

立法會
Legislative Council

Ref : CB2/BC/11/06

LC Paper No. CB(2)804/07-08
(These minutes have been seen
by the Administration)

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

**Minutes of the 5th meeting
held on Monday, 26 November 2007, at 4:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Dr Hon Fernando CHEUNG Chiu-hung (Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHAN Yuen-han, SBS, JP
Dr Hon YEUNG Sum, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon CHOY So-yuk, JP
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon KWONG Chi-kin
Hon TAM Heung-man
- Member attending** : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Members absent** : Hon Margaret NG
Hon Bernard CHAN, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC

- 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
- Ms Winnie LEUNG
Assistant Secretary for Labour and Welfare (Welfare) 2A
- Ms Cecilla LI
Assistant Director (Family and Child Welfare) (Acting)
Social Welfare Department
- Ms PANG Kit-ling
Chief Social Work Officer (Domestic Violence)
Social Welfare Department
- Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting & Administration)
Department of Justice
- 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

Action

- I. Meeting with the Administration**
[LC Paper No. CB(2)330/07-08(01)]
- The Bills Committee deliberated (index of proceedings at **Annex**).
2. Deputy Secretary for Labour and Welfare (Welfare)1 (DSLW(Welfare)1) briefed members on the Administration' responses to views/suggestions expressed

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by deputations on the Bill, details of which were set out in Part I of the above Administration's paper.

Introducing a definition of "molest" in the Domestic Violence Ordinance

3. Mr Albert HO said that as members of public did not have legal background to look up previous decided court cases on the granting of injunction order under the Domestic Violence Ordinance (Cap. 189) (DVO), the term "molest" or a new definition of "domestic violence" should be introduced to the DVO. To avoid the problems that the introduction of a new definition might render previous decided court cases irrelevant or restrict the court on establishing which act constituted molestation, the drafting should set out the scope of the coverage of "molest" or "domestic violence" yet also providing flexibility and latitude to the court to make any judgement as it saw fit. Ms Miriam LAU concurred.

4. Senior Assistant Legal Adviser 1 said that the definition of "molest"¹ under the Family Abuse Prevention Act of the State of Oregon might be a useful reference in addressing the concerns of both members and the Administration.

5. DSLW(Welfare)1 noted with concern that words like "hostile intent" used in the definition once enacted would serve to narrow down circumstances whereby victims of domestic violence could successfully obtain injunction orders under the DVO, e.g. cases involving a divorced husband who, out of love rather than hostile or malicious intent, attempted to reconcile with his former wife through such actions or behaviors that the court accepted as molestation. Victims of domestic violence under those circumstances could no longer rely on the DVO to obtain injunction orders in future if a statutory definition of "molest" were introduced with "hostile intent" embodied therein. The Administration's concern was that a statutory definition of "molest" might have the inadvertent effect of restricting the scope of application of the DVO in different ways, with the overall effect of undermining the interest of the victims of domestic violence and reducing protection.

6. Mr Alan LEONG appreciated the concerns of the Administration. He suggested that consideration could be given to stipulating an interpretation of the term "molest" in the DVO, while also clarifying that it should not affect the application of common law on establishing molestation on decided cases or new cases. Mr LEONG pointed out that similar approach was adopted in the Sale of Goods Ordinance (Cap. 26).

¹ "Molest" is defined in the Oregon Family Abuse Prevention Act as "acting, with hostile intent or injurious effect, in a manner that would reasonably be expected to annoy, disturb or persecute a person in the petitioner's position".

Action

7. Deputy Law Draftsman (Bilingual Drafting & Administration) responded that although the suggestion made by Mr LEONG in paragraph 6 above was not intended to be a codification of the common law on establishing molestation, such an interpretation of "molest" in the DVO, might, following the enactment of the Amendment Bill, tantamount to a statutory definition. Notwithstanding that, he undertook to consider whether it would be feasible to clarify the meaning of the term "molest" in the DVO by way of a special note so as to preserve the flexibility and latitude currently afforded to the court on establishing molestation of different forms in accordance with the prevailing conditions. He undertook to revert to members later.

