

立法會
Legislative Council

LC Paper No. CB(2)960/00-01
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the Administration)

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LegCo Panel on Home Affairs

**Minutes of special meeting
held on Friday, 12 January 2001 at 10:45 am
in the Chamber of the Legislative Council Building**

- Members Present** : Hon Andrew CHENG Kar-foo (Chairman)
Hon CHOY So-yuk (Deputy Chairman)
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Timothy FOK Tsun-ting, SBS, JP
Hon Albert CHAN Wai-yip
Hon IP Kwok-him, JP
- Member Attending** : Hon Abraham SHEK Lai-him, JP
- Members Absent** : Prof Hon NG Ching-fai
Hon Andrew WONG Wang-fat, JP
Hon LAU Wong-fat, GBS, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon Henry WU King-cheong, BBS
Hon WONG Sing-chi
- Public Officers Attending** : Mr NG Hon-wah
Principal Assistant Secretary for Home Affairs(2)

Miss Eliza YAU
Principal Assistant Secretary for Security

Miss Mary TSANG
Principal Assistant Secretary for Health and Welfare

The Law Reform Commission of Hong Kong

Professor Raymond WACKS
Chairman, Privacy Sub-committee

Mr Robin MCLEISH
Member, Privacy Sub-committee

Mr Con CONWAY
Member, Privacy Sub-committee

Mr Stuart STOKER
Secretary

Mr Godfrey KAN
Secretary, Privacy Sub-committee

Attendance by Invitation : Hong Kong Journalists Association

Miss MAK Yin-ting
Chairperson

Mr Gren MANUEL
Vice-Chairperson

Hong Kong Press Photographers Association

Mr SIN Wai-keung
Chairman

Miss Dorise CHAN
Secretary

Hong Kong Federation of Journalists

Mr CHIU Wai-piu
Chairman

Hong Kong Chinese Press Association

Mr HUE Pue-ying
Chairman

Miss Tanya CHOU
President

Hong Kong Federation of Women

Mrs Janice CHOI
Executive Committee Member

Hong Kong Federation of Women's Centres

Ms Clara LAW
Centre-in-charge

Ms CHONG Sock-ngor

Ms SIU Kai-Sau

Safetalk Domestic Violence Support Group

Mrs Tessa STEWART
Member

Ms Lina WONG
Member

Hong Kong Association for the Survivors of Women
Abuse (Kwan Fook)

Ms LIU Ngan-fung
Worker

Ms CHENG Ching-man
Member

Harmony House Ltd

Ms Heidi IP Cheung-sau
Co-ordinator

Miss Viola LEE Y C
Community Education Officer

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Report on stalking published by the Hong Kong Law Reform Commission (LRC)

Meeting with deputations

The Chairman welcomed the deputations to the meeting and invited them to give views on the Report on Stalking published by the LRC (the Report).

Hong Kong Journalists Association (HKJA)
[Paper No. CB(2)650/00-01(02)]

2. A representative of the HKJA briefed members on the submission. She said that the HKJA had reservations about the recommendations put forward by the LRC, in particular with regard to the definition of stalking. The LRC had recommended that a person who, without lawful authority or reasonable excuse, pursued a course of conduct which amounted to harassment of another, and the harassment was serious enough to cause that person alarm or distress, should be guilty of a criminal offence. The HKJA considered that the definition was too loose. It would put journalists engaged in legitimate news-gathering activities at risk of arrest or imprisonment if the proposal was implemented. The representative of the HKJA cited the example of reporters pursuing with persistence the truth of the resignation of Mrs Anson CHAN, Chief Secretary for the Administration, might be found guilty of harassment under the proposed legislation.

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3. Referring to the proposed defence of "the pursuit of the course of conduct which was reasonable in the particular circumstances", the representative said that what was a reasonable pursuit would be subject to different interpretations. The HKJA remained unconvinced that the defences proposed in the Report would be sufficient to protect all legitimate activities of journalists which were of a diverse nature. She said that specific defence would be provided in the US to certain profession to ensure that a person who was engaged in the normal pursuit of his profession would be protected. The Administration should consider including a similar defence in the legislation to ensure ordinary reporting could be safeguarded from legal sanctions. In addition, the Administration should consider adding a public interest defence.

4. The representative pointed out that even if the behaviour of a journalist was subsequently found by the courts to have not amounted to harassment of a person, that person could easily intimidate the journalist into stopping his legitimate reporting activities by initiating legal proceedings against that journalist or the media organization concerned. She urged that the proposed legislation should not have the effect of undermining the autonomy of the press and the freedom of expression.

