

Appendix A

Outline of current anti-stalking legislation in the six jurisdictions

UK	<p>The Protection from Harassment Act 1997 (PHA)¹</p> <ul style="list-style-type: none"> - Criminal and civil harassment - In force since 16 June 1997. Section 3 (civil remedy, including damages) wholly in force since 1 Sep 1998. - Extent of the PHA (s. 14): <ul style="list-style-type: none"> ➤ Sections 1 to 7 extend to England and Wales only ➤ Sections 8 to 11 extend to Scotland only in relation to civil harassment ➤ The PHA (except section 13) does not extend to Northern Ireland. Very similar provisions are found in The Protection from Harassment (Northern Ireland) Order 1997² ➤ The offence of stalking in s. 39 of the Criminal Justice and Licensing (Scotland) Act 2010³ is in force since 13 December 2010. - References to harassing a person include alarming the person or causing the person distress (s. 7(2)). - “A “course of conduct” must involve—(a) in the case of conduct in relation to a single person (see s. 1(1)), conduct on at least two occasions in relation to that person, or (b) in the case of conduct in relation to two or more persons (see s. 1(1A)), conduct on at least one occasion in relation to each of those persons.” (s. 7(3) as substituted when “harassment to deter lawful activities was introduced in 2005. See below). - Conduct includes speech (s. 7(4)). - Main amendments: <ul style="list-style-type: none"> 2001: new offence of <u>collective harassment</u> (by 2 or more people): s. 7(3A) <ul style="list-style-type: none"> - Added by Criminal Justice and Police Act 2001 c. 16 section 44 (1)⁴ (August 1, 2001) - It is a form of joint enterprise harassment—“if A aids, abets, counsels or procures B to harass C, A is deemed to have harassed C if B does so.”⁵ - Section 7(3A): “A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—(a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and (b) to be
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¹ <http://www.legislation.gov.uk/ukpga/1997/40?timeline=true&view=extent>

² <http://www.legislation.gov.uk/nisi/1997/1180?timeline=true&view=extent>

³ The criminal offence of stalking is found in the provisions of s 39 of the Criminal Justice and Licensing (Scotland) Act 2010 at <http://www.legislation.gov.uk/asp/2010/13/contents>

⁴ See Explanatory Notes 137-139 at <http://www.legislation.gov.uk/ukpga/2001/16/notes/division/3/1/3/8/11>

⁵ David Mead, “A chill through the back door? The privatised regulation of peaceful protest” (2013) *Public Law* 100, p 107 (“Mead”)

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.”

2005: new offence of harassment to deter lawful activities (harassing 2 or more persons on separate occasions): s 1(1A), aimed at protecting company's employees from being harassed by activist groups. Injunctions are also granted to companies to protect their employees (s. 3A).

- Added by Serious Organised Crime and Police Act 2005 c. 15 section 125 (2) (a)⁶ (July 1, 2005)
- Section 7(3) was substituted by Serious Organised Crime and Police Act 2005 c. 15 section 125 (7) (a) (July 1, 2005)
- Conduct on at least one occasion in relation to each person is enough (s. 7 (3) (b)).
- It is aimed at protecting company's employees claiming harassment by activist groups. Injunctions are also granted to companies to protect their employees.
- It creates the concept of secondary harassment: “where X harasses Y in the hope that this will persuade Z not to continue the activity of which X disapproves. Y could be employees of Z or its suppliers or financiers.”⁷

2009: section 5A was introduced to allow a court to make a restraining order in respect of a person acquitted (or whose conviction was quashed on appeal) of any offence under the PHA. Maximum penalty for breach of order is 5 years' imprisonment (s. 5(6)).

- Added by the Domestic Violence, Crime and Victims Act 2004 c. 28 section 12 (5)⁸ (September 30, 2009).

2012: creates 2 new offences of stalking

- Added by Protection of Freedoms Act 2012 c. 9 section 111(1)⁹ (November 25, 2012)
 - Section 2A : offence of stalking (summary offence), not defined but “stalking can only be established where an offence of harassment has occurred” (see s. 2A (2) (a) to (c))¹⁰
 - Examples of acts or omissions associated with stalking are introduced in s. 2A, including:
 - Section 2A (3)... (c) publishing any statement or other material— (i) relating or purporting to relate to a person, or (ii) purporting to originate from a person; and (d) monitoring the use by a person of the internet, email or any

⁶ See Explanatory Notes 302-306 at <http://www.legislation.gov.uk/ukpga/2005/15/notes/division/6/1/14/1>

⁷ Mead, p106.

⁸ See Explanatory Notes 54-60 at <http://www.legislation.gov.uk/ukpga/2004/28/notes/division/4/2/3>

⁹ See Explanatory Notes 446-452 at <http://www.legislation.gov.uk/ukpga/2012/9/notes/division/5/1/7/3>

¹⁰ See also Home Office Circular 108/2012 at <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/018-2012/>

	<p>other form of electronic communication.</p> <p>Some of the examples of stalking are based on s. 39 of the Criminal Justice and Licensing (Scotland) Act 2010.</p> <ul style="list-style-type: none"> ➤ Section 2B (new power of entry in re to stalking in s 2A) ➤ Section 4A (<u>offence of stalking involving fear of violence or serious alarm or distress</u> (triable either way)).
NZ	<p>The Harassment Act 1997 (HA)¹¹</p> <ul style="list-style-type: none"> - Criminal (summary offence) and civil harassment. - Parts 1-2 & 4 in force since 1 Jan 1998. - Part 3 (civil harassment) in force since 1 May 1998. - Amended twice without altering main definitions. - Most recent amendments – not yet in force. - Amendments re cyber-bullying and other issues are expected to be introduced during 2013.
AU	<ul style="list-style-type: none"> - All Australian jurisdictions enacted anti-stalking legislation between 1993 and 1996. Amendments have been introduced since then. - Queensland was the first state to pass legislation. <p>QLD - The Criminal Code Act 1899,¹² s. 359A-F Unlawful Stalking</p> <ul style="list-style-type: none"> - First introduced in 1993 and amended by Criminal Code (Stalking) Amendment Act 1999,¹³ and others. - Restraining orders available (not part of criminal proceedings). <p>VIC - The Crimes Act 1958,¹⁴ s. 21A Stalking</p> <ul style="list-style-type: none"> - Inserted by the Crimes (Amendment) Act 1994 (Vic). - The Personal Safety Intervention Orders Act 2010 provides that the Court within the meaning of that Act may make a personal safety intervention order in respect of stalking.
CANADA	<p>Criminal Code R.S.C. 1985, s. 264 Criminal harassment¹⁵</p> <ul style="list-style-type: none"> - Criminal Code amended to create offence: in force since 1 Aug 1993, as amended (26 May 1997, 23 July 2002, 2005) without altering the definitions. - Summary or indictable offence. - Aggravating factors include: breach of court order under the Criminal Code or other

¹¹ <http://www.legislation.govt.nz/act/public/1997/0092/latest/versions.aspx>

¹² <http://www.legislation.qld.gov.au/legisltm/current/c/crimincode.pdf>

¹³ <http://www.legislation.qld.gov.au/Bills/49PDF/1999/CrimCodeStkAmdB99.pdf> and Explanatory Notes at <http://www.legislation.qld.gov.au/Bills/49PDF/1999/CrimCodeStkAmdBExp99.pdf>

¹⁴ http://www.austlii.edu.au/au/legis/vic/consol_act/ca195882/

¹⁵ <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html>. See also Criminal Harassment: Handbook for Police and Crown Prosecutors, March 2004 accessible at <http://www.justice.gc.ca/eng/pi/fv-vf/pub/har/index.html>

	<p>Act or under common law</p> <ul style="list-style-type: none"> - Prohibition order (section 109): Where a person is convicted of section 264 or discharged, the “court that sentences the person or directs that the person be discharged, as the case may be, shall, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance during the period specified in the order as determined in accordance with subsection (2) or (3), as the case may be.” - Unclear whether tort of harassment establishes a civil cause of action <p>Criminal Code R.S.C. 1985, s. 423 Intimidation¹⁶</p> <ul style="list-style-type: none"> - Doing certain acts ((a) to (g)) for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing <p>Manitoba: The Domestic Violence and Stalking Act, C.C.S.M. c. D93¹⁷</p> <ul style="list-style-type: none"> - Assented to on 29 June 1998, in force since 30 Sep 1999. - Formerly The Domestic Violence and Stalking Prevention, Protection and Compensation Act¹⁸ - Provides for protection orders and prevention orders (compensation can also be pursued; and if the stalker operated a motor vehicle to further stalking or domestic violence, his driver’s licence can be suspended). - Court discretion to require persons committing domestic violence or stalking to attend counselling or therapy - Explicit Tort of Stalking: s. 26 (stalkers can be sued for damages)
US	<ul style="list-style-type: none"> - All states have anti-stalking legislation.¹⁹ California was the first state to legislate stalking in 1990. - There are also federal laws, mainly related to interstate, foreign commerce / communications. - Many state legislation regulates stalking and harassment separately (those which only provide for a stalking offence include California. However, harassment is under the umbrella of stalking). - Besides penalties, other legal remedies may be available. - 12 states allow victims to file a civil law suit against stalkers (one is California) <p>California: Cal Pen Code § 646.9. Stalking,²⁰ Civil Code § 1708.7. Stalking : explicit tort of stalking</p>

¹⁶ *Ibid.*¹⁷ <http://web2.gov.mb.ca/laws/statutes/ccsm/d093e.php>¹⁸ <http://web2.gov.mb.ca/bills/38-2/b017e.php#top>¹⁹ Up-to date states’ legislation is accessible at <http://www.victimsofcrime.org/our-programs/stalking-resource-center/stalking-laws/criminal-stalking-laws-by-state>²⁰ <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=639-653.2>

	Nevada: Nev.Rev. Stat. Ann. Chapter 200:²¹ § 200.571 – 200.601 Harassment and Stalking
SOUTH AFRICA	<p>The Domestic Violence Act, 116 of 1998²² (DVA) defines stalking for the civil law and only if the person stalked is in a domestic relationship with the stalker.</p> <p>The Protection from Harassment Act 2010²³</p> <ul style="list-style-type: none"> - Signed into law on 2 Dec 2011 - At the time of writing not yet in force²⁴ - Only civil remedy for stalking. It mirrors civil remedy provided for in the DVA, i.e. a protection order against harassment (as defined in the Act), attached with a suspended warrant of arrest. - I.e. the Act extends the civil remedy to non-domestic violence; even one single act may warrant a protection order - Breach of bail conditions or protection orders leads to criminal sanctions.

²¹ <http://www.leg.state.nv.us/NRS/NRS-200.html>

²² <http://www.info.gov.za/view/DownloadFileAction?id=70651>

²³ <http://www.info.gov.za/view/DownloadFileAction?id=156361>

²⁴ See Bianca Capazorio, “Crucial stalker law still on hold,” Post, 16 February 2013, accessible at <http://www.thepost.co.za/crucial-stalker-law-still-on-hold-1.1471599>

Appendix B

Text of anti-stalking provisions in the six jurisdictions

UK (England and Wales)

Protection from Harassment Act 1997

England and Wales

1 Prohibition of harassment.

- (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.
- (1A) A person must not pursue a course of conduct —
- (a) which involves harassment of two or more persons, and
 - (b) which he knows or ought to know involves harassment of those persons, and
 - (c) by which he intends to persuade any person (whether or not one of those mentioned above)—
 - (i) not to do something that he is entitled or required to do, or
 - (ii) to do something that he is not under any obligation to do.
- (2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.
- (3) Subsection (1) or (1A) 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.

2 Offence of harassment.

- (1) A person who pursues a course of conduct in breach of section 1(1) or (1A) 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.

2A Offence of stalking

- (1) A person is guilty of an offence if—

- (a) the person pursues a course of conduct in breach of section 1(1), and
- (b) the course of conduct amounts to stalking.

(2) For the purposes of subsection (1)(b) (and section 4A(1)(a)) a person's course of conduct amounts to stalking of another person if—

- (a) it amounts to harassment of that person,
- (b) the acts or omissions involved are ones associated with stalking, and
- (c) the person whose course of conduct it is knows or ought to know that the course of conduct amounts to harassment of the other person.

(3) The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking—

- (a) following a person,
- (b) contacting, or attempting to contact, a person by any means,
- (c) publishing any statement or other material—
 - (i) relating or purporting to relate to a person, or
 - (ii) purporting to originate from a person,
- (d) monitoring the use by a person of the internet, email or any other form of electronic communication,
- (e) loitering in any place (whether public or private),
- (f) interfering with any property in the possession of a person,
- (g) watching or spying on a person.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine not exceeding level 5 on the standard scale, or both.

(5) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (4) to 51 weeks is to be read as a reference to six months.

(6) This section is without prejudice to the generality of section 2.

2B Power of entry in relation to offence of stalking

(1) A justice of the peace may, on an application by a constable, issue a warrant authorising a constable to enter and search premises if the justice of the peace is satisfied that there are reasonable grounds for believing that—

- (a) an offence under section 2A has been, or is being, committed,
- (b) there is material on the premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
- (c) the material—
 - (i) is likely to be admissible in evidence at a trial for the offence, and
 - (ii) does not consist of, or include, items subject to legal privilege, excluded material or special procedure material (within the meanings given by sections 10, 11 and 14 of the Police and Criminal Evidence Act 1984), and
- (d) either—
 - (i) entry to the premises will not be granted unless a warrant is produced, or
 - (ii) the purpose of a search may be frustrated or seriously prejudiced unless a constable

arriving at the premises can secure immediate entry to them.

(2) A constable may seize and retain anything for which a search has been authorised under subsection (1).

(3) A constable may use reasonable force, if necessary, in the exercise of any power conferred by virtue of this section.

(4) In this section “premises” has the same meaning as in section 23 of the Police and Criminal Evidence Act 1984.

3 Civil remedy.

(1) An actual or apprehended breach of section 1(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.

3A Injunctions to protect persons from harassment within section 1(1A)

(1) This section applies where there is an actual or apprehended breach of section 1(1A) by any person (“the relevant person”).

(2) In such a case—

- (a) any person who is or may be a victim of the course of conduct in question, or
 - (b) any person who is or may be a person falling within section 1(1A)(c),
- may apply to the High Court or a county court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction.

(3) Section 3(3) to (9) apply in relation to an injunction granted under subsection (2) above as they apply in relation to an injunction granted as mentioned in section 3(3)(a).

4 Putting people in fear of violence.

(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.

4A Stalking involving fear of violence or serious alarm or distress

(1) A person ("A") whose course of conduct—

(a) amounts to stalking, and

(b) either—

(i) causes another ("B") to fear, on at least two occasions, that violence will be used against B, or

(ii) causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities,

is guilty of an offence if A knows or ought to know that A's course of conduct will cause B so to fear on each of those occasions or (as the case may be) will cause such alarm or distress.

(2) For the purposes of this section A ought to know that A's course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion.

(3) For the purposes of this section A ought to know that A's course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress.

(4) It is a defence for A to show that—

(a) A's course of conduct was pursued for the purpose of preventing or detecting crime,

(b) A's 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 A's course of conduct was reasonable for the protection of A or another or for the protection of A's or another's property.

(5) 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 twelve months, or a fine not exceeding the statutory maximum, or both.

(6) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (5)(b) to twelve months is to be read as a reference to six months.

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

(8) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (7) convicted before it of an offence under section 2 or 2A as a magistrates' court would have on convicting the person of the offence.

(9) This section is without prejudice to the generality of section 4.

5 Restraining orders.

(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 or victims 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.

5A Restraining orders on acquittal

(1) A court before which a person ("the defendant") is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

(2) Subsections (3) to (7) of section 5 apply to an order under this section as they apply to an order under that one.

(3) Where the Court of Appeal allow an appeal against conviction they may remit the case to the Crown Court to consider whether to proceed under this section.

(4) Where—

(a) the Crown Court allows an appeal against conviction, or

(b) a case is remitted to the Crown Court under subsection (3),

the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

(5) A person made subject to an order under this section has the same right of appeal against the order as if—

(a) he had been convicted of the offence in question before the court which made the order, and

(b) the order had been made under section 5.

7 Interpretation of this group of sections.

(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—

(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or

(b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.

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

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

(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.

(4) “Conduct” includes speech.

(5) References to a person, in the context of the harassment of a person, are references to a person who is an individual.

UK: Scotland**Protection from Harassment Act 1997***Scotland***8 Harassment.**

(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.

(1A) Subsection (1) is subject to section 8A.

(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 M1Damages (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 ”.

8A Harassment amounting to domestic abuse

(1) Every individual has a right to be free from harassment and, accordingly, a person must not engage in 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) Subsection (1) only applies where the conduct referred to amounts to domestic abuse.

(3) Subsections (2) to (7) of section 8 apply in relation to subsection (1) as they apply in relation to subsection (1) of that section but with the following modifications—

- (a) in subsections (2) and (4), the words “course of” are omitted;
- (b) for subsection (3) there is substituted—
 - “(3) For the purposes of this section—
 - “conduct”—
 - (a) may involve behaviour on one or more than one occasion; and
 - (b) includes—
 - (b)(i) speech; and
 - (ii) presence in any place or area; and
 - “harassment” of a person includes causing the person alarm or distress.”; and
- (c) in subsection (4)(b), for “pursued” substitute “engaged in ”.

9 Breach of non-harassment order.

(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).