8. DSLW(Welfare)1 supplemented that the Administration was not opposed to putting beyond doubt that the term "molest" included physical, sexual and psychological abuse or threats thereof. The crux of the matter was whether it was to the best interest of the victims of domestic violence to do so through the DVO or administrative means. On balance, the Administration considered that the latter approach was more appropriate in protecting the interests of victims of domestic violence for the reasons already given in the Administration's paper. To that end, the Administration would step up publicity and public education to inform members of the public that the term "molest" in the DVO covered physical, psychological and sexual abuses.

9. Ms Miriam LAU said that to ensure consistent handling of domestic violence cases, including the granting of injunction order under the DVO, consideration should be given to the issue of judicial guidelines.

10. DSLW(Welfare)1 advised that the Judiciary had provided responses to issues raised by the Bills Committee, as set out in LC Paper No. CB(2) 347/07-08(01). Principal Assistant Secretary for Labour and Welfare (Welfare) 2 elaborated that, on the civil side, a dedicated pool of seven Judges at the Family Court would exercise their powers under section 3 of the DVO in handling applications for injunction order under the DVO and apply similar principles in relevant precedent cases, where appropriate. On the criminal side, domestic violence cases were dealt with at the Magistrates' Court, the District Court or the Court of First Instance, depending on the nature and seriousness of individual cases. As each case depended on its own facts, the Judiciary considered that the issue of judicial guidelines might not serve any practical purpose in facilitating consistent handling of domestic violence cases.

Action

II. Any other business

11. The Chairman suggested and members agreed to start clause-by-clause examination of the Bill at the next meeting.
12. There being no other business, the meeting ended at 5:50 pm.

Council Business Division 2
Legislative Council Secretariat
11 January 2008

**Proceedings of the fifth meeting of
Bills Committee on Domestic Violence (Amendment) Bill 2007
on Monday, 26 November 2007, at 4:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000854	Chairman	Opening remarks	
000855 - 001159	Chairman Admin	Briefing by the Administration on Part I of LC Paper No. CB(2)330/07-08(01) detailing its responses to the views/suggestions given by deputations	
001200 - 002307	Mr Albert HO Admin	Need for defining the term "molest" in or introducing a new definition of "domestic violence" to the Domestic Violence Ordinance (Cap. 189) (DVO)	
002308 - 003733	Ms Miriam LAU Admin Chairman	Need for issuing judicial guidelines to ensure consistency in the handling of domestic violence cases	
003734 - 004646	Chairman SALA1 Admin	Meaning of "molest" under the Family Abuse Prevention Act of the State of Oregon	
004647 - 005732	Mr Alan LEONG Admin	The Administration agreed to consider whether it was feasible to introduce a definition of the term "molest" in the DVO without compromising the flexibility and latitude currently afforded to the court on establishing molestation of different forms in accordance with the prevailing conditions, and revert to members later	✓ (Admin to consider)
005733 - 005816	Admin Chairman	The Administration would step up publicity and public education to inform members of the public that the term "molest" in the DVO covered physical, psychological and sexual abuses	
005817 - 005837	Chairman Admin	Deferred discussion on including same sex couples under the DVO, upon receipt of the Administration's response to the legal point raised by the Equal Opportunities Commission, particularly on the applicability of the case of <i>Secretary for Justice v Yau Yuk Lung</i> [2007]3 HKLRD 903, and on the genuine need for not including same sex couples under the DVO	
005838 - 011002	Chairman Admin	Administration's response to the suggestions on scope of protected persons	
011003 - 011622	Chairman Admin	Administration's response to the suggestions on scope of the injunction order	
011623 - 011709	Chairman Admin	Administration's response to the suggestions on anti-violence programme	
011710 - 011757	Chairman Admin	Administration's response to the suggestions an arrest for breach of injunction order	

Time marker	Speaker	Subject	Action required
011758 - 012103	Chairman Admin	Administration's response to the suggestions on validity period of injunction order	
012104 - 012141	Chairman Admin	Other suggestions given by the deputations as set out in Part II of LC Paper No. CB(2)330/07-08(01) were outside the scope of the Bill and might be followed up at other committees	
012142 - 012423	Chairman Mr LEE Cheuk-yan Admin Ms Miriam LAU	Arrangements for the next meeting	

Council Business Division 2
Legislative Council Secretariat
11 January 2008