
CYBER CRIME BILL CLASHES WITH CONSTITUTION - PREMIER TOLD

Time and opportunity was not given for a proper review



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L-R: Premier Hon. Dr. Orlando Smith and Hon. Julian Fraser, Third District Representative

Government members shot down an opposition proposal to have a special select committee of the House examine the controversial Computer Misuse & Cyber Crime Bill, opting to instead proceed in committee stage and move towards passing the bill with amendments.

The opposition contended that the bill be given more consideration and allow for a public discussion given the seriousness of the bill, which seeks to criminalize persons who leak and publish unauthorized information and child pornography.

During the debate in the House of Assembly (HOA), Third District Representative, Hon, Julian Fraser pointed out that he does not see where the damage lies in publishing a document that is supposed to be a Government document.

He further pointed out that Article 3 Subsection 4 of the bill presented by Premier and Minister of Finance, Hon. Dr. D. Orlando Smith was unconstitutional and retroactive in nature.

Hon. Fraser explained that the bill proposes that where prior to enactment and commencement, information acquired would have constituted an offense under the act, had this act been enforced at the material time, if such information is published after the coming into force of this act.

"Madame Speaker one of the basic tenants of democracy is freedom. Freedom to express yourself and one expresses themselves based on their knowledge of the law at the time. [When] the expression was made this law was not enforced, it didn't even exist and now you are telling me the law is saying to me that the act applies prior to enactment. That is retroactive legislation Madam Speaker. That is a threat to democracy, especially in the case of this particular law Madam Speaker, where criminal penalties are attracted upon a conviction by a jury. Madam Speaker, I put it to you that this particular article in this legislation is unconstitutional. This in my view is a violation of the constitution, particularly Chapter II, section 23 of the constitution," Hon. Fraser stated.

He pointed out that the constitution states that no person shall be hindered in the enjoyment of his or her freedom of expression. Further, the constitution states that a person's freedom of expression includes freedom to hold opinions without interference, freedom to receive information and ideas without interference, freedom to disseminate information and ideas without interference (whether to the public generally or to any person or class of persons) and freedom from interference with his or her correspondence or other means of communication.

Further, Hon. Fraser pointed out that the constitution states that nothing in any law or done under its authority shall be held to contravene the section to the extent that it is reasonably justifiable in a democratic society.

"It is my view that the Premier ought to consider a closer look at this particular bill. I have no objections to a bill of this nature being passed in this House of Assembly, but when it comes to the

infringement on the freedom and rights of the individual, I have a problem with that," Hon. Fraser stated.

He pointed out that he wants the BVI to avoid a similar situation that occurred in the Philippines where their Cyber Crime Protection Act of 2012 was stopped by the Supreme Court because of its unconstitutionality.

Hon. Fraser stated that time and opportunity was not given for a proper review and feedback from the industry and the public at large.

"I am not convinced that this was done. Madam Speaker, I did not start the fire so therefore it is not in my place to put it out...I am humbly asking that the Premier give consideration to the issues I have raised and giving the bill a second look before moving to passage," Hon. Fraser appealed.

Premier Attempts To Allay Fears

Earlier in the debate, Premier Smith stated that the bill is not about protecting secrecy or shady dealings as some would have the rest of the world believe.

"We have no secrecy laws in this Territory and never had any. We simply subscribe to the Common Law principle of confidentiality and adhere to our treaty obligations as regards maintaining confidentiality in matters relative to mutual legal assistance, including the exchange of information," Premier Smith stated.

He stated that the bill is not about witch hunting anybody or an attempt to breach the constitutional rights of any person, nor is it about muzzling the press. Premier Smith stated that press freedom continues to be respected and upheld in this Territory within the bounds of the laws, as is the case with every citizen's right to express himself or herself.

"This bill is not about any attempt to cover up any act of corruption. Indeed, Madame Speaker, members of this House will recall that in 2006 the Criminal Code, 1997 was amended to completely revise and enhance the anti-corruption and anti-bribery laws of this Territory in accordance with the United Nations Convention against Corruption," Premier Smith noted.

He added, "This bill is not about preventing anybody from making a disclosure to a law enforcement authority about any suspicion of the commission or of an attempt to commit an offense. Indeed, disclosures to law enforcement are protected and this bill is not about restricting or prohibiting in any way any owner or institution in the Virgin Islands from giving lawful authority in relation to the use of a computer in respect of which it has ownership and which does not constitute a protected computer."

Premier Smith stated that the bill effectively outlines provisions that are considered fundamental to the continued growth and security of the Virgin Islands in the age of modern technology. He said everything necessary to protect the appropriate and lawful use of that technology must be done.