AFTER *MALCOLMSON V MEHTA*: CHARTING NEW WATERS IN THE LAW OF HARASSMENT IN SINGAPORE – CIVIL AND CRIMINAL PERSPECTIVES

1 "An abundance of leisure time means that there are people who can afford the time and money to indulge in fantasies about other people, whether in respect of any grievance they have, or of so-called celebrities … And the means by which such people can act out their fantasies have become not only easier but more powerful. No longer need one be within sight or hearing of the victim ... [L]ife can be unbearable for the person who finds himself the object of attention of one who is determined to make use of these modern devices[1] to harass. That person's mobile phone can be ringing away at all times and in all places. He may get a flood of SMS[2] messages, which can now be conveniently sent out by computer via e-mail. His inbox can be flooded with unwanted e-mail. These communications can be warm words of adulation or they can be chilling threats to property or personal safety. The result can range from displeasure to distress to debilitation."[3]

In the landmark case of *Malcomson Nicholas Hugh Bertram & Anor v Naresh Kumar Mehta*[4] the High Court of Singapore held that the time has come for the recognition of a tort of harassment.

2 Interestingly, barely a month later, the English Court of Appeal in *Wong v Parkside Health NHS Trust & Anor*[5] decided that prior to the enactment of the Protection from Harassment Act of 1997 in the United Kingdom, the common law had never recognised that harassment *per se* was actionable in tort.

3 The Singapore High Court and the English Court of Appeal considered largely similar case precedents before arriving at their respective conclusions.

4 This article, however, does not purport to determine which decision was correct. Instead, its aim is two-fold. First, it seeks to discuss whether the courts in Singapore should recognise a common law tort of harassment. Second, the authors propose to examine existing common law torts and

1 The "modern devices" refer to mobile phones, pagers and computers.
2 Short message system.
3 *Malcomson Nicholas Hugh Bertram &Anor v Naresh Kumar Mehta* [2001] 4 SLR 454 at p 471.
4 *Ibid*.
5 [2001] EWCA Civ 1721.

current provisions in the Singapore legislation to ascertain whether these adequately address the concerns raised by proponents of a tort of harassment, and if not, how the perceived lacuna in the law should be addressed.[6]

5 To these ends, this paper will first examine the cases dealing with acts of harassment. Next, it will consider the extent to which existing torts cover acts of harassment, and evaluate the adequacy of such torts. Third, the relevant legislative provisions in Singapore will be analysed to see whether harassment can be adequately prevented under the existing local statutes. Following that, the authors examine some possible solutions to counter the problem of harassment. Finally, a proposed solution to the perceived lacuna in the law of harassment is suggested.

Cases dealing with "harassment"

6 It is helpful to start with a review of some of the decided cases, particularly the two recent Singapore and English cases mentioned above.

Malcomson Nicholas Hugh Bertram & Anor v Naresh Kumar Mehta

FACTS

7 This case involved a persistent ex-employee who relentlessly harassed the managerial staff of the plaintiff company. At the material time, the defendant, a man by the name of Mehta had resigned from his employment with the plaintiff company Zerity Pte Ltd ("Zerity"), of which the first plaintiff, one Malcomson, was the Chief Executive Officer.

8 For about a year after Mehta's resignation, he sent numerous annoying e-mails and SMS messages to Malcomson and various other directors and employees of Zerity. He also made frequent phone calls to them, including calls to Malcomson's private mobile phone number which he obtained by intimidating Malcomson's maid. Further to all these acts, Mehta entered Zerity's premises and Malcomson's residence without permission. The string of harassing acts also included a calculated attempt to cause distress when Mehta sent a congratulatory card to Malcomson near the death anniversary of the latter's son. These acts were done despite warnings given to Mehta not to disturb the employees of Zerity.

6 The Law Reform Committee of the Singapore Academy of Law ("SAL") has considered a report on stalking prepared in October 2000 by the Law Reform Commission of Hong Kong. The authors understand that the SAL has forwarded the committee's comments to the Law Reform Committee of the Attorney-General's Chambers, which is presently studying this issue, and should be releasing a report soon.

9 The plaintiffs sought injunctions to restrain Mehta from committing further similar acts on the basis that those acts were actionable in the torts of trespass, nuisance, and harassment.

JUDGMENT[7]

10 On the causes of action based on the torts of trespass and nuisance, Lee Seiu Kin JC found for the plaintiffs. On the facts, it was hardly disputable that Mehta had committed trespass by entering into Zerity's premises and Malcomson's residence without permission. Where nuisance is concerned, the court found that the persistent telephone calls to both Zerity's office premises and Malcomson's home interfered with the plaintiffs' use and enjoyment of the land. It was held that this gave rise to an action in the tort of nuisance.[8]

11 The more imperative issue before the court, however, was whether the third cause of action on the basis of the tort of harassment could succeed. In answering this question, Lee JC began by acknowledging that harassment was not an established tort in Singapore. However, he then squarely addressed the issue of whether such a tort ought to be recognised. After referring to dictionary meanings of the term "harassment", Lee JC defined it to mean "a course of conduct by a person, whether by words or action, directly or through third parties, sufficiently repetitive in nature as would cause, and which he ought reasonably to know would cause, worry, emotional distress or annoyance to another person".[9] He added, however, that this was not intended to be an exhaustive definition, but rather, one that "sufficiently encompasses the facts of the present case in order to proceed with a consideration of the law".[10]

12 Lee JC, noting that there was no reported decision in Singapore dealing with the tort of harassment, then proceeded to examine the English authorities. Lee JC took the view that the cases of *Wilkinson v Downton*[11]

7 It should be noted that the application was for judgment in default of defence. The application proceeded *ex parte*, and the learned Judicial Commissioner was concerned as to whether the pleadings disclosed any cause of action: see, *supra*, note 3 at pp 456–457, paras 5–8. Notwithstanding, it is clear from the judgment that the learned Judicial Commissioner considered very carefully the issue of whether a tort of harassment was recognised under Singapore law.

8 *Supra*, note 3, at pp 458–459, paras 10–13. The issue of whether a corporation can obtain an injunction under the tort of private nuisance to restraint a defendant from telephoning or sending documents to the corporation's employees at the corporation's premises is discussed below: see, *infra*, accompanying text to note 54.

9 *Supra*, note 3, at p 464, para 31.

10 *Ibid*.

11 [1897]2 QB 57.

and *Janvier v Sweeney*[12] (which established that false words or verbal threats calculated to cause, and uttered with the knowledge that they are likely to cause, and actually causing physical injury to the person to whom they are uttered, are actionable torts) did not in any way restrict the development of the law on a tort of harassment.

13 In the later case of *Patel v Patel*[13] it was said in the English Court of Appeal that there was no tort of harassment. Lee JC, however, noted that this position was subsequently doubted in *Khorasandjian v Bush*[14] and *Burris v Azadani*.[15]

14 The House of Lords in *Hunter v Canary Wharf Ltd*[16] made it clear that in the United Kingdom, the matter is now covered by the Protection from Harassment Act 1997. In this case, Lord Goff characterised the plaintiff's primary complaint in *Khorasandjian v Bush* (namely, abusive telephone calls) as harassment. Commenting on *Khorasandjian v Bush*, His Lordship said, "In truth, what the Court of Appeal appears to have been doing was to exploit the law of private nuisance in order to create by the back door a tort of harassment which was only partially effective in that it was artificially limited to harassment which takes place in [the victim's] home".[17]

15 Lee JC also highlighted the approach of Lord Hoffman in *Hunter v Canary Wharf Ltd*. Lord Hoffman had noted that there was an absence of a tort of intentional harassment causing distress without actual bodily or psychiatric illness. In his view, there was "no reason why a tort of intention should be subject to the rule which excludes compensation for mere distress, inconvenience or discomfort in actions based on negligence".[18] Drawing from these comments, Lee JC reasoned that there was no English authority standing in the way of the development of a tort of harassment in Singapore.

16 Lee JC then considered the Singapore decision of *And Chandran v Gartshore*.[19] In that case, G P Selvam J approved the "general principle embedded in common law that mental suffering caused by grief, fear, anguish and the like is not assessable".[20] This would suggest that mental

12 [1919] 2 KB 316.
13 [1988] 2 FLR 179.
14 [1993] QB 727; [1993] 3 All ER 669.
15 [1995] 1 WLR 1372.
16 [1997] AC 655; [1997] 2 All ER 426.
17 *Ibid*, at p 438.
18 *Ibid*, at p 452.
19 [2000] 2 SLR 446.
20 *Ibid*, at p 452, para 13, adopting Devlin J's position in *Behrens v Bertram Mills Circus Ltd* [1957] 2 QB 1 at p 28.

distress suffered as a result of harassment would not give rise to a cause of action. However, Lee JC circumvented this problem by reasoning that, in Selvam J's view, he had not intended to rule out all actions founded on mental distress. In any case, even if one took the position that Selvam J did so intend, Lee JC was prepared to distinguish *Arul Chandran v Gartshore* on the basis that Selvam J's statement was only *obiter* in respect of recovery for mental distress in tort, because the question before the court in that case involved damages for mental distress in a breach of contract situation. Lee JC further noted that legal counsel in that case did not appear to have cited the authorities mentioned in Selvam J's judgment, in particular the quoted statement above by Lord Hoffman in *Hunter v Canary Wharf Ltd*. Once again, Lee JC therefore concluded that there was no local authority in the way of the development of a tort of harassment in Singapore.

