

**SENATE***Monday, May 21, 2018*

The Senate met at 1.30 p.m.

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

**Madam President:** Hon. Senators, I have granted leave of absence to Sen. Sophia Chote SC, who is ill.

**REVOCAION OF APPOINTMENT**

**Madam President:** Hon. Senators, I have received the following correspondence from Her Excellency the President, Paula-Mae Weekes:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND  
TOBAGO

By Her Excellency PAULA-MAE  
WEEKES, President of the Republic  
of Trinidad and Tobago and  
Commander-in-Chief of the Armed  
Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. RONALD GAHERIS DUKE

WHEREAS by Instrument dated 14<sup>th</sup> May, 2018, I appointed you to act as a temporary Senator, with effect from 15<sup>th</sup> May, 2018 and continuing during the absence from Trinidad and Tobago of Senator Jennifer Raffoul.

**UNREVISED**

In exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, I, PAULA-MAE WEEKES, President as aforesaid, do hereby revoke, with immediate effect, your appointment to act as a temporary Senator.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad  
and Tobago at the Office of the  
President, St. Ann's, this 21<sup>st</sup> day of  
May, 2018."

### **SENATORS' APPOINTMENT**

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND  
TOBAGO

By Her Excellency PAULA-MAE  
WEEKES, President of the Republic  
of Trinidad and Tobago and  
Commander-in-Chief of the Armed  
Forces.

/s/ Paula-Mae Weekes

President.

TO: PASTOR CLIVE DOTTIN

WHEREAS Senator JENNIFER RAFFOUL is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, PASTOR CLIVE DOTTIN, to be

**UNREVISED**

temporarily a member of the Senate with effect from 21<sup>st</sup> May, 2018 and continuing during the absence from Trinidad and Tobago of the said Senator Jennifer Raffoul.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad  
and Tobago at the Office of the  
President, St. Ann's, this 21<sup>st</sup> day of  
May, 2018."

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND  
TOBAGO

By Her Excellency PAULA-MAE  
WEEKES, President of the Republic  
of Trinidad and Tobago and  
Commander-in-Chief of the Armed  
Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. JOHN HEATH

WHEREAS Senator Sophia Chote, S.C., is incapable of performing her duties as a Senator by reason of illness:

I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1) (b) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOHN HEATH, to be temporarily a member of the Senate with effect from 21<sup>st</sup> May, 2018 and continuing during the absence of Senator Sophia Chote, S.C., by reason of illness.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 21<sup>st</sup> day of May, 2018."

### **OATH OF ALLEGIANCE**

*Senators Pastor Clive Dottin and John Heath took and subscribed the Oath of Allegiance as required by law.*

### **WELCOME TO STUDENTS**

**Madam President:** Hon Senators, permit me to welcome the students of the Madras Government Primary School. They are here with us. [*Desk thumping*]

### **URGENT QUESTIONS**

#### **Passing of Six-year-old Zakiah Lorde (Investigation Undertaken)**

**Sen. Wade Mark:** Thank you, Madam President. To the hon. Prime Minister: In light of the passing of six-year-old Zakiah Lorde after she succumbed to her injuries, can the Prime Minister state whether an investigation will be undertaken?

**The Minister of State in the Office of the Prime Minister (Hon. Ayanna Webster-Roy):** Thank you, Madam President. Let me first extend sincere condolences to the family, friends and loved ones of young Zakiah. The matter is currently being investigated by the Trinidad and Tobago Police Service. Thank you, Madam President.

**Sen. Mark:** Madam President, can the Minister indicate whether the Tobago House of Assembly intends to conduct an enquiry into this matter as well?

**Hon. A. Webster-Roy:** Thank you, Madam President. Since the incident occurred the Tobago House of Assembly would have been investigating and looking into the procedures and protocols. Thank you.

**Escalation of Domestic Violence by Police Officers  
(Measures Implemented)**

**Sen. Wade Mark:** To the hon. Minister of National Security: In light of recent reports that there is an escalation in the number of allegations of domestic violence by police officers, can the Minister advise what urgent measures are being implemented to reduce this incidence of domestic violence?

**The Minister of National Security (Hon. Maj. Gen. Edmund Dillon):** Thank you, Madam President. Madam President, with regard to the statement of an escalation in the number of allegations of domestic violence by police officers, I am awaiting validation of this from the Commissioner of Police. The Trinidad and Tobago Police Service has adopted a zero tolerance approach to every report of domestic violence committed by police officers. Each matter is treated with the greatest level of urgency to ensure that the matter is thoroughly investigated and then appropriate action is taken against the perpetrators. Support is also provided to the victim through the Trinidad and Tobago Police Service Victim and Witness Support Unit. Additionally, officers receive training to deal with domestic violence situations and over 250 officers have been trained in care counselling as an internal support mechanism.

**Sen. Mark:** Could the hon. Minister indicate, given the urgency of this matter, when the report of the Commissioner of Police can be expected to be submitted to your good self?

**Hon. Maj. Gen. E. Dillon:** Madam President, I do not have a timeline. The

Commissioner of Police is investigating it and he would respond accordingly.

**Sen. Mark:** Madam President, can I ask the hon. Minister whether there are any mechanisms in place to monitor this phenomena given the stressful nature of the occupation of the police officer?

**Hon. Maj. Gen. E. Dillon:** Madam President, the Commissioner of Police is treating with the matter, and I am sure he is treating it with quite a degree of urgency and he will report accordingly.

**UTT's Restructuring Exercise  
(Retrenchment of Persons)**

**Sen. Wade Mark:** To the hon. Minister of Education: Can the Minister advise of the total number of persons who are expected to be retrenched in the upcoming weeks as part of the UTT's restructuring exercise?

**The Minister of Education (Hon. Anthony Garcia):** Thank you very much. According to the information received from the University of Trinidad and Tobago, 59 academic staff are to be dismissed, 57 of which have already received dismissal letters. In addition, 287 non-academic staff are expected to be dismissed. Discussions are still ongoing between the OWTU and the University of Trinidad and Tobago. Thank you very much.

**Sen. Mark:** Can the Minister indicate based on request for information by the sitting union re: the retrenchment of some 287 non-academic staff members, can the hon. Minister indicate to this Senate whether UTT has provided the counter information required, or the information requested by the sitting union?

**Hon. A. Garcia:** Madam President, as part of the negotiating process the union has been requesting certain bits of information that have been provided to the union. However, I have facilitated three meetings in an

effort to bring both parties together, and at the last meeting that I held with the union and UTT, the union had requested some additional bits of information. The UTT is now treating with that information and I have been assured that in the not too distant future, that information will be relayed to the union. Thank you very much.

**Sen. Mark:** Madam President, through you, can I ask the hon. Minister with close to 300 academic and non-academic staff being earmarked for retrenchment, can you share with this Senate what impact, if any, this layoff will have on the quality of education at the level of UTT?

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

#### **UTT Retrenchment of Employees (Assistance of)**

**Sen. Wade Mark:** To the hon. Minister of Labour and Small Enterprise Development: Can the Minister advise whether the Ministry has been formally notified by the UTT of its retrenchment of several employees, and what assistance, if any, is being provided by the Ministry to the retrenched employees?

**The Minister of Labour and Small Enterprise Development (Sen. The Hon. Jennifer Baptiste-Primus):** Thank you very much, Madam President. Madam President, I am informed by the University of Trinidad and Tobago that with regard to the academic staff, they are not deemed to be workers under the Act which require reporting to the Minister of Labour and Small Enterprise Development.

**Sen. Mark:** Madam President, they are citizens of the Republic, of course. What I would ask the hon. Minister, even though they are not workers as deemed by the Industrial Relations Act given what you have said, what

assistance, if any, is the Ministry prepared to offer to those retrenched academic members of the community?

**Sen. The Hon. J. Baptiste-Primus:** Madam President, through you, I would just like to remind my colleague that the Ministry of Labour and Small Enterprise Development, we do have in place a programme that emerged from the 10 point plan, one of which, the National Employment Service. That unit falls under the Ministry of Labour and Small Enterprise Development where employers register with us, and unemployed or retrenched persons are invited to register with the Ministry of Labour and Small Enterprise Development.

As a matter of fact, we have opened a National Retrenchment Register to capture more accurately the number of the persons retrenched in Trinidad and Tobago because the Act states that an employer is only required to inform the Minister of Labour and Small Enterprise Development of retrenchment if that employer is retrenching five or more workers and, therefore, under five there is no requirement. So that we invite those who have been retrenched to visit the offices of the Ministry of Labour and Small Enterprise Development and they will be given the necessary assistance and guidance where possible.

**Madam President:** Hon. Senators, the time for urgent questions has expired.

### **VISIT OF SENATE PRESIDENT (ST. LUCIA)**

**Madam President:** Hon. Senators, permit me to invite you to join with me in acknowledging our very distinguished guest with us in the Chamber, Sen. The Hon. Jeannine Michele Giraudy-McIntyre. She is the President of the Senate of the Parliament of St. Lucia. [*Desk thumping*] The President of the

Senate of St. Lucia is visiting with us and will be participating in the Tenth Gathering of the Parliamentary Network for Gender Equality which is taking place this week.

### ANSWERS TO QUESTIONS

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Madam President, the Government would like to have a deferral of all four questions listed on the Order Paper today—131, 132 and 133 for two weeks.

**Sen. Mark:** Madam President, could I get an explanation from the hon. Leader as to why these questions are being deferred?

**Madam President:** Sen. Mark, I would—[*Interruption*]

**Sen. The Hon. F. Khan:** It is within the Standing Orders.

**Madam President:** Normally at the beginning of this part of the Order Paper, the Minister indicates what questions they will be answering. Okay?

### ORAL ANSWERS TO QUESTIONS

*The following questions stood on the Order Paper:*

#### **Sandals Resorts International (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?

[*Sen. S. Hosein*]

**Assessment Report on Tobago Passenger Ferries  
(Continuation of Operation on Sea Bridge)**

- 131.** In view of reports that an assessment conducted by a UK based company on the state of the two Tobago passenger ferries revealed multiple defects to the vessels, can the hon. Minister of Works and Transport indicate why after having such a report for eight (8) months the vessels were allowed to continue operating on the sea-bridge?  
[*Sen. W. Mark*]

**T&T Objection to Dominica's Fee Waiver  
(Action Taken)**

- 132.** In view of this country's objection to Dominica's request for an OAS fee waiver, can the hon. Prime Minister indicate what actions he intends to pursue against the persons deemed responsible for the embarrassment caused to this country? [*Sen. W. Mark*]

***T&T Spirit* Unserviceable State  
(Action Taken)**

- 133.** In view of recent reports by a UK based company that the *T&T Spirit* had been operating to an almost unserviceable state, can the hon. Minister of Works and Transport indicate what action, if any, will be taken against the persons responsible for the maintenance of said vessel? [*Sen. W. Mark*]

*Questions, by leave, deferred.*

**DEFINITE URGENT MATTER  
(LEAVE)**

**Crime Epidemic Gripping Trinidad and Tobago  
(Safety of)**

**Sen. Anita Haynes:** Thank you, Madam President. I hereby seek your leave to move the adjournment of the Senate today under Standing Order 16

to discuss an urgent matter of definite importance, namely the crime epidemic currently gripping Trinidad and Tobago. The matter is definite as it pertains specifically to the crime wave that has gripped Trinidad and Tobago in the past few weeks, where there has been an increase in home invasions and violent crimes.

The matter is urgent as Trinidad and Tobago is under threat of becoming a failed state under this administration and the Government has failed in its duty to protect the people of Trinidad and Tobago by guaranteeing their safety. The matter is of public importance because as it stands no one in Trinidad and Tobago feels safe and no one is safe.

Thank you. [*Desk thumping*]

**Madam President:** Hon. Senators, I have considered the Motion of the Senator and I am not satisfied that the matter presented qualifies under this Standing Order.

**ELECTIONS AND BOUNDARIES COMMISSION  
(PARLIAMENTARY SCRUTINY)**

**Sen. Wade Mark:** Thank you very much. Madam President, I beg to move the following Motion standing in my name:

*Whereas* it is established by Section 71(1) and (12) of the Constitution of the Republic of Trinidad and Tobago, that there shall be an Elections and Boundaries Commission that in the exercise of its functions shall not be subject to the direction or control of any other person or authority;

*And whereas* the Elections and Boundaries Commission is responsible for holding free and fair elections throughout Trinidad and Tobago;

*Be it resolved* that the Senate take note that the Elections and Boundaries Commission is not subject to any parliamentary scrutiny or accountability in respect of its activities and operations unlike other similar independent bodies such as Service Commissions;

*And be it further resolved* that the Senate call on the Government to take urgent steps to introduce legislation that would make the Elections and Boundaries Commission accountable to the citizenry of Trinidad and Tobago by allowing parliamentary scrutiny of its administration, the manner of the exercise of its powers, methods of functioning and any criteria adopted by the Commission in the exercise of its powers and functions.

Madam President, there should be no sacred cows in the Republic of Trinidad and Tobago [*Desk thumping*] and particularly where public resources are being expended to execute their operations and other actions. Madam President, I want to refer to the Constitution, first of the United National Congress, and later on to the Republic of Trinidad and Tobago. And under section 2 “Aims and Objectives”, dealing with what I call Roman or article (vii), it states and I quote:

United National Congress—“IS COMMITTED TO THE FOLLOWING AIMS AND OBJECTS:—

To struggle against any tendency towards authoritarianism, autocracy and dictatorship and to promote a viable diffusion of centres of power and decision-making as a check against the concentration and abuse of power;”

Madam President, the Republican Constitution of Trinidad and

Tobago, Part IV, from sections 70, 71, and 72 outlines in brief the responsibilities, functions and duties of the Elections and Boundaries Commission, and one of the matters you would observe in this part of the Constitution and particularly section 72, sub (1), (2), (3), (4), (5), and (6), is a provision that says that once a report is tabled or submitted by the Commission to the Parliament, that report can either be accepted, approved or rejected. There is no wriggle space for the people, or the people's representatives to conduct any modification, any amendments to the recommendations of the Elections and Boundaries Commission. It is either these recommendations are rejected, they are approved, and that is the end of the matter.

I will show you, Madam President, in my presentation that the framers and fathers of this Constitution, back then, may have had their reasons for doing so. But the dynamics of development and the need for greater accountability and transparency over the years have forced many countries within the Commonwealth, including New Zealand, South Africa, the United Kingdom, Australia, just to mention a few, to revisit this approach, and there are in those countries that I have mentioned, particularly in New Zealand, joint select committees established. In New Zealand it is called the Justice and Electoral Committee to scrutinize the activities through their annual reports of their Electoral Commission. We have no such luxury and opportunity in the Republic of Trinidad and Tobago.

So much so, Madam President, I am not breaking new ground, I am not making history by bringing this matter to the attention of this honourable Senate. Because of the fact that the Parliament does not have the power to

scrutinize the activities of the Elections and Boundaries Commission, parliamentarians before me have had to bring Private Members' Motions in order to deal with this entire issue of the Elections and Boundaries Commission.

