

THE NEW OFFENCE OF “UNLAWFUL STALKING” IN SINGAPORE

The provisions relating to “unlawful stalking” in the new Protection from Harassment Act 2014 have great potential to increase protection given to victims of family violence, sexual harassment, cyber bullying and lesser forms of antisocial conduct. “Unlawful stalking” is a new criminal offence as well as grounds for a protection order or expedited protection order to prohibit such conduct and for civil proceedings for a claim in damages. The challenge is in giving deserving victims as wide protection as possible but limiting the possibility of abuse of the new Act. Comparisons are also made with other offences and orders under the new Act and the Women’s Charter (Cap 353, 2009 Rev Ed).

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I. Introduction

1 The gap in the law in dealing with stalking or harassment-type behaviour such as silent phone calls in the middle of the night, giving unwanted attention and gifts, and cyber-bullying has been brought up repeatedly before.¹ The response of the Government in the past to these concerns has been either that care must be taken to study the issue² or that the existing laws provide an adequate response to the problem.³

* The author would like to thank Stanley Yeo and Goh Yihan for their comments on an earlier version of this article.

1 *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at col 702 (Kanwaljit Soin); *Singapore Parliamentary Debates, Official Report* (17 May 2002) vol 74 at cols 1465–1466 (Indranee Rajah); *Singapore Parliamentary Debates, Official Report* (12 March 2004) vol 77 at cols 1346–1347 (Indranee Rajah); Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 1st Ed, 2007) at paras 12.31–12.38, (LexisNexis, 2nd Ed, 2012) at paras 12.30–12.38; *Singapore Parliamentary Debates, Official Report* (1 March 2012) vol 88 (Vikram Nair); *Singapore Parliamentary Debates, Official Report* (2 March 2012) vol 88 (Zaqy Mohamad).

2 *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at col 703 (Ho Peng Kee); *Singapore Parliamentary Debates, Official Report* (17 May 2002) vol 74 at col 1470 (Ho Peng Kee); *Singapore Parliamentary Debates, Official Report* (12 March 2004) vol 77 at cols 1368–1369 (Ho Peng Kee); *Singapore Parliamentary Debates, Official Report* (1 March 2012) vol 88 (Teo Chee Hean).

3 *Singapore Parliamentary Debates, Official Report* (25 August 2008) vol 84 at cols 3117–3119 (Teo Chee Hean); *Singapore Parliamentary Debates, Official Report* (26 April 2010) vol 87 at cols 159–161 (Wong Kan Seng). Existing offences

(cont’d on the next page)

Up till 20 January 2014, the preferred response for filling in any gaps in the law was to improve on existing legislation. In a reply to a parliamentary question, the Minister for Law, K Shanmugam, said that:⁴

[T]he Government's present thinking is to build on the existing legal framework to provide a ladder of remedies to tackle the broad spectrum of harassing acts and related anti-social behaviour.

2 However, there were also signs that the Government was thinking of enacting specific legislation to deal with the issue. A press release by the Ministry of Law following a conference on harassment held in November 2013 stated:⁵

The Ministry initially favoured an incremental approach to reform Singapore's law on harassment, *ie*, by tweaking existing legislation. However, having heard the general and overwhelming consensus for a standalone harassment bill, the Ministry will take this preference into serious consideration.

3 New legislation in the form of the Protection from Harassment Bill ("Bill")⁶ was introduced in Parliament on 3 March 2014. It was passed into law after the second and third readings of the Bill were carried out on 13 March 2014.⁷ At the second reading of the Bill, the Minister for Law described instances of harassment as being "very grave" and "far too numerous".⁸

include s 3 of the Computer Misuse and Cybersecurity Act (Cap 50A, 2007 Rev Ed) (unauthorised access to computer material); s 503 of the Penal Code (Cap 224, 2008 Rev Ed) (criminal intimidation) and s 28 of the Moneylenders Act (Cap 188, 2010 Rev Ed) (harassing borrower from an unlicensed moneylender). The "traditional" criminal offences can be used for more serious forms of conduct: see, *eg*, *Howe Jee Tian v Song Jing* [2007] SGDC 260 (criminal trespass, mischief and use of criminal force) and *Ganesan s/o Ramachandran v Public Prosecutor* [2002] SGDC 232 (theft, voluntarily causing hurt).

4 *Singapore Parliamentary Debates, Official Report* (20 January 2014) vol 91.

5 Ministry of Law, "Combatting Harassment, Safeguarding Singapore – A Summary of the Institute of Policy Studies' Conference on Harassment in Singapore on 18 November 2013" at para 24 <<http://www.mlaw.gov.sg/news/press-releases/ips-conf-summary.html>> (accessed 30 July 2014).

6 Bill 12 of 2014.

7 The Act was not in force yet as at the time of writing.

8 *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91 (K Shanmugam). One newspaper carried the following headline on its front page: Neo Chai Chin, "Anti-harassment Laws to Fight 'Social Scourge'" *Today* (14 March 2014). In *Malcomson Nicholas Hugh Bertram v Mehta Naresh Kumar* [2001] 3 SLR(R) 379 at [57], it was judicially noted that "there appears to be an increasing number of cases of what is known as 'stalking', *ie*, the harassment by individuals of the objects of their fantasies or desire".

4 The purpose of this article is to review the new offence of “unlawful stalking”⁹ created by the Protection from Harassment Act 2014 (“PHA”). Comment will be made on the definition of this offence and where further refinement may be needed. Comparison will also be made to the other offences and orders possible under the PHA and the Women’s Charter.¹⁰

II. *Actus reus* of unlawful stalking

5 Section 7(1) of the PHA states that “[n]o person shall unlawfully stalk another person”. What is the behaviour that is prohibited? For that we have to turn to s 7(2) which states that:

[A] person ... unlawfully stalks another person ... if the accused person engages in a course of conduct which –

- (a) involves acts or omissions associated with stalking;
- (b) causes harassment, alarm or distress to the victim; and
- (c) the accused person –
 - (i) intends to cause harassment, alarm or distress to the victim; or
 - (ii) knows or ought reasonably to know is likely to cause harassment, alarm or distress to the victim.

