

Seanad Debate, 17th December 2002

Mr. B. Hayes: The Order of Business as proposed by the Leader today is completely unacceptable. For any degree of parliamentary scrutiny, to suggest that we can take all Stages of two vitally important Bill through the House by 10 o'clock this evening is stretching the limitations of credibility just too far. The Leader has proposed to take Second Stage contributions from leading spokespersons in all groups for ten minutes on a vitally important Bill concerning domestic violence and ten minutes on the National Development Finance Agency Bill which, I understand, has a total of 23 sections. We are then expected to proceed immediately to Committee and Report Stages. My colleague, Senator Feighan, has already proposed 20 substantive amendments and it seems unlikely they will be reached. That is not the way to do business. The Leader is ramming through some very important legislation just because we are one week from Christmas.

If we have learnt anything from the Supreme Court decision in respect of the domestic violence legislation passed in 1996, it is that Bills should be considered line by line and word by word. I ask the Leader at this late stage to reconsider the order as proposed. On this side of the House, we want to do business in a serious way. The order, as proposed, does not take serious account of the contributions and amendments of my party colleagues and other Senators. I again ask the Leader to re-think the Order of Business.

Domestic Violence (Amendment) Bill, 2002: Order for Second Stage.

Bill entitled an Act to amend the Domestic Violence Act, 1996.

Ms O'Rourke: I move: "That Second Stage be taken today."

Question put and agreed to.

Domestic Violence (Amendment) Bill, 2002: Second Stage.

Question proposed: "That the Bill be now read a Second Time."

Minister of State at the Department of Justice, Equality and Law Reform (Mr. B. Lenihan): The purpose of this Bill is to remedy a defect in the Domestic Violence Act, 1996, which resulted in the Supreme Court on 9 October declaring section 4(3) of the Act unconstitutional. In doing this, the Bill restores to our courts the power to make interim barring orders *ex parte*.

Section 4(1) of the Domestic Violence Act, 1996, provides that the Circuit or District Court may, on the making of an application for a barring order, or between the making of such application and its determination, make an interim barring order if it is of the opinion that there are reasonable grounds for believing that there is an immediate risk of significant harm to the applicant or any dependent person if the order is not made immediately, and the granting of a protection order would not be sufficient to protect the applicant or any dependent person.

Section 4(3) of the Act provides that where the court, in exceptional cases, considers it necessary or expedient in the interests of justice, an interim barring order may be made *ex parte* or notwithstanding the fact that the originating document or other notice of the application required to be duly served on the respondent to the application has not been so served. The words "*ex parte*" signify that the order has been made in the absence of, and without notice to, the other party.

Section 4(4) provides that an interim barring order shall cease to have effect on the determination by the court of the application for the barring order. The duration of such an

interim barring order endured until the court made the final decision on the substantive application for a barring order.

On 9 October last, the Supreme Court, in a case which arose out of the granting of an *ex parte* interim barring order which was in effect for almost three months, held that the provisions of section 4 as they relate to *ex parte* interim barring orders, in failing to prescribe a fixed period of relatively short duration during which such an order would continue in force, deprived the respondents to such applications of the protection of the principle of *audi alteram partem*, which means that the other side should be heard. The Supreme Court ruled that the invasion of the principle of natural justice was, in a manner and to an extent which was disproportionate, unreasonable and unnecessary.

For those reasons, the court declared section 4(3) unconstitutional and said that it had not been demonstrated that the remedy of an interim order granted on an *ex parte* basis would be in some sense seriously weakened if the interim order thus obtained were to be of limited duration only. The applicant could be required at the earliest practicable opportunity to satisfy the court in the presence of the opposing party that the order was properly granted and should now be continued in force.

It is important to note that the Supreme Court said it was beyond dispute that the Oireachtas had the power to abridge the rights of individual citizens, such as the right to be heard in proceedings taken against them, in order to deal with the social evil of domestic violence. The Supreme Court did not take issue with Oireachtas powers in that respect. The constitutional problem arose with the manner in which the abridgement of the right was effected in that the abridgement has to be proportionate.

The principle of hearing the other side and of giving each side an opportunity to be heard before a determination can be made is the hallmark of a civilised jurisprudence in any jurisdiction. The Creator did not banish Adam and Eve from the garden of Eden without giving them a hearing.

Mr. B. Hayes: They got due notice.

Mr. B. Lenihan: This is very important because the power to grant an interim barring order *ex parte* is essential in certain cases to protect innocent persons in their home. That is an important jurisdiction and, since the Supreme Court decision, the courts have not been in a position to exercise that jurisdiction because that power has not been available to them. In such circumstances, it will be important that the offending party will be ordered to leave the home and it is not practicable, in the circumstances of the case, to require that notice be given to him or her prior to the making of the order. However, as is indicated by the Supreme Court decision, when such an order is made there must be an early return date on which the applicant must show in proceedings, of which the respondent has notice, that the continuation of the interim order is justified in accordance with the statutory criteria. The period upon which we have fixed in the legislation is eight working days.

I now turn to the provisions of the Bill. Section 1 is the substantive provision which substitutes a new subsection (3) for the existing section 4(3). Paragraph (a) of the proposed subsection has three features worthy of comment. These are: first, the provision that an interim order may be made *ex parte* and the jurisdiction is confirmed; second, the replacement of the phrase "in exceptional cases" in section 4(3) with a reference to "the circumstances of the particular case"; and, third, the stipulation that an interim order may be made *ex parte* "where the court considers this necessary or expedient in the interests of justice".

Section 4(3), in its present form and prior to the Supreme Court decision, permitted the making of an interim barring order *ex parte* or notwithstanding the fact that the originating document or other notice of the application required to be served on the respondent to the barring order application had not been so served. This was a reference not to notice of the application for the interim order but to notice of the application for the full barring order. I have

been informed that, in the vast majority of cases, interim barring orders were issued where the notice of the barring order application had yet to be served on the respondent. Even where this notice had been served, it would be rare for the respondent to be aware that, in addition to a full barring order, an interim barring order was also being sought against him or her.

The approach taken in this Bill is to dispense with reference to notice of the barring order application and provide simply that where, having regard to the circumstances of the particular case, the court considers it necessary or expedient in the interests of justice, an interim barring order can be granted *ex parte*; that is, in the absence of and without notice to the respondent. Where the court decides it is neither necessary nor expedient in the interests of justice to make the order *ex parte*, it can require notice to be served on the respondent of the application for the interim order.

The approach taken in this Bill is to dispense with reference to notice of the barring order application and provide that where, having regard to the circumstances of the case, the court considers it necessary or expedient in the interests of justice, an interim barring order can be granted *ex parte*, that is, in the absence of, and without notice to, the respondent. Where the court decides that it is neither necessary nor expedient in the interests of justice to make the order *ex parte*, it can require notice to be served on the respondent of the application for the interim order. Paragraph (b) of section 1 of the Bill makes a largely similar amendment to section 5(4) of the Act dealing with protection orders. I will refer to that matter later.

The second point about the proposed new subsection (3)(a) relates to the phrase, "having regard to the circumstances of the particular case." The Supreme Court noted that section 4(3), as it stands, provides for the making of interim barring orders *ex parte* in "exceptional cases", but contains no indication of the criteria by which the court is to decide whether a case is exceptional. The merit of the new wording is that it invites the court to assess the circumstances of the case before it. In that respect, it focuses on the individual case before the judge and does not require any determination that the case is exceptional which would imply comparison with other cases.

As regards the phrase "necessary or expedient to do so in the interests of justice", Senators will note that this criterion is already in section 4(3). It also resembles section 17(3) of the Child Care Act, 1991, which was referred to with approval by the Supreme Court in the case to which I referred and which permits an interim care order in respect of a child to be made without notice to a parent where, having regard to the interests of justice or the welfare of the child, the judge so directs.

I now move on to the proposed paragraphs (b) and (c) of the new subsection (3). Applications for interim barring orders, prior to the finding of the Supreme Court, were generally made on a sworn information. However, they were often supported by oral evidence given by the applicant to the judge. I understand that while the sworn information was frequently made available to the respondent, practice differed from court to court and sometimes the information was not made available. The oral evidence, however, was not recorded in a note or otherwise nor was it communicated to the respondent. This issue has been highlighted in a report of the Law Society law reform committee entitled, Domestic violence: The case for reform, published in May 1999. This report proposed that court rules be amended to require that *ex parte* applications for a protection order or an interim barring order be made on affidavit and that the respondent automatically be provided with a note of all the evidence given at the hearing.

The effect of paragraphs (b) and (c) is that the application for an interim barring order must be made either on an affidavit or on a sworn information and, where an interim order is made *ex parte*, a note of any evidence given must be made and served, together with the order, and affidavit or sworn information, on the respondent as soon as practicable. In this way, the respondent will have full information on what has been alleged against him or her on the basis of which he or she has been barred from the home. Paragraph (c) provides that the note of the oral evidence shall be prepared by the judge, the applicant or the applicant's solicitor and

approved by the judge or as otherwise directed by the judge. In the case of applicants for an *ex parte* interim barring order in the District Court, which represents the majority of cases, it would be unusual for such persons to be accompanied by a solicitor and they may not be fully in a position to make an adequate note of their evidence. To ensure that such cases are attended to, the judge may make the note or may direct that it be done in some other way, for example, by obtaining the services of a stenographer.

Paragraph (d) of the proposed new subsection (3) addresses the main point in the Supreme Court's judgment, namely, that the court held that the provisions of section 4, as they relate to *ex parte* interim barring orders, in failing to prescribe a fixed period of relatively short duration during which such an order would continue in force, deprived the respondents to such applications of the protection of the principle of *audi alteram partem*, that is, that the other side should be heard, in a manner and to an extent which is disproportionate, unreasonable and unnecessary. Paragraph (d) provides that the *ex parte* order shall have effect for not more than eight working days unless, on application by the applicant for the barring order and on notice to the respondent, the order is confirmed within that period by order of the court. A time limit is placed on these orders by the legislation.

Proposed paragraph (e) provides that the *ex parte* interim barring order shall contain a statement of the effect of paragraph (d), that is, the duration of the order and the possibility of its being confirmed as provided for in the paragraph. A working day for the purpose of paragraph (d) is defined in paragraph (f) as a day other than a Saturday, Sunday or a public holiday within the meaning of the Organisation of Working Time Act, 1997. If the interim order is confirmed, it will continue in effect until the application for the barring order itself is determined, as provided for in section 5(4) of the 1996 Act.

Section 1 (b) provides that a new subsection (4) will be substituted for section 5(4) of the 1996 Act. This provides that a protection order may be made *ex parte*. Section 5(4), as it stands, provides that a protection order may be made "notwithstanding the fact that the originating document or other notice of the application required to be duly served on the respondent to the application for a safety order or a barring order has not been so served". As I have already explained with regard to section 4(3), this is a reference to the notice of the application for the final order - in this case a barring order or a safety order - not to any application for the interim relief. The proposed amendment to section 5(4) changes this by simply providing that a protection order may be made *ex parte*, that is, in the absence of and without notice to the respondent. Section 2 contains a standard provision for Short Title and collective citation.

