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18 September 2007

BY HAND

Ms. Mary So
 Clerk to Bills Committee
 Legislative Council
 Legislative Council Building
 8 Jackson Road, Central, Hong Kong

Dear Ms. So,

Re: Bills Committee on Domestic Violence (Amendment) Bill 2007

I refer to your letter dated 6 September 2007 inviting representatives from the Law Society to attend the Bills Committee meeting on 28 September 2007.

The Family Law Committee supports the Domestic Violence (Amendment) Bill 2007 and so will not be sending any representatives to the meeting.

The Law Society wishes to repeat its submission that the Administration consider establishing and funding a truly dedicated Family Court. I attach an extract from the Law Society's Report on the Domestic Violence Ordinance for reference.

Yours sincerely,

Joyce Wong
 Joyce Wong

Director of Practitioners Affairs
 e-mail: dpa@hklawsoc.org.hk

Encl.

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Chapter 9

Family Court

A. Dedicated Family Court

1. Long standing request to establish a Family Court

The request to establish a dedicated Family Court in Hong Kong was made more than 35 years ago by *the Hong Kong Federation of Women Lawyers* in a paper prepared by Ms. Elsie Leung and Ms. Maria W. C. Tam in 1979¹. A dedicated Family Court would deal exclusively with family disputes such as “*divorce, separation, and maintenance orders adoption, juvenile delinquency, family violence, guardianship of infants.....*”

In 1998 the Chief Justice met with representatives of the Law Society, the Bar Association, and the Hong Kong Family Law Association to discuss a joint request that a separate Family Court be established. The Chief Justice indicated the existing structure was satisfactory. The existing court rooms allocated to the Family Court judges were refurbished and painted in separate colours in order to distinguish it from the rest of the District Court in the Wanchai Law Courts.

The Law Society considers it is time to hold an open debate on whether the existing structure of the Family Court and the resources allocated are adequate to meet the demand for the Court’s services.

2. The Judgment in *Lomas v. Parle*²

The observations by the English Court of Appeal in the judgment of *Lomas v. Parle* clearly identified not only the areas of dissatisfaction but also the level of waste of judicial resources within the existing system. The Asian Economic Crisis in 1997 led to reduction of budgets across all agencies in Hong Kong, including that of the Judiciary.

¹ Submissions to the Hong Kong International Year of the Child Commission 1979

² [2004] 1 F.L.R. 812

The number of unrepresented litigants is a major concern as judicial resources are finite. An obvious area for reform is the introduction of an integrated court thus avoiding the duplication of criminal and civil proceedings arising from the same act(s) of domestic violence. This recommendation clearly makes economic sense. It also improves the process for the victim. The procedure would be less stressful as the victim would not have to attend separate proceedings in the magistracy and the District Court, often fixed for hearing weeks' apart, and dealt with by different court officials.

The criticisms of the Court of Appeal in England can be applied to Hong Kong as our court system is modelled on the old English system. Thorpe LJ noted in the judgment

“the unsatisfactory nature of the present interface between the criminal and family courts.....It is expensive, wasteful of resources and time-consuming. It is stressful for the victim to move from court to court in order to obtain redress and protection from the perpetrator. Other jurisdictions are attempting to solve this problem. The State of New York is setting up integrated courts to hear both criminal and civil proceedings before one tribunal. The publication of the Domestic Violence Crime and Victims Bill is an opportunity, we would suggest, for a reconsideration of the present dual system and an opportunity to look into the possibility of integrated courts to see if they might avoid the problems which we now raise”.

The Law Society submits that Lord Thorpe's observations are apposite to the situation in Hong Kong. Recent tragic events have galvanised the community to demand a concerted effort to tackle this very serious social problem with effective policies by all stakeholders.

Appendix 3: Judgment of the English Court of Appeal: Lomas v. Parle

3. Care and Protection Orders (“CPOs”)

The Law Society endorses the recommendations on CPOs made in the Law Reform Commission's Report: *Child Custody and Access*. The recommendation to transfer the Juvenile Court to a Family Court has merit as the physical environment for these hearings

should be considered. The Magistracy is not an appropriate place to deal with children in the 21st Century. The administration of Care and Protection Orders is a hangover from colonial times and changes could and should be introduced as soon as possible. Despite past complaints, there is evidence of a lack of empathy for the trauma these children are enduring and there is considerable room for improvement.

