and, you know, probably offer themselves to serve this country and, of course, the Judiciary at that level. But what I wanted to say is that even though staffing is a real issue, whether it is at the DPP, whether it is at the Judiciary, certainly that is not a reason why or that ought not to be a stumbling block in the passage of this Bill today.

Sen. The Hon. R. Sagramsingh-Sooklal (cont'd)

As a matter of fact, Mr. President, I had the benefit to sit at the LRC with our learned Attorney General and, you know, I want to—that is in my substantive contribution, but as I raise the issue of the AG, I want to applaud the Attorney General. I have to commend the Attorney General.

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

**Sen. The Hon. R. Sagramsingh-Sooklal:** Because the Attorney General came in at—our new Attorney General, I sat at those LRCs and I saw his interest, his intent, his focus on delivering and in ensuring that this Bill—

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

**Sen. The Hon. R. Sagramsingh-Sooklal:** I saw the care and diligence that was applied by our current Attorney General in those consultations that took place with the Judiciary and other stakeholders. Mind you, and the AG would not say it but I will say it, because, of course, of the technology we had LRCs sometimes that went into 8.00, 9.00, well into the night, and the AG is there with all the energy, all of the enthusiasm, with our stakeholders trying to make this thing right. And I have to use the opportunity again to applaud the AG, and congratulate him for the work that he has done since he has come into the Ministry, and more so for the Bill that currently appears before us.

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

**Sen. The Hon. R. Sagramsingh-Sooklal:** Mr. President, you know, the Judiciary—and why I am saying that is because in having the benefit of sitting in those LRCs, with of course, I must recognize the Chairman of the LRC as well, Minister Al-Rawi, and our AG, I understand fully that from the get go, the Judiciary supports this Bill, and I have every confidence, Mr. President, that as it relates to staffing issues, that the Judiciary is competent and they are able to manage their affairs and, they of course, will work with the JLSC and the

necessary entities to ensure that once this Bill is proclaimed, that they are running on pure gas and on full cylinders.

And therefore, we can really see this system being operationalized and bringing forward the changes that I know both the Judiciary and, of course, the Government is looking forward to, once AJIPA—once we breathe that necessary life into AJIPA. And I just wanted to place that on the record as it relates to the issue of staffing raised by Sen. Lutchmedial.

Of course, the AG would have already spoken in detail about his work and his continuous work and efforts with the Office of the Director of Public Prosecutions. And I may sound utopic and I may sound optimistic but you know what, Mr. President? In the times that we—you need leaders like myself who believe that there is hope and there is abundance in Trinidad and Tobago—

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

**Sen. The Hon. R. Sagramsingh-Sooklal:**—just as every Member of this Government believes in. And I have every confidence that with the continued work of the Attorney General, his team that he has assembled, a very competent team that he has assembled to work with him in resolving whatever outstanding issues that may exist in the Office of the Director of Public Prosecutions, I believe, with that continued dialogue, that we will be able in short order, Mr. President, to see the reformation and the improvements being brought to the Office of the Director of Public Prosecutions; an officer whom I have the world of respect to, and I have always said that to the DPP's face, even behind his back. And I am sure that in short order, as I said before, those changes will be brought that will improve the complement and the issues that exist there.

All that being said, Mr. President, I want to allay the fears of the general public as it relates to whether or not the proclamation clause is just going to be

used as another stumbling block or another block to derail us from proclaiming AJIPA. I have every confidence that upon the passage of this Bill—because systems are already in place both in the Office of the Director of Public Prosecutions, both at the Judiciary stage and certainly from the Office of the Attorney General stage—I have every confidence that this proclamation clause is not going to be used to further derail the Bill.

However, what it will be used, as all proclamation clauses are used for, it gives the additional little time that may be required for those who have not fully put their houses in order, to put things in place so that once it is proclaimed we can be able to see those changes.

Mr. President, I now want to turn to the issue on the search warrants raised by Sen. Lutchmedial. And again, it is a copy and paste, unfortunately by, you know—from statements made—well, that I would have seen on the *Hansard* of Senator—not Senator, in another place by MP Hosein. And Mr. President, like her colleague in the other place, the question was raised on the issue of search warrants. It was stated that the law now allows for a master of a High Court to have jurisdiction under IOCA.

Again, Mr. President, for the purpose of clarifying the record, the distinction here is made between an intercept warrant pursuant to sections 6 and 8 of IOCA. And I strongly suggest both to, you know, her colleague in the other place and the Senator, perhaps they would want to go back to the IOCA legislation, and would want to pay particular attention to section 6 and section 8, and you will see the distinction that is made in the legislation between the search warrants we are speaking about here, as opposed to the intercept warrant that IOCA deals with. So I wanted to place that on the record as it relates to the law.

Mr. President, I also want to say that this—the search warrants that we are

speaking about here are distinctly different—the IOCA, sorry, the intercept warrant is distinctly different to a search warrant where in stored—and I want read it from the legislation, where in “stored communication”, “stored data”, and “communications data” are required. These are currently issued under section 5, Mr. President, of the preliminary enquiry Act and are obtainable by a police constable.

So I had to make the distinction because they are tying up themselves when they talk about search warrant, search warrant, Mr. President, respectfully. What IOCA deals with is distinct and separate and apart from what is being dealt with under this piece of legislation. And I felt that there was a need for me to rectify and clarify the record as it relates to that.

Mr. President, like her colleague in the other place as well, you know, Sen. Lutchmedial, you know, off the bat verbatim stated, just like her colleague, this threshold of getting a search warrant is too low. It was again a copy and paste. To deal with that issue of the threshold being too low, Mr. President, again I have to revert to the law as it relates to search warrants.

**4.05 p.m.**

Mr. President, the standard is the same—the standard for obtaining these search warrants is the same throughout other pieces of legislation in Trinidad and Tobago, Mr. President. As a matter of fact, this is the threshold which is currently upheld by the Criminal Procedure Act and I see a criminal practitioner here who is representing the Opposition today. I am sure Ms. Bisramsingh is familiar with section 37 as well of the Summary Offences Act. And as a practitioner of the criminal law—and again, I am referring respectfully through you, Senator, that Sen. Lutchmedial and her friend in the other place, they go to the law again, go to section 37 of the Summary Offences Act, and section 37(1) in particular says:



The—“...information is given on oath to a Magistrate or Justice that there is reasonable cause for suspecting that...”

And, of course, it goes on to speak to the, you know—in obtaining a warrant. So what we have is, in section 37 of the Summary Offences Act speaks to the same standard—the same standard they believe is low in this legislation, Mr. President, the Summary Offences Act of Trinidad and Tobago is the same exact standard that is applied when it relates to obtaining a search warrant.

If I may take my colleagues in the Senate further, because my answer, refute to that, is that the standard is not low, it is just simply in alignment with other pieces of legislation. The same standard applies in other pieces of law. One piece of law I would have spoken to is—well, I spoke about the Criminal Procedure Act, I spoke about the Summary Offences Act. If I may also know—and I know Sen. Bisramsingh may be familiar with section 30 of the Firearms Act. Section 30, Mr. President, as it relates to the obtaining of these search warrants is the same exact threshold. And if I may read into the record section 30(1), it says:

“A Magistrate or a Justice of the Peace on being satisfied by information on oath that there is a reasonable ground for suspecting that an offence...”—the suspensory dots.

Well then, of course—and the section more goes on to say, you know, they will grant the search warrant and so on, and so forth. But what I had to simply clear up—I mean, they came here you know, talking about these search warrants as if there is some kind of underhand reason and—Mr. President, this is good law and I want to commit this law to the people of Trinidad and Tobago, by saying that we have dealt, one—I made the distinction between that intercept warrant that they would have spoken about, I would have respectfully, through you, suggested to my colleagues to go—my friends on the other side, to look at section 6, section 8 of

IOCA, they will see the distinction, and then I would have gone a separate step—a further step, Mr. President, in disputing their arguments and their concerns about these search warrants.

In looking at existing law, Mr. President, the Criminal Procedure Act, looking at section 37 of the Summary Offences Act, looking at section 30 of the Firearms Act, to say that the standard is not too low, what we have simply done is apply the same exact standard that is used in other pieces of legislation as it relates to, you know, the obtaining of search warrants that appears before us, and I had to clear that record. I would have hoped, you know, persons with their experience, Mr. President, that they would have familiarized themselves with the law, but it is what it is. That is why we are here as the Government Bench to add clarity and clarification, you know, in any—and add, and assist the Opposition in understanding the good law that we are bringing to the people of Trinidad and Tobago today.

Mr. President, then of course, the issue of indictment was raised. And as it relates to the issue of indictments, you know, Sen. Lutchmedial spoke about her concerns about where indictments are placed. And I have to say that one of my particular—all I want to say, Mr. President, especially in relation to the issues of indictment, I know Sen. Lutchmedial says if the DPP lays a voluntary Bill of indictment, he is now subject to a sufficiency hearing. Mr. President, you know, for the purpose of the record, section 19(1) now requires all indictments, including a voluntary bill of indictment, and I want to read it, under section 6(2):

To be subjected to an initial and sufficiency hearing.

Yes. This upholds the power of the DPP to do his voluntary indictment. But at the same time—and this is the point that I want to make, Mr. President—it still allows

for a matter to be adequately case managed so that all necessary documents are before the court for the trial.

So, yes, that is why particularly, I am supporting the place in which indictments—we are requiring that indictments are filed, because we are not usurping the rights and the powers of the DPP. That is still intact. But by moving the indictment at the beginning of the sufficiency, to the place where we have now moved it, Mr. President, what we are doing is that we are now having an ability to aggressively and adequately, Mr. President, manage when that indictment is filed and ensuring that all documents are before the court in a timely manner.

You know, Mr. President, this—and this is a real issue, eh. I recall, in preparation for this, I would have pulled some stats on indictments. And it is—and again, this is not, of course, to cast any aspersions on what happens in the Office of the Director of Public Prosecutions at all, at all, at all. But I have my concerns as a citizen of Trinidad and Tobago when I look at—for example, let us look at 2013, in the Port of Spain division alone—Port of Spain courts, we had 105 indictments alone that is filed. We have in 2014, you have 129 indictments, and this is from thousands and thousands of matters. If you fast track from 2013/'14 to 2023, we have 41 indictments, Mr. President. If we are serious about improving the criminal—and that is in the Port of Spain area. If I look at San Fernando in 2013, we would have had 78 indictments. There was a year in 2020 where we only had—well, of course, I know COVID was around, but we had only four indictments filed, Mr. President. Currently, in 2023, we have 42 indictments, Mr. President.

Certainly, if we are serious, which we are on this Government Bench, we are serious about, you know, expediting the rates in which matters go through our criminal justice system, I have to agree with the Attorney General, I have to agree with the Bill which appears before at this stage and the place in which we have

placed these indictments. And I am hoping that at least in the minds of the Independent Bench, that we get the support that we are looking for, recognizing if we go through—and I do not want to belabour the point of, you know, what indictments have not been filed and what is outstanding, but I just—but there are the statistics. The statistics, Mr. President, are available and it is concerning to me, not as a Member of Government, not even as an attorney at law, but just as a regular citizen of Trinidad and Tobago.

Because, you know, I heard Sen. Lutchmedial said it, the AG said it, when we deal with these matters—and I will echo that as well. When we deal with matters, criminal matters, remember, there are several stakeholders involved, eh. We are not just dealing with the accused, and we are not just dealing with a government who wants to pass good law and manage a country. We are dealing with the witnesses, we are dealing with families, we are dealing with the police; there are so many stakeholders. And once you do not have these indictments brought at a reasonable time, once you do not have them being filed, you know, at a fast rate, we will continue to have, not just the criminal justice system being affected, but the lives of real people, Mr. President, being put on hold because there is a matter looming over their head. And that was just—I wanted to just echo that I am in full support, Mr. President.

I recall also, Mr. President, during our consultations on this point of indictments that our Public Defenders' Department, they showed, of course, support for the voluntary bill of indictment being subject to a sufficiency hearing and, of course, I want to also place that on the record. So we have stakeholders, the Judiciary, we have Public Defenders' Department as well also supporting the position of where we want to now place indictments in these proceedings and I just wanted to, you know, put that on the record.

So, Mr. President, I mean, those were the six of the major—six of the points that were made by—contributions made by Sen. Lutchmedial that I just wanted to start my contribution, looking at—Mr. President, you can tell me how much more time I have?

**Mr. President:** You finish at 4.23 p.m.

**Sen. The Hon. R. Sagrarsingh-Sooklal:** Well, I do not have much time as I can see. But, you know, Mr. President, based on what you would have said, you know, Mr. President, again, you know, I just want to start from the place—I know the AG would have mentioned the case of Hilroy Humphreys and, of course, I am not going to belabour that case but, you know, Lord Hoffmann, I just want to start by reminding citizenry, reminding even the accused and the family of the accused who are paying attention to this matter that, of course, we are not usurping the rights, we are not trampling over the constitutional rights of the accused by the removal of preliminary enquiries. Mr. President, also, jumping into the case that the AG would have mentioned too, I am certainly not going to run afoul of tedious repetition but I would look at a statement made by Lord Hoffmann, in particular, in that particular case, Mr. President. And for the purpose of the record, Mr. President, Lord Hoffmann stated that:

“Prospective litigants (or defendants in criminal proceedings) do not have a vested right to any particular procedure and there will generally be nothing unfair in applying whatever procedure is in force when the case comes to court.”

Therefore, Mr. President—and that is taken straight out of the Hilroy Humphreys case.

Mr. President, you know, and this is—especially as I started off saying, for the families of the accused—the accused persons themselves, please, it is really for

they to understand that certainly their rights to be heard have not been trampled upon and there is no constitutional issue, Mr. President. An accused person will still be able, Mr. President, to enjoy the right of due process and therefore, with this amendment, Mr. President, I reiterate there is no constitutional infringement by abolishing preliminary enquiries as it does not, Mr. President, at all, affect the accused's right to a fair trial.

Mr. President, I know that the hon. AG would have spoken, in his piloting of the Bill, about this Bill not being an infringement on the DPP's constitutional rights. In my contribution, of course, because time again is always my enemy in this, you know, hallowed place, you know, just briefly to reiterate and to join with the hon. Attorney General in his position, I too agree, as an attorney-at-law, Mr. President, that there is no infringement on the DPP's constitutional rights. All the rights of the DPP, pursuant to section 90 of our Constitution, Mr. President, are intact in this legislation, Mr. President.

Mr. President, as a matter of fact, the DPP has control over, as we know, based on his constitutional rights, Mr. President, he has control over criminal proceedings, similar to other countries. In this Bill, in particular, Mr. President, if we look at clause 8 of the Bill, which amends section 6, to my mind that is a clause in this current Bill that shows where the rights, that section 90 rights of the DPP remain intact, Mr. President, and that example, in coming out of this Bill that appears before us, deals with the issue of the discharge of the accused. In this particular clause, Mr. President, we see the Director has the power under clause 8, which amends section 6(2), of the proposed Bill, to provide when he or she:

“...is of the opinion that a person should be put on trial for an indictable offence, the...”—DPP—“...may prefer and file an indictment against that person, whether or not a complaint is made against that person.”

Mr. President, if I might go on further to the Bill that appears before us, the proposed clause 20 of the Bill, which amends section 19 of the Act, it goes on to state and I quote:

“A Master shall hold a sufficiency hearing to determine whether there is sufficient evidence to establish a prima facie case of any indictable offence on an indictment.”

However, Mr. President, the proposed clause 26 of the Bill, which amends section 25, provides:

“...after reviewing the evidence submitted by the prosecutor and the accused, a Master finds that there is sufficient evidence to establish a prima facie case of any indictable offence on the indictment, the Master— shall...”

—discharge the accused, you know, taken in respect of the charge:

“and...taken in respect of charge shall be void.”

However, Mr. President, there is a safeguard in the Bill that appears before us, the constitutional function of the DPP is not trampled, it is not eroded and that is seen at new section 24(4) of the Bill, Mr. President, that provides for instances where, and I quote from the section, I quote from the Bill:

“Where an accused is discharged, the Master shall, on the written request of the Director of Public Prosecutions, transmit within fourteen days to the Director of Public Prosecutions the record of the sufficiency hearing.”

It goes on, Mr. President, provide at the proposed section (5):

“The Director of Public Prosecutions may appeal the...”—discretion—“...of the Master, if the Director of Public Prosecutions is of the opinion that the accused ought not to have been discharged.”

And what we see here, the right of the DPP to appeal that decision, to my mind, that bolsters his section 90(5) rights pursuant to the Constitution.

**4.20 p.m.**

So I want—if there are any concerns, especially in the minds of the members of the listening public, who may believe that in some way or the other this Bill seeks to trample the constitutional rights of the DPP, I simply suggest that they go to the Bill, particularly pay attention to clause 25 of the Bill, which amends section 24, and more so, section—which amends section 24(4). Pay attention to that, and you will clearly be able to see that the powers of the DPP, the section 90 powers of the DPP, of course it remains intact. Just as we are not trampling over the rights of the accused, as I would have alluded to earlier, similarly in this Bill we are not trampling over or infringing upon the section 90 constitutional rights of the DPP. Mr. President?

