



PARLIAMENT

REPUBLIC OF TRINIDAD AND TOBAGO

FIRST SESSION OF THE ELEVENTH PARLIAMENT (2015/2016)

INTERIM REPORT
OF
THE JOINT SELECT COMMITTEE
APPOINTED TO CONSIDER AND REPORT ON THE WHISTLEBLOWER
PROTECTION BILL, 2015

Ordered to be printed

TOGETHER WITH THE MINUTES OF PROCEEDINGS

PARL:

HOR PAPER NO: / 2016

SENATE PAPER NO: /2016

MANDATE

1. Pursuant to resolutions of the House of Representatives on Friday November 13, 2015 and of the Senate on Friday November 17, 2015, a Joint Select Committee was established:

to consider and report on a Bill entitled the “Whistleblower Protection Bill, 2015”; and...to report within eight weeks, that is to say, on or before January 22, 2016.

MEMBERSHIP OF THE COMMITTEE

2. The following persons were appointed to serve on the Committee:
 - Mr. Faris Al-Rawi, MP
 - Mr. W. Michael Coppin
 - Mr. Foster Cummings
 - Mr. Wade Mark
 - Mrs. Sophia Chote, SC
 - Mr. Stuart Young, MP
 - Major Gen. (Ret.) Edmund Dillon, MP
 - Mr. Prakash Ramadhar, MP

CHAIRMANSHIP

3. At its first meeting on Friday December 04, 2015, your Committee elected Mr. Faris Al-Rawi to be its Chair, in accordance with House of Representatives Standing Order 97(3) and Senate Standing Order 87(3).

SECRETARIAT AND TECHNICAL SUPPORT

4. During the session Ms. Chantal La Roche, Legal Officer II Parliament, served as Secretary of the Committee and Tanya Alexis, Legal Officer as Assistant Secretary.

MEETINGS

5. Since its appointment, your Committee has held three (3) meetings on the following dates:
 - i. Friday December 04, 2015;
 - ii. Friday December 18, 2015; and
 - iii. Tuesday January 12, 2016

6. The Minutes of the meetings are attached at Appendix I.

WORK TO DATE

7. At its First Meeting held on December 04, 2015, your Committee agreed that all Members must have an understanding of the issues surrounding Whistleblower Protection. To this end, whistleblower legislation from the following jurisdictions were circulated:
 - a. Jamaica
 - b. Malaysia
 - c. Malta
 - d. United Kingdom
 - e. Canada
 - f. New Zealand
 - g. United States of America

8. During preliminary discussions your Committee recognized that it would be a challenge for it to satisfactorily consider and report to Parliament on the Bill within two (2) months. Nevertheless, your Committee identified the need for external assistance during its deliberations and resolved that the Chief Parliamentary Counsel would be invited to assist with a clause by clause analysis on the Bill, to assist the Committee during its deliberations.

9. In an effort to improve transparency and citizen engagement in the legislative process, your Committee developed a list of stakeholders and through its Secretary invited written submissions on the Bill. The stakeholders contacted were:
 - i. The Law Association of Trinidad and Tobago
 - ii. The Criminal Bar Association
 - iii. The Director of Public Prosecutions

- iv. The Judiciary
- v. Trinidad and Tobago Transparency Institute
- vi. Trinidad and Tobago Chamber of Industry and Commerce
- vii. American Chamber of Commerce of Trinidad and Tobago (AmCham)
- viii. Public Services Association of Trinidad and Tobago
- ix. National Union of Government and Federated Workers (NUGFW)
- x. National Trade Union Centre of Trinidad and Tobago
- xi. The Bankers Association of Trinidad and Tobago
- xii. The Anti-Corruption Investigations Bureau
- xiii. The Witness Protection and Care Programme/Unit
- xiv. Integrity Commission
- xv. Bankers Association of Trinidad & Tobago
- xvi. Board of Inland Revenue
- xvii. Children's Authority of Trinidad & Tobago
- xviii. Customs and Excise Division
- xix. Elections and Boundaries Commission
- xx. The Energy Chamber of Trinidad & Tobago
- xxi. Delegation of the European Union to the Republic of Trinidad and Tobago
- xxii. Financial Intelligence Unit (FIU) of Trinidad and Tobago
- xxiii. Industrial Court of Trinidad and Tobago
- xxiv. Joint Trade Union Movement (JTUM)
- xxv. University of the Southern Caribbean
- xxvi. Central Bank of Trinidad and Tobago (CBTT)
- xxvii. Commissioner of Police
- xxviii. College of Science, Technology, and Applied Arts of Trinidad & Tobago
Central Administration
- xxix. Environmental Management Authority
- xxx. Fair Trading Commission
- xxxi. Federation of Independent Trade Unions and Non-Governmental
Organisations (FITUN)
- xxxii. Hugh Wooding Law School
- xxxiii. Trinidad & Tobago Manufacturers Association (TTMA)
- xxxiv. National Physical Planning Authority of Trinidad and Tobago
- xxxv. Trinidad & Tobago Office of the Ombudsman
- xxxvi. Organization of American States (OAS)
- xxxvii. Police Complaints Authority (PCA)
- xxxviii. The Employers Consultative Association (ECA)
- xxxix. Trinidad and Tobago Defence Force (TTDF)

