

立法會
Legislative Council

LC Paper No. CB(2)297/04-05

Ref : CB2/PL/AJLS
Tel : 2869 9253
Date : 30 November 2004
From : Clerk to Panel
To : Hon Margaret NG (Chairman)
Hon LI Kwok-ying, MH (Deputy Chairman)
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Hon Miriam LAU Kin-yea, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Lik, JP
Hon KWONG Chi-kin

Panel on Administration of Justice and Legal Services

Follow up to meeting on 22 November 2004

Law Reform relating to domestic violence

At the meeting on 22 November 2004, the progress of implementing the recommendations on law reform relating to family violence as contained in the Law Reform Commission (LRC) Report on Stalking was raised. With the agreement of the Chairman, members are invited to note the following developments.

LRC Report on Stalking

2. The LRC Report on Stalking was released on 30 October 2000. An extract from the Report on "Summary of recommendations" is in **Appendix I**. One of its recommendations is that the Administration should give consideration to reforming the law relating to domestic violence. Following the release of the report, it is a matter for the Government to decide whether and how to implement the recommendations.

Work of other committees of LegCo

3. Issues concerning the strategy and measures to prevent and tackle family violence are being followed up by other committees of LegCo –

- (a) Following the Tin Shui Wai family tragedy on 11 April 2004, a subcommittee was set up under the Panel on Welfare Services (WS

Panel) to study the most pressing issues concerning the strategy and measures to prevent and tackle family violence. After the subcommittee made a report on its deliberations to the WS Panel on 19 July 2004, it was dissolved.

- (b) At its meeting on 8 November 2004 in the current session, the WS Panel agreed to form a subcommittee to follow up issues relating to family violence. The background paper prepared by the LegCo Secretariat for the Panel gives an account of the past discussions held by Members in the last term. It also highlights members' views on how the Domestic Violence Ordinance should be amended, and members' suggestion that instead of having a single piece of anti-stalking legislation, the Administration should consider introducing separate legislative measures to deal with specific problems relating to family violence. A relevant extract from the background paper is in **Appendix II**.
- (c) The WS Panel held a special meeting on 22 November 2004 to discuss the Report of the Review Panel on Family Services in Tin Shui Wai. Thereafter, the relevant issues will be followed up by the new subcommittee formed under the WS Panel which will have its first meeting on 8 December 2004.

4. As the matter is being followed up by the subcommittee formed under the WS Panel, the Chairman has instructed that no further action will be taken by this Panel.

(Mrs Percy MA)
Clerk to Panel

c.c. Hon James TO Kun-sun)
Hon CHAN Kam-lam, JP)
Hon LEUNG Yiu-chung)
Hon WONG Yung-kan, JP) (Non-Panel Members)
Hon LAU Chin-shek, JP)
Hon LAU Kong-wah, JP)
Hon Alan LEONG Kah-kit, SC)
SALA2
CCS(2)4

An extract from the Law Reform Commission Report on Stalking

Chapter 10

Summary of recommendations

Recommendation 1

We recommend that the Administration should give consideration to reforming the law relating to domestic violence. (*Chapter 4*)

Recommendation 2

We recommend that:

- (a) a person who pursues a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other, should be guilty of a criminal offence;
- (b) for the purposes of this offence, the harassment should be serious enough to cause that person alarm or distress; and
- (c) a person ought to know that his course of conduct amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other. (*Chapter 6*)

Recommendation 3

We recommend that it be a defence for a defendant who is charged with the offence of harassment to show that:

- (a) the conduct was pursued for the purpose of preventing or detecting crime;
- (b) the conduct was pursued under lawful authority; or
- (c) the pursuit of the course of conduct was reasonable in the particular circumstances. (*Chapter 7*)

Recommendation 4

We recommend that the courts should take into account the rights and freedoms provided in Article 17 (privacy, family, home and correspondence), Article 19 (freedom of expression) and Article 21 (peaceful assembly) of the International Covenant on Civil and Political

Rights when determining whether the pursuit in question was reasonable in the particular circumstances. (Chapter 7)

Recommendation 5

We recommend that:

- (a) a certificate issued by the Chief Executive or his designate stating that anything carried out by a specified person on a specified occasion related to security or the prevention or detection of serious crime should be conclusive evidence that the provisions of the anti-stalking legislation do not apply to the conduct of that person on that occasion; and**
- (b) the term “serious crime” referred to in (a) above should be defined in the legislation with reference to the maximum sentence applicable to the offences that could be considered as falling within that description. (Chapter 7)**

