

立法會
Legislative Council

LC Paper No. CB(2)45/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/6/08

Bills Committee on Domestic Violence (Amendment) Bill 2009

**Minutes of the third meeting
held on Thursday, 10 September 2009, at 2:30 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-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon Albert CHAN Wai-yip
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 Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon Paul TSE Wai-chun
- Member absent** : Hon James TO Kun-sun
- Public Officers attending** : Miss Eliza LEE
Deputy Secretary for Labour and Welfare (Welfare)1

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

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. Meeting with the Administration

[The Bill, Legislative Council Brief, LC Paper Nos. LS86/08-09, LS112/08-09, CB(2)1982/08-09(01), CB(2)2293/08-09(05), CB(2)2337/08-09(01), CB(2)2414/08-09(01) and CB(2)2444/08-09(01) to (02)]

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

2. The Administration was requested to –

- (a) review the description of the factors of the new section 3B(2), in particular the expression "in the opinion of a reasonable person with normal perceptions" in the new section 3B(2)(h);
- (b) provide further information on the property/furniture arrangements between the concerned applicant and the respondent when the former had made an application to the court for injunction order; and
- (c) provide further information on the services provided by the Administration to support the victims of domestic violence in the absence of a specialised domestic violence court.

Action

- Admin
3. Members noted that the Administration would consider reviewing the proposed definition of "party to a cohabitation relationship" and revert to members with its proposal, as set out in paragraph 14 of its paper (LC Paper No. CB(2)2414/08-09(01)).

II. Date of next meeting

4. Members agreed to hold the next meeting on 12 October 2009 at 10:45 am.
5. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2
Legislative Council Secretariat
15 October 2009

**Proceedings of the third meeting of the
Bills Committee on Domestic Violence (Amendment) Bill 2009
on Thursday, 10 September 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000000 - 001109	Administration Chairman	Administration's response to members' comments regarding the proposed definition of "cohabitation relationship" made on 29 June 2009 [LC Paper No. CB(2)2414/08-09(01)]	
001110 - 001837	Dr Priscilla LEUNG Chairman Administration	<p>Whether the amended Domestic Violence Ordinance (DVO) would be applicable to a cohabitation relationship involving more than two persons</p> <p>Response of the Administration that express provisions in the definition of "cohabitation relationship" specifying a relationship between "2 persons" served to affirm the policy and legislative intent of DVO that injunction protection would be extended to parties to a marriage or relationships akin to a marriage. Relationships involving more than two parties could hardly be described as relationships akin to a marriage. Nevertheless, it was a fundamental right of an individual to have access to court. Any person, including a person in a relationship involving more than two partners, could make an application to the court for injunction protection under both the existing DVO and the amended DVO. It is up to the court to decide whether the person is in a cohabitation relationship in respect of which such an injunction may be granted against the other party to the cohabitation relationship.</p>	
001838 - 002612	Mr Paul TSE Chairman Administration	<p>Concern of Mr Paul TSE that the introduction of the proposed definition of "cohabitation relationship" was deviated from the common law approach adopted in drafting section 2 of the existing DVO. In his view, removing the reference to "a man and a woman" from section 2(2) of DVO or adding a new definition of "非男女同居關係" to section 2 of DVO would suffice</p> <p>The Administration's response that –</p> <p>(a) the proposal sought to address the concerns raised by the religious and parent groups that the proposed definition would not have the effect of equating, or linking in any way, same-sex cohabitation with "marriage", "spouse" or "husband and wife" while achieving at the same time the objective of rendering the same level of protection against molestation to both heterosexual and same-sex cohabitants; and</p> <p>(b) as the definition of "cohabitation relationship" was something new and gender neutral, the established case laws on "cohabitation of a man and a woman" might not be readily applicable in the court's future consideration of applications for injunctions by cohabitants. The Administration</p>	

