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## Comment

### THE PROTECTION FROM HARASSMENT ACT 2014

#### Legislative Comment

The Protection from Harassment Act 2014 (“Act”) was passed by Parliament on 13 March 2014 following its Second Reading. The Act is a culmination of a concerted ministerial effort to bring about legislative change to the laws governing harassment. Bringing together the background to the Act, its general structure and its specific provisions, this article aims to add to the undoubted long list of commentaries on the Act and, it is hoped, contribute to the understanding and enforcement of the Act.

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#### I. Introduction

1 The Protection from Harassment Act 2014 (“Act”) was passed by Parliament on 13 March 2014. The Act is a culmination of a concerted ministerial effort to bring about legislative change to the laws governing harassment. This effort first gained public prominence in November 2013, when the Institute of Policy Studies held a Conference on Harassment in Singapore.<sup>1</sup> Bringing together the background to the Act, its general structure and its specific provisions, this comment aims to contribute to the enforcement of the Act. Its purpose is therefore intentionally not to thoroughly evaluate the Act, but to look at relevant material in aiding its enforcement.

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1 Institute of Policy Studies Conference on Harassment in Singapore: Realities, Conundrums and Approaches Moving Ahead (18 November 2013).

## II. Background to the Act

### A. *Inadequate previous protection*

#### (1) *Limitations of common law protection*

2 By way of background to the Act, the common law did not always afford protection against harassment. This is because harassment involves disturbance short of actual psychiatric or physical damage outside of the victim's property. The law of torts protects against such disturbance, including excessive noise, by way of actions in *property-related* torts such as nuisance. Specifically, the tort of private nuisance protects the right of a person who has possession of land to enjoy his premises undisturbed. The essence of nuisance is a condition or activity which unduly interferes with the use or enjoyment of land.<sup>2</sup> In *Epolar System Enterprise Pte Ltd v Lee Hock Chuan*,<sup>3</sup> the Court of Appeal recognised these principles and held further that generally, only a person with a proprietary interest, whether by virtue of his freehold or leasehold interest, can sue in the tort of private nuisance. Mere occupation is not enough. Thus, a person who is a mere occupier, even if the wife of the husband-owner, cannot sue. This is further illustrated by the English case of *Malone v Laskey*,<sup>4</sup> where the wife of the manager of a company entitled to live in the affected premises by virtue of her husband's employment was held not to have standing to sue in private nuisance.

3 However, the protection of privacy cannot stop there, especially where there is no property interest which precludes an action in these torts. This covers a wide range of situations like the one illustrated in *Malone v Laskey*. Many times, the occupier of the premises came into occupation by virtue of a relationship with the owner, such as wife, child or friend. Yet, in these cases, the English cases have held that there is no recourse for disturbance caused to them while on the premises. In order to alleviate the harshness of the situation, the English Court of Appeal in *Khorasandjian v Bush*<sup>5</sup> held that the daughter of the mother-owner had the right to sue in private nuisance. Dillon LJ thought that it was "ridiculous" that in the light of changed social conditions:<sup>6</sup>

... the making of deliberately harassing and pestering telephone calls to a person is only actionable in the civil courts if the recipient of the calls happens to have the freehold or leasehold proprietary interest in the premises in which he or she has received the calls.

2 *AXA Insurance Singapore Pte Ltd v Chandran s/o Natesan* [2013] 4 SLR 545.

3 [2003] 2 SLR(R) 198.

4 [1907] 2 KB 141.

5 [1993] QB 727.

6 *Khorasandjian v Bush* [1993] QB 727 at 734.

4 However, this decision was overturned by the House of Lords in *Hunter v Canary Wharf*.<sup>7</sup> In that case, Lord Goff of Chieveley held that an action in private nuisance will only lie at the suit of a person who has a right to the land affected.<sup>8</sup> Thus ended the English courts' attempt to extend the tort of private nuisance to afford some protection to victims of harassment. However, it must be said that the English position towards such victims is not so dire: there exists the UK Protection from Harassment Act 1997<sup>9</sup> that affords statutory protection for victims of harassment.

5 The other non-property-related torts fare no better. It is of course trite law that a person who suffers physical harm or the threat of imminent physical harm can sue in battery and assault respectively. Thus in *Amutha Valli d/o Krishnan v Titular Superior of the Redemptorist Fathers in Singapore*,<sup>10</sup> the High Court defined battery as the actual affliction of unlawful force on a person, and assault as an act which causes another person to apprehend the infliction of immediate, unlawful force on his person.<sup>11</sup> A person who is harassed does not generally fall within these definitions. There is normally no unlawful force on victims of harassment, since harassment usually takes the form of unwanted stalking or contact through other means, for example, telephone calls or e-mails. There is also normally no apprehension of battery (thus constituting assault) because the unwanted contact is usually through written communications, thereby possibly negating the immediacy that is required for assault to be established.

6 These shortcomings in the law of torts led the Singapore courts to develop a tort of harassment more than ten years ago. In *Malcomson Nicholas Hugh Bertram v Naresh Kumar Mehta*<sup>12</sup> (“*Malcomson*”), Lee Seiu Kin JC (as he then was) created a new tort of intentional harassment, which had hitherto not been recognised elsewhere. Lee J defined “harassment” to mean:<sup>13</sup>

... 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.

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7 [1997] AC 655.

8 *Hunter v Canary Wharf* [1997] AC 655 at 692.

9 c 40.

10 [2009] 2 SLR(R) 1091.

11 *Amutha Valli d/o Krishnan v Titular Superior of the Redemptorist Fathers in Singapore* [2009] 2 SLR(R) 1091 at [71].

12 [2001] 3 SLR(R) 379.

13 *Malcomson Nicholas Hugh Bertram v Naresh Kumar Mehta* [2001] 3 SLR(R) 379 at [31].

7 However, quite apart from the impracticality of resorting to expensive litigation to resolve harassment issues, even the creation of this new tort turned out to be insufficient protection for victims of harassment. Indeed, the very existence of the common law protection became unclear following *AXA Insurance Singapore Pte Ltd v Chandran s/o Natesan*<sup>14</sup> (“*AXA Insurance*”). In that case, the High Court held that, since the tort of harassment was essentially a new tort, its creation should be by Parliament through its process of deliberation and debate by members accountable to the public. The status of the tort of harassment therefore became unclear in Singapore.<sup>15</sup>

(2) *Limitations of statutory protection*

8 The common law tort of harassment aside, there was *some* statutory protection against harassment in Singapore. This was, however, spread over several statutes and none was targeted specifically at harassment. The protection arises from the criminalisation of certain acts deemed to be against the public order,<sup>16</sup> or as part of the general criminal law.<sup>17</sup> More specifically, protection may be accorded in the form of a protection order in the Women’s Charter, but that is premised on there being a familial relationship between the parties concerned.<sup>18</sup>

9 The problem with these statutory protections, quite apart from their piecemeal nature, lay in terms of remedies. In this regard, most of the statutes are criminal in nature and did not generally offer compensation in the civil sense wherein the victim is compensated monetarily for harm caused by the harassing conduct.<sup>19</sup> More prominently, there is no *general* injunctive relief for harassment unless it occurred in the familial context.

