

# REPORT ON PROPOSED LEGISLATION TO CURB STALKING

A Report of the Law Reform Committee  
of the Singapore Academy of Law

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# **REPORT ON THE PROPOSED LEGISLATION TO CURB STALKING**

## **1. BACKGROUND**

1.1 The Law Reform Committee (LRC) of the Singapore Academy of Law was prompted to initiate this project by the receipt of the comprehensive Report on Stalking prepared by the Hong Kong Law Reform Commission. The LRC requested Senior Counsel Mr Jimmy Yim, Drew and Napier, to prepare a paper on the subject in the context of Singapore. Mr Yim presented his paper entitled "Stalking: The Problem, The Existing Law and Recommendations" at a meeting of the Law Reform Committee (LRC) of the Singapore Academy of Law on 7 Apr 2001.

1.2 The Chairman requested the Law Reform and Revision Division (LRRD) of the Attorney-General's Chambers to assist Mr Yim in further developing paper. LRRD held consultations with Mr Yim and proceeded to draft legislation to curb stalking in Singapore.

1.3 A Report on the proposed legislation, which incorporates material from the paper and expands upon various salient issues raised in it, was presented to the LRC on 30 Jun 2001.

1.4 Following discussion by the LRC on 30 Jun 2001, extensive amendments were made to the draft Bill. A revised Bill was discussed the LRC on 28 Jul 2001 and some minor amendments proposed. The Report was revised and the Bill amended accordingly.

1.5 The LRC discussed the Bill and revised Report on 18 Aug 2001. Further amendments were made and the amended Bill and Report were circulated to the members of the LRC for final comments. The Bill and Report were finalised with minor amendments in November 2001.

## 2 STALKING AND ITS IMPACT ON THE VICTIM

2.1 Stalking is not so much a legal concept as a description of a course of conduct adopted by a person vis-à-vis another. Stalking is generally a label for a number of acts, which when taken individually may be legitimate. However, when such acts are repeated with unreasonable frequency, or conducted in an anti-social manner, the recipient of the unwanted attention might feel that his privacy has been violated, or be put in fear of the stalker.

2.2 Various attempts to define “stalking” have been made. One accepted definition is that it is “the pursuit by one person of what appears to be a campaign of harassment or molestation of another, usually with an undertone of sexual attraction or infatuation.”<sup>1</sup> The US Department of Justice describes stalking as “a distinctive form of criminal activity composed of a series of actions (rather than a single act) that taken individually might constitute legal behaviour.”<sup>2</sup> The Law Reform Commission of Hong Kong in its Report on Stalking stated that “the concept of ‘harassment’ is an adequate description of both the activities engaged in by stalkers and the impact which such behaviour would have on victims of stalking”<sup>3, 4</sup>.

2.3 A clearer picture emerges from considering the variety of methods used by stalkers, such as:

- (a) surveillance of the victim or her friends/family/ colleagues
- (b) phone calls, continual or made at unsocial hours
- (c) unwanted gifts
- (d) communications to the victim with alarming or distressing content
- (e) disclosure of personal information to strangers
- (f) libel or slander of the victim
- (g) threats against the victim or his/her family/friends/ colleagues

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<sup>1</sup> Wells, Celia. *Stalking: The Criminal Law Response*, [1997] Crim LR 463

<sup>2</sup> *Domestic Violence, Stalking and Antistalking Legislation*, Annual Report to Congress, March 1996)

<sup>3</sup> *Stalking*, The Law Reform Commission of Hong Kong Report, October 2000, at p.5

<sup>4</sup> While these definitions attempt to define “stalking” as a form of behaviour, most jurisdictions do not criminalise stalking per se without the further need to show specific intent on the part of the stalker to cause some form of injury (whether distress, alarm or actual harm) to the victim. Among the jurisdictions which only require constructive or actual knowledge as opposed to specific intent are the UK, New Zealand, Canada, Ireland and various states within the US and Australia.

2.4 Cyberstalkers, who pursue their activities on-line, adopt the following methods<sup>5</sup>:

- (a) sending of unwanted e-mails to the victim which are abusive threatening or obscene
- (b) electronic sabotage, in the form of sending numerous junk e-mail messages (known as "spamming") or sending computer viruses, or subscription of the victim to mailing lists resulting in hundreds of unwanted emails.
- (c) indirect forms of harassment, including impersonation of the victim, and sending abusive or fraudulent e-mails in the victim's name.

2.5 Motivations for stalking range from obsession, jealousy, anger and/or a desire to contact and control. See Annex C for a categorisation of stalkers.

2.6 Stalking is an antisocial activity which should be curbed because of its dire impact on the victim. Apart from experiencing emotional suffering, some victims suffer physical effects such as loss of sleep, weight loss, depression, anxiety, difficulty concentrating or even post traumatic stress disorder. Stalking may also give rise to an economic impact where the stalker attempts to disrupt the professional life of the victim, e.g. by defamation of the victim, or the targeting of colleagues or business of the victim, which may lead to the dismissal of the victim from his work. Although every stalking case is different, and the types and kinds of events may vary, the stalker's behaviour will generally escalate over time to become increasingly threatening and violent and, in more serious cases, stalking may be a prelude to a physical attack on the victim or even murder. Stalking in such cases should be dealt with as a means of crime prevention before it is too late.

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<sup>5</sup> Ellison, L. "Cyberstalking: Tackling Harassment on the Internet", 14<sup>th</sup> BILETA Conference, <http://www.bileta.ac.uk/99papers/ellison.html>

### **3 EXTENT OF THE STALKING PROBLEM**

#### **3.1 International Trends**

3.1.1 Between 1996 and 1997, there was a surge of legislative initiatives across the many common law jurisdictions e.g. the United Kingdom<sup>6</sup>, Australia<sup>7</sup> and many parts of the United States<sup>8</sup>. Various law reform bodies also published reports on the problem of stalking e.g. Hong Kong<sup>9</sup> and Canada<sup>10 11</sup>.

3.1.2 Quite apart from being solely a private or domestic malady between former intimates or family members<sup>12</sup>, stalking has become an increasing problem against public personalities e.g. media celebrities, politicians and judges<sup>13</sup>. The latter case can be further complicated by the fact that the identity of the stalker is sometimes unknown.

3.1.3 The rise of the Internet also affords more opportunities for stalkers as they can pursue their activities against the victim from the comfort and safety of their own home. The Internet affords anonymity to their actions. Further, there is greater access to personal information on the Internet which a stalker can use for his purposes.

#### **3.2 Singapore Position**

3.2.1 The same problems experienced overseas in relation to stalking are likely to arise in Singapore. Singapore has a modern, urban society. Internet usage is high. The growth of the media industry has led to greater publicity being given to media personalities. The increased prominence of media personalities, as well as other public personalities, in the public eye is likely to increase their vulnerability to the attention of stalkers.

3.2.2 Comprehensive statistical information on stalking in Singapore is unavailable since such data is not captured under existing criminal surveys.

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<sup>6</sup> Protection from Harassment Act 1997

<sup>7</sup> Amending legislation to Australian Capital Territory, Crimes Act 1900 s.34A; New South Wales, Crimes Act 1900, s.562AB; Northern Territory, Criminal Code Act 1997, s.189; South Australia, Criminal Law Consolidation Act 1935, s19AA; Queensland, Criminal Code, Chapter 33A; Victoria, Crimes Act 1958, s.21A.

<sup>8</sup> Model Anti-Stalking Code promulgated by the National Institute of Justice in 1996, which however does not represent the position in many states. See <<<http://www.ojp.usdoj.gov>>>. E.g. California, Penal Code 646.9 and others cited in Hong Kong Law Reform Commission Report on Stalking, Chapter 5.

<sup>9</sup> Law Reform Commission for Hong Kong, Report on Stalking, October 2000 which recommended the creation of an offence of harassment which is broadly similar to the UK Protection from Harassment Act 1997.

<sup>10</sup> Manitoba Law Reform Commission, Stalking (Report No 98, 1997)

<sup>11</sup> See Annex F on Foreign Laws on Stalking.

<sup>12</sup> Singapore already has enactments against family violence in the Women's Charter (Cap.353) section 66

<sup>13</sup> The paparazzi pose a separate problem which the proposed legislation is not aimed at solving.

Because of gaps in the law, many cases are not actionable until they have escalated in seriousness and, sometimes, culminate in the physical violence.

3.2.3 The recent prosecution of a number of cases involving stalking under existing laws has brought the issue of stalking into the media limelight.<sup>14</sup> Despite the optimism expressed in the newspaper reports, the prosecutions in these cases turned upon special facts in each case and do not suggest that prosecutions will be generally available in all cases of stalking. In the *Mailcity* case<sup>15</sup>, the defendant was convicted under the Computer Misuse Act because he had used the victim's e-mail account without authority; he could not have been prosecuted if he had used his own account or an account which he himself opened in the name of the victim. In another recent case<sup>16</sup>, it became possible to charge the defendant under section 13A(1) of the Miscellaneous Offences (Public Order and Nuisance) Act only after a relentless 2 year history of harassment, predicated by informal warnings by the police on 2 previous occasions. The charge of insulting the modesty of the victim under section 509 of the Penal Code was based on the fact that the defendant had left items with sexual connotations<sup>17</sup> at the victim's home. Minus these special factors, no prosecution could have been taken.

3.2.4 The Family Violence provisions in the Women's Charter have set a precedent for legislation to protect victims of harassment. The frequent use made of these provisions since their enactment is an indication of the need to make such provisions available to a wider range of victims.<sup>18</sup> However the limitation to "family members" makes the provision inaccessible to victims being menaced by ex-boyfriends or strangers.<sup>19</sup> Extension of such protection to harassment by strangers is a logical step; indeed it may seem inconsistent that the law currently affords greater protection against one's own family than against strangers.

3.2.5 The problem of intimidation and harassment by creditors and loansharks has frequently been highlighted in the press. The cases illustrate the kinds of tactics often used by stalkers and the distress caused to their victims. In the case of moneylenders, the Moneylenders Act (Cap.188)<sup>20</sup> applies with stiffer penalties than those under the proposed legislation.

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<sup>14</sup> See Annex D

<sup>15</sup> *PP v Lim Song Khee*, MA 256 of 2000, decided 9 Apr 2001.

<sup>16</sup> *PP v Seah Cheng Kim*, decided 31 May 2001.

<sup>17</sup> i.e Strawberry flavoured contraceptives, a book on "Motherhood", a sanitary pad, etc.

<sup>18</sup> See Annex E for statistics personal protection orders, exclusion orders and expedited orders.

<sup>19</sup> The victim in Seah's case (see Annex D) applied for a protection order under the Women's Charter but was refused on the ground that they were unrelated.

<sup>20</sup> Section 33. See Annex D, items D, E and F.



## 4 INADEQUACY OF EXISTING LAWS

4.1 There is no statute in Singapore that comprehensively addresses the issue of stalking or harassment. Available remedies in the statute book or at common law are piecemeal and were not fashioned to address the problem of stalking. When attempting to employ such remedies in a particular case of stalking, the case would often turn upon peripheral issues which have no actual bearing on the existence of stalking.<sup>21</sup>

4.2 Because stalking by its nature consists of a series of acts which taken individually do not constitute criminal behaviour, it is necessary to provide effective pre-emptive protection for the victim. Existing criminal provisions do not generally allow the police to take action in circumstances of stalking until criminal harm has been threatened or inflicted upon the victim. (See para. 4.6 – 4.8)

4.3 The Women's Charter provisions on family violence have seen much use since its enactment.<sup>22</sup> They have worked well in the context of domestic violence. However, stalking is not restricted to the domestic situation and the provisions do not apply where the stalking is by a stranger or non-family member. (See para. 4.5)

4.4 The common law is unsettled as to whether the tort of harassment exists. (See para. 4.10, especially conclusion in para 4.10.8). Other civil remedies are limited in their application. (See para. 4.19)

## EXISTING STATUTORY PROVISIONS

### 4.5 Women's Charter (Cap.353)

4.5.1 Section 65(1) empowers the court, upon satisfaction on a balance of probabilities that family violence has been committed or is likely to be committed against a family member and that it is necessary for the protection of the family member, to make a protection order restraining the person against whom the order is made from using family violence against the family member.

4.5.2 "Family violence" means, amongst other things, causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member.<sup>23</sup> This definition is probably sufficient to cover most instances of stalking in a domestic context.<sup>24</sup> However the limitation to "family members"

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<sup>21</sup> See para. 3.2.3 of Report.

<sup>22</sup> See Annex E for statistics.

<sup>23</sup> Definition in section 64(d). It does not however include any force lawfully used in self-defence, or by way of correction towards a child below 21 years of age.

<sup>24</sup> This was the intent of the clause: see Dr Kanwaljit Sooin's explanation to limb (d) in the Singapore Parliamentary Reports, Vol 65, 2 November 1995, column 205

makes the provision inaccessible to victims being menaced by ex-boyfriends or strangers.<sup>25</sup>

4.5.3 Protection Orders issued under the Women's Charter can be expedited so that they are available within a few days. The violation of an existing Protection Order is a *seizable* offence, which means that the police may arrest the offender without a warrant

#### **4.6 Miscellaneous Offences (Public Order and Nuisance) Act (Cap.184)**

4.6.1 Provisions targeting harassment as an independent criminal offence were incorporated into the Act in March 1996. Section 13A creates an offence of causing harassment, alarm or distress to another person with the use of "threatening, abusive or insulting words or behaviour" with such intent. Section 13B creates a pre-emptive offence where the conduct is carried on within the hearing or sight of any person *likely* to be caused harassment, alarm or distress.

4.6.2 However these provision are inadequate to deal with stalking because:

- (a) The offences are limited in application to words or behaviour which are threatening, abusive or insulting. Stalking can take on many forms and need not be "threatening, abusive or insulting" e.g. unwanted declarations of affection and the showering of unwanted gifts, or inundation by junk mail. The provisions are too narrow in scope to deal with stalking.<sup>26</sup>
- (b) There is no right to apply for a restraining order, which is a critical means to control a stalker's behaviour.
- (c) Contravention of sections 13A and 13B merely attract fines not exceeding \$5,000 and \$2,000, respectively. These penalties are ineffective to restrain or discourage serious and/or mentally disordered stalkers.

#### **4.7 Criminal Procedure Code (Cap.68): Breach of the Peace**

4.7.1 Section 73 of the Criminal Procedure Code permits a Magistrate's Court to require a person to execute a bond to keep the peace.

4.7.2 These binding over provisions are unlikely to assist in a stalking case because:

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<sup>25</sup> The victim in Seah's case (see Annex D) applied for a protection order under the Women's Charter but was refused on the ground that they were unrelated.

<sup>26</sup> In Seah's case (see Annex D) the prosecution under section 13A(1) became possible only after Seah persisted in the conduct, spanning 2 years, despite 2 previous warnings.

- (a) The definition of 'breach of the peace' seems to envision an actual illegal act.<sup>27</sup> Stalking, as discussed earlier, may consist of acts which individually may not be illegal.
- (b) The procedure for obtaining an order to bind over is unfamiliar to laymen and would be difficult and time-consuming as it involves laying a complaint, issuing a summons, service of the summons, and appearance of the complainant and the stalker before the magistrate, before the order can be made.
- (c) A binding over order is in any event unlikely to dissuade a serious or psychologically-disturbed stalker from continuing his course of conduct. In fact, the action may cause the stalker to escalate the seriousness of his actions.

#### 4.8 Penal Code (Cap.224)

4.8.1 Although the Penal Code contains the basic provisions which criminalise serious acts such as murder and rape, the Code can also be relevant when dealing with less serious behaviour commonly associated with stalking, such as:

- (a) assault (s351)
- (b) outrage of modesty (s354)
- (c) house trespass (s442)
- (d) defamation (s499)
- (e) criminal intimidation (s504)
- (f) criminal intimidation by anonymous email (s506)

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<sup>27</sup> *Jowitt's Dictionary of English Law*, 2<sup>nd</sup> Edition, 1997, Sweet & Maxwell Ltd, London defines "breach of peace" as follows:

"A violation of that quiet, peace and security to which a person is entitled under law. Breaches of the peace are offences against public order. They are commonly divided into actual, constructive and apprehended... Actual breaches of the peace include riotous and unlawful assemblies, riots, affrays, forcible entry and detainer, etc..."

Constructive breaches of the peace include the offences of sending challenges and provoking to fight, going armed in public without lawful occasion in such a manner as to alarm the public, etc. These are misdemeanours, punishable with imprisonment and other penalties... Insulting behaviour does not necessarily constitute a breach of the peace.

An apprehended breach of the peace is where on man threatens another with bodily injury, or with injury to his wife or children, or where a man goes about with unusual weapons or attendance, to the terror of the people, or publishes an aggravated libel of another. In such a case, the offender may be summoned before a justice of the peace, and bound over to keep the peace."

4.8.2 A further point to note in regard to the use of criminal law provisions is that section 95 of the Penal Code provides that slight harm cannot constitute an offence.<sup>28</sup> This would be relevant in prosecuting stalking cases under the existing criminal provisions as stalking often begins with a series of individually harmless acts.

## CIVIL REMEDIES

### 4.9 Existing Torts

4.9.1 Under the common law, there are a number of civil remedies available for the infringement of personal rights. Torts such as private nuisance, assault, battery and trespass on land may be relevant in stalking cases. However, their usefulness is limited as stalking cases will often not satisfy certain essential elements of these torts.

