

立法會
Legislative Council

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LC Paper No. CB(2)98/07-08
(These minutes have been seen
by the Administration)

**Bills Committee on
Domestic Violence (Amendment) Bill 2007**

**Minutes of the 2nd meeting
held on Friday, 28 September 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Dr Hon Fernando CHEUNG Chiu-hung (Chairman)
Hon Margaret NG
Hon James TO Kun-sun
Hon CHAN Yuen-han, SBS, JP
Hon Bernard CHAN, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Ronny TONG Ka-wah, SC

Members absent : Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Dr Hon YEUNG Sum, JP
Hon LI Fung-ying, BBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon KWONG Chi-kin
Hon TAM Heung-man

Public Officers attending : Miss Eliza LEE
Deputy Secretary for Labour and Welfare (Welfare)1

Miss Hinny LAM
Principal Assistant Secretary for Labour and Welfare (Welfare) 2

Mr FUNG Pak-yan
Deputy Director of Social Welfare (Services)
Social Welfare Department

Ms PANG Kit-ling
Chief Social Worker (Domestic Violence)
Social Welfare Department

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting & Administration)
Department of Justice

Miss Angie LI
Government Counsel
Department of Justice

Deputations : Against Elderly Abuse of Hong Kong
by invitation

Ms Kennex YUE
Chief Executive Director

Mr Bernard TANG
Supervisor (Policy & Legal Support)

Hong Kong Women's Coalition on Equal Opportunities - Anti
Domestic Violence Programme

Ms CHUNG Yuen-yi
Project-in-charge

Hong Kong Chinese Civil Servants' Association, Social Work
Officer Grade Branch

Mr LEUNG Kin-hung
Chairman

Mr CHEUNG Kam-ki
Vice-Chairman (External Affairs)

Association Concerning Sexual Violence Against Women

Ms TAN Kong-sau
Counsellor

Hong Kong Council of Social Service

Ms Elsa CHIU
Chief Officer, Service Development (Family and Community)

Caritas-Hong Kong Family Service

Ms KWOK Chi-ying
Supervisor

Society for Community Organization

Ms SZE Lai-shan
Community Organizer

Hong Kong Alliance for Family

Ms Beatrice VAN
Project Manager

Hong Kong Association for the Survivors of Women Abuse
(Kwan Fook)

Ms LIU Ngan-fung
Chairperson

Parents for the Family Association

Mr Howard LAI
President

Miss Stella HUI
Secretary

Civil Rights for Sexual Diversities

Mr Roddy SHAW
Chairperson

Amnesty International Hong Kong Section

Ms Medeleine MOK
LGBT Group Coordinator

Hong Kong Women Christian Council

Ms WONG Wai-yin
Executive Secretary

Ms CHEUNG Lai-chu
Anti-Domestic Violence Coordinator

Zonta International

Mrs Winnie TEOH
Area Director, District 17, Area 2

Zonta Club of Hong Kong

Ms Pansy LEUNG
President

Zonta Club of Hong Kong East

Ms Marina WONG
Past President

Civic Party

Ms Linda WONG
Member

Association for Concern for Legal Rights of Victims of Domestic Violence

Ms NG Wai-ching
Chair-person

Ms Debora POON Suk-ying
Member

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Alliance for the Reform of Domestic Violence Ordinance

Ms LIU Ngan-fung
Member

Women Coalition of HKSAR

Ms YEO Wai-wai
Executive Committee

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2) 5

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Ms Maisie LAM
Council Secretary (2) 2

Ms Sandy HAU
Legislative Assistant (2) 5

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I. Meeting with deputations and the Administration

[LC Paper Nos. CB(2)2456/06-07(04), CB(2)2739/06-07(01) to (05) and CB(2)2769/06-07(01) to (10)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Views of deputations

2. The Bills Committee noted the submissions from the Harmony House [LC Paper No. CB(2)2739/06-07(04)] and The Law Society of Hong Kong [LC Paper No. CB(2)2739/06-07(05)].