There is evidence of an inconsistent approach by the different Magistracies when dealing with CPOs. On the whole, the Fanling and Kowloon Magistracies have improved their procedures. The children have been separated from the juvenile delinquents and adults facing criminal charges, and hearings are conducted in a room other than the courtroom. However, some of these children can still wait up to 2 hours before a Magistrate hears the application.

It is clear that some Magistrates lack awareness and the ability to distinguish the different needs of children involved in CPO applications with those required for juvenile offenders. The following is a description of an advocate's recent experience when conducting a CPO hearing in Eastern Magistracy:

- “1. The hearings were conducted in the Juvenile Court which is otherwise used as an adult court.*
- 2. The solicitor appearing was required to stand when addressing the Bench which is a reversal of the practice introduced to make the hearings more informal and representatives were permitted to remain seated in order to maintain an air of informality.*
- 3. The child was required to stand. Even though this is “normal” it adds the formality and can be intimidating for the child concerned.*
- 4. New instructions were also posted on the advocate's desk for legal representatives **not** to say “good morning” to the magistrate. It is noted the*

directive does not engender an atmosphere in which juveniles, let alone vulnerable children, should be dealt with.

5. *Prior to the hearing the child was kept in a witness waiting room on the same floor as the juvenile court and escorted past adult and juvenile defendants waiting to go into the court for the hearing.”*

It should be recognised that many of these children require protection *because* of incidents of domestic violence and have suffered unnecessary anxiety as a result of institutional indifference. CPO cases should be dealt with by the Family Court and the Administration should take urgent steps to remedy this unsatisfactory situation.

4. Law Reform Commission’s Report on *Child Custody and Access (“LRC”)*

There have been no amendments to the major pieces of legislation dealing with children and family-related applications for more than 30 years. This fact is clearly reflected in the 72 recommendations in the LRC’s Report and this is an opportune moment to make use of the research to introduce comprehensive reforms.

5. Adoption of a holistic approach

In order to navigate the existing procedures victims of domestic violence could attend the following hearings in order to obtain assistance:

- (a) Civil application: Under the DVO for an injunction order and a power of arrest;
- (b) Criminal: Magistrates or District Court for assault charges;
- (c) District Court: Interim ancillary relief application: maintenance and custody

The system has to be reformed in order to increase efficiency not only for the victim, but also those organisations supporting the victim – police, social workers, lawyers, the courts.

The economic cost of domestic violence alone should be a wake-up call as the total budget across all agencies such as Home Affairs Bureau, Health Welfare Food Bureau,

Security Bureau, Department of Justice, the Judiciary, and the Hospital Authority, is a significant part of the Administration's budget, and ultimately taxpayer's money. The Administration should grasp the opportunity to ensure its resources are well spent to ensure effective delivery of services by adopting a holistic approach to the reforms.

The creation of a true Family Court dealing could assist the Administration to successfully implement its family policies, particularly those tackling domestic violence.

B. Specialist Domestic Violence Courts

1. England and Wales

The British Government has adopted a pro-active policy to tackle domestic violence and in October 2002 launched its Pilot Scheme on Specialist Domestic Violence Courts ("SDVC"). The aim of the Scheme is to provide a co-ordinated multi-agency response and increase the effectiveness of the judicial system.

The policy involves the assignment of cases involving domestic violence being listed to a single dedicated sitting of the SDVC and the co-ordination of other services in order to deliver an effective and efficient use of the judicial system by:

- providing protection and support to victims and witnesses of domestic violence;
- providing appropriate sanctions to perpetrators; and
- reducing delay through effective case management.

There are 2 types of SDVC:

(a) Clustering

All cases are grouped into 1 court session to deal with pre-trial hearings, bail applications, pleas, pre-trial reviews, pre-sentencing reports and sentencing.

(b) Fast Tracking Procedure

The Court will deal solely with criminal, adult proceedings.

