

SENATE*Tuesday, March 12, 1991*

The Senate met at 1.30 p.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. President: Hon. Senators, I have granted leave of absence to Sen. Prof. John Spence for the period March 9 to 23; to Sen. Motilal Moonan for the period March 7 to 15, 1991 and Sen. Dr. Krishna Bahadoorsingh for the period March 7 to April 6, 1991.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have been advised by his Excellency the President that he has appointed Mr. Trevor Belmosa to be a temporary Senator during the absence from the Senate of Sen. Motilal Moonan with effect from March 11, 1991.

I have also been advised that his Excellency the President has appointed Dr. Kenneth Ramchand and Mrs. Diana Mahabir-Wyatt to be temporary Senators with effect from March 11, 1991 and continuing during the absence from Trinidad and Tobago of Senators Prof. John Spence and Dr. Krishna Bahadoorsingh respectively.

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Diana Mahabir-Wyatt, Dr. Kenneth Ramchand and Trevor Belmosa.

NATIONAL CARNIVAL COMMISSION BILL

Bill to establish a National Carnival Commission of Trinidad and Tobago, brought from the House of Representatives [*The Minister of Youth, Sport, Culture and Creative Arts*]; read the first time.

PAPERS LAID

1. Report of the Auditor General on the Accounts of the St. Patrick County Council for the year ended December 31, 1981. [*Sen. Alloy Lequay*]
2. Report of the Auditor General on the Accounts of the St. Patrick County Council for the year ended December 31, 1982. [*Sen. A. Lequay*]

3. Report of the Auditor General on the Accounts of the St. Patrick County Council for the year ended December 31, 1983. [*Sen. A. Lequay*]
4. The Defence (Rates of Pay and Allowances) (Amdt.) Regulations, 1991. [*Sen. A. Lequay*]

ORAL ANSWERS TO QUESTIONS

The following question stood on the Order Paper in the name of Sen. Wade Mark:

Foreign Consultancy Firms

3. Would the hon. Minister of Finance kindly state:
 - a. The number of foreign consultancy firms employed by the Government between the period January, 1987 to December, 1990?
 - b. The number of foreign consultancy firms earmarked for employment in 1991?
 - c. The specific purposes of their engagements?
 - d. The existing and projected costs of these firms to the taxpayers of Trinidad and Tobago; and
 - e. Are the reports of these firms accessible or made available for public consumption?

Sen. Alloy Lequay: Mr. President, I am expecting the Minister of Finance and I wonder if, with your kind leave, and the leave of the Senate, we could proceed with the questions to the Minister of Labour, Employment and Manpower Resources in the interim.

Assent indicated.

Industrial Court

9. **Sen. Wade Mark** asked the Minister of Labour, Employment and Manpower Resources:

Could the Minister indicate what measures are being taken to address the urgent problems of staffing and chronic poor working conditions currently plaguing the Industrial Court and in the process, impeding the course of justice?

The Minister of Labour, Employment and Manpower Resources (Dr. the Hon. Albert Richards): The Minister is not aware that there are "urgent problems of staffing plaguing the Industrial Court."

Since the inception of the court the complement was 13 judges—three in the Essential Services Division and 10 in the General Services Division. At present the complement is 13.

Additionally there were vacancies of Verbatim Reporters. The Director of Personnel Administration appointed three Verbatim Reporters but only one officer took up the appointment. There is also a vacancy in the Research Section which is being addressed.

With respect to the physical problems, regular attempts were made to address them. Cabinet agreed on January 31, 1991 that as a matter of urgency, the matters of the replacement of the air-conditioning system and the comprehensive repair of the premises occupied by the Industrial Court be undertaken by private contractor on the basis of an award to be made by the Central Tenders Board. The implementation of Cabinet's decision in this regard is being further pursued by the Industrial Court.

1.40 p.m

Sen. Mark: Could the Minister indicate whether the present uncertain security of tenure of judges at the level of the Industrial Court militates against the independence of the Court and in the process obstructs the course of justice?

Dr. Richards: That is not a question I can answer.

Sen. Mark: Could the Minister of Labour state whether the present system of selection and appointment of judges impede the course of justice at the level of the Industrial Court?

Mr. President: The Minister does not seem to be in a position to answer that.

Sen. Mark: This is a supplementary question. I thought in the context of how the conditions are affecting the course of justice at the level of the Industrial Court, the Minister would have been adequately prepared to deal with these supplementary questions.

Mr. President: It does not seem to be a question that follows out of the original question.

Dr. Richards: I am always prepared to answer appropriate questions.

Mr. President: What you can do is to give notice of the question separately.

Sen. Mark: With your guidance I would allow it to pass. It was my opinion that it followed logically in terms of the course of justice. It is my opinion that the supplemental question follows logically because we are dealing with the course of justice at the level of the Industrial Court and I am seeking from the Minister whether it is a fact that the present system of selection and appointment of judges impede the course of justice at the level of the Industrial Court. I thought it logically followed from the question posed.

Dr. Richards: That is not my opinion.

ILO Conventions

10. Sen. Wade Mark asked the Minister of Labour, Employment and Manpower Resources:

Could the hon. Minister state how many International Labour Organization Conventions have been ratified by the Government since December 1986, and how many are earmarked for ratification by December 1991?

The Minister of Labour, Employment and Manpower Resources (Dr. The Hon. Albert Richards): In the post-Independence era, that is since 1964, only two ILO Conventions have been ratified by this country, Conventions No. 111 and No. 125. No further conventions have since been ratified.

At the present time however Conventions Nos. 68, 73 and 92 are being actively considered for ratification.

Sen. Mark: Could the Minister explain his Government's refusal to fill the Caribbean seat on the International Labour Organization's governing body at its last conference of delegates in June 1990?

Dr. Richards: I do not think it naturally follows.

Sen. Mark: Could the Minister indicate whether the Government has lost faith in the workings of the International Labour Organization and this has been reflected in its non-ratification of a number of important ILO Conventions?

Dr. Richards: The answer is no.

Foreign Consultancy Firms

3. Sen. Wade Mark asked the Minister of Finance:

Would the hon. Minister of Finance kindly state:

- a. The number of foreign consultancy firms employed by the Government between the period January 1987 and December 1990?
- b. The number of foreign consultancy firms earmarked for employment in 1991?
- c. The specific purposes of their engagements?
- d. The existing and projected costs of these firms to the taxpayers of Trinidad and Tobago; and
- e. Are the reports of these firms accessible or made available for public consumption?

The Minister of Finance (Hon. Selby Wilson): Mr. President, I wonder if I can ask that I answer that question at a later stage. It would be here shortly. I do have the answer to question 21.

Leave granted.

The following questions stood on the Order Paper in the name of Sen. Haji Ralph Khan:

Caroni Lands

12. (i) Would the Minister of Planning and Mobilization indicate the acreage of land formerly of Caroni (1975) Limited, expropriated by Government for use by Government and other agencies from the time of the company's takeover from Tate and Lyle to the present time?
- (ii) Would the Minister state what quantum of this distribution was utilized by Government, and what percentage was turned over to the other agencies?
- (iii) Would the Minister indicate to this House what is the total value of the lands so distributed?

**Caroni (1975) Limited
(Foreign Exchange)**

13. (i) Would the Hon. Minister of Planning and Mobilization indicate the total amount of foreign exchange earned by Caroni, (1975) Limited from the time of its takeover, by the Government from Tate and Lyle Limited, to the present time?
- (ii) Would the Minister indicate what has been the aggregate of subventions granted to Caroni (1975) Limited within the period referred to at (i)?

**Caroni (1975) Limited
(Housing Policy)**

14. (i) Would the Hon. Minister of Planning and Mobilization kindly state what is the housing policy of Caroni (1975) Limited?
- (ii) Would the Minister indicate the number of qualified personnel who, though offered company housing facilities, turned them down in favour of cash housing allowances?
- (iii) Could the Minister inform this House whether or not this state of affairs is against the company's polity?

Sen. Alloy Lequay: Mr. President, the Minister of Planning and Mobilization specifically requests a further week to answer questions 12, 13, and 14.

Questions, by leave, deferred.

Caroni Racing Complex

The following question stood on the Order Paper in the name of Sen. Robert Amar:

19. Will the Minister of Industry, Enterprise and Tourism advise this House on the date for the commencement of construction of the Caroni Racing Complex?

Sen. Lequay: I must again respectfully request a postponement of one week for the Minister of Industry, Enterprise and Tourism.

Question, by leave, deferred.

Unemployment Insurance Scheme

20. Sen. Robert Amar asked the Minister of Labour, Employment and Manpower Resources:

Will the Minister provide this House with a progress report on the study relating to the introduction of unemployment insurance and indicate the target date which the Government has set for the introduction of an Unemployment Insurance Scheme?

The Minister of Labour, Employment and Manpower Resources (Dr. The Hon. Albert Richards): Mr. President, at the 18th meeting of the National Planning Commission held on July 19, 1988 the issue of unemployment insurance was discussed.

By letter dated August 8, 1988, the National Insurance Board was commissioned to undertake a feasibility study of the matter and report its findings. The study was completed in October 1989 and submitted to the National Planning Commission for consideration.

At the 44th meeting of the Commission held on October 11, 1989, it was decided that a sub-committee be established to examine the study with a view towards making policy recommendations to Government.

On December 5, 1989 at the 47th meeting of the National Planning Commission, the final report of the sub-committee was submitted and approved by the Commission. The sub-committee recommended *inter alia* that Government set up a technical group, to work out the details of the implementation of an unemployment insurance programme.

Cabinet agreed on February 22, 1990 to the recommendation of the National Planning Commission, that Government should set up a technical group to work out the details of implementation, given the need for unemployment insurance, and given the problem of funding which remained unresolved.

The prerequisite of an actuarial survey to determine the level of financial assistance that could be generated by the National Insurance Board was also stressed. Once the actuarial survey has been completed the Government will be in a position to set a target date for the introduction of the scheme.

Sen. Amar: Mr. President, in view of the difficulties presently being experienced in the country I have only one question and I hope I can get a positive answer.

We all know that these actuarial analyses can be done quite quickly. Could the Minister give me a deadline date as to when the actuary will be completed?

Dr. Richards: I cannot.

Sen. Amar: It is just difficult to understand these sly remarks because we are running a country.

Dr. Richards: Did he say "sly", Mr. President?

Economic Performance

21. Sen. Robert Amar asked the Minister of Finance:

Will the Minister advise this House on the performance of the economy of Trinidad and Tobago during the first month of the fiscal year, 1991, and indicate whether the principal assumptions made in the 1991 budget, including in particular the price of oil, are proving to be valid?

The Minister of Finance (Hon. Selby Wilson): Mr. President, the fiscal of the Government for the month January, 1991 is as follows:

<u>Revenue</u>	<u>\$m</u>
Projected outturn	955.3
Actual outturn	1,090.9
<u>Expenditure</u>	<u>\$m</u>
Projected	949
Actual	815

The results at the end of January 1991 would suggest that the principal assumptions made in the 1991 budget are still valid.

The budget had assumed that the average price of oil for the year as a whole would be US \$22 per barrel. The present indications are that the average price received by local oil companies for the month of January would be below this figure. However, it is much too early to determine whether the average price for the entire year would be different from that assumed in the 1991 budget.

1.50 p.m.

Sen. Amar: If the oil prices were to be varied, would we seek a supplementary budget?

Hon. Wilson: Mr. President, I am sure that the hon. Senator is fully aware of the fact that if your estimates are not appropriate, then you have to take steps to adjust them accordingly.

Foreign Consultancy Firms

Mr. President: Hon. Minister, are you ready to answer question No. 3?

Mr. Wilson: I have not yet gotten an answer to that. With your permission, I will answer that at a later stage, or if the Senator will accept, I will give him a written answer today.

Mr. President: Will you accept a written response?

Sen. Mark: I would want a response.

Mr. President: Question No. 3 will be deferred to a later stage of the proceedings.

MOTION OF PRIVILEGE

The Minister of Social Development and Family Services (Dr. The Hon. Emanuel Hosein): Mr. President, I rise under Standing Order 26, Motions of Privilege, and seek that we refer the matter that I shall raise to the Committee of Privileges. The matter relates to a report in the *Express* of Saturday, March 9, which purports to be a report of the proceedings of this Parliament that took place at the last sitting on Tuesday, March 5, 1991. The article is headlined "Investigate the Causes", and it is written as if it were an article submitted by me. It says, "by Dr. Emanuel Hosein, Minister of Social Development and Family Services, (during debate in the House on the Domestic Violence Bill)."

Mr. President, anyone who was present here and who read the article will recognize, I am sure, that the last 50 lines or so of the article in fact were part of the contribution from another Senator, and I believe it was Sen. Motilal Moonan. I do not wish to suggest—and I see Sen. Moonan is absent from the Senate—that there is anything in his contribution that was inappropriate, except to say that I did not say it. There are probably a few things that he did say and that are reported to have been said by me in this article which I would not have wanted to say myself. It is, therefore, Mr. President, clearly a case of breach of privilege insofar as the press is obligated to report accurately on the proceedings of this House.

I just want, without going on too long in my motion, to make the point that I have had the unfortunate experience with the *Express* newspaper of never having that newspaper carry any retraction when I, as Minister in both my former portfolio and the present one, have had to point out their errors to them. On one occasion, the editor of that newspaper told me over the phone that I could go ahead and deny it if I wanted, and that his newspaper would not correct itself. I

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therefore feel obligated under the circumstances to raise this matter as a Motion of Privilege and seek that you refer the matter to the Privileges Committee.

I think in closing that it must be pointed out that I cannot imagine the circumstances in which whoever made up this article could possibly have extracted from *Hansard* the report of one Senator and mixed it up with the contribution of a Minister on a matter that has engendered tremendous debate, both in terms of quantity and quality, and which is of fundamental social importance to the country today, so that the responsible Minister's contribution on the debate could be as distorted, truncated and disrupted—if that is the word—as this article sought to do.

I therefore move, Mr. President, that you refer the matter to the Privileges Committee.

Mr. President: Hon. Senators, the Senator is raising a matter in connection with an article published in the *Express* of Saturday, March 9, 1991, on page 9. I am satisfied that a *prima facie* case has been made out, and I therefore rule that the matter will be referred to the Committee of Privileges.

DOMESTIC VIOLENCE BILL

[SIXTH DAY]

Order read for resuming adjourned debate on question [January 29, 1991]:

Mr. President: Hon. Senators, you will recall last week Tuesday the Senate passed the second reading of the bill dealing with domestic violence. The bill will now stand referred to a Committee of the whole Senate to consider the bill clause by clause.

Bill committed to a committee of the whole Senate.

Senate in Committee.

Mr. Chairman: Hon. Senators, there are quite a number of amendments before this Committee. In addition to all those amendments, Sen. Rambachan has given notice of another amendment, and that is that he wants to delete clause 25. That has not been circulated.

Sen. Alexander: That is mine.

Mr. Chairman: That was yours—sorry, Sen. Alexander—to delete subparagraph (a) of clause 25. All the other amendments have been circulated.

We have amendments from Sen. Mahabir-Wyatt, Sen. Deosaran, Sen. Alexander, Sen. Persad, Sen. Furness-Smith, and from the Minister.

Now, when the Clerk calls the clause by number, anybody who has an amendment to move must move it then. It is not the responsibility of the Chair to call on any one of the 10 people or so that have submitted amendments. If you miss your chance then, it is lost forever. Let us proceed.

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

Question proposed, That clause 3 stand prt of the bill.

Clause 3.

Dr. Hosein: Mr. Chairman, I beg to move clause 3 be amended as follows: In the definition of "conduct of such an offensive or harassing nature," delete the word "such".

