THE

PARLIAMENTARY DEBATES

OFFICIAL REPORT

IN THE FIFTH SESSION OF THE THIRD PARLIAMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO WHICH OPENED ON JANUARY 12, 1987

SESSION 1990—91 **VOLUME 32**

SENATE

Tuesday, April 02, 1991

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. Haji Ralph Khan from today's sitting of the Senate.

PETITION

Lions Club of Chaguanas

The Minister in the Ministry of Industry, Enterprise and Tourism (Dr. The Hon. Surujrattan Rambachan): Mr. President, I have the honour to present the petition on behalf of the members of the Lions Club of 39 Edinburgh Gardens, Chaguanas.

This club is desirous of introducing a private bill in this honourable Senate for the purpose of the incorporation of the organization.

I now ask that the Clerk be permitted to read the petition and that the promoters be allowed to proceed.

Petition read.

Question put and agreed, That the promoters be allowed to proceed.

ORAL ANSWERS TO QUESTIONS

Foreclosure
(Homes)

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

Could the Minister of Settlements and Public Utilities provide an up-to-date account of 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. President, I certainly have not made a check to determine whether the Minister is ready to answer the question. I also apologize to Sen. Mark and to the Senate. I ask that it be deferred for a further week.

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 on the date for the commencement of construction of the Caroni Racing Complex?

Sen. Alloy Lequay: Mr. President, Sen. Amar said to me last week that he will be out for some time. Perhaps we could also defer this question, although I have not had any official communication from him.

Mr. President: Sen. Amar advised that he would be out of the country from tomorrow until next week Monday or Tuesday. He might not be here for the next sitting.

Questions, by leave, deferred.

BUSINESS OF THE SENATE

Sen. Alloy Lequay: Mr. President, under "Government Business" we have bills for second reading but I wish to propose, for your kind consideration and that of hon. Members, that we continue with the committee stage of a bill to afford protection with which we were dealing at the last two sittings, when it was recommended and agreed that we proceed at this sitting.

Question put and agreed to.

Mr. President: The Senate will now resolve itself in committee to continue consideration of the Domestic Violence Bill.

1.40 p.m.

DOMESTIC VIOLENCE BILL

[EIGHTH DAY]

The Committee of the whole Senate resumed its deliberations on the bill. [Chairman: Sen. Emmanuel Carter]

Mr. Chairman: Members of the Committee we are now returning to clause 3—the definition of "child" and the definition of "parent".

Clause 3 recommitted:

Mr. Chairman: Sen. Furness-Smith, we are back to clause 3 and we have to deal with the definitions of "child" and "parent". We are now on the definition of "child" and I see you had an amendment in the original list of amendments. Would you like to move that amendment?

Sen. Furness-Smith: Yes, please, if I could. I thought we had dealt with that already.

Mr. Chairman: I was not here at the last meeting. My information is that the definition of "child" and "parent" had been deferred for further consideration.

Sen. Furness-Smith: My amendment reads as follows:

Substitute for the definition of "child" the following new definition—

"child" in relation to a person means a person under the age of eighteen years:

(i) who normally resides with and is under the care and control of such person;

(ii) who has been treated by such person as a child of his or her family; or

(iii) of whom the first mentioned person is a parent, custodian, or guardian."

The word "custodian" could now be omitted because that has been dealt with. The purpose of this change is to broaden the definition of "child" to make it include the definition of “child” under the Family Law Act. It is seemingly unfortunate that there should be two contradictory definitions in respect of the Acts.

Dr. Hosein: I thought there are different definitions and the definition being referred to is quite often for determining paternity suits, and the purpose of this bill is different. We believe that the definition here is what suits the purpose of this Act and we would not really want to accept the amendment as proposed.

Mr. Chairman: Hon. Senators the question is that the definition of "child" in clause 3 be amended as proposed by Sen. Furness-Smith.

Question, on amendment, put and negatived.

Mr. Chairman: We now move on to the definition of "parent".

Dr. Hosein: Mr. Chairman, with regard to the definition of "parent" we had some considerable discussion and we had agreed on most of the amendments. Hon. Senators should have a copy of it from the last day. It is on the very first page and it is the last three lines, which I shall read in a moment. If I recall, we had some difficulty with the phrase "for the purposes of". We suggest that the amendment being moved by myself be amended by deleting the words "for the purposes of" in the second and third to last lines and substitute "within the meaning of". Therefore, the last three lines would now read:

> "who is a parent within the meaning of the Family Law, (Guardianship of Minors, Domicile and Maintenance) Act, 1981."

The amendment to "parent" would be:

> Substitute for 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 within the meaning of the Family Law, (Guardianship of Minors, Domicile and Maintenance) Act, 1981."

Question, on amendment, put and agreed to.

Clause 3, as amended, ordered to stand part of the bill.

Clause 4.

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

Dr. Hosein: Mr. Chairman, we have agreed in principle to introduce the concept of "an undertaking" and we have had a lot of discussion on it. Our difficulty was in the legal drafting in a way that adequately represents what we have agreed in principle. The difficulty created now is that on the last occasion we had skipped over the introduction of the "undertaking" and we had accepted some other consequential amendments, which it would now appear we may need to go back on. If hon. Senators would turn to page 4 of the amendments moved by

myself, we had agreed on what is listed there as 4, 5 and 6. But, as a result of seeking an appropriate wording for 3, we have found it necessary to change 4, 5 and 6. I now wish to move the following amendments to clause 4 . What we are doing has been circulated to hon. Senators. It would have arrived some time today.

1.50 p.m.

Dr. Hosein: It reads as follows: "substitute for (3)...". So that what is on page 3 of the originally circulated set of amendments, we had accepted (2) which reads:

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

Page 3, at 4. where we had agreed to add at the end of the clause the following subclause and we had also agreed on what is (2), we are now changing what is (3), (4), (5) and (6) to read as follows:

Substitute (3):

"(3) Where the Court is satisfied—

(a) that a previous protection order has not been made against, or no undertaking has been given by the respondent; and

(b) that no allegation is made against the respondent of conduct referred to in subsection (1)(a)—

the Court may, at any time before a protection order is made, accept from the respondent a signed undertaking that he shall refrain from engaging in conduct referred to in subsection (1)"

That is now being proposed Mr. Chairman, as subclause (3) of clause 4.

Mr. Chairman: Was it accepted last week?

Dr. Hosein: No, only subclauses 4, 5, and 6 were accepted.

Sen. Furness-Smith: Could I just raise one small drafting point? This arrived this morning and I am afraid I was not able to communicate when I tried to do so this morning. I would just like to draw one little point to the Minister's attention. I do not think (a) is quite right—Where the Court is satisfied that a previous protection order has not been made against, or no undertaking is being given by." Now the court would have to be satisfied either with one or the other, which is not right. I think what is required is, "is satisfied that a previous protection order has not been made against, and no undertaking has been given by the respondent."

Mr. Chairman: The question is that clause 4 be amended by adding the new subclause (3) as proposed by the Minister, subject to the amendment suggested by Sen. Furness-Smith to substitute "and" for "or" in the 3rd line of (a).

Sen. Persad: I noticed that the Minister has left off referring to paragraphs (b) and (c) of subsection (1).

Dr. Hosein: No, that is what we had agreed to, that it is only 1(a). I seem to recall that we had agreed that in this clause, it is when no allegation is made against a respondent referred to in subsection (1) (a). That is what we had agreed to on the last day. The undertaking is for (b) and (c) and, therefore, no allegation has been made under (1)(a), which is more serious violence. This is an exclusionary provision that is saying, once it is not (1) (a), which means it is (b) or (c).

Sen. Alexander: I do not understand why the undertaking should be broader than the allegation which is made against him. If the allegation is that the respondent has threatened to engage in conduct; if that is the allegation, then the undertaking should be in respect of that allegation. But as it is here, the undertaking is in respect of (a), (b) and (c).

Dr. Hosein: No, only (b) and (c) because subsection (1) (a) is excluded here.

Sen. Alexander: No. This is how it reads: "the court may, at any time before a protection order is made, accept from the respondent a signed undertaking that he shall refrain from engaging in conduct referred to in subsection (1)", which is (a), (b) and (c). I think the better wording is the one suggested by Sen. Furness-Smith, that the subject of the application shall refrain from engaging in conduct.

Dr. Hosein: My understanding of the reason for it being this way, is that the undertaking may be given or may be offered at any point in the proceedings, sometimes before one may be clear. So that is on what the circumstances are because the way it is written here, at any point in the proceedings the person may offer an undertaking. The person had to have been there because of conduct referred to in subsection (1).

Sen. Alexander: Which is not (1) (a). If it is clause 4(1)(a) "an undertaking" is not applicable, so the "conduct" will be either 4(1)(b) or (c). But the undertaking which is provided for here, is an "undertaking" in respect of (a), (b) and (c). In other words, if an application is made that the respondent has threatened to engage in conduct that will constitute a domestic offence, why make it wider?

Dr. Hosein: I understand the point.

2.00 p.m.

Dr. Hosein: Mr. Chairman**,** yes, we accept the point made and we will amend. It will now read, if Senators Alexander, Furness-Smith and other Members will follow—

"that he shall refrain from engaging in conduct referred to in subsection (1) (b) or (c)."

Sen. Furness-Smith: If you accept that, would it not be clearer and simpler to say that "he will refrain from the conduct complained of."

One of my problems with this thing is, if he is going to be asked to give a general undertaking under (b) or (c)—or (a) for that matter—but particularly (c), where, as we have discussed, (c) is a general thing involving all kinds of behaviour and it may not be clear to anybody just what constitutes "oppressive and harassing conduct". So, if I am asked to give an undertaking not to engage in conduct under (c), a dispute can then arise that I have committed a breach of my undertaking when I did not know that was oppressive conduct. Somebody else thinks it is. So instead of having the adjudication, I will be judged on a breach of an undertaking which is a serious matter and, in fact, constitutes an offence.

So, we are not here at this moment to put a noose around the man's neck.

Sen. Tiwary: Mr. Chairman, perhaps I can enquire from Sen. Furness-Smith; I wish to be excused if I am not properly following the tenor of all of this because I was absent for some time. But I am wondering Sen. Furness-Smith, respectfully through you, Mr. Chairman, whether it would not be more appropriate to confine the terms of the undertaking within the context of the subclauses rather than refer to general conduct at large.

Sen. Furness-Smith: What I am saying is that he should be asked to give an undertaking in the terms of what the complaint is, because he is admitting that that constitutes oppressive conduct.

Sen. Tiwary: Do we understand that you are suggesting that the last lines should be that he should refrain from engaging in the conduct complained of?

Mr. Chairman, I wonder if I could raise one other point. Suppose the offender is pursuing or calling up somebody—the victim—in a harassing manner and you say that he should give an undertaking to refrain from engaging in the conduct complained of, but instead of calling up the person, he pursues the person and he

says "I undertook not to call you but I did not undertake not to pursue you." I am of the view that instead of confining him to refraining from engaging in conduct complained of, it should be conduct falling under the subclauses. This is why I am of the view that we should really leave it in the context or within the boundaries of the subclauses.

Sen. Alexander: That is very dangerous. Remember a breach of that undertaking exposes the respondent to criminal sanctions. It must be of a precise nature. You see, "conduct of an offensive or harassing nature" is as wide as it is broad. To meet your point—let us say, the persistent following of a person—if he does not breach that undertaking but he commits some other act of an offensive or harassing nature, then a protection order is given against him. He cannot give an undertaking again. But you cannot have an undertaking, particularly, "the conduct of an offensive or harassing nature" which is not spelt out.

I am fearful that if that is so imprecise it might very well be null and void.

Sen. Tiwary I still wish to invite Sen. Furness-Smith to comment on it in the light of what I have said. What is the virtue in limiting the undertaking to this particular kind of conduct alone and not putting it within the context of the subclauses so that the offender, if he chooses to be technical, could say "I will not call you up but I can pursue you from place to place." So, do we then go back to court for another undertaking or get another order? The whole idea is to say that if he really falls within the confines of the conduct referred to in each subclause, the undertaking should apply to that.

Sen. Alexander: Except that you do not have the definition. You have (a) to (f). These are only inclusive. There are other conducts which could be held to be conduct of an offensive or harassing nature. That is the difficulty. If the definition was, "conduct of an offensive or harassing nature means (a) to (f)," then once an undertaking is given, the respondent would know specific acts which he cannot—

Sen. Tiwary: With the greatest respect Sen. Alexander, I do not see what the difficulty is in having the person who is giving an undertaking to understand that if he has threatened to commit an offence under (b) or (c) that he is told, "You are giving an undertaking that you will not do what is alleged against you within the context of the offence they say you are committing."

Why should it only be pursuing, contacting or calling? I am still asking Sen. Furness-Smith for his views.

2.10 p.m.

Sen. Furness-Smith: Yes, I see the point. The first thing that I would like to say is how delighted I am to see Sen. Tiwary back among us for the closing stages of this bill. I think we missed her.

What Sen. Alexander says is quite right. The first thing one must remember is when “conduct” under paragraph (c) is alleged no offence has been created. Now, we have been told repeatedly that this does not constitute an offence. That is the root cause of a great deal of our difficulties with this clause. “Conduct” under (c) does not constitute any offence either as known to the law presently or as created in this bill. It includes a whole range of conduct which may or may not be conduct of the present nature depending on the particular circumstances, the family or the relationship.

I take Sen. Tiwary's point. One does not want any undertaking to look foolish. If he gives an undertaking not to commit what he has done—or may be, we could allow something in the nature of the alleged conduct, to give a little breadth to it, but to just force him to give an undertaking not to commit any act under (c) he would not know what might be an act under (c).

Sen. Tiwary: Perhaps we can all suggest something that is more precise if we do not wish to include (b) and (c). We should say “engaging in the conduct complained of or any other similar conduct.”

Sen. Furness-Smith: “Similar conduct or engaging in the conduct of the nature of the conduct complained of”. Subclause (c) is so widely drawn now that we cannot leave it like that.

Dr. Hosein: The amendment that we are dealing with, that is clause 4, is going to continue at a later stage if you look at the amendment that was circulated today.

At subclause (6) sections 15, 17 and 18 apply to an undertaking just as it does to a protection order.