In bringing the Bill before the House I am conscious that we must look at these proposals in the context of the legislation on domestic violence as a whole, that is, the Domestic Violence Act, 1996. That Act was ground-breaking legislation, which built on existing remedies for the victims of violence in the home. The barring order remedy dates from 1976, when it was provided for in the Family Law (Maintenance of Spouses and Children) Act. The Family Law (Protection of Spouses and Children) Act, 1981, strengthened the law on barring orders. The main changes made were the extension of the District Court's time limit from three to 12 months, the granting of a statutory power of arrest without warrant to the Garda for breaches of orders and the creation of the remedy of a protection order. The 1996 Act repealed and re-enacted, with substantial amendments, the provisions of the preceding legislation.

Among the changes introduced by the 1996 Act were that: remedies were no longer confined to interspousal violence in that cohabitants could, on certain conditions, avail of the remedies provided by the 1996 Act, as could parents against their adult children; a new type of long-term protection order called a safety order was introduced and this was made available to persons residing together in a relationship, the basis of which was not primarily contractual, in addition, of course, to the other categories who are eligible for barring orders; the maximum duration of a barring order granted by the District Court was increased from one to three years and; the Act, for the first time, provided that a health board, on certain conditions, could apply for a barring order or a safety order on behalf of a victim of domestic violence.

According to the Courts Service report for 2001, in the region of 2,000 barring orders were granted each year since 1996. The number of interim barring orders made per annum has fluctuated over that period, the highest number being just over 1,000 in 2001. The number of safety orders has ranged from around 700 to 1,200 per annum while the number of protection orders has been in the region of 3,400 to 3,800.

It is worth noting from the report of the Courts Service that while the average length of time from the date of issue of the summons to the date of hearing of barring and safety order applications was 12 weeks, barring order applications where an interim barring order had been made were dealt with within two to three weeks. This shows that the District Court had been giving priority already to cases in which an interim order had been made and that judges were generally conscious of the need to set early return dates where they had made such orders.

These are just brief details of the operation of the system since the coming into force of the 1996 Act. Based on this experience, there have been a number of recommendations for reform of what are perceived to be deficiencies in the Act. In particular, there have been reports from Women's Aid and the Law Society's law reform committee. I have already referred to the latter report.

Among the proposals which have come from various sources are the following: eligibility criteria for orders under the Domestic Violence Act, 1996, should be extended to include a person with a child in common; the residence requirement for eligibility for a barring order in the case of unmarried cohabitants should be reduced from its present level which is six months out of the previous nine; the residence requirement should be removed for cohabitants seeking a safety order and for cohabitants with sole ownership or tenancy rights in the home seeking a barring order; provisions should be introduced permitting parents or elderly relations to apply for protective orders against abusive relations or persons other than an adult child and such provisions should include safety or barring orders against such relations or persons residing in the home and safety orders against those residing elsewhere; there should be a category of associated persons who would be entitled to apply for a safety order and a non-exhaustive list of such persons should be provided; associated persons with sole ownership or tenancy rights in the home should be entitled to apply for a barring order; the case has been made that there should be either detailed statutory guidance or a list of standards to be considered by the courts in determining whether to grant protective orders; there should be statutory guidance with regard to welfare based applications; further statutory guidance should be provided regarding the standard of proof necessary to establish abuse; and the probation and welfare service should be given a clear statutory role in relation to domestic violence cases and an increased role in supervised access arrangements.

There is also a commentary on the Law Society's report by AMEN, an organisation which speaks in defence of men who have been respondents in domestic violence cases, that there should be a category of "associated persons" who would be entitled to apply for a safety order and a non-exhaustive list of such persons should be provided. Another proposal is that "associated persons" with sole ownership or tenancy rights in the home should be entitled to apply for a barring order.

A case has been made that there should be either detailed statutory guidance or a list of standards to be considered by the courts in determining whether to grant protective orders. Also, that there should be statutory guidance with regard to "welfare" based applications and that further statutory guidance should be provided regarding the standard of proof necessary to establish abuse. The probation and welfare service should be given a clear statutory role in relation to domestic violence cases and an increased role in supervised access arrangements. A commentary has also been made on the Law Society's report by AMEN, an organisation which speaks in defence of men who have been respondents in domestic violence cases.

The Minister for Justice, Equality and Law Reform intends to have these various recommendations further examined in consultation with interested parties and, to the extent

that reform seems warranted, his intention is to introduce the necessary amendments as part of a family law Bill which he aims to bring forward in about a year or so.

It would not have been feasible in the short time available since the Supreme Court decision to include any such measures in the present Bill which is aimed specifically at restoring the power to make interim barring orders *ex parte* in a way which conforms with the Constitution. I appreciate the patience of Senators as I have outlined the legal technicalities involved in the particular measure. To have attempted to go beyond that at this stage would have delayed the most urgent change of all which will provide a necessary remedy for the victims of domestic violence.

This Bill represents a proportionate response to circumstances where an interim barring order has to be obtained urgently to save vulnerable persons who are faced with an immediate risk of significant harm to themselves or a dependent. I commend the Bill to the House.

Ms Terry: I thank the Minister of State for coming into the House to take part in this important debate. This matter has caused distress to many people and must be addressed. I agree with the Leader that we do not want to be responsible for any person being a victim over the Christmas period or not being free to seek the protection to which he or she is entitled under the Constitution.

I am concerned, however, that we are rushing the Bill. We will go through all Stages today. This Bill should have been given more time. The Supreme Court made its decision on 9 October so we did have time available. I raised the matter at that time and on a second occasion in the House. I am annoyed that we are now dealing with it in this rushed fashion. The recommendations which have come before the Minister from the various bodies could have been dealt with earlier. Other issues on which I have proposed amendments need time for debate in the House but they will not get due process or the time they deserve if they are rushed through today.

This Bill falls short of what is required. The amendments I propose address some of the issues. I am surprised at the timeframe of eight working days being used by the Minister of State. People in the legal field have suggested that eight days is sufficient. As the Minister of State said, this is a precedent set under the Child Care Act which was used as a model by the Supreme Court. I propose that we revert to the eight days. In regard to the Child Care Act, the time was extended at a later stage to 28 days. The Supreme Court decision, which seems to be unaware of that, should now have an effect on the Child Care Act and the extended 28 days should now revert to eight days following the Supreme Court decision.

Another issue I would like to take up is the deletion of the words "exceptional circumstances" and their replacement by the words "having regard to the circumstances of the particular case." People are concerned by the removal of the phrase. It gave the respondent an opportunity to know for sure the case being taken against him or her. We should retain those words.

I welcome the short timeframe. The Minister of State has said eight working days but I hope he accepts an eight day timeframe. Timing is all important and I have concerns about that. For example, if an application is made on a Monday and the respondent returns on Friday and says he or she did not have sufficient time to prepare a case and deserves to be heard, could we then be in a situation where the order would fall? Nothing in this Bill puts an onus on the judge to say where an adjournment could take place. There is no timeframe. If that is not corrected the system will fall and we will have applicants returning for renewable interim barring orders. We are back then at where we were before the Supreme Court decision. If an adjournment is called by the respondent while a judge is hearing the case the judge must set a date no longer than eight days from that adjournment. That needs to be written into the Bill or the adjournment could go on indefinitely.

The Minister of State says in the memorandum that there are no financial implications. I believe there are because there will be more cases where time is of the essence. They have to be heard within the eight day frame. We know of the lack of resources available to the Legal Aid Board. It must be given resources to deal with the additional cases. If funds are not provided the system will not work. These are financial implications for this Bill.

The Minister of State has left the issue of protection orders vague. Protection orders should be awarded the same security provisions as interim barring orders. If we do not deal with that we leave ourselves wide open to a Supreme Court decision deeming the Bill unconstitutional.

Mr. J. Walsh: Ba mhaith liom fáilte a chur roimh an Aire go dtí an Seanad chun an ábhair seo a phlé. At various stages in my youth I was given coaching in hurling, soccer and tennis. I subsequently underwent training courses in relation to some aspects of my community work with the junior chamber. People involved in business or politics often undertake training courses or driving courses, which are quite topical. In contrast, when I got married there was no equivalent coaching or training in personal relationships - it was rather a matter of trial and error. Since the introduction of divorce and related changes, some of the churches have initiated pre-marriage courses and that is welcome. However, it often occurred to me how odd it is that in relation to probably the most important calling in one's life, one is left to find one's own way without any specific training. The same applies to parenthood.

Should the State not have some role in ensuring proper training and counselling in that regard for people entering a very important stage of their lives, making commitments which they and society would wish to see as life-long commitments? The Bill before the House relates to breakdowns in relationships leading to extreme situations in which violence occurs in households. In relation to the stresses and strains of people who come to live together in adulthood, bringing their individual characteristics and personality traits, it may take time to reach compatibility. Guidance and support should be available and the State should be helpful and constructive in that regard.

The Bill deals with the failure aspect. A balanced approach is needed. There are many societal benefits to be gained from good, sound relationships of a quality which will imbue the next generation with the same spirit, thereby renewing and strengthening society. There must be a role for the State in trying to promote that approach.

I listened with interest to Senator Terry's comments, with which I have some sympathy. I am aware of correspondence and representations with regard to the insertion of "in exceptional circumstances" which, it appears, applied in the 1996 legislation but has been dropped from the Bill. Perhaps that was because of a Supreme Court finding that there was not a definition of that term or the cases to which it might apply. If we cannot provide for it now, we should set down criteria at the earliest opportunity. To debar a person from the family home is obviously a major step. A court decision of that nature may contribute to irretrievable breakdown of the relationship. Accordingly, it behoves us to try to ensure this will only happen in case of a really genuine threat. Clearly, partners and children cannot be exposed to real threat of injury or to their lives. Regrettably, there have been some traumatic situations of that nature in recent years.

In the course of my research for this debate, I came across some interesting statistics in the Accord report to the Department of Social and Family Affairs. Respondents to a questionnaire were asked if their partners had ever used force against them or if they had ever used force against their partners for any reason. The results indicated that, during the course of a marriage or a living together relationship, 53% of all couples responded "Yes" to that question and, in almost half of the replies, it was mutual. Obviously, there were varying degrees of domestic violence, including pushing, shoving and grabbing. A noteworthy finding, which may be disputed by other Members, was that, excluding cases of mutual perpetration, the incidence of perpetration by women only, at 36%, was slightly higher than perpetration by men only, at 28%. I expect the findings were influenced by when and where the survey was carried out.

The Bill deals with *ex parte* applications. The Minister of State has acknowledged that the right to be heard is a fundamental principle in law. Any departure from that should be in very exceptional circumstances and where there is a real threat to the safety of an individual or individuals. The issue has to be considered against the background that in many instances where one only gets one side of the story, that will invariably be a subjective view.