17 The next question then was: should there be a tort of harassment? Lee JC noted that improvements in technology have brought about three great changes in lifestyle, namely, urbanisation, widespread availability of leisure time, and ease of communication. According to him, these changes have combined to create the problem in the present case. He said, "[L]ife can be unbearable for the person who finds himself the object of attention of one who is determined to make use of these modern devices [*ie* mobile phones, pagers and computers] to harass. ... The result can range from displeasure to distress to debilitation".[21]

18 Lee JC took the view that abusive, insulting or threatening words expressed over the mobile phone which caused harassment, alarm or distress to the victim was not caught as an offence under ss 13A and 13B of the Miscellaneous Offences (Public Order and Nuisance) Act.[22] While Lee JC acknowledged that the victim could switch off his mobile phone if he did not want to receive such calls, this would restrict the victim's freedom to use his mobile phone, or any other device through which the perpetrator's communications may be sent. Hence Lee JC was of the opinion that there was a need to address this "lacuna in the law" and that the common law should respond to this need.

19 Lee JC also highlighted the fact that Singapore was one of the most densely populated countries in the world, and "it will make for an intensely uncomfortable living environment if there is no recourse against a person who intentionally makes use of modern communication devices in a manner that causes offence, fear, distress and annoyance to another".[23]

21 *Supra*, note 3, at p 471, para 52.
22 This is further discussed below in paras 69–80.
23 *Supra*, note 3, at p 473, para 55.

20 Lee JC asserted that the law should provide a recourse in respect of intentional acts that cause harm in the form of emotional distress. The fact that it may well be difficult to quantify damages should not hinder the court from granting appropriate relief. He saw no policy reason against granting injunctions to prevent such harmful behaviour. In fact, he opined that recognising a tort of harassment could nip many "stalking" cases in the bud.

21 Lee JC therefore concluded that the time had come in Singapore to recognise a tort of harassment, and to grant injunctions in appropriate cases to prevent harassment and stalking wherever it may take place, without having to base such jurisdiction on the law of nuisance.

Wong v Parkside Health NHS Trust & Anor

22 This judgment from the English Court of Appeal was delivered by Lady Justice Hale about a month after Lee Seiu Kin JC's decision. One of the issues raised was whether there was a tort of harassment at common law before the United Kingdom Protection from Harassment Act 1997 came into force.

FACTS

23 The case involved the mistreatment of a handicapped ex-employee by her fellow employees. The appellant was a disabled Asian lady by the name of Wong who worked in the same office as the respondents. The respondents were unhappy with Wong because they thought that Wong's position should have been given to another employee who had worked there temporarily before. As a result of this unhappiness, the respondents were extremely mean toward the appellant. Among other things, they criticised her for arriving on time, told her that she had not mastered the job and should leave, locked her out of the office, interfered with her desk and personal effects, hid things that she needed, threatened her with reprisals from an ex-convict, assaulted her and frightened her by throwing things against the office window. As a result of these acts, the appellant suffered a long term nervous illness and sued the defendants.

JUDGMENT

24 Addressing the issue of whether a tort of harassment existed in the United Kingdom, Hale LJ was of the view that case law had been developing in such a way that some considered that a new tort of harassment had already been created. However, Hale LJ felt that the decided cases did not truly go that far. She also noted that in all of the cases, the question was whether an injunction should be granted to prevent particular kinds of behaviour; there was no case in which damages were awarded as compensation for past behaviour.

25 In *Burnett v George*[24] it was held that molestation and interference were not actionable wrongs, "unless there be evidence that the health of the plaintiff is being impaired by molestation or interference calculated to create such impairment, in which case relief would be granted by way of an injunction to the extent that it would be necessary to avoid that impairment of health." Hale LJ also noted that in *Pidduck v Molloy*,[25] which was often cited as a case supporting the existence of a tort of harassment, the Court of Appeal granted an injunction against speaking to the victim " 'in an intimidatory, threatening or abusive manner' on the basis that these were all capable of amounting to crimes or torts".[26]

26 Hale LJ noted that the injunction in *Khorasandjian v Bush* was upheld because, *inter alia*, "the campaign of harassment has to be regarded as a whole without consideration of each ingredient in isolation, and viewed as a whole it is plainly calculated to cause the plaintiff harm, and can be restrained *quia timet* because of the danger to her health from a continuation of the stress to which she has been subjected".[27] She also cited Peter Gibson J's dissenting judgment in that case, in which he limited the injunction to conduct calculated to cause harm, preferring to follow the decision in *Burnett v George* rather than *Pidduck v Molloy*.

27 The Court of Appeal took the broader view in *Burns v Azadani*, where an injunction was granted against the defendant coming or remaining within 250 yards of the plaintiff's home. It was said that the liberty of the defendant should be respected up to the point at which his conduct infringed or threatened to infringe the rights of the plaintiff: "Ordinarily, the victim will be adequately protected by an injunction which restrains the tort which has been or is likely to be committed, whether ... harassment ... or as the case may be. But it may be clear on the facts that if the defendant approaches the vicinity of the plaintiff's home he will succumb to the temptation to enter it, or to abuse or harass the plaintiff, or that he may loiter outside the house, watching and besetting it, in a manner which might be highly stressful and disturbing to a plaintiff".[28]

28 Hale LJ was of the opinion that the basis of the decision in *Burris v Azadani* was that an interlocutory injunction may be granted to prohibit conduct which was not in itself unlawful if the injunction was necessary to prevent such unlawful conduct taking place or to protect the claimant's right to bring the matter before the court.

24 [1992] 1 FLR 525.
25 [1992] 2 FLR 202.
26 *Supra*, note 5, at para 22.
27 *Ibid*, at para 23.
28 *Supra*, note 15, at pp 1380H–1381A.

29 As for *Khorasandjian v Bush*, Hale LJ felt that it was quite clear that the judges there were not creating a new tort; rather, they were merely developing existing torts to cover the behaviour complained of and, in the case of the majority, to prohibit conduct which was likely to result in harm being suffered even though it had not yet done so.

30 Turning to *Hunter v Canary Wharf*, once again Hale LJ took the view that the judgment in that case did not lend support to the view that there was a recognised general tort of harassment at common law. She said that the judgment in that case gave "no warrant for concluding that the common law had by then reached the point of recognising a tort of intentional harassment going beyond the tort of intentional infliction of harm".[29]

31 In short, Hale LJ took the position that until the Protection from Harassment Act 1997 came into force, there was power to restrain by injunction conduct which might result in the tort of intentional infliction of harm or otherwise threaten the claimant's right of access to the courts, but there was no right to damages for conduct falling short of an actual tort. This was clear evidence that there was no recognised tort of harassment as such.

Summary of approaches in Singapore and English cases

32 As can be seen, in the Singapore case, Lee JC took the view that it was uncertain whether the English courts recognised a tort of harassment prior to the enactment of the Protection from Harassment Act 1997. Drawing from *dicta* set out in some of the English cases, he concluded that there was nothing to prevent the Singapore courts from recognising such a tort, and that the time had come to expressly recognise this tort.

33 In contrast, Hale LJ in the English case came to the conclusion that there was no recognised tort of harassment as such until the Protection from Harassment Act 1997 came into force. However, it was possible for the courts to restrain certain acts of harassment on a *quia timet* basis if the issue of such an injunction would prevent the commission of some other recognised tort.

29 *Supra*, note 5, at para 29.

Other English cases

34 At this juncture, it will be useful to consider briefly some of the English cases cited in the decisions:-

PATEL V PATEL[30]

35 *Patel v Patel* was a case involving a family dispute. In the course of the dispute, the defendant, who was the plaintiff's son-in-law, trespassed on the plaintiff's home, made threats and used abusive language towards the plaintiff. The plaintiff instituted proceedings in trespass and obtained an injunction with a 50-yard exclusion zone around the plaintiff's home. The following year, the defendant harassed the plaintiff by, *inter alia*, telephone calls and visits to the plaintiff's home, but during this time the defendant did not commit any trespass to either the person or property of the plaintiff. Committal proceedings were heard resulting in the defendant being fined, but the 50-yard exclusion order was discharged. The English Court of Appeal upheld the discharge of the exclusion order. May LJ held that:

> "... in common law actions based upon an alleged tort injunctions can only be an appropriate remedy where an actual tortious act has been or is likely to be committed ... Unless an actual trespass is committed or is more than likely to be committed, it does not seem to me that merely to approach to within 50 yards of a person's house does give a cause of action which may be restrained by an injunction in those terms."[31]

Waterhouse J agreed with May LJ and added:

> "The essence of the appellant's complaint is that he has been the victim of repeated harassment since May 1985, but in the present state of the law there is no tort of harassment."[32]

Thus it would seem that *Patel v Patel* supports the view that there was no common law tort of harassment at this time.

BURNETT V GEORGE [33]

36 This was a case involving a plaintiff and her former boyfriend. The plaintiff complained of a series of molestations and assaults upon her person and harassment by way of repeated telephone calls in the middle of the night. At first instance, an injunction was granted restraining the defendant

30 *Supra*, note 13.
31 *Ibid* at p 181.
32 *Ibid*, at p 182.
33 *Supra*, note 24.

from any conduct amounting to molestation and interference with the plaintiff. The English Court of Appeal held, however, that an injunction in those terms was too wide, and was only prepared to grant relief by way of an injunction restricting the defendant from assaulting, molesting or otherwise interfering with the plaintiff *by doing acts calculated to cause her harm*. Therefore, although the court recognised that an injunction could issue in respect of a broad category of conduct on the part of a defendant, it would appear from the approach of the court that there must be a link to the impairment of the plaintiff's health or evidence that the plaintiff's personal safety is jeopardised.