If we look at clause 15 in the bill, we will see that the court, in making a protection order and in this case now, an undertaking, will have to explain the order. We will see that at subparagraphs (a), (b), and (c) the court must explain the purpose, terms and effect of the proposed order, the consequences that may follow, *et cetera*. With that provision it could be that the respondent will have an opportunity to have explained to him by the court, exactly what is the nature of his undertaking, what are the general things which he can and cannot do which might

provide the opportunity for the kind of understanding by the respondent of what is involved in his undertaking that would avoid some of the difficulties being referred to.

Sen. Furness-Smith: Yes, I think that is a good point. It is at the discretion of the magistrate what undertaking he will accept. What we do not want to do is to fetter the discretion of the magistrate. Suppose I am accused of telephoning; I admit that and I am prepared not to do it again; the magistrate will say "that is very well but suppose you start doing it again?" I hope that he will then draft the undertaking in a way which will cover Sen. Tiwary's point.

What we have to do, therefore, is to be sure that our language does not restrict that process so that if we say, "conduct in the nature of the conduct alleged" would we not have achieved that?

Dr. Hosein: What I am asking is whether clause 15 will apply to an undertaking and would provide the opportunity for the respondent to have the court explain to him exactly what it is he is undertaking. If we look at the list of amendments clause 4 (6)—

Sen. Alexander: The undertaking must be in writing.

Sen. Furness-Smith: It does not matter what the magistrate says to the man, the critical thing is the terms of his undertaking because it is only if he breaks that he commits an offence.

Sen. Tiwary: I am of the view that perhaps all of this could be solved by us being more precise with the end of subclause 3. Is Sen. Furness-Smith suggesting that he should refrain from engaging in the conduct in the nature of the conduct alleged?

Sen. Furness-Smith: Yes.

Sen. Persad: At present it can either be trivial for instance, that you are telephoning your wife and you say you cannot telephone your wife. If he had not done that; for instance, if he was telephoning and following his wife; now if he follows her under this undertaking he is breaking the law, contempt of court.

In other words, if he had engaged in both activities initially he had an undertaking. Now he has done them and maybe they are both harmless, in a consequential fashion, now he is going to pay a price. I ask, is that natural justice? This undertaking is a problem. It is very difficult to define and to pin down and to say, in the nature of, is even more imprecise. As you said before, we were against the whole idea of an undertaking and now you are seeing the problems with it.

Sen. Furness-Smith: It is the same problem as if an order is made, in my view.

2.20 p.m.

Mr. Chairman: It is suggested that we defer the definition.

Sen. Tiwary: Mr. Chairman, could we inquire as to whether between Sen. Furness-Smith and Sen. Alexander they could have a proposed draft and maybe the Minister's advisors can try and see if we can work out something around that?

Sen. Persad: Leave the Opposition out in the cold again!

Sen. Tiwary: I beg your pardon. I am sorry. I thought you were just totally against it all and you did not have a proposal, but if you do, I am sure we will consider it.

Dr. Hosein: I agree with you.

Sen. Lequay: Mr. Chairman, does that now mean we are—*[Interruption]*

Mr. President: Do you not want to do the rest of clause 4?

Dr. Hosein: Yes. Just one point for the consideration of Sen. Furness-Smith and Sen. Alexander, if I can get their attention. The other way we could deal with it is to leave out (c) and just have an undertaking for (b), and if there is an offence under (c), let a protection order be issued and be done with it.

Sen. Alexander: Mr. Chairman, in respect of a protection order at the end of clause 4, it says, "the Court shall make an order restraining the respondent from engaging in that conduct..."; that is the conduct complained of. All I am suggesting is that the undertaking is to restrain the respondent from engaging in the conduct complained of. It is there.

Dr. Hosein: I am sorry. Let me point out to Sen. Alexander, if he could just read it again. It is on page 10 of the bill. It says, "in that conduct and in conduct that would constitute any domestic violence offence..." So you are not fully correct there.

Sen. Furness-Smith: But "domestic violence offence" means (a), not (c). That is the point.

Dr. Hosein: It includes all.

Sen. Furness-Smith: No. Conduct under (c) is not a domestic violence offence. That is a basic misconception, with due respect.

Sen. Alexander: "Domestic violence offence" is defined.

Sen. Furness-Smith: It is (a).

Sen. Alexander: Yes. It is defined.

Sen. Furness-Smith: It comes under (a).

Dr. Hosein: The solution, as I said, is let it be (b) and leave (c) out.

Sen. Furness-Smith: No, no, because the whole purpose of this undertaking, as explained by Sen. Alexander, is to try, in the marginal cases, to prevent waste of the court's time and preserve the relationship. It is particularly under (c) that the undertaking would be useful. I really do not think that (b) comes into it very much.

You see, basically, at the end of clause 4, the magistrate having heard the evidence, he makes an order restraining the respondent from engaging in the conduct which has created all the fuss, and in conduct that would constitute any domestic violence offence. So he gets an order under (a) as well, generally. I do not mind that in those circumstances. Now, you have then added in, the magistrate being able to make all these other orders, whether supported by the evidence or not in his discretion, depending on the circumstances.

Now, I think the magistrate, when considering clause 5, would have to consider whether to make an order which had no bearing at all, but he could. You have given him power to make any of those orders, even though the evidence does not support such an order. Now, that may be, I mean, we have agreed to it I think—I am not sure, but I believe we have accepted it—but that basically is the root cause of the concerns being expressed over here about this whole bill and what is going to happen when it gets into the magistrate's court. But we are hoping that the magistrates will be able to handle it. God help them.

Now, when we are going to make an undertaking, which I am quite convinced is extremely important, we cannot make the man give an undertaking in all the terms of clause 5; that would be hopeless.

Dr. Hosein: We have what I hope is a solution here—that it would read:

> "Accept from the respondent a signed undertaking that he shall refrain from engaging in the conduct specified in the application, and in other conduct that would constitute any domestic violence offence."

This would be consistent with the language used throughout.

Sen. Furness-Smith: Yes, I would not mind that.

Dr. Hosein: Mr. Chairman, we have found a solution, an apt solution I believe: Delete the words after "engaging in" and substitute the following:

"the conduct specified in the application and in other conduct that would constitute any domestic violence offence."

Sen. Alexander: Why would you not repeat "engaging in the conduct specified in the application or in conduct that would constitute a domestic violence offence"?

Dr. Hosein: Yes, yes, that would be appropriate, "specified in the application or in conduct...", or should it be "in other conduct..."?

Sen. Alexander: The conduct under (b) or (c) is not a domestic violence offence. So if you say "other conduct", "and in conduct"

Dr. Hosein: Yes

Sen. Tiwary: From "shall refrain from engaging in conduct specified in the application", should it be "'and' in other conduct", because it is the undertaking?

Sen. Alexander: No, not "other".

Sen. Tiwary: Sorry. You are right, "...and in conduct..." Instead of "or", because the undertaking, first of all, is that he is refraining from engaging in the conduct in the application, and he is also giving the undertaking that he will not be engaging in conduct. So instead of "or", it should be "and". The undertaking is not to do the conduct complained of, or not to commit a domestic violence offence.

Dr. Hosein: It should be "and".

Sen. Tiwary: Very well.

Dr. Hosein: Yes.

Sen. Furness-Smith: I am a little concerned that this is not a little restrictive here, the "conduct specified in the application..." It may be that when it comes to be discussed, I would like to suggest, in the nature of it, so that when the magistrate is drafting the undertaking, he has a little discretion.

Dr. Hosein: Actually, Mr. Chairman, I just want to point out that if we had left it in at (1), we would not have had this problem, if we had just left it at (1), it would have covered everything.

Sen. Tiwary: The original draft, "shall refrain from engaging in conduct..."

Sen. Alexander: No. That original draft is an open sesame. The man would not know the limits of the undertaking, particularly when you deal with 4 (1) (c)

Dr. Hosein: All right. Mr. Chairman, we will accept it as it is. So the final version will read that he shall refrain from:

> "...engaging in the conduct specified in the application, and in conduct that would constitute any domestic violence offence."

Sen. Alexander: Okay.

Sen. Mahabir-Wyatt: Mr. Chairman, with reference to this point, I would like to go back to Sen. Furness-Smith's statement. I think if you limit it to "conduct specified in the application..." and not use his words which were, I believe, "conduct in the nature of the conduct complained of in the application...", you narrow it down so much that unless—in other words, unless somebody has carefully coached the person who made the application to specify broadly enough what the action is, what would happen is if the particular problem is, say, persistent intimidation of a person by the use of abusive language, you are just limiting it to that and not giving the magistrate the discretion to say that particular conduct and similar conduct, or as Sen. Furness-Smith said, conduct in the nature of that conduct complained of, you are narrowing it to a very, very small area.

Sen. Alexander: Conduct specified in the application.

2.35 p.m.

Sen. Persad: Mr. Chairman, the whole purpose of the undertaking is that the offence is not serious, it is of a harassing nature and, therefore, you want the person to say, "Look, you have not gone that far but beware." Now that you are saying "conduct of the nature specified in the application and in conduct that would constitute any domestic violence offence," an offence of a harassing nature is different and distinct from a domestic violence offence. Also, what you want to do initially is to prevent the person from engaging in an offence of a harassing nature. Would this really do that? I am asking this because they are two separate streams.

Sen. Tiwary: Sen. Furness-Smith's and Sen. Mahabir-Wyatt's proposals would take care of all that.

Sen. Persad: In the nature of—

Sen. Tiwary: Yes, in the nature of—

Sen. Persad: If you say "offence of a harassing nature as defined," would that not be more precise?

Sen. Tiwary: You are not going to tell somebody do not go to Port of Spain, do not visit her on her job, do not telephone her. You have to state in the undertaking what he has to do and what he has to refrain from doing. If we limit it only to the acts complained of in the application, it does not give the magistrate discretion to say, "Well, if you have been telephoning—"

Sen. Persad: Okay. I agree but I am asking: Would the magistrate list all these sorts of things to prevent him from—

Sen. Tiwary: He should.

Sen. Persad: All right. Once that is the case—I had to be sure.

Dr. Hosein: Mr. Chairman, there seems to be some support for the concept put forward by Sen. Mahabir-Wyatt and seemingly accepted, that we amend it to say:

"The conduct of the nature specified in the application and in conduct that would constitute any domestic violence offence."

Mr. Chairman: Members of the Committee, under clause 4, we are dealing with the new subclause (3) which was deferred from last week and the amendment proposed by the Minister for the new subclause (3) should read as follows:

"(3) Where the Court is satisfied—

(a) that a previous protection order has not been made against, or no undertaking has been given by the respondent; and

(b) that no allegation is made against the respondent of conduct referred to in subsection 1 (a)—

the Court may, at any time before a protection order is made, accept from the respondent a signed undertaking that he shall refrain from engaging in conduct of the nature specified in the application and in conduct that would constitute any domestic violence offence."

Question, on amendment, put and agreed to.

Dr. Hosein: Mr. Chairman, there is a new subclause 4 which reads as follows:

> "An undertaking given under this section may deal with such other matters that may be dealt with in a protection order as the Court sees fit, having regard to the matters referred to in section 6."

Sen. Alexander: Are you dealing with the latest amendment?

Dr. Hosein: Yes.

Sen. Alexander: What I have here states:

"An undertaking given under subsection (3)..."

Is that the latest?

Mr. Chairman: At the last meeting the committee accepted new subclauses (4), (5) and (6). The Minister is now moving that those three subclauses be deleted and replaced with (4), (5), (6) and (7), as circulated today.

Sen. Alexander: I do not understand what subclause (4) is all about.

Sen. Furness-Smith: We should have been discussing this under (3).

Hon. Senator: You see this was deferred.

Sen. Alexander: There is constant confusion between an undertaking and a protection order.

Sen. Furness-Smith: Mr. Chairman, I am sorry. I am afraid I did not realize that the paper which I received this morning from the hon. Minister or the Law Commission has been again superseded by additional amendments filed this afternoon in different terms. So that when we were discussing (3) I did not realize that the hon. Minister was now asking for an undertaking to also have anything in it which the magistrate feels should go in it, without regard. I respectfully submit that the Minister should revert to what he circulated earlier this morning.

Sen. Tiwary: Sen. Furness-Smith, this has just been re-drafted into several subclauses but really to incorporate the amendment which was discussed on the last occasion, to put it in a more comprehensive fashion rather than have a very long subclause.

Sen. Furness-Smith: It is entirely up to the Minister what he proposes, I am just trying to explain my personal total confusion. I mean, we have been at this for two or three weeks.

Sen. Tiwary: Yes, but we are advised that the contents of what is now being proposed at (4), (5) and (6)—

Sen. Furness-Smith: I am not complaining about (5), (6) and (7), which I have seen. I have seen it last week. I have looked at it; I have discussed it; I have amended it; I have made suggestions on it. What I am complaining about is this new subclause (4) which has evolved between 9.00 a.m. and 1.30 p.m.

2.45 p.m.

Sen. Tiwary: With respect Sen. Furness-Smith, I am looking at your proposed amendment.

Sen. Furness-Smith: My proposed amendment?

Sen. Tiwary: On the last occasion, which I am seeing here. The body of it states:

> "...a signed undertaking that the subject of the application shall not re-occur dealing with such of the matters that may be dealt with in a protection order as the court sees fit, having regard to the matters referred to in Section 6 and stating that the period of such undertaking and each part of it is to remain in force in accordance..."

I understand that was your proposal.

Sen. Furness-Smith: It certainly was.

Sen. Tiwary: If that is so, this is what the Minister's advisors have sought to do—to incorporate your very proposals as subclause (4). Is it possible for us to look at it at this time?

Sen. Furness-Smith: Excuse me. You are quite right. I put that language in my draft, which I prepared with considerable hurry last Thursday, I think it was. This morning I received this document, and now, apparently, while we have all been discussing it—I see, what we have agreed here.

Sen. Tiwary: The Minister's advisors had an opportunity to tidy up your proposal.

Sen. Furness-Smith: I see. I beg your pardon. Excuse my being confused. Sen. Alexander perhaps, being even more confused because it was not his language.

Dr. Hosein: We are trying so hard to please Sen. Furness-Smith.

Sen. Furness-Smith: What happened to it early next morning?

