

Tackling violence at home: suggestions for law reform

I. INTRODUCTION

1. Until recently, many jurisdictions explicitly endorsed domestic violence by upholding a husband's right to physically "chastise" his wife.¹ An epochal shift in public perception has since occurred, and such a right is difficult to imagine today. Indeed, the emphasis is now on ensuring that our laws adequately reflect our stance against domestic violence.

2. The main statute governing the law on domestic violence in Singapore is the *Women's Charter*.² The provisions relating to family violence, *viz*, sections 64 to 67, were last amended in 1996.³ The other statutes that cover specific aspects of domestic violence include the *Penal Code*⁴ and the *Children and Young Persons Act*.⁵

3. The existing law, while embodying essentials such as protection orders and generic criminal sanctions, should be supplemented to address the problem more robustly.

4. As such, the general thrust of the recommendations in this essay is to allow for earlier, more proactive, and more extensive intervention by the State. This is to stem violence before it escalates, and to prevent further violence from occurring.

5. Additionally, underlying the evaluation of all policy options are two key considerations: compatibility with other existing legislation, and whether the policy objectives can be achieved through non-legislative means.

6. Finally, this essay takes a comprehensive and broad-brush view of the major issues that pertain to domestic violence law. The recommendations therefore span several areas of the law to achieve policy intervention at various levels.

¹ Deborah Epstein, "Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System" (1999) 11 *Yale J.L. & Feminism* 3 at 9; Beirne Stedman, "Right of Husband to Chastise Wife" (1917) 3 *Va.La.Reg.* 241 at 243.

² Cap. 353, 2009 Rev Ed.

³ Bill No. 30 of 1996.

⁴ Cap. 224, 2008 Rev Ed.

⁵ Cap. 38, 2001 Rev Ed.

II. DEFINITIONAL ISSUES

7. This section examines the two definitions central to the law of domestic violence, *viz*, “family member” and “family violence”. As they form the premises for protection orders, and potentially civil and criminal liability, defining these terms with great precision to reflect the policy intent is of utmost importance.

A. “Family member”

(1) Current definition

8. “Family member” is defined in the *Women’s Charter* to mean, *inter alia*, spouses and former spouses, children, parents, and siblings.⁶ This definition is generally satisfactory. Nonetheless, it is worth considering whether “family member” should encompass carers and cohabiting couples.

(2) Carers

9. Carers include domestic workers and informal caregivers. They are vulnerable to abuse,⁷ but currently lack recourse to protection orders. Several jurisdictions such as New South Wales⁸ and Northern Territory⁹ include carers, whether paid or unpaid, in the ambit of their domestic violence laws.

10. During the Ministry of Health Committee of Supply debate this year, the Government signalled its intention to provide greater support to caregivers so as to improve home-based care and ageing-in-place for the elderly.¹⁰ In consonance with our national imperative to encourage care-giving and to be a more caring society,¹¹ the inclusion of carers is an apt way of demonstrating this commitment.

⁶ *Women’s Charter*, s 64.

⁷ *ADF v PP* [2010] 1 SLR 874 at [55].

⁸ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 5(f).

⁹ *Domestic and Family Violence Act 2007* (NT), s 9(g).

¹⁰ *Sing. Parliamentary Debates*, vol. 91 (12 March 2014) (Senior Minister of State for Health, Ms. Amy Khor).

¹¹ Caryn Yeo, “A ‘Caring Society’ must provide more for those with less: Government”, *Channel News Asia* (29 May 2014) <<http://www.channelnewsasia.com/news/singapore/a-caring-society-must/1113286.html>>.

(3) *Cohabiting couples*

11. Unmarried cohabiting couples, whether homosexual or heterosexual, are covered in the domestic violence legislation of most other jurisdictions including Hong Kong.¹² Indeed, some have suggested that this apparent lacuna in Singapore law be rectified.¹³

12. However, intrinsic to the question of whether unmarried couples who cohabit consensually should be availed of protection orders and are hence deserving of protection is whether such cohabitation should be recognised and implicitly endorsed by the law.

13. Singaporeans' attitudes are rather conservative in this respect. A survey conducted by the Institute of Policy Studies in 2013 found that 44.3% of respondents considered living with a partner before marriage wrong, and 78.2% were against homosexuality.¹⁴

14. Providing cohabiting couples with recourse to protection orders could be perceived as subtle endorsement by the State despite the general disapproval of Singaporeans. Therefore, until there is a marked shift in perspectives, they should not be included in the definition of "family member".

