

M953

Muir, N. H. The need for specialist legislation to address stalking behaviour...

**The Need For Specialist Legislation
to Address Stalking Behaviour and How Adequately
the Currently Proposed Legislation Meets This Need.**

Natalie Helen Muir

**The Need For Specialist Legislation to Address Stalking Behaviour
and How Adequately the Currently Proposed Legislation Meets This
Need.**

**Submitted for the LLB (Honours) Degree at
Victoria University of Wellington**

1 September 1997

e
AS741
VUW
A66
M953
1997



VICTORIA
UNIVERSITY OF
WELLINGTON

*Te Whare Wananga
o te Upoko o te Ika a Maui*



LIBRARY

**The Need For Specialist Legislation to Address Stalking Behaviour
and How Adequately the Currently Proposed Legislation Meets This
Need.**

	20
I INTRODUCTION	5
II THE EXTENT OF THE PROBLEM	5
III APPLICATION OF THE DOMESTIC VIOLENCE ACT 1995	7
IV INADEQUACIES IN THE CURRENT LAW	10
A <i>Civil Law</i>	10
1 <i>Tortious remedies</i>	10
2 <i>Bonds to keep the peace</i>	11
3 <i>Trespass</i>	11
4 <i>Privacy law</i>	11
5 <i>Mental health law</i>	12
6 <i>Human rights</i>	12
B <i>Criminal Law</i>	12
V HOW OTHER COUNTRIES ARE ADDRESSING THE PROBLEM	13
A <i>United States</i>	13
B <i>Canada</i>	14
C <i>Australia</i>	15
D <i>England and Wales</i>	16
1 <i>Criminal law protections</i>	16
2 <i>Civil law protections</i>	16
3 <i>Proposed legislation</i>	18
E <i>Scotland</i>	18

VI THE NEED FOR SPECIALIST LEGISLATION	19
VII THE PROPOSED LEGISLATION	20
A <i>Key Contents of the Proposed Legislation</i>	20
B <i>General Assessment of the Proposed Legislation</i>	22
C <i>Problems and Inadequacies with the Proposed Legislation</i>	25
1 <i>Issues arising from the definition of the offence of criminal harassment</i>	25
(a) <i>Harasser must "know" or "intend" to create fear</i>	25
(b) <i>Criminal harassment occurs where the necessary element of fear is held in relation to "any person with whom the primary victim has a family relationship" but not other persons with whom the primary victim has a close relationship</i>	26
(c) <i>Reasonably causing fear?</i>	28
2 <i>Inadequacies in the definition of harassment necessary to apply for a civil restraining order</i>	28
(a) <i>Lack of protection from some causes of emotional harassment</i>	28
(b) <i>Inclusion of conduct aimed at "any person with whom the applicant has a family relationship" but not other persons with whom the applicant has a close relationship</i>	29
3 <i>The wide power to make civil restraining orders may inhibit lawful activity</i>	29
4 <i>Restrictive requirement that applications for restraining orders be made on notice</i>	31
5 <i>Concerns about the Police power to request details of alleged harasser</i>	32
6 <i>Court authority and requirement to consider whether a psychiatric assessment should be made</i>	33
7 <i>Lack of specific provision authorising discretion to make a subsidiary order concerning the possession of weapons</i>	34

8	<i>Discharge of an order against the respondent automatically discharges an order against an associate respondent</i>	34
9	<i>Lack of provision for an order against a child</i>	35
10	<i>Lack of provisions addressing concerns about public registers</i>	35
11	<i>Drafting problems in the Bill</i>	36
	(a) <i>Complexity of the Bill</i>	36
	(b) <i>Definition of "against"</i>	37
	(c) <i>Prohibition of encouragement of another person to do a specified act</i>	37
12	<i>Inclusion in legislation predominantly targeting concerns about gang behaviour</i>	38
13	<i>Choice of terminology - stalking or harassment?</i>	38
14	<i>Choice of terminology - protection or restraining orders?</i>	39
	VIII CONCLUSION	39
	APPENDICES	
	APPENDIX 1: The Harassment and Criminal Associations Bill, Parts I-IV	41
	These parts of the Bill which address stalking behaviour.	
	APPENDIX 2: Relevant criminal law provisions	60
	APPENDIX 3: Samples of foreign jurisdiction provisions on stalking	
	A An example of Australian legislation - Northern Territory	62
	B The Canadian federal legislation	63
	RESOURCES USED	
I	TABLE OF LEGISLATION	64
II	TABLE OF CASES	65
III	BIBLIOGRAPHY	66

I INTRODUCTION

"Stalking" refers to a pattern of behaviour which is threatening, intimidating or distressing to the person at which it is directed. The individual acts, which collectively amount to stalking behaviour, may appear quite innocent, but taken in context they assume an importance beyond their immediate significance. The effects of stalking may range from an unwanted intrusion that substantially impacts on the victim's enjoyment of life to a traumatic experience that leaves the victim terrified even though no physical violence may have occurred.¹

There is currently insufficient protection for victims of stalking. Neither existing criminal law offences nor civil law remedies provide devices to deal with this behaviour adequately. The difficulties victims have encountered in attempting to obtain relief through the courts against stalkers, and anecdotal evidence suggesting such behaviour is a real and existing problem, make it clear there is a gap in the law which urgently needs to be addressed.