Dr. Hosein: I assure Sen. Furness-Smith that it was in an attempt to tidy it up, but to contain the same concept that he had introduced, that it has been drafted this way. It is really the same matter in far more precise drafting language.

Sen. Persad: Why did you put this in? Clause 6 deals with the prohibition order, so you want to make sure that the person does not kill or beat anybody. The whole idea of the undertaking—that is of a gentle nature—conduct of a harassing nature. These things here do not make sense. It does not follow. In my mind there is no need for subclause (4). The whole purpose of the undertaking is defeated.

Dr. Hosein: The objective of a protection order is to ensure that certain things do not happen which are the things referred to in clause 6. In other words, this subclause (4) will ensure that the nature of the undertaking is such that it also has regard to subclause (6). In other words, if the court is to give a protection order, he wants to ensure that the protection order is done in a way that it ensures certain things. Under clause 6 it states matters can be taken into account. So we want to make sure that if an undertaking is being given, that undertaking is also of a nature that it takes account of the things that will have to be taken into account if it were a protection order.

Sen. Persad: Therefore, you are saying that an undertaking is equivalent to a protection order.

Dr. Hosein: No.

Sen. Persad: That is what you are saying. There is no difference.

Dr. Hosein: No. It must have the effect of ensuring, and it must be of such a nature that it takes into account the things as listed in clause 6, because those are the things that would have to be taken into account if a protection order was being given.

Sen. Persad: Why the need for an undertaking?

Sen. Tiwary: It gives the respondent the opportunity to volunteer, instead of making an order against him; he is prepared to come forward and say, I undertake, I will not do these things and, therefore, the court in deciding what, in the final analysis must come forward, will clearly be in a better position if he advances that.

Sen. Persad: With all due respect, you are contradicting yourself, because if he has given an undertaking of his own free will that he will not do these things and yet you tell me he is saying that on the one hand and on the other hand the court is taking all the measures necessary as if it were a protection order, to tell him that he cannot do it, then you are contradicting yourself.

Dr. Hosein: Mr. Chairman, while I see the point Sen. Persad is making, he is going back on something which we have already passed, that is the concept of an undertaking. With the greatest respect, since we have crossed that hurdle and we have agreed to the concept of an undertaking, what we are seeking to do now is to ensure that the nature of that undertaking is such that it has to account for certain matters. We have done that for a protection order. Subclause (4) is to ensure that it also applies to a protection order. This is the drafting point that ensures that if an undertaking is given, rather than have the court issue a protection order, that undertaking does its job. Remember the objective of this bill is still to protect certain parties and this is necessary for that.

Sen. Alexander: An undertaking is available only in respect of 4(1)(d) and (c), that is, threats and conduct of an offensive or harassing nature. I do not see how these conditions are applicable to an undertaking.

Dr. Hosein: It is not a prohibition any more.

Sen. Alexander: I do not see how they are related. It is quite clear to me that the provisions of clause 6 are provisions which are to be taken into account whether you are going to prohibit the respondent from going to his house and that sort of thing. These are the provisions of clause 6.

Sen. Tiwary: Sen. Furness-Smith are you supporting Sen. Alexander in this matter? Because these arose out of your proposal.

Sen. Furness-Smith: My proposal came out of the Minister's proposal. And surprising as it may seem, I was equally anxious to accept any concept, any language which I could. So that it was not my concept, it was your concept. Nevertheless, I accepted it on the reasoning that this undertaking business has to be a conceptual thing. That is to say, the respondent has to be willing to accept that he has been a little at fault and he is prepared to give an undertaking and also—obviously the magistrate will ask the applicant whether she is going to be satisfied. At that stage, it seems to me, as the Minister indicates, the magistrate has a discretion. He is going to be in charge of that situation. It may be that the

spouse, whether *de facto*, former or whatever, will raise things which are worrying her and which she will tell the magistrate, "Look, all right, it is not specified in my order but I am worried about little Willy being collected from school," or God knows what. The magistrate will raise it with the respondent and he will say, "I have no problem with that." Then the magistrate can put in odd little things like that. That is how I conceive it happening.

If the respondent refuses to give an undertaking on those terms and the applicant makes it clear that she wants the matter to proceed, then the magistrate is going to have to do his duty and hear all the evidence. I am sure the magistrate will try—because he does not want to sit there for two or three hours to hear this thing which will probably be perfectly trivial. I think we have got to give a wide discretion.

Sen. Tiwary: The respondent must agree to say, "Look, I am undertaking not to do this or to do that as the case may be". Are you now agreeing with Sen. Alexander that subclause (4) should be deleted altogether?

Sen. Furness-Smith: I do not think so. I will not mind if it goes, but I think it would be better to leave it in.

Sen. Tiwary: How does Sen. Alexander feel about it?

Sen. Alexander: I really do not see the connection.

Sen. Tiwary: But he has just explained it.

Sen. Alexander: I do not agree with Sen. Furness-Smith on that.

Sen. Furness-Smith: Even Sen. Alexander and I can disagree on occasions, but I understand Sen. Alexander's point. I think technically and juristically, it is not perhaps right, but I am prepared to go along with it.

2.55 p.m.

Dr. Hosein: Mr. Chairman, Sen. Furness-Smith at least agrees with us here although Sen. Alexander still has his reservations. I think we should proceed with the amendment.

Mr. Chairman: Members of the Committee it is proposed that subclauses (4), (5) and (6) agreed to at the last meeting, be deleted and substituted with subclauses (4), (5), (6) and (7) circulated today in the supplemental list of amendments prepared by the Minister.

Sen. Alexander: Are you saying we had agreed to these amendments?

Dr. Hosein: No, not as listed here, we amended them. In other words, the way it is written when we went through them we amended them, so it is not the way it is written here. But we are deleting them anyway.

Mr. Chairman: In subclause (6) there is one little correction. The first word "Section" should be plural, "Sections".

Sen. Mahabir-Wyatt: Mr. Chairman, as we had the wording on the last day, there was a particular phrase that was put in which indicated that an undertaking would have to be made after consulting with both the applicant and the respondent. I notice that those words have been taken out. When we were discussing it under clause 4 (3) of the Minister's amendments, the words that were actually discussed in the committee stage were:

> "...may at any stage of the proceedings after consulting with both the applicant and the respondent."

I would like to know whether that concept of consultation remains and, if so, could I be told where?

Dr. Hosein: I remember the discussion Mr. Chairman, but I do not think we had agreed on that wording. In other words, what was accepted last day did not include that. I do recall that there was a discussion but at the end of the discussion, we had not actually inserted those words.

Sen. Mahabir-Wyatt: The concept which has just been mentioned a few minutes ago, of the respondent and the spouse agreeing to this procedure, was one which we had spent some time discussing. I am just wondering if that concept remains, because it is an undertaking. I do not know whether this happens wherever an undertaking is given, which is possible. I just do not know. I am asking from a legal standpoint, if it would be a part of the procedure for both parties to agree that the undertaking takes place. I think it is important that the concept remains.

Sen. Tiwary: In practice, if an undertaking is being offered by one side, it must be accepted by the other so it is something that is agreed between the parties. You are correct.

Sen. Mahabir-Wyatt: That is the reassurance I was looking for.

Sen. Tiwary: I hope my colleagues agree that one does not have to say "after consultation" because an undertaking is really only accepted if it is agreed upon between the parties so there is no need to spell it out in the bill.

Sen. Furness-Smith: I do not think so. I think the way it is drafted normally the magistrate would be sure that the applicant accepts but he has a discretion. He has a discretion; he is in charge, it is his court and I think if he was satisfied that the applicant was being stupid or unreasonable, he could accept the undertaking. But he would certainly want to consult him.

Sen. Alexander: Where is this?

Sen. Tiwary: In clause 4 (3):

"Where the Court is satisfied—

(b) that no allegation is made against the respondent of conduct referred to in subsection (1)(a)—

the Court may, at any time..."

Sen. Alexander: We have "may".

Dr. Hosein: The point is taken care of.

Sen. Alexander: Mr. Chairman, I think at the last meeting subclauses (4), (5) and (6) were agreed upon.

Mr. Chairman: On the last occasion, they were agreed upon but what he has done is rephrased them. They are substituting (4), (5), (6) and (7) as indicated on the list of amendments circulated today.

Sen. Alexander: Is that the correct procedure?

Mr. Chairman: Yes, it is in order.

Sen. Tiwary: The whole clause was not accepted and the Chairman had begun the proceedings by moving that what was agreed to on the last day be deleted.

Mr. Chairman: Members of the Committee, the question is that the new subclauses (4), (5), (6) and (7) of clause 4 be substituted for subclauses (4), (5) and (6) agreed to at the last meeting?

Question, on amendment, put and agreed to.

Clause 4, as amended, ordered to stand part of the bill.

3.05 p.m.

Mr. Chairman: Clause 5 has been accepted. We now move to clause 6.

Clause 6.

Question proposed, that clause 6 stand part of the bill.

Dr. Hosein: Mr. Chairman I wish to move that: "In subclause (1)—paragraph (b) the words, 'or dependant' be deleted"

The reason relates to something which was drawn to our attention by Sen. Furness-Smith and one can get into a very complicated situation. I do not know if we need to go into all the details but the difficulties, when pointed out are such, that remember "dependant" here is someone over the age of 18, and can include someone whom you have taken into your home because you are kind-hearted and want to give assistance. If you leave that in there, you can get into practical situations that—Government has accepted the arguments that the potential difficulties are such that it would be safer to leave it out.

Indeed it was after some discussions that we were persuaded and we accept that there are serious problems which can arise.

Sen. Persad: Maybe the Minister could explain why he has a reversal of position. The whole argument about this bill was that Sen. Furness-Smith's amendments were to restrict the bill, we had many arguments about that. Now the "dependant" all of a sudden is restricted again. How about the case where you have extended family? It is a clear reversal of your position and maybe you should tell us why you are reversing, because you agreed on it.

Dr. Hosein: If you look in clause 6 (2), the last line, you will see "shall consider the matters referred to in paragraph 1 (a) and (b) as being of primary importance." In other words, what is in (a) and (b) is given a level of importance above and beyond all the other subclauses. When you include the "dependant" here one can foresee—because it is going to be of primary importance—we believe that (f), which is a sort of catch all—"any other matter that, in the circumstances of the case, the Court considers relevant" to catch the kinds of situations that may be left over. But if you are talking about something to be of primary importance, the potential complications and maybe injustices that may be created if you leave in dependants, is something we thought we should just reconsider and leave it out.

Sen. Persad: Maybe the Minister can tell me why it is that all of a sudden, in terms of the extended family, taking into consideration the cultural factors in Trinidad that there are many extended families. I agree that there may be one or two opportunistic tanties, according to Sen. Furness-Smith, but there are many cases where you have genuine extended family members living in a household.

Dr. Hosein: In which case, let me point out that (a), which is of primary importance as well, says, "the need to ensure that a prescribed person is protected..." and prescribed person includes dependant. So that (a) catches dependants.

Sen. Persad: Again, the logic does not follow. If it is included in (a) as you say and it is important, why leave it out in (b)? I am amazed by the degree of illogic which is taking place here.

Sen. Furness-Smith: Following discussions mentioned by the hon. Minister, I drafted my own conception of clause 6 and judging by the remarks of Sen. Persad, it does not appear that the Opposition Bench really understands the discussion at all, which is unfortunate. Because at the end of the day we are going to have a vote on these clauses and if the Opposition Members are supporting this bill without understanding, I think that is a great tragedy. Their purpose here, under the Constitution, is to examine closely, bills of this nature; to fully understand them and eventually either to join with a few Independants or not in permitting them to go through, because there is a special majority at stake.

So I do hope that before we end this discussion, Sen. Persad will understand this particular point which is a point of technical detail, which he will appreciate.

Sen. Persad: Mr. Chairman, I hope that Sen. Furness-Smith's remark is not driven by the fact that probably his first amendment is being accepted.

Sen. Furness-Smith: Let us just put aside these little things and try to understand what we are about. We have already gone through the question of giving dependants the protection of this bill. That has been voted on and decided and I am not agitating that again.

Clause 6, when originally looked at, struck me as being a little strange. There is no reason why in a bill of this nature, we should not lay down general principles which the magistrate should observe in exercising a new jurisdiction. When we have in subclause (2) that of these various principles, (a) and (b) are to be of

primary importance, then that could have a very serious effect on the way the jurisdiction is exercised.

Now in my knowledge of the practise of the law, the only principle which I have known, I think in any jurisdiction, certainly in a family jurisdiction, is that the welfare of the children of the family shall be the paramount consideration. That is a general, universal rule which one meets with every time one has divorce, matrimonial or family matters. So when I see different things becoming primary, I wonder.

We are not on the question of whether an order should be made, or whether the thing is to be oppressive and harassing, or domestic violence. We are not on that, because we have already legislated for that. The magistrate is given the jurisdiction and he is to exercise it. What we are here doing, is setting out a number of principles and we are stating that two of them are to be of primary significance. I do not think we should do that. I think we are making an error. To look at (a), "the need to ensure that a prescribed person is protected from violence or harassment", now that is the purpose of the whole bill, but it does not mean to say that in looking at the affairs of a particular family, the court is to put everything else to one side, or to treat that as the primary or only matter of significance.

The second item is the welfare of a child or dependant. The hon. Minister, I am grateful, he saw with me, the spouse or the respondent. Not that he is to disregard dependants, because he can make an order in favour of a dependant. I am not disputing that. But the question is, what is to come first? Then we have got these other things which are clearly material. The accommodation needs of a prescribed person, any hardship that may be caused to the respondent or to any other person which would include a dependant, as a result of making the order. Then the income, the assets, obviously they are all very material. "Subclause (f) brings in everything: “any other matter that in the circumstances of the case, the Court considers relevant."

3.15 p.m.

Now, the critical thing is, what is to be primary? Now in listening to this discussion over the course of numerous weeks, I am confirmed in my view that notwithstanding our great and proper concern for battered wives and spouses in trouble and so forth, nevertheless, the primary consideration of this court and every other court, should be the welfare of any children around.

The grown-ups obviously have made a hack of their lives but let us put the children first. That is the only strong principle that I am really prepared to fight for in this bill. Let us get the children first. Whatever happens to the grown-ups who have been harassing the children and making their lives miserable and destroying their upbringing, if we are going to interfere through our magistrates, let us have the guiding light there that the magistrate is to hold to the welfare of the children as being the primary consideration and not anything else at all. That is what I have drafted here.

