SENATE

Tuesday, March 19, 1991

The Senate met at 1.34 p.m.

PRAYERS

[MR. VICE-PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. Vice-President: Members of the Senate, I wish to announce that permission has been granted to Sen. Dr. Surujrattan Rambachan from today's sitting. He is out out of the country on Government business.

Permission has also been granted to Sen. Haji Ralph Khan and the Senate's President, Sen. Emmanuel Carter from today's sitting. They are also out of the country.

SENATORS' APPOINTMENT

Mr. Vice-President: As a consequence of these absences, I wish to inform you that in exercise of the power vested in him by Section 44 of the Constitution, His Excellency the President has appointed Mr. Abdool Wahab to be a temporary Senator during the absence from the Senate of hon. Dr. Rambachan with effect from March 18, 1991.

I have also been advised that his Excellency the President has appointed Mrs. Monica Babb with effect from March 19, 1991, to be temporarily a Senator during the absence of the President of the Senate.

OATH OF ALLEGIANCE

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

Mrs. Monica Babb and Mr. Abdool Wahab.

NATIONAL TRUST OF TRINIDAD AND TOBAGO

Bill for the establishment and incorporation of the National Trust of Trinidad and Tobago and for matters incidental thereto; brought from the House of Representatives, *[The Minister of Youth, Sport, Culture and Creative Arts]*; read the first time.

ORAL ANSWERS TO QUESTIONS

Penal Reform

11. Sen. Wade Mark asked the Minister of Justice and National Security:

Could the Minister outline what specific plans are being formulated to institute appropriate reform of the existing penal system in light of the frequency and regularity with which many habitual offenders appear before the law courts of the land?

The Minister in the Ministry of Justice and National Security (Sen. The Hon. Hochoy Charles): Mr. Vice-President, it is quite common to find unconvicted prisoners coming before the courts on numerous bailable charges. Under the law, unconvicted prisoners cannot be made or be required to work and therefore they do not benefit from training programmes available at the prisons. However, for the habitual offenders the penal system provides the following:

Current reform programmes: As far as current reform programmes go for habitual offenders in prison, the prison service has sought, within the financial constraints of the country, to pursue some form of literacy training to enable the number of illiterates who come into the system to leave with some measure of reading and writing skills.

In this regard, they have been able to solicit and obtain the services of trained, retired teachers, who have volunteered and are assisting in these programmes. Prisoners assist and are trained in plumbing, electrical and other skills in the construction field. It is worthwhile to know that the women's prison built in 1989, was undertaken with this form of labour.

At the Youth Training Centre which caters for young offenders between the ages of 16 and 21, there are programmes in religion, physical education, vocational pursuits, agriculture, culture, welfare and health. Juxtaposed with this is a full programme of academic studies.

The much needed spiritual teaching is met by an approved denominational chaplain and in addition, the prison service has allowed other approved organizations to visit and intensify the spiritual impetus.

To satisfy the counselling requirements, we have managed to obtain a post of psychologist in the prison service which is expected to be filled this year, 1991.

Alcoholics Anonymous has carried out several counselling sessions and has continued so to do. Officers trained in drug rehabilitation techniques at NIHERST

are at present working at the Youth Training Centre and such training will be expanded in 1991 to embrace the adult prison establishment.

Future programme: A workshop will be established at Carrera prison with assistance obtained from the private sector. This workshop will be equipped to enable inmates to be taught marketable skills.

A building which is to be erected at Golden Grove Prison to house prisoners during construction of the extension of the Remand Prison will ultimately be utilized as a workshop towards training inmates in the manufacture of school furniture.

A Cabinet-appointed committee is at this moment preparing other proposals on the question of prisoner rehabilitation and the feasibility of a payroll system.

Sen. Mark: Mr. Vice-President, could the hon. Minister indicate what steps are being; taken to reduce the serious overcrowding currently plaguing the nation's jails? Whilst I am on my feet, may I ask him an additional question? Could the Minister indicate whether the persistent reduction in financial allocation probably has contributed to the chaotic situation that is currently plaguing the nation's jails?

Mr. Vice-President: I am not too sure that those questions are supplemental. They do not naturally follow from the original question.

Sen. Mark: When the question was posed, I sought to get from the Minister specific plans which he has outlined. But, we are talking about penal reform in Trinidad and Tobago. I am simply asking what steps have been taken to deal with the issue of overcrowding which is contributing to new offenders, crimes and so on because of that situation at our nation's jails.

Mr. Vice-President: I will allow this question, since it can relate to the question.

Sen. H. Charles: Mr. Vice-President, I indicated what we are doing in the prison in terms of the facilities that we are constructing in order to alleviate the overcrowding. One must bear in mind that when one talks about the penal system in Trinidad and Tobago, most times, we use the word casually when referring to the prison system. One must also bear in mind that the penal system encompasses the judicial system which involves the courts, police and so on. I have given him the programmes for the prison and that was the specific question asked. I think that if he wants a response on what the Government is doing in terms of the penal

system which encompasses the judicial system, I did not come prepared to answer that question.

Sen. Mark: Could the hon. Minister indicate what is the present prison population in Trinidad and Tobago?

Sen. H. Charles: Mr. Vice-President, I do not have those figures, but surely, I can pass on those figures to Sen. Mark at any moment.

1.45 p.m.

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 policy?

Sen. Lequay: Mr. Vice-President, I have been advised that Sen. Haji Ralph Khan has requested that questions 12, 13 and 14 be deferred until next week. The Minister was ready to respond today, having requested deferment previously but in view of the request from Sen. Khan, I ask that the question be deferred.

Questions, by leave, deferred.

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

Public Service

16. (a) Could the hon. Prime Minister state whether the public service, is over-staffed, and if so, by how many and in which categories?

(b) Could the hon. Prime Minister state in precise and definite terms the current size of trained professional personnel in the public service and their respective categories?

(c) Could the hon. Prime Minister state the precise size of the establishment of the public service in respect of the following categories:-

Number of Civil Servants

Number of Fire Officers

Number of Prison Officers

Number of Police Officers

Number of Teachers

Foreclosure
(Homes)

17. Could the Minister provide an up-to-date account on the number of homes that have been foreclosed by mortgage and trust companies in both the public

and private sectors arising out of householders' inability to sustain their monthly mortgage instalments?

Sen. Alloy Lequay: Mr. Vice-President, I wish to respectfully request that question 16 be postponed for one week, with the consent of Sen. Mark and Members, and that question 17 be postponed for two weeks and I want to explain why.

You will note that the question requests information for both the public and private sectors. Whilst the Minister has the information for the public sector, she has to source information for the private sector from various other departments including the Ministry of Finance and that information is not yet available. Out of an abundance of caution, she feels that two weeks will be more appropriate than merely to ask for one week's postponement.

Questions, be leave, deferred.

Caroni Racing Complex

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

Will the Minister of Industry, Enterprise and Tourism advise this House of the date for the commencement of construction of the Caroini Racing complex?

Sen. Lequay: The Minister of Industry, Enterprise and Tourism has also requested a further postponement of two weeks and he has asked me to advise that the difficulty in answering the question is because of a legal problem and he cannot properly answer the question unless he knows the resolution of that legal problem—to allow the start of the building of the Caroni Racing Complex. I wish to solicit the assistance or the agreement of Sen. Amar in the Senate for that postponement.

Assent indicated.

Question, by leave, deferred.

BUSINESS OF THE SENATE

Sen. Alloy Lequay: Mr. Vice-President, we will note under Government Business that item 1. deals with the second reading of "An Act to amend the Evidence Act, Chap. 7:02" which is supplemental to the bill before us.

I suggest that we continue with the committee stage of the Domestic Violence Bill and then proceed with the Evidence Act.

DOMESTIC VIOLENCE BILL

[SEVENTH DAY]

The committee of the whole Senate resumed its deliberations on the bill.

[Chairman: Mr. Leonard Bradshaw]

Mr. Chairman: I just want to point out to Members of the Senate that the Minister has circulated a new list of amendments and this replaces his original list of amendments. So refer only to the new list which has been circulated today in our deliberations on the bill. This list is dated March 19, 1991.

We also have a new amendment to clause 6 from Sen. Furness-Smith. This also has been amended and I trust that we all have copies.

At the last sitting we had gotten to the point where clause 3 was amended to include a new definition of “Guardian” and that definition has been voted upon and accepted. It reads as follows:

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

Has this been approved?

Dr. Hosein: Yes.

Mr. Chairman: We therefore need to move on from “interim protection order”.

Dr. Hosein: We had not finished with the definition of “child”.

Mr. Chairman: Yes, I know but that has been deferred. Would you want to take that point at this stage?

Dr. Hosein: I am prepared to take it at this stage, Mr. Chairman.

Sen. Furness-Smith: Are you making a new proposal on “child”?

Dr. Hosein: No. I take it you intended to pursue your amendment.

Sen. Furness-Smith: We are now faced with a whole new six pages.

Mr. Chairman: Sen. Furness-Smith, you had proposed the amendment to this particular subclause. Are you prepared to continue with your arguments, or would you want to defer it? We can go either way whichever is convenient to you.

Sen. Furness-Smith: I would like to defer it.

Mr. Chairman: Should we continue from the subclause under definitions relating to the protection order. If there has been no amendment proposed to "interim protection order", I take it that is acceptable and we can move on to the definition of "Minister". There has been no proposed amendment to that definition. So we are at the point of the definition of "parent" and there is a subclause for an amendment from Sen. Furness-Smith, as well as one from the Minister. Can we deal with those, please?

Dr. Hosein: Mr. Chairman, we did have detailed private discussions with Sen. Furness-Smith. I think we could take my amendments first because we are agreed on how we will proceed on this point.

Mr. Chairman: Does this mean that Sen. Furness-Smith is prepared to withdraw his proposed amendment?

Sen. Furness-Smith: Yes.

Dr. Hosein: Mr. Chairman, the first column, clause 3 "parent":

"substitute for the definition of 'parent' the following definition—

'parent means a person who is a parent or grandparent in relation to a child, dependant, spouse or respondent as the case may be;

(a) by blood;

(b) by marriage; or

(c) by adoption,

and includes a person who is a parent for the purposes of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981."

1.55 p.m.

Mr. Chairman: Can I put the question therefore?

Sen. Alexander: *[Inaudible]*

Mr. Chairman: Mr. Minister, how do you respond to that?

Dr. Hosein: I am advised it is a drafting point and that it is of necessity to draft it the way it is because it is a presumption of paternity and “accordance” means you have to comply with procedures.

Mr. Chairman, I do not want to get into the legal drafting argument with Sen. Alexander but I am advised that one would want to go with the wording as I have proposed on the grounds that one does not necessarily want to conform with procedures because there is a presumption of paternity in the bill.

Sen. Alexander: *[Inaudible]*

Mr. Chairman: You have two options. You can either ask that the question be put or you can defer the subclause for private consultation. Is there an agreement that the definition of "parent" be deferred?

Assent indicated.

Mr. Chairman*:* Shall we move on therefore to the definition "prescribed offence"?

Dr. Hosein: We agreed, Mr. Chairman, on the amendment. It was fairly straightforward. I think it was pointed out in the debate that there were some omissions. This amendment is meant to deal with that. It is:

> "in the definition of 'prescribed offence' in paragraph (c), insert the number '15' between the numbers '14' and '16' and in paragraph (e), insert the number '5' between the numbers '4' and '6'."

Mr. Chairman: Sen. Furness-Smith, you had also proposed an amendment to that paragraph.

Sen. Furness-Smith: *[Inaudible]*

Mr. Chairman: I want to put the question therefore that the amendment of the definition of "prescribed offence" as circulated by the Minister in the new set of amendments be accepted as is.

Question put and agreed to.

Sen. Lequay: Mr. Chairman, there seems to be a further amendment proposed by Sen. Ramchand, I do not know if you have seen it.

Mr. Chairman: No, I have not. I am very sorry. Sen. Ramchand, is it relating to this description?

Sen. Ramchand: Yes Mr. Chairman**.** The proposal is that we should add to the list of prescribed offences, a new clause which states—

"(f) the use of force or fear to have sexual intercourse with a spouse without her or his consent."

In her contribution to the debate on this bill, there came a cry from the heart of Sen. Louise Horne. She said Government may continue to talk a great deal about social justice for women but fight shy of amending clause 4 of the Sexual Offences Act. It was a shameful episode in our parliamentary history when in 1986 marital rape between persons living together was excluded from being an offence under the Sexual Offences Act.

The Domestic Violence Bill offers us an opportunity to go part of the way towards remedying this sin against one half of the population. If we were to include (f) under "prescribed offences" I think we would be getting around one of the main objections to marital rape being regarded as a criminal offence. They say that when you call it rape you change the definition of marriage. So we are now escaping having to call it marital rape. We are calling it a domestic violence offence and if those people who said that they objected to the word "rape" in relation to this offence, really meant what they were saying, then I can see that half the objection to the inclusion of the clause in the Sexual Offences Act, would now have been removed.

I do not think I have to go into any kind of reasoning about how cruel and unfair and wicked it is for a man to have sexual intercourse with his wife without her consent. I think that issue has been well advertised and I will be preaching to the converted if I try to persuade Members of this honourable House. Therefore without more ado, I ask you to open discussion on this—if discussion is necessary—or that everybody say "aye" quickly. The additional subclause (f) will read in the definition:

"The use of force or fear to have sexual intercourse with a spouse without his or her consent."

Question proposed.

2.05 p.m.

Dr. Hosein: I think I understand the views being expressed. I do not think it is a matter of agreeing or disagreeing with those views at this stage. If I may repeat a point I made in relation to another matter that had come up on the last day, the question and the concept of rape within marriage itself is a major issue, which, as Sen. Ramchand mentioned, has been pontificated upon in this very House relatively recently. Indeed in 1986, there was extensive debate and

Parliament did not accept it at that time. Again, I want to appeal to Sen. Ramchand under the circumstances, that this bill not be the channel for re-introducing that topic. I think until we can feel comfortable with that concept, we want to appeal to Sen. Ramchand not to pursue that case at this stage. As I say I am not attempting here to answer the demerits or merits of the argument.

Sen. Ramchand: Let me correct an impression that the Minister has. I am not re-introducing a discussion about marital rape. I am not proposing an amendment to the Sexual Offences Act. I am only saying that the rape by one spouse of the other, again for sexual intercourse between spouses without consent, constitutes a domestic violence offence.

I am not using the word rape at all. It used to be called rape. It is now a domestic violence offence. I am only asking that it be considered as such. If cuffing a woman is a domestic violence offence, I do not see why having sexual intercourse with her against her will is not?

Sen. Horne: I am supporting that.

Sen. Amar: I would like to endorse that as a very positive step. What went by has gone by. We have to face the realities of today. We are putting a domestic violence bill in place which must take care of not only certain things but everything.

From my own experience and talking with people, the trend is, that men have this precedence of wanting to take advantage when they have a problem. The first thing that they do after they get into a fight is to want to go to bed to pacify.

I want to believe there should be no opposition by the Government's side to introduce this into the bill.

Sen. Rampersad: Why should we not?

Sen. Amar: Why should you not?

Sen. Rampersad: I have a little problem. If the Senator is saying that he is going to introduce rape in this bill—

Mr. Chairman: The Senator did go out of his way to stress that he is not using the word rape.

Sen. Rampersad: Let me just rephrase. If the Senator is arguing that you are going to introduce sexual intercourse as domestic violence, how are you going to define the act when it gets before the court?