**B. *Institute of Policy Studies Conference on Harassment***

10 All of these problems prompted the organisation of the Conference on Harassment in Singapore: Realities, Conundrums and

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14 [2013] 4 SLR 545.

15 See Goh Yihan, “The Case for Legislating Harassment in Singapore” (2014) 26 SAclJ 67.

16 See, *eg*, ss 13A–13D of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed).

17 See, *eg*, ss 503, 504 and 507 of the Penal Code (Cap 224, 2008 Rev Ed).

18 See ss 65–66 of the Women’s Charter (Cap 353, 2009 Rev Ed).

19 However, on this point, one may note that s 359 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) empowers the court to make compensation orders to the victims of crimes. This does not appear to have changed even with respect to the offence-creating provisions of the Act.

Approaches Moving Ahead, which was held on 18 November 2013<sup>20</sup> (“Conference”). The proceedings of the Conference might have been instrumental to crystallising the problems considered in the drafting of the Act. Indeed, the Minister for Law, Mr K Shanmugam noted that, based on public feedback, there was a sense that the laws at the time were inadequate to deal with harassment.<sup>21</sup>

11 In addressing these inadequacies within the present framework of legal protection against harassment, Mr Shanmugam said that it would be useful to look at standalone legislation enacted to protect against harassment in the UK, New Zealand and South Africa.<sup>22</sup> In contrast, he also noted that there is comprehensive state or territory legislation, which is not necessarily general in nature, providing for criminal as well as civil remedies for harassment in Australia and some states in the US. It is suggested that these sources may help inform our understanding of the Act, particularly the origins of its provisions.

### C. *Parliamentary passage of the 2014 Act*

12 It was against the above backdrop that the Act was presented and passed in Parliament. The Act was first read on 3 March 2014. This generated significant press coverage and discussion,<sup>23</sup> much of which was positive. The second, more significant, event was the Act’s Second Reading on 13 March 2014. The following sections will discuss the outline and operation of the Act with reference to the Minister’s Second Reading speech.

## III. **Outline and general provisions of the 2014 Act**

13 The Explanatory Statement provides that the Act “seeks to make provisions to protect persons against harassment and unlawful stalking, and to make consequential amendments to other written laws”. To that end, the Act consists of 22 sections and is organised into four main

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20 See Sim Jui Liang, “Report on Conference on Harassment in Singapore: Realities, Conundrums and Approaches Moving Ahead” <[http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/12/Conference-Harassment-in-Singapore\\_report-updated.pdf](http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/12/Conference-Harassment-in-Singapore_report-updated.pdf)> (assessed 20 April 2014).

21 See Sim Jui Liang, “Report on Conference on Harassment in Singapore: Realities, Conundrums and Approaches Moving Ahead” at p 2 <[http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/12/Conference-Harassment-in-Singapore\\_report-updated.pdf](http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/12/Conference-Harassment-in-Singapore_report-updated.pdf)> (assessed 20 April 2014).

22 See Sim Jui Liang, “Report on Conference on Harassment in Singapore: Realities, Conundrums and Approaches Moving Ahead at p 2 <[http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/12/Conference-Harassment-in-Singapore\\_report-updated.pdf](http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/12/Conference-Harassment-in-Singapore_report-updated.pdf)> (assessed 20 April 2014).

23 The press coverage was extensive: see, eg, Radha Basu, “Legal Redress for Harassment Victims to be Easy, Inexpensive” *The Straits Times* (14 March 2014).

parts: Preliminary (Pt I), Offences (Pt II), Remedies (Pt III) and General (Pt IV). Part I, comprising ss 1 and 2, consists of preliminary provisions, including the important provisions dealing with the interpretation of certain expressions in the Act. Perhaps the most striking characteristic of the interpretative provisions is that they do not set out a definition of “harassment”. Part II, comprising ss 3–10, consists of the provisions dealing with offences created by the Act. Part III, which in turn comprises ss 11–16, deals with remedies. Finally, Pt IV, comprising ss 17–22, deals with several general matters. Of the general matters, the extraterritoriality application of the Act is worth highlighting.

#### IV. Offences

14 Through eight sections, the Act creates five distinct offences to deal with general harassment as well as specific acts of harassment, for instance, unlawful stalking.

##### A. Sections 3 and 4: Causing of harassment, alarm or distress

###### (1) Interpretation of ss 3 and 4

###### (a) Background

15 Sections 3 and 4 of the Act create various offences of causing harassment, alarm or distress. The distinction between the two sections is that, whereas s 3 concerns the *intentional* causing of harassment, alarm or distress, s 4 concerns merely the causing of harassment, alarm or distress.

16 As the Explanatory Statement to the Act explains, ss 3 and 4 re-enact ss 13A and 13B of the Miscellaneous Offences (Public Order and Nuisance) Act<sup>24</sup> (“MOA”) with suitable modifications so as to extend to words, behaviour or communication used or made by any means including through electronic means,<sup>25</sup> and also with the penalties “increased quite substantively”.<sup>26</sup> And as the High Court explained in *Chee Siok Chin v Minister for Home Affairs*<sup>27</sup> (“*Chee Siok Chin*”), ss 13A and 13B drew substantial inspiration from and are largely modelled on ss 4A and 5 of the English Public Order Act 1986,<sup>28</sup> which in turn were both designed “to extend the ambit of the pre-existing corpus of public order offences while also widening the net to criminalising acts of

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24 Cap 184, 1997 Rev Ed.

25 See also *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91.

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

27 [2006] 1 SLR(R) 582.

28 c 64.

nuisance and inappropriate behaviour”.<sup>29</sup> This broad purpose is still applicable to ss 3 and 4 of the Act, only that they now apply in the more specific context of harassing conduct.

17 In this context, ss 3 and 4 of the Act (as well as ss 5 and 6, which are discussed below)<sup>30</sup> are therefore medium neutral: harassing conduct, whether in the physical or cyber world, are equally caught by the Act. This is evident by the addition of the words “by any means” to ss 3–6; these words were not present in ss 13A–13D of the MOA, from which ss 3–6 of the Act were derived. From this starting point, let us now discuss some potential points of application for ss 3 and 4.