Criminal Justice and Licensing (Scotland) Act 2010**39 Offence of stalking**

- (1) A person (“A”) commits an offence, to be known as the offence of stalking, where A stalks another person (“B”).
- (2) For the purposes of subsection (1), A stalks B where—
- (a) A engages in a course of conduct,
 - (b) subsection (3) or (4) applies, and
 - (c) A's course of conduct causes B to suffer fear or alarm.
- (3) This subsection applies where A engages in the course of conduct with the intention of causing B to suffer fear or alarm.
- (4) This subsection applies where A knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause B to suffer fear or alarm.
- (5) It is a defence for a person charged with an offence under this section to show that the course of conduct—
- (a) was authorised by virtue of any enactment or rule of law,
 - (b) was engaged in for the purpose of preventing or detecting crime, or
 - (c) was, in the particular circumstances, reasonable.
- (6) In this section—
- “conduct” means—
- (a) following B or any other person,
 - (b) contacting, or attempting to contact, B or any other person by any means,
 - (c) publishing any statement or other material—
 - (i) relating or purporting to relate to B or to any other person,
 - (ii) purporting to originate from B or from any other person,
 - (d) monitoring the use by B or by any other person of the internet, email or any other form of electronic communication,
 - (e) entering any premises,
 - (f) loitering in any place (whether public or private),
 - (g) interfering with any property in the possession of B or of any other person,
 - (h) giving anything to B or to any other person or leaving anything where it may be found by, given to or brought to the attention of B or any other person,
 - (i) watching or spying on B or any other person,
 - (j) acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm, and
- “course of conduct” involves conduct on at least two occasions.
- (7) A person convicted of the offence of stalking is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

(8) Subsection (9) applies where, in the trial of a person (“the accused”) charged with the offence of stalking, the jury or, in summary proceedings, the court—

- (a) is not satisfied that the accused committed the offence, but
- (b) is satisfied that the accused committed an offence under section 38(1).

(9) The jury or, as the case may be, the court may acquit the accused of the charge and, instead, find the accused guilty of an offence under section 38(1).

Australia: Queensland**The Criminal Code Act 1899, Part 5 Offences against the person Chapter 33A,
sections 359A-F Unlawful Stalking****359A Definitions for ch 33A**

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, whether or not the defendant also has an interest in the property; or

Editor's note—

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.
- (b) property that is otherwise—
- (i) used and enjoyed by the person; or

- (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.

359B What is unlawful stalking

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, email 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.

359C What is immaterial for unlawful stalking

(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.

359D Particular conduct that is not unlawful stalking

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.

359E Punishment of unlawful stalking

(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.

(4) Also, a person is liable to a maximum penalty of imprisonment for 10 years if any of the acts constituting the unlawful stalking are done when or because the officer is investigating the activities of a criminal organisation.

359F Court may restrain unlawful stalking

(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).

Australia: Victoria**Crimes Act 1958
Section 21A Stalking**

(1) A person must not stalk another person. Penalty: Level 5 imprisonment (10 years maximum).

(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-

- (a) following the victim or any other person;
- (b) contacting the victim or any other person by post, telephone, fax, text message, e-mail or other electronic communication or by any other means whatsoever;
 - (ba) publishing on the Internet or by an e-mail or other electronic communication to any person a statement or other material-
 - (i) relating to the victim or any other person; or
 - (ii) purporting to relate to, or to originate from, the victim or any other person;
 - (bb) causing an unauthorised computer function (within the meaning of Subdivision (6) of Division 3) in a computer owned or used by the victim or any other person;
 - (bc) tracing the victim's or any other person's use of the Internet or of e-mail or other electronic communications;
- (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);
 - (da) making threats to the victim;
 - (db) using abusive or offensive words to or in the presence of the victim;
 - (dc) performing abusive or offensive acts in the presence of the victim;
 - (dd) directing abusive or offensive acts towards the victim;
- (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;
- (f) keeping the victim or any other person under surveillance;
- (g) acting in any other way that could reasonably be expected-
 - (i) to cause physical or mental harm to the victim, including self-harm; or
 - (ii) to arouse apprehension or fear in the victim for his or her own safety or that of any other person- with the intention of causing physical or mental harm to the victim, including self-harm, or of arousing apprehension or fear in the victim for his or her own safety or that of any other person.

(3) For the purposes of this section an offender also has the intention to cause physical or mental harm to the victim, including self-harm, or to arouse apprehension or fear in the victim for his or her own safety or that of any other person if-

- (a) the offender knows that engaging in a course of conduct of that kind would be likely to cause such harm or arouse such apprehension or fear; or
- (b) the offender in all the particular circumstances 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 subsection, would constitute an offence against subsection (1).

(4A) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that the course of conduct was engaged in without malice-

- (a) in the normal course of a lawful business, trade, profession or enterprise (including that of any body or person whose business, or whose principal business, is the publication, or arranging for the publication, of news or current affairs material); or
- (b) for the purpose of an industrial dispute; or
- (c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.

* * * * *

(6) It is immaterial that some or all of the course of conduct constituting an offence against subsection (1) occurred outside Victoria, so long as the victim was in Victoria at the time at which that conduct occurred.

(7) It is immaterial that the victim was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (1) occurred, so long as that conduct occurred in Victoria.

(8) In this section- mental harm includes-

- (a) psychological harm; and
- (b) suicidal thoughts.

Note The Personal Safety Intervention Orders Act 2010 provides that the Court within the meaning of that Act may make a personal safety intervention order in respect of stalking.

New Zealand**Harassment Act 1997****Part 1 Preliminary Provisions****2. Interpretation**

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

applicant means—

- (a) a person who applies for an order under this Act on his or her own behalf;
- (b) the person on whose behalf an application for an order is made under section 11 or section 13

associated respondent means a person against whom a restraining order applies by virtue of a direction made under section 18

court means a District Court; and includes a District Court Judge

encourage includes to incite, counsel, or procure

family member, in relation to a person, means,—

- (a) any other person who is or has been related to the person by blood, marriage, civil union, de facto relationship, or adoption;
- (b) any other person who is a member of the person's whanau or other culturally recognised family group
- (c) [Repealed]

harassment has the meaning set out in section 3; and harass has a corresponding meaning

property, in relation to a person, means property (whether real or personal) that—

- (a) the person owns; or
- (b) the person does not own but—
 - (i) uses or enjoys; or
 - (ii) is available for the person's use or enjoyment; or
 - (iii) is in the person's care or custody; or
 - (iv) is at the person's dwelling house

Registrar means the Registrar of a court; and includes a Deputy Registrar of a court

Representative, —

- (a) in relation to a minor aged 16 or under, means a guardian ad litem or next friend appointed, under rules of court, to take proceedings under this Act on behalf of that minor aged 16 or under;
- (b) in relation to a person to whom section 13 applies, means a guardian ad litem appointed, under that section, to take proceedings under this Act on behalf of that person

respondent means the person against whom an application for a restraining order has been made under this Act; and includes a person (other than an associated respondent) against whom a restraining order is made under this Act

restraining order means an order made under section 16

safety, in relation to any person, includes that person's mental well-being

special condition, in relation to a restraining order, means any condition of the order imposed under section 20

specified act means one of the types of activity specified or described in section 4(1).

(2) For the purposes of this Act, a person is in a family relationship with another person if the person—

- (a) is a current or former spouse, civil union partner, or de facto partner of the other person; or
- (b) is a family member of the other person.

3. Meaning of harassment

(1) For the purposes of this Act, a person harasses another person if he or she engages in a pattern of behaviour that is directed against that other person, being a pattern of behaviour that includes doing any specified act to the other person on at least 2 separate occasions within a period of 12 months.

(2) To avoid any doubt,—

- (a) the specified acts required for the purposes of subsection (1) may be the same type of specified act on each separate occasion, or different types of specified acts;
- (b) the specified acts need not be done to the same person on each separate occasion, as long as the pattern of behaviour is directed against the same person.

4. Meaning of specified act

(1) For the purposes of this Act, a specified act, in relation to a person, means any of the following acts:

- (a) watching, loitering near, or preventing or hindering access to or from, that person's place of residence, business, employment, or any other place that the person frequents for any purpose;
- (b) following, stopping, or accosting that person;
- (c) entering, or interfering with, property in that person's possession;
- (d) making contact with that person (whether by telephone, correspondence, or in any other way);
- (e) giving offensive material to that person, or leaving it where it will be found by, given to, or brought to the attention of, that person;
- (f) acting in any other way—
 - (i) that causes that person (person A) to fear for his or her safety; and
 - (ii) that would cause a reasonable person in person A's particular circumstances to fear for his or her safety.

- (2) To avoid any doubt, subsection (1)(f) includes the situation where—
- (a) a person acts in a particular way; and
 - (b) the act is done in relation to a person (person B) in circumstances in which the act is to be regarded, in accordance with section 5(b), as done to another person (person A); and
 - (c) acting in that way—
 - (i) causes person A to fear for his or her safety; and
 - (ii) would cause a reasonable person in person A's particular circumstances to fear for his or her safety,— whether or not acting in that way causes or is likely to cause person B to fear for person B's safety.
- (3) Subsection (2) does not limit the generality of subsection (1)(f).

5. Meaning of act done to person

An act is done to a person (person A), for the purposes of this Act, if that act is done—

- (a) in relation to person A; or
- (b) in relation to any other person (person B) with whom person A is in a family relationship, and the doing of the act is due, wholly or partly, to person A's family relationship with person B.

6. Object

- (1) The object of this Act is to provide greater protection to victims of harassment by—
- (a) recognising that behaviour that may appear innocent or trivial when viewed in isolation may amount to harassment when viewed in context; and
 - (b) ensuring that there is adequate legal protection for all victims of harassment.
- (2) This Act aims to achieve its object by—
- (a) making the most serious types of harassment criminal offences;
 - (b) empowering the court to make orders to protect victims of harassment who are not covered by domestic violence legislation;
 - (c) providing effective sanctions for breaches of the criminal and civil law relating to harassment.
- (3) Any court which, or any person who, exercises any power conferred by or under this Act must be guided in the exercise of that power by the object specified in subsection (1).

[Section 7 omitted]

Part 2 Criminal Harassment

8. Criminal harassment

- (1) Every person commits an offence who harasses another person in any case where—
- (a) the first-mentioned person intends that harassment to cause that other person to fear for—
 - (i) that other person's safety; or
 - (ii) the safety of any person with whom that other person is in a family relationship;or
 - (b) the first-mentioned person knows that the harassment is likely to cause the other

person, given his or her particular circumstances, to reasonably fear for—
(i) that other person's safety; or
(ii) the safety of any person with whom that other person is in a family relationship.

(2) Every person who commits an offence against this section is liable, on summary conviction, to imprisonment for a term not exceeding 2 years.

Part 3 Civil Harassment

9. Application for restraining order

(1) Subject to subsection (4), any person who is being or has been harassed by another person may apply to the court for a restraining order in respect of that other person.

(2) If the person who is eligible to apply for a restraining order is a minor under 16 years of age, the application must be made by a representative in accordance with section 11(2).

(3) If the person who is eligible to apply for a restraining order is unable or unwilling, in the circumstances specified in section 13(1)(b), to make the application personally, a representative appointed in accordance with section 13 may make an application on that person's behalf.

(4) A person who is or has been in a domestic relationship with another person may not apply under this Act for a restraining order in respect of that other person.

(5) For the purposes of subsection (4), domestic relationship has the same meaning as it has in the Domestic Violence Act 1995. Compare: 1995 No 86 s 7 Section 9(2): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

16. Power to make restraining order

(1) Subject to section 17, the court may make a restraining order if it is satisfied that—

(a) the respondent has harassed, or is harassing, the applicant; and

(b) the following requirements are met:

(i) the behaviour in respect of which the application is made causes the applicant distress, or threatens to cause the applicant distress; and

(ii) that behaviour would cause distress, or would threaten to cause distress, to a reasonable person in the applicant's particular circumstances; and

(iii) in all the circumstances, the degree of distress caused or threatened by that behaviour justifies the making of an order; and

(c) the making of an order is necessary to protect the applicant from further harassment.

(2) For the purposes of subsection (1)(a), a respondent who encourages another person to do a specified act to the applicant is regarded as having done that specified act personally.

(3) To avoid any doubt, an order may be made under subsection (1) where the need for protection arises from the risk of the respondent doing, or encouraging another person to do, a specified act of a different type from the specified act found to have occurred for the purposes of paragraph (a) of that subsection. Compare: 1995 No 86 s 14.

17. Defence to prove that specified acts done for lawful purpose

A specified act cannot be relied on to establish harassment for the purposes of section

16(1)(a) if the respondent proves that the specified act was done for a lawful purpose.

25. Offence to contravene restraining order

(1) Every person commits an offence who, without reasonable excuse,—

- (a) does any act in contravention of a restraining order; or
- (b) fails to comply with any condition of a restraining order.

(2) Subject to subsection (3), every person who commits an offence against subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$5,000.

(3) Every person who commits an offence against subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 2 years where—

- (a) that person has previously been convicted on at least 2 different occasions of a qualifying offence; and
- (b) at least 2 of those qualifying offences were committed not earlier than 3 years before the commission of the offence being dealt with by the court.

(4) For the purposes of subsection (3), a qualifying offence, in relation to the offence being dealt with by the court, is an offence against subsection (1), where the 2 offences are committed in respect of—

[Remaining sections omitted]

Canada: Federal**Criminal Code****Sections 264 (Criminal harassment), 423 (Intimidation), and 423.1 (Intimidation of a justice system participant or a journalist)****Criminal harassment**

- **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 ten 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.

Intimidation

- **423.** (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,
 - (a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property;
 - (b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;
 - (c) persistently follows that person;
 - (d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;
 - (e) with one or more other persons, follows that person, in a disorderly manner, on a highway;
 - (f) besets or watches the place where that person resides, works, carries on business or happens to be; or
 - (g) blocks or obstructs a highway.

- **Exception**

(2) A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

Intimidation of a justice system participant or a journalist

- **423.1** (1) No person shall, without lawful authority, engage in conduct referred to in subsection (2) with the intent to provoke a state of fear in
 - (a) a group of persons or the general public in order to impede the administration of criminal justice;
 - (b) a justice system participant in order to impede him or her in the performance of his or her duties; or
 - (c) a journalist in order to impede him or her in the transmission to the public of information in relation to a criminal organization.

- **Prohibited conduct**

(2) The conduct referred to in subsection (1) consists of

 - (a) using violence against a justice system participant or a journalist or anyone known to either of them or destroying or causing damage to the property of any of those persons;
 - (b) threatening to engage in conduct described in paragraph (a) in Canada or elsewhere;
 - (c) persistently or repeatedly following a justice system participant or a journalist or anyone known to either of them, including following that

person in a disorderly manner on a highway;

- (d) repeatedly communicating with, either directly or indirectly, a justice system participant or a journalist or anyone known to either of them; and
- (e) besetting or watching the place where a justice system participant or a journalist or anyone known to either of them resides, works, attends school, carries on business or happens to be.

- **Punishment**

(3) Every person who contravenes this section is guilty of an indictable offence and is liable to imprisonment for a term of not more than fourteen years.

Canada: Manitoba**Domestic Violence and Stalking Act 1999**

DEFINITIONS AND INTERPRETATION

- **Meaning of "stalking"**
2(2) Stalking occurs when a person, without lawful excuse or authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, repeatedly engages in conduct that causes the other person reasonably, in all the circumstances, to fear for his or her own safety.
- **Examples of conduct**
2(3) The conduct referred to in subsection (2) includes the person
 - (a) following from place to place the other person or anyone known to the other person;
 - (b) communicating directly or indirectly with or contacting the other person or anyone known to the other person;
 - (c) besetting or watching any place where the other person, or anyone known to the other person, resides, works, carries on business or happens to be; or
 - (d) engaging in threatening conduct directed at the other person or anyone known to the other person.
- **Certain persons deemed to have fear**
2(4) Where, but for mental incompetence or minority, a person would reasonably, in all the circumstances, fear for his or her safety owing to conduct referred to in subsection (2), the person is conclusively deemed to have the fear referred to in that subsection.

PROTECTION ORDERS BY DESIGNATED JUSTICES OF THE PEACE

- **Authority**
3 A designated justice of the peace may hear and determine applications for protection orders under this Act.
- **Granting a protection order without notice**
6(1) A designated justice of the peace may grant a protection order without notice where the justice determines on a balance of probabilities that an order is necessary or advisable for the immediate or imminent protection of the subject, in circumstances where
 - (a) the respondent
 - (i) is stalking or has stalked the subject, or
 - (ii) is subjecting or has subjected him or her to domestic violence;
 - (b) the subject believes that the respondent will continue or resume the domestic violence or stalking; and
 - (c) the subject requires protection because there is a reasonable likelihood that the respondent will continue or resume the domestic violence or

stalking.

- **Certain persons deemed to have belief**

6(2) Where, but for mental incompetence or minority, a person would, in all the circumstances, reasonably believe that the respondent will continue or resume the domestic violence or stalking, the person is conclusively deemed to have the belief referred to in clause (1)(b).

- **Application to set aside order**

11(1) A respondent against whom a protection order is made may apply to the court within 20 days after being served with the order, or such further time as the court may allow, to have the order set aside.

- **Application does not stay order**

11(2) A protection order is not stayed by an application under subsection (1).

