

SENATE

Friday, April 20, 2018

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

**PAPER LAID**

Ministerial Response of the Ministry of Health to the Sixth Report of the Joint Select Committee on Human Rights, Equality and Diversity, Third Session (2017/2018), Eleventh Parliament, on an Inquiry into the Impact on Mental Health and Family Life of Remandees at the Remand Prisons. [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]

URGENT QUESTIONS**Sentencing of Female National****(Iraqi Court)**

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Foreign and Caricom Affairs: Has the Government verified reports that a female national has been sentenced to death by an Iraqi Court for her association with the Islamic State?

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): [*Desk thumping*] Thank you very much, Madam President. Madam President, I wish to advise that the Government is not currently in the position to provide any additional comment on this issue. However, the Government has in fact reached out to international partners to verify the veracity of such reports and we await such information.

Sen. Mark: Could the hon. Minister inform this Senate, when can the Senate and

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the country be in a position to secure a definitive position on this matter based on communications from our international partners?

Hon. Maj. Gen. E. Dillon: Madam President, one cannot set a time limit on that. It is all based on the information coming from our international partners to whom we have made such request.

Sen. Mark: Is the Minister aware from his knowledge that any Trinidadians and Tobagonians are in Iraq under the sentence of death? Are you aware of any information to that effect as the Minister of National Security?

Hon. Maj. Gen. E. Dillon: Madam President, I have no such information.

Court Ruling on National Security Minister

(Corrective Action)

Sen. Wade Mark: Thank you, Madam President. To the hon. Attorney General and Minister of Legal Affairs: Having regard to the recent High Court ruling indicating that the Minister of National Security acted illegally in removing the former SSA Director in November 2015, what immediate steps are being taken to correct the actions of the Minister?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, based on the information and advice I have before me, the assertion in the question in relation to the ruling of the High Court is manifestly incorrect and as such no steps have been taken to correct the action that has been indicated in the question.

Sen. Ramdeen: Thank you, Madam President. Madam President, through you to the hon. Leader of Government Business: Having regard to the ruling of the High Court in this matter, what steps have been or are being taken to preserve intelligence, surveillance or other information that would have been gathered during the period that the court has declared that the SSA was illegally without a

director?

Sen. The Hon. C. Rambharat: Madam President, I am advised by the hon. Attorney General that he has sought the advice of Senior Counsel. This is a very recent decision of the court rendered on the 16th of April, 2018, and the Attorney General is awaiting that advice.

Sen. Ramdeen: Thank you, Madam President. Madam President, through you, to the hon. Leader of Government Business: What steps, Minister, have been taken at the SSA to ensure that what transpired in November of 2015 that led to this High Court's action being commenced and challenged in this case does not reoccur at any time in the future?

Sen. The Hon. C. Rambharat: Madam President, as I have said, this is a decision rendered this week by the High Court. The Attorney General has sought the advice of Senior Counsel on the implications of the decision and that information is not available at this time.

Police Social and Welfare Association

(Collapse of the TTPS)

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of National Security: In light of the concerns expressed by the Police Social and Welfare Association about an impending collapse of the TTPS owing to the absence of promotions, what steps are being taken to avoid such collapse?

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you, Madam President. Madam President, the Commissioner of Police has advised that there is no impending collapse of the Trinidad and Tobago Police Service due to the absence of promotions in the First Division. However, there has been an unacceptable long delay in promotions which is being addressed, notwithstanding the negative bureaucratic process that has to be followed to effect these

promotions.

Madam President, since 2016, the Trinidad and Tobago Police Service has been pursuing contracting a firm to design and implement a promotional assessment process to fill vacancies in the First Division of the police service. This is required by virtue of the Police Service Act and Regulations. Process requires the engagement of the Central Tenders Board. In 2017, Miami Dade College was selected and notified that it was to be awarded the contract for the assessment process.

However, extensive negotiations to finalize the contract between the Miami Dade College and the Trinidad and Tobago Police Service, under the guidance of the Chief State Solicitor Department, ensued from September 2017 to December 2017 without the parties reaching an agreement on the clauses of the contract. As a consequence, the Commissioner of Police wrote the Central Tenders Board to have the award of contract to Miami Dade College rescinded so that the process can move forward to effectively have another company provide the assessment services. He is at present awaiting the authorization of the Central Tenders Board on this matter, Madam President.

Sen. Mark: Madam President, could the hon. Minister indicate, in the interregnum, what impact the absence of promotions over the last few years is having on the morale of members of the police service?

Madam President: Sen. Mark, that question does not arise.

Sen. Mark: Well, could I ask another one?

Madam President: Yes, you have another one you can ask.

Sen. Mark: Could I ask the hon. Minister, is there a time frame, Madam President, for the engagement of firm number two in an effort to speed up the assessment process that would facilitate this long-outstanding promotional matter?

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Hon. Maj. Gen. E. Dillon: Madam President, the Commissioner of Police is awaiting the Central Tenders Board and I have no timeline with respect of what the Central Tenders Board has placed on that process.

ORAL ANSWERS TO QUESTIONS

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, the Government intends to answer all of the questions for oral answer with the exception of question No. 110 and question No. 111 and we are asking for a deferral of two weeks on those two questions.

Madam President, just to remind you, you may recall—

Madam President: Yeah. No need about question 64.

The following questions stood on the Order Paper in the name of Sen. Saddam Hosein:

Maracas Beach Facility

(Details of Food Vending)

110. Having regard to food vending at the Maracas Beach facility, can the hon. Minister of Health advise on the following:

- i. have the relevant officials from the Ministry of Health inspected the food vending facilities prior to occupation by vendors; and
- ii. have the necessary approvals for food vending been granted by the Ministry of Health.

Sandals Resorts International

(Details of Memorandum of Understanding)

111. In light of statements from the Government that a Memorandum of Understanding was signed between the Government of Trinidad and Tobago and Sandals Resorts International, can the hon. Prime Minister indicate:

- i. the date on which the Memorandum of Understanding was signed; and
- ii. the parties who signed the Memorandum of Understanding?

Questions, by leave, deferred.

HDC Cases/Tenants

(Recovery of Arrears)

82. Sen. Wade Mark asked the hon. Minister of Housing and Urban Development:

Can the Minister indicate the number of HDC cases/tenants, in the following areas, who are in arrears of their monthly payments and what action is being taken to recover same:

- i. Phase 1 and 2 of the East Grove Housing Development;
- ii. Oasis Housing Development;
- iii. Eden Gardens Housing Development; and
- iv. Cashew Gardens Housing Development?

The Acting Prime Minister, Minister of Finance and Acting Minister of Housing and Urban Development (Hon. Colm Imbert): [*Desk thumping*]

Thank you, Madam President. In my capacity as Acting Minister of Housing and Urban Development for the time being, the answer to question 82, the number of clients for the named housing developments currently in arrears are as follows: At the East Grove Housing Development, there are 56 persons in arrears; at the Oasis Housing Development, there are 132 persons in arrears; at the Eden Gardens Housing Development, 18 persons in arrears; at the Cashew Gardens Housing Development, 146 persons in arrears.

The Housing Development Corporation has increased its internal resources dedicated to the recovery of arrears and participated in several continuing

collection exercises using both external and increased internal personnel to reduce the volume of arrears outstanding. In particular, internal staff routinely visit the clients with delinquent accounts and invite them to visit the offices of the HDC to pay outstanding balances or arrange for the implementation of a payment plan. The corporation has also engaged Debt Recovery and Administrative Services Limited and A.V. Knowles & Company Limited, debt collection agency, to assist in its collection effort.

Sen. Mark: Thank you. Could the hon. Minister, acting Prime Minister, could the hon. Acting Prime Minister indicate, Madam President, if he is in a position at this time to provide this Senate with the total value of outstanding arrears in dollars and cents owed to the HDC at this material time?

Madam President: To the HDC, Sen. Mark, or in respect of these—

Sen. Mark: In respect of these areas, rather.

Hon. C. Imbert: Unfortunately not. If the honourable Senator will pose the question, we would certainly answer it.

Sen. Mark: Madam President, could the hon. Minister indicate what are the specific steps and how—well, I should put it in another way, how successful thus far have been the various efforts aimed at recovering these outstanding arrears in the areas identified?

Hon. C. Imbert: Madam President, that too, I do not have the detailed particulars. If that question is asked we will answer it.

Sen. Mark: Madam President, may I ask the hon. Minister through you whether the Government has any intention to consider writing off these outstanding loans and debt owed to the HDC in these areas having regard to the state of this economy and the plight of maybe many homeowners at this time?

Hon. C. Imbert: Thank you, Madam President. It should be self-evident from the

answer that the answer is no, not at this time, since we have engaged collection agencies to try and collect the debts.

Sen. Mark: And hence I ask, Madam President, seeing that we have appointed a number of agencies to collect these outstanding debts, can the Minister indicate to us how successful have these agencies been thus far?

Madam President: Sen. Mark, you have repeated that question and the Acting Prime Minister has answered. So you have just used up your four supplementary questions. [*Crosstalk*]

Sen. Mark: I seek your protection from this—

Madam President: Sen. Mark, next question.

Sen. Mark: I think he is the Acting Prime Minister. You should have more manners here.

Madam President: Sen. Mark, next question please.

Hon. Senator: Move along, move along.

Sen. Mark: No, you cannot tell me to move along. Out of place.

Madam President: Sen. Mark, if only you would look at me and take my direction. Next question please.

Sen. Mark: I need a hearing aid, Madam President, to avoid this gentleman.

East Grove Housing Development

(Details of Expansion)

83. Sen. Wade Mark asked the hon. Minister of Agriculture, Land and Fisheries:

With respect to the Housing Development Corporation's proposed expansion of the East Grove Housing Development, can the Minister indicate:

- i. whether a valuation of the land earmarked for the proposed expansion has been done;

- ii. the established value of the land;
- iii. whether the land is currently being used for agricultural production;
- iv. if the answer to (iii) is no, what is the land currently being used for;
- v. the class of soil of the land earmarked for the proposed expansion; and
- vi. the date of the last soil test carried out on the land?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President, and I thank my colleague, Sen. Mark for this question. Madam President, the Housing Development Corporation's proposed development in that area is called the North Grove Housing Development and not the East Grove Housing Development. As it relates to parts i and ii of the question, the valuation of the land has not been done and no value has been placed on the land at this time. Whereas a fixed value of \$5 per square foot is ascribed to state land used to construct individual public housing units, it is not the normal practice for a valuation to be done of state land that is intended to be used for the construction of apartment buildings to provide housing units for sale or rental to the public.

With regard to part iii of the question, Madam President, sections of the land are currently under tree crop cultivation. Significant portions of the land are abandoned and covered in bush.

With regard to part iv of the question, soil clarification studies conducted decades ago list the soil in that area as class one soil. That also includes land, Madam President, now occupied by the Eric Williams Medical Sciences Complex, various state buildings and squatters in the area.

Finally, Madam President, as it relates to part vi of the question, the last soil test carried out in that area was in 2013.

Sen. Mark: Could the hon. Minister indicate when the last soil test was carried

out in 2013, what was the cost of the soil at that material time?

Sen. The Hon. C. Rambharat: Madam President, as I indicated, the soil tests conducted decades ago listed as class one soils and nothing that happened in 2013 changed that classification.

Sen. Mark: In light of the fact that we still have class one soil in this particular area of the country, can the Minister indicate to us, whether the Government intends to pursue its housing construction programme on class one soil, which as you know is a rarity in our country?

Sen. The Hon. C. Rambharat: Madam President, it will take me a long time to deal with the issue of rarity. In allocating land for development purposes and public use, there are various factors to be considered, and in fact, the rating of or classification of soil is just one factor in terms of the use of the soil, particularly for agricultural use. So, the Government, having examined the availability of land and examined a number of factors relating to its Housing Development Programme has settled on this particular site, particularly having regard to its condition and the fact that it has not been used in a sustainable way, and the Government is satisfied that it is a decision to be made in line with its housing programme. Thank you.

Sen. Mark: Could the hon. Minister indicate what portion of this land is under tree crop production at this material time?

Sen. The Hon. C. Rambharat: Madam President, we are dealing here with a 200- acre parcel of land, bounded on the west by the river, on the north by WASA, on the east by the Southern Main Road, and on the south by East Grove Housing Development. It is a large site. It is very difficult to determine, but I would say in fairness to my friend that it is not more than 10 acres that are used for tree crop cultivation and this is across the 200-acre site.

Sen. Mark: Can you indicate to this honourable Senate whether it is the

Government's policy to erode, through housing construction, class A or class one soil? In other words, utilize class one soil for purposes, Madam President, of housing construction at a time when agriculture is so critical and vital for food security for our nation.

Sen. The Hon. C. Rambharat: Madam President, I thought that my colleague would have been extremely familiar with the way this works. This soil is no different from the Pineapple Smith Lands in Mausica that were bulldozed by the UNC and ended up in court. This soil is no different from the soil upon which Oasis Housing Development in Endeavour Road was developed. And as I said before, the classification of the soil may be a factor but it is one factor and the Government has made its decision in relation to its Housing Development Programme.

Housing Units

(Details of)

84. Sen. Wade Mark asked the hon. Minister of Housing and Urban Development:

Can the Minister indicate the number of housing units completed or renovated as well as those units distributed for the period September 2015 – January 31, 2018, in the following areas:

- i. Oasis Housing Development;
- ii. Eden Gardens Housing Development; and
- iii. Cashew Gardens Housing Development?

The Acting Prime Minister, Minister of Finance and Acting Minister of Housing and Urban Development (Hon. Colm Imbert): Thank you, Madam President. Response to Question 84: The units at Oasis, Eden Gardens and Cashew Gardens Housing Developments were all completed prior to September 2015. The

number of units renovated and distributed in these areas were: Oasis, 187 renovated, 204 units distributed; Eden Gardens, one unit renovated, 60 units completed, 58 units distributed; Cashew Gardens, 40 units renovated, 48 units completed, 18 units distributed.

With respect to Cashew Gardens in particular, while only 18 units were distributed during the period September 2015 to January 31, 2018, which is the period in the question, since then the remaining units have been distributed.

Sen. Mark: Madam President, can the hon. Minister advise whether in the three areas identified, particularly in Oasis, is there need for a continued programme of renovation for units constructed at this particular site?

Madam President: Sen. Mark, that question does not arise.

Sen. Mark: Does not arise. Okay.

Madam President: Next question, Sen. Mark.

Sen. Mark: No, I am fine.

National Crime Prevention Programme

(Status of Implementation)

109. Sen. Saddam Hosein asked the hon. Minister of National Security:

What is the status of the implementation of the National Crime Prevention Programme announced in the 2017/2018 budget presentation?

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you, Madam President. Madam President, the National Crime Prevention Programme referred to as the NCPP is one of Government's strategic responses to the challenges facing the country in terms of the fear of crime, criminality and social disorder. The National Crime Prevention Secretariat commenced its operation in August 2017 and currently has a staff of seven including a manager who oversees its operations. Since its establishment, NCPP Secretariat has

achieved several of its core activities. These include drafted terms of reference for the operations of the NCPP, community liaison officers, community crime prevention councils and interministerial committee.

We have conducted strategic planning sessions in the municipalities of Diego Martin and Chaguanas which are aimed at establishing community crime prevention councils in the two municipalities and Tobago in the first phase of its implementation. We have drafted a comprehensive project document, including a communication and education strategy, established an administrative framework and a management plan for stakeholder engagement.

We also invited applications for the positions of community liaison officers for the various municipalities. Suitable applicants have been shortlisted and interviews are to be scheduled shortly. We also conducted stakeholder meetings with the Chairmen, Mayors and CEOs of all municipalities. Further public sessions have been scheduled with key stakeholders in Diego Martin, Chaguanas and Tobago. These sessions will facilitate the development of appropriate plans, projects and programmes.

Madam President, implementation of the programme would occur on a phased basis. The initial phase will be in Chaguanas, Diego Martin than Tobago. Strategic planning sessions have been held with all three executive councils and the community crime prevention council is to be established in both municipalities and Tobago. Evaluation of this programme will be undertaken in three months and thereafter the programme will be implemented in the other 12 municipalities.

Due to the multi-faceted and multi-dimension approach required to address crime prevention, a comprehensive training programme has been developed and would be executed over the period April 23 to July13, 2018. This programme consists of workshops, which will be divided in separate two-day sessions, will

include participants to the concept of crime prevention with an evidence-based approach and is targeted towards stakeholders who would operate in a crime prevention capacity in their respective responsibilities, Madam President.

Sen. S. Hosein: Thank you. In light of the answer given by the Minister with regard to the terms of reference of the NCPP, which is the National Crime Prevention Programme, can the Minister give the Senate the terms of reference of the programme please?

Hon. Maj. Gen. E. Dillon: Madam President, that can be forwarded. I do not have it on me right now, but it certainly can be made available because they are public documents.

Sen. S. Hosein: Thank you very much, Madam President. With respect to the answer also given, where the Minister indicated that community liaison officers were actually engaged in the programme, can the Minister state whether or not these positions were advertised?

Hon. Maj. Gen. E. Dillon: Madam President, yes, they were advertised and based on cooperation between the municipalities and us that these applicants were received.

Sen. S. Hosein: Having regard to the high levels of crime in the Port of Spain area and also in the municipalities of San Juan/Laventille, can the Minister indicate why the programme was not initiated in these municipalities first?

Hon. Maj. Gen. E. Dillon: Madam President, the programme targets all municipalities and Tobago. The time the decision was made to choose Chaguanas and Diego Martin was based on, at that time, the sort of security environment that existed in those two municipalities. But at the end, all municipalities will be addressed, because the programme addresses all municipalities and Tobago.

Bamboo Village, Cedros

(Relocation of Families)

112. Sen. Taharqa Obika asked the hon. Minister of Housing and Urban Development:

In the aftermath of the February 2018 landslide in Bamboo Village, Cedros and the Government's decision to relocate eight families, can the Minister indicate the following:

- i. are there other families to be relocated from the disaster area;
- ii. apart from the temporary HDC housing, the allocation of land and a \$20,000 grant, are there other provisions to support the residents in the reconstruction of their homes; and
- iii. why were the affected residents not given the option of permanent housing in Lake View, Point Fortin?

The Acting Prime Minister, Minister of Finance and Acting Minister of Housing and Urban Development (Hon. Colm Imbert): Thank you, Madam President. The Housing Development Corporation has been advised that two additional families were affected by the landslide in Bamboo Village, Cedros. The cases of both families are being assessed by the HDC to determine if their cases warrant emergency housing accommodation, following which the HDC will provide housing in a similar manner to those families who have already been temporarily relocated.

The Aided Self-Help Programme, a recently launched initiative by the Ministry of Housing and Urban Development aims to empower persons to manage the construction of their own homes with financial and technical support of the State. The HDC is working alongside the parliamentary representative for the area, the hon. Edmund Dillon who has been in discussions with non-governmental organizations, such as Habitat for Humanity who agreed to provide financial

support through corporate sponsorship upon location of any available lands by the HDC in the Cedros area to assist the families in rebuilding their homes.

The Ministry's initial involvement in providing assistance to the affected residents of Bamboo Village, Cedros, was the provision of temporary emergency housing. It was subsequently determined during the assessment of the housing needs of the residents that all of the residents preferred to remain in the Cedros area. Therefore, the option of permanent housing in Lake View, Point Fortin is not applicable. Further, subsequent to the placement of the families in temporary housing units, the residents requested assistance to rebuild their homes and the HDC is currently in the process of exploring alternative housing accommodation through various agencies, both non-governmental and state agencies.

2.00 p.m.

Sen. Obika: Madam President, the Acting Prime Minister made reference to an assessment. How long are the residents expected to wait for this assessment to arrive at its final conclusion given that February was when the calamity occurred?

Hon. C. Imbert: Madam President, I do not have that information but this relates to two additional families whose situations became known after the event. I will see that it can be expedited. I cannot tell you exactly when, but I will try my best to make sure it is expedited.

Madam President: Sen. Ramdeen.

Sen. Ramdeen: Thank you, Madam President. To the hon. Acting Prime Minister, how has the Government, through the HDC, engaged any of the private landowners in that area where this calamity has taken place so that they may access lands that are available closer to where these persons live in order to provide them with accommodation and even lands to rebuild their homes in case the plans that the Prime Minister has indicated from Habitat for Humanity are made available?

Hon. C. Imbert: Madam President, I cannot specifically answer that question but a search is ongoing for land. I would think that if no state land is available, then the option of private lands will have to be considered.

Madam President: Sen. Obika.

Sen. Obika: Thank you, Madam President. Could the Acting Prime Minister indicate if the persons would have to finance their own construction of the houses as he mentioned that they may find lands? But would they have to finance the construction of their own new homes?

Hon. C. Imbert: Madam President, I thought I answered that but I will just repeat. The Aided Self-Help Housing Programme provides financial and technical support from the State, so it provides a level of financial support. Habitat for Humanity also provides financial support. So those are the two programmes that are being considered at this point in time: assistance through the Aided Self-Help Housing Programme which provides a level of finance and assistance through Habitat for Humanity which always provides a level of finance.

Madam President: Sen. Obika.

Sen. Obika: Thank you, Madam President. Could the Acting Prime Minister indicate what per cent of the final home construction figure the families would have to bear?

Hon. C. Imbert: No, I cannot tell you that at this point in time but I will endeavour to determine the information and that can be provided.

Madam President: Sen. Obika, any more questions? Next question, Sen. Obika.

Bamboo Village, Cedros

(Qualification of Landslide)

113. Sen. Taharqa Obika asked the hon. Minister of Housing and Urban Development:

In the aftermath of the February 2018 landslide in Bamboo Village, Cedros, can the Minister indicate the following:

- i. does the landslide qualify as a national disaster; and
- ii. if the answer to (i) is in the affirmative, what special provisions are in place to attend to the needs of victims of natural disaster?

The Acting Prime Minister, Minister of Finance and Acting Minister of Housing and Urban Development (Hon. Colm Imbert): Thank you, Madam President. I do not know if there was a typo in the question but the landslide in question is not a national disaster. It cannot be since it is a localized incident and affects just 10 houses. However, landslides are generally classified as natural disasters as opposed to national disasters. In this context, the Office of Disaster Preparedness and Management is normally the first point of contact in the event of any natural disaster in Trinidad and Tobago. When a natural disaster occurs such as a landslide, the ODPM refers such cases to the disaster management unit who then assigns field officers to conduct site assessments.

Following the reports on these visits, the ODPM partners with representatives from agencies such as the Ministry of Social Development and Family Services, the Ministry of Housing and Urban Development, the Ministry of Works and Transport, the Ministry of Rural Development and Local Government and the National Commission for Self-Help, among others, to provide relief.

Madam President: Sen. Obika.

Sen. Obika: Thank you, Madam President. Could the Acting Prime Minister indicate if, given these measures, any psychosocial support is being rendered to the persons as they—thank you.

Hon. C. Imbert: Madam President, since that was not part of the question, I do not have those details. But I do know that the Ministry of Social Development and

Family Services does provide counselling and other forms of psychosocial support.

Madam President: Sen. Obika.

Sen. Obika: Madam President, the question was in the spirit of the fact that these persons would have lost everything and if there is anything above and beyond what the Acting Prime Minister mentioned as one of the measures. Is there anything above and beyond given the peculiar circumstances of the persons in Bamboo Village?

Madam President: Sen. Obika, that question does not arise. Sen. Mark.

Sen. Mark: Can I ask the hon. Acting Prime Minister whether the Government has established a special fund for addressing natural disasters given their frequent occurrences in this part of the region and more so Trinidad and Tobago? Is there a special fund that has been established?

Hon. C. Imbert: Madam President, there is no special fund. However, Trinidad and Tobago, under this Government, has taken out catastrophe insurance which only last year resulted in a payment to Trinidad and Tobago of some \$50 million from the Caribbean Catastrophe Insurance Facility to attend to victims of flooding. So whereas there is no special fund, there is a catastrophe insurance policy in place.

Sen. Mark: Can I ask the hon. Acting Prime Minister, in light of this natural disaster that has occurred in Cedros and the subsequent erosion of the coastal areas of that particular part of the country, can the hon. Acting Prime Minister indicate whether attempts are being made to address the erosion of the coastal region or areas of that part of the country?

Madam President: Sen. Mark, that question does not arise. Next question, Sen. Obika.

San Fernando City Corporation

UNREVISED

(Car Park Details)

114. Sen. Taharqa Obika asked the hon. Minister of Rural Development and Local Government:

Can the Minister inform the Senate whether the San Fernando City Corporation has plans to charge persons for the use of the Corporation's Car Park on Lady Hailes Avenue near the entrance to the General Hospital?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, the simple answer is yes, the San Fernando City Corporation has plans to charge persons for the use of the Corporation's car park on Lady Hailes Avenue near the entrance to the general hospital for the purpose of providing additional revenue for the Corporation.

Madam President, the San Fernando City Corporation was given permission and full responsibility to construct and utilize the car park by the Public Transport Service Corporation (PTSC). In March 2018, the Corporation took the decision to lease out the car park to be operated and managed privately at a monthly rate of \$10,000 for an initial period of three months commencing April 2018. Upon the expiration of this period of lease, the contract will be evaluated to determine whether or not the arrangement should be continued or a new arrangement implemented. The Corporation currently has two other open spaces leased out for parking under similar arrangements. Thank you.

Madam President: Sen. Obika.

Sen. Obika: Thank you, Madam President. Could the hon. Minister indicate if, in introducing this fee, the plight of the persons using the water taxi for which the car park services would be adversely affected because they now have additional fees for parking?

Sen. The Hon. C. Rambharat: Madam President, I do not understand the use of

word “plight”. Certainly, the users of the water taxi and any other member of the public will be able to enjoy the convenience of parking at the Corporation’s car park and pay the requisite fee to the Corporation, because the Corporation, as I said before, wishes to generate revenue for the purpose of up-keeping the car parks and for other issues.

Sen. Obika: Madam President, could the hon. Minister indicate how much revenue, given that the car park is to raise revenue for the Corporation, this measure should bring?

Sen. The Hon. C. Rambharat: Madam President, as previously indicated, the Corporation has entered into three-month arrangement commencing April 2018. Upon expiration of the three-month period, the Corporation will evaluate the arrangement including the revenue generated from the arrangement and determine the feasibility of the arrangement or other issues relating to the arrangement.

Sen. Obika: Madam President, could the Minister indicate whether or not consultation with users of the water taxi, for whom the car parking facility accommodates, was conducted? Were the users of the water taxi consulted before deciding to introduce a fee for the car park?

Sen. The Hon. C. Rambharat: Madam President, as previously indicated, this arrangement is for a three-month period and at the end of the three-month period, the Corporation will evaluate the feasibility of the arrangements entered into. I may add, Madam President, the impossibility of consulting with this unknown group called the “users of the water taxi”, but that may encompass anybody, anywhere in the world.

Sen. Obika: Madam President, then can the Minister confirm that no consultation was conducted with the users of the water taxi regarding introduction of this fee for the car park that they currently enjoy free of charge?

Madam President: Sen. Obika, I would not allow that question.

VALUATION OF LAND (AMDT.) BILL, 2018

[Second Day]

Order read for resuming adjourned debate on question [April 17, 2018]:

That the Bill be now read a second time.

Question again proposed.

Madam President: On said date, Tuesday the 17th of the April, 2018, some 18 Senators including the Mover of the Motion contributed to the debate. I now invite the Minister in the Ministry of Finance to continue her contribution. You have 43 minutes of speaking time.

Sen. The Hon. A. West: Thank you, Madam President. Predictably, quite a bit of the discussion on Tuesday centred around issues really arising under the Property Tax Act rather than the Valuation of Land Act, understandably, because they are so interwoven, which is why we were hoping to debate them together, but that was not to be. So, what I propose to do, Madam President, unless I get instructions otherwise from you, is to focus more specifically on the issues dealing with the Valuation of Land (Amdt.) Bill, and in my contribution in respect of the Property Tax Bill, I will deal with the other matters that are peculiar to that Bill.

So, Madam President, in reviewing the comments and questions raised on the last occasion, I have categorized them into four areas. That would be the basis of the valuation of the property; the fine that is being amended; the establishment of the Tribunal, and the suffering that is going to be brought to bear on the poor and downtrodden in Trinidad and Tobago. So I will address my responses in those categories.