6 Hence, although “stalking” is conduct which “causes harassment, alarm or distress to the victim”, exactly what conduct is encompassed by “stalking” is not stipulated. Limb (a) must be read with s 7(3) which provides *examples* of acts or omissions associated with stalking. The examples given include: following the victim; communicating with the victim; loitering outside the victim’s residence or any place frequented by the victim; interfering with property in the

9 This offence is based on the UK provision found in s 111 of the English Protection of Freedoms Act 2012 (c 9). For comment on the UK law, see Judith Gowland, “Protection from Harassment Act 1997: The ‘New’ Stalking Offences” (2013) 77 *Journal of Criminal Law* 387. The stalker in this article is referred to as being male and the victim as female to reflect the majority of cases where stalking is likely to occur. For a discussion of the Protection from Harassment Act 2014 in general, see Goh Yihan & Yip Man, “The Protection from Harassment Act 2014 – Legislative Comment” (2014) 26 SAclJ 700.

10 Cap 353, 2009 Rev Ed. For a review of the law before the Protection from Harassment Act 2014, see Goh Yihan, “The Case for Legislating Harassment in Singapore” (2014) 26 SAclJ 68 and Mark Lim, Gene Kwek & Eric Tan, “After *Malcomson v Mehta*: Charting New Waters in the Law of Harassment in Singapore – Civil and Criminal Perspectives” (2002) 14 SAclJ 302.

victim's possession; sending material to the victim; and keeping the victim under surveillance.¹¹

7 The point to note about such conduct is that it may appear to an objective observer as entirely innocuous or trivial in nature, even if it causes “harassment, alarm or distress to the victim”. It could be something as minor as sending letters or gifts to a person, or lingering at the void deck where the victim lives. Is it justified for such apparently innocuous acts to be criminal offences? The answer is that the behaviour takes on a different significance for the victim owing to its context and the relationship of the parties which is being exploited by the stalker. For example, a greeting card usually sent to a couple to congratulate them on the birth of a child takes on a very different meaning when it is sent to a former employer and his wife on the anniversary of the death of their son by a disgruntled employee who resigned from his job.¹²

8 Unfortunately, the existing criminal offences do not tackle this type of behaviour even if it affects the victim psychologically since there is no property or physical harm or threat of such harm.¹³ Even the very broad¹⁴ offence under s 4 of the PHA (which takes the place of s 13B of the Miscellaneous Offences (Public Order and Nuisance) Act¹⁵ (“MOA”)) that prohibits any words, behaviour or communication that is likely to cause “harassment, alarm or distress” to a victim is only applicable if the words, behaviour or communication is inherently “threatening, abusive or insulting”.¹⁶ Sending a greeting card used to congratulate a couple on the birth of a child simply does not qualify as

11 These acts are also unlawful if done to a “related person” which is defined as “a person about whose safety or well-being the victim would reasonably be expected to be seriously concerned”: s 7(10) of the Protection from Harassment Act 2014. It can be expected that the term will be interpreted broadly to include family members and relatives, colleagues and friends.

12 This was one of the acts committed by the defendant in *Malcomson Nicholas Hugh Bertram v Mehta Naresh Kumar* [2001] 3 SLR(R) 379.

13 Although mental harm is also encompassed by the offence of hurt under the Penal Code (Cap 224, 2008 Rev Ed), it appears that such harm needs to meet a certain threshold of being long-lasting in nature: see *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684.

14 It is broad because the offender need not *intend* to cause harassment, alarm or distress or for the conduct to be threatening, abusive or insulting. See *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [75]–[76].

15 Cap 184, 1997 Rev Ed. The offence is based on s 5 of the English Public Order Act 1986 (c 64). For comment on the UK law, see Emily Finch, *The Criminalisation of Stalking* (Cavendish Publishing, 2001) at pp 148–153.


16 *Public Prosecutor v Ng Chye Huay* [2007] SGMC 5 at [30]; whether the accused persons' conduct is “insulting” is objectively assessed. It follows that the same requirement applies to ss 13A, 13C and 13D of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) and the offences replacing them in the Protection from Harassment Act 2014.

objectively “threatening, abusive or insulting” even if the victim does not want the attention and finds this conduct threatening.¹⁷

9 On the one hand, it is ideal to have a broad definition of stalking to encompass all types of unwanted attention to give victims the protection that they need before the situation becomes more serious and entrenched. For example, suggestive e-mails can proceed to more desperate – and dangerous – behaviour involving outrage of modesty or wrongful restraint if the admirer’s affections are not returned. Police intervention can occur earlier, and if the person is convicted of unlawful stalking, imprisonment or a mandatory treatment order is possible.¹⁸

10 On the other hand, there is a danger that the net will be cast so wide that harmless but irritating conduct will be criminalised as well. This may include repetitive e-mails from insurance or estate agents,¹⁹ pesky journalists chasing for a quote, desperate students seeking help from their teachers, concerned citizens wishing to raise issues with their Members of Parliament, zealous volunteers seeking donations or just innocent loitering around. It will also cover legitimate activity which involves putting a person under surveillance such as a private investigator hired to uncover whether a spouse is cheating.²⁰ At the second reading of the Bill, the Minister for Law explained that the offence “is not intended to apply to inconsiderate behaviour” but it was “for the court to decide whether conduct in each case amounts to an offence [of unlawful stalking]”.²¹

11 The wide scope of stalking is cut down by the requirement that the stalker engage “in a course of conduct” in addition to “causes harassment, alarm or distress to the victim”.²² What amounts to a “course of conduct” can be easily satisfied.²³ It only requires repeated

 17 Compare with *Yeo Mee Yee Maggie v Roger Yow Hok Mun* [2012] SGDC 375 where the defendant was convicted under s 13B of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) for repeating the words “fuck you” and simultaneously pointing his right index finger at her and saying “let’s go outside and settle and talk” and “you call the police”.