4.9.2 For instance, an essential element of the tort of private nuisance is that there must be a disruption to one's enjoyment of one's land<sup>29</sup>. A claim based on this tort would not succeed if the harassment does not occur when the victim is on his or her land. Similarly, for the tort of trespass to land to be founded, the stalker must have entered upon the victim's land and the courts cannot by injunction create an exclusion zone beyond the boundary.<sup>30</sup>

4.9.3 In the case of assault, the victim must have been put in fear of physical assault.<sup>31</sup> As has been pointed out, stalking often does not consist of any threat of physical assault. More so, the tort of battery cannot be made out unless there is physical contact.<sup>32</sup> False imprisonment requires a complete deprivation of liberty; mere partial interference in the freedom to take a particular route would not constitute false imprisonment.<sup>33</sup>

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<sup>28</sup> Penal Code, section 95, reads: "Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if the harm is so slight that no person of ordinary sense and temper would complain of such harm."

<sup>29</sup> See *Hunter v Canary Wharf* [1997] 2 All ER 426

<sup>30</sup> Clerk & Lindsell on Torts, 17<sup>th</sup> edition (1995), paras 17-01, 17-02. *Patel v Patel* [1988] 2 FLR 179 CA

<sup>31</sup> Clerk & Lindsell on Torts, 17<sup>th</sup> edition (1995), paras 12-12, 12-13

<sup>32</sup> Clerk & Lindsell on Torts, 17<sup>th</sup> edition (1995), para 12-05

<sup>33</sup> Clerk & Lindsell on Torts, 17<sup>th</sup> edition (1995), para 12-17. *Bird v Jones* [1845] 1QB 742

## 4.10 Tort of Harassment

4.10.1 It is unsettled whether there is a tort of harassment at common law.<sup>33a</sup>

4.10.2 In the English case of *Patel v Patel*<sup>34</sup>, Waterhouse J stated that “in the present state of the law there is no tort of harassment. The Court of Appeal upheld the decision of the judge at first instance to discharge a 50-yard exclusion order. In coming to this decision, May LJ stated:

“...it must be made clear, at any rate in my opinion, that in common-law actions based upon an alleged tort injunctions can only be an appropriate remedy where an actual tortious act has been or is likely to be committed. A number of allegations in the various affidavits that are before us do not constitute a tort, nor give any reason for thinking that a tort might be committed... unless an actual trespass is committed or is more than likely to be committed, it does not seem to me that merely to approach to within 50 yards of a person’s house does give cause of action which may be restrained by an injunction in those terms.”<sup>35</sup>

4.10.3 The position however seems to have shifted since *Patel v Patel*. In *Burnett v George*<sup>36</sup>, the English Court of Appeal granted an injunction restraining the defendant from “assaulting, molesting or otherwise interfering with the plaintiff by doing acts calculated to cause her harm”. In that case, the plaintiff had been subjected to a series of molestations and assaults on her person, and also included unwelcome visits to her home and harassment by means of telephone calls.

4.10.4 In *Khorasandjian v Bush*<sup>37</sup>, Dillon LJ stated:

“I find it difficult to give much weight to that general dictum that there is no tort of harassment, when the reformulated injunctions which Waterhouse J approved included an injunction restraining the defendant from molesting the plaintiff.”<sup>38</sup>

4.10.5 Sir Thomas Bingham MR in *Burris v Azadani*<sup>39</sup> further doubted the position taken by Waterhouse J in *Patel v Patel*:

“I do not, however, understand May LJ to have held that such an order was improper even in a case where the commission of a tort was reasonably to be apprehended and where an “exclusion zone” order was reasonably judged to be necessary for protection of the plaintiff as the potential victim

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<sup>33a</sup> See Afternote in para 4.10.9

<sup>34</sup> [1988] 2 FLR 179

<sup>35</sup> *Ibid.*, at 180.

<sup>36</sup> [1992] 1 FLR 525

<sup>37</sup> [1993] QB 727

<sup>38</sup> *Ibid.*, at 738.

<sup>39</sup> [1995] 1 WLR 1372

of tortious conduct. Nor, in the light of later authority, can the view be upheld that there is no tort of harassment.”<sup>40</sup>

4.10.6 However, the House of Lords in *Hunter v Canary Wharf*<sup>41</sup> put the entire issue into doubt again when it overruled *Khorasandjian v Bush* on the point that an action in private nuisance could be founded by a mere licensee. Lord Goff seems to doubt the existence of the tort of harassment when he said:

“In truth, what the Court of Appeal appears to have been doing was to exploit the law of private nuisance in order to create by the backdoor a tort of harassment which was only partially effective in that it was artificially limited to harassment which takes place in her home. I myself do not consider that this is a satisfactory manner in which to develop the law, especially when... the step so taken was inconsistent with another decision of the court... In any event, a tort of harassment has now received statutory recognition (see the Protection from Harassment Act 1997). We are therefore no longer troubled with the question whether the common law should be developed to provide such a remedy.”<sup>42</sup>

4.10.7 No further assistance can be had from England given the legislative recognition of harassment as an actionable tort under the Protection from Harassment Act 1997.

4.10.8 It would not be satisfactory to rely on the local courts to develop an independent common law tort of harassment as a complete solution to the problem of stalking. As seen from the line of cases above, the Law Lords themselves were uncertain as to its existence and form. It would, in any case, take time for the courts to work out the parameters of such a tort on a case by case basis. Legislation would provide a quicker and more certain solution and useful procedural measures, such as prohibition or protection orders, temporary (expedited) orders and orders for referral to psychiatric evaluation, could be included. Further, where the identity of the stalker is unknown, the investigatory powers of the police are required to identify the offender.

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<sup>40</sup> *Ibid.*, at 1378.

<sup>41</sup> [1997] 2 All ER 426

<sup>42</sup> *Ibid.*, per Lord Goff, at 438.

**Afternote:**

**4.10.9** The judgment of Lee Seui Kin JC in *Malcomson v Mehta* (S 687/20001/T; SIC 1575/2001) on 12 Oct 2001 has given recognition to the tort of harassment in Singapore. Nevertheless, we stand by our recommendation for legislation to curb stalking for the reasons stated in paragraph 4.11.8.

**4.10.10** In that case, the High Court granted an injunction restraining the defendant from contacting the plaintiff (his former employer) by telephone, facsimile or electronic mail etc. The learned judicial commissioner cited urbanisation, widespread availability of leisure time and advances in communication technology as 3 changes in lifestyle which have combined to create a new problem of harassment. He noted:

“In Singapore we live in one of the most densely populated countries in the world. And the policy of the government is to further increase the population. It would make for an intensely uncomfortable living environment if there is no recourse against a person who intentionally makes use of modern communication devices in a manner that causes offence, fear, distress and annoyance to another. ... Surely in respect of intentional acts that cause harm in the form of emotional distress, the law is able to provide a recourse. The fact that in such cases it is difficult to quantify damages should not, in my opinion, hinder the court from giving the appropriate relief. In the present case, as I suspect will generally be the situation in most cases of this nature, what the Plaintiffs essentially want are not damages but an injunction restraining [the Defendant] from continuing from such acts.”

## 5 ISSUES CONSIDERED

### 5.1 Should there be a criminal offence?

5.1.1 One of the criticisms of the UK Protection from Harassment Act (referred to in this Report as the UK Act) during its passage through the House of Lords was that the new law criminalises conduct which is otherwise entirely lawful e.g. walking along the street, standing outside someone's house, sending gifts through the post, telephoning, pestering etc. Further, the Bill criminalises such conduct immediately. Because the offence is "measured not by the intention of the offender but by the effect of his conduct on the victim", the offender will "have committed an offence, and although [he] believed that what [he was] doing was, first, lawful and, secondly, reasonable, objectively it was not."<sup>43</sup>

5.1.2 The Lord Chancellor explained: "The reason why the Government's Bill contains parallel jurisdictions<sup>44</sup> is that it is built on existing practice but deals with the point that a victim would not necessarily know the source of the course of conduct in question."<sup>45</sup> He estimated that in about 20 per cent of cases the identity of the stalker is not known to the victim and said that "[t]hat creates the additional dimension of identification. It is essential that the investigative powers of the police should be available to identify the stalker and bring him to justice."<sup>46</sup>

5.1.3 An alternative non-criminal procedure based upon the power of magistrates to bind over was proposed by Lord Gresham in the House of Lords.<sup>47</sup> The amendment was however withdrawn when it failed to win the support of the Lord Chancellor. Concern that the adoption of such fundamental changes proposed at Committee Stage would prevent the Bill from being passed during the current session of Parliament no doubt played a part in its rejection.

5.1.4 The Lord Chancellor's main difficulty with the alternative non-criminal procedure was that it would be necessary to give the police "powers which they do not have at present in order to deal with this, powers which rest on either evidence of, or reasonable suspicion of, the commission of a criminal offence. Here the police are invoked for the purpose of giving help to one party in what is essentially a civil dispute."

5.1.5 However, UK has now given the police power to give a direction to stop the harassment of a person in his home. Knowing contravention of a direction is an offence and a person may be arrested without warrant for this offence.<sup>48</sup>

<sup>43</sup> Lord Thomas of Gresford, 17 Feb 1997, In Committee, House of Lords Hansard, column 512.

<<http://www.parliament.uk>>

<sup>44</sup> i.e. it creates both criminal offences as well as a statutory tort of harassment

<sup>45</sup> *Ibid*, column 521

<sup>46</sup> 24 Jan 1997, House of Lords Hansard, column 922.

<sup>47</sup> 17 Feb 1997, House of Lords Hansard, column 510-517

<sup>48</sup> UK Criminal Justice and Police Act 2001 s.42



**5.1.6 In view of the need to employ police investigatory powers in cases where the identity of the stalker is unknown to the victim, we agree that stalking should be made a criminal offence.** In all the jurisdictions surveyed, the legislation on stalking creates a criminal offence. However different variations of the definition of stalking or harassment have been used. It is important that the offence should be carefully defined so as to afford the alleged offender adequate safeguards against unjustifiable conviction. (See recommendations in para 5.2)

**5.1.7 We do not recommend that the police be given powers to grant stop orders.** Such expedited (temporary) orders should be controlled by courts. **We propose to adopt a show cause procedure by which such temporary orders may be made absolute.** (See para 5.3.8)

## **5.2 Elements of the Criminal Offence**

### **(a) A course of conduct**

**5.2.1 The UK Act provides that there must be a course of conduct, i.e. conduct on at least 2 occasions, and conduct includes speech.**<sup>49</sup> All the jurisdictions surveyed have this requirement except the Queensland legislation which provides that conduct on one occasion is sufficient if the conduct is sufficiently protracted.<sup>50</sup>

**5.2.2 We agree to the requirement for a course of conduct comprising conduct on at least 2 occasions unless the conduct is sufficiently protracted.** This requirement recognizes that individual acts constituting stalking may be innocent and inconsequential, and that the menace of stalking arises from the existence of a concerted and, often, escalating course of action by the stalker. We are satisfied that the proposed provision will also cover collective harassment.<sup>51</sup> The provision that conduct on a single protracted occasion is sufficient covers the situation where, for example, the stalker watches the house of the victim continuously for days on end.

### **(b) Harassment**

**5.2.3 The offence in the UK Act consists of harassment which is defined as including "alarming the person or causing distress".**<sup>52</sup> The concept of "harassment" is not new to English law as the term is used in a number of other statutes;

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<sup>49</sup> UK Protection from Harassment Act 1997 s.7

<sup>50</sup> ACT Crimes Act 1900, s.34A(1)(a) and (b); NSW Crimes Act 1900, s.562AB(1), (3); NT Criminal Code Act 1997, s.189(1)(b); Victoria Crimes Act 1958, s.21A(2) and (3) c.f. Queensland Criminal Code s.359B

<sup>51</sup> e.g. where a person arranges or instigates other persons to do just one act of harassment each, or a group arranges for each member to do just one act of harassment. The Penal Code (Cap.224) provisions on abetment (s.107) and conspiracy (s.120A) would avail. See also Penal Code sections 33 to 37. UK has amended s.7 of the Protection from Harassment Act 1997 to include collective harassment: Criminal Justice and Police Act 2001 s.43

<sup>52</sup> S.7(2)

however, in those other statutes, it is always qualified by the requirement of specific intent to cause a particular effect or limited to specific kinds of acts.<sup>53</sup> The use of the term “harassment” in Singapore statutes is similarly qualified.<sup>54</sup> The UK Act also provides that there is harassment if a reasonable person with the same information as the offender would think that the offender’s conduct amounts to harassment (see further item (c) below).

5.2.4 The UK rejected the list approach because if “a list approach was adopted, it is likely that stalkers would simply adopt another type of conduct, not covered by the list, in order to carry on their campaign of harassment”.<sup>55</sup> The law would not be able to keep up with the creativity of would-be offenders.

5.2.5 The list approach has however been widely adopted elsewhere e.g. in Canada<sup>56</sup> and most states of Australia<sup>57</sup>. This approach is fairer as it gives greater certainty to the ambit of the offence. The lists seem to be fairly comprehensive; all of the most common or offensive types of conduct seem to have been covered. Most of the provisions surveyed also included a general provision for any other conduct that “could reasonably be expected to arouse the other person’s apprehension or fear”. It is likely that any conduct not included in the list is relatively trivial and should not in any case be criminalized.

5.2.6 Under the alternative scheme proposed in the House of Lords by Lord Thomas of Gresford,<sup>58</sup> there would be no need to define any conduct as a justice may exercise his powers to bind over upon finding *just cause* to do so. The Lord Chancellor however pointed out that “[t]he idea that just cause is itself sufficient without further definition to avoid legal argument would, I believe, be belied by the noble Lord’s experience. I do not believe that that phrase is any more immune from the ingenuity of our colleagues in the legal profession than is the phrase that

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<sup>53</sup> e.g. Public Order Act 1986 s.5(1) (limited to the use of “threatening, abusive or insulting words or behaviour”); Administration of Justice Act 1970 s.40 (demanding payment in a manner calculated to subject persons to “alarm, distress or humiliation”); See also Protection from Eviction Act 1977 and earlier Rent Acts and Caravan Sites Act 1968 (acts likely to interfere with the peace and comfort of residential occupiers with intent to cause him to give up occupation or to refrain from exercising his rights), Conspiracy and Protection of Property Act 1875 s.7, Public Order Act 1986 s.40(2) and Trade Unions and Labour Relations Act 1974 s.15(1) (intimidation)

<sup>54</sup> Women’s Charter (Cap.353) s.64, limb (d) of definition of “family violence” (causing continual harassment with intent to cause or knowing that it is likely to cause *anguish* to a family member); Miscellaneous Offences (Public Order and Nuisance) Act (Cap.184) s.13A (limited to the use of “threatening, abusive or insulting words or behaviour”); Moneylenders Act (Cap.188) s.33 (“harasses or intimidates ... in connection with a loan, or watches or besets, the residence or place of business or employment of the debtor etc”); Penal Code (Cap.224) s.14A (calling emergency number “with intent to annoy, abuse, threaten or harass”); Public Accountants Board Rules and Institute of Certified Public Accountants of Singapore Rules (Forms of unacceptable publicity of professional services include use of “coercion, over-reaching or harassing conduct”).

<sup>55</sup> The Lord Chancellor, 24 Jan 1996, House of Lords Hansard, column 918. This was the reason an earlier Private Member’s Bill by MP Janet Anderson failed.

<sup>56</sup> Canada Criminal Code s.264(2)

<sup>57</sup> Queensland, Australian Capital Territory, South Australia, Victoria and the Northern Territories. In New South Wales, where this approach was not adopted, the term “stalk” is qualified by a requirement for specific intention to cause physical or mental harm.

<sup>58</sup> 17 Feb 1997, House of Lords Hansard, column 510-517

we have used in the present Bill.”<sup>59</sup> Further, the binding over powers of justices have been under substantial attack at the European Court in Strasbourg because if there is no definition of what a person is bound over to do (i.e. “a person who is bound over to keep the peace or to be of good behaviour does not know what keeping the peace or being of good behaviour means”) there is a serious erosion of civil liberties. The UK Law Commission had taken the view that such powers should be taken out of the law. Lord Thomas pointed out that, under his proposed scheme, the order would set out with particularity the conduct which the offender is to refrain from.<sup>60</sup>

**5.2.7 We are of the view that it would be undesirable to adopt the UK definition of harassment by itself (i.e. without any qualification as to specific intent or clear description of the acts prohibited) in criminal provisions.** Harassment, especially at its fringes, is an uncertain concept which depends on individual perceptions of acceptable conduct. Individual perceptions may justifiably differ on such matters, even between reasonable people. Criminal provisions should be sufficiently clearly defined so that people can tell beforehand what conduct they must avoid.

**5.2.8 It is our intention to address the problem of stalking rather than the wider question of harassment generally. We therefore create a crime of unlawful stalking and adopt a list approach in its definition.** We propose to adopt the lists used in Australian legislation, with the 2 additional items to make the list more comprehensive.<sup>61</sup>

### (c) Objective Test of Knowledge of Effect of Conduct

**5.2.9 The UK Act requires that the offender must know or ought to know<sup>62</sup> (i.e. have actual or constructive knowledge) that his conduct amounts to harassment.** The offender has constructive knowledge if a reasonable person in possession of the same information as the offender would think the course of conduct amounted to harassment.<sup>63</sup> The Lord Chancellor stated that “[t]his is an important provision as many stalkers claim that they have no intention of harassing their victims--ignoring the devastating effect that they can have on their victims’ lives. This formulation will enable the courts to look at the information in the possession of the stalker and, on that basis, decide whether the stalker ought to have known the effect of his conduct.” The reference to the information of the offender also conversely provides a safeguard against a hyper-sensitive victim whose vulnerability is unknown to the offender.

