To <stalking_consultation@cmab.gov.hk>
cc
bcc
31/03/2012 14:04 Subject 要求來電宣傳者必須提供市民聯絡來源
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

很多時候，我們都會收到不知名公司的來電宣傳，來電者能準確地稱呼我們的姓、名。 希望法例可以要求來電者必須透露如何得知我們的通訊資料，以了解沒有一些公司未經同意便將我們重要的私人資料披露予第三者。

(寄件人要求不具名公開意見)

香港基督教女青年會女聲舊生會回應

有關《纏擾行為的諮詢文件》意見書

前言

香港基督教女青年會女聲舊生會是一群參與香港女聲年青女性領袖培育計劃的大專生，舊生會在 2008 年成立，成員是大專女生/職業女性。我們的宗旨為關心婦女議題，並為從女性角度為婦女發聲。就政府計劃將纏擾行為刑事化一事，本會轄下小組女聲舊生會表示反對。本會女聲舊生會(下稱本會)認為保障婦女免受滋擾的方法有數，《有關纏擾行為的諮詢文件》條文含糊，有打擊香港新聞及集會自由之嫌，故反對將纏擾行為刑事化。

本會對諮詢文件的意見如下：

纏擾法的訂立的確成為婦女的一種保障

本會認為政府立法禁止纏擾行為，無疑女性以及家暴受害婦女者提供了保障。婦女一旦持續地被跟蹤、監視、包圍及騷擾等，便可引用此法例以得到保障。另外，根據諮詢文件的內容，家暴受害婦女若受前夫的纏擾時，即使沒有受到即時的暴力對待，也可援引此法例得到保護。上述內容對女性來說，的確為一種保障。

本會的確十分關注婦女權益，但另一方面，本會認為婦女權益及公民權利應該是並行的，政府決不能以婦女權益作掩護，剝削公眾的新聞及集會自由。然而，纏擾法的諮詢文件內容含糊，本會擔心政府一旦立法，纏擾法會成為打擊新聞及集會自由的工具。

纏擾法的訂立有箝制集會、社會運動之嫌

首先，諮詢文件所涵蓋的範圍太廣，有箝制集會、社會運動之嫌。根據諮詢文件中，「集體騷擾」的條文或會打擊市民集會結社的自由。若論婦女權益，「集體騷擾」與婦女權益並無直接關係，婦女受集體騷擾的個案少之又少，根本沒有加入「集體騷擾」的條文之必要。此法非但沒有保障女性權益的功效，更會對社會造成恐慌。本會擔心此法生效後，集會活動如工會罷工、集體遊行等，會受此法監控，市民或會因為參加集會活動，對公眾人物造成騷擾而觸犯纏擾法。故謂，此法恐怕會付令市民人心惶惶，怯於行使個人的公民權利去表達訴求。

纏擾法的訂立有損於公眾知情權之嫌

此外，本會憂慮此諮詢文件會被濫用，成為窒礙新聞自由的工具。為了報導更深入、全面地報導事實真相，傳媒包圍公眾人物及其住處的事常有發生。傳媒的採

訪，對新聞人物來說，或會構成滋擾；但站在公眾立場觀之，若沒有傳媒鍥而不捨的追採，公眾又豈能多角度了解事件？即如近日的特首選舉，沒有傳媒的報導，公眾又如何更深入了解每一位候選人的背景？可是，一旦立法，政府如何確保新聞人物不會引用纏擾法控告傳媒？香港特區的新聞自由還會得到保障嗎？。雖然諮詢文件中尚有提到免責辯護的一項，然而，採訪活動分秒必爭，若採訪活動因纏擾法的條文，遭警方即時阻止，新聞即無法即時呈現公眾眼前，這種有限度的新聞自由還可稱為新聞自由嗎？可見，纏擾法的訂立有損於公眾知情權之嫌。

<u>訂定執法清單，加強對警員的訓練和指引</u>

除此之外，本會亦對警方的執法標準存疑。雖然諮詢文件中已列出多項纏擾方式，但立法後，警方在執法的過程中，特別是避免家暴受害人、已離婚婦女被纏擾，婦女可以在警方備案等。本會質疑警方會否對文件所提到的項目有不同的理解，因而造成執法不公的問題？我們如何確保警方能夠持相同的標準來協助不同階層的受害人？就此，我們認為一旦立法，政府有必要訂定執法清單，還要加強對警員的訓練和指引，加強警方對有關行為之認知、警方才可以認真態度處理事件，以免有關當局執法不公。

<u>建議修改《家暴條例》，將條例刑事化</u>

一如意見書開端所言，本會認為保障婦女免受滋擾的方法有數，將纏擾行為刑事化並非唯一出路，例如法改會可以考慮修改《家暴條例》，將條例刑事化，並將纏擾行為的項目列入《家暴條例》之中。這樣即可直接、有效地保障家暴受害者。既然特區政府可以循其的途徑加強對家暴受害人的保障，對其他被持續跟蹤、監視、包圍及騷擾的受害人，政府必定也可循其他的途徑去幫助他們。至此，政府還有將纏擾行為刑事化的必要嗎？

<u>總結</u>：

概而論之，本會擔心政府在以女性權益作掩護，透過纏擾法箝制港人的新聞自由及集會自由。本會固然關注婦女被纏擾、滋擾的問題，然而，本會深信政府能另覓方法去協助相關的受害人，而本會亦會繼續關注及跟進此議題的發展動向。但就將纏擾行為刑事化一事，本會表示反對。

香港基督教女青年會女聲舊生會
地址：
秘書：(刪除)
電話：
電郵：(刪除)
日期：2012 年 3 月 31 日

31/03/2012 14:48

To stalking_consultation@cmab.gov.hk
cc
bcc
Subject Response to the Consultation on the Proposed Anti-stalking Legislation

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Response to the Public Consultation on the proposed Anti-stalking Legislation:

1) Reply to Questions in Section 3.37 of the Consultation:

a) Yes, the same penalty for the same offence of harassment, whether or not the suspects know or not know the effects of their conduct. A person of ordinary intelligence and with sound mind is certainly capable of anticipating for the consequences of his/her actions before he/she actually proceeds to carry out such acts. For a person who is not capable of anticipating beforehand the consequence of his/her own actions should probably be subject to mental treatment, hence be sent to a mental institute, not being left off the hook by simply paying a fine.

(b) Yes.

(c) Yes.

2) The defenses set out in Section 3.38 of the Consultation: The conduct mentioned in 3.38(a) and (b) must not be excluded from the scope of offences for harassment, OR, you are condoning in silence the "right" for unscrupulous parties (whosoever bearing "goodwill" or peoples identified in the Laws of HK Cap. 589 Interception of Communications and Surveillance Ordinance as Civil Servants and Lawyers?) to intrude into any legal HK permanent residents' life and privacy at their pleasure and of their choice.

3) Section 3.40 of the Consultation is utterly incomprehensible: Regarding paragraph 3.38(a) and (b) above, the LRC recommended that the defenses of prevention or detection of crime and lawful authority should be made available so as to exclude these activities from the scope of the offence. The latter was to ensure that the law would not put in jeopardy the freedom of others to pursue lawful activities. The latter refers to conduct pursued under lawful authority? Who are these peoples being bestowed with so much "freedom" as being pry into the life and privacy of others to "detect/prevent crime"? What if the "presumed subjects" of such "privately-run" covert investigations turn out to be innocent? Do such randomly-picked victims not deserve compensation for what they have been made to live through, since it is the government that allows such things to be done "in the name of law"?

4) Section 3.46 of the Consultation has a point: Clarifications as to under what circumstances convert/overt surveillance of the "presumed subjects" were considered to be "unreasonable" must be made, particularly in a time when using the media to blackwash a presumed opponent has become a growing trend. For example: the recent HK CE election - that concerned public interest; but what about private citizens? If the wife of a media boss suspects her husband of having a mistress hence sending her team to conduct surveillance on the "presumed mistress," yet all turns out to be malicious rumor resulting from jealousy… Is being a famous actor/actress synonymous with selling out his/her whole life and all privacy? This has nothing to do with public interest!

5) Reply to Section 3.55 of the Consultation:

- Defense for news-gathering activities should be subsumed under "reasonable pursuit" in sub-paragraph 3.55(a)(iii).
- Specific defense for news-gathering: public interest, meaning knowledge that has an impact on the HK public, not the private life of any photogenic actor/actress, politicians, government officials…

- Journalists are liable to the public in what they report/publish, if what they report/publish will not only NOT enlighten the public in any sense, but instead cause distress to some innocent individuals, then they have already crossed the line.

6) Reply to Section 3.72 of the Consultation:

- Whether or not a court sentencing a person convicted of the offense of harassment, the court should be empowered to impose a restraining order on the defendant as it thinks fit. Such an order could be made to the defendant in addition to a prison sentence, only that the order could take effect only after the defendant is released from jail.
- The prosecutor and complainant should be allowed to comply to vary/discharge the order, not the defendant. After all, what thief would not desire to avoid imprisonment? As for the complainant, he/she shall be liable for any consequences created as a result of such variation.
- Same penalty for same offense.

7) Reply to Section 3.81 of the Consultation:

- A person whose course of conduct amounted to harassment serious enough to cause alarm or distress of another should be liable to in tort to the object of pursuit, in addition to criminal liabilities.
- A plaintiff should be able to claim damages for distress… and apply for an injunction, in addition to the pursuit of criminal proceedings against the defendant.

8) Reply to Section 3.93 of the Consultation:

- Yes to questions 3.93(a)(i) to (v).
- When a civil remedy loses its effects, recourse to criminal remedies is necessary.

9) Chapter 4 Sections 4.1 to 4.5 must not be allowed to be adopted, or HK will become a police-state in no time. Basing an individual's life and well-being on the word of one person: such an idea must not even be considered at all, or you are opening the floodgate to political persecution under the excuse of security… This is particular true when the one person having such powers may not be provided with "correct intelligence" concerning the individual concerned, and nowadays there is no guarantee for integrity of any government official however high their ranking may be.

10) Points set out from (1) to (9) above largely comprise of my response to the proposed Anti-stalking legislation. Also, please bear in mind that in a Common Law zone such as HK that adopts the "presumption of innocence principle," often no action from law enforcement is taken until after the fact, yet the misfortune is that once an act/a plan becomes a fact, little can be done to reverse the damage done. And that was/has been/is the dilemma faced by victims of stalking, among whom some have already lost their life. Of course, legislating against stalking will not be able to eliminate stalking altogether, but it can at least provide comfort to victims of stalking who manage to escape unscathed while at the same time deter potential stalkers from carrying out their scams in the future.

Regards,
C. SZETO
PS: You may reveal my name as written above, but not my email address. Thank you.

The same document is also attached hereto in Word form for your easy reference.

31 March 2012 Stalking.docx

31/03/2012 14:56

To stalking_consultation@cmab.gov.hk
stalking_consultation@cmab.gov.hk
cc
bcc
Subject 強烈反對《纏擾法》現有諮詢方案

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敬啟者：
本人強烈反對《纏擾法》現有諮詢方案，因其涵蓋面極闊，賦法例與執法部門，更多的選擇打壓言論自由空間，並支持香港婦女中心協會於2012年03月30日聯署的要求。認為纏擾行為立法，必須將適用範圍限制於特定情況，如家庭及異性和同性之間戀愛暴力、追債及收樓等情況下的纏擾行為。
此外，為了更有效保障受害婦女，當局應盡快於《家暴條例》設立家暴法庭及同時檢討警方執法不力問題，提升警方對家暴案件的執法力度。
王美娟

To stalking_consultation@cmab.gov.hk
cc
bcc
31/03/2012 14:56 Subject [Possible SPAM] : 不應把纏擾行為定為刑事罪行

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S0428

AMNESTY INTERNATIONAL [illegible] KONG
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Submission from Amnesty International Hong Kong on Stalking Law Consultation

Amnesty International Hong Kong

Amnesty International is an international human rights organization founded in 1961. AIHK is the Hong Kong section of Amnesty International. Our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

Defending freedom of expression, freedom of assembly and the freedom of the press have been the core mission of Amnesty International over the past five decades. From the perspective of international human rights standards, we would like to express our concerns about the *Consultation Paper on Stalking* (the "*Consultation Paper*") released by the Constitution and Mainland Affairs Bureau dated 19 December 2011.

Unclear definition

AIHK finds the broad definition of "Stalking" in the consultation paper to be problematic. With reference to the *Stalk Report 2000* by the Hong Kong Law Reform Commission (LRC) , we know that the primary purpose of the Stalking Law is to protect women and victims of domestic violence from molestation. According to this purpose, the law should clearly define the acts, scope and context of the offence. In paragraph 3.8 of the *Consultation Paper* it states

"We have considered whether the term "harassment" should be defined under the proposed anti-stalking legislation, if taken forward. The LRC considered it unnecessary as the term could be easily understood by the courts and the ordinary public."

AIHK finds this suggestion worrisome. Without a clear definition and context illustration, the proposed law would put basic human rights at risk, particularly, as the Police have tightened various policing measures in recent years. For example, at the post 7.1 protest on 2nd July last year and during Chinese Vice Premier Li Keqiang's three-day visit to Hong Kong last August, the Police aggressively

obstructed news reporting and arrested reporter and protestors. If there is no clear definition of the offence, the law could be manipulated as a convenient tool to suppress journalism and demonstrations.

The *Consultation Paper* paragraphs 3.8 and 3.10 also suggest that

".....criminalizing harassment without specifying a list of prohibited activities would help ensure that all kinds of activities that cause harassment can be caught. We tend to agree"

" There is no established definition or criteria to define or measure distress and alarm. ... The anti-stalking legislation of overseas jurisdictions provided no definition of "distress" to "alarm". We, therefore, do not consider it appropriate to define the two terms in the proposed legislation,..."

The law is suggesting that "harassment", causing "distress" and "alarm" may be criminal offences. If they are criminal offences, it is important to provide a definition of these terms, otherwise the public could become criminal offenders without realizing that they had committed a crime. Let us take some examples: a complainant sending a letter of complaint more than once to a company, an organization or a government bureau; during news-gathering, reporters making continuous calls or texted messages to senior government officials,; or protestors staging demonstrations at certain office to express their demands. If the proposed law is enacted, the above activities could all become criminal offences. As a result, people would lose freedom of expression and could easily be subjected to all kinds of human rights abuses.

"Collective harassment" poses threat to freedom of assembly

In the *Stalking Report 2000*, the LRC suggested only that the law targets one-person-to-one-person conduct. However, the *Consultation Paper* paragraph 3.12 states,

".....a group of people acting together to harass another where each one of the perpetrators only undertakes one act of harassment."

If a protest target just feels "harassed" or even only feels "distress" and could use this law to have the protestor charged, then the public would have no means to defend their rights. Once again, when freedom of expression is infringed, human rights abuses will increased.

Furthermore, we strongly believe such law could be exploited easily, based on the experience of the United Kingdom. We know that the UK media has experienced various obstacles after the Government enacted the Protection from Harassment Act. On the other hand, according to Article 19

of International Covenant on Civil and Political Rights, rights to access information should be upheld when considering any "stalking" allegation.

We also note that women's groups, victim of money lenders and land acquisition have experienced various difficulties, while the Hong Kong police seemed to have ignored their concerns.

In view of the urgency of their needs, we suggest that the Bureau should enhance the existing laws, namely the Domestic and Cohabitation Relationships Violence Ordinance, the Money Lenders Ordinance and the Landlord and Tenant (Consolidation)(Amendment) Ordinance to fully protect the victims, instead of enacting the proposed new law which could jeopardize the rights of the people.

Conclusion

Under the Basic Law, the United Nations' Universal Declaration of Human Rights (UDHR) and the Hong Kong Bill of Rights, everyone should have the right to freedom of opinion and expression, the right to freedom of peaceful assembly, rights to access information and the rights to life, liberty and security of person. AIHK has strong reservations about this Stalking Law proposal. We believe the Hong Kong Government should strengthen and enhance the existing laws, before considering enacting a new law to combat stalking acts related to domestic violence, money lending and land acquisition.

31 March 2012

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

26th March, 2012.

Dear Sir/Madam,

The purpose of this letter is to critically assess recommendations on 'Offence' part in the consultation paper ("paper") on stalking. This letter will adopt a criminal law perspective ("CLP"), to see if the paper attains the purposes or functions of the criminal law ("CL"), namely, the prevention, incapacitation, restitution, retribution effects etc. Part I of this letter will address the elements of the offence considered in the paper and see if they satisfy CLP. The other parts of this letter will focus on the idea that CL should maintain its protection effect rather than being used as a tool to solving social problem and violating human rights.

(I) Elements of the Offence on Stalking

The paper first states the three recommendations from the Law Reform Committee ("LRC") on stalking. LRC suggests a person who pursues a 'course of conduct' ("COC"), which he knows or ought to know ("OTK"), amounting to causing that person alarm or distress shall be guilty of an offence. Recommendations largely copied the United Kingdom's ("UK") Prevention from Harassment Act ("PHA"). The paper does not say the new legislation will be the same as what LRC suggested, it is expected that it will refer largely to PHA because most of the HK legislations borrow similar provisions from the UK. LRC considered the persistence concept embedded in 'COC' is self-explanatory and requires no further elaboration. In addition, LRC did not put forward an exhaustive list of incidents of what is 'harassment'. Similar to PHA and Ireland's law[1], it says harassment should be 'serious enough to cause that person alarm or distress'. The paper considers whether it should draw a list of prohibited activities of causing harassment and if there is a need to define 'distress' and 'alarm'. Furthermore, one of the key aspects of the LRC's recommendation ("recommendation") is that it imposes an OTK standard, which means to establish the offender's guilt, the prosecution is not required to prove that the offender possesses a specific intent (which is similar to PHA). LRC furthers states in its third recommendation that the 'OTK' standard is when

[1] S.10 (1) of the Non-Fatal Offences against the Person Act 1997

a reasonable person in possession of the same information would think that the COC amounted to harassing the other.

(A) Less preventive effect

Concerning the COC, I think the intuitive understanding of the stalking nature (i.e. repetitive) cannot be assumed to be inferred in people's minds when reading this actus reus element. Therefore, some light must be shed on the term as guidance about the terms notifies the public for what the law seeks to condemn, thereby achieving a better preventive effect. It is not to support a drawing of an exhaustive list of what is stalking as in Australia[2] and Canada[3], for there is a risk that stalking would be interpreted exclusively according to the list and it does not provide a clear picture in light of a variety of stalking conduct. S.7 (3) of PHA defines the term as 'conduct on at least two occasions that may include speech'. By requiring two occasions as a liability basis, PHA enables a means of intervention at an early stage of stalking. However, the importance of nexus between the incidents in 'COC' is still negated. We can see the requisite nexus in the US and Australia[4]. S.649.9 (e) of the Californian Penal Code defines COC as 'a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose'. In Australia, it also defines stalking refers to a list of prima facie lawful conduct when it is undertaken for a particular prohibited purposes[5]. Leaving 'COC' in the legislation without elaboration may acknowledge that stalking can take many diverse forms and enhance protection available for victims of stalking, however an elaboration of the term such as elaborating the required nexus in the COC gives a clearer picture to what contributes to part of the actus reus of the offence and inform the public better.

(B) Better protection offered

For the definition of 'harassment', albeit being criticized as over-general, the LRC's definition of 'harassment' ensures a greater protection to the victim. It is important for CL to capture the very nature of the crime for protecting the victims and get a better restitution effect. LRC's definition captures the central wrong and harmful effect of stalking, that is, the offender causes harm to victim with unwanted attention and relentless pursuit. Through recognizing the nature, CL is in a better position to protect and repair the harm caused to victims. Defining harassment as 'causing a fear of safety' like New

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[2] S.34A of the Crime Act 1900 in the Australian Capital Territory.

[3] S. 264 (2) of the Canadian Criminal Code.

[4] Finch, Emily. (2002). Stalking The Perfect Stalking Law: An Evaluation of The Efficacy of The Protection from Harassment Act 1997. *Criminal Law Review*.

[5] *Supra* note 2.

Zealand[6] and Canada[7] neglects the fact that sometimes harassment causes emotional distress rather than an apprehension of safety risk. Furthermore, specific measurements about the level of alarm or distress for establishing offenders's guilt is not proposed. This ensures the determination of whether a particular behaviour amounts to harassment is open to the court's interpretation with reference to the parameters of acceptable interaction on an individualistic basis[8] (although neither LRC or the paper considers the victim's fear in all circumstances shall be reasonable[9]). There is no clear definition of 'alarm' and 'distress' in medical field[10]. The terms are largely a question of fact for the court's determination with regard to each case's circumstances. It is not sensible if the legislation prescribes definitions for the two terms. The Recommendation addresses interests of CL's intended protected group.

(C) Insufficient incapacitation and deterrent effects

The 'OTK' standard seems at first glance as helpful to prosecution because the specific intent required of the offender to be liable to stalking is disregarded. The Recommendation does not encourage the incapacitation effect of CL. On one hand, the proposed legislation ideally catches a larger pool of offenders and seems protecting the public better; on the other hand, the 'OTK' standard catches a group of people who do not really comprehend their misbehavior would cause distress to victims. The relief gained from putting the offender to jail or imposing injunction only be short-term and may not prevent the offender from re-offending. It is more constructive to the offender's holistic development by giving him a chance to reconsider his behaviour and modify his attitudes through psychological treatments or social etiquette workshops than criminalizing it.

Furthermore, if a specific intent is not required of the offender in order to prove his guilt, it would lower deterrent effect of the law. Common sense tends to suggest that the possibility of being criminalized would defer the potential offenders from trying the behaviour. However, it may not be the case for stalking offenders. For many times the stalking offenders are delusional and continue the stealthy misbehavior, even the victims have been trying hard to stop or disapprove them. Excluding the mens rea requirement may not serves a deterrent effect as for most of the time the offenders are simply out-of-mind and acting deliberately. Hardly would they be able to comprehend their behaviour can make victims suffer nor would they be able to comprehend the deterrent

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[6] S.8 of the Harassment Act 1997.
[7] S.264 of the Canadian Criminal Code.
[8] *Supra* note 3.
[9] *Supra* note 6.
[10] Constitutional and Mainland Affairs Bureau. (2011). *Consultation Paper on Stalking*. Hong Kong: Constitutional and Mainland Affairs Bureau.

effect of the new legislation. If such a strict liability is imposed, there will be a reversed burden proof. To mitigate the harshness of a purely objective test, attributing certain characteristics of the offender to the reasonable person is encouraged.

(D) No fair labelling

The name of an offence symbolizes the degree of condemnation attributed to offenders and signals to society how the offence is to be regarded[11]. If 'stalking' accurately reflects the degree or nature of the wrongdoing, then the offender could be fairly stigmatized[12]. However, if the 'OTK' standard is kept, it is arguable that the offenders, are not labelled in proportion to his wrongdoing, because he is affected by his own circumstances which is neglected by the proposed legislation.

(II) CL should not be abused to solve a social problem even though retribution effect is attained

We have to ensure that CL would not be abused to solve a social problem[13]. Courts have been interpreted some offences in the Offences Against The Person Ordinance (Cap. 212) ("OAPO") to include the manifestations of stalking, by applying the offences to stalking behaviour despite the absence of the threat of physical harm. Although the OAPO is not an ideal means to tackle stalking, it would be more appropriate to improve the existing laws in tort and OAPO than to devise a new CL (which obviously lacks definition) to address a social problem. For example, the Domestic Violence Ordinance has been amended in 2010 to protect women and victims of domestic violence from being stalked or harassed by unwelcome phone calls. Even though the criminalization of stalking serves the retribution effect by leading the public opinion to condemning for the act conducted by the offender and attribute to the offender moral blameworthiness, it would be quite another matter to allow the public marking of some conduct with a condemnatory label to become the very test for the criminalization.

(III) Should not use collective harassment ("CH") and harassment to deter lawful activities ("HTDLA") as offences which would minimize the original protection effect of CL

The paper considers if CH and HTDLA should be made offences. S.7 (3A) of PHA makes CH an offence. Stalker can be charged even if he acts personally only one harassment act and arranges another person to commit other stalking acts on the victim.

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[11] Williams, Glanville. (1983). Convictions and Fair Labelling. *Cambridge Law Journal*, 42 01.

[12] Chalmers, James and Leverick, Fiona. (2008). Fair Labelling in Criminal Law *Modern Law Review* 71, 217-246

[13] Wells, Celia. (1997) Stalking: The Criminal Law Response. *Criminal Law Review*.

No similar law is found in other jurisdictions. PHA aims to tackle the difficulty of proving guilt under the doctrine of joint enterprise because of each offender's limited role in CH thereby offering better protection in situations such as debt collections. Assuming the mens rea element is absent, whenever a reasonable person owning the same information would think different acts by offenders in the COC amounts to harassment, the group of offenders would be prosecuted. HTDLA deals with single stalker on multiple victims. A similar provision is found in s.1 (1A) of PHA, which largely targets animal law protestors.

It is foreseeable that if CH is made an offence, protestors would easily be culpable when the victim can report to the police that there is harassment. Even though protesters can later excuse themselves in court that their conduct was 'reasonable', the victim achieved his aim for protests were immediately obstructed. CL aims to have a better protection against a wrong but not to be used as a tool to suppress union organizations. If HTDLA is criminalized, a labour union that calls staff to strike against unreasonable measures of their employers would be considered as 'deterring lawful activities' and can report to the police. Gathering support on the internet to criticizing some people or 'like' on Facebook, setting up booths on the streets asking for signature from the public may easily attract criminal liability. It is unclear how a similar provision like PHA could operate to effectively protect an employee if only a fellow employee had been harassed, as the legislation required one person had harassed another on at least two occasions to secure a conviction under s.1 (1A) of PHA. Furthermore, there is little statistics showing the two situations are now eminent dangers to the public. The inclusion of these offences would of no effective value subject to abuse.

After critically assessing the paper from CLP, it is viewed that if the law is to be passed, it should be more well-defined instead of borrowing largely from PHA. It would be a significant extension of CL without precise limitations, unless there is judicial interpretation limiting the proposed legislation's meaning[14]. It should be borne in mind that any legislation against CH and HTDLA shall not be used as tools to suppress freedom of expressions, otherwise it would not protects what the law originally intends to protect.

Yours sincerely,

signed)

[14] Herring, Jonathan. (1998). The Criminalisation of Harassment. *Cambridge Law Journal.*

S0430

保障婦女安全爲虛 打壓人權自由爲實

強烈反對《纏擾法》現有諮詢方案

政制及內地事務局於去年就《纏擾法》的立法建議進行公眾諮詢，表面上回應了婦女團體多年來爭取立法保障婦女免受纏擾的訴求。可是，諮詢文件中的提案涵蓋範圍極廣，且並無任何豁免情況，令人質疑政府立法的背後另有政治目的。

其中，諮詢文件提出「集體騷擾行爲」(多人騷擾一人)及「阻嚇合法活動的騷擾行爲」(一人騷擾多人)，明顯針對遊行集會及工會行動，與保障婦女的目標絲毫扯不上任何關係；而提案中未有豁免記者進行採訪工作或市民進行遊行示威等抗議活動，更是嚴重打擊新聞工作者的採訪自由和公民的言論表達、遊行集會自由。即使記者或一般市民可提出「免責辯護」免受刑責，但即時的採訪活動或示威抗議活動已被警方阻撓；若案件被提交至法庭，有關人士更可能被裁定有表面證據，並把證明自己只是採訪新聞或行使公民權利所以無罪的責任轉移到被告身上，這是偷換概念的做法。因此，我們有理由相信，政府是次提案，是以保障婦女爲煙幕，實質是借此打壓新聞採訪自由及遊行集會自由，打擊公民社會的發展。

婦女作爲社會的一分子，除了免受侵犯的權利，同樣有權享有公眾知情權及參與遊行集會的權利。我們不容許政府假借保障婦女之名，通過諮詢文件所提出的、涵蓋面極闊的《纏擾法》。因此，我們重申，**強烈反對《纏擾法》現有諮詢方案**。我們要求政府：

1. 刪除諮詢文件提及的「集體騷擾行爲」和「阻嚇合法活動的騷擾行爲」兩部份。

2. 將《纏擾法》的適用範圍限制於特定情況 - 家庭暴力、異性和同性之間的戀愛暴力、追債及收樓 - 下的纏擾行爲，或將「請願、遊行、示威、集會活動」以及「新聞採訪活動」豁免於條例之外，以保障記者的工作及公眾的知情權。

3. 現時的家暴受害者報警求助，警方往往將個案列爲家庭糾紛處理，令受害者繼續處於受虐狀況，令不少個案發展至無法收拾的局面。現時警方於處理家暴案件時明顯欠缺性別敏感度，即使將來訂立更多新法例，警方執法不力亦只會令法例成爲「無牙老虎」。我們要求檢討警方執法不力的問題，加強警員培訓，並製作執法清單，令警員有更清晰的執法指引。

聯署團體 (排名按筆劃序) ：

平等機會婦女聯席　香港女同盟會　香港女社工協會　香港婦女中心協會
香港婦女基督徒協會　香港婦女勞工協會　新婦女協進會　群福婦女權益會
關注婦女性暴力協會

保障婦女免受纏擾　同時捍衛新聞及集會自由原則
香港婦女中心協會對《有關纏擾行爲的諮詢文件》的回應

2012 年 3 月 31 日

政制及內地事務局於 2011 年 12 月發布了《有關纏擾行爲的諮詢文件》(下簡稱「《諮詢文件》」)，建議引入制約纏擾行爲的法例。法律改革委員會早於 2000 年已就立法規管纏擾行爲作出建議，事隔超過 10 年後，政府終於提出制訂纏擾法以保障婦女免受纏擾，本會理應表示歡迎。可是，本會對於《諮詢文件》的建議方案絕對不能表示贊同，特別是其涵蓋範圍之廣已超出了保障婦女的範疇；本會亦憂慮有關建議對表達自由、採訪自由及公眾知情權等基本人權做成負面影響，難怪有人質疑政府訂立纏擾法另有政治動機。我們認爲，纏擾法的適用情形應有所限制，包括將條例的適用範圍收窄至針對特定情況——家庭暴力、異性和同性間的戀愛暴力、追債及收樓——下的纏擾行爲，或將「新聞採訪活動」及「遊行、示威、請願、集會活動」豁免於條例之外，以免法例被執法者和當權者濫用，影響公民社會的發展。

纏擾是一種暴力行爲

根據聯合國《消除對婦女的暴力行爲宣言》(Declaration on the Elimination of Violence against Women／下簡稱「《宣言》」)，「對婦女的暴力行爲」(violence against women)指任何不論是發生在公共還是私人生活之中，基於性別的暴力行爲，或暴力行爲的威脅、強迫或任意剝奪自由，並對婦女造成身心方面或性方面的傷害或痛苦。

《宣言》亦申明「對婦女的暴力行爲」侵犯了婦女的人權及基本自由，也妨礙了婦女享有這些人權與自由，而這種暴力行爲亦是歷史上男女權力不平等關係的一種表現，後果會將女性繼續置於從屬於男性的地位，受男性的支配，繼續妨礙著婦女的充分發展，延續兩性的不平等。

除執法外，立法亦同樣爲公眾教育的重要一環，可令社會大眾明白纏擾行爲的嚴重性，進而減少纏擾行爲的出現。

保衛公眾知情權及表達訴求的權利

本會認爲現時《諮詢文件》中所提出的方案涵蓋範圍太廣，已遠超保護婦女所需，並可成爲鉗制個人或集體的示威、請願活動、集會、遊行和新聞採訪活動的工具，將會嚴重打擊公眾的知情權、新聞自由及表達自由等基本權利。

對新聞自由的剝奪

根據《諮詢文件》的建議，「一個人如做出一連串的行爲，而這一連串的行爲對另一人造成騷擾，他亦知道或應該知道這一連串的行爲對該另一人造成騷擾，即屬犯刑事罪。」(第 3.1 段) 新聞工作者爲捍衛公眾知情權，難免需要對被訪對象窮追不捨，甚至以跟蹤、偷拍、於住所門外通宵守候等方式探尋事件的真相，或多或少會讓被追訪的對象感到「受騷擾、驚恐或困擾」。傳媒擔當著社會監察者的角色，只有在新聞自由得到保障、新聞採訪活動得以進行的情況下，才可以發揮作爲監察官員權貴的力量；婦女作爲社會的一分子，亦有得悉涉及公共利益事件真相的權利。

《諮詢文件》雖提出以「免責辯護」保障新聞採訪活動 (第 3.45 - 3.50 段)，但我們認爲「免責辯護」會把舉證責任放於辯方身上，被告要在法庭上証明自己情有可原，法官才在這時決定被告有罪或無罪。所以，當新聞採訪活動要用免責辯護去保障時，其實被告 (記者) 已經經歷了警方執法、控方檢控、被告上庭、到審訊的中期甚至表面證據已成立，跟著被告才能使用免責辯護，然後被告還要說服法官辯方的辯護是事實及可信，並真是情有可原。因此，這與立法保障受害人免受纏擾行爲的原意簡直是南轅北轍；而即時的採訪活動已被干擾，採訪內容亦已成過去，無法挽回。

我們要求將「新聞採訪活動」豁免於條文之外，以保障記者的工作及公眾的知情權。

纏擾行爲雖然未必涉及暴力，亦不必然會使受害人受到身體上的傷害，但即使是一種暴力行爲的威脅本身，亦會對受害人的精神、心理及社交帶來無可挽救的創傷。特別是離婚婦女面對前夫或親屬的纏擾行爲，將嚴重影響婦女的身心健康及安全感，令她們難以從過去的經歷中重新開展新生活。

根據《宣言》的定義，纏擾顯然屬於「對婦女的暴力行爲」的一種，若不加以制止，後果會是侵犯了婦女的人權及基本自由，也妨礙了婦女享有這些人權與自由，並延續了不平等的性別權力關係。

現行法例不足以保障婦女免受纏擾

現時要保障婦女免受纏擾，法例上主要由《家庭及同居關係暴力條例》(下簡稱「《家暴條例》」)提供保障。《家暴條例》提供了渠道，讓受害人通過申請禁制令，防止對方作出騷擾行爲。可是，《家暴條例》屬於民事範疇，雖能在一定程度上保障受害人的生活不受滋擾，但受害人需要到法庭面對複雜的司法程序，或聘請律師代爲處理申請，所需要的時間、心力及花費往往使受害人，特別是基層婦女卻步。雖然有經濟困難的受害人可申請法律援助，但受害人亦需要分擔部分費用，加上對繁複的法律程序感到陌生及恐懼，婦女往往會選擇繼續逃避問題。而面對突發性及即時性的纏擾行爲，曾有婦女告訴我們，即使她報警救助，警方亦因騷擾者沒有觸犯任何刑事法而表示無從介入。

此外，《家暴條例》的適用範圍僅包括配偶及前配偶、親屬、同居及前同居人士。至於其他關係者，包括傾慕者、追求者、非同居的異性及同性戀人或前戀人所作出的纏擾行爲，《家暴條例》並不適用。

事實上，海外多個國家的立法機構同樣意會到纏擾行爲對婦女的影響，並立法限制纏擾行爲。以歐盟 27 個成員國爲例，至 2010 年已有 12 個成員國將纏擾定爲刑事罪行。[1] 可見對纏擾行爲立法以保障婦女爲世界性的趨勢。

[1] European Union, *Feasibility Study to Assess the Possibilities, Opportunities and Needs to Standardise National Legislation on Violence Against Women, Violence Against Children and Sexual Orientation Violence* (Luxembourg: Publications Office of the European Union, 2010), 67.