Instead of the way the Minister has drafted, I would put (a) and (b), as follows:

"(a) the welfare of a child of the spouse or the respondent;"

and I do not mind adding any other child that is a child of the family, but I think we have already dealt with that—

"(b) the need to ensure that a prescribed person is protected from violence;"

Then put all the other ones and add one at the bottom, because after all, we are dealing not only with *de facto* spouses but we are dealing with marriages. Surely, we are not just throwing out of the window, the constant efforts of the law and all the jurisdictions to maintain matrimonies. I have some support here.

Let us at least pay some lip-service to the concept of matrimony. Let us add in (f), the desirability, if it is possible, of preserving the spousal relationship. Then I would add in (2), I would just cross out that (b). So that all right, we have established a number of principles but the only principle which is to be of paramount importance is the welfare of any children that may be around. That is the way I would like to see this bill. I sincerely trust that the Opposition Members, on consideration, are not suggesting that the welfare of the children should be made subordinate to any of these itemized principles. If they do, I would like to hear them say so specifically and clearly.

Sen. Persad: Mr. Chairman, for Sen. Furness-Smith's edification, I think he has displayed an innovative ignorance of the cultural factors involved in Trinidad and Tobago. I think I would leave it to the hon. Sen. Amrika Tiwary to let him know how the East Indian families operate. I want the hon. Senator to tell me categorically if he thinks that parents and aunts are less important than children.

Mr. Chairman: Senator, you can disagree with Members, but please try to be friends in disagreement.

Sen. Prof. Spence: Mr. Chairman, just so that I understand clearly what is going on—it is very difficult to follow all the legal arguments—I want to be clear that I understand at least. Do I understand that the discussion centres around removal of the word "dependant"?

My understanding of the definition of the the word "dependant", am I mistaken or has that been changed? There has been so many changes, it is difficult to follow them. Under definition, "dependant" in the original version, to my mind, means a handicapped person.

The definition says a person over 18 years who normally resides and who by reason of physical or mental disability. So, are we saying that those handicapped persons should not be protected in the same way that children should be? If that is what we are saying, I do not agree. Have I gotten completely confused?

Sen. Tiwary: Perhaps I could just point out the last one. In 6(1) (a) says—

> "the need to ensure that a prescribed person is protected from violence or harassment;"

That was the Minister's proposal and it remains like that. You will see in the definition of "prescribed person" that a dependant is a prescribed person. So it is only in respect of (b) that the Minister is accepting Sen. Furness-Smith's proposal that "or dependant" is deleted only in relation to 6(1)(b).

Sen. Prof. Spence: I understand that. I am asking, why should it be deleted if the dependant we are talking about is a handicapped person? My understanding of the definition of a handicapped person is one of being dependent. If that is so, then I am in support of protecting the handicapped person in the same way that the child is protected. I see nothing wrong with that.

Sen. Alexander: Clause 6 has a direct link to clause 5. They are interrelated. What clause 6 is saying is in the exercise of the jurisdiction under clause 5 to make orders, these are the matters which are to be taken into consideration for particular protection orders. Subclause (2) of clause 6 seems to give more weight to some of the matters than others. When it comes, for example, to 5(1)(a), a protection order which—

> "prohibits the respondent from being on premises in which a prescribed person resides or works;"

Now, in deciding whether to make that order, clause 6 as it is decides that (a) and (b) must be given primary importance and the same weight.

Dr. Hosein: Therefore, it should not matter which is first or second.

Sen. Alexander: I do not see why the welfare of children should be given the same weight as the need to ensure that a prescribed person is protected from violence or harassment. They do not go together. They are countervailing. On the one hand you have the welfare of the child and on the other hand you have the need to ensure that the prescribed person is protected. It seems to me that there is some conflict between these two primary objectives which you give equal weight. It seems to me that in these circumstances, the welfare of the child ought to be given paramountcy.

3.25 p.m.

Dr. Hosein: No! No! Please, give me any circumstances, it does not matter how far-fetched, where these two will be countervailing. I really cannot see that. I thought I had a very good imagination but I cannot imagine circumstances in which the welfare of the child will somehow be counter to the need to ensure a prescribed person is protected against violence. Unless you can come up with an example for me, it does not matter how far-fetched, I just would not accept that.

Sen. Alexander: A prescribed person means the spouse of the respondent, a parent or a child or dependant of the spouse. When you look at 6(1)(a) and (b) "child" is excluded and it must be, from 6(1)(a).

Dr. Hosein: No! No! "(a)" refers to protection against violence. The other one refers to welfare. Welfare is a far broader term than protection against violence; so that the two concepts are totally different and separate.

A prescribed person includes a child and a dependant; so when it comes to violence everybody is included. When it comes to welfare, you want to be a little more cautious because you want to give it primary importance as well. We are prepared to go with the welfare of children but we are prepared to see the point that when you are giving it primary importance—the difficulty of including dependants.

We have conceded that point. What is in (a) and what is in (b) are two different things. One is violence. The major point of this bill—and I will give my arguments against changing (a) to (b) and (b) to (a)—is about protecting people against violence. It is not meant to cure every social ill. We are coming with other legislation to deal with other points. I do not want to go off the point here, but Sen. Mahabir-Wyatt also has an amendment which I will argue in the same way.

This bill is not intended to cure every social ill. It is intended primarily to look after the issue of protection against violence and this is why it is (a). Subparagraph (b) is there because it is of primary importance. There is nothing in (a) and (b) to imply that one is a little more important than the rest. If that is so then protection against violence is it, because that is what this bill is about.

I hope that I have cleared the air on that point. We have resisted consistently, and I will resist again later on, the idea of introducing other social concepts of great importance under this bill. If we have bent over backwards to introduce anything new in this bill, it is to protect against violence. But in this bill we have to be careful not to attempt to go too far afield, hence our reason for resisting some other amendments that came up along the way.

Sen. Alexander: There are several circumstances where the welfare of a child will prevent or dissuade the magistrate from making one or two of the orders and the question is, where do you put the primacy? If you have the need to ensure that a person is protected against violence and then you have the question of the welfare of the child, which is to be taken into consideration; which are you going to give greater weight? That is all.

Dr. Hosein: It is not a question of, greater. They are both going to be of primary importance and there is nothing in labelling one (a) or (b) that makes anyone the greater or the lesser. But that apart, I am saying the heart of this bill is protection against violence and if forced to make a choice against my will, because I do not think a choice is involved, it will remain protection against violence, because that is what this bill is about.

Other laws will come which will have as its primary role the protection of children. I want to resist the attempt to suggest in this debate, that it is one versus the other, that one will be the greater and one will be the lesser I am saying that issue does not arise at all, but if it were to arise we are choosing clearly the protection against violence because that is what this bill is about.

Other legislation will follow that will have as its primary objective, the welfare of children. That is another matter. I think we have been through that and I do not want to repeat myself.

Sen. Furness-Smith: I can scarcely believe what I am hearing from a Minister. From ever since, the courts and the laws of this country have established the welfare of the children as the primary consideration and now because he is bringing in a bill about domestic violence, he is saying that principle is to be protected in some other legislation, whereas it is already protected in the laws of the land.

Dr. Hosein: I do not want to get into a situation of moral blackmail here, where the Senator is going to suggest that somehow to put one as (1) (a) and one as (1) (b) raises the question of what the Government or legislation *et cetera,* views as being of primary importance.

I am saying the issue does not arise and I am resisting the very suggestion that this is what we are talking about. We are not talking about that. We are talking about legislation designed to protect certain parties against violence. This is what this bill makes the primary issue. We started off on that premise. There will be other legislation that will have the welfare of children as being its core.

Sen. Furness-Smith: We do not want any other legislation. We have the legislation; we have the principles of law, and the hon. Minister, for all his protestations, is putting a great big blue line through all those principles of law. He cannot deny it because it is here in this bill and that is why we are trying to improve it.

Sen. Tiwary: I object very, very strongly to Sen. Furness-Smith's representations with respect to welfare of child. No part of this bill says that one is to take precedence over the other. The Minister has just clearly said that if he has to choose, he will choose protection against violence because that is what this bill is about. Sen. Furness-Smith is well aware that the welfare of a child has been of paramount consideration, and is the law of this land. Nothing in this bill changes that. To attempt to pretend or suggest that this is what this bill is doing, is really not doing justice to the case at all.

Sen. Furness-Smith: I would ask Sen. Tiwary to just read the clause which we are now addressing because if something is to be paramount, it necessarily implies that something else must not also be paramount. That is common sense.

Sen. Tiwary: May I answer you? If you look at subclause (2)—

> "In having regard to the matters referred to in subsection (1), the Court shall consider the matters referred to in paragraph (1) (a) and (b) as being of primary importance".

With my limited understanding of the English language I cannot understand that where the subclause (2) says, "...the Court shall consider the matters referred to in paragraph (1) (a)," that is, the need to ensure that the prescribed person is protected from violence or harassment, and (b), the welfare of a child of the spouse or of the respondent as being of primary importance, is in any manner

suggesting that this bill says that the welfare of the child is being relegated to second or tenth place. It is given here as being of primary importance. It does not change anything.

3.35 p.m.

Sen. Alexander: It gives the need to ensure that the prescribed person is protected, equal weight. It gives the welfare of the child equal weight with the need to ensure. Let us take an example: the magistrate is thinking of making a prohibition order against the respondent from being on premises on which a prescribed person resides or works and there is a child involved. Which takes precedence, the welfare of the child or the need to protect the person? That is the question.

Sen. Tiwary: But we are dealing here with a bill which seeks to protect victims of domestic violence. As the Minister has said—and he will say it for himself, and I am sure he is here to answer—if there is a choice, one must choose the need to ensure protection from violence, if he has to make a choice. But the subclause does not say there is a choice in the matter. The clause says the Court shall consider both matters: the need to protect the prescribed person, which includes a child, as well as the welfare of a child.

Both of those factors are matters which are to be regarded as being of primary importance. There is no question of selecting one or the other. The bill clearly says the court shall consider both of these matters, (a) and (b), as being of primary importance. So I do not agree that the bill, in any way, tends to relegate or take away from the paramountcy of welfare principles.

Sen. Furness-Smith: Could I ask Sen. Tiwary this: If this issue came before a matrimonial court now in the High Court, would the need to protect a prescribed person from violence take precedence over the welfare of the infants of that marriage? I just ask you a straight question of law.

Sen. Tiwary: If one is dealing with the welfare of the child alone, the welfare of the child is of paramount importance. If one is dealing with the needs of the child or the need to protect the child, the welfare of the child is paramount. But this bill is about the protection for victims from violence.

Sen. Furness-Smith: So the welfare of the child, if necessary, has to take second place.

Sen. Tiwary: With the greatest respect, it does not say so. The bill does not say so. It says both are matters to be considered by the court, both (a) and (b) are of primary importance.

Mr. Chairman: Members of the Committee, I think you have had sufficient time for everyone to air their views.

Sen. Spence: I just wanted to ask what "primary" means, because I understand that "primary" comes from "first". I do not see how two can be first.

Sen. Alexander: That is what I am saying.

Mr. Chairman: There are amendments by Sen. Furness-Smith and an amendment proposed by the Minister. I would put the amendment proposed by the Minister first. The Minister's amendment is that in clause 6(1)(b), delete the words "or dependant."

Question put.

Dr. Hosein: Sorry, Mr. Chairman. Are hon. Members voting against deleting "or dependant" in the statement, "the welfare of a child of the spouse or dependant..."? You are objecting to deleting "or dependant"?

Sen. Spence: That is right. That is what I objected to, Sir, because, I believe a dependant runs to the handicapped person.

Dr. Hosein: Is Sen. Furness-Smith voting against it? I just want to be sure.

Sen. Furness-Smith: No, certainly not, but the Opposition Members are voting against that amendment and that should be recorded in a big, big headline tomorrow, I hope. Let me see where this politics gets them.

Sen. Spence: I honestly do not understand what he is trying to imply. I do not understand why you should not protect a handicapped person in the same way you are protecting a child.

Mr. Chairman: I will put the amendment again and I hope everybody will understand it, for the last time. The Minister is proposing that in clause 6(1)(b) the words "or dependant" be deleted.

Question put.

The Committee divided: Ayes 16 Noes 8

AYES

Charles, Hon. H.

Weekes, G.

Basdeo, Hon. S.

Atwell, Hon. H.

Tiwary, Miss A.

Lequay, A.

Bradshaw, L.

Hosein, F.

Charles, Mrs. U.

Bhagan, N.

Rampersad, F.

Sampath, M.

Warner, C.

Furness-Smith, G.

Alexander, A.

Deosaran, Dr. R.

NOES

Persad, Dr. P.

Mark, W.

Baksh, Miss S.

Moonan, M.

Joseph, Fr. W.

Spence, Prof. J.

Khan, K.

Mahabir-Wyatt, Mrs. D.

Amendment agreed to.

Mr. Chairman: We now come to the amendments moved by Sen. Furness-Smith. On a supplemental list of amendments circulated by Sen. Furness-Smith, the amendment is that in clause 6(1), substitute for paragraphs (a) and (b) the following:

"(a) the welfare of a child of the spouse or of the respondent,

(b) the need to ensure that the prescribed person is protected from violence."

Question put.

The Committee divided: Ayes 4 Noes 20

AYES

Furness-Smith, G.

Alexander, A.

Joseph, W.

Khan, K.

NOES

Charles, Hon. H.

Weekes, G.

Basdeo, Hon. S.

Atwell, Hon. H.

Tiwary, A.

Lequay, A.

Bradshaw, L.

Hosein, F.

Charles, Mrs. U.

Bhagan, N.

Rampersad, F.

Sampath, M.

Warner, C.

Persad, Dr. P.
Mark, W.
Baksh, Miss S.
Moonan, M.
Deosaran, Dr. R.
Mahabir-Wyatt, Mrs. D.
Spence, Prof. J.

Amendment Negatived.

Mr. Chairman: The next part of the amendment is to re-number paragraph (f) as paragraph (g) and insert a new paragraph (f) as follows—

Sen. Furness-Smith: I will withdraw that amendment because it is meaningless at this time.

Mr. Chairman: That amendment has been withdrawn, so it will not be put.