Sen. Furness-Smith: Mr. Chairman, are we to take the Minister's amendments first? I respectfully submit that the language of the bill should be taken as we go through it, and as we come to any particular amendment. In point of fact, the Minister's amendments to a certain extent reflect my amendments, and I would submit that in those cases where the Minister's amendments in those respects follow my amendments, I should have the first bat to submit to any fast bowling there may be. As a matter of procedure, I would have thought so.

Mr. Chairman: I did not realize there was a merger of your amendments and the Minister's amendments.

Dr. Hosein: Mr. Chairman, age before beauty.

Mr. Chairman: Sen. Furness-Smith, do you have amendments to clause 3 that you would like to proceed with?

Sen. Furness-Smith: Yes. Mr. Chairman, the first amendment is that clause 3 be renumbered as clause 1.

The sole purpose of that is because I wish to exclude the definition of "conduct of an offensive or harassing nature" which we will be coming to as a definition. What I think needs to be done with it and which I think the draftsmen really, on examination, would intend—I do not know whether it would be convenient, therefore, to consider this when we come to the definition of "conduct of an offensive or harassing nature." If that amendment falls then this particular amendment would also fall.

2.05 p.m.

Dr. Hosein: Mr. Chairman, the Government holds to the style of the drafting. I thought Sen. Furness-Smith would have recognized the fact that we objected to the amendment of renumbering as clause 3(1), indicates the line we would follow on other matters. We do not agree with the amendment moved by Sen. Furness-Smith.

Sen. Furness-Smith: I am quite prepared to discuss the details of my proposed subclause (2) if that is thought convenient at this stage, but I think it would be better to take it as we go through and when we come to the definition of "conduct of an offensive or harassing nature", I would be able to explain my misgivings about it which caused this particular first amendment.

Dr. Hosein: Mr. Chairman, I see the point that Sen. Furness-Smith is making. It is just that we disagree with him on what he is referring to as well. I think the renumbering of the subclause and creating a clause 3 (1) and (2) would follow if we were accepting the point that the Senator wants to make but we do not intend to accept that point so it would not make sense at this stage. Even at this stage I am prepared to entertain the discussion which I know the Senator really wants to get into because it makes more sense to follow that approach.

Sen. Furness-Smith: The question is whether we discuss it immediately or when we come to that part of clause 3. It is a matter for the Chair to decide.

Mr. Chairman: We would wait until we reach that part because there are many other amendments.

Sen. Furness-Smith: Mr. Chairman, looking at this definition it seems to me that one ought to try, if one could, to introduce the concepts and language of the Family Law Act which are part of our laws, rather than have different definitions for a child in different Acts. It was with that in mind that I drafted my amendment, which is, that we substitute for the definition of "child" the following:

"Child" in relation to a person means a person under the age of 18 years:

- (i) who normally resides with and is under the care and control of such person;
- (ii) who has been treated by such person as a child of his or her family; or
- (iii) of whom the first mentioned person is a parent, custodian, or guardian."

The word "custodian" is absent from the bill. Under the Family Law Act the court can make an order that a person be named as "custodian", and it seems to me that if such an order is made then this bill should apply to such person in the same way as it applies to a parent or guardian.

The other two passages are also taken, I think, from the Family Law Act and I do not see why we should depart from that language which has been enforced for some eight or nine years. The Family Law (Guardianship of Minors, Domicile and Maintenance) Act, No. 15 of 1981 uses the expression, "minor child of a family" or "minor child of his family" in relation to the partners to a marriage or to unmarried persons, and it means:

- "(a) A minor child of both of those parties;
- (b) Any other minor child who has been treated by both of those parties as a minor child of their family."

The concept there is "being treated" so the—

Dr. Hosein: Mr. Chairman, Sen. Furness-Smith would appreciate that that is the definition in the Family Law Act in which the family relationship needs to be well defined. This bill deals with a domestic situation which is broader and I think he would agree with me that sometimes one has to have definitions to suit the matter that one is dealing with. It is understandable, therefore, why in the Family Law Act one would want to have that kind of definition of a child.

In this bill, where what we are seeking to do is to protect individuals, we have deliberately opted for a broader definition which will take in those instances which go beyond what he has just read from the Family Law Act. In other words, we use this definition deliberately because we recognize that children are quite often placed in the charge of persons who have a relationship with them that is outside the definition in the Family Law Act where that restricted definition is more appropriate. We have done so very deliberately, and with due regard to what happens in our society.

Were we to go along with that definition, it would exclude from any locus under this bill, which provides for protection, a number—I do not want to pretend to be able to give the number but I think anyone who knows what happens in Trinidad society would know of instances where that close family relationship as defined in that Act does not apply in which these children are in the care and home of persons who may perpetrate abuse or violence, *etc.*, upon them.

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It is for this reason that the Government would want to stand by its present definition as it is in the bill. I hope that the Senator would accept the point and recognize the need to do what we are attempting to do here.

Sen. Alexander: Mr. Chairman, with the greatest respect, the amendment by Sen. Furness-Smith gives a wider and more comprehensive definition of "child" than that given in the bill.

Firstly, it includes a custodian of the child and I think the question of custody there will take care of the situation to which the Minister has referred. The inclusion of custodian and guardianship and so on gives the definition a certain preciseness that is necessary.

There is a second situation in the bill which the term is said to include. What are those other categories which are not included? I think that "custodian" rounds off everything.

2.15 p.m.

Dr. Hosein: Mr. Chairman, I agree with that point raised by Sen. Alexander. He would notice under the amendments circulated by me on page 2, that the definition of "guardian" will now be amended to take care of that custodian situation to which he has referred. We agree with the point but we are dealing with it through that amendment. I think, however, if we go back to the amendment as proposed by Sen. Furness-Smith, we will recognize that in the end it would be more restrictive. In other words, the additional concept of custodian, as referred to by Sen. Alexander, is quite correct, but we are dealing with it in the way by amending "guardian."

Sen. Furness-Smith: It seems to me that the difference between us is really ignoring (ii) of the bill. What I am substituting in (i) and (ii), seems to me, at least in some respect, to be considerably wider than your (i) which states:

"normally resides, or resides on a regular basis."

I have two heads:

"Who normally resides with and is under the care and control of such person."

Which I agree could be slightly restrictive. I am prepared to accept to substitute (i). I go on in (ii):

"Who has been treated by such person as a child of his or her family."

That is clearly wider than either of those.

Dr. Hosein: It still needs a family test.

Sen. Furness-Smith: But you see, quite frankly I know we are addressing different aspects of family life but we are still addressing family life. That is what homes are about, with respect.

Dr. Hosein: I think we are addressing abuse. I had made this point, in my winding up, that the focus of this bill is to protect persons who have had violence and abuse perpetrated on them. All the ties that are referred to in the bill are merely to make the point that these persons have not been abused in a dark alley by a stranger, but by someone whom they have encountered in a domestic situation. Not necessarily a family situation because that is slightly more restrictive. There are people who are not in fact blood family, the way we think of family but who, children in particular, end up in the care of such persons, and the society of Trinidad and Tobago accepts that. It happens in all parts of the country. People are left with persons by agreement with both parties. Sometimes it may be a life-long friend and what have you, and abuse takes place, so we want this definition to be sufficiently all-inclusive that someone can apply for protection for that child.

Sen. Furness-Smith: Is not such a person being treated as a child by his or her family? I do not know why we have to introduce new concepts in this bill. I understand what the Minister is saying and I am quite happy to make it wide, but when we have gone through much trouble to make legislation as wide as we need to make it, when we are dealing with homes, then we now come from a different aspect of home-life because this home of which we speak is the child's home. Whether he came there from a guardian or custodian, it is his home and the only home that the child has. He is, I presume, treated by that person, as a child in the family.

Dr. Hosein: Mr. Chairman, if Sen. Furness-Smith is now arguing that his amendment and mine achieve the same thing, can I humbly request that he withdraw his amendment, insofar as I understand him to be saying it is six of one and half a dozen of the other?

Sen. Furness-Smith: Not at all. A child who is residing on a regular basis, I agree that is wider than I have in my amendment of subclause (i), but he may not be residing on a regular basis or normally, he may be in the home and treated as a child of the family.

Sen. Mark: Mr. Chairman, the amendment as proposed by Sen. Furness-Smith appears to me to be too rigid and somewhat inflexible. I say this because I am looking at Sen. Furness-Smith's amendments comprehensively and not individually. The entire package appears to be very restrictive. It appears to me that Sen. Furness-Smith is seeking to introduce an "Anglo-Saxon Concept" of family life which—and I do not want to be disrespectful—does not cast that at all.

Sen. Furness-Smith: If he does not want to be disrespectful why does the Senator not keep his mouth shut because he does not seem able not to be disrespectful. I think he is as deaf as I am because he could not have heard what I said in my contribution.

Sen. Mark: Mr. Chairman, what I am saying is that it is very restrictive and inflexible, and we have to deal with the Trinidad and Tobago and the Caribbean reality. As the Minister pointed out, there are many instances in the Caribbean and in Trinidad and Tobago in particular, where families are migrating and leaving their children with strangers. In the context of what is being proposed, we feel that it is extremely broad and it leaves room for flexibility. In this context we would not be supporting this amendment as proposed by Sen. Furness-Smith.

Sen. Broomes: Mr. Chairman, I was looking at the amendment proposed at (i). It is clearly more restrictive than what is in the bill because it is adding an additional qualification. Not only must the child normally reside, but he must be under the care and control. I suggest that if we change "and" to "or", it may be helpful. Certainly, if you left "and" it would be making it more restrictive. I would not go so far as to use the expression "Anglo-Saxon Concept" but it is surely narrowing it in a way which is not really applicable to our society. I suggest (4) instead. Thank you.

Sen. Furness-Smith: I have already agreed that we can fix that up, but what I am drawing attention to is subclause (ii). I would like to mention, before we go any further, as I made perfectly clear in my contribution, I have taken the trouble to put these amendments together in order to improve the bill, not to restrict it. If anybody finds that there is no improvement, then we would reject them. But I hope that my work will not be the subject of abusive language of any kind.

Dr. Hosein: Mr. Chairman, let me go on record to say that at no time did the Minister or anyone on this side question Sen. Furness-Smith's intention or even his motives in moving his amendments. In fact, there are a number of his

amendments to which we have conceded, albeit, that we may want to achieve the same thing by slightly different means.

To get to this point of the restriction, because it keeps coming up and as Sen. Mark pointed out a few of Sen. Furness-Smith's amendments, as in this instance, are a bit restrictive and it is a theme that runs through. I had mentioned this in my winding-up presentation and I sort of served notice to Sen. Furness-Smith that we would not be agreeing with him, once we perceive them to be so restrictive.

I do not know to what extent Sen. Furness-Smith intends to argue all his points except to say that there is a theme that runs through them, which we will not be accepting.

2.25 p.m.

Sen. Alexander: A point which the hon. Minister has apparently forgotten to reply to, is that the definition is not exclusive. What else does it include? This is the point. If you are legislating, you have got to legislate in such a way that the people for whom you are legislating would know what you are legislating against. This is why I prefer Sen. Furness-Smith's definition with the amendments which he is prepared to accept which would make a child within the meaning of this bill something definite. But the definition in the bill as wide as it is, is very uncertain and unsure. As wide as it is, it is not exclusive. So what are we talking about?

Dr. Hosein: Mr. Chairman, I see the point made by Sen. Alexander. He is correct in that sense and the only test placed here in the bill is one of custody and residence. It does say, "child in relation to a person includes", and it is therefore not exclusive.

One example, one could imagine, is a situation where the parents are overseas. If what Sen. Alexander is now suggesting is that we go beyond that and be all inclusive in our definition, I still do not agree that Sen. Furness-Smith's amendment would achieve that. In fact, by his admission, it is restrictive. If therefore, we are not talking about that, can I then ask Sen. Alexander what he would like to see included here that would satisfy him on that point that it be all inclusive. Because we believe what is here is sufficiently broad to take up situations that one might like to speculate about.

Sen. Alexander: It is too broad. It is totally open-ended.

Sen. Mahabir-Wyatt: I wonder if when Sen. Alexander is considering what wording he would recommend for this if he would take into account a situation

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[HON. E. HOSEIN]

Tuesday, March 12, 1991

which frequently happens. For example, where you have a child who is under the age of 18, who has left the orphanage or in some cases a shelter or a half-way house, having resided there for a while and who has to go to live in a household, that child is not treated as a member of the family as such, but worse than a servant. He or she would be under the control of the head of the household. I would not say "care". In the suggestion to the amendment perhaps if you leave the word "includes" rather than "means", it would mean that the existing definition in the second part would stay the way it is:

"(ii) of whom the first mentioned person is the parent or guardian;"

The custodian thing is taken into account later on. With respect to:

"(i) who normally resides or resides on a regular basis with the first mentioned person."

I think Sen. Furness-Smith said that his (i) or (i) in the bill, he does not really matter which one it is and has agreed to make the "and"; "or" there. If "means" is changed to "includes", then there is perhaps no reason to battle against Sen. Furness-Smith's (ii):

"who has been treated by such person as a child of his or her family".

My point is very often there are young people under the age of 18 who are not treated as members of the family but are resident within the domicile and are frequently subject to domestic violence. They are not a small number of people but in fact unfortunately—

Sen. Furness-Smith: You cannot have a young person in your house without that person being in your care. You may not give much care but the child is under your care.

Sen. Mahabir-Wyatt: They would be under your control but not necessarily under your care because they have been sent away from the orphanage after the age of 16. They would be resident in a house and very often as a kind of domestic servant. I do not know how legally you define "care". Perhaps, that is the problem, but they would be under "control" so if you change the "and" to "or", it would satisfy both the objections.

Sen. Alexander: I believe that in Sen. Furness-Smith's amendments instead of having three alternative situations we would have four, that is breaking (i) into

two—"who normally resides with"; "who is under the care and control of such persons;"and,

I cannot conceive of any other situation except a child passing through a house. I do not think one could say that is a situation of domestic violence. That has to be left to the ordinary criminal law. A child "who normally resides", that in itself is self-explanatory. "A child who is under the care and control of such a person"; that is also is self-explanatory; "a child who has been treated as one of the family". You are not a blood relation but you are in the home as a member of that household. Then we come to the legal situation of parenthood, custodianship and guardianship. I think it takes in every category of "child."

Sen. Furness-Smith: We could say "care and/or control." As it is in the bill, it is very indefinite.

Sen. Alexander: "Care and/or control" is all right.

Sen. Furness-Smith: This question of "means" and "includes". If we are saying "includes", in respect of any of these definitions, what we are saying is that the word "child" means child in the ordinary sense and also includes our definition. As Sen. Alexander pointed out that would make rubbish of this bill because it would mean any child at all. Then we say a child who is a member of the family or is residing. One has to define it. It has to have a proper definition which means the word "means". I entirely accept Sen. Alexander's suggestion.

2.35 p.m.

Dr. Hosein: Mr. President, at this stage may I ask that we defer this particular matter for the moment, while we can find a solution, because I take the point made by Sen. Furness-Smith. I think we can find a solution from a technical point of view if we can go on, at this stage.

Sen. Furness-Smith: I know there are Members of the Senate who would find my contributions a little bit tedious, but I have another amendment. This comes to the first question which is the definition of "conduct of such an offensive or harassing nature includes": and there is a list of things which the Minister indicated that he wants people to be protected against.

After some thought about this—because it seems somewhat wide—I came to the conclusion—and I hope I can persuade Members to agree with me that first of all, of course, the Minister conceded the word "such" was a mistake and should be deleted, which is helpful. What we want is a definition of "conduct of an

offensive or harassing nature”, for the purpose, of course, of clause 4(c) of the bill, where this language is very, very important.