PIDDUCK V MOLLOY[34]

37 In the same year following the case of *Burnett v George*, *Pidduck v Molloy* arose for consideration by the English Court of Appeal. This case involved an unmarried couple who had cohabited for some years. The relationship soured and the parties separated. The defendant then began to behave in a violent, aggressive and hostile manner toward the plaintiff. An injunction was granted to prevent the defendant from approaching the plaintiff in the street. The matter was reconsidered in the county court where the judge felt that the terms of the injunction were too wide and the terms were revised to comprise the following: (i) that the defendant does not assault the plaintiff; (ii) that the defendant does not speak to the plaintiff; and (iii) that the defendant does not visit or enter the curtilage of the plaintiff's home. The defendant appealed on the basis that the revised injunction was still too wide. The English Court of Appeal acknowledged that the terms of the injunction were somewhat wide, but what is noteworthy is the indication that the court was prepared to grant an injunction not only in cases where an actual tort was involved, but also in cases where there was sufficient ground to conclude that the acts in question, if not restrained, *could* amount to crimes or torts. In Lord Donaldson MR's judgment:

> "[Counsel] did submit that speaking to the plaintiff was not of itself a tort, nor was it of itself a crime, and in that he is quite correct. But it is a fact that the past conduct of the defendant has suggested that, if he does speak to her, it is usually for the purpose of intimidating, threatening or abusing her, all of which are capable of amounting to crimes or torts, and in the circumstances, I would modify the second part of the injunction to read "not to speak to the plaintiff in an intimidatory threatening or abusive manner."[35]

34 *Supra*, note 25,
35 *Ibid*, at p 206.

KHORASANDJIAN V BUSH [36]

38 Next came the case of *Khorasandjian v Bush*. This case also involved a failed relationship. The plaintiff told the defendant that she wanted nothing more to do with him, but the defendant was unable to accept this and began harassing the plaintiff. He assaulted her, threatened violence, behaved aggressively when he saw her, followed her around and shouted abuse, and also pestered the plaintiff with telephone calls to her at her parents' and grandmother's homes. He had also threatened to kill the plaintiff. An interlocutory injunction was granted to restrain the defendant from using violence to harass, pester or communicate with the plaintiff in any way. The defendant appealed, contending that an injunction could only be granted to protect the plaintiff's legal rights, and the defendant therefore could not be restrained from harassing, pestering or communicating with the plaintiff, since these acts did not constitute any known tort.

39 The majority of the English Court of Appeal dismissed the defendant's appeal. The court held that it was not necessary that the acts which were the subject of the injunction should themselves be actionable torts. The court could look at the defendant's conduct as a whole in the context of his campaign of harassment against the plaintiff, and was entitled to restrain his conduct. In coming to this conclusion, Dillon LJ appeared to be moved by two concerns. First, he took the view that the harassing telephone calls could be restrained on the basis of private nuisance because it was an interference with the ordinary and reasonable enjoyment of the property, even though the plaintiff was only a licensee on the properly in question. Second, Dillon LJ held that the harassing conduct by the defendant could be restrained because there was an obvious risk that the cumulative effect of continued and unrestrained further harassment would cause the plaintiff to suffer from physical or psychiatric illness.

HUNTER V CANARY WHARF [37]

40 At the outset, it bears noting that this case in fact did not concern a situation of harassment. The plaintiff brought two claims. The first was a claim in respect of interference with the reception of television broadcasts in the plaintiff's home allegedly caused by the presence of a building that had been erected by the defendant with the permission of the relevant authorities. The second claim was in respect of deposits of dust on the plaintiff's premises caused by the construction of a link road.

36 *Supra*, note 14.
37 *Supra*, note 16.

41 The main issue that the House of Lords addressed was whether a licensee was entitled to sue in private nuisance. Their Lordships answered this in the negative. They were then faced with the decision in *Khorasandjian v Bush*, which appeared to support the proposition that an action in private nuisance could be sustained by a mere licensee. The majority of the Law Lords agreed that: (i) *Khorasandjian v Bush* should not be taken as authority for the proposition that a licensee can sue in private nuisance because that was a case where the law of private nuisance was extended inappropriately in an attempt to provide a remedy for the plaintiff who was the victim of a campaign of harassment by the defendant; and (ii) the common law no longer had to grapple with finding a remedy by relying on the law of private nuisance because harassment had received statutory recognition by way of the Protection from Harassment Act 1997.

42 It is interesting to note, then, that the judgments are aimed at addressing what should be the proper scope of the law of nuisance. The judgments do not squarely address the issue of harassment; neither do they expressly deny the existence of a tort of harassment. Rather, their Lordships appear to side-step this issue by stating simply that harassment has received statutory recognition by way of the Protection from Harassment Act 1997.

Burris v Azadani[38]

43 In this case, the plaintiff became acquainted with the defendant when she enrolled for martial arts classes conducted by the defendant. The defendant sought an intimate relationship with the plaintiff, who did her best to resist. However, the defendant was unwilling to respect her wishes. He began to make uninvited nocturnal visits to her home and made nuisance telephone calls on repeated occasions. He also threatened to commit suicide and made threats against the plaintiff.

44 The English Court of Appeal echoed similar principles to those put forth in *Pidduck v Molloy* and *Khorasandjian v Bush*, namely, that: (i) the power of the court to grant an injunction was not limited to restraining conduct which was in itself tortious or unlawful; and (ii) the court could restrain such conduct if it was of the view that such restraint was reasonably necessary for the protection of a plaintiff's "legitimate interest". Sir Thomas Bingham MR held:

38 *Supra*, note 15.

> "Ordinarily, the victim will be adequately protected by an injunction which restrains the tort which has been or is likely to be committed ... But it may be clear on the facts that if the defendant approaches the vicinity of the plaintiff's home he will succumb to the temptation to enter it, or to abuse or harass the plaintiff; or that he may loiter outside the house, watching and besetting it, in a manner which might be highly stressful and disturbing to a plaintiff. In such a situation the court may properly judge that in the plaintiff's interest – and also, but indirectly, the defendant's – a wider measure of restraint is called for."[39]

Review of cases

45 It appears from a review of the decided cases that the existence of a common law tort of harassment prior to the Protection from Harassment Act 1997 is not entirely clear. On the one hand, Hale LJ's reasoning in the *Minna Wong* case is persuasive. She held, essentially, that (i) there was no recognised tort of harassment as such until the Protection from Harassment Act 1997 came into force; but (ii) that it was possible for the courts to restrain certain acts of harassment on a *quia timet* basis if the issue of such an injunction would prevent the commission of some other recognised tort.

46 It ought to be noted that it was certainly easier for Hale LJ to refuse to recognise a common law tort of harassment since there was by then a statute dealing with harassment in England. There is presently no such statute in Singapore, and Lee JC obviously thought there was a lacuna in the law which had to be filled.

47 However persuasive Hale LJ's reasoning may be, Lee JC's decision can equally be supported by the existing case law. In any event, with the enactment of the Application of English Law Act of 1993 ("AELA"), Singapore courts are no longer bound by English decisions, but are free to develop our law "according to the circumstances of Singapore and its inhabitants with such modifications as may be required".[40]

39 *Ibid*, at pp 1380–1381.

40 See s 3(1) AELA (Cap 7A, 1994 Rev Ed). See also Phang, "Cementing the Foundations: The Singapore Application of English Law Act 1993" UBC Law Rev 205 for a detailed discussion of the effect of the enactment of s 3 AELA. In practice, s 3 AELA had been employed to depart from English decisions: see for instance *RSP Architects Planners & Engineers v Ocean Front Pte Ltd* [1996] 1 SLR 113.

48 In the following sections, existing torts and Singapore legislation are discussed to ascertain the extent to which they cover harassment, as well as the extent to which they are deficient or inadequate (for example, in scope or in available remedies).

Harassment *vis-à-vis* other torts

Trespass

49 The tort of trespass encompasses trespass to the person, trespass to land and trespass to goods. Clearly, trespass to the person will be more relevant in the context of 'harassment' than the other kinds of trespass.[41]

50 Interference, however slight, with a person's elementary civil right to security of the person, and self-determination in relation to his own body, constitutes trespass to the person.[42] Trespass to the person may take two main forms, namely "assault" and "battery".[43] A battery is committed when there is an actual infliction of an unlawful physical contact with the claimant. An assault is committed where the claimant is caused to apprehend a battery.[44]

51 What is significant in both torts is that commentators have classically analysed the torts in terms of the requirements of directness (of the tortfeasor's act) and intention (by the tortfeasor to cause harm),[45] although in the case of battery the actual infliction of harm is considered a necessary requirement. There is no doubt that more extreme forms of harassment will satisfy the elements of intention and directness for the torts to arise, but

41 Trespass to land will, of course, also be relevant if the acts of harassment include unauthorised entry onto the victim's land or into the victim's premises.

42 *Clerk & Lindsell on Torts*, (18th Ed, 2000), at para 13-01.

43 The third category is unlawful imprisonment.

44 *Supra*, note 42.

45 *Supra*, note 42, at paras 13-05–13-17. It is the authors' view that the elements of directness and intention are not clear-cut. In many cases where there had been no direct act by the tortfeasor, the courts have found the claim to be satisfied. In the case of *Dodwell v Burford* (1670) 1 Mod 24, it was held that no physical contact was needed to establish battery. In that case, the tortfeasor struck the horse (and not the claimant) on which the claimant was riding thereby causing him to fall from it. See also the case of *Innes v Wylie* (1884) 1 C&K 153 where a claim succeeded even though the person who actually came into physical contact with the claimant was not the tortfeasor himself but a person acting under the latter's orders. In many of such cases, the courts appear to have been swayed by the fact that the tortfeasor had *intended* his act to cause injury (in the case of battery) or to cause the victim to reasonably apprehend a battery (in the case of assault) and not so much whether there was a direct act or not. Therefore, how far directness features in barring certain acts of harassment is unclear.

harassment can often consist of acts which would not amount to battery or assault. Take for instance a case where the perpetrator stalks his victim from a distance out of adulation but does nothing further. A claim in battery will fail for the lack of intention, directness and injury. A claim in assault fares no better for the want of intention and directnes. However, in these cases, the mental distress to the victim can hardly be ignored.

