Fighting Domestic Violence - Hong Kong

3. Similarities and differences in terminology

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# 3.1 Domestic violence

Described by the Department of Justice (DoJ)[19] as "…a general term which describes a range of behavior often used by one person to control or dominate another with whom they have, or have had, a close or family relationship.[20] It is often a series of abusive incidents, whether physical or not, that has a cumulative effect on the victim. Domestic violence occurs irrespective of background and circumstance, sexuality, age, disability and gender, but the majority of abusers are male and victims female."

Referenced in police procedural guidance as "any incident involving an assault, or breach of the peace between parties who could generally be described as married or having an intimate partner relationship, which also includes lovers having a lasting relationship or former lovers."[21]

DCRVO requires that the court be satisfied that an applicant (or a minor, on whose behalf an application has been made) has been "molested" before certain injunction or relief can be granted. Apart from spouses and minors, persons in a "cohabitation relationship" and relatives[22] are also eligible for injunctive relief. These terms are defined in Section 3.1.

# 3.2 Stalking

Described by the Law Reform Commission (LRC) of Hong Kong[23] as "a series of acts directed at a specific person that, taken together over a period of time, causes him to feel harassed, alarmed or distressed." This may include "making unwelcome visits, making unwanted communications or silent telephone calls, repeatedly following the victim on the streets, watching or besetting the victim's home or place of work, persistently sending unwanted gifts or bizarre articles to the victim, disclosing intimate facts about the victim to third parties, making false accusations about the victim, damaging property belonging to the victim, and/or physical and verbal abuse."

# 3.3 Harassment

Defined in various sexual,[24] racial[25] and disability[26] harassment legislation. In 2000, the LRC recommended that harassment be criminalized to enable victims to claim damages and apply for injunctive relief.[27] This has not been implemented. Only certain forms of harassment (e.g., landlord against tenant and[28] grossly offensive, obscene or menacing telephone harassment)[29] are criminal offences.

The statutory definitions share similar elements, often referred to as "unwelcome conduct… in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated," or conduct that "creates a hostile or intimidating environment" for the other person.

For conduct falling outside of these statutory prohibitions, victims may still make a claim on the basis of the tort of harassment, though whether such cause of action exists in the common law remains in doubt in Hong Kong. Victims can still bring claims for injunctions and/or damages with a reasonable likelihood of success based on the body of case law.[30]

# 3.4 Victim

Defined by the DoJ as a "person who suffers physical or emotional harm, or loss or damage to property because of a criminal offence. This covers not only the person against whom the offence was committed but also anyone who has suffered directly from the commission of the offence."[31]

More generally considered "the object of any wrong, including a crime or tort. For example, a person who suffers an assault, battery, or robbery is a victim of those wrongs. A victim of tort may bring a civil action against the tortfeasor (wrongdoer)."[32]

# 3.5 Abuser

The Social Welfare Department (SWD) uses the term "batterer" in the domestic violence context, as a person who exercises a pattern of coercive control in a partner relationship, punctuated by one or more acts of intimidating physical violence, sexual assault or credible threat of physical violence. The pattern of control and intimidation may be predominantly psychological, economic, or sexual in nature, or may rely primarily on the use of physical violence.[33]

The SWD has also defined "intimate partner violence," "child maltreatment/abuse" and "elder abuse" in its respective procedural guides.

Note these guides are reviewed by a task force consisting of members from the Labor and Welfare Bureau, the Education Bureau, the Department of Health, Hong Kong Police Force, Hospital Authority The Hong Kong Council of Social Service and various NGOs.

# 3.6 Civil protection order

Terminology not used in Hong Kong.

DCRVO enables victims of domestic violence to apply for Hong Kong court orders to a similar effect, and is further discussed in Section 4, i.e., those seeking to restrain an abuser from molesting the victim by, for instance, ordering the abuser to vacate the victim's home and workplace and forbidding any contact with the victim via mail, telephone or otherwise.

# 3.7 Causes of action

Refers to the whole set of facts giving rise to legal claims that can be pursued by a legal action for judicial redress,[34] i.e., generally the reason for a person or an organization to commence a legal action against another. Examples include breach of contract, negligence that causes injury to another person or failure to repay a loan.[35]

For causes of action in the domestic violence context, see Section 1.4.

# 3.8 Marital rape

Marital rape (or spousal rape or partner rape) is non-consensual sexual intercourse in which the victim is the perpetrator's wife or female partner.[36]

It is important to note that under Hong Kong law, rape can only be committed by a man against a woman.[37] A government consultation paper from 2003 suggested that the gender of a party should rest on medical evidence of the person's biological assignment at birth.[38]

# 3.9 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

**Cohabitation relationship**

Defined by DCRVO as "a relationship between two persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship." The court may consider eight factors in determining whether two persons are in a cohabitation relationship, including the stability and permanence in the relationship, existence of a sexual relationship, sharing of tasks, duties and expenses.

**Molest/ molestation**

Not defined in DCRVO, but necessary to establish that an applicant or minor has been molested by the spouse or former spouse of the applicant before a non-molestation order or ouster order can be granted under the statute.

In *P v C*,[39] the court adopted the following definitions from English case law:

"Molestation may take place without the threat or use of physical violence and still be serious and inimical to mental and physical health…[40] [applying] to any conduct which can properly be regarded as such a degree of harassment as to call for the intervention of the court."[41]

Relevant cases have established that molestation captures a wide spectrum of intimidating or intrusive conduct that does not necessarily require an element of physical violence. Conduct constituting molestation can include verbal abuse;[42] sweeping belongings to the floor and breaking furniture;[43] regular throwing of chattels; and shouting and threatening with knife.[44]

**Specified minor**

Defined in DCRVO as a minor (under the age of 18 years)[45] who is either:

a natural child, adoptive child or stepchild of the applicant or the abuser

any minor who is living with the applicant, if they have been molested by the applicant's spouse, former spouse, cohabiting partner or former cohabiting partner[46]

Minors who fall outside of this definition is still afforded protection and remedies under DCRVO if they are molested in a domestic violence context, i.e., where they are:

molested by a relative (as defined in DCRVO)

in a cohabitation relationship with the applicant of the injunctive relief against the abuser

This distinction is relevant in the application process for relief under DCRVO; see Section 4.6 for further details. For example, where a minor resides with the abuser(s) (such as grandparents) and the parents are unwilling/unable to make an application, they can rely on a common law concept whereby the relevant applicant is a "next friend."

Relevant references to minor(s) in this document generally mean those eligible for protection by DCRVO.

For a DCRVO application made on behalf of the Specified Minor, please see *HKK v HCM*.[47]

**Spouse**

Excludes partners in single-sex unions,[48] given marriage law in Hong Kong stipulates that marriage entered into on or after 7 October 1971 will imply "a voluntary union of one man and one woman to the exclusion of all others."[49]

**Intimate partner violence**

Defined by SWD as battering that occurs in a relationship between a couple who live or have lived together intimately.[50]

**Child maltreatment/ child abuse**

Defined by SWD as any act of commission or omission that endangers or impairs the physical/psychological health and development of an individual under the age of 18.[51]

**Elder abuse**

Defined by SWD as any act of commission or omission that harm the well-being or safety of elders.[52]

**Relative**

Broadly defined in an exhaustive list in DCRVO, and includes grandparents/children, adoptive and other extended/blended families of the applicant as well as certain immediate and extended family members of the applicant's spouse.[53]

*L v K*[54] is an example of DCRVO application involving domestic violence between relatives, where the mother-in-law of the abuser sought continuation of interim injunction order.

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