Following a breakdown of a relationship, much recrimination and point scoring may occur. Accordingly, the judgment of the Supreme Court should be welcomed and the remedy in that regard in the Bill is probably the right course of action, apart from the omission of the term "in exceptional circumstances," to which I referred earlier. An eight day period seems reasonable. It has been suggested that, in an application of this nature with regard to an interim barring order, there should be very full exploration of the sufficiency of a protection order. When somebody is removed from the family home, that gives rise to its own difficulties in the relationship and otherwise. The position of children also has to be considered. The use of protection orders should be considered in any future amending legislation, if not in this Bill.

The Supreme Court judgment found section 4 of the Act unconstitutional and required that the applicant should, as soon as possible, be able to satisfy the court, in the presence of the opposing party, that the order was properly granted. In that regard, and in the report to which I have referred, it was interesting that domestic violence did not feature as strongly - although the statistics indicated it was quite high at 53%, based on the criteria applied - in undermining relationships as criticism, insults and not listening, which tend to undermine the marriage relationship.

The State has a role to play in ensuring that the facilities of the court are conducive to bringing the parties together if possible. I am aware that many judges try to do so. The circumstances must be taken into account. My local courthouse is located in the county hall. Local authority staff and legal personnel have commented on the fact that anybody attending the family law courts is on public view to everybody working in the county hall or visiting there. There is an onus on the Department of Justice, Equality and Law Reform to play its part in exercising sensitivity in this regard. People are entitled to reasonable privacy and nobody wishes to have their sins on public display. We should examine the possibility of defining the criteria to ensure the Bill is as finely honed as necessary to meet the requirements of safeguarding people on the one hand, while on the other hand respecting the absolute right of individuals not only to be heard but also to be protected by the State. When the legislation is implemented it should be closely monitored in the interests of all parties and of society as a whole.

Acting Chairman (Dr. Henry): I must interrupt the debate to allow the Leas-Chathaoirleach to present the Fourth Report of the Committee of Selection.

Debate adjourned.

Domestic Violence (Amendment) Bill, 2002: Second Stage (Resumed).

Question again proposed: "That the Bill be now read a Second Time."

Dr. Henry: It is unfortunate to have to deal with such a Bill but following the ruling of the Supreme Court we all realised it was essential to amend the legislation at the earliest opportunity. The Leader was correct to ensure that all Stages of the Bill would come before the House today.

It is sad to think that violence against women can be judicial as well as domestic. On the Order of Business earlier, we heard Senator Leyden refer to the case in Nigeria where a woman who had a child outside marriage has been sentenced to be stoned to death. There is a serious incidence of violence against women throughout the world.

Domestic violence is particularly sad, of course, and apparently at this time of year it becomes worse than ever. As a doctor, I have often wondered if the medical profession could not do more to address the issue of domestic violence.

I wish to place on the record of the House some details of the splendid work undertaken by a colleague of mine, Dr. Fiona Bradley, who, sadly, died recently at the age of 41. She carried out some incredible research on domestic violence in this country, with reference to hospital patients and general practice. Dr. Bradley collaborated on the research project with Mary Smith, a research nurse, Jean Long, a lecturer in international health and development, and Professor Tom O'Dowd, a professor of general practice. Their work was published in the *British Medical Journal* of 2 February 2002 and won the JMS Doctor award in the category of general practice. Sadly, the award was presented at a ceremony on the day of Dr. Bradley's funeral. However, her work is a great memorial to her interest in domestic violence.

We know that domestic violence is under-identified and there is considerable physical and psychological morbidity associated with it. Community surveys have indicated that up to one in four women in the United States experience domestic violence. However, according to various surveys carried out in the United States and Australia, some general practices are better at identifying domestic violence than others.

Dr. Bradley set about studying the situation here and obtained the co-operation of 22 practices from all over the country. From March 1996 to May 1997, for two weeks in each practice, the receptionist was asked to hand female patients, over the age of 16, a pack comprising a consent form, a study briefing, a questionnaire for self-completion and a return envelope.

The measure of domestic violence included in the questionnaire was adopted from various surveys on controlling behaviour, violent incidents and consequent injuries. The questionnaire also included questions as to whether general practitioners had ever asked if the women had suffered domestic violence, and if they felt it was right that a person's regular GP should ask such questions. Some 72% of patients responded to the survey, which is a good response rate, and the results were very interesting. The average age of the women who responded was 36.6 years. Some 75% of them were in a current sexual relationship and another 15% had been in such relationships formerly.

Some 48% of the respondents said they had experienced domestic violence of some sort. Of those, 24% said they had experienced one form of violence, 25% said they had experienced two or three types of violence, 20% said they had experienced four to seven types of violence; and 31% of these women had experienced eight or more types of violence.

The most commonly experienced behaviour was where a partner punched or kicked the walls or furniture, shouting at and threatening the children, and where the woman was pushed, grabbed or shoved. More serious violent incidents occurred as well. Some 10% of the women reported having been punched in the face; 10% were punched or kicked on the body, arms or legs; 9% were choked; and 9% were forced to have sex. These admissions are pretty shocking.

Two of the most common controlling behaviours reported by the women who responded to the questionnaire were that their partners shouted or screamed at them, and also that they threatened violence against or were violent towards their children. It is not just the woman who is on the receiving end of domestic violence, it is the whole family. The effect on the children must be really dreadful.

Many of these women did not present in the practice with injuries, but did present with anxiety and depression. A considerable number of them had received treatment for many years for anxiety and depression, and what is described as somatisation, which is where their mental anxiety causes them to have physical problems. The cost of this to the health service must be quite astonishing.

Some 77% of the women who responded said they felt it would be right for the general practitioner whom they commonly attended to ask about domestic violence. In my own practice, I have only infrequently asked female patients about domestic violence. Only 5% of the respondents to Dr. Bradley's survey said they had ever been asked by their general practitioner if domestic violence could have been involved in their cases. The survey's findings provide much food for thought, particularly for those of my medical colleagues who are involved in general practice.

Dr. Bradley carried out a similar survey in accident and emergency units where she or a nurse interviewed women who came in. In all such cases, a woman interviewed another woman and the survey was undertaken privately. It was found that a high percentage of the women who came in with bruising, broken noses or broken fingers had not suffered such injuries in falls but as a result of domestic violence. Hospital accident and emergency departments must ensure privacy for female patients so they can speak in confidence to medical and nursing staff who can then discover if domestic violence has caused them to attend the unit.

It was not only young women who attended the accident and emergency units; women in their 60s and 70s frequently attended also. In these cases, the older women had not necessarily suffered violence as a result of their partner beating them up - in some cases their children were involved. We are not doing enough to address this serious issue.

I wish to acknowledge the work that Dr. Bradley undertook. If only more of us in the medical profession were so concerned about examining the epidemiology of illness, perhaps we would not have such a serious situation in our casualty departments. I am quite sure that with counselling and investigation into family problems, a considerable amount of domestic violence could be addressed.

4 o'clock

The lack of privacy in family courts was raised by Senator Walsh. That is unacceptable. The family courts should sit in private. The Court Services has attempted to examine the issue of what happens in the family courts and I have raised it in this House also.

Often we do not realise how serious these cases are. An attempt was made last year to appoint a barrister to the courts to compile a report in this regard. However, the then Attorney General felt the *in camera* rule would be breached if this were to happen. The barrister concerned is no longer employed by the Court Services as her contract expired in April. She was unable to produce reports even though they would have been anonymous and undertaken with people who had given consent for their cases to be addressed.

We have to find some way of addressing this issue. I am sure the Minister is as concerned as I am - I see him nodding - about this matter. People do not understand just how serious these cases frequently are. Senator Terry's concerns regarding the eight days need to be taken into account in this regard also.

Men are often injured in domestic violence incidents. They, too, feel threatened and abused in the home. I have worked in casualty departments and it is only in approximately one out of every seven cases that such incidents arise. The main reason women are abused is that they are physically smaller.

Ms O'Rourke: Physical force.

Dr. Henry: I have heard many stories. A heavily pregnant woman told me her arm was broken when her husband rolled over it in the bed. We need to make a greater effort to deal with these cases, not just in the courts but in accident and emergency units and within general practice. We should look closely at the work carried out by Dr. Bradley in this regard to see if we can prevent such incidents and thereby reduce the need for barring orders. We should also seek a satisfactory outcome within partnerships.

Mr. Minihan: I, too, welcome the Minister to the House to introduce this timely and necessary Bill. Trends in recent years clearly indicate an increase in the incidence of domestic violence at this time of year. I agree with the Minister that the Bill is aimed specifically at restoring the power to put barring orders in place *ex parte* in a manner which conforms to constitutional requirements. Equally, it is a necessary and welcome Bill because we cannot continue as we are as a result of the Supreme Court ruling in this regard last October.

We as legislators have a responsibility to protect the vulnerable in society. We must introduce whatever laws are necessary to ensure that protection. We have all heard the term, "street angel and house devil", something so apparent in the area of domestic violence. It is not just the two parties involved in domestic violence who are under threat during such incidents; the children and extended families also suffer the consequences. The effect on children is long term. There is evidence to suggest that children who come from violent backgrounds go on to become perpetrators of similar violence in their adult life. They do not conform to or play a full role in society because their upbringing was affected by domestic violence.

Domestic violence is not confined to spouses or partners. The growing number of applications to District Courts for barring orders against adult children by elderly parents is alarming. We are faced with a situation where adult children, as a result of alcohol or drug abuse, are becoming violent in the home towards their elderly parents. That point is often missed in debates such as this. Elderly parents are being forced to seek barring orders against their adult children. We need to highlight this problem and remain conscious of it because there are enormous social implications for everyone. Our elderly people deserve to be protected in every way.

A number of provisions contained in the Bill need to be put on the record if for no other reason than to alert Members to the facts and statistics surrounding domestic violence. It would be remiss to think domestic violence is confined to women; a percentage of men suffer it also. We need to acknowledge that fact and ensure we afford them similar protection.

Women's groups warn that over one in five women will suffer domestic violence this Christmas season. That means that between 20% and 25% of women will be beaten by their spouses or partners. The National Network of Women's Refuge and Support Services say its 32 centres around the country will be full on St. Stephen's Day as a result of domestic violence incidents. There were 10,877 Garda call-outs to domestic violence incidents in 2000; in 1999 the number of such incidents reported to gardaí increased by 20% over 1998. Of the 4,578 barring orders applied for in the year 2000, 2,142 were granted. The safety and sanction research into domestic violence and enforcement of law in Ireland in 1999 conducted by Women's Aid indicated that children were present at and witnessed a significant amount of domestic violence incidents in the home.

Ninety-six women were murdered by their spouses or partners in the past seven years. We are not alone in these statistics. Battering is the single biggest cause of injury to women in the USA with 4,000 women a year being beaten to death by their partner. In Sweden, every ten days a woman is beaten to death and its 115 refuge centres are constantly full. Twenty-five per cent of women in Britain suffer physical abuse from their partners. In Canada, 39% of women report having been assaulted at some stage.