Madam President, subsequent to the 2000 General Election which was held on December the 11<sup>th</sup>, 2000.

The then Opposition People's National Movement, through its MP who is now Prime Minister, Diego Martin MP, Diego Martin West, then MP, now Prime Minister, filed and debated a Private Member's Motion, in which the Member sought to persuade or to convince the House to establish a commission of enquiry into all the actions of the Elections and Boundaries Commission in the preparation of its preliminary and final voters list, which were used in the December 11, 2000 General Elections, and went on, Madam President, to call on the House to agree, that the Government provide through supplementary allocation, all the necessary financial and other resources, to effect an immediate comprehensive, nationwide voter registration exercise, inclusive of a new voter identification system, as well as calling on the House at that time to have that exercise completed, in the shortest possible time, with a view to having improved procedures and a revised voters list, available well before any other national elections in the country.

**2.00 p.m.**

Madam President, I am bringing to your attention that the matter of the Elections and Boundaries Commission is not anything that is new or that is confined to what we are raising on this side of the House. As a result, of

that decision, that Motion, when the PNM got into power in 2002, it was on the 29<sup>th</sup> of January, 2002, that the President appointed a commission of enquiry into the functioning of the Elections and Boundaries Commission. That was done in 2002, Madam President, and the terms of reference for that commission of enquiry were as follows: Were the electoral lists for 2000 and 2001 General Elections accurately compiled? Are the processes and procedures employed by the EBC conducive to accuracy of the electoral list and the competent functioning of the EBC staff? And what changes, if any, should be made, to ensure that the integrity of the electoral process is preserved?

Madam President, that Commission received 72 submissions. It held a series of public hearings between March 13, 2002 to May 15, 2002 and paid visits to selected offices of the EBC. That Commission, Madam President, was chaired by the retired judge of the Supreme Court, Justice Lennox Deyalsingh. It included Professor Karl Theodore, Dr. Noel Kalicharan, Mrs. Myrtle Palacio and Mr. Keron Arthur. These were the members of that commission.

Madam President, I draw these matters to your attention, and to the attention of this honorable House to let you know, as I said earlier, there should be no sacred cows in our nation and every public authority, even enshrined or entrenched in our Constitution, should be subjected to Parliamentary and public scrutiny, and that should be addressed through the appropriate amendment to the legislation, that is, both the Constitution and our Standing Orders.

Madam President, we are aware, that the Elections and Boundaries

Commission is an autonomous body created by the Constitution with the key task of directing and supervising the registration of voters and the conduct of elections in this country. And, Madam President, in section 71(1) of the Constitution of our Republic, it states that:

“71. (1) There shall be an Elections and Boundaries Commission for” —

this country, and that this Commission membership is outlined and the process of the appointment of the Commission members it states in subsection 8 that:

“(8) The Commission may regulate its own procedure.”

And to demonstrate the kind of independence and the need for nonpartisanship in its operations:

“(10) The salaries and allowances of the staff of the Commission shall be a charge on the Consolidated Fund.”

So, under section 71(10) that is made abundantly clear, Madam President, that the Commission salaries shall be a direct charge on the Consolidated Fund.

Madam President, the Elections and Boundaries Commission is also, as the Motion indicates—must conduct free and fair elections. So, the Election and Boundaries Commission is not only governed by the Constitution. It is also governed by what is known as the Representation of the People Act, which sets out the mechanics by which the EBC carries out its constitutional and legal functions.

Now, Madam President, if we go to the Representation of the People Act, Chap 2:01 and you go to Part I and you go to subsection (3) it states,

and I quote:

“3. (1) Subject to subsection 71 of the Constitution, in the exercise of its functions under the Constitution, the Commission shall exercise general direction and supervision over the administrative conduct of elections and enforce on the part of all Election Officers”—hear the words, Madam President,—“fairness”—may I repeat?—“fairness, impartiality”—may I repeat—?“impartiality and compliance with this Act.”

It goes on to indicate, Madam President, in subsection 2 of section 3:

“(2) There shall be a Chief Election Officer who shall, subject to any general or special directions of the Commission, perform such functions and duties and exercise such powers of the Commission in such a manner as the Commission may from time to time direct, including any of the following duties:”

And it goes on the outline, Madam President the powers of the Chief Election Officer:

“ (a) To make such arrangements and to do such things as are necessary for the initiation and maintenance of the unit and central registers in accordance with this Act, and for that purpose to make arrangements for the preparation and issue of the necessary forms and instruments and for the collection and keeping of such records as may be necessary.

(b) To issue of Elections Officers such

instruction as he may, from time to time, deem necessary to ensure the effective execution of the provisions of this Act; and

(c) To execute and perform all other powers and duties that by this Act or by the Commission are conferred or imposed on him.”

Now, Madam President, the election and Boundaries Commission has a very serious duty and responsibility to ensure that the elections that are conducted by them are seen by the population as being conducted fairly, “neut” where there is neutrality, where there is impartiality and, Madam President, not a hint of anyone under its watch being compromised or being able to be compromised, or to taint or blemish the electoral process. [*Desk thumping*] Whenever that hint is given, it is cause for alarm, and that can lead, Madam President, to serious developments for the stability, for the peace, the good order and governance of our nation.

Madam President, I want to tell you that Trinidad and Tobago, in its current state, faces a lot of dangers. Sometimes the dangers are so imperceptible the eyes, the naked eyes cannot see because they are so imperceptible, in terms of how they are reaching and coming. There is a book written by two gentlemen out of America. It is entitled *How Democracies Die*. I forgot the name of the authors; *How Democracies die*. And, Madam President, they were saying in that document, that book, that in the past, generals used to overthrow democratic regimes, like what happened in Chile under Allende in 1973, and in other countries in South America, and

recently, in Egypt.

But what the literature is revealing today is that elected Members of Parliament, elected leaders, Madam President, are the ones who are—once they are placed in office, they are the ones who are subverting and compromising the entire democratic process. That is what these authors were saying, and within a twinkle of an eye, a country that could be described as a laboratory of democracy can become a laboratory of authoritarianism and autocracy, just by a twinkle of an eye. And that is why, Madam President, it is so important that whatever we do we as Parliamentarians must guard jealously with our lives if necessary our independent institutions in this country.

And we must do nothing to ensure that anything comes between those institutions and democracy. So, Madam President, whether it is the Public Service Commission, whether it is the Police Service Commission, whether it is the Elections and Boundaries Commission, those institutions must be safeguarded. They must be protected and they must be defended. [*Desk thumping*] We must defend the Constitution and those institutions that are entrenched in our Constitution.

**Sen. Khan:** The EBC is entrenched.

**Sen. W. Mark:** And that is why—we know that that is why I am asking for it to be “dis-entrenched” or de-trenched or unhinged.

Madam President, I want to bring to your attention, and I want to tell you that since I have known myself in public life I have never witnessed a situation where a quasi-judicial body, has as its chairman a political appointee. [*Desk thumping*] I have never witnessed that in my life.

Madam President, when you see these things beginning to emerge in your country, we have to take note, we have to take stock, we have to be alarmed. I have never seen a quasi-judicial commission, Madam President, having as its chairman a political appointee. I have never seen that, and you know, what is worse, if that had happened under the People's Partnership there would have been blood and sand on the roads and streets of this country.

**Sen. Baptiste-Primus:** Please.

**Sen. W. Mark:** Well when I say—let me withdraw that, Madam President. There would have been a lot of concerns. Let me withdraw it.

**Hon. Senator:** That is better.

**Sen. W. Mark:** Yeah, there would have been a lot of concerns and challenges.

Madam President, could you imagine that a member of a board appointed by the Kamla Persad-Bissessar's Government to the Chaguaramas Development Board been appointed as the Chairman of the Police Service Commission? Could you imagine that happening under the Kamla Persad-Bissessar's Government? You have a political appointee appointed by a Cabinet, by the Kamla Persad-Bissessar Government and that person is appointed as the chairman of the Police Service Commission in Trinidad and Tobago. Could you imagine—[*Crosstalk*]

**Madam President:** No, Sen. Mark, permit me just to interrupt and I do it reluctantly. But, you are talking about the Police Service Commission and I believe that is a process in the other place that is triggered by the President of the country. And therefore you are bringing the President into the debate,

and therefore I am going to ask you, whatever you have to say, you have to manage you information please.

**Sen. W. Mark:** Madam President, all I am saying is that, I am not querying or questioning. I am saying, Madam President, as Parliamentarians we ought to be conscious of these developments, and I am not querying or questioning the appointment of any person, and I am not even casting aspersions on any character involved in this exercise. I am bringing to the attention of the honourable House through you, Madam President, some of the warning signs that are emerging, some of the dangers that are appearing that we need as Parliamentarians to be conscious of. [*Desk thumping*] That is all. We have to be conscious of these things.

Madam President, otherwise if we are conscious of these things, I would accused of being derelict in my duty, because if I knew of such a thing taking place in our country, and I did not bring it to your attention and to this House's attention or this Senate's attention, I would be guilty of dereliction of duty.

So I make it very clear. I am not attacking. I am not questioning. I am not casting any aspersions on any appointment or any office holder, Madam President. I am dealing with a principle that is involved here, a principle, and that is what we should be concerned about as Parliamentarians.

Madam President, this is why I again say that when we look at the process, I want, Madam President, as I am on this line, let me draw your attention to the commission of enquiry's report into this Election and Boundaries Commission. And this commission of enquiry report was done,

as I said, by Mr. Lennox Deyalsingh. He was then a retired Supreme Court Judge. It is dated Friday 31 May. There were 23 recommendations that were submitted by the Deyalsingh Commission on this particular matter.

But, Madam President, Justice Deyalsingh, as he was then and maybe still is today, made some very interesting statements and again it emphasizes the importance of us ensuring that we do nothing in this country to undermine, to subvert, to destabilize our democracy. We must do nothing to undermine our democracy. That is what is at stake here.

Hear what this gentleman said in his report on page 12. He said, and I quote:

“The Electoral process is the bedrock of any...democracy.”

We agree, Madam President. If there is a hint in this country—Madam President, I told you a short while ago, that in 2000 the People’s National Movement in Opposition raised a hue and a cry over the election results of 2000. They accused the then Government of voter padding, of fraud, of stealing the elections. All of these things were done and said by the then PNM Government. So important to them was the electoral process, and I do not agree with them. I do not agree with them. I support that position, because if I were in their place I would have been making the same noises because you cannot give anyone the hint that you are stealing an election. You cannot do that. You are going to have problems in a country like ours. So everything must be above board and everybody must have confidence in the process that led to it.

So, Madam President I go on:

“The will of the people is paramount and it is through General

Elections that the people's will is expressed and determined. The electoral process starts long before voting day with continuous voter registration and the maintenance of a List of Electors.”

Madam President, it goes on to say that:

“The goal of any truly democratic Government must be to ensure that any qualified person who wants to vote is given the opportunity to”—vote.

And it said:

“It is vital”—that—“our Democracy that systems and procedures be put in place to ensure the free and fair statement of the will of the people on Election Day. Anything which hinders or prevents a voter from casting his vote is unacceptable and must be viewed with serious concern.”

Madam President, my Motion, or the Motion that I have advanced today, talks about the need for free and fair election. There must never be an impression given in this country that critical office holders have any contact or relationship with any subsisting politician, and holding high office.

It is wrong, and I am not casting any aspersions on anyone. But, Madam President, I will ask you from a hypothetical situation. As I asked a colleague of mine some time ago. If I were to ask, or bring to your attention, or to bring to any other Member's attention here that the relative of the Member of Parliament for Oropouche East is the Chief Elections Officer of the Elections and Boundaries Commission of the Republic of Trinidad and Tobago. Madam President, how would my colleagues react if you heard that the Member of Parliament for Oropouche East cousin or relative is the Chief Elections Officer of the Elections and Boundaries Commission? How would

people react, Madam President? It is not to say Dr. Moonilal's cousin or relative might not be fair, might not be objective, might not be impartial—

**Madam President:** Sen. Mark, you are dealing with a hypothetical situation, so just leave it at the Member for—do not call any names. Okay.

**Sen. W. Mark:** Yeah, a Member of Parliament, Madam President without calling any names, thank you for guiding me.

How would we feel? And this is why I raised this matter today, to bring to your attention the unease, the concern, the public's concern about developments that have taken place recently at the level of the Elections and Boundaries Commission. And as I said, I cast no aspersions on anyone. I call no names. I have names. I call no names. But I am saying how would one feel?

Senator, you know and I know that if that were so, I am saying, Madam President, that if my friend had known this, that that had taken place with a Member from our side, my friend would have been marching up and down the town—

**Sen. Obika:** To the max.

**Sen. W. Mark:** To the max, [*Desk thumping and Laughter*] Madam President, calling for the removal of that individual from that position. But as it is now, we say that the Elections and Boundaries Commission, which is a important institution in our country, needs to pay attention to the perception that is being painted in the society today.

The perception that is being given to the society today that the people of this nation are not happy are not comfortable, Madam President, with what is taking place at this time. And this is why I have asked, through you,

Madam President and I hope that the hon. Leader of Government Business will take note of this development because it is of grave concern to the community, to the country and to its future.

And therefore action must be taken by the Government to have that individual placed in that office of the EBC, either replaced or removed and put somebody who is neutral, who is impartial, who is independent and who cannot be questioned by the population. [*Desk thumping*] We need an independent person in that office. We do not want any hint, Madam President, of any relationship between X person or Y person and we cannot have that.

**Madam President:** Sen. Mark you have five more minutes.

**2.30 p.m.**

**Sen. W. Mark:** So, Madam President, I am asking you that if at this moment we have a situation in which a relative of a sitting Minister is the Chief Elections Officer that person should be removed from that post and put somebody who is independent, impartial, neutral and acceptable to the entire population. [*Desk thumping*] We cannot continue how we are going.

And, Madam President, may I say in the few minutes I have, that I call on the Government to take steps to bring the Elections and Boundaries Commission under parliamentary scrutiny in our Parliament. We need, Madam President—if we had the scrutiny of the Elections and Boundaries Commission by a JSC, a lot of things that are taking place right now at the EBC would not have gone on. We would have already brought them before the Parliament.

Madam President, you remember the PSC, in another place, appointed

and something went to that place and that place decided to set up a select committee to call that PSC before it to explain its position. Now, I am saying, Madam President, when you have reports coming from that particular Elections and Boundaries Commission, that Elections and Boundaries Commission must come before the Parliament Joint Select Committee as it does in New Zealand, in South Africa, in the United Kingdom and in many other territories and be able to be subjected to scrutiny, to accountability, to exchanges. Please explain your position. Why are you cutting up the boundaries like what you are doing?

Madam President, as I said to you earlier on in my presentation, when a report comes to the Parliament and it does not come here, Madam President. It only goes to the House of Representatives, which is wrong because we are lawmakers. It should go to the both Houses of Parliament. But when it comes to the Parliament, Madam President, either you accept it or you reject it and send it back to the EBC. The EBC must be able to come before a Joint Select Committee of Parliament and explain why it has altered boundaries in Trinidad and Tobago. [*Desk thumping*] The EBC cannot hide behind a provision in the Constitution and say it is not subject to any authority or comptroller and any direction. So they can do whatever they want, when they want and nobody could ask them any questions? Madam President, the days of that are over.