18 Even if the police do not take action, it is possible for the victim to initiate a private prosecution since the maximum term of imprisonment for unlawful stalking does not exceed three years: see s 11(10) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

19 E-mails are not covered by the Do Not Call Registry. See s 38 of the Personal Data Protection Act 2012 (Act 26 of 2012).

20 This will not be covered by the defences found in ss 7(7)(b)–7(7)(d) of the Protection from Harassment Act 2014.

21 *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91.

22 Protection from Harassment Act 2014 s 7(2)(b). It will not be an offence of unlawful stalking if the defences under s 7(7) of the Protection from Harassment Act 2014 are made out. It is for the offender to prove that the defences apply.

23 However, it has been said that episodes of bad behaviour interspersed with periods of affection cannot be described as amounting to a course of behaviour, see *R v* (cont’d on the next page)

conduct on two or more occasions; or if it is only one occasion, it must be either “protracted” or the stalker has a previous conviction for unlawful stalking in respect of the same victim.²⁴

12 From the definition of “course of conduct”, it can be seen that there is no requirement that the two or more occasions need to relate to the same victim. For example, it could be a case where the stalker had been following the victim as well as members of her family. In some situations, line drawing may be difficult. For example, if a person follows a victim from home to her place of work, waits for her outside her office, and then follows her home – would that be considered as one occasion or two?²⁵ In borderline cases, it would be highly unlikely for prosecutions to proceed because of the uncertainty whether it would amount to a “course of conduct”.

13 In comparison, under earlier case law which tried to distinguish antisocial conduct which crossed the line and conduct which did not, the need for sustained recurrence was stronger. In *Malcomson Nicholas Bertram v Mehta Naresh Kumar*,²⁶ a case on the tort of harassment, the High Court said that harassment was a course of conduct “sufficiently repetitive in nature”.²⁷ In *Chua Keem Long v Public Prosecutor*,²⁸ a case concerning illegal moneylending under the then s 33(1) of the Moneylenders Act,²⁹ harassment was described as having “a necessary quality of repetition or persistency”. In the same vein is *Chee Siok Chin v Minister for Home Affairs*³⁰ where the court noted that the word “harassment” in ss 13A and 13B of the MOA were not defined in the statute and then went on to point out that the “essence of harassment is not just repetitive conduct but includes prolonged or persistent or sustained conduct”. This also accords with the common meaning of stalking which is defined in the *Oxford English Dictionary* as:³¹

Curtis [2010] 1 WLR 2770 at [32] where the six incidents occurred over a nine-month period when the parties cohabited.

24 Protection from Harassment Act 2014 s 7(10). If the police are alerted at different times for different incidents, there is a danger that each incident will be viewed as isolated. Victims should record each incident, noting the date, time, location and nature of the incident, and whether there are any witnesses. They should make a police report for each incident even if no offence is disclosed so that a “paper trail” can be developed.

25 Unfortunately, there were no other indications from the Parliamentary Debates on what was intended by the phrase “course of conduct”.

26 [2001] 3 SLR(R) 379 at [31].

27 This was also the definition of “harassment” adopted for protection orders under the Women’s Charter (Cap 353, 2009 Rev Ed); see *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99 at [33].

28 [1996] 1 SLR(R) 239 at [64].

29 Cap 188, 1985 Rev Ed.

30 [2006] 1 SLR(R) 582 at [124].

31 Available online at <<http://www.oed.com>> (accessed 16 April 2014).

The action, practice, or crime of harassing or persecuting a person with unwanted, obsessive, and usually threatening attention over *an extended period of time*. [emphasis added]

14 It is suggested that the two or more occasions required to constitute a course of conduct under the PHA must generally demonstrate proximity in timing to show that they can be linked together. However, this cannot be an inflexible rule, so it may be possible for a case of stalking to be made out even if the stalker sends the victim a reminder of their relationship once a year, but the date chosen has some significance such as the anniversary of the date when the victim broke off the relationship with the stalker.³²

15 The words “harassment”, “alarm” and “distress” are not defined in the PHA. It is expected that the courts will interpret these words according to their common sense meanings.³³ In addition, in deciding if a course of conduct is likely to cause harassment, alarm or distress, the PHA directs that the court may consider a range of factors.³⁴ Some of these factors are objective in nature such as the number of occasions, the frequency and duration, and the manner and the circumstances in which the acts or omissions associated with stalking were carried out. Two of the factors are subjective, namely:

(f) the likely effects of the course of conduct on the victim’s safety, health, reputation, economic position, or his freedom to do any act which he is legally entitled to do or not to do any act which he is not legally bound to do; and

(g) the circumstances of the victim including his physical or mental health and personality.

32 In *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91, Tan Kheng Boon Eugene suggested that:

Although [the Protection from Harassment Act 2014] does not specify what period of time should elapse between the two occasions ... we should not adopt a pedantic or dogmatic reading ... Thus, if the behaviour complained of has ceased, even for a short period of time, and then resumed either in the same or a different form, this can certainly constitute a course of conduct. By the same token, acts that are some distance apart in time can also constitute a course of conduct. It goes without saying that each case will fall to be determined on its own facts.

33 This was the case for the words “insulting”, “harassment”, “alarm” and “distress” under the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed): see *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [72]. Unfortunately, these words are synonyms of each other. For example, in the UK case of *Hayes v Willoughby* [2013] 1 WLR 935, which dealt with the offence of harassment under the English Protection from Harassment Act 1997 (c 40), the word “harassment” was defined as “a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress” (at [1]).