B. "Family violence"

(1) *Current definition*

15. "Family violence", as defined in section 64 of the *Women's Charter*, appears to place more emphasis on the physical aspects of abuse, such as "hurt" and "restrain(t)".

16. This is, however, too narrow in the present context as significant psychological and emotional torment can be inflicted even without physically hurting the victim or placing him in fear of physical hurt.¹⁵ The following sections discuss whether sexual abuse, emotional and psychological abuse, coercive control, and financial abuse should be incorporated into the definition.

¹² *Domestic and Cohabitation Relationships Violence Ordinance* (HK), s 2(1)(a).

¹³ Radha Basu, "Protecting more from domestic violence" *The Straits Times* (24 June 2012).

¹⁴ Institute of Policy Studies, "Survey on Race, Religion and Language" (2014).

¹⁵ Lynne Harne and Jill Radford, *Tackling Domestic Violence: Theories, Policies and Practice* (Maidenhead, England: Open University Press, 2008) at page 5.

(2) *Sexual abuse*

17. Several representors had suggested to the Select Committee on the 1996 Women's Charter (Amendment) Bill ("the Committee") to provide specifically for sexual abuse in the definition of "family violence".¹⁶ The Committee rejected this suggestion as it opined that sexual misconduct between married couples was difficult to ascertain.¹⁷ As for forced sex between estranged couples or between family members, the Committee remarked that subsection (d) of the current definition is sufficient to cover such conduct.¹⁸

18. Nonetheless, it is submitted that for greater clarity in legislation, sexual abuse should be expressly provided for if it is intended to be covered under the definition.

19. As for married couples, as the Government's stance is that the norms and values in society currently do not reflect a need to criminalise marital rape,¹⁹ save for instances where there is evidence of a breakdown in the marital relationship,²⁰ an apparent inconsistency would arise if married couples were availed of protection orders on the ground of sexual abuse. Hence, an exception for married couples should be made until the position on marital rape changes.

(3) *Emotional and psychological abuse*

20. Subsection (d) of the current definition addresses emotional and psychological abuse by providing for "continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member".²¹

21. This should be broadened to include conduct such as stalking, and placing the victim in fear of provocation or violence – conduct that is covered under the *Protection from Harassment Act 2014*²² ("PHA"). Incorporating these types of conduct into domestic violence law brings both areas of the law into parity with one another. This reduces the risk of arbitrage between the PHA and the *Women's Charter* in obtaining protection orders.

¹⁶ *Report of the Select Committee on the Women's Charter (Amendment) Bill* (15 August 1996) at para 5.3.5.

¹⁷ *Ibid.* at para 5.3.6.

¹⁸ *Ibid.* at para 5.3.7.

¹⁹ *Sing. Parliamentary Debates*, vol. 90 (4 February 2013) (, Second Minister for Home Affairs, Mr. S Iswaran).

²⁰ *Penal Code*, ss 375(4) and 376A(5),.

²¹ *Women's Charter*, s 64,.

²² Act No. 17 of 2014.

(4) *Coercive control*

22. The new cross-governmental definition of “domestic violence” in the United Kingdom (“UK”) includes “coercive control” as a form of violence.²³ The reasons for its inclusion are, *inter alia*, the need to highlight the deliberate subordination and suppression of the freedom of family members as forms of domestic violence.²⁴

23. Although there is merit in these arguments, “coercive control” lacks precision as a definition, and may give rise to ill-defined and indeterminate liability. Furthermore, the conduct it seeks to cover would be adequately dealt with if the recommendation on emotional and psychological abuse is adopted.

(5) *Financial abuse*

24. Based on the legislation adopted in other jurisdictions, financial abuse, in broad terms, relates to conduct such as coercing a person to relinquish control over assets or income,²⁵ preventing a person from accessing joint financial assets for the purpose of meeting normal household expenses,²⁶ or disposing of a person’s property without his or her consent.²⁷

25. The jurisdictions differ on whether intention is required. In Victoria²⁸ and Northern Territory,²⁹ for instance, it is sufficient that the conduct has the effect of coercing a person to relinquish control over assets or income objectively; whereas in Tasmania, an additional requirement of the defendant’s intention to unreasonably control or intimidate the family member is required.³⁰

26. Despite the lack of physical hurt, financial abuse is indeed a form of deliberate deprivation,³¹ which can be seen as psychological violence.³² To aggravate matters, the elderly

²³ UK, Home Affairs Section, *Domestic Violence* (Standard Note, SN/HA/6337, 23 May 2014) at page 4.