PREVENTION ORDERS BY COURT OF QUEEN'S BENCH

- **Content of prevention order**

14(1) Where, on application, the court determines that the respondent has stalked the subject or subjected him or her to domestic violence, the court may make a prevention order with any terms or conditions it considers appropriate to protect the subject or remedy the domestic violence or stalking, which may include any of the following:

- (a) a provision prohibiting the respondent from following the subject or a specified person from place to place;
- (b) a provision prohibiting the respondent from communicating with or contacting the subject or a specified person;
- (c) a provision prohibiting the respondent from attending at or near or entering any place that the subject or a specified person regularly attends, which may include a place where the subject or person resides, works or carries on business;
- (d) subject to any order made under clause 10(1)(b.2) or subsection 10(5) of *The Family Maintenance Act*, a provision granting the subject temporary exclusive occupation of the residence, regardless of ownership;
- (e) a provision directing a peace officer to remove the respondent from the residence immediately or within a specified time;
- (f) subject to any order made under *The Family Property Act*, a provision granting either party temporary possession of specified personal property, which may include vehicles, household furnishings, clothing, medical insurance cards, identification documents and keys;
- (g) a provision directing a peace officer to accompany, within a specified time, a specified person to the residence to supervise the removal, in a safe and orderly manner, of personal property owned by a party or granted to him or her under clause (f);
- (h) a provision directing the respondent to deliver up to a peace officer, until a further order under the *Criminal Code (Canada)*, the *Firearms Act (Canada)* or this Act,
 - (i) any firearm, weapon, ammunition or explosive substance that

the respondent owns, possesses or controls, and

- (ii) any document that authorizes the respondent to own, possess or control an item referred to in subclause (i);
- (i) when an order includes a provision under clause (h), a provision that, if the respondent does not deliver up the items referred to in the order, a peace officer may for the purpose of seizing the items enter and search any place where the officer has reason to believe the items are located with such assistance and force as are reasonable in the circumstances;
- (j) a provision requiring the respondent to pay compensation to the subject for any monetary loss suffered by the subject or any child of the subject as a result of the domestic violence or stalking, which may include
 - (i) loss of income,
 - (ii) expenses relating to new accommodations, moving, counselling, therapy, medicine and other medical requirements, and security measures, and
 - (iii) legal fees and other costs relating to making an application under this Act;
- (k) a provision prohibiting the respondent from taking, converting, damaging or otherwise dealing with any property in which the subject has an interest;
- (l) a provision authorizing the seizure, until further order of the court, of any personal property of the respondent used in furtherance of the domestic violence or stalking;
- (m) a provision recommending or requiring that the respondent receive counselling or therapy;
- (n) a provision requiring the respondent to post a bond, with or without sureties or a cash deposit, in an amount the court considers appropriate to secure the respondent's compliance with the order;
- (o) if the subject and respondent reside or have resided in the same premises, a provision prohibiting the respondent from entering upon the premises while the subject is residing there;
- (p) if an order has been made under clause 10(1)(c) (no entry to spouse's premises) or (d) (non-molestation) of *The Family Maintenance Act* by a judge of the court, a provision revoking that part of the order.

- **Interim prevention order, with notice**

16(1) The court may at any time after an application for a prevention order is made, on the motion of a party to the application and on notice to the other party, make an interim prevention order on terms and conditions that the court considers fit and just.

- **Order may be made without notice**

16(2) The court may make an order under subsection (1) on a motion without notice if the court is satisfied that it is necessary or advisable to do so to ensure the safety of the subject.

GENERAL PROVISIONS

- **Court may vary or revoke order**

19(1) The court, on application at any time after a protection order is filed in the court under subsection 10(2) or a prevention order is made under subsection 14(1), may, if satisfied that it is fit and just to do so,

- (a) delete or vary any term or condition in the order, or add terms and conditions, which may include any provision mentioned in clauses 14(1)(a) to (p); or
- (b) revoke the order.

TORT OF STALKING

- **Liability of stalker**

26(1) A person who stalks another person commits a tort against that person.

- **Action without proof of damages**

26(2) An action may be brought under subsection (1) without proof of damages.

US: California**Penal Code § 646.9 Stalking**

(a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously 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.

(c)(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 Section 290.006.

(e) For the purposes of this section, “**harasses**” means engages in 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.

(f) For the purposes of this section, “**course of conduct**” means two or more acts occurring 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. Constitutionally protected

activity is not included within the meaning of “credible threat.”

(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)(1) 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.

(k)(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(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 and Rehabilitation 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.

Civil Code § 1708.7. Stalking

(a) A person is liable for the tort of stalking when the plaintiff proves all of the following elements of the tort:

(1) The defendant engaged in a pattern of conduct the intent of which was to follow, alarm, or harass the plaintiff. In order to establish this element, the plaintiff shall be required to support his or her allegations with independent corroborating evidence.

(2) As a result of that pattern of conduct, the plaintiff reasonably feared for his or her safety, or the safety of an immediate family member. For purposes of this paragraph, “immediate family” means a spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides, or, within the six months preceding any portion of the pattern of conduct, regularly resided, in

the plaintiff's household.

(3) One of the following:

(A) The defendant, as a part of the pattern of conduct specified in paragraph (1), made a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or the safety of an immediate family member and, on at least one occasion, the plaintiff clearly and definitively demanded that the defendant cease and abate his or her pattern of conduct and the defendant persisted in his or her pattern of conduct.

(B) The defendant violated a restraining order, including, but not limited to, any order issued pursuant to Section 527.6 of the Code of Civil Procedure, prohibiting any act described in subdivision (a).

(b) For the purposes of this section:

(1) "Pattern of conduct" means 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 "pattern of conduct."

(2) "Credible threat" means a verbal or written threat, including that communicated by means 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 and 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 immediate family.

(3) "Electronic communication device" includes, but is not limited to, telephones, cellular telephones, 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.

(4) "Harass" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. The 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.

(c) A person who commits the tort of stalking upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages pursuant to Section 3294.

(d) In an action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction.

(e) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(f) This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, and assembly.

US: Nevada**Nev.Rev.Stat. § 200.571. Harassment: Definition; Penalties**

1. A person is guilty of harassment if:
 - (a) Without lawful authority, the person knowingly threatens:
 - (1) To cause bodily injury in the future to the person threatened or to any other person;
 - (2) To cause physical damage to the property of another person;
 - (3) To subject the person threatened or any other person to physical confinement or restraint; or
 - (4) To do any act which is intended to substantially harm the person threatened or any other person with respect to his or her physical or mental health or safety; and
 - (b) The person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out.
2. Except where the provisions of subsection 2 or 3 of NRS 200.575 are applicable, a person who is guilty of harassment:
 - (a) For the first offense, is guilty of a misdemeanor.
 - (b) For the second or any subsequent offense, is guilty of a gross misdemeanor.
3. The penalties provided in this section do not preclude the victim from seeking any other legal remedy available.

Nev.Rev.Stat. § 200.575 . Stalking: Definitions; Penalties

1. A person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, commits the crime of stalking. Except where the provisions of subsection 2 or 3 are applicable, a person who commits the crime of stalking:
 - (a) For the first offense, is guilty of a misdemeanor.
 - (b) For any subsequent offense, is guilty of a gross misdemeanor.
2. A person who commits the crime of stalking and in conjunction therewith threatens the person with the intent to cause the person to be placed in reasonable fear of death or substantial bodily harm commits the crime of aggravated stalking. A person who commits the crime of aggravated stalking shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$5,000.
3. A person who commits the crime of stalking with the use of an Internet or network site, electronic mail, text messaging or any other similar means of communication to publish, display or distribute information in a manner that substantially increases the risk of harm or violence to the victim shall be punished for a category C felony as provided in

NRS 193.130.

4. Except as otherwise provided in subsection 2 of NRS 200.571, a criminal penalty provided for in this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.
5. The penalties provided in this section do not preclude the victim from seeking any other legal remedy available.
6. As used in this section:
 - (a) "Course of conduct" means a pattern of conduct which consists of a series of acts over time that evidences a continuity of purpose directed at a specific person.
 - (b) "Family or household member" means a spouse, a former spouse, a parent or other person who is related by blood or marriage or is or was actually residing with the person.
 - (c) "Internet or network site" has the meaning ascribed to it in NRS 205.4744.
 - (d) "Network" has the meaning ascribed to it in NRS 205.4745.
 - (e) "Provider of Internet service" has the meaning ascribed to it in NRS 205.4758.
 - (f) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.
 - (g) "Without lawful authority" includes acts which are initiated or continued without the victim's consent. The term does not include acts which are otherwise protected or authorized by constitutional or statutory law, regulation or order of a court of competent jurisdiction, including, but not limited to:
 - (1) Picketing which occurs during a strike, work stoppage or any other labor dispute.
 - (2) The activities of a reporter, photographer, camera operator or other person while gathering information for communication to the public if that person is employed or engaged by or has contracted with a newspaper, periodical, press association or radio or television station and is acting solely within that professional capacity.
 - (3) The activities of a person that are carried out in the normal course of his or her lawful employment.
 - (4) Any activities carried out in the exercise of the constitutionally protected rights of freedom of speech and assembly.

South Africa

Protection from Harassment Act 2010

Definitions and application of Act

1.(1) In this Act, unless the context indicates otherwise –

“**court**” means any magistrate’s court for a district referred to in the Magistrates’ Court Act, 1944 (Act No. 32 of 1944);

“**harassment**” means directly or indirectly engaging in conduct that the respondent knows or ought to know –

(a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably –

(i) following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;

(ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or

(iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of, the complainant or a related person; or

(b) amounts to sexual harassment of the complainant or a related person;

“**harm**” means any mental, psychological, physical or economic harm;

“**related person**” means any member of the family or household of a complainant, or any other person in a close relationship to the complainant

“**sexual harassment**” means any –

(a) unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome;

(b) unwelcome explicit or implicit behavior, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances, which a reasonable person having regard to all the circumstances would have anticipated that the complainant or related person would be offended, humiliated or intimidated;

(c) implied or expressed promise of reward for complying with a sexually-oriented request; or

(d) implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually-oriented request;

Application for protection order

2. (1) A complainant may in the prescribed manner apply to the court for a protection order against harassment.

(2) If the complainant or a person referred to in subsection (3) is not represented by a legal representative, the clerk of the court must inform the complainant or person, in the prescribed manner, of –

- (a) the relief available in terms of this Act; and
 - (b) the right to also lodge a criminal complaint against the respondent of *crimen injuria*, assault, trespass, extortion or any other offence which has a bearing on the *persona* or property of the complainant or related person.
- (3) (a) Notwithstanding the provisions of any other law, the application for a protection order may, subject to paragraph (b), be brought on behalf of the complainant by another person who has a material interest in the well-being of the complainant or related person.
- (b) An application referred to in paragraph (a) must be brought with the written consent of the complainant is a person who, in the opinion of the court, is unable to do so.
- (4) Notwithstanding the provisions of any other law, any child, or person on behalf of a child, may apply to the court for a protection order without the assistance of a parent, guardian or any other person.
- (5) The application referred to in subsection (1) may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court has a reasonable belief that the complainant or a related person is suffering or may suffer harm if the application is not dealt with immediately.
- (6) Supporting affidavits by persons who have knowledge of the matter concerned may accompany the application.
- (7) The application and affidavits must be lodged with the clerk of the court who must immediately submit the application and affidavits to the court.

Consideration of application and issuing of interim protection order

3. (1) The court must as soon as is reasonably possible consider an application submitted to it in terms of section 2(7) and may, for that purpose, consider any additional evidence it deems fit, including oral evidence or evidence by affidavit, which must form part of the record of proceedings.

(2) If the court is satisfied that there is *prima facie* evidence that –

- (a) the respondent is engaging or has engaged in harassment;
- (b) harm is being or may be suffered by the complainant or a related person as a result of that conduct if a protection order is not issued immediately; and
- (c) the protection to be accorded by the interim protection order is likely not to be achieved if prior notice of the application is given to the respondent,

the court must, notwithstanding the fact that the respondent has not been given notice of the proceedings, referred to in subsection (1), issue an interim protection order against the respondent, in the prescribed manner.

- (3) (a) Upon the issuing of an interim protection order the court must direct that the interim protection order be served on the respondent in the prescribed manner by the clerk of the court, sheriff or peace officer identified by the court.
- (b) A copy of the application referred to in section 2(1) and the record of any evidence noted in terms of subsection (1) must be served on the respondent together with the interim protection order in the prescribed manner.
- (c) An interim protection order must call on the respondent to show cause on the return date specified in the order why the interim protection order should not be made final.

(4) If the court does not issue an interim protection order in terms of subsection (2), the court must direct that the certified copies of the application concerned and any supporting affidavits be served on the respondent in the prescribed manner by the clerk of the court,

a sheriff or a peace officer identified by the court, together with a prescribed notice calling on the respondent to show cause on the return date specified in the notice why a protection order should not be issued.

(5) The return dates referred to in subsections (3)(c) and (4) may not be less than 10 days after service has been effected on the respondent, but a return date referred to in subsection 3(c) may be anticipated by the respondent on not less than 24 hours' written notice to the complainant and the court.

(6) An interim protection order is of force and effect from the time it is issued by the court and the existence thereof has been brought to the attention of the respondent.

(7) Upon service or upon receipt of a return of service of an interim protection order on a respondent, the clerk of the court must immediately cause –

- (a) a certified copy of the interim protection order; and
- (b) the original warrant of arrest referred to in section 11(1)(a),

to be served on the complainant in the prescribed manner.

[Sections omitted: 4 Electronic communications service provider to furnish particulars to court, 5 Court may order investigation to ascertain name and address of respondent, 6 Powers of members of South African Police Service to ascertain name and address of respondent, 7 Attendance of witnesses, 8 Circumstances in which proceedings may not take place in open court and publication of information]

Issuing of protection order

9. (1) If the respondent does not appear on a return date referred to in section 3(3) or (4), and if the court is satisfied that –

- (a) proper service has been effected on the respondent; and
- (b) the application contains *prima facie* evidence that the respondent has engaged or is engaging in harassment,

the court must issue a protection order in the prescribed form.

(2) If the respondent appears on a return date and opposes the issuing of a protection order, the court must proceed to hear the matter and –

- (a) consider any evidence previously received in terms of section 3(1); and
- (b) consider any further affidavits or oral evidence as it may direct, which must form part of the record of proceedings.

(3) The court may, of its own accord or at the request of the complainant or related person, order that in the examination of those witnesses, including the complainant or related person, a respondent who is not represented by a legal representative –

- (a) is not entitled to directly cross-examine a person whom he or she is alleged to have harassed; and
- (b) must put any question to the person by stating the question to the court, and the court is to repeat the question accurately to the person.

(4) Subject to subsection (5), the court must, after a hearing as provided for in subsection (2), issue a protection order in the prescribed form if it finds, on a balance of probabilities, that the respondent has engaged or is engaging in harassment.

(5) For the purpose of deciding whether the conduct is unreasonable as referred to in paragraph (a) of the definition of “harassment”, the court must, in addition to any other factor, take into account whether the conduct, in the circumstances in question, was engaged in –

- (a) for the purpose of detecting or preventing an offence;
- (b) to reveal a threat to public safety or the environment;

- (c) to reveal that an undue advantage is being or was given to a person in a competitive bidding process; or
 - (d) to comply with a legal duty.
- (6) On issuing a final protection order, the court must direct that –
- (a) the original of that order must be served on the respondent; and
 - (b) a certified copy of that order, and the original warrant of arrest referred to in section 11(1)(a), must be served on the complainant,
- in the prescribed manner by the clerk of the court, sheriff or peace officer identified by the court.
- (7) The clerk of the court must immediately, in the prescribed manner, forward certified copies of any protection order and of the warrant of arrest referred to in section 11(1)(a) to the police station of the complainant's choice.
- (8) Subject to section 10(5), a protection order issued in terms of this section remains in force for a period of five years or such further period as the court may determine on good cause shown unless it is set aside, and the execution of that order is not automatically suspended upon the noting of an appeal against the order.

Court's powers in respect of protection order

10. (1) The court may, by means of a protection order, including an interim protection order, prohibit the respondent from –

- (a) engaging in or attempting to engage in harassment; or
- (b) enlisting the help of another person to engage in harassment; or
- (c) committing any other act as specified in the protection order.

(2) The court may impose any additional conditions on the respondent which it deems reasonably necessary to protect and provide for the safety or well-being of the complainant or related person.

... [Remaining subsections omitted]

Warrant of arrest upon issuing of protection order

11. (1) Whenever a court issues a protection order, including an interim protection order, the court must make an order –

- (a) authorizing the issue of a warrant for the arrest of the respondent, in the prescribed form; and
- (b) suspending the execution of that warrant subject to compliance with any prohibition, condition, obligation or order imposed in terms of section 10.

(2) The warrant referred to in subsection (1)(a) remains in force unless the protection order expires in terms of section 9(8), is set aside, or is cancelled after execution.

(3) The court may issue the complainant with a second or further warrant of arrest, if the complainant files an affidavit in the prescribed form in which it is stated the warrant is required for his or her protection and that the existing warrant of arrest has been –

- (a) executed and cancelled; or
- (b) lost or destroyed.

(4) (a) A complainant may hand the warrant of arrest, together with an affidavit in the prescribed form, wherein it is stated that the respondent has contravened any specified, prohibition, condition, obligation or order contained in a protection order, to any member of the South African Police Service.

- (b) If it appears to the member of the South African Police Service concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant or related person is suffering harm or may suffer imminent harm

as a result of the alleged breach of the protection order by the respondent, the member must immediately arrest the respondent for allegedly committing the offence referred to in section 18(1)(a).

- (c) If the member of the South African Police Service concerned is of the opinion that there are insufficient grounds for arresting the respondent in terms of paragraph (b), he or she must immediately hand to the respondent a written notice in the prescribed form, which –
- (i) specifies the name, the residential and work address and the occupation or status of the respondent;
 - (ii) calls upon the respondent to appear before a court on the date and at the time specified in the notice, on a charge of committing the offence referred to in section 18(1)(a); and
 - (iii) contains a certificate signed by the member of the South African Police Service concerned to the effect that he or she handed the original notice to the respondent and that he or she explained its import on the respondent.
- (c) The member of the South African Police Service must immediately forward a duplicate original of a notice referred to in paragraph (c) to the clerk of the court concerned, and the mere production in the court of such a duplicate original is *prima facie* proof that the original was handed to the respondent specified therein.