34 Protection from Harassment Act 2014 s 7(5).

16 Factors (f) and (g) could be made clearer by requiring that the conduct reach a certain threshold as having caused “a substantial adverse effect on the victim or the victim’s day-to-day activities”.³⁵ Hence, it should not be enough that the victim subjectively feels alarm or distress, but there must also be an effect on the victim of a substantial degree. Examples of such substantial adverse effects include being so fearful that the victim is unable to leave her home unaccompanied, needs medical treatment, changes her telephone number or door locks, moves house, changes jobs, or takes another route when she goes out just to avoid the stalker.³⁶ This standard will hopefully prevent petty acts between estranged family members from being treated as criminal offences. To paraphrase the learned District Judge in the case of *Yue Tock Him @ Yee Chok Him v Yee Ee Lim*,³⁷ which involved an application for a protection order under the Women’s Charter based on “continual harassment ... to cause anguish to a family member”:³⁸

[N]ot every act which causes some unhappiness or irritation to a complainant will constitute [stalking]. In order to constitute [stalking], the conduct complained of must be of sufficient magnitude and seriousness to merit being labelled as [a criminal offence]. ...

...

While this might at first glance appear to be somewhat harsh to a complainant, it is necessary that the law, in addition to protecting a victim of [stalking], must at the same time, offer to a respondent sufficient protection from frivolous complaints by complainants who may choose to make an issue of the most trivial of matters.

III. *Mens rea* of unlawful stalking

17 The *mens rea* requirement of unlawful stalking is satisfied if the stalker “intends”, “knows” or “ought reasonably to know that [he] is likely” to cause harassment, alarm or distress.³⁹ The first two *mens rea* terms are subjective in nature, but the last is objective. The “ought to know” limb is open to objection for extending criminal liability too far especially where no physical harm is caused. However, it is a justifiable

35 This is required for an expedited protection order under s 13 of the Protection from Harassment Act 2014: see para 32 below.

36 Some of these examples were given by K Shanmugam in his explanation of what the phrase “substantial adverse effect on the victim or the victim’s day-to-day activities” meant in the context of an expedited protection order under s 13 of the Protection from Harassment Act 2014: *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91.

37 [2011] SGDC 99.

38 *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99 at [42] and [44].

39 Protection from Harassment Act 2014 s 7(2)(c). The offence of unlawful stalking is therefore broader than the offence under s 3 where the offender must be shown to *intend* to cause harassment, alarm or distress.

extension in this case because the stalker may genuinely not intend or know that harassment, alarm or distress is likely since he only wishes to demonstrate his affection for the victim or he may not be capable of forming the intention or knowledge required because of some mental condition. Hence, an objective *mens rea* term is needed to protect victims against stalking.

18 Section 7(4) of the PHA provides that:

... the accused person ought reasonably to know that his course of conduct is likely to cause harassment, alarm or distress to the victim if a reasonable person in possession of the same information would think that the course of conduct is likely to have that effect.

It must be recognised, however, that there are potential difficulties in applying this test. Who is the “reasonable person” to be used in the assessment? Can personal characteristics of the stalker such as his mental condition be imputed to the reasonable person? It is not inconceivable for an argument to be raised that there are differences between men and women or between persons of different cultures on what is acceptable behaviour.⁴⁰ For example, it may be argued that men view rejections of affection by women to be expected and such rejections are meant to encourage men to make greater declarations of love.⁴¹ On the other hand, an argument can rightfully be made that victims suffering from the battered woman syndrome⁴² or post-traumatic stress disorder may perceive dangers differently from others not exposed to such experiences. Even a victim who has suffered prior threats can be expected to behave and weigh the seriousness of the present threat differently from a person who has not been subject to them.⁴³ A court considering such issues will have to tread carefully in determining which

40 Zainal Sapari described stalking as being “in the eye of the beholder”: *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91.

41 For a review of use of seduction in intimate relations, see, eg, Jane E Larson, “Women Understand So Little, They Call My Good Nature ‘Deceit’: A Feminist Rethinking of Seduction” (1993) 93 *Colum L Rev* 374 and Peter Alldridge, “Sex, Lies and the Criminal Law” (1993) 44 *Northern Ireland Legal Quarterly* 250.

42 Although no Singapore case has expressly adopted evidence of the battered woman syndrome, remarks made in the following cases suggest that the courts are sympathetic to such arguments if supported by evidence: *Public Prosecutor v Anizabte Essa* [2008] 3 SLR(R) 832 at [35] and [55] and *Public Prosecutor v Sundarti Supriyanto* [2004] 4 SLR(R) 622 at [167]–[168].

43 See, eg, *Public Prosecutor v Lim Ah Seng* [2007] 2 SLR(R) 957 where the accused pleaded guilty to the offence of culpable homicide not amounting to murder of his wife. The accused was described at [55] as:

... the victim of a violent and abusive spouse over a period of time so much so that ... [he] suffered from hypervigilance; he startled easily; he locked himself in his own home and kept the lights off; he was unable to sleep and continued to be in this state despite the source of his trauma passing away. He had initially persevered in the belief that the deceased was alive and continued to be afraid of her even after she had died.

subjective characteristics or knowledge can be considered in the reasonable person test while at the same time not undermining protection offered to victims under the PHA.

IV. Defences

19 Four defences are provided for in the PHA against the offence of unlawful stalking. The burden of proof is placed on the accused to show:⁴⁴

- (a) that the course of conduct was reasonable in all the circumstances;
- (b) that the course of conduct was pursued under any written law or rule of law or to comply with any condition or requirement imposed by any person under any written law;
- (c) that the course of conduct was lawfully done under a duty or power under any written law for the purpose of preventing or detecting crime; or
- (d) that the course of conduct was done on behalf of the Government and was necessary for the purposes of national security, national defence or the conduct of international relations.

20 The PHA specifically provides that a certificate issued by the relevant Minister that in his or her opinion any act done by a specified person on a specified occasion was for purposes of national security, national defence or conduct of international relations shall be conclusive.⁴⁵

21 It is anticipated that the defence most likely to be relied on is that “the course of conduct was reasonable in all the circumstances”. An illustration of how this issue can be approached comes from the District Court case of *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* where the complainant applied for a protection order under the Women’s Charter based on various incidents which he alleged to satisfy the harassment limb of family violence. One of the allegations was that the respondent had tried to kill him by using black magic through pasting yellow talismans in the house. The respondent explained that he placed the yellow talismans to protect his property from being disturbed by the complainant. The learned judge reasoned:⁴⁶

[A] balance must be struck between the right of an individual to place whatever he wishes, yellow talismans or otherwise, on his personal property, and the right of an occupant of a property not to be

44 Protection from Harassment Act 2014 s 7(7).

45 Protection from Harassment Act 2014 s 7(8).

46 *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99 at [106]–[108].

distressed by the sight of another person’s items, whether it be yellow talismans or some other item.