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		considered it necessary to provide clear guidance to the court of the policy intent through the definition itself and the eight signposts introduced under the new section 3B(2)	
002613 - 002926	Dr Margaret NG Chairman Administration	<p>Given that there were established case laws on "cohabitation relationship", Dr Margaret NG considered the eight signposts listed in the new section 3B(2) unnecessary and inelegant. Nevertheless, Dr NG raised no strong opposition to the new section 3B(2) if it did not have negative impact on the legislative intent.</p> <p>The Administration's response that the new definition of "cohabitation relationship" and the new section 3B(2) were proposed having balanced the views from different quarters of the community. While some members might not agree with the Administration on the need for the new provisions, the Administration gathered that others (such as most deputations attending the Bills Committee meeting on 30 July 2009) were in support of the Administration's approach.</p>	
002927 - 003727	Chairman ALA8	Paper prepared by the Legal Service Division on the relevant factors in determining whether two persons were in a cohabitation relationship (LC Paper No. LS112/08-09)	
003728 - 004007	Chairman Mr Paul TSE ALA8	<p>Views of Mr Paul TSE that –</p> <p>(a) it was unnecessary to list out eight signposts in the new section 3B(2);</p> <p>(b) the eight signposts under the new section 3B(2) were drawn up with close reference to a United Kingdom (UK) case, namely, <i>Kimber v Kimber</i>. However, the factors taken into account by the court in determining the existence of cohabitation relationship were specific to the circumstances of the case; and</p> <p>(c) the decided cases of other common law jurisdictions like UK and Australia on the existence of a cohabitation relationship were considered by the court in the context of legislation relating to property rights of cohabiting parties, and not in the context of domestic violence</p>	
004008 - 004150	Dr Margaret NG ALA8	The court would not be restricted by the factors under the new section 3B(2) when determining the existence of a cohabitation relationship	
004151 - 004543	Dr Priscilla LEUNG Chairman ALA8 Mr Paul TSE	Whether there were decided cases made by the courts of other major common law jurisdictions in determining the existence of a cohabitation relationship involving persons below the age of 18	

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004544 - 005219	Mr Ronny TONG Administration Chairman	<p>Whether a person could make more than one application to the court for injunction protection concurrently under the existing DVO and the amended DVO and whether age was a consideration factor for applying injunction protection under DVO</p> <p>The Administration's response that –</p> <p>(a) any person could make an application to the court for injunction protection under both the existing DVO and the amended DVO. It was up to the court to determine, having regard to all circumstances of the case, whether each relationship of the concerned applicant and the respondent amounted to a "cohabitation relationship"; and</p> <p>(b) the meaning of "marriage" under DVO would be construed in the context of the Marriage Ordinance under which no certificate would be granted if the proposed party to the intended marriage was under the age of 16 years. Nevertheless, DVO did not spell out the age limit for making an application to the court for injunction protection</p>	
005220 - 005628	Mr TAM Yiu-chung Administration	<p>Applicability of the factors of the "husband and wife" test to a cohabitation relationship involving same-sex cohabitants</p> <p>The Administration's response that it was hoped that the court, in applying the new definition of "cohabitation relationship", would take into account factors applicable in the "husband and wife" test and adopt an eligibility threshold that was comparable to the standard of the "husband and wife" test</p>	
005629 - 010706	Ms Miriam LAU Chairman Administration	<p>Rationale for making reference to an UK case, i.e. <i>Kimber v Kimber</i> in drawing up the factors for the court to take into account in determining the existence of a cohabitation relationship, and whether the Administration would consider making reference to the relevant statute law in New South Wales of Australia, i.e. provisions in the Property (Relationships) Act 1984 which were quite similar to those proposed under the new section 3B(2) in the Bill</p> <p>The Administration's response that –</p> <p>(a) in drawing up the factors in the new section 3B(2), it had made reference to the relevant factors which had been adopted or used by courts of other common law jurisdictions in determining the existence of a cohabitation relationship. Although the expressions adopted in the relevant legislation were not the same, the factors to be taken into account by the court bore similar qualities; and</p> <p>(b) it would review the description of the factors listed in new section 3B(2), in particular the expression "in the opinion of a reasonable person with normal perceptions" in the new section 3B(2)(h)</p>	Admin