²⁴ UK, Home Office, *Cross-Government Definition of Domestic Violence – A Consultation* (2012) at page 17.

²⁵ See, eg, *Family Abuse Intervention Act* (Nunavut), s 3(1)(g).

²⁶ See, eg, *Domestic Violence Act 1995* (NZ), s 3(2)(c)(iva).

²⁷ See, eg, NT, *supra* note 9, s 8(b).

²⁸ *Family Violence Protection Act 2008* (Vic), s 6.

²⁹ NT, *supra* note 9, s 8.

³⁰ *Family Violence Act 2004* (Tas), s 8.

³¹ Adams *et al*, “Development of the Scale of Economic Abuse”, (2008) 14 *Violence Against Women* 563 at 567.

³² *Ibid.* at 568.

are particularly vulnerable to financial abuse,³³ with the incidence of such abuse likely to increase³⁴ notwithstanding significant under-reporting.³⁵

27. Financial abuse should therefore be recognised as a form of domestic violence. Nevertheless, to ensure that liability under the definition is well-scoped and not indeterminate, a requirement of intention could be added, similar to Tasmania.

III. PROTECTION ORDERS

28. Where domestic violence has occurred or is likely to occur, an imminent need to protect victims and potential victims arises.

A. *The present system*

29. Under the *Women's Charter*, the court may grant a protection order when it is satisfied, on a balance of probabilities, that two requirements are met.³⁶ First, family violence has been, or is likely to be, committed against a family member. Second, the order is necessary for the protection of the family member. The application may be made by, *inter alia*, the family member concerned, or, where the family member is a child, the child's guardian.³⁷

30. Upon such an application, if the court is satisfied that there is imminent danger of family violence being committed, the court may make the protection order in an expedited manner.³⁸ An expedited protection order lasts for up to 28 days,³⁹ though the court may extend its duration.⁴⁰ There is no stipulated maximum duration for non-expedited protection orders.

31. The wilful contravention of either protection order is an arrestable offence,⁴¹ with the possibility of a fine and imprisonment.⁴²

B. *Shortfalls of the present system*

³³ Chan Wing Cheong, "Protect the elderly from financial abuse" *The Straits Times* (29 August 2012).

³⁴ *Ibid.*

³⁵ Tang Hang Wu, "The Prevention of Financial Elder Abuse" *Singapore Law Gazette* (May 2010).

³⁶ *Women's Charter*, s 65(1).

³⁷ *Ibid.*, s 65(2) read with (10).

³⁸ *Ibid.*, s 66(1).

³⁹ *Ibid.*, s 66(2).

⁴⁰ *Ibid.*, s 66(3).

⁴¹ *Ibid.*, s 65(11).

⁴² *Ibid.*, s 65(8).

32. First, a protection order can only be granted when an application is made by the family member concerned, unless the circumstances in section 65(10) are present. This is not ideal as victims of domestic violence may be averse to taking action, usually out of fear or sheer reluctance to be seen as implicating a family member.⁴³

33. The present system is largely reactive in nature. It is dependent upon the victim taking the first step in making the initial application to court. This is possibly due to a globally-held perception in the past that domestic violence is a family affair, which the State should not bother itself with.⁴⁴

34. For instance, currently, when the police are notified of domestic violence cases involving non-arrestable offences, they can refer the victim for counselling and explain the application process for a protection order.⁴⁵ However, if the victim chooses not to take action, he or she would be at perennial risk of domestic violence.

35. To be less passive, the system could empower the authorities to intervene more proactively to avert further violence, regardless of whether the victim takes action. Hence, the recommendations in the next section are aimed at enabling the State to intervene earlier in cases of domestic violence, while striking a reasonable balance with the privacy interests inherent in family matters.

C. Earlier intervention

36. Pursuant to these objectives, intervention can begin even before a formal application for a protection order is made to court. The approaches adopted in other jurisdictions can broadly be classified into two categories, which are presented as options here.