Now what this language states is, “conduct with offensive or harassing nature includes”, that is to say, the words, “conduct of an offensive or harassing nature” are used somewhere in the bill, we can interpret that as meaning “conduct of an offensive or harassing nature” in the normal day to day use. Then we can add the following additional meanings, so that “conduct of an offensive or harassing nature” in each case means “the persistent intimidation of a person by the use of abusive and threatening language; the damaging of the property of a person; the persistent following of a person from place to place.”

Mr. Chairman, when you think about these things, it is not all these things that will be “conduct of an offensive or harassing nature”. The persistent following of a person could or could not be. I quite understand what the Minister is getting at, he wants to prevent people being harassed around their work place and so forth, but that will entirely depend on the circumstances.

Dr. Hosein: May I help Sen. Furness-Smith, by pointing out to him—and he quite rightly identified that link up with 4(c). When you read 4(c) Mr. Chairman which states:

"the respondent has engaged in conduct of such an offensive or harassing nature in respect of a spouse of the respondent, a parent or a child or.... that the spouse..."

and this is a test, because it is a test of the situation—

"or the parent fears for his or her safety or for the safety of a child or dependant of the spouse..."

In other words, it is not just harassing nature as listed, but it has an additional text, that as a result of that behaviour. So it is not persistent following because you are madly in love, and my understanding is, that this test of fear for his or her safety itself constitutes battery in the criminal law. So that it is a test on such behaviour that one may not appreciate—if you look at the definition of “conduct”.

Sen. Furness-Smith: I fully understand that point and we will come to discuss that language in due course. Looking at 4(b), there are two aspects of it and it really is very important. Members may not understand it fully because it becomes legal niceties, but it is very important to get this sort of language right, otherwise when we go to the Magistrate's Court—as we hope all these excellent

people will be going and getting the relief—they are going to be faced with all sorts of technical arguments about what the Act really means, and has Parliament gone over its head. Unless we get it right we are going to have trouble, which is why, I for one, have taken some trouble to try and put forward some amendments, for which, of course, I would be wrongly abused.

I received a petition this afternoon from the whole mass rank of women's organizations. Whether they understood one word of my contribution on the second reading, or my amendments, I do not know, but it is not for them to debate these questions in committee. We have to take that responsibility, whether we are subject to abuse or not.

To come back to the bill, there are two aspects of it. It has got to be “conduct of an offensive or harassing nature”, and even though we have put in this other language about “fear for safety” and so forth, which we will deal with in a moment, the magistrate still wants to know what is “conduct of a harassing nature”. If we leave these things in the definition, then any of these things is automatically “conduct of a harassing nature” even though it obviously is not. That is what you want to avoid in the bill. Even though it is quite clear that—for instance in the particular circumstances—depriving a person of the use of his/her personal property is not conduct of a harassing nature, the magistrate has to find if it is, because we have put it in the definition.

It seems to me, what we want to say is that “conduct of an offensive or harassing nature may include these things”. We are giving illustrations and we want to get the magistrate to understand that he is not to be restricted, he is to interpret the words of “an offensive or harassing nature” in the light of these illustrations. They are not meanings, they are illustrations. If you examine this language—I feel confident myself—that is really what is intended.

Dr. Hosein: I was under the impression, Mr. Chairman, that the term “includes” and “may includes” is—I think one is active and one is future tense. I really do not see the difference, with the greatest respect to Sen. Furness-Smith. I do agree with him, we need to be very exact and I think that is what we attempted to do. I want to let Sen. Furness-Smith know that we on this side, put a tremendous amount of thought and examination of issues, which is why we have not only drafted the bill in the way we have, but had proposed certain amendments.

We are grateful to him for his efforts, because he has, in fact, pointed out one or two things, but on this point Mr. Chairman, all I can do is remind Sen Furness-Smith of the test which is contained in 4(c). I appeal to Sen. Furness-Smith to withdraw his amendment and accept the position here. It is very fundamental really. Again, I remind him that when people set out to harass and be offensive, they may do a number of things. One has to be very exact about it and yes, we want the magistrate to appreciate that, for example, depriving a person of the use of his/her personal property in a manner that such person fears for his/her safety. It is not that conduct in itself, it is when that conduct is merely to make the point to the victim, "listen, I am here to harass you and I have chosen to harass you by doing this", that, that person is now in fear. I think between the definition as we have it and the exact language in 4(c), it covers the situation which we have been trying to have covered in this bill.

2.45 p.m.

Sen. Lequay: There seems to be many proposed amendments to clause (3)—the definition clause. I think Sen. Ramchand has one, Sen. Wyatt has one and so on. If we defer clause 3 in its entirety, will it affect the consideration of the main content from clause 4 on and see how, later on, we could marry all the proposed amendments on the definition clause? Will it affect consideration of the main bill?

Sen. Furness-Smith: Our gut feeling is that the definitions raised the issues which we are trying to discuss. Now, I do apologize, it is rather a burdensome task but personally, I think we will do better to go through it line by line, clause by clause. It may be that this particular one will be clearer when we come to examine 4(c). I would be happy to defer this particular one until we have dealt with 4(c).

Dr. Hosein: Mr. President, I accept Sen. Furness-Smith's position on that and I think we ought to go on. I do not know if Sen. Furness-Smith has exhausted his points, but I would seek that you put the question on Sen. Furness-Smith's amendment.

Sen. Alexander: From a point of view of pure drafting—and this is what the amendment is—it is a drafting point; and in my view, Sen. Furness-Smith's amendment is preferable even if one takes into consideration clause 4(c). Now, in 4(c) there are two things which the magistrate must find; (1) he must find that there was conduct of an offensive or harassing nature. The present definition in the bill is "once there is evidence". For example in—

"(c) the persistent following of a person, from place to place;"

He must find that there was conduct of an offensive or harassing nature. As it is defined here, "conduct of an offensive or harassing nature" includes the persistent following of a person from place to place; it is a definition which you are now giving to magistrates. Once there is the finding that there is conduct of an offensive or harassing nature, it is true that you now have to prove the fear but that does not ease the situation at all.

Dr. Hosein: You cannot get the order for such behaviour for example, as in the case of the lovesick individual. The reason for this following is not giving fear for his or her safety.

Sen. Alexander: The person who is being persistently followed may not be the person applying for the order. It could be a spouse or a parent; and the fear which is required is not fear of the person who is being followed but the person who brings the application. So, you have the lovesick person and the parent fears and applies for an order. That is the problem in the definition—

Dr. Hosein: The parent can only apply if it is a child—if I hear somebody is following my child in school and that person says he/she is in love with my 18 year old daughter and I fear, I want to be in a position to apply. I am not going to expect that she is not in fear. I want to be able to protect my daughter in school.

Sen. Alexander: The fact is that, I am saying, in my point of view, to defer it does not in any way deal with the provision of clause 4. At the same time, it will get rid of a potential situation if there is a finding of conduct of an offensive or harassing nature. When there is no offence and there is no harassment, the order may not be given but there will be a finding of this persistent following, as part of an offence. [*Crosstalk*]

Dr. Hosein: If the victim comes and explains the situation, the magistrate after all, has the power, because the essence of this bill is to put certain powers in the hands of the magistrate; and the magistrate—I am sure the Senators will agree with me—is not someone who is cloistered, he understands life; justice itself is not a cloistered virtue. The magistrate is not going to be spuriously convinced about something. What we are seeking to do is to put the authority in his hands if he so finds that this behaviour, as listed, not only falls under definitions that we have here—and that point we take—but additionally, it can lead to fear for one's safety. We want to give the power to him to do that.

The separation, which Sen. Furness-Smith's amendment is designed to achieve, to deal with offensive and harassing nature as a separate matter here, because we have not yet come to his other amendment, we are just on the point of deleting—and I take it that what is on the fourth page of his list of amendments, is what we are dealing with as well.

Other Senators are getting a little lost. We do not agree that it helps; that it is anymore exact; that it is going to be anymore useful for the guidance of magistrate, than what is there.

2.55 p.m.

Sen. Alexander: Let me put a situation to the Minister.

A person may go under clause 4 and say that “A” is whistling at “B” and as such a parent or spouse is fearful for the safety of “B”. Now the magistrate under these provisions will come to a conclusion as to whether the whistling is conduct of an offensive or harassing nature or not. That is within his province—because whistling is not included in the definition of conduct of an offensive or harassing nature. But once there is evidence of the persistent following, he has to come to the conclusion that this conduct is of an offensive nature and that is the problem.

Dr. Hosein: Let us see if Sen. Alexander and Sen. Furness-Smith who are pursuing this point would be satisfied with the following: that we go with 3(1) and 3(2) but we say, when we insert now 3(2) "for the purposes of section 4(c) conduct of an offensive or harassing nature in relation to the conduct of a respondent includes", and that list.

Sen. Alexander: I think everybody may.

Dr. Hosein: No. We are not accepting the point on may. I think it is a drafting point on which, I am advised, we would want to say “includes”. But would Sen. Furness-Smith be satisfied with what I have just proposed? Let me read it a little slowly for him.

Sen. Furness-Smith: Yes, I got it.

Dr. Hosein: Did you get it?

Sen. Furness-Smith: It does not meet my point really because you are still including a definition that the offensive or harassing nature includes the following conduct.

If that is the furthest the Minister can go, I will accept. I think it may do some good. I do not guarantee it.

Dr. Hosein: Mr. President may I, for the records, if Sen. Furness-Smith will follow me here, indicate that we will now accept his very first amendment; that is, “renumber as subclause 3(1)”. We will agree to delete the definition of "conduct of such an offensive or harassing nature"; we will insert a new subclause 3(2) which will read as follows:

"for the purpose of section 4(c) "conduct of an offensive or harassing nature in relation to conduct of a respondent" includes the following conduct.

I just want to clear one point here with Sen. Furness-Smith and that is in his own list he had in fact excluded I believe—

Sen. Alexander: That second phrase seems to be logical—in relation to a respondent.

Dr. Hosein: Yes, I get the point. I think you are correct. I take your point. I missed that. I am grateful.

Sen. Alexander: There is just one grammatical error in sub-paragraph (d) depriving a person of the use of “his” property, instead of “their.”

Dr. Hosein: Again, I am grateful. Before Sen. Horne comes in..

Sen. Mahabir Wyatt: “His” or “Her”.

Sen. Alexander: “His” means “Her” in law.

Dr. Hosein: I am sure Sen. Alexander is more than aware of the view of many that the law should change its view that "his" means "her" as well and that it should say his or her. This is a good opportunity I think, to put a new word in the English language meaning person, say "persona".

Sen. Alexander: Because the law refers to a person.

Dr. Hosein: There is another point. While that is being drafted since Sen. Furness-Smith's amendment had excluded the point about dependants, in other words, the minute we began to list what is now our (f) in Sen. Furness-Smith's listing, he had left out dependant person and that is another point of principle.

3.05 p.m.

Sen. Furness-Smith: Could we reserve that?

Dr. Hosein: Yes.

Sen. Furness-Smith: We have, I am afraid, a little argument about that to conduct, which I hope will lead to light rather than darkness.

Dr. Hosein: Mr. President, there is one point I wish to note at this stage. With Sen. Furness-Smith's amendments, when he begins to list the items in what is now 3(ii), on item (f), Sen. Furness-Smith and I recognize full well that he has left out the very last few words, which is "or dependant person". Now, on this side, we feel strongly that must be there, and I think now may well be an appropriate time to settle that matter because the definition of dependant, I believe, is also an issue with Sen. Furness-Smith. I think if we can settle this matter we can settle that point as well.

Sen. Furness-Smith: Yes, any time.

Dr. Hosein: Maybe I can ask Sen. Furness-Smith to make his point here on "dependant" because I think we have to settle this matter, and once we do, we can settle as well this matter of the inclusion of "or dependant person" at this stage.

Sen. Furness-Smith: On the definition of "dependant", I have some severe worries about this concept of dependants in this bill, in addition of course to the question of *de facto* spouses, which seems to be generating some heat.

Now, my original understanding, when the bill was explained to me by persons interested, was that in order to give the spouse protection, we need to protect the dependants, because the spouse is got at through the dependants. I can understand that concept. What I am concerned about is that, although I am quite

sure that many people in the position of dependants are suffering from finding themselves in a home where they are subject to abuse or harassing conduct, or whatever, I am not convinced that we should be passing special legislation for them. I would therefore restrict the use of the word "dependant" in this bill in various places.

However, I am not asking for the definition of "dependant" to be deleted. All I am asking is, first of all, to substitute for the word "includes" appearing in line one the word "means". Now, I really think if we are going to extend the law to dependants, we must have a clear definition of what a dependant is. Because in its normal language, normal parlance, a dependant could be a very wide expression indeed. So that when the bill says—

Dr. Hosein: Mr. President, may I interrupt Sen. Furness-Smith? Has he looked at my proposed amendments? We have conceded that point, you know.

Sen. Furness-Smith: You have?

Dr. Hosein: Yes, yes.

Sen. Furness-Smith: I beg your pardon. Yes, I have got that.

Thank you.

And the second point, in paragraph (b), I would wish to insert immediately after the word "person" appearing in line three the words, "as part of the family, and not as a visitor." You see, (b) says:

"Who normally resides or resides on a regular basis with the first-mentioned person."

That throws us back to the definition of "child" which we were discussing earlier on, and it is very similar language. It seems to me that in the case of a dependant, certainly. Now, as far as children go, I am completely ready and anxious to make it wider, but I think in the case of dependants, we have to be a little more careful. I am suggesting the following amendment:

"Who normally resides or resides on a regular basis with the first-mentioned person as part of the family and not as a visitor."

He must be a member of the family and not just a visitor.

Now, I know there are cases in respect of dependants as mentioned by Sen. Mahabir-Wyatt, but I do not think that is sound thinking. I think we will be doing a great damage to the social structure if we enable dependants to bring this sort of

complaint here. So I think we have got to be very careful. The intention is very admirable and very charitable and so forth, but to bring the law into that sort of situation, I think we have to be very clear.

And finally in paragraph (c), substitute for the word "welfare" appearing in line 3 the words "care and support".

Well, (c) says:

"Who by reason of physical or mental disability is reliant on that first-mentioned person for his welfare."

Now, I am not at all sure what "welfare" means in that case. I would have thought that "care and support" would be a more accurate expression. "Welfare" seems very wide to me. But that is purely draft.

The second one is more important and it raises perhaps some question of principle. I am suggesting that "dependant" be restricted to a person who normally resides or resides on a regular basis as part of the family and not as a visitor, because if things do not go nice in that home, he should leave. That is the point. He should leave. Now, I am told, "Well, he will not have anywhere to go", but that is a matter for the Government or the social services or charitable persons to find a place for him, so do not force him to stay there, by assistance of a magistrate or judge, or whoever. You are spoiling the family and you will be undermining the social structure which the Government is not able to provide but which is provided by all sorts of families turning round and helping people.

If we are going to start introducing this so that once you have taken somebody in you are stuck with that person, and you are liable to be taken to court by him/her, I think you are in big trouble.

Dr. Hosein: I think Sen. Furness-Smith missed the point, that there is no power being invoked here except in circumstances of violence, abuse, and indeed actions that I am sure Sen. Furness-Smith believes no citizen of this country should perpetrate on anyone else whether a child, a dependant or an adult. I think I had cleared that point in responding. I do not see how anyone can claim that by bringing someone into his/her house and perpetrating such acts on that person that he/she was helping out. If per chance anyone who could be deemed to be a dependant by this definition, found himself/herself in the care of anyone, other than by what Sen. Furness-Smith refers to as by the family, he mentioned a visitor, it could be a friend—you have left the child in the care of a friend—that

Sen. Furness-Smith, I am sure, does not feel that such a child/dependant should not be afforded the protection, as in this bill, purely on that basis.