Hong Kong Press Photographers Association (HKPPA)

[Paper No. CB(2)650/00-01(03)]

5. The representative of the HKPPA briefed members on the submission. He said that the defence would give rise to litigations because whether the course of conduct was "reasonable in the particular circumstances" would be subject to different interpretations. The representative of the HKPPA cited two examples to explain that in the course of gathering news materials, journalists inevitably needed to rely on close observation of their targets to gather information. Such conduct should not be caught by the legislation.

6. The representative held the view that the conduct of stalking should not be criminalized. He pointed out if a person was found breaching the Personal Data (Privacy) Ordinance, he would only be subject to civil sanction.

Hong Kong Federation of Journalists (HKFJ)

[Paper No. CB(2)650/00-01(04)]

7. Members noted the concerns raised by the HKFJ as set out in the submission which were similar to those of the HKJA and HKPPA. The representative of the HKFJ said that there appeared to be a need to define clearly

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the circumstances under which the pursuit of the course of conduct was considered unreasonable so that journalists would have a clear idea of what they could not do.

Hong Kong Chinese Press Association (HKCPA)

[Paper No. CB(2)650/00-01(05)]

8. A representative of the HKCPA said that the HKCPA believed that while victims of stalking ought to be protected by law, the proposed legislation should not offer an opportunity for unwarranted curbs on press freedom and free speech. The representative said that the legislation should strike a balance between protection of privacy and press freedom. Details of the HKCPA's views were set out in its submission.

Hong Kong Federation of Women (HKFW)

[Paper No. CB(2)650/00-01(06)]

9. The representative of the HKFW expressed support for the proposed legislation. The representative said that stalking should be criminalized so that complaints about stalking could be dealt with swiftly by the police to prevent it from escalating into violence. The HKFW suggested that stalking should be clearly defined in the legislation so that those who handled stalking cases had clear guidance. It proposed that the definition of stalking should take into account a number of factors as set out in its submission.

Hong Kong Federation of Women's Centres (HKFWC)

[Paper No. CB(2)650/00-01(07)]

10. A representative of the HKFWC briefed members on the submission. She said that the HKFWC supported the proposal of the LRC to make stalking a criminal offence. The proposal would help close a loophole in the law and supplement existing legislation to protect the privacy and personal safety of women. She advocated a wider definition of harassment so that the law could deal with stalking behaviours adequately. She further said that the public should also be educated on the implications of stalking and learn to respect the privacy and rights of an individual.

Safetalk Domestic Violence Support Group (SDVSG)

[Paper No. CB(2)650/00-01(08)]

11. A representative of the SDVSG said that the SDVSG fully supported the 12 recommendations made by the LRC. Given that stalking would be a new law in Hong Kong, it was important to set up systems to ensure that the law would be implemented effectively. The SDVSG suggested the following measures -

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- (a) To raise public's understanding on stalking through education;
- (b) To set up specialised teams in the Judiciary to deal with stalking;
- (c) To use experienced professionals to assess the conduct of stalking;
- (d) To set up a specialised team in the police;
- (e) To notify victims of stalkers when the stalkers were released from custodial institutions;
- (f) To provide special assistance to women whose ex-spouses were stalkers and had a right to access to their children; and
- (g) To introduce more useful and restraining orders.

Details of the proposals of the SDVSG were set out in its submission.

Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)
(HKASWA)

[Paper No. CB(2)650/00-01(09)]

12. A representative of the HKASWA briefed members on the submission. She urged that the legislation on stalking should be introduced at the soonest, given that the existing law did not provide sufficient protection to women who were stalked by their former spouses or boyfriends.

Harmony House Ltd (HHL)

[Paper Nos. CB(2)650/00-01(10) and (11)]

13. A representative of the HHL expressed support for the anti-stalking legislation proposed by the LRC. She highlighted the stance of the HHL as follows -

- (a) There were inadequacies in the existing law to safeguard the privacy and safety of victims of stalkers;
- (b) Anti-stalking legislation should be introduced as soon as practicable;
- (c) Domestic Violence Ordinance (DVO) should be reviewed;

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- (d) Special police training to cultivate an understanding of the new developments of the law and the social phenomenon of stalking should be provided;
- (e) A monitoring mechanism should be set up to ensure effective implementation of the legislation;
- (f) Protection to victims of stalkers should be enhanced;
- (g) Convicted stalkers should be ordered to receive counselling and mental treatment;
- (h) Co-operation among departments should be strengthened in order to combat stalking; and
- (i) The public should be educated on the implications of stalking.