(1) First option: obligation on the police to investigate

⁴³ Felson *et al*, “The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police” (2005) 67 *J.Marriage & Fam.* 597 at 597.

⁴⁴ Epstein, *supra* note 1 at 9.

⁴⁵ *Sing. Parliamentary Debates*, vol. 66 (2 May 1996) at cols. 93–94 (Minister for Community Development, Mr. Abdullah Tarmugi).

37. An obligation on the police to investigate any matter reasonably suspected to be domestic violence can be legislated, as in Western Australia⁴⁶ and, until recently, Queensland.⁴⁷ In the latter, the police were also authorised to apply to court for protection orders.⁴⁸

(2) *Second option: police power to issue quasi-protection orders*

38. Another option is to empower the police to issue binding, albeit temporary, orders, which are largely similar in effect to court-issued protection orders.

39. In the UK, under the *Crime and Security Act 2010* (“UKCSA”), the police can issue a domestic violence protection notice (“DVPN”) if it has reasonable grounds for believing that firstly, a person has been violent or has threatened violence towards a family member,⁴⁹ and secondly, a DVPN is necessary to protect the latter from violence.⁵⁰

40. The DVPN must be issued by an officer not below the rank of superintendent,⁵¹ and may contain provisions commonly found in protection orders, such as requiring the suspected perpetrator to leave specified premises.⁵²

41. Once a DVPN is issued, an application for a domestic violence protection order (“DVPO”) must be made to court⁵³ and heard within 48 hours.⁵⁴ The DVPN ceases to have effect when the court determines the outcome of the application.⁵⁵ Suspected victims do not have to consent to the issuing of a DVPN or DVPO.⁵⁶

42. One major difference between the police-issued DVPN and a DVPO is the effect of a breach. The breach of a DVPN gives rise to a power of arrest without warrant.⁵⁷ Under the UKCSA, that person will be held in custody pending the court hearing of the DVPO

⁴⁶ *Restraining Orders Act 1997* (WA), s 62A.

⁴⁷ *Domestic and Family Violence Protection Act 1989* (Qld), s 67(1).

⁴⁸ *Ibid.* at s 67(2)(c).

⁴⁹ UKCSA, s 24(2)(a).

⁵⁰ *Ibid.*, s 24(2)(b).

⁵¹ *Ibid.*, s 24(1).

⁵² *Ibid.*, s 24(8).

⁵³ *Ibid.*, s 27(1) read with (2).

⁵⁴ *Ibid.*, s 27(3).

⁵⁵ *Ibid.*, s 25(1)(d).

⁵⁶ *Ibid.*, s 24(5).

⁵⁷ *Ibid.*, s 25(1)(b).

application.⁵⁸ In contrast, the breach of a DVPO is contempt of court and may result in a fine and imprisonment.⁵⁹

43. A similar approach is adopted in Tasmania,⁶⁰ Victoria,⁶¹ and most recently in Queensland.⁶²

(3) *Evaluation*

44. The second option is preferred for several reasons. First, it is not necessary to legislate a duty to investigate as under the *Criminal Procedure Code*⁶³ (“CPC”), the police already have a default obligation to investigate all information relating to offences. Reasons must be furnished if a decision is made not to investigate.⁶⁴

45. The main question is hence whether the police should merely be authorised to apply to court for protection orders as in Queensland previously, or be empowered to issue binding orders. With the aim of earlier intervention to provide swifter response and prevent further violence from occurring, the second option is more efficacious as police orders would have immediate effect. Merely authorising the police to apply to court for protection orders still results in delays as more administrative steps are needed; this is not a significant improvement from our present position.

46. While the second option is advantageous in its immediacy, several risks present. First, the concern of abuse of power by the police is pertinent as these orders are binding and would invariably have repercussions on the domestic affairs of the family.

47. However, it bears repeating that police orders under the second option are temporary. The *UKCSA*, for example, provides that the DVPN ceases to have effect when the outcome of the protection order application is determined. An additional safeguard is the seniority of the officer

⁵⁸ *Ibid.*, s 26(1).

⁵⁹ *Magistrates' Court Act 1980* (UK), s 63.

⁶⁰ Tas, *supra* note 30 at s 14.

⁶¹ Vic, *supra* note 28 at ss 24–41.

⁶² *Domestic and Family Violence Protection Act 2012* (Qld), s 101.

⁶³ Cap. 68, 2012 Rev. Ed.