**Mr. President:** Three more minutes.

**Sen. The Hon. R. Sagramsingh-Sooklal:** Three more minutes? Okay. So in my three minutes I just want to say there are many, many social benefits that, of course, go with the Bill that we are dealing with today. You know, we are looking at—by the removal of these PIs, I will strongly say from a cost perspective and cost for the accused, Mr. President, whereby now not having the trouble of having to hire well-learned senior counsels and the crème de la crème to run this trial for you, an accused is already in prison, “is de family tail to ketch” unfortunately, to determine what they are going to sell sometimes, God forbid, their kidney and liver, hopefully they do not have to sell in order to find money, and that is a reality. It is so sad what the families of the accused have to go through in order to be able to retain counsel. By the removal of these PIs, I strongly believe that there is going to be a significant social benefit to the accused persons as well, as from a cost perspective.

Mr. President, we also have from the accused, him or her, being denied their



freedom for the length of time that they remain waiting for these matters to even come up at a PI level, that too is another social benefit. The AG, I know he would have more or less time-stamped, I think it was a six-month period, based on the deadlines that are now given in the Bill—the timelines that are given in the Bill that appears before us. I myself calculated it. You are looking at—hopefully, you have the sufficiency hearing. If you have the adherence to the timelines that are presented, that these matters can be dealt with in matter of six months' time.

If you calculate the 28 days there, and the 14 days there, and the 15 days there, it really works up to about six months. That is in the interest of the accused because we are looking at, he is not just sitting there becoming a hardcore criminal, waiting for his matter to be heard, we have that sufficiency hearings can be dealt—we have that their matters can come up. He knows whether he has a matter to answer to on the indictment or whether he is discharged. That is a benefit. And more so, I believe by doing this it is also a great benefit to the country.

You know, Mr. President, I remember in 2016, the then Attorney General would have revealed that the cost to the State to, let us say, maintain inmates on remand, it is about \$10.6 billion per year to maintain 2,235 inmates. That was the cost, Mr. President. I believe we could reduce the cost and even save the country moneys that can be used elsewhere, rather than taking care of prisoners who are waiting for their trial. I thank you, Mr. President.

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

**Mr. President:** Sen. Bisramsingh.

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

**Sen. Karunaa Bisramsingh:** Mr. President, I thank you for the opportunity to contribute to this Bill here today. We all know the major crisis that our criminal justice system is currently in. And as a criminal defence attorney, I for one

welcome any meaningful legislation that can adequately address and resolve the issues. But in order to address the issues, we must be able to correctly identify the issues, and in order to correctly identify the issues, we must understand how our current criminal justice system works in reality.

We cannot just sit here and deal with the paper aspects and be disconnected from the reality of things. We cannot just be drafting and implementing legislation that on paper sounds and looks good, but will do nothing to help our criminal justice system. If we do that, we are just here wasting time, money and paper.

I was told that this Bill is being referred to as “de fast track trial law”. That sounds good, anything to have the wheels in our criminal justice system moving, but we must never sacrifice fairness for speed. It is our criminal justice system and we must be just, and we must ensure that justice is served. We must ensure that the legislation being drafted and implemented preserves our rights as citizens, and more so, for an accused person. We must ensure that the legislation can achieve its aim. We must ensure the legislation is useful.

After listening to our hon. AG, I began to wonder if the go-to or the fix-all for everything was to abolish, and whether “abolishing” is synonymous to “faster” and “speedier”. “The criminal justice system slow, so leh we abolish de jury system. De criminal justice system slow, so leh we abolish preliminary enquiries.” What next would we want to abolish?

I am not here to bash the Government. As a practising criminal defence attorney who is in the criminal justice system every day, I want change, I need change, and I am not even one of those accused persons sitting in a cell languishing. So I am open to any proposals or measures which would help our criminal justice system. But let me tell you why this Bill, which seeks to abolish preliminary enquiries, will not help speed up the criminal justice system.

The statistics and numbers were given with respect to how many indictable matters are at the Magistrates' Courts currently, and how many indictable matters are added each year. As it stands, it is in excess of 37,000. So you have 37,000 persons fighting and competing to have their preliminary enquiry started and completed. But in an actual preliminary enquiry, the actual hearing of evidence, where the witnesses would come to be cross-examined, you know, that process itself actually just takes days?

So if in the hearing of a preliminary enquiry, if the hearing of the evidence just takes mere days, why do we have this backlog? Why does it take so long, from the point of being charged, to the point of being committed, to stand trial in the High Court? One of the major delays is the actual filing of witness statements.

I have been in many murder PIs where it takes upwards of six months to have all the witness statements in a matter. So you have the accused going to court every 28 days just to be told how many statements are filed so far and how are outstanding. That is the norm. You would never get all of the witness statements in less than six months, and this is me being generous.

Now, we all know and we are all aware that the actual filing of the indictment takes years. Accused persons thinking, okay, they completed their preliminary enquiry and they are committed, so now they are going to have their trial in High Court before a judge, but that is not the case. They have to wait upwards of five years before their matter could even come before a judge in the High Court, and again I am being generous with the time of five years.

If this Bill seeks to circumvent the years it takes for the filing of an indictment, then well done. I will be in full support of a measure that can do that. But even if this Bill may appear good on paper for the reduction in time in having indictments filed, it may not be so in reality, because this is not the fast track trial

law. This is the shifting of the bottleneck law.

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

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

**Sen. K. Bisram Singh:** What this Bill does is that it just moves the bottleneck from the Magistrates' Court to the masters in the High Court. So we would have the 37,000 indictable matters before the masters in the High Court, and then awaiting to go before the judge. So you are just moving the bottleneck that is currently in the Magistrates' Court and placing it before in the High Court. Why are we reinventing the wheel in hopes that it fixes the criminal justice system, rather than just address and fix the real issues? Other measures need to be implemented in our criminal justice system; measures like having more masters, more judges, more prosecutors, more courts. The required personnel must also be properly trained. We must have the proper infrastructure to support all of this.

And I do not want to hear how many new masters were appointed, and how many new judges were appointed, when in reality that figure does not represent the masters and judges that were positioned in the Criminal Division. We have the Civil Division and we have the Family Division where some of that manpower went.

How many times we have to hear the DPP begging for prosecutors? And the DPP's department is in a deplorable state. This Government implemented the PDD, which was able to supplement and support the very small defence attorney bar, and this PDD is very highly functioning. That was a good measure. The Government heard the cries that matters were being kept back and taking too long, because the criminal bar was just too small, and it was only a handful of attorneys in matters, and that these attorneys could only do one trial at a time. So that problem, that clog in the criminal justice system, was addressed.

When are we going to address the lack of prosecutors in the courts? It is the same prosecutors that are before the masters and the judges. I have appeared before masters on many occasions and there are no prosecutors in the court. Why? Because the same prosecutors are engaged in trials before the judges, so no prosecutors are available to appear before the masters to progress matters.

Now, I know this Bill seeks to have police prosecutors conduct sufficiency hearings as well as the state prosecutors from the DPP's Office. But is that not already the case with preliminary enquiries? Do we not already have the police prosecutors there, and they who would conduct majority of the PIs before the magistrates? So we have them there and we still have a backlog, we still have a bottleneck. So what is this clause going to change?

This Government implemented the grant of bail for murder accused in an attempt to reduce the prison population. Again, I commend that measure. I am in full support of that. But we should pull the statistics and numbers and find out how many persons have since applied for bail for murder, and from that number how many persons have actually had a determination in their matter. I am certain that the number is not encouraging. And why is it taking so long? There are not enough prosecutors to deal with applications. The matters are being adjourned for months to allow for prosecutors sufficient time to respond to applications, as they are the same prosecutors before the masters, the same prosecutors before the judges.

Now, this Bill, I firstly want to deal with the sufficiency hearing itself. Pursuant to new section 19A(1), the attendance of witnesses is not required unless there is an application made and:

“...the Master makes an order for the attendance of a witness who filed an unsworn statement.”

So witnesses who have a sworn statement are not required to attend these sufficiency hearings. The rationale I am sure for that clause was no witnesses being brought to court to give evidence, so no witnesses to cross-examine, no time to waste, no delay to the matters.

Now, we currently have paper committals in courts at the moment, which means that witnesses do not come to the courts to give any evidence. Their evidence is already on paper.

**4.35 p.m.**

The witnesses are only coming to be cross-examined. This Government again drafted and implemented the Criminal Procedure Rules and that is working well, those rules achieved the aim of case management of criminal matters. Long gone are the days where you would cross-examine witnesses at length and these Criminal Procedure Rules which were implemented sought to limit the number of witnesses you would cross-examine.

If a matter has 20 witnesses, you do not cross-examine all 20 witnesses, you can agree to evidence formally because you do not want to cross-examine the police officer who escorted a dead body to the Forensic Science Centre, you do not want to cross-examine the police officer who collected a post-mortem report. So in a preliminary enquiry not every single witness is being cross-examined. In most cases, you would just find that the victims, the eyewitnesses and the lead investigator are the witnesses to be cross-examined. But in that cross-examination of the main witnesses, you get to test the evidence that put you in court at the first place.

An accused person gets to challenge his accuser, you get to challenge the eyewitness account of what the allegedly saw and this opportunity to challenge the evidence is very, very important as your case could fall through right there and you

could be discharged. You cross-examine the person who puts you before the court and realize that his evidence cannot be relied on. Your matter does not then go to the High Court, your matter would finish right then and there. But with this sufficiency hearing, you are not given the opportunity to cross-examine anybody. The master looks at the witness statements filed in the matter and makes a determination if there is a prima facie case for the matter to then go before a judge.

Accused persons are now going to be robbed of an opportunity to have their matter finished right there. The accused would have spent extra time in prison if he does not have bail, when he could have been discharged right then and there at the end of the PI. An accused person is now going to be robbed of the second limb that is available to him in making a submission of no case to answer.

Usually after evidence is heard in a preliminary enquiry, an accused person can make a submission of no case to answer, in that the cross-examination of the witnesses has been so discredited, the evidence was poor, it was inherently weak that a jury cannot convict on it.

This Bill in clause 23 gives an opportunity for submissions to be made to the master to help in reaching of the final decision. But if you are robbing accused persons of the opportunity to make a submission of no case to answer on one of the limbs, is that fair? Further, we have also had instances in court where during a preliminary enquiry and cross-examination of witnesses, the case would unravel right there. The cross-examination of witnesses was so poor and that during the preliminary enquiry the prosecutor would often go back to the DPP to get instructions as to how to proceed with the matter, whether to continue with the matter, and sometimes these cases are stopped right then and there. So all of these are cases which appear good, which appear strong on paper, on the witness statements and then after the cross-examination they are unravelled. If with this

sufficiency hearing, witnesses are no longer required to attend, then this could never happen and persons would be made to languish in prison even longer than they should.

Now, Sen. Sagram Singh-Sooklal spoke of her experience of being locked into a bad cross-examination from a preliminary enquiry and then not being able to navigate in the High Court, and all I will say is that you do not need a Bill which will take away the cross-examination, you just need a better lawyer.

**Hon. Senators:** [*Laughter and desk thumping*]

**Sen. K. Bisram Singh:** And, you know, cross-examination of a witness in a preliminary enquiry sometimes saves a trial before a judge, and let me tell you how. We have many instances where witnesses die or they become unavailable before they are able to attend their trial and before they are able to be cross-examined. But because this now deceased or this now unavailable witness was cross-examined in the preliminary enquiry, the State makes an application to put that evidence, to put that cross-examination before the jury, because the State will essentially be saying, “Look, the witness was cross-examined in the preliminary enquiry and that the jury can use that evidence to determine the credibility of the witness”.

So now, if we are to have sufficiency hearings and no cross-examination of witnesses and then that witness comes and dies before the trial, what is going to happen? Because it will certainly be unfair to put a witness statement, which has been untested, which has been unchallenged, which did not give an accused an opportunity to challenge his accuser before the jury. So now the judge may rule that it would be unfair to do that and would not allow that witness to give evidence before the jury. And then that is it, the whole case falls down there and the accused would have spent time in jail for nothing. Again, why are reinventing the



wheel, when if these measures, if passed, are not going to help the criminal justice system?

I feel like we are running a relay in circle. We are just passing the baton, passing the bottleneck from the Magistrates' Court to the masters and we are just running in circles.

Now, at the initial hearing, as proposed in this Bill, it asked for an accused person to file his witness statements or other relevant documents for the sufficiency hearing. But how is an accused person, who has a right to remain silent, who does not need to advance a defence, but rather challenge the prosecution's case, how is he now being made to file witness statements before his trial even starts? Usually it is at the end of the prosecution's case in a trial before a judge, that an accused person will make a decision whether he wants to call evidence, whether he wants to call witnesses. Why is an accused person now being forced to show his hand? And this is before his trial even starts before a jury.

Now, a next part of this Bill that I take great issue with is new section 32B(1) which speaks to anonymization of documents. The hon. AG said that it is not the anonymization of witnesses, but that it is the anonymization of documents. But what other documents they have to anonymize, other than a witness statement? We are going to anonymize a forensics report? We are going to anonymize a certificate of analysis? We are going to anonymize photographs? It has to be the witness statements that are being referred to.

**4.45 p.m.**

So with this measure we would not know the names of the witnesses. We do not know if it is a man, if it is a woman. We do not know who is making these accusations against us. We do not know if it is someone who we have noise with.

If it is someone abusing this section and hiding behind this section for whatever hidden agenda they may have, and this cannot be the case. An accused person must be able to know who his accuser is. This section is only going to allow for spurious allegations to be made against persons and now enabling persons to hide behind it.

Currently, we already have legislation to deal with all of the scenarios which this Bill wants to deal with. When a witness is in fear, when a witness does not want to come to court to give evidence, we have legislation for that already. Witnesses can give evidence via video link. Witnesses can give evidence behind screens. We have the witness protection programme that can be used. So is it that the Government is now saying that these measures are not working? And with this measure, how are accused persons going to ask for disclosure if they do not even know the persons who are making the allegations?

How would an accused person know if these witnesses have convictions, have pending matters, if a bad character application should be made? How is an accused person going to properly prepare their defence if they do not know who brought the allegation against them? This cannot be.

Mr. Vice-President, this Bill will not help the current state of our criminal justice system. All that this Bill does is just move the bottleneck. The criminal justice system will still have a backlog. It would just be before the masters at the High Court. This is not a fast-track-trial law. This is a move-the-bottleneck law. This Bill is not going to achieve its aim. We need to go back to the drawing board for this. Our criminal justice system demands more and deserves more. I thank you.

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

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

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

**Sen. Dr. Varma Deyalsingh:** Thank you, Mr. Vice-President. I must say that this proposed—the amendments to this AJIPA 2023, I have been hearing that this is really to expedite the system of justice in Trinidad and Tobago. So persons who have started in the process would have a faster means of getting to trial and a faster means of being able to get justice. So therefore, the intention seems to be very good. It is an intention that I am pleased that the Government is at this stage trying to somehow get the wheels of justice turning faster. As we all know, justice delayed is justice denied, and so we are now moving to try and see if we can get this justice going a little bit quicker.

Recently, I read where it took, I think, 13 years for a case to reach the High Court in its determination, where there was the death penalty handed down to an individual, 13 years. And, you see, this, to me, it is a fact that we know we have a slow pace of justice. We know that the Judiciary is trying to improve the system. We know the fact that the Government has even been providing more courts, more judges, et cetera, so there is a thrust to see if we can get this going forward. But 13 years—I think it is an injustice to the relatives of those victims of crimes waiting this time, not knowing what is happening. It is an injustice to the eyewitness who, if involved in the cases, who would now have failing memory, who would be frightened if their case is not heard quickly. Their safety out there would be something that they have to be a bit worried about in our crime environment.

Then again, the personnel in the court who has to be seeing about these matters, being up and down, to and fro, police officers, for 13 years. This, to me, it is a horrendous wait and it is a great mental strain even on the persons and the relatives of the victims if they have to be waiting this long; even the plight of an innocent person who might have been framed and waiting for his case to be held,

waiting for the trial, waiting to get that out there that, “Look, I am innocent. I have been set up”. So all of these it can be unfortunate both for victims and both for the accused if he was innocent.

So we all know that there was a need to do something better and this Bill here serves to try to expedite matters now. And the thing is, we have the fact that preliminary enquiries have their function. This whole process serves to weed out the persons coming there, you know, the police officers coming with minor cases, cases going to the High Court where it weeds out those cases where there is not enough evidence, and at least it makes sure that the case going trial would have had enough evidence to proceed to go forward.

And I heard speakers before mention, there is the whole justice in that system where we could weed out those cases quickly. We allow the magistrate to end cases based on the fact that if there was insufficient evidence. So it sounds good in the sense that it has a great function to weed out the cases, to try and prevent these cases from going forward. But, you see, the fact remains is when you hear the figures of the backlog, something went wrong. So even though it was there to serve its function, if you are hearing figures like 37,933 serious offences are still pending in the pretrial phase, it means something is not right. If we heard the figures, there are 8,835 coming per year, again, something is not right there. So definitely having these cases hanging over persons’ heads, having those cases there shows that even though the preliminary enquiries may have had a function, serve a function, probably prevent cases from going forward, I would have liked to know in, you know, like the amount of cases that went before the magistrates, the percentage that they were able to say, “Listen, these cases did not have enough evidence to go to the High Court”. And that would have kind of given me the success of the preliminary enquiries, because it would tell me now, like if there are

75 per cent of cases are not going to the High Court, it would have given me the idea, well, hey, these magistrates and the prelim—are probably doing something well, something to prevent cases from going up to the High Court which is a higher level of the judicial arena. So the figures would have helped me somewhat to make a determination.