Details of the HHL's views were set out in its submission.

Submission from the Hong Kong Women Christian Council

14. Members also noted that the Hong Kong Women Christian Council had made a written submission on the Report [Paper No. CB(2)650/00-01(12)].

Discussion with deputations

Submission from Mr WONG Kwok-wah
[Paper No. CB(2)665/00-01(01)]

15. The Chairman informed members that the submission from Mr Wong Kwok-wah, a member of the LRC Privacy Sub-committee, was tabled at the meeting. He sought deputations' views on Mr WONG's remarks that "investigative journalism ends when stalking begins".

16. A representative of the HKCPA said that in recent years there had been some adverse comments about media ethics. To address these concerns, the press had made various improvements which included among others tightening its self-regulatory mechanism and recruiting experienced reporters. He considered that the present standard of investigative reporting was satisfactory.

17. A representative of the HKJA said that she disagreed with Mr WONG's remarks because Mr WONG had neglected that there were many techniques in news-gathering. In certain cases, a journalist had to engage in persistent pursuit of

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an individual in a hope to gather more information. In this regard, engaging a "stalking" type of behaviour was part of investigative journalism.

18. Another representative of the HKJA quoted his experience as an investigative journalist and said that his way of news-gathering might fall in the definition of harassment under the proposed legislation. Last year he had pursued a story of a restaurant owner exploiting illegal immigrants as his workers without paying them. The representative had posed himself as a customer of the restaurant for a prolonged period of time in order to report that story. In this case, the owner ended up with a substantial imprisonment sentence. The representative said that under the proposed law he could have been arrested or frustrated by the intervention of the police.

The new offence

19. Mr Albert HO said that he heard two different voices from the deputations. While representatives of the media expressed reservations about the new offence of stalking, the groups representing women's interests welcomed the proposal.

20. A representative of the HKJA said that since the police did not keep any statistics in relation to stalking because it was not an offence under existing law, it was not possible to ascertain the magnitude of the problem. While she agreed that stalking was an anti-social behaviour, she did not see that there was a social need for the new offence. She expressed concern that given the wide application of the legislation, people of different trades and profession might be inadvertently caught by the net and subject to civil or criminal sanction.

21. Citing the reporting of Mrs Anson CHAN's resignation as an example, the representative said that reporters would obviously wait outside Mrs CHAN's home day to night so as to obtain more information from her. These reporters inevitably would engage in "a course of conduct" which might cause distress to the person concerned and hence caught by the proposed legislation. Another example was the Carrion case pursued by an investigative journalist, Mr Matt MILLER. In pursuing the story, Mr MILLER had followed his targets secretly for seven years. Under the proposed legislation, the journalists would also be caught by the law. The representative recalled that the Asia Television Limited had once expressed concern that waiting outside someone's premises openly for a long time or even overnight might be considered unreasonable under the proposed legislation. She said that unless the LRC could provide strong justifications, she remained to be convinced that the proposed legislation was necessary.

22. The representative of the HKFJ said that while some people might find the approach taken by puppy teams disagreeable, persistent pursuit of an individual

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was one of the news-gathering techniques. He suggested that the legislation should list the lawful activities which would be exempted from criminal responsibility so as to provide better guidance to the public and law enforcement agencies.

23. A representative of the HKPPA said that stalking should be more clearly defined in legislation to avoid unnecessary uncertainty in law enforcement and confusion to journalists. He expressed concern that press freedom would be infringed because of uncertainties in the legislation.

24. Miss Cyd HO said that it was difficult to draw a line between stalking and just following someone for the purpose of news-gathering. Given that a journalist convicted of the offence of harassment would be liable to imprisonment for two years, Miss HO asked the HKFW whether it considered the penalty appropriate.

25. A representative of the HKFW responded that it was important to strike a balance between press freedom and the right of privacy. If the object of the course of conduct engaged by a journalist was merely to pry into a person's intimate affairs in a bid to increase the circulation and profit of the newspaper, the conduct would amount to harassment of another. The offender should be penalized. She held the view that the number of occasions that should suffice to constitute a "course of conduct" should not be quantified in law. The offence of stalking should take into account the seriousness of the harm caused. In this connection, a single bizarre act by a stalker could have caused his victim serious distress and alarm. The legislation should be flexible enough to catch this type of stalking behaviour.