Sen. Persad: Let me state that I am against forcing female spouses to have intercourse. The fact is under clause 4, when you say the threat of it, it puts it in a different light. I agree that cuffing your wife is not an everyday or every week occurrence, however sexual intercourse is part and parcel of marriage. One would presume it should occur regularly. It is something of the order of business of marriage as opposed to cuffing and hitting, therefore the threat of it, of being hauled before a court, I think that you should be very careful about that. Now, I agree with the point that women should not be forced, however, if it is done this way I have my doubts.

Mr. Chairman: I think what the Senator is saying is an amendment that would propose that sexual intercourse in any kind of relationship must be consented to by both parties. Am I right? What he is proposing in this amendment is that the use of fear of force should be precluded from the normal behaviour in any kind of sexual relationship.

Sen. Horne: Yes it is domestic violence.

Let me give some sort of example. These examples have been aired in the press. A woman has had surgery, the stitches are not out; she is at home. Her husband wants to have sexual intercourse with her. What is that? Violence!

The man is a philanderer, she knows it. She realizes that unfaithfulness a couple of years ago is different from now. He could have brought home certain social diseases. You could have gone to the hospital to get that cured, but now it is AIDS. So when she knows what the situation is and she refuses to have sexual intercourse, the woman is fighting for her life and for the life of any child that could come as a result. That is wanting sexual intercourse that the woman is not wanting to give and as such that is domestic violence. What do you want to do with this bill, if you cannot really understand the people for whom you are having the bill, if you cannot come to the point that they want. This has to be in it.

Sen. Mahabir-Wyatt: I would just like to add my support to this amendment. As far as I am concerned, I am very comfortable with the whole concept and I think that perhaps Sen. Persad has missed the point. While we all agree that sexual intercourse is a normal part of marriage the threat of violence or the attempt to have sexual intercourse through force of fear is not a normal part of marriage. At least it is not in my experience. I hope that it is not going to be regarded so by anybody in the Senate and I strongly support this amendment.

Sen. Persad: I am not saying that anybody should use force. Under this bill I would agree with the Minister that this is not the place to introduce it. It is a different thing. When one considers the definition of this "prescribed offence" coupled with clause 4, "when there is a threat" of it and the fact of *de facto* spouses which this Parliament refused to define accurately, then you leave open a situation that can be exploited. I think we have to be careful. While you want to provide protection for spouses, on the other hand you do not want to give anyone else weapons. It should be introduced elsewhere.

Sen. Ramchand: Just a brief comment of Sen. Horne's contribution. It strikes me, that is committing murder in the future, if you allow a philanderer to come home and force his wife to have sexual intercourse with him. That is just a comment. The children conceived after such an act would be doomed. To those who are a little bit nervous about taking the amendment at present, let me say, that it is really only a compromise and I am not under any illusions. It is a half-way measure. It cannot lead to a criminal prosecution. At the present time this domestic violence offence would not lead to a criminal prosecution. There will be a restraining effect. It would prevent the husband from having sexual intercourse with his wife without her consent.

2.15 p.m

It is simply having a restraining effect. Those who feel that this is a terrible thing and men are going to be brought up under criminal charges, not yet. The amendment at this point would only serve notice. It would be tantamount to a declaration by the Government that it intends to amend the Sexual Offences Act of 1986 and make marital rape a criminal offence. This does not amend the Sexual Offences Act. It merely gives a restraining power.

Mr. Chairman: Can we hear Sen. Alexander?

Sen. Alexander: While I agree with this amendment, what in effect the amendment would do will be to amend the Sexual Offences Act, once that amendment is included under the definition of "prescribed offence", a police officer under clause 23 will have power to enter into premises where a person is in imminent danger of suffering that type of domestic violence. Similarly, clause 24 will entitle a magistrate, on information, on oath, on reasonable suspicion, and so forth, to issue a warrant authorizing a police officer to enter premises, in respect of that. As well, clause 25 will give the police officer powers of arrest without a warrant where he reasonably believes that such an offence is being

committed. And lastly, under clause 27, that person will be subject to prosecution for that offence. All I am saying is that the entire bill will need substantial amendment to accommodate the very reasonable suggestion by the Senate, and in effect it will amount to creating that as an offence, and it would be creating a criminal offence as it were by that.

Dr. Sampath: Mr. Chairman, I believe that the bill already accommodates this whole question of doing anything at all to the spouse without his or her consent. I do not see why we should single out sexual intercourse. Violence or threat of fear or force is something that the bill already makes provision for. Sexual intercourse is not the only thing that people do in marriage, or I should hope not, and violence is often done because the wife refuses to do several other things. So why single out sexual intercourse? I think we are only complicating this if we are going to accept that amendment.

I hope Sen. Ramchand realizes that by the wording of his amendment, I believe he has said "the use of fear of force with a view to sexual intercourse", it is not the actual fact of having sexual intercourse without wife's consent. So the threat and the threat of violence and the fear is the actual operative words in this respect, not the actual sexual intercourse. So the bill takes care of all of this.

Sen. Ramchand: The phrase is, "the use of force or fear to have sexual intercourse.

Sen. Dr. Sampath: Precisely. I think the semanticists can have a field day here, but I think this is precisely what I am saying. It is the use of fear or force that is important here.

Sen. Ramchand: To have; not to threaten.

Dr. Sampath: Well, Mr. President, suppose we start to enumerate all the various things for which the use of fear or force are used in sexual violence. Suppose we say sexual intercourse, not washing a teacup properly, not looking after the children, keeping a dirty house, answering back, and so forth. You see my point, Mr. Chairman? I hope Sen. Rambachan sees my point. This is simply one activity. Why list it?

Mr. Chairman: Well, that is another perspective. Sen. Furness-Smith, please.

Sen. Furness-Smith: Mr. Chairman, I support this amendment. I am concerned that if we are going to pass an important bill like this, we should do so on grounds of logic. As it has been explained and discussed, we really are making

considerable changes in the law, and it seems totally illogical to make a big fuss about offensive and harassing conduct of all kinds and threats of all kinds and leave out one of the most intimate and important aspects of marital life, which as Sen. Horne has pointed out, can be absolutely crucial, not only to the continuance of the relationship but to the continuance of either party, and this is the area in which we are.

For all the easy arguments that we should ignore Sen. Ramchand's amendment so that we can get the bill passed and go home, I do not think that is good enough. If we have set our hand to the business here, let us follow through the logic of it. Maybe we will find that this line of thinking will throw light on the whole bill, but do not let us pass a bill making quite considerable protection for a few blows and continue to permit the man, who, in the circumstances mentioned, is himself a complete danger to the wife and the family everytime he approaches his wife sexually because of his conduct outside. So what are we doing?

What amazes me at this stage of this debate is that this amendment should be put forward by Sen. Ramchand and not be included in the petition advanced on behalf of the Amalgamated Women's Institutions of Trinidad and Tobago to the hon. Minister last week, who are apparently extremely concerned about these matters and the welfare of women, and this is absolutely vital.

With regard to Sen. Alexander's point, of course, he is absolutely correct, but we could easily make a few amendments to safeguard—*[Interruption]* No, no. We can and we will, because we are already going to make a few amendments, I believe, to the police powers in this matter.

Sen. Horne: Mr. Chairman, this bill is primarily to take care of problems regarding women, and whatever has to be done, the women must feel satisfied that the Government really wants to take care of an important problem which they have. So if you have to jettison the whole bill as it is to fix it over, you have to do that.

Over the air this week, I heard that England has now done what Scotland did before, that a wife can now bring up her husband for rape. That was over the air this week in the British News. We have not brought it here. People are talking about bringing another bill to take care of that, but that is when? Let us do it now because that is domestic violence, and it is not a question of just singling out the one thing, as the hon. Senator pointed out, all the other trivialities. What the women want is that rape, which is now called domestic violence, with special reference to sexual abuse, must be included. Sen. Ramchand's point of view, I

agree. At least I said so in my contribution. Without that the bill is a mere palliative and that is not what the women want. They do not want palliatives anymore; they want something that would really act, something that is practical, something that is useful. So whatever we have to do to fix that, we must do it.

Sen. Lequay: Mr. Chairman, it is unfortunate that the letter from a concerned group of women which Sen. Furness-Smith has received has appeared to have caused him to lose his sense of balance and his sense of reason and his sense of logic. I detect also a certain amount of facetiousness in his comments, which is very unfortunate because one always likes to hear Sen. Furness-Smith on these amendments at the committee stage.

After the explanation given by Sen. Dr. Persad on the practical implications of the amendment and the legal difficulties which Sen. Alexander has explained would arise, I would not have expected the comments of Sen. Furness-Smith. I do feel, after hearing Sen. Persad and Sen.Alexander, that we should certainly not include the amendment of Sen. Rambachan in the bill. *[Interruption]*

Mr. Chairman: Can we hear the Minister, please?

Sen. Alexander: Mr. Chairman, I want to make it quite clear that all I was saying is that the acceptance of this amendment will require consequential amendments, and I am not saying not to accept it.

Mr. Chairman: That has been made very clear.

Sen. Lequay: I accept that.

Mr. Chairman: Let us have some order, please. Can we hear the Minister?

Dr. Hosein: Mr. Chairman, I just want to make two points here. In "prescribed offence", which is the point we are on now, we have listed many things all of which are offences now in the law. Even conduct of an offensive and harassing nature is an offence in law. We have had enough trouble—or let us put it this way, Mr. Chairman, conduct of an offensive and harassing nature is a matter which, in matrimonial affairs, at least, one could seek protection against. And we have had enough trouble with Sen. Furness-Smith and others trying to get that listed here.

Now what is being attempted is to introduce a matter that is today not an offence on the books of this country, and we are now trying to list it as an offence, albeit a domestic violence offence. I am saying that it is a concept of a level of importance that I would not want to put to this House, that we attempt to introduce it as an offence in our law via the medium of the Domestic Violence

Bill. We can look in the future at amending the Sexual Offences Act by dealing with it specifically. I need to remind hon. Members that it was dealt with specifically on that occasion and it was not accepted, and one must be reminded of that. The Parliament of this country pontificated on that issue, and I am saying I have a difficulty for the first time introducing the concept of such an act being an offence in law through the medium of this bill. I repeat my appeal to Sen. Ramchand that we not introduce it, that we can look at introducing, it as an amendment to the Sexual Offences Act and have it included here if we think at a later stage that is something we ought to do.

Sen. Ramchand: Mr. President, I cannot listen to the appeal just yet. There is nothing in law or nature which says that this amendment cannot be put under "prescribed offences". It may be difficult. It may cost us time. We may have to make further amendments. But it is not impossible and it is not forbidden. There is no taboo on it. So I do not buy the Minister's explanation, if it is an explanation.

2.30 p.m.

I cannot understand Sen. Lequay's logic. I do not know what it is that Sen. Furness-Smith said that could prompt him to say “do not accept the amendment”. I sent a little note saying that I was going to thank Sen. Furness-Smith for the cogent support that he has given to the amendment, and I am sure the ladies would forgive him for the little teasing that he does not seem to be able to help doing. I think he was just teasing the ladies but the support that he gave to the amendment seems to be very rational and cogent. I want to underline what he also said about Sen. Alexander's comments.

> "This Senate must not be in a hurry to misread Sen. Alexander's careful assessment of how accepting the amendment will force us to make other changes in the bill as an objection."

I take very great comfort from what he has said because he is showing how with patience and care it is possible to work in the amendment.

Dr. Hosein: Mr. Chairman, let me make three points here. Firstly, we do not intend to jettison this bill; we are going to the bitter end. I want to clear Sen. Horne's mind on that point. Secondly, I think we have spent enough time in this Senate on this matter to satisfy everyone that we intend to deal with this matter with the greatest care, so I do not think anyone needs to pursue that argument again. Thirdly, I think we must understand Sen. Alexander's argument. It is an

argument that he and Sen. Furness-Smith had pursued before in taking some care on the matter of introducing the concept of "conduct of an offensive or harassing nature". Now, however, I find with surprising alacrity that Sen. Furness-Smith has jumped in with something totally new. I find it a little bit of a contradictory argument.

If you take Sen. Alexander at his word, once we introduce the amendment, as Sen. Ramchand has proposed, we would then have to look at all the possible consequences and I think we have introduced in other sections sufficient safeguards against abuse of the concept of "conduct of an offensive or harassing nature". Now when you start looking at charges of force and threats being used in order to have sex within a marriage, I think you are into an area that provides even greater dangers above and beyond what I can feel comfortable with, that the safeguards in the bill are sufficient safeguards. I had enough trouble convincing some Senators that there are sufficient safeguards against the concept of "conduct of harassing or offensive nature". To go and do it now about force in order to have sex within marriage is not something I feel I can accept, so I think we would have to go with that and I do not see the point of pursuing the debate, Mr. Chairman.

Mr. Chairman: Sen. Ramchand before you come in let me make a point please. I have listened to contributions on your amendment from nearly half of the Senators and I have heard two arguments to be or not to be. If we are not going to be introducing substantially new arguments I would suggest that we put the question.

Sen. Ramchand: Before you put the question—

Mr. Chairman: But bear that in mind.

Sen. Ramchand: Yes. I suppose there might be a way to save this Senate from persistent shame. *[Interruption]* If the Minister—

Mr. Chairman: Can we hear the Senator please?

Hon. Senator: I take very, very strong objection to that language. You cannot say that in the Parliament. Persistent shame! That is not parliamentary. I strongly object to that. It has strong political conflicts. Does he think he is in the UWI cafeteria or Students' Guild?

Sen. Ramchand: Would the hon. Senator explain what is causing offence? I said that I want to propose a compromise that would save the Senate from persistent shame.

Hon. Senator: Your language, demeanour and hostility—

Mr. Chairman: Let me intervene, Senator.

Sen. Ramchand: I said I want to propose an amendment that would save the Senate from persistent shame. Mr. Chairman, if that is an offensive remark I would withdraw it.

Mr. Chairman: I was about to suggest that because we want to progress on the bill and I do not want the introduction of two words in a statement to cause us—

Sen. Ramchand: Okay. I should like to suggest a compromise by which this Senate can bring credit on itself. If the amendment could be included as item (g) under "conduct of such an offensive or harassing nature", this would be a token of the Senate's recognition of the importance of the subject we have raised. If the Minister could give the Senate an assurance that he would exert all his efforts to institute or to get others to institute a revision of the Sexual Offences Act, I would be happy to withdraw the amendment.

Sen. Sampath: Mr. Chairman, I am not clear on what Sen. Ramchand really wants. What words would he like to include under (g)?

Mr. Chairman: Last week it was agreed that a subclause 3 (2) be added, which reads as follows:

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

(a) the persistent intimidation of a person by the use of abusive and threatening language;

(b) the damaging of the property of a person;

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

(d) depriving a person of the use of their personal property;

(e) the watching or besetting of the house or other place where a person resides, works, carries on business or happens to be;

(f) the wilful or reckless neglect of a child or dependant person;"

And he is suggesting that his amendment be included as a further subclause (g).

Sen. Sampath: Mr. Chairman, is he suggesting that we should include the words, "having sexual intercourse against the person's will"? If this is so, I would object.

Mr. Chairman: What the Senator is seeking to do is to go back to what was agreed on last week, which we cannot allow.

Sen. Sampath: Precisely.

Sen. Amar: Mr. Chairman, I have a suggestion. One of the things that seems to be worrying the Minister is that this is going to be looked at as a specific sexual offence. How about if we get the Minister to think about tying that in towards the specifics which we are trying to avoid, which is the battering? How about if we try to find a way to tie that to say "sexual offence that comes as a result of battering". I am trying to explain it in a sense to say that we have this man who comes home; first he gets angry and hits the lady, then he comes around and says, "To hell with that, I want intercourse." It would not be sex in a specific instance to say that he just comes home and forcefully throws himself on her, we would let the Sexual Offences Act fix that. But as a result of the licks—if I could use this word because I know the Government takes offence to the word "licks"—but for ease of reference and understanding, could the Minister think about using a compromise in that aspect, because it will protect the woman in that case.

