

立法會
Legislative Council

LC Paper No. CB(2)331/09-10
(These minutes have been
seen by the Administration)

Ref : CB2/BC/6/08

Bills Committee on Domestic Violence (Amendment) Bill 2009

**Minutes of the fifth meeting
held on Friday, 23 October 2009, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LEE Cheuk-yan (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
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 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 Frederick FUNG Kin-kee, SBS, JP
- Public Officers attending** : Miss Eliza LEE
Deputy Secretary for Labour and Welfare (Welfare)1

Ms Tracy CHU
Acting Principal Assistant Secretary for Labour and Welfare (Welfare)2

Miss Maria LAU
Acting 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. CB(2)89/09-10(01) to (02), CB(2)1982/08-09(01) and CB(2)2483/08-09(01)]

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

Admin

2. The Administration was requested to consider –
- (a) reviewing the Chinese rendition of "as a couple" in the proposed definition of "cohabitation relationship";
 - (b) providing for a definition of "the applicant" to the effect that the term would be applicable to a party who made an application under sections 3, 3A and 3B as the case would be;
 - (c) adding "該" between "而信納" and "申請人的配偶或前配偶" in the Chinese version of section 3(1) to maintain consistency with section 3A(1) and the new section 3B(1);
 - (d) reviewing the proposed definition of "cohabitation relationship" and the relevant expressions in the new section 3B in relation to former cohabitants; and

Action

- (e) reviewing and where appropriate amending the new sections 3B(2)(b), (f) and (h) by making reference to the approach adopted in New Zealand and amending the new section 3B(2)(g) by making reference to the approach adopted in Australia.

3. Members noted that the Administration was considering members' suggestion to state expressly that the 2 parties to the relationship could be of the same sex or of the opposite sex in the proposed definition of "cohabitation relationship".

II. Any other business

4. Members agreed to cancel the meeting originally scheduled for 3 November 2009, and hold the next meeting on 17 November 2009 to continue the clause-by-clause examination of the Bill and discuss the Administration's proposed Committee Stage amendments (CSAs).

5. Members also agreed that individual members who wished to move any CSAs to the Bill should submit the proposed CSAs by 10 November 2009 for discussion at the meeting on 17 November 2009.

6. There being no other business, the meeting ended at 12:47 pm.

Council Business Division 2
Legislative Council Secretariat
19 November 2009

**Proceedings of the fifth meeting of the
Bills Committee on Domestic Violence (Amendment) Bill 2009
on Friday, 23 October 2009, at 10:45 am
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 - 001718	Chairman Mr James TO Administration Mr Ronny TONG	<p>The Administration's elaboration on its response to the comments made by The Law Society of Hong Kong (The Law Society) pertaining to the applicability of <i>ejusdem generis</i> rule to the dictionary meaning of the word "couple" [paragraphs 3 to 7 of LC Paper No. CB(2)89/09-10(01)]</p> <p>The Administration's response that while it did not see the need for amending the proposed definition of "cohabitation relationship" as per The Law Society's recommendation, it would consider members' suggestion to state expressly that the 2 parties to the relationship could be of the same sex or of the opposite sex in the proposed definition of "cohabitation relationship"</p>	Admin
001719 - 002943	Chairman Administration Ms Audrey EU Mr Ronny TONG	<p><u>Continuation of the clause-by-clause examination</u> <u>Clause 5 – Interpretation and application</u></p> <p>Views of Ms Audrey EU that the proposed definition of "cohabitation relationship" was inconsistent with the description of applicants for an injunction specified under the existing section 3, i.e. spouse or former spouse. For the sake of clarity and consistency, the Administration might consider deleting paragraph (b) from the proposed definition of "cohabitation relationship" and adding "and former cohabitation relationship" after "cohabitation relationship" in the new section 3B(1), or deleting "and former cohabitants" from heading of the new section 3B</p> <p>Views of Ronny TONG that the Administration might consider the need for introducing the concept of former common residence in the new section 3B(1)(c)</p>	
002944 - 003334	Dr Margaret NG Chairman Ms LI Fung-ying Mr LEUNG Kwok-hung Mr Ronny TONG	Dr Margaret NG strongly opposed to the Chinese rendition of "couple" as "情侶" in the proposed definition of "cohabitation relationship". In her view, "情侶" meant "lovers" and whether two persons were in love involved subjective judgement and should not be a matter for the court. She would consider proposing a Committee Stage amendment (CSA) in this respect	
003335 - 003842	Chairman Administration	<p>The Administration's advice that –</p> <p>(a) under section 3(1)(c) and the new section 3B(1)(c), the court might grant an injunction containing specific provisions restraining the respondent from entering or remaining in a specified part of the residence of the applicant or a specified area whether or not it was the</p>	

