

**HOUSE OF REPRESENTATIVES***Monday, April 08, 2019*

The House met at 10.00 a.m.

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

**Madam Speaker:** Hon. Members, I have received communication from the following: hon. Shamfa Cudjoe, MP, Member for Tobago West, who has requested leave of absence during the period April 06<sup>th</sup> to 10<sup>th</sup>, 2019; Dr. Roodal Moonilal, MP, Member for Oropouche East; and Dr. Tim Gopeesingh, MP, Member for Caroni East, who have requested leave of absence from today's sitting of the House. The leave which the Members seek is granted.

**PRIME MINISTER'S QUESTIONS****ANR International Expansion Project  
(Consultation With Residents)**

**Mr. David Lee (Pointe-a-Pierre):** On behalf of the Member for Couva North to the hon. Prime Minister: In light of the growing dissatisfaction by residents who will be directly affected through the expansion of the ANR International Expansion Project, could the Prime Minister state whether his Government intends to have urgent consultation with the Crown Point/Bon Accord residents on the issues affecting them?

**Madam Speaker:** Prime Minister.

**The Prime Minister (Hon. Dr. Keith Rowley):** [*Desk thumping*] Madam Speaker, the only useful phrase in this question is "growing dissatisfaction". There is no growing dissatisfaction with respect to the residents in this area. What exists is a request by the residents for further information and clarification of the Government's Development Programme in the area. As a result of that, Madam

Speaker, and in anticipation of these requirements, the normal processes and procedures are under way, and only last Friday this said community engaged in very fruitful and useful clarifying discussions with the residents of this area. So the question is null, void and of no effect.

**Madam Speaker:** Supplemental, Member for Couva South.

**Mr. Indarsingh:** Thank you, Madam Speaker. Could the Prime Minister advise the House how many parcels of land have been identified to be acquired for this said project?

**Hon. Dr. K. Rowley:** No. I would rather if you put that question to the relevant Minister in the appropriate way and the answer would be given at that time.

### **Implementation of Housing Bond**

**Mrs. Vidia Gayadeen-Gopeesingh** (*Oropouche West*): Thank you, Madam Speaker. In relation to the Prime Minister's recent statements at a public meeting, could the Prime Minister indicate when the "Housing Bond" earlier mentioned by the Government will be implemented?

**The Prime Minister (Hon. Dr. Keith Rowley):** Madam Speaker, the Government's policy of implementing housing bond has been mentioned, and the appropriate preparations are being made by the relevant Ministry, which is the Ministry of Finance, and it is anticipated that the Ministry of Finance would be in a position to address this matter at the mid-year review.

**Madam Speaker:** Supplemental, Member for Oropouche West.

**Mrs. Gayadeen-Gopeesingh:** Hon. Prime Minister, would those bonds be obligation bonds or revenue bonds?

**Hon. Dr. K. Rowley:** If you await the presentation of the Minister of Finance on completion and preparation, the answer would be available.

### **Public Participation in Industrial and Commercial Activities (Dr. Eric Williams' view)**

**Mr. Rodney Charles** (*Naparima*): Thank you. Could the Prime Minister state whether the Government is still committed to Eric Williams' view as enunciated in the 1972 “White Paper on Public Participation in Industrial and Commercial Activities” that shares of state enterprises should be divested as a matter of priority to the general public?

**The Prime Minister (Hon. Dr. Keith Rowley)**: Madam Speaker, if he is referring to Dr. Eric Williams, former Prime Minister of Trinidad and Tobago, I would assume that he was talking about the former Prime Minister of Trinidad and Tobago. Madam Speaker, this matter refers to some policy from 1972. I would advise, Madam Speaker, that since 1972, public assets from PLIPDECO, state enterprises like BWIA, NFM, FCB and other distributions of public assets have taken place on a consistent basis. I know of no policy being espoused anywhere in the Government that it has ceased to be so, and therefore I do not know where this question is coming from.

**Madam Speaker**: Supplemental, Member for Naparima.

**Mr. Charles**: Could the Prime Minister, in the context of what he has just said, give an undertaking—[*Device goes off*]

**Madam Speaker**: Could the Member who has that device, please leave the Chamber and take it off. [*Device continues ringing*] I am still hearing the device. And could all Members take this opportunity to ensure that their devices are on silent and not going to disturb the proceedings. Member for Tabaquite. Member for Pointe-a-Pierre.

**Kay Donna Drive/Cinema  
(Compensation to Minister)**

**Mr. Lee**: Oh, sorry, Madam Speaker.

**Madam Speaker**: I have called Member for Pointe-a-Pierre, No. 6.

**Mr. David Lee** (*Pointe-a-Pierre*): Thank you. Question No. 6 to the hon. Prime

Minister: Given recent reports swirling in the public sphere that the Minister who is a majority shareholder at the recently acquired Kay Donna Drive/Cinema received some \$100 million in compensation for his portion of the property, can the Prime Minister confirm or deny that sum as well as to provide this House with details of the actual sum of moneys received by him and when?

**The Prime Minister (Hon. Dr. Keith Rowley):** Madam Speaker, Parliament time is very valuable and I do not propose to spend any of it responding to rumour and gossip and mischief under the guise of reports swirling in the public sphere. I know of no swirling report. I do not know what public sphere he is talking about, and I know of no Minister who has received any money or any \$100 million. This is just UNC gossip being brought to the Parliament.

**Building at #3 Alexandra Street, St. Clair  
(Accommodation for CPO Office)**

**Mr. Rudranath Indarsingh** (*Couva South*): Thank you, Madam Speaker. Madam Speaker, to the Prime Minister. Could the Prime Minister inform this House why the Cabinet approved a lease for a building at #3 Alexandra Street, St. Clair to accommodate the office of the Chief Personnel Officer at a cost of \$14 per square foot when a building for the said CPO's office was being rented at \$7 per square foot?

**The Prime Minister (Hon. Dr. Keith Rowley):** Madam Speaker, in the disparities that are mentioned are not correct, and, Madam Speaker, the answer to the question is in the question. It is to accommodate the office of the CPO, a department that has made request to the relevant government department for relocation and aggregation of many government departments into one building so as to provide the public with better service. Madam Speaker, a request was made by the department of the CPO to the relevant government department and all the necessary steps were taken to determine the value of the building and the offering

of the building as suitable was determined by the relevant government department and the appropriate approvals were had under the normal circumstances of government rental where the Government is paying for a service for the supply of adequate accommodation for public servants in the CPO's office.

**Madam Speaker:** Supplemental, Member for Couva South.

**Mr. Indarsingh:** Prime Minister, are you telling this House that the building at Barataria that did not house all the offices in relation to the Chief Personnel Officer?

**Hon. Dr. K. Rowley:** Madam Speaker, I just spoke in the English language, and it is very clear what I have said, and I stand by what I have said. I want to add that the old formula of how this matter is arrived at, if the Member poses the appropriate question to the relevant Minister responsible for the acquisition of Government's rentals, he would get the details so as—[*Interruption*]

**Madam Speaker:** Prime Minister, please continue. Supplemental, Member for Naparima.

**Mr. Charles:** Thank you. Mr. Prime Minister, in the context of the straitened circumstances of the Government, why is the rental of government property taking precedence at this point in time?

**Hon. Dr. K. Rowley:** Madam Speaker, the examination of this particular arrangement will show that there are benefits to the Government for doing that and that it is cheaper to have done it that way.

**Madam Speaker:** Supplemental, Member for Naparima.

**Mr. Charles:** Is the Prime Minister at all concerned that there are concerns by the population that the rental arises from an individual who is a Member of his Cabinet?

**Hon. Dr. K. Rowley:** Madam Speaker, I am not aware that the population is

concerned about who owns the building. What the population is concerned about is what the Government is buying and what the Government gets value for money for.

**Madam Speaker:** Member for Oropouche West.

**Mrs. Gayadeen-Gopeesingh:** Hon. Prime Minister, what criteria were used to determine suitability?

**Hon. Dr. K. Rowley:** Value for money and suitability of the structure.

**Promoter for Tobago Jazz 2019  
(Tendering Process)**

**Ms. Ramona Ramdial** (*Couva North*): Thank you, Madam Speaker. To the Prime Minister: Could the Prime Minister inform this House why no tendering process was engaged in the choice of promoter for Tobago Jazz 2019 by the Tobago Festival Commission?

**The Prime Minister (Hon. Dr. Keith Rowley):** Madam Speaker, it is not every situation that requires a tendering process. There are instances of obtaining services where you seek the service based on matters that are unique in the circumstance.

**Madam Speaker:** Supplemental, Member for Couva North.

**Ms. Ramdial:** Thank you, Madam Speaker. Prime Minister, do you support the claim that there are promoters from within Tobago who could have done the job just as well and for less?

**Hon. Dr. K. Rowley:** I am in no position, Madam Speaker, to support or to refute that claim.

**Report on Mr. Darryl Smith  
(Tabling in Both Houses)**

**Mr. Rodney Charles** (*Naparima*): Thank you, Madam Speaker. Could the Prime Minister inform the House when will the outstanding report on Mr. Darryl Smith,

former Minister of Sport and Youth Affairs, will be formally and finally tabled in the both Houses of Parliament?

**The Prime Minister (Hon. Dr. Keith Rowley):** Madam Speaker, as I said in this House before, the report which was prepared has been the subject of legal challenge and on the advice of the Attorney General's office and the public service requirements, this matter is there being reviewed, and upon review and advice that it is appropriate to present that or any other report, it would be so done.

**Madam Speaker:** Supplemental, Member for Naparima.

**Mr. Charles:** Could the Prime Minister then give us some sense of a time frame when all the reviews would be finalized?

**Hon. Dr. K. Rowley:** Madam Speaker, I am in no position to do that because I am not in control of that situation.

**Madam Speaker:** Supplemental, Member for Naparima.

**Mr. Charles:** Is this part of a process of keeping the House of Representatives and the people of Trinidad and Tobago delaying the provision of vital information to them?

**Hon. Dr. K. Rowley:** I know of no such situation, Madam Speaker. What I do know is that there are processes, and as a matter of fact, when a former Prime Minister acted differently the result was quite catastrophic.

**Bank of Nova Scotia, Houston, Texas  
(Evaluations of Proposals for Petrotrin)**

**Mr. Rudranath Indarsingh (Couva South):** Thank you, Madam Speaker. To the Prime Minister: In light of the public disclosure that 70 expressions of interest have been received to take over the operations of the former Petrotrin refinery, could the Prime Minister inform this House how the Bank of Nova Scotia of Houston, Texas, was selected to provide technical advice in the shortlisting and evaluation of proposals for the sale or lease of the said refinery?

**The Prime Minister (Hon. Dr. Keith Rowley):** Madam Speaker, Petrotrin would have gone out with a request for proposals, would have received proposals, evaluated them and would have chosen the best one on the basis of competence and experience and cost.

**Madam Speaker:** Supplemental, Member for Naparima.

**Mr. Charles:** Thank you. Mr. Prime Minister, in the context of Dr. Williams' White Paper on public participation in industrial and commercial activities, was any consideration or is any consideration being given to divestment to the general public in this regard?

**Hon. Dr. Keith Rowley:** Madam Speaker, which question I am answering?

**Madam Speaker:** No. 10.

**Mr. Charles:** We are talking about divestment.

**Hon. Dr. K. Rowley:** Madam Speaker, No. 10 is about how the Bank of Nova Scotia, Houston, was selected. What is the question?

**Hon. Member:** Read it out! [*Laughter*]

**Mr. Charles:** In the proposals for the lease or sale of the said refinery, I am asking if it is governed by a policy principle that was enunciated by the founding father of the nation, Dr. Eric Williams? That is all.

**Hon. Dr. K. Rowley:** Madam Speaker, I do not know what is this obsession with Eric Williams today you know, but I simply want to say, everything that this Government does is governed by a policy of the people of Trinidad and Tobago. [*Desk thumping*]

**Madam Speaker:** Supplemental, Member for Naparima.

**Mr. Charles:** Prime Minister, it is a simple question. The 70 that you receive, does any of the 70 indicate a situation where the general public would be the beneficiary of the sale?

**Hon. Dr. K. Rowley:** Madam Speaker, we have spoken on this matter ad infinitum. All that has happened is that a request for proposal has been put out so that Petrotrin can have adequate technical ability to assess those who are offering to use the refinery. That is simply clear English against a policy that says that we as a nation, not producing enough of our own crude, will not continue to refine oil by buying oil to refine and lose money. On that basis we shut the refinery, and the policy requires that we make the refinery available to anyone else who may have the wherewithal to use the refinery. Against that policy, we have invited to see who would respond and those responses are coming in, and this question is asking me how we chose the advisor to evaluate. I do not know where Naparima is going, and I am not going there with him.

**Madam Speaker:** Member for Couva South.

**Mr. Indarsingh:** Thank you. Could the Prime Minister inform this House what would be the cost to the taxpayers of Trinidad and Tobago?

**Madam Speaker:** In terms of—

**Hon. Dr. K. Rowley:** Well, well, I mean to say—

**Madam Speaker:** Prime Minister.

**Mr. Charles:** Of the Bank of Nova Scotia.

**Madam Speaker:** Couva South, I would not allow that question.

### **Flooding Mitigation Works (South Trinidad)**

**Mrs. Vidia Gayadeen-Gopeesingh** (*Oropouche West*): Thank you, Madam Speaker. To the hon. Prime Minister: With regard to the Prime Minister's recent assurances to the residents of Greenvale that flooding mitigation works will commence to prevent same, could the Prime Minister indicate when will similar work commence in south Trinidad to prevent the devastating yearly flooding?

**The Prime Minister (Hon. Dr. Keith Rowley):** Madam Speaker, I did not tell the

residents of Greenvale when flooding works abatement will commence. What I did was tour the advance state of preparation to deal with improved hydraulic management around Greenvale, and I am pleased to announce that that work is very well advanced, and similar works, not only in Greenvale, but all over Trinidad. And if the Member is so inclined to ask the appropriate question to the relevant Minister, she would get a comprehensive list of where all over Trinidad, where it is required, that work is going on now at pace with respect to preparation to deal with flooding abatement in the rainy season

**Madam Speaker:** Supplemental, Member for Oropouche West.

**Mrs. Gayadeen-Gopeesingh:** Have hydraulic management works started in Oropouche West, hon. Prime Minister?

**Hon. Dr. K. Rowley:** Madam Speaker, I would like to advise the Member for Oropouche West, if you file the appropriate question to the appropriate Minister you can get a detailed undertaking and listing of where the works are taking place across Trinidad.

**Madam Speaker:** Member for Naparima, supplemental.

**Mr. Charles:** Prime Minister, did you give assurances to the residents of Greenvale that flooding mitigation works will commence to prevent future flooding? And the question I am asking from the residents of Naparima and Barrackpore, are you as Prime Minister willing to give assurances to the citizens/residents in Barrackpore?

**Madam Speaker:** So, Member for Naparima, the first question as I understand it was already answered, asked and answered. So, the question that I am going to allow is, is the Prime Minister prepared to give assurances to the members—yes. Prime Minister.

**Hon. Dr. K. Rowley:** Madam Speaker, I will give the assurance that the Ministry

of Works and Transport and its departments will make every effort to treat with all situations within the affordability and availability of effort to ensure that we mitigate flooding and abate the effects of flooding across Trinidad and Tobago.

**Construction of Port in Toco  
(Feasibility or Plans Done)**

**Mr. David Lee** (*Pointe-a-Pierre*): Thank you, Madam Speaker. On behalf of the Member for Tabaquite, question No. 12 to the Prime Minister. Since the Government has been speaking about the highway to Toco to facilitate transport by ferry from Toco to Tobago, could the Prime Minister inform the House whether any feasibility or plans have been done for the construction of port facilities in Toco?

**The Prime Minister (Hon. Dr. Keith Rowley)**: Madam Speaker, the plans that are under way include the preparation of the improvement of the roadway to Toco and the EIA with respect to the port establishment in Toco bay. Madam Speaker, the feasibility that we have done is to talk directly to the people of Grande Riviere, Toco, Matelot, Cumana, Rampanalgas, Sangre Grande, all of whom by public mandate have authorized this Government to improve their physical infrastructure, and to bring them into the economy of Trinidad and Tobago. [*Desk thumping*]

**Madam Speaker**: Supplemental, Member for Naparima.

**Mr. Charles**: Mr. Prime Minister, has the Government done an economic feasibility study, and if so what is the return on the investment?

**Hon. Dr. K. Rowley**: Madam Speaker, this is not a matter of return of investment on actual dollars and cents. It is a matter of creating the infrastructure, and for which extensive studies are available, showing that this part of the country is the part of the country which has the lowest earnings, the lowest opportunities for economic advancement, and that the studies have shown is as a result of poor infrastructure and underutilization of the assets of the area. We need no further

indication. [*Desk thumping*]

**Madam Speaker:** Supplemental, Member for Pointe-a-Pierre.

**Mr. Lee:** Thank you, Madam Speaker. Prime Minister, based on what you had said about the extensive discussion with residents of Grande Riviere, et cetera, could the Prime Minister give a start date when the port would start in Toco?

**Hon. Dr. K. Rowley:** Madam Speaker, anyone hearing that we are now doing the environmental impact assessment and asking for a date of the port start, the start-up of the port, is just being mischievous. Madam Speaker, I cannot subscribe to that mischief. [*Desk thumping*]

**Madam Speaker:** Member for Naparima, supplemental.

**Mr. Lee:** Prime Minister, is it true that you are reported as saying in the past that the expenditure in Tobago—the road to Toco is a waste of time and effort? And if that is correct, what changed—

**Madam Speaker:** One question. Member, one question.

**Mr. Charles:** The question is, what has changed to justify the change in your views?

**Madam Speaker:** Okay, so wait, one minute please? The first thing is an assertion or it is a question?

**Mr. Charles:** Assertion and a question.

**Madam Speaker:** Prime Minister.

**Hon. Dr. K. Rowley:** Madam Speaker, I am not prepared to respond to any assertion from the Member for Naparima, who is being purely mischievous.

**Madam Speaker:** Member for Naparima, supplemental.

**Mr. Charles:** Is the Prime Minister saying that you have never made a statement that a highway to Toco is a waste of time and money? [*Desk thumping*]

**Hon. Dr. K. Rowley:** Madam Speaker, I am not aware of any statement made by

me that the highway to Toco is a waste of time, because I have never heard of any highway being advanced for Toco. What I heard of, and sometime under the group that is on the other side, is the building of a port in Toco, and that did not carry with it any road upgrade as we are doing now. What they did was stimulate a land grab in the village of Toco, which was objected to at the time by the people of Toco. [*Desk thumping*]

**Madam Speaker:** Member for Tabaquite, question 4. Is it that you are vacating the questions, Whip?

**Mr. Lee:** No, no.

**Madam Speaker:** All right.

***Jean de La Valette***  
**(Dredging of Port to Accommodate)**

**Mr. David Lee** (*Pointe-a-Pierre*): Thank you, Madam Speaker. Question No. 4: Could the hon. Prime Minister inform the House what is the estimated cost of dredging the port to facilitate the accommodation of the *Jean de La Valette* which is scheduled to service the sea bridge, by the Member for Tabaquite.?

**The Prime Minister** (**Hon. Dr. Keith Rowley**): Madam Speaker, these engineering assessments are currently being made, and as soon as that figure is available and the work is done this House can be so advised with the appropriate question being filed.

***Jean de La Valette***  
**(Associated Costs)**

**Mr. David Lee** (*Pointe-a-Pierre*): Thank you, Madam Speaker, question No. 5 on behalf of the Member for Tabaquite. Could the Prime Minister provide the House with the cost of leasing the ferry known as the *Jean de La Valette* including crew and supplies as well as the costs associated with securing the same ferry from its

current location to Port of Spain?

**The Prime Minister (Hon. Dr. Keith Rowley):** Madam Speaker, I am trying to make sure that I know what he is asking me about the costs associated with securing the ferry from its current location to Port of Spain. The cost per day to lease this ferry, Madam Speaker, is 34,500 euros per day, and that is the overall cost for leasing and operating the ferry.

**Madam Speaker:** Supplemental, Member for Pointe-a-Pierre.

**Mr. Lee:** Thank you, Madam Speaker. Prime Minister, what would be the cost for relocating the vessel from wherever it is based presently to bring it to Trinidad and Tobago?

**Hon. Dr. K. Rowley:** Madam Speaker, the breakout of that figure from the cost is not available to me at this moment, but if the Member asks a question in the appropriate way, the figure can be made available to him. That was not part of the original question so I do not have that figure.

## URGENT QUESTIONS

### Eviction of Local Government Councillors (Unavailability of Funding)

**Mrs. Vidia Gayadeen-Gopeesingh (*Oropouche West*):** Thank you, Madam Speaker. To the Minister of Finance: With regard to recent reports indicating that local government councillors of the Couva/Talparo Regional Corporation are set to be evicted due to the unavailability of funding from the Ministry to fulfil their rental commitments, could the Minister indicate when will releases be issued?

**The Minister of Finance (Hon. Colm Imbert):** Next week.

**Madam Speaker:** Supplemental, Member for Oropouche West.

**Mrs. Gayadeen-Gopeesingh:** Hon. Minister, at what date next week?—we have seven days.

**Hon. C. Imbert:** Before the end of the week.

**Madam Speaker:** Supplemental, Member for Oropouche West.

**Mrs. Gayadeen-Gopeesingh:** Would it be released in tranche?

**Hon. C. Imbert:** All necessary funding would be released.

**Madam Speaker:** Supplemental—Member for Oropouche West.

**Cars Catching Fire  
(Investigations into Fuel)**

**Mrs. Vidia Gayadeen-Gopeesingh** (*Oropouche West*): Madam Speaker, to the Minister of Energy and Energy Industries: With regard to a recent report indicating that citizens are fearful that the fuel available on the market may be related to the recent incidents of cars catching fire, could the Minister indicate whether any investigations are being conducted to verify these concerns?

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam Speaker. Madam Speaker, all of Paria's cargo products are fully tested at the load point, and these tests are witness by independent inspectors. The results of these tests are provided to Paria for review prior to discharge of all cargoes. The products are again tested at the Guaracara laboratory with tests again being witnessed by an independent inspector. To date, all the products imported have met and in many cases exceeded the contractual specifications. These specifications are in keeping with the Trinidad and Tobago Bureau of Standards specification for motor vehicle fuels. So, there is no issue there, Madam Speaker. And I just want to quote on yesterday's newspaper, a prominent mechanic did indicate that vehicles catching fire has nothing to do with fuel quality, and very likely it has to do with the poor maintenance practices of the driver.

**Madam Speaker:** Supplemental, Member for Oropouche West.

**Mrs. Gayadeen-Gopeesingh:** Hon. Minister, who is this independent inspector?

**Sen. The Hon. F. Khan:** I am not sure, the external inspector at the load point.

But in Trinidad it is the Bureau of Standards.

### **ORAL ANSWERS TO QUESTIONS**

**The Minister of Planning and Development (Hon. Camille Robinson-Regis):**

Thank you very much, Madam Speaker. Madam Speaker, there are seven questions for oral answer, four will be answered today, and I am asking for a two-week deferral for the following: question No. 117, question No. 149, and question No. 150. Thank you, Madam Speaker.

**Madam Speaker:** The deferral is granted. Member for Oropouche West.

*The following questions stood on the Order Paper:*

#### **Gang Members Under 18 (Details of)**

- 117.** Further to the number of gang members as at November 29, 2017 provided by the Attorney General at a Senate sitting on March 20, 2018, could the hon. Minister of National Security state:
- a) whether there has been an increase in the number of persons under the age of 18 years joining gangs;
  - b) if the answer to part (a) is affirmative, provide the current number; and
  - c) the measures initiated to deter persons under the age of 18 years from engaging in criminal activities? [*Mrs. V. Gayadeen-Gopeesingh*]

#### **Completed Tourism Projects (Number of)**

- 149.** Could the hon. Minister of Health provide the number of completed tourism projects since September 2015? [*Mr. F. Karim*]

#### **Local Tourism in T&T (Promotion of)**

- 150.** Could the hon. Minister of Energy and Energy Industries state the efforts taken to promote local tourism in Trinidad and Tobago? [*Mr. F. Karim*]

*Questions, by leave, deferred.*

**10.30 a.m.**

**Personnel Department  
(Terms and Conditions for Contract Workers)**

**115. Mrs. Vidia Gayadeen-Gopeesingh** (*Oropouche West*) asked the hon. Minister of Public Administration:

Could the Minister indicate whether the Personnel Department has sufficient staff to treat with the finalization of terms and conditions for contract workers?

**The Minister of Public Administration (Hon. Marlene Mc Donald):** Thank you, Madam Speaker. Responsibility to the finalization of terms and conditions for contract workers in the public service, falls under the remit of the Contracts Unit, Compensation Management Division of the Personnel Department. The Contract Unit has nine approved positions. There are currently six officers operating in that unit. The Personnel Department is undertaking a recruitment exercise currently. Thank you, Madam Speaker.

**Madam Speaker:** Supplemental, Member for Oropouche West.

**Mrs. Gayadeen-Gopeesingh:** Hon. Minister, are you aware that persons have been waiting over three years to know what are their terms and conditions under the contract?

**Hon. M. Mc Donald:** Thank you, Madam Speaker. Member, yes I am aware, but I would also get the particular response for you from the Personnel Department at a later date.

**Reports of Missing Girls  
(Details of)**

**116. Mrs. Vidia Gayadeen-Gopeesingh** (*Oropouche West*) asked the hon. Minister of National Security:

With regard to increased reports of missing girls, could the Minister state:

- a) the number of reports of missing girls from January 2018 to January 2019;
- b) whether any of the girls in part (a) were extracted to date;
- c) whether counselling is offered to families of those missing girls; and
- d) whether any of the cases in part (a) were confirmed as human trafficking?

**The Minister of National Security, Minister of Communications and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Madam Speaker. Madam Speaker, according to the information provided by the Trinidad and Tobago Police Service and the Counter Trafficking Unit of the Ministry of National Security, the answer to (a) is as follows: A total of 290 girls under the age of 17 years were reported missing for the period January 2018 to January 2019. That is 260 for 2018, 30 for the period January 01 to 31, 2019. It will be pertinent to note that one report received in 2018 was for an unaccompanied Venezuelan minor.

In answer to (b), a total of 266 girls under the age of 17 years were extracted for the period January 2018 to January 2019; 243 for the year 2018, 23 for the period January 01 to 31, 2019.

(c), the Victim and Witness Support Unit is responsible for providing support to the families of persons reported as missing. Once a referral is made, the Victim and Witness Support Unit officers will contact the parents or guardians and arrange for an assessment to be done, so that an appropriate intervention can be tailored, regarding counselling and required support.

For the period 1<sup>st</sup> of January, 2018, to the 31<sup>st</sup> of January, 2019, the families of seven girls were referred to the Victim and Witness Support Unit and support

and counselling were provided to the affected family members. During the period outlined each of the seven girls returned home, received a minimum of two counselling sessions. All girls reported to have gone to the home of a friend or a relative during the period they were missing. It is to be noted that intervention is generally concluded by the family members following the return of the missing girls.

The answer to (d), there were two reports of missing girls being utilized for human trafficking. So the vast majority of these girls that have gone missing, have been returned, and also the vast majority have been reported to have gone to the homes of family, friends or other relatives.

**Madam Speaker:** Supplemental, Member for Oropouche West.

**Mrs. Gayadeen-Gopeesingh:** Hon. Minister, the two girls who were found for, you said for human trafficking? Is it two girls?

**Hon. S. Young:** Yes.

**Mrs. Gayadeen-Gopeesingh:** Right. Anybody has been held accountable for those, or charged, or brought before the court?

**Hon. S. Young:** Madam Speaker, I do not have that information here but it can be provided.

**Madam Speaker:** Supplemental, Member for Oropouche West.

**Mrs. Gayadeen-Gopeesingh:** I believe recently about 19 girls were found in Port of Spain, have they returned to their country of origin?

**Hon. S. Young:** Thank you very much, Madam Speaker, and thanks for the opportunity to provide an update. These girls continue to be in a safe house setting. The investigation—the police investigation has been ongoing, a number of charges have been laid against certain persons, some of whom are not nationals of Trinidad and Tobago; is being taken very seriously. All of the girls who have

wanted to communicate with their family members back in Venezuela, that has been provided, that has been accommodated. The girls continue to receive the necessary counselling, the necessary other provision of safe elements of a safe environment.

**Siparia Union Presbyterian Primary School  
(Status of)**

**137. Mr. David Lee** (*Pointe-a-Pierre*) on behalf of Dr. Lackram Bodoë (*Fyzabad*) asked the hon. Minister of Education:

Could the Minister provide a status update on the construction on Siparia Union Presbyterian Primary School?

**The Minister of Education (Hon. Anthony Garcia):** Thank you very much, Madam Speaker. Madam Speaker, records at the Education Facilities Company Limited, EFCL, indicate the Siparia Union Presbyterian Primary School's overall completion of phase one is 52 per cent. The foundation and the superstructure of the school is 100 per cent completed. However, Madam Speaker, the mechanical, electrical and plumbing and the finishes are 50 per cent complete. Work on the projects were suspended by the contractor, Construction Services and Supplies Limited, on the 26<sup>th</sup> of August, 2015, due to late payment by the EFCL.

Madam Speaker, the contractor and the consultant have received payments totalling \$2,482,766.40 and \$398,262.50 respectively. As a result of these payments, the Ministry of Education is in a position to recommence work on the project. The EFCL is presently reengaging the consultant, CEP Limited, to provide a cost estimate to complete phase one of the project. Thank you.

**Mr. Karim:** Thank you very much, Madam Speaker, question 149 to the Minister of Health.

**Madam Speaker:** Question 148 I believe we are at.

**Mr. Karim:** Sorry, 148, sorry.

**Preventative Medicine Programme  
(Measures Constituted of)**

**148. Mr. Fazal Karim** (*Chaguanas East*) asked the hon. Minister of Health:

Could the Minister provide the measures that constitute a preventative medicine programme in Trinidad and Tobago?

**The Minister of Health (Hon. Terrence Deyalsingh):** Thank you, Madam Speaker. Question No. 148, it is really the domain of the Ministry of Health. The key measures that constitute a preventative medicine programme in Trinidad and Tobago are as follows:

1. The implication of an implementation of a non-communicable diseases strategic plan, 2017/2021, on the prevention and control of NCDs to achieve the overall target of a 20 per cent reduction in preventable mortality for NCDs by 2025. Several initiatives have been implemented and these include:
  - (a) In April 2017, the prohibition of the sale of serving sugar sweetened, non-alcoholic beverages with added sugars by manufactures and other producers in all Government and Government assisted schools.
  - (b) The strengthening of the early screening, diagnosis and treatment within the primary care institutions for cancer, diabetes and cardiac care as to prevent the burden on the secondary and tertiary care health institutions. For the period January to June 2018, 29,898 cancer screening, that is almost 30,000 and 22,982 gestational diabetes screenings were conducted for pregnant women, first time in Trinidad and Tobago; and
  - (c) In December 2018, the Ministry of Health launched the

“Trinidad and Tobago Moves” Initiative for behavioural change including: fruit Fridays, water Wednesdays and shape up Saturdays and Sundays.

2. The vaccination of the population against communicable diseases through the expanded immunization programme for several key diseases including: diphtheria, pertussis, tetanus, measles, mumps, rubella, poliomyelitis, pneumococcal and yellow fever.

Over the past few decades there has been a significant reduction in the mortality rates from these communicable diseases. The most recent vaccination programme on prevention includes the increase in vaccine as administered for the human papillomavirus for the prevention of cervical cancer.

3. The strengthening and greater enforcement of the protocols, clinical guidelines, upgrade of equipment and facilities in the repositioning of antenatal and post-natal programmes to achieve a significant reduction in maternal mortality rates.

From September 2015 to May 2017 the Minister of Health acted as director, women’s health, to ensure greater planning and enforcement of policies and guidelines for immediate reduction in maternal deaths. In 2017 the creation of a dedicated unit, the Directorate Women’s Health at the Ministry of Health to provide leadership, policy formulation and accountability on issues related to maternal and perinatal health including breastfeeding.

Madam Speaker, as a result of the above during the period 2017 to 2019 there has been a significant, for the first time, a significant reduction in maternal deaths at public health institutions from nine in 2015 to four in 2018 and one to date in 2019. This represents a fall in the maternal mortality ratio from 50 to 60 per 100,000 live births in 2015, to under 30 per 100,000 live births in 2019. The

recommended worldwide target for 2030, the STG goals, is 70 per 100,000 live births. We are now at 30. However, PAHO has set the Region of the Americas a rate of 30 per 100,000 live births and thus far Trinidad and Tobago for the past two years continues to meet this target twelve years ahead of schedule.

With respect to the neonatal mortality rate, there has been a reduction from 12 per 1,000 live births in 2015 to 9 per 1,000 live births in 2017, to 7.9 per 1,000 live births in 2018. Therefore, Madam Speaker, Trinidad and Tobago has already achieved both the global and regional target set at less than 9 per 1,000 live births, again, 12 years ahead of our STG targets.

Another key area of concern is the strengthening and enhancement of public awareness programmes on mental health matters in the reduction of stigma and public perception attached to mental health challenges. During the period 2016 to 2019, the key preventative initiatives for mental health are as follows:

- (a) In 2018 the Ministry of Health in collaboration with PAHO and other stakeholders launched a National Mental Health Awareness Campaign, “Paint the Town Green”.
- (b) In 2019 the creation of the position of director Mental Health Services to ensure greater oversight in the design and effective implementation of mental health promotion and prevention strategies throughout the country.
- (c) During 2016 to present, the development and dissemination of mental health promotion materials on topics such as mental health—

**Madam Speaker:** Minister of Health, just—

**Hon. T. Deyalsingh:**—thank you very much, Madam Speaker.

**Madam Speaker:** Supplemental, Member for Chaguanas East.

**Mr. Karim:** Thank you very much, Madam Speaker. Given all those significant

achievements, is the Minister aware that patients at the San Fernando General Hospital are unable to access blood reagents at the labs and therefore, to be significantly assisted in preventative health care services?

**Hon. T. Deyalsingh:** Madam Speaker, I am not aware of that but the prevention of those things will be addressed. Thank you very much.

**Madam Speaker:** Supplemental, Member for Chaguanas East.

**Mr. Karim:** Thank you very much, Madam Speaker. Can the Minister indicate what plans do you have for the hundreds of unemployed doctors in strengthening preventative care services in Trinidad and Tobago?

**Hon. T. Deyalsingh:** Thank you very much, Madam Speaker. We are engaging all persons in this fight. Currently, we are trying to engage as many of these doctors as possible and we will continue to do so through the RHAs. Thank you very much, Madam Speaker.

**Madam Speaker:** Supplemental, Member for Chaguanas East.

**Mr. Karim:** Thank you very much, Madam Speaker. Can the Government say what additional resources—and, of course, through the Minister—will be allocated to the health sector to cater for the health needs of Venezuelans migrants, refugees, now seeking care at the nation's health care facilities.

**Hon. T. Deyalsingh:** As I have said publicly on several occasions, the policy of the Government of Trinidad and Tobago for non-nationals has always been to provide primary health care services, public health in the areas of vaccinations and so on, and we continue to do that. So for example, they can get free access to emergency care of our A&Es at our clinics and for public health concerns, for example, vaccinations for the influenza, vaccinations for MMR. We continue to treat them for communicable diseases like HIV and so on. We also provide them with treatment for malaria. So that is the stated government policy to deal with the

health concerns of Venezuelan migrants and all migrants.

**Madam Speaker:** Hon. Members, the question time is now spent.

**CIVIL ASSET RECOVERY AND MANAGEMENT AND  
UNEXPLAINED WEALTH BILL, 2019**

[Second Day]

*Order read for resuming adjourned debate on question [April 05, 2018]:*

That the Bill be now read a second time.

*Question again proposed.*

**Madam Speaker:** Attorney General, you have 11 minutes of original time remaining and of course, you are entitled to an extended time of 15 minutes.

**Hon. F. Al-Rawi:** [*Desk thumping*] Thank you. Madam Speaker, I will immediately say that I will take that extra 15 minutes and run till full time, if it is the will of the Chair. Madam Speaker, I am very pleased to wrap up this debate and I want to dive strictly to the issues before this House and to the public concerns relative to the introduction of groundbreaking law of this type.

Madam Speaker, the Government has amendments that it had prepared since the last occasion and those amendments will be circulated in short order. There is a need to do some tidying up of that effect and I would ask the House to allow for a small half an hour break after I wrap up to perfect those amendments.

Madam Speaker, the asset recovery under a civil regime under this Bill has two routes. On the first hand, Madam Speaker, we have the ability of an investigator being Customs, Board of Inland Revenue and police approaching the DPP once they are in the course of an investigation, telling the DPP, I wish to have a civil asset support and then the DPP, if he considers it appropriate, refers that matter to a trustee. The trustee as the law provides is somebody who is independent, without any ministerial reach, appointed by the Judicial and Legal Service Commission as for two of them and appointed by consultation between by

the Leader of Opposition and the Prime Minister as to the third person and if they cannot agree, by the President in own discretion.