3. The Bills Committee received views from the following deputations on the Domestic Violence (Amendment) Bill 2007 (the Bill) -

- (a) Against Elderly Abuse of Hong Kong [LC Paper No. CB(2)2769/06-07(01)];

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- (b) Hong Kong Women's Coalition on Equal Opportunities - Anti Domestic Violence Programme
[LC Paper No. CB(2)2769/06-07(02)];
- (c) Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch
[LC Paper No. CB(2)2769/06-07(03)];
- (d) Association Concerning Sexual Violence Against Women
[LC Paper No. CB(2)2769/06-07(04)];
- (e) Hong Kong Council of Social Service
[LC Paper No. CB(2)2769/06-07(05)];
- (f) Caritas Hong Kong - Family Service
[LC Paper No. CB(2)2769/06-07(06)];
- (g) Society for Community Organization;
- (h) Hong Kong Alliance for Family
[LC Paper No. CB(2)2769/06-07(07)];
- (i) Hong Kong Association for the Survivors of Women Abuse (Kwan Fook);
- (j) Parents for the Family Association
[LC Paper No. CB(2)2456/06-07(04)];
- (k) Civil Rights for Sexual Diversities;
- (l) Amnesty International Hong Kong Section
[LC Paper No. CB(2)2739/06-07(02)];
- (m) Hong Kong Women Christian Council
[LC Paper No. CB(2)2769/06-07(08)];
- (n) Zonta Club of Hong Kong, Zonta Club of Kowloon, Zonta Club of Hong Kong East, Zonta Club of New Territories, Zonta Club of Victoria and Zonta Club of Hong Kong II
[LC Paper No. CB(2)2739/06-07(03)];
- (o) Civic Party;

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- (p) Association for Concern for Legal Rights of Victims of Domestic Violence
[LC Paper No. CB(2)2769/06-07(09)];
 - (q) Alliance for the Reform of Domestic Violence Ordinance; and
 - (r) Women Coalition of HKSAR
[LC Paper No. CB(2)2769/06-07(10)].
4. Major views/suggestions expressed by deputations were as follows -
- (a) "domestic violence" should be defined in the Domestic Violence Ordinance (Cap. 189) (DVO) to put beyond doubt that "violence" included physical abuse, psychological abuse, sexual abuse, neglect of children, the elderly and the mentally incapacitated, and stalking;
 - (b) stalking behaviour in domestic context should be made a criminal offence before the Government had completed its review on the proposed anti-stalking legislation;
 - (c) definition of "specified minor" proposed in new section 3(3) of the Bill should be widened to cover a child who was living with the applicant, regardless of whether that child was a natural child, adoptive child or step-child of the applicant or respondent. Consideration should be given to the use of the definition of "relevant child" referred to in section 62 of the Family Law Act of 1996 in the United Kingdom (UK);
 - (d) definition of "relatives" proposed in new section 3A(2) of the Bill was too specific to provide the court with any flexibility in extending protection to victims. Consideration should be given to the use of the term "associated persons" in the UK domestic violence legislation and the term "domestic relationship" in the New Zealand domestic violence legislation;
 - (e) scope of the DVO should cover persons in same sex relationship;
 - (f) "injunction order" under the DVO should be renamed as "protection order" to better reflect the intent of the injunction order, and that the scope of the protection order should be expanded to include provisions giving the protected person the exclusive right to stay in the family home (an occupation order) and the right to take with him/her or to keep in his/her possession specified furniture and household items (a furniture order) as practised in places such as New Zealand;

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- (g) an authorisation of arrest should be automatically attached to an injunction order made under the DVO and that any breach of the injunction order should be made a criminal offence;
- (h) procedures for applying for an injunction order under the DVO should be simplified, having regard to the small number of such applications made with the court. For instance, only 23 applications for an injunction order under the DVO was made in 2004, as opposed to 3 993 domestic violence cases reported in the same year;
- (i) elder abuse should be made a criminal offence;
- (j) a specialised domestic violence court to handle both criminal and civil cases relating to domestic violence should be set up for speedy handling of domestic violence cases and providing comprehensive support to victims; and
- (k) publicity on the civil and criminal remedies available to victims of domestic violence should be stepped up.