After all, this is an individual who—remember, this is someone who is hardly in a position to determine things for himself. This is someone who finds himself subject to the vagaries, almost, the command of adults. His real parents may have said, "I am sending you by so-and-so." He feels obligated to go. He is a child. He/she accepts that. Then something is perpetrated on him/her in that home. We are now saying that because the tie is not family, or because in fact the child is there merely for a brief period and as such may be viewed as a visitor, such child ought not to be afforded protection under this bill purely on that basis. I do not accept that. Because that is the consequence of your amendment.

I think Sen. Furness-Smith is missing the other side of the coin. On the point of it being broad, yes, we have consciously, on the occasions where we had to examine the issue closely as to whom should these provisions apply, we have chosen it to be broad or broader than Sen. Furness-Smith is suggesting to the House today.

It is a fairly fundamental point, but there are too many instances. If numbers mean something, Mr. President, the numbers of instances where young persons or dependant persons find themselves in the charge of adults where it is not strictly family, and they may be indeed viewed to be visitors for a period of time, and here we are loose on our definition. It happens so often, and abuse is so prevalent in these circumstances that I think we should afford them some protection.

Sen. Furness-Smith: The Hon. Minister seems to be talking about one thing and I am talking about another. I am not talking about children; I am talking about what is defined as "dependants". There may be young persons, I suppose, in some cases but in most cases there will be adults. So that is what we are talking about here. We are not talking about children in the care and control of people; we are talking about dependants.

I can understand that will include somebody who is crippled, somebody who is very old, all sorts of situations where people find themselves in a house, and by courtesy of someone else, they are being looked after.

Dr. Hosein: Mr. President, allow me to interrupt Sen. Furness-Smith. There are three criteria listed here for "dependants", if you follow the bill. I agree, we are not talking about children. I brought up the point of children as a category of persons who found themselves subject to the command and vagaries of others. I was merely trying to place some emphasis.

There are three criteria:

- (a) a person over the age of eighteen years;
- (b) who normally resides or resides on a regular basis with the first-mentioned person; and
- (c) who by reason of physical or mental disability is reliant on that first-mentioned person for his welfare.

Now, ignoring the issue of welfare for the moment, I do not know if Sen. Furness-Smith can imagine the kind of situation that is being covered here. The last thing I would want to do, for obvious reasons, is to relate incidents that I am aware of. I just want to assure him that there are instances of persons with physical or mental disability over the age of 18 who are dependant on other persons for their welfare, not just their care and support; that is another matter. The welfare of a disabled person, I can assure you, is sometimes very much beyond the question of care and support. Again, I assure Sen. Furness-Smith, especially since he raised the matter, that a lot of thought has gone into this matter, even prior to his moving his amendment. We would want to maintain, and I hope Sen. Furness-Smith would recognize the kinds of circumstances—as I say, I do not bring details into the Senate, but I want to assure him—and that they happen often enough.

3.20 p.m.

Sen. Furness-Smith: I know exactly what he is talking about. There can be all sorts of unhappy situations and all sorts of grave consequences. I am just issuing a warning that I think the hon. Minister and all these well meaning people who have ganged a hold on passing this bill are going to be gravely disappointed when they see the results of some of these provisions. You are going to be undermining what you have got now, which is goodwill, in all sorts of homes in the country and you are going to think that you are going to substitute magistrates and policemen to put back what you are taking away and it would be a serious matter.

Dr. Persad: Mr. Chairman, may I ask Sen. Furness-Smith: If you say, “a person who normally resides or resides on a regular basis,” would that not exclude a visitor?

Dr. Hosein: Exactly.

Dr. Persad: I can see his point about part of the family but the addition of “not as a visitor”, I think is redundant.

Dr. Hosein: Thank you. That is the point.

Sen. Alexander: There is no legal obligation on anyone to take care of a dependant person. We start from that point of view. A person who undertakes in some way to do that, and who abuses the dependant, the criminal law is there to deal with that person. But you want to impose upon that person, who is under no legal obligation towards that person over 18 years, legal restrictions which might affect that person's property, when the criminal law can deal with it.

Dr. Hosein: That point applies to just about everything else in the bill.

Sen. Alexander: No, no, there is a legal obligation to a child.

Dr. Hosein: It applies to offences of a harassing nature. That applies to all other offences.

Sen. Alexander: There is a legal obligation to a child. There are legal obligations to a spouse and insofar as parents are concerned there is a blood relationship but this may be a person who has no sort of relation to the person at all. I think this is very far-reaching. It is not that there is no provision to deal with that situation. The criminal law is there to deal with it. What is the reason for subjecting a person to these strictures?

Dr. Hosein: When you look at (c) we are talking about a category of persons who are particularly vulnerable, especially in a residence, because we are talking about persons who are over the age of 18 but who, by reason of physical or mental disability, are reliant on that first-mentioned person. We are not talking about—I do not want to use the word—normal adults, we are talking about a very vulnerable category here.

Sen. Furness-Smith: What is the legal obligation now to look after that person?

Dr. Hosein: There is no legal obligation but you have undertaken an obligation. I take it Sen. Furness Smith is aware that we are talking about a situation in which one has voluntarily taken in someone. It could also be someone who is a child of the person. As I say, I do not want to go into too much detail, but I am aware of two disabled persons who are in their late thirties. They live in their parents' house, and you could accept my word for it, they are abused in that house, for no other reason, but because of their disability. They have nowhere else to go—and I would not go into all the details of what is done—but they are the children of the people who are doing it. But let us assume that they were not,

which is the instance I take it Sen. Furness-Smith is talking about, are we saying that because they are not the children of the perpetrator, albeit over the age of 18, that we would want to exclude them from the right to seek a protection order under this bill.

Sen. Furness-Smith: Yes, I am saying that. You are changing the law, do not tell me that I am restricting it. You must justify your new law and the new rights you are giving to a wide selection of people and the consequences of it.

Sen. Alexander: What compounds the whole question is the introduction of "conduct of an offensive or harassing nature". If this bill comes into law tomorrow and I have a dependant in my house and I say, "Look, I cannot take care of you again, you have to leave."—willful neglect, conduct of an offensive or harassing nature, and a protection order. That is the problem.

Dr. Hosein: I am almost taking it for granted that if you have any such person that you do not neglect him/her to where he/she fears for his/her safety; that you do not physically abuse, and I would like to think that if you did that every other Senator here, if not your good self, feels that such person should be entitled to some protection.

Sen. Alexander: I have no legal obligation but a protection order is going to be granted against me. This seems to me to be very wide.

Dr. Hosein: Mr. Chairman, I think we would have to resolve this one by going to the vote.

We are dealing here with the definition of dependant. The proposed amendment, on which we agree, is:

"Substitute the word 'includes' for the word 'means'".

3.30 p.m.

Sen. Furness-Smith: He mentioned people who are crippled and whose parents are living with them. But I think most cases of this kind would be different.

Supposing there is a young couple living under reasonably poor circumstances and trying to bring up a family of three or four children, and the wife has an old aunt or second cousin who is 70, partly bedridden and so forth, and to put it bluntly, she is a perfect old bitch. She says, "my sister says that after a month she will take this old woman in, so just let her come in for the month and let us try

and look at things." I say, "darling if that is the way you want it, I will do it for you." Then she comes in and the sister, of course, does not come up. So the old woman is there in my house and I have never been able to stand her, and she lashes me with her tongue whenever she can and passes her disgusting remarks about me. I get more and more irritable with my life; I get irritable with my wife and children and the old woman. Sometimes I may forget myself and smash things or do something stupid. You are to bring the magistrate or the police to me, not because I have committed an offence, but because I am guilty, in some way, of oppressive and harassing conduct. Incidentally, I fall out with my wife, which I am sure the hon. Minister does not want. The children are in danger of losing their father. You split up my family because I cannot tell the old woman politely to go. I am sorry, but she has to go. It is my home, my wife; I value my wife and my children more than this old woman whom I cannot stand. But she is in my house, I have taken responsibility for her. You are mashing up the family.

Dr. Hosein: Mr. Chairman, the example as stated by Sen. Furness-Smith, I dare say, is a very common occurrence all over the world. Anyone who has to take care of anyone, even parents, who becomes senile—the medical textbooks will tell you that, the very behaviour he described. Unfortunately, I regret to inform that if all of us live long enough that is the fate of us all. I would hate to think that our children or those whom we will be dependent upon will proceed to physically abuse or harass us as a result of our being old, miserable, and tongue-lashing. I dare say that I am personally acquainted with the behaviour and I know other people who have been subjected to that very instance. It is a common occurrence. If we live long enough it is going to happen to everybody in this room, both on these benches and in the public gallery. I am saying we want to pass a law that says the last thing anybody should do as a result, is to physically abuse, harass or treat anybody like that. *[Interruption]*

Mr. Chairman: I want to address those in the public gallery. Silence please. Many of you are here for the first time. In a Parliament, all, except the Members of the House, have to maintain absolute silence while the proceedings are continuing. I hope I have made myself clear. Any further applause or interruption will force me to ask the officers to clear the public gallery.

Sen. Furness-Smith: He has stated that I have committed some offence or violence. His bill does not state that at all. In this bill I can be taken before the magistrate and I have not lifted a finger against anybody. That is the mistake he is making.

Dr. Hosein: The provisions of the bill can only be invoked where you can show that these things have happened. In other words, if, as a result of the tongue-lashing the hon. Senator wants to put this old, miserable person—I would not use the word he used—out of his house, do so. All this bill says is, if you proceed to perpetuate violence against them and do certain things to them, then they are entitled to the protection of this law. If you want to put them out, put them out. That is a different matter. Nobody is preventing you from putting somebody who is miserable out of your house.

Sen. Furness-Smith: That is harassment, wilful or reckless neglect of a child or dependant person. You have just made that point, I cannot put her out.

Dr. Hosein: I disagree with Sen. Furness-Smith. I think there is sufficient protection in the bill, as it is drafted, that no magistrate will invoke the consequences of which Sen. Furness-Smith is fearful, unless certain things have happened from which persons are entitled to protection.

Sen. Furness-Smith: This is coming back to the importance of harassing conduct. We have language there which imputes harassing conduct for all sorts of things which are not oppressive or harassing at all, or may not be.

The second ingredient is that "the spouse or the parent cares for his or her safety or the safety of the dependant." Are you telling me that if I tell the dependant to go out on the street, she would not be afraid for her safety? That is inarguable.

Dr. Hosein: If the dependant is someone who is mentally disabled, somebody must be able to have the locus to appear before the magistrate to apply for a protection order for that person.

Sen. Furness-Smith: In the case which I have given, you are telling me I can tell the old lady to get out, and my spouse, to whom I am scarcely speaking now, because of this relative says, "I will take you to the magistrate because I am fearful for the safety of the old woman." Are you saying I am guilty of oppressive conduct as I have wilfully failed to support her? An obligation which is imposed upon me by this bill which we are being asked to pass today. Then the magistrate puts me out of my house.

Dr. Persad: Mr. Chairman, maybe the Minister can define what is wilful and reckless neglect in the definition section to avoid this situation. That is one alternative. It is not defined in the bill at all.

Dr. Hosein: Wilful neglect is itself a test. In other words, one must show that it is a form of neglect which is intentional and to the point where someone must fear for his/her safety. In other words, the words "wilful neglect" and "to the point of" in (4)(c) fearing for one's safety is something that one would have to show to a magistrate. The magistrate will have to be satisfied. Remember he must have due regard to certain things, which is also in the bill. Whoever is applying for the order has to be able to show the magistrate, to his or her satisfaction, that this is neglect that is wilful and that it exists at a level that the victim can rightfully fear for his/her safety, and in both cases, impose a test which the magistrate will pass judgment on, before he can then invoke any of his powers under the Act. It is not the kind of case to which Sen. Furness-Smith is referring.

3.40 p.m.

Dr. Persad: I do not think it is frivolous, I think you have to account for it. What you are saying is if a person is kind enough to take care of somebody—now I do not agree to put them out, but what you are doing is putting a legal burden on them that caregiver must keep that person because once you put that person out, that is wilful neglect. If I am taking care of somebody for 20 years and I put them out, that is wilful neglect. I think you must answer this question. Either you remove "dependant person" from this 3(f) or you define "wilful or reckless neglect" or you split that to exclude "dependant" from "wilful or reckless neglect."

Dr. Hosein: I think there is something being lost here. I think there was some mention about Government agencies. There is also the question of the Mental Health Act which we must not forget which provides other kinds of remedies for some other instances that are being referred to. Remember this bill is designed to protect individuals, whether they are children, spouses or *de facto* spouses, and that is another matter; dependants as defined here are normally resident, physically and mentally disabled on whom violence has been perpetrated. The idea that you would have taken in someone out of the goodness of your heart—I have a little difficulty with "goodness of your heart", and then proceed to commit offences against this person that leaves you liable—let us assume that that is what happens, because the situation develops over a period of time, you may have started out treating the person very well and now you are beginning to perpetrate acts upon that person that leave you liable under this bill. Is anyone here suggesting that the victim ought not to be entitled to the protection of this bill, purely because there is now the price to be paid by the person who took the victim in originally; that a magistrate may issue an order that says, "listen you

have to stop that kind of behaviour"? Remember, Members keep glibly saying, "put out of the house". The magistrate is not going to put out everybody. He has the powers to do certain things and in giving his prohibitions, he must have due regard to certain circumstances. Obviously, he is not going "to put out of the house"—everybody is using that phrase loosely—someone who is providing the wherewithal to maintain the person. There are many prohibitions that he can impose or he may impose none at all.

Indeed, if we accept another amendment, he might just have to give an undertaking and I am not conceding that at this stage Mr. Chairman. I am saying there are all sorts of things he can do. It is not a question of putting you out of your house because you took in somebody. Surely our magistrates are not going to be unreasonable. More than that, a magistrate is compelled by the law to have regard to certain circumstances which are under clause 6(1)(a) to (f). In other words, the magistrate is not going to put out everybody; he is obligated to have regard to certain circumstances.

I think the situation that Sen. Furness-Smith keeps bringing up and using that example as a basis for even providing protection for dependants here—I think a magistrate would himself be in error to do what Sen. Furness-Smith is complaining about.

Sen. Furness-Smith: We keep on talking about violence. I may not have been violent at all under this bill. My harassment may consist of a few threats in a family situation where I am driven to desperation by the tongue of this woman. I am in a situation with my wife who is at sixes and sevens with me because of this same business that I have been forced to keep this woman in the house. She comes and says that she is afraid for the health of this old lady whom I am threatening to put out.

Look at 5(1)(f)

"...where the order contains a prohibition of the kind..."

Dr. Hosein: "Wilful neglect", I hate to use the term but it is almost violence by omission. Let me give you the example that I had in mind. Take the example of physically disabled children who have to use the bathroom. They undertake themselves to get a carpenter to come in and put in a rail so that they can hold on to use the bathroom and they break down the rail. They take away the wheelchairs, they take away the bedpans. So what happens? Can you imagine what happens to physically disabled persons? That is not violence on the person

but it is virtually violence of a sort that I do not think we have to stretch our imagination to understand what is the effect on the lives of these persons. As I say, they are in their late thirties.

I did not bring these instances into the debate—

Sen. Furness-Smith: Mr. Chairman, we are talking here about poor people. There are many such people in the world. The hon. Minister knows perfectly well that there is nothing that this Parliament, or the Government or any government can do. Hardships, poverty, distress, disabilities are very sad indeed, but we are not here to try and cure all the world of all the evils in one afternoon. What we must do is to provide sensible laws which do not infringe on the rights of citizens. We are being asked to widely extend the rights of citizens in all sorts of ways. I am not speaking of what I call (a) or (b), I am speaking of the harassment which lets in a whole wash of possible scenarios. I gave you one and I am told I am being unrealistic; an old woman of 60 or 70 years who has got a tongue like a knife. I do not want her; I do not like her, but I have agreed to let her come on a temporary basis. She has nowhere else to go, or so she says, and her niece or sister lets me down. I am a nice fellow, I suppose, and I have taken her in, "well let him keep her nah. We do not want her, let him keep her." I start getting pressure, my marriage starts breaking down and I am told I would not be found guilty by the magistrate unless I am guilty of some violence. That is just not true. The hon. Minister does a disservice to this honourable House if he keeps insisting that this bill is about violence only. It is not about violence only.