Madam President, Sen. Shrikissoon was the one who spent the most time dealing with the methodology of the valuation, asking which one we were going to

use and whether we needed to amend the nemesis rule to impact on each of the methods on those kinds of things. What I would like to make clear to Sen. Shrikissoon, through you, Madam President, and the rest of the national community is that land and building taxes, in respect of all property in Trinidad and Tobago, will be based on the annual rate of a value of that property. The Valuation Division will seek to determine the annual rate of a value starting with comparisons based on similar properties and those kinds of things, where it is not able to directly get to an annual rateable value. It would have the leeway of going through a backing into the annual rateable value using the capital method or the site-value method, but ultimately, the objective is to arrive at the annual rateable value of each property. So that there is no need to create a de minimis rule with respect to a capital value or a site value, because in terms of computing a tax liability, those will not be relevant.

Valuation is an inexact science, so even if we spelt out exactly what they were going to do, there is no way that anybody, even a qualified valuator, could say with any degree of certainty what rental value will be arrived at by the Commissioner of Valuations. They will have a guide as to what will happen. But what we really do need to do is to get on with the business of the legislation, start preparing the valuations and circulating it to the members of the public, so they will get some degree of comfort that the valuations are not ridiculous, and therefore the tax will not be ridiculous.

I am fairly comfortable, based on the long history of the operation of the Lands and Building Taxes Act, that the annual rental values that will be arrived at will not be unreasonable but we cannot tell that for certain until we actually see them. So, through you, Madam President, to Sen. Shrikissoon, I wish I could give

you and the national community more comfort on that issue at this point but as I said, we could only get that as and when we start seeing the values.

Madam President, a lot was made of the fact that the fine for failure to file a return and failure to wilfully file a return and to wilfully omit information or misstate information in that return, that we are seeking to increase the fine from \$500 to \$5,000. The main reason for imposing a fine is to act as a deterrent for people to not flout the legislation. If the fine is too minimal, that deterrent factor will be absent. When we look at the old legislation, which was introduced in 1920, the fine for the identical offence was \$400. A century later, having a fine of \$500, you must acknowledge that there is no way that could act as a deterrent, not in a country where Trinidadians and Tobagonians are prepared to pay \$1,500 to go to a Carnival fete and pay \$10,000 for a Carnival costume; \$500 is not a deterrent. So I am not saying, by any means, that \$500 is not a significant amount of money that a lot of us can do with it but it certainly is not the kind of deterrent that we need to ensure that people comply with their responsibilities under the legislation. This is the reason why we are seeking to adjust the fine from \$500 to \$5,000. There are some Senators—and I agree with them—who say that for some, \$5,000 is not enough of a deterrent, but we have to get to a middle point where we do not overburden the people who, \$5000, that is a significant amount. So we have arrived at an amount that we find is reasonable that hopefully will act as something of a deterrent.

The Tribunal. I think the sense we got was that most people were in favour of the Tribunal. It avoids the incurrence of legal fees. It gives you a more informal setting to try to deal with your disputes on valuation. It avoids the significant backlog at the Tax Appeal Board. It creates a specialist area so

hopefully we can get matters dealt with expeditiously. So we appear to be on the same page with that. The concern that was raised with respect to the Tribunal by the vast majority of Members on the other side had to do with who appoints the members of the Tribunal.

The reason why the Government did not think that the appointment of the Tribunal by the Minister was that detrimental was that the Tribunal does not interfere with any of the existing appeal rights. You still have the right to go to the court of first instance, you still have the right to appeal to the Court of Appeal, you still have the right to appeal to the Privy Council. The tribunal is not seeking to replace any of those levels. And it is really intended to act as the more informal alternative dispute resolution-type of avenue for resolution of these matters with specialists and valuations there, so that they can lend their expertise in assisting with resolving issues between the landowner and the Valuation Commission. However, being the reasonable Government that we are, we heard you all and we are prepared to suggest an amendment when we get to that stage.

Sen. Creese, on the issue of the valuation, Madam President, raised concerns regarding the level of qualification of the members and urged us to increase that. And my response to Sen. Creese is that the levels outlined in the Act are the minimum standards that will be required and what the intention will be, will be to pull together the best Tribunal that we can, but we do not want to restrict ourselves and make it impossible to get a Tribunal. So we have put a reasonable minimum level and as I said, we will seek to get the best Tribunal who can give justice to that new method of resolution of matters. So that is how we propose to address that issue, Senator.

Madam President, a lot of the issues under this last category which I refer to

as the suffering of the poor comments, really have to do with the Property Tax Act and a lot of them I will address, as I said, in that context, but there are certain specific issues that I would like to address now. Sen. Mahabir asked if the fact that we have defined condominiums and townhouses as representing land means that they will pay a lower rate of tax because they are categorized as land. And Sen. Mahabir, that really will not arise because when we get to Property Tax Act, you will see that we are moving away from the system where there is a rate of tax on land and a different rate of tax on buildings. There is one rate of tax that applies to the property as enhanced by buildings. So what the amendment that defines a condo as a building really does is that it allows the Board of Inland Revenue to assess and collect tax from each individual owner in a multi-dwelling compound; that is what it does. It does not give them the advantage of paying tax at a lower rate; that is not the intention at all.

Sen. Obika raised an example of a retiree destitute but living in a 10-bedroom house with an annual rateable value of \$120,000 how: she will set upon and she will lose her house because they will be made to suffer. I would like to advise Sen. Obika, through you, Madam President, that somebody living in a house, the rental value of which is \$120,000, will have an annual, not monthly, an annual tax liability of \$3,600. In my view—and you may think that I am unreasonable and insensitive, in my view, a \$3,600 annual property tax charge is not unreasonable. Over and above that, there is a provision in the legislation to provide relief to anybody who cannot afford to pay their tax liability, which I will deal with more fully when I get to that legislation. So I do not think that the old lady with her 10-bedroom house will have too much of a problem. I think my colleague, the Leader of Government Business, adequately dealt with Sen. Obika's

concern about providing your land deed number so I will not deal with that again.

Definition of persons who hold certificates but are not owners. Yes, the intention is—and this is a question from Sen. Baig as well. The intention is that anybody who falls within the definition of “owner”—whether you are a legal owner or you are an occupier—will have a tax liability and it does not matter that you are not the legal owner of the land; it does not matter that you may be a squatter, as somebody occupying property, you are also enjoying the benefits provided by services of the regional councils and of the State. Because you are illegally, perhaps, occupying land or because you are occupying land under a less than perfect title, why should you not contribute to payment for those services? And so, that is the Government’s position. So we are intended to assess properties like that to tax and to collect taxes from people in that area, and I will also deal with that when I come to the property tax legislation.

Sen. Ameen: Madam President, I just want to ask the Minister: How does that have an impact on people’s entitlement or their rights, squatter rights, where it regards the land assessment and taxation for squatters in particular? Those who have Certificates of Comfort and those who do not.

Sen. The Hon. A. West: I will deal with that in the property tax debate. Yes? Sen. Ameen raised the issue of the applicability of the increased fines to people like herself who have not submitted—and I hope what she meant was she has not yet submitted—her return form, and what I will say to you is that the fine only applies where you fail to submit a form that you are required to submit. Up to now, people have been requested to submit forms voluntarily, they are not yet required to submit forms and therefore, the fine does not yet kick in.

Yes, we do intend, Madam President, to address the issue of education. I

readily acknowledge that the education programme on the last occasion was inadequate. That was significantly due to the fact—as I said, when I started the debate, that there was a lot of uncertainties regarding the areas of responsibility of the two agencies involved: the Valuation Division versus the Board of Inland Revenue. In my view, we have significantly clarified that and we will ensure that we learn from that exercise and ensure that not only do we have a better education campaign going forward but that we also have people properly available to assist persons who have questions and who need help with filling out the form.

And Sen. Small, I will also give you the assurance that we have had finite dates within which somebody must object to a matter for ages in all our tax Bills and yes, we acknowledge that there may be a difficulty with receipt and the people who administer these different bits of legislation are cognizant of that fact. There is provision in the legislation for an extension of time and it is normal to receive an extension of time once you have satisfied the administrator that you have not been irresponsible and that you have acted reasonably as soon as the information has come to your attention. So we intend to approach this reasonably. We need to get cracking on these valuations. We need to bring the tax on and so we are asking that you support the legislation so that we can move forward.

Madam President, those are all the comments I have to make so I thank you and I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

2.30 p.m.

Senate in committee.

Madam Chairman: Hon. Senators, may I just indicate that we have amendments circulated on behalf of the Minister in the Ministry of Finance, amendments circulated on behalf of Sen. Mahabir. We are awaiting the finalization of amendments to be submitted on behalf of Senators Ramkissoon, Shrikissoon and Sen. Mark. I think I am being told that those amendments are almost ready and we need to have them circulated as well. So I am going to suspend the committee for 15 minutes. So this committee is suspended for 15 minutes.

2.32 p.m.: *Committee suspended.*

3.06 p.m.: *Committee resumed.*

Madam Chairman: Senators, as we resume the committee stage of these proceedings, may I confirm that each Senator has the proposed amendments circulated on behalf of Sen. Mark, Sen. Shrikissoon, Sen. Ramkissoon, Sen. Mahabir and the Minister in the Ministry of Finance. Sen. Raffoul, you need?

Sen. Raffoul: Thank you. Sen. Mahabir's amendment.

Madam Chairman: Sen. Mahabir's. Sen. Chote?

Sen. Chote SC: Sen. Mahabir's, please.

Madam Chairman: Anybody else needs? Just to remind you all that those were circulated at the last sitting on Tuesday. Everyone has the amendments, the proposed amendments? So may we proceed? Sen. Mark?

Sen. Mark: I think I forgot Sen. Mahabir's own home, so if I could, please.

Madam Chairman: Sure.

Sen. Mark: Chair, thanks very much.

Madam Chairman: Senators, may I remind you that this Bill has 19 clauses, and as I indicated there are five sets of amendments. I am therefore seeking your cooperation in following the proceedings as we go along. Okay?

Clauses 1 to 3.

Question proposed: That clauses 1 to 3 stand part of the Bill.

Sen. Mark: Madam, I know that—

Madam Chairman: Sen. Mark?

Sen. Mark: Madam Chair, it may have been left out. The Tax Appeal Board. All right. Cool.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Madam Chair, I do not have an amendment, but I would like to make an enquiry, through you, to the Minister, with respect to two issues that arise with respect to clause 2.

Madam Chairman: In respect of which clause?

Sen. Ramdeen: In respect of two of the definitions in clause 3, sorry. Do I have your permission?

Madam Chairman: Yes.

Sen. Ramdeen: Minister, in relation to appeal, I apologize for not participating in the debate, but the new definition of “appeal” refers to—I am concentrating on (b), the High Court from a decision of the Valuation Tribunal—I see that in the principal Act from which the amendment seeks to target, there is an expressed provision that allows a decision of the Valuation Tribunal to go to the High Court, and in your debate you said you also have a right of appeal from the High Court to the Court of Appeal and from the Court of Appeal to the Privy Council. When I read the definition of “appeal” and match it back to section 22, I do not see that there is any express right of appeal to the Court of Appeal from that decision.

I have looked at section 38 of the Supreme Court of Judicature Act and I am respectfully of the view that if we do not prescribe for that right of appeal in the substantive law, it would not confer a right of appeal from the High Court to the Court of Appeal and thereafter to the Privy Council. And I think that the right

place to do it would be in the definition section.

Sen. West: Sen. Ramdeen, the AG would have dealt with this particular issue in his submission and he assured the House that that was not necessary. So I am just conferring with my team to determine whether they are on the same page.

Sen. Ramdeen, we are of the view on this side that unless the legislation says that the High Court is the final Court of Appeal, that the Rules of the Supreme Court will allow for the appeal to the Court of Appeal and thereafter to the Privy Council; the Attorney General had adopted the identical position in his presentation on Tuesday.

Sen. Ramdeen: While I understand that to be position, Minister, I do not want to seem to think that I am asking you legal questions or raising legal questions. I do not agree with that position and I ask you to consider, for two reasons. One, in the principal Act that we are seeking to amend, that provides for an appeal statutorily to the Court of Appeal, by virtue of section 22(1). So, if that position were correct, by a matter of simple reasoning, there would not have been a need to provide from an appeal from the board to the Court of Appeal in relation to that matter.

But more importantly, the rules of court, which would be the Civil Proceedings Rules, cannot confer a substantive right of appeal on an appellant in any form of matter, because the rules of court only prescribe the procedure by which the right of appeal is effected.

So, for example, normally in the High Court, you would have a right of appeal. You would have 42 days. In this case, you have 30 days. The rules of court would provide the means by which the right is effected. But the rules of court cannot provide a substantive right of appeal to an appellant.

So, we run the risk here, if we do not provide for it, that anyone who is dissatisfied with a decision of the High Court on appeal from the Valuation

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Tribunal may find themselves in a position where they do not have a right of appeal to the Court of Appeal, and then the concurrent right of appeal to the Judicial Committee.

Sen. West: Sen. Ramdeen, we do not agree with your position. However, because we do not currently see a challenge with putting it in, I am prepared tentatively to accept it and can we come back to finalize it at the end of the discussion, Madam Chair? Yes?

Madam Chairman: Sure. One second. I see Sen. Chote wanted to raise something. Is it on the same issue, Sen. Chote?

Sen. Chote SC: Yes. But unfortunately, it seems that I got to the microphone after Senator asked for it to be stood down, as it were. So, I do not know if I will still be able to make my contribution now.

Madam Chairman: Yes. Is it on the same point?

Sen. Chote SC: Yes.

Madam Chairman: Yes.

Sen. Chote SC: I support what Sen. Ramdeen is saying, because in his contribution, I had noted at the time, that the hon. Attorney General had referred to the fact that there would be the continuing right of appeal to the appellate jurisdictions, but had not stated the source of the right. So, when I had the opportunity, I looked back at primary legislation and the current legislation and realized that it had actually not been included. So, one of the primary rules of drafting I think, is clarity. So, if we are to go for clarity, then it seems to me that perhaps we ought to err on the side of simply putting it in, instead of leaving it out and then having disputes about whether the right exists, and so on. So, that was just my two cents on the matter.

Sen. West: Madam Chair, I thank both Members for their guidance, and as I said,

I do not have a problem in principle. I would just like to ensure that the AG does not have any concerns with us doing that. So if we can defer this?

Madam Chairman: Sure. Let me just—Members, let me just hold on because there are some other hands and I just want to make sure. If it is on the same point, then we are going to defer that point. We are still on clause 3 though. So, are there any further points to be raised with respect to clause 3? Yes.

Sen. Mark: Yes. Madam Chair, you would have observed in my amendments circulated, the whole question of the Tax Appeal Board is being proposed for retention. And you will see in clause 3(v), where they are seeking to delete. So it is another justification for us to pause for a cause.

Madam Chairman: Sure. Any other questions? Yes, Sen. Hosein.

Sen. S. Hosein: Thank you very much, Madam Chairman. Through you, to the Minister, when I looked at the appeal issue and section 22(2) of the Act, which restricts the appeal on questions of law only, I find this very restrictive in terms of the way in which we appeal, because when the Valuation Tribunal conducts, or it makes a decision on any matter, it would have had to take into consideration various facts. And if there is a divergence with facts, in terms of what is presented in the valuation return form, witnesses who attend and also persons from the Valuation Division, then if there is a dispute of fact and you want to appeal on that ground, it seems as though you do not have that right to appeal, based on a factual dispute from the Valuation Tribunal.

Sen. West: Chair, through you, two responses to that. One, all appeals are said to be on a point of law, and the case law is clear that if the facts are wrong then that would be regarded as a point of law. So I do not see that we need to amend to cater for that.

Sen. S. Hosein: So then why did we include the words “on the question of law

only”?

Sen. Ramdeen: Because that is the standard approach for appeals.

Madam Chairman: Sen. Ramdeen, you wanted to add something?

Sen. Ramdeen: I want to add to maybe what Sen. Hosein said. But I wanted to just ask the Minister, through you, Madam Chairman, that in considering the suggestion that I made with respect to the addition of the right of appeal to the Court of Appeal in the definition of “appeal”, if the Minister and the draftsmen would look at section 23 of the Judicial Review Act, more so section 23(2). Minister that provides, what we did when we enacted the Judicial Review Act is that, again, on the same submission in the Judicial Review Act you have the provision that is 23(2) that says:

“An appeal shall lie from a decision of the Court of Appeal...as of right to the Judicial Committee of the Privy Council.”

I think that if we are going to statutorily provide for a right of appeal to the Court of Appeal, then we might as well do as is laid down in the Judicial Review Act that provides for the right of appeal to the Judicial Committee, statutorily for the reason that, because you—if the Minister has explained, and I will get to the point of law—if you are limiting it to a point of law I do not agree that is the actual style of drafting a right of appeal, because on a point of law, limits the right of appeal significantly.

But secondly, when one has to appeal to the Judicial Committee or the Privy Council, and you go under section 109 of the Constitution, there is an in-built hindrance to appealing to the Judicial Committee, which is that you must show that there is a genuine disputable issue, and that comes from the *Jamaat al Muslimeen v The Attorney General* decision of the Court of Appeal. And therefore, if it is that we are saying that we want to give effect fully to the right of a landowner to

challenge a decision of the Land Tribunal to the High Court to the Court of Appeal and to the Judicial Committee, then I think the right way for us to statutorily embed that right in the legislation is to provide for it statutorily in the definition. I do not think that there is anything that we lose by doing that.

Because again, when you go under section 109 and you do not have an appeal, as of right under (1)(a), then you have very, very limited circumstances in which you can exercise that right of appeal to the Judicial Committee. It is not like how you can exercise it, like the Minister said, to the Court of Appeal. There are very limited circumstances in which you can exercise that right. I think I have the Constitution here, so I could just—

Madam Chairman: I do not think, Sen. Ramdeen, you need to go into it. I think the Minister has heard your contribution, and we are going to defer clause 3 for further consideration.

Question put and agreed to.

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

Madam Chairman: As I indicated before, clause 3 has been stood down or deferred for consideration.

Sen. Ramdeen: Madam Chair, if there is any other, can I raise now the other issues that we could have with clause 3, save and except the one with the definition for “appeal”?

Madam Chairman: Which is what I had invited, I think, a little while ago. But yes.

Sen. Ramdeen: I am sorry.

Madam Chairman: So before I defer for further consideration, clause 3, I am going to invite Senators to indicate any issue that you may have with the rest of clause 3. Sen. Ramdeen.

Sen. Ramdeen: Madam Chair, through you to the hon. Minister in the Ministry of Finance. Minister, while I understand the re-drafted position, with respect to the definition of “owner” and the mischief that the drafters have sought to do, with respect to capturing everyone who is an owner, an occupier and then you have the long definition of “receiver”, “attorney” and otherwise, the difficulty that I think this definition poses is when you match this definition back to the penalty provision for not filing, which is linked to the definition of “owner”, what you have is, as I foresee and perhaps I may be wrong, what you will have is that you can have different persons over the same parcel of land who are caught by the definition. So you could have the freehold title owner. You could have somebody in adverse possession. You could have somebody who is a lessor and has different tenants.

But the problem with that proposition with the definition of “owner” being so wide is that the duty to provide the valuation form to put on the rolls will apply to more than one person. And when you have a criminal sanction attached to the failure to do so, it will then attach to different people who can be in possession of a parcel of land, in actual possession or not in actual possession and still be the fee simple owner. So, the definition itself becomes problematic because in the administration of the Act, you might have different valuation forms that are submitted with respect to the same parcel of land.

Sen. West: Senator, we do, through you Madam Chair, recognize that there may be obligations by different people to comply with respect to the same parcel of land. But they can only be required to provide information within their knowledge, and so they would not be wilfully in breach of the provisions, which is what triggers the offence if they cannot provide information because the information is not in their possession.

Sen. Ramdeen: That deals with the wilful disobedience, in terms of the creation of the offence. But if you have, say a one-lot parcel of land and you have somebody who has a freehold title holder to it, but they are in actual possession, you have a squatter on the land in adverse possession, then the way the legislation is set up, by virtue of the requirement to submit the form, the person who is the freeholder would have to submit a form with respect to all of the information. And the person who is in adverse possession would be caught by the definition and will have to submit a form with all of the information.

And therefore, the administration of the Act would become problematic because how would the rolls be compiled with different persons having different interest over the same parcel of land?

Sen. West: The reason why we do not want to limit the ability of the Commissioner to secure information from different people is because we can use that information to confirm the information that we received from different sources, and, therefore, arrive at a more accurate position. So, it is—and as I said, the information being supplied by the individual can only reasonably be information within that individual's knowledge.

Sen. Ramdeen: One last enquiry. If you have two forms that are submitted, if I am an occupier and Sen. Obika is the freeholder, and he submits the form as a freeholder and I submit the form as an occupier, because we are caught by the provision as being an owner, on the actual rolls for the registration of who is the owner, you cannot have two people registered on the same rolls or on the same parcel of land.

Sen. West: Well, there certainly will not be two registrations of that parcel of land. So we will take the information about who is the owner and who is an occupier, for example, but we will only have one entry of that property on the roll.

But we will have, hopefully, all the information required, perhaps from the combination of the information provided by the two forms.

Madam Chairman: Any other questions or comment? So that clause 3 is now deferred for further consideration.

Clause 3 deferred.

Clause 4.

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

Madam Chairman: There are two proposed amendments to clause 4. There is an amendment proposed and circulated by Sen. Mark and there is an amendment proposed and circulated by Sen. Shrikissoon. Sen. Mark, because yours is the shorter of the amendments, let us deal with your amendment first.

Delete clause 4 and substitute with new clause 4:

Section 5 of the Act is amended in subsection (1) by deleting paragraphs (a) and (b) and substituting the words “annual rental value”.

Sen. Mark: Yes. Madam Chair, in light of the confusion generated by this piece of legislation as to the particular method that is going to be employed as the base to value properties on lands in Trinidad and Tobago, we are recommending that we stick to one specific method, rather than a combination of methods, as we have under the particular section or clause of the legislation before us. And therefore, we are proposing that what has worked well thus far, until there is some comprehensive study conducted by the Government on this matter, we would like to propose that we do not go along with capital value, site value and improvements on site value because it means the same.

3.30 p.m.

Madam Chair, the Government would be engaging in an activity where they would be trying to gain income and more revenue, by utilizing different methods,

and you as the property owner, would not at any material time, have any precision and clarity as to the base that is being employed, by the Commission of Valuations, to value your property.

And therefore we are saying that the old method that we used, under the Lands and Building Taxes Act, which has now been repealed, has been the annual rental value, and that is what we would like to propose that be used as the base, Madam Chair, until the Government is able to do a comprehensive study and make recommendations accordingly.

Madam Chairman: Sen. Shrikissoon, this amendment is very similar to the one proposed by you. Do you wish to say any one thing at this stage?

Sen. Shrikissoon: Yes. Madam Chair, thank you. To the Minister in the Ministry of Finance, I want to endorse Sen. Mark's comment, that there is a need or requirement in my mind, to be very specific with respect to the annual rental value. I have heard the argument put forth by the hon. Minister, that there will be times that you may not be able to arrive at an annual rental value, and therefore, you may need the freedom to use another method.

But my suggestion here is based on, we must be definitive, as to what the method used is. And the reason for it, if you would allow me, Madam Chair, to just quote from the existing Property Tax Act, just to demonstrate the point. If we look at what is deemed the annual taxable value, the annual rental value in the Property Tax Act, it means the annual rental value of land as determined by the Commissioner of Valuations. So if it is that the Property Tax Act, we are saying that the annual rental value is determined by the Commissioner of Valuations, and then the annual taxable value is based on the annual rental value. Then if you assign a value to a property that is not valued according to the annual rental value, and you use capital value, or site value, then you do not have the ability to assign a

tax to it. Because the Property Tax is saying it is based on the valuation put forward as annual rental value.

So in my mind, I am seeing some element of disharmony between the two pieces of law, and therefore how can we assign a capital value, based on taxation of capital value, and the other is referring to it as the annual rental value.

Madam Chairman: Any other further comment on this particular issue? On the same—yes.

Sen. Shrikissoon: Yes, and it is for that reason, but we are also recognizing that the Commissioner may at times need the freedom, to use the other methods for another reason. It is for that reason why I still propose in clause 4 that the method still remain, but it must be specific as to why.

Sen. S. Hosein: Thank you very much, Madam President. Hon. Minister, while I was doing my research on the areas on the base value for the taxation. I looked at Northern Ireland and they had switched their system from the annual rental value, sorry, to that of the capital value.

Now, before they actually did this, they did a study of the percentage of property that was held through freehold and held through leaseholds, because they were saying that if the majority of properties were actually leasehold, you go with the annual rental value, because it is easier to actually give a figure of what it would be.

So, I am just asking whether or not there was any research or study done in Trinidad and Tobago to determine these figures, and also what is the justification for using the rental value as compared to the capital value, are we keeping the site value, annual rental value, and capital value. Because we will change it later on, or are we sticking to it, the annual rental value at all material times?

Madam Chairman: Minister.

Sen. West: Thank you, Chair. The annual rental value has been the value that we have used throughout to impose tax on property in Trinidad and Tobago and that is the value that we continue to consistently use for imposing tax on property.

What I had sought to explain earlier, was that there are certain circumstances when to arrive at the annual rentable value, we would have to do that through ascertaining the capital value, because there may not be comparable property that will give us a sense of what the annual rental value of this particular item is. It may not be land per se, it may be plant and machinery, and therefore that is why we need the Commissioner to be able to be flexible in determining how he arrives at the value for tax purposes. But in every case the value he arrives at that will go on the roll will be the annual rental value.

As I said, we have consistently used it. In the past there have been no challenges with respect to the Commissioner's ability to arrive at the annual rental value, how he arrives at it, there may be challenges of the amount. But he has used the different approaches to come to a position on what the annual rental value should be. This is not a variation from what we have done for the last century and I really do not see the reason to introduce a change in this point.

And with respect to Sen. Hosein's comment. Yes, consideration was given in the past whether there should be a shift in the annual rental value, to capital value and it was found for the purpose of Trinidad and Tobago—and I think it is safe to say the Minister of Agriculture, may be able to jump in and assist—that because we have natural resources under the ground, the bulk of our property is now granted under leasehold property. This is where we are in terms of land ownership.

But, as I said, consideration was given to both approaches as determined for the purpose of Trinidad and Tobago that it is better and what we have found for

example, by looking at the Barbados situation is that using the capital value may often give rise to a higher tax charged in using the annual rentable value.

Madam Chairman: Sen. Mark.

Sen. Mark: Madam Chair. I do not know if the hon. Minister had time to study the Jamaican Land Valuation Act, it is 1985 and they spent a considerable amount of time really experimenting until they arrived at a particular methodology which is now applicable throughout Jamaica. They do not have three and four methodologies or techniques or approaches in assessing or valuing land in Jamaica, and this is the Act here. And I think we should take a page out of the Jamaican experience, because we have abolished or repealed the Lands and Building Taxes Act, the Valuation of Land Act, all of these things have gone through the window. And what I am saying, Madam Chair, is that we cannot proceed on what I would like to call, Madam Chair, a discretionary and subjective basis. Because the Commissioner of Valuations, rather, is going to be left with too much discretion with these different methodologies that he is going to be employing in order to arrive at valuation. There must be one base that we can use so all I am asking is that if we had studied the Jamaican experience, we would have been able to learn something from it and not have three methods employed in one piece of legislation.

Madam Chairman: Sen. Shrikissoon, you wanted to say one final thing?

Sen. Shrikissoon: Sure, thank you, Madam Chairman, I appreciate that. Just with respect to the clause, in the way my suggestion on the amendment that I tabled considers the multiple valuation methods and in no way the amendment that I proposed, deleted the other methods as the Commissioner would require. But in the wording of the law as in the Act here, in my view in reading the Act it gives the Commissioner the autonomy or flexibility to use whichever method he chooses to

come up with a valuation. And I am saying and that is why Part A of it is saying, just as you said, hon. Minister that the annual rental value should be the method and I am agreeing with you there. But it needs to be specific and then in the event that the Commissioner needs the latitude to use the other methods, then employ it, and not give him or her the latitude immediately up front creating a vagueness as to which method was actually used.

So my amendment is actually what you would have proposed here, but it is in the way it is presented.

Madam Chairman: Sen. Ameen, you wanted to raise something?

Sen. Ameen: Yes, I wanted to ask, Madam Chairman, just an extension from what Sen. Shrikissoon was saying, with regard to what is already provided for, and this difference we see here, in terms of the rental value and the capital value and if it would provide a loophole for a person who wants to make a challenge.