We, in Ireland, have a unique distinction in this area, the pervasive and wicked influence of alcohol in our society. Only last week we debated the consequences of alcohol abuse among young people. It is fair to correlate that abuse with young people if it is to continue into their adult life, thereby contributing to these statistics and, unfortunately, increasing them.

Domestic violence and alcohol abuse are directly related. In discussing the legal framework within which to deal with domestic violence we must also look at what causes it. We have to be seen to take action by raising awareness through education campaigns to prevent alcohol abuse, a major factor in domestic violence. Christmas is a time of high emotion. It is, equally, a time when barring orders become necessary and are often breached. It is imperative that

we, as legislators, enact this Bill to provide those vulnerable in society with the necessary protection of the courts at this time of year. The culture of taking alcohol to celebrate every occasion from birth to death is something we must consider seriously. We must get it right and this is an opportunity to do so.

We must protect the vulnerable and emphasise the effect of domestic violence on children. At Christmas time, when children's expectations are so high, it is very worrying if households or family units are destroyed by domestic violence, particularly if we do not have in place the necessary legislation to provide protection for these children. That is one of the reasons I welcome this Bill. We must protect children, the guardian of these children and the parent who is responsible for them. We cannot allow victims to fall through legal loopholes. I commend the Minister for his timely action on this issue.

The law as it stood was an accident waiting to happen. The two primary areas of justice are that no man should be a judge in his own case and, equally, one must hear the other side, which is true but not possible at all times. In the case of direct evidence, protection must be given and the court must act to restrain further violence, possibly fatal violence if the court does not act. For that reason I welcome the Bill. Given the rise in family law cases, there need to be dedicated judges or courts in the area of family law who can bring their expertise and wisdom to bear in this field.

I wish to pay tribute to the many refuge centres, including Connolly House and Edel House in Cork city which provide such a valuable service. I acknowledge the contribution made by medical practitioners and pharmacists who at times are the first people to identify domestic violence. These people have an integral role to play in protecting the most vulnerable in our society. I commend the Bill to the House.

Ms Tuffy: I thank the Minister of State for coming here for the debate. I welcome the Bill, subject to the amendments I have tabled and on which I will expand further on Committee Stage. I am pleased the Bill has come before the House so quickly because the limbo created by the result of the Supreme Court judgment needs to be dealt with as soon as possible. I reiterate that it is inappropriate to take all Stages together because the important issues raised by the Supreme Court must be carefully addressed.

I recognise the need for this type of legislation, which is very important for dealing with emergencies and protecting the vulnerable and those at risk. On the other hand, I agree with the finding of the Supreme Court. My experience as a solicitor is that this measure could be subject to abuse. It is very important to have fair procedures in place so that both sides of the case are heard, subject to some emergency provisions. There are huge consequences from the issuing of an interim barring order, particularly if the case is not heard very rapidly. Many knock-on consequences could affect other decisions made by the family law courts or criminal courts. Therefore, it would not be right to prolong the matter without having a fair hearing of the issues involved. I will table amendments dealing with a return date for the hearing and a provision for undertakings to be given to the court, an issue raised by the Supreme Court.

There should be a review of the whole family law area. Groups and individuals rightly raised the question of the need for men's rights to be addressed within the system. From my experience, I believe the system treats men unfairly and it treats women unfairly in other ways. It is important to ensure there are supports in place for families or individuals subjected to domestic violence.

The Eastern Regional Health Authority statistics for 1999 indicated that two out of three people who sought refuge with the health board were refused places in refuge centres. People who are violent need to be punished but they also need help. We need to help families in general and to bring about a less adversarial family law system. It is very important to have counselling programmes in place and to recognise that violence takes many forms. Older people and children can be subjected to domestic violence.

Mr. Kett: I welcome the Minister of State and the Bill to the House. The Minister must be congratulated on the speed with which he has brought the Bill before us because the issue was the subject of a court judgment just two months ago. It indicates the necessity to deal with this horrible crime which is part of our daily life.

When preparing for today, I was gobsmacked when I read some of the statistics. Senator Minihan referred to the fact that one in five will experience violence at some stage in their relationships. He also referred to the time of year which is now approaching. Another statistic I noted is that 83 women have been murdered in this country since the end of 1995, 54 of whom were murdered in their own homes, 37 by people they knew. As that is a horrendous statistic in anyone's language, it is essential to have tight legislation to deal with the problem. It is a problem we have been slow to come to terms with.

I recall listening earlier this year to the Minister for Arts, Sport and Tourism, Deputy O'Donoghue, in his former capacity as Minister for Justice, Equality and Law Reform. He posed a question to his audience which for me captured the indifference in our attitudes towards domestic violence. He asked people to imagine if today's newspapers or television carried a story that a new risk threatened people, and that risk would challenge between 10% and 20% of the population. He said a large number of those affected would require hospitalisation and some would even die. Most of those affected would suffer for the rest of their lives and in a large number of instances children would be affected. He asked what the audience thought the response would be. Would we as a society do nothing about it? Would everyone say it was not their problem, it was not a matter for legislation, it was somebody's else's problem? Would the media run the story for a day, week or month? If a year on we still had done nothing about it, would there be a public outcry? He asked if it was not a fact that the risk was already among us in its ugliest manifestation, namely, domestic violence.

That captured for me the indifferent attitude we as a society have towards domestic violence. Thankfully, that attitude has been changing in recent times. Credit for that must go to the Taoiseach because when he went into office in 1997 one of the first things he initiated was the national steering committee. The focus of the national steering committee was to bring about a cohesive and multiagency approach to domestic violence. Eight regional committees were established to deal with the matter in a more cohesive and localised manner, which is a demonstration of the Government's changing attitude to this issue.

It is right that we should acknowledge the fine work of non-governmental agencies such as the rape crisis centres and the women's refuges. Such organisations have given hope to those who have suffered from domestic violence. Their extremely important work is appreciated by those who have availed of it and by successive Governments. As someone who works in the voluntary sector, I can imagine the problems that are faced by the groups to which I have referred in terms of fundraising. They chase down benefactors and peddle boxes of flags to raise money to provide a service that the Government has not been providing to a sufficient extent. Many other bodies deserve the same credit as the two I mentioned for contributing in a meaningful way. It is good to note that, during its 1997 to 2002 term of office, the Government increased funding for the agencies from €3.8 million to €11.5 million.

The importance of providing information for those who suffer domestic violence cannot be overstated. They need to know that information services are available. The national steering committee, chaired by the Minister of State, Deputy O'Dea, has run tremendous awareness campaigns and has sent out a great deal of information in relation to the services that are available. In the past, domestic violence was considered a private matter and not one for legislation. A family row in a rural area was kept indoors as there was a pride factor - it would be considered that one had let the family down if one reported one's experiences of domestic violence. I am sure that a great deal of hardship was endured by many women who were afraid, perhaps as a result of their pride, to let it be known that there was a problem in their homes.

We need to educate the public to change its attitude to domestic violence. We have to ensure that the legal process is adequate and that those charged with the responsibility of dealing

with this issue, including the Garda Síochána, have the relevant knowledge to deal with it effectively. Perceptions are beginning to change and rightly so. It is past time this happened. People other than the man or woman concerned suffer when instances of domestic violence take place because children are often involved. I recently read that a child is either present or in the next room during 80% of domestic violence incidents, a statistic that emerged from international research.

One can only imagine the effect on a child of seeing his or her parents having a row that manifests itself in the form of physical violence. When such an incident is etched on the minds of children, they show it in different ways. Perhaps the worst thing they can do is to keep it bottled up and it is better if they externalise their feelings. We need to ensure that the necessary facilities and tools are available to those charged with recognising the symptoms of the problems I have mentioned, so they can put in place the mechanisms necessary to deal with the issues.

We must create an ethos whereby sufferers of violence know that people care for them and their children. In the event of sufferers revealing the tragedy of domestic abuse, it is important that a caring and professional system is in place to assist them. It is important that GPs and the staff of accident and emergency departments are skilled in recognising what needs to be done to deal with domestic violence. Medical personnel should keep accurate and comprehensive records so that trends and patterns of violence can be recognised.

I welcome the Bill and I thank the Minister of State, Deputy Brian Lenihan, for bringing it to the House so swiftly. I look forward to its quick passage.

Mr. B. Hayes: I welcome the Minister of State, Deputy Brian Lenihan. When I spoke to him after he became a Minister of State, he informed me that there is no constitutional obligation on Ministers to be present in the Seanad when it sits. I subsequently discovered that the Minister of State is absolutely correct.

Mr. B. Lenihan: A Minister has to be in this House for legislation.

Mr. B. Hayes: I welcome the Minister of State nonetheless and I am glad that he has appeared today. It is good that he is in the House for this debate because he has an expert knowledge of these matters.

Domestic violence is a serious matter and there is an urgent need for the Bill after the recent Supreme Court ruling. Irrespective of one's views on the matter, we cannot ignore the fact that the Supreme Court has determined that section 4(3) of the Domestic Violence Act, 1996 - passed by the Oireachtas having been brought forward by the former Minister, Mr. Mervyn Taylor - is defective constitutionally. When the courts make such a determination, we have to take the matter very seriously under our constitutional procedures. The Oireachtas is obliged to respond to an absence of rights that has been in place in relation to section 4(3) for the last six years. The amendments that Senator Terry and I will propose later attempt to implement both the letter and the spirit of the Supreme Court ruling, as set out some weeks ago.

The Minister of State is aware that some serious issues were raised in the ruling to which I refer. When the legislation was being discussed in these Houses in 1996, the former Minister, Mr. Taylor, said that the provision that one's home could be forfeited on the basis of an application that comes before the courts was a draconian power. Quite rightly in my view, the Supreme Court made two rulings in relation to interim barring orders. The court said, first, that a time limit should be imposed on the barring orders in question and, second, that respondents have a right to know all the evidence proffered against them. The Minister of State knows that it is a fundamental principle of justice and an aspect of any summons that goes before a court that a person has the right to defend himself against any charges to be proffered against him and has a right to know the evidence as set out in the courts. Having read it, the Supreme Court judgment seems to be a logical application of the jurisprudence

that exists in this country. It was a considerable oversight on the part of the Oireachtas in 1996 that it did not foresee this problem.

When I spoke on the Order of Business earlier, I was not speaking against the Bill but simply making the point that we need to take our time to ensure we get it right this time. As we do not want to make the same mistake again, it is important that this legislation is debated fully, as it has been so far today. I hope it will be thoroughly examined on Committee and Report Stages and that many of the issues to which I refer will be ironed out as part of the House's discourse with the Minister of State, who is an expert on these matters. I believe he will respond clearly to the amendments that will be proposed.

Domestic violence is a tragedy for men, women and families and it is sad that the State has to intervene. There are circumstances in which it is necessary, for the benefit of children and the individuals involved, for the State to have the power to legislate for interim *ex parte* barring orders, particularly at this time of year.