First, this essay will discuss the inadequacy of the current law and how other jurisdictions are dealing with the menace of stalking. Second, the proposal to address stalking currently before the Justice and Law Reform Select Committee entitled the Harassment and Criminal Associations Bill will be examined. Its merits and inadequacies will be discussed.

II THE EXTENT OF THE PROBLEM

The extent to which stalking is a problem in New Zealand is not known because there is no reliable indicator of its incidence. Prosecution rates for the offence of intimidation and threats are available. However, this offence is used in a variety

¹ This description of stalking is taken from the explanatory note attached to the Bill.

of situations, many of which would not be properly categorised as stalking.² Despite the lack of empirical evidence, statistics from other jurisdictions indicate stalking behaviour is a real problem which needs to be addressed.

A recent study³ on women's safety in Australia indicated 15% of women (1 million) reported having been stalked at some time during their life:⁴

- 6.1% by a previous partner - in New Zealand this would be covered by our domestic violence legislation.
- 7.2% by a stranger - these situations would escape New Zealand's domestic violence legislative protections.
- 4.4% by another man known to them - some of these situations would escape New Zealand's domestic violence legislative protections.

The same study indicated of these women 31.9% feared for their personal safety, 10% took time off work and 39.8% changed their day-to-day activities. Australia has a similar culture to New Zealand, accordingly it can be assumed New Zealand has a comparable problem with stalking behaviour.

Some limited English statistics are available.⁵ The National Anti-Stalking and Harassment ("NASH") campaign reported that over 7000 victims of stalking telephoned their helpline between January 1994 and November 1995. NASH estimates that about 95% of victims are women.

² GA McFadyen, Planning and Policy Manager, New Zealand Police.

³ W McLennan *Women's Safety Australia 1996*, (Australian Bureau of Statistics, Canberra, 1996).

⁴ Some women have been stalked more than once, thus when summed the breakdown of different types of stalking exceeds the total number of women stalked.

⁵ United Kingdom Government *Stalking: The Solutions - Consultation Paper*, 1996, 2.

Anecdotal evidence⁶ also supports a conclusion that stalking is a problem in New Zealand as do demands being made on the courts to apply existing inadequate legislation or common law causes of action to stalking cases.⁷

III APPLICATION OF THE DOMESTIC VIOLENCE ACT 1995

The Domestic Violence Act 1995 enables victims of domestic violence to apply for a protection order⁸ in relation to any person with whom they are in, or have been in, a domestic relationship. Whether a victim of stalking will be able to use the Act depends initially on whether their relationship with the stalker fits the definition of domestic relationship.⁹ The widest definition of domestic relationship through which victims may seek cover is s 4(d) which affords protection where the victim has or had a close personal relationship with the stalker. Some matters to which the Court may have regard in determining whether a close personal relationship exists or existed are the nature and intensity of the relationship including: the amount of time that was spent together, the places where that time was ordinarily spent, the manner in which that time was spent and the duration of the relationship.¹⁰ There are many situations such as stalking by a stranger, acquaintance, workmate or friend where it would be hard or impossible to establish there was a close personal relationship with the stalker. Protection is needed in these cases.

⁶ The author in researching this essay has become aware of many personal stories about problems with stalkers. The Ministry of Justice also recognises anecdotal evidence of stalking behaviour is abundant. Letter to Minister of Justice, From Secretary for Justice *Stalking*, 9 October 1995, 4.

⁷ See below part III and IV.

⁸ The Domestic Violence Act 1995, s 7.

⁹ Above n 8, s 4.

¹⁰ Above n 8, s 4(4).

Judge von Dadelszen in the Family Court recognised this gap in the law in *T v H*.¹¹ In addressing a long term stalking situation where nothing in the conduct amounted to a criminal offence he noted that the Domestic Violence Act provides precisely the kind of protection necessary. He expressed the view that if the victim has no other practical means of obtaining relief then the Act should, if possible be interpreted in such a way as to assist the victim. The Judge granted a temporary protection order.

In *T v H (No. 2)*¹² Judge Inglis QC addressed the crucial issue namely, whether the long term stalker was in a close personal relationship with the victim. The Judge was satisfied that the stalker had created a close personal relationship due to his persistence in making contact with the victim and the intensity of his expressions to the victim. This was notwithstanding the victim's rejection of any attention and the little time they had spent together. On this reasoning the more persistent and frequent the harassment the more likely the Court would find a close and personal relationship. A mere acquaintance could "create" a close and personal relationship through harassment! Although Judge Inglis QC stressed the Court must be careful not to step outside the jurisdiction with which the legislature has entrusted to it, and further that the Domestic Violence Act is aimed essentially at aberrant behaviour within domestic relationships, this case stretches the protection available beyond its rightful ambit. It is likely the Judge was influenced by his recognition that a protection order was the most appropriate remedy, civil injunctions being cumbersome and no criminal offence having been committed.

