

*Leave of Absence**Tuesday, May 29, 2012***SENATE***Tuesday, May 29, 2012*

The Senate met at 1.30 p.m.

**PRAYERS**[Madam VICE-PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Madam Vice-President:** Hon. Senators, I wish to inform you that the President of the Senate is out of the country. And I have granted leave of absence to Sen. The Hon. Fazal Karim and Sen. Nicole Dyer-Griffith who are both out of the country.

**SENATORS' APPOINTMENT**

**Madam Vice-President:** Hon. Senators I have received the following correspondence from His Excellency, the President Prof. George Maxwell Richards, T.C., C.M.T., Ph.D.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards  
President

TO: MR. JAMAL MOHAMMED

WHEREAS the President of the Senate, Timothy Hamel-Smith is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JAMAL MOHAMMED, to be temporarily a member of the Senate, with effect from 29<sup>th</sup> May, 2012 and continuing during the absence from Trinidad and Tobago of the said Senator Timothy Hamel-Smith.

*Senators' Appointment*

*Tuesday, May 29, 2012*

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 29<sup>th</sup> day of May, 2012."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards  
President

TO: MR. DON SYLVESTER

WHEREAS Senator Nicole Dyer-Griffith is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DON SYLVESTER, to be temporarily a member of the Senate with effect from 29<sup>th</sup> May, 2012 and continuing during the absence from Trinidad and Tobago of the said Senator Nicole Dyer-Griffith.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 29<sup>th</sup> day of May, 2012."

Hon. Senators, we also have one temporary Senator to be sworn in, but we are awaiting the instrument, so we will do that subsequently in the sitting.

#### OATH OF ALLEGIANCE

*Sen. Jamal Mohammed and Sen. Don Sylvester took and subscribed the Oath of Allegiance as required by law.*

#### INDIAN ARRIVAL DAY GREETINGS

**Madam Vice-President:** Hon. Members, at this time of the year we celebrate the occasion of Indian arrival in this country. From 1845, India connected with this island, and to this day remains a vital source of spiritual and cultural strength for many. In celebrating Indian Arrival Day 2012 as children of the indentureds,

we stand on the shoulders of our ancestors who came to this country with very few material possessions, but with the wealth of a civilization called India in their hearts and in their minds. Our Indian heritage is strong and has allowed this landscape to enjoy Indian philosophy, religion, clothing and food, as part of almost every aspect of our lives in this multi-ethnic society.

As we celebrate this occasion, let us pay tribute to those who worked here during 1845 to 1917, but let us also pay tribute to those who stayed here to make Trinidad and Tobago their home, those who stayed here have carved their footprints in the history of this nation. Our National Anthem's call for every creed and race to find an equal place draws deeply from the Vedas which says:

"I will make you of one heart, of one mind and free from hate...unanimous, united in purpose, speak your words..."—with one voice.

I believe the age is upon us when all artificial fences must be broken. We must acknowledge that our national consciousness is indeed forged from a similar journey of many of our ancestors to this land. Slavery, indentureship and the entire experience of colonialism is, in fact, our shared history. We are more united by our history, our heritage and our colonial experience than we are divided by race, creed or ethnicity.

Crossing the Kalapani may have been seen as a rite of passage that washed away those things that divided us. In 2012 we must embrace Indian arrival as part of who we all are, so that we may build our own mother Trinidad and Tobago that we must become to many of our own sons and daughters.

Even as we celebrate 50 years of independence, let us take up the challenge to build bridges of wisdom, faith and peaceful coexistence among all races, creeds and religions. We too have to see ourselves as a spiritual and cultural ancestral caretaker, for the young among us and for those yet to come.

Later on this evening, greetings will be brought by the separate benches.  
[*Desk thumping*]

#### ORAL ANSWERS TO QUESTIONS

**The Minister of Public Utilities (Sen. The Hon. Emmanuel George):** Madam Vice-President, I beg leave of this Senate to have the following questions deferred for two weeks, questions No. 84, 86 and 89.

**Sen. Hinds:** Again?

**Sen. Beckles:** Madam Vice-President, there are also nine written questions that have qualified as well.

**Sen. Hinds:** Three were deferred and five were deferred from last week.

**Sen. E. George:** Yes, we also ask leave to defer the written answers for two weeks, Madam Vice-President.

**Madam Vice-President:** Would you undertake a date to have them supplied?

**Sen. E. George:** Yes, two weeks from now.

**Madam Vice-President:** Two weeks from now. Yes?

**Sen. Hinds:** Madam Vice-President, and the five questions that I asked last week, that the Leader deferred, would we be getting answers to my questions that were deferred last week today?

**Sen. E. George:** No, they were not deferred, we asked for those to be deferred for two weeks.

**Madam Vice-President:** Sen. Hinds, those would come in the next Order Paper.

**Sen. Hinds:** Madam Vice-President, I have now lost count, could the Leader of Government Business tell us how many questions were deferred in all?

**Sen. Deyalsingh:** Written and all.

**Sen. Hinds:** Including the written ones?

**Sen. E. George:** Well, I do not have those figures with me here, but they are certainly a lot less than the PNM deferred in their time. [*Desk thumping*]

**Sen. Ramlogan SC:** “Yeah!” “Yeah!” Shame on you man! Shame!

**Sen. Hinds:** But, Madam Vice-President, they had promised that none would be deferred and that they would answer all questions.

**Madam Vice-President:** Okay. Sen. Hinds, thank you. We do have the procedural to follow, the answer is that these answers are deferred for two weeks, and we will continue with the proceedings of the Senate.

**Sen. Hinds:** Untruth!

*The following questions stood on the Order Paper in the name of Sen. Penelope Beckles:*

**Police Complaints Authority  
(Details of)**

- 84.** With respect to the Police Complaints Authority, could the hon. Minister of Justice state:
- (i) the number of reports made against police officers for the period January 2009 to March 2012;
  - (ii) the number of resolved matters; and
  - (iii) the number of officers that have been warned, disciplined or fired based on reports made to the Authority?

**Multilateral Funding Organizations  
(Details of)**

- 86. A.** Would the hon. Minister of Finance inform the Senate whether negotiations are currently being undertaken by the Government with the following multilateral funding organizations:
- (i) World Bank;
  - (ii) Inter-American Development Bank;
  - (iii) European Investment Bank;
  - (iv) Caribbean Development Bank?
- B.** If these answers are affirmative, could the Minister state the quantum and purpose of the loans or proposed loans?

**Infant/Maternal Mortality Rates  
(Details of)**

- 89.** Would the hon. Minister of Health provide the Senate with the infant mortality and the maternal mortality Rates for Trinidad and Tobago for the past five (5) years?

*Questions, by leave, deferred.*

**1.45 p.m.**

**SENATOR'S APPOINTMENT**

**Madam Vice-President:** Hon. Senators, before we proceed, I have received the instrument of appointment. A Senator is required to take the oath. Please stand.

*Senator's Appointment*

*Tuesday, May 29, 2012*

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL  
RICHARDS, T.C., C.M.T., Ph.D., President and  
Commander-in-Chief of the Republic of  
Trinidad and Tobago.

/s/ G. Richards  
President.

TO: MR. SHANE MOHAMMED

WHEREAS Senator the Honourable Fazal Karim is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, SHANE MOHAMMED, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Fazal Karim.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 29<sup>th</sup> day of May, 2012.

**OATH OF ALLEGIANCE**

*Sen. Shane Mohammed took and subscribed the Oath of Allegiance as required by law.*

**REGIONAL HEALTH AUTHORITIES (AMDT.) BILL, 2011**

[Fourth Day]

*The committee of the whole Senate resumed its deliberations on the Bill.*

[Chairman: Sen. Oudit]

*Clause 2 (cont'd)*

**Sen. Al-Rawi:** Madam Chairman, I notice that we are going quickly into the clauses of the Bill. When we had paused on the last occasion, the hon. Minister was looking at a particular point of clarification relative to the need for this type of amendment in view of the provisions of the Act, he having identified that potentially it was a section of the regulations which may have provided the

prohibition against the kind of activity which the Bill's intent was supposed to cover. I am not sure if the hon. Minister is in a position to advise us what his research has uncovered so far in relation to that.

**Sen. Ramlogan SC:** Madam Chair, the hon. Minister did in fact consult with me on this matter and the Government's position is that a substantive amendment is necessary and desirable in this matter for the following reasons. When one looks at the way section 20 of the Regional Health

Authorities Act is drafted, it speaks to a singular approach of authorization so that the Act empowers and authorizes each regional health authority and its board to act in relation and in respect of its authority.

The wording in section 20 is:

“(1) For the purpose of any transaction, contract or covenant, a Board may, on behalf of the Authority”—the Authority meaning the particular specific authority for which it is constituted—

“(a) invite, consider, accept or reject offers for the supply of goods or the undertaking of works or services necessary for carrying out the objects of the Authority; and

(b) dispose of surplus...belonging to the Authority.”

It is clear that the way the Act was drafted, the intention and policy of the Act was to authorize each authority to function as an independent corporate body, an independent creature. Having regard to what is contemplated here, where you can have joint purchasing, where one authority may take the lead to actually put out the invitation to tender but really it will be to the benefit of all, then another board cannot be said, within the meaning of section 20, to be acting on behalf of the authority. In fact, the one that takes the lead may be acting on behalf of all of them. It is against that backdrop that the substantive amendment is required.

Apart from that, there are liability issues which, according to the Solicitor General and my predecessor in office, Mr. Jeremie, that ought properly to be avoided and written opinions were on file which in fact said that if we amended the regulations or if we left things as is, then that could lead to a situation where the authority would be acting ultra vires the law.

It is in those circumstances, against the weight of those opinions which were supported by an advice from the Solicitor General, that it was felt that a substantive amendment is necessary to clarify this important section because hundreds of millions of dollars may now be spent to get the benefit of the economies of scale by bulk purchasing.

*R.H.A. (AMDT.) Bill, 2011*  
[SEN. RAMLOGAN SC]

*Tuesday, May 29, 2012*

If we do not do this and one authority takes the lead to put out the tender, but is acting on behalf of or in concert with the others, then it cannot be said that that authority is acting on behalf of the authority. It may be acting on behalf of the authorities, plural, and a disgruntled contractor or service provider, who was not selected, could then perhaps litigate the matter and take the point that the whole thing should be squashed and it should start ab initio because it was really null and void in the first place.

In those circumstances, the amendment is necessary both to the substantive law, which will then enable the regulations to be made to facilitate this kind of more efficient purchasing by the regional health authorities. In those circumstances, that is the Government's policy position in this regard and we rest on that.

**Sen. Al-Rawi:** Madam Chair, if I may enquire, the hon. Attorney General has pointed, in particular, to advice from the Solicitor General and erstwhile advice that sat, I am not sure in what context. Is that advice available for interrogation? I will ask you why.

It is firstly asked for in the context of the Attorney General seeing that it is upon advice that this position is being taken. We, in the debate, have asked specific questions as to the articulation of section 20 of the Act, which we seek to amend by clause 2 of this Bill, in the context of the operation of section 13 of the Regional Health Authorities Act. That is to be had when one appreciates that the wording in section 20 is that you may have the procurement done on behalf of the authority.

Section 13 of the Regional Health Authorities Act provides for the ability to delegate any of the functions of the authority to any subcommittee or other committee and, in fact, to have the CEO of the authority, in another section, dealt with.

I was saying that in the context that the reason for the request for advice as a Senate was based, firstly, upon the wording of "may" being utilized in section 20, which we seek to amend by clause 2 of this Bill; secondly, in the context of the articulation of section 13 of the Regional Health Authorities Act in conjunction with that; also too, insofar as there is a concurrent practice for many years relative to Cabinet's ability to procure, on behalf of all authorities, items which have been procured, for instance, in the C-40 arrangement and by Nipdec. So the question now lies: does this advice extend to the current operation, for instance, in relation to procurement; in relation to all authorities as is and has been continuing for many years?

**Hon. Dr. Khan:** The way things have been done for many years in the procurement aspects—as you mentioned C-40, where the Ministry identified Nipdec as the provider and the solicitor of services for pharmaceuticals—that has proven to be an extremely inefficient system based on regulation monitoring, et cetera, as also procurement.

In doing the Act this way—rather than going through the Ministry of Health as you articulated the last time—by the regional health authorities coming together and one regional authority procuring on behalf of the total regional health authorities, that will make it, as you say, economies of scale, also an efficiency. As it is now being articulated—that going through the Ministry of Health and procuring via a second party such as Nipdec in this case—it does not create efficiencies as well as proper monitors are not regulated.

**Sen. Al-Rawi:** Hon. Minister, thank you for the response. The Bill seeks to amend the law relative to procurement, supposedly to enable procurement en bloc by one tender committee, one authority on behalf of all—that is not an issue of efficiency per se. Efficiency is a separate issue as to the rationale as to why we are here. Why do we need to amend the law in relation to procurement if it has been done already?

**Sen. Ramlogan SC:** The reason the law needs to be amended is that the Act, when it is drafted, taken in its context and in the scheme of the Act, never had within its contemplation as a policy that one RHA will, in fact, be doing the procurement on behalf of others. It is a compartmentalized, individualistic and singular approach that was adopted and that was the policy at the time.

The Act taken as a whole intended to authorize the board of one RHA to undertake procurement and tenders for the benefit of that RHA. What we are about to do is to authorize one RHA to act on behalf of more than one RHA. If we do that, then the substantive law needs to be amended to allow for one RHA to act on behalf of others. Even the powers of delegation, to which reference was made during the course of the debate in section 13, that power of delegation cannot be interpreted in a manner that would conflict with a substantive provision in the same Act, to wit section 20.

The clear intention of section 20 is that one RHA board will act on behalf of that particular RHA alone. The delegation powers would have to be construed against that backdrop and when so properly construed, it cannot mean that it would authorize one RHA to act on behalf of others, notwithstanding the clear provision in section 20 that the board of the RHA is meant to act with respect to “the” authority. The words “the authority” speak to a singular authority, meaning the specific authority that the board is appointed to serve.

**2.00 p.m.**

It is for those reasons that the Government takes this policy position that we would amend the substantive provisions of the law and to allow for the regulations to be amended so that they will not be done ultra vires. I understand that some creative ideas have been thrown out and tossed around during the course of the debate. But we would rather not take that chance only to run up against litigation. I do not think, from my review of the *Hansard*, that there is any quarrel with the end result that we trying to achieve in so doing. If there is no debate about the end result being a desired policy objective and goal that we all agree to, then the method by which and the medium by which that is achieved is a matter for the policy of the Government.

Our position is that, as a matter of policy, the substantive law should be amended, regulations could then be made pursuant to that amendment so that we would allow for one RHA to do the procurement en masse and in bulk for the benefit of all the RHAs. That is the position.

**Sen. Deyalsingh:** Madam Chair, if I may—to either the hon. Attorney General or the Minister of Health. With this substantive amendment and your comment on the penultimate question about the inherent inefficiencies with the job procurement process under Nipdec as the procurement agency and C40 as the distribution agency, with this amendment would that process via Nipdec now become redundant?

**Sen. Ramlogan SC:** Well, that is not a matter that arises at the committee stage, surely you would appreciate. That is really a policy matter that may arise in another debate. What we are dealing with here is a specific clause in this Bill. And I will rest our case there.

**Sen. Deyalsingh:** Fine.

**Sen. Al-Rawi:** I thank you for the explanation hon. AG, through Madam Chair. The mischief I am trying to avoid or rather to have an assurance will be avoided is: are we trading one set of liabilities or difficulties for another? The end result of efficiency in procurement and transparency, et cetera, is one thing. I accept the statement that you have put forward that you wish to avoid challenge in relation to one authority procuring, in the event that happens.

My question is, in the vacuum of not being able to see the subsidiary legislation which is the regulation, and how that will take care of the conflict positions between the boards of the RHA where there may or may not be a

material conflict from one board to the other with respect to items which should properly result in exclusion of Members' participation. In so far as that is the case, are we not trading one set of liability for another? And the question is: why it is that the Ministry of Health itself cannot continue in the procurement cycle achieving the efficiencies of scale as it does currently?

**Sen. Ramlogan SC:** I think it was under a former administration, when the People's National Movement was in power, that they recognized the need to have some decentralization and take away the Ministry of Health being involved in the health sector at the regional levels and that is why the establishment of the RHAs came into being after much angst and pain because a policy move away from the Ministry of Health was much debated at the time. But having had the regional health authorities now for some time they have serve their purpose, and what we have now is a Bill really to just ensure that there is some efficiency so we can take advantage of the economies of scale that it arise.

The conflict and the possibilities to which you refer exist in theory in any solution that will come. It is a matter for the administration of the law that we will now put in place to see whether that kind of conflict will stymie the growth and the development of the RHAs and the savings that are likely to occur. Bear in mind that this does not negative the need for consent by an RHA in any way. The board of one RHA will have to be a willing participant, and they will have to make sure that it is in the best interest of their RHAs—their particular RHA—to enter into this joint arrangement.

But this is really a simple matter that is going to allow for simple economies of scale; it allows for bulk buying and nothing else.

**Sen. Al-Rawi:** In that context, hon. AG, there are two simple questions.

**Sen. Ramlogan SC:** Sure.

**Sen. Al-Rawi:** One, in the hiatus that we have had between the last discussion on this Bill and today's committee stage being resumed, we could have had the opportunity to see the advice that you have referred us to, which may very well have dealt with the concerns that we have. Secondly, even though we cannot debate or look to the efficacy of the amendments to the regulations, we could certainly have had sight of it which would have laid any ears that one could foster to rest. In those circumstances, are you in a position, armed with the advice that you say that you have, to distribute that advice to satisfy the concerns which we harbour on the Opposition bench and in relation to those articulated by the Independent bench?

**Sen. Ramlogan SC:** The State has never had a practice and it certainly has not been the convention for privileged legal advice given to an Attorney General to be circulated to Members of Parliament. In this matter I have looked at it and formed my own view, and it is my view that has informed the Government's policy position in consultation with the hon. Minister of Health. That is an advice that I have explained in the course of my contribution before this committee, and there is nothing further to add to it. So the answer is no. There is no legal advice to share beyond that which I have already shared which substantially encapsulates the advice that I have been given in this matter.

Secondly, with respect to the regulations, the regulations: will be made but the conflict that you assume or expect to take place is one—again, I wish to point out—is one that will be a matter for the administration of the amendment when it takes place. The regulations are simple: to allow for bulk purchasing of goods and services by one RHA on behalf of all because the more you buy, with one customer, you basically shut the door against the possibility of price discrimination because what you will have is one manufacturer of pharmaceutical goods and services and they could price discriminate among the RHAs and you might have people in one country paying different prices for the same drugs.

It is a very simple amendment, and I do not see that there is any need to put the regulations, which can only be made to service the one amendment we are making which is to enable, and facilitate, bulk buying of medicines and goods and services. That is all.

**Sen. Al-Rawi:** For the record, relative to an interrogation of the subsidiary regulations, this one amendment, if it passes, will involve a substantial and radical refitting of the regulations. Secondly, I am trying to understand what mischief could be allowed by the consideration of advice specifically related to this Bill which you are asking us to accept simply on: “I promise you it is correct advice.”

**Sen. Ramlogan SC:** No. I am saying to you that I have already shared with you that advice. Perhaps, you were not listening. But the advice is—I have explained it during the course of my contribution. And the advice of the Attorney General to the Government of the day is that this amendment is required for the following reasons, and I would repeat that advice.

**Sen. Al-Rawi:** Okay, I do not need to have the repetition and nor do I need to have your medical diagnosis relative to my hearing. I did not think that we needed to go there just yet, perhaps, later maybe. But the point is that we are dealing with an amendment which rocks to the core of conflict positions between one RHA and another in a position when in society at present we are seeing that boards are having difficulty in the manner in which they procure things.

We are also in the context of a discussion—as you and I are both personally aware of a public procurement process and the need for transparency. So I am just holding on to one very simple question, if you could state for us—and perhaps I have not heard this one or perhaps the version that I would like to have clarified—as to what mischief could possibly be exposed by circulating advice which relates to the amendment that is before us, and you are asking for support on?

**Sen. Ramlogan SC:** Chair, the position is this. Advice given to the Attorney General is privileged, and my learned friend well knows that. I am not aware of a single instance—

**Sen. Al-Rawi:** Unless it is waived hon. Attorney General; LPP: subject to waiver.

**Madam Chairman:** Please allow the Attorney General to continue.

**Sen. Ramlogan SC:** Perhaps my learned friend could maintain the decorum of the Senate, that he so often complains is in a state of decline by allowing me to speak. I am not aware of a single instance where advice given to an Attorney General throughout our 50 years of independence has been tendered for interrogation by the Opposition. Certainly, if my learned friend can point to one instance—

**Sen. Al-Rawi:** Sure. I can right now.

**Sen. Ramlogan SC:**—when the PNM was in power that they gave advice given, and circulated the written opinion for the entire Opposition bench to “interrogate”, then I shall be happy to perhaps revisit this in the future.

**Sen. Al-Rawi:** I can give one example now.

**Sen. Ramlogan SC:** I am hearing voices again. Perhaps, my learned friend could allow me to speak please. If and when that is done, perhaps consideration can be given to the exercise of my discretion in the future in appropriate cases when it becomes necessary to share such advice beyond the oral contribution of the Attorney General to the Chamber. But the policy position of the Government on this very simple amendment, after all the smoke is cleared, is that we are seeking to allow for economies of scale by bulk buying. It is no different to buying your groceries in a little parlour as opposed to buying it in PriceSmart, or a big grocery; that is all it is.

The policy position is, as we have outlined—we seek to amend the substantive provision and the Government's policy rests, and we have nothing further to add on the matter ma'am.

**Madam Chairman:** Okay. I think the Attorney General has made his position very clear. [*Crosstalk*] Hold one second.

**Sen. Al-Rawi:** Could I ask a question, Madam Chair?

**Madam Chairman:** I am being advised that this matter was ventilated in a previous sitting.

**Sen. Al-Rawi:** No it was not, Madam Chair.

**Madam Chairman:** I think hearing with some certainty the position of the Government in terms of its policy position, I do not see where the policy position will change further with any further discussion. So, I am going to put the question because this is not a debate and we are in committee. Sen. Beckles?

**Sen. Al-Rawi:** Madam Chair, I am not on about debates but there are others to contribute.

**Madam Chairman:** Can I allow Sen. Prescott SC, to—

**Sen. Prescott SC:** I am most grateful to you. May I firstly raise a question for the attention of the hon. Attorney General? In section 5 of the Act—

**Sen. Ramlogan SC:** Section, sorry?

**Sen. Prescott SC:** Section 5.

**Sen. Ramlogan SC:** Yep!

**Sen. Prescott SC:** There is a clear exception, if you like.

**Sen. Ramlogan SC:** Which section in 5, are you referring to?

**Sen. Prescott SC:**—Of the Regional—

**Sen. Ramlogan SC:** No. I meant—subsection (1) or subsection (2)?

**Sen. Prescott SC:** Section 5(2).

**Sen. Ramlogan SC:** Yes.

**Sen. Prescott SC:** The Tobago Regional Health Authority is excepted from all of the strictures that seem to apply to the other regional health authorities. It says:

In the exercise of its powers and functions the board of that authority is subject to the provisions of the Tobago House of Assembly Act.

**Sen. Ramlogan SC:** Yes.

**Sen. Prescott SC:** Would you care to persuade us as to how an amendment to section 20, which does not directly address section 5(2) is going to have the force of imposing itself or imposing this new gigantic authority with the power to do bulk purchases on the Tobago Regional Health Authority?

**Sen. Ramlogan SC:** Well, subsection 5 exempts the Tobago Regional Health Authority.

**Sen. Prescott SC:** Do you mean section 5(2)?

**Sen. Ramlogan SC:** Section 5(2), yes. So the Tobago Regional Health Authority is exempt.

**Sen. Prescott SC:** From the bulk buying?

**Sen. Ramlogan SC:** Yes.

**Sen. Prescott SC:** Good.

**Sen. Ramlogan SC:** No.

**Sen. Prescott SC:** Well in that case may I move to my next question?

*[Sen. Ramlogan SC speaks to his advisors]*

**Sen. Ramlogan SC:** Tobago is exempt.

**Sen. Prescott SC:** Tobago would be exempted from the bulk buying?

**Sen. Ramlogan SC:** Yes. Or else you would need to amend section 5(2) as well. I see where you are heading, yes.

**Sen. Prescott SC:** I thought that was an option available to you even now. I am sure you are not averse to amending it if the need arises.

**Sen. Ramlogan SC:** That is altogether a different point, and it is—let me just confer with the Minister as to whether or not Tobago is meant to be part of the arrangement for the bulk buying because that is an interesting point.

**Sen. Prescott SC:** I think we all need to know.

**Sen. Ramlogan SC:** Yes.

**Sen. Prescott SC:** Because the economies of scale will be so much the greater if all were included.

**Sen. Ramlogan SC:** If we include Tobago as well.

**Sen. Prescott SC:** Because you know one does not tamper with Tobago so easily.

**Sen. Ramlogan SC:** Therein lies the rub.

**Sen. Prescott SC:** Secondly—may I go on to another point, Chairman? In the course of our debate it became clear that many speakers were of the view that legislation already exists which empowers each of the regional health authorities to collaborate with another for the purpose of achieving economies. I want to get—

**Sen. Ramlogan SC:** Sorry, sorry. Yes Senator.

**2.15 p.m.**

**Sen. Prescott SC:** I was pointing out that it had been the view of a number of us who spoke in the debate—*[Interruption]*

**Sen. Ramlogan SC:** Yes, Sir.

**Sen. Prescott SC:** —that the power already exists in each of these authorities to act together with others to bring about benefits, economies, as the case may be.

**Sen. Ramlogan SC:** Sure.

**Sen. Prescott SC:** Now in the introductory remarks today, hon. Attorney General—*[Interruption]*

**Sen. Ramlogan SC:** Yes.

**Sen. Prescott SC:**—you pointed to the lack of independence, if I may put it that way, of each of these authorities—*[Interruption]*

**Sen. Ramlogan SC:** Not the lack of, no, on the contrary.

**Sen. Prescott SC:** I am about to put the converse—*[Interruption]*

**Sen. Ramlogan SC:** Yes.

**Sen. Prescott SC:** —which is how you had stated it. That this gives independence to them to enter into these contracts, and I thought that it is clear that the existing section 20 does not denude them of independence—*[Interruption]*

**Sen. Ramlogan SC:** No, no. That is not what I was saying, sorry.

**Sen. Deyalsingh :** He was not listening.

**Sen. Ramlogan SC:** I do not think that he was not listening. I think perhaps I did not articulate it as clear as the hon. Senator would have liked, but what it really meant *[Crosstalk]* is that the clear intention and purpose of section 20 was

to reinforce and underscore the fact that the powers which are given to the RHA boards were given to them for the purpose of acting in relation to “the” RHA, meaning the RHA that they are appointed to serve. It was not the intention of the law when it was passed—when one looks at the wording of section 20—that one RHA will act on behalf of another or others. In fact the word “the Authority” is referred to in section 20(1), 20(1)(a) and 20(1)(b), so it is repeated three times, that the powers of the board may be exercised “on behalf of the authority”, the objects of the Authority and “articles belonging to the Authority”.

“The authority” there used in the context and the scheme of this particular Act refers to a singular Regional Health Authority. It was in those circumstances that it was felt that to clarify the position, and to make it abundantly clear, whilst one may debate the merits and demerits of perhaps going about it—you know, any of the other routes—the problem is that you are still anchored in section 20 as to whether or not that will permit it. One may take the chance, but why risk the litigation, given what is at stake?