表達訴求權利的影響

根據《公民權利及政治權利國際公約》第 21 及 22 條，人人享有和平集會及結社的自由。可是，《諮詢文件》中對「纏擾行爲」的定義（第 3.1 段 - 第 3.10 段）過於主觀；《諮詢文件》中亦建議將集體騷擾行爲定爲罪行，以「保障個人不受兩或以上的人而每人只做出一次騷擾行爲的集體騷擾」(第 3.16 段)，這些均將成爲限制市民（不論是集體、還是個人）表達訴求的緊箍咒。

警方如按《諮詢文件》的內容執法，任何的個人請願、集體遊行、示威、集會活動，當有被抗議的對象表示自己感到「驚恐」或「困擾」，已足以讓警方執法及控告請願的個人、主辦單位、以至所有參與者。事實上，法改會的建議中並無針對「集體騷擾」的立法建議，諮詢文件中加入相關部分，難怪會令人感到政府借保障婦女之名，收窄公民社會表達意願和發展的空間。

我們要求刪除「集體騷擾行爲」和「阻礙合法活動的騷擾行爲」部分，並將纏擾法的適用範圍限制於特定的情況——家庭暴力、異性和同性間的戀愛暴力、追債及收樓——下的纏擾行爲，或將「新聞採訪活動」及「遊行、示威、請願、集會活動」豁免於條例之中。

總結

本會支持將在家庭暴力、戀愛暴力、追債及收樓等情況下的纏擾行爲刑事化，爲受纏擾的婦女提供更大的保障。但同時本會絕不期望有關立法建議成了一把雙面刃，在保障婦女免受滋擾的同時，損害了婦女作爲公民的基本權利。因此，本會反對現時《諮詢文件》所提出的立法建議，並要求將纏擾法的適用範圍回歸至保障婦女的層面，而非將纏擾的定義及法例的適用性無限延伸，影響婦女及市民的權利與自由。

因此，本會要求：

1. 刪除《諮詢文件》提及的「集體騷擾行爲」和「阻嚇合法活動的騷擾行爲」兩部份。
2. 將《纏擾法》的適用範圍限制於特定情況——家庭暴力、異性和同性間的

戀愛暴力、追債及收樓——下的纏擾行爲，或將「新聞採訪活動」及「遊行、示威、請願、集會活動」豁免於條例之中。

3. 現時的家暴受害者報警求助，警方往往將個案列爲家庭糾紛處理，令受害者繼續處於受虐狀況，令不少個案發展至無法收拾的局面。警方於處理家暴案件時明顯欠缺性別敏感度，即使將來訂立更多新法例，警方執法不力亦只會令法例成爲「無牙老虎」。我們要求檢討警方執法不力的問題，加強警員培訓，並製作執法清單，令警員有更清晰的執法指引。

如有任何查詢，請與本人聯絡。

香港婦女中心協會
總幹事
電話：[redacted] (刪除)
電郵：[redacted] (刪除) [redacted]

2012 年 3 月 31 日

31/03/2012 17:06

To <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject Stalking Consultation Paper

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sirs,

I object the proposal to criminalizing stalking as the existing legislation, i.e. Harassment Act, is good enough to address the issue which as the Law Reform Committee emphasizes on debt collector and ex-lover behaviors.

As a responsible government, whenever considering a new proposal related to the public interest, should take into account of freedom of press, human right. right to protest and right to pursue of truth. The proposed anti stalking worries public that this is a test case for **Article 23** which damages the core value of Hong Kong.

Hong Kong is not a democracy city in politics yet. Democracy is a fundamental to allow pubic participating law making and elect their own leader that is not going to happen in Hong Kong. Therefore law reform should be taken for public interest but not for administrative convenience.

Please be mindful that you may deceive all people part of the time and part of the people all of the time but not all of the people all of the time. As Edmund Burke said all that necessary is for evil to triumph and is for good man to do nothing. I am now doing as a good man should do.

Regards,
LEUNG Chun Sing

To stalking_consultation@cmab.gov.hk
cc
bcc
31/03/2012 17:27 Subject 纏擾行為諮詢文件

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

您好，本人上司曾經由2007年至今，不斷給一名曾在本座辦公室做保安人員，但已遷去職位之男士纏擾，每當放工時候他在辦公室樓下等，報警多次，都不能檢控，原因他沒有做出傷害她身體行為，時常送花或咭及由電話送出口訊，最近亦被警員告戒，但仍然繼續纏擾，令我上司精神困擾，心理壓力非常大，因此我們希望立法禁止纏擾行為。
應要屬於犯刑事罪。
罰則是需要十萬元及監禁二年或以上。
在刑事訴訟發出禁制令應要定為刑事罪行。
應負上侵權法下的民事責任。
應讓受害人可以就一連串行為所引致的困擾、焦慮和經濟損失索取賠償和申請禁止纏擾者做出所有以上事情強制令。

希望政府能幫助給被所有被纏擾之人士得到幫助。
謝謝！

To <stalking_consultation@cmab.gov.hk>
cc
bcc
31/03/2012 18:17 Subject 有關纏擾行為的公眾諮詢

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Re: 有關纏擾行為的公眾諮詢

本人是一名外國大學畢業學歷嘅普通職業女性, 職業是corporate selling, account servicing kind嘅工作. 工作表現一向積極良好. 過去十年不停被不知名人士組織用不同方式纏擾, 方式層出不窮, 令本人憤怒! 技倆分別是: 閉門偷竊(本人家中, 公司私人文件, 信件, 電話簿, 相片)之後部分用不同方式發回, 跟蹤(不論辦公, 休閒時間, 返教會, 當義工, 報讀課程都跟蹤本人. 甚至潛入本人課室, 教會, 當義工嘅組織等. 例如:於2010年混入本人[redacted](刪除)[redacted]課室; 被跟蹤期間亦有多次發生被陌生人走近惡意諷刺或與剛接觸人士認識就被惡意以挑撥形式講話恐嚇講出本人私隱及生活或經歷細節, 當中對方人士包括有: 去年因公事剛接觸初次見面嘅[redacted](刪除)[redacted]主管及其下屬, 他們竟然能諷刺本人講出本人未曾向其透露嘅私隱, 背景, 生活及曾報案經歷細節, 此後本人再無就被纏擾報案; 另今年2012年初本人因公事剛接觸亦係初次見面嘅上市公司主席, 本人亦被其惡意以挑撥形式講話恐嚇講出本人私隱, 教會生活及經歷細節; 而昨日在[redacted](刪除)[redacted]亦發現再被跟蹤, 本人乘搭MTR分別至[redacted](刪除)[redacted]期間本人到[redacted](刪除)[redacted]餐, 膳後一名男子不知是手法愚笨還是刻意恐嚇要本人知道他在跟蹤本人並走近本人來回緊貼跟隨, 在[redacted](刪除)[redacted]期間本人再被陌生人走近惡意諷刺), 黑客入侵(公司及私人電腦, 電話, 電郵; 今年初本人在公司辦公室內, 親眼目擊有人 未經本人同意入侵本人公司電腦, 向上司報告要求報警不果, 最終反倒被開除), 在過去亦試過收? 讲幻屢偶都镜剜]寄到本人父母親友家中. 屢次報警不果. 經過多年被纏擾嘅經驗得知, 纏擾本人嘅人士不是個人, 不是小規模組織, 而是大規模組織, 人士眾多. 他們行為手法往往係纏擾本人又故意讓本人知道. 他們行為背後原因不明, 但目的結果明顯是負面, 是欺凌, 令人髮指, 憤怒, 困擾不安!!!!! 當中情況惡劣, 甚至影響到本人家人親戚朋友!!!! 望當局嚴辦立法正視.

(寄件人要求不具名公開意見)

To <stalking_consultation@cmab.gov.hk>
cc
bcc
31/03/2012 18:30 Subject 有關纏擾行為的公眾諮詢

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

您好 ！

本人十分贊成對纏擾行為立法，因本人感同身受，以下是本人的真實個案 ：

本人於1999年與丈夫完成離婚手續，並開始新生活，但本人前夫於2004年某一晚跟蹤本
人放工，幸好當時有同事跟我一起放工才安全，他並開始將有我姓名及相片但沒有下款
(即追數公司聯絡人及電話) 之追數單張傳真至本司，但本人確實沒有欠他錢，他一次會傳真數十張到本司，一日可由早到晚傳真到本人工作地方，以致影响到本人工作公司
之運作，本人心感恐懼及担心，担心影响公司對我之看法及解僱。本人及同事到警署報
案，但當值警員說因沒有刑事成份. 所以並未能幫本人做任何事，只可例行幫本人開
file備案 (其中一次備案編號 ： (刪除)).

受害人 ： 張穎珠

聯絡電話 ： (刪除)

winmail.dat

(.

31/03/2012 19:10

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>

cc

bcc

Subject 反對立法，防外新聞自由。

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

香港基督教協進會社會公義與民生關注委員會
《有關纏擾行為的諮詢文件》意見書

本會一向關注社會中的公義、和平、人權、自由及民生事務。就政府於 2011 年 12 月發表諮詢文件（下稱文件），建議就纏繞行為立法，本會有以下意見。

1. 立法的理據不足

正如文件所言，現有的不少「惹人反感的纏繞行徑可以按照現行法例處理，但是民事及刑事法所能提供的保障卻是零碎、不明確及非有效」（2.4），然而文件同時提及「在香港受到纏繞行為影響的人並不多」（2.3），也承認「當局沒有纏繞行為獨立統計數字」（2.11），令人質疑是否有訂立纏繞法的強烈及迫切需要。

誠如法改會指出，「只要有足夠的個案顯示香港有市民受纏繞者騷擾，則不論受害人佔香港人口的 1%或是 0.01%，纏繞行為仍應被視作一個問題來加以處理」（2.12），然而由於纏繞行為定義寬鬆，覆蓋範圍相當全面，幾乎無所不包，使極大量原不相干的行為皆可墮入法網，與立法原意並不符合，反過來為市民造成更大的影響，限制了個人自由的空間。而且文件更建議把纏繞行為刑事化，以預防或制止有機會出現、但不必然出現的身體和心理健康的破壞，是不合理及不符比例的處理；而更甚者，正如不少傳媒人士及人權組織已指出，新聞自由必首當其衝，受到嚴重傷害。

正如文件指出，「有傳媒人士再次就擬議法例（如推行的話）可能被人利用以干預新聞自由表示關注」（3.45），並加以免責辯護作為回應（3.49-3.54）。然而免責辯護的作用是案件進入法庭程序時作為抗辯理由，對於正常的採訪活動仍會因為檢控過程本身而受到不必要及無可挽回的阻礙，而且文件建議把纏繞行為刑事化，更會造成不必要的壓力，令新聞界進行自我審查。值得關注的是，無國界記者於本年一月公布 2011 至 2012 年全球新聞自由指數，香港排名由上年度第 34 位急滑至第 54 位，該組織形容香港情況為「急劇惡化」，令人擔憂。而纏繞法的訂立，勢必使香港的新聞自由進一步受到嚴重影響。由此看來，法例帶來的保障遠遠不及其影響，故本會不認為有需要現階段就纏繞行為立法。

2. 本會建議

本會認同有市民受纏繞者騷擾的情況存在，而情況較嚴重和值得關注的主要是「收數」行為及家庭暴力兩方面。

對於前者，現行法律處理在警方通過加強執法及積極宣傳成功的執法行動及檢控個案，藉以阻嚇不良收債人或收債公司進行違法收債行為，案件數量已然下降。

按保安局局長李少光於 2011 年 6 月在立法會會議中表示，涉及收債活動有關的刑事罪行舉報和非刑事滋擾行為的舉報，較前年下跌兩成，情況有明顯改善。所以，本會認為警方應繼續及加強執法與宣傳力度，此外，也應教育市民面對有關行為時的權利和作出適當之舉報，相信可進一步減少有關方面的纏繞行為，特別是嚴重的違法收債行為。

對於家庭暴力的纏擾行為方面，據關注家庭暴力受害人法權會報告，在家暴條例修訂後，前線處理家暴政府部門本身仍缺乏家暴零容忍意識，態度欠積極，以至在現行法律下保護婦女不力，實在需要執法人員加以大力改善。此外，有感於禁止纏擾的法例可能會危害新聞自由，婦女團體一直向政府建議，在《家庭及同居關係暴力條例》中加入反纏擾的條款，已足以解決現有的纏繞行為，無需另立新法。本會認為這是合理而更具針對性的做法。

31/03/2012 19:54

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 有關纏擾行為的意見
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

敬啟者：

你好!我對於政府就纏擾行為立法發表意見，我是一位普通市民，在日常生活中經常接收到宣傳電話有關銀行、保險公司、體檢中心、電訊公司、美容公司、健身公司、財務公司等。我的手機號碼已經登記在電訊管理管局拒絕接宣傳電話，但沒有實質改善情況，只是減少歷名來電。這些公司經常來電滋擾本人，我已嘗試勸籲他們不要再來電，它們只是停止一個月。之後，它們繼續來電宣傳，令人感到煩擾不安。本人曾試過一天內收過六個宣傳電話，令我不能安心工作，甚至被上司質疑做外快，差點被解僱。有時到鬧市逛街會被一些疑似做訪問的人攔截，懇求只是一般資料訪問，後來遊說你提供個人私隱和簽名。這些行為使我們感到困苦，沒有個人私隱空間，請政府立法這些纏擾行為，使市民生活安心有保障，亦使這些公司或機構行為收斂。

市民
陳先生

31/03/2012 20:03

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 反對立法，防外新聞自由。

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

To stalking_consultation@cmab.gov.hk
cc
bcc
31/03/2012 21:18 Subject disagree
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

This should NOT be made a criminal offence.

–
Best regards,
G.C.

31/03/2012 21:41

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 立法禁止纏擾行為意見

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

法改會執事台鑒：

立法禁止纏擾行為

「纏擾」行為！ 目前政府沒有一套良好方法及改善措施，政府應對「纏擾」行為立法懲治一些違反人士，避免一些無辜市民受害及無助。

我曾經包受一無良財務公司纏擾賬務催收行為。有一天！我流動電話響起便應接，對方問我是不是某某某，我回應是，對方便開口指我欠卡數，我突然感不安，於是我問那陌生人(他)：「你是那一間銀行，你是何人」，他隱瞞不說是那一間銀行，他只說：「你自己心中有數，欠銀行卡數」。我回覆他我沒有欠任何銀行卡數，我問他：「你們有無搞錯！」最後他說話帶有恐嚇性語氣：「你唔還錢我哋就做嘢」。那天我立即去報警，將上述事態告知警方，我亦沒有欠任何銀行卡數，希望警方將犯事人士繩之于法，警方指一個電話不能作實是罪行。

自從那天開始便不斷地收到電話騷擾，連家裏的固網電話到不放過，來電亦沒有來電顯示，電話騷擾一直來過不停，無耐唯有接聽沒有來電顯示的來電，接聽後只聽到電話口訊叫我按照提供電話與職員聯絡，於是按照指示打電話去搞清楚事件，可惜打電話去電話接通便發出尖銳聲及刺耳，電話騷擾一直來過不停，簡直折磨！唯有再去報警求助，是次警方才願意開檔案處理，警方叫我每天記錄騷擾電話兩至叁星期以上，警方才可跟進事件。這樣已經飽受困擾及折磨！

本人希望藉着今次向法改會提出以下意見：

立法的需要

1. 應把纏擾行為定為刑事罪行？

立法的需要

1. 應把纏擾行為定為刑事罪行？

就以上述事況，根本我受害人與財務公司沒有任何關係，又沒有欠任何銀行卡數債項，而不知財務公司從那裏獲得受害人資料，經常以電話騷擾及纏擾令人感憂心忡忡及折磨！ 這纏擾行為應是定為刑事罪行。

2. 應否將集體騷擾行為及阻嚇合法活動的騷擾行為定為罪行？

應該將集體騷擾行為及阻嚇合法活動的騷擾行為定為罪行，因一些或有些騷擾行為是集體騷擾行為，特別是財務公司纏擾行為。

罪行

3. 應否就纏擾罪行的罰則劃一為罰款100,000元及監禁兩年？

同意

免責辯護

4. 應否提供下述法改會建議的免責辯護？

(a) 有關行為是為了防止或偵查罪行的目的而做的;
(b) 有關行為是在合法權限之下做的；以及
(c) 在案中的情況下做出該一連串的行為是合理的。
☐
是否同意法改會的建議，上述(c)項的.合理行為.的免責辯護已包涵為新聞採訪活動提供的免責辯護，抑或應為新聞採訪活動另外提供特定的免責辯護？若後者，應如何制訂該免責辯護？

就4.項 建議的免責辯護如下 ：

(a)項要得到合理合法受權才可實行；

不同意(b)項有免責辯護，合法權限太空範(不清楚)；及

(C)項同樣要得到合理合法受權才可實行，新聞採訪活動應有特定的免責辯護，不應運入此處相提並論，新聞採訪活動應以社會大衆知情權及以社會大衆利益為依歸，不可以娛樂新聞作免責辯護！

在刑事訴訟中發出禁制令

5. 應授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使案中受害人或其他人驚恐或困擾的事情，以及若然，違反禁制令應被定為刑事罪行為受害人提供民事補救

應該。

6. 應否訂明一個人如做出一連串的行為，而該一連串的行為會構成騷擾，嚴重至引致他人驚恐或困擾，便須向該一連串行為的目標人物負上侵權法下的民事責任？

應該。

7. 應否讓受害人可以就該一連串行為所引致的困擾、焦慮和經濟損失索取賠償和申請禁止纏擾者做出會導致他驚恐或困擾的事情的強制令？

應該。

受害人
31.03.2012

To <stalking_consultation@cmab.gov.hk>
cc
bcc
31/03/2012 22:35 Subject Opinion

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir/Madam,
I am for legislation against stalking behaviour. Undue following, shadowing or intrusion into the private living of an individual should be considered criminal, and should not be justified simply with the sweeping excuse of "public interest". In this sense, the newspaper media need to justify themselves and put up evidence that what they are after is really for public interest (ie should not assume that everything published in newspaper or megazines is for public interest). On the other hand, sending "unwanted" gifts or revealing the intimate facts of a person should not automatically be regarded as stalking. Evidence should be raised that these acts are done with a malicious intention before these are considered criminal.
Thank you.
C S Ho (deleted)

(寄件人要求以保密方式處理意見書)

(The sender requested confidentiality)

!

31/03/2012 23:01

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>

cc

bcc

Subject 纏擾法意見書

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

以下是本人對於有關纏擾行為立法的意見:

諮詢文件第3.41段指,「在缺乏保障下,傳媒在尋求這類資訊和議見時便難以履行其監察職能。」卻又指:「 如果摒棄採用合理行為這項一般性免責辯護,改為在法例中列明各項特定的豁免情況,有可能將原應納入法例之內的情況排除於外. 」 換言之,法改會是預期在釐訂各項豁免後有可能有灰色地帶的出現,而在合理推想下,這灰色地帶的範圍相對狹窄.

相反,在建議的立法下,「 合理行為 」並不能為傳媒採訪提供合理保障,將令傳媒面對廣泛的灰色地帶,以致「難以履行其監察職能 」.

法改會為了排除纏擾行為法的可能出現的狹窄灰色地帶,而犧牲新聞自由這香港核心價值,引入廣泛的新聞採訪灰色地帶,這是難以理解和不可接受的.

因此本人反對當局提出的纏擾行為立法建議.

Tam Sau Han Patty
HKID: (刪除)

(寄件人要求以保密方式處理意見書)

(The sender requested confidentiality)

31/03/2012 23:25

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc "
bcc
Subject 反對立法，防外新聞自由。

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

To stalking_consultation@cmab.gov.hk
cc
bcc
31/03/2012 23:39 Subject 有關纏擾行為的公眾諮詢

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

政制及內地事務局(第4組)
執事先生：

我擔心，《纏擾法》只能阻嚇好人，而不能阻嚇壞人。

諮詢文件提出《纏擾法》主要應用的例子，包括出現感情糾紛時的滋擾行為，或收數追債時所用的手段。但在現實情況中，《纏擾法》不可有效阻嚇上述滋擾者，因為警力有限，就算警方接到舉報時，遠水救不了近火。而且，財務公司根本不會因為有了《纏擾法》而不追債。

反而，最有可能出現的情況是，《纏擾法》會被濫用，用來對付採訪、新聞和集會自由。記者會因為揭發貪污事件採訪肇事者，但肇事者可以受到所謂滋擾為由，用《纏擾法》起訴記者。集會人士會因為口號喊得大聲，但反對者可以受到所謂驚嚇為由，用《纏擾法》起訴集會人士。即使記者或集會人士事後以「合理行為」為由在法庭上申辯，但已為時已晚，採訪和集會當時已被逼停止。

有人指「狗仔隊」過份侵犯私隱，所以《纏擾法》不能完全豁免新聞採訪。但本周有報導指娛樂藝人在寓所內遭拍攝裸照，最後肇事的周刊敗訴，可見現行的私隱條例行之有效，根本不需要另外推行《纏擾法》。

觀乎國外，英國所立的《免受纏擾法》亦為公眾詬病為打壓工具。當中最突出的例子是，2007年，英國能源公司 Npower指示威人士行為滋擾，以《免受纏擾法》對示威人士和記者申請禁制令。經過三個月的訴訟，有關禁制令才被解除。

為了保障受滋擾者的人身安全，以及避免採訪、新聞和集會自由受到阻礙，更好的辦法是針對性地完善現存的家暴條例、放債人條例、私隱條例等，而非另行推出《纏擾法》。

市民　姜先生
二O一二年三月三十一日

To <stalking_consultation@cmab.gov.hk>
cc
bcc
31/03/2012 23:41 Subject 有關纏擾行為的公眾諮詢
Please respond to
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

敬啟者：

騙徒(姓名)以藉口出錢騙香港人(我兒子)免費一同往到澳門玩，實際到澳門後即帶受害人往賭場，聯同其他騙徒假冒是賭場職員，以入會有優惠藉口，填寫入會表格套取受害人個人、父母(我們)及親友資料如住處及聯絡電話等等後帶賭櫃，以受害人會員名義攞籌碼賭，由陪同騙徒下注賭輸錢後簽下欠單，帶受害人反香港向父母(我們)及親友要求還錢，如不給錢，父母(我們)及親友會受到不斷以電話騷擾要求俾錢/還錢，由於是一個騙局，父母(我們)不付錢往警署報案，隨後亦去信及往澳門司法警察局報案，最後澳門檢察院批示「"騙徒"之人伙同其他身份不明之人士對被害人實施了為賭博之高利貸行為及其他犯罪行為。然而，經偵查，直到目前為止，仍未查明"騙徒"以及其他人士具體之身份資料及彼等之下落。…將卷宗歸檔。」。把澳門檢察院批示交予香港警方，但案件仍是債務糾紛了結。此類纏擾騙錢案件是應歸類為刑事騙錢案件。

附上寄給澳門司法警察局信件(附件1)及澳門檢察院批示(附件2)以佐了解該類案件。

(署名來函)

(刪除)

手提：

(寄件人要求不具名公開意見)

31/03/2012 23:47

To "stalking_consultation@cmab.gov.hk" <stalking_consultation@cmab.gov.hk>
cc
bcc
Subject 有關纏擾行為的公眾諮詢

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

- agree to legislate against stalking

- should take into consideration of similar arrangement in nearby developed regimes

- agree with 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

- a line should be drawn to balance the need of business (such as promotion, cold call) and the public interest

-The court should 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.

- Stalking leads to criminal offence is contorversial

To stalking_consultation@cmab.gov.hk
cc
bcc
31/03/2012 23:49 Subject 有關纏繞行為的諮詢文件的意見

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

本人想就2.18提到法改會立法禁止纏繞行為發表意見:
就到第三章:擬議制約纏行為法例的內容的3.6項,我絕對同意法改會的建議,不應該將蓄意騷擾列為擬議罪行的元素之一。因為有一部份的纏繞者的意圖是出於'愛慕'而對受害人做出纏繞行為。雖然他們的意圖不是想傷害受害人,但他們的行為其實都會對受害人造成一定程度的煩擾甚至心靈上的傷害,所以我認為不應該將蓄意騷擾列為擬議罪行的元素之一。
另外, 就到3.22項(a),我亦同意法改會所提出的建議,應該將它們也定為刑事罪行,因為騷擾如果纏繞者都知道他做的行為都會對人造成騷擾,即纏繞人都明白事情的嚴重性,只有將纏繞行為列為刑事罪才可以有效阻嚇他們的行為。
同時,如果有另一人持有相同資料,他也認為纏繞者的行為會對受害人造成纏繞,即是說這是一個客觀的事實,而不是一個主觀的行為,因此我認為法改會的建議的合理及應該執行的。

本人想就 2.18. – 有關立法禁止纏擾行為提出意見

本人強烈支持就禁止纏擾行為立法。

因為纏擾行為除了可能釀成暴力問題外,更值得關注的是纏擾行為所帶來的心理影響。

暴力或是對身體所做成的傷害也可能會有完全復原的一天,但是精神困擾,心靈創傷卻可能是一個永不磨滅的陰影。
遭到纏擾的人,特別是被沒有犯罪意識的人所滋擾的受害者(沒有犯罪意識的人即如心理有問題的人,前度,追求者,他們並不是刻意做成纏擾),除了日夜擔心不知何時會再被騷擾,經常活在不安,惶恐,之中以外,這類纏擾行為也可能會影響到受害者以後結交朋友,伴侶,對其社交,人際方面也可能會構成一定的負面影響。

同時,如果對方是刻意做成騷擾,立法是絕對有必要,以起阻嚇作用;即使對方是沒有犯罪意識,尤其是那些心理有問題或有妄想症的人,立法更是刻不容緩。正正是因為在他們眼中,根本沒有「騷擾」受害者,所以立法起碼有警惕阻嚇作用 — 就算他們沒有意識自己是不對,最少有法例去防止他們騷擾受害者,通過立法使這些人知道他們所做的是觸犯法律,從而可以打擊或阻止騷擾情況再發生。

飽受纏擾的人面對的身心困擾實在是不容忽視,可是現行法例根本全面保障受害人避免再受纏擾。舉一個非常普遍的例子 : 纏擾者如在住所/工作地點附近等候受害者出現,暗中監察或從各方途徑以得知或套出受害人的最新生活動態,消息,行蹤等等, 這些行為已對受害者做成無形的心理壓力,使其精神緊張,但是現行法例卻無法就此向纏擾者作任何懲戒,這往往令受害人感到非常無奈,這無助的感覺對受害者而言可謂是雪上加霜,因此本人認為政府絕對有必要就禁止纏擾行為立法。

To stalking_consultation@cmab.gov.hk
cc
bcc
31/03/2012 23:58 Subject 反對纏擾行為立新例

☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

本人SY Li Yee [ID no (刪除)]，反對政府打算立新例禁制纏擾行為，
在目前香港的環境下，新聞自由比以往更加重要，
我認為該新例將影響新聞自由和市民請願遊行等表達自由。

根據與新聞界的朋友探討，他們認為政府可考慮在《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行為的條款，
以保障受前歡舊愛纏擾的男女、無辜受收債行為影響和因強迫收樓而受遷迫的小市民。

SY

(寄件人要求以保密方式處理意見書)

(The sender requested confidentiality)

致政制及內地事務局部性第四組：

我黃世澤(身分證號碼 (刪除))是一名商人及時事評論員，現具函反對政制及內地事務局擬議另立新例禁制纏擾行為，因為有關新例暫將影響新聞自由和市民請願遊行等表達自由。本人認為，政府可考慮在《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行為的條款，以保障受前歡舊愛纏擾的男女、無辜受收債行為影響和因強迫收樓而受逼迫的小市民。

此外，本人亦具函，收回本人在立法會政制事務委員會上，關於諮詢文件上的一切書面及口頭陳述。

(署名來函)

(黃世澤) 謹啟

2012 年 3 月 29 日，香港

如有意聯絡本人，請循以下途徑

電話： (刪除)

電郵： (刪除)

地址：

本函以郵寄方式遞回，並以電郵方式抄送繆美詩小姐

這是纏擾行爲嗎？

敬啓者：

本人是一位需要 24 小時開啓手提電話，也要間中通宵工作，白天睡覺，不能轉換電話號碼的 (署名來函)

自數年前(已忘記何年開始)，本人已不斷收到自稱各大銀行及各大機構的來電推銷，尤以各銀行推銷低息貸款爲多，以(刪除)銀行集團數量最多((刪除)貸及(刪除)銀行)，其次爲(刪除)銀行 (刪除)銀行 (刪除)財務，全部的推銷電話都是不知本人姓甚名誰，當要求各公司停止再致電本人，但不久又致電本人滋擾，更以書信明確(以掛號郵遞形式)指明不要再滋擾本人，又到該銀行店舖報警求助要求停止電話滋擾，但結果都一樣，繼續滋擾，永無寧日。但這些方法(去信及報警)可做幾多次呢？以(刪除)銀行集團最爲可惡， (刪除)貸幾經辛苦，浪費本人不知多少時間才可電話安寧，現在又來個(刪除)銀行，實令本人不勝其煩，致電投訴又給回一些不知所謂的答案，本人已不再作投訴或報警，祇會用自己的方法處理此項問題，爲何呢？本人曾以信件向以下機構投訴(包括特首 — 看附件及聽錄音帶)，也向各大立法局議員投訴，包括科技界立法局議員，全部都不了了之，沒有實質動作，回覆信件行貨如行貨。

特首辦 — 將個波交給下屬，理所當然(針唔拮到肉，唔知痛)，這可能是雞毛蒜皮。

警局 — 曾多次報警，但都是不了了之，也曾與警司對話，也是一樣，更被一名警員質問：「你是否有病？」這是什麼意思，苦心自問，沒有一個人喜歡接聽如此電話，而且曾試過一日三次，也試過一日同一公司致電問我是否要低息貸款，正如一個人不喜歡聽粵曲或古典樂曲，在一個長期播此類樂曲的地方工作或生活，這個人一定覺得煩厭，情緒不穩定。也嘗試對一名警員說若我每天都致電給你，「我是 XX 快餐店，你是否要一份早餐，你如何呢？」他的答覆是說：「你恐嚇我呀！」這是什麼態度？若我涉嫌恐嚇爲何不拘捕我呢？

電信局 — 書面及電話回覆，都是說現行法例做不到什麼(附信件及錄音)。

各議員 — 曾致電各黨派的一名立法局議員，他們的職員聽了便算，沒有跟進。曾幾何時，也致電當時的資訊科技界立法局議員辦事處，回覆都是與電信局一樣「現行法例做不到什麼」。

(未能確定寄件人是否願意公開姓名)

銀行公會，金融管理局 — 他們也沒有辦法，不了了之，可能如此小事，用不著他們費心。

本人每次對待各銀行，都是「先禮後兵」，全部先致電客戶服務部提出刪除我的電話資料的要求，再有滋擾電話。而書信提出抗議，但都是沒有用，向各部門投訴也不得要領，爲有用自己方法去處理，包括報警，報警有何用？有，可以第三者證明我受電話滋擾，也可壓低我的脾氣，我也不知道我會做出什麼傻事。有一次中午，我在沙田吃午飯，又一次自稱 (刪除)打來推銷低息貸款，吃完飯後，便往沙田分行理論，衝口而出，對著經理說：「我打你呀！」我也即時報警，也對警員說我涉嫌恐嚇，錄音還在記錄中，我也不後悔，祇要再沒有滋擾電話打來，你要我在中環 (刪除)跳下來都得。我祇想耳根清靜，此段說話是與(刪除) 行關顧組對話中的一小段(有記錄)。

