

Law Reform Commission releases report on stalking

The Law Reform Commission today (October 30) announced the publication of its report on Stalking, proposing the creation of a new offence of harassment of another.

The report follows detailed consideration by the Commission of responses to a consultation paper issued by the Commission's Privacy Sub-committee on this subject in May 1998.

The Stalking Report notes that stalking is a problem in Hong Kong and that existing laws are inadequate to protect individuals from harassment. The Commission therefore recommends that a person who pursues a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other, should be guilty of an offence.

To address the concern that the measure of harassment is too low, the Commission further recommends that the harassment must be serious enough to cause the victim alarm or distress.

To ensure that the law would not put in jeopardy the freedom of those pursuing lawful and legitimate activities, the Commission recommends that it should be a good defence if (a) the conduct was pursued for the purpose of preventing or detecting crime; (b) the conduct was pursued under lawful authority; or (c) the pursuit was reasonable in the particular circumstances.

The Commission further recommends that the courts should take into account the right of privacy, the right to freedom of expression and the right of peaceful assembly under the International Covenant on Civil and Political Rights when determining whether the pursuit in question was reasonable in the particular circumstances.

A person who is guilty of the proposed new offence would be liable to imprisonment for two years if he knew that his pursuit amounted to harassment of the victim. Where the accused did not have actual knowledge but the court found that he ought to have known that his pursuit amounted to harassment of the victim, he would be liable to imprisonment for 12 months.

In order to deter convicted stalkers from harassing the victim again, the Commission recommends that a sentencing court may make an order prohibiting the accused from doing anything which causes alarm or distress to the victim. Any person who, without reasonable excuse, does anything which he is prohibited from doing by the order should be guilty of an offence, which is punishable by 12 months' imprisonment.

The Commission also recommends that civil remedies should be available to the victim and a person who pursues a course of conduct which would have constituted the new offence should be liable in tort to the victim.

To assist a victim in enforcing an injunction granted in his favour, the Commission considers that a civil court should have the power to attach a power of arrest to an injunction, and a police officer may arrest without warrant any person whom he reasonably suspects to be in breach of an injunction to which a power of arrest is attached.

The Commission believes that the proposals offer a satisfactory solution to the shortcomings of traditional remedies and would provide better and more effective protection to victims of stalking.

Copies of the report are available on request from the Law Reform Commission

Secretariat, 20th Floor, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. The report can also be found at <www.info.gov.hk/hkreform/>.

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