Only if the DPP says to the investigator, green light, approach that trustee, does the trustee go to a court of law. In the court of law, the matter is brought before a judge, the judge will consider whether that matter is deserving of freezing assets and if it is frozen only then do all of the parties with an interest into the matter come before the court. That includes, importantly, all of the people who have an interest in the property because this law provides, in clause 7 subclause (9) it provides the very important qualification that says: If you are a person who owns property for value and that value is a bona fide value and you had no notice that this thing was criminal property then that cannot bring you into the pot. Let me make that clear, no doubles vendor, no occupant of a property, no person who bought property, no person who received it by way of a Deed of Gift, because that is by way of value, if it is bona fide, none of those people fall into that pot. [*Desk thumping*]

Now very importantly, Madam Speaker, the Government says that to qualify for this you must be a person involved under an investigation regime under the Proceeds of Crime Act. Let me repeat that. For the investigator to be involved in this situation, the Government's proposal is that you must be anchored in the proceeds of crime pot. Forgive me, let me explain that because I do not want to be distracting people from it. What does the Proceeds of Crime Act say? There is a Schedule of offences, Madam Speaker—

**Mrs. Persad-Bissessar SC:** Would the Member give way?

**Hon. F. Al-Rawi:** No. [*Interruption*] There is a Schedule of offences, [*Continuous interruption*] Madam Speaker, under the Proceeds of Crime Act

which treats with what a proceeds—

**Madam Speaker:** Honourable, one minute. Hon. Member, we understand. If your friend does not give way then you cannot speak.

**Hon. F. Al-Rawi:** Thank you, Madam Speaker. The Proceeds of Crime Act, Madam Speaker, is where we ground this law. The Proceeds of Crime Act passed by a UNC Government in the year 2000 and which had stood on the books of Trinidad and Tobago, the Second Schedule describes what a specified offence is. Here is what the Proceeds of Crime Act says:

- “(1) Participation in an organised criminal group and racketeering;
- (2) Terrorism, including terrorist financing;
- (3) Trafficking in human beings, body parts and migrant smuggling;
- (4) Sexual exploitation including sexual exploitation of children;
- (5) Illicit trafficking in narcotic drugs and psychotropic substances;
- (6) Illicit arms trafficking;
- (7) Illicit trafficking in stolen and other goods;
- (8) Corruption and bribery;
- (9) Fraud;
- (10) Counterfeiting currency;
- (11) Intellectual property offences including counterfeiting and piracy of products;
- (12) Environmental crimes;
- (13) Murder, grievous bodily injury;
- (14) Kidnapping, illegal restraint and hostage-taking;
- (15) Robbery or theft;
- (16) Smuggling...;

- (17) Tax crimes...;
- (18) Extortion;
- (19) Forgery;
- (20) Piracy; and
- (21) Insider trading...”

—money laundering and offences against the Gaming and Betting Act.

Now, Madam Speaker, it is very important as we ground this to say that the investigation must be one that these three categories of people, Inland Revenue, police, or customs, they must be, the Government proposes, investigating offences under the Proceeds of Crime Act. Now, Madam Speaker, that means you cannot get to the DPP unless you are under the Proceeds of Crime Act; you cannot get to the asset trustee unless you are under the Proceeds of Crime Act; you cannot get to the court where the court considers the bona fides unless you are under the Proceeds of Crime Act. But let us stick a pin for a moment.

In relation to the Schedule, which refers to tax crimes, it is very important to note, we as a country have told people under the income tax legislation and under the customs legislation that you should only keep your record for six years. It would therefore be improper for us to tell people resurrect the proverbial dead of documentation. It would not be proper, Madam Speaker, [*Crosstalk*] to ask people to go behind a period of six years to find documentation and therefore the Government proposes that this chain in respect of taxation be limited to that six-year period. It must be harmonized in accordance with the income tax laws and the customs laws.

So I want to say this here, I can certainly say that no person in Trinidad and Tobago could find fault with any Government saying if you are under

investigation, under the proceeds of crime category of offences, these very bloody and dirty and terrible crimes that have driven our country into servitude, Madam Speaker, [*Crosstalk*] in those circumstances, we say no right thinking human being can find fault. And Madam Speaker—

**Madam Speaker:** Order! Order!

**Hon. F. Al-Rawi:**—permit me to, as I respectfully decline giving way, I have very short time, Madam Speaker, we have a full committee stage to come, I want to read something that appeared in the *Newsday* today at page 5, at section A:

“Volney backs seizure bill”—Clint Chan Tack.

“FORMER People’s Partnership justice...Herbert Volney is calling”—on—  
 “Civil Asset Recovery and Management...Bill”—to be supported effectively.

“In a post on his Facebook page, Volney said as a retired judge and legislator, he urges all good and law abiding citizens to support the bill ‘to provide the judicial and administrative structures to confiscate ill-gotten gains.’ He recalled that in 2000, the then United National Congress (UNC) administration enacted the Proceeds of Crime Act.”

And here is what he said and I quote:

“If you are a nuts vendor, then tell me how are you driving an E Class Benz, Volney asked. He also asked how could a government minister be driving a Range Rover and living in a palatial mansion. Explain how you could build a mansion on the sale of pumpkin and dasheen bush.

Volney said the bill provides ‘guarded procedures to kick start the accountability process in hauling those with unexplainable wealth before the courts, to say why their property should not be treated as the proceeds of

crime and thus forfeited to the State.’”

He went on, he said:

“‘He was certain that 90 per cent of the population supports the legislation. But Volney added, ‘UNC operatives in the House of Representatives are opposed to it.’ Volney called on the 90 per cent to speak out now and encourage government to pass the measure.’”

And hear what it ends with:

“‘He added, ‘It would be a shocking reflection of political hypocrisy if the Opposition fails to support this bill.’”

Now, Madam Speaker, I want to say this.

**Dr. Rowley:** Who is Volney?

**Hon. F. Al-Rawi:** So says Herbert Volney, man fired for section 34, man on his way out who said in relation to the emailgate revelations and the matters that were put out there that he saw the face of God in the truth of those revelations. Former Judge of the High Court, Former Minister of Justice under the UNC Government, so, Madam Speaker, I quote a Member from the UNC. Madam Speaker, let me go further.

**Hon. Member:** Former Member.

**Hon. F. Al-Rawi:** In treating with this civil asset forfeiture regime, let me give an active demonstration. The proceeds of crime legislation is clear, trafficking in human beings—those 19 girls who were caught in servitude, sexual servitude, drug, et cetera, one may not be able to catch the perpetrators of that crime, in flagrante with a conviction, but this law allows for a court of law and only a court of law to call upon these people to have their assets explained, frozen and potentially forfeited.

And, Madam Speaker, I want to put this forward, as we treat with the constitutional issue for that, it is important to note that the case law is very certain, be it the case of Francis, Suratt, Oakes, Maharaj, which ever one of the cases you want to refer to, we are talking about the insistence that there must be a legitimate aim, that there must be a rational connection of that legitimate aim to the purposes of the Bill, that you must be in the least intrusive mechanism possible and that in the round you should be proportionate. And I want to say that there has been active European Court of Human Rights decision on law such as this, the Strasbourg Court, in particular, in the case of *Gogitidze v Georgia*, application No. 36826 of 2005, it is a judgment, dated the 12<sup>th</sup> of May, 2015, and in the case of the United Kingdom where they dealt with the case of Unexplained Wealth Orders, et cetera. In all of these cases we are talking about a predicate investigation for a serious matter under the equivalent of proceeds of crime.

Madam Speaker, this law is not unique. This law exists in the other jurisdictions and to the right-thinking people of Trinidad and Tobago who believe that the state deserves a fighting chance to catch drug lords, to catch criminals, to catch gangs, to catch people who are in public office and who have been guilty of misbehaviour in public office or money laundering we say those right-thinking people will support this.

Now, Madam Speaker, I have noticed in particular the Leader of the Opposition calling upon the Government and me in particular to explain wealth. And I would like to say this law allows for that. And this Government and these Members are capable of withstanding scrutiny. [*Desk thumping*] The question is, because this law has no exception for sitting Members of Government, this law puts the Attorney General first in line, if under a Proceeds of Crime Act, but,

Madam Speaker, it is not Members of this Government who have given stories about pumpkin patch, and about nuts selling and about \$60 million mansions sprawling over acres being built by contractors with their name painted off on the side of the equipment. It is not this Government that finds itself in those circumstances, it is other people outside of this Government. And when you are protesting up and down the country with pumpkin patch, nuts and “contractor building your house” in what is equal to size of a mansion, then you have difficulty—

**Mr. Charles:** Standing Order 48(6). Nobody on this side.

**11.00 a.m.**

**Madam Speaker:** Attorney General, please continue.

**Hon. F. Al-Rawi:** Thank you, Madam Speaker. And when you have persons in public life outside of this Parliament, or you are dealing with people who have held political office in the past, sprawling acres of mansions on palatial standing, with pool tables worth \$4 million and ivory and gold-plated, where you are on a ministerial salary, I think that you are protesting too much. [*Desk thumping*] And this country has asked for people to have a fighting chance, and anchoring this law under the Proceeds of Crime Act, as we do, is critical.

Let us go to the second limb, Madam Speaker. The second limb, the Unexplained Wealth Order limb, says—and the Government proposes that only if Customs, Board of Inland Revenue and police are involved in an investigation touching proceeds of crime scheduled offences, which are called specified offences, only if you are starting off with the position of a proceeds of crime matter, should they have the ability to go to the court and ask you—listen, to do what—to turn up to the court, explain what your assets are and how you acquired

them. We are providing the caution that this should not be any level policeman. We are going to say in the amendments that it should be a high-ranking policeman, the Comptroller of Customs, the Comptroller of the Board of Inland Revenue. Because, Madam Speaker, we are not in committee stage yet, you know, and laws go through a process. This Government's proposal—despite the protestations of the Opposition, this Government's proposal is, start off with proceeds of crime legislation, have somebody go to court. We are taking the caution.

The Member for Chaguanas West made an interesting intervention. In fact, he was an excellent speaker on the last occasion in terms of his advocacy. I did not agree with his content, but his advocacy was good. But one thing that came out there was the need to harmonize the tax issue. It would be unfair to call upon people to explain themselves beyond six years. They do not have the documents from Customs and from Board of Inland Revenue. And even though that is the existing law—[*Crosstalk*]*—*even though that existing law would have provided that answer, to avoid a court having to determine whether there is a conflict between new law and old law, we think it prudent to put that safeguard in there so that people could sleep well and say, Look, I “doh” have to be worried about the taxman coming after me. I am not in the proceeds of crime list of offences. I am not trafficking in persons. I am not misbehaving in public office. I am not selling drugs. I am not in that. And insofar as I put away and throw away and discarded, as I could under law, my tax documents and my customs documents after the six-year period had passed, and where there was no assessment levied by Customs or the Board of Inland Revenue, they should sleep well at night. It is only fair that that should happen. [*Desk thumping*]

So, Madam Speaker, let us go a little further. Does this law, in the

definition of proportional consideration, go any further than the existing law does? Madam Speaker, I would like to say that the law as it relates to Mareva Injunctions, has been a feature of our common law and our court practice for decades. And under the Mareva Injunction route—a Mareva Injunction is where you could go to a civil judge and ask to freeze people's property; their accounts, et cetera, and that Mareva Injunction can freeze assets; it can freeze bank accounts. *[Interruption]* I know the Member for Siparia does not practise much and may not be aware of these things *[Laughter]* but the point is that the Mareva Injunction route is the existing law which allows freezing and it also involves the ability to forfeit. Because there is nothing, as the Member for Port of Spain North/St. Ann's West will bear me out, as the Member for Laventille West will bear me out—there is nothing to support a civil court allowing for a declaration that the property should transfer.

Let me refer as well to the provisions of the Companies Act. The Companies Act, under the oppressive remedy feature, section 242 of the Companies Act—the Companies Act allows, in the relief section, in section 245, that a court can declare that property should be transferred to someone else. So our civil law allows it already. Mareva Injunctions allow it already. The provisions of the Companies Act, section 242 and section 245 allow it already. This law is not going any further than the common law has recognized for decades, and that is why we are not intruding on three-fifths rights.

You see, the UNC's strategy is to frighten people in protecting, or rather, in avoiding opening oneself up to scrutiny. We open ourselves up to scrutiny. In the UNC saying that there should be no scrutiny to people's wealth, and we ask why—in the UNC engaging in that—

**Hon. Members:** We never said that.

**Hon. Member:** “Why you all doh hush”?

**Mrs. Persad-Bissessar SC:** Dishonest.

**Hon. F. Al-Rawi:** Madam Speaker, in the UNC effectively saying they do not support this law, and then raising the bogey, the bogeyman of section three-fifths, It is clear, it is trite law that not every law that touches a three-fifths right requires a special majority.

Secondly, the argument is constitutionality by way of proportionality. Thirdly, the law encompasses in this Bill what the existing civil law provides. Thirdly, there is no determination of guilt of any person. Let me repeat that. This law does not require a determination of guilt of any person. It may treat with property in exactly the same way Mareva Injunctions treat with property. This law is to apply that process. [*Interruption*] Why do we do it now? Madam Speaker, can the Member for Siparia behave herself, please, respectfully?

**Mrs. Persad-Bissessar SC:** I will say no more on that—

**Madam Speaker:** Member for Siparia—[*Crosstalk*] Member for Siparia—  
 [*Crosstalk*] Member for Barataria/San Juan, Member for Naparima—

**Mr. Charles:** I did not say anything.

**Madam Speaker:** You said nothing on this occasion but I am being disturbed. I am being disturbed so I am giving you all due warning.

**Hon. F. Al-Rawi:** Thank you, Madam Speaker. Thou doth protest too much. [*Desk thumping*] Thou doth protest too much, Member for Siparia. Madam Speaker, in treating with this particular purpose, we are saying that this law encapsulates in one law what exists already in the civil law. And why should drug men, why should corrupt politicians, why should people in public life who are

guilty of misbehaviour in public office be afraid to explain themselves in a court of law?

People in this country, in talking about Mr. Big, over and over again, make an allegation of politicians that they are either crooks or “mooks”, and they believe that all politicians are crooked, and here we have a Government saying, come and inspect everybody in the Government side—come and inspect everybody in the Government side—and the only people in this Parliament who are saying do not do that, do not inspect me, is the Opposition, is the Member for Siparia.

**Hon. Member:** There is a process. There is a process—

**Hon. F. Al-Rawi:** And, Madam Speaker, this is done, as the Member for Port of Spain North/St. Ann’s West says, after a court of law and due process. Madam Speaker, I have noticed that there are umpteen videos going around. The population is being fed a certain narrative from the UNC. They are entitled to spread that narrative. That is no problem. [*Crosstalk*] The Government gives its own narrative. But, Madam Speaker, this is not like the US system where, in the US system a policeman can seize your property, and in the US system a policeman can go off and just take your property. In our system we are saying, “No, Sir.” Start with proceeds of crime; must be an investigation; senior police officers; let the DPP say go ahead; go to a court of law where you have the right of appeal, all the way to the Privy Council. And we say you will be compensated pursuant to clause 34 of this Bill—43, sorry. Clause 43 of this Bill says that you will have the compensation if the State is wrong.

Madam Speaker, is this novel law? Yes. Is this something that the UNC has said no to? Yes. The Cabinet record, when the Member for Siparia threw

it out of Cabinet on the 20<sup>th</sup> of March, 2014, says what the UNC position is, they do not support this law. They had the opportunity to take Commissioner Griffith, then Minister of National Security's recommendation—[*Crosstalk*] and pass that law themselves. They did nothing with it. They are frightened, Madam Speaker, [*Desk thumping*] of the application of this law. They are trying to make this law about single persons. We welcome that, you know. Madam Speaker, we have no fear in the PNM, of inspections. [*Desk thumping*] We will act within the confines of the law. We say we are first to be checked. [*Crosstalk*] I know the UNC cannot say that, Madam Speaker.

Madam Speaker, this is proportionate law. At the committee stage we will engage in the amendments that we propose, as a Government. Right-thinking people in this country support this law [*Desk thumping*] and the PNM's position is on principle. We will provide the safeguards for the taxpaying aspects, and Madam Speaker, I beg to move. [*Desk thumping*]

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

**Madam Speaker:** This House is now suspended for 45 minutes. We shall resume here at 12.00 noon.

**11.12 a. m.:** *House suspended.*

**12.11 p.m.:** *House resumed.*

*House in Committee.*

**Madam Chairman:** This committee of the whole is now called to order. Might I ask if amendments have been circulated?

**Mr. Al-Rawi:** Madam Speaker, the Government has circulated written

amendments, yes.

**Mrs. Persad-Bissessar SC:** We have not received any.

**Madam Chairman:** You have not received any? All right. So let me ask. Does the Opposition also intend to propose any amendments? Are yours ready for circulation?

**Mrs. Persad-Bissessar SC:** In a few minutes they should be ready.

**Madam Chairman:** All right. So might I propose that at this stage I suspend for the lunch break? All amendments intended for both sides must be written and circulated so that everybody would have sight of it by the time we come back. So that we will resume at 1.15. We will take the lunch then during that time and all amendments to be circulated. So it means they must be in writing and exchanged. Is that a course that we can adopt?

**Mrs. Robinson-Regis:** Ma'am, just to be clear, we are breaking now for the lunch break—

**Madam Chairman:** Yes.

**Mrs. Robinson-Regis:**—and all amendments must be circulated during that time.

**Madam Chairman:** All amendments must be circulated, so that when we come back here at 1.15, everybody should have the other's. Right?

**Mrs. Robinson-Regis:** Thank you.

**Mr. Al-Rawi:** Where are they?

**Mr. Singh:** Madam Chair, is there any possibility that we get some time in order to internalize the impact of these amendments?

**Madam Chairman:** Well, I thought that people would have been able to internalize it over lunch. That is why I was suggesting that we take the lunch break also at this time. [*Crosstalk*]

**Mrs. Robinson-Regis:** Madam Chairman, ours are being circulated but we

understand that the Opposition has, but we have not had sight of them as yet.

**Madam Chairman:** Well, what I heard the Leader of the Opposition, the Member for Siparia, indicate, is that theirs is almost ready. She has asked for a few minutes. So that my saying that everybody's own should be circulated, I think makes it clear that also the Opposition's must be reduced in writing and circulated during the lunch break.

**Mrs. Robinson-Regis:** With your leave, Ma'am, may I ask if they have a sense of time in terms of when we will see theirs? You said a few minutes, but can I get a sense of time?

**Mr. Lee:** Ten minutes.

**Madam Chairman:** Ten minutes? So that it is agreed by 12.25 everybody should have all of the amendments. Okay? So we will resume at 1.15 which, I think, will give everybody enough opportunity to go through—

**Mrs. Persad-Bissessar SC:** Ma'am—

**Madam Chairman:** Yes, Member for Siparia.

**Mrs. Persad-Bissessar SC:** For guidance, yes, we will circulate. Can you guide us? Should we give it to the Leader of the House who will take care of her Members and we will take care of ours? [*Interruption*]

**Mr. Lee:** No, no, no. Our amendments.

**Mrs. Persad-Bissessar SC:** Our amendments? Or give it to the Clerk?

**Madam Chairman:** I think the better thing would be to submit it to the Clerk. Yes?

**Mrs. Persad-Bissessar SC:** Okay, fine. Can we find her during the lunch break?

**Madam Chairman:** The Clerk will be in the Chamber.

**Mrs. Persad-Bissessar SC:** Okay, thanks.

**Mrs. Robinson-Regis:** May I make a small suggestion, Ma'am? Given that the

Opposition needs about 10 more minutes before they would start circulation, may I suggest that we resume at 1.30 rather than 1.15?

**Madam Chairman:** Is that agreed? Member for Chaguanas West, I think your plea for impact—for time for impact—all right? So we will resume at 1.30. Okay. This meeting is again suspended.

**12.15 p.m.:** *Committee suspended.*

**1.30 p.m.:** *Committee resumed.*

**Madam Chairman:** The meeting of the committee of the whole is now resumed. Leader of the House.

**Mrs. Robinson-Regis:** Yeah, thank you very much, Ma'am. Madam Chairman, as instructed, all the amendments have been circulated and exchanged and we are ready.

**Madam Chairman:** Okay. So are we doing this clause by clause? Yes?

**Mrs. Robinson-Regis:** Yes.

**Mrs. Persad-Bissessar SC:** Ma'am, may I seek your guidance in terms of where we want to propose a preamble, whether we will deal at the end or whether at this stage, please, for your guidance?

**Madam Chairman:** The preamble is done at the end.

**Mrs. Persad-Bissessar SC:** Thank you very much.

*Clauses 1 and 2 ordered to stand part of the Bill.*

*Clause 3.*

*Question proposed:* That clause 3 stand part of the Bill.

In the definition of —

“criminal conduct”-

- (a) in paragraph (a) delete the words “an offence in Trinidad and Tobago;” and replace with the words “a specified offence;”; and

(b) in paragraph (b)(ii) delete the words “an offence in Trinidad and Tobago.” and replace with the words “a specified offence.”; “instrumentality of crime”, in paragraph (a) delete the word “criminal” and replace with the word “specified”.

**Mr. Al-Rawi:** Madam Chair, the Government has circulated proposed amendments to clause 3. May I with your permission?

**Madam Chairman:** Please proceed.

**Mr. Al-Rawi:** Much obliged, Ma'am. Madam Chair, we propose in the definition of “criminal conduct” to cause an amendment so that criminal conduct is “an offence in Trinidad and Tobago”, we delete those and we replace it with the words “a specified offence”.

In paragraph b(ii), again, we are deleting the words “an offence in Trinidad and Tobago” and we are replacing with “a specified offence”.

In the “instrumentality of crime” definition, we are proposing in paragraph (a) that we delete “criminal” and replace with the word “specified”.

And if I may refer you, Madam Chair, to the fact that in that same clause 3, the definition section has already a definition of “specified offence”. “Specified offence” has the meaning assigned to it by section 2 of the Proceeds of Crime Act, and if I may for the record indicate, section 2 of the Proceeds of Crime Act incorporates the list of offences set out in the Second Schedule to the Proceeds of Crime Act which are those very heinous offences: murder, rape, kidnapping, et cetera. There is a reference in that Schedule to taxation crimes and we will treat with a limitation of that in a different clause. Those are the proposed amendments by the Government and the rationale standing behind same.

**Madam Chairman:** Member for Siparia.

**Mrs. Persad-Bissessar SC:** Madam Chair, I am very glad the hon. Attorney

General listened to Members of the Opposition because the definition of “crime” there in that clause that is now being amended was far too wide:

“‘criminal conduct’ means conduct which-

(a) constitutes an offence in Trinidad and Tobago;”

And we took serious objection to that. That is what is in the Bill that we had until the amendments and we took serious objection to that because it meant you could have had a DUI, you could have had a case for assault, you could have had a “cuss case” as Trinis say, an offence, it would have been so wide. So that we accept this limitation to crimes committed under the POCA or the Proceeds of Crime Act and we will support that part of the amendment to clause 3.

**Mr. Al-Rawi:** Madam Chair, for the record, these were not observations that we gleaned from the Opposition at all. These are observations which we brought ourselves. Secondly, there is no way on earth that the law, as proposed in the Bill, could have included a “cuss case”, et cetera. That is not the case, Madam Chair, as the law specifically provided for. Thank you.

**Madam Chairman:** Okay. All right. So there is agreement on the first proposal with respect to criminal conduct. Member for Siparia, anything else? Yes?

**Mrs. Persad-Bissessar SC:** Not on that specific point but there are other items of clause 3 that we would like to speak to.

**Madam Chairman:** Please proceed.

**Mrs. Persad-Bissessar SC:** Okay. In clause 3(b), we have “criminal conduct”, we have “criminal property”, then we have “if it occurs”. Part (b) of that same part (b) of clause 3 under “criminal conduct”, “(a) constitutes an offence...”—has now been amended; (b) is where I would wish to propose that we delete:

“if it occurs in a country outside of Trinidad and Tobago”—and—

“would constitute an offence in that country;”

What we are saying is if an offence constitutes criminal conduct in another country, it would be the subject of the criminal laws of that country and to include that in this law, we would run the risk of double jeopardy of a person having to face double jeopardy. Further, we wish to prosecute criminal conduct that would have occurred in another country, that is the purpose for the laws of that particular extradition. So we believe that this occurring in a country outside of TT should be deleted from this clause 3.

**Madam Chairman:** All right. So, Attorney General?

**Mr. Al-Rawi:** Yes, Madam Chairman, if I may. The standardization of extraterritoriality as it relates to offences is across every single law of the books of Trinidad and Tobago. It is in the Anti-Terrorism Act, it is in the Dangerous Drugs Act, it is in the Proceeds of Crime Act itself. That is the first point. Secondly, the double jeopardy is trite law in the Commonwealth and there is no way that someone could ever be denied the defence of saying that he or she is subjected to double jeopardy. That is across the Commonwealth, and in fact, it finds itself in the Mutual Assistance in Criminal Matters Act insofar as there is non-Commonwealth cooperation there. So we respectfully cannot agree with the recommendation. It would be to change the approach that this country has taken to laws since 1962, Madam Chairman.

**Madam Chairman:** Member for Siparia.

**Mrs. Persad-Bissessar SC:** Hon. Attorney General, if I am to be penalized or tried in Trinidad and Tobago here or go through matters under this present Bill, if it becomes law and when it becomes law, if something is done by a person out of the jurisdiction, how can that be investigated here? How can that be dealt with as a breacher of our laws? What jurisdiction do we have?

**Mr. Al-Rawi:** I thank the Leader of the Opposition for the observation and if I

may explain quite simply. Madam Chairman, when we are treating with money laundering which this law treats with as a scheduled offence, money laundering is transnational and for instance, in serious crime cases, fraud, et cetera, where the wire transfer occurs abroad or where the criminal property occurs abroad and then there is that whole concept of where the transaction started, in which jurisdiction without which jurisdiction that is to explain the circumstance in which if we were to accept the non-extraterritoriality of this law, we would be making a mockery of international cooperation for money laundering in particular, and I would think that that is obvious to most people.

Secondly, it is for that reason in extraditable offences that the first hurdle that you must cross in extraditable offences is that there is dual criminality. You are treated with the fact that an offence elsewhere has a similar action in Trinidad and Tobago. Now, Madam Chairman, if we accept this very dangerous recommendation coming at us, it means that we will not be able to catch transnational crimes for money laundering, for hiding of properties abroad, for hiding of the proceeds of crime abroad and this Government cannot and will not accept that recommendation.

**Mr. Young:** Madam Chair, may I add to what the hon. Attorney General has said? This also is designed to capture terrorist acts because right now, terrorist acts that we may want to prosecute people for, or forfeit their property for, are being committed outside of the jurisdiction of Trinidad and Tobago, and when you go on further in this piece of legislation, under for example, “recoverable property”:

“‘recoverable property’ means criminal property, terrorist property...”

So this falls squarely within our attempts to combat terrorist acts that are conducted by locals outside of Trinidad and Tobago.

**Madam Chairman:** All right. Well, what I will do is, I will take all the

amendments proposed for clause three and then we would put the questions, so we will take the discussions. As far as the Leader of the Opposition, I believe you have some other amendments for clause 3?

**Mrs. Persad-Bissessar SC:** Yes, Madam. I propose that we insert in clause 3:

“Director of Public Prosecutions” means the Director of Public Prosecutions of Trinidad and Tobago or any person assigned by him for the purpose of this Act;

This would do two things, Madam. It will allow for delegated authority and there is precedent in the Proceeds of Crime Act for delegated authority that is not the Director of Public Prosecutions himself but any person so assigned by the DPP for the purposes of this Act. I so move as circulated for clause 3, Ma’am.

**Mr. Al-Rawi:** Madam Chair, this is a recommendation which really is not objectionable, but also not necessary. The definition of the “Director of Public Prosecutions”, including the fact that he can lawfully delegate to his subordinates, is contained in the supreme law of Trinidad and Tobago; it is in the Constitution, and all laws are subjected to the supreme law which is the Constitution. Section 2 of the Constitution makes that abundantly clear and this law is read under the Constitution. So to define the DPP, I mean, really takes us nowhere because that would say that the Constitution does not prevail.

**Mrs. Persad-Bissessar SC:** No.

**Mr. Al-Rawi:** So Director of Public Prosecutions means the DPP or any person assigned by him for that purpose, that is in the Constitution and it is in the Interpretation Act. So, quite frankly, it is superfluous.

**Mrs. Persad-Bissessar SC:** No. Madam Chair, this is the formula that has been used in the Proceeds of Crime Act. These sort of quasi things that are going to be happening—neither fish nor fowl, criminal nor civil—I think it is important that

the DPP be so designated as himself or any person assigned by him. There is nothing objectionable as the AG has said and I think out of an abundance of caution, I would prefer to err on the side of caution than to go with the proposal being made.

**Mr. Al-Rawi:** If we wish to harmonize with the Proceeds of Crime Act, because it is defined there, then that is—I mean. That is why I said it does not go one way or the other, it is superfluous. There would be no harm in including it subject to the views of the Committee.

**Mr. Young:** Madam Chair, if I may just assist? AG, I would be very cautious on that because what we then do is we are no longer harmonizing the law, and as you are aware and anyone who practices in the courts, once you say the Director of Public Prosecutions, the Commissioner of Police, et cetera, it does not necessarily mean the person in post and in office. They can delegate their duties. For example, where it talks about the Director of Public Prosecutions laying charges, it does not mean only the officeholder in the position of Director of Public Prosecutions can lay charges. When we start making these kinds of amendments across the board, it can lead to difficulties in further interpretation.

**Mr. Al-Rawi:** Madam Chair, it is superfluous, it is already captured.

**Madam Chairman:** All right, okay, so I think discussion on that has been exhausted. Member for Siparia, I believe you have other amendments proposed.

**Mrs. Persad-Bissessar SC:** Yes, in clause 3 in the definition of “criminal property”, I suggest that we delete the word “constitutes” and replace with the word, “is”; criminal property.

**Mr. Al-Rawi:** Madam Chairman, the intention behind the definition of “criminal property” which is now properly anchored only in specified offences because remember, “criminal property” is read in the manner that we have proposed.

Right? But “constitutes” is a broader definition which captures the various iterations and combinations of events and “constitutes” is to keep it synonymous with POCA. So the Proceeds of Crime legislation uses the proceeds concept and I think that we would be rewriting the manner in which this is interpreted. And what I want to make a specific cautious approach on, I do not want this to be read as constructively amending the Proceeds of Crime Act so I prefer to leave it in tandem with the language used in the Proceeds of Crime Act.

**Madam Chairman:** Member for Siparia.

**Mrs. Persad-Bissessar SC:** The AG has the final say, Madam.

**Madam Chairman:** All right. I believe you have other amendments.

**Mrs. Persad-Bissessar SC:** To clause 3.

**Madam Chairman:** Yes.

**Mrs. Persad-Bissessar SC:** Still dealing with “criminal property”.

**Mr. Al-Rawi:** Madam Chair, before the Leader moves on, please, in that clause, “criminal property” subclause (a), as I read it over from a wordsmithing point of view, the word “and” as it appears in the third line is not necessary. So:

“‘criminal property’ means property—

- (a) which constitutes a benefit to a person from criminal conduct or represents such benefit, in whole or in part...”—the word “and” should be out—“whether directly or indirectly including...”

I am so advised by the CPC’s department.

**Madam Chairman:** Member for Siparia.

**Mrs. Persad-Bissessar SC:** Yeah, the AG has stopped me but that is exactly what my amendment is. The next amendment is exactly to delete those words “and whether” and replace it just with the inverted marks. I am referring to item number 5, clause 3. That is the amendment that I have circulated.

**Mr. Al-Rawi:** Not quite, Madam Chair, because she is inviting us to go further and delete the word “whether”. I do not agree with the “whether”, I agree with the word “and”.

**Madam Chairman:** Okay, so that in terms of this and I am calling it Opposition 4, AG, what you have agreed is that the word “and” comes out but “whether” remains?

**Mr. Al-Rawi:** Not for 4, for 5. So Opposition 5—

**Madam Chairman:** Well, we have not taken the Preamble, No. 1 on theirs is the new preamble.

**Mr. Al-Rawi:** I see. I am just looking at their list as circulated, it is listed as 5. So on their 5, clause 3, in the definition of “criminal property”, delete the word “and”; I respectfully decline to delete the word “whether” and replace with the word “,” not necessary. So I would just simply say delete the word “and” full stop.

**Madam Chairman:** Okay, Member for Siparia.

**Mrs. Persad-Bissessar SC:** The last word is on the other side, the Government will have its way.

**Madam Chairman:** I believe you have other amendments on clause 3.

**Mrs. Persad-Bissessar SC:** We have under clause 3, Madam, item 6:

In the definition of “criminal property”, delete the word alleged offenders and replaced with the word “respondent”.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Madam Chair, we wanted in the definition insofar as a court must construe legislation with a presumption of constitutionality there, being very loathe to disturb the presumption of constitutionality. We wanted in the definition to convey that this is an allegation. It brings into it the spirit and feeling of innocence until proven guilty and therefore we would respectfully decline the invitation to

simply categorize it as respondent.

**Madam Chairman:** Member for Naparima.

**Mr. Charles:** Is the Attorney General saying that the concept of—the word “respondent” implies guilt? It does not constitute the same thing as alleged?

**Mr. Al-Rawi:** That is certainly not what I am saying. I am saying that in the rule of interpretation under the doctrine of *Pepper v Hart*, it is important for the *Hansard* to reflect Parliament’s intention. Parliament’s intention in keeping in the definition section by using the reference to allegation is to imbue and bring to life the concept of innocence until proven guilty and therefore, we want to purposefully colour that expression by inviting a court to always be mindful not to rush ahead unless due process is had.

**Mrs. Persad-Bissessar SC:** May I please?

**Madam Chairman:** Yes, Member for Siparia.

**Mrs. Persad-Bissessar SC:** I was stunned for a moment because throughout the Bill, the word that has been used throughout the Bill is the word “respondent”; “applicant” and “respondent”.

**Mr. Al-Rawi:** That is correct. That is in the Bill, not the definitions clause.

**Mrs. Persad-Bissessar SC:** No, no, no, in your Bill. Your definition clause is in your Bill, your clause 3 is in your Bill and throughout it, you have not said anything about allegations. In fact, these are some of the things that we raised on the Opposition side when you were going with people who were not found guilty of anything, who were not charged with anything being respondent. So throughout, I would respectfully say, hon. Attorney General, that you have used the word “respondent” and therefore in keeping with that, dealing with “criminal property”, again, it will be property of a respondent. It would not be Mary’s property and John’s property, it will be a respondent.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Madam Chair, the constitutional courts of this country, all the way up to the Privy Council always look to the construction of the law. They must interpret the law as produced by Parliament. The definition section is a critical section which categorizes what you want. If we were to accept the invitation of the Leader of the Opposition, then we would have to use the word “alleged” right throughout the Bill. That is why you have a definition section. It is here and only here that the colouring of the innocence and allegation needs to be had, nowhere else. To adopt otherwise would make a mockery of the manner in which law is drafted.

**Madam Chairman:** Member for Laventille West.

**Mr. Hinds:** Thank you, Madam Chairman. But in addition to that, in disagreement with the Member for Siparia, this talks about an approach where a criminal investigation is taking place. When you make the actual application, you are talking about a respondent but we are talking about a criminal investigation leading to this civil application. I disagree with her.

**Mrs. Persad-Bissessar SC:** I would like to agree with the hon. Attorney General but in the reverse, that in my respectful view, it is a mockery of the law to use these words “alleged offender” instead of the word “respondent” when the entire Bill deals with respondents in matters. The Government will have its way.

**Mr. Al-Rawi:** If I may, Madam Chair?

**Madam Chairman:** All right, just one minute. Member for Oropouche West, did I see your hand? No? Member for Naparima.

**Mr. Charles:** As a layman, I would like an explanation under “specified offence”.

**Madam Chairman:** Okay, let us just deal with what is before us.

**Mr. Charles:** Yes, it uses the word “and lawfully acquired wealth of the

respondent”. This is on page 6. So I am just wondering for consistency across, why not—

**Madam Chairman:** So that Attorney General, if you can deal with both and therefore I think we would have—

**Mr. Al-Rawi:** Sure, Madam Chair. With the latter contribution of Naparima first, that is the definition from the Proceeds of Crime Act, we do not wish to move away from that. Secondly, if we accept the Leader of the Opposition’s invitation, we would not use the word “alleged” anywhere else in the law. Nowhere else in the entire Bill would we have the allegation and therefore the colouring of innocence until proven guilty, so we would just chop it clean out which would be respectfully creating a disaster from an interpretation point of view.

**Madam Chairman:** All right, Member for Diego Martin North/East.

**Mr. Imbert:** If I look at part (a) of the definition of “criminal property”, it speaks to criminal conduct, so it is:

“‘criminal property’ means property—

(a) which constitutes a benefit to a person from criminal conduct...”

So this entire thing flows from criminal conduct so you must have an offender, an alleged offender if you are talking about criminal conduct. That is the root of the clause. I am afraid I cannot understand the problem because this is dealing with criminal property which is derived from criminal conduct so you must have an alleged offender. A respondent more properly belongs in the civil arena where you have a claimant and you have a respondent.

**Mr. Al-Rawi:** When the application is made. The point is the respondent becomes a live creature when proceedings have been filed. You see, until proceedings are filed, you are in a pre-engagement exercise. When you are in court and an application has been filed, that is when the respondent is clothed as a

respondent. Someone, for instance, is not a defendant until they are brought before a court, until then, it is all a proposition.