The other thing too, if we figure it is the delay and the bottleneck is at the Magistrates' Court—I know the Government has given us more High Court judges. I know, I think, in the—I have heard the figures in the Court of Appeal, it has increased and also in the High Court itself. So we have gotten that commitment from the Government that, you know, we heard about and we have gotten more courts. We have gotten some improvements that we should be proud of, that we were, you know—we are on threshold of going forward.

But then, coming here today I am wondering, is it that having more magistrates, putting some more efforts in giving these magistrates, increasing their numbers, would this have now been able to solve this problem, in the sense you would now have more magistrates sitting, they would be able to hear the evidence, they would be able to get these cases, you know, expedited quicker? Some go up, some stay, some will just have to get out. So therefore, this was one thing. I am looking at why not increase that capacity in the lower or—well, the district Magistrates' Court. Because we have heard that the Magistrates' Courts are now district courts and we have heard there is a thrust there to improve the system there and I think doing this would have probably, you know, helped that situation somewhat and not needing to change so much. But be that as it may, we are here and we are looking at changes and the Government said that they are going to be trying to get this Bill passed.

I had the fact, you know—I had the disquiet that when I am looking at cases

going before the magistrates, sometimes it is not a quick system. It comes like it is a mini trial. You have not just, you know, listening to the evidence. And I heard the speaker before mention that, you know, they do not look at every piece of evidence. Sometimes a police goes in with some report, they would not look at those things. But the fact remains, a lot of attorneys, they think that if they could abort that trial at this stage, this would be beneficial. So it came like, you are having trials there within the Magistrates' Court, you have those smart attorneys wanting to look at every piece of evidence, question the eyewitness and sometimes that delays it also. Sometimes the eyewitnesses also may feel that they are badgered in court and some of them lose their strength of, you know—their braveness to say, "Hey, we are going to the High Court", because after you are facing the music in the Magistrates' Court, you may lose your courage and say, "Look, I have no time for this, you know. I do not, you know, believe in going forward". So sometimes, you know, even though we have heard the advantages, there were some disadvantage. And again, I heard my Independent colleague before spoke about it is like a gravy train for attorneys, the amount of money that they would have probably gotten in these cases. So the fact is, all these numbers show me that something went wrong and something needed to be done.

And this is why I would like now to look at some details in this piece, this Bill that is here to see what I may be concerned about, what I may decide that I may want to get some clarification. Remember, this whole Bill serves to expedite the system, it serves to get rid of some cases, to get it faster tracked. And you have to remember, Sir, the last time when we tried to expedite cases, it was when we—sometimes when we looked at section 34 that came here and the whole good intention was to get rid of cases 10 years and older, what happened then, what transpired then was like a—it created something more than that, you know. So we

have to say, expedition of the judicial system, getting it faster, getting rid of certain cases even then, 10 years and older, seemed to have been a good idea. And at the time that it was passed, all benches had agreed to it and that was a close to midnight when they were agreeing to it. So things may sound good but then you have to realize if there is any sting in the tail. So is there anything in this piece of legislation that have to be concerned about?

Well, the Opposition did mention that the excursion into the powers of the DPP was a cause of concern. And I also may have had a little concern but I heard Members on the Government's Bench speaking about it. The Minister in the Office of the Attorney General and Ministry of Legal Affairs mentioned about the concerns. She had tried to address some of the concerns. But if history serves me right, the DPP—it was in 1975, I think, the DPP got the powers to indict. I think it was with the AG before and then in our 1975 legislation it came over to the DPP.

So therefore, the powers there now simply—that rest with the DPP is something that I am cautious to see any piece of legislation which may be perceived as trying somehow to erode his powers.

**5.00 p.m.**

And this is why I had some concerns. Because you have to remember the DPP did mention he had 114 members of staff that were deficient in his department, and he cried out for this, and there was a public spat, I want to put it, where other persons came in and said it is really not—he is not running his office properly and he does not need that staff. So it came from different quarters. So right now, he may be on the defensive where he may think he had a need to try to expedite the system of justice, he said he needed his staff but he was pushed back. So therefore, I just want the assurance from the Attorney General that the DPP was in fact consulted on these changes that were made. Because, you see, if there is a

public perception there is some sort of—well, not seeing eye to eye in certain matters in terms of staffing and how we could expedite the system, we would not want to create any sort of a problem there.

So I was really looking at—I am looking at the piece of legislation here where we actually attempt now here to strike out some of the old pieces of the legislation. So I look at Part III where it is mentioned “sufficiency hearing” and it is under 19(1), which has now been struck off, where:

...a sufficiency hearing shall be held by a Master to determine whether there is sufficient evidence to establish a prima facie case of any indictable offence unless the Director of Public Prosecutions prefers and files on an indictment under section 6(2).

So that is being struck off, and what it is being replaced with—and part (2) is also struck off too:

A sufficiency hearing shall be held in open court unless a written law of rules made under this Act provide or the Master determines elsewhere.

So you are striking off 19(1) and (2) and replacing it with, “A Master”—well, just one part:

“A Master shall hold a sufficiency hearing to determine whether there is sufficient evidence to establish a prima facie case of any indictable offence on an indictment.”

So we actually removed the DPP from this equation. And probably there may be a good reason, but I would want to know that the DPP was actually consulted on this and will think, “Hey, you know, this is probably a good idea. It makes sense by taking me out of that”. And there were different areas where the DPP, again, was to be excluded, and again under consultation I have no problem with that.



And I looked at also section 24(4) where we are looking at discharge of accused, and what we want to introduce is subsection (4) where we say:

“Where an accused is discharged, the Master shall, on the written request of the Director of Public Prosecutions, transmit within fourteen days to the Director of Public Prosecutions the record of the sufficiency hearing.”

And also:

“(5) The Director of Public Prosecutions may appeal the decision of the Master, if the Director of Public Prosecutions is of the opinion that the accused ought not to have been discharged.”

So now, here we are seeing that if some power is taken away from the DPP but yet still you are giving him that right to appeal, he needs the staff. He needs the staff—he may need that staff to mount that appeal, else if you are not giving him that, it again would go against the grain of that, he may want to appeal but because of staff “restrictment” he may have to hold back. And I was always under the impression that the DPP had the power to even, well, initiate the criminal proceedings, and even if it was dismissed, to restart it. So I just wanted that clarification, that sort of comfort to know that the DPP would have been consulted on these matters.

And then I look at section 26(c) again which says:

If after the receipt of the statements and other documents mentioned in section 26 or 26(1) the Director of Public Prosecutions is of the opinion that the accused person should not have been committed for trial but that the case should have been dealt with summarily the DPP may if he thinks fit refer the case to a magistrate for summary trial.

So again, all these things were depleted. So my point is made, DPP consulted, I have no problem with it. Again, I look at this legislation and I said there were

some good things that I saw. I saw the fact that when I looked at the fact that section 20 which looked at the “Review of evidence”, and 21(3A):

Notwithstanding section 91 the Children Act where a statement is made by a child under the age of fourteen such statement shall be supported by a statement from a probation officer, a child psychiatrist...

And before it had, “or any other persons qualified”. Now we hope to add: child psychologist, social worker, counsellor, other persons who are similarly

qualified to make an assessment.

So I totally agree with this piece of addition.

And again, I look at also 21, I look at part (da) where we want to add now:

“where the statement is made by a person who does not speak English fluently, the statement shall—

- (i) be taken in a language which the person speaks fluently, in writing, or by video or audio recording;”

Again, when I look at that paragraph (da) as it goes so, it again shows the fact that we are aware that with the influx of the migrant population, other people here, there is a need for this. So I commend the Attorney General for putting that in this piece of legislation. I want to also make mention to the fact that—the fact is the part of this piece of legislation where I think it caused some contention before, was the idea of the anonymous document, and this is section 32B which is being put into this Bill here. This was not in the parent legislation. And this caused some sort of—I am hearing on one side that it is really for documents only, it is not for the witness. And 32B reads:

“The Registrar may, on application or in his own discretion,

anonymise any document filed or issued under this Act, if...necessary—”

And part (a):

“for the protection or safety of a witness or accused;”

Part (b):

“to prevent serious damage to property;”

Part (c):

“in cases involving witnesses who the Court considers to be vulnerable by virtue of—

- (i) the age or immaturity of the witness;
- (ii) a physical disability or mental disorder;
- (iii) any trauma suffered by the witness;
- (iv) the witness’ fear of intimidation; or
- (v) the nature of the offence, including sexual offences, for which the witness is the virtual complainant; or

(d) in the interest of public safety.”

So if we are going to—if it is not really the individual that we are trying to protect and it is really the individuals, any sort of documentation—I just want you to get some idea what it is, some example, what sort of documentation that we would deal with. Because, you see, we are looking at anonymous witness, which is one thing, but to have the persons who gave these documents in, and being protected, I would want some more examples of that.

Because remember, if you had remembered the Scott Drug Report, Mr. Vice-President, this report was a public report, and a lot of the persons who gave evidence in that report were criminals, known criminals. So therefore, we have to make sure justice is done, that if certain persons come here and decide to, you know, take advantage of the law and you do not know if they will hide behind this

to cause some sort of mischief. So we have to be aware of this

Now, if it a document like, let us say, I see there if it is a document but any trauma suffered by a witness—if I am a witness and I am going through post-traumatic stress disorder, I have that in a medical file, I would not want that document out there because that is my personal medical file. So I can relate it to that. So I would just need some other examples, if the Attorney General will give us that example to at least make me sit a little easier in this. Because I was getting the impression that even the Lower House there was some discomfort, but I think it was clarified that it is the documents that we would be looking at really and not the persons themselves.

The other aspect I would want to say is, I have tried to figure now, is it that it is only we in Trinidad who have this problem? Is it we that have this problem with delay? And I said no, because I looked at other countries, and I see there is delay, the UK has delay in their cases also. There are attorneys there who are also complaining. And in every single jurisdiction there are challenges, and there is a need to improve. And, you see, when I saw that there was a case in Canada and I would like you to—permit me please to just mention this case, Sir. This case in Canada actually shows that there was a court case where we found that—it is called a decision in 2016, a Jordan decision in Canada where the Supreme Court actually found that cases were coming too long to them and they imposed a time limit on the Crown to bring criminal cases to trial.

So that Jordan decision actually found that the delay is unreasonable after 18—they gave a period of 18 months in the Provincial Court or 30 months in the Superior Courts. After the delay, the Crown now must prove why there is a delay. So that case rocked the Canadian criminal system because right now, the court now, they had no choice after to try and expedite. They had to see how they were

going to get these cases because the courts actually put that direct mandate on them that they had to do it. So what did they do? Well, they had to try to expedite cases. And what they actually did, they utilized the system where they started using direct indictments more.

So what we are trying to achieve here via legislation, they were directed via their courts, their superior courts that they had to do something and they chose that matter. Now, when they chose that, did they get any sort of criticism? Because, remember, you know, did anybody say that going straight to—having direct indictments more would have any sort of problems? And they did, and this is what I would hope you would let me read in, Sir, and this is something from March the 27<sup>th</sup>, 2017, where the Canadian Bar Association said:

“Eliminating preliminary hearings isn’t the answer to court delays.”

So they were against it. So this was in 2017. So they came, I just want to put what they said here. They said:

“...cuts, however justifiable they seem in the moment, can end up creating more problems down the road than they were supposed to solve.”

So they were a bit critical of the fact that, you know, that more cases were now being channelled through the direct indictment route, and they said, you know—and they gave a whole set of different recommendations how we could somehow improve on the system, how we can somehow mitigate against the delay. So they had things in place that they suggested. And they also suggested:

“Police could be resourced to hire experienced counsel...support staff to...” —help them in the cases. But we are hearing now from the Government side that some of those police officers who are qualified in law would be assisting in the matter down in the lower courts.

We are also hearing now, that they were saying there is—they actually had

another release, and there was a release now by a different attorney now where he said, “The Problem of Delay - A Pragmatic Approach”—and this is by A. Scott Reid, and it was published in 2019, and some of the recommendations he made. So these are persons who, in the Canadian system, will now be looking at the reasons for delay. And why I want to quote this, Sir, is some of the things that they suggested are some of the things we already have implemented here, and this is something here, because they looked at reducing court delays, and it is via a group called “Justice On Target” programme, and they aimed to reduce delay. And what they said, and some of the guidelines they gave, and some of the suggestions they gave was to “hire more judges”, but we have done that. So we have to commend the Attorney General and the Government for doing this

So their recommendations, we already had that here. They said, however, the government there had:

“...to invest in courts, courtrooms...court staff, court reports, cells officers.”

They said:

“...judges need chamber days when they write rulings, so other judges need to preside on those days.”

But we have done that.

**5.15 p.m.**

So we were ahead of the Canadian system by what the Attorney General and the previous Attorney General had mounted to try and improve our system.

Another option they said is:

“...to allow electronic remands...form of non-attendance for simple remands.”

And they are saying we have to shift where even a defence counsel could stay in his chambers, he could:

“...touch base with the Crown...”—they could—“...adjourn the matter without appearing in court. That would allow counsel to actually be at their office to prepare their cases - review disclosure, prepare trial applications, meet with clients and witnesses...”

But we already did that.

During the COVID we realized that remand yard, we had to come online, there are online courts. So again, the Canadian system, we seem to be having like a checklist ticking out their recommendations.

Now, another recommendation they made was the fact that they found their offences, in terms of impaired driving, and what they call Over 80 offences, were taking up too much time in the court. But we already went to the Motor Vehicles and Road Traffic Act and we already have the system where we moved from offences to violations, and the Attorney General and the previous Attorney General must be commended for the fact that we freed up 104,000 cases from their court. Now, that is progress, and this is the same thing the Canadians were suggesting.

One other thing that the Canadians are actually suggested too was that the:  
“...Crowns screen minor offences for prosecution.”

So minor offences, they would say that something like

“Shoplifting, personal disputes that end up with one party charged with a minor assault where there were no injuries were suffered...”

—they were thinking they should free up the courts from that.

Well, we did free up the courts from the marijuana charges where people were charged with marijuana before because with the changes in legislation, but they actually were looking at other minor offences for prosecutions, shoplifting, et cetera. But this is something, Sir, I would not recommend because New York, California, persons are going into shops now and causing havoc and the business

persons are actually taking offence and closing their business because they find that if you do not prosecute these minor offences, they just come back and reoffend and it is difficult to run.

So therefore, my point in bringing this is really to commend the Government for the fact that a lot of these recommendations that were suggested in the Canadian system, we already have it on board. So we already have it on board. So that had to think that we were thinking ahead, we were trying to get this—well, this, I consider it as a dream that our last Attorney General was trying to peddle, but I mean everything he has done so far, it seems to be coming on board but we need to see the practicalities of it manifest where people actually start to move. We need to see the practicalities where figures will show that when somebody now is charged, it reaches to that point in a much quicker time, and that is how you really judge success.

So, in conclusion, I want to say that the Privy Council case, Hilroy Humphreys, said there is really no right to a preliminary enquiry, but there is a right for a free trial. So once we put that right for a free trial, once we ensure that the victims will get a free trial, the accused will get a free trial to make sure his rights are not infringed, then I am saying, we would be doing a justice to our citizens. So once we can expedite matters, it is to the benefit of citizens. As I say, Canada was actually forced to try to go this way because of a court case. We are doing it voluntarily. We are following a plan of action and it was set in motion before. I see good things before.

The judges raised from 36 to 64 in the High Court, 12 to 15 in the Court of Appeal—more courts—and I am saying that I commend the Government for this, trying to expedite cases. It is to the benefit of these citizens. I also say the cautions that were raised, please go into it and allay the fears of persons. Also, I



am saying that the real test really is when we look at the figures from start to finish, then we would say, “Hey, we have done something for the benefit of the people”. Thank you, Mr. Vice-President.

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

**Sen. Evans Welch:** Mr. Vice-President, thank you for giving me the opportunity to speak on this Bill and to make a few brief observations of certain aspects of it which I consider to be most important. This Bill which is before the Senate today seeks to amend the Administration of Justice (Indictable Proceedings) Act of 2011. The Act which this Bill seeks to amend has a very impactful provision which is section 33. If that Act comes into being, section 33(1) of that Act reads:

“The Indictable Offences (Preliminary Enquiry) Act...”—and the Indictable Offences (Committal Proceedings) Act, 2014 are—“...repealed.”

So the important Act is the parent Act, in that it abolishes preliminary enquiries, and what we are dealing with today are amendments to that Act. But my concern though, is that the Government has advanced the importance of abolishing—the abolition of preliminary enquiries. We have been hearing of the need to abolish preliminary enquiries for a number of reasons. It will bring a number of advantages to the system, et cetera, and yet still although this Act was passed in 2011 and assented to on December 16, 2011, we are now approximately 12 years later, in 2023, with an Act which was said to be important and which Act has still not been proclaimed as yet. And what we are here to do today, without that Act even being proclaimed, further amendments are being made to something which is in disuse and non-functional.

I have counted it. There have been four amendment Bills with the same name, Administration of Justice (Indictable Proceedings) Act: amendment 2012 to the Act; 2019, there were two amendments; there was another one in 2020; and

here we are again, without the Act ever being proclaimed or put into force, amending it, another amendment in 2023.

This Act, since it has been passed in 2011, has existed through three different administrations, 2010—2015, and two of the same from 2015—2023, and none has effected it, but we keep hearing about its importance, we need it. And at every debate—I was not here for the previous debates, but I am sure the same thing was said when amendments were brought in 2012, the two amendments in 2019, and the other one in 2020. That is four before the one of today.