A person whose property is assessed on capital value based on the discretion of the Commissioner and then they are charged property tax according to the value determined, but they want to use that is a loophole to challenge what is being charged. Are you not providing a space there for people to evade paying?

Madam Chairman: Minister.

Sen. West: An individual does have the right to challenge a value that is ascribed to his property and I think he should have that right. He has a right to look at how the Commissioner arrived at his valuation, as I said there is no discrepancy as to the value on which the property tax will be applied. The Property Tax Act is abundantly clear on that. This provision gives the Commissioner the ability to value property for different reasons and therefore he of necessity requires different approaches.

I understand, Sen. Shrikissoon that in your submission you attempted to

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preserve that right to use other methods for the purposes. What I am saying to you is that there are circumstances, we believe that they will be limited, but there are circumstances in which to arrive at the annual rental value. We have to start with another method and I think we have been doing that for decades. We need to preserve that right for the Commissioner or we will tie his hands.

Madam Chairman: All right, hon. Senators, I will now put the question to the vote, on the amended as circulated by Sen. Mark. So the question is that clause 4 be amended as circulated by Sen. Mark.

Question, on amendment, [Sen. W. Mark] put and negatived.

Madam Chairman: I will now move on to the same clause 4, the amendment proposed by Sen. Shrikissoon. But, Sen. Shrikissoon, can you limit now what you have to say to the further part of your amendment, because we have dealt with that—yeah. Okay.

Sen. Shrikissoon: Thank you, Madam Chair. The argument for the second part was wrapped up in the first, so given the Minister's explanation, I would still like to support the amendment, but under this case I will just withdraw it.

Madam Chairman: So you are withdrawing.

Amendment [Sen. Shrikissoon] withdrawn.

Question put.

Sen. Mark: I want a division.

The Committee divided: Ayes 20 Noes 6

AYES

Gopee-Scoon, Mrs. P.

Rambharat, C.

Sinanan, R.

Hosein, K.

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West, Ms. A.

Le Hunte, R.

Henry, Dr. L.

Singh, A.

Cummings, F.

De Freitas, N.

Dookie, D.

Huggins, R.

Lewis, Ms. A.

Romano, Ms. A.

Baptiste-Primus, Mrs. J.

Small, D.

Chote SC, Ms. S.

Creese, S.

Raffoul, Ms. J.

Richards, P.

NOES

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Ramdeen, G.

The following Senators abstained: Dr. D. Mahabir, T. Shrikissoon, Ms. M Ramkissoon.

Question agreed to.

UNREVISED

Clause 4 ordered to stand part of the Bill.

Clause 5.

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

Madam Chairman: Sen. Mark, you have proposed and circulated an amendment, so I will ask you to—

Sen. Mark: Thank you, Madam Chairman. You will realize or appreciate that the Schedule attached to this Bill, Schedule II, is very invasive and it provides, of course, we will deal with that at a later stage of our proceedings. Suffice it to say that it is quite unsatisfactory for a Minister without referring to the Parliament on the Schedule which is so invasive, and is asking for so much private and confidential information from each property owner and occupier of land in this country, without having the Parliament being given the relevant checks and balances to contain that ability of the Minister to whimsically, capriciously and arbitrarily amend this particular Schedule.

And therefore, consistent with proper accountability and transparency, I am proposing on behalf of the Opposition Bench that any changes and or amendments to this Schedule be brought to the Parliament for debate. So, Members of Parliament who would have debated this Bill and finally decided whether to approve it or not, once it is approved, it should be subject to an affirmative resolution. It is against that context, Madam Chair, that I am proposing that this be subject to an affirmative resolution.

Madam Chairman: Sen. Mark, you also though, had another part, part A of your proposed amendment. Can you briefly—

Sen. Mark: Yes. Madam Chair, I am suggesting unlike my colleagues on the other side that this is a very punitive imposition of a fee, or a charge on the citizenry of this country. I would have wanted to propose \$40 as was done in

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Jamaica. But, I think I would be going too far. But having regard to the initial legislation of \$500, Madam Chairman, I see no justification for \$5,000 increase, knowing fully well, Madam Chairman, that ordinary people who are going to be subjected to this provision can be caught in this net quiet innocently, and therefore in those circumstances I am suggesting that we stick to the \$500 and not \$5,000, Madam Chair.

Madam Chairman: Sen. Mahabir.

Sen. Dr. Mahabir: Thank you very much, Madam Chair. The issues for me concern 5(a), because we know that valuations in Trinidad and Tobago was supposed be done by the State every 15 years, from 1948—by my calculations, we should have had a valuation in 1963, 78, 93, 08 and one in 2022.

The State has been delinquent in discharging this critical function and given that the next valuation according to the law is supposed to be in 2022, I would like to propose and I am not convinced with the argument of the Government that we need simply to add a zero. I want to know why \$5,000? Why not \$550? Simply adding a zero is not justification to me, and I can very well see citizens indicating that the move from \$500 to \$5,000 failing to file the form wilfully, may be oppressive and if I am a citizen and I am in that situation, I can see grounds for challenging the Government.

But, Madam Chairman, I want to put this thing in perspective. When we are talking about a fine, we have to look at offences. In the Summary Offences Act, for pelting a stone at somebody and causing them harm, section 69, \$1,500. Are we saying that it is okay to pelt someone with a stone and harm and injure them, and that is one-third the severity of failing to file a form? So we need to look at fines and we need to ensure that there is equity with respect to this system. Thank you very much.

Madam Chairman: Sen. Ameen.

Sen. Ameen: Thank you, Madam President. I too want to agree with Sen. Mark with regard to the fine, not being increased from \$500 to \$5,000. I also want to suggest that this is a very punitive approach. However, on the other hand, I think we could use an incentive in a different way and consider putting some sort of reward or discount for paying early. There are countries who use provisions to provide, for instance, a 5per cent discount if you pay your electricity bill before its due date and so on. So, that type of approach rather than only the punitive approach if you do not file. But if you do file and you file on time or before the due date which is what the Government should try to encourage, if you can consider a measure like that.

Madam Chairman: Okay, Sen. Ramdeen.

Sen. Ramdeen: I would like to make an enquiry, from the Minister and then may a suggestion. Minister, am I correct through you, Madam Chair, that the power that is given to the Minister by virtue of clause 5(b) amendment to amend the Schedule, applies both to Schedule I and Schedule II?

Madam Chairman: Schedule II alone.

Sen. Ramdeen: Schedule II alone? Okay, then my concern is alleviated with respect to one.

Madam Chairman: Sen. Hosein.

Sen. S. Hosein: Thank you very much, Madam Chair. Through you to the Minister, I just wanted to support what Sen. Mark had to say with regard to Schedule II of the Act, that is the form. Now, from what happened previously with respect to the exercise where the Ministry was asking persons to submit their forms, there were some issues regarding that the forms that they were telling you to submit additional documents. Now, when I looked at the BRF sample here on

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Schedule II, it does not allow for the submissions of additional documents, it does not request that. But my issue is that I believe that we should have the parliamentary oversight because the Minister can at any time include anything in this form for you to volunteer personal information which may actually be in breach of your privacy rights, and also may amend the form to actually request certain documents. So that is my concern with regard to removing the parliamentary oversight from Schedule II of the Act itself.

Madam Chairman: Sen. Chote.

Sen. Chote SC: Thank you, Madam Chairman. Minister, I just wanted to make a suggestion with respect to the fine. Now, I have no problem with the increase in the fine, but it is just that you will have different categories of persons who have wilfully failed to file a return, and I was wondering whether the Government would be amenable to considering allowing the Commissioner to have a discretion.

So somebody with means, if he wilfully fails to file the return can pay a higher fine. But somebody with little means, maybe attracts a fine which is considerably less. I think that may mitigate what some people perceive as the sort of broad brush harshness, for want of a better word, of the imposition of the \$5,000 fine.

And secondly, with respect to the information contained in the second Schedule, it may be in the legislation, but I do not see it. Is there anything to protect this information from getting into the wrong hands? So that when this information is collected, let us say, somebody cannot source it and use it for identity theft and so on because you are giving all your personal information.

Madam Chairman: Senator, you can continue. You can continue with your—

Sen. Chote SC: Yes, so I was just wondering whether there was any consideration given to that, and if it is possible for us to have something to say “that this

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information shall not be disclosed, unless it is to the proper authorities” or something like that. I do not have the language on the tip of my tongue, but I am sure that if the idea is taken on board that the drafters may come up with something that we can use.

Madam Chairman: No, just one second. The Minister has heard quite a number of comments and she needs to respond, Minister.

Sen. West: Thank you, Madam Chairman. With respect to the fine; the fine is imposed by a magistrate on summary conviction and therefore in the normal manner of interpreting these things it is a maximum fine, and the magistrate within his or her discretion can determine how much he or she will impose up to that limit. So I think Sen. Chote that that covers your suggestion, because contrary to what you said, it is not a fine imposed by the Commissioner. So in my view there is no need to put in tiers to cater for that. The magistrate already has that discretion.

I had explained in my earlier submission why we thought that we needed to increase the fine for the purpose of putting a deterrent, and we continue to be of the view that this is necessary and having regard to the explanation I just provided to Sen. Chote that it is a maximum fine at the discretion of the Magistrate. I think that provides the owners with sufficient protection in respect of any action that may be seen to be arbitrary that the Commissioner might take.

Madam Chairman: Just, one sec. Minister, you wanted to say something else?

Sen. West: I need to respond to the comment on the affirmative resolution, yes. Madam Chair, with respect to the power of the Minister, it is a form to provide information for the purpose of the valuation of persons' properties. The Minister is not able to amend the form to request information other than that to put in a clause that every time he changes a comma or a full stop on the form that he needs to

come to Cabinet to get a debate on that.

4.00 p.m.

If you compare that with the tax return form that is changed every year by the Board of Inland Revenue, it is no more invasive than that. It has not been taken advantage of by the Board of Inland Revenue, because everybody administering the system understands that any amendments made have to be made for the purpose of the administration of the legislation, and we need some flexibility and agility in terms of administering the legislation. So, in light of that, I think it is unreasonable to request that every amendment to the form has to be done by affirmative resolution, Madam Chair.

Sen. Raffoul: Thank you. I had a question about the penalty that is up to \$5,000. Does it apply per—

Sen. West: Sorry, Madam Chair, I am not hearing Sen. Raffoul.

Sen. Raffoul: My question is about the penalty. Does it apply per property or per owner? So, for example, if one person owns two properties and they neglect to file, are they eligible for a fine of up to \$10,000 or is it per owner, per person?

Sen. West: It would apply per offence.

Sen. Raffoul: Okay.

Sen. West: So if an offence is committed in respect to each return, and you would have a different return for each property, then the prosecution can take place in respect to each offence and the maximum fine can be imposed by the Magistrate.

Sen. Raffoul: Thank you.

Madam Chairman: Okay, Sen. Haynes.

Sen. Haynes: I just had a comment on the Minister's response to section 5(b). That is an assumption that with only small changes to the form. So, what we are looking at is protection for major changes to Schedule II. And while we

understand that it may be onerous if it is a comma or a full stop, but what protections are we putting in place for citizens for major changes to the form? And I think that should be considered when making law.

Sen. Obika: Thank you, Madam Chair. In response to the Minister's response regarding the comparison with BIR, I think that definitely does not arise, because the process for selection of the head of BIR is different to what is proposed here where a Minister can appoint. So it is different. It must be apples with apples, so I do not think the comparison with BIR arises, because of the independence of the BIR.

Madam Chairman: Now, Members, we are on clause 5 and several Members have put forward their comments on the proposed amendment of Sen. Mark. The Minister has responded. If there is something different from what you earlier commented on then I would allow it, but at some point the conversation has to end and we have to put the clause to a vote. Sen. Ramdeen has asked, Sen. Mark.

Sen. Ramdeen: Thank you very much, Madam Chair. To the Minister, through you, Madam Chairman. Minister, I think while one can understand that the imposition of the \$5,000 it would affect different persons with different incomes in a different way, proportionately, I was wondering, having regard to the explanation that was given to Sen. Chote with respect to her suggestion of giving up power to reduce the amount that can be paid—I understand and I agree with your explanation about it being a conviction—but having regard to the fact that these fines when paid goes into the Consolidated Fund, I was wondering whether it would not be a form of relief if we consider giving the Commissioner the power to remit a fine that is paid in particular circumstances so that it can act as a form.

Whereas you cannot interfere with the judicial process of the fine being paid, but giving the Commissioner himself the power to remit a certain sum in

inappropriate circumstances may temper that hardship that someone who has been fined, for example, a pensioner or someone who in inappropriate circumstances, it can temper that hardship that they will suffer as a result of being convicted and having to pay a fine without interfering with your ability under the statute to convict someone, and to impose a fine which is a matter for the court.

Sen. Mark: Madam Chair, I just would like to ask the hon. Minister, through you, if you are not in favour of an affirmative and we always make legislation for the future and then for tomorrow, how would you respond to a negative resolution, meaning that when decisions are taken, it will be tabled and we go through the process? If it is egregious then we can bring a Motion to have it annulled. Would you be in favour of a negative resolution?

Sen. West: Thank you, Madam Chair. With respect to giving the Commissioner the power to remit, I personally do not see it necessary because the Commissioner, if he thinks that is there a reasonable basis to grant relief, he could choose not to bring the matter before the court at all, because he is the one who would initiate the prosecution. So the combination of that and the power that the magistrate has to determine whether a fine would be imposed and the size of that fine, I think it is sufficient protection. Sen. Mark, with respect to the resolution, I would be prepared to go with a negative resolution.

Sen. Mark: Madam Chairman, I just wanted to clarify something with your leave with the hon. Minister. Thank you so very much. Sen. Chote made a very important observation a short while ago. We have admitted that we have about close to 700,000 properties in this country, and you would agree that a lot of sensitive information is being provided. Now, the question here is that to what extent, there will be, what I consider the adequate protection of the information that would be made available to the Commissioner of Valuations, and what

provision would you want to suggest? Because there is always the possibility that information could be misused for all kinds of purposes and, therefore, how do you guarantee John public that the information that they are supplying to the Commissioner of Valuations will not be misused for any other purposes than what for it was intended. Where do we have in the legislation directly or ensuring that there is protection for the use of that information, Madam Chair, through you to the hon. Minister?

Sen. West: Thank you, Madam Chair. And Sen. Chote, I apologize for not remembering that element of your question. There are two provisions, one I believe is in the Property Tax Act rather than the Valuation of Land Act which prescribes the persons with whom the Commissioner of Valuations can share information, and there is also the Data Protection Act that protects information provided to the State. So I think the combination of those things would be sufficient to ensure that there is not a general sharing of the information collected by the Commissioner of Valuations.

Sen. Mark: Madam Chair, I do not want to prolong, but just with your leave again, hon. Minister, through the Chair, you would be aware it is only small sections of the Data Protection Act that has been proclaimed in Trinidad and Tobago. All the sensitive sections that protect my rights and your rights and the citizens' right have not been proclaimed. Unless you are giving an undertaken to the Parliament that this matter would be done very shortly, we need to have some protection for all this information that will be provided to the Commissioner of Valuations.

Sen. West: I was waiting on you to invite me to respond. Sen. Mark, I have personally been impacted in seeking information for the Ministry of Finance in terms of getting information from other state agencies. So the provision I believe

that protects citizens' information has already been proclaimed. And so I think there is already sufficient protection between that and the provision in the Property Tax Act for the citizens' information.

Madam Chairman: All right? So hon. Senators, I am going to put forward the amendment as circulated by Sen. Mark, and then once that is dealt with, I will then propose the amendment as indicated by the Minister with respect to the (b) part of clause 5. Okay. So, hon. Senators, the question—

Sen. Mark: No, no. Madam Chair, having regard to the compromise made rather you putting it, I am saying I will withdraw mine and you will just only put the Minister's and that is it.

Madam Chairman: Sure. So, thank you very much. Sen. Mark. So, Sen. Mark's proposed amendment to clause 5 is withdrawn.

Sen. Mark: You see, I am a very compromising chap, you see.

Madam Chairman: So, hon. Senators, the question is that clause be amended as follows. [*Crosstalk*] Hon. Senator, this is a very, very difficult procedure, and I really require Members to pay attention or not distract me. Okay? So the question is that clause 5 be amended as follows:

At paragraph (b)(5) to insert the words after the word "Order subject to negative resolution".

Sen. Dr. Mahabir: Madam Chair, it should be: "may by Order amend Schedule II subject to negative resolution."

We would have to, I think, read: The Minister may by Order amend the Schedule subject to negative resolution.

So if we just put it by order, we will have to return.

Madam Chairman: What is the proposed amendment, Minister?

Sen. West: The proposed amendment, Madam Chair, should read:

“The Minister may by Order, subject to negative resolution of Parliament, amend Schedule II.”

Madam Chairman: So, Members, I would read—

Sen. Mark: Madam Chair, will we be coming back to paragraph (a)?

Madam Chairman: Paragraph?

Sen. Mark: Paragraph (a).

Madam Chairman: No, you withdrew.

Sen. Mark: No, no, I withdrew the affirmative. You had proposed, no, no, no.

Madam Chairman: Sen. Mark, no, no, no. Listen. Members, all I want to do here is to get it right.

Sen. Mark: I too.

Madam Chairman: But for me to get it right, you all have to concentrate a little bit on what I am saying. Okay?

Sen. Mark: Okay.

Madam Chairman: So, I was under the impression Sen. Mark, that you had withdrawn all of your proposed clause 5

Sen. Mark: No, no.

Madam Chairman: You are now saying—hold on—that you want to have 5(a)—you are proposing that 5(a) be amended—

Sen. Mark: Yes.

Madam Chairman: And that 5(b)—

Sen. Mark: That is the one that I withdrew in favour of—

Madam Chairman: If you remember what I was proposing, as a matter of just having it very clean, was to deal with your amendment, and then subject to what we decided to then move on to add the words.

Sen. Mark: My sincerest apologies.

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Madam Chairman: So, let us, therefore, revert to that position where we are going to deal with clause 5, the amendment as proposed by Sen. Mark. Hon. Senators, the question is that clause 5 be amended as circulated by Sen. Mark?

Question, on amendment, [Sen. W. Mark] put and negatived.

Madam Chairman: Hon. Senators, the question is that clause 5 be amended as follows: at 5(b)(5) by inserting the words:

“The Minister may by Order”—inserting the following words—“subject to negative resolution of Parliament, amend Schedule II.”

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6.

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

Sen. Mark: I have no amendments here. I am trying to get some clarification with your leave?

Madam Chairman: Sure.

Sen. Mark: Is it okay?

Madam Chairman: Yes.

Sen. Mark: Okay. Hon. Minister, I would like to ask if you could clarify for us, this section here—clause 67A(1) We go to:

“...should take effect, he shall notify the Minister.” When we talk about notifying the Minister, how is this done? Is it going to be done in writing? How does the Commissioner of Valuations notify or will notify the Minister? Is it going to be in writing? Because it just say “notify”, so I just wanted to get clarification on that.

Sen. West: The legislation is silent because what is contemplated is in writing, but I do not have any objection to putting in “in writing”.

Sen. Mark: Then, the other area I want to—

Madam Chairman: Just one second, Sen. Mark, because I think Sen. Mahabir, you wanted to raise something on the same—

Sen. Dr. Mahabir: Not the 7A(1), but on section 7. Through you, Madam Chair, when I read section 7, my understanding of it was at variance with what the Minister indicated, because the Minister indicated that there would be minimum value of \$18,000, but the reading here is that:

“...he shall record that annual rental value as the annual rental value for such land.”

And by that, when you look at the sentence structure, you have—and I will read.

“Where the owner of land in Trinidad and Tobago makes a return of land under section 6 and the Commissioner is of the opinion on the basis of that return that the land carries an annual rental value of less than eighteen thousand dollars, he shall record that...”

You see “that annual rental value” refers to the \$10,000 or \$15,000 that was recorded, but according to your statement and according to your intent, you meant that, whenever it is less than \$18,000 the Commissioner of Valuations will record the value as \$18,000. So I will recommend as follows, for clarity:

“he shall record the annual rental value as eighteen thousand...” So after the comma after “eighteen thousand dollars, he shall record the annual rental value as eighteen thousand” then it would be clear to me the “that” refers to the “eighteen thousand” and not to the lesser value as written in the valuation. Thank you.

Madam Chairman: Any other—Sen. Hosein.

Sen. S. Hosein: Thank you, Madam Chairman, for recognizing me. Through you, to the hon. Minister. When we mention owner of land and this \$18,000 limit, is it just restricted to domestic use or does it extend to commercial use?

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Madam Chairman: Does the \$18,000 extend only to domestic use or does it include commercial use?

Sen. West: There is no restriction in the legislation—no qualification in the legislation, so it will apply to all that. And with respect to your recommendation, we accept the recommendation for clarity. Thank you very much.

Madam Chairman: Just one second. So that we will at 7, it is proposed that you take off the words “he should record that annual rental value” take of the words “as the annual rental value for such land”.

Sen. Dr. Mahabir: I would recommend, Madam Chair, after the “eighteen thousand dollars,” for clarity, “he shall record the annual rental value”. Take out the “that”—“he shall record the annual rental value as eighteen thousand dollars.” That is it.

Sen. West: Madam Chair, could you read back the impact of that please?

Madam Chairman: So, it shall read—section 7 shall read as follows:

Where the owner of land in Trinidad and Tobago makes a return of land under section 6 and the Commissioner is of the opinion on the basis of that return that the land carries an annual rental value of less than eighteen thousand dollars, he shall record the annual rental value as eighteen thousand dollars.

That is what Sen. Mahabir—

Sen. West: Yes, Madam Chairman. We are happy with that.

Madam Chairman: Then at 7A(1), it has been proposed that you add the words “in writing” after “Minister”.

Sen. West: Yes.

Madam Chairman: Yes?

Sen. West: Yes, we are happy with that too.

Madam Chairman: So, hon. Senators, the question is that clause 7 be amended—
Sen. Ameen.

Sen. Ameen: Yes, the part 7A(1):

“Where the Commissioner is of the view that...fifty per cent of land...has
been valued...the valuation should take effect...”

I do not know if the Minister could just clarify here. How can you tell when you have reached the 50 per cent if the lands are to be valued? How do you tell? Do you have a number? And what is that based on?

Sen. West: It is based on the information within the knowledge of the Commissioner of Valuations which is why he is the one who will notify the Minister when we have gotten to that point.

Sen. Ameen: Madam Chairman, before I propose a suggestion, what I am asking, because the thing is yes the Commissioner will receive the forms and so on from people, based on what does the Commissioner decide that you have reached 50 per cent? Do you have a listing or a record of the total number of parcels of land in Trinidad and Tobago to be valued?

Madam Chairman: Well, I think, that is what the Minister is saying. I think the Minister is saying from the knowledge of the entity in question that that is how you will come to that 50 per cent.

Sen. Ameen: Well, I was not getting that. I am getting that the Commissioner will know based on the applications that are sent it, the valuations that are done and sent. So I am asking, what database are you going to use? I do not want to presume. I am just asking. What database do you have? Do you have a certain database that will say, how many parcels of land in Trinidad and Tobago are there to be valued in total, to determine what 51 per cent of that is?

Sen. West: Madam Chair, between the information that resides in the Ministry of

Agriculture, Land and Fisheries and the information that is currently in the possession of this Commissioner and that he will gather during his valuation exercise, we will determine what the population of land is and what 50 per cent of that is.

Sen. Obika: Thank you, Madam Chair. My main concern with this 50 per cent arises from one, you have a Cabinet decision deciding on the—interfering with the process and then, how do you determine which 50 per cent? Is it that it is going to be 50 per cent as a representative sample of Trinidad and Tobago or some parts of Trinidad and Tobago will be facing this tax because they would have been captured by the valuation and the rest will not be facing the tax? I think 50 per cent is—what is the reason for 50 per cent?

Madam Chairman: Right. Members, I am encouraging Members to make your comments, but I am also encouraging you to make them succinctly and when you hear we call on the Minister, is because I think the Minister has grasped what you are saying. Okay? Minister.

Sen. West: The Commissioner of Valuations will be undertaking an exercise covering the whole of Trinidad and Tobago simultaneously. So there will not be one area or areas targeted, and it is on that basis the 50 per cent would be arrived at.

Sen. Mark: Hon. Minister, through the Chair, how do you justify 50 per cent as opposed to 75 per cent? What I am asking in essence is this. Will we not be allowing the Commissioner of Valuations to not perform his duties properly? If we are targeting 100 per cent and we are saying that we have 700,000 properties in our country, should the Commissioner of Valuations not be able through the mechanisms that we are going to establish, to advise the Minister, look we have completed 100 per cent of our valuation work and, therefore, notification is served

in writing to that effect? In addition we, the parliamentarians, who are lawmakers ought to be informed properly that that has been done.

Now, the Minister is going to issue an Order upon notification in writing on this matter. Should we, Minister, not be given some notification as well that that event has been completed and the public can go at some place to look at a valuation, let us say a roll, as the case may be? So, that is why I am saying whether you will agree that we, the Parliament, given the Order here, be subject to a negative so that at least this Commissioner of Valuations and his people should not be doing the job halfway. They should go to the 100 per cent, complete the job and then notify the Minister and the thing takes effect. Madam Chair, that is what I am trying to get clarified.

Sen. West: Yes, Madam Chair. The 50 per cent is not the end game. It is the point at which the tax starts to be imposed. The Commissioner of Valuations, after he notifies the Minister, will continue to do his job with the intention of completing the entire valuation as soon as possible. So it is not that anybody would get relief from taxes, it is just a start point because we need to get it started.

As I had indicated on Tuesday, there is no way that the Commissioner of Valuations can say, at any point in time, I have evaluated all the buildings in Trinidad and Tobago, because one could have been completed two days after he finished what he thought was 100 per cent. So the 50 per cent is a start point to get us there, and he would continue to get to do his valuations to complete as expeditiously as possible.

Madam Chairman: Right. Sen. Ameen, I think—is it anything different from what you have raised before?

Sen. Ameen: Yes, yes it is.

Madam Chairman: Yes?

Sen. Ameen: I wanted to ask the Minister, the next 50 per cent, those who have not filed, when you do reach to assessing them, are they going to have to pay taxes from the date they are assessed or are they going to have to pay retroactively?

Sen. West: The intention, as I said, is to complete all the valuations within a particular period. So we do expect to span the different years of assessments, so we expect everybody to pay from the year of commencement of the tax.

Madam Chairman: Sen. Obika, at this stage, I think I really have to put—okay, just the last comment from Sen. Obika on this clause.

Sen. Obika: Thank you, Madam Chair. Basically, how are persons who are not valued going to be taxed? At what rate?

Sen. West: I did not say that people who are not assessed will be taxed. I am saying that everybody will be assessed and will be assessed in the shortest possible time and, thereafter, they will be taxed. **Sen. Ameen:** So, they will pay retroactively from the beginning whenever they are. They will pay from the same date as those who are assessed in the first 50 per cent.

Sen. West: That is the intention.

Sen. Ameen: So it is retroactive.

Sen. West: I would not say retroactively, I would say same period.

Madam Chairman: So, hon. Senators, I am now going to put clause 6 to the Committee. The question is that clause 6 be amended as follows. Well, clause 6 will be amended as follows. I am going to read 7:

Where the owner of land in Trinidad and Tobago makes a return of land under section 6 and the Commissioner is of the opinion on the basis of that return that the land carries an annual rental value of less than eighteen thousand dollars, he shall record the annual rental value as eighteen thousand dollars.

And 7A(1) will read as follows:

Where the Commissioner is of the view that more than fifty per cent of all land in Trinidad and Tobago has been valued and that the valuations should take effect, he shall notify the Minister in writing.

Question put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Madam Chairman: Hon. Senators, this is a good stage for us to suspend the proceedings of the Committee and we will return at 5.00 p.m. So the Committee is suspended until 5.00 p.m.

4.30 p.m.: *Committee suspended.*

5.00 p.m.: *Committee resumed.*

Madam Chairman: Hon. Senators, shall we resume the proceedings of the Committee?

Clause 7.

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

Madam Chairman: There are two amendments circulated for clause 7, one circulated on behalf of Sen. Shrikissoon and one on behalf of Sen. Mark. Sen. Mark, again, because yours is shorter we would do yours first.