曾多次向(刪除) 行， (刪除)行，(刪除) 行向他們投訴電話滋擾，他們全部否認是他們公司電話打出，可能是有人冒認銀行套取資料，已經知會保安組及警方，但本人要求與他們一起到警署報警，他們都不肯，說自己會處理事情，如此大銀行，有其他人冒認銀行可能進行不法行爲，竟然如斯安穩，不聞不問，他們不怕受影響嗎？你相信嗎？故有兩次致電給我推銷低息貸款，假意向他們借錢，還用假姓氏，假職業，還到銀行辦理，經驗如下：

(刪除) 行 — 接到無來電顯示的推銷電話，故假意借錢，但我要確定來電者是否屬實，故收線後由另一位同事及有來電顯示電話給我，他也詳細詢問我的資料，更相約下午於沙田(刪除) 行辦理手續，到達後我已發難，要求經理報警，但該名職員可能見我發難已離開，我到達之前他致電給我說已到了該銀行，事後向該銀行投訴，回覆結果是第一個電話不是他們公司打來的，第二個電話(即該名職員)才是銀行打來推銷，但他爲何知道我假姓氏和假職業呢？投訴組更說是他做錯了，已經辭退了他(他祇是代罪羔羊)。

隔了一段時間，也接了一個無來電顯示的電話，一聽已經問候我母親，又說我的好事，我給銀行炒魷，等等。自此，我起碼收到多次無聊電話，也曾收過連續多次致電給我的滋擾電話，已報警求助，現在又是不了了之。

花旗銀行 — 收到一次推銷低息貸款電話，又一次假意借錢，相約沙田辦理手續，到達確定後便即時報警，也拿了準備的滋擾電話錄音播出及用紙張寫明因由，時大聲向在銀行內的職員及市民控訴此銀行的行爲，同時，被一名高級職員說我什麼已忘記。若不是(刪除) 行多次對本人這樣滋擾，我是不用這樣的，我已先禮後兵，毛主席說：「人不犯我，我不犯人，人若犯我，我必犯人。」自此，我收到最多的是 (刪除)電話滋擾。

(未能確定寄件人是否願意公開姓名)

當我忍無可忍的時候，也不知道何時要做的事情，以死控訴各大銀行。

最後方法： 某星期一早上，在中環 (刪除)總行門口對外的街道電車站頂，加上大 Banner 作出投訴(中英對照)，站在電車站頂呆等四小時，等所有記者到達後，以狂吞藥丸，狂飲滴露，自殘身體，再以電油自焚，翌日各大報章，互聯網，一定放於頭條，相信政府即時推行法例禁止電話推廣，雷鋒精神：「犧牲小我，完成大我」。

本人不惜以身試法，包括民事或刑事訴訟，在所不計，祇想耳根清靜，不要迫我走上絕路！

本人之電話祇是聯絡朋友，不是接聽無謂的推銷服務，而且，一而再，再而三，不知要接到幾時及幾多次！

(署名來函)

2012 年 3 月 29 日

(未能確定寄件人是否願意公開姓名)

香港新聞行政人員協會

Hong Kong News Executives' Association

(刪除)

香港添馬添美道2號
政府總部(東翼)12字樓
政制及內地事務局(第七組)

電郵：stalking_consultation@cmab.gov.hk

香港新聞行政人員協會
對《有關纏擾行為的諮詢文件》
建議立法禁止纏擾行為的意見書

香港新聞行政人員協會
Hong Kong News Executives' Association

(刪除)

敬啟者：

背景：

鑒於政府發表上述諮詢文件，建議就纏擾行為立法。根據諮詢文件，在某段時間內針對某人所做的連串使該人受騷擾、驚恐或困擾的行為，可被形容為纏擾行為。有關行為包括：在不受歡迎的情況下登門造訪、發出受害人不欲收到的通訊、在街上尾隨受害人、注視或暗中監視受害人的居所或工作地點、送贈受害人不欲接受的禮物或古怪物件、向第三者披露受害人的私隱、對受害人作出虛假指控、破壞受害人的財產，以及/或謾罵和傷害人的身體。

而新聞採訪工作的特質之一就是可能涉及跟蹤、監察以及涉及公眾利益下的追纏採訪對象或暗中調查等。

至於新聞採訪活動，法改會認為這已包含在「合理行為」的免責辯護內。本會就諮詢文件的部份建議對新聞自由的深遠影響表示高度關注，並提出如下意見。

意見：

一、 **纏擾行為立法勢將損害新聞自由**

將纏擾行為列作刑事罪行，勢將侵犯新聞自由及表達自由。香港現行法例已可針對制約不少纏擾行為，誠如報告中所列的《個人資料(私隱)條例》，《截取通訊及監察條例》及《家庭及同居關係暴力條例》等。近日私隱專員就刊物的偷拍行為

香港新聞行政人員協會

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(刪除)

的裁定，就是最好例證，對新聞採訪行為亦然。若政府認為需在涉及個人關係的滋擾行為加強法律保障，正確的方向是應有針對地修改補充個別現行法例，並非另立定義寬泛的纏擾行為刑事化。

二、 應豁免記者的新聞採訪活動

若根據目前諮詢文件建議立法，必將成為阻礙傳媒正常採訪的一個很好的法律理據。以近期行政長官候選人的唐英年大宅僭建風波為例，若唐的家人或附近居民報警，指記者採訪造成騷擾，則警方會否因此阻止記者採訪呢？帶出來的情形是，雖有如諮詢文件所言在法庭上以「合理行為」作為免責辯護，但採訪工作必然在未開展司法程序前已遭妨礙或制止。

故此，本會強烈建議若然政府非要立法，應豁免記者的新聞採訪活動。

三、 「免責辯護」不能保證「正當的新聞採訪活動」

諮詢文件提出，現時已把記者「正當的新聞採訪活動」包括在「合理行為」內。但在實際執行中，記者的採訪在甚麼情況下才符合所謂「合理行為」很難介定。本會認為「合理行為」之所以對新聞採訪沒有實質保障，是因為一旦被起訴，新聞機構需花大量資源及時間，以應付實際之法律程序，而該程序亦可能被人濫用。

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四、 結語

我們確信，言論自由是一項基本人權，新聞自由是言論自由的具體表現，是本港的核心價值。眾所週知，新聞界在報導關乎公眾利益的消息方面，擔當重要的角色。本會認為按現建議就纏擾行為立法將損害香港的資訊自由/新聞自由。

資訊自由、新聞自由是香港社會的重要基石。本會強調，若然立法，只有將豁免記者的新聞採訪活動，另行提供特定的免責辯護，最低程度要達到諮詢文件建議的免責辯護 (a) 項「有關的一連串行為是為了防止或偵查罪行的目的而做的」相同的效果，因為新聞界正常的採訪活動，其實是涉及公眾利益，同時亦是維護社會公義，肩負監察公職人員不當行為，以免香港社會受不同利益集團影響，破壞得來不易的公平、公正、公開、透明的成功制度，這才能在立法制約涉及個人關係的纏擾行為和公眾利之間取得平衡，才能真正保障正當的新聞採訪活動，維護香港社會享有新聞自由的核心價值。

香港新聞行政人員協會

2012年3月30日

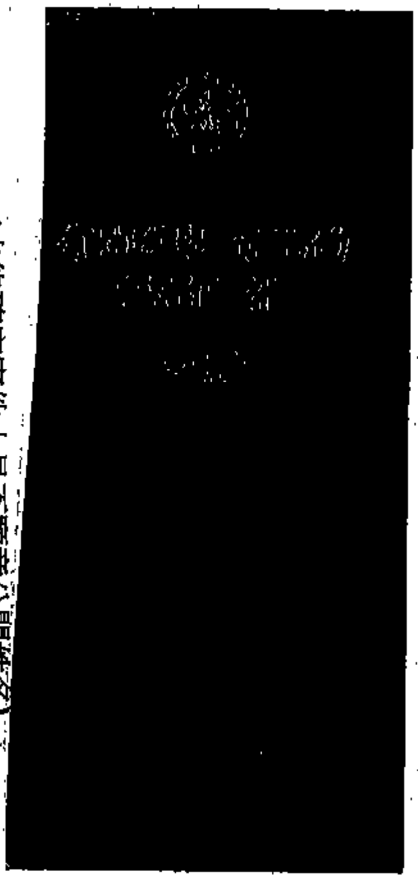
S0457

THIS IS ABOUT THE 3RD TIME I RAISE THIS DEMAND.

A LAW SHOULD BE ESTABLISHED TO FORBID, FORBID, PEOPLE FROM STARING, OR LOOKING, OR NAILING THEIR EYE-ORGANS ON ANOTHER HUMAN BEING, WHETHER THAT OTHER HUMAN BEING POSSESS CONSCIOUSNESS OF DIGNITY OR NOT, WHEN THE STARER, INVARIABLY OF VERY LOW QUALITY HOWEVER WELL OR BADLY ATTIRED, CANNOT TELL THIS.

SUCH LOOKING/STARING, USUALLY COMMITTED WITH INSULTING, LUSTFUL INTENT, IS INJURIOUS TO THE DECENT, WHOSE DIGNITY IS OF COURSE THUS DEPRIVED AND CAUSES MENTAL WOUNDS, WHICH WOUNDS CAN ACCUMULATE TO SERIOUS MENTAL DISTURBANCES OR INJURIES, WOUNDS IN THE HEART, THOUGH HONG KONG IS NOT IN POSSESSION OF SUCH DECENT GENERALLY.

(Unable to ascertain whether the sender agrees to make known his/her identity)



(未能確定寄件人是否願意公開姓名)

引言

纏擾行為可被形容為在某段時間內針對他人所做出的一連串使該人受騷擾、驚恐或困擾的行為。

纏擾者可以下述方式騷擾受害人：在不受歡迎的情況下重複通訊；發出受害人不歡迎的通訊；在街上跟隨受害人；注視或暗中監視受害人的居所或工作地點；送給受害人他不欲接受的禮物或古怪物件；向第三者披露受害人的私隱；對受害人作出直接恐嚇；破壞受害人的財產；以及/或說恐嚇傷害受害人的身體。纏擾行為可以由對特定個人着迷、驚恐但合法的行為，演變成危險、暴力或可致引致他人死亡的行為。

雖然現行的普通法及刑事法涵蓋纏擾行為的某些方面，但只將它們視為不同的個別事件分別處理，未能將纏擾行為視為獨立的現象來處理。因此，法律改革委員會（"法改會"）建議應引入針對纏擾行為的法例，訂明一個人如做出一連串的行為，導致另一人驚恐或困擾，即屬犯罪，並須向受害人負上根據法下的民事責任。

我們尊重法改會的意見，纏擾行為會令受害人及其家人的健康、自由和生活質素受到極大影響。因此，我們建議落實立法針對纏擾行為。

由於法改會的建議具爭議性，我們已發表諮詢文件，載列有關於法改會建議的考慮因素。徵求意見的主要事項概要如下。

徵求意見的事項

立法的需要

- 應否立法禁止纏擾行為？

罪行

- 應否把纏擾行為定為刑事罪行？ 應該
- 若然，應否根據法改會的建議，訂明一個人如做出一連串的行為，而他知道或理應知道這一連串的行為對另一人造成騷擾，並重至足以使該人驚恐或困擾，即屬犯刑事罪？ 是刑事
- 應否將集體纏擾行為及擬將會被涵蓋的纏擾行為定為罪行？ 有罪

罰則

- 應否把纏擾罪行的罰則訂為罰款100,000元及監禁兩年？ 不應，因為財富豐厚的人不足為患

免責辯護

- 應否規定下述法改會建議的免責辯護？
  - (a) 有關行為是為了防止或偵查罪行的目的而做的； 可以
  - (b) 有關行為是在合法權限之下做的；以及
  - (c) 在有關的情況下做出該一連串的行為是合理的。 可以
- 是否同意法改會的建議，上述(c)項的"合理行為"的免責辯護已足以為新聞採訪活動提供的免責辯護，抑或應為新聞採訪活動另外提供特定的免責辯護？若是者，應如何制訂該免責辯護？ 前者可以。

在刑事訴訟中作出禁制令

- 應否授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使受害人或其他人驚恐或困擾的事情，以及將不遵守禁制令的行為定為刑事罪行？ 應授權法院出禁制令，不遵從，應為刑事

為受害人提供民事補救

- 應否訂明一個人如做出一連串的行為，而該一連串的行為會構成騷擾，或重至足以使他人驚恐或困擾，他須向該一連串行為的受害人負上根據法下的民事責任？ 應該。
- 應否讓受害人可以就該一連串行為針對犯行者提出申索，及應由法庭於聆訊中頒發禁止纏擾者做出會導致他驚恐或困擾的事情的禁制令？ 應該

你的意見

諮詢文件可從各區民政事務處諮詢服務中心索取或從本局的網頁下載（網址：www.cmab.gov.hk）。請在二零一二年三月三十一日或之前，以郵寄、傳真或電郵方式提交意見：

地址：
香港添馬添美道2號
政府總部東翼12樓
政制及內地事務局（第4組）

傳真號碼：
3521 0365

電郵地址：
stalking_consultation@cmab.gov.hk

其次，受害人只需提供地點、時間而不便提供實際証據如相片等，因有些人會聘請私家偵探跟蹤，受害人很難拍照，此外，法庭可由以批准「搜查令」去搜查纏擾者的居所和電腦，搜尋罪証，自行[illegible]

纏擾者還會偷拍、竊聽、和在internet散發謠言。
本人已經是受害者，對方特意不顧[illegible]條件而聘請狗仔隊跟蹤，偷拍，而且不斷向人傳播虛構的是非，實在不合理，社會立法保障私隱的安全。

致：纏擾行為的諮詢文件

FAX: 25230565

敬啟者：

① 本人非常同意立法禁止纏擾行為

② 應訂為刑事罪行 絕對同意定為刑事罪

③ 並不理解何謂集體纏擾行為？

④ 罰款為最少 20,000 監禁起碼四年

⑤ 不大理解何為合理辯解？

⑥ 在刑事訴訟中應立刻下禁制令

⑦ 應由纏擾者負上責任

P.①

No.

Date

⑧ 應給與賠償及即下禁制令

本人是一位居者 居於(刪除) 被纏擾及

(刪除)纏擾已三年及踏入第四年 投訴給[illegible]及

非常窮困 報警多次 投訴房屋[illegible]

要作要求調查但不得要領 並報到

這些人搞的事 投訴區議員也無能助

現在這些人變本加厲 在本人不在家

時隨便可入屋偷東西及破壞家中[illegible] P.2

[redacted]

(寄件人要求不具名公開意見)

No.

Date

今次對樓本人已投訴三次，仍可隨便(出入)

一是对门 (刪除) 室 (刪除) 三个中年一对夫婦

姊 (刪除) 及其也常另長，隨便出入屋倒東西，破壞物品，

偷食物品，又損毁也粨

在整層換放較 IP cam，但遭破壞，电腦

和壞了文件，而有 (刪除) 室的中學生 (刪除) 亦有

加入破壞，偷竊，甚之大力拍門及大力打门

很可怖，令不在設他们(搬来只得的四年时間)

P.3

No.

Date

事緣起因是他、((刪除) 室)某晚上晚飯时

食回來，立刻見到而被又打樓 (刪除)

住於(老人單位隔壁(後單位)，在下和是此种單位

有幾位年青人爭拿相机)对着在下拍照，而行

為，再是一二日又用有一条長红线，对準

在下射来，又在大笑地一齊，非同小可

立刻叫來警察，但在下單位细，与家庭流通

不够，索又开窗簾(通常是晚上吃飯时間)

P.4

(寄件人要求不具名公開意見)

[illegible]对方又指[illegible]打，真[illegible]笑。有个[illegible]人
是[illegible]，两个带眼[illegible]，一个没带，都是[illegible]
的。没带眼[illegible]的在(刪除) [illegible]（[illegible]）[illegible]
围[illegible]了[illegible]打，[illegible]了[illegible]在下[illegible](刪除)（[illegible]）
就见到了，他还对在下[illegible]打！你不[illegible]
[illegible]结果都[illegible]下。[illegible]在打开[illegible]时，
对方就会[illegible]打或[illegible]打，[illegible]在都不[illegible]
打开[illegible]也是一样。[illegible]在[illegible]等，在下[illegible]
[illegible]着[illegible]，报警只得[illegible]对答[illegible]。
（有些[illegible]）(刪除)）[illegible] [illegible]） P.5

No

Date

[illegible]入[illegible]打，被在下[illegible]
到又以[illegible]，[illegible]不[illegible]我不到。一只[illegible]
[illegible]有声音，[illegible]已[illegible]
[illegible]用[illegible]布[illegible]着一个[illegible]
在[illegible]又[illegible]
又[illegible]所[illegible]（[illegible]大哭）
[illegible]有[illegible]，[illegible]、回家时[illegible]到[illegible]
其他[illegible]人时，他们都在[illegible]通[illegible]对在[illegible]
[illegible]着不动，等在下[illegible]入[illegible]到他们[illegible]。 P.6

S0459

No.

Date

在街上我碰到不認識的人對着在下[illegible]
笑，或瞪着眼，我朋友大叫是她是她。
在下只好急步快走，最近一次去街夜回
家回是晚上11-12點，周都有十多位十多歲的
孩子們，街上只有在下，其他人只得一兩个已
走了，在下走入大廈更衣房，在下直說[illegible]
24 們，[illegible]後生仔大叫直追着在下在大[illegible]
(是呀呀呀！是呀呀呀！)嚇得在下急快步回[illegible]

老指已是周身痛痛，兩膝更已痛多年。
經此一役，家在[illegible]不清。([illegible])
懇請及傾請你們幫幫忙，救救在下
千多謝，万多謝！

(署名來函)

老指：

(刪除)

手提：(刪除)

P.8

(還有[illegible]電話，[illegible]
(每天起碼有[illegible]電話的)

(寄件人要求不具名公開意見)

Consultation Paper on Stalking

Introduction

1. Hutchison Global Communications Limited and Hutchison Telephone Company Limited (collectively referred to as "Hutchison") are pleased to submit their joint comments on the Consultation Paper on Stalking (the "**Consultation Paper**") as follows:

Insufficient Grounds to Pursue the Proposed Anti-Stalking Law

2. In the Consultation Paper, the Government agrees to the view of the Law Reform Commission ("LRC") that stalking is a problem in Hong Kong that needs to be addressed. It stated that:

> *"Even if stalking does not affect a significant number of people in Hong Kong, the LRC was of the view that it is clearly a serious problem for those affected by such conduct."*

3. In considering the need for the legislation, the Government shares the LRC's view that:

> *"... it is immaterial whether the number of Hong Kong residents affected by stalking behaviour is 100 or 10,000. As long as there are enough cases to show that some people in Hong Kong are being harassed by stalkers, stalking is a problem that needs to be addressed – whether these victims account for 1% or 0.01% of the Hong Kong population."*

4. However, both the LRC and the Government has not elaborated the meaning of "enough cases" and has not provided an objective basis to support and justify LRC's concern.

5. On the contrary, the Government acknowledged that "there are no statistics on stalking per se" to support the Proposed Anti-Stalking Law.

6. With the lack of objective evidence to prove that "stalking" is affecting a substantive number of population in Hong Kong and that it is creating a serious problems to those affected (in an objectively measurable standard), the extent and magnitude of such a "problem" cannot be objectively ascertained. It is pre-mature to consider spending public and administrative resources on creating a law on this subject when there is no concrete evidence of the need for such.

7. No objective evidence indicates that there is a pressing need to pursue such a new law, especially in light of the fact that there are 5 offences under tort law, 7 offences under existing criminal law and 3 offences under common laws that deal with similar behaviour. In the Consultation Paper, it stated that it is impractical and undesirable to await development of the common law to provide comprehensive

protection to victims of stalking. From the other side of the coin, a lack of common law cases may indicate that such protection may already well be provided under the current laws.

8. Besides, even if a law on anti-stalking is proved to be required after a thorough study, in order to ensure that the law is well designed for the purpose, the nature of the incidents that prompted the law in the first place would have to be carefully studied and analyzed in order to ensure that the law will be able to prevent the specific types of behavior that aim to be curtailed. The few examples that were quoted by the LRC do not give a comprehensive view of the types of behaviour that aim to be regulated. Further study in that respect is necessary in order to determine what form the law, if there was to be one, should be.

9. We consider that a balance should be struck between spending public resources on enacting a new law and protecting a hypothetical few of the public. If the number of people affected by stalking behaviour is only a handful number of Hong Kong residents, pursuing the Proposed Anti-Stalking Law may not serve the public interest.

10. In the premises, the Government should collect more objective evidence and figures to analyze the need for the Proposed Anti-Stalking law to justify spending public resources on its enactment.

Elements of the Criminal Offence of Stalking (If Proved Necessary)

(i) Vague definitions

11. Under the Proposed Anti-Stalking Law,

> *"... a person who pursued a course of conduct which amounted to harassment of another, and which he knew or ought to have known amounted to harassment of the other, should be guilty of a criminal offence; for the purpose of the offence, the harassment should be serious enough to cause that person alarm or distress..."*

12. However, no clear definitions are provided for the meanings of "harassment", "alarm" or "distress", as the Government believes that by not defining the above terms, it will give flexibility in law.

13. A balance needs to be struck between providing flexibility in law and providing certainty to the persons who may unfairly be caught under the Proposed Anti-Stalking Law.

14. In the absence of clear definitions, it would be unfair to a person who may not necessarily be aware that his acts would constitute "harassment" of another. Such person may get a wrong impression that his acts are welcomed, or if not, at least not be rejected.

15. There must be clear and indicative refusal or rejection (by words) from the complainant which clearly indicates that further contact is unwanted.

16. Moreover, guidelines and non-exhaustive examples of what conduct may constitute harassment, and under what circumstances, should be provided.

(ii) Mental State of the Victim

17. In the Consultation Paper, the Government agrees with the LRC's suggestion that:

> *"... the activities engaged in by the stalker should have caused the victim alarm or distress (which is a subjective test)..."*

18. It went on to state that the terms "distress" and "alarm" have been used interchangeably in medical literature, without elaborating the difference between the two terms. The frequency and magnitude of "alarm" and "distress" should be clearly set out that there must be a legitimate ground for the person to feel alarmed and distressed.

19. As the victim's state of mind is an important component of the Proposed Anti-Stalking Law, an objective test, instead of a subjective test in respect of the particular individual (who might be ultra sensitive or vulnerable), should be used to determine whether a reasonable person in the same situation would feel alarmed or distressed before the stalker could be charged with the offence of harassment.

(iii) Intention to Harass

20. In the Consultation Paper, the Government concurs with the LRC's view that intention to harass should not be included as an element of the proposed offence for the following reason:

> *"If the stalking offence requires specific intent on the part of the stalker, the anti-stalking provisions would not be able to help victims who suffer at the hands of stalkers who are delusional and not capable of forming the necessary intent."*

21. If the LRC's argument alone is good, the same "concern" could have applied to murder and other criminal offences that require a proof of intent. We do not agree to the view of both the LRC and the Government because intention is an important element of proof in criminal offences. There is no basis to change the fundamentals of the whole criminal law system for the Proposed Anti-Stalking Law.

22. It is unfair and unjustifiable to have a blanket dispensation of the need to prove intent simply because a random few may be incapable of forming an intent. The fundamental of needing to prove intent should remain with an exemption to prove intent be provided to such category of person.

23. The element of an intention to harass an individual with the purpose or effect of creating distress or alarm should be included.

Exemption to Legitimate Business Activities

24. We note that the few examples quoted in the Consultation Paper involve harassment by an ex-girlfriend or between two individuals in their own capacities. None of the examples quoted involve sales activities (or one in the capacity as a consumer).

25. We also note that the proposed Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance Bill 2012 (the "**TDO**") seek to regulate, among others, "aggressive sales practices".

26. It would be a waste of administrative and public resources to have two legislations that potentially overlap or contradict with each other on the same subject matter. Furthermore, it may create uncertainty in carrying out business and incurring high compliance costs, which eventually would harm legitimate business activities. The need for an anti-stalking law on business activities should be assessed only after the TDO is in place for a certain time and is proved to be ineffective. All business activities should be excluded from the scope of the Proposed Anti-Stalking Law.

27. The Government acknowledged that a balance should be struck between interests of different stakeholders:

> "*...how the competing rights and interests, in particular privacy of the individual and freedom of the press, could be balanced would need to be carefully considered and weighed.*"

28. Unless there is certain ill intent or effect that prejudices a consumer's behavior, legitimate sales activities should not be regulated. If a consumer is purely annoyed because of bad selling techniques, then the Proposed Anti-Stalking Law would be punishing a business for bad management with criminal offence, which would be an inappropriately excessive penalty.

29. In respect of collective harassment, different representatives acting for and on behalf of one corporation may be unfairly caught under the Proposed Anti-Stalking Law, if their separate acts may constitute a "course of conduct". An intent of acting together for the purpose of harassing another individual must be one of the elements of the criminal offence (please refer to our views on intention under paragraphs 20 – 23 above). Otherwise, separate innocent and legitimate acts of individuals will be unjustifiably aggregated.

Conclusion

30. Hutchison urges the Government to collect more evidence and conduct a more in-depth analysis in order to provide sufficient grounds to pursue the Proposed Anti-Stalking Law. If the Proposed Anti-Stalking Law is to be pursued, the components of the criminal offence of stalking should be well-defined and that legitimate business activities should be exempted.

Submitted by
Hutchison Global Communications Limited and
Hutchison Telephone Company Limited
on 30 March 2012

不贊成
(a) 有關行為是為了防止或偵查罪行的目的而做的；

不贊成
(b) 有關行為是在合法權限之下做的；以及

不贊成
(c) 在案中的情況下做出該一連串的行為是合理的。

不贊成
是否同意法改會的建議，上述(c)項的"合理行為"的免責辯護已包涵為新聞採訪活動提供的免責辯護，抑或應為新聞採訪活動另外提供特定的免責辯護？若後者，應如何制訂該免責辯護？

不贊成

在刑事訴訟中發出禁制令

贊成
是否授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使案中受害人或其他人驚恐或困擾的事情，以及若然，違反禁制令應否被定為刑事罪行？

贊成

為受害人提供民事補救

贊成
是否訂明一個人如做出一連串的行為，而該一連串的行為會構成騷擾，嚴重至引致他人驚恐或困擾，便須向該一連串行為的目標人物負上侵權法下的民事責任？

贊成
是否讓受害人可以就該一連串行為所引致的困擾、焦慮和經濟損失索取賠償和申請禁止纏擾者做出會導致他驚恐或困擾的事情的強制令？

你的意見

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政府總部（東翼）12 字樓

政制及內地事務局（第4 組）

傳真號碼：

2523 0565

電郵地址：

stalking_consultation@cmab.gov.hk

[illegible]

黃先生

(未能確定寄件人是否願意公開姓名)

引言

纏擾行為可被形容為在某段時間內針對某人所做出的一連串使該人受騷擾、驚恐或困擾的行為。

纏擾者可以下述方式騷擾受害人：在不受歡迎的情況下登門造訪；發出受害人不欲收到的通訊；在街上尾隨受害人；注視或暗中監視受害人的居所或工作地點；送贈受害人他不欲接受的禮物或古怪物件；向第三者披露受害人的私隱；對受害人作出虛假指控；破壞受害人的財產；以及／或襲擊和傷害受害人的身體。纏擾行為可以由初時屬令人氣厭、驚恐但合法的行為，演變成危險、暴力或可能引致他人死亡的行為。雖然現行的普通法及刑事法涵蓋纏擾行為的某些方面，但只將它們視為不同的個別事件分別處理，未能將纏擾行為視為獨立的現象來處理。因此，法律改革委員會("法改會") 建議應引入制約纏擾行為的法例，訂明一個人如做出一連串的行為，導致另一人驚恐或困擾，即屬犯罪，並須向受害人負上侵權法下的民事責任。我們同意法改會的意見，纏擾行為會令受害人及其家人的健康、自由和生活質素受到極大影響。因此，我們建議落實立法制約纏擾行為。由於法改會的建議具爭議性，我們已發表諮詢文件，載列有關於法改會建議的考慮因素。徵求意見的主要事項摘要如下。

徵求意見的事項

立法的需要

☐ 應否立法禁止纏擾行為？✓

罪行

☐ 應否把纏擾行為定為刑事罪行？✓

☐ 若然，應否根據法改會的建議，訂明一個人如做出一連串的行為，而他知道或應該知道這一連串的行為對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪？ ✓

☐ 應否將集體騷擾行為及阻礙合法活動的騷擾行為定為罪行？✓

罰則

☐ 應否就纏擾罪行的罰則劃一為罰款100,000元及監禁兩年？ ✓

免責辯護

☐ 應否提供下述法改會建議的免責辯護？ ✗

(未能確定寄件人是否願意公開姓名)

(a) 有關行為是為了防止或偵查罪行的目的而做的；✗

(b) 有關行為是在合法權限之下做的；✓ 以及

(c) 在案中的情況下做出該一連串的行為是合理的。✗

□ 是否同意法改會的建議，上述(c)項的"合理行為"的免責辯護已包涵為新聞採訪活動提供的免責辯護，✗抑或應為新聞採訪活動另外提供特定的免責辯護？✗若後者，應如何制訂該免責辯護？✗

在刑事訴訟中發出禁制令

□ 應否授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使案中受害人或其他人驚恐或困擾的事情，✓以及若然，違反禁制令應否被定為刑事罪行？✓

為受害人提供民事補救

□ 應否訂明一個人如做出一連串的行為，而該一連串的行為會構成騷擾，屢屢至引致他人驚恐或困擾，便須向該一連串行為的目標人物負上侵權法下的民事責任？✓

□ 應否讓受害人可以就該一連串行為所引致的困擾、焦慮和經濟損失索取賠償和申請禁止騷擾者做出會導致他驚恐或困擾的事情的強制令？✓

你的意見

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[redacted]

OK

(未能確定寄件人是否願意公開姓名)

Y = Yes N = No

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.

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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

Yo Should we legislate against stalking?

Offence

Yo Should stalking be made a criminal offence?

Yo 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?

Yo Should collective harassment and harassment to deter lawful activities be made offences?

Penalty

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

Defences

N o Should the following defences recommended by the LRC be provided?

N (a) the conduct was pursued for the purpose of preventing or detecting crime;

N (b) the conduct was pursued under lawful authority; and

N (c) the pursuit of the course of conduct was reasonable in the particular circumstances.

N o Should a defence for news-gathering activities be subsumed under the "reasonable pursuit" defence in (c) above as recommended by N the LRC, or a separate, specific defence for news-gathering activities be provided? If the N latter, how should the defence be framed?

(Unable to ascertain whether the sender agrees to make known his/her identity)

Y = YES N = NO

Restraining Orders in Criminal Proceedings

Yo 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 Yor any other person and if so, should a breach constitute a criminal offence?

Civil Remedies for Victims

Yo 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?

Yo 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.**

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o Should collective harassment and harassment to deter lawful activities be made offences?

Penalty

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

Defences

o Should the following defences recommended by the LRC be provided? NOT NOT AT ALL:-

(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.

o 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?