⁶⁴ *CPC*, s 16(5).

issuing the police order, which can be legislated. Third, with this being the exercise of public power by the police, the decisions made would be judicially reviewable in court.⁶⁵

48. The second major concern is that it is prejudicial to issue such police orders and to assign liability before the facts are investigated fully and the defendant given the opportunity to be heard. A similar concern could arguably be raised as regards expedited protection orders in our present system, which can be made even if the summons had not been served on the respondent.⁶⁶

49. Yet, in practice, the expedited order is kept within “fair limits”⁶⁷ through express provisions on when it takes effect,⁶⁸ for example. These mechanisms are intended to provide emergency protection to victims, and should not be perceived as an assignment of liability.

50. Hence, the second option appears to be more effective in achieving the objective of swift response for the prevention of violence. Although not without risks, they can be mitigated through institutional safeguards as described above.

D. Proposed framework for protection orders

51. Adopting the second option, this section proposes an integrated approach for the law on domestic violence protection orders in Singapore.

(1) Initial report and classification

52. The process begins when a possible case of domestic violence comes to the attention of the police. Based on the information received, the police can classify the case into one of four categories: arrestable criminal offence, non-arrestable criminal offence, no criminal offence but domestic violence present,⁶⁹ and no criminal offence and no domestic violence present.

53. For the fourth category, the police will not take any further legal action. They may nonetheless refer these cases to voluntary welfare organisations.

⁶⁵ *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [93].

⁶⁶ *Women’s Charter*, s 66(1)(a).

⁶⁷ Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2012) at p141.

⁶⁸ *Women’s Charter*, s 66(2).

⁶⁹ This is on the assumption that not all forms of domestic violence are criminal offences (see section V).

54. For arrestable offences, the police can arrest the alleged perpetrator immediately. He or she would be charged in court within 48 hours as required under article 9(4) of the *Constitution of the Republic of Singapore*.⁷⁰ Thereafter, if the accused is granted bail, the police or court can exercise discretion under section 94(1) of the *CPC* to impose bail conditions restraining him or her from using family violence against the suspected victims, thereby ensuring the latter's protection.

(2) *Family violence police notice*

55. For the second and third categories, the police will issue a family violence police notice ("FVPN") immediately. An FVPN should be issued by default unless one or more pre-determined extenuating circumstances are present. This would reduce administrative delays and the amount of time needed for decision-making as time is of the essence in protecting possible victims. As with protection orders, an FVPN may contain, *inter alia*, provisions granting exclusive occupation to protected persons.

56. For non-arrestable offences, the FVPN will last until the accused person is arrested. The procedure thereafter is the same as for arrestable offences.

57. For cases with domestic violence present but no criminal offence, an application for a protection order must be made to court when an FVPN is issued. This application must be heard within 48 hours. The FVPN will have effect until the court issues an expedited protection order or the application for the protection order is determined, whichever is earlier.

58. The breach of an FVPN will give rise to a power of arrest without warrant. The suspect will be taken into custody until he or she is charged in court for the non-arrestable offence in question, or the application for the protection order is heard in court for non-criminal domestic violence cases.

⁷⁰ 1999 Reprint.