Sen. Mark: Yes, thank you, Madam Chair. Madam Chair, as I indicated earlier to you and this body, we intend to revert to the Tax Appeal Board with more resources, human, financial and other technical resources, in order to give effect to this piece of legislation as it relates to appeals by members of the public who are property owners and who have not been satisfied with their notices, the revaluations, coming from the Commissioner of Valuations. It is in this regard that I have proposed the deletion of this amendment or this particular clause. We do not support the Minister having any role whatsoever in this matter via the tribunal,

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and we believe that we should retain the Tax Appeal Board. And the President, as you know, Madam Chair, is the person who is responsible for appointing the chairman and the vice-chairman of the Tax Appeal Board, and, of course, all other members are appointed through the Judicial and Legal Service Commission. So they have tenure of office and they are not subject to anyone's dictate or dictates. So, it is against that background, Madam Chair, that I am suggesting or proposing that we delete this clause completely.

Madam Chairman: Minister.

Sen. West: Madam Chair, I am a bit confused, because based on my documents clause 7 deals with section 9 of the legislation, and there we have replaced President with Minister, but it relates to the issue of fresh valuations, nothing to do with the tribunal, Madam Chair.

Sen. Mark: Madam Chair, let us go to clause 9.

Sen. West: Clause 7?

Sen. Mark: No, section 9 of the Act is amended, okay. Madam Chair, if you go to section 9 of the original Act, subsection (2), when we use the term President we are referring to the President of the Republic, and it is against that background I am suggesting that the President has a very big role to play in the context of the Tax Appeal Board.

Sen. West: And my response, Madam Chair, is that this subsection has nothing to do with the Tax Appeal Board. It has to do with the issue of a fresh valuation every five years.

Sen. Mark: Madam Chair, well, maybe I am not too clear on this one, and maybe you as a lawyer, in your capacity, you can advise me whether we are talking about President—*[Interruption and laughter]* Madam is an attorney-at-law. The President here in section 9(2), I am interpreting it as President of the Republic. If

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it is the Cabinet in this regard then I would like to be so advised. Are we referring to the Cabinet in this instance?

Sen. West: Sen. Mark, I am not disputing that we have replaced President with Minister, what I am saying is that the power that is being conferred on the Minister is the power to determine when fresh valuation shall come into effect, nothing to do with the Tax Appeal Board or any tribunal.

Sen. Mark: Okay. But we are talking about the same President, right?

Sen. West: We are talking about the President of the Republic. That is correct.

Sen. Mark: Okay. Well, I want the President to remain.

Sen. West: Okay. So in response to that I will refer you to the section that we have discussed earlier which relates to the new clause 7A(2). Sorry, section 7A(2) introduced by clause 6 of the Bill.

Sen. Mark: 7A—

Sen. West: 7A(2).

Sen. Mark: Right, okay.

Sen. West: Under that provision which we have approved, we are conferring on the Minister, the right, once he gets the notice in writing from the Commissioner of Valuations to declare the role in effect. What the section 9(2) does is to allow the Minister to declare the new role in effect. So it is a roll-on activity, and I would recommend that it would be best to be placed in the same functionary, rather than to have different functionaries.

Sen. Mark: So are you saying, hon. Minister, that you are just trying to address a situation that ought to have been corrected earlier in terms of this legislation, because the parent Act that we have before us, in order for us to compare the current matter that we are dealing with, we have in section 9(2) the President—

Sen. West: We do.

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Sen. Mark:—and you are saying that you want to clean up this by removing the President and replacing that with the Minister?

Sen. West: We want to maintain consistency.

Sen. Mark: Okay.

Question, on amendment, [Sen. W. Mark] put and negatived.

Madam Chairman: Sen. Shrikissoon, you also have an amendment, can you just indicate the purpose of the amendment, please?

Sen. Shrikissoon: Sure. That you, Madam Chair, through you, if we go to clause 9 of the Bill.

Madam Chairman: No, clause 7 of the Bill, section 9 of the Act.

Sen. Shrikissoon: Section 9 of the Act. Yes, correct. Thank you, Madam Chair. It reads:

“A fresh valuation in respect of land shall commence as near as may be to five years from the date of the last valuation of the land as recorded in the Valuation Roll.”

And just for the purposes of being a little bit definitive I did not see what really constitutes the Valuation Roll, and, hence, I looked at the definitions and realized it was not there, and given that reference is being made to one, I do not know if it was an oversight on my part, but I thought it would be—

Madam Chairman: Minister.

Sen. West: Sen. Shrikissoon, through the Chair, if I can refer you to section 16 of the Act which says that a Valuation Roll shall be prepared, and it lists the information that is included in the roll. So I think that adequately covers the issue that you are rising.

Sen. Shrikissoon: Thank you, Madam Chair. If I ask the question, what is a Valuation Roll?

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Sen. West: And I would say to you, a Valuation Roll is the document prepared by the Commissioner in accordance with section 16.

Sen. Shrikissoon: Okay, sure.

Madam Chairman: Sen. Shrikissoon, are you—

Sen. Shrikissoon: Yes.

Amendment [Sen. Shrikissoon] withdrawn.

Question put and agreed to.

Clause 7 ordered to stand part of the Bill.

Clause 8.

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

- A. Insert the word “registered” before the words “post to his last known business address”.
- B. Insert the word “registered” before the words “post shall be deemed to have been served”
- C. Insert the word “registered” after the words “received in the ordinary course by”.

Madam Chairman: Sen. Mark, you have circulated an amendment to clause 8.

Sen. Mark: Madam Chair, we live in the real world as we all are conscious of and the postal services in this country, it does not operate at the level of efficiency that we would all want it to operate, and, therefore, there is a certain level of unreliability. And, Madam Chair, you will realize that under section 8 of this legislation that we are looking at innocent people can be prosecuted if mails arrive late. Action can be taken against them, and, therefore, it is incumbent upon us to ensure that we do everything in our power to facilitate the property owners to have access to the correspondences or communications that are issued by the Commissioner of Valuations. And, therefore, I would like to suggest—in the case

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of Jamaica, Madam Chair, they have something called, prepaid registered letters. Now, I do not know if in Trinidad and Tobago, through the Chair, hon. Minister, do we have at the postal level, prepaid registered letters or posts?

Sen. West: I am unable to answer to that, Sen. Mark.

Sen. Mark: So that is why I have included, Madam Chair, registered post, so that for instance we will hold the postal services accountable to getting the correspondence to the owners or to whoever the correspondence is being sent to, rather than then send it, Madam Chair, ordinarily by post, it may never arrive. In fact, I think it was Sen. Small who brought it to our attention recently. It took him 11 days or 15 days to get a simple piece of correspondence from—

Madam Chairman: So that, Sen. Mark, I think to just summarize what you are proposing that it be by registered post.

Sen. Mark: Yes, that is what I am proposing.

Madam Chairman: Yes. Sen. Mahabir

Sen. Dr, Mahabir: Thank you very much, Madam Chair. And through you, Madam Chair, to the hon. Minister, and it is an elaboration of Sen. Mark's point, I note in Schedule II, hon. Minister, under Personal Information in Schedule II, we asked for the owner's name, contact details, email. There has to be a reason to ask for the citizen's email address in addition to his telephone number, and I was just wondering whether in order to expedite the process of making all Government agencies much more computer compatible, you are not going to add under, in clause 8, in section 13 of the Act, as amended, you put notices being sent by post or email since we are asking for the email in Schedule II, and I think if we are to do that we could circumvent some of the problems, alluded to by Sen. Mark. And we are sending notices now via email. It is a record. It is a record sent by the relevant agency, the Commissioner of Valuations, and the thing with email is this,

once it is sent, it is sent; if it is not delivered it will bounce back. So that I think the Government, as a general policy, in addition to you as Minister of Finance in this particular Bill, should consider, once we ask citizens for their email to use it, in addition to the snail's pace which can be unreliable.

Madam Chairman: Minister.

Sen. West: Sen. Mahabir, the intention and the reason for requesting email is so that we can efficiently communicate with owners via email. We did not think it was prudent to put it in the legislation. I can confer with the drafters and get their view on that. The reason why we have moved away from registered mail, and you would see when you look through the legislation in general, you would see what we have done is suggest ordinary mail or personal delivery where there is no obligation on the owner to act where he has to object within a particular time or pay within a particular time, registered mail is required, but for notification—and you will bear in mind that the roll is a public roll, the owner has access to it—will have this information, and the delivery of the information by mail is a formality. So we thought in those circumstances we did not need registered mail for this particular purpose, but we have it elsewhere.

Sen. Mark: Madam Chair, if I may ask, through you to the hon. Minister, why then are we proposing in clause 8(4), why are we proposing or suggesting a timeline, “not later than the fifteen days succeeding the day when posted”, and that is a person who is residing in Trinidad and Tobago, and then for a person who is not a resident, “not later than the thirtieth day”. So in other words, Madam Chair, there is a timeline. So even though ordinarily, as you have said, there is no compulsion, why are we setting a time frame? So therefore remove the time frame, there is no need to put a time frame. You put a time frame because if they do not respond around that time, or immediately after that time then the onus is on

them, and that is why I am saying that it should go registered and not ordinary.

Madam Chairman: Sen. Mahabir, you wanted to add something?

Sen. Dr. Mahabir: I just wanted to go a stage beyond that, and looking at the idiosyncrasies, peculiarities of the Trinidad and Tobago Postal Service, you never, ever get anything online. Those of us who have to pay credit cards via a particular date will never get the statement from the bank before the expiry date. And I think to be fair to the citizens, we are all online now, I would really like if, in addition to the old fashion way of communicating, we can simply add “or email” since we are asking for it you see. If we are asking for it I see no reason why we cannot, in addition to sending it via email and to get it immediately, it comes in the post whenever it comes, but the individual can simply go into his inbox and he knows that a notice has been sent from the Commissioner of Valuations, I can read it and I will wait for the written documentation. And I think it would be fairer to the citizens given the fact that our postal service is highly inefficient.

Madam Chairman: Sen. Hosein.

Sen. Hosein: Thank you very much, Madam Chair. Now, I am seeing an inconsistency here with regard to the method of post, because when you look at section 13 which is the clause that we are addressing right now, clause 8, registered post is actually deleted. When you go back to section 6(3), a notice regarding you failing to file your annual return form will be sent by registered post. So why it is you are removing registered post here for the notice of the valuation, because I think this is extremely important because this actually forms the basis in which your property tax is going to be assessed? It will affect the time regarding the appeal that you have with the tribunal or even other appeals that you may want to exhaust.

Madam Chairman: Minister, you have three comments.

Sen. West: I will try to remember them all, Chair, thank you.

Madam Chairman: Yes.

Sen. West: With respect to registered post, I have experienced instances where registered post actually comes long after ordinary mail, and it is not something that is irregular. So I do not know if that provides the citizen with any more protection, other than evidence of when it is received. So that no, ordinary post, for some strange reason, tends to be quicker. As I said, Sen. Mahabir, the intention is to communicate with the citizen by email as well for greater efficiency, but I would shy away from putting that in the legislation at this point in time until we get our electronic system of communication more secure. I do not know if you have sought to do anything through the iGovTT route. We have had failures in that system and we are working on it, but I am not sure when we would get there. So I would be happy to give an undertaking, that is the intention, but I would not want to legislate.

Sen. Hosein: Very well. Thank you.

Sen. Mark: My final question, Ma'am. If we are dealing with valuation of properties and communication is being sent by the Commissioner of Valuations under section 13 of the parent Act, Madam Chair, and we are giving a deadline when the person ought to receive the communication, if it does not arrive, Madam Chair, through you to the Minister, on that particular period that we have identified, what happens? That is going to put everything in a tailspin. Madam Chair, through you, I am just saying, in the event—

Madam Chairman: I think the Minister heard you.

Sen. Mark: Okay.

Sen. West: Yeah, I got the point. So, I would say two things, one is that, yes, the person has 15 days to respond from the date of service, but the Commissioner has

the right to accept an objection out of time. We have dealt with this provision for decades under the Income Tax Act, the system works. The Board of Inland Revenue, once it is satisfied that the mail has been received late and that you acted within a reasonable time thereafter receiving it, generally gives the extension of time for you to file your objection, and you have a right to object if the board takes an unreasonable position. So I think that provides adequate cover for somebody who may receive the information late, not to mention that this information is a matter of public record. So the owner always has access to the Valuation Roll to determine whether there is a change or what his current position is. So having regard to all of those things we did not think it was necessary to require that it be sent by registered mail.

Question, on amendment, [Sen. W. Mark] put and negatived.

Question put and agreed to.

Clause 8 ordered to stand part of the Bill.

Clause 9.

Question proposed: That clause 9 stand part of the Bill.

A. Delete Clause 9 and substitute the following-

“Section 16 of the Act is amended in subsection (1), by-

(a) deleting paragraphs (b), (d), (e) and (g); and

(b) in paragraph (k) by deleting all the words after the word “rented” and inserting the words “the average annual rental income earned”

B. Renumber the paragraphs accordingly.

Madam Chairman: Sen. Shrikissoon has proposed an amendment to clause 9. Sen. Shrikissoon.

Sen. Shrikissoon: Thank you, Madam Chair. Through you to the hon. Minister, well, my suggestion for clause 9 was really premised on clause 4 of the Bill,

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section 5 of the Act, given that if annual rental value was going to be defined as the way then there was no need for the rest. But given that we are here, could you just share with me the justification for then removing site value and leaving the rest, if my understanding is correct in the removal of (d), paragraph (d), the site value of the land?

Sen. West: The section indicates the information that is required to be included in the rolls. So whereas the Commissioner from time to time may need to secure or assess the site value, it is not something that we thought needed to be included in the rolls, because the site value is not likely to be a valuation approach that will impact the annual rental value. The capital value is likely to but not the site value, so we did not think it was necessary to include the site value in the roll because that would require the Commissioner to assess the site value in respect of every property in Trinidad and Tobago, and because it is not necessary for the purpose of the Lands and Buildings Taxes Act we did not think that was necessary.

Sen. Shrikissoon: Okay. Thank you, Minister. Madam Chair, through you, again—

Sen. West: Property tax, I am sorry.

Sen. Shrikissoon: No, so I am just saying that now that you said that with site value, but site value and improved value would be kind of linked. Yeah, so site and improved are linked to some extent, so if you are having site, improved value is almost similar. So the justification for having it there is—if I follow your argument, if we are removing site, we should also be removing improved and leaving annual and capital.

Sen. West: Because property could be assessed today and there is an improvement tomorrow, and the improvement should affect the value ascribed, we left improved there.

Sen. Shrikissoon: Okay. And there is one more amendment. Right. Thank you, Madam Chair, again, and just in paragraph (k), and this is just in keeping with my contribution during the debate where it requires where the land is rented the amount of rent paid on the land and the number of tenant, my understanding is that this Valuation Roll may be updated probably every five years, thereabout, and I am asking the question as to whether or not the exact amount of rent on the land and the number of tenants is actually relevant to this part in terms of it being so specific in terms of the amount of rent and the number of tenants, and whether you would give consideration to the average annual rental earned from the property.

Sen. West: The Commissioner of Valuations in arriving at the annual rentable value will take various things into consideration. One of the things he will definitely want to take into consideration is the actual rent received, which is why he is also asking for vacancies, the length of period occupied, because all of that will influence it. If we get an average rent from a person that, one, it is subjective and, two, it does not give the Commissioner all the information he needs to arrive at a proper annual rentable value.

Sen. Shrikissoon: Okay. Madam Chair, just a final comment on it, and I understand the direction or the premise upon which you are basing it, but in terms of the content of the Valuation Roll, not the information being given to the Commissioner, should he really be reporting on the Valuation Roll that element of a specific figure, although he would have had the information collected from the forms?

Sen. West: Yeah, I see your question. The issue is not, in my view, so much whether he should put the information on the roll, and more whether that portion of the roll should be made public, yes, and I am happy to indicate that the information that will be publicly available would not be all the detailed information.

Sen. Shrikissoon: Okay. Good.

Sen. West: Yes. So we would put sufficient information for people to understand where the property is and what the annual rentable value is, and that kind of thing, but not personal information that is of a financial nature. Yeah?

Sen. Shrikissoon: Okay. Thank you, Madam Chair. So having the issue been addressed, I respectfully withdraw it.

Amendment [Sen. Shrikissoon] withdrawn.

Question put and agreed to.

Clause 9 ordered to stand part of the Bill.

Clause 10.

Question proposed: That clause 10 stand part of the Bill.

Delete Clause 10.

Madam Chairman: Sen. Mark, you have proposed an amendment.

Sen. Mark: Yes, Madam Chairman, again, consistent with the approach that I have advanced with the Tax Appeal Board and the role of the President in that area, the Minister is replacing the President, and I object. We object to that. So on that basis we are not in support of that amendment.

Madam Chairman: Minister, the response to Sen. Mark.

Sen. West: The clause with respect to section 17, right?

Madam Chairman: Yes.

5.30 p.m.

Sen. West: Section 17(2) deals with Notice of Valuation, and this is what the Minister has the power to set the date to fix that information, and therefore, again, it is consistent with the earlier sections that deal with publication of the roll, the day to effect the roll and therefore notification of the information on the roll.

Sen. Ramdeen: The amendment that is proposed in relation to 10 is to change

Minister to President, no? Not in that one?

Madam Chairman: Yes.

Sen. Mark: “President” here is the President of the Republic?

Sen. West: That is correct. In every case in the Act where you see “President”, it remains President of the Republic, Sen. Mark.

Madam Chairman: Hon. Senators—I am sorry, Sen. Ramdeen, you asked one question. You have something else?

Sen. Ramdeen: I am just trying to find out, Madam Chair, through you, the purpose of that change is to just make it consistent and nothing else? Because legally it does not make any difference.

Sen. West: What we are doing is that we are doing valuations. The Minister will issue an Order indicating when the valuation is effective. Notices will be sent out, and the Minister again will determine when that happens. So it does not, in our view, make sense shifting from one functionary to the other in respect of the same connected activity.

Sen. Ramdeen: I am guided.

Madam Chairman: So hon. Senators, I shall now put the amendment as proposed by Sen. Mark to clause 10 to the vote. So the question is that clause 10 be amended as circulated by Sen. Mark.

Question, on amendment, [Sen. W. Mark] put and negatived.

Question put and agreed to.

Clause 10 ordered to stand part of the Bill.

Clause 11 ordered to stand part of the Bill.

Clause 12.

Question proposed: That clause 12 stand part of the Bill.

Madam Chairman: Sen. Mark, you have circulated an amendment?

Sen. Mark: Yes, Madam Chair. I am being very generous by proposing 90 days in my amendment. I do not think we should be legislating public service inefficiency in our country. What the Government is seeking to propose here is that if there is an objection and a notice has been issued by the Commissioner to that effect, you the owner of the property has, according to this amendment, upon the expiration of 12 months, after the notice of objection has been served on you, if the Commissioner fails to determine the objection then you can take it to another level, which in this instance is the Valuation Tribunal.

I have looked at the Jamaican legislation and they provide 60 days—60 days. How in heaven are we proposing 12 months, a whole year Madam Chairman? It just does not make sense. So I would like the hon. Minister to consider this matter. Twelve months is too long, and we are legislating inefficiency. So I have to take action against a decision of the Commissioner of Valuations and you are telling me I can only take that action to the tribunal after the expiration of 12 months.

Sen. Ramdeen: If we can draw an analogy, Madam Chair. When you have an appeal to the Court of Appeal now, the Court of Appeal which deals with the most complex of matters across the board, there is no limitation, no specialist tribunal or anything like that, anything, the Court of Appeal sets itself a deadline of three months to determine any civil appeal. The High Court gives you six months to deliver a judgment. If this is a specialist tribunal that is manned by persons who are supposed to be versed in the specialities that are required to determine these objections, how could you allow that tribunal a period of 12 months? It is totally inordinate to do that.

The second part of it is, even if the period of time, whatever that period of time the Government thinks is appropriate before it elapses, they are saying 12

months, well what are you going to appeal to the tribunal when there is no determination? There is no determination to appeal. So you lodge an objection, the objection is not determined. What is it that you are going to appeal? The appeal is for the purposes of determining a finding. There is no finding. So it is either after the period of time the objection is allowed, or that is the end of the matter. There is nothing to appeal to the tribunal. The appellate process cannot be the same as the first-instance process, and therefore—

Madam Chairman: Okay, I think your point has been made. Sen. Chote.

Sen. Chote SC: Thank you, Madam Chairman. I too think that this is an inordinate length of time. In fact, it must be the longest time I have ever seen for an appeal to be lodged, and I do think that all that it will serve is to enhance slowness within a bureaucratic system. So I do think that the 90 days suggested is reasonable. In fact, I had 60 days in mind, but, you know, 90 days is not outside the boundary as it were.

The second thing is, I am not clear about one aspect of this, and I am wondering Minister, through the Chair, whether you could assist me with this. It says, “the Commissioner fails to determine the objection”. So is it that the tribunal fails to determine the objection? Because as I understand it, you make an objection, there is some sort of hearing or adjudication upon it and a decision is then made. Is that what is meant by this, or am I reading it all wrong?

Madam Chairman: Before the Minister answers, Sen. Roach.

Sen. Roach: Thank you, Madam Chair. I just want to associate myself with the comments made in terms of the length of time, it being unduly long. If you look at the Judicial Review Act, which speaks to decisions being made or ought to be made, the time given to bring a JR is three months, 90 days. I think that should be kept as a very reasonable position in these circumstances. Thanks.

Sen. West: In terms of the process, the Valuation Division conducts a valuation of a property. If somebody is dissatisfied with that, that person objects to the Commissioner of Valuations. That is the issue that is being dealt with under this provision. The Commissioner at that point will review what has been done, and determine based on new information or new consideration whether he will adjust the value upwards or downwards, depending on the information before him. That is what we are asking for 12 months for. We have not yet got to the tribunal stage of the process.

The reason why we think that 12 months is a reasonable period is because you will acknowledge that every five years the Commissioner is required to value upwards of 700,000 properties in Trinidad and Tobago. If there is a wash of objections sent to the Commissioner, there is no way he could handle that in three—it is not that the properties are being valued in stages as they come on. All the properties need to be valued and the roll published at a particular time. Therefore, to ask the Commissioner to determine objections in respect of hundreds of thousands potentially of objections within three months, I do not think that is reasonable.

What we can do, and what we propose to do, is try to expedite the objections. But to say that he has to do them within three months, I do not think it will be done. If we put the three months in and proceed to the next stage, what it means is that we will be just sending things forward to the Valuation Commission. The Commissioner still has to turn up to defend his assessment, and he will have a high volume of objections in front of him and have to deal with a high level of appeals. It seems to me we are just making the system more inefficient, because we are forcing matters down the pipe that we may not have to. The Commissioner may be able to adequately deal with the objection at his stage, if he has adequate

time.

Sen. Chote SC: That still does not give me much comfort with respect to the use of the word “determine”. I mean, I might be nitpicking, but I am just thinking that there must be some other word that we could use to indicate that the Commissioner has to make a decision, and what he is doing is carrying out a decision-making process when he is met with an objection. So I do not know if perhaps the drafters may be able to find a better word than that.

The other thing is, why do we not then—because we do not want to have this 12 months entrenched in the law and, forever after, the Commissioner would have 12 months to not give his reasons as it were, to not give his determination as it were. Why not put a time frame? Say, well, for the first two years from the assent of the law or the Act that this section will operate on the basis of 12 months for notice of appeal to be given, but thereafter it will be three months. Would that be at all possible? Because I do not imagine that every year you will be met with the same number of objections. It would be in the inception stage.

Sen. West: Yes, Madam Chair. Three issues I have got are—determination. That is a term of art. It is included already in other bits of tax legislation and there is adequate jurisprudence on what determination means and when it should be regarded to have been given. So I would not want to veer away from that, having regard to the fact that this is another bit of tax legislation.

In respect of giving the Commissioner the extended time only for the initial assessment, the reason why I am hesitant to do that is because this same process and the same volume of work will arise every five years. Therefore, at this point I will prefer to leave him with the 12 months, and if we see that it is becoming less and less voluminous, I would be happy to reconsider at that point, but because we have no idea what the volume is going to be and we anticipate a high volume, I

would prefer to leave it at the 12 months.

Madam Chairman: Sen. Roach and then Sen. Mahabir.

Sen. West: Sorry, just one more thing, Madam Chair. What I forgot to add was that in tax objections the standard term is either 12 months or 24 months for the tax authority to make a determination, because we understand the volume we have to deal with and the various categories of documents that need to be gone through to properly come to a determination.

Sen. Roach: Through you, Madam Chairman. Upon the determination by the Commission, does that attract any interest or anything while it is pending? Would it attract a penalty of interest?

Sen. West: The tax is not held in abeyance pending the determination. So once the tax is settled, no interest in penalty would arise.

Sen. Roach: You know, Minister, I understand what you are saying in terms of the reason for the 12 months, but to me we have to err on efficiency where this is concerned, just to make whatever the institution is, to me, more efficient. Give it whatever resources is necessary to keep to the timeline, and I think a shorter timeline will be more palatable for me. I am uncomfortable with the 12. I understand your reasons, but I beg to disagree with it on this occasion.

Sen. Dr. Mahabir: Thank you very much, Madam Chair. And Madam Chair, through you, you see, clause 12 refers to what exists in section 9. In section 9 the Commissioner is guided by section 9 (b), that the annual rental value of any land appearing in the Valuation Roll is incorrect. So that if a citizen, Madam Chair and Minister, says to the Commissioner of Valuations that the annual rental value appearing on the rental roll is \$500,000 and I have evidence that it should be \$50,000, it is incorrect.

I do not see any great procedure in simply taking the person's document,

instead of having him wait for a year, or more than a year and some, to determine what the correct value is. And so, when we give the Commissioner of Valuations a full year to perform what I consider to be basic and rudimentary functions, I think we really are building into the legislation a level of inefficiency that we could correct at this stage. Take for example below that, that land should not have been included in the Valuation Roll. So if there is an objection that my land was in the Valuation Roll when it should not have been, I am sure the information, based upon the internal processes and procedures, would be readily available to any clerk in the Commissioner's office. Not the Commissioner herself or himself, but any clerical officer, please check and see whether it is correct or not.

I do not really see why—many of these are objections, which are rudimentary and straightforward, should engage 12 months and more of the Commissioner's time, because I consider them to be basic, straightforward, rudimentary and it should be based upon information already in the possession of the Commissioner of Valuations, that he would then use to make his determination. Thank you.

Madam Chairman: Sen. Mark, one final time before the Minister.

Sen. Mark: Madam Chair, I would like to urge the Minister to reconsider this position of 12 months; it is too long. Maybe you might want to suggest a little lower. I went to 90, you might want to go, you know, a little higher, but it is unacceptable for us to agree to 12 months.

The second thing, Madam Chair, I want to draw to your attention is this: in this particular clause you would have seen mention made of “notice of objection”, but when you go to the legislation there is no form provided in the legislation before us to guide any property owner on the contents that should guide any property owner, as it relates to notice of objection. But when I went to Jamaica I

saw the form. I saw the form, Madam Chair. There is a form. So any owner who is objecting, they have a form that can be filled out easily. But here it is and so on we are making amendments to legislation and there is no form or forms attached. So this whole thing is subjective. We are not ready, and we are going to be in trouble.

Madam Chairman: Sen. Mark though, may I just point out, despite your passion about the form, that the amendment that you have proposed which is what we are discussing deals merely with the 90 days from the 12 months.

Sen. Mark: Forgive me, but I will come back to that later. I take the point.

Madam Chairman: So Minister?

Sen. West: Yes, Madam Chair. Sen. Mahabir, I agree with you that objections that are rudimentary can and should be handled within a shorter time frame, and that is what is contemplated. But a lot of these objections we do not expect to be rudimentary. I have been through a process of reviewing objections with respect to land and property taxes and it requires securing purchase documents for documentation, looking at the rate of wear and tear that should be applied to that kind of equipment, determining how it operates in the industry, things that are technical and take some time.

With respect to rudimentary things, yes, it could be short, but a technical land and building valuation objection could be a fairly lengthy process. And what we want to do is ensure that we handle as much as what we can handle internally before we go before the tribunal and clog that up.

Sen. Mahabir: Okay, but are you contemplating then, hon. Minister, through you, Madam Chair, that the Commissioner of Valuations be given up to a year, or are you saying he can take five years or 10 years to make a determination? Could we not put a time limit?

Sen. West: The year is the maximum.

Sen. Dr. Mahabir: The maximum; he can take up to a year.

Sen. West: That is what the legislation currently provides.

Sen. Dr. Mahabir: Right, very well. So that will take into account the complex features, but we are contemplating that there should be a determination within a couple of weeks if it is basic?

Sen. West: Exactly.

