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LegCo Panel on Welfare Services
Legislative Council
Jackson Road, Central

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June 22, 2002

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Dear Ms Chan ,

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Dr. Grace Au
Ms. Theresa Y. P. Fung
Dr. C. W. Kam
Dr. Emil M. L. Ng
Prof. Patricia L. Sullivan
Ms. Vera M. Safarikova

RE: Proposed amendments to the Domestic Violence Ordinance (Cap. 189)

Harmony House is a non-profit voluntary organization specialized in addressing issues related to family violence. Since our establishment of the first shelter in 1985, we have provided refuge to over 5000 women and children. Based on our experience in working with abused women, we realize that the community should not only provide refuge to protect the victims, we should also ensure the safety of women and children through appropriate legislation. The Ordinance specifically enacted to safeguard victims of family violence: "Domestic Violence Ordinance" (Cap. 189) was put into effect 16 years ago. With the passage of time, we realize that the said Ordinance no longer adequately reflects the changing needs of the victims and the society. Harmony House has thus, in the past year, initiated a review on the said Ordinance and drafted the attached proposed amendments.

The attached proposal was drafted by a working group which composes of social workers, solicitors and service-users. We have also consulted related social service agencies. Written endorsement was obtained from a number of non-government organizations.

We shall be grateful if you would kindly review and comment on our proposal. We shall also forward the said document to the Secretary of Justice, Ms E. Leung, and members of the Legco Panel on Administration of Justice and Legal Services for support and endorsement.

We look forward to hearing your views and working closely with your office to advance on the proposed changes.

If any further information is required, please do not hesitate to get in touch with the undersigned at telephone: or e-mail

Sincerely yours,

Margaret Wong
Executive Director

cc. Members of LegCo Panel on Welfare Services

Harmony House
“Domestic Violence Ordinance” Cap. 189
Proposal for Amendments

Background

- “Domestic Violence Ordinance”(“DVO”) came into force in 1986 in Hong Kong. It aims at offering protection for victims of domestic violence and preventing them from being struck by domestic violence. There has been no review on or amendments to DVO for these 16 years of implementation. The victims being abused may apply to the court for injunction order, restraining the abuser/stalkers from molesting the applicant, or any children living with the Applicant or entering into matrimonial home. There is no restriction on the gender of the applicants under DVO but people who may benefit from DVO are women in most circumstances.
- Under DVO, upon application by spouse, the court(civil) may grant an injunction order:-
 - a Restraining the other spouse from inflicting violence against the applicant or any children living with the applicant; or
 - b Restraining the other spouse from entering into the (matrimonial) home or any particular place.

The terms of such injunction order shall be in force for a period of 3 months but may be further extended for another 3 months. The total effective period shall not exceed 6 months

- According to The Health and Welfare Bureau, the figures of the newly reported spouse abuse cases increased from 1009 cases in 1998 to 2433 cases in 2001 on average, 6.7 cases of domestic violence took place every day and over 90% of victims are female. Besides, according to the statistics provided by Hong Kong Police Force, there are on average over one incident of domestic violence involved grievous assault.
- Referring to the number of cases admitted to our Shelter and hotline service of Harmony House, the former increased by 20% from 376 cases in 98/99 to 447 cases in 01/02. Our 24-hour crisis hotline rose to a record

high of 8411 calls in 01/02. This represented a 70% rise as compared with 97/98.

- There was no classification on the cases as mentioned before by reference to the relationship as between the abuser and the victims. However, as reflected in recent news about domestic violence, domestic violence was not limited to the matrimonial and cohabitation relationship, but also existed in relationship as between parents and children(child abuse, elderly abuse), siblings, mothers-in-law and daughters-in-law, brothers-in-law and sisters-in-law etc..
- In accordance with the survey conducted in August, 2001 on the women who left our shelter, 13 of out 24 of the women responded, have been or are still being harassed by their spouses by telephone call(62%), threat/intimidation(54%), scolding/insult(38%), wandering around their residence(31%) etc. Over half of the victims were distressed and anxious. As a result, about 30% of them had very limited social life and some were home restricted for fear of harassment by the abuser.

