

Castries, St. Lucia
October 02, 2020

Statement by Independent Senator Adrian Augier
On the COVID 19 Prevention and Control Bill and Related Matters

1. On September 30, 2020 the prevailing state of emergency previously declared by the Governor General, and subsequently ratified by Parliament, came to an end.
2. It was the expressed intention of Government that the legislation creating the State of Emergency should be replaced by the **COVID 19 Prevention and Control Bill** which was passed by the Lower House on Tuesday September 29 and considered by the Senate on Thursday October 01, 2020. That sitting did not take place, as there was no Quorum.
3. The two Independent Senators, having several concerns with the Bill, and noting also the expressed concerns of civil society institutions, had previously written to the Leader of Government Business on Wednesday October 30, to request a deferment of the Bill, to permit wider consultation.
4. No response to that correspondence was received until the afternoon of Thursday, October 01, 2020. The response from the Leader of Government did not entertain the suggestion for deferment.
5. The Independent Senators then advised the Hon. Leader of Government Business as follows:

Enlightened principles of good governance adopted worldwide suggest that many practices which are not strictly required do nevertheless make for better laws, better societies, better democracy. In our specific case, where Independent Senators are appointed and not elected, the clear constitutional intention is to involve civil society in the making and passing of laws.

In this particular case, the legislation at hand has profound, immediate and direct impact on the private sector and in our view, requires input from those likely to be most affected. Our voice is not a solitary one in that regard. At least two civil society institutions of some standing, have written to communicate their significant discomfort.

We suggest therefore, that it is in the best interest of both the government and the governed to speak with each other before proceeding with any undue haste. The result should be a more sustainable outcome for all concerned.

You may recall also that the last time independent senators requested a deferment there was indeed due cause. The faulty legislation had to be withdrawn, redrafted and returned for affirmation. I close by stating unequivocally that our interest here is unambiguous: that any legislation brought to the house should represent, both in form and substance, the paramount interests of people and country.

6. Had the **COVID 19 Prevention and Control Bill** passed the Senate on Tuesday, it would endow specific ministers and specific government entities with sweeping powers which they do not normally enjoy. These powers would be in effect for two years.
7. While it is clear that certain exceptional powers may be justified to protect public health and public safety in the event of a sudden spike in C-19 cases on island, the Bill contains several clauses requiring more careful consideration as to their intent and impact, and in particular their infringement of civil liberties.

8. Among these are the following:

(Re: Section 67) The Bill would be in effect for 2 years. This is excessive given that it grants sweeping powers to individual ministers to act without normal recourse or consequence, just as if a state of emergency were in effect. Even under the Constitution, a state of emergency cannot endure beyond one year.

Recommendation: Amend the life of the Bill to six months at a time and require the Minister of Health to return to Parliament for approval of any extension.

(Re Section 66) The Minister of Health may make Regulations under the Act including the creation of offences, the imposition of penalty, imprisonment, fines, etc.

This should not be the purview of a Minister of Health acting solely on the advice of the Chief Medical Officer.

(Re: Section 61) The act grants immunity to the CMO, any public officer, and any police officer for acts done or omitted to be done.

Recommendation: Where there is exceptional power there must also be exceptional accountability. This needs to be revisited to provide for due process and protection from abuse.

(Re: Section 57) The Ministry of Health (as opposed to a specific person or Officer) can process and transfer any person's private medical information to health authorities in another country without that person's consent if the Ministry feels it is necessary to protect public health "or concerns public health".

Recommendation: This is too broad and too vague and provides little assurance of confidentiality to persons who must comply. This needs to be better addressed particularly when considered against the immunity granted under (61) and the mandatory compliance stipulated in 50/2(e).

(Re: Section 50) The Ministry of Health (as opposed to a specific person or Officer) can at any time within 12 months of first request for personal medical information, continue to collect, use, process, share, the data collected without consideration of the individual's right to know that this is being done.

(Re: Section 48) A person cannot refuse to wear an electronic monitoring device on their person (including a bio-sticker affixed to their chest) and can be brought before the court if they refuse to comply.

Anomaly: There appears to be no mandatory wearing of electronic monitoring devices for persons staying at hotels. This approach appears to be intended primarily for returning residents and nationals.

(Re: Section 27) This section seems to be a reintroduction of previous failed attempts to license tourism related businesses at a time when economic conditions and business environments are particularly adverse.

