

**2nd Meeting of Bills Committee on Domestic Violence (Amendment) Bill 2009
on 30 July 2009**

**The Administration's Response to the
Views and Suggestions Made by Deputations and Members**

| Views/suggestions | The Administration's responses |
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| <i>(1) Definition of "cohabitation relationship"</i> | |
| <p>(a) The proposed definition of "cohabitation relationship" would reduce the flexibility of the court in determining cohabitation relationships. The Administration was requested to review the need for retaining the word "2" in the proposed definition of "cohabitation relationship".</p> <p>(b) The expression "as a couple" in the proposed definition of "cohabitation relationship" was redundant</p> <p>(c) Whether the amended DVO would be applicable to a cohabitation relationship involving more than two persons</p> | <p>Through the Domestic Violence (Amendment) Bill 2009, we have proposed to introduce a new definition of "cohabitation relationship" to mean a "relationship between two persons who live together as a couple in an intimate relationship". Please refer to LC Paper No. CB(2)2414/08-09(01) which elaborates in detail the background of and the need for introducing this new definition and the rationale of its formulation, including the need to retain the expression "as a couple". In line with the policy and legislative intent underlying the Domestic Violence Ordinance (DVO) since its enactment in 1986, the Administration wishes to re-affirm the need for retaining the expression "between two persons" in the proposed definition of "cohabitation relationship".</p> <p>Since the enactment of the DVO in 1986, Section 3 has extended injunction protection to "a party to a marriage" against molestation by his/her spouse. Apart from "a party to a marriage", by virtue of Section 2(2), the DVO is also applicable to "the cohabitation of a man and a woman" as it applies to marriage. The policy intent and legislative intent of the DVO all along is that injunction protection shall be applied to parties to a marriage or relationships akin to a marriage. Relationships involving more than 2 parties can hardly be described as relationships akin to a marriage. This policy intent and legislative intent of the DVO remains intact in the current amendment exercise. Express provisions in the definition of "cohabitation relationship" specifying a relationship between "2 persons" serves to affirm such intents and is consistent with the existing provision of the DVO.</p> |

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| | <p>So far, neither the Judiciary nor the Department of Justice is aware of any decided court cases involving an application for injunction orders under the DVO by a person in a three or more parties cohabitation relationship (i.e. against two or more parties to a cohabitation relationship in the same application); nor any decided cases involving two or more separate applications by the same applicant against two or more persons with whom the applicant is having a cohabitation relationship concurrently.</p> <p>Neither the policy and legislative intent, nor any decided court case indicates that a cohabitation relationship involving more than two partners would fall within the ambit of the DVO. That notwithstanding, it is a fundamental right of an individual to have access to court. Any person, including persons in a cohabitation relationship involving more than two partners, may exercise that right and make an application to the Court for injunction protection under both the existing DVO and the amended DVO. Ultimately, it is up to the Court to determine, having regard to all circumstances of the case, whether the relationship of the concerned applicant and the respondent amounts to a “cohabitation relationship”</p> |
| <i>(2) New section 3B(2): Factors for the court to take into account in determining whether a relationship in question amounted to a cohabitation relationship</i> | |
| (a) Some deputations questioned the need for spelling out expressly the factors 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 | Please refer to LC Paper No. CB(2)2414/08-09(01) which elaborates in detail the background of and the policy intent underlying the introduction of the new section 3B(2) and the need to retain the expression “with normal perceptions” in the new section 3B(2)(h). |