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Proceedings

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引言

纏擾行為…彼形容為在…人所做出的…使該人…驚恐…困擾的行為。

纏擾者…述方式騷…歡迎的情況…追訪；…不…到的通訊；在…跟隨受害…窺受害人的居…或…作地點；…接受的禮物…占…物件；…人的私隱；對…人作出虛假…人的財產；以及…和傷…纏擾行為可以由…時屬合法的行為，…演變成危險、暴力或可能…死亡的行為。

雖然現行的普通法及刑事…行為的某些方面，但只將它們按…件分別處理，未能將纏擾行為…來處理。因此，法律改革委員會（…改會）建議…應引入制約纏擾行為的法…，…一個人如做出一連串的行為，導致另一…困擾，即屬犯罪，並須向受害人負上…的民事責任。

我們同意法改會的意見，…受害人…

…和生活…

…立法…行為

…

…法改會建議…

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…法…建…

…，而他知道…

…

…即屬犯…

…行…及附帶合法…的纏擾

…的罰則…100,00

…改會建議的…

(未能確定寄件人是否願意公開姓名)

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(b) 及 賠償和 實質

(c) 做出 是 出擾的事

合

☐ 改善的建 合理 事務處

行 已包涵 網址：w ab.gov

供 響，抑或應 外 月三十一

提 規論？ 訂 式遞交意

談 進

在 訴訟中發出

☐ 法院向一名 發出禁 擾

制令，止該人做出致使 人或其他 組）

人 困擾的事情，以 制

令 定為刑事罪行

為 人提供民事

☐ 應 明一個人如做 行，而該 cmab.gov

一

連串的行為會構成騷擾， 致他人驚

恐或困擾，便須向該一 目擊人物負

上侵權法下的民事責任？ 同意

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Offence

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o 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? ✓

o Should collective harassment and harassment to deter lawful activities be made offences? ✓

Penalty

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

Defences

o 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. ✗

o 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? ✗ ✗ ✗

(Unable to ascertain whether the sender agrees to make known his/her identity)

Restraining Orders in Criminal

Proceedings

o 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? ✓ ✓

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Offence

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o Should collective harassment and harassment to deter lawful activities be made offences? Of Course

Penalty

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Defences

o Should the following defences recommended by the LRC be provided? None of them:

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引言

纏擾行為可被形容為在某段時間內針對某人所做出的一連串使該人受騷擾、驚恐或困擾的行為。

纏擾者可以下述方式騷擾受害人：在不受歡迎的情況下登門造訪；發出受害人不欲收到的通訊；在街上尾隨受害人；注視或暗中監視受害人的居所或工作地點；送贈受害人他不欲接受的禮物或古怪物件；向第三者披露受害人的私隱；對受害人作出虛假指控；破壞受害人的財產；以及／或侵犯和傷害受害人的身體。纏擾行為可以由初時屬令人煩厭、驚恐但合法的行為，演變成危險、暴力或可能引致他人死亡的行為。雖然現行的普通法及刑事法涵蓋纏擾行為的某些方面，但只將它們視為不同的個別事件分別處理，未能將纏擾行為視為獨立的現象來處理。因此，法律改革委員會("法改會")建議應引入制約纏擾行為的法例，訂明一個人如做出一連串的行為，導致另一人驚恐或困擾，即屬犯罪，並須向受害人負上侵權法下的民事責任。我們同意法改會的意見，纏擾行為會令受害人及其家人的健康、自由和生活質素受到極大影響。因此，我們建議落實立法制約纏擾行為。由於法改會的建議具爭議性，我們已發表諮詢文件，臚列有關於法改會建議的考慮因素。徵求意見的主要事項撮要如下。

徵求意見的事項

立法的需要

☐ 應否立法禁止纏擾行為？(應)

罪行

☐ 應否把纏擾行為定為刑事罪行？(應)

☐ 若然，應否根據法改會的建議，訂明一個人如做出一連串的行為，而他知道或應該知道這一連串的行為對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪？(應)

☐ 應否將集體騷擾行為及阻礙合法活動的騷擾行為定為罪行？(應)

罰則

☐ 應否就纏擾罪行的罰則劃一為罰款100,000元及監禁兩年？(應)

免責辯護

☐ 應否提供下述法改會建議的免責辯護？(否)

(未能確定寄件人是否願意公開姓名)

(a) 有關行為是為了對該人作出該罪行的目的而做的；否

(b) 有關行為是在沒有法律權限下做的；以及否

(c) 在案中的情況下，該連串行為是合理的。否

□ 是否同意，在(c)項的"合理行為"的免責辯護已包涵為新聞採訪活動提供的免責辯護，抑或應為新聞採訪活動另外提供特定的免責辯護？若後者，應如何制訂該免責辯護？否

在刑事訴訟中發出禁制令

□ 應否授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使案中受害人或其他人驚恐或困擾的事情，以及明知而違反禁制令應否被定為刑事罪行？應

為受害人提供民事補救

□ 應否訂明一個人如做出一連串的行為，而該一連串的行為會構成騷擾，嚴重至引致他人驚恐或困擾，便須向該一連串行為的目標人物負上侵權法下的民事責任？應

□ 應否讓受害人可以就該一連串行為所引致的困擾、焦慮和經濟損失索取賠償和申請禁止纏擾者做出會導致他人驚恐或困擾的事情的強制令？應

你的意見

諮詢文件可從各區民政事務處諮詢服務中心索取或從本局的網頁下載（網址：www.cmab.gov.hk）。請在二零一二年三月三十一日或之前，以郵寄、傳真或電郵方式遞交意見：

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傳真號碼：

2523 0565

電郵地址：

stalking_consultation@cmab.gov.hk

[redacted]

簽名

(未能確定寄件人是否願意公開姓名)

引言

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雖然現行的普通法及刑事法涵蓋纏擾行為的某些方面，但只將它們視為不同的個別事件分別處理，未能將纏擾行為視為獨立的現象來處理。因此，法律改革委員會("法改會")建議應引入制約纏擾行為的法例，訂明一個人如做出一連串的行為，導致另一人驚恐或困擾，即屬犯罪，並須向受害人負上侵權法下的民事責任。我們同意法改會的意見，纏擾行為會令受害人及其家人的健康、自由和生活質素受到極大影響。因此，我們建議引入立法制約纏擾行為。

由於法改會的建議具爭議性，我們已發表諮詢文件，載列有關於法改會建議的考慮因素。徵求意見的主要事項摘要如下。

徵求意見的事項

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☑ 應否立法禁止纏擾行為？

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☑ 若然，應否根據法改會的建議，訂明一個人如做出一連串的行為，而他知道或應該知道這一連串的行為對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪？

☑ 應否將集體騷擾行為及單獨一人活動的騷擾行為定為罪行？

罰則

☑ 應否就纏擾罪行的罰則訂為罰款100,000元及監禁兩年？

免責辯護

☒ 應否提供下述法改會建議的免責辯護？

(未能確定寄件人是否願意公開姓名)

X :→

(a) 有關行為是為了防止或偵查罪行的目的而做的；

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□ 是否同意法改會的建議，上述(c)項的"合理行為"的免責辯護已包涵為新聞採訪活動提供的免責辯護，抑或應為新聞採訪活動另外提供特定的免責辯護？若後者，應如何制訂該免責辯護？

在刑事訴訟中發出禁制令

☒ 應否授權法院向一名被定罪的罪犯發出禁制令，禁止該人做出致使家中受害人或其他人驚恐或困擾的事情，以及若然，違反該禁制令應否被定為刑事罪行？

為受害人提供民事補救

☒ 應否訂明一個人如做出一連串的行為，而該一連串的行為會構成騷擾，騷擾至引致他人驚恐或困擾，便須向該一連串行為的目標人物負上侵權法下的民事責任？

☑ 應否讓受害人可以就該一連串行為所引致的困擾、焦慮和經濟損失索償和申請禁止騷擾者做出會導致他驚恐或困擾的事情的強制令？

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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 street, 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

o Should there be legislation against stalking? OK

Offence

o Should stalking be made a criminal offence? OK

o 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? OK

o Should collective harassment and harassment to deter lawful activities be made offences? OK

Penalty

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

Defences

o Should the following defences recommended by the LRC be provided? SHOULD NOT :

(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.

o 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?

(Unable to ascertain whether the sender agrees to make known his/her identity)

Restrai... Orders in Criminal

Proceedi...s

- **Shoul...** the court be empowe... to make a restrai...ing order to prohibit a p...son convicted of stalking from doing anything which ca...s alarm or distres... to the victim or any other person and if so, ... a breach constitu... a criminal offence? OK

OK

Civil Remedies for Victims

- **Shoul...** a person who purs... course of conduct which amounts to ha...ment serious enough to cause alarm or distr... another be made liable in tort to the ob... of the pursuit? OK
- **Shoul...** the victim be able to cla... damages for any distress, anxiety and financial ... s resulting from the pursuit and apply for an ...junction to prohibit the stalker from doing anything which causes him alarm or distress? OK

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
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4

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引言

纏擾行為可被形容為在某段時間內針對某人所做出的一連串使該人受騷擾、驚恐或困擾的行為。

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雖然現行的普通法及刑事法涵蓋纏擾行為的某些方面，但只將它們視為不同的個別事件分別處理，未能將纏擾行為視為獨立的罪行來處理。因此，法律改革委員會("法改會")建議引入制約纏擾行為的法例，訂明一個人如做出一連串的行為，導致另一人騷擾或困擾他的罪犯罪，並須向受害人負上侵權法下的民事責任。我們同意法改會的意見，纏擾行為會令人感到

及其家人的健康、自由和生活質素受到極大影響。因此，我們建議就有關立法制約纏擾行為。

由於法改會的建議具爭議性，我們已發表諮詢文件，臚列有關於法改會建議的考慮因素。現就意見的主要事項摘要如下。

徵求意見的事項

立法的需要

(1) 應否立法禁止纏擾行為？

罪行

(2) 應否把纏擾行為定為刑事罪行？

(3) 若然，應否根據法改會的建議，訂明一個人多次做出一連串的行為，而他知道或應該知道這一連串的行為對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪？

(4) 應否將集體騷擾行為和團體合法活動的騷擾行為定為罪行？

罰則

(5) 應否就纏擾罪行的最高刑罰為罰款100,000元及監禁兩年？

免責辯護

(6) 應否提供下述法改會建議的免責辯護？

(未能確定寄件人是否願意公開姓名)

(a) 有關行為是為了防止或偵查罪行的目的而做的；

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☐ 是否同意法改會的建議，上述(c)項的"合理行為"的免責辯護已包涵為新聞採訪活動提供的免責辯護，抑或應為新聞採訪活動另外提供特定的免責辯護？若後者，應如何制訂該免責辯護？

在刑事訴訟中發出禁制令

☑ 應否授權法院向一名被定罪的騷擾者發出禁制令，禁止該人做出致使案中受害人或其他人懼怕或困擾的事情，以及若然，違反禁制令應否被定為刑事罪行？

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由於法改會的建議具爭議性，我們已發表諮詢文件，臚列有關於法改會建議的考慮因素。徵求意見的主要事項撮要如下。

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☐ 應否立法禁止纏擾行為？

罪行

☐ 應否把纏擾行為定為刑事罪行？

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免責辯護 不要：

☐ 應否提供下述法改會建議的免責辯護？

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不要：

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□ 是否同意法改會的建議，上述(c)項的"合理行為"的免責辯護已包涵為新聞採訪活動提供的免責辯護，抑或應為新聞採訪活動另外提供特定的免責辯護？若後者，應如何制訂該免責辯護？

要：

□ 應否容許受害人可以就該一連串行為所引致的困擾、焦慮和經濟損失索取賠償和申請禁止纏擾者做出會導致他感恐或困擾的事情的強制令？

在刑事訴訟中發出禁制令

要：

□ 應否授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使案中受害人或其他人感恐或困擾的事情，以及若然，違反禁制令應否被定為刑事罪行？

為受害人提供民事補救

□ 應否訂明一個人如做出一連串的行為，而該一連串的行為會構成騷擾，並達至引致他人感恐或困擾，便須向該一連串行為的目標人物負上侵權法下的民事責任？

你的意見

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政制及內地事務局（第4 組）

傳真號碼：

2523 0565

電郵地址：

stalking_consultation@cmab.gov.hk

[redacted]

[redacted]

[redacted]大

(未能確定寄件人是否願意公開姓名)

引言

纏擾行為可被形容為在某段時間內針對某人所做出的一連串使該人受騷擾、驚恐或困擾的行為。

纏擾者可以下述方式騷擾受害人：在不受歡迎的情況下登門造訪；發出受害人不欲收到的通訊；在街上尾隨受害人；注視或暗中監視受害人的居所或工作地點；送贈受害人他不欲接受的禮物或古怪物件；向第三者披露受害人的私隱；對受害人作出虛假指控；破壞受害人的財產；以及／或襲擊和傷害受害人的身體。纏擾行為可以由初時屬令人煩厭、驚恐但合法的行為，演變成危險、暴力或可能引致他人死亡的行為。

雖然現行的普通法及刑事法涵蓋纏擾行為的某些方面，但只將它們視為不同的個別事件分別處理，未能將纏擾行為視為獨立的現象來處理。因此，法律改革委員會("法改會") 建議應引入制約纏擾行為的法例，訂明一個人如做出一連串的行為，導致另一人驚恐或困擾，即屬犯罪，並須向受害人負上侵權法下的民事責任。我們同意法改會的意見，纏擾行為會令受害人及其家人的健康、自由和生活質素受到極大影響。因此，我們建議落實立法制約纏擾行為。

由於法改會的建議具爭議性，我們已發表諮詢文件，載列有關於法改會建議的考慮因素。徵求意見的主要事項撮要如下。

徵求意見的事項

立法的需要

☐ 應否立法禁止纏擾行為？

罪行

☐ 應否把纏擾行為定為刑事罪行？

☐ 若然，應否根據法改會的建議，訂明一個人如做出一連串的行為，而他知道或應該知道這一連串的行為對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪？

☐ 應否將集體騷擾行為及阻撓合法活動的騷擾行為定為罪行？

罰則

☐ 應否就纏擾罪行的罰則劃一為罰款100,000元及監禁兩年？

免責辯護

☐ 應否提供下述法改會建議的免責辯護？：

(未能確定寄件人是否願意公開姓名)

(a) 有關行為是為了防止或偵查罪行的目的而做的;

(b) 有關行為是在合法權限之下做的；以及

(c) 在案中的情況下做出該一連串的行為是合理的。

□ 是否同意法改會的建議，上述(c)項的"合理行為"的免責辯護已包涵為新聞採訪活動提供的免責辯護，抑或應為新聞採訪活動另外提供特定的免責辯護？若後者，應如何制訂該免責辯護？

在刑事訴訟中發出禁制令

□ 應否授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使案中受害人或其他人驚恐或困擾的事情，以及若然，違反禁制令應否被定為刑事罪行？

為受害人提供民事補救

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□ 應否讓受害人可以就該一連串行為所引致的困擾、焦慮和經濟損失索取賠償和申請禁止纏擾者做出會導致他驚恐或困擾的事情的強制令？

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Introduction

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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

YES o Should we legislate against stalking?

Offence

YES o Should stalking be made a criminal offence?

YES o 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?

YES o Should collective harassment and harassment to deter lawful activities be made offences?

Penalty

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

Defences

NONE OF THESE ?

o 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.

o 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?

INVASION OF PRIVACY

(Unable to ascertain whether the sender agrees to make known his/her identity)

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

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徵求意見的事項

立法的需要

☐ 應否立法禁止纏擾行為？

罪行

☐ 應否把纏擾行為定為刑事罪行？

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Issues on which Comments are Invited

Need for Legislation

o Should we legislate against stalking? OK

Offence

o Should stalking be made a criminal offence? OK

o 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? OK

o Should collective harassment and harassment to deter lawful activities be made offences?

Penalty

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

Defences

ABSOLUTELY NOT :—

o Should the following defences recommended by the LRC be provided?

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PRIVACY RIGHT

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Proceedings

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引言

纏擾行為可被形容為在某段時間內針對某人所做出的一連串使該人受騷擾、驚恐或困擾的行為。

纏擾者可以下述方式騷擾受害人：在不受歡迎的情況下登門造訪；發出受害人不欲收到的通訊；在街上尾隨受害人；注視或暗中監視受害人的居所或工作地點；送贈受害人他不欲接受的禮物或古怪物件；向第三者披露受害人的私隱；對受害人作出虛假指控；破壞受害人的財產；以及／或襲擊和傷害受害人的身體。纏擾行為可以由初時屬令人煩厭、驚恐但合法的行為，演變成危險、暴力或可能引致他人死亡的行為。雖然現行的普通法及刑事法涵蓋纏擾行為的某些方面，但只將它們視為不同的個別事件分別處理，未能將纏擾行為視為獨立的現象來處理。因此，法律改革委員會("法改會") 建議應引入制約纏擾行為的法例，訂明一個人如做出一連串的行為，導致另一人驚恐或困擾，即屬犯罪，並須向受害人負上侵權法下的民事責任。我們同意法改會的意見，纏擾行為會令受害人及其家人的健康、自由和生活質素受到嚴大影響。因此，我們建議落實立法制約纏擾行為。

由於法改會的建議具爭議性，我們已發表諮詢文件，臚列有關於法改會建議的考慮因素。徵求意見的主要事項摘要如下。

徵求意見的事項

立法的需要：✓

☐ 應否立法禁止纏擾行為？ ✓

罪行

☐ 應否把纏擾行為定為刑事罪行？ ✓

☐ 若然，應否根據法改會的建議，訂明一個人如做出一連串的行為，而他知道或應該知道這一連串的行為對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪？ ✓

☐ 應否將集體騷擾行為及阻礙合法活動的騷擾行為定為罪行？ ✓

罰則

☐ 應否就纏擾罪行的罰則劃一為罰款100,000元及監禁兩年？ ✓

免責辯護

☐ 應否提供下述法改會建議的免責辯護？ 不要：X

(未能確定寄件人是否願意公開姓名)

(a) 有關行為是為了防止或偵查罪行的目的而做的；

(b) 有關行為是在合法權限之下做的；以及

(c) 在案中的情況下做出該一連串的行為是合理的。

☐ 是否同意法改會的建議，上述(c)項的"合理行為"的免責辯護已包涵為新聞採訪活動提供的免責辯護，抑或應為新聞採訪活動另外提供特定的免責辯護？若後者，應如何制訂該免責辯護？

在刑事訴訟中發出禁制令

☐ 應否授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使案中受害人或其他人難恐或困擾的事情，以及若然，違反禁制令應否被定為刑事罪行？

為受害人提供民事補救

☐ 應否訂明一個人如做出一連串的行為，而該一連串的行為會構成騷擾，而且至引致他人難恐或困擾，便須向該一連串行為的目標人物負上侵權法下的民事責任？

☐ 應否讓受害人可以就該一連串行為所引致的驚、焦慮和經濟損失索取賠償和申請禁止纏擾者做出會導致他難恐或困擾的事情的強制令？

你的意見

諮詢文件可從各區民政事務處諮詢服務中心索取或從本局的網頁下載(網址：www.cmab.gov.hk)。請在二零一二年三月三十一日或之前，以郵寄、傳真或電郵方式遞交意見：

地址：

香港添馬添美道2 號

政府總部（東翼）12 字樓

政制及內地事務局（第4 組）

傳真號碼：

2523 0565

電郵地址：

stalking_consultation@cmab.gov.hk

[redacted]

(未能確定寄件人是否願意公開姓名)

Restraining Orders in Criminal

Proceedings

o 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

o 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?

o 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 [redacted] !PRIVACY!

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:
2525 0565
E-mail address:
stalking_consultation@cmab.gov.hk

(Unable to ascertain whether the sender agrees to make known his/her identity)

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

o Should we legislate against stalking?

Offence

o Should stalking be made a criminal offence?

o 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?

o Should collective harassment and harassment to deter lawful activities be made offences?

Penalty

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

Defences

o 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.

o 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?

! PRIVACY !

(Unable to ascertain whether the sender agrees to make known his/her identity)

Introduction

Stalking may be described as a series of acts directed at a specific person which, taken together over a period of time, cause 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 conduct that may initially be annoying, alarming or lawful behaviour to the level of dangerous, violent and potentially fatal acts.

Although existing common law and statutory 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 liberty of both the victim and his family. We, therefore, propose to put forward legislation against stalking. As a number of the LRC's recommendations are controversial, we have issued a consultation paper setting out the controversial issues relevant to the LRC's recommendations. The major issues which we have raised and are highlighting now are:

Issues on which Comments are Invited

Need for Legislation

o Should we legislate against stalking? ✓

Offence

o Should stalking be made a criminal offence? ✓

o 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? ✓

o Should collective harassment and harassment to deter lawful activities be made offences? ✓

Penalty

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

Defences

o 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; ✗

o 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? ✗ ✗ ✗

(Unable to ascertain whether the sender agrees to make known his/her identity)

Restraining Orders in Criminal

Proceedings

o Should the court be empowered to make
a restraining order prohibiting a person
convicted of stalking from doing anything
which causes alarm or distress to the victim
or any other person? If so, should such an order
constitute a criminal offence?

Civil harassment injunctions

o Should a person who pursues a course of
conduct that amounts to harassment of another
enough to cause alarm or distress of a serious
be made that he or she is not to pursue the objectionable
pursuit?
o Should the victim be able to claim damages for
any distress and financial loss resulting
from the harassment and apply for an injunction
prohibiting the harasser from doing any act which
causes him or her alarm or distress?

Your views

You can [illegible] consultation process [illegible]
the Public [illegible] Secretariat, Constitutional Affairs
Offices [illegible] from our website (www.
cmab.gov.hk) [illegible] your views by e-mail,
facsimile [illegible] on or before 31 March 2013.
Address:
Team
Constitutional and Mainland Affairs Bureau
Central [illegible] Offices
12/F, [illegible]
2 Tim Mei Avenue, Tamar
Hong Kong
Fax number:
2523 [illegible]
E-mail address:
stalking-consultation@cmab.gov.hk

(Unable to ascertain whether the sender agrees to make known his/her identity)

引言

纏擾行為可被形容為在某段時間內……所做出的一連串使致人受騷擾、……的行為。

纏擾者可以下述方式騷擾受害人……迎的情況下登門造訪；發出受害人……通訊；在街上跟蹤受害人；注視受害人的居所或工作地點；送贈受……受的禮物或古怪物件；向第三者……私隱；對受害人作出虛假指控，……產；以及／或……和傷害受害人的……

對……以由初時……人煩厭、……演變成危險、……或可能引致……對……進行的……及刑事法源……某些方面，……將它們視為……別處理，未……纏擾行為視為……處理。因此，……改革委員會……應……人士……行為的法例，……一連串的行為……致另一人騷……擾，並須向……人負上侵權……我們同意法……的意見，纏擾……

及……人的私隱、自由和生活質素受到極大……因此，我們建議落實立法制約纏擾行為。……改會……諮詢……生，我們已發表諮……文件，載列有關該……會建議的考慮因素。……員的主要事項……如下。

……事……項

……的需要

……立法……行為？

……行為……罪行？

……的建議，訂明一個人……行為，而他知道或應該知道……對……人造成騷擾，嚴重至……或困擾，即屬犯刑事罪？

……及……合法活動的騷擾……

……罰……款 100,000……

……的免責辯護？

(未能確定寄件人是否願意公開姓名)

(a) 何關行為 … 防止或偵 …

而 … 的；

(b) … 法權限之 …

(c) … 做出該一 …

合 … 的。

… 的建議， …

… 的豁免 … 涵為新 …

… ？若後者 …

… 引致的

… 禁止繼續

… 的強制令？

… www.cmab.gov.

… 三 … 之前，

在 … 出禁制

… 一名被定 …

… 致使案中 …

…，以及對

… 行？

… 事補救

… 如做出一 …

… @ … gov.hk

… 行為 … 援，最

… 一連串行 …

上 … 法 … 任？

(未能確定寄件人是否願意公開姓名)

支持政府立法。

我在一間護理安老院工作，近半年受到姓劉同事纏擾。工作時走到那就追到那，擋住我的路，不斷咒罵、滋扰、恐吓、到出手攻擊我，一次報警。兩次被劉害到情緒失控入醫院(拿刺器傷害自己)現有在工作進，一個正常人被人纏扰到失常，是一個悲慘又可怕的事，不知何時可以走出這慘局，可望政府早日立法。

(署名來函)

(未能確定寄件人是否願意公開姓名)

31-MAR-2012 11:48 FROM TO 25230565 P.01

敬啟者：

關於就(纏擾行為)立法，本人極之讚成。概因每人皆有享受平靜生活，言論自由及個人空間的自由。社會上有些不良分子，無惡不作，以作弄別人，侵害別人自由空間，發洩個人對社會不滿，將怨氣發洩於別人身上，為因小事，或在交談中，言語中談及別人，繼而懷恨人，或指派不良份子打擾別人，不分時不分早晚，以電話騷擾別人，令人精神及肉體及生活上飽受困擾。就算報警，警方也未必受理，就算受理也難於查辦。本人也是受害者之一。此等不良份子的行為比殺人、放火、打劫的行為更甚，如果不加嚴懲，實在對整個社會不公，對守法之希望生活在一個有良好治安有個人生活空間的大多數市民不公道。本人極之讚成對做出此等事的人加以懲處，以收阻嚇之效，治安機關需加以公開宣傳，阻止人們以此為樂。

(署名來函)

(未能確定寄件人是否願意公開姓名)

S0484

To: 政策及內地事務局(第4組)

Fax: 2523 0565

Re: 有關纏擾行為的諮詢

① 我完全同意為禁止纏擾行為立法,因為那是一個人損人不利己的行為,令受害人不得安寧。只是,在定罪方面,訂明他"知道"或"應該知道"他所做的是對另一人造成騷擾,可能較為籠統。我近年不斷收到不meaning顯示的電話,壹天十幾次,不作聲,有時早上6時多打來,晚上十一時多又打來,我要警方協助調查,事情還未解決。你說這是不是騷擾?不立法,怎可教訓這些自私鬼!

② 罰則是警誡作用,10万及入獄兩年,同意。

③ 免責辯護,是民主社會的體現,同意有"合理行為"的辯解,一切待法庭以事實判斷。

(署名來函)

(未能確定寄件人是否願意公開姓名)

S0485

傳真 24230565

☒ 贊成立法及懲罰、檢控「纏擾行為」

本人十分贊成立法~~懲治~~檢控「纏擾行為」的不良人仕，因為本人亦一象受傷又正接受醫治的人（無論是工傷或是交通意外受傷）不斷被有關的保險公司的人監視、跟蹤、偷拍，做成對我們的滋擾以及壓力和侵犯我們的私隱。就算我們在電話中與人傾談，都會被這些人偷聽，盼望將這些問題一併立法檢控。謝謝！

30-3-2012

(未能確定寄件人是否願意公開姓名)

第五章：徵求意見的事項

立法的需要

1. 請就我們立法禁止纏擾行為的建議提出意見。

騷擾罪

2. 請就以下事宜提出意見：

(a) 應否把纏擾行為根據法改會提出的下述建議定為刑事罪行：答：应該

(i) 一個人如做出一連串的行為，而這一連串的行為對另一人造成騷擾，他亦知道或應該知道這一連串的行為對該另一人造成騷擾，即屬犯刑事罪；

(ii) 就此罪行而言，所造成的騷擾應該嚴重至足以使該人驚恐或困擾；以及

(iii) 如果一名持有相同資料的合理的人會認為該一連串行為對該另一人造成騷擾，做出該一連串行為的人便會被認為應該知道他的一連串行為對該另一人造成騷擾；以及

(b) 應否將集體騷擾行為和阻礙合法活動的騷擾行為定為罪行：答：应該

罰則

3. 如推行擬議罪行的話，請就以下事宜提出意見：

(a) 應否就擬議嚴擾罪訂定單一的最高罰則，不論犯事者是知道還是應該知道其行為構成嚴擾；答：应該

(b) 擬議嚴擾罪的最高刑罰應否定為第 6 級罰款(100,000 元)及監禁兩年；答：应該

(c) 應否將集體嚴擾罪和阻礙合法活動的嚴擾罪的罰則定在與上文(b)段所提述的同一水平；以及 答：应該

(d) 向法院提起法律程序的時限應否指明為當纏擾者的行為構成一連串行為，而這些行為的累積效果使受害人驚恐及困擾起計的兩年。
答：一年較適當(如各方面環境許可情況下)

免責辯護

4. 請就以下事宜提出意見：

(a) 應否就嚴擾罪(如推行的話)提供法改會建議的下述免責辯護：

(i) 有關行為是為了防止或偵查罪行的目的而做的 答：应該

(ii) 有關行為是在合法權限之下做的；以及 答：应該

(iii) 在案中的情況下做出該一連串行為是合理的；答：应該

(未能確定寄件人是否願意公開姓名)

(i) 若民事法庭在一宗以嚴擾為由而提起的訴訟中發出強制令，該法庭應該可以在強制令附上逮捕權書；唔可以

(ii) 警務人員應該無需手令便可以逮捕他合理地懷疑違反附有逮捕權書的強制令的人；唔可以

(iii) 審理違反該強制令的法庭應該可以將被告人羈押或准予保釋；唔可以

(iv) 若法庭沒有在強制令附上逮捕權書，而原告人又認為被告人有做出強制令禁止他做的事情，則原告人應該可以向法庭申請逮捕被告人的手令；以及唔可以

(v) 若被告人被執行手令的人逮捕，審理違反強制令的法庭應該可以將被告人羈押或准予保釋；以及唔可以

(b) 我們所提出有關不應將違反民事強制令的行為定為刑事罪行的意見。

(ii) 是否須指明禁制令的時效，還是該命令可指明時效或不指明時效直至另行通知為止；否：須指明時效(如需要，可於到期後再發)

(iii) 是否容許檢控官、被告人或禁制令提述的任何其他人向法院申請更改或撤銷該禁制令；以及否：容許

(iv) 違反禁制令的最高刑罰應否與騷擾罪的建議刑罰定在同一水平(即第 6 級罰款(100,000 元)及監禁兩年)。否：應該

為受害人提供民事補救

6. 請就應否推行下述建議提出意見：

(a) 一個人如做出一連串的行為，而該一連串的行為會構成騷擾，程度嚴重至引致他人驚恐或困擾，便須向該一連串行為的目標人物負上侵權法下的民事責任；以及否：應該

(b) 以騷擾為由提起訴訟的原告人可以就該一連串行為所引致的困擾、焦慮和經濟損失索取賠償和申請禁止被告人做出會導致原告人驚恐或困擾的事情的強制令。否：應該

執行強制令

7. 請就以下事宜提出意見：

(a) 應否推行法改會所提出的下述建議：

(未能確定寄件人是否願意公開姓名)

(b) 就藐視罪(如推行的話)，是否同意法改會的建議，即上文第(a)(iii)分段的"合理行為"的免責辯護應已包含為新聞採訪活動提供的免責辯護；抑或應為新聞採訪活動另外提供特定的免責辯護；

答：

(c) 如應為新聞採訪活動另外提供特定的免責辯護，如何制訂該項免責辯護(不論是有規範的或是無規範的)？

答：應以具充足理據為基礎(特殊情況)

(d) 應否就藐視罪(如推行的話)提供任何其他的免責辯護；以及

答：具充份理由才應該(特殊情況)

(e) 應否就集體藐視罪及阻礙合法活動的藐視罪(如推行的話)提供任何免責辯護；以及若然，甚麼免責辯護？

答：如是充份理由理據才應該

在刑事訴訟中發出禁制令

5. 請就以下事宜提出意見：

(a) 法院處罰一名被判藐視罪(如推行的話)的人時，應否有權發出禁制令，禁止該人做出致使案中受害人或其他法院認為適當的人驚恐或困擾的事情；以及

答：應該有权

(b) 若然：

(i) 法院是否可以在對被判犯藐視罪的被告人判刑、或在發出感化令或發出無條件或有條件釋放被告人的命令之餘發出該禁制令；

答：可以

(未能確定寄件人是否願意公開姓名)

香港個人資料私隱專員公署
Office of the Privacy Commissioner
for Personal Data, Hong Kong

Your Ref :
Our Ref : (deleted)

31 March 2012
(By Hand)

Ms. Adeline Wong
Under Secretary for Constitutional and Mainland Affairs
Constitutional and Mainland Affairs Bureau
Central Government Offices
12/F East Wing
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Adeline,

Consultation Paper on Stalking

We enclose our submission in response to the Consultation Paper on Stalking issued by the Constitutional and Mainland Affairs Bureau on 19 December 2011.

We hope you will find our submissions helpful. Please note that we have no objection to our views being reproduced and attributed to us in any publicly available report arising from this consultation exercise.

Yours sincerely,

(signed)

(Brenda Kwok)
Chief Legal Counsel
for Privacy Commissioner for Personal Data

Encl.

(deleted)

PCPD's Submission in response to Public Consultation on Stalking

General support on more stringent regulation

Generally speaking, stalking is more a subject touching on "personal privacy" rather than "information privacy" which falls within the ambit of the Personal Data (Privacy) Ordinance ("Ordinance"). However, given its wide scope of coverage according to its meaning[1] in the Consultation Paper ("Paper") a stalker may engage in a series of act like collection and dissemination of the personal data of the victim, personal data privacy issues may arise as a result of the acts or behaviour of the stalker. In this respect, we wish to express our support to the Administration for its proposal to legislate and formulate sanctions against stalking. To treat stalking as a unique issue and deal with it in an independent manner would be able to plug the loophole of insufficient coverage or protection offered by our existing civil and criminal law, and thereby enhancing the privacy protection of individuals.

Media Intrusion and Privacy

2. As explained in detail below, we have been dealing with two types of complaints under the Ordinance which could well fall within the ambit of stalking. The first type of complaints refers to clandestine taking of photos of celebrities and artistes through systematic surveillance and using special photographic equipment such as long focus lens and magnifier. The second type of complaints refers to abusive debt collection practices. In both cases, the complainants generally felt and we agree that the existing provisions of the Ordinance are inadequate in safeguarding privacy. First, we have no authority to award compensation to aggrieved data subjects or to impose monetary penalties on data users for contraventions of the Data Protection Principles (DPPs). The aggrieved data subject is left on his own to institute legal proceedings against the data user concerned to seek compensation under the Ordinance. Secondly, contravention of the DPPs is not an offence per se. The most forceful action we may take is to issue an enforcement notice to direct the data user to take specified remedial steps within a specified period. Only if the

[1] "As explained in the LRC Report on "Stalking", stalking may be described as a series of acts directed at a specific person that, taken together over a period of time, causes him to feel harassed, alarmed or distressed", paragraph 2.1 of the Paper.

data user contravenes the enforcement notice will it commit an offence. The punitive effect of this arrangement is weak. Thirdly, we may serve an enforcement notice only when a contravention is likely to continue or be repeated. Further, in the event that a data user resumes the same contravening act shortly after compliance with the enforcement notice, we can only issue another enforcement notice.

3. If we adopt the wide definition of stalking[2], a data user's persistent unfair collection of the data subject's personal data may be part and parcel of the stalking. Back in 1999, the Court of Appeal in the case of *Eastweek Publisher Limited & Another v Privacy Commissioner for Personal Data [2000] 2 HKLRD 83* ruled that a photograph of an individual could amount to personal data.

4. More recently, three artistes complained to us in June 2011 alleging that photos of their private life at home were taken surreptitiously and published in magazines. The complainants had been photographed naked or in their intimate moment, in their own living units. The photos were apparently taken from a far distance outside their premises, without their knowledge, through systematic surveillance and using special photographic equipment. We have determined that such act amounted to unfair collection of personal data contrary to DPP1(2) in Schedule 1 under the Ordinance. Please refer to http://www.pcpd.org.hk/english/publications/invest_report.html for details of the case.