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<sup>59</sup> 17 Feb 1997, House of Lords Hansard, column 521, 522

<sup>60</sup> 24 Jan 1997, House of Lords Hansard, columns 521, 523, 524

<sup>61</sup> Clause 3(2)(a)(vii) and (viii)

<sup>62</sup> s.1(1)(b)

<sup>63</sup> s.1(2)

5.2.10 However, opponents of this test point out that the reference to what a 'reasonable person' would think will give rise to endless litigation. They point out that "matters of sexual conduct are now matters in which the standard of "reasonable person" varies extremely".<sup>64</sup> The test was also criticised because it "is not much assistance to a potential offender in knowing how to govern his actions".<sup>65</sup>

5.2.11 Canada adopts a formulation that requires the offender to know or be reckless as to whether the victim is harassed, in addition to the conduct causing the victim reasonably to fear for their safety or that of anyone known to them.<sup>66</sup> The concept of "recklessness" has been used in Singapore criminal statutes, but usually only in relation to driving offences and false statements.

5.2.12 South Australia requires the offender to have specific intent to cause serious physical or mental harm or serious apprehension or fear.<sup>67</sup> The positions in the Australian Capital Territories, New South Wales, Northern Territories, Victoria are similar.<sup>68</sup> But in New South Wales the offender is taken to intend to cause fear if he *knows that the conduct is likely to cause fear*.<sup>69</sup> In Victoria the offender has the requisite intention if he *knows or ought to have known* in all the particular circumstances that the conduct would be likely to cause fear.<sup>70</sup> (See item (d) below on Specific Intent.)

5.2.13 The different tests of constructive knowledge of the effect of the offender's conduct differ little in effect except that in New South Wales, Canada and Victoria it is the constructive knowledge of *the offender* which is relevant whereas in the UK it is that of a *reasonable person with the information of the offender*. In any case, a court would probably be able to draw an inference that the offender knew or ought to know what a reasonable person would know, unless it is proved otherwise.

**5.2.14 We propose to adopt the test requiring that the offender knows or ought to have know that his conduct would be likely to cause the victim distress, alarm or fear (cp New South Wales). The "ought to know" test has been used in a number of criminal statutes in Singapore.<sup>71</sup> Bearing in mind that**

<sup>64</sup> Earl Russell, 24 Jan 1997, House of Lords Hansard, column 932

<sup>65</sup> Lord Gresford, 17 Feb 1997, House of Lords Hansard, column 512

<sup>66</sup> Canada Criminal Code s.264(1),

<sup>67</sup> South Australia Criminal Law Consolidation Act 1935, s.19AA(1)(b).

<sup>68</sup> ACT Crimes Act 1900, s.34A(1)(a) and (b); NSW Crimes Act 1900, s.562AB(1), (3); NT Criminal Code Act 1997, s.189(1)(b); Victoria Crimes Act 1958, s.21A(2) and (3).

<sup>69</sup> NSW Crimes Act 1900, s.562AB (3)

<sup>70</sup> Victoria Crimes Act 1958, s.21A(3)

<sup>71</sup> Copyright Act (Cap.63) s.32 and 33, know or ought reasonably to know that the making of the article constituted an infringement of copyright; Control of Vectors Act (Cap.59) s.14, know or ought reasonably to know that the Commissioner has taken action with respect to the consignment under the Act; Securities Industry Act (Cap.289) s.163, know or ought reasonably to be aware of facts rendering him precluded from dealing with the securities; Also Smoking (Prohibition in Certain Places) Act (Cap.310) s.6 and Gas Bill, clause 29(4).

the offender's conduct may otherwise be lawful, we felt it would not be fair to make the offender liable of an offence if the offender entirely did not know or could not reasonably be expected to know the effect of his conduct. We therefore adopt an actual or constructive knowledge requirement. It is necessary, in our view, to include constructive knowledge because, in the case of stalking, the stalker (who in many cases has a mental, or at least a personality disorder) may not have any actual knowledge that he was causing distress, alarm or fear by his conduct. Where the mental requirement cannot be established because the offender is mentally unsound, he can be remanded to a mental institution pursuant to powers in Part XXXI of the Criminal Procedure Code (see para 5.6 below).

5.2.15 We have pegged the knowledge requirement to the likelihood of causing distress, alarm or fear. We also propose to include a list of factors which the court may have regard to in determining whether a course of conduct is likely to cause the victim distress, alarm or fear.<sup>72</sup> Distress, alarm or fear could be caused by factors such as injury to reputation, economic detriment and loss of freedom to act in any way which the victim is entitled to do (see clause 3(3)(f) of Bill and para 5.2.17 below).

#### (d) Specific Intent

5.2.16 South Australia, Australian Capital Territories, New South Wales, Northern Territories and Victoria all require the offender to have intended to cause harm to the victim (whether in the form of physical, mental or emotional injury or apprehension or fear). In New South Wales the offender is taken to cause fear if he knows that the conduct is *likely* to cause fear i.e. actual knowledge of likelihood of harm is required. In Victoria the offender has the requisite intention if he *knows or ought to have known* in all the particular circumstances that the conduct would be likely to cause fear. (See para. 5.2.12 above). Queensland merely requires the conduct to be "intentionally directed" at the stalked person<sup>73</sup>; specific intent to cause apprehension or fear or detriment are not required.

5.2.17 *Types of harm* The UK Act defines harassment as including "alarming the person or causing distress".<sup>74</sup> California<sup>75</sup>, South Australia<sup>76</sup> and the Northern Territories<sup>77</sup> adopt similar wide definitions of the offence. The Queensland legislation defines the causing of "detriment" to include "serious mental, psychological or emotional harm", "prevention or hindrance from doing an act the person is entitled to do" and "compulsion to do an act a person is lawfully entitled to abstain from doing".<sup>78</sup> The US Model law adopts a narrower definition of the

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<sup>72</sup> Clause 3(3) of proposed Bill.

<sup>73</sup> Queensland Criminal Code Act 1899 s.359B(a) and 359C(4)

<sup>74</sup> S.7(2)

<sup>75</sup> California Penal Code 646.9 (seriously alarms, annoys, torments or terrorises)

<sup>76</sup> South Australia Criminal Law Act 1935 s.19AA(1)(b) (serious physical or mental harm, apprehension or fear)

<sup>77</sup> Northern Territories Criminal Code Act 1997 s.189(1)(b) (physical or mental harm, apprehension or fear)

<sup>78</sup> Queensland Criminal Code s.359B

offence in that it must be reasonable to cause fear of “bodily injury or death”.<sup>79</sup> Australian Capital Territory<sup>80</sup>, New South Wales<sup>81</sup> and Victoria<sup>82</sup> respectively refer to “serious harm”, “personal injury” and “personal safety”. The wider definition would encompass distress caused by factors other than fear of bodily injury such as injury to reputation or even economic detriment.

5.2.18 The UK and Canadian provisions do not require specific intent to cause harm.

5.2.19 **We are of the view that specific intent to cause harm should not be a necessary element to constitute the offence of unlawful stalking.** Such a requirement would render the provision ineffective unless there is a further provision that constructive knowledge of the effect of their conduct constitutes intent. Such a provision would be artificial in the case of many stalkers who cannot be said to intend harm to their victims; often, they may actually be acting from a sense of admiration or affection for their victim and pursue conduct which, in different circumstances, may actually be pleasing to the recipient e.g. giving gifts to or communicating with the object of their affections. Instead we propose that the offender must have constructive knowledge of the effect of their conduct. This would serve as a sufficient safeguard. (See item (c) above.)

#### (e) **Proof of Resulting Harm**

5.2.20 Of the foreign jurisdictions considered, only Canada and Victoria require that harm or apprehension or fear must have actually resulted.<sup>83</sup> In the other jurisdictions, proof that the victim actually suffered harm, apprehension or fear as a result of the offender’s conduct is not necessary.

5.2.21 **We recommend that proof that the victim actually suffered harm, apprehension or fear as a result of the offender’s conduct should not be necessary to establish the criminal offence.** It is sufficient that the offender has actual or constructive knowledge that his conduct would be likely to cause the victim distress, alarm or fear. Whether the victim is actually harassed could depend on the victim’s personality or vulnerability; these factors, if known to the offender, would already be taken into account when considering whether the offender had the requisite knowledge of the effects of his conduct (See item (c) above).

### **5.3 Remedies and Penalties**

5.3.1 It was stated in the UK House of Lords that “the prime object of [anti-stalking] legislation must be to protect the victim” and “[i]f there is a balance to be

<sup>79</sup> <<<http://www.ojp.usdoj.gov>>>. US legislation on stalking tends to have more stringent requirements because concerns over constitutional freedoms.

<sup>80</sup> ACT Crimes Act 1900, s.34A

<sup>81</sup> NSW Crimes Act 1900, s.562AB

<sup>82</sup> Victoria Crimes Act 1958, s.21A

<sup>83</sup> Canada Criminal Code s.264(1); Victoria Crimes Act 1958 s.21A(2) and (3)

struck, it is a balance which must be weighted towards ensuring that people can live their lives unmolested". We agree that the framework adopted by the legislation should provide an accessible (in terms of speed, simplicity and cost) and effective (i.e. the remedy should be able to put an end to the stalking) remedy.

5.3.2 The UK Act creates a criminal offence of harassment<sup>84</sup> punishable summarily by up to 6 months' imprisonment and/or a fine up to level 5 on the standard scale<sup>85</sup>, and a more serious offence of causing people to fear<sup>86</sup> punishable on indictment by up to 5 years' imprisonment and/or a fine<sup>87</sup> or summarily as stated above.

5.3.3 In addition the UK Act enables the victim of actual or apprehended harassment to seek the civil remedies of damages and an injunction by creating a statutory tort of harassment.<sup>88</sup> Breach of such an injunction without reasonable excuse is a criminal offence. Although contempt of court proceedings are available to deal with breaches of a civil order, the Government considered that the use of police investigative powers and Crown Prosecution Service assistance in the prosecution of alleged offenders are essential to provide adequate protection for the victims. The subject of the injunction must have been informed of its contents before any criminal proceedings for breach of the injunction may be brought and any breach must be proved beyond reasonable doubt, i.e. the criminal standard of proof.<sup>89</sup> The penalty for the offence is the same as that for the more serious criminal offence created by the Act.<sup>90</sup>

5.3.4 Further, the criminal courts are given a new sentencing power to prevent future harassment by making a restraining order.<sup>91</sup> The provision is intended to avoid the necessity of a victim, following a conviction in a criminal court, having to endure a second hearing in a civil court to gain an order to prevent future harassment.<sup>92</sup> Breach of a restraining order without reasonable excuse is an offence. The penalty for the offence is the same as that for the more serious criminal offence created by the Act.<sup>93</sup>

5.3.5 The criminal penalty applicable to comparable offences in most of the jurisdictions surveyed is 5 years imprisonment. The Victorian statute creates a more serious offence punishable with 10 years imprisonment rather than the usual 5 years.

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<sup>84</sup> UK Protection from Harassment Act 1997, s.1

<sup>85</sup> i.e. L5, the highest level, on the scale provided in the Criminal Justice Act 1982.

<sup>86</sup> UK Protection from Harassment Act 1997, s.4

<sup>87</sup> i.e. triable in the Crown Court. There is no limit to the fine but the court is required to take account of the offender's financial circumstances: Criminal Justice Act 1991 s.18(3).

<sup>88</sup> UK Protection from Harassment Act 1997, s.3.

<sup>89</sup> Halsbury's Statutes Service: Issue 76, 12 Criminal Law 38, 39.

<sup>90</sup> See para 6.3.2 above.

<sup>91</sup> UK Protection from Harassment Act 1997, s.5

<sup>92</sup> 17 Dec 1996, House of Common Hansard, col 785

<sup>93</sup> See para 5.3.2 above.

5.3.6 In Singapore, under the family violence provisions of the Women's Charter<sup>94</sup>, the court has power to make a protection order on the application of the family member concerned (or, for children and incapacitated persons, on their behalf) where it is satisfied on the balance of probabilities that it is necessary for the protection or personal safety of the applicant. Willful contravention of such an order is a seizureable offence (i.e. the offender may be arrested by the police without warrant) punishable with up to 6 months' imprisonment and/or a fine up to \$2,000. In the case of a subsequent offence, the penalty is imprisonment of up to 12 months and/or a fine up to \$5,000. The protection order may refer any of the parties to counselling and failure to comply with such an order is punishable as a contempt of court. The court may also make an expedited order where there is imminent danger of family violence i.e. the summons need not have been served on the respondent before the hearing. The expedited order takes effect only when it is served or on such later date as the court has specified, and expires 28 days from the making of the order or upon the hearing of an application for such order.

**5.3.7 We propose that there should be a criminal offence. This will enable the police to investigate cases where the identity of the stalker is unknown. The criminal court is also given a power to make a prohibition order upon sentencing** (as in the UK Act, see para 5.3.4 above). (See para 5.2 for elements of the criminal offence).

**5.3.8 We also propose a means whereby a victim of stalking can apply for an expedited order (temporary protection order) from the court, whether or not there is a criminal prosecution brought against the stalker.**<sup>95</sup> The procedure is based on existing show cause procedures in the Criminal Procedure Code.<sup>96</sup> The temporary order can be made absolute (i.e. a protection order made) after a show cause hearing.

5.3.9 To provide an integrated procedure for the grant of temporary orders or protection orders, the grounds for granting such orders is based on a finding by the court that the respondent has unlawfully stalked and is likely to continue unlawfully stalking the victim. The standard of proof in the case of a temporary order is a prima facie case, whilst in the case of a protection order it is on a balance of probability. The burden of proof is placed upon the complainant. The lower standard of proof will enable the victim to obtain a temporary order more easily and without immediately criminalising the alleged offender's acts. Contravention of the temporary order or protection order will attract criminal liability but there is no danger that a person will be unwarily penalised as the order will have made it clear what conduct he must avoid.

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<sup>94</sup> (Cap.353), Part VII, ss. 64 – 67.

<sup>95</sup> See Part III of proposed Bill.

<sup>96</sup> E.g. s97 ff (Public Nuisances), s75 ff (Security for keeping the Peace)



5.3.10 The provisions are also partly modelled on the family violence provisions in the Women's Charter. The court is given the power to order the offender to undergo counselling, psychiatric evaluation or mediation, where necessary.

**5.3.11 We have not adopted the provision in the UK Act which creates an actionable tort of harassment.** We are of the view that the primary remedy sought by a victim of stalking is the ability to put an end to the stalking conduct. This can be achieved by obtaining a protection order. The advantage of the proposed procedure is its low cost, simplicity and speed. We do not wish to complicate or delay the process by other considerations which tortious liability would entail. We also do not wish to create a new statutory tort governed by its own special rules. Where there has been actual damage, emotional trauma or loss caused to a victim, it will likely be recoverable under existing heads of tort.<sup>97</sup> As harassment can arise in varied ways, we think it more appropriate to leave this area of the common law of torts to development by the courts on a case by case basis.

5.3.12 It was felt that the penalty for contravention of restraining orders and prohibition orders in the Women's Charter family violence provisions was too low for a stalking offence. Stalking may encompass a wide range of criminal behaviour from fairly innocuous conduct to serious violent conduct. **We have therefore increased the maximum imprisonment to 2 years and, in the case of a subsequent offence, to 5 years.**

#### **5.4 Defences**

5.4.1 The UK Act provides defences to the charge of harassment where the conduct (a) was pursued for the purpose of preventing or detecting a crime, (b) was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or (c) was, in the particular circumstances, reasonable.<sup>98</sup> For the more serious offence of putting people in fear of violence, the third limb of the defence is limited to a "course of conduct reasonable for the protection of himself or another or for the protection of his or another's property".<sup>99</sup> The first two defences are official law enforcement defences. Other alleged offenders would have to rely on the third limb. The third limb is intended to prevent those who are engaging reasonably in otherwise legitimate activity, such as journalists, salesmen, religious activists, debt collectors, private investigators or political canvassers, from being penalised.<sup>100</sup> This limb of [the] defence was criticized by its opponents as it would give a "huge area for argument" and "court cases will be much prolonged by such discussions".<sup>101</sup>

<sup>97</sup> E.g, *Wilkinson v Downton* [1897] 2 QB 57, tort of causing intentional harm

<sup>98</sup> UK Protection from Harassment Act 1997, s.1(3).

<sup>99</sup> UK Protection from Harassment Act 1997 s.4(3)(c)

<sup>100</sup> 17 Dec 1996, House of Commons Hansard, column 784 and 24 Jan 1997, House of Lords Hansard, column 919

<sup>101</sup> 24 Jan 1997, House of Lords Hansard, column 924

5.4.2 The UK Act in addition provides a conclusive defence where the Secretary of State certifies that any act of a specified person on a specified occasion related to national security, the economic well-being of the UK or prevention or detection of serious crime was done on behalf of the Crown.<sup>102</sup> This is intended to ensure that the work of intelligence and security services are not compromised.

5.4.3 The defences in the Victoria legislation are limited to official law enforcement functions i.e. “conduct engaged in by a person performing official duties for the purpose of (a) the enforcement of the criminal law, (b) the administration of any Act, (c) the enforcement of a law imposing a pecuniary penalty, or (d) the protection of public revenue.”<sup>103</sup> Queensland has in addition defences for acts done for a genuine industrial dispute, or genuine political or other public dispute carried out in the public interest, reasonable conduct for lawful trade etc. or for legitimate giving or obtaining of information.<sup>104</sup> The other Australian states do not provide specific defences. This is probably because the relevant offences under their laws require proof of specific intent to cause harm, so there could not possibly be any defence that the conduct was reasonable.