**Sen. Prescott SC:** Chairman, I have heard the hon. Attorney General.

**Sen. Deyalsingh:** Chairman? Sorry.

**Sen. Prescott SC:** Oh, forgive me. I certainly did not share the view that section 20, as it exists at the moment, needs to be interpreted in that very, very narrow confine, and on the contrary, what is now being introduced does not appear to widen the powers any more than had existed. If you look at the new proposed clause (1A), it says, “...where it is economically, expedient to do so, a Board may—(c) acting on behalf of its Authority...”, and the only thing that we have done is now—we have gone to say, and another authority may act.

We have gone creating this monster simply to say that, if anyone dares to read the existing section 20 as limiting an authority, as to whom it may enter into a contract with—and forgive me for not being able to avoid the hanging preposition. If anybody dares to interpret the old section 20 as saying it limits the authority, and with whom it may contract, that person really is not reading the Act in the way it ought to be read. The Act does not put any limitation; it does not proscribe the power of the existing Regional Health Authorities by any means. [*Desk thumping*]

So that, AG, I think that we are sitting here trying to create a horse, creating a camel, and it still cannot do what we want to do, which is to carry more than one person.

**Sen. Ramlogan SC:** Senator, with respect, I do not understand why you think the amendment would not achieve that purpose. The amendment says it creates an exception, and what it seeks to do is to authorize a board, pursuant to an agreement with any other authority, acting in accordance with the regulations made under this new section, to invite, to consider, to reject offers—to enter into contracts basically. On its clear wording, what it seeks to do is to authorize a board to enter into an agreement with another authority, to do bulk tendering and purchasing of goods and services, which is really what we want to do.

**Madam Chairman:** Attorney General, may I just intervene here? *[Interruption]*

**Sen. Ramlogan SC:** Yes.

**Madam Chairman:** As far as I am reading, “Notwithstanding subsection (1)”—*[Interruption]*

**Sen. Ramlogan SC:** Yes.

**Madam Chairman:** So this does not by itself preclude section (1), it simply enhances it. Is that correct?

**Sen. Ramlogan SC:** Yes.

**Madam Chairman:** Okay.

**Sen. Ramlogan SC:** That is our position.

**Sen. Prescott SC:** Chairman, I have another observation. I have been hearing the references by the hon. Attorney General to policy decisions so I know what that ought to mean to me, but let me just ask him to look at one other thing—*[Interruption]*

**Sen. Ramlogan SC:** Sure.

**Sen. Prescott SC:**—that may or may not impact on policy. In the latter part of the clause, I do not know what one calls that, commencing with the word “invite”, the last five lines. *[Interruption]*

**Sen. Ramlogan SC:** Sorry, you are looking at the Bill?

**Sen. Prescott SC:** The clause, the Bill. I had pointed out that there is the introduction, and I hope it was not just to make a difference. *[Interruption]*

**Sen. Ramlogan SC:** Sure.

**Sen. Prescott SC:** But the following clause, “and enter into contracts”, coming right after the words “accept or reject offers”. *[Interruption]*

**Sen. Ramlogan SC:** Yes.

**Sen. Prescott SC:** Is it meant to create a different kind of scenario from accepting or rejecting offers to say “enter into contracts” or are they the same thing? Is the acceptance and rejection of offers the same as entering into contracts? Is it still that way?

**Madam Chairman:** Offer for consideration.

**Sen. Ramlogan SC:** Well, I suppose it is a matter of drafting style and technique really, but I see what you are saying, but one can conceivably consider or reject an offer which might be separate, different and distinct to the entering into the contract because—*[Interruption]*

**Sen. Prescott SC:** You want to say that again?

**Sen. Ramlogan SC:** Well, you may—the tendering procedures, I understand it would be that you submit an invitation, you advertise and you invite people to tender. When you invite them to tender, you would evaluate the tender, and may decide to accept or reject the tender.

**Sen. Prescott SC:** Yes, they never—*[Interruption]*

**Sen. Ramlogan SC:** If the board decides to accept the tender, that would be no doubt a minuted decision taken by the relevant boards pursuant to the agreement referred in (1)(a), but after the decision to accept the tender, you would then have the entering into of the contractual arrangements. So that is why, I presume, the draftsman said, to invite tenders, to consider tenders, which would have been received pursuant to the invitation to accept or reject, and then enter into contracts for the supply of the goods and services because that is the procedure, and they are distinct, separate stages in the procurement process.

**Sen. Prescott SC:** Is that what was intended then, Sir?

**Sen. Ramlogan SC:** I think so, yes.

**Sen. Prescott SC:** That we should gild the lily.

**Sen. Ramlogan SC:** Well, I mean.

**Sen. Prescott SC:** Madam Chairman, I have heard the hon. Attorney General, I certainly am of the view that clause 2 does not improve the existing Regional Health Authorities Act—*[Interruption]*

**Sen. Ramlogan SC:** What about 2? May I ask Senator—2(1A)(a), I just want to understand your point clearly. Insofar as the amendment seeks to allow, where expedient, a board to enter into an agreement with another authority for the purpose of allowing the tendering—*[Interruption]*

**Sen. Prescott SC:** Yes.

**Sen. Ramlogan SC:** You do not see that as adding to this?

**Sen. Prescott SC:** No. I think that power already exists in section 20 as it stands, that there is no limitation on the power of an authority—[*Interruption*]

**Sen. Ramlogan SC:** Yes, I see what you are saying, I understand.

**Sen. Prescott SC:**—to enter into any contract.

**Sen. Ramlogan SC:** I understand. Well, Chair, I think on this particular issue, we would have to rest with a divergence of legal opinion. Our analysis of section 20, and based on the advice that we have received from the state departments, is that section 20—the policy, the scheme and the intent of section 20—when literally read, and when applied in the context of this Act, what the RHA Act had within its contemplation, bearing in mind the time at which it was passed, looking at the—to quote my learned friend, Sen. Al-Rawi’s favourite case, the “Hart and Pepper rule”, when one looks at what the evolution, and the development of the health sector was, the intention was to create independent RHAs to service various districts in the country. In fact, that is why it is said in section 4 of the Act,

“Each Authority is hereby created a body corporate...”;

The point was they intended to create a single RHA that would be a body corporate in its own right, that would then be able to exercise certain powers and functions given to it by this law.

It is true that one can argue that an RHA then can, therefore, enter into an agreement with another RHA, which I think is Sen. Prescott’s point. And I want to say it is a point that I did raise in the pre-LRC period, before this matter came for legislative review. It is a point that I did raise, in addition to the point as to whether or not this could be done via regulations, but I was persuaded that rather than run the risk of an argument, that the policy, the purpose, and the overall scheme and the context of the legislation was not to permit that.

The contra to Sen. Prescott’s argument is simply this. If the law intended in creating an individual body corporate which would be an independent RHA; if the law intended, when they passed this Act, to say that RHAs could act in concert by virtue of a simple agreement with each other to do bulk buying and bulk purchasing, well, I ask two simple questions: (a), if that power was so obvious, why is it that it has never been done since the RHA Act has been passed because it has never been done since 1994? But hold on—so this has been something that they have wanted to do for a long time, and since 1994 to now, no RHA has done it.

Secondly, if that was the intention of the law, it would have been very simple to put in subsection 20(1)(c) to say that the RHAs are entitled to do exactly what we are seeking to allow them to do. But I think, you know, the fact that this has never been done goes to the way the RHAs themselves have understood, applied and interpreted their own powers in law, and I think the way that they have understood and applied those powers—because of the wording of section 20, and because they are an individual body corporate—is such that we must, in fact, have this amendment to give effect to this.

It may very well be that what you are saying is that it is superfluous, and it is already there, but I prefer to have it and err on the side of caution, given the advice that we have been given, than to run litigation, and have a case up by a disgruntled person who did not get a contract worth hundreds of millions dollars to say, well look, the whole thing should be scrapped, it is null and void.

We have spoken to the people in the Ministry of Health and the RHAs, and the clear understanding that they have operated on, given the history of this Bill, was that the intention was to create individual entities that would operate in their own right for the benefit of their own RHAs, and that is the position. So it really has been a policy decision to err on the side of caution, rather than to run the risk.

We could have not come to Parliament at all, and I hear you on that, but the Government chose to come to the people's Parliament, to let the Parliament authorize/sanction this amendment in the full glare of public scrutiny, so that they will know this is the intention of the Government because it is an important policy. As my learned my friend, Sen. Al-Rawi, said, this is going to create a revolution of sorts in the purchasing, and it is going to redound to the benefit and have cost savings. So that is the policy position of the Government.

I thank Sen. Prescott for bringing to the attention of the national community that the Government did not need to come to Parliament to get this done, but that the Government, consistent with its principles of transparency and public scrutiny, nevertheless to come to the people's Parliament to allow for this to be debated and fully ventilated. So, we thank you very much. [*Desk thumping*]

**Sen. Prescott SC:** Madam Chair, may I at least express my gratitude in these words? [*Laughter*] A body corporate has all the powers of a human being, and such powers as are set out in its functions. Why am I being shut up at this point?

**Sen. Ramkhelawan:** Chair, if I may?

**Madam Chairman:** Yes.

**Sen. Ramkhelawan:** I have heard from the learned attorneys in the Chamber, and there are many more, but I think the question I want to have answered is whether this particular section or this clause—we are hearing the argument that it does not add to the legislation, but the question I have is, does it take away from the existing legislation or does it add some sort of clarity? And if it does add some sort of clarity, and does not take away from the existing legislation, I think we just need to look at the clause itself, and decide how we go forward because I think that we getting back into a debate, rather than getting into the committee stage.

**Madam Chairman:** Yes. Thank you Senator. Dr. Wheeler.

**2.30 p.m.**

**Sen. Dr. Wheeler:** I just wanted to ask one question regarding Tobago, where the Attorney General said Tobago is not really included in this. Minister, you are here. Right now Nipdec purchases bulk items for Trinidad and Tobago. Suppose the Act is passed and Nipdec no longer provides bulk items, what will be the position for Tobago in terms of procuring its own medicines and so on?

**Hon. Dr. Khan:** Nipdec purchases the pharmaceuticals on behalf of the Ministry of Health for the regional health authorities, and in doing so Tobago gets their just due. If this thing is passed it does not negate that happening and continuing to happen. However, there are certain things that could be, as I said, certain other items as well as services—when we say procurement we mean goods and services. We are focusing on goods. However, it does not also negate that Tobago can join with the other RHAs to procure if they so desire, but they would not lose anything.

**Sen. Dr. Wheeler:** But it appears that this will have—from what the AG said, Tobago is not included.

**Hon. Dr. Khan:** According to the Act.

**Sen. Dr. Wheeler:** So, there will have to be some—

**Sen. Ramlogan SC:** The answer is Tobago is not subject to this at the moment. That is the answer. Sen. Wheeler, what you are asking is, you want Tobago to be subject to this? To be part of the whole—

**Sen. Dr. Wheeler:** Tobago would be left out from the economies of scale, left out from all the benefits.

**Sen. Cudjoe:** I wish to join as it relates to Tobago. As the legislation stands right now, we are—section 5(2) of the parent Act speaks to Tobago being subject to the Tobago House of Assembly Act. I wish that it remains that way and as the

Minister said before, Tobago has the flexibility to join in or to stay out, but Tobago Regional Health Authority falls under the mandate of the Tobago House of Assembly Act, and I am sure if you talk to the TRHA, they would not want to be under this.

**Hon. Dr. Khan:** I have been advised, legally, Tobago would not be able to join in on this one.

**Sen. Ramlogan SC:** No, they cannot. It is the concerns raised by Sen. Cudjoe that led us to this position where we did not in fact wish to interfere with Tobago. [Laughter] That is why we have left Tobago out of the arrangement. Apart from that, from a practical standpoint, given the anticipated change in leadership in the Tobago House of Assembly, one thought that this would not present a challenge in the future going forward.

**Sen. Deyalsingh:** Madam Chair, is it that—[Interruption]—hon. Attorney General, you emphasized on the words “a board” or “the authority”. With this amendment, from how I understand it, any authority can enter into bulk purchasing on behalf of the other authorities. Am I correct?

**Sen. Ramlogan SC:** Sorry. With the amendment.

**Sen. Deyalsingh:** With the amendment?

**Sen. Ramlogan SC:** Yes, correct.

**Sen. Deyalsingh:** Given the recent hullabaloo about boards under this Government—like CAL, EFCL—is it that one board will take the lead in the procurement of pharmaceuticals, one in the procurement of equipment, or all boards will be vying to do procurement for all of these different goods and services?

**Sen. Ramlogan SC:** That will be subject to whatever agreement the authorities come up with.

**Sen. Dr. Balgobin:** Case-by-case.

**Sen. Ramlogan SC:** It will be done on a case-by-case basis. Yes, Sen. Balgobin is correct; it will be done on a case-by-case basis.

**Sen. Al-Rawi:** That makes no sense.

**Sen. Dr. Balgobin:** Madam Chair, it is manifestly clear in my own mind that this power, a reasonable person would think, already resides with the Minister. The amendment does not, however, take away from—

**Sen. Al-Rawi:** It does.

**Sen. Dr. Balgobin:**—the work of the authorities. What it does seek to do is reconfigure some aspects of purchasing behaviour, and I think the question of to what extent we are comfortable with that is really a matter that should be confined to the debate and not the committee stage.

**Sen. Ramlogan SC:** Yes, that is the point.

**Sen. Dr. Balgobin:** I think that if you wanted to save money and reap economies of scale that a more courageous and perhaps common sense approach would have been to re-examine why we have all of these RHAs. But, given where we are and since we have been round this merry-go-round several times now, might I suggest that we vote on the amendment and carry on?

**Sen. Deyalsingh:** Madam Chair, before we vote, may I just make one last point. Now that the issue has been clarified that each board would be purchasing on a case-by-case basis as enunciated by Sen. Balgobin and echoed by the Attorney General, is it that after one authority has built up the expertise and institutional knowledge—for example, purchasing pharmaceuticals—is it that another board can simply come on stream and decide on their own, or make the necessary application, that we also want to purchase pharmaceuticals, and therefore, lose all the institutional knowledge that another board may have had in procuring a particular type of good or service?

**Hon. Dr. Khan:** Could I answer that? It is going to work like this: not one board doing procurement for everybody. The authority is going to get together, but in that authority, the tender committee will be made up of people from all the other regions. So, it would not just be a matter of expertise gained in one authority. It is not going to be like that. The one authority is going to purchase because the authorities right now are body corporates. Right now they cannot be given—we are going back to debate—that economies of scale. So, we are going back into debate, exactly what we articulated.

As Sen. Balgobin said, it is a case-by-case basis, but the authority and the intellectual part of it would be had by all the authorities and they could determine which one they would so desire to procure an item or service, which cannot happen now.

**Madam Chairman:** Sen. Ramkhelawan.

**Sen. Ramkhelawan:** I have nothing further to add.

**Sen. Dr. Balgobin:** In effect, on the necessary occasions what you are saying is that, for example, if we are chairs of RHAs and we all need—I think in the debate you said this is really to tackle the purchase of services from the private sector.

**Hon. Dr. Khan:** More so.

**Sen. Dr. Balgobin:** So, we need these services. We get together, we agree we need these services and—how does this actually work? You create a super structure—a tenders committee that spans all the RHAs, they then assess this tender—

**Hon. Dr. Khan:** Negotiate and tender. As it is now, a tender committee could only work for that one RHA and no one else.

**Sen. Dr. Balgobin:** So, how will the contracting occur then?

**Hon. Dr. Khan:** Before?

**Sen. Dr. Balgobin:** No, now. With this amendment, how is the contracting intended to work?

**Hon. Dr. Khan:** They would have the expressions of interest, the request for proposals, and the authorities would get together and make a tender committee, which would then evaluate the tenders that they obtained and then, as I say, give contracts or reject contracts.

**Sen. Dr. Balgobin:** But who is going to—that is the point I am asking.

**Hon. Dr. Khan:** The board. All the authorities would get together and produce a tender committee and an evaluation committee.

**Sen. Dr. Balgobin:** So, I am a neurosurgeon and this joint structure has decided to purchase my skills, but North West only wants me for one day, South West for one day—

**Hon. Dr. Khan:** With this amendment you could do that. As it stands now you cannot do that.

**Sen. Al-Rawi:** Yes, you can.

**Sen. Dr. Balgobin:** You see, that is the thing; that is a grey area for me because right now I can contract with each authority in my own right, could I not? If I am from the private sector and I decide to sell you my services for one day of the week, I could do that with four RHAs.

**Hon. Dr. Khan:** From the private sector, but not if you work in the public sector or the RHA sector.

**Sen. Dr. Balgobin:** I think the mischief you are trying to resolve is that I could actually cut four very different deals around the place.

**Sen. Ramlogan SC:** That is the point. The mischief that we are trying to avoid is the one neurosurgeon could charge difference prices for his services and price discriminate, and you are standardizing that and you are allowing there to be an informed approach to the purchasing—

**Sen. Dr. Balgobin:** You are standardizing costs and levels of service and so on.

**Hon. Dr. Khan:** Yes.

**Sen. Ramlogan SC:** That is correct.

**Sen. Dr. Balgobin:** That is all.

**Hon. Dr. Khan:** Madam Chair, I would just go to one other part, Dr. Balgobin; if I have a public-sector person in the RHA, he could work only in that RHA; with this amendment we could do the contracts for them to work in all the RHAs.

**Sen. Al-Rawi:** Even though the Act allows sale of services to other RHAs?

**Hon. Dr. Khan:** It does not, not in the manner as it is now.

**Sen. Dr. Balgobin:** Well, 17 and 18 are clear that you can sell services. *[Interruption]*

**Sen. Deyalsingh:** Madam Chair, a final question please. Given what the Minister of Health has just said with this drawing on the expertise in a tenders committee to purchase on behalf of the RHAs, how is that significantly different from what obtains with pharmaceuticals and Nipdec?

**Hon. Dr. Khan:** I just said that pharmaceuticals are a Ministry of Health procurement agenda. This is not so, this is a totally different ball game.

**Sen. Ramlogan SC:** It is a different scheme altogether.

**Madam Chairman:** I am going to ask—

**Sen. Dr. Wheeler:** Madam Chair, just one last comment—one caution which I had mentioned when I contributed. I am not sure if you were here, but in the effort to allow the RHAs the capability to procure services they do not have, my

concern is that it is going to be a disincentive for specialists who are in short supply to be employed with the RHAs. They are going to find themselves being more lucrative to provide their services privately to the RHAs and this will actually be to the detriment of the building-up of capacity within the public system—

**Sen. Al-Rawi:** Absolutely so.

**Sen. Dr. Wheeler:**—and I had expressed this to the Minister, and you might actually find specialists right now. Some of my colleagues have actually mentioned to me that, look, it looks like if it would be better for them, rather than getting the one salary for one RHA, one or two leave, form a little company and then offer the same services back to all the RHAs at a much higher—

**Sen. Ramlogan SC:** But nothing can stop that.

**Sen. Dr. Wheeler:** That is my real, real concern.

**Sen. Ramlogan SC:** Yes, I hear you. [*Interruption*] The problem is that there is nothing to stop that either way. There is nothing to stop that right now either way, and there will be nothing to stop it afterwards.

**Sen. Dr. Wheeler:** This would encourage it.

**Hon. Dr. Khan:** Could I just say one thing? If what you have just said occurs, that they will move and form the private sector company that will now supply services to the regional health authorities as a bulk, then you would remove from the yoke of the Ministry of Health and the public service the litigation factor because they would be acting as a separate company and people would litigate against them rather than the public servant. Yes, their responsibility would be greater at that point in time. But what I am saying to you, I would give you the assurance, it will not happen.

**Sen. Al-Rawi:** How? Hon. Minister—

**Sen. Ramlogan SC:** Dr. Wheeler, we hear you on the concern and one could never predict the future. But the point is that doctors, lawyers, any professional, they have an independent constitutional right and we cannot restrict that, but we can certainly seek to regulate it in the public interest. And by putting the RHAs in a position where—whenever it is considered expedient that they can all join hands and actually put themselves in an umbrella position to engage in discussions with any service provider or any pharmaceutical company as the case may be—the intention clearly is not that it would facilitate and encourage persons to now put themselves in a position where they could blackmail the health-care system.

That is not the position, but as Sen. Balgobin quite rightly outlined in his example, that could have been taking place all now, it could continue to take place, but I certainly think that by all the RHAs being able to take a joint approach to this thing, we are putting the public interest first and in a much better position to deal with them in an informed manner.

**Sen. Dr. Wheeler:** Okay, I agree with you. This will cause some standardization—the fees—but could I ask that some audit be done when the Bill is—

**Sen. Ramlogan SC:** I am not hearing you, some what?

**Sen. Dr. Wheeler:** Let us say the Bill is passed tomorrow and comes into effect the next day, that the Ministry undertake some audit to review the movement after one year to see what effects—

**Sen. Ramlogan SC:** I think that is a very good idea.

**Sen. Dr. Wheeler:**—and then determine if you will look to review it in a year or so.

**Hon. Dr. Khan:** I will give you that assurance. Yes, we will. *[Interruption]*

**Sen. Dr. Balgobin:** If you are doing a tenders committee comprised of people from the different RHAs, what tender rules would apply?

**Sen. Ramlogan SC:** The regulations will still have force of law, so the regulations will still govern it and any agreement they make will still have to be—

**Sen. Dr. Balgobin:** I am just pointing out for the Minister and his team the importance of having the MOH or someone draft a set of tender rules for that—

**Hon. Dr. Khan:** It is done already.

**Sen. Ramlogan SC:** That is fine. That is fine.

**2.45 p.m.**

**Sen. Ramlogan SC:** Permit me to say for the record, Sen. Wheeler, that if on Sen. Prescott's and Sen. Al-Rawi's analysis, this amendment was not necessary because the RHAs could have been doing this all the time, then the very fears that you all are expressing now are fears which would have been alive and continuously so.

**Hon. Senator:** No.

**Sen. Ramlogan SC:** Because then if the RHAs could have been doing this without this amendment, then equally the specialists could have been forming themselves into groups and holding the RHAs to ransom in any event.

**Sen. Dr. Wheeler:** The difference is that the RHAs right now function like individual fiefdoms.

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

**Sen. Ramlogan SC:** Yes.

**Sen. Dr. Wheeler:** So this might encourage them—you quite rightly say to collaborate in a sense—[*Interruption*]

**Sen. Ramlogan SC:** Yes. The hope is to standardize it and eliminate price discrimination.

**Sen. Dr. Wheeler:** That part I agree with—[*Interruption*]

**Sen. Ramlogan SC:** I am grateful for that.

**Sen. Dr. Wheeler:** Because you do have some doctors charging different RHAs—[*Interruption*]

**Sen. Ramlogan SC:** And even pharmaceutical companies as well. So Chair, that is it.

*Question put and agreed to:*

*Clause 2 ordered to stand part of the Bill.*

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

*Senate resumed.*

*Bill reported without amendments, read a third time and passed.*

**ADMINISTRATION OF JUSTICE  
(ELECTRONIC MONITORING) BILL, 2012**

*Order for second reading read.*

**The Minister of Justice (Hon. Herbert Volney):** Thank you Madam Vice-President. Madam Vice-President, I beg to move,

That a Bill entitled, an Act to make provision for the implementation of a system for electronic monitoring in Trinidad and Tobago and for related matters, be now read a second time.

This Bill is being presented in the context of general knowledge that the criminal justice system is bursting at its seams. The Ministry of Justice was created by our Government, by the Prime Minister, with the primary mandate being the transformation of the criminal justice system that would see to the creation of a robust community justice system that places a special emphasis on the rehabilitation of offenders through their effective management. As the proliferation of

*Electronic Monitoring Bill, 2012*  
[HON. H. VOLNEY]

*Tuesday, May 29, 2012*

crime and criminal activity increases and becomes more complex, greater prominence is focused on the increasing sophistication of the resources and systems utilized in the fight against crime.

As we lay the foundation for the sustainable development and economic prosperity of our country, our Government will ensure that our progress is not stymied by the reckless, unbridled criminal activity of a few. The Administration of Justice (Electronic Monitoring) Bill, 2012 is just one of the measures proposed by our Government to overhaul the penal system by introducing a new sentencing option which would have the effect of reducing prison overcrowding and introducing a more effective prisoner management system.

Madam Vice-President, and hon. Senators, the expanding use modern technology for tracking criminals is a colossal priority for our Government. This Bill therefore—together with other interventions, in the form of wide ranging reforms that include amending the prison rules and introducing a system of parole—will signify the fulfilment of yet another promise made by our Government to the people of Trinidad and Tobago, that is, to ensure justice is delivered swiftly while safeguarding and preserving the integrity of the rule of law and the protection offered by due process in our twin-island republic.

Madam Vice-President, by way of explanation, electronic monitoring—also called electronic tagging—is a form of non-secret surveillance consisting of an electronic device attached to a person allowing their whereabouts to be known and monitored. Devices operate on one of two main electronic or telecommunication systems: global positioning systems, otherwise called GPS, or radio frequencies. Electronic monitoring allows persons involved in monitoring offenders to quickly and easily confirm that an offender is at a specified location. From a distance, offenders' geographic locations can be pinpointed in real time.

By way of a brief historical overview, the first electronic monitoring device was created and patented in the mid-1960s in the United States by a Harvard psychologist called Robert Schwitzgebel, whose intention was to provide a humane and inexpensive alternative to custody for persons involved in the justice process.

Later, in 1977, a judge, Jack Love from Albuquerque, New Mexico, drew inspiration from an episode in the Spider-Man comic book series—to explore the possible utilization of electronic monitoring for offenders—when Spider-Man the comic book hero was tagged with a device that allowed a villain to track his every move.

Judge Jack Love subsequently sentenced the first offender to house arrest with electronic monitoring as far back as 1983. By 1986 the United States Parole Commission developed an experimental curfew parole programme for the early release of some inmates.

By 1989 the programme was expanded to include probationers and pre-trial defenders. By 1991 the federal system was implementing electronic supervision nationally. Since its initial design, Madam Vice-President, and hon. Senators, monitoring solutions have continue to evolve throughout their duration. New innovative technologies continued to be advanced, curing the hiccups and difficulties experienced in the early stage of implementation.

Now, electronic monitoring technologies are employed worldwide and in particular in the following instances:

1. As a domestic violence deterrent. As a tool to both strengthen the protective or protection order and provide a measure of psychological reassurance to the complaining witness;
2. At the pretrial stages as a condition of an order for bail;
3. As a sentencing option;
4. In the early release of sentenced offenders;
5. In the monitoring of terrorist suspects and security risks;
6. In the instances of juvenile delinquency;
7. In family proceedings for the purpose of securing the welfare of the child and/or to prevent changes in the circumstances relevant to the determination of a custody matter.

Madam Vice-President, jurisdictions worldwide have lauded the benefits offered by the use of electronic monitoring. Offenders are now monitored throughout Europe, the United Kingdom, United States of America, Asia, Australia, Canada, Latin America, and in the Bahamas, right here in the Caribbean. So too, other jurisdictions in our region, such as the Grand Cayman and the British Virgin Islands are also considering the utilization of similar technological measures to restructure and upgrade their respective systems in an effort to create a more effective prisoner management system.