5. This is a classic example of a scenario where a breach of personal data privacy right would overlap with the concept of stalking. The artistes could well have perceived the act of covert photography as an interference with the privacy and family life over a period of time, thereby causing them distress, alarm or even serious impairment of their physical or psychological well-being.

6. We agree with paragraph 3.43 of the Paper that the media must sometimes be persistent when trying to solicit responses from their targets who refuse to communicate over a matter of public interest. It would be reasonable for the media to pursue a course of conduct in order to report on a matter of public interest. However, if the story was about the private facts of an individual with no public interest involved, the media should not pursue the individual to

[2] Ibid

the point of "alarm" or "distress". If the media sought to obtain information about a public figure's private life through harassment or persistent pursuit, we agree that it is only fair that the media be required to account for its conduct by convincing the court that its pursuit was reasonable.

7. The Law Reform Commission ("LRC") as stated in paragraph 3.2 of the Paper considered that the concept of persistence should be introduced into the formulation of the new offence by utilizing the phrase "a course of conduct". We note that the essence of time or duration is an important factor to determine whether an activity is to be classified as stalking. Hence, we agree that a single act, no matter how bizarre, should not attract criminal liability.

8. We recognize the pivotal role that the media plays in conveying information of public concern to the society. We share the view of the Administration that while attaching great importance to the protection of freedom of expression and press freedom in Hong Kong, the public concern regarding the invasion of privacy should not be undermined at the same time. A balance is needed between press freedom and other fundamental human rights, including the right to privacy.

9. To cater for the specific concern of the media that the proposed legislation on stalking would jeopardize their legitimate journalistic activities, we support creation of a separate defence rather than having it subsumed under the general defence of the "pursuit of a course of conduct that is reasonable in the particular circumstances". This should be restricted to "legitimate news-gathering activities", not "all forms of news-gathering activities". To meet the media's expressed need to define clearly "legitimate news-gathering activities", the Administration may wish to consider drawing up an non-exhaustive list of subjects for which news-gathering would serve the public interest, in the sense of being of legitimate concern to the public. In this regard, reference could be made to the list included in the judgement of Harrison, J in *CanWest TV Works Ltd v. XY* [2008] NZAR:-

* criminal matters;
* issues of public health and safety;
* matters of politics, government or public administration;
* matters relating to the conduct or organizations which impact on the public;
*exposing misleading claims made by individuals or organizations; and

*exposing seriously anti-social and harmful conduct.

Debt collection-related activities

10. Abusive debt collection practices are other forms of stalking behaviour which interfere privacy and may be collateral to a breach of personal data privacy rights. Our experience in handling enquires and complaints from the public supports the view expressed in the Paper that abusive debt collection practices including repeated telephone calls are serious social problems infringing the privacy of individuals. We note that in paragraph 2.11 of the Paper, the number of non-criminal debt collection-related harassment cases reported to the Police averaged over 14,000 each year in the last three years, indicating that these harassment cases do possess significant threat to the community involving privacy infringement that should be properly addressed. Malpractices alleged in complaints involving debt collecting agencies included dispatching debt recovery letters to a complainant's workplace or neighbours, posting copies of a complainant's identity card with abusive message and demanding repayment of a debt from a referee who was not a guarantor.

11. While the above mentioned activities may be caught under the Ordinance, establishing stalking as a criminal offence is a more direct sanction and will deter activities which cause harassment and annoyance to the victims.

12. Insofar as the requirements of the Ordinance apply to individual cases involving debt collection agencies, this Office has taken action to enforce compliance with the requirements concerned. However, the requirements of the Ordinance are by no means applicable to the whole range of abusive behaviour that debt collection agencies are alleged to engage in. Even where the requirements do apply, they may not always be an effective means of protecting individuals from the abusive practices concerned. Hence, legislating against stalking and making it a criminal offence with civil remedies available to victims would be an effective way to tackle against the independent phenomenon.

Civil Remedies for Victims

13. With respect to attributing civil remedies for victims, section 66 of the Ordinance confers a right on an aggrieved individual who suffers damages such

as injury to feelings by reason of a contravention of a requirement under the Ordinance to seek compensation from a data user. Similarly, there is no reason why victims to stalking should not be entitled to civil remedies which the perpetrator should be liable in tort to the object of the pursuit. After all, a civil remedy would be more appropriate in circumstances where the stalker's behaviour is not sufficiently serious to warrant the intervention of the criminal law.

Certificate for matters related to Serious Crime and Security

14. Paragraph 4.1 of the Paper recites the LRC recommendation that a certificate issued by the Chief Executive or his designate stating that anything carried out by a specified person on a specified occasion related to security or the prevention or detection of serious crime should be conclusive evidence that the provisions of the anti-stalking legislation did not apply to the conduct of that person on that occasion. Paragraph 4.4 of the Paper goes on to say that there is no similar certificate mechanism under the Ordinance which also provides for exemption for the prevention and detection of crime as well as safeguarding security in respect of Hong Kong.

15. In this connection, we would like to clarify that similar certificate mechanism is provided under section 57 of the Ordinance. This section provides for an exemption from the data protection principle 3 (section 57(2) refers) and data protection principle 6 (section 57(1) refers) in respect of personal data concerning the safeguard of security, defence or international relations in respect of Hong Kong. Specifically, section 57(3) of the Ordinance stipulates that any question whether an exemption under the section 57(1) is at any time was required in respect of any personal data may be determined by the Chief Executive or Chief Secretary for Administration; and a certificate signed by the Chief Executive or Chief Secretary for Administration certifying that this exemption is or at any time was so required shall be evidence of that fact. Moreover, section 57(4) provides that for the purpose of section 57(2), a certificate signed by the Chief Executive or Chief Secretary for Administration certifying that personal data are or have been used for the purpose of safeguarding security, defence or international relations in respect of Hong Kong shall be evidence of that fact. Section 57(5) goes further to say that the Privacy Commissioner shall comply with a direction not to carry out an inspection or investigation given by the Chief Executive or the Chief Secretary

for Administration under a certificate issued pursuant to section 57(3) or (4).

Office of the Privacy Commissioner for Personal Data
31 March 2012

香港立法会议员的先生、女士们：大家好！

S0488

最近香港特区政府提出缠扰行为刑事化、征询市民意见。本人万分赞成、绝对拥护，万望立法会的议员们大力支持，促其成为。缠扰问题并非小节，而是十分严重的社会大问题，它直接破坏着香港平等、自由和人权的核心价值，关系到香港社会和市民的和谐与安宁。它是社会的负能量，扰乱治安，破坏社会秩序，危害他人，祸害社会。对此本人深有体会、深受其害。长期以来，我不断遭到大规模、有预谋、有计划的非一般的缠扰。子缘有城中的一男（女）长期不断地向我逼婚，不择手段，十分卑鄙，可说是无所不为。围追堵截，威逼利诱，软硬兼施，手段恶劣，到处打击，无理取闹……阴谋诡计层出不穷，阴魂不散，时达十年以上。我的心灵遭到极大的创伤；我和家人权受到粗暴的践踏；我的精神和正常生活以及工作被严重的干扰。

婚姻自由，永爱追求，是自权利，无可非议，但如有人依仗自己的背景和权势，有恃无恐，肆无忌惮地利用影响的网络，把自己的意愿强加于人，甚至不择手段逼人就范，严重伤害他人，这就是卑鄙的野蛮行径，荒唐已极。其实它是精神和心理上的强奸，它造成的伤害较之肉体上的强奸有过之而无不及，且更深远和严重。缠扰者的心态和思维，充满着强盗的逻辑和土匪的霸道，它的手段是"四人帮"惯用的无法无天的流氓手段，是杀人的软刀子。这和自由、平等、人权、文明的香港精神是背道而驰的，是可忍，孰不可忍！

不具名

(寄件人要求不具名公開意見)

本人一向与人为善，与人无争，与世无争。对长期来的违背缠扰也逆来顺受，一忍再忍，期望有关人士能够自觉，知所进退。可惜，有关人士太不识相，得寸进尺，并无收敛，且变本加厉为所欲为，死缠烂打，阴魂不散，挥之不去，这分我已忍无可忍，迫不得已，略诉一二，盼议员们赐教！如有需要能再详叙。

谨祝

工作顺利

(署名來函)

2012.3.28.

(刪除)

电话：(刪除)

政制及内地事务局

(刪除)

(寄件人要求不具名公開意見)

S0489

政制及內地事務局主任：

你好，關於法改會纏擾行為的諮詢工作，本人以受害者之處境提出意見：—

一，應當立法禁止纏擾行為，纏擾行為絕對是一個需要解決的問題。

二，應當訂明一個人或以上，蓄意做出一連串的行為，而他知道或應該知道這一連串的行為對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪。

三，研究考慮執法人員之為了防止或偵查罪行的目的免責辯護，加入防止濫用條款，保護無刑事紀錄或傾向或無危險行為的市民，受到纏擾。

四，應當為新聞採訪活動另外提供特定的免責辯護，並以合理的公眾知情權及利益為制訂基礎。

五，應當訂明一個人或以上，蓄意做出一連串的行為，會構成騷擾，嚴重至引致他人驚恐或困擾，便須向該一連串行為的目標人物負上侵權法下的民事責任。

六，應當讓受害人可以就該一連串行為所引致的困擾，焦慮和經濟損失索取賠償和申請禁止纏擾者做出會導致他驚恐或困擾的事情的強制令。

七，每個騷擾罪的年期，騷擾傷害程度不一，故此只能定出最低之罰款金額，及監禁年期，卻不能劃一上限數目。

因為本人長年期遭受到警方報復性監視，並用拍攝工具，以敵意，拍攝本人，更引發身邊所有人加入串謀纏擾，引至極度騷擾，驚恐困惑，喪失不少公平機會，所以絕對贊同成立纏擾法案，以阻嚇犯案者肆無忌憚觸犯纏擾罪。

特別請求第三項之意見，盼望法改會能研究考慮堵塞灰色地帶。

謝謝！

(署名來函) (刪除)

29/3/2012.

(未能確定寄件人是否願意公開姓名)

S0490

請立法处理

〈别人單位内，嚴止在其單位設置長鏡，攝錄机，强光来射入〉，又竊聽电話和跟踪。

用極强光射入本人私人單位内

因一般木器、布質，甚至鉄片，均因物料和造模製作時出現孔位，經極强光（如电台用拍攝用的灯）照射，會穿过布質或物料的孔，看到至内情況，甚至人身上的衣服和棉被，也可射穿。

拍攝鏡頭

) 加上放大鏡頭，拍攝鏡頭，放大得仔细的鏡頭，由極强光加上这些鏡頭，就看得好清楚。

) 他们把这些鏡头和灯放在其單位向着我的單位（24小時長監視）

非法

) 政府公屋單位設渠除爐位，他们的渠除也可射穿看到我和家人

照有（上述）用上述器具又看

5) 甚至在正门（鉄闸和木门）

到室内

6) 只有厚的石屏牆才可阻擋。

（待查）

(未能確定寄件人是否願意公開姓名)

⑦ 投訴無門，警方和管理公司都不理。
（大廈人）

⑧ 又叫人跟蹤我和家人，每次有二三條街對人跟，去了、食飯、公園，乘車，總之我跟到我們回家。透視我們生活和个人私隱。

⑨ 又將我們照片上網給他們的私人網站

⑩ 又用器具竊聽我們家居和手提电話。

請立例立法保障我們善良大众，被這些坏人非法滋擾我們，嚴重影响侵入私人地帶，个人私隱。

這些人都是有黑背景的，或都是偏門（多數）的人。

(未能確定寄件人是否願意公開姓名)

JUSTICE*

THE HONG KONG SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS

(deleted)

Chairman
Rury Barretto, S.C.

Vice Chairman
Hin-Lee Wong

Executive Secretary
Hay Yiu Wong

S0491

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

30th March 2012

Dear Sir,

Re: Consultation Paper on Stalking of December 2011

1. **Previous opinions not reflected in Consultation Paper.** We refer to our previous submission 29th July 1998 on a previous Consultation Paper on Stalking. A copy is enclosed. Our views remain the same in view of the similarity in the Consultation Papers. We note with the regret that these adverse opinions have not been reflected in the current Consultation Paper. As a result we will keep our additional submissions as brief as possible.

2. Chapter 2, there is still **No need for legislation** demonstrated by this Chapter. We note at 2.11 there are still no statistics on stalking. It is obvious that other criminal offences are available and should be used. An example is a recent case where a classic case of stalking by following somebody was prosecuted as loitering and causing concern under existing legislation.

3. The Chapter 3, The Elements of the Proposed Anti-Stalking Legislation based on Harassment. Having regard to the Chapter 2, it is clear that **the main vice complained of is not making someone feel harassed or annoyed or upset.** The main vice is intimidation which causes fear. The intention to engender fear causing someone to live in fear is the vice which ought to be targeted.

4. **Annoyance and harassment should not be a crime and misses the point.** Many people are put into a state of annoyance, harassment, alarm and distress by many things, such as traffic noise, construction site noise, air pollution, cruelty, injustice, environmental degradation, dumping of rubbish and many of the things which are part of life in Hong Kong. There is no new law intended to protect against that kind of annoyance which can be more physically and mentally damaging. There are various laws supposed to protect us from noise and air pollution but they are not enforced adequately. The same applies for the various laws and conducts which this Consultation Paper tries to address. There is no

justification for this law for this type of annoyance or harassment. **The existing laws only need to be better enforced by the Police.**

5. **Fear is the key element.** The examples given in Chapter 2 such as 2.1 and 2.2 and 2.3 all emphasize the victim being placed "in constant fear and alarm"; 2.9 targets impairment of physical and psychological wellbeing as a result of fear. The real issue being aimed at in 2.10 is behaviour which causes fear by being threatening and which may escalate into violence.

6. In the examples given in 2.11, it is clear that

   (a) spraying red paint can be dealt with by criminal damage legislation;
   (b) the essence of this example is constant fear from threatening telephone calls so S.20, The Summary Offences Ordinance should have been used;
   (c) driving a car right behind someone else is criminal intimidation plus careless driving, again the key element is causing fear.
   (d) Thus all 3 examples show there are other ordinances which should have been used.

7. Thus, the offence should not be an offence of harassment. **It could be another definition or crime of criminal intimidation if needed at all.** For example, another definition could be proof of "a course of conduct which has no legitimate justification or reason other than to cause fear and alarm and distress to the victim by intimidating means and with intent to cause fear, alarm and distress."

8. It is important to have this intention to cause fear etc, so as to protect those who whose conduct does involve persistent work which can be annoying such as salesmen, religious canvasses, political canvasses, protestors, demonstrators and the press and investigators. None of these and other legitimate activities should be put at risk of harassment by prosecution under a law which is too widely drafted. The requirement to prove intention to cause fear as the key element will deal with the problems with the definitions of alarm and distress.

9. Comments at 3.22. Our response is as follows:
   (a) No.
   (b) No.

10. As regards the penalties, 3.26 clearly shows how inadequate this is for persons who are involved in demonstrations, the press and those who act out of the best motives, namely the public interest and protecting those who are the victims of cruelty or injustice.

11. Comments at 3.37.
   (a) No.
   (b) This is too high.
   (c) Too high.

(d) Two years limitation is too long.

12. **Defences at 3.38 are too limited and narrow** and provides examples of how the proposed offence is far too wide, having regard to the real matter at issue.

13. **Interpretation left to Judge without Jury.** There will most likely be trial without a jury for this proposed new crime, so there is no safety net of the commonsense of a jury representing a community's feelings. Instead, the sole arbitrator of whether the Defendant has prove his defence of acting reasonably is left to a judge who may be prejudiced or biased or regard the specific NGO activity or anti Government activity as not reasonable, and it would be very difficult to show the Judge was wrong or unreasonable on appeal.

14. **Burden cannot be on Defence, it must be on Prosecution.** For example, if there were protests on Climate Change or air pollution, one can foresee a judge who is a climate sceptic or just unaware of the facts, would regard the persistent behaviour as being harassment and it would be an unfair burden on an ordinary defendant in the Magistracy to prove such facts to the Court so as to establish his defence.

15. **Empty assurances set out in a Government consultation paper such as this will provide no guarantee of no prosecution.** It will provide no help in a subsequent court of law years from now. One has to proceed on the basis that prosecutors will proceed to the full extent of the letter of the law rather than be bound by assurances that they would not prosecute people who are acting in the public interest as per 3.41. If acting in the public interest is regarded as a bar to prosecution then it should also be a specific defence so Judges have to consider it.

16. **Otherwise, there should be a whole list of exceptions.** There are many examples of conduct which is justified but which could be persistent or annoying but which does not have the connotation and vice of stalking causing fear. Some of the examples are news and information gathering, protests and demonstrations, public interest activity, exposing oppressive conduct, misconduct, maladministration, cruelty, immorality, doing social work, NGO work, actions done for the public benefit and actions to protect rights and freedoms.

17. **Proposed new law is too wide.** The fact that the Paper is considering an exception for "news gathering activities" under 3.45 will lead to a request that all other types of activities with a public interest or benefit element should be excluded too. Why just exclude the press? Again, this simply shows that this proposed law is far too wide and must wider than is needed.

18. **The Burden of proving conduct is unreasonable and capable of being stalking should always be on the Prosecution.** The proposed new law puts the burden of proof on the Defendant to show whatever he is doing is reasonable. It should be always on the Prosecution to show that the conduct is capable of being

criminal and is unreasonable. **This reverses the burden of proof and is objectionable.**

19. Comments at 3.55:
    (a) Not wide enough and many exclusions need to be specified.
    (b) News gathering activities should be one of those specified.
    (c) Specific defences should be for a whole list of activities.
    (d) Other defences should be provided.
    (e) Defences should include the matter set out above namely actions done to protect rights and freedoms and for the public benefit and to remedy injustice or to expose misconduct.

20. Restraining orders, comments at 3.72:
    (a) No.
    (b) No and obviously if there is to be an Order it must have a specific duration.

21. Civil remedies for victims based on the same criteria clearly show how undesirable such a wide law will be. Complaint to the police will be used as a convenient tactical first step in lieu of injunctions etc. Comments at 3.81:
    (a) No.
    (b) No.

22. Enforcement of Injunctions, comments at 3.93:
    (a) No.
    (b) No.

23. **Abuse of similar laws in UK and affect on free press.** We are informed that anti- harassment laws in England have been used to bar news reporting in thousands of cases, showing that a widely drawn law which is excessively wide is inappropriate. We are informed these wide laws are now the subject of review to be restricted to appropriate situations.

24. **Conclusion.** Hong Kong should get it right from the beginning and withdraw this Consultation Paper and focus on amendments which deal with the actual perceived vice namely conduct which is intended to cause fear, rather than an excessively wide law which will potentially criminalize many kinds of public an private conduct, unless the Defendant can prove it is reasonable.

Yours sincerely,
(signed)

JUSTICE Hong Kong

[8244.rb]

JUSTICE

THE HONG KONG SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS

29th July 1998

The Secretary,
The Privacy Sub-committee,
The Law Reform Commission,
20/F, Harcourt House,
39 Gloucester Road,
Wanchai,
Hong Kong.

Dear Sir/Madam,

Re: Consultation Paper on Stalking

1. We have examined the captioned consultation paper and have the comments below.

2. The principal recommendation of the captioned consultation paper is the creation of a new criminal offence of stalking, the particulars of which are stated in paragraph 5.1 thereof.

3. We are of the view that no new criminal offences should be introduced unless there is a demonstrated need to criminalise a form of anti-social behaviour which is shown to be causing physical and mental harm to others and which cannot be dealt with in any other way

under the present law. A stricter level of scrutiny should, in addition, be undertaken where the proposed or preferred mode of sentence under the proposed new criminal offence is to incapacitate the offender by way of imprisonment.

4. Are stalking activities sufficiently injurious to the public that such activities be declared as a wrong to warrant the application of the criminal procedure? Should stalkers be subject to control because they are disposed to commit crimes?

5. The Sub-committee accepted that there were no statistics on the prevalence of stalking in Hong Kong. Not deterred by that, the Sub-committee relied on anecdotal evidence and statistics in other jurisdictions and came to the view that stalking as "a menace to society which ought to be taken seriously by the public and the police". We are of the view that this is not a sound basis to gauge the extent of the problem and to assert the phenomenon of stalking as one of "a menace to the society". This is more so since stalking, as the Sub-committee accepted in paragraph 1.1 of the Consultation Paper, is a generic description of various types of behaviour with great difference in the physical and psychological harm that might entail.

6. Many types of conduct which are said to be stalking activities are offences under the current criminal law. See paragraphs 2.49 to 2.77 of the Consultation Paper. We are of the view that the current criminal law is in a position to deal with most of the manifestations of stalking. Much of the current criminal law have been developed in recognition of or applied to deal with acts which are manifestations of stalking. See the recent case of R v Ireland [1997] 4 All ER 225 in which the House of Lords held that the words "bodily harm" in the Offence Against the Person Act 1861 was capable of covering recognised psychiatric illness; that silent telephone calls which caused psychiatric injury to the victim was capable of amounting to an assault; and that grievous bodily harm could be committed even though no physical violence was applied directly or indirectly to the body of the victim. The recent successful prosecution of a man for making persistent telephone calls to a female co-worker is another example.

7. If there is any difficulty in prosecuting stalkers, this is inherent in the investigation of such behaviour. The stalker may not be an acquaintance at all but a total stranger.

8. If there is any difficulty in preventing known stalkers from further pestering their subjects, one must first distinguish between problems associated with the prosecution of the offender and problems associated with the detection and apprehension of the offender. There is anecdotal evidence on the unwillingness of the police to investigate into complaints of stalking activities. Our experience tend to confirm the said allegation. If this is indeed the true picture, the police ought to be trained to be aware of the magnitude of the issue and be sensitive to complaints of such activities. The police should know the law better and enforce the law with more concern and vigour. If the law is enforced with vigour and the result is that most stalking activities can and are put in check, the problem is addressed.

9. In any event, an obsessed and determined stalker will never be in a lucid position to understand the demands of civil and criminal justice, such as bail conditions, restraint orders, or injunctions, whether because of his psychiatric condition or otherwise.

10. The Sub-committee appears to be making its suggestions in law reform without much consideration as to the law in action. We are of the opinion that the need for anti-stalking legislation, particularly for the creation of a new criminal offence, has not been demonstrated. Rather, what is needed is better police training to cultivate an understanding of the new developments of the law and the social phenomenon of stalking, the bringing of prosecutions in line with the Ireland authority to reflect the ability of the law to deal with stalking behaviour, and the raising of judicial awareness of the phenomenon and the harm that can be done to subjects of stalking. It goes without saying that in sentencing the court is entitled to regard the course of conduct leading to the offending act, so long as such course of conduct is revealed in evidence, as an aggravating feature.

11. Professor Celia Wells of the Cardiff Law School, in her article Stalking: The Criminal Law Response [1997] Crim LR 463, considered the English debate on criminal law and stalking. She identified the set of beliefs underscoring the debate as including the following: that "violence" is on the increase; that "something must be done"; and that law, as a vehicle of social change, is the neutral instrument with which to achieve results. She also cautioned commentators to "retain a critical distance in considering any proposal to extend the criminal law". The assumption that the law solves social problems is probably an exaggeration. "Sometimes, the need for reform is misunderstood and what is identified as a failure of law is not a failure of legal definition or scope but of construction particularly at a social and cultural level which translates to the police and enforcement level." Professor

Wells' observations are equally applicable to the Hong Kong situation and illustrate, with respect, the erroneous tendency displayed in paragraph 4.7 of the Consultation Paper when the Sub-committee sought to justify the proposed introduction of a new offence by reasons like quick response from the police, sending a clear message to the public, and no need for court to stretch existing legal concepts to find a remedy.

12. The main proposal of the Sub-committee is the introduction of anti-stalking legislation. The offence recommended in paragraph 5.1 of the Consultation Paper closely resembles with the provisions of the English Protection from Harassment Act 1997. Professor Wells commented that this form of legislation "follows a pattern witnessed in other areas (hunt saboteurs, joy-riding, and dangerous dogs come to mind) of addressing a narrowly conceived social harm with a widely-drawn provision, often supplementing and overlapping with existing offences".

13. A single offence is prescribed. It requires proof of pursuance by the defendant of a course of conduct which amounts to harassment of another and which the defendant knows or ought to know amounts to harassment of the other. The maximum penalty is two years' imprisonment. It appears that the Sub-committee is suggesting that imprisonment is the only option though it is possible for the magistrate or judge trying the case to impose probation orders and hospital orders.

14. The proposed offence punishes a course of conduct. The tribunal will be asked to consider at least two individual events. There is no statutory definition of such events. The tribunal will be asked to take a view of the aggregate effect and see if that amounts to harassment of another. Harassment includes causing another alarm or distress.

15. Further, the tribunal will at times not be asked to assess whether a reasonable person in the position of the victim would react with alarm or distress to the course of conduct if the prosecution chooses to establish actual knowledge instead of imputed knowledge. This creates the danger of "taking the victim as one finds him or her".

16. Even where the tribunal is asked to consider whether the defendant ought to know that the course of conduct in question would amount to harassment of another, the specification of the "reasonable person" to be one "in possession of the same information" as the victim is an invitation for the tribunal to hypothesize and to perform "mental gymnastics".

17. From the point of view of the criminal practitioner, a trial of the proposed offence may allow the prosecution room to shift from one matter to another without breaching the rigour of the rule against duplicity, a fundamental tenet of our criminal justice system. The defendant may never know exactly what the specific acts the prosecution is alleging against him in support of the main allegation of pursuing a course of conduct which amounts to harassment. The main focus may often not be the course of conduct, which a defendant may be in position to offer an innocuous explanation, but in the invitation by the prosecution to take a global view of the course of conduct to find harassment. At this stage, the defendant is at the mercy of the alleged victim, who may be in a position to transform startling coincidences into deliberate acts to cause alarm. Triviality can be magnified exponentially thereby. It is not difficult to imagine private prosecutors seeking to take revenge on others using this proposed offence. We are of the opinion that the creation of the proposed offence is also undesirable from the angle of the administration of criminal justice.

18. Further, the statutory defences proposed would not offer much comfort. The first two defences are specifically worded. The third is very vague. It illustrates the broad scope of the proposed offence but fails to narrow it for the purpose of informing the public of what is lawful activity or course of conduct. A door-to-door salesman/ religious follower repeatedly calling on the same flat plying his goods or evangelising his beliefs can be as persistent and caused as much annoyance and concern as a spurned lover or bitter ex-spouse. By failing to draw the line and leaving it to individual magistrates, the Sub-committee unwittingly promotes uncertainty in the law, makes the law more like a lottery, and creates a new occupational hazard for many people with legitimate occupations.

19. For these reasons, we are of the view that the recommendations of the Sub-committee in paragraphs 5.1 to 5.5 are not justified and should not be adopted.

20. On the other hand, we agree with the recommendations in paragraphs 5.7 to 5.9 of the Consultation Paper. Better statutory protection in these specific areas of domestic violence, debt collection and landlord and tenant will address what is perceived to be a large proportion of stalking activities.

21. If there is still a residual need to provide a summary remedy for those subject to stalking but who are not within the categories of relationships with the stalker as described in the last paragraph, consideration should be given to the enactment of a statutory scheme of summary injunctions based on the similar schemes in different Australian jurisdictions, eg Justices Act Amendment Act 1982 (S Aust) (No 46), which grew out of the old provisions dealing with bonds and sureties to keep the peace. See M Goode, Stalking: A Crime of the Nineties? (1995) 19 Crim LJ 21, which referred to the case of Brunsgard v Deire (1984) 36 SASR 391. In Hong Kong, section 40 of the Magistrates Ordinance (Cap 227) appears to be a provision for a rudimentary form of restraint order. Although there may be a need to modernise the terms of the section, what is needed in reality is an enactment empowering the magistrate to make those orders. If this scheme is put in place, then there is no need to consider the enactment of statutory tort of harassment since the remedy of damages, which traditionally requires proof of harm, is available through the existing common law tort of assault.

22. As for the call to create a tort of harassment, we believe that, like the proposed creation of a new criminal offence, the need for such a tort has not been demonstrated. The Hong Kong courts should be at liberty to develop the common law in this area by looking to other Commonwealth jurisdiction and if they so choose, parting company with pre-1997 English authorities.

23. We hope these comments will of use to the Sub-committee in its further deliberations.

Yours Faithfully,

Gladys Li, SC, Chairman

S0492

To：敬啟者：

本人（刪除）是一位普通的市民，在2009年12月中、任職（刪除）廣場（刪除）舖位，與其中一位Sales發生口角，隨即無故受到騷擾，每天被人跟蹤，每天有無號碼的電話騷擾，初部是十多歲的年青人，後來更有警務人員跟蹤，還偷了本人的鎖匙，入屋搜查，達三年多時間，其間無故騷擾，恐嚇。

本人感到十分驚訝，香港是法治之區，怎可能有此事發生，本人亦報警三次之多，亦沒有人受理，亦去警察投訴科多次，亦沒有結果，亦找過謝偉俊議員、梁家傑議員亦沒有理會，亦找過東方日報，申訴專員，私隱專員亦沒有結果。

本人感到十分傷心，香港是個法治之區，竟然有這樣的事情發生，實在令人費解，有人可以隻手遮天，無法無天，目無法紀，亦沒有人理會，希望貴會可以立法，保障本人免受騷擾，可以過翻一些有人權、有私隱、安穩的生活，不要每天在網上做真人騷，希望可以還回本人小小的尊嚴，非常感激！多謝！但本人希望不要(刊登本人的個人資料)內容就可以

姓名：(署名來函)

祝生活愉快

30-3-2012年

(寄件人要求不具名公開意見)

To：獨立監察警方處理投訴委員會：羅小姐 S0492

檔案：((刪除))

本人 (刪除) 警方濫用職權、假公濟私、公報私仇、隻手遮天，沒法無天，侵害本人，人權及私穩，有高級警務人員勾結黑社會危害本人的人身安全，不斷騷擾本人、及其家人、朋友、同事、家傭、還安裝攝錄機在本人睡房、廁所、大廳，長期偷拍、及偷聽器、所有家居电話、本人手提、及家人、朋友、同事、親戚、全部都有勾結和跟蹤，還威脅家人和友人，聽他們指令。

那些警務人員和黑社會，每天跟蹤本人，拍攝本人每天的行蹤和照片、每天擺上網站，給全港市民觀賞，更在「蘋果日報、蘋果網站、刊登本人被偷拍的浴照，擺在報章上、目的是凌辱本人，還無中生有地誣諂本人、中傷本人、吸毒、犯毒。本人從來都無有見過毒品。本人並無案底，也沒有黑社會背境，而且朋友也不多，只是家庭主婦，平日只是返工放返工，很有規律、閒中、還做義工，也是宣明會樂施會的會員，本人希望貴會和警察投訴科，幫本人申冤、徹查此事，感激不盡，本人願意轉交警察投訴科徹查此案，多謝!!

本人： (署名來函)

5-12-2011

(寄件人要求不具名公開意見)

屯門區婦女會
TMDWA
總會：(刪除)
電話：
網址：(刪除)
電郵：

政制及內地事務局局長

譚志源, JP 台鑒：

<u>有關纏擾行爲諮詢文件的意見書</u>

作爲長期服務女性36年的機構，屯門區婦女會十分贊成將纏擾行爲立法。在本會日常服務中，常接觸到不少遭遇家暴、「情痴」、前夫追債纏擾的婦女，她們深受困擾、甚至出現情緒問題、或爲躲避纏繞者而影響工作；但回顧現時法例，對她們公平合理的保護卻不足夠，缺乏專門針對防止纏擾行爲的法例，所以本會歡迎把纏擾行爲刑事化，保障婦女免受騷擾。

然而檢視《有關纏擾行爲的諮詢文件》，本會就騷擾行爲界定、纏擾行爲的舉證、纏擾行爲的刑責及民事賠償、集體騷擾定罪的範圍等環節尙有疑慮，如匆匆立法而不釐清其中細節，除了無法保護被纏擾的人士，更極有可能造成浪費公帑及影響採訪、言論、集會、遊行等合理自由行爲。因此本會有以下建議：

(一) 將騷擾行爲定罪要清晰

法改會建議的纏擾行爲是一個人如做出一連串的行爲， 而這一連串的行爲對另一人造成騷擾， 他亦知道或應該知道這一連串的行爲對該另一人造成騷擾，即屬犯刑事罪。然而現時法改會認爲沒有必要介定「騷擾」 一詞的含義，法改會也認爲沒必要臚列全部構成騷擾的行爲。但本會認爲騷擾行爲界定必需要清晰，可以列出一系列常見的騷擾行爲，以及加上一句包含其他騷擾行爲的總結性說話，以免產生大量不必要爭拗，浪費公帑。

另外一方面，法改會也認爲沒有必要介定「驚恐或困擾」，但由於這是屬於主觀感受的範疇，嚴重程度或因人而已，是否會造成定罪困難或誣告騷擾者之嫌 ? 因此爲保障有關被指爲騷擾者獲得公平的調查及待遇，本會建議有關機構亦需要確保騷擾者得到同等的隱私保障。

(二) 建議加強協助受害人舉證

本會留意到除了列清所有纏擾行爲是十分困難的，要舉證纏擾行爲也是十分困難的。有些行爲例如跟蹤或持續恐嚇，通常是不規律、突發的行爲，受害人已被纏擾者跟蹤或恐嚇，或許在受驚的情況下已需要顧及自身安全，未必能即時利用攝錄機等儀器收集具體的證據。

屯門區婦女會
TMDW
總會：(刪除)

S0493
電話：
網址：(刪除)
電郵：

而驚恐或困擾均是內在的感受，故建議有關執法部門與各部門(如民政、社署)加強聯繫協調，加強協助及支援受害者舉證，尤其是因經濟問題仍和前夫同住的婦女，減省受害者舉證的時間及精力，從而減輕受害人的困擾。

(三) 建議加入合理民事賠償、簡化申訴程序

本會同意將明知故犯的騷擾者處以較重刑罰，即2年監禁及較重罰款。而其他騷擾行爲，本會認爲應由法院按個別案件的情況、犯罪意識的強弱， 以及所得的證據去判處適當的刑罰較爲合適，最低刑法可適當調低至6個月爲宜。

除了罰款，本會認爲還應加入合理民事賠償，因罰款是一次性的，未能充分考慮到實際情況，例如受纏擾者因困擾而失去工作的賠償、因情緒困擾而看醫生的持續的醫療費用等，都應加入法例。

本會要求申訴賠償程序必須簡化，是否可以一個庭同時宣判罰款及賠償？使受害人不必面對長期的追償，身心疲累。現時受害人只可按照損失向騷擾者循民事途徑索償，受害人要面對漫長訴訟期及或需付上高額訴訟費用，身心疲憊。

(四) 集體騷擾定罪的範圍要合理、維護新聞自由及集會自由

此外，除了社會關注的新聞自由，本會亦特別關注言論、集會、遊行等會受到立法影響，當局需小心考慮並衡量如何在互相衝突的權利和權益， 尤其是個人私隱與新聞自由之間取得平衡。

現時香港弱勢社群常用示威遊行等方式表達自己訴求，如被虐婦女、本地孕婦，但諮詢文件中指出立法將包括集體騷擾罪，本會擔憂此例是否對本身已經是弱勢社群的婦女雪上加霜、訴求無門？本會建議將合理的集會遊行列入豁免範圍，以避免立法後有人濫用法例，以遏止自由及爭取合理之權益。

聯絡人：陳春艷
電 話：(刪除)
傳 真：

屯門區婦女會主席

(signed)

葉順興 MH 太平紳士

二零一二年三月三十日

(deleted)

Your Ref.: S/F(3) to CR 7/22/12(2011) Pt.11
Our Ref.: (deleted)

30th March, 2012 (Fri)

Ms. Philomena Leung
for Secretary for Constitutional and Mainland Affairs
Constitutional and Mainland Affairs Bureau
Government Secretariat
East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar
Hong Kong
(Fax: 2523 0565; Page Faxed: 1)

Dear Ms. Leung,

Constitutional and Mainland Affairs Bureau - Government Secretariat
Public Consultation on Stalking

Thank you for your letter of Monday the 19th of December, 2011.