So we serve notice on the EBC today, we serve notice today on the Elections and Boundaries Commission that those days are over. The days of bringing a report and tabling it in the House of Representatives and it is either we approve or we disapprove and that is the end of it. And most of

the time we approve, and the next thing you know three constituencies that were UNC gone PNM. Those days are over. Those days are over Mr. EBC. So from now on the EBC would be subjected like the Police Service Commission to the scrutiny of the House of Representatives, and they would be subjected to the scrutiny of the Parliament.

And I go further, Madam President, to ask the Government to bring that EBC under some control and scrutiny by amending the laws so that we can bring that body under some scrutiny of the Parliament of the Republic of T&T. We cannot continue how we are going, Madam President. We need to ensure that there is accountability for the actions of the Elections and Boundaries Commission. [*Desk thumping*]

Madam President, there are many things I know; because of certain constraints I cannot say but I would reserve that for the public platform. But there are many things that we are concerned about that can cause a lot of problems in this country if this Government does not take action to remove the Chief Elections Officer who is currently in place at the EBC from that office and replace that person immediately with a more impartial, independent and neutral person; and not related to any Minister. [*Desk thumping*] That must never happen, Madam President, in our country. We are looking for trouble. We are looking for trouble.

**Madam President:** Sen. Mark, begin to—

**Sen. W. Mark:** Yes, Madam President, I am about to wrap up—

**Madam President:** Yes.

**Sen. W. Mark:** And I am saying we are looking for trouble. [*Laughter*]  
Madam President, I want to thank you for giving me the opportunity for

making this presentation. It is a very serious matter and I hope that the Government takes it very seriously. I beg to move. [*Desk thumping*]

**Madam President:** Hon. Senators, the Motion requires someone to second it.

*Seconded by Sen. K. Ameen.*

*Question proposed.*

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Madam President, thank you very much for allowing me to join the debate on this Motion. Madam President, from the outset, let me express my complete disappointment with Sen. Mark and his contribution, because, Madam President, when I looked at the Motion when it was first filed, there is a lot of weaknesses in the Motion that I would point out, but I felt, Madam President, that a discussion on the Elections and Boundaries Commission had its rightful place in the Parliament, because in the conduct of elections and the oversight of the electoral process, it is one of the unique areas in which the Executive, the Judiciary and the Parliament are fully engaged.

Under the different pieces of legislation and consistent with many decisions which have been rendered on our electoral process, each arm has its defined roles and functions and in something as important as the conduct of the elections for the purpose of constituting this Parliament, I felt that it was useful to have a discussion on the Elections and Boundaries Commission. But, Madam President, I was very surprised on the second part of the presentation to understand really what this Motion is about.

This Motion, clothed as an attempt to bring scrutiny to the EBC, is

really an attack on the independence of the Public Service Commission, because I could not believe—I recall a question now, more than one questions being asked in the Parliament about the appointment of the Chief Elections Officer, and I have read a press release from the Public Service Commission in which the commission took responsibility for that appointment as it is entitled to under the law.

So I did not plan a response on behalf of or a defence of the Public Service Commission and, clearly, Sen. Mark planned an attack on the commission, because for 20 minutes we understood what this was about. This was the Senator being unhappy with an appointment made by a body that he has touted the independence of the body. The independence of the body is not in question.

And my first comment on the Motion and his presentation is that it is unwarranted, unnecessary and it demeans this House. [*Desk thumping*] And not because the Standing Orders provide for a private Motion to be filed, a true reading or any reading—an upside down reading of the Standing Orders—does not empower anybody to use this House to attack an independent body; the process.

And, you know, my friends are armed with excellent judicial review lawyers, and if ever there was a case, there is one thing—I stood right here some months ago, and I spoke about particularly pieces of legislation and development in our law that I felt took us around the correct road of jurisprudence, in particular, in relation to public interest, and two of the things I pointed to was, one, the placement in statutory form of the right of judicial review. And we have seen flowing from the enactment of the law a

steady stream of cases, many of them successful, in relation to the defence of the rights of the average citizen of this country who believed that somehow public authorities in their decision making had infringed their rights.

But, perhaps, today, I would refer to the second thing I spoke about previously, and that is the removal of the ouster clause, because it is inconceivable now, as it was at the time of its removal, that we could ever operate in an environment in which public authorities making decisions which affected individual rights did not have a responsibility to provide reasons for their decision, and also were not accountable to anybody, and the removal of the ouster clause in the Constitution made bodies like the Public Service Commission open to scrutiny and question.

And the Judicial Review Act, Madam President, provides 15 grounds on which an aggrieved person, or someone representing the interest of an aggrieved person, could question the decision-making process of the Public Service Commission. And if Sen. Mark believes that there is a decision that ought to be challenged, and if he feels strongly about it, my position is that is the place in judicial review proceedings and not this honourable House, and it should not be something that we ever support in this House or elsewhere.

Madam President, Sen. Mark also referred to the call by my colleague back in 2001 for a commission of enquiry into the functioning of the EBC, and he read parts of that report by Justice Deyalsingh and the members of the committee; the five-member committee. But he failed to tell this House the most important thing about that report, Madam President. And if ever there was a case for being careful in how we examine or interface—we as the beneficiaries of the electoral process and we as politicians—if there was

ever a case for being careful, it was what followed that report, and not the report in itself, and I want to refer to specific aspects of that report.

But my friend failed to tell this House that having rendered this report, the Deyalsingh Commission faced judicial review proceedings and this report was quashed and it was quashed because of the findings of the court in relation to the contents of the report and the failure of the commissioners to afford due process and natural justice to those who were named in the report and whose rights were affected by the report. So the report was quashed.

And in doing that, we understand that there must be process, and certain things—not everything can be opened to public scrutiny, but everything is capable of coming into the public domain, and I would tell you how things in the EBC come into the public domain, and how the law provides for things relating to elections and the functioning of the EBC to come into the public domain without having to come through a joint select committee, because the Parliament is not the only place for due process and scrutiny and examination and information of the public. In the separation of powers, there are different places, all covered by some form of legislation and some form of process.

The other thing I want to say before I get into the report, Madam President, is to say what I have pointed, and I credit my colleague, Sen. Khan, for pointing this out very early in our term in office and that is, there are three things which have been a consistent line in the Opposition in this House and, that is, the Opposition consistently seeks to deny the Executive the authority which properly belongs to the Executive. So whenever we are

dealing with an issue in which the Executive is properly exercising its functions, the Opposition is critical of that.

The second thing, the Opposition has been consistent in seeking to place elsewhere authority which properly belongs to the Executive. So on many occasions when we come to deal with legislation, the Opposition is calling upon us, for no valid reason, to place Executive authority in the hands of somebody else.

And the third pattern of behaviour is a consistent line in which the Opposition is seeking to whittle away at the existing Executive authority with a redundant phrase about lack of trust in the Government, in the Executive or a lack of trust in specific ministerial portfolios. Of course, consistently saying it is not the individual we are targeting.

So when the legislation calls for the Minister of Finance to exercise authority, the response is we do not want a Minister and in addition to that is, not that Minister, you know, but a Minister—we want the President, we want the Judicial and Legal Services Commission, we want somebody else—things that belongs to the Executive, because my response to all of that has always been, for example, this. If this calls for security and change in the law and all of that was so important to my friends, why did you not do it? Why did you not do it? [*Desk thumping*] And my question to you—because changes in the law must always address a mischief, and apart from the sky is falling, the sky is falling—they put somebody I do not like as Chief Elections Officer—you have pointed to no mischief that has arisen. From September 2015, we have had the general election. We have had the Tobago House of Assembly election. We had the local government election

in 2016 and you have offered not one line from the EBC or from any other reliable source which points to something that happened from 2015 to now that ought to be cured by changes in the legislation.

And the irony is that I agree with you, as I said from the start. I agree with you that as a democracy, we must continuously examine the elections process. I agree with you. But what I do not agree with is the use of a private Motion to settle personal scores. [*Desk thumping*]

Because, Madam President, going back to this report, the Report of the Commission of Enquiry into the Functioning of the Elections and Boundaries Commission of Trinidad and Tobago, dated Friday, 31<sup>st</sup> May 2002, a report, as I said that the court quashed. It was an example—the very thing you asked for—that the EBC is not under scrutiny. This was a form of scrutiny. A properly constituted commission of enquiry observing due process is an example of a form of scrutiny into the EBC or any other institution in this country.

It is not that we are lacking, but we used different avenues to deal with the issues before us. And in appointing this commission, the view was that the 2001 and 2000 elections ought to be examined. And, as I said, the report itself highlights the danger, because at paragraph 289—I would read for you some three paragraphs of what the report says, and nobody slightly schooled in the law will countenance statements like this being made in relation to any institution or individual in this country. And I quote:

“The EBC we found, sees itself as an autonomous body circumscribed by an Act and the Rules appended thereto. It is not prepared to venture outside. The Act (and rules) except where it is

absolutely necessary to do so. It does not see itself as a pro-active Institutions. It sees itself more as a Government Department rather than an Institution which is the Guardian of the Electoral Process...in a sense, a Guardian of Democracy in Trinidad and Tobago. This being so, it has no vision.”

That is the report at paragraph 289 of the commission’s report. It goes on to say:

“The EBC has become a prisoner of legal definitions of “duty” and “power”. It does its duty as indeed it must do, but it sees no real need or urgency to exercise its powers to bring about updated Electoral Lists and an informed public.”

And I would read paragraph 297:

“Independent persons who accept appointment to independent Constitutional Commissions and upon whom vital constitutional and legal functions are imposed, must carry out those functions efficiently and effectively. If they cannot do so, whatever the reason, they just resign.”

Now, what are the commissioners saying in this report? They are saying that the EBC is sticking to the law. And if there is ever a place where the law requires that you stick to the strictest interpretation of the law, it is in the conduct of the people’s elections as we saw in the applications brought in relation to the 2015 general election. The court insisted on strict interpretation of the law, in particular, the time limit for doing certain things, because that is the fundamental thing about elections. There must be absolute clarity. It must be defined.

Those involved in the process—we in this House had to come a Saturday to amend the law to allow the THA one extra day for the election because the law requires 21 clear days, and in order to preserve the process and to hold the process and, ultimately, the outcome of the elections enviable, we came to the House on a Saturday morning to fix that. [*Crosstalk*] And the authority, throughout, in every one of our islands, more outside than here, in Dominica and St. Lucia, there have been—there are consistently election petitions brought after elections, and the case involving Winston Peters is always cited as authority.

But, of course, in those jurisdictions, the judgments are consistent in saying Trinidad and Tobago's process is different from many of the islands, because in Trinidad and Tobago we have gone beyond the Constitution which created the EBC and the Representation of the People Act, and we have specifically incorporated the rules of the Supreme Court in the election petition process, and that is what makes us fairly unique in our part of the region, and why on many occasions judges up the island decline to use Peters as an authority in dealing with procedural matters in election petition proceedings.

But, this commission—and I did not bring the commission into this, you brought the commission of enquiry into it—committed a fundamental flaw in their reasoning. They were going against the grain of well-established authority. Unlike you, Sen. Mark today, they found themselves on dangerous ground because they were asking and they were condemning a constitutionally constituted commission to go outside the ambit of the law to “ramajay”. And when we come to the people's election process, there is no

room to go to the left or to the right. The law must be strictly applied. [*Desk thumping*] And you know, Sen. Mark, why I found your Motion if it was well-intentioned to be important? At paragraph 306 of the report—I would read it for you—it says and I quote:

“Because of time constraints, we regret that we have been unable to deal with that aspect of our Terms of Reference relating to ensuring that members of the staff of the EBC exercise their functions competently, and in accordance with democratic practice and principles.”

Now, is that not surprising that a commission of enquiry appointed to review the conduct of two elections and the functioning of the EBC, having rendered a report and having reached to the 306<sup>th</sup> paragraph of that report, having called for the commissioners of the EBC to resign, then tells you, we regret that we were unable to check the employees of the EBC to see if they are exercising their functions competently and in accordance with democratic practice and principles?

In other words, the commission told you, we did not even check the engine room. We did not even look. That is where the work of the EBC goes on, not in the minds of the commissioners. The work of the EBC goes on by the persons employed in the EBC—the ones in the field and the field offices and the ones preparing the registers and taking the registration information and providing oversight of the election—that is where the democracy takes place. And this commission had no time to check on that. And if they had even followed the due process, this report had no ground to stand on.

**3.00 p.m.**

Madam President, looking at the Motion, the Motion makes some assumptions, and I will go into the Motion. The first is that, in the first paragraph on the Motion, Sen. Mark tells us that in the exercise of the functions of the EBC it shall not be subject to the direction or control of any other person or authority. Now, that may be so, but what this section, what this provision in the law targets, it is not putting the EBC out of the reach of scrutiny. That in itself is not evidence of lack of scrutiny because in this country elections are conducted, as I said before, under the Representation of the People Act, and this very lengthy piece of legislation, supported by election rules and registration rules, and specimen forms, and so on, contain in detail how our elections are conducted on the whole apparatus and beaucracy, and so on. It is very robust. But the most important part of that is that if anybody wishes to question the process—someone's candidacy in the election—the qualification to be selected, the events of Election Day, this is the process; this is the place. And in questioning the nomination of a candidate, in questioning the qualification of a candidate, in questioning the conduct of the election, you are bringing the EBC under scrutiny. That is the purpose of the Representation of the People Act, it covers a wide range.

Part I, the officers of the commission, starting with the Chief Election Officer, the process of registration, the election itself, the writ of election and the rules of the election, and the details of the rules are constituted in lengthy rules of election; the campaign, the appointment of agents and sub-agents, elections expenses, the requirement for the deposit, the requirement for declaration, the requirement to be able to vouch your expenses. You

have faced three elections, Sen. Mark, you know. Offences, and the longest part, Sen. Mark, the longest part of the Representation of the People Act is the parts dealing with offences. This is more criminal law than election. But the reasons why we have so many offences here created in relation to every step of the process is because the law recognizes, and legislators like you and I recognize the need to have free and fair election evidenced by the opportunity of someone qualified to vote to exercise their franchise without interference. And that is what this is here.

My point you to is that because we do not have a JSC to oversee the EBC does not mean that the EBC is not under scrutiny. The EBC throughout this legislation—in fact, early in the Representation of the People Act, when you get to section 26, you start seeing the scrutiny. If the EBC refuses the registration of a potential voter that disenfranchised person can make an application to the Court of Appeal. That is where it starts. Someone who believes that they should be registered and has been refused by the EBC has a right of recourse to the Court of Appeal to challenge the decision of the EBC and the failure to register. From section 6, as you course through the Act, you see requirements, you see process, you see time limits, but most importantly, you see the ultimate opportunity for scrutiny which is to challenge decisions made along the way, leading up the casting of a vote on Election Day.

