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9 January 2015

Clerk to Subcommittee on Strategy and Measures to
Tackle Domestic Violence and Sexual Violence
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong

BY EMAIL & BY POST
(kyyeung@legco.gov.hk)

Dear Sir,

Re: Definition, Identification and Assessment of Domestic Violence and Sexual Violence

The Law Society has perused and considered the Background Brief prepared by the Legislative Council Secretariat *Ref: LC Paper No. CB (2)380/14-15(01)* dated 2 December 2014 on the Strategy and Measures to Tackle Domestic Violence and Sexual Violence ("Paper"). While the Family Committee of the Law Society is going to have a detailed review of this subject matter (and may make submissions thereafter), we have the following preliminary observations:

1. The Law Society notes that the legal definition of domestic violence was not discussed in the Paper. The classification of domestic violence as averred to in the Paper, which are apparently for operational purposes, is not definition per se, legal or otherwise. Under this classification, domestic violence cases are either "domestic incidents", "domestic violence (miscellaneous)" or "domestic violence (crime)" (para 13 of the Paper). The basis of the classification is not clear and seems to be arbitrary.
2. There is no attempt to define domestic violence by the Administration, and yet various measures have been devised to try to tackle domestic violence cases.

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3. We have been mindful of the Tin Shui Wai tragedy in 2004, where all the four members of a family that had lived in Tin Heng Estate died in domestic violence. Subsequently, the Administration appointed an independent panel to find ways to prevent tragedies of domestic violence in the district. In the “*Report of Review Panel on Family Services in Tin Shui Wai*” of November 2004 released in the aftermath of the sad saga, a recommendation was made for a review of the Domestic Violence Ordinance, Cap. 189 especially giving attention to the areas for revision including definition of domestic violence (para 5.12 *ibid*).
4. We reiterate that it is imperative and necessary to lay down a clear legislative definition for domestic violence. A proper definition would among other things assist the frontline officers (police or social workers) to respond to and to handle domestic violence cases in a timely and appropriate manner. This would also help in the training for the related officers.
5. In 2005, the Law Society has released a Report on Domestic Violence Ordinance making recommendations to the Administration, amongst others, that there should be a definition in the Domestic Violence Ordinance by reference to and by adapting the relevant provisions in New Zealand’s Domestic Violence Act 1995. The relevant recommendation is extracted below:

"Recommendations

Definition of “Domestic Violence”

2. It is apparent from the review there should be a definition of domestic violence in the DVO. The term “molest” is vague as it has not been defined in the Ordinance. As the legislation was passed in 1986 the experience from other jurisdictions accepts domestic violence can include: psychological and emotional behaviour, stalking, and harassment as well as actual physical abuse.

(a) “Domestic”

This should include current and former partners as well as extended family members. It is more fully discussed in Chapter 3.

(b) “Violence”

This should have the widest definition and should include:

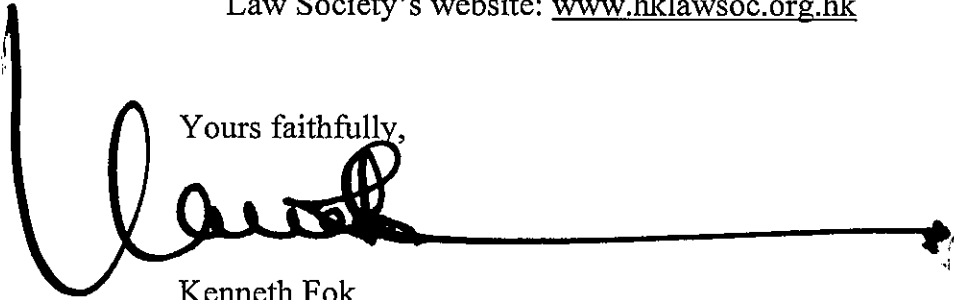
“physical, psychological, sexual, emotional, and financial abuse; forcible restriction of physical freedom; placing or attempting to place a family member in fear of pain, disease or infirmity; continued

harassment with intent to cause anguish, causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim; forced social isolation, economic desperation, control through the exercise of forced destructive verbal or emotional harassment”.

(c) The Law Society recommends adaptation of the provisions in New Zealand’s Domestic Violence Act 1995¹.”

6. A copy of the Report on Domestic Violence Ordinance can be found on the Law Society’s website: www.hklawsoc.org.hk

Yours faithfully,

A large, stylized handwritten signature in black ink, starting with a large loop and ending with a horizontal line that tapers to a point.

Kenneth Fok
Director of Practitioners Affairs
The Law Society of Hong Kong

¹ see Appendix 1
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"New Zealand

(1) Definition in the Domestic Violence Act 1995

"Domestic violence, in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship."

(A) Violence means:-

- (a) physical abuse;*
- (b) sexual abuse;*
- (c) psychological abuse, including, but not limited to,*
 - (i) intimidation;*
 - (ii) harassment;*
 - (iii) damage to property;*
 - (iv) threats of physical abuse, sexual abuse, or psychological abuse.*

(B) A person psychologically abuses a child if that person:-

- (a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or*
- (b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring;*

but the person who suffers that abuse is not regarded, for the purposes of this subsection, as having caused or allowed the child to see or hear the abuse, or, as the case may be, as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.

(C) A single act may amount to abuse for the purposes of that subsection:

- (a) a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.*
- (b) behaviour may be psychological abuse for the purposes of subsection (B) above which does not involve actual or threatened physical or sexual abuse."*

By the Domestic Violence Amendment Act 2013, financial or economic abuse was inserted after (A)(c)(iv).