The introduction of electronic monitoring has not been without its difficulties. For instance, both United Kingdom and Canada have endured imbroglio with its implementation. In the United Kingdom, for example, the first pilot, launched in 1989, was abandoned after five and a half months because of opposition by the probation services to its introduction. Despite this, the labour Government

*Electronic Monitoring Bill, 2012*  
[HON. H. VOLNEY]

*Tuesday, May 29, 2012*

advanced and extended the use of electronic monitoring in 1995 on the basis that this form of surveillance would help to increase the protection of the public. The British Government understood, then, that electronic monitoring represented a major technological overhaul of the criminal justice and penal system, and to this end the home detention curfew scheme, HDC, was proposed in January 1999.

This scheme allowed prison authorities to release eligible offenders up to six months before the completion of their sentences and place them under surveillance in their respective communities. To be eligible for the home detention scheme an offender must be serving a sentence of three months or more, but less than four years. Additionally, he must pass a risk assessment, have a fixed address and agree to be electronically monitored. By way of illustration, hon. Members of the Senate, a study of the home detention scheme conducted in its first year of operation by the Home Office revealed that 95 per cent of prisoners who were released on HDC in the first year were able to complete the programme successfully. Of those recalled to prison, 68 per cent were recalled for violating one or more curfew conditions. Only 1 per cent was recalled because he posed a risk of serious harm to the community.

Electronic monitoring is now accepted and implemented with success throughout the United Kingdom as both an alternative to custody and as a penalty at the highest end of community sentences. The British Government remains committed to strengthening community sentences with stricter electronically enforced curfews. In this vein, in February 2012 they dramatically increased the funding available for the award of contracts for electronic monitoring of offenders from £650 million to £1 billion—sterling that is.

**3.00 p.m.**

Additionally, the Legal Aid, Sentencing and Punishment of Offenders Bill, HL Bill No. 109, proposes to amend section 204 of the Criminal Justice Act, 2003 to extend the maximum amount of time an offender spends on a tag, from six to 12 months and from 12 to 16 hours a day.

Earlier on, Madam Vice-President, I alluded to the problems experienced by Canada in implementing its federal pilot project, the Electronic Monitoring Programme Project, (EMPP). This programme was launched in December 2009. There were a number of challenges associated with the reliability of the technology, the sustainability of the charged battery, drift and frequent false alerts. Notwithstanding this, the Government of Canada did not recommend the suspension of the electronic monitoring programme. It was felt that the above deficiencies could be addressed and corrected through the use of more sophisticated and modern technologies.

Electronic monitoring remains to stay in Canada. The Canadian Government is presently amending its Corrections and Conditional Release Act of 1992 by introducing a new section 57.1(1), entitled, “Monitoring device” which provides and I quote:

“...may demand that an offender wear a monitoring device in order to monitor their compliance with a condition of a temporary absence, work release, parole, statutory release or long-term supervision that restricts their access to a person or a geographical area or requires them to be in a geographical area.”

Hon. Senators, jurisdictions the world over agree that some of the benefits of electronic monitoring include the following:

(1) Cost effectiveness.

Electronic monitoring may be less expensive than incarceration and requires less staff than traditional intensive supervision programmes. A perfect illustration of this can be seen in an article published in the *Financial Times* of September 29, 2011 prepared by Helen Warrell and Gill Plimmer, United Kingdom, and I quote:

“The cost advantage of tagging is most apparent when it is used to secure an offender’s early release from prison. Electronic monitoring costs £13 a day”—that is sterling—“compared to the £123 daily cost of keeping an offender in custody.”

Similar praises are sung in the territory of Victoria in Australia. The Victorian parole board has noted that monitoring parolees saves \$1.80 for every \$1 spent. This is quite phenomenal, Madam Vice-President.

The figures obtained from the Commissioner of Prisons of Trinidad and Tobago—the prison service in Trinidad and Tobago—for 2010 have disclosed that the cost to maintain an inmate per day for the period January to December of 2010 was approximately \$315.57. I do not know where the 57 cents came from, but that is the given amount—[*Interruption*—]per day. The use of electronic monitoring, therefore, has the potential to improve the cost effectiveness of correctional programmes, provide enhanced opportunities for offender rehabilitation and extend the range of sentences available to the courts.

(2) Reduces overcrowding.

Jurisdictions worldwide have acknowledged that monitoring offenders relieve the pressure on an overcrowded prison and enables valuable prison resources to be targeted at those offenders who represent a real risk to the public. The overcrowding statistics in our nation’s prisons for the period January to June 2011 denote that the Port of

*Electronic Monitoring Bill, 2012*  
[HON. H. VOLNEY]

*Tuesday, May 29, 2012*

Spain prison, Carrera convict prison, Tobago convict prison and remand, all amassed their capacity. The Port of Spain prison with a capacity of 250 inmates was 140 per cent overcrowded; Carrera, at its highest, was 81 per cent overpopulated with a capacity of 185. Tobago was 130 per cent overcrowded with a capacity of 30, and remand yard with a capacity of 655 inmates at times, was 69 per cent over its capacity.

(3) It reduces recidivism.

In Trinidad and Tobago the recidivism rate is close to 55 per cent, Madam Vice-President. Rates of recidivism reflect a degree to which released inmates have been rehabilitated and the role that correctional programmes play in reintegrating prisoners into society. Sentencing low-risk offenders to prison can lead to reoffending on release. Family structures and support mechanisms are disrupted when low-risk offenders are imprisoned and the revolving-door justice provokes a negative public reaction.

High rates of recidivism result in tremendous cost, both in terms of public safety and in tax dollars spent to arrest, prosecute and incarcerate reoffenders. Our Government's priority is penal reform and the introduction of electronic monitoring and is intended to significantly reduce recidivism.

Madam Vice-President, the utilization of electronic monitoring as a form of offender management also has the support of the United Nations. Adopted in 1986, the United Nations Standard Minimum Rules for Non-custodial Measures, also called the Tokyo Rules, note that imprisonment should be considered as a last resort and, in turn, encourage the promotion of non-custodial measures such as electronic monitoring, having, of course, due regard for the rights of victims and the concerns of society.

**Sen. Ramkhelawan:** Thanks to the Minister for giving way. I did not quite catch the cost of electronic monitoring in Trinidad and Tobago, or your estimate for it, even though you gave the cost of maintaining a prisoner at \$357 and some cents per day. Could the Minister clarify before he completes his presentation?

**Hon. H. Volney:** Yes, I can do that now. A recent expression of interest sent out by the Ministry of Justice reveals that the approximate cost from a number of persons who were involved in the exercise showing an interest varied between approximately US \$13 and US \$20 per day, per person. In the Bahamas I know for the last three years it has been US \$15 per day, which is approximately TT \$90.

**Sen. Drayton:** Is that for just monitoring?

**Hon. H. Volney:** It is a final cost.

**Sen. Drayton:** It is a final cost, inclusive of the monitoring and equipment and everything?

**Hon. H. Volney:** Yes. It is a final cost.

Similar sentiments are expressed with regards to juveniles in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules, adopted in 1985. It gives guidance with respect to the establishment of a progressive justice system for young persons in conflict with the law. The rules encourage the devising of new and innovative measures to avoid detention, in the interest of the well-being of the juvenile.

Our Government, Madam Vice-President, is signifying its commitment to the principles enunciated in the Beijing Rules by making vigorous, concerted and effective efforts to ensure that such rights are protected, and this Bill is testimony to that. We are putting in place—as part of the proposed offender management legislation which will very soon be before this honourable Chamber—specific measures applicable to juveniles accused of, or recognized, as having infringed the criminal law. We intend to establish also a juvenile offender unit by which juvenile offenders will be the focus of a wide range of intervention strategies that will combine rehabilitative and punishment aspects with intensive monitoring.

This will be done in an effort to control and limit their opportunities for criminal activity. The imposition of electronic monitoring on juveniles has already shown marked benefits in the United States and in the United Kingdom. Madam Vice-President, a 2004 report from the state of North Carolina Department of Juvenile Justice demonstrates that 75 per cent of juveniles who were released from the electronic monitoring programmes were considered successful. These programmes have the advantage of restricting an offender's activities while minimally disrupting productive social life and behaviour.

Another American study conducted as far back as 1989 by Michael Charles, titled “Juveniles on Electronic Monitoring”, and published in the *Journal of Contemporary Criminal Justice* shows that the social and psychological impacts of electronic monitoring on juveniles are positive. In the United Kingdom, the Criminal Justice and Police Act of 2001 introduced new powers for the electronic monitoring of juvenile offenders on bail. The Home Office initially made electronic monitoring of juveniles aged 12 to 16, on bail or remand, available to the courts. Powers to tag 17-year-olds were introduced in a street crime initiative in July 2002.

*Electronic Monitoring Bill, 2012*  
[HON. H. VOLNEY]

*Tuesday, May 29, 2012*

This Government is cognizant of the fact that young persons who have been charged with an offence develop mental needs that require different programmes and services than those for our adults. Our Government intends to adhere to the spirit of the United Nations Convention on the Rights of the Child to which it is a party, and which mandates at Article 40 sub-article (4), and I quote:

“A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

**3.15 p.m.**

The best interest of the child is the primary consideration of our Government, Madam Vice-President. Therefore, we shall strive to protect their well-being and safety through the policies and programmes which will be enacted. The option of using electronic monitoring as part of the juvenile offender management policy provides youths with the ability to be supervised in the least restrictive manner in lieu of detention—I repeat, in lieu of detention—with the aim of disrupting the offending behaviour of persistent young offenders through strict monitoring and enforcement.

By virtue of this Bill, hon. Senators, our Government proposes to make provision for the introduction of electronic monitoring in Trinidad and Tobago as a condition of a protection order granted under Part V of the Domestic Violence Act Chap. 45:56. Our Government is taking a stand against domestic violence by strengthening the protection orders issued by our courts and giving them teeth through the use of electronic monitoring systems.

We have all heard of unfortunate incidents where victims of domestic violence, having received the protection of the State via a protection order, suffer repeated violence—and in some cases, death—at the hands of the very abuser against whom an order was obtained. In fact, one of our prominent attorneys, Lynette Seebaran-Suite, in an article in the *Guardian* newspaper of January 16, 2011, “The problem with Protection Orders”, noted that, and I quote:

“The problem with the machinery of the protection order, she explained, is that society often leaves the battered woman on her own to attempt to enforce the order...”

Seebaran-Suite went on to lament and I quote again:

“We all know that a piece of paper cannot really protect anybody, especially if you’re dealing with somebody who has no respect for the law...”

She further called for us as a society to go beyond the protection order and recommended the introduction of inter-agency protocols to define specific roles for all our stakeholders in a situation of domestic violence including the court and the police.

Madam Vice-President, the use of electronic monitoring in tandem with the grant of a protection order is not a novel concept. Spain has been using electronic monitoring devices in cases of gender-based violence since 2006. In a study conducted by Elmo-Tech Ltd. titled, "*The Evaluation of Electronic Monitoring and Dissuasion of Domestic Violence in Madrid*," during the period March 01, 2006 to August 31, 2009, it was revealed that since its implementation there has been a significant increase in the use of electronic monitoring devices in cases of suspected domestic violence. There was a decrease in the number of homicides of ex-spouses and, according to the study, there were no additional reports of attacks on victims by their respective abusers who were subject to electronic monitoring as a condition of a protection order.

Our Government has heard the pleas of victims and activists alike and we view electronic monitoring as a perfect complement to the current system of protection orders. The presumption underlying electronic supervision is that offenders under protection orders, knowing that they cannot approach a certain area without detection, are less likely to attempt to seek out a victim, in spite of a history of violating such orders in the absence of electronic monitoring.

The police are also provided with a better means of enforcing protection orders, as electronic monitoring would facilitate law enforcement's ability to know when respondents have violated protection orders by entering exclusion zones and by allowing police to properly respond to the respondent's violation and provide the necessary evidence to the prosecution for the laying of criminal charges. This initiative in this Bill will go a long way towards returning liberty to the victims of domestic violence as well as to their children.

I now turn to the provisions of the Bill. Clause 2 would provide for the constitutionality of the Bill, which is divided into five parts and comprises 25 clauses. The Bill would be inconsistent with sections 4 and 5 of the Constitution and is therefore required to be passed by a special majority vote of at least three-fifths of the Members of each House.

Madam Vice-President, the Constitution is our supreme law of the land and any legislative provision which is inconsistent with it is void to the extent of the inconsistency. This is clearly stated in section 2, of the Constitution. It is well

*Electronic Monitoring Bill, 2012*  
[HON. H. VOLNEY]

*Tuesday, May 29, 2012*

established, however, that in every democratic society the rights of the individual must be balanced against the interest of national security, the public and economic well-being of the country and the effective functioning of the criminal justice system.

When these interests conflict, the public interests or the common good must prevail where reasonably justifiable. It is sometimes necessary, therefore, that individuals rights are abrogated where there is a threat to the public good. In other words, the rights of each individual must be balanced against the right of the State to protect all individuals collectively.

I will now address those provisions of the Bill which would be inconsistent with sections 4 and 5 of the Constitution. Clause 10 of the Bill would provide for the court to impose electronic monitoring as a sentence—a sentence in lieu of a sentence of imprisonment or as part of a sentence comprising some imprisonment, and as a condition of bail and as a condition of a protection order made under the Domestic Violence Act. Further, clause 14 would require a person, the parent or guardian of a child who is fitted with the device, or a respondent to make full or partial payment for the use of the electronic monitoring device.

These provisions would be inconsistent with the right of the individual to equality before the law and the protection of the law which is guaranteed in section 4(b) of the Constitution respectively. Madam Vice-President, this right is an intrinsic right which every democratic nation must guard jealousy. It may be argued that this right is abrogated where the Electronic Monitoring Programme requires participants to pay user fees. Some have identified this move as a form of discrimination against youths and the poor. It should be noted, however, that most electronically monitored house arrest programmes—the world over—charge user fees, and the offender is also required to have a court approved residence and a telephone. Offenders lacking these resources may find themselves faced with no other alternative but prison.

Madam Vice-President, we have made provision in this Bill to address these potential inequities by introducing a sliding fee scheme or schedule which would take into consideration the means of the offender. At the same time, electronic monitoring will afford an individual with limited financial means an opportunity to return home while awaiting trial, whereas he would, more than likely have been forced to remain in custody until the end of his trial due to his inability to secure bail.

Clause 14 of the Bill would interfere with the right of the individual to respect for his private and family life as guaranteed in section 4(c) of the Constitution. Those critical of the initiatives contemplated by this Bill may also cite potential adverse social effects associated with the visibility of both the body worn and residential equipment.

It is submitted, Madam Vice-President and hon. Members of the Senate, that the interference of the privacy rights of the participant in the Electronic Monitoring Programme will be an interference that is consented to by the participant. To have the benefit of this, a participant must consent. Madam Vice-President, that is a matter for the judge, a matter for the magistrate and for the regulations to establish how the consent is recorded and reported.

Consent is necessary for participation and such consent would be sought from the applicant for bail—in the case of a child, his parents or guardian as well as other adults residing in the offender's household, prior to being fitted with the tag. By obtaining this consent, Madam Vice-President, our Government is confident that any associated hardships will be fully anticipated, appreciated and accepted by persons giving their consent.

What is the alternative, Madam Vice-President and hon. Senators—to consent? If you do not consent to be part of the programme the alternative is you remain locked up in custody. That is the harsh reality of it. I would shudder to think that any person who could avail themselves of an opportunity under this Act, if it becomes law, that they would go for the electronic monitoring with consent, than remain wasting their life, locked up, awaiting a trial day. Or in the case of a sentence of the court that they would prefer to remain at home under electronic monitoring rather than remain locked up in a cell at the State institution. I think there are many people who are presently locked up who would love to have the opportunity now to get early release with an electronic bracelet than to remain under the harsh circumstances of incarceration in our country.

Regarding the potential intrusiveness of electronic monitoring it must be borne in mind by Members here in the Senate that even though the physical attachment of a device to a person can be both physically and psychologically invasive, such attachment would not be performed without the consent of the participant. Consent will always be without coercion and the participant will be fully informed via explanation and demonstration of the device and its operation.

It is my considered opinion, Madam Vice-President, that although fundamental rights and freedoms are being curtailed, a court would be hard-pressed to declare that the proposed legislation is not reasonably justifiable in a society that has a

*Electronic Monitoring Bill, 2012*  
[HON. H. VOLNEY]

*Tuesday, May 29, 2012*

proper respect for the rights and the freedoms of the individual. It is with the collective interest of our citizens in mind that I appeal to all the Members of this honourable Chamber to support this Bill.

**3.30 p.m.**

Part I of the Bill comprises clause 3, which provides the interpretation provision. In this clause 3, “competent authority” is defined to include a statutory board, a tribunal or any other authority or functionary appointed under any written law.

The Ministry of Justice intends in the very near future to bring legislation to this honourable Senate introducing a system of parole, which is a widely utilized form of early release from imprisonment, to be granted in respect of certain offenders.

I spoke of this in the budget debate, Madam Vice-President, in the other House, and the policy has been approved for some time. It is at the Chief Parliamentary Counsel’s office, which is overworked and overburdened. I am happy to announce that we now have a draft Bill to take before the Legislative Review Committee, and very soon the parole Bill will be here in this honourable Chamber. [*Desk thumping*] The imposition of electronic monitoring on parolees by a parole board is a recognized practice and would be provided for under this clause.

I now come to electronic monitoring of children. Madam Vice-President, with regard to the possible imposition of electronic monitoring on certain children, we would like to assure this honourable Chamber that this practice obtains in other jurisdictions that we sometimes look to for guidance on policy issues as regards criminal justice reform. A court will have the power to impose electronic monitoring on any child below the age of 18, provided that the consent for such imposition in the case of an order for bail has been obtained by his parent or guardian.

Part II of the Bill comprises clauses 4 to 8 and deals with the establishment of an Electronic Monitoring Unit, which will be a unit within the Ministry of Justice.

Clause 4 of the Bill would establish the electronic monitoring unit and would provide for the staff of the unit to include an Electronic Monitoring Manager and a Deputy Electronic Monitoring Manager, who shall be public officers to which section 121 of the Constitution shall apply.

The new clause 5 would make provision for a transitional clause to clearly demonstrate that the contractual appointments of the EM Manager and the Deputy EM Manager by the Ministry is meant as an interim step towards ensuring that we are not again walled into stagnation. The new clause 5 establishes the contractual engagement of the EM Manager and the Deputy EM Manager, which is not meant to supplant the fact that the Public Service Commission is to be charged with the establishment of independent offices of EM Manager and the Deputy EM Manager.

I have been advised that the process of appointment by the Public Service Commission could take one and a half to two years. We simply cannot allow the appointment of the EM Manager and the Deputy EM Manager, the driving forces of the legislation, to linger for such a protracted period of time. In this regard, there is circulated, I hope, an amendment to that clause—I have asked for it to be circulated—which would bring it into line with the same arrangement approved by this Chamber, as regards interim arrangements for the implementation of the DNA legislation that received the unanimous support of this Chamber.

Madam Vice-President, clause 6 of the Bill stipulates that the Electronic Monitoring Unit shall be responsible for ensuring the security of the electronic monitoring system, for retrieving and analyzing information and for reporting any non-compliance with the court's decision or a decision of a competent authority. The unit will also report on breaches related to the use of electronic monitoring devices. This unit will do so by providing near real-time tracking of the location of offenders and reporting alarm notifications, signal loss, device malfunction or device tampering forthwith to the Electronic Monitoring Manager. This unit being proposed by our Government is not unlike other electronic monitoring units set up in other jurisdictions for the purpose of implementing electronic monitoring systems.

In the United Kingdom, for instance, the National Offender Management Service (NOMS) oversees the use of electronic monitoring, while private contractors provide and install the monitoring equipment and are responsible for monitoring the curfews. Similarly, under the Penal Code Electronic Monitoring Rules 2010, made pursuant to the Penal Code Act, Chap. 84 of the Commonwealth of the Bahamas, which is analogous, an electronic monitoring unit was also established.

Madam Vice-President, I had the opportunity of observing this personally on one of my official fact-finding trips to the Bahamas, of which there were two since I have been Minister. Well, one to the Bahamas. After establishing an electronic monitoring system, spearheaded by this unit in 2010, the Bahamas has had nothing but a series of successes in this regard. The system is operating smoothly to date and the courts are making good use of this newly introduced sentencing option.

Clause 8 of this Bill would prohibit any officer or individual engaged on contract with the electronic monitoring unit, or any individual engaged by a service provider, from disclosing any information received in the course of his employment other than in the proper exercise of his functions. Persons contravening this clause commit an offence and could face a fine of up to \$100,000 and two years' imprisonment upon summary conviction. This is a crucial safeguard installed in this Bill in order to protect information gathered and the privacy of anyone being monitored.

*Electronic Monitoring Bill, 2012*  
[HON. H. VOLNEY]

*Tuesday, May 29, 2012*

Part III of the Bill comprises clauses 9 through 15 and addresses the general application of Electronic Monitoring Orders in addition to key administrative functions.

Hon. Senators, this Bill would provide that electronic monitor may not be imposed as a sentence, as part of a sentence, or in lieu of a sentence of imprisonment for the offences listed in the First Schedule to the Bill, which include treason, murder, kidnapping, rape, drug trafficking and various firearm offences. As can be seen from the nature of the offences, our Government acknowledges that electronic supervision in the community would not be suitable to violent offenders committing violent crimes, as these types of offenders are deemed high-risk and are seen to pose a significant threat to public safety.

Electronic monitoring in the community would be in the most part geared towards offenders deemed not to pose a serious threat to the public and whose crimes do not necessarily warrant incarceration in order to effect rehabilitation of the offender, while at the same time protecting the public from undue risk.

Clause 10 would provide, that before making a decision in respect of the imposition of electronic monitoring, a court shall request a report from the EM Manager which will indicate the suitability of the offender as a candidate for electronic monitoring. This report would serve as a guide to the court, as to the suitability of an offender for electronic monitoring. The report will inform the court about the general character, antecedents and physical and mental health of the offender, so that the court may be well poised to determine the possible threat to public safety, which may be caused by community supervision of the offender in question.

**3.40 p.m.**

The Electronic Monitoring Manager has a further principal duty to ensure that permission to install the monitoring instrument is obtained from either the occupier of the premises or any other person without whose cooperation it would be impracticable for the implementation of electronic monitoring.

Clause 10 would provide further that the court explain to any person—or in the case of a child, his parent or guardian—or a respondent on whom electronic monitoring is to be imposed, the meaning and effect of the electronic monitoring decision, as well as the effect of non-compliance with it. This is a particularly important step as an incontrovertible explanation and demonstration of the device, and its operation is paramount. The participant must clearly understand that the use of the device is chiefly as an alternative to incarceration, and there would be serious consequences for any violation.

Electronic monitoring as a condition of a protection order: as I had alluded to, this legislation makes provision for electronic monitoring to be imposed as a condition of a protection order issued under the Domestic Violence Act, Chap. 45:56. By clause 10, the court may impose electronic monitoring as a condition of a protection order, made under section 5 of the Domestic Violence Act. A respondent who is arrested and charged under the Domestic Violence Act may be granted bail with or without electronic monitoring, but in such circumstances, the consent of the respondent will not be sought; as to do so, will enervate the intent of this Bill.

Clause 11 of the Bill would provide that electronic monitoring may now be imposed as a condition of a pardon granted by the President under section 87(2)(a) of the Constitution. Conditional pardons are not a foreign concept as His Excellency has, in the past, granted conditional pardons.

Clause 12 provides that a competent authority empowered to grant early release from imprisonment may impose electronic monitoring as a condition of such early release. In the case of parole, the eligibility and suitability of certain classes of incarcerated persons will be determined by the parole board which will be a creation of statute. This board will be empowered by legislation, soon to be before this honourable Chamber, to impose electronic monitoring on parolees in appropriate cases.

Clause 13 provides the type of electronic monitoring device to be fitted on a person, child or respondent. In making such a determination, the court shall take into account the recommendations of the Electronic Monitoring Manager as well as the list of approved devices stipulated by the Minister under clause 9.

Clause 14 would give the court the discretionary power to request that a person, respondent, or, in the case of a child, his parent or guardian, make full or partial payment for the use of the electronic monitoring device if these persons have the financial capability to make such payments. The court's power would be exercisable on the basis of the report of the Electronic Monitoring Manager. Madam Vice-President, this is the position in Canada and other countries where the device is used.

Our People's Partnership Government is an all-inclusive Government. It does not discriminate especially on the basis of poverty or youth. In this regard, offenders who are unable to pay will not be disqualified from participation in the programme. Our Government will not send such impecunious offenders to prison. Clause 15 would provide for the terms of electronic monitoring.

*Electronic Monitoring Bill, 2012*  
[HON. H. VOLNEY]

*Tuesday, May 29, 2012*

Part IV of the Bill comprises clauses 16 through 22, and would set out the offences which can be committed by a person or other individuals under the proposed legislation. These would include deliberately tampering or removing a device.

Clause 17 would set out the procedure to be complied with where a person fails to comply with a court decision or breaches any agreement.

Clause 18: a duty is placed upon the person, or in the case of a child, his parent or guardian, to inform the Electronic Monitoring Manager of any proposed change or changes in his circumstances within a reasonable time.

Clause 19 would empower the court in cases of non-compliance or breach to impose the original sentence which would have been imposed on the person, as well as to impose the penalty prescribed for a breach of the protection order.

Clause 20 would provide that in the event of a dismissal of a proceeding before the court that a detailed report of the reasons for such dismissal be prepared and placed on the person or respondent's record maintained by the unit.

Madam Vice-President, Part V of the Bill, clauses 23 to 25, provide for miscellaneous matters.

It gives me great pleasure, in presenting this Bill, to ask the Senators here to look at the greater picture which is an alternative to incarceration. So often incarceration destroys lives; it destroys families; and many times, through acts, injudicious acts, out of the character of man—and women. People do make mistakes. This measure is meant to be an aid to the court to ensure that the indiscretions of men who are not criminals do not necessarily end them up in prison because there are alternatives. It also gives persons who cannot afford the bail to be out on bail with electronic monitoring.

Madam Vice-President, I think this Bill is a good Bill. Our legal people have worked very hard on it. If there are ways that this honourable Chamber can assist in improving it, I would be happy to get any suggestions coming from the floor so that we can have a good and an improved Bill as much as I think that it is a good Bill. I beg to move.

*Question proposed.*

**Sen. Penelope Beckles:** Madam Vice-President, I thank you very much for the opportunity to contribute on this Bill, "An Act to make provisions for the implementation of a system for electronic monitoring in Trinidad and Tobago and for related matters."

Madam Vice-President, if you would allow me before I go into the Bill, just to express my—well, the fact that there are several ladies and gentlemen in the Senate that look extremely splendid in their outfits today. I see that the Minister of Public Utilities is smiling.

**Sen. George:** I am smiling at the smile that came to Sen. Al-Rawi's face. [Laughter]

**Sen. Al-Rawi:** Typical!

**Sen. George:** As you mentioned, eh!

**Sen. P. Beckles:** Both, of course, from the Independent Bench, Sen. Ramkhelawan, Sen. Burke, my good friend, temporary Senator Shane Mohammed, who seems to be setting the trend—always the younger ones—and, of course, Sen. Deyalsingh. [Desk thumping] I know that Sen. St. Rose-Greaves has given us a nice little cross there, because I know that she can do the head tie; not everybody can do the head tie. Madam Vice-President, yours is hiding, but I know that you also—[Interruption]—respectfully so. So just to acknowledge the fact that they look extremely dapper in keeping with our holiday on tomorrow which we would talk about a little later on.

Madam Vice-President, just to deal with my first concern on the Bill, which is Part II, clause 4 which says:

“(2) The staff of the Unit shall include the Electronic Monitoring Manager...who shall be head of the Unit, and such other suitably qualified officers and employees.

