



## **Consultation Paper on Stalking Submissions of the Law Society of Hong Kong**

### **1. Offence of Harassment**

- (a) whether stalking should be made a criminal offence based on the LRC's recommendation that:
- (i) a person who pursues a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other, should be guilty of a criminal offence;
  - (ii) for the purposes of this offence, the harassment should be serious enough to cause that person alarm or distress; and
  - (iii) a person ought to know that his course of conduct amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other; and

**Law Society's response:**

**We agree but subject to further refinement of the offence with reference to the *Ghosh* test.**

- (b) whether collective harassment and harassment to deter lawful activities should be made offences.

**Law Society's response:**

**There does not appear to be any pressing need to legislate against collective harassment. We consider unlawful acts by debt collection agencies can be dealt with under the existing criminal law.**

### **2. Penalty**

- (a) whether a single maximum penalty level for the proposed offence of harassment should be provided, irrespective of whether the offender knew or ought to have known that the conduct amounted to harassment;

**Law Society's response:**

**The normal rules of sentencing should be applied and the discretion of the Judicial Officer should not be restricted.**

- (b) whether the maximum penalty for the proposed offence of harassment should be set at a fine at Level 6 (\$100,000) and imprisonment for two years;

**Law Society's response: We agree.**

- (c) whether the maximum penalty for the offences of collective harassment and harassment to deter lawful activities should be set at the same level as in (b) above; and

**Law Society's response: N/A.**

- (d) whether the limitation period for institution of court proceedings should be specified as two years from the time when the actions taken by the stalker constituted a course of action and the cumulative effect of these actions was such that the victim was alarmed or put in a state of distress.

**Law Society's response: We agree.**

### **3. Defences**

- (a) whether the following defences proposed by the LRC for the offence of harassment, if pursued, should be provided:
- (i) the conduct was pursued for the purpose of preventing or detecting crime;
  - (ii) the conduct was pursued under lawful authority; and
  - (iii) the pursuit of the course of conduct was reasonable in the particular circumstances;

**Law Society's response: We agree with the the 3 specified defences in (i), (ii) and (iii) above but also see our comments to Question 3(b) below.**

- (b) whether a defence for news-gathering activities should be subsumed under the "reasonable pursuit" defence in sub-paragraph (a)(iii) above as recommended by the LRC, or a separate, specific defence for news-gathering activities should be provided for the offence of harassment, if pursued;

**Law Society's response:**

**We acknowledge the sensitive nature of this provision. We suggest the proposed defence of 'reasonable pursuit' could be amended as follows:**

*"the pursuit of the course of conduct was reasonable in the particular circumstances including all legitimate news-gathering activities by journalists or members of the press, or conduct otherwise in the public interest"*

- (c) if a specific defence for news-gathering activities should be provided, how the defence, whether qualified or not, should be framed;

**Law Society's response:**

**This defence can be framed by subsequent case law, and is to be given its ordinary meaning.**

- (d) whether any other defences should be provided for the offence of harassment, if pursued; and

**Law Society's response:**

**These can be developed by case law on "reasonable pursuit".**

- (e) whether, and if so what, defences should be provided for the offences of collective harassment and harassment to deter lawful activities, if pursued.

**Law Society's response: N/A**

#### **4. Restraining Orders in Criminal Proceedings**

- (a) whether or not a court sentencing a person convicted of the offence of harassment, if pursued, should be empowered to make a restraining order prohibiting him from doing anything which causes alarm or distress to the victim of the offence or any other person as the court thinks fit; and

**Law Society's response: We agree.**

**1. A breach of the restraining order should be a distinct offence and the court has the power to sentence the defendant. The matter should be akin to breaches of probation orders or community service orders.**

**2. We recommend such restraining orders to have a validity of up to 24 months.**

- (b) if so:

- (i) whether the restraining order may be made in addition to a sentence imposed on the defendant convicted of the offence of harassment, a probation order or an order discharging him absolutely or conditionally;

**Law Society's response: We agree.**

- (ii) whether the duration of the order has to be specified or the order may have effect for a specified period or until further notice;

**Law Society's response: We agree.**

- (iii) whether the prosecutor, the defendant or any other person mentioned in the restraining order should be allowed to apply to the court for it to be varied or discharged; and

**Law Society's response: We agree.**

- (iv) whether the maximum penalty for breaching a restraining order should be set at the same level as that proposed for the offence of harassment (i.e. a fine at Level 6 (\$100,000) and imprisonment for two years).

**Law Society's response: Yes.**

## **5. Civil Remedies for Victims**

- (a) a person who pursued a course of conduct which amounted to harassment serious enough to cause alarm or distress of another should be liable in tort to the object of the pursuit; and

**Law Society's response: We agree.**

- (b) the plaintiff in an action for harassment should be able to claim damages for any distress, anxiety and financial loss resulting from the pursuit and to apply for an injunction to prohibit the defendant from doing anything which causes the plaintiff alarm or distress.

**Law Society's response: We agree.**

## **6. Enforcement of Injunctions**

- (a) whether the following LRC recommendations should be taken forward:

- (i) where a civil court grants an injunction in an action for harassment, it should have the power to attach a power of arrest to the injunction;

**Law Society's response: We agree.**

- (ii) a police officer should be able to arrest without warrant any person whom he reasonably suspects to be in breach of an injunction to which a power of arrest is attached;

**Law Society's response: We agree.**

- (iii) the court dealing with the breach should have the power to remand the defendant in custody or release him on bail;

**Law Society's response: We agree.**

- (iv) where the court has not attached a power of arrest to the injunction, the plaintiff should be able to apply to the court for the issue of a warrant for the arrest of the defendant if the plaintiff considers that the defendant has done anything which he is

prohibited from doing by the injunction; and

**Law Society's response: We agree.**

- (v) if the defendant is arrested under such a warrant, the court dealing with the breach should have the power to remand him in custody or release him on bail; and

**Law Society's response: We agree.**

- (b) our view that a breach of a civil injunction should not be made a criminal offence.

**Law Society's response: We agree.**

The Law Society of Hong Kong  
Criminal Law and Procedure Committee  
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