Sen. Dr. Mahabir: Thank you.

Madam Chairman: Hon. Senators, I will now put for clause 12 the amendment as proposed by Sen. Mark to the committee.

Question put.

Sen. Mark: I think I want a division.

The Committee divided: Ayes 14 Noes 16

AYES

Mark, W.

Haynes, Ms. A.

Ameen, Ms. C.

Hosein, S.

Obika, T.

Ramdeen, G.

Mahabir, Dr. D.

Roach, H.

Shrikissoon, T.

Ramkissoon, Ms. M.

Chote SC, Ms. S.

Creese, S.

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Raffoul, Ms. J.

Richards, P.

NOES

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan, R.

Hosein, R.

West, Ms. A.

Le Hunte, R.

Henry, Dr. L.

Singh, A.

Cummings, F.

De Freitas, N.

Dookie, D.

Huggins, R.

Lewis, Ms. A.

Romano, Ms. A.

Small, D.

Amendment [Sen. W. Mark] negatived.

Question put and agreed to.

Clause 12 ordered to stand part of the Bill.

Clause 13.

Question proposed: That clause 13 stand part of the Bill.

Madam Chairman: Sen. Mark, you have an amendment?

Sen. Mark: Yes, Madam Chair. Again, we are very adamant that we should

retain the Tax Appeal Board with more resources, more personnel, more judges; make it more efficient, the structure is already there, and not a valuation tribunal in the form that is being proposed by the Minister.

We are also suggesting for the consideration of the Minister a provision that would allow a person who is lodging an appeal shall deposit with the Commissioner as a security for the due prosecution of the appeal, such sum as may be prescribed for the particular class of case, as he appears in person or by an attorney-at-law before the body—this is a Valuation Tribunal, this is supposed to be the Tax Appeal Board—in support of his appeal, and that person shall be entitled to a return of the said sum whatever the outcome of the appeal.

Madam Chair, let me just explain that in countries like Jamaica again, and in Trinidad and Tobago, we had in the original legislation a provision that would have allowed a person who is making an appeal to the Tax Appeal Board to be refunded the sum of money that that person would have expended. The Minister of Finance has deleted that provision which was in the original legislation, and has said if you are appealing or you are going before a tribunal, or you are going to the High Court, you must bear your own costs. Now, that is very burdensome for citizens.

In Jamaica, Madam Chair, there is also the same provision in the legislation, where the Jamaican citizen is given state support to appeal at the level of the Revenue Court. So both in terms of Jamaica and in the parent legislation governing the Valuation of Land Act, the previous Patrick Manning administration seemed to have had more heart and more care for the citizens, and he proposed at that time that the State was prepared to allow the citizens to be refunded. In this instance, that is not being proposed.

So I want to go back to the 2009 Act by the former Prime Minister—and

may his soul rest in peace—where he proposed that that be included, and I am getting solid support out of Jamaica in their Valuation of Land Tax Act, for this very provision. So I ask the hon. Minister to give consideration to the hardships that ordinary people are faced with today, and have some kind of concern for a provision that was in the original Act and the Minister of Finance has now moved it out completely, and that is not fair. So I am just asking her, through you, Ma'am, to consider.

Sen. Ramdeen: Madam Chair, thank you very much for the opportunity. Minister, I am very wearisome of those provisions that have fixed statutory time limits for the filing of an appeal for two reasons. When the limitation period for the filing of the appeal is laid down in statute there can be no extension of time of the 30 days. In a normal appeal we have 42 days to file an appeal. I would ask that you consider both aspects of it. One, that we extend the period of time from 30 days to 42 days, but more so that you provide in this said section a power in the appeal tribunal to allow an extension of time to file a notice of appeal, because once it is fixed by statute and you are outside the 30 days, that is it.

There should be some form or mechanism whereby someone who has not been able for some legitimate reason to meet the 30-day time period, which is a very short time period, is able to apply to the tribunal for an extension of time to file their appeal.

Madam Chairman: Sen. Ramdeen, just for clarification we are speaking on clause 13 and on the amendment proposed by Sen. Mark. You are actually proposing further amendments to clause 13?

Sen. Ramdeen: I am suggesting in addition to what Sen. Mark has proposed. This is the provision that deals with section 21 subsections (1) to (4). So I am suggesting first of all—

Madam Chairman: No, I understand. I just wanted to clarify that. Any other comments before I ask the Minister to speak?

6.00 p.m.

Sen. West: Thank you, Madam Chair. We had explained why we are of the view that the introduction of a Valuation Tribunal is a good idea in this context. One, we expect a lot of objections. Two, we have found in respect to taxes where you go from the objection section to the Tax Appeal Board, which is a court of first instance, that the taxpayer does not generally get a real opportunity to be heard by an independent semi-informal body, where a lot of issues can be easily dealt with, without having to incur the cost of going to an appeal, because the Tax Appeal Board is a process that could be expensive. Individuals can appear on their own behalf but companies must appear through an attorney.

So we wanted, before you got to that formal stage, to allow an intermediary independent body to be able to objectively look at this and give the person that opportunity to be heard, and we think the tribunal can do that. If you look, when we get to the provisions now, you will see that the tribunal, specifically mentioned in the Act is the tribunals—what we anticipate or hope the tribunal will do which is to give the parties the opportunity to have a discussion and settle the matter amicably between them. That is not available in the Tax Appeal Board Act.

Sen. Ramdeen, the tribunal will be given the power to determine their own laws but we do contemplate some similarity with what is in the Tax Appeal Board legislation and that does have a provision for an extension of time if you are out of time for filing because I do accept that there will be lots of reasons why somebody may not be able to appeal within the right time.

Sen. Ramdeen: Are we putting in something to that effect?

Sen. West: We are leaving it up to the tribunal to determine its procedure.

Sen. Ramdeen: Respectfully Minister, we had a situation like this before under the Summary Courts Act where there used to be a time period of seven days and once you file your appeal outside the seven days, because it was not a rule that was laid down by the rules but was laid down by the Act itself, the statute itself, there was no power to extend the time beyond that. And then the Legislature amended the legislation to give the Court of Appeal a power for the purposes.

Sen. Roach: Madam Chair, can I just add one thing here please.

Sen. West: Yes, Sen. Ramdeen, having regard to the fact that the provision does exist in the Tax Appeal Board Act itself, I am happy to put in a provision to that effect.

Sen. Ramdeen: I am obliged. I am very much obliged. Thank you.

Sen. Roach: Through you, Madam Chair, again, I am just coming back with the 30 days aspect of it too. I think it could be extended, I mean, this I am talking about in the equity, we want to give the Commissioner 12 months but we do not want to give the landowner a reasonable more time, 30 days. Make it 60 days.

Sen. West: I have accepted the recommendations—

Sen. Roach: Oh, you—

Sen. West: Yes, I have accepted it and we are going to take it into account, but remember the taxpayers are dealing with one property, more likely than not. The Commissioner is dealing with potentially 700,000. So a reason for discrepancy, but we have accepted the recommendations to legislate for the ability to extend.

Madam Chairman: All right, so if I could just clarify something. The amendment as circulated by Sen. Mark deals with two aspects, the aspect of the Tax Appeal Board of substituting Valuation Tribunal for Tax Appeal Board, correct? And then the aspect of the deposit, yes? But you are, Minister, saying that you are going to accept another form of amendment. Yeah? That you will

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then submit to the committee. So shall we therefore take a vote on the amendment as proposed by Sen. Mark and further amended, because I took down what you said. Sen. Ramdeen.

Sen. Ramdeen: Milady, just to assist the Minister. Minister, perhaps you can ask the drafters to look at the form of the provision in addition to the Tax Appeal Board, the one in section 130A of the Summary Courts Act. That is where the Legislature had given the powers as well to extend the time, 130A.

Sen. Mark: Madam Chair, could we stand down—

Madam Chairman: Well, what I was going to do Sen. Mark was to put your amendment and then subject to what is determined, then we will stand down the clause. Okay?

Sen. Roach: Madam Chair, could I just ask for clarification purposes, based on Sen. Mark's comments. I think—I am not sure if both were addressed by the Minister, you know. The aspect of the reimbursement for expenditure in terms of mitigating. What is the position on that?

Sen. West: We are not minded to accept that amendment. The normal rules will allow the taxpayer who is successful and has not brought a frivolous matter before the body to recover costs, and therefore we think that that is adequate. We are of the view that if we sponsor the appeals of persons to objections we will have an abuse of that provision, which is why we removed it and decided that if you bring a matter and there is merit in the matter then you can seek recovery of cost. And remember that the tribunal is intended to be a more informal setting and therefore we do not anticipate the costs to be prohibitive, because an individual can represent his or herself, and argue his case before the tribunal.

Sen. Roach: Is it provided that the tribunal has that power to award costs as in the case of the Industrial Court?

Sen. West: The rules of the tribunal will be drafted by the tribunal.

Sen. Roach: So it is not in the parent Act?

Sen. West: It is not in the parent Act, no.

Sen. Roach: You see, so I am saying. But in the Industrial Court, the IRA, there is a discretion, usually it is anticipated, it is ordinary, not all of the stringent rules and so forth, right? But in terms of costs it could be awarded in meritorious cases, where it is merited. So I was hoping that something like that could be visited, or probably accommodated in this as well, as opposed to waiting for the procedural aspect of it. So it is discretionary, it remains a discretion in good meaningful, you know, in good cases. It is not regularly used, but there are times when it is necessary.

Sen. West: Yes, Sen. Roach. As I said, we would have considered that during the drafting of the provision and we do not think at this point in time, that that is something that we should prescribe in the legislation. We would prefer to leave it up to the tribunal to determine what its procedures will be.

Sen. Mark: Madam Chair, again, through you to the hon. Minister. The Jamaican Parliament did not leave it up to the Revenue Court.

Sen. West: I accept that.

Sen. Mark: They have that in the legislation, and Mr. Patrick Manning—

Madam Chairman: Sen. Mark—

Sen. Mark: No, no, please—

Madam Chairman: Yes. Okay. Let us, yeah—

Sen. Mark: I just wanted, Madam Chair, to indicate that under the parent Act, right, the Valuation of Land, section 27, subsection (3), Madam Chair, there is a provision that says that if you are appearing before the Commissioner of Valuations—Madam Chair, I am saying that if the Minister does not want to go to

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the level of the tribunal and have it inserted here, what about at the level of the Commissioner of Valuations? Because remember, the Commissioner of Valuations is going to make determinations, and if I am unhappy with those determinations I can go to the Commissioner of Valuations and make my objection, and then he will have his hearing. Now in this instance, under 27(3) of the parent Act, here it is, it says:

“Any person attending in accordance with”—what I have just said—“before the Commissioner or an officer authorised by him is entitled to have his reasonable expenses paid from public funds by such person and in such manner as may be prescribed.”

So I am saying if you do not want to go to the level of the tribunal, because this thing is not compulsory eh, understand that, it is not compulsory. So to give the person an incentive, Madam Chair, I am suggesting that you adopt or consider adopting the same provision that we had in the parent legislation. I would like her to consider.

Madam Chairman: Minister, do you have anything different to say? So I think at this stage there has been enough discussion on this, so I am going to put forward the amendment as proposed by Sen. Mark.

Hon. Senators, the question is that clause 13 be amended as circulated by Sen. Mark and further amended at the second to last line of sub (5) by deleting the words “Valuation Tribunal” and substituting the words “Tax Appeal Board”.

Sen. Mark: May I have a division on this one?

Question put.

The Committee divided: Ayes 6 Noes 22

AYES

Mark, W.

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Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Ramdeen, G.

NOES

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan, R.

Hosein, R.

West, Ms. A.

Le Hunte, R.

Henry, Dr. L.

Singh, A.

Cummings, F.

De Freitas, N.

Dookie, D.

Huggins, R.

Lewis, Ms. A.

Romano, Ms. A.

Small, D.

Shrikissoon, T.

Ramkissoon, Ms. M.

Chote SC, Ms. S.

Creese, S.

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Raffoul, Ms. J.

Richards, P.

Dr. D. Maharaj and Mr. HRI Roach abstained.

Amendment [Sen. W. Mark] negatived.

Madam Chairman: Having said that, Minister, I believe based on your discussions with Sen. Ramdeen that you propose to amend clause 13. Do you have the form of the amendment now?

Sen. West: I believe I do. We are proposing to insert a new subsection (3) to section 21, to read as follows—

Madam Chairman: Just one second. So that you will have to have a (1) and (2) of the amendment or an (a) and (b) of the amendment. Because you are amending firstly by deleting the words “Tax Appeal Board” wherever they occur and substituting the words “Valuation Tribunal” and then you are also—

Sen. West: So, Chair, the first amendment is as circulated.

Madam Chairman: Yes.

Sen. West: Yes. And the second proposed amendment, which is (b) of clause 13:

By inserting after subsection (2) the following subsection:

Upon an application by an owner or local authority for an extension of time to give notice of appeal under subsection (1), the Valuation Tribunal may extend the time prescribed to give notice of appeal on any terms and conditions as it thinks fit.

Madam Chairman: Hon. Senators, the question is that clause 13 be amended as follows. And I am going to read the entire clause 13:

Section 21 of the Act is amended by:

- (a) Deleting the words “Tax Appeal Board” wherever they occur and substituting the words “Valuation Tribunal”; and

(b) By inserting after subsection (2), the following subsection:

(3) Upon application by an owner or local authority for an extension of time to give notice of appeal under subsection (1), the Valuation Tribunal may extend the time prescribed to give notice of appeal on any terms and conditions that it thinks fit.

Question put and agreed to.

Clause 13, as amended, ordered to stand part of the Bill.

Clause 14.

Question proposed: That clause 14 stand part of the Bill.

Madam Chair: Sen. Mark, you had proposed an amendment?

Delete Clause 14.

Sen. Mark: Yes, Ma'am. We would like to suggest that, first of all this Valuation Tribunal in its current form is not going to serve the public interest and we will talk about that as we get into that section in a more detailed way. And in those circumstances we are proposing that the Tax Appeal Board be retained and be properly resourced in order to carry out the function. There will be impartiality, there will be independence. It is a superior court of record and in those circumstances we do not see this tribunal ever coming close to the power and independence of this Tax Appeal Board. The tribunal rather, could never come as close as we would like it to come to the independence of this particular body called the Tax Appeal Board. In those circumstances, we are proposing that we delete that entire clause 14 because we are proposing that we retain the Tax Appeal Board and not remove it as the Government is proposing, Madam Chair.

Sen. Ramdeen: I am just raising a concern, Madam Chair, to the Minister through you. At the beginning of the subsection, the subsection begins:

“22(1) If the Commissioner or any person affected by the decision...”

Is the person—

Sen. West: Sorry Sen. Ramdeen, I am missing some of what you are saying. Can you speak into the mike, please?

Sen. Ramdeen: Sorry, I apologize. The beginning of subsection 22(1) begins with the parties who are vested with the right of appeal as being the Commissioner or any person affected by the decision. And then with respect to the right of appeal being effected in the second line, it says if you are dissatisfied with the decision of the Valuation Tribunal, the Commissioner or such other person—is there some reason why you moved away from any person affected to—seems to me, to widen the net—to such other person, because it would seem as though the locus to prosecute an appeal ought to either be the same or limited to the persons who have the right of appeal?

Madam Chairman: But, Sen. Ramdeen, I have proposed the amendment as circulated by Sen. Mark. That is what we are dealing with right now and when that is—

Sen. Ramdeen: I apologize.

Madam Chairman: Yeah, okay. Anybody else? Minister.

Sen. West: Yes, Chair. For the reasons outlined previously, more than once I think, but I am happy to repeat if anybody wants me to, we are of the view that the creation and operation of a Valuation Tribunal will significantly aid the process of resolving any matters that come up in respect of challenges to the valuation. So we are not at this time prepared to accept Sen. Mark's recommendation that we revert to the Tax Appeal Board.

Question, on amendment, [Sen. W Mark] put and negatived.

Madam Chairman: Sen Ramdeen—

Sen. Ramdeen: I think I have explained it.

Madam Chair: Yes. Minister.

Sen. West: Yes, Madam Chair. We believe that the reference in line three “to such other person” refers you back to persons mentioned earlier in the section. So we do not think that there is a need to repeat the same words.

Sen. S. Hosein: Thank you, Madam Chair. My issue is with respect to subsection (2) of the section itself, of the parent Act, with regard to the repeal being only on questions of law. I think that we can delete “on questions of law only” because it is very restrictive. I know you said earlier that is how it is drafted, but I know you can, in fact, appeal both on grounds of facts and grounds of law. So I think that just for clarity we can just remove “on questions of law only”. I do not see it as being a very detrimental amendment.

Sen. West: And as I would have indicated earlier, Sen. Hosein, the right to appeal against questions of law do encompass appeal in respect of questions of fact where the tribunal has made a fundamental error. So we think that the provision as drafted is adequate.

Sen. Ameen: Minister, in that regard, would you consider deleting the word “only”?

Sen. West: It does not make a difference, I do not think. Because I could ask the drafts-person—

Sen. Ameen: Yeah, if they could advise because the word “only” suggests to me that you are restricting it.

Sen. West: And just to point out this is consistent with the—well, identical to the language that previously existed.

Question put and agreed to.

Clause 14 ordered to stand part of the Bill.

Clause 15.

Question proposed: That clause 15 stand part of the Bill.

Madam Chair: Hon. Senators, we have amendments proposed by Sen. Mark, Sen. Mahabir, Sen. Ramkissoon, Sen. Shrikissoon and by the Minister. So we have five sets of proposed amendments to clause 15.

Sen. West: Madam Chair, might I suggest that we consider starting with the amendments that we have proposed? That may address a lot of the issues raised by the other Senators.

- A. In proposed section 25A (3), delete the word “Minister” and replace with the word “President”;
- B. In proposed section 25B (1) and (2) delete the word “Minister” and replace with the word “President”;
- C. In proposed section 25C delete the word “Minister” and replace with the word “President”;
- D. In proposed section 25D (c) delete the word “Minister” and replace with the word “President”;
- E. In proposed section 25G delete subsection (2) and renumber subsections (3) to (5) as subsections (2) to (4).
- F. In proposed section 25H delete paragraph (b) and renumber paragraphs (c) to (d) as paragraphs (b) to (c).

Madam Chair: Yes. So Minister.

Sen. West: Madam Chair, having heard the comments from both the Opposition Bench and the Independent Bench in respect of the powers granted in our original draft to the Minister, we are proposing that where the Minister appears in the sections, that is section 25A(3); section 25B(1) and (2); section 25C; section 25D, subsection (c); section 25G—no, sorry those areas that we replace the Minister with the President and the effect of that is that the President is the person who will

have the authority to appoint the tribunal rather than the Minister.

Sen. Ramdeen: Milady, section 80 of the Constitution provides the way in which this operates. In that it says:

“(1) In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where other provision is made by this Constitution or such other law, and, without prejudice to the generality of this exception, in cases where by this Constitution or such other law he is required to act—

- (a) in his discretion;
- (b) after consultation with any person or authority other than the Cabinet; or
- (c) in accordance with the advice of any person or authority other than the Cabinet.”

So that the effect of the amendment does not give, in reality, the power that the Minister proposes to give to the President.

6.30 p.m.

Madam Chairman: Minister.

Sen. West: Yes, Madam Chair. We are of the view that replacing the functionary should give the citizenry enough comfort that there is some distance between the Minister and the President, and we think that the clause, as amended, should remain and not be subject to consultation with the Prime Minister and the Leader of the Opposition as is being proposed.

Madam Chairman: I do not think that is what Sen. Ramdeen is asking.

Sen. Ramdeen: Perhaps I did not make it clear, Madam Chairman. What the

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effect of section 80 is, wherever you have “President”, it means the Cabinet or the Minister exercising the general authority of the Cabinet. So if you replace the word “Minister” with the word “President”, it simply means that you are either going to get—the President has to act mandatorily on the advice of the Minister or the Cabinet. So that it does not give the effect of placing any distance between the exercising of power or the Cabinet exercising the power and, therefore, at the end of the day, it amongst to the same thing.

Madam Chairman: Minister.

Sen. West: Chair, I believe that that is the issue that I responded to just now when I indicated that the Government is of the view that we are happy to replace “Minister” with “President”, but we would not want to take it beyond that.

Madam Chairman: Sen. Chote.

Sen. Chote SC: Madam Chair, I support Sen. Ramdeen in his concern about the wording of this particular clause and I was wondering if he could be asked to, perhaps, suggest a cure for what appears to be a mischief.

Sen. Ramdeen: To answer Sen. Chote, the answer is in section 80(a). You just add the words “in his discretion” so that it is clear that what is triggered is section 80(1)(a) so that the President would be making the determination.

Sen. West: Madam Chair, I did seek guidance on this, and the Government’s position is that it should remain as we presented it. We are of the view that the President would be at liberty to question any instructions she gets from Cabinet but it should remain as the—the amendment that we are proposing as laid out here.

Sen. Chote SC: Madam Chairman, may I?

Madam Chairman: Sen. Chote.

Sen. Chote SC: I am becoming a little more concerned because what it seems is that we are being asked to use the word “President” but mask in a sense the fact

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that it is upon the advice of a politician, which is what we were trying to step away from in the first place. We were saying that to ensure the independence of this body, that we should take every step that is reasonable to insulate that person from political interference and I think we had considerable input in the debates about the conflicts of interest and the potential conflicts of interest and so on. So I do not see that it is unreasonable for us to ask that the words “in his discretion” be inserted to make it clear that this person is acting independently.

Sen. Ramdeen: I just want to say one thing, Madam Chair. The Minister has kindly explained to us that the view of the Government is that if the word “President” is inserted for the word “Minister”, that that means that the President has the discretion to not agree with the Minister or Cabinet?

Madam Chairman: Can you restate what you just said, Minister?

Sen. West: I said that the President would have the opportunity to have a discussion with Cabinet in respect of its instructions, not that she would be able to—I am not sure what words you used so I do not want to repeat, but that is what I said, I did not say that you—

Sen. Ramdeen: Madam Chair, for the record, I want to just put on the record that that is not the law. The law, as represented by the Constitution, is that the President must act. He has no discretion to act under section 80 where the word “President” is used.

Madam Chairman: Any other comments? Sen. Richards.

Sen. Richards: Thank you, Madam Chair. Just a question to the Minister, through you. What is the Government’s concern about adding Sen. Ramdeen’s suggestion if it is that the intention is that Her Excellency, or whoever the President may be, would have the remit in that particular situation, that particular choice of discretion?

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Sen. West: In other bits of legislation where similar powers have been granted, the language is as we have outlined it and we are concerned about varying from that in this bit of legislation. That is our concern about going another way.

Sen. Richards: And through you, Madam Chair, once again, and there is no concern that—because on several occasions, the hon. Attorney General has indicated that “President” by itself is interpreted as Cabinet and that is where my confusion comes in as different from what you are stating now.

Sen. West: Well, no, it is not different from what I am saying now. What I am saying is that the concern that we heard during the debate on Tuesday was that the Minister could act arbitrarily to engage people and to terminate people for all sorts of spurious reasons and the request that was made of us was to reconsider replacing “the Minister” with “the President” to avoid that potential arbitrary action. We have acceded to that and we do not think it is necessary to go further.

Sen. Richards: One more comment, if you will, Madam Chair, and based on what you have said a short while ago, there will be some sort of interaction between Her Excellency and the Minister if there is some concern?

Sen. West: Not the Minister, it is the Cabinet eh.

Sen. Richards: The Cabinet, sorry, yes. And if there is a disagreement, who has the final say?

Sen. West: Yes, we do agree that the President is required to act on the advice of the Cabinet.

Sen. Richards: So then at that point, the President really has no say, no final remit so it reverses, in my understanding, in limited understanding, to what the Cabinet has instructed or advised. So then why involve the President, Her Excellency, at that stage anyway?

Sen. West: Yes. What we have done, as I indicated, is we have moved from a

position where the power rests in the Minister who you are saying is influenced by political issues and may act arbitrarily on his own to the position where it is the President as advised by the Cabinet and we think that provides adequate cover. In a situation where we are talking about a tribunal, that is below the level of first instance where you still have three levels of appeal.

Sen. Small: Thank you, Madam Chair. I have listened to the Minister, and I understand your argument. I would like to share with you, Madam Minister, that when I sat on the Joint Select Committee that was looking at the procurement amendment, this same argument came up when we were dealing with the review board, and the proposal from the Government, initially, was the Minister, and the argument went along almost this same line, and the Government recognized, one, it was a new institution and you needed to repose a level of confidence in the new institution. And on that basis, amongst others, the Government took the argument in the discussions, at that stage, on the review board that it should be appointed by the President. I think that that is my concern. It is a new entity; it is not something that—it is brand new and I think what you want to try to do, with the greatest of respect, Madam Minister, is to imbue a new entity with a level of confidence from the people, from citizens, that it is completely clean of the political system. So I understand your argument. Your argument is that you have said the Minister alone, we remove that, it is essentially the collective view of the Cabinet which should insulate and I think I am not sure if that is enough.

Madam Chairman: Sen. Mahabir.

Sen. Dr. Mahabir: Yes, thank you very much, Madam Chair. To the Minister, I see the amendment that is proposed by the hon. Minister but it makes absolutely no difference to what existed in the initial Bill. So it is just a change of word with absolutely no meaning and you see, I would just like to find out whether the

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Government has made a firm decision that they will change the word only because my position why I argued in the debate is that I would like Her Excellency the President to make these appointments in consultation with the Leader of the Opposition and the Prime Minister. So I need to get a clear position from the hon. Minister as to whether it is Government's policy that they will not go that route, and if that is the case, keep "Minister". Why change and why put in "President" simply because it sounds better?

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Madam Chair, just to assist everyone, if you go to section 40 of the Constitution, which is the section that allows Senators to be appointed, the Independent Senators are appointed by Her Excellency now and the section that allows the power to do that says:

“...nine shall be appointed by the President in his discretion...”

And that is why the President is able to appoint nine Independent Senators and choose who the President wants. So you cannot get it any clearer than that in demonstrating that the fact that you have to have the words “in his discretion” in order to effect the political insulation that everyone is clamouring for.

Sen. West: Madam Chair, can I ask that we stand this one down, please?

Madam Chairman: All right. Hon. Senators, clause 15 is deferred and stood down.

Sen. Ramkissoo: Madam Chair, are we deferring all the amendments or we are going through it?

Madam Chairman: No, we are deferring clause 15 in its entirety.

Sen. Ramkissoo: Okay.

Sen. Mark: And you have not heard me as yet, eh?

Madam Chairman: Correct. I have only heard the Minister on her proposed

amendments, I will hear everyone else when we revert.

Clause 15 deferred.

Clause 16.

Question proposed: That clause 16 stand part of the Bill.

Insert the words “subject to affirmative resolution of Parliament” after the word “Order”.

Madam Chairman: I believe Sen. Mark, there is an amendment on your behalf:

Sen. Mark: Madam Minister, again, to ensure some level of checks and balances in the Minister doing things without referring to the Parliament, I have asked that this matter be subject to an affirmative resolution of the Parliament, but with your leave, through the Chair, I am prepared to compromise and I ask you to consider a negative. So again, whatever he is doing, he would table in the Parliament so that the country can see and if we find it is objectionable, under the Standing Orders, we can so file a motion rather than forcing a debate on the matter. So I am prepared, as how you said earlier on, you will go with a negative as opposed to an affirmative. So I would like you to consider that as well.

Madam Chairman: Minister.

Sen. West: Madam Chair, section 26 gives the Minister to prescribe a fee for the production of a certificate of information on the roll. I think that it goes beyond what is reasonable to ask the Minister to come to Parliament to debate the imposition of a fee, Madam Chairman, so we are not minded to accept this recommendation.

Sen. Mark: No, we are not asking you to bring him to the Parliament to debate, that is an affirmative and that is why I am saying I am prepared—

Sen. West: Yes, but he will be obliged to come and debate it if somebody decides to raise it before the Parliament. So if it is a negative resolution, it does not avoid

the debate, it just means that a debate may or may not occur, and I am saying for the imposition of a fee that that is unreasonable. The Minister should be able to impose a fee for the provision of a service without a parliamentary debate.

Sen. Mark: Now, even though we are not elected, we are part of the Parliament and we are lawmakers, and if you are going to impose a fee on the population, it should not be done secretly and I think you are promoting—well, I should withdraw that. I think that, for instance, what that would amount to is secrecy.

Sen. West: It is not at all secrecy, it is just avoiding parliamentary debate. The fee will be made public because members of the public will have to bear the fee, so it is not a question of secrecy.

