

立法會 *Legislative Council*

LC Paper No. CB(2)2456/06-07(03)

Ref : CB2/BC/11/06

Bills Committee on Domestic Violence (Amendment) Bill 2007

Background brief prepared by the Legislative Council Secretariat on review of the Domestic Violence Ordinance (Cap. 189)

Purpose

This paper gives an account of the past discussions by the Panel on Welfare Services (the Panel) and its Subcommittee on Strategy and Measures to Tackle Family Violence (the Subcommittee) on the review of the Domestic Violence Ordinance (DVO) (Cap. 189).

Background

2. The DVO mainly provides for a civil remedy for victims of domestic violence to seek injunction from the court, whereas violence acts involving crime element are mainly dealt with by the Crimes Ordinance (Cap. 200) and the Offences Against the Person Ordinance (Cap. 212) and the protection of children and juvenile is dealt with under the Protection of Children and Juveniles Ordinance (Cap. 213). Since its enactment in 1986, no review has been carried out to the DVO.

3. Due to the rise in the number of domestic violence cases in Hong Kong, there have been increasing public calls for introducing amendments to the DVO to strengthen protection to the victims, particularly after the occurrence of the Tin Shui Wai family tragedy in April 2004.

Preliminary proposals for amending the DVO

4. At a closed meeting on 23 May 2006, the Administration presented to the Subcommittee its preliminary proposals for amending the DVO, as well as the justifications for not implementing the proposals made by various organisations, including the Law Society of Hong Kong, the University of Hong Kong and the Women's Commission. The preliminary proposed amendments include -

- (a) extending the scope of the DVO to include former spouses and former co-habitees so that they could make applications for an injunction order under the DVO;
- (b) enabling a "next friend" of a child under the age of 18 to make applications for an injunction order on behalf of the child and removing the requirement that the child has to live together with the applicant;
- (c) enabling the court to vary or suspend an existing custody or access order in respect of the child concerned when making an exclusion order under the DVO;
- (d) empowering the court to also attach a power of arrest if it reasonably believes that there is likelihood that the respondent will cause bodily harm to the applicant or the child concerned; and
- (e) extending the duration of the injunction order and the related power of arrest from a maximum of six months to two years.

Past discussions

Meeting on 23 May 2006

Duration of injunction order

5. Hon CHAN Yuen-han was of the view that it should best be left to the discretion of the court to decide the duration of the injunction order and the power of arrest attached, as some matrimonial or custody proceedings took more than 24 months to conclude. Hon Mrs Sophie LEUNG and Hon Alan LEONG however considered the proposal reasonable.

6. The Administration explained that setting 24 months as the maximum duration of the injunction order and the power of arrest attached was made having regard to the time generally required of a matrimonial or custody proceedings and the need to provide legal clarity and certainty. Although some matrimonial or custody proceedings might take more than 24 months to conclude, the applicant could always apply for another injunction order afresh and the power of arrest attached from the court should there be such a need. In general, the court might grant an injunction order for one month in the first instance. This could be extended by a further three months if deemed necessary. Upon the expiry of the six-month maximum period, the applicant could make a fresh application for an injunction order from the court should he/she or a child living with him/her was again molested by the abuser.

Scope of "protected persons"

7. Dr Hon Fernando CHEUNG was of the view that members living in the same household, such as elderly parents and parents-in-law, should be covered under the scope of the DVO as "protected persons".

8. The Administration responded that it had not ruled out the possibility of extending the scope of the DVO to include parents-adult son/daughter and parents-in-law relationships under the scope of the DVO. More in-depth studies would have to be conducted to ascertain whether such extension was necessary, having regard to the fact that most elders were reluctant to seek legal action against their adult children or children-in-law for abusing them. There was also the concern about the impact of such extension on family relations. Even if the elderly was not covered under the scope of the DVO as "protected persons", other legislative means would be considered to protect the elderly from being abused by their family members or caregivers on the condition that these means would not impact adversely on family relations.

Introducing court-ordered batterer intervention programme(BIP)

9. Hon CHAN Yuen-han and Dr Hon Fernando CHEUNG urged the introduction of court-ordered BIP without further delay, as the existing arrangements of putting batterers on probation order to join the counselling programme under the arrangement of the probation officers were far from effective, as evidenced by only a handful of such probation orders made by the court in a year. While agreeing that court-ordered BIP was crucial for combating domestic violence, Hon Mrs Sophie LEUNG hoped that more efforts could be made by the Administration to make the BIP more accessible by, say, training up more people with the skills to provide counselling to actual and potential batterers.

10. The Administration responded that more careful and in-depth examination was needed before it could decide on whether and, if so, how court-ordered BIP should be introduced. For instance, there was a need to consider carefully whether court-ordered BIP should be one of the sentencing options for the court; whether participation in BIP should be in place of imprisonment penalty; and whether batterers serving sentence in jail should be required to attend BIP concurrently. In addition, legal advice also suggested that the relevant provision should be sufficiently precise and adequately accessible to the abusers to be able to foresee with a reasonable degree of certainty the circumstances in which and the conditions on which the authorities might effect the court-ordered treatment.

11. The Administration also advised that upon the completion of two pilot projects of BIP being conducted by the Social Welfare Department (SWD) from January 2006 to March 2008, the projects would be evaluated with a view to identifying effective treatment modalities for batterers of various backgrounds. The experience drawn from these projects would provide useful reference for defining the goals, contents and standards of BIP, as well as for considering whether BIP should be stated explicitly as a sentencing

option. In the meantime, SWD would arrange sharing sessions with judges and enforcement agencies upon completion of the first phase of the pilot projects in June 2006, with a view to encouraging the court to make more referrals to BIP.