5.4.4 Canada uses the term “without lawful authority”.<sup>105</sup>

5.4.5 **We propose to adopt the defences in the UK Act.<sup>106</sup> In addition, we also adopt the Queensland defences for reasonable conduct engaged in for lawful trade, etc., and for legitimate giving or obtaining of information.<sup>107</sup>** In the context of the small size of Singapore, where the alleged victim and alleged stalker might live in close proximity, there is a need to balance the rights of parties to reasonable use of public areas and the discomfort which the alleged victim may feel towards such encounters.

## 5.5 Safeguards against Unmeritorious Actions

5.5.1 Proper safeguards are necessary to protect the innocent from the stigma of being accused of being a stalker and to prevent the courts from being burdened with unmeritorious claims. People, motivated by mischief, malice or revenge, may otherwise seek to use the proposed anti-stalking provisions to harass others e.g. family members or neighbours in conflict, former intimates or ex-business partners. The ease and accessibility of such an action may become a lure to unmeritorious applicants. In a small place such as Singapore it is easy to make allegations based on innocent and unavoidable encounters, especially if the parties live or work in close proximity. Complaints arising from the hypersensitivity of an alleged victim should not be entertained; it is necessary to balance the legitimate rights of both parties.

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<sup>102</sup> UK Protection from Harassment Act 1997 s.12

<sup>103</sup> Victoria Crimes Act 1958, s.21A(4)

<sup>104</sup> Queensland Criminal Code Act 1899 s.359D

<sup>105</sup> Canada Criminal Code s.264(1)

<sup>106</sup> See para 5.4.1 and 5.4.2 above

<sup>107</sup> Queensland Criminal Code Act 1899 s359D(d) and (e)

**5.5.2 The legal elements of the criminal offence ensure that innocent persons will not be penalised e.g. the requirement for a course of conduct on at least 2 occasions unless protracted, actual or constructive knowledge that the conduct will be likely to cause the victim distress, alarm or fear, defences for law enforcement and reasonable conduct.**

5.5.3 Abuse of the application for temporary protection orders is avoided by requiring the court to be prima facie satisfied of the same elements as the criminal offence. The elements must be proved on a balance of probability to make the protection order absolute. The burden of proof is on the complainant. The respondent need not attend court if he does not wish to show cause against the order. The court may dismiss such an application with costs at any time if it considers it to be frivolous or vexatious.

## **5.6 Mentally Unsound Offenders**

5.6.1 In many cases, stalking offences may be committed by mentally unsound persons.<sup>108</sup>

5.6.2 In the case of a criminal prosecution, the court has powers under Part XXXI of the Criminal Procedure Code (Cap.68). If the court has reason to suspect that an accused is of unsound mind, the court shall investigate whether the accused is of unsound mind and consequently incapable of making his defence.<sup>109</sup> The court can obtain evidence from a medical officer on the state of mind of the accused and, if not satisfied that the accused is capable of making his defence, remand the person for observation in a mental hospital.<sup>110</sup> Even if the accused is acquitted on the ground of unsoundness of mind, the court shall order the person to be kept in safe custody whenever the finding is that the accused committed the act alleged. The Minister [for Home Affairs] may then order the person to be kept confined in a mental institution (or other suitable place) during the President's pleasure.<sup>111</sup>

5.6.3 The Seah case demonstrates how the powers outline above may be utilised in the context of a mentally unsound stalker. Seah was acquitted on grounds of unsoundness of mind but, based on medical evidence that he was likely to continue to pose a threat to the victim if released, was remanded for treatment in a mental hospital.<sup>112</sup>

**5.6.4 We are of the view that the Criminal Procedure Code provides adequate powers to manage a mentally unsound offender in the case of a**

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<sup>108</sup> See Annex C for categorization of stalkers

<sup>109</sup> Section 308(1), Criminal Procedure Code (Cap.68)

<sup>110</sup> Section 308, Criminal Procedure Code (Cap.68)

<sup>111</sup> Section 315, Criminal Procedure Code (Cap.68)

<sup>112</sup> See Annex D.

**criminal prosecution. We do not therefore make any additional provisions in relation to the criminal prosecution in the proposed legislation.**

5.6.5 The Mental Disorders and Treatment Act (Cap.178) provides a procedure for the committal of a mentally unsound person for treatment as an inpatient at a mental hospital. The person must be suffering from a mental disorder which warrants such detention and it must be necessary in the interests of that person's health or safety or for the protection of other persons that that person should be detained.<sup>113</sup>

**5.6.6 In relation to prohibition orders and protection orders, we propose that the court should be empowered to include other appropriate orders including a referral to counselling, psychiatric evaluation or mediation.<sup>114</sup> If the offender is found to be mentally unsound pursuant to psychiatric evaluation and there is no criminal prosecution, he may if appropriate be committed for inpatient treatment at a mental hospital under section 35 of the Mental Disorders and Treatment Act.**

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<sup>113</sup> Section 35(5), Mental Disorders and Treatment Act (Cap.178)

<sup>114</sup> Clause 9 of the proposed Bill.

## 6 SUMMARY OF RECOMMENDATIONS

6.1 In view of the need to employ police investigatory powers in cases where the identity of the stalker is unknown to the victim, stalking should be a criminal offence. [Para. 5.1.6]

6.2 The following legal elements should be adopted for the criminal offence to ensure that innocent persons will not be penalized: the requirement for a course of conduct on at least 2 occasions unless the conduct is protracted, a list of conduct constituting unlawful stalking, and actual or constructive knowledge that the conduct will be likely to cause the victim distress, alarm or fear. [Paras. 5.2.2, 5.2.8, 5.2.14, 5.5.2] There should be general defences for reasonable conduct, law enforcement and compliance and national security, etc. Conclusive evidence may be afforded by certificate of the Minister for Home Affairs in relation to national security, etc. (Based on UK PHA Act and Queensland). [Para. 5.4.5]

6.3 It would be undesirable to adopt the UK definition of harassment by itself (i.e. without any qualification as to specific intent or clear description of the acts prohibited) in the criminal provision. We propose to adopt a list approach to the definition of unlawful stalking and an actual or constructive knowledge requirement as to the effect of the course of conduct. [Paras. 5.2.7, 5.2.8, 5.2.14]

6.4 Specific intent to cause harm should not be a necessary element to constitute the offence of unlawful stalking. [Para. 5.2.19]

6.5 Proof that the victim actually suffered harm, apprehension or fear as a result of the offender's conduct should not be necessary to establish the criminal offence. [Para. 5.2.21]

6.6 The sentencing court should be able to make a prohibition order to prevent further unlawful stalking. [Para 5.3.7].

6.7 We also propose an integrated means by which the victim or, if there is a criminal prosecution, the prosecutor can obtain an expedited (temporary protection) order, which can be made absolute by a simple show cause procedure. [Paras 5.3.8 - 5.3.10]. We are not proposing to create a new tort of harassment. [Para 5.3.11]

6.8 Abuse of the application for temporary protection orders is avoided by requiring the court to be prima facie satisfied of the same elements as the criminal offence. The elements must be proved on a balance of probability to make the protection order absolute. The burden of proof is on the complainant. The respondent need not attend court if he does not wish to show cause against the order. The court may dismiss such an application with costs at any time if it considers it to be frivolous or vexatious. [Paras. 5.3.9, 5.5.3].

6.9 The penalty for unlawful stalking or for contravention or failure to comply with prohibition/temporary/protection orders should be a fine of \$2,000 or 2 years imprisonment or both, or for a subsequent offence, a fine of \$5,000 or 5 years imprisonment or both. [Para 5.3.12]

6.10 We are satisfied that, in the case of criminal prosecution, mentally unsound stalkers can be adequately dealt with under the powers in Part XXXI of the Criminal Procedure Code (Cap.68). [Para 5.6.4] We propose the court should have power to order the respondent to undergo psychiatric evaluation when making a protection order; this will assist in determining whether further proceedings under the Mental Disorders and Treatment Act (Cap.178) should be taken where there is no criminal prosecution. [Para. 5.6.6]

6.11 We therefore propose that legislation be enacted in the form at Annex A. (See Explanatory Notes on the Bill in Part 7)

## 7 EXPLANATORY NOTES ON BILL

7.1 The Bill creates an offence of unlawful stalking by pursuing a course of conduct comprising certain listed acts which he knows or ought to know is likely to cause the victim distress, alarm or fear. The criminal courts are given the power to make an order preventing further unlawful stalking.<sup>115</sup> The Bill also enables victims of unlawful stalking to apply for a temporary order which may be made absolute by a show cause procedure.<sup>116</sup>

### Part I : Preliminary Matters

7.2 Clause 1 relates to the short title and commencement of the Act.

7.3 Clause 2 defines “unlawful stalking” by reference to section 3. A “related person” is defined as a person about whose safety or well-being the victim would be expected to be seriously concerned.<sup>117</sup>

### Part II: Criminal Offences and Prohibition Orders

7.4 Clause 3 prohibits unlawful stalking which is defined as a course of conduct engaged in on 2 or more occasions (or one occasion, if protracted) comprising certain acts enumerated in sub-clause (2)(a) which he knows or ought to know would be likely to cause the other person distress, alarm or fear.<sup>118</sup> Clause 3(3) lists certain factors which a court may have regard to in considering whether a course of conduct is likely to cause distress, alarm or fear.<sup>119</sup>

7.5 Clause 3(5) makes the offence punishable by a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 2 years or to both and, in case of a second or subsequent conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 5 years or to both.<sup>120</sup>

7.6 Clause 3(6) provides defences to the offence in the case of reasonable conduct (in particular, for lawful trade, etc., or the legitimate giving or obtaining of information), acts done for law enforcement or compliance, or acts necessary for national security, etc.<sup>121</sup>

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<sup>115</sup> Part II of Bill

<sup>116</sup> Part III of Bill

<sup>117</sup> See clause 3(2) of Bill. Stalking directed at another person, e.g. the victim’s child or family member, may cause distress, alarm and fear as much as stalking directed at the victim.

<sup>118</sup> See para. 5.2(b) and (c) of Report

<sup>119</sup> See para. 5.2.15 and 5.2.17.

<sup>120</sup> See para 5.3 of Report. Penalties are higher than those for contravention of personal protection orders and domestic exclusion orders under the Women’s Charter.

<sup>121</sup> See para. 5.4. Defences are based on the UK Protection from Harassment Act s.1(3) and Queensland Criminal Code Act s.359D.

7.7 Clause 3(7) and (8) allows the Minister [for Home Affairs] to issue a certificate as conclusive evidence that a course of conduct carried out by a specified person on a specified occasion was necessary for national security, etc., and was done on behalf of the Government. This clause ensures that the work of intelligence and security services is not compromised.<sup>122</sup>

7.8 Clause 4 empowers the criminal courts to make a prohibition order to prevent further unlawful stalking by the defendant.<sup>123</sup> Contravention of a prohibition order without reasonable excuse is made a seizure offence.<sup>124</sup> The penalties are the same as those for an offence under clause 3.<sup>125</sup>

### **Part III : Applications for Protection Orders**

7.9 Clause 5 empowers a court to make a temporary order prohibiting the respondent from doing anything described in the order if it appears to the court that there is prima facie evidence that the respondent has unlawfully stalked the aggrieved person and that the respondent is likely to continue unlawfully stalking that person.

7.10 Clause 6 provides the procedure by which the temporary order may be made absolute (i.e. a protection order made).<sup>126</sup> The standard of proof required is proof on the balance of probability and the burden of proof is on the person making the complaint.

7.11 Clause 7 relates to the procedure for applications under Part III. The procedures for hearing of summonses under the Criminal Procedure Code (Cap.68) apply. Clause 7(2) makes provision for an application on behalf of an aggrieved person.<sup>127</sup> Clause 7(3) empowers the court to dismiss frivolous or vexatious applications and to make orders as to cost in any case.

7.12 Clause 8 relates to the procedures and powers of the High Court in the case of an appeal from any order or refusal of an order under Part III.

### **Part IV : General**

7.13 Clause 9 allows the court, upon making a prohibition order, a protection order or a temporary order to make other appropriate orders including a referral to counselling or psychiatric evaluation.<sup>128</sup> Failure to comply with such orders are punishable as a contempt of court.

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<sup>122</sup> See para. 5.4.6 of Report. Based on UK Protection from Harassment Act s.12

<sup>123</sup> Based on UK Protection from Harassment Act s.5

<sup>124</sup> i.e. the police may arrest without warrant c.p. Women's Charter s.65(11).

<sup>125</sup> Clause 5

<sup>126</sup> Clause 8. The show cause procedure is based on CPC Chapter IX (Public Nuisances) and Chapter IV (Security for Keeping the Peace, etc.)

<sup>127</sup> Maintenance of Parents Act (Cap.167B) s.11 c.f. Women's Charter s.65(10)

<sup>128</sup> See para. 5.6.5 of Report



7.14 Clause 10 makes failure to comply with a prohibition order, a temporary order or a protection order a seizable offence. The penalties are the same as those for an offence under clause 3. The court may make further orders where the respondent breaches a temporary order or protection order.<sup>129</sup>

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<sup>129</sup> c.p. Women's Charter s.65(7), (8) and (11)

**THE PROTECTION FROM HARASSMENT  
ACT 2001**

**(No. of 2001)**

**ARRANGEMENT OF SECTIONS**

**PART I**

**PRELIMINARY**

Section

1. Short title and commencement
2. Interpretation

**PART II**

**CRIMINAL OFFENCES AND PROHIBITION ORDERS**

3. Offence of unlawful stalking
4. Prohibition order

**PART III**

**APPLICATIONS FOR PROTECTION ORDERS**

5. Temporary order
6. Protection order
7. Procedure
8. Appeals.

**PART IV**

**GENERAL**

8. Supplementary orders
  9. Contravention of order
- The Schedule
-



A BILL

*intituled*

An Act to make provision for protecting persons from unlawful stalking and matters related thereto.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

**Short title and commencement**

1. This Act may be cited as the Protection from Stalking Act 2001 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

**Interpretation**

2.—(1) In this Act, unless the context otherwise requires —

“aggrieved person” means a person whom, pursuant to an application under Part III, it is alleged has been unlawfully stalked;

“prohibition order” means an order made under section 4;

“protection order” means an order made under section 6;

“related person” means a person about whose safety or well-being the victim would reasonably be expected to be seriously concerned;

“respondent” means a person against whom a temporary order or a protection order is sought;

“temporary order” means an order made under section 5;

“unlawful stalking” means unlawful stalking as defined in section 3.

## PART II

### CRIMINAL OFFENCES AND PROHIBITION ORDERS

#### **Offence of unlawful stalking**

3.—(1) No person shall unlawfully stalk another person.

(2) Subject to subsection (6), a person (referred to in this Part as the offender) unlawfully stalks another person (referred to in this Part as the victim) if —

- (a) the offender engages in a course of conduct comprising one or more of the following acts:
  - (i) following the victim or a related person;
  - (ii) telephoning, sending electronic messages to, or otherwise communicating with or contacting, the victim or a related person;
  - (iii) entering or loitering outside or near the place of residence or of business of the victim or a related person, or any other place frequented by the victim or a related person;
  - (iv) interfering with property in the possession of the victim or a related person (whether or not the offender has an interest in the property);
  - (v) giving material to the victim or a related person, or leaving it where it will be found by, given to or

brought to the attention of, the victim or a related person;

- (vi) keeping the victim or a related person under surveillance;
  - (vii) impersonating the victim or a related person with the intention of leading another person to believe that the offender is that victim or that related person;
  - (viii) disseminating information about the victim or a related person without the express or implied consent of the victim or the related person, as the case may be;
  - (ix) acting in any other way that would be likely to cause distress, alarm or fear in the victim; and
- (b) the offender knows or ought to know that his course of conduct referred to in paragraph (a) would be likely to cause the victim distress, alarm or fear.

(3) In considering whether a course of conduct is likely to cause distress, alarm or fear, the court may have regard to the following factors:

- (a) the number of occasions on which the constituent acts were carried out;
- (b) the frequency and the duration of the constituent acts;
- (c) the manner in which the constituent acts were carried out;
- (d) the circumstances in which the constituent acts were carried out;
- (e) the particular combination of acts comprised in the course of conduct;
- (f) the likely effects of the course of conduct or any threatened conduct on the victim's safety, health, reputation, economic position, or his freedom to do any act which he is legally entitled to do or not to do any act which he is not legally bound to do;
- (g) the circumstances of the victim including his physical or mental health and personality.

(4) In subsections (2) and (3), "course of conduct" means conduct on one occasion, if the conduct is protracted, or on two or more occasions.

(5) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 2 years or to

both and, in case of a second or subsequent conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 5 years or to both.

(6) For the purposes of this Act, unlawful stalking shall not include any of the following acts —

- (a) acts which, in the particular circumstances, were reasonable;
- (b) acts reasonably engaged in by a person for the purposes of his lawful trade, business or occupation ;
- (c) acts reasonably engaged in by a person for the purposes of obtaining or giving information that he has a legitimate interest in obtaining or giving;
- (d) acts pursued under any written law or rule of law or to comply with any condition or requirement imposed by any person under any written law ;
- (e) acts lawfully done for the purpose of preventing or detecting crime;
- (f) acts done on behalf of the Government which are necessary for the purposes of national security, defence or conduct of international relations .

(7) If any dispute arises as to whether any act falls within paragraph (e) or (f) of subsection (6), a certificate issued under the hand of the Minister stating that in his opinion any act done by a specified person on a specified occasion falls within either of those paragraphs shall be conclusive evidence that the act falls within that paragraph.

(8) A document purporting to be a certificate issued pursuant to subsection (7) and to be issued under the hand of the Minister shall be received in evidence and unless, the contrary is proved, be treated as being such a certificate.

### **Prohibition order**

4.—(1) A court sentencing or otherwise dealing with a person convicted of an offence under section 3 (referred to in this section as the convicted person) may, as well as sentencing him or dealing with him in any other way, make an order under this section.

