

Submission to Legco Panel regarding Law Reform Commission Report on Stalking

To : Hon. Andrew Cheng Kar-foo Chairman, Legco Panel on Home Affairs

From : **Safetalk** Domestic Violence Support Group

Introduction

Safetalk members would like to thank the Law Reform Commission for taking the time and trouble to address this issue so comprehensively and for producing such an excellent Report with a full examination of the issues involved. Overall we would like to fully support the intentions of the Law Reform Commission. In particular we support their decision not to limit their proposals by being more specific or detailed in their definition of harassment, even though this raises concerns about other freedoms being put at risk. We take this stance because we have much direct experience of dealing with the manipulations and deceptiveness of men who are violent and controlling, and we find them to be extremely clever at getting around any legal barriers that are made specific. We are concerned ourselves about the possibility of a stalking law being abused. In fact, some women fear stalkers may attempt to use such a law themselves against women trying to collect maintenance payments after divorce, or as revenge.

As with other members of the community, we are also concerned about the possibility of any loss of civil rights. However, we think that the problems encountered by anyone who is stalked can be so serious and dangerous in nature that we must address the issues as fully as possible, and try as best as we can to use the remedies available, which are detailed fully in the Report, to protect against abuses. People who are stalked currently have no remedies available, and since their situation is often so extreme, this must be addressed.

Recommendations in the Report

We fully support the twelve recommendations made in the Report. Our concerns are mainly around how to effectively implement any new law, given this is a new field for Hong Kong, as well as being quite complex in nature.

Education is Key to Understanding Stalking

While we appreciate the fact that the members dealt with Education in the Report, we would like to raise the profile of this section as being integral to the effective implementation of any proposed law. We like the comments made by all the other parties in this section,, especially that of the HK Federation of Lawyers proposing that a special judge should be assigned to deal with these cases, someone who receives specialist training regarding stalking. Judges can have no chance of properly assessing risk for granting bail, or fairly deciding sentencing or applying restraining orders effectively if they do not have training in this area. The tendency by any ‘reasonable person’ is to minimise and misunderstand the effects of stalking. Even a person who may be sympathetic, or have social work or psychological training may be at a loss to understand the target’s fear and difficulties if they have had neither training or experience of stalking.

Setting up Specialised Teams in the Judiciary

Instead of more strictly defining the legal terms to give judges clearer guidance, we would instead suggest that only a very few judges hear these cases, and that they all are given enough training to have a clear understanding of the issues involved. In particular they need to have training in risk assessment and gender awareness. Safetalk does not find a gender blind law always protects women, and what a “reasonable male” might consider to be enough to induce fear may be different to what a woman would experience in the same situation, usually with good reason. Women who leave their violent husbands are statistically at real risk, and they know this, but often find it hard to convince others in time to prevent dangerous incidents.

Use of Experienced Professionals for Assessment

The courts should identify expert witnesses who can give proper assessments, and realise that it requires knowledge and experience to make accurate pronouncements in this area.

Safetalk members would like to stress that stalkers come from all socio-economic backgrounds, and this can make them extremely plausible as defence witnesses. If your ex-husband is a judge, lawyer, high level civil servant or other professional, our members' experiences of trying to activate support from the community is that it can be doubly hard. Members' ex-husbands are usually very intelligent and highly educated. They can fool others easily, and often understand how to manipulate systems with ease, some having taken pride in having done so all their lives.

Specialised Police Team

Similarly as with the Judiciary, a small group could be set up in the Police with special understanding of stalking, plus training in identification of stalkers, as well as in threat management. The Police need to set up some mechanism to deal with Domestic Violence and Rape, which are both linked to stalking, this might be the most appropriate place to locate expertise on stalking and threat management. Preferably the Police will be open to keeping in flexible contact with the target and consider at times acting on their in-put. Sometimes stalkers can be made more dangerous by intervention, and the target who knows a stalker well will know their flash points, and how best to act to protect their children and themselves. All police also need to be made aware that an ex-spouse stalking his former wife is a potential danger to her and possibly to those around her, and every case must be taken seriously.

Notifying victims of stalkers' release.

The Police should be informed if stalkers are about to be released from custodial sentences, and alert the victims, working with them to help augment their security, using their threat management expertise.

Special Difficulties of Women with Ex-Spouses who need to have ongoing Access to Children

Where ex-spouses who are violent have the right to have access to children, a woman is left more exposed, as the ex-spouse has more opportunities to try to find out her address and personal details. These women are often stuck in a situation that seems hard to change in a small place like Hong Kong, and need more support and understanding from societal institutions and professionals than they currently receive. In fact, it is rare for them to find anyone who can really appreciate their difficulties properly. Often the ex-spouse seems to get more support, and she constantly feels unprotected, and unsafe. Schools and family doctors, welfare workers and lawyers can be drawn in by the ex-spouse as a means to their ends of keeping in touch with the woman at all costs, which is their obsession. Such a woman has to be constantly vigilant and often deal with the ex-spouse's clever attempts to get through to her, and this can go on for years, interfering with her normal life and peace of mind.

Restraining Orders and Aggravated Stalking.

For this reason we especially welcome the proposed introduction of more useful and effective restraining orders. However, we would suggest that it would be better if these could be applied more broadly in domestic violence cases. This would be more possible if the offence of 'Aggravated stalking' was included. This is necessary because the present situation regarding applying for restraining orders is so cumbersome it leaves women unprotected in practice.

Conclusion

Whilst we welcome this proposed law wholeheartedly, we do not think it can be a complete panacea, due to the inherent obsessional nature of stalkers. For this reason we again stress the importance of funds being set aside for education, for the community, for professionals and for women about this new form of legal protection once it becomes available.