Mr. Chairman: It is not the Minister in this case, it will include Sen. Ramchand—

Sen. Amar: Maybe Sen. Ramchand could think about it along that line.

Mr. Chairman: I think it is a diversion from what Sen. Ramchand is proposing and as far as I am concerned, that is probably a shade of grey between the Minister's position and the Senator's position.

Sen. Amar: Maybe we could move the Minister to darken the grey.

2.40 p.m.

Sen. Persad: Mr. Chairman, I would like Sen. Ramchand to withdraw his amendments because under "prescribed offence" the first two are offences under common law the other three are under written law. They are already offences. What he is seeking to do is to introduce a new offence. I think it needs careful thought. We just cannot stick it in. I agree with the principle and I have stated my position that I am dead set against any spouse having intercourse by force or otherwise. I am saying that we have common law offences and we have written

law offences. This is a new offence we are trying to establish and I think it needs a separate forum. I urge him to withdraw.

Dr. Hosein: Mr. Chairman, I think one point should be borne in mind, and it is in response to Sen. Amar, that the concept of what is in fact a sexual act being battering. I think efforts have been made in law to separate these two. This is why you have a specific Sexual Offences Act, and this is addressed also to Sen. Ramchand. I think that since what we are talking about is going to be a sexual offence, I am prepared to give an undertaking that we will bring this matter to the Attorney General's attention with a view to proposing a specific amendment to the Sexual Offences Act, which when it is done we will then bring it into this Act if necessary, at the time we make that amendment. At this stage I think we cannot afford to mix it up with battery and we cannot introduce what will be a new concept into this Act. I agree with Sen. Persad in that respect.

Sen. Horne: Mr. Chairman, this is a man dominated set-up. It is difficult. I cannot see—

Mr. Chairman: Senator, unless you are proposing an amendment, it is too late for that.

Sen. Horne: That is a promise and the promise would not materialize. Many things have been promised to women. We have done bills here and they have not materialized.

Mr. Chairman: Sen. Horne, I cannot allow you. You will have to discontinue.

Sen. Horne: *[Remarks expunged.]*

Mr. Chairman: Senator, please desist.

Dr. Hosein: Mr. Chairman, I want to be on a specific point of order for the records. I have given an undertaking. I think it is unparliamentary for the Senator to make that remark and I think she ought to withdraw it.

Sen. Horne: I am not withdrawing it.

Mr. Chairman: Senator, I feel that is particularly unfortunate.

Sen. Horne: Perhaps it is, but that is the way I feel about it.

Mr. Chairman: Senator, you do hold a certain measure of respect in this Senate. You are also respected because of your seniority. I will proceed.

Sen. Ramchand, I thank you for your withdrawal.

Sen. Ramchand: May I, Sir, with your kind permission. I am curious to find out under what bill the Minister would give this assurance that this debate will take place.

Dr. Hosein: The Sexual Offences Bill.

Sen. Fr. Joseph: There is a thing called "conjugal rights" in this country. It is a myth to which people hold fast. To me, listening to the debate about sexual assault—I am trying to get away from rape, it is germane to the whole thing about domestic violence. I want to make that clear.

Sen. Ramchand: First of all, I want to accept the hon. Minister's assurance but I really would have liked him to put it to the vote.

Mr. Chairman: You have given the assurance that you have withdrawn your amendment.

Sen. Ramchand: I said I have accepted the hon. Minister's assurance.

Dr. Hosein: Mr. Chairman, if there is any doubt introduced in the mind of Sen. Ramchand on my honesty in giving an undertaking, I want to disabuse him of any such idea.

Sen. Ramchand: Once you put it like that, Mr. Minister, I withdraw the amendment.

Dr. Hosein: Mr. Chairman, I want to pursue on a point of order and Sen. Horne's refusal to withdraw her allegation. I do not intend to let this matter rest. It is not a matter that I would ever want to let rest. I have had my troubles with the newspapers on this matter and I am not going to let it rest in this Senate. I would like you to make a ruling on the matter. Otherwise I will have to reserve the right to say the same thing about Sen. Horne inside and outside the House. I do not have any reason to want to say that about her. I would like to think that in her heart of hearts she does not have any reason to say the same about me. I hope it is not just a question of an argument over a point within this Senate. If Sen. Horne has a problem with my honesty, I would like her to say so very clearly and to withdraw the remark. I call upon you for a ruling, Sir.

Mr. Chairman: Mr. Minister, I have considered Sen. Horne's remark to be very, very unfortunate and I have made that point very clear. I cannot, however,

demand that the Senator withdraw the remark, I can ask that she withdraw the remark.

Sen. Horne, you yourself, on many occasions, have had the opportunity to pronounce that the Senate is the upper level of decency and debate insofar as parliamentary affairs are concerned. I am sure you have said that with every good and sensible intent. I cannot perceive that what you may have said about the Minister in relation to his honesty is anything but a slip of the tongue. These things happen during the course of a debate and I take it that this may have happened during the "cut and thrust" of exchange. I plead with you at this stage, in the interest of ensuring that the dignity of this Senate is not reduced to that which we have seen elsewhere, that you withdraw the remark. You will come out smelling roses, I assure you.

Dr. Hosein: Mr. Chairman, I have a serious problem. Are Members of the Senate going to take everything I say, from now on, as coming from a dishonest man? How can I pursue a debate in this Senate, on any matter of principle, if I am so viewed? I do not want to let the matter rest. I think you ought to make a ruling on the matter. I rose on a point of order and I think you must make a ruling. I cannot see what my status in this Senate is going to be if every Member here believes that in pursuing a discussion on any matter that is now about to arise, I am going to be viewed as dishonest. I cannot let the matter rest.

Mr. Chairman: Sen. Horne, the Minister has made a request and I have indicated to you my own personal displeasure with the statement that you have made. I have given you ample opportunity to withdraw the statement. Very apparently, you have chosen not to. Therefore, I have two options: I can name you under the Standing Orders. That is in fact a very strong privilege of the Chair and I prefer not to. I would take the lesser option of asking *Hansard* to ensure that those statements be expunged from the record. It is as much as I am prepared to do at this stage.

Dr. Hosein, I hope you are satisfied. I intend to proceed.

Dr. Sampath: Mr. Chairman, may I request, from the Chair, that the press be urged not to mention this incident at all. I can very well see certain disreputable newspapers—I am not saying that they are all, there are very reputable newspapers among them—with the caption: "Minister accused of dishonesty". Especially in these times, I think it is very important that the integrity of this Senate and the Minister should be upheld by all of us.

I thank you.

Mr. Chairman: Sen. Sampath, the Chair has tremendous power under these circumstances. Apart from Senators, everyone who is here is here as a privilege and not as a right, and that includes the press. I am loathe to direct the press on how it should report this matter. I prefer to rely on the good sense of the press. There is more good sense in the press, than we might imagine, to report this matter fairly and objectively. I am sure that when mention is made in the press, you yourself will not be surprised that it has been handled with all the delicacy of which the press is capable. Thank you.

Sen. Alexander: I do not think that the press can report proceedings in committee.

Mr. Chairman: I am not so sure, but I think I have said as much about what the press will do on this matter and I have every confidence that they will handle it competently and maturely. Can we move on to a continuation of our examination of the description?

Sen. Furness-Smith: I have an amendment. In the definition of "prescribed person" add the following words immediately after the word "be" appearing at the end thereof:

> "a person residing in the same household as the respondent or the spouse as part of the family."

This definition does not appear everywhere in the bill. It appears in clauses 5 and 6. It does not appear in clause 4 which is the critical clause. In clause 5 it appears in various places.

> "(b) prohibit the respondent from being on premises in which a prescribed person resided or works."

So that even though there is no incident under clause 4, on the basis of which the protection order is made, the protection order may make an order to a wider section of persons being a "prescribed person" because prescribe persons can be anybody in this relationship—whether they are residing in the household or not. This is a bill to protect domestic situations. Even though the parent or dependant is not in a domestic situation, we are apparently prepared to give them protection under clause 5 or 6:

"6 (a) the need to ensure that a prescribed person is protected..." even though he is not residing in the house.

I may have missed something on this. I will be glad to hear the Minister's explain why the definition of "prescribed person" should not be limited in this way. I should point out that the definitions we are including of "parent" or "dependant" and indeed "child", make a very large number of people and spouse possible prescribed persons. I do not understand why we are extending the limits of the order in this way.

2.50 p.m.

Dr. Hosein: The answer is simply that a domestic situation is not confined by the four walls and the residency test. That will come into play if we accept Sen. Furness-Smith's amendment. I thought we had been through this argument before and we made it clear that we are not going to accept the concept of a "residency test." We are well aware that there are certain types of relationships in Trinidad and Tobago and they are not confined to four walls.

Sen. Furness-Smith: But we are still making a protection order whether they are in the four walls or not. Obviously, we have a misunderstanding. I would like to suggest that this amendment be voted on, I am not withdrawing that amendment. Let it be voted on and let it go down in the records.

Mr. Chairman: In the definition of "Prescribed person" in the last few lines it says:"...a parent, or a child or dependant of the spouse or of the respondent (or the defendant), as the case may be." Added to that, the amendment would read:

> "being a person residing in the same household as a respondent and his spouse, as part of the family."

Question, on amendment, put and negatived.

Mr. Chairman: Shall we move on to description of protection order. Do we have any amendments to this description?

Assent indicated.

Mr. Chairman: Are there any amendments to "respondent"? Sen. Furness-Smith do you have any amendments?

Sen. Furness-Smith: I withdraw my amendment in the circumstances.

Mr. Chairman: That is very mature of Sen. Furness-Smith.

Amendment withdrawn.

Mr. Chairman: Dr. Hosein, do you have any amendments to "respondent'?

Dr. Hosein: No.

Mr. Chairman: There are no amendments to "respondent" and "spouse" so that description remains. I take it that clause 3 is now accepted minus the deferred amendment to the definition of "child".

Sen. Furness-Smith: On clause 3, I think that Sen. Mahabir-Wyatt has an amendment dealing with "the place of safety".

Sen. Mahabir-Wyatt: I have been assured that there is an upcoming amendment to the Children Act, therefore my amendment will be unnecessary so I withdraw that particular amendment.

Amendment withdrawn.

Dr. Hosein: I am pleased that the Senators have accepted my undertaking,

Sen. Alexander: It seems to me that "respondent in relation to an application" means a person in respect of whom a protection order is sought or made. It is a respondent to the application. Am I not correct? When you look at clause 4:

"Where, on an application made in accordance with this Act,..., the Court is satisfied, on the balance of probabilities, that—

(a) the respondent has engaged in conduct..."

Dr. Hosein: We take the point made by Sen. Alexander and we are asking for two minutes to allow us to decide. I think we can deal with it right away. Can I say that "respondent" means the person specified in clause 7(2).

Sen. Alexander: You have respondent in clause 4 which states:

"Where, on an application made in accordance with this Act in respect of a person, the Court is satisfied, on the balance of probabilities, that—

(a) the respondent has engaged in conduct...."

There is a respondent to the application.

3.00 p.m.

Mr. Chairman: I think the Minister is suggesting that the description of respondent be as described in 7(2). If you look at 7(2) it states: "person in respect of whom the application is made shall be the respondent to the proceedings." It is not just a mention, it is almost a description of the respondent.

Sen. Alexander: It may very well be that we do not need a definition in clause 3. What is happening now is that you have two meanings for “respondent”.

Dr. Hosein: The term “respondent” keeps recurring throughout the bill.

Sen. Alexander: Either you put it in clause 3 or you leave it in clause 7, but not in both places.

Dr. Hosein: I see the point which Sen. Alexander is making but would it not be useful, in fact, to have a definition of “respondent” and merely say “a respondent means a person referred to in section 7(2)”, because it is something which keeps coming up again and again. I do not know if Sen. Alexander would be satisfied with that.

Sen. Alexander: That is bad drafting. With the greatest respect, it is totally illogical.

Mr. Chairman: I think what the Senator is saying is that he would draft a very definite description of “respondent” in clause 3 and there should be no need to confuse the bill further in 7(2), by again almost bordering on the description of the "respondent". I think that what is intended in 7(2) is a reference to “respondent” as described in clause 3.

Sen. Alexander: If the Minister wants to have that in his bill, it is all right, but I cannot agree with it, because it is just simply bad drafting.

Mr. Chairman: Sen. Alexander, after having looked at 7(2), would you therefore agree that if your proposed amendment to the description of the "respondent" is taken, that it will then be necessary probably, to re-word 7(2)?

Sen. Alexander: Having regard to clause 7(2), which was kindly pointed out to me by the Minister, then you do not need a definition of “respondent” in clause 3.

Mr. Chairman. Are you accepting the Minister's contention that 7(2) serves as a description.

Sen. Alexander: Clause 7(2) satisfies it, so I why put it twice?

Dr. Hosein: I would prefer Mr. Chairman, that it be in the interpretation section and we can take out 7(2) if we have to, because it keeps recurring. My only aside to Sen. Alexander is that we spent so many hours with it that if he had made the point, we could have sorted it out then rather than argue the point here.

Mr. Chairman: Sen. Alexander, we are back in your court. We need to be more precise with the description of “respondent”. The Minister says that he is

prepared to probably delete 7(2), but he wants to keep the description of "respondent" in this clause.

Sen. Alexander: An “applicant” for a protection order means the person in respect of whom the order is sought or made.

Dr. Hosein: Mr. Chairman, the proposed “respondent” means a person against whom an application is sought or made.

Sen. Alexander: You do not go to court to seek an application, you make the application and you seek an order.

Dr. Hosein: We are proposing “respondent” means, the person against whom an application is made.

Sen. Alexander: That satisfies me.

Mr. Chairman: The “respondent” means a person against whom an application is made.

Question, on amendment, put and agreed to.

I take it that we can go over the definition of “spouse”. How do we handle the definition of “child”? Do we want to tackle it here Mr. Minister?

Dr. Hosein: No.

Mr. Chairman: We will not put the amended clause 3 but move on instead to Part II, under protection orders, clause 4.

Clause 3 deferred.

Clause 4.

Question proposed, That, clause 4 stand part of the bill.

Dr. Hosein: Mr. Chairman, I propose that clause 4 be amended by deleting the words "in respect of a person", in line 2.

Mr. Chairman: It reads: "Where, on an application made in accordance with this Act the Court is satisfied, on the balance of probabilities, that—"

Question, on amendment, put and agreed to.

3.10 p.m.

Mr. Chairman: Sen. Furness-Smith, withdrawing your amendment?

Sen. Furness-Smith: Mr. Chairman, the hon. Minister was complaining about my colleague on my right coming with these amendments at this late hour

but I have just received the Minister's new amendments in respect of the sittings which we had last week—in which I thought we made very good progress—and I have not had a chance to check this. This bill is getting increasingly complicated—and indeed, illogical as we have discovered this afternoon—that I find it very difficult to proceed with any confidence that we are getting a proper result.

I was hoping that we might have had all these amendments put in and shaped so that we could have read and understood them. I am afraid I cannot read these two pages now and just like that decide whether I am ready to withdraw my amendments or not.

Mr. Chairman: I have to deal with what is before me and what is before the committee is a proposal for an amendment made by the Minister. If you have no objection, I would have to deal with the amendment that is before the House,

Sen. Furness-Smith: What I am saying, Mr. Chairman, is please go on, as far as I am concerned, but do not ask me to agree to anything because I am not able to do so.

Mr. Chairman: Thank you very much, Sen. Furness-Smith.

