

9th January 2001

The Hon. Andrew Cheng Kar Foo
Chairman
Panel on Home Affairs
The Legislative Council
Jackson Road
Central
Hong Kong

Dear Chairman,

LRC report on Stalking

I regret that I cannot attend the meeting on 12th January 2001 on the above as I have to attend a Bills Committee meeting on the Securities and Futures Bill in another part of the Legco Building at the same time. I would like to put forward the following views for members' consideration.

1. The Law Reform Commission (LRC) proposes to create an offence of harassment which is serious enough to cause alarm [驚恐] or distress [困擾] (see Recommendation 2). In my view, we should distinguish between conduct which causes:
 - (a) **alarm**, fear, threat, violence including fear of emotional, psychological or physical harm to oneself or one's close relations; and
 - (b) **distress** such as distress from unwelcome publicity or harassment from the media.

The former is far more serious than the latter.

Alarm

2. I agree that conduct of the former type should be criminalized. This should cover most of the stalking-related incidents in Hong Kong (see para 3.9 of the LRC Report) and protect victims of what I would regard as classic stalking cases by ex-spouses, lovers, obsessed fans or debt collecting agencies. (*One notable exception is the case involving Godfrey JA but this case was covered under the existing law for contempt of court*).

Distress

3. I do not agree that conduct of the latter type should be criminalized. My reasons are:
 - (a) The proposal may inhibit the freedom of the press. A public figure may welcome press attention which is favourable. But when similar attention is

about some adverse news, the same person may easily claim to be distressed and threaten the reporter by calling the Police.

- (b) The proposed defence (see Recommendation 3(c)) that the course of conduct is reasonable does not help. It is difficult to know beforehand what will be accepted by the court as reasonable. But once there is a threat to call the Police or a threat of criminal prosecution, the gathering of the news can be stopped.
- (c) It is more appropriate for this type of situation to be dealt with by the civil law. The LRC recommends the creation of a civil tort (see Recommendation 9). Any person who is distressed by the harassment can apply for a civil injunction to stop the conduct or to claim damages.
- (d) We should reserve the criminal law for what is really criminal conduct and not try to create new criminal offences in order to stop unwelcome behaviour.

Yours sincerely,

Audrey Eu