Madam President, the reports—and I heard mention of reports and reporting and so on—in some countries the law provides for the election authority, whether it is a commission or whatever election body, to report to Parliament, and in some cases those reports are open for debate, and in our

country the law provides for reports to be treated in a particular way. And in Part V of the Representation of the People Act we see the treatment of proceedings after the poll, and, in particular, it sets out what happens with the documentation, the ballots and the other documents, the list, the completed list, and all of that, it sets out what happens to it. The reason all of that is set out is because it preserves the evidence and the information to which someone who wishes to challenge the process will have recourse. And when you get to section 108 then you see what eventually is to be found on the website of the Elections and Boundaries Commission. And that section 108, sub-rule 6 says, and I read:

“The Commission shall immediately after each election, cause to be printed a report giving—

- (a) the number of votes polled for each candidate, by polling divisions;
- (b) the number of rejected ballots;
- (c) the number of names on the revised lists of electors and on the list of special electors; and
- (d) any other information that it may deem fit to include,

and shall forthwith forward a copy of the report to the persons...set out in subrule (5)(b)”

And the persons set out in (5) (b) include the Minister with responsibility for local government.

So, if, Sen. Mark, for example, if you go on the EBC’s website you see, dating back to the Legislative Council, the reports of every election, and you see in the opening part of all those reports the Commission reporting on

a number of things, including recommendation. In fact, a few elections ago—I cannot remember the election, it might have been 2007—you see the Commission reporting on the issue of campaign finance reform and talking about what they saw in the election campaign, and how that compares to the reports they got on the expenditure, and they were questioning whether the expenditure reported truly reflects the cost and what is involved in running a modern election campaign in Trinidad and Tobago. If you go to the report on the Local Government Elections, for example, the one 2016, you see a letter dated 16<sup>th</sup> November, 2017, to the hon. Minister of Rural Development and Local Government, election, where the Elections and Boundaries Commission is providing the Minister with a complete report on the conduct of the election. None of this is hidden.

The fact that this is not tendered in this form to the Parliament does not mean that it escapes scrutiny, and it comes to the Minister who is a politician who sits in the Executive and in the Cabinet, and it gives that Minister the opportunity to make representations to the Cabinet in relation to the conduct of elections based on what is put before the Minister. And in each report you will see some form of recommendation. You would see some form of recommendation coming forward. Madam President, the process is different in other jurisdictions. I will go quickly to two jurisdictions. In Germany, for example, the Bundestag has something called a Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure in the German Bundestag, and that committee has three main functions. The first function—and, Sen. Mark, you would like this—is electoral scrutiny. That committee is given the power to deal with any

objection to the federal elections. It is a specific power given under Article 41 of the German Basic Law. In addition to that there are two other powers relating to members' immunity and procedural matters.

**Madam President:** Minister, you have five more minutes.

**Sen. The Hon. C. Rambharat:** Thank you very much. But this Committee covers a strange combination of the electoral process and the affairs within the House, and it allows that committee to do what the combination of the EBC and the Judiciary does in our jurisdiction, and has done well.

In Pakistan, for example, there is a current discussion in Pakistan—and I know you would like this, Sen. Mark—there is a current discussion, and this is based on a publication of March 23, 2018, and that discussion deals with the issue of boundaries. And you made a statement here and I am not sure I heard it correctly, but the matter of the determination, or the report on the boundaries comes to this Parliament, as you know, and the question in Pakistan was whether the election body should be dealing with boundaries, or whether it should be some other independent body dealing with the boundaries. So it is a matter that is currently being debated. And, of course, what is driving this discussion in Pakistan is you have people, like on the other side of me, you have people who believe that there is independent and there is more independent, and I do not trust the independent so I have to create my own idea of independents. .

But if the legislation provides for that body to create the boundaries and you do not have a legitimate complaint on the work of the election body in dealing with the matter then you ought not to be complaining. As I said before, today I sat and I listened intently; I barely slept last night when Sen.

Khan told me that I was going in today because I was excited. I was looking forward to this Motion. And I sat and I said, well, it is coming, the mischief, this thing, this Pandora's Box that opened home by Sen. Mark, it turned out to be an attack on the Public Service Commission. Imagine that, wanting to weaken one independent body, the Elections and Boundaries Commission, and wanting to destroy another body because you do not like what they decide.

Another model is the Canadian model, and in Canada the matter of elections is dealt with on a provincial level and a federal level. On a federal level you have Elections Canada which is the equivalent of our EBC. And you have something that we do not have. The matter of election offences are dealt with separately by a Chief Electoral Officer working within the Office of the Director of Public Prosecutions, and that is meant to ensure that there is absolute detachment on the prosecution of electoral offences in Canada. And it is not that you do not have offences. You have a lot of offences, you have a lot of things happening, and it is not part of the work of Elections Canada, but it is a separate part that resides in the Director of Public Prosecution. Under the Canada Elections Act, 2000, the legislation provides for election issues to be contested by application. It sets out which are the courts that could deal with those matters. It sets out the rules of procedures and the time limit, and all of that. It sets it out there.

In the Canadian system too—and you will be heartened to hear this—in the Canadian system there is a committee called the Standing Committee on Procedure and House Affairs, and that committee most recently considered the 23<sup>rd</sup> report, and the 23<sup>rd</sup> report in response to the Chief

Electoral Officer's recommendation for legislative reforms following the 42<sup>nd</sup> general election. In other words, the Chief Election Officer—while our EBC tenders the report to the Minister and to other persons named in the election rules, in the Canadian system the Chief Electoral Officer tenders the report to the Standing Committee on Procedure and House Affairs, and it is examined there.

**Madam President:** Minister, your time is up.

**Sen. The Hon. C. Rambharat:** Thank you. [*Desk thumping*]

**Madam President:** Sen. Roach. [*Desk thumping*]

**Sen H.R. Ian Roach:** Thank you, Madam President. Madam President, I usually come in a bit late in the debates and, as a result, most times I do not have much to say, because most of what I would have wanted to contribute would have probably been said by the several Senators before me. But I must, before I embark on this, my contribution, which, like Sen. Rambharat, Clarence Rambharat, was saying that he was excited about this debate and then he was side-tracked having come and being a bit disappointed. I too was a bit excited about it, and what I want to say is that all credit to Sen. Wade Mark. He is someone, a Member of these Chambers who has been in the political arena or in the Parliament for—I think, with experience spanning something like 28 years, and as a result of that he would have gained a lot experience, and he is somewhat like an institution in our democracy, and which we all can learn something from. I think he has a lot to impart upon us and we can learn from him, both positively and in some instances negatively, but I prefer to learn in the positive from him. It also applies to the other side too; there are Members on the other side who you

can learn both positively and negatively.

So the task or the challenge for us Independents is always to sift through the politics and get to the thrust of what it is, not to be too taken up with the messenger but the message that is being put before us so that we could assist in executing our duty to the public, which is to do what we believe is in the best interest of the public without fear or favour. Now having said that, when I looked at the Motion before us, and I would read it:

“WHEREAS it is established by Section 71(1) and (12) of the Constitution of the Republic of Trinidad and Tobago, that there shall be an Elections and Boundaries Commission that in the exercise of its functions shall not be subject to the direction or control of any other person or authority”

Immediately I paused and I looked at the Constitution, the current Constitution, our republican Constitution to basically inform myself as to the accuracy of the sections being quoted, and so forth. And I went on:

“AND WHEREAS the Elections and Boundaries Commission is responsible for holding free and fair elections throughout Trinidad and Tobago”

—which I believe is also true, and I paused and I reflect upon the EBC as I know it, my experience with the EBC. And the EBC, fortunately for Trinidad and Tobago, political history, we have had successive elections from 1962, I believe, to present time where several governments have changed, and Members here had been on either side of the divide, excluding us here in the Independence Bench. And nothing has ever been laid to the public—representation made to the public that our elections was anything

but free and fair elections, [*Desk thumping*] and for that we must give congratulations to the successive chairpersons of the Elections and Boundaries Commission, starting from, I think, from Sir Alan Reece, I think. There were about five of them. There was Alan Reece, there was Sir Isaac Hyatali, Oswald Wilson, Norbert Masson, and presently we have Mark Ramkerrysingh, and I think no one can call into question the integrity of those honourable gentlemen [*Desk thumping*] in holding our institution to be one that can be to the envy of most of the world. We have been able to, with all the disturbing and the rattlings of race, politics, inequity in our society, and so forth, if it is one thing we have been able to achieve consistency is the changing of government without the bullet but by the ballot, and that is commendable to Trinidad and Tobago.

Now, I ask myself, when you continue reading the entire Motion it seems on the face of it to be one that is constructive and one that can lend in helping to strengthen our institutions in terms of being more transparent and accountable. So the lawyer I am, public lawyer as well, like Sen. Clarence Rambharat, the first thing that jumped out at me, what is the mischief that he is getting at with this, and I had pause to cause. What is the mischief really and truly? Is it that this Motion is suggesting that we may be in a situation where the EBC is not living up to its function and its integrity of being an institution that is independent, an institution that is not capable of executing and securing elections to be free and fair? And I kept wondering and I said, well, you know, as far as my memory serves me I have never been aware of that in Trinidad and Tobago. Again, I engaged in some further discussions and research and nothing was able to come up. Even election petitions that

have been filed in the court in Trinidad and Tobago, not one of them, I think, has ever been successful. No election petition has been successful in Trinidad and Tobago in discrediting the affairs of the EBC, so to speak. Now, that being the case, I ask myself therefore, what is the urgency of bringing such a Motion? It is one that I say that is commendable in the sense that whatever one can do in our dynamic democracy in this ever-changing world to help bring greater scrutiny and transparency in our institution that represent the interest of the country should be done. But when I listened to Sen. Mark's presentation today I must say I was a bit taken back and I was a bit disappointed, because I thought a lot more, he was going to give some sort of flesh onto the urgency of having the institution of the EBC brought into question here.

I started to even play with some thoughts and ideas of if that is the case and we were to support his Motion, and having it brought before a Joint Select Committee through whatever arrangement, Standing Orders or law, as the case may be, what type of joint select committee would be necessary to ensure that, and immediately again came to mind is that I am saying, if this was to be the case it would have to be a Joint Select Committee that is chaired—certainly Chair and Vice-Chair—by Independent Senators, and supported by the Independent Senators who will occupy the majority of the seats there in order to keep it independent, you know, if we were to reach there.

But I ask myself, is this necessary at this point in time? I said, if we are serious about showing up the integrity and the process of our electoral elections being free and fair, and continue to have elections that we can feel

proud about, to me the most urgent need in this is campaign finance. Campaign finance is the thing that is supposed to be before us with a great urgency, not trying to bring the EBC before us in any form through a Joint Select Committee as is being suggested. And as has been said before, you have a number of instances in the Representative of the Peoples Act, under the Constitution itself, that secures the accountability of the EBC as it exists today. It is also financially audited by the Auditor General. You have judicial review which is available; it is a public body. You have the instance of the staff of the EBC being provided by the Public Service Commission, which is an independent institution as well. So you have a number of checks and balances as we speak that exist to secure that independence of the EBC, right, and to give the people's trust in the electoral process as administered by them.

So when I heard the comment being made, you know, I was glad that it was reiterated by Sen. Mark that his concern was the appointment of somebody in the process that is aligned to somebody who is a Minister, or whatever it is like that. The fact is what has not been alleged is that person was appointed by any political party directly. The person, based on what I am hearing, was being appointed by the Public Service Commission. So I think we have to be very careful as we deal with things like elections, that how Government has changed, that we do not easily or recklessly bring into question the integrity of the institution. I think we would be doing ourselves a great disservice. The people of Trinidad and Tobago, we would be doing a great disservice rather than we doing them a good. [*Desk thumping*]

Therefore the critical analysis that I would have liked to bring to this

debate is not necessary at this point in time, because I do not think the EBC is in any way threatened or being undermined in being able to deliver elections as it is done successively over the years to be free and fair, and to be staffed by persons who are independently appointed to the EBC to be its officials. When I looked—I went back again, I said, you know, what is the thinking of the forefathers of our Constitution? So I went back to the Order in Council in 1962 to see exactly what was the arrangement, what was the thought behind the Wooding Commission, what was the debate that took place in our republican Constitution in 1976, and all I could have seen from the contribution from some of them—I cannot read all of them in the short space of time—from some of the Senators is that what was done in the 1962 Constitution, the EBC, which is now the EBC unified as one body was separated. It was the Boundaries Commission and Elections Commission, and what they did they fused them and made it one. Right. So that was the only change substantially that was done between the 1962 Constitution and the 1976 republican Constitution; nothing else was changed. It lends credence to the fact that whatever the arrangement was in 1962, later on in 1976, the situation—yes, the society is continuing to evolve. There was no need to undermine or to bring it anymore into the realms of the scrutiny of the politician.

Now, saying this, you may bring the EBC to a Joint Select Committee—say you want to bring it under parliamentary scrutiny. But unless that you say you are using the model I suggested, you are having Independent Senators being on top and being the majority of it, it will not necessarily escape the influence by pressure, subtle or otherwise of a Joint

Select Committee where the majority are elected Members, are politicians. So it could be undermined in that way. So, you know, nothing is ever 100 per cent. So, I mean, yes, in other countries you have the independent commissions. They are known by a number of different nomenclature. I see in South Africa the election is called judicial branch; different things they are called. But at the end of the day, some of them, they have different arrangements. Our arrangement has worked for us successfully without failure. And the fact that I have been part of two Parliaments in the last five years and the governments have changed successfully, and there has never been a cry that the elections were not free and fair.

**3.30 p.m.**

I think that, as to use the old adage that people say, “and if it ain’t break, why fix it”? Right? Why fix it? We have more urgent concerns in the society at this point in time [*Desk thumping*] that I think we need to be attending ourselves to our minds, using this time to really do that. This is not in any way to be disrespectful to my learned colleague, Sen. Wade Mark, as I said, he is somebody that I believe is very valuable. He is somebody that I prune what he says, but to get the good out of it because there is a lot of good that he has, but I do not think it is one of his best choices of debate, given the time that the legislative agenda that we have seems to be quite crowded and urgent. This is not something, I think, urgently, should worry or what should captivate our attention at this point in time.

So, I will hasten to say, it is not a Motion that I will be supportive of, not because it does not have the integrity, it is not one that—at some point, probably a later stage, may be relevant to us to look at. We have to

continually look at how to improve it, but for now there is nothing that is before us even by Sen. Mark, to cause us to be saying, well, we need to get this to be more vigilant, we need to have these—whether it is a mischief or mischiefs that have been existing, that is not before us.

So, Madam President, as I said, this was one where I was getting excited to be able to say a lot more. I mean, I have a set of literature that I have researched into elections, into the Electoral College, Election and Boundaries Commissions as exists in the Commonwealth and all over, but I do not think it is relevant at this point in time. So again, even though I am speaking early, I do not have much to say. So, I thank you very much. [*Desk thumping*]

**Madam President:** Sen. Haynes.

**Sen. Anita Haynes:** [*Desk thumping*] Thank you. Thank you, Madam President, for the opportunity to participate in the debate on this Motion brought by Sen. Mark on behalf of the Opposition Bench.