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| <p>(b) Some deputations questioned the need to include the expression "with normal perceptions" in the new section 3B(2)(h), as it might be overlapping with the concept of "a reasonable person" and thus redundant</p> | |
| <p><i>(3) Scope of the Bill</i></p> | |
| <p>(a) A few deputations remained of the view that the Government should consider extending the scope of DVO to persons living together under one roof, in particular the elderly</p> | <p>Since the enactment of the DVO in 1986, Section 3 has extended injunction protection to “a party to a marriage” against molestation by his/her spouse. Apart from “a party to a marriage”, by virtue of Section 2(2), the DVO is also applicable to “the cohabitation of a man and a woman” as it applies to marriage. Indeed, the DVO is premised on the consideration of the special power interface, dynamics and risk factors arising from such intimate relationships between spouses or between a man and a woman in cohabitation, whose intricate emotional and sexual relationships, concerns for their children’s feeling/well being or fear of losing family’s financial support may render the victims reluctant to report to the Police the abusers’ acts of violence and to seek redress under the criminal legislative framework.</p> <p>In view of these special considerations, the DVO serves to provide additional civil remedies for these victims on top of the current criminal legislative framework. The DVO is tailored to deal with acts of molestation which occur between individuals in a specific relationship, enabling the victim to be temporarily segregated from the abuser and freed from molestation under the protection of an injunction order, and allowing both parties the time and space to cool down and solve their problems. For instance, the victim may apply for an injunction order to exclude the abuser from their matrimonial home. Or the abuser may be required by the Court to attend an anti-violence programme seeking to change the attitude/behaviour of the abuser</p> |

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| | <p>that has led to the granting of the injunction order. Programme contents include courses on anger management or how to manage relationships with one's spouses and children. It is never the legislative intent of the DVO to cover all categories of persons who may, for one reason or another, decide to live under the same roof; or to all violence taking place in a domestic setting.</p> <p>In extending the scope of the DVO under the Domestic Violence (Amendment) Bill 2007 to cover former spouses, former heterosexual cohabitants and other immediate and extended familial relationships, we have already removed the "living-with" requirement originally provided for under the DVO. Accordingly, the only eligibility criterion for protection under the DVO is whether the victim and the abuser have a spousal, intimate or familial "relationship" as specified in the legislation. In other words, whether the victim is living with the abuser under the same roof is no longer a factor in deciding if the victim is entitled to the protection under the DVO. For instance, a grandmother who is subject to molestation by her grandson will not be debarred from applying for an injunction order against him under the DVO even though she is residing in an elderly home and living separately from her grandson.</p> <p>Also, for persons who are unrelated but living under the same roof, e.g. landlords and tenants, tenants sharing the same flat, employers and employees (such as domestic helpers), roommates in boarding schools, residents in residential homes for the elderly or for children etc., the acts of violence among these people are never regarded as "domestic violence". There is also no intimate relationship or risk factor between them that may render the victim reluctant to hold the abuser liable for his acts of violence by resorting to the usual criminal sanctions.</p> <p>More importantly, as mentioned above, the civil remedies provided for under the DVO are tailored to the specific context arising from the intimate relationships between the abusers and the victims. If the DVO were to be extended to cover such persons above, this may give rise to some unreasonable scenarios and other complicated legal issues. For instance, a domestic helper may apply to the court for an injunction order to prohibit his/her employer from entering</p> |

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| | <p>the latter's own residence; or a boarding school student may expel his/her roommate from the dormitory, or even a tenant may prohibit his/her landlord from entering the latter's own premises, etc.</p> <p>For unrelated elders who are abused or molested by their roommates, they should report the case to the Police and bring the perpetrator to justice and seek assistance from social workers. There is no intimate relationship or risk factor between the two parties that may render the victim reluctant to hold the abuser liable for his acts of violence by resorting to the usual criminal sanctions. DVO is not a suitable avenue to resolve the conflicts of elderly roommates.</p> |
| <p>(b) Some deputations urged the Government to replace the award of an injunction order by a protection order, and/or a property order.</p> | <p>DVO enables the court to grant an injunction order under the Ordinance restraining the behaviour of the abuser, with the ultimate intention of protecting the victim. This is because domestic violence can spiral into personal injuries or even fatality in a short space of time. The immediacy and urgency serves to justify a special court procedure under the DVO to provide quick and immediate injunctive relief to victims of domestic violence for protection.</p> <p>The consideration of ancillary orders at the same time may complicate and prolong the court hearing, and is not an effective and efficient use of the special court procedure set up to deal with injunction applications. Matters involving maintenance, property ownership, possession of furniture or household items, etc. should be dealt with separately in the matrimonial proceedings or other civil proceedings. Should the protected persons concerned have financial difficulties, they could seek assistance from the Social Welfare Department (SWD) as necessary.</p> |