(3) The EM Manager and other members of staff of the Unit shall be engaged on contract, in accordance with guidelines for contract employment established by the Chief Personnel Officer.”

Now, the Minister was at pains to point out the—later down on the Bill, you would see the roles and responsibilities. I think it is—if we go to Part III, clause 9(6) where it says:

“In making a decision under this section, the Court shall take into account the report of the EM Manager which shall be prepared in accordance with the Second Schedule and shall have regard to the character, antecedents, physical and mental health of the person or respondent, to any extenuating circumstances in which an offence was committed and to the possible threat to public safety caused by his release.”

*Electronic Monitoring Bill, 2012*  
[SEN. BECKLES]

*Tuesday, May 29, 2012*

Later on, it also speaks to, specifically, some roles and functions of the manager.

Therefore, Madam Vice-President, my concern is: what is it to be “suitably qualified” for the purposes of this Bill? At the end of the day, the way this particular clause is written—to me, really, I am not certain. I imagine from this that it would be the Permanent Secretary who would be contracting the head of the unit and the other suitably qualified officers and employees.

Now, the hon. Minister spoke about his experience in the Bahamas and he gave us quite a great deal of information in relation to Canada, England and so. I know that the hon. Minister would have realized that in the United States, Canada and other places, they would go under different names, whether it is the correctional—they have different names that they would give the units that have been set up. Having regard to what the court is going to be requesting of the Electronic Monitoring Manager, I think, simply to leave the words “suitably qualified officers and employees” is not sufficient. [*Desk thumping*]

Madam Vice-President, if we go to clause 5, which talks about the responsibilities of the unit, it says:

- “(1) In furtherance of its responsibility for implementation and maintenance of the system for electronic monitoring, the Unit shall be responsible for—
- (a) ensuring the security of the system for electronic monitoring;
  - (b) retrieving and analyzing information from the system for electronic monitoring; and
  - (c) reporting...non-compliance...”

Then it goes a little further to talk about—“Notwithstanding the generality of the foregoing, the Unit shall provide” real-time tracking. It talks about the collection of data, maintaining a register and it talks about improving information technology and electronic monitoring literacy within the Ministry and advancing electronic monitoring awareness.

Madam Vice-President, it may very well be that when they talk about “suitably qualified”, they would be looking at the roles and responsibilities of the manager and the unit, and somebody would determine if these persons are suitably qualified. My question is: who has the responsibility to determine whether the staff and the EM Manager are suitably qualified?

**3.55 p.m.**

I know the majority of Ministers here, particularly the Ministers of Public Utilities and National Security, would have certain agencies under their remit. In those agencies, when you look at the legislation, it would specify a couple of persons—if I speak off the top of my head—for example, both WASA and T&TEC in the legislation, for obvious reasons, would say an engineer, an accountant, a lawyer, because of the fact that the nature of it means that you have to have persons who have certain expertise. I want to suggest that if we are going to be serious about implementing this particular piece of legislation, having regard to all that the Minister has said and what is expected of the unit, that “suitably qualified” is definitely not good enough. [*Desk thumping*]

One of the things that bothers me is the issue of collection of data and ensuring the security of the system for electronic monitoring. We have seen, very recently and within recent times, that we have not, as a country, certainly given the impression that we are very good at collecting quality information—collecting information, storing very important information that may be considered secret, information that should not get into the hands of the average person. I refer to the recent report in the newspapers of the break-in at the Strategic Intelligence Agency in Arima, where it was stated that surveillance equipment was stolen, which cost \$2 million. I know the hon. Minister of National Security has indicated that he has disagreed with some of that and he has also indicated that some investigation is taking place. But there is confirmation that there was a break-in.

The point is we ask ourselves if you have an institution that should be collecting information where the integrity of that information is so very, very important, how is the country going to feel comfortable that you set up this unit with suitably qualified persons—where we do not specify the criteria, exactly what those qualifications are—how are we going to feel comfortable that the data there is safe and secure? [*Desk thumping*]

Madam Vice-President, we have not been good as a country at collecting data. You would recall that I filed a question some time ago to the hon. Attorney General, in relation to exhibits—how long it takes when there is a case for the exhibits to get to court and the delay. The Attorney General was at pains to point out that, really, that kind of data is not as easily accessible as it ought to be. As a matter of fact, he indicated that insofar as the data collection in the police service, not only was that information not readily accessible but it was not as credible as he would like. That is why the issue of the suitability of the persons who work in this institution is so very, very important.

**Sen. Al-Rawi:** Yes. [*Desk thumping*]

**Sen. P. Beckles:** One of the things they talk about here is real-time data. Clause 5(2) states:

“Notwithstanding the generality of the foregoing, the Unit shall—

(a) provide near unit real time tracking of the location of a person or a respondent;”

The hon. Attorney General gave us the cost of maintaining a prisoner at \$315.57 in 2010. I filed a question to the hon. Minister of National Security and I got an answer in 2011, and at that time it cost \$312. So, it cost less for us, apparently, in 2011 than it did in 2010. I do not know for 2012.

My point is this—and I think Sen. Ramkhelawan asked the question—the hon. Minister was able to give us detailed information as it relates to Britain, Canada and many other places, in terms of the cost. One of the things we have not been good at is the issue of real-time data. Now, ideally, when the question was asked—What would the monitoring cost and what is it costing us, in terms of prisoners?—you would think that we should be able to provide that data in 2012. We should not be using 2010 or 2011 data.

The hon. Minister of National Security indicated at the time, December 2010, that there were 3,493 persons being held within the prison system. Of this number, 3,386 were male adults and 107 were female. With respect to juvenile offenders, both convicted and unconvicted young men between the ages of 16 and 18 are housed at YTC. At December 2010, there were 198 juveniles at the facility. When we deal with these matters—I think we are sufficiently computerized with some modern systems that we can tell today—if the Minister is able to call now, they should be able to tell you now exactly what the prison population is. So, as we debate the Bill we should get the best appreciation of what our data and what our information is like. [*Desk thumping*]

Madam Vice-President, it is not something that—the modernization of the prison system and the court system is something that we—is always a work in progress. When we look at clause 5(2)(g), it says:

“improve information technology and electronic monitoring literacy...”

I want to draw to the attention of the hon. Minister—and I am assuming that he has the responsibility for the court system—the inequities that presently exist, as they relate to different magisterial districts. For example, very simple, in Port of Spain on a morning, if you go to court you can get a printed list of all the matters provided to

the attorneys. That does not happen, as far as I know, in any other system. And even when there are charged cases, Port of Spain can print them for you. I know you have worked extensively in all the courts, but things have not changed much.

**Sen. Hinds:** They do not drive Zephyrs still.

**Sen. P. Beckles:** My friend reminded me that they do not drive Zephyrs still. Things have not changed all that much. When you talk about the head of the unit providing this kind of real-time data, even the courts do not have it, probably, to give to the officer for him to—*[Interruption]*

**Sen. Hinds:** Tell them. It is just a facade.

**Sen. P. Beckles:** Whilst we are working on improving and getting modern, these are real issues that I am raising. Of course, you know when you go into the rural courts like Point Fortin and Mayaro, that is not even anywhere close to it. If we are to get it right, those are some of the things that we need to work on very, very clearly.

Madam Vice-President, I want to go to clause 9(6) which states:

“In making a decision under this section, the Court shall take into account the report of the EM Manager which shall be prepared in accordance with the Second Schedule...character, antecedents, physical and mental health of the person or respondent, to any extenuating circumstances in which an offence was committed and to the possible threat to public safety caused by his release.”

Hon. Minister, my concern here is the extent to which the unit is going to have at its disposal psychologists, psychiatrists and other persons who may be needed in order for them to provide the court with that kind of information at the court’s request.

As you would know, hon. Minister, let us take, for example, any of the juvenile institutions, whether it is St. Dominic’s, St. Jude’s, St. Michael’s or St. Mary’s, when they send juveniles to those institutions, they use—out of the allocation that the Government would give them—their own moneys in order to send these persons to psychologists. Inevitably, they are not sent because institutions cannot afford it.

Quite recently, a 12-year-old was sent to St. Ann’s because the institution really does not have the expertise to be able to deal with that, and that is not exclusive to St. Michael’s. I do not know about St. Dominic’s but I know there are other institutions where, if a child is behaving in such a way that they cannot control, and they do not have the expertise resident or otherwise available to them, they can end up in St. Ann’s. It is not because they have a mental illness, it is simply because the institutions themselves are not capable of treating with it and that is the next best place. That is why I hope you understand my point about “suitably qualified”.

I want to go to the clause dealing with offences. Clause 16 says:

“(1) A person or respondent who fails to comply with a decision of the Court or breaches any agreement or condition related to the use of the device, shall be brought before the Court in accordance with this section.”

It goes on to say that:

“(2) As soon as the EM Manager receives information”—he shall send that report—“to a police officer in charge of the police station in the magisterial district in which the breach purportedly occurred.”

**Sen. Al-Rawi:** Clause 17.

**Sen. P. Beckles:** Thank you. I raise this in the context of certain information that has come to my attention, that I was advised about quite recently. They talk about the role of the police officer again at clause 16(3) and (4) and, in essence, for this entire Bill to be operational, the police service has a very, very important role to play because, not only are they the persons responsible for doing the charging of the persons in the first instance, but they are also the persons who—in terms of the monitoring, if there is a breach—also have to charge, and, therefore—[*Interruption*]

**Madam Vice-President:** Senator, could you clarify the clauses you are referring to.

**Sen. Al-Rawi:** She meant clause 17 but she said clause 16.

**Sen. P. Beckles:** No, no, I said clause 16. Okay it is clause 17(3). Thanks. Sorry about that. I was talking about the role and responsibilities of the police officers and the importance, again, of ensuring that they are properly trained. The clause refers to training because this is obviously going to be a specialist area. Even in the unit, in my humble view, you may have to have police officers attached. The Minister or may not agree with me on that matter, but I think it is something that should be considered. So at the end of the day, police officers have an extremely important role to play in terms of monitoring the unit.

**4.10 p.m.**

Now, Madam Vice-President, recently we had where the—in terms of the issue of—as the Commissioner of Police put it, the spike of the murder rate, the murder rate having increased, being more than it was last year. We had the SOE, and we had the fact that the police officers continue to play a very, very important role and our detection rate, not just now, but for a couple of years now, has not been very good.

How do we improve in terms of technologies for the police officers, so that the detection rate can improve? This Bill, of course, is revolutionary in a sense, and it is heavy in terms of the whole issue of equipment, use of modern equipment, but whatever we say, the police service is going to play a very, very important role.

Now, recently, we are aware that in the public domain, a certain Minister of Government was charged for an offence. I am advised that all the police officers who were involved in that matter have been transferred.

**Hon. Senators:** “Nah! Nah!”

**Sen. P. Beckles:** Madam Vice-President, it does not matter what piece of legislation we pass. If it is that we are going to send a message to police officers that when certain persons are charged, this is how it could end up, then we can do what we want; we could bring all the Bills, we could bring this Bill, we could bring whatever Bill, it is not going to happen. [*Desk thumping*] And I am calling upon the Minister of National Security and the Minister of Justice to investigate this matter because it is a very serious thing if officers are transferred because they have charged a Minister of Government; that is the information from which I am advised. [*Desk thumping*]

**Sen. Hinds:** Wow! The Minister sits there quietly, “not ah word”.

**Sen. P. Beckles:** The Minister may not know anything about it. I am sure he would not condone that.

**Sen. Hinds:** Well, he hardly knows anything, it is true.

**Sen. P. Beckles:** The bottom line is that fortunately at this point in time, they reported the matter to the Commissioner of Police and their transfers have been stayed, but some are there sitting at a desk not doing any work, and they are not doing any traffic duties. So we are here debating this Bill and putting all these different things in place, all right?

**Sen. Al-Rawi:** That is referred to as constructive dismissal.

**Sen. P. Beckles:** “Yeah.” Those things are constructive dismissal.

**Sen. Hinds:** Demoralizing.

**Sen. P. Beckles:** Putting things in place, we are saying the prisons are overcrowded; in some instances, the police are overworked, we are all—and no one can disagree with the Minister that, if it is we can save taxpayers money, and the evidence seems to suggest that in Britain, Canada, New Zealand, the Bahamas and Jamaica a substantial amount of money is saved. Now, that by itself to me is not a reason, but

*Electronic Monitoring Bill, 2012*  
[SEN. BECKLES]

*Tuesday, May 29, 2012*

it is certainly one of the considerations and a valid consideration for considering the Bill. But at the end of the day, there are a multiplicity of things that we need to put in place to improve our judicial system, and to improve the protection of citizens in our society. One of the initiatives the Government implemented, for example, was the construction of a new prison facility in Santa Rosa Heights at the cost of some \$55 million.

**Sen. Hinds:** “Yeah,” \$60 million.

**Sen. P. Beckles:** So I was making the point when I spoke last week, which people were not happy about that a lot of these facilities, the juvenile facilities, just need a “couple millions of dollars” to improve them, so that the juveniles who are staying there could be in a better position.

Madam Vice-President, the First Schedule speaks to the list of offences for which the electronic monitoring may not be imposed by way of a sentence. One of the important issues is the issue of education that has to be linked with this particular Schedule. When people hear about the option of tagging and so, immediately they begin to, you know, probably get excited that they may be one of the persons who would attract the Bill—well, could possibly be somebody who would qualify as a candidate for the electronic tagging and monitoring. So this is the kind of Bill that certainly needs a lot of educating the public in relation to this.

There are just a couple of things I want to say before I close. This has been something that I have spoken about almost every time I get up to talk on a number of these Bills that have come before the Parliament, and that is, the issue of prevention and focusing a lot more on a policy of prevention, so that we can reduce the likelihood of a lot of our young people ending up before the courts.

You know, we have been seeing a lot of protests around the country; recently we saw one at the Beetham. There is a facility there, a community centre, that is almost 80 per cent completed. That is not an area where there are many options for young people to do certain things. It may very well be that together with the legislation that is passed—to ensure that people who do the crime, do the time—that you also think of prevention, you also think of other activities and other initiatives that are likely to reduce young people getting involved in crime. I really hope that somebody can convince the Government to complete that community centre at the Beetham. [*Desk thumping*]

Every time I pass there on a morning—it is a pretty nice facility. As soon as the election was called in 2010, and this Government came into office, they immediately stopped work on the centre. Madam Vice-President, I am sure you pass there, you

may not know that it is a centre, but it is the biggest building when you leave Port of Spain on the right hand side. I really believe there has been a lot of focus on those areas during the SOE and even recently with the protest and so. I am sure if they have facilities like that—debating a lot of these Bills and spending a lot of money to keep people in prison, as the Minister is giving us the figures—the chances are that they could use their energies elsewhere, and be more productive citizens of Trinidad and Tobago. So I just urge that as a consideration for the Government.

Madam Vice-President, the Minister also gave us a number of reasons in terms of more effective prison management systems, and he talked about the balance in terms of the rule of law, the rights of the citizens and the rights of the prisoners. I support that, but I am of the view that there are a number of clauses in the Bill that need a little tweaking. I would leave that for my colleague, Sen. Al-Rawi, to deal with. I am not going into too much detail in terms of the Bill.

**Sen. Deyalsingh:** Nobody wants to be around you. [*Sen. Deyalsingh motions to Sen. Abdulah*]

**Sen. P. Beckles:** Hon. Minister, I looked at the first—[*Interruption*]

**Sen. Deyalsingh:** “Come across on dis side nah.”

**Sen. P. Beckles:** Hon. Minister, I would like you to—in the schedule — [*Interruption*]

**Sen. Hinds:** No, he is very good there. [*Crosstalk*]

**Sen. P. Beckles:** I do not know if I am reading this right, “eh, Minister.”

“Clause 4:

Offences of a sexual nature, namely—

- (c) Sexual intercourse with female under fourteen years;
- (d) Sexual intercourse with female between fourteen and sixteen years;
- (e) Sexual intercourse with male under sixteen years;”

Is it possible that that could be worked in such a way that it does not sound that—or is it just that, I am not—it just sounds a little confusing to me, you know. With a female under 14, and with a female between 14 and 16. Is it necessary to put it that way? I just read it and I wondered.

**Hon. Volney:** Well, we are using the old Sexual Offences Act.

**Sen. P. Beckles:** Oh, you are importing it as is? Okay, fine. I just wondered. The one other thing in that same clause, hon. Minister, is the:

“(i) Sexual intercourse with mentally subnormal person;”

That particular definition is taken from which Act? Is that the normal description? *[Interruption]* All right. Okay. Because I was looking to see if I could find the other piece of legislation for which this particular—*[Interruption]*

**Hon. Volney:** It is in the Sexual Offences Bill.

**Sen. P. Beckles:** Okay. Fine. All right, well, I can check it afterwards. Madam Vice-President, as I wind up—this particular list of offences for which electronic monitoring may not be imposed by way of a sentence, in lieu of a sentence, I believe the public should be made very much aware that it is not open—as they say, *carte blanche*.

I raised the concerns that I have in terms of the issues of staffing; in terms of the issue of the data collection; the role of the unit; the tampering with the information; and for me more importantly—because I am actively involved in practice every day—and I see that in order for this to be effective, there are a number of other things that have to take place, for example, the establishment of the unit, the establishment—we are talking about the parole system, the modernization of the court system, those things have to be done before this can really be effective in the way in which we want.

So with those few words, those are the concerns that I would like to raise.

**Madam Vice-President:** Hon. Senators, I know it is 4.23 p.m., but I propose that we take the tea break, and resume at 5.00 p.m.

**4.23 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Sitting resumed.*

**Sen. Elton Prescott SC:** Thank you very much, Madam Vice-President, and thank you colleagues in the Senate.

I rise to support the Administration of Justice (Electronic Monitoring) Bill, 2012. *[Desk thumping]* This support is necessary, in my view, because the efforts of those whom we have put to govern to control crime need our support. Not everybody has the right answer. Indeed, we have heard the confessions recently that we are not going to be able to eradicate crime, but we will be damned if we made no effort at all. For this reason, when I read what is recommended by the hon. Minister, I feel certain that when it is placed alongside all the other bits and pieces of legislation that have been introduced in an effort to control or to contain crime, it will give some fillip to their efforts.

We, as legislators, are therefore required to look at it and ensure that it is capable of biting; that it will have the necessary effect. So there are going to be some issues that I am going to point out, if only so that the Minister and his team may go back and look at it and determine whether they wish to take these recommendations and observations on board or whether they have already thought of it; in which case, no doubt, he will elucidate and at least put me right.

Some of these areas are not areas with which I am too familiar because I do not practise in criminal law at all—I used to do it when I was very new to the profession—so that I am prepared to accept if the occasion should arise that the Minister should seek to correct me publicly that I was stepping out of my crease.

The first of those very tentative steps outside of my crease is to invite the Minister to tell us whether the offences which are contemplated by the Bill are limited only by what appears in the First Schedule. The way I read it, electronic monitoring is not going to be imposed, whether by way of a sentence or in lieu of a sentence, for the offences set out in the First Schedule and, therefore, I concluded that it was going to be available for every other offence. It seemed too simple to accept that that could be what it is because if you look at this very piece of legislation, it, itself, creates offences.

The Minister really must tell me: is it intended that, if I should commit an offence in breach of the Administration of Justice (Electronic Monitoring) Bill, I could find myself being adorned with whatever the device is? Look at clause 22(2), for example. Clause 22 says that the Electronic Monitoring Manager may request information from a person, a respondent, parent or guardian of a child and it makes it an offence to give him false information under this section. Could it possibly be that such a person now finds himself or herself eligible to be considered for electronic monitoring?

There are many other examples of it. Maybe I should just look at one more. If you look at clause 23(2), there again an offence is created. It is an offence to contravene the regulations made hereunder. I imagine that the Minister would tell us: No, it is offences which command centres of imprisonment above a certain level or offences of a certain gravity. Since it is not apparent to me, then I suspect it is not apparent to at least one other person and I would be happy to be put right on it.

**Sen. George:** Faris Al-Rawi is the other person. [*Laughter*]

**Sen. E. Prescott SC:** Well done, Leader of Government Business.

*Electronic Monitoring Bill, 2012*  
[SEN. PRESCOTT SC]

*Tuesday, May 29, 2012*

I think I have said it already, urging that some clarity is required if only to ensure that people understand that it is not every offence which would be the subject of electronic monitoring.

In the definition section, you will see that the word is used, for example, in reference to the definition of a child—“an individual below the age of eighteen years who is charged with or convicted by a Court for an offence”—and the same approach is used in the definition of a person. I shall now move away from it and I look forward to the explanation.

May I next go to the purport of the Bill, which I gather from clause 10 and from the introductory remarks of the Minister is to provide for an alternative form of sentencing. That, of course, explains why this kind of legislation is regarded as being inconsistent with sections 4 and 5 of the Constitution because it certainly impinges on people’s rights in a very significant way. It is therefore for the public to understand that monitoring is a form of sentencing.

I think I heard the Minister say—or somebody did—that it will be necessary to explain to some person that it is not that you may say to the judge or the police officer: well, I am going to plead guilty if you can afford me a bracelet. I imagine that there will come a time in Trinidad and Tobago when it will be trendy to do it [*Laughter*] and one would, therefore, make it known that in the “brands culture” that we have, you have just got to have a bracelet.

**Hon. Senator:** Prisoner.

**Sen. E. Prescott SC:** Okay, there is this American trend, which I understand we have been following, where your trousers, worn in a certain way, identify you as a prisoner; and a prisoner is, in the Trinidad setting, “ranks”. Can you imagine when daffodil-coloured bracelets become the thing? Maybe not daffodil; let us think of another colour. Navy or orange, or if you want to be aligned with one service provider as opposed to another, you either wear lime green or red. You will select your bracelet. [*Laughter*] Of course, I am assuming that what is coming are bracelets. It says “device” and I do not know that there is a legal definition of the word “bracelet”, so, for the moment, a device.

The Minister did use the word “visible”. Apparently, these devices are not going to be permitted to be hidden. You must be known throughout the society as one who wears a bracelet. But I have been here long enough to know about Valmond Jones and others, people who will start making bracelets. It could be good business on the People’s Mall. You buy a thing looking like a bracelet and you are in. It may be what you need to get into the next public fete.

**Hon. Senator:** “And pick up”.

**Sen. E. Prescott SC:** Sen. Cudjoe will tell us that.

**Sen. Cudjoe:** Oh, no, no, no.

**Sen. E. Prescott SC:** In years to come, we will be told that we no longer need the “boom-boom” room, or you do not need to walk with your sister’s children, get a bracelet! And seeing that it is gender neutral, we do not have to worry ourselves. Anybody who cares to be seen—to be in the market—will simply say to the judge: Judge, I am guilty. May I have a bracelet in lieu of imprisonment? I cannot afford to go to prison, I have young babies—the usual thing—I am a single mother; so you get a bracelet.

Minister, it does appear to me that somebody needs to embark upon public education and training that says this is very serious business. It will not be permitted to be used in that fashion and it will be an offence to have one that looks like it. [*Desk thumping*] Give it some thought! Like a camouflage uniform, you cannot go about manufacturing things that look like these electronic monitoring devices and sell them publicly.

You know what is going to happen. There will be people who have the technology—and I am just taking this to another level—who will have three:—the real thing, one in the car and one in the house—and, as I was saying upstairs, he will go out on a bicycle. So the police or whoever is sitting and doing his monitoring may well find that it is very possible to mislead.

I suspect that I am speaking from a premise of ignorance when I went into that area and I better run away from it quickly. I do not know that it is possible to create a device that has the same impact as the one the Minister has been looking at. But, if a man created it, I am sure that there is a man who can copy it and copy it so effectively that it would distort all of the models that the people have in mind. I think it is necessary, therefore, for the purpose of the national community and those who are not quite sure what this is about.

Monitoring is also a condition of bail. Bail, as you know, provides a guarantee based on ownership of property that you will turn up for court. It is a condition imposed by judicial officers so that people will attend court when they ought to. It appears that what the Minister is now thinking is that if you do not have the wherewithal to post bail, if I may use the American term, or you do not have the bailor standing by—the propertied person who is prepared to put his property at risk—then you may well be able to persuade a judicial officer that I shall turn up because I want to get rid of this bracelet. So you may impose this condition of wearing the device or being subjected to the device and that may take the place of being on bail.

*Electronic Monitoring Bill, 2012*  
[SEN. PRESCOTT SC]

*Tuesday, May 29, 2012*

I would like to hear, Madam Vice-President, through you, whether when the Minister spoke of the device being visible, that was indeed the serious intention of the Government because it immediately put into my mind—far from it being a fashion item—and I was probably saying that frivolously—it may be a considerable source of embarrassment to certain persons in the society and it may have the impact of a further sentence on that person, depending on where you work or worship.

**Hon. Volney:** Through you, Madam Vice-President, I do not recall saying that it must be worn visibly. That was never the intention. If I said so, I would have been wrong to say so because that is not part of the plan. Usually these bracelets are attached at the ankle and are covered by the pants, long trousers, so that there is that privacy. You do not expose it.

**Sen. E. Prescott SC:** I am grateful. Thank you. I heard the word “visible” and it may have been used in a different context. I am afraid it just caused me to think otherwise because it will be visible if it is on the ankle. There are at least 50 per cent of the people in this country who do not wear pants as a rule and there are those who do not wear socks. There must be some thought given to it. If it is that the Minister and the Government do not intend to add to the embarrassment of the offender by causing the thing to be visible, then there must be some method contemplated that might cause it to be less visible.

**5.15 p.m.**

If attaching it to the ankle is going to be visible as I am sure it will be, then—  
[*Interruption*]

**Hon. Volney:** Give them a pair of trousers.

**Sen. E. Prescott SC:**—give them a pair of trousers? [*Laughter*]—or attach it to some other part of the body. So, I have made the second observation that monitoring is a condition of bail.

It is going to be used as a means of restraint against an offender in a domestic violence situation. I imagine that this must cause great worry to a large number of persons—men in particular—because from my observations of what has been transpiring since the Domestic Violence Act has become law, there have been—and there are those who will say to the contrary—cases of men who have found themselves in situations which would not ordinarily have been the case, if it were not that their significant other was permitted, *ex parte*, to get an order in the court.

If you were required in each case to have an *inter partes* hearing before an order is made, the chances are that a judicial officer might come to a different decision each time.

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

**Sen. E. Prescott SC:** But between the first complaint ex parte and the appearance in court of the offender, he—and it is usually he—will wear a device.

I was saying it may not be so bad if you are “hanging out” on the Western Main Road in St. James and “yuh boys feel that you have rank.” But where you worship, and where you work, the atmosphere is different in each case. The employer is looking on. He does not want to know that “yuh wife make a mistake”; you are wearing a bracelet. A bracelet is worn by an offender. He may or may not have any authority to enquire into your criminal past or present, but an employer will certainly make a mark somewhere in his records about you.

I am not putting it forward as a means for saying let us not have this thing. I am very supportive of the legislation, but do acknowledge that of every 10 households you know, there are eight fathers who are really good men, and they are at risk. Maybe something could be done to remove, or at the very least, to alleviate the likelihood of it.

Finally, monitoring can be a condition for a Presidential pardon. I am particularly enthused by that one because as most people know, His Excellency does have the power to grant a pardon, not only to a convicted person but to someone even before he has been indicted or tried or sentenced, for reasons sometimes best known to the authorities. I imagine that the offender will have the benefit of legal advice when he or she determines that he prefers to have the device attached or not.