(b) Definition of “harassment”

18 The first point concerns the lack of a definition for “harassment”.<sup>31</sup> Any definition of harassment is relevant not only for ss 3–6, but also for s 7, which creates the offence of unlawful stalking. The definition of “unlawful stalking”, as discussed below,<sup>32</sup> is dependent in the first instance on the acts or omissions constituting stalking to cause, *inter alia*, harassment. There is no general definition of “harassment” set out in s 2. Likewise, there was no definition of “harassment” in the MOA. However, this is mitigated somewhat by the inclusion of illustrations to ss 3 and 4 showing examples of conduct that will satisfy them. Although nowhere stated in the Act, these illustrations should more or less function like those in the Penal Code.<sup>33</sup> In its 1837 prefatory address to the Governor-General in Council on the Indian Penal Code, the Indian Law Commission made the following observation regarding the “copious use of illustrations” in the Penal Code:<sup>34</sup>

These illustrations will, we trust, greatly facilitate the understanding of the law, and will at the same time often serve as a defence of the law ... The illustrations will lead the mind of the student through the same steps by which the minds of those who framed the law proceeded, and may sometimes show him that a phrase which may have struck him as uncouth, or a distinction which he may have thought idle, was deliberately adopted for the purpose of including or excluding a large class of important cases.

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29 [2006] 1 SLR(R) 582 at [61]–[62].

30 See paras 33–40 below.

31 Cf Factsheet on the Protection from Harassment Act 2014 issued by the Ministry of Law (1 March 2014).

32 See paras 41–43 below.

33 Cap 224, 2008 Rev Ed.

34 T B Macaulay, *et al*, *The Indian Penal Code as Originally Framed in 1837* (Higginbotham & Co, 1888) at pp xiv–xv.

19 It is suggested that there are several purposes to these illustrations when they are considered in their proper context. First, in his Second Reading speech, Mr Shanmugam said that these illustrations reiterate and signal that the Act will cover a wide-range of anti-social behaviour, such as cyber-bullying, bullying of children and sexual harassment, wherever it takes place, and this includes the workplace.<sup>35</sup> The inclusion of these illustrations can be understood in the context of the Conference, where several participants from AWARE and educational organisations highlighted the need for protection from harassment in, *inter alia*, the workplace and schools. Thus, rather than enact specific legislation to cater to each and every one of these contexts, the Act has adopted a *general* approach but expresses its coverage to these specific contexts through the use of illustrations in ss 3 and 4. For example, illustration (a) to s 3 concerns harassment in the workplace, whereas the illustration to s 4 concerns harassment in the school environment. It appears therefore that a broader purpose of these illustrations is to show the wide applicability of the Act.

20 Secondly, and more specifically, these illustrations also shed light on the meaning of “harassment” under the Act. It is to be expected that an extrapolation of conduct that fits the relevant illustrations will satisfy ss 3 and 4. Since there is no general definition of “harassment” in the Act, it is expected that case law, both local and foreign, will be helpful in providing some definition. Insofar as local case law is concerned, *Malcomson* would likely retain some significance in helping the courts determine if a certain act complained of amounts to harassment. Similarly, in considering ss 13A and 13B of the MOA, the High Court in *Chee Siok Chin* has alluded to a commonsensical meaning of the word “harassment”:<sup>36</sup>

The fact that Parliament did not define the word ‘harassment’ in ss 13A and 13B of the MOA is a strong indication that this word, like the words ‘insult’ and ‘abusive’, is intended to be accorded a common-sense meaning. Harassment describes determined conduct which is directed at persons and is calculated to produce discomfort and/or unease and/or distress: see *Malcomson Nicholas Hugh Bertran v Mehta Naresh Kumar* [2001] 3 SLR(R) 379. Persistent or prolonged conduct that is directed at causing distress in those responsible for discharging their duties would amount to harassment for the purposes of the subject provisions. *The essence of harassment is not just repetitive conduct but includes prolonged or persistent or sustained conduct.* [emphasis in original]

21 Indeed, in District Court cases dealing with ss 13A and 13B of the MOA, the definitions of harassment adopted in *Malcomson* and

35 See also *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91.

36 [2006] 1 SLR(R) 582 at [124].

*Chee Siok Chin* were applied. For example, in *Yap Beng Hin v Tan Bee Tin*,<sup>37</sup> District Judge Lee-Khoo Poh Choo referred to the *Malcomson* definition when considering a private prosecution under s 13A. In doing so, the learned judge acknowledged that the entire course of the alleged offender's conduct must be taken into account, thereby rejecting defence counsel's argument that the alleged offender had only uttered the vulgarities once. That utterance had to be considered with other conduct.

22 Although not directly relevant, *Malcomson* has also been considered with reference to s 64 of the Women's Charter,<sup>38</sup> which provides that "family violence" includes "causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member". In *Yue Tock Him @ Yee Chok Him v Yee Ee Lim*<sup>39</sup> ("*Yue Tock Him*"), District Judge Colin Tan had to consider the meaning of "harassment" in s 64 in the course of granting a protection order under s 65 of the Charter. In doing so, he referred to both *Malcomson* and *Chee Siok Chin* for their respective definitions. Indeed, in *Yue Tock Him*, the learned judge also referred to other local cases where the courts have dealt with what amounted to harassment either under the MOA or Women's Charter. Thus, in *ZU v ZV*,<sup>40</sup> the District Court found that three visits to the complainant's home did not constitute harassment, especially since the alleged offender was there to pick up some documents. In *Chua Li Choo v Teo Swee Theng*,<sup>41</sup> there was no harassment when the husband simply returned to the matrimonial home, and called the police at the request of the wife. Finally, in *AGX v AGW*,<sup>42</sup> the District Court found that the alleged acts of harassment were in fact not harassment since they had taken place in the context of the matrimonial home and occurred through a strained relationship between the parties. These cases will all be relevant in defining what amounts to harassment under the Act.

23 Apart from local case law, foreign legislation and cases are also relevant.<sup>43</sup> In contrast to the Act, other jurisdictions with standalone legislation to provide protection from harassment do set out a general or even detailed definition for "harassment". Under the UK Protection from Harassment Act 1997,<sup>44</sup> a non-exhaustive and brief description

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37 [2011] SGDC 127.

38 Cap 353, 2009 Rev Ed.

39 [2011] SGDC 99.

40 [2009] SGDC 99.

41 [2005] SGDC 241.

42 [2010] SGDC 27.

43 Indeed, as mentioned above, Mr Shanmugam referred to the possibility of relying on UK case law in his Second Reading speech: see *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91.