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		<p>residence of the applicant. Whether it was a common residence or former common residence was not an issue of concern; and</p> <p>(b) paragraph (b) in the proposed definition of "cohabitation relationship" aimed to include under the coverage of the amended DVO cohabitation relationship that had come to an end. If the new section 3B were to be amended to include both references of cohabitation relationship and former cohabitation relationship alongside the deletion of the said paragraph (b), then the factors under the new section 3B(2) would need to be expressed in both present tense (for ongoing cohabitation relationship) and past tense (for former cohabitation relationship) in appropriate places so as to avoid any possible argument that even though the relationship had come to an end, it would be relevant to consider the present circumstances between the parties for the purpose of that section. The current drafting was considered more precise and appropriate</p>	
003843 - 004131	Chairman Ms Audrey EU	<p>Suggestion of Ms Audrey EU that –</p> <p>(a) paragraph (b) be deleted from the proposed definition of "cohabitation relationship"; and</p> <p>(b) "and former cohabitation relationship" be added after "cohabitation relationship" in the new section 3B(1) and 3B(2)</p>	
004132 - 005120	Dr Margaret NG Mr Ronny TONG Chairman Mr LEUNG Kwok-hung Mr Ronny TONG Ms Cyd HO Ms Miriam LAU	<p>Further discussions on the Chinese rendition of "as a couple" in the proposed definition of "cohabitation relationship" –</p> <p>(a) Dr Margaret NG maintained the view that the Chinese rendition of "couple" as "情侶" was improper in the legal context;</p> <p>(b) Views of Mr LEUNG Kwok-hung and Ms Cyd HO that consideration might be given to adopting "伴侶" as the Chinese term of "couple";</p> <p>(c) Views of Mr Ronny TONG that it might not be necessary to include the expression "as a couple" in the proposed definition of "cohabitation relationship"; and</p> <p>(d) Views of Ms Miriam LAU that there was a need to include "as a couple" in the proposed definition of "cohabitation relationship" in order to declare unequivocally that other "intimate relationships", such as those between very close friends or relatives, would not be within the meaning of the cohabitation relationship. As the court would take into account all the circumstances of the case, the Chinese rendition of "couple" as "情侶" was considered acceptable</p>	

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005121 - 005543	Chairman Administration	<p>The Administration's response that –</p> <p>(a) the proposed definition of "cohabitation relationship" was a precise delineation of the kind of cohabitation relationship that was intended to be covered under the amended Domestic Violence Ordinance (DVO), irrespective of the gender of the cohabitants. The inclusion of the expression "as a couple" in the proposed definition of "cohabitation relationship" was an essential and integral component to reflect the special qualities of the relationship to be covered under the amended DVO;</p> <p>(b) there was a need to adopt under the amended DVO an eligibility threshold that was comparable to the present standard of the "husband and wife" test in the proposed definition of "cohabitation relationship". Removing "as a couple" from the proposed definition of "cohabitation relationship" or adopting "伴侶" as the Chinese rendition of "couple" could fail to unequivocally declare that other "intimate relationships", such as those between very good friends living together, fell outside the coverage of the amended DVO; and</p> <p>(c) most deputations attending the Bills Committee meeting of 30 July 2009 considered the proposed definition of "cohabitation relationship" acceptable</p>	
005544 - 005756	Ms Cyd HO Administration	<p>Suggestion of rewording paragraph (a) of the proposed definition of "cohabitation relationship" to "means a relationship between 2 persons who live together in an intimate relationship and have not registered in accordance with the law"</p> <p>The Administration's response that the proposed definition of "cohabitation relationship" was drafted having regard to the concerns raised by different quarters of the community. The Administration envisaged strong objection to the suggestion as this would give rise to the concern of equating, or linking in any way, same-sex cohabitation with "marriage", "spouse" or "husband and wife"</p>	
005757 - 005920	Mr Ronny TONG Mr Paul TSE	<p>Understanding the policy consideration, Mr Ronny TONG shared the Administration's view of retaining "as a couple" in the proposed definition of cohabitation relationship. He did not find "伴侶" an acceptable rendition of "couple" in this context. He further suggested that the Administration should consider refining the Chinese expression "作為情侶" to fully reflect the meaning of "as a couple" in the proposed definition of "cohabitation relationship"</p> <p>Views of Mr Paul TSE that the current drafting of the proposed definition of "cohabitation relationship" was acceptable in the light of the policy consideration</p>	Admin to consider