26. Miss Cyd HO asked the deputations whether they kept any statistics on stalking. Representatives of the five women associations unanimously said that they did not have the figures. They said that it was a well-known fact that victims tended to know the stalkers who were mostly former lovers, former spouses or current spouses. Given that stalking was not an offence, police intervention was not possible. The victims were left to protect themselves under the present law. The associations would offer help to women who were threatened. A representative of the HHL said that the association offering help might also become the victim of stalking. She recalled that the HHL had received numerous nuisance calls presumably from the stalkers last year.

27. In view of the fact that the majority of the victims were women who were former spouses or lovers of stalkers, Miss Cyd HO suggested that tightening the DVO would help solve part of the problem. She opined that there might not be the need to introduce an overall anti-stalking legislation which would have the adverse effect of infringing press freedom. A representative of the HHL expressed support

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for the suggestion of reviewing DVO. However, she pointed out that DVO had its limitations. For instance, injunctive relief under the DVO was not available once the spouses were divorced. Representatives of the five women associations were of the consensus view that the existing law did not provide comprehensive and effective protection to victims of stalking. They supported the new offence which would subject a stalker to both civil and criminal sanctions.

28. Mr Albert CHAN said that given the close relationship between the stalker and his victim, stalking must be carefully defined in law. He expressed concern that the proposal would result in more antagonism among members of the family and pre-empt chances for a family to re-establish a harmonious relationship.

Defence of public interest

29. The Deputy Chairman and Mr Albert HO asked the deputations whether they found the proposal to include in the legislation a defence that "the course of conduct was pursued for public interest" provided sufficient protection to the media.

30. A representative of the HKCPA said that journalists were entitled to use various news-gathering techniques to pursue important topics which involved public interest. A public interest defence would safeguard freedom of the press and the public's right to know.

31. A representative of the HKJA said that depending on individual cases, the scope of the public interest defence could be wider or narrower than the defence of reasonable pursuit. Given that what was of public interest was a matter for the court to decide, journalists would face uncertainties as to whether their reporting activities are justifiable in the legislation or not. She reiterated that an intervention by the police arising from a complaint of alleged stalking conducted by a journalist would create an immediate chilling effect on the press and as a result, press freedom might be infringed.

Harassment from debt collectors

32. Mr Albert HO said that there were also other categories of stalkers, one of which was debt collectors who stalked to exert pressure on debtors' friends and relatives. He sought views from the deputations on the suggestion that anti-stalking legislation should be targeted at a specific type of stalkers.

33. A representative of the HKJA said that given that the job nature of reporters and debt collectors were fundamentally different, it should be possible for the law

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to provide two different treatments. He urged that the LRC should revise its proposals and come up with ones that were acceptable to all groups of people.

Meeting with the LRC

[Paper No. CB(2)665/00-01(01)]

34. Professor Raymond WACKS, Chairman of the Privacy Sub-committee of the LRC, said that he would make a general response to the concerns raised by the media as follows -

- (a) Having been involved with the general subject of privacy, the Privacy Sub-committee had always taken seriously the crucial importance of press freedom. It was an extremely difficult task to balance the interest of individuals who suffered genuine physical and emotional stress as a consequence of the behaviour of certain members of the community, and the interest of press freedom protected both in the Basic Law and the International Covenant on Civil and Political Rights;
- (b) There were three crucial elements in the proposals which the LRC believed would provide sufficient protection to the interests mentioned in paragraph 34(a). The offence of stalking would require that an individual engaged in a "course of conduct", the mental element that he "knew or ought to have known" his conduct amounted to harassment of the other, and the seriousness of the harm caused. In other words, simply to cause distress did not trigger the offence being committed. The defendant must know or ought to know that this was the consequence of his action. There must be serious harm or at least the harassment should be serious enough to cause another person harm or distress. The examples quoted by the press earlier on would not meet the threshold. In addition, some of the concerns raised could be addressed by the defence of reasonable pursuit;
- (c) There were always in any sophisticated legal system a screening device, prosecutorial and judicial discretion to screen out unfair or untoward exercise of the law; and
- (d) The experience in other jurisdictions was encouraging. UK, Australia, Canada, New Zealand, Japan and all the states in the US had anti-stalking legislation.