I know that there are cases where the option is not open to the offender, but it should be considered whether in every case where an offender—who may potentially be required to wear a device—is being considered for it, that he or she should have the benefit of legal advice as to whether this is what he or she truly wants.

The pardon—if I may just go to the other extreme—is most known in cases where it is used after a murder conviction; some years after the person has served in prison. And I can well imagine the prisoner—the murder convict—who will grasp at an opportunity to have his freedom subject only to this little device. But that may also be an occasion where it is more important to say to such a person, you need the benefit of advice before you accept this as a condition of your pardon.

So I put that out for the Minister’s consideration. Minister, you no doubt would have come across many times people who have applied for pardons because they want to get a visa to go somewhere, but I do not know if this electronic device is going to work when it leaves the shores of Trinidad and Tobago. And if as a condition of getting your visa you have to wear a green “ting”

*Electronic Monitoring Bill, 2012*  
[SEN. PRESCOTT SC]

*Tuesday, May 29, 2012*

on “yuh” ankle—the gentleman who meets you at the door in Miami might know full well what it means, and there is a second imposition of a sentence on you. You will no doubt be not permitted entry because you cannot explain this thing that keeps going off whenever you try to pass though the—I cannot remember what they call it. What?

**Sen. Abdulah:** Scanner.

**Sen. E. Prescott SC:** Scanner! Will it, Minister—through you, Madam Vice-President—go off if you seek to go through the scanner?

**Sen. Hinds:** No.

**Sen. E. Prescott SC:** Well, I trust that Sen. Hinds is right. It cannot be made of anything but a metallic substance, I imagine. [*Laughter*] I heard Sen. Hinds say no in answer to my question. I do not rush to accept that he is right, but if it is so, fine, because it imposes a further burden, a penalty, on the person who has sought the pardon for the very purpose of being able to travel freely, and then discovers that this thing creates a least a hindrance in his way. So I make that observation.

I now come to the question of the reporting—no, let me deal with the Electronic Monitoring Manager first. Now, the Electronic Monitoring Manager has been placed on a very high public service pinnacle, if I may put it that way. In short, this person according to the Bill shall be occupying a public office, to which section 121 of the Constitution applies; and it shall be prescribed for the purposes of section 141; and the terms and conditions are reviewable by the Salaries Review Commission.

Now I have the luxury of saying that I really do not understand. This is a person who knows a little bit about the electronics and can monitor movements on a screen and say “John has stepped out of bounds”. That is all this person needs to be able to do? There so many young people in this country who could do that anytime. [*Interruption*] I beg your pardon?

**Hon. Volney:** You have to report to the court.

**Sen. E. Prescott SC:** Yes. And so, why does he have to be this highfalutin equivalent of a permanent secretary to do it? Even if it were possible to satisfy all of us that it was necessary to place such a person at that level, may I rush to enquire, what extreme qualifications do such a person require to place him or her in this vaulted position?

Sen. Beckles did make the observation that all we have said in clause 4, is that such a person—[*Interruption*]

**Sen. George:** Stick with the 25.

**Sen. E. Prescott SC:** Yes, I am reading it again to be sure. The Electronic Monitoring Manager shall be the head of the unit. It shall be a public office—no actually, “suitably qualified” does not seem to apply to him, does it? No, it applies to this other person, clause 5. I am reading it as amended. Without prejudice to the power of the Public Service Commission to make an appointment to the offices of Electronic Monitoring Manager and Deputy Electronic Monitoring Manager.

“Where prior to the making of the first appointments to the offices of EM Manager and Deputy EM Manager by the Public Service Commission, and the exigencies of the public service require the recruitment of individuals to perform the functions of those offices, the Permanent Secretary of the Ministry may engage suitably qualified individuals...”

Madam Vice-President, I am not seeing therefore any criterion applying to the person who seeks to hold the substantive office of Electronic Monitoring Manager or Deputy Electronic Monitoring Manager. He is not even required to be suitably qualified. Maybe, Minister—if I may not approach it in such a cynical fashion—there ought to be a fairer statement of the basic requirements for the office. And by that I mean some reference to technical or academic achievements and/or skill which would take you out of the ordinary and vault you into the position of being a section 121 type public officer. I go forward.

The “competent authority” caused me some trouble. And I think that that reference is to be found at clause 3, page 2 of the Bill in the interpretation section.

“In this Act—‘competent authority’ includes a Statutory Board or Tribunal or other authority or functionary, appointed under any written law for the purposes of this Act,”

In plain and simple language, you may create a statutory board for the purposes of this Act, or a tribunal, or some other authority, but—and this is the one that causes me alarm—a functionary may be appointed. I do not know why “functionary” is such an unfortunate choice of word; it sounds like a very lowly individual. Certainly, not at the level of authority or power, or prestige of a statutory board or tribunal, or other authority.

So you create—simple majority, simple piece of legislation; it comes here and nobody pays attention, and you create a functionary under the Administration of Justice (Electronic Monitoring) Act, and then you give to that functionary the following power: clause 6(3): the unit—the top Electronic Monitoring Manager, section 121, the Deputy Electronic Monitoring Manager and all the people who are suitably qualified—shall comply with the functionary’s decisions. Does it not

*Electronic Monitoring Bill, 2012*  
[SEN. PRESCOTT SC]

*Tuesday, May 29, 2012*

trouble anyone in here—[*Crosstalk*—that such a person shall have the power—at the level of the court, the competent authority, namely the functionary, may command the unit to comply with his decision?

**Sen. Dr. Balgobin:** What section is that?

**Sen. E. Prescott SC:** Clause 6(3), at the bottom of page 5.

**5.30 p.m.**

Madam Vice-President, I sometimes take up these little points and make them appear big, and it may turn out this may amount to nothing at all. The functionary might be some high-level police officer, it may well be, but equally in the hands of an authority—a Government that has a simple majority—it could be anybody. Then, to put into that person’s hands the power to direct the unit tells us that it could not possibly mean that we are to appoint, what I regard as, a mere functionary. If my use of language is not sufficiently expansive, and “functionary” does have a different meaning of greater substance, once again I humbly bow.

Let us go to clause 12 (6), which may be found on page 7.

**Hon. Senator:** Nine.

**Sen. E. Prescott SC:** 12(6)—nine Thank you. Twelve deals with the electronic monitoring issued by a competent authority. Pardon me—I would start on page 8 at 12.

“a functionary”—

I substituted for the word “competent authority”.

“...empowered to grant early release from imprisonment under any written law, may impose electronic monitoring as a condition of such release.”

We are now introducing into our legal lexicon and into the firmament of judicial officers, a functionary with the power to grant early release from prison.

**Hon. Volney:** Functionaries are limited, you know.

**Sen. E. Prescott SC:** Say again?

**Hon. Volney:** Under “competent authority” the functionary has to be read as it once was.

**Sen. E. Prescott SC:** Pardon me. The Minister is suggesting that I go back to the definition section? Yes? [*Crosstalk*] And read the definition of “competent authority”?

**Hon. Volney:** Yes.

**Sen. E. Prescott SC:** Page 2. Clause 3, the second of the words, it includes” so it is unlimited, “a Statutory Board or Tribunal or other authority or functionary, appointed under any written law for the purposes of this Act”. And I prefaced what I was saying by saying, and therefore, any Government with simple majority may come here and produce a simple piece of legislation, innocently saying we are about to appoint a functionary for the purposes of this Act.

**Hon. Volney:** I hear you. I take your point.

**Sen. E. Prescott SC:** Much obliged. If I were in Opposition politics I would have called the names of people in this society who we know have stirred the minds about how far a Government can go wrong in making appointments of functionaries.

So I was inviting your attention to the breadth of the authority that is given to the functionary or competent authority, whichever word you may choose to apply, under clause 12, and in particular to read clause 12(6), which says, in respect of sections 13, 14 and 15—no, let me read it as it says there:

“Sections 13, 14 and 15 shall apply in respect of a decision of the competent authority”—or functionary—“as they apply in respect of a decision of the Court.”

So the functionary, Madam Vice-President, when he or she has spoken, has behind him or her, all the panoply of powers of the court.

These are the situations in respect of which that authority may be exercised. When the court receives a report from the Electronic Monitoring Manager, a decision shall be taken concerning the type of device to be fitted. So the functionary would decide which device.

Clause 14.

“Where the Court, having considered the report of the EM Manager, is of the view that a person,” other than a child; a respondent; or in the case of a child, his parent or guardian, “has the financial capability to pay either the total cost of the use of the device or any part thereof, the Court may require total or partial payment, as the case may be.”

The functionary may decide whether you have enough money to pay for the device or not.

Finally, 14:

“A decision made by the Court shall contain a directive on the period of time...”

He may say for how long, he may say where you should report, the frequency with which you shall report, and also that the person or respondent not be in a certain place. He can say where you may not go.

*Electronic Monitoring Bill, 2012*  
[SEN. PRESCOTT SC]

*Tuesday, May 29, 2012*

So all of your rights are circumscribed, even denuded, and may be made so by a competent authority, which includes a functionary appointed by simple legislation in these Houses of Parliament. But the Minister has assured me that he has heard what I have had to say, and I hope that I would not be treated in the way that the Attorney General had brought me to an end. [*Interruption*] I beg your pardon.

**Hon. Volney:** The court has its own meaning.

**Sen. E. Prescott SC:** Yes, yes, yes.

**Sen. Al-Rawi:** The court has jurisdiction.

**Sen. E. Prescott SC:** It does. Thank you. I am almost through. I want to raise a question about the reporting function, clauses 10(4) and 12(2), which say that reports may be required—just a second. If I may go firstly to 10, I think it is virtually repeated in 12; 10 speaks of the court imposing a sentence of electronic monitoring, and says in the body of it—10(5), pardon me, page 7;

“Before making a decision...the Court shall request a Report from the EM Manager concerning the person or respondent which the EM Manager shall cause to be provided as soon as it is practicable...”

That report, according to 10(8), shall be prepared in accordance with the Second Schedule—bottom of the page—which sets out the kinds of things the manager should report on.

If I may harken back to the earlier parts of my address, I wondered what is it this electronic manager must have to have this great position because this is all he has to report on:

the name and assumed names of the person;

whether the person has a stable place of residence, whether the residence is sufficiently secure;

all telephone contacts and information on the capacity of the person or respondent—I suppose that is if he has a land line—

or in the case of a child, his parents or guardian;

an emergency telephone contact;

a list of his pets or other elements which may compromise the integrity of electronic monitoring equipment;

Again my ignorance causes me to laugh, at this it may be quite serious.

a list of any commitments, such as employment, dependents and addresses;  
an assessment of his financial capability;  
a recommendation on the type of device to be used;  
any history of spousal or family abuse while living with family;  
documentation evidencing pre-existing physical or mental condition of the person;  
whether the person has access to a standard power service;  
—which again is probably something to do with telecommunications—  
whether the victim agrees to the person or respondent being released under supervised monitoring.

So this is not rocket science. This Electronic Monitoring Manager just simply has to go out with a questionnaire and get a few answers to some questions. If this is the full list of things that are required, according to the Second Schedule, I am inclined to suggest to the Minister, through you, Madam Vice-President, that we ought to also enquire into the criminal record of the person—any history of criminal behaviour within the community where he or she may have resided, or any threats, whether oral or otherwise, known to have been made or demonstrated by the behaviour of this person—threats to public safety that is.

So that, the Second Schedule report can truly inform a court or competent authority, why it is this person, even before he or she is found guilty of an offence, should be adorned with a device, and immediately put his liberty at risk or violate his liberty.

The Electronic Monitoring Manager would not be earning his keep if all he is required to do is this. It seems to be watering down the position of people who have to go through all the section 21 anxieties, to invent this person called the Electronic Monitoring Manager and give him or her these little, apparently unimportant, trivial duties to carry out.

Madam manager, [*Laughter*] Madam Vice-President, I return to my initial position. I am fully in support of this Bill, and I trust that—[*Crosstalk*] yes, thank you very much—counsel suggests that I should say it this way: but not in its present form. [*Crosstalk*]

And so I imagine that by the time all of us have made our contributions, the Minister who has, so far in his appearances here, proven to be very malleable—[*Interruption*]

**Hon. Senator:** What?

**Sen. E. Prescott SC:**—will continue to be so. Thank you very much, Madam Vice-President. [*Desk thumping*]

**The Minister of National Security (Sen. The Hon. Brig. John Sandy):** Thank you, Madam Vice-President, for allowing me the opportunity to contribute to this Bill, “to make provision for the implementation of a system for electronic monitoring in Trinidad and Tobago and for related matters”.

Madam Vice-President, before getting into my brief contribution, I wish to refer to two points made had by Sen. Beckles: the first being or having to do with the police administration and the transfer of personnel, or words to that effect. I would simply like to say to Members of this honourable Senate, and indeed to the national community, that this is one Minister of National Security that has not, and will not ever interfere in the administration of the police service for matters such as these. [*Desk thumping*] I dare say I think that most people know me well enough to know that I would not.

The other point she made had to do with the work being stopped at the community centre at the Beetham. I happen to know a bit about that because, since getting into office I have frequented the Beetham, and we have seen that and we have enquired. We found out that the work did not stop on May 24, 2010. It was prior to that. The reason for that—and I think that Sen. Hinds is aware—is the contractors were being attacked by the personnel in the area because they brought in their people, and they were not giving the people in the area jobs. This is what we found out subsequently. But I must give you the assurance that efforts are being made as we speak, to get that unit going. Just as we did at Mango Rose—and Mango Rose was opened just a few weeks ago—we are in the process of attempting to bring that to fruition. [*Desk thumping*]

**Sen. Hinds:** I sincerely thank the hon. Minister for giving way. Minister I understand and respect your posture as to not getting involved in administrative matters in respect of the police service. But, as a Brigadier and former head of the defence force, you would know that the troops function largely on morale, and if it is that you—under the Constitution having oversight of this organization would find out, that officers acted lawfully and properly in the execution of their duty and, as a consequence, have been punished by being banished or transferred from where they were to places unknown, is that not a matter that must concern you in terms of the morale of the troops and the upkeep and upholding of law and order in our country?

**Sen. The Hon. Brig. J. Sandy:** I totally agree with you, and I give you the assurance here now that I will make the necessary enquiries.

**Hon. Senator:** That is all. Thank you.

**Sen. Hinds:** Thank you.

**Sen. The Hon. Brig. J. Sandy:** Madam Vice-President, I am excited at the prospect of this Bill becoming an Act and being implemented. We heard from the hon. Minister of Justice about the origin of the ankle monitors or the electronic tagging or the electronic systems as we—[*Crosstalk*] [*Laughter*] Sen. Hinds is telling me that he has one; I was not aware. [*Laughter*]

**Sen. Hinds:** I have 29.

**Sen. The Hon. Brig. J. Sandy:** Happy to hear, and it is good to know that you are boasting about.

**Hon. Senator:** Confession is good for the soul.

**5.45 p.m.**

Madam Vice-President, I want to embrace this opportunity to congratulate my colleague, the Minister of Justice, for bringing this Bill at this time because it can only augur well for our crime-fighting activity. We in the Ministry of National Security, of course, partner quite closely with the Ministry of Justice in the application and operationalization of this Bill when it comes to fruition.

As he had indicated, he gave us a history of the electronic system, the electronic device, and he spoke about what happened in the mid-60s and 1977 with Judge Love and people like that. As we speak, the system is used quite widely—worldwide—in the United States. There are very few states now in the United States that do not carry the electronic monitoring, and even here in the Caribbean. The Minister spoke about the Bahamas, but Jamaica as well, because you know the National Security Minister of the Bahamas went to Jamaica in 2009 to see how they operate and then they adopted it in the Bahamas. And, of course, Canada, Australia, New Zealand; I particularly like New Zealand where they refer to it as home detention.

He spoke about the Spider-Man issue and it is remarkable. When we look at some of what we call the comic strips and what they do for us from a technological perspective, we all remember Dick Tracy and Sam Catchem, with the two-way wrist radio, and people would say, no, that could never happen. Today it is a reality and, similarly, Judge Love looked at Spider-Man and saw this device being put on Spider-Man by a villain and today it has proven to be technologically sound for us in the world of criminal activity.

*Electronic Monitoring Bill, 2012*  
[SEN. THE HON. BRIG. J. SANDY]

*Tuesday, May 29, 2012*

Madam Vice-President, we look at the electronic monitoring system as a crime-fighting control mechanism—if you would call it that. The benefits of the electronic monitoring would redound to not only allowing our law enforcement system to be upgraded a few notches from a technological point of view, but because of what it does it would allow, as well, personnel to be better employed because it is not a situation now where you would need a police officer to monitor physically an offender. This is one of the areas that we grasp from a technological perspective in allowing the management of our police services, our law enforcement agencies, to be better poised.

We look at the impact on family life as well because, as was indicated earlier on, some of these minor offenders—if we can call them that—sometimes it is a matter of circumstances: they get involved in something, just carry out an act and it so happens they are arrested, and it might be someone coming from a structured family environment and that whole structure now is demolished because of the absence—and in most instances it is the father figure. That structure is demolished and you find that he might be the bread winner in the family and as a result there are social aspects and they impact on the family life in that family.

Of course, he may have children who need his guidance and you would find that it is not the best thing to go to school one morning and tell your friends, “well, my father is in jail, my father is in prison.” It might be all right, a “lil” better to say, he is charged with something but he is back home with us. He might be wearing a bracelet, but that bracelet could easily be concealed, and as such, the element of embarrassment does not present itself.

We have been speaking within recent times a lot about our father figures, and I want to make my pitch here again for my Father’s Fair on June 16th, to which all my colleagues are invited, and I know I would see all of them. My dear friend, Sen. Hinds, promised that he would come with some youngsters, and I am looking forward to that, Senator.

**Sen. Hinds:** Indeed. Indeed.

**Sen. The Hon. Brig. J. Sandy:** We must take cognizance of the fact as well that we are in a situation where we are making efforts to regain the trust of our police service among our citizenry, and there are instances when members of a family might not be too happy by the manner in which a police officer might accost their relative.

If, on the other hand, we have the use of our electronic monitors, we would know for a fact that this individual was at a certain place at a certain time and, as such, he would not have been involved in that criminal activity, and it allows us a wider range of—not a wider range, but a more defined range of trying to determine or

solve a case, or as was indicated earlier, our detection rate is low and you would find that, as a result of that now you have a smaller cadre of suspects from which you would address your investigations.

Some families or some people see it as harassment and they feel that if the police are in the process now of doing their investigations and the manner in which they do it—sometimes they do it robustly and sometimes that is necessary—and if you are innocent you feel, well, look, I am being harassed, I am being targeted. When you are wearing your bracelet and they know for a fact that you were not in that vicinity, well, then, it allows that ability to not interfere with you as such. Some people argue about their privacy, and I simply say that you have committed an offence, what about the privacy of the person on whom you inflicted that offence, to whom you committed that offence?

We talk about consent, so it means that you have to say, well, yes, I am prepared to do this, and as was indicated earlier by the hon. Minister, I have not ever “made a jail”, [*Laughs*] but I have seen the inside of the prison, and it is not a place you would want to spend one night. If you are in a situation where you are allowed that facility and knowing from your own sake, I am not a criminal, I got involved in an incident and, okay, I am here now before the court, I think a fair number of offenders would choose the bracelet as opposed to spending some time confined.

Some people argue as well about it being a humiliating experience. That might be so, but as was indicated earlier, we have bracelets, wrist bracelets, there are ankle bracelets. I think in Jamaica they wore it on the hip, so that is even more secluded from external observation. So I think and I am sure in time to come, our world being a world of style, you would find that some of these bracelets, anklets and so on, would be designed in such a way that it would not allow for embarrassment to any great extent. If you want to have it exposed then by all means. You could very well find that, as Sen. Prescott SC indicated, that might be a style; people would want to be associated with having a bracelet.

We look as well at what it allows the law enforcement officers to do with respect to their investigations. There is a story coming out of Los Angeles, where someone wearing a bracelet, an offender, was involved in a robbery and they detected it immediately. He was driving the getaway car, they went to some location and, because of the bracelet they were able to trace him there, get the car, get the loot and get everything. So it works in some way because some of the offenders would take chances as they go along.

*Electronic Monitoring Bill, 2012*  
[SEN. THE HON. BRIG. J. SANDY]

*Tuesday, May 29, 2012*

Madam Vice-President, we also look at the aspect of victim protection. We know we have had offenders out on bail and they go and attack the same person or persons who they were originally arrested for attacking. There was an incident some years ago—I am sure some of us here would recall, a decade or two ago—where an offender, who was debarred from going to his spouse's home, I think he got the police to go with him, and he said he was just going inside for something, and went inside and killed the woman in the presence of the police.

So, they do things like that, particularly domestic violence. You wonder sometimes what would get into the heads of some of these guys to do that. Sometimes they are out on bail and, probably to get legal fees, they go and commit robberies. These are the things that happen.

As a condition of a protection order made under section 4 of the Domestic Violence Act—and we see situations so very often—when people are restricted from going to areas, and they go. Once they are in an area that they ought not to be, this would be picked up by the monitor and, of course, you are in a situation now where you do not have to apply so many law-enforcement officers in one area; you have officers on patrol in the areas, who can respond much more quickly to that incident.

In Trinidad and Tobago, we have the situation of overcrowding of our prisons as was indicated earlier—from an average, 131 per cent out of the entire prison accommodation. We spoke about the cost of imprisonment and, based on the figures given by the Minister with respect to the electronic monitoring, it turns out you make about \$180 a day versus having someone in prison, and this is something worth looking at with respect to our tax dollars.

We spoke of the social impact on the domestic violence. It also increases compliance because I know I have a bracelet, and there are certain curfew hours attached to it sometimes, and you want to maintain—you do not want to go back to prison because once you break that agreement it is back into prison. You accepted wearing it for that reason; you do not want now to come and spoil that.

One of the areas of concern is our young offenders being placed among hardened criminals and we know that happens. So, if it is a situation where we can alleviate that to some extent, we must do that. We spoke about recidivism as well, and in Trinidad and Tobago it is in excess of 51 per cent. So, if using our electronic monitoring system, we can get rid of or diminish that recidivism situation in Trinidad and Tobago, by all means.

**6.00 p.m.**

Remember, in the Trinidad and Tobago prison system we are looking now at rehabilitation. We are trying to get our inmates to return to the national community, to return to society, with skills and with a degree of acceptance. So, were we to say okay, the last six months of your term—and we allow you to go out—you would wear the bracelet, we would allow you to go out. We can even create homes that are semi-prisons, because people are using the bracelets and they get to go out, so they get a feel for society.

The national community—probably a little cagey at first, but then you accept them because you realize that they have rehabilitated themselves. So you would find that as a result of that, Madam Vice-President, the national community is better for it—you have less inmates in your prison; it means, therefore, the prison officers could concentrate on the rehabilitation aspect of it more diligently because of the ratio of the prison officers to the inmates as well.

We are of course utilizing our GPS and GIS and our computer systems. It reminds me of, let us say, two decades ago in the military when a soldier is leaving any location, he has to get his work ticket signed—So, 34665 Private Sandy J, I am going to Port of Spain from Tetron Barracks and I get warrant officer Modeste to sign the work ticket for me. I come to the gate and I present it to the Sentry and he writes it in the mark in and out book or sheet where I am going. So if I am going to St. James, he would expect that I would be back in about an hour's time because it is authorized—I must get the signature. If I am not back in an hour's time something is wrong because we were supposed to take direct routes and things like that.

Now, we have GPS, we have GIS so we do not need that strict kind of—although it still happens. The point I am making is because of technology we are able now to know exactly where our vehicles are and that way we could—the administration of our driving would be so much better. We must recognize as well, that the same technology to which we are exposed, the offenders out there are exposed to it as well. So it means, therefore, we need to be doubly careful when we are dealing with some of those.

We have always had problems with responses—with the police service. You know you would hear people say they called and cannot get their response on time. We are making efforts now to have police patrols out in communities so that they would respond even quicker. It is a situation where, for instance, some youngster or some offender who is wearing one of these bracelets or one of these electronic gadgets, you would find that in the event something happens, your police patrol would be close by; they can respond more readily and much more easily.

*Electronic Monitoring Bill, 2012*  
[SEN. THE HON. BRIG. J. SANDY]

*Tuesday, May 29, 2012*

We hear so many stories. We have heard about one in suburban Port of Spain, where someone saw thieves breaking into her neighbour's home. She called the police and the police said "We have no vehicle". Five minutes after, she called back and said, "Listen, there is no need for you to come, the owner came and shot the intruder" and so on. Shortly after, they turned up; but this was not true; of course, this was not true. So when they turned up they said, "I thought you said the owner came and shot the intruder". She said, "Well, I thought you said you had no vehicle". [Laughter] We have grown to hearing stories like that. But with the input of our electronic equipment we would be able now to respond much more quickly because we would have those vehicles and patrols in the area to assist.

Madam Vice-President, all this contributes to the development of our national crime-fighting apparatus. And if we were just to look at some of our statistics with respect to repeat offenders, and if we were to do some maths with the course of one inmate, we would recognize the kind of savings we can make in the event that we are able to apply our electronic equipment to these offenders.

Repeat offenders for 2010, 14,241; repeat offenders for 2011, 14,232; repeat offenders up to May 28, 2012, 7,458. So in less than two and a half years we are talking about 35,931 offenders in Trinidad and Tobago. Persons released on bail from the High Court 2010, 492; 2011, 679; up to May 28, 2012, 258—a total of 1,424 over the two and a half year period. Persons released on bail from prison 2010, 1,975; 2011, 2,258; up to May 28, 2012, 744. Of course, with the introduction of our parole system we would have the opportunity to implement our electronic systems even further.

Madam Vice-President, I just want to paint two scenarios that will bring home the point. A man with a record of sex offences against children is released from prison on condition that he would be tagged. He is a known pedophile, and as an additional condition to his release he was not to come within 100 metres of any place that children are kept, and the example could be a school or day nursery of a something like that. One day while going to work he is drawn to a playground or primary school. He begins to cross the street to stand by the fence where the children play. Within seconds, because of the technology, a patrol vehicle will be able to come and find out from him why he is not in keeping with the dictum of the court.

Scenario two, a woman abused for years and her spouse is mandated to stay away from her under a protection order. With the proper systems in place we would be able to monitor this individual's pattern of movement and with the right

level of communication a patrol unit can be dispatched to the woman's home, if it appears that her abusive husband is in the vicinity of her home, as a precautionary measure. These are the types of things that we would be able to do with the implementation—*[Interruption]*

**Sen. Prof. Ramkissoon:** Madam Vice-President, through you, could the hon. Senator tell me what the prison population was in 2011. You gave us the repeated offenders. Do you have any figures for the total prison population in that year?

**Sen. The Hon. Brig. J. Sandy:** I cannot recall. I came to the Parliament sometime and gave that information. I cannot recall now what it is.

**Sen. Ramkhelawan:** Just to add to what Sen. Ramkissoon was saying, I do not think we have as many as 14,000 prisoners. So maybe you need to—*[Interruption]*

**Sen. The Hon. Brig. J. Sandy:** *[Inaudible]*

**Sen. Ramkhelawan:** No you said 2011, 14,000 and something; 2010, 14,000. So it may be the number of charges related to offenders, but could you clarify that?

**Sen. The Hon. Brig. J. Sandy:** Repeat offenders. What I said, Madam Vice-President, and I repeat, in 2010, there were 14,241 repeat offenders. It is minor offences, people will do little things. This is why there is this backlog in the courts of Trinidad and Tobago. The majority are minor; that is why it is so extensive.