Dr. Hosein: I wonder if I may be of some value to Sen. Furness-Smith. This was what was agreed to after some deep discussion with Sen. Alexander. I know you had to leave the meeting at one point and this is what we came up with. Maybe some explanation from Sen. Alexander would be useful to Sen. Furness-Smith.

Sen. Alexander: I left Sen. Furness-Smith, he did not leave me here.

Mr. Chairman: Let us not get into that please Senators.

Dr. Hosein: I think that Sen**.** Alexander was present but Sen. Furness-Smith was not.

Mr. Chairman: Can we look at the clause please?

Sen. Alexander: Amendment No. 2, I have some problem with. It appears that the words between "court" and section 5 on page 10 being substituted for—

> "shall subject to this section make an order restraining the respondent from engaging in such conduct or in any other conduct referred to in this section."

So, the order that the magistrate can make under this new clause 4 is a restraining order by which the respondent is prevented from engaging in (a), (b) or (c). *[Interruption]* Yes, but how does clause 5 come in?

Sen. Furness-Smith: It does not. This comes out.

Sen. Alexander: Clause 5 comes out?

Dr. Hosein: Perhaps I can assist Sen. Alexander. If he looks at the fourth proposed amendment on page 3 where it says—

"Add at the end of the clause, the following subclause

> The court when making a protection order may impose one or more of the prohibitions...."

In fact, what I am referring to now is as a consequence of a proposal by Sen. Alexander about the undertaking. So the point he is saying is not in our amendment in fact taken up at this point.

Sen. Alexander: What I am saying, Mr. Minister, is this bill is seeking to confer statutory powers on the magistrate. The present clause 4 enables the magistrate to restrain the respondent and also to impose the prohibitions or conditions in clause 5. That is the enabling provision. The amendment proposed does not enable the magistrate to make any protection order. That is all I am saying.

But you see clause 5 says—

"Subject to this bill, a protection order may—

(a) prohibit..."

That is saying what could be contained in the protection order. But the provision which gives the magistrate power to make the protection order is 4 and if you do not have it in 4 then the magistrate cannot make a protection order.

Dr. Hosein: Mr. Chairman, we are now also adding a 4(2). We are taking out that point and creating separate subclauses (2) and (3) in order to give the magistrate power to accept undertakings. It will be there when we go on to the next amendment.

Sen. Alexander: I am not on to the undertaking.

Dr. Hosein. No, we are talking about clause 4. Clause 4 now has only one part but when we are finished with all the amendments there will be a 4(2) and 4(3)—(1), (2), (3), (4), (5) and (6), which will include some other points made by Sen. Alexander.

Sen. Mahabir-Wyatt: Mr. Chairman, I am suffering under somewhat the same disadvantage as Sen. Furness-Smith, since we have just received these a few

minutes ago. It is very difficult to be able to comment on the implications of them. But I cannot see where on page 3 under section 4(2) of the Minister's amendments "that the court will be enabled to make the protection order". All it says is "when the court does make the order, it may impose one or more of the prohibitions" but there is nothing there that enables them. I wish the Minister will help me on this.

Dr. Hosein: *[Inaudible]* What will now be 4(1)

Sen. Mahabir Wyatt: Mr. Minister, 4 (1) says—

> "Where, on an application is made in accordance with this Act, the court is satisfied, on the balance of probabilities,..."

The court shall make an order. What your new amendment says is that—

> "The court shall make an order restraining the respondent from engaging in such conduct or any other conduct referred to in this section."

But it does not say that he can make a protection order, it is a restraining order.

Dr. Hosein. Referred to in this section. Then it goes on in the same section under a new subsection (2) which on page 3 of my circulated amendments you will see, which then says that—

> "it may impose one or more of the prohibitions as specified in subsection 5"

and then it goes on to do other things. So we will now have a much more comprehensive clause 4.

Sen. Alexander: Mr. Chairman, may I suggest that in the new amendment under subclause (2), instead of "an order" that we say "make a protection order". "Make a protection order restraining the respondent". When you use that term "protection order" you then go back to the definition of protection order in subclause(3).

That ties in 5. I am ensuring that the magistrate has the statutory power.

3.20 p.m.

Dr. Hosein: I think we can accept a protection order.

Mr. Chairman: The new amendment shall read:

> "Subject to the section make a protection order restraining the respondent from engaging in such conduct or in any other conduct referred to in the section."

Question, on amendment, put and agreed to.

Sen. Lequay: I merely want some guidance. What do we want as 4 (1)?

Mr. Chairman: There is no 4 (1) at this stage. There will be.

Dr. Hosein: We will have 1 (a) (b) and (c).

Sen. Lequay: Where is 4 (2)?

Mr. Chairman: It is forthcoming. It is proposed on page 3 and it will follow what is now clause 4. We will renumber clause 4 (1) (a); 4 (1) (b) and so forth. Clause 4 is now renumbered clause 4 (1). [*Interruption*]

Mr. Chairman: The Minister is now proposing one.

Sen. Alexander: What will be clause 4 (1)?

Mr. Chairman: The original clause 4 now becomes 4 (1) (a); (b) and (c).

Sen. Alexander: Yes.

Mr. Chairman: His amendment proposed on page 3 of the sheet will follow (c).

Sen. Alexander: Is that at the end of the clause?

Mr. Chairman: Yes.

Sen. Alexander: Do we have an amendment (b) which is amending 4 (c)?

Dr. Hosein: We are coming to amendment 4 (c) in a minute.

Mr. Chairman: Let us do this progressively. I need to put the question on the re-numbering of clause 4.

Question, on amendment, put and agreed to.

Mr. Chairman: Shall we proceed therefore, Mr. Minister?

Dr. Hosein: Yes. In what is now 4 (1) (c), we propose to amend by deleting the word “such” in the first line and insert before the word “that” the words “to the extent”. It will now read “to the extent that”.

Mr. Chairman: It should read:

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

of the spouse or of the respondent that the spouse or the parent fears for his or her safety."

Dr. Hosein: We have another amendment here. I have another proposed amendment. We will substitute for the words "fear for his or her safety or for the safety of a child or dependent of the spouse or the respondent" with "is fearful of injury physical or mental, to herself or himself, or to a child or dependant of the spouse or the respondent". This takes care of a point about the looseness of the term “fear for his or her safety”.

Sen. Persad: On the point of “mental injury”, I have a problem with “mental”. What do you mean by "mental injury"? That is nebulous. I do not know what that means.

Sen. Furness-Smith: Last week, that is why we agreed that it would not be there.

Sen. Persad: That should be removed.

Sen. Furness-Smith: I agreed to something last week. Today, they come and put something quite different and I am expected to agree to all of these things. No, no, no.

Dr. Hosein: Mr. Chairman, I seem to recall pursuing the point in our discussion with Sen Furness-Smith about being clear about mental injury, and I made the point on that occasion that the result of behaviour of an offensive or harassing nature quite often, is psychological injury to the women. They may have no bruises and blows to show, but as I said to him then, a lot of them can end up at St. Ann’s as patients for months because of the constant and deliberate harassment in order to affect their mental health. I thought we needed to say that very, very clearly. This is understood as being injury. I made the point. Maybe the laymen may not see it, but ask the doctors and psychologists at St. Ann’s, and the priest they see it.

Sen Persad: Could it be defined properly?

Sen. Alexander: By putting in the word “mental” you may be putting a heavy burden on the person who does not have marks showing, to prove that their mental health is affected. “Injury” is enough.

Sen. Persad: I would say remove “physical and mental”—"in fear of injury”.

Dr. Hosein: If you want to prove injury, you come with a certificate from a doctor to say that you have a bruise and you can come with a certificate from a

psychiatrist from St. Ann’s, or a private psychiatrist or psychologist, to show you have it as well. That will be your evidence.

Sen. Persad: How do you know that you got if from that incident?

Dr. Hosein: Because you would have had a certificate from a psychiatrist or psychologist and that would be evidence of mental injury.

Sen. Alexander: I think you are safe by leaving the word “injury” and the onus will be on us.

Dr. Hosein: If I can be satisfied that the normal use of the term “injury” in law encompasses the concept of mental injury I will accept that.

3.30 p.m.

Sen. Furness-Smith: Mr. Chairman, what is the injury?

Sen. Alexander: I think you are safe, Mr. Minister, by leaving the word "injury" and the onus will be—

Dr. Hosein: If I can be satisfied that the normal use of the term "injury" in law encompasses the concept of mental injury, I will accept that. But, you know, I think it is something we should be very, very clear about. Maybe I am more willing to accept undertakings from others, Mr. Chairman, but if I can be assured on the point, I feel that I would like the law to be very clear on the point of mental injury because it is in keeping with the concept of offensive and harassing nature being conducted deliberately by someone against a victim in order to achieve a kind of injury that is really mental. They torture theses people mentally, and the do it deliberately to bring about emotional collapse. I think this is the complaint that comes up from many victims, and I want to be absolutely clear about it in the law. I thought we were about the business of being very clear in this law.

Sen. Persad: Mr. Chairman, through you, the whole purpose of this bill is to afford a sort of cheap measure of protection. Are you telling me now that a person who has been subjected to mental torture must go and see a psychiatrist and spend $500? Is this the purpose of the bill? "Injury" is sufficient.

Mr. Chairman: The Minister is defending, almost with a passion, the point about people being psychologically affected by psychological harassment, and he wants the assurance of the legal persons in the Senate that if he omits any mention

of mental injury and just says "injury", that the bill is not going to be compromised in terms of its ability to handle psychological harm.

Sen. Persad: Physical and mental.

Mr. Chairman: That is your position. That is your position. The Chair recognizes your position. You have advice and I am listening. Can we hear the other Senators, please?

Sen. Ramchand: Would the Minister consider any key into psychological injury, injury of any kind?

Dr. Hosein: Mr. Chairman, I have heard a lot of argument today and over the past few sittings about our being exact and very careful in this bill, and I am saying conceptually, I want us to be very clear that we mean mental injury. It is not an argument to say that we might have to go to a psychiatrist. The vast majority of psychiatrists in this country work in the public service, separate and apart from whether they work privately as well. So there is not a question of cost. I want us to be very clear, on this law to contain, with the greatest of clarity, the concept of mental injury. I am saying that is what a lot of the victims we are trying to protect here really undergo. I am saying I want us to be clear about it.

Sen. Alexander: A person might, because of circumstances in the home, suffer psychologically or mentally but will not be suffering from mental injury. If you put "mental injury", the onus will be greater than "mental suffering". "Mental suffering" is injury. A woman who sees her child knocked down by a car gains damages for mental suffering but not mental injury. Mental injury is under the Mental Health Act. If you insert that, you may very well be putting a higher burden.

Mr. Chairman: Mr. Minister, what Sen. Alexander is trying to be precise on is the difference really in the definition, as he has put it, of "injury" and "suffering" as it relates to a mental situation.

Sen. Furness-Smith: Mr. Chairman, we spent a long, long time discussing this question last week. The hon. Minister made the point that his being a doctor as well as a Minister, he knows about these things and he knows the importance of saving people from mental harassment, but it becomes a matter of what language to put in here.

This is a bill for the magistrate's courts for prompt remedies. I have little doubt that if he could show in an appropriate case that the fear we are talking about, is of the offensive and harassing nature, to an extent that the person has

fear for injury. Now, if the magistrate believes that person is genuinely fearful, that the person is going off her head as a result of this thing, he could find it, but as Sen. Alexander says, you are asking the woman to give evidence—and I am assuming she is going to be a woman—that she is fearful of mental injury. Well, she is going to say, "I believe I am going off my head." What is the magistrate to do? Either he can just accept that, because he has evidence that the woman is fearful of injury, which is an entirely subjective matter. I presume he will try and give a judgement as to whether the fears are genuine or not. He will have to look at the whole case. But are we to ask him to bring a psychiatrist in court to prove actual mental injury that is likely from these things? What is the purpose of such medical evidence? Because we are talking of fear; we are not talking of actual injury. We are talking of fear that there may be injury, and we will be going round and round and round in those courts. This is something which goes to the root of my objections to this bill in the first place as it is drafted.

Remember this, the bill which the hon. Minister has taken months to prepare, the original language was "fears for his own safety, or for the safety of a child." There was nothing there about mental injury, nothing there about mental injury. There was no concept of mental injury.

Dr. Hosein: It was Sen. Furness-Smith who objected to the term "safety". Both Sen. Furness-Smith and Sen. Alexander objected to the use of the term "safety". They felt it was too subjective and too broad and too vague, and it is in discussion with both of them that the term "injury" came up as being more exact. In pursuit of that term "injury", I sought from them language that would ensure that the term "injury" encompassed the concept of mental injury, and we thought we would say that in so many words. So to come and hear Sen. Furness-Smith arguing the way he is now, I think he is beginning to reverse himself. I do not know if he is recalling what he said earlier, you see.

Sen. Furness-Smith: My position is perfectly clear, that you brought a bill to ask—let me make it quite clear again.

Dr. Hosein: It was in pursuit of a process where we did not have to pursue these arguments about words in committee, that we undertook to have private meetings and they proved to be very lengthy, to work out some of these things that we could agree upon, and I am recounting for Sen. Furness-Smith the history of this particular amendment. I was on his objection to the word "safety". It is subjective, and we recognize there will always be a certain amount of subjectivity involved and that a magistrate will have to determine something that is subjective.

That is fair. How do you accept when somebody tells you, "I am in fear"? The question is in fear of what? The word "safety" was too nebulous, too broad, too vague, and we said they should be in fear of injury, and we said we could accept that. Yes, it is a little more restrictive, it is a little more exact, but it is a little more subjective. We tried to encompass in the word "injury" the concept of mental injury, and I am saying yes, "injury", it is a higher test. We agreed it is a higher test, because one can show a bruise and a doctor's certificate that you have been battered, and equally there is a form of proof to show mental injury. Yes, it is a higher test, but it is in pursuit of being exact. It is in pursuit of not being too nebulous and too broad that we came up with these terms. I really cannot understand—

Sen. Persad: Mr. Chairman, we were not privy to such private meetings. However, the reason we are against this amendment is not because we were not privy to such private meetings. I would say so clearly, but I think the Minister should remove "physical" and "mental" and leave it as "injury". That is our position.

Sen. Mahabir-Wyatt: Could I just make one point, Mr. Chairman? Sen. Furness-Smith has suggested that if you take the words "physical and mental" out that "injury" is enough because you are talking about fear of injury, but a lot of the fear that women go through is not fear of battering. It could be fear of rape. It could be fear of martial rape night after night after night, and that is not battering. We have taken out any possibility of having sexual intercourse by fear or threat in the bill, so I think that it is possible that people would end up in St. Ann's because they are so frightened, not of the threat of being beaten, but of the threat of being raped every night. I think that is what we are attempting to cover here. Perhaps Sen. Furness-Smith could answer the legal point as to whether or not "injury" would cover mental injury as well, because if it does, I do not mind. It is just that I do not want to have it limited to just the fear of battering, and that the fear of rape and other forms of violence are not covered in this bill.

Mr. Chairman: Before you respond, Sir, can we hear Sen. Ramchand?

Sen. Ramchand: I wonder if the Minister sees a distinction between "mental injury" and "mental suffering"?

Dr. Hosein: It may not be quite the same, because "injury" is something one may have to have a higher test, a higher burden of proof. I agree and I accept that. What we are talking about here is fear of these things.

Sen. Ramchand: But would not "physical injury" and "mental suffering" serve the bill?

Mr. Chairman: What the Minister is saying is that he is discussing fear of these rather than of a physical nature.

Dr. Hosein: If you are in fear, you already have mental suffering. So just to be fearful means you have undergone mental suffering. But to be in fear of mental injury is another matter again. Are you following the distinction?

Sen. Ramchand: Yes.

Dr. Hosein: All right.

