

SENATE

Wednesday, July 3rd, 2024

The Senate met at 10.00 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

SPECIAL SELECT COMMITTEE REPORT

Miscellaneous Provisions



(Trial by Judge Alone) Bill, 2023

(Presentation)

The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Thank you very much and good morning, Mr. President. I have the honour to lay the following report as listed on the Order Paper in my name:

Report of the Special Select Committee of the Senate appointed to consider and report on the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2023, Fourth Session (2023/2024), Twelfth Parliament.

JOINT SELECT COMMITTEE REPORT

Local Authorities, Service Commissions and

Statutory Authorities

(Presentation)

Minister in the Office of the Attorney General and Ministry of Legal Affairs

(Sen. The Hon. Renuka Sagrarsingh-Sooklal): Mr. President, I have the

honour to present the following report as listed on the Order Paper in the name of Sen. Sunity Maharaj:

Eleventh Report of the Joint Select Committee on Local Authorities, Service Commissions and Statutory Authorities (including the THA) on a follow-up inquiry into the recommendations contained in the Ninth Report of the

UNREVISED

Committee (presented in the 11th Parliament) on an inquiry into certain aspects of the operations of the Chaguaramas Development Authority, Third Session (2022/2023), Twelfth Parliament.

STANDING ORDER 77 (3)

Whistleblower Protection Bill, 2022.

The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Amery Browne): Mr. President, having regard to the report of the Special Select Committee of the Senate appointed to consider and report on the Miscellaneous Provisions (Trial by Judge Alone Bill, 2023) in the Fourth Session 2023/2024 Twelfth Parliament, I beg to move in accordance with Standing Order 77 (3) that the proceedings on the Miscellaneous Provisions (Trial by Judge Alone Bill, 2023) be resumed in the next session at the adoption of the report stage.

Question put and agreed to.

WHISTLEBLOWER PROTECTION BILL, 2022.

[Second Day]

Order read for resuming adjourned debate on question [July 02, 2024]:

Mr. President: Hon. Members, the debate on the following Bill, which was in progress when the Senate adjourned on Tuesday July 2nd, 2024 will be resumed.

A Bill entitled an Act to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector, to protect persons making those disclosures from detrimental action, to regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct and to provide for other matters connected therewith.

The list of those who spoke is as follows: Sen. The Hon. Reginald Armour SC mover, the Attorney General and Minister of Legal Affairs; Sen. Wade Mark; Sen. Anthony Vieira SC; Sen. The Hon. Donna Cox, Minister of Social

Development and Family Services; Sen. Dr. Tim Goopeesingh; Sen Hazel Thompson-Ahye; Sen. Laurence Hislop and Sen. Dr. Maria Dillon-Remy.

Hon. Senators, as indicated, there were eight speakers on this Motion. Sen. Dr. Dillon-Remy utilized six minutes of her speaking time and therefore has 34 minutes remaining. Sen. Dr. Maria Dillon-Remy.

Hon Senators: [*Desk thumping*]

Sen. Dr. Maria Dillon-Remy: Thank you, Mr. President, for allowing me to continue in this very important debate. As I was reflecting this morning on yesterday's debate and—actually for both Bills yesterday, Whistleblower and the one that had to deal with the polygraph, we talked quite a lot about corruption. I mean, it was the centre of our discussion. Everybody talked about corruption and how corrupt Trinidad and Tobago is and what we are seeking as parliamentarians to do about it.

Mr President, I got a meme yesterday—actually on a WhatsApp message yesterday—from a Trini who is living abroad and the WhatsApp message says, “Beryl did not make it, too much crime. Dey even tiefing wind in Trinidad and Tobago”. So it is out there, it is a part of what we—I mean after a category 4 hurricane almost hit Tobago and Trinidad, we laugh and we say that the category 4 wind could not come to Trinidad because it was too much “tiefing” in Trinidad and Tobago. I reflected on it because it is the kind of perception in terms of corruption that is in our lovely twin-island Republic that I understand we, as legislators here, are seeking to turn that around. Therefore, my understanding is that this Bill, according to the Attorney General, and all the lawyers talk about, has a legitimate purpose.

The legislature has historically given recognition to the need to protect whistleblowers and have drafted provisions into other Acts to serve the purpose of

dealing with whistleblowing. Section 40 of the Public Procurement and Disposal of Property Act No. 1 of 2015 contains some built in protection for whistleblowers. There is also a provision in section 99 of the Data Protection Act, Chap 22:04, which provides protection for whistleblowers. I think the Attorney General would have mentioned that in his presentation. But now the Legislature has taken a bold step to craft an entire Bill dedicated towards whistleblower protection. Under this Bill disclosure will be protected, if true, made in good faith, discloses improper conduct and is not made for personal gain. Further, there is an obligation for secrecy and confidentiality when treating with disclosure pursuant to clause 23.

So as I said before—but I would just like to—as I am starting my contribution or continuing my contribution from yesterday to just mention a couple articles. In the *Express* newspaper of January 28th, 2021 the *Express* is quoting our hon. Independent Senator here, Sen. Hazel Thompson-Ahye, she is quoted as saying and the article says T&T “a corrupt society”. It was published on January the 28th, 2021 and the quote is:

“Trinidad and Tobago is a corrupt society where people believe that they can bribe public officials to get whatever they want.”

10.10 a.m.

Another article, February 19, 2022, in the Trinidad and Tobago *Express* again, titled:

“Corruption capital”

Raffique Shah lamented and I quote:

“I am convinced that Trinidad and Tobago is the most corrupt country in the world. There is hardly a person who has not witnessed ‘wid mih own eyes’, as Trinis would say, or otherwise gained knowledge of, at least one

act of corruption in his lifetime, and likelier several such illegal transactions. He or she will have said nothing about it by way of reporting the illegal act to anyone with the authority to act on it.”

So, Mr. President, we have accepted that it is a problem and the illegal activities, many times, people do not report because they shy away from reporting because they fear retaliation.

The Trinidad and Tobago Transparency Institute was quoted before but I do not think anybody quoted this particular article from the *Guardian* titled:

“Whistleblower law key to fighting corruption”

Published on June 26th, 2024 and I quote:

“As a small island state, the fear of detrimental action for exposing corrupt practices has been forwarded by witnesses and victims as a reason for remaining silent. The Whistleblower Protection Bill starts us on a new path to combat corruption, through this known and tried path, as it affords protections for whistleblower, balanced with the need for the presentation of truthful positions. We fully expect this to evolve in its eventual operationalisation...”

Mr. President, and last night when I mentioned to the Government, the Attorney General, that I really do hope that it is not a legislation that is being put on the books to tick to say we have done it, that it should be operationalized. It is the only way we are going to get things changing. So I am therefore thankful to see that a Bill which grants:

“...immunity from criminal, civil and disciplinary proceedings...”

While at the same time, protecting whistleblowers from being:

“...harassed, intimidated or victimised...”

Or:

“...suffering injury, loss or damage in relation to his”—or her—“employment, family life, career, profession, trade or business”

The Bill aims:

“...to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector...”

The Bill also seeks:

“...to protect persons making those disclosures from detrimental action...”— and—“regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct...”

It goes further to list the types of improper conduct that may be disclosed if it has occurred, is occurring or is likely to occur. I know that there was some discussion on how can a person talk about something that is likely to occur, but just in case, people can be put on the alert that something may be happening and they can look for it.

So I mentioned last night but I will do it again here, the Corruption Perceptions Index, and I think the AG also mentioned, is the most widely used global corruption ranking in the world. It measures how corrupt each country's public sector is perceived to be according to experts and business people. The worst possible score is zero where a score of 100 indicates that no corruption is perceived in the respective country. This index is a composite indicator that includes data on perception of corruption in areas such as bribery of public officials, kickbacks in public procurement, embezzlement of State funds and effectiveness of Government's anti-corruption efforts. Since 2017, the score has

remained above 40, an improvement in comparison to previous years.

In 2023, the results of the Corruption Perceptions Index show that corruption is still thriving in Trinidad and Tobago despite an increase in the score to 42; 42 out of 100. I do not think any of us in this Chamber would be happy about that. You would not want your child coming home with a report that says, “Daddy, mummy, my percentage is 42 per cent”. In other words, “I have failed”. We are failing and this is why I said last night, I really do think that each one of us here would like to see this change from where it is right now and I am repeating it. I am convinced, Mr. President, that each of us in this Chamber wants to see this change because we do not want to see where Trinidad and Tobago lies in this 76th out of 180 countries.

So as I said, I understand there is a legitimate reason for the Bill and I will just quote an article from the Organisation for Economic Cooperation and Development, a presentation by Leah Ambler of the OECD Anti-Corruption Division titled:

“Whistleblower Protection
Legislation and Mechanisms”

It was published on all the websites for the OECD and that article lists benefits of whistleblowing legislation which far outweigh any challenges. So I know we have spoken about the challenges and I will speak about some of them again because I think it is important to know what we are dealing with and to try to make sure that whatever is done, we put the things in place to deal with them. So she talked about the benefits and some of the benefits include:

- “• Encourages reporting of misconduct, fraud and corruption;
- Decreases corruption risks;

- Increases detection of corruption;
- Creates a more accountable workplace;”

And:

- “• Helps authorities monitor compliance with anticorruption laws.”

And then she also talked about some of the challenges but she also mentioned some solutions, possible solutions for the challenges. One of them she mentioned was:

- “• Insufficient knowledge of law”
 —which can be overcome by providing:
 “• Education”

In other words, a person not being familiar enough with the law, what the law says to know what to do and therefore would not do it but that could be, as she points out, by providing appropriate education for the public that that may be overcome.

- “• Fear of reprisals”
 —which can be overcome by raising:
 “• Awareness...of the rules and procedures”

I will come back to that because I know quite a lot was said about that in terms of reprisals. Another one:

- “• Cultural, historical barriers”
 —that can be overcome by:
 “• Creating an organisational culture of transparency which supports whistleblowing”

And I will talk about that a little later. So we do have the barriers. Another barrier was:

- “• Confidentiality/loyalty provisions”

And she suggested that it can be overcome by:

- “• Ensuring effective protection is provided”

We talked about that. The person who blows the whistle, how can they be protected and she talked about ensuring effective protection being provided.

Another one was:

- “• Lack of meaningful implementation of the law”

—which can be overcome by not just passage of the legislation in this area but also enforcement. Again, we talked about that, about, you know, implementation and how that would be done. A lot was said about that, the regulations, et cetera, as to how that will be done. So there are challenges to the Bill but according to this article and I do agree with her, there are more benefits and the benefits outweigh those challenges.

So that this Bill 2022 contains four Parts. Part I takes care of the preliminary matters. Part II relates to “Disclosure of Improper Conduct”. Part III provide “Protection on Whistleblowers”. Part IV contains “Miscellaneous” provisions to ensure proper protection. The Bill seeks to provide protection to whistleblowers in the following instances.

Clause 6 says where:

“...disclosure of improper conduct...”—is made by an employee of an—“...organisation to a whistleblowing reporting officer within the organisation or a whistleblowing reports unit of a designated authority listed in the Schedule.”

So it provides protection there in clause 6. Clause 6 also provides:

“...where an employee has reasonable grounds to believe that improper conduct has occurred, is occurring or is likely to occur in the organisation.”

—and makes the report and three, the conditions of clause 7 are satisfied and clause 7(1) says:

“A disclosure is a protected disclosure if—

- (a) it is made in accordance with section 6”

Section 6 talks about protected disclosures and:

“(a) ...is made in accordance with section 6;

(b) ...is made in good faith;

(c) at the time of making the disclosure, the whistleblower reasonably believes, based on the information he has at that time, that—

(i) the information disclosed, and any allegation contained in it, are substantially true; and

(ii) the information disclosed tends to show that his...”—or her—“employer...or a person acting...”—in the—“employer’s behalf has engaged, is engaging...”—was—“preparing to engage in improper conduct;

(d) the disclosure is not made for the purposes of personal gain;

(e) in the case of an internal disclosure, it is made substantially in accordance with the internal procedures established under section 11(1); and

(f) in the case of an external disclosure, the director of a whistleblowing reports unit concludes that a disclosure has been properly made under section 14(5).”

So the conditions of clause 7 are satisfied.

Another aim for the law is that:

“...if the identity of the person making an anonymous disclosure becomes

known, the disclosure shall be deemed as protected disclosure as if it had not been made anonymously.”

So it can be made anonymously, it is not considered protected then but once the identity is known, once the name of the person making the anonymous disclosure is known, the disclosure shall be deemed protected.

“A disclosure made by a member of Parliament would not amount to a breach of privilege.”

And:

“...a provision in a contract of employment would be voidable in so far as it purports to preclude the making of a disclosure.”

That is clause 6. Where is disclosure prohibited and not protected in this context?

One:

Immunity will not be granted to a whistleblower if he was the perpetrator or an accomplice.

That is clause 7, I think that is fair. Two:

“...the...Act does not authorise the disclosure of information protected by legal professional privilege and the disclosure of such information will not be a protected disclosure if it is made by a person to whom the information has been disclosed in the course of obtaining legal advice.”

And that is clause 8. Clause 9:

“...an anonymous disclosure would not be a protected disclosure.”

We mentioned that already and the other case of where it is not protected:

“...the disclosure of information...”—is prohibited where it—“may lead to the identification of a whistleblower and restrict the communication of contents of a disclosure between the whistleblowing reports unit and other

departments within its designated authority. A designated authority...however”—“will—“be able to share information about its investigations with its whistleblowing reports units for the unit to determine whether it has any information relevant to an investigation.”

And that is clause 20.

Mr. President, two concerns I have about the Bill. Division 1 of Part II of the Bill sets out the procedure for making and receiving internal disclosures whilst Division 3 of Part 2 sets out the same with regard to external disclosures. And these are some of the clauses that deal with those divisions. In other words, you are setting up the units and you are setting up the people within the units to whom this disclosure would be made.

Clause 10 relates to the appointment of the whistleblowing reporting officers.

Clause 13:

“would require a designated authority to have a whistleblowing reports unit...responsible for receiving and processing disclosures from whistleblowing reporting officers pertaining to matters that fall within the areas of responsibility of the designated authority.”

Clause 14:

“...provide for the circumstances under which these external disclosures could be made to a whistleblowing reports unit.”

Clause 15:

“...provide for the referral of protected disclosures by a whistleblowing reports unit to another...reports unit.”

Clause 16:

“...provide for annual reports of the activities of the whistleblower reports unit to the Parliament.”

So we have set it out where it has the areas of how you are protected, where you are not protected everything is set up for you. And you have to make the necessary arrangements now, for how these procedures are going. My main concern is what is going to happen in the terms of the—how the—appointment of these officers. The officers who are considered whistleblowing—the units—in the units, how those officers are appointed. And we do not know that as yet, because I would imagine that those things are going to come out later.

We know that you could have a law and you put people in positions, but if the people are not the right people, you are not going to get the right outcomes. So how confidential are the people in the unit who are designated whistleblowing officers? It is a concern for me because, as we have said already, I think it is Sen. Hislop, he talked about six degrees of separation, and you know, how close people are. How do we make sure—as we put this in place, and I am not saying by any means that we should not, but making sure that the people that are chosen in these different departments or in different Ministries, et cetera, are the right people. I am concerned there.

Also making sure that having made the disclosure, the things do not disappear, as we know, files disappear, et cetera. How would that be? You know, a person brings the thing unprotected and gives it to you, and then it disappears mysteriously. Questions of impartiality have risen from time to time, and I know clauses 23, 24, and 25, which impose hefty fines and penalties of imprisonment for anyone impeding the whistleblower, are there, and also anyone who reports

inappropriately. You have protected information, and you leak that, there are hefty fines for that.

However, despite the provisions such as these, as in other pieces of legislation, we know that miscreants has historically found a way to be dishonest, commit fraud, and engage in corrupt practices. Thus I must ask about the vetting process and criteria for the persons under these Divisions. I know Senator, I think, Dr. Gopeesingh, had asked last night about the repercussions for reporting. In other words, if you are reporting—and yes, we are saying the legislation is there. But legislation does not protect a person. It is the people who are making the legislation a reality that would protect the people.

So, in spite of the legislation, we may still have people who are afraid to report. So this is why I am saying my other concern is the—and I will talk about now the environment of the organizations which we are seeking to create, where a whistleblower will feel confident enough and safe enough to report and not expect reappraisals. And yes, we may be at level one now, what we are, 48 per cent? 47 per cent? I “doh” know whatever, 48? We are down here now, but at least we must be putting things in place to make sure that we move up the ladder.

So what environment are we seeking to create? Like in the Ministries, for instance, and I would like to suggest that important people in the organizations are going to—these are the people who are going to make the environment enabling, make the environment conducive to deliver the—have the environment so that people could feel safe enough. We are talking about people’s lives, as Sen. Dr. Gopeesingh would have mentioned last night about a person making a disclosure and the next thing you know, whatever. We know that is the current scenario in which we are on, but we are not going to stay there. The more of us who reject

that as a way of life, is the more likely we are to move from the index where we are right now, to another level.

So it was mentioned last night again about culture change, so I am suggesting that in order to get this enabling environment and get the culture shifting from where it is now to where it should be, at some point in time moving up the ladder that one of the things we really need to do, and I would quote from, I have quoted him several times here, John Maxwell, who talks about high road leaders. In each Ministry, in each division, in each of the organizations that are going to be the units where you are reporting, it must be led by people who take these things seriously. In other words, you will get no change if you are in the division, or the department, or whichever business sector or whatever, you have people who really do not see, this is not going to be very important for them.

So the legislation is going to be there, you a unit, you have this and that, but it will be just a tick and nothing happens. But if the people are leaders who operate at a high level, how does he describe a high road leader? A high road leader he says is one who has good leadership skills and also has good values. He talked about that person with good skills and good values will seek to serve the people, will seek to lead the people well, will seek to want what is best, not just for the organization, but for the people themselves. And in our case, we are talking about our nation.

High road leaders we need in the environment who will take this thing seriously and take it up a notch. As different as some, you could have leaders who have good leadership skills but poor values, and what do they do? They manipulate people. That is not the kind of leadership we are talking about. Or people who do not have leadership skills but have good values, they “cah” lead me

any way. Those are not the kind of leaders because they are not going to get the kinds of change that we wanted to see. And, well, of course, leaders with poor values and poor skills, we do not want them at all around.

So what we are saying is that—I am humbly suggesting that as we put something like this in terms of trying to change our environment, we need at the leadership level—because at the leadership level is where the action will take place. It says if the head is rotten, what happens? If the head is rotten, what happens? The whole thing is rotten. Whereas if the head is good, the whole thing is good. So I am suggesting like in our Ministries, where a lot of this will be implemented, leadership, permanent secretary, deputy permanent secretary, heads of divisions, et cetera.

These are the people who would be guarding and making sure that the environment is an environment where whistleblowers are feeling comfortable enough. We talked about culture change. These are the people who will be responsible for the culture change. So that is at one level. I am also saying that the—so the skills and values for the leadership, and I am also suggesting that it has to happen in the different divisions at the same time.

I must commend Sen. Donna Cox. She told me at some point in time that her Ministry, Ministry of Social Development and Family Services, was—the Ministry carded to roll out a values, attitude, and behaviour programme for the nation, and right now they are running it through in their Ministry. Minister Cox, I would hope that this is the kind of thing that will roll out not just in your Ministry but in other Ministries and ultimately—because this is what will make a difference. We will come here and quarrel about which Government did this and which Government did that. We will not get anywhere, Mr. President, if the values that

we live by do not change. So I am tired of hearing, “is allyuh do it” and “is allyuh do it”, “allyuh do more than us”. That will not get us anywhere.

10.35 a.m.

This whistleblower legislation would not go anywhere of that. So the—

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

Sen. Dr. M. Dillon-Remy: Thank you, Mr. President. So it is the—at leadership, high road leaders, leaders leading with values and with skills, and then the environment, we have to have it in the business sector. The business sector must know that they cannot come by me anymore and get to push money under the table. So they have to have that going on there too, leaders in the business sector. And more, and more, and more, I have heard about people who have forgone contracts because they are not prepared to pay a bribe, and it is big money they lose. People must be prepared. And we have to know that it is in this culture we are talking about.

So people—if you are trying to have a whistleblower legislation, and in my private sector business, I know that in order to get my thing, I would not want to put it in place. But if they know that when I come here, I am not getting anything through, so we have to talk about it happening in the business. We also have to educate our children, we have to let our children know that this is the kind of children we want.

And I must commend here what has been going on in Tobago within the Tobago House of Assembly. There is a character-based programme that has been taught in schools over the last several years. It is a partnership between an NGO called Family Life Tobago and the Division of Education. And these children are taught about the pillars of character. That is an investment into trying to get

another set of leaders. And I will put in a plug here, Mr. President, trying to get a new brand of women parliamentarians—right now, there are some young ladies being trained as women parliamentarians by the Women’s Parliamentary Group of Trinidad and Tobago, and I invite all of you now to the debate that is happening next week Tuesday, July the 9th, I think—anyhow, investing in young women, in terms of development, so that they could have a different category and calibre of leaders coming up. That is the way it will change. It would not change by us just sitting down here and making laws. So, Mr. President, an enabling environment conducive to reporting.

And I would just say, it is my sincere hope—I support the Bill because I think it is a round one. I support it, but I am saying that that alone would not do it, and we have to be much more intentional about the other things that we do in terms of shifting culture. I would love to hear the next time a meme comes out about the wind from Trinidad and Tobago, what it says, “Trini—dem Trini boy, dey creative, wind energy like dat coming from Trinidad,” not that they are thieving wind but that they are creating—

Sen. Hislop: Harnessing the wind.

Sen. Dr. M. Dillon-Remy:—harnessing the wind, good energy coming out of Trinidad and Tobago. Mr. President, I thank you.

Hon. Senators: [*Desk thumping*]

Mr. President: Sen. Lezama-Lee Sing.

Hon. Senators: [*Desk thumping*]

Sen. Lezama Lee-Sing: Thank you very much, Mr. President, for giving me this opportunity to make a very brief intervention on this wonderful piece of legislation that we are debating in this House. Good morning to all our colleagues.

Mr. President, I wish to start by saying that I am so very pleased to be associated with this piece of legislation, this historic and timely piece of legislation that this Government has been trying for years to have passed into law in Trinidad and Tobago. Mr. President, we have heard from the three Benches in this Chamber, over the past several hours, different perspectives about the importance or concerns of this Bill. I wish to identify wholly with the contributions of all of the Members of the Government Bench and with the Members of the Independent Bench. I particularly identify with Sen. Vieira's and Sen. Dr. Dillon-Remy's, especially with the training and the mentorship, particularly for the young women because I too am part of that WPTT initiative which we want to encourage all young women to participate in, and all our female parliamentarians to be mentors for, Mr. President.

This legislation is not—and I wish to assure all Senators—merely a tick in the box. Our Prime Minister, even during his time as the Opposition Leader, has repeatedly called for whistleblower legislation in Trinidad and Tobago—

Hon. Senators: [*Desk thumping*]

Sen. L. Lezama-Lee Sing:—dating back to 2013. Mr. President, at almost every opportunity at which he was afforded the chance to speak on criminality in Trinidad and Tobago, and on corruption in Trinidad and Tobago, he has called for the inclusion of whistleblower legislation. And here we are, over 10 years later, on the cusp of making it a reality, Mr. President. And I am very pleased that later today, I will cast my vote in support of this piece of legislation.