Many men are concerned, not with the law passed by the Oireachtas, but with the application of it in the courts. I was very struck when I entered elected politics, representing an ostensibly working class constituency in Dublin, at the number of men who complained to me about court rulings. They said they had been dealt with unfairly, that there was a presumption of guilt attached to them and that for them, at least, their experience of the courts, particularly of barring orders in the family law courts, was unfair. Much of that is perception - the courts have to decide these issues - but we must respond to it. The issue of domestic violence is greater than just the appalling circumstances for women.

The Minister of State is involved in the Department of Health and Children and I ask him to put pressure on his colleague, the Minister for Health and Children, to publish a report on domestic violence which has been on his desk for the last three years. It is the most exhaustive study of domestic violence ever carried out in the State. We would be in a better position to judge much of the anecdotal and empirical evidence which has been heard in this debate if this report were published. As Senator Walsh pointed out, there are cases of domestic violence against men and we must ensure fairness and due process in the courts' deliberations on these sanctions.

I ask the Minister to publish this report once and for all, to get it out into the public domain and ensure that the largest possible survey of domestic violence is published as soon as possible so that we know the evidence.

I generally welcome the Bill but caution all Members to give it the respect and attention to detail that it requires. It is rare for a Bill to come before the House concerning legislation passed by the Oireachtas on which the Supreme Court has ruled so emphatically.

Ms Feeney: I welcome the Minister of State and compliment him on his speedy response in bringing the Bill before the House. Only two months ago the Supreme Court ruled that section 3(4) of the Domestic Violence Act was unconstitutional. The general public, as well as politicians, have always been too ready to criticise Ministers and their Departments for being slow, particularly with legislation such as this. We seem to be painstakingly slow at times, but well done to the Minister on his speedy response in this instance.

It is our duty as legislators to make sure we have laws which will protect and create a safe place for all of us. Many victims of abuse, believe, wrongly, that our laws do not protect them or their children. It is very difficult for any man, woman or child to be caught up in domestic violence. I agree with Senator Hayes that the whole area of domestic violence is a terrible tragedy. It is not just the domain of women and children. Men are also the victims of domestic violence. Perhaps we should think about how male victims feel. They are a small minority but they feel less a man. It is very difficult for them.

I had lunch with five school friends last Saturday. One of them is a victim of a very unhappy marriage which she went into on the basis of what she thought was a very loving relationship. She experienced domestic violence on her honeymoon. Her husband used to kick her, bite her and pinch her, always on parts of her body which would not be noticed. She became pregnant with her first child after a year and the beatings continued. They became worse when the baby was born and she never thought of looking for help. She never shared it with any of us, her friends, because she thought it was not the type of thing that happened to people like her. Domestic violence happens across the board, regardless of socio-economic circumstances. She eventually looked for help when her baby was four. She was on the ground, unconscious, and woke up to the child screaming and crying, "Please don't die on me, Mummy". Her suffering continues today. She is still a victim. She is legally separated but the verbal abuse continues. Statistics show that 76% of separated couples still experience violence, whether it is verbal or physical. They still feel threatened.

The way to deal with stigmas is to talk about them and I am glad we are having this debate. I wish it could go further than the Houses of the Oireachtas. We need to build an environment where victims will feel safe, protected and part of the system. There have been many figures given out today and I will not go back over them. However, I was surprised to read a survey recently carried out by the Rotunda. Out of 400 pregnant women surveyed, 12.5% of them experienced very severe domestic violence while they were pregnant.

Another point to bear in mind, and Senator Minihan alluded to it, is that children are part of domestic violence. They are the innocent victims. Their parents could be in a bedroom, while they are in another listening to what is going on. Worse still, they might witness their father beating their mother or, in some cases, their mother being abusive to her husband.

I welcome the Bill but I would like to see special family court sittings in high density areas. Perhaps there could be more family-friendly sittings where a mother could leave children to school or to a baby minder when she goes to court, rather than having to bring the children into the court with her.

Senator Terry said earlier today she was rather sad that we were rushing the legislation through. The legislation has come at the right time and has not been rushed through. This is a very emotional time of year when we experience high levels of stress, alcohol consumption and debt. All of this, unfortunately, leads to people losing their heads. The fists are very much to the fore. A house which does not experience something like this is very lucky. Christmas should be a time of harmony and peace. It is a time when we reflect and think of people who are less well off. I welcome the Bill, which comes at the right time. I again compliment the Minister of State on his speedy response.

Mr. Bannon: I welcome the Minister of State to the House. It is to be hoped that the Domestic Violence (Amendment) Bill, 2002, will copperfasten protection for victims of this insidious but extremely prevalent blot on family life. Concerns widely raised about the Domestic Violence Act, 1996, must be urgently addressed. Like other Members, I would like to have more time to debate this Bill but I see that it is important to get it passed before the Christmas recess.

Domestic abuse is often shrouded in secrecy. Many couples, especially in rural areas, live their married lives in a more discreet and less open way than those in urban areas. They can be the silent victims of abuse as they feel hidden away from the world outside. In a sense they are the living affirmation of the hidden nature of abuse. They are unable to confide in outsiders or other members of their families. It is often the case that the true picture of a life of hell is not revealed until after the death of the bullying partner. This is sad but it is also unacceptable.

The holding of domestic violence cases *in camera* is also contributing to the culture of secrecy surrounding such issues. A new approach of openness and accountability would enable victims to read about such cases, realise that they are not alone in their suffering and seek help. During the period of abuse the victims are often unaware of or afraid to tap into the range of confidential services available to them. Services such as the Rape Crisis Centre,

Women's Aid and AMEN provide invaluable assistance to abuse sufferers. I compliment them on their work.

The 2001 Garda annual report states that of all cases investigated that year, 10,000 related to domestic violence incidents. Last year more than a thousand callers to Women's Aid had endured an abusive relationship for more than 30 years. This represents a whole lifetime destroyed by abuse, whether physical, sexual or mental. The three types of abuse are not mutually exclusive and the abuser often uses mental abuse such as intimidation and bullying to prevent his or her abused partner from leaving. Although physical abuse is more evident to a neighbour or outsider, mental abuse is equally traumatic for the victim. Last year Women's Aid received a far greater number of calls reporting mental abuse than physical abuse. Disturbingly, in 2001 more than 60% of victims of sexual abuse had been abused by someone known to them, such as a relative, partner or a date. This confirms the domestic nature of abuse. Sadly, the person from whom help should be available is too often the person who has instigated the abuse.

The amendments we are debating will provide greater protection to victims of domestic violence and the legislation will address last month's Supreme Court ruling on the unconstitutionality of interim barring orders because of the absence of time limits on the operation of such orders and other concerns raised by those working in this area with regard to the Domestic Violence Act, 1996. This Act allows one partner to go to the District Court and swear information to apply for an interim barring order against the other partner, who does not have to be notified. No time limit is set on the operation of the order, which can stay in place until a full hearing. In delivering the judgment of the court, the Chief Justice, Mr. Justice Keane, said that the Legislature's failure to impose any time limits on orders with such draconian consequences was inexplicable. In the resultant confusion, some perpetrators of abuse have moved back with their partners following the rescinding of interim barring orders, forcing women to take refuge in emergency accommodation.

Interim barring orders were created to protect women where the court is of the opinion that there are reasonable grounds for believing that there is an immediate risk of significant harm to the applicant or any dependent person if the order is not made immediately, and the granting of a protection order would not be sufficient to protect the applicant or any dependent person. The rescinding of the interim barring order has created a vacuum in which women are without adequate recourse to legal protection and it is imperative that the current wait of ten to 12 days before a barring order hearing takes place is reduced to seven days. Senator Terry referred to an eight day period and that would also be acceptable.

Victims of domestic violence, regardless of gender, must be protected by every means we have available, but in doing so we must not create new victims. Justice must be done and be seen to be done, fairly and equitably. This important legislation must leave no room for loopholes.

Ms Ormonde: I welcome the Minister of State to the House and promise him to try not to use the same lines as everybody else. Everybody is in agreement that this amendment to the legislation is necessary. The Supreme Court judgment implied strongly that the rights of all parties must be taken into consideration and I agree. As a woman - although I do not want to create a line - I feel we must talk only about violence, whether it is perpetrated against men or women. That is why I am here. We are trying to discover how best to eliminate the violence that is out there. This is a timely issue. Nobody is saying that the legislation was not useful and I congratulate the former Government and Taoiseach on it, as well as the Minister of State, Deputy Mary Wallace, who, with her interest in eliminating violence, spearheaded this legislation. We can have all the legislation in the world, but how can we be sure it will be effective on the ground? That is the fundamental question facing all of us. How do we know that violence is not taking place in some household at a particular point in time? How can we as a society face up to this serious problem?

People have asked why domestic violence happens. Somebody once told me it was because we need to feel power and control and for some people, the only way to feel this is by beating

and bullying. They feel they can only keep control and hold power if they adopt this approach. Domestic violence affects all social classes in all regions. Quality of life is destroyed for many families. The impact on children is very significant. In my former career I came across domestic violence many times. One would notice the children coming into school suffering from the effects of the night before. It affected their progress, demeanour and discipline, but they could not themselves identify what was wrong.

We must do everything we can to break the cycle of violence. The national steering committee set up by the previous Government has gone a long way in that regard by putting in place directives on reaching out to health boards, NGOs and services for women experiencing violence. Information should now be available in libraries, Garda stations and hospitals. Such information is not always available. For example, I contacted a Garda station today and it was not available there. The steering committee has stated that its terms of reference would ensure information is available in schools, health boards and libraries. Even if it is available in these places, could a vulnerable woman look for it? We must create an effective national awareness campaign that is not just a once-off. It must be ongoing and make society face up to the fact that this is a real problem that cannot be swept under the carpet.

Domestic violence is a crime, a social problem, and legislators should be fighting against it. We will never be rid of it entirely, but we must acknowledge and help those affected. We must let them know that there is a refuge for them, that they can get out, that local authorities can provide vital accommodation and that the health boards will help.

If we increase funding, it must be reflected in better services. The training of hospital personnel for those who arrive in accident and emergency units as a result of domestic violence is important. Front-line personnel should know the difference between ordinary accidents and violent abuse. Schools should also receive funding for the physical and psychological needs of young people.

I am glad this legislation is being amended, but the Minister of State must ensure it is implemented in a manner whereby the public can see that there is protection for those being abused. We must never stop talking about this issue and ensure it remains on the agenda.

Minister of State at the Department of Justice, Equality and Law Reform (Mr. B. Lenihan): I thank Senators for their contributions and the constructive way in which they have approached this measure. It is an important measure that has been necessitated by the decision of the Supreme Court. This debate has been wide-ranging, covering not only the legislation but exploring the implications of violence in family relationships and the resultant problems posed for our health services.