(5) In considering whether or not the complainant or related person is suffering harm or may suffer imminent harm, as provided for in subsection (4)(b), the member of the South African Police Service must take into account the –

- (a) risk to the safety or well-being of the complainant or related person;
- (b) seriousness of the conduct comprising an alleged breach of the protection order;
- (c) length of time since the alleged breach occurred; and
- (d) nature and extent of the harm previously suffered by the complainant or related person.

(6) Whenever a warrant of arrest is handed to a member of the South African Police Service in terms of subsection (4)(a), the member of the South African Police Service must inform the complainant of his or her right simultaneously to lay a criminal charge against the respondent, if applicable, and explain to the complainant how to lay such a charge.

[Sections omitted: 12 Seizure of weapons, 13 Variation or setting aside of protection order, 14 Jurisdiction, 15 Service of documents, 16 Costs, 17 Appeal and review]

Offences

18. (1) Notwithstanding the provisions of any other law, any person who –

- (a) contravenes any prohibition, condition, obligation or order imposed in terms of section 10(1) or (2); or
- (b) in an affidavit referred to in section 11(4)(a), makes a false statement in a material respect,

is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(2) ... (omitted)

[Remaining sections omitted]

Domestic Violence Act 1998

Definitions

1. In this Act, unless the context indicates otherwise –

“**domestic relationship**” means a relationship between a complainant and a respondent in any of the following ways:

- (a) they are or were married to each other, including marriage according to any law, custom or religion;
- (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
- (d) they are family members related by consanguinity, affinity or adoption;
- (e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship or any duration; or
- (f) they share or recently shared the same residence

“**domestic violence**” means –

- ... (f) harassment;
(g) stalking; ...

where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant;

“**harassment**” means engaging in a pattern of conduct that induces the fear of harm to a complainant including –

- (a) repeatedly watching, or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;
- (b) repeatedly making telephone calls or inducing another person to make telephone calls to the complainant, whether or not conversation ensues;
- (c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant;

“**respondent**” means any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant;

“**stalking**” means repeatedly following, pursuing, or accosting the complainant ... [remaining subsections omitted]

Duty to assist and inform complainant of rights

2. Any member of the South African Police Service must, at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when the incident of domestic violence is reported –

- (a) render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment;
- (b) if it is reasonably possible to do so, hand a notice containing information as

prescribed to the complainant in the official language of the complainant's choice; and

- (c) if it is reasonably possible to do so, explain to the complainant the content of such notice in the prescribed manner, including the remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint, if applicable.

Arrest by peace officer without warrant

3. A peace officer may without warrant arrest any respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against a complainant.

Application for protection order

4. (1) A complainant may in the prescribed manner apply to the court for a protection order.

(2) If the complainant is not represented by a legal representative, the clerk of the court must inform the complainant or person, in the prescribed manner, of –

- (c) the relief available in terms of this Act; and
- (d) the right to also lodge a criminal complaint against the respondent, if a criminal offence has been committed by the respondent.

(3) Notwithstanding the provisions of any other law, the application may be brought on behalf of the complainant by any other person, including a counselor, health service provider, member of the South African Police Service, social worker or teacher, who has a material interest in the wellbeing of the complainant: Provided that the application must be brought with the written consent of the complainant, except in circumstances where the complainant is

- (a) a minor;
- (b) mentally retarded;
- (c) unconscious; or
- (d) a person whom the court is satisfied is unable to provide the required consent.

(4) Notwithstanding the provisions of any other law, any minor, or any person on behalf of a minor, may apply to the court for a protection order without the assistance of a parent, guardian or any other person.

(5) The application referred to in subsection (1) may be brought outside ordinary court hours or on a day which is not an ordinary court day, if the court is satisfied that the complainant may suffer undue hardship if the application is not dealt with immediately.

(6) Supporting affidavits by persons who have knowledge of the matter concerned may accompany the application.

(7) The application and affidavits must be lodged with the clerk of the court who shall forthwith submit the application and affidavits to the court.

Consideration of application and issuing of interim protection order

5. (1) The court must as soon as is reasonably possible consider an application submitted to it in terms of section 2(7) and may, for that purpose, consider any additional evidence it deems fit, including oral evidence or evidence by affidavit, which shall form part of the record of proceedings.

(2) If the court is satisfied that there is *prima facie* evidence that –

- (d) the respondent is committing or has committed an act of domestic violence; and

- (e) undue hardship may be suffered by the complainant as a result of such domestic violence if a protection order is not issued immediately, the court must, notwithstanding the fact that the respondent has not been given notice of the proceedings contemplated in subsection (1), issue an interim protection order against the respondent, in the prescribed manner.
- (3) (a) An interim protection order must be served on the respondent in the prescribed manner and must call on the respondent to show cause on the return date specified in the order why a protection order should not be issued.
- (b) A copy of the application referred to in section 4(1) and the record of any evidence noted in terms of subsection (1) must be served on the respondent together with the interim protection order.
- (4) If the court does not issue an interim protection order in terms of subsection (2), the court must direct the clerk of the court to cause certified copies of the application concerned and any supporting affidavits to be served on the respondent in the prescribed manner by the clerk of the court, a sheriff or a peace officer identified by the court, together with a prescribed notice calling on the respondent to show cause on the return date specified in the notice why a protection order should not be issued.
- (5) The return dates referred to in subsections (3)(a) and (4) may not be less than 10 days after service has been effected on the respondent: Provided that the return date referred to in subsection 3(a) may be anticipated by the respondent upon not less than 24 hours' written notice to the complainant and the court.
- (6) An interim protection order shall have no force until it has been served on the respondent.
- (7) Upon service or upon receipt of a return of service of an interim protection order, the clerk of the court must forthwith cause –
- (a) a certified copy of the interim protection order; and
- (b) the original warrant of arrest referred to in section 11(1)(a),
- to be served on the complainant.

Issuing of protection order

6. (1) If the respondent does not appear on a return date referred to in section 5(3) or (4), and if the court is satisfied that –
- (c) proper service has been effected on the respondent; and
- (d) the application contains *prima facie* evidence that the respondent has committed or is committing an act of domestic violence,
- the court must issue a protection order in the prescribed form.
- (2) If the respondent appears on a return date and opposes the issuing of a protection order, the court must proceed to hear the matter and –
- (c) consider any evidence previously received in terms of section 5(1); and
- (d) consider any further affidavits or oral evidence as it may direct, which must form part of the record of proceedings.
- (3) The court may, of its own accord or at the request of the complainant or related person, order that in the examination of those witnesses, including the complainant or related person, a respondent who is not represented by a legal representative –
- (c) is not entitled to directly cross-examine a person whom he or she is alleged to have harassed; and
- (d) must put any question to the person by stating the question to the court, and the court is to repeat the question accurately to the person.
- (4) The court must, after a hearing as provided for in subsection (2), issue a protection

order in the prescribed form if it finds, on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence.

(5) Upon the issuing of a protection order, the court must direct that –

- (c) the original of that order must be served on the respondent; and
- (d) a certified copy of that order, and the original warrant of arrest referred to in section 8(1)(a), must be served on the complainant,

in the prescribed manner by the clerk of the court, sheriff or peace officer identified by the court.

(76) The clerk of the court must forthwith in the prescribed manner forward certified copies of any protection order and of the warrant of arrest referred to in section 8(1)(a) to the police station of the complainant's choice.

(8) Subject to section 7(7), a protection order issued in terms of this section remains in force until it is set aside, and the execution of that order shall not be automatically suspended upon the noting of an appeal.

Court's powers in respect of protection order

7. (1) The court may, by means of a protection order referred to in section 5 or 6, prohibit the respondent from –

- (a) committing any act of domestic violence;
- (b) enlisting the help of another person to commit any such act;
- (c) entering a residence shared by the complainant and the respondent: Provided that the court may impose this prohibition only if it appears to be in the best interests of the complainant;
- (d) entering a specified part of such a shared residence;
- (e) entering the complainant's residence;
- (f) entering the complainant's place of employment;
- (g) preventing the complainant who ordinarily lives or lived in a shared residence as contemplated in subparagraph (c) from entering or remaining in the shared residence or a specified part of the shared residence; or
- (h) committing any other act as specified in the protection order.

(2) The court may impose any additional conditions which it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant... [omitted] ... [remaining subsections omitted]

Warrant of arrest upon issuing of protection order

8. (1) Whenever a court issues a protection order, the court must make an order –

- (a) authorizing the issue of a warrant for the arrest of the respondent, in the prescribed form; and
- (b) suspending the execution of that warrant subject to compliance with any prohibition, condition, obligation or order imposed in terms of section 7.

(2) The warrant referred to in subsection (1)(a) remains in force unless the protection order is set aside, or it is cancelled after execution.

(3) The clerk of the court must issue the complainant with a second or further warrant of arrest, if the complainant files an affidavit in the prescribed form in which it is stated the warrant is required for his or her protection and that the existing warrant of arrest has been –

- (a) executed and cancelled; or
- (b) lost or destroyed.

(4) (a) A complainant may hand the warrant of arrest, together with an affidavit in the

prescribed form, wherein it is stated that the respondent has contravened any prohibition, condition, obligation or order contained in a protection order, to any member of the South African Police Service.

- (b) If it appears to the member of the South African Police Service concerned that, subject to subsection (5), there are reasonable grounds to suspect that the complainant or related person may suffer imminent harm as a result of the alleged breach of the protection order by the respondent, the member must forthwith arrest the respondent for allegedly committing the offence referred to in section 17(1)(a).
- (c) If the member of the South African Police Service concerned is of the opinion that there are insufficient grounds for arresting the respondent in terms of paragraph (b), he or she must forthwith hand a written notice to the respondent, which –
- (i) specifies the name, the residential and work address and the occupation or status of the respondent;
 - (ii) calls upon the respondent to appear before a court on the date and at the time specified in the notice, on a charge of committing the offence referred to in section 17(1)(a); and
 - (iii) contains a certificate signed by the member concerned to the effect that he or she handed the original notice to the respondent and that he or she explained its import on the respondent.
- (d) The member must forthwith forward a duplicate original of a notice referred to in paragraph (c) to the clerk of the court concerned, and the mere production in the court of such a duplicate original shall be *prima facie* proof that the original thereof was handed to the respondent specified therein.
- (5) In considering whether or not the complainant may suffer imminent harm, as contemplated for in subsection (4)(b), the member of the South African Police Service must take into account –
- (a) the risk to the safety, health or wellbeing of the complainant;
 - (b) the seriousness of the conduct comprising an alleged breach of the protection order; and
 - (c) length of time since the alleged breach occurred; and
- (6) Whenever a warrant of arrest is handed to a member of the South African Police Service in terms of subsection (4)(a), the member must inform the complainant of his or her right simultaneously to lay a criminal charge against the respondent, if applicable, and explain to the complainant how to lay such a charge.

[Sections omitted: **9 Seizure of arms and dangerous weapons, 10 Variation or setting aside of protection order, 11 Attendance of proceedings and prohibition of publication of certain information, 12 Jurisdiction, 13 Service of documents, 14 Legal representation, 15 Costs, 16 Appeal and review**]

Offences

17. (1) Notwithstanding the provisions of any other law, any person who –
- (a) contravenes any prohibition, condition, obligation or order imposed in terms of section 7;
 - (b) contravenes the provisions of section 11(2)(a);
 - (c) fails to comply with any direction in terms of the provisions of section 11(2)(b); or

(d) in an affidavit referred to in section 8(4)(a), wilfully makes a false statement in a material respect,
is guilty of an offence and liable on conviction in the case referred to in paragraph (a) to a fine or imprisonment for a period not exceeding five years or to both such fine and such imprisonment, and in the case of an offence contemplated in paragraph (b), (c), or (d), to a fine or imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Remaining sections omitted]

Appendix C

Defences/exemptions found in anti-stalking legislation

UK	<p>The Protection from Harassment Act 1997 (PHA)</p> <p>The provisions of the PHA would not apply to criminal or civil harassment if the conduct in question:</p> <ul style="list-style-type: none"> • was pursued for the purpose of prevention or detection of crime; • the conduct was pursued by those required to act under any enactment or rule of law; and • where in the particular circumstances the pursuit of the course of conduct is reasonable. In the context of the criminal harassment, this defence is only available for the lower-levels of causing harassment and stalking offences; not for the higher-levels of harassment and stalking offences.
NZ	<p>The Harassment Act 1997 (HA)</p> <p>No specific defence for criminal or civil harassment but the Law Commission recently suggested that the general defence of “lawful purpose” for civil harassment should be reformulated.</p>
AU	<p>QLD - The Criminal Code Act 1899, s. 359A-F Unlawful Stalking</p> <p>Exemptions:</p> <ul style="list-style-type: none"> • acts done in the execution of a law or administration of an Act or for a purpose authorised by an Act; • acts done for the purposes of a genuine industrial dispute; • acts done for the purposes of a genuine political or other genuine public dispute or issue carried on in the public interest; • reasonable conduct engaged in by a person for the person’s lawful trade, business or occupation; and • reasonable conduct engaged in by a person to obtain or give information that the person has a legitimate interest in obtaining or giving. <p>VIC - The Crimes Act 1958, s. 21A Stalking</p> <p>It is a defence to the charge for the accused to prove that the course of conduct was engaged in without malice—</p> <ul style="list-style-type: none"> • in the normal course of a lawful business, trade, profession or enterprise (including that of any body or person whose business, or whose principal business, is the publication, or arranging for the publication, of news or current affairs material); or for the purpose of an industrial dispute; or • for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.

<p>CANADA</p>	<p>Criminal Code R.S.C. 1985, s. 264 Criminal harassment</p> <ul style="list-style-type: none"> • lawful authority <p>Criminal Code R.S.C. 1985, s. 423 Intimidation</p> <ul style="list-style-type: none"> • lawful authority; and • exemption for one of the seven specified acts. The specified act is found in section 423(1) (f): “besets or watches the place where that person resides, works, carries on business or happens to be.” (This act is also specified in section 264 (2) (c)). Section 423(2) makes the following exemption: <p>“a person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.”</p> <p>The Manitoba Domestic Violence and Stalking Act, C.C.S.M. c. D93</p> <ul style="list-style-type: none"> • lawful excuse or authority; a sort of an in-built defence in the definition of stalking.
<p>US</p>	<p>Many state legislation regulates stalking and harassment separately (those which only provide for a stalking offence include Florida and California). Many statutes explicitly exempt “constitutionally protected activities.” Among those which include more specific exemptions are:</p> <p>California: Penal Code § 646.9. Stalking</p> <ul style="list-style-type: none"> • Constitutionally protected activity is not included within the meaning of “course of conduct.” • Constitutionally protected activity is not included within the meaning of “credible threat.” <p>Furthermore, § 646.9 exempts from liability:</p> <ul style="list-style-type: none"> • conduct that occurs during labor picketing. <p>California: Civil Code § 1708.7. Stalking</p> <ul style="list-style-type: none"> • This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, and assembly. <p>Nevada: Revised Statutes § 200.571- 200.601 Harassment and Stalking</p> <p>“Without lawful authority” in § 200.575 (Stalking) includes acts which are initiated or continued without the victim’s consent. The term does not include acts which are otherwise protected or authorized by constitutional or statutory law, regulation or order of a court of competent jurisdiction, including, but not limited to:</p> <ul style="list-style-type: none"> • Picketing which occurs during a strike, work stoppage or any other labor dispute.

- The activities of a reporter, photographer, camera operator or other person while gathering information for communication to the public if that person is employed or engaged by or has contracted with a newspaper, periodical, press association or radio or television station and is acting solely within that professional capacity.
- The activities of a person that are carried out in the normal course of his or her lawful employment.
- Any activities carried out in the exercise of the constitutionally protected rights of freedom of speech and assembly.

Arizona - A.R.S. § 13-2923. Stalking

Exemption:

- Does not include constitutionally protected activity or other activity authorized by law, the other person, the other person's authorized representative or if the other person is a minor, the minor's parent or guardian”

Arizona - A.R.S. § 13-2921. Harassment

Exemption:

- This section does not apply to an otherwise lawful demonstration, assembly or picketing.

Illinois - 720 ILCS 5/12-7.3. Stalking

Exemptions include:

- picketing occurring at the workplace that is otherwise lawful and arises out of a bona fide labor dispute, including any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the making or maintaining of collective bargaining agreements, and the terms to be included in those agreements;
- exercise of the right to free speech or assembly that is otherwise lawful

Arkansas - A.C.A. § 5-71-229. Stalking

- It is an affirmative defense to prosecution under this section if the actor is law enforcement officer, licensed private investigator, attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his or her duty while conducting surveillance on an official work assignment.

Florida - Fla. Stat. § 784.048. Stalking

- The term “course of conduct” does not include constitutionally protected activity such as picketing or other organized protests.