(2) The prohibition order may, for the purpose of protecting the victim or a related person mentioned in the order, from further

unlawful stalking, prohibit the convicted person from doing anything described in the order.

(3) The prohibition order may have effect for a specified period or until further order.

(4) The prosecutor, the convicted person or any person mentioned in the prohibition order may apply to the court for the prohibition order to be varied or discharged.

(5) The court may, upon making a prohibition order, discharge any temporary order or protection order previously made against the convicted person in respect of the victim or a related person mentioned in the prohibition order.

### PART III

#### APPLICATIONS FOR PROTECTION ORDERS

##### **Temporary order**

5.—(1) Where it appears to a court (upon application by an aggrieved person, and on taking such evidence, if any, as it thinks fit) that there is *prima facie* evidence that—

- (a) the respondent has unlawfully stalked the aggrieved person; and
- (b) the respondent is likely to continue unlawfully stalking the aggrieved person,

the court may make an order —

- (i) prohibiting the respondent from doing anything described in the order; and
- (ii) requiring the respondent, if he wishes to show cause why a protection order should not be made, to appear before the court at a time and place specified in the order.

(2) Subject to section 7(2), an application for a temporary order shall be by made under oath by the aggrieved person.

(3) A temporary order shall be in the form set out in the Schedule with such variation as the circumstances of each case may require.

(4) The Minister may, by notification in the *Gazette*, amend the form set out in the Schedule.

(5) A temporary order shall be served on the respondent, with a copy of the application for the temporary order, in the manner



provided in the Criminal Procedure Code for service of a summons.  
(6) A temporary order shall not take effect until the order is served on the accused person or, if the court has specified a later date as the date on which the order is to take effect, that later date.

### **Protection order**

6.—(1) If the respondent does not appear at the time and place specified in the temporary order and it appears to the court on oath that the temporary order was duly served, the court may make the temporary order absolute.]

(2) If the respondent appears to show cause why a protection order should not be made, the court shall take evidence in the matter.

(3) If, after taking evidence, the court is satisfied on a balance of probabilities of the matters referred to in paragraphs (a) and (b) of section 5(1), the court shall make the temporary order absolute with such variations, if any, as it sees fit.

(4) If the court is not satisfied on a balance of probabilities of the matters referred to in paragraphs (a) and (b) of section 5(1), the court shall discharge the temporary order.

(5) For the purposes of subsections (3) and (4), the burden of proving the matters referred to in paragraphs (a) and (b) of section 5(1) shall be upon the person making the application.

(6) The court may, upon application by the respondent or any person mentioned in the protection order or (where criminal proceedings are pending against the respondent in respect of an offence under section 3 involving any person mentioned in the protection order) the Public Prosecutor, vary or discharge a protection order.

(7) An order made under this section shall be served on the respondent in the manner provided in the Criminal Procedure Code for service of a summons.

### **Procedure**

7.—(1) All applications under this Part may be made to a District Court or a Magistrate's Court and shall be heard in the manner and in accordance with the procedure for the hearing of summonses by the District Court or the Magistrate's Court under the provisions of the Criminal Procedure Code (Cap.68).

(2) Where an aggrieved person is unable to make an application under this Part (whether by reason of physical or mental infirmity or for any other reason), such application may be made on his behalf by ---

- (a) any member of his family;
- (b) any person in whose care he resides; or
- (c) any other person whom the applicant has authorised to make such an application.]

(3) A court before which an application under this Part is heard may exercise any of the following powers :

- (a) if the court is satisfied that the application is frivolous or vexatious, dismiss the application at any time; and
- (b) make such orders as to costs as it thinks fit.

### **Appeals**

8--(1) An appeal shall lie from any order or refusal of any order by a District Court or a Magistrate's Court under this Part to the High Court exercising appellate jurisdiction under the provisions of the Supreme Court of Judicature Act (Cap.322).

(2) All appeals brought under this section shall be by way of rehearing and the High Court shall have the like powers and jurisdiction on the hearing of such appeals as the Court of Appeal has on the hearing of appeals from the High Court under the Supreme Court of Judicature Act.

(3) No appeal brought under this section from an order under this Part shall operate as a stay of such an order unless the High Court or the District Court or the Magistrate's Court so directs.

(4) The Rules of Court for the time being in force made under the provisions of the Supreme Court of Judicature Act and applicable to appeals from the District Courts brought under section 21 of that Act shall apply to all appeals brought under this section.

(5) Where an appeal is so brought from a Magistrate's Court, the Rules of Court shall be construed and applied as far as necessary as if references to the District Court were references to a Magistrate's Court and references to a District Judge were references to a Magistrate.

## PART IV

### GENERAL

#### **Supplementary orders**

9.---(1) Upon making a prohibition order or a protection order, the court may make such other orders as it thinks fit having regard to the circumstances of the case, including any one or more of the following orders:

- (a) referring the respondent to attend counselling by such body as the court may direct; and
- (b) referring the respondent to attend psychiatric evaluation by a medical officer.

(2) Any failure to comply with an order made under subsection (1) shall be punishable as a contempt of court.

#### **Contravention of order**

10.—(1) Where the respondent fails to comply with a prohibition order, a protection order or a temporary order made against him, the court may, in addition to any penalty provided for under subsection (2), make any one or more of the orders under section 9(1), to commence from such date as is specified in such new order.

(2) Any person who, without reasonable excuse, fails to comply with a prohibition order, a protection order or a temporary order, except any order made by virtue of section 9(1), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 2 years or to both and, in case of a second or subsequent conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 5 years or to both.

(3) An offence under subsection (2) shall be deemed to be a seizable offence within the meaning of the Criminal Procedure Code (Cap.68).

## THE SCHEDULE

Section 5(4)

### TEMPORARY PROTECTION ORDER MADE UNDER THE PROTECTION FROM HARASSMENT ACT 2001, SECTION 5(4)

To *(name and address)*

WHEREAS IT APPEARS TO THE COURT upon application made by *(name of aggrieved person)* that —

- (a) you have unlawfully stalked *(name and address (if appropriate) of aggrieved person)*; and
- (b) you are likely to continue unlawfully stalking that person,

You are HEREBY ORDERED:

- (a) *(list prohibitions)*
- (b)

TAKE NOTICE that, if you wish to show cause why a protection order should not be made against you under section 6 of the Protection from Harassment Act 2001, you are required to attend before the \_\_\_\_\_ Court on \_\_\_\_\_ at \_\_\_\_\_ am/pm with any evidence or witnesses you intend to produce to the Court.

IF YOU FAIL to attend before the Court at the time and place appointed, the Court may, in your absence, make a protection order against you under section 6 of the Protection from Harassment Act 2001.

TAKE FURTHER NOTICE that if, without reasonable excuse, you fail to comply with this order or a protection order made under section 6 of the Protection from Harassment Act 2001, you will be guilty of an offence.

IF YOU ARE CONVICTED of such an offence, you will be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 2 years or to both. In the case of a second or subsequent conviction, you will be liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 5 years or to both.

Given under my hand and the seal of the Court, this       day of       ,       .

(Signature)  
Magistrate or District Judge

(Seal)

*Note: This temporary order must be served on the respondent, with a copy of the application for the temporary order, in the manner provided in the Criminal Procedure Code for service of a summons.*

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## DERIVATION TABLE OF BILL

	Derivation
1	—
2	—
3(1)	cp Victoria Crimes Act 1958 (VCA) s21A(1), Queensland Criminal Code Act 1891 (QCCA) s.359A(1)
3(2)(a)	cp VCA s.12A(2), but we use “related person” instead of “other person” and sub-paragraphs (vii) and (viii) are new.
3(2)(b)	cf VCA s.12A(3)
3(3)	New, but sub-paragraph (f) cp Penal Code (Cap.224) s.509
3(4)	cp QCCA s.359B(b)
3(5)	Women’s Charter (Cap.353) (WC) s.65(8)
3(6)	cp UK Protection from Harassment Act (UK PHA) 1997 s.1(3) and 12, and QCCA s.359D
3(7), (8)	cp UK PHA s.12
4(1) – (4)	UK PHA s.5(1) – (4), with modifications.
4(5)	WC s.65(8), we use “without reasonable excuse” instead of “wilfully” cp UK PHA s.5(5)
4(6)	New
5	New, cp WC s.65 and Criminal Procedure Code (Cap.68) ss.97 ff and s.75 ff.
6	New, cp CPC s.100, 101, 180(p)
7(1)	cp WC s.79(1)
7(2)	cp Maintenance of Parents Act (Cap.167B) s.11
7(3)	Cp Small Claims Tribunal Act (Cap.308) s.32
8	cp WC s.77 and 79
9	cp WC s.65
10	cp WC s.65(7), (8), (11), but we use “without reasonable excuse” instead of “wilfully” cp UK PHA s.5(5)

## CATEGORISATION OF STALKERS

Psychologists and researchers in the field of stalking have categorised stalkers into a number of distinct groups, although it must be observed that the number of categories do not appear to be either closed nor necessarily well defined.

### Psychologically disordered groups

(i) *Delusional Erotomanics*

A Delusional Erotomaniac believes that the subject of his attention loves him, although that person may not even know of his existence in reality. The Delusional Erotomaniac believes, and creates in his fantasies, episodes and experiences shared with his victim. A Delusional Erotomaniac may not intend to cause fear, but rather intends to actualise his relationship with his victim.

(ii) *Borderline-Erotomanics / love obsessives*

Borderline Erotomanics most likely have had no prior relationship with their victims, who have become known to them through the media. A common example of Borderline Erotomaniac is the pursuit of celebrities, which has been termed as the “**obsessed fan syndrome**”.

(iii) *Former intimate / simple obsessives*

Most stalking cases involve this category of stalkers. The stalker and victim were formerly intimate, either in a marriage or other sexual/romantic relationship. It has been suggested that this group poses the most threat to the victim<sup>1</sup>. Former intimates tend to exhibit the need to control their victims, and will target the victim and/or her current lover.

(iv) *Sociopathic stalkers*

This category of stalkers is characteristic of serial murderers and rapists who seek out victims who meet pre-defined criteria. They will stalk one victim after another as opposed to being fixated on a single victim.

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<sup>1</sup> Wayne Petherick, *Cyber-stalking: Obsessional Pursuit and the Digital Criminal*, <http://www.crimelibrary.com/criminology/cyberstalking/index.html>

(v) *Persons with false victimisation syndrome*

Stalkers with the syndrome believe that they are the victim of another person, either real or imaginary, in order to foster sympathy and support from those around them.<sup>2</sup>

Others

(i) *Vengeance Stalkers*<sup>3</sup>

Vengeance Stalkers feel that they have been victimised by an organisation, and are typically ex-employees. Vengeance Stalkers pursue the target organisation with the intention of 'getting even'. Repeat telephone calls of this type of stalker are a common phenomenon here.

A separate variety of Vengeance Stalkers, or Terrorist Stalkers<sup>4</sup>, have political motivations. Stalking is utilised as a weapon of terror to achieve an agenda. Examples of this kind of stalker include radical anti-abortionists in the US who stalk abortion clinic doctors.

(ii) *Debt Collectors*

A common article in the newspapers in Singapore is of stories of the home-owners who have mistakenly been targeted by Debt Collectors. Debt Collectors are driven by the desire to collect on the loans made to the debtors, often at exorbitant interest rates.

(iii) *Neighbourhood harassment*

Neighbourhood harassment cases have also been the subject of media attention from time to time. Cases involve various types of harassing behaviour between adjoining HDB apartments, including:

In some cases, the level of hostility escalates to actual physical violence. Some attempt has been made to alleviate the occurrence of this kind of harassment through community mediation.

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<sup>2</sup> Hickey, E. *Serial Murderers and Their Victims*, 2<sup>nd</sup> Ed., 1997, California, cited in *supra*, note 6.

<sup>3</sup> *Supra*, note 3 at 12.

<sup>4</sup> Beatty, D. *1999 National Victim Assistance Academy Text*, Chap 21.2, (Coleman, G. et. al. eds)  
<http://www.ojp.usdoj.gov/ovc/assist/nvaa99>



(iv) *Clients of counselling staff*<sup>5</sup>

The incidence of stalking or harassment of counselling staff appears to have been highlighted as a problem in the US. 63% of the respondents involved in a study of the stalking or harassment of the staff at counselling centres in the US reported being harassed by current or former clients<sup>6</sup>.

(v) *Cyberstalkers*

The rapid pace of development of the Internet and its associated communities have led to the rising incidence of 'cyberstalking'. Cyberstalkers are categorised separately for their employment of the Internet for the purposes of stalking, although in terms of their motivations, they may also fall under one of the more typical categories.

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<sup>5</sup> Lion, JR & Harschler, JA, "The Stalking of Clinicians by Their Patients" in Meloy JR (ed), *The Psychology of Stalking* (Academic Press, 1988) cited in the October 2000 Report at page 16.

<sup>6</sup> Romans, ISC et. al., "Stalking and Related Behaviours Experienced by Counseling Centre Staff Members From Current or Former Clients", *Professional Psychology: Research and Practice*, vol 27 no 6, at page 595, cited in the October 2000 Report at page 13.

## CASES INVOLVING STALKING

**A** Public Prosecutor v Seah Cheng Kim (Case decided on 30 May 2001, reported in the *Sunday Times* 27 May 2001 and *Straits Times* 31 May 2001 and 4 June 2001, *Today* 31 May 2001)

1.1 **Defendant** was a 40 year old single male suffering from Schizophrenia, living with his widowed father. Siblings do not want contact with him. Had 6 past admissions to Woodbridge Hospital between 1995 to 2000 for relapses of his illness. The relapse was due to poor compliance and frequent default of treatment.

1.2 The psychiatrist testified that because of poor compliance to treatment and limited social support, he was likely to perpetuate his actions and pose a continual threat to his victim.

1.3 **The victim** was a 53 year old female primary school teacher, a widow staying with 1 of her daughters. Apart from being familiar with the name 'Seah Cheng Kim', the victim did not know the accused. The victim suffered from Post Traumatic Stress Disorder as a result of the stalking and applied for long leave from work. She feared for her life and sanity.

1.4 Victim had been stalked since March 1999 until accused was arrested on 27 Feb 2001. She filed 2 Magistrate's complaints against the accused but was unable to get a restraining order against the accused. In addition, she was unable to get a personal protection order since a PPO is only issued if the accused was related to her.

### 1.5 Instances of Harassment

1.5.1 On or about 23 March 1999, accused left packages of food and a piece of paper with his particulars on it at the victim's home. Victim called accused thinking that the package was left there by mistake. Accused invited her out for a date and asked to rent a room from her. Victim refused as she thought the accused was not sound. Thereafter, the accused called her on the phone.

1.5.2 On the same night, when the victim left with her family for dinner, she saw a Comfort Taxi at the car-park below, with the hazard lights on. The identification plate in the Taxi bore the name of the accused.

1.5.3 On or about 26 Mar 1999, the accused called and asked her out and expressed his love for her. He left many notes asking her to rent a room to him. The calls were traced and were found to have been made from public phones.

1.5.4 On 18 May 99, accused sent the victim his resume and work credentials.

1.5.5 On 7 May 2000, accused left his name card under the door to the victim's residence. On the card, the Accused asked the victim to accompany him to Kota Tinggi, Johore. Victim dared not leave home.

1.5.6 On 10 May 2000, accused left a message on the victim's answering service saying that he had visited the house on the 9 May 2000 at 9 pm. Left his name card under the door.

1.5.7 On 13 May 2000, accused left his name card under victim's door. He also left a VCD of a 'romantic' movie for the victim.

1.5.8 On 19 Oct 2000, victim received a 'vulgar' e-mail. However, there is no evidence that it was from the accused.

1.5.9 On 12 Nov 2000, 5 pm, a male person kept knocking on the victim's door and stood outside her door for some time. There is no evidence that the person was the accused.

1.5.10 On 20 Jan 2001, victim received a letter from Seah Cheng Kim in her letter box.

1.5.11 On 21 Jan 2001, accused left a huge portrait of himself outside victim's house. Accused addressed the victim as his wife. (Victim applied for but was not granted a restraining order or PPO.)

1.5.12 On 24 Jan 2001, accused left oranges and Lunar New Year Card outside the door.

1.5.13 On 30 Jan 2001, accused left \$500 cheque (amongst other things) for the Victim as 'marriage expenses'.

1.5.14 On 11 Feb 2001, accused left a plastic bag filled with mineral water; a book, 2 stalks of roses and another book with messages inside it addressing her as wife and himself as husband;

1.5.15 On 14 Feb 2001, accused left a plastic bag filled with a yellow and a red rose, and love messages in a Valentine's Day card.

1.5.16 On 18 Feb 2001, accused left a package filled with contraceptives ('Strawberry' flavour), book on 'Motherhood', black nylon hairband, one cardboard with some messages and 1 sanitary pad ('Kotex').

1.6 **Arrest and Prosecution.** The Police *informally warned* the accused on 2 occasions – March 1999 and 7 May 2000. He was *informally warned* not to harass the victim. They explained to the accused that the victim does not know him and he was causing her distress and fear. There was no offence revealed for which the accused could legitimately be charged for at that point in time.

1.7 Despite repeated warnings, the accused persisted in his actions. On the 27 Feb 2001, the Accused was arrested.

1.8 He was charged with insulting the modesty of a woman under section 509 of the Penal Code (Cap.224) and for persisting in a threatening course of behaviour under section 13A(1)(a) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap.184). The court rejected his plea of guilty and called for a psychiatric report. The psychiatrist testified that he was of unsound mind at the time of the offence and that he was likely to pose a continued threat to his victim should he be given outpatient treatment.