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010707 - 011506	Mr LEUNG Kwok-hung Chairman Administration Dr Priscilla LEUNG	Whether the factors under the new section 3B(2) were exhaustive The Administration's response that the factors spelt out in the new section 3B(2) was to provide guidance to the court, to have regard to all the circumstances of the case, including but not limited to the factors, in considering future injunction applications from cohabitants	
011507 - 012007	Mr Paul TSE Chairman Administration	Rationale for drawing up the eight signposts to determine whether a relationship in question had the qualities that were required of a cohabitation relationship	
012008 - 012305	Chairman Administration	The Administration would, as set out in paragraph 14 of its paper, consider simplifying the proposed definition of "party to a cohabitation relationship" and revert to members with its proposal	Admin
012306 - 012541	Dr Priscilla LEUNG Administration	The signposts as currently drafted would not cover all persons living under the same roof. Consideration should be given to extending the coverage of the amended DVO to all persons living under the same roof.	
012542 - 012733	Chairman Mr Paul TSE Dr Priscilla LEUNG Dr Margaret NG Ms Emily LAU	The Administration's response to the views and suggestions made by deputations and members made on 30 July 2009 [LC Paper No. CB(2)2444/08-09(01)]	
012734 - 013712	Dr Priscilla LEUNG Administration Chairman Ms Emily LAU	Clarification on whether the amended DVO would be applicable to a cohabitation relationship involving more than two persons The Administration's response that express provisions in the definition of "cohabitation relationship" specifying a relationship between "2 persons" served to affirm the policy and legislative intent of DVO and was consistent with the existing provision of DVO. Notwithstanding this, any person, including a person in a relationship involving more than two partners, might make an application to the court for injunction protection under both the existing DVO and the amended DVO as it was a fundamental right of an individual to have access to court. Ultimately, it was up to the court to determine whether the relationship of the concerned applicant and the respondent amounted to a "cohabitation relationship"	
013713 - 013848	Chairman Mr Ronny TONG	View of Mr Ronny TONG that civil remedies provided for under DVO were tailored to the specific context arising from the intimate relationships between the abusers and the victims. Persons who were unrelated but living under the same roof facing violence acts could resort to the existing criminal framework	

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013849 - 014817	Chairman Administration Mr Paul TSE	<p>Whether the scope of DVO could be extended to allow the court to award a property order or a furniture order together with injunction order so as to relieve the need for victims of domestic violence to make separate applications and prepare separate affidavits</p> <p>The Administration's response that –</p> <p>(a) victims of domestic violence could make application for injunction protection under DVO and damages in one go;</p> <p>(b) the suggestion for awarding ancillary orders together with an injunction order might complicate and prolong the court hearing. While the Judiciary saw no real need for the establishment of a specialised domestic violence court, the Administration had raised and would continue to discuss with the Judiciary the feasibility of introducing administrative arrangements to provide better support to domestic violence victims and expedite the listing of domestic violence cases; and</p> <p>(c) should the protected persons concerned had financial or other difficulties, they could seek assistance from the Social Welfare Department as necessary</p>	
014818 - 015152	Mr Ronny TONG Administration	<p>Meaning of the "property order" as proposed by some deputations</p> <p>The Administration's response that to its understanding, it might refer to the property arrangements between the concerned applicant and the respondent when the former had made an application to the court for injunction protection. The Administration would provide further information in this respect</p>	Admin
015153 - 015348	Chairman Mr Ronny TONG Administration	The Administration was requested to provide further information on the services provided by the Administration to support the victims of domestic violence in the absence of a specialised domestic violence court	Admin
<i>Agenda item II – Date of next meeting</i>			
015349 - 015504	Chairman Dr Margaret NG Mr Ronny TONG Dr Priscilla LEUNG Ms Miriam LAU	Date of next meeting	