**Madam Chairman:** Member for Siparia.

**Mrs. Persad-Bissessar SC:** I do not accept the explanations, Government will have its way.

**Madam Chairman:** Okay. I think you have some other amendments proposed under clause 3.

**Mrs. Persad-Bissessar SC:** Yes, Madam, we have at item 7 of my proposals. In the definition still of “criminal property”, I respectfully suggestion that we delete the word “suspects” and replace with the words “has reasonable grounds to believe”.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** So, Madam Chairman, this is an important point to clarify. The reason why we have used suspect here ought not to be confused with what actually happens along the way. As this law is drafted, as the Bill is drafted, investigating officers have suspicion, it must be reasonable suspicion. That is to be found in the comparators, for instance, in section 32 of the Proceeds of Crime Act; that is to be found where someone goes for a warrant to enter premises or to seize things or where someone actually arrests someone. That suspicion does not take care of the event. When the suspicion happens, you go to the Director of Public Prosecutions on the first route, you must then—the Director of Public Prosecutions, as you see later, must have the view that there is sufficient evidence. So the DPP goes—from suspicion, the DPP says there is sufficient evidence.

And when you go to the provisions in sections 31 onward, suspicion, DPP must have evidence, then the court goes to have reasonable grounds. So it is not at all the correct process to say mere suspicion, because when the court acts, it is

filtered through the DPP who has sufficient evidence and then the court accepts reasonable grounds. So this cannot be and ought not to be sensationalized as mere suspicion. That is not the way this law operates.

And in the concept of “criminal property”, criminal property falling on criminal conduct, “criminal conduct” being only for Proceeds of Crime specified offences, it makes it even tighter. So there is no turpitude or error or mischief in using the word “suspect” because that is not what a court acts on. A court acts after the DPP has said that there is sufficient evidence and where the court says there are reasonable grounds for acting.

**Madam Chairman:** Member for Siparia.

**Mrs. Persad-Bissessar SC:** I know the AG intends to come to amend, I think, it is clause 31 or 31(2) with respect to sufficient evidence and insufficient evidence. Take out “insufficient” and instead put “sufficient”. Because I think he is mixing up his clauses because this is not about the process starting from suspicion moving to—what was it—evidence before the DPP and then before the court. This is speaking to the alleged offender. The “alleged offender knows or suspects”, it is nothing to do with that process that you are going through to get whichever order they are in. This is about the offender, not about the DPP, not about the policeman, the DPP, et cetera, et cetera.

So this is where the person, the alleged offender that you had alleged wherever, the “alleged offender knows or suspects”. So that is the person. We did not put offender. I asked to put respondent, you told me to leave offender. So it is me, it is you, it is anyone who is being investigated on suspicion; step two, goes to the DPP; DPP on evidence then goes to court. No, no, no, this is the person must know, the person must suspect, “constitutes or represents a benefit”. So we are giving a sort of discretion that the person has reasonable grounds to believe that

this property is so tainted.

Look, Madam Chairman, in our country, there was an allegation of a high official who sold his motor car to Dole Chadee for example, many years ago, and the money he would have received would have been the proceeds of Mr. Chadee, deceased, of his crimes. At the time when that happened, would that person have known? And now it would have gone—if he is passed away, that official, it goes into his estate. Will that be property recoverable from an estate? If it is that the alleged offender had reasonable cause at that time to believe that it was okay, the money was coming from an “okay” source. And that is why I am saying it gives a protection to the person who is being investigated that they must have reasonable grounds to believe.

**Madam Chairman:** Member for Laventille West.

**2.00 p.m.**

**Mr. Hinds:** Madam Chairman, the alleged offender, he is in possession of what is being deemed criminal property. All that is required here and what this is accurately saying is that it is property that he knows, or ought to know, on some very limited evidence, is criminal property. And I think the construction here, and what is being suggested from the Member for Siparia, very much similar, does not make any real difference. But just for the record, and in fairness to a former parliamentarian, there was no allegation that the car was sold to any drug dealer, but to a car dealer called Subance, just to protect the reputation of someone.

**Madam Chairman:** One minute, Attorney General, please. Member for Diego Martin North/East.

**Mr. Imbert:** I just want to correct the record. In that particular case, the person, the former MP, who has now passed away, had no possible chance of suspecting that, because that person was not involved in the transaction.

In this particular case, if somebody comes to you with a valuable property or a valuable item and offers you a Mercedes Benz for \$1,000 or something like that, clearly, in those circumstances, a reasonable person would suspect something is wrong, and this is what this is all about. You should be able to suspect that something is wrong with the property when it comes to you. That is the root of this. So I do not understand what the problem is again.

**Madam Chairman:** Just one minute, let me just let the Attorney General—

**Mr. Al-Rawi:** Thank you.

**Madam Chairman:**—because they are all responding to a point that you raised.

**Mr. Al-Rawi:** Correct.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Number one, the law must be read as a whole. Number two, Madam Chairman, criminal property does not mean it is recoverable property. This law is built, and civil asset forfeiture and explain your wealth, is built only in respect of what is deemed to be recoverable property. Recoverable property is specifically defined and recoverable property, you will note, is in a section all by itself. It is in a clause 7, because the law has said that if you want these kinds of things to be operative, as we saw in the anti-terrorism law, put it in a section by itself. So when you get to recoverable property, recoverable property has some significant exceptions. Bona fide purchaser for value without notice of the crime is a complete exception.

So, to say that criminal property and the use of the word “suspect” is difficult, makes a mockery of how the law works, which is why I have started off with saying, you must read the law as a whole. Just because it is criminal property does not mean it is recoverable property and that is the crux of this law. So dissecting it in this fashion here makes a mockery of the law.

**Mrs. Persad-Bissessar SC:** So, are you saying criminal property is not necessarily recoverable property?

**Mr. Al-Rawi:** Exactly.

**Mrs. Persad-Bissessar SC:** And then the reverse follows.

**Mr. Al-Rawi:** How?

**Mrs. Persad-Bissessar SC:** Recoverable property has to be criminal property. It cannot be anything else.

**Mr. Hinds:** No, no.

**Mr. Al-Rawi:** Madam Chairman, human beings may be arrested, but not everyone is arrested. They must fall within a category of having committed an offence. So we say something is criminal property but it will not be the subject of a Civil Asset Forfeiture Order or an Unexplained Wealth Order, unless it is recoverable as defined under the Act. And that is to be very specific about this.

You see, Madam Chairman, I must be careful on the record to disabuse and reject out of hand a narrative that, on mere suspicion you are losing your property. That is not the case, and it is draconian and irresponsible to say.

**Mrs. Persad-Bissessar SC:** That is not relevant today.

**Mr. Al-Rawi:** That is the case. Madam Chairman, I am not talking about my Members opposite. I am talking—

**Madam Chairman:** One minute please, let us have a discussion where we hear each other. Yes, please.

**Mr. Al-Rawi:** I am talking about narratives beyond the Parliament, and one would be foolish not to pick up on those narratives. I am saying, where there is a peddling of talk, irresponsible talk, that on mere suspicion “your property gone”, that is to be rejected. The property must be recoverable property and the definition of recoverable property and what can be recovered, is in clause 7 of the Bill,

Madam Chairman. By the way, for the record, this is equivalent to section 45 of the Proceeds of Crime Act. So this definition, where the alleged offender knows or suspects constitutes, that has been the law as passed by a UNC Government, since the year 2000.

**Mrs. Persad-Bissessar SC:** Ma'am, I do not buy the arguments being put forward. I still think the hon. Attorney General is mixing up the prosecution process. And when he talks about suspects and goes to stymie what he calls "narrative" about you could lose your property on mere suspicion, as the Bill stands, yes, that is possible to happen. The AG has now put an amendment, which we have not got to yet, and I still think he is tying up that suspicion of the investigator, the DPP and the court.

This is where the offender suspects and I am asking that that person who may or may not become the subject of all these orders here, that that person be given the reasonable benefit of the doubt, be amended to say: "has reasonable grounds to believe".

Even the Member for Diego Martin North/East inadvertently or deliberately did say that he did not have cause then to believe.

**Mr. Imbert:** Which is the same thing.

**Mrs. Persad-Bissessar SC:** Because it was a different person.

**Mr. Imbert:** He was not involved.

**Mrs. Persad-Bissessar SC:** I did not call any names, so I do not know which case you are speaking of. The hon. Member said "had reasonable cause". All I am asking, for a person who could stand to lose their property, then that person must at least have that benefit of saying: "Look, I had reasonable grounds to believe." Look, lawyers who practise, when a client comes and pays you money, what do you do? You go and do a due diligence before you collect the fee. How far would

you go? And then one day you find out “but wait nah, dat client who came in here last week and paid the lawyer, you know what?—look they convict him for some criminal ting yuh know.” So this money might have come from a criminal source. So give the person a chance by saying: “has reasonable grounds to believe”.

**Mr. Al-Rawi:** Madam Chairman, would the word—not that I accept any of what the Leader of the Opposition is saying for the reasons that I have announced but for the listening public—would the qualification of ought to know, knows or ought to know? Because then that gives a slightly different colour. You see, this is the individual him or herself—

**Mrs. Persad-Bissessar SC:** Yes, the person.

**Mr. Al-Rawi:** It is not a prosecutor who has to prove reasonable grounds for something. But, Madam Chairman, in my submission to this committee, I prefer to anchor this in the submissions of the Proceeds of Crime Act. The Proceeds of Crime Act is slightly different, because there it is a prosecutor who is looking for reasonable aspects. Here, we are putting this thing where the alleged offender knows or suspects. It is the ordinary interpretation of that. Suspicion must be based upon reason. One does not have suspicion without reason. So there is an implied understanding that it is reasonable. But in any event, the salvation for this is to be found in the fact that criminal property is not recoverable property.

**Madam Chairman:** Okay.

**Mrs. Newallo-Hosein:** Yes, I do not understand what the AG is saying. Because when I read clause 7 of the Bill, which—

**Madam Chairman:** Clause 7?

**Mrs. Newallo-Hosein:** No, no, wait, wait, wait. The hon. Attorney General indicated that in order for me to understand what “recoverable” means that you would see it in clause 7, which the Member indicated there are amendments. I do

not see any amendments at all in the documents. So this is why I just want to clarify what the AG just said in relation to where it is recoverable in clause 7. So I know that we are not in clause 7, but according to what the AG just indicated, recoverable for criminal property comes under that and if he can in fact read over what he has said utilizing the terminology that is in here please?

**Mr. Al-Rawi:** Madam Chair, when we get to clause 7 that will become clear. My point is that elsewhere, in relation to this, recoverable property is the only thing that can be the subject of civil asset forfeiture or explain your wealth. Nothing else.

**Madam Chairman:** Okay. Member for Siparia, I believe you have some others.

**Mrs. Persad-Bissessar SC:** Two others. Our item eight, with respect to clause 3, again, with the definition of “criminal property”, I suggest we delete the words, “a benefit and for which it is immaterial who carried out the conduct, who benefited from conduct” and simply replace it with the words, “the proceeds of criminal conduct”.

**Mr. Al-Rawi:** Again, Madam Chairman, the definition of “criminal property” is intended to be wide. But I come again to the fact that that is not recoverable property. Recoverable property is very specifically managed, and also there are a host of exclusions as to when something ceases to become recoverable. So you are intended to have a wide berth and a benefit is a material point, because one cannot categorize property easily. There has to be a wide explanation as to what property is.

**Mrs. Persad-Bissessar SC:** You know what it is? It is very verbose. And I know the AG speaks very verbose language as well. But all that means, all those words what they mean, represents a benefit for which it is immaterial who carried out the conduct, who benefited from the conduct. All that really means, the thing is the

property is coming from the proceeds of crime, criminal conduct. So, we can leave it as it. Again, the Government has its way. I do not agree, but the Government will have its way.

**Mr. Al-Rawi:** Madam Speaker, this is born from case law not verbosity. It is born from case law. I am sure that my learned Senior, the Member for Siparia, could understand that. So first of all it is case law.

Secondly, because there are live issues as to what proceeds are, and when one comes to disaggregate whether you were an accomplice or not, is it an inchoate crime or not. All of these are real issues in law. Whilst my friend might think that that is being verbose, that is just the law, Madam Chairman.

**Madam Chairman:** Okay.

**Mrs. Persad-Bissessar SC:** Item 9, clause 3. In the definition of “instrumentality of crime”, I recommend that we delete the word “includes” replace it with the word “means”. I think the law should be certain, especially where there are going to be sanctions consequent upon this definition. So we take out “include”, which leaves it open-ended and instead we replace it with the word “means”. This is what it means. So the law is certain, you know what will happen, and we know the sanctions are there to follow. I think we want to be more certain in the law than to leave it open-ended.

**Mr. Al-Rawi:** Madam Chairman, the manner in which one drafts these things is to use word “includes”, so that the law continues to speak. What is today an instrument may not tomorrow be an instrument. One could not contemplate a flash card, a flash drive, a digital mechanism, crypto currency. If we were to be specific in the law and rely only upon the Interpretation Act, we would be coming back every five minutes to amend an Act of Parliament, Madam Chairman. And, therefore, the fundamental principle in drafting is that the law must be allowed to

grow and breathe. And, therefore, we keep with the current methodology of defining things by saying “includes”.

**Mrs. Persad-Bissessar SC:** Again, again, you know, this is inconsistency at the highest. In this very definition section, if I look at the same page I am looking at: Civil asset recovery means, civil assist forfeiture payment order means, consent order means, criminal conduct means. In every one of them you have the word “means”, and you are saying you want to leave it open-ended because things may change. But when it changes that must come and you must change your law in order to again let people know that the law is certain where criminal sanctions are involved, where you can stand to lose your property. I think the law should be certain and not left open-ended. Okay? I plead my case again. You have used it almost everywhere else on that very page in your definition section.

**Mr. Al-Rawi:** Madam Chair.

**Madam Chairman:** One minute please. Member for Naparima, do you have a contribution to make?

**Mr. Charles:** No, I support. The only concern I have is that “includes” in the hands of someone who is not circumspect, it can be abused. And, therefore, I would prefer if my property is involved, to know the law and be very specific about that. So I would err on the side of being specific rather than being on the side of open-ended.

**Mr. Al-Rawi:** Madam Chair, the person to be circumspect is a judge. So that person is circumspect. It is not any and every person off the street interpreting the law. It is a judge. So Naparima ought to know a judge is very circumspect.

Secondly, Madam Chairman, the Leader of the Opposition sat down on the Proceeds of Crime Act, as a Member of the UNC Government in the year 2000, and we are now 19 years later, and hear this, property means, I am reading from

the Proceeds of Crime Act:

“‘property’ means real or personal property whether within or outside the territory and includes...”

And elsewhere in that Proceeds of Crime Act, they use the word “means”. So I cannot accept, respectfully, the new-found exhortations of the Leader of the Opposition to just all of a sudden say what has been volunteered. I reject it.

**Mr. Young:** Thank you very much, Madam Chair. Madam Chair, to add to what the hon. Attorney General has said, anyone who has had to interpret legislation before knows that the definition section is the policy that drives it, and the use of “includes” the Member for Siparia is saying: “we want the instrumentality of crime includes...” and she is saying that there are other ones that use “means”. But look on the other page, reasonable living expenses includes. What includes, when you use “includes”, what it means is exactly what the Attorney General has said. You take a policy decision as to how expansive you want something to be or not.

**Madam Chairman:** Okay? Member for Siparia?

**Mrs. Persad-Bissessar SC:** Yeah, the hon. Attorney General talked about something from the proceeds of crime; some words that you just quoted. Did you complete that sentence? Did you complete what you were reading?

**Mr. Al-Rawi:** Are you referring to the Proceeds of Crime Act?

**Mrs. Persad-Bissessar SC:** After the word “includes”.

**Mr. Al-Rawi:** The point is, it is “includes”. The exhortation was to use the word “means”.

**Mrs. Persad-Bissessar SC:** What comes after “includes”?

**Mr. Al-Rawi:** A dash.

**Mrs. Persad-Bissessar SC:** And what comes after the dash? It includes, and it gives the list of things that it includes.

**Mr. Al-Rawi:** Madam Chair, I think I have answered this point. I do not think I am going to change my answer on that.

**Mrs. Persad-Bissessar SC:** Okay.

**Mr. Al-Rawi:** It is inconsistent.

**Madam Chairman:** All right. So can we move on? Member for Siparia, I believe the other item is instrumentality of crime? Attorney General, I believe you have a proposed amendment to that.

**Mr. Al-Rawi:** Yes, Madam Chair, I volunteered that at the beginning. So the amendment as circulated, by us. We had then turned, after I did that, to the Leader of the Opposition's recommendations which we are on, and I believe that the Leader of the Opposition then goes on to No. 10 of her list.

**Madam Chairman:** No. 9.

**Mr. Al-Rawi:** We did No. 9, instrumentality.

**Madam Chairman:** Okay, fine.

**Mrs. Persad-Bissessar SC:** We just did No. 9. That was the argument. Item 10, clause 3:

In the definition of property delete the words “assets, of any kind whether tangible or intangible, moveable or immovable, listed assets and includes cash;” and replace instead with the words

“real or personal property, whether within or outside the territory and includes—

- (a) a right, interest, title, claim, chose in action, power, privilege whether present or future and whether vested or contingent, in relation to property, or which is otherwise of value;
- (b) a conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable

property whereof the person executing the conveyance is proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for a lesser interest;

- (c) a monetary instrument;
- (d) any other instrument or securities;
- (e) any business;
- (f) a vehicle, boat, aircraft or other means of conveyance of any description; and
- (g) any other tangible or intangible property;

**Mr. Al-Rawi:** Madam Chair, the first thing that jumps out at me, after hearing the Leader of the Opposition talk about the precision of the word “means”, is that the recommendation now has the word “includes”. I will flag that.

Second thing, what is absent, Madam Speaker, what is absent is cash. So why would one want to define “property” without a definition to cash, when cash is defined in this section in the position? So if we accept the Leader of the Opposition’s position, well forget cash clean.

Thirdly, we are keeping consistent our definition of “property” to include that of the type which we did in the Anti-Terrorism Act, et cetera. There can be no broader a definition of “property” than to say it includes assets of any kind whether tangible or intangible, moveable or immovable, listed assets, which we have defined in this Bill, and cash which we have defined in this Bill. So there can be no broader definition than that which we have offered. It is to be found in umpteen pieces of law. The most recent of vintage is the Anti-Terrorism Act and this allows for evolving asset, particularly when you are treating with choses in action and also intellectual property of the type including crypto currency, et cetera.

**Madam Chairman:** Member for Siparia.

**Mrs. Persad-Bissessar SC:** Yes, Madam Chair, when it is convenient, the Government, through its Attorney General, refers us back to the Proceeds of Crime Act. When it is not convenient, the hon. Attorney General forgets what the Proceeds of Crime Act has to say. And indeed, when he talked about the word “includes”, when he was reading from the Proceeds of Crime Act, when we had the discussion about “includes” and “means”, he was in fact reading from the Proceeds of Crime Act, but did not continue it. Because after the word “includes”, this is what happened. These words that I am asking that be inserted are the identical words of the Proceeds of Crime Act, and I am saying that definition of “property”, again to harmonize with that as we have been saying all along, I respectfully suggest you have your listed assets, yes, you could have cash too if you want, but we go with this definition from POCA, from the Proceeds of Crime Act.

**Mr. Al-Rawi:** Madam Chair, the Government intends to amend the Proceeds of Crime Act in two important ways, one, the definition of “property” to harmonize it with what we are doing now. And secondly, to amend the schedule of offences to include anti-gang provisions, gang-related offences.

We, unfortunately, could not do this in this Bill, because this is not a Miscellaneous Provisions Bill and we will be returning to the Parliament in a Miscellaneous Provisions Bill to change the definition of “property” on the Proceeds of Crime Act and to add gang-related offences into the second Schedule to catch specified offences in that way.

**Madam Chairman:** Leader of the Opposition, I believe there is one more you have under clause 3.

**Mrs. Persad-Bissessar SC:** Yes. I am here now, we are under—I am looking at item 11 on my list:

In the definition of recoverable property insert after the word “crime;” the words “but does not include property that was obtained in good faith for value without notice that it was recoverable property”.

**Mr. Al-Rawi:** Madam Chair, there is case law in particular coming out of the anti-terrorism jurisdiction experience, which says that when you put this caveat in the definition section, that Parliament is treating with it loosely. We have caught the exact mischief that the Leader of the Opposition has flagged in clause 7 of the Bill. Let me read it out, and the reason we put it as a stand-alone clause, which would become a section, is to make sure there can be no doubt that people that have bona fide interests are to be protected and that it is not recoverable property. And if I may: In clause 7(9), and this is to give punching power to the law. Clause 7(9):

“Where a person holds recoverable property and is able to satisfy the Court, on a balance of probabilities”—a very low standard—“that the property was obtained in good faith for value without notice that it was recoverable property, the property ceases to be recoverable.”

Let me stick a pin and say the concept of value there is not cash only. It is not only for purchasers. The value includes a deed of gift, which is natural love and affection. The value includes a settlement of a trust. It may be for valuable consideration, which is non-financial, and which the law recognizes for good and other valuable consideration, good and valuable in law. So we have been very specific to put this in an operative clause, so that the court could never catch the innocent people who ought to be excluded from this law.

**Madam Chairman:** Member for Siparia.

**Mrs. Persad-Bissessar SC:** Sorry Madam. I would respectfully recommend that the amendment be made to clause 3, with respect to where you acquire property

obtained in good faith for value without notice that it was recoverable property. I would want to see this inserted here. The Attorney General has a different view, so be it.

**Mr. Al-Rawi:** Madam Chair, it is important to bear in mind, if we just put that in the definition section, who is going to determine that? In what process? In what standard if we just say so? Where is the process of somebody saying and protecting someone in those circumstances?

The only way that that could be done is pursuant to clause 7(9), where a court exculpates someone. He says: "Look, your property is not in that. You got it by a deed of gift. Your mother or your father left it to you for valuable consideration." If we accept this here, who is going to decide that and in what process? It is by far better to protect the person and clothe them with protection by a court saying: "You are knocking on the wrong door. Do not touch my inheritance. Do not touch my gift that my mother or father gave to me or my uncle or aunt. I am outside that pot." And that is why we prefer to be more cautious with people's right.

**Mrs. Persad-Bissessar SC:** I believe that this is the part of the Bill in which we should make it very clear that if you got something without notice, you have it, the property was obtained in good faith for value without notice. I do not think an inheritance will fall into good faith for value without notice.

**Mr. Al-Rawi:** No, it falls in any other just purpose, which is elsewhere in the Bill.

**Mrs. Persad-Bissessar SC:** Okay. So I still feel this is a place we can define recoverable property; we take that outside of being recoverable property where it has got in good faith.

**Mr. Imbert:** Is the Leader of the Opposition saying, again this goes back to an earlier point about whether you suspect something is stolen goods or not. Are you saying that the person should not have any liability whatsoever for receiving

property that is obviously the proceeds of crime?

**Mrs. Persad-Bissessar SC:** You may want to ask the Attorney General that question.

**Mr. Imbert:** No, but in your proposal—

**Mrs. Persad-Bissessar SC:** No, that is not—

**Mr. Imbert:**—you are saying, you have the words “without notice”, eh.

**Mrs. Persad-Bissessar SC:** Yes, “without notice”.

**Mr. Imbert:**—“without notice”, and that is what has caught my attention. You are saying that if you have property that you obtained in good faith for value without notice, it was recoverable, it means that nobody told you that this property was the proceeds of crime. That defeats the earlier clause about suspicion. It means that somebody could present to you something and it is obvious this is the proceeds of crime, but nobody told you, so if we go along with your definition, you get away.

**Mrs. Persad-Bissessar SC:** I think you are talking at cross-purposes with the hon. Attorney General. He has just said he has taken like words or similar words and put flesh onto bone inside of it in clause 7.

**Mr. Imbert:** I am only talking about this clause, your recommendation with respect to a definition of “recoverable property” and you are trying to get us to agree that “recoverable property” is property that nobody told you was the proceeds of crime.

**Mrs. Persad-Bissessar SC:** It is not so simple, hon. Minister.

**Mr. Imbert:** Please explain.

**Mrs. Persad-Bissessar SC:** It is not that they told you. In the law, for example, if you are going to buy a property, if somebody had a *lis pendens* against the property, you would be deemed to have had notice. So it is not that they must tell you in your face. The AG could tell you that in conveyancing law what happens.

So, the same way without notice, there was no way you could have known. There was no way you could have known, and so you have value. These are the words that are used. Because you have it again in clause 7 of the Bill, which is what the AG is just saying.

**Mr. Charles:** “Yuh doh understand.”

**Mrs. Persad-Bissessar SC:** Okay. Just move on.

**Madam Chairman:** So, I think all the amendments, the proposed amendments to clause 3, have been dealt with and, therefore, I will now put the question. So, the question is that clause three be amended in accordance with the Opposition’s list, items 2 to 11 as circulated.

*Question, on amendment, [Mrs. Persad-Bissessar SC] put and negatived.*

**Madam Chairman:** The question is that clause 3 be amended, in accordance with the Government’s list of amendments as circulated and in addition to delete the word “and” from the definition of “criminal property” (a), line four between the words “part and whether”.

**Mrs. Persad-Bissessar SC:** Madam, I am sorry, can you please remind me which clause we are dealing with?

**Madam Chairman:** We are dealing with clause 3. But remember, we had two lists of amendments.

*Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.*

**2.30 p.m.**

*Question put and agreed to.*

*Clause 3, as amended, ordered to stand part of the Bill.*

*Clause 4.*

*Question proposed:* That clause 4 stand part of the Bill.

Renumber clause as clause 4(1) and insert after renumbered clause 4(1) the

following new subclause:

“(2) Subsection (1) shall not apply to tax crimes which occurred at any time six years or more prior to the coming into force of this Act.

**Mr. Al-Rawi:** Madam Chair, the Government proposes an amendment to clause 4. Specifically, Madam Chair, in putting the ability to have a civil asset forfeiture regime and an unexplained wealth order regime operate we have already accepted that that must be done only as it relates to investigations treating with the proceeds of crime schedule.

In that Proceeds of Crime Act in the second schedule, there is a definition, there is an offence set out which is tax crimes and the Government thinks that it would be inappropriate and disproportionate in light of the existing law in the Income Tax Act and in the Customs Act to ask people to go and find documents which they would have discarded after six years. The law as stands in the Customs Act as we amended last year and in the Income Tax Act which has been decades in operation is that, if there is no assessment raised against a taxpayer or in the Customs regime within six years that after the sixth year you no longer need to keep your documents. There is a positive obligation on taxpayers to keep documents for six years.

It is imperative therefore insofar as clause 4 applies to crimes which may have been committed in the purview of this law prior to the proclamation of this law, that we only ask people in tax regime and insofar as it hits in the customs aspect of that because remember customs treats with that indirect consequence as well that they only be responsible for a six-year period behind the proclamation. So if we proclaim the law on the 31 December, 2019, you go six years back and only six years. There is an exculpation completely for anything beyond the sixth year backwards.

So if it is proclaimed in 2020, you are counting six years backwards and you are only liable to account for things within that period, because it would be unreasonable to ask you to go and get documentation beyond that period. It is for that purpose and with specific regard to taxpayers and people in the customs arena that we propose to limit the operation of the applicability of this law which is clause 4 in the manner circulated.

**Mr. Singh:** Thank you, Madam Chair. AG, just a sense of clarification here. Are you saying now that it is only going to be confined to breaches of the tax laws and the customs laws, or is it going to cover everything else?

**Mr. Al-Rawi:** All taxes, direct taxes, VAT, PAYE, BIR, health surcharge, all of those direct charges, et cetera, in the entire suite of what is considered tax or customs, you can only go back six years from the commencement of the law.

**Mr. Singh:** So no other crime is being dealt with other than breaches of the tax law?

**Mr. Al-Rawi:** Correct.

**Mr. Singh:** Okay, so that therefore—and the retroactivity is confined to a six-year limitation?

**Mr. Al-Rawi:** For tax purposes only. So, for instance, murder which has no statutory period cannot be put in. Fraud which has no statutory period cannot be put in. And those things are discoverable as and when the police find it. Somebody may have murdered someone 30 years ago and took their property, for instance. Maybe that is something that happened.

But the one issue which is a potentially wide issue to a host of people in this country is what about my taxes? I throw away my documents six years ago. I cannot find documents in 2013 or 2012 as it is may be. If you are in 2020 from 2014 you cannot find your documents. So because there are hundreds of thousands

of registered taxpayers in this country, we cannot place upon them any burden to go back beyond six years. We must keep within the chain-link that the law currently prescribes because that is a rational and logical thing to do. People must not be exposed to that specter of worrying where are they are going to find their tax information because it lost or they got rid of it after the six-year period.

**Mrs. Persad-Bissessar SC:** Why are you imposing a heavier obligation on non-tax matters? Why? You are saying okay, the tax matters because the law said six years. But any normal human being who would have built a house 20 years ago, five years ago, 10 years ago, may not have any piece of paper, none whatsoever in existence, so that—

**Mr. Al-Rawi:** But there is other evidence to treat with that. You see—

**Mrs. Persad-Bissessar SC:**—you are putting, it seems to me, a heavier burden on non-tax parties. In other words, I do not support exempting the tax matters. I think they should stay.

**Mr. Al-Rawi:** Sure, Madam Chair, there is a compelling reason to chain this to six years because people—

**Mrs. Persad-Bissessar SC:** Just tax matters.

**Mr. Al-Rawi:**—throw away their money. That is tax matters. Let us deal with other matters. The rest of the matters in the proceeds of crime schedule are what we call “blood matters” or “money blood matters”.

Trafficking in persons, rape, kidnapping, money laundering, and drug related offences. The reason for putting a heavier burden on those people, and as we intend to put gangs inside of there as well, is to really focus the country’s attention on that type of crime because that is what is killing our society. The average citizen in Trinidad and Tobago should not be worried about whether he had his tax documents from seven years ago, unless it is fraud, of course, fraud you can catch

them there.

In those circumstances, post-conviction forfeiture applies, not civil. If you breach the tax laws, line up in the court on a post-conviction basis and talk about your assets there. It is reasonable there, if we were to impose upon people this thing to go and find their documents in a hurry that they are burnt or threw out, et cetera, that would be causing pandemonium in this country. And we cannot do that to the regular taxpaying people of this country. However, when we are dealing with drugs, et cetera, they do not—now the Leader of the Opposition raised a very emotive and important point.

The aunty or grandmother or old lady down the block who build a house X number years ago, no court of law in the equity jurisdiction which this law holds on to, could ever forfeit that person's property, because, number one, that person must be with the Proceeds of Crime Act. If the granny was involved in drug offences, and there was evidence before a court that the DPP was satisfied with, well then granny has some questions to answer. If granny was involved with trafficking in human beings, well granny has some questions to answer. But granny who built her house as we say in Trinidad “chirrip-chirrip” has no questions to answer. *[Interruption]* Please.

**Mrs. Persad-Bissessar SC:** What about the person granny got it from?

**Mr. Al-Rawi:** Granny, not having noticed and got that for value without notice of the criminal activity is clean and clear. Granny is an innocent person in that matrix, and this law is very careful to protect granny, who may be a doubles vendor, who may be a small man on the street—

**Mrs. Persad-Bissessar SC:** Coconut vendor.

**Mr. Al-Rawi:**—or a big man, or people who inherited their wealth from their families. Those people have nothing to worry about because they are not in the

Proceeds of Crime Act. They are not in trafficking, they are not in drugs, they are not in murder. They are not in that category.

**Madam Chairman:** Member for Siparia, would you have dealt with your amendment?

**Mrs. Persad-Bissessar SC:** I have circulated item 12 clause 4. We are not supporting clause 4 at all and this has issues relating to the constitutionality of the Bill. I think my colleague, the Member for Chaguanas West will deal with that.

**Mr. Singh:** Madam Chair, I think that this, the whole question of retroactivity in the criminal law and matters of that nature is really inappropriate in this society and that therefore we are of the view in the Opposition that this retrospective effect of this law is inappropriate notwithstanding the objective of this law, meaning that the ordinary citizen must know at the time when they committed any act that that act had certain implications of a criminal nature, and that therefore to come after the fact and make it retrospective in effect, inappropriate.

**Mr. Young:** Thank you very much, Madam Chair. To respond to my friend from Chaguanas West, it would be a remarkable—it is rather a remarkable proposition to suggest that a person who is engaging in criminal activity, for example, let us say tax evasion, at the time of engaging in criminal activity they are not aware that they are engaging in criminal activity and there may be consequences that will flow from their committal of crimes. That is a fabulous acrobatic performance by the Member for Chaguanas West here today and it cannot by any stretch of the imagination, and I did try, I did try, meet with any merit whatsoever.

So a person who has acted criminally, they know they are acting criminally and the Attorney General has proposed, and we have accepted the second schedule of POCA, which are serious crimes. These are not driving under the influence or traffic offences, et cetera. These are serious crimes. Persons who are evading tax,

know that they are evading tax, and I use this opportunity, Madam Chairman, to tell the public that it is estimated that between 12 to \$14 billion a year are lost in Trinidad and Tobago due to tax evasion, and that is one of the things that we are dealing with here frontally today.

**Mr. Al-Rawi:** Madam Chair, if I could refer to the Proceeds of Crime Act to deal with the Member of Chaguanas West's position. I am looking specifically at clause 3 of the Proceeds of Crime Act:

“Reference in this Act to an act that would constitute an offence or criminal conduct includes a reference to an act or criminal conduct which would constitute an offence committed before the commencement of this Act.”

So that is point number one.

Point number two, Madam Chair. If we drew a line to say that this—except for tax—that this must only start from today go forward, what about all the people before the courts right now, or who are under suspicion right now for trafficking in persons, for murder, for drug related offences who are involved in conspiracies to defraud, et cetera, as we have in financial crimes, money laundering. Why should they be allowed to walk around this country in that category? This would provide a get out of jail card for all of them. And what they have done.

So this law in its proportionality is intended to attach to those “blood crimes” as I call it, or “money from blood crimes” as I call it. And specifically to step aside from the tax man, the VAT man, the health surcharge man, the NIS man, all of those people, only six years back because they have the records for that. That is the proportionality in this because we do not want innocent people—look nobody in this country is without sin. All of us as human beings have sinned, people may have had errors, they may be innocent, but if they do not have the documents that is the problem. And it would be irrational for us to ask people to

have documents beyond six years for tax issues.

**Mr. Hinds:** Thank you. My friend from Chaguanas West, I think what he was alluding to is a well-established and well observed principle that you cannot create criminal law retroactively. So, he is really saying that if something was not a crime at the time that it was done, it is in breach of that principle and wrong to charge somebody if you created the criminal offence after. But I think he is mistaken because fraud and murder and all of these things would have been existing offences at the time of the commission of them and what you are doing now is attempting to forfeit property as a result of well-known and committed crimes at the time. So I understand the principle he is raising, but I do not think it bears relevance here. He is mistaken, misapplying it.

**Mr. Lee:** Thank you. Attorney General, how far back would this retroactivity go?

**Mr. Al-Rawi:** Retroactive is retroactive. There is no limitation period on retroactive except in relation to the tax issues which we have spoken about because you keep records for a certain period. Look, fraud has no statutory period of limitation. Right? And when you discover it there is none.

**Dr. Tewarie:** Attorney General, I am not concerned about the murderer, or the fraudster, or the convicted criminal who is caught in this. I am concerned, and we would be concerned about the innocent person who can be trapped by this. And therefore, the issue I want to raise is simply in the issue of the acquisition of property for a person who is not convicted of any crime, who can be caught up by this legislation for confiscation of property. And I want you to explain to me how that would not be a concern, and how the Bill takes care of it?

**Mr. Al-Rawi:** I apologize to the hon. Member, I was just having a small discussion there. Could I ask you please to just succinctly just repeat your question?

**Dr. Tewarie:** What we are concerned about is the innocent person who might be caught up in the system, that is to say somebody who has purchased a property, has not been convicted of any crime, but the property is deemed criminal property. Where is the protection for that person in the Bill? And how is that matter to be dealt with in this concept of retroactivity, because the person would have purchased under the existing laws not having done a search for criminality and therefore—?

**Mr. Al-Rawi:** I can answer immediately. It is in clause 7(9). There is a complete exculpation for that type of person. That person had no way of knowing about that. Clause 7(9) says:

“Where a person holds recoverable property and is able to satisfy the Court, on a balance of probabilities, that the property was obtained”—notice the word obtained—“in good faith for value without notice that it was recoverable property...”

In other words then, I had no clue of knowing that this somebody has some crime before and they were a predecessor in title, and four people—four purchasers ago it was that person. That person is not in the basket. There is a complete exculpation on under clause 7.

**Mr. Charles:** But, Attorney General, this occurs, forgive me I am trying to understand, my property is taken. I am innocent, because under clause 9, I am innocent, but that takes in our system two or three years for me to prove that?

**Mr. Al-Rawi:** No, your property is never taken. The civil asset regimes says, look it could be frozen and you have 14 days if it is frozen for the court to make sure you come to court, and not only you, but anybody with an interest comes to court. And in the interest of justice no forfeiture can happen unless a courts hears from you first. So your property is never “taken”. You cannot have your property

taken in those circumstances. Only a court could change the title away from you to the State, because that is what happens in forfeiture, the title goes away from you to the State.

**Mr. Charles:** So it cannot happen ex parte?

**Mr. Al-Rawi:** It can—there is no forfeiture in this Act ex parte, none at all. The law is specifically designed to be inter partes. Clause 34, where an application clause 34(3):

“Within fourteen days of a Property Restriction Order being granted...”

That is in effect a freeze right, look hold on to that property do not do anything with it yet.

“Within fourteen days of a Property Restriction Order being granted”—not forfeiture, it says restriction—“or such other period as the High Court may direct, notice of the order shall be served on all persons known to the Agency and any person claiming to have an interest...”—et cetera.