Dr. Hosein: I object to the concept that I am doing a disservice to the House. I take it Sen. Furness-Smith knows that when we talk about offences under this bill, I mean all, including offences of a harassing nature. The point I made was, that even that has a test before the magistrate. Sen. Furness-Smith is suggesting to this Senate that these things can happen arbitrarily and I am saying that is not so. I am saying that there is an obligation under clause 6 for the magistrate to have regard to all the circumstances that Sen. Furness-Smith is bringing up. He is the one who is misleading the House by suggesting that other provisions in this bill do not protect against the circumstance that he is constantly bringing up over and over, and which I am suggesting the magistrate will not permit, because he has to have regard to certain circumstances.

3.50 p.m.

You keep bringing up one instance which I am saying is far-fetched, and not only is it far-fetched but a magistrate would have misdirected himself to have

permitted this situation which you are talking about, because he is obligated to have regard to certain circumstances, including simple hardship. For you to get put out is going to be a hardship on you that the magistrate is obligated to have regard to. I think you are bringing up an instance which just cannot happen and if it were to happen I would sympathize.

Sen. Furness-Smith: I must thank God that I am not going to be a magistrate sitting in the courts of this country when this bill is passed because their lives would be absolute hell.

Sen. Mark: Mr. Hosein may I seek a clarification. On the issue of “wilful or reckless neglect”, are you saying that “wilful or reckless neglect” would have to take place within the household? But in the case proposed by Sen. Furness-Smith, if he puts out that old lady, he is now saying that he would be legally obligated, given what the bill is seeking to advance. I think that, for instance our leader here on this side, Sen. Prakash Persad was seeking to determine whether or not a definition could not have been provided which would probably ease the fears. Because both Senators Allan Alexander and Furness-Smith are advancing that under this particular arrangement, you may find yourself imposing a legal obligation on the person in question. The Minister is saying, that if you want to put out a dependant from your home, you can do that and you would not have any legal obligation. That is not what is being said by both Senators Allan Alexander and Furness-Smith.

Dr. Hosein: Sen. Furness-Smith is combining the dangers if we are leaving a dependant person under “conduct of a harassing nature”, it means that the dependant person can now seek protection against offensive or harassing nature.

May I suggest that we increase the level of text under subclause (f) “...wilful or reckless neglect of a child or dependant person...”, by adding, “to such a degree that a person fears for their safety”. In other words, we make it absolutely clear. Not only must you meet the test of “wilful or reckless neglect”, but we make it absolutely clear that it must be of such a degree that they fear for their safety, to provide a higher level of test.

Sen. Furness-Smith: If it were in the case of my wife's relative, if I start tampering with her safety arrangements in the house—surely she is going to fear for her safety, if I misplaced something which she must hold onto sometimes and she may be half blind and she cannot see it, all sorts of malice can go on. But what about the business of threatening to put her out? I would have wilfully neglected to maintain her and I am told that she is my dependant. This bill states

that she is my dependant. Because I agreed with my wife that I would have her for a month and I now have her for two years, she becomes my dependant. I have no obligation to that woman.

Sen. Alexander: I do not think we are looking very closely at Sen. Furness-Smith's amendment. All he is seeking to do, is to limit the definition of "dependant" to a person who lives in a household as part of the family and not as a visitor, but you want to include visitor and that is the problem. If you are part of a family, although you have no legal obligation, you have a moral obligation, now you want to include "visitor".

Sen. F. Hosein: There are two things combined which Sen. Furness-Smith is speaking about. You have to look at the combined effect.

Sen. Alexander: Let us deal with one at a time. I may agree with this but I may not agree with that. If "dependant person" is defined as part of a family, one could consider that "conduct of an offensive nature" to such a person could be protected. If you want to define it as a visitor, it cannot be considered at all.

Dr. Hosein: We have agreed that it is a residence test and it is not a question of obligation, so I am a little lost there. We have to understand the combined effect of the two amendments, one is to leave "dependant person" out of the definition under "offensive or harassing nature" to include "the wilful or reckless neglect of a child" and in the bill we have "or dependant". Indeed, one can say conceptually, a dependant person over the age of 18 but physically or mentally disabled, conceptually what is the difference between such a person and a child, really?

Sen. Furness-Smith: There is a very great difference, but the Minister is doing a great disservice not to realize the distinction. If one brings children into the world, one is responsible for them and that is something which everybody forgets, including the Government.

Dr. Hosein: We are thinking of them here as vulnerable groups within the domestic situation. I thought we had crossed the hurdle about family ties, that in this country we have many such instances in which the ties; are not family. What we are talking about here is the residence test and in effect a dependency test. That is what we are talking about here.

With the greatest respect, I think I understand the concern of Sen. Furness-Smith. I do not think it is a lack of failure to appreciate the instance which he is talking about, but I think we on this side would want to maintain the position that

there is sufficient protection against the very instance which leaves Sen. Furness-Smith concerned as he is. As I say, he has to maintain the position of what is in the bill. I hope it does not cause Sen. Furness-Smith that much discomfort. I still feel he is being overly concerned here.

Sen. Alexander: When you say dependant in relation to a person, means a person so and so over the age, who normally resides or who resides on a regular basis. Now you have put two conditions there, which will include a person who is not really a part of the family, but is a regular resident as a visitor or whatever, and that is the problem. Where in the bill are you going to put legal obligation? That is the problem.

4.00 p.m.

Dr. Hosein: Is Sen Alexander suggesting that we delete "or resides on a regular basis"? I take it that the point you are making leads to that.

Sen. Alexander: Well "normally resides" or "who resides".

Dr. Hosein: Under the definition of dependants at (b), is that what you are suggesting, "who resides"?

Sen. Alexander: I think that may be "who normally resides".

Dr. Hosein: Will you agree with that?

Sen. Alexander: I think that is what we want.

Sen. Furness-Smith: With a degree to "a part of the family".

Dr. Hosein: No, I think Sen. Furness-Smith is trying to read through this thing about family again. I think I can accept—albeit reluctantly—this suggestion that we delete—this is under the definition of "dependant"—(b) which will now read—

"who normally resides or with the first mentioned person".

So that we delete—

"or resides on a regular basis"

Sen. Furness-Smith: So, we are ensuring that in the case I put forward, I get rid of my old tanty before she "normally resides". I had better get around to it.

Dr. Hosein: If you so desire, Senator.

Sen. Furness-Smith: That is the message we are giving; once the whole country understands that, it is perfectly all right.

Dr. Hosein: Mr. Chairman, we are to take care of the point that we had left in abeyance at the time for the time being; (1) under the definition of—"conduct of such an offensive or harassing nature", we had agreed to make that 3 (ii), to list all the things and an (f) will remain as it is in the bill.

Mr. Chairman: We are dealing with the second amendment of clause 3 as proposed by Sen. Furness-Smith—

"to delete the definition of 'conduct of such an offensive or harassing nature'".

What we are going to do is to move that the definition be deleted, that the clause be renumbered as 3(i) and that a new subclause (ii) be added which will read as follows—

"(ii) For the purposes of section 4(c) 'conduct of an offensive or harassing nature' in relation to a respondent includes—"

Then we will put in (a), (b), (c), (d), (e) and (f) as in the bill on page 7, under the definition of "conduct of such an offensive or harassing nature".

One minor correction in paragraph (d)—substitute "his/her" for "their".

Sen. Furness-Smith: We are not here to wave feminist flags.

Mr. Chairman: We are deleting the whole definition and replacing it with a subsection (ii) of clause 3 and the introduction to (ii) will read—

"For the purposes of section 4(c), "conduct of an offensive or harassing nature in relation to a respondent includes"

And we take in (a) to (f) as is on page 7 of the printed bill except that in (d) you substitute "his" for "their".

Question, on amendment, put and agreed to.

Dr. Hosein: Mr. Chairman, I propose to amend the definition of "dependant" by deleting the words "or resides on a regular basis"; and substituting the word "includes" for the word "means".

Question, on amendment, put and agreed to

Sen. Furness-Smith: Mr. Chairman, I withdraw my amendment on the definition of "custodian".

Sen. Lequay: Sen. Furness-Smith, did you see the amendment by Sen. Ramchand on "*de facto* spouse"?

4.10 p.m.

Sen. Furness-Smith: Does Sen. Ramchand also have one? That is good. Maybe I should try and explain my thinking on this matter. This matter, I think, has been fairly fully debated on the second reading.

I tried to explain my reason for wanting to limit the practice. The answer I have heard is that we ought to be prepared to prevent almost anybody from violence in the home and that is the only answer. So that everybody has persisted in entirely ignoring it in the Senate, the press and the feminist organizations. In this country there are 21 of them. We have copies to the Senators to persuade him to object to any of the amendments which, in their opinion, will weaken the bill.

Dr. Hosein: The Minister requires no persuasion.

Sen. Furness-Smith: But clearly one has 21 bodies united, whether or not they have read the bill or heard evidence and whether or not this happened to any of them, but all of them are unanimous in saying this is our bill, we must have everybody.

I also prefer it but I feel it is my duty to pursue the amendments in the best of terms.

Dr. Hosein: It is up to the ladies or anyone else wanting to consider a matter and what happens out there. That is something we understand very well and I want Sen. Furness-Smith's wholehearted support on this matter. One of the Senators, on a number of occasions, Sen. Horne, made a point in the same vein about family life. I do not think the objective of this bill is to encourage anything in practice.

I recall Sen. Horne who gave the story about the gentleman who was married and had five other women pregnant for him at the same time. She asked how many deputies he was entitled to. All he is not entitled to do is to abuse or harass any of them and not the choice of how many deputies whether one or a million. This is all this bill is really concerned about.

Sen. Furness-Smith: I have accepted all that, but we, Sen. Alexander and other lawyers, know something about that. When you bring cases in court, and you are subjected to interpretation of the law and you have to go to the Privy Council.

I am prepared to listen very closely to them. I had hoped that some of them would spare a second to listen to what we are going to tell them because to my mind they are in danger. God help me! I am not going to be guilty of anything. I do not think too many of my colleagues or friends will like that. It is they who will suffer. All these wives and women will be suffering when we do that.

Dr. Hosein: If we get the view and support of Sen. Furness-Smith on the definition as we have it, there would not be a problem. I think that we must understand what we are doing because this bill requires a certain thought for making the matter very clear.

I take Sen. Furness-Smith's objection. I am to understand that you are now satisfied on a focus for persons in that kind of relationship. What we really voted for is whether this society is of such a nature, what the organizations of this country feel and while we do not want to raise uncertainty, notwithstanding the relation to a man or anyone else, I remember on a number of occasions, the focus of the bill is to protect. We were clear on the definition.

Sen. Furness-Smith: I do not think we voted for confusion. Nevertheless the bill makes its point. We are really talking about taking the men to court and the possibility of their being excluded from their homes. If that is what the people want, sure; that is the point. It would not worry me if that is what the people really want.

4.20 p.m.

Sen. Alexander: I think what confused me is "not a parent". I think that is what confused me. I understand what it means now.

Dr. Hosein: Are you with me?

Sen. Alexander: I understand what it means.

Sen. Furness-Smith: It seems a little complicated to me. Could we perhaps first of all deal with the suggestions I have made here? As the Minister says, it is a matter for consensus. Either we accept that we should give full rights to any *de facto* spouse, or we do not. Personally, I have grave misgivings about it.

I have put two alternatives here. The first is one which emphasizes the question of children:

“*de facto* spouse’ in relation to a person means a person of the opposite sex to the first-mentioned person who is living with the first-mentioned person on a continuous basis in the same household as such person’s husband or wife,

Domestic Violence Bill
[SEN. FURNESS-SMITH]

Tuesday, March 12, 1991

although not legally married to such person, and includes a former *de facto* spouse who is the mother of any child or children of the first-mentioned spouse.”

Or alternatively:

“‘*de facto*’ spouse in relation to a person means a person of the opposite sex of the first-mentioned person who is living with the first-mentioned person on a continuous basis in the same household as such person’s husband or wife, although not legally married to such person, in circumstances constituting a family of which there is a child who is a minor child of the family as defined by the Family Law Act No. 15 of 1981.”

I accept that we can have *de facto* situations, and I am quite prepared to protect those situations if the spouses have children involved, if it is a genuine home. As it stands at the moment, it is wide, wide open. In the illustration that I have, is it one week, two weeks, three weeks or a month? What is it? We do not know. To my mind, that will lead to confusion, and it is quite wrong, too.

Dr. Hosein: I suggest to Sen. Furness-Smith, for example, one of the flaws in his amendment is it talks about “mother” and, therefore, ignores the possibility of the father, the reverse situation. I think the intention of his first suggestion is what we have incorporated, and I think we have done so. We have accepted the intention of your first suggestion, because you gave two alternatives. We have accepted the principle that you have put forward in your first suggestion, only we have drafted it differently, and suggest, more tightly, accurately, than what you actually have here. What seems to have happened, because the way you have drafted it here—

Sen. Furness-Smith: I have said “mother” instead of—yes, I accept that. But you know, your amendment, as far as I can make out, all it adds is, “if not living with that person, is the parent of a child.”

Dr. Hosein: Yes.

Sen. Furness-Smith: So that if you are living with the person, even though you have only been living for two weeks, you are a *de facto* spouse.

Dr. Hosein: Yes.

Sen. Furness-Smith: I cannot see why we need to extend special rights like this to people in those relationships at all.

Dr. Hosein: We are not giving them rights; we are giving them protection.

Sen. Furnes-Smith: They have the criminal law to protect them.

Sen. Alexander: I have some difficulty with “*de facto* spouse”. In the first place, both amendments, the amendments of Sen. Furness-Smith and the Minister’s amendment, create a difficulty in identifying the father of a child who is not married to the mother. The law makes provision for the identification of such children. Now, are the amendments in this bill meant to override the provisions of the Family Law Act? The Family Law Act makes provision for paternity orders.

In other words, how will one prove that a person is the father of her child? It is easy to prove insofar as the mother is concerned, but insofar as the father is concerned, the law—

Dr. Hosein: But that is a problem you have anyway. Does this bill have to deal with that problem?

Sen. Alexander: No. You see, what I am saying, the Family Law Act and other bits of legislation which deal with succession, and so on, make provision for a child born out of wedlock whose paternity is established to be a successor to the father’s estate. Now, how will this magistrate who is looking at an application determine this? Is he being given jurisdiction to find paternity with the term “parent, in law”?

Dr. Hosein: Would the term “parent, in law” satisfy the Senator? Because I take the point he is making.

Sen. Alexander: I do not think that will satisfy your position, because it will mean that you will have to get a paternity order first, or you will have to prove paternity.

Dr. Hosein: I understand the point you are making to be, if we are agreeing that a man or a woman who is not resident with the respondent is to have locus in front of the magistrate to seek as a *de facto* spouse because that person has a child with the respondent, how do you prove that is in fact the respondent’s child? Because that may become an issue. A woman may say, “But I have a child with this man and he is beating me.” The man says, “Who says that is my child?”

I am now seeking some assistance from Sen. Alexander here. How do we satisfy that point. If it does not, as I understand you to be saying now, how do we satisfy that point?

Sen. Alexander: You see, you can have a situation where there is a paternity order. You can have another situation where the father has accepted the child to be his. You can have a third situation where the child is living in a household with two people who are not married and that child is a child of that family. Those are the three situations that I can think of, but I do not think the term “parent, according to law”, is sufficient.