Madam Vice-President, as I was saying, because of our rehabilitation thrust in the prison service you will find that there would be an ability now for our prison officers in the spaces that they would now have—because there would be an elimination of the overcrowding—they would be able to concentrate more on the inmate population.

**Sen. Hinds:** I am so sorry to trouble you. It is the second time in your wonderful and illuminating discourse, you said “because of the rehabilitation thrust now”. Might I remind you that the programme for rehabilitation of offenders began as far back as 2002, long before you contemplated coming into politics *[Desk thumping]* and has been in full operation since that time.

**Sen. The Hon. Brig. J. Sandy:** I stand reminded.

**Sen. Hinds:** I thank you very warmly.

**Sen. Beckles:** You see the difference? *[Laughter]*

**Hon. Senator:** You all should be like this all the time.

**Sen. Hinds:** Most times.

**Sen. The Hon. Brig. J. Sandy:** Madam Vice-President, a condition for bail—and we know sometimes as we say in local parlance, “skip bail”. We have had instances where people on bail leave the country to go abroad and things like that. As was indicated earlier on, someone made the point: it would be difficult to get into another country wearing one of these things. You pass through and they would want to know what is that because most of the other countries that you want to go to would be aware and would ask questions about what you are wearing; what is this all about.

As well there is the element of tampering, and clause 16 speaks to tampering and aiding and abetting tampering with such devices. If I may, Madam Vice-President, clause 16:

“16.(1) An individual who deliberately tampers with or removes a device commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years.

(2) In this section, “tampering” means any form of interference which is capable of disrupting the transmission of the monitoring signal of the device to the Unit.”

In the Bahamas sometime in January, 30 persons who were wearing such bracelets used foil paper. Apparently, the foil paper disrupted the transmission. That went on for a couple of months, so at regular intervals they would put on this foil paper and it disrupts the transmission. So it means, therefore, as far as the transmission coming to the computer or the monitor—as far as they are concerned, they are resting comfortably home or something like that and they are elsewhere, until eventually they could not get through with it forever, and as such they were detected and of course taken back before the courts.

Madam Vice-President, permit me to summarize and look at some of the direct benefits of this initiative: improving the analysis and detection of criminal activity; reducing criminal activity in the long term; providing increased, supervision and surveillance to offenders; the proper review of offenders eligibility and compliance with standards to allow for maximum protection of citizens; improving the speed and consistency of response to calls for service and even preempting of some criminal activities; development of a plan that identifies the needs of the offender and systematically addresses those needs.

Madam Vice-President, as the Bill proposes, it is intended to equip our law enforcement officers with the necessary technology in our continued efforts to curb and manage criminal behaviour in Trinidad and Tobago.

Madam Vice-President, I thank you.

**6.15 p.m.****PROCEDURAL MOTION**

**The Minister of Public Utilities (Sen. The Hon. Emmanuel George):** Madam Vice-President, I beg to move that this Senate do sit until 8.30 p.m., which would give Senators here a fair chance to express their views on this Bill before we adjourn the Senate.

*Question put and agreed to.*

**ADMINISTRATION OF JUSTICE  
(ELECTRONIC MONITORING) BILL, 2012**

**Sen. Faris Al-Rawi:** [*Desk thumping*] Thank you, Madam Vice-President. Madam Vice-President, had I started first and the Procedural Motion come second, I may have shifted gears a little bit then.

Madam Vice-President, I rise to make a contribution on this Bill before this honourable Senate, which is—the short version, called the “Electronic Monitoring Bill,” and it is, of course, in its long version, “The Administration of Justice (Electronic Monitoring) Bill, 2012.” I would like to join hon. Senators, of course in a very short way, in wishing all God’s light to shine upon all of Trinidad and Tobago in celebrating tomorrow, the arrival of only one of many classes of brothers, in the East Indian community.

In a sense I thought of it in the relationship with this Bill because indentured labourers came to this country tagged in a sense, confined to barracks, required to work in specific circumstances. So it crossed my mind that tomorrow is, in fact, a day which is not divorced from relevance to the discussion of this Bill. All that, perhaps, has changed is the technology which surrounds the monitoring and movement of persons under a form of control.

I am happy to note, of course, that our East Indian brothers, through the passage of democracy in this country, have moved into a celebration of complete freedom. So I celebrate tomorrow openly with all Senators present.

Madam Vice-President, I welcome the hon. Minister of Justice back to this Senate. It is his third time before us in relation to the Bills which his Ministry has brought for us. I am not counting the individual incidences of having to start and stop, as he has been required to do. I note with pleasure his tone in coming to discuss his Bills, a very different person from his first appearance before us. I do say that the DNA debate caused him some reflection, Madam Vice-President, and I am certain that I do not see any resemblance of the once squire before us now. So I am happy that he has come back.

*Electronic Monitoring Bill, 2012*  
[SEN. AL-RAWI]

*Tuesday, May 29, 2012*

I am happy that the hon. Leader of Government Business has also moved for the adjournment at 8.30 so that we would not have to hear the cry at how young the hon. Minister's companion is and of his need to get home to make sure that he is well appreciated. [*Laughter*] I am being polite by not labelling his wife that openly.

So, Madam Vice-President, the hon. Minister is going to be given an easy ride in some senses. Indeed, the tone of the debate so far has been very cordial. Sen. Prescott was at his most charming this evening. I noted that he put forward a very interesting carrot on his stick in saying that he supported this Bill, but I noted the little detail at the end, perhaps at my own urgings, yes, that the Bill is one that one could perhaps support but not in its present form.

Madam Vice-President, I say that because at the very outset it is clear, this is a good idea. Electronic monitoring, in its many fashions around the world, is a great idea. So, too, is the right to bear arms, as the United States enjoys; that constitutional right to have weapons to defend yourself—great idea. The question for us as a Senate is whether this great idea is ripe for introduction into Trinidad and Tobago. [*Desk thumping*]

We must, as a Parliament, consider the terms of introduction of this kind of legislation. May I bring it into severe focus by saying that this Bill, which is admitted by the hon. Minister—and he has been very clear in the statement of the rights which will be derogated in our Constitution. This Bill requires a three-fifths majority. In fact, the hon. Minister has presided in his Ministry since its establishment, in this Senate in the DNA Act—that is, the Administration of Justice (Deoxyribonucleic Acid) Act—in the amendment to the Legal Aid and Advice Act, and now in this Bill.

It is the three-fifths majority which causes me concern in bringing it into focus. When we consider the fact that we are proposing legislation today which will affect fundamental rights, we come now to an issue in the usual sense of a discussion as to the proportionality of the legislation. Dare I say that the legislation is, in large part, proportional. I can say that. The Bill before us appears to meet the criterion of proportionality with respect to the derogation of rights insofar as it has taken on board the experience of other jurisdictions relative to making sure that we have provided consent for the use of electronic monitoring.

That is a very important tool by which we cure some of the difficulties of a constitutional nature. But, Madam Vice-President, that is borrowed from other jurisdictions. What I noted in my research for this Bill was that electronic

monitoring is properly well used in many jurisdictions, but the manner and timing for the introduction of the Bill is what caught my eye most. Great idea, implemented elsewhere, but how did they implement it is a very relevant question for us. Not what did they implement only, but how did they implement it.

Now, the hon. Minister took us through a reflection of the history behind electronic monitoring. I will make an observation to him that he ought to have a polite word with those who help him to prepare his speeches, because he, like the Minister of Justice, has quoted very liberally in his contribution from existing literature without reference to the authors—and I think he should be careful about that—and in particular, insofar as his introduction took liberal use of Wikipedia.

“Electronic tagging is a form of non-surreptitious surveillance consisting of an electronic device attached to a person or vehicle...”

In 1964 Ralph Kirkland Schwitzgebel (family name later shortened to ‘Gable’) headed a research team...”

Then we went on to the references of Spider-Man and “Jack Love persuaded...”, et cetera, all from Wikipedia.

So it is not the form of research that I consider best. I find it a very useful source to get a quick précis but I really do not think it is the kind of literature that we would want to reflect upon in this Senate, particularly because the authorship is sometimes open to change. It is suspect, at best, when, in fact, Madam Vice-President, there are very, very noble pieces of work, in particular in Canada, New Zealand, Australia, the United Kingdom and Spain. I was warmed to hear the reference to the Spanish model. I have, in fact, read all of those reports and I have most of them here.

In researching for this Bill I noted, with great concern, as evidenced in the excellent work most recently in the 2010 report in Canada, that electronic monitoring is always introduced—in every jurisdiction that it has been introduced—after the system of parole has been introduced, after the system of parole has been tried and tested, and after the use of a pilot project to look at the applicability and the palatability of electronic monitoring in the specific context of the societies in which it was introduced. After, never before, Madam Vice-President.

The reason that it is done after is that, the hon. Minister told us—and he is correct—this is a measure to deal with sentence reform. This Bill proposes that electronic monitoring may be used in a number of situations. One, in bail

*Electronic Monitoring Bill, 2012*  
[SEN. AL-RAWI]

*Tuesday, May 29, 2012*

applications; two, under the provisions of the Domestic Violence Act; three, in an early-release scenario; and four, in His Excellency's exercise of discretion relative to the issuance of conditional pardons, in particular. Those are the four circumstances.

But when you look to the jurisdictions that use this legislation, this tool, I was struck, in particular, by the Canadian experience, and I want to recommend to this honourable Senate that we ought to look, as legislation makers—the makers of law—at the experiences of how that legislation was dealt with. Canada stood out leaps and bounds, in the sense that it was a 2007 report, followed by a 2009 implementation on pilot programme basis, which specifically incorporated recommendations of this electronic monitoring tagging system without jurisdictional and legislation authority.

So in Canada, they introduced the electronic monitoring without amending its legislation. Why did they do that, Madam Vice-President? They did that because it made logical sense to interrogate the facts and, therefore, the rationale as to why we need this good idea. Is it apposite to the best interest of our citizens?

In Canada, there is an excellent report, and if you permit me, Madam Vice-President, to reflect upon that report. Regrettably, in shuffling my papers, I lost the front page of the report, but the report is “An Overview of Electronic Monitoring in Corrections”, and it went through all of the statistical information of prior reports. The summary of the report says that this is, at best, a discussion based upon equivocal circumstances. What does that mean? The evidence does not go one way or the other in support of it. It went into the fact of an analysis on multiple jurisdictional experiences where the bold allegations of a drop in recidivism rates, of betterment in cycles, were proved on statistical information to be extrapolated upon insufficient data.

So, Scotland, in its experience, specifically abandoned the use of a pilot programme for electronic monitoring because it felt that it went nowhere. England—and I will come to England in a short while in the Ministry of Justice in England's statement as to electronic monitoring because it has evolved. It is not the abandoned project of 1995 that the hon. Minister told us about. But what we have seen is that the statistical information in this area of the law is poor. It is not sufficient, and that we would be doing ourselves a disservice to automatically say, “Great idea to monitor. Let us implement it”, when, in fact, what we would be doing, if you look at the research, is to put the cart before the horse.

So the hon. Minister has told us that he is coming with a system of parole, that he will introduce that legislation into the Parliament; but, Madam Vice-President, dare I say that that is the mechanism which ought to come first. After the parole system has been introduced and we look to early-release provisions for offenders,

for persons who have been convicted, and we are able to test the first-response system of the personal interaction via parole officers with persons released early on bail, then we would be taking a proper step, which is a responsible one.

**6.30 p.m.**

This Bill, which is borrowed from other jurisdictions similar to the Bahamas, similar to other places, this Bill—those noises notwithstanding around us—suggests and is based upon a parole system functioning. All of the literature suggests that the electronic monitoring as a tool—this is literature out of the United States as well—is a very poor substitute and a back-up plan to deal with the fact that your first priority must always be the personal interaction of parole officers. So that is from a policy perspective. From an overall review of multiple jurisdictions, all legislation which has incorporated the use of electronic monitoring says, build it on a system of parole system existing first.

Madam Vice-President, in the Canadian model, in particular, when the sample size evaluation was done relative to success and recommendation it was conspicuous to note that the persons who were providing input into the system, volunteers into the system—both offender volunteers and persons as test subjects or placebo volunteers—the parole officers that provided commentary and monitoring were 12-years-plus in the system.

Now, the hon. Minister of Justice told us—and again, I am at the high level before getting into the specific provisions of the Bill. On the high-level analysis we have been told in quick fashion that this is a great idea, that we have prison populations that are under some difficulty, that there is a high recidivism rate; but, we have not been told what the level of consultation in the system is. That is a very critical thing. I invite the hon. Minister, through you, to tell us who he consulted with, what the interest groups had to say in relation to it. [*Desk thumping*]

In England the experience was—and in Canada—the criminal bar association was approached; the judiciary was approached; the probation division was approached because it must exist first; the psychologists were approached. Based upon those provisions, in this jurisdiction, the juvenile courts could be approached. The police was approached; the police authority; the private sector that provides ancillary services, for instance, in remand movements and yard management, those institutions—[*Interruption*]

**Sen. Hinds:** IT.

**Sen. F. Al-Rawi:**—let alone—IT, as Sen. Hinds is correctly prompting, information technology. All of these interest groups form an intersecting interest into the type of legislation which we are proposing now. And it would be irresponsible of us to give birth to this great idea in a bad way because then we would be destined to having a type of failure experienced, for instance, in Canada, in the United Kingdom in 1995, and thereafter, in Scotland most recently in 2010

If you start the system on the wrong foot, with the best of intentions you may find yourself in difficulty. So whilst the idea is good the consultation must be had and dare I say the results of the consultation need to be put forward to us.

**Sen. Hinds:** The UNC is hopeless.

**Sen. F. Al-Rawi:** The Ministry of Justice in England produced a report called, “Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders”, that is a publication dated December 2010. It was presented to Parliament by the Lord Chancellor and Secretary of State for Justice by Command of Her Majesty as it is labelled in the report.

Madam Vice-President, what struck me there is that this report was preceded by a Green Paper, by statements of consultation, by statistical analysis and, most importantly, by an absolute statement by the Member of Parliament who put this forward as to what the crime plan is for the British Government which is a coalition Government. It says, specifically, that the electronic monitoring view is in the context, and I quote with your permission, I am sure.

“Our reforms to sentencing”—“this being one of the reforms for sentencing”—“are built around a greater need for clarity and common sense reinforcing the principles of judicial independence and the need for justice to be seen to be done.”

It says here that it is done specifically in the context of the enunciation of a crime plan because the British coalition Government took care to say—whilst electronic monitoring allows for the early release of prisoners, for instance, whilst it allows for use in domestic violence, whilst it allows for youth offender management—it took care to state by way of its crime plan and by way of its policy that it would not tolerate indiscipline or adherence to the law in an articulation of its policy.

So, Madam Vice-President, not only have we put the cart before the horse by bringing electronic monitoring before a parole system, but we have again put the cart before the horse because, into the third year of this hapless Government, we

now notice crime plan number one. The 120-day plan in the manifesto said, “We will deal with crime.” On the platform they said it, “120-day crime plan in the manifesto to come.” Government said it would introduce its crime plan.

Government then said, you know what, the Commissioner of Police is producing a crime plan. The Commissioner of Police response is, “I know nothing about a crime plan.” The National Security Council has not told us what its crime plan is. But what is the latest development in Trinidad?—and one of my colleagues will speak to this I am sure in a moment. The latest crime plan is to be produced by Dr. Selwyn Ryan and others at a cost of \$2 million.

So, Madam Vice-President, the Government has now outsourced a crime plan preparation.

**Sen. Hinds:** In addition to salary?

**Sen. F. Al-Rawi:** So, Madam Vice-President—

**Sen. The Hon. Brig. Sandy:** Could I please?

**Sen. F. Al-Rawi:** Sure.

**Sen. The Hon. Brig. Sandy:** Madam Vice-President, this is erroneous. This is news to me. From day one I came to this Parliament and I indicated what our crime plan was. They continue to say that we do not have a crime plan. And the more they say it, probably the more they want to believe it. But, there is no truth in Dr. Selwyn Ryan doing a crime plan for the Ministry of National Security.

**Sen. Hinds:** You will tell us again.

**Sen. F. Al-Rawi:** Thank you, hon. Minister for that clarification. My point as perhaps impliedly accepted by the hon. Minister by way of no denial relative to the creation of a crime plan by Dr. Ryan is a different one. [*Desk thumping*]

My point is, in creating the avenue for the introduction of this type of legislation, you are putting the cart before the horse when in other jurisdictions it is pellucidly clear that you ought to state your crime plan and your position on crime in the most clear sense. This Government has not done that, Madam Vice-President. [*Desk thumping*]

**Sen. Hinds:** What have they done? Spent and corrupt our money.

**Sen. F. Al-Rawi:** Now, Madam Vice-President, when we look to the position of the policy. Let us look to how this legislation is meant to work in Trinidad and Tobago. Right now we know it is a good idea to have prison reform. We know it

*Electronic Monitoring Bill, 2012*  
[SEN. AL-RAWI]

*Tuesday, May 29, 2012*

is a good idea to have the parole system introduced. Hon. Brig. Sandy has told us in his contribution—a very good contribution—that this is a mechanism to fight crime; it is a crime fighting tool.

What we have not heard in a very clear sense from the Government, which is required, is how our rehabilitation of prisoners is meant to happen. That is all the much more important when you pay attention to the statistics provided to us by hon. Brig. Sandy when he pointed out to us that it is a repeat offender statistic of somewhere close to 14,000 per year.

So clearly, Trinidad and Tobago is not doing its best. Even though that 14,000 number may include arguably minor crimes in terms of repeat, the point is we are not seeing the relief in terms of rehabilitation. And dare I say the experience in the state of emergency ought to have taught us: you can lock up the country, if you do not deal with the underlying issue, the problem is going to come back. [*Desk thumping*] That is in fact proved by the Commissioner of Police's cry that the murder rate has spiralled out of control again. This is something that we cautioned. You can lock up the country—it is relevant to the Bill because it says you can lock up people—you can let go people. You can lock up the country but if you do not deal with the rehabilitation or source of crime issues you are going to end up in problems.

Now, Madam Vice-President, the hon. Sen. Prescott,—today I got a feeling of what it is like to have a lawyer stand first and give all the commentary on the Bill and then you are left with commentary to speak after. Dare I say, if I were in court, in the court of appeal where three judges sit, my contribution on the Bill would probably have started by, “I have read, Sen. Prescott's contribution and I too concur. I adopt all of his submissions.” But he did leave me a few bones to chew on and I would like to ask your permission to deal with those now, Madam Vice-President.

**Sen. Beckles:** Very few bones.

**Sen. F. Al-Rawi:** Very few bones. He was very thorough and elegant and charming as he always is in his commentary on the Bill, but he was generous as well to leave me with but a few issues to deal with.

Madam Vice-President, I could say in terms of a summation of points that I have perhaps three concerns from a top level policy point with the Bill. The first concern is the system. The Bill talks about an electronic monitoring system and my question is, what is it?

The second concern I have, which Sen. Prescott waded into quite seriously—Sen. Beckles having led the introduction to it—is the Electronic Monitoring Unit, qualifications and functions.

The third issue that I have, as an association of issues, is the fact that we are delegating authority in this Bill. We are providing in this Bill a legal framework to give the Electronic Monitoring Unit and something called a competent authority, with powers. And, we are going to be delegating—as I will point to you in a moment—a lot of that authority, Madam Vice-President.

There is a fourth issue but I do not even want to call it fourth because it is so deserving of a stand-alone position, and that is the manner in which this Bill treats with children's issues. We just came out of a marathon session on the Children Bill, 2012. It was interesting to note that whilst we sat here in a very difficult circumstance debating a very important piece of legislation. Whilst we committed ourselves to the Children Bill issue till 4.30 in the morning, when we begged for pause to consider, I had not noticed that the papers—with a 16-page supplement for Thursday, that very day that we were sitting—had a pull-out in it that said, Children Bill done. It is only then that I understood where we were going in the rush.

But, relevant to this Bill and that observation, this Bill deals with children's rights. The hon. Minister told us about it. He said, "this Government is intent on upholding Article 40 of the United Nations Convention on the Rights of the Child." But, Madam Vice-President, it appears—notwithstanding the very close proximity of seating this afternoon only, the hon. Minister of Justice sitting to the left of the hon. Minister of Gender, Youth and Child Development—that there has been no consultation between the discussions relative to the Children Bill and this Bill. Because, if that were the case, this Bill ought to have reflected the very provisions that we contemplated.

Even though I accept that the Children Bill, having been passed in this Senate is yet to be proclaimed—it is partially proclaimed under the last Act, which was repealed—we would have to do a partial proclamation in that Bill again. But, Madam Vice-President, when you reflect upon the schedule to this Bill, it is absolutely silent in relation to the children's articulation issues. How could that be? If there was going to be serious consultation, Madam Vice-President, if we reflected upon the United Kingdom 2001 legislation, then, we ought not to have seen what we saw in the Schedule to this Bill.

**6.45 p.m.**

The Criminal Justice Act, 2001 of the United Kingdom specifically provides for amendments to the Bail, Act 1976 of the United Kingdom. Do you know what it says, Madam Vice-President, which this Bill does not in the schedule that we are dealing? We are in the schedule of this Bill amending the Bail Act and amending the Domestic Violence Act.

But, what do we do as an articulating Government paying attention to itself? What does the Government do? It has none of the reflections in relation to youth offender principles as set out in the 2001 UK provisions, for example—something which the hon. Minister professes or claims to have had reflection to. It certainly was not on the Wikipedia site so I am sure that he went to the legislation itself. But, the English Act provides a very important thing, which is that children are to be treated relative to bail provisions in a very different way from other persons.

In the United Kingdom, and the Minister referred to it, persons who are 17 years of age are treated in a particular way, but anybody who is 12 years and over, up to 17 years, there are prescriptions as to treatment, but this Bill has none of it. So how could this represent two years of work in the Ministry of Justice? It reminds me very much of the type of claim that the Minister made when he came to persuade us that the legal aid amendments that he was making were as wholesome as they were, when he left in the Act there, the ability to not fund an archaic piece of law called “loss of the procurement of services of a girl or child”. So, Madam Vice-President, we have really not paid attention to detail, which goes back to the reason why in other jurisdictions, they put in the probation authority first. They understand how that works first, they look at the statistics first, and then, they introduce electronic monitoring on a pilot basis first.

Let us look—Madam Vice-President, may I ask how much time I have left?

**Madam Vice-President:** You would close off at 7.01 p.m.

**Sen. F. Al-Rawi:** At 7.01 p.m. So, in 15 minutes, knowing that this Bill has a great deal of attention to be had, I would like to make a few observations on the Bill itself.

The definition of “competent authority”, alluded to by my learned senior, Sen. Prescott. Clause 3 of the Bill deals with this most nebulous reference to competent authority. Competent authority may include “a Statutory Board or Tribunal or other authority or functionary, appointed under any written law for the purposes of this Act”.

Then, “Minister” means “the member of Cabinet to whom responsibility for offender management is assigned,” and “Ministry” has “the corresponding meaning”. I do not know why the Minister has to be a member of Cabinet there, but perhaps there is an explanation. “Person” means “an individual who is charged or convicted by a Court for an offence”.

So, we have here this competent authority, and apart from the observations of the substitution of functionary that my learned senior, Sen. Prescott went through, I wish to pose a few questions. Madam Vice-President, the issue of delegation. This Bill proposes that we would provide the competent authority with the ability to do certain things under this Act. Sen. Prescott took us through it and I wish not to repeat it but to adopt it. In those circumstances, this Bill specifically contemplates that we are going to delegate the authority to a competent authority. What can the competent authority do? The competent authority, surely I would imagine, speaks to the parole system most largely, or persons who would deal with early release of offenders.

Put that in conjunction with the Electronic Monitoring Unit. The Electronic Monitoring Unit—it has been created in Part II of the Bill in clause 4—is comprised in its architecture of an Electronic Monitoring Manager, a deputy manager, no qualifications specified. Then, it has other persons who are suitably qualified—a nebulous term. All of those people—the manager and the deputy manager—subject to section 121 of the Constitution, and can be appointed, in what I now call “the Susan Francois clause fashion”, that is, the intermediary position; no limitation on the time frame there.

But, what does section 121(3) and (4) of the Constitution provide? It provides the power of veto. So, whomever you bring with no qualification or statement of qualification to perform administrative functions—as Sen. Prescott showed us—to perform, what I call “quasi-judicial functions” as the schedule provides and recommendations there; no qualifications there—all to be vetoed.

Then, you have the “Francois clause”, as I call it, and that is, the ability to veto it; the ability to appoint someone as an intermediary whilst it is practical to do so, but with no limitation on time. What is to prevent then, Madam Vice-President, under the power of veto, as we saw with the Susan Francois appointment: “Well, it is not convenient right now to do that” and “It is not apposite to our best interest.” That is the corollary point which I wish to add on to Sen. Prescott submissions so far. Insofar as without a statement of qualification, it is entirely nebulous and open to abuse under the powers of Section 121(3) and (4) of the Constitution which permit the power to veto.

Next, Madam Vice-President, is the delegation aspect that I referred to articulate with the competent authority. The Electronic Monitoring Unit can specifically contract out its position to a company, the Bill says. Mind you, I would recommend to the hon. Minister that he not use the word “company”. He should, in fact, use the word “person”, but person is precluded from using because he has defined person in the definition section. A person under the Interpretation Act, Chap. 3:01, I think it is section 16—26 forgive me—provides that a person includes a corporation or a corporate entity, but a company, as defined here, does not. So there may be circumstances with other entities which are not companies at law that he may wish to allow to have the receipt of the delegated power.

But, Madam Vice-President, this Electronic Monitoring Unit can give all or some of its powers, its abilities, its performance, to persons in a company. Where is the fetter on control to that? The only control in the Bill is with respect to an obligation of confidence, which, from a civil law point of view—not professing to be a criminal lawyer—falls woefully short of an oath of secrecy of, from the confidentiality provisions with respect to public domain positions. But, it is an offence to disclose information, but we have not safeguarded the thing properly.

So, Madam Vice-President, bearing in mind that we can use a company to perform the unit’s role—is this well thought-out? Where are the fetters? Where is the statement of qualification to at least have the assurance that the manager of the Electronic Monitoring Unit has the wherewithal to do the correct thing? Particularly, where we notice that staff members are to be appointed on contract, but there is no statement of the time frame of the contract; and we saw that very laudably used in the Children Bill, which we debated the other day, when we prescribed a contract should be of a minimum period of three years.

So, we are dealing with quasi-judicial aspects of vetting in clause 6 of the Bill, of vetting a person’s eligibility for electronic monitoring to, as Sen. Prescott put it, be adorned with the bracelet. When we look at that, we appreciate the high bar which we must have because if you are going to deal with quasi-judicial recommendations, under a delegated system of authority, then, we have to do better than that.

Madam Vice-President, we have another concern. The other concern is the issue of technology. It was something that was mentioned in passing by a couple of our people. I am going to raise technology first before I get to the issue of children because technology is important. This Bill confines itself to the use of telecommunications technology, either in GPS scenario or in RF scenario; full stop. It does not make provision for the evolution of technology.

The GPS mechanism is the one which allows you to have the real time monitoring, but the GPS mechanism, as has been demonstrated in the Canadian reports, in the English reports, spanning the usage of this type of technology from the 1980s come forward. That is quite a long time. That is 30-years-plus. The 30 years of usage have shown limitation on RF technology—that is now aside—but they have also shown limitation on GPS technology. I want to bring this home to the people who are listening. The GPS technology has a sincere difficulty for countries like Trinidad and Tobago.