SOUTH AFRICA	<p>The Protection from Harassment Act 2010 (Civil harassment)</p> <p>For the purpose of <u>deciding whether the conduct of a respondent</u> (i.e. the one against whom a protection order is being applied for) <u>is unreasonable</u> in the sense of the definition of harassment, the court must, in addition to any other factor, <u>take into account whether the conduct</u>, in the circumstances in question, was engaged in-</p> <ul style="list-style-type: none">• for the purpose of detecting or preventing an offence;• to reveal a threat to public safety or the environment;• to reveal that an undue advantage is being or was given to a person in a competitive bidding process; or• to comply with a legal duty.
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Appendix D (1)

Number of charges lodged in Queensland Courts pursuant to Sections 359E and 359F of the *Criminal Code Act 1899* by court, section, charge title and year

Court	Section	Charge Title	Year						Grand Total
			2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	
Magistrates (Childrens) Court	359E(1)	Unlawful Stalking	8	5	11	17	6	18	65
	359E(1)&(3)(A)	Unlawful Stalking Uses/Threatens Violence	3	8	20	1	2	2	36
	359E(1)&(3)(B)	Unlawful Stalking Possess A Weapon	2	1	-	-	-	-	3
	359E(1)&(3)(C)	Unlawful Stalking Contravenes/Threatens To Contravene An Order/Injunction	-	-	1	1	-	-	2
	359F(8)	Breach Of Restraining Order	-	-	-	1	-	-	1
Magistrates (Childrens) Court Total			13	14	32	20	8	20	107
Magistrates Court	359E(1)	Unlawful Stalking	304	310	287	248	254	250	1,653
	359E(1)&(3)(A)	Unlawful Stalking Uses/Threatens Violence	31	49	58	63	48	60	309
	359E(1)&(3)(A)&(3)(B)	Unlawful Stalking Uses/Threatens Violence Possess A Weapon	-	4	3	6	5	-	18
	359E(1)&(3)(A)&(3)(B)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Possess A Weapon Contravenes/Threatens To Contravene An Order/Injunction	2	-	-	2	-	-	4
	359E(1)&(3)(A)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Contravenes/Threatens To Contravene An Order/Injunction	4	5	2	6	7	3	27
	359E(1)&(3)(B)	Unlawful Stalking Possess A Weapon	1	2	2	2	1	-	8
	359E(1)&(3)(B)&(3)(C)	Unlawful Stalking Possess A Weapon Contravenes/Threatens To Contravene An Order/Injunction	-	-	-	-	1	-	1
	359E(1)&(3)(C)	Unlawful Stalking Contravenes/Threatens To Contravene An Order/Injunction	25	11	15	18	11	16	96
	359E(1)&(3)(C)&541	Conspiracy Unlawful Stalking Contravenes/Threatens To Contravene An Order/Injunction	1	-	-	-	-	-	1
	359E(1)&535	Attempted Unlawful Stalking	-	-	-	-	-	2	2
	359F(8)	Breach Of Restraining Order	22	21	23	10	12	16	104
359F(8)&535	Attempted Breach Of Restraining Order	-	-	1	-	-	-	1	
Magistrates Court Total			390	402	391	355	339	347	2,224
Childrens Court of Queensland	359E(1)	Unlawful Stalking	2	-	-	-	-	1	3
	359E(1)&(3)(A)	Unlawful Stalking Uses/Threatens Violence	-	-	-	2	-	-	2
	359E(1)&(3)(C)	Unlawful Stalking Contravenes/Threatens To Contravene An Order/Injunction	-	-	-	1	-	-	1
Childrens Court of Queensland Total			2	-	-	3	-	1	6
District Court	359E(1)	Unlawful Stalking	54	54	59	48	70	59	344
	359E(1)&(3)(A)	Unlawful Stalking Uses/Threatens Violence	23	15	34	36	22	28	158
	359E(1)&(3)(A)&(3)(B)	Unlawful Stalking Uses/Threatens Violence Possess A Weapon	4	-	2	2	4	-	12
	359E(1)&(3)(A)&(3)(B)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Possess A Weapon Contravenes/Threatens To Contravene An Order/Injunction	4	1	-	3	1	1	10
	359E(1)&(3)(A)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Contravenes/Threatens To Contravene An Order/Injunction	5	9	12	7	12	6	51
	359E(1)&(3)(B)	Unlawful Stalking Possess A Weapon	-	-	2	1	1	-	4
	359E(1)&(3)(B)&(3)(C)	Unlawful Stalking Possess A Weapon Contravenes/Threatens To Contravene An Order/Injunction	-	-	-	-	-	1	1
	359E(1)&(3)(C)	Unlawful Stalking Contravenes/Threatens To Contravene An Order/Injunction	11	11	4	16	15	10	67
	359F(8)	Breach Of Restraining Order	-	-	2	-	2	-	4
359F(8)&535	Attempted Breach Of Restraining Order	-	-	-	1	-	-	1	
District Court Total			101	90	115	114	127	105	652
Supreme Court	359E(1)	Unlawful Stalking	1	-	-	1	-	-	2
	359E(1)&(3)(A)	Unlawful Stalking Uses/Threatens Violence	1	1	2	-	-	-	4
	359E(1)&(3)(A)&(3)(B)	Unlawful Stalking Uses/Threatens Violence Possess A Weapon	1	-	-	-	-	-	1
	359E(1)&(3)(A)&(3)(B)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Possess A Weapon Contravenes/Threatens To Contravene An Order/Injunction	-	1	-	-	-	-	1
	359E(1)&(3)(A)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Contravenes/Threatens To Contravene An Order/Injunction	-	-	1	-	2	-	3
359E(1)&(3)(C)	Unlawful Stalking Contravenes/Threatens To Contravene An Order/Injunction	-	1	-	-	-	-	1	
Supreme Court Total			3	3	3	1	2	-	12
Grand Total			509	509	541	493	476	473	3,001

Source: Queensland Wide Inter-linked Courts (QWIC)

Date prepared: 28 February 2013

Notes:

1. Sections 359E and 359F of the *Criminal Code Act 1899* deal with charges of 'Unlawful Stalking'.

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Appendix D (2)

Number of defendants convicted in all Queensland Courts of a charge/s pursuant to Sections 359E and/or 359F of the *Criminal Code Act 1899* by court, order and year

Court	Order	Year						Grand Total
		2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	
Magistrates (Childrens) Court	Imprisonment/Detention	-	-	1	2	-	-	3
	Custody in the community	-	-	-	2	-	-	2
	Community Service Order	-	-	-	1	1	-	2
	Probation Order	3	2	6	3	-	2	16
	Good Behaviour/Recognisance	1	1	1	1	1	1	6
	Youth Justice Conference	-	-	-	2	-	-	2
	Other	-	-	-	-	-	1	1
Magistrates (Childrens) Court Total		4	3	8	11	2	4	32
Magistrates Court	Imprisonment/Detention	31	27	39	25	33	31	186
	Custody in the community	3	1	-	1	2	1	8
	Community Service Order	4	4	3	5	4	4	24
	Probation Order	32	24	27	27	32	25	167
	Monetary Order	23	29	16	27	25	15	135
	Good Behaviour/Recognisance	9	12	8	6	6	6	47
	Other	1	-	2	2	3	-	8
Magistrates Court Total		103	97	95	93	105	82	575
Childrens Court of Queensland	Probation Order	1	-	-	-	-	-	1
Childrens Court of Queensland Total		1	-	-	-	-	-	1
District Court	Imprisonment/Detention	33	32	31	38	42	35	211
	Custody in the community	1	2	1	1	-	-	5
	Community Service Order	2	3	1	1	-	2	9
	Probation Order	10	6	1	7	4	4	32
	Monetary Order	-	-	1	-	-	2	3
	Good Behaviour/Recognisance	2	1	1	-	-	2	6
	Other	-	1	1	1	1	-	4
District Court Total		48	45	37	48	47	45	270
Supreme Court	Imprisonment/Detention	1	1	2	-	-	-	4
Supreme Court Total		1	1	2	-	-	-	4
Grand Total		157	146	142	152	154	131	882

Source: Queensland Wide Inter-linked Courts (QWIC)

Date prepared: 28 February 2013

Notes:

1. As there is no unique identifier enabling the identification and subsequent reporting of unique defendants, defendants have been identified based on the national Report on Government
2. A Defendant can receive a single sentence for a single offence, a single sentence for multiple offences, multiple sentences for multiple offences and/or multiple sentences assigned to
3. The order type, 'Custody in the community' includes intensive correction orders and conditional release orders.
4. The order type, 'Other' includes convicted and not punished, no penalty imposed and reprimand.
5. The QWIC system is a "live" operational system in which records are updated as the status of court matters change (for example, a defendant being resentenced as a result of a Court of
6. Sections 359E and 359F of the *Criminal Code Act 1899* deal with charges of 'Unlawful Stalking'.

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Appendix D (3)

Number of charges finalised by conviction in Queensland Courts pursuant to Sections 359E and/or 359F of the *Criminal Code Act 1899* by court, section, charge title, order and year

Court	Section	Charge Title	Order	Year					Grand Total	
				2006-07	2007-08	2008-09	2009-10	2010-11		2011-12
Magistrates (Childrens) Court	359E(1)	Unlawful Stalking	Imprisonment/Detention	-	-	1	1	-	-	2
			Custody in the community	-	-	-	2	-	-	2
			Community Service Order	-	-	-	1	1	-	2
			Probation Order	3	1	5	2	-	1	12
			Youth Justice Conference	-	-	-	2	-	-	2
			Other	-	-	-	-	-	1	1
			359E(1)&(3)(A)	Unlawful Stalking Uses/Threatens Violence	Probation Order	-	1	2	1	-
Good Behaviour/Recognisance	-	1	1		1	1	1	5		
359E(1)&(3)(B)	Unlawful Stalking Possess A Weapon	Good Behaviour/Recognisance	1	-	-	-	-	-	1	
359F(8)	Breach Of Restraining Order	Imprisonment/Detention	-	-	-	1	-	-	1	
Magistrates (Childrens) Court Total				4	3	9	11	2	4	33
Magistrates Court	359E(1)	Unlawful Stalking	Imprisonment/Detention	24	20	34	27	30	30	165
			Custody in the community	3	1	-	2	1	-	7
			Community Service Order	4	9	1	6	4	3	27
			Probation Order	33	28	29	28	29	35	182
			Monetary Order	19	23	12	24	26	12	116
			Good Behaviour/Recognisance	9	12	9	5	6	6	47
			Other	1	-	-	1	2	1	5
	359E(1)&(3)(A)	Unlawful Stalking Uses/Threatens Violence	Imprisonment/Detention	2	2	2	1	-	5	12
			Custody in the community	-	-	-	-	1	-	1
			Community Service Order	-	-	2	-	-	-	2
			Probation Order	2	2	1	1	6	1	13
			Monetary Order	2	1	1	2	1	2	9
			Good Behaviour/Recognisance	-	1	-	1	-	-	2
			Other	-	-	1	1	-	-	2
	359E(1)&(3)(A)&(3)(B)	Unlawful Stalking Uses/Threatens Violence Possess A Weapon	Imprisonment/Detention	-	-	-	-	1	-	1
			Probation Order	-	-	1	-	-	-	1
	359E(1)&(3)(A)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Contravenes/Threatens To Contravene An Order/Injunction	Imprisonment/Detention	-	2	1	-	1	3	7
	359E(1)&(3)(C)		Imprisonment/Detention	2	-	1	-	2	-	5
	359E(1)&(3)(C)	Unlawful Stalking Contravenes/Threatens To Contravene An Order/Injunction	Community Service Order	-	-	-	-	-	1	1
			Probation Order	-	-	-	1	1	-	2
			Monetary Order	1	-	-	-	-	1	2
			Good Behaviour/Recognisance	-	1	-	-	-	-	1
			Other	-	-	-	-	1	-	1
	359E(1)&535	Attempted Unlawful Stalking	Other	-	-	-	-	-	1	1
359F(8)	Breach Of Restraining Order	Imprisonment/Detention	5	3	4	2	4	7	25	
		Custody in the community	-	-	-	-	-	1	1	
		Probation Order	1	-	-	9	-	-	10	
		Monetary Order	3	15	4	3	1	1	27	
		Good Behaviour/Recognisance	1	-	-	-	-	-	1	
		Other	-	-	1	-	-	-	1	
Magistrates Court Total				112	120	104	114	117	110	677
Childrens Court of Queensland	359E(1)	Unlawful Stalking	Probation Order	1	-	-	-	-	-	1
Childrens Court of Queensland Total				1	-	-	-	-	-	1
District Court	359E(1)	Unlawful Stalking	Imprisonment/Detention	22	22	21	26	37	15	143
			Custody in the community	-	1	-	1	-	-	2
			Community Service Order	-	1	1	1	-	1	4
			Probation Order	3	10	1	6	3	3	26
			Monetary Order	-	-	-	-	-	1	1
			Good Behaviour/Recognisance	1	-	-	-	-	1	2
			Other	-	-	-	-	-	1	1
	359E(1)&(3)(A)	Unlawful Stalking Uses/Threatens Violence	Imprisonment/Detention	10	7	11	14	18	9	69
			Custody in the community	1	1	1	-	-	-	3
			Community Service Order	1	-	-	-	-	-	1
			Probation Order	5	1	-	4	-	2	12
			Monetary Order	-	-	-	-	-	1	1
			Good Behaviour/Recognisance	-	1	-	-	-	1	2
			Other	-	-	-	-	-	1	1
	359E(1)&(3)(A)&(3)(B)	Unlawful Stalking Uses/Threatens Violence Possess A Weapon	Imprisonment/Detention	-	1	1	-	2	1	5
	Probation Order		1	-	-	-	-	-	1	
	359E(1)&(3)(A)&(3)(B)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Possess A Weapon Contravenes/Threatens To Contravene An Order/Injunction	Imprisonment/Detention	2	-	-	1	-	1	4
	Probation Order		-	-	-	-	2	-	2	
	359E(1)&(3)(A)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Contravenes/Threatens To Contravene An Order/Injunction	Imprisonment/Detention	2	4	5	5	6	5	27
			Community Service Order	-	1	-	-	-	-	1
Good Behaviour/Recognisance			-	-	1	-	-	-	1	
359E(1)&(3)(B)	Unlawful Stalking Possess A Weapon	Imprisonment/Detention	-	-	1	-	-	2	3	
359E(1)&(3)(B)&(3)(C)	Unlawful Stalking Possess A Weapon Contravenes/Threatens To Contravene An Order/Injunction	Imprisonment/Detention	-	-	-	-	-	1	1	

	359E(1)&(3)(C)	Unlawful Stalking Contravenes/Threatens To Contravene An Order/Injunction	Imprisonment/Detention	2	6	1	7	7	8	31
			Community Service Order	-	1	-	-	-	1	2
			Probation Order	2	-	-	-	1	-	3
			Monetary Order	-	-	1	-	-	-	1
			Good Behaviour/Recognisance	1	-	-	-	-	-	1
			Other	-	1	-	1	-	-	2
	359F(8)	Breach Of Restraining Order	Imprisonment/Detention	-	-	-	-	1	-	1
			Other	-	-	2	-	1	-	3
District Court Total				53	58	47	66	78	54	356
Supreme Court	359E(1)	Unlawful Stalking	Imprisonment/Detention	1	-	-	-	-	-	1
	359E(1)&(3)(A)	Unlawful Stalking Uses/Threatens Violence	Imprisonment/Detention	1	-	1	-	-	-	2
	359E(1)&(3)(A)&(3)(B)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Possess A Weapon Contravenes/Threatens To Contravene An Order/Injunction	Imprisonment/Detention	-	1	-	-	-	-	1
	359E(1)&(3)(A)&(3)(C)	Unlawful Stalking Uses/Threatens Violence Contravenes/Threatens To Contravene An Order/Injunction	Imprisonment/Detention	-	-	1	-	-	-	1
Supreme Court Total				2	1	2	-	-	-	5
Grand Total				172	182	162	191	197	168	1,072

Source: Queensland Wide Inter-linked Courts (QWIC)

Date prepared: 28 February 2013

Notes:

1. The order type, 'Custody in the community' includes intensive correction orders and conditional release orders.
2. The order type, 'Other' includes convicted and not punished, no penalty imposed and reprimand.
3. The QWIC system is a "live" operational system in which records are updated as the status of court matters change (for example, a defendant being resentenced as a result of a Court of Appeal decision) and or input errors are detected and rectified. This constant updating and data verification may
4. Sections 359E and 359F of the *Criminal Code Act 1899* deal with charges of 'Unlawful Stalking'.

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Appendix E

Overview of law of press freedom, protests and demonstration in Hong Kong

Press freedom

1. It has been observed that freedom of the press calls for:
 - freedom from censorship, licensing or other controls by the government, to ensure that there is freedom to express without sanctions;
 - all have the right and possibility of free access for all to news, views, education and culture;
 - freedom for news media to obtain information from relevant sources;
 - freedom from concealed influence from media owners or advertisers on news selection or opinions expressed;
 - an active, independent and critical editorial policy;
 - freedom from economic influence.¹

2. Freedom of the press is intertwined with freedom of expression, as the former enhances the latter and is essential for the operation of a democratic form of government. This allows diverse opinions and enriches knowledge and debate, connecting freedom of the press with the public sphere in a way that makes governments more responsive and accountable to the people.²

3. In Hong Kong, “one sees the press acting freely but cautiously at the same time.”³ With regard to the public, while they may treasure freedom and civil liberties, during the transitional period of the handover, they were also often apathetic due to the long drawn out

¹ Anne S.Y. Cheung, *Self-censorship and the struggle for press freedom in Hong Kong* (The Hague: Kluwer Law International, 2003), Chapter 5, Part C (“Cheung”), p 19.

² Cheung, p 20.

³ Cheung, p 24.

sense of powerlessness and their perception that the government under British colonial rule would not respond and improve.⁴

Media presence in Hong Kong

4. According to the Hong Kong Information Services Department, as at 29 February 2012, “there were 50 daily newspapers and 648 periodicals (including a number of electronic newspapers), two domestic free television programme service licensees, three domestic pay television programme service licensees, 17 non-domestic television programme service licensees, one government funded public service broadcaster, and four sound broadcasting licensees.”⁵

5. The Hong Kong newspapers registered “included 24 Chinese-language dailies, 13 English-language dailies (including one in Braille), eight bilingual dailies and five Japanese dailies. Among the Chinese-language dailies, 19 cover mainly local and overseas general news; three specialise in finance; and the rest cover horse racing. The larger papers include overseas Chinese communities in their distribution networks, and some have editions printed outside Hong Kong, in particular in the United States, Canada, the United Kingdom and Australia.”⁶ Newspapers, such as *The Financial Times*, *The Wall Street Journal Asia*, *USA Today International*, *International Herald Tribune* and *The NIKKEI* are printed in Hong Kong.⁷

News activities

6. There are different types of activities that the media use in order to report a story. They include door-stepping interviews, loitering with intent to interview, lens photography, pursuing celebrities with intent to photograph them, and confronting the target.⁸ In these situations it is not unlikely that the target of the story and or persons connected to the target, try to avoid the one pursuing the story.