Proposal for Amendments

A) Amendments to DVO

I. Expanding scope of protection:-

Reasons:-

1. At present, DVO is only applicable to matrimonial and long and stable cohabitation relationship and their children. In other words, the provisions of DVO fall short of coping with recurrent abuse incidents as between father-in-law, mother-in-law, daughter-in-law, brother-in-law in recent years who shared the same residence. It follows that the scope of "matrimonial home/family" under DVO is too restrictive to sufficiently protect all family members.
2. In recent years, there has been an increase in the number of incidents of abuse of elderly. As DVO only aims to protect women and children, DVO fails to cope with the problem of abuse of elderly.
3. Under DVO, only parties of matrimonial relationship or male or female

cohabitants are entitled to apply for relief of injunction order. The court is not conferred with jurisdiction to deal with the any incidents of molestation/harassment and grant any relevant relief or order if the victims of molestation / harassment is not residing with the abuser at the material times. Further, any divorced parties and any cohabitants who have ended their cohabitation relationship are also not entitled to apply for relief and order under DVO. Hence, the present provisions of DVO are inadequate in protection for victims of domestic violence.

Proposal 1

We propose that term adopted by DVO should be changed from “Matrimonial Home” to “Domestic Home”) and the scope of application shall not be limited to domestic violence in matrimonial relationship and parental relationship but be also extended to relationship as between ex-cohabitants, father-in-law, mother-in-law, daughter-in-law, brother-in-law who shared the same residence for the sake of conferring more protection to family members as follows:-

1. spouses and ex-spouse
2. present cohabitants and ex-cohabitants
3. parents and children(including adopted children and step parents and children)
4. siblings
5. mother-in-law, grandfather-in-law, daughter-in-law, brother-in-law
6. any relatives who cannot take care of himself and are regarded as family members in the same residence by the court

II. Definition of Domestic Violence

Reason:-

Domestic Violence includes physical, psychological and sexual abuse. DVO appears to show less protection to the victims of psychological and sexual abuse, e.g. marital rape, as they have to go through a more complicated procedure with longer application period to apply for relief of injunction order. Also, DVO only provides that the court may grant injunction order restraining the other party inflicting violence to the

applicant or restraining the other party from entering into the applicant's residence or other designated area. A Power of Arrest may be attached to the injunction order if the other party has already caused actual bodily harm to the applicant or any children living together with the applicant. Such power of arrest can only be exercised if it is possible that the other part will do actual bodily harm to the applicant and any children living together with him. If the other party only threatens to cause actual bodily harm to the applicant or any children living together with him, the court cannot attach such power of arrest to the injunction order. The court will attach such power of arrest to the injunction order only if the male and female repeatedly breached the injunction order and causing harassment to any relevant persons.

Proposal 2

We propose that the definition of domestic violence should explicitly point out that domestic violence is not confined to physical violence but also include evident psychological abuse, marital rape and sexual abuse.. The court should be conferred with extended authority to attachment of power of arrest whereby power of arrest should be attached to the injunction order if sexual abuse or psychological abuse is revealed.

III. Review the content of Injunction Order

Reason:

At present, according to DVO, the total effective period of injunction order shall not exceed six months. However, the legal procedure of divorce cases, especially involving custody of children, often exceeds six months. In this critical period, the victims may easily be threatened or stalked by the abusers.

Proposal 3:

We propose that the maximum term of such injunction and the power of arrest should be extended to one year with quarterly review. In addition, we propose that abusers' participation in batterers treatment program offered by community organization (e.g. Harmony House-Third Path Man's Service) forms part of the criteria in assessing the extension of the period injunction order.

B) Other social facilities

IV. Strengthening the training for Professionals

Proposal 4

To equip front-line professionals with the necessary professional knowledge in handling domestic violence cases, we propose that regular training should be provided to professionals including: social workers, child-carers, police officers, medical officers, school counseling and administrative officers and teachers. Our education system should also instill gender equality perspectives and anti-domestic violence messages in schools.

June 17, 2002

Supporting parties

Against Child Abuse

Caritas Elder Abuse Prevention Project

End Child Sexual Abuse Foundation

Haven of Hope Elderly Protection Centre

Hong Kong Family Welfare Society

Working group

Ms. Theresa Fung (Lawyer, Board Member of Harmony House)

Ms. Vera, M.H. Lam (Consultant, Mediator, Solicitor)

Mr. Cary Yeung (Solicitor)

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