Finally, in subclause (2), delete the words "and (b)" appearing in line 3.

Sen. Furness-Smith: I also withdraw that.

Clause 6, as amended, ordered to stand part of the bill.

Clause 7:

Question proposed, That clause 7 stand part of the bill.

Dr. Hosein: Mr. Chairman, I beg to move that clause 7 be amended as follows: In subclause (1)(b)(ii), substitute for the words "mother" and "father", the word "parent".

Also in subclause (1)(b)(iv), insert after the word "welfare" the words "being a public officer and".

In subclause (1) (d), substitute for the words "a parent", the words, "a parent of a spouse or a respondent or a parent against whom the alleged conduct has been or is likely to be engaged in."

In subclause (2), we would want to delete—

Mr. Chairman: I think we had better do it separately.

Dr. Hosein: One at a time?

Sen. Mahabir-Wyatt: Mr. Chairman, I have been trying to catch your eye. Could I just have an explanation about this amendment, because under (b)(iv) the words "being a public officer and approved by the Minister in writing" would make sure that those people who work in shelters for battered women and the Rape Crisis Centre would have to do an awful lot of the work. In fact, the majority of the work with battered women would be disqualified because they are not public officers. I would like to know what is the intention of disqualifying these people since at the present time most of the people who in fact work with victims of domestic violence are not public officers.

Dr. Hosein: Mr. Chairman, we agonized over this matter for sometime, I wish to assure Sen. Mahabir-Wyatt. The difficulty was that public officers fall under the control of a Minister. In other words, the actions of persons appointed by the Minister should, as far as possible, be approved by him. The Minister should be in a position to account for their actions and naturally be in a position to influence, if not control, their actions. If these are public officers, it is one matter.

The other side of the coin is that there are many persons who may not be public officers who may possess qualifications and experience who we might all in this House accept as suitable persons to have the right to go in front of a court and seek a protection order on behalf of, say, a child. The difficulty created thereby, if we agree to that concept, is to what extent would the Minister—since they have to be approved by the Minister in writing—have control over such persons? You now have the situation in which—let me be a little far-fetched if I may—such a person having once been appointed may proceed to do things and appear in front of the court applying for orders left, right and centre in a way that may cause some problems. What does a Minister do? You are forced to either totally revoke that appointment, *etc*. And it may be a problem because when an order is applied for—we have spoken at length as to what is involved in that. So out of an abundance of caution, we chose to have these persons be public officers.

3.50 p.m.

Sen. Mahabir-Wyatt: Mr. Chairman, I would just like to have it recorded that I totally disagree with this stand at the present time. The work that is being done is mainly being done by people who are not public officers, and I really do not see why the Minister has to have control over qualified and experienced people when it comes to trying to help children or dependants. I do not see that this is

necessary. Logically, it does not follow and I think it retracts from the work that is already being done in the field of domestic violence.

Sen. Mark: Would the hon. Minister define what he means by a public officer?

Dr. Hosein: That is defined in the law. It is in the Constitution. A person who is in the service of the Government of Trinidad and Tobago. I hope the Senator is not going to burden me with going and finding the law, but there is a definition of who is a public officer. It is a legal type of definition.

Sen. Fr. Joseph: Mr. Minister, is there some difficulty in incorporating Sen. Mahabir-Wyatt's proposal? Because that makes sense in terms of people who are actually involved; people who can empathize; people who can really bring this to court.

Dr. Hosein: I think it is not a lack of empathy. In fact, that is the original draft to the bill. I think what Sen. Mahabir-Wyatt is seeking to do is to go back to the original and she is speaking against the amendment. It is almost surprising that it does not emanate here but it may well come forth in another place, that, you know—let me choose a wild example—the Minister may want to appoint the Chairperson of the NAR Women's Group because he thinks that might be a good thing to do for partisan reasons. But that would be the power given to the Minister if we go with it as it is. In other words, if we look at the other side of the coin, it is placing in the hands of the Minister, the power to appoint persons whom he feels are experienced and qualified. The other argument is: Do you want such powers in the hands of the Minister? If it is a public officer, there is a law that says who is a public officer. That is a different matter. When you look at (vi) we see people who are probation officers or medical social workers. These are people who are defined in terms of the positions they hold, and they would be public officers. They are an appropriate category who can go and apply for a protection order for a child or someone. But if it is someone who is just experienced and qualified, the Minister may be accused of, on the one hand, choosing people arbitrarily and, on the other, not choosing people, who some third party may argue, are sufficiently qualified and experienced. It leaves the Minister in a difficult position. I am in the unusual position of arguing against powers for Ministers.

Sen. Mark: Mr. Minister, the social welfare officer, the teacher, the civil servant, they fall under the definition of public officer.

Dr. Hosein: Yes, once they are in the public service. In other words, if they are public officers and they are experienced or qualified, the Minister may appoint them if they are in the public service. You may have a teacher who is not a public servant who is teaching in some private school whom you and I may feel is sufficiently experienced and qualified. The real question now is: Do you leave it to the Minister to choose whom he wants because he is satisfied that they are qualified and experienced? What does that mean in law? I am saying that there is a danger. I would have thought that Senators would have been on the side of such caution.

Sen. Spence: I wonder if there is any way of compromising and taking it away from the Minister and having some organization, some authority approving the persons other than the Minister. If the problem is that it may be exploited politically, then the thing to do is to take it away from the political arena but still have the provision for voluntary social workers to be recognized in that way. Is there an association of some sort? Can the Medical Association or the Legal Association do this? Surely, there must be some authority other than the Minister who can give the approval.

Dr. Hosein: It is a little too complicated to set up some authority that will have that kind of decision-making powers. The real danger in leaving it as it is, is that you can get non-governmental organizations involved in what is a serious legal process. From time to time all of us in the society may agree that X or Y may be suitable, but that is not the problem. The problem is, how do you control that situation especially when it is left to the Minister to determine such persons? The difficulties involved in your suggestion are fairly clear.

Sen. Spence: Not necessarily create an authority but there are so many authorities, maybe we can use one of them in that way. I would assume, for example, that the Medical Board would have some competence in this. Is there an association of psychiatric social workers that could give the approval?

Dr. Hosein: No. With due respect, most of these bodies, like the Medical Board, are professional regulatory bodies. They are not set up to make those kinds of choices. If you look at public health inspectors, these appointments are approved by the Minister in writing. There may be professional bodies that look after the affairs of public health inspectors, but when it comes to appointing someone who would have certain legal powers granted to them by law and regulation, the Minister must approve. That is the normal process in law.

I think what we are trying to do with this amendment is to err in favour of caution in a matter in which that person, once appointed, has the power to go in front of a court and seek a protection order for people whom they are otherwise not connected to.

Sen. Spence: Can it be the Minister, on advice of the Director of Social Services? Is there not a social service system in the country that has professional people in it, and can they not advise the Minister to take it away from the political arena?

Dr. Hosein: This is what would have to happen anyway. In other words, when the Minister is appointing public health inspectors where, for example, as the Minister of Health, I had to sign the precepts for all the public health inspectors, it was based on advice. It is not that someone walks into my office and says, "I would like to be a public health inspector." So there is a presumption of that anyway. The real question is: Ought the Minister to have powers to appoint people who are not public officers, to do certain things such as these?

Hon. Senator: Why not?

Dr. Hosein: It is fine to say, why not? It may be a different matter if a Minister then proceeds to use that power arbitrarily, and then you may say, "Ah, now I see why not. This is the point. I do not know how Senators feel about it, but we have chosen to go with this amendment.

4.00 p.m.

Sen. Alexander: There is no relationship between the Minister and a person who is not a public officer, and the Minister has to be responsible for this, so therefore, “public officers.” It is a question of responsibility and accountability.

Question, on amendment, put and agreed to.

Sen. Persad: Mr. Chairman, I have two amendments. I am suggesting that we have a 7(b) (vii) and 7(b) (viii). Subclause 7 (b) (vii) should read:

“A teacher qualified in social welfare approved by the Minister in writing.”

Subclause 7(b)(viii) should read:

> “A minister of religion approved by the Minister in writing.”

Dr. Hosein: Mr. Chairman, with regard to the first, once that teacher is a public officer, it is already taken care of in the first. In other words, the person may be a teacher or in some other category—once he is qualified and experienced in social work, and a public officer. I do not think there is a need—

Sen. Persad: The other one 7(b)(viii) Minister of religion, I would think that a minister of religion plays an important part in the community in which he works. If we are serious about combatting domestic violence we must use all resources possible.

Mr. Chairman: The role of a minister is to counsel the family.

Dr. Hosein: I suggest to Sen. Persad that for someone to counsel, which is something I think we have accepted—

Sen. Persad: I am saying that the ministers of religion play an important role.

Dr. Hosein: Here we are talking about persons who would have power to go to court. What is more appropriate for ministers of religion is for them to be approved for counselling, which is something to which we have already agreed. When it comes to someone having the power to go to court, that, I think, is a different matter.

Sen. Persad: I am not understanding why a minister of religion cannot go to court. I am not clear on that.

Sen. Tiwary: What we are saying is that the added responsibility for him to initiate the action, make the application, go to court every time the matter is called and so on, are you sure that is the responsibility you want to give to him? He can refer them to one of these people, because it is a legal proceeding we are talking about. In effect, he will really be the applicant or the complainant.

Sen. Persad: Yes, I think that he should do so.

Sen. Tiwary: How do you feel Sen. Joseph? Would you like to see that responsibility—

Sen. Fr. Joseph: I appreciate what he is saying. I will tell you the difficulty I would have. A lot of this hinges on confidentiality which cannot stand up in a law court and that always poses a problem about the priest dealing on a counselling basis having to go to court, and I would resist it on that basis.

Sen. Tiwary: In addition, I would think that the responsibility which you would now be entrusting to any minister of religion being involved in pursuing legal proceedings on behalf of victims, noble as it is, is too much. It is not wise, really, to include that category of persons to initiate this kind of action. Would you like to reconsider it and withdraw your amendment?

Sen. Persad: Okay, I withdraw.

Dr. Hosein: Mr. Chairman, can we proceed now? If we are finished with subclause (1), we wish to delete subclause (2). The reason is that we have already picked up the question of the respondent in a new definition. Therefore, we would delete (2) and renumber the other subclauses accordingly.

Question, on amendment, put and agreed to.

Dr. Hosein: In subclause (3) which will now be (2) when we renumber, the amendments are:

(a) Substitute for the word “and”, the word “or” in line 2.

(b) Delete the word “custodial” in line 2.

(c) Substitute for the words “shall be a party to the proceedings”, the words “and with whom the child normally resides or resides on a regular basis, has a right to be a party to the proceedings.”

Question, on amendments, put and agreed to.

Dr. Hosein: Mr. Chairman, subclause (4), which would now become subclause (3), we would want to delete that and substitute the following:

"Where the application is made by a police officer in respect of a prescribed person who is an adult, that person shall be a party to the proceedings."

Question, on amendment, put and agreed to.

4.10 p.m.

Mr. Chairman: Sen. Furness-Smith, do you have some amendments to clause 7?

Sen. Furness-Smith: Due to the Minister's amendments, I withdraw my amendments to clause 7.

Sen. Furness-Smith's amendments withdrawn.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the bill.

Clause 8.

Question proposed, That clause 8 stand part of the bill.

Dr. Hosein: Mr. Chairman, I beg to move that clause 8 be amended by renumbering it as 8(1) and new subclauses (2) and (3) be added to read as follows:

"(2) The Court in proceedings on an application may order that such proceedings be held *in camera.*"

(3) Except as otherwise provided by this Act, the Summary Courts Act applies, *mutatis mutandis,* in respect of proceedings on an application."

Sen. Alexander: The new subclause (2) gives the magistrate a discretion as to whether proceedings should be held *in camera* or not. Why not make all the proceedings *in camera?* This sort of proceeding should be held *in camera.*

Sen. Tiwary: I do not agree with Sen. Alexander. There may be certain matters which, due to the very nature of the violence or the offence alleged, may be such in the magistrate's discretion that ought to be heard *in camera*. But if we are talking about domestic violence broadly, and bearing in mind all the prescribed offences which are under all the various Acts, I would say it should be really left to the court's discretion.

Under the Sexual Offences Act, already there is a provision as to which matters may be heard *in camera*. But to make a blanket provision that all offences under this bill should be heard *in camera*, I feel that would be undesirable.

Sen. Alexander: With the greatest respect, confusion creeps in again between the criminal offence which is tried in the criminal courts and what we are dealing with here, applications for protection orders. That is what we are dealing with here.

Sen. Tiwary: But if those very applications come up in the High Court, they are heard *in camera,* although held in the Chamber Court, any member of the public has access there.

Sen. Furness-Smith: Chamber Court?

Sen. Tiwary: Normally, the public has access to it and that is what happens everyday. If it is the matrimonial chamber court, the matrimonial judge occasionally says when they are hearing a particular matter, that only parties and their representatives can be in court. But the practice has developed right now, and

I know for the past 10 years at least, where normally, members of the public have access where ordinary injunctions are sought in the High Court.

Sen. Horne: Mr. Chairman, quite a number of points that a woman might wish to make, she might not be able or she might not feel that she could make those points in public. So if we are really looking for justice, she ought to be able to do this *in camera*.

Sen. Tiwary: With respect to Sen. Horne, this is why the provision allows the court to have a discretion as to which matter ought to be heard *in camera*. But to say that all matters brought under this bill should be heard *in camera* is really very wide indeed.

Sen. Alexander: Why in public?

Sen. Tiwary: What is there that should make it different from any other kind of proceedings?

Sen. Alexander: It seems to me that these proceedings are eminently suited for *camera* hearings.

Sen. Tiwary: But civil proceedings normally are not heard *in camera*. Only some criminal proceedings are heard *in camera*. Are we now saying that all these proceedings are akin to criminal proceedings?

Sen. Alexander: These proceedings deal with family affairs—ex-spouse, present spouse, de facto spouse, husband, child and parent.

Sen. Tiwary: Committed violence.

Sen. Alexander: There is confusion in people's mind between the criminal offence which is tried in the criminal court before a judge and a jury, and the applications for a protection order. That is all this bill does, to given an abused person a right to a protection order. That is what it is.