Rule in Wilkinson v Downton

52 Any act or statement which is calculated to infringe the right to personal safety of another and which causes physical harm to such person through the medium of his mind constitutes the tort defined in the century old case of *Wilkinson v Downton*[46] In *Wilkinson v Downton*, the defendant, in the execution of what he seemed to regard as a practical joke, falsely represented to the plaintiff that her husband was injured in an accident. The defendant told the plaintiff that her husband was lying at Leytonstone with both legs broken, and that she should go at once to fetch him home. The plaintiff suffered a violent shock to her nervous system, causing vomiting and other more serious and permanent physical consequences which entailed weeks of suffering and incapacity, as well as medical expenses. The plaintiff, on the faith of the defendant's statement, also incurred a small expense for railway fares of persons whom she sent to Leytonstone. The court ordered that the defendant pay the railway fares incurred by the plaintiff and also ordered that damages be paid to the plaintiff for the physical harm to her. The court held that the defendant had wilfully done an act calculated to cause physical harm to the plaintiff – that is to say, to infringe her legal right to personal safety – and had in fact thereby caused physical harm to her. That proposition appeared to the court as a good cause of action. The court said that the wilful *injuria* was in law malicious although no malicious purpose to cause the harm was imputed to the defendant.

53 Although the tort in *Wilkinson v Downton* is commonly labelled as "intentional infliction of harm", it is not necessary to prove that the defendant actually wanted to produce such harm. If the conduct complained of was calculated to do so, and does so, then that is enough.[47] In other words, the tortfeasor need not necessarily have to intend the harm to the victim but it is sufficient if he ought to have known that harm will result to the latter.

46 *Supra*, note 11.

47 See the judgment of the English Court of Appeal in *Wong v Parkside Health NHS Trust & Anor*, *supra*, note 5, at para 10.

This is well illustrated in *Wilkinson v Downton* itself where the defendant's intention was not to actually harm the plaintiff but merely to play a practical joke on her.

54 The rule in *Wilkinson v Downton* was followed in the famous case of *Janvier v Sweeny*.[48] In *Janvier v Sweeny*, a detective and his assistant visited the plaintiff under the pretext that they were officers from Scotland Yard representing the military authorities to investigate her. The assistant sought to find out information from the plaintiff by frightening her into believing that the authorities suspected her of corresponding with a German spy. As a result of this traumatic experience, the plaintiff suffered a long period of nervous illness. In the English Court of Appeal, it was argued that *Wilkinson v Downton* was wrongly decided and ought to be overturned. This was flatly rejected by Bankes LJ who delivered the main judgment of the court. In addition, the case also established that the harm resulting from the act need not be physical harm but also extends to mental harm.

55 The question is: how does the rule in *Wilkinson v Downton* serve as a tool in the law of harassment? It would seem clear that cases of harassment which result in injury to health, physical harm or nervous shock of a person will fall under the rule laid down in *Wilkinson v Downton*. However, whether the rule extends beyond recognized forms of psychiatric illnesses is ambiguous. On the one hand, there are authorities that suggest that mere distress, without any further physical or mental harm, is sufficient for the action to arise.[49] On the other hand, there are also authorities to the effect that the rule in *Wilkinson v Downton* does not extend to cover situations where no recognisable harm results from the act of the supposed tortfeasor.[50]

56 It is, however, submitted that there is a good reason why the rule in *Wilkinson and Downton* ought not to cover purported acts of harassment where there is no manifestation of any physical or mental injury. One of the requirements for establishing a tort under the rule is that the plaintiff must adduce evidence that some sort of damage has been suffered. Where acts of harassment such as stalking are involved, it may be difficult for the plaintiff to prove that he or she has suffered any such harm. Without proof of harm, it is hardly conceivable how an action on this basis can stand.

48 *Supra*, note 12.

49 See for instance Flemming, *The Law of Torts* (9th Ed, 1998) at 38. See also *Hunter v Canary Wharf Ltd*, *supra*, note 15, at p 707 per Lord Hoffman.

50 See for instance *Minna Wong v Parkside Health NHS Trust & Anor*, *supra*, note 5, at para 11.

Nuisance (private nuisance)

57 The essence of nuisance is a condition or activity which unduly interferes with the use or enjoyment of land.[51] Nuisance is an act or omission which is an interference with, disturbance of or annoyance to, a person in the exercise or enjoyment of (a) a right belonging to him as a member of the public, when it is a public nuisance, or (b) his ownership or occupation of land or of some easement, profit, or other right used or enjoyed in connection with land, when it is a private nuisance.[52]

58 Private nuisance takes place where:

(1) there is an encroachment into land (where it closely resembles trespass to land);

(2) physical damage is caused to land or building or works or vegetation upon it; or

(3) there is undue interference with the comfortable and convenient enjoyment of land.[53]

59 There are, however, two important limitations to this tort. First, the tort of private nuisance is confined to interference with specific property and will therefore not cover cases of stalking which often may not encroach on the victim's property. For example, the act of merely following someone everyday from a bus stop to the beginning of the road where her house is located, may amount to stalking but will not amount to private nuisance. Further it is important to note that only a person with an interest in the land can sue for private nuisance.[54]

60 The decision of the Singapore High Court in *Malcomson Nicholas Hugh Bertram & Anor v Naresh Kumar Mehta*[55] raises an interesting issue as to whether a company has *locus standi* to sue for private nuisance on behalf of its employees. In this case the court found that the plaintiffs had established trespass and nuisance in respect of Zerity's (second plaintiff) office premises. The Court, among other things, granted an injunction restraining the defendant from telephoning and sending any document or

51 *Supra*, note 42, at para 19-01.

52 *Ibid*.

53 *Ibid* at para 19-06. Also see Michael Hwang & Andrew Chan's Chapter on *Singapore* in Michael Henry (Editor), *International Privacy, Publicity & Personality Laws*, (1st Ed, 2000), at p 369.

54 See the House of Lords in *Hunter v Canary Wharf Ltd*, *supra*, note 16, overruling the decision by the Court of Appeal in *Khorasandjian v Bush*, *supra*, note 14. Thus, for example, a daughter living in her parents' house would not have the requisite interest in the land to bring an action in private nuisance.

55 *Supra*, note 3.

article to Zerity's employees or officers at the premises. The issue of private nuisance is not discussed in detail in the judgment except for a mention that on the pleadings the plaintiffs had established the basis for trespass and nuisance.

61 It should be noted that Zerity is a company and it was its employees who had suffered the distress caused by the plaintiff. It is unlikely that the employees, who in any event were not party to the suit save for the first plaintiff, can assert the tort of private nuisance in respect of their work places since they would not have the requisite interest in the land. It is submitted that Zerity similarly cannot sue on behalf of its employees in private nuisance for the distress caused to them. It could perhaps be argued that nuisance was actually caused to Zerity though the direct targets were its employees. In any event, it would have been preferable if these aspects had been discussed in the judgment.

Intimidation

62 A tort of intimidation is committed when A delivers a threat to B that he will commit an unlawful act against B, as a result of which B does or refrains from doing some act which he is entitled to do, thereby causing damage either to himself or to C.[56]

63 It is essential to the cause of action for intimidation that the person threatened complies with the demand. Harassment is akin to intimidation. However, the tort of intimidation will not cover all cases of harassment since it will only arise where there was a threat coupled with a demand and where the threatened person complied with the demand.[57]

Invasion of privacy

64 It was held in *Kaye v Robertson*[58] that there was no right to privacy in English law and accordingly there was no right of action for breach of a person's privacy. However, the English and Australian courts have recently recognised a limited common law right to privacy.[59]

56 *Supra*, note 42, at paras 24–65; *Rookes v Barnard* [1964] AC 1129.

57 *Supra*, note 42, at paras 24–84.

58 [1991] FSR 62.

59 See *Douglas and Others v Hello! Ltd* [2001] QB 967 at pp 1011–1012; *Mills v News Group Newspapers Ltd* [2001] All ER (D) 9; *WB v H Bauer Publishing Ltd* [2001] All ER (D) 148; *A v B plc & Anor (Garry Flitcroft v MGN)* [2002] 1 All ER 449; *Theakston v MGN Ltd* [2002] EWHC 137; *Campbell v Mirror Group Newspapers* [2002] EWHC 499. See also the Australian decision in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* [2001] HCA 63.

65 Even if such a right is recognised in Singapore,[60] it is unlikely that it would be able to cover all possible acts of harassment. However, it may be useful in certain cases, particularly those relating to harassment of celebrities.

Singapore legislative provisions dealing with "harassment"

66 At this juncture, it may be apt to point out that although the *Malcomson* case and the *Minna Wong* case dealt primarily with the issue of whether a tort of harassment exists at common law, a discussion of the legislative measures that have been designed to curb the problem of harassment, primarily in criminal law, is useful for at least two reasons. First, in most cases of harassment, the victim would likely attempt to involve the public authorities such as the police in seeking relief. Civil action is quite often only relied on as a secondary remedy or as a last resort. Second, the fact that certain acts of harassment have been labelled as offences and given criminal sanctions serve as a strong deterrent against such conduct. The deterrent can sometimes be more effective than remedies obtained via civil actions. Therefore, an examination of the local legislation dealing with harassment is necessary to determine if these are adequate.

67 The main statute which has relevance to acts of harassment is the Miscellaneous Offences (Public Order and Nuisance) Act.[61] Under the Act, there are, generally speaking, two groups of provisions dealing with harassment. Firstly, ss 13A (Intentional harassment, alarm or distress) and 13B (Harassment, alarm or distress) criminalise various acts of harassment. Secondly, there are other provisions within the Act that deal with harassment under specific conditions.