44 c 40.

that focuses on the effects of anti-social behaviour on the victim, has been provided: “harassment” includes causing alarm or distress to a person.<sup>45</sup> The New Zealand Harassment Act 1997 sets out an equally broad definition of the term “harassment” under s 3(1) which provides:

... a person harasses another person if he or she engages in a pattern of behaviour that is directed against that other person, being a pattern of behaviour that includes doing any specified act to the other person on at least 2 separate occasions within a period of 12 months.<sup>46</sup>

24 The Act is clearly more similar to these jurisdictions with broad definitions. Yet, these jurisdictions have shown no difficulty in applying their respective Acts. In the UK Supreme Court case of *Hayes v Willoughby*,<sup>47</sup> the court acknowledged that the term “harassment” is not otherwise defined in the UK Protection from Harassment Act 1997. However, Lord Sumption held that it is an “ordinary English word with a well understood meaning”, and that it is “a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated and does cause that person alarm, fear or distress”, citing *Thomas v News Group Newspaper Ltd*.<sup>48</sup> Similarly, in the English Court of Appeal case of *R v Curtis*,<sup>49</sup> Pill LJ held that:

... [t]o harass as defined in the Concise Oxford Dictionary, is to ‘torment by subjecting to constant interference or intimidation’. The conduct must be unacceptable to a degree which would sustain criminal liability and also must be oppressive.

This general definition allows the UK Act to be applied to many different forms of harassment, including repeated offensive publications in the newspaper,<sup>50</sup> victimisation in the workplace,<sup>51</sup> and campaigns against the employees of an arms manufacturer by political protesters.<sup>52</sup>

25 At this point, the authors are optimistic that the lack of a definition of “harassment” will not overly hamper the application of the Act. First, there is sufficient case law and legislation, both local and foreign, which define or deal with harassment to assist the courts. Second, there are ample illustrations in the Act by which to come to a

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45 See s 7 of the Protection from Harassment Act 1997 (c 40) (UK) for application to England and Wales and s 8 for application to Scotland.

46 Section 3(2) of the Harassment Act 1997 (New Zealand) provides two clarificatory notes on the general definition in subsection (1): (a) the acts need not be the same type of act; and (b) the acts need not be done to the same person on each separate occasion, as long as the conduct is directed against the same person.

47 [2013] 1 WLR 935 at [1].

48 [2002] EMLR 78 at [30].

49 [2010] 1 WLR 2770.

50 *Thomas v News Group Newspaper Ltd* [2002] EMLR 78.

51 *Majrowski v Guy’s and St Thomas’s NHS Trust* [2007] 1 AC 224.

52 *EDO Technology Ltd v Campaign to Smash EDO* [2005] EWHC 2490 (QB).

sensible definition of harassment. And finally, such an approach seems preferable to a detailed definition that may shackle the application of the statute to novel situations not otherwise contemplated.

(c) Persons protected by ss 3 and 4

26 It is clear that the Act is geared towards the protection of individual persons. However, if the reasoning in *Chee Siok Chin* in relation to ss 13A and 13B of the MOA is applied to the Act, then corporate bodies may also be protected. In that case, the High Court held that s 2 of the Interpretation Act<sup>53</sup> defines a “person” to “include any company or association or body of persons, corporate or unincorporated”, unless “there is something in the subject or context inconsistent with such construction or unless it is [in the legislation] otherwise expressly provided”. Thus, the court ruled that the offences under ss 13A and 13B of the MOA can be committed, if not against corporate or unincorporated bodies as persons, then certainly against the persons responsible for operating or managing such bodies.<sup>54</sup> There does not appear to be anything in the Act that militates against such a reading with respect to ss 3 and 4.<sup>55</sup>

(d) Distinction between ss 3 and 4: The question of intention

27 The distinction between ss 3 and 4 of the Act can seem rather thin. *Chee Siok Chin* highlights two important differences between ss 13A and 13B of the MOA, which will be relevant to understanding ss 3 and 4. First, s 13A (and s 3), unlike s 13B (and s 4) does not require the offence to take place within the hearing or sight of any person likely to be caused harassment, alarm or distress.<sup>56</sup> Secondly, a plain reading of s 13B of the MOA reveals that an intention for the conduct to be “threatening, abusive or insulting” is not even a necessary criterion. It has been said that objectivity is the touchstone for assessing the conduct in question and that threats, abuses and insults embraced by s 13B may constitute an offence whether or not they were so intended.<sup>57</sup> This is likely applicable to s 4 of the Act.

28 Thus, it appears that to fall under s 3, there needs to be proved, firstly, an intent to cause harassment, alarm or distress, and, secondly, through the means provided for under the section. It is immaterial that the conduct is not within the hearing or sight of the person affected, although that person must be so affected. Under s 3(3), it is a defence

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53 Cap 1, 2002 Rev Ed.

54 [2006] 1 SLR(R) 582 at [71].

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

56 [2006] 1 SLR(R) 582 at [124].

57 [2006] 1 SLR(R) 582 at [75] and [76].

for the alleged offender to prove his conduct was reasonable. What is reasonable would depend on the circumstances, although from *Chee Siok Chin*, there is a need to actually show reasonableness.<sup>58</sup>

29 Under s 4, on the other hand, an intention to cause harassment, alarm or distress is not necessary; the necessary intention is directed at performing the conduct complained of. In other words, the acts must be deliberate, as opposed to being involuntary. If such conduct objectively amounts to causing harassment, alarm or distress, and is within hearing or sight of the victim, then the section is made out. It has also been held that it is not a defence that the offender was merely staging a peaceful protest or that she did not intend any harassment or violence.<sup>59</sup>

(2) *Likely range of sentences*

(a) First and subsequent offences

30 The criminal penalties provided for under ss 3 and 4 of the Act are higher than those originally provided by ss 13A and 13B of the MOA. It is clear from the Second Reading speech that the intention behind the Act is to enhance the penalties for ss 3 and 4 (as well as 5 and 6) as compared to their equivalents in the MOA. Indeed, Mr Shanmugam said in his speech that the penalties “are increased quite substantively”; that wider sentencing options “ensure that the sentence meted out in each case better takes into account the culpability of the offender and the harm caused to the victim” and “better reflect the gravity of the offences”.<sup>60</sup>

31 Therefore, present case law dealing with ss 13A and 13B (as well as ss 13C and 13D) of the MOA may not be directly relevant to a court considering sentencing for ss 3 and 4 (and ss 5 and 6) of the Act. However, it is suggested that courts will have to attribute a tariff to the increased gravity that Parliament now clearly ascribes to these offences, and add that to existing sentences. In that sense, existing sentences will still be indirectly relevant. To the extent that is correct, it can be noted that the tariff for ss 13A and 13B is normally fines well below the maximum prescribed, where there are no serious aggravating factors.<sup>61</sup>

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58 [2006] 1 SLR(R) 582 at [137].

59 *Public Prosecutor v Ng Chye Huay* [2011] SGDC 157 at [25].