I commend the work of the Garda in this area. Senator Ormonde mentioned that the legislation must be seen to be implemented. Much of its implementation falls squarely on the shoulders of gardaí who are called to deal with difficult and sensitive circumstances in many households and to administer and interpret this legislation in as fair a way as possible to the parties before it comes to judicial determination.

Senators mentioned the technical aspects of the legislation and the legal formulations used. I would prefer to address those issues in committee. Senator Terry referred to the financial implications of the measure and the strains on the legal aid service and the courts system. The explanatory memorandum makes it clear that the implementation of the Bill will give rise to additional court hearings to decide whether or not to confirm interim barring orders made *ex parte*, but it does not have any necessary financial implications. Even under the arrangement condemned by the Supreme Court, the matter had to return to court at some stage so there is no increase in the volume of work of the courts, although this legislation means they will have to work at a faster pace. That is no bad thing.

Senator Jim Walsh referred to our view of marriage. Initiatives by the health boards, such as the Springboard initiative, are funded by the Department of Health and Children and seek to intervene as early as possible to protect the welfare of children where there is a difficult parenting position and ensure those children get the chance to advance in life. Initiatives can be taken by Government agencies but the State cannot become a parent. We must have standards of parenting at a social level. The State cannot be expected to fund indefinitely the parenting of all children. We would not have the resources to do that no matter how great our prosperity. We must affirm the importance of parents in setting an example and taking responsibility for children.

The Supreme Court was very critical of us for using the phrase "exceptional circumstances" in the initial legislation and I understand why Senators refer to the issue. It should be exceptional to remove anyone from a family home, but when the courts have to deal with this, they cannot make a judgment about how common this exceptional circumstance is as a social phenomenon. They have to view it in the light of immediate circumstances. The urgency, rather than the exceptional character of the circumstances, is what impresses itself upon a court.

The Court Services Commission has done much in the area of court facilities and progress has been made in recent years compared to the circumstances that obtained when I commenced legal practice.

Senator Henry gave an interesting account of the medical phenomenon of violence against women. As a medical practitioner, we must give weight to her opinion that the trend of the statistics is for far more violence against women than against any other group, while not denying that violence is perpetrated against many different family members.

The Senator also raised the issue of the publicity of court proceedings in family matters. It is an important issue and we must be careful in this area. We must respect the privacy of family proceedings, but the standard of criticism that must take place in such cases is at issue. The Constitution is clear that justice must be administered in public save in such specially limited circumstances as are prescribed by law. The bulk of matrimonial and family law proceedings are way beyond the specially limited circumstance and amount to much of the business of the courts. The programme for Government contained a commitment to consider this area.

5 o'clock

The courts are not accountable to the Houses of the Oireachtas or the Government. However, they are accountable to public opinion which cannot be formed if there is not some form of publicity about the decisions being made. There are no proposals in this measure to deal with that, but it must be examined and there is a commitment for that in the programme for Government.

Senators referred to the fact that there are sensitive issues with regard to the necessary privacy which parties to these proceedings would wish to see obtain. There is an equal need to ensure that what the courts do is subject to public scrutiny. There is a difficult balance to be struck and the Government has made a commitment to address this issue, which was raised by Senator Hayes.

Senator Minihan welcomed the legislation and stressed the need for social provision and refuge centres. He also commented on the social phenomenon of violence, a matter to which Senators Feeney, Bannon, Ormonde, Kett and Tuffy also referred. It is a phenomenon that has always been there, but one that must be openly addressed by the Oireachtas.

The legislation has been introduced to respond to the concerns of the Supreme Court on the legal aspect of the problem. I hope I have dealt with most of the points of substance raised by Senators on Second Stage. If there are particular issues, I would prefer to deal with them in committee as they relate to the technical character of the legislation.

Question put and agreed to.

An Leas-Chathaoirleach: When is it proposed to take Committee Stage?

Mr. J. Walsh: Now.

Agreed to take remaining Stages today.

Domestic Violence (Amendment) Bill, 2002: Committee and Remaining Stages.

SECTION 1.

Ms Terry: I move amendment No. 1:

In page 3, line 11, to delete "having regard to the circumstances of the particular case," and substitute "in exceptional circumstances".

I ask that the amendment be adopted. I agree with the Minister of State that every case is urgent, but the provision of the clause "in exceptional circumstances" is extremely important to groups representing people who find themselves in these situations. Those groups have asked me to impress strongly on the Minister of State the importance of having this phrase reinstated in the Bill. The Supreme Court decision did not require these words to be removed, which is important. It is mentioned in the court's decision that the criteria are not available to it. I suggest we put that clause, as provided for in the Act, in the Bill and that the criteria be drawn up. It would not take a lawyer long to draw up such criteria if the Minister of State accepts the amendment. It is important to the groups with a strong interest in the Bill that the words should be retained.

Mr. B. Hayes: I second the amendment in the name of Senator Terry. From my understanding of the Supreme Court proceedings, the State, in the action it took in defending the 1996 legislation, referred to the exceptional cases provision as set out in that legislation. The Supreme Court ruling stated that:

There is no indication of the criteria by which the District Court in the case of an *ex parte* application for an interim barring order is to decide whether it is an exceptional case in which it is necessary or expedient in the interests of justice to grant the application.

The court has clearly stated that there are not, as Senator Terry pointed out, criteria established whereby these cases can be determined.

Other Supreme Court rulings map out what the court believes the Legislature should follow. I would have thought with regard to this issue that the court has asked the Oireachtas to map out the circumstances by which interim *ex parte* barring orders can be established. That is why the amendment has been put in my name and that of Senator Terry. If we were to establish the character and criteria to be used in the District Court, it could be to the benefit of the courts in establishing the validity of these barring orders. Senator Terry and I are interested to hear the Minister's response.

Minister of State at the Department of Justice, Equality and Law Reform (Mr. B. Lenihan): The amendment promises much but fulfils little in the sense that it does not provide the desiderata or criteria which are to be operated on by the courts. This is the difficulty with the amendment, which I cannot accept. It is an important issue and I understand the motivation behind the amendment.

The amendment says that the phrase "having regard to the circumstances of the particular case," should be deleted and replaced with the term "in exceptional circumstances". If that was done, no criteria at all would be provided.

Senator Terry points out that we are not obliged to follow opinion on this matter, that the Supreme Court is not the Legislature and that the Oireachtas has a separate voice on this. Nonetheless, the court has expressed the opinion that the phrase "in exceptional circumstances" is meaningless. It would not do the House credit if the Bill was amended and that meaningless phrase restored. To give that phrase flesh and blood, an outline would have to be given in the legislation - a task that has eluded the Opposition Senators who have tabled this proposal.

The Senators have not specified what exceptional circumstances are envisaged. This is not an easy task. The proposal before the House is that we simply use the phrase "having regard to the circumstances of the particular case". That leaves it to the courts to determine this issue and I accept that. The courts in general are entrusted with a lot of discretion in the area of family law provision and matrimonial law, whether on the division of property, the exclusion of parties from the family home or the determination of appropriate sums of maintenance. These matters are left to the discretion of the court in the particular circumstances of a case.

As Members know from their work as public representatives, the variety of circumstances that can arise in family proceedings is extraordinary. To devise a legislative formula to cover all these circumstances would be a difficult task and, because of that, many of these matters are left to the court to determine in a particular case. By sending out a signal to the courts that this is now an order that can only have a finite duration, its temporary and provisional character is highlighted. I am not prepared to accept an amendment that would go beyond that and say that a phrase to which the Supreme Court took exception should be restored to the legislation.

From reading the speech of the then Minister for Equality and Law Reform, Mr. Mervyn Taylor, on Second Stage in this House on 31 January 1996, it is apparent that the *ex parte* interim barring order was seen as a remedy for what were, in Mr. Taylor's words, "extreme cases". I refer here to cases where there is evidence that there is an immediate and serious risk of significant harm to an applicant or dependent person if the order is not made immediately and the court is satisfied that the granting of a protection order would not grant sufficient protection. It is known that the granting of interim orders *ex parte* rather than on notice became a more widespread practice rather than an exception, notwithstanding the existence of that express legislative provision. This happened because the criterion for the granting of an interim order in practice is that there would be an immediate risk of significant harm to an applicant or a dependant. Those are the circumstances that any court examining this matter would act upon and rely upon.

Once such a provision is introduced, it is difficult to set a limit on it. The reason I suspect the Supreme Court did not find favour with the provision on exceptional cases is that it appears to relate to the sociology of the provision rather than giving any guidance on its legal interpretation. For those reasons, I am unable to accept the amendment, although I understand the motivation of those who moved it.

Ms Terry: I am disappointed the Minister of State will not accept my amendment.

Mr. B. Hayes: I understand the Minister of State's reply. It is difficult to define an exceptional case in statute law. However, when the legislation was initially put through this House and the other House, a former Minister, Mervyn Taylor, referred to the fact that the granting of such orders was confined to extreme cases. He did not define what he meant by "extreme cases"; he left it to the application of the courts. The Supreme Court ruling on this matter seems to rap us across the knuckles for our failure to establish what we believe to be exceptional cases. We are not attempting to slow down the progress of this important Bill, but we must return to this issue. It is not always the case that the courts want to be the sole arbitrators in such matters. They want a set of circumstances under which they can determine, based on

the evidence, what is in the interests of natural justice. This is one of the cases where our knuckles were rapped. We will not be able to devise new criteria between now and 6 p.m., given that we have failed to do so since the Supreme Court ruling.

Mr. B. Lenihan: I will not rap the Senator's knuckles.

Mr. B. Hayes: This point needs further examination. In 1995 the sponsoring Minister clearly stated that it was for extreme cases. As the Minister of State said, it has a wider application now than was originally envisaged in 1995 and 1996.

Mr. J. Walsh: While I accept some of the arguments, the points made by the Minister of State are valid. It will probably be difficult and time consuming to draft criteria. It is desirable that such criteria should be drafted and enacted as soon as possible because there are time constraints. Many Senators said that this Bill must be placed on the Statute Book as soon as possible, particularly given the time of the year and the fact that alcohol is a factor in such cases. We must have regard for the serious decision taken by the court, namely, that someone will be barred from their home and will not be allowed to contact their children. Section 1(3)(a) states, "An interim barring order may be made *ex parte* where, having regard to the circumstances of the particular case, the court considers it necessary or expedient to do so in the interests of justice." A lawyer may have a different interpretation of "expedient" from my interpretation of it. The phrase, "or expedient", suggests a lower level of qualifying criteria on which a decision may be based. I have some concerns about that. Perhaps the Minister of State might consider that between now and Report Stage. The phrase, "necessary or expedient", seems to dilute the necessity for a barring order. Perhaps my more legally qualified colleague, the Minister of State, will respond to that.

Mr. B. Lenihan: We are all legally qualified.

Dr. Henry: Like Senators Terry and Brian Hayes, I have received representations about the wording. We must take into account the Supreme Court's pronouncement that these words are meaningless. I do not say that because half of them are constituents of mine, although that is part of the equation. While we are not run by them, it seems unusual to put back into the legislation wording which has been thus described.