The Administration's response

5. Deputy Secretary for Labour and Welfare (Welfare)¹ (DSLW(Welfare))¹ said that -

- (a) the Administration did not see the case for pursuing a definition on "violence" in the DVO for the following reasons -
 - (i) although there was no statutory definition of "molest" in the DVO, according to the Department of Justice, decided court cases made it clear that the concept was wide, extending to abuse beyond the more typical instances of physical assault to include any form of physical, sexual or psychological molestation or harassment which had a serious detrimental effect upon the health and well-being of the victim. The concept also covered the threat of any form of such molestation or harassment. Information gathered from the Judiciary also revealed that the court had granted injunction on application under the DVO on the grounds of the three different forms of abuse. In other words, the existing law already applied to psychological, physical and sexual abuse; and
 - (ii) there were abundant court cases already built up both locally

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and in the UK with regard to the interpretation of the term "molest" and the application of the DVO. The Family Law Act 1996 in the UK, to which the DVO resembled, similarly provided for the granting of non-molestation order by the court. The term "molest" was also undefined in the UK legislation;

- (b) neglect of children was already a criminal offence under the Offences Against the Person Ordinance (Cap. 212), while the Protection of Children and Juveniles Ordinance (Cap. 213) and the Mental Health (Guardianship) Regulations (Cap. 136D) also provided civil remedies to children and mentally incapacitated persons in need of care or protection. As regards the proposal to criminalise elder abuse, the subject would require careful consideration given the controversy and the host of issues involved. That said, a number of supportive services were currently available to protect the elderly if they were willing to receive help;
- (c) it was not feasible to criminalise stalking only in domestic context before the Government had completed its study on the report on stalking by the Law Reform Commission of Hong Kong for the following considerations -
 - (i) as a matter of legal principle, the law should be coherent and consistent. If it was decided that stalking behaviours should be penalised as a crime, all stalking behaviours, whether in domestic or non-domestic context, should be subject to the same treatment and liable to the same level of criminal sanction under the law. In the same vein, victims of stalking, whether in domestic or non-domestic context, should be entitled to the same level of protection; and
 - (ii) to make stalking a criminal offence only in domestic context might also give rise to significant enforcement problems. When the Police received report of stalking acts, the frontline Police officers would have to ascertain the relationship between the complainant and the alleged offender before they could take any further action under the proposed provision;
- (d) the protection given to a child under the age of 18 had been considerably expanded under the Bill as compared with the existing DVO. At present, only a child living with the applicant was afforded the protection. Under the Bill, a child of the applicant or the respondent would be covered by the injunction order even if he/she was not living with the applicant. For a child living with the

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applicant but who had no familial relationship with the applicant, the court was empowered under Cap. 213 to grant a supervision order or appoint legal guardian in respect of a child or juvenile who had been or was being assaulted, ill treated, neglected, sexually abused, or whose health, development or welfare had been or was being neglected or avoidably impaired;

- (e) the Administration considered the proposed coverage of protected persons proposed in the Bill appropriate. Indeed, some quarters of the community had expressed concern that the proposed scope of protected persons was too wide. Although the scope of the Bill covered only the specified familial relationships, it should be noted that any violent acts that amounted to an assault were subject to criminal liability under the relevant ordinances, irrespective of the relationship between the abuser and the victim;
- (f) to enable persons in same sex relationship to apply for an injunction under the DVO would be incompatible with other legislation. The Hong Kong law, which reflected Government's policy position, did not recognise same sex marriage, civil partnerships, or any same sex relationships. In Hong Kong, a marriage contracted under the Marriage Ordinance (Cap. 181) was, in law, the voluntary union for life of one man and one woman to the exclusion of others. Recognising same sex relationships was an issue concerning ethics and morality of the society. Any change to this policy stance would have substantial implications on the society and should not be introduced unless consensus or a majority view was reached by the society;
- (g) notwithstanding paragraph 5(f) above, persons in same sex relationship might continue to seek protection under the law of tort or inherent jurisdiction of the court. Moreover, persons in same sex relationship were afforded the same level of protection as with those in heterosexual relationship under the existing criminal legislative framework as any acts of violence were liable to criminal sanctions under the relevant ordinances irrespective of the relationship between the abuser and the victim;
- (h) it was not necessary to rename "injunction order" as "protection order" or to include other types of protection under the injunction order. It was clearly stipulated in the long title of the DVO that the intent of the DVO was to provide for the protection of persons from domestic violence and for matters ancillary thereto. Should protected persons encounter financial difficulties, they could seek assistance from the charitable/trust funds administered and/or other