- xl. Association of Trinidad and Tobago Insurance Companies (ATTIC)
- xli. Trinidad and Tobago Securities Exchange Commission
- xlii. United Nations Development Programme (UNDP)
- xliii. University of the West Indies
- xliv. University of Trinidad & Tobago (UTT)
- xl. Auditor General's Department

10. Your Committee also held a media conference on December 18, 2015 to invite input on the Whistleblower Protection Bill, 2015 from a wide cross-section of the population. The Committee agreed to a deadline for submissions from the public of January 20, 2016.

11. In response to the request for written submissions the Committee has received submissions from the following:

1. Public Service Commission (PSC)
2. National Trade Union Centre of Trinidad and Tobago
3. Mr. Rodney Seepersad, Research Officer Investigations and Fraud, TSTT
4. Mr. Shane Nelson, Member of the Public
5. Samuel Stafford, Member of the Public
6. Organisation of American States
7. Mukta Balroop, Attorney-at-Law
8. Director of Witness Protection Programme
9. The Ombudsman, Ms. Lynette Stephenson, S.C.
10. Auditor General
11. The Association of Trinidad and Tobago Insurance Companies (ATTIC)
12. Rachel, Maikhoo, Member of the Public
13. Environmental Management Authority (EMA)

12. In addition, the Committee has also received several comments on the Bill via the Parliament's social media platforms.

13. At its second meeting held on December 18, 2015, your committee commenced a clause by clause analysis on the Bill led by Mr. Ian Macintyre, S.C., Chief Parliamentary Counsel. The Chief Parliamentary Counsel also provided guidance on the undermentioned concerns that were noted and discussed by the Committee during its deliberations:

- a. Whether the Bill was retrospective and could be in breach of sections 4 and 5 of the Constitution.
 - b. Harmonization of offences and penalties created by the Bill with other existing legislation.
 - c. The effect of Whistleblower provisions on professional and parliamentary privilege.
14. During its third meeting held on January 12, 2016 your Committee was also assisted by Mrs. Charlene Taylor-Brasso, Senior Parliamentary Counsel, Law Reform Commission who advised Committee that the Law Reform Commission would circulate a policy document highlighting key policy issues in the area of whistleblower protection from both a regional and international perspective.

REPORT

15. The Committee wishes to report that a clause by clause analysis of the Bill is in progress together with a compilation and review of submissions received from stakeholders and members of the public. However, additional time is required for the completion of this exercise. As such, the Committee is unable to submit its recommendations by the deadline of January 22, 2016.

RECOMMENDATIONS

16. Your Committee humbly requests a further period of two (2) months to complete its work and to submit a final report to Parliament by **March 22, 2016**.
17. During the period of extension, the Committee proposes to continue its work in collaboration with the Chief Parliamentary Counsel's Department of the Ministry of the Attorney General, to meet with stakeholders and to assess submissions received.

Respectfully Submitted,

Sgd.