The certification requirement immediately outlaws several categories of businesses which may not at this time have a Covid19 compliance certificate. Such businesses include the informal accommodation (AB&B) sector, as well as villas, DMCs, buses, sites and attractions, diving operations, tours, whether or not they are actually catering to tourists as opposed to residents and nationals. It is unlikely that this is the intention of the Bill. Further, the inevitable lag in processing new applicants will place additional burden on a beleaguered sector.

Recommendation: Revisit and clarify clauses. Improve processing time. Consider unintended effects. Provide support to enable training and compliance.

(Re: Section 34) There is no advance notice required for the revocation of a compliance certificate.

Recommendation: Establish minimum 21-day notice for revocation of a license. This would make 34/2 consistent with 34/3. Clarify whether the business is entitled to continue operation during the period of notice and appeal. Establish procedure and timeframe for reinstatement of compliance certificate.

(Re: Section 6) There is no person or office named in the Composition of the Command Centre who represents the private sector or wider civil society.

Recommendation: Given the critical role of this entity appropriate representation should be enshrined in the legislation and not left to the discretion of the Command Centre to co-opt or exclude as it finds convenient to its purposes.

(Re: Section 11) The powers granted to the Minister of Health to requisition private property are exceptionally sweeping including the power to do to such property anything which the owner might lawfully do.

Recommendation: revisit and revise to better respect the rights of property owners.

(Re: Section 12) Given the scope and life of the Bill, the power conferred on the Minister of Health and the Minister of Finance to waive the application of any rules governing the procurement of goods and services is excessive.

Recommendation: Revisit and Revise

9. Given the above concerns, there appear to be significant grounds for deferring the passage of the Bill to facilitate further consideration and public consultation.

10. Regarding further public consultation, the **St. Lucia Bar Association and the St. Lucia Hospitality and Tourism Association** are both preparing papers outlining their professional concerns with the Bill. These papers will be available on Tuesday October 06, 2020.

Recommendation: Defer consideration of the Bill to allow those concerns to be aired and discussed.

11. In the interim, should the Senate be convened with a quorum, the following are likely to happen:

The Government will appoint one additional senator to return to its full complement of 5 senators.

The Independent Senators will be removed and replaced with more compliant individuals.

The Senate will convene with a quorum and the **COVID 19 Prevention and Control Bill** will pass the Senate unamended.

The Government, despite its best intentions, will be under no obligation to amend the Bill.

The Government despite its best intentions, will be under no obligation to engage in broader public consultation.

Any amendments agreed during consultation will not be binding upon the Government and may be defeated in both the Lower or Upper House if returned for consideration.

The Independent Senators would have failed in their obligation to represent the best interests of civil society upon consultation with whom the Governor General typically makes such appointments.

12. Available Options Empowering the Government to Protect Public Health and Public Order:

The provisions of the **COVID 19 Prevention and Control Bill** can be reviewed and amended based on public consultation, to reflect the justifiable concerns of civil society.

This can happen over the next 7 days to ensure that the country is not left exposed by deficient legislation in the event of a COVID 19 spike or other similar health crisis during which time Government must be able to act decisively and legally to protect public order and public health. This is our paramount national concern and should not be compromised.

Return to a temporary State of Emergency as declared by the Governor General which will preserve the status quo ante, thus extending for 7 days the legality of all Statutory Instruments which derive their legitimacy therefrom.

To avoid the need to obtain Parliamentary Approval for the SOE, return to Parliament with the amended **COVID 19 Prevention and Control Bill** within seven days of the SOE being declared.

Rely on the existing Quarantine Act, Chapter 11.16 Act 13 of 1945, revised in 2001, under which the Quarantine Authority is the Chief Medical Officer and thereby endowed with exceptional powers, including the power to decide and govern quarantine facilities and indicate the persons or things that are detained for observation or isolation.

Note that when any place is in use for quarantine purposes, a person may not enter or leave except with the general or specific permission of the Quarantine Authority. Under this Act, the police have the duty to enforce compliance. The Act also states that the police may arrest, without a warrant, any person who there is reasonable cause to believe has committed any offence.

Rely also on the Public Health Act which confers extensive powers on the Chief Medical officer including the power to declare COVID-19 a **Notifiable Disease** and declare a national health emergency and in so doing justify the observance of existing protocols.