The 1st Evaluation Report³ of the Pilot Scheme has shown the SDVCs:

- Enhance the effectiveness of the court and support services for victims
- Makes advocacy and information sharing easier
- Improves the victim's participation and satisfaction with the system
- Increases the public's confidence in the Crown Prosecution Service

As a result of the success of the Pilot Scheme, the Home Office has announced that it will increase the number of SDVCs from 4 to 25 by April 2006.

Independent Domestic Violence Advisors ("IDVAs")⁴

Victims of domestic violence are often overwhelmed by the legal process and the inefficiencies within the system means victims have to negotiate a number of agencies and repeat their stories in order to obtain the next stage of assistance. The IDVA helps the victim to navigate the system and provide support to ensure the safety of the victim. *The key element is the victim's safety rather than better results for any particular agency.* IDVAs need to understand the full range of procedures and remedies in the civil and criminal systems as well as the physical safety options for the victim. They need to be an effective bridge between the statutory and voluntary agencies and ensure they collaborate for the benefit of the victim.

The SDVCs have introduced an independent advocacy services for women which has been recognised by the Home office as being:

"effective in terms of outcome for the victim and in terms of cost efficiency.... The evidence shows that support of IDVAs:

³ "Evaluation of Specialist Domestic Violence Courts/Fast Track Systems" by Dee Cook, Mandy Burton, Amanda Robinson and Christine Vallely (March 2004)

⁴ Home Office Report: "Domestic Violence A National Report" March 2005

- *reduces repeat victimisation;*
- *reduces attrition rates in the criminal justice system;*
- *increases victim satisfaction and confidence; and*
- *is cost effective.”*

2. USA

There have been specialist domestic violence courts in the US in some states since the early 1980s with a considerable variation in the procedures and functions.

(a) Criminal Cluster Court Model

The Brooklyn Felony Domestic Violence Court was one of the first of these courts to be established as a ‘*problem-solving court*’. Research has shown the practices in the court have improved the rate of victim satisfaction with the process, together with an increase in the guilty plea rate. However, the conviction rate has not gone up, thus, it is the method of disposition (plea instead of trial) that has changed. The research has shown that improved support for victims may have enhanced the quality of evidence and information available to the specialist court, which then translates into a higher guilty plea rate.

(b) Dade County and Broward County in Florida

Both have an integrated model of specialist domestic violence courts dealing with both the criminal and civil aspects of a single domestic violence case. The qualitative evaluation for the Dade County Specialist Domestic Violence Court revealed that both judges and prosecutors felt that the integrated system improved administrative efficiency and helped to reduce recidivism.

Research has suggested that an integrated specialist domestic violence court has the potential to resolve the information-sharing problems that exist in the traditional judicial system but also “*evidence-sharing*” problems. Specially trained judges in integrated domestic violence courts have no difficulties applying the different evidential burdens and the tailoring of relief to each case.

Recommendations

“Family Court”

36. Governments in many jurisdictions have adopted an integrated approach to family-related matters including domestic violence. Reform involves a comprehensive review of policy and legislation, the role of the Judiciary and the courts, the delivery of services by all statutory and NGO stakeholders, the legal profession and all relevant Government Bureaux and Department.

The Administration should:

- (a) Conduct a comprehensive review of domestic violence by consulting all relevant stakeholders.**
- (b) Conduct research on the economic cost of domestic violence to Hong Kong’s economy.**

37. The time is right to debate the proposal to establish a true Family Court where the following should be discussed.

- Exclusive jurisdiction to deal with all family disputes, including CPOs**
- Adequate allocation of resources**
- Increasing the number of Specialised Family Court Judges**

38. Holistic Approach

A holistic policy should be adopted to enable incidents of domestic violence to be dealt with in a comprehensive manner. Any criminal charges arising out of incidents of domestic violence should be dealt with by a Specialised Domestic Violence Court. SDVCs should be established in Hong Kong and should be a specialised unit within the Family Court.

39. Independent Domestic Violence Advisors (“IDVAs”)

Research has indicated IDVAs are cost-effective in improving the implementation of the policy initiatives introduced by the British Government. IDVAs should be introduced in order to enhance co-ordination between the stakeholders in Hong Kong.