60 See also *Singapore Parliamentary Debates, Official Report* (13 March 2014) vol 91.

61 For s 13A of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed), see, eg, *Yap Beng Hin v Tan Bee Tin* [2011] SGDC 127 (\$1,500 fine); *Koh Young Lyndon v Masao Lim Zheng Xiong* [2009] SGDC 309 (\$1,500 fine); *Public Prosecutor v Bavani d/o Subramaniam* [2010] SGDC 260 (\$4,000 fine for ten charges each based on s 13A(1)(a)); *Siaw Kah Pin v Public Prosecutor* [2009] SGDC 450 (\$1,500 fine, though there is an obvious typographical error in the first paragraph which put the amount at \$15,000 fine); *Wong Shan* (cont'd on the next page)

However, where there are aggravating factors, which may include previous antecedents of a similar nature or lack of remorse, a fine close to the maximum will be imposed under ss 13A and 13B.<sup>62</sup>

(b) Community order

32 Further to fines and imprisonment, s 9 also provides that the court shall have power to make a community order under Pt XVII of the Criminal Procedure Code.<sup>63</sup> According to Mr Shanmugam in his Second Reading speech, such orders will include mandatory treatment orders.<sup>64</sup> The purpose of s 9 seems to be to empower the court to help resolve the root causes of harassing behaviour; such orders allow the offender to undergo psychiatric treatment in lieu of other criminal penalties.<sup>65</sup>

**B. Section 5: Fear or provocation of violence**

33 Section 5 re-enacts s 13C of the MOA relating to “fear or provocation of violence”, with changes to clarify the meaning of the provision. There does not appear to be any Singapore case applying the old s 13C, and the interpretation of s 5 will likely follow established principles of statutory interpretation.

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*Shan v Public Prosecutor* [2007] SGDC 314 (\$1,000 fine; reversed [2008] SGHC 49 though not obviously on this charge); *Xia Hong v Oon Guan Hoo* [2007] SGDC 261 (\$2,000 fine); *Public Prosecutor v Wang Jian Liang* [2007] SGMC 18 (\$2,000 fine); *Lwee Kwi Ling Mary v Quek Chin Huat* [2002] SGMC 21 (\$1,000 fine); and *Kula Mohamed Asia Beevi v Habeebah bte Mydin Pillai* [2002] SGMC 4 (\$3,000 fine despite the lack of a serious aggravating factor). For s 13B of the Miscellaneous Offences (Public Order and Nuisance) Act, see, eg, *Yeo Mee Yee Maggie v Roger Yow Hok Mun* [2012] SGDC 375 (\$800 fine); *Public Prosecutor v Ng Chye Huay* [2011] SGDC 157 (\$1,500 fine); and *Public Prosecutor v Ng Chye Huay* [2007] SGMC 5 (\$1,000 and \$1,500 fine).

62 For s 13A of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed), see, eg, *Public Prosecutor v Tan Hock Khin* [2011] SGDC 198 (\$4,200 fine); *Public Prosecutor v Tan Ming Shung* [2004] SGMC 10 (\$1,000 fine, but with aggravating factors similar to *Public Prosecutor v Tan Hock Khin* [2011] SGDC 198 present); and *Wong Sin Yee v Public Prosecutor* [2001] SGDC 59 (\$2,000 fine, the aggravating factors were behaving like a hooligan and being an advocate and solicitor).

63 Cap 68, 2012 Rev Ed.

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

65 See, eg, *Public Prosecutor v Goh Lee Yin* [2008] 1 SLR(R) 824.

**C. Section 6: Threatening, abusing or insulting public servant or public service worker**

(1) *Interpretation of s 6*

34 Section 6 of the Act protects against the threatening, abusing or insulting of a public servant or public service worker. Section 6 is based on s 13D of the MOA, although with significant differences. According to Mr Shanmugam in his Second Reading speech, s 6 extends existing protection for public servants to workers who deliver services that are essential for the well-being of the general public, but who are not regarded as “public servants” under existing laws.<sup>66</sup> This is effected by the addition of the expression “public service worker” to s 6, which is in turn defined by s 6(5) to mean “an individual who belongs to a prescribed class of employees or workers that provides any service which is essential to the well-being of the public or the proper functioning of Singapore”. These terms are defined in s 6(5). The Minister may also, under s 6(6), prescribe the classes of employees or workers and the services provided by such public service workers for the purpose of s 6(5).<sup>67</sup>

35 Another difference between s 6 and the existing s 13D of the MOA is the phrase “in relation to” the execution of the public servant or public service worker’s duty. Section 13D(1) related to anti-social conduct towards a public servant “in the execution of his duty as such public servant”. In contrast, s 6(1) now relates to anti-social conduct “*in relation to* the execution of the victim’s duty as such public servant or public service worker” [emphasis added]. According to Mr Shanmugam, this change is meant to indicate that the offending conduct need not be committed during performance of the duty, so long as it is committed in relation to the performance of that duty.<sup>68</sup> This therefore extends the ambit of the new s 6, as compared to s 13D.

36 Quite apart from these differences, the operation of s 6 is likely to be influenced by the present application of s 13D. It is thus useful to examine some of the relevant s 13D decisions. A preliminary point from the High Court case of *Goh Ang Huat v Public Prosecutor*<sup>69</sup> is that there is no need for the alleged offender to intend to breach the peace. In that case, a prosecution under s 13(f) of the old Miscellaneous Offences (Public Order and Nuisance) Act<sup>70</sup> failed because it could not be proved the offender intended to breach the peace. However, commenting on the

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

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

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

69 [1996] 3 SLR(R) 1.

70 Cap 184, 1990 Rev Ed.

then-new s 13D, Yong Pung How CJ held that a prosecution under s 13D would have succeeded since there was no longer a need to prove intention to breach the peace.<sup>71</sup> Given the similarity in wording between s 13D and s 6 in this respect, it is likely that a similar interpretation will be adopted.

37 Another point relating to s 13D is that the place of commission has no bearing on whether the offence is made out. In *Public Prosecutor v Zeng Guoyuan*,<sup>72</sup> District Judge Loo Ngan Chor held that if one of the specified conduct under s 13D is proved, “it does not matter whether the place in which the accused does it is a public or private place” since there is no such requirement in the section. This is likely to be the case for s 6 of the Act as well. However, District Judge Loo was also quick to point out that the place of commission could affect the sentence imposed.<sup>73</sup>

38 Section 6(1) is also subject to s 6(2), which provides that no offence is committed unless the alleged offender knows or ought reasonably to know that the victim was acting in his capacity as a public servant or public service worker. Finally, it shall be a defence under s 6(4) if the alleged offender can prove either that he had no reason to believe that his conduct would be heard or seen by the victim concerned, or that his conduct was reasonable. The Explanatory Statement to the Act provides that intention or actual or constructive knowledge of the likely effects of the alleged offender’s conduct is not required. However, there seems to be some overlap between this and the defence of non-perception in s 6(4)(a). More generally, as these are new to s 6, and were not taken from s 13D of the MOA, there does not appear to be any Singapore case touching on their operation.