Sen. Mark: I am trying to get some clarification from Sen. Furness-Smith. What do you define as “person on a continuous basis”?

Sen. Horne: When you take the man to court to have him maintain the child, you have to prove that he is father of the child, and you have to prove that through answering strange and delicate questions as put by the lawyer. That is how you prove that.

Dr. Hosein: There must be an Act that says that is what must be done. What we are trying to identify is what Act that is, because there must be a law that says that this is the burden of proof for a child. I do not think it is the Family Law Act of 1981.

Sen. Alexander: It is section 22 of the Family Law Act.

Dr. Hosein: I am being advised that once you indicate “lawful parent”, because I am told that the Family Law Act picks up part of the point and the Status of Children Act picks up the rest of it. Therefore, if you say “parent, in law” or “lawful parent”, it covers the situation and, therefore, will throw the onus on the magistrate to satisfy himself in terms of the two Acts we are talking about. That may be the best solution to the point Sen. Alexander is making.

Mr. Chairman: I think at this stage we will take a break.

Just for the record, I remind the Senate what I said at the end of the last sitting, that I hope there would be a meeting of the legal minds before today. God knows I have tried my best for that to happen. The little experience I have around Parliament leads me to believe that whenever you try to do drafting on the floor of the House, many years after problems seem to arise.

I was hoping that the lawyers would have got together and discussed the problems. Once you decide on the principle, the draftsman could be called in—drafting is nothing you can do in a hurry—to draft out the particular agreements you have reached. I do not know if Sen. Furness-Smith, Sen. Alexander and one Member of the Opposition are willing to spare a day between now and next week

Tuesday to meet with the Minister, if he is so disposed, and a couple of the lawyers—Sen. Broomes, Sen. Fyard Hosein on this side, to sort out the areas of disagreement. And those who have amendments would be free to come.

Because right now, only about three people are participating in this exercise and there are about 30 people present, and we are only at the early part of clause three. There are many other definitions to be sorted out. I always refer to this as a “lawyers’ law”. It is a legal tangle. If you all would agree to this, probably during the break we could discuss it and when we come back we will arrive at some decision.

Sen. Mahabir-Wyatt: I think, with all the greatest respect, the reason more of us have not spoken is because at the moment you are discussing specific amendments given by specific people. There are a number of amendments which have been recommended which are in fact not just matters of drafting but are matters of principle. I think it is just more than having the lawyers sit and bash out the language.

For example, in this example before us, “*de facto* spouse”, well, I can accept Sen. Furness-Smith’s first alternative entirely. I do not accept the words “on a continuous basis”, because I think there is a fundamental point there. I do not think this is just a drafting point; I think it is a conceptual point. I would be very worried, with the greatest respect, to just turn this over to the finest legal minds we have present. I think that there are points of principle in addition to points of drafting that need to be discussed, if perhaps you could expand your committee.

Mr. Chairman: Well, we can continue the discussions during the intermission. As I say, it is only a suggestion. I am quite prepared to stay here until whatever time.

Sen. Deosaran: With due respect, that is just one Senator’s view. I was very sympathetic, and for good reason, with what has been going on for the entire afternoon. With the greatest of respect to the last speaker, I think they are separate issues of technicality and draftsmanship. To a large extent, that is what has been happening. I am not going to feel offended. In fact, I would welcome the suggestion if on the basis of hearing other speakers, the legal minds as they have been called, be given a separate chance to frame their concerns, which are of a purely legal or technical matter, and then we can all enjoin ourselves on a wider discussion on the substantive of the conceptual issue.

Mr. Chairman: We will take a break at this stage and resume at 5.05 p.m.

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4.35 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed.*

Mr. Chairman: Hon. Senators, the Minister of Finance would now answer question No. 3 which was deferred to a later stage. After that, we would resume the committee.

Senate resumed.

ORAL ANSWER TO QUESTION

Foreign Consultancy Firms

3. Sen. Wade Mark asked the Minister of Finance:

Would the hon. Minister kindly state:

- a. The number of foreign consultancy firms employed by the Government between the period January 1987 to December 1990?
- b. The number of foreign consultancy firms earmarked for employment in 1991?
- c. The specific purposes of their engagements?
- d. The existing and projected costs of these firms to the taxpayers of Trinidad and Tobago; and
- e. Are the reports of these firms accessible or made available?

The Minister of Finance (Hon. Selby Wilson): Mr. President, since assuming office in December 1986, the present Government has been steadfastly attempting to increase the level of investment activities as a means of achieving much needed growth and transformation. In so doing, it is our aim to ensure that to the greatest extent possible, the allocation of scarce investment resources is characterized by careful project development, selection and implementation. At the same time, it is the case that several projects and programmes in priority areas can only be realistically undertaken if there is access to external sources of financing, giving rise to the necessity to address specific additional pre-requirements of the prospective financiers.

It must also be underscored that frequently, investment initiatives must be complemented by attention to the related institutional and policy environment in order to ensure effective realization of the objectives of the particular project or programme. These are considerations with which the Government must concern

itself out of sheer self-interest so as to ensure that the project vehicles are not only properly designed, dimensioned and appraised, but also adequately supported by appropriate institutional strengthening and policy changes.

Over and above that, where external financing of public sector investment is concerned, lenders would often explicitly require these contextual elements to be dressed as a matter of course. It is against this background that the matter of the engagement of consultancy services, foreign and local, must be seen. If these needs are to be met, recourse must sometimes be had to the services of individual consultants and consultancy firms to provide special inputs into the project development process. These may entail such aspects as market or demand analysis, technology evaluation and selection, final engineering design work, improvement of managerial structures and systems, project management services and environmental impact analysis.

In order to assist with the mounting of relatively large numbers of pre-feasibility and feasibility studies, general studies, engineering designs and ancillary studies, the Government, in 1988, secured loans and grant funds from the Inter-American Development Bank amounting to US \$7 million to facilitate the establishment of a US \$10 million global pre-investment programme. The grant element, US \$1.3 million, of the resources from the IDB is directed towards the financing of a number of agreed basic agricultural and environmental studies covering such issues as technology transfer, institutional strengthening, incentive policy and production diversification and land use and land tenure.

Non-reimbursable technical co-operation agreements grants have also been concluded with the IDB in respect of activities such as project cycle management, computerization in the public service, the commissioning of the Mount Hope Medical Sciences Complex, institutional strengthening and rationalization in the health sector and at NHA, the review of the land development and shelter policy; and the establishment of a national health insurance scheme.

Oral Answer to Question
[HON. S. WILSON]

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The need for consultancy services also arises in relation to the implementation of the structural adjustment programme for which the World Bank support has been obtained. Within that framework, a wide range of policy studies are to be undertaken and action plans developed covering issues such as trade policy, export facilitation, the incentive framework, the structure and performance of major utilities, the operations of state enterprises, *etc.*

I turn now to the specifics of the question, Mr. President. During the period January 1987 to December 30, 1990 contracts were awarded to 17 foreign consultants. Three foreign consultancy firms had been selected for engagement in 1991.

The specific areas of consultancy and cost of contracts are as follows:

Client	Consultancy Services	Cost
Ministry of Finance	To assist the Tax Performance Committee to develop a tax reform programme for Trinidad and Tobago.	TT \$2,548,800
Ministry of Education	To assist the Ministry of Education on policy in relation to the allocation and use of funds at primary and secondary school levels. To help in formulating appropriate medium and long term policy for the allocation of financial resources to the individual budget categories and the implementation of a spending programme.	TT \$428,000 Grant
	To organize and manage an educational development and	

Client	Consultancy Services	Cost
	learning resource centre at primary educational level and formulating a curriculum development policy at the primary education level.	TT \$860,793
	To formulate a curriculum development policy for the primary education programme.	TT \$395,900
Ministry of Planning and Mobilization	To undertake pre-feasibility studies for the establishment of an MTB plant. The main areas are the market studies analysis, technical studies analysis and financial studies.	\$419,440
Ministry of Food Production and Marine Exploitation	To co-ordinate and advise studies in production diversification and incentive policy, research and technology transfer schemes and institutional strengthening and budgeting.	\$33,897
	To undertake related studies in production diversification and incentive policy, research and technology transfer schemes and institutional strengthening and budgeting.	\$4,990,083 (grant)

Client	Consultancy Services	Cost
Ministry of Food Production and Marine Exploitation	To undertake feasibility studies for the rehabilitation of Plum Mitan rice scheme and a reconnaissance study for extension of the scheme.	\$1,247,970 (grant)
Ministry of Health	To undertake feasibility studies and design for the Couva Hospital.	TT \$2,767,205 (loan)
Ministry of the Environment and National Service	To undertake basic environmental studies and advise in the area of institutional strengthening and legal infrastructure, coastal protection and marine resource management.	TT \$29,275 (grant)
	To undertake studies in environmental education and institutional strengthening.	TT 241,340 (grant)
Ministry of the Environment and National Service	To undertake rural access roads studies. To undertake feasibility studies for the Oropouche area development	\$1,378,063 \$833,375 \$235,400 (grant)
Water and Sewerage Authority	To undertake studies in strengthening of WASA	TT \$438,993
Trinidad and Tobago Electricity Commission	To undertake studies, to formulate an action plan, to strengthen, financial administrative and operational performance of the Trinidad and Tobago Electricity Commission.	\$1,813,360

5.15 p.m.

The existing cost of the foreign consultancy firms to taxpayers during the period 1987—1990 is TT \$11,413,898.19. The grant element amounted to something like \$7 million.

Cost of employing foreign consultancy firms for 1991, as a whole, will only be available when contracts are actually awarded. However, the available data for 1991, with regard to foreign consultancy firms, are as follows:

Client	Consultancy Services	Cost
Water and Sewerage Authority	To undertake studies for institutional strengthening in WASA.	
	To undertake feasibility studies to determine methodology of leak detection in Trinidad and Tobago.	\$3,558,594

Two projects extended from 1990 will have a negotiated cost of \$391,000. Therefore, total negotiated cost to date, for 1991 in respect of this consultancy is \$3,949,594.

The reports on final studies produced by the consultancy firms have not normally been made available to the public.

Sen. Mark: Mr. President, I am very grateful for the response given to this House by the hon. Minister. But could the hon. Minister identify the sources of these grants?

Secondly, could the Minister indicate what is the Government's strategy in dealing with these foreign agencies which exert pressures on, not only Trinidad and Tobago, but other developing states to employ foreign consultancy firms as opposed to nationals who are experts in the same fields of endeavour?

Mr. Wilson: The grant funds came from the Inter-American Development Bank.

With respect to the second question, our general policy is to negotiate in the best interest of the citizens of Trinidad and Tobago. The first thing about foreign consultancy is that there is no pressure to employ consultancies *per se*. In fact, our policy has been, to the extent where it is possible to employ, or to have a mix of foreign and local consultants, we try to do that as far as possible. As far as I am aware, there is no mandate that we must employ foreign consultancy. What we must do is to go out on the international bidding, general bidding, in order to achieve the best available in the area in which the consultancy is to be given.

Sen. Mark: Is the Minister aware that professors or lecturers at the University of the West Indies were quite peeved over the fact that in 1987 the Government chose to employ foreign consultants to deal with the Tax Performance Committee and as a result the VAT came into effect and they were overlooked by the Trinidad and Tobago Government?

Mr. Wilson: Mr. President, I am not aware that the university professors were particularly peeved.

In respect of the tax consultancy engagement we had solicited tenders from all the local consultancy firms that were engaged in that kind of business. I dare say, if the university professors were interested, then they should have taken the initiative and submitted appropriate proposals to Government.

DOMESTIC VIOLENCE BILL

The Committee of the whole Senate resumed its deliberations of the bill.

[Chairman: Sen. Emmanuel Carter]

Dr. Hosein: Maybe I can find out from Sen. Alexander—I am advised that the point with which we were dealing when we took the tea break can, indeed, be appropriately handled by merely using the term "lawful parent" and leave it to the magistrate to invoke appropriate laws to determine what is lawful. So that for the purposes of this bill the term "is a lawful parent" would be adequate. I do not know if Sen. Alexander had the time to think about it over tea.

Sen. Alexander: Does that mean in the case of a child born out of wedlock, a "parent" as declared under the Family Law Act and/or the Status of Children Act—why not spell it out that way?

Dr. Hosein: Why do we not leave it for the magistrate? He knows what the laws are.

Sen. Alexander: That is the problem. If you leave it to the magistrate and in an application the magistrate, using some rule of thumb, comes to the conclusion that the respondent is the father of that child, there are all sorts of legal consequences. Will that be a sufficient finding to meet the situation, under the Family Law Act and the Status of Children Act? That is the problem.

Dr. Hosein: If it is lawful, clearly it means that the criteria do satisfy these two Acts. In other words, all we are asking—we are on a point of drafting—is it necessary to make reference to these specific Acts in drafting this, or is it sufficient to say, "lawful" insofar as we and the magistrate will know what "lawful" means? That is, you must comply with the criteria set out under those two Acts. Do we have to write into this bill specific mention to those Acts? We can do it if that is what you are saying, but I am seeking some guidance.

5.25 p.m.

Sen. Alexander: I am thinking, in the first place, that "lawful parent" may have the old meaning of a parent in a marital relationship. I do not think there is a problem if there is a paternity order or if in accordance with the provisions of the Status of Children Act the child is the child of a certain person. But what about other circumstances where there is not a paternity order or the father has not accepted the child in accordance with the Status of Children Act? I am trying to find a formula which would include a child about whom there is neither a paternity order nor has the father accepted the child in accordance with the Act and the Status of Children Act. If you do not have that sort of situation to prove that child to be a child of that father, you will have to go through the provisions of the Family Law Act and get a paternity order.

Dr. Hosein: May I suggest, that in light of the argument pursued by Sen. Alexander, that we require a drafting formula, since we agree on that principle, that we leave that matter to be resolved at a technical level and go forward on some of the other provisions of this bill.

Sen. Alexander: That is only one part of the "*de facto* spouse."

Sen. Furness-Smith: I find that argument very difficult because we are talking about the spouse who is not living together and we are assuming that somehow he or she becomes relevant to this provision. They are not living together but their child might be in the house. I am not really visualizing the

circumstances in which that part of the definition would be relevant. My submission on this is to answer the question of one, two or three weeks.

My language here suggests that in both cases, the material change I am asking for is, "on a continuous basis in the same household." That is a formula which, although obviously it leaves room for argument, it would give the magistrate enough guidance to draw the line between the cases which are ethereal and the cases of a real common-law spouse whom we all recognize as requiring protection. I feel there must be some way of expressing that in a reasonable way.

Dr. Hosein: I suggest to Sen. Furness-Smith that if his concern is the time factor, then neither what is in the bill nor his amendment will take care of that and I think he admitted as much. That is, that it still leaves it open. The point about it is that it will in the end be left to the magistrate and the magistrate is going to have to exercise good judgment about the locus of the person applying for a protection order because what is here is, "who is living with the first-mentioned person." Even if we were to accept "on a continuous basis in the same household.

Sen. Furness-Smith: "...as husband and wife."

Sen. Mahabir-Wyatt: Mr. Chairman, I wonder if I could ask for clarification. If a definition as to what the words "on a continuous basis" means I am thinking about a situation, for example, in certain Muslim households, where not perhaps according to the law, but according to one's religious persuasion, a male is allowed to have more than one spouse who may be living in three or four different domiciles. "On a continuous basis in the same house" would seem to exclude three of the four wives. If that is a continuous basis, how many people can you be living with continuously at the same time as husband and wife? I do not mean this facetiously at all because outside the question of the Muslim community, there are also many common-law arrangements where a man may have more than one *de facto* spouse living in different households for whatever reason and can go from one to another. Are these to be regarded as continuous or because they go from one to another. I think an example was given in this House last week about someone who lives in Port-of-Spain during the week and in San Fernando on week-ends. You may in fact have two *de facto* spouses in that situation. If it is up to the magistrate to decide whether "you are living with" would it not be also up to the magistrate to decide what "continuous" meant? Or is there something in the law somewhere that defines your definition of "living on a continuous basis"?