I was of the view that if the Respondent’s purpose was a legitimate one, *ie*, the protection of his property from theft or disturbance by means of dissuading the Complainant from meddling with his things, the placing of the yellow talismans would not constitute harassment. This view was based on the right of an individual to protect his own property. ...

On the other hand, if the Respondent’s purpose had no legitimate purpose but was instead merely a means to cause distress and anguish to the Complainant, then it might well be that the Respondent’s act constituted harassment.

22 One issue with the defence that the “course of conduct was reasonable” is that it is difficult to see how the defence can operate when the objective limb of the *mens rea* requirement is used. If a reasonable person in the position of the stalker would know that the conduct amounts to stalking, it is not likely that a defence can be mounted that it is still reasonable to engage in the conduct. The defence of reasonable conduct will therefore only be of use if the Prosecution proceeds on the basis that either the stalker intended to cause harassment, alarm or distress, or knew that it was likely to do so.

V. Punishment

23 The punishment on conviction for unlawful stalking is: for a first conviction, a fine not exceeding \$5,000 or imprisonment not exceeding 12 months or both;⁴⁷ for a second or subsequent conviction, a fine not exceeding \$10,000 or imprisonment not exceeding two years or both.⁴⁸

24 These punishments may be compared with the punishments for other offences under the PHA as shown below:⁴⁹

47 Protection from Harassment Act 2014 s 7(6).

48 Protection from Harassment Act 2014 s 8(e). This includes those who were previously convicted of any offence under ss 3, 4, 5 or 6 of the Protection from Harassment Act 2014 or s 13A, 13B, 13C or 13D of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed).

49 Sections 3, 4, 5 and 6 of the Protection from Harassment Act 2014 replace ss 13A, 13B, 13C and 13D of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed). The new offences generally have a higher sentencing maximum than the old offences and they also have enhanced sentencing for repeat offenders which was not available before. The new offences apply to modern forms of communication such as use of the Internet and mobile phones. Another change brought about by ss 3 and 4 of the Protection from Harassment Act 2014 is that they apply to offences committed inside a dwelling house as well.

	Section 3 of the PHA (intentionally causing harassment, alarm or distress)	Section 4 of the PHA (harassment, alarm or distress)	Section 5 of the PHA (fear or provocation of violence)	Section 6 of the PHA (threatening, abusing or insulting public servant or public service worker)
First offence	Fine not exceeding \$5,000 or imprisonment not exceeding 6 months or both	Fine not exceeding \$5,000	Fine not exceeding \$5,000 or imprisonment not exceeding 12 months or both	Fine not exceeding \$5,000 or imprisonment not exceeding 12 months or both

25 The punishments for unlawful stalking under s 7 of the PHA can be argued to be out of sync with the offences under ss 3, 4, 5 and 6 of the PHA in terms of the stalker's culpability. Under s 3 of the PHA, the offence of causing harassment, alarm or distress must be committed "intentionally" and the conduct is inherently wrongful ("threatening, abusive or insulting" words, behaviour or communication), yet the maximum term of imprisonment is half that of s 7 of the PHA.

26 The lower punishment under s 4 of the PHA can perhaps be justified on the basis that the offender in that case is not required to be shown to intend or know that he will cause harassment, alarm or distress so long as his conduct is likely to do so. This being the case, it is queried whether it is unduly severe to punish a person convicted of unlawful stalking with up to 12 months' imprisonment if his culpability is similarly on an objective basis that he "ought reasonably to know [that his conduct] is likely to cause harassment, alarm or distress to the victim".

27 The punishment under ss 5 and 6 of the PHA is the same as for unlawful stalking under s 7 of the PHA. However, the conduct in ss 5 and 6 of the PHA is arguably more culpable. In s 5 of the PHA, the offender acted intentionally to cause the victim to believe that unlawful violence will be used against him, or had provoked the victim to use unlawful violence. The conduct also involves inherently wrongful acts (threatening, abusive or insulting words, behaviour or communication). In the case of s 6 of the PHA, the conduct involved is also inherently wrongful (indecent, threatening, abusive or insulting words, behaviour or communication) and is directed to a public servant or public service

worker in relation to the execution of his or her duty.⁵⁰ This would make the conduct more culpable than for unlawful stalking except for the fact that the offender in s 6 of the PHA need not intend or know that his conduct will have any effect on the victim.

28 On conviction of unlawful stalking, the court can also make a community order under Pt XVII of the Criminal Procedure Code.⁵¹ The most useful community orders will be a mandatory treatment order to require the stalker to undergo psychiatric treatment⁵² and a day reporting order to require the stalker to undergo counselling and rehabilitation programmes.⁵³

VI. Protection order and expedited protection order

29 Application may be made to a District Court for a protection order or an expedited protection order against conduct which falls within the offence of unlawful stalking. A protection order or an expedited protection order may involve the following:⁵⁴

- (a) prohibiting the respondent from doing anything in relation to the victim or any related person, as may be specified in the order;
- (b) requiring that no person shall publish or continue to publish offending communication;⁵⁵
- (c) referring the respondent or the victim or both to attend counselling or mediation provided by such body as the District Court may direct; and
- (d) giving of any direction as is necessary for and incidental to the proper carrying into effect of any order made under the above paragraphs.

50 A “public servant” here is defined the same way as in s 21 of the Penal Code (Cap 224, 2008 Rev Ed) while a “public service worker” is defined as someone who “provides any service which is essential to the well-being of the public or the proper functioning of Singapore” and such persons and services provided are to be prescribed by the Minister: ss 6(5) and 6(6) of the Protection from Harassment Act 2014. Note that for the offence to be made out the offender must know or ought reasonably to know that the victim was acting in his capacity as a public servant or public service worker: s 6(2).