There is a phenomenon called “drift” as alluded to by my learned Minister of Justice, and that is, that you are supposed to be in place “X” but the GPS monitor says that you are actually 200 feet or several miles away from that. Anybody with an iPhone who uses the application “iMaps” can zoom into where you are, real time, on the telephone network, and it will show you where you are. But, what is interesting is that that is a real example of drift. You are always 200 feet to 400 feet or 500 feet away from where you are.

Let us add that into a real-life scenario of where this technology is going to be used. It is no secret that there are certain hotspots in Trinidad and Tobago. Persons who reside there are most likely going to be those who are going to wear the electronic monitoring devices—one. Two, it is no secret that people live in shared households.

Under the provisions of the Domestic Violence Act—it being a very broad piece of legislation—which under the terms of the Act allows members of the same household to apply for domestic violence order, persons who are family-related but not in the same household to apply for domestic order. Anybody who has practised in the courts, who has dealt with a domestic violence application, knows that you can have a protection order and live in the same place. You could have a protection order and live on the same compound; you could have a protection order and be the next-door neighbour. Add that now into the conversation on drift, and drift tells you that whenever you are near to large bodies of waters, the drift phenomenon becomes more and more of a problem.

So, let us put in real life examples. Any one of the hotspot areas, people side by side—the hon. Minister in his delivery to the Lower House, and I read his contribution, said that you could zoom into people in the same bed and know where they are. But that is not the reality. Madam Vice-President, that is not the reality when you look at the research. Added now to clause 16 of the Bill which says it is an offence for any person—sorry, not person—for any individual—that is the language used in this Bill—to cause an interference with an electronic monitoring device. What, God pray tell, are TSTT and Digicel going to do about dropped calls and dropped frequency interruption scenarios?

**7.00 p.m.**

Madam Vice-President, drive round the Savannah, hit just before Emperor Valley Zoo, bam!—dropped call. Drive on Wainwright Street, past the American Embassy's home—dropped call. Drive around the Savannah outside the American Embassy—dropped call. Drive anywhere right now, Trincity—dropped call. As you are driving down the highway to San Fernando, Claxton Bay, Couva—dropped call. What happens if you live there? Who do we make liable? The person responsible was the telephone network provider because he interrupted the signal. So, you cannot get electronic monitoring device relief if you live in those areas. How?

My point, in that circuitous way, is to say that our technology is not ripe.

**Madam Vice-President:** Hon. Senators, the speaking time of the hon. Senator has expired.

*Motion made:* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. T. Deyalsingh*]

*Question put and agreed to.*

**Sen. F. Al-Rawi:** Thank you, Madam Vice-President. What I was saying is, it is my heartfelt belief that our technology does not allow for it to happen. So, if our existing service providers cannot give it, what does that mean? Is it correct to say that the guesstimates—I would not hold the hon. Minister by saying the estimates—at the preliminary stage for service provision could really be US \$20 or TT \$128 per person? Because it means if we needed a reliable system we would have to invest in better technology than the current service providers can give us. I believe that system, that US \$20 guesstimate, would have to be raised. Then, we are coming almost to parity.

Now, if that is the scenario and we turn now to the issue of the children, this Act deals with children. So, we have dodgy technology, we have issues with the application and usage and potential offences going to be committed by telecom providers for interrupting the signal where it is not—as Brig. Sandy told us—the Bahamian experience of using foil by the offenders themselves. We have children mentioned in this Act. What do we have in relation to our children? Apart from the Second Schedule having no form of reflection on the conversations that we have been having, with respect to children, we have—and permit me just to reflect upon the note that I have made to try to be tight in the contribution—children being required to give consent, through their parents.

Clause 10(5) of the Bill provides for consent at the end, just before (6). In the case of a child, his parent or guardian must give the consent. The consent is the golden key to giving the constitutionality and the proportionality to this legislation. It must be given.

Where is the Children's Authority? Where is the report from the Children's Authority in this Bill? We have the Electronic Monitoring Manager's report—that person, with no description of qualifications, performing administrative and quasi-judicial determinations. We have his report. But in the case of a child, we have parent or guardian—no reflection of the person with responsibility for the child—something which we went through as a Senate in great detail and understood the importance of, because you can have a child in your custody or care and control and not be the parent and not be the guardian, even if you go to the Guardianship of Minors Act. [*Desk thumping*]

So, no reflection of the person with responsibility, no report from the Children's Authority, none at all. It never happened! We have not been discussing this issue. It has not been lying around for 13 years. We did not just pass a Bill which seeks to repeal the Children's Act, which is partially proclaimed. We do not have a Children's Authority in existence, but yet we have had consultation, supposedly—no statement of it. So, where is the report from the Children's Authority? Where is the best interest of the child had here? Where?

How could this have been proper interrogation of the position and a statement of adherence to section 40 of the United Nations Convention on the Rights of the Child? Again, with the greatest of respect to the hon. Minister, go back and look at it. It is a great idea, electronic monitoring. The cart is well before the horse.

Tell us what your crime plan is. Tell us you are going to be tough on crime. Tell us what your rehabilitation issues are going to be. Tell us that Vision on Mission, named top NGO as set out in recent papers—forgive me, the date is not copied—that you will support measures like this. I understand, and I stand to be corrected, that funding for these institutions cannot be found. We have right now, a Mercy Committee in operation, not a parole system. The Mercy Committee could let you out for a malady, a difficulty of health, et cetera. You have the President's ability to pardon you. We want to bring a parole system but all of this is dependent upon an interarticulation of NGOs and support of NGOs and one-on-one personal interaction. But none of this is here.

So, perhaps it was correct of us to reflect upon Judge Love, in recognizing a comic book and Spider-Man, because it has to be a reflection of comedy for us not to look at this thing in the broader perspective. We agree that it is a great idea. On the

*Electronic Monitoring Bill, 2012*  
[SEN. AL-RAWI]

*Tuesday, May 29, 2012*

surface of the Bill alone, you have left out important interarticulation issues. This Bill interacts with the Bail Act—no treatment of amendment under the Bail Act for young offenders. None! It is true that the Minister can do it by way of regulation, but should we do it by way of regulation?

Next, the person appointed, the manager and deputy manager, no form of qualification, extra-judicial functions and quasi-judicial functions, in terms of assessment or recommendation, because, obviously, as the first person with the responsibility for interrogation, the report is going to say a lot. If you get a badly prepared report, you may prejudice your chances of electronic monitoring and therefore early release, you could argue. Where is the reflection? I am not sure. We have to have a better product.

If the hon. Minister could convince me to support this Bill, I would keep us here for a very long time in committee stage. But I do not know if that would be appropriate when the Bill is not capable of being fixed today. There must be better reflection. I have a number of comments to make in relation to the particular clauses of the Bill, but I am not sure if I would in fact make those because I want to make the bold statement that the Bill in its current form is in need of much more work. The timing of the Bill is entirely wrong. If we are looking at service providers now and we do not have a parole system in place, something is wrong. I am wrapping up, Madam Vice-President.

The point is we need—[*Interruption*]

**Sen. Beckles:** You have six minutes more.

**Sen. F. Al-Rawi:** I am sorry, I got a little note from my learned colleague, Sen. Deyalsingh, warning me. If I have a couple more minutes I would make the observation that there is a lot to say in relation to the clauses themselves.

Do we also—I think some people may regret that Sen. Deyalsingh was not correct—want to reflect upon the provisions of the First Schedule? We know that the schedules can be amended by the Minister in his regulations. But, there is a lot here to be included by way of subsidiary legislation, which I do not think we ought to do on a first pass on the legislation. This is one of those circumstances, if you were to have consultation on the Bill, that you should at least be discussing the regulations as well. We are doing that in a joint select enterprise in other areas of originating legislation which we deem important.

I would not say more than that, but the point is when you are bringing something first out, you are doing it before the parole system is created, at least have the courtesy to bring some discussion on the regulations in. This is not the average case where we know what we are dealing with because we have an existent system in place. That is not the case.

If this Bill were to be passed, if it were to be put into effect before a parole system came out, and before it was tried, tested and a pilot project was put into place, there would be a large batch of people in this country, including the same people who were shepherded and herded under a state of emergency and locked up, those people would be most in danger under the provisions of bail applications and under the Domestic Violence Act.

I wish to state, under the Domestic Violence Act, Chap. 46:56 I believe it is, the “balance of probabilities” is the standard for domestic violence proof, not proof beyond reasonable doubt. And the experience has been that most people adopt the approach of accepting an undertaking before evidence is given, and under the provisions of the Act, an undertaking is as good as an order. If you have an undertaking, you just do not want to fight the case because you are going to lose because of the evidence, even though you may have a good case but the standard being so low, you are going to be in problems and at risk and in jeopardy of incarceration for breach of the provisions as this Bill provides. We ought not to do that in this scenario, unless we saw things like regulations and unless we had wider interarticulation.

Madam Vice-President, I will end by recommending that we consider the words of the hon. Chief Justice in the *Republic of Trinidad and Tobago Sentencing Handbook* produced in December 2010. He said:

“Much criticism of apparently disparate sentencing is prompted by an incomplete understanding of the circumstances of the crimes and the offenders, so that critics are often comparing apples with oranges. Thus, an appropriate sentence for manslaughter may vary from the imposition of a lengthy term of imprisonment to a bond to keep the peace and be of good behaviour, with suitable conditions...”

It is perhaps open to us, bearing in mind the hon. Chief Justice’s words—something with which my learned colleague, the hon. Minister of Justice would be well aware, he having years of experience on the Bench in dealing with sentencing—it would be well open to us to understand that our sentencing options are wide and the discretion that the judges enjoy is a wide one. We ought to have faith to better the system through careful approach, lest we find that we have to do like Scotland did in 2010 and say we abandon the system—abject failure.

Madam Vice-President, I urge the hon. Minister to consider this Bill carefully, to look at the provisions again and to come with a wider articulation and expression and I thank you for the opportunity to contribute. [*Desk thumping*]

**7.15 p.m.**

**Sen. Corinne Baptiste-Mc Knight:** I thank you, Madam Vice-President, for the opportunity to contribute to this Bill, particularly coming in the footsteps of Senators Beckles, Prescott and Al-Rawi. It means that my contribution would be much shorter because they have said, far more eloquently than I would have or could have, much of what concerned me with this Bill. However, there are a few—in the words of Sen. Al-Rawi—bones that in my turn I would chew on.

Before dealing with the specific clauses of the Bill, I would just like to make a few general comments. The first comment I would like to make deals with the unintended negative results, implications, consequences of this Bill. Now, Sen. Brig. Sandy mentioned that there may be some embarrassment, but he did not see it as a very serious problem. I wish to suggest to this Senate, however, that when one looks at all of the other jurisdictions in which electronic monitoring happens, and we compare them with Trinidad and Tobago, I think we would note one element that is vastly different. In none of those jurisdictions exists the culture of disrespect for each other that is a given in this society. I am talking about the “picong”, the harassment and the heckling. This is something we have to recognize and face. It is a cause for merriment, if you are not the subject of it.

Granted, the person who would be adorned with the Government jewellery is accused of something. But when that person is adorned, nobody is going to tell me that this thing is invisible; it is on your ankle, yes, but unless you are wearing sailor pants, once you sit down it is obvious. I do not think I am the only person who has seen a television show called I think, “White Collar” or something like it. The protagonist is a criminal who is now helping the CID, CIA or whoever it is, to deal with white-collar crime, and his little monitor is very obvious.

Now, I ask you, does this not affect the person’s spouse and particularly children? All of you who have children know how cruel children can be to each other. So we have to realize that a sentence of electronic monitoring is, in fact, a sentence for the whole family. I am not saying that this is a reason not to consider it. I am saying it is a reason we must consider very carefully how this Government bling would be allocated.

**Hon. Senator:** Government bling?

**Sen. Corinne Baptiste-Mc Knight:** We have to do some serious public education and I say this knowing that I am more or less wasting my time because there have been successive pieces of legislation—I think of the Anti-Gang Bill, now the Anti-Gang Act—where we were promised that the police would be totally educated on how to apply it, we saw that that did not happen, that the public would be made aware of what was involved, we saw that that did not happen.

There seems to be a criminal determination not to ever educate the public on things that concern them, and if we are not going to educate the public on something like this, it means that instead of reducing crime you are going to be encouraging crime because people who cannot stand the kind of provocation wearing this Government jewellery is going to bring down upon them may react disproportionately. That is one area of concern.

Another area of concern: persons attached to their surveillance devices, we would hope, would be in the workforce, and as Sen. Al-Rawi mentioned, we know about dropped signals. In very many of the high-rise buildings where people work now, signal disappears. Now, the person is at work, signal is not on the monitor, which means either the device is off, or the person has absconded. So Government music in blue flashing lights, turning up at the office and police invading the people's office in order to find somebody who has absconded. How long do you think he is going to keep that job?

Now, that is not collateral damage because it means that this guy is twice victimized: one for the wrong thing that he did, and now, through no fault of his own, he is going to lose a job because his employer is unconscionable enough to have his office in a high-rise building where his monitor signal is not functioning full-time, but I consider that a serious embarrassment.

I have even greater concern in the case of the protection orders. When a device is attached to someone as part of a protection order, on whom is this device applied? If it is applied on the gentleman or gentle lady who has not paid maintenance, or if it is applied on the husband or wife who has a striking affection for the other one, all well and good, but how is the person who is monitoring that device to know when said person, tagged person, comes into contact with the person with whom he or she is not supposed to be in contact, unless that person too is monitored? Is that making sense?

**Hon. Senator:** Yes.

**Sen. Corinne Baptiste-Mc Knight:** So it means if I am to be protected from an abusive man, I also have to wear a monitor—*[Interruption]*

**Hon. Senator:** It is required.

**Sen. Corinne Baptiste-Mc Knight:**—otherwise I have to stay home, which means I am virtually under house arrest. We have instances of spouses—or is it spice? *[Laughter]*—turning up at workplaces and killing people. Does it mean that the workplace has to be monitored too? Or, the workplace could be on the radar,

*Electronic Monitoring Bill, 2012*  
[SEN. BAPTISTE-MC KNIGHT]

*Tuesday, May 29, 2012*

but we have heard that the GPS is not an exact science here, so it means that that is not—you know, there is a problem—all that to say that I endorse totally what Sen. Al-Rawi has said, that this is an idea, a great idea, whose time has not come to Trinidad and Tobago. [*Desk thumping*]

Let us consider the radio frequency. There are two things that are absolutely necessary, I am told, to apply this radio frequency. You need to have a landline and a fixed place of abode where that landline is going to be.

**Sen. Al-Rawi:** Electricity.

**Sen. C. Baptiste-Mc Knight:** No, we are not going there yet. TSTT, I believe, has not been in the landline business for a while, because everybody walks with an attachment.

**Sen. Drayton:** Or two or three.

**Sen. C. Baptiste-Mc Knight:** Right. So are you going to produce a landline and hope that, electricity and other things being equal, it functions in order? What if the accused or offender might have a little problem with fixed place of abode? In this here territory, I am not so sure that this sort of home detention, house arrest or whatever is likely to be a very serious deterrent for anything or anybody.

Now, I would just like to mention the cost of this, and I am a bit amazed really to think that in a country where we have to buy the technology, we have to import the people to run it, at least initially to teach our people. The cost of that technology here to us is going to be a factor of about 10 to 15 per cent more than the cost where the technology originates. I suspect that the Minister's mathematicians got their decimal point misplaced; that is the only explanation I could have for those figures.

And this is supposed to bring some assistance to the whole judicial system, but in what time frame? If this legislation can be fixed and a Bill passed in this session, I doubt that this can be proclaimed in under, perhaps, a couple of years because your satellite and mobile system has to be updated, your people have to be recruited and trained, the legal officers also have to be trained because this is new to the judges, and I am sure they will ask for some kind of training as to how do they allocate, how do they choose these people. It cannot solely be on the basis of a report from the Electronic Monitoring Manager.

**7.30 p.m.**

Let me get on to the Bill itself. Suffice it to say, I share and adopt the problems raised at clause 4 where it deals with the qualifications of the Electronic Monitoring Manager because I wondered why it is you need suitably qualified staff, but

totally unqualified people to manage them. This being Trinidad, we are an amazing people. We manage to get things to fall in place, even when we do not want them to.

Clause 4(5), where it talks about—just let me say that given recent experience, there is no way that I am going to be accepting this clause. I like to go on what is certain and what is certain is that the experience I have had of this I am not willing to live with it here.

The responsibilities of the unit at clause 6: now at clause 6(2), we talk about providing technical assistance where necessary; providing training where necessary, but everything that is mentioned here talks solely about managing the system, the actual devices. I wonder—the reports that have to be made talk about character, physical and mental health, et cetera—who is going to be doing that?

Even where they talk about the actual management of the system—at 6(2)(a), it talks about providing near real-time tracking. What does that mean? I interpret it to mean doing the best you can to track them; but, of course, in practice, this is what is going to be happening because we do understand that the GPS tracking here is not an exact science. Even given the fact that it is not an exact science, when your mandate is not to do it in real time, there is a problem. So we have to deal with that as well as tidy up the language in that particular clause.

In clause 7, it says “the Government may”. Now which Government and who is the Government? Who in the Government? I do not know and I would like to find out.

I want to move on swiftly to clause 9, where it says “the Minister may by Order, subject to negative resolution of Parliament, approve the electronic monitoring devices...” Simple question: what is the Minister’s expertise and technical competence in electronic monitoring? I get the impression that of the 20-odd Ministers we have currently and of the 100-odd Ministers that we have had before, I think I can say with a fair degree of certainty that not one would have had competence in this area. So, from the information we are given, there is nothing to guide me to say that the Minister would be able to get this expertise from the staff that will be manning the unit. Not good enough. I think that has to be rethought totally.

Moving on to clause 10, which is part of the substance of it, here is where the court is given a wider range of sentencing options, but this option can only apply to offences committed after the coming into force of the Act, so the hundreds of people on remand for bail and for other infractions who, after the Act, could

*Electronic Monitoring Bill, 2012*  
[SEN. BAPTISTE-MC KNIGHT]

*Tuesday, May 29, 2012*

possibly attract some Government bling, remain in jail. Is this really what the intention is, that there is no opportunity to review the condition of people who would qualify had they been sentenced later?

Then in subclause (4), where it says that for domestic violence, with or without electronic monitoring, “the Court shall not request the consent of the respondent...”. There is no way that I am going to be partial to male or female guilty of any form of domestic violence infraction, but that does not say that I am going to agree to removing from that person the right to choose whether he or she would be tagged or not. Someone might meet all the conditions for tagging but decide: look, the living between me and that person is so bad, I am better off cooling off in jail for two weeks. On the other hand, when a judge decides to tag an angry man and send him home, what is he inviting?

I notice in subclause (5)(a), everybody concerned is going to be consulted about the prospect of monitoring this person but the victim. That does not make sense to me. Really. I think that the first person that should be asked—because if I am living with someone for X years and I find it necessary to take them to court, I would really like to have a say in whether I have to stay at home afraid because that person is out with some Government bling. No. No. I do not like that idea.

Under 10(7), it says: “While making the report of the...Manager, the Court shall commit...”, et cetera. Are we thinking of while making the report or while awaiting the report? The court is not making the report, if I understand it properly. The idea of the manager making the report sounds to me as if he is going to be concocting something, especially when at subclause (8), it says that in addition to name, address, pets and girlfriends, he needs to find out about character, antecedents, et cetera. There is a little shoddy drafting there that has me a little worried.

In the matter of extenuating circumstances, et cetera, where is the Electronic Monitoring Manager going to be able to find out about extenuating circumstances? This is work for a probation officer or a social worker. I do not think either of them is in the rarefied stratosphere of section 121 of the Constitution. Perhaps we need to look at that a little bit more.

There is a little glitch in 13(b) where reference is made to any order of the Minister under section 8. I cannot quite figure what section this refers to, but it is not section 8.

Under clause 15 and elsewhere in this, I want to agree with Sen. Al-Rawi that the Children’s Authority really ought to be involved, specifically where it affects children under this. I imagine, when this was being drafted, people were not quite aware of what was going on with the authority and elsewhere, but I think, having drawn it to their attention, it would be dealt with.

Clause 15(3) where it says that the copies of the decision of the court shall be given to these persons and transmitted to the unit as soon as is practicable after it is made, I do not think that that is good enough. I think that here is where we need the nice legal word “forthwith”, but I would go for “immediately”. I understand that a little better.

Clause 18: now this boggles my imagination if we are talking about real-time, continuous surveillance. Where it says that if somebody changes address, they are allowed to give this advice within a reasonable time after the change occurs if they have not been able to do it before, that kind of does not make sense to me. If you are under surveillance and your every action is being watched, somebody on the monitor should be aware that you were not where they had been watching you all the time, and that you are somewhere else. But you are allowed to move and then tell them within a reasonable time. No. I think one should allow 48 hours maximum for this, if the idea is that we are being serious about that. This affects 18(1) as well as 18(2).

In clause 22, I am thinking that the complainant 22(1) and (2)—I cannot seem to find it now. What I am interested in is ensuring that among the people who have to be consulted in matters, particularly concerning domestic violence, should be the victim or complainant or whatever nice word applies to that.

**7.45 p.m.**

I have to warn the hon. Minister moving this Motion, through you Madam Vice-President, that when it comes to schedule one I have a little problem. Sen. Al-Rawi mentioned some of them, but basically I wonder whether, if what we want to do is to expand the sentencing options available, do we really believe that any judge—and I do not think I need to add, “in his right mind”—will put Government adornments on a kidnapper, somebody accused of murder, kidnapping, shooting and wounding? And I wonder why it is again we turn up with this ridiculousness of not allowing bail or jewellery to somebody guilty of buggery, but somebody guilty of bestiality is not mentioned here, unless I have missed it.

Here again, we just finished talking about child pornography. The judge is expected to use his judgment there—no, but we will discuss that when we come to the committee stage if the hon. Minister does not see it fit to have another rethink of this because from all that I have been hearing—some of which have amused me quite, but is very serious. I do believe that one needs to have another serious look at this.

*Electronic Monitoring Bill, 2012*  
[SEN. BAPTISTE-MC KNIGHT]

*Tuesday, May 29, 2012*

In the Second Schedule, I note that the report that the EM Manager has to supply to the court has everything in it of serious consequence. They forgot to put the names of the pets though, they only have to list them. But at 10(8), I believe—yes—there is a requirement that goes further than the Second Schedule. Why is it not included in the Second Schedule once and for all?

Madam Vice-President, I too would have been a little happier if I could have seen the regulations that go with this because it really would have helped me to get a better handle on exactly what the functions of the unit and the manager and deputy are. As it stands, much as I would like to see measures like this introduced—because, you know, I believe it is Dr. Wayne Dyer who said in a book he wrote, *Living the Wisdom of the Tao*, that the more laws that are posted, the more thieves appear—we have to be careful that the laws that we make do not precipitate unacceptable and unexpected consequences.

I feel that as this stands here in our society, it could produce some very difficult—well they would no longer be unforeseen because I have told you what is going to happen—consequences especially for the children of people who have these adornments. Not to mention the fact that when these are put on to children, one of two things would happen: either other children think it a joke and try to replicate it, or this becomes a badge of honour, this guy is now a recognized bad guy who has to be acknowledged. I do not think we want that.

We need to think of other alternatives. What you project to a child that you expect of him or her is exactly what that child becomes. We do not want children becoming big bad people by blinging them. Thank you, Madam Vice-President.  
[*Desk thumping*]

**Sen. Jamal Mohammed:** Thank you very much, Madam Vice-President, hon. Senators. Once again, the pleasure is mine to stand in this honourable Senate, in this august Chamber, in the month of May at the eve of a very historic occasion here in Trinidad and Tobago. I am reminded of a story in my own family of an ancestor of mine who came from India as an indentured immigrant. He did not come to Trinidad first of all, he went to Martinique. When he came from India he landed in Martinique. He ran afoul of the law in Martinique and he came down to Trinidad, and that is how our family started here in Trinidad and Tobago.

You can say what you like, Madam Vice-President, May 30 every year is a historic day for the people of Trinidad and Tobago. May 30, 1845 began a historic journey for a large section of the population of Trinidad and Tobago. You can call it what you like, May 30 will always be Indian Arrival Day here in Trinidad and

Tobago. I wish to extend best wishes to you, Madam Vice-President, and to all Members of this honourable Chamber. Best wishes for Indian Arrival Day 2012 tomorrow. [*Desk thumping*]

Madam Vice-President, every morning when I get up I say thank God I am not a lawyer. [*Desk thumping*] The first person I see every morning is a lawyer, it is a member of my family. When I come to Port of Spain every morning, I see a lawyer. I have been here a couple of occasions and I am surrounded by lawyers. I say thank God I am not a lawyer. And I have my lawyer's permission to say that, so I would not get in trouble for saying that. [*Desk thumping*]

I wish to stand here this evening, Madam Vice-President, to express my full support for this Bill that has been piloted by the hard-working hon. Minister of Justice, Member for St. Joseph. [*Desk thumping*] One of lessons that you learn in politics is that with elections and general elections there are consequences. In 2010, the people of Trinidad and Tobago gave the People's Partnership a mandate to do things as they see fit as an administration of Government in Trinidad and Tobago. We were given the power of the people to see within our wisdom what is the best thing we can do for, and on behalf of, the people of Trinidad and Tobago. Elections have consequences.

It is so because in 2010 we found ourselves in a situation where we almost reached the stage of a failed state. We were doing things and getting no results. We were trying things and we were reaching nowhere. In May 2010, the people of Trinidad and Tobago said let us turn the corner and try something different.

So, we have a mandate from the people and that is not to disappoint them— not just to sit there and do nothing. We have the opportunity now, on behalf of the people of Trinidad and Tobago, to see what we can do to improve the quality of the lives of the people of Trinidad and Tobago. I have been here a couple times. I was here when Dr. Fuad Khan came with some amendments to the regional health authorities which were finally passed today. I was here when we discussed the Children Bill to some extent, and I am here today again. I want to say that I am trying to understand why we are failing to accept that change is in the air, that we have to do things differently.

Dr. Fuad Khan, who is my Member of Parliament, is one of the most experienced medical practitioners in Trinidad and Tobago. He has worked in the private sector; he has worked in the public sector; he has worked in different avenues in the health sector. He brought an idea here to this honourable Chamber to see if we can do things differently, to achieve better results on behalf of the

*Electronic Monitoring Bill, 2012*  
[SEN. MOHAMMED]

*Tuesday, May 29, 2012*

people. We went back and forth, back and forth trying—as a lawyer would always do—to find out this and trying to find out that, and Hon. Dr. Khan almost did not get the opportunity to pass his amendments. Luckily today, with the assistance of the Attorney General, we were able to come to some kind of compromise.

The same thing happened with the Children Bill. We were going back and forth, back and forth, and we almost did not pass that Children Bill. It was until four o'clock in the morning we were here, and we have to congratulate Sen. Verna St. Rose-Greaves for the patience and her dedication in ensuring that we had that Bill. [*Desk thumping*]

Now, we come with this Electronic Monitoring Bill. It is a very good and radical idea, and we have to compliment the Minister of Justice and his hard-working team for coming up with that idea. [*Desk thumping*] I support it 100 per cent. It may not be a perfect Bill. We cannot get absolute perfection in everything that we do here. We must strive for perfection in all that we do. [*Desk thumping*]

I want to view this Bill from a different point of view. We have heard from the hon. Minister of National Security and from the Commissioner of Prisons, and so on; we have a serious problem of overcrowding in our prisons. There are too many prisoners in too small a space to properly accommodate them. There are just too many prisoners. I have heard a figure of maybe 3000-and-more prisoners. It costs us—I have heard a figure of nearly \$400 million a year to maintain those prisoners that we have right now.