7. Undercover journalistic investigations of the kind that requires following a person in order to denounce to the public and alert the authorities that crimes are being committed also

⁴ Cheung, pp 41-42. See also footnote 22 on p 42 for survey references on this aspect,

⁵ See “Hong Kong: The Facts,” The Media, April 2012, at <http://www.gov.hk/en/about/abouthk/factsheets/docs/media.pdf>

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Frances Quinn, *Law for Journalists*, 3rd ed (Pearson Education Limited, 2011), Chap 19 (“Quinn”). See also Martin Davis, “Good News all round? The Protection from harassment Act 1997” (1997) *Entertainment Law Review* 191, p 192 (“Davis”).

plays a role in news-gathering activities. In jurisdictions such as the US, there are several institutional and legal supports for investigative journalists.⁹ They include organizations such as the Investigative Reporters and Editors, a grassroots non-profit organisation founded in 1975 and dedicated to improving the quality of investigative reporting; and print and broadcast media specialising in investigative journalism. An instance of legal support at the federal level is the Freedom of Information Act allowing access to a great number of government documents. Sunshine Laws also exist at the state level.

8. The activities engaged in by journalists, investigative journalists, free-lance or otherwise already attract legal liabilities when such activities cross the permitted boundaries. For example, journalists are liable for defamation, malicious falsehood, data protection and confidentiality, and trespassing. They are also subject to a series of restrictions, such as those in relation to TV and radio broadcasting, reporting restrictions in courts, restrictions involving government officials' secrets, etc.; and to a Code of Professional Ethics.¹⁰

No freedom of information legislation

9. Hong Kong lacks freedom of information legislation. The current position caters for a Code on Access to Information as an administrative measure only. The following is reproduced to show the effectiveness, or rather ineffectiveness of the Code:

In order to test the sincerity of the Hong Kong SAR Government, the Hong Kong Journalists Association sent out 56 faxes by its researchers in their personal capacity in November 1997, requesting 81 documents of the Government Progress Report in one single month. The success rate was only 35%. In one case, a researcher had to pay HK\$700 ...photocopying fee to the Chief Secretary's Office, only to discover that certain documents had been withheld. When the Home Offices Affairs Bureau became suspicious that a survey was being carried out, it sent an internal memorandum to senior civil servants instructing them to "kill the story" as "good news is no news." The code thus appears to be a mere cosmetic gesture.¹¹

⁹ See Bryce T. McIntyre, "Investigative Reporting: The U.S. vs. Hong Kong," *Media Digest*, 15 May 2003, at http://rthk.hk/mediadigest/20030515_76_79219.html, accessed 22 March 2013.

¹⁰ The Hong Kong Journalists' Code of Professional Ethics was adopted in 2000 by the Executive Committee of the Hong Kong Press Council. It is accessible at http://www.presscouncil.org.hk/en/web_ethics.php

¹¹ Cheung, p 77.

Judicial attitude towards press freedom

10. It has been commented that Hong Kong Judiciary has maintained a conservative attitude which does not encourage the exercise of a true press freedom.¹²

11. While the Court of Final Appeal has remarked that no restrictions imposed on freedom and rights may contravene the provisions of the BL and the BORO,¹³ freedom of expression, including press freedom, is not absolute and has also received conservative judicial opinion in the last 10 years or so. In the context of defamation and privacy, judicial attitude to press freedom seems to be less restrictive than in the context of social order-related cases.

12. In the context of defamation, Lord Nicholls of Birkenhead NPJ said in *Cheng Albert v. Tse Wai Chun*¹⁴ that the defence of fair comment is broadly interpreted in favour of the protection of freedom of expression while former CJ Li indicated that the court should adopt a generous approach to the right of fair comment on matters of public interest and express it in its full vigour as it is a most important element in the freedom of speech. The significance of this decision is to restrict the scope of malice that can defeat the fair comment defence.

13. The decision in *Tse Wai Chun* became a high water-mark of the freedom of expression in Hong Kong and lowered the risk of the press in defamation suits of being liable for comments honestly made on social or public affairs.¹⁵ In fact, in *Next Magazine v. Ma Ching Fat*¹⁶ a 3-2 majority of the Court of Final Appeal had expressed concern that while the policy of the law was not to discourage fair comment, it should be made with genuine belief in the truth of the relevant facts.

14. In a defamation action against an online news publisher, former Justice Reyes noted in *Yaqoob v. Asia Times Online Ltd*¹⁷ that in determining the appropriate standard of journalistic responsibility, proliferation of defamatory materials should be avoided whilst maintaining a free flow of information especially in matters of public interest. In particular, he noted that the same test applies to investigative journalism.

¹² Cheung, p 70. For case law Pre-1997 Bill Of Rights Era, see pp 79 to 91. For case law Post-1997 Basic Law Regime (until 2000), see pp 92 to 106.

¹³ *HKSAR v. Ng Kung Siu* (1999) 2 HKCFAR 442, para 39. This case involved the criminalisation of flag desecration as a necessary and justifiable restriction on the freedom of expression.

¹⁴ (2001) 4 HKCFAR 26.

¹⁵ Johannes Chan SC, "Freedom of the Press: The First Ten Years in the Hong Kong Special Administrative Region" (2007) 15-2 *Asia Pacific Law Review* 163 ("Johannes Chan (2007)").

¹⁶ (2003) 6 HKCFAR 63.

¹⁷ [2008] 4 HKLRD 911 (CFI).

15. *Oriental Daily Publisher Ltd v. Ming Pao Holdings Ltd (No. 1)*¹⁸ affirms that a person repeating a defamatory accusation is liable for defamation even if he does not adopt the truth of the comments. Bokhary PJ, as he then was, drew attention to the need that defamation law must accommodate the right to free speech as well as the right to reputation. Like the Court of Appeal, the Court of Final Appeal noted that excessive defamation awards put free speech at risk.

16. *Eastweek Publisher Ltd v. Privacy Commissioner for Personal Data*¹⁹ is an example of a data privacy action which clarified the meaning of “collection of data” in the Personal Data (Privacy) Ordinance, Cap 486 (PDPO). The Commissioner for Privacy decided that Eastweek’s photographer who took a photograph of an unknown woman on the street, and that Eastweek which published the photograph with critical comments of her fashion sense, contravened the provisions of the PDPO by collecting the photograph by unfair means. The Court of First Instance dismissed the magazine’s judicial review application for an order quashing the Commissioner’s decision. The argument that the exemption for ‘news activity’ in section 61(3) of the PDPO applied, was rejected. The Court of Appeal however, with Wong JA dissenting, allowed Eastweek’s appeal. The Court noted the distinction between the taking of the photograph of an identified person (as an important item of information) and that of an anonymous person; only the former amounting to data collection of personal data. In particular, this distinction was drawn because legitimate journalistic activities including photo-journalism would be unduly inhibited. It was further commented that:

All sorts of reasons may exist for the media to collect personal data. For instance, one can envisage a newspaper engaged in investigative journalism compiling over a long period a dossier on a public official suspected of involvement in corrupt activity or of having financial interests which conflict with his public duties.²⁰

17. Thus it is lawful for a news publisher to illustrate social phenomenon with an identifiable picture of a person, so long as the identity of that person was not known to or considered relevant for the publisher. As noted by one commentator, the majority decision

¹⁸ Unreported FACV 1/2012 (CFA); [2011] 3 HKLRD 393 (CA).

¹⁹ [2000] 2 HKLRD 83 (CA).

²⁰ [2000] 2 HKLRD 83 (CA), para 34.

underlines the fact that the court is reluctant to be seen as clamping down on press freedom and this is probably why the Court of Appeal allowed the magazine's appeal.²¹

18. *So Wing Keung v. Sing Tao Ltd*²² is the case where at first instance, Hartmann J, as he then was, highlighted the draconian nature of a search warrant due to its serious intrusion upon press freedom. Hartmann J stressed that the court should consider applications within the broader context of 'the public interest' to protect the freedom of the press. The Court of Appeal disagreed that there should be a bias in favour of the freedom of the press and refused to regard it as some sort of paramount consideration. This raised major concerns, such as whether the needs of criminal investigation inevitably prevail over the protection of media freedom.²³ The Court of Appeal demonstrated a weak commitment to freedom of the press as the value judgment of the judges was not inclined towards the importance of freedom of expression.²⁴

19. *Secretary for Justice v. Ocean Technology Ltd t/a Citizens' Radio and Others*²⁵ raises issues relating to freedom of speech. In relation to Citizens' Radio Station, which was a radio broadcaster charged with the offence of establishing and maintenance of a means of telecommunications without a valid license pursuant to section 20 of the Telecommunications Ordinance, the Court of Appeal upheld the constitutionality of the licensing system under the statute. It was held that even if the licensing regime was unconstitutional, an offence criminalizing unlicensed broadcast would be justified due to the potential chaos that could result if anyone could freely broadcast without a licence. An application of appeal to the Court of Final Appeal was refused.

Protests / demonstration activities

20. People dissatisfied with matters affecting them, which are in the public interest, rely on protests and demonstrations to express their concerns. People can protest because of political reasons, dissatisfaction with service or goods providers, censorship, religion, labour disputes, corporate and banking abuses, and a number of other issues.

²¹ Simon Deane, "The Personal Data (Privacy) Ordinance and its Relevance to the Press: The Eastweek Case", *Hong Kong Lawyer* (April 2001).

²² (2005) 2 HKLRD 11 (CA); unrep., HCMP 1833/2004 (CFI).

²³ Yan Mei Ning, 'Search Warrant Versus Production Order —The Hong Kong Experience In Protecting Journalists' Material' (2005) 10 *Media & Arts Law Review* 117.

²⁴ Johannes Chan (2007).

²⁵ [2009] 3 HKLRD F1 (CA). This decision has been followed by the Court of First Instance in *HKSAR v. Szeto Wah*, unreported, HCMA 164/2011.

21. There are different ways in which they express their dissatisfaction, including protests through different media, such as blogs and twitter; street protests, through marches showing banners, using loudspeakers, handing over leaflets to the public, etc. This type of expression (protests / demonstrations) can take a few hours to several days, weeks or months.

22. In the case of street protests for example, permission from the police must be requested as to the purpose, time, route and estimated number of people taking part in the procession but the police has the discretion to object to such procession or to impose conditions. Holding an unauthorized assembly is against the law. There are also restricted areas or protected sites where people are not allowed to enter or pass through as they would become trespassers. When demonstrations and protests become violent, participants become liable for a series of offences such as assault and battery, offences against public order, etc.

Recent protests statistics in Hong Kong

23. During a special meeting of the Panel on Security of the Legislative Council, on 29 January 2013, the Commissioner of Police briefed LegCo on Hong Kong's Law and Order Situation in 2012.²⁶

24. In 2012, there were 7,529 public order events held, a rise of 651 events or 9.5% when compared with 2011. Among them 5,599 were public meetings, an increase of 236 events or 4.4%, while 1,930 were public processions, an increase of 415 events or 27.4% when compared with 2011.²⁷

Protest / demonstration and other activities covered by journalists

25. On 25 April 2002 two journalists were arrested and handcuffed by the police while covering a protest in Chater Garden in Central. This triggered comments such as that the police imposing restrictions on press freedom and newsgathering activities by confining journalists to a designated press area and blocking their view "amounted to a ban on reporting at the scene of the action."²⁸

26. Article 16(3) of the BORO, the restrictions allowed under freedom of expression, allows three questions to be raised²⁹: (i) Were there any restrictions on press freedom? (ii) If

²⁶ Brief Report on Hong Kong's Law and Order Situation in 2012, accessible at <http://www.legco.gov.hk/yr12-13/english/panels/se/papers/se0129cb2-546-1-e.pdf> ("Law and Order 2012").

²⁷ Law and Order 2012.

²⁸ Yan Mei-Ning "Freedom of Expression and the Right of Journalists to Cover Protests and Demonstrations: Hong Kong and Beyond" (2003) 33 *Hong Kong Law Journal* 613, at 629-630 ("Yan Mei-Ning, (2003)").

²⁹ Yan Mei-Ning (2003), at 628.

yes, could these restrictions be justified on the permitted grounds? (for the respect of the rights or reputation of others; or for the protection of national security or of public order (ordre public), or of public health or morals) (iii) Were these measures necessary and proportionate? The following shows answers in the positive to item (i), and in the negative to items (ii) and (iii):

... newsgathering activities at the time had not given rise to any law and order problem or any issues relating to protection of the rights of others, which might justify police measures to restrict movements and activities of journalists in the vicinity. Moreover, confining journalists to a designated press area and the subsequent arrest and handcuffing of the two journalists were certainly not proportionate. Less restrictive measures were available if the sole aim was to prevent undue hindrance to police actions at the scene.³⁰

27. It has been remarked that the right to gather news should include the right to report on protests and demonstrations as they are “the most direct form of political expression, the protection of which is paramount to a free and open society and to a democracy”.³¹ Furthermore:

Only when press coverage is free from police and government restraints can demonstrators and protesters communicate their messages to the wider community, and thus fully enjoy their right to freedom of expression and to protest. This is especially important having regard to the origin of press freedom, which was won historically by restricting the government's power to silence political speech of opponents and critics. Moreover, the work of journalists can serve multiple purposes. By publishing news reports, they contribute to discussions and exchanges on public issues. Their presence also serves a monitoring role, helping to prevent or reduce possible abuses of police powers.³²

28. Another worrying attitude towards the press did not happen in Hong Kong but involved Hong Kong journalists in a 2013 incident that attracted “outrage and

³⁰ *Ibid.*

³¹ *Ibid.*, at 633.

³² *Ibid.*, at 635.

condemnation.”³³ Some Hong Kong journalists were brutally attacked when they had been on assignment in Beijing, at the time they “were doing nothing more than legitimate reporting on the activist and the dissident's wife [Nobel laureate Liu Xiaobo's]. The assault is an affront to press freedom and the public's right to know.”³⁴ The attackers walked away to the surprise of the reporters who asked public security officials for an explanation, only to be told not to ask further questions.

Judicial attitude towards rights to freedom of expression and peaceful assembly

29. Freedom of expression and the right to assembly have been restricted by the courts. Referring to the Court of Final Appeal decision in *HKSAR v. Ng Kung Siu*³⁵ it has been commented that:

the freedom to employ flag desecration as a non-violent but eye-catching means of expressing political dissent has been curtailed. Moreover, it is feared that the ruling has laid down a restrictive approach for future freedom of expression cases. This outcome made the pledge by Li CJ of the importance of freedom of expression sound markedly hollow and perhaps like mere lip service:

“Freedom of expression is a fundamental freedom in a democratic society. It lies at the heart of civil society and of Hong Kong's system and way of life. The courts must give a generous interpretation to its constitutional guarantee. This freedom includes the freedom to express ideas which the majority may find disagreeable or offensive and the freedom to criticise governmental institutions and the conduct of public officials.”³⁶

30. In *Billion Star Development Ltd v. Wong Tak Chuen*³⁷ an injunction had been granted against organized protestors who opposed redevelopment by way of blocking access and entry, setting up cordons and lying on the ground to stop unloading. On appeal, the protestors relied on their constitutional freedom of expression and right to peaceful assembly as a defence. The Court of Appeal reiterated what had been expressed in previous cases; i.e.,

³³ “Attack on Journalists is an affront to Press,” South China Morning Post, 10 March 2013.

³⁴ *Ibid.*

³⁵ (1999) 2 HKCFAR 442.

³⁶ Yan Mei-Ning (2003) at 629.

³⁷ CACV 49/2012, 8 March 2013.

that the right of assembly and the right of freedom of expression are not absolute rights and a balancing exercise has to be made. In this particular case, those rights could not override the constitutionally entrenched right to protection of property.

31. In *Leung Kwok Hung & Others v. HKSAR*³⁸ one of the defendants (D1) was convicted of holding an unauthorised assembly contrary to section 17A (3) (b) (i) of the Public Order Ordinance (Cap 245) (POO). The offences arose from a peaceful procession of between 40 and 96 people. D1 refused to go through the statutory notification procedure, despite a warning from the police. Section 13A of the POO provided that before such procession could take place, the Commissioner of Police had to be notified in writing and given particulars such as to its purpose, time, route and estimated numbers. The Commissioner then had a discretion to object to the procession under section 14(1), if he reasonably considered this was "necessary in the interests of national security or public safety, public order (*ordre public*) or the protection of the rights and freedom of others" (the statutory legitimate purposes). He was obliged under section 14(5) not to object if he reasonably believed that the relevant statutory legitimate purposes could be met by imposing conditions, which he was empowered to do under section 15(2).

32. At issue on appeal to the Court of Final Appeal was whether the statutory scheme for regulating public processions was contrary to the right to freedom of assembly in art.27 of the Basic Law and art.17 of the BORO. The focus of the challenge was on the contention that the discretion for the purpose of "public order" was too wide and uncertain and so did not come under permissible restrictions requirements of: (a) "prescribed by law", as per article 39(2) of the Basic Law, and article 17 of the BORO, and (b) "necessity", as per article 17 of the BORO.

33. The Court of Final Appeal held by majority (Bokhary PJ dissenting) that although the freedom of peaceful assembly was a fundamental constitutional right, closely associated with the fundamental right of freedom of speech, there must be restrictions on it, albeit narrowly interpreted. The burden was on the Government to justify any restriction.