And then it goes further. At any point in time if we did not catch you you can knock on the door of the court as say, “Hello I have an interest in this thing, reverse yourself. Make a further order.” So there is never a situation of taking property.

I just want to point something out. I saw an interesting video being circulated on the WhatsApp channels it was John Oliver from the United States who was talking about how seizures happen in the United States where policemen catch you, and you have cash in the car and they take your property for \$40 in some crime, that does not apply in this circumstance here. That law in the United States is totally different from ours. There was no judicial process there.

For this thing to be forfeited a court has to say it is forfeited. And it is actually the circumstance as you would find under a Mareva Injunction or under a

section 24(2) or 24(5) remedy minority shareholder remedy or other remedy under the Companies Act by way of example. So this is—we are not the US. There is no indication of that and anybody who does not have notice of this is completely outside of the matrix.

**Mr. Charles:** So, Attorney General, 33(4):

“An application under subsection (1) shall be accompanied by an affidavit from the investigating police officer.

5) An application under subsection (1) or (2) may be made ex parte and without notice.”

What does this mean?

**Mr. Al-Rawi:** So read (6). It is for a restriction order not a forfeiture order. Look, there are circumstances where the State—let us say a drug dealer is about to do something where you may want to restrict the property. You want to seize it for a moment, it happens every day in court under Mareva Injunction right? So, under Mareva Injunction you can go to the court and say look, I fear that something is going to happen to that property, the bank account might be dissipated, the cash might be withdrawn and you go and you freeze it under the provisions of the Mareva Injunctions. That is equal to this.

What happens next is an inter partes thing, two parties come to court and in our case it is multi-party. All people with an interest get to come to court the mortgager, the lessee, the person who said look it is mixed property. “That man I did not know he was a crook, I invested in this property look my money inside that property.” All of those people come forward and say why the court should not treat with that property and in those circumstances clause 33 which is restriction or freezing is not the forfeiture mechanism. The forfeiture mechanism comes in section 44(5) where the agency makes an application for a forfeiture order against

recoverable property it shall do certain things.

**Mr. Lee:** Madam Chair. AG, we are talking about retroactivity and going back into time. Let us say you acquired a property 25/30 years ago, and you say clause 7(9) kicks in. Now, the Member for Caroni Central is talking about innocent individuals. For that innocent individual, that person has to go to a court of law and the process of going through the whole process of taking a lawyer and so forth to prove his or her innocence—

**Mr. Al-Rawi:** You would not even get there. In the civil asset forfeiture regime an investigating officer must go to the DPP, the DPP must go to the trustee, the trustee must go to the court, and it goes in the following graduation scale: suspicion, reasonable suspicion, DPP must be satisfied there is evidence, if the DPP is satisfied that there is evidence, the court must say that there are reasonable grounds.

If they came and they said look Faris Al-Rawi has a property that he bought 40 years ago/30 years ago, the record is in the registry. The deed for that property would have to be presented to the DPP. So before the DPP even said yes the DPP would have a very hard time demonstrating how a 40 year old deed came to relate to a money laundering transaction five years ago. So let us be rational in how we are approaching this thing. That is why we put in the filters and the ultimate filter is the court. But for the DPP to even get there and as you will see, this is further grounded in the fact that this is a specified offence under the Proceeds of Crime Act.

So the drug dealer who is living in his grandmother's house, let us use that as an example. Granny do not know that the drug dealer is involved in activities. He is a "good boy" as they say. He is caught in some drug related offence. When they are going for a civil asset forfeiture now, granny's property not in that.

Granny's property is in her name acquired 40 years ago. The errant son or grandson who is in that property, or somebody who took over the property in a home invasion, for instance, that man does not have a right to have granny's property in the pot. So that is why I am saying that this thing is so carefully built. However, if he has a BMW in his name, he has \$300,000 worth of gold chain in his name, that is a different story.

**Mr. Hinds:** Thank you, Madam Chair. And just by way of extension and example to the point so well made by the AG in terms of the concern for the Member for Naparima where the investigating officer, and making the application he puts in an affidavit. He is investigating criminal behaviour and he is identified property. And then he sees on Facebook, or on some other form an advertisement for the vehicle that he is attempting to treat with. It is on that basis and in that affidavit that he goes to court and says the vehicle is now up for sale and I want a restriction order. That is how it works.

**Mr. Charles:** So let me give an example. I am home and somebody plants cocaine in my water tank, let us assume and—[*Interruption*]

**Madam Chairman:** Member for Naparima, do not be distracted.

**Mr. Charles:** An investigating officer, in good faith, discovers this. He gets three persons to swear and they go to the court ex parte.

**Mr. Al-Rawi:** Question. In your example—sorry to interrupt but I catch your drift—if you bought that property 25 years ago as probably happened right, somebody in your station in life probably invested in property years ago, 20 years ago, 10 years ago, and somebody planted something in your property yesterday and the police come and knock on your door, how are they getting past proving on reasonable grounds that the proceeds of that crime followed the property 20 years ago?

**Mr. Charles:** But, my understanding, and again forgive me if I do not and clarify, that the crime is to the property, so therefore the property has now become tarnished. So the deed is irrelevant?

**Mr. Al-Rawi:** No. The deed is very relevant. The definition of recoverable property is that it is something that flows from the crime. It is the proceeds of that crime. So you are selling drugs and bought a car, that car could likely be from the proceeds of crime. It surely cannot be that when 20 years ago you bought a property that a crime today could have paid for that. That is not the case. That property would be exempted from this. This law and the way it has been applied in other jurisdictions—take for instance the Antigua/Barbuda case. In that case there was a man who, Ahmed—I forget his name—Williams or whatever it was. He was convicted of a drug offence and the property that he had related to a time frame when he bought the property and he was selling drugs.

If we look to the Harrods case where the Azerbaijani banker was jailed, and his wife was in England she spent £16 million in shopping at Harrods. She bought a jet, she had a \$12 million mansion, and she had a \$10 million mansion and all of those things were bought in the time frame for which the husband was convicted for fraud in Azerbaijan. So those things are rationally connected.

The old property that you bought, et cetera is severable from the proceeds of crime. That is why we say the DPP must be satisfied that there is evidence that this recoverable property flowed from a criminal conduct under the Proceeds of Crime Act.

**Dr. Tewarie:** Yes. AG, the thing that we want to avoid is miscarriage of justice for someone who is innocent. If a matter goes to the DPP under this law, and the DPP has not yet pronounced, is it not possible for the matter to be taken to court before the pronouncement for a property to be held, or to be—I forget what is the

legal term—restricted in the law. Is that not possible? Is that possible under the law?

**Mr. Al-Rawi:** Not under the civil asset forfeiture route. The trustee can only go to court and ask for a restriction order or a forfeiture order if the DPP says there is sufficient evidence. So there is no way you could apply under clause 44 for a restriction order under the civil asset forfeiture route unless the DPP says, I, the DPP acting in my independent constitutional role, am satisfied that there is evidence, not suspicion, eh, the DPP says there is evidence. Only then could they apply for a restriction and then the restriction must go to all parties and then everybody must have their say.

**3.00 p.m.**

**Dr. Tewarie:** So the DPP's intervention is necessary for a restriction order?

**Mr. Al-Rawi:** Yes, because the restriction order cannot happen under the civil asset forfeiture route, unless the agency is given the green light by the DPP to act, and the DPP must—

**Dr. Tewarie:** Where is the clause that says that?

**Mr. Al-Rawi:** Sure. So if you look to clause 31:

“Where during the course”—and we have an amendment to this. Right?—

“of a criminal investigation”—and we are bumping up the categories.

We are going to put Comptroller of Customs, Comptroller of Board of Inland Revenue and a policeman above the rank of Inspector. Right?

“...has reasonable grounds to suspect that the offence involves recoverable property he may forward an investigative report to the Director of Public Prosecutions.”

Then, subclause (2):

“Where upon receipt of an investigative report under...(1), the Director of

Public Prosecutions is of the view that there is insufficient evidence to pursue criminal charges...but there is sufficient evidence that the property is recoverable property...”

**Dr. Tewarie:** Okay.

**Mr. Al-Rawi:** And there, recoverable property is not just any criminal conduct property. It is the type that excludes granny’s home and the other factors there. So this here, clause 31(2) only where the DPP says “Green light, go” can the trustee, who is an independent appointed entity by the JLSC as to the first two, and by the Leader of the Opposition and the Prime Minister or the President in sole discretion if they cannot agree, only then can they get to court.

**Mr. Charles:** And he makes this judgment on the basis of the balance of probability?

**Mr. Al-Rawi:** More than that. The case law demonstrates, where a DPP says that there is sufficient evidence, look at what he is doing first. He is really looking at a criminal matter. Right? So it is not light evidence he is looking at. He must first determine: “Look, I cannot go criminally, that is serious stuff.” He must have done investigations via these authorized investigating people, because it is only the police could investigate. He would usually send them, bring them back, receive their information, and send them back. Now, he must be satisfied that there is not just reasonable evidence, there is sufficient evidence that the property is recoverable.

To get to sufficient evidence, the DPP would have asked for the deed. So they cannot just come up and say: “Hey, Faris Al-Rawi is living in X property. Ah doh like him.” No, the DPP would call for the deed for the property, find out Faris was really renting the property and it was owned by Colm Imbert, and then they say well hold on, that is Colm Imbert’s property. That is not Al-Rawi’s property,

come again. So this thing is not a speculative difficult thing to follow. The DPP must determine that there is sufficient evidence that it is recoverable property, and clause 7 says recoverable property does not include property which a bona fide value without notice of the crime involves. So there are significant safeguards inside of this.

**Madam Chairman:** So Members, I am now going to put the question. I think this clause 4 has been exhausted. The question is that clause 4 be amended in accordance with the Opposition list of amendments item 12, as circulated. [*Crosstalk*] Please, let us have some order.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and negatived.*

*Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.*

*Question put and agreed to.*

*Clause 4, as amended, ordered to stand part of the Bill.*

*Clause 5.*

*Question proposed:* That clause 5 stand part of the Bill.

**Dr. Tewarie:** I wanted to ask a question on that, Madam Speaker.

**Madam Chairman:** We are at clause 5. I will call on the Leader of the Opposition. I believe you have amendments to this clause.

**Mrs. Persad-Bissessar SC:** Thank you, Madam Speaker. Hon. Attorney General, with respect to clause 5, I am asking you, where we would have put the President in—sorry, I have the wrong piece of paper. Give me a moment please. Just one moment please. I am sorry. Yes:

“...any question under this Act as to...”

—to be deleted, because if you are talking about the standard of proof, it has to be under this Act and, therefore, it would be superfluous, in my respectful view, to say “...any question under this Act as to...”.

**Mr. Al-Rawi:** Madam Chair, I did not have a view on this per se. The CPC tells me that this is the way that it is drafted. The intention of this clause is to simply say this is civil standard and, therefore, any issue under the Act—any question, any subset—ought to all be at civil standard. So the CPC's explanation to me is that in case there is a separation out of issues, let us not guess as to what standard applies, it is all civil.

**Mrs. Persad-Bissessar SC:** I am happy that we have, in fact, just express provision in the standard of proof. I am just suggesting that the questions could only arise under this Act, it will not be under any other Act.

**Mr. Al-Rawi:** Well, I am guided by those that draft as opposed to my—I did not have a view one way or the other. All that I wanted to be sure is that the standard did not change when the burden shifted, because on one occasion it might be prosecution turned to defendant or respondent and then vice-versa, and there is an issue of changing of standards where reversals of burdens shift.

**Madam Chairman:** Member for Caroni Central, is this the clause you have a question on?

**Dr. Tewarie:** Well, it is a question that really has to do with the issue of standard of proof. How does the issue of reasonable suspicion figure here in this clause being not mentioned at all?

**Mr. Al-Rawi:** Sure. Madam Chair, so again, and I understand the need to work this out. Reasonable suspicion is the first step in the investigators. To get past that, they need on the civil asset forfeiture arm, they need to go to the DPP who has sufficient evidence. After you get to the DPP, you go to the court which says there must be reasonable grounds to do what it is doing. So that is the graduation aspect. The reason that we have gone for civil standard here, is actually quite similar to the rationale for having a civil standard for money laundering.

Under the Proceeds of Crime Act, the standard of proof for money laundering matters is on a civil standard, and that is on a pure criminal offence matter. So here we are treating with this, we have gone on the civil standard. It is not uncommon or unknown to our law, it exists right there in the Proceeds of Crime Act.

**Madam Chairman:** Member for Chaguanas West.

**Mr. Singh:** Thank you, Madam Chair. But hon. Attorney General, you will recognize that the civil standard in the Proceeds of Crime Act takes place after there is conviction beyond reasonable doubt. So that therefore, it is the second tier in the process.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Allow me to put on the microphone. That is not necessarily so. So, cash forfeitures, it used to be the case where forfeiture happened under the proceeds of crime. It used to be the case prior to the UNC Government in the last term changing the law that you had to have a predicate offence. We then took away the predicate offence for money laundering and, particularly, in the regime of cash forfeitures, which is a considerable regime, we do not need a conviction. So that is not something that is necessarily wholeheartedly there. There are versions of it to be applied and that is something that the country has been rated on by the Financial Action Task Force as a matter of fact, its cash forfeiture regime in particular.

**Madam Chairman:** Okay?

**Mr. Al-Rawi:** And just to put it right because I want to be correct, the forfeiture of cash, section 39 of the Proceeds of Crime Act:

“The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings.”

We also have section 45(4):

“For the purposes of subsection (3), the standard of proof required by the person referred to in that subsection, shall be that applicable in civil proceedings.”

And subsection (3):

“Where a person is charged with an offence under this section and the Court is satisfied that the property in his possession or under his control was not acquired from income derived from a legitimate source, it shall be presumed, unless the contrary is proven, that the property is criminal property.”

So the Proceeds of Crime Act for cash and for property in section 39 and section 45, as it relates to money laundering, the later one, civil standard and presumptions.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and negatived.*

*Question put and agreed to. Clause 5 ordered to stand part of the Bill.*

*Clause 6.*

*Question proposed: That clause 6 stand part of the Bill.*

**Madam Chairman:** Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** Thank you Madam. Item 14, clause 6. AG, I may need a clarification here. Why is it that we are saying:

“A Property Restriction Order made under this Act is an order in rem against property believed to be criminal property...”

Why on belief and on whose belief?

**Mr. Al-Rawi:** So, we are starting with the genesis of the thing which can fall into the order, and in describing that because here we are making reference to criminal property. Right. We are not dealing with recoverable property which is a much narrower category. In treating with criminal property, we still had suspicion

because it is not yet recoverable, and what they are doing here, they are making sure that the “in rem” applies. And if you go to the maritime law, for instance, and you look at the manner in which you may seize a vessel, an in rem seizure against MV X. That is how you describe it. It is still believed. We used “believed” because it has not yet gone into the definition of “recoverable property” but we are making sure that the moment we are treating with it, we are treating with it on an in rem basis. Now, why in rem? So for those who are listening on “in rem” means the thing, the thing in itself.

**Mrs. Persad-Bissessar SC:** So would it be the State as against—

**Mr. Al-Rawi:** PCX 2434, a car or the State against a room full of cash comprising X million dollars.

**Mrs. Persad-Bissessar SC:** A computer full of water bottles.

**Mr. Al-Rawi:** Correct. Whatever it may be, it is against the thing. Why? We want to be careful in this regime that we are not determining the guilty or innocence of a person because a person’s guilt or innocence has attached to it a deprivation of a liberty, because you will be sent to jail, you will have a criminal record, you may be denied all sorts of things. So all that this thing is treating with is a thing. It cannot treat with a person which is why the Strasbourg Courts, that is the European Courts of Human Rights and the English courts have upheld the constitutionality of civil assets regimes.

**Mrs. Persad-Bissessar SC:** I was concerned about the insertion—not about in rem and so on—“property believed to be”. Is it necessary that is it on belief or it is simply that the property is believed to be criminal property, terrorist property?

**Mr. Al-Rawi:** I am so sorry. Would you repeat?

**Mrs. Persad-Bissessar SC:** My concern was not for the meaning of “in rem”, my concern was “property believed to be”.

**Mr. Al-Rawi:** Sure. Look at clause 6(1) and 6(2). Clause 6(1) applies to a Property Restriction Order, 6(2) applies to the forfeiture order. In 6(1) that is the ex parte. You may not have everybody present, there is sufficient evidence, the DPP is involved but, at that point, the restriction is really on a belief and sufficient evidence of the DPP. It is only when you get down to a forfeiture order that we are saying:

“...is an order in rem against property which is criminal property, terrorist property or instrumentalities of crime.”

So we use the “believed” insofar as it relates to a restriction and we use the “is” when you are going for the forfeiture.

**Mrs. Persad-Bissessar SC:** In that the event, Madam, I will withdraw that particular amendment.

*Question put and agreed to.*

*Clause 6 ordered to stand part of the Bill.*

*Clause 7. Question proposed: That clause 7 stand part of the Bill.*

**Mrs. Persad-Bissessar SC:** Item 15. With respect to clause 7(1), Attorney General, you were at pains to point out and to clarify definitions in the clause 3 definition section. Why are we repeating the meaning of criminal property, terrorist property, instrumentality and so on is recoverable property. Why did we not just say recoverable property is recoverable under the Act and you have a definition in clause 3? Why is it necessary to do this here?

**Mr. Al-Rawi:** It came out of the experience in the litigation under the Anti-Terrorism Act where the courts, not only in Trinidad and Tobago, but in the equivalence elsewhere, courts scorned upon relying upon things which were in definition sections. So the current learning is where you want to be abundantly clear that you should put it as in operational section of the law, in this case here,

clause 7, and what we are making sure—here is the important point—recoverable property is as defined here subject to all of the subclauses in clause 7, in particular, the powerful protection by clause 7(9), which is where you are holding property and you obtained it for value in good faith without notice that it was recoverable, then you are out of that category.

**Mrs. Persad-Bissessar SC:** With due respect Sir, then that makes nonsense of the definition section.

**Mr. Al-Rawi:** I had the same battle while we were amending the Anti-Terrorism Act and I fought with assessors and I fought with the jurisprudence, et cetera, and I said I did not agree with it, but the advice given to us was, it is safer in the clause itself as opposed to the definition section, because it makes it absolutely clear that Parliament's intention was to define "recoverable property" in very specific circumstances as set out here.

**Mrs. Persad-Bissessar SC:** AG, with due respect, the words are identical to that in the definition section as you defined many other things—criminal property has been defined, recoverable property. I am just saying there is no need for you to put it in this clause. I can see no justification.

**Mr. Al-Rawi:** The need is to be in the position that when a judge has to apply this law, the judge has a whole section in the Act to say exactly what Parliament intended recoverable property should mean. And if you were to try to define all of the circumstances of recoverable property, then how do you fit in clause 9(9)? You see, it is in this clause 7 that you define—you go through what is not recoverable property and you go through the mechanism by which a court tells somebody: "You have nothing to worry about. This property is not recoverable property" and that is in subclause (9). So this is more than just defining. This has operational worth inside of it.

**Mrs. Persad-Bissessar SC:** The words are identical, Sir. The words are identical, so it is not that you are excluding, including or stretching. So, let it go. I do not agree, but so be it.

**Madam Chairman:** Can we go on to your other proposed amendments on clause 7?

**Mrs. Persad-Bissessar SC:** Yeah, clause 7(7).

**Madam Chairman:** Clause 7(6).

**Mr. Al-Rawi:** Clause 7(6).

**Mrs. Persad-Bissessar SC:** Sorry, clause 7(6), minor suggested amendment. Clause 7(6), where a person who has criminal property, and my suggestion is that we should put “where a person has an interest in criminal property”.

**Mr. Al-Rawi:** So, Madam Chair, we treat with criminal property, first of all, as a categorization, then we treat with the manner in which criminal property may be held—joint tenancy, tenancy in common, equitable interest as opposed to legal interest, et cetera. That is why we have come further down to say what mixed property is, what an interest in property is and how you treat with it from a severability point of view across the various species of property which may be tangible, intangible and real or in personam or in rem property. Right? So what we start off here with is where a person who has criminal property. What we are catching here is the generation of profits from criminal property, but later on is where we disaggregate mixed ownership from joint ownership from equitable ownership, because take for instance where somebody owns stocks or shares in a company, and they own it as part of an ESOP plan, how are we going to treat with the ESOP plan disaggregation or where there has been an assignment of the beneficial ownership to a spouse which constitutes an irrevocable assignment for instance, where you have alienated yourself from the gift as can happen in certain

types of trust arrangements? In all of those categories, what we are trying to treat with later on is that disaggregation, but here the mischief we intend to legislate for is capturing the profit from it, so that when you have the equity of tracing that you also trace the profits generated from it.

**Mrs. Persad-Bissessar SC:** AG, all of that is fine, but you are saying where a person has criminal property. How do they have it? Are they holding it in their hands or is it that they have an interest and it is all those things you have just said—joint interest, whatever interest, whatever. It is an interest. It has to be an interest.

**Mr. Al-Rawi:** Right. So:

“criminal property”—is defined as—“property—

- (a) which constitutes a benefit to a person from criminal conduct or represents such benefit, in whole or in part and whether directly or indirectly including economic gains and funds or property converted or transformed into other property;”

So the interest is captured in the definition. So if you have criminal property, the first thing you have to go and see is, well what is criminal property defined as? A criminal property is defined as constituting a benefit or interest in sale.

**Mrs. Persad-Bissessar SC:** The person must have an interest in that.

**Mr. Al-Rawi:** It is captured in the definition section.

**Mrs. Persad-Bissessar SC:** He has his phone. I am suggesting—

**Mr. Al-Rawi:** He may be in possession of the phone—

**Mrs. Persad-Bissessar SC:** Exactly.

**Mr. Al-Rawi:** The legal owner might be his company.

**Mrs. Persad-Bissessar SC:** So that is where they must have an interest, you have helped me, in fact, where a person has an interest in the criminal property.

**Mr. Al-Rawi:** And it is caught in the definition section.

**Mrs. Persad-Bissessar SC:** You know, sometimes—I know you are working very hard today. In fact, you seem to be—they have put you on the line as the only person and you are working very hard. [*Crosstalk*]

**Mr. Al-Rawi:** It is my job. All of my colleagues are equally capable of handling this.

**Mrs. Persad-Bissessar SC:** You are working very hard, Sir. [*Crosstalk*] That is exactly what I am saying. It should be an interest where the person has an interest—

**Mr. Al-Rawi:** We agree.

**Mrs. Persad-Bissessar SC:**—whether it be part, whether it be some, joint, whichever way it may be.

**Mr. Imbert:** Do not take the bait.

**Mrs. Persad-Bissessar SC:** It cannot just be has an interest.

**Mr. Al-Rawi:** We agree. It is in the interpretation section.

**Mrs. Persad-Bissessar SC:** We move on. The inconsistency of being in the interpretation section or not being in the body. That is what we have been doing allevening.

**Madam Chairman:** So clause 7(7), I believe?

**Mrs. Persad-Bissessar SC:** Clause 7(7), which is item—

**Madam Chairman:** Seven on your list.

**Mrs. Persad-Bissessar SC:** Yes. AG, I have asked for “(b)” to be deleted, “(c)” and “(d)”, because I do not understand how it flows from what is being said at clause 7 before subclause (a), (b) and (c). Clause 7(7) which says:

“Recoverable property ceases to be recoverable under this Act—”

And let us take (b):

“(b) if pursuant to a judgment in civil proceedings, the defendant makes payment to the claimant or the claimant otherwise obtains property from the defendant;”

Can you explain how that will make it no longer recoverable property? It will cease to be recoverable.

**Mr. Al-Rawi:** Sure. Because the person who was acting in respect of property, which would otherwise be recoverable, but they acted in accordance with a direction of a court and, therefore, the court is an intervening effect to stop it being recoverable. So this takes care of somebody acting outside of subclause (9). In subclause (9), we exclude the bona fide purchaser or bona fide owner for value without notice. However, we must also exclude somebody who received the property by virtue of a court Order, because the court intervened and said: “Go and give that property to someone else.” So, I must put an equitable and lawful stop to the tracing of that property, and I ought not to go behind an order of the court, because the court exercised a determination of rights and said: “Go and give that property to John Brown who sued you for it.” It would be improper for the tracing to follow past a court order which is a final determination by a court of law.

**Mrs. Persad-Bissessar SC:** Hon. AG, I think this may be a recipe for fraud, opening a doorway for fraud. For example, all a person would have to do is bring a fictitious claim for a property and transfer pursuant to such a claim.

**Mr. Al-Rawi:** And?

**Mrs. Persad-Bissessar SC:** And it will then not become a recoverable property, even a divorce settlement.

**Mr. Al-Rawi:** You are right, and that would be a proper recipe if there was not a remedy. You can set aside court orders which are by consent or by way of final operation on three important grounds apart from the appellate ground of a superior

court saying the inferior court was wrong, there are three important grounds: one, mistake of fact; two, material misrepresentation and three, fraud. So in those circumstances you can disturb a court order. There is proper case law on this: mistake a fact, material misrepresentation or fraud. So there is a remedy to treat with that.

**Mrs. Persad-Bissessar SC:** Well, with due respect, in our jurisdiction I might be dead, so maybe you and many of us before the court reaches that point, because the matters are so stacked and backlogged for a long time. I think this is opening—

**Mr. Al-Rawi:** It has been dealt with multiple times before. I have dealt with this in court on many occasions.

**Mrs. Persad-Bissessar SC:** So, who will satisfy that judgment?

**Mr. Al-Rawi:** The court.

**Mrs. Persad-Bissessar SC:** The court cannot on its own notion. Someone will have to approach the court.

**Mr. Al-Rawi:** Listen.

**Mrs. Persad-Bissessar SC:** Someone will have to approach the court.

**Mr. Al-Rawi:** So here is how this goes. For something to be recoverable property, the court must, when it is analysing assets—let us say the court is treating with Stuart Young. Stuart Young is before the court. They realize that there is property in his portfolio which could be recoverable property, they say right: “You see that property in Maraval, we want that property because it fits all off the reasons why it should happen” and then somebody turns up and says: “Holds on, I sued Stuart Young for that property and got that property and a court ordered it.”

So let us assume that that was a fraudulent arrangement. It was a “cook-up” deal: “Boy, sue meh nah, I would not defend it and you will get a judgment in default and you will take the property.” Right? So let us assume that that

happened. It would be up to the Civil Asset Trustee to say: “Hold on, that was a fraudulent scheme for the following reasons” and ask the court to set aside that award. Because if we were to not have this position here the thousands of cases of vesting of property by a court on a daily basis in the civil regime—remember, a court determines property rights all the time in the civil regime. People may go forward in a civil court and say: “I want you to cause the Registrar General to set aside a deed, because that deed was based on fraud.” So this civil asset route is not unknown to our law. It is the first time we are codifying it in one place.

**Mrs. Persad-Bissessar SC:** But we are not going there. I am saying this is opening a door, in my respectful view. Someone is going to have to set it aside. You are saying through these court proceedings that that court can then move to set aside something. I am saying by that time it will be long gone. It will be years before any such thing happens, and so it opens the way for fraud. So if X has recoverable property, all the person has to do is to get someone to sue them, and when the property is transferred it ceases to become recoverable property. That is what this means.

**Mr. Al-Rawi:** Madam Chair, the hon. Member is correct. There are live examples of that that have passed. SIS did that in the Eden Gardens matter. It is not in court. I am giving you an actual example of a case where that happened. So this is a known scheme. [*Crosstalk*] Correct. But I would not talk about that, because that is still on. Right? But these are things which happened all the time and the point is, if we were to cater for it legislatively in reverse, everybody would be paying for one person. It must be that a judgment of a court stands as a judgment of the court, and that if you want to disturb a judgment of the court, go to court and disturb it in the normal way.

**Madam Chairman:** Member for Diego Martin North/East, do you still want to

make an intervention?

**Mr. Imbert:** Madam Chairman, if the Leader of the Opposition is concerned about clause 7(7)(b), then why is the Leader of the Opposition not concerned about clause 7(9) because to me the principles are the same.

**Mr. Al-Rawi:** Exactly.

**Mr. Imbert:** In 7(9)—

**Mrs. Persad-Bissessar SC:** We have not gone on to 7(9).

**Mr. Imbert:** But you have not proposed an amendment to 7(9).

**Mrs. Persad-Bissessar SC:** I am on 7(c).

**Mr. Imbert:** Yeah. But you have not proposed—we are on clause 7, and you have not proposed an amendment to clause 7(9), which means that you agree with the principle that:

“Where a person holds recoverable property and is able to satisfy the Court, on a balance of probabilities, that the property was obtained in good faith for value without notice that it was recoverable property, the property ceases to be recoverable.”

So, you agree with that legal principle and that is very similar to what the Attorney General is bringing in clause 7(7)(b). So you are contradicting yourself.

**3.30 p.m.**

**Mrs. Persad-Bissessar SC:** With due respect, that it is not happening and I beg to differ. Why are we moving then to legalize something that we know is fraudulent? It is not the same.

**Mr. Al-Rawi:** That is not the case, Madam Chair.

**Mrs. Persad-Bissessar SC:** It is not the same.

**Mr. Al-Rawi:** Let me be careful, eh. This is the committee stage and we are on record. There is no circumstance where we could be legalizing fraud. We are

setting the well-known established principle that there are certain estoppels, in this case a legal—it is more than an estoppel, a legal stop to positions. You cannot go behind a court judgment unless:

- (a) It is turned over on appeal, or
- (b) It is set aside on three grounds: mistake of fact, material misrepresentation or fraud.

You can go behind it, but you must be careful to have evidence to do that. You ought not to be able to have a legitimate thing. If we remove this, Madam Chairman, then everybody who went to court and had a judgment of court, every mortgagee sale, every order for possession which a court went through, that means all their property would be in the equity of tracing. It means everybody in this country that bought a property from a bank sale should start to panic because the order of the court would not be final. I mean, this is most astounding submission on the part of the Leader of the Opposition. It is to worry the entire banking sector and mortgagee sale arena. That would be madness, intellectually speaking of course, Madam Chairman, madness.

**Mrs. Persad-Bissessar SC:** I think it is equally madness to put this particular provision in there, in 7(b).

**Mr. Al-Rawi:** Wow.

**Mrs. Persad-Bissessar SC:** Given what we have said before, I do not agree, and my colleague, North/East, raised the issue of 7(9). That does not arise when we are looking where property will become not recoverable property, ceases to be recoverable property where something like this takes place. I beg to disagree and let us agree to disagree on this point.

**Mr. Al-Rawi:** Madam Chairman, when you are doing a title search, part of your title search, after you get to a root of title, which is defined in law as to what roots

are good roots, you work your way forward and you check. One of the things that you do, if you see a judgment which has been registered, is you ask for the satisfaction of a judgment. If there is no satisfaction of a judgment by way of a filed notice of satisfaction discoverable in a court of law, you are in trouble. If we accept the Member for Siparia's recommendation, it means that every title search for the last couple hundreds of years will be in trouble, and it would be feeding the same paranoia that is being put out in the public domain as to why people ought to be worried. I am genuinely concerned to understand what is being said here.

**Madam Chairman:** All right. So, can we move on? Member for Siparia, I think you have (c) and (d) also under—

**Mrs. Persad-Bissessar SC:** (c), if the AG would be kind enough to explain why this would make recoverable property no longer recoverable, please? 7(c)?

**Mr. Al-Rawi:** So 7(c) says:

“Recoverable property ceases to be recoverable...

if the claim of the claimant is based on the criminal conduct of the defendant;”

Let me explain that. John Brown goes to court and sues Jane for fraud. On the civil route, eh, not the criminal route, because criminal matters may take forever and people go to court all the time and they seek to rectify the title, the register, and say, listen, this was fraud, and they go on a balance of probabilities and they get the property overturned on the basis that this was fraud. So, there ought not to be a circumstance where you did not provide for this.

We are dealing with here, recoverable property. We are dealing with the concept of what we call the equity of tracing. So in tracing the property, you have to stop tracing if somebody else sued for that being fraud, because they got there before you. They sued before you so they were first in time, they are before a

court and they are telling the court, no, no, no, that is my property based upon somebody's criminal conduct in a civil court, and it is therefore only fair if you take the ranking of priorities that that person has first bite of the cherry.

**Mrs. Persad-Bissessar SC:** Hon. AG, again, I see this as an avenue for fraud, as an instrument of fraud. "If the claim of the claimant"—which claim are we speaking of? Which claimant are we speaking of which is based on the criminal conduct of the defendant?

**Mr. Al-Rawi:** So, Madam Chair, assuming this law is proclaimed and assuming that this law, when proclaimed, will meet an ongoing legal system, a judicial system with umpteen matters of cases before the court, if we were to automatically say, well, hold on, Jane Brown who was selling drugs, that property is now properly recoverable property because she is in the POCA, proceeds of crime specified offences, forget the claim that somebody else brought in advance where they were asking for something, then that causes problem. We have to respect the fact that the law will be applied onto a system which is ongoing, and therefore you ought to preserve the priority of claims. So it could be any claim.

**Mrs. Persad-Bissessar SC:** Again, we agree to disagree on that one, and then similarly with 7—

**Mr. Al-Rawi:** But, Madam Chair, sorry to interrupt, but what I could say is that in (c) the word "the" ought to be changed to "a", because what the Member for Siparia just said is sensible; which claimant?

**Mrs. Persad-Bissessar SC:** Are you sure?

**Mr. Al-Rawi:** Yes, that aspect is sensible.

**Mrs. Persad-Bissessar SC:** That is good, coming from you.

**Mr. Al-Rawi:** So, if the claim of a claimant—

**Mrs. Persad-Bissessar SC:** That is why I asked you which claim. It is still

ambiguous, hon. Attorney General. Just maybe you could—

**Mr. Al-Rawi:** What I could say as well, Madam Chair, perhaps this may help to alleviate some of the concerns of the Leader of the Opposition; this comes from the Commonwealth law. So the Commonwealth model, the 22 other jurisdictions that we have looked at, all of these provide for these as the recommended best-in-class mechanisms to ensure that people who got their first are treated in the priority that they ought to.

**Mrs. Persad-Bissessar SC:** Hon. Attorney General, I will have to fact check that because many times things are said and that is not necessarily the case. When you talked about the 22 other jurisdictions, well, we did look at some of those. You talked about the umpteen jurisdictions, and so on, and there are differences, obviously, across the various models.

**Mr. Al-Rawi:** Of course there are differences. We did not say that we applied 22 laws in pari materia. How could we?

**Mrs. Persad-Bissessar SC:** Can we go to please 7(d), please, Madam? I disagree with you. I say, again, with (d), 7(d), it is the same point. It is the same point.

**Mr. Al-Rawi:** (d) says:

“(d) if civil proceedings have commenced and the property obtained by the claimant would be recoverable property;”

Again, it is to recognize the priority of who got there first. We are saying, let a court hear that first. If a court decides otherwise it falls back into the pot, you know. It falls back into the property being potentially recoverable property, but let those who got there first have their matters heard first.

**Mrs. Persad-Bissessar SC:** Again, I see this as another avenue, Madam, and so we agree to disagree. I think this should not be there so I had asked for (b), (c) and (d) to be deleted from (7).

**Madam Chairman:** Just for clarity, would the word “the” before “claimant” remain or change it to be “a”?

**Mr. Al-Rawi:** It should be “a” in subparagraph three, 7(c)—

**Madam Chairman:** Yes, but in (d), does it remain “the” or it is “a”?

**Mr. Al-Rawi:** It remains “the”.

**Madam Chairman:** “the”? Okay.

**Mr. Al-Rawi:** Because that is in civil proceedings, any civil proceedings.

**Mrs. Persad-Bissessar SC:** You see, AG, I think you were on to a good thing there in response to the question which came, and so on. I am suggesting that even in (d) it is a little confusing, because we have claimants here, we have claims here, there will be matters ongoing here, and I am not sure, now I am understanding it a little better now. We realize these are outside things completely from outside of this Act.

**Mr. Al-Rawi:** Correct.

**Mrs. Persad-Bissessar SC:** But I do not find that is clear enough in the way it is worded. Maybe you can ask your drafters to look at it.

**Mr. Al-Rawi:** Madam Chair, I confess, it took me four or five goes at this to make sure I understood it right while we were drafting over the years that we took. So, it is a term of art, but a claimant is the terminology used under the Civil Proceedings Rules for civil proceedings, so I had to use that.

**Mrs. Persad-Bissessar SC:** Initially you had “the claimant” which you have now changed to “a claimant”.

**Mr. Al-Rawi:** But that is in a different circumstance. In (c) if the claim of a claimant is based, in (d), if civil proceedings, that could be any civil proceedings, have commenced and the property obtained by the claimant in any civil proceedings; so that makes linguistic sense.

**Mrs. Persad-Bissessar SC:** Again, we beg to disagree. Madam, we agree to disagree with respect to 7(b), (c) and (d), all three. I think they can be used in a way that will now redound to the benefit of the Act. All of these proceedings are indeed civil proceedings that we have here.

**Madam Chairman:** Okay? So, is it that it is being withdrawn?

**Mr. Al-Rawi:** No.

**Mrs. Persad-Bissessar SC:** No.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and negatived.*

*Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.*

*Question put and agreed to.*

*Clause 7, as amended, ordered to stand part of the Bill.*

*Clause 8.*

*Question proposed:* That clause 8 stand part of the Bill.

**Mrs. Persad-Bissessar SC:** Madam, I think there was another amendment to clause 7(8) rather than clause 8. We had—

**Madam Chairman:** At 18?

**Mrs. Persad-Bissessar SC:** 18, yes, Madam. 7(8). [*Crosstalk*] Item 18, Madam.

**Madam Chairman:** Okay, so what I will propose to do is let us revisit clause 7 and we will just take clause 7(8). Okay? So, the question is that clause 7 be revisited.