Mr. Chairman: What the Minister is asking, apparently the Minister is willing to concede—or to consider. What he would want to be assured of however is that if we deleted it, there would be no chance that in the court mental suffering cannot be considered an injury.

Dr. Hosein: Mental injury.

Sen. Alexander: In my view, "injury" embraces all these things. What I am saying, however, is that "mental suffering"—I can well see an attorney requesting the applicant to have his psychiatrist or psychologist, or whatever, run a test on the applicant who expresses those fears to see whether those fears are genuine or not. Is that what is required under this bill, or speedy procedure, where the lady or man gives his subjective position of fear of injury and the magistrate accepts or rejects it? That is all I am saying. "Mental injury" seems to me to make the thing more complicated.

3.45 p.m.

Dr. Hosein: Remember what the person in court is saying to the magistrate is, "I am in fear that if this goes on my mental health may be affected." You just have to show that you are in fear. The point was raised by two hon. Senators. If you want to say to a court “I want a protection order because I am in fear,” something may or may not have happened in terms of something physical or violent and I want a protection order.

You see, Mr. Chairman, when we look at subclauses (a) and (c), we see that they refer to conduct. In other words, something physical has already happened. Subclause (b) refers to threats to engage in conduct. Subclause (c) refers to fear for his/her safety or his/her fear of injury. We are separating these concepts and we are saying in subclause (c) that you are applying for an order because this

person has engaged in conduct, or has done something that leads one to fear for injury, and I am saying the concept of injury was introduced in an attempt to be exact because that conduct may not have constituted a domestic violence offence which is covered in subclause (a). In other words, he may have mashed up the furniture and he/she is coming towards you and he/she says, "Listen, I have mashed up the furniture; I would come for you next." So that not only is it purely verbal but it is conduct that now leads the person to be in fear of injury.

I am saying there are instances where that conduct is geared towards affecting the mental health of the victim. As opposed to coming to hit you with the broomstick, it is to deliberately drive you mad, to use a loose term, and I am saying if you are going to seek protection under subclause (c) for that, then the applicant should be able to come into court and say, "Because of conduct already engaged in, I am in fear of being driven mad." "I am fearful that if this continues I would end up in St. Ann's." You are saying that you are in fear and therefore mental anguish has been caused. "I am also afraid that if this thing continues I would go off," to use a colloquial term. I am saying that it must be clear in the bill that the person can come and plead that. "I am not only afraid that he/she will hit me and break my arm, I am in fear that if this thing continues I would be in St. Ann's." On that occasion, you would not have to come to show that you are “off”, you are saying that you are in fear of going off.

Mr. Chairman: That is not the point Senators Alexander and Persad are making. They are being careful about this. It is not that they are objecting to fear being—

Dr. Hosein: Injury, physical or mental.

Mr. Chairman: Yes. What you are in fact introducing by using mental or physical is a more nebulous judgement. What you are suggesting is that it is possible for someone to stand before the magistrate and say, "I fear that if I remain in this situation of harassment or intimidation, that I will be mentally injured."

Dr. Hosein: Yes, that is exactly what I want to say.

Mr. Chairman: In my opinion it is fairly a much more difficult proposition to put to the court.

Dr. Hosein: No. I am saying that I want this bill to contain that concept. In fact, it quite often happens first before it gets to the fear of physical injury.

Sen. Furness-Smith: Of course, it does happen but the same thing happens in every case of an unhappy marriage where the people are going through hell, and whether it is words, oppressive or harassing conduct, whatever they call it, both sides probably would say, "Look, if this goes on I would go mad." And we are putting a magistrate; to my mind, this is madness.

Mr. Chairman: Sen. Furness-Smith, it appears that the Minister is very adamant. You have been seeking to persuade him but I put the question very clearly and he holds to his position.

Sen. Alexander: I just want to put one further point to the Minister.

Mr. Chairman: Not unless the Minister is listening.

Sen. Alexander: Suppose, for example, this conduct makes the applicant fearful of financial injury, that is out? Having put physical and mental, financial injury does not come in?

Dr. Hosein: I thought it was Sen. Alexander and Furness-Smith who wanted this kind of restriction because we could have left the word, "safety", you know.

Sen. Alexander: Injury.

Dr. Hosein: If you want to go back to "safety", I am willing. Are you saying that you want financial injury to be included?

Sen. Alexander: What I am saying is that the word "injury" is sufficient to cover all those aspects.

Mr. Chairman: If you move away from the precision of describing injury, you can introduce any argument for any kind of injury, including financial injury, in the court. He is seeking to persuade you to reflect on his suggestion that the fear should be of injury, without a precise description of the type of injury. Am I right?

Dr. Hosein: No, no, no, you are saying the reverse of what he is saying. He is pointing out that injury might well be interpreted to mean financial injury. This person is seeking a protection order to do all the things that people have pointed out have all sorts of attendant dangers, and I am saying let us be precise. I would hate to think that the word "injury" includes fear of financial injury as well. I should like it to say, "physical or mental", and I think that is clear enough.

Sen. Persad: Is the Minister saying that you need to specify for the magistrate to understand that injury means physical and mental. Are you saying that the

magistrates do not understand that? I am saying they do. If they do not, they should not be there.

Dr. Hosein: Mr. Chairman, we pursued the argument on a number of other points about our being very clear. We have undertaken to spend the time to be clear. I am saying that this is an occasion when we can be clear. Least a magistrate fail to appreciate the point, let us be clear. Is there a problem with being clear?

Mr. Chairman: All right, Mr. Minister, your argument is unwavering and I think at this stage the question must be put.

Dr. Hosein: Yes, I would go along with that.

Mr. Chairman: I therefore wish to read the amended clause as follows:

Sen. Alexander: Insofar as the Interpretation Act is concerned, masculine includes the feminine. So why "to herself or himself"? Why then not "to a male and female child, or to a male and female dependant"? The Interpretation Act is there—Volume I.

Mr. Chairman: Concession?

Dr. Hosein: No problem on that.

Mr. Chairman: So we are knocking out "to herself or".

Sen. Lequay: And we need to omit "or her" in the second line. It should be "fear for his safety", not necessarily "his or her safety".

Mr. Chairman: That is the old drafting. The new drafting would read:

> "... is fearful of injury, physical..."

All right, let me put the question on the amended clause. The clause should read as follows:

Sen. Alexander: You can put “herself” and that would mean “himself”, but usually they put "himself".

3.55 p.m.

Mr. Chairman: Let me deal with the amendments first.

Dr. Hosein: Let me just be clear on this point. You have to say injury to whom, and then you have to list those persons. We are listing "himself." If I could ask Sen. Alexander to concede the point. It is a very sensitive point with women

these days about making that distinction of that, “I know the law.” If Sen. Alexander wants to fight the point I have no difficulty in just leaving it as “himself.” But I think no harm is done to say “himself” or “herself.” I would like Sen. Alexander to leave it as it is. It does not really matter.

Sen. Alexander: It is so easy to let the Law Commission amend all the laws to include “himself” or “herself.”

Dr. Hosein: May I ask, for the last time, is Sen. Alexander insisting on “himself” alone?

Sen. Alexander: Not on myself.

Dr. Hosein: I am talking about the language. Let us deal with it so that we can put it to the vote. Do you want it to say only “to himself”?

Sen. Alexander: Here we are dealing with a legal—

Dr. Hosein: I know, but come to the bottom line. Are you insisting that the term be “himself” alone?

Sen. Alexander: Legally, I cannot agree that “himself” or “herself” should be there. I understand the philosophy, the politics and the sociology and what have you, but legally—

Sen. Furness-Smith: If the hon. Minister wants to have “herself” appearing, let him just put “herself” and then we would know that this bill is for women—which it is.

Dr. Hosein: Mr. Chairman, I was tempted to make a remark that may be unparliamentary which would be to refer to facetiousness, but I would not.

Sen. Furness-Smith: You have already done so. I am already accused of being facetious, but that is the way I operate because only with a little bit of joke here and there will we get people to see some sense, sometimes.

Dr. Hosein: In that case we will proceed leaving “himself” or “herself.”

Sen. Furness-Smith: Let us vote on it.

Question, on amendment, put and agreed to.

Mr. Chairman: The second amendment is that line 5 of subclause 4(1)(c) that the words "to the extent" be included before the word "that."

Question, on amendment, put and agreed to.

Continuing on line 5 all the words appearing after "parents" be deleted and that the following words be inserted: "is fearful of injury physical or mental to herself or himself or to a child or dependant of the spouse or the respondent."

Question, on amendment, put and agreed to.

Sen. Furness-Smith: Would you mind putting my amendment to this language in (B) (3)? The Minister complains that we reached an agreement last week.

Mr. Chairman: There is a simple device given to us. I will put the question on Sen. Furness-Smith's amendments.

Sen. Lequay: He seems to have put an amendment with alternatives. I am suggesting that we rule. You must decide which one.

Mr. Chairman Sen. Furness-smith, I think Sen. Lequay is correct. He is saying that your amendment offers alternatives, either do (a) or (b) as an amendment. He is suggesting that you need to be more precise and decide which of those alternatives you would prefer.

Sen. Furness-Smith: I do not think so, Mr. Chairman. In (B) (3) "Delete all the words appearing after the word "of" and in line two substitute the following: "the respondent must engage in such conduct of an offensive or harassing nature in respect of a prescribed person that the spouse fears that the respondent will commit a violent act against such or any other prescribed person." I leave it at that.

Mr. Chairman: Are you removing your second option?

Sen. Furness-Smith: Yes, I will.

Mr. Chairman: Sen. Furness-Smith is proposing that 4(1) (c) be amended as follows:

"Delete all the words appearing after the word "of" in line two and substitute the following: "A prescribed person that the spouse fears that the respondent will commit a violent act against such or any other prescribed person."

Question, on amendment, put and negatived.

4.05 p.m.

Mr. Chairman: We therefore move on to your amendment, Mr. Minister. Under section 4, you are proposing an additional subsection 2.

Dr. Hosein: I propose we create a new subclause (2) which will read as follows:

"The court when making a protection order, may impose one or more of the prohibitions or conditions specified in section 5."

Mr. Chairman: The Minister is proposing a new subclause (2) to read as follows:

"The court when making a protection order, may impose one or more of the prohibitions or conditions specified in section 5."

Question, on amendment, put and agreed to.

Dr. Hosein: I also propose a new subclause (3) which encompasses the concept of an undertaking. There was an argument that one could give an undertaking not to do all the different things to which the Government had some serious objections on the grounds that we are talking about serious conduct. However, it was pointed out that in clause 4(1)(b) what was referred to was "threats". It was not a question of "conduct engaged in" but merely the issuance of threats. We felt therefore, that we could accept the concept of an undertaking if it refers to section (b) "threats". We therefore have drafted the following amendment which reads as follows:-

"Where a person is for the first time before the court as a respondent and the court is satisfied as referred to in paragraph (b) of subsection (1) but is not satisfied as referred to in paragraph (a) or (c) of that subsection, the court may refrain from making an order under subsection (1) if the respondent gives to the court a signed undertaking that he would not engage in the conduct threatened or any other conduct referred to in subsection (1)."

Sen. Persad: Mr. Chairman, since we were not privy to the secret meeting and we just got this amendment, it is a bit difficult to make a decision but upon advice, we will not support it. It makes no sense.

Dr. Hosein: That is the concept of an undertaking once it is an issuance of threats.

Sen. Alexander: Mr. Chairman, I understand that this clause and the clauses which follow, are an attempt by the Minister to meet my proposed amendment to clause 8 of the bill. I have just read this proposed clause 3 and it appears to me that what is intended, is that where an application is made on the ground that the respondent has threatened to engage in conduct that will constitute a domestic

violence offence, and unless the respondent is restrained, the respondent is likely to engage in conduct that will constitute that or another violent offence. In such a case, I take it that in this proposed amendment an undertaking is needed. That does not take into account, applications under (a) and (c).

Having regard to the meaning of "prescribed offence", I am prepared to concede that because of the seriousness of these crimes, an undertaking may not be appropriate. I make that concession with hesitation. I will tell you why I make this hesitation. It is because what we we are dealing with here, as I sought to point out in my contribution, is an application for a protection order when the onus of proof is on the balance of probability. We are not dealing with the trial of criminal offences. It was because I had envisaged the distinction between the criminal offence, properly so called and the application for protection order, that I suggested that an undertaking would be appropriate in respect of subclauses (a), (b) and (c).

Since an undertaking, in these proceedings would require satisfaction on a balance of probability, it seems to me that if a man is going to undertake that he would not attempt again to murder his wife and that he would have confessed to the attempted murder. In those circumstances, I am prepared to concede that an undertaking may not be appropriate insofar as prescribed offences are concerned because of the seriousness of the conduct which is complained of.

However, in my view that does not apply to (b) or (c). The gravamen of (b) is a threat to engage in domestic violence offence and the likelihood that the respondent would engage in such offences. So no offence has been committed and therefore an undertaking that the respondent would not engage in such conduct, in my view, is appropriate to meet the circumstances.

I do not agree with the way this bill has been drafted because it is confusing. It is confusing in that it makes provision for the magistrate to go into the merits of the case and to be satisfied about certain things and not to be satisfied about other things. In other words, this provision here would militate against the speed with which an application under (b) or (c) could be completed by the applicant undertaking not to engage in the conduct. In an undertaking the respondent is called up and he says: "Look, I am prepared to give an undertaking that I would not engage in that conduct." There is no trial; he gives an undertaking. But the way this is framed, the magistrate has to go into the facts and if he is satisfied about this and he is not satisfied about that, then he would give an undertaking.

It defeats the whole purpose of the "undertaking" because one of the reasons I am suggesting the "undertaking" is that without the "undertaking", the entire bill would be punitive. The percept will be punitive. There would be no voluntariness provided for the respondent to seek to mend his or her way on his own motion. This is one of the prime purposes of the bill. The undertaking, if it is accepted, would be the only means provided by this bill which would assist in a reconciliation between the parties and which will tend to cause the respondent to desist from the act.

4.15 p.m.

Sen. Alexander: It is quite clear that that applies, insofar as threats are concerned. In my view the undertaking is also appropriate in respect of (c), that is:

> "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 dependant of the spouse or of the respondent to the extent that the spouse or the parent is fearful of injury, physical or mental, to herself or himself or to a child or dependant of the spouse or the respondent."

Now this is conduct which is not comprehended under the prescribed offence. So it is conduct which is less than battery; it is conduct which does not include physical violence and the gravamen of subclause (c) is the fear that injury will be caused to the applicant. The applicant, under (c) cannot go before a magistrate and obtain an order on the basis that the respondent has engaged in conduct of an offensive or harassing nature. That will not be sufficient for an order.

In order to get a protection order the applicant must prove that she or he is fearful of injury. If therefore, the respondent gives an undertaking that he will not injure whoever it is, either physically or mentally, that takes care of what this provision is seeking to prevent. I do not see, having conceded that undertaking may be given in respect of (d), why it cannot be given in respect of (c)? I believe it is because of a misunderstanding of what an undertaking is.

An undertaking in court is not as it is being said papers “a piece of paper”. It is a piece of paper in the same way as the order which a magistrate makes is a piece of paper. When the magistrate makes an order, he makes it on a piece of paper; when someone gives an undertaking, it is recorded on a piece of paper. So it is not “a piece of paper”. An undertaking is as efficacious as an order of the magistrate and it is put in writing only so that it is recorded, that the extent of his

undertaking is recorded in writing. If it is not in writing, then another magistrate who is coming to deal with an alleged breach of the undertaking, would not know the extent of it. That is why it has to be in writing. It cannot be in the magistrate's head and in the heads of the people who are there. That is why it is in writing.