Sen. R. Khan: Mr. Chairman, I think it is important that I clear up a point on the question of Islamic law. I shall not go into detail, but there are stringent Islamic injunctions that govern that sort of livelihood and none of those include neglect or abuse of any kind. Suffice it to say that it is assured. That takes into consideration the injunction that I am talking about or written into, it takes care of all the aspects of life to make life comfortable and happy.

Sen. Rampersad: Is that only in the instance where you have more than one wife or where you are allowed to marry more than one woman?

Sen. R. Khan: I do not want to answer that question. I just talked about the religious functions that apply in situations like those. There is no neglect if one has to follow the religious injunctions, there is no abuse or anything like that. That is taken care of. I just want to make it clear to those who do not know and may get the wrong impression about that sort of livelihood and or concubine thing as they may want to consider it.

Dr. Sampath: I was hoping that Sen. Haji Khan would have explained that a Muslim is supposed to spend his time equally and look after his four wives if that is the case. So the question of continuity here does arise. When does continuity continue?

Sen. R. Khan: Mr. Chairman, knowing my friend Sen. Dr. Sampath so well, I would lend him a book because if I should talk on this matter we will take up the rest of the afternoon and our time will be exhausted. I realize that this debate will go on for another couple of days when we resume next week or maybe week after. So in the interest of time and all the Members present, I will lend my dear friend a book with all the laws governing the whole operation and he can study it carefully and edify himself and build on his knowledge.

5.35 p.m.

Sen. Sampath: My second point has to deal with Sen. Furness-Smith's introduction of the child. Surely the difficulty we are having here, as far as the child and affiliation are concerned, arises simply because he has introduced "child" into the argument. If it had been left as previously, without having the provision that there must be a child to establish the person to be a *de facto* spouse, the difficulty would not have arisen at all about "child". So I suggest that the question of "child" be removed from our consideration.

Sen. Furness-Smith: Mr. Chairman, it would be simpler this afternoon—I would be very happy to do it—if you all could pass a vote to tear up my amendments and call it George, and we really could. The point I am trying to

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make is that, I think these points are of some importance. If the Senators do not agree with me, they will no doubt, vote me down.

To turn to the question of continuous basis, as Sen. Mahabir-Wyatt said, in the last resort whatever language we use, it would be for the magistrate to sort it out. The magistrate will have to draw a line as to what is husband and wife, living as husband and wife, as we have in the bill at the moment, or what is on a continuous basis in the same household, as I am suggesting. What it is, in my submission, our business to do, is to give the magistrate some guidance, so that ordinary people will know what their rights are. If not they can go to a lawyer and have some guidance as to whether they have rights or not. That is our business. We cannot say here how the magistrate is going to decide something because this legislation is quite new and we do not have any precedence, as far as I know.

Now the concept I am trying to get away from is the idea that you can go and live with somebody for a week or two weeks as husband and wife—I believe it is commonly called “shacking-up”. If somebody tells me that is not living as husband and wife, I would like to know what is living as husband and wife? I am trying to get away from the idea that you can just go and “shack-up” for two weeks, three weeks, or four weeks, but not on a permanent basis. You have no intention of making a permanent relationship, you have a temporary mutual attraction and you are living as husband and wife as far as I know. That is what the magistrate will have to say.

Dr. Hosein: If you live under the same roof with someone and you have no intention, which is the instance Sen. Furness-Smith is talking about—of having this continuous or permanent relationship and a situation arises, leave, do not beat; leave. But if you beat, the person you are beating is entitled to some protection, regardless of whether you are in the house five minutes or five days or five years.

Mr. Chairman, I do not want to go on and on with this argument. The question of a time-frame is totally irrelevant if we recognize the focus of the bill is the fact that you have violence. Even if you walk in the house one second and you proceed to beat, what difference does it make? I know that Sen. Mark's phrase was a little unfortunate but it is a slightly Judaeo-Christian view—I know Sen. Khan has to leave now, and I know he will be satisfied that I would not say anything that does not conform, I have some idea and Sen. Hosein is there to correct me if I go wrong. The point is, it would not satisfy if one were to comply

with Islamic law in terms of one's rights to more than one wife—would it be continuous, as Sen. Furness-Smith is suggesting?

What breaks continuity then? That is the next question. Suppose after living for five years with someone, you leave for a week and come back, can you argue that it is not continuous? You could get into all sorts of semantics. What we are hoping to achieve here, is to give the magistrate the power to listen to all the circumstances, exercise good judgement and presumably, in this society he could look at a Muslim and get some idea as to whether that circumstance is appropriate to grant the person in front of him, some locus under this bill or not. This is the nature of our society. If we want to tie up all the loose ends on time we will get nowhere.

Sen. Furness-Smith: The Minister goes on and that is totally unacceptable. If we are going on like this, I for one would just have to walk out of this place and vote against this bill, which I will be very, very sorry to do. We must try and get at the issue. The Minister insists on saying that this is a matter of violence. If it was only a matter of violence and this bill was drafted on that basis, all my problems would go, but it is not as I have told you time and time again. It is not only a question of violence. So I do not know what to do, Mr. Chairman. I cannot get at the real issue.

Sen. Alexander: This question of the definition of the *de facto* spouse also has to do with the right to apply for one of these protection orders. Is it the intention that immediately upon a relationship being created, a "*de facto spouse*" has the right to apply for a protection order, whether it is one of the prescribed offences or not? Because you see, the protection orders provide for taking away certain rights from a person and that is what the protection orders are. The protection orders seek to prohibit you from going to a certain place, limiting your freedom of movement and limiting your rights to property.

Now besides that, there is the criminal law. Do not forget that the criminal law is there to deal with the violence aspect. So are you going to give a person the right to have another person's rights and liberties fettered upon a relationship which is hardly established? That is the point. It is a fresh, whole matter—the right to bring application.

Sen. Rampersad: Mr. Chairman, I need to ask Senators Alexander and Furness-Smith a question. Since they seem to be making out a very strong case for what is called the "shack-up" relationship and I have no problem with the positions which they are taking, but we have in this country and indeed in many

other countries, situations where you have people with a long relationship who do not live under the same roof, how do you treat that situation?

Sen. Alexander: The bill does not provide for that so we are dealing with a theoretical question. We are dealing with what the bill provides for.

Sen. Rampersad: But you are introducing the “shack-up” case.

Sen. Persad: We have a definition “spouse” and a legal definition spouse, are you asking for us to have a new definition of a new term, “*de facto* spouse”? I think you should state clearly your intent. On one hand, if I read you correctly, you are saying that once a person enters and started to cohabit on that instant you have additional legal protection under this Act. It would seem, if I read you right, that the question is that “spouse” and the whole definition or intent behind the word “spouse” is continuity, long term. This is how it is defined. Now if you are coming with a new definition “*de facto* spouse” which goes counter to the normal definition of the word “spouse”, I think that if you should state clearly what is your intent. How do you perceive this *de facto* spouse and on what grounds, ethical, moral or whatever, do you want to base your arguments as to be given this extra legal protection? I think you can clear that up first and the definition of “*de facto spouse*” will fall in place. But you have not done that.

5.45 p.m.

Dr. Hosein: I want to disagree with that. A *de facto* spouse is:

"a person of the opposite sex to the first mentioned person who is living with the first mentioned person as the person's husband or wife,..."

I think that is clear. What is being said now is; well exactly at what point in time does all of that start? I am yet to hear somebody even suggest—despite all the objections nobody is willing to come out there and now say to me "Mr. Minister, I suggest one, two, or three weeks". The Minister must say his intentions.

Well my intention is to leave it to the magistrate—I want to make that clear—who will have due regard to the circumstances to determine when the two people are living as husband and wife. Now, if you are saying that you are not prepared to accept a situation in which the magistrate will have due regard to all the factors and as a person—with the concept in the law I understand is a "reasonable person"—what do you reasonably understand that to mean. If somebody wants to

tell me now that you insist on a time-frame, well, I am open to suggestions but my intention is very clear and I stand by it in that matter.

Dr. Persad: I think your definition here is contradicting you with respect—

Sen. Furness-Smith: Does the Minister mean that people who begin living as husband and wife in a house for one day, will be the beneficiaries of this bill?

Dr. Hosein: If the magistrate is satisfied that one day is enough—having regard to the situation—that is the Minister's intention.

Sen. Furness-Smith: Are you asking the magistrate to legislate? I never heard such a thing. You cannot tell him what a husband and wife is.

Sen. Alexander: With the greatest respect, what the magistrate has to do is to see whether in the circumstances he would make the order. But it is a threshold position I am on. Are you going to give a person who has hardly established a relationship, the right to make the application. Or are you going to define in practical terms? That is all I am asking. Insofar as I am concerned, once there is a child of the union, I think that must come within the bill. But there must be some *indicia* of the establishment of a household.

Dr. Hosein: Since Sen. Furness-Smith also accepts, as per his amendment, that "they must be living on the continuous basis", can I ask him to defend his amendment by saying exactly when a "continuous relationship" begins, since he has thrown it at me?

Sen. Furness-Smith: Unless you start using language like five years or something, which I have been careful not to do because I was trying to be helpful. One needs to have some language which will give the magistrate guidance that we are talking about not just living as husband and wife—which is a question of fact and "shacking-up"—but a question of some continuity and he will take it from there, I agree. He will take it from there but it is not a matter of one day or a week.

Sen. Amar: Mr. Chairman, I want to understand the Minister's approach. What the two goodly gentlemen are saying is that if you just move in to live with a woman or a man, for the first day, and he beats you, for whatever reason, you cannot take any recourse until you reach a situation of "continuous living." Are they saying that you must take licks for two and a half years before you go and complain?

I feel that the idea of continuous is a difficulty and it has nothing to do with the rights of taking away property or anything like that. It has to deal with specific rights that the Minister is trying to put forward by saying "If you break the law, which is to inflict damage to a human being, this law will protect you whether it is for one hour, one day, one minute or one year. All the other complications that are being thought about, I feel we have big problems in the society. Let us put the law in place, we will come right back here and amend it if it has to be amended but we continue to go over this *de facto* situation. Many people have the same problems—amongst ourselves here, I am sure we have problems of similarity.

We have live experiences that you can learn from but I think the point that the two goodly gentlemen have to answer is: When does a woman have to stop being beaten before she has a right to make a complaint? If they can put into law that a woman must only be beaten three times before she can make a complaint, I will say, "Yes, let us look at that". Because they are getting licks three and four times right now and they cannot complain, so let us put a limit to the amount of licks you can get.

Sen. Furness-Smith: We keep coming back to licks and so forth. I am not on that and the Minister is not on that. He has made a bill which goes much further than licks. I am just on the margin of it and it is no use talking about it. If you are going to talk about licks, I might as well pick up a newspaper and go home because we are just wasting time.

Sen. Mansoor: Mr. Chairman, I was just going to point out to Sen. Amar that he is falling into that trap. This bill applies long before violence has taken place. It is just the threat of violence. It is not a question of living with someone and then the person is beating you up and this bill applies, it does not do that. This is about the threat of violence and when do you get a protection order. No violence can take place and you can get a protection order, you know.

Dr. Hosein: Mr. Chairman, I thought I had made my point in responding that what is referred to here and defined as "offensive and harassing nature" is not only a prelude often to violence—pick up any newspaper, the crime reports will tell you that people live in terror of battery and assault and what have you. You stick your finger within X distance of somebody's face, if that person is terrorized thereby, that is battery. You do not have to actually cuff down somebody.

Let us understand what the concept of "offensive and harassing nature" means in practice—and in law for that matter—because it constitutes battery in law and Sen. Furness-Smith knows full well that I do not want to start to refer—when I use the word “licks” I am referring to all the behaviour across the board. He keeps making that point, and I take it Sen. Amar—

Sen. Furness-Smith: With due respect, Sen. Amar certainly was not and you are not. You are using it as an illustration constantly in this Senate meaning that it is violence and it need not necessarily be violence. That is the point I am making.

Dr. Hosein: Threats and terrorizing, well permit me to make the point to Sen. Furness-Smith that the next time I happen to use the word "licks", I am including generically. Or if he wants I will specifically mention all just to make sure I am clear. He keeps harping on that. The point is the behaviour referred to in the bill—all of it, including offensive and harassing nature—you see Sen. Furness-Smith is not accepting something, and that is, notwithstanding his lengthy practice in the court, he does not have the experience of the persons out there who deal with this problem and who can tell you about this kind of behaviour.

There have been a number of comments in the newspaper—Dr. Sabga and others, who made the point about their being the experts in the field, including some of the organizations which wrote to Sen. Furness-Smith and all Senators, appealing for support on certain provisions of this bill. They know and it is Sen. Furness-Smith who is—shall we say—less knowledgeable in this field and when people insist on the provisions of "offensive and harassing nature" they know what they are talking about. It is not a light matter at all. To draw this distinction between actual violence and the terror that is imposed by what is listed here as "offensive and harassing nature" must not be ignored. So often the statistics and the experience—if you want to say prelude—quite often where people are followed and harassed, the next thing that happens is that they are beaten, stabbed or killed.

5.55 p.m.

Sen. Furness-Smith: I am not thinking that at all. The Minister is assuming that every such case is going to lead to violence and needs protection. I am not for it. That is all. He must find some language which modifies his bill so that it is sensible and reasonable otherwise I cannot vote for it. I am sorry.

Sen. Mark: Mr. President, I just want to relate an instance because I myself do not find favour with the proposed amendment of Sen. Furness-Smith.

I know of an instance where a couple was separated. The husband filed for a divorce because he was visiting a deputy during that period. He had three children whilst he was married. He received the divorce. His former spouse had two children for him. He visits the lady quite regularly. I would not describe his occupation. He seeks to command, even though he has obtained a divorce. He has no right but what happens is that there is something called control. The male always feels that he has control, so he wants to control even though he has lost control. The point I am making is that the lady is subjected to violence. She is a former *de facto* spouse.

Sen. Furness-Smith: No. She is not. She is a former spouse.

Sen. Mark: Well, a former spouse.

Sen. Furness-Smith: Well, it makes all the difference.

Sen. Mark: No! No!

Sen. Furness-Smith: I am not talking about women. You are talking about *de facto* spouse. You said she got a divorce so this has nothing to do with the case. I do not think so at all. The woman was married.

Sen. Mark: All of us here have a right to our opinions. If you feel strongly about something, do not interrupt me when I am speaking. I am making my contribution and you interrupt me.

I am simply advancing that in the Caribbean society and context, we have a culture that we cannot run away from. I cannot support any measure that is going to deny another human being the right of protection in the event of violence being committed on that person. I am saying that whether it is for an hour, a day or two weeks that person is subjected to violence according to this bill and the person could apply for a protection order. The conditions are clearly defined on the basis on which a person could apply for protection. I am saying that in this instance and in the instance of our situation, many people, *de facto* spouse or otherwise, require protection because they do not have it.

I see nothing fundamentally objectionable to this particular clause of the bill. As I said, it seems to be a number of philosophical, political, ideological and class biases that are being introduced in this debate here. It is not so much drafting legalism. It is a kind of prejudice that I see emerging in this debate, where, for

instance, we are living in a male dominated society. If somebody were to beat someone else on the streets that person has a right to protection. He can lay a charge, but we are saying on the other hand a *de facto* spouse could be beaten in a home and we have all sorts of things trying to be introduced here—"on a continuous basis". What is that? That is vague and nebulous! What do you mean by that?