1.9 On 30 May 2001, the court acquitted Seah on the ground that he was of unsound mind and ordered him to be kept at the Institute of Mental Health until he was deemed fit for release.

## **B Reported in the Straits Times 4 June 2001**

1.1 Widow, a 50 year old clerk, ended love affair with boyfriend.

1.2 The man turned up at workplace and home and places she frequented with friend.

1.3 He left messages on her doorstep, first pleading, then offensive.

1.4 Woman changed her home and mobile telephone numbers to avoid his calls. He tried to obtain numbers from her friends and, when they refused, began a smear campaign. He told her friends, employer and colleagues that she was a 'loose woman' and that he had broken off the affair.

1.5 He got a locksmith to break into her flat. Police investigating the case.

1.6 She got a lawyer to write a warning letter that an injunction would be sought against him. He replied with a long letter. Harassment, lasting 6 months, had since stopped.

**C** Public Prosecutor v Lim Song Khee (MA 256 of 2000, decided 9 Apr 2001)

1.1 Woman went on a trip to Europe with Lim sometime in April 1999. Upon their return to Singapore, woman ended the relationship.

1.2 From April 1999 onwards, she started having problems logging into her email account ('the email account').

1.3 On 9 May 1999, an email was sent out from the email account to three of the woman's friends. The contents in the email were addressed to her and they contained details of her purported intimate relations with Lim during their Europe trip.

1.4 He also stalk her with the assistance of information retrieved from reading her emails and began to harass the victim's friend after discovering that she had encouraged the victim to make a Police Report against him.

1.5 Lim was charged under section 3 of the Computer Misuse Act (Cap.50A) Lim appealed. Conviction was upheld.

**D** Article from Straits Times Interactive Jun 11, 2001

## **Thief stole IC - and identity**

### **Loan-shark graffiti disrupts mechanic's life after IC loss**

LOAN sharks scribbled warnings and splashed paint on his door, demanding that he clear his debts.

But he had not borrowed a cent from them.

About three weeks ago, Mr Ang Ching Hock, 43, returned to his sixth-floor Ang Mo Kio flat to see warnings scrawled near the staircase outside it.

It was the trademark loan-shark missive: 'Owe money, return money' in Chinese, together with his name and identity-card number.

There were similar warnings on the third and fourth floors.

His uncle, who lives on the fourth floor of the same block, first saw the scrawls and told his family about it.

Last Thursday, the loan sharks struck a second time, splashing Mr Ang's front door with red paint.

ded 'We were shocked as it's never happened to my family before,' said Miss S. Ang, Mr Ang's younger sister.

pon She and their parents live in the same flat.

her 'My mother has a weak heart and she hasn't had a good night's sleep since this happened,' she added.

of Mr Ang said in Mandarin: 'I didn't borrow from loan sharks. I think someone used my IC which was stolen early last month.' A car mechanic, he usually changes out of his clean clothes and leaves them in the office while he repairs vehicles in the workshop. His wallet, which contained the IC, was in the back pocket of his clean pants.

ng The evening his IC went missing, he was changing into his clean clothes when he ad noticed his wallet had been tampered with and his IC was missing.

A) Two weeks later, the loan sharks gave their first warning.

The thief appears to have even gone shopping with the IC, buying two mobile phones under his name.

Mr Ang found out only when a local telecommunications company billed him for calls made on the phones.

He said that in about 10 days, the thief ran up a bill of more than \$400.

'I hope that after my story is published, the loan sharks will stop disturbing us,' he added.

E Article from Straits Times Interactive, Jun 11, 2001

## **Pestered for money they don't owe**

**Loan sharks are notorious for using intimidation and harassment to get their money back from bad debtors. But sometimes, innocent residents fall victim to their tactics. LEE HUI CHIEH and TAN YEN NEE talk to two such people**

THE nightmare for a 53-year-old, self-employed clerk started more than three years ago when loan sharks first knocked on her door.

Today, she is still living in fear because of constant harassment from the same loan sharks looking for the same woman. And, more recently, for a second female debtor.

Their most recent visit was last Friday.

Ms Mary Wong (not her real name) said she froze when she heard the familiar knock on the door of her West Coast Road flat.

Three days earlier, she had returned home to find an incense-paper burner in front of her doorstep, along with a note bearing a pager number and the words, in Chinese characters, 'Please call back'.

It was one of several notes that the loan sharks' runner have left over the months. Their tone ranges from mild to threatening.

'The loan sharks first appeared in April 1998 looking for 'Ah Choo'. I have no idea who she is. I don't understand why they still won't give up,' said Ms Wong, who has been living in her flat for the past 22 years.

The loan sharks' scare tactics had included smashing flowerpots on her door, and ringing her doorbell or banging on her door in the middle of the night, she said. Even her neighbours' flowerpots were not spared.

'I never thought I'd be a victim of such intimidation. It has come to a point now where I become hysterical, especially when the doorbell rings in the middle of the night,' she said.

She has made numerous police reports, but the harassment has not stopped. The case is under police investigation.

Just last week, the loan sharks began asking for a woman by the name of 'Swee Ee', apparently another debtor.

'I haven't the slightest clue who these two women are. I really wish I could find out though,' she said.

All she knows is that the loan sharks have indicated in their notes to her that the two debtors owe some \$1,200 and \$2,400 in separate receipts.

She believes the two women have borrowed the money and given them her address as their own.

'I'm furious. How could anyone endure this kind of harassment for three years?' asked Ms Wong.

'My life has been turned topsy-turvy. I'm a prisoner in my own home, so much so that I don't even dare to go out now even though I'm semi-retired.'

F Article from The Straits Times, May 1, 2001

## Tutor hounded by father's creditors

**She is now in hiding after discovering that her moneychanger father died owing \$10 million to 600 creditors**

Madam Chang Fei Ping never imagined that she would fear for her life because of something her father had done.

Mr Chang Fong Kaw, 61, a moneychanger, was everything she and her younger brother, Andrew, could have wished for — a doting father, a successful businessman and a famous philanthropist in Malaysia.

But since his death in March this year, their world has been turned upside-down.

Madam Chang, a private tutor and permanent resident here, was shocked to discover that her father owed debts amounting to nearly \$10 million to more than 600 creditors.

Her 27-year-old brother, heir to the senior Chang's once-thriving moneychanging business in Johor Baru, went missing barely a week after their father's death.

Madam Chang, 30, has now gone into hiding because of threats and harassment from her father's creditors.

In the most recent incident, her uncle, Mr Joseph Lee, was confronted by a group of creditors last Thursday.

Mr Lee, a 49-year-old businessman dealing in children's clothes, was at an insurance company in Changi that afternoon when he was cornered by four creditors.

They started ringing other creditors who had come to Singapore from Malaysia to look for the Changs and their number soon swelled to 10.

They forced him to reveal Madam Chang's whereabouts and followed him to her flat in Woodlands, before turning up at another relative's flat in Holland Village, where she was hiding.

They banged on the door and demanded that Madam Chang let them in.

Speaking to The Straits Times yesterday, Madam Chang said in Mandarin: "I called the police and then told the creditors that I would not open the door until



the police were around. I was afraid that the moment I did so, they would barge into the flat.”.

A heated argument started between her and the creditors outside.

Madam Chang said: “They asked for their money, which they had invested with my father, and told me to jump off the building to prove my innocence. I refused and told them that the matter had been referred to lawyers as my father had not left behind a will.”

All financial matters in the business, she said, were handled by her brother.

“Only he knows how much money our father had. I hope that he will come back soon to solve this problem” she said.

### **G Article from Straits Times, Oct 15, 2001**

## **Madly in love - with her doctor**

**Study shows that patients have stalked almost half of the doctors and social workers at the Institute of Mental Health**

By Sharmilpal Kaur

SHE waits for him outside his clinic, calls him several times a day and when he answers, makes sexual remarks to him, which he is too embarrassed to repeat.

But forensic psychiatrist Stephen Phang ignores her advances. He is treating her for schizophrenia, seeing her once a month for it, and has just one goal - to make her well again.

Schizophrenia is a mental condition where a person may have delusions and an inability to relate to other people. Some may hear voices in their head.

Dr Phang said: 'She loiters around the clinic. If you walk past her and don't pay attention to her comments, she goes away.'

The 34-year-old, a consultant at the Institute of Mental Health, is not worried that he or those he cares for will be harmed by her, though the married, middle-aged woman has been stalking him for several years.

He said: 'I just treat it as an occupational hazard. If my life is threatened, I can make a police report.'

He is lucky, he added, that his wife used to be a social worker at the institute and understands the situation.

His is not an isolated case. Almost half the doctors and social workers at the institute have been stalked by their patients, revealed a recent study conducted by Dr Mok Yee Ming, who also works there.

Two-thirds of the 27 psychiatrists polled have been stalked, so have a third of the 28 medical social workers and psychologists who took part in the study. Four in 10 have been harassed in the last 12 months, while nearly one in five said that he still is.

The institute has 69 psychologists, psychiatrists and medical social workers. Most of the stalkers are between 21 and 40 years old and single, and many are unemployed. There are slightly more men than women.

Most fancy themselves in love with their victims, a condition called erotomania. Said Dr Mok: 'A lot of them want to get married to the person they stalk.'

The study also shows that most of the stalkers suffer from schizophrenia. However, Associate Professor Chong Siow Ann, a consultant at the institute and an expert on the mental illness, does not believe that schizophrenics are more likely to turn into stalkers than those suffering from other mental conditions. 'Such people are socially withdrawn,' he said, adding that they want to be left alone. He also pointed out that the high number of schizophrenic stalkers in the study could be because most of the institute's patients suffer from schizophrenia. He has never been stalked, though from time to time, he said, he 'gets letters showing appreciation from the same person one too many times'. The study found that most of the victims are aged between 26 and 35.

Their stalkers usually loiter around the institute, make unwanted approaches and unsolicited phone calls, or send letters, e-mail or faxes that are not needed. But these people have never harmed their victims physically or damaged their property, which could be why the staff at the institute are not overly worried about being stalked. Only one person has made a police report.

There are no anti-stalking laws in Singapore, but victims can seek police help against stalkers who have trespassed on their property or harmed them. But unlike in the United States, there is little the police here can do if a person finds himself being stalked, a situation that Dr Phang said could be 'quite traumatic'.

Dr Mok said that the data from the study would be analysed further, and the research could be expanded to include other psychiatric institutions here.

**STATISTICS ON APPLICATIONS UNDER PART VII  
OF THE WOMEN'S CHARTER**

Applications for Personal Protection Orders (PPO) and Domestic Exclusion Orders (DEO)

	1998	1999	2000	2001 (1st Qtr)
No. of complaints	97	155	164	45
No. of applications for PPO	2,560	2,723	2,722	712
No. of applications for DEO	80	99	139	32
No. of expedited orders issued	1,216	1,746	2,115	575
No. of PPO issued	1,283	1,630	1,599	358
No. of DEO issued	86	103	101	47

**FOREIGN LEGISLATION ON STALKING**

ders

**CANADA CRIMINAL CODE**

264.—(1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

**Prohibited conduct**

(2) The conduct mentioned in subsection (1) consists of—

- (a) repeatedly following from place to place the other person or anyone known to them;
- (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
- (c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- (d) engaging in threatening conduct directed at the other person or any member of their family.

**Punishment**

(3) Every person who contravenes this section is guilty of—

- (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction.

**Factors to be considered**

(4) Where a person is convicted of an offence under this section, the court imposing the sentence on the person shall consider as an aggravating factor that, at the time the offence was committed, the person contravened—

- (a) the terms or conditions of an order made pursuant to section 161 or a recognizance entered into pursuant to section 810, 810.1 or 810.2; or
- (b) the terms or conditions of any other order or recognizance made or entered into under the common law or a provision of this or any other Act of Parliament or of a province that is similar in effect to an order or recognizance referred to in paragraph (a).

## Reasons

(5) Where the court is satisfied of the existence of an aggravating factor referred to in subsection (4), but decides not to give effect to it for sentencing purposes, the court shall give reasons for its decision.

R.S., 1985, c. C-46, s. 264; R.S., 1985, c. 27 (1st Supp.), s. 37; 1993, c. 45, s. 2; 1997, c. 16, s. 4, c. 17, s. 9.

## ACT CRIMES ACT 1900 - SECT 34A

### 34A. Stalking etc.

(1) A person shall not stalk another person with intent to cause —

- (a) apprehension or fear of serious harm in the other person or a third person;  
or
- (b) serious harm to the other person or a third person.

Penalty:

(a) where —

- (i) the offence involved a contravention of an injunction or other order made by a court; or
- (ii) the offender was in possession of an offensive weapon;

imprisonment for 5 years; and

(b) in any other case—imprisonment for 2 years.

(2) For the purposes of subsection (1), a person shall be taken to stalk another person if, on at least 2 occasions, he or she —

- (a) follows or approaches the other person;
- (b) loiters near, watches, approaches or enters a place where the other person resides, works or visits;
- (c) keeps the other person under surveillance;
- (d) interferes with property in the possession of the other person;
- (e) gives or sends offensive material to the other person or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the other person;
- (f) telephones or otherwise contacts the other person;
- (g) acts covertly in a manner that could reasonably be expected to arouse apprehension or fear in the other person; or
- (h) engages in conduct amounting to intimidation, harassment or molestation of the other person.

(3) In a prosecution for an offence under subsection (1), it is not necessary to prove that the person stalked or a third person, as the case may be, apprehended or feared serious harm.

(4) In this section —

“harm” means physical harm, harm to mental health, or disease, whether permanent or temporary;

“harm to mental health” includes psychological harm;

“physical harm” includes unconsciousness, pain, disfigurement and any physical contact that might reasonably be objected to in the circumstances, whether or not there was an awareness of that contact at the time.

## NEW SOUTH WALES CRIMES ACT 1900 - SECT 562A

### 562A. Definitions

(1) In this Part:

apprehended domestic violence order means an order under Division 1A.

apprehended personal violence order means an order under Division 1B.

apprehended violence order means:

(a) an apprehended domestic violence order, or

(b) an apprehended personal violence order.

authorised justice means (except in section 562H):

(a) a Magistrate, or

(b) a justice of the peace who is employed in the Attorney General's Department.

court means:

(a) a Local Court;

(b) the Children's Court, or

(c) the District Court;

exercising jurisdiction under section 562G.

defendant means the person against whom an order is made or is sought to be made.

intimidation means:

(a) conduct amounting to harassment or molestation, or

(b) the making of repeated telephone calls, or

- (c) any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.

order means an apprehended violence order (including a telephone interim order or an interim order made by a court) in force under this Part and, if the order is varied under this Part, means the order as so varied.

protected person means the person for whose protection an order is made.

stalking means the following of a person about or the watching or frequenting of the vicinity of or an approach to a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity.

telephone interim order means an interim apprehended violence order made by an authorised justice in accordance with section 562H.

(2) For the purpose of determining whether a person's conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour.

(3) For the purposes of this Part, a person has a domestic relationship with another person if the person:

- (a) is or has been married to the other person, or
- (b) has or has had a de facto relationship, within the meaning of the Property (Relationships) Act 1984, with the other person, or
- (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) is living or has lived in the same household or other residential facility as the other person, or
- (e) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or (f) is or has been a relative (within the meaning of section 4 (6)) of the other person.

#### **562AB. Stalking or intimidation with intent to cause fear of physical or mental harm**

(1) A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is liable to imprisonment for 5 years, or to a fine of 50 penalty units, or both.

(2) For the purposes of this section, causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm to another person with whom he or she has a domestic relationship.

(3) For the purposes of this section, a person intends to cause fear of physical or mental harm if he or she knows that the conduct is likely to cause fear in the other person.

(4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared physical or mental harm. Division 1A Apprehended domestic violence orders

## **NORTHERN TERRITORY CRIMINAL CODE ACT 1997**

### **189. UNLAWFUL STALKING**

(1) A person stalks another person if, on at least 2 separate occasions —

(a) the person —

- (i) follows the other person;
- (ii) loiters outside or enters the place of residence or employment of the other person or some other place frequented by the other person;
- (iii) interferes with property (whether or not the person has an interest in the property) in the possession of the other person;
- (iv) keeps the other person under surveillance; or
- (v) acts covertly in a way that could reasonably be expected to arouse the other person's apprehension or fear; and

(b) the person intends to cause —

- (i) physical or mental harm to the other person or a third person; or
- (ii) apprehension or fear.

(2) A person who stalks another person is guilty of an offence and is liable —

(a) to imprisonment for 2 years; or

(b) where —

- (i) the person's conduct contravened a condition of bail or an injunction or order imposed by a court (either under a law of the Commonwealth, the Territory, a State or another Territory of the Commonwealth); or
- (ii) the person was, on any occasion to which the charge relates, in the possession of an offensive weapon,

to imprisonment for 5 years.



# QUEENSLAND CRIMINAL CODE ACT 1899

(as amended by Criminal Code (Stalking) Amendment Act 1999 (No 18 of 1999))

## CHAPTER 33A—UNLAWFUL STALKING

### Definitions for ch 33A

**359A.** In this chapter —

“**circumstances**” means the following circumstances —

- (a) the alleged stalker’s circumstances;
- (b) the circumstances of the stalked person known, foreseen or reasonably foreseeable by the alleged stalker;
- (c) the circumstances surrounding the unlawful stalking;
- (d) any other relevant circumstances.

“**detriment**” includes the following —

- (a) apprehension or fear of violence to, or against property of, the stalked person or another person;
- (b) serious mental, psychological or emotional harm;
- (c) prevention or hindrance from doing an act a person is lawfully entitled to do;
- (d) compulsion to do an act a person is lawfully entitled to abstain from doing.

*Examples of paragraph (c) —*

A person no longer walks outside the person’s place of residence or employment.