Sen. Mark: Yeah but listen, Madam Chair, may I just bring to the attention of the hon. Minister that under section 75(1) of the Constitution, the Cabinet is collectively accountable to the Parliament.

Madam Chairman: Sen. Mark, I do not think you have to bring that to the attention of the Minister. I think the Minister has provided an answer to what you have raised, your proposed amendment.

Does anyone wish to raise or make a comment with respect to the proposed amendment of Sen. Mark? Therefore, I will now put the amendment to the vote.

Question, on amendment, [Sen. W. Mark] put and negatived.

Question put and agreed to.

Clause 16 ordered to stand part of the Bill.

Clauses 17 and 18 ordered to stand part of the Bill.

Clause 19.

Question proposed: That clause 19 stand part of the Bill.

Delete clause 19.

Madam Chairman: Sen. Mark, you have circulated an amendment:

Sen. Mark: Yes. Madam Chair, we are talking about Schedule II of this particular provision. We find this provision very invasive, intrusive and we find the provision to be quite unacceptable in terms of the information that is being requested, particularly when account is taken of the fact that we do not have any guarantee that this personal information can be misused by the personnel who may come upon the said information. In those circumstances, we are proposing that this be deleted completely and be replaced by the original form that is in the legislation that we have circulated. That is the legislation under a Bill entitled an Act to amend the Valuation of Land Act, Chap. 58:03, and we are proposing, Madam Chair, there is a provision in the previous legislation, not this one; I made an error when I mentioned this.

Madam Chairman: Okay. Sen. Mark, you are proposing that this clause 19 be deleted and that we would therefore revert to Schedule II as obtains in the current Valuation of Land Act. Correct? That is what you are proposing? [*Laughter*]

Sen. Mark: Yes, I am in support of that.

Madam Chairman: Minister.

Sen. West: Madam Chair, we have considered Sen. Mark's proposed amendment and we are not in agreement. The reason why we have sought to vary the Schedule is because the Commissioner is not receiving adequate information on the Schedule as previously drafted. We want to make the information return as comprehensive as possible to limit the need for 100 per cent visits to all sites, to limit the kinds of visits that we have to effect and in those circumstances, we think that the information requested is reasonable.

Sen. Mark: Madam Chair, may I also seek your guidance on this matter? This matter is now under appeal at the Court of Appeal of the Republic of T&T. Leave has been granted on this valuation return form. Do you think it is appropriate,

whilst this matter is pending determination by the Court of Appeal, that this Senate should be interfering with the process in this matter?

Madam Chairman: Are you invoking a Standing Order, Sen. Mark?

Sen. Mark: Yes, the sub judice rule.

Madam Chairman: Minister.

Sen. West: Madam Chair, we were quite careful in reviewing the legislation and bringing amendments to avoid the sections that are the subject of the court matter. We got guidance and advice from our attorney who is handling the matter, and we do not think that the form itself is under challenge and therefore, it is not a matter that is sub judice.

Madam Chairman: Sen. Hosein.

Sen. Hosein: Thank you very much, Madam Chair. To the hon. Minister, now when a person completes this valuation return form and they submit it to the Commissioner's office, can a member of the public who makes an application under the Freedom of Information Act be able to obtain the information as contained in these forms?

Sen. West: It would seem to me that the Data Protection Act would protect the member of the public from disclosure of that information. The information is being collected for the purpose of the administration of the legislation.

Sen. Hosein: Madam Chair, through you, can I ask the Minister under what section of the Data Protection Act are we looking at in order to protect this information? Just out of clarification.

Madam Chairman: Hold on. The Minister has answered what—she has given an answer. Minister, perhaps, I think Sen. Hosein would like you to check. I do not know if you have that level of detail but in the meantime, Sen. Mahabir has an issue that he wants to raise.

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Sen. Dr. Mahabir: Yes, thank you very much, Madam Chair. The fine was discussed at length, it is up to \$5,000 at the discretion of the magistrate for failing to file this particular form. But what concerns me is if there is information requested here that the property owner refuses to give, is there a penalty associated with that? Take for example, Madam Chair, under owner's name, personal information, contact details, telephone number, his cell number or his email. If he refuses to supply that—he has it but he refuses to supply it or his national ID, passport or driver's permit. He does not supply this bit of information, he supplies everything else such as the address at which the property is located, is he committing a breach in any way or is it that the citizen is compelled to supply everything that is asked for in this form, including his cell number? And if he does not provide it, what is the penalty for failing to supply information which he has on his personal files and which he does not list on his form? So it is basically my cell number, I did not put it in here, it can be proven that I have a cell phone and I did not record it here. Am I in breach and therefore what is the penalty for that breach?

Madam Chairman: Minister.

Sen. West: Thank you, Madam Chair. The information that is requested in the form is not only to allow the Commissioner to arrive at a reasonable valuation, but also to allow for easy communication. The information in respect of which wilful default will land you in some trouble is where there is a problem with respect to your—the information provided to value the property. So something like a cell phone or an email, omission of that will not. Yes?

Sen. Dr. Mahabir: Very well, thank you very much, Minister.

Madam Chairman: Sen. Mark.

Sen. Mark: I just want to get some clarification, Madam Chair, through you. Are

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you saying, Madam Minister, that there are sections of the form that would be purely voluntary? Meaning that, for instance, if I chose to provide information, accurate information on certain sections of the form and not to other sections of the form, then there is nothing in the law that can compel me to so do. Am I correct?

Sen. West: What I have said, Sen. Mark, is that the information that would—if you fail to provide it or if you wilfully provide incorrect information that may lead to a prosecution is information that impacts your valuation.

Madam Chairman: Minister, do you have a response to Sen. Hosein under the data protection?

Sen. West: No, well, with respect to the freedom of information, there is provision there to refuse to provide information on the basis of the fact that it is personal information. There is the opportunity for persons to appeal that decision and we cannot predict how the court will determine, but we are of the view that the Freedom of Information Act does provide some protection with respect to personal information.

Sen. Mark: But in terms of what you said earlier, it does not apply?

Madam Chairman: Sen. Mark.

Sen. Mark: Sorry, Ma'am, sorry,

Madam Chairman: Yeah, Sen. Ramkissoo wanted to raise an issue.

Sen. Ramkissoo: Thank you, Madam Chair. I just have a question. In relation to items 3 and 6, residential building rents and commercial rents and we are asking on this form that you have the name of each of the tenants. And my question is, since we are doing a valuation every five years, say three of those five years, the place is empty, the room is empty, the space is—the lease is up and it is not renewed, how does an owner now bring this attention to the Commissioner to say that this form needs to be amended? Do they just know that they have to fill out

another form even though they did not make the five years' time?

Sen. West: The information provided on the form with respect to details of the rent received in the particular period and or the tenants will be information based on what provides at the time. What we are going to ask the owners to provide us with updates on, is only information that will impact the valuation. So if you are construct a building on the property or if you do significant revision of the property or if the property is destroyed, for example, but not things like who are your tenants and what rent have you received in the period. That is a snapshot bit of information.

7.00 p.m.

Sen. Ramkissoon: Let me see if I can ask the question a little differently then. So you have 10 tenants, right. It is a commercial lot, a mall. You have 10 tenants. Out of those 10, you fill a form that you have 10 tenants, but next year something happens, God forbids, like a leakage or something, and you only have five tenants. So you are only receiving rent from five out of the 10. So, obviously your annual rental value has now been directly impacted. How now does this owner now bring this attention to the Commissioner? Because in the form there is no space. So how now does an owner bring this information forward?

Sen. West: The contemplation is that the owner can communicate with the Commissioner through written correspondence, indicating any change of circumstances that impact the value, his annual rentable value. And the Commissioner will then review the position to determine whether there should be a change.

Sen. Ramkissoon: Madam Chair, just one more. Is it something that they would expect to be doing, a notice, or is it something formal?

Sen. West: In reviewing an amendment put forward by one of the Senators, I

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spoke to the draftspersons and we did contemplate recommending an amendment different from what had been suggested, but that should cover the recommendation. I do not know if we are at liberty to propose that recommendation at this point.

Sen. Ramkissoon: Madam Chair, when it comes up we can talk about this. So, thank you that it was considered.

Madam Chairman: Hon. Senators, the question—Sen. Ramdeen.

Sen. Ramdeen: This is to assist everyone on the issue that the Minister raised.

Madam Chairman: Which issue?

Sen. Ramdeen: About the data protection.

Madam Chairman: Yes.

Sen. Ramdeen: The sections of the Data Protection Act that deal with personal information and the protection of personal information, are section 29 to section 62, by Legal Notice No. 2 of 2012. The only sections of the Data Protection Act that have been proclaimed are sections 7—18, 22, 23, 25, 26 and 28. So none of the sections that relate to the protection of personal data have been proclaimed or are in force.

Question, on amendment, [Sen. W. Mark] put and negatived.

Question put and agreed to.

Clause 19 ordered to stand part of the Bill.

Madam Chairman: Hon. Senators, at this stage, we have outstanding clauses 3 and 15, and then we have some new clauses proposed. At this stage therefore, we will suspend the Committee for 15 minutes.

7.03 p.m.: *Committee suspended.*

7.30 p.m.: *Committee resumed.*

Madam Chairman: Hon. Senators, I am going to suspend the Committee to

assume the Chair, and deal with the Procedural Motion.

Senate resumed.

PROCEDURAL MOTION

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continues to sit until the completion of the business at hand.

Question put.

Sen. Dr. Mahabir: Madam President, could I get a division on that? Yes? I do not know what the business at hand is.

Sen. The Hon. C. Rambharat: Madam President, we propose to complete the Bill before us, the committee stage, and we also propose to pilot the Property Tax (Amdt.) Bill tonight.

Madam President: All right. May I just say that this—a division has been called, the division was called without reference to any discussions and therefore the division has to take place. Okay?

The Motion is that the Senate continues to sit until the completion of the business at hand. Yes.

Sen. Ameen: Madam President, if I may make a suggestion, considering the request for clarity from the Senator, and I am sure we all will have that desire for clarity, perhaps we could ask the mover of the Motion to clarify his Motion and do it over.

Madam President: Members, if I may say this. May I say this, please? This is rather unorthodox, rather unorthodox. There is supposed to be collaboration among Members. And therefore, a division has been sought, and therefore I have to now go through with the division. Okay?

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The Senate divided: Ayes 19

Noes 10

AYES

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Henry, Dr. L.

Singh, A.

Cummings, F.

De Freitas, N.

Dookie, D.

Huggins, R.

Lewis, Ms. A.

Romano, Ms. A.

Roach, H.R.I.

Small, D.

Shrikissoon, T.

Richards, P.

NOES

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

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Obika, T.

Ramdeen, G.

Mahabir, Dr. D.

Chote SC, Ms. S.

Creese, S.

Raffoul, Ms. J.

Sen. M. Ramkissoon abstained.

Madam President: Hon. Senators, the result of the division is as follows: 19 Members voted for the Motion, 10 Members voted against and one Member abstained. So, therefore, Hon. Senators, this Senate will continue to sit until the completion of the business at hand.

Question agreed to.

Madam President: I just want to point out one thing. I did not feel it was proper to say it before the vote was taken because a division was called and, therefore, the vote had to be put into motion. But it is my recollection that when we adjourned on the previous Sitting, the Leader of Government Business will indicate what the business of the Senate will be for the next sitting. That is my recollection. Hon. Senators, we shall now resume committee.

VALUATION OF LAND (AMDT.) BILL, 2018

Committee resumed.

Clause 3 reintroduced.

Madam Chairman: Hon. Senators, we are reverting to clause 3, which had been stood down. I do not think that there were any amendments circulated for clause 3, but some suggestions were made as we sat in Committee. So, Minister.

Sen. West: Thank you, Madam Chair. I have conferred with the AG and his team and we are of the view that the provision as currently drafted is adequate and so we

are not proposing to accept any amendments to this clause.

Madam Chairman: Hon. Senators, the Minister has indicated her position. Are there any questions or comments on clause 3?

Sen. Mark: Minister, would you just want to explain again, in terms of clause 3?

Sen. West: The matter that was stood down related to whether we needed to state specifically that there should be appeals to the Court of Appeal and the Privy Council, and the Attorney General and his team advised me that that is not necessary.

Sen. Mark: Okay.

Sen. Ramdeen: Madam Chair, for the purposes of the *Hansard*, I wish to indicate and place on the record the fact that I am of the view that without the statutory provision inserted, that a person who wishes to exercise a right of appeal from the High Court to the Court of Appeal, and to the Judicial Committee of the Privy Council, will not have that right of appeal. If the Government chooses to pursue that course, let them so do.

Madam Chairman: Any other questions or comments? Minister.

Sen. West: Madam Chair, we did discuss that issue with the Attorney General, and as I have said, we are satisfied with the clause as is.

Question put.

Sen. Mark: No. Division.

The Committee divided: Ayes 15 Noes 11

AYES

Gopee-Scoon, Mrs. P.

Baptiste-Primus, Mrs. J.

Rambharat, C.

Sinanan, R.

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Hosein, K.

West, Ms. A.

Henry, Dr. L.

Singh, A.

Cummings, F.

Dookie, D.

Huggins, R.

Lewis, Ms. A.

Romano, Ms. A.

De Freitas, N.

Le Hunte, R.

NOES

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Ramdeen, G.

Ramkissoon, Ms. M.

Chote SC, Ms. S.

Creese, S.

Raffoul, Ms. J.

Richards, P.

The following Senators abstained: Mr. HRI Roach, Dr. D. Mahabir, Mr. D. Small, Mr. T. Shrikissoon.

Question agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 15 reintroduced.

Madam Chairman: So, hon. Senators, as we revisit clause 15, I remind you that we have amendments on behalf of the Minister, on behalf of Sen. Mark, on behalf of Sen. Dr. Mahabir, Sen. Shrikissoon, and Sen. Ramkissoon. When we deferred clause 15, Minister, we were dealing with the amendment circulated on your behalf. Okay, so Sen. Mahabir, we will now deal with your proposed amendment.

A. In the proposed section 25A, delete paragraphs (2) (a) and (b) and insert the following:

"(2) The Valuation Tribunal shall consist of-

- (a) a Chairperson who shall have wide knowledge and experience in the valuation of property;
- (b) an Attorney-at-law with ten years or more experience; and
- (c) one other suitably qualified person drawn from the construction or real estate sector."

B. In the proposed section 25H—

- (1) Delete paragraph (b); and
- (2) Renumber the paragraphs accordingly.

Sen. Dr. Mahabir: Thank you very much, Madam Chair. I am referring to 25A(2), but it has to be read in conjunction with 25G(5). Section 25G(5) contemplates that:

“An Act or proceeding of the Valuation Tribunal shall not be regarded as invalid because of a defect in the appointment of a member of the Valuation Tribunal or a vacancy in its membership.”

My reading of 25G(5) is that the tribunal can conduct its proceedings, as indicated

in the first few words, even if there is a vacancy in its membership so that it is possible for the Tribunal to sit, not as a tribunal of three but with a membership of two.

I want to look at the construction of 25A(2), the Valuation Tribunal. It says:
“The Valuation Tribunal shall...

- (a) a Chairperson who shall be an Attorney-at-law with ten years or more experience...
- (b) two other persons, one of whom shall have wide knowledge and experience in the valuation...”

And one other person whose job description or whose qualifications is not defined.

The concern I have, and hence the reason for the amendment, is that if this tribunal, for any reason, sits with two persons, the Chairman who is the attorney-at-law and one other member, who is a member at large, it is quite possible that the tribunal will sit to hear matters of a particularly specialized nature, with two individuals, without anyone of them having any specialized training in the field which, in my mind, contravenes the objective of these specialist administrative tribunals. And if such is the case, I see opportunities arising for the decisions of the tribunal to be contested, which is what we do not wish to have.

What I am proposing is that the tribunal shall consist of a chairperson who shall have wide knowledge and experience in the valuation of property. So that the chairperson who is overseeing the proceedings of a tribunal shall be the one with wide knowledge and experience in the valuation of property, the attorney-at-law with 10 years or more experience as a second member and one other suitably qualified person drawn from the construction or real estate sector.

Let me justify (2)(a). Once the Chairperson of the tribunal is someone with the experience in the valuation of property, I think we will always have the

confidence as members of the public, that the proceedings of the tribunal will be chaired by the person with the expertise. The attorney-at-law, you see, is someone whose specialty is undefined. One hopes that he has experience in the field. But as the law is constructed, he could be 10 years experienced in air and space law or in commercial law and not necessarily in the area under review.

And third, Madam Chair, it says: one other qualified person. I would like the Government to consider this other person, not to be someone without specifications and qualifications, but this person drawn from the construction or real estate sector. Construction, he may be a quantity surveyor, so he has experience in the valuation, or at least the costing of buildings. Real estate, he has experience, both in real estate and in land and buildings.

And I think in this situation, since the law is contemplating two persons sitting, we can have, really, the chairperson and the attorney-at-law; the chairperson and one other suitably qualified person from the real estate sector, in the understanding that this tribunal, given my own experience in tribunals, always has legal expertise within the organization. So that if the lawyer is absent, there is the legal advisor to the tribunal who is always there to provide whatever legal advice is needed.

So I am placing—in the interest of having the tribunal function efficiently as tribunals should, without there being any question as to their ability, or any question as to the technical competence of the tribunal to make determinations—this particular amendment for the consideration of the hon. Minister.

Madam Chairman: There is another component to your amendment?

Sen. Dr. Mahabir: The other component, Madam Chair, is to delete paragraph (b), which was just hanging there. The Minister has recognized that, and in the Minister's submission for amendment, she has in her clause 15 F, she says:

In proposed section 25H, delete paragraph (b) and renumber paragraph (c) to (d).

So this is the same amendment that I had requested.

Madam Chairman: Minister.

Sen. West: Yes, Madam Chair. I would point out that the subsection (5) of section 25G that the Senator refers to does not require the Chairman to be one of the two people sitting. So I do not know that the amendment that you are proposing addresses that issue.

In addition to that, we are of the view that because this tribunal will be exercising judicial power, that it should be chaired by an attorney-at-law to deal with the rules of natural justice and proper procedure, and so on. If the person who is missing from the tribunal is the person with the specialist expertise that is required, there are two issues. One, the issue before the tribunal may or may not require that specialist expertise. And two, if it does, the Chair then has the option to either adjourn that particular matter or to seek assistance from somebody else with expertise. So we do not think it is necessary to put the person with valuation expertise as the Chair.

Sen. Dr. Mahabir: Just one counterpoint, Madam Chair, through you. Is it that at 25G(5) says that the Chairperson of the tribunal can then be any one of the three? Because, you see:

“An act or proceeding...shall not be regarded...of a defect in the appointment of a member...”

So I am saying that if there is a defect in appointment or if there is a vacancy and the vacancy happens to be the person with technical expertise, I can see good grounds with only the attorney and the other person at large alone administering the proceedings of this tribunal, making decisions which are going to be subject to

appeal. And it is something you do not wish to have.

But if, of course, you as the hon. Minister, are of the view that with the composition, the concern I have, well, is not a major concern then, of course, I will withdraw the amendment.

Sen. West: Just to add that we do have a similar situation in the Tax Appeal Board, where the court is constituted mainly by people who have legal expertise and accounting expertise because of the nature and that matter has been addressed. It has not caused any significant concern, so we do not anticipate that this will.

Sen. Dr. Mahabir: Okay, fine.

Sen. Ramkissoon: Madam Chair, before Sen. Dhan withdraws his amendment, I have—*[Interruption]*

Madam Chairman: Sen. Mahabir.

Sen. Ramkissoon: Sen. Mahabir. Habit is bad. Thank you, Madam Chair. I just have a question in relation to this amendment.

7.55 p.m.

Is there a clause, Madam Minister, to allow the Chairperson or Chairman, to appoint someone with specialized skills to assist the tribunal? Is there a clause that says that?

Sen. West: No, there is not. But as I indicated previously, the tribunal is being given the power to create its own rules, and within that they can give themselves the ability to call on expertise as and when they require that expertise.

Sen. Ramkissoon: Right, and that was my other question. These policies and procedures are being developed and these points will be taken into consideration hopefully? Right, thank you.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Madam Chair, I was just wondering if the Minister could clarify,

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with respect to subsection (5), where we are providing—there are two things I have an issue with. The first one is that any act or proceeding—we are trying to preserve the acts and proceedings of the tribunal, as being valid because of a defect in the appointment of a member. And I was just wondering, what is the mischief that we are trying to cure, by providing that there will be a defect in the appointment of a member.

Madam Chairman: Minister, I will ask you to respond, but I will point out, that right now, we are dealing with the amendments as proposed by Sen. Mahabir.

Sen. Ramdeen: As you please, Ma'am.

Madam Chairman: No, no. I have asked the Minister to respond, but I am just pointing out—

Sen. Ramdeen: I may have been mistaken, Madam Chair, and I apologize. I thought the amendment by Sen. Mahabir had to do with the 25G(5).

Madam Chairman: Sen. Mahabir made reference to the section, and that is one of the reasons he said, because of that section, that he thought that this amendment would be prudent.

Sen. Ramdeen: Perhaps I can leave that, and just deal with the other part that Sen. Mahabir raised about the vacancy in the appointment. Without us providing for there to be a quorum for the tribunal to function, what is going to happen is that the provision that you are enacting, in my respectful view at 25G(5), with respect to what Sen. Dr. Mahabir has raised about “or a vacancy in its membership”, is going to, not only result in there being a position where the tribunal can operate with two members, but on this interpretation, the tribunal could operate with one member.

Madam Chairman: Minister.

Sen. West: Madam Chair, we do not agree that the tribunal can operate with one member. As I said, there is a lot of precedent for this approach, and the tribunals

either operate with three members or with two members. So I do not agree.

I would refer the Senators to 25I(4), which says that:

“The Valuation Tribunal may receive and take into account any relevant evidence or information, whether or not that evidence...would be admissible in court proceedings.”

This gives the Valuation Tribunal significant power to call for such information and such assistance as it would require. So we think that adequately addresses the—at subsection (3)—we think that adequately addresses the tribunal’s power to supplement any absence of expertise in any particular area.

Madam Chairman: Sen. Mahabir.

Sen. Dr. Mahabir: I raised it—if the hon. Minister is of the view that the mischief I am trying to avoid, is not as large as I am seeing it, then I will be withdrawing the amendments.

Madam Chairman: Okay. So the amendment proposed by Sen. Dr. Mahabir is withdrawn.

Amendment [Sen. Dr. Mahabir] withdrawn.

Madam Chairman: Sen. Ramkissoon, can we deal with your proposed amendment?

Sen. Ramkissoon: Thank you, Madam Chair. I do have an amendment to my clause submitted, which is, so it states:

25A (5) Notwithstanding that a member’s term of office has expired, with the permission of the President acting on the advice of the” — chairperson—“continue in office for such a period after the expiry of his term, as may be necessary to do anything in relation to the completion of proceedings that were commenced before the tribunal, before his term of office expired.

And Madam Chairman, this thought came about after listening to Sen. Creese's contribution, where he asked for the time period to be amended. And I thought of another way to go, because I looked at our existing law, in relation to how we look at tribunals, and we have the Equal Opportunity Tribunal of Trinidad and Tobago, and they actually have in their legislation a provision to ensure that members who have been appointed; if a matter is before them, they can continue once the Chairperson sees it fit, can allow the President to appoint that person to allow them to continue to sit until that matter has closed so it does not affect the three year appointment that we have in the Bill.

I am not sure if the Minister caught all of that? Okay.

Madam Chairman: No, there is another component to your amendment as well. There is a B? Yes.

Sen. Ramkissoon: So you want to deal with section 25E as well?

Madam Chairman: I want to deal with the amendments that you have circulated in respect of clause 15.

Sen. Ramkissoon: All right. So, in the proposed section 25E, I also have the concern about members who may be absent and vacant posts and how the tribunal will be dealing with this and that is why I chose to propose a clause be inserted to cover such so:

25E (2) Where a member is ill, or otherwise unable to act, or where his office is vacant, the President may appoint a temporary member to act, as the case may be.

And just really to ensure that you have your three members present for your tribunal.

Madam Chairman: Minister.

Sen. West: Madam Chair, I am advised that the Interpretation Act adequately

addresses the issue of a member being able to continue in office to conclude his—any work that is before him, so that we are not of the view that this amendment is necessary.

Similarly, with respect to an individual being temporarily incapacitated, the reason why we can sit with two rather than three is to allow for situations like that and we have not come across any of the tribunals where we have had difficulty in relation to this matter. So we are not minded to accede to either of those recommendations, Madam Chair.

Sen. Ramkisson: Madam Chair, thank you.

Madam Chairman: Just before, Sen. Roach wants to—

Sen. Roach: Madam Chair, can I just raise a question to the hon. Minister, please. Section 25E where you have two persons, right? Any decision is made by a majority of the tribunal, when you sit with three. So a majority will be two. When you have two persons sitting, what is the majority when they are not agreeing? How are you dealing with that?

Sen. West: Well, I have seen two members sitting. The two members will have to agree on the decision—

Sen. Roach: And they do not agree.

Sen. West:—or it will not be a majority.

Sen. Roach: Exactly, so you do not have a decision.

Sen. West: Yes, that is correct. Yes, so they will consider the matter, as I said Senator—

Sen. Roach: The business will be concluded? Even though—

Sen. West: They can do one of two things. They can review the issue and determine whether the matter is of such significance that they need a third member and if that is so they can defer the contemplation of the issue, and if they think that

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the matter is simple enough that two of them can determine it, then they can proceed. As I said, we have this situation going on daily with tribunals like the Tax Appeal Board and it has not stymied the operation of the tribunal.

Madam Chairman: Sen. Ramkissoon wanted to say something before.

Sen. Ramkissoon: Thank you, Madam Chair. In relation to the response by the Minister, now I made reference to a tribunal existing in Trinidad and Tobago, the Tax Appeal Board I would not look at it as a tribunal per se, I am looking at the Equal Opportunity. Now, this law was assented to on the 20th of October, 2000, and there is a provision when you look at the tribunal where this clause assisted. And I am not sure why the Government is reluctant to include such a clause because it is not—if you are saying it is not against the Interpretation Act, then why not put this in at this time?

Madam Chairman: Sen. Hosein.

Sen. S. Hosein: Thank you, Chair. With regard to the function of this tribunal, it is a judicial body and earlier on the Minister indicated that two members can sit and then they would decide whether a third member sits. Now this tribunal has the power in order to take evidence. So I could imagine that if two members sit and hear the evidence, then a third person cannot come and then make a decision on the evidence that was heard by two members sitting previously. So there will be a deficiency in the entire process because the matter now becomes part heard before two individuals and you cannot then include a third individual to consider the matter; that is an illegality in itself. So I think we need to cure this mischief.

Madam Chairman: Questions or comments? Minister?

Sen. West: Madam Chair, if you can give us a few minutes. We are considering the recommendations.

Madam Chairman: Minister, do you need some time?

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Sen. West: Yes, Madam Chair.

Madam Chairman: Okay. So what we will do is—

Sen. West: Move onto the others?

Madam Chairman: Move on to to the amendment proposed by Sen. Shrikissoon.

Sen. West: I am happy with that, Madam Chair, thank you.

Madam Chairman: Sen. Shrikissoon.

Sen. Shrikissoon: Thank you, Madam Chair. To the hon. Minister, in perusing the Act and going through the Act, I have realized that there is provision for improvements. So that when improvements are made there is a procedure whereby new valuations can be conducted when that is done. However, given that the—

Madam Chairman: Sen. Shrikissoon, you have a proposed amendment to clause 15 and then you have a new clause 15. We are actually dealing now with the proposed amendment to clause 15. Yes, because we deal with new clauses when we have finished all the other clauses.

Sen. Shrikissoon: Thank you, Madam Chair. My apologies. To the hon. Minister, the intent of my amendment here was the independence of the tribunal and when I used the word “President”, I used it in the context of the President of the Republic of Trinidad and Tobago and hence, I thought that office would lend a lot of independence to the establishment of the tribunal. So, thank you, Madam Chair, for allowing me.

Madam Chairman: And renumbering the removal of—apart from deleting “Minister” and substituting it with “President”, B and C, yes?

Sen. Shrikissoon: Thank you Madam Chair, again. If it is that the amendment is accepted then with respect to the section 25G: where the Minister shall not—and it says here—

“(2) The Minister shall not give directions to the Valuation Tribunal...”