I was thinking of what is the best analogy to describe this situation, and you may find, Mr. Vice-President, that I have not begun by talking about the provisions of the Bill, its advantages, and disadvantages, et cetera, because a lot of Senators have already done so. I am now looking at the wider picture of paying lip service to the matter. Because the Attorney General at the end of his presentation indicated, “And after it is passed, if it is passed, we will take some time again to allow for commencement on it before it is proclaimed”. So based on that statement, there is no indication of immediacy even after this fourth process.

The best analogy I could have come up with is like, you know, the PTSC buying a bus in 2011, never deploying it or putting it on the road. It has never made a trip. It has never carried anyone anywhere but every two years, you are refurbishing it. You are painting it over, you are decorating the inside, you are replacing the seats with leather, you are air conditioning it and the bus is going nowhere. If this proposed legislation is as important as the Government advances that it is, then let this not be another paint job. Do something if one is serious. And I speak very vociferously and forcefully on it because being a criminal lawyer who has been part of that system, I fully know, appreciate, and understand, and have experienced the serious disadvantages of the system of preliminary enquiries.

Because with a preliminary enquiry—and I do not need to repeat myself in detail, a lot of the speakers before me have addressed it. With a preliminary enquiry, it is not the trial. For an indictable offence, you call witnesses, they are cross-examined, the witnesses have to testify over several days sometimes. There was a time when their evidence even had to be read back to them and they had to sit there and listen for hours while their evidence is read back to them. After the matter, spends about two years in the Magistrates' Court—and that is at best especially if it is a murder. After it spends about two years in the Magistrates' Court, the notes have to be typed up. Even with the present digital system, someone has to sit down and type up the notes after. That takes time before it can be transmitted to the Office of the DPP, and to the High Court which is another length of time.

So at best, before it is transmitted, I can tell you because I am in practice, I have clients who have waited eight, nine years before the arrival of proceedings from the Magistrates' Court to the DPP's Office.

**5.30 p.m.**

And part of the problem is the albatross around the neck of the criminal justice system and it is only one of the albatrosses, it is only one of the burdens, was the preliminary enquiry and the length of time that it lasts.

Now, I am not saying it is totally useless. I have heard some persons speak that there is some usefulness to it, there is some advantage to it and I agree, but the disadvantages of it outweigh any advantage that is to be derived from it. I heard temporary Senator, Sen. Karunaa, say—forgive me if I do not—in her very able and articulate address, mention matters such as it gives the opportunity, it saves—it is a shifting process and it saves useless matters going to the High Court. And while that is true, I maintain that that is the minority because in a preliminary

enquiry, the threshold for committal—all us criminal lawyers know, the threshold for committal is very low. The magistrate simply has to find that there is evidence.

So the whole business of you lose the opportunity to cross-examine and destroy the prosecution's case and you lose the chance of an acquittal, that is more illusory than real because a magistrate would tell you in making a ruling, "I am not concerned about the credibility of witnesses, I am not concerned about the effect of cross-examination, that is essentially a matter for the High Court". So in any event, the advantage which has been spoken of that is to be derived to an accused from holding preliminary enquiries is not one which is often realized. So I have no hesitation therefore in expressing the view that any advantage is grossly outweighed by the disadvantages of it.

And to that extent, I commend the Government, the Attorney General on the assumption that we are serious this time on this fifth amendment occasion for advancing it, hopefully making it a priority on this occasion. So, in principle, I support any legislative attempt on effort which involves the abolition of preliminary enquiries. My difficulty, as I have said before, is that there has been an unjustified legislative lethargy in the approach to it. And I do not buy that we need to put things in place and we need to put the refinements in place, et cetera, et cetera, before proclaiming the Act. From 2001, when the Act was passed, there has been enough time for that.

Having stated that, my issue is whether this is the most effective approach and that is my queue for stating, I agree with those views which are to the effect that there is a strong possibility that all this approach amounts to is shifting the backlog from one place to the next. So while the philosophy and the idea is well intentioned and I support the thinking behind it, the approach which has been adopted, I do not think will realize the full benefits of what one is hoping for. I

believe it would be underwhelming in its effect and when we look two or three years down the line, we would realize that.

I am suggesting a somewhat different approach with the same objective in mind with the abolished preliminary enquiries, I am with that. Initial hearing and sufficiency hearing, I am also with that. Where I differ is shifting that process from the Magistrates' Court to masters. In the same way that magistrates conduct the preliminary enquiries now and they have to determine whether there is a prima facie case and so on, I submit they no longer abolish the preliminary enquiries, that long form, no cross-examination, no calling of witnesses, none of that but the system which is being introduced at the master's level, leave it at the magisterial level and let magistrates deal with it.

And the reason why I say that that is, to do otherwise would constitute a shifting of the backlog because I heard the Attorney General say there are currently 18 masters—if I have gotten it wrong, I believe it is the Attorney General who said that or perhaps the former Attorney General. Some of those masters, if there are 18 masters, some of them I presume would be assigned to the civil jurisdiction but certainly there are not as many masters as there are magistrates. Magistrates already have the facilities, the Magistrates' Courts and the buildings, et cetera, and they are spread throughout the districts of Trinidad and Tobago. Masters, I am not quite sure where they operate from. The Magistracy system already is in place with accused being brought to them when someone is charged. With masters, under this proposed Bill, accused persons charged with serious indictable offences have to be brought before masters. As to where that would take place and how, I do not know. And exactly how are they going to be distributed with masters, I am not sure either.

Because if it is, as the Government has indicated, you have about 8,000 I

believe is the figure, 8,000 indictable offences on average every year and you have about 18 or 20 or whatever masters, how is that not shifting the backlog? How are they going to manage? How are they going to master that quantum of work? It is impossible, it is not feasible to think that it can be properly managed and then under this Bill, they are going to be vested with even more responsibilities as well. They would now—masters now have to determine whether to issue search warrants, issue warrants of arrest, listen to police complainants come before them, decide whether there is reasonable suspicion. They have to deal with a whole host of things and mind you, they already have a function which, to me, some of them seem overburdened with, which is the case management conferences.

I have been in some case management conferences, in fact quite a few with masters, and they last half the day, sometimes more than half the day, and there are quite a number of matters on their list. Case management conferences relate to matters in which indictments are already filed and you are preparing it for trial to send it to the judge of the High Court. So a master who is already beset with a number of case management conferences now has to be taking on these 8,000 annually indictable offences among their small numbers and having to manage that along with the several other responsibilities they are going to have. It seems, to me, impractical. I know it is perhaps too late for the suggestion I am making but it needs to be said.

Magistrates are equally qualified to do the work that the masters do when it comes to indictable offences because they are the ones who are doing it now, they are the ones who have been doing it from time immemorial and therefore, I support a view that abolished preliminary enquiries with the new system be conducted by them, all the initial hearings, sufficiency hearings, scheduling orders, et cetera, et cetera, et cetera. And I think of the greater good so I would love on this occasion

to be proven wrong two years down the line but somehow I feel I would be proven right and I will have no joy in saying I did say so.

Another concern I have relates to the situation with the Office of the Director of Public Prosecutions and his powers with respect to this amendment Bill. To me, there is going to be a change in the law which is only going to contribute to the backlog and which is counterproductive to what is the whole purpose and the philosophy that have been advanced for these changes.

Clause 25 of the Bill allows for the discharge of the accused:

...if a master is satisfied that there is insufficient evidence against the accused.

It provides that if the DPP is not satisfied by the decision of the master, he can:

...appeal the decision of the master to the Court of Appeal.

It would seem to me, I ask the question: Why are we introducing a new layer of litigation in this process?

**5:45 p.m.**

You are appealing a decision of a master to discharge someone on an indictable offence, and that is going up to the Court of Appeal. So you now have to schedule a hearing in the Court of Appeal about what essentially is a preliminary matter. You are going to have arguments on both sides, it is going to be a full panel of the Court of Appeal. They may have to issue a written judgment, there is a case against this individual, a case to be tried, the master was wrong to discharge him. If the Court of Appeal issues a written judgment to that effect, and that man is now to go on trial, in the face of a written public judgment after a public hearing before the Court of Appeal, what is the—is there not a potential to prejudice him at his trial if there is a danger—if there is a decision from the Court of Appeal which is to the effect that there was a case against him and a master was wrong to

discharge him? Why is this being changed? Because look at what is the present provision, which is more workable, and which ought to stay and remain the law.

We had the DPP under section 23(5) of the Indictable Offences (Preliminary Enquiry) Act, if the DPP:

“...is of the opinion that the accused ought not to have been discharged, he may apply to a Judge of the High Court for a warrant for the arrest and committal for trial of the accused person.”

That is far simpler than lining up litigation before the Court of Appeal with both sides' submissions, et cetera. The DPP currently—what the DPP currently does under present legislation, and which is a far simpler process, is make an ex parte application to a judge who may issue a warrant for the accused. There is no filing of any skeleton arguments, there is no counsel on either side, there is no going before the Court of Appeal, there is no waiting for the Court of Appeal to fix a date, there is no public decision issued on the matter which can potentially prejudice the accused. Why is this being done? This in itself is a process which is going to take far longer than a DPP saying, “You have this charge, okay, tomorrow, I go before a judge”. No arguments on either side, judge reviews the papers, judge issues a warrant. The issuing of a warrant is a simple process.

So if this approach is being maintained with masters and so on—I have already expressed my view on it, but given that my view is hardly likely to change the fundamentals, at least that clause 25, get rid of it, and replace it with a clause similarly worded as 23—as section 23(5) of the Indictable Offences (Preliminary Enquiry) Act, and put that into your Administration of Justice Bill as the remedy that the DPP would have, in the event that a master discharges a person on an indictable offence and he is not satisfied with it. It is a far more sensible approach. There are other matters which—and I do not propose to go into them in detail



because they have been touched on already. There are other matters which I believe were raised, I believe it was Opposition Senators that raised it, and it was something which I am in agreement with and which I myself had already earmarked.

I think it is a bit awkward that the DPP, who has ultimate responsibility for criminal matters and so on, has to file an indictment so early in the process. If it is the Government is concerned that indictments have been taking too long after proceedings reach the DPP's Office, I do not know that putting—bringing forward the time for the inditement will speed up the process. It might make it even longer, especially if the department is under-resourced. It is going to put an even greater strain on them and it will not achieve its purpose, if it is the same reasons which have caused the delay in filing of indictments exist, it is the same reason which would cause them to be unable to be filing an indictment ahead of the completion of a hearing. And it is a bit awkward as well.

I see it speaks to the master speaking of an amendment of indictments. As a trial lawyer, I would say—unfortunately, I have the advantage of wearing both caps, prosecution cap and defence cap. As a High Court trial prosecutor and defence lawyer, I share with you my view that questions of amendment of indictments—indictments essentially belong before the judge who is trying the matter, and the questions of amendment of it should perhaps remain there as well. It is a neater approach, it is more a trial issue as far as I am concerned.

And the issue with respect to this whole process, you can try to fast track the process but since the DPP's Office is going to be heavily involved in this process, and there has been, from what I observed, a history of the relevant authorities using the DPP's Office almost like a training ground for masters, magistrates, and judges, and therefore depleting it, leaving junior prosecutors, inexperienced

prosecutors, et cetera, then it is either the powers that be, increase the incentive and the salary to encourage people to stay there, or the other powers that be, be a little more circumspect in its deletion of the department, so that they would have the resources and the personnel to advance matters such as this new Bill. Because it is not right for an important institution to be treated as a training ground.

And that is what has been happening for quite a number of years. Resource it, give them the financial incentives so that it can properly function because it takes more than one hand to clap. You cannot introduce this Bill and expect results unless the other matters that are affecting the system are properly taken care of. And there has been that very long complaint relative to the DPP's Office.

**5.55 p.m.**

There is another provision which I have some issue with in this Bill, and it is unclear, it is vague, it is uncertain, and it really provides no guidance and it needs to be firmed up. This is the clause 5 which deals with proceedings which have been commenced in the Magistrates' Court before the Act. It says the proceedings which have been instituted in the Magistrates' Court, before this Act comes into force, the Magistrate will:

“...determine whether the case is to be determined in accordance with...”—  
the new—“...Act—”

—or whether the magistrate will continue to hear it. Well, if we are saying that there are a number of such matters pending in the Magistrates' Court, then let the policy be consistent. Do not leave it up to the individual views and thoughts of each magistrate from one case to the other—

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

**Sen. E. Welch:**—make it a default position. If charges have already been laid, but the proceedings have not yet started, then it seems to me the

approach should be to provide that those matters are to be dealt with under the new system as opposed to just leaving it to a magistrate to decide and there is no guidance in here, if there are so many matters in the Magistrates' Court.

If the proceedings have already begun, let the default position be that the proceedings are now—rather than go through it for the next two years or three years, if the legislation is in place, let the default position be that those proceedings, which have already begun, also be transferred to the masters, unless—put the burden on either the defence or the prosecution, unless the defence or the prosecution can demonstrate that it would lead to unfairness, but let the default position be what you are currently advocating as the ideal way to go forward.

As it is, as I said, it leaves it up to the magistrate and it gives no indication how the magistrate is to decide. It merely says this very illusory, in vague term, which seems to be the new style of the drafters, or perhaps not the drafters, the policymakers: “in the interest of justice”. “In the interest of justice” means nothing, unless you specify what the criteria is and what are the factors to be taken into consideration in deciding whether a matter is in the interest of justice or not. So I consider this not to be very useful, provisions that just say the magistrate will decide in the interest of justice whether to transmit it or not. That is totally unhelpful and provides no guidance and really means nothing unless criteria is specified.

Let me further suggest, and it may be somewhat radical, let us not wait for the Privy Council to tell us that persons who are in custody over 15 years—as they did with Pratt and Morgan, people who are waiting five years on the death sentence—let us not wait for them to also tell us people who are in custody over 15 years or 18 years, it would be cruel and unusual or a breach of their constitutional

rights to be proceeding to try them or sentence them to death. Let us be radical and do something about this. You need to cut down on backlog and you need to deal with these matters where persons have been in custody for that length of time. And you need to deal with them by some kind of radical provision which says such persons shall be offered a plea agreement and specify the circumstances or offered some alternative, something, and leave it up to them to choose or not, so that we can get rid of this backlog.

I was very embarrassed when I was prosecuting a matter in a foreign jurisdiction, and I told them I had to get home because my trial is about to start and my client has been in custody for some time. And they asked me how long, I said about 14 or 15 years. All the lawyers looked around at me and said, “No, you must be mad. You could not be serious”. And that was from Jamaica, Antigua, and somewhere else; because this is unheard of anywhere else. We need to find a way to deal with it effectively, and it requires innovation, intuition and pushing the envelope. Thank you.

**Mr. President:** Senator, your time was coming up to an end.

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

**Mr. President:** Attorney General.

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

**The Attorney General and Minister of Legal Affairs (Sen. Hon. Reginald Armour SC):** Thank you very much, Mr. President. Mr. President, I am pleased to take the podium to wind up this debate on this transformative Bill and acknowledge the contributions which have been made today. May I address some of the issues which were raised by my senatorial colleagues on the other side?

The removal of cross-examination has been raised as an issue before this honourable Chamber, curiously. There is a very recent case, *The State v Kerlan*

*George*, Criminal Appeal No.002 of 2011, decided in February 2023; February 2023, this year. Practising criminal attorneys-at-law ought to be aware of the well-established position that a preliminary enquiry in our current disposition, a magistrate is not entitled to consider the credibility of witnesses and their account of facts. That was the decision in *The State v Kerlan George*.

So I fail to understand the insistence by criminal practitioners who stand here today recommending the precedent of their experience to suggest that by this Bill, reducing to very limited terms any entitlement to cross-examination, is somehow unfair to the accused. Because in the current law, as it exists, decided in February 2023, that is not a relevant consideration. And what this Bill is simply doing is to codify into law the misuse of preliminary enquiries by removing the process of wasteful cross-examination at the pretrial stage.

Another area, Mr. President, which has been flagged for attention is the fact that I have spoken to the proclamation of the legislation and it has been said that, well, the Government passes laws but are not proclaimed. Sen. Lutchmedial cited one Act, the Evidence Act, as being unproclaimed. That is ungenerous, if I may say so, with respect, to the massive work which has been undertaken by this Government and justice sector agencies to implement several laws which have been passed and are in effect.

In fact, by Legal Notice No.99 of 2022, new section 12AG in section 4 of the very Evidence (Amdt.) Act, and sections 6 and 7 of the Act came into operation on Monday, 02 May, 2022. My office has worked with the Trinidad and Tobago Police Service, Mr. President, to support the service's preparation for the intended operationalization of this Act. That support commenced in 2021, and included the provision of draft regulations to the Act for the consideration of the police service. The police service would require the implementation of requisite

processes and procedures in order to achieve full compliance with the Act. And in this regard, the Office of the Attorney General remains committed in the provision of support to the police service for all work that is being done to support that service's preparation for the intended operationalization of the Act.

The proclaimed provisions deal with admissibility of CCTV recordings, the admissibility of electronic evidence in any criminal proceedings, and ensuring the prosecution has an independent right to give a closing address. Those are the proclaimed provisions of the Evidence (Amdt.) Act.

Beyond this, if I may remind Sen. Lutchmedial of some of the major laws which have been implemented as part of this Government's ongoing and comprehensive approach to justice reform: the Criminal Procedure (Plea Discussion and Plea Agreement) legislation. My office has a working committee of all justice stakeholders, Mr. President, including representatives from the Office of the Director of Public Prosecutions, the police, the prisons, the criminal bar, the Law Association, and the Judiciary who meet regularly to ensure successful implementation of that law.