Sen. Tiwary: I do not agree that all applications under this Act should be heard *in camera*. I would like to say that the court should have the discretion to determine which matter should be held *in camera*.

Dr. Hosein: Mr. Chairman, can I ask for Sen. Furness-Smith's opinion on this matter?

Sen. Furness-Smith: I must say that I really agree with Sen. Alexander. But, as I have not practised in the courts in the way Sen. Tiwary speaks for at least10 years, I am a little confused again this afternoon when I hear her lay down propositions which, to my thinking, are totally incorrect. The Chamber Court is a private court. That is the essence of a chamber court. She is quite correct when she says that the practice has grown up of permitting all kinds of chamber matters to be heard with everybody there. The whole place is crowded with people where my personal affairs are being discussed. That is a practice that has grown up. It should never have been allowed to grow up. It has grown up since I was practising in those courts. I am amazed. However, that is one point.

This point is a question of family matters. I think, even now the judge has a certain compunction in discussing applications with respect to children or really personal matters with his court full of practitioners. But he still does it of course and nobody seems to worry in the least whether the practise of the law is being abused. Nobody protests. It is not right. There is no matter under this bill which is in the nature of giving the women of this country the right to go cheaply before a magistrate and get the same kind of order which more wealthy people could get in the High Court. There is no reason at all why this, which is essentially a private matter, should not be held *in camera.* Why should poor people be treated less properly than rich people?

Sen. Fr. Joseph: Mr. Chairman, I am not going to ask what the law enjoins here. I think we need to look at it in terms of parties, in terms of reconciliation. I think it would help reconciliation if it were to be held *in camera*. I think for that purpose alone, I would like to see it held *in camera.*

4.20 p.m.

Dr. Hosein: Mr. Chairman, we have no difficulty, we are accepting the principle. The question is, How is it drafted? I think it is on the record, Sen. Alexander's proposed amendment which came around in writing and said that the magistrate may order—I have it here.

I remind Sen. Furness-Smith, that when in pursuit of this point and how we drafted it—because he accepted the principle—we suggested the drafting which exists in the Sexual Offences Act, which reads: "shall be heard *in camera* unless the court otherwise directs." It was at his insistence and argument that we changed it to the wording that is now before this Committee. I just want to say that so that we can be clear. So Sen. Alexander is arguing against himself, first of all and I

thought I would have had support from Sen. Furness-Smith because it is at his insistence that we came up with this drafting. It goes to show, Mr. Chairman—and I hate to say this—that people have been arguing about this so much that they are beginning to argue against themselves.

Sen. Alexander: Mr. Chairman, the point is, in the original bill the provisions of the Summary Courts Act were to be applicable, in which case, hearings would have had to be in public. My proposed amendment when it is said, "the magistrate may", "may" in that context means "shall".

Dr. Hosein: "May" means "shall"?

Sen. Alexander: Yes, in that context.

Sen. Horne: Mr. Chairman, if it is that it is not *in camera*, we have to understand that before the order is given the victim must explain why, or give facts why she wants such an order. It may be difficult to do all of that in a public court. The victim may not be able to really say, may not feel, or may not have that gumption to say everything that went wrong so that she could really get the order. I think that it should be held *in camera*.

Dr. Hosein: May I then suggest—in the hope that I could gain the support of Sen. Furness-Smith who I recall had objected to using the wording as it is in the Sexual Offences Act—that we go back to the wording, "shall be heard *in camera* unless the court otherwise directs".

Sen. Furness-Smith. I am a little disappointed at the Minister throwing at us expressions we have used when we attempted, at his request, to try and work out suitable drafting of his bill.

Dr. Hosein: On a point of order. Sen. Alexander's amendment was something which was circulated. It was not something said in private and that is what I referred to.

Sen. Furness-Smith: The Minister is throwing at us that we have changed our minds. The purpose of these proceedings is to hear the views of other Senators and try and reach some collective wisdom. I may have taken a view on this bill, on various things, over the last two or three months, which is inconsistent with what I am saying today. When I hear points raised, I do not just sit and say that I am sticking to my view, I listen and I try to improve on them.

I do not think that kind of argument should be raised. I really do not. Quite frankly, if I am not saying something contradictory to what I said before this afternoon, I would be extremely surprised. I have a mass of papers. The hon. Minister has inundated me with amendments, great big pages. A whole booklet came to me only this afternoon. There was none at 9:00 a.m and another at 1.30 p.m., and I am totally confused.

I compliment his staff for trying to get through well, but let us not have this sort of argument. I am quite satisfied, having heard the argument, that Sen. Alexander is quite right. If I have made some suggestions otherwise, I am quite wrong. The Sexual Offences Act is a criminal statue and there are very good grounds for saying that the standard rule in a criminal matter is that it should be heard in public because it is a criminal matter and the public has an interest. This proceeding here, we are trying to give poor people the right to go to the magistrate and get the same relief which wealthier people can get in the Chamber Court, before the High Court. We should try and give the poor people the same rights, privileges and privacy which richer people can have, if it is possible. If it is not possible, then we have to do something else, but let us do our best.

Dr. Hosein: Mr. Chairman, I just want to quickly respond and hopefully have the point be put aside. No offence is created in any debate here. I would have hoped that none would be, in debate on serious matters which will have serious effects on the society out there. We will all take positions that someone or the other may find serious difficulty with, but nothing in the debate is intended to create offence.

I do not think I need to remind Sen. Furness-Smith that he has accused us on this side of being contradicting, because we too have changed our position on a number of matters based on argument. The fact that I reminded Sen. Furness-Smith and I seem to recall saying it in the best of humour—and I am sorry that there was offence.

I just want to say Mr. Chairman, that we are still trying to resolve the matter of how do we word this to achieve the effect that we all agree we want to achieve. I have suggested that we use the same wording in the Sexual Offences Act. I want to know, in light of what Sen. Furness-Smith just said, whether that is acceptable.

Sen. Alexander: What is the purpose of holding these proceedings? What purpose will it serve to hold them in public? These are purely private matters. Why in public?

4.30 p.m.

Sen. Tiwary: I agree with you and if it is desirable, they can always be heard *in camera*. I thought that the object of bringing these proceedings in the magistrate's court—one of them—was that the magistrate's courts are spread throughout the country, so that people in all parts of the country will have a more speedy access to the courts. I am only asking one question, particularly of Sen. Alexander, bearing in mind the normal workload of a magistrate. At the start of the debate there was a lot of talk as to whether we were now giving more work to a magistrate. Are we going to make it more difficult for the magistrate to hear as many matters as he would normally hear, if we are asking him to hear them *in camera*? If so, do you agree that we should leave it to his discretion?

I mean, some of the domestic violence may be trivialised, may not be too serious as others, in which case the magistrate can hear them as routine. On the other hand, the more intimate, detailed violence, the more personal matters, he can choose to hear *in camera*, bearing in mind what his workload normally is throughout the country. Would it not be desirable to leave it, as the Minister originally proposed, that is, where the magistrate should have the discretion?

Sen. Alexander: At what point does he decide, when he has already heard something in open court and he says, “No I am not going any further?” I do not see any reason why it should be held in public at all. In point of fact, the magistrate can clear the court and say, "I am hearing applications at 11 o'clock", and he works from 9 to 11 o'clock and then he hears these matrimonial applications. There is absolutely no reason for having these matters in open court.

4.32 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Dr. Hosein: We accept the wording as it is in the Sexual Offences Act, the reason is, that in respect of the sensitivity to the point about the burden of the magistrate’s court, we believe that if we insist that all hearings be *in camera* it obligates the magistrate to have to clear the court every time a domestic violence matter comes before him. We believe that a magistrate could look at the application and make an early determination as to whether he thinks it is necessary to clear the court or not and, therefore, the wording in the Sexual Offences Act which says, "shall be heard *in camera* unless the court otherwise directs" is the way we would want to go. We could word it this way:

"Proceedings in respect of an application shall be heard *in camera* unless the court otherwise directs."

Question, on amendment, put and agreed to.

Mr. Chairman: Sen. Furness-Smith do you have any amendments to propose to clause 8?

Sen. Furness-Smith: If I have, I withdraw them.

Mr. Chairman: Sen. Furness-Smith's amendments are withdrawn.

Sen. Alexander, do you wish to pursue your amendments to clause 8?

Sen. Alexander: I withdraw them.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the bill.

Clause 9 ordered to stand part of the the bill.

Clause 10.

Question proposed, That clause 10 stand part of the bill.

Dr. Hosein: In subclause (2) substitute for the words "on behalf of" the words "in respect of".

Question, on amendment, put and agreed to.

Dr. Hosein: In subclause (3) substitute for the word "complaint" the words "application as if it were a complaint to which that Act applies."

Question, on amendment, put and agreed to.

5.10 p.m.

Dr. Hosein: In subclause (4), delete the words "or summons."

Question, on amendment, put and agreed to.

Sen. Furness-Smith: I am withdrawing my amendments.

Mr. Chairman: Amendments to clause 10 proposed by Sen. Furness-Smith have been withdrawn.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the bill.

Clauses 11 and 12 ordered to stand part of the bill.

Clause 13.

Question proposed, That clause 13 stand part of the bill.

Dr. Hosein: Mr. Chairman, I beg to move that clause 13 be amended as follows:

Substitute for the word "defendant" the word "respondent" in line 2.

Question, on amendment, put and agreed to.

Sen. Furness-Smith: I withdraw my amendment, Mr. Chairman.

Question put and agreed to.

Clause 13, as amended, ordered to stand part of the bill.

Clause 14.

Question proposed, That clause 14 stand part of the bill.

Dr. Hosein: Mr. Chairman, I beg to move that clause 14 be amended as follows:

Delete subclause (2) and renumber appropriately.

Sen. Baksh: Mr. Chairman, can I ask the Minister what is the reason for deleting subclause (2)?

Dr. Hosein: Mr. Chairman, the idea is that it be left in the magistrate's discretion. What is in subclause (2) attempts to spell out and limit. If you re-read the whole clause now without subclause (2), you will realize that it leaves to the discretion of the magistrate how he is going to proceed with evidence.

Sen. Alexander: On what basis would the magistrate make an interim order? He must have some evidence before him. He cannot just make an interim order upon an application. He must have some sort of evidence.

Sen. Furness-Smith: He has to be satisfied.

Sen. Tiwary: Subclause (1) refers to satisfaction; he has to be satisfied. Subclause (2) is really shaky. He can only make an order where there is evidence, or whatever evidence, but what we are saying is the magistrate must have evidence, and it must be given by the applicant or the spouse. If for some reason the victim is unable to come to court, or whatever, to be able to say what has happened about it, if we leave subclause (2), it means that the court would not have the power to grant an interim order unless oral evidence is given by the applicant or the spouse, or by the person on whose behalf the application is made. So the person who has been violated has to go in the box and give that evidence. Here where it is only an interim order, it is an emergency situation, you want to leave the discretion to the magistrate to see what evidence he or she will accept to grant an interim order. These are usually done in times of emergency. If you spell out that it is only after somebody goes in the box and gives evidence that “my arm was chopped”, or whatever, there may not be that opportunity for it.

Sen. Alexander: He must hear some evidence.

Sen. Tiwary: But subclause 14(1) says, "...the Court is satisfied that it is necessary, in order to ensure the safety..." He must be satisfied.

Sen. Alexander: Satisfied on what? Satisfied on the basis of what? By looking at the people who come before him?

Sen. Tiwary: It must be based on the evidence that is given before the court.

Sen. Alexander: Exactly.

Sen. Tiwary: If you read 14(1) it says:

> "Where an application for a protection order has been made and the Court is satisfied that it is necessary, in order to ensure the safety of a prescribed person, pending the hearing and the determination of the application, to make an interim protection order, the Court may make such order whether or not the application has been served on the respondent."

Sen. Alexander: It seems to me that if subclause (2) is being deleted, you should insert between the words "satisfied" and "that" in the second line of subclause (1), the words "on evidence".

Sen. Tiwary: Yes, we will accept that.

Dr. Hosein: Yes.

Sen. Tiwary: On the evidence, or on evidence?

Sen. Alexander: By evidence.

Dr. Hosein: Is it by evidence or on evidence?

Sen. Alexander: Either one is good enough.

Sen. Mahabir-Wyatt: Mr. Chairman, through you for the edification of non-legal people could we just be told what exactly does "on evidence" mean? Does this mean you have to have a hearing? Because it seems that it would nullify the whole purpose of an interim order if you have to have evidence presented, which sounds like a hearing. I just do not know what it means in layman's terms.

Sen. Tiwary: It does not say what the nature of the evidence must be before the granting of an interim protection order. What I believe I understand it to mean is that some evidence must be presented before the court on consideration of which the magistrate is of the view that the circumstances require the issuing of an interim protection order, but that not necessarily the alleged victim or the complainant, himself or herself, be produced in court to give that evidence. Once the magistrate is satisfied on that evidence, it is necessary to grant the order.

Sen. Mahabir-Wyatt: Does that mean that evidence has to be led?

Sen. Tiwary: It must be.

Sen. Mahabir-Wyatt: That implies a hearing then because then you are not talking about a straight application you are talking about a hearing. If evidence has to be led, does that not mean in legal terms that one must have a hearing in order to lead evidence? So therefore, it ceases to be an interim emergency measure and becomes a hearing.

Sen. Tiwary: Once the matter comes before the magistrate that is a hearing, whether it takes two minutes or two days. Once it comes up before the magistrate and he deals with it, it is a hearing. It may not be a lot of detail; it may not be very lengthy but there must be some evidence before the court for him to decide that the circumstances warrant the issuing of an order.

Sen. Mahabir-Wyatt: Yes, but my question is, What sort of evidence are we talking about?

Sen. Tiwary: There must be somebody who is prepared to come before the court and say that Mr. or Mrs. or Miss Y. has been injured in a family situation and, therefore, as a result of that, that person needs protection.

Sen. Mahabir-Wyatt: If that is what is meant, I am satisfied. I was asking for an explanation.

Dr. Hosein: Mr. Chairman, we therefore propose that we amend clause 14(1) by inserting between the words "satisfied" and "that" in the second line, the words "on evidence" and we delete subclause (2) and renumber appropriately.

Question, on amendment, put and agreed to.

Dr. Deosaran: Mr. Chairman, I had withdrawn all my amendments because the earlier one was premised in a certain way.