As I prepared for the debate, and as usual there are several pieces of paper on my desk because I did quite a bit of research preparing for this debate because like the Senators before me, I was also very excited to participate in what I consider to be yet another conversation in how we as a young democracy can build and strengthen our institutions so that they are more reflective of the aspirations of the people of Trinidad and Tobago.

And so, when I looked at Sen. Mark's Motion that dealt with what is in essence one of the most critical elements of any democracy, free and fair elections throughout Trinidad and Tobago, I knew that today was going to be an important debate, given that all of our Members here, I believe, stand

for fairness, stand for transparency, stand for accountability, and can understand where the Motion is coming from in its essence, which is that as we think about democracy, and as we think about nation-building, and as we think about what kind of Trinidad and Tobago we would like to see and we evaluate our institutions under that lens, then we can understand where there can be a need for parliamentary scrutiny of the powers that the Election and Boundaries Commission currently hold.

So, Madam President, as I began looking through, I started with a report of the Global Commission on Elections, Democracy and Security, and this report looks at elections globally and what they mean to our human rights and the development of democratic rights. And the report notes that in a global recession and rising economic inequality, these things are putting pressures on democracies as you now have a situation where, in times of turmoil or where countries face factors like ours, where you have rising crime, you have economic concerns and joblessness, that this also puts pressures on democracies and your democratic systems.

So that, when Senators spoke today and said, well, why are we looking at this now and what is the mischief that we are hoping to cure? My concern was not so much that there is a mischief that needs to be cured in such, as that we must look more at, are there ways we can strengthen deficiencies before they arise so that we can be proactive rather than reactive. And I think we have heard time and time again in this Senate that, why are we always reacting to concerns. And I think what Sen. Mark was trying to do and is trying to do, is to be proactive in the development of our institutions so that when we think about systems, we think about how they

work can work effectively for our country.

And Sen. Rambharat called the Motion—[*Interruption*] Minister, sorry, Minister Rambharat, thank you, called the Motion unwarranted and unnecessary. And I think because of the lens at which the Minister looked at Sen. Mark's contribution, that from that lens the Minister arrived at these conclusions, but had you broadened the lens from what the intent is, to strengthen our institutions for the best interest of our country, then I think that you would find that it is very necessary and very important that we could have these discussions, and then we can agree or disagree, but it is important that we are always thinking about aspirational goals because Trinidad and Tobago is a young democracy.

We are, in the wider scope of things, we are at a juncture where we can look at all of our institutions and say, okay, is this the best route? Are we doing this in the best way possible? Is there more that we can do? And I think, you know, as I looked, and I also looked at a practitioner's report on electoral commissions, and I will get to that shortly, which kind of contextualized the electoral commissions and how they function and where they locate themselves in the space of democracy. And these are, again, important discussions because you can agree or disagree, but the discussions should be had as a young democracy as we look to move forward as a nation.

I think it is important to note that when discussing elections, and as Sen. Roach noted, we have had a history of free and fair elections, and that is something that we can all, you know, be grateful for, because nations who would have gained their independence at the same time as ours, they have

not fared as well. But, the reason that we can boast about things like a fair handover of power and an open handover of power is because we as a nation have determined that will trust our process, and in order to continue to do so, I think, there is a role for us as a Parliament to evaluate our process, and to look at, again, whether or not we are doing this in the best way possibly.

The ultimate goal of this is that we can have confidence in the results, confidence in the process—in the way that the elections were conducted, and then this is how we judge our successes overall. And while nothing may be broken, are we doing it in the best way possible? You see an electoral commission falls under the category of institutions broadly grouped as electoral management bodies. And when you look at the criteria for electoral management models, there are a number of bodies that study international best practice. So, I will go through a couple of those, and I think that will help contextualize whether or not we can agree or disagree that the systems that we have in place now are the systems that we want and that they represent what we hope to see as a nation.

There are models, and I am quoting here from a Practitioners' Network case study in which the Zimbabwe Electoral Commission, they were looking at the “kind of selection criteria for Electoral Commissioners...used in... respective countries”, and this was published on June 22, 2009. And, if you will allow me to just quote part of it here:

“An Electoral Management Body...or bodies responsible for electoral management. The mix or choice of how to organize”—these bodies in specific countries, is largely as a result of each country's socioeconomic space.

And, so what that says is that, countries can evaluate their commissions based on their reality as it exists in real time. So, there is a government model of the electoral management board where elections are organized and managed by the executive branch of government through a ministry, and this occurs in countries like Sweden, where there is a long-established system of democracy, and where they can trust the system.

And so when Minister Rambharat said, that there is a continuing line from the Opposition that we would like to remove power from the Executive where it resides, I mean, yes, but, we are coming from a political philosophy and it is something that I personally stand by, where we would like to see power checked and that there be checks and balances for all powers. And it is not going to change if the seats change.

So, the things that we are advocating for, do not end at the end of an election if we become the Government and they become the Opposition, they continue. And so, I do not understand where the discomfort is, because if we are saying that there should be additional checks and balances, it does not mean additional checks and balances for only the PNM because if you are no longer the Government, the checks and balances will continue to stand.

And I said that, because in my discussion as I prepared today, you know, I noted that there are systems where electoral management can exist, co-exist with the executive and that was a space that we could discuss and look at as we move forward. It is not something that I personally agree with, but it exists. Right? It is because there are countries where their realities are such that the democracy is well-established, that the executive can house this

kind of power within their jurisdiction. However, there is also a mixed model of the election management board where two or more bodies can share the responsibilities. So, on one hand there is the government component which organizes the elections, and then there is the independent structure which oversees and monitors them. And you see, this allows for additional—and then the last model is the one that we have here which is an independent model which uses the structure where the institution is independent and autonomous from the Government and they organize and manage the election.

And this last model is not accountable to any government ministry or department, but they note here:

“...may be accountable to the legislature, the judiciary, or the head of state”.

So, where you house the accountability is also a conversation that we can have, and I think that Minister Rambharat noted that it is his belief that the accountability is housed under the Judiciary and he is comfortable with that. But, what we are saying is that we are not comfortable with that and we would like to have an additional layer of scrutiny via the Legislature, and in the context of a young democracy, and that is a constructive and warranted conversation that should be had because we are a society that gets extremely preoccupied with elections.

There are countries where election time is a very sobering and quiet time, and then there is Trinidad and Tobago, where [*Interruption*]—well no. Well, I do not mean us alone, but I am just using us as a context, where an election time generates, not just a lot of interest, but it is a loud experience,

there is a lot of excitement. I think that I have had—in 2015, some of my friends who did the political science major along with me, were in Trinidad and Tobago for our election, and they were amazed by the music trucks and the motorcades. It is just something that is unheard of in their context, and so, you know, when you look at the way the elections preoccupy the minds of our citizens, it is very important for us to be very invested in strengthening the institutions that participate in this very important part of our democracy. [*Desk thumping*]

And so, electoral policy and oversight policy, when you are thinking about it, you have to contextualize it within your country. And, in Trinidad and Tobago, where everybody knows somebody and everybody knows somebody else, where, you know, the perception of any kind of interference can really find its way into our conversation, into our national conversation, whether intentionally or unintentionally, and what we are saying is that, if that space is opened then you create an ever grater space for questions to be asked. And this is something that, where it can be prevented, it should be prevented, and I do not see why anyone would disagree with something as logical that.

You see, in some places an electoral management body is responsible for, as far as drafting and reviewing proposed electoral legislation, and the legislation for electoral oversight and supervision. And so, again, when examining what our electoral process looks like, we as citizens, I think, first and foremost, because that is where you should come—that is the angle you should look at this Motion from, as a citizen, locate yourself in the country and think about your electoral management body, and think about what is

the best option you would like to see, and would you not like to be able to ask questions and have a fair, transparent assessment of how you elect the leaders of your country. I think that, to me, it is not something that should worry us if we are asking questions, it is something that we should be grateful for the opportunity to do.

Part of this Zimbabwe study looked very carefully at how persons are located within electoral management commissions. The study noted that regardless of how the body is constituted, the persons who are employed generally require a mixture of an administrative and logistics operations, but what they said:

“In this sense, the skills needed to compose an Electoral Management Body consequently span a range of fields including management, integrity, professionalism and technical competence. It is therefore very important that each country carefully select their...mix of members keeping in mind their qualifications as well as depending on the circumstances at hand”—in every country.

So, most independent bodies look at not just your academic qualifications, but also, you know, when they say, you can train talent, but you should hire character in terms of looking at, are you committed to independence? Are you committed to integrity?—and those broad characteristics that would create a confidence in our institution, that is undeniable.

And the study noted that a number of advertisements for persons to be hired within commissions, et cetera, talk about:

“...a proven track record of integrity and honesty in public and

private life' as well as 'loyalty to the duties and functions of the office, and not personal loyalties'. Expert based Electoral Management Bodies are quite common, found in countries such as Australia, Bangladesh, Canada, Costa Rica, India, Indonesia, Poland, Thailand and Ukraine”.

So it is not something that is unusual or unheard of, that when you are talking about who is located within your electoral commission, to be very circumspect as to every area of their personal integrity, because it does form part of the system. And I think it would be naive to think that it can exist outside of the system of elections, as well as the perception of free and fair elections.

The important role of the election commission cannot be understated, but the role of the persons who form the day-to-day operations of the commission, must also be part of the discussion, and not something that we are offended by or something that we think creates a space, or room, or avenue for mischief, it is standard practice internationally.

And I think, as we look at the Motion as presented by Sen. Mark, he said that:

“Whereas the Election and Boundaries Commission is responsible for holding free and fair elections throughout Trinidad and Tobago; Be it resolved that the Senate take note that the Election and Boundaries Commission is not subject to any parliamentary scrutiny or accountability in respect of its activities and operations...”

And, if you think about what the Motion is asking, if you think about what we are looking at, it is simply saying, would you prefer or would we prefer as

a society, more scrutiny in what is a very important process in our democracy; and you could look at this from a number of angles. You can look at whether or not our electoral management body should have more responsibility to conduct its affairs, or greater independence. Greater independence does not, I think, it is not limited by scrutiny. Scrutiny, and additional scrutiny and accountability, is not a limit on what the electoral commission can do, and how they can perform their functions. So, I think, again, is it not something that we should be offended by, as a conversation.

And, when you look at countries where, again, elections preoccupy the minds of citizens, you have to be extra careful in the way in which you handle some of the perceptions around the bodies. And, there is a study here that looks at how commissions function in terms of the dissemination of information by their bodies. And the survey notes that, countries around the world are looking at their electoral management commissions and their electoral management bodies especially in light of the contentious, well, not contentious, but a highly publicized election such as the American elections—the United States elections, and looking at how their systems function to reflect the needs of their citizens. And they are drawing from these practices and saying, okay, let us set baseline standards and international standards for our electoral management bodies.

So, I think Sen. Mark was very forward-thinking in moving this Motion, not just forward-thinking, but also very current in looking at elections and what they mean to a society and how the electoral management bodies filter in and feed into this, our democratic institutions.

I am going to go back to the Zimbabwe study on the qualification

criteria for persons located within the electoral management bodies. And they include things as far as minimum age, citizenship, professional qualifications, renowned competence, et cetera. And they noted as well, that the process of appointing members is also stipulated under a country's electoral law, and the recruitment and selection from nomination procedures or open advertising may also be a space that we can critique and look at whether or not we in Trinidad and Tobago are comfortable.

So as Minister Rambharat noted, the appointment was from the Public Service Commission, and that Sen. Mark was seeking to undermine an independent commission. And I think that is unfair, because a critique of how our system takes place or how it plays out, is not—the goal may not be to undermine, but it may be to strengthen and to ensure that we are getting the kind of service that we want as a society or the kind of results that we want as a society.

So, I raised these studies to show that internationally, people are looking very carefully at who comprises their electoral commission or electoral management bodies. This is not something that is strange or personal or an attack, it is just part of maturing as a democracy, and growing as a nation. And that is very much the role of our Parliament, and it is part of our responsibility here, as we sit here. Well, every time we meet we are trying to, I believe, put our best foot forward for the nation and create—similarly when we debated the parliamentary autonomy and we looked very carefully at, is the system working the way that we would like for it to work? Is it doing what we hope, what we want our Parliament to do?

So, it is in that same vein that you can look at an institution like the

Election and Boundaries Commission and say, is it functioning in the way that we would like for it to function? And, can we think of ways, like the way that Sen. Mark suggested which is, by allowing parliamentary scrutiny of its administration and the manner and exercise of its powers, and the methods of functioning and criteria adopted by the commission, are these things that would assist in the furthering of our democracy? And I would like to agree that it would help, because the more that persons can feel confident in our process, the better it is for society as a whole.

**4.00 p.m.**

Countries have the right to implement and run the elections according to their own standards, their own aspirations, their own goals as a nation. And the right to political participation, that citizens participating within a process will only fulfilled at its maximum potential where there is confidence in the process and where persons feel like when they go out to exercise their civic duty that it means something, and that it has an impact or the impact, their desired impact. And, when you look at the different approaches with the composition or structure of an election commission there is no single body that will ensure an effective and efficient electoral process. There is a diversity internationally, despite the fact that there is a common purpose, and the goals of election commissions are all very common, and the goals are the same, but how you arrive there may be different.

And so, do we as a country think that in arriving at our very laudable goal as a mature democracy wish to locate our Elections and Boundaries Commission under parliamentary scrutiny. There is a lot of merit, I think, in

having a Joint Select Committee, or some such function look at the EBC and their roles and functions. Because, as we have seen technology grow and expand you find more and more people are paying attention, and more and more people are tuning in. And so if we can shine even more light on the systems by bringing bodies into the public space and into a space for public scrutiny, we would be, in essence, creating more involvement in the process and people become more connected to the process, and I think that is where we should want to be going as a nation. We should want to have our citizens more engaged in the systems, and if we can do that by shining more light, by putting more scrutiny in place, I think that is something that—that is a space we would want to go towards.

Madam President, as I was going through this *Elections Commissions and Provision of Information, a Comparative Study of Better Practices Globally*, which was a document produced by the Centre for Law and Democracy, the Asian Foundation, under the auspices of Australian Aide, published in September 2012. The study focused quite heavily on not just the role of election commissions, but also the impact that election commissions have the confidence that citizens have in their electoral process—and if I can just find my notes here. So, looking at the election commissions they took a quotation from a United States judge that says, shining a little light is better than applying disinfectant. I believe that was the quote.

In speaking—and the context was saying that, look, where you can have increased transparency, and accountability, and increased scrutiny, then it is better than a reactive approach, or after something has happened to say,

well, we now have to cure this, or we have to fix this, because by that time the process is already tainted and persons have already lost confidence. And so, what Sen. Mark is doing with his Motion is ensuring that our citizens will always have confidence in the process, and would always be able to say, yes, when I participated in the election my vote counted for something. It counted. And even if the side that you chose to support did not ultimately become successful then you still did not feel robbed by the system, or you do not feel as if you have been disenfranchised as a citizen. And that is extremely important when you think about nations have been moving forward. [*Desk thumping*]

You have been seeing more and more that whether or not an election was billed as free and fair, persons still felt that the way the process unfolded that their vote did not count, and that they were not getting the opportunity to have their say, and that is why you are seeing calls for—

**Madam President:** Sen. Haynes, you have five more minutes.

**Sen. A. Haynes:** Thank you—a revision of things like the Electoral College in the United States, because they are thinking about whether or not the way the system is set up, as it stands, it is reflective of what they hope to see as a democracy.