A person significantly changes the route or form of transport the person would ordinarily use to travel to work or other places.

*Example of paragraph (d) —*

A person sells a property the person would not otherwise sell.

“**property**”, of a person, means —

- (a) property in which the person has an interest<sup>7</sup>, whether or not the defendant also has an interest in the property; or
- (b) property that is otherwise —
  - (i) used and enjoyed by the person; or

<sup>7</sup> The *Acts Interpretation Act 1954*, section 36—

“**interest**”, in relation to land or other property, means—

- (a) a legal or equitable estate in the land or other property; or
- (b) a right, power or privilege over, or in relation to, the land or other property.

- (ii) available for the person's use or enjoyment; or
- (iii) in the person's care or custody; or
- (iv) at the premises at which the person is residing.

**"stalked person"** see section 359B.

**"unlawful stalking"** see section 359B.

**"violence"** —

- (a) does not include any force or impact within the limits of what is acceptable as incidental to social interaction or to life in the community; and
- (b) against a person includes an act depriving a person of liberty; and
- (c) against property includes an act of damaging, destroying, removing, using or interfering with the property.

### **What is unlawful stalking**

**359B.** "Unlawful stalking" is conduct —

- (a) intentionally directed at a person (the **"stalked person"**); and
- (b) engaged in on any 1 occasion if the conduct is protracted or on more than 1 occasion; and
- (c) consisting of 1 or more acts of the following, or a similar, type —
  - (i) following, loitering near, watching or approaching a person;
  - (ii) contacting a person in any way, including, for example, by telephone, mail, fax, e-mail or through the use of any technology;
  - (iii) loitering near, watching, approaching or entering a place where a person lives, works or visits;
  - (iv) leaving offensive material where it will be found by, given to or brought to the attention of, a person;
  - (v) giving offensive material to a person, directly or indirectly;
  - (vi) an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;
  - (vii) an act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and
- (d) that —
  - (i) would cause the stalked person apprehension or fear, reasonably arising in all the circumstances, of violence to, or against property of, the stalked person or another person; or
  - (ii) causes detriment, reasonably arising in all the circumstances, to the stalked person or another person.

### **What is immaterial for unlawful stalking**

**359C.**—(1) For section 359B(*a*), it is immaterial whether the person doing the unlawful stalking —

- (*a*) intends that the stalked person be aware the conduct is directed at the stalked person; or
- (*b*) has a mistaken belief about the identity of the person at whom the conduct is intentionally directed.

(2) For section 359B(*a*) and (*c*), it is immaterial whether the conduct directed at the stalked person consists of conduct carried out in relation to another person or property of another person.

(3) For section 359B(*b*), it is immaterial whether the conduct throughout the occasion on which the conduct is protracted, or the conduct on each of a number of occasions, consists of the same or different acts.

(4) For section 359B(*d*), it is immaterial whether the person doing the unlawful stalking intended to cause the apprehension or fear, or the detriment, mentioned in the section.

(5) For section 359B(*d*)(*i*), it is immaterial whether the apprehension or fear, or the violence, mentioned in the section is actually caused.

### **Particular conduct that is not unlawful stalking**

**359D.** "Unlawful stalking" does not include the following acts —

- (*a*) acts done in the execution of a law or administration of an Act or for a purpose authorised by an Act;
- (*b*) acts done for the purposes of a genuine industrial dispute;
- (*c*) acts done for the purposes of a genuine political or other genuine public dispute or issue carried on in the public interest;
- (*d*) reasonable conduct engaged in by a person for the person's lawful trade, business or occupation;
- (*e*) reasonable conduct engaged in by a person to obtain or give information that the person has a legitimate interest in obtaining or giving.

### **Punishment of unlawful stalking**

**359E.**—(1) A person who unlawfully stalks another person is guilty of a crime.

(2) A person who commits the crime of unlawful stalking is liable to a maximum penalty of imprisonment for 5 years.

(3) However, a person is liable to a maximum penalty of imprisonment for 7 years if, for any of the acts constituting the unlawful stalking, the person —

- (*a*) uses or intentionally threatens to use, violence against anyone or anyone's property; or

- (b) possesses a weapon within the meaning of the *Weapons Act 1990*; or
- (c) contravenes or intentionally threatens to contravene an injunction or order imposed or made by a court or tribunal under a law of the Commonwealth or a State.

### **Court may restrain unlawful stalking**

**359F.**—(1) This section applies on the hearing before a court of a charge against a person of unlawful stalking.

(2) Whether the person is found guilty or not guilty or the prosecution ends in another way, if the presiding judge or magistrate considers it desirable, the judge or magistrate may constitute the court to consider whether a restraining order should be made against the person.

(3) The judge or magistrate may act under subsection (2) on application by the Crown or an interested person or on the judge's or magistrate's own initiative.

(4) Also, if the restraining order proceeding is started before the Supreme Court or the District Court, the court may order the proceeding to be transferred to a Magistrates Court.

(5) If a court makes an order under subsection (4), the registrar of the court must send to the clerk of the relevant Magistrates Court a copy of the order and the record of proceedings of the hearing of the charge and any application mentioned in subsection (3).

(6) The court hearing the restraining order proceeding may make a restraining order against the person in relation to any person or any property if it considers it desirable to do so having regard to the evidence given at the hearing of the charge and any application under subsection (3) and any further evidence the court may admit.

(7) A restraining order may be varied or revoked at any time by the court, and, if the order provides, by another court.

(8) A person who knowingly contravenes a restraining order commits an offence.

### **Maximum penalty—40 penalty units or 1 year's imprisonment.**

(9) A restraining order may be made against a person whether or not another order is made against the person in the proceeding for the charge.

(10) A restraining order proceeding is not a criminal proceeding.

(11) A question of fact for a decision under subsection (2) and in a restraining order proceeding must be decided on the balance of probabilities.

(12) In this section —

“charge” means the charge of unlawful stalking mentioned in subsection (1).

“restraining order” against a person means any order considered appropriate for the purpose of prohibiting particular conduct, including, for example, contact for a stated period by the person with a stated person or the property of a stated person.

“restraining order proceeding” means a proceeding started under subsection (2).

## **QUEENSLAND CRIMINAL CODE ACT 1891** (before 1999 amendment)

### **Unlawful stalking**

**359A.**—(1) A person must not unlawfully stalk another person.

(2) A person (the “first person”) unlawfully stalks another person (the “second person”) if—

- (a) the first person engages in a course of conduct involving doing a concerning act on at least 2 separate occasions to another person or other persons (whether the second person, another or others); and
- (b) the first person intends that the second person be aware that the course of conduct is directed at the second person, even if the concerning acts or particular concerning acts are done to, or to the property of, a person other than the second person; and
- (c) the second person is aware that the course of conduct is directed at the second person; and
- (d) the course of conduct would cause a reasonable person in the second person’s circumstances to believe that an offensive act (a “concerning offensive act”) is likely to happen.

(3) For the purpose of subsection (2)(d), the second person’s circumstances are those known or foreseen by the first person and those reasonably foreseeable by the first person.

(4) It is a defence to a charge under this section to prove that the course of conduct was engaged in for the purposes of a genuine—

- (a) industrial dispute; or
- (b) political or other public dispute or issue carried on in the public interest.

(5) The offence under this section may only be committed against an individual.

(6) Unlawful stalking is a crime for which the first person is liable to a maximum penalty of—

- (a) imprisonment for 5 years if, for any of the concerning acts constituting the offence, the first person—

- (i) unlawfully uses or threatens to use unlawful violence against another person or another person's property; or
- (ii) has possession of a weapon within the meaning of the Weapons Act 1990; or
- (iii) contravenes an injunction or order imposed or made by a court under a law of the State, the Commonwealth, another State or a Territory, or threatens this; or

(b) imprisonment for 3 years in any other case.

(7) In this section —

“concerning act” means any of the following acts —

- (a) following, loitering near, watching or approaching another person;
- (b) telephoning or otherwise contacting another person;
- (c) loitering near, watching, approaching or entering a place where another person lives, works or visits;
- (d) interfering with property in the possession of another person;
- (e) leaving offensive material where it will be found by, given to or brought to the attention of, another person;
- (f) giving offensive material to another person, directly or indirectly;
- (g) an act of harassment, intimidation or threat against another person;
- (h) an unlawful act committed against the person or property of another person;

“concerning offensive act” means an unlawful act of violence by the first person against —

- (a) the second person's person or property; or
- (b) a person, other than the second person, about whose health or custody the second person would reasonably be expected to be seriously concerned if the act were done, including, for example, a dependant, relative, friend, employer or associate of the second person; or
- (c) the property of a person, other than the second person, about whose property the second person would reasonably be expected to be seriously concerned if the act were done, including, for example, the premises where the second person lives or works, or the property of a dependant, relative, friend, employer or associate of the second person;

“property” of a person other than the first person includes property in which both the first person and the other person have an interest;

“unlawful” act means an unlawful act constituting an offence;

“violence” against the person includes an act depriving a person of liberty;

“violence” against property includes an unlawful act of damaging, destroying, removing, using or interfering with property.

## **SOUTH AUSTRALIA CRIMINAL LAW CONSOLIDATION ACT 1935**

### **Unlawful stalking**

**19AA.**—(1) A person stalks another if —

(a) on at least two separate occasions, the person —

- (i) follows the other person; or
- (ii) loiters outside the place of residence of the other person or some other place frequented by the other person; or
- (iii) enters or interferes with property in the possession of the other person; or
- (iv) gives offensive material to the other person, or leaves offensive material where it will be found by, given to or brought to the attention of the other person; or
- (v) keeps the other person under surveillance; or
- (vi) acts in any other way that could reasonably be expected to arouse the other person’s apprehension or fear; and

(b) the person —

- (i) intends to cause serious physical or mental harm to the other person or a third person; or
- (ii) intends to cause serious apprehension or fear.

(2) A person who stalks another is guilty of an offence.

Penalty:

(a) if —

- (i) the offender’s conduct contravened an injunction or an order imposed by a court (either under a law of the State or the Commonwealth); or
- (ii) the offender was, on any occasion to which the charge relates, in possession of an offensive weapon,

imprisonment for not more than 5 years;

(b) in any other case—imprisonment for not more than 3 years.

(3) A person who is charged with stalking is (subject to any exclusion in the instrument of charge) to be taken to have been charged in the alternative with offensive behaviour so that if the court is not satisfied that the charge of stalking

ng, has been established but is satisfied that the charge of offensive behaviour has been established, the court may convict the person of offensive behaviour.

DN (4) A person who has been acquitted or convicted on a charge of stalking may not be convicted of another offence arising out of the same set of circumstances and involving a physical element that is common to that charge.

(5) A person who has been acquitted or convicted on a charge of an offence other than stalking may not be convicted of stalking if the charge of stalking arises out of the same set of circumstances and involves a physical element that is common to the charge of that other offence.

## VICTORIA CRIMES ACT 1958 - SECT 21A

### ne Stalking

er 21A.—(1) A person must not stalk another person.

ve **Penalty: Level 5 imprisonment (10 years maximum).**

ne (2) A person (the offender) stalks another person (the victim) if the offender engages in a course of conduct which includes any of the following —

- ie (a) following the victim or any other person;
- (b) telephoning, sending electronic messages to, or otherwise contacting, the victim or any other person;
- n (c) entering or loitering outside or near the victim's or any other person's place of residence or of business or any other place frequented by the victim or the other person;
- (d) interfering with property in the victim's or any other person's possession (whether or not the offender has an interest in the property);
- (e) giving offensive material to the victim or any other person or leaving it where it will be found by, given to or brought to the attention of, the victim or the other person;
- r (f) keeping the victim or any other person under surveillance;
- e (g) acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of any other person —
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with the intention of causing physical or mental harm to the victim or of arousing apprehension or fear in the victim for his or her own safety or that of any other person and the course of conduct engaged in actually did have that result.

(3) For the purposes of this section an offender also has the intention to cause physical or mental harm to the victim or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if that offender knows, or in all the particular circumstances that offender ought to have understood, that



engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear and it actually did have that result.

(4) This section does not apply to conduct engaged in by a person performing official duties for the purpose of—

- (a) the enforcement of the criminal law; or
- (b) the administration of any Act; or
- (c) the enforcement of a law imposing a pecuniary penalty; or
- (d) the execution of a warrant; or
- (e) the protection of the public revenue—

that, but for this sub-section, would constitute an offence against subsection (1).

(5) Despite anything to the contrary in the Crimes (Family Violence) Act 1987, the Court within the meaning of that Act may make an intervention order under that Act in respect of a person (the defendant) if satisfied on the balance of probabilities that the defendant has stalked another person and is likely to continue to do so or to do so again and for this purpose that Act has effect as if the other person were a family member in relation to the defendant within the meaning of that Act if he or she would not otherwise be so.

## CALIFORNIA PENAL CODE

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison. (b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years. (c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years. (2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years. (d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to subparagraph (E) of paragraph (2) of subdivision (a) of Section 290. (e) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. This course of conduct

must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person. (f) For purposes of this section, "course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct." (g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. (h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code. (i) This section shall not apply to conduct that occurs during labor picketing. (j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed. (k) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. (l) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. (m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684. 646.91. (a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order where a peace officer, as defined in Section 830.1, 830.2, or 830.32, asserts reasonable grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family,

within the meaning of Section 646.9. (b) A peace officer who requests an emergency protective order shall reduce the order to writing and sign it. (c) An emergency protective order shall include all of the following: (1) A statement of the grounds asserted for the order. (2) The date and time the order expires. (3) The address of the superior court for the district or county in which the protected party resides. (4) The following statements, which shall be printed in English and Spanish: (A) "To the protected person: This order will last until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application." (B) "To the restrained person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application." (d) An emergency protective order may be issued under this section only if the judicial officer finds both of the following: (1) That reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Section 646.9, exists. (2) That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity. (e) An emergency protective order may include either of the following specific orders as appropriate: (1) A harassment protective order as described in Section 527.6 of the Code of Civil Procedure. (2) A workplace violence protective order as described in Section 527.8 of the Code of Civil Procedure. (f) An emergency protective order shall be issued without prejudice to any person. (g) An emergency protective order expires at the earlier of the following times: (1) The close of judicial business on the fifth court day following the day of its issuance. (2) The seventh calendar day following the day of its issuance. (h) A peace officer who requests an emergency protective order shall do all of the following: (1) Serve the order on the restrained person, if the restrained person can reasonably be located. (2) Give a copy of the order to the protected person, or, if the protected person is a minor child, to a parent or guardian of the protected child if the parent or guardian can reasonably be located, or to a person having temporary custody of the child. (3) File a copy of the order with the court as soon as practicable after issuance. (i) A peace officer shall use every reasonable means to enforce an emergency protective order. (j) A peace officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable. (k) A peace officer who requests an emergency protective order under this section shall carry copies of the order while on duty. (l) A peace officer described in subdivision (a) or (b) of Section 830.32 who requests an emergency protective order pursuant to this section shall also notify the sheriff or police chief of the city in whose jurisdiction the peace officer's college or school is located after issuance of the order. (m) "Judicial officer," as used in this section, means a judge, commissioner, or referee. (n) Nothing in this section shall be construed to permit a court to issue an emergency protective order prohibiting speech or other activities that are constitutionally protected or protected by the