We also have the Miscellaneous Provisions (Trial By Judge Alone) Act which is already law, and there is a Bill before this Parliament to improve that law, but it is already in effect. And under that law, which was proclaimed, over 60 judge-only trials were elected by accused persons since proclamation of the law in 2019. And importantly, judge-only trials were the only mode of trial which was possible during the pandemic. So the country did not grind to a halt. The justice system continued to work as a result of improvements implemented under the watch of this Government.

The Criminal Division and District Criminal and Traffic Courts Act transformed the operations of the former Magistrates' Court and created the

position of master.

The Miscellaneous Provisions (Age of Retirement of Judges, Interpretation and Chief Judicial Officers) Act, 2020, raised the age of retirement for judges from 65 to 70, thereby ensuring longer judicial service of able men and women with agile minds and a commitment to doing justice for the citizens of this country. The Miscellaneous Provisions (Supreme Court of Judicature and Children) Act, 2018, amended 13 pieces of legislation to allow for the streamlining of the processes, as it relates to the treatment of children and children matters; all of these being proclaimed and in effect.

The amendments also made provision for an increase in the complement from 13 to 36 High Court judges; nine to 12 in the Court of Appeal. This is the largest increase to the statutory complement of judges since this country became independent in 1962.

**6.10 p.m.**

The Family and Children Division Act, 2016, created the Children Courts, which provides specialized expertise in resources to address the unique complexities of family and child-related legal matters, ensuring better protection of their rights and their welfare.

The Administration of Justice (Electronic Monitoring) (Amdt.) Act, 2020, which created a system of enhanced supervision and accountability through remote tracking and surveillance and is in effect. The Electronic Payments into and out of Court Act, 2018, allows for electronic payment of all fines, all fees, and trust accounts, example, maintenance payments. Physical cash is no longer needed.

Mr. President, these are just a few of the laws passed by this honourable Parliament at the behest of this Government, which are in effect. And I said at the beginning, when I commenced the piloting of this legislation, that we should avoid

politicizing a worthwhile endeavour, and worse than that, we should avoid misleading the listening public that the hard work of this legislature is not being implemented. It is implemented, it is proclaimed and it is doing better for the citizens of this country every day. And that is what we are here about today.

Heavy weather, Mr. President, was also made of the perceived lack of resources and training, with specific emphasis on the DPP's Office. Of course, I acknowledge that I am an easy target for persons who think that I make an easy target, to the extent that there are perceived differences between myself and the honourable Director of Public Prosecutions. But without prejudicing the ongoing engagement that continues between myself and the Director, I can say without fear of contradiction that several processes, infrastructural and human resource efforts are underway to enhance the capacity of the Office of Director of Public Prosecutions.

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

**Sen. The Hon. R. Armour SC:** And I am not going to speak of it beyond this, because I do not want it to become part of a political circus before it brings the results home that this country deserves.

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

**Sen. The Hon. R. Armour SC:** We ought not, Mr. President, as a Parliament, allow persons to cause unfounded fears of insufficient resources to prevent this law from coming into effect. I cannot understand, frankly, how responsible persons can stand here today and say, "Because of all of the teething pains that we are experiencing as a maturing country, we must not take steps to improve our condition". I simply do not understand it. I fail to follow the logic of that myopic approach to government.

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



**Sen. The Hon. R. Armour SC:** This very law is meant to ensure that resources are better utilized in the justice sector through a more streamlined and efficient system. So that in the virtual court system that we now have— I heard Sen. Welch, the last speaker, speak about the fact that the preliminary enquiry should be left with the magistrates because we have magistrates spread across the country and he does not know how many masters there are. But in the High Court, and I pay tribute to the superior quality of efficiency that is taking place in the High Court right now, we have a remarkable digital justice system that is allowing for courts being held, matters being heard, persons being given trials virtually across the nation, without having to physically locate people in a particular place or places. That is why the country's justice system did not come to an end with the start of the pandemic.

I just returned, Mr. President, from an eye-opening experience in Spain. Compliments of the IADB, I visited Spain with a group of six other countries. Trinidad and Tobago was the only English-speaking country to participate in Spain's digital justice tour of Spain to learn from and understand what is taking place in Spain, Uruguay, Chile, Peru, Panama. And I was very proud to come away from that experience to recognize and to have other persons recognize that Trinidad and Tobago's digital justice system is on par with and, in some cases, ahead, of some of those other countries.

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

**Sen. The Hon. R. Armour SC:** And it is the future: digital justice, electric documents. Just today, my daughter wanted to make an application for a particular document. She was able to go to the computer, make the application and have the document downloaded. She did not have to get into a car and deal with the traffic, and drive to Sangre Grande, or attempt to get to Sangre Grande for the document

she needed. That is the present, which is now our future, that our judicial system is engaged in.

So when we speak about the masters of the court dealing at the initial hearing and at the surveillance hearing to process the pretrial stage in six months, I fail to understand the comparative attractiveness of saying, “We have magistrates in all of the districts who are not yet digitized, that is a work in progress, so let us leave them with the job because that is what I am accustomed to”. That is not progress.

Mr. President, as a Parliament, we must know that the current preliminary enquiry system does not serve its purpose. I said that at the beginning, I say it now, and I will continue to say it. It is detrimental to accused persons, to victims. It wastes precious judicial time and resources and causes unjustifiable delays in the resolution of serious criminal matters. Sen. Welch himself said, when he uttered to his colleagues abroad that he had a case that was 15 years old, they thought he was joking. Well, that is what we are trying to fix. Does the system need a change now? The answer is an unqualified, all capitals, Y-E-S. Yes.

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

**Sen. The Hon. R. Armour SC:** Does this Bill provide a workable solution? And that the answer, again, is a resounding, yes. Mr. President, if I can clarify to move to another subject, some issues that have been raised in relation to the Interpretation of Communications Act, clause 7.

That clause proposes to insert references to sections 13 and 14 of IOCA, the Interpretation of Communications Act, into this Bill, but it is introducing references to “communications data”, “stored data”, and “stored communications”, which already exist under the present law that is now being amended. It is not new. The only amendment that was introduced, and I introduced it in the House

earlier this week, is because we had left out the term “stored data” from the group “communications data” and “stored communications”. But that is already the law and we simply added in “stored data” because by an error it had been left out. That is not new. That is not now being introduced. That is the existing law.

And more than that, scaremongering, the idea that communications data, stored data, and stored communications is to be said to be synonymous with intercept is just wrong. It is plain, patently wrong. Access to stored communications data does not have anything to do with “intercept”, which is another definition in the IOCA legislation, and I will read it. It appears, with your leave, Mr. President, in section 5 of the Interception of Communications Act:

“‘intercept’, in relation to a communication, means listening to, monitoring, viewing, reading or recording, by any means, such a communication in its passage over a telecommunications network without the knowledge of the person making or receiving the communication;”

Well, nothing in this Act is adopting or borrowing from IOCA the term “intercept” and it is not introducing that in this Act. It is significantly different, if we take the time and the trouble to read and to understand what we read, from communications data, stored data, and stored communication.

So under section 5 of the Act, the master will issue a search warrant to seize a mobile phone because he suspects that there may be something stored on that phone. It is not going to be giving the police or anyone, the registrar or anyone, the power to seize that to listen to anyone’s communication, but simply on the definition of the power of search and seizure in section 5(2) to give the police power to seize the instrument, to see what may be on that phone that is relevant to suspicion of the commission of an indictable offence. Nobody is going to be listening to anybody’s conversation.

Another critical issue raised is the requirement for the filing of the indictment at the start of the pretrial process, Mr. President, instead of at the end. I heard concerns uttered of the fact that there is a likelihood that the charge may be changed by the DPP when evidence is led in the pretrial stage. I do not understand how are we criticizing—allowing the indictment to be laid at the beginning as a criticism on improving our justice system. The time has come for a culture change and a process change.

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

**Sen. The Hon. R. Armour SC:** It is to the benefit of the accused to know and to be ensured that before he is charged and brought to the courts and deprived potentially of his liberty, that all relevant state agencies are mandated to comprehensively prepare to charge and move this matter through, either to acquittal or conviction, as the case may be, at the first stage. What is there unfair about that, that an accused at the beginning of the process has the confidence that the indictment will be filed so he knows what he has to face?

And we have to also understand what is the purpose of an indictment. It is meant to inform an accused of what they are charged with, particulars of what they are charged with. What justifiable reason is there for not allowing the accused to know, in the legal language, *ab initio*, from the beginning, what he is charged with? How can that be objectionable?

Mr. President, the new system ensures that the police gather all the necessary evidence against the accused before a charge is laid. And therefore, the indictment can be properly informed based on the evidence against the accused. In the event that the DPP must amend the indictment for whatever reason, the DPP's powers to review, amend, or change his mind about charges is, of course, supported by evidence provided for in clause 26, section 25(1)(b).

Concerns have also been raised about the either-way offences and the right of accused to elect the mode of trial. The mode of trial, Mr. President, as we are reminded in Hilroy Humphreys, is a procedural element of the pretrial process, which does not impact the accused's substantive right to a fair trial. We are not depriving the accused of his right to be heard or of a fair trial. What we are doing is streamlining processes and upholding the DPP's section 90 power of prosecution. The court in which a matter is to be prosecuted ought to be left to the DPP who brings the case, brings the charge before the court.

Mr. President, there is a remarkable suggestion that this Bill is simply moving the bottleneck to the High Court. This is a gross underestimation of the decades of consultation and policy development which has been undertaken through my office and my Ministry by all those who are committed to perfecting this Bill for more than a decade.

**6.25 p.m.**

There has been, and I have spoken to it, a consultative process that has involved the Office of the Director of Public Prosecutions; the Judiciary; the Public Defenders' Department of the Legal Aid Authority of Trinidad and Tobago; the Trinidad and Tobago Police Service; the Law Association of Trinidad and Tobago; the Criminal Bar Association; the Criminal Justice Committee, chaired by the Chief Justice, which has all of those personalities I have already identified as part of that committee; added to which there is the Office of the Attorney General and Ministry of Legal Affairs; the Chief Magistrate; and the Commissioner of Prisons. Are we seriously suggesting today that one or two attorneys' personal experience of how they conduct their practice is superior in wisdom to a decade of consultation of all of these organizations who have worked with my office to perfect this Bill to bring before this Parliament? Let us get real.

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

**Sen. The Hon. R. Armour SC:** This Bill is intended to work in tandem with other legislative amendments. It is not a stand-alone, one-trick pony or a magic wand.

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

**Sen. The Hon. R. Armour SC:** It is intended to work with a suite of other laws that have already been passed, that are on our books, as we seek to perfect our system and it is a work in progress—

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

**Sen. The Hon. R. Armour SC:** With stronger, better prepared cases, Mr. President, we anticipate that this system will not be inundated with trials and instead will operate like other systems in other countries where the majority of matters are disposed of fairly and expeditiously at an earlier stage even before the full trial commences. And that is going to benefit, as I said at the beginning, the accused, multiple accused, the victims, their families, persons who languish in remand yard for two to three to 10 years. What advantage can there possibly be for us to tell ourselves that we must not at least try?

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

**Sen. The Hon. R. Armour SC:** I was asked, Mr. President, to provide—

**Hon. Senators:** [*Interruption*]

**Sen. The Hon. R. Armour SC:** Thank you, Mr. President, I was asked to provide examples of what documents may be the subject of anonymization. Mr. President, let me first of all underscore that the anonymization, which is spoken to in this Bill, is not a new concept that is being introduced by this Bill for the first time. When we read the Bill, we see that anonymization, by its definition, is taken from the definition of other existing legislation. It is already part of our law. It is already

part of our law in relation to sexual offences cases and documents which give details of children. It is to protect the identity of persons who are vulnerable.

Another example is the need to protect the information that involves state witnesses and those under justice protection programmes. In anonymization, the court and the parties, including the accused, are aware of the names and details of the documents. But the essential protection, which is being afforded under this Bill, is to protect against public distribution of the information. That is what the anonymization is geared towards. It is not to make for and keep secrets and expose people to charges and not know who their accusers are. Let us read the Bill. Let us understand it.

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

**Sen. The Hon. R. Armour SC:** Mr. President, in order to ensure stakeholder readiness, the Government has, for the last 12 years, engaged key stakeholders. I have been over that more than once, I am not going to repeat it, but I say only to reassure Sen. Welch that I did not speak to the time between the passage of the Bill here today and proclamation to engage in further public consultation. The consultation has already taken place. What I said was, it would prepare us to sensitize persons who have to work within the system. And I can give this House the assurance that my office is working even as I speak—well, not as I speak, it is after six. But in the course of our normal work days, we are having training sessions with the police, we are supported by the UNDP and other international agencies in sensitizing the stakeholders who are going to work to deliver the justice system that this Bill, is going to contribute to.

I have—I think I have said enough, Mr. President, I would ask this House to support the Government in passing this Bill into law and therefore, Mr. President, I beg to move.

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

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**Mr. Chairman:** Hon. Senators, this Bill has 45 clauses. There have been no circulated amendments throughout the debate and prior to this committee stage so we shall now begin. Clerk.

*Clauses 1 to 45 ordered to stand part of the Bill.*

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

*Senate resumed.*

**Mr. President:** Attorney General.

**Sen. The Hon. R. Armour SC:** Thank you, Mr. President. I wish to report that the Administration of Justice (Indictable Proceedings) (Amdt.) Bill, 2023, was considered in the committee of the whole and approved without amendments. I now beg to move that the Senate agree with the committee's report.

*Bill reported, without amendment.*

*Question put:* That the Bill be now read a third time.

**Sen. Mark:** Division.

*The Senate divided:*      Ayes 24      Noes 0

AYES

Brown, Hon. Dr. A.

Armour SC, Hon. R.

Gopee-Scoon, Hon. P.

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

**Mr. President:** Members, allow the division to take place, please.



*Division continued.*

Sinanan, Hon. R.

**Hon. Senators:** [*Crosstalk*]

**Mr. President:** Look, Sen. Mark and Members on the other side, please allow the division to take place in silence.

*Division continued.*

Hosein, Hon. K.

West, Hon. A.

Mitchell, Hon. R.

Cox, Hon. D.

Bacchus, Hon. H.

Singh, Hon. A.

Ibrahim, Dr. M. Y.

Sagramsingh-Sooklal, Hon. R.

Sookhai, Hon. R.

Lezama-Lee Sing, Mrs. L.

Hislop, L.

Richards, Dr. P.

Vieira SC, A.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

Welch, E.

Drayton, J.

*The following Senators abstained:* Mr. W. Mark, Ms. J. Lutchmedial, Mr. D. Nakhid, Mr. D. Lyder, Mr. A. Roberts and Ms. K. Bisramsingh.

**Mr. President:** Hon. Senators, the results of the division are as follows: 24 Members voted for, zero Members voted against, and there were six abstentions. As such, the question is put and passed.

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

*Question agreed to.*

*Bill accordingly read the third time and passed.*

**6.40 p.m.**

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

**ANNULMENT OF INDUSTRIAL RELATIONS (AMENDMENT TO THE  
SECOND SCHEDULE) ORDER, 2023**

**Sen. Wade Mark:** Thank you, Mr. President. I beg to move the following Motion standing in my name:

*Be it resolved* that the Industrial Relations (Amendment to the Second Schedule) Order, 2023 be annulled.

Mr. President, I do not know how many citizens are aware that on the 26<sup>th</sup> day of May, 2023, Legal Notice No. 163 was issued by the Government, entitled the Industrial Relations Act, Chap. 88:01 Order. May I read this Legal Notice for the record?

“Made by the President under section 67(6) of the Industrial Relations Act...”

And when we say “President”, it is not the President of the Republic. It is the Cabinet headed by the Prime Minister and his Members.

“...subject to negative resolution of Parliament

The Industrial Relations (Amendment to the Second Schedule) Order, 2023

1. This Order may be cited as the Industrial Relations (Amendment to the Second Schedule) Order, 2023.
2. The Second Schedule to the Industrial Relations Act is amended by inserting after item 10, the following item:

‘Liquid Fuel Pipeline Facilities and Network Services.’.

Dated this 26<sup>th</sup> day of May, 2023.”

Now, Mr. President, this Legal Notice, like a thief in the night, was issued by the Cabinet, headed by the Prime Minister and his Members, arbitrarily, whimsically, capriciously, simply declaring liquid fuel as an essential service. No explanation, no discussion, no consultation with anyone in the country, but it has implications which I will demonstrate.

Mr. President, bear in mind that—and let me repeat for your edification again—the Government has declared as an essential service the liquid fuel pipeline facilities and network services. I would like the hon. Minister of Labour, when he is responding, to explain to Trinidad and Tobago what does network services entail? What does it mean? Does it mean the national petroleum marketing board, or company? We need clarification very early on this matter. Mr. President, what does this mean? When we talk about an essential service and when we talk about an essential worker, what do we mean? Mr. President, who works in an essential service?

Without defining what is an essential service, we have to look at the existing law to be guided, Mr. President. So I take you to the Industrial Relations Act, Chap. 88:01, and we go to what is called the interpretation and definition section. And on page 8 of this Act:

“‘essential services’ means the services set out in the Second Schedule;”

So when you turn to the Second Schedule, what do you see? What is located?