51 Cap 68, 2012 Rev Ed; s 9 of the Protection from Harassment Act 2014.

52 Criminal Procedure Code (Cap 68, 2012 Rev Ed) ss 339–340.

53 Criminal Procedure Code (Cap 68, 2012 Rev Ed) ss 341–343.

54 Protection from Harassment Act 2014 ss 12(3) and 13(1).

55 Under s 21 of the Protection from Harassment Act 2014, the Minister may exempt a class of persons from this requirement. This order can apply to others who repost items online as well as the web administrator to require them to remove the posts.

30 The standard of proof required for a protection order is on a balance of probabilities that:⁵⁶

- (a) the respondent has contravened section ... 7 in respect of the victim;
- (b) the contravention ... is likely to continue, or the respondent is likely to commit a contravention of section ... 7 in respect of the victim; and
- (c) it is just and equitable in all the circumstances.

31 A point to note is the requirement that the conduct of unlawful stalking must be “in respect of the victim” only. This is narrower than the offence itself where the conduct may be *vis-à-vis* “the victim or a related person”. Hence, although the protection order and expedited protection order may prohibit the respondent from doing anything in relation to “any related person”, the “related person” will not be able to apply on her own for the said orders. For example, if a stalker follows X’s daughter and keeps watch outside her school, it may amount to an offence of unlawful stalking, but X will not be able herself to apply for a protection order to stop the stalker’s conduct from happening.⁵⁷

32 An expedited protection order may be issued by the District Court on showing that:⁵⁸

- (a) there is *prima facie* evidence that –
 - (i) the respondent has contravened section ... 7 in respect of the victim;
 - (ii) the contravention ... is likely to continue, or the respondent is likely to commit a contravention of section ... 7 in respect of the victim *imminently*; and
 - (iii) *the contravention ... if continued or committed, is likely to have a substantial adverse effect on the victim or the victim’s day-to-day activities; and*
- (b) it is just and equitable in all the circumstances *for the protection order to be made on an expedited basis.*

[emphasis added]

33 The words in italics are requirements which differ from the basic protection order. The standard of proof is not on a balance of

56 Protection from Harassment Act 2014 s12(2). This provision applies to contravention of ss 3, 4, 5 and 6 of the Protection from Harassment Act 2014 as well.

57 The daughter may of course apply for a protection order on the basis that the stalker has committed the offence of unlawful stalking against herself. The practical impact is that a protection order may not be obtained if the “wrong” party makes the application.

58 Protection from Harassment Act 2014 s 13(1).

probabilities but is on a *prima facie* basis only. However, there must be a showing of imminence that stalking is likely to continue or to be committed, and the stalking is likely to have a substantial adverse effect on the victim.

34 An expedited protection order is different from a basic protection order in that the notice of the application does not need to be served at all or within a reasonable time before the hearing of the application on the respondent.⁵⁹

35 An expedited protection order takes effect from the date the order is served; if service is dispensed with, then on the date when service of the order is dispensed with; or such later date as specified by the District Court.⁶⁰ The expedited protection order ceases to have effect on the 28th day after the making of the expedited protection order or on the first day of the hearing of the application of the protection order, whichever is earlier.⁶¹

A. Comparison with protection orders and expedited protection orders under the Women’s Charter

36 There is considerable overlap between the orders under the PHA and the Women’s Charter. The latter includes acts of “continual harassment with intent to cause or knowing that it is likely to cause anguish” within its definition of “family violence”.⁶² There is probably little or no difference in the terms “harassment”, “anguish”, “alarm” and “distress” found in both legislation, but the requirement in the Women’s Charter of “continual harassment” and the *mens rea* element of “intent to cause or knowing that it is likely to cause anguish” is more difficult to satisfy. Under the PHA, a “course of conduct” which causes harassment, alarm or distress is sufficient and, as explained above, the requirement of “course of conduct” can be easy to fulfil. Also as mentioned above, the *mens rea* of unlawful stalking can be satisfied objectively if a reasonable person would know that the conduct is likely to cause harassment, alarm or distress to the victim even if the stalker did not think so.

37 Considering the overlap between the two regimes, it is unfortunate that the orders under the PHA and the Women’s Charter are known by the same name. This could potentially be a source of confusion to victims and support agencies in giving advice to victims on avenues of help. It would have been better if the orders under the PHA could have been named “restraining orders” instead.

59 Protection from Harassment Act 2014 s 13(1).

60 Protection from Harassment Act 2014 s 13(2).

61 Protection from Harassment Act 2014 s 13(3).

62 Women’s Charter (Cap 353, 2009 Rev Ed) s 64.

38 Five major differences, however, can be noted between the two regimes. First, under the Women's Charter, protection orders and expedited protection orders may only be granted for family violence committed against a "family member". Such persons are listed in the Women's Charter and are required to be in a family relationship through marriage or adoption such as a spouse (including a former spouse), a child (including an adopted child and a step-child) or a parent.⁶³ There is no similar restriction in the PHA, such that strangers, acquaintances, work colleagues, neighbours and even same-sex couples, for example, will be able to apply under it. This greatly expands the scope of protection to persons who were not previously covered under the Women's Charter.

39 Second, the Women's Charter explicitly allows a court to grant exclusive occupation of a shared residence to the victim of family violence by excluding the respondent from it.⁶⁴ While the PHA does not contain this explicit order, it may be argued to come within the provision of "giving of any direction as is necessary for and incidental to the proper carrying into effect of any order made".⁶⁵

40 Third, while the Women's Charter generally requires the victim herself to apply for the order,⁶⁶ there is no such restriction in the PHA. In fact, the Rules Committee constituted under the Supreme Court of Judicature Act⁶⁷ is empowered to make rules prescribing persons who may apply on behalf of the victim.⁶⁸

41 Fourth, a breach of a protection order made under the Women's Charter is automatically deemed to be a seizable offence.⁶⁹ This means that the perpetrator may be arrested without the need for a warrant of

63 Women's Charter (Cap 353, 2009 Rev Ed) s 64. The broadest category is "any other relative ... or an incapacitated person who in the opinion of the court should ... be regarded as a *member of the family of the person*" [emphasis added].