## (2) *Likely range of sentences*

39 Section 6(3) of the Act prescribes a fine not exceeding \$5,000, or imprisonment not exceeding 12 months, or both. In contrast, s 13D of the MOA prescribed the same maximum sentences, except that they were wholly in the alternative. In line with the general notion that harassing conduct must be severely dealt with, it appears that the increased severity was intended, although the maximum fine and imprisonment were probably not increased further so as to make them consistent with the other offences under the Act.

40 Insofar as precedents are concerned, the vast majority of s 13D cases have imposed fines, with the normal tariff said to be a fine from

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71 [1996] 3 SLR(R) 1 at [59].

72 [2008] SGDC 107 at [5].

73 [2008] SGDC 107 at [8].

\$1,500 to \$3,000, with the factors to be considered “including the nature of the words or behaviour and the intention of the offender”.<sup>74</sup> However, it must be kept in mind that the courts under the MOA could not impose a term of imprisonment in addition to a fine, and that the precise sentence must depend on the facts. Where there are aggravating factors, such as previous antecedents of the same or similar nature, courts have tended to impose corrective training orders too. Thus in *Silver Packiam s/o Nurusamy v Public Prosecutor*,<sup>75</sup> the District Judge imposed such an order in view of the offender’s antecedents. Also, whereas the norm for abusive or insulting language would be a fine,<sup>76</sup> a term of imprisonment is warranted where *threatening* language has been used.<sup>77</sup> Indeed, it has been noted that “[t]hreatening or insulting a police officer in the execution of a lawful duty is viewed seriously because it undermines the fabric of law and order in our society”.<sup>78</sup> Thus a two-month sentence was imposed in *Public Prosecutor v Foong Yuen Kuang*<sup>79</sup> where the words “don’t be afraid of the police ... if you have the guts, challenge me one to one” were uttered to a police officer. However, where such language was uttered in the heat of the moment, a stiff fine still sufficed, as was the case in *Public Prosecutor v Paramjeet Singh*.<sup>80</sup> An

74 See *Public Prosecutor v Mohamad Noor bin Aris* [2009] SGDC 1 at [38] and *Public Prosecutor v Selvarajah s/o Murugaya* [2007] SGDC 283 at [29]. See also *Public Prosecutor v Zeng Guoyuan* [2008] SGDC 107 at [9], where it was further stated that the tariff for using abusive/threatening language or behaviour is a fine of \$3,000, whereas that for insulting language is \$1,500. This, however, appears slightly different from the sentiments and sentences imposed elsewhere. Furthermore, see *Public Prosecutor v Daniel Lo Kiang Heong* [2007] SGDC 47 at [68], where it was said that: “With regard to the offences under the Miscellaneous Offences (Public Order and Nuisance) Act, the sentencing norm would be to impose a fine, unless there are strong and exceptional aggravating factors.”

75 [2002] SGDC 169.

76 See, eg, *Public Prosecutor v Chandran s/o Natesan* [2013] SGDC 33 (\$2,000 fine); *Public Prosecutor v Iskandar Mirzah bin Aripin* [2012] SGDC 303 (\$3,000 fine); *Public Prosecutor v Ang Boon Hwee* [2009] SGDC 201 (\$1,500 fine); *Public Prosecutor v Mohamad Noor bin Aris* [2009] SGDC 1 (\$1,500 fine); *Public Prosecutor v Zeng Guoyuan* [2008] SGDC 107 (\$2,500 fine); *Public Prosecutor v Gopalan Nair* [2008] SGDC 313 (\$2,000 and \$1,500 fines); *Public Prosecutor v Daniel Lo Kiang Heong* [2007] SGDC 47 (\$2,000 fine); *Public Prosecutor v Selvarajah s/o Murugaya* [2007] SGDC 283 (\$1,500 fine); and *Verghese Alan v Public Prosecutor* [2001] SGMC 7, although this is subject to other factors such as antecedents or other similar charges: see, eg, *Public Prosecutor v Yap Eng Heng* [2012] SGDC 324 (one-month imprisonment) and *Public Prosecutor v Chandran s/o Sinnathamby* [2005] SGMC 11 (one-month imprisonment). One of the heaviest sentences imposed was a ten-month imprisonment in *Balarasu s/o Periasamy v Public Prosecutor* (MA72/2001).

77 *Public Prosecutor v Foong Yuen Kuang* [2010] SGDC 7 at [63].

78 *Public Prosecutor v Paramjeet Singh* [2011] SGDC 18 at [36].

79 [2010] SGDC 7 at [39] and [63].

80 [2011] SGDC 18 at [26] and [36].

order of preventive detention may also be ordered if the usual test in *Tan Ngin Hai v Public Prosecutor*<sup>81</sup> is satisfied.<sup>82</sup>

#### D. Section 7: Unlawful stalking<sup>83</sup>

41 Mr Shanmugam highlighted in his Second Reading speech that s 7 creates a new offence, that is, unlawful stalking. The aim is to deal comprehensively with stalking as opposed to looking to existing legislation for assistance. Section 7 is said to be based on the UK Protection from Harassment Act 1997, as amended by its Protection of Freedoms Act 2012.<sup>84</sup> It also draws inspiration from the Singapore Academy of Law's Law Reform Committee's 2001 "Report on Proposed Legislation to Curb Stalking".<sup>85</sup> Because this new offence is the subject of a comprehensive discussion by Chan elsewhere, this part of the present article only sets out generally the contents of s 7.<sup>86</sup>

42 Section 7 revolves around the concept of a "course of conduct". The three elements are centred on this concept. The first element requires that the course of conduct "involves acts or omissions associated with stalking". Section 7(3) provides examples of such acts or omissions, which are not meant to be exhaustive.<sup>87</sup> The second element is that the course of conduct under s 7(2)(a) "causes harassment, alarm or distress to the victim". Once again, this requires a definition of, *inter alia*, harassment, which will likely be accorded a commonsensical meaning.

43 The third element is that the acts or omissions satisfying ss 7(2)(a) and 7(2)(b) were also intended, known or reasonably ought to be known by the alleged offender to cause "harassment, alarm or distress" to the victim. Section 7(4) provides that an alleged offender ought to reasonably know that his course of conduct is likely to cause harassment, alarm or distress if a reasonable person in possession of the same information would think the same. This therefore imposes an objective state of mind test, rather than what the alleged offender subjectively thought his conduct amounted to. Section 7(5) then sets out some factors in considering whether a course of conduct is likely to

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81 [2001] 2 SLR(R) 152 at [8].

82 See, eg, *Public Prosecutor v Letchumanan s/o Manikam* [2012] SGDC 27.

83 For a comprehensive discussion of the new offence of unlawful stalking, see Chan Wing Cheong, "The New Offence of 'Unlawful Stalking' in Singapore" (2014) 26 SAclJ 333.

84 c 9.

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

86 For a comprehensive discussion of the new offence of unlawful stalking, see Chan Wing Cheong, "The New Offence of 'Unlawful Stalking' in Singapore" (2014) 26 SAclJ 333.