You have in the Second Schedule:

- “1. Electricity Service (Generation, Transmission and Distribution).
2. Water and Sewerage Services.
3. Internal Telephone Service.
4. External Communications (Telephone, Telegraph, Wireless).
5. Fire Service.
6. Health Services.
7. Hospital Services.
8. Sanitation Services (including scavenging).
9. Public School Bus Service.”

And what is called the:

- “10. Civil Aviation Services...”

So, Mr. President, under this particular measure that is before us today, the Government has defined “Liquid Fuel Pipeline Facilities and Network Services” as an essential service.

Now, there is also in this piece of legislation, something known as an “essential industry” that is in the Industrial Relations Act. But when we go to the “essential industry” definition, it simply tells you, Mr. President, that an:

““essential industry” means an industry specified in the First Schedule;”

So you go to the First Schedule of this Act, called the Industrial Relations Act, and you find some 13 industries outlined. I would not spend too much time on these industries. Suffice it to say that the Government has taken a decision to debar workers in the liquid fuels company of Trinidad and Tobago as essential workers.

Mr. President, if you ever travelled near the Caroni crematorium, you just

look opposite and you see a lot of white tanks with pipelines. That is known as the “Liquid Fuels Company of Trinidad and Tobago”. That location stores fuels, whether it be diesel, super unleaded, premium, kerosene or jet fuel. All are stored at the Liquid Fuels Company of Trinidad and Tobago. So the Government has declared that service that is offered by that company as an essential service.

Mr. President, may I inform this honourable House that the employees located in this particular service industry, because of what we are debating now, there are over 100 workers or employees at the Liquid Fuels Company of Trinidad and Tobago. By this decision, what the Government has done is to debar, to deny the workers of the Liquid Fuels Company Limited of embarking or taking or undertaking industrial action, because by the definition that I have given, and by placing that particular service under an essential service, it means that the Government has taken a decision to declare these workers as essential workers.

What this means is that these workers cannot, under the law, withhold their labour. Your only right as a worker when you are involved in an industry that is not an essential industry is to embark on strike action in order to gain benefits or improve your terms and conditions of employment. But, Mr. President, it does not stop there.

With the definition that I have given you of “essential service”, what it means is that if any worker and unions were to embark on industrial action, which would include strikes, lockouts, go-slows, work-to-rules, et cetera, the workers under the law can be fined and/or jailed. Their trade unions can be decertified. Their leaders can be fined or jailed. That is what an essential service means. It takes away the rights of the workers to withhold their labour.

**6.55 p.m.**

So what we are dealing with here today, Mr. President, is what the

Government has decided to do by defining this particular liquid fuel service and facilities as an essential service in Trinidad and Tobago.

Now, Mr. President, we need to understand when we when talk about industrial action, when we talk about essential services, what do we mean? What are we talking about? Mr. President, there is no definition of essential services under the legislation. I had to go to the International Labour Organization to outline for me, so I could outline to this honourable Senate, what an essential service really means.

Mr. President, your only right as a worker in an industry that is not defined as an essential industry is when you decide to embark on action to improve your terms and conditions of employment, you are able to do so without any repercussions, meaning you are not fined, you are not jailed; the officers of the union are not fined, they are not jailed; and your trade union certification is not removed from your trade union. However, if you are an essential service, Mr. President, you cannot take strike action, you cannot withhold your labour. If you withhold your labour, there are consequences.

The key point I would like to emphasize, Mr. President, is that fundamental right of the worker to withhold his labour. But when you place that worker under an essential service, he cannot withhold his labour. And what has happened is that when we go to the International Labour Organization conventions, both 87 and 98 we see, Mr. President, where under these two conventions workers have the right to withhold their labour, because it is a fundamental right. These conventions, 87 and 98, the right to organize, the freedom to organize, and the right to engage in collective bargaining have both been ratified by the Government and people of Trinidad and Tobago.

Mr. President, may I remind you that it was under slavery that the slave did

not have the right to withhold his labour. When we come to Trinidad and Tobago in 2023, the worker cannot, under this particular company because of the declaration of this company service as an essential service, withhold his or her labour. And, Mr. President, that is extremely sad, it is troubling, it is worrying because why would a government—why would the Government, Mr. President, go to Cabinet and declare liquid fuels and facilities and network services as an essential service without any consultation, without any discussion, without any kind of negotiations? We had to read this thing, access this information through a Legal Notice because it was subject to negative resolution, and because of our vigilance we were able to discover what the Government had done. Hence the reason we are here today to have that Motion annulled. We have come here today to have that Motion annulled, Mr. President.

Mr. President, so the Government has proceeded in a very stealthy way, almost engaging in subterfuge, by secretly declaring a service—

**Mr. President:** So, Sen. Mark, two things, one just be careful about the line that you are going down and the statements that you are making. And two, your main point has now come full circle with many concentric circles in-between, so I would ask at this point to move on to a brand new point if you have one. We heard all about what you stated in relation to essential services and what happens when an industry is put under essential services. So if you have any other new points to bring forward at this point for the other half of your contribution, I invite you to do so.

**Sen. W. Mark:** Mr. President, I brought to your attention earlier that I searched far and wide for a definition of essential service and I could not find one. It is not in the Act.

**Hon. Senators:** [*Interruption*]

**Sen. W. Mark:** So I had to journey to the International Labour Organization. So let me explain to this honourable House what an essential—

**Mr. President:** Members, could we have a little bit of silence while Sen. Mark is making his contribution.

**Sen. W. Mark:** Mr. President, let me explain to this honourable House what the International Labour Organization has defined as an essential service. Mr. President, I am quoting from a document by the International Labour Organization on essential services, on page nine of this report, and what has been defined as an essential service, and I quote:

“What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country.”

It continues:

“Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population.”

**7.05 p.m.**

Mr. President, I want you to pay attention to these words. If the action taken via a strike contributes to the endangering of the life, personal safety, or health of the whole or part of the population, then the Government can deem that particular service as an essential service. It can then, Mr. President, issue what we have here as a Legal Notice as a rationale for justifying its actions. But in the legislation that we are dealing with, Mr. President, the Government has provided no justification. The Government has provided no rationale for its decision to declare liquid fuels as an essential service, Mr. President.

**Sen. Mitchell:** Mr. President, on a point of order, please, 53(1)(b). I think this is



the third circle back now.

**Hon. Senators:** [*Laughter*]

**Mr. President:** So, Sen. Mark, the point of order put forward is upheld. I have cautioned you once before. We have heard this argument before. If you have something new, I invite you to bring it forward now.

**Sen. W. Mark:** Mr. President, I want to ask you to look at the Industrial Relations Act because when we talk about essential services, it has to be seen in the context of the definition of “worker” within the meaning of the Industrial Relations Act. And when we look at the Industrial Relations Act, Mr. President, you will see what is defined as a worker and what is not defined as a worker. So under the Industrial Relations Act, a worker is not defined in the context of those citizens who work in the general labour force of the nation. So there are certain categories that are not defined as workers. What are those categories, Mr. President?—so that we can understand this concept.

Police officers are not defined as workers, Mr. President, and therefore, they cannot embark on industrial action. Members of the public service cannot take industrial action and they are not defined as workers. Members of the fire service, members of the teaching service, members and employees of the Central Bank, Mr. President, members who are defined as domestic workers, persons who are defined as apprentices cannot be workers under the law. It means to say, Mr. President, that when you are not a worker under the law, you cannot embark on industrial action.

**Sen. Mitchell:** Mr. President, it is a filibuster now.

**Sen. W. Mark:** You cannot—

**Sen. Mitchell:** It is a proper filibuster now. 51(3)(b), please, and 46(1).

**Mr. President:** So, Sen. Mark, on 46(1), I listened intently to the point that you

are making now and I am not exactly sure where it lies in relation to what is before us and therefore, I uphold 46(1) in relation to relevance. I think you need to think just a little bit more about that argument that you are bringing because it does not fit with what is before us and what you are trying to do. So if you have anything else, I invite you.

**Sen. W. Mark:** I have things. I have many more things. Mr. President, let me just explain to you what has occurred in this situation that we are faced with. Mr. President, the reality facing us today is that a union, known as the OWTU, represents the workers of National Petroleum. They have just applied to the Registration, Recognition and Certification Board for recognition status for the workers represented or working or employed at a company known as the Liquid Fuels Company of Trinidad and Tobago. It is that very company that I referred to earlier whose services have now been deemed an essential service.

Mr. President, it is passing strange that as soon as the OWTU submitted their application for recognition to the Registration, Recognition and Certification Board sometime in May of 2023, as soon as the company was written to by the Registration, Recognition and Certification Board, two days after, before a reply could be given, the Government of Trinidad and Tobago, through this Legal Notice No. 163, declared those services provided by that company to be essential.

Now, Mr. President, is the Government seeking to deny those workers and their trade union the right to organize as is their right under the law? Is the Government seeking, Mr. President, to use this particular Legal Notice, placing those liquid fuels as an essential service, to deny those workers who work at NP as we speak today, to be also an essential service? That is why I have asked the hon. Minister, when he is wrapping up—when he is making his contribution rather, if he can define for us what are network services? That is what I would like him to

define for us.

Mr. President, I would like to bring to your attention the historical evolution of this situation that we are facing—that I am speaking to. Prior to 1965 in Trinidad and Tobago—

**Mr. President:** Sen. Mark, that is way, way, way outside of the boundary line.

**Sen. W. Mark:** [*Inaudible*]

**Mr. President:** No. No, Sen. Mark. Number one, this is a Motion to annul. What essentially is required is reasoning as to why it should be annulled. You have given that reason for the last—the first 21 minutes. The second point that you have made bordered but did not properly cross imputation of improper motives which cannot be used to give a definition to annul what is before us. So, for the third time, I am going to ask to bring a third point, if you have it, whilst you have a few minutes to complete your moving of this Motion.

**Sen. W. Mark:** Mr. President, I am putting a simple point forward, and the simple point I am putting forward is that the Government of Trinidad and Tobago, without any consultation with the relevant parties, went behind the back of the workers and declared a service an essential service. And I am putting to you and to this honourable House that you cannot simply, overnight, take such a decision without any consultation with the workers involved and their unions. And in this instance, because you are talking about the fundamental rights of the worker, you are talking about the Industrial Relations Act that defines what an essential service is under the Second Schedule. The Government has simple used negative resolution to give effect to this Legal Notice of 163, taking away the rights of the workers to withhold their labour.

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

**Sen. W. Mark:** That is what the issue is. The Government cannot whimsically

just take away peoples' rights. And we are saying that the workers should be able to get an answer from the Government of this country. Why are you seeking to place these workers back into slavery? That is what we are concerned about.

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

**Sen. W. Mark:** The workers fought against the slave masters in order to be free.

**Sen. Roberts:** Correct.

**Sen. W. Mark:** And why should we, in 2023, have new slave masters seeking to take away their rights?

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

**Sen. W. Mark:** This is a fundamental issue. This is an issue, Mr. President, that goes at the heart of the peoples' rights to determine their quality of life and their standard of living.

Mr. President, I want to tell you, when we talk about essential services under the Industrial Relations Act, you have within the Industrial Court two important institutions that these workers can go to because of their refusal—because of their being debarred the right to take strike action. So what are these two divisions? There is something called the Essential Services Division.

**Hon. Senator:** That is right.

**Hon. Senators:** [*Crosstalk*]

**Sen. W. Mark:** Those—that division, Mr. President, is the division that all essential service workers have to go to. And there is another tribunal within the Industrial Court called the Special Tribunal.

**Mr. President:** It is getting to a certain level inside the Chamber where I cannot even hear Sen. Mark. Continue.

**Sen. W. Mark:** So, Mr. President, when the workers cannot take strike action, they are supposed to be treated in a special way so they can go to the Essential

Services Division in order of execute and in order to prosecute their case. That is what the Essential Services Division is about. Mr. President, you know what is happening?

**Hon. Senator:** Tell us.

**Sen. W. Mark:** The Government, through the Cabinet, deny workers the right to withhold their labour. And it does not end there. The Government, Mr. President, establishes these two divisions, but you know what? All the members of these two divisions, including the Chairman of the Essential Services Division, are appointed by the very Cabinet led by the Prime Minister. So imagine you take away the rights of the workers—

**Hon. Senator:** Once again.

**Sen. W. Mark:**—to protest and to withhold their labour and then you send them before a tribunal—

**Sen. Mitchell:** Mr. President, 46(8) please.

**Sen. W. Mark:**—and an Essential Services Division that you appoint, Mr. President.

**Sen. Mitchell:** Mr. President—

**Sen. W. Mark:** [*Inaudible*]

**Sen. Mitchell:** Mr. President, 46(8) please

**Mr. President:** There is a point of order. 46?

**Sen. Mitchell:** The Industrial Court—[*Inaudible*—46(8).

**Mr. President:** No. So I will not uphold 46(8). Continue, Sen. Mark.

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

**Sen. W. Mark:** So, Mr. President, the Government—the workers, Mr. President—

**Mr. President:** Sen. Mark, you have five more minutes.

**Sen. W. Mark:** Mr. President, the workers—the workers are being placed in chains by this Government. That is what is going on. I was making the point, Mr. President, that the people who head the special Essential Services Division, they are appointed—the Chairman is appointed by the Prime Minister and his Cabinet, all the members are appointed by the Government. And there is something called the Special Tribunal, and the members of the Special Tribunal are appointed by the Prime Minister and the Cabinet.

**7.20 p.m.**

So here it is, Mr. President, you deny me the right to withhold my labour by declaring this to be an essential service, and you tell me at the same time, Mr. President, if I am to take action, I have to go before a tribunal, and the tribunal members are appointed by you. So where is the independence? Where is the justice? Where is the fair play? There is no fair play. And, Mr. President, a classic example of the uneven playing field is the imposition by the Government of 4 per cent on these workers. You put 4 per cent on the workers and you send them before an Essential Services Division—

**Mr. President:** Sen. Mark, again, you are outside of the boundaries. You have literally just a few minutes again. I invite you to wrap up the moving of the Motion now. Do not even bother to repeat what you have said before because you have repeated it many times, so that is in and of itself a kind of wrap up. So summarize as best as you can to end off at the allotted time, please.

**Sen. W. Mark:** Mr. President, let me just summarize what I have said. The reason why I have brought this Motion for annulment today is to ensure, Mr. President, that before the Government embarks on action against ordinary workers there ought to be consultation, there ought to be discussion among the parties. In the absence of any discussion where you are fundamentally eroding and subverting

the rights of the workers, Mr. President, we are saying that that ought not to take place without proper debate. We are debating the matter now, and because the Government did not find the opportunity or took the time to engage us and engage the movement, we are saying, Mr. President, the Government should not be allowed to pursue this Legal Notice No. 163.

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

**Sen. W. Mark:** And therefore, Mr. President, we are calling on this Senate to support the annulment of this Motion. There has been no justification put forward by the Government for this invasion, incursion, subversion, undermining of the trade union and the workers in question. So we are calling on this Senate, when you are seeking to take away the rights of the workers to withhold their labour, Mr. President, you must have good reasons for doing it. And if you do not have good reasons, and you cannot justify it, you should not embark on that course. And therefore, we are calling on this honourable Senate to send a message to this Government, do not trifle, tinker, tamper with the fundamental rights of the workers of our country.

And we are saying to the Government, in closing, this essential service concept has to be reviewed because tomorrow morning, Mr. President, the Government can get up and say taxi drivers are an essential service and that is it. The Minister of Labour can get up the next day and say all the workers in his Ministry are essential workers and therefore, that is an essential service. Because it is done whimsically, it is done arbitrarily, it is done maliciously and capriciously, and we cannot allow that to continue. And therefore, Mr. President, I have brought this Motion in defence of democracy, in defence of the trade union, in defence of the workers, and we are calling on this Senate to have this Motion annulled, negated and not go forward. Thank you, Mr. President. I beg to move.

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

**Mr. President:** Who is seconding the Motion?

**Hon. Senators:** Nobody.

**Hon. Senators:** [*Laughter*]

**Sen. Lutchmedial:** Mr. President, I beg to second the Motion and reserve my right to speak later in the debate.

**Sen. Roberts:** I want to talk too.

**Mr. President:** The Motion has been seconded by Sen. Lutchmedial.

*Question proposed.*

**Mr. President:** Minister of Labour.

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

**Mr. President:** One second, Minister of Labour, we have Sen. Dr. Deyalsingh first. Sen. Deyalsingh.

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

**Sen. Nakhid:** Blows, blows, blows.

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

**Sen. Dr. Varma Deyalsingh:** Thank you, Mr. President, for allowing me to present on this Motion raised by Sen. Mark. Now, this Motion basically serves to look at the reasoning why—the reasons why the Government would have seen it fit to put the natural gas in the category of essential services, an essential industry or an essential category. And I would like to start by saying that I looked at the Industrial Relations Act, and the First Schedule lists the “Essential Industries (Categories)”, and:

“1. Electricity service (Generation, Transmissions and Distribution).

2. Water and Sewerage Services.”

**Mr. President:** So, Sen. Dr. Deyalsingh, let me just state from the outset, I hope it



is not your intention to repeat everything Sen. Mark has said, because he has done so ad nauseam. The comments that you are making right now, in terms of the Industrial Relations Act and all of the essential services, Sen. Mark spoke to them. He called them out. There is really no need for you to go over them. What I am looking for at this juncture is anything new by way of reasoning as to why this Motion should be approved. If you have something new, not stated by Sen. Mark, I invite you to bring it forward now.

**Sen. Dr. V. Deyalsingh:** Thank you. But I am trying to get some clarification from the Minister who would soon be addressing us about some misconceptions.