68 Apart from the Miscellaneous Offences (Public Order and Nuisance) Act, there are also several other provisions in other legislation which relate in some way to acts of harassment. These can be divided into two broad categories. On the one hand, some provisions prohibit specific forms of conduct which may, in some instances, be akin to harassment (*eg* causing public nuisance or annoyance, intimidation, or sexual harassment). On the other hand, there are also provisions that prohibit harassment in specific situations (*eg* family situations, moneylending situations, *etc*). All these provisions including those under the Miscellaneous Offences (Public Order and Nuisance) Act are examined below.

60 There is, to the best of the authors' knowledge, as yet no Singapore decision on this issue.

61 Cap 184, 1997 Ed.

Miscellaneous Offences (Public Order and Nuisance) Act

69 There are several offences relating to harassment under the Miscellaneous Offences (Public Order and Nuisance) Act. Sections 13A and 13B set out fairly broad offences relating to causing harassment, alarm or distress. Other sections deal with specific acts of "harassment" and/or acts involving certain persons or situations. A police officer may arrest without a warrant any person who, in the officer's view, is offending any of these provisions.[62]

SECTIONS 13A AND 13B

70 Sections 13A and 13B make it an offence for a person to use "threatening, abusive or insulting" words and behaviour with the intent to cause harassment, alarm or distress[63]

71 These provisions were considered in the case of *Malcomson Nicholas Hugh Betram & Anor v Naresh Kumar Mehta*.[64] Lee JC opined that ss 13A and 13B would not extend to threatening, abusive or insulting words expressed by the perpetrator over the mobile phone which cause harassment, alarm or distress to the victim.

62 Section 40 of the Miscellaneous Offences (Public Order and Nuisance) Act.

63 Section 13A provides that (1) Any person who in a public place or in a private place, with intent to cause harassment, alarm or distress to another person – (a) uses threatening, abusive or insulting words or behaviour; or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that person or any other person harassment, alarm or distress, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000. (2) It is a defence for the accused to prove – (a) that he was inside a dwelling-house and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, by him would be heard or seen by a person outside that dwelling-house or any other dwelling-house; or (b) that his conduct was reasonable. Section 13B provides that (1) Any person who in a public place or in a private place — (a) uses threatening, abusive or insulting words or behaviour; or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of any person likely to be caused harassment, alarm or distress thereby shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000. (2) It is a defence for the accused to prove — (a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress; (b) that he was inside a dwelling-house and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that dwelling-house or any other dwelling-house; or (c) that his conduct was reasonable.

64 *Supra*, note 3, at pp 471–472, paras 53–54.

72 The learned Judicial Commissioner did not elaborate on the reasons for his view that ss 13A and 13B only applied to face-to-face communications. However, it is submitted that his view can be supported on several grounds:

(1) Sections 13A and 13B were enacted to deal with the shortcomings of the former s 13(f).[65] Section 13(f) itself was modelled after ss 4A and 5 of the UK Public Order Act.[66] The wording of the UK Public Order Act suggests that the provision was not envisaged to cover telephone harassment: it refers to words, behaviour, writing, sign or other visible representation committed in a public or private place.

(2) In our Act, ss 13A and 13B should be contrasted with s 14 which expressly refers to telephone communications. Section 14 would to a certain extent be rendered otiose if ss 13A and 13B extended to telephone communications.

65 Section 13(f) Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1985 Ed) states that any person who commits any of the following offences shall be liable on conviction to a fine not exceeding $1,000: (f) uses any indecent, threatening, abusive or insulting words or behaves in a threatening or insulting manner, or posts up, or affixes, or exhibits any indecent, threatening, abusive or insulting written paper or drawing with intent to provoke a beach of the peace, or whereby a breach of the peace is likely to be occasioned.

66 The relevant provisions in the UK Public Order Act 1986 are as follows:
4A—(1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he — (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress. (2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling. (3) It is a defence for the accused to prove — (a) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or (b) that his conduct was reasonable.
5—(1) A person is guilty of an offence if he — (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. (2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling. (3) It is a defence for the accused to prove — (a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or (b) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or (c) that his conduct was reasonable.

(3) This view is also borne out in the Singapore Parliamentary Reports recording the debates of the second reading of the Miscellaneous Offences (Public Order and Nuisance)(Amendment) Bill. A Member of Parliament (Dr Kanwaljit Soin) noted that ss 13A and 13B did not cover telephone harassment. In response, the Minister of State for Law (Associate Professor Ho Peng Kee) conceded that the provision was not intended to cover telephone harassment, and said that he would consider the MP's suggestion.[67]

73 Apart from ss 13A and 13B not extending beyond face-to-face communications, the provisions may also be unsatisfactory in dealing with acts of harassment for other reasons:

74 Firstly, the phrase "threatening, abusive or insulting" found in both ss 13A and 13B acts as an inherent limitation to the situations that can be covered under the statute. Cases interpreting the sections have dealt with unequivocal instances where it could be said that there was "threatening, abusive or insulting" words or behaviour.[68] However, in cases of harassment where there is an absence of such words or behaviour, ss 13A and 13B would have little effect. For instance, cases of harassment may involve only the act of stalking where no words are uttered. Even though such behaviour may cause mental distress to the victim, this may not necessarily amount to "threatening, abusive or insulting" behaviour.

75 Secondly, the penalties under these sections may not prove to be a sufficient deterrent. Both sections do not provide for imprisonment. Under s 13A, which deals with the situation where a person uses threatening, abusive or insulting words or behaviour, or displays any such sign to another person with intent to cause harassment, alarm or distress, the maximum fine which a court can impose is $5,000. Under s 13B, which makes it a lesser offence for situations where it may be difficult to prove that there was an intention on the part of the offender, but nevertheless the behaviour appears objectively likely to cause harassment, alarm or distress, the maximum fine is only S$2,000.

67 Singapore Parliamentary Reports Vol 65 (1996) at cols 701–702. Note that with the enactment of s 9A(1) Interpretation Act (Cap 1, 1999 Rev Ed), it is now appropriate to refer to extrinsic aids such as parliamentary debates to determine the intention behind a particular piece of legislation.

68 Currently, there appear to be only two local cases which have dealt with ss 13A and 13B. In *Low Teck Seng v PP* (*Suit 122/2001, unreported*), the accused had told the complainant that he would not let him off should anything happen to the former. In *Wong Sin Yee v PP* [2001] 3 SLR 197, the accused caused alarm to the complainant by shouting "why called (sic) your father, call Lee Kuan Yew or the F…ing Police".

76 Thirdly, a victim cannot recover damages or costs in criminal proceedings brought under ss 13A and/or 13B. Although the court has a discretion to direct that an accused person pay the costs of his prosecution or such part thereof, or pay to the victim a sum by way of compensation under s 401 of the Criminal Procedure Code (Cap 68), in practice this is rare.

77 Fourthly, and most importantly, the court is not empowered to grant interim relief, such as an interim injunction to restrain the behaviour complained against, pending the outcome of the prosecution.

78 For the above reasons, it is respectfully submitted that ss 13A and 13B of the Miscellaneous Offences (Public Order and Nuisance) Act, though useful, are not entirely adequate in providing a meaningful and valuable remedy to a victim of harassment.

Other provisions

79 Under the Miscellaneous Offences (Public Order and Nuisance) Act, there are other provisions which deal with harassment in particular situations. For instance, s 13C[69] deals with acts of harassment where violence is likely to result; s 13D[70] covers acts of harassment to public servants in the course of their duty; and s 14A[71] makes it an offence to make harassing calls to emergency numbers.

69 Section 13C makes it an offence for any person to use threatening, abusive or insulting words or behaviour, or to distribute or display any threatening, abusive or insulting writing, sign, or visible representation, in a public or private place, to another person, intending to cause that person to believe that immediate unlawful violence will be used against him or another person by any person, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

70 Section 13D makes it an offence for any person to use indecent, threatening, abusive or insulting words or behaviour, or to distribute or display any indecent, threatening, abusive or insulting writing, sign, or other visible representation, in a public or private place, to a public servant in the execution of his duty.

71 Section 14A(1) makes it an offence for any person to make a telephone call to an emergency telephone number with intent to annoy, abuse, threaten or harass any person who answers that call. An emergency number refers to any number that has been gazetted as such, and includes police and civil defence emergency telephone numbers. Section 14A(2) makes it an offence for any person to make an obscene telephone call to an emergency telephone number. The punishment for these offences is stricter where the calls are made from a public telephone, the rationale being that it is more difficult to apprehend culprits in these situations as the lines cannot be traced. As a corollary to s 14A, s 14B puts the onus on the subscriber of a telephone service to ensure that his or her telephone service is not used to make harassing or obscene phone calls. Section 14B provides that the subscriber shall be liable if his telephone service has been used to commit an offence under s 14A, unless he proves that he exercised due diligence to prevent the commission of such offence.

80 Although these provisions do go some way toward criminalising certain acts of harassment, it is equally clear that they are rather circumscribed in their scope and are intended to respond to specific problems and acts of mischief, rather than to serve as a remedy in situations of harassment generally.

Legislation prohibiting specific forms of harassment

81 There are various legislative provisions which may be invoked in appropriate harassment-related situations. These, however, are directed at specific, generally egregious, types of conduct. Accordingly, they do not adequately cover acts of harassment generally. Some of the relevant provisions are briefly discussed below:

OFFENCES OF CRIMINAL INTIMIDATION, CRIMINAL FORCE AND ASSAULT

82 If the harassing acts in question fall within the definition of criminal intimidation under the Penal Code, then this could constitute offences under Chapter XXII of the Penal Code.[72]

83 Similarly, if the harassing acts in question fall within the definitions of criminal force or assault under the Penal Code, then this could constitute offences under Chapter XVI of the Penal Code.[73]

72 Cap 224, 1985 Ed. Section 503 of the Penal Code provides that whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as a means of avoiding the execution of such threat, is said to commit criminal intimidation.