In the first place, I am prepared to concede no undertaking in respect of (a) but I feel very strongly that an appropriate undertaking in respect of (b) and (c) will meet the situation. Now it is being said "Oh, a piece of paper". Who will prevent the respondent from doing it? When the magistrate makes the order, who will prevent him from breaking the order? There is nothing to prevent him, because he is not going to jail, he is prohibited by “a piece of paper”, by the magistrate.

Dr. Hosein: Mr. Chairman, the argument is not that it is only “a piece of paper”. The argument is that it is only so many words that they would not have to do it again. We are talking about persons who under (a) and (c) have engaged in certain kinds of conduct. I do not want to spend all the time going through the arguments which I put forward to Sen. Alexander, in saying that we, too, concede very reluctantly that we will even entertain the concept of an undertaking in the instance of (b). Because in (b) no conduct has been engaged in, at that stage it is words, threats, but that is as much as we are prepared to concede and I do not want to engage in any long justifications for that amendment.

Sen. Alexander: I am very sorry if the Minister felt that I was taking too much time to put forward my arguments because I had not completed my submissions.

Dr. Hosein: I have no objections at all to the time or the arguments. I am just saying that I did not wish to do the same.

Sen. Alexander: I hope the Minister did not misunderstand me when I said that the undertaking is being referred to as “a piece of paper”, because I never heard the Minister make that statement. I just said it is being said. Anyhow the Minister has succeeded in putting me off my track.

The point is and I stress, subparagraph (c) deals with “conduct”, whatever it might be, which is less than battery.

Dr. Hosein: It does constitute criminal assault.

Sen. Alexander: I said less than battery.

Sen. Furness-Smith: It may not constitute assault.

Sen. Alexander: It does not deal with conduct which amounts to battery, it deals with conduct less than battery. It may or it may not include an assault but in my respectful view, it is not the conduct which is engaged in that gives rise to the order. It is the fear of injury being done to the applicant which gives rise to the order. If there is an undertaking that injury will not be affected, then the undertaking will be as good as the order, in terms of efficacy and in terms of striking a balance between the maintenance of the relationship and, in my view, it will be a greater efficacy than an order being handed down by the magistrate from his bench which will be perceived as punishment. That is my respectful submission.

4.25 p.m.

Sen. Mark: Mr. Chairman, the idea or concept of an undertaking is one that I would like to have some further clarification on from Sen. Allan Alexander. He referred to subsections (b) and (c) of clause 4. You have a situation where—as it refers to (a)—the Senator indicated that where you have matters of serious offences being committed, an undertaking ought not to be given, but in instances where threats are made—like in (b)—or conduct of an offensive and/or harassing nature, that an undertaking can be given.

What I want to find out from Sen. Allan Alexander—the definition that we have here of an "offensive or harassing nature", we have some serious offences included here. You are talking about the damaging of property of a person, the persistent following of a person from place to place, among others. That could constitute not only physical but it can also constitute mental torture and we previously agreed that if there is fear of injury, physical or mental, to a child, the person in question or a dependant, then that in itself constitutes a very serious offence and therefore the person could use that as a basis to gain some sort of protection.

I am wondering, for instance, when threats are taken into account and also conduct of an offensive and/or harassing nature, whether, for instance we do not see those two areas as constituting possibly serious developments in such an arrangement that should warrant an undertaking, as opposed to a protection order. I am of the view that the areas outlined are sufficiently serious. So, Sen. Allan Alexander, could you clarify why you are of the view that threats or conduct of an offensive or harassing nature could be classified and the magistrate could grant or allow the person in question—the aggressor—to undertake that he or she would not commit these things in future when, as outlined here under conduct of

an offensive and/or harassing nature, there are very serious crimes involved here? I would like to have some clarifications on this.

Sen. Alexander: To the end of your submission, you almost touched on what I said. I said that with respect to (a), they are serious criminal offences. With respect to (b) and (c), they are not serious criminal offences, if they are criminal offences at all. The difference between an order and an undertaking is that the magistrate issues the order and the undertaking is voluntarily given by the respondent. That is all the difference. In other words, the respondent can undertake not to go onto premises where the prescribed person resides and he can undertake any of the things in (5). He can undertake the restraining order. The only difference is that the order is made by the magistrate and the undertaking is voluntarily given. That is the difference. There is no other difference.

Sen. Furness-Smith: Mr. Chairman, I am extremely disappointed at the failure of the hon. Minister to accept this proposal by Sen. Alexander. What he is saying is so very clear and simple that I cannot understand why it is not receiving more positive hearing.

Sen. Persad: Mr. Chairman, a fellow who has threatened to engage in a domestic violence offence, which may include murder—if I read it right—that domestic violence is a prescribed offence—is that fellow going to give an undertaking that he would not kill somebody?

Sen. Furness-Smith: If I could finish, and the hon. Senator would listen a little more clearly to people who know perhaps a little more about this, he would perhaps understand. Sen. Alexander has made it clear that he is not speaking about domestic violence offences under (a). He has conceded that. We are now talking about (b) and (c). Now Sen. Alexander and myself agree that harassing and oppressive conduct under (c) can be serious. It could have mental effects and injuries and all sorts of other things could happen. But as we have framed it—or are framing it—in our bill, it does not necessarily mean that it will happen.

Sen. Alexander's reasons were that he wants to give a chance for these relationships not to be totally spoilt by the Minister and his supporters round and about insisting in putting through this bill.

Dr. Hosein: Please, please. The Minister and the law is not doing anything to interfere with anybody's relationship. The fact that there is violence, harassment, that is what has damaged relationships and I want to object to Sen. Furness-Smith

taking the line that this House is engaged in anything that is going to damage relationships. Further than that, Sen. Furness-Smith is aware—

Sen.Furness-Smith: I was not finished, hon. Minister.

Dr. Hosein: I was taking objection before the Senator went forward and I am objecting to his suggestion.

Sen. Furness-Smith: If it is on a point of order, certainly, but surely I am entitled to say what I have to say without being interrupted every minute.

Mr. Chairman: Excuse me. There is no need to raise our voices, please. Are you objecting on a point of order, Mr. Minister?

Dr. Hosein: Yes. My point of order is that Sen. Furness-Smith is suggesting—and he used the words "the Minister" is doing something that is going to interfere in peoples' relationships and I am objecting to that.

Sen. Furness-Smith: Very well. The Minister says that he is not intending to, but we have made it clear on this side that the effect of his bill—if allowed to go unamended, as it might easily have been if some of us had not done a lot of work on it—would just have that effect, whether he likes it or not.

Now, if I may return to what I was saying. The purpose of Sen. Alexander's amendment was to give some chance in a doubtful situation of the marriage or relationship—whatever it is—not being soured by these proceedings. What he is suggesting will be in the discretion of the magistrate. We are not saying that the magistrate has to accept an undertaking. It will be in the discretion of the magistrate. Sen. Alexander makes the further point that it could happen at an early stage in these proceedings. Before the family has had the trauma of all its dirty linen being washed in public in the magistrate’s court, the man could come up and say "Mr. Magistrate, I heard that a complaint is being made against me. I am prepared to give an undertaking; I love my wife and I want this thing to be settled. I am prepared to give an undertaking. I do not want our family affairs to be discussed in this court." It will then be for the magistrate to make a decision. All we are doing here is giving that opportunity to the parties to maintain the relationship.

The hon. Minister and his advisors and everybody else who seem to be supporting him, for one reason or another—

Dr. Hosein: In response to that, Mr. Chairman, Sen. Furness-Smith can see from the amendments that we will be accepting the concept of "in camera" so the

family's dirty business will not be discussed in public in the open court because we have accepted that and we concede the point. We also accept the point that every effort be made to provide counselling to preserve the relationship. So how the relationship is to be preserved, is by providing an opportunity for counselling in a professional way, but we are not prepared to concede that an undertaking is going to be sufficient where conduct has been engaged in, as opposed to (b) which refers only to threats. So that any talk about this prohibition and you conceded (a) under (c) will somehow throw this tremendous strain on the relationship after conduct has already been engaged in. That is what has thrown the relationship in trouble.

4.35 p.m.

The fact that conduct [*Interruption*] Allow me to finish Senator. After conduct has been engaged in and we are saying that an undertaking is sufficient if the relationship is to be preserved in the light of such conduct, let them go for professional counselling. We have an amendment to deal with that; that their dirty linens be not washed in public. I assure you that we are reluctantly conceding that an undertaking may be given if threats are involved.

Sen. Alexander: On a point of order. Is it the intention of the bill that a respondent must be punished under subparagraph (c)?

Dr. Hosein: A respondent must be prohibited. That is what it is.

Sen. Alexander: Does the Minister concede that an undertaking is the self-imposition of a protection order? He does not concede that.

Dr. Hosein: I am saying that the court must prohibit when the respondent has engaged in certain kinds of conduct. That is the heart and soul of the bill. That is what we are here for; that we give the power to the magistrate to prohibit the respondent who finds himself subject to these prohibitions because he has engaged in certain kinds of conduct. That is what this bill is all about and it is a major concession to even think about an undertaking as opposed to specific prohibitions and we conceded solely on the point that under (b) only threats would have been engaged in at this point. It is a reluctant concession.

Mr. Chairman: I am sorry, but we will be very, very keen on the argument after tea.

4.40 p.m.: *Sitting suspended.*

5.10 p.m.: *Sitting resumed.*

Mr. Chairman: Mr. Minister and Sen. Alexander in particular, I was attempted to make a tactical withdrawal when I saw the two of you conferring over the matter. Sometimes I think we would have made a lot more progress if we had allowed you another five minutes with each other. But I am sure we are all mature enough and can continue the discussion.

Dr. Hosein: I wish to ensure the Chair that we enjoyed the battle.

Mr. Chairman: Sen. Mahabir-Wyatt.

Sen. Mahabir-Wyatt: Mr. Chairman, in relation to this particular amendment that has been moved by Sen. Alexander, I understand that the current procedure in the High Court where an undertaking is given is that the judge in that case—I suppose—consults with the applicant as well as the respondent. I am very, very strongly against any idea of an undertaking where it deals with domestic battering, but where it deals with (b) and (c), if in fact the applicant and the respondent are consulted before the order is made, I think that it would be preferable in the case of (c) to have an undertaking rather than an order in the first instance, and I would like to support Sen. Alexander's amendment in this.

Dr. Hosein: Mr. Chairman, we too are coming around to the view that (c) as well maybe acceptable on the basis of what Sen. Mahabir-Wyatt has referred to, and what I understand has been the history of the matter in the UK courts, where it has proven to be a very useful device, which I think only lends weight to the argument, and I think we could concede the point. Again, my understanding is that the practice is that the applicant will be heard in the matter as to whether an undertaking will be accepted by the court. In other words, the magistrate determining whether he will accept—because the wording is "may" accept an undertaking—that the applicant will be heard in that, and I understand that is the normal process of the court and therefore we will find it acceptable.

In that regard, Mr. Chairman, we would want to—

Mr. Chairman: Will it suffice to strike out (c)?

Dr. Hosein: Yes. Now, in order to make it absolutely clear—and clarity is what we are hoping to achieve here—we would therefore propose, notwithstanding what we understand are the processes of the court, that we would

add (b) or (c). Then, of course, we will have to delete (c) in the next two lines. So it will now read:

> "Satisfied as referred to in paragraph (b) or (c) of subclause (1), but is not satisfied as referred to in paragraph (a)".

And we leave out “or (c)”. In that section, the court, after consulting with both the applicant and the respondent refrain from making an order, to be absolutely clear.

> "May, after consulting with both the applicant and the respondent, refrain from making an order under subsection (1) if the respondent gives to the court a signed undertaking that he will not engage in the conduct threatened or in any other conduct referred to in subsection (1)."

Sen. Alexander: Mr. Minister, in line three, "and the court is satisfied as referred to in paragraph (b)", that is going out.

Dr. Hosein: No, no. It will be (b) or (c). Let me read it again for the benefit of Sen. Alexander, on that point. If we start reading from the third line—

Sen. Alexander: No. Read from the beginning, please.

Dr. Hosein: Okay.

> "Where a person is for the first time before the court as a respondent and the court is satisfied as referred to in paragraph (b) or (c) of subsection (1), but is not satisfied as referred to in paragraph (a)...

And we strike out "or (c)" there.

> "...of that subsection, the court, after consulting with both the applicant and the respondent, may refrain from making an order under subsection (1) if the respondent gives to the court a signed undertaking that he will not engage in the conduct threatened or in any other conduct referred to in subsection (1)."

That is how it would read.

Sen. Alexander: The problem I have with that is by the use of the words, "and the court is satisfied". That imports a hearing by the magistrate.

Dr. Hosein: But he has to be satisfied. He has to be.

Sen. Alexander: It imports a hearing that there is satisfaction on the evidence. May I make this suggestion for your consideration?

"Where a person is for the first time before the court as a respondent and the application is made on grounds specified in paragraphs (b) or (c) but not paragraph (a), the court may, after consultation with the applicant, at any stage of the proceedings, accept an undertaking in writing from the respondent..."

And ending up as you have—

Dr. Hosein: I understand that approach. But if you go back to the start of paragraph (4), you will see the term "the court is satisfied", and that is a concept that is already there. Because there is no reference to grounds in any of either (4) or any of the clause, but there is reference to, "the court is satisfied", and you have to be consistent with that.

Sen. Alexander: No, Mr. Minister, with the greatest respect, the satisfaction here, where on an application made in accordance with this Act, the court is satisfied on the balance of probabilities that; it means that after hearing the evidence the court is satisfied on the onus of proof, which is a balance of probabilities, that (a), (b), or (c) has occurred. So "satisfaction" means hearing. It imports a hearing.

Mr. Chairman: Sen. Alexander, how would you prefer it to read, in order that we may proceed more quickly?

Sen. Alexander: I have just read out what I am suggesting.

Mr. Chairman: Sorry, I missed it.

Sen. Alexander:

"Where a person is for the first time before the court as a respondent, and the application is made, on grounds specified..."

If you do not want “grounds specified”;

"...and the application is made under paragraphs (b) or (c) but not paragraph (d), the court may, after consultation with the applicant at any stage of the proceedings..."

meaning the beginning, the middle or the end;

"...accept an undertaking in writing that the Respondent..."

And we finish up where you were. In other words, as soon as the case is called, the undertaking could be given. The undertaking could be given when evidence is being led but not completed, or it could be given at the end of the evidence.

Mr. Chairman: All right. Sen. Alexander, I am sure that you and the Minister are one in terms of the direction that you want the amendment to take. What seems to be outstanding is some satisfaction, some mutual agreement on the wording. Mr. Minister, if you will allow me.

Dr. Hosein: Yes.

Mr. Chairman: It seems both of you are at one on the general direction of the amendment, but the only thing that needs to be tightened up is the wording. Sen. Alexander has just made an extensive amendment in wording that in his opinion satisfies the direction in which you are both heading.

Sen. Alexander: I would suggest an appropriate undertaking, as I suggested at the meeting—

Mr. Chairman: Further amendment to the wording.

Sen. Furness-Smith: I filed a little amendment which was more or less—it has been massaged a little more since.

Mr. Chairman: So you are going along generally with the language?

Sen. Furness-Smith: Absolutely. You see, it is basically there.

Mr. Chairman: It might be better for the whole process if we concentrate on what is generally acceptable and modify it as we need to.

Dr. Hosein: You see, Mr. Chairman, the objection to that approach, as I understand it—and it is consistent with a point that has been made, I think, by many Senators—is that the powers you are giving to the court are serious ones, and you want to ensure that as much is done to satisfy the court, because in the end the court may decide, "I am not going to be satisfied with any promise of undertaking in this matter." Therefore you want the full opportunity for the court to be satisfied, and you want to have in the phrase that the court is satisfied, whatever is necessary to satisfy the court. In other words, once we are prepared to give to the court the power to do all these things and which leave some people queazy because of the constitutional implications, let us ensure that the court is satisfied. If at the end of the court being satisfied, it is satisfied that an undertaking is appropriate, let the court be satisfied.