*Question put and agreed to.*

*Clause 7 recommitted.*

*Question again proposed:* That clause 7 stand part of the Bill.

**Madam Chairman:** So we are looking now at clause 7(8), Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** Thank you, Madam Chair.

Insert after the words “criminal conduct” the following words:

“...only where there is reasonable grounds to believe that the grantee had knowledge that the property was recoverable property.”

This will go in tandem with 7(9) that the AG has spoken about. So if a person grants an interest in recoverable property belonging to him, the interest is also to be treated as obtained through criminal conduct only where there are reasonable grounds to believe that the grantee had knowledge that the property was recoverable property.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Madam Chairman, it is caught by 7(9), so 7(8) tees it up. It holds it as recoverable property and then that person is exculpated in the circumstances suggested by the language of 7(9).

**Madam Chairman:** Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** I do not agree because in (8) if the person grants an interest in recoverable property, which is different from where a person holds recoverable property, and he can show good faith without notice, and so on. So I think the two provisions are different and I respectfully recommend that we insert this at the end of (8).

**Mr. Al-Rawi:** Madam Chairman, (8) creates the effect of tracing. So, similar to the previous subsections where we traced profits, we traced other things, (8) says:

“If a person grants an interest in recoverable property belonging to him, the interest”—which he granted is also to be followed.

Right? The hon. Leader of the Opposition spoke a little while ago about circumstances of fraud and was making the argument in respect of subclause (7) that (b), (c) and (d) allowed for fraud because somebody could sue you and then that stops you. Well, if we were to treat with (8) without following it in a strict

sense, we would be feeding the same argument of mischief offered in respect of subclause (7). So (8) is intended to trace that property, the grant that happened. It may be an equitable grant. It may be a leasehold interest. It may be a trust. It may be different things. In (9) we say, “Where a person holds recoverable property”. That is the grantee in (8). So the grantee in (8) says, “Listen, I am holding that. I leased that property for 99 years. I paid for it. I paid my money. They did not give me a deed for it yet, but my equity prevails over my law and therefore I own it.” That person comes under subclause (9) and says, “I, on a balance of probabilities, can prove that I acted in good faith. There was value and I had no notice that it was recoverable”. So (9) is how you catch it.

**Mrs. Persad-Bissessar SC:** Okay. Fine. Again, Hon. Attorney General, I beg to differ and propose the amendment circulated.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and negatived.*

*Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.*

*Question put and agreed to.*

*Clause 7, as amended, again ordered to stand part of the Bill.*

*Clause 8 ordered to stand part of the Bill.*

*Clause 9.*

*Question proposed:* That clause 9 stand part of the Bill.

**Madam Chairman:** Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** Clause 9, I am suggesting this is where we give the qualifications of the Second Deputy Trustee, and we have asset recovery as one qualification, asset management or finance and audit. I want to suggest all be included.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Well:

“The Civil Asset Trustee and one of the Deputy Civil Asset Trustees shall be Attorneys-at-law of at least ten years’ standing appointed by the President on advice of the”—JLSC—“with experience and qualifications...”

In other words, stick a pin. They have law already and they have been doing it for 10 years, and the JLSC considered them and said, “You were a lawyer for 10 years so you have experience in law. You are in the boat”. Then we go further to say that you should have experience and qualifications in the following areas:

“...asset recovery;  
...asset management; or  
...finance and audit.”

So it is taken care of already. So, is it that that amendment was intended for subclause (2) in the manner that I just read or is it with respect to subclause (3), because the proposed amendment does not say which one, eh?

“The Second Deputy Trustee shall be a person who possesses qualifications and experience in—

- (a) asset recovery;
- (b) asset management; or
- (c) finance and audit,”

That one does not require law, but the circular for clause 9 does not say which one of them we are looking at. Which one is it?

**Mr. Lee:** Subclause (3). So we are looking at a wider pool, AG.

**Mr. Al-Rawi:** Right. So finance and audit or law?

**Mr. Lee:** Yeah.

**Mr. Al-Rawi:** So you are widening the pool?

**Mr. Lee:** Yes.

**Mr. Al-Rawi:** That would be agreeable if it is in that particular section.

**Mr. Lee:** Yeah.

**Mr. Imbert:** AG, would you not want to make sure you have somebody with finance and audit, because you had law then you may not have somebody with finance and audit.

**Mr. Al-Rawi:** No, I understand, but in the circumstance where you might find a pool very small, you run into those problems in appointments of people sometimes where you just cannot find people to meet the muster and you may be forced to use three lawyers. So, I would have no difficulty with that.

**Mr. Lee:** Thank you. [*Crosstalk*]

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and agreed to.*

*Question put and agreed to.*

*Clause 9, as amended, ordered to stand part of the Bill.*

*Clause 10.*

*Question proposed:* That clause 10 stand part of the Bill.

**Madam Chairman:** Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** I beg to move this 10(1) be amended, the Civil Asset Trustee, the term of appointment, instead of seven years for it to be five years. [*Interruption*] Yeah, the procurement legislation.

**Mr. Al-Rawi:** Yeah. I was just literally asking the Minister of Finance his views on that. Is it to keep it in harmony with the public procurement? [*Interruption*]

**Madam Chairman:** One moment, AG. Somebody—

**Mr. Imbert:** That is my fault.

**Madam Chairman:** Member, could your just step out of the meeting, get your phone under control and you can return.

**Mr. Imbert:** Most certainly. [*Crosstalk*]

**Mr. Charles:** But give advice first. [*Laughter*]

**Mr. Al-Rawi:** The Chairman has exclusive authority over this domain. So, Madam Chairman, I went for seven to make sure that somebody had tenure. I mean, there is a comparative to the public procurement law. I have no difficulty if the Committee feels that it should be a lesser period. In the public procurement law we went for a lesser period and that is an institution of equal standing.

**Mrs. Persad-Bissessar SC:** Yeah. That is even a more—

**Mr. Al-Rawi:** Yeah, no problems, Madam Chairman.

**Madam Chairman:** Okay. And with that—

**Mrs. Persad-Bissessar SC:** The Member for Arouca/Maloney has a problem with five.

**Mrs. Robinson-Regis:** No. No. I do not have a problem with five because in the Urban and Regional—

**Mrs. Persad-Bissessar SC:** Planning.

**Mrs. Robinson-Regis:** Yes, we said five, and they quarrelled and said it was not enough time, it should be 10. So, I am surprised that they are saying five now.

**Madam Chairman:** 10(2), Leader of the Opposition. [*Crosstalk*]

**Mrs. Persad-Bissessar SC:** I went with five now. 10(2), moving along, moving along. 10(2). The Deputy Civil Asset Trustee, again, the term of appointment, instead of six, we replace it with the same five.

**Mr. Al-Rawi:** Could I ask whether the Leader of the Opposition is thinking—I have no objection to amending—right?—but if we make everybody co-terminus then the issue of continuity falls to be consider. You know, is there any institutional memory left inside of there? So would four—

**Mrs. Persad-Bissessar SC:** You could make it slightly less.

**Mr. Al-Rawi:** Yeah?

**Mrs. Persad-Bissessar SC:** Yeah. For the deputy person maybe it is slightly less.

**Mr. Al-Rawi:** Four?

**Madam Chairman:** For clarity, what is agreed as far at 10(2)?

**Mr. Al-Rawi:** Four years.

**Madam Chairman:** Four years?

**Mr. Al-Rawi:** Yeah.

**Madam Chairman:** Okay. The question is that clause 10 be amended, as proposed by the Leader of the Opposition: In terms of clause 10(1) to replace “seven” with “five”, and as agreed in the case of clause 10(2), to replace “six” with “four”.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and agreed to.*

*Question put and agreed to.*

*Clause 10, as amended, ordered to stand part of the Bill.*

*Clause 11.*

*Question proposed:* That clause 11 stand part of the Bill.

**Madam Chairman:** Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** I beg to move clause 11 be amended as circulated at item 22. What this is saying here is that a person appointed as a Civil Asset Trustee or Deputy Civil Asset Trustee, no person is bankrupt, if it is a bankrupt—unsound mind, but then I see in (c), which is the one I want to move the amendment for:

“has at any time had a record of criminal conviction for any...offence which carries...imprisonment of at least five years.”

So I would want to say, should have no criminal record whatsoever.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** I welcome the suggestion, but what crossed my mind was somebody with a DUI with a longer term which is why we went to the five years. I

do not know if the law is going to be changed at some point in time. Sorry to put it this way, but there are some offences, like under the Municipal Corporations Act, the sale of rotten tomatoes is an offence, and I do not know what the law is going to happen later on, so I wanted to not have somebody with those kinds of offences excluded. So this is sort of standard in many places. I do not know how the law is going to evolve. I do not know what time frames are going to be changed to, so what we had gone for, has at any time had a record for indictable or summary which carries a term of imprisonment of at least five years.

**Mr. Imbert:** AG, may I?

**Mr. Al-Rawi:** Sure, please, I welcome.

**Mr. Imbert:** I would like to make a suggestion. There is a particular law where bathing in the Maraval River is an offence which is a term of imprisonment. I would like to suggest we look at the Representation of the People Act where you cannot be a Member of Parliament, and I think it is either one year or two years was the term of imprisonment. If you have been sentenced to prison for six months, you can still be a candidate and a Member of Parliament, but once you go beyond a certain amount you are disqualified from being a Member of Parliament, and I will suggest we use the same rubric.

**Madam Chairman:** Member for Pointe-a-Pierre.

**Mr. Lee:** When we did the NPO Bill and you talked about the disqualification of the individual holding—

**Mr. Hinds:** Controlling.

**Mr. Lee:**—controlling, how does that relate to this individual at this position?

**Mr. Al-Rawi:** We put a higher bar just like this. It was not just anybody, controller had any offence. An obscene language offence would be ridiculous to debar somebody for. So those controllers, we harmonize that with the Companies

Act existing provisions.

**Mrs. Persad-Bissessar SC:** Would you respect, AG—if I may, Madam?—would you respect, you know, all that we are doing here and we have been here, and you have spent four years drafting this law, and so on, I think it is just too important. It is one designed to deal with criminals and criminality.

**Mr. Al-Rawi:** So no offence?

**Mrs. Persad-Bissessar SC:** No. No, for this particular—well—

**Mr. Al-Rawi:** But what about the DUI guy?

**Mrs. Persad-Bissessar SC:** What about the RPA Minister Imbert is speaking of—

**Mr. Al-Rawi:** Yeah.

**Mr. Imbert:** It is 12 months.

**Mr. Al-Rawi:** 12 months

**Mrs. Persad-Bissessar SC:** But I am not agreeing for this. It is too important.

**Mr. Al-Rawi:** Okay.

**Mrs. Persad-Bissessar SC:** The whole purpose of this thing is crime and criminality.

**Mr. Al-Rawi:** Sure.

**Mrs. Persad-Bissessar SC:** And you are saying, okay, man, you could have had it for—it is five years, you know. So you are now suggesting maybe one year.

**Mr. Imbert:** I am not suggesting that, I am just saying that is a good standard. If you look at that on standard, it is 12 months.

**Mr. Al-Rawi:** So section 62 of the Representation of the People Act disqualifies a person from being a Member of Parliament if it has been 12 months.

**Mrs. Persad-Bissessar SC:** I am not agreeing, I am suggesting the person should not have a criminal record. This is too important.

**Mr. Al-Rawi:** You see, my fear in this is that there are very innocuous offences in law, DUI which may be slightly over could be in that; rotten tomatoes in all seriousness; bathing in the Maraval River. There are some offences which do not go towards an issue of corruption or impropriety, but in respect of which they may be just be an offence.

**Mrs. Persad-Bissessar SC:** So we are putting a lawbreaker, whichever offence, we want to put a lawbreaker to be a Civil Asset Trustees or Deputy Civil Asset Trustee.

**Mr. Al-Rawi:** Suppose he was caught with one joint of marijuana and we go to decriminalize that in the future, and that happened when he was 17 years old, as children make mistakes, is there no room for improvement of one's character? I am being serious, people make mistakes in life. None of us have not made mistakes. I, certainly am far from perfect or without sin.

**Madam Chairman:** Member for Laventille West.

**Mr. Hinds:** Yes, and I am happy that the AG raised that—

**Mrs. Persad-Bissessar SC:** But, AG, let us go to the—

**Mr. Al-Rawi:** Twelve months?

**Mrs. Persad-Bissessar SC:** Twelve months. Sorry.

**Madam Chairman:** One minute, please, I just recognized the Member for Laventille West.

**4.00 p.m.**

**Mr. Hinds:** Thank you, Madam Chair, and I am very happy that the AG made that rather potent point. I thought I had detected a philosophical underpinning when the Member for Siparia in the NPO legislation spoke using the example of a certain person as a controller for an NPO. But now I am realizing that that was then, and she has a different philosophical approach on this matter now, about criminal

convictions.

**Mrs. Persad-Bissessar SC:** Madam Speaker, I think we can find a compromise. There is precedent in our law and that would be the one year.

**Mr. Al-Rawi:** One year?

**Mrs. Persad-Bissessar SC:** The one year, the 12 months.

**Mr. Al-Rawi:** Sure, I welcome the suggestion.

**Mrs. Persad-Bissessar SC:** Why is that “fella” so offensive down there?

**Madam Chairman:** Member, Members, for the committee, let us please maintain our composure. All right. So at least one year?

**Mr. Al-Rawi:** Yes, Madam Chair.

**Madam Chairman:** AG, you could just read that over for me please, to just make sure.

**Mr. Al-Rawi:** So, Madam Chair, in clause 11 in subparagraph (c), it would say:

“has at any time had a record of criminal conviction for an indictable or summary offence, which carries a term of imprisonment of at least twelve months.”

So instead of five years, 12 months, which would keep it in line with the RPA, Representation of the People Act.

**Madam Chairman:** So the question is that clause 11 be amended to delete the words in clause 11(c), delete the words “five years” and substitute the words “twelve months”.

*Question put and agreed to.*

*Clause 11, as amended, ordered to stand part of the Bill.*

*Clause 12 ordered to stand part of the Bill.*

*Clause 13.*

*Question proposed:* That clause 13 stand part of the Bill.

**Mrs. Persad-Bissessar SC:** Thank you. As I understand it, if we do not insert the words, “the President in his own discretion”, what this would then mean is the Cabinet, AG, that is my recollection of it.

**Mr. Al-Rawi:** Yes.

**Mrs. Persad-Bissessar SC:** And therefore, I beg to move that we insert after the word “President”, the words, “in his own discretion”. That way it is the will of the President, not the Cabinet. AG, it goes a little further, I mean, this is where the President may at any time revoke the appointment of a trustee.

**Mr. Al-Rawi:** I have no objection because we took the formula of the President in his own discretion doing something, we took that caution. I would have no difficulty with that.

**Mrs. Persad-Bissessar SC:** Good, let us move along. We are doing better as we go.

**Madam Chairman:** We now have to go to 24. We are at item 24 which is also clause 13.

**Mrs. Persad-Bissessar SC:** We are at (g). Again, this power for the President to revoke the appointment of a trustee, and we are told there. But the (g) says, “for any other reasonable cause”. I think that is far too wide a power for revocation of an appointment of a trustee. It would be ambiguous to leave it like that. So what, the President may in his sole discretion—and this is not the person of the President, so I mean no disrespect, it is the Office of the President—to revoke an appointment for any other reasonable cause. I mean, that is probably how you draft, but I think it is too wide to revoke somebody’s appointment for any reasonable cause.

**Mr. Imbert:** Since we are changing this now to “the President in his or her discretion”, I think we need to trust the President, because this is reviewable. As we learnt with the Max Richards case, this is reviewable, so I would leave it.

**Mr. Al-Rawi:** Madam Chair, I think that we would want—I welcomed the fine tuning of the President’s discretion as recommended by Siparia. I think that we need to allow the room for the President in own discretion, there may be some other compelling reason that is just wrong, that does not fit the circumstance. So I would recommend that we leave it.

**Mrs. Persad-Bissessar SC:** You see, another compelling reason could well be that this person is not doing what I want them to do. I am not going on the person, I am speaking of the office. You will see above, you have:

“misbehaves in office or brings his office into disrepute;  
...become a person who would be disqualified...”

These are very strong grounds for revocation. This comes like a power to appoint as well. This is a very dangerous thing, in my respectful view. You were very careful in crafting how you would set the thing up. You were very careful how appointments would be made. I respectfully ask you to reconsider deletion of 13(g).

**Mr. Imbert:** In many bits of legislation if a person does not attend meetings for a particular period of time, their appointments can be revoked. That is not in this list. You see, this list is not exhaustive. We could put 10 things inside of here and think that we have covered everything, but we may not have covered everything. The word “reasonable” qualifies it. The President would have to be reasonable.

**Mrs. Persad-Bissessar SC:** I do not agree. That would accord with the power to appoint. It is the obtuse of the reverse of power of appointment that you have the power to disappoint.

**Mr. Al-Rawi:** Yes, that is in the Interpretation Act, so that is permitted in law.

**Mrs. Persad-Bissessar SC:** Therefore so to do—that is what I am saying, that is what the power is so to do on (g) which I respectfully say is far too wide and

therefore I—

**Mr. Al-Rawi:** You see, with the greatest of respect to the Member, I thought that the example given by the Minister of Finance was compelling. So somebody who just decides, look, I am not coming to work, and misses all of the meetings, could not fall within the list that we have. I think that if we are giving this discretion to the President, we ought to at least leave a little room for latitude, particularly because the caution is that the President can be reviewed at law, as the Max Richards's decision clearly demonstrates.

**Mrs. Persad-Bissessar SC:** I beg to disagree, Sir.

**Madam Chairman:** So the question is that clause 13 be amended as proposed by the Leader of the Opposition at item 23. *Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and negatived.*

**Madam Chairman:** The question is that clause 13 be amended as proposed by the Leader of the Opposition at Item 24.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and negatived.*

*Question put and agreed to.*

*Clause 13 ordered to stand part of the Bill.*

*Clause 14 ordered to stand part of the Bill.*

*Clause 15.*

*Question proposed:* That clause 15 stand part of the Bill.

**Mrs. Persad-Bissessar SC:** Item 25, clause 15: Delete the words “reckless and knowingly”. This is in 15(2) please, Madam:

“A person to whom this section applies who recklessly and knowingly fails to comply with subsection (1) commits an offence...”

It should be a strict liability, and we take out “recklessly and knowingly”. The

clause is too important to provide a statutory defence in this way for such a person.

**Mr. Al-Rawi:** Madam Chair, I am looking for a judgment which was just issued by the Privy Council. Just permit me one second. There is a case coming out of Mauritius. It is a Privy Council decision. All right, I do not have it here. But anyway, the latest authority coming out of the Privy Council on this concerned a Minister of Finance who was the Deputy Prime Minister in the State of Mauritius who ran afoul of disclosure of interest, and the court specifically read into it the requirement for a mental intention which included “knowingly”. So in that law they did not appear to be animus mens rea element, and the Privy Council said “no, that is definitely not the case, you have to read the mens rea element in”, and they had held it to be in the context of recklessly and knowingly. So if “recklessly” is causing some issues then we should certainly keep “knowingly” at the very least.

**Mrs. Persad-Bissessar SC:** I beg to disagree. If we look at it, it is about integrity in public life. This is about disclosure of interest in matters. I think it should be kept very strictly and not give a statutory defence to a person who breaks—that is a conflict of interest.

**Mr. Al-Rawi:** So the 2019—

**Madam Chairman:** One minute please. Let me have one contribution at a time. Member for Siparia, are you finished?

**Mrs. Persad-Bissessar SC:** Yes, Ma’am.

**Mr. Al-Rawi:** Sorry. Madam Chair, Privy Council judgment published on the 25<sup>th</sup> of February, 2019, which is persuasive authority for us and binding authority if we get there. Lord Kerr, Lord Carnwath, Lord Lloyd-Jones, Lord Kitchin, Lord Sales. This is from the Supreme Court of Mauritius, *Director of Public Prosecutions v Jugnauth and another* who was the Deputy Prime Minister and Minister of Finance. They had the exact words. If we delete this “recklessly and

knowingly” and the court put it back in, because they said it would make a nonsense of the circumstances, and this is the leading authority on this which was exactly on point with this. So that would mean that I would have to ignore the decisions of the Privy Council, which I am aware of, and I just cannot.

**Mrs. Persad-Bissessar SC:** I disagree. I have not seen the judgment. I will have to fact check it. I am very sorry, I have not seen the judgment, but where we are dealing about conflict of interest issues, where a trustee who:

“for the purpose or in connection with the exercise of any  
of its functions to—

- (i) hold property;
- (ii) enter into contracts;
- (iii) sue and be sued;
- (iv) employ agents;
- (iv) execute a power of authority, deed or other instrument, power; and...
- (v) to do any other act...”

I mean, they are given tremendous powers of assets that would have recovered, and I do believe that we are giving such a person a statutory defence where they are in breach of the conflict of interest and of disclosure of interest.

**Mr. Al-Rawi:** Madam Chair, the Privy Council February 2019 decision insist upon a mens rea being present, and when we put “recklessly and knowingly” it is to catch more than just “knowingly”, you know. You have been reckless as to whether it happened. That is an important qualification. So having “recklessly and knowingly” catches a wide category of issues, because reckless is by far a lower standard than knowing. So we respectfully disagree with the Leader of the Opposition on the basis of Privy Council authority.

**Mr. Imbert:** May I also assist you?

**Madam Chairman:** Yes, Member for Diego Martin North/East.

**Mr. Imbert:** I just did a very quick search, and I would refer the Leader of the Opposition to the case of *King v Victor Parsons and Company* (1973) 1WLR29 and also *Beaman v ARTS Ltd* (1949), 1 Kings Bench 550, where Lord Denning explained to the word “knowingly”, you must add the word “recklessly” because, and I would read it:

A man is aware that what he is doing may be wrong but  
he takes the risk of it being so.

And that is where the “recklessly” comes in. So this goes back to a 1949 case. The Privy Council has affirmed it.

**Madam Chairman:** So can we go on. Leader of the Opposition, you have some other amendments on clause 15?

**Mrs. Persad-Bissessar SC:** Clause 15, item 26 please.

“unless he proves to the satisfaction of the High Court  
that he did not know that—

- (a) the matter in which he had an interest was the subject of consideration by the Agency; or
- (b) he had an interest in the matter under consideration by the Agency.”

Again I think this is giving the same reason basically. You are giving a statutory defence for a person who would have breached the integrity provisions in respect to disclosure where there is a conflict of interest matter. So I would respectfully ask that these statutory defences be taken out.

**Mr. Al-Rawi:** Madam Chair, let me explain why I cannot accept that respectfully. I do not want anybody to fly off the handle. I am going to put this in a hypothetical structure. [*Interruption*] No, I never would. Let us assume that you

are sitting as the Prime Minister of a Cabinet. You are a person in public life under our Integrity in Public Life Act. You make a particular decision, you award a particular mandate which has with it certain benefits. Surely that person ought to be able to have the right to go to court to say, look, this thing has been done before. Because otherwise if I were to apply the existing laws of Trinidad and Tobago in certain circumstances, “crapaud smoke yuh pipe”. That person ought to have a right to go to court, and I am speaking about real examples that I could speak about elsewhere. So we must be reasonable in these circumstances. There is a very real large elephant in the room on this issue, and we cannot be half way on it. I think you catch what I am saying.

**Mrs. Persad-Bissessar SC:** I do not think the Speaker catching anything right now.

**Mr. Al-Rawi:** I know you caught me.

**Mrs. Persad-Bissessar SC:** I did not catch you. Well, I will. You probably know something I do not.

**Mr. Al-Rawi:** It is in the public domain.

**Mrs. Persad-Bissessar SC:** Let us not go into that.

**Mr. Al-Rawi:** Yes, let us try not to go there.

**Mrs. Persad-Bissessar SC:** I do not know what it is.

**Mr. Al-Rawi:** It is the award of Silk. [*Crosstalk*]

**Mrs. Persad-Bissessar SC:** Oh my gosh. There you go again. I think you are just jealous.

**Mr. Al-Rawi:** Breach of the integrity in Public Life Act.

**Madam Chairman:** Okay, Members, let us get back on track. Member for Diego Martin North/East, Member for Siparia, Attorney General, let us get back to the business of this. I think you made a particular point in response. Let us forget the

last matter there. Member for Siparia, if you could just address your amendment, please.

**Mrs. Persad-Bissessar SC:** Yes, I am suggesting that these words be removed as on the circulated list of amendments.

**Madam Chairman:** I am now going to put the question. The question is that clause 15 be amended as proposed by the Leader of the Opposition.

*Question, as amended, [Mrs. K. Persad-Bissessar SC] put and negatived.*

*Question put and agreed to.*

*Clause 15 ordered to stand part of the Bill.*

*Clause 16.*

*Question proposed:* That clause 16 stand part of the Bill.

**Mrs. Persad-Bissessar SC:** As circulated at item 27 please, delete the words at 16(2):

“No civil or criminal proceedings shall lie against a Trustee who, in good faith, discloses information as permitted under this Act.”

**Mr. Al-Rawi:** Madam Chair, can I ask why?

**Mrs. Persad-Bissessar SC:** Well, why do you want no proceedings against someone, a trustee, who discloses information?

**Mr. Al-Rawi:** Because we want this person to have the absolute indemnity in the strictest sense possible, to act without fear at all for doing the right thing, because if this person is to be fettered in any way—we were very careful in constructing this law, to make sure that this trustee was appointed by no politician, the JLSC, the President in own discretion if the Leader of the Opposition and Prime Minister could not agree. We have agreed that if you are going to be removed, President by own discretion, but we want to make sure that this person has the protection to

know that they do not need to look over their shoulder on matters concerning trusts. We are saying here:

“No civil or criminal proceedings shall lie against a Trustee who in good faith discloses information as permitted under this Act.”

If we look to the Financial Intelligence Unit Act, Chap. 72:01, section 25 subsection (2), I will read it out:

“No civil or criminal proceedings shall lie against a person who, in good faith, discloses financial intelligence or information under this Act.”

We are acting in tandem with what we have done. This law was amended 2011, that is the FIU Act, 2012, 2014, 2015, and that clause was never disturbed, you know. Lastly, this clause was actually amended in 2012 by the UNC. So if the FIU could have been treated with this way, by way of an amendment from the UNC Government in 2012, how we could not be protecting a trustee in a similar way?

**Mr. Imbert:** To me the operative words are at the end of the subclause, “as permitted under this Act”, because the person will be disclosing it to a lawful authority. He would not be disclosing it to Tom, Dick and Harry. It is “as permitted under this Act”. It brings in the good faith because you are not going to be lying to the lawful authority. You are permitted to disclose the information and you provide the information in good faith. There is absolutely nothing wrong with this.

**Mr. Hinds:** Madam Chair.

**Madam Chairman:** Leader of the Opposition, then I will take you Laventille West.

**Mrs. Persad-Bissessar SC:** In those circumstances, Member for Diego Martin North/East, who would be liable for any loss that may be sustained by the actions of a trustee who may have acted in good faith or bad faith?

**Mr. Al-Rawi:** Clause 43, the State.

**Mr. Imbert:** I go back to, “as permitted under this Act”. Yes, as the AG says, but I go back to “as permitted under this Act”. So the information is being disclosed to a proper authority. It may be wrong, and as the AG says the State is liable.

**Mrs. Persad-Bissessar SC:** Which clause is that, please?

**Mr. Al-Rawi:** Clause 43, compensation.

**Mr. Hinds:** Thank you, Madam Chair. I am just curious to find out from the Member for Siparia why would this public officer appointed by the President in the circumstances here, why should such a person be subject to personal liability? I would like to hear that.

**Mrs. Persad-Bissessar SC:** Madam Chairman, I have accepted Diego Martin North/East’s explanation, and shall we please move on?

**Madam Chairman:** Hon. Members. Member for Siparia, is it that you are withdrawing item 27?

**Mrs. Persad-Bissessar SC:** Yes.

**Madam Chairman:** Or you agree to disagree?

**Mrs. Persad-Bissessar SC:** No.

**Madam Chairman:** You are withdrawing?

**Mrs. Persad-Bissessar SC:** Yes, Ma’am, and the explanation. Can we then therefore invite you to elucidate on item 28?

**Mrs. Persad-Bissessar SC:** It is just a little drafting issue where I am suggesting that, “Such moneys as may be appropriated by Parliament” we delete, and instead we just say, “out of the Consolidated Fund”. So that is what that is basically.

*[Interruption]*

**Mr. Al-Rawi:** Madam Chair, I think that is a sensible submission, that it goes to the Consolidated Fund, because the risk could be that you fail to appropriate it under a line item in the budget at any one year, and what it really ought to be is a charge on the Consolidated Fund.

**Madam Chairman:** Pointe-a-Pierre, do you have a point?

**Mr. Lee:** No.

**Mr. Al-Rawi:** It is the same thing, but it is a safer route.

**Madam Chairman:** So can I put the question now?

The question is that clause 16 be amended as proposed by the Leader of the Opposition in terms of item 28. We agreed it is item 28?

**Mrs. Persad-Bissessar SC:** Yes, Ma'am.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and agreed to.*

*Question put and agreed to.*

*Clause 16, as amended, ordered to stand part of the Bill.*

**Madam Chairman:** Might I ask, no amendments have been circulated in terms of clauses 17 to 30. Can we take them en bloc?

**Hon. Members:** Yes.

*Clauses 17 to 30 ordered to stand part of the Bill.*

*Clause 31.*

**Madam Chairman:** Just so that we are all on the same page, we are now at page 24.

*Question proposed:* That clause 31 stand part of the Bill.

A. In subclause (1)

- (a) insert after the word "investigation" the words "for a specified offence";

- (b) insert after the words “police officer” the words  
“above the rank of Inspector”;

B. In subclause (2) delete the words “there is insufficient evidence to pursue criminal charges for a specified offence but there is sufficient evidence that the property is recoverable property and...” and replace with the words:

- (a) there is insufficient evidence to pursue criminal charges for a specified offence but there is sufficient evidence that the property is recoverable property;
- (b) the defendant whose property may be the subject of a Property Restriction Order-
  - (i) has absconded the jurisdiction;
  - (ii) is outside of the jurisdiction;
  - (iii) is too ill to face trial; or
  - (iv) has died

and”

There are amendments proposed on both sides.

**Mr. Al-Rawi:** Madam Chair, may I just as a matter of housekeeping, we are now about to get into some of the crux amendments, and we are at 4.24. I am wondering whether it would be a human relief if we could take the break, subject to your guidance, at this point and then start the run?

**Madam Chairman:** I thought we had so much human relief already. But I think I get the sentiment from all involved that it is the humane thing to do. So I would say that we suspend this meeting now, and we resume at five o'clock. So the meeting is now suspended. We resume at 5.00.

**4.25 p.m.:** *Committee suspended.*

**5.00 p.m.:** *Committee resumed.*

**Madam Chairman:** The meeting of the committee of the whole now resumes, and I will invite the Attorney General with respect to his proposed amendments to clause 1—yes, clause 31.

**Mr. Al-Rawi:** Thank you, Madam Chair.

**Madam Chairman:** I believe it was called already—

**Mr. Al-Rawi:** Yes, Madam Chair.

**Madam Chairman:**—and then we will invite the Leader of the Opposition.

**Mr. Al-Rawi:** Thank you. Madam Chair, clause 31 falls under Part IV “Civil Asset Recovery”. Clause 31 treats with the manner in which you launch the criminal investigation, who ought to be treating with a criminal investigation, for what matters at what standard, and then referring that to the Director of Public Prosecutions, and then the DPP, if satisfied on evidence that is sufficient, asking the trustee to go to court.

We propose in the circulated version that we insert after the word “investigation” as it appears in clause 31, the words “specified offence”, “for a specified offence”. Specifically, that ties back to the interpretation section where we have defined “specified offence” to mean an offence under the Second Schedule of the Proceeds of Crime Act. So it is only that there can be civil asset forfeiture recovery and referral of matters to the DPP where investigators being police, Customs and BIR are involved in the course of investigating a proceeds of crime offence.

We specifically also recommend that we have the investigators be of very senior level. The Chairman of the Board of Inland Revenue is already there, we propose that it is a police officer above rank of inspector. In other words then, you

are getting to senior superintendent, assistant superintendent rank.

In subclause (2) we propose, Madam Chairman, that we delete the words:

“there is insufficient evidence to pursue criminal charges for a specified offence but there is sufficient evidence that the property is recoverable...”

And we replace it instead with the words:

“there is insufficient evidence to pursue criminal charges for a specified offence but there is sufficient evidence that the property is recoverable property;”

We go further to say what in circumstances that should happen, and we say that that should be in the circumstance where the defendant whose property may be the subject of a property restriction order:

- “(i) has absconded the jurisdiction;
- (ii) is outside of the jurisdiction;
- (iii) is too ill to face trial; or
- (iv) has died.”

In the round therefore, clause 31 is intended to provide that:

“(1) Where during course of a criminal investigation...”—for a specified offence, that is proceeds of crime, “a police officer...”—above the rank of inspector, the Comptroller of Customs or the—“...Chairman of the Board of Inland Revenue has reasonable grounds to suspect that the offence involves recoverable property he may forward an investigative report to the Director of Public Prosecutions.

(2) Where upon receipt of an investigative report under subsection (1), the Director of Public Prosecutions is of the view...

- (a) there is insufficient evidence to pursue criminal charges for a specified offence but there is sufficient evidence that the

property is recoverable property...

- (b) the defendant whose property may be subject of a Property Restriction Order—
- (i) has absconded the jurisdiction;
  - (ii) is outside the jurisdiction;
  - (iii) is too ill to face trial; or
  - (v) has died;

...and an application should be made for the recoverable property to be forfeited to the State, he may refer to the agency.” So—

**Madam Chairman:** Attorney General, just out of an abundance of caution, just to ensure that I am following. You are proposing “Comptroller of Customs”.

**Mr. Al-Rawi:** Yes.

**Madam Chairman:** Okay.

**Mr. Al-Rawi:** So, Madam Chair, yes, I was just about to tell you, in the draft which has been circulated, unfortunately, we omitted the inclusion of deletion of the words “customs officer” and replacing it with “Comptroller of Customs”.

So, Madam Chair, in the circulated amendments, B, if you see B in subclause (2). Right. So forgive me, it is actually A. In A, in the paragraph B, we are saying, insert after the words “police officer,” the words “above the rank of inspector”, and then we go, right under that B, put in a paragraph C which should read as follows delete the words “customs officer” and replace with “Comptroller of Customs.”

So we are proposing therefore, that A, it is a specified offence under proceeds of crime not just any offence; B, the “police officer” be changed instead to “someone above the rank of inspector”; C, it is not any customs officer, it is in fact the Comptroller of Customs; and then we are saying that the DPP must be

satisfied: Firstly, that there is insufficient evidence to go the criminal route, and then secondly, that there is sufficient evidence that the property is recoverable property, and then we provide further that the defendant whose property may be the subject in circumstances where he has absconded from the jurisdiction, is absent from, therefore, in that category, outside of the jurisdiction, too ill to face trial or has died, that the DPP may consider referring that to the trustee.

So, Madam Chair, this is to hone in and limit it only to proceeds of crime offences as we have excluded taxation in the manner that we have in clause 4, and to narrow this down; that is the rationale for the Government's proposed amendments.

**Madam Chairman:** Member for Pointe-a-Pierre.

**Mr. Lee:** Just for some clarification. The amendment that you circulated, there is an addendum to it. Right?

**Mr. Al-Rawi:** So in the amendment that we circulated—

**Mr. Lee:** In clause 31.

**Mr. Al-Rawi:**—what is missing to that would be the subparagraph (c) which is under the A. So what you need to put in there, as I dictated to the Madam Chairman, is, replace “customs officer” with “Comptroller of Customs”.

**Mr. Lee:** Right. And then you mentioned something with DPP. Is that an additional thing?

**Mr. Al-Rawi:** No. The DPP was always there. What we are doing now is we are broadening the circumstances that the DPP may act. We received advice actually from the lawyer that did the Unexplained Wealth Order in the Harrods case. That same lawyer who acted in the UK case, that lawyer advised us that we should cater for people who have absconded from the jurisdiction because they may just frustrate justice, people who have died, people who are outside or people who are

too old.

**Mrs. Persad-Bissessar SC:** O'Halloran?

**Mr. Al-Rawi:** Yes, the O'Halloran circumstance. The SIS circumstance, all of those things fall into the kind of consideration. Sorry?

**Mrs. Persad-Bissessar SC:** Has he died?

**Mr. Al-Rawi:** Absconded; one may allege. Right? Panama is a non-extraditable country and SIS has just gone to Panama. There are lots of questions concerning that particular activity.

**Mrs. Persad-Bissessar SC:** You have to trace back the O'Halloran twin towers up in Canada?

**Mr. Al-Rawi:** Yes. That could very well be the possibility. The Piarco—well, let me not go into matters otherwise. Nothing sub judice, but the point is that this is intended to catch that; and, yes, the O'Halloran would be a circumstance to be caught.

**Madam Chairman:** Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** Okay. I am not sure what we are doing at the moment because—we have these amendments and our amendments—

**Madam Chairman:** Well, we are at clause 31, I mean, you can speak to the AG's amendments, proposals if you wish, and you can also, or move yours.