We would like to let you know that on this occasion our Association members have not offered to add to views on this issue previously advanced by other bodies.

Thanks again for consulting us and looking forward to more substantive discussions with you in the future,

Yours Sincerely

(signed)

Association Secretary

(The sender requested anonymity)

(deleted)

關注家庭暴力害受人法權會
《有關纏擾行為的諮詢文件》立場書
2012 年 3 月 31 日

引言

「關注家庭暴力受害人法權會」多年來一直致力關注香港法律對家庭暴力受害人的保障是否足夠，而賦予應有的權利是否得到落實，倡議政府制定全面的反擊家庭暴力政策。就政制及內地事務局最近《有關纏擾行為》的諮詢，與家暴受害人的法律保障有切身關係，本會亦十分關注，特此回應表達我們的關注及意見。

本會對「立法禁止纏擾行為」的立場和意見

I. 應否立法禁止纏擾行為？

1.1. 有關立法禁止纏擾行為的討論已經是十多年的事，法改會在1998年已經進行探討，在2000年法改會的咨詢報告書[1]，已經詳列支持立法及對立法有猶豫的因素，總結正反的關注主要都是在立法保護受害人及立法可能阻礙公眾的知情與表達權利之間的矛盾問題。

1.2. 作為長期關注家庭暴力受害人法律權利的組織，在本會2011年進行的「家暴受害人的處境及使用法律保障的經驗」[2]調研結果反映，23.4%的家暴受害人受到施虐者的「纏繞跟蹤」，而當中84%的被「纏繞跟蹤」受害人是有報警，這反映家暴受害人普遍受到施虐者的纏繞，而被纏繞的受害人的個案都是比較嚴重的報警個案。現實我們接觸到的個案的纏繞行為本身就是施虐者的操控行為，對受害人造成嚴重的精神虐待，就算家暴受害人決定離開施虐者，不少施虐者以不同形式的纏繞行為，以求復合、洩憤及報復等，以導致受害人承受極大精神創傷。

1.3. 在法改會2000年就立法禁止纏繞行為的＜纏繞行為＞咨詢報告書之後，本會於立法會(2006-2008年)研究修訂當時的家暴條例時，曾積極建議政府成立家庭暴力法庭，同時處理涉及家暴個案的刑事及民事問題，將家暴條例刑事化，把家暴定義包含纏繞行為，以及早保障家庭暴力受害人免受纏繞行為困擾。可是有關條例修訂並沒有接納本會的建議，有關條例修訂後對受害人的作用實在強差人意。

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[1] 法改會：＜纏繞行為＞（香港：香港政府，2000）

[2] 吳惠貞: ＜家暴受害人的處境及使用法律保障的經驗＞ （香港：關注家庭暴力受害人法權會，2011）

1.4. 為因此，本會認為立法將私人之間的「纏擾行為」定為刑事罪行，以保障家暴受害人的人身安全及私人空間是刻不容緩。問題是現時政府提出的「纏繞行為」的立法並不是針對私人之間的「纏擾行為」，咨詢的建議內容覆蓋牽涉公共利益的新聞採訪、示威活動，無疑將「纏擾行為」立法又帶回14年前的爭議，一再拖延受害人的法律保障。事實上，「私人之間的纏擾行為」與「新聞採訪、示威活動」是兩個不同的議題，為了盡速為受害人提供法律保障，本會強烈要求有關政府部門將私人之間的「纏擾行為」與新聞採訪、示威活動分開處理，是次立法著重針對私人之間的「纏擾行為」，如果政府或公眾認為有需要對「新聞採訪、示威活動」等問題需要加以關注，可以另外進行咨詢。

本會對「纏擾行為」法例草擬內容的意見

1 纏繞行為的定義

為了清楚表明法例針對的「纏擾行為」不包括新聞採訪及其他示威活動，建議草擬的條例草案需要清楚列明有關條例內容「不涵蓋新聞採訪及其他示威活動」。

2 應否將集體騷擾行為及阻嚇合法活動的騷擾行為定為罪行？

2.1. 然而，與此同時，本會亦關注到公眾擔心訂立有關法例後，可能會影響到新聞、言論和集會等自由，因此，本會則強烈反對「將集體騷擾行為和阻嚇合法活動的騷擾行為定為罪行」。本會建議相關法例不應該將私人間的纏繞行為與新聞、言論及集會行為混為一談，建議有關立法必須同時確保不會損害公眾的知情與表達權利，仔細考慮如何有效地釋除社會大眾的疑慮。

3. 應否把纏擾行為定為刑事罪行？

3.1 本會支持在不會損害公眾的知情與表達權利的條件下，訂立法例禁止私人間的纏繞行為，並將之定為刑事罪行。正如法改會的報告提出纏繞行為對受害人造成的困擾甚至可能發展成嚴重傷害。事實上，在兩性間特別是家庭暴力個案中，纏繞行為造成的人身禁制、心理威脅及精神打擊可以十分嚴重。在下面我例舉的個案是典型家暴受害人及子女飽受的纏繞行為，而現時的法例及家暴條例都是愛莫能助。

3.2 因此，本會同意根據法改會提出的三項建議，將「纏擾行為」定為刑事罪行，以制止威脅和騷擾受害人並打擾他們的正常生活，在纏繞者的行為惡化至嚴重程度前將他們拘捕，以防演變成暴力事故及阻嚇他們不敢再繼續纏繞，以

制約被判有罪的纏繞者，使他們不會再犯纏繞罪。

4. 若然，應否根據法改會的建議，訂明一個人如做出一連串的行為，而他知道或應該知道這一連串的行為對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪?

4.1 本會曾接觸的家暴個案，被虐受害人與子女為逃離施虐者，報警、入住庇護中心，最後與施虐者離婚及重建新生活。可惜施虐者繼續纏繞，以探望受害人為由要求進入受害人的家門，受害人為免家醜外揚只好讓施虐者進入家中，這樣施虐者連續在一年時間裡面，每天到訪受害人一至兩小時，每次都是坐在屋內注視著受害人及子女的活動，遊說受害人及子女復合。

4.2 施虐者沒有打罵，但他的存在已經對受害人及子女造成威脅，就是不知道什麼時候會對她們做出不利行為，為免再受傷害，受害人為有每次都躲在洗手間內，而子女亦刻意在父母之間活動以保護母親，施虐者坐在屋內注視著受害人及子女，令她們的生活在施虐者監視中，由於子女生活在驚恐中，受害人也飽受困擾情緒困擾，以至情緒低落甚至產生自殺的念頭。最後受害人與子女只能再次入往庇護中心，直到今日她與子女仍然生活在躲躲藏藏中。

4.3 上述個案明顯地反映在家庭暴力中的纏繞行為是「一個人如做出一連串造成騷擾的行為」，雖然施虐者可能只是出於愛意求復合，但已經足以對受害人造成驚恐或困擾。因此，本會是支持法改會建議將纏繞行為「訂明一個人如做出一連串的行為，而他知道或應該知道這一連串的行為對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪而他知道或應該知道這一連串的行為對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪。」

5. 罰則 - *應否就纏擾罪行的罰則劃一為罰款100,000元及監禁兩年？*

5.1 對於家庭暴力個案，本會同意訂定單一的最高罰則，不論犯事者是知道還是應該知道其行為構成騷擾。將最高刑罰定為第6級罰款(100,000元)及監禁兩年屬於合理的做法。

5.2 本會不同意將纏繞罪行應用於「集體騷擾行為和阻嚇合法活動的騷擾行為」，更不支持在禁止私人的纏繞法例中訂立「集體騷擾行為和阻嚇合法活動的騷擾行為」的罰則。

5.3 由於家暴中的纏繞行為可以是持續一段長時間而搜證上有實質的困難，而受害人受制於家庭關係未能提出投訴，因此本會同意延長「向法院提起訴法律

程序的時限至受害人正式向警方提出投訴的兩年時間內。

6. **免責辯護－*應否提供下述法改會建議的免責辯護？***

(a) 有關行為是為了防止或偵查罪行的目的而做的;

(b) 有關行為是在合法權限之下做的；以及

(c) 在案中的情況下做出該一連串的行為是合理的。

是否同意法改會的建議，上述(c)項的"合理行為"的免責辯護已包涵為新聞採訪活動提供的免責辯護，抑或應為新聞採訪活動另外提供特定的免責辯護？若後者，應如何制訂該免責辯護？

6.1. 本會對於將「防止或偵查罪行的目的」納入免責辯護中表示同意。

6.2. 不過，同時建議將「關乎公眾利益的新聞採訪」和「獲得基本法允許的言論和集會自由」列明為特定的免責辯護，以釋除新聞工作者和公眾人士對立法「禁止纏繞行為」會削減現有的「新聞採訪」和「基本法允許的言論和集會自由」的疑慮。

6.3. 就免責辯護中第4(a)(ii)項提出「有關行為是在合法權限下做的」，本會十分關注家庭暴力的離婚個案中，子女的探視權可能成為被施虐者騷擾的藉口。就本會接觸家庭暴力受害人的情況反映，目前仍有不少施虐者獲法庭判予子女的「合理探視權」，而所謂的「合理探視權」往往沒有清晰介定探視時間、頻率及安排，本會十分擔心「子女探視權」會被利用為「合法權限下」的理由以纏擾受害人。就這個問題，本會建議法庭為免法例的漏洞成為纏繞者的脫罪藉口，在審理涉及家庭暴力的離婚個案時，應該對子女探視的安排作出清晰的判決（包括指定探視頻率、時間及方式），同時增加對探視安排的支援，例如安排社工監管探視情況，避免施虐者利用「合理探視權」纏擾受害人。

7. **在刑事訴訟中發出禁制令－*應否授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使案中受害人或其他人驚恐或困擾的事情，以及若然，違反禁制令應否被定為刑事罪行？***

7.1 本會同意應賦法院對被判處觸犯纏繞罪的人發出禁制令的權力，以禁止該人做出致使受害人或其他相關人士驚恐或困擾。即使該人最終被判感化令或獲得無條件或有條件釋放，法例須訂明禁制令會在被告人被定罪名成立後生效，而無需受害人自行提出申請，以禁止被告繼續對受害人作出令受害人驚恐或困擾行為，徹底保障受害人的人身安全。

7.2 在禁制令的時限問題，就以往的受虐個案反映，為禁制令設有時限等同預告施虐者設定故態復萌的時間。故此，本會建議禁制令/強制令不應設定指明時效，而是有效「直至另行通知為止」。本會同意可以容許檢控官、被告人或禁制令提述的任何其他人，均可向法院申請更改或撤銷禁制令，然而法院收到有關呈請時，應先進行慎重的評估程序，例如向精神科醫生、臨床心理學家及感化官索取評估報告外，更必須參考受害人的口頭或書面意見等，以確定犯事人不會再對受害人做出纏擾行為/傷害之後，才向其取消有關禁令。

8. **為受害人提供民事補救** – *應否訂明一個人如做出一連串的行為，而該一連串的行為會構成騷擾，嚴重至引致他人驚恐或困擾，便須向該一連串行為的目標人物負上侵權法下的民事責任？*

8.1 本會對於「在制約纏擾行為法例中特別訂明提供民事補救」表示贊同。一方面不應單靠刑事法來防止和遏止騷擾行為，而民事案件的舉證標準要求則較低，為「因起訴的證據未能符合刑事訴訟的舉證標準」的個案，透過將騷擾定為獨立的侵權行為來提供民事補救。另一方面，纏繞行為受害人帶來身心傷害，透過將騷擾定為獨立的侵權行為，可以循有關法律途徑申索合理賠償。

8.2 本會亦同意被判處觸犯纏擾罪行的犯事人應對受害人負上在侵權法下的民事責任，法例應考慮就纏繞者的纏擾行為導致受害人的情緒困擾、焦慮和經濟損失等提供賠償。

8.3 不過，在有關賠償的安排上，本會認為不應將申索的責任加諸受害人身上，而應由法院根據案件中犯事人對受害人造成的傷害，在考慮受害人的意見後，以實際情況判處適當賠償金額的命令，以確保受害人應有賠償的機會，亦避免犯事人因受害人的申索而加強對受害人的針對性滋擾或傷害。

8.4 此外，目前刑事法庭和民事法庭之間缺乏相通報機制，如果要受害人在經歷完刑事法庭的審理程序之後，或因為刑事法院未能成功起訴犯事人，而需要受害人再自行向民事法院提出起訴或賠償申索的話，此舉不但加重訴訟對受害人的精神創傷，同時一般的受害人亦常常因為「怕入官門」而不敢主動再向另一法庭提出訴訟或索償。因此，本會支持建議中的「禁止纏繞行為法」同時考慮對受害人的刑事及民事補救，最理想是在同一個法院審訊中判決被告的刑事及民事的責任，否則在執行上更建議刑事法庭和民事法庭之間應就審理觸犯纏擾行為的案件設立互通機制，又或由執法機關負起「將有關案件轉為民事補救」的責任。

9 執行強制令

9.1 如5.2的建議一樣，本會認為應在民事補救的法例中訂明強制令會在被告人被判定罪名成立之後同時生效，而無需受害人再自行提出申請(除非受害人在特殊情況下有此需要)。

9.2 此外，當法院向判定罪成的被告人發出強制令之時，亦應在禁制令附加逮捕權書，賦予警務人員的權力，只需証明被告人確實違反強制令後，便無需再費時向法院提出申請拘捕手令，從而避免因為時間延誤，加深受害人承受驚嚇的傷害。

法權會聯絡人：吳惠貞（主席）
聯絡方法：(刪除)　（手提電話）

香港添馬添美道2號
政府總部(東翼)12字樓
政制及內地事務局(第4組)

立法禁止纏擾行爲意見

纏擾行爲使人極度討厭，不但剝奪別人自由，侵害個人私隱，影响工作及生活，受害人長期受到驚嚇而造成心理威脅及創傷，而犯罪的人卻逍遙法外，甚至無法無天地滋擾受害人的身邊朋友或家人。 立法可使犯罪的人得到法律制裁，有助受害人重獲新生。 但如定罪太輕沒有阻嚇作用，應設定適當的刑罰及盡快立法禁止纏擾行爲。

(署名來函)

2012年3月31日

徵求意見的事項：	回答
1. 立法的需要	
應否立法禁止纏擾行爲？	絕對應該.
2. 罪行	
應否把纏擾行爲定爲刑事罪行？	應該定爲刑事罪行.
若然，應否根據法改會的建議，訂明一個人如做出一連串的行爲，而他知道或應該知道這一連串的行爲對另一人造成騷擾，嚴重至足以使該人驚恐或困擾，即屬犯刑事罪？	應該
應否將集體騷擾行爲及阻嚇合法活動的騷擾行爲定爲罪行？	除和平表達自由活動外
3. 罰則	
應否就纏擾罪行的罰則劃一爲罰款100,000元及監禁兩年？	應該

(未能確定寄件人是否願意公開姓名)

(a) 有關行爲是爲了防止或偵查罪行的目的而做的；
(b) 有關行爲是在合法權限之下做的；以及
(c) 在案中的情況下做出該一連串的行爲是合理的。

是否同意法改會的建議，上述(c)項的“合理行爲”的免責辯護已包涵爲新聞採訪活動提供的免責辯護，抑或應爲新聞採訪活動另外提供特定的免責辯護？若後者，應如何制訂該免責辯護？

5. 在刑事訴訟中發出禁制令

應否授權法院向一名被定罪的纏擾者發出禁制令，禁止該人做出致使案中受害人或其他人驚恐或困擾的事情，以及若然，違反禁制令應否被定爲刑事罪行？ 應該

6. 爲受害人提供民事補救

應否訂明一個人如做出一連串的行爲，而該一連串的行爲會構成騷擾，嚴重至引致他人驚恐或困擾，便須向該一連串行爲的目標人物負上侵權法下的民事責任？ 應該

應否讓受害人可以就該一連串行爲所引致的困擾、焦慮和經濟損失索取賠償和申請禁止纏擾者做出會導致他驚恐或困擾的事情的強制令？

戴方（沛賢）
THE FANG (Pai Hian)
(刪除)

尊敬的法改会专组秘书：

法改会关于"有关缠扰行为的谘询文件"很好，立法很有必要。另外在香港被誉为东方明珠的地方，在公共场所或私人物业等处，随处包括公共交通工具，竟不受限制，胡乱张贴宣传广告、单张，也应立法规管或处罚。这些各种各样的广告，政府部门及相关人士一次又一次要花费大量人力、物力、财力去设法清除，给人员或这些人士造成精神上困扰，也不利香港作为国际城市的观瞻，更不利于环保。请考虑！谢谢你们，并祝

诸安！

戴方 敬上
2012年3月31日

To stalking_consultation@cmab.gov.hk
cc
bcc
01/04/2012 00:02 Subject Stalking consultation submission from HKHRM

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Stalking_final.doc

香 港 人 權 監 察
HONG KONG HUMAN RIGHTS MONITOR

(刪除)

電話 Phone: (刪除) 傳真 Fax: (刪除)

香港人權監察就「有關纏擾法行為的諮詢文件」的意見書
2012 年 3 月

前言

1. 法律改革委員會於 2000 年 10 月曾發表《纏擾行為》的報告書，指出現時保障個人免受騷擾的措施並不足夠，故提出當包括一個人如做出一連串的行為，導致另一人驚恐或困擾，即屬犯罪，並須向受害人負上侵權法下的民事責任。

2. 政制及內地事務局於 2011 年 12 月發表《有關纏擾法行為的諮詢文件》，指出政府同意法改會的意見，但因建議具爭議性，故發表諮詢文件徵求社會各界意見。香港人權監察反對訂立纏擾法，認為建議會危害請願示威的自由，損害新聞和言自由，干擾工業行動和勞工運動，要求政府改而修訂《家庭暴力條例》(香港法例第 189 章)、《放債人條例》(第 163 章)和《業主與租客(綜合)條例》(第 7 章)等法例以協助因個人感情糾葛、追債及收樓三個範疇的纏擾行為。

國際人權標準

3. 適用於香港的聯合國《公民權利和政治權利國際公約》第 19 條指出：
「一．人人有保持意見不受干預之權利。
二．人人有發表自由之權利；此種權利包括以語言、文字或出版物、藝術或自己選擇之其他方式，不分國界，尋求、接受及傳播各種消息及思想之自由。
三．本條第二項所載權利之行使，附有特別責任及義務，故得予以某種限制，但此種限制以經法律規定，且為下列各項所必要者為限：
(子) 尊重他人權利或名譽；
(丑) 保障國家安全或公共秩序、或公共衛生或風化。」

4. 聯合國《公民權利和政治權利國際公約》第 21 條亦指出：
「和平集會之權利，應予確認。除依法律之規定，且為民主社會維護國家安全或公共安寧、公共秩序、維持公共衛生或風化、或保障他人權利自由所必要者外，不得限制此種權利之行使。」

5. 《基本法》第 27 條亦指出：「香港居民享有言論、新聞、出版的自由，結社、集會、遊行、示威的自由，組織和參加工會、罷工的權利和自由。」

6. 香港政府有意制責任維護香港市民的新聞自由及示威請願自由，但近年新聞從業員的工作及示威請願的活動屢屢遭政府打壓，例如過去一年在遊行

期間的大規模拘捕、示威區及遊行路線安排欠妥當、副總理李克強訪港期間對傳媒工作及示威請願的限制、拘捕在新政府大樓的記者等，加上香港不如大部分外國地方有資訊自由法及檔案法，確保資訊妥善保存及流通，都令新聞自由及示威請願自由受到威脅。一旦現時建議的纏擾法獲通過，更會嚴重打擊新聞自由及示威請願自由。

建議的纏擾法危害新聞及示威請願自由

7. 根據法改會的建議，纏擾行為的定義是「在某段時間內針對某人所做一連串使人受騷擾、驚恐或困擾的行為」，而纏擾的方式包括「在不受歡迎的情況下登門造訪；發出受害人不欲收到的通訊；在街上尾隨受害人；注視或暗中監視受害人的居所或工作地點；送贈受害人他不欲接受的禮物或古怪物件；向第三者披露受害人的私隱；對受害人作出虛假指控；破壞受害人的財產；以及／或謾罵和傷害受害人的身體。

8. 必須注意的是，建議的纏擾行為定義甚為主觀及廣濶，「騷擾」和「困擾」的門檻很低，甚至連「造成傷害」或「很可能會造成傷害」，有可能令很多平常行為亦可能變成纏擾行為，例如在街上游說途人買旗或接受問卷調查、在某人的 Facebook 多次留言等。尤需注意的是，同一次採訪或示威活動中重覆或多次不同的行為，已可以構成「一連串的行為」。

9. 纏擾行為刑事化更會危害新聞自由及示威請願的自由。新聞採訪活動經常需要追訪或不斷致電公眾人物，希望他們評論某牽涉公眾利益的事件，例如特首選舉臨近，每當特首參選者有公眾活動，勢必要多名記者在場追訪，有時記者更要跟縱、監視及深入調查報道，如跟蹤報道官員進出中聯辦，到特首辦測試系統的記者等。根據建議中的纏擾法，被追訪的人士隨時可以以被纏擾為理由而報警求助，新聞採訪行動勢必要即時終止，負責追訪的傳媒工作者更可能被刑事起訴。

10. 同樣地，纏擾法亦極有可能會窒礙請願及示威自由，追擊示威行動如跟隨落區政界人物抗議、在遊行跟隨特定政黨在旁抗議，甚至在網上持續評論特定人物，只要被「追擊」的對象聲稱被纏擾，所有的示威及遊行都隨時需要終止。

11. 人權監察的擔憂並不是過慮，建議中的纏擾法與英國的《1997 年保障免受騷擾法令》相似，而英國就有多宗個案，被用作箝制新聞及示威請願的自由：

- 2001 年一群到美軍情報中心抗議的示威人士，因高舉寫上「George W Bush? Oh dear!」的標語令美國員工感到滋擾，而被檢控纏擾罪；
- 2001 年，一名示威人士因盯著建築物 (staring at a building)而遭拘捕；
- 2004 年，一名女士發出兩封電郵致一間藥物公司的管理人員，呼籲該公司停用動物測試藥物，言詞禮貌，卻被拘捕；
- 2007 年，一群居民抗議能源公司 Npower 計劃以煤灰填家園附近的湖泊，Npower 指示威人士滋擾公司員工，引用纏擾法申請禁制令，禁止示威人士以及記者採訪，經三個月訴訟後才獲豁免。

12. 政府亦因應英國在2001年及2005年修訂《保障免受騷擾法令》，而考慮應否將「集體騷擾」及「阻嚇合法活動」的騷擾行為訂為罪行。在英國，集體騷擾的條文適用於兩個或以上的人做出的集體騷擾行為，更包括一個人親自作出一項作為又安排另一人作出另一項作為。而「阻嚇合法活動」就是一個人如在不同時候對兩個或以上的人做出一連串他知道或應該知道涉及騷擾的行為，目的是勸使任何人不要做其有權做的事情或做其無責任要做的事情。

13. 若政府立法將「集體騷擾」及「阻嚇合法活動」的騷擾行為訂為罪行，將會更加威脅示威及集會的自由，因為多人聚集的示威活動，或多人聯同致電郵予某人或某組織等行為，已經可以被視為集體騷擾；而組織或機構亦可以聲稱其員工因示威或採訪行動而受滋擾，影響他們工作，而觸犯「阻嚇合法活動」的騷擾行為。屆時工會呼籲工友加入罷工行列，也動輒墮進「阻嚇合法活動」的法律陷阱。

免責辯護無補於事

14. 政府引述法改會建議的免責辯護，包括「有關行為是為了防止或偵查罪行的目的而做的」、「有關行為是在合法權限之下做的」、以及「在案中的情況下做出該一連串的行為是合理的」。法改會認為「正當的新聞採訪活動」已包含在合理行為這項免責辯護之內，因此沒有必要就此另訂免責辯護。

15. 人權監察認為，法改會的建議厚此薄彼，亦不能真正維護新聞及示威請願的自由。既然新聞採訪活動已經包括在合理行為，為何基於「防止或偵查罪行」的行為就會是一項獨立的免責辯護，而新聞採訪或示威遊行活動就被歸入合理行為。近年在示威遊行中，警方往往以防止罪案及控制人群為理由，近距離拍攝示威活動，更將示威者的容貌拍攝，令示威人士深感困擾。但除非有罪案發生，否則在合法的示威遊行活動中，警方不應近距離拍攝示威者容貌，即使是控制人流所需，亦絕無必要近距離拍攝。但我們可以預見，若有示威人士引用纏擾法而投訴被滋擾，「防止或偵查罪行」的免責辯護定成為警方的尚方寶劍。

16. 另一方面，縱使「合理行為」的免責辯護能保障新聞工作者及示威請願的參與者，但這保障卻只限於他們被起訴後，保障他們免於入罪。他們採訪新聞，或進行示威請願的目的並不能達成，因為他們即場的行動必然會受到阻礙，亦難以期望前線警員在執法時會充份考慮免責辯護的條文。事實上，大部分被追訪或成為示威對象的人物或機構，他們並不是要令新聞工作者或參加示威及請願的人士入罪，只是想妨礙新聞採訪及示威請願的行動，免受記者追訪及社會監察與批評。而且，一旦他們被起訴，他們需要面對冗長及耗費巨大的法律程序，更要主動證明他們的行為合理，即使最終被判無罪，整個法律過程對他們而言亦絕不公平，亦構成白色恐怖，令新聞工作者及參加示威請願的人士會有所顧忌。

建議

17. 雖然政府的建議能有助保障某些受滋擾的人士，但現時政府的建議卻一網打盡，不必要地擴展至其他範圍，令多種自由受到不必要的威脅，故此人

權監察反對法改會的建議。政府應將纏擾的適用範圍限制至以下關係，並由控方證明疑人與受害者符合以下關係，以及訂出清楚合理的啟動門檻，方可構成纏擾罪：

- 個人關係，如家庭關係、昔日情人、追求者；
- 債主 (或其委托人) 與欠債人 (或其他人、同住者) 關係；
- 收購者與屋主或地主；
- 或收購物業的業主與售出物業不久的舊業主。

換句話說，人權監察要求政府在現行的《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行為的條款，保障真正受滋擾的人士，同時不會對示威集會和新聞言論的自由、工業行動等構成威脅。

有論者認為，人與人之間有太多關係，未必能在法例中一一加以羅列。人權監察同意要臚列出所有人際關係並不現實，但亦不能過份概括，危害其他市民的權利。另外，人權監察亦不同意加入僱員的個人關係，因為這會妨礙牽涉勞資糾紛的僱員爭取權益。

To stalking_consultation@cmab.gov.hk
cc
bcc
01/04/2012 00:10 Subject Re: 意見

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本人希望政府可儘快立法。因為本人由2007年至今從不間斷地被一個不認識的人纏繞及跟蹤，報了5次案。雖然明白到警方已儘了力幫忙，但因害怕目前的法律在纏繞方面並不是太完善；若日後能成功把他起訴，法官亦有可能只輕罰他而已。但可能因為這樣，會激發他對自己做出更可怕的行為。在考慮過後，本人只好每次見他又出現時即時離開辦公室及每日上班及離開公司時都儘量找同事陪伴。所以希望政府可儘快立法!

十分感謝!
Ms Lam

To stalking_consultation@cmab.gov.hk
cc
bcc
Subject Stalking consultation

01/04/2012 22:38

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Please find my submission attached

I am happy that my identity is linked to my submission

Thanks **Response to the Consultation paper on Stalking.docx**

Response to the Consultation paper on Stalking

Professor John Bacon-Shone
Director, Social Sciences Research Centre
Former Chairman, LRC subcommittee on Privacy

Need for Legislation:

I consider it unarguable that stalking is a serious social problem which is not addressed by current legislation and cannot fully be addressed by amending current legislation (e.g. the Domestic and Cohabitation Relationship Ordinance) as it is not solely linked to debt-collectors or cohabitation relationships.

It is outrageous for the HKJA to argue that there is no pressing social need because the number of debt-collection cases reported to the police have dropped. Firstly, many cases are not debt related and secondly, those who need help most from the legislation already know that the police cannot help unless there is physical risk. While journalists have a legitimate concern about whether the legislation might impact freedom of expression, it is not for them to dismiss the legitimate concerns of those suffering harassment.

Elements of the Legislation:

The LRC proposal focused on person-to-person harassment because that is both the most serious social problem and because that minimizes the risk of restricting justifiable activity.

Experience in England and Wales has shown that extending the scope to cover collective action or group victims would significantly increase the risk of abuse of the legislation for little increase in protection of individuals. The apparent willingness of the Hong Kong Police Commissioner to restrict the right of freedom of expression on the claimed basis of protecting public security suggests the need for great caution in expanding the scope of the legislation in either way.

Defences:

The LRC considered in detail whether "legitimate news-gathering activities" should be a defence and rejected this on the grounds that it should already be fully protected through the defences of "purpose of preventing or detecting crime" and "reasonable in the particular circumstances".

I still believe that the courts will be fully able to protect freedom of expression, given the proposed exemptions. However, I do not have such confidence in the Police given their recent behaviour. The consultation document refers to an exemption for "news-gathering activities" without the critical word "legitimate", which would essentially provide an exemption for all activity, which makes this an easy straw man to demolish.

I now believe that an exemption for "legitimate news-gathering activities" might be a good idea as it highlights the key role of freedom of expression, while allowing the

courts to rule on whether the news-gathering activities are legitimate or merely an excuse to satisfy prurient curiosity.

To <stalking_consultation@cmab.gov.hk>
cc
bcc
03/04/2012 09:49 Subject HKWPEA Response Paper on Stalking Consultation Paper
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Sir / Madam,

Enclosed please find the response paper on Stalking Consultation Paper from Hong Kong Women Professionals & Entrepreneurs Association

Thanks & regards,
HKWPEA Secretariat
Tel: (deleted)

HKWPEA_Response Paper on Stalking_29Mar2012.pdf

Hong Kong
Women Professionals
& Entrepreneurs
Association Limited
香港女工商及專業人員聯會有限公司

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

29th March, 2012

Dear Sir/Madam,

Response Paper on Stalking Consultation Paper

In response to the Consultation Paper on Stalking which was published in December, 2011, members of the Hong Kong Women Professionals & Entrepreneurs Association (HKWPEA) have studied and exchanged views with regard to the proposal from the Consultation Paper before presenting our consolidated response for submission to the Government.

Enclosed please find our HKWPEA's response paper to this Public Consultation Paper on Stalking for your kind perusal. For any further enquiries or information, please do not hesitate to contact me at

Yours faithfully,

Mrs. Agnes Koon
President
Hong Kong Women Professionals & Entrepreneurs Association

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Hong Kong Women Professionals & Entrepreneurs Association (HKWPEA)

Response to Consultation Paper on Stalking

March, 2012

The Hong Kong Women Professionals & Entrepreneurs Association (HKWPEA) was established as a non-profit organization in September 1996 by a group of local women professionals and entrepreneurs. These include women professionals, business executives and entrepreneurs who have come together with the following objectives, namely: 1) developing a strong supportive network; 2) creating practical and innovative learning and business opportunities for themselves and for others and 3) promoting high professional standards within the community. Based in Hong Kong, the HKWPEA reaches out and establishes relationship with counterparts in Mainland China and abroad. Ranking high on the Association's agenda is timely response to the consultation papers of the HKSAR Government on various policy issues through the support of the Public Affairs Committee.