If it is that the President of the Republic is accepted as the position or is the person to appoint then that clause will not be relevant. Hence I ask it to be removed.

Madam Chairman: Minister?

Sen. West: Madam Chair, we have revisited the issue of the appointment of the tribunal and we are prepared to follow the position adopted in the Tax Appeal Board Act, which allows the President to appoint the chairperson of the tribunal on the advice of the Judicial and Legal Service Commission and the other members of the tribunal are appointed by the President without more. So this is what we are proposing to the members to bring us closer to a common position on this issue.

Sen. Shrikissoon: Thank you, Madam Chair. I appreciate the accommodation of the Minister to entertain the change of the proposed amendment. However, if it is that the tribunal comprise three people and you have one person being elected by the President in consultation or with the assistance of the Judicial and Legal Service Commission, then what you would have is the majority of members on the tribunal being appointed by the Minister and the whole goal of this is to bring independence to the tribunal.

Madam Chairman: Minister.

Sen. West: Madam Chair, we have operated the Tax Appeal Board with this equation, on this basis for years without any indication that has been any interference from anybody in terms of their operation. They operate like an independent tribunal, I have heard no accusations otherwise. And so, I think that the accommodation in the circumstances is a reasonable one.

Madam Chairman: One second, Sen. Chote.

Sen. Chote SC: May I just speak in support of Sen. Shrikissoon’s proposal. I do not see that changing the Chairman to be someone appointed by the JLSC with the

two other members still, you know, being under the difficulties we had perceived when we had last come to discuss this matter, is going to change anything at all. And the fact that the composition of the Tax Appeal Board may have worked well in the past really is sort of irrelevant in my mind, because we are looking at a new piece of legislation and we are looking at its operations moving forward. So I would imagine tribunals in the past have worked well and have not worked well. So to single one out and to say that that should be an example for this particular one, I think is a dangerous logical connection. And I think that there is nothing difficult, I do not see what is difficult or controversial about protecting the independence of the tribunal in the best possible way. So I support Sen. Shrikissoon in that regard.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: I have asked the Clerk of the Senate to pass around some material that I thought would be of assistance to all of the members who are considering how to vote on this particular matter. And one of the pieces of legislation I have passed around is the Tax Appeal Board Act and it is not right, Madam President, for us to simply make reference to the Tax Appeal Board and say that is the way it operates in the Tax Appeal Board, the Tax Appeal Board is composed differently from how this tribunal is composed.

The conditions of employment and the security of tenure are different under the Tax Appeal Board than how it is here. Under the Tax Appeal Board Act when one reads the Act, you will see that the Chairman and the Vice-Chairman are appointed by the JLSC. The Chairman is to enjoy the same salaries and allowances as a judge of the High Court, his salary is charged to the Consolidated Fund, all of these security—independence is not about simply saying they are appointed, one person—this is a very serious matter and saying that you can take

one member. I do not want to use a colloquial example, but you cannot have halfway independence, it is either you are independent and insulated or you are not.

So at the end of the day when one looks at the provisions—everybody has it on soft copy, when you look at the provisions of what applies to members of the Tax Appeal Board, it is different and the fact that it has worked in one—the point that Sen. Chote makes is a point that has been canvassed in the Court of Appeal and in the Privy Council by the fact of saying—the fact that it has worked in one particular tribunal is not a good reason to come here and say, well it will work here as well.

We are here with the opportunity to get it right, and that is what we are trying to do. So that the examples, we can also say that is the way it operates in the Industrial Court—

Madam Chairman: Okay, but Sen. Ramdeen, I think that—

Sen. Ramdeen: No, no, but there is one point I want to make that is very important—

Madam Chairman: Okay.

Sen. Ramdeen: When the Attorney General was piloting this particular—explaining this particular provision and how it operates and why it is independent, the Attorney General cited a number of cases and I have put all those cases for everyone to have a look at it and read it.

But, the difference between the Industrial Court which is appointed by the Cabinet, the Court of Appeal has said the reason why that is not in breach of the separation of powers is because the experience has shown that they have exercised their jurisdiction in a particular way. You cannot have that same test in a tribunal that is being created for the first time.

Madam Chairman: Okay. Sen. Haynes.

Sen. Haynes: I just wanted to make the point that while the Minister was speaking, the Minister said that the Tax Appeal Board operates somewhat independent and that is exactly what we are trying to cure here is the illusion or that—okay, I am sorry if I misquoted you, but that is the impression that I got. And it is that what we are saying is that because this is so important and you are dealing with people's property, et cetera, that you have to be very careful looking at the independence of the tribunal and so that is what we are proposing, that when we do this it is truly independent and not just an appearance of independence.

Madam Chairman: Sen. Hosein.

Sen. S. Hosein: Thank you very much, Madam Chair. I just want to join issue with Sen. Ramdeen with respect to this matter because you are establishing a judicial body and then two members, the majority of members are being appointed by Cabinet. Now, when one looks at the Interpretation Act, it now means that Cabinet has the right to suspend, discipline and even set remuneration of these persons.

Because the one who has the power to appoint also has the power to revoke, and the other powers are even listed in the Interpretation Act. And I am saying that how can we say that these persons will now be operating without the pressure of the Minister, or the Cabinet, or even the entire Executive.

Because truly, you have a Chairman operating with two political appointees so that can never be an independent body, so there is no protection offered for these other members or even the Chairman of this entire Valuation Tribunal.

Madam Chairman: Sen. Mahabir.

Sen. Dr. Mahabir: Thank you very much, Madam Chair. It builds upon the concern expressed by Sen. Hosein prior and that is, majority rules. Two out of the

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three are members appointed by the Executive. I think it is going to be potentially very unworkable with two members who can vote against a Chairman on a continuous basis. And this is new law, as Sen. Chote indicated, and I am not really getting from the Government what is the problem for having all three members immune from political influence.

Madam Chairman: Sen. Roach, you had indicated? No. Okay. Sen. Shrikissoon.

Sen. Shrikissoon: Thank you, Madam Chair. I just want to raise one point with reference to the Tax Appeal Board and somebody could correct me if I am wrong, but the Tax Appeal Board is not a division of the Ministry of Finance? So, if it is not then—so that is why. So that is the point, where you have members being appointed by the Ministry of Finance or by the Minister of Finance for a tribunal that is resident there, that is held in the same Ministry and that is the point.

Madam Chairman: Sen. Ameen.

Sen. Ameen: Thank you, Madam Chairman. I just want to say that I know and I understand that the Minister is coming from a practical perspective having experienced in that Ministry and with some of these departments first hand and how the board operates.

But I think in the debate many of us made the point about insulating the board from political influence and I think we are making the same points again. The Tax Appeal Board that you referred to, although you are referring to how they operate practically, the fact is that they have different terms and conditions, they have different—that I think offers them additional protection that the present valuation tribunal does not have. So which is why I am endorsing the point that was made and further strengthening the argument and asking you to give consideration to that but also appreciating that I know you are offering from a

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practical sort of perspective as to how it works. But that protection that exists sort of behind the scenes, would be absent in this case. So I am pleading with you to give consideration to the amendments proposed.

Madam Chairman: Minister.

Sen. West: Madam Chairman, I would thank the Members on the other side and the Opposition Bench for their comments. The Government has reconsidered the position but we are of the view that the compromised position that we offered earlier is significantly adequate to provide the protection. Having regard to the fact and we will say again that this is not a court of first instance, that the owners of property who have challenges have three courts over and above the tribunal who are there to protect their rights if they think their rights are violated. So in those circumstances, Madam Chairman, we think that the formula that we have provided is adequate.

Madam Chairman: Okay, so Minister, you will be amending—you had proposed an amendment and therefore is it that you are going to further amend that amendment?

Sen. West: Yes, Madam Chair.

Madam Chairman: Do you have the wording or will you need sometime?

Sen. West: If you give me a couple minutes, Madam Chairman and am—

Madam Chairman: No problem. Sen. Mark, let us—Members, I am just going through all the amendments and then we will take them one by one. I think Sen. Mahabir has withdrawn his. So, Sen. Mark.

Sen. Mark: Yes. Madam Chair, the mere fact that we are having so much difficulty in a simple tribunal tells me that there is great justification for us retaining, by pumping more resources into the Tax Appeal Board of the Republic of Trinidad and Tobago. I cannot understand, Madam Chair, and maybe the

Minister can tell us what is the rationale for the Government's hesitance, for promoting an independent tribunal.

Madam Chairman, may I say that justice must not only be done but must be seen to be done and I listened very carefully to the hon. Minister's contribution earlier on, where the Minister spoke about this tribunal exercising judicial functions. How can a tribunal exercise judicial functions if it is under the control of the politicians and the Cabinet? It just does not make sense.

And, Madam President, hence the reason we objected to the tribunal and we said we already have a structure in place called the Tax Appeal Board, let us go with the Tax Appeal Board and let that board, as I said, be properly resourced.

Now, Madam Chair, this body is going to have a lot of information and one wonders why the Government is seeking not to have an independent body; why is the Government so afraid of having three independent members of this tribunal adjudicating over sensitive land matters. Why is the Government afraid? I have not had any justification from the Government side as to why they are afraid of having a truly independent tribunal?

8.25 p.m.

And, Madam Chair, I can only assume, and that is why I want to say to you, I had asked the hon. Minister earlier on, what protection is there for this sensitive information coming from 700,000 property owners, and we did not get a proper answer until Sen. Ramdeen told us that a large section of the Data Protection Act is still not proclaimed. So it means to say, Madam Chair, that all this information is being given to a group of people that we have no assurance, the information is going to be misused. And what have me more suspicious is the Government's decision here this evening, not to adhere and not to support the establishment of an independent tribunal. It consolidates, in my mind, that there is something more in

the mortar than the pestle, because, Madam President, why—

Madam Chairman: Sen Mark, please, please, let us not go with those kinds of imputations. Please, you can make your case as you are doing it. But do not say—refine what you are saying, please.

Sen. Mark: I would be guided by you. But you know I cannot help it. Madam Chair, so here it is we have advanced that the Tax Appeal Board is properly constituted in law. As I said, it is a superior court of record—members' salaries like the Chairman and the Vice-Chairman directly from the Consolidated Fund. These people cannot be removed. They have security of tenure and, therefore, all the evidence is before us why we should go with this body called the Tax Appeal Board and, therefore, we reject completely this Valuation Tribunal. It is not going to serve the purpose that the Government believes it would serve.

And, Madam Chair, if the Government wishes to do what it wants to do, there are certain constitutional infirmities—[*Crosstalk*] okay—that we are seeing in this legislation, and if I were the Government and the Government understands the separation of powers, they would be very, very mindful that this matter, if it is not handled properly. Madam Chair, you are an attorney-at-law, you know how these things go. So this is to tell the Government, do not go down a path that is going to be deemed otherwise somewhere else.

So I want to advise the Government to rethink its position. I believe, Madam Chair, that the hon. Minister means well. I believe that the Minister would like to have the President appoint the tribunal on consultation with the Prime Minister and the Leader of the Opposition, but as the hon. Minister has indicated, they have instructions and they are operating under Government's policy. So if that is the Government's policy, we cannot change the Minister's mind. So, I would pause at this time, and we will have to take the vote and let the chips fall

where they may. I would close my case at this time.

Sen. Raffoul: Thank you. I also support the amendment that all members of the tribunal be appointed by the President in her discretion. I think that our role here is to prevent loopholes and to prevent potentials for abuse of power or political interference in our legislation and to say that, you know, citizens can always appeal, which is extremely expensive to do so, or to go to the courts, I think that is a weak argument. I think we have to make sure that we try and protect citizens as much as possible and have things that are based on merit and transparency.

Sen. Ramdeen: Thank you. I see that the amendment that Sen. Mark—I would be guided by you, Madam Chair—has said is to delete the entire subsections. Am I able to speak to any one of the subsections under 25 in that amendment?

Madam Chairman: Sen. Mark did, so you can.

Sen. Ramdeen: Or. Okay, thanks. Madam Chair, I know a little bit about public law, and there is a section here that much was made of, about:

“The Minister shall not give directions to the Valuation Tribunal in respect of any particular application or proceeding before the Valuation Tribunal...to act judicially.”

Public law and legislation that prescribes public powers is based upon two things. A public power is supposed to be exercised in an environment of legality, it is called the principle of legality. It is supposed to be exercised reasonably, and it is supposed to be undermined by a presumption of regularity. How a statute can enact, that a Minister must not do something unlawful is incredible, because I have never seen—in the little bit of legislation that I have read—a statute, prescribed, that a Minister must not do something unlawful. Because the entire presumption of the exercise of public power is that you must do it lawfully.

So the fact that we are doing the reverse, which is prescribing that you

should not do it unlawfully, means that there is a presumption that you are doing it unlawfully. I have never seen a provision that says a Minister shall not give directions.

There is a provision here that says:

“The Valuation Tribunal shall conduct its proceedings without procedural formality but shall observe”—the rules of—“natural justice.”

Where does a statute prescribe that a tribunal that is exercising quasi-judicial functions, must observe the rules of natural justice? That is a presumption. It is expected that you will observe the rules of natural justice. So, this is another provision that presumes for some reason that the Tribunal will be acting in breach of the rules of natural justice, so we must prescribe that they must act lawfully in exercising judicial functions.

So, what I want to suggest, Madam Chairman, in accordance with the policy of the Government, is this, and I am serious. We have a Judicial Review Act in this country, and it prescribes all of the grounds for judicial review, it is statutory. So I think we should amend the law, and we should prescribe in accordance with section 5(3), all of the grounds that one can apply for judicial review, we should insert all of the grounds, and say that the tribunal should not do any of these things, because these are all of the bases upon which you can challenge a public power. So why limit it to natural justice, and why say the Minister should act lawfully? Let us quote all of them—you should not exercise excess of jurisdiction.

Madam Chairman: Sen. Ramdeen, I think your point has been made. Do you have a further point?

Sen. Ramdeen: No, no. I just think that I want to just say, Madam Chair, that the cases that are cited here by the Attorney General, I did all of them. I do not apologize for doing them, and I have won all. So I can say with a certain degree of

experience, that what we are doing here is a very dangerous thing, and based on the authorities, it is clearly unconstitutional, and I am saying that, having represented the State in all of these matters.

Sen. S. Hosein: Thank you very much, Madam Chair. Now, there is one comment that the Minister made that had me very concerned. I got the impression that once there is an appeal, it means the entire process is independent, and I want to disagree with that. Because there is a right to appeal, how does that make the Tribunal independent? It no way does that, because at the end of the day you still have persons who are appointed by the Executive sitting and making these decisions of this tribunal.

And I also want to put on record that I support the point that Sen. Raffoul made with respect to the expense of appeals. These are poor persons we are going to be dealing with, Madam Chair. How can they afford to access higher courts? And my last point on this is, why it is that there is such a fight down for us to ensure independence of a judicial body? That concerns me a lot, because we should not be here arguing at 8.34 p.m. in the night that we should have persons exercising judicial functions not be appointed by the Executive. I think that goes without saying.

Madam Chairman: Any further—Sen. Creese.

Sen. Creese: The thing about all of this that has me concerned is the term of office. I think we had agreed on five years or 3 years?

Hon. Senators: Three years.

Sen. Creese: So which gets us into the first year of whatever administration precedes the current one. So I think that is their point about which we should all be concerned, that whatever we institute now would redound to the advantage—whatever we perceive it—of the current administration, but the same would apply

to the successive administration.

Sen. West: Madam Chair, there are two issues before us in respect of clause 25, one in respect of the appointment of the Tribunal and the other in respect of the term of office and temporary inability to act. With respect to the latter, Madam Chair, we are prepared to accept the suggestions of Sen. Ramkissoon with certain amendments, and I am happy to propose those now.

At (a) of the proposed amendment, which seeks to insert a new clause 5, we are proposing to replace the words at the beginning “notwithstanding that a member’s”—I am assuming term of office has expired with the words “where the term of office of a member has expired, he may,”—

Madam Chairman: Just a sec.

Sen. West: Sorry. We are deleting, “notwithstanding that a member’s term of office has expired” and replacing it with, “where the term of office of a member has expired”—

Madam Chairman: Where “the” or where “a”? Where “the term” or where “a term”?

Sen. West: The term.

Madam Chairman: The term. Yes.

Sen. West:—“has expired, he may,”—and then it continues—“with the permission of the President” and so on.

Sen. Hosein: Out of clarity, my version has the words, “the advice of the Minister”. Is “the Minister” remaining there?

Madam Chairman: Chairperson.

Sen. Hosein: Chairperson. Thank you.

Madam Chairman: Okay, so that the further amendment to the proposed amendment will read as follows:

“Where the term of office of a member has expired, he may, with the permission of the President acting on the advice of the Chairperson continue in office.”

That is it. Right?

Sen. West: Yes, Chair.

Madam Chairman: And the rest. Okay?

Sen. West: With respect to the amendment at paragraph (b), Madam Chair, we propose to amend the reference to section 25E to section 25D. **Madam**

Chairman: So in the proposed section 25D—

Sen. West: Yes, and we accept the proposed amendment as suggested by Sen. Ramkisson.

Madam Chairman: So, right? Will it be insert after the word “25E” or D?

Sen. West: D.

Madam Chairman: At (1)? So you have (b). In the proposed 25D—(1), insert after the word—would that be 25D or that stays?

Sen. West: D, yes.

Madam Chairman: So it will be insert after the word 25D, the word “(1)” and “(2)”, insert the following new subsection?

Sen. West: That is correct, Madam Chair.

Madam Chairman: Minister, before I put the various proposed amendments to the vote, I believe you still have some housekeeping to do?

Sen. West: With respect to the final proposed amendment, Madam Chair.

Madam Chairman: Yes, yes.

Sen. West: Madam Chair, I would like to crave your indulgence for us to suspend for 15 minutes so that we can come to a final determination on what position we will adopt.

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Madam Chairman: Sure. So, hon. Senators, this Committee is suspended until 9.00 p.m. We will return at 9.00 p.m.

8.41 p.m.: *Committee suspended.*

9.02 p.m.: *Committee resumed.*

Madam Chairman: Minister.

Sen. West: Madam Chairman, in accordance with Standing Order 68(14), I beg to move that progress on the Bill be reported to the Senate.

Senate resumed.

The Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, I wish to report that a Bill entitled “An Act to amend the Valuation of Land Act, Chap. 58:03” was considered in Committee, however the deliberations on the Bill were not concluded. I, therefore, seek the leave of the Senate to resume committee stage on Thursday, April 26th 2018, at 2.00 p.m.

Question put and agreed to.

PROPERTY TAX (AMDT.) BILL, 2018

Order for second reading read.

The Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Madam President. I beg to move:

That a Bill to amend the Property Tax Act, Chap. 76:04, be now read a second time.

Madam President, the Bill being presented today is the Property Tax (Amdt.) Bill, which provides amendments to the Property Tax Act, Chap. 76:04. The amendments are being proposed to better segregate the responsibilities and powers of the Commissioner of Valuations and the Board of Inland Revenue respectively, and to address some uncertainties, inaccuracies and anomalies that exist in the two

pieces of legislation.

Madam President, given the long history and escalating noise with respect to the legislation before us, it is important to provide some background. Prior to the passage of the Property Tax Act in 2009, the system of taxation on property was governed by the Lands and Buildings Taxes Act, the Valuation of Land Act and Part V of the Municipal Corporations Act, Chap. 25:04.

The lands and buildings taxes, Madam President, was introduced in 1920 under the Lands and Buildings Taxes Act. The concept of property then was separated into land on the one hand, and buildings on the other hand. So under that piece of legislation, land was subject to tax on the basis of acreage at a rate of between \$10 and \$20 per acre, whereas buildings were taxed on the basis of the annual rental value of the building.

The rate of tax that applied to buildings—the annual rateable value of the buildings—was 7 ½ per cent. Madam President, the last mass appraisal under the Lands and Buildings Taxes Act was effected in 1948. As a general rule, properties were not systematically reassessed thereafter. So what you had was that existing properties continued to be valued and taxed under old rates, under old valuations, but as new properties came on to the roll, they were assessed based on the then current value. So, you had a situation where there could be properties either of similar nature or widely different natures, that should carry similar valuations, but they did not merely because of the age of the valuation. That had to be addressed because it created significant inequity.

We had, at the time, a compliance approach which required people who wanted to secure mortgages and/or who wanted to make certain taxes in respect to their property, they needed to get a tax clearance. That was intended to promote

compliance with the legislation, but it was not successful in doing that, because our records indicated that under the Lands and Buildings Taxes Act we had only assessed 241,000 properties, although the Commissioner of Valuations is of the view that the number of properties in Trinidad and Tobago is in the region of 700,000, and under the Municipal Corporations Act, we had only assessed 33,000 properties. It means that, not only were people underpaying the tax on the properties that were assessed, but more than half of the properties in Trinidad and Tobago were not assessed at all.

9.10 p.m.

The inequity that existed in respect of tax on property in Trinidad and Tobago was compounded when the Municipal Corporations Act was introduced, and, in particular, Part V of that Act which conferred on the municipalities the right, the authority to conduct their own assessments and to impose their own rates. Although there was a limit on the rate of tax that could be imposed, they did have a wide range of power in respect of imposing taxes, ranging from just above zero to 10 per cent. What we found, and this provision applied to the municipalities—which would be Port of Spain, San Fernando, Chaguanas, Point Fortin—our research has revealed that at the time when the Part V of the Municipal Corporations Act was repealed, the rates that were actually being charged by the different corporations were as follows: Port of Spain City Corporation imposed a tax of 10 per cent; the San Fernando City Corporation imposed a tax at the rate of 8 per cent; the Arima Borough Corporation imposed it at 10 per cent; the Point Fortin Borough Corporation imposed at rates ranging from 2 per cent to 6 per cent, depending on the category of property; and the Chaguanas Borough Corporation imposed at the rates of 7.5 per cent and 10 per cent.

You would see from that, Madam President, that not only do we have an issue with inconsistency in valuations, we also have a significant inconsistency with the rates imposed. In a country as small as Trinidad and Tobago that, in my view, is an untenable position. Further, Point Fortin did not even start collecting taxes until 1995, and Chaguanas until 2000. So that a lot of people were not paying their fair share of the property taxes.

Madam President, the reason for giving this brief history is to show that for decades the property tax system in Trinidad and Tobago has been plagued by inconsistencies and inequity, and that there was no fairness in the system. So in 2009, you had a property tax system which meant tax on land, tax on buildings, and the house rates under the Municipal Corporations Act which reflected, one, significantly outdated property values, and therefore an under-collection of tax; two, a disparity between values ascribed to old versus newer properties; three, a huge disparity in rates ranging from two on the low end to 10 per cent on the high end.

The Government at that time could have taken the easy route from a legislative perspective and avoided this by saying, let us just go out and do a wide-scale valuation of properties to bring the properties up to the current values, but what that would have done, Madam President, it would have imposed a rate of 7½ per cent, because that is the rate that applies under the Lands and Buildings Taxes Act. It would have imposed a rate of 7½ per cent on current rental values. It would have imposed rates of up to 10 per cent under the municipalities on current values, and that, in our view, would have placed a significant burden on the taxpayers had we gone that route. So as a responsible Government what we decided to do was to revamp the property tax system to remove the inequities and

to ensure that even at current values the amount of tax that was payable was reasonable and affordable by reducing the rates and having the rates apply across Trinidad and Tobago.

So what we did at the time to revise the system was we unified the responsibility and the timing of the valuations so we would not have a situation where the Point Fortin Corporation was engaging a private valuator who may take a different approach to valuation from what the Valuation Commission was doing; that the Arima Corporation was valuing property in 2014 while San Fernando was valuing in 2018, and arriving at inequities again in the valuation.

So, reuniting the responsibility in terms of who would conduct the valuations and the timing of the valuations so that it would be done in the same period. Unify the rates across the country, we introduced a staggering of rates to cater for different uses to which property is applied, looking to determine who could best afford the areas of activity we are trying to encourage, and that kind of thing. Lower the rates to mitigate the impact of modern-day values versus the older values that applied.

So the rates that we introduced were 1 per cent for agriculture, 3 per cent for residential properties, 5 per cent for commercial properties, and 3 per cent and 6 per cent for industrial properties, depending on whether the machinery used by the industrial property was under cover or not. All those rates, you would note, are below the rates that were being charged prior to 2009 with the single exception of the rates that applied in Point Fortin. Right?

So the failure of the last regime, Madam President, to either re-implement the Lands and Buildings Taxes that was there previously or to implement the current legislation has led to losses of revenue to the Government for the last—it is

now eight years. And while, given the economic circumstances that prevailed at that time, the country may have been able to afford to forego those taxes, we are no longer able to do so, not having regard to the situation in which the last regime left the country with annual deficits notwithstanding earnings of up to \$62 billion; with significantly overdrawn accounts of the Central Bank, which, if memory serves, was in the region of \$12 billion; with an empty NGC account, having bled the company of \$16 billion; with all sorts of undisclosed short-term debt which are coming to light as we proceed; with a significant public service salary adjustment and a massive back pay obligation; with significant undisclosed liabilities that are still coming from various contractors, which we do not have the documentation to dispute, many of them; with tons of claims for wrongful dismissal from public servants; with unresolved gas contracts leading to a reduction in petroleum exploration; with a revised tax regime to the energy sector is allowing the energy companies, unless we can do something about this, to avoid payment of tax until the year 2024.

Having regard to all of those burdens that impact significantly the revenue that we are currently receiving, we can no longer afford to not collect property tax. Sen. Shrikissoon in his budget contribution urged the Ministry of Finance, through me, to try to balance to budget. We cannot balance the budget without collecting additional revenue. We cannot. So in that context, Madam President, we are obliged to operationalize this legislation, and to do so properly we are seeking to make certain amendments to address certain deficiencies that we spotted in the legislation as passed in 2009.

So, Madam President, if I can now spend some time on the actual amendments having laid out the history. Clause 3 of the Bill seeks to amend the

legislation to deal with multifamily dwellings. During the course of the information-gathering exercise that occurred in April and May of last year, a lot of questions were raised as to how does the property tax impact on establishments like One Woodbrook Place, and when we looked at the legislation we acknowledged that that was not clearly identified in the legislation. And so, clause 3 seeks to amend the legislation to say, because the tax is imposed on land we are defining land to mean any single unit in a multi-unit compound. And we are in anticipation that we could have a similar situation with respect to commercial properties, we have taken the liberty of amending it to include a similar impact for commercial properties where there are multi-owners in such properties.

Clause 5 is amending section 15 to clarify certain concerns raised again—a lot of the concerns were raised during that period where we were trying to begin the operationalization of the tax in respect of the impact on a legitimate property owner of having a deemed owner but not a legal owner account for the tax. So we have amended the legislation to say that notwithstanding the fact that tax could be collected from somebody who is not a legal owner, such as an occupier, that will not impact his legal entitlement to that property.

Clause 6 of the Act seeks to clarify various categories of exempt property, and when this was first published there were a lot of misconceptions as to the impact. We are not seeking to remove exemptions, we are just seeking to clarify the categories of properties to which those exemptions apply. So that the current legislation, for example, exempts charitable institutions, but when one examines the case law in terms of what is a charitable institution, there are so many issues that come up that creates uncertainty. Lots of people think that if you register an organization as a not-for-profit organization under the Companies Act, that it is a

charitable organization. So we wanted to remove that uncertainty. We already have a provision in section 6(1)(g) of the Corporation Tax Act which grants exemption from corporation tax to entities approved as charitable entities by the President, and therefore, we are tying the two provisions together. So once the President declares that an institution is a charitable institution, that institution will qualify for relief on its property.

Exemptions re state and state-related entities, I remember when the legislation was first introduced and we looked at the provision that said in effect that land belonging to the State and used for a public purpose qualified for exemption, there was a lot of debate as to what is meant by, “for a public purpose”. So, for example, TSTT is engaged in commercial activity, is that a public purpose and therefore do they qualify for exemption? Similarly PLIPDECO.

So there are lots of organizations that are like that; so we decided to do away with that uncertainty and list the organizations that qualified for the exemption. The basis on which we came up with those organizations was that we would exclude from the exemption any entity that was engaged in commercial activity, so T&TEC would not be covered, PLIPDECO would not be covered, NGC would not be covered. So we would exempt government entities that were there providing a public service. So that is how we have changed that. So what we have done was listed all of those in a schedule to the Act.

We have amended the provision that provides relief for UWI, because the provision previously read something like, the land owned by UWI and occupied by UWI, owned and occupied by UWI and its staff would be exempt, which could possibly be interpreted to mean that if you are a member of staff of UWI, your property qualified for exemption. So we have changed that to say that the land

must be owned and occupied by UWI. So you would see that amendment in the legislation.