Faris Al-Rawi, MP

Chairman

January 20, 2016

APPENDICES



JOINT SELECT COMMITTEE ON THE WHISTLEBLOWER PROTECTION BILL, 2015

**MINUTES OF THE FIRST MEETING HELD IN THE ARNOLD THOMASOS ROOM
(EAST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A
WRIGHTSON ROAD, PORT OF SPAIN ON DECEMBER 04, 2015 at 10:30 a.m.**

PRESENT

Mrs. Brigid Annisette-George - Speaker of the House

Committee Members

Mr. Stuart Young, MP - Member
Maj. Gen. (Ret.) Edmund Dillon, MP - Member
Mr. Faris Al-Rawi, MP - Member
Mr. Prakash Ramadhar, MP - Member
Mr. Wade Mark - Member
Mr. Foster Cummings - Member
Mr. W. Michael Coppin - Member

Secretariat

Ms Chantal La Roche - Secretary
Ms Jacqui Sampson Meiguel - Clerk of the House

ABSENT/EXCUSED

Mrs Sophia Chote - Member

COMMENCEMENT

1.1 The meeting was called to order by the Speaker of the House at 10:40 a.m.

ELECTION OF CHAIRMAN

2.1 The Speaker advised that her role was to facilitate the election of a Chair and she invited nominations.

2.2 Maj. Gen. (Ret'd) Edmund Dillon nominated Mr. Faris Al-Rawi for the chairmanship and this nomination was seconded by Mr. Prakash Ramadhar.

2.3 There being no further nominations, Mr. Al-Rawi was declared Chairman.

2.4 The Speaker of the House informed Members that Ms Chantal La Roche would serve the Committee as Secretary.

2.5 Mr. Al-Rawi was invited to take the Chair.

2.6 The Chairman took the Chair and began by thanking Members for their unanimous support for his nomination. He expressed the hope that the same spirit of cooperation would be reflected in the future deliberations of the Committee.

Excuses for Absence

2.7 The Chairman indicated that the Mrs Sophia Chote would be excused from the day's meeting.

QUORUM

3.1 The Chairman proposed a quorum of 4 persons, inclusive of the Chair, provided that at least one Member from each House was present. The Committee agreed to this proposal.

TERMS OF REFERENCE

4.1 The Chairman reminded Members of the Terms of Reference of the Committee as follows:

- i. To consider and report on a Bill entitled "An Act to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector, to protect persons making those disclosures from detrimental action, to regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct and to provide for other matters connected therewith";
- ii. To discuss the general merits of the Bill along with its details; and
- iii. To report by January 22, 2016.

DISCUSSIONS ON THE WAY FORWARD

5.1 The Chairman invited discussion on the approach to be taken by the Committee in achieving its mandate.

Legislation from other Jurisdictions

5.2 The Committee requested the circulation of whistleblower legislation from other jurisdictions for use during its deliberations. The Chairman and Members identified the following jurisdictions:

- a) Jamaica
- b) Malaysia
- c) Malta
- d) United Kingdom
- e) Canada
- f) New Zealand
- g) United States of America

Request for Written Submissions to the Committee

5.3 Discussion ensued on the need for significant public consultation on the Whistleblower Protection Bill. As a consequence, the Committee agreed to the following as the most practical course of action:

- a) Stakeholders and other relevant parties would be invited to submit comments and to give evidence to the Committee before the consideration of the clauses of the Bill. The Committee identified the following preliminary list of stakeholders:
 - i. The Law Association of Trinidad and Tobago
 - ii. The Criminal Bar Association
 - iii. The Director of Public Prosecutions
 - iv. The Judiciary
 - v. Trinidad and Tobago Transparency Institute
 - vi. Trinidad and Tobago Chamber of Industry and Commerce
 - vii. American Chamber of Commerce of Trinidad and Tobago (AmCham)
 - viii. Public Services Association of Trinidad and Tobago
 - ix. National Union of Government and Federated Workers (NUGFW)
 - x. National Trade Union Centre of Trinidad and Tobago
 - xi. The Bankers Association of Trinidad and Tobago
 - xii. The Anti-Corruption Investigations Bureau
 - xiii. The Witness Protection and Care Programme/Unit
 - xiv. Integrity Commission

- b) An advertisement would be placed in the three daily newspapers inviting written submissions/comments on the Whistleblower Protection Bill. A deadline would be set for receiving submissions.

External Expert Assistance

5.4 The Committee also identified the need for external assistance during its deliberations and agreed to the following:

a) An independent regional or international expert from within the Commonwealth would be sourced by the Committee to assist the Committee with its future deliberations. The Chairman identified the World Bank as one possible institution to be approached by the Committee. The terms of the engagement of the expert will be discussed at a subsequent meeting.

b) The Chief Parliamentary Counsel would be invited to make a presentation to the Committee on the Bill, as well as to assign an officer to assist the Committee during its deliberations.

ADJOURNMENT

6.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Friday December 18, 2015 at 10:00 a.m.