Meeting on 15 June 2006

12. The Subcommittee met with nine deputations to listen to their views on the Administration's preliminary proposed amendments to the DVO. The deputations urged the Administration to further extend the scope of the DVO to cover all familial relationships and persons living in the same household; make it mandatory for batterers to undergo counselling programme; and introduce a definition of "domestic violence" in the DVO to include physical abuse, sexual abuse and psychological abuse.

13. The Administration responded that -

- (a) it had not ruled out the possibility of expanding the scope of the DVO to cover parent/adult child and parent/adult child-in-law relationships;
- (b) it would consider the way forward on the merits of empowering the court to make order requiring batterers to undergo counselling after evaluating the effectiveness of the two pilot projects of BIP upon their completion in March 2008. In the meantime, discussion would be held with the Judiciary on referring alleged offenders on bind-over order to attend BIP; and
- (c) legal advice had pointed out that the term "molest" under the DVO covered any conduct which could properly be regarded as such a degree of harassment as to call for the intervention of the court. Information gathered from the Judiciary also revealed that the court had granted injunction on application under section 3 of the DVO on the ground of psychological abuse. To help the public to understand that the term "molest" under the DVO included psychological abuse, such information would be included in the information kits/leaflets for victims of family violence. Legal advice would also be sought on the desirability of defining "molest" in the DVO.

14. Hon CHAN Yuen-han considered that the amendments to the DVO proposed by the Administration still fell short of providing adequate protection to victims of domestic violence. She requested the Administration to set up a dedicated working group comprising all relevant stakeholders and Legislative Council (LegCo) Members to review the DVO.

15. The Administration did not consider there to be a need for a separate working group to review the DVO, as there were established channels to collect and consult the views of stakeholders and the general public on issues of public concern.

Meeting on 20 September 2006

16. The Administration updated the Subcommittee on its review of the DVO after consulting various advisory groups and stakeholders. Parties consulted generally welcomed the proposed amendments to the DVO. The common consensus was that prevention was more important. To that end, SWD was preparing an information kit for victims of domestic violence to elaborate on the legal protection and remedies available under the law in general terms and the range of services provided by SWD and other departments. The information kit would be ready by early 2007. Members were also advised that on review, the Administration remained of the view that extending the scope of the DVO to cover parent/adult child and parent/adult child-in-law relationships was not necessarily the only way or the best way to resolve some family disputes.

17. Members urged the Administration to introduce the amendment bill expeditiously, as it was unlikely that the Administration would change its stance on other proposals put forward by members and deputations. The Administration was requested to respond by October 2006 on the timetable for introducing the amendment bill.

18. The Administration replied in writing on 12 October 2006 that it was at the final stage of consultation on the amendment proposals and aimed to consult the Panel on the final proposals by the end of 2006. The Administration would proceed with the preparation of the amendment bill within the current legislative session.

Meeting on 8 January 2007

19. The Administration consulted the Panel on the proposed amendments to the DVO outlined in paragraph 4 above.

20. Dr Hon KWOK Ka-ki, Dr Hon YEUNG Sum, Dr Hon Fernando CHEUNG, Hon TAM Yiu-chung, Hon LEUNG Kwok-hung, Hon Ronny TONG, Hon Margaret NG, Hon LI Fung-ying, Hon Albert HO and Hon CHAN Yuen-han were of the view that the scope of the DVO should be extended to allow an elderly person who had been abused by his/her relative to apply for an injunction order with the court. They disagreed with the Administration's explanation that the reason why it did not propose to extend the scope of the DVO beyond spousal/cohabitation relationship to include parents-adult son/daughter and parents-in-law relationships was because statistics collected by SWD revealed that the majority of the reported elder abuse cases involved spousal relationship which was already covered by the DVO. These members pointed out that according to a recent study conducted by the University of Hong Kong on spousal battering and child abuse in Hong Kong, the number of domestic violence cases was greatly under-reported. Moreover, a low reporting rate for non-spousal elderly abuse should not be an excuse for not protecting elderly victims of domestic violence. These members also considered it unreasonable for the Administration to state that the elderly were not allowed to seek injunction against their relatives because this would cause irreparable breakdown of the family relationship.

21. Hon Albert HO and Hon Margaret NG were also of the view that the scope of the DVO should be extended to enable same sex couples to apply for an injunction under the DVO, in view of the decriminalisation of homosexuality in Hong Kong and to prevent sexual discrimination.

22. In response to Dr Hon KWOK Ka-ki's suggestion that the DVO should be amended to criminalise stalking, the Administration advised that if it was decided that stalking behaviors should be penalised as a crime, all stalking behaviours, whether in domestic or non-domestic context, should be subject to the same treatment and liable to the same level of criminal sanction under the law.

23. The Administration also did not see the case for defining “domestic violence” in the DVO requested by Dr Hon YEUNG Sum and Hon Ronny TONG, as according to the Department of Justice, the term "molest" in the DVO included physical abuse, psychological abuse and sexual abuse. Information gathered from the Judiciary also revealed that the court had granted injunction on application under the DVO on the grounds of the three different forms of abuse.

24. On making it mandatory for batterers to undergo counselling programme as practised in some overseas places, the Administration considered that in so doing careful consideration needed to be made on whether court-ordered BIP should be made a substitute for imprisonment penalty, and if so, what types of cases might be suitable and the format of such programme. Hon Mrs Sophie LEUNG considered that a better approach to prevent batterers from repeating their acts was to provide more training to social workers to make BIP more accessible.

Relevant papers

25. Members are invited to access the LegCo website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meetings on 15 June 2006, 20 September 2006 and 8 January 2007.

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11 July 2007