**Mr. President:** That is all well and good, but there is really no need to repeat anything Sen. Mark has said. You do not need to read out what is an essential service, what is under essential services by the way of the Industrial Relations Act, all of that has been stated. You would be in breach of tedious repetition if you do so. So if you have questions for the Minister of Labour, by all means.

**Sen. Dr. V. Deyalsingh:** Thank you, Sir. But I just wanted to read number seven in that category that I want to expand on. Number seven, beside all the others we saw—

**Mr. President:** So, Sen. Dr. Dayalsingh there is really no need to read out number seven. There is one that is being added by way of this Order to that essential services list which forms the boundaries of this particular debate. You get where I am coming from?

**Sen. Dr. V. Deyalsingh:** [*Inaudible*]—what is being argued in this Act is already included in this, and this is what I am trying to say. Right? So I am looking at number seven where an essential industry would be:

“...Oil, Gas, Petrochemicals (Exploration, Exploitation, Refining, Manufacture, Distribution, Marketing)”.

So then I looked at this and I am wondering if it is already gas—oil and gas, and we are already speaking here in this First Schedule of manufacture and distribution, I was under the impression that it may have already—this liquid gas may have already fallen into the ambit of this listed on the seventh schedule.

You see, I had gotten some correspondence from the OWTU where they questioned this Legal Notice No. 163, and they actually had letters given to the Independent Senators asking us to study this, to give an opinion on this. So therefore, I wanted to figure, you know—their questions, what they actually wanted to as a union in terms of this new—of what was being proposed here. So, according to their letter, they actually spoke on the fact that they would have been disadvantaged in terms of their workers, and Sen. Mark did say it is 100 and something workers. And I must say the protection of citizens' rights, I think, is important—workers' rights.

And let me—so we were just on from Labour Day and we heard all the good things, we heard about the oil industry; the strikes; Uriah Butler what he did, he stood up for the rights of the workers. And similarly, if we are looking of the concerns of the OWTU—OWTU, who I might say, served the oil industry well and actually helped the rights of the individuals working in the oil industry, they do have some concerns.

But I am really trying to figure, you know—if we already have this part seven, I am not seeing the problem here, because according to what I am reading to this, it is already covered under this Schedule. So my take on this is, Sir, is that if you have the workers taken out from the protection of, you know, being under a service that is deemed essential or non-essential, if they are an essential service now they are not allowed any sort of legal strike action. So my problem is, will that be at a disadvantage to the workers? And I have to say, Sir, I think that the

worker disadvantage, if they are at a disadvantage, is there anything in place that would come about to alleviate that? We went through the Arbitration Bill here recently. So I am saying that if there is a worker that is disadvantaged, this is something that we probably would have to look at the Government meeting with the workers, as I think Sen. Mark said, there were no consultations. And this is the only thing I have a little concern about. If there was no consultation with the 100-plus workers, I think this is something that does not auger well. We were just from another Bill where the AG said there was widespread consultation in some other pieces of legislation. So I am thinking if this is so, we may have fallen short on this.

So the question is, if you have an essential service—and the fact is essential services are there in case you have any sort of problems in the country, you know you need these services to run. Jamaica has health, water, food, electricity, public works, firefighting, civil aviation, telecommunications. And we know that natural gas is essential for us to run our electricity plant. So even all the other countries that I looked at; UK, water, gas, electrical, if somehow there is action taken and we are not afforded the free flow of natural gas, we may be disadvantaged in terms of our electricity supply. So this is where I want to form the connection, that even though it was not on the Schedule, and my interpretation that it is in the Schedule, I would have thought that if it is vital to provide electricity, which is an essential service, I would have love that connection to be at least explored further. Because we would be in a country where we would have a great disadvantage if suddenly we are cut off from electricity due to some strike action. So the workers' rights, I think, could still be entertained by consultation with them, arbitration agreement.

I think also the need for us to realize—and even though we are moving away from natural gas as our main source of power because we are going into the natural

energy supplies, I would think that moving into other energy supplies we would have placed a less importance to our natural gas. But as it is now, it is still part of our whole spectrum of getting foreign exchange, it is part of our fuel that we need. And even though we would say we would move to other renewable energies, presently I think it is definitely an essential service.

**7.35 p.m.**

One thing I may just want to bring up, Sir, is that even in Iran there is the— Iran runs on natural gas, and they provide 10 per cent of the world oil reserve, 15 per cent of the gas reserve. But Iran, there is an IndustriALL Global Union, and even on the 26<sup>th</sup> of April, 2023, they allowed—Iran, which is a country where this is very draconian—they had allowed the contract workers at the oil and gas fields in their south area to be able to strike for increase wages and better working conditions.

So my point is, if Iran could do that, we would not want to appear to be putting any sort of draconian sort of—what am I saying?—putting some sort of measures in place where our 100 and something workers could feel disadvantaged. It would not look well. So I am saying I would rather Government to consult with the workers, form an agreement. But as it stands now, I am thinking for the benefit of the country I would have no choice to not really support Sen. Mark's Motion because I definitely think that natural gas is essential for us, essential for electricity. Thank you, Sir.

**Mr. President:** Minister of Labour.

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

**The Minister of Labour (Hon. Stephen Mc Clashie):** I thank you, Mr. President, for the opportunity to contribute to this debate. Before I actually outline the Government's position with regard to this, I need to make some clarifications

based on what a number of Members would have asked. In the first instance, I believed that Sen. Dr. Deyalsingh is confusing oil and gas and chemicals with what we are dealing here today, which is liquid fuels that are really gasoline, which is super, premium, diesel, and aviation fuel and therefore, they both belong to two different industries and they are not essentially the same.

I listened intently to the spirited contribution of Sen. Mark and what was very interesting is that I was not too sure at one point who he was arguing for. In that—

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

**Hon. S. Mc Clashie:**—he sold his product and then he bought it back.

**Hon. Senators:** [*Laughter*]

**Hon. S. Mc Clashie:** But I will address some of the issues that he raised as I move along, Mr. President. We are here today to essentially discuss the amendment to the Second Schedule and its annulment for the “Liquid Fuel Pipeline Facilities and Network Services”. Section 67(6) states that:

“The President of Trinidad and Tobago may by order, subject to negative resolution of both Houses of Parliament, vary the Second Schedule by adding thereto...”—and—“...removing therefrom any service.”

Therefore, it stands to reason that the Second Schedule can be amended by adding or by subtracting various services. And that is why we have exercised that right given the issues that I am about to raise with respect to the liquid fuel pipeline facility and network services. The question was asked, what is the network services? And Sen. Mark indicated that if you do go to Caroni and you look opposite the crematorium, there is a large facility there with a number of tanks and they do not bring fuel to those tanks to fill them.

When fuel is brought into Trinidad and Tobago and it goes to the—Pointe-a-

Pierre, Paria, that is then pumped from Pointe-a-Pierre to central and there are other pipelines that take aviation fuel to Piarco and then back into Port of Spain. That is several miles of pipeline that is considered a network and therefore, that is where the network services come in as distinct from the plant itself that does the receiving and the distribution of those fuels to tankers for distribution and therefore, that is why it is called network services.

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

**Hon. S. Mc Clashie:** There seemed to be an issue with what is an essential service, and the concept of essential services have been enshrined in in our laws for a very long time.

An essential service is one which is so vital to the day-to-day existence of any population that it is necessary to preserving life, health, public safety and basic societal functioning, as well as to ensure an uninterrupted flow of such services, for example, water, electricity, hospitals, et cetera. Whether they are delivered by public or private providers, services may be considered to be essential because they are public goods that sustain the well-being of each citizen and help the development of society as a whole.

The International Labour Organization was quoted, and within the ILO various member states have adopted a variety of measures to ensure the continuous delivery of basic services. So yes, it is part of the ILO thinking and many members states have adopted the use of essential services as a tool to ensure that their citizens are serviced as best they can, especially where it can lead to shortages and poor service. So the ILO supervisory bodies have included measures that balance the needs of the public good with the fundamental right of workers to participate in the determination of their conditions of work in a meaningful way.

Hon. Members will observe in a previous amendment a new category of

essential service was added, which was the “Public School Bus Service”. Historically, some of us might recall the addition of transportation to the category of essential services due to a strike in 1969 that impacted the citizens of this country. Liquid fuel pipeline facilities and network services are clearly critical infrastructure and essential services.

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

**Hon. S. Mc Clashie:** These facilities and services are a critical part of the energy infrastructure of this country, responsible for the storage and transportation of motor fuels and aviation fuels.

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

**Hon. S. Mc Clashie:** Mr. President, the Liquid Fuels Company of Trinidad and Tobago provides services that are pivotal and play a key role in its transportation by virtue of its capacity to distribute 75 per cent of the country’s petroleum fuels. A disruption in these services can therefore result in a disruption to the supply of gasoline and aviation fuel which would severely impact the day-to-day life of citizens. The effects would be detrimental in the case of aviation fuels as it would affect, not only the airline industry, but it also will create some reputational risk for Trinidad and Tobago.

The 10 essential services, and now the 11<sup>th</sup> that we listed, if we were to just examine for a moment—and I urge you to consider a week without petroleum products available for distribution, what would that impact be? What will happen to the fire services? What will happen to the hospitals? What will happen to almost every aspect of our life? Well, electricity is more natural gas. But if you consider that that disruption and what it could possibly do to Trinidad and Tobago in a meaningful way, in terms of turning back the clock, we will be in a very bad place. Let me just put it like that.

Let me debunk the issue that this thing became an issue overnight and sometime in May somebody met surreptitiously in some backroom and decided to move it from where it was. This issue started since in 2018. The Ministry of Labour since then was asked by the Ministry of Energy and Energy Industries to comment on the inclusion of the following provisions. We considered it then and as you know, by the time 2020 came around, we had the COVID-19 and a number of things got put on the back burner. And in any event, it did not take a day for us to decide that this is what we needed to do.

Given when Sen. Mark said that the OWTU would have applied for recognition, which was sometime in May, and we began this discussion in 2018, “the maths not mathsing”. So we—at the Law Revision Commission, which was called on May 15<sup>th</sup>, we had not received anything from OWTU by that time. The entire issue was discussed and the decision was made in the public interest, and we seem to be caught up, Sen. Mark that is, in the issue of workers’ rights, but what about the public good?

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

**Hon. S. Mc Clashie:** There are mechanisms in place to deal with workers in essential industries, and Sen. Mark himself did a very good job in outlining—

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

**Hon. S. Mc. Clashie:**—the Industrial Court and the essential service arm of the Industrial Court which treat with these issues in a very quick and timely manner.

We all know—it is just common sense—that you cannot have an essential service and issues relating to those essential services and workers prolong for any period of time. It is shooting yourself in the foot. It is committing public policy suicide. So when workers have issues in essential services, they usually come to the Ministry of Labour and we go through a conciliation exercise. Thereafter, if



we cannot meet, and treat, and arrive at a conclusion that is satisfactory to all, it may be referred to the Industrial Court, and in that case the Essential Services Division will take up that. So it is not like we are trying to somehow take workers' rights away, as is being suggested. We are quite mindful that those workers do in fact need a special kind of treatment and it is one that we will actually give.

**7.50 p.m.**

Sen. Mark asked, what about consequences? And I will put the question back to him. What about consequences? You spoke of consequences to the workers but what about the consequences to you and me? What are the consequences to children not being able to go to school?

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

**Hon. S. Mc Clashie:** What are the consequences of the fire services not being able to arrive at a scene or an ambulance not being able to take your loved ones, your children, your father, your grandparents to the hospital because they do not have fuel? What about those consequences?

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

**Hon. S. Mc Clashie:** So it seems that the entire argument that was being put forward was, one, to support the OWTU's quest for recognition, ignoring everything else except the rights of what we refer to as the workers. I have no problem, and I can speak for the Government of Trinidad and Tobago, we have no problem with unions. "We not trying to bust anybody, we not trying create an issue", and I ask the question rhetorically, by doing this, do we harm workers, do "we mash up de" union by 100 workers not being able to be represented? Not to be represented, let me roll that back. All workers have the right to representation.

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

**Hon. S. Mc Clashie:** That does not mean that those workers do not have the right

to representation. What it means is that they cannot take industrial action as strike in an adverse way that impacts on the public good.

Therefore, the issue I think and the herring that is not being put out there is that if it becomes an essential service, then OWTU may not be able to represent those workers having already being a representative in another essential service and therefore, it seems that we are talking about the impact of the bottom line to the union and whatever else goes with it.

So the Act provides for strikes by every other classification of worker except essential service workers and that impact really pales in comparison to the possibility of what could happen one week without fuel, just one week. And the provisions within the IRA, the Industrial Relations Act, for treating with workers and essential services is quite clear. I am confident, Mr. President, that a very large majority of the people in this country will agree that the burden of duty of any government is to protect the vital interest, which members of the public have, in being spared hardships caused by work stoppages which could cause severe damage to, not only the economy, but to the daily lives of citizens. It has always been the tenet of good industrial relations practice that industrial conflict in areas which stifle the flow of essential goods and services should be avoided.

While I maintain a firm stand against industrial relations action in essential services, I pledge with equal vigour to pursue the settlement of disputes which may arise in such instances. It is therefore not reasonable to annul the amendment. As Minister of Labour, I reiterate the commitment of the Government of Trinidad and Tobago to good, fair and collaborative industrial relations practices.

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

**Hon. S. Mc Clashie:** This addition simply recognizes that liquid fuel pipeline facilities and network services are essential to the day-to-day running of this

country.

Mr. President, I want to thank you again for the opportunity to contribute to the debate of this Motion, and I thank you.

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

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

**Sen. Wade Mark:** Thank you, Mr. President. I want to thank Sen. Dr. Varma Deyalsingh for making his contribution to this annulment Motion. I would also like to thank the Minister of Labour for clarifying that issue of the network services. And I want to elaborate on some other points that you have raised as I bring the proceedings to a close.

But before I do so, Mr. President, may I indicate that there is a difference—and I think Sen. Dr. Deyalsingh was seeking to clarify and I think the Minister was also attempting to clarify, to some extent he did. But under the Industrial Relations Act, when we look at the First Schedule as well as the Second Schedule, Sen. Dr. Deyalsingh speak to the issue of oil, gas, petrochemicals and he was saying as if this issue of an essential service was already captured.

But I want to make the point, Mr. President, that an essential industry—the workers and their union in an essential industry can take industrial action. So in the case of the OWTU, before your Government politically assassinated, “decapitated” Petrotrin, the OWTU could have taken strike action. So even though it is captured under essential industry, it does not necessarily mean that you cannot take industrial action. But wherever you fall under an essential service, you cannot embark on strike action. So there is a difference between the essential industry and the—so like, for instance, national petroleum. They could take industrial action because they are not captured under essential services.

We know, based on what the hon. Minister has said, that the National

Petroleum Marketing Company is going to be transformed, according to the Budget Statement of 2021, into a real estate landlord operation. And what the Minister also said, innocently but quite powerfully, is that the attempt by the OWTU to represent the workers of the Liquid Fuels Company limited will not be successful. And the Minister said in his contribution that the OWTU already represents workers in an essential service. So all that the Minister did not say is that, listen, you see that attempt, Mr. President, for recognition status by the OWTU to represent the 110 workers of the Liquid Fuels Company of Trinidad and Tobago, Mr. President, you are going to fail.

Minister, through the President, could you clarify for Trinidad and Tobago that the OWTU will not be able to represent those 110 workers of the Liquid Fuels Company of Trinidad and Tobago? Because the OWTU, I may have misinterpreted it. So, Minister, I am prepared to take my seat for a few seconds—

**Hon. Senators:** [*Crosstalk*]

**Sen. W. Mark:**—for you to clarify for the country. Can you clarify?

**Hon. Senators:** [*Continuous crosstalk*]

**Mr. Mc Clashie:** Sen. Mark, you, better than me, know the industrial relations rules with regard to essential services and how many essential services any union can represent. Right? So I do not need to say that OWTU will not, the IRA is very clear on that.

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

**Sen. W. Mark:** I understand what you have said without saying it. I understand what you have said without saying it. Mr. President, I want to make it very clear that we need to review the entire process governing industrial relations in Trinidad and Tobago. We cannot continue—

**Sen. Gopee-Scoon:** [*Interruption*]

**Sen. W. Mark:** No, I am responding not to you, you did not speak.

**Hon. Senators:** [*Laughter*]

**Mr. President:** Sen. Mark, Sen. Mark. Sen. Mark, have a seat. You are a seasoned Senator in this Chamber and I know you have the ability to ignore and continue your contribution.

**Hon. Senators:** [*Interruption*]

**Sen. W. Mark:** So, Mr. President, I hope that the hon. Minister would have been able to provide us with some perspective as it relates to the future.

**Sen. Lyder:** [*Inaudible*]

**Mr. President:** Sen. Lyder.

**Sen. Mark:** Mr. President, democracy is a messy—

**Hon. Senators:** [*Continuous interruption*]

**Sen. W. Mark:** Please, please, please, please. “Ah cyah talk, ah eh hearing mehself. All yuh disturbing meh”.

**Hon. Senators:** [*Continuous interruption*]

**Sen. W. Mark:** Yeah. Hon. President, the reality is, and the hon. Minister alluded to it and you made a very good point, how do we balance the interest of the workers or the working class with that of the society? That is the issue.

Now, in France, every day in France, workers, if they are only attacked by the Government or the employers, “the airport shut down” because they have the right in France to strike.