Hon. Senators: [*Desk thumping*]

Sen. L. Lezama-Lee Sing: It is yet another clear and precise piece of evidence of the PNM's and this Government's commitment to honouring its word to the

population of Trinidad and Tobago, and keeping its promise to facilitate a better and brighter country for all, Mr. President.

I wish to identify strongly with the last contribution of Sen. Dr. Maria Dillon-Remy. Throughout the course of the debate, we have heard several speakers talking about the culture of the organization and the need for cultural shifts. Last week, we had the opportunity to have lunch with a guest here, and we were discussing the excellence that is the staff of the Parliament of Trinidad and Tobago. And we had discussed that it would be something if being a part of the parliamentary staff was a mandatory course for all of those who would lead in the public sector, simply because of the high level of professionalism and care, and high work ethic that happens here in the Parliament, Mr. President.

Now, I say all of that to say that Dr. Dillon-Remy's concern, I understand it, her concern about the people who you put in certain positions, but I have every confidence, Sir, that as we go forward, all of these things will be put in place to ensure that we have the best people available to us, people with high ethical and moral standards, Mr. Vice-President. Before I get into my contribution—Mr. President, Sir, I apologize—there are certain things that I need to dispel.

We have traversed every clause of this piece of legislation. We have had opinions expressed on every single piece, every concern, whether it was protection, whether it was the formation of the reporting authority or the reporting officer, whether it was anonymous disclosure or protected disclosure, we have had discussions on every single clause of this Bill, Mr. President. And what I have found is vaulting rhetoric coming from the Opposition in which they are trying to instil fear in the population of Trinidad and Tobago that this is bad law, that this is bad legislation, and I am very concerned about their continued unwillingness to

support whistleblower legislation in Trinidad and Tobago.

Mr. President, Sen. Mark described it as a malicious piece of legislation and disproportional, and I am yet to understand what he means by “disproportional”. I have compared our legislation with the legislation in Barbados and St. Kitts, and St. Kitts is actually held at a very high standard because it is considered to excellent legislation. And I have found that our law—our proposed law is actually going to be superior to what is put in the St. Kitts legislation, Mr. President. So I do not know why Sen. Mark is continuing this. What is it that the Opposition has to hide? What is it that they are afraid of, that they are trying to trigger the national population to reject this? It causes me a great sense of concern, Mr. President. When I look for instance at clause 3, at some of the interpretations, and I see for instance:

“‘detrimental action’ means any act or omission that results in a person being—

(a) unfairly subject to disciplinary action;”

—or:

“(c) harassed, intimidated or victimised;”

—or:

“(d) transferred against his will;”

—or:

“(e) unfairly refused transfer or promotion;”

—I cast my mind back to the period between 2010 and 2015, and names liked Stacy Roopnarine, Cheryl Miller, Dawn Annamunthodo—who was the former chair of the school feeding programme, who was fired when her husband raised a complaint or concern against the then line Minister—I cast my mind back to those

things and I wonder if that has anything to do with the fear that this legislation presents to the Members of the Opposition. And I am concerned that Opposition's rhetoric is that the PNM is never about transparency, but nothing could be furthest from the truth, Mr. President.

Hon. Senators: [*Desk thumping*]

Sen. L. Lezama-Lee Sing: This Government has always been very open with the population of Trinidad and Tobago, and whenever required to do so, they have presented the information as needed, through all the mechanisms, whether it is through parliamentary question time, the Motions on the Adjournment or even through Freedom of Information Act, which we know is the key tool for the Members of the Opposition, Mr. President. And I really just wonder what is it that the UNC or the Opposition is so concerned about, that they are unable or rather unwilling to support a piece of legislation, Mr. President, that will strengthen the Government's fight against corruption, and that will strengthen the working environment of Trinidad and Tobago, that will strengthen the economy, that will strengthen the culture. This little piece of legislation is so significant and far-reaching in every sphere of our existence.

You know the whistleblowing, it is a mechanism that is put in place to counter wrongdoing, to promote proper, and effective, and efficient operations of public service. Without whistleblowers, Mr. President, we will never find out about corruption. And here it is the Government is trying to introduce a legal framework for the reporting of critical or suspected infringements, and we are receiving heavy pushback from the Opposition.

Hon. Senators: [*Desk thumping*]

Sen. L. Lezama-Lee Sing: And I want to know why, Mr. President, and I want

the national community to ask the Opposition, what are they so afraid of.

Hon. Senators: [*Desk thumping*]

Sen. L. Lezama-Lee Sing: The whistleblower is a critical person in our society. Employees in whatever organizations that they would be in, they raise a red flag of wrongdoing and the individuals will now have the option to report it responsibly using their freedom of expression, and within the existence of the provided framework, and the provided effective, protective mechanisms, Mr. President. So, of course, within the framework, there is space for protection.

And what are the ingredients for this whistleblowing, Mr. President? A clear whistleblowing policy and process—this is prescribed in the proposed legislation—and an authority or agency that empowers the whistleblowers to speak without fear of retaliation whilst promoting a culture of transparency, accountability and integrity, three critical components for us to exist, and survive, and thrive in this country, Mr. President; transparency—

Hon. Senators: [*Desk thumping*]

Sen. L. Lezama-Lee Sing:—accountability, and integrity. And the protection is triggered, Mr. President, as soon as the whistleblowers have made the notification in good faith to the relevant authority.

I know people have quoted Trinidad and Tobago Transparency Institute, Sir, but I wish to quote from them, in an article that was published in the *Caribbean Times*. So it would have come out of the same press release that came out of the TTTI, and it was published in the *Caribbean Times* on June 26th, and it talked about the TTTI welcoming the recent passage of the whistleblower legislation, and they urged authorities to ensure that the law follows best practice and serves its intended purpose. But the Transparency Institute, and I quote:

“TI calls on all Parliament Members to commit to this process for the benefit of Trinidad and Tobago, moving the country closer to a corruption-free society.”

Is that not what we all want to strive towards, Mr. President—

Hon. Senators: [*Desk thumping*]

Sen. L. Lezama-Lee Sing:—a corruption-free society? And the TI noted:

“...that whistleblower legislation is one of the critical tools in the fight against corruption.”

Corruptions leads to crime, crime leads to a total breakdown in society. We have to look at it as a whole approach, tackle it from every angle, Mr. President.

10.50 a.m.

I just want to go back on the history of the whistleblower legislation. When it was first introduced in 2015, it went to a joint select committee and then it was defeated. It came back as the Whistleblower Protection Bill in 2018, defeated again; 2019, defeated again; 2024, here we have Rai who went awry, and who cast a glimmer of hope for the people of Trinidad and Tobago—

Hon. Senators: [*Desk thumping*]

Sen. L. Lezama-Lee Sing:—by lending his support to this piece of legislation, Mr. President. To me, I interpret this as bad behaviour on the part of the Opposition. The Opposition, it seems as if they want to punish the country and the citizens because they are not the Government. I feel as if their actions are deliberate to cripple and stymie the progress in crime fighting, and they cannot stand here today and say because they supported something yesterday they are assisting with crime fighting, Mr. President. And then come here today, and something that is another critical tool in the arsenal of fighting against crime, you

stand up and you come outright and say that you are not supporting the legislation, and I wonder if the Opposition is just willing to do everything that is inimical to the interest of the country. This whistleblower legislation is not inimical to the country. It will lead to the benefit of a more productive, safe and inclusive society, Mr. President.

From a female perspective, very often when women go to make complaints or state their concerns, they are considered to be—they are called the worst possible things, treated in the worst possible light, attacked viciously, viciously. And I am not asking for sympathy because we are women, but it is a reality that in society women are attacked terribly. The fact that you can come forward as an anonymous whistleblower and you are afforded that protection; to the women out there, the women who may have been affronted, the women who may have been assaulted, the women who may have been abused or used as tools, this legislation is for you.

Hon. Senators: [*Desk thumping*]

Sen. L. Lezama-Lee Sing: Mr. President, I am speaking to the women of Trinidad through you. This legislation is to give you a space to stand and raise your complaints and your concerns because we cannot stand here and pretend that all is well, that we live in a non—I do not want to use the word sexual, but we live in a society where women are easily preyed upon, I should say. Women are easily preyed upon. Women are looked past. Women are easily called names, emotional, erratic. Just because of our nature we are judged. We live in this society and, therefore, this legislation is particularly for women. It gives you the space and the opportunity to come forward. There are certain guaranteed protections for you and, therefore, this is your opportunity for us as women to do what we must to

make this country a better place.

And so, I particularly implore the women on the Opposition Bench to see the benefits, and the one who is here today—two—of this piece of legislation, to see how it will serve our counterparts, our women in Trinidad and Tobago to make this a better place for all of us. Because you and I both know, we all know, that we have all been victims of harassment from colleagues in the working environment, not in here, not in this Chamber, Sir. I am talking about the working environment. We have all been victims, one way or another, of some form of discrimination, or some form of harassment or intimidation and this legislation is for us. So I commend this legislation, Mr. President, and I encourage all Members in this Chamber to lend their fullest support to this whistleblower legislation. Thank you.

Sen. Karunaa Bisram Singh: Mr. President, I thank you for the opportunity to contribute on this debate as it is a pivotal moment for the protection of those who dare to speak up. Now, a whistleblower Bill is not just a legislative proposal. It is a commitment to transparency, accountability and justice. By safeguarding whistleblowers, we empower individuals to expose wrongdoing without fear of retaliation.

So, while the intention behind that whistleblower Bill may be noble, we must carefully consider the possible ramifications of its implementation. This Bill, though well meaning, can create risk in our environment. It can be misused and we can have unintended consequences. Therefore, in evaluating the necessity of it and, of course, that cannot be disputed, as we in our nation, we want to encourage persons if you see something, say something. But, of course, the avenues for saying something must be looked at from the perspective of snitches get stitches and whether there are safeguards and measures in place to prevent that. So, we

need to critically evaluate the necessity and the possible impact of this Bill.

Now, let us look at some of the clauses. The first I want to deal with is section 9, which provides for anonymous disclosures. It states that anonymous disclosures are not protected disclosures. So, what does this mean? Well, it means that if someone makes an anonymous report, it would not be treated as being protected. That person would not be afforded the protection of immunity from criminal, civil or disciplinary proceedings. They would not have any protection from this Bill. So, what is the difference then between me wanting to make an anonymous report under this Bill, and then calling 1-800-TIPS or Crime Stoppers and giving information? This Bill does not encourage me to make a disclosure anonymously. And if it is not encouraging me make an anonymous disclosure, then this Bill would not meet its aim. This Bill can actually discourage whistleblowers who fear exposure.

Being anonymous can be a critical factor in encouraging persons to come forward without fear of retaliation. There should be a right of this in the Bill. Whistleblowers should have the explicit right to remain anonymous if they choose. The Bill should provide mechanisms, not just for anonymous reporting but it should ensure those reports are given the same level of protection as if the whistleblower's identity is known.

We have looked at the whistleblower's legislation in different countries and imported that into this Bill. But we have not imported some of the safeguards. If we look at Australia's Public Interest Disclosure Act, 2013, that Act allows for anonymous disclosures. But not just that, the same protections that apply to the anonymous disclosures apply where the identity of the person is known. We do not have that here in this Bill.

Let us go to another flaw of this Bill. How does this Bill deal with the

inherent risk that could still lead to the exposure of a whistleblower's identity? During the investigation of a report, it is possible that by the very nature of the report and of the allegations, the identity of the whistleblower may be indirectly revealed. For example, if the details of the report are specific to a particular incident or a particular person, it can be easy to find out who the person is. Let us just say the whistleblowing reporting officer, while he has to bound to certain confidentially obligations, they still need to interview certain individuals or review specific documents, which can then lead to the whistleblower's identity being inferred. And these little examples show how easy it is for the identity of whistleblowers to be revealed.

This Bill says that the whistleblower's identity shall remain confidential. However, it lacks detailed protocols and procedures for ensuring that confidentially. Telling me I have to keep the identity confidential without telling me what are the steps and measures I should take to do that, does not help me. So, this Bill, by not stating what the employers have do in their internal process, can lead to inconsistent application and potential breaches. Without having standardized measures for protecting the identities of whistleblowers, different organizations and agencies might adopt varying levels of protection leading to different standards. This Bill is lacking and needs to have clear, standardized protocols established and these need to be enforced across all sectors and organizations to ensure that the identity of the whistleblowers are protected consistently and effectively.

Whistleblowers must be assured that their identity would be kept confidential by the organization doing A, by the organization doing B, and for it being expressly stated what the organization needs to do. They must know that this is a standardized process. They must know this is how my identity is going to

be protected; this is how it works. And with all things, when you put measures in place to try to achieve something, there must be some of check to ensure that what we are trying to achieve is really being achieved. There should be something in this Bill about audits and compliance checks to ensure that the organizations are adhering to these protocols.

Furthermore, we are not just checking for checking sake. These checks should be done to ensure that noncompliance would be met with the appropriate sanctions to enforce the importance of maintaining the confidentiality. And what these audits can do is that they can also help to identify potential weaknesses in the system and ensure continuous improvement in the protection of whistleblowers' identities.

Moving on to another section, this Bill outlines the penalties for breaches of confidentiality; the penalties for the officer who discloses the identity of the whistleblower. But what about the remedies for breaches of confidentiality to the whistleblower? What about the remedies that would be available to him?

The Bill must provide clear, legal recourse for whistleblowers whose confidentiality has been breached. This can include the right to seek damages through the court system. It does not help a whistleblower to tell him: "Yes, your identity or confidentiality was breached. But, hey doh worry, the officer who did it would be fined or face a term of imprisonment." That does not help the whistleblower. And if a whistleblower makes a disclosure, if he subsequently finds out that his identity or confidentiality was breached, who does he now go to, to address that complaint? The same officer in the unit who breached it in the first place? This Bill needs to address that, maybe by establishing a dedicated body or ombudsman to oversee and address complaints related to breaches of whistleblower confidentiality. Again, it is all about gaining the trust of the public.

This independent body can offer a trusted avenue for whistleblowers to report breaches and to seek redress. And we can compare this to the PCA.

When we have a problem with a particular police officer, the officer is involved in improper conduct, this officer is harassing us, we do not go to the station that the officer works in to make the report. We do not go into another station where his batch “workin”. We go to the PCA. We, the public, have come to trust in the PCA. And that is why reports are continued to be made against rogue officers. That is why officers are being investigated, because the public has distrust in them. The public trusts the process. They trust that it is independent. And this Bill has no mechanism like that.

I will go now to the internal disclosure procedures. The effectiveness of this Bill, of whistleblower protection, lies heavily on the internal procedures established within these organizations. These procedures are meant to provide a structured and secure way for employees to report misconduct. This Bill, and specifically section 10, requires employers to appoint whistleblowing reporting officers and to establish their own internal procedures.

11.05 p.m.

However, there is no provision in this Bill for oversight, to ensure that these procedures are adequate and fairly implemented. The employers just need to establish their procedure and publish that procedure. But who is to say that that procedure is effective? Who is to say that that internal procedure meets a certain basic standard? This Bill does not include provisions for oversight, and this can lead to several issues. Without having that external oversight, there can be significant variation in how different organizations implement their whistleblower internal procedures.

Some may have robust and fair processes, while others may have inadequate

or biased processes. Some would be just implementing it to say they are following the law, or are not in breach of the law, but the internal system that they implement is not working, or not being effective. This is another issue with this Bill. Section 11(1) states that:

“...An employer shall appoint and keep in his employ such whistleblowing reporting officers...”

And then section 12(1) goes on to state that:

“...An employer shall have in operation internal procedures for receiving and dealing with disclosures...”

But then we have section 15(1) which states that:

“...An employee of an organisation may make an external disclosure to the whistleblowing reports unit...if—

(a) the organisation has no internal procedures established and published for receiving and dealing with disclosures...”

So, we have one section saying, “That the employer shall”, which means that they must do it, they do not have a choice or a discretion, and then, another section is saying, “Well if the organization do have it, you can just go make an external disclosure.” So, which is it? Is it mandatory, is it optional? This Bill also does not give any details or particulars of how that internal process is to be. Is it one whistleblowing reporting officer to every 50 employees? So that, the number of officers you have can vary depending on how big your organization is. This Bill is silent on issues like that.

So, back to having oversight. Without having oversight, there is no mechanism to hold organizations accountable for failing to establish effective procedures. This Bill requires the appointment of whistleblowing reporting officers, but it does not address specific conflicts of interest, especially in smaller

organizations. We know how small this country is, everybody knows each other, you can have the businesses being run by family members, we know about that. Reporting officers may have personal or professional stakes in the matters being reported. Does this Bill mandate that there be a conflict of interest register? Is it that an organization may have more than one whistleblowing reporting officer so that an employee can choose who they report to? This Bill makes no provision and does not give us the specifics with respect to scenarios like these.

Now, Sen. Dr. Gopeesingh said yesterday in his contribution that there are 21 designated authorities that a person can go to, and maybe persons may get confused, or they may not know who they should go by. That notion was laughed at by Members opposite me. But this is very real. How many times do you go to a particular police station to make a report, and they run you? They tell you, "This is not for them, they can do anything", and they send you to another station, and then you go to that station, and is the same thing again. They tell you, "They can take this report, dah is not for them, go to a next place", and they just keep dancing you in circles.

What mechanisms, or measures are in this Bill to provide, or to ensure, that a report will be taken by the unit? What are the consequences of a report not being taken? If we want to enact legislation, it must be specific and clear. It must not lead a nation to wonder what to do in this scenario, or that scenario. There should be detailed particulars on how the process is to be followed, and this Bill does not do that. This Bill is vague at best. Let us talk about the criteria for these whistleblowing reporting officers. If I am a whistleblower, or I am going to make a report, I would like to know who I am making this report to. I would want to be able to trust the process. I must feel safe and have some sort of assurance in the process. Are these officers required to have any sort of training to handle and deal

with these reports? This Bill must state that, the requirements and criteria of these officers.

Now, the effectiveness of this legislation hinges on the ability to prevent retaliation and to provide appropriate remedies. While this Bill does prohibit detrimental actions and provides for remedies, sometimes the process of applying to the High Court for relief, might be cumbersome, and intimidating for some, and this can be a barrier. We all know the legal system, it is intimidating. It is complex. Persons do not know how to navigate it, it requires significant time, as well as financial resources. Also, the time taken as well.

So, there should be administrative pathways that allow whistleblowers to seek relief more quickly and with less formality than judicial proceedings. This could maybe mean involving a dedicated whistleblower protection agency or the Ombudsman.

Sen. Thompson-Ahje: Senator, some of the issues that you have. Do you think that they can be handled, or can be dealt with in the regulations that must come with the Act?

Sen. K. Bisram Singh: Well, we are here debating a Bill, and we do not have the regulations before us. I do not have any specifics.

Hon. Senators: [*Desk thumping*]

Sen. K. Bisram Singh: What I have here is, a guess at best, of what is to be. I do not know. I do not know. The regulations should have been here. We should have been able—

Hon. Senators: [*Desk thumping*]

Sen. K. Bisram Singh: This Bill also lacks detailed provisions for independent oversight, or a dedicated body to ensure compliance, and to address issues. Without this independent oversight body, there can be significant challenges in

ensuring that these organizations comply with the law. Having an independent oversight body can also help standardize how these complaints would be handled across the various organizations. If we look at the United States they have the office of the whistleblower.

Hon. Senator: [*Desk thumping*]

Sen. K. Bisram Singh: This office provides independent oversight over the complaints relative to this. We do not have that here. This Bill is lacking with that. And, in bringing this Bill have we looked at our comparative current systems like the witness protection programme. Have we compared how that is working? I know many cases where witnesses in a witness protection programme would leave the Friday evening from their designated safe house, go to lime, go to fete, go to party, and then return on the Monday morning.

Have you looked at who is overseeing these police officers, who are in charge of these witnesses, or are we just leaving it for the officers to do what they are instructed to do? Again, can we leave functions and tasks as important as receiving a report, and dealing with the disclosure to an internal employee of the same organization, or do we need to implement a centralized independent body?

11.15 a.m.

Hon. Senators: [*Desk thumping*]

Sen. K. Bisram Singh: Now, what protections are there for the whistleblowing reporting officer in this Bill? That officer is in an unenviable position; they are between the employer who is feeding their family and between a colleague or a friend. What protection does this Bill afford him for taking this report and dealing with that issue? What about the protection for the person against whom the report is made? What protection is there for him?

So let us say someone makes as report against him, how is this investigation

into that report going to be done? Who is exactly doing that investigation? Are they trained? Are they qualified? What does this investigation entail? Does that person against whom the report was made, do they get an opportunity to be heard and to plead their case? Is he told of the identity of the person? If the identity of the whistleblower is being withheld, how does that now impact and infringe upon his right of challenging and facing his accuser?

Hon. Senators: [*Desk thumping*]

Sen. K. Bisram Singh: Let us just say that that report goes further, and one of the units gets involved, and the person is charged with a criminal offence as a result of that report being made. Disclosure is of course one of the first steps in court. That disclosure will include the original report of that whistleblower. We get everything, used statements, unused statements, so is it that now the report being made, is that going to be exempt from being used in court to prosecute a matter? Is that person against whom the report was made, is he getting an opportunity to challenge and face that person? This Bill gives no information on how the information from a report is to be treated in court, whether it can be used in a claim or to prosecute a matter.

Because again, if a whistleblower knows if he makes a report and an investigation is done, and a person is charged based on what he indicates, and that person is before the court, will he be required to attend as a witness? And if it is that he is, would he then now go through this whole process of making a report under this Bill, or would they just prefer to call Ian Alleyne and just give him a tip and let the police come in and do their work?

These are the some serious flaws in this Bill. It leaves unanswered questions. It is vague. It does not set out proper procedure and processes. It is not effective. This is not good law and it does not achieve its aim. I thank you.

Hon. Senators: [*Desk thumping*]

Mr. President: Sen. Teemal.

Hon. Senators: [*Desk thumping*]

Sen. Deeroop Teemal: Mr. President, I thank you for the opportunity to contribute on the matter that is before the Senate. Essentially, the Whistleblower Protection Bill, 2022. Mr. President, as we have heard, and I do not think there is any doubt that public interest demands effective whistleblower legislation. That is, as it is critical in the fight against corruption. A lot has been said there and I do not intend to elaborate any further on that. But the effectiveness of any whistleblower legislation that we are looking to put in place, to me, Mr. President, is highly context-dependent. And it requires a combination of comprehensive or someone used the term “robust legal framework”, two, effective enforcement, three, supportive organization cultures, and four, public awareness.

And research would show that countries with comprehensive laws, dedicated enforcement agencies, and supportive environments, tend to see more successful whistleblower outcomes. However, challenges would remain in ensuring consistent application and overcoming cultural barriers as we have heard, and I trust, I really hope that this would not be overlooked during the implementation phase of this legislation should it be passed.