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support services provided by the Social Welfare Department (SWD);

- (i) breach of an injunction order would be a contempt of court and could be punished by imprisonment or a fine;
- (j) the relatively small number of applications for injunction under the DVO might be attributed to the fact that seeking protection from the DVO was not the only avenue available to victims of domestic violence. Battered spouses could also apply for injunction order in matrimonial proceedings and custody disputes;
- (k) to empower the court to attach an authorisation of arrest to an injunction order if it was satisfied that the respondent had caused actual bodily harm to the protected person or if it reasonably believed that the respondent would likely cause bodily harm to the protected person had struck a right balance in containing the powers conferred upon the Police and ensuring protection to persons from domestic violence. When an authorisation of arrest was attached to an injunction order, a Police officer could arrest without warrant any person whom he/she reasonably suspected of being in breach of the injunction by reason of that person's use of violence or, as the case might be, his/her entry into any premises or area specified in the injunction. The police officer would also have all necessary powers, including the power of entry by the use of reasonable force to effect that arrest;
- (l) SWD had recently produced a new information kit to help victims of domestic violence understand their rights, the protection and remedies afforded by law, as well as the support services the Government provided. The information kit had been widely distributed through SWD offices, non-governmental organisations, the Police, 18 District Offices, etc.; and
- (m) the Administration had already raised with the Judiciary the feasibility of modeling on the UK experience in dealing with domestic violence cases in a specialised way, including clustering and fast-tracking cases in the court, in which pre-trial hearings of domestic violence related criminal cases were grouped in one court session, as well as enhancements to court listing arrangements. The Administration would report to the Panel on Welfare Services when there was concrete progress on the way forward. The Administration would also explore with relevant parties on other administrative measures that UK had put in place to provide better support to domestic violence victims, including enhanced partnership among criminal justice agencies, early identification of eligible cases

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for fast-tracking handling, strengthened training of personnel in the criminal justice system (including Police officers and prosecutors), better witness support and improvement to court security.

Discussion

6. Miss Margaret NG said that if the Administration supported the implementation of specialised domestic violence court, it should make clear to the Judiciary that the Administration was prepared to provide sufficient funding for the Judiciary to effect such. DSLW(Welfare)1 responded that adequate funding to the Judiciary would be sought should the Judiciary come to a view on ways to deal with domestic violence cases in a specialised manner.

7. Miss Margaret NG disagreed with the explanation given by the Administration on not covering same sex relationship in the Bill as set out in paragraph 5(f)-(g) above. Miss NG said that providing protection to victims of domestic violence should be applied to all citizens regardless of their gender so long as the relationship was familial or cohabitual. Miss NG further said that the fact that persons in same sex relationship were afforded the same level of protection as with those in heterosexual relationship under the existing criminal legislative framework and might continue to seek protection under the law of tort or inherent jurisdiction of the court did not mean that they should be deprived of the additional civil remedy provided under the DVO, as the latter was the fastest, easiest and cheapest means to obtain protection from the court. Ms Audrey EU concurred. At the request of the Chairman, DSLW(Welfare)1 agreed to provide a response in writing on why excluding persons in same sex relationship from the DVO was in conformity with the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383).

Admin

8. At the request of Ms Miriam LAU, DSLW(Welfare)1 undertook to convey to the Judiciary on establishing judicial guidelines for courts handling domestic violence cases under the DVO, so as to ensure consistency in the handling of these cases by the courts.