So, essentially, there are also other universities that were provided with exemptions, but the exemption at the time, or before this amendment that we are proposing, essentially exempts any property that those organizations owned. So that UTT, for example, any land, based on the current drafting, any land that UTT owns would qualify for exemption; we have changed that to say the land must not only be owned by, but it must be occupied by. Yes? So it is just a question of tidying up and getting a tighter grip on what should qualify for exemption.

Section 20, as it is currently drafted, allows the Commissioner to adjust where there is an under-assessment, and we have just tidied that up to allow him to adjust where there is an under-assessment of an over-assessment. We thought that was just fair. It also places a time limit of 60 days on the Board of Inland Revenue for repayment of any overpaid tax and 30 days on the owner to settle any underpaid tax, because where there is an over or under-statement the landowner may already have overpaid the taxes that was due. So we say that, yes, you must repay that tax and you must repay it within 60 days. If you fail to do so there is interest that will accompany the payment. We also gave the Board of Inland Revenue the option instead of repaying, to offset it against other taxes that might be owed to the Board of Inland Revenue.

Clause 10 seeks to amend section 21 of the legislation to stipulate the time within which an objection must be filed. It also removes the cumbersome process of objection that currently applies. What the legislation currently does, it requires all objections to be filed with the Board of Inland Revenue. And where any of the issues under objection relate to valuations, the Board of Inland Revenue is required

to refer that value, that issue to the Commissioner. The Commissioner must respond back to the board within nine months to give the board enough time to respond within the 12 months that the board has.

So, if you remember what we did under the previous legislation we were looking at, the Valuation of Land Bill, is that we said to the Commissioner in his legislation, these are the issues that you will deal with, which are all the valuation issues, so the only matters that now go before the board had to do with tax itself. So there is no need for the board to receive the objection, refer it to the Commissioner, get it back and then respond. I mentioned that we required the board to pay interest on late payments of refunds and the rate of interest applicable would be 6 per cent per month based on the draft before you.

Clause 12 of the Bill seeks to amend section 23, which deals with deferral of taxes. Now, that also has created some concern, because the initial interpretation was that we were removing the deferral. So let me explain. The legislation as currently drafted says the Board of Inland Revenue may approve an application by a qualifying landowner to defer his tax. The issues of the board would consider the income that the individual earns, whether he has a health issue, or any other special circumstances that would make it difficult or impossible for him to settle his taxes. Having considered that, that deferral under the current legislation would last indefinitely. When that person is deceased, his successor, if he could satisfy the board that he also had a difficulty settling those deferred taxes then the board could recommend to the President a partial or full waiver of the taxes.

But when we looked at the section again we became concerned that although somebody may be able to satisfy the board today that he does have a challenge settling his tax liability, his circumstances may change, and there was nothing in

the legislation to allow for a revisiting of that decision. So all we have done is put in the legislation that an individual must reapply every two years to satisfy the board that his conditions remain unchanged, and if his conditions remain unchanged he will continue to enjoy the deferral. If his conditions change, however, the tax will become payable. The board must notify that person of any issue of revocation of that privilege in writing.

Sen. Mark: Madam Minister, may I? Through you, Madam. Madam Minister, I just wanted to ask—Senator, rather, hon. Minister, is there any intention on the part of the Government to examine the establishment as we have in Barbados and in other countries, the establishment of a hardship board or a relief board?—so that the Board of Inland Revenue that is caught up in other functions and duties would not have to spend too much time on pensioners, because we have about 80,000 who are on public assistance, and then another couple tens of thousands who have left the system. So do you think that you will be looking at the possibility of establishing a special board or committee to deal specifically with those people who might be suffering hardships?

Sen. The Hon. A. West: Sen. Mark, in response to your question, it is something that we can monitor, but the advantage we think of leaving it where it is, is that the Board of Inland Revenue would have the advantage of not only the information provided by the applicant but also information on its system. You have made reference on several occasions to pensioners needing relief, but a pensioner is only somebody who has stopped employment, it is not somebody who is necessarily indigent and cannot afford. So it really has to be based on a means test. And while information will be provided and requested from the applicant, the Board of Inland Revenue can also do an independent review, a separate tribunal would not have the

advantage of that information, and because of the provisions in the Board of Inland Revenue which require secrecy, they will not be at liberty to share that information unless the legislation is changed. So we will monitor the effectiveness of the review and determine whether we need to adjust the resources, and so on.

Madam President, we have also moved the payment date from March 31st, where it currently is, to September 30th, and a follow-on adjustment is moving the grace period for payment where no interest and penalty would apply, what the legislation provides is a six-month grace period where no interest on penalty will apply, and if you do not pay by that date the interest on the penalty will kick in. So having changed the payment date we had, of course, to change the termination of the grace period date. The Board of Inland Revenue is being given the power by the proposed amendment to waive any interest on penalty that is imposed. That is a power that they currently have and exercise in respect of other pieces of legislation that they administer.

Clause 19 deals with the—what we had in a couple of sections was that the landowner who owed tax was required to settle that tax, for example, if we seized property to recover tax, the landowner could pay the tax due and recover his property. We have amended that section to say not only must he pay the tax due but he must pay any penalty and interest due as well, unless that penalty and interest is waived of course.

Clause 20 seeks to amend section 34 to reduce the period within which the Board may issue a demand for payment. So you have a payment date when the payment is due, the legislation currently says if the payment is not made by that date the board can issue a demand for the tax within six months; we have reduced that to three months. The legislation as currently exists allowed any person to

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Sen. The Hon. A. West (cont'd)

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whom payment of the tax could be made, which includes a Revenue Officer or a Treasury Officer to levy the stress for non-payment of tax; we have limited that power to only the Chairman of the Board of Inland Revenue. So that is the only person who could determine what, if any action to take in respect of outstanding taxes. We have amended section 52A, which is the section that was introduced—
[Interruption]

Sen. Dr. Mahabir: Hon. Minister, thanks for giving way, but I was not very clear as to where the citizens are going to pay this tax. Is it to the BIR, whereas in the past it was the municipal corporations? I did not see it in the Bill, but I would like a little clarity on it.

Sen. The Hon. A. West: Yes. Sure. And thanks for raising the question because that is an issue that has caused significant problems for a long time. What existed under the provisions of the Lands and Buildings Taxes Act was a provision that required you to settle your tax in the area that the land resided. So if you are living in Tobago and had property in Mayaro, you had to come to Trinidad, go down to Mayaro, pay your taxes and go back home, so we have changed that to say that the taxes can be paid anywhere in Trinidad and Tobago. The responsibility for the tax, the tax is to be collected by the Board of Inland Revenue, and we, in introducing the local government legislation, we will probably give authority to the local government to collect tax as well. We are still considering that, because although it would be more convenient for the taxpayer on the one hand, it creates some challenges, but certainly you can pay your tax as it is at any regional Board of Inland Revenue office, and that would make things more convenient.

As I said, clause 52A was introduced in 2015 to grant a waiver of taxes up to 2015. That was introduced by the former administration, we are amending that to

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extend that exemption, because, as you know, we were not ready to implement the tax from 2006. Clause 24 creates a new section 53A to give the Minister the power to amend the schedules which deal with the applicable rate and the exempt state organizations.

9.40 p.m.

Sen. Raffoul: Thank you for giving way. My question is about when is the extension, the moratorium? When is the moratorium ending, is it 2016 or 2018? You said it was going to be extended, but you did not say until when.

Sen. The Hon. A. West: At the moment it is 2016. We will make a final determination as and when we are ready to move forward whether we will adjust that further.

Sen. Raffoul: Okay. Thank you.

Sen. The Hon. A. West: So we are proposing to give the Minister the power under clause 52, which introduces the new section 53A, to amend the rates of tax and the list of exempt state organizations.

Historically, Madam President, we have collected on average less than \$100,000 per annum in respect of these taxes, which, based on all the information before us, is significantly under what we should be collecting— [*Interruption*]—\$100 million, I am sorry. If we take account of the fact that we anticipate that we have about 700,000 properties, if all the owners of those properties pay a mere \$1,000 in tax, and even if we leave 200,000 properties because they qualify for deferral, we should be earning at least half a billion dollars in tax, nothing to sneeze at. It would certainly go a long way in funding the regional corporations to get their work done and to assist in updating the coffers of the Government. So as I said, Sen. Mark indicated during his debate that was supposed to be related to

valuation, to comment on the fact that Barbados gave all pensioners a 50 per cent relief. I think that our version of the relief is superior to that because, as I indicated, a pensioner does not mean somebody who cannot afford. A pensioner just means you have retired from employment. Where we are satisfied that the person cannot afford they get full relief, not 50 per cent, and the relief can be not only indefinite but absolute. So I think that our provision in that regard is superior to that in Barbados.

As I indicated, we have outdated valuations, we have unassessed properties, we have nominal tax imposed on land which is potentially valuable, we have rampant non-compliance. The steps we are taking to address these are the State is working on creating a comprehensive land registry. We have significantly increased the complement of valuers and we are continuing their classroom and on-the-field training.

We have a much improved computerized system to monitor and track all categories of tax obligations and defaulters via the TTRA, which we are proposing to introduce shortly. We propose to have a more fully integrated district revenue office system, because at the moment the district revenue offices are really treated like bastard children. They are not properly staffed, they are not integrated sufficiently into the system, and we intend to address that. We are of the view that once we do all of these things, that the administration of this new tax will be much better than the administration of the old tax was. So we will get a fairer system, we will get a more equitable system, the level of compliance would be improved and we can all benefit from that.

Madam President, much ado has been made about the fact that under this legislation this administration is intent on taking away people's property. Nothing

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could be further from the truth. We are scaring members of the public for no reason. Under the existing land and building taxes legislation, the Board of Inland Revenue had the power to levy distress on people. The provision that exists under the current legislation is identical.

The Board of Inland Revenue had the power to forfeit property for non-payment of tax. They could have done that under the Lands and Buildings Taxes Act after one year of default. This legislation extends that period to five years. So the board is not able to take any action to forfeit property unless at least five years of non-compliance have elapsed. So it is an improvement on what existed. The board also had the power under the old legislation to forfeit vacant land where no tax was applied. Under that legislation they could have done that five years—

Madam President: Minister, you have five more minutes.

Sen. The Hon. A. West: Thank you, Madam President. They could have done that five years after it was determined that the property was vacant. Now they have to wait 16 years. So we have, in fact, reduced the power of the Board of Inland Revenue under the provision, and I challenge anybody on the other side to show me evidence where the board had superior power to what it has now, that we took away people's property and deprived them of their rights and all these things that we are scaring the public with. The legislation is reasonable; it is responsible; it is proportionate; it is necessary; and I ask that you support it.

Madam President, I thank you and I beg to move.

ADJOURNMENT

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I beg to move that this Senate do now adjourn to Tuesday April 24th at 1.30 p.m. and on that day it is Private Members' Day. At the

Adjournment (cont'd)

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same time I just want to remind my colleagues that we have a significant amount of work to complete in this House. We have a lot of Bills on the Order Paper that have come from the Lower House, and we expect to have some long days ahead of us. Thank you.

Madam President: Acting Leader of Government Business, did you indicate what you will be dealing with on the next occasion?

Sen. The Hon. C. Rambharat: Madam President, on Tuesday April 24th at 1.30 p.m. we have Private Members' Day and on that day we will continue the consideration of the Motion from my colleague, Sen. Mark, on parliamentary autonomy, and earlier we adjourned to Thursday 26th at 2.00 p.m. for the continuation of the committee stage on the Valuation of Land (Amdt.) Bill, 2018.

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

Labour Force Participation Rate

(Decline in)

Sen. Wade Mark: Thank you, Madam President. The matter of the labour force participation rate is what I would want to address in this short contribution this evening and its decline over the last period.

The labour force participation rate is a measure of the proportion of a country's working age population that engages actively in the labour market, either by working or looking for work. It provides an indication of the size of the supply of labour available to engage in the production of goods and services relative to the population at working age.

What we have witnessed in Trinidad and Tobago over the past few years is an alarming decline in the labour force participation rate, which is cause for serious

concern. The labour force participation rate has been steadily declining over the past few years. This decline in participation trend has worsened over the last 30 months. So as at the end of the second quarter, which is when data is available, of 2017, the labour force participation rate stood at 59.50 per cent, the lowest since 1995. This labour force participation rate pales into insignificance when compared to that of Iceland, which has a labour force participation rate of 87 per cent; the UK, 78.80 per cent as at the end of December 2017; and countries like Canada, which is at 65.5 per cent.

Some of the basic reasons or factors which may be attributed to the declining labour force participation rate are, inclusive among others, and let me identify them: the ageing population, the high levels of school dropouts, the high murder rate, which may have led to the resignation of wives or husbands from their jobs to look after dependants, given the exponential rise in the number of discouraged workers, that is another factor. Madam President, the low level of the labour force participation rate is having a negative impact on national output and productivity and, consequently, economic growth and social development in our country.

With this falling labour force participation rate, we also have to take into consideration that since 2006, some 6,400 able-bodied young men and women, whose average age centred around 29 years, have been murdered, as a result of the worsening crime situation in our country.

Madam President, when you take into account the employment level in this country, we have seen that employment has declined from 611,000 persons in 2016, to 602,000 persons as at the end of 2017. We have a population of 1.3.56 million people, and when we look at what is called the “non-institutional population” of our country, we are talking about a 1,070,500 people. Those are

Matter on the Adjournment (cont'd)
Sen. Mark (cont'd)

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people between the ages of 15 and 65 who are able to work at this material time.

So we have about 602,900 citizens who are employed in the country. So we have close to 500,000 people who are part of what is called the “non-institutional population”, who are available to work in the country, but as I said there are many factors that could be addressing why they are not actively involved in the labour force.

So I raise the matter about the current declining rate of the labour force participation rate in this country, because at the beginning of the first quarter of 2017, it stood at 59.80 per cent. That has declined as at the end of the second quarter to 59.50 per cent. The highest labour force participation rate as recorded, was the fourth quarter of 2004, when we had a participation rate of 64.5 per cent of the population—that is the working population.

So when we take into account wages that have contracted, given the index of average earnings by some 3.1 per cent as at the end of 2017, and we take into account the growing and ageing population, where the pension level seem to be focusing more and more on a shrinking labour force, it really calls for serious action.

And therefore, I have raised this matter, and I would like to get the Government’s response to this whole question of how is the Government planning, how is the Government preparing, how is the Government addressing the declining labour force participation rate in the Republic of T&T, because as I said it is impacting negatively on production, on economic growth and productivity in our nation, and it is cause for alarm and concern. I call on the hon. Minister to explain to us what is the way forward to address this particular matter.

Thank you, Madam President.

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Sen. The Hon. J. Baptiste-Primus (cont'd)

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Madam President: Minister of Labour and Small Enterprise Development, you have 10 minutes.

The Minister of Labour and Small and Micro Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus): Thank you very much, Madam President. I thank you for the opportunity to respond to this very important Motion raised by my colleague Sen. Wade Mark concerning what he termed to be the continuous decline in the labour force participation rate and its implications for the national economy. Madam President, I sat here and I listened to my good friend articulate various percentages that did not link to a coherent, compelling case. For example, my friend stated that 602,900 persons in this country are employed, and that there are approximately 500,000 available to work. Now, I do not quite understand what my friend meant, but my interpretation of it tells me that perhaps, just perhaps, my friend may not have taken into consideration that though the population may be deemed to be in the vicinity of 1.2 to 1.3 million, so that a simple calculation of the figures that he has placed before this House indicates 1.2 million, but it does not make provision, for example, to children or young people between 18 years and 20 years who may be attending university full time. It does not take that into consideration. Secondly, my friend talked about a shrinking labour force which is impacting on economic growth and productivity, but he has not laid any evidence, he has not laid any information before this House to support what he has stated.

Nonetheless, the Government appreciates the concerns expressed by Sen. Wade Mark, as we understand the importance of the workforce to our national development. Madam President, the labour force participation rate is a key measure of the labour market. By definition, the labour force participation rate measures the proportion of the working age population that is employed or

Matter on the Adjournment (cont'd)
Sen. The Hon. J. Baptiste-Primus (cont'd)

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unemployed.

According to the International Labour Organization the labour force participation rate provides an indication of the size of the supply of labour available to engage in the production of goods and services relative to the size of the population who can be deemed to be at working age.

As we continue to navigate these challenging economic times, the Government of Trinidad and Tobago is committed to mitigating the consequences of these harsh economic circumstances on our labour force. The Government, in our National Development Strategy 2016—2030, better known as Vision 2030, commits to the development goal, putting people first, nurturing our greatest asset. Of course, this includes maximizing the potential of our labour force.

Madam President, let us look at trends in world labour force participation. We must first recognize that the challenges faced by our national labour market, those challenges are not unique to Trinidad and Tobago. I recall my friend, Sen. Wade Mark, stating that the participation rate in this country is 59.50 per cent, which is the lowest since 1995, and he cited Iceland, 87 per cent, UK, Canada. All those countries he has cited, they are deemed to be First World countries, developed countries. We are a developing country. But nonetheless, the challenges faced by Trinidad and Tobago are challenges all countries are facing to date.

The ILO's *World Employment and Social Outlook—Trends 2018* depicts a continuing decline in the world labour force. The global gender gap also continues, as women remain less likely to participate in the labour market than men. The phenomenon of ageing populations and the marked effect on the labour market is a universal reality. The ILO estimates that as the world labour growth

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rate accelerates, the proportion of people aged 65 and over in the total population will increase substantially in the coming decades. The growth of the global labour force will therefore not be sufficient to compensate for the exit from its ranks of the rapidly expanding pool of retirees.

I think you belong to that pool, Sen. Mark.

Sen. Mark: I have not reached there as yet. I will join you just now. [*Laughter*]

Sen. The Hon. J. Baptiste-Primus: I used to be there and I will go back there, and I will welcome you with open arms.

Madam President, an ageing population is also less able to keep up with the pace of innovation and structural changes in the labour market. These trends pose challenges at the national level as regards keeping retirees out of poverty, promoting decent work outcomes for an increasingly ageing labour force, and helping older workers adapt to changes in the world of work.

Let us look at the labour force participation in Trinidad and Tobago. At this point, allow me to provide the official statistics on labour force participation rates obtained from the Central Statistical Office for the period 2013 to the second quarter of 2017. An examination of labour force participation rates for this period reveals several important trends in this country. The first and most obvious of these trends relates to the overall rate of both sexes.

Official estimates from the Central Statistical Office show that labour force participation stood at 61.4 per cent at the start of the period just mentioned. The rate then increased moderately in 2014 to 61.9 per cent, before declining slightly for the remainder of that period. Preliminary estimates for 2017 shows a labour force participation rate of 59.6 per cent, and it is normal for this rate to drop marginally during periods of subdued economic growth as business contractions

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take place.

Madam President: Senator, you have one more minute.

Sen. The Hon. J. Baptiste-Primus: Madam President, thank you. In this situation, persons may focus on continuing their schooling, upskilling exercises and early retirement rather than re-entering the labour force.

The examination of labour force participation rates by sex is also useful in understanding the implications of a declining rate on the domestic labour market. Data reveal that the labour force participation rate remained relatively constant for females over the corresponding period. In fact, preliminary estimates for 2017 show a slight increase in female labour force participation rate to 50.7 per cent. While some may perceive this as a cause of concern, this development can also be looked at as a source of encouragement. Conceivably, it means that more women are choosing to participate in the production of goods and services.

I thank you, Madam President.

Madam President: Next matter, Sen. Mark.

School Dropouts

(Appropriate Action to Reduce)

Sen. Wade Mark: Thank you very much, Madam President. The second area I wanted to bring to the attention of this honourable Senate deals with the issue of school dropouts. We got some statistics from the hon. Minister of Education some time ago, and I believe it is very important to bring those statistics back to the attention of this Senate, because the numbers to my mind remain very alarming, and we need to pay attention and to take appropriate action.

Between the period 2008 to 2017, according to the hon. Minister of Education, data that was provided to us here in the Senate, both at the primary and

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secondary school levels we had some 11,072 students dropping out of the school system in our country. When we examine on a yearly basis that amounted to about 1,384 students, giving you a monthly figure of about 115 students per month dropping out, which breaks it down to at least four students every day dropping out of the school system in Trinidad and Tobago.

When we look at the primary school system and the male and female numbers between the period I have identified, you will realize that in terms of males, between 2008 to 2016, we had about 651 students or pupils in the primary school system leaving.

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In terms of females we had about 466 during that period 2008 to 2016, giving us a grand total of 1,117 students between 2008 and 2016. When we go to the secondary school level, the picture is even more discouraging.

In the period under review, 2008 to 2016, we had a total of 5,492 male students dropping out of the school system, and in terms of females we had a figure of 4,463, giving us a grand total, Madam President, of close to 10,000 male and female students between the period 2008 to 2016.

Now, Madam President, we have not, as a country, measured the cost to this country, to this nation, of these school dropouts; we do not know how these students are being tracked. We do not know how many of them are being trapped by the socio-economic situation that this country currently faces, and how many of them end up in a life of crime in Trinidad and Tobago. What we do know, Madam President, is that many of our young people who leave the school system at these tender ages, they leave because of economic inequality, social inequality, injustices and neglect.

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And, Madam President, because of these disadvantaged youths being faced with these challenges, we have not been able to see any intervention strategies to rescue these young people. And we know that it is an incontestable fact that the progress of any nation is highly dependent on a very educated citizenry, and if we have education playing a central role in the development of human existence, then we have to do something about this high rate of school dropouts in our nation's system today. We cannot continue to allow young people to fall through the cracks and there is no tracking mechanism to rescue these young people in our nation today.

Madam President, we have not been able to properly measure the impact that these school dropouts, you know, would be having on our economy and our society. We have not been able to measure what impact these young people who are dropping out the school system that they are having on the crime wave that we are currently experiencing as a nation.

And, Madam President, we know that the compulsory age to leave school at the primary level is 12, and I think, I could be wrong, but I believe I am right, that at the secondary school level it is supposed to be 16 years. So if it is 12 at the primary school level and the compulsory is at 16 at the secondary school level, we have to determine what is happening on a regular basis, on a daily basis to these students who I have mentioned who are currently out of the system.

If we have 12,000 young people between the ages of 11 and 15 and 16 years falling through the cracks in our country and there is no mechanism to track them down, you understand the negative impact that is having on our development, on our growth, our productivity levels, as well as the negative impact on crime, because many of these young people get themselves involved in criminal activities

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in our country.

So, Madam President, I have raised this matter because it is of concern to the nation and to many, well not the nation alone, but I would say to our country because it is harming and hurting development, and I have brought it to the attention of this honourable Senate to get some answers from the Government as it relates to what mechanisms are being put or are in place to rescue these young people. What mechanisms are in place to track down these young people? How is the Government, you know, intervening? What strategies are being employed in order to rescue these young people who are falling through the cracks because of all kind of factors? I mentioned economic, I mentioned social, but there are many other factors.

And, Madam President, if we can just imagine if these young people were to become graduates at the level of the secondary school, you could imagine the impact it would have on our economic growth and development.

So, Madam President, I close by asking the hon. Minister to share with us what is the Government's perspective and strategies for the future. Thank you very much, Madam President.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): [*Desk thumping*] Madam President, there is great danger in anticipation, and I wrote down some words long before Sen. Mark introduced his Motion, but I must commend him because he has successfully failed to defend his own Motion.

His Motion talks about the failure of the Government to adequately address the continuing issue of school dropouts, but his data is positioned from 2008, and I would respond to the data. So he has taken us over a nine-year period 2008 to

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2016 that has spanned the Patrick Manning administration, the Kamla Persad-Bissessar administration and the Keith Rowley administration, and if, if there is a failure, he has surely not positioned it at the feet or in the hands of this Government.

Having failed to defend his own Motion in relation to the data, and I am not sure upon what data Sen. Mark relies. He referred to data produced by my colleague the Minister of Education, but I have data that points in a different direction and I will get to that.

The third point that I want to make in response is, not surprisingly he is inherently contradictory in his defence of his Motion, because on the one hand he says to us, we have not been able to measure the impact of the dropouts, we have not been able to measure the impact of the dropouts on crime, and on the other hand, he tells us that there is impact on economic development and on crime. So let me assist him in his own Motion.

The first, Madam President, and I think I am well positioned because of where I come from. There is sufficient data which points to a link between low-education achievement and poverty; there is sufficient data and sufficient research. There is sufficient data and sufficient research which points to a link between low-education achievement and the likelihood of involvement in deviant behaviour. Those are facts, and they are well established in our society.

And there are various factors as he has pointed out, a wider range of factors, and based on my own experience in my community, a rural community, these factors range from early entry into the workforce, the economic situation that families and communities find themselves in, and the struggle on some mornings to get passage to go to school and money to buy food. Transport, I have said,

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throughout the length and breadth of this country that the number-one thing that affects education achievement, the part of the country that I come from, is transport. Some people get accustomed with walking outside their gate and finding a taxi, a maxi or a PH, the bus stops four o'clock in the afternoon where I come from, and you walk the rest of the night if you want to get to a classroom.

The family situation and the fact that in many households, particularly in rural communities you have parents who are not as literate and not as able to assist with homework, and you have community influences encouraging people to stay at home rather than go to school. So we know the factors and the factors range.

However, Madam President, in any society in anything you do there will be a percentage that will fall through the cracks, and based on the data provided by the Ministry of Education, I would say in relation to primary schools, the dropout rate has been on the decline between 2013 and 2016. In terms of the gross numbers, in the primary schools the dropout number in 2013 and 2014, that period, was 151 and that is out of a total enrolment of 119,424, it is a .35 per cent.

In 2015, out of a total of 120,870 primary school students, we had 120 dropouts, a decline to .1 per cent. And in 2015/2016 out of a total of 107,360 primary school students there a total dropout number of 49 which meant 0.5 per cent. So from 2013, .35 or a gross number of 151, to 2016, three years later, a decline to .05 per cent or a gross total of 49. Even 49 is too much, Madam President, it is too much, but the point is that it has been declining.

In secondary schools in 2013/2014, the percentage was 1.08 per cent. In 2015/2016, two and a half to three years later it is now at 1.33 per cent, and in terms of, just to give you an idea in terms of the gross number, that means a dropout number of 1,006 in 2015/2016 from secondary schools out of a total of

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75,486.

And measures used by the Ministry of Education, Madam President, and I am sure some would have been initiatives under this administration and some would have been things that my colleague met in train and they include and I will refer to six or seven measures.

The school-based management system, which is essentially utilizing the combined efforts of the staff of the school, the parents, the students themselves and the community, increased monitoring and reporting of absenteeism and dropouts. And I suppose that is why we have the data that we could refer to. Home and family intervention, and that is particularly important, Madam President, in dealing with the link between the family situation, the community situation and the school performance; parenting in education programme.

And we recognize, as I said, we have parents who are younger and people who are having children at a very young age, and as the calypso says, “children making children to be part of this growing mass”. And we recognize that parents whether it is older parents or very young parents need support within the school and within the community. Learning enhancement centres; because what we have I can talk particularly about my community. I have always said that, you know, it is not one size fits all in education. What works in Port of Spain will not work in Guayaguayare, and we need to have the additional opportunity for specialized intervention; particularly across the country we know that the achievement levels in maths and English are low in some communities, and where you have a particular issue in a community, you need a specialized intervention and the learning enhancement centres contribute to that.

Support for under-performing students—and the support for

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under-performing students is not only in the classroom, but outside the classroom and in the community. Not everybody—we are not made equally. We are not fortunate, for example, to be as brilliant as Sen. Mark, and those of us who are not, require some support. So it is very important that those students who need the support, get it in and outside the classroom.

Something that we overlook because as I said, education is not one size fits all. So the Ministry has been using differentiated instruction, not everybody is inclined towards “chalk and talk”. Not everybody—some of us are listeners, and some of us do not listen, some of us want to read, and we have different forms of learning.

Madam President: Minister, you have one more minute.

Sen. The Hon. C. Rambharat: Thank you very much. I need just one more minute.

And those, Madam President, are some of the interventions that the Ministry of Education is involved in, and I am very happy to have been able to respond to the Motion. I am very happy that my colleague has, notwithstanding the wording of his Motion he has accepted that this is something that is a continuing issue in the country, it affects productivity, it affects our investment into the long-term asset which is our human resource asset, and it is something that as a Parliament we ought to be paying close attention to. I thank you. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 10.25p.m.