We have heard about the history of this particular piece of legislation and I do not intend to repeat it because it comes—it started off in 2015 and it is the failure of a joint select committee to complete the process that was set up to look at this Bill. I am not a constitutional expert but as a legislator, I have to say, I would have appreciated the benefit of a completed rigorous review of a joint select committee for this particular Bill, which would have also ensured that we had expert inputs that would normally come with a JSC. And also, wide and

meaningful engagement, identification and meaningful engagement of all stakeholders.

Notwithstanding that, we have heard from the hon. Attorney General, and then we heard from Sen. Vieira, both heavyweights in the legal field, and the whole question of constitutionality of this Bill, particularly with regard to the rights enshrined in sections 4 and 5 of our Constitution, was extensively discussed, and I am prepared to move forward on the basis of what has been put forward thus far by our legal luminaries, including our learned Senator who just spoke, Sen. Bisram Singh.

I would ask the question, how comprehensive is the legal framework in this Bill to ensure effectiveness? And ask the question also in response to that question, are there provisions to protect disclosures related to a wide range of wrongdoings, including fraud, corruption, safety violations, and environmental harm? And this is addressed in the interpretation under the definition of “improper conduct” in which nine actions are outlined.

However, whilst in the definition of “improper conduct” section (d), mention is made of a threat to public health, no mention is made, I observe, of a threat to— mention is made to the threat of the “health or safety of a person”, but no mention is made of a threat to public health. And although (e) mentions threat:

“...or damage the environment;”

—I think that this is not sufficient to address public health. And I am just wondering why in the definition of “improper conduct” public health has not been tagged as a definitive wrongdoing when public health is endangered by the actions of persons, and corporate bodies, and public bodies?

Now, under “improper conduct” as well, the definition, section (f) speaks about:

“...conduct that shows gross mismanagement,”

And I am a little concerned about that because is the gross management arising out of a lack of competence? And in which case could that be classified as a wrongdoing if it is just incompetence, and somebody blowing the whistle on somebody who just has not been competent, or whether we should be using the term “willful mismanagement”?

Is the Bill clear on what constitutes whistleblowing and protected disclosures such as to help prevent legal ambiguities and encourage participation? And in that context, I would like to, you know, just throw out a thought in terms of why we have chosen not to define what a “protected disclosure” is. Because in reading through the Bill I had to go through it several times just to try to grasp what a protective disclosure is. And seeing that a protective disclosure is a trigger for so many actions to be taken, so many actions to be validated by what is a protective disclosure, I am just wondering why an attempt was not made to include it as a definition as an interpretation under this Bill.

And in that context, why are provisions being made for disclosures to be made orally and for a statement to be prepared by the officer receiving the disclosure to be signed by the whistleblower? Does this not make the disclosure open to influence by the receiving officer, having oral transmission and then having the whistleblower having to sign this statement? And then, what if the whistleblower wants to maintain anonymity? How does an oral receipt of improper conduct work in the case of maintaining anonymity in the first stage of the process where you have to personally interact with the reporting officer or an officer of the reporting unit? And then, also, why are disclosure not being allowed for via electronic means such as e-mail, because it is not mentioned in the Bill? So are we prepared to receive disclosures through electronic means?

And then, several speakers before me, Mr. President, have raised the question of why are anonymous disclosures not to be considered as a protected disclosure under section 9(1)? And of course, it raises the question as others have raised, would this not reduce the expected results and decrease the effectiveness of this legislation? Now, section 7, deals with what is a protected disclosure, and 7(1)(d) states that:

“the disclosure...”—should—“...not...”—be—“...made for the purposes of personal gain.”

So if we find out that the disclosure was made for personal gain then it is not going to be a protected disclosure, and it offers some protection to the accused in bringing about some balance between individual rights and public interest, but what is the interpretation of personal gain in this context? Is it material gain? Or could it be interpreted here or is the intention here that it is emotional gain? And I am probably limited by my choice of using the words “emotional gain” but if it is based on not-so-proper motives, if it is based on revenge, if it is based on having to get back at somebody or the fact that you just do not like the person, you know. So, would personal gain cover vindictiveness and other emotional satisfaction, emotional fulfilment gains, and by including this here in section 7, for it not to be protected disclosure, then we are not leaving any room down the road for any rewards and incentives.

11.30 a.m.

The legislation before us does not consider reward and incentives. Although in some jurisdictions, like certain states of the United States, there are rewards and incentives because there is the strong feeling—and experience has shown that with reward and incentives managed in a responsible way, that the effectiveness of whistleblower legislation is heightened because there is an encouragement for

persons to come forward. And we are working on the basis here of altruism, on people's sense of patriotism, on the sense of people wanting to do the right thing, yes, but I mean, we all know the frailties of human nature and without having to break any law, whether or not consideration should have been given to the introduction of incentives.

Now, although we this about personal gains, we see in clause 19(3), which deals with:

“No immunity to whistleblower if..”—the whistleblower is a—
“...perpetrator or an accomplice”

—allowances are being made for the whistleblower to throw himself at the mercy of the court, literally appeal to the court for his punishment to be mitigated or remitted, and to:

“...hold him liable...”—only for—“...part of the damage...”—he is liable for and not be held—“...jointly and severally with others.”

Now, clause 19(5) also allows for the employer of the whistleblower, if he is an employee of a public body:

“(a) to mitigate the effects of any punishment; and

(b) where possible, not seek the dismissal of the whistleblower as punishment.”

So, Mr. President, I am asking the question: Are these not personal gains? Does it conflict with what is laid out there in clause 7? Because if your punishment is being mitigated or remitted, and your employer is being asked—if you are an employee of a public body—to mitigate the effects of any punishment, if these are not personal gains. I think there seems to be a bit of a contradiction here because the whistleblower may well decide to take the calculated risk of reduced punishment rather than face full consequences if caught and successfully

persecuted. Is not that a personal gain? And what about the gains accrued by the whistleblower being the perpetrator or an accomplice, would the whistleblower be allowed to keep the gains, or would they have to return it under this law? And I think this should also be addressed.

Another question in terms of effectiveness is: Are there strong anti-retaliation measures in the Bill? And clause 17 deals with:

“Prohibition of detrimental action

“...under any written law, rule of law, contract, oath or practice...”

—subject to any exceptions under this Bill. And “detrimental action” is also well defined in the interpretation of the Bill, so there is clarity there.

I would just like to raise the issue of employer confidentiality clauses that is often included in employment contracts. It is a standard thing now. A lot of employer contracts have non-disclosure clauses or confidentiality agreements designed to protect the employer’s proprietary and sensitive information. And these clauses typically outline what constitutes confidential information, the obligations of the employee to protect the information, and the consequences of violating the agreement that the employee is asked to sign.

Whilst the legislation before us addresses this indirectly, should it specifically include direct law that instructs employers to allow for provisions in their employment confidentiality clause, to ensure that that employees can report violations of improper conduct, as defined in this Bill, to regulatory authorities without breaching confidentiality?

What if the employer, in their an employment agreement, as a result of this legislation, now requires the employee, the potential whistleblower, to indemnify them for any losses resulting from unauthorized disclosures or a disclosure that is not declared as a protected disclosure? What protection would be afforded to the

whistleblower in such a situation? I do not think that the immunity offered in clause 18 offers the protection to a whistleblower, because clause 18, as we understand, is really for protected disclosure. So a potential whistleblower could be setting up himself, in that, if his agreement asked for him to indemnify his employer against losses, it creates a situation of difficulty for that person to come forward and they may be wavering, and wavering, and wavering, and saying, “Look, I am not going to take that chance.”

Mr. President, support systems for protection of whistleblowers envisaged by this Bill, to me, it seems to be rather limited, and the only access that comes to—it seems to me that whistleblowers seems to have, to remedy detrimental action, is to seek redress in the High Court. Now, there is no legal assistance for whistleblowers to have access to legal counsel to help them navigate the reporting process and protect their rights under this Bill. And it seems as though they would have to make do—those who cannot afford legal counsel would have to make do with legal aid. And the lack of an effective legal support system, to me, in the context of protection, is sure to act as a deterrent for potential whistleblowers coming forward.

Now, we have to think that employees of businesses—employees with corporations of means, large conglomerates, large-scale businesses, even the medium-sized businesses, would have access to high-level legal counsel. That is part of the corporate business world, where they can afford high-level legal services. And here you have the—

Sen. Dr. Richards: Heavy hitters.

Sen. D. Teemal: Yeah, the heavy hitters. And here you have the whistleblower who decides to come forward, who wants to be protected, but the support system for that whistleblower to go up against, you know, corporate lawyers, the heavy

hitters, as Sen. Richards is saying, that to me is a serious deterrent and I think some consideration has to be given to support, in terms of legal support.

Now, there is also no access to counselling and psychological support that can help whistleblowers cope with stress and isolation that they would experience by coming forward.

11.40 am

So, which is why I said the support system for the protection of whistleblowers, deserves more attention, moving forward. And whilst mechanisms for anonymous reporting are there, there should also be legal guarantees. Should there not be legal guarantees, to ensure that the identity of whistleblowers remain confidential throughout the investigation process? Now yes, we have reporting officers, reporting units, directors of reporting units and officers of reporting units. All of these things within the designated authority. But what legal guarantees are there to a whistleblower? What legal guarantees are there to a whistleblower, to offer confidence, or to offer the level of protection that a whistleblower needs?

I am not sure, as the effective independence of the reporting officer and the reporting unit, with its director and officers, comes into question. I think some of this was raised by Sen. Bisram Singh and others, in terms of the question of independence of the reporting officer, and the independence of the reporting unit, with its director and officers. So it begs the question: Are the provisions of the Act enough to ensure independent oversight and enforcement?

The Act allows for an employee to make a disclosure to a whistleblowing officer, in the case of an internal disclosure, or in the case of an external disclosure to a whistleblowing unit, within a designated authority. Now the reporting officer is to be appointed by the employer and kept in their employ; so appointed and being paid by the employer. Under the circumstances, how independent can these

officers be, and how much trust would a whistleblower have, in such a reporting officer? Sen. Bisram Singh did mention a lot of businesses, particularly the medium sized to small businesses, are family run operations. And you may well have the reporting officer that is appointed, being a member of the family, because the entire family is engaged in the business.

In such situations where being a member of a family-run business, and in other instances where you are being paid by the business—I mean, the question of independence comes in. The question of the effectiveness of this, is all going to be on the basis of trust. And how much trust can we establish in the systems that are being put forward? And to me this is a deterrent. What can be said, as a rebuttal to what I am saying, is that, if you are not satisfied with the reporting officer, then you could go to the reporting unit of the 21 designated authorities that are listed. But then it begs the question, why allow for internal disclosures in the first place?

And yes, I think having these internal disclosures across the board, is very ambitious with this piece of legislation, or whether it should have been restricted or constrained to organizations that have the culture of corporate responsibility, and of national responsibility, to who embraces these as part of their corporate policies to be socially responsible, and to put measures in place to be socially corporate—have corporate responsibility? I can see internal disclosures tying in with that. But then across the board, in terms of the range of businesses that we are dealing with. I think it leaves a gap that has to be addressed, at some point in time.

Sen. Bisram Singh did raise the question of who is vetting the procedures that the employer has to put in place. This is not the reporting officer who is putting the procedures in place, according to the legislation. It is the employer who is putting the procedures in place. And then, what is the oversight? It was asked, in terms of these procedures not being a formality to satisfy the law, or there is a

genuine attempt on the part of the employer to have procedures, that is in keeping and is in the interest of this legislation, and whether or not independent oversight is necessary for this. I support that line of questioning. I ask the question why is the framework for these internal procedures not allowed for inclusion in the regulations that we are putting in section 28. Should there not be uniformity, should not there be guidance, and to ensure compliance with the law, that we look to regulate through subsidiary legislation? Some degree of guidance and some degree of expected compliance through regulations, on employers that are establishing the procedures that they are being called upon to establish. And then even within the regulations, should we be setting up responsibilities, clear lines of responsibilities for the reporting officer, so that they can fulfill their responsibilities under the Act? Particularly, guidance in terms of determining what is a protected disclosure.

Now it was raised, the use of the term “shall” throughout sections 10 and 11 dealing with internal disclosures. Is the term “shall” being used here as a mandatory legal requirement? Is it to be interpreted that way, or is not intended by use of the word “shall” as mandatory? And the reason I had to ask it, is because none compliance with these sections 10 and 11, particularly dealing with the employer and the internal discussions, none of them is being classified as an offence under this Act, and as such there are no penalties. And we are using the term “shall”. So, what I am gathering, it is not mandatory. Then if, it is not mandatory, what is the incentive for the employers to go through this expense of having a legal officer in their operations? Something to think about.

The Act provides for 21 designated authorities. Each of which shall have a whistleblowing reports unit, consisting of a director, and other such officers, as are required for the efficient performance of the functions of the unit. So I ask the

question, are the powers of the director and the officers of the unit, clearly outlined? Who determines the qualifications of the directors and the officers, and subsequently appoints the director and officers? The reason I ask who appoints, is because, what are the powers of the director and the officers? Because should guidelines for the qualifications and appointment of the director and unit officers be provided in the secondary legislation, that is the regulations to come. And who would the director of the unit report to? Who would monitor the performance of the director to ensure timely and fair investigations, that complaints should be investigated promptly to prevent prolonged uncertainty and potential retaliation, and investigations are conducted impartially, without biased, undue influence from the accused parties?

11.50 a.m.

Now, if the Director has to report to the Executive or the board of the designate authority, would this not be seen as comprising anonymity because then you are introducing another level of reporting? We have to account to the Executive or the board, somebody. In the absence of a reporting body, it has to go up the road, and would it not be compromising confidentiality or extending the arena so that the potential for confidentiality to be abused, it becomes more reality? Would this not be a deterrent in building trust? I keep saying ‘a deterrent in building trust’ because the effectiveness of this legislation, to me, rests on the building of trust; trust in protection that is being offered, trust in confidentiality. In such a case where you have to go to a higher level, how is confidentiality going to be managed?

Now section 21(4) states that:

“Guidelines may be issued by each designated authority setting out-

(a) the duties of communication between the whistleblowing reports

- unit and the whistleblower and the restrictions thereon; and
- (b) the rules for disclosure to other departments of the designated authority or to other designated authorities.”

Mr. President, I have a concern about the use of the word “may” here, because we are talking about guidelines by designated authorities in a vital function under this Act, the term “may” is being used.

My interpretation is that by use of the word “may”, this is an option. This is a choice of the designated authority. While we do not have much more specific—specific instructions if the intention for it is to be mandatory, and we put that the designated authority—we should not say “may” but we should say “is required to”, so it changes the dynamics of giving them an option or a choice. In addition, why should this be left up to each designated authority?

Sen. Dr. Tim Gopeesingh raised the question of the merits of a central authority and also Sen. Bisramsingh did speak about central authority. Now, the approach here has been to decentralize the process, and, of course, there are advantages to decentralization.

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

Sen. D. Teemal: But it is just that in terms of why the consideration was not given to a central authority. Because to me a major omission—it was mentioned—that in the case of complaints, where will the whistleblower go?—because the whistleblower has a complaint, he or she cannot go to the reporting officer or the reporting unit because there is a complaint. In such a case, you know, consideration in lack of a central authority, maybe the Office of the Ombudsman would have to come in here.

So we have a dedicated Ombudsman for getting engaged in terms of whistleblowing to be a source or a possible solution for whistleblower complaints.

Because if there is no agency or means or avenue for complaints, again, it is a serious deterrent to the effectiveness of this legislation. I have to cut short, the time is limited. But in closing, I will just want to point out, Attorney General, in Schedule I, the 13th designated authority is listed as the National Physical Planning Authority and, as far as I understand, the Planning and Facilitation of Development Act 2014 has not been proclaimed as yet.

So I am just wondering about the inclusion of 13, the National Physical Planning Authority of Trinidad and Tobago, as one of the designated authorities and whether or not we should be using the Town and Country Planning Division of the Ministry of Planning and Development as the designated authority until the Planning and Facilitation of Development Act, 2014, is proclaimed. And then, section 28, the Attorney General was very specific in terms of removing the requirement for the super majority of the constitutional requirements in this Bill, and he said Senior Counsel had advised for the inclusion of section 28 dealing with regulations.

Hon. Attorney General, why are we using the term “may”? If section 28 is so critical that it had to be included to amend the 2019 Bill, why are we using “may” because, to me, “may” provides you with the option or choice? It is not mandatory, and whether or not we should be using the term “is required to” instead of “may”. Mr. President, I thank you.

Hon. Senators: [*Desk thumping*]

Mr. President: Sen. London.

Hon. Senators: [*Desk thumping*]

Sen. Karmaria London: Mr. President, thank you for affording me the opportunity to contribute on this Bill. I would like to also thank the hon. Prime Minister, Dr. Keith Rowley, for affording me the opportunity to serve as a Senator

in this august House.

Hon. Senators: [*Desk thumping*]

Sen. K. London: Mr. President, the Whistleblower Protection Bill, 2022, as amended in the House of Representatives stands as a pivotal piece of legislation aimed at combating corruption and other wrongdoings in both the public and private sectors of Trinidad and Tobago. This Bill is not just about encouraging and facilitating disclosures of improper conduct. It is about protecting those brave individuals who may come forward with vital information from facing detrimental actions. Mr. President, the importance of supporting this Bill cannot be overstated and here is why.

First and foremost, the Whistleblower Protection Bill provides a legal framework to empower and protect whistleblowers. Whistleblowers play a critical role in uncovering corruption and misconduct that would otherwise go unnoticed. By ensuring that whistleblowers are shielded from detrimental actions, such as harassment, intimidation or victimization, this Bill creates a safer environment for individuals to speak up against wrongdoing.

Furthermore, Mr. President, this Bill establishes a clear guideline for disclosures of improper conduct, both internally within organizations and externally, designated authorities. The structured approach ensures that disclosures are handled in a systematic and effective manner leading to proper investigations and actions being taken against misconduct. Mr. President, this Bill also prohibits the obstruction of whistleblowing reporting personnel, sending a clear message that interference with the disclosure process will not be tolerated.

Hon. Senators: [*Desk thumping*]

Sen. K. London: Additionally, this Bill provides immunity to whistleblowers from criminal, civil and disciplinary proceedings for making protected disclosures.

This immunity is crucial in encouraging individuals to come forward without fear of reprisal for doing the right thing. It ensures that those who take the courageous step of reporting misconduct are not penalized for their actions but instead are supported and protected. Moreover, Mr. President, the Bill includes provisions for civil remedies in case detrimental actions are taken against whistleblowers. This ensures that whistleblowers have legal recourse in the face of retaliation for their disclosures, further strengthening their protection under the law.

In conclusion, Mr. President, the Whistleblower Protection Bill, 2022, is a significant step towards fostering transparency, accountability and integrity in Trinidad and Tobago. By supporting this legislation we are not just upholding the principles of good governance, but we are also standing up for those who have the courage to speak out against corruption and wrongdoings.

Hon. Senators: [*Desk thumping*]

Sen. K. London: Mr. President, it is essential to back this Bill to create a society where honesty and accountability are valued and where those who expose misconduct are safeguarded and supported.

In light of the above arguments, it is imperative that all stakeholders, including government officials, lawmakers, organizations and citizens come together to support and implement the Whistleblower Protection Bill, 2022, for the greater good of Trinidad and Tobago. It is with this contribution, I pledge my whole heart support towards this Bill. I thank you.

Hon. Senators: [*Desk thumping*]

Mr. President: Hon. Senators, before I call on the next speaker, permit me to congratulate Sen. London on her maiden contribution in this Chamber.

Hon. Senators: [*Desk thumping*]

Mr. President: Sen. Roberts.

Hon. Senators: [*Desk thumping*]

Sen. Anil Roberts: Thank you, Mr. President. Let me first take this time, on behalf of the Leader of the Opposition and the United National Congress, to send our prayers to the people of Jamaica and all the rest of the Caribbean who still lie in danger of Hurricane Beryl, and to send our heartfelt emotional support and positivity to all the islands who have been devastated, Carriacou, Petite Martinique, St. Vincent, Dominica, St. Lucia; Tobago got a little touch. I commend the people of Trinidad and Tobago for their selflessness in providing instantaneous support and sending all that is necessary to help our brothers and sisters in the Caribbean.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: I will also commend—I wish she was here because this is the first time—it is a historic moment, I commend the hon. Minister of Trade and Industry for also providing support quickly and swiftly to those who are most in need. Too bad she is not here to hear it. She should have been there. She will probably replay it.

Hon. Senator: What!

Sen. A. Roberts: That is about it. “Daiz de kumbaya done dey”.

Hon. Senators: [*Laughter*]

Sen. A. Roberts: Let me deal with hon. Sen. Teemal. Hon. Sen. Teemal brilliantly asked the PNM to provide lawyers for whistleblowers who blow whistle on the PNM. Hon. Sen. Teemal, this PNM Government would not even pay for the attorneys of dead divers’ families to defend themselves and get some sort of recompense. This PNM Government would not even—they try to fight to pay for attorneys for the Auditor General to fight the very said PNM Government.

12.05 p.m.

So I do not think you should hold your breath waiting for this PNM to pay for any legal representation, for any whistleblower who “blowing whistle” on the PNM.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: Some Senators in the debate yesterday and today said, “The Achilles’ heel of our nation’s progress is corruption”. That came from that side. “Well, I nearly faint” because I really could not believe that, because that side is the PNM. That side has been in power, 52 of 68 years, as we had any sort of governance, whether it was premier or Prime Minister in this country. And they stand there and talk “that corruption just drop from de sky off ah corbeaux foot”, But the PNM has created—I heard hon. Senators say the culture of this country is corruption and corruption. Well, the PNM has ruled. The leaders lead. The leaders set culture. If the culture is corruption, “then PNM put it dey”.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: Another Senator stated that we cannot do the same things over and over and expect different results.

Sen. Dr. Ibrahim: Mr. President.

Mr. President: Senator, we have a Point of Order.

Sen. Dr. Ibrahim: Mr. President, 46(6).

Mr. President: Okay, so again, the Senator is creating his context right now. He has just begun his contribution. I will allow you to continue but of course, just be careful.

Sen. A. Roberts: Mr. President, I am not sure that the hon. Vice-President was giving us some real scientific contributions yesterday—I was very impressed—in a different debate. But now, today, when I am talking about culture, he does not

understand leadership creates culture. A leader, the reason you have a cricket captain, it creates a culture of professionalism, ability to win. This why India was able to win the world cup that we should have played in the oval. But it is alright. The culture of any organization, nation or country, is determined by the leadership. If the PNM has led us for 52 years out of 68 and you, the PNM, are saying that our culture is corrupt, then you must look in the mirror, hon. Senator.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: We cannot do the same things over and over and expect different results, I heard from hon. Senators. Well, I agree. Because we have been doing the same thing. The PNM boasts that “dem always come back”, like a bad rash. “No matter who get together and vote dem out; dey always come back.” We must stop bringing them back.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: Get rid of the PNM and then things will go smooth. This Bill:

“An Act to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector to protect persons making those disclosures from detrimental action...”