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

cause harassment, alarm or distress. Once again, these are not meant to be exhaustive.<sup>88</sup> It will be interesting to see how the factors in s 7(5) might influence the definition of harassment.

## V. Remedies

44 The signature purpose of the Act is to provide remedies to victims of harassing conduct. In the sections below, the potential applicability of some of the provisions relating to remedies will be discussed.

### A. Section 11: Action for statutory tort

(1) *Statutory tort: A “civil contravention” of ss 3, 4, 5 and 7*

45 Section 14 of the Act has made it clear that the common law tort of harassment has been abolished and civil proceedings can only be brought under s 11 of the Act, which creates a statutory right to bring an action for damages against offenders who have, “on a balance of probabilities”, contravened s 3, 4, 5 or 7 of the Act. This dispels the uncertainty created by *AXA Insurance* as to whether there was a tort of harassment in Singapore.<sup>89</sup> However, by abolishing the tort, it necessarily presupposed that there was a tort of harassment in the first place. This essentially means that *AXA Insurance* was wrong to suggest that there was no tort of harassment in Singapore. Its statements about the limited ambit of the common law’s development can also be regarded as incorrect.

(2) *Exclusion of s 6?*

46 Notwithstanding the breadth of civil remedies provided for in the Act, a “civil contravention” of s 6 does not afford a right to damages, unless the same acts complained of also contravene s 3, 4, 5 or 7 of the Act on the balance of probabilities. The legislative intention is not clear from the parliamentary debates, but it may be speculated that there is a public policy concern about allowing public servants or public service workers to recover compensation for conduct against them in the execution of their public duties.

47 However, as pointed out by Mr Shanmugam in his Second Reading speech, a public servant or public service worker who is the victim of an offence under s 6 can nevertheless seek civil remedies under other sections of the Act “if the same acts also contravene [section] 3, 4,

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

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

5 or 7”.<sup>90</sup> In this regard, the language of s 6 is very similar to ss 3 and 4, which are similarly focused on the use of threatening, abusive or insulting words or behaviour or the making of such communication.<sup>91</sup> There are, of course, some minor differences. First, ss 3 and 4 prescribe offences on terms that such undesirable conduct would thereby cause “harassment, alarm or distress” to the victim, with s 3 being stricter in that it requires the alleged offender to act with the intent of causing such effects on the victim for an offence to be constituted. But it would be rather improbable that an offence under s 6 does not also amount to offence under s 4, as any “threatening, abusive or insulting” conduct aimed at the execution of duty by the public officer or public service worker must surely cause harassment, alarm or distress to that person. In a great number of cases, conduct that contravenes s 6 is likely to contravene s 3 if the offence under s 6 was committed with knowledge that the victim was acting in the capacity of a public servant or public service worker. It would be extremely difficult for the offender in such an instance to argue that he had not acted with intent to cause “harassment, alarm or distress” to the victim, thereby also constituting an offence under s 3.

48 A second difference is that s 6 is potentially wider in ambit as it includes “indecent” words, behaviour or communication; the word “indecent” is omitted in the provisions under ss 3 and 4. However, one wonders if this additional word contributes to any material difference in practice. “Indecent” conduct is also “abusive” or “insulting” conduct, and the circulation of pornographic material is one such instance. Surely, Parliament could not have intended to exclude harassment by the circulation of pornographic material. That being said, given the slight difference in statutory wording and also the assumption that the omission or inclusion of words in a statute is always intentional, it is at least open to argument that s 6 is meant to catch a wider range of acts. But if so, there must be proper justification for the difference.

49 In the light of the above analysis, it appears that in most of the cases, a “civil contravention” of s 6 would also amount to a “civil contravention” of s 3 or 4, and perhaps more exceptionally, also of s 5 or 7. Thus, the lack of civil remedies under s 6 is more than covered by the potential availability of remedies under s 3, 4, 5 or 7. This gives effect to the wider policy, in that if s 6 was introduced to better protect workers who provide public service, it seems only right that they should be able to have at least indirect recourse under s 11 for damages.

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

91 More exceptionally, if the “threatening, abusive or insulting” conduct was committed with the intent of causing fear of violence or provoking unlawful violence by the addressee, it may also constitute an offence under s 5 of the Protection from Harassment Act 2014.

(3) “Just and equitable”: Common law principles?

50 To prove that one is a victim of an offence under s 3, 4, 5 or 7 does not automatically entitle one to an award of damages. Section 11(2) of the Act further provides that such damages may be awarded in respect of the contravention as the court may, “having regard to all the circumstances of the case, think just and equitable”. “Just and equitable” is not an unfamiliar phrase in a statutory provision,<sup>92</sup> and is usually inserted to afford greater latitude of discretion to the courts to deal with the case as the circumstances require. As Mr Shanmugam had pointed out in his Second Reading speech, the quantification of damages will be governed in accordance with “existing common law principles”.<sup>93</sup>

51 The difficulty though is what are the applicable common law principles? There are two possibilities. First, damages could be awarded where the acts complained of also amount to a recognised tort, for example, trespass to person, nuisance, intentional infliction of harm based on *Wilkinson v Downton*,<sup>94</sup> etc, and quantification will follow the principles applicable under the relevant tort. However, if this is indeed the only correct interpretation of s 11, its usefulness is greatly diminished, and its existence rendered almost otiose. It can afford victims of harassment civil relief no more than what existing tort law could, one of the very gaps which the Act was supposed to fill. The second possibility is to develop a new set of principles for quantifying damages for harassment. If so, the exercise is not done through simply applying “existing” common law principles; some adaptation and invention will be inevitable.

**B. Sections 12 and 13: Protection orders and expedited protection orders<sup>95</sup>**

(1) *Protection orders*

52 The signature remedy under the Act is the protection order, whether expedited or not. Indeed, Mr Shanmugam explained in his Second Reading speech that this is the “kind of architecture that the new

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92 See, eg, s 112 of the Women’s Charter (Cap 353, 2009 Rev Ed) (apportionment of matrimonial assets); s 137 of the Companies Act (Cap 50, 2006 Rev Ed) (extension of time and rectification of register of charges); and s 254(1)(i) of the Companies Act (ground for winding up of a company).

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

94 [1897] 2 QB 57.

95 For a comprehensive discussion of the protection orders in the Act, see Chan Wing Cheong, “The New Offence of ‘Unlawful Stalking’ in Singapore” (2014) 26 SAclJ 333.

law envisages”.<sup>96</sup> Notably, the regime for personal protection orders under ss 65 and 66 of the Women’s Charter<sup>97</sup> – which is similar to the regime for protection orders under the Act – has proven to be a rather effective remedy for victims of family violence.<sup>98</sup> One could thus expect that the protection orders under ss 12 and 13 of the Act will also afford effective relief to the victims of harassment.