Sen. Alexander: That is included in "may".

Mr. Chairman: I think that the use of the word "satisfaction" coming from you or coming from Sen. Alexander carries different connotations.

Dr. Hosein: We are trying to achieve the same thing, yes, but this thing about the "grounds specified", and what have you, we have a little problem with that language.

Mr. Chairman: Yes.

Sen Alexander: It is a simple thing. Grounds are (a), (b), or (c) in 4(1); those are the grounds. Or take out "grounds". If you do not like “grounds”, say under paragraph (b) or (c).

Dr. Hosein: That is what we have said.

Sen. Alexander: But you are talking about "satisfaction". When you speak about satisfaction, Mr. Minister, you talk about a court being satisfied beyond reasonable doubt, being satisfied on a balance of probabilities, but that is hearing the case. That is hearing the evidence.

5.25 p.m.

Dr. Hosein: The court must want to be heard in case the applicant objects to an undertaking.

Sen. Alexander: Well then he may not give it. After consultation with, he may, not that he shall. This is so simple.

Sen. Furness-Smith: So simple.

Sen. Ramchand: I will support that. I think "may" covers the question of satisfaction so you do not need to say anything about satisfaction once you have "may".

Sen. Persad: The court may be satisfied.

Sen. Furness-Smith: I do not know what the hon. Minister is being told. This is so simple and everybody in this Senate has explained in the course of this second reading debate, that the magistrates are already overworked. It is a serious matter, the amount of extra work that may come to the magistrate's court. It is not me being facetious. This is a serious matter. Apart from making every sense, this proposed amendment could save a lot of magisterial time and it could also provide the basis for the relationship, instead of being torn asunder, continuing. But if you are going to have a hearing every time so that the magistrate has to be satisfied, then there is no point in it at all, just a waste of time.

Mr. Chairman: Now that you have made your point we would give the Minister a bit of time to process it. I want to allow some time for him to process what you have offered.

Dr. Hosein: Mr. Chairman, can we get a few minutes to come up with a clear draft? I think Sen. Furness-Smith's actual draft is not quite clear. It is a problem of language here. Maybe we can go on in the meantime.

Mr. Chairman: I have no objection. Sen. Alexander, the Minister is asking that we proceed without having reached agreement on that particular clause. He wants to take a look at Sen. Furness-Smith's draft and we will come back.

Sen. Alexander: Very well.

Dr. Hosein: Mr. Chairman, I was suggesting that while the language to incorporate the point is worked on, that we proceed on other matters which I think we can get on with.

Mr. Chairman: That means that we can go on to clause 4 (4).

Dr. Hosein: Yes, I think we can go to that. I do not think it will be a problem.

Mr. Chairman: I do not see it being a problem. It has nothing to do with the concepts that we are talking about.

Dr. Hosein: Mr. Chairman, I propose that a new subclause (4) be added as follows:

"An undertaking shall be in force for such period as the court determines but not exceeding 12 months from the date it is signed."

Sen. Alexander: Given.

Dr. Hosein: "...from the date it is given." So the last word is “given”.

Question, on amendment, put and agreed to.

Dr. Hosein: There is a new subclause (5) which reads as follows:

"A breach of an undertaking constitutes a contempt of court."

Sen. Alexander: Mr. Chairman, I have the greatest of problems.

Mr. Chairman: Let us hear you, Senator.

Sen. Alexander: Where does the magistrate have power to convict, or whatever, for contempt of court?

5.35 p.m.

Mr. Chairman: Could we put that in abeyance and move on to subclause (6)?

Dr. Hosein: Yes. We put that in abeyance. Maybe Sen. Alexander might or might not be able to help us. Could we move on to subclause (6)? If there is a need to redo subclause (5), based on the point Sen. Alexander is making, we can do that. I do not think it would upset subclause (6) which will read: "The court is not precluded from making a protection order by reason of an undertaking being in force."

Sen. Alexander: What is the purpose of an “undertaking”? An undertaking and a protection order is the same.

Mr. Chairman: I think that the protection order should override the undertaking.

Dr. Hosein: My understanding of the intention here is that we are making it absolutely clear that there is not going to be the potential for an argument in court, that one thing is in effect and therefore the court's power to now make a protection order is in doubt. I would have thought it would have been the kind of clarity on which the hon. Senator seems to be insisting. It seems to be in that vein.

Sen. Alexander: One can envisage a situation where there is an undertaking? One cannot envisage a situation where there is an undertaking and a protection order in the same terms.

Mr. Chairman: Is it possible that the subclauses are reworded such that upon a protection order being made the undertaking is overlooked?

Sen. Alexander: No. Once the undertaking is given, it is given. What occurs thereafter is if there is a breach. The undertaking is given and it is in force for such period of time as the court determines. If it is breached then it comes to an end and a protection order may be made.

Mr. Chairman: If subclause (5) is valid then you also have *[Inaudible]*

Sen. Alexander: We still have to deal with subclause (5). The position is, if the respondent is not given a sufficient undertaking, the magistrate refuses to

accept it, goes on and hears the case and makes such protection orders as he considers necessary. This is how I conceive it.

Dr. Hosein: I think the idea here, as I say, was to be clear and not to be an argument that one is prevented from issuing a protection order because an undertaking is in force. I think the point Sen. Alexander is now making is that you could not conceive of the need for a protection order unless an undertaking has been breached. I take it that that is the point.

Sen. Alexander: Yes.

Dr. Hosein: Is there not a possibility of your having an undertaking with regard to some matters and a protection order with regard to others? You can have that possibility. Therefore, it may be useful to ensure that there is clarity on that matter.

Sen. Alexander: If I were a magistrate and the respondent would not give an appropriate undertaking which will cover every aspect of the case, I just would not accept it.

Dr. Hosein: Sen. Alexander is saying that he cannot envisage circumstances in which the magistrate may accept an undertaking with regard to certain things and a protection order with regard to others. We have already drawn the line between such matters to which an undertaking will not apply. Once he has done certain things, you would want to issue a protection order and you may want to accept an undertaking with regard to other things when the court has the power to accept an undertaking. That is a possibility.

Sen. Alexander: For example, you are talking about if an application is made under (a) and one under (b)? But you see, he cannot take an undertaking in respect of (a).

Dr. Hosein: It is not easier to err on the side of caution and maintain this paragraph so that if any circumstances come up that may lead to any doubt, this paragraph is there and makes it absolutely clear.

Sen. Alexander: The part of the amendment which was accepted states: "A signed undertaking or an undertaking in writing that he will not engage in the conduct threatened or any other conduct referred to in subsection (i) which also includes (a).

Dr. Hosein: The magistrate may not accept that. There are circumstances in which you can have two operating at the same time and you do not want the court's authority to engage in that question because somebody says, "This is in force and therefore you cannot do that." If you are going to err, let it be on the side of caution.

Sen. Ramchand: What is the point of having two operating at the same time?

Sen. Lequay: Mr. Chairman, is it not possible that there can be more than one applicant against the same respondent?

Mr. Chairman: In the Trinidad context, of course.

Sen. Alexander: In respect of one application for the first time.

Sen. Lequay: He gives an undertaking.

Sen. Alexander: But he cannot give an undertaking in the second.

Sen. Lequay: He could then get a protection order, but then the undertaking is still in force in respect of the first offence.

Dr. Hosein: I think the point is that one could imagine any series of circumstances that could give rise to any combination or permutation of circumstances, protection orders, etc.

Sen. Furness-Smith: Could I make the point, I am not sure, under (5), about this business of contempt of court.

Mr. Chairman: Let me formally dispense with subclause (6) and then we will return to subclause (5).

The question is that clause 4 (6) be accepted as proposed.

Question, on amendment, put and agreed to.

Clause 4(5).

Sen. Furness-Smith: I do not know whether the Minister is making a suggestion but I have a draft here that might be of some assistance. Surely, what is needed is something that will make an undertaking equivalent to an order. I would suggest something on these lines: “An undertaking under this clause shall have the same effect as though an order had been made.” That would mean, of

course, that if you breach your undertaking you can be made guilty of an offence under clause 18.

Dr. Hosein: We considered that and the way we drafted it would read as follows:

"The breach of an undertaking shall be treated as if it were a breach of a protection order for the purposes of this Act."

Sen. Alexander: “For the purposes of this Act” does not add anything to it.

Dr. Hosein: Okay, we could stop at “order.” For my own edification on this point, the magistrate does not have the power in law to convict someone for contempt.

5.45 p.m.

Sen. Furness-Smith: What he does have is special provisions under the Summary Courts Act enabling him to keep discipline in his court.

Dr. Hosein: I think it is for a period of—

Sen. Alexander: I think he can charge him $480.00.

Dr. Hosein: Are there not instances in court where the magistrate can hold someone for contempt?

Sen. Alexander: Not as such. For misbehaviour in the court he can. It is a sort of contempt.

Dr. Hosein: Mr. Chairman, we agree on the word "therefore". Paragraph 5 will now read:

"A breach of an undertaking shall be treated as if it were a breach of a protection order."

Mr. Chairman: We have not completed subclause (3).

Dr. Hosein: Mr. Chairman, we have some difficulty with the wording of "grounds specified." We would like it to read: "

“The concept at any stage of the proceeding."

I think it is the concept we want to accept because it would mean since both parties would have to agree on an undertaking that there is no point proceeding with all of these hearings, which I think is the point Sen. Alexander is making. I will read it from the beginning:

"Where a person is, for the first time, before the court as a respondent and the court is satisfied as referred to in paragraph (b) or (c) of the subsection; but is not satisfied as referred to in paragraph (a) of that subsection, the court may, at any stage of the proceedings refrain from making an order under subsection (1) if the respondent...."

Sen. Alexander: Satisfied as to what?

Dr. Hosein: If it is satisfied that (a), (b) or (c) applies because that is what gives him the power to agree to an undertaking.

Mr. Chairman: Mr. Minister, I get the impression that you are not totally aware of the area in which you have locked horns with the Independents. I think you are using the word "satisfaction" in terms of an emotional thing and the goodly Senators are seeing "satisfaction" as a process of law. Am I right?

Dr. Hosein: Mr. Chairman, since we are agreeing that the undertaking is only possible under (b) and (c) but not under (a), the court must be clearly satisfied that in relation to (a) is involved. This is what we are saying here. The magistrate has to be satisfied that (a) is involved; if he is not so satisfied, he cannot now agree to an undertaking because if anything under (a) is involved, there is no undertaking.

Sen. Alexander: He can give an undertaking when the application is made under (b) or (c) and not (a). That is all.

Dr. Hosein: He must be satisfied at the level of the application. Correct me if I am wrong. To say that the court is "satisfied", the court may be satisfied at the point of the application. But the court has got to be so satisfied because it makes a difference in law whether the court is satisfied or not. Therefore that phrase, to my thinking, must be included.

You are implying that a court cannot be satisfied until some sort of evidence is led. You are saying that if an application is made, the court may be satisfied at that point in time.

Sen. Alexander: Mr. Minister, an application is made on a form prescribed in the bill which sets out the details of the alleged conduct. The magistrate reads that and sees whether the application is (b) or (c). That is not a satisfaction in law. All he has to see is if the application is made under (b) or (c). Once you introduce "satisfaction", you are talking about an evidential assessment.

Sen. Furness-Smith: Let me go a little further than that, to assist the hon. Minister. Clause 4 is the critical area in this bill which gives the jurisdiction to the magistrate to make an order. That is predicated and that is the way these things are expressed. The magistrate must be satisfied that (a), (b) or (c) has happened and he then makes an order. The hearing is in order to satisfy the magistrate about this. You must have evidence before a magistrate could be satisfied.

We are suggesting that when an application is made, it has to specify and does specify, not (a) but (b) or (c). Before the hearing and before being satisfied about anything, the magistrate could ask the wife: "Well, your husband is offering some kind of undertaking. Are you interested in that?" And in five minutes, the whole matter can be finished and the magistrate could get on with the next case. He has not heard a stitch of evidence. All he has looked at is the application, the application which is under (b) or (c) but not under (a). If the application is under (a), then the magistrate would have to say: "No, I cannot take you on, I am not listening to any talk about undertaking.". He would have to carry on with the case unless they withdrew that. But if it is just being seen, as is mentioned in the application, and the man comes and confesses and gives an undertaking, that is the end of the matter. Everybody can go home. It is just as though the magistrate sat for a week, listening to all the evidence and comes to a conclusion, is satisfied and makes an order and you just achieve the same thing in five minutes instead of one week. That is all.

Dr. Hosein: I think the difficulty that is being expressed here is the idea of fitting in that concept in the one subclause and we may have to look at an additional subclause in order to achieve that. Maybe we can proceed Mr. Chairman, while we look at the drafting of that. Let us leave it to the draftsmen to incorporate the concept which Senators are talking about because there is a difficulty in introducing the wording here as suggested by Sen. Furness-Smith into the wording that we now have.

Assent indicated.

Clause 4 deferred.

5.55 p.m.

Clause 5.

Question proposed, that clause 5 stand part of the bill.

Mr. Chairman: Is it possible that we will not have any amendments to this clause?

Dr. Hosein: We will have amendments, but the question is, will we agree? I am under the impression we have agreed.

Mr. Chairman: Let us deal with subclause (1). It is on page 5 of the Minister's proposals.

Dr. Hosein: In subclause (1), I am of the view that we have agreed that in paragraph (e) which is of subclause (1), substitute for the word “contacting”, the words “speaking or sending messages to”. That is in the interest of clarity in response to points made. Just one point to Sen. Persad on this question of discussions. Discussions were held with those who had proposed amendments and it was not an attempt to exclude or include anyone in particular.

Sen. Persad: That makes it worse because I have amendments also.

It is doubly insulting.

Dr. Hosein: I am sorry. I think your amendments were dealt with under “spouse” and we have crossed that in the committee stage.

Sen. Persad: No, Sir, you are rubbing more salt in the wound.

Mr. Chairman: I think that it was an oversight on the Minister's part.

You are suggesting that “speaking or sending messages to”. Do we have any objections to that? If not, I put the amendment which should read as follows in subclause (5)(e): “prohibit the respondent from speaking or sending messages to a prescribed person”.

Question, on amendment, put and agreed to.

Dr. Hosein: In paragraph (f), substitute for the words “the Court may direct the respondent”, the words “direct the respondent".

Sen. Alexander: And the “dash”.

Mr. Chairman: In paragraph (f), we substitute the words “the Court may direct the respondent” the words “direct the respondent”.

Question, on amendment, put and agreed to.

Dr. Hosein: In paragraph (g), delete the first two lines and the whole of sub-paragraph (ii). So (g) will now read "prohibit the respondent from taking possession of specified personal property, being property that is reasonably used by a prescribed person."

There is also an amendment to the word “person”, “prescribed persons specified in the application”. We are also amending that language to read, "used by a prescribed person specified in the application".

Mr. Chairman: Paragraph (g) now reads:

> "prohibit the respondent from taking possession of specified personal property, being property this is reasonably used by a prescribed person specified in the application".

Question, on amendment, put and agreed to.

Dr. Hosein: After paragraph (g) add the following new paragraph which will now be listed as (h), "direct the respondent to return specified personal property that belongs to the applicant or a prescribed person".

Sen. Alexander: I would suggest "to return specified personal property which is in his possession and which belongs to..."

Dr. Hosein: Yes, I see the point. "...specified personal property in his possession...". The word “which” is not necessary; "...and which belongs..."