34. The Court formulated the proportionality test in these terms: (a) the restriction must be rationally connected with one or more of the legitimate purposes; and (b) the means used

³⁸ [2005] 3 HKLRD 164.

to impair the right of peaceful assembly must be no more than was necessary to accomplish the legitimate purpose in question.

35. It was essential to distinguish between the use of the concept of “public order” at the constitutional level and the statutory level (sections 14(1), 14(5) and 15(2) of the Public Order Ordinance, Cap 245 (POO)). At the constitutional level, there was no doubt that it included public order in the law and order sense, that is, the maintenance of public order and prevention of public disorder. Whilst it was also wider than this, its boundaries could not be clearly defined.

36. At a statutory level, although it was important for the Commissioner for Police to have a considerable degree of flexibility, his discretion to restrict the right of peaceful assembly for the statutory purpose of "public order" plainly did not give an adequate indication of the scope of that discretion. Thus, the discretion fell foul of the constitutional requirement of "prescribed by law" and sections 14(1), 14(5) and 15(2) of the POO were unconstitutional. The majority Court remedied it by way of severance of public order (in the law and order sense), which was sufficiently certain, from "public order (*ordre public*)". After severance, the Commissioner's discretion in relation to public order (in the law and order sense) satisfied the "prescribed by law requirement" and the "necessity requirement," and was constitutional.

37. Applying the proportionality test to the exercise of the Commissioner's statutory discretion to restrict the right of peaceful assembly following the severance, his discretion was not an arbitrary one but a constrained one.

38. The implication for D1 was that, as his offence did not relate to the Commissioner's statutory discretion concerning “public order (*ordre public*)” but arose from the holding of a public procession without complying with the statutory notification requirement, his conviction was upheld.

39. In his dissenting judgment, Bokhary PJ indicated that:

Whenever there was a power by which the exercise of a fundamental right or freedom was liable to be restricted, a constitution properly protective of human rights required that it be clearly and carefully limited to avoid the danger of it being exercised arbitrarily or disproportionately. This was

particularly important where the exercise of such right or freedom beyond the permitted restrictions was criminalised. The rule of law so demanded. Free assembly must be put beyond - and be seen to lie beyond - the Executive's temptation to suppress. Legal certainty was an integral part of the means by which freedom was preserved while order was maintained and harmony sought.³⁹

40. Bokhary PJ held that the Commissioner's powers of prior restraint under the schemes were insufficiently circumscribed and so unconstitutional; accordingly, such powers should be struck down with the result that D1's conviction should be set aside.

41. In *HKSAR v. Au Kwok Kuen and Others*,⁴⁰ the issue was the limits of the right of assembly and of the right to freedom of expression when they are sought to be exercised in private residential property without the permission of its owners or occupiers.

42. Six defendants were jointly charged with one count of taking part in an unlawful assembly, contrary to section 18(3)⁴¹ of the Public Order Ordinance, Cap 245. They were found guilty after trial. Their appeal was dismissed.

43. At trial, the defence applied to the Magistrate for the issue of a witness summons to Mr Michael Suen Ming-yeung (to whom the concern group planned to make the petition on some housing matter outside his residential address), the then Secretary for Housing, Planning and Lands, to testify for the defence. The Magistrate refused all four applications.

44. The Magistrate rejected the defence's argument that at the material time, the defendants were lawfully exercising their constitutional right of assembly and right to freedom of expression (whilst inside the residential development). The Magistrate found that the defendants were trespassers (they had entered private property when metal gates opened

³⁹ [2005] 3 HKLRD 164, 292B-294G.

⁴⁰ HCMA 948/2008 (2 June 2010).

⁴¹ Section 18 states: "(1) When 3 or more persons, assembled together, conduct themselves in a disorderly, intimidating, insulting or provocative manner intended or likely to cause any person reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such conduct provoke other persons to commit a breach of the peace, they are an unlawful assembly.

(2) It is immaterial that the original assembly was lawful if being assembled, they conduct themselves in such a manner as aforesaid.

(3) Any person who takes part in an assembly which is an unlawful assembly by virtue of subsection (1) shall be guilty of the offence of unlawful assembly and shall be liable –

(a) on conviction on indictment, to imprisonment for 5 years; and

(b) on summary conviction, to a fine of \$5,000 and to imprisonment for 3 years."

to give way to cars) and as such they did not enjoy any of the constitutional rights in question whilst within the private residential premises of others.

45. In dismissing the defendants' appeal, the Court of First Instance held that:

...the right of peaceful assembly and the right to freedom of expression stop, so far as physical or geographical limits are concerned, at the boundary of private residential property belonging to others, in the absence of any permission to enter. (This is said, it should be noted, without prejudice to any possible argument that in situations such as that found in *Brooker v Police*⁴², even activities carried out outside the physical boundary, but within the immediate proximity, of private residential premises could, depending on the facts, amount to an unlawful interference with the constitutional right to privacy at home of the owner or occupier of the premises.)⁴³

⁴² [2007] 3 NZLR 91. In this case the Supreme Court of New Zealand considered a defendant's exercise of the right to freedom of expression guaranteed under the New Zealand Bill of Rights on the grass verge of the public road facing a female police constable's house with whom the defendant had a grudge. He knew that the police constable had been on duty overnight and was resting in her house. He had rung and knocked until the constable open the door and told him to go away. He then retreated to the grass verge of the public road where he sang songs in a normal singing voice and played his guitar while displaying a placard referring to police conduct. He was arrested and was eventually charged for disorderly behaviour. The majority of the Court reached the conclusion that, taking into account the noise level, the duration of the incident, the time of day, and the protest purpose, Mr Brooker's conduct did not cross the threshold of being disorderly. Therefore, his appeal was allowed.

⁴³ HCMA 948/2008, para 53.

Appendix F

Penalties for anti-stalking offences in the six jurisdictions

Jurisdiction / Legislation	Section	Penalty of imprisonment (alternative)	Financial penalty (alternative)	Both, penalty of imprisonment and financial penalty (alternative)
UK <i>Protection from Harassment Act 1997</i>	2 Offence of harassment	06 months (on summary conviction)	Not exceeding level 5 fine	√
	2A Offence of stalking	51 weeks ((on summary conviction)	Not exceeding level 5 fine	√
	4 Putting people in fear of violence	5 years (on conviction on indictment) / 06 months (on summary conviction)	Fine / Not exceeding statutory maximum fine	√
	4A Stalking involving fear of violence or serious alarm or distress	5 years (on conviction on indictment) / 12 months (on summary conviction)	Fine / Not exceeding statutory maximum fine	√
SCOTLAND <i>Criminal Justice and Licensing (Scotland) Act 2010</i>	39 (7) Offence of stalking	5 years (on conviction on indictment) / 12 months (on summary conviction)	Fine / Not exceeding statutory maximum fine	√

Jurisdiction / Legislation	Section	Penalty of imprisonment (alternative)	Financial penalty (alternative)	Both, penalty of imprisonment and financial penalty (alternative)
AUSTRALIA, QUEENSLAND <i>The Criminal Code Act 1899</i>	359A-F (2), (3) and (4) Unlawful Stalking	5 years / 7 years (violence, weapon) / 10 years (while officers investigating activities of criminal organisation)	×	×
AUSTRALIA, VICTORIA <i>The Crimes Act 1958</i>	21A Stalking	10 years	×	×
NEW ZEALAND <i>-Harassment Act 1997</i>	8 Criminal Harassment	2 years (summary conviction)	×	×
CANADA <i>Criminal Code R.S.C. 1985</i>	264 (3) Punishment for criminal harassment	10 years (indictable offence) / punishable on summary conviction	×	×
US, CALIFORNIA <i>Penal Code</i>	§ 646.9. Stalking (a) / (c) (2)	1 year / 2, 3 or 5 years (felony)	√ / ×	√ / ×
US, NEVADA <i>Nev.Rev.Stat.</i>	§ 200.571. Harassment 2. (a) and (b)	06 months (misdemeanour) / 1 year (gross misdemeanour)	√ / ×	√ / ×
	§ 200.575. Stalking 2. / 3.	2 - 15 years (aggravated stalking Category B felony) / Category C felony, as provided in NRS 193.130 ¹	× / ×	√ / √

¹ **NRS193.130 Categories and punishment of felonies.**

1. Except when a person is convicted of a **category A felony**, and except as otherwise provided by specific statute, a person convicted of a felony shall be sentenced to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute, unless the statute in force at the time of commission of the felony prescribed a different penalty. The minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed.

2. Except as otherwise provided by specific statute, for each felony committed on or after July 1, 1995:

(a) A **category A felony** is a felony for which a sentence of death or imprisonment in the state prison for life with or without the possibility of parole may be imposed, as provided by specific statute.

(b) A **category B felony** is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years, as provided by specific statute.

(c) A **category C felony** is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than \$10,000, unless a greater fine is authorized or required by statute.

(d) A **category D felony** is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater fine is authorized or required by statute.

(e) A **category E felony** is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. Except as otherwise provided in paragraph (b) of subsection 1 of [NRS 176A.100](#), upon sentencing a person who is found guilty of a category E felony, the court shall suspend the execution of the sentence and grant probation to the person upon such conditions as the court deems appropriate. Such conditions of probation may include, but are not limited to, requiring the person to serve a term of confinement of not more than 1 year in the county jail. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater penalty is authorized or required by statute.

[1911 C&P § 18; RL § 6283; NCL § 9967]—(NRS A 1967, 458; [1995, 1167](#); [1997, 1177](#); [1999, 1186](#))

Appendix G

Print media regulation in New Zealand, Australia, Canada, the United States and Hong Kong, and broadcast media regulation in New Zealand and Canada

New Zealand

1. The New Zealand Press Council regulates print media activities, while the Broadcasting Standards Authority the broadcast media activities. The New Zealand Press Council¹ is a self-regulatory body which resolves all complaints about the editorial contents of newspapers, magazines and periodicals in circulation in New Zealand (including their websites). It publishes a Statement of Principles,² of which Principle 2 relates to privacy³. However, unlike the Press Complaints Commission in the UK, the Statement of Principles does not contain a provision which deals with harassment or stalking activities by journalists.
2. The Broadcasting Standards Authority (BSA),⁴ set up under the Broadcasting Act 1989 to regulate the broadcast media, oversees the broadcasting standards regime in New Zealand by handling complaints, conducting research and providing information about broadcasting standards. Amongst all standards, privacy is the only broadcasting standard for which the BSA can receive complaints directly, without the broadcaster having the right of first reply.⁵ It is also the only standard for which the BSA can award compensation for breaches.⁶
3. A broadcaster has the statutory duty to respect the privacy of an individual in its activities. Under section 4(1)(c) of the Broadcasting Act 1989, every broadcaster is

¹ The website of the New Zealand Press Council is <http://www.presscouncil.org.nz>

² Available at http://www.presscouncil.org.nz/principles_2.php

³ Principle 2 states as follows:-

“2. Privacy

Everyone is normally entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of significant matters of public record or public interest.

Publications should exercise particular care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not relevant to the matter reported.

Those suffering from trauma or grief call for special consideration.”

⁴ The Broadcasting Standards Authority’s website is www.bsa.govt.nz

⁵ Section 8(1A) of the Broadcasting Act 1989

⁶ Section 13(1)(d) of the Broadcasting Act 1989

responsible for maintaining in its programmes and their presentation, standards that are consistent with the privacy of the individual. In *TV3 Network Services Ltd v. Broadcasting Standards Authority* [1995] 2 NZLR 720, the term “privacy” was interpreted by the Court to cover harassment by disclosure of past events.

4. In this case, the appellant, TV3 Network Services Ltd. (TV3) screened a programme on 11 July 1993 which concerned the case of a man who had recently been convicted of sexual offences committed on his five daughters. The programme showed interviews with three daughters who had suffered the abuse and an interview with the girls’ mother, Mrs. S. In compliance with the provisions of section 139(1) of the Criminal Justice Act 1985, the identities of Mrs. S and her daughters were disguised. However, the interview was filmed and tapped surreptitiously without Mrs. S’s knowledge or permission. In the interview, it was revealed that Mrs. S herself had been an incest victim. The reporter also suggested that Mrs. S had been aware of the abuse inflicted upon her daughters by her husband. Mrs. S was angry and complained to the BSA. She contended that the appellant had contravened privacy standards because the interview was filmed without her permission and the fact that she herself had been a victim of sexual abuse was revealed in the interview. The BSA upheld Mrs. S’s complaint, and the appellant appealed to the High Court.
5. The Court upheld the BSA’s findings and dismissed the appeal. It was held that the term “privacy” in section 4(1)(c) of the Broadcasting Act 1989 was not a reference to the principles of the New Zealand law of privacy. At that time, the New Zealand privacy law and the common law tort of privacy had not been fully developed, therefore the BSA was entitled to refer to the United States case law in developing its privacy principles. In particular, the Court opined that “privacy in this setting should include relief from individuals being harassed with disclosure of past events having no sufficient connection with anything of present public interest”.
6. Apart from the liberal interpretation of the term “privacy” made by the Court to protect the privacy of an individual, the BSA has formulated privacy principles for the broadcasters to observe. These privacy principles are available at the BSA’s website⁷. These privacy principles are incorporated into the Broadcasting Codes, namely, the

⁷ The privacy principles are accessible at <http://bsa.govt.nz/standards/privacy>

Free-to-Air Television Code⁸, the Radio Code⁹ and the Pay TV Code¹⁰. The privacy principle which can be relevant to our present study is privacy principle 4, which is reproduced as follows:-

Privacy Principle 4: Disclosure for the purpose of encouraging harassment

The protection of privacy includes the protection against the disclosure by the broadcaster, without consent, of the name and/or address and/or telephone number of an identifiable individual, in circumstances where the disclosure is highly offensive to an objective reasonable person.

7. In order to provide guidance to complainants and broadcasters, the BSA has issued a practice note¹¹ on its interpretations of the privacy principles. Concerning privacy principle 4, the BSA cited *Spring and TRN* (2007-108) in its practice note as an example showing what kind of disclosure made by a broadcaster amounts to encouragement of harassment.
8. In this case, the complainant, Mr. Spring, complained to the BSA for a radio host's comments on his appearance on a television programme in which he described how he drowned cats. The host told listeners how they could find the complainant's listing in the White Pages. The host also suggested that "they send something to him", adding that the complainant was "the cat Hitler, is a cruel, cowardly, disgusting, sickening, shit bag with bad shoes and I'd really love to see him in a cage and immersed too...".
9. The BSA held that the host's disclosure of the complainant's details, together with the strong criticisms against him, was designed to encourage listeners to harass the complainant. The BSA upheld the complaint and ordered compensation in the sum of \$1,500 for breach of privacy. It is to be noted that privacy principle 4 does not apply

⁸ Standard 3 of the Free-to-Air Television Code provides that

"Broadcasters should maintain standards consistent with the privacy of the individual.

Guideline 3a When considering an individual's privacy, broadcasters shall apply the privacy principles developed by the Broadcasting Standards Authority (see Appendix 2)."

⁹ Standard 3 of the Radio Code provides that

"Broadcasters should maintain standards consistent with the privacy of the individual.

Guideline 3a When determining privacy complaints broadcasters shall apply the privacy developed by the Broadcasting Standards Authority (see Appendix)."

¹⁰ Standard P9 of the Pay TV Code provides that "Content should conform to the Privacy Principles outlined in Appendix 1."

¹¹ The practice note is accessible at <http://bsa.govt.nz/images/assets/Practice-Notes/Privacy-Practice-Note.pdf>

to disclosure of email addresses as it does not result in the same “potential harassment or physical threats at their place of residence”¹².

Australia

10. The Australian Press Council handles all complaints about Australian newspapers, magazines and associated digital outlets. The General Statement of Principles¹³ and the Statement of Privacy Principles¹⁴ published by the Australian Press Council are the guidelines when providing advice and adjudicating complaints.
11. Unlike the Press Complaints Commission in the UK, there is no provision in the General Statement of Principles and the Statement of Privacy Principles which deals with harassment or stalking activities by journalists. Nevertheless, an examination of the cases adjudicated by the Australian Press Council reveals that harassment or stalking activities by journalists are dealt with under the category “intrusion on privacy”.
12. Adjudication No.1493 adjudicated in April 2011 reported in the Australian Press Council’s *Annual Report 2010-2011 No.35*¹⁵ provides an illustration. This case is categorized under the issues “Inaccuracy or misrepresentation”, “Intrusion on privacy” and “Other offensive material”. In this case, the close relatives of a male victim in the murders complained to the Australian Press Council against some articles in The Canberra Times in 2008 and 2009, which reported the murders and court hearings of the subsequent charges. Concerning the issue “Intrusion on privacy”, one of the complaints was that the male victim’s family was harassed by a series of voicemail messages from The Canberra Times journalists seeking their comments in the days following the murders. The Australian Press Council held that the alleged series of voicemail messages did not constitute undue harassment. It also noted that the newspaper had complied with a subsequent request not to contact the family.

Canada

¹² See *Kirk and TVWorks*, 2007-088

¹³ Available at <http://www.presscouncil.org.au/general-principles/>

¹⁴ Available at <http://www.presscouncil.org.au/privacy-principles/>

¹⁵ A summary of Adjudication No. 1493 is on pages 58-59 of the *Annual Report 2010-2011 No.35*.