Mr. B. Lenihan: No one has a monopoly on legal expertise in this House. We are not the first with the best intentions to have created the worst, as Shakespeare once said. I agree that we must be careful about the words we use. The phrase "necessary or expedient" was mentioned. That was included in the original legislation. Expediency as well as necessity were imported as ideas from the original legislation. That is why they are included in this provision. We will examine the standards or criteria which should be applied in such cases in our review of family law legislation. Although there are many matters on which we have given a discretion to the courts, the exercise of a discretion in such a case raises far reaching questions. As regards the phrase, "in the interests of justice", the right of ownership and residence in a family home is a matter of justice as well as the protection of the spouse.

It is a difficult balancing position and that is why we, as a Legislature, have tended to leave the difficult task of deciding that balance to the courts. The fact that we are complying with the judgment of the Supreme Court in this legislation and setting a definite time limit on such an order is the most important signal to send. If we lose sight of that, we will get lost in discussing the technicalities of certain phrases. We are saying to the courts that there is a time limit on this order which they must respect. That, in itself, imports the ideas about which Senators are concerned in this discussion.

Ms Terry: I will not press the amendment in view of the Minister of State's response and the ongoing review he mentioned.

Amendment, by leave, withdrawn.

Acting Chairman (Mr. Dardis): Amendment No. 2 is in the name of Senator Tuffy. The Government has also tabled this amendment.

Ms Tuffy: I move amendment No. 2:

In page 3, line 22, to delete "of" and substitute "or".

I thank the Minister of State for accepting the amendment.

Mr. B. Hayes: Full marks.

Dr. Henry: I congratulate Senator Tuffy.

Mr. B. Hayes: It is an exceptional case.

Mr. B. Lenihan: It is an exceptional development.

Acting Chairman: The Chair could comment, but I will not.

Amendment agreed to.

Acting Chairman: Amendment No. 7 is consequential on amendment No. 3. Amendments Nos. 3 and 7 may be discussed together.

Ms Terry: I move amendment No. 3:

In page 3, line 31, to delete "working".

I wish to delete the word "working" so that the paragraph reads: "The order shall have effect for a period, not exceeding 8 days." If amendment No. 3 is accepted, amendment No. 7 will also be accepted. The Supreme Court described the Child Care Act, 1991, as a model which enabled the District Court, on the application of a health board, to make a care order in respect of a child without notice to the parent, where this is required, in the interests of justice or the welfare of the child. Such an order, unless the health board and the parent have custody consent, must not be for a period exceeding eight days. I want the same to apply in this case. Unless the Minister of State can give me a good reason why eight working days should be applied, I ask for it to be changed to eight days.

Mr. B. Lenihan: I can, but the Senator has raised an interesting point. The Senator's intention appears to be to have a return date of eight days rather than eight working days when an interim barring order has been granted *ex parte*. It is true that the Supreme Court referred with approval to that section of the Child Care Act, 1991, to which the Senator has referred. Section 17 of that Act provided for the making of an interim care order in respect of a child, including on an *ex parte* basis, effective for a period not exceeding eight days. However, the Supreme Court - and the Supreme Court can sometimes err too - did not advert to the fact that the eight day period had been amended to 28 days by section 267(1)(a) of the Children Act, 2001.

Ms Terry: I said that earlier.

Mr. B. Lenihan: The analogy begins to disintegrate because the Oireachtas has, in a more recent provision, provided for a period of 28 days. The provision in the Bill is closer to the 28 days than the Senator's amendment.

In this Bill it has been decided to propose a period of eight working days rather than eight days, or indeed 28 days. Advice has been taken from the Attorney General on the

constitutionality of this. A working day is defined as a day other than a Saturday, Sunday or public holiday, within the meaning of the Organisation of Working Time Act, 1997. Public holidays under this Act are Christmas Day, St. Stephen's Day, St. Patrick's Day, Easter Monday, the first Monday in June, the first Monday in August, the last Monday in October and the first of January and, where relevant, the following weekday when a public holiday falls on a Saturday or Sunday.

The provision for eight working days gives far greater flexibility to the courts than would be the case with eight days. For example, with eight working days an *ex parte* order granted on Monday, 23 December next would expire on Monday, 6 January next. If the period were eight days it would expire on 30 December and the court would have to sit on that day or earlier. It is, of course, true that this is a greater imposition on the respondent than eight days would be, but it is not an excessive period or a disproportionate abridgement of the rights of the respondent under the Constitution.

For these reasons I cannot accept these amendments. I am concerned, in particular, when we took the advice of the Attorney General on a matter as sensitive as this that we should stay within that context.

Mr. B. Hayes: Is the Minister saying that the difficulty arises from the number of days the courts are sitting? That difficulty can arise in certain circumstances, given the very lengthy holidays taken by our colleagues in the courts. It would be entirely inappropriate if that were the reasoning. Can the Minister confirm or deny that?

Mr. B. Lenihan: I deny it, of course. It has no connection with that matter, which is settled under rules of court and upon which Senators, I am sure, have their own views. As the Senator is aware, the District Court, where the bulk of these applications are made, does not enjoy the benefit of the extensive vacation enjoyed by the other courts. I gave that illustration not in reference to court vacations but because the courts do not sit on the particular holidays prescribed in the Organisation of Working Time Act, which the Oireachtas has prescribed for the nation at large. In those circumstances it seems appropriate to take those into account in legislation of this character, something that could not have been taken into account in the 1991 Act.

Acting Chairman: Senator Hayes, have we decided whether the courts are working or not?

Mr. B. Hayes: The jury is still out on that.

Question, "That the word proposed to be deleted stand", put and declared carried.

Amendment declared lost.

Acting Chairman: Amendment No. 5 is an alternative to amendment No. 4 and both may be discussed together, by agreement. Is that agreed? Agreed.

Ms Tuffy: I move amendment No. 4:

In page 4, line 2, after "court" to insert "and in specifying the date on which the order shall lapse, the court shall specify a date, on or before the first mentioned date, for the hearing of any application that may be brought by the applicant to confirm the order".

One of the main reasons for this Bill is to ensure a speedy return date. The Bill goes part of the way to achieving this but it does not ensure a return date within eight days. This amendment would guarantee that.

As the Bill stands an interim barring order could lapse and the applicant would have to re-apply for an interim barring order. Meanwhile the respondent will have an unresolved court order hanging over him or her. The order may have lapsed but the damage to the respondent's reputation will be ongoing. If there is no guarantee of a return date the respondent cannot put his or her side of the story to the court. This, surely, is the purpose of the Bill. I ask the Minister to accept this amendment.

Dr. Henry: I support the amendment. Problems have arisen in the courts from the way in which things have been allowed to run on and on without set dates for the return of cases.

Ms Terry: I support Senator Tuffy's amendment. It is important that we place an obligation on the court to fix a date for a return hearing within the eight day period. If we do not, an applicant could be at risk. A judge is in a better position to set the date rather than leaving the matter to the applicant or respondent. This amendment would guarantee that matters would be dealt with quickly, which is the principal purpose of the Bill. If the judge sets the date things are made easier for everybody.

Outside Dublin it is more difficult because courts sit less frequently. This amendment will ensure that the judge will set a date and decide where the case will be heard.

Mr. B. Lenihan: I can understand the motivation for these amendments. However, there seems to be a misapprehension regarding the applicant at risk. The proposers appear to believe the applicant to be at risk from his or her own legal advisers. Any legal adviser will inquire of a judge when a case is to be returned to. In any application for an interim or interlocutory order a legal adviser who sees that the Oireachtas has now provided that the order will lapse in eight working days will inquire of the judge when the matter will next be in court. Otherwise the adviser has totally failed to attend to the requirements of his client by ensuring the matter is kept alive before the court.

I am unable to accept these amendments, although I understand the motivation for them, because in entertaining an application of this type the court will, as a matter of practice, fix a return date. This is not a matter which requires legislation. This legislation will impose a limit of eight working days. A court which has made an order of this character will, clearly, at the same time make an order as to when the matter is to be returned to the court within that period.

As Senator Terry mentioned, in some provincial locations the venue may have to change because the judge assigned to the district may not be sitting in the same venue within eight days. It is impossible within the judicial economy of Government to provide otherwise because the sittings are fixed for the various venues within the district and the judge will have to fix the return date for a different venue within his or her District Court area.

The amendments are not necessary. They seem to be based on the premise that a court will wilfully allow an order to lapse for want of a hearing or that the matter will be lost sight of by the court under pressure of other business.

I appreciate Senator Henry's intervention as well but often cases seem to get lost in the court. That the Oireachtas is now providing for a very definite time limit on these orders ensures they cannot be lost, because they are lost after eight days unless the necessary application is made. It is envisaged that the applicant, or his or her advisers, will at the time of the application fix a return date. Not all applicants have legal representation - some appear in person - but judges are always mindful of the fact that they have a duty to assist a litigant and will naturally advise the litigant that the order is of only eight days duration and that they must come back to court and serve the necessary documentation on the other side.

What is at issue in this legislation and in the Supreme Court decision is the service of proceedings. It is common in civil proceedings for proceedings to be taken by one side and to obtain an order *ex parte* and the court always insists that the proceedings should be served

as quickly as possible on the other side. Under the legislation I envisage a similar practice developing where the court will advise the applicant to serve his or her papers as soon as possible and, in the event of renewal of the order, he or she should be present at a sitting of the court within X number of working days.

This matter refers back to the earlier amendment, which was pressed, about the working days. That is the reason we considered it necessary to provide this framework of at least eight working days and not let time be lost because of the incidence of public holidays, Saturdays or Sundays. There has to be a reasonable period for the applicant to serve the papers on the respondent and for the respondent to have an opportunity to turn up and contest the case.

I appreciate in legislation of this character there is an anxiety to ensure every contingency is dealt with. The normal procedure for contingencies of this type is that if there is any particular difficulty it is dealt with by a rule of court, made under the relevant rules - the rules of the District Court or the Circuit Court where the rule making committees would draw up a specific procedure.

The intention of the Oireachtas is made clear enough in the measure before the House. These orders lapse after eight working days. I am satisfied the courts will be mindful of their responsibilities to arrange their business in such a way that their orders do not lapse because a hearing within the period of validity is not fixed. With regret I cannot accept these amendments.

Amendment put and declared lost.

Ms Terry: I move amendment No. 5:

In page 4, line 2, after "court." to insert "In any event, the court shall fix a return date for the hearing of the interim barring order application within the eight day period and that application shall be on notice to the Respondent at the earliest possible opportunity."

Amendment put and declared lost.

Ms Tuffy: I move amendment No. 6:

In page 4, line 4, after "(d)" to insert "as it applies to the proceedings in question".

The purpose of this amendment is to ensure clarity in the order and that it explains paragraph (d) in terms of the date that applies to the particular case in question.

Mr. B. Lenihan: We are advised that the existing proposal is clear enough. We do not believe the phrase "as it applies to the proceedings in question" adds anything to what is before the House. Therefore, we are not in a position to accept the amendment.

