

Imperfect Protection

by Elizabeth Cheung

After getting out from jail in 2008, former private tutor Lam Tung-chun changed his name and started living under a new identity. This time he opened his own tutorial centre, so that he could continue giving tutorials to young girls. But what he wanted to do was molest the girls when he was alone with them.

Mr Lam had three previous convictions for indecent assault, and had been jailed for 30 months. Rather than getting rid of paedophilia, a sexual desire directed towards children, Mr Lam chose a job where he had easy access to his prey right after he was released.

“The government should consider whether parents are entitled to know the backgrounds of tutorial school teachers,” said Justice Louis Tong Po-sun, who sentenced Mr Lam to four years and eight months on nine counts of indecent assault.

Justice Tong was not the first judge to call on the government to look into what critics say – a legislative gap on the problem of repeat sex offenders.

Right now, there is no regular mechanism for schools and other employers who run organisations working with children to check whether a prospective employee has a past conviction for sexual offences against minors.

To address the gap, the Law Reform Commission set up a panel that has been looking at the possibility of setting up a Sex Offender Register since 2006.

Last year, the Commission issued an interim proposal on a Sex Offender Register which aimed at protecting children from serial child molesters.

Under the proposed measures, employers engaged in child-related work or work relating to mentally-incapacitated persons (MIPs), would be able to check whether a prospective

employee has committed a sexual offence before.

But they would only be able to do so with the consent of the applicant. Without legislative backing, the current version of the scheme would operate on a voluntary basis. Employers would not be obliged to carry out any checks.

“They don’t know how to speak when they have been harmed.”

Still, Ho Hau-sim, headmistress of HHCKLA Buddhist Po Kwong School, a school for mildly and moderately mentally disabled students, believes that a sex offender register could help alert schools and protect MIPs.

Ms Ho said mentally disabled people trust people easily. They are

vulnerable to being taken advantage of by their caretakers.

“They don’t know how to speak when they have been harmed,” the headmistress added.

Although Ms Ho said the school would not rule out employing applicants who had committed sex offences in the past, she believes that knowing more about an employee’s background could help the school’s management to be more careful in making job arrangements.

“There are some jobs that are not suitable for sex offenders, but there are lots of other jobs where workers do not have to work alone with children like IT technicians. In this case, we have less to worry about,” she said.

Ms Ho said the school relies on references from ex-employers, obtained with the consent of prospective employees. But it is hard to depend on others to be honest. “If they don’t tell us, we have no idea at all,” she said.

Although the interim proposals stipulate that employers must gain their employees’ consent before they can check their background, some groups say this is a “false choice” and a possible human rights violation.

The Society for Community Organisation (SOCO) raised just such a

concern in the consultation process for the proposals.

“Although the scheme is on a voluntary basis, when we put it into practice, applicants who reject to disclose their criminal history would very likely not be employed,” said Richard Tsoi Yiu-cheong, a SOCO Community Organiser.

“After the announcement of the register, applicants for related jobs are ‘forced’ to disclose their private information, it violates an individual’s right to privacy,” he said.

Also, he was worried the scheme would not stand up to legal challenges because under the proposal, it would be an administrative scheme rather than one backed up by legislation.

Mr Tsoi said that while sex offenders should not have an absolute right to privacy, any disclosure should base on reasonable grounds with the support of law. Mr Tsoi pointed out that in the United Kingdom,

“Applicants who rejected to disclose their criminal history would very likely not be employed.”

information about sex offenders could be disclosed on the basis of protecting children, but the disclosure is backed with legislation.

Employers in the UK would also have access to more details about a prospective employee. The disclosure not only includes any criminal conviction but also a rehabilitation progress report of the sex offender.

“In the UK, employers can evaluate (the employees) based on the reports provided. But Hong Kong employers would only