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| <i>(4) Other complementary measures</i> | |
| <p>(a) Some deputations requested that the Administration should set up a specialised domestic violence court, and require the abusers to receive compulsory counseling services</p> | <p>Regarding the proposal to set up a specialised domestic violence court, the Judiciary has concluded that it sees no real need for the establishment of such a court. Please refer to the Annex for the Judiciary's response and overall thinking.</p> <p>On counselling for the abuser, under section 3(1A) of the DVO, the court is already empowered, in granting a non-molestation order, to require the abuser to attend the anti-violence programme (AVP), seeking to change his/her attitude and behaviour that lead to the granting of the injunction order. Absence from a scheduled session of AVP without prior notification will be regarded as non-compliance of the requirement set by the court and hence a breach of the injunction concerned. Breach of injunction order is a contempt of court and is subject to imprisonment or a fine.</p> <p>In the meantime, SWD continues to provide the Batterer Intervention Programme for suitable abusers involved in spouse battering behaviour as part of its counselling service. Besides, SWD is further studying and developing suitable treatment models for different types of batterers.</p> |
| <p>(b) Some deputations requested that the Administration should provide assistance and support for victims of domestic violence to undergo court proceedings.</p> | <p>The Family and Child Protective Services Units (FCPSUs) of SWD are specialized units manned by experienced social workers. They provide a co-ordinated package of one-stop services including outreaching, social investigation, crisis intervention, statutory protection, intensive individual and group treatment to victims of child abuse and spouse battering, batterers and their family members. Referrals to various other services e.g. legal aid, school placement, residential placement, etc. will also be made whenever necessary. In the past few years, resources have been allocated to SWD to strengthen direct support for victims of domestic violence and families in need, such as strengthening social work manpower and clinical psychological services, enhancing the hotline service of SWD, increasing the capacity and support services of refuge centres for women, etc. As reported to the Welfare Services</p> |

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| | <p>Panel previously, SWD will further consider ways to enhance the support services for victims of domestic violence, in particular those undergoing the judicial process.</p> <p>To strengthen support and safety assurance to victims throughout the case enquiry and legal proceedings, the Police have also set up a protocol of Victim Management in May 2008 for victims of serious domestic violence cases by way of constant contact with victims and close liaison with social workers. Such protocol has also been extended to victims of non-serious domestic violence cases handled by the crime units since January 2009.</p> |
| <p>(c) Some deputations requested the Administration to step up publicity and public education on the civil remedies available to victims of domestic violence under the amended Ordinance.</p> | <p>Since the commencement of the Domestic Violence (Amendment) Ordinance 2008 in August last year, the Administration has conducted a number of briefings to social workers of SWD and NGOs, relevant stakeholders, committees and district communities, on the civil remedies available to an expanded scope of domestic violence victims under the DVO. The Judiciary launched a booklet on “How to Apply for Injunctions Under the Domestic Violence Ordinance” in January 2009, copies of which are made available to the public at different levels of courts, the Public Enquiry Service Centres of the 18 District Offices, and all service units of SWD and subvented organisations and through the Legal Aid Department. The booklet can also be downloaded from the Judiciary’s website.</p> <p>SWD has also continued its territory-wide publicity and district-based programmes on “Strengthening Families and Combating Violence” to enhance public awareness of domestic violence problem and encourage victims and vulnerable families to seek assistance at early stage.</p> <p>The Administration will continue its efforts to increase public awareness of the expanded protection of the DVO and to help victims of domestic violence understand their rights, protection provided by law and support services available in the community.</p> |