Amendment put and declared lost.

Ms Terry: I move amendment No. 7:

In page 4, to delete lines 5 to 8.

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

Ms Tuffy: I move amendment No. 8:

In page 4, line 8, after "1997)." to insert the following:

"(g) If the interim barring order is made *ex parte*, the court may, if it thinks fit, require the applicant to give an undertaking as to damages in favour of the respondent in the event that the court subsequently determines that the order was wrongly applied for."

This amendment seeks an undertaking in regard to damages, which is normal in any *ex parte* injunction. One of the reasons my colleagues and I tabled the amendment is that the absence of an undertaking was a matter of concern to the Supreme Court in the Keating v. Crowley case in October. The amendment requires an undertaking only where the court so orders; therefore it would apply only in exceptional circumstances. The consequences of an interim barring order being taken out against a person can be severe. Given that the Supreme Court has raised the issue, there may be cases where such an undertaking would be required.

Mr. B. Lenihan: The Senator has raised an interesting point. The Supreme Court, in referring to this issue, was not advocating that we reform the law by insisting that applicants give an undertaking as to damages before they obtained a barring order or an interim barring order in this instance. What the Supreme Court did in its judgment was to contrast the arrangement in ordinary civil cases where frequently a plaintiff or a defendant seeking interlocutory relief has to give an undertaking as to damages with the peculiar nature of this remedy where no such undertaking is required.

No doubt that was a factor that influenced the Supreme Court in arriving at the conclusion that there should be a strict time limit in the operation of this type of order. In ordinary civil proceedings a plaintiff can be required to say a particular activity shall cease on the proviso that the person trying to restrain the activity offers to compensate the party affected, if the person seeking the restraining order is proved wrong at the conclusion of the case. That is the undertaking with regard to damages.

That has never been a feature of this particular remedy. Since its inception in 1976, this remedy has proceeded without any undertakings being required of the parties. It does not require a great leap of the imagination to see why, because undertakings by many of the parties to this particular litigation would not be of great value and would be inclined to give rise to more litigation subsequently and dispute over a pot of gold that does not exist. For that reason the undertaking has not been a feature of our legislation and the Oireachtas, when it provided for this remedy, never provided for undertakings as to damages. It provided a specific system of remedies for an unique problem of domestic violence.

It would be a retrograde step if we accepted this amendment and put the clock back by saying that the previous law where one had to obtain an injunction, an undertaking as to damages was required. It would be impossible for a spouse of limited means to give such an undertaking. The Senator who moved the amendment rightly said that not all spouses are of limited means. There may be cases where spouses have substantial means. It would be a major innovation in the system of barring orders we have operated to invite the courts to consider whether undertakings as to damages should be offered by parties seeking these orders. It would not be appropriate to include such a measure in legislation of this scope and character. This legislation is essentially remedial in character and is designed to deal with the consequences of the Supreme Court judgment. There would be a danger that this amendment would place an *ex parte* interim barring order remedy out of reach for those who need it most.

Let us consider the position of a woman of limited financial means who may be simultaneously trying to obtain maintenance from her spouse. How could she be expected to give an undertaking as to damages? She may be a victim of violence and hesitate about seeking an interim barring order *ex parte* because she may expose herself to a risk of

damages. We must remember that when we invite the courts to exercise a particular option - we know from our experience with the existing legislation that this gave rise to the difficulty in the Supreme Court - they often exercise it. It would be dangerous to include a reference to an undertaking as to damages.

What does the amendment mean? Does it refer to circumstances where the court refuses to confirm the interim barring order? Having heard and weighed the evidence of both parties, the court may conclude that it should not make the order. However, the application may not be without merit but merely fail to pass a particular threshold. If we introduce the undertaking as to damages we will actually change the nature of the discretion the court may exercise. Inevitably, once brought into the picture the courts will take it into account with regard to whether they should make the order in the first instance.

Through this legislation, the Oireachtas has always provided that the safety and security of a spouse and her child are paramount in the exercise of the jurisdiction in the particular circumstances of a case. To introduce any requirement regarding the financial means of the parties would be to revolutionise the jurisdiction we have exercised in this area. That is not a step I am prepared to support at this stage.

Dr. Henry: We should be grateful to Senator Tuffy for bringing this worthwhile amendment before the House. I agree with the Minister of State. I would be concerned that applicants might be deterred from proceeding with cases in circumstances where they should do so. People, particularly those of limited means, have to rely on legal advice.

As a solicitor, Senator Tuffy would have more knowledge than I of the family courts. I am always concerned about the numbers urged to go forward with personal injury or medical cases. An enormous number of those cases are lost, but in many instances the legal adviser has not told the unfortunate applicant about the large amount of money he or she may have to pay. These people have often been encouraged to sign indemnities saying they will pay the fee if the case is lost. Whereas in such cases I would like the applicant to obtain more information about the financial penalties they might incur if they lose the case, I believe applicants could be deterred from bringing cases altogether.

Mr. B. Hayes: Gratitude is owed to Senator Tuffy for the proposal of this novel amendment. It would certainly be an innovation. The Senator's point is valid in so far as it only deals with spouses with substantial means. Granting to the court the jurisdiction to determine whether a spouse in such a case could give such an undertaking is flexible. The Minister has said that this is a large step to take. I accept that, but it is an important fact that not everyone who comes before the court is of insignificant means. Could this provision be used to harm another party, particularly the respondent? In bringing forward the amendment, Senator Tuffy has highlighted this important issue.

Mr. B. Lenihan: Senator Henry raised the matter of costs. In the District Court an order for costs could be made against an unmeritorious applicant but the amount of measured costs would be low. In the Circuit Court, they would be more substantial. That penalty already exists for an unsuccessful applicant and it is something any applicant has to consider before entering legal proceedings.

What we are discussing here is a more radical requirement where an applicant for interim relief actually gives the court an indemnity against any loss the other party suffers in the event of the applicant being unsuccessful. That is a far reaching step to take and is a fundamental change to this jurisdiction, which is statutory in origin.

Senator Brian Hayes made the point that a question of means might arise and that the applicant might be wealthy. In such circumstances the Oireachtas would have to legislate because, in the amendment, it is not proposed to discriminate against the person of means. The question of violence must also be considered. Irrespective of the person's means, what we are talking about is balancing the *desideratum* of stamping out domestic violence and the

operation of penalty points in the case of a wealthy applicant who would have to pay money up front to deter an alleged case of violence. While I can see the interesting argument that can be made for this proposal, I am not convinced of its merits.

Amendment put and declared lost.

Ms Terry: I move amendment No. 9:

In page 4, between lines 9 and 10, to insert the following:

"(f) Where an interim barring order obtained *ex parte*, pursuant to subsection (3)(d), is to be continued pending any adjournment of the application, so that the Respondent may be heard, that the period of adjournment should not exceed eight days."

I tabled this amendment because of concerns that within the eight day period when an application is being heard the respondent may request more time for preparation. I want to ensure that if a judge decides that additional time should be provided, it should be a period of no more than eight days. If that is not set down, the judge could allow a month or three weeks. To ensure the system works, I ask that the amendment be accepted. It would provide for a speedier resolution and at the same time protect the applicant.

Mr. B. Lenihan: I understand the spirit in which the amendment is being moved, but I am not certain it adds to the legislation. The legislation will provide that the order lapses after eight working days. That is a fundamental bar on the jurisdiction of the court. If the respondent appears within the eight days to contest the order, he can do it there and then. If he wishes further time to meet the case, then the applicant will have to apply for a fresh order. The applicant will have to apply afresh because the Oireachtas is providing in the legislation for the termination of the order after eight days. That is an absolute bar.

The court is deprived of jurisdiction after eight days. It cannot look at the order and say that it was made for eight days but, because the respondent wants an adjournment, it will extend it for a further month. The court has no power to do that because the order lapses after eight working days. In such cases, a fresh application must be made by the applicant. The applicant will have to come into court and seek another eight days. At that stage, the respondent is present in court to meet the claimant.

I am not trying to create difficulties for the Senator. I realise this is a very technical measure and I really appreciate the amendments which have been put down as they have allowed an elucidation of a very complex piece of legislation, short though it may appear.

Ms Terry: I am concerned that the matter could go on and on, as we feared. When an applicant is granted an interim barring order, notice of the application has to be given to the respondent and a date is set for the hearing. The Minister of State has already said the judge will, of course, set the day. The applicant has to serve notice on the respondent as quickly as possible, even though those words are not now in this Bill and I tried earlier to provide for that.

If it takes a few days for the applicant to find the respondent and the case is set down for a Friday, I am concerned that the order may lapse. The applicant would then have to seek another order and a further day would have to be set by the court. That process could go on and on. That is one of the defects in the Bill which I believe my amendment would resolve.

Mr. J. Walsh: The whole thrust of the provision, accepting the Minister of State's comments, is that it automatically dies after the eight day period and, therefore, the applicant would have to return to the court again. Obviously, there will have been a requirement in the interim to notify the respondent and provide a note of the evidence of the affidavit, as well as the other relevant provisions in this regard. I believe that covers the situation fairly satisfactorily. When the matter comes back to the court a second time it will be a new application, but at that stage

the respondent may be present, in which event the order may well be challenged. I regard that as a relatively good mechanism for dealing with the matter.

Ms Terry: If the order lapses and there is even one day for which there is no interim barring order, the applicant is at risk from the offending party, the respondent. There should not be any interval whatsoever before another order is made. If an order lapses on a Friday, the applicant cannot go to court until the following Monday. That is a real problem. We cannot allow the applicant to be at risk, especially in a situation where relationships are liable to deteriorate because of the legal proceedings.

Mr. B. Lenihan: So far, in this debate, the amendment was pressed in terms of the effect on the respondent. In dealing with that, I mentioned that the order would lapse but, of course, the order can be confirmed and I wish to emphasise that. Therefore, from the perspective of the respondent, once he or she is in court, he or she is in a position to meet. If the respondent wishes to have an adjournment - I will return to the Senator's point in a moment - that is clearly a factor which the judge will have to examine in the context of a confirmation application by the applicant. However, the Senator has now canvassed a different contingency entirely, namely the impact on the applicant of the fact that the order automatically lapses. That, of course, is the kernel of the legislation.

If the applicant cannot locate the respondent and cannot effect service, the applicant will have to go to court again and seek an order. That is my understanding of the position. With regard to the law of service, the court can always deem service to be good in certain circumstances where the respondent cannot be traced. It is not the case that an applicant would have to return endlessly to court every eight days to obtain an order. However, under this scheme, where an order is about to lapse for one reason or another, the applicant will have to renew his or her application to the court before the operative last day. As Senator Terry has rightly pointed out, if the order lapses on a Friday, it will not be easy to find a district justice on Saturday, particularly one with jurisdiction. The Senator's point is well made but the applicant will have to come to court before the eight day period lapses. That is inescapable, given the purport of the legislation.