

立法會
Legislative Council

LegCo Panel on Welfare Services and Panel on Security

**Background paper prepared by the Legislative Council Secretariat
on reforming the law relating to family violence**

Purpose

This paper gives an account of past discussions on reforming the law relating to family violence to strengthen protection for family members.

Background

2. Under section 3 of the Domestic Violence Ordinance (Cap. 189) ("DVO"), on an application by a party to a marriage, the District Court may grant an injunction if it is satisfied that the applicant or a child living with the applicant has been molested by the other party to the marriage. The injunction may contain provisions restraining that other party from molesting the applicant or any child living with the applicant, or excluding that other party from the matrimonial home. In the context of domestic violence, the protection afforded by the DVO is limited since only a party to a marriage may apply for an injunction. In its report on stalking released in October 2000, the Law Reform Commission of Hong Kong ("LRC") considered the limitations of the DVO in the context of stalking, and recommended that the Administration should give consideration to reforming the law relating to domestic violence.

Past discussions

3. Past discussions on reforming the law relating to family violence to strengthen protection for family members had been discussed by Members on five occasions since 2001, summaries of which and the Administration's responses are set forth in the ensuing paragraphs.

Special meeting of the Panel on Home Affairs on 12 January 2001

4. Representatives from the Administration, LRC, journalists' associations, press organisations, women groups and other concern organisations attended

the special meeting to discuss the LRC's Report on Stalking. Some members were of the view that although there might be a need to legislate against stalking, anti-stalking legislation would have the effect of hampering legitimate journalist activities. They suggested that instead of having a single piece of anti-stalking legislation, the Administration should consider introducing separate legislative measures to deal with specific problems, such as harassment by ex-spouses, harassment of debtors by debt collection agencies, etc.

5. The Administration responded that given that the Report touched upon a wide range of issues dealt with by various policy bureaux, the Home Affairs Bureau (HAB) had taken on a co-ordinating role. The Administration would consider carefully the community's views, including the view of the Panel, before deciding on the way forward. No timeframe had been set to decide on the recommendations.

Meeting of the Panel on Welfare Services on 11 March 2002

6. Members and deputations urged the Administration to amend the DVO, such as requiring the abusers to attend mandatory treatment as an alternative to imprisonment, to safeguard the personal safety of the victims.

7. The Administration responded that it would decide whether, and if so, how the DVO should be amended after studying the submissions from deputations in detail. As to the suggestion of mandatory treatment for abusers as an alternative to imprisonment, there was a need to study overseas experience in this area before deciding on the way forward. The Administration however pointed out that mandatory treatment of the abusers was available in Hong Kong if the abusers were put under the supervision of probation officers.

Meeting of the Panel on Welfare Services on 10 February 2003

8. The issue of amending the DVO to better protect the life of individuals facing marital problems was again raised by members at the above meeting.

9. The Administration advised that it had commissioned the University of Hong Kong (HKU) to carry out a study on child abuse and spouse battering to identify possible areas for improvement, including those that might be related to legislation. Part one of the study, which would be on the prevalence rate of child abuse and spouse battering in Hong Kong and elements contributing to effective prevention and intervention, would be completed in mid 2004. Part two of the study, which would be on the development and validation of assessment tools and training to 500 frontline professionals for use of these tools, was scheduled to be completed by April 2005. Relevant statistics from the Judiciary were also being collected to assess the effectiveness of the

existing legal remedies under the DVO. These would help to shed light on the way forward.

Joint meeting of the Panel on Welfare Services and the Panel on Security on 26 April 2004

10. The proposal of making stalking an offence was raised again by some non-governmental organisations (NGOs) at the joint meeting, in the light of the current occurrence of the Tin Shui Wai family tragedy. These NGOs urged the Administration to expedite criminalising the act of stalking, i.e. by distinguishing such act committed by family members from others such as investigative journalists, and legislate separately against stalking behaviours in family violence cases.

11. The Administration responded that HAB had studied in depth the LRC's Report on Stalking. It appreciated that stalking was a problem that needed to be tackled, and intended to follow up on the proposal of making stalking a criminal offence.

12. Members also called upon the Administration to consider the following suggested amendments to the DVO made by a number of NGOs -

- (a) to expand the definition of family members from spouses, cohabitants and children under 18, to former spouses, former cohabitants and other family members who resided together, etc.;
- (b) to clearly define family violence to include not only physical abuse but also psychological abuse, abandonment, neglect, intra-marital rape and other less obvious sexual acts;
- (c) to confer more power on the court by allowing the court to attach a power of arrest to injunction orders in cases of sexual and psychological abuses;
- (d) to empower the Director of Social Welfare or a person appointed by him to act as a temporary guardian of victims who were abandoned or neglected by abusers;
- (e) to extend the maximum validity of injunction order up to 18 months to dovetail the corresponding matrimonial or guardianship proceedings;
- (f) to introduce the element of "mandatory counselling" for the abusers;
- (g) to require the court to take into account whether an abuser had

participated in any counselling/educational course and their performance, when considering an application to extend the validity of an injunction order;

- (h) to permit victims of family violence to submit an application to the court direct;
- (i) to permit a third party to apply for an ex parte injunction for a victim provided that the victim was aware of the application; and
- (j) to study the possibility of including provisions on prohibition against stalking behaviours in the DVO.

Joint meeting of the Panel on Welfare Services and the Panel on Security on 30 April 2004

13. In response to the suggestions raised by NGOs in paragraph 12 above, the Administration advised that the study on child abuse and spouse battering conducted by HKU would, inter alia, identify possible areas of improvement, including those related to legislative amendments. Whilst waiting for the outcome of the study, the Administration was simultaneously examining the legislative provisions and would consider, and if so how, the existing legislative framework needed to be improved to the benefit of the victims. It should however be pointed out that there were existing legislation providing protection to every individual in society, irrespective of his/her relationship with the offender. Criminal offences such as assault and intimidation were provided in various ordinances, such as the Offences Against the Person Ordinance (Cap. 212) and the Crimes Ordinance (Cap. 200). In line with the multi-disciplinary strategy mapped out by the Working Group on Combating Violence, the Police would seek to complement additional measures for dealing with family violence.

Question and motion debates raised/held at Council meetings

14. A question was raised by Dr Hon LAW Chi-kwong at the Council meeting on 9 April 2003 as to whether the Administration would adopt the recommendations of LRC to amend the DVO; if so, the details and timetable for doing so.

15. Three motion debates without legislative effect relating to family violence were also held at Council meetings. Hon James TO moved a motion on "Sexual violence" on 12 April 2000, Dr Hon David CHU on "Family problems" on 15 May 2002, and Hon Cyd HO on "Curbing domestic violence" on 5 May 2004.

Relevant papers

16. Members may wish to access the website of the Legislative Council (<http://www.legco.gov.hk>) for details of the minutes of meetings and the associated papers mentioned in the foregoing paragraphs.

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