

**For discussion
14 April 2000**

Bills Committee on Witness Protection Bill

**Administration's Response to Issues Raised at
the Bills Committee Meeting on 3 April 2000**

Witness' existing social ties in the community

Noting that a witness might be required under the Memorandum of Understanding (MOU) to sever all his existing social ties in the community, some members queried whether this would be a factor in considering the inclusion of a witness in the witness protection programme (WPP). They also suggested that the Administration should consider spelling it out in clause 4(3) if it was confirmed to be a factor of consideration for inclusion of a witness in the WPP.

2. While a witness' social ties in the community may affect his decision on whether he should subject himself to the requirements of the WPP, we do not think that it should be a factor that the approving authority should take into account when deciding whether or not to include a witness in the programme. The issue should instead be dealt with when the MOU is drawn up. Whether a witness is required to sever all his existing social ties in the community will be decided by the approving authority after taking account of the particular circumstances of each case and the detailed requirements will be set out in the MOU. A witness will of course not be included in the WPP if he does not agree to the requirements and hence refuses to sign the MOU.

3. The approving authority would not assume that a witness cannot be trusted to maintain the confidentiality of the programme because of his existing social ties in the community. Once a witness signs the MOU,

he should observe the terms and conditions drawn up to deal with, inter alia, his existing social ties. Protection and assistance under the WPP may be terminated if he breaches the memorandum. An additional safeguard is that a person who, without lawful authority or reasonable excuse, discloses information about the identity or location of a person who is or has been a participant or who has been considered for inclusion in the WPP or that compromises the security of such a person, commits an offence under clause 17 of the Bill.

Clause 4(3)(g) – nature of the witness’ relationship to other witnesses

4. Some members considered that the meaning of “witness’ relationship to other witnesses” in clause 4(3)(g) was unclear and suggested that the Administration should consider replacing “other witnesses” with “other persons”.

5. Clause 4(3)(g) is intended to deal with the situation where a witness who is being assessed for inclusion in the WPP is related to other witnesses, either involved in the same case or other cases, who are being assessed for inclusion in the WPP. The approving authority may consider the relationship among the witnesses before deciding whether or not to include a witness in the WPP. The term “other witnesses” in clause 4(3)(g) will apply to witnesses in the same case that a witness is being considered for witness protection. However, it may also refer to witnesses in other cases as well so long as the approving authority considers it a relevant consideration for providing witness protection for a witness in a particular case. For example, two of three brothers in a family are witnesses for the prosecution implicating their triad associates in a serious triad-related crime case and they are being assessed for inclusion in the WPP. The third brother, who does not live with them and is not required to testify for the prosecution, has requested witness protection. In deciding whether or not to include the third brother in the programme, the approving authority may consider the nature of his relationship with the other two.

6. According to clause 3 of the Bill, only a witness can be considered for inclusion in the WPP. Clause 4(1) also stipulates that the approving authority has the sole responsibility of deciding whether or not to include a witness in the WPP. We have no strong views on the suggestion of replacing “other witnesses” in clause 4(3)(g) with “other persons” as it does not affect the meaning of the provision. However, retaining the use of “other witnesses” may maintain consistency with similar use in clauses like 4(2) and 4(3).

Clauses 4(3), 5 & 6 – medical, psychological or psychiatric tests/examinations

7. Some members suggested that the Administration should review the drafting of clauses 4(3), 5 and 6 in relation to the medical, psychological or psychiatric tests/examinations as these tests/examinations would occur concurrently when considering the inclusion of a witness in the WPP.

8. We have explained in the last Administration’s response that the approving authority may consider the results of psychological or psychiatric examinations but not medical tests/examinations of a witness when deciding whether or not to include him in the WPP. The purpose of asking a witness to undergo medical tests/examinations is only to allow the appropriate measures to be taken to reduce the risk of death or medical complications whilst under protection.

9. While these psychological, psychiatric or medical tests or examinations will, if necessary, usually be conducted before a witness is included in the WPP, a participant may also be required to undergo such tests again if the approving authority finds that it is necessary to do so after a lapse of time, e.g. the approving authority finds that the health of a witness has changed since his inclusion in the programme. Clauses 4 and 5 prescribe procedures to be carried out before the signing of a MOU

and hence clauses 4(3) and 5(2) are intended to deal with the requirement for a witness to undergo these assessments before being included in the WPP. On the other hand, the requirements referred to in the MOU, i.e. those described in clause 6(2)(d), are only in force after the witness has been included in the programme. If the approving authority, having regard to the relevant matters stipulated in clauses 4(3) and 5(2), decides not to include a witness in the WPP, an MOU will not be signed. Then the witness will not be a participant and clause 6(2) will not be engaged.

10. We therefore do not see the need to revise clauses 4(3) and 6(2) in relation to medical, psychological or psychiatric tests/examinations. As regards clause 5(2), we will revise the drafting to make it clear that the approving authority may require a witness to undergo medical tests/examinations and to make the results available to the approving authority before being included in the WPP.

Clause 8(3) – establishment of a new identity for a witness

11. Some members considered that the present drafting of clause 8(3) seemed to refer to the establishment of a new identity for a witness after he had been included in the WPP for some time. As in practice the decisions to include a witness in the WPP and to establish a new identity for the witness might be dealt with concurrently, some members suggested that the Administration should review the present drafting of the provision.

12. Clause 8(2) stipulates that subject to the recommendation of the Commissioner and the approval of the Chief Executive, the approving authority may establish a new identity for a participant. Under clause 2 of the Bill, “participant” means a witness who has been included in the WPP. Hence, clause 8 cannot be used to change a witness’ identity until the MOU is signed and he has become a participant. A participant’s identity can however be changed as soon as the MOU is signed.

13. At present, it is difficult to estimate how long the process of establishing a new identity for a witness will take. In practice, to enable immediate action necessary to protect a witness to be taken, a witness may be required to sign a MOU and become a participant first. Before the new identity is created, the participant will have to sign a new MOU containing additional terms and conditions that will only be applicable in the event of a change of identity for a participant, e.g. to sever existing social ties in the community. Additional terms and conditions will be drawn up based on the circumstances of each case.

Security Bureau

April 2000

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