**Mrs. Persad-Bissessar SC:** Can I just do the first part for the moment, please?

**Madam Chairman:** Yes.

**Mrs. Persad-Bissessar SC:** Thank you very much. Speaking to the AG's proposals, I think the insertion for the investigation for a specified offence, that is an improvement, a great improvement that will help deal with other concerns that we would have raised because, again, our major concern, one of, was the fact that this thing was for any offence as contained in your criminal conduct defined in the

interpretation section. So this, in your interpretation section, and here as well, I think that goes to improving the law to a great extent.

With respect to insert after the words “police officer”, the words “above the rank of inspector”, I think the suggestion was made on our side by Members speaking, that this should be the Commissioner of Police. Let me continue. I think that there is some inconsistency in your amendments in the Bill where you have changed the “Comptroller” when you are dealing with the BIR, you used the word “Comptroller” in some parts of the law, and in this part you are still keeping—

**Mr. Al-Rawi:** Yes. So later on, we just referred to “the police officer” under this section, et cetera, because they must all go back to as it is defined here. So it is not inconsistent, I raised the same question of the drafting team and they referred me back to the origin of the discussion which would be this clause 31.

**Mrs. Persad-Bissessar SC:** That is fine, but—just give me one moment, AG, I want to see. You have the Chairman of the BIR here in the existing clause 31, you are amending to give a higher rank for the police officer.

**Mr. Al-Rawi:** Yes.

**Mrs. Persad-Bissessar SC:** But in another part of the legislation, you did not have the “Chairman of the BIR”, you had the “Comptroller”.

**Mr. Al-Rawi:** You want to take me to where that happened?

**Mrs. Persad-Bissessar SC:** Can we agree to come back as we go along?

**Mr. Al-Rawi:** It should be harmonized, certainly.

**Mrs. Persad-Bissessar SC:** Yeah. [*Confers with Mr. Lee*] Can you just find it for me? I know we spoke of it earlier, please. Okay. That is the first point. Sorry, the “customs officer”. AG, one moment, I am looking at your proposals where you have at (c). Comptroller, okay. Okay. Fine. So that will take care of my concerns with the inconsistency.

I know the Opposition Members when they spoke had suggested that the officer be the “Commissioner of Police”, this is an improvement, but I think, given the retroactive nature, the violation of a lot of constitutional rights and so on that could be triggered by things happening here, that we should go for the “Commissioner of Police” whom you have praised very highly.

**Mr. Al-Rawi:** So, Madam Chair, I do not accept that there is any violation of any constitutional right, for the record. Secondly, whilst I welcome the highest officer, I have not seen it in any law where you say the “Commissioner of Police”, save—no, that is not correct.

In the Interception of Communications Act, the designated officer as described as the Commissioner of Police, so insofar as that exists there, I would have no objection to that.

**Mrs. Persad-Bissessar SC:** Very good. So you accept that amendment then?

**Mr. Singh:** In fact, it is in the New Zealand law.

**Mrs. Persad-Bissessar SC:** In your interpretation, well you shared with me the delegation when we tried to deal with the DPP—

**Mr. Al-Rawi:** Yes.

**Mrs. Persad-Bissessar SC:**—so I guess the same provisions—

**Mr. Al-Rawi:** Yes, it does. Yes. I am sure because we do intercepts under the Interception of Communications Act in that way.

**Mr. Young:** I just want to put something for consideration.

**Mrs. Persad-Bissessar SC:** There are other pieces of legislation which you would have looked at which also has that officer, the office, not necessarily the person.

**Mr. Young:** The reason why you draft in this manner, when you say “above the rank of an Inspector”, is to ensure that if there is delegation of authority, it could be only up to that rank. If you just go with “Commissioner of Police” understand it

could be delegated to a constable, eh.

**Mr. Singh:** Yeah. Whilst I agree with you, through you, Madam Chair, the fact of the designation provides a level of accountability and responsibility for a level of commissioner.

**Mrs. Persad-Bissessar SC:** You will have to go back to the commissioner.

**Mr. Singh:** That is what is required in society.

**Mrs. Persad-Bissessar SC:** So this will prevent, with due respect to officers, a rogue officer, who may take it upon himself to begin this investigation.

**Mr. Al-Rawi:** So that might be the case, but if we look at the most serious of circumstances, interception of communication, in interception of communication we define CDS, director and commissioner specifically, but Minister Young's point is a very powerful point which is the delegated authority, because under the Interception of Communications Act, very low-level officers can actually act by way of the delegation; so did we want to do the two?

**Mrs. Persad-Bissessar SC:** Would they not then have to go back to the Commissioner of Police?

**Mr. Al-Rawi:** Yeah.

**Mrs. Persad-Bissessar SC:** Yes. So that is the check and balance there. I am looking for the possibility of a rogue officer who decides "I do not like Faris Al-Rawi and Mr. or MP Faris Al-Rawi, I go out there and start an investigation and trigger off this whole thing. I do not like any of you", a rogue officer could go out and do it, the commissioner will have a greater responsibility and accountability.

**Mr. Al-Rawi:** Leader, through you, Madam Chair, I am very cautious to take Minister Young's concern and to accept recommendation together. "Commissioner of Police or such person as he may delegate to not below the rank of Inspector" no, "assistant", "not below the rank of Assistant Superintendent".

**Mrs. Persad-Bissessar SC:** I think that is a perfect compromise.

**Mr. Al-Rawi:** Yeah?

**Dr. Tewarie:** We like that, we support that.

**Mrs. Persad-Bissessar SC:** Perfect compromise.

**Mr. Al-Rawi:** So, I will just ask the CPC's team to put that together.

**Mrs. Persad-Bissessar SC:** Why did we not—this just takes me back a little when we tried to get the person delegated by the DPP. Why did we not look for something similar, so you do not send a junior, junior?

**Mr. Al-Rawi:** I will tell you why; because everything in the DPP's office must be under his hand even if a junior manages it. So the DPP or the deputies, they must actually sign off on it. So where, under the money laundering provisions under the Proceeds of Crime Act, the DPP must give consent or for bribery or corruption matters, the DPP himself has to actually sign off on it; so the juniors do the work. What Minister Young was cautioning is that the years of interception of communication, Commissioner of Police acts, it goes down to a junior, but they have no need to come back up because he has delegated it to them.

**Mrs. Persad-Bissessar SC:** Okay. Your compromise I accept. Our compromise.

**Mr. Al-Rawi:** Our compromise, the compromise.

**Mrs. Persad-Bissessar SC:** I think it is a perfect compromise; perfect. So can we—oh, the second issue, AG, is can we agree that wherever the word in rest of the statute in the rest of the Bill wherever the word “customs”—

**Mr. Al-Rawi:** That we keep it at the top?

**Mrs. Persad-Bissessar SC:** We keep it.

**Mr. Al-Rawi:** Yes.

**Mrs. Persad-Bissessar SC:** Okay? And wherever “police officer”, similarly to what we have just done?

**Mr. Al-Rawi:** Yes.

**Mrs. Persad-Bissessar SC:** The third one, is it the “Customs”?

**Mr. Al-Rawi:** So “Comptroller of BIR” same thing. So we keep ensuring wherever the phenomenon of these people acting—

**Mrs. Persad-Bissessar SC:** Yeah.

**Mr. Al-Rawi:**—or performing functions appear, that it be confined to “Commissioner” or his delegate “not below the rank of assistant superintendent, Comptroller of Customs and Comptroller of BIR”.

**Mrs. Persad-Bissessar SC:** Would not a similar problem, I am curious, if a comptroller problem arises, as with when you said that if we put the “Commissioner of Police” too low down?

**Mr. Al-Rawi:** The delegatee?

**Mrs. Persad-Bissessar SC:** Yes.

**Mr. Al-Rawi:** They must act through the “Comptroller”. So raising of assessments, et cetera, that is the “Chairman” and the “Comptroller”. Under the Customs law it is only the Comptroller that can do certain functions, it must come to the Comptroller’s desk in the raising of assessments, et cetera, et cetera, because it is at that point if you look at section 223 of the Customs Act, 222, 221, where you are dealing with the impositions of fines, et cetera, the hearing is before the Comptroller himself.

**Mrs. Persad-Bissessar SC:** Well, certainly I think we have found a compromise, we will check that because there will be an opportunity for Opposition Members to participate in the Senate, so we will fact-check those matters and if need be, raise necessarily.

**Mr. Al-Rawi:** Sure.

**Mrs. Persad-Bissessar SC:** We will take your word for it at this time.

**Mr. Al-Rawi:** Yes; because we agree with the principle, the policy ought to be that. So, Madam Chair, in the amendments circulated by the Government, if you look at A in subclause (1), A stands as it is, but if we get to B, if we strike off “insert after”, and we put word instead “delete” and then we continue “the words ‘police officer’”; strike off “the words”, those two words, you see “the words”—just strike that off.

So we say, “delete the words police officer”, and now we are going to add in the following words, “and replace with the words ‘the Commissioner of Police or such other person delegated by him not below the rank of Assistant Superintendent’”, and then you would strike a line through the rest of the words you saw in B “above the rank of Inspector”. Right?

So subclause (b) would read as follows, delete the words “police officer” and replace with the words “the Commissioner of Police or such other person delegated by him not below the rank of Assistant Superintendent”. That is it.

**Madam Chairman:** So, we remain with “customs officer”?

**Mr. Al-Rawi:** And, of course, you got the first one where I added in a new “C” already. Right? So that was the amendment to “B”, and then the “C” as I read would stand which would be delete the words “customs officer”, and replace with the words “Comptroller of Customs”.

**Madam Chairman:** And as far as your amendment as proposed at “B”.

**Mr. Al-Rawi:** Yes. That would read as circulated, Madam Chair.

**Madam Chairman:** That remains as is.

**Mr. Al-Rawi:** As circulated. Yes, Madam Chair.

**Madam Chairman:** Okay. So, I now turn to call upon—all right. Let me hear Chaguanas West and then Leader I will ask you to present your proposal.

**Mr. Singh:** I want you to deal with the second part, AG, with respect to the

insufficient evidence, the matter before the DPP. Having regard to the definition of “recoverable property” meaning “criminal property, terrorist property”, how do you reconcile the constitutional remit of the DPP now to determine that if there is insufficient evidence for a criminal charge that you have, but the evidence may be sufficient for a reference to the trustee for action. How do you reconcile that? Because constitutionally in the context of the role and function of the DPP.

**Mr. Al-Rawi:** Sure. First of all, it is a very good question, by the way. The role of the DPP is not conflated into this argument at all, there is a handover. So where the DPP has investigators talking to him because they are talking about a proceeds of crime offence, a specified offence, and the DPP is going to see whether there is a criminal case to be answered, and the DPP says, “Look I do not have enough, release that man”, as happens—on an anti-gang matter, trafficking in persons matter, et cetera. The DPP at that point will say, “I do not have enough to charge”. However, I believe that there is enough for somebody else to do an exercise, in this case here, the agency, the trustee. The DPP is handing that over, but when the DPP hands that over, the DPP says, “Look I believe there is sufficient evidence here”. So it is not suspicion because there would have been a course of investigation; he is actually handing a file over.

Now, it is very important to remember that under the rules of discovery that that information must be presented; there is no—you cannot hide the information, because if it is evidence it must be discoverable, and in civil proceedings you have to have discovery. So that evidence is discoverable, you have moved beyond the realm of suspicion, you are in now to sufficient evidence, but I would like to tell you this. The DPP’s office in the past, in particular in relation to quite a large matter which is ongoing so I would not name it by case, has gone to the civil courts and asked for worldwide Mareva

Injunctions and freezing orders, and Anton Piller orders.

And in the Anton Piller order regime, you are also condescending to answers too, so this has happened already, the DPP has already retained attorneys and gone to court in matters. In fact, Minister Young was involved in that matter, as a matter of fact. I have done certain aspects of Mareva and Anton Piller with court supervisors, et cetera, so I can tell you that that regime exists as it is right now; this law does not go any further than that.

**Madam Chairman:** Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** I have an amendment. Is that what I can deal with now, Ma'am?

**Madam Chairman:** Yes, please.

**Mrs. Persad-Bissessar SC:** All right. Item 29, clause 31(1); this is in tandem with what my colleague from Chaguanas West has said, that I am suggesting that we delete the word “suspect” and replace it with the word “believe”, because, again, this on mere suspicion we feel it is not enough, we have to go with a stronger point, and I am suggesting we use the word “believe” rather than “suspect”. So where you have—where during the course of a criminal investigation, all these officers we mentioned from the Customs and so on and so on—

**Mr. Al-Rawi:** Sure.

**Mrs. Persad-Bissessar SC:**—has reasonable grounds to suspect that the offence involves recoverable property, he may forward an investigative report to the DPP. I think “believes” rather than suspicion; suspicion is such a suspicious thing.

**Mr. Al-Rawi:** You are right. We wrestled with this, and the first port of call that we came to was section 32 of the Proceeds of Crime Act. And in section 32, it is the exact formula, “reasonable suspicion”. Why?—because the officer may have a

suspicion. The officer engages in an investigation, but the officer is now in this formula going to the DPP who says, “Look I have a suspicion, I am in the course of an investigation”, because all investigations are on suspicion. I have suspicion, I am coming to you, and then the DPP has to say, “Look, I now have an obligation to go even higher than you. I must...”—if you see it in subclause (2), I must believe that there is sufficient evidence, and evidence is not suspicion, it is a very positive obligation on the DPP to make sure that there is sufficient evidence for this matter to go to the Trustee.

So the DPP is entitled to receive a suspicion from a policeman, in this case here, now of the highest rank that we can get to, Comptroller, chairman, Commissioner of Police with the bar as to how low he can go; they come with a suspicion because all crimes are investigated on suspicion. But when they get to the DPP, his first route is to say, “Look I am going criminal. Only if I cannot go criminal, will I go civil, if there is sufficient evidence”; stick a pin.

Right now under law, the DPP has done and has the power to approach the civil court, and when he goes before the court, particularly if I can remind, the reason why we went with this “sufficient evidence”, and I know that you would this, Siparia, under the Anton Piller regime, under the Mareva Injunction regime, there are very specific standards to be observed. You have to have full disclosure, it must be in the primary document, it cannot be buried into the affidavit, you must effectively come with clean hands, all of those things prevail in what “sufficient evidence” looks like. So the courts have said in the Anton Piller regime, for instance, you cannot come on a fishing expedition, in the Mareva Injunction there is, in fact, the undertaking that you are not being frivolous, so that is why we have balanced it with clause 43 in the compensation aspects.

So, we have confined ourselves to what the law looks like right now. So, the

DPP removes the policeman and suspicion, the DPP must be satisfied that there is evidence to ask as the trustee to go to the court.

**Mrs. Persad-Bissessar SC:** Okay. I want go to an amendment to clause 31(2), but I will go back to 31 as whole “in the round” as the AG likes to call it, I would like to look at it, again, but I have suggested here that we take out the word “insufficient” and insert thereof the word “sufficient”, this is in (2), 31(2).

**Mr. Al-Rawi:** Right.

**Mrs. Persad-Bissessar SC:** Where upon receipt of the report the DPP is of the view that there is “insufficient evidence” to pursue criminal charges. It should be that there is “sufficient evidence”, the DPP—

**Mr. Al-Rawi:** Well, then he would go “sufficient”, then we would go “criminal”.

**Mrs. Persad-Bissessar SC:** Yes. And this is the danger of this clause that we verily believe that this was one of the clauses that will trigger us into constitutional issues.

**5.30 p.m.**

I know you do not believe it, but I would share with you. The DPP does not have this power. The DPP is a creature of statute, of the highest statute in the land, the Constitution, and the powers that the DPP has are in section 90, and what you are asking the DPP to do by virtue of this section, he does not have that power under law and you cannot give him this power by an ordinary statute, when his powers are those entrenched in section 90. That is my respectful view with respect to this 31.

**Mr. Al-Rawi:** Would you permit me to distinguish the argument?

**Mrs. Persad-Bissessar SC:** “Mm hmm.”

**Mr. Al-Rawi:** I agree with you, that the DPP must act within the confines of section 90 of the Constitution, which is his three powers: initiate, take over or stop

nolle pros matters. The DPP has always had the opportunity to ask for civil aid to criminal enforcement. Civil aid to criminal enforcement. And the DPP is never the entity to go for that civil aid to criminal enforcement. It is the State that goes for that, so the Attorney General would take over the civil aspects. So, we found that entirely unacceptable. Why? Why should a political appointee, like me, who is an Attorney General for the time being, have the power to go and get civil aid to criminal enforcement? We said no, let us clean that up. Let us take that existing power, the civil aid to criminal enforcement. The DPP does not do that, let us remove the AG from doing that. He has no business in there. Let us put the trustee to do that.

And therefore, I am attempting to distinguish the argument raised by you, to say number one, I agree, the DPP ought not to have that function, but this law does not give him that function. Number two, this law is in pari materia with the fact that the Attorney General, by way of civil aid to criminal enforcement, has the power under section 76, subject to section 79 of the Constitution, to go for civil aid to a criminal enforcement. We say that that is inappropriate. We did not want any political creature in this dance, bring the independent trustee forward, appointed by the JLSC. That is equivalent to the functions that should be existing or the President in her own discretion, if the Prime Minister and Leader of the Opposition cannot agree upon the circumstance. So in effect, I am agreeing with you, but distinguishing the point to say that we are going even better.

**Mrs. Persad-Bissessar SC:** Well, with due respect if it is you want to clean it up and you want to get all of that out, there is a process. You cannot just do it like this, by the back door. *[Interruption]* Wait, wait, wait.

**Mr. Al-Rawi:** Sure.

**Mrs. Persad-Bissessar SC:** The Constitution is very clear, section 90 is deeply

entrenched. The powers given to the DPP are those in section 90. If you want to get civil—what you said?

**Mr. Al-Rawi:** Civil aid to criminal enforcement.

**Mrs. Persad-Bissessar SC:** Through the DPP, then change the Constitution.

**Mr. Al-Rawi:** No, no, no.

**Mrs. Persad-Bissessar SC:** Give him the power.

**Mr. Al-Rawi:** That is not what we are saying at all.

**Mrs. Persad-Bissessar SC:** That is what you are saying, Sir.

**Mr. Al-Rawi:** No, Ma'am. No, Ma'am. What we are saying is, the DPP under subsection (2) says, "I'm out. I do have sufficient evidence. Here is the file to the trustee. You do what you have to do." The DPP is not the claimant in these proceedings asking for this. It is the Civil Asset Trustee. The same way the DPP does have the power right now to say to the Attorney General, "I'm out, AG you take civil aid to criminal enforcement." So, we are not conflating anything under the DPP's hat in contravention to section 90 of the Constitution. Far be it from the case. We are removing that odium from a political appointee, the Attorney General, performing this function.

**Mrs. Persad-Bissessar SC:** If you are saying that is the existing power in the law of Trinidad and Tobago then that has to be changed by law that is passed by the due process that is needed to alter the constitutional provisions.

**Mr. Al-Rawi:** Permit me? Minister Young. We are not altering the Constitution.

**Mrs. Persad-Bissessar SC:** I beg to disagree with you again.

**Mr. Al-Rawi:** Madam Chairman, for the record, I would like somebody who has actually done this in law, which is Minister Young, to put onto the record as a matter of fact what I am saying.

**Mrs. Persad-Bissessar SC:** Has the DPP ever acted where there are no criminal

proceedings, AG? Has the DPP done any of these things you have mentioned?  
Coming to you to get a civil—

**Mr. Al-Rawi:** Under my tenure, no. But I can tell you when John Jeremie was Attorney General, acting—

**Mrs. Persad-Bissessar SC:** A lot of things happened then, eh.

**Mr. Al-Rawi:** Well, yeah a lot of good things happened then; Piarco Airport enquiry, all sorts of things. Very good things. So, a lot of things happened then. What I can tell you is that the State has always had the Attorney General under the Constitution acting in civil matters. But we do not think it appropriate that the Attorney General should be busying himself in this realm of civil asset forfeiture. Not at all. No political appointee must be in that dance.

**Mrs. Persad-Bissessar SC:** I agree with you, Sir, but you have to change the law in accordance with the law.

**Mr. Al-Rawi:** So where in this law is the DPP doing that?

**Mrs. Persad-Bissessar SC:** You are asking the DPP here where there are no criminal charges, there are no criminal proceedings, he must make a determination on the sufficiency of evidence.

**Mr. Al-Rawi:** And then do what?

**Mrs. Persad-Bissessar SC:** He refers the matter to someone else.

**Mr. Al-Rawi:** To someone to do the thing.

**Mrs. Persad-Bissessar SC:** No, no, no.

**Mr. Al-Rawi:** He is taking a step.

**Mrs. Persad-Bissessar SC:** He does not have the power in these—Sir, this is my respectful submission, we would fight it out in the court of law when the time comes.

**Mr. Al-Rawi:** Okay. Let me mark the spot.

**Mrs. Persad-Bissessar SC:** We will fight it in the courts.

**Madam Chairman:** Member for Oropouche West.

**Mrs. Gayadeen-Gopeesingh:** Hon. AG, so in proceedings for the hearing, take for example, for an objection to confiscation at any time, what is the role of the DPP then? Is it then he would apply to the court for an unexplained wealth declaration against a person?

**Mr. Al-Rawi:** No. No, that would be to breach the Constitution. Only the Attorney General can act for the State in civil matters. The DPP under section 90 of the Constitution has three specific powers: he can initiate prosecution, he can take over prosecution, or he can enter a nolle pros, meaning he can stop prosecution. The DPP does not take a step other than handing it over after saying he is satisfied that there is evidence to go on the civil route, he sends it to the trustee, the Civil Asset Trustee, to go and knock on the door of the court.

**Mrs. Gayadeen-Gopeesingh:** So, hon. AG, so you are saying, no application cannot be made in conjunction then with a freezing order?

**Mr. Al-Rawi:** By the DPP?

**Mrs. Gayadeen-Gopeesingh:** Yeah.

**Mr. Al-Rawi:** Correct. The DPP has no role in this.

**Mr. Young:** Madam Chair, if I may assist here. Section 31 is a simple free-stage process. The first part is there must be a criminal investigation taking place. We have already established via compromise the level of officers from the police service. We have agreed to the Comptroller of Customs, and we have agreed to the Chairman of the Board of Inland Revenue being the persons who are in charge of the pursuit of criminal investigation in those circumstances to tie back to a specified offence, which are the serious crimes under POCA, Second Schedule. That is the first stage. So they are the ones who are doing the criminal

investigation. What then happens is they may send the report to the DPP.

One of the roles that the DPP currently performs is looking at evidence from these three various bodies, in particular the police, and then determining as to whether criminal charges should be laid or not. In this circumstance, what subclause (2) is saying, is if there is sufficient evidence to pursue criminal charges for a specified offence, which is under POCA, Second Schedule now, as you know defined, but there is sufficient evidence that the property is recoverable property pursuant to this Act, and an applicant should be made. So, he is performing that same litmus test role that he currently performs, and then his role stops there. He just says, “Look, there is sufficient evidence to go for recoverable property here.” He passes it on to this isolated agency, this agency we have been so careful to protect, and to make sure it is ring-fenced as to who is in the agency, and they then are the ones who pursue the action in court.

So, the DPP is just continuing to perform a role that he performs right now, and the Attorney General is right. One of the briefs I remember getting, and I think it was from the DPP Geoffrey Henderson, was where they had forfeited state—there was a breach of state lands, it was illegal quarrying, they had forfeited equipment, and there was a Court of Appeal hearing as to whether the forfeiture of that equipment was in fact appropriate in the circumstance. That is a civil appeal. That is not a criminal appeal. And it was a retention by the DPP.

Another one to which the Attorney General is referring that he is aware of, there was a time where evidence was being prepared to go for international Mareva Injunctions. Someone breached the laws of Trinidad and Tobago, cost us at one point in time, \$25 billion. There was a whole commission of enquiry into that, and we had prepared the Mareva, the international Mareva Injunctions; in comes a new administration in 2010, the rest is history. It was discontinued. I was asked to

return the brief. But this is not something that is new. It is something that is now being codified, and it is—as we know, we are all here debating civil asset forfeiture. Civil asset, not criminal asset forfeiture, which is POCA.

**Madam Chairman:** Member for Laventille West.

**Mr. Hinds:** Thank you, Madam Chair. So, yes, Minister Young, Member for Port of Spain North/St. Ann's West got that. The DPP is, on a daily basis, giving advice on criminal matters to the police, and rather routinely. So, this is really to continue that. It began with a criminal investigation, as we know, and he is looking at sufficiency of criminal evidence, and if there is not sufficient criminal evidence, he—and you are dealing now with what is recoverable property, he gives advice. That advice goes to the agency. We are not taking away any power from the DPP. You are just giving him—

**Hon. Member:** Nor adding.

**Mr. Hinds:** Or nor are you adding. You are just codifying that which is routinely done, and he is just simply giving independent advice in the circumstances.

**Dr. Tewarie:** Chair. Chair, I mean, if I can make an interpretation of what the Leader of the Opposition is asking? Does the DPP have the powers under the Constitution to determine at what bar a matter that is not—that he is not able to pursue criminally can be referred for civil action? I think that is the issue.

**Mr. Al-Rawi:** Yes, let me answer that. The Constitution provides three certain powers of the DPP. The Constitution does not go into granular ancillary powers of the DPP. The DPP under the operation of our Constitution, once he is out to something, but he wants something that is in the civil realm, the DPP must refer that to the Attorney General because the Attorney General—in our 1962 Constitution, and prior to that, the Attorney General actually did what the DPP does. When we took our 1976 Constitution, we gave the Attorney General civil,

and we created the DPP to do criminal. But the two coexist insofar as there is a conflation of certain aspects. If the DPP wants the State to take certain steps, the AG acts in the civil realm. And he does that, and the DPP would be passing information to the Attorney General in any event to say, "Here is the sufficiency of what I have, you take it over." In this instance here, in looking at the fact that the existing common law allows the AG to take these steps, we have said, listen, that is unseemly, let the trustee, who is not an AG, we are actually taking away powers from the AG by statute, and that is to be commended because we are ring fencing this matter away from a politician.

**Mr. Young:** If I may, Caroni Central, if you would allow me?

**Madam Chairman:** I recognize the Member for Port of Spain North/St. Ann's West and then Caroni Central.

**Mr. Young:** If I may answer our question directly, the answer is under this legislation. We are setting the bar for the DPP. If you look at the section we are looking at now, clause 31(2), we are saying:

"Where upon receipt of an investigative report under subsection (1), the Director of Public Prosecutions is of the view that there is insufficient evidence to pursue criminal charges for a specified offence but there is sufficient evidence that the property is recoverable property..."

Then go to clause 5 of the Bill:

"The standard of proof required to determine any question under this Act as to whether recoverable property should be subject to civil asset recovery shall be that applicable to civil proceedings."

So that is the direct answer to the question. So where you talk about recoverable property you flip to 5, 5 tells you what is the standard of proof for recoverable property.

**Mr. Al-Rawi:** But stick at 2, what the DPP does is, he may refer the matter to the agency. He must hand that baton over to someone else. He is not taking any part there. So, what we are doing for the first time, we are circumscribing the functions of the AG.

**Dr. Tewarie:** I appreciate what you are saying, but I think what is happening, I think there are three issues that come up. The questioning by the Leader of the Opposition of whether the DPP does have the constitutional authority to be able to determine that the matter is a civil matter for action. That is the first thing. The second thing that is emerging is that this shall be done by the agency, but where does the agency get its power? Is it that the AG is now delegating his power to the agency, and I think those—I do not know what—

**Mr. Al-Rawi:** So, permit me to answer that.

**Dr. Tewarie:** Yes.

**Mr. Al-Rawi:** So, there is no delegation—

**Dr. Tewarie:** I would like—no, just a minute. I do not know what the legal rightness of it is, but I know that that is where the confusion is among those three.

**Mr. Al-Rawi:** Sure. Madam Chair, what we are doing here is we are in statute, pursuant section 53 of the Constitution, where Parliament makes laws for the peace, order and good governance of its country, pursuant to section 53 of the Constitution, we are effectively codifying a process of limitations. Without this law, the AG could act in the circumstances I have just described, and it has happened before. Secondly, Parliament “in its wisdom” has a presumption of constitutionality on its side, and Parliament is now saying, “Listen, this thing of civil asset forfeiture, it could happen already in the common law. A court could deal with that.” [*Knocks desk*] “Don’t let the AG do it. Let someone else do it.” So, there is no delegation. You are ousting the AG from this process. You are

ousting the AG for the first time ever. You are ousting the AG by statute pursuant to Constitution from acting in this, because we believe that no politician should be involved in this dance.

**Mrs. Persad-Bissessar SC:** That is very laudable, Sir.

**Dr. Tewarie:** And we agree with that.

**Mrs. Persad-Bissessar SC:** We agree with that, but you are—so, if I may, the AG speaks of section 53, the AG does not speak of section 54. So, section 53 tells you, yes, Parliament may make laws for the peace, order and good governance. But 54 then tells you the process. So, if you are interfering with section 90 which gives the DPP his powers—

**Mr. Al-Rawi:** How are we interfering with 90?

**Mrs. Persad-Bissessar SC:** Wait one minute, let me finish! One minute please?

**Madam Chairman:** Go ahead Member for Siparia.

**Mrs. Persad-Bissessar SC:** If you are giving powers to the DPP that he does not at present possess, you are in fact, you are doing an implied amendment of section 90, and if that is the case you have a process in section 54—[*Interruption*]—I am not finished, Sir, I gave you a lot of leeway.

**Mr. Al-Rawi:** Sure.

**Mrs. Persad-Bissessar SC:** In section 54 for things to be done. Now, listen, what is happening here?

“Where upon receipt of an investigative report under subsection (1) the”—  
DPP—“is of the view...”

So he has to make a determination, he is of the view that there is insufficient evidence to pursue criminal charges for a specified offence. That is the end of his job under section 90. That is the end of his job. Look, there is no sufficient evidence to go down this route for a criminal charge. That is the end. He has to

stop there. But you go on to say where the DPP is of the view X, there is no X, but there is sufficient evidence that the property is recoverable property, you are now giving him, in my respectful view, a new power. He has to make a determination on the sufficiency of evidence as it relates to recoverable property.

**Mr. Al-Rawi:** Madam Chair, if I may distinguish?

**Mrs. Persad-Bissessar SC:** It is my view, Madam, it is my respectful view that you are—I think you used the word, “conflating”, if I am correct. But you are adding to the powers without using the proper process for making laws for the good order, good governance, and so on of the land.

**Mr. Al-Rawi:** Madam Chair, section 54 of the Constitution says:

“Subject to the provisions of this section, Parliament may alter any of the provisions of the Constitution...”

**Mrs. Persad-Bissessar SC:** Yes.

**Mr. Al-Rawi:** First thing.

**Mrs. Persad-Bissessar SC:** Section 90 is there.

**Mr. Al-Rawi:** Hold on. “Alter” may be read in my view as “derogating from”. So, if I am going to derogate from any of the powers given to the DPP, then there is a process to be followed. We are not derogating from anything. Secondly, the savings law clause in the Constitution saves the law prior to the Republican Constitution and the ’62 Constitution. And the existing law prior to the Constitution is that the DPP could have asked the AG at any point in time, as umpteen cases would demonstrate, to go and get civil aid to criminal enforcement. So, under section 6 of the Constitution, the savings law clause, under the proportionality principles, Maraj, De Freitas, Oakes, Suratt, you name them, Francis in our Court of Appeal, under all of these things, we are going no further than the existing law recognizes the law to be. So, we are not interfering with

section 90 of the Constitution. Specifically, we are not derogating from section 90 of the Constitution. Look, I accept that that does not stop someone from going to raise that as a question in court. What I can tell you, we have taken careful advice on this matter, and our view is that we are safe in doing this because, what we are doing is we are bettering the law. We are removing the Attorney General from having this functionality and putting it in a trustee.

**Mrs. Persad-Bissessar SC:** We always have this saying, “the road to hell is paved with very good intentions”. Your intentions are noble, to remove the politician. Our view on that—I end on that point, Madam—is that you have to follow the process that is laid out in the Constitution. The AG mentioned 53, and I used 54, but if we go down into 54, we talk about altering and what altering means, and in my respectful view, I think you are altering this in a way that it is not consistent with the process set out in the Constitution. That is my respectful view, Madam.

**Mr. Al-Rawi:** Well, we agree to disagree.

**Madam Chairman:** All right, so I would now put the question.

**Mrs. Newallo-Hosein:** Chair?

**Madam Chairman:** Member for Cumuto/Manzanilla.

**Mrs. Newallo-Hosein:** Yes, before you continue, can the hon. AG just, on the clause 31(1), just read it please for clarity? The persons that would be carrying out these—

**Mr. Al-Rawi:** That would have this power?

**Mrs. Newallo-Hosein:** Yes.

**Mr. Al-Rawi:** They would be the Commissioner of Police or someone who is his delegate not below the rank of Assistant Superintendent; there would be the Comptroller of Customs; and the Chairman of the Board of Inland Revenue.

**Madam Chairman:** Clear? So, hon. Members—

**Mrs. Newallo-Hosein:** Can it read “an officer” as opposed to “person”?

**Mr. Al-Rawi:** I am sorry I do not follow?

**Madam Chairman:** Instead of being a person, “the Commissioner of Police or such other person delegated by him”, meaning, it should be “such other officer delegated by him not below the rank of Assistant Superintendent.”

**Mr. Young:** Sorry, Madam—

**Madam Chairman:** Just one minute.

**Mr. Young:** Sorry, may I just add whilst the AG is conferring on something there?

**Madam Chairman:** Yes, Member for Port of Spain North/St. Ann’s West.

**Mr. Young:** It just dawned on me in a little bit of a conversation I was having there. As it currently stands, just to put on record how the application of the law and the Constitution currently exists with respect to the Director of Public Prosecutions. If evidence is taken to the Director of Public Prosecutions now, say, for example by the FIB Unit of the Trinidad and Tobago Police Service for money laundering, and he does not think there is sufficient evidence there to lay criminal charges for money laundering it is well within his purview to say, go and pursue. Exactly as the Attorney General has been saying, go and pursue these—use this evidence in civil proceedings, which is of a lower standard, a lower burden of proof. There is nothing abnormal with that. This is not affecting the constitutional ambit of the Director of Public Prosecutions in any manner whatsoever.

**Madam Chairman:** All right, and Attorney General I think there is one other issue to address, other person—

**Mr. Al-Rawi:** Well, Madam Chair, under the Police Service Act and its regulations, police cannot, the Commissioner of Police cannot delegate to

somebody who is not a policeman because they do not have the investigative powers. So, we had gone with person to avoid the gender argument, quite frankly. Where it is what we views in other areas, it is just person, but you “cyar” win the lotto without the ticket, and in this case here, the ticket is you have to be a policeman.

**Madam Chairman:** Okay, I think the word that the Member had asked for is an officer. Okay, so can I now put the question?

*[Assent indicated]*

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and negatived.*

**Madam Chairman:** The question it that clause 31 be amended as circulated by the Attorney General, and further amended at—

(1)(b)—

to delete the words “police officer” and replace with the words “the Commissioner of Police or such other person delegated by him not below the rank of Assistant Superintendent”; and.

(c) to delete the words “custom officer” and replace with the words “Comptroller of Customs”.*Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.*

*Question put and agreed to.*

*Clause 31, as amended, ordered to stand part of the Bill.*

**Madam Chairman:** Might I ask can we do clauses 32 and 33 together, as no amendments have been circulated. AG? Leader of the Opposition?

**Mr. Al-Rawi:** Yes, please.

**Madam Chairman:** Yes? Okay.

*[Assent indicated]*

*Clauses 32 and 33 ordered to stand part of the Bill.*

*Clause 34.*

*Question proposed:* That clause 34 stand part of the Bill.

- 34(1)(b)      A. delete the word “if”;
- B. Delete the words “holds it, the Agency has taken all reasonable steps to do so” and replace with the words:
- “holds it,  
it may grant a Property Restriction Order.”
- C. Renumber subclauses (3) to (13) as subclauses (2) to (11).
- D. In renumbered subclause (10) delete the words “(10)” and replace with the words “(8)”.

**Mr. Al-Rawi:** Madam Chairman, we propose the amendments as circulated to clause 34, but we have a small tweak to that, which is circulated, and if I could just give you that first? We do not actually need (c) as is reflected there. It was picked up in the proof reading. So, if you could delete—you have A, B, then C, you can just run a line through capital C and renumber capital D as C.

**Madam Chairman:** Okay.

**Mr. Al-Rawi:** And then in C as renumbered, that is the old D, take off “renumbered”. So, it is not “in renumbered”, it is “In subclause (10)”. Yes? So, now for the rationale.

Clause 34, right, if you look at the text of clause 34 it was nonsensical to have the word “if” in subclause (b). So, 34(1) said:

“Where an application is made under section 33(1) and the High Court is satisfied that—

(a)...”

—and then (b), “if the property”, it makes no sense, so we are deleting the word

“if”. Further into subclause (b), and it would read:

“the property to which the application for the order relates includes property alleged to be associated property, and the Agency has not established the identity of the person who holds it,…”

We do not need, “the Agency has taken all reasonable steps to do so.” We then drop down into the chasseur, which is the tail end to catch both (a) and (b), the words “it may grant a Property Restriction Order”.

So, 34(1) chapeau, reads as it does, (a) reads as it does, (b) strike the word “if”, (c) after the words “holds it” you are effectively deleting the words “the Agency has taken all reasonable steps to do so”, and then you are introducing a chasseur, a footing to catch both (a) and (b), which is, “it may grant a Property Restriction Order”. And then we are putting the word “or” as it appears in between. Right? So, in the Bill the word “or” is missing, so between subparagraph (a) and subparagraph (b) it is “or”.