(3) *Protection orders*

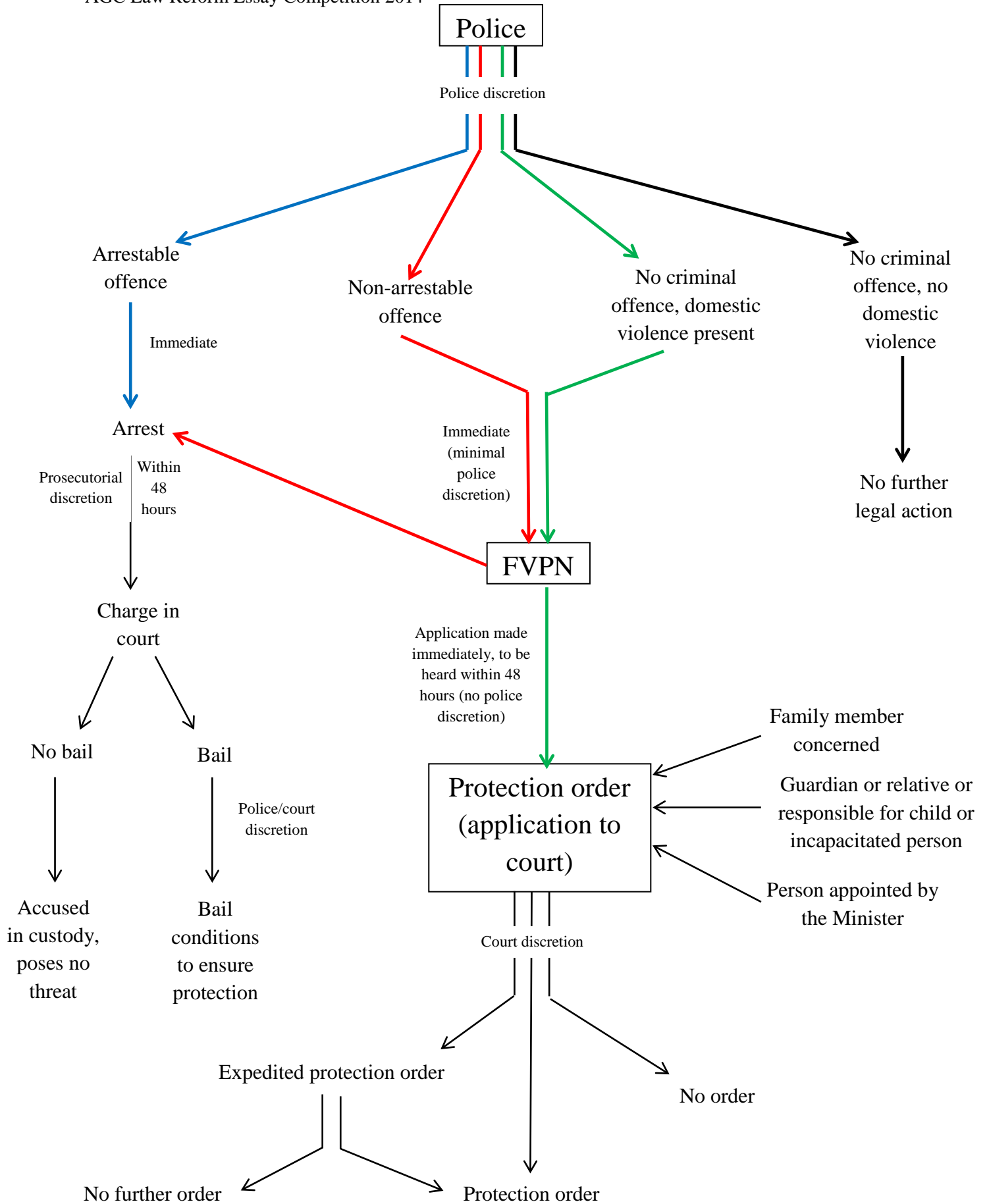
59. Apart from these proposed changes, the current provisions in the *Women's Charter* on who can apply for a protection order,⁷¹ the types of orders the court may make,⁷² and the consequences of a breach⁷³ should remain.

60. The diagram below illustrates the proposed framework.

⁷¹ *Women's Charter*, s 65(2) read with (10).

⁷² *Ibid.*, s 65(5).

⁷³ *Ibid.*, s 65(8).



E. Compatibility with existing legislation

61. The *PHA* provides for expedited protection orders⁷⁴ and protection orders⁷⁵ in relation to conduct such as causing harassment, alarm, or distress, causing fear or provocation of violence, or stalking. Nonetheless, the risk of arbitrage with the *PHA* is low. This is because while the *PHA* applies generally and is not confined to particular types of relationships, it concerns conduct that is more specific in nature, which domestic violence cases are usually not confined to.

IV. CIVIL LIABILITY

62. Under the proposed definition of “family violence”, certain forms of violence such as assault and battery are established causes of action in tort law. Others, such as financial abuse, currently do not give rise to civil liability *per se*. This creates undesirable inconsistencies within the law of domestic violence itself. In addition, it would be remarkably odd if the law recognised certain forms of conduct as behaviour worth protecting victims from through protection orders, yet not provide victims with the avenues to seek compensation for damage sustained.

63. To address this, a statutory tort in respect of “family violence” should be created. Analogous to section 11 of the *PHA*, this would give victims a right to bring an action for damages against a person who has committed any form of domestic violence.

