

Bills Committee on Domestic Violence (Amendment) Bill 2007
Meeting on 28 September 2007

Supplementary information

**Whether the continued exclusion of same sex relationships
from the Domestic Violence Ordinance would be
consistent with the human rights provisions
of the Basic Law and the HKBOR**

All persons in Hong Kong are entitled to the protection of the criminal law. They are also entitled to take civil proceedings in relation to any tort committed against them.

2. The purpose of the Domestic Violence Ordinance is to provide additional protection in the form of civil injunctive orders to individuals in certain specific relationships who are particularly prone to falling victim to violence in the domestic context. It was never intended to apply to all categories of person who may, for one reason or another, decide to live in the same household, or to violence generally which takes place in a domestic setting. The categories of person who are not covered by the Ordinance could include friends, or fellow students or persons who choose, or are obliged to live together, for various reasons including a common economic interest. The Bill extends the protection to persons in a wide range of open familial relationships whether they live in the same household or apart.

3. It has been argued that the exclusion of same sex relationships from the protection of the Ordinance constitutes unlawful discrimination, since if one party of the relationship commits an act of violence against the other the victim is not entitled to apply for an injunction under the Ordinance. It is said that not providing a remedy discriminates against the victim on the grounds of his or her sexual orientation. But the absence of remedy under the Ordinance does not preclude the victim from the protection of the criminal law nor from seeking injunctive relief under the general law and the exclusion from the specific protection of the Ordinance is common to any of the classes of person who may share accommodation referred to in paragraph 2 above.

4. Unlike the facts in the case of the *Secretary for Justice v Yau Yuk Lung* [2007] 3 HKLRD 903, in which the impugned legislation applied specifically to persons engaging in male homosexual conduct, there is nothing in the Bill nor the Ordinance which singles out individuals for less favourable treatment on the ground of their sexual orientation. A person may have a variety of relationships, some of which would bring them within the scope of the Ordinance and some of which would not. The Bill extends the classes of relationship which are brought within the scope of protection.

5. Neither the provisions of the Bill nor the Ordinance discriminate against any person on the ground of his or her sexual orientation. Anyone who has a relevant relationship may seek the protection of the Ordinance. As a matter of law, no one is excluded from the scope of the Bill on the grounds of his or her sexual orientation, and the Bill is therefore consistent with the human rights provisions of the Basic Law and the Hong Kong Bill of Rights.

Department of Justice
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