

立法會
Legislative Council

LC Paper No. CB(2)2296/08-09
(These minutes have been
seen by the Administration)

Ref : CB2/BC/6/08

Bills Committee on Domestic Violence (Amendment) Bill 2009

**Minutes of the first meeting
held on Monday, 29 June 2009, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon LEE Cheuk-yan (Chairman)
Dr Hon Margaret NG
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Paul CHAN Mo-po, MH, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun

Members absent : Hon James TO Kun-sun
Hon LI Fung-ying, BBS, JP
Hon Albert CHAN Wai-yip
Hon Starry LEE Wai-king
Hon WONG Sing-chi

Public Officers attending : Item II

Mr Matthew CHEUNG Kin-chung , GBS, JP
Secretary for Labour and Welfare

Miss Eliza LEE
Deputy Secretary for Labour and Welfare (Welfare) 1

Mrs Alison LAU
Principal Assistant Secretary for Labour and Welfare
(Welfare) 2

Ms Zandra MOK
Political Assistant to Secretary for Labour and Welfare

Mrs Anna MAK
Assistant Director for Social Welfare
(Family and Child Welfare)

Ms Fanny IP
Senior Assistant Law Draftsman

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Miss Florence WONG
Senior Council Secretary (2)5

Miss Maggie CHIU
Legislative Assistant (2)4

Action

I. Election of Chairman

Mr LEE Cheuk-yan was elected Chairman of the Bills Committee.

2. The Bills Committee accepted Mr LEUNG Kwok-hung's application for late membership in accordance with Rule 23 of the House Rules.

Action

II. Meeting with the Administration

[The Bill, Legislative Council Brief, LC Paper Nos. LS86/08-09 and CB(2)1982/08-09(01) to (02)]

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

Admin

4. The Administration was requested to –

- (a) consider the need to retain "as a couple" in the proposed definition of "cohabitation relationship", as the term seemed to be redundant;
- (b) review the proposed definition of "cohabitation relationship" to spell out explicitly that persons who were in marital relationship would be excluded from the application of new section 3B and, in this context, review the need for the proposed definition of "party to a cohabitation relationship";
- (c) review and refine the factors listed in the new section 3B(2) for the court to take into account in determining whether a relationship in question amounted to a cohabitation relationship as specified under the Amendment Bill for the future application of the Domestic Violence Ordinance (DVO); and
- (d) review the new section 3B(2)(h), as it appeared that a reference to "with normal perception" might be overlapping with the concept of "a reasonable person" and thus redundant.

5. Ms Cyd HO recapitulated to members that during the scrutiny of the Human Organ Transplant (Amendment) Bill 2001, concern about transplant applications involving homosexual couples was raised, and the Administration had agreed to put on record in the speech during the resumption of Second Reading debate on the Bill the proper interpretation of section 2A of the Human Organ Transplant Regulation in respect of same sex marriages or civil partnership registered outside Hong Kong. Ms HO requested the Clerk to circulate the relevant record to members for reference.

Clerk

ALA

6. The Assistant Legal Adviser was requested to provide information on the case law regarding the factors taken into account by the court in determining whether a relationship in question amounted to a cohabitation relationship.

Action

III. Date of next meeting

7. Members agreed to receive views from deputations on the Bill in July 2009. An invitation for views would be posted on the LegCo website. Members further agreed that deputations who attended the special meetings of Panel on Welfare Services on 10 and 23 January 2009 to give views on the proposed amendments to DVO would also be informed of the arrangement.

8. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 2
Legislative Council Secretariat
28 July 2009