So, Madam Chair, if I point out, 34(1) says:

“Where an application is made and the High Court is satisfied that—

- (a) there are reasonable grounds to believe that the property to which the application relates is recoverable or associated property; or
- (b) the property to which the application for the order relates includes property alleged to be associated property, and the Agency has not established the identity of the person who holds it, it may grant a Property Restriction Order.”

I just want to point out in 34, the court is not acting on any suspicion. The court is acting on belief, i.e. evidence by way of reasonable grounds, and it is in that circumstance that stage one happens. That is a restriction order. It is not forfeiture. It is that you could freeze the property, and then you go through an inter

partes stage a little bit later on. So, Madam Chair, those are the reasons for the proposed amendment as circulated by the Government, as tidied up.

**Madam Chairman:** Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** We have no objection to the proposed amendment.

**Madam Chairman:** Okay. So the question is that clause 34 be amended as proposed by the Attorney General.

*Question put and agreed to.*

*Clause 34, as amended, ordered to stand part of the Bill.*

**6.00 p.m.**

**Madam Chairman:** Can we take clauses 35 to 57 together? No amendments have been circulated.

*Clauses 35 to 57 ordered to stand part of the Bill.*

*Clause 58.*

*Question proposed:* That clause 58 stand part of the Bill.

- 58(1)
- A. Delete the words “a Customs or Excise Officer” and replace with the words “the Comptroller of Customs”.
  - B. Insert after the words “police officer” the words “above the rank of Inspector”;
  - C. Insert after the words “the applicant” the words “during the course of an investigation for a specified offence”; and
  - D. Delete paragraphs (a) and (b) and replace with the following:
    - “(a) the total wealth of the respondent exceeds the value of his lawfully obtained wealth;
    - (b) the total wealth of the respondent is over

five hundred thousand dollars;

- (c) the property is owned by the respondent or is under his effective control; and
- (d) the property was obtained through the commission of a specified offence,”

**Mr. Al-Rawi:** Madam Chair, clause 58 is where we get to the Unexplained Wealth Order and we are doing a few things in the amendments proposed by the Government. Effectively, Madam Chair, we are insisting and we will just make a small tweak to harmonize it with the manner in which we just did, clause 31. We are saying that it should not be any customs officer or any police officer. We are going to ask that that be instead the Comptroller of Customs and the Commissioner of Police or a delegate not below the rank of Assistant Superintendent. And out of an abundance of caution, we want to include the express words that this must be during the course of an investigation for a specified offence. Meaning only a proceeds of crime offence as of course we have curtailed that to exclude matters of taxation after six years in the commencement, going six years back from commencement for taxation matters.

What we have done further, Madam Chair, and this comes out of the debate, in particular coming out of one of the recommendations from Chaguanas West. We felt it prudent to include a threshold, Madam Chair. The Law Association did make a recommendation to us on this ground and we were quite intrigued by that. We wanted to hear what the debate promoted and we believed that it is appropriate to put a threshold in this. So that people in this bracket who have wealth under \$500,000 are not going to be the subject of this Unexplained Wealth Order. They are excluded automatically. That is of course open to discussion here as to what the threshold ought to be; we have proposed \$500,000.

We are also saying that we should just simply tidy this up by adding in that the property is owned by the respondent or under effective control and the property was obtained through the commission of a specified offence. So not that you have obtained that property—as I will come back, and the Member for Arouca/Maloney will quarrel with me for saying granny—not that you obtained the property as the granny, or the grandmother or the grandpa involved in this. But that property must be property which came from the specified offence. It came from drug dealing, it came from trafficking persons, it came from white collar crime. We do not want it to be anything else. It must flow from that thing which was under investigation. So this Unexplained Wealth Order is now being anchored in very specific terms. Number one, to get into the dance or basket of Unexplained Wealth Order, these three ranking entities must have been investigating a specified offence. What is a specified offence? The Second Schedule of the Proceeds of Crime Act, not including tax matters which go beyond six years from the past for commencement.

Secondly, we say people ought not to be subjected to this if they are under a threshold. So you are under \$500,000 in wealth, you are out. We welcome the views of the committee as to what that threshold ought to be. [*Crosstalk*] I hear the Member for Port of Spain North/St. Ann's West.

- “(c) the property is owned by the respondent or is under his effective control; and
- (d) the property”—flowed from—“the commission of a specified offence,”

So that is very careful, eh, Madam Chair, it does not involve all the property you may have had before you had a run in with the law. Your grandmother's property, your grandfather's property that came to you, you inherited, you made a mistake with the law, all of that is safe. It is what flows from that offence. So we

are tracing the drug dealer, the people that have gone astray, that is what this is. So we have sought to tighten this law in a very careful way. That is the rationale for the amendments to this particular clause, Madam Chair. I note that in our list as circulated, as we tidy up A, which is on the first line, where we say delete the words “a Customs”; the word “or” should be “and”. So we are deleting “a Customs and Excise Officer” and we are replacing it with “Comptroller of Customs”. Just a tidy up, it is falling out anyway but just from a text point of view, okay?

**Madam Chairman:** Leader of the Opposition, I will invite you to raise any issues on the proposed amendments and then to put your proposed amendments.

**Mrs. Persad-Bissessar SC:** Why \$500,000 is your threshold? Why not 300? Why not 700? What led you to 500?

**Mr. Al-Rawi:** Good question. So we thought, look, let us peg it to the value of an HDC house or a car. Those were two things in my mind in coming up with a threshold. I will tell you, I find the whole exercise of the legislature as it relates to offences, penalties, jail terms, and thresholds, I genuinely find that very hard and arbitrary. I see us for the last eight years, I have not been here for the length of time you have Siparia, I noticed that we as a Parliament come up with figures, even though we try to put a matrix under our particular regime.

So, I looked at it as some people may own a car under that value, \$100,000, \$200,000, some people may own it at \$500,000, but what about a house; a low range HDC house under \$500,000. I really, I am in the committee’s hands as to what an appropriate threshold is. What I can tell you, in the United Kingdom the threshold is £50,000, so that is why I went for the 500. But there are economies of scale that are quite different. I mean, I do not know if a pound goes as far, I do not know if our dollar goes as far as a single pound. [*Crosstalk*]

**Mrs. Gayadeen-Gopeesingh:** Hon. Attorney General, a person has unexplained wealth if the value of the person's wealth is greater than the value of the person lawfully acquiring it. So who determines the value of my wealth and to determine whether it was lawfully acquired?

**Mr. Al-Rawi:** Sure.

**Mrs. Gayadeen-Gopeesingh:** Who does that?

**Mr. Al-Rawi:** So, who does that? This law is built upon, if you go to the earlier clauses, there must be a valuation exercise done. So when we look to the beginning of the Bill you will see that we have the "Application", clause 4, "Standard of proof", 5, "Orders *in rem*", "Criminal Property which may be recovered", civil asset regime, establishment agency, composition, 32? [Interruption] Thank you. I would have been a long time in the dance had I gone the other way.

So clause 32, the agency, this on the other side, right? The agency to require an entity valuation, an equity valuation for a company and for property. So we deal with it on the civil asset forfeiture side. Your question now on the Unexplained Wealth Order side, that is done by an objective standard by the court. So where the person is being invited to come to the court, if a court makes an order, the person must come forward and say this is what my wealth is—look, any one of us in this room here, for instance, have a really easy path to this kind of law. Why? We have been filing integrity in public life forms, we unlike most people have a full list of what our assets are and what our values are. So that is just an example. We would know what our values are because we have been declaring that for a long time. So that is done by way of, because the Integrity Commission asks us to do that and we put values. I am sure all of us have faithfully and scrupulously put those values. I certainly make sure to do that. But when we do

that we have that.

So it is an object—the person that gives it, the object of the answer is the person himself and that person would come forward with evidence. But there is also implied in this the fact that the State, the investigating officers would have to say, well, look, we believe, because look at it:

“58. (1) Where the Chairman...”—et cetera—“responsible for financial investigations...reasonably suspects that—

(a) the total wealth...exceeds...

(b) ...he may apply to the...Court in writing for an order...”—  
asking for the—“...respondent to file a declaration and  
answer questions...”

So the first threshold is that they have got to say, you own a property at X, the value looks at Y. And then a person turns up. And then they give their explanation on that. So there is a process, an obligation on the person attending for the application, the mover of the application has a certain thing to do, which is to say, we estimate that this property is worth X, can the person just explain how they own that.

**Mrs. Gayadeen-Gopeesingh:** So it is based on suspicion again, AG.

**Mr. Al-Rawi:** It is where the chairman, police officer responsible reasonably suspects, yes.

**Mrs. Gayadeen-Gopeesingh:** Yeah, suspicion again.

**Mr. Al-Rawi:** However, the court must be satisfied of certain things and the court is satisfied. Look, after you fill out the information what happens next is the question. A court makes an order under the explain your wealth order, only if it is satisfied after it has heard from you that you have not explained how you got it. It is regardless of the information. You roll up with your Deed of Mortgage, the loan

that somebody gave you, somebody rolls up with an affidavit and says look, I was John Brown's mother and I paid for things in the process of development. Four neighbours in the neighbourhood say, well, look, this family has been contributing over the years, yes it was done on a cash business, but here is how we apply that. But remember, what we are doing in this clause here is we are saying that the property must be property which flows from an offence, not things in the past. So if somebody is suspected of drug trafficking, that must be grounded in a fact of drug trafficking, whereas John Brown is under investigation for the shipment of cocaine that came in to Trinidad and Tobago on X date, and whereas John Brown has a property which he acquired two months after, it is that property we are going for. That is the connection, that is the rational connection.

It cannot be, whereas John Brown was suspected of drug trafficking in the month of May 2019, and John Brown has a house which his grandmother gave him in 1962, we want that house. That is not it. That is why we have amended this to say the property must be something flowing from the thing which is the charge.

**Mrs. Robinson-Regis:** Madam Chairman, thank you so much. I am a little flummoxed because this is what we have been discussing from the time we started the debate on this Bill. So I am very surprised that the Member for Oropouche West would be asking the question which is the crux of this piece of legislation before us.

**Mrs. Gayadeen-Gopeesingh:** Well, do not be surprised, we have to clarify things.

**Mrs. Robinson-Regis:** I am.

**Mrs. Gayadeen-Gopeesingh:** We have to clarify.

**Mrs. Robinson-Regis:** No, but this is what—

**Mrs. Gayadeen-Gopeesingh:** Do not be surprised.

**Mrs. Robinson-Regis:** “Oh gosh.”

**Mrs. Gayadeen-Gopeesingh:** Why are you surprised?

**Mrs. Robinson-Regis:** I do not know there was anything else that you could do that could surprise me.

**Mr. Singh:** Thank you, thank you, Madam Chair. I am dealing with the issue of the threshold. Madam Chair, when we put the designated officers being the Chairman of the Board of Inland Revenue, the Commissioner of Police and his designate to the rank of Assistant Superintendent, and then you have the Comptroller of Customs, I find that the threshold of \$500,000 then becomes low. But then I have a concern. How are you going to deal with the gang members who may find that their exposure—you may want to deal with that exposure, but can you put a figure, so that therefore we have to think of the practical application of the threshold.

**Mr. Al Rawi:** Madam Chair, if I could just say this, and I mean this with the greatest sincerity. The Member for Chaguanas West hit the nail on the head. The Minister of Finance was discussing this very issue with me. Let me put it this way. Let me tell you who we are really intent on going behind. I am sure all of us are in the same intention, opposite and present in the Government. We want gang members. Gang members are likely to have a gold chain, car, certain things. Yeah, we have the men in suit and tie in the white collar aspects, but they are over the threshold. The gang members are the ones that could hide under the threshold.

Now, something that the Second Schedule of POCA does not have listed in it is offences under the Anti-Gang Act. It is not there. And despite my quarreling with the CPC, the Deputy CPC, who is to my left here, this lovely lady, who has passed through 11 Attorneys General, despite quarreling with her that I wanted to do the amendment here in this Bill, she said, “AG, this is not a miscellaneous

provisions Bill, we will have to take the inclusion of the anti-gang matters in a miscellaneous provisions Bill”. And what we had agreed, Minister of Finance and the team, is that we would put a threshold for gang members which is different. So if you are under an anti-gang charge, we will drop it down to a \$150,000. So you are not wasting police time but we want to treat with them specially. That now takes us to setting a threshold here which is reasonable and we will undertake, we will do it, we will come back and treat with the gang men separately.

**Madam Chairman:** Have you finished with the Chaguanas West?

**Mr. Al-Rawi:** Yes.

**Madam Chairman:** Member for Siparia.

**Mrs. Persad-Bissessar SC:** Just a thought when you said you legislate specially for them. Is there not a danger that you will fall into legislating for a class?

**Mr. Al-Rawi:** No. So that is the ad hominem Liyanage principle.

**Mrs. Persad-Bissessar SC:** I was told it is “Liyana-ge”. I was so told.

**Mr. Al-Rawi:** Forgive me. So Mendez who is the man that is the leading guy on that point calls it Liyanage, so I borrowed it from him. It may be a different pronunciation, I do not know, right?

**Mrs. Persad-Bissessar SC:** It does not matter.

**Mr. Al-Rawi:** So the ad hominem rule would be tripped if we were legislating for known persons or persons who could fit within a known class. However, I can tell you, I in fact drafted explain your wealth for the Anti-Gang Act but I removed it, knowing that I would take standalone legislation. So when I was doing the anti-gang legislation I had a whole section on the ability to forfeit gang members’ property on a civil standard basis, but I said look, let us take that in the round here. So the national security argument in due process for persons treated with under the gang membership, I do not think it would fall within the type of class, an

identifiable class, from a beneficiary class basis. So if it was like in a trusteeship position where you were dealing with an identifiable class of people who you were going to prejudice, then I think we would trip the rule but not for offenders of the law.

**Mrs. Persad-Bissessar SC:** We will look at it in the round when you bring it to the Parliament.

**Mr. Al-Rawi:** So the question is, how do we feel about the threshold?

**Mrs. Persad-Bissessar SC:** Not good.

**Mr. Al-Rawi:** Well, there should be a threshold, surely.

**Mrs. Persad-Bissessar SC:** Well, there was none when you brought it after four years.

**Mr. Al-Rawi:** We are in the Parliament now, we are here now. When you bring a Bill you listen to voices.

**Mrs. Persad-Bissessar SC:** It is like a very ad hoc kind of, you know, it is \$500,000.

**Mr. Al-Rawi:** Well, suggest a number.

**Mrs. Persad-Bissessar SC:** I am asking Suruj who, sorry, the Member for Tabaquite who deals in houses and stuff like that.

**Hon. Member:** Humph! Humph!

**Mr. Imbert:** He deals with that?

**Mrs. Persad-Bissessar SC:** What is the “humph-ing” about?

**Mr. Al-Rawi:** Let us not be distracted.

**Mr. Lee:** Maybe the Member for Point Fortin might suggest from the threshold from housing with any HDC house. [*Crosstalk*]

**Mr. Al-Rawi:** So, Madam Chair, just for the record and with the permission, we have double checked the name, the “Comptroller of Customs”, it is actually the

“Comptroller of Customs and Excise”. So what we intend to do is where ever we have used that term, Madam Chair, we are going to clean it up to read “Comptroller of Customs and Excise” for the record.

**Mr. Hinds:** Madam Chair—

**Madam Chairman:** Yes, Member for Laventille West.

**Mr. Hinds:** Did we get an offer of a figure from the Member for Siparia which I did not hear?

**Hon. Member:** She left it open to consensus.

**Madam Chairman:** I think that the question for whether the—whatever is the figures for the threshold, I think that is still being discussed on the floor.

**Mr. Hinds:** Thank you.

**Mrs. Persad-Bissessar SC:** The AG has decided that this might be appropriate, I have no objection here.

**Mr. Al-Rawi:** But, Madam Chair, let me say, I welcome the views of the whole. So the VAT Act has the threshold at \$500,000; the exemptions that we gave people for first time homeowners was higher, \$1.5 million for taxation aspects. The property market in Trinidad and Tobago if you take HDC as the base market, you are not finding a property for under \$750,000 in range, in the middle. So if I use an HDC homeowner, where are we for that? You see, this law can always be adjusted over time, where we start we can adjust schedules. So I am asking for the collective views on what—there can be no policy behind this because there are so many variables to this. It really requires a collective thought on it.

**Mr. Singh:** I think, Madam Chair, I think this kind of threshold requires an analysis of the sociology of the society and I think that from where I sit, that \$500,000 seems to be as at the lowest threshold and a practical working starting point. And that therefore, I would go along with this.

**Dr. Tewarie:** I have no objection to the position articulated by my colleague but it seems to me the lower the threshold, the broader this scope and range. That is the first issue. The second thing, I mean, a Bill like this is targeting—

**Mr. Young:** Wrongdoers.

**Dr. Tewarie:** No, well, it is targeting different categories of law violators, okay? So, I mean, one hopes that the low threshold will not alter the focus to simply people who operate at the visible level and ignore the invisible actors in the system. But I do think that a low threshold—300, 400, 500—would capture the broadest range of actors in criminal activity.

**Madam Chairman:** Anybody else? Can I therefore invite the Leader of the Opposition to deal with her amendments as circulated?

**Mr. Al-Rawi:** Madam Chair, sorry, just so that I could give you what the Government's final word version of the circulated amendments as tidied up would look like, before you invite the Leader of the Opposition. So, where we have 58(1), A, it would read as follows:

Delete the words “a Customs and Excise Officer or a police officer attached to the branch of the Police Service responsible for financial investigations”.

So Madam Chair, if you could just write in, after the words, “Excise Officer” you would be writing in the rest of these words, “or a police officer attached to the Branch of the Police Service responsible for financial investigations”, and you are continuing to write, Madam Chair, and replace with:

“the Comptroller of Customs and Excise or the Commissioner of Police or such other person designated by him not below the rank of Assistant Superintendent...”

That would allow you then, if you look to the draft, to delete B, those words:

“Insert after the words ‘police officer’ the words ‘above the rank of’”

—that comes out, renumber C as B, renumber D as C. So those would be our amendments. Much obliged. Now to the Leader.

**Madam Chairman:** Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** I think I have item 33 on my list, please.

**Madam Chairman:** 32, I believe.

**Mrs. Persad-Bissessar SC:** Well, I believe this is an insertion and I do not know if from my memory, I may be wrong, we take new clauses at the end.

**Madam Chairman:** Well, it is really a subclause that you are adding so you can deal with it here. It is not really a new clause in its entirety. It is really a subclause.

**Mrs. Persad-Bissessar SC:** I am so guided Madam. Thank you very much.

**Madam Chairman:** You are welcome.

**Mrs. Persad-Bissessar SC:** Now, we had a discussion with 31 about the role of the DPP. In this Part V which deals with Unexplained Wealth Orders there is no safeguard, there is no agency and I want to suggest that we insert the DPP. I am strenuously against it and the AG seems to think it can be done and this is what this new insertion is attempted to do, to have some other body involved, namely that of the DPP. So:

“Where the”—DPP—“has signalled his finding under subsection 58(1)A that he is satisfied that the total wealth of the Respondent exceeds the value of his lawfully obtained wealth the Applicant shall within 28 days from the date of receipt of the finding of the Director of Public Prosecutions apply to the High Court in writing for an order (‘in this Part hereinafter referred to as a Preliminary Unexplained Wealth Order’), requiring the respondent to file a declaration and answer questions as required in relation to his assets.”

I so move, Madam.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** So, Madam Chair, I will tell you that I genuinely struggled with the filtration aspects of this. Had long arguments with drafters and experts on the point. I was very happy with the handover of the baton in the civil asset forfeiture side where the DPP says “Look, I am not high enough, I think there might be something sufficient, over to you, Mr. Agency, to approach the court”. So that one worked well because the DPP was not taking the full step himself. On this particular position the Unexplained Wealth Order is in effect the equivalent of a disclosure order by the court in civil proceedings, an aid to criminal enforcement via civil route.

It has been utilized, I have certainly utilized it in the corporate litigation that I have done a lot of. I have used it in the companies regime under section 245 of the Companies Act, where we ask people to declare their assets, and I have used it as a court requiring disclosure as to persons’ assets under the Mareva Injunction routes. I have used it in both places on umpteen occasions, so I know it exists well in the civil law.

The difficulty that we had here was taking the DPP into an active role that the DPP was not handing over to someone else. So the approach that we took was to take these officers to have them go to the court, to have the court be satisfied that somebody should declare their wealth in relation to that specific asset which flowed from that specific offence under the Proceeds of Crime Act; not anything prior. And because the order which flows from the Unexplained Wealth Order is a preliminary order which can then be made final. If the preliminary order is made, it is at that point you go to court and say look, these are my assets, here is how I bought them, they are mine. After that happens, if the court is dissatisfied with the explanation that you have given as to some or all of what you have said, the court

can then go on to make an order that the difference between what is your wealth and what you have demonstrated to be your wealth, that difference is to be paid to the Seized Asset Fund. And of course, that then flows into how you can enforce that.

**6.30 p.m.**

So we were hard-pressed to include the DPP as a filter in that exercise there because of the conflation of the role of the DPP in this function because the DPP would not be passing the matter off. The DPP would, in effect, be acting in the matter. So the DPP would be acting in contravention of the Constitution which requires the Attorney General to act.

**Mrs. Persad-Bissessar SC:** AG, one of the things that concerns us here—and I did share with some of your colleagues, a letter from the Law Association—

**Mr. Al-Rawi:** I have read it, 20 March, 2019.

**Mrs. Persad-Bissessar SC:** Yes. But this seems at odds with the kind of time frames you had told this Parliament, you know, in getting a response. You said it took them 10 months—

**Mr. Al-Rawi:** It took them about 10 to 11 months.

**Mrs. Persad-Bissessar SC:** And then you took matters on board. But this particular section, in fact, is the one that seems to have caused the most worry, the Unexplained Wealth Orders, and the process in there. Well, you said you have read it, but—

**Mr. Al-Rawi:** I have read it, yeah.

**Mrs. Persad-Bissessar SC:**—I would like to raise this. And this is where we have some concerns too, under this one, with respect to the violations of the Constitution that we see. So, for example, in this 58(1), you get a Preliminary Unexplained Wealth Order where you are required to file a declaration and answer questions

and so on. And they expressed concern that the Form 1 which will be pursuant to—when the order is granted you have to file this Form 1 from the statute and the Law Association expressed the concern that this is a violation of privacy rights, because you are, in effect, being forced just on suspicion—somebody's suspicion—that you will have to disclose your information, that of your spouse, that of your children. So it seems to be a violation of privacy rights that you are being forced to do it, because if you do not do it, there is a sanction for failure; a person who makes a wrong statement, and so on. If you do not do this, of course, the order is there against you, and so on. So the Law Association has raised some concerns about this. I am asking that we look at, again, this thing about suspicion. So where we have reasonable affidavit stating the identity of the respondent—I am looking at 58(2) now.

“(b) the grounds by which the applicant reasonably suspects...”

And it should really be “believes”. Sorry. I am looking at my paper which is item 33.

Delete the words, “the grounds by which the applicant reasonably suspects” and replace with the words, “the grounds upon which the reasonable belief of the Applicant.”

So we are dealing with “reasonable belief” rather than mere suspicion. And this would be in (2)(b). I am suggesting an amendment be made. And then clause 58(2)(b) still, to:

Insert after the words, “lawfully obtained wealth”, the words to be inserted, “is based”.

Those two proposals for 58(2)(b).

**Mr. Al-Rawi:** Madam Chair?

**Madam Chairman:** Yes, Attorney General.

**Mr. Al-Rawi:** Okay. So, Madam Chair, the reason why we went—so 58 says where the designated people reasonably suspects, they can approach the court. 58(2) provides that they must positively state the grounds by which they reasonably suspect. So we are not just saying mere suspicion. Then we get to 61, and 61 is where the court, having received that application, says, if it is minded, to make a preliminary order—61 says:

“Where the High Court is satisfied that there are reasonable grounds to suspect...”

So let us stick a pin there. Let us jump immediately to section 32 of the Proceeds of Crime Act:

“A police officer may, for the purposes of an investigation, in or outside Trinidad and Tobago, into

(a) a specified offence;”

Same as us—go to a judge, ask for an order, and in that order, if a:

“...Judge is satisfied that the conditions in...(6) are fulfilled he may make an order that...”

—a person being a relative or an associate of a person, and that is your children, your family, anybody—cohabitant—make a statutory declaration—

**Mrs. Persad-Bissessar SC:** Yes, but you see those are criminal—

**Mr. Al-Rawi:** Hold on, hold on. I am going to come to that. Make a statutory declaration. Breach of a statutory declaration is punishable by imprisonment and fine:

“(a) identifying”—items—“of property...”

—whether in or out.

“(b) identifying each property sent out...”

(c) setting out the estimated value...

(d) stating...”—et cetera.

Look at (6), which are the conditions that the court must be satisfied with to make that person do a statutory declaration under penalty of law. (6) says this—

**Mrs. Persad-Bissessar SC:** May I ask, Sir, are these persons who have been charged?

**Mr. Al-Rawi:** No. This is—

**Mrs. Persad-Bissessar SC:** Is it on pure suspicion?

**Mr. Al-Rawi:** No. This is suspicion:

“Where a police officer may, for the purposes of an investigation...into—

(a) a specified offence;

apply to a judge for an order under subsection (2)...”

And then they go on to say that “a person”. So not an accused, “a person”, a suspect. And here are the conditions in (6):

“The conditions referred to in...(2) and (3) are—

(a) in the case of (2)...reasonable grounds for suspecting...

(b) in the case of subsection (3)...reasonable grounds for suspecting...

(c) that there are reasonable grounds for suspecting...

(d) ...there are reasonable grounds for believing that it is in the public interest...

(i)...benefit likely to accrue...”—et cetera,

“that the material should be produced or access to it should be given or that declaration be made.”

**Mrs. Persad-Bissessar SC:** Okay.

**Mr. Al-Rawi:** So currently, in the Proceeds of Crime Act, a suspect under an investigation by the police may simply approach a judge in an ex parte fashion and the judge will issue a warrant telling you, “Go and make a statutory declaration and

produce all the information, if I am satisfied that there are reasonable grounds for suspicion.” So this order here, this terminology in clause 61, is exactly equal to the Proceeds of Crime Act.

**Mrs. Persad-Bissessar SC:** I beg to disagree. I do not have it in front me, but if my memory serves me right, you are saying where there is investigation of a specified offence—

**Mr. Al-Rawi:** Yes.

**Mrs. Persad-Bissessar SC:** There is nothing of the sort under the Unexplained Wealth Order here. There is nothing about investigating a specified offence.

**Mr. Al-Rawi:** So if I go back to our amendment to clause 58, we have anchored that in “specified offence” only.

**Mrs. Persad-Bissessar SC:** Well, let me refresh my memory here.

**Mr. Imbert:** Read our amendments.

**Mrs. Persad-Bissessar SC:** Well, I read it but it is a lot of them—

**Mr. Al-Rawi:** No, no, let us go through.

**Mrs. Persad-Bissessar SC:**—to go through in one hour, two hours.

**Mr. Al-Rawi:** It is an important observation—

**Mrs. Persad-Bissessar SC:** It is a whole lot of amendments—

**Mr. Al-Rawi:** In our amendment to 58, we are saying that it is only for the specified offences under the Proceeds of Crime Act.

**Mrs. Persad-Bissessar SC:** Okay. Well, as I said, for another section, this has improved the thing tremendously by inserting “specified offences”. So we can move along on that point, AG. [*Crosstalk*]

**Mr. Al-Rawi:** So if I may, to the Member for Siparia, Leader of the Opposition, very importantly, what we have actually done in this provision is, we have narrowed the Proceeds of Crime Act on the Unexplained Wealth Order. Because,

remember—

**Mrs. Persad-Bissessar SC:** AG, I am convinced, having put in “specified offence” from the very start in the section, you have improved this law.

**Mr. Al-Rawi:** Okay.

**Mrs. Persad-Bissessar SC:** That was one of the things we were very concerned about. So we are quite happy with that.

**Madam Chairman:** Member for Siparia, do you mind if I take the Member for Oropouche West on an issue related to this and then you will do the other amendments under clause 58?

**Mrs. Persad-Bissessar SC:** No.

**Madam Chairman:** Member for Oropouche West?

**Mrs. Guyadeen-Gopeesingh:** Thank you. Hon. Attorney General, you just said that the court may grant an order that the respondent may pay moneys into a Seized Asset Fund. Is there any clause or amendment here to the effect that what will be done with those moneys? Is it a victim will be compensated or so?

**Mr. Al-Rawi:** Yeah, yeah. So clause 43, when we come to it, deals with if they were wrong in dealing with that and there is compensation, right? But how the Seized Asset Fund is managed is also the subject of the later provisions of this: what you can do with it; where it comes from. If it goes bankrupt, the Consolidated Fund is behind you. That Seized Asset Fund we put under the trustees and with them we rank the priority of their spending. They must pay it into the Consolidated Fund; they may enter into reciprocal arrangement with other asset recovery institutions around the world, which is the norm right now, et cetera.

**Madam Chairman:** Okay? Member for Siparia, I believe you have some other amendments to propose under clause 58.

**Mrs. Persad-Bissessar SC:** 58(2)(c), Madam, as itemized, number 35.

Delete the words “the grounds by which the applicant reasonably suspects...  
Madam, I have several here for clause 58, but given the amendment, the improvement made by the Government, through the AG, with “specified offence”, I will not pursue the others under clause 58 at this time.

**Madam Chairman:** All right. So just for guidance—

**Mrs. Persad-Bissessar SC:** I did not have that when I did my amendments.

**Mr. Al-Rawi:** Sure, we appreciate that.

**Mrs. Persad-Bissessar SC:** I just got it today.

**Mrs. Robinson-Regis:** What “you quarrelling for?”

**Mrs. Persad-Bissessar SC:** Because you quarrelling there.

**Mrs. Robinson-Regis:** We “not quarrelling.”

**Madam Chairman:** Member for Siparia and all members, you know, let us try and get this done. For me to be clear what I am putting, you have under 58, you have 32, 33, 34, 35, 36. I understand that you are withdrawing 35 and 36. Are you removing all?

**Mrs. Persad-Bissessar SC:** 34, 35 and 36.

**Madam Chairman:** Okay—are withdrawn.

**Mrs. Persad-Bissessar SC:** Will not be moved.

**Mr. Al-Rawi:** Yeah.

**Madam Chairman:** Okay? So 32 and 33 remain.

**Mrs. Robinson-Regis:** As amendments?

**Madam Chairman:** As proposed amendments.

**Mrs. Robinson-Regis:** Proposed amendments?

**Mrs. Persad-Bissessar SC:** No, no. I think the AG—

**Madam Chairman:** So you are taking out all?

**Mrs. Persad-Bissessar SC:** Yes, Ma'am.

**Madam Chairman:** All right. Thank you.

**Mrs. Robinson-Regis:** Thirty-two, 33, 34—

**Mrs. Persad-Bissessar SC:** Right down to item 36.

*Question put and agreed to.*

*Clause 58, as amended, ordered to stand part of the Bill.*

*Clause 59.*

*Question proposed:* That clause 59 stand part of the Bill.

**Mrs. Persad-Bissessar SC:** Ma'am, I seek your guidance. I have in my list of proposed amendment a new clause 59A. So I do not know if we will deal with it in the same way, or take it at the end?

**Madam Chairman:** No, we will deal with it in the same way because it is really a subclause. Yes?

**Mrs. Persad-Bissessar SC:** That is right. Thank you, Madam. I pointed out that these documents are to be filed in court—

**Mr. Al-Rawi:** I like it.

**Mrs. Persad-Bissessar SC:** You like it?

**Mr. Al-Rawi:** Yeah, but I am subject to the views of—I am now seeing it there, but—

**Mrs. Persad-Bissessar SC:** You are getting nicer as the day wears on. I will tell you why. I will give you a reason. You have to file the forms, okay? When you file the forms in court you are putting your assets, you are putting your wife's, you are putting your children. There are dangerous people in this country and all your assets are being declared. It is put in the court. It is not under seal, and, therefore, any mad man, to put it bluntly, may have access to that and thereby endanger—because remember, you are suspecting—*[Interruption]* Yes, under seal.

**Mr. Al-Rawi:** If I could—sorry to interrupt the submission. So it is open to

treatment in other jurisdictions by way of sealing. Right? And particularly because it is a preliminary.

**Mrs. Persad-Bissessar SC:** That is right.

**Mr. Al-Rawi:** And because it is preliminary, the safeguard would help.

**Mrs. Persad-Bissessar SC:** Safety for your families.

**Mr. Al-Rawi:** So, I mean, it is not something I have had a chance to speak with my colleagues, but I think there is merit. Now the truth is that it is actually a new clause. I thought it was a subclause, as the Speaker had said. But I personally think it is a step in the right direction.

**Mrs. Persad-Bissessar SC:** Yeah, yeah, yeah. Your colleagues do not want you to do it. That is what is happening. But you will endanger your family.

**Mr. Al-Rawi:** We could put it as a subclause (2) to 59, if it was agreeable, as opposed to a substantive clause.

**Mrs. Persad-Bissessar SC:** Madam, 59 says:

“A declaration under section 58(1) shall be in the form as set out...”

And then we can make that an (a) and a (b).

**Madam Chairman:** Or a (1) and a (2).

**Mrs. Persad-Bissessar SC:** A (1) and a (2). But I think what you all want is, maybe you feel you will get one of us in something. Somebody will get somewhere, and you want to be—

**Hon. Member:** And that is cool.

**Mrs. Persad-Bissessar SC:** And that is fine. That is what the law is and you do your jobs. We will do ours. And you may want to publicize it, because you feel it may bring political benefit, and so on. But whilst it remains as a preliminary something, I think it is putting undue danger on the lives of people and their families and, therefore, we should give people that protection until they are

actually found to have unlawful wealth, and so on.

**Mr. Young:** Just before we move on, I would just like to put my thoughts on the table. I agree with the preliminary stage because I could understand the merit in that.

**Mrs. Persad-Bissessar SC:** Sure.

**Mr. Young:** So if it is a preliminary stage and possibly ex parte, until the person has the opportunity to come to court to explain their wealth, where it has come from, but I think we must be careful that the final order is not sealed. So up to that point, the preliminary point, and until the person, the respondent, comes to court to explain their wealth, I could see the merit in that.

**Mr. Al-Rawi:** So if we put it a 59(2), if we took clause 59:

“A declaration under...58(1)”—which is the preliminary—“shall be in the form set out...”

If we made that a subclause (1) of 59, and if we took what the Leader of the Opposition has circulated there as a new clause and we put it as a 59(2), to say that it is under seal, well, then that will take care of it entirely.

**Mrs. Persad-Bissessar SC:** Of the prelim.

**Mr. Al-Rawi:** Yes.

**Mrs. Persad-Bissessar SC:** I could see no objection to that.

**Mr. Young:** Because it is the declaration, as the AG said, is the preliminary part.

**Mrs. Persad-Bissessar SC:** Yes.

**Mr. Young:** When they then get to the court; the court hearing.

**Mrs. Persad-Bissessar SC:** A 58(1) declaration, yes.

**Mr. Young:** You do not even need to do that, you know, AG. You could just add it. Do not make a (2). A declaration, and it shall be in the form set out, and shall remain sealed, and then you could say, “until so declared by the court in its

discretion”.

**Mrs. Persad-Bissessar SC:** Until the court otherwise rules.

**Mr. Al-Rawi:** Well, if we said it this way. So a document filed—

**Mrs. Persad-Bissessar SC:** You could go back to the court to unseal it. I mean, we tried to unseal the elder abuse documents. There are methods to unseal—

**Mr. Al-Rawi:** [*Laughter*] You could not resist, eh?

**Mrs. Persad-Bissessar SC:** I could not resist it.

**Mr. Al-Rawi:** So if we were to say:

All documents filed in the High Court under (1) shall be filed under seal. Then that would take care of making sure that in the preliminary stage that is the eyes of the judge and the people only and nobody else.

**Mrs. Persad-Bissessar SC:** I thank you accepting the amendment, AG.

**Madam Chairman:** Member for Arouca/Maloney.

**Mrs. Robinson-Regis:** Thank you very much. I just wanted to put on record that I am sure the Member for Siparia did not mean to say that this Government, or any Member of this Government, would want the documents not under seal for political reasons. I am certain she did not want to say that.

**Mrs. Persad-Bissessar SC:** I am very happy to hear that, Madam. I am very happy.

**Mrs. Robinson-Regis:** So I would not like that imputation left on the record.

**Mrs. Persad-Bissessar SC:** There was no imputation. It was an analogy.

**Mr. Charles:** It was no imputation. You are thin-skinned.

**Mr. Al-Rawi:** Madam Chair—

**Madam Chairman:** All right, Members. So let us get—

**Mrs. Persad-Bissessar SC:** Madam, I accept the explanation of the hon. Member that no one on that side would want to do that. I am very happy to hear that.

**Madam Chairman:** So let us get clear what the amendment is. [*Crosstalk*]

**Mr. Al-Rawi:** Madam Chair, if we could just get into clause 59, at the Leader of the Opposition's 37— [*Crosstalk*]

**Madam Chairman:** Hon. Members. [*Crosstalk*] Hon. Members—

**Mr. Al-Rawi:** At the Leader of the Opposition's 37, if we were to say, instead of new clause 59, if we were to put:

New subclause 59(2)—and we would say:

New subclause: All documents filed in the High Court under section 58(1)  
—because it is there that it happens—  
shall be filed under seal.

And then we would say, Madam Chair:

Renumber clause 59 as 59(1)”

—and then you would go:

Insert after 59(1) as renumbered, new subclause 59(2)—

And 59(2) would read:

All documents filed in the High Court under section 58(1) shall be filed  
under seal.