64 Women's Charter (Cap 353, 2009 Rev Ed) s 65(5)(a).

65 Protection from Harassment Act 2014 s 12(3)(d).

66 Women's Charter (Cap 353, 2009 Rev Ed) ss 65(2) and 65(10). Specified persons may only apply on the victim's behalf if he or she is a child under the age of 21 years or an incapacitated person.

67 Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) s 80(3).

68 Protection from Harassment Act 2014 s 19(2)(e). It remains to be seen if the rules will restrict the applicants to the same categories as s 65(10) of the Women's Charter (Cap 353, 2009 Rev Ed).

69 Women's Charter (Cap 353, 2009 Rev Ed) s 65(11). The more accurate term under the new Criminal Procedure Code (Cap 68, 2012 Rev Ed) is an "arrestable offence". The protection regime in the Women's Charter was revised in 1996, see Chan Wing Cheong, "Latest Improvements to the Women's Charter" [1996] Sing JLS 553 at 568–569. For the inadequacies of the earlier regime, see Louis D'Souza, "Tears or Fears – A Look at Section 65A of the Women's Charter" [1987] 1 MLJ clxxiii.

arrest being issued.⁷⁰ Unfortunately, the position under the PHA is less clear. The PHA provides that:⁷¹

Any police officer may arrest without warrant any person offending *in his view* against any of the provisions of this Act, and take him before a Magistrate’s Court to be dealt with according to law. [emphasis added]

42 Does the phrase “in his view” mean that the police officer can only make an arrest without a warrant if the breach is personally witnessed by him? This interpretation will severely limit the usefulness of a protection order under the PHA. The same phrase appeared in the previous Criminal Procedure Code which provided that “[a]ny private person may arrest any person who, in his view, commits a non-bailable and seizable offence”.⁷² Case law had interpreted this phrase in the Criminal Procedure Code liberally to mean “in his presence” such that it would include situations not seen but sensed or perceived by the person as well.⁷³ The present Criminal Procedure Code now provides that “[a]ny private person may arrest any person who, in his view or presence, commits an arrestable non-bailable offence”,⁷⁴ so the issue of when the power of arrest can be invoked no longer arises under the Criminal Procedure Code but is still a problem under the PHA.

43 An even more liberal interpretation of “in his view” is that the police officer can make the arrest so long as “in his opinion” the breach has taken place, even if the breach did not take place “in his presence”. In support of this interpretation is the argument that the Legislature has used the phrase “in the presence of a police officer” or “in the police officer’s presence” in the Criminal Procedure Code if that is the interpretation that is preferred.⁷⁵ In any case, one commentator has raised the interesting situation where an offence is witnessed on a recording device. This would satisfy the literal words of “in his view” but it can hardly be described as “in his presence”.⁷⁶

44 Serious thought should be given to whether the powers of arrest under the PHA should be restricted to breaches “in [the police officer’s]

70 For the difference in handling arrestable and non-arrestable offences, see ss 16–18 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

71 Protection from Harassment Act 2014 s 18. No light is shed on this aspect by the Explanatory Statement to the Act or the Parliamentary Debates.

72 Criminal Procedure Code (Cap 68, 1985 Rev Ed) s 34(1).

73 See *Metro (Golden Mile) Pte Ltd v Paul Chua Wah Liang* (13 August 1980) (HC) (unreported), noted in Ivy Hwang, “Wrongful Arrest by Private Persons” (1981) 23 Mal LR 182 and *Sam Hong Choy v Public Prosecutor* [1999] 4 MLJ 433 where the same stance was also taken for the equivalent provision in the Malaysian Criminal Procedure Code (Act 593).

74 Criminal Procedure Code (Cap 68, 2012 Rev Ed) s 66(1).

75 See ss 64(1)(j) and 81 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

76 Ivy Hwang, “Wrongful Arrest by Private Persons” (1981) 23 Mal LR 182.

view” when a similar breach of protection orders under the Women’s Charter automatically carries a power of arrest.⁷⁷ The argument raised under the Criminal Procedure Code that it would be dangerous to allow private persons to make an arrest merely because “in his opinion” an offence has been committed surely does not apply to a *police officer* acting under the PHA.

45 Lastly, the penalties for contravention of protection orders under the two regimes also differ. Except for a failure to attend counselling, breach of a protection order under the Women’s Charter is punishable by a fine not exceeding \$2,000 or imprisonment not exceeding six months or both. A second or subsequent conviction is punishable by a fine not exceeding \$5,000 or imprisonment not exceeding 12 months or both. The punishment under the PHA does not make a distinction between first-time or repeat offenders. The maximum fine that can be imposed is higher but the maximum term of imprisonment is the same as the first-time offender who breaches a Women’s Charter protection order: it is punishable by a fine not exceeding \$5,000 or imprisonment not exceeding six months or both.⁷⁸ More thought could be given to whether higher maximums ought to apply for repeat offenders considering that a protection order puts the stalker on notice that his behaviour is unacceptable and that if the behaviour continues, it will result in severe consequences.

46 It is also unknown at this stage how easy, inexpensive, quick or private applications for protection orders and expedited protection orders under the PHA will be. It is hoped that the infrastructure in place for protection orders under the Women’s Charter can be utilised for applications under the PHA as well.

VII. Civil proceedings and compensation orders

47 The common law tort of harassment is abolished by s 14 of the PHA for any conduct that occurs after the date of the commencement of the Act. However, by s 11 of the PHA, a victim may bring civil proceedings against a respondent for conduct amounting to unlawful stalking and the court may award such damages as the court may think just and equitable.⁷⁹

77 It goes without saying that the police may only act if there is reason to suspect that the protection order has been breached.