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35. Referring to the Carrion case quoted by the HKJA, Professor WACKS pointed out that since Mr MILLER was hidden when following his targets, he could not have caused anyone alarm or distress. In this connection, the new offence could not by definition apply to him. The example of the restaurant owner also fell short of the definition. Where a journalist pursued a story in an attempt to expose an unlawful act, he would be covered by the defence of reasonable pursuit. It was quite possible that he was loitering with intent, yet he was not prosecuted. In fact, no journalist in Hong Kong had ever been charged with that offence.

36. As regards the concern raised in the HKJA's submission that the UK's approach concentrated exclusively on harassment, Professor WACKS explained that the LRC further looked into the consequences and applied the concept of alarm or distress as a means to differentiate the seriousness of behaviour in the proposed anti-stalking legislation. Given the defence of reasonable pursuit, it was highly unlikely that a judge in Hong Kong would conclude that the reporting activities of journalists in any of the examples mentioned by deputations amounted to stalking behaviour. He stressed that the principal objective of the legislation was to protect victims of stalkers. While others might feel that they were potentially caught in the net, there was no simple solution.

37. Mr Albert HO asked whether the LRC would consider legislation against abusive debt collectors. Professor WACKS responded that the LRC had made certain proposals in the Report to deal with stalking arising from the activities relating to debt collection. In his view, to legislate against certain trade or profession would not resolve the problem of stalking entirely. In further response to Mr HO, Professor WACKS said that to the best of his knowledge, there had been no prosecutions launched against journalists in the US under anti-stalking legislation. As regards the two cases quoted by the HKJA in its submission about journalists in UK who were allegedly arrested, there was no prosecution mounted. In any case, the two cases would not fall into the definition proposed by the LRC since there was not a course of conduct involved.

38. In response to Miss Cyd HO's earlier suggestion to amend the DVO to resolve the problem of stalking, Professor WACKS explained that stalking was a social problem that could not be fully addressed by the current DVO or by amending the ordinance because many stalkers bore no relation to the victims. He added that with the increasing popularity of the Internet, there was the need in many jurisdictions to protect victims against cyber stalking as well.

39. Mr Albert CHAN expressed concern that while the proposed legislation would provide a remedy to victims of stalking, it might have the adverse effect of undermining press freedom. Miss Cyd HO reiterated the HKJA's concern that a

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journalist would have difficulty in pursuing a particular news after a prosecution had been launched against him or the media organization concerned.

40. Professor WACKS responded that he appreciated the concerns about press freedom. In his view, the defendant, be it the journalist or his newspaper, needed not stop pursuing the story if they believed the conduct was a reasonable pursuit of news. Even if the newspaper stopped pursuing that particular story, it was not unlikely that the news would be pursued by its competitors. Mr Robin MCLEISH, a member of the Privacy Sub-committee of the LRC, supplemented that no prosecution could possibly be launched without both the claim and the fact that that person caused alarm and distress, and that the mental element of that person knew or ought to have known that his conduct would cause alarm or stress.

41. A representative of the HKJA said that an editor would be under even greater pressure if his newspaper rather than the reporter was prosecuted. She expressed concern that police intervention as a result of alleged stalking would have the immediate effect of halting live reporting or news gathering activities. The end result was infringement of press freedom. The representative further said that she had reservations about the proposed legislation because it had not taken into full account the various reporting techniques employed by the media, some of which might put reporters at the risk of breaching the law.

42. The Chairman referred to the letter from Hon Audrey EU expressing the view that she agreed to criminalize a conduct that caused alarm but disagreed to criminalize a conduct that caused distress [Paper No. CB(2)650/00-01(13)]. He asked the LRC to respond to Hon Audrey EU's view.

43. Professor Raymond WACKS responded that he noted Ms EU's point. However, he did not really think that the issue she raised in the letter undermined the essence of the argument made by the LRC.

Meeting with the Administration

[Paper No. CB(2)650/00-01(01)]

44. Principal Assistant Secretary for Home Affairs (2) (PAS/HA(2)) said that given that the Report touched upon a wide range of issues which were dealt with by various bureaux, the Home Affairs Bureau had taken on a co-ordinating role. The Administration would consider carefully the community's views, including the Panel's, before deciding on the recommendations in the Report. In response to the Chairman's enquiry, PAS/HA(2) said that the Administration had not set any timeframe to decide on the recommendations.

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45. The Chairman thanked representatives of the deputations, the LRC and the Administration for attending the meeting.

46. The meeting ended at 12:40 pm.

Legislative Council Secretariat

27 February 2001