Recommendation 6

We recommend that:

- (a) a person who is guilty of the proposed offence of pursuing a course of conduct which amounted to harassment of another, and which he knew amounted to harassment of the other, should be liable to a fine and to imprisonment for two years; and**
- (b) a person who is guilty of the proposed offence of pursuing a course of conduct which amounted to harassment of another, and which he ought to have known amounted to harassment of the other, should be liable to a fine and to imprisonment for 12 months. (Chapter 8)**

Recommendation 7

We recommend that:

- (a) a court sentencing a person convicted of the offence of harassment may make an order prohibiting him from doing anything which causes alarm or distress to the victim of the offence or any other person, as the court thinks fit;**
- (b) the restraining order may be made in addition to a sentence imposed on the defendant convicted of the offence of harassment, or in addition to a probation order or an order discharging him absolutely or conditionally;**

- (c) the restraining order may have effect for a specified period or until further notice;
- (d) the prosecutor, the defendant or any other person mentioned in the restraining order may apply to the court for it to be varied or discharged; and
- (e) a person who, without reasonable excuse, does anything which he is prohibited from doing by a restraining order should be guilty of an offence, which is punishable by imprisonment for 12 months. *(Chapter 8)*

Recommendation 8

We recommend that the courts may require any person convicted of the offence of harassment to receive counselling, undergo medical, psychiatric or psychological evaluation, and receive such treatment as is appropriate in the circumstances. *(Chapter 9)*

Recommendation 9

We recommend that:

- (a) a person who pursues a course of conduct which would have constituted the offence of harassment should be liable in tort to the object of the pursuit; and
- (b) the plaintiff in an action for harassment should be able to claim damages for any distress, anxiety and financial loss resulting from the pursuit and to apply for an injunction to prohibit the defendant from doing anything which causes the plaintiff alarm or distress. *(Chapter 9)*

Recommendation 10

We recommend that:

- (a) where a civil court grants an injunction in an action for harassment, it should have the power to attach a power of arrest to the injunction;
- (b) a police officer should be able to arrest without warrant any person whom he reasonably suspects to be in breach of an injunction to which a power of arrest is attached; and
- (c) the court dealing with the breach should have the power to remand the defendant in custody or release him on bail. *(Chapter 9)*

**Extract from the background paper prepared by Legislative Council Secretariat
on Strategies and measures to prevent and tackle family violence**

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Amending the Domestic Violence Ordinance (Cap. 189) (DVO)

7. Members considered the existing provisions of the DVO fell far short of being effective in combating family violence. They shared the views of the deputations that the Ordinance should be amended in the following manner -

- (a) expanding the definition of family members (spouses, cohabitants and children under 18) to include former spouses, former cohabitants and other family members who resided together;
- (b) clearly defining family violence to include not only physical abuse, but also psychological abuse, abandonment, neglect, intramarital rape and other less obvious sexual acts;
- (c) conferring 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) empowering 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) extending the maximum validity of injunction order up to 18 months to dovetail the corresponding matrimonial or guardianship proceedings;
- (f) introducing the element of "mandatory counselling" for the abusers;
- (g) requiring 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) permitting a third party to apply for an ex parte injunction for a victim provided that the victim was aware of the application; and
- (i) studying the possibility of including provisions on prohibition against stalking behaviours in the DVO.

8. Members noted that the University of Hong Kong (HKU) had been commissioned to conduct a study on child abuse and spouse battering in April 2003. The Administration pointed out that the study, which was expected to take two years, would, inter alia, identify possible areas of improvement, including those related to legislative amendments. Part one of the study would be on the prevalence rate of child abuse and spouse battering in Hong Kong and elements contributing to effective prevention and intervention, including whether the provision of legislative measures, such as the DVO, could facilitate prevention and intervention. Part two of the study would be on the development and validation of the assessment tools and the training of frontline professionals who would use the tools. While waiting for the outcome of the study, the Administration was simultaneously examining the relevant legislation and would consider whether and how the existing legislative framework needed to be improved.

Expediting legislative proposal to criminalise the act of stalking

9. Under section 3 of the 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) reviewed 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.

10. Members considered it necessary to legislate against stalking. However, in recognition of the possible effect of the anti-stalking legislation in hampering legitimate journalist activities, Members 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.

11. 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. HAB appreciated that stalking was a problem that needed to be tackled. The Bureau intended to follow up the proposed legislation, and would go through the necessary process.

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