78 Protection from Harassment Act 2014 s 10. This also does not apply to an order to attend counselling or mediation under the Protection from Harassment Act 2014.

79 This applies to contravention of ss 3, 4, 5 of the Protection from Harassment Act 2014 as well.

48 Monetary compensation can also be ordered by a court on conviction of an offender for unlawful stalking. Unlike the previous Criminal Procedure Code where such an order was discretionary,⁸⁰ the present law requires the court to consider it.⁸¹ Payment should therefore not depend on the ability of the person injured to pursue a civil claim. However, it may well be that a compensation order in a case of stalking will not be considered “appropriate” because of the difficulty in ascertaining damages for mental distress unless the offender accepts the amount to be paid.⁸²

VIII. Conclusion

49 The provisions on unlawful stalking in the PHA have now given victims a range of remedies to choose from which were hitherto unavailable. They are now able to:

- (a) apply for a protection order or an expedited protection order to prohibit the conduct;
- (b) bring civil proceedings against the respondent for a claim in damages; and
- (c) initiate criminal proceedings for the offence of unlawful stalking.⁸³

50 The police will find it difficult to turn victims away by saying it is a “domestic” or “private” matter which does not concern them, now that stalking is a criminal offence. The real challenge, as alluded to above, is in crafting an offence which is sufficiently broad in scope to ward off low-level harassment before it escalates into more serious stalking, but at the same time preventing abuse of the offence for situations it is not meant for.

80 Section 401(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) provided: “The court ... may, in its discretion, make ... the following orders ...”. See Wing Cheong Chan, “Compensation Orders in Singapore, Malaysia and India: A Call for Rejuvenation” in *Support for Victims of Crime in Asia* (Wing Cheong Chan ed) (Routledge, 2008).

81 *Public Prosecutor v AOB* [2011] 2 SLR 793; *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299. Section 359 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) provides:

(1) The court ... shall ... consider whether or not to make an order for the payment by that person of a sum to be fixed by the court by way of compensation to the person injured ... in respect of his person, character or property ...

(2) If the court is of the view that it is appropriate to make such an order ..., it must do so.

82 Goh Yihan, “The Case of Legislating Harassment in Singapore” (2014) 26 SAclJ 68 at 81, para 26.

83 Including a private prosecution.

51 Victims of stalking are, in a very real sense, in charge of setting the limits of acceptable conduct through their choice of remedy. It will be a source for future research to examine how the different legal remedies are used and by whom. As the provisions on unlawful stalking co-exist with the existing protection orders under the Women's Charter, it will also be interesting to see whether the PHA will eventually replace applications under the Women's Charter. In any event, victims of stalking are most likely to be ones who have been in an intimate relationship before with the perpetrator, so thought should be given to eliminating any differences between protection orders under the two regimes.

52 Owing to the wide nature of the offence of unlawful stalking, the police, public prosecutors and judges will have the power to shape the law in this area on what is socially acceptable conduct: when will the attempts of a spurned lover to patch up a relationship or the persistent efforts of an investigative journalist or a celebrity photographer turn to unlawful stalking? Some stalkers who make threats never actually intend to carry them out and therefore do not pose any threat to their victims. On the other hand, there are those who do not make any explicit threats to their victims but pose a very real danger to them. Making the right distinctions will affect how police, prosecutorial and judicial resources are used.⁸⁴ The range of conduct "associated with stalking" is not closed,⁸⁵ and there will be debate over whether the course of conduct is "reasonable in all the circumstances".⁸⁶ A test of the new offence is in whether the police are able to assess the situation accurately and apply the same standards across different police divisions consistently and rigorously when victims approach them for help.

53 The PHA is also to be applauded for having provisions enabling extraterritorial application of the offence⁸⁷ as well as for allowing identification of the stalker through other means.⁸⁸ However, it remains to be seen how effective the law will be against persons who are anonymous or remain overseas. A large amount of police and prosecutorial resources will have to be put in to ensure the success of the new offence against such persons.

84 See, eg, *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99; *AGX v AGW* [2010] SGDC 271; *ZU v ZV* [2009] SGDC 99; and *Chua Li Choo v Teo Swee Theng* [2005] SGDC 241 where applications for a protection order under the Women's Charter (Cap 353, 2009 Rev Ed) for "continual harassment with intent to cause ... anguish to a family member" failed.

85 Protection from Harassment Act 2014 s 7(3).

86 Protection from Harassment Act 2014 s 7(7)(a).

87 Protection from Harassment Act 2014 s 17.

88 Protection from Harassment Act 2014 s 19(2)(d). This may be through an Internet location address, a website, a username, an electronic mail address or other unique identifier even if the stalker's name is unknown.

54 Even though further research needs to be carried out in evaluating what are effective responses to violence against women,⁸⁹ the passing of the PHA will at the very least serve to raise awareness of stalking in the public media and spur discussions on what is not socially acceptable conduct, particularly in the context of relationships between men and women.⁹⁰ Most crucially, the new offence sends the message that the criminal justice system treats stalking, and the related issue of violence against women, seriously.

89 For the first comprehensive survey in this area, see Brigitte Bouhours, Chan Wing Cheong, Benny Bong & Suzanne Anderson, *International Violence Against Women Survey: Final Report on Singapore* (2013) <[http://www.ncss.org.sg/documents/Singapore%20IVAWS%20\(final%20report\).pdf](http://www.ncss.org.sg/documents/Singapore%20IVAWS%20(final%20report).pdf)> (accessed 22 April 2014).

90 There are no comparable statistics in Singapore, but it has been estimated that “[n]early thirty percent of all women murdered in America are killed by their husbands or boyfriends, and as many as ninety percent of them have been stalked”: see Susan E Bernstein, “Living under Siege: Do Stalking Laws Protect Domestic Violence Victims?” (1993) 15 *Cardozo L Rev* 525 at 525. There is a strong link between stalking and violence against women. In many situations of such violence, the relationship between the parties has ended or is in the process of ending, but instead of accepting that the relationship is over, the male perpetrator continues to exert control over the female party through harassment, threats or violence.