

**HOUSE OF REPRESENTATIVES**

[EXTRAORDINARY SITTING]

Monday, July 24, 2023

The House met at 1.30 p.m.



**PRAYERS**

[MADAM SPEAKER *in the Chair*]

**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY**

**(AMDT. AND VALIDATION) BILL, 2023**

**Senate Amendments**

**The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC):** Thank you, Madam Speaker. I beg to move the following Motion standing in the name of the Minister of Finance:

That the Senate amendments to the Public Procurement and Disposal of Public Property (Amdt. and Validation) Bill, 2023 listed in the Appendix be now considered.

*Question proposed.*

*Question put and agreed to.*

*Senate amendments read as follows:*

*Clause 3.*

3(a) A. In proposed paragraph (e) delete the words “in consultation with” and replace with the words “with the agreement of”.

B. Delete paragraph (b)(i) and substitute the following:

(i) deleting the words “(5)” and substituting the words “(6)(e)”.

*Clause 5.*

A. In subparagraph (a)(i), delete the words “in consultation with” and replace with the words “with the agreement of”.

**UNREVISED**

B. After paragraph (b), insert the following new paragraph:

“(c) by inserting after subsection (3), the following new subsection:

“(4) Regulations made under section 63(1)(c) shall provide for the contracts awarded to be reported to the Office.”.

**Madam Speaker:** The Attorney General.

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

**Mr. Armour SC:** Thank you very much, Madam Speaker. Madam Speaker, I beg to move that this House agree with Senate in the amendments to clauses 3 and 5 of the Public Procurement and Disposal of Public Property (Amdt. and Validation) Bill, 2023.

Madam Speaker, the amendments which are before this House this afternoon are very straightforward and simple. With respect to the proposed amendment introduced by clause 3 of the Bill, we ask that the words “in consultation with” be replaced by the words “with the agreement of the Office”, so that that clause will read:

“such other services as the Minister may, on the recommendation of the Office or upon the initiative of the Minister with the agreement of the Office, by Order, determine.”

We ask further, as amended in the Senate, that in subsection (7), to delete the words “(5)” and to substitute instead the words “(6)(e)”.

In clause 5 of the Bill, we ask for an amendment in similar terms to that already proposed for clause 3, that is to say, in subsection (a)(i) by deleting the words “in consultation with” and replacing with the words “with the agreement of”, and to add a new clause, subsection (4) to section 63, that is to say:

“Regulations made under section 63(1)(c) shall provide for the contracts awarded to be reported to the Office.”

As I said, Madam Speaker, the amendments are straightforward and simple, and I do not intend to trouble this House for any undue length of time. The short point is that very sensible amendments were proposed in the other place, have been accepted by this Government, so that you will now have, with this House accepting the amendments on the table, you now have the Minister making an order under section 7(6)(e) of the procurement Act, doing so on the recommendation of the office or upon his initiative with the agreement of the office and may, by order, determine. That allows for flexibility of the application of the new law, so that the Minister may propose but ultimately the discretion and oversight of the Office of Procurement Regulation will inform the acceptance, or not, of the proposed order.

With reference to clause 3(b), a simple amendment, may it please you, Madam, and that is with respect to clause 7 of the Bill, as is now contained, instead of the reference in 7(7) to clause 5, that clause will be deleted to make a specific reference to clause 7(6)(e), which is the subsection of section 6 of the Act that allows the Minister to propose the Order, which is to allow for additional exemptions under clause 7(6).

And with respect to clause 5(a) of the Bill, again, we introduce and ask this House to accept the amendments which were proposed and accepted in the other place and to delete the words “in consultation with” and to replace with the words “with the agreement of”, meaning that the Minister will propose but ultimately the oversight will be that of the Office of Procurement Regulation.

And lastly, Madam Speaker, we ask that a further section be added to section 63, so that at the end of the process when the orders are made, we will introduce by inserting after subsection (3) the following new subsection:

“Regulations made under 63(1)(c) shall provide for the contracts awarded to be the reported to the Office...”

—allowing for oversight and for the transparency which the Act proclaims at section 5, the objects section.

And, Madam Speaker, as I said at the beginning, I do not need to elaborate. We have already had comprehensive submissions and speeches on this amendment. And with those few words, I beg to move.

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

**Madam Speaker:** Member for Barataria/San Juan.

**Mr. Saddam Hosein (Barataria/San Juan):** Thank you very much, Madam Speaker, for this opportunity to contribute to this particular Motion, which is part of our legislative exercise when we pass laws in this honourable House. And the last time we left on Wednesday, I did not expect that we would be meeting so soon, but here we are with the third extraordinary sitting in probably less than a week.