64. Nevertheless, damages should be quantified by the courts in accordance with existing common law principles. As the Law Minister highlighted in his Second Reading speech for the *PHA*, there is no need to codify what is long-established law that the courts have developed.⁷⁶

V. CRIMINAL LIABILITY

65. In Singapore, perpetrators of “family violence” under the proposed definition could potentially be guilty of an offence under one or more statutes including the *Penal Code*, *PHA*, *Women’s Charter*, and *Children and Young Persons Act*. The question is whether “family violence” should constitute a standalone criminal offence.

⁷⁴ *PHA*, s 13.

⁷⁵ *Ibid.*, s 12.

⁷⁶ *Sing. Parliamentary Debates*, vol. 91 (13 March 2014) (Minister for Law. Mr. K Shanmugam).

66. The jurisdictions vary in their stances. The UK, Australia, Canada, and Hong Kong do not have standalone criminal offences for domestic violence. This is in direct contrast to the United States, where approximately 38 states have offences relating specifically to domestic violence in their criminal and penal codes.

67. It has been argued that standalone offences are warranted due to the personal relationship between the victim and the offender.⁷⁷ However, this can be addressed through aggravated sentencing, for instance, and there is no need to legislate a standalone offence for this purpose.

68. Furthermore, creating such a new offence would result in duplicitous offences across multiple statutes. This makes the scope of one's liability less clear, and would be contrary to the rule of law. Differences in the penalties prescribed may also be difficult to justify in cases where the familial relationship is not strong.

VI. MISCELLANEOUS ISSUES

69. This section examines three miscellaneous issues: mandatory reporting, disclosure, and the propensity rule in evidence law.

A. *Mandatory reporting*

70. The mandatory reporting of suspected domestic violence cases furthers the objectives of earlier and more proactive state intervention. Several jurisdictions, including California⁷⁸ and Newfoundland and Labrador,⁷⁹ have legislated variations of such a duty to report.

71. The first question is who should be bound. In California, only healthcare practitioners are bound,⁸⁰ whereas in Newfoundland and Labrador, other professionals, including solicitors, teachers, and social workers, have a legal obligation to report.⁸¹ It is submitted that as healthcare practitioners are better-placed to ascertain the nature of injuries with greater precision and scientific certainty, the Californian position is preferred.

⁷⁷ Jocelyn Coupal and Mark Myhre, "Evidentiary Issues in Domestic Violence Trials" (Continuing Legal Education Society of British Columbia, May 2011) at page 1.1.1 <<http://www.cle.bc.ca/PracticePoints/FAM/11-DomesticViolenceTrials.pdf>>.

⁷⁸ *Penal Code* (California), §§ 11160–11163.2.

⁷⁹ *Child, Youth and Family Services Act* (Nfld & Lab), s 15.

⁸⁰ *Supra* note 78, §11160(a).

⁸¹ *Supra* note 79, s 15(5).

72. Assuming only healthcare practitioners are bound, the risks of such an approach include domestic violence victims being deterred from seeking medical treatment, and a lack of patient autonomy as the patient's consent is not required.

73. To mitigate these risks, one possible formulation of the duty is to require reporting only where the injury for which treatment is sought is suspected to be from domestic violence. If, however, treatment is sought for an unrelated ailment, and upon examination, the healthcare practitioner observes injuries that are suspected to be from domestic violence, reporting is not mandatory and the patient's consent would be required. While this requires the exercise of discretion on the healthcare practitioner's part, it strikes a reasonable compromise between the policy objectives and risks.

B. Disclosure

74. The domestic violence disclosure scheme, which provides a framework for the police to disclose to individuals details of their partners' abusive pasts, was recently introduced in the UK. There are two processes under this framework – the “right to ask” and the “right to know”. The former applies when a member of the public directly contacts the police about a partner. The latter applies when the police or its partner agencies act on information that an individual is at risk of harm from his or her partner.

75. The UK police already had common law powers to disclose information relating to previous convictions to the public.⁸² Hence, this disclosure framework was implemented within existing legal powers without enacting or amending legislation.

76. The “right to know” exists in Singapore, albeit in a limited form. In 2009, it was reported that the Community Court identifies abusers who are likely to return to violence and alerts families before they are released from prison.⁸³

77. The “right to ask”, in contrast, would presumably apply to engaged or newly-wed couples. The risks of recognising such a right are first, the obvious privacy concerns if this power

⁸² *R v Local Authority in the Midlands* [2000] 1 FLR 612, affirming *Glasbrook Brothers Ltd v Glamorgan County Council* [1925] AC 270 at 277.