53 Under the Act, a protection order may be sought from the District Court pursuant to s 12. Section 12(2) provides that a District Court may grant a protection order where on a balance of probabilities certain situations are proved. In addition, s 12(3) continues to provide that a protection order may be made for various purposes: prohibiting the respondent from doing anything in relation to any person; requiring that no person shall publish or continue to publish any offending communication; referring the respondent and/or victim to attend counselling or mediation; and the giving of any direction “as is necessary for and incidental to the proper carrying into effect of” the making of an aforesaid order. Section 12(4) provides that the protection may be subject to exceptions and conditions. As highlighted by Mr Shanmugam in his Second Reading speech, the court will look at the facts and circumstances of each case to decide the most appropriate order to make.<sup>99</sup>

54 In exceptional cases, the District Court may, where it is just and equitable in all the circumstances to do so, grant an expedited protection order<sup>100</sup> pursuant to s 13 on the *prima facie* evidence of certain specified matters. It is also important to note that s 13(5) of the Act states that there shall be no appeal against a decision of the District Court made under s 13.

## (2) Breach of protection orders

55 Section 10 makes it an offence to breach protection orders made under s 12 (except s 12(3)(c) and any direction under s 12(3)(d)) or s 13, and on conviction, the offender shall be liable to a fine not exceeding \$5,000 and/or a term of imprisonment not exceeding six months.

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

97 See generally Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at pp 134–143.

98 See the Subordinate Courts of Singapore, “Study of the Effectiveness of Protection Orders” (2001) Research Bulletin, Issue No 28.

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

100 The order may be issued “notwithstanding that notice of the application has not been served on the respondent or has not been served on the respondent within a reasonable time before the hearing of the application” (see s 13(1) of the Protection from Harassment Act 2014).

56 One potential shortcoming with s 10 is that breach of a protection order is not an arrestable offence as it carries a sentence of less than three years' imprisonment.<sup>101</sup> By contrast, it is made clear under the Women's Charter that a contravention of a personal protection order issued under s 65 is "deemed" to be a seizable offence within the meaning of the Criminal Procedure Code.<sup>102</sup> The lack of provision notwithstanding, the courts should not hesitate to exercise enforcement powers if there is disobedience of such orders, although there may be an understandable sense that the "bite" behind the protection orders granted under the Act ought to be weaker because not every instance of harassment involves violence, unlike the protection orders issued under the Women's Charter.

### C. *Section 15: False statements of fact*

57 Section 15 introduces a "self-help" remedy that is targeted at helping victims being harassed by false statements that have been made about them. In cases involving false statements being made in relation to a victim, Mr Shanmugam had explained in the Second Reading speech that s 15 will enable the victims to help themselves, instead of being forced to file a criminal complaint or bring a civil action for damages, neither of which could truly provide relief to the victim in some cases. In some cases, a victim might simply wish for a correction or clarification of the falsehood, even if the conduct could come under the requirements for a protection order under s 12. Thus, the remedies are "self-help" in this sense.

58 Victims of false statements can apply to the District Court for an order that "no person shall publish or continue to publish the statement complained of unless that person publishes such notification as the District Court thinks necessary to bring attention to the falsehood and the true facts".<sup>103</sup> Section 15(3) states that such an order may be issued by the District Court if it is satisfied on a balance of probabilities that the relevant statement is false and it is just and equitable to make such an order.

59 In his Second Reading speech, Mr Shanmugam noted that online publications are borderless and viral, and offensive materials could thus be reposted by many after they have been uploaded onto the Internet by the original harasser. To address this particular problem, the

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101 See the First Sched to the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

102 See s 65(11) of the Women's Charter (Cap 353, 2009 Rev Ed).

103 Protection from Harassment Act 2014 s 15(2).

court may grant protection orders<sup>104</sup> or s 15 orders<sup>105</sup> that are good against all publishers. This means that other persons who reposted the offensive materials/false statements would be required by the same protection order or a s 15 order to remove and/or correct the relevant publications, as the case may be. The victim need not take out a new application for an order against these other persons. Of course, new issues will arise as technology continues to develop. Nor can these provisions under the Act afford relief in all cases even in relation to existing issues due to unforeseen practical difficulties. Nevertheless, these provisions under the Act represent a strong commitment to combat against cyber bullying/harassment. They could also provide a good reference point for other jurisdictions looking to reform their legislative regime to address cyber harassment.

60 There is, however, one possible deficiency with the Act in relation to s 15. Unlike protection orders where breach of the orders would attract criminal sanctions of a fine and/or imprisonment under s 10 of the Act, there is no provision made anywhere in the Act as to the consequences of a respondent breaching a s 15 order. Of course, a non-compliant respondent would be punishable for contempt of court. But it is worth considering if more specific criminal sanctions should be prescribed for non-compliance with a s 15 order, so as to give more bite to the order.

## VI. Conclusion

61 The authors have tried in the space of a single article to comment on what is undoubtedly an important and wide-ranging Act. As Mr Shanmugam repeatedly stressed in his Second Reading speech, the Act must be given time to work, and then refinements can be made along the way.<sup>106</sup> The authors have tried to highlight some key areas of application within the Act in this article, though there is no doubt that other, more detailed, articles will be written on more specific areas of the Act. A perhaps more practically important consideration is the enforcement of such a statute. It is no use having a statute that cannot be easily used by the layperson.

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104 Section 12(3)(b) of the Protection from Harassment Act 2014 provides that an order may be made “requiring that *no person* shall publish or continue to publish the offending communication” [emphasis added].

105 Section 15(2) of the Protection from Harassment Act 2014 provides that the District Court may “order that *no person* shall publish or continue to publish the statement complained of unless that person publishes such notification as the District Court thinks necessary to bring attention to the falsehood and the true facts” [emphasis added].

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

62 In this regard, the UK Protection from Harassment Act 1997 does not prescribe a special procedure and the normal court system is used. However, as mentioned earlier, this runs the risk of denying to the layperson a remedy through a complicated implementation system. A better example may be the South African Protection from Harassment Act, which, while still relying on the normal court system, provides via s 2(2) that the clerk of the court must inform the lay-complainant of his relief available under the Act. This eases the burden on the layperson who may not otherwise be familiar with his rights. This approach, however, may be met with the reasonable objection that it privileges harassment victims over other victims. Perhaps it will have to be a conscious policy decision why such victims are given this kind of advantage over other victims, inasmuch as claims for matrimonial matters are also provided non-legal assistance by the sidelines. This can be justified by the fact that there may be more harassment victims than victims of other offences.

63 Taken together, the Act is an important step taken by Parliament towards curbing anti-social behaviour in Singapore. It may suffer from some minor problems of interpretation and application, but its goals and general applicability are clearly laudable. The challenge now lies in making it accessible to victims of such anti-social behaviour, and to educate both victims and those empowered to enforce the Act, on its various functions and reach.

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