6.2 The adjournment was taken at 11:15 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

December 4, 2015



JOINT SELECT COMMITTEE ON THE WHISTLEBLOWER PROTECTION BILL, 2015

**MINUTES OF THE SECOND MEETING HELD IN THE ARNOLD THOMASOS ROOM
(EAST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON
ROAD, PORT OF SPAIN ON DECEMBER 18TH 2015 AT 10:00 AM**

PRESENT

Committee Members

Mr. Faris Al-Rawi, MP	-	Chairman
Mr. W. Michael Coppin	-	Member
Mr. Foster Cummings	-	Member
Mr. Wade Mark	-	Member
Mrs. Sophia Chote, SC	-	Member
Mr. Stuart Young, MP	-	Member
Major Gen. (Ret.) Edmund Dillon, MP	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Tanya Alexis	-	Assistant Secretary

ABSENT/EXCUSED

Mr. Prakash Ramadhar, MP	-	Member
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Other Attendees

Mr. Ian Macintyre, SC	-	Chief Parliamentary Counsel
Mr. Aneil Joseph	-	Parliamentary Counsel I
Ms. Solange De Souza-Ransome	-	Legal Counsel I
Ms. Vyana Sharma	-	Legal Counsel II

COMMENCEMENT

- 1.1 The meeting was called to order by the Chairman at 10:30 a.m.
- 1.2 The Chairman indicated that Mr. Prakash Ramadhar, MP was excused from the day's meeting.

CONFIRMATION OF MINUTES

- 2.1 The Minutes of the 2nd Meeting were amended by inserting "Maj. Gen. (Ret'd)" in Mr. Dillon's title on page 2.
- 2.2 The Minutes were confirmed by Mr. Cummings and seconded by Mr. Mark.

MATTERS ARISING FROM THE MINUTES

Requests for Submissions from Stakeholders

- 3.1 The Chairman informed Members that invitations for written submissions were requested from sixteen (16) stakeholders. The stakeholders contacted were:
 - a. The Law Association of Trinidad and Tobago
 - b. Criminal Bar Association
 - c. Director of Public Prosecutions
 - d. Trinidad and Tobago Transparency Institute
 - e. Trinidad and Tobago Chamber of Industry and Commerce
 - f. the American Chamber of Commerce of Trinidad and Tobago (AMCHAM)
 - g. Public Services Association
 - h. Public Service Commission
 - i. Police Service Commission
 - j. Teaching Service Commission
 - k. National Union of Government
 - l. Federated Workers, National Trade Union Centre of Trinidad and Tobago
 - m. The Anti-Corruption Investigation Bureau
 - n. The Witness Protection and Care Programme Unit
 - o. the Integrity Commission
 - p. Disclosure Today

The entities were given a deadline of January 8th 2016 to submit their submissions.

3.2 The Committee agreed that invitations for written submissions would also be requested from the following Stakeholders:

- a. The Judiciary
- b. Federation of Independent Trade Unions and Non-Governmental Organisations (FITUN)
- c. Joint Trade Union Movement (JTUM)
- d. Police Complaints Authority
- e. Environmental Management Authority
- f. Trinidad and Tobago Manufacture's Association
- g. Energy Chamber
- h. Industrial Court
- i. Trinidad and Tobago Insurance Companies (ATTIC)
- j. Bankers Association of Trinidad & Tobago
- k. Central Bank of Trinidad and Tobago
 - Supervisor of Insurances
 - The Inspector of Financial Institutions
- l. TTSE
- m. Credit Unions
- n. Trinidad and Tobago Police Service (TTPS)
- o. Trinidad and Tobago Defence Force (TTDF)
- p. Hugh Wooding Law School
- q. University of the West Indies UWI
- r. University of Trinidad and Tobago
- s. COSTAATT
- t. Organization of American States (OAS)
- u. European Union
- v. World Bank
- w. CFATF
- x. United Nations Office on Drugs and Crime (UNODC)

3.2.1 The Committee agreed that the deadline for submission from the additional Stakeholders would be January 15th 2016.

DISCUSSION ON THE WAY FORWARD

4.1 The Committee agreed to issue a public call for submissions via print advertisement, social media, the Parliament Channel and the Parliament website. It was also decided that the deadline for submissions from the public would be January 20th 2016.

4.2 The Chairman instructed the Secretariat to create a Dropbox link containing all reference materials relating to the Bill and make same available to the public on the Parliament website.