73 Force is defined in s 349 of the Penal Code as causing motion, a change of motion or a cessation of motion to another person, or to cause to any substance such motion, change of motion or cessation of motion as to bring that substance into contact with that person's body, or with anything which that person is wearing or carrying, or with anything so situated that such contact affects that person's sense of feeling.
Section 350 of the Penal Code goes on to provide that whoever intentionally uses force to any person, without that person's consent, in order to cause the committing of any offence, or intending by the use of such force to illegally cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that person.
Section 351 of the Penal Code further provides that any person who makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

84 These provisions are useful to the extent that they criminalise certain extreme acts of harassment which could amount to offences thereunder. However, to the extent that many acts of harassment may well fall short of criminal intimidation, criminal force or assault, the victim of harassment is still left without a remedy.

85 In this regard, it is interesting to note how the English Courts have been willing to extend the scope of traditional offences (prior to the introduction of the Protection from Harassment Act 1997) so as to encompass harassing telephone calls. An illustration is found in the case of *R v Ireland*,[74] where the defendant made a series of telephone calls to three women. In each case, he would simply remain silent when the calls were answered. The women suffered psychological damage as a result of the calls. The House of Lords upheld the defendant's conviction under s 47 of the Offences against the Person Act 1861 for infliction of grievous bodily harm. The House of Lords held that "inflict" included the infliction of psychiatric injury and it was not confined to physical harm being applied directly to the victim. Their Lordships also held that recognisable psychiatric illness fell within the phrase "bodily harm". It is difficult to resist the conclusion that their Lordships were minded to do justice on the facts of the case even if it meant having to strain the meaning of the provision in question. Perhaps the law would be better served if a proper solution is developed to address the issue head on – which is indeed the manner in which the law has evolved in the UK.

SEXUAL HARASSMENT AND OUTRAGE OF MODESTY

86 If the harassment in question takes on the form of an outrage of modesty, offences under ss 354, 354A, and 509 of the Penal Code may come into play.

87 Section 354 makes it an offence for any person to assault or use criminal force to another person intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person. Section 354A sets out the "aggravated" form of the offence, where a person voluntarily causes or attempts to cause to his victim death, hurt, or wrongful restraint, or fear of death, instant hurt or instant wrongful restraint in order to outrage the modesty of another person or to facilitate the commission of such an offence.

74 [1997] 1 All ER 112.

88 In the absence of assault or criminal force, a person may still be guilty of outraging the modesty of a woman if he intrudes upon her privacy, or utters any word or sound intending that such word or sound be heard by her, or makes any gesture or exhibits any object intending that such gesture or object be seen by her, with the intent to insult her modesty.

89 These provisions are useful in criminalising certain acts of sexual harassment. However, they are limited to this specific form of harassment and are clearly not intended to be, nor are they capable of being, any sort of remedy for harassment generally.

PUBLIC NUISANCE OR CAUSING ANNOYANCE GENERALLY

90 In some situations, it may be possible to rely on the "nuisance" or "annoyance" provisions in the Penal Code. For instance, s 268 of the Penal Code provides that a person is guilty of a public nuisance if he does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public, or to the people who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. Section 510 of the Penal Code provides that whoever, in a state of intoxication, appears in any public place or trespasses in any place, and whilst there conducts himself in such manner as to cause annoyance to any person, shall be punished with imprisonment and/or a fine.

91 Once again, these are specific provisions which could be invoked in appropriate harassment-related situations, but they would not adequately cover acts of harassment generally.

"OBSTRUCTION" OFFENCES

92 This would cover, for instance, the offence of obstructing a public servant in the discharge of his public functions under s 186 of the Penal Code, or the offence of obstructing, assaulting, threatening, insulting, abusing or intimidating a person carrying out his duties under the Civil Defence Act.[75] Another very specific example would be that of interfering or otherwise obstructing the master of a ship or other officers of a ship in performing their duties, under s 195 of the Merchant Shipping Act.[76]

75 Section 106 Civil Defence Act (Cap 42, 2001 Ed).
76 Cap 179, 1996 Ed.

COMPUTER MISUSE

93 If the acts of harassment in question involve the unauthorised use or interception of computer services, or the obstruction of the use of a computer, this could constitute offences under the Computer Misuse Act.[77]

94 The local case of *PP v Lim Siong Khee*[78] illustrates how incidents of harassment may possibly be caught by the provisions of the Computer Misuse Act. In that case, the complainant ended a brief relationship with the accused soon after they both returned from a trip to Europe. Subsequent to this, the complainant started having difficulties logging into her e-mail account. What happened was that the accused had actually gained access to her account and in a spite of anguish had sent an e-mail to the complainant's friends detailing her intimate relationship with him. The trial judge held that on the facts, the accused did not acquire the necessary consent to access the complainant's e-mail account. The trial judge held that the accused had committed an offence by securing access to the complainant's e-mail account without her authority. The decision was upheld by Yong Pung How CJ on appeal to the High Court.[79]

95 Although situations of harassment involving the unauthorized interference with computer accounts and programs may fall within the ambit of the provisions of the Computer Misuse Act, it is evident that the provisions are limited in nature and do not cater to all situations of harassment as such.

77 Cap 50A, 1998 Ed. Section 6 of the Act provides that it shall be an offence for any person knowingly to:
(1) secure access without authority to any computer for the purpose of obtaining, directly or indirectly, a "computer service";
(2) intercept or cause to be intercepted without authority, directly or indirectly, any function of a computer by means of an electromagnetic, acoustic, mechanical or other device; or
(3) use or cause to be used, directly or indirectly, the computer or any other device for the purpose of committing an offence under para (1) or (2) above.
"Computer service" is defined in the Act as including computer time, data processing and the storage and retrieval of data.
Section 7 of the Act makes it an offence for any person to knowingly and without lawful excuse interfere with, interrupt or obstruct the lawful use of a computer, or impede or prevent access to or impair the usefulness or effectiveness of any program or data stored in a computer.
Section 3 of the Act further provides that any person who knowingly causes a computer to perform any function for the purpose of securing, without authority, access to any program or data shall be guilty of an offence.

78 MC Suit No 256 of 2000 (unreported).

79 *Lim Siong Khee v PP* [2001] 2 SLR 342.

INTERCEPTION OF MESSAGES

96 Section 41 of the Telecommunications Act[80] provides that:

> Any person who intending –
>
> (a) to prevent or obstruct the transmission or delivery of any message;
>
> (b) to intercept or to acquaint himself with the contents of any message; or
>
> (c) to commit mischief,
>
> damages, remove, tampers with or touches any installation or plant or any part thereof used for telecommunications belonging to a public telecommunication licensee or interferes with the radio-communication service or system of a public telecommunication licensee shall be guilty of an offence ...

97 Section 28 of the Postal Services Act[81] provides a similar provision in respect of any installation or plant or any part thereof used for posts belonging to a public postal licensee.

98 In addition, s 46 of the Telecommunications Act makes it an offence for any person to fraudulently retain a message or record of a message which ought to have been delivered to some other person, or to neglect or refuse to deliver up any message or record of message when required by a public telecommunication licensee to do so.

99 It would seem that these provisions are geared towards preventing public mischief in connection with telecommunications services, and would be inadequate for protection against harassment.

Legislation dealing with "harassment" in specific situations

FAMILY VIOLENCE

100 A significant area in which harassment has received statutory attention is in the context of family law. The Women's Charter's[82] definition of "family violence" in s 64 includes the act of harassment with intent to cause, or knowing it is likely to cause, anguish. Sections 65 and 66 Women's Charter provide a regime for the issuance of protection orders to restrain a person from using family violence against a family member.

80 Cap 323, 2000 Ed.
81 Cap 237A, 2000 Ed.
82 Cap 353, 1985 Ed.

101 However, the legislative provisions to combat situations of harassment under the Women's Charter are limited in scope as they are confined to "family members" *inter se*. Also, there is no definition of "harassment" under the Charter, and most decided cases seem to refer to harassment according to its natural ordinary meaning, and use the term loosely within the factual context of each case, without attaching any particular legal definition to the term.

Moneylending

102 The Moneylenders Act[83] contains specific provisions concerning harassment in the context of a creditor-debtor situation. Section 33(1) of the Act makes it an offence for any moneylender who, personally or by any person acting on his behalf, harasses or intimidates his debtor, any member of the debtor's family or any other person in connection with the loan to the debtor at, or watches or besets, the residence or place of business or employment of the debtor, the member of the debtor's family or that other person, or any place at which the debtor receives his wages or any other sum periodically due to him.

103 In the case of *Chua Keem Long v Public Prosecutor*,[84] Yong CJ considered s 33 of the Moneylenders Act, noting that the term "harassment" was not defined therein. His Honour began by highlighting the definition of "harass" from the New Shorter Oxford dictionary, which defined the term as "trouble by repeated attacks. Now freq, subject to constant molesting or persecution." Citing this definition, his Honour then took the view that a necessary quality of harassment was that of repetition or persistency. His Honour contrasted the notion of harassment with that of intimidation, which could undoubtedly include an isolated act. However, his Honour noted also that a single visit or encounter could still amount to harassment if its intensity amounted to a persistent attack or persecution.