—brought by the PNM “inno”?

Let me take you to a little recent history of the PNM. August 13, 2018, a PNM member, a whistleblower was suspended and expelled from the PNM for whistleblowing. But the PNM is coming here to bring whistleblower and tell the population live on TV and radio, that they are going to fight corruption. I take you to *Loop* news, *TV6* news, *Express* news, you all could check it. August 13, 2018.
Harry:

“Ragoonanan said he believed he was targeted because rumours had been

circulating that he had unearthed the corruption at the Port as it relates to the ongoing Sea Bridge fiasco with the Bridgemans Services Group LP. He said he remains a devoted PNM supporter despite the unfair treatment meted out to him.”

This is a whistleblower:

“I am a member of the PNM and I support the duly elected leader at all times”

—said Ragoonanan.

“I don’t see any cause for my suspension in the party. There is no section of the constitution in which I am qualified to be suspended. I have been accused of exposing the corruption in the fast ferry situation, the tendering procedure.”

“The People’s National Movement...”,

—*Guardian*, same date, August 13, 2018. *Guardian*:

“The People’s National Movement voted yesterday to expel...”—

Mr. President: Senator, do you have a title of that article?

Sen. A. Roberts: Yes.

Mr. President: Proceed.

Sen. A. Roberts: PNM stall watch expelled. PNM’s:

“...National Movement voted yesterday...”

—voted, you know? And I have to sit here and listen to all of this talk about corruption busting, and whistleblowing and protection and bring it on, and “the UNC afraid ting”. “We eh afraid nothing.” Especially, not from the PNM.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts:

“The People’s National Movement voted yesterday to expel suspended long-

standing member and financier Harry Ragoonanan from the party. At a press conference at Balisier House...”

—this is the smaller Balisier House, not the \$120 million one with “fancy air-condition and ting now, that we doh know where the money come from”. This was in the original small one, right.

“...Colm Imbert said none of the general council members voted against the disciplinary committee’s recommendation...”

—so it was unanimous. PNM’s attack, and thwarting, and punishing, and suspending, and expelling a whistleblower, was unanimous. “Allyuh coming with whistleblower to tell me bout allyuh care bout people and allyuh want information?”

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: And the point about this whistleblower, this was not PNM “blowing whistle in the wind” because “they blow whistle and like dey have asthma”. “The whistle never go nowhere”. They just keep blowing. But this whistleblower, the hon. Prime Minister and Member for Diego Martin West, stated in Tobago, in a meeting about the Bridgemans company and the charter party agreement, that that was crooked money. So the Prime Minister and leader of the PNM agreed with the whistleblower, that something was awry, something was crooked and “yet de man still get bust throat, suspended and pelt out of the PNM”. “Ah say PNM. Allyuh give me a rest here, nah, ah can’t take no more.”

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: And on top of that, as the article continues, they go on to talk about other officers of the PNM who talking, you know. Some of them we still do not know. “They didn’t need no whistle to blow” but \$143,000, in cash, that they say “come out ah bank but did not come out ah de bank but went in ah next bank”.

They did not need a whistleblower. But where that reach? Where that reach with the police? Because we are, here. Everybody is talking like whistleblowing is the be-all and end-all to corruption now, that we in society, we going to be a country under the PNM, where we get value for money, proper tendering, and so on, because of this whistleblower. “But yuh could blow whistle any time. Yuh could blow whistle by de police. You could blow whistle by the Integrity Commission. Yuh could blow whistle anywhere, but when whistle blow under the PNM, ting does just stop.” The PNM is so disrespectful it boggles the mind.

Even to someone like me, who knows the PNM dearly, I am still shocked when I come here, because we have been in this Senate parliamentary term for a long time. I commented about two months ago, that this is the lowest level of work. We have many Tuesdays when we do not come. Now, “I doh mind because me eh really look forward to sitting across and looking at my PNM colleagues”. I prefer to stay home and watch my child play tennis or study or something. However, all of a sudden, at the end of the term, “the PNM coming with a haste, to bring Bill here, bring ting here”. “Say dey do this. Come back here. Come stay here till midnight come.” Why is that? There has been no legislative agenda. This is a Government that is running a country. Their decisions impact lives. Their decisions impact the safety and security of the country “and we cah have a legislative agenda but at the end ah de term, allyuh, drink coffee and stay awake. Come and listen to the PNM”. That is disrespect of the highest order, on top of incompetence.

Hon. Senators: [*Desk thumping*]

Sen. Mitchell: 46(1) please. It is completely irrelevant.

Mr. President: So Sen. Roberts, 46(1) will be upheld. At this point in time, you have made your introduction. You have created the context. So I would ask you

to refer to the clauses in the Bill that is before us.

Sen. A. Roberts: Yes, I will refer to many clauses, Mr. President, but I came late in the batting order, so I have to respond to some of my colleagues. So let me respond to some of the comments made by independent Sen. Dr. Remy. She said that we are 76th out of 180 in the Corruption Perception Index and that is woeful and that is terrible. She suggests also that this whistleblower, passing this, will help us move up in those ranks. I would also like to proffer, that passing strong procurement legislation with teeth, that included a special majority. That included disposal of assets, included legal fees, included medical supplies, that keeping that legislation strong, to protect people's money, would have had an impact on the Corruption Perception Index. Had we not, in this Parliament, in this Red House, voted to water down a procurement legislation that was strong, that was designed to protect people's money, that was designed to make it difficult, that was designed to keep six degrees of whatever contact, of whatever the Senator said there, that was meant to keep eyes on the money and make it difficult for those with nefarious goals to touch it, how did we then in this Red House approve the watering down of procurement legislation and now we complain—

12.15 p.m.

Sen. Mitchell: Mr. President, 46(1) and 53(1)(b), please.

Mr. President: So, yes, Sen. Roberts, you have indicated what Sen. Dr. Dillon-Remy said and you are making the rebuttal argument towards that but again, you are going a little bit too broad in the making of that argument, in terms of the procurement regulations. Someone listening can think that you are debating procurement regulations, which is not the case. So again, if you are rebutting, rebut, but keep it short.

Sen. A. Roberts: Yes, thank you.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: I am not debating procurement legislation. I am just debating anti-corruption measures. I heard the words “slew of legislation” from the hon. Attorney General, like two “does mean” a slew. I did not that know I would have to check my thesaurus, but I am speaking to what this Government does. They come here, they take measures and decisions to promote corruption or to allow corruption to exist, and to be encouraged, and then come here to claim that they are corruption busters. The hon. Minister of Social Development and Family Services said, “It is a debate,” so we are debating.

Now, the hon. Senator also talked about John Maxwell. I “doh” know much about John Maxwell, but she said that John Maxwell spoke about the high road—leaders should take the high road and therefore, they set the culture of the organization—hon. Vice-President of the Senate, Maxwell, right? But what was strikingly amazing is that the leaders stopped just below the Government. So the Permanent Secretaries, the directors, the CEOs, all of them need to be this high road level but not the Prime Minister, not the Cabinet, not the Ministers, not those in charge. I put it to you from the side of the UNC that it is incumbent upon the leaders from the Prime Minister, the Cabinet and all the Ministers to follow John Maxwell and be the high road—

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts:—and therefore, the culture will change. So to stand here and talk about leaders just below, and leave the leaders who tell us that they are in charge, and they will be in our faces from right here like a “jumbie from Les Coteaux”, I find that unfortunate. It is incumbent on the leaders to lead, and lead us out of this corrupt society. And the only way for us to do that is for the Prime Minister to not play games, call the elections, and we could move you all out so we

could lead—

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts:—in the realm of John Maxwell. You know, it was amazing, Mr. President? I am not very artful or skilful in the domestic arts to put it bluntly, I leave the place dirty. I do not go and wash dishes, and make up the bed, and sweep and thing. It is a failure on my part, but I was a spoiled child. That is like me coming home at any time and saying the place is dirty, when “is I make de place dirty, I eh wash meh dishes, I throw meh shoes on de ground”, I did not clean up, but I have the audacity to come and say, “De place dirty”. That is the PNM. You all have created the corruption, created the systems, abused the institution and now you come to say, “We come to clean up corruption with a piece of paper.”

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: Whistle could blow at any time. “De whistle done blow” on Bridgemans, what happened? “De whistle done blow” on \$143,000 cash, nothing happened. “De whistle done” blow on the *Galleons Passage*, PNM Ministers procuring, nothing happened. “Whistle done blow” on the sale of two Porsches by one Minister and saying, in the Parliament, the wrong number that time—

Mr. President: Senator—

Sen. A. Roberts:—no whistle “eh” blow—

Mr. President: Sen. Roberts, that is the context in which you created in the first 10 minutes of your contribution. What I will ask you to do now, we have 29 clauses in the Bill, please get to the clauses in the Bill. Because even though you are responding to Senators that have gone before, from last night to now, you would notice that every single Senator that has spoken, at some point, got to clauses in the Bill and gave their observations thereof.

Sen. A. Roberts: Okay.

Mr. President: So I will ask you do to the same now.

Sen. A. Roberts: I will go to the clauses in the Bill immediately, Sir, and then come back to come back to responding, if you like that kind of mix. I could do that too. Right? So, let us go to clause 7. It is very interesting, this clause 7 of the Bill. Clause 7(1) says:

“A disclosure is a protected disclosure if—

- (b) it is made in good faith;
- (c) at the time of making the disclosure, the whistleblower reasonably believes, based on the information he has at that time, that—
 - (i) the information disclosed, and any allegation contained in it, are substantially true...”

But we can continue to clause 7(2):

“A disclosure is not a protected disclosure if the whistleblower discloses information which he knows or ought reasonably to...”—know—“...is false.”

This is very interesting, especially when it is read in conjunction with clause 4, which give this Bill some retroactivity.

Let us read clause 4. Since “all yuh PNM like clause, leh we go with clause”.

“This Act applies to any disclosure made after the coming into force of this Act, irrespective of whether or not the conduct or the improper conduct to which the disclosure relates occurred before or after the coming into force of this Act.”

Very interesting. Now, I could tell you all, you all are going to see yourself in the court, but we are passing this now. PNM has the majority, simple majority—all

sorts of discussion of why you took away the special majority and simple majority, “oh” no problem, but with this retroactivity, accompanied with the clauses that I read before, clause 7(2):

“A disclosure is not a protected disclosure if the whistleblower discloses information which he knows or ought reasonably to have known, is false.”

I now take you to 2013, Parliament of Trinidad and Tobago, *Hansard*, a Motion brought into the Parliament, a no confidence in a sitting Prime Minister, and I am just going to quote from the *Hansard* of that day of the Member for Diego Martin West. This is the first part—because you said that if you knew it was false, then you are also liable—in clauses 22(1)(e) and 22(2), you are liable:

“(2)(a) summary conviction to a fine of fifteen thousand dollars and to imprisonment for two years...”

—and this is retroactive—and clause (2)(b):

“conviction on indictment to a fine of fifty thousand dollars and to imprisonment of ten years.”

So let us read a little from the *Hansard* of the Member for Diego Martin West, taken on Monday, May 20, 2013, and the Member says:

“Mr. Speaker, I crave your indulgence at the beginning of this presentation to quote three statements from some very prominent people in the context of freedom of speech, which seems to be very apt at this point today. I want to quote from *May’s* in the context of freedom of speech...”

And the Member for Diego Martin West continued:

“...*May’s*:

“Subject to the rules of order in debate—a Member may state whatever he thinks—in debate, however offensive it may be to the feelings or injurious to the character, of individuals, and he is

protected by his privilege from any action for libel, as well as any other question or molestation.”

The Member for Diego Martin West then went, secondly, to show what he knew he was going to do was not to give information that was factual, or fact-based, or evidence-based.

The second quote he took was from:

“...Enoch Powell a very prominent Northern Ireland parliamentarian in the UK where he said, in May 1978...”—

Sen. Mitchell: Mr. President, excuse me. Mr. President, 46(6), imputing improper motives and 46(8).

Hon. Senators: [*Interruption*]

Dr. Gopeesingh: [*Inaudible*]

Sen. A. Roberts: Leave him “nah.” Leave him.

Mr. President: So 46(6) with the imputation of improper motives, there is a slight anticipation in relation to where you are going. We all understand what it is you are trying as it relates to this particular Bill. Just be extremely careful with how you are phrasing that.

Sen. A. Roberts: Thank you, Sir. Mr. President, I do not know what the hon. Ministers is getting jumpy for. These are the words of his leader, the words of the Prime Minister, the words of the man who is bringing this legislative agenda on whistleblowing here, so what are you frightened about? The hon. Prime Minister now, but then he was Leader of the Opposition, continued, he said that Enoch Powell said:

“...it is part of the privilege of—the—‘House’—of Commons—
‘and...individual Members to—say in this place not only what they could
not say outside without the risk of process but to be able to say that to

which grave objection is taken by—other’—honourable—‘Member.’”

The third example of the well-researched Member for Diego Martin West, as he brought “Emailgate” into the Parliament, was from the Speaker of the House in Australia, Speaker Snedden, and he said:

“...I feel that we do not need to invent any whereby a Speaker or anybody else should make the judgment as to whether a Member should be allowed to proceed with his privileged attack on an individual. It would not be within the capacity of a Speaker to make the right judgment because he would not have the facts. He would not know. Therefore the person raising the matter must bear the consequences himself. But I would not like to see that privilege limited or diminished in any way.”

And he continued.

Now, one must recall that this was the Member for Diego Martin West bringing things that were not emails. Because you are saying that in clause 7(2), you ought to have known, should have known, or reasonably known, if 29 out of the 31 things could not even go up in the cloud because they were not email addresses, they did not have sufficient characters to be an email address, someone ought to have known. The hon. Member for Diego Martin West—

Sen. Dr. Browne: Mr. President, on a point of order, 46(1). Whistleblower in the context of this Act is clearly defined in the Bill itself and therefore, everything the Member is saying is not relevant to this Bill.

Mr. President: Okay. So, Sen. Roberts, I get the point now, as you have developed it, that you are trying to make. It could only lead to one end conclusion as it relates to this Bill and clause 4, which you have identified, which has some level of retroactivity to it.

Sen. A. Roberts: And clause 7.

Mr. President: Exactly. So what I am saying is that, one, you have gone quite wide in terms of reading what was in the *Hansard* record of that particular day to make the very point that that individual would fall under breach of clause 4 after this Bill is passed because of retroactivity. Again, 46(6), in that relation, would come into play if that point is being made. So I would ask you to just move on from that point now because 46(6) would be in breach at the end of the conclusion of that point.

Sen. A. Roberts: Thank you, Mr. President. I think I have made the point enough, and they know enough, and they know what is right, and they what is wrong, and they know what is whistleblowing, and they know what is fabrication. The PNM knows what is untruth and what cannot be proven, and all of them are ashamed, and they stand ashamed here today.

So I will move on, but I am just letting them know that the population understands and knows who you are, so do not come here and pretend in the Senate that you all came here to bring legislation to do something, which is against your very DNA.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: The hon. Senator said, “She did not want to see.” You see, because if in the slew of legislation, and if we are to believe the PNM and what they brought here today, that they want to fight corruption, we must look at their track record, we must look at them in Government, what they have done.

Mr. President: Senator, you are making the same point again.

Sen. A. Roberts: No, it is not.

Mr. President: Have a seat. Have a seat. You are making the same point that you started off with, which is, again, just to paraphrase, that you are bringing a piece of legislation but you are, you know, guilty, for example, of doing to same thing. I

have heard that just few moments ago. You stated it at 12.03 p.m. when you started, it is now 12.29 p.m. What I am looking for at this point, at the position that you have come in to this debate, which is quite far down, is to look at the clauses on the Bill, refer to a particular clause and state any observations or opinions that you have on that clause without being tedious in repetition to anything that has been said before. Continue, Senator.

12.30 p.m.

Sen. A. Roberts: Thank you, Mr. President. It is not my fault that the PNM is guilty over and over and over in different elements of doing the wrong thing. It is not just one element. The anti-corruption fight takes many forms. You have to have corporate governance, you have to have tender procedures, you have to have competition, you have to have evaluation. As the hon. Sen. Hislop said, you have to have six steps of separation, but he was boasting. I think in Tobago they have no separation, it is one on one. I nearly thought it was Desmond Carty talking here in the Senate, the great PNM Desmond Carty who say, “all ah we tief” because they were not understanding that corporate governance provides checks and balances, whistleblower legislation is just one element.

So when the hon. Independent Sen. Dr. Dillon-Remy says, she does not like the meme saying that, “boy, Beryl did not come because in Trinidad dey does tief wind”, then she must understand where that comes from. Now that originated, that statement originated on the afternoon drive on Power 102 in 2009 by the great Dennis Hall aka “Sprangalang”. Is he who started that, so I am glad that it is still going. Right? But that is where it is originated, on the airwaves of Power 102.

But the Senator said, she does not want to see businessmen in the country meet face to face to get something under the table. But we see Prime Ministers and Ministers meeting face to face with goods and service providers while active

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tenders are going on. That is not good corporate governance, and no whistleblower legislation, no piece of paper could eliminate that culture in a developed country.

Sen. Dr. Browne: Mr. President, on a point of order. Standing Order 53(1)(b). We were on to clauses, but it seems we are off of it now.

Mr. President: Okay. So, Senator, what I am trying to get across is that as much as you are attempting to respond to statements and comments made by Senators gone before, the comments that you have chosen to respond to, are the ones that are borderline—

Sen. A. Roberts: Okay, Sir.

Mr. President:—in relation to the Bill that is before us. Again, what I am listening for at this juncture is a clause, an observation in relation to that clause. Many Senators have spoken to that, they have identified the clause and gave their observations and such. What you are talking about with “tief wind” and all of that, is just added stuff. What we are looking for is the actual clause and your observations on that.

Sen. A. Roberts: Thank you.

Mr. President: Continue.

Sen. A. Roberts: Mr. President, clause 24. They could dance, they could hide, they could do squats, but they cannot get away from the being the most incompetent Government in the history of Trinidad and Tobago.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: Six and 24.

“A person who obstructs a whistleblowing reporting officer or director or other officer of a whistleblowing reports unit in the performance of his duties under this Act commits an offence and is liable on summary to conviction to a fine of fifteen thousand dollars and...imprisonment for two

years.”

Now when you hear this and you see what takes place, this Bill is coming way too late, because one would want to wonder how did the hon. Prime Minister of the PNM find out that a merit list was due to go to the Office of the President in August 11, 2021 and therefore, how did he act and interact to prevent that from going forward? Was there any benefit? They say that a whistleblower cannot and should not receive any benefit. They should act in good faith. What was the position in that case?

When I was in the Parliament in 2011, I really could not understand because the PNM had a Prime Minister called Patrick Mervyn Augustus Manning, good man, I have no problem with him. I may have disagreed with his policies and so on, but he sat and he told us about an instance that occurred in 1971, because I had been enquiring, why would this Prime Minister not deal with acts or known acts or alleged acts of corruption with people under his Government like Calder Hart, Utharo Rao, Monteil and so on? The hon. Prime Minister who was then in chair number 12, he was now just a Member of Parliament for San Fernando East, he regaled the Parliament about a story which is a very critical story that all of us as leaders and Members of Parliament must know. He said that he was a parliamentary secretary in the Ministry of Energy in 1971. He had uncovered some information about corruption in Tesoro in the oil companies and so on, he had investigated, he had found this information and he was going to his Prime Minister, Dr. Williams, to make his report. He told us with great detail. Dr. Williams took a pull of his cigarette put it in a yellow ashtray. He took a pencil from out of his ears and listened to every word of this whistleblower, Patrick Mervyn Augustus Manning, Parliamentary Secretary in the Ministry of Energy. When he was finished presenting his arguments, he said the hon. Prime Minister

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took the pencil out and put a line through all of his evidence and told him, “Young man, go and do the job I told you to do and do not come with this”.

Now when we see that culture, when understand that that is a young individual who is later to become the Prime Minister, and then we see that he took the same position that he was taught, then we have to understand when I see young Senators like Sen. Hislop talking about the Point Fortin highway and talking about corruption in the UNC and that the PNM is not corrupt, yet in the Point Fortin highway the very PNM for three years has appointed a commission of enquiry, spent \$17 million and not one day has that commission—

Mr. President: So, Senator, Senator, I gave you a little berth because you did what I had guided you on, in terms of calling out the clause, but I have to point out that when I ask you to call out a clause, you call out a clause, you read the clause and then you go right back to the very point that you were making at the start of the contribution, which means that it is not following exactly what it is I am asking you to do. So do not read out the clause and then go back to the very point that you made at 12.03 and it is now 12.36 because you are still in breach of tedious repetition if you are doing that. If you look at clause 24, which you just read, what you just stated before I rose to my legs has nothing to do with that. It has to do with what you stated in the first five minutes. So again—Sen. Roberts, have a seat—call the clause, state your observations on the clause, but it has to be relevant. Do not go back to what you stated in the first part.

Sen. A. Roberts: Thank you, Mr. President, the last time I lost two minutes, not it is a next, but it is okay. Let me go to clause—this clause 23(3).

Hon. Senators: Santa Claus.

Sen. A. Roberts: Yes. No Santa Claus.

“whether in the making of the disclosure to the whistleblowing reports unit,

the employee complied with the internal procedures referred to in section 11(1).”

Part (3):

“Where a person makes a disclosure to a whistleblowing reports unit, the director of the whistleblowing reports unit shall, within forty-five days after receiving the disclosure, consider and reach a conclusion as to whether it is appropriate for the disclosure to be made externally.”

This had to be madness. Who is this director? What is the qualification? Is this a police officer? Is this a Director of Public Prosecutions? Is this an attorney? Who is this person to determine whether information given to them can be made or allowed to be made externally? What does externally mean? Does it mean that they come now and say anything and go and express or come in the Parliament and talk out, open channels on the airwaves and say anything whether substantiated, unsubstantiated which is the norm of the PNM. So when we this, we see that the PNM is creating a layer to make their modus operandi in politics, especially in the electoral process where they get on platform and just tell untruths, repeat it a thousand times and come in here.

We even heard yesterday with—it is linking, “doh, yuh see”—Sen. Hislop when he was given a little nudge by Sen. Lezama-Lee Sing. He talked about LifeSport, but you could see LifeSport they have spoken about, they have talked about it over 10 years, but they cannot go outside and call one allegation on the Minister Anil O.E. Roberts in anything in LifeSport. This is the audit that has been quashed. This audit, if you look in that audit, you cannot find the Minister, the Minister’s position, the name Anil Roberts anywhere. That has been quashed, but they keep coming to repeat their untruths, to give innuendo, and part and parcel of this whistleblower is to give credence or credibility through this creation of some

unit and director who they would appoint to give whatever or somebody wants to say, some form of credibility. So when the PNM comes with it, I challenge anyone of them if they have testicular fortitude—

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

Sen. A. Roberts: Yes.—like the strong, tough Randall Mitchell to go outside there and call Anil Roberts name in anything. They have spent \$50 million, they have all of the police, they control what they want and they can find nothing. So do not come here with whistleblower legislation pretending that you are coming to fight corruption.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: We heard the hon. Prime Minister 10 days ago talk about, just so he offered and proffered this information that he was sleeping somewhere early in the morning and heard that the DPP was going to bring 17 charges on him, and his lawyers got to action and he dealt with it. Well, that was a secret, that is why it was overturned because he was not informed that those charges were going to be brought. Now we see in this whistleblower legislation brought by the very man who said that he was hurt and it bothered him that this Integrity Commotion had gone so far to carry 17 charges by the DPP and police were coming down by him without him being given the opportunity to respond, is bringing whistleblower legislation with those same clauses in here, giving secret, anonymous accusations from unknown people that could be disseminated externally by a director appointed by whom, and that is a problem with this legislation.