13. Canada has five local Press Councils¹⁶, namely, Alberta Press Council¹⁷, Atlantic Press Council¹⁸, British Columbia Press Council¹⁹, Ontario Press Council²⁰ and Quebec Press Council²¹. These Press Councils govern the newspaper industries, including receiving and handling complaints against newspapers, in their respective provinces. The Manitoba Press Council had regulated the newspaper industry in Manitoba for more than 25 years, but it ceased operations on 1st January 2012²².
14. The Alberta Press Council issues newsletters, but not all newsletters contain complaint statistics. Even if a newsletter contains complaint statistics, the statistics do not reveal the issues of the complaints²³.
15. The Atlantic Press Council's website does not contain any press complaint statistics.
16. The British Columbia Press Council publishes complaint summaries in its newsletters, but the complaint summaries do not reveal the issues of the complaints. Details of adjudicated complaints are available on The British Columbia Press Council's website, but the adjudicated complaints in recent years do not concern harassment/stalking issues.
17. The Ontario Press Council published a summary of complaints in 2012 on its website. According to the summary, the average number of complaints received from the public each year is more than 100. Most complaints concern perceived factual errors, unfair criticisms, lack of balance in reporting and differences of opinion. There are also cases about unfair investigations and the revelation of unwarranted personal information. Past decisions in which public hearings have been held are published on The Ontario Press Council's website, but most of these past decisions do not relate to privacy issues. None of these published past decisions relates to harassment/stalking issues.

¹⁶ Information obtained from the Newspapers Canada website, available at <http://www.newspaperscanada.ca/about-newspapers/press-complaints>

¹⁷ Alberta Press Council's website: <http://www.albertapresscouncil.ca/>

¹⁸ Atlantic Press Council's website: <http://atlanticpresscouncil.wordpress.com/>

¹⁹ British Columbia Press Council's website: <http://www.bcpresscouncil.org/>

²⁰ Ontario Press Council's website: <http://ontpress.com/>

²¹ Quebec Press Council's website: <http://conseildepresse.qc.ca/en/>

²² See the news "Manitoba Press Council closes" in the Newspapers Canada website, available at <http://www.newspaperscanada.ca/news/industry/manitoba-press-council-closes>

²³ For example, volume 1 of The Alberta Press Council's newsletter

18. The Quebec Press Council publishes annual reports and adjudicated decisions on its website. It appears that the annual reports contain complaint statistics. However, all annual reports and adjudicated decisions are written in French only and no English translation is provided.
19. The Canadian Broadcast Standards Council²⁴ regulates the standards of private broadcasters in Canada. It administers a number of codes²⁵, including the Radio Television Digital News Association of Canada (RTDNA Canada) Code of Ethics (RTDNA Code of (Journalistic) Ethics)²⁶. The RTDNA Canada²⁷, formerly the Radio Television News Directors Association of Canada (RTNDA Canada), is the association of electronic journalists in Canada. Article 4 of the RTDNA Code of (Journalistic) Ethics provides that:

Article 4 – Privacy

Electronic journalists will respect the dignity, privacy and well being of everyone with whom they deal, and will make every effort to ensure that newsgathering and reporting does not unreasonably infringe privacy except when necessary in the public interest. Clandestine newsgathering techniques should only be used when necessary to the credibility or accuracy of a story in the public interest.

20. One of the functions of the Canadian Broadcast Standards Council is to adjudicate complaints made by the public against private broadcasters. It interprets the codes administered by it and decides whether particular articles of the codes have been breached.
21. Concerning Article 4 of the RTDNA Code of (Journalistic) Ethics, the Canadian Broadcast Standards Council has held that this Article 4 prohibits disclosure of personal information of an individual with the view of inviting other people to harass that individual.

²⁴ The Canadian Broadcast Standards Council's website is at <http://www.cbsc.ca/english/index.php>

²⁵ The list of codes administered by the Canadian Broadcast Standards Council is available at <http://www.cbsc.ca/english/codes/index.php>

²⁶ The RTDNA Code of (Journalistic) Ethics is available at <http://www.cbsc.ca/english/codes/rtnda.php>

²⁷ The RTDNA Canada's website is <http://www.rtdacanada.com/HOME/default.asp>

22. In CJMS-AM re comments on two episodes of *Le p'tit monde à Frenchie* (CBSC Decision 04/05-0939) decided on 24 October 2005²⁸, the complainant complained against CJMS-AM for disclosing his name and telephone number in a talk show in order to induce listeners to harass him. The complainant, who used the name “Johnny”, was one of the callers in the talk show *Le p'tit monde à Frenchie* on 6 January 2005. During the dialogue between the complainant and the two hosts, the complainant’s telephone number was revealed on air. On 10 January 2005, which was four days after the said dialogue, another caller called to the show revealing the real name of the complainant. The complainant felt that he was insulted by the two hosts in the shows on 6 January 2005 and 10 January 2005. He was dissatisfied that his name and telephone number were disclosed in the shows and lodged a complaint to the Canadian Broadcast Standards Council.
23. The Canadian Broadcast Standards Council decided, amongst others, that by announcing the complainant’s name and home telephone number to the talk show in order to invite other callers to harass the complainant, CJMS-AM has invaded the privacy of the complainant and breached the spirit of Article 4 of the RTNDA Code of (Journalistic) Ethics, which is now the RTDNA Code of (Journalistic) Ethics.

The United States

24. At present, there are two Press Councils in the United States, namely, Washington News Council²⁹ and Media Council Hawaii³⁰.
25. The Washington News Council posts details of the recent public hearings on complaints in its website³¹, but most of these complaints do not relate to privacy. None of these complaints relates to harassment/stalking issues. Press complaint statistics cannot be found from its website.
26. The Media Council Hawaii, formerly the Honolulu Community Media Council, monitors press activities in Hawaii. Its website is now under construction, but

²⁸ This decision is available at <http://www.cbsc.ca/english/decisions/2005/051116a.php>

²⁹ Washington News Council’s website: <http://wanewscouncil.org/>

³⁰ Media Council Hawaii’s website: <http://www.mediacouncil.org/>

³¹ Available at <http://wanewscouncil.org/category/complaints/>

information is still available on its blog³². However, press complaint statistics cannot be found from its website or blog.

27. The Minnesota News Council had already closed in around 2011 after regulating the news media for 40 years, partly due to the declining number of complaints³³.
28. The New England News Forum³⁴ carries out projects on media issues in the United States, but it resolves controversies through discussions and debates rather than handling complaints.

Hong Kong

29. Hong Kong Press Council Limited. The Hong Kong Press Council Limited (the Council)³⁵ was incorporated on 23 June 2000 to regulate the professional ethical standards of newspapers in Hong Kong. Before the Council was set up, there were growing public concerns on media intrusion on privacy in Hong Kong. The problem was highlighted in the Law Reform Commission's two consultation papers both published in August 1999 entitled Civil Liability for Invasion of Privacy and the Regulation of Media Intrusion. In order to address these concerns and enhance professional standards, the newspaper sector held discussions and consultations, and decided to form a self-regulatory body, i.e. the Council, to regulate the standards among newspapers in Hong Kong.
30. Since 1 September 2000, the Council has handled public complaints against local newspapers, but only limited to areas of intrusion on privacy and articles of a prurient, indecent or sensational nature.
31. The Executive Committee of the Council has adopted the Journalists' Code of Professional Ethics as a code of ethics and guidelines for local journalists in performing their duties. The Journalists' Code of Professional Ethics was jointly drafted and promulgated in June 2000 by four major journalist bodies, namely, the Hong Kong Journalists Association, the Hong Kong Federation of Journalists³⁶, the

³² Media Council Hawaii's blog: <http://mediacouncil.org/wp/>

³³ See the news "Minnesota News Council Closing After 40 Years" in the CBS Minnesota's website, available at <http://minnesota.cbslocal.com/2011/01/28/minnesota-news-council-closing-after-40-years/>

³⁴ New England News Forum's website: <http://www.newenglandnews.org/?q=node>

³⁵ The website of the Council is at http://www.presscouncil.org.hk/en/web_index.php

³⁶ The Hong Kong Federation of Journalists' website is <http://www.hkfj.org/index.php>

Hong Kong News Executives' Association³⁷ and the Hong Kong Press Photographers Association³⁸.

32. The Journalists' Code of Professional Ethics is divided into three sections – “Our Beliefs”, “Code of Ethics” and “Guidelines for Practice – (I) Photojournalism”. Articles of the Journalists' Code of Professional Ethics relevant to our present study are articles 4 and 7 of the Code of Ethics, and article 3 of the Guidelines for Practice – (I) Photojournalism, which are reproduced below:

Code of Ethics

Article 4

Journalists should respect the reputation and privacy of individuals. Taking into account solid editorial reasons, journalists should report on the private lives of individuals – who have not given their consent for doing so – only in ways that would not create unnecessary additional damage to the individuals.

Article 7

Journalists should obtain information, photographs and illustrations through proper means.

Guidelines for Practice – (I) Photojournalism

Article 3

Photojournalists should respect the privacy of people being photographed.

33. The Council publishes summaries of complaints handled by it on its website³⁹. Cases involving alleged intrusive news-gathering activities of journalists handled by the Council are summarised below, some involved harassment allegations.
34. ***Alleged following and taking photographs surreptitiously by a journalist.*** On 15 June 2012, a complainant complained against a non-member newspaper for

³⁷ The Hong Kong News Executives' Association's website is <http://nea.org.hk/eng/index.php>

³⁸ The Hong Kong Press Photographers Association's website is <http://hkppa.net/>

³⁹ Summaries of complaints handled by the Council since 8 August 2000 are available at http://www.presscouncil.org.hk/ch/web_info.php?p=5

inaccurate reporting and invasion of privacy⁴⁰. The newspaper published a news article about a strange medical practitioner who provided free consultation and distributed medicine. One of the complaints was that the newspaper's journalist followed the complainant and took photographs of the complainant's activities and residence surreptitiously and without prior consent. The complainant averred that such acts, together with the subsequent publication in the newspaper, had invaded the complainant's privacy. Nevertheless, the Council dismissed the complainant's complaint. On the issue of invasion of privacy, the Council held that the complaint was not founded because the complainant's personal information was not disclosed and the photograph(s) had been edited so that the person(s) shown thereon could not be identified.

35. *Alleged media scrum in the accident and emergency department of a hospital.* On 25 April 2008, a hospital representing the relatives of an injured person complained against a number of newspapers for the media scrum and the taking of photographs forcibly in the accident and emergency department of that hospital⁴¹. Nevertheless, since the complaint was not supported with an authorisation letter of the relatives of the injured and that the news-gathering activities alleged by the hospital could not be proved, the Council could not follow up on the matter.
36. *Alleged stalking behaviours of a reporter.* On 27 February 2004, the complainant complained against a non-member magazine for inaccurate reporting and invasion of privacy concerning an article entitled "A Man who wears a Bra" published on 15 May 2003⁴².
37. The complainant was a transsexual person. At the material times before the publication of the said article, he was waiting for a sex reassignment surgery. From 8 May 2003 to 10 May 2003, a reporter of the magazine, who pretended to share the same interest as the complainant's, approached the complainant. The reporter used the name "Ah Ling" to obtain information from the complainant through ICQ. The reporter, who pretended to be a customer, visited the complainant's workplace, a hair

⁴⁰ The summary of this complaint is available at http://www.presscouncil.org.hk/ch/web_info.php?db=case&id=337

⁴¹ The summary of this complaint is available at http://www.presscouncil.org.hk/ch/web_info.php?db=case&id=215

⁴² The summary of this complaint is available at http://www.presscouncil.org.hk/ch/web_info.php?db=case&id=83

salon, and recorded the complainant's working conditions. The complainant also received a phone call from the reporter inviting him for an interview, but the complainant rejected. Later, the reporter reported in the said article information and photographs taken from the complainant's website. The complainant alleged that his dismissal by his employer and loss of his job in the hair salon was caused by the reporter's stalking behaviours.

38. The Council dismissed the complainant's complaint. On the issue of invasion of privacy, the Council held that since the information and photographs reported in the said article were taken from the complainant's website, the media's report of such materials published on the internet did not amount to invasion of privacy. The Council saw it as a question of copyright rather than invasion of privacy. The complainant's dismissal from his employer due to the alleged stalking behaviours of the reporter was an employment issue.
39. *Alleged harassing news-gathering activities of a journalist.* On 3 September 2002, The Boys' and Girls' Clubs Association of Hong Kong complained against Ming Pao for exaggerated and inaccurate reporting and inappropriate news-gathering practice concerning a news article published in Ming Pao on 29 July 2002⁴³. The news article entitled "The Boys' and Girls' Clubs Association of Hong Kong was suspected of abusing a child under its custody – Boy alleged being kept in a dark room for 2 hours; Social Welfare Department conducted investigations". It was reported that, according to a former tutor of the complainant's youth centre in Ma On Shan, a staff member of that centre had kept a primary one student in a toilet and a small room respectively many times. That former tutor had complained this matter to the Social Welfare Department.
40. The complainant complained, amongst others, that the journalist adopted harassing practices in gathering the news. The complainant contended that the journalist followed and pursued the child in question and his family when gathering the news. Even though the child and his family had rejected the interview, the journalist kept on pursuing them and asking questions. The journalist was alleged to have been following the child when his parents were not with him and without obtaining his

⁴³ The summary of this complaint is available at http://www.presscouncil.org.hk/ch/web_info.php?db=case&id=56

parents' consent. As a result, the child was distressed, and the family was dissatisfied and lodged a complaint with the complainant.

41. Ming Pao gave a different account of events. It contended that, on the day in question, the journalist went to the complainant's youth centre with the former tutor in order to identify the child. When they saw the child's grandfather and the Philippine domestic helper outside the centre, the journalist greeted them and obtained the contact information of the child's mother from the domestic helper. Subsequently, the journalist also met the child's grandmother, who said that she just realized that her grandson had been kept in the toilet recently and the centre had already made an apology. During the discussion with the child's grandmother, the journalist knew that the domestic helper would bring the child to meet his mother, who was not living with the child, in Kowloon Tong. So, the journalist and the former tutor joined the domestic helper and the child to meet the child's mother in Kowloon Tong. While they were travelling, the journalist asked the child questions, and the child confirmed that a teacher of the youth centre had kept him in the toilet and a small room respectively from around 2 p.m. to around 4 p.m. When the journalist met the child's mother, the mother said she knew nothing about her child being kept in the toilet. So, when the journalist informed her of this matter, she immediately talked to her child to understand more about it. She also replied to the journalist that she would discuss this with the centre and would contact the journalist later. Therefore, the journalist gave her a name card and left.
42. The Council dismissed the complainant's complaint. Concerning the harassing news-gathering activities alleged by the complainant, the Council did not consider that the practice adopted by the journalist was harassing. The journalist had obtained consent from the child's family before interviewing the child. After the interview, the journalist had explained this to the child's mother, who had also accepted a follow-up telephone interview with the journalist. So, the Council would not follow up on this complaint.
43. *Alleged car chase by a press photographer in a highway.* On 15 January 2001, a complainant complained against a non-member newspaper for adopting improper

tactics in gathering the news⁴⁴. It is the complainant's case that while he was driving a private car with his friend in a highway, a press photographer chased after them and even blocked their way with a motorcycle. The complainant was forced to brake immediately in order to allow the press photographer to take photographs of him and his friend. He criticised that the press photographer's acts were very dangerous and were improper tactics in gathering the news. The Council opined that it could not process this complaint because "news-gathering practice" is not one of the areas of complaints handled by the Council. Nevertheless, the Council agreed that the tactics employed by that press photographer were improper because they adversely affected the safety of the press photographer, the interviewees and the public. Therefore, the Council issued a public release stating the Council's position and raising concern in the media industry on such news-gathering tactics. This case suggests that a paparazzi trail would not be tolerated.

44. Hong Kong Journalists Association. The Hong Kong Journalists Association (HKJA) is a trade union of journalists in Hong Kong. It has its own Code of Ethics⁴⁵. Articles 5 and 6 of the Code relate to our present study. These two articles are reproduced below:

Article 5

A journalist shall obtain information, photographs and illustrations only by straight forward means. The use of other means can be justified only by over-riding considerations of the public interest. The journalist is entitled to exercise a personal conscientious objection to the use of such means.

Article 6

Subject to justification by over-riding considerations of the public interest, a journalist shall do nothing which entails intrusion into private grief and distress.

⁴⁴ The summary of this complaint is available at http://www.presscouncil.org.hk/ch/web_info.php?db=case&id=21

⁴⁵ The code of ethics of the HKJA is available at <http://www.hkja.org.hk/site/portal/Site.aspx?id=A1-502&lang=en-US>

45. The Ethics Committee of the HKJA handles unethical reporting of the local media. It refers to its Code of Ethics when making judgments⁴⁶. One of the recent judgments made by the HKJA concerned alleged harassing news-gathering activities of a journalist. In this case⁴⁷, Mr. Raymond Wong Yuk-man's wife complained against Next Magazine concerning an article published on 11 November 2010 entitled "Elder son was jailed in Shenzhen for more than half a year; Raymond Wong Yuk-man was anxious".
46. According to Mrs. Wong, while her daughter-in-law was going to a kindergarten to bring her son back home, a journalist of Next Magazine who claimed to be a secondary school classmate of Mrs. Wong's son, approached her. Mrs. Wong suspected that the journalist, who pretended to be somebody else, had been following their family and making harassing interviews. After receiving Mrs. Wong's complaint, the HKJA contacted Next Magazine, but no reply was received. Given the lack of information from Next Magazine, the HKJA did not have sufficient information to adjudicate Mrs. Wong's complaint. This case suggests that the effectiveness of the complaint-handling mechanism depends on whether the newspapers/magazines concerned are co-operative.

⁴⁶ Recent judgments made by the HKJA are published on the HKJA's website at <http://www.hkja.org.hk/site/portal/Site.aspx?id=L1-178&lang=en-US>

⁴⁷ This judgment is available at <http://www.hkja.org.hk/site/portal/Site.aspx?id=A1-931&lang=en-US>