Madam Speaker, the Government would have taken this particular Bill to the other place and there would have been amendments to two particular clauses; those are clause 3 and clause 5. And the crux of the amendment to clause 3 deals with the Minister's ability and his power to make an order to exempt the various services. And at clause 5 it deals with the Minister's power to promulgate regulations. So I will deal with clause 3 first, Madam Speaker.

And when you look at these two particular amendments that are before us here, when the Bill left here, it left here with the Minister having a very great deal of power in order to make—

**Madam Speaker:** So I just want to guide. Remember, this is a very narrow exercise. So while I give you a little leeway, this is not to rehash anything that took place and it is really confined to the exact text of the amendment. So we cannot deal with all of clause 3. We cannot deal with all of clause 5. It is the exact

amendments.

**Mr. Hosein:** Yes. Thank you very much, Madam Speaker. And this deals with the curtailment of the power of the Minister because now the Minister has to act, according to the amendment, with the agreement of the office.

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

**Mr. Hosein:** And it changed from the Minister only consulting with the office. So therefore, if the office had said yes or no, or even not responded, the Minister could have made the exemption to that particular service. But now, the Minister must do it with the agreement of the OPR. And, Madam Speaker, I have flagged one particular concern with this amendment with the Minister being “with the agreement of”. Because the rationale of this is that there was too much bureaucracy. And now, if we have to get the agreement of the Office of Procurement Regulation, are we now adding a layer of bureaucracy on to this entire exercise? Because if the Minister now has to seek the approval and agreement of the OPR, is the Minister now having to add a layer of bureaucracy? And, Madam Speaker, our view remains the same and consistent, that the Minister should have just come to the Parliament and sought the approval right here.

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

**Mr. Hosein:** Because if the OPR says no to the Minister and he does not agree, will it then grind government services to a halt? Because that is why we are here, to prevent the Government from grinding to a halt. So why not just leave it to affirmative resolution? In fact, why you did not just put it to affirmative resolution of the House?

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

**Mr. Hosein:** If it is cumbersome to go in both Houses of Parliament, it should have just been the Minister exempts the services with the affirmative resolution of

the House, just like how we would approve a Commissioner of Police right here in this particular Chamber. So that is the first point, Madam Speaker.

And, Madam Speaker, what is strange about this particular amendment is that this Government now finds it easier to convince an independent institution to give them an exemption from procurement of a particular service. And this institution is no regular institution. This is the OPR that is set up by the particular Act of Parliament he now has to get the agreement of, who regulates that law, and now he is asking the OPR to say, "Well, can you agree with me to now not allow your office to have any oversight over my procurement?" So the Government finds it easier to convince an independent institution than come to the Parliament.

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

**Mr. Hosein:** And I find that may have some difficulty with us. Then, Madam Speaker, back on to the point if the OPR disagrees. Let us just say the Minister sends the order to the OPR, OPR says no, but the Minister wants this particular service exempted, what does the Minister do? Madam Speaker, is it that we will now have a government having to apply to a court for judicial review action for the approval, for a court to now supervise that particular process of the OPR? Because the Minister wants this, you know. The OPR is saying no. What recourse does the Minister have? The only recourse I can see, Madam Speaker, is that the OPR is a public body under the Judicial Review Act and can be susceptible to judicial review.

So would that entire lengthy process now, if we have to go court, not cause the government services to grind to a halt? What if a pipe breaks in that particular period, will the government services grind to a halt? Will there be no toilet paper again in the Ministry or any services to fix photocopiers? Because all of those things that they justify, Madam Speaker, will cause the Government to grind to a

halt. But now, you are adding an extra layer of bureaucracy on this entire thing, when all we are saying is that just come to the Parliament, come in the full public glare of the citizens of Trinidad and Tobago, and exempt what you have to exempt. Let the country see what you are doing.

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

**Mr. Hosein:** And I see no difficulty with this, Madam Speaker, because we sit almost on a weekly basis; on a weekly basis.

**Madam Speaker:** So I have already allowed you some leeway. So we are not going back to what you want. Okay? I understand the point that you are trying to make, the difficulties that may arise from this, but we are not going back. I think that was fully ventilated as you yourself pointed out last week.

**Mr. Charles:** [*Inaudible*]

**Madam Speaker:** Member for Naparima, I have ruled. Thank you.

**1.45 p.m.**

**Mr. Hosein:** Thank you very much, Madam Speaker. And when we were in the committee stage, I know my colleague from Naparima would have raised some of these concerns, Madam Speaker, for the mandatory consultation of the Minister.