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts: I can blow a whistle right in here, but I will not bother, I will blow it somewhere else, about a Minister there who is building, fixing up house and so on in Cascade and making bills out to a dead man's name. That is a very

serious thing. What a whistleblower? Who do I blow that whistle to now? Anybody on that side? Will that go anywhere? Will it reach anywhere?

Hon. Senators: [*Laughter*]

Sen. A. Roberts: The hon. Independent Sen. Vieira SC said, with this Bill even cowards will come forward with information. Unfortunately, Senator, the vindictive culture of the PNM, the wicked culture of the PNM, the corrupt culture of the PNM has exalted the corrupt over the righteous, and has made cowards of billionaires. It has made cowards of millionaires. It has made cowards of police, ex-police, lawyers. It has made cowards of public servants, independent officers.

Sen. Dr. Browne: Mr. President, Standing Order 53(1)(b).

Mr. President: So again, Sen. Roberts, you have one minute left to wrap up.

Sen. A. Roberts: Thank you. Any injury time, Sir? Because it is becoming, I mean—

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts:—even in the Euro championships and the Copa América we get injury time. The independent officeholders, retired judges, all of our nation have become cowards under the weight of the vindictive PNM. Even senior counsels have become cowards as they wait for a brief and wait for the PNM's permission to speak. Our country is in a mess. The culture must change. The PNM created the culture, the PNM imprints the culture. For the culture to change, the PNM must go. "Alyuh could call" Standing Order from now to thy kingdom come—

Hon. Senators: [*Desk thumping*]

Sen. A. Roberts:—but the people are waiting for you and they will riot with their finger one by one and eliminate the PNM from the culture because the PNM is patiently corrupt. Thank you, Mr. President.

Hon. Senators: [*Desk thumping*]

Mr. President: Sen. Maharaj.

Hon. Senators: [*Desk thumping*]

Sen. Sunity Maharaj: Thank you, Mr. President. In the nine months that I have been in this Senate this is the most exciting piece of legislation that has come before me. It is also potentially revolutionary, if we know what to do with it because by great fear, as much as I have hope, my great fear is that it may be too hot to handle. And with that I can parallel it really to the procurement legislation, because procurement legislation, the Procurement Act has so much of what we needed to straighten out the corruption, but we were not ready and we started to take shortcuts and it is a shadow of itself though still on its legs, and perhaps we may grow into that responsibility. This time however, we are coming to corruption from the perspective of the other end of the spectrum, and I would like to think it is the ordinary person who is described as an employee. This is where we are coming up against a very worrying culture of fear in the society. We say all the time, see something, say something, and you are seeing something and you are not saying something. Why? It is a very logical response of a people who might have, you know, might have very big mouths and talk a lot, but the minute you say, stand up and say it by yourself, they say, “not me and that”, you know, “I did not see. I do not know. I do not want to know”.

12.45 p.m.

We have to restore our confidence, people’s confidence. I should not say restore, I do not think we really ever had that confidence, but we have to grow into the confidence that is required of an independent people in a sovereign State. So to the extent that this piece of legislation puts protection in the hands of those who would like to but are afraid, and justifiably in many cases, I can come to the point, as someone once said, if is something is worth doing, it is worth doing badly. This

is not to say that I am not continuing in the pursuit of elusive quality of perfection, I think was the person accused of doing yesterday, as though mediocrity is where we should wallow.

This is not going to be—my hope for this legislation is tempered by fear that at the first sign of its potential power, we might run, and I am talking about everybody, because employers are all over the private sector. So I will come to try to follow the stricture from the President of dealing—I felt that my colleagues have dealt very well, with the clause-by-clause, both on the Opposition and amongst the Independence in terms, of finding the problem points, opening up the discussion. We need this legislation to work and therefore to the extent that it needs more work, we should encourage it.

Like my colleague Sen. Vieira, I sat with the Bill from 2019 and 2022, and I went through them clause-by-clause, I found one minor editing change and of course, in the regulations where it has a little more detail, it is exactly the same. We have been told that the Attorney General—well the legal advice from him is that this does not require a special majority, and the Opposition is convinced it does. I would encourage the Opposition to go to the court at the first possible opportunity, do not wait for when we have a case.

Sen. Lutchmedial-Ramdial: Wow.

Sen. S. Maharaj: When somebody should be found guilty but they cannot because it is found to be unconstitutional. We want to know that we stand on good ground with this piece of legislation and if it is found to be unconstitutional, we will come back and get it is on it legs properly. We want to, all day, whatever weakness because we need this piece of legislation to work, we do not need it to adorn the law books.

So, I want to deal with areas of the Bill here, that under it are conditions that

we need to discuss a bit. For example, section 7 “Protected Disclosures”:

“(1) An employee of an organisation may make a disclosure of improper conduct to a whistleblowing reporting officer or a whistleblowing reports unit...”

Now, I do not know how we are selecting these individuals, what training, what is the code, or the protocol? I imagine those will come with the regulations or whatever you want to describe them that will come. What we are doing—this is almost like the procurement officers in various Ministries. They have to be insulated from the reporting structure and the influence of their own bosses to do their work properly. We have also the example of the officers who work in the freedom of information units. These individuals have to be insulated and operate independent, and be able to conform and to follow a clear protocol that applies to every one of them across the board. I do not know how we are going to get that. To me the public sector is the appropriate place to commit. The private sector seems to be not bound to, but employees in that sector can go to any designated authority, whether it is the Bureau of Standards, the Central Bank whichever is the appropriate, you can go.

If you working for a doubles man, it was explained to me, and you find the doubles man, or the corn soup lady is doing something with the food, then you can look at the designated entities and take your report. Taking your report, these are the subjectivity, personal proclivities, biases, ability to withstand perceived threats, but that may not even be real, but the fear of fear that so many of us have. That integrity that has to underpin this operation is not something we can take for granted. We cannot just say “this a manual, follow it”. So that is it is something that we will have to be seriously thought through with as much input as we can, in how to insulate these officers and the person who is receiving.

What if we come to the position where the Permanent Secretary says, “You are under my authority, I need to see that.” How we are going to tell if that happens? Will a person or will that reporting officer become the whistleblower? It can happen, but the biggest fear here is that unless we can do so much work, and cross that threshold of fear this Bill can become just useless. We will continue saying we know but we are not going to say, and we will have ticked off a box on whistleblower legislation that will be meaningless. To have lost that opportunity, that is my fear. Therefore, I think that this is a piece legislation that has to be buttressed by civil society.

We know political parties in office and out of office are two different creatures, right and what you might champion in office you might not champion in Opposition and vice versa, but it is to the society as a whole, it is the rest of the society. It is the transparency, Trinidad and Tobago law association, media association, medical association, community organizations. There is a massive job and I am urging civil society, individuals, and citizens who really want us to get pass this culture of fear that holds us back to get involved in this.

I am finding for the private sector, I think have heard them say they support it, but I would like to hear a more invigorated discussion about this legislation, because it is being passed very quickly. We have not had an awakening, as I have said to revolutionary potential of this, and that can explore to our benefit. I think for example—I can make some other points about this legislation. I think the reporting officer who breaches the confidentiality, that person should get a far more substantial punishment than I think it is \$600,000. In other words money you can pay but just two years other people can get 10 years. I think that person has the sacred responsibility and that they should feel the full weight, because that is great weakness in this that people in positions of authority are inclined to protect

themselves, we know that. So, I am saying I would like to see a sterner fine for that.

In terms of the employers, we are dealing with “Internal Disclosures”:

“(1) An employer shall appoint and keep in his employ such whistleblowing reporting officers as are required for the purposes of this Act.”

Now, these officers, is it one person? Is it a unit? How does one report? You have come, you have blown the whistle and somebody—you are required to write it. I am in agreement, because I think a person who is serious enough about this, but they will only put their name and agree to write if—this is chicken and egg question. They will have to come to the view that they can trust the process, otherwise when say “put in the writing” even if they hold the position they might say “I am not ready do that”.

12.55 p.m.

So we need a few early examples that will imbue people with trust. Whether we will get that or not, that does not mean you cannot manipulate that, we will just have to see whether it brings people out, and I think that this is where the discussion that is needed in the wider society can help shape the regulations that follow. And who is—these are the weaknesses, the areas for clarity:

“An employer shall appoint and keep in his employ such”—

What are the qualifications of these people? Who do you choose? I think Sen. Teemal said, well, you might choose your family, it is a business after all. The reporting officer if you have a sense—you might not even know they are leaking the information. You might not even know, but if you do then I suppose you go to a designated entity and hope that they do not do the same thing. So, I think so much has been said about this law, the whistleblower Bill, that I think is

valid, the question is, whether the Government is willing to take some of these things on board in the interest of getting a very effective and workable piece of legislation. But more importantly, whether the society can be stimulated in taking control and possession of this piece of legislation by the way we extract from it the value that can be had, if we do not see it as belonging to us, if we do not come to the point of having the confidence to activate it and to demonstrate that it actually works, then we will not get anything from it. It will just be useless, but I think, for example, we could well see the back. We have had a case in the past where a woman reported a senior official and got some money and signed a non-disclosure agreement. That is not allowed under this Bill and I think that is really important.

And so this thing about, well, take your money and hush your mouth, just to see the back of that. But if it happens and nobody—if for example it happens, suppose somebody does do that, suppose somebody is bribed to silence, then somebody else seeing a wrong has happened can report that. And so this is a Bill that I am happy to support, fearful that we might not have the courage, and that we might not have the capacity for—and I am not talking about the courage of just Members here, I am talking about the courage as a society. I think this is a Bill to get out into the wider public. I think it is the population that is going to make this Bill happen, and therefore there is a requirement on all of us who identify with civil society, to take it out of this Chamber into the wider society. Thank you.

Hon. Senators: [*Desk thumping*]

Mr. President: Sen. Lutchmedial.

Sen. Jayanti Lutchmedial-Ramdial: Thank you, Mr. President, for the opportunity to join in this debate on this very important piece of legislation. Mr. President, let me start off by saying that when the UNC supports legislation you can be sure that it is good legislation that we are supporting.

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial: We support laws where we believe there has been sufficient thought, we support laws where we are certain that the law can operate in such a way as to encourage or to address the problem that is really being faced by society. We support laws that we believe are for the peace, good order and good governance of Trinidad and Tobago. We support laws where we are given an opportunity to express our concerns, and there is a thoughtful, meaningful, substantial response to those concerns from the Government, and we are satisfied that we have done our duty to the population. Unfortunately, this piece of legislation falls woefully short of that standard,

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial: Woefully short. I have no argument with what the Government says in terms of—we have a problem with corruption and we have to address it. That is a known fact. I do not think anybody can argue with that. It is difficult to sit down here and listen to people talk about corruption and fixing corruption when, you know, somebody blow whistle on them and now they turn around and sue the State because somebody blew the whistle on them and breached their rights. It is very difficult to sit down and listen to a Government talk about they want to fight corruption and protect women, when they have no problem with NDAs being signed and people are paid off to remain quiet because they are being harassed in the work place. It is very difficult to sit down and listen to that, but I have no argument—

Mr. President: Senator, I will not stand so you do not have to sit. But we have heard all of that already, so if you could skip that part and get to the clauses, which I know you would have, we will appreciate it.

Sen. J. Lutchmedial-Ramdial: Yes, Mr. President. I just felt the need to mention

that, because I want them to know that we sit here and we listen, and we give due consideration to what they say. And so I could accept that this legislation is perhaps intended to pursue illegitimate aim of protecting whistleblowers, but that is just only one element of it. It must be done in such a way that the law can withstand scrutiny.

We gave our support yesterday to a piece of legislation that we believe met that threshold, that it could withstand judicial scrutiny, it could withstand a challenge in the court. You see, they are so accustomed to having legislation struck down because of the manner in which they approach this law-making process that it is like they do not care anymore. So Sen. Maharaj who spoke just before me, is saying well, the Opposition should go. We should go and challenge it if that is what we believe. Why should we have to go? Why should the Government be allowed to come here after, as they say, many attempts, acknowledging, and I will get to the very poor excuse being put forward for removing the special majority clause. But, they come here and are willing to push a piece of legislation through Parliament that they know ought to be brought here with a special majority in order for it to be good law—

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial:—and to withstand the level of scrutiny that will come. It will come, and it will come because of everything that I am going to identify in the course of my contribution here today. Because there are several shortcomings, not only legal issues, but in terms of the operation of this law. And I want to give, you know, a compliment to my colleague, Sen. Bisram Singh, who very meticulously, and in a very orderly way went through clause by clause and identified several of the shortcomings of this legislation. She makes my life very easy when she is here because she is able to do that.

But Sen. Bisram Singh highlighted so many issues, and I think it was Sen Teemal—I was not physically here but I was listening. Sen. Teemal said that he would have liked the benefit of having a full JSC process on this. I 100 per cent agree, because all of these issues and how each mechanism in the Bill is supposed to work. It is not just about how functional the legislation could be, you know, it is at which different junctures in the operation and implementation of this legislation the law can be challenged or it can lead to unintended consequences, and those are the things you flesh out in a JSC. And again, a government that wants to and is committed to passing good law would take the time to listen and to do that.

So I say today, if this Government wants to fulfil its duty to the people of Trinidad and Tobago and make good law, withdraw this Bill, send it back to a JSC and let all of the issues be ventilated properly and come back here with a proper piece of legislation that will accomplish the intended aim that you say you have. Because you see, that is why people think there is a nefarious sort of aim on the part of the Government when they come here to shove through this piece of legislation without giving the time and due consideration that it requires. It is a serious piece of law. It is a piece of law that everyone acknowledges from since 2016 come forward, interferes with fundamental rights. Do you just push a piece of legislation through Parliament because there is a time line and the clock is running down on you now, without giving it consideration when it has such serious consequences for people's rights? When you are asking people to utilize a piece of legislation and do something which, as Sen. Dr. Gopeesingh and others have agreed, can actually put somebody's life at risk? No, you make sure you have a good law. And so that is where we are here today.

Let me get to the issue of the special majority. We all heard time and time again about the history of this Bill with respect to the special majority clause and

the decision to remove it. Mr. President, when the Attorney General stands here and says that he has now received advice that he can remove the special majority clause on the basis of the Suraj decision which came in 2022—well, I do not know, maybe he can fool some people with that but he cannot fool me with that. Because Suraj did not change the law. And there is a man who, if he only knows one case, and they give him silk, it is Surratt, and they gave him silk for knowing one case and even he knows that the law long before Suraj—Suraj, the intention of the Suraj case was to try to displace and reverse what has been the law in Surratt as enunciated by Lady Hale that was upheld by the majority in Barry Francis. Those things happened since 2000—and—I think Barry Francis was 2014, Surat was 2006 or '07.

So, is the Attorney General coming here today to try to tell us that when the CPC, Senior Counsel, Ian Macintyre wrote his opinion in 2016, he was not aware of Surratt and Barry Francis? Suraj came after, and Suraj confirmed the position, but that was the law. The law was that if it is that Parliament can pass law if they felt that it was proportional and so on. So coming now to say, well, I have removed it and that being the reason, that is not the reason. The reason is because you do not have the support and you want to push it through so you just removed the special majority clause.

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial: If you believed that there was some big change in circumstances by the Suraj decision of 2022, why did you put the special majority clause in the Bill we dealt with yesterday? Why?

Hon. Senators: “Ahh.” [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial: If you could pass law anyhow you want because Suraj all of a sudden said so in 2022, why did you put the clause in yesterday and

ask us to support you? And I never thought the day would come when I say this, but I have to give a compliment to the Minister of National Security or his speech writer, who gave a very comprehensive, detailed account of the law coming through, Hinds and then Surratt, and then Barry Francis, and the majority and what the minority said, and then finally ending up with Suraj. But if you had listened to what he was saying, you would understand that the law and how we deal with proportionality and that requirement did not change. And the Minister of National Security stood here and said, it is because the court gives greater deference to the special majority when there is a challenge and so on, is why they included it yesterday, so why not include it here today? Do you not want to make the best possible law?

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial: So do not use the excuse of Suraj in 2022 as being the change in circumstance that has caused you to remove the special majority. That is not so. Many others have raised it, but I would reiterate again, you want buy-in, you want confidence in this process, you want a good law? Make the opinion that you say that you have gotten, public.

Sen. Dr. Gopeesingh: Public.

Sen. J. Lutchmedial-Ramdial: Make it public.

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial: We have seen the opinion from the CPC. It went to a joint select committee. It is insulting, not just to us on this side who you asked to support a Bill, but it is insulting to the country, to the nation, to the people who have put you there to do a particular function, to stand up and say, a nameless, faceless senior counsel has now advised me. Well, I hope it is not the same senior counsel that advised them that they could proclaim one section of a law and put off

an election. I hope it is not the same senior counsel that advised them to send a pre-action protocol letter to the Auditor General instead of coming here to seek a proper extension of time to lay a report. Because people of this country are tired. They are tired of the mistakes and the mishaps on the part of this Government, and so I say today, if you are relying on a legal opinion for something as serious as this, make it public. Make it public.

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial: Circulate it to the Members of this House, who you are asking to support you without that special majority clause, and tell us why. Why you feel the need. Because, again, people who do not understand they think that some big revolution in the law took place with Suraj.

Sen. Dr. Gopeesingh: “Mm-hmm.”

1.10 p.m.

Mr. President, a law can still be challenged if it is found to not be reasonably justifiable in a society without—that has the respect for the rights and freedom of individuals. So that did not change in Suraj, you know. And we want to be sure when we pass a law, that it meets that threshold. And when we go now and say that this Parliament—if it is that it comes down to it that this Parliament passes a bad law and it has to be struck down, because it should have had the majority, who is going to suffer?—not the people who we say want to come and make whistleblower reports, and who may make reports pursuant to this legislation, which could then be struck down? Who is going to suffer? It is not the Opposition. We “doh” suffer when they make their mistakes. We do not. It is the people of Trinidad and Tobago, and so that is why they should come properly and do this thing properly.

If it could be challenged, because it is disproportionate for not meeting the

standards set out in section 13, then we will have a problem. And even back in 2016, when the CPC raised his concern, he himself said—because again, he understood the law, as it then was enunciated in Barry Francis, as it was enunciated in Surratt, that even if you put in the special majority, that challenge could still stand. And this is what he said, he said:

It is arguable, however, that even if the Bill is passed with such special majority, it may still be unconstitutional under section 13(1) of the Constitution on the grounds that it is not reasonably justifiable in a society that has proper respect for the rights and freedoms of the individual. The Bill permits personal and confidential information to be obtained in contravention of the criminal law and protects persons who obtain and disclose such information from criminal liability.

Mr. President, I heard—I think it was Sen. Gopeesingh yesterday talking about that. He said, you know, the Bill permits protection for someone who can hack your personal data, and people on this side scoffed, and laughed, and said, “Oh my goodness. Oh, you know the UNC, we so—oh, we always raising something to frighten people,” or whatever. We did not say it, “Go and laugh at Ian McIntyre, the Chief Parliamentary Counsel”. He said that, that that is part of the danger of this law. It insulates—a person who might engage in what would otherwise be criminal conduct, it insulates them from liability. And in any law like that, you have to balance rights. So let us decide now, here—and that is what this debate and what this examination of this Bill should be about. Not all this airy-fairy, “We want to fight corruption, we want to fight”—nobody believes you. So let us just stop right there.

So speaker, after speaker, after speaker could stand up and say, “We want to fight corruption, we want to fight corruption”—I think my colleague, Sen. Roberts,

has done an excellent job of showing why nobody will believe that you are interested in fighting corruption. All right? So leave that right there, you “eh fooling nobody with that”. If you want to bring a law because you promise that you would bring it, well then, let us look at how law would function. Let us look at this and let us decide what we are asking people do under this piece of legislation.

Firstly, and why is it so of grave concern, the law encroaches upon some very fundamental rights, and that is—the first one is the right to due process and protection of the law. In that said case that they are bandying about, called Dominic Suraj, which I do not know if any of them have actually read, it recognizes that the Constitution is a living instrument, it recognizes that it is not a document frozen in time, it recognizes that the law must be applied in such a way that keeps pace with the way in which society is evolving. So the right to protection of the law has significantly evolved over time. And if you go and you read the cases like Seepersad and the Commissioner of Prisons in the Privy Council, and the Maya Leaders Alliance case coming out of Belize, you will see how the issue of protection of the law has evolved far beyond the concept of access to the court. And so when you are passing a piece of legislation that, on the advice of the Senior Council, the CPC, the draftsman—who I know has been drafting law since I think I was in school uniform—but when on the advice of that particular person that says that, “Look, this right is being encroached upon,” and we recognize that that right is being encroached upon, we have to examine what right really means and if we have sufficient protections for the persons from whom we are taking away that right.

So if I or one of us here is the subject of a whistleblower report, how can we then have sufficient protection in place for that person? Yes, we want to protect

the whistleblower, that is fine, but you must have a balancing of rights. There is always a balancing of rights. That is what makes a law proportional. Proportionality is not a nice word introduced by Suraj. You have to understand what it means. Where is the proportionality?

Let us go first with one of the issues here, and it comes from the definition section, the definition of “improper conduct”. “Improper conduct” is very broad at the number of things that can fall under that category of improper conduct. But you know what is the—one of the most dangerous ones?

“wilful concealment of any act described in paragraphs (a) to (h);”

So you have a number of things listed that you do not necessarily have to engage in the conduct, but someone can blow—can make a report against you, because they believe, and we will get to the nature of that belief just now, that you have engaged in willful concealment of one of those Acts.

So I am an employee of a company and I believe that somebody in the company has failed to carry out a legal obligation, but I also believe that the person sitting in the office next to him is guilty of willful concealment of them failing to carry out that legal obligation, and I decided to file a report against that person, can a person against whom a report like that is made, do they have—are there sufficient mechanisms built into this law for them to be able to dispel that notion? It starts with looking at what is a protected disclosure. The disclosure made against a person in circumstances like that will be protected if:

“it is made in good faith;”

—very broad concept. If:

“at the time of making the disclosure, the whistleblower reasonably believes, based on information he has, that...”—it is and it goes on to say:

“...substantially true...”

So it does not have to be all together true, it does not have to be concrete, he does not have to be 100 per cent certain, he believes it to be substantially true, and that will be a protected disclosure. If it is in those circumstances where I am found or anybody is reported as being guilty of improper conduct by way of willful concealment of someone else's offence, how do I dispel that notion, when it is protected disclosure based on somebody having a reasonable belief that it is substantially true?

