



The Cayman Islands Law Reform Commission

Stalking Legislation

29th January, 2014

The Cayman Islands Law Reform Commission

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The Law Reform Commission

Stalking Legislation

1. The Law Reform Commission (“LRC”) has commenced an examination into the legislative issues that touch and concern stalking in the Cayman Islands. This examination is aimed at addressing the problems relating to stalking by defining stalking behaviour and identifying appropriate legal remedies to prevent or reduce harm brought about by such conduct. In this regard, the LRC proposes to respond to the issue of stalking by way of a consultation Penal Code (Amendment) Bill, 2014 and a Stalking (Civil Jurisdiction) Bill, 2014.

Background

2. Issues surrounding stalking formed the basis of discussions undertaken by the Young Business and Professional Women’s Club (“YBPW”) which established a Taskforce in 2005 to investigate, assess and provide legislative recommendations to the then Government on sexual harassment and stalking. It was intended that those recommendations would facilitate the protection of persons from sexual harassment and stalking in the Cayman Islands.

3. A report was prepared by the YBPW in which the prevalence of sexual harassment and stalking was highlighted and it concluded that sexual harassment and stalking present a serious problem in the Islands which required legislative intervention.

4. Subsequently, pursuant to the Report of the Special Advisory Committee on Gender Violence, 2008, the then Cabinet issued a directive in December, 2008 that the issue of gender violence should be examined by a committee established by the Portfolio of Legal Affairs in consultation with the then Ministry of Health and Human Services. It was instructed that the examination should fall within the parameters of the LRC and address interpersonal and gender-based violence issues such as domestic violence, sexual harassment and stalking.

5. The LRC has since dealt with the issue of domestic violence which culminated in the enactment of the Protection from Domestic Violence Law, 2010. In relation to sexual harassment, the LRC submitted its Final Report on Sexual Harassment which includes a Sexual Harassment Bill¹ to the Hon. Attorney General for consideration. The proposal is to now address the stalking issue in a similar manner, that is, by way of consultation legislation.

The stalking issue

6. Historically, in jurisdictions where the “fan” culture is prevalent, stalking was associated with those obsessed fans who harassed and threatened various celebrities. Today, stalking is no longer restricted in nature as it affects a wide variety of persons.

7. Stalking behaviour may be described as a series of acts or course of conduct directed towards any person that, taken together over a period of time, causes that person to feel harassed, alarmed, distressed or intimidated and to fear for his or her safety or the safety of others know to him or her.

¹ 1st May, 2013

8. This type of behaviour may escalate from what may initially be annoying, alarming but lawful behaviour to the level of dangerous, violent and potentially fatal conduct. The methods employed by stalkers can involve a series of unlawful actions such as making obscene telephone calls, using threatening language and committing acts of violence.

9. Additionally, stalkers may harass their victims by making unwelcome visits, making unwanted communications or silent telephone calls, repeatedly following the victim on the streets, watching the victim's home or place of work, persistently sending unwanted gifts or 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 or physical and verbal abuse.

10. It is important to note that stalkers may exhibit behaviour which is legal and socially acceptable when examined in isolation. However, innocent conduct, such as following someone or sending gifts, can be intimidating if done persistently and against the will of another person. In other words, when viewed holistically, and in the context of the relationship between the stalker and the other person, behaviour which may seem innocuous may become unlawful and dangerous.

11. Stalking is gender neutral behavior, that is, both male and female perpetrators and victims are involved. However, women are usually the primary victims and men are the primary perpetrators. Some perpetrators may be suffering from minor psychiatric and emotional illness, whilst others may be suffering from a serious psychological syndrome or psychiatric breakdown.

12. Studies have identified several categories of stalkers. These include the rejected stalker, predatory stalkers, debt collectors, erotomanics, love obsessional stalkers, sociopathic stalkers, stalkers with false victimisation syndromes, disgruntled clients or employees of private or public organisations and cyberstalkers.

13. Stalking may have the effect of causing behavioural, psychological and social consequences for the affected person. Specific risks to the victim include loss of personal safety, the loss of a job, insomnia and a change in work or social habits. The experience in other jurisdictions is that these effects of stalking have the potential to adversely affect criminal justice resources, the health care system and the economy.

Why is legislation needed?

14. The Protection from Domestic Violence Law, 2010 has provided a legislative framework for addressing domestic violence and the option of using civil proceedings to redress the imbalance of power that may exist in some inter-personal relationships. In most legal systems, the general criminal law prohibits personal violence offences and in some systems, such as our own, domestic violence legislation provides recourse in the form of a protection order to prevent future acts of personal violence. Further, the Penal Code (2013 Revision) criminalises acts of harassment and watching or besetting.

15. Notwithstanding these laws, the enactment of specific stalking legislation would serve as a recognition that comprehensive protection is not available to people who fear that they will become victims of violent activity in the immediate future. The legislation would reinforce that

actions which constitute stalking cause psychiatric and psychological harm and may result in serious danger to the person being pursued. Ultimately, the objective would be the reduction and prevention of violent inter-personal relationships by recognising that violence, irrespective of the form, is unacceptable behaviour and ensuring that there is effective legal protection for victims of stalking.

16. It is in the best interests of our society to take immediate and effective action when cases of stalking arise. Many jurisdictions have implemented legislation against stalking behavior in recognition that it is a problem and requires serious attention.

Legislative proposals

17. In advancing this process and having had the benefit of reviewing the report prepared by the Young Business and Professional Women's Club Taskforce, the LRC has prepared for consideration a draft Penal Code (Amendment) Bill, 2014 and a Stalking (Civil Jurisdiction) Bill, 2014.

18. The provisions of the Bills are informed by several legislative precedents including the Australian Capital Territory Crimes Amendment Act, 2000 (No. 4), the Bermuda Stalking Act, 1997 the New South Wales Crimes (Domestic and Personal Violence) Act, 2007, the Canadian Criminal Code, 1985, the United Kingdom Protection from Harassment Act, 2007, the New Zealand Harassment Act, 2007 and the South Africa Protection from Harassment Act, 2010.

19. The Penal Code (Amendment) Bill, 2014 contains legislative proposals which-

- (i) identify the elements that must be satisfied before the offence of stalking is constituted;
- (ii) the types of conduct that may constitute the offence of stalking; and
- (iii) the defences that may be raised against allegations of stalking.

20. The Stalking (Civil Jurisdiction) Bill, 2014 contains legislative proposals which deal with stalking from a civil perspective. These proposals provide for-

- (i) the issuance of a protection order for the benefit of a stalking victim;
- (ii) the making of an application for a protection order on behalf of a stalking victim who is unable or unwilling to apply;
- (iii) investigation of stalking complaints and the conduct of court proceedings; and
- (iv) damages for any loss suffered by the victim of stalking or the person against whom a frivolous or vexatious claim was made.

Stakeholders and the general public are invited to provide comments on the draft legislation.

Unless marked to the contrary, the LRC will assume that comments received are not confidential, and that respondents consent to our quoting from, or referring to, their comments and attributing their comments to them, and to the release or publication of their submissions.

Requests for confidentiality or anonymity will be respected to the extent permitted by the Freedom of Information Law, 2007.

Submissions should be forwarded in writing by post or hand no later than 21st March, 2014 to the Director, Law Reform Commission, Ground Floor – dms House, 20 Genesis Close, George Town, Grand Cayman, P.O. Box 907, Grand Cayman KY1-1103 or emailed to cheryl.neblett@gov.ky.