The HKWPEA has been taking a proactive role in responding, studying and stating our suggestions on any current public issues that will have major impact on the well-rounded well-being of the Hong Kong community. Last year, we have expressed our views on the Healthcare Reform 2nd Stage Consultation as well as the Competition Law.

We have been aware about the Consultation Paper on Stalking as presented by the Constitutional & Mainland Affairs Bureau, and initially we would like to have a direct view exchange with the Secretary or any of the team members from the Hong Kong SAR Government involved in this public consultation process. With the advice from the Bureau that a face to face discussion with the HKWPEA members may not be technically feasible due to the fully packed schedule of the Bureau officers, our Executive Committee members including the chairperson of our Public Affairs Committee eventually have attended one of the 2 duplicate forums organized by the Bureau where issues of Stalking consultation process were highlighted.

As a women professional and entrepreneur body with members from various sectors including the multi-media and communications industry, our members share the following views and values in terms of our response to the proposed Consultation Paper on Stalking:

1. We believe human rights and privacy of each individual needs to be respected and protected under all circumstances.

2. While "Stalking" may be described as "a series of acts directed at a specific person which, taken

together over a period of time, causes him/her to feel harassed, alarmed or distressed", any stalking behavior may escalate from what may be initially just annoying , alarming to the level of dangerous behaviour, including potential violent or even fatal acts. In general principle, we do support the initiative to consider legislate against the act of "Stalking".

3. However, there are a couple of grey areas or controversial issues requiring further discussion and the public opinions from different experts or stakeholders, as we need to balance the public interests, interests of the community as a whole as well as individual rights.

4. Overall, we support considering the act to legislate against the act of "Stalking", but there are indeed some concerns and comments as follow.

Our comments below represent views that are being held from a cross-section of HKWPEA members who are holding significant positions in both the public and private sectors in Hong Kong with experts and leaders in various fields, especially those working in the multi-media and public relations sector, as well as members working on the best interests for women in the community:

1. **Access to information for the public interests or interests of the community as a whole**

One of the main controversial issues or sensitive area which needs further discussion with regard to the consideration of legislating the act of "Stalking" is the optimal balance of the public interest for press freedom" with particular reference to the journalists or people working in the multi-media profession.

The implementation of the law against "Stalking" needs to ensure that no one will be abusing this legislation to oppress any "press freedom" or prevent any investigational activities meant for the best benefits of the society or community as a whole.

2. **Definition of "Stalking" within the anti-stalking legislation**

While the Law Reform Commission (LRC) considered the objectives of anti-stalking legislation include stopping threatening and harassing behaviour which disrupts normal life for the victim and preventing the escalation of the aforesaid behavior into violence, our members suggested that the meaning of "threats" and "disruption" needs further fine definition as these could always be subjective for different individuals, especially if the act of "apparent stalking" is part of a genuine investigational activity cared by a bona fide journalist for the public interest of the community, and we need strike a balance- on one hand, to prevent any abuse of the legislation against the multi-media or public relations professionals, and on the other hand to protect anyone from any unnecessary or unreasonable stalking behaviour.

3. **The legislation leading to potential mental treatment to stalkers in appropriate cases**

Again, this requires further fine definition and open discussion, and the further expert opinion from the medical professions, especially the psychiatrists and clinical psychologists. It is reckoned that the journalists or multi-media professionals are quite concerned about this implication from the future legislation with regard to "Stalking", as while one is paying his/her duty such as in the case of the journalists asking a single question repeatedly directed towards the interviewee who refuses to make any clarification or even hide himself/herself from the public if he/she has done anything wrong. The protection of public interests in this case will then be mistreated as an act of "Stalking".

4. **Protection against women's rights**

Taking into account the views of some women groups and as a women association, we suggested that it may be more sensible to include the anti-stalking provision be included in the Domestic and Co-habitation Relationship Ordinance rather than enacting a completely new law as the current mentioned activities from the public consultation paper are mostly vaguely defined, and this will probably be up to individual interpretation and definition for a lot of times.

5. **Special concerns for domestic issues**

Following our suggestion of consideration of incorporating the more clearly defined stalking activities with particular reference to specific scenarios, concerns from divorcees being if their ex-partners are escaping from any liabilities with irresponsible acts, this might have further implication with the enactment of the Stalking Law especially if the proposed" Joint Parental Responsibility Model" by legislative means is going to be implemented for joint child custody and access in the days to come. This will make the application of legislating against "Stalking" an even more confusing and complicated matter.

6. **The respect of press freedom and protection of the media or public relations profession**

With regard to defence for a defendant who was charged with the offence of harassment to show that the conduct was pursued for the purpose of preventing or detecting crime, under lawful authority or it was "reasonable" in the particular circumstances, our media and public relations professional members voiced further concerns, again with regard to the definition of "reasonable", and the definition of "prevention or detecting crime". This will have potential impact on any restriction of press freedom when a journalist or a media worker is performing his or her duty, or in turn, the journalists might be "stalked" by government officials to "prevent or detect any crime" or that this particular "stalking" act against the journalists might be counted as

"reasonable".

Conclusion

In principle, we do support the proposed Public Consultation on Stalking – on one hand to protect each person's human right and one's own privacy, but on the other hand, we need to balance the public interests in general for the society and the community, with particular reference to press freedom or any potential limitation upon those working in the multi-media or public relations profession. At the same time, we need to explore whether there will be any potential loopholes when the proposed legislation is going to be applied to any domestic issues or specific scenarios.

At the moment, it seems that the current proposal has not provided sufficient details with regard to any clear definition of any individual scenarios, the definition of "reasonable conduct" or "prevention or detection of crime" when a defendant is defending the charge of the offence of harassment. Therefore, we propose this consultation should be further prolonged with a more thorough and open discussion among all the stakeholders, members of the relevant professions within the community in order to achieve the "win-win-win" situation – law-makers are comfortable with the enactment of the law, while ensuring protection of individual human rights and also the protection of the media and public relations workers with sustainability of press freedom in the Hong Kong community.

To <stalking_consultation@cmab.gov.hk>
cc
bcc
10/04/2012 16:29 Subject 反對新禁止纏擾行為之條例
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

致：政制及內地事務局執事先生

本人葉錦明(身分證號碼 (刪除))是香港科技大學人文學部副教授，現具函反對政制及內地事務局擬議另立新例禁制纏擾行為，因有關新例將會影響新聞自由和市民請願遊行等表達自由。

本人認為，政府可考慮在《家庭及同居關係暴力條例》、《放債人條例》及《業主與租客條例》中加入禁止纏擾行為的條款，以保障因情感問題受纏擾的男女、無辜受收債或強迫收樓等行為影響的市民。
謝謝您將本人之意見考慮在內。
祝安！

葉錦明謹上

To stalking_consultation@cmab.gov.hk
cc
bcc
13/04/2012 22:56 Subject 纏擾行為定為刑事罪行的意見
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

給: 政制及內地事務局

本人認為如將纏擾罪定為刑事罪, 很容易會造成濫用. 除非只應用在很極端的情況, 例子, 在商業社會, 你魚我騙, 是很普及的, 單是小額錢債審裁處及法院, 每年的錢債及其他案件都數以萬計, 如有人欠債不還(已知是騙人老手), 經法院判決勝訴. 如仍不還款, 勝訴人找收數公司, 雖然他們用的方法是合法, 但人家可以投訴或是報案給纏擾, 即是否收數公司連同勝訴人都需負上刑事責任?? 另勝訴人通過各方面追討, 包括電話, 信件, 上門及其他. 亦可能隨時構成纏擾??? 亦例如租客欠租, 業主找電話及上門, 但仍不付款, 反而說你纏擾著他, 他不但不交租, 反控告你纏擾及要求賠償? 並說已記錄你的罪証, 這豈不是產生更多的問題嗎?

另外地產代理或一般推銷或其他, 如致電予客如予資訊或資料, 亦有機會構成纏擾.....媒體介的追蹤明星亦是, 或是親戚間有糾紛, 大家經常通過電話及其他方法互相纏擾. 這是否2個人都要被控刑事? 亦例如情侶分手後, 有一方想通過溝通試圖復合, 另一方不同意, 這是否算是纏擾? 因此纏擾的界定要有局限. 否則他人就很容易濫用. 社會亦會產生很多問題. 我怕你招多3萬個Police都應付不了.

本人認為**應豁免商業活動/公共利益/傳媒/個人糾紛等**, 纏擾的定義最好是為:

受害人, 在完全不認識及跟這位第三者或是他人(因可能是受託人)沒有任何利益瓜葛, 其他糾紛(包括商業, 民事, 錢債, 感情等), 及不存在任何親戚關係的情況下, 第三者無理及不斷對受害人作出各式各項的纏擾. **而且歷時超過2個月, 受害人雖已拒絕, 並已通過合法的途徑, 包括律師, Police報案或是法院, 出信或是和各種方法, 轉達要求終止此項無理的纏擾行為. 並已記錄在案, 在確認這第三者收到轉達訊息後, 第三者仍沒有"停止及仍持續纏擾", 亦沒法向受害人, Police或法院作出"合理的解釋及辯解"**, 經律政司審查案件後, 確認是一宗完全"無理的纏擾", 這樣才可考慮作出檢控.

如是受害人認識的或是因其他糾紛/原因而受到的第三者纏擾, 受害人可通過法律途徑, 包括現行的法律, 好像禁制令等去執行禁止進行纏擾. 不應將之納進成為纏擾法.

因遲了給予意見. 請見諒!

Frenda

20/04/2012
11:15

To vchan@cmab.gov.hk
cc stalking_consultation@cmab.gov.hk

bcc
Subject Consultation Paper on Stalking (Dec 2011)
☐ Urgent ☐ Return receipt ☐ Sign ☐ Encrypt

Dear Miss Chan,

Consultation Paper on Stalking (Dec 2011)
Submission of Law Reform Commission Secretariat

Since the Consultation Paper on Stalking was published , there have been some concerns, as evidenced by press coverage, about implementing some of the proposals, in particular on how such reforms may impact on press freedom .

The Law Reform Commission (LRC) had spent considerable time and efforts to address these concerns and recorded its deliberations and conclusions in its report . Since members of the public may not be aware of the existence of such useful reference materials, and with a view to enabling the Bureau and the public to have a more detailed and balanced consideration on the way forward , we in the LRC Secretariat have collated and recapped the parts of the LRC Report where those concerns were dealt with.

We would also like to provide certain relevant information which became available only after the publication of the LRC Report.

Against this background, I attach a Submission in the name of the Secretariat .

LPD_SJO_QGO1-#371133-v5-LRC_Secretariat_Submission_on_CMAB_Consultation_Paper_on_Stalking.DOC

Regards,

Stephen Kai-yi WONG
Secretary

香港法律改革委員會
THE LAW REFORM COMMISSION OF HONG KONG

(deleted)

CMAB CONSULTATION PAPER ON *STALKING*

Submission of LRC Secretariat

INTRODUCTION

In the Bureau's consultation paper on Stalking issued on 19 December 2011 (the CMAB Consultation Paper), the Bureau summarised and re-presented to the public the reasoning and recommendations contained in the LRC's report on Stalking published in October 2000 (the LRC Report), and indicated how the Administration intended to move forward to implement reforms to the law in this area.

2. It is evident from press coverage on the CMAB Consultation Paper since it was published[1] that certain key objections are likely to be raised against the Bureau's proposals on implementation; in particular, on how such reforms may impact on press freedom. The LRC Secretariat notes that these concerns echo those raised during the LRC's public consultation exercise in 1998.[2]

3. The LRC had spent considerable time and efforts to address those concerns and recorded its deliberations and conclusions in its report. Since members of the public may not be aware of the existence of such useful reference materials, and with a view to enabling the Bureau and the public to have a more detailed and balanced consideration on the way forward when the respective views received are weighed against each other, the LRC Secretariat has collated and recapped under this Submission the parts of the LRC Report where those concerns were dealt with. We also take the opportunity to provide certain relevant information which became available only after the publication of the LRC Report.

NEED FOR LEGISLATION

4. In Chapter 2 of the CMAB Consultation Paper, the Bureau summarises the discussion in the LRC Report on the nature of stalking and why it is a problem which needs to be addressed, including the inadequacy of the protections for victims under the existing civil and criminal law. Endorsing, in paragraph 2.17, the LRC's recommendation that anti-stalking legislation should be introduced, the CMAB Consultation Paper, at paragraph 2.18, invites the public to comment on the Bureau's *"proposal to legislate against stalking."*

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1 See, for example, "Balancing privacy and press freedom", *China Daily* (4 Jan 2012) and "Stalking behaviour should be defined before proposing a law", *South China Morning Post* (15 Mar 2012).

2 Following publication of the LRC Privacy Sub-committee's consultation paper on *Stalking* in May 1998.), which is discussed in Chapter 2 of the LRC Report.

5. Paragraph 2.15 of the CMAB Consultation Paper refers to the LRC's public consultation exercise[3] which found that the vast majority of the 54 submissions it received supported the introduction of anti-stalking legislation. To strengthen the weight to be ascribed to the information provided in paragraph 2.15, we would supplement by noting that included within the group of respondents which supported the LRC's anti-stalking legislation proposals[4] were:

- Hong Kong Bar Association
- Law Society of Hong Kong's Criminal Law and Procedure Committee
- Hong Kong Young Legal Professionals Association
- Hong Kong Federation of Women Lawyers
- both the Prosecutions Division and the Civil Division of the Department of Justice
- Security Bureau
- Hong Kong Police Force
- Social Welfare Department
- Working Group on Battered Spouses
- Office of the Ombudsman
- Hong Kong Family Welfare Society
- Harmony House
- Safe Talk Domestic Violence Support Group
- the member agencies of the Hong Kong Council of Social Service
- Hong Kong Federation of Women
- Association for the Advancement of Feminism
- Anti-Sexual Harassment Alliance
- Zonta Club of Victoria
- Lingnan College.

6. We note also that, significantly, all but one of the media organisations which responded during the LRC's consultation exercise expressed support for the proposals, though qualified by concerns over implications for press freedom.[5] These organisations included:

- Hong Kong News Executives' Association
- Hong Kong Press Photographers Association
- Asia Television Ltd
- Hong Kong Commercial Broadcasting Co Ltd
- Metro Broadcast Corporation Ltd

7. The one media organisation responding to the LRC consultation which expressed "strong reservations" about the proposals was the Hong Kong Journalists Association.[6]

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3 Following publication of the LRC Privacy Sub-committee's Consultation Paper on *Stalking* (May 1998), which is discussed in Chapter 2 of the LRC Report.

4 See LRC Report, at paras 2.2 to 2.5.

5 See LRC Report, at paras 2.7 to 2.10.

6 See LRC Report, at para 2.13.

8. Because of its potential relevance to the objectives of the current consultation exercise, we attached by way of further elaboration the full text of Chapter 2 of the LRC Report, which summarises the views expressed in response to the LRC's consultation exercise (see **Annex**).

OFFENCE OF HARASSMENT

9. In paragraphs 3.1 to 3.9 of the CMAB Consultation Paper, the Bureau summarises the discussion in the LRC Report on the elements of the offence of harassment proposed by the LRC,[7] and endorsement of the LRC's approach is indicated in paragraphs 3.8 and 3.9.

10. The Bureau then goes on to discuss, in paragraphs 3.11 to 3.21, the additional 'new' offences of "collective harassment"[8] and "harassment to deter lawful activities"[9] based on legislative provisions introduced in the United Kingdom in 2001 and 2005 respectively. We would underscore that these possible 'new' offences, the introduction of which in the UK post-dated the publication of the LRC Report, did not form part of the LRC's recommended offence of harassment, which, as the Bureau observes at paragraph 3.12, *"targets one-person-to-one-person conduct."*

11. It is noted that, in paragraph 3.22(a) of the CMAB Consultation Paper, the Bureau invites comments from the public on *"whether stalking should be made a criminal offence based on the LRC's recommendation ... ."* Public comment is also invited at paragraph 3.22(b) on *"whether collective harassment and harassment to deter lawful activities should be made offences."* As the latter 'new' and potentially controversial proposals had not been considered by the LRC, we are unable to offer any view. However, we urge that priority be accorded to implementing the much-needed basic stalking offence which the LRC recommended. It would be regrettable that its implementation is delayed by any controversy or opposition arising from the new proposal.

DEFENCES

12. The Bureau has invited the public to comment on issues related to the defences to be provided within the anti-stalking legislation at paragraph 3.55 of the CMAB Consultation Paper. Paragraph 3.55(a) asks whether the defences for the offence of harassment proposed by the LRC should be provided. Paragraph 3.55(b) refers to whether *"a defence for news-gathering activities should be subsumed under the "reasonable pursuit" defence ... as recommended by the LRC, or a separate, specific defence for news-gathering activities should be provided"*. Paragraph 3.55(d) asks whether *"any other defences should be provided for the offence of harassment, if pursued"*.

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7 See LRC Report, at paras 2.7 to 2.10.

8 To apply to *"a campaign of harassment by two or more people"*: CMAB Consultation Paper, at para 3.14.

9 To *"two or more persons to the extent that any person (whether or not one of those persons, and not limited to individuals) was deterred from carrying out his lawful business"*: CMAB Consultation Paper, at para 3.20.

News-gathering activities and public interest

13. The Bureau summarises the LRC's reasoning on why a separate defence for news-gathering activities should not be necessary, and also why a separate "public interest" defence is not needed, in paragraphs 3.42 to 3.43 and 3.47 to 3.48 of the CMAB Consultation Paper. On the basis that the concerns and objections originally raised to the LRC on these important issues are likely to be raised again in the current consultation exercise, we think it useful to set out below in full the discussion in the LRC Report where the arguments put forward for these separate defences were considered and answered in detail by the LRC. The LRC stated:

> *"7.12 Certain activities that are carried out for legitimate purposes may assume the form of stalking if the manner in which they are carried out is excessive or unreasonable. Nonetheless, it is also essential to safeguard press freedom and the freedom of various trades and professions to go about their ordinary business. We therefore conclude that the defence of acting reasonably in the circumstances should be adopted. If the incorporation of such a defence has any impact on the news media, it is only when the pursuit of a journalist has caused alarm or distress and is considered by the court to be unreasonable in the circumstances.*
>
> ***News-gathering activities***
>
> *7.13 The Hong Kong Journalists Association (HKJA) strongly requests that the proposals be modified to ensure that journalists engaged in legitimate news-gathering would not be at risk of arrest or imprisonment if the proposals were implemented. They submit that fraudsters or other persons who have something to hide would be able to back up their 'no comment' with a threat of calling the police to arrest the investigating journalists. They say that journalists must sometimes be persistent, particularly when the subject who has refused to comment might change his mind later. They are concerned that journalists who observe in all respects the ethics of the journalistic profession might be found guilty of harassment if they pursue an individual with persistence. The Association cites the following example in support of their views:*
>
> > *'Suppose a journalist has the phone number of a business executive accused of cheating their customers. Everyday new allegations may emerge about the company's business activities. When a reporter rings the executive, they may say that they never speak to the press and slam down the phone. Nevertheless, if the next day's article has new disclosures about the firm, it is the duty of an ethical reporter to ring and try and put the allegations to the executive. They have the right to say once again they never speak to the press and slam down the phone. ... The*

actions of the reporters involve no threat of violence, or risk of escalation. However, this could easily be construed as 'harassing behaviour which disrupts normal life for the victim' ... particularly if ten reporters all calling everyday. Should the executive have the right to have the reporters arrested? The HKJA believes not. But the reporters' activities seem quite likely to be classed as harassment going by the proposed definition.'

7.14 Asia Television Ltd is concerned that the defences proposed in the Consultation Paper may not protect all legitimate activities of the media. They give the example of journalists waiting outside the responsible officers' home from day to night so as to obtain their views and other information about the chaos of the new airport when the officers came out. Their concern is that waiting outside someone's premises for a long time or even overnight might be considered unreasonable under the proposed legislation.

7.15 In our view, the behaviour of the journalists in the examples cited by the HKJA and ATV above are reasonable in the circumstances even if their conduct is found by the courts to have amounted to harassment. The HKJA seeks to support their views by citing two incidents supplied by the National Union of Journalists in the UK, but the journalists involved were not convicted of the offence of harassment under the UK Protection from Harassment Act 1997.

7.16 The HKJA suggests that a defence based on the special characteristics of media activities be created:

> *'For instance, the difference between 'harassment' by journalists and those by others is that journalists should identify themselves and thus put the subject's mind at ease over their intentions. There should be no risk or threat that their activities will be arbitrarily extended, escalate, or be calculated to cause mental anguish. It could be made a defence that the harassment was such that the victim had no reasonable cause for alarm or fear under the circumstances.'*

7.17 If it is true, as suggested by the HKJA, that revealing the fact that the person seeking information is a journalist would 'put the subject's mind at ease', enquiries made by journalists can never amount to harassment as long as they disclose their identity. Further, if the journalist in an action for harassment could show that the subject had no reasonable cause for alarm or fear in the circumstances, he would have no difficulty rebutting any claim that he knew or ought to have known that his pursuit amounted to harassment of the subject. We therefore consider it unnecessary to include the defence suggested by the HKJA.

7.18 The Hong Kong News Executives' Association argues that it is difficult to define what is reasonable behaviour on the part of a journalist. They say that it may differ depending on who the subject is. In relation to the claim that a few celebrities have been stalked by journalists, the Association submits:

> *'It would be unreasonable to put [celebrities] in a position of being able to use that public attention one day yet threaten criminal action for the same action another day. So-called 'paparazzi' may be unwelcome but their attentions are almost a part of the disadvantage of being a public figure. Provided they are not violent or abusive they should not be denied their work in a public place simply because the public figure decides they do not want to be a public figure for a few hours.'*

7.19 The Hong Kong News Executives' Association comments that the proposed offence will catch many 'genuine journalists' who do indeed pursue a course of conduct which the subject considers harassing, particularly when the subject has some scandal to hide. They suggest as a specific defence (or as an example of reasonable pursuit) that the defendant's course of conduct was a 'normal pursuit by a journalist of his profession'.

7.20 Commercial Radio Hong Kong comments that legitimate public interest in an individual's activities may outweigh the importance of his personal feelings. They argue that stalking legislation must not be able to be used as a tool by unscrupulous members of the public to prevent legitimate news gatherers from doing their job.

7.21 The Hong Kong Press Photographers Association explains that in the course of gathering news materials, journalists unavoidably need to rely on close observation of their target to check his credibility. They hold the view that such conduct should not be caught by the legislation. It is, perhaps, worth pointing out that a journalist would not be liable for harassment if the subject is not aware that he is being pursued.[10]

7.22 The press in Hong Kong plays an important role in the discussion of public affairs. It has been doing the general public a great service by acting as a purveyor of information and a public watchdog. The nature of journalism requires journalists to have many interactions with private citizens when covering news. We agree with the news associations that journalists must sometimes be persistent when trying to solicit a response from their targets who

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10 Footnote 4 in Chapter 7 of the LRC Report states: *"If the subject subsequently discovers by reading a newspaper that he has been followed and watched surreptitiously, he might have a remedy under the Personal Data (Privacy) Ordinance on the basis that the stalker has collected his personal data by unfair means."*

refuse to talk to them over a matter of public interest. It is reasonable for a journalist to pursue a course of conduct in order to report on a matter of public interest. However, if the story is about the private facts of an individual with no public interest involved, as would be the case when the object of the news organisation is merely to satisfy the curiosity of its readers or audience, the journalists should not pursue the individual to the point that he or she is alarmed or put in a state of distress. The need to balance press freedom with the right of privacy is all the more pressing in these cases even though the target is a public figure such as an artiste. Journalists should use means that do not amount to harassment when no public interest is at stake.

7.23 By virtue of Data Protection Principle 1 in the Personal Data (Privacy) Ordinance (Cap 486), every person, including the press, is under an obligation to collect personal data by means which are lawful and fair in the circumstances. The public may have a legitimate interest in the activities of an individual but journalists should still gather information by means which are fair. Obtaining personal information through harassment or persistent pursuit is an unfair collection unless it falls within one of the many exemptions prescribed in the Ordinance.[11] *In determining whether a journalist's actions were reasonable or not, the courts would consider all the circumstances of the case, including any claim that he was pursuing a story involving a matter of public importance, whether the means used were proportionate to the importance of the story, and whether the conduct of the journalist was fair in the circumstances under DPP1.*

7.24 By the same token, it is unnecessary to include a defence of 'legitimate news-gathering activities'. Such a defence is subsumed under the defence of reasonable pursuit. A more elaborate defence for legitimate news-gathering activities is also not practicable. Whether the harassing conduct of a journalist is legitimate or not depends on many factors, such as:

- *the purpose of the pursuit, eg whether the matter investigated by the journalist is a matter of public importance;*
- *the nature and gravity of the subject matter;*
- *the status of the subject (for example whether he is a public officer, a celebrity or a victim of crime);*
- *whether the journalist persisted in total disregard of the subject's response;*
- *the time and place at which the incidents occurred;*

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11 Footnote 5 in Chapter 7 of the LRC Report states: *"Clause 4(i) of the Code of Practice ratified by the Press Complaints Commission in the UK provides that "Journalists and photographers must neither obtain nor seek to obtain information or pictures through intimidation, harassment or persistent pursuit" unless the use of such means can be demonstrated to be in the public interest. Eastweek Publisher Ltd v The Privacy Commissioner for Personal Data, HCAL 98/98."*

- *the number of calls or visits made; and*
- *whether abusive language was used.*

7.25 Commercial Radio Hong Kong comments that where an individual withholds information which is of public interest, the activities of journalists who seek to solicit information from that individual might not generally be regarded as harassment. They argue that celebrities may rely upon the intrusion of the press to attract publicity and maintain their livelihood:

> *'[Celebrities] may feel angered, annoyed, put out or deem such [press] attention an invasion of their privacy. Yet how much of that attention do they at other times encourage in order to further their careers? It is obviously impractical for anyone to desire press attention at some times, to receive it and benefit from it, and yet object strongly to it at other times.'*

7.26 A celebrity who persistently seeks publicity would face an uphill battle in convincing the court that he or she has been harassed by the press. However, it should be stressed that the right of privacy may be waived for one purpose, and still asserted for another; and it may be waived on behalf of one class, and retained as against another class. Celebrities are entitled to protection from unreasonable harassment. The fact that the alleged victim is a celebrity is merely one factor which the court would take into account.

7.27 Commercial Radio maintains that wealthy or influential figures or people holding public office may argue that a lower threshold for harassment should apply to them because of 'the pressures of their positions' or because their work is 'busy, important or sensitive'. In our view, where a public figure is accountable to the public because of his power and influence over society, a reasonable person would hold that he has a higher rather than a lower threshold for harassment. There is no reason to believe that influential figures and public officers would abuse the legislation by threatening journalists with unmerited legal actions.[12]

7.28 Where the nature of the job requires a public figure to have frequent contacts with the press, that public figure is unlikely to feel alarmed or distressed when pursued by journalists. He should have no cause for alarm or distress if a journalist rings him ten times a day. However, if a journalist sought to obtain information about the public figure's private life through harassment or persistent pursuit, it is only fair that the journalist is required to account for his conduct by convincing the court that his pursuit was reasonable.

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12 Footnote 6 in Chapter 7 of the LRC Report states: *"See also the section on Potential for Abuse in Chapter 9 below."*

7.29 A journalist or a team of journalists who constantly follow a public figure and keep him under surveillance twenty four hours a day over a long period of time to the extent that the public figure has been deprived of his private life in its entirety may be found by the court to be unreasonable if the object is not to publish a story of public importance but merely to pry into the public figure's intimate affairs in a bid to increase the circulation and profits of the publisher. The credentials of the particular journalist and the bona fide nature of the investigation are factors which the court would take into account.[13]

7.30 The Hong Kong News Executives' Association notes that while the majority of journalists are responsible, there will be some who are pushed beyond acceptable bounds by their employers. They think that in such circumstances, the employer should be liable for the behaviour of their employees. The point raised by the Association is a matter governed by the general principles of law. An employer who instructs his employee to commit an offence will be liable to be prosecuted as the principal in the first degree or as a secondary participant.

7.31 Where a private citizen has been repeatedly harassed, without justification, by journalists from the same news organisation but different journalists have been deployed on different occasions, the journalists concerned would not be liable because they have not engaged in a course of conduct, but the editor, as the person who has responsibility over the daily activities of the journalists, would probably be.

7.32 Professor Kenneth W Y Leung of the Chinese University of Hong Kong suggests that news-gathering activities should be exempt from liability provided: (a) the persistent course of conduct is neither unlawful nor harmful to the source of information; (b) the pursuit is conducted by the staff of a 'bona fide news organisation'; and (c) the information gathered by its staff is related to 'public figures, public affairs or public interests'.

7.33 It is not clear how a news organisation would qualify as a 'bona fide news organisation'. Although 'news organisation' may be defined in terms similar to those appearing in section 61 of the Personal Data (Privacy) Ordinance (Cap 486), which contains a definition of 'news activity', it is difficult, if not impossible, to work out the criteria under which a news organisation would be regarded as bona fide. Yet even if it is possible to work out such a definition, it is not in the interests of press freedom to employ notions such as 'bona fide news organisation' in the legislation. Moreover, not all activities carried out by the staff of a news organisation are journalistic in nature. There is no guarantee that all the activities of a news

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13 Footnote 7 in Chapter 7 of the LRC Report states: *"T Lawson-Cruttenden & N Addison (1999), above, 36-37."*

organisation will always adhere to the highest standard of media ethics. We have seen that Data Protection Principle 1 requires that personal data be collected by means which are fair in the circumstances. It is arguable that personal data in relation to public figures should also be gathered by means which would not amount to harassment unless there are good reasons for using such means.

Public interest

7.34 The Hong Kong Human Rights Commission comments that the legislation should strike a balance between the protection of privacy and press freedom. It considers that journalists are entitled to use various news-gathering techniques to interview public figures or public officers who are involved in matters of 'public interest', and in interpreting what constitute matters of 'public interest' reference should be made to international jurisprudence. They hope that such an approach could prevent members of the public from abusing the new legislation to obstruct the news-gathering activities of journalists.

7.35 The HKJA proposes that the legislation should provide for a defence that 'the course of conduct was pursued for public interest'.

7.36 The scope of a defence based on the notion of public interest is both narrower and wider than the defence of reasonable pursuit proposed by us. A public interest defence is narrower because only matters of public interest recognised by the courts would be protected. The threshold for public interest is high. It is undesirable if pursuits that cannot be justified in the public interest would not be exempt even though they were reasonable in the circumstances.

7.37 A public interest defence is also wider than the defence of reasonable pursuit. If the latter defence were adopted, then even if a public interest is at stake, the courts would still have to consider it in the circumstances of the case and take all factors into consideration. Hence, the requirement that the pursuit be reasonable 'in the circumstances' might render a course of conduct pursued for a public interest unreasonable if other competing interests, if any, have been taken into account. The principle of proportionality may also render a particular pursuit disproportionate to the importance of the issue at stake and, hence, unreasonable in the circumstances of the case.

7.38 Since the public interest in a matter pursued by journalists would be taken into account by the courts if the defence of reasonable pursuit were adopted, we conclude that it is unnecessary to provide for the defence of public interest in the legislation. The defence of acting reasonably in the circumstances would provide greater protection to journalists and other persons who carry out legitimate activities."

14. On the question of privacy and public interest in the context of journalistic activities, no doubt the Bureau is aware of the recent decision of the Office of the Privacy Commissioner for Personal Data to impose enforcement notices under the Personal Data (Privacy) Ordinance (Cap 486) on two magazines (*Sudden Weekly* and *Face*) for infringing the privacy of three artists by secretly photographing and then publishing pictures of their private activities.[14] The Commissioner ruled that, having considered all the circumstances of the two cases, the clandestine photo-taking by the two magazines was *"highly privacy intrusive and not supported by public interest considerations."*[15] The Commissioner went on to state:

> *"I must point out that what may be of interest or curiosity value to the public is not necessarily in the public interest. Public interest must involve a matter of legitimate public concern. There is a distinction to be drawn between reporting facts capable of contributing to a debate of general public interest and making tawdry descriptions about a public figure's private life."*[16]

15. We note that the decision was commented on favourably in a follow-up editorial in the South China Morning Post, which stated:

> *"The [privacy] watchdog has given useful reference on drawing the line between privacy and public interest. First, it said celebrities are entitled to 'reasonable expectation of privacy' when they are at home. It also noted the photographs involved careful planning, referring to reporters spying into high-rise buildings with telephoto lenses. While it accepted public interest can be used as a defence, in the two cases, the photos were merely salacious, aimed at satisfying readers' prurient interest. The criteria used by the commissioner are reasonable. Hopefully the ruling will have a positive impact in curbing media excess.*
>
> *Given the vulnerable media environment in Hong Kong, fears of the ruling having a chilling effect is to be expected. But the case also underlines the importance of the media discharging its duties responsibly. Unless the disclosure of ordinarily private moments is in the public interest, the individual's right to privacy should be respected. This is particularly essential in light of the media's power and influence. Press freedom comes with great responsibility ... ."*[17]

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14 See Media Statement: "Investigation Reports: Unfair Collection of Personal Data of Artistes by Media Organizations" (28 March 2012) on website of the Office of the Privacy Commissioner for Personal Data at:
http://www.pcpd.org.hk/textonly/english/infocentre/press_20120328.html
Copies of the relevant decisions of the Privacy Commissioner are available at:
http://www.pcpd.org.hk/english/publications/files/R12_9164_e.pdf and
http://www.pcpd.org.hk/english/publications/files/R12_9159_e.pdf

15 See Media Statement, above.

16 See Media Statement, above.

17 "Media must respect right to privacy", *South China Morning Post* (2 April, 2012). See also related press article, "Magazines breached TV artists' privacy", *South China Morning Post* (29 March, 2012).