So I could have a reasonable belief in some half-truth, as Sen. Roberts has highlighted, like "Emailgate"—I could have a reasonable belief and I could say, "Well, I made this in good faith. Whether it is amounts to anything or not, I acted in good faith because I had a reasonable belief that this was at least halfway true and I will have a protected disclosure, and that protected disclosure will never be known to the person who is the subject of that disclosure," how is that fair? We are not only looking at protection for the whistleblower, you must also balance it with fairness for the person who is the subject of the report. That is what makes a law proportionate. That is what will satisfy the test of Suraj, and Surratt, and Barry Francis and all of those cases. And that is what makes a law a good law.

So we could move on now and say that when the disclosure, it will not be protected, it talks about:

"he...ought reasonably to have known,"—that it—"is false."

So if I want to now access my right to the protection of the law, which I am guaranteed under section 4 of the Constitution, it falls upon me, as the subject of a whistleblower report, to dispel the notion that this whistleblower ought reasonably to have known that it was false. You see the standard that we are setting. It is an impossible standard. It is quite simply an impossible standard. And I say all of this to highlight why this Bill requires a special majority, why it requires further

interrogation. And I could go on and on, and I can go through all the different examples in here, where there is an imbalance. There is quite simply an imbalance in terms of what you are trying to accomplish and perhaps the legitimate aim that you are trying to pursue with the damage that could be done to the ordinary, regular citizens.

At the end of the day, all persons, whether you are subject to a police report, an Integrity Commission report, a whistleblower report, any kind of report, the Constitution guarantees you certain rights and you should have the right to be able to, not just address the report made against you, but you should have the right to seek redress, and that is the second thing here.

This law seriously impacts upon your ability to seek redress before the courts, not just by making it impossible and setting an impossible standard, but it altogether removes the right in certain circumstances. So someone can commit a criminal offence like—you know, it is still an offence to steal mail in this country, right? It is an offence to steal mail. Somebody can steal mail from your mail box and uncover your personal information, or uncover something that they believe and gives them the reasonable belief that you are involved in any of those things that is defined as improper conduct, failing to perform a legal duty, damage to the environment, all of these things. They could recover that type of information through a criminal act themselves and they are being offered protection. And what is your recourse? None. Because they had a reasonable belief and they acted in good faith when they made a report against you. Disproportionate, please, Mr. President, and I will go further on that.

Now, I think that it is clear that the wording in this legislation and the protections offered to people who are the subject of reports that are unsubstantiated needs to be looked at again. But apart from that, I think we also need to look very

carefully at some of the procedural things that are set up by this law. And I want to move on now, because I know time is running out, to the internal disclosure process.

Mr. President, I know it has been raised before about the need for an independent regulator, and something that this Bill does not contemplate is quite simply the resource and capability of all the people who would be affected by this. Yesterday, again, we discussed at length the operability, and how things would operate, and all of the requirements needed for laws that would affect a very well defined group of public officers. This law affects 1.4 million people. Every employer and employed person is governed by this piece of law. And I think Sen. Bisramsingh made the point that even in the drafting of the Bill, it has been very clumsy and careless because you impose a positive duty upon an employer, which is anybody. I have a housekeeper and I have a yard boy, I am an employer. I have to have somebody to get whistleblower report from them. I pay NIS for them. I am an employer, so I need to have a thing. My doubles man has three vans, he is employing about 25 people, he has to have a whistleblower reporting officer. That is what this law imposes, a positive duty on an employer to set up and designate somebody to receive whistleblower reports.

Anybody who took the time to study what pertains in other jurisdictions would realize that if you want to implement a law like this, the first place you start is the public sector. That is the first place you start. You want to deal with corruption, deal with the public sector first, and then you roll it out on a risk-based approach to the private sector. You cannot expect a conglomerate, a multinational company to implement a law in the same way as you would have a parlour. Who would get the whistleblower report from the doubles man who dumping all the stale oil in the river? He is committing an environmental offence, something

harmful to the environment, that is improper conduct, but you are going to have a whistleblowing reporting officer there, but you impose a positive duty.

So a proper structure for this Bill would be to have a regulatory authority that will not only function as the whistleblowing reporting unit for businesses under a certain size, or with less than a certain amount of employees and so on, but who will also act as the regulator, as a check and balance on those persons who have to implement internal units?

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial: Because nowhere in clause 10, when it says—at clause 11:

The—“...employer shall have in operation internal procedures...”
—who is coming to check on the procedures?

1.25 p.m.

Who is coming to check on it to see if they have those procedures? They have an obligation here. The employer shall publish and republish while leading his organization, all of the procedures, and so on. Who is coming to check and to see that he is doing that at regular intervals? There is nobody. There is a big gaping hole in the structure and the work ability of this legislation. I “cyah say it” enough times, bad law. And the reason we will not support this law has nothing to do with, “we fraid alyuh. We fraid dis. We fraid who, we fraid de other.” Ten years now “alyuh bawlin corruption, corruption, corruption all over de place and all yuh cyar” lock up nobody from the Government, from the People’s Partnership government. Up to now nobody. So we have nothing to be afraid of. You know what we are afraid of?

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial: I am afraid of PNM incompetence—

Sen. Roberts: Correct.

Sen. J. Lutchmedial-Ramdial:—because anybody who could bring a piece of law like this to a Parliament and ask for support, when there are such serious shortcomings, when it is unworkable, when it lacks basic infrastructure to implement, you are criminally dangerous. You are a criminally dangerous Government—

Hon. Senators: [*Desk thumping*]

Sen. J. Lutchmedial-Ramdial:—to bring a law like this. Criminal incompetence that is what it is.

Sen. Roberts: Tick a box.

Sen. J. Lutchmedial-Ramdial: Criminal—yeah, tick a box. Because you see, none of your promises have materialized from the last election, and so you are trying to check a box here now but we will not facilitate that process on your part by going with a piece of law that is so deficient please, Mr. President. So that is a major shortcoming.

There are consequences for disclosing the identity of the whistleblower, and there is a requirement that the whistleblowing reporting officer—I am dealing with the internal disclosures now—must within 30 days notify the whistleblower of the status of the disclosure. So 30 days pass and I as the whistleblowing reporting officer tell the whistleblower, I am still investigating and then that is it. Talk done. Poor whistleblower have to sit down there now and decide, well what do I do? Do I go to one of the units in one of these listed agencies? Do I wait? What happens?

In fact, the law goes on to say that this officer—and again, I do not know if they think that every organization and every employer in this country has somebody with the competence and capability to receive this information, process it, analyse it, disseminate it. You are essentially asking somebody to become an

investigator to review documents and to come to a conclusion. Again, this person, you could be working in a grocery; you could be in a family-based business; you could be selling doubles; you could be selling snow cone, corn soup; you could in a conglomerate working, but you have to have someone who has the ability to do this. But that person where it is apparent that action has been to rectify or deal with the improper conduct disclosed, it will not be necessary for them to comply with subsection (1).

So they do not have to deal with that 30-day requirement if they feel that enough has been done. So they can satisfy themselves—very dangerous. Very, very dangerous because it means that the whistleblowing reporting officer if they are compromised, there is no duty of accountability to the whistleblower. The whistleblower can make his or her report and they could sit down there and never hear from the whistleblowing reporting officer again, and what is their recourse. The Bill is silent on that. The Bill is silent on what recourse he has.

If he feels that nothing has been done, it goes on to say later on that he can go to one of the external units and so on. But is that encouraging the culture that we want? All this talk about culture, and culture, and changing the culture and so on, you know this reminds me a little bit when we tried to introduce anti-money laundering compliance and we brought businesses under the Proceeds of Crime Act, and we set up the FIU, and we try to have a culture of compliance amongst private sector entities, and the level of implementation that was required had to be gaged, it had to be risk-based recognizing that people in different organizations of different sizes, and different levels of competence, and different levels of experience, and in different levels and types of business activity, you had to gage and make the legislation flexible enough that it could apply to them. This has a serious level of rigidity and inflexibility that will make it impossible for these

internal disclosures to take place.

Let me move on to the external disclosures now. The requirements of the external disclosure, it means that the director of one of these units—and I think Sen. Roberts touched on it—can make a determination that the external disclosure was not the appropriate forum and send the whistleblower back to the internal disclosure to make an internal disclosure. I find that to be counterproductive. Why is the external body, a government agency—all of the bodies that are listed there are government bodies, and you know it is a kind of thing that out of these 21 designated bodies, at least four of them are agencies, which yesterday they came to say it have so much corruption they need to put lie detector, and biometrics, and all kind of things on them. But these are the agencies that you are saying you must go and blow the whistle to. Right? Okay, no problem. And these are the same agencies that they are saying can make a determination that this whistleblower should go back.

Hon. Senator: They telling the truth.

Sen. J. Lutchmedial-Ramdial: Well whether they are telling the truth or not, but the appropriate forum for them to do this is to go back internally. Why would the whistleblower not go internally, come externally and then you are giving the power of the external agency to send them back?

Sen Bisramsingh used the example about when you go in one police station and they send you here, there, everywhere, and I think that in most of those cases they just frustrate you. I think that is what that clause is setting up whistleblowers for, a level of frustration. Because if I do not feel comfortable going to my internal whistleblowing reporting officer to make a report and I come to the TTPS, or the Central Bank, or the Securities and Exchange Commission, why are you giving them the power to send me back? That is a power to frustrate people, Mr.

President, and I do not believe that that clause serves any purpose, and I do not believe it is right to have it included in this particular piece of legislation.

What are the consequences to an agency that does not investigate; that does not do a proper investigation? How will you know when there is no requirement for feedback? Who is the whistleblowing reporting officer accountable to within the organization? These are things that would make this law proportionate. It would make the law in pursuing a legitimate aim. We cannot stand here and say, “Because I say so, because the Attorney General say so, because somebody else say so, that the law is pursuing a legitimate aim.” You have to see that spelt out in the clauses, Mr. President, and again I say, this Bill falls woefully short and because of that we cannot support it. And I would hope that in the interest of the people of Trinidad and Tobago, the Government will take our advice and give this law some greater consideration before they try to pass it. We do not pass laws for the sake of passing laws. We pass laws because we believe it is in the best interest of the country. And if you want the support of the Opposition, you have to show that you have given due consideration to all of the concerns raised and then you can get support.

I cannot overemphasize the need for a balance approach in law-making. It is very important and this law lacks that. It lacks that balance that is required, and so we will not be able to support something that has such dire consequences for people. We will not support law—

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

Sen. J. Lutchmedial-Ramdial: We cannot support law that lacks procedural safeguards. And so, we ask the Government to take on board the suggestions. You have had many good suggestions coming out from all of the contributions here today, take them on board, go back to the drawing board, and produce

something that could withstand scrutiny and is a good law that will achieve the intended objective. I thank you.

Hon. Senators: [*Desk thumping*]

Mr. President: Minister of Tourism, Culture and the Arts.

Hon. Senators: [*Desk thumping*]

The Minister of Tourism, Culture and the Arts (Sen. The Hon. Randall Mitchell): Thank you very much, Mr. President. I am grateful for a few minutes to add my voice in support of this Whistleblower Bill, of course, intended to do everything as is described in the long title of the Bill which I would not go on now to repeat. Many of us have repeated the long title of the Bill and all that it is intended to do. I want to start off in an unusual fashion, in joining with my colleague, Sen. Roberts, in sending our prayers as well on this side, on behalf of the Government, to our Caricom neighbours, Grenada, Carriacou and Jamaica, and we hope that all will be well in time to come. Of course, this is not about debit cards, we are here for our Caribbean neighbours.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell: And I would also join with Sen. Roberts, in commending the hon. Prime Minister and in commending the hon. Minister of Trade and Industry for a very quickly springing into action to assist our Caricom neighbours.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell: And that is the end of that. Mr. President, I want to say something at the outset. We are aware of your tendency to take your political battles into the court and we are not afraid of you.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell: We will meet you anywhere, whether it is in the

court of law or in the court of public opinion—

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell:—and we will beat you. But, Mr. President, here is the problem I have with this matter of taking these things to the court because I want to whistleblow here today.

Mr. President, the UNC does not pay their bills and they are owing—

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell:—the People’s National Movement money in costs. They are consistently losing matters. They are taking us to court and when they lose, they are not paying their bills. Pay your bills. You are owing us millions of dollars in costs. And more than that, when they take the Government to court over these frivolous contentions and these frivolous matters, it is the taxpayer who has to foot those bills you know, and when they lose, they are hiding. They are not pay the taxpayer. They are not paying their costs. That is the problem that I have, and that we have, in this matter of you are always taking your political battles to court. It is not a problem you know, take it to court. When you lose, pay your costs.

Mr. President, we have heard—well let me start off with Sen. Lutchmedial-Ramdial. We have heard from Sen. Lutchmedial-Ramdial and she says something that is often said by the Opposition, “that we will support good law”. There is nothing more ambiguous about that statement. Any time they disagree with a particular piece of legislation, “we will support good law”, but then does not go on to suggest what good law is. It is just a cop out. It is a cop out. And then, of course, Sen. Lutchmedial-Ramdial goes on to do as I say, “lawyer down de ting”. You always go into these very esoteric legal arguments about why this public policy position is not good and you talk about Barry Francis, you talk about Suraj, you talk about Suratt, you talk about everybody, but let us deal with the public

policy position. This is not rocket science you know. This is simply creating a mechanism, if you see some wrongdoing, say something to someone. That is all this is.

Mr. President, I mean, you go back to primary school days because in my socialization as I got from being in the age of minority to the age of majority, in your primary school days in the 80s that was something that was always taught. It was a value that was always taught, “if you see something, say something”. In the primary school, you would say something to the person in authority.

1.40 p.m.

Because the person in authority would not be able to see and appreciate all matters of wrong doing that goes on in that environment. So when you are sitting down next to your classmate, and your classmate has a little accident, you would say something. If your classmate has bruises or something is wrong, and you know it to be wrong, you would say something. Those are the values that we were raised on, in the eighties. But then in the nineties—and I would say—I mean, maybe it is a simplistic view. But I would ascribe it to the influx of, perhaps the Jamaican culture, and this dancehall music, “Informa fi dead”, “spy fi die”, “snitches get stitches”. And then it all be became unfashionable to speak out against wrong things in society. The persons who profited from the wrong doing, they were of course allowed to flourish. We heard from Sen. Roberts. Sen. Roberts is a very, very, old Senator.

I do not know if you have to admire it, or you have to chastise it. Because Sen. Roberts, he spoke about leadership “eh”. He spoke about leadership. Sen. Roberts led one of the most corrupt and criminal programmes that we have ever seen here in Government.

Hon. Senators: [*Desk thumping*]

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Sen. the Hon. R. Mitchell: He was at the helm.

Sen. Dr. Gopeesingh: 46 (6). 46 (6). How he could say something like that?

Sen. Roberts: Leave him. Leave him, let him talk.

Mr. President: Minister, just be careful with the phraseology that you are using.

Sen. The Hon. R. Mitchell: And the hon. Sen., he came flashing this audit report and what he would not tell you is that the audit report identified the criminality and the corruption. And what he would not tell you as well, is that in breach of proper procedure, in breach of the rules of natural justice, the Member for Siparia came and laid the report without giving the hon. Senator a chance to respond to the allegations made within the report. Then—

Sen. Roberts: Now that, 46 (6). My name is not in any report. So let him cool himself.

Mr. President: No. No. Alright Senator. Sen. Okay. Okay. Okay.

Sen. Roberts: I hope he has court clothes. Right.

Mr. President: 46:6. Understood. So again, Minister as you are making your point and you are responding to something raised—

Sen. Roberts: [*Inaudible*]

Mr. President:—Sen. Roberts. You do have the right of reply to respond to something brought into the debate. In the course of the debate, I would allow you do so, but just navigate it a little bit more carefully.

Sen. The Hon. R. Mitchell: Thank you very much. Mr. President, I am responding to the hon. Senator. It is not that the hon. Senator was exculpated in anyway. It was simply an error in process.

Sen. Roberts: Again. 46 (6). The hon. Senator on this side was not mentioned at any point, in that report, only public servants and that has been quashed. So Senator, please stop being [*Inaudible*] do not play that [*Inaudible*]

Mr. President: Okay, Senator. Senator, Senator, Okay. Senator, have a seat.

Sen. Roberts: 46 (6).

Mr. President: Have a seat Senator.

Hon. Senators: [*Crosstalk*]

Mr. President: Members.

Mr. President: Members. Sen. Gopeesingh.

Sen. Dr. Gopeesingh: Yes. Yes, Mr. President.

Mr. President: So you raised the point of order. You have a brief explanation, it is not a debate when you are raising your point of order. So again, I have ruled on that point of order. Minister, like I said, continue.

Sen. The Hon. R. Mitchell: Hon. President, I will move on from that point you know, but I have some further points a little way down in the contribution that would address the real issue in LifeSport as it pertains to the Bill before us and we will come to that.

Well, Sen. Mark says that anonymous whistleblowers are protected, and anonymous disclosures are protected, in complete contrast to what Sen. Bisramsingh went on to speak about anonymous whistleblowers. Sen. Mark was decrying that anonymous whistleblowers would be protected, and how could you allow this sort of thing to flourish and people will defame other people, and so on. But yet Sen. Bisramsingh was lauding how important anonymous whistleblowing can be. I do not understand the contrast. And then Sen. Mark spoke about, well we must bring, Mr. MacIntyre SC here to give testimony and evidence to corroborate what the Attorney General said. This is the same Sen. Mark—Why would we need to bring Mr. Macintyre, Senior Council here to corroborate? This is the Attorney General of Trinidad and Tobago.

Hon. Senator: He could lie.

Sen. The Hon. R. Mitchell: He is Attorney—well I—listen—

Hon. Senators: [*Inaudible*]

Sen. Armour SC: You see that remark coming from Sen.—

Sen. Roberts: Miami Court House [*Inaudible*]

Hon. Senators: [*Crosstalk*]

Mr. President: No. Members. I am on my legs. Sen. Mark, be careful of your outbursts. That particular outburst is not allowed as you are well aware. Continue Minister.

Sen. The Hon. R. Mitchell: And as he says the word, I am reminded of a time when the hon. Senator, as he then was Speaker of the House And came into the Parliament waving a paper—

Hon. Senator: [*Desk thumping*]

Sen. The Hon. R. Mitchell:—to claim that the Judiciary told him something, and stymied a whole debate. And that was proven to be untruthful.

Sen. The Hon. West: “Yep. Yep”.

Sen. The Hon. R. Mitchell: That was proved to be untruthful.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell: So, I do not understand why the entire Parliament accepted what you said in your waving, which came to be known as untrue and we cannot accept with the hon. Attorney General of the country says, Senior Council as he is, not self-appointed. And then, Sen. Gopeesingh. Jurisdictions are changing—and well Mr. President, I do not even know if Sen. Gopeesingh read the Bill. Because he went on to talk about a lot of things that were proven by my hon. colleague, Sen. Hislop, to be untrue. He did not understand that “improper conduct” was defined. I mean, I do not know if he read the Bill. But in those jurisdictions that are now amending—well the fact is that those jurisdiction do

have whistleblower protection legislation. That is the fact. We need it here to, to deal with a culture where corruption and criminal activities are allowed to flourish.

Sen. Gopeesingh also said that nothing has been mentioned in the Bill about disclosure under the Freedom of Information Act, when in fact, clause 23, makes it is an offence that anybody who contravenes the secrecy and the confidentiality of these disclosures will be penalized upon summary conditions to a fine of \$600,000 and imprisonment for two years. Totally ignoring that. Of course you cannot get that information under a Freedom of Information request. That is clear. There is a contradiction. There is a very stark contradiction, Mr. President, because they are utilizing all sort of arguments, esoteric, weak and very meaningless to argue why this should not be made law, or why this particular piece of legislation is bad law.

But the United National Congress, when in government they brought two pieces of important legislation. The Integrity in Public Life Act. This talks about watering down and gutting the public procurement legislation. You in those both pieces of legislation, Mr. President, there are provisions in there to allow for whistleblowing. As a matter of fact, if you go on the OPR's website now—and I heard the talk, Sen. Teemal, was talking about whether these things will be allowed to be done electronically. There is a whole portal on the OPR's website that allows for the electronic—

Sen. The Hon. West: Submission.

Sen. The Hon. R. Mitchell:—submission of complaints. And the UNC brought that.

1.50 p.m.

You talk about gutting the legislation, but there still is that provision that allows for whistleblowing. Mr. President, why would a sitting Government—a sitting Government who needs to protect its integrity and who needs to protect its

chances into the next election, why does a sitting Government bring this legislation to the Parliament three times—three times, unafraid of the reporting of any whistleblower improper conduct on ourselves? Why would we do that? The public listening, they are not stupid, you know. They are not fools and they are not fooled by the UNC.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell: We are bringing this, we are exposing ourselves in a very transparent manner. We are saying, “We lead from the front, we must be held accountable, the Executive must be held accountable, civil service must be held accountable; Trinidad and Tobago, we must hold ourselves accountable”.

We are leading from the front and we are arguing that, and the United National Congress, they are opposing that. Why should we have one designated authority? Ridiculous argument; of course, it increases the risk. It is as risky proposition. Why would you have one designated authority where if that designated authority is infected by this corruption virus, you shatter the entire system. But here is the best one and, of course, this is part of the fearmongering because you are trying to say, a company must now employ whistleblowing officers. Nothing could be further from the truth.

There are some companies that are so small that it would be natural—or some organizations that are so small that it would be natural that you make an external disclosure and you go to a designated authority, but in other companies what you do simply is to appoint. You do not need to hire any person and put them inside of there and call them a whistleblowing reporting officer and pay them money for a whistleblowing reporting officer and increase your costs as it relates to your human resources. You do not have to do that. You have to appoint one person. And by analogy, every company, there must be someone in that company

who is responsible for receiving a grievance from an employee.

There is somebody in that company for receiving a complaint of misconduct and asking that someone be disciplined, or there is somebody in that company so appointed to treat with the discipline of employees in a company. By analogy, it is the same thing. What you do is that you appoint someone as the whistleblowing reporting officer. You and, most likely, in terms of understanding organizations, it would be somebody in the HR department—maybe somebody in the HR department or somebody in your legal department, if you have a legal department, and that person would be the designated person to receive whistleblowing reports.

Hon. Senator: [*Inaudible*]

Sen. Mark: Is it a fact or you are speculating?

Sen. The Hon. R. Mitchell: That person will be the one to receive whistleblowing reports, and Sen. Mark knows this.

Sen. Mark is a person who is—well, he holds himself out as being someone who understands industrial relations. So we have the Industrial Relations Act and we have the law with respect to discipline and with respect to grievances. We do not have to hire somebody who is an expert or somebody who is an industrial relations officer in a company. You simply have to appoint someone, and that someone will be guided as is the person who is charged with receiving grievances; the person who is charged with the discipline and maintaining discipline in the company. That person would receive guidance documents as to how you treat with a complaint of discipline, with how you deal with grievances in a company, and those guidance documents are all over. The ECA, the association that is in charge of employers, they put those things out all the time. So that is flatly incorrect.