⁸³ Theresa Tan, “More help for victims of family violence” *The Straits Times* (13 November 2009).

is abused. Second, owing to the gross under-reporting of domestic violence cases,⁸⁴ individuals may develop a false sense of security if there is nothing to disclose.⁸⁵ Nonetheless, a pilot can be conducted to determine the effectiveness of such disclosures in averting domestic violence.

78. Finally, unlike the UK, the police in Singapore do not have explicit common law powers of disclosure. Given the inherent privacy concerns, a “right to ask” should be thoroughly debated in Parliament and legislated.

C. Propensity rule in domestic violence trials

79. The general rule in Singapore is that similar fact evidence is not admissible where the main purpose of adducing the past similar misconduct is to prove the defendant’s propensity to act in a particular manner, which is in turn used to prove the present allegations against him.⁸⁶ The *raison d’être* for the rule was the risk of prejudice to the defendant in trials by jury, even where the evidence was relevant.⁸⁷

80. While the likelihood of prejudice is germane, especially in criminal trials, evidence of prior bad acts is highly probative in domestic violence cases because of its cyclical nature.⁸⁸ Typically a pattern of behaviour rather than an isolated incident, domestic violence episodes frequently escalate in severity.⁸⁹ There are usually also few witnesses willing to testify during the trial.⁹⁰

81. Hence, California⁹¹ and Alaska⁹² have specifically legislated for the admissibility of prior bad act evidence to prove propensity in domestic violence cases. In contrast, under a common

⁸⁴ 55–95% of women who are physically abused by their partners never seek official help: World Health Organisation, *Multi-Country Study on Women’s Health and Domestic Violence against Women (Summary Report)* (2005) at page 19.

⁸⁵ Olivia Goldhill “Clare’s Law: is it just a sticking plaster on a far more serious problem?” *Telegraph* (25 November 2013) <<http://www.telegraph.co.uk/women/womens-politics/10473081/Clares-Law-is-it-just-a-sticking-plaster-on-a-far-more-serious-problem.html>>.

⁸⁶ See, eg, *Lee Kwang Peng v PP* [1997] 2SLR(R) 569 at [35].

⁸⁷ Ho Hock Lai, “An Introduction to Similar Fact Evidence” (1998) 19 Sing.L.R. 166 at 167.

⁸⁸ *Supra* note 15 at page 65.

⁸⁹ Donald G. Dutton, *Rethinking Domestic Violence* (UBC Press, 2006) at page 195.

⁹⁰ UK, National Policing Improvement Agency, *Guidance on Investigating Domestic Abuse* (2008) at page 26.

⁹¹ *Evidence Code* (California), §1109(a)(1).

⁹² *Rules of Evidence* (Alaska), §404(b)(4).

law approach, the Canadian courts have, in the past 15 to 20 years, softened the propensity rule in domestic violence cases.⁹³

82. In Singapore, the risk of prejudice is diminished as judges are more competent than jurors to handle prejudicial evidence.⁹⁴ Therefore, an exception to the propensity rule should be made for domestic violence cases. This can be legislated apropos of the statutory tort if that recommendation is adopted. Legislation would also provide more clarity to an area of the law that has been described as being fraught with difficulties.⁹⁵

VII. CONCLUSION

83. The time is ripe for the law on domestic violence in Singapore to be updated to address the problem more comprehensively and robustly. Policy intervention should take place at several levels, and hence the above recommendations span various areas of the law.

84. Yet, even a comprehensive legal framework would need to be complemented by the “many helping hands” approach,⁹⁶ with measures such as creating a strong support network for victims and ensuring the proper rehabilitation of offenders.

⁹³ *Supra* note 77 at page 1.1.4; see also, *R v SB*, 1996 Ont.S.C. 7978; *R v Peterffy* 2000 BCCA 132.

⁹⁴ *Wong Kim Poh v PP* [1992] 1 SLR(R) 13 at [14]; *Tan Chee Kieng v PP* [1994] 2 SLR(R) 577 at [8].

⁹⁵ Chin Tet Yung, “Remaking the Evidence Code: Search for Values” (2009) 21 SAclJ 52 at 54.

⁹⁶ MCYS, *Protecting Families from Violence* (2009) at page 7.