And, Madam President, in the closing few minutes, I would just like to say that what I have seen since I have been here for this short time in this Senate, is a space where we may not always have conversations that the citizens feel involved in, or feel that there is a need to actively engage in the debate. But when you talk about elections and election commissions and whether or not there is transparency and accountability that resonates with

the population, because they do not want to feel, as Sen. Mark noted, disenfranchised. You want to know that the country that you live in, at the very least, if you do not get anything else right, you can get elections correct, because that is where persons have their say. That is ultimately where they can show their dissatisfaction or satisfaction with all of us, and so they want that space to be sacred, they want to also be able to look at how the sausage is made, quite frankly, and know that in this process that everything about it ran in the manner it is supposed to.

So, having said that, Madam President, I would like to fully agree with the Motion that Sen. Mark brought here today, that there should be no institution that is shrouded from the population, that we as a Parliament should stand for scrutiny, should stand for openness and should stand for transparency. Those are things that, if we can adopt as part of our everyday being, I think we have as a nation can go forward and reach where we would like to be, as Trinidad and Tobago. I thank you. [*Desk thumping*]

**Sen. Garvin Simonette:** Madam President, I thank you for permission granted to me to contribute to the Motion being moved by Sen. Mark, in this my maiden speech to this honourable House [*Desk thumping*] for reasons which I shall develop, I must fundamentally oppose the Motion in its entirety.

The Members of this honourable Senate are entrusted to assist in the execution of good governance of the nation which includes upholding of our Constitution and the rule of law. The citizen is entitled to insist that in executing this duty, we the Members of this Senate adhere to the very Constitution and rule of law that we require the ordinary citizen to comply

with. In listening to the contributions on the other side, the citizenry could be misguided in holding the view that there is little regulation to the manner in which our general elections are held, administered, and indeed reviewed. It is important to appreciate that our 1976 Constitution remains the supreme law of our nation in this regard. And it is important to repeat two preambles to the Constitution as they affect, in my view, a correct rejection of the Motion under debate. The preambles in question are preamble c which reads:

“Whereas the People of Trinidad and Tobago—

have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;”.

And d which states:

“Whereas the People of Trinidad and Tobago—

recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;”.

In the context of the rule of law, Madam President, it is important to appreciate how the Elections and Boundaries Commission is established. And, whilst the Motion correctly refers to the particular sections of the Constitution, it is important to note with specificity, what is provided. In this regard, it is important to note that section 71 of the Constitution stipulates that, and I quote:

“There shall be an Elections and Boundaries Commission for Trinidad

and Tobago (in this Part referred to as ‘the Commission’).

The members of the Commission shall be a Chairman and not less than two nor more than four other members”

—and very importantly—

“the Chairman and other members of Commission shall be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition.”

So that there can be no doubt that the Constitution of the Commission is reached after proper consultation between the Prime Minister and the Leader of the Opposition. And no doubt this provision is intended to ensure that persons of good character, and persons of some degree of skill and competence are put forward as nominees for appointment by the President. So that, I must take exception to the impression given that there is some degree of laxity in the Constitution of members of the EBC. The appointment of a commission is after a process of mature consultation between the Prime Minister and the Leader of the Opposition, with the appointment being placed ultimately in the discretion of the President. So that I must take a different view to that of Sen. Haynes who conveys the impression that by reference to the requirement in other jurisdictions and indeed, jurisdictions less mature than Trinidad and Tobago, there is some laxity or paucity of review in the appointment process of commissioners of such an important commission as the EBC.

And, Madam President, I think it is also important to indicate that we often take for granted the doctrine known as the separation of powers enshrined in our system of Government. That is the development of rules of

good governance originating in the great charter of the liberties known as Magna Carta Libertatum, agreed by King John and the Lords of the English Barons at Runnymede near Windsor in England on 15<sup>th</sup> June 1215. Constituting fundamental guarantees of rights and privileges. Again, in if one was to listen to the contribution made by my friends, Sen. Mark and Hayes as opposed to the contribution by my friend Sen. Roach, the impression is given that there is some immaturity to the arrangements of our governance going back to at least 1962.

The fundamental rule remains that no man, or dare I say woman, shall be above the law. Be he or she Prime Minister, Minister, Senator, public servant, or trade unionist. In relation to ensuring good governance and individual liberty, governmental functions are, as we appreciate, divided into three classes: the Legislature, comprising the House of Representatives and this Senate; the Executive comprising the Cabinet, and at times the President; and the Judiciary. The founding fathers of our Republican Constitution in 1976 Constitution, in recognition of the importance of the administration of general elections and related matters recommended what has come to be known as the independent and impartial Elections and Boundaries Commission.

It is worthy of note that those founding the fathers were men and women of distinguished intellect capacity and experience. The EBC is established, as I indicated, by section 71 of the Constitution, and it is important to appreciate as we have, how it comes to be constituted. When one considers those disqualified from membership, created by section 71.4, that is, being persons who are either Ministers, Parliamentary Secretaries,

Members of the House of Representatives, Senators or Temporary Senators, or public officers, it becomes clear that those eligible for appointment to the Commission are persons who have no personal interests in the business of the EBC. That is, the administration and delivery of free and fair elections.

The Constitution also provides for security of tenure of the commissioners, who hold their office for a term of five years from the date of appointment. And very importantly, they do so without receiving a salary. But that is not the only legislative provision for the administration of free and fair elections. As Sen. Rambharat pointed out, we have the benefit of the Representation of the People Act together with the election rules. Now, when we talk of the separation of powers, we appreciate and have long appreciated in Trinidad and Tobago, that the courts of Trinidad and Tobago are the guardians of the Constitution which creates in this instance and the debate, the Elections and Boundaries Commission. The courts of Trinidad and Tobago are also charged with upholding the rule of law.

My friend, Sen. Rambharat was correct, in seeking to identify in the Motion moved, the mischief that it was seeking to address. Indeed, if one has to discuss any mischief in the election arrangements that govern this country's affairs one would have to look to the manner in which elections can be questioned. The Motion does not address the manner in which elections are questioned. It does not raise that issue frontally. But indeed, that is the issue that lies at the heart of any review of the instant arrangements as administered by the EBC, pursuant to all relevant law, namely, the Representation of the People Act, and the election rules.

In my humble view I think that well-settled arrangements for

questioning elections, and questioning any irregularities in elections adequately provide for the public scrutiny and the protection of the public interest in free and fair elections, and in the sanctity of the right to vote. These settled principles and procedures in relation to the questioning by citizens of election irregularity, if one can term it that, are contained in the relevant rules which entitle any citizen to prosecute what has come be called a representation petition, or if one harkens back to the earlier period, an election petition.

These settled principles, with respect, required no further legislative interference, and they have been well tested by both the Opposition and the Government, that in this regard both Opposition parties at the time and incumbent government at the time, in the courts, in several representation cases that have reached as far as our Court of Appeal. So that the impartiality and independence of the EBC is established by the constitutional provisions for its appointment of commissioners. And the Representation of the People Act by section 35 requires all elections to be conducted in accordance with the election rules. It is important to note that section 35 stipulates, and I read, it provide that section 35(3):

“No election shall be declared invalid by reason of any act by a Returning Officer or any other person in breach of his official duty in connection with the election or otherwise or the Election Rules if it appears to the Court having cognisance of the question that the act did not materially affect the result of the election.”

Again, the Representation of the People Act at section 149 empowers the court hearing a representation petition to declare an election void where

it is shown that the commission of a corrupt or illegal practice may be reasonably supposed to have affected the result of the election.

**Sen. Khan:** That is why “all yuh” petition lost. [*Laughter*]

**Sen. G. Simonette:** And, that issue was fully ventilated following the last election where without question the challengers being the UNC candidates in six constituencies were afforded full opportunity to ventilate their objection to certain arrangements made, as we well know, regarding deployment of administration of the general election by the EBC in September of 2015.

But, in addition to the written constitutional remedy, that is the remedy provided by section 52 of the Constitution. And section 52 it is important to note, is the provision that provides the constitutional provision that indicates that any question, whether any persons has been validly appointed as a Senator or validly elected a Member of the House of Representatives, shall be determined by the High Court. In addition to the constitutional remedy provided by section 52 of Constitution, the common law has received from England prior to Independence, also applies. And it is important to note that the common law entitles the citizen to promote that a parliamentary election be avoided on an election or representation petition on the ground of irregularity by election officials, if the irregularities were so great as to prevent the election being a true election. And of course, you have the several offences, that the election offences sounding in the criminal penalty arena indicated by my learned colleague Sen. Rambharat.

So that when one talks of scrutiny of the EBC, or scrutiny of the performance by the EBC of its solemn function and obligation, our Court of

Appeal correctly recognizes there are two streams—

**Madam President:** Senator. Sen. Simonette—hon. Senators, at this stage we will suspend and return at 5.00 p.m.

**4.30 p.m.:** *Sitting suspended.*

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

**Madam President:** Sen. Simonette, you have 18 more minutes remaining.

**Sen. G. Simonette:** Much obliged, Madam President.

The avenues open for review therefore with regard to irregularities or complaints on the adequacy of a general election, or the validity of the appointment of a candidate, can be contained in two streams of redress open to the citizen and ventilated in the courts.

The first stream of course is that made available by section 52 of the Constitution, and contained in the two sections we looked at before the break, that is, in section 35(3) and section 149 of the Representation of the People's Act. The other stream of course is the common law stream which is open to the challenger to question whether the election of anyone to the House of Representatives ought to be set aside as having been obtained so fundamentally outwith the Constitution and the law, and principles relating to elections in a democratic society, so as to render the impugned election effectively a non-election, and as Justice of Appeal Jamadar opined in the recent case, an election that is not truly a constitutionally democratic and valid election.

So that there can be no doubt, Madam President, that the arrangements existing under our Republican Constitution and under the common law, provide well-tested avenues for seeking redress which not

only exist as available, but which have been tested by our Court of Appeal following several challenges in the form of election or representation petitions launched by aggrieved members of the public and, indeed, by aggrieved candidates.

So that the maturity we have reflected upon exists, not academically by reference to the studies and the reviews in less mature jurisdictions referred to by Sen. Haynes, but by reference to what the lawyers call precedent that is binding upon us and that guides jurisprudence how we manage ourselves as an independent nation.

It bears saying as well, Madam President, that this is not a task that has been embarked upon a decade ago. The function and work of the Elections and Boundaries Commission has been in existence for over 70 years. They celebrated their 70<sup>th</sup> anniversary in 2016. So I think it would be fair to say that the EBC in Trinidad and Tobago is enjoying in excess of that longevity given to man threescore and 10. And it is something that we ought to be proud of and to uphold and to recognize, whilst fair criticism and vigilant review is always recommended and is always to be entertained in appropriate cases, I think it is important to underscore that those who have been responsible for administering free and fair elections in our twin-island State ought to be congratulated and given credit as that credit certainly is due.

My learned friend, Sen. Mark, also indicated that in the setting of boundaries and delimitations of constituencies there was some degree after deficiency and, indeed, the process was open to capricious conduct on the part of the EBC. In closing I would like to point out that that cannot be a

correct interpretation of the law, as the delineation and limitation of boundaries is regulated by the Constitution at section 72 (1) of the Constitution.

In summary, the EBC is charged with the function of dividing the country into constituencies, and they are obligated to file their report on such matters every two to five years. That report is the subject of review by the House of Representatives, but more importantly the work must be conducted in accordance with the Second Schedule of the Constitution. That Schedule governs the question of boundaries of constituencies. In essence, and I will not read the seven provisions of that Schedule, but essentially it provides an overarching obligation to ensure fairness and to ensure that insofar as possible constituencies are delimited so as to create a certain degree of equality and fairness in numbers and so on.

In closing I say that the solemnity of the right to vote and the regulation of general elections dating back to the 18th Century, make it absolutely correct that such matters be carefully regulated, and they are and have been for quite some time. It would be entirely wrong to assimilate the work of the EBC with that of other service commissions who, again, under our Constitution are structured to treat with the appointment and discipline of public officers, and who are mandated to implement Government policy with equal skill and care, with such service commissions being interspersed to ensure and to protect public officers from direct political interference.

Madam President, in closing I say that the Motion and the support for the Motion by my friends on the other side, falls short of the qualification for any intervention, by either this or the other place, in scrutinizing the

work of the EBC, as the law adequately provides in its existence at the moment for proper redress to be had should the citizen have any complaint as to the manner in which free and fair elections are delivered by the work of the commissioners.

So that I move that the Motion be rejected, and without further intervention I would urge all those charged with the duty of ensuring our compliance with the rule of law to adopt the same position.

I thank you, Madam President.

**Madam President:** Hon. Senators, let us congratulate Sen. Simonette on his maiden contribution. [*Desk thumping*] Sen. Richards.

**Sen. Paul Richards:** No thumping desks for me? [*Desk thumping and laughter*]

Thank you, Madam President, for recognizing me and allowing me to participate in this debate on the Motion as moved by Sen. Mark, which is:

*Whereas* it is established by Section 71(1) and (12) of the Constitution of the Republic of Trinidad and Tobago, that there shall be an Elections and Boundaries Commission that in the exercise of its functions shall not be subject to the direction or control of any other person or authority;

*And whereas* the Elections and Boundaries Commission is responsible for holding free and fair elections throughout Trinidad and Tobago;

*Be it resolved* that the Senate take note that the Elections and Boundaries Commission is not subject to any parliamentary scrutiny or accountability in respect of its activities and operations unlike other similar independent bodies such as Service Commissions;

*And be it further resolved* that the Senate call on the Government to take urgent steps to introduce legislation that would make the Elections and Boundaries Commission accountable to the citizenry of Trinidad and Tobago by allowing parliamentary scrutiny of its administration, the manner of the exercise of its powers, methods of functioning and any criteria adopted by the Commission in the exercise of its powers and functions.

Madam President, let me say that I agree with the principle of the Motion as moved by Sen. Mark, but as in any Motion one has to look at the wording very carefully. I think the parts I may have some sort of issues with, if not the entire principle of the Motion moved by Sen. Mark, is possibly the issue of scrutiny as opposed to accountability and engagement, because I do not see a mischief in more accountability, especially with a commission or a body or a function like the Elections and Boundaries Commission in Trinidad and Tobago, in terms of its critical and sacrosanct involvement in the elections of our country, and that is because I do not see it as anathema to the fact that the Elections and Boundaries Commission, as has been outlined by many of the speakers before, has not had a good track record or an integritous track record. I do not see that having a different layer of accountability is going to take away from that track record or impugn in any way the reputation of the Elections and Boundaries Commission so far.