Adherence to trade practices

16. In addition to the arguments raised for separate "public interest" and "news-gathering activities" defences, the LRC also received suggestions that there should be a specific defence for those adhering to "established trade practices". The LRC concluded, however, that such an additional defence was not necessary. In the event that similar suggestions are raised to CMAB in its current consultation exercise, the relevant discussion on this point in the LRC Report is set out below.

> *"7.39 Standard Chartered Bank argues that the interests of commercial viability must be balanced against that of personal freedom. They propose that the legislation should provide a defence that the defendant adhered to 'established trade practices or other rules and regulations issued by a competent authority' such as the Hong Kong Monetary Authority and the Hong Kong Association of Banks.*
>
> *7.40 The Legal Aid Department comments that it is desirable to have some guidelines as to what pursuit would be considered as reasonable. By way of example, it suggests that a person's course of conduct should be considered as reasonable 'if he was acting reasonably in the course of his profession, trade, business or other lawful activity.'*
>
> *7.41 Many professions are regulated by a code of practice which is promulgated and enforced by a competent authority. These regulatory schemes ensure that members of the profession are accountable to the public. In determining whether the pursuit of an accused who had been acting in the course of his profession was reasonable or not, the courts would take into account whether the profession in question has adopted such a code and whether the conduct of the accused was permissible thereunder. A person acting in compliance with a professional code of conduct, which is reasonable and generally accepted by the industry, is likely to be treated by the courts to have been acting reasonably in the circumstances.*
>
> *7.42 It is true that the suggestion of the Legal Aid Department would direct the courts' mind to the legitimate activities of various professions when assessing the reasonableness of a pursuit. But even if the accused can show that he was merely acting in the course of his profession, he would still have the burden of proving that he had been acting reasonably in the circumstances. We do not think that the Department's suggestion adds much to the defence of reasonable pursuit."*

Other possible concerns which may be raised in the context of defences – freedom of speech and freedom of assembly

17. As well as calls for the separate defences discussed above, the LRC also received submissions during its consultation exercise which expressed concern about the possible impact of anti-stalking legislation on freedom of assembly and of demonstration, and argued whether specific defences should be provided in this area. We assume that submissions expressing similar views may be received by the Bureau in the current consultation exercise. While the CMAB Consultation Paper makes reference at paragraphs 3.51 to 3.54 to the constitutional provisions which the court would take into account in deciding cases under the legislation, it would be useful also to have to hand the detailed arguments which the LRC considered in concluding that rights of freedom of assembly and demonstration would not be affected by the proposed legislation. These are set out below.

> *"7.43 Safetalk Domestic Violence Support Group is concerned that stalking legislation might be applied to curtail Hong Kong residents' right to freedom of demonstration. They suggest that the needs of demonstrators should be addressed in the legislation. They argue that the 'reasonable person' test might be misapplied in Hong Kong because it does not have the same traditions of democracy as other jurisdictions. Another respondent submits that political and other forms of protests should be exempt. He comments that the defence of reasonable pursuit is too general and will cause uncertainty, thus putting constraints on the right to demonstrate.*
>
> *7.44 ICCPR - Article 21 of the International Covenant on Civil and Political Rights recognises the right of 'peaceful assembly'. Only peaceful assemblies are protected under that Article. 'Peaceful' means the absence of violence in its various forms. Yet even peaceful assemblies may be restricted if the restrictions serve one of the purposes listed in the Article and are necessary in a democratic society for attaining that purpose. Thus, an assembly may be prohibited and broken up if this is 'in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedom of others.'*[18]
>
> *7.45* **Canada** *- In Canada, freedom of expression under the Canadian Charter of Rights and Freedoms has to be balanced against the right of privacy.*[19] *In a case in Ontario,*[20] *the Attorney*

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18 Footnote 8 in Chapter 7 of the LRC Report states: *"Restrictions may be imposed on the ground of public safety if an assembly constitutes a specific threat to the safety of persons (ie, their lives, their physical integrity or health): M Nowak, UN Covenant on Civil and Political Rights – CCPR Commentary (Strasbourg: N P Engel, 1993), 380."*

19 Footnote 9 in Chapter 7 of the LRC Report states: *"J Craig & N Nolte, "Privacy and Free Speech in Germany and Canada: Lessons for an English Privacy Tort" [1998] 2 EHRLR 162."*

General of Ontario sought injunctions to restrain anti-abortion picketing of hospitals, abortion clinics and doctors' homes and offices. Although the defendants opposed the injunctions by relying on freedom of expression and freedom of assembly, the court granted the injunctions to protect the health, well-being and privacy of patients, doctors and third parties.

7.46 The stalking provision in the Canadian Criminal Code has been attacked on the ground that it infringes freedom of expression. The court in R v Sillipp held that for stalking behaviour to be criminal in nature, the psychological integrity, health or well-being of the person must have been interfered with in a substantial way. Since direct psychological harm is often 'more pervasive and permanent in its effect than any physical harm', any expression which may flow from stalking behaviour does not fall within the scope of freedom of expression under the Canadian Charter of Rights and Freedoms.[21] *Murray J said:*[22]

> *'The thrust of the defence is that s. 264 has the potential of restricting many activities including picketing and other labour activity as well as various forms of protest behaviour. Counsel takes the position that the section restricts and impinges upon all three of the principles and values underlying the protection of free expression. It was argued that picketers and protestors bring forward information for the public and thus it is a matter of seeking and attaining a truth. Also, this activity has political elements which s. 264 will dampen. Thirdly, picketers and protestors must be free to do things because there is something inherently good about self-expression and participating in group activities which benefits individuals in forming their soul or their intellect or developing their personality, even if this behaviour impinges on the rights of other people. The thrust of the argument is that to restrict such expression would have an unacceptable dampening effect upon such picketers and protestors, in fully exercising their right to freedom of expression, even though in doing so the target person or persons will experience substantial interference with their 'psychological integrity, health or well-being'.*

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20 Footnote 10 in Chapter 7 of the LRC Report states: *"Ontario (Attorney General) v Dieleman (1994) 20 OR (3d) 229; discussed in J Craig & Nolte, above, at 169."*

21 Footnote 11 in Chapter 7 of the LRC Report states: *"R v Sillipp (1995) 99 CCC (3d) 394. The court agreed at p 411 that 'in our democratic society, the freedoms in s. 2 of the Charter [of Rights and Freedoms] must never serve to diminish a person's right to be free from and protected against violence, or the threat of violence brought about by harassing conduct.'"*

22 Footnote 12 in Chapter 7 of the LRC Report states: *"Above, at 416."*

I have trouble seeing how the meaning conveyed by means of the forms of expression enumerated in s. 264 can validly be said to fall within the ambit of the three enunciated values and principles [of freedom of expression] set out in Irwin Toy.[23] *Indeed, a form of expression which leads to such a result is, to my mind, inconsistent with all three and the antithesis of the third.'*

7.47 The Canadian court in Irwin Toy held that where the government aims to control only the physical consequences of certain human activity, regardless of the meaning being conveyed, its purpose is not to control expression.[24]

'if the government has aimed to control attempts to convey a meaning either by directly restricting the content of expression or by restricting a form of expression tied to content, its purpose trenches upon the guarantee. Where, on the other hand, it aims only to control the physical consequences of particular conduct, its purpose does not trench upon the guarantee.[25]

7.48 ***United States*** *- It is generally accepted in the US that freedom of speech does not comprehend the right to speak whenever, however, and wherever one pleases. Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, and manner restrictions.*[26] *Accordingly, reasonable regulations as to the time, place, and manner of exercise of protected speech are permissible under the First Amendment where they are necessary to further significant governmental interests, provided they are evenhanded or non-discriminatory, and that no undue burden or absolute prohibition is imposed on free speech.*[27]

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23 Footnote 13 in Chapter 7 of the LRC Report states: *"In Irwin Toy Ltd v Quebec (Attorney-General) (1989), 58 DLR(4th) 577 at 612, 25 CPR(3d) 417, [1989] 1 SCR 927, the court summarised the nature of the principles and values underlying freedom of expression as follows: (1) seeking and attaining the truth is an inherently good activity; (2) participation in social and political decision-making is to be fostered and encouraged; and (3) the diversity in forms of individual self-fulfilment and human flourishing ought to be cultivated in an essentially tolerant environment not only for the sake of those who convey a meaning, but also for the sake of those to whom it is conveyed."*

24 Footnote 14 in Chapter 7 of the LRC Report states: *"'The bold line ... between restrictions upon publication and regulation of the time, place and manner of expression tied to content, on the one hand, and regulation of time, place, or manner of expression regardless of content, on the other hand, reflects the difference between the state's usually impermissible effort to suppress 'harmful' information, ideas, or emotions and the state's often justifiable desire to secure other interests against interference from the noise and the physical intrusions that accompany speech, regardless of the information, ideas, or emotions expressed.' A Cox, Freedom of Expression (Cambridge, Mass: Harvard University Press, 1981), at pp 59-60."*

25 Footnote 15 in Chapter 7 of the LRC Report states: *"Irwin Toy Ltd v Quebec (Attorney-General), above, at 611-12."*

26 Footnote 16 in Chapter 7 of the LRC Report states: *"16A Am Jur 2d, Constitutional Law, §§ 491 & 512."*

27 Footnote 17 in Chapter 7 of the LRC Report states: *"16A Am Jur 2d, Constitutional Law,*

7.49 Frederick Schauer observes that although the free speech principle is relevant even in those cases where the regulation is not directed at the communicative impact of the conduct, freedom of speech cannot be as high a trump card in these instances, both because of the legitimacy of the countervailing interests in order, traffic flow and the like, and also because the absence of an intent to interfere with communication weakens the free speech interest.[28]

7.50 American courts reject the view that an apparently limitless variety of conduct can be labelled 'speech' whenever the person engaging in the conduct intends thereby to express an idea.[29] *A physical assault is not expressive conduct protected by the First Amendment, even though the person committing assault intends to thereby express an idea.*[30] *Violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact are not expressive conduct protected by the First Amendment.*[31] *People who want to propagandize or protest have no right under the First Amendment to do so whenever, however and wherever they please.*[32] *The editors of American Jurisprudence observe that:*

> *'Despite the constitutional guarantee of freedom of expression, the government may properly act in many situations to prohibit intrusion into the privacy of the home of unwelcome views and ideas which cannot be totally banned from the public dialogue. Nothing in the United States Constitution compels persons to listen to or view any unwanted communication, whatever its merit, and no one has a right to press even 'good' ideas on an unwilling recipient. ... On the other hand, the ability of government to shut off discourse solely to protect others from hearing it is dependent on a showing that substantial privacy interests are being invaded in an essentially intolerable manner.*[33]

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§512."

28 Footnote 18 in Chapter 7 of the LRC Report states: *"F Schauer, Free Speech: a philosophical enquiry (Cambridge University Press, 1982), 204-5."*

29 Footnote 19 in Chapter 7 of the LRC Report states: *"Wisconsin v Mitchell, 124 L Ed 2d 436, 444 (1993)."*

30 Footnote 20 in Chapter 7 of the LRC Report states: *"US v Sodema, 117 S Court 507, 136 L Ed 2d 398 (1996)."*

31 Footnote 21 in Chapter 7 of the LRC Report states: *"Roberts v United States Jaycees, 468 US 609 at 628, 82 L Ed 2d 462 (1984)."*

32 Footnote 22 in Chapter 7 of the LRC Report states: *"Adderley v Florida, 385 US 39 at 48, 17 L Ed 2d 149."*

33 Footnote 23 in Chapter 7 of the LRC Report states: *"16A Am Jur 2d, Constitutional Law, §475. The American Supreme Court has upheld exclusion of political advertisements from public buses in Lehman v Shaker Heights, 418 US 298 (1974), and upheld the exclusion of protestors from privately owned shopping centres in Lloyd Corp v Tanner, 407 US 551 (1972)."*

7.51 The US Supreme Court has ruled that an ordinance, which makes it 'unlawful for any person to engage in picketing before or about the residence or dwelling of any individual', was not prima facie invalid under the First Amendment on the following grounds:[34]

- *the ordinance is content-neutral;*
- *it prohibits only focused picketing taking place solely in front of a particular residence;*
- *it leaves open ample alternative channels of communication for the dissemination of messages, including marching alone or in groups in residential neighbourhoods, going door-to-door or through the mail, and contacting residents by telephone, short of harassment; and*
- *it is narrowly tailored to serve the significant government interest of protection of residential privacy, especially where the picketing is narrowly directed at the household, not the public, and where, even if some picketers have a broader communicative purpose, their activity nonetheless inherently and offensively intrudes on residential privacy.*

7.52 The Supreme Court held that the ordinance served the significant governmental interest of protecting residential privacy. An important aspect of such privacy is the protection of unwilling listeners within their homes from intrusion of objectionable or unwanted speech. Although in many locations, we expect individuals simply to avoid speech they do not want to hear, the home is different. There is no constitutional right to force speech into the home of an unwilling listener:

> *'The First Amendment permits the government to prohibit offensive speech as intrusive when the 'captive' audience cannot avoid the objectionable speech. The target of the focused picketing ... is figuratively, and perhaps literally, trapped within the home, and because of the unique and subtle impact of such picketing is left with no ready means of avoiding the unwanted speech.*[35]

7.53 The Supreme Court stated that the devastating effect of targeted picketing on the quiet enjoyment of the home is 'beyond doubt'. It noted that the tensions and pressures on the residents may be psychological as well as physical, and the home becomes something less than a home when and while the picketing continues.[36] *'Whether ... alone or accompanied by others ... there are few of us that would feel comfortable knowing that a stranger*

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34 Footnote 24 in Chapter 7 of the LRC Report states: *"Frisby v Schultz, 487 US 474, 101 L Ed 420 (1988)."*

35 Footnote 25 in Chapter 7 of the LRC Report states: *"At 487, citations omitted."*

36 Footnote 26 in Chapter 7 of the LRC Report states: *"Carey v Brown, 447 US 455 at 478, 65 L Ed 2d 263 (1980)."*

lurks outside our home.[37]

7.54 It has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.[38] *In Madsen v Women's Health Center,*[39] *the US Supreme Court held that the fact that an injunction limiting the protests of anti-abortion demonstrators restricted only their speech and not others did not make the injunction content-based. The mere fact that the injunction covered people who shared a particular viewpoint did not render the injunction content or viewpoint based.*

7.55 ***England*** *- In an English case,*[40] *an animal-testing company obtained an ex parte injunction against certain anti-vivisection campaigners under the Protection from Harassment Act 1997. In discharging the injunction, the court held that:*

> *'[the 1997 Act] was clearly not intended by Parliament to be used to clamp down on the discussion of matters of public interest or upon the rights of political protest and public demonstration which are so much part of our democratic tradition. I have little doubt that the courts will resist any such wide interpretation as and when the occasion arises.'*

7.56 We note that the UK Protection from Harassment Act 1997 provides that the accused has a defence if the pursuit was reasonable in the particular circumstances. Likewise, section 4A of the Public Order Act 1986, which creates the offence of using 'threatening, abusive or insulting words or behaviour' thereby causing another person 'harassment, alarm or distress', also provides that the accused has a defence if he could show that his conduct was reasonable. The English courts have not encountered difficulties in construing such a defence.

7.57 Our response - The proposal in the Consultation Paper would not apply to pickets proceeding on a definite course or route in front of a home or place of work, nor would it prohibit general marching through residential or commercial districts or walking a route in front of a building. The proposal would only affect offensive and disturbing assemblies focused on a 'captive' who has no ready means of avoiding the unwanted speech. This will be the case if the

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37 Footnote 27 in Chapter 7 of the LRC Report states: *"Quoted in Frisby v Schultz, at 487.*

38 Footnote 28 in Chapter 7 of the LRC Report states: *"16A Am Jur 2d, Constitutional Law, §492."*

39 Footnote 29 in Chapter 7 of the LRC Report states: *"512 US 753, 129 L Ed 2d 593 (1994), referred to in 16A Am Jur 2d, Constitutional Law § 460."*

40 Footnote 30 in Chapter 7 of the LRC Report states: *"Huntingdon Life Sciences v Curtin [1997] The Times Law Reports,11 December. E Finch, 'Legitimate Protest or Campaign of Harassment – Protesters, Harassment and Reasonableness: The Decision in DPP v Moseley' [1999] 5 Web JCL."*

target is trapped in his or her residence, a nursing home, a health centre or business premises. Our proposals would not prohibit more generally directed means of public communication especially when they take place in public place.

7.58 Stalking legislation is introduced not because of the messages intended to be conveyed, but because of a legitimate purpose which is unrelated to the content of the expression. The regulation of conduct which amounts to harassment is content-neutral. The emphasis would not be on the message, but rather on the conduct of an individual or the manner in which his speech is directed.

7.59 Protests and demonstrations are important and legitimate forms of communication. However, they need to be balanced against equally important and legitimate public interests. The Government maintains an interest in protecting the privacy, family, home, health and well-being of Hong Kong residents. Stalking legislation furthers this important governmental interest by putting its focus on the harmful effect of stalking behaviour on victims. Insofar as stalking legislation is not directed intentionally at the communicative impact of the conduct, it is unrelated to the suppression of free speech. Any restriction on free speech is incidental; and any such incidental restriction is no greater than is essential to the protection of public health and privacy interests. The regulatory measures are not aimed at ideas or information in the sense of singling out conduct for control or penalty because of the specific message or viewpoint such conduct expresses. They do not fall within the scope of the free speech principle even though free speech would be restricted incidentally as a result. We conclude that there is no real danger that the legislation would compromise free speech protected under the Basic Law.

7.60 Further, we have little doubt that the courts in Hong Kong would resist any wide interpretation of the stalking legislation which would impinge on the freedom of assembly, of procession and of demonstration guaranteed in the Basic Law. The courts will take into consideration the provisions of the Basic Law in determining whether the conduct of the demonstrators was reasonable in the circumstances. In determining whether the course of conduct engaged in by demonstrators was reasonable or not, the courts would take into consideration whether the pursuit was directed at a particular individual, a group of individuals, or the public at large. Where the pursuit was directed at a particular individual, the fact that he is or is not a public figure would be relevant. But even public figures, including politicians, are entitled to protection from unreasonable harassment.[41]

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41 Footnote 31 in Chapter 7 of the LRC Report states: "*Members of the Legislative Council are protected from molestation under section 19 of the Legislative Council (Powers and Privileges) Ordinance (Cap 382).*"

7.61 To conclude, due to the prevailing effect of the Basic Law, the proposed legislation will not be construed in such a way as would limit the rights and freedom guaranteed in the Basic Law. A demonstrator who is charged with harassment would have a strong case to argue if he was exercising his right to 'freedom of assembly, of procession and of demonstration' pursuant to Article 27 of the Basic Law in a lawful manner.[42]"

18. The LRC went on to state in this context:

"7.65 Nevertheless, in recognition of the importance of free speech, press freedom and the right of peaceful assembly, we agree that apart from the right of privacy, the courts should also have regard to the right to freedom of expression and the right of peaceful assembly when determining whether the pursuit in question was reasonable in the particular circumstances. ...

We recommend that the courts should take into account the rights and freedoms provided in Article 17 (privacy, family, home and correspondence), Article 19 (freedom of expression) and Article 21 (peaceful assembly) of the International Covenant on Civil and Political Rights when determining whether the pursuit in question was reasonable in the particular circumstances."[43]

19. We trust that the detailed arguments and justifications from the LRC Report which are set out above may assist the Bureau in considering and answering key concerns which may be raised against the LRC's reform proposals on stalking.

LRC Secretariat
April 2012

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42 Footnote 32 in Chapter 7 of the LRC Report states: *"Article 41 of the Basic Law."*
43 LRC Report, Recommendation 4. This, and related issues, discussed in the CMAB Consultation Paper at paras 3.51 to 3.54.

ANNEX

[Full text of Chapter 2, LRC Report]

Chapter 2

Overview of responses to the Consultation Paper

2.1 The Consultation Paper proposed that a person who, without lawful authority or reasonable excuse, pursues a course of conduct which amounts to harassment of another should be guilty of an offence and liable in tort. This chapter gives an overview of the comments made by the respondents on the proposals stated in the Consultation Paper. The Privacy sub-committee received a total of 54 submissions. The vast majority of the submissions support the introduction of anti-stalking legislation, with or without qualifications. Putting aside the submissions from private individuals, only two respondents have reservations or object to the introduction of such legislation; namely, the Hong Kong Journalists Association and the Hong Kong section of the International Commission of Jurists (JUSTICE).

Submissions expressing support

2.2 The **Hong Kong Bar Association** can see no legal policy objection to introducing anti-stalking legislation along the lines set out in the Consultation Paper. The Criminal Law and Procedure Committee of the **Law Society of Hong Kong** supports the proposals in principle. The **Hong Kong Young Legal Professionals Association** supports the spirit of the proposals as they would bring the laws of Hong Kong more in line with other jurisdictions. The **Hong Kong Federation of Women Lawyers** supports anti-stalking legislation. They hope that that such legislation would deter stalkers from harassing their victims and apprehend the stalker before his conduct reaches a serious level. Both the Prosecutions Division and the Civil Division of the **Department of Justice** lend their support to the proposals.

2.3 The **Hong Kong Police Force** and **Security Bureau** also support the proposals in principle. The police agree that stalking is a problem in Hong Kong. They confirm that stalking often precedes a report of domestic violence or blackmail. They think that if an offence of stalking were introduced, it may reduce the number of serious offences which are committed after a period of harassment. The **Social Welfare Department** supports anti-stalking legislation and criminal sanctions to protect victims before the

stalkers take violent action. The **Working Group on Battered Spouses**, which comprises representatives from various government departments, the Hospital Authority and Health & Welfare Bureau, agrees that stalking should be a criminal offence. The **Office of the Ombudsman** welcomes the proposal to make harassment an offence.

2.4 The **Hong Kong Family Welfare Society**, which employs about 150 professional social workers, generally supports the recommendations. **Harmony House**, which provides a refuge for women and their children who are in immediate danger of domestic violence, generally concurs with the views stated in the Consultation Paper. They believe that early intervention in stalking cases would prevent escalation into violence which results in further damage to the victims and sometimes the stalkers themselves. **Safetalk Domestic Violence Support Group**, a domestic violence support group affiliated to the Hong Kong Federation of Women's Centres,[1] welcomes the introduction of civil and criminal measures that address stalking. They consider that these measures are essential to protect women from serious and long-term harassment by abusive husbands or partners. The member agencies of the **Hong Kong Council of Social Service** generally support the proposal to provide more comprehensive and effective protection for victims of stalking by legislating for civil and criminal sanctions.

2.5 The **Hong Kong Federation of Women** agrees that victims of stalking ought to be protected by law. They comment that stalking should be criminalised so that complaints about stalking can be dealt with swiftly by the police before the stalker commits another crime. The **Zonta Club of Victoria**, a service orgainsation of executive women in business and profession, also supports the introduction of anti-stalking legislation. The **Association for the Advancement of Feminism** and the **Anti-Sexual Harassment Alliance** comment that criminalising stalking behaviour can protect the privacy and personal safety of women. They point out that the proposed legislation would close a loophole in the law and supplement existing legislation such as the Sex Discrimination Ordinance. **Lingnan College** supported the proposals making harassment an offence and a tort.

2.6 It goes without saying that some of these respondents also comment on the details of the proposals. These comments are discussed in Chapters 6 to 9 below.

Submissions expressing qualified support

2.7 The **Legal Aid Department** agrees that existing legislation appears to have failed to provide adequate protection to individuals in certain situations involving persistently anti-social and troublesome behaviour which causes unwarranted interference with the health, comfort or rights of individuals. They comment that there is a *prima facie* need to introduce legislation to

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1 The Federation of Women's Centres runs a free legal advice clinic staffed by volunteer lawyers, as well as many other services and programmes for women.

prevent the harm caused by stalking conduct. However, the Department qualifies its support with comments on the ingredients and penalty of the proposed offence.

2.8 The **Hong Kong News Executives' Association** welcomes any legislation to deal with stalking. They are, however, concerned that the proposed legislation may be misused to curb the activities of journalists, thereby limiting free speech. They think that criminal law should not provide a means to threaten press freedom. The **Hong Kong Press Photographers Association** is pleased to see that genuine stalking behaviour would be subject to legal sanctions so that innocent citizens would not be harassed by stalkers. But they hope that press freedom would not be infringed because of uncertainties in the legislation.

2.9 **Asia Television Ltd** supports the spirit of reforming the law to protect stalking victims. They generally agree with the proposals in the Consultation Paper. They are, however, anxious to see that legitimate journalistic activities would be covered by the defences. **Hong Kong Commercial Broadcasting Co Ltd** believes that stalking is a social problem which requires legislation. Their only concern is that legislation in this area may offer an opportunity for unwarranted curbs on press freedom and free speech. **Metro Broadcast Corporation Ltd** does not object to the introduction of an offence of stalking. However, they stress that the freedom presently enjoyed by the media in news gathering and news reporting activities should not be affected by the proposals.[2]

2.10 The **Hong Kong Human Rights Commission**, which is a coalition of 11 non-governmental organisations, agrees that simple, swift and effective procedures should be in place to protect victims of stalking at an early stage. But they qualify their support by commenting that the Consultation Paper failed to give full consideration to the possible conflict between the operation of the proposed legislation and the exercise of press freedom.

Submissions commenting on certain aspects of the paper

2.11 **The Hong Kong Democratic Foundation** suggests that a comprehensive study of the prevalence of stalking in Hong Kong be commissioned by the Government without delay. The **Hong Kong Association of Banks** comments that the threshold for the initiation of criminal and civil proceedings under the proposal is too low. It also expresses its preference for self-regulation to address the problem of abusive debt collection practices. **Professor Kenneth W Y Leung** of the Chinese University of Hong Kong suggests that news-gathering activities of *bona fide* news organisations be exempted by way of a specific defence. The **Judiciary Administrator's Office** comments that implementing the proposals would increase the workload of the courts.

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2 Television Broadcasts Ltd advises that they do not have any specific comments.

2.12 The submissions from the following respondents are focused entirely on the problems arising from harassment by debt collection agencies: **Office of the Privacy Commissioner for Personal Data**, the **Hong Kong Monetary Authority**, the **DTC Association**, **Standard Chartered Bank**, **Citibank NA**, and **a debt collection agency** in Hong Kong, which prefers to remain anonymous in its submission.

Submissions raising objection or having reservations

2.13 The **Hong Kong Journalists Association** has "strong reservations" about the proposals. It urges the Law Reform Commission to consider how ordinary reporting could be safeguarded from legal sanctions. The **Hong Kong section of the International Commission of Jurists (JUSTICE)**[3] is the only respondent who expressly objects to the introduction of anti-stalking legislation. It holds the view that the main proposals are not justified and should not be adopted. It believes that if existing law is enforced with vigour, most stalking activities can be put in check. It argues that the police ought to be aware of the magnitude of the issue and be sensitive to such complaints, and that the police should know the law better and enforce the law with more concern and vigour. It points out that in any event, an obsessed and determined stalker will never be in a position to understand the demands of civil and criminal justice, such as bail conditions, restraint orders, or injunctions, whether because of his psychiatric condition or otherwise. JUSTICE therefore concludes that the need for anti-stalking legislation, particularly the need to create a new criminal offence, has not been demonstrated.

3 The Chairman and Vice-Chairman of JUSTICE in 1998 were Gladys Li SC and Margaret Ng respectively.

民主黨立法會議員辦事處
Democratic Party Legislative Councillors' Office

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回應《有關纏擾行為的諮詢文件》的意見

民主黨婦女黨團召集人 陳樹英

2012.2.20

政制及內地事務局在 2011 年 12 月公佈《有關纏擾行為的諮詢文件》，就立法制約纏擾行為提出多項建議，我們特就有關建議提出意見，希望當局日後若推行立法工作，充份考慮民主黨的意見。

立法制約纏擾行為是婦女團體多年爭取的保障，2000 年法律改革委員會發表《纏擾行為研究報告書》進行公眾諮詢時，已有不少婦女團體強烈支持。雖然《2007 年家庭暴力（修訂）條例草案》已保障了在家庭範疇內發生的纏擾行為，但是很多婦女面對的纏擾問題仍未得到保障，例如「情癡」、昔日情人的纏擾行為，如經常打電話、在街上尾隨等，令被纏擾的婦女感到困擾、驚恐，但法例不能為她們提供保障。由於與纏擾相關的法例零碎分散，立法規管纏擾行為可以為被纏擾人士提供較完整、明確而有效的保障。

從關心婦女權益的角度，我們支持將纏擾行為列為刑事罪，是為了保障婦女免受他人纏擾而威脅身心健康，但我們並不希望將制約的範圍加諸新聞工作者的採訪活動之上。婦女團體支持禁止一般的纏擾行為的原因之一，是纏擾者的行為可能惡化，甚至可能演變成暴力事故，需要及早防止，但新聞採訪絕對沒有這個危機，將新聞工作者的採訪活動涵蓋於規管纏擾行為的法例之內，很可能會令新聞工作者在追訪新聞時，要面對多種顧慮，包括可能會面對遭逮捕、入獄，以及因為被訪對象感到困擾而被索取賠償等後果，我們擔心這是會損害新聞自由和採訪自由。

在諮詢期間，關注演藝人權益的團體曾表示傳媒採訪其家人，特別是年幼子女的手法，往往造成困擾，希望透過立法規管提供保障。對此，我們認為，私隱和新聞自由都是人權公約保障的重要事項，如何在新聞自由和個人私隱之間取得平衡，是敏感而具爭議性的問題，社會各界意見不一，因此對法律改革委員會在 2004 年發表的《傳播媒介的侵犯私隱行為》，政府並沒作出跟進。在沒有就如何平衡新聞自由和個人私隱這個問題上作出全面而透徹的公眾討論前，政府不應

「斬件式」地透過規管纏擾，管制新聞工作者。

我們亦留意，有市民面對被追債人士滋擾的問題。就此，政府應該考慮規管某些用野蠻和不合理手法行事的收債公司對債務人的纏擾。但是，政府在《有關纏擾行為的諮詢文件》中提出，將集體騷擾定為罪行，我們認為是超出規管收債公司對債務人的纏擾，更可能誤中副車，侵犯了示威請願人士的權利，而社會亦沒有意見認為應該防止請願示威人士纏擾他人。

總結而言，**我們支持禁制纏擾行為，保護婦女安全，但民主黨關注纏擾法可能會打擊新聞自由以及市民請願示威的表達自由，反對法例涵蓋傳媒的採訪工作。我們建議，在現階段，條例只局限於保護婦女、和那些受不合理和野蠻追債及收樓行為滋擾的人士，而不會涉及新聞工作者及示威和請願人士。**

平 等 機 會 委 員 會
EQUAL OPPORTUNITIES COMMISSION

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22 May 2012

Mr. Raymond Tam Chi-yuen, JP
Secretary for Constitutional and Mainland Affairs
Constitutional and Mainland Affairs Bureau
East Wing
Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Raymond,

Consultation Paper on Stalking

The Equal Opportunities Commission ("EOC") welcomes the opportunity to comment on the consultation paper on stalking and would like to contribute to the consultation exercise through sharing our views as follows:

1. EOC attaches great importance to the protection of victims, inter alia, of sexual harassment. While the Sex Discrimination Ordinance (SDO) provides protection to the victims of sexual harassment in the fields of employment, education, provision of goods, services and facilities as well as management of premises, there are scopes which are not covered by the SDO. The proposed anti-stalking legislation covers a much broader scope including ex-lover, ex-spouse, rejected suitor, neighbor, gang member, disgruntled defendant as well as aggrieved customer, and it makes provision for protecting persons from repetitive harassing conduct and/or collective harassment. The proposed legislation should be able to provide more generic protection to victims of sexual harassment and harassing acts which fall outside the protected fields in the SDO.

2. From the disability perspective, even the Disability Discrimination Ordinance (DDO) provides protection to the victims of disability harassment, similarly it does not cover conducts that fall outside the fields of employment, education as well as provision of goods, services and facilities. The proposed legislation provides more comprehensive protection to the victims against disability harassment acts which do not fall within the stipulated fields in the DDO. In addition, the proposed "collective harassment" provision might be useful in kerbing harassment conducts engaged by a group or groups of persons against vulnerable groups, such as people with mental illness or HIV/AIDS, with a view to block the provision of much needed rehabilitation facilities in the community. In the light of it, it appears that the proposed anti-stalking legislation can provide a relatively greater degree of protection to persons with disabilities, especially the more vulnerable ones who remain commonly discriminated against.

In view of the above, the Commission strongly supports the introduction of anti-stalking legislation and is keen to see more legislative protection for the vulnerable groups in our community, in particular women and persons with disabilities.

I apologize for being late with our submission but I do hope that our Commission's support will add impetus to the introduction of new legislation on this front.

Yours sincerely,

(signed)

Lam Woon-kwong
Chairperson
Equal Opportunities Commission