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

**Sen. W. Mark:** They have the right to strike. Because you know why? In France, Mr. President—

**Hon. Senators:** [*Interruption*]

**Sen. W. Mark:** Mr. President, the reality is countries and governments that have a

respect for the rights of the working class—

**Hon. Senator:** [*Interruption*]

**Sen. W. Mark:** Without workers, there will be no production.

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

**8:05 p.m.**

**Sen. W. Mark:** And therefore, Mr. President, there is always a bottle between capital and labour, always a conflict between capital and labour. So the question that we have to deal with, and I agree with the Minister, how do we seek, Mr. President, to balance that interest? You cannot put or pull the scales in one direction, and that is what the Government of Trinidad and Tobago has been doing.

**Sen. Roberts:** Anti-labour. Anti-labour.

**Sen. W. Mark:** You have to balance it in the interest of the workers. And that is what the Minister was arguing in his contribution there. And he was making the point about, “If my family get ill, and it have no fuel in the country what will happen? Are they going to die? Who is going to provide ambulance services? Who is going to drive”—Mr. President, I—the reality is, before—

**Sen. Roberts:** [*Inaudible*—fire truck will bring water.

**Mr. President:** So colleagues of Sen. Mark, Sen. Mark has the floor, he is the only one that I need to hear. Have a seat, Sen. Mark.

**Sen. W. Mark:** Sorry, sorry, sorry, Sir. My apologies.

**Mr. President:** He is the only one that I need to hear. When you speak, you are actually speaking over him. So I would ask you to just temper. Continue, Sen. Mark.

**Sen. W. Mark:** So—

**Hon. Senator:** [*Inaudible*]

**Sen. W. Mark:**—yeah, “dais no problem”. So, Mr. President, the reality is that

since the Government appeared on the political stage in this country, there has always been an attempt by this Government to shackle and to handcuff—

**Sen. Roberts:** Labour.

**Sen. W. Mark:**—labour.

**Hon. Senator:** Yes. Shame.

**Sen. W. Mark:**—in Trinidad and Tobago. I want to remind this honourable Senate, Mr. President, through you, that workers had the right strike in any industry in Trinidad and Tobago. They had that right, but Eric Williams removed it.

**Hon. Senator:** Shame.

**Sen. W. Mark:** I want to remind this honourable House, through you, Mr. President—

**Sen. Dr. Browne:** Sen. Mark.

**Sen. W. Mark:** Yeah, just now, you want to speak to? No, no.

**Sen. Dr. Browne:** I am asking just for clarification.

**Sen. W. Mark:** Okay. Go ahead.

**Sen. Dr. Browne:** Thank you. Thank you for giving way. Senator, I know you were interrupted a short while ago, but you were on the point of ambulance services, and ill persons getting to hospitals, and other connections using fuel. I do not know if you were—had completed that point.

**Sen. W. Mark:** No, no. I had gone past that because that was developed—

**Hon. Senators:** [*Laughter*]

**Sen. W. Mark:**—that was developed in balancing the interest.

**Hon. Senators:** [*Laughter and crosstalk*]

**Sen. W. Mark:** Mr. President, I passed that point, I was trying to deal with the interest.

**Hon. Senators:** [*Crosstalk*]

**Sen. W. Mark:** And that is why—that is why, Mr. President—

**Hon. Senators:** [*Interruption*]

**Sen. W. Mark:** No, no, that is why—[*Laughter*] Mr. President, that is why I was about to indicate to my dear friend that we need to have a conversation on this issue. How do we balance the rights of the workers and the working class against the rights of the State and the interest of the public? And that is the kind of conversation—so when you talk about ambulance, fire, it does not matter. Let us sit down as a nation and discuss this issue, Mr. President. Because I was about to develop the point that in places like Italy, Mr. President, and in France, and in the UK—you would know, hon. Minister, through the President, the just recently nurses and doctors went on strike in the United Kingdom. In Trinidad and Tobago, that is outlawed. It is outlawed in Trinidad and Tobago. You “cyah” take strike action. So, Mr. President, I want to say that it is important that if the Government is taking action—and I must indicate, hon. Minister of Labour, through the President, you gave us a very, very succinct, sharp definition of what is an essential service.

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

**Sen. W. Mark:** Mr. President, you know, I looked through this Industrial Relations Act, and there is no definition like this. Hon. Minister, through the hon. President, can I propose to you that you bring an amendment to this Act where the definitions of “essential services” can be defined in law? We do not have it in the law. We do not have what—I have is to go to the ILO, and I saw where you took your definitions as well from the ILO, so we are on same page. But the question here is that—Mr. President, I am not displaying, right? Right. Why can we not place in the legislation the definitions of what is an essential industry and what is



an essential service? Why? Why can we not do that? Because, Mr. President, right now—why I brought this annulment Motion, Mr. President, is because we did not know that the Government of Trinidad and Tobago had taken that decision.

When the OWTU knew about it, was like when we discovered it. There was no discussion with the OWTU. I am not saying that the Government had a duty or a responsibility, but I am saying, Mr. President, just out of courtesy. You have a stakeholder who has applied to the recognition board for certification as the majority recognized union to represent the 110 workers. And whilst that is taking place, hon. President, I just want to share with you the chronology, so that we could have it on the record here, so that everyone could appreciate what has transpired. It caught everybody by surprise. And that is why I made the point, Mr. President, the Minister of Labour has a responsibility and a duty to keep the stakeholders together, to inform them, to communicate with them, so that they will know what is happening, Mr. President.

**Mr. President:** Sen. Mark, one moment. Leader of Government Business.

### **PROCEDURAL MOTION**

**The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne):** Thank you, Mr. President. Mr. President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand, inclusive of matters on the adjournment. Thank you.

**Mr. President:** Hon. Senators, the question is that the Senate continue to sit until the completion of the business at hand, inclusive of the matters on the adjournment. Those in favour say aye.

**Hon. Senators:** Aye.

**Mr. President:** Those against say no.

**Hon. Senator:** No

**Mr. President:** I think the ayes have it. The business of the Senate—

**Hon. Senators:** [*Laughter*]

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

**Hon. Senator:** Division.

**Hon. Senators:** [*Continuous laughter and crosstalk*]

*Question put and agreed to.*

**ANNULMENT OF INDUSTRIAL RELATIONS (AMENDMENT TO THE  
SECOND SCHEDULE) ORDER, 2023**

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

**Sen. Wade Mark:** [*Laughter*] My honourable friend wants us to curtail our debate. [*Laughter*]. Yeah, Mr. President, I just wanted to share with my hon. colleagues, right, the chronology of this whole situation. And that is what generated the concern, and concerns if I may say. Mr. President, it was on the 20<sup>th</sup> of April, 2023, that the OWTU made an application to the Registration, Recognition and Certification Board for recognition at the Liquid Fuels—

**Sen. Dr. Browne:** Mr. President—

**Sen. W. Mark:**—Company of Trinidad and Tobago.

**Sen. Dr. Browne:** Point of order, Standing Order 53(1)(b).

**Mr. President:** Okay. So, Sen. Mark, once you are responding to the comments that are made before, you should be within the Standing Orders; same thing, Leader of Government Business. There is something else to say?

**Sen. Dr. Browne:** Yes, Mr. President. Mr. President, Sen. Mark is literally repeating the sequence, the chronology that he gave during his contribution. So I did not take it as a response.

**Mr. President:** So whereas that may be true, and understandably so, he does have the right as the mover of the Motion and wrapping up to respond to comments

made by the Minister of Labour, and Sen. Dr. Deyalsingh. So it is in that context, Sen. Mark, I will allow you to continue, but obviously be mindful of tedious repetition within your wrap up itself.

**Sen. W. Mark:** Yeah. Thank you. Mr. President, as you rightly said the Minister, the hon. Minister did make reference or mention to this recognition attempt by the OWTU. And it is against that background I am just giving a chronology of how this thing actually occurred, so that at least Members of this honourable House would be aware of the sequencing of this whole process.

**8.15 p.m.**

So, if I may go on, Mr. President?

On the 20<sup>th</sup> April, 2023, the union wrote to the company, that is the Liquid Fuels Company of Trinidad and Tobago, informing that company of the application it had made in accordance with the IRA, and they had copied same to the hon. Minister of Labour. On April the 28<sup>th</sup>, a notice of application was issued by the Registration, Recognition and Certification Board in the context of the application that was then made.

Mr. President, on the 24<sup>th</sup> of May, 2023, it was the Registration, Recognition and Certification Board that sent a letter to the Liquid Fuels Company of Trinidad and Tobago, informing them that the OWTU had an application before it. And before they could have responded to the recognition board, the Legal Notice of the 26<sup>th</sup> of May, 2023, emerged. So within two days of the Registration, Recognition and Certification Board communicating to this company called the Liquid Fuels Company of Trinidad and Tobago, indicating that they have an application from the OWTU for recognition status for the 110 workers, Mr. President, within two days, the Legal Notice was issued by the Government. And it caught everyone by surprise and now we understand why; why the Government has chosen to take this

particular course.

Well, Mr. President, I want to indicate to Trinidad and Tobago, and I want to indicate to the OWTU, that a United National Congress government will review—will review this whole issue of what is and what is not an essential service. You have—and the ILO has warned this Government, you know. I have several pieces of correspondence from the International Labour Organization warning this Government—I should not say warning, seeking to encourage the Government to make certain changes to the law.

Mr. President, the ILO has called on this Government to bring about minority unions in workplaces. Forget this 50-plus one. Right?

**Mr. President:** Sen. Mark, do not expand too much into all of that. Try and keep it to what is before us. Continue.

**Sen. W. Mark:** You see, Mr. President, if you recall, the hon. Minister of Labour spoke to the issue of ILO “supervisery” committees. He did make mention of ILO “supervisery” committees.

**Hon. Senator:** Supervisory.

**Sen. W. Mark:** Yes, supervising committees. But the reality is that when you look at the various components of the ILO, our country, being a signatory to the International Labour Organization, and we being a member since 1963, all I was bringing to your attention is that the ILO has been advising the Government every year, through their experts, on the various labour committees, looking at convention 87, the right to organize; and 98, freedom of collective bargaining. I am calling on the Government, Mr. President, to allow minority unions to represent workers. And you know how many years this Government has committed to doing that, Mr. President? And they have done nothing.

Now, the relevance of it, Mr. President, is that teachers—teachers have not

been defined—

**Sen. Gopee-Scoon:** We are not dealing with that.

**Sen. W. Mark:** No, we are talking about essential services, Mr. President; essential services. I am winding up.

**Mr. President:** One second. So you have to be very careful because the boundaries in this is very tight. Yes, essential services are relevant, but it is a specific body or industry falling under those essential services by way of this Order. Anything outside of that will put you in breach of Standing Order 46(1), which speaks to relevance. Sen. Mark.

**Sen. W. Mark:** Now, if I may journey to 2018, that the Minister referred to. The Minister indicated to us that this event, this whole issue of determining whether this particular liquid fuel arrangement ought to be essential or not began in 2018. That is what the Minister said. That discussion started since 2018, and he said COVID intervened and they had to deal with it sometime in 2020. Right? So I just wanted you to take note of that particular statement that was made.

So, the Government, Mr. President, had begun to contemplate deeming that service as an essential service since 2018. And, Mr. President, no consultation? No discussion? At the end of the day, Mr. President, the Government will have the last word. And that is why, Mr. President, I am calling on the hon. Minister of Labour to look at this issue of taking decisions, in the way they have taken, without any consultation with the workers or their unions. We should be able to have consultation.

Look, we will review the Industrial Relations Act on this issue of essential service and what is an essential service and what is not an essential service. I think it is being abused.

Mr. President, let me give you an example of what I am talking about. Mr.

President, let me give you an example of what I am talking about. You know, under this Act that we are dealing with here, the Government has put in civil aviation as an essential service; pilots, aircraft. But, you know, under the International Labour Organization, the International Labour Organization to which we signed on in 1963 is saying that that is not an essential service? So in other words and so on, the Government of Trinidad and Tobago has deemed civil aviation, pilots, as an essential service.

**Mr. President:** Sen. Mark, we are not dealing with the civil aviation, unless in some way, form, or fashion you are going to tie it to the industry that is spoken to in relation to this Order. So once again, I am calling upon you to move forward to any other point that you have to ensure that you remain within the Standing Order 46(1), which is relevance.

**Sen. W. Mark:** Mr. President, I believe that I have made my case on behalf of the workers, on behalf of the unions in Trinidad and Tobago. Mr. President, democracy can only flourish and grow and expand, Mr. President, when freedom reigns supreme.

**Hon. Senator:** Yes.

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

**Sen. W. Mark:** I want to remind this—Mr. President, I want to remind this House, before I take my seat, that we are here today in this honourable House because of the blood, sweat and tears of the working class that revolted in 1937 in this country, that brought about self-government in this country, that brought about fundamental reforms, the right to vote. Those are fundamental advances that were brought about by the labour movement, the trade union movement led by Butler, Rienzi and all these heroes—

**Mr. President:** Sen. Mark, Sen, Mark, even in your final comments—

**Hon. Senators:** [*Crosstalk*]

**Mr. President:** Members, Members. Even in your final comments, you would still need to be relevant. So I understand what it is you are trying to say. Keep it as tight as possible.

**Sen. W. Mark:** You know, Mr. President, I must tell you something, you know, just en passant. You know I, as a seasoned politician as you said, you know, sometimes without casting any aspersion on anyone, including your good self, you know, Mr. President, I have more freedom of speech outside in the public than here in the Parliament?

**Hon. Senators:** [*Crosstalk*]

**Sen. W. Mark:** But I cast no aspersions, I cast no aspersions on anybody.

**Mr. President:** But if you say you cast no aspersion—you cast the aspersion and then you say you cast no aspersion. It does not—

**Sen. W. Mark:** Let me withdraw that. I want to withdraw that statement, Mr. President, because I do not want you to take it personally.

**Mr. President:** Have a seat, have a seat, have a seat, have a seat.

**Sen. W. Mark:** Okay. I withdraw it. I withdraw it and I apologize for that—  
[*Inaudible*]

**Hon. Senators:** [*Interruption*]

**Mr. President:** Okay, Members, okay. I am on my legs. So, just again, Sen. Mark, you do not say you cast no aspersions and then begin to cast the said aspersion. That is not how it works. You just do not cast it at all. Continue.

**Sen. W. Mark:** Mr. President, I brought—in closing—I want to close off, right? Because I do not want to go further. I do not want to go further. I think I have made my points. I think the issues have been cleared up. I think the people of this country would have witnessed what has happened today. And I can only hope, Mr.

President, that the Government of Trinidad and Tobago would appreciate, for instance, the hurt, the injury, the harm that they have brought to the workers of Trinidad and Tobago by that action that the Government has taken.

And I want to just say, Mr. President, that this is a matter that will be the subject of review by an incoming—may I repeat? This is a matter that will be under review. We will revisit this matter; we, in consultation with the stakeholders in this country, including the OWTU, to ensure, Mr. President, that we have a democratic, united approach to addressing critical, sensitive issues impacting on our society, economy and citizenry.

So with those few words, Mr. President, I thank you and I beg to move.

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

*Question put.*

**Sen. Mark:** Division, division, division—[*Inaudible*]

**Hon. Senators:** [*Crosstalk*]

**Mr. President:** Please, when a division is called, I expect the Chamber to fall to silence, so that the Clerk can call the names and the answers can be heard properly. Continue, Clerk.

*The Senate divided:*        Noes 19        Ayes 8

### **NOES**

Browne, Hon. Dr. A.

Armour SC, Hon. R.

Gopee-Scoon, Hon. P.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Mitchell, Hon. R.



Cox, Hon. D.

Bacchus, Hon. H.

Singh, Hon. A.

Ibrahim, Dr. M.Y.

Sagransingh-Sooklal, Hon. R.

Sookhai, R. Hon.

Lezama-Lee Sing, Mrs. L.

Hislop, L.

Vieira, SC. A.

Deyalsingh, Dr. V.

Teemal, D.

Dillon-Remy, Dr. M.

**AYES**

Mark, W.

Lutchmedial, Ms. J.

**Sen. Lyder:** Absolutely, yes. Shameful PNM.

*Division continued.*

Bisramsingh, K. Ms.

Roberts, A.

Nakhid, D.

Welch, E.

Drayton, J.

**Sen. Lyder:** All six of us—[*Inaudible*]

*Division continued.*

**Mr. President:** One second, Clerk. Sen. Lyder, I know I am speaking English, and I know you understand the meaning of the word silence. Continue, Clerk.

*Division continued.*

*The following Senators abstained:* Dr. P. Richards, Ms. A. Deonarine and Mrs. H. Thompson-Ahye.

**Mr. President:** Hon. Senators, the results of the division are as follows: 8 Senators voted for, 19 Senators voted against, and three Senators abstained. As such, the Motion is not carried.

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

*Motion negatived.*

### ADJOURNMENT

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

**Sen. Lyder:** [*Inaudible*]—beating the desk against—[*Inaudible*]

**Mr. President:** Just because we are at the end of the proceedings does not mean that I do not have the authority to control the decorum in this Chamber. Leader of Government Business.

**The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne):** Thank you, Mr. President. 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 a matter to be raised on the Motion for the adjournment of the Senate. Sen. Mark.

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

**Sen. Mark:** Mr. President, in the interest of our democracy and seeing that we have all worked as a family, I am going to defer this matter to the next sitting of the Senate.

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

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 8.34 p.m.*