Enforce existing regulations regarding **Communicable and Notifiable Diseases** which provide the Chief Medical Officer with powers to:

- (a) take all steps necessary for giving effect to the Regulations;
- (b) to enter any premises;
- (c) examine and inspect any premises and do such things therein or thereto as may be necessary for preventing the spread of disease;
- (d) examine or treat or immunise or cause to be examined or treated or immunised any case or suspected case or carrier of a communicable disease;
- (e) examine or treat or immunise or cause to be examined or treated or immunised any contact;
- (f) isolate contacts or persons attending on a case or carrier or to place them under surveillance, subject to such conditions as the medical officer of health considers necessary. Isolation may be substituted at any time instead of surveillance if the medical officer of health is satisfied that the conditions of surveillance are not being complied with;
- (g) isolate any person suffering from a communicable disease either in the house in which he or she is residing or elsewhere until such time as the patient is no longer infectious;

- (h) disinfect or destroy any clothes, bedding, or other article belonging to a patient or contact which he or she believes capable of transmitting disease;
- (i) declare any premises in which a person suffering from a communicable disease resides to be an infected place and to affix a notice to that effect;
- (j) order the evacuation of any premises or house;
- (k) order removal of any person suffering from a communicable disease from a ship to an isolation station or hospital;
- (l) order the removal to hospital and detention in hospital of any person suffering from a communicable disease until such time as he or she is satisfied that the person is no longer infectious;
- (m) isolate or detain in hospital or elsewhere any person suffering from a communicable disease or any carrier who is capable of taking proper precautions to prevent the spread of disease or to provide himself or herself with proper accommodation or care;
- (n) enter any school and immunise any child or teacher;
- (o) prohibit the sale of any food or milk or ice when he or she believes the consumption of such is likely to cause a communicable disease;
- (p) order the anatomical examination of the body of any person who has died or is believed to have died from a communicable disease;
- (q) order the burial within a specified time of the body of any person who has died or is believed to have died from a communicable disease.

Or failing all else, **resubmit** the suitably amended **COVID 19 Prevention and Control Bill to Parliament** for urgent consideration.

Remove, replace and retain such senators as the Government and His Excellency the Governor General see fit.

13. Note On the Appointment of New Senators

Standing Order 12 of the Senate makes it unambiguously clear that "Senators" are to be sworn by the Clerk and during a Sitting of the Senate.

Order of Business 12.

Unless the Senate otherwise directs, the business of each sitting shall be transacted in the following order:- (1) Prayers (2) **Oaths of Allegiance of New Senators** (3) Announcements by the President (4) Statements by Ministers or Parliamentary Secretaries (5) Bills brought from the Honourable House of Assembly (6) Petitions (7) Papers (8) Reports from Committees (9) Notices of motions under Standing Order number 23 (10) Questions and answers to questions (Question Time) (11) Requests for leave to move the adjournment of the Senate on definite Matters or urgent public importance (12) Personal explanations (13) Motions relating to the Business or Sittings of the Senate and moved by a Minister

or Parliamentary Secretary (14) Introduction of Bills (15) Public Business (16) Private Bills (17) Adjournment of the Senate.

It is trite law that to participate in the business of the Senate one has to be first sworn in. That swearing can only take during a Sitting and a Sitting can only commence with a quorum present.

A Quorum is dealt with under Standing Order 8 as follows: Quorum 8. (1) The Quorum of the Senate and of a Committee of the whole Senate shall consist of six Senators besides the person presiding.

There are at present 4 sworn senators on the government side and one on the opposition side. Two new senators would make 5 unsworn senators leaving only 5 sworn senators besides the presiding officer. This would be insufficient to meet the requirements of the quorum standing order.

Section 43 of the Constitution states: 43.- Oath by members (1) Every member of the Senate or the House shall, before taking his seat therein, take and subscribe before the Senate or the House, as the case may be, the oath of allegiance but a member may before take that oath take part in the election of the President or Speaker. (2) Any person elected to the office of President or Speaker shall, if he has not already taken and subscribed the oath of allegiance under subsection (1) of this section, take and subscribe that oath before the Senate or the House, as the case may be, before entering upon the duties of his office.

Based on the Constitution it is clear the oath must be taken in the Senate whilst in session and it cannot be in session without a quorum.