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laws of this state or by the United States or activities occurring during a labor dispute, as defined by Section 527.3 of the Code of Civil Procedure, including but not limited to, picketing and hand billing. (o) The Judicial Council shall develop forms, instructions, and rules for the scheduling of hearings and other procedures established pursuant to this section. (p) Any intentional disobedience of any emergency protective order granted under this section is punishable pursuant to Section 166. Nothing in this subdivision shall be construed to prevent punishment under Section 646.9, in lieu of punishment under this section, if a violation of Section 646.9 is also pled and proven. 646.92. (a) The Department of Corrections, county sheriff, or director of the local department of corrections shall give notice not less than 15 days prior to the release from the state prison or a county jail of any person who is convicted of violating Section 646.9 or convicted of a felony offense involving domestic violence, as defined in Section 6211 of the Family Code, or any change in the parole status or relevant change in the parole location of the convicted person, or if the convicted person absconds from supervision while on parole, to any person the court identifies as a victim of the offense, a family member of the victim, or a witness to the offense by telephone and certified mail at his or her last known address, upon request. A victim, family member, or witness shall keep the Department of Corrections or county sheriff informed of his or her current mailing address and telephone number to be entitled to receive notice. A victim may designate another person for the purpose of receiving notification. The Department of Corrections, county sheriff, or director of the local department of corrections, shall make reasonable attempts to locate a person who has requested notification but whose address and telephone number are incorrect or not current. However, the duty to keep the Department of Corrections or county sheriff informed of a current mailing address and telephone number shall remain with the victim. Following notification by the department pursuant to Section 3058.61, in the event the victim had not originally requested notification under this section, the sheriff or the chief of police, as appropriate, shall make an attempt to advise the victim or, if the victim is a minor, the parent or guardian of the victim, of the victim's right to notification under this section. (b) All information relating to any person who receives notice under this section shall remain confidential and shall not be made available to the person convicted of violating this section. (c) For purposes of this section, "release" includes a release from the state prison or a county jail because time has been served, a release from the state prison or a county jail to parole or probation supervision, or an escape from an institution or reentry facility. (d) The Department of Corrections or county sheriff shall give notice of an escape from an institution or reentry facility of any person convicted of violating Section 646.9 or convicted of a felony offense involving domestic violence, as defined in Section 6211 of the Family Code, to the notice recipients described in subdivision (a). (e) Substantial compliance satisfies the notification requirements of subdivision (a). 646.93. (a) (1) In those counties where the arrestee is initially incarcerated in a jail operated by the county sheriff, the sheriff shall designate a telephone number that shall be available to the public to inquire about bail status or to determine if the person arrested has been released and if not yet released, the scheduled release date, if known. This subdivision does not

require a county sheriff or jail administrator to establish a new telephone number but shall require that the information contained on the victim resource card, as defined in Section 264.2, specify the phone number that a victim should call to obtain this information. This subdivision shall not require the county sheriff or municipal police departments to produce new victim resource cards containing a designated phone number for the public to inquire about the bail or custody status of a person who has been arrested until their existing supply of victim resource cards has been exhausted. (2) In those counties where the arrestee is initially incarcerated in an incarceration facility other than a jail operated by the county sheriff and in those counties that do not operate a Victim Notification (VNE) system, a telephone number shall be available to the public to inquire about bail status or to determine if the person arrested has been released and if not yet released, the scheduled release date, if known. This subdivision does not require a municipal police agency or jail administrator to establish a new telephone number but shall require that the information contained on the victim resource card, as defined in Section 264.2, specify the phone number that a victim should call to obtain this information. This subdivision shall not require the county sheriff or municipal police departments to produce new victim resource cards containing a designated phone number for the public to inquire about the bail or custody status of a person who has been arrested until their existing supply of victim resource cards has been exhausted. (3) If an arrestee is transferred to another incarceration facility and is no longer in the custody of the initial arresting agency, the transfer date and new incarceration location shall be made available through the telephone number designated by the arresting agency. (4) The resource card provided to victims pursuant to Section 264.2 shall list the designated telephone numbers to which this section refers. (b) Any request to lower bail shall be heard in open court in accordance with Section 1270.1. In addition, the prosecutor shall make all reasonable efforts to notify the victim or victims of the bail hearing. The victims may be present at the hearing and shall be permitted to address the court on the issue of bail. (c) Unless good cause is shown not to impose the following conditions, the judge shall impose as additional conditions of release on bail that: (1) The defendant shall not initiate contact in person, by telephone, or any other means with the alleged victims. (2) The defendant shall not knowingly go within 100 yards of the alleged victims, their residence, or place of employment. (3) The defendant shall not possess any firearms or other deadly or dangerous weapons. (4) The defendant shall obey all laws. (5) The defendant, upon request at the time of his or her appearance in court, shall provide the court with an address where he or she is residing or will reside, a business address and telephone number if employed, and a residence telephone number if the defendant's residence has a telephone. A showing by declaration that any of these conditions are violated shall, unless good cause is shown, result in the issuance of a no-bail warrant. 646.94. (a) Contingent upon a Budget Act appropriation, the Department of Corrections shall ensure that any parolee convicted of violating Section 646.9 on or after January 1, 2002, who is deemed to pose a high risk of committing a repeat stalking offense be placed on an intensive and specialized parole supervision program for a period not to exceed the period of parole. (b) (1) The program shall include referral to

specialized services, for example substance abuse treatment, for offenders needing those specialized services. (2) Parolees participating in this program shall be required to participate in relapse prevention classes as a condition of parole. (3) Parole agents may conduct group counseling sessions as part of the program. (4) The department may include other appropriate offenders in the treatment program if doing so facilitates the effectiveness of the treatment program. (c) The program shall be established with the assistance and supervision of the staff of the department primarily by obtaining the services of mental health providers specializing in the treatment of stalking patients. Each parolee placed into this program shall be required to participate in clinical counseling programs aimed at reducing the likelihood that the parolee will commit or attempt to commit acts of violence or stalk their victim. (d) The department may require persons subject to this section to pay some or all of the costs associated with this treatment, subject to the person's ability to pay. "Ability to pay" means the overall capability of the person to reimburse the costs, or a portion of the costs, of providing mental health treatment, and shall include, but shall not be limited to, consideration of all of the following factors: (1) Present financial position. (2) Reasonably discernible future financial position. (3) Likelihood that the person shall be able to obtain employment after the date of parole. (4) Any other factor or factors that may bear upon the person's financial capability to reimburse the department for the costs. (e) For purposes of this section, a mental health provider specializing in the treatment of stalking patients shall meet all of the following requirements: (1) Be a licensed clinical social worker, as defined in Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, a clinical psychologist, as defined in Section 1316.5 of the Health and Safety Code, or a physician and surgeon engaged in the practice of psychiatry. (2) Have clinical experience in the area of assessment and treatment of stalking patients. (3) Have two letters of reference from professionals who can attest to the applicant's experience in counseling stalking patients. (f) The program shall target parolees convicted of violating Section 646.9 who meet the following conditions: (A) The offender has been subject to a clinical assessment. (B) A review of the offender's criminal history indicates that the offender poses a high risk of committing further acts of stalking or acts of violence against his or her victim or other persons upon his or her release on parole. (C) The parolee, based on his or her clinical assessment, may be amenable to treatment. (g) On or before January 1, 2006, the Department of Corrections shall evaluate the intensive and specialized parole supervision program and make a report to the Legislature regarding the results of the program, including, but not limited to, the recidivism rate for repeat stalking related offenses committed by persons placed into the program and a cost-benefit analysis of the program. (h) This section shall become operative upon the appropriation of sufficient funds in the Budget Act to implement this section.

**UK LEGISLATION****A. UK PROTECTION FROM HARASSMENT ACT 1997***England and Wales***Prohibition of harassment**

1.—(1) A person must not pursue a course of conduct —

- (a) which amounts to harassment of another, and
- (b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Subsection (1) does not apply to a course of conduct if the person who pursued it shows —

- (a) that it was pursued for the purpose of preventing or detecting crime,
- (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
- (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

**Offence of harassment**

2.—(1) A person who pursues a course of conduct in breach of section 1 is guilty of an offence.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

(3) In section 24(2) of the Police and Criminal Evidence Act 1984 (arrestable offences), after paragraph (m) there is inserted —

- "(n) an offence under section 2 of the Protection from Harassment Act 1997 (harassment)."

**Civil remedy**

3.—(1) An actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

(3) Where —

- (a) in such proceedings the High Court or a county court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment, and
- (b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction,

the plaintiff may apply for the issue of a warrant for the arrest of the defendant.

(4) An application under subsection (3) may be made—

- (a) where the injunction was granted by the High Court, to a judge of that court, and
- (b) where the injunction was granted by a county court, to a judge or district judge of that or any other county court.

(5) The judge or district judge to whom an application under subsection (3) is made may only issue a warrant if—

- (a) the application is substantiated on oath, and
- (b) the judge or district judge has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction.

(6) Where —

- (a) the High Court or a county court grants an injunction for the purpose mentioned in subsection (3)(a), and
- (b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction,

he is guilty of an offence.

(7) Where a person is convicted of an offence under subsection (6) in respect of any conduct, that conduct is not punishable as a contempt of court.

(8) A person cannot be convicted of an offence under subsection (6) in respect of any conduct which has been punished as a contempt of court.

(9) A person guilty of an offence under subsection (6) is liable —

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.



## **Putting people in fear of violence**

4.—(1) A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.

(3) It is a defence for a person charged with an offence under this section to show that —

- (a) his course of conduct was pursued for the purpose of preventing or detecting crime,
- (b) his course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
- (c) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

(4) A person guilty of an offence under this section is liable —

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

(5) If on the trial on indictment of a person charged with an offence under this section the jury find him not guilty of the offence charged, they may find him guilty of an offence under section 2.

(6) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (5) convicted before it of an offence under section 2 as a magistrates' court would have on convicting him of the offence.

## **Restraining orders**

5.—(1) A court sentencing or otherwise dealing with a person ("the defendant") convicted of an offence under section 2 or 4 may (as well as sentencing him or dealing with him in any other way) make an order under this section.

(2) The order may, for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which —

- (a) amounts to harassment, or
- (b) will cause a fear of violence,

prohibit the defendant from doing anything described in the order.

(3) The order may have effect for a specified period or until further order.

(4) The prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(5) If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence.

(6) A person guilty of an offence under this section is liable —

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

### **Limitation**

6. In section 11 of the Limitation Act 1980 (special time limit for actions in respect of personal injuries), after subsection (1) there is inserted —

"(1A) This section does not apply to any action brought for damages under section 3 of the Protection from Harassment Act 1997."

### **Interpretation of this group of sections**

7.—(1) This section applies for the interpretation of sections 1 to 5.

(2) References to harassing a person include alarming the person or causing the person distress.

(3) A "course of conduct" must involve conduct on at least two occasions.

(4) "Conduct" includes speech.

### **Scotland**

#### **Harassment**

8.—(1) Every individual has a right to be free from harassment and, accordingly, a person must not pursue a course of conduct which amounts to harassment of another and —

(a) is intended to amount to harassment of that person; or

(b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person.

(2) An actual or apprehended breach of subsection (1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question; and any such claim shall be known as an action of harassment.

(3) For the purposes of this section —

"conduct" includes speech;

"harassment" of a person includes causing the person alarm or distress; and a course of conduct must involve conduct on at least two occasions.

(4) It shall be a defence to any action of harassment to show that the course of conduct complained of—

- (a) was authorised by, under or by virtue of any enactment or rule of law;
- (b) was pursued for the purpose of preventing or detecting crime; or
- (c) was, in the particular circumstances, reasonable.

(5) In an action of harassment the court may, without prejudice to any other remedies which it may grant—

- (a) award damages;
- (b) grant—
  - (i) interdict or interim interdict;
  - (ii) if it is satisfied that it is appropriate for it to do so in order to protect the person from further harassment, an order, to be known as a "non-harassment order", requiring the defender to refrain from such conduct in relation to the pursuer as may be specified in the order for such period (which includes an indeterminate period) as may be so specified,

but a person may not be subjected to the same prohibitions in an interdict or interim interdict and a non-harassment order at the same time.

(6) The damages which may be awarded in an action of harassment include damages for any anxiety caused by the harassment and any financial loss resulting from it.

(7) Without prejudice to any right to seek review of any interlocutor, a person against whom a non-harassment order has been made, or the person for whose protection the order was made, may apply to the court by which the order was made for revocation of or a variation of the order and, on any such application, the court may revoke the order or vary it in such manner as it considers appropriate.

(8) In section 10(1) of the Damages (Scotland) Act 1976 (interpretation), in the definition of "personal injuries", after "to reputation" there is inserted ", or injury resulting from harassment actionable under section 8 of the Protection from Harassment Act 1997".

### **Breach of non-harassment order**

9.—(1) Any person who is found to be in breach of a non-harassment order made under section 8 is guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both such imprisonment and such fine; and

- (b) on summary conviction, to imprisonment for a period not exceeding six months or to a fine not exceeding the statutory maximum, or to both such imprisonment and such fine.

(2) A breach of a non-harassment order shall not be punishable other than in accordance with subsection (1).

### **Limitation**

10.—(1) After section 18A of the Prescription and Limitation (Scotland) Act 1973 there is inserted the following section—

#### **"Actions of harassment**

18B.—(1) This section applies to actions of harassment (within the meaning of section 8 of the Protection from Harassment Act 1997) which include a claim for damages.

(2) Subject to subsection (3) below and to section 19A of this Act, no action to which this section applies shall be brought unless it is commenced within a period of 3 years after —

- (a) the date on which the alleged harassment ceased; or
- (b) the date, (if later than the date mentioned in paragraph (a) above) on which the pursuer in the action became, or on which, in the opinion of the court, it would have been reasonably practicable for him in all the circumstances to have become, aware, that the defender was a person responsible for the alleged harassment or the employer or principal of such a person.

(3) In the computation of the period specified in subsection (2) above there shall be disregarded any time during which the person who is alleged to have suffered the harassment was under legal disability by reason of nonage or unsoundness of mind."

(2) In subsection (1) of section 19A of that Act (power of court to override time-limits), for "section 17 or section 18 and section 18A" there is substituted "section 17, 18, 18A or 18B".

### **Non-harassment order following criminal offence**

11. After section 234 of the Criminal Procedure (Scotland) Act 1995 there is inserted the following section —

#### **"Non-harassment orders.**

234A.—(1) Where a person is convicted of an offence involving harassment of a person ("the victim"), the prosecutor may apply to the court to make a non-harassment order against the offender requiring him to refrain from such conduct in relation to the victim as may be specified in the order for such period (which includes an indeterminate period) as may be so specified, in addition to any other disposal which may be made in relation to the offence.

(2) On an application under subsection (1) above the court may, if it is satisfied on a balance of probabilities that it is appropriate to do so in order to protect the victim from further harassment, make a non-harassment order.

(3) A non-harassment order made by a criminal court shall be taken to be a sentence for the purposes of any appeal and, for the purposes of this subsection "order" includes any variation or revocation of such an order made under subsection (6) below.

(4) Any person who is found to be in breach of a non-harassment order shall be guilty of an offence and liable —

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both such imprisonment and such fine; and

(b) on summary conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both such imprisonment and such fine.

(5) The Lord Advocate, in solemn proceedings, and the prosecutor, in summary proceedings, may appeal to the High Court against any decision by a court to refuse an application under subsection (1) above; and on any such appeal the High Court may make such order as it considers appropriate.

(6) The person against whom a non-harassment order is made, or the prosecutor at whose instance the order is made, may apply to the court which made the order for its revocation or variation and, in relation to any such application the court concerned may, if it is satisfied on a balance of probabilities that it is appropriate to do so, revoke the order or vary it in such manner as it thinks fit, but not so as to increase the period for which the order is to run.

(7) For the purposes of this section "harassment" shall be construed in accordance with section 8 of the Protection from Harassment Act 1997."

### ***General***

#### **National security, etc.**

12.—(1) If the Secretary of State certifies that in his opinion anything done by a specified person on a specified occasion related to —

(a) national security,

(b) the economic well-being of the United Kingdom, or

(c) the prevention or detection of serious crime,

and was done on behalf of the Crown, the certificate is conclusive evidence that this Act does not apply to any conduct of that person on that occasion.

(2) In subsection (1), "specified" means specified in the certificate in question.

(3) A document purporting to be a certificate under subsection (1) is to be received in evidence and, unless the contrary is proved, be treated as being such a certificate.

### **Corresponding provision for Northern Ireland**

13. An Order in Council made under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 which contains a statement that it is made only for purposes corresponding to those of sections 1 to 7 and 12 of this Act —

- (a) shall not be subject to sub-paragraphs (4) and (5) of paragraph 1 of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **Extent**

- 14.—(1) Sections 1 to 7 extend to England and Wales only.
- (2) Sections 8 to 11 extend to Scotland only.
- (3) This Act (except section 13) does not extend to Northern Ireland.

### **Commencement**

- 15.—(1) Sections 1, 2, 4, 5 and 7 to 12 are to come into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (2) Sections 3 and 6 are to come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint.
- (3) Different days may be appointed under this section for different purposes.

### **Short title**

16. This Act may be cited as the Protection from Harassment Act 1997.

## **B. UK CRIMINAL JUSTICE AND POLICE ACT 2001**

### **Police directions stopping the harassment etc of a person in his home**

- 42.—(1) Subject to the following provisions of this section, a constable who is at the scene may give a direction under this section to any person if —
- (a) that person is present outside or in the vicinity of any premises that are used by any individual (“the resident”) as his dwelling;
  - (b) that constable believes, on reasonable grounds, that the person is present there for the purpose (by his presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his dwelling), or of persuading the resident or such another individual —

- (i) that he should not do something that he is entitled or required to do;  
or
  - (ii) that he should do something that he is not under any obligation to do;  
and
- (c) that constable also believes, on reasonable grounds, that the presence of that person (either alone or together with that of any other persons who are also present) —
- (i) amounts to, or is likely to result in, the harassment of the resident; or
  - (ii) is likely to cause alarm or distress to the resident.
- (2) A direction under this section is a direction requiring the person to whom it is given to do all such things as the constable giving it may specify as the things he considers necessary to prevent one or both of the following —
- (a) the harassment of the resident; or
  - (b) the causing of any alarm or distress to the resident.
- (3) A direction under this section may be given orally; and where a constable is entitled to give a direction under this section to each of several persons outside, or in the vicinity of, any premises, he may give that direction to those persons by notifying them of his requirements either individually or all together.
- (4) The requirements that may be imposed by a direction under this section include a requirement to leave the vicinity of the premises in question (either immediately or after a specified period of time).
- (5) A direction under this section may make exceptions to any requirement imposed by the direction, and may make any such exception subject to such conditions as the constable giving the direction thinks fit; and those conditions may include —
- (a) conditions as to the distance from the premises in question at which, or otherwise as to the location where, persons who do not leave their vicinity must remain; and
  - (b) conditions as to the number or identity of the persons who are authorised by the exception to remain in the vicinity of those premises.
- (6) The power of a constable to give a direction under this section shall not include —
- (a) any power to give a direction at any time when there is a more senior-ranking police officer at the scene; or
  - (b) any power to direct a person to refrain from conduct that is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (right peacefully to picket a work place);
- but it shall include power to vary or withdraw a direction previously given under this section.

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(7) Any person who knowingly contravenes a direction given to him under this section shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 4 on the standard scale, or to both.

(8) A constable in uniform may arrest without warrant any person he reasonably suspects is committing an offence under this section.

(9) In this section "dwelling" has the same meaning as in Part 1 of the Public Order Act 1986 (c.64).

### **Collective harassment**

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**44.—**(1) In section 7 of the Protection from Harassment Act 1997 (c.40) (interpretation of sections 1 to 5), there shall be inserted the following subsection —

“(3A) A person’s conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another —

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(a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and

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(b) to be conduct in relation to which the other’s knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.”.

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(2) This section has affect in relation to any aiding, abetting, counselling or procuring that takes place after the coming into force of this section.

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