Sen. Deosaran's amendments withdrawn.

Question put and agreed to.

Clause 14, as amended, orderd to stand part of the bill.

Clause 15 ordered to stand part of the bill.

Clause 16.

Question proposed, that clause 16 stand part of the bill.

Sen. Mahabir-Wyatt: Mr. Chairman, I had proposed that in subclause (3) the interim protection order remain in force for a period not exceeding 30 days rather than 14 days because of the problems of just getting time in what is continuously being referred to as overcrowded magistrates' calendars. However, we have already approved clause 9 which says:

> "The clerk shall fix a date for the hearing of an application for a protection order that is not more than seven days after the date on which the application is filed."

So it would appear that this would contradict that. So I withdraw my amendment.

Sen. Mahabir-Wyatt's amendment withdrawn.

Question put and agreed to.

Clause 16 ordered to stand part of the bill.

Clauses 17 and 18 ordered to stand part of the bill.

Clause 19.

Question proposed, That clause 19 stand part of the bill.

Dr. Hosein: Mr. Chairman, I beg to move that clause 19 be amended as follows:

Substitute for the words "a domestic violence offence within the meaning of this Act", the words "an offence for which a protection order may be made."

Sen. Alexander: You cannot arrest a person for 4(b) and (c).

Sen. Furness-Smith: Subclause 4(b) and (c) are not offences.

5.25 p.m.

Sen. Alexander: The suggested amendment to substitute "an offence for which a protection order may be made" in the place of "domestic violence offence" seems to me to suggest powers of arrest in respect of clause 4 (1) (b) and (c).

Sen. Lequay: This is not an offence, it is harassing and so forth.

Sen. Alexander: They have not been made criminal offences. When you come to look at your amendment to clause 25, you are suggesting the same amendment and it appears to me that this is endeavouring to give the police powers of arrest without warrants under 4 (1) (b) and (c).

Sen. Tiwary: Is Sen. Alexander suggesting that we keep the original form?

Sen. Alexander: I see no reason why we cannot.

Sen. Lequay: That would apply to clauses 20, 21, 22 and all the other amendments.

Sen. Tiwary: Yes.

Sen. Alexander: When we come to clause 25 there is a different amendment.

Dr. Hosein: We withdraw the proposed amendments to clause 19 (1) and (2).

Amendments withdrawn.

Question put and agreed to.

Clause 19 ordered to stand part of the bill.

Clause 20.

Question proposed, That clause 20 stand part of the bill.

Dr. Hosein: We withdraw the amendment.

Mr. Chairman: The amendment to clause 20 as proposed by the Minister has been withdrawn.

Amendment withdrawn.

Sen. Persad: Mr. Chairman, I should like to add after the words police officer, "above the rank of sergeant or in charge of the station".

Dr. Hosein: Mr. Chairman, there is reference in clause 19 (1) to section 105 of the Summary Courts Act which sets the limit at corporal. It will certainly complicate matters if we attempt now to go with Sen. Persad's amendment. In other words, you will notice that it is written in a way where it refers to an existing Act, and we have decided to go that way, and in that Act it says "corporal and above." It is uniformity in the law.

Sen. Furness-Smith: I should like to explain my position on this bill. My amendments stated that clauses 19 and 20 should be deleted because I did not think that it was right to introduce an entirely new system of bail just for this bill to replace the general provisions for bail which apply to all other offences. It was explained to me that they want to make this piece of legislation a kind of travelling pocket book for those concerned with these things to be able to see all the laws compendiously in it. I do not agree with this approach but I am prepared to go along with it if that is what the Government wants. I think they would probably regret it sooner or later, but that is their business.

Mr. Chairman: The proposed amendments by Sen. Furness-Smith to clause 20 have been withdrawn.

Sen. Furness-Smith's amendments withdrawn.

Sen. Persad: Mr. Chairman, when you look at clause 23 (4)—

Dr. Hosein: Mr. Chairman, can you hold on for a while?

Sen. Persad: Under this bill, the police seem to have more powers than normal and I should like to think that a certain degree of stature in the police force should be the person who decides to refuse or admit the bail. That is the logic of my argument.

If you look at clause 23 where a police officer can be invited by anybody on the premises and can arrest without warrants, then to have any officer refuse bail I think is something that we ought to look at. It provides a counter-weight to the normal—

Sen. Tiwary: What are you suggesting?

Sen. Persad: "Rank of sergeant and above or in charge of the station."

Sen. Alexander: Suppose the sergeant is not there.

Sen. Tiwary: That is the difficulty. You do not want to make it more difficult for a person who is involved in these kinds of proceedings to get bail than if he were charged with an ordinary criminal offence. I do not think you wish to impose that.

Sen. Persad, if you insist that where somebody has got involved in proceedings under the Domestic Violence Act, that the person who has been arrested under such proceedings can only get bail if there is a police officer from the rank or sergeant or above, it means that you are really limiting the opportunity for him to get bail.

5.35 p.m.

Sen. Persad: That is the idea—"decides to refuse". That is what I am saying just about anybody should not have to "decide to refuse."

Sen. Tiwary: Where is there any reference to refusal?

Sen. Persad: Since any police officer can be invited into a home to arrest a person without a warrant, I am saying that we must have a counter-weight to that. He cannot carry him to a station and just about any corporal also refuse him bail. I am saying that you must have a counter-weight and therefore an officer above the rank of sergeant or in charge of a station should make that decision. It should not be such a routine matter. It provides some measure of counter-balance.

Sen. Tiwary: I am afraid I did not follow him.

Sen. Mark: May I make a point? Mr. Chairman, we are aware of the fact that amendments would have to be made if Sen. Persad's point is to succeed. We have to note that we are introducing a new piece of legislation and in the absence of the necessary training we are not convinced that the Police Service has put into train any systematic and organized programme of training for its officer core to deal with this particular issue. We are talking about the issue of domestic violence. Because of the character of this whole exercise it would be useful, in this particular context, to give the authority of intervention to the rank of a sergeant or above.

Dr. Hosein: Mr. Chairman, I just want to make the point that what we do recognize is that the police have not—it is a habit not just in Trinidad and Tobago but the whole world—become sufficiently involved in domestic affairs even when they have the power, hence the reason, as Sen. Furness-Smith puts it, the Government has chosen to go this way because we need to be instructive to the police. I do not necessarily accept the point that the police are not sufficiently trained in their jobs. That is a different matter. It is a separate matter to be trained one way and not to use your training to intervene. Those are two different matters.

Secondly, the police have in fact set up—that emerged in the debate—a unit to deal specifically with domestic matters. I am aware that the police are also—I do not want to get too involved in what the police is doing, maybe Sen. Hochoy Charles may be better able to intervene—getting involved in training their officer core. I mention that because you did mention it in a way on certain points in the law. I know that members of the Law Commission are involved in that exercise.

Thirdly, I would want to make the point that we have already said that with regard to the provisions in this bill, steps will be taken to appropriately inform all persons who are going to have to play a role, whether it be magistrates, police officers, probation officers or medical social workers, as to what their roles in this are going to be. Those additional steps will take place in due course. I do not think there is a need to fear on that point.

Sen. Furness-Smith: Mr. Chairman, I think there may be some misunderstanding about this point. Members will see that under clause 19(2) which states:

> "...his entitlement to bail shall be in accordance with section 107 of the Summary Courts Act."

Now, section 107 provides the manner in which somebody charged with a summary offence can get bail. When the magistrate issues a warrant for arrest, he endorses it with a statement as to how much bail could be given. Only then does the police have any part in that.

Section 107 states:

"(1) Every Magistrate or Justice issuing a warrant under this Act for the arrest any person shall, if in his opinion such person should be admitted to bail on his arrest, by endorsement on the warrant direct that if such person executes a bond with sufficient sureties for his attendance before a Court at a specified time and thereafter until otherwise directed by the Court, the officer in charge of the Police Station to which such person is brought on his arrest shall take such security and shall release such person from custody."

It goes on at (3):

"(3) The officer in charge of a Police Station to which any such person is brought on his arrest shall comply with the directions endorsed on the warrant of arrest and whenever security is taken under this section he shall forward the bond to the Court."

It is the officer in charge even if he is a corporal, I suppose.

Sen. Tiwary: Section 105.

Sen. Furness-Smith: Yes, that is right. It says:

"...any police officer of or above the rank of corporal may...enquire into the case, and, unless the offence appears to such police officer to be of a serious nature, discharge the person upon his entering into a recognisance with or without sureties for a reasonable amount to appear before a Court..."

Sen. Tiwary: Clause 19(1) states:

"Where a person is in the custody of a police officer having been arrested without a warrant and charged with a domestic violence offence within the meaning of this Act or an offence under section 18, his entitlement to bail shall be in accordance with section 105 of the Summary Courts Act."

Section 105 states that the person must be taken before somebody not below the rank of corporal who shall admit him to bail, if he cannot take him to court within 24 hours.

Clause 19(1) says where somebody has been arrested without a warrant his entitlement is under section 105.

Sen. Alexander: I am just seeing something very, very strange in clause 19(1) which states:

> "(1) Where a person is in the custody of a police officer having been arrested without a warrant and charged with a domestic violence offence within the meaning of this Act or an offence under section 18, his entitlement to bail shall be in accordance with section 105 of the Summary Courts Act."

Now, a domestic violence offence ranges from murder. So, is it the intention for a corporal to grant bail to a person who kills his spouse? This is because sufficient thought had not been given to the separation of the criminal offences from the protection order.

Sen. Tiwary: Section 105 also states:

> "...unless the offence appears to such police officer to be of a serious nature..."

Sen. Furness-Smith: You do not think it would give the police corporal the right to consider whether—

Sen. Alexander: I think these clauses are going in direct conflict with the provisions for bail in respect of these serious offences. I think you need to look at them again.

Sen. Warner: Mr. Chairman, I am in total agreement with Senators Alexander and Furness-Smith. From my experience as a justice of the peace I do not see how the police constable or police officer can refuse bail. To me, that will be usurping the functions of the justice of the peace. The justice of the peace is the person who fixes the bail or decides whether the defendant or the person charged should be granted bail. The police officer can make an application to the magistrate or the justice of the peace that bail ought not to be granted. In that setting it is in the discretion of the justice of the peace or the magistrate to refuse. But it is not the

police officer's duty and function to refuse bail to any person charged. That is how I know it is done.

Sen. Furness-Smith: I agree. To my mind these clauses—and now it is coming out—ought not to be there at all. That was my original amendment. I did say, I think, that if you kept them in you will regret it.

The point that is being made is that the police officer above the rank of corporal has certain powers under section 105 in very minor cases. If you cannot persuade the police in charge you can always go to the magistrate. But as you say, his powers are very limited. Personally, I think it is very unwise to tamper with our laws about bail.

5.45 p.m.

Clause 19 recommitted.

Dr. Hosein: We are looking at 19(1) again. But the point about 20 and the refusal about police to grant bail, I think there is some misunderstanding. Shall we defer 19 with the consent of the Senate?

Mr. Chairman: There is a request from the Minister to defer clause 19 and come back to it at a later stage.

Question put and agreed to.

Clause 19 deferred.

Clause 20.

Dr. Hosein: On the point of clause 20, there is some misunderstanding. The labelling "refusal of police to bail" is giving the impression that the police is going to say "no bail and that means jail." What is meant there is if the police themselves are not prepared to say "yes," what they must do. That is what this clause outlines. As far as I am aware, there is nothing in clause 20 that is not a restatement of what is the present common-law in practice.

Sen. Alexander: I suggest that these clauses be deferred because they are dependent on one another.

Dr. Hosein: Mr. Chairman, maybe we should defer all the matters on "bail" which is Part III of the bill which includes clauses 20, 21 and 22 and go on to Part IV.

Question proposed, That Part III of the bill be deferred

Question put and agreed to.

.

Clause 23.

Dr. Hosein: Mr. Chairman, we had an amendment circulated but we wish to withdraw that amendment.

Amendment withdrawn.

Sen. Furness-Smith: Mr. Chairman, I want clause 23 deleted. I do not think we need to have police officers coming onto private people's premises in this day and age. I am sorry, I understand the problems. I am quite happy to have new provisions to protect a battered wife. But, I just do not think we should extend the powers of the police to come into people's private homes for these reasons.

Dr. Hosein: I want to disagree with Sen. Furness-Smith. I invite Sen. Furness-Smith and other Members to look at clause 24, least the impression be given that clause 23 means that a police officer cannot be refused. What 24 (b) goes on to say is what a police officer must do when and if he is refused. Clause 23 says:

"Where a police officer has been invited onto premises..."

Presumably the opposite can happen and clause 24 provides for it, that is, when the police officer is refused.

Clause 23 talks about where a police officer has been invited on the premises and clause 24 means what happens when he is not invited and has to go before a magistrate. I have no difficulty with that and I think one should not suggest that it is only clause 23. It is 23 and 24 and it merely picks up both circumstances. We must read them together.

Sen. Furness-Smith: But he must get a warrant. Nobody expects the police to go onto premises without a warrant, but clause 23 considerably extends the powers of the police. It says:

"Where a police officer has been invited onto premises by a person apparently resident in the premises for the purpose of giving assistance. . ."

Apparently, that will allow any police officer to go in anywhere.

Sen. Tiwary: Let us suggest that I telephone the police and say, "Somebody is attacking me in my home, please come." Are you saying that the police do not have the authority to enter my home? If he is invited how does he come into your home? Is he going to be in the road? You must contact him by some fashion. We are talking about protecting victims of violence. If I am in my home, insofar as the policeman is concerned, I appear to be resident there. So, apparently, somebody who is on the property invites and tells the policeman, "please come and protect

me. Come and protect my child, he is being attacked." Are you saying that the police officer does not have the power now to come into my home under those circumstances?

Sen. Furness-Smith: Not unless he knows your voice.

Sen. Tiwary: Seriously, how do policemen operate now? Let us be reasonable, we are talking about serious business. If a murder is committed in the home now, I am asking the police officer—

Sen. Alexander: All a police officer has to do to go into anybody's house, is to say somebody, apparently resident there invited him in there.

Sen. Tiwary: But Sen. Alexander, I am asking you if a murder is committed in a home as so often happens now, what is the authority of the policeman to go in there? He has not arrested anybody, he does not have a warrant and so on. He goes into that home regardless.