I would like to clear one conceptual point with Sen. Alexander. The concept of “possession” incorporates the concept of “control”.

Sen. Alexander: Yes. If you wish we could put "in his possession or under his control".

Mr. Chairman: That new subclause (h) should read—

> "direct the respondent to return specified personal property in his possession or under his control and which belongs to the applicant or a prescribed person."

Question, on amendment, put and agreed to.

Sen. Alexander: Should we not say here “or a prescribed person specified in the application"?

Dr. Hosein: "...or a prescribed person specified in the application". What about the idea that the respondent may have taken—I am told the typical case is hiding the children's passports. So that a child involved may be “a prescribed person" but may not be “an applicant”. So you may want to leave it as “a prescribed person” insofar as a child would be “a prescribed person”. I am told that the really common practice here is taking the passports.

Sen. Alexander: There is nothing wrong with specifying the name of a child in the application.

Dr. Hosein: Mr. Chairman, you may run the risk of the applicant, not being sophisticated, failing to list everything. A person may not be sophisticated or she may not have legal help, and if you had failed to include this in the application and you now remember, "Well, you know it is the children's passports"; would it not be safer to just say "or a prescribed person"?

6.05 p.m.

Sen. Alexander: Magistrates amend applications and information every day.

Dr. Hosein: We are talking about speed here. I suppose the question is: Is any harm done or any danger encountered by leaving it as we have it here?

Sen. Alexander: So far as I recall, later on we will be dealing with "prescribed persons" being parties to the proceedings.

Dr. Hosein: Can we leave it as it is?

Sen. Alexander: Okay, I suppose it can work**.**

Dr. Hosein: If we may go on, Mr. Chairman. In what is now paragraph (h), substitute for the words "subparagraph g(i), the words "paragraph (g)".

Sen. Lequay: May I suggest that we renumber the latter paragraph "(h)" as "(i)". That (h) will now be (i). So we letter "(h)" as "(i)" and substitute for the words—

Dr. Hosein: Substitute, in that paragraph—what is now "(h)" and we are renumbering "(i)"—"subparagraph (g)(i)" the words "paragraph (g)" because we have eliminated (g)(i) and (ii). We are substituting paragraph (g) because it says paragraph (d) or (e) or subparagraph (g)(i). We are now saying or paragraph (g). I am sorry Mr. Chairman, I think I am realizing that there is no need to use the word "paragraph" anymore, you could just say (d), (e) or (g).

Mr. Chairman: So the amendment is that you are renumbering paragraph (h) as (i) and substituting for the word "subparagraph (g)(i)", the word "(g)".

Question put and agreed to.

Dr. Hosein: After "new paragraph", this is after (j) because what is (i) now becomes (j)—and there is no amendment to that—we renumber what is "(i)", "(j)" and we now create a new paragraph (k) to read as follows—

> "direct that the applicant or respondent, or both, seek appropriate counselling or therapy from a person or agency approved by the Minister in writing."

Sen. Mahabir-Wyatt: Mr. Chairman, I realize that this is a new paragraph which came out of the consultation exercise that took place last week. Incidentally, I did submit amendments and I was not invited to participate in that consultation. These amendments are not just legal drafting points, several of them are amendments of considerable substance. I would submit, with the greatest of respect, that this bill is just not a legal one; it is a bill that has to do with matters outside of mere legal drafting and I do think that the Constitution of the country put Independent Senators that were not lawyers for a reason and, I would suggest that it might have been polite, at least, to have those of us who have some experience in this field, to have a chance to contribute to those discussions.

I support this amendment, of course, because I think counselling is very important but I would also like to propose that the court be given the power to order a psychiatric report, simply because in many cases of domestic violence, particularly the severe battering ones, there can be problems of mental imbalance, in other words, psychopathic behaviour. I do not know what the appropriate wording would be but I think the court should have that option because in many cases it is not just counselling or therapy that is needed, it could be psychiatric care that is needed. I do not know how the wording can be done but I suggest that perhaps it would be appropriate to put it somewhere in this particular subclause. Thank you, Mr. Chairman.

Dr. Hosein: My initial response to that—and I had no notice of that amendment—is that it would go against the grain of speed in procedure. If what you are suggesting is that the court may not be satisfied or make its determination; it had to wait, or if necessary, require a psychiatric evaluation, it violates the entire principle of speed. Secondly, I would have thought that such a procedure of seeking that would be involved where one is determining the

criminal matter. What is being determined here is whether there are grounds for issuing a protection order or accepting an undertaking.

So to introduce the idea in this bill of the court requiring, in certain instances, a psychiatric report, this really may not be the place for it, when what the court is being called upon to determine is whether a protection order should be issued; what those prohibitions must be; whether an undertaking is acceptable. To then have to stop and say, "Look I think I better get a psychiatric evaluation," goes against the grain and is best left when the criminal matter is being determined; where that may be relevant and more important.

Sen. Mahabir-Wyatt: I was not suggesting, Mr. Minister, that this should be a requirement, just that the court may—if the court so feels that this is necessary—order the psychiatric report to be made, because it could be very relevant, particularly where for example, narcotics are involved because a lot of battering takes place where the batterer is under the influence of drugs or narcotics of some sort. I think that in the Narcotics Act there is such a provision and it may be very relevant—may be. Not that the court may require it, but the court should have that power if the court feels that this is necessary, which will simply mean either sending the applicant or the respondent to get a private psychiatric report or one from the Government—as you say, most of the psychiatrists work for the Government. I do not think that the matter of speed should be paramount.

6.15 p.m.

While I recognize that the matter of speed is important, I think that there are certain things involved in protection that have to be taken into consideration. I think if you are going to talk about counselling or therapy there may be times when that is totally irrelevant because the person is just unable to cope with counselling or therapy for very definite psychiatric reasons.

Dr. Hosein: But the court may do that. I agree on the point that there may be instances when the court may think that it is a waste of time but remember clause 5 which says:

"Subject to this Act, a protection order may..."

Now what you are suggesting is that a protection order may require the person to get a psychiatric evaluation.

Sen. Mahabir-Wyatt: Yes.

Dr. Hosein: One wonders to what end. Is it as a constraint? Let us assume in your case, the court has reason to believe that this person is psychiatrically imbalanced, there is something pathological involved—whether the court seeks to determine that in a definitive way by getting a psychiatric evaluation, of what value is that at this stage? I do not see the value of it. Whether the court does or does not find that out at that stage, the court has determined that it will issue a protection order. Why require that as part of the protection order under any circumstances?

Sen. Mahabir-Wyatt: Surely, if the person is a psychopath the court will then not issue a protection order because a protection order will not work. It will not be effective if you are dealing with a psychopath.

Mr. Chairman: It seems to me that the Minister is not really adverse to what you are suggesting, but he seems to apply that this is not the particular clause of the bill that should accommodate such a suggestion. Am I right Mr. Minister?

Dr Hosein: Yes.

Mr. Chairman: There might be some possibility to introduce your very worthwhile suggestion in some other part of the bill. Have you looked at the rest of it or probably drafted another clause altogether to give that authority to the magistrate?

Sen. Mahabir-Wyatt: Could someone advise me where this should be? I am quite happy to take the suggestion.

Sen. Alexander: May I say that I am in total agreement with Sen. Mahabir under this particular clause. I had thought that the direction of appropriate counselling or therapy was wide enough to include psychiatric treatment. If it is not wide enough—what I am saying, it is the Minister who has to approve these persons and agencies, so if he is not prepared to approve psychiatrists, then you will have to put it in here.

Dr. Hosein: I want to take the other side of the coin to satisfy that prohibition, that the agency would have to report to the court. In other words, if someone is ordered by the court to seek such, the reasonable presumption is that that agency would be expected to report to the court that this has been complied with. Clearly—maybe I will fall from my own clarity argument here—the agencies that will be listed will include both public and private psychiatric services. In fact one can see that it will be first on the list.

Sen. Alexander: The point about this is that a breach of this direction will be a breach of the protection order. I do not think it is so much an evaluation as treatment, if it is required to prevent that behaviour.

Dr. Hosein: In other words, I think the point Sen. Alexander is making is that once the section involves treatment it goes beyond a mere evaluation. It means that the person would have already been compelled to accept counselling and treatment which is even beyond the question of assessment. The point that I am making is that what Sen. Mahabir is trying to achieve is already incorporated in the amendment we have moved and it goes beyond what Sen. Mahabir is trying to achieve.

Mr. Chairman: Do you accept that?

Sen. Mahabir-Wyatt: Yes. If I discover next week that it does not, I will try to bring it under another section.

Sen. Persad: I have two questions. The first one is that you take out a protection order in respect of someone and now I notice that you are directing the applicant. All your five subsections prohibit the respondent from various activities or direct him in a certain direction. Suddenly I notice that in (k) you are directing the applicant also. I am wondering whether that does not go against the grain.

Dr. Hosein: No. It is in keeping with the concept of preserving and this is why I was so strong in making the point when the matter of preserving the relationship was raised, that this amendment will deal with it because you have two parties involved.

If that is your objective in this clause, you have to give the magistrate the power to direct both parties because you must remember the objective of this. It is not merely to pass judgment that the respondent is a sick human being but that in a relationship even if it is not six of one or half a dozen of the other, it may be seven to five.

Sen. Persad: In that same vein then, do you not think it would be useful for the same condition to apply in the case of an undertaking? This is why I thought it would be separate because in the case of an undertaking where the person has indicated a tendency towards domestic violence, I think that if you are really serious about preventing domestic violence, you would nip it in the bud and therefore let this person go for counselling also. So in the case of an undertaking, I think that the same thing should apply.

Dr. Hosein: What you are saying is that the person will then give an undertaking to go for counselling. I thought that is what you were saying.

Sen. Persad: No. When a person has given an undertaking to keep away from domestic violence, I would think that it is appropriate also, that the person be directed to seek counselling because he has shown a tendency towards domestic violence. What you are saying here is only “subject to this Act a protection order may”; it says nothing about an undertaking.

Dr. Hosein: This goes back to the point that we were discussing earlier where the magistrate may not only accept an undertaking on one hand, but give you an order on the other. In other words he says “okay, I accept your undertaking not to do this but I am now issuing an order that you go for counselling” and you can have both at the same time. That is a good example. We have already been through that point. There is nothing to prevent the magistrate from saying, “I accept your undertaking not to do certain things but I am issuing an order that you seek therapy and counselling.”

Sen. Persad: Let me just finish the point. We had an argument about both being in effect. The problem now is that it is going to be the normal case. If the undertaking is serious, the person should go for counselling and therefore a protection order must be given. I think you should consider seriously.

Dr. Hosein: You are forgetting the word “may”. The magistrate “may” or "may not" do it based on the circumstances.

Sen. Persad: Let me ask you a question. If a person gives an undertaking, are you saying that the magistrate would not send him for counselling or that he should not?

Dr. Hosein: No. The magistrate decides. This is just the point, because we say the magistrate may. We have already crossed the hurdle about this possibility where there may be both an undertaking and an order in force, with regard to one single respondent on one application.

Sen. Alexander: There is nothing to prevent a respondent giving an undertaking.

6.25 p.m.

Sen. Alexander: He can give an undertaking in terms of any of those matters under clause 5.

Dr. Hosein: Mr. Chairman, would you put the question?

Mr. Chairman: Yes. The question is that subclause (6) be amended as stands.

Question, on amendment, put and agreed to.

Mr. Chairman: The question is that subclause 5(k) be amended as contained in the Minister's presentation.

Question, on amendment, put and agreed to.

Mr. Chairman: Since we have completed clause 5—

Sen. Deosaran: Mr. Chairman, I thought I had submitted some amendments. I was not invited to the consultation, but that does not mean that that should be aggravated in this place.

Dr. Hosein: I seem to have gotten myself into a lot of trouble with that.

Sen. Deosaran: What I have to say, might save the Minister sometime. Can I give a brief explanation, Mr. Chairman?

Mr. Chairman: Yes.

Sen. Deosaran: My amendment really, on the face of it—

Mr. Chairman: Your amendment relates to clause 5(2)?

Sen. Deosaran: Yes, Mr. Chairman.

Mr. Chairman: You may proceed, Senator.

Sen. Deosaran: My amendments strike at what can be seen as the heart of the bill. I think we can go back a bit and understand what is the rationale of these proposals.

I took my cue, Mr. Minister, through you Mr. Chairman, from the preamble to the bill about seeking to preserve a balance and seeking to preserve the existing relationship. Therefore, I sought a way to put, at least in my view, some balance into the bill by having a judicious mixture of punitive provisions as well as opportunities for reconciliation, if at all you needed to preserve as far as is practical the existing relationship. I therefore suggested these amendments because I believe, as I said, what the preamble contained. You had several other prohibitions that can be used to achieve this dual purpose: that is, protection and punishment as well as preserving the existing relationship.

I also went further in the amendments to seek a guarantee from the Government about looking after the victims or people who are complainants. So

it is not only diluting the bill; it is also trying to strengthen the provision in the bill as far as direct assistance is concerned. I am saying all of this because during the debate, and especially what I have been hearing from the committee hearing sittings, is that there is a different emphasis from the one I have given to the question of preserving the existing relationship. So I believe it is either I have misled myself, or perhaps something went wrong along the way where the emphasis shifted more in another direction.

Without wanting to start a micro debate over the pros and cons of what the High Court does or does not do, I have looked at the attitude of the Minister and the way he has been trying to compromise—and really, this is his bill. I was merely trying to bring whatever assistance I could have in view of what the preamble stated. In fairness to him—and I admire the way he held on to what he believes he wants in the bill, and as well as the kinds of compromises he has prepared along the way to offer. So I have to use my own wisdom rather than trying to beat a dead horse. At this stage, I would like to withdraw my amendments.

Sen. Lequay: All of them?

Sen. Deosaran: Well, if the first one falls, all fall. They all are connected with the rationale I gave. So it does not make sense starting with a debate again.

Mr. Chairman: Sen. Furness-Smith, you also had a proposed amendment to 5(2), are you pursuing it?

Sen. Furness-Smith: I had forgotten about that.

Mr. Chairman: Page five of your presentation (b). It seems it is no longer material, so we may proceed.

Sen. Furness-Smith: I do not know. Is it?

Sen. Alexander: Yes.

Sen. Furness-Smith: I withdraw that. We have dealt with that.

Mr. Chairman: Therefore, there is no standing objection to 5(2).

Sen. Lequay: Does the Minister have an amendment to 5(2)?

Dr. Hosein: No.

Amendment withdrawn.

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the bill.

Mr. Chairman: Believe it or not, we have succeeded in agreement on an entire clause today.

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

Mr. Chairman: Senator, before that, there has been a proposal and a redraft. Are you prepared to submit this today?

Sen. Alexander: It is not agreed yet.

Mr. Chairman: Have you seen it?

Sen. Alexander: Yes.

Mr. Chairman: If it is not agreed we can report progress.

The Senate will now resume in full session.

Senate resumed.

BUSINESS OF THE SENATE

The Minister of Social Development and Family Services (Dr. The Hon. Emanuel Hosein: Mr. Vice-President, I beg to report that consideration of the bill continues in committee, and I wish to report that progress has been made.

I beg to move that the committee be now adjourned to Tuesday, April 2 at 1.30 p.m.

Question put and agreed to.

ADJOURNMENT

Sen. Alloy Lequay: Mr. Vice-President, it may have surprised Members that we omitted next Tuesday. The reason is that I had given notice that the Finance (Variation of Appropriation) Bill will be with us and it needs to be passed

through all its stages at one sitting, and it should be with us next Tuesday, March 26. So I wanted to give notice about that.

I beg to move that the Senate do now adjourn to Tuesday, March 26, 1991 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.35 p.m.