**Proceedings of the first meeting of the
Bills Committee on Domestic Violence (Amendment) Bill 2009
on Monday, 29 June 2009, at 4:30 pm
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker(s) | Subject(s) | Action required |
|---|--|---|------------------------|
| <i>Agenda item I – Election of Chairman</i> | | | |
| 000000 – 000140 | Hon LEE Cheuk-yan Ms Emily LAU Dr Margaret NG | Election of Chairman | |
| 000141 – 00322 | Chairman Mr LEUNG Kwok-hung Ms Emily LAU Clerk | Application for late membership made by Mr LEUNG Kwok-hung | |
| <i>Agenda item II – Meeting with the Administration</i> | | | |
| 000323 – 002003 | Chairman Administration | Briefing by the Administration on the background and objective of the Domestic Violence (Amendment) Bill 2009 (the Bill) | |
| 002004 – 002453 | Chairman Ms Emily LAU Mr Ronny TONG Ms Cyd HO Ms Audrey EU Mr TAM Yiu-chung Administration | Invitation of views on the Bill | |
| 002454 – 003340 | Dr Margaret NG Chairman Administration | Dr Margaret NG's view that reference to "as a couple" in the definition of "cohabitation relationship" was redundant and that the Chinese rendition of "a couple" as "情侶" was not accurate Need for spelling out the factors under the new section 3B(2) on which the court would take into account in determining whether two persons were in a cohabitation relationship | Admin |
| 003341 – 003854 | Ms Emily LAU Administration Chairman | Whether the proposed legislative amendments had addressed the concerns raised by different quarters of the community | |
| 003855 – 004423 | Mr Paul TSE Administration Chairman | Whether residing together was a prerequisite factor in determining whether two persons were in a cohabitation relationship The Administration's response that the court would consider all the circumstances of the case in determining whether two persons were in a cohabitation relationship and residing together was not a prerequisite factor under new 3B(2) | |
| 004424 – 004940 | Mr Ronny TONG Administration | Concern that the proposed definition of "cohabitation relationship" was applicable to all persons in intimate relationships, irrespective of their marital status. The Administration might consider spelling out explicitly that "cohabitation relationship" excluded married persons | Admin |

| Time marker | Speaker(s) | Subject(s) | Action required |
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| | | <p>The Administration's response that a new definition of "party to a cohabitation relationship" was added to section 2(1), to the effect that party to a cohabitation relationship would not include the spouse or the former spouse</p> | |
| 004941 – 005501 | Mr TAM Yiu-chung Administration Chairman | <p>Rationale for including a minor who did not necessarily have familial relationship with the applicant for an injunction order under the protection of the Bill.</p> <p>The Administration's response that the definition of "specified minor" was an existing definition in the Ordinance, and the definition already included a minor who did not necessarily have familial relationship with the victim. Under the proposed amendment to the definition of "specified minor", the definition would apply to both section 3 and the new section 3B of the Ordinance</p> | |
| 005502 – 010454 | Ms Cyd HO Administration Chairman | <p>Views of Ms Cyd HO that in addition to the factors under the new section 3B(2) for determining whether persons were in cohabitation relationships, objective factors such as same-sex marriage or civil partnership contracted outside Hong Kong should be added</p> <p>The Administration's response that –</p> <p>(a) the factors listed in the new section 3B(2) were drawn up with close reference to the rulings made by the court regarding the factors taken into account by the court in determining the existence of a cohabitation relationship, viz. the relationship of a man and a woman (not married to each other) living together as husband and wife; and</p> <p>(b) it was not appropriate to add civil partnership registered overseas to the new section 3B(2) as it would violate the Administration's policy stance of not recognising same-sex marriage, civil partnership or any same-sex relationship as a matter of legal status</p> <p>Ms HO's view that during the scrutiny of the Human Organ Transplant (Amendment) Bill 2001, transplant applications involving homosexual couples was discussed, and the Administration had agreed to put on record in the speech during the resumption of Second Reading debate on the Bill the proper interpretation of section 2A of the Human Organ Transplant Regulation in respect of same sex marriages or civil partnership registered outside Hong Kong. The Administration should make reference to the previous approach adopted</p> | <p>Clerk to circulate the record</p> |
| 010455 – 011119 | Dr Priscilla LEUNG Administration | <p>Views of Dr Priscilla LEUNG that –</p> <p>(a) reference to "civil partnership" should under no circumstances be added to the Bill as it was not acceptable by the majority of the community; and</p> | |