But I will hasten to add and put on the record that while I agree in principle with the Motion as moved by Sen. Mark, I do not agree that this move be a mechanism for a witch hunt for any person or official in the Elections and Boundaries Commission, especially when, and once that

person has been appointed, in an integritous manner and the person has shown no sign that they have run afoul of the law or is impartial. So I need to put that on the record although I agree in principle with it, because I think while there are parts of Sen. Mark's submission and presentation that I agree with, there are some parts that I would like to distance myself from, because it opens up what could be a Pandora's box of issues related to a person's conduct.

There was also some suggestion that one of the office holders is a relative of a Government official. If we look at it in Trinidad and Tobago, as I said, once the person has been appointed with integrity and following due process and according to the laws of the country, and the person is carrying out his or her function in an integritous and impartial manner, anybody in this country, anybody in this honourable hall could be accused of being related to somebody else or associated with somebody else, in a small country like Trinidad and Tobago. So I do not see that as, quite frankly, a factor that would limit someone's eligibility.

Madam President, I am going to quote from a couple of publications. There are a couple of issues I think I want to raise and hone in on in terms of, to me, the importance of possibly a JSC more than likely hopefully chaired by an Independent Senator, and going through a process of engagement with the EBC and the EBC officials, to add a different level of engagement to deal with many of the issues that people who are charged with that responsibility, who are on the front line of administering free and fair elections in Trinidad and Tobago, will not be to the benefit of Trinidad and Tobago, especially in an evolving political landscape, an evolving

global landscape in Trinidad and Tobago, where there are so many other issues coming into the election as significant factors moving forward.

Quoting from the *Role of Parliament in Promoting Good Governance* from the Economic Commission for Africa:

“In the 21<sup>st</sup> Century there is a growing interest more than ever in the issues related to democracy. This is a reflection of the increasing acceptance that democracy and good governance are not a luxury, but a fundamental requirement to achieve sustainable development...”—  
“because without democracy we can see what can happen around the world. Also—“because Parliament plays a crucial role in gauging, collating and presenting the views and needs of the people, articulating their expectations and aspirations in determining the national development agenda. As an oversight body, Parliament helps to identify problems and policy challenges...—and engage with stakeholders, agencies and otherwise—“that require attention and assists in overcoming...”what may be in some instances—  
“bureaucratic inertia”.

And I like this quote very much:

“The existence of a parliament is not synonymous with democracy, but democracy cannot exist without a parliament.”—and the role of Parliament in governing structures.

When you look at the word “scrutiny,” in some instances it may be construed in a kind of punitive manner, and that is why I prefer the words, “accountability” and “engagement”.

What is the role of the EBC? That is the question. Is it fulfilling its

role as effectively as it could? I think we can ask these questions without laying blame or impugning the character or functions of the official of the EBC because these are relevant questions as the democracy evolves. Primarily to facilitate free and fair elections in Trinidad and Tobago, who decides if the Commission is functioning effectively? Who decides if the mandate needs to change in our evolving democracy? Who decides if there are new options, arrangements, and legislative opportunities available and applicable in it fulfilling its mandate? Is the Commission free from the possibility of political interference, no matter who is in power? Does the Commission have the resources to effectively fulfil its mandate?

And I think as the highest court in the land, I do not think it is anathema for the Parliament to have that type of direct engagement with the Elections and Boundaries Commission. Not necessarily as I said before in a punitive manner or a condemnatory manner or a judgmental manner, but certainly from a manner in which we can thrash out the issues with persons who are on the front line, and possibly come up with suggestions and applications and legislative change for a more effective functioning Elections and Boundaries Commission, and as a more fervent manner of securing our democracy.

One of the quotes I also like is:

“Real democracy is a mechanism for distribution of political power and ensuring that all voices are heard and considered, to ensure equitable distribution of access to State resources, tangible and intangible, including material wealth, decent work, health care, water, food, education, protection, opportunities and justice.

I think that is important when we are looking at the issue of the EBC and its ability to fulfil its role effectively.

In a publication by Mathew Lawrence and Sara Birch focusing on the democracy commission, *Reforming Democracy to Combat Political Inequity*, August 2015, from the Institute for Policy Research, the UK's leading progressive think-tank on democracy and governance, there are several issues that came up in terms of their examining their electoral commission in that jurisdiction. One is the issue of marginality. The other is the issue of inequalities in participation related to age, income and class.

They have discovered in their research that in those jurisdictions one found that those demographic factors had significant impacts on persons' ability or willingness to vote, and that is not ensuring a level playing field. Their examination or engagement of their electoral commission was aimed at finding a way to engage those groups more effectively, so that there was a more equal representation of what the people thought when they went to election.

Among the other issues that came up were: a fixed date for elections, should there be mandatory votes in some jurisdictions over the age of 18, the issue of electronic or online voting, the issue which I think the Prime Minister, the hon. Dr. Keith Rowley, spoke about some time ago, the issue of whether or not we should have a maximum of two terms for a Prime Minister, the issue of social media and its impact on the democratic process—and when we see what is happening around the world and suggestions right here in Trinidad and Tobago, that is an issue worth exploring in that kind of setting with the Elections and Boundaries

Commission. Not again to be punitive, but certainly with people who are on the front line of ensuring free and fair elections to see what their experiences are on the ground with a view to giving them the resources or changing legislation to ensure that they can ensure that we have free and fair elections in any circumstance; the issue of referendum, which has been long discussed in Trinidad and Tobago or effectively put and whether those types of issues, whether or not we should decriminalize marijuana, whether or not that should be or could effectively be put when we go into the elections.

The US does it very, very effectively, where, in addition to electing congressmen or governors, they put these questions in their election process, because you are spending the money already, and you find out en masse what the population thinks. So I think these kinds of issues can equally be discussed in those kinds of fora, and not punitive but certainly in a different kind of arrangement.

The issues of making voting more representative—there is an issue in Canada where there is a consideration of enacting a boundary commission, as separate from the elections commission, because of the issues they faced in the past. Also one of the suggestions that I particularly like, because it speaks to a representative type of governance and making sure all voices are heard, is the issue of the single transferable vote system, the STV, which is really interesting and I think quite innovative. It is a form of proportional representation which uses preferential voting in a multimember constituency.

Through you, Madam President, it is executed by—candidates do not need a majority of votes to be elected, just a lone quota or share of the votes

determined by the size of the electorate and the number of positions to be filled. It is where each voter gets one vote which they can transfer from their first preference to their second preference. So if you preferred candidate A, and he or she has no chance of being elected, well you put on the ballot candidate B, so that your vote for a candidate who may not have amassed a particular number of votes is not wasted. So you have more people getting a chance to choose who is eventually to represent them. I particularly like that in terms of consideration.

Canada as we know is one of the more progressive democracies, in terms of stability, in the world. It is also considering significant changes to its system by engagement with its Parliament and its electoral council. Ballot issues, does the elector place a mark besides the single candidate's name as we said before? The number of candidates per constituency in terms of limits; the procedure to determine winners and the threshold for determining winners.

I kind of promised my colleague that I am not going to be long. I know Sen. West is going to possibly laugh at me because she always does.

One of the issues that it would be remiss of me not to mention in Trinidad and Tobago is the issue, of course, of campaign finance reform, and the kind of engagement that we should have with the Elections and Boundaries Commission in the furtherance of that. I am quoting from the Parliament of the Republic of Trinidad and Tobago, Fifth Session of the Tenth Parliament, and the First Report of the Joint Select Committee appointed to propose a legislative framework to govern the financing of election campaigns. When you think, Sen. Mark was part of that; Member

of Parliament, Dr. Bhoë Tewarie; Mrs. Camille Robinson-Regis; Mr. Clifton De Couteau; Mr. Colm Imbert; Mr. Elton Prescott SC; Mr. Ganga Singh; Mr. Garvin Nicolas; Mrs. Helen Drayton; Miss Marlene McDonald; Mr. Prakash Ramadhar and Dr. Roodal Moonilal. Also, Garvin Nicholas was replaced by Anand Ramlogan SC as a member of that committee.

The number of issues that came out of that, that could be, to me, further engaged at the level of a joint select committee engaging with the Elections and Boundaries Commission of Trinidad and Tobago, to get those points to a different level, in terms of engagement in Trinidad and Tobago. Many of the issues related were, the law and definition of political parties, existing legal provisions governing spending limits, oversight of campaign finance and disclosure of finance. The funny thing about that is in our Constitution presently under existing provisions 18(3), there is a \$50,000 limit for election; I laughed because it is actually hilarious. In the general election as counteracted by section 47(2) which allows for a third party contribution.

And we all know that \$50,000 per candidate is not spent in Trinidad and Tobago. Oversight monitoring and sanctions and appeals. I am quoting from the *Trinidad Guardian* just to counter that suggestion. This is the *Trinidad Guardian* May 20, 2016 an article by Richard Lord:

“Political parties spent in excess \$157m in ads for last polls in the run-up to the...election in T&T...”—in 2015.

“This was revealed by president of the Advertising Agencies Association of T&T, Lorraine Rostant, during...session of the two-day conference on campaign finance reform. At the Hyatt Regency,

in Port of Spain.

Prime Minister Dr. Keith Rowley told the opening of the conference on that Wednesday his Government had the will to propose legislation to deal with the issue before the next general election.”

We are two and a half years from that. The importance of discussing issues like campaign finance to get it on the books in Trinidad and Tobago I wait with bated breath to see if it would become a reality before the next election. Interestingly enough, the article goes on to say that the UNC outspent the PNM 2.4 to 1, which did not have a significant effect on outcome of the election, or maybe it did. I am just quoting, Sen. Mark.

**Sen. Wade Mark:** That is not true. That is propaganda. [*Crosstalk and laughter*]

**Sen. P. Richards:** My point Sen. Mark is that although it may not have had the desired effect, if that indeed is true, we still have to look at the issue of campaign finance reform and its impact on the democratic process.

**5.30 p.m.**

Because in any democracy, we will know that—we see it happen around the world where there is a suggestion that first, the expectation of the population that well, and this is not pointed at any particular political party, that when you can raise \$157 million, this is between the two main political parties, nobody is thinking that those persons who would have invested in either political party is doing it out of good will. And I know we have the procurement legislation which will come into effect pretty soon, but we all know that they work hand-in-hand, in terms of, one, ensuring proper governance and preventing corruption.

I will close, Madam President, that a High Court Judge—this is *Trinidad Guardian* article published on May 16, recently, 2018—a judge calls for proper framework for campaign finance reform and, of course the High Court Judge Justice Frank Seepersad said:

“courts, in a developing democracy,” we “should not have to decide whether sums of money received were spoils campaign financing.”

And he said we need to ensure that this:

“veil of secrecy and anonymity must be removed and there should be full disclosure of financial contributors, with caps placed on the amounts...”—

and I fully agree with that, Madam President.

Because, at the end of the day, in the context of the Motion being debated, and I know the EBC has presented reports related to suggestions for campaign finance reform and the impact it is possibly having on the democratic process in Trinidad and Tobago. How far has that gone in terms of real debate in Trinidad and Tobago? And I think the forum of a joint select committee or Parliament having the ability to engage the Elections and Boundaries Commission in that sort of context can go a long way in elucidating the issues, one, that the Elections and Boundaries Commission officials would have faced, and, two, their thoughts and the interrogation of the issue in its fullness, to ensure that we can have the urgency placed on it, one, and, two, the resources that the Elections and Boundaries Commission may need to identify persons who seem to flout this law, or who are flouting this law, not seem, because we know persons are flouting this law. We just have not identified them and brought them to book yet.

But I think those are some of the issues that that kind of engagement is worthy of consideration with. So, I do not see that parliamentary oversight or a JSC, Madam President, engaging with, or dealing with the accountability issue with the Elections and Boundaries Commission, is anathema to or against the issue of, or sending some kind of judgment against the function and past role of the Elections and Boundaries Commission. So this is a Motion, I guess, with a little revision or the addition of a word or two, I would have a tendency to support, because of the importance that I certainly, and I know that Trinidad and Tobago as a whole, places on the function and role of Elections and Boundaries Commission and the possibility of us getting some of these issues resolved moving forward.

And I think, in closing, I will mention again the issue of the impact of social media, for instance, is one of the issues. In our present books, we know of the laws relating to canvassing on election day and putting up stuff, printing stuff for the newspapers. I work in the media, so we have had to go through significant training of staff of what is expected of them on election day and election week, et cetera. And now, with the paradigm of social media, I do not know that the Elections and Boundaries Commission has the resources to track and monitor online posts and influences and inferences on election day. And that is something we need to look at in Trinidad and Tobago. We have not even considered the other issues related to that, as we have seen are being investigated around the world.

So, once again, thank you for the opportunity to make this intervention and I finish my contribution. [*Desk thumping*]

**Sen. Pastor Clive Dottin:** You know, we temporary Senators, Madam President, whenever we are given the chance, since we are not sure, there is no predictability about the next time. We have to take every opportunity.

**Sen. Richards:** That is why I shortened by contribution.

**Sen. C. Dottin:** Yes, I heard that. Thank you for your goodwill. So, I have 20 minutes, I have been assured. I normally take 20 minutes. So it is my privilege to address this honourable House once more.

**Hon. Senators:** You have 25 minutes.

**Sen. C. Dottin:** Twenty-five, okay. You want me go right up to the borderline. Careful how we say borderline these days.

I am glad to speak to this, because I believe as a pastor, I must always see hope for the Republic of Trinidad and Tobago. And I want to begin by saying there is nothing we cannot accomplish if we work together. And we may disagree from time to time, but certainly, there is hope for our nation. And speaking about hope, because I want to tie my contribution to two concepts. One is hope, of course, and the impact on the body politic and the human organism. And the other is institutional trust. And where I am going here, before I deal with my good friend, who I relate to some of what Sen. Rambharat said, because we had a great experience in Mayaro recently, that I think is a model for the country. The issue of institutional trust, whatever we could do to build institutional trust, we should be happy to do it; whatever we could do, whether it is a line in the Constitution, whether it is an oversight committee, whether as was mentioned by both Sen. Roche and Sen. Richards, in terms of oversight committee chaired by a JSC.

And, of course, I may tread on dangerous ground here Dr. Mahabir, but we just have to be sure that whoever chairs that committee operates

independently too. Because you could have a challenge, since none of us could boast that we possess papal infallibility. So, therefore, we have to ensure, all of us on all three sides, but especially the independent side, that we operate with due transparency.

So that, I was thinking that during the debate, you had the kind of slight haemorrhaging of hypocrisy in the debate, in the sense that I went to vote some years ago, and at that time the voter-padding allegation was all over the place. And there was a guy who was a financier, is a financier, for a particular party, and he saw me in the line, not knowing that I was living in Diego Martin, and he came up to me and he said: "Pastor, you are living in Diego Martin?" I said: "Yes, for the past umpteen years." He said: "I am surprised." "Ah lady call meh and tell meh: you know what he is accusing you of? Being part of the voter-padding process." Now, whether we like to hear it or not, both parties have been accused, from time to time, of interfering with the electoral process; either through voter-padding or gerrymandering the boundaries.