Sen. Alexander: But he has got to make a proper report.

Sen. Tiwary: But he has to go in there to make a report.

Sen. Alexander: But he has to have reasonable cause to believe that something has happened.

Sen. Furness-Smith: As Sen. Alexander says, the police at the moment and for the longest time, before and after Independence must have reasonable cause to believe before he makes an arrest and enters a house and so forth. We are now saying that a police officer has to be invited onto the premises by a person apparently resident. All I am saying is you are tampering with the law. If you wish to tamper with law, let us take a vote and go home. You are tampering with the law, it is not right and you will regret it.

5.55 p.m.

Sen. Persad: We have the same concern. We agree that it is an extraordinary situation. A policeman may be invited to a person's residence, but however, it ought to be qualified that the police officer must have reasonable grounds to suspect domestic violence. If that is included in the bill then I think it is reasonable.

Sen. Alexander: It is already in the law.

Sen. Tiwary: With the greatest respect to Sen. Alexander, how can a policeman know who is living in which house? He cannot be sure who is living in which house, but insofar as a citizen is concerned, who complains that "I am living in here and I am inviting you to give me protection", that happens every day. The whole object of this bill is to really advise the police that they do have those powers and they are calling upon them to exercise these powers because the general attitude in the society is that the police do not take action in instances of domestic violence, because of the very nature of it being husband and wife business.

Sen. Persad: Would you agree that they need to have reasonable grounds? Would it deter or detract from what you are suggesting here?

Sen. Tiwary: Where do you wish to put in reasonable grounds?

Sen. Bradshaw: If my wife is inflicting personal violence on me, I want to be able to put my head out the window and shout, "police, help, murder" and attract the police. If on the other hand, I am found in somebody else's home and the husband, for one reason or another, suspects that I was tampering with his family and decides to inflict personal violence, I want his wife to be able to call the police as well, and say, "there is likely to be a problem developing in my home, please enter". But what you are trying to do is to take away all the jurisdiction and all the discretion of the police to enter in such a matter.

Sen. Persad: No. What we are saying is that in the final analysis the police will be accountable. A police cannot go in somebody's house. How do you verify that as being invited by somebody else? Are you going to take his word for it?

Dr. Hosein: May I point out, through you, Mr. Chairman, that clause 23 refers to the police going in to give assistance. He is not going in to arrest anybody. If upon being invited in, he enters and nothing is happening, that is the end of his right under clause 23. So do not misunderstand. *[Interruption].* He may enter the premises for the purpose of giving assistance. What is it to do with?

> "assistance to a person who has suffered, or is in imminent danger of suffering from a domestic violence offence or an offence under section 18..."

which is breach of a protection order.

> "the police officer may, without a warrant, enter the premises for the purpose..."

Sen. Prof. Spence: Mr. Chairman, it will be very unfortunate if, because the evening is late and we are getting a little bit tired and frayed, we were to lose what perhaps could be a compromise and a solution to the problem. It does not seem to me that we will finish this afternoon. Is it possible that this point could be deferred? It seems to me from listening to the discussion that there is a possible solution which could be acceptable, but we may lose it because of the fact that Senators are rather tired at this stage.

Dr. Hosein: Mr. Chairman, may I suggest to Sen. Spence that sometimes a solution emerges after the discussion and people have heard what everybody has had to say. So I do not want us to necessarily postpone a discussion in the belief that lack of the discussion will help us with the solution. I suggest the opposite.

Sen. Prof. Spence: Postpone the decision because we may arrive at the wrong decision because the Senators are tired.

Dr. Hosein: I do not want to necessarily, as I mentioned, stop the discussion at this point, because it is an important point and I think some things may have been missed for those who see it as being a little objectionable. I do not know if there are other points which other Members want to make about the remaining clauses. If what Sen. Spence is suggesting is that we postpone the decision on clause 23, whether it would be useful at this stage to again defer clause 23 and go on, so that we may exhaust the discussion now, and when we come back we can finalize it—

Sen. Furness-Smith: You said that clause 23 is for the purpose of the police giving assistance. As far as I know, the police are not members of the Red Cross or the St. John's Ambulance. They are policemen and their business is to enforce the law, to protect and serve. That is their business. Why do we need them to come in to assist? Their purpose is, if they come in and they find that they have reasonable cause for believing that somebody is committing an offence, they must arrest and charge him in exactly the same way as if they see us committing a driving offence or larceny or anything else. It is their duty by law, by the Police Act, to arrest and charge. They do not do it, of course, but that is their duty. Their duty is not to just assist; their duty is to fulfil their duty under the Police Act, which is to arrest somebody who may be committing an offence.

In addition to subverting many other laws, we are creating a new kind of policemen here, who are going to enter places to assist people. This is completely out of this world.

Sen. Bradshaw: Maybe Sen. Furness-Smith has not grown up in that environment. He would be surprised at the tremendous calming influence which a uniformed policeman has had in many domestic disputes. Just the presence of the policeman brings sanity to many disputes.

Sen. Furness-Smith: I know that. I do not live in some cloud nine like some of the other gentlemen who should be nameless. But nevertheless, you do not legislate for a policeman on duty to walk into a place just to think. You legislate to give him further powers. If we want policemen, who we have no trust in—I am sorry, we cannot rely on them to do their duty on the open street, what are we inviting them into our homes to do? It does not make sense.

Dr. Hosein: We are inviting them in to give assistance. I am flabbergastered that any Senator would suggest that the police ought not to give assistance to people who are at risk of the offence being committed just because it happens in the house. The need for a Domestic Violence Bill in the first place, is because there has been a gap in our thinking, conceptually and in the law, to cover these kinds of situations. That is why we are going through all of this. We are dealing with circumstances that hardly a person in this room cannot think, if not of something which they have been involved with themselves, but the neighbour, or if it is not one house away, it is two houses away, where these kinds of things take place. We all know what we are talking about.

6.05 p.m.

It is not a mystery and we know what happens and, in particular, we know what the police will and will not do. We know what happens when the police do or do not do certain things. If what Sen. Furness-Smith is suggesting is that we are breaching frontiers, if it is so, fine, let it be, but we need to go into an area that is not adequately covered in the law and even in people's thinking. This is what this Parliament is about to do, to get into an area that even the whole society needs to be educated on. People made the point that it is not going to solve all the problems but hopefully as it comes into play, we will see the kind of adjustment in people's thinking and behaviour that we want to see.

This area of where the police gets involved is one of the most crucial aspects of the whole thing. I think that emerged very clearly in the debate and I think this is really at the heart of the matter.

Sen. Alexander: With the greatest respect, Mr. Minister, there is one principle of law that when you give someone power, there must be checks and balances to that power to prevent abuse. There are no checks and balances. You must have checks and balances for the police not to abuse that power to go into people's houses. That is all we are saying.

Sen. H. Charles: What are you proposing?

Sen. Alexander: This clause allows a policeman to say, "Mr. X, an apparent resident of No. 12 So and So, invited me in to render assistance" and he goes in and he has a complete defence for whatever he does.

Sen. Tiwary: Mr. Chairman, Sen. Lequay has just drawn something to my attention and I am just attempting to give a rough draft and to enquire whether this version might be more acceptable to the hon. Senators. I propose that clause 23 can read—

> "Where a police officer has reasonable grounds to suspect that a person on premises has suffered or is in imminent danger of physical injury at the hands of another person and needs assistance to prevent or deal with the injury, that police officer may without a warrant, enter the premises for the purpose of giving that assistance."

That is incorporating the first part of 24 (a).

Sen. Furness-Smith: Speaking for myself, I find this a very serious clause. I believe—of course I know nothing about what people think in this country; you see me here, a citizen of this country, I know nothing about it—but I believe the people of this country value the privacy of their homes to some extent and I think you will all be committing a big political mistake to treat this lightly.

I myself do not wish to accept in any shape or form, a clause to replace this one without having full notice and giving it full consideration and being able to consult people about it.

Sen. U. Charles: Mr. Chairman, may I say something? I personally feel, from an experience that I had; two young girls were not permitted by their parents to go to a school outing. The mother knew from the reaction of the father that when those two girls came home, what was going to happen. She was afraid. She called and talked to the neighbours and nobody could have entered the house to do anything about it. As soon as the two girls reached, the man started to beat both of them. He tied them down, took a scissors and cut off all their hair; they had big

plaits of hair. The mother could have done nothing. I feel we should give the right to that mother to call the police before, because she knew what was going to happen. We should put this in the law to protect children like this especially. Why have a Domestic Violence Bill if we still cannot get protection? It is important. Protection is what we need and I believe if some of us could see some things that happen, before they happen and could call a police who could remain within the vicinity, we could prevent many of these things from happening.

I am sure that if that mother could have called the police and have them there, that would not have taken place. He went a little further, he took the girls for three days and carried them to catch birds in the bush and the mother could do nothing about it.

Sen. Persad: Mr. Chairman, I think the Senator is missing the point. There are two things here. You are creating a new offence, a domestic violence offence, in which you can invite the police if you have grounds to do so. In that case, if that situation were to arise again the mother could call the police because you have something defined under the domestic violence legislation which was not there before. Now they are two separate things. What we are concerned about here now is the fact that the sort of *carte blanche* way you are giving the police the powers of entry. It is the powers of entry that we are having problems with.

Sen. Mahabir-Wyatt: Mr. Chairman, I think that Sen. Tiwary's draft sounds very reasonable to me, but I think perhaps it would be easier if we could all see it in writing and consider it and take a look at it and consult. I think that there are a number of Acts already on the statute books in which police can arrest without warrant and can enter premises without a warrant. I do not think this is something totally new but I think that in all the cases that I have been able to discover, it is where they have reasonable grounds to suspect that something is happening and I think that maybe if we put that wording in it would be consistent with the other instances like the Prevention of Crimes Act, the Larceny Act and the Trespass Act and so on.

I agree with Sen. Furness-Smith that we should perhaps get a chance to take a look at it and consider it.

Dr. Hosein: Mr. Chairman, in light of all the discussion that has taken place on this point, which I think is very, very crucial, and in fact on the whole clause 23 of the bill, and the fact that there may clearly be a need to look at the drafting again, I

think now might be a convenient time to—[*Interruption*]. Before I seek the adjournment, through the Leader of the House, I just want to ask Sen. Furness-Smith, whether at this stage he intends to pursue the deletion of clause 25.

Sen. Furness-Smith: Clause 25, is unnecessary and offensive. It merely expresses the police's duty.

Dr. Hosein: Without going into too much discussion here, Mr. Chairman, we have consistently made the point—in fact I think Sen. Furness-Smith said it for us when he made the point—that we are attempting here to encapsulate in one bill, certain things for which we believe there is a need. This whole question of the police powers and what the police are entitled to do by law, we want to encapsulate in this bill. I just want to make the point at this stage that we would want to be consistent on that. I ask hon. Members not to rely too much on catch-phrases that may have entered their minds and to look at the provision with respect to clause 23.

6.15 p.m.

Hon. Members have been receding to the concept of a policeman coming as if that officer would want to arrest. Read the clause carefully and observe what is the objective and this may be so with a number of other clauses. When we return I think we will step up the debate of the bill. You are very well-versed with what is in the clauses.

Sen. Furness-Smith: Clause 25 for Members who would like to understand, as I explained earlier, if we believe on reasonable grounds that a person has committed any offence the police has a duty to charge him if not to arrest him.

To bring a bill to Parliament stating that a policeman should do what is clearly his duty, I do not propose to be a part of any such move. One can imagine when bills come before this House, if we have to repeat every law in the land, the laws will be a complete—

Dr. Hosein: I am not in dispute with what Sen. Furness-Smith is saying. The point was made by so many Senators during the course of the debate that the police do not do their duty once it is a domestic issue involved. Why do we feel we have to do this?

We keep running into a matter that we know is happening out there and our legislation must deal with the real world. To merely come and say that the

police have the power in the Police Service Act, section 35 to do all these things is not good enough. We have this bill and we need to address the police very carefully unless, Sen. Furness-Smith is correct that they have set powers; but we are trying to deal with a particular issue in which we know the police, not only here, but all over the world are reluctant to act. I dare say we are going out of our way to make a point that we want our police to go out and do this and it is appropriate to have it in this bill. That is what this bill is about

Sen. Alexander: You ought to consider as well where there is a repeal. I am just asking you to consider whether these provisions would not repeal those in the Police Service Act. You do not have the same set of laws to do that and you may have serious consequences. What you need to do is to give the police booklets and remind them of their duty.

Sen. Furness-Smith: It is on the instruction of administration and it is the duty of the Government to see that public servants do their duty.

Sen. Mark: I would like to ask the Minister to kindly make his amendments available to the Senators as early as possible. We would not like to have a repetition of this. We have grown accustomed to having amendments on the same day and because of the nature of our discussion we would urge him to have those amendments posted to us at least 48 hours in advance.

Dr. Hosein: I cannot guarantee 48 hours. Friday and Monday were public holidays. I understand the point. We did make an attempt but it was unsuccessful; I cannot promise that within 48 hours the amendments would be with the Clerk of the House.

Sen. Sampath: I only wish to support the Minister. My point is that if Sen. Furness-Smith carries his argument to its logical conclusion, it means that there is no need for a Domestic Violence Bill at all. That is the point I want to make.

Senate resumed.

BUSINESS OF THE SENATE

The Minister of Social Development and Family Services (Dr. The Hon. Emanuel Hosein): Mr. President, I beg to report that progress has been made in Committee. I move that the Committee be adjourned to Monday, April 08, 1991.

Sen. Prof. John Spence: Mr. President, would you forgive me for speaking now but it is a serious matter. There seems to be a defect with the roof over where we are sitting. I do not think we should be asked to sit here next Monday unless something has been done about it.

Mr. President: You might not have noticed it but it was there last week and the week before.

Sen. Horne: I was here earlier on this morning and I saw workers from the relevant Ministry. They came to have a look. I think something is being done about it.

Sen. Lequay: Let me merely advise Members that on Monday we will complete the rest of the amendments and then proceed to the National Carnival Commission Bill.

Motion made and Question proposed, That the Senate do now adjourn to Monday, April 08, at 1.30 p.m. *[Sen. A. Lequay]*

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.25 p.m.