Here we have an opportunity—where it be a small amount, a minuscule amount, but it will be an opportunity whether we can reduce the amount of prisoners in our prisons right now. This Electronic Monitoring Bill is able to do that; when you provide the people who are offenders with the opportunity to remain in their homes and not having to go into a prison. Now, the psychology of going into a prison, especially a prison in Trinidad and Tobago, is not a nice thing. Many of you here, if not all of you, may have read accounts of people who have spent time in prison; and it is not a nice thing at all.

We have heard, “jail eh nice”. It is not a nice thing at all when you have 10-20 people sharing a little cell. You have no toilet except a bucket, and you have to share that bucket. So you can think of the psychological impact on a prisoner who has to go through that. Here we have an opportunity where we can take away that psychological, that negative psychological effect on that person of having to spend time in a prison.

**8.00 p.m.**

We have to view it like that, and I want hon. Senators to view it in that context. It would be a way for the Government to ease the burden on our prisons and cut down on the cost of maintaining these prisoners in our prisons. Think about it from that point of view.

Another of the benefits, hon. Senators: it deals with the aspect of controlling juvenile delinquency, and again, I want to support this Electronic Monitoring Bill in cases—and especially when we are dealing with juvenile delinquents. Whatever the reasons we may have heard, that they think that this will be some fashionable thing to have on—the anklet and so on—once these young people know that they are being monitored, and they have on this anklet, whatever the problem they might have been involved in, they would think twice again before they do it.

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

**Sen. J. Mohammed:** It would act as a great deterrent before they do—or what they plan to do—whatever miscreant action they want to perform, they would think twice before they do it again.

So I encourage this kind of activity, especially for those youngsters who we may have in our community who may run afoul of the law or who may be in the company of those who may not be doing the correct things; it is a good thing. Let us think about it in that way, let us think about it from outside of the box, how we can improve and help out those who have found themselves in these difficult conditions.

I also noticed that it is a consideration, it can be used, these bands or whatever you want to call them, these monitoring facilities, these electronic monitoring items, whatever you want to call them, we can use them on suspects.

You know in Trinidad and Tobago, I always hear, and I do not know if it is true, that the policemen in our country—God bless the police of our country, I am not saying anything wrong about them—they know who all the criminals are. They have intelligence of who all the criminals are. They know where these criminals are, they know how they operate and so on; it is just that they cannot bring them in because of a lack of evidence, or whatever the case might be. This Electronic Monitoring Bill, and this facility of the electronic monitor, we should snap it on on all those we suspect, so we can monitor them 24 hours of every day—*[Interruption]*

**Hon. Senator:** You mad!

**Sen. J. Mohammed:**—so we would know exactly where they are—  
[*Interruption*]

**Sen. Deyalsingh:** Are you serious?

**Sen. J. Mohammed:** Serious!

**Hon. Senator:** “Eh heh?”

**Sen. Deyalsingh:** People who you suspect?

**Sen. Beckles:** We have to respect the rule of law.

**Sen. J. Mohammed:** We do respect the rule of law, [*Crosstalk*] but this is an opportunity for us to try to monitor—for example, if police has a suspicion that there is a possibility [*Crosstalk*] that a person may be involved in untoward activity—[*Interruption*]

**Sen. Beckles:** You cannot be serious? That is what is going to happen. That is Hitler or what? [*Crosstalk*]

**Hon. Senator:** People who you suspect?

**Sen. J. Mohammed:** We have to be very careful. [*Crosstalk*]

**Hon. Senator:** All of them will have on—[*Crosstalk*]

**Sen. Deyalsingh:** Wooh!

**Sen. J. Mohammed:** Let us try our best to understand this thing, [*Crosstalk*] that we have to be able to provide the opportunity to monitor, and to take a closer look at these people who we might feel, or the intelligence officers of the community might feel that they have to look at—[*Interruption*]

**Sen. Deyalsingh:** So the Minister of Works and Infrastructure—[*Interruption*]

**Sen. J. Mohammed:** —we have to see because there is an idea out there of where these people are and what they are doing. [*Crosstalk*] So we have to be able to be in a position to at least look at them, and to monitor them, and to find some way to find out what we can do to stop them.

Madam Vice-President, we have to look at this Bill in the context—we are always afraid of passing Bills, we are not sure what is going to happen, we are not sure what is going to done, what we can do or what will happen later on. As we are celebrating the 50<sup>th</sup> anniversary of our independence, to think back on those

days in 1962, many of the things that we now take for granted, when it happened in 1962 we were not sure what was going to happen; there was a sense of apprehension. We may not have been able to understand if this would work or if this would not work—that was 50 years ago. Several things that we started first of all as a new country, 50 years ago, have now become a way of life for us because with the passage of time we have seen how these things have fit in.

This particular Bill is one such thing that would give us the opportunity, with the passage of time, to see how best we can ease the situation in our prisons, and with our areas where we need to help those who need the help and might be in prison.

**Sen. Deyalsingh:** Sen. George, you hear what—*[Interruption]*

**Sen. J. Mohammed:** I want to say that before this Electronic Monitoring Bill is implemented, I am willing, as an ordinary citizen—I am not in any legal problems or anything—to wear it to try it out, to see how it will work because we have to make sure that we have it in place, and to see how it is working. Try it out on ordinary citizens, let us see what would happen, put the things in place, and try it out.

**Sen. Deyalsingh:** Ordinary citizens?

**Sen. J. Mohammed:** I do not mind as an ordinary citizen to see how it would be monitored, and what would be done, and how it would work out, what would be the problems that we could encounter, and try our best to find a way, find a mechanism whereby we can have a proper operation for this Electronic Monitoring Bill.

Fifty years ago some laws were not around, and they have changed the way of life that we have in Trinidad and Tobago. Many of us may not understand that 50 years ago when we became an independent nation—I remember Sen. Hinds speaking about it—the role of Dr. Rudranath Capildeo where he insisted, on certain buffers between the State and the people to ensure that everything would go well as a new country, and that is where we got the service commissions and many of the commissions that we have in place now. All of these things we have to try to put in place, with regards to this piece of legislation to ensure that it works well and we want it to work.

Sen. Al-Rawi has spoken about the need for the parole board to come in place before this Bill is enacted. The parole board would go well, hand in hand with this piece of legislation, but it may not necessarily be a requirement and a specific requirement to put in place before this legislation is passed.

*Electronic Monitoring Bill, 2012*  
[SEN. MOHAMMED]

*Tuesday, May 29, 2012*

The parole board would help, yes, because when you are giving these people the electronic monitoring device, you are affording them the opportunity to get an early release from prison, and another opportunity to get a second chance in their way of life.

I noticed the other day, for Mother's Day—this is an annual event—where mothers who are in prison are given the opportunity to come and meet their children for the day on Mother's Day. Could you imagine if we had this electronic monitoring facility available? What a great thing it would have been to afford the opportunity to the mothers who are in prison right now to go home to their children, whatever the mechanics of it, in terms of their sentences, and however it may be worked out, but it is an excellent way to allow this opportunity for the family to come back together. So this is something that we have to consider and something for us to bear in mind.

The Bill is not perfect, there will be teething problems, there will be some problems. It would not be a perfect Bill, but give it a chance, just as we have to give the Children Bill a chance, and the amendment made by Dr. Fuad Khan to the regional health authorities. Give it a chance, let us see if it can work. Everyone must be on the same page, with the same objective. We must take baby steps and build on our successes. We have to try not only to creep before we walk, but to make sure that we have things in place, and to ensure that most, if not all, of the aspects of this Bill are in position. That is why we challenge the Minister of Justice to ensure that whatever needs to be done, it is done, so that we can have a proper operation of this Bill.

Many years ago when we had the Industrial Court being launched in Trinidad and Tobago—I do not know if Senators can even remember that—or even recently with the Family Court, there may have been apprehensions about the operations of these two institutions in our country: if they are sufficient, if they would have been functional, and if they would have been operational at the time of their start-up point. But lo and behold, after many years we have found that the Industrial Court, and then the Family Court, they have turned out to be some very effective operations in our country—and institutions of the State that we have come to learn and appreciate for what they have done.

This brings us to a point that we face in our country, and it is something that we as citizens need to improve. We do not give the institutions of our State a chance. We are very cynical about the institutions of our State; we do not give them enough chance and recognition. Even from talking and hearing some of the Senators speak, and some of the comedy and some of the jokes that we are making

up about this, we do not give our institutions a chance. We have to be more patriotic, if I can say. For example, we have the office of the Integrity Commission; for all of its mistakes it is an important institution in our country. We have the Office of the Ombudsman; whatever else you can say, it is an important institution in our country.

We have the Police Complaints Authority, and I suspect that the Police Complaints Authority would come in this Bill here because if somebody wants to complain about some action of the police regarding the Electronic Monitoring Bill, I suspect that they may have to go to the Police Complaints Authority. Whatever you want to say, whatever rough start it may have had, I have to congratulate sister Gillian Lucky for the excellent job that she is doing at this time with the Police Complaints Authority. [*Desk thumping*]

We have to start to believe in the institutions of our State. We have to start to believe that as a country, 50 years after independence, all of these institutions are very important, and all of these institutions are so important to our development as a people.

We have a serious habit in our country where we make fun and we find faults. We point fingers and we accuse the institutions of our State of not working, and we end up in a situation where we bring down ourselves as a people. We cause ourselves to lower our status as a people, not only from within, but within the eyes of the world. We have to support the institutions of our state.

We have to give ourselves credit, and we have to support ourselves to make sure that all of these things that we try to put in place are able to work, and work for the improvement of the lives of all of the people of Trinidad and Tobago.

“Jail eh nice,” and when you have to spend time in jail, psychologically it is a serious thing—and whatever we can do to ease that burden on our prisons, on prisoners—to make it easy for them to have a second chance, to make it easy for them to re-bond with their family, to make it easy for them to see if they can improve the quality of their lives. We support organizations like Vision on Mission by brother Wayne Chance, and all those who help prisoners who come out of prison.

This Electronic Monitoring Bill will go a long way in showing that we can give these people a second chance or at least provide an opportunity where they can see the light. [*Desk thumping*] We have to give them that opportunity. Whatever faults this Bill may have, I urge Members on both sides of this Senate to see what they can do to support the Minister of Justice in his effort to make some sense of what is really a bad situation.

*Electronic Monitoring Bill, 2012*  
[SEN. MOHAMMED]

*Tuesday, May 29, 2012*

When you sit down and you analyze the situation of our prisons today, and you read some of the sad stories of the prisoners and what they have to go through, it is not nice at all. Anything that we can do to help them would go a long way, and I see this Bill as a major way of easing the burden on our prisons, on our prisoners, our families and everyone who is charged with the responsibility of the administration of justice in Trinidad and Tobago.

That is why I have to give my support, 100 per cent, to this Bill, and I commend the hon. Minister of Justice for bringing this Bill at this time. If we do not do it, when are we going to do it? The time is now. It is something that is urgently needed, and it can be done once we make up our mind and we decide amongst ourselves to see what little changes may have to be made, but let us get this show on the road. It is something that is very, very important and long overdue. [*Desk thumping*]

The Children Bill that was passed last week—and we spent so many hours—yes, there might be a little fault or two in it, there might be a little mistake and so on, but let us see if we can make it work.

The amendment to the regional health authorities that was debated by Dr. Fuad Khan in this Senate—yes, we have to see how it will work, and we must hold our Ministers who bring these Bills responsible. That is our duty here, to make sure that when a Bill passed, and it is proclaimed, they do what they are supposed to do. That is why we have to hold responsible the Minister of Justice and those responsible in his Ministry and those who will be responsible for the implementation of this Bill. When it becomes an Act, we have to make sure that we follow them and make sure that everything is in place—[*Interruption*]

**Sen. Al-Rawi:** Monitor them.

**Sen. J. Mohammed:**—and make sure that they are in a position to do what must be done to make this Act a success on behalf of the people of Trinidad and Tobago.

I want to ensure, Madam Vice-President—especially in terms of the help that this Bill would provide for people in connection with domestic violence, wives and other people who are affected—we cannot afford to continue with a situation where so many of the murders and crime being committed these days are done because of family affairs and family matters. This Electronic Monitoring Bill can help, and we should look to the good side of it to see what it can do to ease the burden and the problem of domestic violence, and problems we have.

**8.15 p.m.**

I want to say, Madam Vice-President, that one of the things I like most about this Bill is that it affords the court to grant bail on condition that you wear the electronic monitoring, whatever it is, to make sure that when your time has to come in court, that you are back in court and you are able to represent yourself in court and you do not abscond and leave the country and so on. It is a good way to ease the administration of justice and make the process of justice flow smoothly. This Electronic Monitoring Bill will go a long way in ensuring that.

So, I am saying the time is now; if not now, when? We cannot afford to waste time on these important matters. We have to learn to accept these changes that are coming by and accept that this is what this new administration is trying to do, to assist the administration of justice and to make the wheels of justice turn a lot more smoothly. Give us your support. And I, too, would like to extend my full support to the Minister of Justice in this Bill that is before this Senate and I urge all Senators to support it.

Thank you very much.

**ADJOURNMENT**

**The Minister of Public Utilities (Sen. The Hon. Emmanuel George):** Madam Vice-President, I had moved earlier on that this Senate would sit until 8.30 p.m. and we are approaching that time now. In that context, I beg to move that this Senate do now adjourn to Tuesday, June 05, 2012 at 1.30 p.m., when we will debate the Finance (Supplementary Appropriation) Bill, 2012; and if we complete it we will continue the debate on this Administration of Justice (Electronic Monitoring) Bill, 2012.

**Indian Arrival Day  
(Greetings)**

**Madam Vice-President:** Hon. Senators, before I put the question on the adjournment I believe that tributes were prepared so I would ask you to read that before I move the adjournment.

**The Minister of Public Utilities (Sen. The Hon. Emmanuel George):** Thank you very much, Madam Vice-President. On behalf of the Government of the Republic of Trinidad and Tobago, I would like to present a statement on the occasion of Indian Arrival Day, 2012.

Madam Vice-President, hon. Members of this Senate, today on the eve of the 167th anniversary of the arrival of East Indians to the shores of Trinidad, I ask that we pause to reflect on the contributions of persons of East Indian descent to our society and

*Indian Arrival Day (Greetings)*  
[SEN. THE HON. E. GEORGE]

*Tuesday, May 29, 2012*

to our country. Tomorrow, as Trinidad and Tobago celebrates Indian Arrival Day, we must reflect on and never forget the challenges and adversities which those first indentured servants, as they were then called, had to face and overcome on the arrival to a new land from their far-off native India.

It is noteworthy that the main purpose for the importation of indentured servants was to provide a source of labour for agriculture. The resulting inclination of East Indians to identify with land and their abiding interest in the field of agriculture has to a great extent enabled Trinidad and Tobago to grow considerable amounts of its own food. As is well known, food security sustains and contributes to national security, and a greater sense of self-sufficiency and self-reliance.

In addition, their presence has contributed in no small measure to every other facet of our society. Indeed, our rich, diverse, religious and cultural heritage reflects their influence, of which Eid ul Fitr, Divali, Phagwa, Hosay, Ramleela and chutney are outstanding examples.

Insofar as the public life is concerned, persons of East Indian descent were intimately involved in the independence movement and played a significant role in the independence talks held in Marlborough House, London, which led to the attainment of our Independence in 1962. It would be remiss of me if I did not note the contribution at those talks in London of two of our most outstanding citizens at that time: Dr. Rudranath Capildeo, internationally renowned mathematician, and Mr. Tajmool Hosein, prominent attorney-at-law.

Madam Vice-President, I also take note of the contribution of Mr. Kamaluddin Mohammed in the establishment and development of party politics in Trinidad and Tobago and in the functioning of our Parliament. All of these persons and others too numerous to mention have played pivotal roles in entrenching democracy and our democratic institutions in Trinidad and Tobago.

Today, as Trinidad and Tobago celebrates its 50th anniversary of independence, our country is led by the hon. Kamla Persad-Bissessar SC, the first woman of East Indian descent to hold the office of Prime Minister in this country.

In every sphere of activity there can be identified persons of East Indian descent. They have been holders of high offices, such as: President of the Republic, Mr. Noor Hassanali; Prime Minister, Mr. Basdeo Panday; Chief Justice, Mr. Satnarine Sharma; President of the Senate, Dr. Wahid Ali; Speaker of the House of Representatives, Mr. Nizam Mohammed, Madam Occah Seepaul, Mr. Barendra Sinanan; Ministers of Government, too numerous to mention; Members of the Senate and House of Representatives, also too numerous to mention, and members of the Judiciary.

Their sterling contributions have also been recorded in the fields of politics, medicine, law, engineering, academia, business, agriculture as aforementioned and public service, among others. But, Madam Vice-President, even as we reflect and celebrate their many achievements, I hold the view that the true impact and significance of their collective contribution is yet to be fully documented and appreciated.

It may not be well known that the first major celebration marking the arrival of East Indians in Trinidad and Tobago took place on May 30, 1945 at Skinner Park in San Fernando. Tomorrow, we the people of Trinidad and Tobago will together celebrate the 167th anniversary of the arrival of the *Fatel Razack* to our shores, carrying on board its precious cargo comprising a unique group of persons from a far-off land, who, through their hard work, diligence, perseverance and ambition, laid the foundation for those who followed to contribute to the establishment and development of what is today our great Republic of Trinidad and Tobago. To them we owe a debt of gratitude.

Madam Vice-President, on behalf of the Government of the Republic of Trinidad and Tobago and on my own behalf, I wish all citizens of Trinidad and Tobago, and in particular, those of East Indian descent a happy and festive 167th anniversary of Indian Arrival Day.

Madam Vice-President, I thank you. [*Desk thumping*]

**Sen. Terrence Deyalsingh:** Thank you, Madam Vice-President, for allowing me the opportunity to bring greetings on the eve of Indian Arrival Day. As I do so, to my Hindu brothers and sisters, *Setaram Namaste*; to my Muslim East Indian brothers and sisters, *Assalaam Alaikum*; and to my Christian East Indian brothers and sisters, I greet you in the name of the Saviour Lord Jesus Christ.

**Hon. Senator:** “Aaa, aah.” [*Desk thumping*]

**Sen. T. Deyalsingh:** Madam Vice-President, Indian Arrival Day, which we celebrate tomorrow, owes a significance to the fact that over 140,000 of our ancestors would have left India and found their way to Nelson Island, from where they would be processed and then sent to all the different sugar estates. What was very amusing coming out of that processing at Nelson Island—and I remember going to the museum many years ago as a Form 2 student at St. Mary’s College—you actually had a log of all these people and the English people in those days would translate the names phonetically. So many of us do not really carry our correct names, but that is just an aside.

*Indian Arrival Day (Greetings)*  
[SEN. DEYALSINGH]

*Tuesday, May 29, 2012*

Madam Vice-President, if we, as people of Indian descent like myself and others around me are here today, and we are here to celebrate our presence in Trinidad and Tobago, that pride that I feel and that pride that we feel in being here cannot be separated from our Afro brothers and sisters. [*Desk thumping*] It is because of the abolition of slavery that we came here. So, we also stand on the shoulders of our Afro brothers and sisters in finding this place in the sun. [*Desk thumping*]

However, can we as Indo Trinidadians and Indo Tobagonians, in celebrating this event, also separate ourselves from our Portuguese brothers and sisters, our Syrian brothers and sisters, Lebanese, and all the other groups?—because we all belong to this island State of Trinidad and Tobago and we all came here seeking a better way of life, so we are all interconnected.

I broaden the commentary on Indian Arrival Day to speak to the Afro presence, the Syrian/Lebanese presence, the Chinese presence and the Portuguese presence because very often, as an Indo Trinidadian, I always wonder how do these people or these groups—who we might call minorities—how do they feel, where is their place in the sun? Because we have Indian Arrival Day and we have Emancipation Day. So as we broaden the commentary I want to signal and invite all Trinidadians, all Tobagonians, regardless of your ethnic origins, your racial origins, your genetic origins, to celebrate with us on this Indian Arrival Day. [*Desk thumping*]

Madam Vice-President, I consider myself lucky to be born when I was born, in that I was able to see the transformation from rural Trinidad and Tobago to what we are today. I grew up in Caroni, then Curepe, and in my childhood I was exposed to “leepaying” of houses—how many people know about that now—where you take the cow dung, you mix it with water and you “leepay” the house. I used to go by my neighbour in Caroni to do that. In that village you had people of Afro descent speaking Hindi and you had people of Indian descent speaking patois, but you do not see that type of melting again.

Sen. George spoke about the contribution of East Indians to national life, and he is right, but I would be a little more casual with my contribution. Besides cuisine, dance, chutney, which he mentioned, how many of us know that when we jokingly say—when people ask us if we know something and we say “ham na jani”, that is Hindi for “I eh know”. And Sen. Jamal Mohammed, when your uncle was doing Mastana Bahar many years ago with “Pick-A-Pan”, the question was, “What is the Hindu word for wares?” When you “washing wares”, and the person in the crowd did not know it was “bartan”. But, that is what Trinidad and Tobago is about; that is about the Indian presence but, more importantly, it is all our presence.

So, Madam Vice-President, as I make my contribution to celebrate Indian Arrival Day, I want to give thanks to all our ancestors for coming here. And, as I said, I wanted to broaden the commentary to speak to all of the other groups that find a place in Trinidad and Tobago.

Madam Vice-President, I thank you. [*Desk thumping*]

**Sen. Basharat Ali:** Thank you, Madam Vice-President. I do not think I would be as long as the previous speakers—[*Laughter*]—because they have stolen my thunder pretty well.

I start by offering my greetings on this Indian Arrival Day firstly to all my colleagues in Parliament and to all the members of our staff and to the community as a whole. I wrote very few notes on it, just a reminder to myself that Indian Arrival Day on May 30th would be 167th anniversary of that occasion. Many people do not know that journey from the Bay of Bengal to the Gulf of Paria took pretty well 100 days in that period, from February into May, bringing 225 immigrants, intended really to be indentured labourers at the end of slavery.

### **8.30 p.m.**

So, we the people of Indian origin come from humble circumstances. Our forefathers had the same problems, not as harsh as the Africans, but at least they were pretty well second-class citizens and it is wonderful to see where we have reached. I do not know how many of you would have attended the Dr. Eric Williams Memorial Lecture on Saturday by that great West Indian, Sir Shridath Ramphal. The subject or the theme of his lecture was “Labouring in the Vineyard”. It was a most wonderful speech, very forthright and may not have pleased some people, but he spoke his mind. I think he is a true West Indian son. [*Desk thumping*] I enjoyed it.

The theme touched me very closely because from Saturday night I have been thinking about it—“Labouring in the Vineyard”—since most of the Indian people, even in this Senate here, are of rural origin, it makes some sense. I know Sen. Jamal Mohammed and Sen. Shane Mohammed are both rural people. Sen. Jamal comes from the same town or village as I do. Sen. Shane says he comes from Princes Town. I do not know where—[*Interruption*]

**Sen. Ramnarine:** I am from Cumuto.

**Sen. B. Ali:** Cumuto, you see. So, if we go through that way we will find that—my friend always claims he is from Cunupia.

**Sen. Deyalsingh:** Who me? Caroni.

*Indian Arrival Day (Greetings)*

*Tuesday, May 29, 2012*

**Sen. B. Ali:** Caroni, sorry. And my friend there who has a mixture of Iraqi and Trinidadian blood in him—Indian blood, we are all here in this process. On my bench here we have the same, if I may, Sen. Subhas Ramkhelawan, rural. I think Dr. Rolph Balgobin may be. Certainly, Prof. Harold Ramkissoon will be also and, of course, myself.

I am happy to say that I do not know of any strife in the village in which I came from. I come from Aranguez and my father was a gardener. He was not a farmer. The word “farmer” was not there for the people who toiled the land. They were called gardeners. Farmers were people who had big estates, et cetera. That is where I came from: from the farmer or from the gardener, and I say “labouring in the vineyard” is like saying to me, well that is what my father grew. Instead of grapes, it was tomatoes, baigan, cucumbers, cauliflower and cabbage. That is what my father did and he marketed it all. I myself had to—we all had to help in doing that. I remember the first time I went to Port of Spain was with some baskets of vegetables to the Central Market and it was on a donkey cart at 4.00 a.m. So that is part of my recollection of myself. It was the first time I went to Port of Spain on a donkey cart. [*Laughter*] Yes, a donkey cart to bring the products—tomatoes, et cetera, to the Central Market.

Recently, someone asked me, “Well, how did you become an engineer?” And I told him, “by accident”. I happened to start off in an elementary school in San Juan, then I went to St. Mary’s College. [*Desk thumping*] Yes, I knew I would get that. [*Laughter*] I was a scholarship runner-up. I had expected to win a scholarship, but not in anything related to engineering. I studied the subjects, botany and zoology and had eventually done chemistry and physics. So, I had all the subjects that were required to go straight into medicine. I did not win an island scholarship. My father did not have a penny to send me anywhere.

One possibility was to be a pharmacist—[*Laughter*]—and I did not end up there. I was eventually interviewed by Shell. It was a company called UBOT at the time. Having not gotten all of the qualifications, I somehow was given a job as a statistical clerk. So I was learning to type, do shorthand and statistics until the results came out for my A levels in physics and chemistry. I had all four subjects and eventually they called me in one day and said, “We would like to give you a scholarship.” It was to do mining engineering or petroleum engineering, but it would have taken a longer time, so I then chose chemical engineering as my career subject. So that is why I say that I am an accidental engineer.

**Sen. George:** Accidental engineer? I thought it was the donkey cart that got into an accident. [*Laughter*]

**Sen. B. Ali:** I depend on you and the Minister of Transport to protect me from accidents. So, that is the story of all of us—parents to whom we would always have to be very grateful that they made all the sacrifices necessary to give us what was necessary, to give us an education, to give us a chance. So, I believe I am pretty well representative of all the folks of Indian origin who are among us and would speak in the same vein and be forever grateful to those great parents of ours.

So we take it seriously, as regards building into or living in the mixed community. I think we have done a fairly good job of that, especially to people like myself, who came from Aranguez, a small village. Most of the people were Indians, but then we had a few African people. You probably would not know their names; it was always ‘neighbour’.

**Sen. Deyalsingh:** “Parosin”.

**Sen. B. Ali:** “Parosin” is for the Indians and “neighbour” is for the Africans. So there was always no ill-feeling among the people there—no resentment. We all lived together and as you all know I married an African woman, 54 years ago—[*Desk thumping*]  
—still going strong like Johnny Walker. [*Laughter and desk thumping*]

As a good Muslim—as I said in the last debate I am not a teetotaler, but I consider myself a very good Muslim. As they say, friendliness and camaraderie among us is something very unique. I think Trinidad and Tobago has a very unique opportunity to lead the world in that respect [*Desk thumping*] and we can always show ourselves. I was very pleased, actually, Madam Vice-President, looking at the second anniversary celebration, that there was a very mixed audience. [*Desk thumping*]  
To me that was a very positive sign of the direction in which we are going.

So, Madam Vice-President, let me once again congratulate all of us who are here for being together on this occasion, for exchanging our greetings to each other, and I say happy Indian Arrival Day to all of us and to our community at large.

Thank you. [*Desk thumping*]

**Madam Vice-President:** Thank you very much, and to each and every one of you an auspicious and memorable Indian Arrival celebration tomorrow.

Hon. Senators, the question is that this Senate do now adjourn to Tuesday, June 05, 2012 at 1.30 p.m.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 8.40 p.m.*