I was looking at something, I did not hear it mentioned before, I do not know if it flew pass me, but it was mentioned but it was, I think, in 1976, that we combined the Boundaries Commission and the Elections Commission. That was in the year 1976. So they were separate up to and until that time.

I am saying right now, I am not here to cast aspersions on anyone. If it is one person who should not do that in the House right now is the pastor, because the good book says, "Judge not that ye be not judged." If I could just caution my dear friend, he is my dear friend, Dr. Wade, you know, we

have to be careful not to go in that direction. However, to my mind, the Motion possesses intrinsic value. If it is just to advance the transparency process by half of 1 per cent it possesses intrinsic value. If I should read it:

“AND BE IT FURTHER RESOLVED that the Senate call on the Government to take urgent steps to introduce legislation that would make the Elections and Boundaries Commission accountable to the citizenry of Trinidad and Tobago by allowing parliamentary scrutiny of its administration, the manner of the exercise of its powers...”

So I am saying, to my mind, at this point in the history of Trinidad and Tobago, we need to build institutional trust. And if you build institutional trust, then you are going to create a greater level of hope in the society. It is not an attack on the present Government, but people are losing hope at faster speeds than Usain Bolt when he used to run. People are losing hope. And one reason for that loss of hope is the collapse of institutions, and what Michael Harris spoke about in his recent article about malignant narcissism and that kind of stuff. People are just losing hope and one reason is that we have to do a lot of work with our young people. I am one, I feel we are not engaging young people enough in the process of governance, and like in the fight against crime, the fight against corruption, doing a kind of consistent, overwhelming education programme, where we show young people we are placing trust in them.

I want to say that the issue of institutional trust must not be trivialized, by any party who is in government, who in opposition; should not be. And I said last time I was here, what is amazing is that when you are in government, you look through a particular lens, and when you are in

Opposition you want to have done what you did not do while you were in government, and that revolving door is hurting us more than anything else, in terms of the governance of the country. [*Desk thumping*] That is a very serious thing. You know what I mean? You have all the answers when you are on the other side.

And I want to chide, not chide, but indicate to Sen. Rambharat, we must stop asking the question sometimes—while it is good to ask the question—what you did when you were there? At the same time, that must not be an excuse for who is there now not to take particular action. [*Desk thumping*] That has to be said in a major way.

So I mentioned before, there is nothing we cannot accomplish, you know, if we do not work together. I want to deal with that. I did not know that the book *How Democracies Die* would figure in the debate. There are two fantastic authors with funny names. So since I did not bear them and bring them into this earth I would pronounce them how I know best. It is Daniel Ziblatt and Steven Levitsky, those two guys. Sen. Mark quoted them. Of course, throughout the book there are a number of anecdotal experiences, et cetera. But there are some principles that he brings there that I think—he deals with the concept of postmodern, post-democracy or post-democracy, postmodern, the whole direction that we are going in. And he says you could identify—

And I want to also agree with Sen. Richards and a few other speakers, that not because we do not have a problem now or did not have a major problem before, all right, that we do not have to anticipate how to strengthen the democracy to face a challenge that could emerge in the future. In other

words, democracy is not a frozen piece of ice or wood or a dead animal. It is a living, dynamic organism. And, therefore, change, as Gandhi said, the only thing that is changeless is change and I want to risk what he said. Of course, Thomas Moore is no good example of freedom, in terms of fundamental rights. But he made a remark, and I want to deal with it here. He says democracies die when elected politicians renounce their role as gatekeepers. That is when democracies die.

Ziblatt and Levitski speak to the issue, all right, of protecting the democracy and preserving it. And you know, when you read that book and you read the *Collapse of Democracy* by Robert Moss, you see some intrinsic parallels meandering through those two books. The first one he mentioned is we have to watch out for tyranny in the future although we enjoy a certain brand of democracy now. My honest opinion is that in some Caribbean countries what we have, in terms of Westminster brand of politics, is really a prime ministerial dictatorship. That is what we have in most of the Caribbean islands.

I was talking to Sen. Ronald Huggins before we started Parliament. I was telling him one of the greatest things we could do for democracy is remove the Whip from both parties, which means people would be free to vote according to their conscience. Now some people say that would lead to the destruction of the democracy and you would have an election, perhaps, every two years or every year. But I think if you have to risk, you must risk on the side of right. That is just, perhaps, my crazy idea.

One thing that was mentioned in the book is refusal to recognize opponents as legitimate. That is why you have to strengthen your

institutions. And when you have a polarized society, especially around election time, I see a very development. We have the emergence of a mushrooming third party coming and some other parties, or a fourth party. I see that there. I have heard a statement made by one of the Members of the Opposition in response to that development. But it is—hello. “Leh me tell yuh something. Leh me say this.” We are all free to do what we wish to do to advance the cause. But I want to mention this, refusal to recognize opponents as legitimate. I have had to make this statement in church organizations, and I would make it here. You might not agree to a point, but even the appearance in the listening and seeing value in the point could advance a democracy. All right? So refusal to recognize opponents as legitimate. Encouragement of violence, statements being made, crazy statements being made on the platform or even in the Parliament.

And then the third one is the attempt to restrict media liberty. Now that is what you do not want to do at all. So I am saying what we have to do here is strengthen the democracy, even if it is by a line, as Sen. Richards, by a word. We have to get in terms of that. And if it could redound to the issue of building trust in our institutions it is critical.

I just want to spend about three minutes giving you an experience, Madam President, and the House here of why we need to—I mean a lot of people feel, “you see dis amount of murders taking place in the country? It is just like the criminals gone crazy and they do not respect anybody and we have got to teach.” This House here, this Senate, must be the role model of respect and decency. No matter how aggressive we are, it must become a role model. It must be a role model of respect and dignity.

I was engaged in a case recently, Madam President, and that is why I am a firm believer, for the past 40 years, in campaign finance reform. My problem with some of the Bills, though, is that we want to address Constitution reform in a piecemeal manner. The time has come for us to overhaul the Constitution. We could see several lacuna in the Constitution. I am telling you, we need—and I favour proportional representation to be honest with you.

I feel, in terms of the pluralistic nature of a society, in terms of religion, race and class, the only way forward to have general, national, you know, development, is to have proportional representation, and it will avoid us having to try and fix this piece of confusion here, this piece here and this piece there. If we want Trinidad and Tobago to be the best, we must think beyond party affiliation, beyond class affiliation, religious affiliation and political affiliation, if we want what is best for the society.

I know, I mean I am not sure, I do not want to be judgmental here. I have not seen a political party that, to my mind, is aggressively interested,—or major political party—aggressively interested, in proportional representation and campaign finance reform. To my mind, most politicians in this country feel that—especially in the present system we have—that will narrow their chances of winning an election.

And by the way, what Sen. Richards said is true there is—hello nobody investing heavy money in an election campaign wants nothing after. They want their contracts, whether you cut it up in several bits and give "dis cousin and dat cousin and whatever have you, or dis friend." There is a synergy that operates there. Once you give that millions of dollars to—I

mean a nation of 1.3 million, over \$150 million spending in an election? The truth be told, people expect something. They are not, “yuh know, ah mean”, so altruistic that they give so much and expect nothing in return, and that is why the corruption bogey continues to haunt us. I am saying whatever could strengthen the democracy and give the citizens some hope that we are going to have institutions that function at a level of quintessential integrity, could only help us to advance our democratic process and develop a brand that exists nowhere in the world and becomes a role model for the planet. I am very serious about that.

You know, it has been said by C.S. Lewis, he made a very valid comment and I want to repeat it here, about the value of everybody. You see, to value institutions and to value democracy, and to value respect, and to value true national development, we must value the individual. And C.S. Lewis made a remark. He said, and I want to quote him here: every human person matters. Hear what he says here: he is infinitely valuable, relentlessly unique and endlessly interesting. And then C.S. Lewis went into the religious domain and he said: every human being carries in himself the weight of glory.

Hello, to solve the crime problem here in this country, to solve the corruption issue, to get a brand and a model, a political model that will relate to all the needs in this very plural society that is polarized, especially around election time, we need to strengthen our democratic institutions. And whatever could advance that cause, I will say, will be great thing.

I just want to make two or three more points on this. I will just take about five minutes. I want to tell you, at this time, that we must not be a

prison of legal definition. That is something that I want to emphasize here and now. We must not be. And, you know, what this boils down to is the marginal seats, Madam President. The accusations that fly fast and furious deal with the issue of boundaries when they are changed and how they are changed and sometimes it is not that the Elections and Boundaries Commission want to do a wrong thing, you know, or have an agenda that favours one party above the rest. I think the real issue is how it is done, not what is done, but how it is done, and how we engage the population on how it is done.

I do not know, we just got up one day and find that boundaries are changed and you wonder who changed them? What was the catalyst driving the change? And hello, if we are talking about maturity in building a democratic model, all right, even if it is more perfect or more reliable than the Westminster system we inherited, then communication with the population is exceptionally important. And I am saying people have concerns about that, and those concerns should be addressed, and we must find a mechanism.

You know I want to tell you "dis eh folks and ah want de Opposition not tuh feel ah how". One of my disappointments with the last regime is that you had an excellent opportunity, like the regime before you, to fix the Constitution. I think what happened, in terms of Constitution reform was an embarrassment. What happened, in terms of Constitution reform was an embarrassment, and I am saying any party in Opposition that wants to come to Government must, that is something we must insist on, a mantra you must have, is that where you made mistakes before you must come out and say:

"We made mistakes. We did it the wrong way, but you should do it the right way." And I think that will lend and enhance and affirm political maturity.

Madam President, before I sit, permit me to just say this. The Jamaican model is worth looking at. All right? The Jamaican model is worth looking at, what they have developed in terms of the Electoral Commission and the Electoral Office. To my mind, they have an accountability level that is important. No society could improve and emerge out of a crisis without maturity. All right, no society, without honesty and, of course, the critical word here that I think Brother Mark has in his Motion is accountability. In other words, whether the Opposition did not do it, Government you have excellent chance to do it. We live. We learn by our mistakes. Of course, Andrew Nicholas Murray said there are three kinds of people, but I say there are four: the few who make things happen, the many who watch things happen, and the overwhelming majority who have no idea of what has happened. And I am saying there is a fourth class, those who have no idea and wish to have no idea of what has happened there.

And therefore, let us go forward. I am the quintessential optimist. I started with hope and institutional trust and I close that way. Do you know what hope does to a society, what hope does to a living organism? It affirms.

**Sen. Richards:** Preach.

**Sen. C. Dottin:** "Ah sound like ah evangelizing?"

**Sen. Richards:** Preach.

**Sen. C. Dottin:** "No, I talking 'bout hope right now. Dis bigger than PNM and UNC and Partnership and MSJ and whatever else the next group will be

called." Hope does something to the T lymphocyte. That is the manager of the immune system. And when you have hope in your prefrontal cortex, do you know what happens there? It inspires the heartbeats. "Um-hmm." It does something else. It causes the swifter multiplication with the white blood cells, the alveolar macrophage controlled by the T and B lymphocytes. That is what hope does. Do you know what hope is all about, my dear? Hope is to the soul, what oxygen is to the human body.

And I am hoping and I am praying that all of us here would see—I know some Government Ministers say they do not see the need for it, but you know, we all live as we learn and we grow as we go. And I hope we see value in this. There is intrinsic value in this and I support it. God bless you and I thank you very much. [*Desk thumping*]

**Sen. Khadijah Ameen:** Thank you, Madam President. I just want to start by saying I appreciate the message of Independent Temporary Sen. Pastor Dottin, in terms of his message of hope.

The matter in this Motion, with regard to EBC, the Election and Boundaries Commission, is amongst those things that I believe firmly in, the same way I believe in Parliament, the same way I believe in protecting our institutions, the same way I believe in the Constitution of Trinidad and Tobago and the fundamental human rights of every citizen. I had intended to start my contribution with a line about optimism and it just flows from the last speaker's contribution, optimism is the faith that leads to achievement.

I thought about this the moment I heard the response from the Government Bench that sounded as though they did not have faith in going forward. It sounded to me, from the contributors that we had thus far on the

Government Bench that everything is okay the way it is. It sounded like they did not have any intention of growing and moving forward. And we as a nation, we have evolved since Independence. We have evolved since the creation of our great Constitution. And how far are we willing to take ourselves is something that we should ask ourselves.

We sit in Parliament today, based on our foundation of our nation. That is the past. But we are a connection to the future. And when I hear Ministers of Government, or in fact any parliamentarian, rejecting an opportunity for us as a nation to evolve I am very concerned. And so I want to implore the Members on the other side, that if you take this Motion in the spirit of nation-building, if you take this Motion in the spirit of it being an opportunity for us to leave something greater than we met, then you will be willing to join hands and work together as a Parliament.

On our last Sitting we debated a Bill which was the product of a joint select committee comprising Members of all the Benches, both Houses. This was also a product of several Governments working together, that is the Insurance Act. And I did not contribute in that debate because I felt that my colleagues had covered the matter sufficiently. But what struck me about that is the fact that it is possible for us, all of us in Government and in Opposition, on different Benches, to put our heads together and do something for the good of our nation, and this is one such opportunity.

*[Desk thumping]*

Madam President, given that the Motion was brought by an Opposition Senator, it is very much the norm for the Government to contribute against it. And, from time to time as Opposition and Government

that is what happens. Because Sen. Mark, the mover of the Motion, in his presentation spoke about a possible mischief that could occur, I noticed that the Government almost immediately, from their responder, their response was going on the attack, because it seemed that something fell in their garden, if I could use that expression. So, something might fall in your garden today, but tomorrow whose garden is it going to fall in?

Madam President, in my contribution, which I hope to continue on the next day, because I know I only have a few seconds remaining today, I intend to look at possible mischiefs and the responsibility that all of us have in making Trinidad and Tobago a better place and the very noble intent of the purpose of the Elections and Boundaries Commission to be protected for future generations.

My contribution, I hope, will also add to our need for continued faith and optimism in Trinidad and Tobago as we continue to achieve from one milestone to another. [*Desk thumping*]

**6.00 p.m.**

### **ADJOURNMENT**

**The Minister of Energy and Energy Affairs (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to Tuesday, 29<sup>th</sup> of May, 2018, at 1.30 p.m. During that sitting we will debate the Motion on the DNA regulations.

**Madam President:** Hon. Senators, before I put the question on the Adjournment, leave has been granted for two matters—[*Interruption*]

**Sen. Mark:** No, we agree.

**Madam President:** Well, look at this. It is so nice that there is such agreement. [*Laughter and desk thumping*]

**Sen. Mark:** We love that, we love that.

**Madam President:** The nicest thing would have been if the Presiding Officer had been told. [*Laughter*] Hon. Senators, before I move the Adjournment, may I just remind all parliamentarians of the 10<sup>th</sup> Gathering of the ParlAmericas, the Parliamentary Network for Gender Equality, which is focusing on Gender-Responsive Climate Action, and that is taking place over the period of May the 22<sup>nd</sup> to May the 24<sup>th</sup>. I invite Members to attend the sessions. They are interesting, they are relevant and it would be good to see our local parliamentarians attend, okay?

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.01 p.m.*