Commercial activities

104 It would appear that the notion of harassment has also received some statutory attention in the context of certain commercial activities. Under the Multi-level Marketing and Pyramid Selling (Prohibition) Act,[85]

83 Cap 188, 1985 Ed.
84 [1996] 1 SLR 510.
85 Cap 190, 1985 Ed.

one of the requirements for a scheme or arrangement to be excluded from the definition of "pyramid selling" is that a promoter of the scheme must take steps to ensure that the participants in the scheme do not use coercion or harassment in promoting the scheme.[86]

EMPLOYMENT SITUATIONS

105 The Trade Disputes Act[87] defines "intimidate" as causing in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property. Section 9 of the Act goes on to provide that:

> "Every person who with a view to compelling any other person to abstain from doing or to do any act, which such person has a legal right to do or to abstain from doing, wrongfully and without legal authority –
>
> (a) uses violence to or intimidates such other person or his wife or children, or injures his property;
>
> (b) persistently follows such other person from place to place;
>
> (c) hides any tool, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof;
>
> (d) watches or besets the house or other place where such other person resides or works or carries on business or happens to be or the approach to such house or place; or
>
> (e) follows such other person with two or more persons in a disorderly manner in or through any street or road,
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 3 months or to both."

86 Section 2(2) Multi-Level Marketing and Pyramid Selling (Prohibition) Act provides that the Minister may by order exclude any class of schemes or arrangements from being prohibited. Pursuant to s 2(2) Multi-Level Marketing and Pyramid Selling (Prohibition) Act, s 2(1)(c)(vi)(D) Multi-Level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order provides that for a scheme or arrangement to be excluded from prohibition, one of the requirements is that the promoter of the scheme shall not, and must take reasonable steps to ensure that the scheme does not permit or cause fraud, coercion, harassment, or unconscionable or unlawful means to be used.

87 Cap 331, 1985 Ed.

This provision could potentially cover some situations of harassment. However, while the provision appears to be rather widely phrased, it may be appropriate to note that the long title of the Trade Disputes Act provides that it is an Act to control trade disputes and matters arising therefrom, and "trade dispute" is defined in the Act as any dispute between employers and employees or between employees and employees, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person.[88] In short, it covers only "employment situations".

106 Also, it appears to require that there be a discernible motive behind the objectionable acts, as the provision states that the acts must be done "with a view to compelling any other person to abstain from doing or to do any act, which such person has a legal right to do or to abstain from doing". This provision would probably not cover situations where a person engages in a course of harassment against another without any clear or apparent motive and without requiring that the victim act or omit to act in any particular manner.

Analysis and commentary

107 Leaving aside the *Malcolmson* case for the moment, it is apparent from the above analysis that the existing law does not adequately cover all forms of harassment.

108 The first question that arises is therefore whether the forms of harassment not presently covered by either existing torts or legislation should be dealt with at all. The court in the *Malcolmson* case was certainly of the view that the lacuna in the law had to be addressed.[89] Indeed, on the facts of that case, it would be unsatisfactory if the victim did not have any legal recourse.

109 The next difficult question is how the lacuna in the law should be addressed. The answer to this question will largely affect the type of reform which the law should take. As noted by the House of Lords in *Hunter v Canary Wharf*,[90] the English courts no longer have to grapple to find a judicial remedy in cases where acts of harassment were not covered by existing torts. This was because harassment *per se* has already received statutory recognition by way of the Protection from Harassment Act 1997.

88 Section 2 Trade Disputes Act.
89 *Supra*, note 3, at pp 470–474, paras 49–57.
90 *Supra*, note 16, at pp 691–692 and p 707.

110 The authors venture to suggest that there are four main possible approaches to the problem:

(1) recognise a general tort of harassment;

(2) extend one of the existing categories of tort law to cover acts of harassment which are presently not covered;

(3) enact specific legislation to address the issue of harassment; and

(4) amend ss 13A and 13B of the Miscellaneous Offences (Public Order and Nuisance) Act to address the issue of harassment generally.

Each of these approaches will now be reviewed.

General tort of harassment

111 In the *Malcolmson* case, Lee JC defined "harassment" to mean "a course of conduct by a person, whether by words or action, directly or through third parties, sufficiently repetitive in nature as would cause, and which he ought reasonably to know would cause, worry, emotional distress or annoyance to another person." Lee JC further asserted that the law should provide a recourse in respect of intentional acts that cause harm in the form of emotional distress. He concluded that the time had come in Singapore to recognise a tort of harassment, and to grant injunctions in appropriate cases to prevent harassment and stalking wherever it may take place.

112 However, despite the robustness of the judgment, it should be noted that Lee JC added that his definition of "harassment" was not intended to be an exhaustive definition, but rather, one that "sufficiently encompasses the facts of the present case in order to proceed with a consideration of the law."

113 This approach was understandable since the application before Lee JC was for judgment in default of defence and the hearing was *ex parte*. In such circumstances, Lee JC may have felt it was preferable to simply lay the foundation for a tort of harassment without necessarily delineating its boundaries. It would then be left to the good sense of subsequent judges to decide whether or not the facts before them amounted to "harassment".

114 It should also be noted that Lee JC's tentative formulation of harassment as "a course of conduct by a person ... sufficiently repetitive in nature as would cause, and which he ought reasonably to know would cause ... annoyance to another person" is extremely broad. Such a definition would seem to cover, for example, a persistent insurance agent, a door-to-door salesman, an enthusiastic journalist or a fervent evangelist. Many acts of private investigators or even the police in carrying out their

duties may also fall within this broad definition of "harassment". Thus, it appears that subsequent courts would also have to address the issue of whether the alleged acts of "harassment" may be justified. If so, should this form part of the cause of action such that a potential plaintiff must satisfy the court that the acts of harassment in question cannot be justified? Or is the onus on a defendant to establish that his acts, though amounting to "harassment", are nevertheless excusable in the circumstances of the case?

115 The extent to which a court should have regard to existing legislation dealing with harassment is also unclear. For example, protection orders may be issued to restrain a person from acts of harassment against a family member with intent to cause, or knowing it is likely to cause, anguish. Arguably, "anguish"[91] is somewhat more serious than "worry, emotional distress or annoyance". If so, does this mean that a person who may not satisfy the requirements to obtain a protection order from court nevertheless be able to secure an injunction to restrain the acts in question?

116 In the same vein, the court in *Chua Keem Long v Public Prosecutor*,[92] in analysing the term "harassment" as used in s 33 of the Moneylenders Act, adopted the definition of "harass" from the New Shorter Oxford dictionary, which defined the term as "trouble by repeated attacks. Now freq, subject to constant molesting or persecution." This is clearly considerably narrower than the definition of "harassment" in the *Malcolmson* case. Indeed, many acts of creditors trying to recover their monies from debtors, such as sending letters of demand, would almost certainly fall foul of the test in the *Malcolmson* case. Does this mean that a special test as to what constitutes "harassment" should be adopted in a creditor-debtor situation? Or can a creditor simply argue that his acts are reasonable, and should not be enjoined?

117 Other issues which may arise include whether the test for harassment should be objective or subjective. For instance, must the acts complained against objectively cause, worry, emotional distress or annoyance? Or would it be sufficient if the acts caused worry, emotional distress or annoyance to that particular person? Conversely, would the state of mind of the harasser be relevant? Would a person of unsound mind be permitted to carry out acts which a normal person be prohibited from doing?

118 It is clear from the above that an unfortunate effect of developing an amorphous concept of harassment as an actionable tort is that it creates considerable uncertainty.

91 According to the Longman Dictionary of Contemporary English, "anguish" is defined as "mental or physical suffering caused by extreme pain or worry".

92 *Supra*, note 84.

Extending existing category of tortious liability

119 It has been noted in the context of the law of negligence that it may be preferable for the law to develop incrementally and by reference to existing categories.[93] In the present context, the tort which may possibly be extended to encompass acts of harassment appears to be the rule in *Wilkinson v Downton*.

120 As discussed above, cases of harassment which result in injury to health, physical harm or nervous shock of a person appear to fall under the rule laid down in *Wilkinson v Downton*. Beyond this, the applicability of the rule remains an unsettled issue. As with the creation of a new tort, the extension in the ambit of an existing tort also comes with the problems associated with the former. Questions such as what kind of acts ought to be covered and what kind of defences can be raised pose formidable challenges. This is compounded by the fact that the rule in *Wilkinson v Downton* has inherent limitations. As discussed earlier, the requirement that the victim should prove the presence of some sort of harm must surely pose a difficult hurdle for one who has suffered nothing more than mere distress.

Specific legislation

121 As already noted, the UK has addressed the problem of harassment by enacting specific legislation, namely, the Protection from Harassment Act 1997. Under the statute, acts of harassment attract either a civil or a criminal remedy.

122 Where a civil remedy is sought, s 3(1) provides that an act of harassment by a perpetrator who knows or ought to know that his actions or words amount to harassment may be the subject of a claim in civil proceedings. Section 3(2) goes on to provide that damages may be awarded for any anxiety caused by the harassment and any financial loss resulting from it.

123 Where a criminal remedy is sought, both ss 2 and 4 of the Act are available. The former deals with a "lower-level summary offence"[94] which attracts a lower penalty while the latter deals with a "higher-level indictable offence"[95] which carries with it more serious punishment.

93 See *Caparo Industries plc v Dickman* [1990] 1 All ER 568 at p 574 per Lord Bridge, adopting the High Court of Australia in *Sutherland Shire Council v Heyman* (1985) 60 ALR 1 at p 43.

94 Addison & Lawson-Cruttenden, *Harassment Law and Practice* (1998) at p 29.

95 *Ibid*

124 Section 2(1) provides that a person who pursues a course of conduct in breach of s 1 is guilty of an offence. Section 1 provides that a person must not pursue a course of conduct which (a) amounts to harassment of another, and (b) which he or she knows or ought to know amounts to harassment of the other.

125 Section 4 of the Act states that a person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his conduct will cause the other so to fear on each of the occasion.