Sen. Bisram Singh, I do not want to be too unkind but coming from you, I did feel the need to go and look up the word “anonymous” to see what it meant.

Ordinarily, I do not need to because I know what that word means, but because the argument came from my learned colleague, I second-guessed myself, so I looked at the word “anonymous”. Sen. Bisram, anonymous disclosures—

Sen. West: Bisramsingh.

Sen. The Hon. R. Mitchell: Bisramsingh, I am sorry. Anonymous persons who make disclosures cannot be protected because as the word suggests, they are simply not known. They are not known. How are you going to protect somebody who you do not know?

And then you asked about, “What do you do when confidentially is breached?”, and of course we go back to clause 23; it creates the offence of breaching confidentially. There is no risk to the breach of confidentiality when it is anonymous persons, of course, but there is a specific way in which you treat anonymous disclosures to prevent defamation and those types of injuries coming to the persons who are so reported as being involved in wrongdoing. I have the note here, section 28(1)(a), specifies that:

Certain regulations are to be created for the processing of disclosures and other information collected under this Act.

So it is there. We have to create the regulations that guide the procedure of this legal frame. We have to do it. The regulations, and what the regulations must treat with, they are all there.

So, Mr. President, I do not want to belabour this point because we have traversed almost every clause. I do not want to belabour the point. We want to get on quickly because the faster we approve this Bill, the faster we can treat with changing the culture in Trinidad and Tobago. But there are some cases in the public domain that we can touch on to show how, if this particular piece of legislation was in place at the time, things could have gone differently. So we are

dealing with LifeSport. Of course, I indicated it was a criminal, corrupt programme that Sen. Roberts led, but if this legislation was in place—there is a person, Mr. President, called Ruth Marchan, and that is how it is now relevant to the debate, because this debate is dealing with the protection of whistleblowers.

If I have to remind you, Mr. President, Ruth Marchan was a whistleblower in this particular programme. She came into prominence by the act of her public whistleblowing and she also came when her bodyguard was killed, all a part of this LifeSport programme. But if this legislation was in place, Ruth Marchan would not have to beat a hasty retreat from Trinidad and Tobago and go into some type of witness protection, because had she been allowed to make a disclosure, and that disclosure become protected, her name would have been protected. The disclosure would have been protected and investigated. She would have been protected from detrimental action under section 17.

There would have been a clear and identified process. You know, if this Ruth Marchan was incorrect, the matter would have been investigated. There would have been in a response to the investigation and perhaps Sen. Roberts would have not had to resign. Perhaps between Sen. Roberts and Sen. Nakhid, they always promote this LifeSport programme still, and perhaps if this legislation was in place, maybe the LifeSport programme would have been—if we had to believe them. But if they do not want to take it from me, I want to quote from a daily *Express* article, “Statement by PM Kamla Persad-Bissessar on resignation of Anil Roberts”, July 30, 2014. It is not me, you know. Here is what the hon. PM said on the resignation of Anil Roberts:

“I continue to be disillusioned, disappointed and distressed by the level of deception and dishonesty associated with the well intentioned LifeSport programme.

The background is well known. At the hint of corrupt practices I immediately ordered that the initiative be switched to the Ministry of National Security and instructed an independent audit be conducted.

After the findings of this audit were made available, I instructed that the report be sent to the Acting of Commissioner of Police, the Integrity Commission, the Head of the Public of the Service and the DPP for consideration.”

Why would they send something to the Integrity Commission? Who else in the LifeSport programme would have been under the Integrity in Public Life Act?

Hon. Senators: [*Crosstalk*]

Sen. The Hon. R. Mitchell: In the penultimate—because I do not want to read out the entire thing—in the penultimate paragraph:

“Consequently...”—

I mean, “consequently”, and all the things that I have just said about the hint of corrupt practices and disappointment, and disillusionment, and deception and dishonestly:

“Consequently, I have decided to accept the offer of resignation as Minister of Sport from Mr Anil Roberts.”

Mr. President, I do not want to talk about Cumuto/Manzanilla, we have all traversed Cumuto/Manzanilla—

Sen. Senators: [*Crosstalk*]

Sen. The Hon. R. Mitchell: Mr. President, I am being disturbed.

Sen. Senators: [*Laughter*]

Mr. President: Continue.

Sen. The Hon. R. Mitchell: Thank you very much. I do not want to talk too much about the Member for Cumuto/Manzanilla, I think he is a courageous

Member.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell: He broke with the Whip. But suffice it to say, the Member for Cumuto/Manzanilla would not have felt the urge, the moral urge, the impelling urge to break with the Whip to vote against the party's vote—well, to vote against the party in the Whistleblower Protection legislation if there was a proper framework in the Sangre Grande Municipal Regional Corporation to treat with the allegations of corruption in there.

2.05 p.m.

The Member for Cumuto/Manzanilla is a representative of people, and when the people come to him, and he is powerless because of the local services that are supposed to be delivered, that are not being delivered because of corrupt practices in the Sangre Grande Regional Corporation, then he felt impelled to vote in favour of this legislation. But the point is, if there was a framework in place, perhaps it would not have been necessary.

There is another case—well, maybe I should get to this one first. There is another case and that is the case of—I do not know if you recall, Mr. President—Stacy Roopnarine and the matter of corruption in the Curepe Interchange; whistleblowing as well. In this case, the Junior Minister in the Ministry of Works sent a complaint of improper conduct against her boss, the Minister of Works, Mr. Surujrattan Rambachan, at the time, and sent that to the Prime Minister, saying, “Listen here, Madam Prime Minister, I feel impelled, I need to report this to you. There is some improper conduct going on here where the Minister is getting involved and is corruptly influencing the award of a contract on the Curepe Interchange. I feel that it is wrong and I feel that you should investigate it.” Mr. President, you know that piece of correspondence ended up in the newspaper?

UNREVISED

Sen. West: Who put it there?

Sen. The Hon. R. Mitchell: Now, if we had an appropriate framework, it would not have ended up in the newspaper. There would have been a proper internal procedure, or using the external procedure, to complain about this thing because in the end, the hon. Prime Minister said, she investigated, claims unfounded. The Junior Minister said, “I accept what the Prime Minister said, claims unfounded.” We know better because the same Curepe Interchange that they were trying to award for \$500 million under this Minister of Works and Transport, we did the same exchange for \$275 million.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell: So we know that they were not unfounded. The original complaint was, “Minister is trying to influence the significant award to a particular favoured contractor.” Mr. President, you know, since 2015, we have not heard from that Minister again. The Minister not only lost her job, the Minister also lost her seat.

Sen. West: Where was the protection?

Sen. Roberts: [*Inaudible*]

Sen. The Hon. R. Mitchell: And—

Sen. Roberts: Well, you should know how that feel.

Sen. The Hon. R. Mitchell: Mr. President—

Sen. Roberts: [*Inaudible*]

Sen. The Hon. R. Mitchell: Mr. President—

Mr. President: Sen. Roberts—

Sen. Roberts: [*Inaudible*]

Mr. President: No, no, no. You cannot be shouting across the floor at the Minister. Please allow him to make his contribution. Minister.

Sen. the Hon. R. Mitchell: Thank you, Mr. President, for your protection from the Minister of—from the Member of Parliament—from the—

Sen. Roberts: [*Inaudible*]

Sen. West: Senator.

Sen. Roberts: “Yuh confusing yuhself”.

Sen. The Hon. R. Mitchell:—from the hon. Sen. Roberts. Yeah. The Minister lost her job, lost her seat and the way the Minister is coming around within the PNM, she probably lost her party card too.

Hon. Senators: [*Interruption*]

Sen. The Hon. R. Mitchell: Suffice it to say, that if the whistleblower legislation was in place, that would not have happened to young Stacy Roopnarine.

Lastly—well, not so much lastly, but lastly, I wish to remind you of Solicitor General, Eleanor Donaldson-Honeywell, because this particular piece of whistleblowing activity, the hon. Prime Minister treated it much differently than she treated the LifeSport whistleblowing activity. So in this case, you have a Solicitor General, a sitting Solicitor General—and I would not mention her name anymore because she sits in a different place. But you have a sitting Solicitor General who felt the need to report an unholy conspiracy between certain lawyers, prisoners, persons involved in the prison administration and actors on behalf of the State. I think it was the Sambury case that evidenced that whole unholy conspiracy, where there was a conspiracy to defraud the State—and they defrauded the State; significant damages by just cutting and pasting all sorts of things and just creating new, and new, and new.

So, Mr. President, the Solicitor General wrote a letter—

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

Sen. The Hon. R. Mitchell: Thank you very much. The Solicitor General wrote

a letter to the hon. Prime Minister, as she then was, Member for Siparia, and said, “Hon. Prime Minister, listen, there is an unholy conspiracy inside of here. We are being defrauded of millions of dollars; millions of state, taxpayers’ dollars. I believe that you should investigate this matter.” In complete contrast to how the Prime Minister dealt the LifeSport and Sen. Roberts—where the hon. Prime Minister, in that case, sent it to the independent Central Audit Committee and the Ministry of National Security—in this case, the Prime Minister sent the complaint back to the Solicitor General’s boss, Attorney General, Anand Ramlogan SC, without a sense of occasion, without considering, “Well, why would the Solicitor General leapfrog the AG and come directly to me?”

Sen. Roberts: Mr. President, 46(1). While it is entertaining, what clause, what part of the Bill—[*Inaudible*]

Hon. Senator: [*Inaudible*]

Sen. Roberts: You were not here whole day, so relax—[*Inaudible*]

Mr. President: One second. So, again, the Minister is wrapping up and he is responding by way of using the very same examples that were brought forward into the debate before to make his point in rebuttal thereof. Continue, Minister.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Mitchell: Thank you very much, Mr. President. Sen. Roberts, I am identifying what an appropriate whistleblowing protection framework would have ameliorated with these corrupt cases in the past. So the hon. Prime Minister, as she then was, sent the matter for the AG to investigate. Well, what happened? The Solicitor General resigned and the investigation was never allowed to take place because members of the stakeholder group, who were invited to be a part of the investigation, said, “Ay, we eh wa no part ah dat. Listen here, Prime Minister, don’t you see that the Solicitor General leapfrogged to the Attorney General to go

to you?” It was in the expectation that you then submitted to an independent investigating body to treat with the matter. So the Prison Officers’ Association people said, “No, we want to part of that. No investigation.” The Solicitor General resigned. She is in a better place than she was under the UNC. So these things would have been ameliorated had we had appropriate whistleblower legislation in place and, of course, in the—just to touch on the case of the whistleblower in the private sector, I think we had a recent one, where there was a complaint of bizarre rituals and—

Sen. Roberts: “Obeah just like de Prime Minister”.

Sen. The Hon. R. Mitchell:—the best of the healing properties—you need some white light.

Hon. Senators: [*Laughter*]

Hon. Senator: Even that cannot work.

Sen. The Hon. R. Mitchell: You need some white light.

Sen. Roberts: You will know about that. You will know about that.

Sen. The Hon. R. Mitchell: And the improper—

Sen. Roberts: If you use that, you might get back your seat.

Sen. The Hon. R. Mitchell: And the improper use of scarce foreign. In that case, I think in reading the facts, the whistleblower here, Parisot-Potter—I believe it was—she was frustrated by the time it was taking to be responded to, in respect of her complaints, and that it was.

2.15 p.m.

And with this whistleblower legislation, all of these things would be ameliorated. Mr. President, I see that you wish to leave your sedentary position. So, all I would say is, I commend—

Hon. Senators: [*Laughter*]

Sen. The Hon. R. Mitchell:—this Whistleblower Protection Bill, 2022 to the House. It is to change the culture of Trinidad and Tobago, it is in the best interest of the people of Trinidad and Tobago. And with those few words, I thank you.

Hon. Senators: [*Desk thumping*]

Mr. President: Attorney General.

Hon. Senators: [*Desk thumping*]

The Attorney General and Minister of Legal Affairs (Sen. Reginald Armour SC): Thank you very much, Mr. President. As I sat here over the past two days, Mr. President, and in particular, as I listened to the Members of the Independent Bench of this Senate, I have found myself reflecting on the wisdom of the Roman times and the concept of the Senate which involves an assembly of wise men and women. And I want to say thank you to the Independent Senators for the contributions which they have made, every one of them: Sen. Vieira SC, Sen. Thompson-Ahye, Sen. Maharaj, Sen. Dr. Dillon-Remy, and Sen. Teemal. Because we have had, on a very important piece of legislation, Bill, that we ask to pass into its maturity as legislation, we have had very balanced thoughtful, wise commentary, all of which I take on board as Attorney General and adviser to the Government. As we go forward with this legislation, I expect that much of what the Independent Senators have contributed will inform very materially, in particular, the regulations which are to be built-out under clause 28 of the Bill before this House. So, I thank the Independent Senators for their contributions.

I am not going to belabour the point. We have had erudite submissions, and I think they have been very clear, pellucid, and at the risk of seeming to do a disservice to them, I will not spend an undue time. I also wish to thank the members on the Government side: Senators Cox, Hislop, Lezama-Lee Sing, and

London equally for their very mature reflections on this very important piece of legislation, Bill.

I have listened to the Opposition Senators and as I have tended to do so often in my time in this hallowed place, I regret the fact that as wise as the Roman Senators were, there are exceptions to every rule. I acknowledge the comments of Sen. Bisramsingh because I accept that while at the end of the day, she delivered certain criticisms of the Bill, there was an encouraging reflective contribution from her which I also intend to take under full consideration.

Hon. Senators: What?

Sen. The Hon. R. Armour SC: That of course, being the single exception with respect to the Opposition Bench.

Sen. Dr. Browne: She repeated a lot of what Sen. Mark said.

Sen. The Hon. R. Armour SC: Mr. President, I have reflected on a lot of the discussion that has taken place, and the need for a simple as opposed to a special majority for this Bill, and I just want to share with the Senate, this august Chamber, a couple of remarks from my experience as a constitutional lawyer.

The concept of the constitution is something which we inherited from our colonial masters, the United Kingdom. They have an unwritten constitution and the jurists and the parliamentarians who promote, apply and regulate the application of that constitution, through their maturity and their wisdom, have respected the fact that a constitution is a very different instrument whether unwritten or written, because, what it does is it regulates the lives of citizens for the present with a good, candid look on the past and into the future. It is impossible to write on a piece of instrument or to lay down unwritten codes that into that context as a constitution which looks to the future, can never be static. It must be an evolutionary guideline by which societies regulate themselves. That is

the essence of a constitution, it is what makes a constitution different from ordinary legislation which seeks to deal with a particular matter at a particular point in time.

So, the English when they came, the British judges of the Privy Council, and we can go back to my student days, and those of us who are lawyers, Sen. Vieira SC, will recall the case of the *Minister of Home Affairs v Fisher* out of Bermuda. It was a constitutional question involving a case involving a child and in relation to the written Constitution of Bermuda, the Privy Council developed in articulate terms perhaps or not for the first time, the expression “the living instrument.” That was a term that the English jurists, out of their experience of an unwritten constitution which is an evolutionary thesis of ordering our lives, applied the concept of living instrument to that unique instrument that we have inherited out of Westminster, the written constitution. And what Fisher laid down was a principle of construction that when you come to look at a written constitution, you have respect for the ethos and the origin of constitutional government because that constitution must always have the capacity to speak of the present, to have its roots in the past, but to look to the future. In other words, it must live.

Sen. Dr. Browne: [*Desk thumping*]

Sen. The Hon. R. Armour SC: And it must live by being in touch with the society under whose rules the society is to be governed. It cannot hold the society prison at one point in time because the society has to grow, it has to live, and it has to change with its evolution and its time. And that concept of “the living instrument” continues to this day, Mr. President, to be applied as what is known as the purposive rule of construction that is applied by all judges to our written constitutions in the Caribbean. In this case, the written Constitution of the proud Republic of Trinidad and Tobago.

We have, Mr. President, under section 53 of our Constitution the mandate that the Government, the Parliament, is to pass laws for the peace, order and good government of the citizens of this country. And the Parliament by the Constitution is the pre-eminent legislative authority under our written Constitution applying the purposive construction which is charged, always maturely, out of balanced discussions such as we have had from the Independent Bench in particular, and from the Government side over the last two days, to assess a particular situation at hand. In this case, crime, the fear of reprisal, the retaliatory impact of criminals, and potential criminals who will not allow whistleblowers to reveal the sully that lies beneath the surface and hides from daylight.

So, the Parliament, in passing laws for the peace, order and good government of this country, has to apply the concept to constitutional discharge of their functions that they are making laws as part of a living instrument for the future. And that is where we came to the Suraj decision. And I commend that Suraj decision, and I am very proud of it because I actually happened to represent the Attorney General in the High Court and in the Court of Appeal, it went to the Privy Council, I was not part of that team. But, I understand how that case developed and I commend it as necessary reading for all of us in this Parliament and even for some of the lawyers who purport to speak law, I would recommend it in point of fact. For Sen. Dr. Gopeesingh, I would not dare—and I have no doubt that he would criticize me if I purported to give him a lecture on obstetrics and gynaecology, as he purports so often to give us a lecture on the law.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Armour SC: So, I commend to Sen. Dr. Gopeesingh, that he should sit down and read Suraj—

Sen. Dr. Browne: Or Wade Mark.

Sen. The Hon. R. Armour SC:—or Sen. Mark, or Sen. Lutchmedial-Ramdial, who dismisses that judgment. The textbooks are going to write about that judgment. The constitutional law textbooks are going to write about that judgment for the next 100 years. And it has come from the courts of Trinidad and Tobago and the Privy Council in that decision was affirming dictum of the court of appeal of this country, our judges.

And, Mr. President, when we come to Suraj and we ask ourselves the question, how do we approach passing the law, that is the Whistleblower Protection Bill, 2022 and do we need a simple majority or a special majority? How do we apply this 2022 judgment that was delivered in June of 2022, 8 years after the first iteration of this Bill, went into a joint select committee? I will read with your leave. Mr. President, only three passages of the judgment of Suraj, if I may. Only three passages, Mr. President. Paragraph 67:

“67. Section 1(1) of the Constitution declares that Trinidad and Tobago is a sovereign democratic state. Accordingly, Parliament is established as the body with authority to make laws for the peace, order, and good government of the country: section 53...

As the majority judgment correctly pointed out in Francis...”

Francis being the Court of Appeal, Mr. President.

“...interpreting the rights in section 4 as subject to an implied proportionality qualification means that effect can be given to section 53 in circumstances in which a super-majority in each House is not always attainable.”

Paragraph:

“68. A very large part of ordinary legislation passed by Parliament for good reasons of public interest ...”

And what is the public interest that we are concerned with here, if I may just digress for a moment?

2.30 p.m.

We are concerned with the public interest of passing laws for the peace, order and good governance of this country to safeguard the citizens of this country from the scourge of crime, to regulate a process by which persons who comprehend that crimes are about to be committed or acts or misdeeds are about to be committed can feel confident to make a report of that fact, and to be protected from the retaliation. So I continue with Suraj.

“A very large part of ordinary legislation, passed by Parliament for good reasons of the public interest, must inevitably interfere with or operate as restrictions on those rights. In the Board’s view it is not plausible to suppose...”

Here we are talking about the living instrument.

“...it not plausible to suppose that the framers of 1962 Constitution and the current Constitution intended to disable Parliament from taking ordinary legislative action in the public interest. The natural solution to accommodate the evitable friction which always exists between fundamental” human “rights and democratic decision-making in a constitutional, liberal democracy like Trinidad and Tobago is that conventionally adopted so often in such states, namely to require that interference with such rights should be permitted in the public interest, but only if the interference is proportionate to a legitimate aim.”

If I may read one further paragraph out of Suraj, Mr. President, with your leave, paragraph 81.

“Since the rights in section 4 have to be read as limited or qualified

rights...” not absolute rights (as explained about and acknowledged in the Thornhill case)...”

Another Trinidad and Tobago Court of Appeal decision, Thornhill. I studied it when I was at law school in the 1980s.

“...they have to be capable of carrying the relevant qualification with them as they develop according to the living instrument doctrine. The nature of the Constitution as a living instrument therefore indicates that a more general form of qualification must have been intended, and points to the proportionality qualification set out in Suratt.”

Another Trinidad and Tobago case.

“Furthermore, the fact that the rights are liable to change in ways which have new and wider effects on governmental activity which itself adapts as society develops...”

We are talking here about the living instrument:

“...which itself adapts as society develops means that the scope for friction between the fundamental rights of individuals and the general interest of the community referred to in para 68 above is likely to increase, which still gives greater force to the point made there. This reinforces the inference that it must have been intended that the rights in section 4...”

Section 4 being the fundamental rights provision:

“...should incorporate a mechanism to strike a fair balance between those rights and the public interest. The proportionality qualification identified in Suratt is the appropriate mechanism for that purpose.”

The short point there being, Mr. President, that when we come to look at the Bill before us today, we ask ourselves the question, what is the legitimate aim? The legitimate aim is to provide a regulatory framework to protect whistleblowers who

can unearth criminal or other activity that is inimical to the fabric of this society, crime, corruption. That being the legitimate aim that the Bill is intended to achieve, you have to look to see what are the mechanisms within that Bill that strike the appropriate balance so that rights which are impacted—fundamental rights to privacy. Sen. Vieira made the point that the fundamental right to privacy, yes, it is impacted, but it has to be balanced against the fact that, that right to the privacy must back away from the greater interest of allowing persons to disclose misdeeds and therefore, cannot trump the right of the whistleblower to give his story.

There is case law that makes it clear that in this case the right to private life, which is guaranteed under our Constitution, that is what is guaranteed under our Constitution, the right to private life cannot be used to trump an institution which is operating corruptly, and that institution saying, I as an institution I am entitled to privacy and therefore my rights are being impacted by the whistleblower spilling the beans on me. So you have to look at the facts as they develop and you have to apply the Constitution as a living instrument.

That, Mr. President, is the reason why with the passage and the delivery of the judgment in Suraj in June of 2022, the language of the three Bills that started in 2015 and had their second iteration in 2016, in 2018 and come here in 2024 as a 2022 Bill, did not have to be rewritten fundamentally because the law had moved on as a living instrument. So the suggestions that come from those who regard themselves as learned lawyers, that because the Bills were drafted in 2016 and there has been no substantial modification, Suraj cannot apply, is to fail to understand the law.

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Armour SC: May I say in answer to criticisms which have

been made of me that as their client I take advice, and I respect the right of lawyers who give me advice as a client to the client/lawyer confidentiality, and that is why I am not about to share any opinions that I get from eminent silk for them to be bandied about and made little of, but I will say this because I asked his permission. I asked the external silk whether I was allowed, because I was not going to put his name into the public domain for some of us here to hang his name from the roof tops doing a disservice to him. One of our most eminent constitutional lawyers who provided the external opinion with which Chief Parliamentary Counsel Mr. MacIntyre agreed and then proposed section 28 is Mr. Douglas Mendes—

Hon. Senators: [*Desk thumping*]

Sen. The Hon. R. Armour SC: —who has lectured some of us in this Chamber and has lectured for 20 years on constitutional law and is perhaps Trinidad and Tobago's foremost constitutional lawyer. I say no more, and I am sharing his opinion.