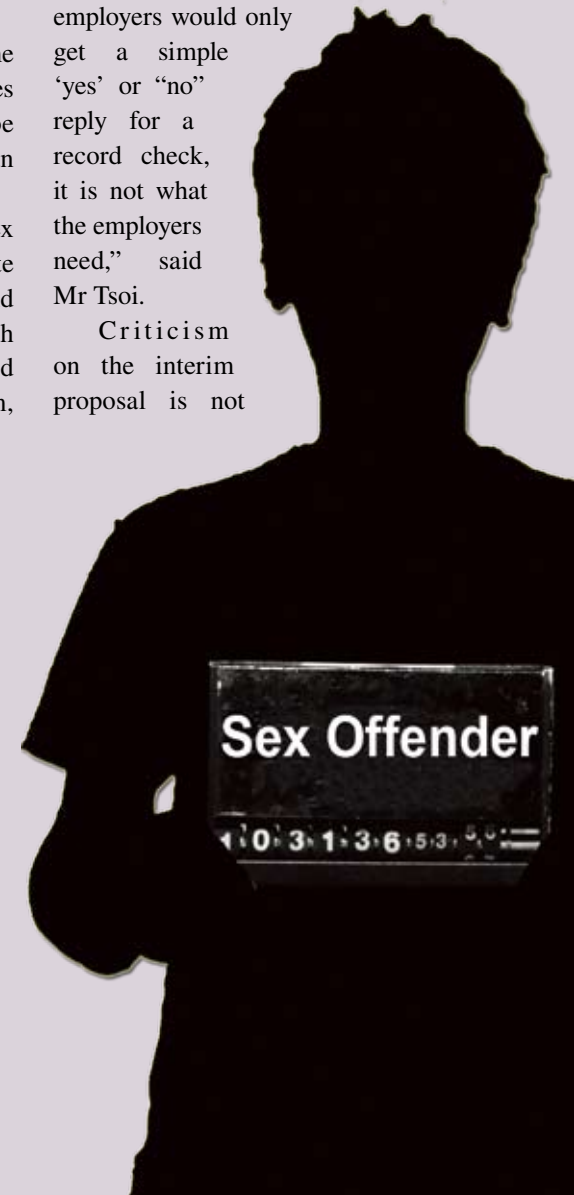
get a simple ‘yes’ or ‘no’ reply for a record check, it is not what the employers need,” said Mr Tsoi.

Criticism on the interim proposal is not



The proposed register allows employers in child-related services to check whether a prospective employee has committed a sexual offence before.

COURTESY OF HO HAU-SIM



“Sexual assault causes tremendous damage to the physical and mental health of children... Even one case would be too much.”

restricted to how details should be disclosed. Many groups have also expressed their concerns over what to include in the register.

Connie Chan Man-wai is a programme officer of Action for REACH OUT, an organisation working for the rights of female sex workers. She says the register includes offences that are not relevant to child molestation.

Among the sexual convictions that would be put on the register under the proposals is a section frequently used by the police to arrest sex worker. This would mean that a sex worker convicted for prostitution could be barred from working with children or those with mental disabilities. “How is a sex worker equal to a child molester?” asked Ms Chan.

The proposed Sex Offender Register would also include anyone convicted of

having consensual sex with girl under 16 and consensual anal sex with a male under 21. Yet, these offenders would not necessarily be paedophiles who are dangerous to children and MIPs.

Action for REACH OUT believes the register could be harmful to sex workers, without offering any real protection for children and MIPs.

Ms Chan said many sex workers in Hong Kong are middle-aged new immigrants. Due to financial difficulties, some of them work as part-time domestic helpers or kindergarten caretakers. If they are labelled as sex offenders, their livelihoods would be affected.

Meanwhile studies in other countries show that most victims of sexual offences are assaulted by people they know, such as relatives and friends, rather than strangers. Ms Chan said the register would not be able to prevent abuse from the most likely sources.

Professor Eric Cheung Tat-ming, a member of the Sub-committee on the Review of Sexual Offences, admitted the current version of the proposed register has limitations. But he said it is the constitutional duty of the government to protect children from sexual assault. He thinks the administrative scheme is an important step.

Professor Cheung, who teaches at the Faculty of Law in the University of Hong Kong, said Hong Kong lags far behind other countries in protecting children from sex offences. Repeated



SAM WONG


Connie Chan Man-wai, programme officer of Action for REACH OUT, says the register includes offences that are not relevant to child molestation.

cases of child molestation show there is an urgent need to set up a mechanism to protect children from sexual harassment.

“Sexual assault causes tremendous damage to the physical and mental health of children. It would have great impact on the development of the kids. Even one case would be too much,” said Professor Cheung.

The official relapse rate of sex offenders is six per cent according to the Correctional Services Department, but Professor Cheung said this has underestimated the real problem. The figure merely reflects the number of sex offenders who are caught and resented within three years of release.

“Sex offences are always underreported. We should be careful with the figures. If we extend (the observation period) to 10 or 20 years, the relapse would be much higher,” he said.

Professor Cheung agreed that just barring sex offenders from doing child-related work would not solve the problem. He said the committee would focus more on the rehabilitation of sex offenders in the second phase of its consultation. 



CHELSEA YU

Professor Eric Cheung Tat-ming, admits the currently proposed register has limitations.