4.3 The Committee agreed that a *Bill Essential* document analysing the Bill should be created and made available on the Parliament website and distributed to the Members.

POST MEETING MEDIA CONFERENCE

5.1 The Chairman advised Members that in an effort to update the media on the Committee's plans, and to officially launch the call for submissions from the public on the Whistleblower Protection Bill, 2015, a 15 minute media conference was scheduled to take place at 11:00 a.m. (after the Committee meeting).

5.2 Mr. Mark suggested that the Committee suspend the meeting to accommodate the scheduled media conference. The Members agreed to Mr. Mark's proposal.

5.3 The Committee agreed that the Chairperson, Mr. Mark and Mrs. Chote would address the media so as to present a joint perspective on the work of the Committee.

5.4 Mr. Young asked to be excused as he had an urgent matter to attend to.

The Meeting was suspended at 11:00 a.m. to address the media.

The Meeting resumed at 12.25 p.m.

5.5 Mrs. Chote asked to be excused after the media conference.

CLAUSE BY CLAUSE ANALYSIS OF THE WHISTLEBLOWER PROTECTION BILL, 2015 BY THE CHIEF PARLIAMENTARY COUNSEL

6.1 The Chairman invited the Chief Parliamentary Counsel, Mr Ian Macintyre, to make a clause by clause presentation to the Committee on the Whistleblower Protection Bill, 2015

6.2 During the presentation the Committee noted and discussed *inter alia* the following concerns:

- d. The Bill was retrospective and would be in breach of sections 4 and 5 of the Constitution.

- e. The offences and penalties created by the Bill may not accord with those contemplated by the Integrity in Public Life Act and the proposed amendments to the Securities Act and the Insurance Act.
- f. Clause 6 (5) of the Bill which specifically mentioned Parliamentarians maybe in contradiction of Part II of the Constitution which deals with Powers, Privileges and Procedure of Parliament.
- g. Whether the Reports received by Designated Authorities should be laid in Parliament.

OTHER MATTERS

7.1 The Committee agreed that the Chief Parliamentary Counsel, Mr. Macintyre S.C. would be invited to the next meeting.

7.2 The Chairman invited Members to submit nominees for external expert assistance.

7.3 The Committee agreed that its next meeting will be held on Wednesday 12th January, 2016 at 10:00 a.m.

ADJOURNMENT

8.1 The Chairman thanked Members and adjourned the meeting to Wednesday 12th January, 2016 at 10:00 a.m.

8.2 The adjournment was taken at 1:17 p.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

December 18, 2015



JOINT SELECT COMMITTEE ON THE WHISTLEBLOWER PROTECTION BILL, 2015

**MINUTES OF THE THIRD MEETING HELD IN THE ARNOLD THOMASOS ROOM
(WEST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON
ROAD, PORT OF SPAIN ON JANUARY 12TH 2016 AT 10:00 AM**

PRESENT

Committee Members

Mr. Faris Al-Rawi, MP	-	Chairman
Mr. W. Michael Coppin	-	Member
Mr. Foster Cummings	-	Member
Mr. Wade Mark	-	Member
Mrs. Sophia Chote, SC	-	Member
Mr. Stuart Young, MP	-	Member
Major Gen. (Ret.) Edmund Dillon, MP	-	Member
Mr. Prakash Ramadhar, MP	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Tanya Alexis	-	Assistant Secretary

Other Attendees

Mr. Ian Macintyre, SC	-	Chief Parliamentary Counsel
Mrs. Charlene Taylor-Brasso	-	Senior Parliamentary Counsel
Mr. Aneil Joseph	-	Parliamentary Counsel I
Ms. Vyana Sharma	-	Legal Counsel II

COMMENCEMENT

1.1 The meeting was called to order by the Chairman at 10:20 a.m.

CONFIRMATION OF MINUTES

2.1 The Minutes of the 3rd Meeting were amended by inserting the words “to address the media” in paragraph 6 on page 4 and “item 5.5 Mrs. Chote asked to be excused after the Media Conference” on page 4.
The word “did” was removed from paragraph 6.2 (b)

2.2 The Minutes were confirmed by Mr. Young and seconded by Mr. Coppin.

MATTERS ARISING FROM THE MINUTES

Requests for Submissions from Stakeholders

3.1 The Chairman informed Members that invitations for written submissions were requested from thirty one (31) stakeholders. The stakeholders contacted were:

1. Bankers Association of Trinidad & Tobago
2. Board of Inland Revenue
3. Children’s Authority of Trinidad & Tobago
4. Customs and Excise Division
5. Elections and Boundaries Commission
6. The Energy Chamber of Trinidad & Tobago
7. Delegation of the European Union to the Republic of Trinidad and Tobago
8. Financial Intelligence Unit (FIU) of Trinidad and Tobago
9. Industrial Court of Trinidad and Tobago
10. Joint Trade Union Movement (JTUM)
11. University of the Southern Caribbean
12. Central Bank of Trinidad and Tobago (CBTT)
13. Commissioner of Police
14. College of Science, Technology, and Applied Arts of Trinidad & Tobago Central Administration
15. Environmental Management Authority
16. Fair Trading Commission

17. Federation of Independent Trade Unions and Non-Governmental Organisations (FITUN)
18. Hugh Wooding Law School
19. Trinidad & Tobago Manufacturers Association (TTMA)
20. National Physical Planning Authority of Trinidad and Tobago
21. Trinidad & Tobago Office of the Ombudsman
22. Organization of American States (OAS)
23. Police Complaints Authority (PCA)
24. The Employers Consultative Association (ECA)
25. Trinidad and Tobago Defence Force (TTDF)
26. Association of Trinidad and Tobago Insurance Companies (ATTIC)
27. Trinidad and Tobago Securities Exchange Commission
28. United Nations Development Programme (UNDP)
29. University of the West Indies
30. University of Trinidad & Tobago (UTT)
31. Auditor General's Department

- 3.2 The Chairman informed Members that submissions were received from:
1. Public Service Commission (PSC)
 2. National Trade Union Centre of Trinidad and Tobago
 3. Mr. Rodney Seepersad, Research Officer Investigations and Fraud, TSTT
 4. Mr. Shane Nelson, Member of the Public
 5. Samuel Stafford, Member of the Public
- 3.3 The Chairman informed the Members that following entities requested an extension of time to provide submissions:
- a) Disclosure Today; and
 - b) American Chamber of Commerce
- 3.4 The Chairman informed Members that the public call for submissions was made via social media, the Parliament Channel and the Parliament website.
- 3.5 The Committee agreed that print advertisements would be published in daily newspapers as follows:
- a) Trinidad Guardian: Tuesday January 12, 2016
 - b) Newsday: Saturday January 16, 2016
 - c) Trinidad Express: Sunday January 17, 2016

- 3.6 The Chairman informed members that a Dropbox link containing all reference materials relating to the Bill was created and made available to the public on the Parliament website.
- 3.7 The Chairman instructed the Secretariat to:
- ensure that the Dropbox link was easily accessible and in a prominent position on the Parliament website; and
 - contact Stakeholders reminding them of the deadline for submissions.
- 3.8 The Chairman informed the Members that a Bill essential analysing the Bill was created and that same would be made available on the Parliament website and distributed to the Members.

REVIEW OF SUBMISIONS RECEIVED ON THE WHISTLEBLOWER PROTECTION BILL 2015

- 4.1 The Committee began the process of reviewing submissions and started with the submission of Mr. Rodney Seepersad, Research Officer Investigations and Fraud, TSTT.
- 4.2 The issues raised by Mr. Seepersad's submissions and the related responses and decisions taken are attached as Appendix I to these Minutes.
- 4.3 The Chairman instructed the Secretariat to collate and tabulate the submissions received for ease of reference and to circulate the compilation to the Members of the Committee.
- 4.4 During the deliberations on Mr. Seepersad's submissions, Mr. Mark again raised the issue of parliamentary privileges. The Committee agreed to revisit this issue as there may be need to remove the clause from the Bill.

CONTINUATION OF THE CLAUSE BY CLAUSE ANALYSIS OF THE WHISTLEBLOWER PROTECTION BILL, 2015 BY THE CHIEF PARLIAMENTARY COUNSEL

- 5.1 After the Committee's deliberations with the Chief Parliamentary Counsel, the Committee instructed the Chief Parliamentary Counsel to:

- Submit a written opinion of constitutionality and retrospective application of the Bill should be reduced in writing and circulated to the Members.
- Create a table comparing the Bill with the periods of incarceration and fines in similar pieces of legislation.
- Consider the merits for making the offences contemplated by the Bill offences of strict liability or to discuss the requisite *mens rea*.