Mr. President, I will say a few more words only. This piece of legislation, this Bill is a work in progress. It has been on the books since 2015. It returned in 2016. It returned in 2018. It returned in 2022 and we are debating it now. It is time we make it law.

Hon. Senators: [*Desk thumping*]

Hon. Senator: Absolutely.

Sen. The Hon. R. Armour SC: I have acknowledged that it is a work in progress. We have registrations to build out and section 28 (2) gives the commitment once this Bill becomes law that we will come back to this honourable Chamber for consultation on the regulations we are going to build out, and a significant percentage of the contributions which have made in this Chamber, and in the other place, will be taken into consideration in the drafting of the regulations to give

flesh and bones to the protection and the sanctity that whistleblowers are entitled to.

So, Mr. President, without spending too more time unduly, I ask this honourable Chamber to embrace with both arms the opportunity to put this Bill on the statute books, let us make it law. No piece of legislation will ever be perfect as our society evolves and as we apply the living instrument doctrine we will improve it, and we will bring it back here if necessary for amendment, but let us pass this Bill into law, with those few words, 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.

Mr. Chairman: Okay. So, hon. Senators, this Bill has 28 clauses in it. We have one new clause 29 proposed by Sen. Thompson-Ahye. I am assuming that everybody has a copy of that. That being the case I will now as the clerk to begin.

Clauses 1 to 28.

Question proposed: That clauses 1 to 28 stand part of the Bill.

Sen. Vieira SC: Chair, I know we have not put in any amendments, but I just wanted to get it on the record. I have a question I would like to ask the Attorney General.

Mr. Chairman: Is it permitting to a particular clause or is it just a question?

Sen. Vieira SC: No. It pertains to clause 4.

Mr. Chairman: Okay. But you are not proposing amendment? It is just clarification?

Sen. Vieira SC: No.

Mr. Chairman: Okay. Go ahead.

Sen. Vieira SC: So thank you. Now, Attorney General, I know that there is a presumption against retrospective operation of a statute, and that is why clause 4 very clearly provides that the Act will apply to disclosures made before its coming into force. I note we are only talking about disclosures. We are not talking any sort of new duties or penalties. It is not going to impair any exists or obligations, but what is the thinking behind this clause 4? Why the need to cover disclosures made prior to the legislation?

Mr. Chairman: Attorney General.

Sen. Armour SC: Thank you, Mr. Chairman. The thinking is, particularly given the object of this Act, and dealing with the fact that there are realities, existing realities that we cannot prescribe as the Act comes into force, to allow the material to come in, and it will be assessed on its merits within the regulatory control of the legislation when passed into law, whether existing before or after the into coming effect. But it will be appropriately balanced out through the processes provided for in this Bill.

Clause 1 to 28 ordered to stand part of the Bill.

New clause 29.

Question proposed: That new clause 29 be read a second time.

Mr. Chairman: Let us try that again.

Question proposed: That new clause 29 be read a second time.

Question put and negated.

2.45 p.m.

Mr. Chairman: Sen. Thompsom-Ahye, just to explain because I see the confusion on your face. It is a new clause 29 which does not form part of the original Bill, and therefore needed to be read a second time. If it is not to be read a second time as per the question just put, which was negated, well, then it does not form part

of any amendment or debate thereof.

The Schedule ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, without amendment.

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

Sen. Mark: No, division.

The Senate divided: Ayes 23 Noes 6

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.

Ibrahim, Dr. M. Y.

Sagramsingh-Sooklall, Hon. R.

Sookhai, Hon. R.

Lezama Lee-Sing, Mrs. L.

Hislop, L.

London, Ms. K.

Richards, Dr. P.

Vieira SC, A.

Teemal, D.

Thompson-Ahye, Mrs. H.

Hutchinson, Prof. G.

Patasar, Dr. S.

Maharaj, Ms. S.

Francis, H.

NOES

Mark, W.

John, Ms. J.

Lutchmedial-Ramdial, Mrs. J.

Roberts, A.

Gopeesingh, Dr. T.

Clerk: Ms. Bisramsingh?

Sen. Bisramsingh: No

[Device goes off]

Clerk: Ms. Bisramsingh?

Hon. Senators: *[Laughter and crosstalk]*

Mr. President: Senators. Senators. Senators, let me just remind you that we are in a very important process, so can we have silence? Again, Members I remind you in relation to phones going off, what is required, but because we are going through a division, we cannot follow through on that, so just make sure your phone is silent. Again, clerk could you recall the last person that you called to make sure you get the recorded answer.

Division continued

NOES

Bisramsingh, Ms. K.

Hon. Senator: *[Inaudible]*

Sen. Mark: “Dat is ah problem”? We are the Opposition.

Hon. Senator: [*Inaudible*]

Sen. Mark: We will take you to court.

Mr. President: Hon. Senators, the results of the division is as follows: 23 Senators voted for, six Senators voted against, and there were zero abstentions. As such the Bill will now be read a third time and passed.

Question agreed to.

Bill accordingly read the third time and passed

ADJOURNMENT

Mr. President: Leader of Government Business

The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne): Mr. President, I beg to move that this Senate do now adjourn to Thursday July 04, 2024, at 2.00 p.m.

Mr. President: Hon. Senators, before I put the question on the adjournment leave has been granted for two matters to be raised on the Motion for the adjournment of the Senate. Sen. Mark.

Hon. Senators: [*Desk thumping*]

ONE CARIBBEAN MEDIA BOARD

(Nomination of Directors)

Sen. Wade Mark: Thank you. Mr. President, the matter on the Motion for the adjournment is calling on the Government to explain its recent nominations of two directors to the Board of One Caribbean Media, known as OCM, and its impact on freedom of the press. Now, Mr. President, as you know under section 4(k) of our Constitution, there is the “freedom of the press” entrenched in our constitution. Therefore, we are a bit concerned as the alternative Government as to what we read in the *Trinidad Express* dated Monday the 17th of June, 2024, on pages 18 and 19,

respectively. Where the Trinidad *Express* through its parent company OCM, has indicated that an annual general meeting is scheduled for July the 11th at 10.00 a.m. in Port of Spain.

One of items for discussion is the appointment of two nominations submitted by the Government for directorship. The OCM board has indicated in this release, this publication, the two directors that the PNM is seeking to impose on the OCM board, which is an independent privately owned media company, are as follows. One, Mr. Dale McLeod, he is an insurance agent with Guardian Life and he has his own agency. The company is saying they have no problem with Mr. McLeod. The United National Congress has problems with Mr. Dale McLeod, and we will indicate why. The second nominee, is one Mr. Shakka Subero, the son of a former journalist attached to the *Express* called Keith Subero, who is currently working out of the office of the Prime Minister, at white house or White Hall, rather.

2.55 p.m.

Now, Mr. President, we do have some concerns, and what are our concerns essentially? We would like the Government to explain its policy position on this decision, and why, Mr. President. What the Government has done, using the collapse of CLICO to get back all its money, \$20 billion, they have bought into OCM, which was initially controlled—not controlled, but CLICO had 23 per cent shares in the OCM group and they, therefore, had Directors on the Board of OCM. What has happened is the Government has floated something called NIF, the National Investment Fund, which is a state-owned, 100 per cent, company under the control of Corporation Sole, Minister of Finance. And because of that 100 per cent ownership of the 23 percent by NIF, the Government has approached OCM, seeking to have two politically-appointed directors placed on the OCM Board.

Now, the question here—no problem if these people did not have a political background. When we look at the CVs of the both gentlemen, which I have before me, Mr. McLeod, who comes across innocently, Dale McLeod, when I go through his own web page on Facebook, I am reading where in 2018, 2019 and 2020, this man is boasting—he is boasting that he, Mr. President, has been distributing vouchers for groceries for families in the constituency of Diego Martin North/East. He is also boasting that he is giving out vouchers for books for kids, which I have no problem with, but you know what is the issue, Mr. President? Not that. The issue is that he is doing that on behalf of his agency and the person who is enjoying the benefits is the Minister of Finance, the hon. Colm Imbert. I have it here in black and white. You want me to read it? I have the information here, where the Minister of Finance is the person who is directly benefiting, through his constituents, as a result of this matter.

Sen. Dr. Browne: Mr. President, Standing Order 46(6).

Mr. President: Yes. So, Sen. Mark, you may want to rephrase that statement. It could be misconstrued as imputation of improper motives.

Sen. W. Mark: Okay. Well, Mr. President, all I can tell you, I have the evidence here and I can circulate it to you, where, for instance, the Minister of Finance is in pictures posing with this gentleman. I have it here, but I know I cannot show it because you would not like me to show it.

Mr. President: I understand that, Sen. Mark, but even so, just be careful about how you are phrasing that statement.

Sen. W. Mark: So the first reservation we have here is the Minister of the Government, who owns 23 per cent through NIF, and the Minister of Finance, Corporation Sole, seems to have a relationship with Dale McLeod. And then, on the other hand, you have some fella called Shakka Subero, whose father is a known

PNM operative.

Hon. Senator: What!

Sen. W. Mark: Known PNM operative.

Hon. Senator: Keith Subero.

Sen. W. Mark: Right? Keith Subero, operating out of the Prime Minister's Office. And, Mr. President, when we look at this gentleman's CV, Mr. Subero, Shakka that is, we see where he had an illustrious career in being, for instance, director, advisor. He was a Director of TTT. He was an Advisor to the Minister of Agriculture, Land and Fisheries. He is a competitor working for Digicel, which is in complete competition with the OCM group that is in the area of media. So this man is conflicted.

So the Government must explain to the country and to the Parliament why is it trying to put two Directors on the Board of OCM? Are you seeking to influence the editorial policy of the OCM?

Hon. Senators: [*Desk thumping*]

Sen. W. Mark: Are you trying to influence the *Trinidad Express*? Are you try to influence i95.5 and its sister station?

Mr. President: Senator, you have one more minute.

Sen. W. Mark: Yeah. Are you seeking to influence the group, CCN, which is the television station, TV6? The reason why we have raised this is, Mr. President, we are calling on the Government to remove its filthy hands off the press. Remove your hands off the press. We are committed to the freedom of the press. The United National Congress is committed to the freedom of the press, and we call on the Government to withdraw these two nominees that are politically influenced, that are politically associated, that are PNM agents that are seeking to infiltrate the Board of OCM and we do not know if they are fronting for another conglomerate,

to get in there to get confidential and private information. We do not know. So this is a very serious matter this is impacting on press freedom in this country, and we call on Dr. Rowley who is the Prime Minister and who heads the Cabinet, and who is behind, he must know about this decision, Mr. President. And we call on the Prime Minister to withdraw these nominees—

Mr. President: Sen. Mark—

Sen. W. Mark: [*Inaudible*]

Mr. President: Sen. Mark, time is up. Minister in the Ministry of Finance.

Hon. Senators: [*Desk thumping*]

The Minister in the Ministry of Finance (Hon. Brian Manning): Thank you, Mr. President, and now back to reality. At the outset, it must be made clear that this has nothing to do with the freedom of the press. It is public knowledge that as part of the repayment of the \$30 billion spent by the Government of the Republic of Trinidad and Tobago, and what is commonly called the “CLICO bailout”, which involved not only relief to persons with short-term investment products at the Colonial Life Insurance Company, but also involved a bailout of CLICO Investment Bank, British American Insurance Company, CL Financial, and several other liabilities of the CLF group. The Government, in July of 2018, acquired 15,286,000 shares on One Caribbean Media, or OCM, valued at \$183,431,000, or \$183.4 million, equivalent to 23 per cent of OCM.

These shares, along with other shareholdings acquired from CLICO Investment Bank in partial repayment for the CLICO bailout, such as shares in Republic Bank and West Indian Tobacco Company, were transferred to the National Investment Fund Holding Company, a wholly-owned state enterprise, to be kept in trust for the people of Trinidad and Tobago. All of the above mentioned companies shares have been used as collateral to underwrite the very successful

public NIF bond issues from the National Investment Fund Holding Company over the last six years, which have provided the general population with high quality and safe investments, with very generous and attractive rates of return. The value of the various shares owned by the National Investment Fund Holding Company has fluctuated overtime, as is expected. But in the case of One Caribbean Media, there has been a precipitous decline in the value of OCM shares since the Government acquired ownership of 23 per cent of the company for the benefit of the population in 2018. OCM shares have plummeted over the last six years for a value of \$12 per share when they were acquired in July 2018, to a value of \$3.68 on July 01, 2024, a decline of \$8.32 per share, or 69.3 per cent.

This has reduced the Government's asset value held in OCM shares and, by extension, the National Investment Company and the taxpayers of Trinidad and Tobago by \$127.2 million. The Government, as the largest single shareholder of OCM, has not sought to have a presence on the Board of the company over the last six years. But having seen its shareholding and, by extension, the people's shareholding in OCM, reduced in value by over \$100 million, with no sign of a recovery in value in the near future under the present Board, it is now considered necessary for the largest shareholder in OCM to be present in corporate decision making at the company.

Contrary to what has been said by Sen. Mark, this move, by no stretch of the imagination, has anything to do with seeking to influence the editorial policy of the various media companies within the OCM group. Instead, this is all about responsible corporate governance and it would be wrong for any major shareholder of any company, incorporated under the Companies Act in Trinidad and Tobago, to just sit idly by and watch its assets dissipate and its share value diminish in this way. After all, we are talking about a lost in the value of taxpayers' assets over a

six-year period of \$127 million. Indeed, to contradict the assertions made by Sen. Mark, and to underscore the Government's commitment to freedom of the press, in mid 2023, the Minister of Finance, based on a request from the Trinidad Express Newspaper Limited, a company within the OCM group agreed to request the EximBank to provide access to foreign exchange through one of the special windows at the EximBank to the Trinidad Express newspaper and other daily newspapers to purchase newsprint. This facility has not been made available to newspapers under any other government.

With respect to public statements made by members of the current Board of OCM, that they do not support, and will not support one of the Government's nominees to the Board of OCM, this public expression of intent is contrary to all known principles of corporate governance. Under section 71(3) of the Companies Act, shareholders, at an annual general meeting, at which an election of directors is required, elect directors to hold office for terms of up to three years. If no term is specified, the directors so elected hold office until the next annual general meeting, that is, for one year.

However, company directors, unless they are also shareholders or they have been given a proxy, cannot elect directors at an annual general meeting of the company. Shareholders elect directors, not directors. And while it is the common misconception that directors of companies can elect themselves and other directors at an annual meeting, this is simply not the case under the Companies Act of Trinidad and Tobago. Directors, on the other hand, owe a duty to the company and it is expected that directors will, at all times, make every effort to maintain and develop the capital value of a company. In this particular case, the 10 largest shareholders of OCM on record, as stated in its 2023 annual report, are as follows:

1. The National Investment Fund Holding Company Limited, 23 per cent,

that is 15,285,917 shares;

2. Rebyn Limited, 8.8 per cent shareholding, 5,826,917 shares;
3. The CCN Group, ESOP, 7 per cent holding, 4,627,286 shares;
4. Republic Bank Limited, 4.5 per cent shareholding, 2,993,209 shares;
5. ABK Investments Inc., 3.6 per cent shareholding, 2,361,000 shares;
6. Brentwood Corporation, 3.1 per cent shareholding, 2,050,000 shares;
7. HH Investments Limited, 2.9 per cent shareholding, 1,941,398 shares;
8. Athlyn Investments Limited, 2.5 per cent shareholding, 1,660,275 shares;
9. Dr. St. Elmo Thompson, 2.4 per cent shares; 1,615,572 shares;
10. RBC Trust (T&T) Limited, 2.2 per cent shareholding, 1,476,728 shares.

The Government, through NIF, with 23 per cent ownership, is therefore by far the largest single shareholder in OCM, and stands to lose the most through the serious decline in share value that has occurred over the last six years. Further, the present directors of OMC, collectively, only directly own 0.16 per cent of the shares of OCM, while parties connected to these shareholders own a total of just 11.9 per cent of the company.

3.10 p.m.

Four of the present directors namely: Faarees Hosein, Chairman; Michael Carballo, Gregory Thomson and Douglas Wilson own no shares in OCM—

Mr. President: Minister you have one more minute.

Hon. B. Manning:—and are not connected to any shareholder of OCM.

The Government wishes to make it clear therefore, that it is the recovery of the \$127 million in the asset value of taxpayers holdings in OCM that has been lost over the last six years that has influenced its decision to have a presence on the board of OCM and it has no intention whatsoever of seeking to interfere with

freedom of the press. To sit idly by and do nothing about this huge loss of share value would be irresponsible. Thank you, Mr. President.

Hon. Senators: [*Desk thumping*]

Mr. President: Sen. Vieira.

Hon. Senators: [*Desk thumping*]

**Escazú Agreement
(Government to Rectify)**

Sen. Anthony Vieira SC: Thank you, Mr. President. Mr. President, when it comes to the environmental rule of law, the situation in Trinidad and Tobago strikes me as paradoxical. As the saying goes, it seems to be a riddle wrapped in a mystery inside an enigma. Take for example, that unlike many countries, on the surface we have everything in place for a robust environmental protection regime. On paper we look pretty good. Our Environmental Management Act has been around for nearly a quarter century, having commenced in March 2000. We have a specialized environmental court in the Environmental Commission, yet there is a dearth of environmental cases.

The Government says the right things in respect of our intended nationally determined contributions and plans to reduce carbon emissions. But when unlawful quarrying takes place brazenly with little or no consequence, even when such quarrying makes life for residents in surrounding areas a living hell and when people are allowed to slash and burn our hills, again with little or no consequence. Notwithstanding how it affects our watersheds, the quality of air and flooding during the raining season, it just seems like lip service.

We live in a tropical paradise, but there is no discernable land use plan to guard against so-called farmers, squatters and even organized crime who damage the environment. The Green Fund which was established to financially assist

organizations and community groups engaged in environmental activities, has billions of dollars, yet environmentalists complain about difficulties in being able to access funds from it.

This country played a leading role in the establishment of the Escazú Agreement. We are one of the original signatories, yet just as it occurred with the CCJ, where we pushed for a treaty, got it, signed it, even managed to have the court located here. Just as with the CCJ, when the time came to operationalize the treaty we backtracked, failing to ratify the agreement.

Now, as many know, the Escazú Agreement is a ground breaking legal instrument for environmental protection which also provides for human rights. The main beneficiaries under the agreement are the people of our region, particularly, our most vulnerable groups and communities. Under the agreement, citizens get to participate significantly in making decisions that affect their lives and the environment. The treaty offers strategies for increasing public awareness and empowering citizens to access rights. There are three main components to the treaty: Information, participation and justice for environmental defenders.

Now why does this matter? Even though we do not talk about it much, the fact is that we are in the midst of a climate crisis, rising sea levels pose a threat and that is not speculation. Because as I speak, countries in the South Pacific have made plans to migrate populations. And while rising sea levels may not affect us as badly as St. Georgetown or the Bahamas, and Cayman Islands, and other parts of the Caribbean, it is going to impact our coastlines and low lying areas.

This planet just recorded 12 consecutive months of unprecedented heat and scientist warn of worse to come. The UN Secretary General warns and I quote:

“We are playing Russian roulette with our planet. We need an exit ramp off the highway to climate hell...”

The heat this year has caused drought in places like Mexico, Panama, St. Vincent and the Grenadines. It even occasioned Public Utilities Minister, Marvin Gonzales, to acknowledge that WASA is facing a serious challenge to maintain supplies in the absence of millions of gallons of water because of current conditions. He warns that climate change will pose a continuing problem to the country's water supply and distribution capabilities. This year's ocean temperatures are off the charts, having broken all records. Barbados, St. Vincent, Carriacou and Union Island, are now counting the cost of damage after having been pummeled by Hurricane Beryl, just as Jamaica and the Cayman Islands are bracing for a direct hit.

The climate crisis is real and it is existential. At stake is humanity's future survival and yet in Trinidad and Tobago even though our eyes are opened we seemed to be asleep. It is time to wake up. We need to develop new plans based on geography, geology and ecology, not politics and we need to do so urgently. Preparedness is more than securing our homes and stocking up on essential supplies. Ratifying the Escazú Agreement can help assist in tackling climate change through its mechanisms.

Among other things, by ensuring that the public is provided with accessible, timely and comprehensive information on environmental issues and that they can meaningfully participate in environmental decision-making processes by allowing individuals and communities to seek legal recourse where environmental laws are violated. By fostering cooperation among Latin American and other Caribbean countries on environmental matters, essential for addressing transboundary climate issues and sharing best practices and resources, and by encouraging the exchange of knowledge, technology and capacity building toward effecting climate change mitigation and adaptation.

Overall, the Escazú Agreement provides a robust framework for ensuring that environmental governance in this country is transparent, inclusive and accountable. Ratification of the treaty will be a key step forward when environmental conservation in this country. It will help us reduce socio-environmental conflict and it will strength our capacity to tackle climate change effectively and equitably. That is why in September 2019, over 60 civil society organizations, working across Trinidad and Tobago sent an open letter to the Prime Minister calling on government to rectify the Escazú Agreement. We need to prepare ourselves for the possibility of the extreme threats in the coming decades. We can no longer permit what we signed in 2018 to remain an empty promise. It is time to ratify the Escazú treaty. I thank you.

Hon. Senators: [*Desk thumping*]

Mr. President: Leader of Government Business.

Hon. Senators: [*Desk thumping*]

The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne): Mr. President, Sen. Vieira has made a very passionate and detailed case with respect to ratification. The Government of Trinidad and Tobago acknowledges the importance of public access to information, fairness and government accountability, including in the context of the environment and related matters. The Escazú Agreement on the access to information, public participation and justice in environmental matters in Latin and the Caribbean is certainly recognized as an arrangement related to such access and inclusion of the population and can contribute to citizens' empowerment and help safeguard the environment that we cherish.

While it is noted that the Escazú Agreement appears to be in alignment with national goals for the promotion of sustainable development and protection of the

environment, in giving consideration to ratification, all elements of such agreements have to undergo very careful examination and scrutiny and will require the Attorney General to give appropriate advice for the Cabinet's consideration. Beyond this assurance, it would be premature for the Government of Trinidad and Tobago to make a more definitive statement at this time. The matter will be given very careful consideration. Thank you, Mr. President.

ARRANGEMENT OF BUSINESS

Mr. President: Leader of Government Business.

The Minister of Foreign and CARICOM Affairs (Sen. The Hon. Dr. Amery Browne): Mr. President, I wish to give some further notice with respect to the business for tomorrow, if I may proceed. The Government intends to debate the Bail (Amdt.) Bill, 2024, the Administration of Justice (Indictable Proceedings) (Amdt.) (No. 2) Bill, 2024, the Miscellaneous Provisions (Judicial and Legal Service) Bill, 2024, provided that these are passed in the House of Representatives this afternoon. And if time permits, the National Musical Instruments Bill, provided that it is passed today.

Hon. Senators: [*Laughter*]

Sen. The Hon. Dr. A. Browne: Thank you, Mr. President.

Question put and agreed to.

Senate adjourned accordingly.

Sitting adjourned at 3.21 p.m.