I am saying from my perspective and from our side, I believe that the Act is not going to be perfect in the first instance. The intentions are laudable and when it reaches the point of implementation we are going to take care of that. I am saying as far as possible we cannot try to clean up everything here at the same time. What is going to happen is, it is best that those goodly Senators vote against this bill than to seek to kill it because the spirit of the bill is being killed by some of these amendments that are being proposed.

I have no objections to people putting forward amendments. They have their right to do so, but I am simply saying in the context of our culture and our political reality people like *de facto* spouse and former *de facto* spouse, as the case may be, require protection. I am totally opposed to violence against the human being and particularly the women.

Sen. Mahabir-Wyatt: I was just wondering if one of the problems that the two Independent Senators are having with this particular definition has to do with giving guidelines to a magistrate as to what constitutes someone who is living with someone else as a husband or wife, if the wording—I understand the point if they want to give guidelines to a magistrate in addition to those under 6 (1). Instead of "living with" could there be something such as, "domiciled with". Because you are not going to be "domiciled" with someone for one minute or one hour. Would that be more of a specific acceptable guideline to what is there?

Sen. Ramchand: I feel that common sense is being ignored here. We all know when somebody is somebody else's common-law wife; or when there is a *de facto* wife; when somebody is your woman; when you are living with her. So I do not see that we have to get a very precise definition based on time about what is *de facto* spouse. You just know, and the magistrate is living here, he knows too. They are quite prepared to go with the legislation as it is and let the magistrate decide because he knows.

Sen. Furness-Smith: Could you put the question on my first amendment? I withdraw the second one. I would like to make the amendment to it though. Where I said "mother" which was obviously a mistake to put "parent".

6.05 p.m.

Sen. Alexander: What are we going to do with the Minister's amendment? The Minister is promising to come up with something insofar as the interpretation of "child" is concerned.

Mr. Chairman: The Senator is putting forward his amendment.

Sen. Alexander: So are we not dealing with it?

Mr. Chairman: The Minister is free to put his amendment.

The amendment proposed by Sen. Furness-Smith at the bottom of the first page is to substitute for the definition of "*de facto* spouse" the following new definition:

"*de facto* spouse' in relation to a person means a person of the opposite sex to the first-mentioned person who is living with the first-mentioned person on a continuous basis in the same household as such person's husband or wife although not legally married to such person and includes a former *de facto* spouse who is the parent of any child or children of the first-mentioned person."

Question, on amendment, put and negatived.

Dr. Hosein: Mr. President, if I may now put my amendment.

Mr. Chairman: Yes. What is your amendment?

Dr. Hosein: In the definition of "*de facto* spouse"—

Sen. Alexander: The Minister not so long ago said that he would defer this to come up with a formulation in respect of the parent of the child. Is he reneging on that?

Dr. Hosein: Yes. I am advised that the way to resolve the problem is to look at the definition of "parent" as opposed to what we were talking about. I think we accept the point in principle. The real issue now is how to go about achieving it.

What has been pointed out is that the bill defines "parent" and it defines "child", and the introduction of "lawful" here may not be the way to go. So that what I am about to propose is what is on the paper in front of you.

So the amendment is, in the definition of "*de facto* spouse", insert at the end of that definition the words "or if not living with that person, is a parent but not a grandparent of a child of that person."

Question, on amendment, put and agreed to.

Sen. Ramchand: Mr. President, am I getting an opportunity to speak on my amendment? I have been trying to get your attention.

Mr. Chairman: Do you want an amendment to "*de facto* spouse" as well?

Sen. Ramchand: Yes.

Mr. President: If you have an amendment, you have to move it and put it to the vote.

Sen. Ramchand: Yes. The amendment being proposed is that in the definition of "*de facto* spouse" after the phrase "to a person" insert the word "normally".

The amendment is not as innocuous as it seems. The matter I am seeking to broach with the word "normally" is a very delicate and perhaps controversial one. I am afraid if it is accepted, it may have implications throughout the bill that may need to be spelt out explicitly. Nevertheless, I think it is necessary to raise the issue because no matter what our preferences and prejudices, we have to believe that every citizen has a right to the protection of the law of the land. Whether we like it or not, Mr. Chairman, and whether the law recognizes such unions or not, there are domestic arrangements between women and women and between men and men that function in almost exactly the same way that unions between people of opposite sexes function.

Mr. Chairman: Are you taking this opportunity to make a speech?

Sen. Ramchand: Not at all, Sir.

Mr. Chairman: The debate on the second reading is past, it is closed. If you have an amendment you can put it and signify the reason.

Sen. Ramchand: I just wanted to say there are many occasions of violence in the kinds of relationships I am talking about, and that people also need protection there. I have used the word "normally" because it seems to me it does not go—

Sen. Rampersad: Mr. Chairman, I am having a problem with this part of proceedings in that the whole question of "*de facto* spouse" was voted on already.

Mr. President: No, no, no. We are on clause three. There are several amendments by several people to different parts of clause 3. "*De facto* spouse" is one definition in clause 3. There was one amendment proposed by Sen. Furness-Smith that was rejected, another amendment proposed by the Minister that has been accepted, and this is an additional amendment to the same "*de facto* spouse" that is being proposed.

Sen. Ramchand: I am not arguing—

Sen. Horne: Sen. Ramchand is now seeking to take care of homosexuals and lesbians.

Sen. Ramchand: To offer them protection from violence, from domestic violence. I am not spelling it out as homosexuals and lesbians. We are using the word "normally", which allows a case to be made if a case is possible. It is a compromise.

Dr. Hosein: Mr. President, I know Sen. Ramchand was not here during the debate itself, and I think it was Sen. Alexander who identified specifically that the bill applies to heterosexual relationships. At the time, I did not think it necessary to make an issue of it, but it was clear, and Sen. Alexander identified it, that the intention of the bill clearly restricted the provisions to heterosexual relationships. That is the position of the Government very specifically. It is not a matter that escaped us. It was written this way specifically. I can spare Sen. Ramchand any attempt to go further in stating his position, to say that the Government will not accept that this bill covers homosexual relationships.

Sen. Ramchand: I am not saying it should cover homosexual and lesbian relationships. I am just saying, let us insert the word "normally".

Dr. Hosein: Well, there are some of us who will feel that what is normal is heterosexual.

Sen. Ramchand: I give you the benefit of the doubt, but that is a bias.

Dr. Hosein: Yes, it is, and I confess to being bias.

Mr. Chairman: Are you proceeding or are you withdrawing?

Sen. Ramchand: I am going to withdraw after such advice. I want to withdraw the amendment.

Sen. Horne: Mr. Chairman, that is violence as well in a family relationship, and if we are really accepting "*de facto*", we could take on the gays and the lesbians, everybody.

Dr. Hosein: Mr. President, I take it there is an element of facetiousness in that remark and I will ignore it.

Sen. Fr. Joseph: Mr. Chairman, I am concerned about the hypocrisy and the inconsistency about this whole debate. From a Christian perspective, if we are talking about normal ordering of things, we should have problems in terms of morality, dealing with "*de facto*" in the first place. If people were living good husband and wife, in terms of Judaeo-Christian or Anglo Saxon, we would not have this problem.

In terms of justice, if we are looking at "*de facto*" in all kinds of relationships, then, in terms of justice issues, we have to look at lesbian relationships, look at homosexual relationships, look at the disabled, all the marginalized; those who are looking for justice. Therefore, it seems to me if we are getting into that kind of argument, violence is also being done in terms of homosexual relationships, what we want to call unnatural relationships. In terms of justice issues we have to look at that seriously. I suggest that the word "normally" be put in to deal with that specific problem.

Dr. Hosein: Let me be very clear, Mr. President. The goodly Father is suggesting that the Government accept an amendment that provides protection in those circumstances. Before he responds, I want to say that is not the Government's position. I do not want to say anymore. I just want to be very clear on what he is suggesting to this Senate and to the Government, that we accept an amendment. Of course, I do not accept the argument that if you accept this, well then you can accept anything. I do not accept that as an argument. I reject it totally. I want to be clear as to exactly what the goodly Father is suggesting to the Government.

Sen. Fr. Joseph: May I say to the goodly Minister, that people living in a "shacking-up" relationship have rights in terms of violence, and you keep talking about violence, but yet people who are homosexuals, people made in the image and likeness of God—now, I am not pushing any homosexual or lesbian relationships. I am talking in terms of justice. Are you saying they do not have rights? I am going to throw the question back to him.

Dr. Hosein: I would suggest that they have rights under the criminal laws.

Sen. Fr. Joseph: But it is the same in all the others, too.

Sen. Mahabir-Wyatt: Mr. Chairman, I think that we are getting off on a little bit of a tangent here. Sen. Ramchand's suggested amendment does not necessarily have to deal with someone's sexual relationship or private sexual life, which I do not think is anybody's business in the Senate. You may have two

people of the same sex who are living together bringing up children in a family type relationship. If violence occurs there, I think his point was—whether they were the same sex or opposite sex—that the protection under the law should operate.

There are many women living together bringing up children in this country who do not have a sexual relationship with each other but are bringing up children in a family kind of relationship. If one of them chooses to go beserk and beat the other one, day in and day out, and I think I made the point in the debate, that it is not just men that are violent. Women are also violent. And in an instance like that, the one who is being abused should also have the right to protection. I do not think we need to get off on a rather difficult debate on what Sen. Ramchand has recommended, and I support him entirely.

Sen. Ramchand: I said it was a very delicate amendment. I was not spelling the thing out in the terms of which it was pounced upon.

Sen. H. Charles: I am seeking guidance here. I want to know precisely what amendments we are on because Sen. Ramchand withdrew the amendment.

Mr. Chairman: But Sen. Fr. Joseph agreed that "normally" should be inserted, same amendment.

Sen. Amar: I think maybe the presentation went a little bit awkward. If you would think back and you did not hear anything about homosexuals and things like that, and he just asked to put in the word "normally", reappraise the position and think what you would have done. I feel you would have accepted the word "normally" without any sort of controversy.

Dr. Hosein: In drafting this bill, the Government consciously drafted it in a way that it clearly applied to heterosexual relationships. As I pointed out, the only person who specifically recognized this fact was Sen. Alexander. I believe it was he who mentioned it. I chose not to, because again I do not want to make it an issue.

6.20 p.m.

The point I am making at this stage is that some thought went into that aspect of it and it was a conscious decision. It is not to say that had somebody brought it up maybe I would have accepted it. The answer to that is no. Let me make my point here. What we are attempting to amend by introducing the concept of the homosexual, really we are amending the definition of "*de facto* spouse". And I am not sure that the society—and I am talking here in a political sense—is ready to

have its laws at this stage give recognition to it because the implications of that— it is like the question of abortion. One has to be very careful. The law of this land is, to put it simply, that any abortion is illegal. It is the kind of issue that if you are tackling it at all, let it be on a specific matter to deal with that. To sneak into this bill that the law of this land recognizes such a relationship as being a question of spousal relationship is a matter that I would not want to have introduced into this bill. If we are going to deal with it, let us do so specifically, in some other place where we understand exactly what we are doing, but let us not sneak this thing into this bill.

While I recognize that it is a problem, that there are certain realities, that the matter is sensitive, I appeal to Sen. Fr. Joseph to do like Sen. Ramchand and withdraw that at this stage. If we have to tackle that question let us tackle it at an appropriate time and in an appropriate manner where we are facing it head on, and not bring it here, in a substantive kind of legislation.

Sen. Furness-Smith: I heard that the hon. Minister would be tackling other rights of *de facto* spouses, whom we are slipping into this bill. In answer to those people who are totally in favour of finally doing away with the institution of marriage, why bother?

Dr. Hosein: I assure Sen. Furness-Smith that we are not "brakesing" from tackling that matter in other areas as well.

Sen. Furness-Smith: Everybody is doing their thing as free as a bird.

Mr. Chairman: Sen. Furness-Smith you had under the definition of "dependant"—

Sen. Furness-Smith: We have passed that.

Mr. Chairman: Were all your proposed amendments dealt with?

Sen. Furness-Smith: No, I am afraid, not as yet. We got on to the definition of "domestic violence offence".

Mr. Chairman: We dealt with the definition of "dependant" a little earlier and we accepted one of Sen. Furness-Smith's amendment. He had two other amendments. I think that one was satisfied by another amendment.

Sen. Furness-Smith: Not with my agreement but they went through.

Mr. Chairman: I just want to be sure that you are satisfied. Then we would go on to "domestic violence offence" which is the next item. Are there any amendments for the definition of "domestic violence offence"?

Sen. Furness-Smith: I have got two amendments which read as follows:

- (i) insert the following words immediately after the word "against" appearing in line 2—
"a person resident in the same household as such person who is";
- (ii) In paragraph (a), insert the following words immediately after the word "person" appearing at the end thereof—
"committing such offence".

This would mean that a "domestic violence offence" means a prescribed offence which is one of the offences listed in clause 4(a) or clause 18 committed by a person. I am saying it should be against the person resident in the same household as such person who is either—

- (a) a spouse of the person committing such offence; or
- (b) a child or dependant of the person or of the spouse of the person or a parent.

If we are going to have these wide definitions of "spouse", "dependant" and so forth, I am saying that this bill is meant to be restricted to violence in a home. Therefore, it should not be an offence against somebody else who is not in the home. So I want to add-

"A person resident in the same household as such person who is a spouse, a child, dependant or parent."

It should be not just the spouse of the person because the person may have about six, 10 or 20 spouses, but it should be the spouse of the person committing the offence.

Dr. Hosein: Mr. Chairman, on the second point we have no difficulty and I think it is being a little more exact really. I do not want to repeat the argument except to say that we will not accept the restrictions that now limits the residency test because we have already agreed in dealing with "*de facto* spouse" that they may not be living together. If we accept Sen. Furness-Smith's first amendment we would have to go back and amend something we have already accepted. I think he would agree with that.

The second one, however makes the law a little more exact and I think we can go along with it.

Sen. Furness-Smith: I am not sure that the second amendment really achieves too much.

Dr. Hosein: I agree. It does not achieve too much but insofar as it—

Sen. Furness-Smith: A violent offence committed by a person against the spouse of the person must be the person committing the offence.

Dr. Hosein: Yes.

Sen. Furness-Smith: So I withdraw that.

Dr. Hosein: Okay.

Hon. Senator: Mr. Chairman, we are against the first one also.

Mr. Chairman: Are you withdrawing everything?

Sen. Furness-Smith: Yes.

Mr. Chairman: All right.

Amendment withdrawn.

Dr. Hosein: The last matter which I think we can deal with in a minute, because it is agreed in principle, is to insert after the definition of "drug" the following new definition:

"'guardian' in relation to a child includes a person who has a custodianship of that child within the meaning of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act 1981."

Before you put the question, I just want to say that I am extremely grateful to Senators Furness-Smith and Alexander.

Sen. Alexander: Should it not be "custody" instead of "custodianship"?

Dr. Hosein: I am advised that the word "custodianship" is the term that is used in the Family Law (Guardianship of Minors, Domicile and Maintenance) Act 1981, hence the reason for using that term.

Question, on amendment, put and agreed to.

6.30 p.m.

Sen. Lequay: Mr. Chairman, at this point, I wish to move that we report progress.

Question put and agreed to.

Domestic Violence Bill

Tuesday, March 12, 1991

Senate resumed.

BUSINESS OF THE SENATE

The Minister of Social Development and Family Services (Dr. The Hon. Emanuel Hosein): Mr. President, I wish to report that progress has been achieved in committee on the bill before us. I ask leave of the Senate to sit again on Tuesday, March 15, at 1.30 p.m.

Question put and agreed to.

Motion made and question proposed, That the Senate do now adjourn to Tuesday, March 19, at 1.30 p.m. [*Sen. A. Lequay*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.33 p.m.