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

**Mr. Hosein:** Maybe if he was listened to, we could avoid this particular sitting. But I want to move quickly on to clause 5, Madam Speaker, and clause 5 deals with amending the power of the Minister to make regulations. And there are two amendments to clause 5 on the Bill, and that deals with—the first one dealing with the Minister making the Regulations and that he has to now get the agreement of the Office of Procurement Regulation. So it would read, Madam Speaker, when you add this Senate amendment to what is existing, is that:

“The Minister may, on the recommendation of the Office or upon the

initiative of the Minister”—and this is the Senate amendment—“with the agreement of the Office, make Regulations to give effect to the provisions of this Act, including the Regulations with respect to...”

And there is the list of regulations.

So now, the Minister has to now get the approval of the Office of Procurement Regulation, and I know the constrictions of this debate, so I repeat and rely on the earlier points I would have raised with respect to the Minister having to have the agreement of the office with respect to of all of the issues: if the office disagrees, if the office agrees; all of those issues I have previously ventilated, I repeat and rely upon them now.

With respect to the second amendment, Madam Speaker, which is found at clause 5B in the Motion that we are dealing with at Appendix, it now says at subsection (4), a new subsection 4 will be included to the original section (3) of the parent Act, and this deals with:

“Regulations made under section 63(1)(c) shall provide for the contracts awarded to be reported to the Office.”

Now, what does section 63(1)(c) mean, Madam Speaker? That deals with the procedures for the procurement of goods and services up to the value of \$1 million.

So now, what this new subsection is saying is that Regulations will have to be made with respect to the Government utilizing this facility now available to them to procure goods and services without being subject to the legislation for values up to \$1 million. And as it says that:

The Regulations in which the Minister shall promulgate shall provide for those contracts up to the value of \$1 million to be reported to the office.

Which office? The Office of Procurement Regulation.

So what the concern here, Madam Speaker, is this, it is a very vague—very,



very, vague piece of drafting. And there are other legislations in which reports have to be made and all of us may be very well familiar with those reports, for example, annual reports. But there is an additional layer of particulars in terms of it should say exactly what the report should contain. Because the Minister could send a very bare-boned report to the office, but he remains compliant with the law, but it may not have the details in which should be there. There are no particulars in which the Minister should do this. Also, there is no timeline. What if the Government decides to exercise this power to award contracts up to a value of goods as soon as this Bill is passed tonight, and let us say by Friday they start exercising this power? Will it be next 10 years that the Minister will submit this report to the Office of Procurement Regulation?

I understand that under the Interpretation Act, and I know the Attorney General may in fact raise this concern, that if a law does not provide a timeline, it means as soon as reasonably practicable, but all of those things are always subject to judicial scrutiny. And those are some of the concerns, Madam Speaker, that we wish to raise with respect to clause 5. That—we understand that it would be with the agreement the office. That may add an additional layer of scrutiny because the Minister now has to get the approval for the Regulations. We are not speaking about the exemptions of services. But when it comes to the Regulations that he has to now make, which has to be reported to the office, I think it lacks that level of particulars that will provide for the encouragement of transparency, accountability and value for money, which are the main aims and objectives of the parent law, the Public Procurement and Disposal of Public Property Act.

So, Madam Speaker, with those few concerns, I would like to wind up my contribution and I thank you for the opportunity. And while we are in the height of this campaign season, I wish my colleagues safe returns after the campaign period

and to have a very productive vacation period. Thank you very much, Madam Speaker.

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

**Madam Speaker:** Attorney General.

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

**Mr. Armour SC:** Thank you very much, Madam Speaker. There is one word that I could use before I take my seat, Madam Speaker, and that word is “sophistry”. But to do justice to, his honourable leader referred to him as “the young man from Barataria/San Juan”—

**Hon. Member:** The little boy.

**Hon. Members:** [*Crosstalk*]

**Mr. Armour SC:**—I will spend just a little time to emphasize a few points.

**Madam Speaker:** Just one minute. We allowed it but I have to remind everyone, something said outside when it is said in here is adopted by the Speaker. While it might be flattering and banter, everybody in here is the hon. Member.