Admin

II. Date of next meeting

9. Members agreed, in principle, to hold future meetings on a bi-weekly basis.

10. There being no other business, the meeting ended at 5:25 pm.

**Proceedings of the second meeting of
Bills Committee on Domestic Violence (Amendment) Bill 2007
on Friday, 28 September 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000745	Chairman	Opening remarks	
000746 - 001307	Civic Party	Presentation of views	
001308 - 001831	The Against Elderly Abuse of Hong Kong	Presentation of views [LC Paper No. CB(2)2769/06-07(01)]	
001832 - 002338	Hong Kong Women's Coalition on Equal Opportunities - Anti Domestic Violence Programme	Presentation of views [LC Paper No. CB(2)2769/06-07(02)]	
002339 - 002909	Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch	Presentation of views [LC Paper No. CB(2)2769/06-07(03)]	
002910 - 003146	Association Concerning Sexual Violence Against Women	Presentation of views [LC Paper No. CB(2)2769/06-07(04)]	
003147 - 003652	Hong Kong Council of Social Service	Presentation of views [LC Paper No. CB(2)2769/06-07(05)]	
003653 - 004224	Caritas Hong Kong - Family Service	Presentation of views [LC Paper No. CB(2)2769/06-07(06)]	
004225 - 004545	Society for Community Organization	Presentation of views	
004546 - 004908	Hong Kong Alliance for Family	Presentation of views [LC Paper No. CB(2)2769/06-07(07)]	
004909 - 005421	Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)	Presentation of views	
005422 - 005933	Parents for the Family Association	Presentation of views [LC Paper No. CB(2)2456/06-07(04)]	
005934 - 010359	Civil Rights for Sexual Diversities	Presentation of views	
010400 - 010843	Amnesty International Hong Kong Section	Presentation of views [LC Paper No. CB(2)2739/06-07(02)]	
010844 - 011341	Hong Kong Women Christian Council	Presentation of views [LC Paper No. CB(2)2769/06-07(08)]	

Time marker	Speaker	Subject	Action required
011342 - 012514	Zonta International; Zonta Club of Hong Kong and Zonta Club of Hong Kong East	Presentation of views [LC Paper No. CB(2)2739/06-07(03)]	
012515 - 013324	Association for Concern for Legal Rights of Victims of Domestic Violence	Presentation of views [LC Paper No. CB(2)2769/06-07(09)]	
013325 - 013744	The Alliance for the Reform of Domestic Violence Ordinance	Presentation of views	
013745 - 014307	Women Coalition of HKSAR	Presentation of views [LC Paper No. CB(2)2769/06-07(10)]	
014308 - 014433	Chairman	Expressed thanks to the deputations	
014434 - 021517	Admin Chairman	The Administration's responses to the views expressed by deputations	
021518 - 022249	Miss CHAN Yuen-han Caritas Hong Kong - Family Service	Setting up a specialised domestic violence court to handle both civil and criminal cases relating to domestic violence Criminalising stalking behaviour in domestic context Considered that adequate child care facilities should be provided before introducing any legislation against parents leaving the children unattended at home	
022250 - 023108	Ms Miriam LAU Admin	Scope of protected persons covered by the Bill The Administration was requested to convey to the Judiciary on establishing judicial guidelines for courts handling domestic violence cases under the DVO, so as to ensure consistency in the handling of these cases by the courts	✓ (Admin to convey to the Judiciary)
023109 - 024359	Miss Margaret NG Admin Ms Audrey EU Civil Rights for Sexual Diversities Association for Concern for Legal Rights of Victims of Domestic Violence Chairman	Setting up a specialised domestic violence court to handle both civil and criminal cases relating to domestic violence Enabling persons in same sex relationship to apply for injunction under the DVO The Administration was requested to provide a response in writing on why excluding persons in same sex relationship from the DVO was in conformity with the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383)	✓ (Admin to provide a written response)
024400 - 025149	Miss Margaret NG Admin Chairman	Setting up a specialised domestic violence court to handle both civil and criminal cases relating to domestic violence	
025150 - 025343	Hong Kong Association for the Survivors of	Hong Kong should draw reference from the experience of Boston of the United States on the	

Time marker	Speaker	Subject	Action required
	Women Abuse (Kwan Fook)	setting and facilities of domestic violence court	
025344 - 025548	Chairman Miss Margaret NG Ms Miriam LAU Admin	Meeting schedule	

Council Business Division 2
Legislative Council Secretariat
16 October 2007