PRESENTATION BY MRS. CHARLENE TAYLOR-BRASSO, SENIOR PARLIAMENTARY COUNSEL, LAW REFORM COMMISSION

6.1 Mrs. Charlene Taylor-Brasso advised the Committee that the Law Reform Commission would circulate a policy document highlighting key issues in the area of whistleblower protection from both a regional and international perspective to the Members of the Committee.

DISCUSSION OF THE ENGAGEMENT OF EXTERNAL EXPERT TO ASSIST THE COMMITTEE

7.1 After some discussion on the issue, the Chairman invited Members to submit their nominees to the Secretary within one week.

DISCUSSIONS ON THE WAY FORWARD

8.1 Discussion ensued on the effect of the imminent reporting deadline on the work of the Committee.

8.2 As a consequence, the Committee agreed that a report would be tabled to bring to the attention of the Parliament:

- (i) the decisions of the Committee thus far;
- (ii) its inability to complete its work in the mandated period; and
- (iii) its request for an extension to March 22nd 2016.

8.3 The Committee concurred that this report would be approved by round-robin.

8.4 The Committee agreed that should any issues arise from the report, a meeting will be scheduled to address the issues.

ADJOURNMENT

- 9.1 The Chairman thanked Members and adjourned the meeting.
- 9.2 The adjournment was taken at 1:17 p.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

January 12, 2016

APPENDIX I

Submissions by Mr. Rodney Seepersad and the Committee’s responses to the submissions.

<u>Clause</u>	<u>Issue</u>	<u>Decision</u>
1	None	
2	None	
3 Definition Section	Use of the word gender as opposed to sex	The Committee agreed that the word gender was satisfactory
4	None	
5	None	
6 (1)	Use of the words “may have occurred” should be used instead of “has occurred”.	The Committee agreed that it was satisfied with the use of has occurred.
6 (6)	Should read “void” instead of “voidable”.	The Committee agreed that it was satisfied with the use of the word voidable.
7 (1) (c) (iii)	Refers only to employer/employee relationships.	The Committee agreed that the definition of employer and employee was sufficient and went beyond what was necessary.
8 (1)	Speaks to Professional Privilege. Should the Bill also cover other professional relationships	The Committee agreed that legal professional privilege should not be eroded and that in relation to other fiduciary relationships the status quo of the law would apply
14 (4)	There are no checks and balances in place for the reporting process of whistleblower units	
<u>General</u>	An employee should not have to comply with internal reporting procedures first The Committee agreed	The Committee agreed that Clause 14 of the Bill covered this concern.

Comments	that Clause 14 of the Bill covered this concern.	
	How is the Director of the Units chosen and does he/she answer to the Minister of National Security?	<ul style="list-style-type: none"> • The Committee agreed that the Office of the Attorney General was better suited to handle the suite of services contemplated by the Bill than that of the Minister of National Security. As such the Committee agreed that the Bill should be amended in this regard. • The Committee agreed that greater discussion is needed on whether the appointment of Directors of the various units should be covered by the regulations or inserted in the Bill.
	Is the Bill covered by the Statute of Limitations?	The Committee agreed that the Bill was not covered by the statute of limitations. However, the offences that may be borne out of improper conduct reported can be statute barred.
	How far back can reports be taken from?	There is no time limit for matters reported.
	What happens if someone from the WB Unit 'blows the whistle' and gives the name and address of a previous WB due to suspected improper conduct?	The Committee agreed that clause 22 of the Bill that addresses the obligation for secrecy and confidentiality sufficiently covers these scenarios.
	Will the Directors of the Whistleblower Units be politically appointed and what will be their terms and conditions for employment?	The Committee agreed to re-visit this issue and decide whether to include the appointment process in the Bill or in the regulations.
	What is there to prevent this Bill from becoming a tool for political victimization	The Committee agreed that section 21 made it a serious offence to knowingly make false disclosures.
	What will happen to information collected by the various	The Committee agreed that the Data Protection Act would have to be

	<p>whistleblowing units over the time?</p> <p>Where will they be kept?</p> <p>Who will have access to it?</p>	<p>considered in relation to sensitive information and that this issue requires further discussion.</p>
	<p>How will the Freedom of Information Act apply to the Unit?</p>	<p>The Committee agreed that a decision would need to be made as to whether to make the information collected exempted under the FOIA.</p> <p>The Bill may need to be amended in this regard.</p>
	<p>Can the information be accessed via the Courts?</p>	<p>The Committee agree that the provisions of the FOIA would apply</p>