**Mr. Armour SC:** So that—thank you very much, Madam Speaker. So for that, in response to the comments made by the hon. Member for Barataria/San Juan, he questions in relation to the amendments that have been proposed to clauses 3 and 5, the substitution of the words “in agreement with” in place of “in consultation with.” He questions the need for that at all. And I would remind the hon. Member, and he would be well aware of this, that in our jurisprudence there is a significant difference in the meaning of the words “consultation” as opposed to “agreement.” In fact, the word “consultation” began its development in the public law jurisprudence in remarks which were made to the High Court by Mr. Stephen Sedley QC, as he then was, went on to become Sedley LJ. And that has given rise to what are now known as the Sedley requirements, that is to say, the requirements

for consultation require sufficient reasons for, the proposal must be provided to allow intelligent consideration and response. Adequate time must be given for the response. The short point there being that consultation is something to be undertaken conscientiously and with due regard and adequate time for that which forms the subject of consultation.

I make that point, Madam Speaker, to emphasize the balance with which this Government approaches its constitutional mandate of governance. Because in the other place, the Government could have insisted that the use of the term “in consultation with” was more than satisfactory to achieve the purpose of allowing a role for the Office of Procurement Regulation.

Instead, prompted by the legitimate concerns which were raised in the other place by the Independent Senate Bench, the Government accepted, in maintaining balance in Government, to relinquish its right to rely on the term “consultation”, according to the common law jurisprudence, which would have meant a meaningful interchange between the office and the Government, and has instead accepted that the Minister’s Order, made pursuant to section 7(6)(e), will be made—and when we go to 63(1), it is the same—by the Minister in agreement with the office of public procurement. And what does that mean? It means that the Government respects the role and function of the office, which is endowed with considerable powers, and I do not need to go into it in detail. It is set out in sections 13 and 14 of the Act, recognizing the legitimate oversight role of the Office of Procurement Regulation.

And what is that in aid of? That is in aid of, if I may be permitted with your leave, Madam Speaker, the objects of this Act; the objects, being to promote:

- (a) the principles of accountability, integrity, transparency and value for money;

(b) efficiency, fairness, equity, and public confidence; and”

Importantly:

“(c) local industry development, sustainable procurement and sustainable development in public procurement and the disposal of public property.”

So that, in the interest of encouraging and supporting the objects of the Act, the Government has accepted, on the recommendations of the Independent Senate Bench, to allow the initiative of the Minister, exercised under the Act, to have to be in agreement with the regulatory oversight of the office of public procurement. I cannot for the life of me, with the greatest of respect, imagine what could be wrong with that.

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

**Mr. Armour SC:** And that is why I stood say that—but for the respect that I have for the hon. Member for Barataria/San Juan, I would have said simply, sophistry, and taken my seat.

Madam Speaker, with respect to the further remarks in relation—Madam Speaker, I beg your pardon, with respect to the further remarks with respect to that which was said by the hon. Member, in relation to the further amendments at clause 5, that is to say, that the new regulation to be introduced:

“Regulations made under section 63(1)(c) shall provide for the contracts awarded to be reported to the Office...”

—well, that is about transparency, the point there being that contracts are going to be made under the amendment, which has already been accepted in both Houses within that \$1 million threshold, and those contracts or all contracts in relation to regulations made pursuant to section 63 will now simply be reported to the office to allow for the oversight and transparency that that office will bring to ensure that

the Act is being complied with.

Again, I can see nothing objectionable about that, nothing to protest against, and I end with your leave, Madam Speaker, on the word “sophistry”. Thank you very much. I beg to move.

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

*Question put.*

**Mr. Lee:** Division.

*The House divided:*      Ayes            19            Noes            8

AYES

Robinson-Regis, Hon. C.

Young, Hon. S.

Hinds, Hon. F.

Deyalsingh, Hon. T.

Al-Rawi, Hon. F.

Beckles, Hon. P.

Webster-Roy, Hon. A.

Cudjoe, Hon. S.

Gadsby-Dolly, Hon. Dr. N.

Gonzales, Hon. M.

Mc Clashie, Hon. S.

Cummings, Hon. F.

Forde, E.

de Nobriga, Hon. S

Leonce, Hon. A.

Manning, B. Hon.

Morris-Julian, Hon. L.

Scotland, K.

Richards, K.

NOES

Lee, D.

Charles, R.

Indarsingh, R.

Hosein, S.

Paray, R.

Mohit, Ms. V.

Tancoo, D.

Seecheran, Dr. R,

*Question agreed to.*

### **ADJOURNMENT**

**Madam Speaker:** Hon. Members, you are reminded that this House stands adjourned to a date to be fixed.

*House adjourned accordingly.*

*Adjourned at 2.00 p.m.*