



Consultation Paper on Stalking Highlights

December 2011

Introduction

Stalking may be described as a series of acts directed at a specific person which, taken together over a period of time, causes him to feel harassed, alarmed or distressed.

A stalker may harass his victim by making unwelcome visits or unwanted communications, following the victim on the streets, watching or besetting the victim's home or place of work, sending unwanted gifts or bizarre articles to the victim, disclosing intimate facts about the victim to third parties, making false accusations about the victim, damaging property belonging to the victim, and/or physical and verbal abuse. Stalking behaviour may escalate from what may initially be annoying, alarming but lawful behaviour to the level of dangerous, violent and potentially fatal acts.

Although existing common law and criminal offences cover some aspects of stalking behaviour, they deal with them as isolated incidents and cannot address stalking as an independent phenomenon. The Law Reform Commission ("LRC"), therefore, has proposed that anti-stalking legislation should be introduced, under which a person who pursued a course of conduct causing another person alarm or distress would be guilty of an offence and liable in tort to the victim.

We share the LRC's view that stalking can have a serious impact on the health, freedom

and quality of life of the victim and his family. We, therefore, propose to pursue legislation against stalking. As a number of the LRC recommendations are controversial, we have issued a consultation paper setting out the considerations relevant to the LRC recommendations. The major issues on which comments are invited are highlighted below.

Issues on which Comments are Invited

Need for Legislation

- Should we legislate against stalking?

Offence

- Should stalking be made a criminal offence?
- If so, should the offence be based on the LRC's recommendation that a person who pursues a course of conduct, which he knows or ought to know amounts to harassment serious enough to cause a person alarm or distress, be guilty of a criminal offence?
- Should collective harassment and harassment to deter lawful activities be made offences?

Penalty

- Should a single maximum penalty of a fine of \$100,000 and imprisonment for two years be set for the stalking offence?

Defences

- Should the following defences recommended by the LRC be provided?
 - (a) the conduct was pursued for the purpose of preventing or detecting crime;
 - (b) the conduct was pursued under lawful authority; and
 - (c) the pursuit of the course of conduct was reasonable in the particular circumstances.
- Should a defence for news-gathering activities be subsumed under the "reasonable pursuit" defence in (c) above as recommended by the LRC, or a separate, specific defence for news-gathering activities be provided? If the latter, how should the defence be framed?

Restraining Orders in Criminal Proceedings

- Should the court be empowered to make a restraining order to prohibit a person convicted of stalking from doing anything which causes alarm or distress to the victim or any other person and if so, should a breach constitute a criminal offence?

Civil Remedies for Victims

- Should a person who pursues a course of conduct which amounts to harassment serious enough to cause alarm or distress of another be made liable in tort to the object of the pursuit?

- Should the victim be able to claim damages for any distress, anxiety and financial loss resulting from the pursuit and apply for an injunction to prohibit the stalker from doing anything which causes him alarm or distress?

Your Views

You can obtain the consultation paper from the Public Enquiry Service Centres of District Offices or download it from our website (www.cmab.gov.hk). Please send us your views by mail, facsimile or email **on or before 31 March 2012**.

Address:

Team 4
Constitutional and Mainland Affairs Bureau
Central Government Offices
12/F East Wing
2 Tim Mei Avenue, Tamar
Hong Kong

Fax number:

2523 0565

E-mail address:

stalking_consultation@cmab.gov.hk