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005921 - 010235	Chairman Administration	Members raised no question on clause 6	
010236 - 010920	Administration Chairman ALA8 Ms Miriam LAU Mr Paul TSE	<p>The Administration's response to the legal adviser's letter of 26 June 2009 [LC Paper No. CB(2)2337/08-09(01)]</p> <p>The Administration was requested to consider –</p> <p>(a) providing for a definition of "the applicant" to the effect that the term would be applicable to a party who made an application under sections 3, 3A and 3B as the case would be; and</p> <p>(b) adding "該" between "而信納" and "申請人的配偶或前配偶" in the Chinese version of section 3(1) to maintain consistency with section 3A(1) and the new section 3B(1)</p>	Admin to consider
010921 – 011525	Administration Chairman	<p><u>Clause 7 – Section added</u></p> <p><i>3B – Power of District Court to grant injunction: cohabitants and former cohabitants</i></p> <p>The Administration would consider reviewing the drafting of the new section 3B(1) in the light of the comments made by members in relation to former cohabitants and the definition of "the applicant"</p>	Admin to consider
011526 - 011715	Chairman Administration	The Administration's paper on the relevant factors in determining whether two persons were in a cohabitation relationship in the new section 3B(2) and in other common law jurisdictions [LC Paper No. CB(2)89/09-10(02)]	
011716 - 011822	Administration	Members raised no question on the new section 3B(2)(a)	
011823 - 012857	Administration Ms Miriam LAU Chairman Mr Paul TSE Dr Priscilla LEUNG Mr LEUNG Kwok-hung	<p>New section 3B(2)(b)</p> <p>Views of Ms Miriam LAU that the Administration might consider making reference to the factors taken into account by the New Zealand court (i.e. whether the parties share household and other domestic tasks) in determining whether two persons were in a cohabitation relationship</p> <p>The Administration's response that the tasks and duties shared by the parties to a cohabitation relationship were not limited to the performance of household duties and the court would take into account all relevant factors in determining whether two persons were in a cohabitation relationship. While the current drafting was considered appropriate, it would consider members' suggestion</p>	Admin to consider
012858 - 013156	Administration Chairman Ms Miriam LAU	Members raised no question on the new section 3B(2)(c) to (e)	

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013157 - 013523	Administration Ms Miriam LAU Chairman	The Administration would consider amending the new section 3B(2)(f) by making reference to the approach adopted in New Zealand, i.e. whether and to what extent the parties shared the responsibility for bringing up and supporting any relevant children	Admin to consider
013524 - 014724	Administration Ms Miriam LAU Chairman Ms Audrey EU Dr Priscilla LEUNG Mr LEUNG Kwok-hung Mr Paul TSE	The Administration would consider amending the expression "motives" in the new section 3B(2)(g) by making reference to the approach adopted in Australia, i.e. the degree of mutual commitment to a shared life, which was considered more specific	Admin to consider
014725 - 015008	Administration Chairman Dr Priscilla LEUNG Mr Paul TSE	The Administration's advice that it would make reference to the approach adopted by New Zealand with adaptation of the wording and amend the new section 3B(2)(h) accordingly	Admin
015009 - 015115	Administration Chairman	Other factors adopted by other common law jurisdictions in determining whether two persons were in a cohabitation relationship	
015116 - 015519	Administration Chairman	Members raised no question on the new sections 3B(3) and (4)	
015520 - 015734	Administration	Members raised no question on clauses 8 to 13	
<i>Agenda item II – Any other business</i>			
015735 - 020238	Chairman Administration Mr TAM Yiu-chung Dr Priscilla LEUNG	Date of next meeting and date for submitting Committee Stage amendments to be proposed by individual members for the consideration of the Bills Committee	