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| <p>(d) Some deputations requested the Administration to strengthen training to frontline social workers, the Police and judicial personnel in handling cases of domestic violence, in particular victims of domestic violence who were same-sex cohabitants, and provide more resources for support services for them, such as temporary hostel places and service hotlines.</p> | <p>The basic training of social workers covers, inter alia, identifying the needs of different clients as well as general counselling skills. Social workers will provide suitable counselling and assistance to service users having regard to their individual needs. In rendering assistance to domestic violence victims regardless of their sexual orientation, social workers will assess the needs of the victims and their family members and provide a co-ordinated package of services which may include outreaching, counselling, group work and referral for other services. In light of the actual situation and the needs of individual cases, social workers may also refer the victims to refuge or crisis centres for short-term accommodation. In view of the proposed amendments to the DVO to extend its scope to cover persons in same-sex cohabitation relationships, SWD will strengthen training for frontline social workers to enhance their sensitivity in handling cases of same-sex relationships and their knowledge on the implementation of the amended DVO.</p> <p>Over the past years, the Police have enhanced their training programmes to raise the capability of police officers in handling and investigating domestic violence cases, with particular focus on risk assessment, questioning techniques, conflict management, sensitivity and awareness of family dynamics, victim psychology and service interface with welfare units, etc. Whenever laws are enacted or amended, the Police will give consideration to strengthening the relevant handling procedures, case classification and other supporting measures, and the provision of relevant training to frontline officers. In light of the amendments to the DVO, the Police are actively studying ways to enhance the alertness and ability of its frontline officers to handle violence cases involving people in intimate same-sex relationships, including enhancing the awareness of their officers about the newly-amended DVO as well as their sensitivity in handling such cases.</p> <p>As for the Judiciary, the Judicial Studies Board provides training programmes for judges and judicial officers (JJOs) at all levels. Every year, the Board organises and coordinates JJOs' participation in various professional training courses, international/local conferences, seminars and visits. In December 2007, an experience-sharing session on dealing with domestic</p> |

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| | violence cases was organised. As part of its on-going efforts to update JJOs on issues of public concern, new legislation and crime trends, the Judiciary will continue to organise suitable training programmes for JJOs. |

Labour and Welfare Bureau
September 2009

Judiciary's response to the proposal of establishing a Specialized Domestic Violence Court ("SDVC")

The Judiciary notes that there is a suggestion for the Administration to consider setting up an SDVC to handle both civil and criminal cases relating to domestic violence ("DV"). The Administration has relayed the suggestion to the Judiciary.

2. The problem of DV is a complex and multi-faceted one requiring careful study. A host of other supporting services, such as short-term refuge facilities, counseling services, behavioral therapy groups, emotion management services, and financial assistance would have to be put in place to help address the problem.
3. Currently, DV cases are dealt with by the courts mainly in two aspects, namely -
 - (a) on the civil side, matters related to a DV case would be dealt with by the Family Court; and
 - (b) on the criminal side, injuries inflicted on family members are dealt with at various levels of Courts, depending on the seriousness of the cases.

The Family Court always gives priority to urgent applications relating to DV cases, e.g. applications related to removal of children or injunction applications. For criminal DV cases, the courts at various levels can competently deal with them.

4. The Judiciary has noted from the research findings provided by the Administration that overseas jurisdictions have developed different models of SDVC.
5. If the suggestion for an SDVC is to set up a specialized court to handle both civil and criminal cases relating to DV, it would involve a host of complicated legal issues as to how the proposed set-up would fit in with the existing legal framework, such that a single court would be able to deal with both criminal and civil aspects.
6. The Judiciary noted that in the UK, an SDVC takes the form of special administrative arrangements, e.g. (i) fast-track listing of criminal DV cases and (ii) better co-ordination of civil and criminal cases related to DV. The Judiciary shares the Administration's view (as set out in the

Administration's paper for the Legislative Council Panel on Welfare Services dated 8 January 2007) that some of the administrative measures are worth exploring. The implementation of these administrative measures would involve legal and practical issues, which have to be carefully considered by relevant parties concerned, including the Administration and the Prosecution.

7. On the handling of DV cases, it should be noted that following consultation between DoJ and the Judiciary, a mechanism has been put in place since October 2008 to enable expedited listing of suitable DV cases. This mechanism has so far been found to be working satisfactorily and should go some way towards addressing concerns over the timely handling of DV cases.

8. In view of the satisfactory working of the above-mentioned expedited listing mechanism, there does not appear to be a real and immediate necessity for the setting up of a separate DV court. To set up another court would involve the consideration and resolution of a large number of legal and practical (both logistical and resource-related) issues that would take some time to accomplish. The Judiciary sees no real need for the establishment of an SDVC.

Judiciary Administration
August 2009