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| | | <p>(b) while appreciating the Administration's efforts in striking a balance among different views in drafting the Bill, the Administration should make reference to overseas experience and extend the scope of the Bill to all those living under the same roof, in order to protect the vulnerable groups especially the elderly from the threats of domestic violence acts</p> <p>The Administration's response that –</p> <p>(a) any acts of violence were liable to criminal sanctions under the existing criminal legislative framework. DVO sought to provide additional civil remedies to people in specific relationships against molestation by the other parties in the relationships, taking into account the risk factors, dynamics and special consideration arising from their intimate relationships,; and</p> <p>(b) elders who faced violence acts from those who were living together with them under the same roof but with no specific relationships could seek redress under the criminal legislative framework or assistance from the relevant departments, e.g. rehousing arrangement</p> | |
| 011120 – 012014 | Mr Alan LEONG Chairman Administration | <p>Rationale for adding "as a couple" to the definition of "cohabitation relationship" as the term was redundant</p> <p>Suggestion of revising the drafting of the definition of "party to a cohabitation relationship" in the proposed section 2(1) as this might create confusion to the public</p> <p>The Administration's explanation of the need to include "as a couple" in the definition in order to remove doubts that very good friends or carers and patients who were living together in such relationships and intimate to each other were also covered under the amended DVO</p> | Admin |
| 012015 – 012513 | Mr Frederick FUNG Administration Chairman | Concern that civil partnership would be recognised as a matter of legal status if no express reference was made in the Bill that such relationship would not be recognised | |
| 012514 – 013449 | Ms Miriam LAU Administration Chairman | <p>Views of Ms Miriam LAU that –</p> <p>(a) she supported the legislative proposal during the scrutiny of the Domestic Violence (Amendment) Bill 2007;</p> <p>(b) spelling out expressly the factors in determining whether persons were in cohabitation relationships in the new section 3B(2) would assist the court in determining the scope of applicability of the Ordinance to the parties concerned. The checklist would also be useful to prospective applicants and legal practitioners;</p> <p>(c) reference to "with normal perceptions" in the new section 3B(2)(h) was unnecessary as the express reference to the test of a reasonable person in the</p> | |

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| | | <p>same provision should have included the quality of normal perceptions; and</p> <p>(d) the Administration should introduce the legislation against stalking as recommended by the Law Reform Commission (LRC) to deal with other acts of molestation that were beyond the scope of application of the Bill</p> <p>The Administration's response that –</p> <p>(a) the expression "in the opinion of a reasonable person with normal perceptions" was found in court rulings on whether a relationship had the quality that was required of a cohabitation relationship; and</p> <p>(b) the Constitutional and Mainland Affairs Bureau was studying the LRC's report on stalking</p> <p>The Assistant Legal Adviser was requested to provide information on the case law regarding the factors taken into account by the court in determining whether a relationship in question amounted to a cohabitation relationship</p> | <p>ALA</p> |
| 013450 – 014006 | Chairman Mr Ronny TONG Administration | <p>Whether the term "permanence in a cohabitation relationship" was adequate for the court to make a decision regarding application of an injunction order under the proposed section 6(3)</p> <p>The Administration's response that the requirement for the court to have regard to the permanence of the relationship when considering applications for injunction from a man/woman in cohabitation relationship had been imposed since the enactment of the DVO in 1986. The Administration had retained the same requirement in the amendment bill in respect of the applications from a party to a cohabitation relationship</p> | |
| 014007 – 014646 | Chairman Dr Priscilla LEUNG Administration | <p>Request for information on overseas legislation on civil partnership, if any. The Administration's response was that since civil partnership, same-sex marriage and same-sex relationship were not recognised as a matter of legal status in Hong Kong, the Administration had not conducted any research on overseas legislation of civil partnership for the purpose of amending DVO</p> <p>Ambiguity and redundancy in including the expression "as a couple" in the proposed definition of cohabitation relationship</p> | |
| 014647 – 015317 | Mr Paul TSE Administration Chairman | Whether there was a need to list the factors in determining whether a relationship amounted to a cohabitation relationship in the new section 3B(2) | |
| 015318 – 015624 | Ms Miriam LAU Chairman | <p>Views of Ms Miriam LAU that –</p> <p>(a) although the drafting style of the new section 3B was long-winded, it would avoid ambiguity in the interpretation of the provisions; and</p> | |

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| | | (b) drafting of the new section 3B(2) should be modelled on the wording used in the relevant case law | |
| 015625 – 015732 | Chairman | The Administration was requested to provide responses to the issues raised by members Date of next meeting | Admin |

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