126 Where the definition of "harassment" is concerned, the statute is far from clear. Section 7(2) provides that "references to harassing a person [within the meaning of the Act] include alarming the person or causing the person distress". Unfortunately, as one commentator points out, the Act fails to define the terms "harassment, alarm and distress".[96] A plain interpretation of the terms may cover a wide variety of instances unanticipated by the drafters of the Act.

127 Defences from a civil or criminal claim of harassment are available under the statute. Section 1(3) of the Act excepts the following situations from being a course of conduct sufficient to amount to harassment:

(1) that it was pursued for the purpose of preventing or detecting crime;

(2) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

(3) that in the particular circumstances the pursuit of the course of conduct was reasonable.

128 Section 12 further protects acts arising out of national security concerns from being subject to civil or criminal liability under the Act.

129 It cannot be gainsaid that it would certainly be ideal if it was possible to devise specific legislation which could balance all the competing policy considerations involved in enacting laws directed at preventing acts of harassment. Unfortunately, drafters of legislation are not omniscient, and it would be remarkable if the drafters will be able to foresee all possible situations where the legislation may be inadequate or may be abused.

130 Even under the Protection from Harassment Act 1997, various criticisms have been levied against the effectiveness of its regime and the

96 *Ibid*, at p 34.

scope of its application.[97] In *Huntingdom Life Sciences Ltd v Curtin*,[98] Eady J criticised the use of the Protection from Harassment Act 1997 for resulting in an application of the law beyond what was intended by its drafters. That case itself illustrates the dangers which can occasion by a wide interpretation of the statute. The case involved an application by the British Union for the Abolition of Vivisection to remove its name from an earlier injunction awarded by the court for the purported harassment of Huntingdom Life and its employees. Huntingdom Life was an organization which was licensed to carry out experimentation using animals. A campaign was organised by the British Union for the Abolition of Vivisection and other organisations to put pressure against the use of animals for scientific experimentation. When the case was brought before the court, the learned Eady J held that the Act was not intended to clamp down on political protests and public demonstrations which clearly formed the cornerstone of a democratic nation.

131 The UK Home Office has also published a research study on the use and effectiveness of the Act.[99] In it, it was discovered that there is considerable uncertainty in the decision-making process where the Act is concerned. This uncertainty arises from two main sources. First, there is a lack of guidance as to the types of cases which the provisions in the Act are intended to cover. Second, there is no guiding rule as to when a party should seek out a civil as opposed to a criminal remedy.

132 Thus, although the enactment of a piece of legislation targeting harassment may theoretically be the best solution, it may perhaps be wishful thinking to suppose that the legislators will be able to draft a comprehensive code to cover all acts which may amount to harassment, while at the same time balancing legitimate countervailing interests which may justify such acts in particular situations. It is also uncertain whether the problem of harassment in Singapore is of significant severity to justify the resources that would be required to prepare and enact specific legislation to counteract this problem, and thereafter to monitor and ensure compliance.

Amendments to ss 13A and 13B of the Miscellaneous Offences (Public Order and Nuisance) Act

133 At the outset, it is perhaps convenient to clarify the conceptual difficulty that arises from suggesting a criminal approach towards what essentially began as a tortious matter. The difficulty is best overcome by

97 See generally *supra*, note 94.

98 *The Times*, 11 December 1997.

99 Harris, *Home Office Research Study 203: An evaluation of the use and effectiveness of the Protection from Harassment Act 1*997 (2000).

analysing the problem from a practical perspective. What is being contemplated in this article are situations of harassment that do not already attract some form of remedy in tort. For instance, when harm is caused to a victim, the victim would already have recourse under existing tort law. The problem arises if no damage is suffered, such as cases of stalking. In such cases, what the victim wants is to deter the stalker, whether in the form of an injunction or some other punitive sanctions, from continuing his course of conduct. This being the case, reforms to the existing harassment offences under the Miscellaneous Offences Act can equally serve the end. What is left is to determine is the scope of such a reform.

134 The court in the *Malcolmson* case opined that ss 13A and 13B are inadequate as they are limited to face-to-face communications and do not extend to acts of harassment expressed through modern communication devices such as mobile phones or computers.[100]

135 It appears that this gap could easily be filled by simply extending the provisions to cover non face-to-face communications. Indeed, such an amendment is, to a certain degree, presaged by the exchange between Dr Kanwaljit Soin and the Minister of State for Law, Associate Professor Ho Peng Kee.[101]

136 There are, however, other aspects of these sections which to some extent reduce their effectiveness in dealing with cases of harassment. These have also been discussed above.[102]

137 It is suggested that if these sections are to adequately deal with the problem of harassment, the following amendments would need to be introduced:

(1) Firstly, and most obviously, the provisions should not be limited to face-to-face communications.

(2) Secondly, it is suggested that the provisions in ss 13A and 13B ought to be amended to take into account what types of acts the legislature would want to prohibit. In particular, special attention must be paid to the terms "threatening, abusive and insulting" because these terms qualify the types of act which fall under the ambit of the provisions. In the United Kingdom, the enactment of the Protection from Harassment Act was propelled by the desire to curb the problem of stalking. In Singapore, there is a need to consider whether our social

100 *Supra*, note 3, at p 472, para 54.
101 *Supra*, note 67.
102 Discussed above in paras 69–80.

conditions require us to pursue a similar goal. If so, an amendment might be necessary. Alternatively, confining the acts which may be enjoined to "threatening, abusive and insulting" words and behaviour may assist in balancing the interests of an alleged victim with other legitimate countervailing interests.

(3) Thirdly, the penalties should be enhanced. What the precise tariff should be is of course a policy decision. However, perhaps the punishment for offences under these sections should include imprisonment for repeat offenders.

(4) Fourthly, to afford a victim of harassment some relief pending the outcome of any prosecution, perhaps the court should be empowered to issue protection orders akin to the orders provided under the Women's Charter to restrain the acts of harassment.

138 In relation to damages and costs, it is difficult to see why an offence of harassment should be treated any differently from other offences involving some harm to a victim (such as causing hurt or outrage of modesty). It is suggested that the existing power of the court under s 401 of the Criminal Procedure Code to award costs or compensation in appropriate cases should be sufficient.

Conclusion

139 In the absence of any comprehensive studies conducted in Singapore to determine how widespread the problem of harassment is, it is difficult to reach a firm conclusion as to what would be the appropriate solution to deal with harassment.

140 As can be seen, none of the four possible solutions discussed above are perfect. Accordingly, to determine which solution is appropriate, it is necessary to identify the considerations which a legal regime dealing with the issue of harassment should take into account. It is suggested that these factors include:

(1) extent of the problem of harassment – Although this is necessarily a matter of some speculation, it is tentatively suggested that acts of harassment not presently covered by existing tort law or legislation may not be particularly extensive.

(2) cost of the proposed solution – Following from the first factor, it is respectfully submitted that if the problem of harassment is not pervasive, it would be preferable that the adopted solution not be too expensive to implement or maintain.

(3) relief sought by victim – Presumably, uppermost in the mind of a victim of harassment would be to stop the acts of harassment as soon as possible.

(4) cost to victim – A victim would need to balance distress or inconvenience caused by the acts of harassment with the cost of securing relief. Unless the acts of harassment are particularly serious, a victim may not be prepared to incur the expense of engaging a private law firm to commence civil proceedings against the harasser, which may be an extensive and expensive exercise, considering the available actions are still not well-defined.

(5) effectiveness of remedy – The sanction against the harasser must of course be sufficiently powerful to have some deterrent value.

(6) other competing interests – As noted above, many activities which would generally be regarded as legitimate may possibly be regarded as "harassment" (particularly in the sense of causing annoyance). Thus, it is necessary to ensure that any solution adopted does not unduly interfere with legitimate activities.

141 As discussed above, it would be ideal if it is possible to draft specific legislation to deal with the problem of harassment. In theory, approaching the issue afresh would enable the legislature to consider and balance the various competing policy considerations. This should be preferable to extending existing legislation, whose purpose may not have been to deal with the issue of harassment, and which therefore may not be suited to tackle this problem. It might also not be appropriate to look to the courts for a solution, in light of the many countervailing policy considerations involved which a court may not be equipped to assess. Of course, we do not live in an ideal world. It is unrealistic to expect drafters of legislation to devise a statute that would adequately identify and balance all the various conflicting policy considerations, particularly in the absence of any comprehensive study of the problem of harassment in Singapore. The problem of harassment in Singapore may also not be sufficiently serious to justify the expenditure of resources to prepare, enact, implement, monitor and enforce specific legislation directed at harassment.

142 With some diffidence, the authors venture to suggest that, at least for the present moment, the most pragmatic solution would be to amend ss 13A and 13B of the Miscellaneous Offences (Public Order and Nuisance) Act in the manner proposed above. In this way, a victim of harassment need only file a police report complaining against the acts in question. Most acts of harassment could presumably be curtailed by the simple expedient of the police issuing a warning to the harasser, and if necessary, instituting criminal proceedings against the harasser. In cases where the police do not think it is appropriate to take any action, for example, if the police take the view that the acts complained against are trivial, or are justified, the "victim" can then choose to initiate a private prosecution before a Magistrate's court or commence civil proceedings.

143 In relation to civil action, it is proposed that it would be preferable not to legislate any changes to existing tort law. Instead, the courts should be free to address the issues before it unfettered by legislation. Currently, a victim of harassment can avail himself or herself of remedies in tort law if he or she wishes to claim damages on top of any criminal action instituted against the harasser. This adequately addresses the problem where injury results to the victim. Where no injury occasions, the main concern of the victim is to prevent the harasser from persisting in his course of conduct. Here, criminal sanctions in the form of fines, imprisonment and protection orders can accomplish the purpose with equal, if not better, efficacy than a civil action seeking injunction as a remedy.

144 In any case, if the proposed solution proves to be inadequate, it would still not be too late to look to Parliament for the enactment of specific legislation dealing with the problem.

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