**Madam Chairman:** Okay. So just to ensure that we are agreed on what we are putting, is that the question is that clause 59 be amended as follows. To add a new subclause 59(2)—

**Mr. Al-Rawi:** No. You would start with:

“Renumber clause 59(1)”—

**Madam Chairman:** What I have been advised is that I do not need to say that for the question.

**Mr. Al-Rawi:** Understood.

**Madam Chairman:** It will follow as a clerical thing.

**Mr. Al-Rawi:** Much obliged. I apologize.

**Madam Chairman:** That is all right. So we add a subclause (2), which will read as follows:

“All documents filed in the High Court under section 58(1) shall be under seal.”

**Mr. Al-Rawi:** “shall be filed under seal.”

**Madam Chairman:** “shall be filed under seal.” Okay?

**Mr. Al-Rawi:** Yes.

*Question put and agreed to.*

*Clause 59, as amended, ordered to stand part of the Bill.*

*Clause 60 ordered to stand part of the Bill.*

*Clause 61.*

*Question proposed:* That clause 61 stand part of the Bill.

**Mrs. Persad-Bissessar SC:** Clause 61, Madam, I have something here. I asked for clarification—61(1). I find it as little unusual that the High Court is to be satisfied there are reasonable grounds to suspect—having the High Court to suspect. 61(1):

“Where the High Court is satisfied that there are reasonable grounds to suspect that...wealth...exceeds...”—and so on.

Is this right to have a High Court suspecting things? Or is it that where there are reasonable grounds to believe?

**Mr. Al-Rawi:** So 61(1) is the opportunity where the court deals with the grant of the preliminary Unexplained Wealth Order and fits within the language of the Proceeds of Crime Act, section 32, as qualified by section 32(6) of POCA where it is reasonable grounds, and the court does that by issuing a warrant to compel the same things. So we kept 61(1) because it is preliminary within the matrix of the

proceeds of crime, which does exactly the same thing.

**Madam Chairman:** Leader of the Opposition?

**Mrs. Persad-Bissessar SC:** I will take—Well, I do not want to do that. I will fact-check it, and let him go with it at the moment. [*Laughter*] I have learnt not to take every word coming from certain quarters to be true, with the greatest of respect.

**Mrs. Robinson-Regis:** Ay, ay.

**Mrs. Persad-Bissessar SC:** I am not saying it is the Attorney General.

**Mr. Al-Rawi:** I think we both have learnt that.

**Mrs. Persad-Bissessar SC:** Do not take the jacket.

**Hon. Member:** Certain quarters.

**Mrs. Persad-Bissessar SC:** I am not giving you the jacket. So, Ma'am, let the AG have his way.

**Madam Chairman:** So what you are really saying is, you do not want to abdicate your responsibility to check.

**Mrs. Persad-Bissessar SC:** Of course, Madam. Thank you for understanding.

**Madam Chairman:** So that is with respect to—I think you have another—

**Mrs. Persad-Bissessar SC:** And the second one, yes. In this one, which is 61(2):

“Where a Preliminary Unexplained Wealth Order has been made under this section, a notice of the making of the order shall be served on the respondent.”

There is no time frame, with due respect, Madam, and I am suggesting—

**Mr. Al-Rawi:** Agreed.

**Mrs. Persad-Bissessar SC:**—“within seven days” be inserted there.

**Mr. Al-Rawi:** I think it is prudent.

**Mr. Al-Rawi:** Because we would have gone ex parte.

**Mr. Al-Rawi:** Yes. And there should be a compulsion to do this thing with alacrity and seven days is the usual time.

**Mrs. Persad-Bissessar SC:** Excellent. We are making some headway, AG. We are making some headway.

**Madam Chairman:** The question is that clause 61 be amended as proposed by the Leader of the Opposition at item 38.

**Hon. Members:** 39. [*Crosstalk*]

**Madam Chairman:** I know we must be all—

**Mr. Al-Rawi:** Sorry for jumping the gun, Madam Chair.

**Madam Chairman:** We must be all very tired. Okay. So the question is that clause 61 be amended as proposed by the Leader of the Opposition at item 38.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and negatived.*

**Madam Chairman:** The question is that clause 61 be amended as proposed by the Leader of the Opposition at item 39.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and agreed to.*

*Question put and agreed to.*

*Clause 61, as amended, ordered to stand part of the Bill.*

*Clause 62.*

*Question proposed:* That clause 62 stand part of the Bill.

A. In subclause (1) delete the word “left” and replace with the word “set”;

B. In subclause (3) delete the words “Customs and Excise Officer” and replace with the words “the Comptroller of Customs”.

**Mr. Al-Rawi:** Madam Chair, in clause 62 we are correcting an error which the Leader of the Opposition has also at item 40 of her circulated amendment spotted as well, and we are proposing that the word “left” be deleted and replaced with the word “set”. That is in 62 (1). And then we are proposing in subclause (3) that we

raise the bar, as we had been doing before with others. So we would need to, in (3):

“Where an application is made under this section the respondent under subsection (1) shall provide the Chairman of the Board of Inland Revenue...”

Fine. What we need to do here is delete “Customs and Excise Officer” and instead insert. “the Comptroller of Customs and Excise”, and then:

“a police officer who made the application...”

Well, we are fine there, because that is the category that we have defined already which is Commissioner of Police with a delegatee no less than Assistant Superintendent.

**Madam Chairman:** Okay. And might I call on the Leader of the Opposition?

**Mrs. Persad-Bissessar SC:** Yes. The AG’s proposed amendments are in keeping with harmonizing wherever these words appear. We have no objection. And then we have both come up with the same amendment in 62(1). So we agree. Proceed.

**Madam Chairman:** Okay. So you have 40, 41, 42 and 43.

**Mr. Al-Rawi:** 41, Member for Siparia.

**Madam Chairman:** You agreed to 40—

**Mrs. Persad-Bissessar SC:** We agreed to 40, yes.

**Mr. Al-Rawi:** You had asked for:

“...or such longer period as the High Court may allow”.

We wanted to have it chained down to the 14 days, to not keep this thing in the dance. So your amendment at 41 had proposed that we allow for an expansion of the 14 days for the inter partes hearing.

**Mrs. Persad-Bissessar SC:** In the event something happens, you know, that you need more time. You also have the word “may”. “The High Court may order—I

think that should be “shall order” and not “may”. That is another amendment I have.

**Mr. Al-Rawi:** Well, we had used “may” there just because of the comity between the Legislature and the court, that we could not mandate them that they shall do something. It is up to them to do it.

**Mrs. Persad-Bissessar SC:** But this is where there is an Unexplained Wealth Order is there. And you are saying—

**Mr. Al-Rawi:** We could put “shall” and they will read it as “may”, you know. So it does not matter.

**Mrs. Persad-Bissessar SC:** Well, yes. But that is their discretion. How can you have an Unexplained Wealth Order on a person and you do not have an inter partes—have the ex parte and you do not give them a chance—

**Mr. Al-Rawi:** No, no, no. I agree with you. There is no way the order could be made in absentia. That is provided for. We went with the CPC’s language that “may”, “shall” and that that is the way you do it. Effectively the case law says that that “may” is “shall”. It is one of these “may” and “shall” debates in Bennion and wherever else this appears that people with Masters in legislative drafting seem to be masters of.

**Mr. Young:** Durity—the Privy Council decision on Durity.

**Mr. Al-Rawi:** I mean, they would read it as “may” anyway.

**7.00 p.m.**

**Mrs. Persad-Bissessar SC:** Okay, AG, again, we are fact-checking. 62(3), well these are the things we have agreed to change the words again for the Customs, the police and Comptroller. AG?

**Mr. Al-Rawi:** Yeah.

**Mrs. Persad-Bissessar SC:** And that is it for clause 62, Madam.

**Madam Chairman:** Okay.

**Mr. Al-Rawi:** So do you want, Madam Chair, if I may, through you, to ask for the insertion “or such longer period as the High Court may allow”? That is 62(1). That is your item 41.

**Mrs. Persad-Bissessar SC:** Yes, but I think you did not agree.

**Mr. Al-Rawi:** I wanted to keep them real tight. They cannot be messing with people’s property and not act instantly.

**Mrs. Persad-Bissessar SC:** If that is your intention, so be it. Just knowing how the courts operate, you know.

**Madam Chairman:** So let me ask. Is it being withdrawn or we agree to disagree? So that I put item 41. Okay, fine. So hon. Members, the question is that clause 62 be amended as proposed by the Leader of the Opposition at items 41 and 42?

**Mrs. Persad-Bissessar SC:** These are my amendments, Madam?

**Madam Chairman:** Yes, at 41 and 42.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and negatived.*

**Madam Chairman:** Hon. Members, the question is that clause 62 be amended as agreed at 62(1) to delete the words “left” and replace it with the word “set”.

*Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.*

**Madam Chairman:** And further that clause 62 be amended in terms of subclause (3) to delete the words “Customs and Excise Officer” and replace it with the words “Comptroller of Customs and Excise”.

*Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.*

*Question put and agreed to.*

*Clause 62, as amended, ordered to stand part of the Bill.*

*Clause 63.*

**Mrs. Persad-Bissessar SC:** I have a similar proposal from my good self, from us

on this side with “may” and “shall”.

**Madam Chairman:** Just let us call it.

**Mrs. Persad-Bissessar SC:** Sorry.

*Question proposed:* That clause 63 stand part of the Bill.

**Mrs. Persad-Bissessar SC:** Madam, I propose at item 44, similar to what was proposed to be deleted “shall”. I proposed this. I know the AG is not of that view. So I propose it, Madam, for consideration.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Madam Chair, the Minister of Finance, the Member for Arouca/Maloney and I and the Leader of the Opposition all agree with “shall” but the drafters are insisting to us that we have to use the word “may”.

**Mrs. Persad-Bissessar SC:** Okay, we will fact-check it.

**Mr. Al-Rawi:** I mean, I personally have no objection to putting “shall” but it would be—

**Mrs. Persad-Bissessar SC:** Okay. Shall we move along then?

**Mr. Al-Rawi:** Madam Chair, I could put “shall”. I mean, let us put “shall” and let them read it as “may” as opposed to the other way round. I have no objection.

**Mrs. Persad-Bissessar SC:** But then we will have to go back.

**Mr. Al-Rawi:** Yes. So, Madam Chair, could we revisit 62, item 42 and put “may” as “shall”? After you do that, item 42 of the Leader of the Opposition.

**Madam Chairman:** All right.

**Mrs. Persad-Bissessar SC:** AG, you have two and a half lawyers here, [Laughter] between the three of you.

**Madam Chairman:** All right. So clause 63. So the question is that clause 63 be amended as proposed by the Leader of the Opposition.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and agreed to.*

*Question put and agreed to.*

*Clause 63, as amended, ordered to stand part of the Bill.*

*Clause 62 recommitted.*

*Question again proposed: That clause 62 stand part of the Bill.*

**Madam Chairman:** Clause 62 is revisited and we are just revisiting it for the purposes of item 42.

*Question, on amendment, [Mrs. K. Persad-Bissessar SC] put and agreed to.*

*Question put and agreed to.*

*Clause 62, as amended, again ordered to stand part of the Bill.*

*Clause 64.*

*Question proposed: That clause 64 stand part of the Bill.*

**Mrs. Persad-Bissessar SC:** Item 45, clause 64(1), hon. Attorney General, this is just a simple grammatical something, if you could look at it quickly.

Insert after the words “the applicant may”, the words “within 90 days of the making of an order under 61.”

Again, putting in some time limits, 64(1).

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Well, Madam Chair, we both have amendments to clause 65.

**Mrs. Persad-Bissessar SC:** No, we are at 64, Sir.

**Madam Chairman:** We are at 64.

**Mr. Al-Rawi:** I apologize, I was looking at the wrong one.

**Madam Chairman:** We are on item 45 of the list as circulated by the Leader of the Opposition. Attorney General?

**Mr. Al-Rawi:** I am just looking at it, Madam Chair, because it changes the concept. I did not quite see it as grammatical, so—

**Mrs. Persad-Bissessar SC:** I am sorry. It was the other clauses I wanted—

**Mr. Al-Rawi:** I apologize then.

**Mrs. Persad-Bissessar SC:** I apologize too.

**Mr. Al-Rawi:** So insert after the words “the applicant may”, “within 90 days of the making of an order under 61”.

**Mrs. Persad-Bissessar SC:** 61 is a Preliminary Unexplained Wealth Order.

**Mr. Al-Rawi:** So I see. So putting a time limit for them to do that for three months.

**Mrs. Persad-Bissessar SC:** Yeah. Because if you do not do that, you could have this prelim thing where—going on forever.

**Mr. Al-Rawi:** So I understand the rationale for having it fixed. The problem is that we later in the Bill, go down to say that if you have made one application already, you cannot come back again unless you have fresh evidence and that is the problem. So we are keeping it sequestered, there is no publication because we have sealed it. The Unexplained Wealth Order is just saying, look, somebody has to come and give that explanation, it has not yet been given. Insofar as the Bill proposes that it would be an abuse of process to do this a second time—as we get later down in the Bill, we will see that—I would have a problem with putting the 90 days because then you will be effectively—

**Mrs. Persad-Bissessar SC:** Truncating it at that point.

**Mr. Al-Rawi:** Yeah.

**Mrs. Persad-Bissessar SC:** Well, is that not—whether it be 90 days or more, is that not something that you may want to do? When you brought your other pieces of legislation for compliance for FATF and I think you have to go back and go back to get another order against—is it Iran or one of those other places or Korea?

**Mr. Al-Rawi:** Well we did that already, so the Iran orders, et cetera, are perfected in law because we came back and we did that.

**Mrs. Persad-Bissessar SC:** So you had a cut-off frame?

**Mr. Al-Rawi:** Yeah. But you see, because this is an investigative tool, if you take a complex fraud matter and there is an Unexplained Wealth Order and we put a 90-day period and we are dealing with a conglomerate, there is no way 90 days will happen, so one size will not fit all in those circumstances. I think that the mischief is met by the fact that the person could apply to discharge the order in circumstances later down in the Bill.

So, in the particular instance of complex fraud, 90 days may not be enough. What happens if we have an absconding person, we cannot serve, we cannot find. I mean there are some people we are trying to find all now to serve legal proceedings for a whole couple of years and we cannot find them in different circumstances. So I think that that is the mischief for the 90 days. I understand the rationale to make sure that look, this thing ought to—

**Mrs. Persad-Bissessar SC:** And pending over on somebody's head for the rest of their life? I mean for the rest of their life. You know, it is like some police investigations which have been ongoing for the past 12 and 15 years and no closure. AG, through Madam Chair, may I also ask you to look at what I am proposing under my item 46?

**Mr. Al-Rawi:** That is exactly what I am looking at now.

**Mrs. Persad-Bissessar SC:** Okay, fine.

**Mr. Al-Rawi:** Madam Chair. I understand the mischief that is being pointed out. This is somebody having a Preliminary Unexplained Wealth Order in perpetuity hanging over their head and putting upon the State an obligation to act—to decide if it is acting or not. The mischief that the Minister of Finance is pointing out, and as I did already in the complex fraud matters, is to say these things may take time. The limitation on coming back, again, is actually in a different part. I was

mistaken when I referred to that. There is no limitation here in the Preliminary Unexplained Wealth Order.

So the item 46, as proposed by the Leader of the Opposition, is actually quite an interesting one where no application is made within 90 days from the making of an order and we could say “or such period as the court may extend”.

**Mrs. Persad-Bissessar SC:** Sure, sure. Sure you can compromise it in that manner. Somebody will know and print it somewhere. [*Crosstalk*] No no, no, I am serious eh know. No, not the form. There is the fact there is a Preliminary Unexplained Wealth—what you call it—Order.

[*Chairman: Mr. Forde*]

**Mr. Young:** Once that comes to your attention, you could go to have it discharged.

**Mrs. Persad-Bissessar SC:** But you will not have sight of any documents. You will not have sight of the documents.

**Mr. Al-Rawi:** An applicant may apply to the court for an Unexplained Wealth Order, right, so the preliminary is granted and then you are allowing, after the preliminary, you are saying in 64(1), look, you have the preliminary, you could now take the next step to apply to the High Court for an Unexplained Wealth Order.

**Mr. Young:** You could take it. Now remember in this case, the applicant is as defined by 58(1) so it is the Commissioner of Police up to rank, the inspector, “blah, blah, blah”.

**Mrs. Persad-Bissessar SC:** Yeah.

**Mr. Young:** Superintendent. So what we are saying here is in anyone of them may apply to the High Court but if they do not do it, what is the—why “yuh” trying to—

**Mrs. Persad-Bissessar SC:** Well you see, you have the preliminary order already made.

**Mr. Al-Rawi:** It is undischarged.

**Mr. Young:** Right, but if you put a time on it and they have an investigation that is taking place and the preliminary order is part of that.

**Mr. Al-Rawi:** So let us look at it this way. When we deal with a warrant, for instance, granted under POCA or we deal with an intercept warrant granted under the Interception of Communications Act—

**Mrs. Persad-Bissessar SC:** Come like what you did with Iran and Korea.

**Mr. Al-Rawi:**—there is a time frame there. So insofar as this is a fair intrusion.

**Mr. Young:** No, but look at 62(1):

“Where the High Court makes a Preliminary Unexplained Wealth Order under...61, the respondent may, within twenty-eight days of notice of the order under...apply to the High Court for...to be...”

So what you all are saying is you get an order, you never serve it, you never gave notice so it is just hanging, but what is the benefit of that? The only way the order bites is when you have served it on somebody for them now to provide the information, the declaration.

**Mr. Imbert:** I will go further, AG. If you look at 61, the preliminary order requires the respondent to file a declaration and appear before the High Court. So you must know, you must know. It cannot be that you do not know.

**Mr. Young:** You would not reach that stage of 64 unless you have been served. You have notice. Correct.

**Mr. Imbert:** And you are aware of it? From 62.

**Mr. Al-Rawi:** Mr. Chair, there is an interesting point here. Under the other limb, the Civil Asset Forfeiture Order on the preliminary side, we put a time frame for it

to be alive. We said if after 90 days this thing is not alive, it is out unless you applied to the court to extend the time or unless it is discharged. We do not have one of a similar purport here. If we were to hybridize what Minister Young is saying and what the Leader of the Opposition is saying, we could say where a preliminary unexplained—sorry, we could say a Preliminary Unexplained Wealth Order granted—

**Mr. Young:** AG.

**Mr. Al-Rawi:** Just here me out. A Preliminary Unexplained Wealth Order granted under section 61 expires 90 days after the date on which—[*Crosstalk*] Hold on.

**Mr. Young:** But AG, it is superfluous you know. If you look at 61(2).

**Mr. Al-Rawi:** Let me at least finish the point. So what I am saying is where that was made, unless an application for an Unexplained Wealth Order is made under section 64 to extend it or it is revoked under 62, so I follow from the 62, the 28 days.

**Mr. Young:** Look at 61(2), so 61(2), we have just agreed where a Preliminary Unexplained Wealth Order has made under this section, a notice of the making of the order shall be served on the respondent.

**Mr. Al-Rawi:** Within seven days. Correct?

**Mr. Young:** Within seven days, so you have an obligation. Once you get that order, you have to serve it in seven days.

**Mr. Al-Rawi:** Right, so you serve it.

**Mr. Young:** Correct.

**Mr. Al-Rawi:** Then next step is you can—if we take 62.

**Mr. Young:** Correct.

**Mr. Al-Rawi:** Right. 62 says within 28 days, you could either apply to set aside

or discharge it.

**Mr. Young:** Correct.

**Mr. Al-Rawi:** Right, so that takes care of the discharge aspect. The person whom the order is made against says, look, that should be discharged and in fact, you should take no steps because I am applying to discharge it. I am not complying with anything, I am “gonna” knock it out.

**Mr. Young:** Correct, so it is live.

**Mr. Al-Rawi:** So that is a fair process. Right. The next question inside of here is should there be a positive on the State to say, look, this thing has been granted and as I am coming up to the 90 days, I am going to apply to extend it because that is the point that is being raised here.

**Mr. Young:** No, but there is already live—and we know from our practice, you go ex parte, the next thing you get is an inter partes hearing. Once both parties are engaged now inter partes, is going to be disposed of one way or the other because the respondent is now live in the action before the court. So to now say the applicant shall apply—where we looking at that? 64(1). Right?

**Mr. Al-Rawi:** Yeah.

**Mr. Young:** But you shall apply for an unexplained wealth—you do not even get there because it is now live before the court. When you have done the preliminary, you have served it, it is live, it is inter partes. You are either agreeing to it or you are setting it aside and discharging. How do we get to the point that we are now forcing you to take the next hurdle without having gone through the completion of that inter partes hearing?

**Mrs. Persad-Bissessar SC:** But you know it would be palatably unfair in my respectful view, AG, that you have a preliminary order made, the State goes and does all this work and gets this order and then that is the end of that.

**Mr. Imbert:** No, but that is not in the matter. I do not see it so at all. What I am seeing is that there is a process. A preliminary order has been made. You are now being served, you now being made aware of it, you are now—

**Mrs. Persad-Bissessar SC:** And you do nothing.

**Mr. Imbert:** Hold on. You have to do something within 28 days. If you decide not to do anything, you have this order against you and you choose not to apply to discharge it, why you want to put an obligation on the State to go to the next stage? The matter is before a judge.

**Mrs. Persad-Bissessar SC:** But why would the State have gone to get a prelim and not go to the next step to say, yes, we are right?

**Mr. Young:** Because you may have provided sufficient evidence for it be revoked and for it to be discharged.

**Mr. Al-Rawi:** No, no. I think that the—and we are talking now just in the realm of the intellectual.

**Mrs. Persad-Bissessar SC:** We need to get consistent with this.

**Mr. Al-Rawi:** Okay, the preliminary order is made, it is served within seven days, that person now has the opportunity to apply to discharge that position. It goes inter partes at that point. What happens in the circumstance where that person is not able, for whatever reason, either by wilful choice, “cyah find ah lawyer”, et cetera—

**Mrs. Persad-Bissessar SC:** Or absconded.

**Mr. Al-Rawi:**—to have this thing dealt with?

**Mr. Young:** But then you are putting an obligation on the applicant, i.e. the police, the Customs, et cetera, you are changing it that they must now apply to the High Court within a specific time for an Unexplained Wealth Order?

**Mr. Al-Rawi:** No, what we are saying is they must apply for an extension of time.

So they must go to the court—

**Mr. Young:** But that is not the proposal.

**Mr. Al-Rawi:** No, that is why I did not take the proposal as coming from Siparia. I was looking at the mischief and thinking of a hybrid.

**Mr. Young:** No, but okay, let us apply now the civil procedure rules that will be applicable for this.

**Mrs. Persad-Bissessar SC:** So let us please agree to disagree on this please and you will have the Senate.

**Mr. Young:** No, no, no, hold on.

**Mrs. Persad-Bissessar SC:** But I cannot have both of you arguing across each other.

**Mr. Al-Rawi:** We are not arguing, we are just trying to find the solution to the mischief.

**Mr. Young:** But we are not arguing, you have raised an issue and we are dealing with it. The Civil Proceedings Rules for anybody who practises in a real court would know that no court is going to leave it just open. The court is going to set a return date.

**Mrs. Persad-Bissessar SC:** Yes.

**Mr. Young:** Okay, so why do you want to force them to then take it to the next stage?

**Mrs. Persad-Bissessar SC:** And then what happens?

**Mr. Young:** Well, if it is fulfilled in the court, it comes to an end. If not, you cannot go and tell the applicant that you must within a specific period of time, suppose now they are having discussions.

**Mr. Al-Rawi:** No, not must. Listen to where I am. Is there merit in considering whether the applicant should take a positive step to say look, I have this order, I am

coming up to 90 days, I intend to act upon it, I am acting with despatch, I would like to extend the time?

**Mr. Imbert:** Yes, but suppose the court has not yet settled the inter partes matter?

**Mr. Al-Rawi:** No, if the inter partes happens, there is no issue there because it is going on inter partes. So if someone who is the subject of the action, the interim order, receives this order, does not take a step, and now the State has this position, the issue is whether the State should take a step to tell the court, look, I want to continue with this thing and I am asking for an extension of time because I am doing X and Y and Z. That is the question.

**Mr. Chairman:** Member for Laventille West.

**Mr. Hinds:** Mr. Chairman, I gather from conversation with a couple of our colleagues and I would like to suggest since, you know, the evening is wearing on, if we can have a short break, refresh ourselves and we can continue our deliberations on this particular point. Can I ask kindly that you consider five minutes or 10 minutes?

**Mr. Chairman:** Not at this time, Member for Laventille West. Not at this time. Yes, AG.

**Mr. Hinds:** Thank you.

**Mr. Al-Rawi:** Mr. Chair, what I would like to ask, if it is okay, I am going to ask the drafters to come up with a suitable wording if we could come back to this, this particular item, because I think that there is merit in asking the State to justify why it should be extended if no step has been taken within 90 days. I think there is merit in that approach.

**Mrs. Persad-Bissessar SC:** I appreciate your attempt at a compromise. It seems your colleagues are very intense.

**Mr. Al-Rawi:** No, no, Minister Young and I are on the same page.

**Mr. Young:** No, I agree with what AG has put forward, that you take a step within the 90 days.

**Mrs. Persad-Bissessar SC:** Okay, okay. No, I thought you all were at cross quarters. Fine, okay.

**Mr. Al-Rawi:** No, no, we flesh out our ideas in sometimes a robust way.

**Mrs. Persad-Bissessar SC:** In public, in public, yes.

**Mr. Al-Rawi:** No, no, this is not public, this is law.

**Mrs. Persad-Bissessar SC:** This is the public Parliament.

**Mr. Al-Rawi:** Yeah, but this is law we are treating with in a committee of the whole which is why we like the committee of the whole.

**Mrs. Persad-Bissessar SC:** Can we please move on? Thank you, Sir.

**Mr. Al-Rawi:** Okay. So can we, Mr. Chair, come back to that?

**Mr. Chairman:** Okay, so we will put a pin there and then we will come back to it.

**Mrs. Persad-Bissessar SC:** Come to clause—whichever was it, 64? Yeah, yeah.

**Mr. Chairman:** Clause 64 will be revisited.

*Clause 64 deferred.*

**Mr. Chairman:** Siparia. Go ahead. I give way.

**Mrs. Persad-Bissessar SC:** Thank you. These items, my items 47, 48—once an MP, always an MP, Speaker—and so on, these are some purely grammatical and punctuation so maybe your drafters can have a look at those in the round—I like your word in the round—and save us some time. So from my 47 going right down until the last one I think.

**Mr. Al-Rawi:** We could cut through that if we turn to 65 because most of them are in clause 65 and we also have an amendment to 65 because we are nearly there.

**Mr. Chairman:** And where we are going now, Mr. AG? 65.

**Mr. Al-Rawi:** Yes, Sir, should it please you.

*Clause 65.*

*Question proposed:* That clause 65 stand part of the Bill.

- A. In subclause 1(a)—
  - (i) delete the word “or”;
  - (ii) insert after the word “submitted” the words “and evidence provided”;
- B. Renumber subclause (1)(b) as subclause (1)(c);
- C. Insert after subclause (1)(a) new subclause (1)(b) as follows:
 

“(b) the total wealth of the defendant is over five hundred thousand dollars; or”;
- D. In subclause (5) insert after the word “information” the words “and any evidence provided subsequently”.
- E. In subclauses (7) delete the words “Customs and Excise Officer” and replace with the words “Comptroller of Customs”;
- F. In subclause (9) delete the words “Customs and Excise Officer” and replace with the words “the Comptroller of Customs”.

**Mr. Al-Rawi:** Mr. Chair, the Government proposes an amendment to clause 65 and we propose specifically that—clause 65 deals with the grant of the Unexplained Wealth Order and what we have spotted in 65, firstly requires an amendment to 65(1). We are proposing that clause 65(1) be expanded to add in certain words. So 65(1), we are proposing to introduce the words “and evidence provided”. 65(1) would therefore read:

“Where the High Court has made a Preliminary Unexplained Wealth Order, which had not been revoked, in relation to a respondent and on the basis of the affidavit and document submitted...”—and the evidence provided.

It would have been dangerous to just go on the written documentation. They may

have provided evidence other than by way of the affidavit evidence and therefore we wanted to add in “and evidence provided”.

We then went further to introduce, again, the concept of a threshold and the court, on the basis of affidavit and documents submitted and on evidence provided, must be satisfied that firstly, on (a), balance of probabilities that any part of the wealth of the respondent was not lawfully obtained or held; (b), we proposed the insertion of “the total wealth of the defendant” is over \$500,000 or we then continue with (c), “particular property is held by and subject to the effective control of the respondent”.

So we then go further, Mr. Chair, to amend subclause (5) when considering the issues under subsection (1), the High Court may have regard to information not included in the Preliminary Unexplained Wealth Order and any evidence provided subsequently because the defendant may very well be coming to court in the application to discharge and provide evidence that ought to be considered. In subclause (7), we are proposing that we bump up the Customs and Excise Officer straight up to the Comptroller of Customs. The reference to the police officer, because it is tied to 58(1), is the Commissioner of Police in the manner we have circumscribed that. Similarly in subsection (9), again, we amend Customs and Excise Officer to the Comptroller of Customs and Excise.

Those would be the amendments we propose and the reasons why. So in a nutshell, it is to put in a threshold to allow for the whole of the evidence to be considered and not just documentary evidence under affidavit because the court would have a duty to consider all the evidence.

**Mrs. Persad-Bissessar SC:** That is a tremendous improvement to what has been there, hon. AG. I do not have any objections to that. I do not know if any of my colleagues—but that definitely improves the situation.

**Mr. Al-Rawi:** Thank you. Mr. Chair, If I could just say that in the list as it is circulated in capital C in the Government's circulated list where we come to the last line of it, you will see (b), "the total wealth of the defendant", that should be "respondent".

**Mr. Chairman:** MP for Siparia.

**Mrs. Persad-Bissessar SC:** Well, you could probably pick it up in the Senate.

**Mr. Chairman:** AG, any additions?

**Mr. Al-Rawi:** No, Sir. Those were the additions from the Government's end but the Leader of the Opposition has circulated a few matters which we could probably decide on if we go through them. I think that the first one appears at item 47. So 65, I see:

"Where the High Court has made a Preliminary..."

I am looking for "Delete the word 'that'."

**7.30 p.m.**

"Where the High Court has made a Preliminary"—investigation—"which had not been revoked, in relation to the respondent on the basis of the affidavit and document submitted..."

I am sorry, I am not finding the word "that". Perhaps the Leader of the Opposition—

**Mr. Chairman:** It is right in line 4, line 5.

**Mr. Al-Rawi:** "is satisfied that—". I see.

*[Mr. Al-Rawi confers with Mrs. Persad-Bissessar SC]*

You would not? Okay, okay. Mr. Chair, we will look at these, insofar as there may be tidying up aspects, and we can take them as we get to the Senate but we give the undertaking to look at those.

**Mr. Lee:** AG?

**Mr. Al-Rawi:** Yes, Sir?

**Mr. Lee:** You could also look at this clause, our amendment clause 67(2), what we had proposed, the last line 63.

**Mr. Al-Rawi:** I do not think we came to 67 yet. We are on clause 65. Okay? So, Mr. Chair, are you going to put the question as to our amendments?

**Mr. Chairman:** As amended.

**Mr. Al-Rawi:** Yeah.

**Mrs. Persad-Bissessar SC:** From which clause?

**Mr. Al-Rawi:** Clause 65.

**Mrs. Persad-Bissessar SC:** Okay.

**Mr. Al-Rawi:** So we are undertaking to look at the list of 65 amendments that you have proposed.

**Mrs. Persad-Bissessar SC:** Yes, from my list, yes.

**Mr. Al-Rawi:** Yes. So it would be for the Chair to put the question that 65 be amended as per the Government's amendments.

**Mrs. Persad-Bissessar SC:** That is for 65.

**Mr. Chairman:** And with the undertaking that you would look into the Opposition's request?

**Mr. Al-Rawi:** Yes. In the Senate we are going to look at that.

**Mrs. Persad-Bissessar SC:** Clause 67, would you kindly? We need a little more time for the drafters to look at it.

**Mr. Al-Rawi:** I was waiting for him to just come to 67, yes. And we have a draft of the language for the other clause we stood down.

**Mrs. Persad-Bissessar SC:** Okay.

**Mr. Chairman:** AG?

**Mr. Al-Rawi:** Yes, Sir.

**Mr. Chairman:** Siparia, okay with that?

**Mrs. Persad-Bissessar SC:** Sure.

*Question, on amendment [Mr. F. Al-Rawi] put and agreed to.*

*Question put and agreed to.*

*Clause 65, as amended, ordered to stand part of the Bill.*

*Clause 66 ordered to stand part of the Bill.*

*Clause 67.*

*Question proposed:* That clause 67 stand part of the Bill.

**Mrs. Persad-Bissessar SC:** We are proposing an amendment here, but I would be happy if we receive—*[Interruption]*

**Mr. Chairman:** AG, excuse, Siparia is on the floor.

**Mrs. Persad-Bissessar SC:** I would be happy if we receive an undertaking that the AG and this team would look at it before they go into the Senate.

**Mr. Al-Rawi:** Yes.

**Mrs. Persad-Bissessar SC:** We would need a little time to consider it, please. So I will not move that amendment at this point.

*Question put and agreed to.*

*Clause 67 ordered to stand part of the Bill.*

*Clauses 68 to 76 ordered to stand part of the Bill.*

*[Chairman: Mrs. Annisette-George]*

**Mr. Al-Rawi:** Madam Chair, there was one clause that we stood down, which we do not have a position yet to harmonize. We got what was raised by the Leader of the Opposition, but we are not in a position to treat with that recommendation right now for a number of reasons. That was the clause 64 and the 90-day extension. Because, as you have seen, we have to decide some issues. So I do not know if the Leader of the Opposition will just—we are going to look at it certainly, but I do not

have a position on it yet.

**Madam Chairman:** So, is it AG, you want me to put the question to 64?

**Mr. Al-Rawi:** Yes, please.

*Clause 64 reintroduced.*

**Dr. Tewarie:** That is the clause that the matter is not resolved yet?

*[Assent indicated]*

So what are we putting?

**Madam Chairman:** We are putting the clause as is.

**Dr. Tewarie:** As is?

**Mrs. Persad-Bissessar SC:** The AG has given an undertaking they will consider it and deal with it in the Senate.

**Dr. Tewarie:** At the Senate level?

**Mrs. Persad-Bissessar SC:** At the Senate level, yes. Is that my understanding?

*[Mr. Al-Rawi confers with the Prime Minister]*

*Question put and agreed to.*

*Clause 64 ordered to stand part of the Bill.*

*Schedules 1 to 3 ordered to stand part of the Bill.*

*Preamble.*

*Question proposed:* That a Preamble be inserted into the Bill.

**Madam Chairman:** This is an amendment proposed by the Leader of the Opposition. Leader of the Opposition.

**Mrs. Persad-Bissessar SC:** Madam Chair, I am prepared to forego moving that amendment, but we leave it up to our Members in the Senate to deal with it. Because I am sure it will make, quite some, on the floor from them, discussion.

**Madam Chairman:** So it is withdrawn?

**Mrs. Persad-Bissessar SC:** Yes.

**Madam Chairman:** Yes?

**Mrs. Persad-Bissessar SC:** Yes.

**Madam Chairman:** Okay.

*Amendment withdrawn.*

*Question put and agreed to:* That the Bill, as amended, be reported to the House.

*House resumed.*

*Bill reported, with amendment.*

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

**Mrs. Robinson-Regis:** Division.

*The House voted:*                      Ayes 34

AYES

Al-Rawi, Hon. F.

Rowley, Hon. Dr. K.

Robinson-Regis, Hon. C.

Imbert, Hon. C.

Young, Hon. S.

Deyalsingh, Hon. T.

Hinds, Hon. F.

Mitchell, Hon. R.

Garcia, Hon. A.

Crichlow-Cockburn, Hon. C.

Forde, E.

Dillon, Hon. Maj. Gen. E.

Webster-Roy, Hon. A.

Gadsby-Dolly, Hon. Dr. N.

Mc Donald, Hon. M.

Francis, Hon. Dr. L.

Jennings-Smith, Mrs. G.

Antoine, Brig. Gen. A.

Olivierre, Ms. N.

Leonce, A.

Cuffie, Hon. M.

**Mr. Lee:** Yes. [*Desk thumping*]

**Mrs. Persad-Bissessar SC:** I say aye given the compromises. It is a much improved Bill. Thank you AG. [*Desk thumping*]

**Mr. Charles:** Yes. [*Desk thumping*]

Rambachan, Dr. S.

Karim, F.

Tewarie, Dr. B.

Newallo-Hosein, Mrs. C.

Gayadeen-Gopeesingh, Mrs. V.

**Mr. Indarsingh:** Yes. [*Desk thumping*]

Padarath, B.

Paray, R.

Ramdial, Ms. R.

**Mr. Singh:** Yes. [*Desk thumping*]

*Question agreed to.*

*Bill accordingly read the third time and passed. [Desk thumping]*

### ADJOURNMENT

**The Minister of Planning and Development (Hon. Camille Robinson-Regis):**

Thank you very kindly, Madam Speaker. Madam Speaker, I beg to move that the

Adjournment

2019.04.08

House be now adjourned to a date to be fixed.

*Question put and agreed to.*

*House adjourned accordingly.*

*Adjourned at 7.45 p.m.*