Even if this stretched ambit provides some additional protection Judge Inglis QC recognised this was a "close to borderline" case. Clearly many situations deserving protection will fall outside the protection of the Act.

¹¹ [1996] NZFLR 865.

¹² Unreported, 16 October 1996, Family Court, New Plymouth Registry, FP 043 302/96.

One option is to further extend the jurisdiction of the Domestic Violence Act to provide victims of non-domestic stalking with protection. The ongoing violence is similar to that experienced by those who are or have been in domestic relationships. Both situations must be addressed as a series of acts rather than a stream of unrelated incidents. However, it is not this aspect of the violence but the relationship in which the violence occurs that should determine whether there is coverage in a domestic violence regime.¹³ It is preferable to use discrete domestic violence legislation to deal with disputes in domestic relationships rather than the criminal law because of the emotional bond between the victim and the perpetrator of the violence which may deter victims from seeking protection. Victims of stalking where there is or has been no domestic relationship are generally less reluctant to invoke the criminal law to deal with the behaviour. Further, provisions in the Domestic Violence Act, such as the availability of property orders and mandatory counselling, are premised on there being or having been some relationship from which property held in common may need to be divided and which may continue on some level, for example to facilitate access to children. These provisions are inappropriate.

A further reason not to extend the Domestic Violence Act is that it would detract from the role of the Family Court which is to determine family disputes. The Principal Family Court Judge His Honour Judge PD Mahony in a submission¹⁴ to the Justice and Law Reform Select Committee on the Domestic Violence Bill expressed concern at the extended range of relationships within the ambit of the Act and the resulting impact on the Court's workload to the detriment of its primary function, namely to provide remedies for family members. The changing nature of domestic relationships in society made it necessary for the Court to

¹³ Letter to Minister of Justice, From Secretary for Justice *Protection from Violence: Coverage For Other Groups*, 30 November 1994, 11.

¹⁴ His Honour Judge PD Mahony *Submission to Justice and Law Reform Select Committee on Domestic Violence Bill 1994*, 10 April 1995.

have its jurisdiction extended to deal with the more varied range of domestic relationships it now encompasses. However, the jurisdiction should not be further extended to situations where there is no domestic relationship. This would clearly detract from the Family Court's primary role.

IV INADEQUACIES IN THE CURRENT LAW

Those who are not within the scope of domestic violence legislation must rely on the criminal or civil law for protection. Neither provide adequate protection from stalking.

A Civil Law

1 Tortious remedies

There are no civil orders available that are analogous to the protection order available under the Domestic Violence Act. An injunction may be applied for based on the torts of private nuisance or intentional infliction of emotional distress. These provisions have value but only in the area that each covers. Nuisance is generally only available to people having an interest in land to protect their use and enjoyment of that land.¹⁵ A protection order based on the tort of nuisance could not therefore provide general protection, nor would it be available in all circumstances. A remedy for the tort of intentional infliction of emotional distress will only be given where the victim has already suffered harm. The New Zealand courts may look to the recent developments made by the United Kingdom courts to provide some protection through the potential tort of harassment. However, it is unclear whether harassment has been established as an independent tort.¹⁶

¹⁵ *Hunter v Canary Wharf Ltd* [1997] 2 WLR 684.

¹⁶ See text at V D 2.

More generally there are a number of problems with civil remedies. They are of little assistance where the stalker's identity is not known as service of proceedings would not be able to be effected.¹⁷ Victims do not know whether their situation will be afforded protection until they take the case to court and establish a tort has been committed. Proceedings are likely to be expensive and complex involving a variety of causes of action. And lastly, breach of an injunction attracts a maximum penalty of only 3 months imprisonment for contempt of court.¹⁸ This does not adequately reflect the harm suffered.

2 Bonds to keep the peace

Under the Summary Proceedings Act 1957 an application can be made for a bond to keep the peace where a person has cause to fear that another person will do certain intimidating things.¹⁹ If a condition of the bond is not kept all or part of the bond is forfeited. Accordingly, the effectiveness of such bonds are somewhat dependent on the financial position of the defendant.

3 Trespass

The Trespass Act 1980 allows notice to be given to require a person to leave or stay off private property.²⁰ A breach is an offence punishable by fine or imprisonment of up to 3 months. However, protection is only available while the victim is at the place where the order is in force.

4 Privacy law

The information privacy principles in the Privacy Act 1993 provide that an agency can collect information only for a lawful purpose connected with the agency's function or activity, and where collection is necessary for that purpose.²¹ The Privacy Act may thus be of assistance where the harassment

¹⁷ Letter to Minister of Justice, From Secretary for Justice *Stalking*, 9 October 1995, 3.

¹⁸ See appendix 2.

¹⁹ The Summary Proceedings Act 1957, s 186.

²⁰ The Trespass Act 1980, ss 3-4.

²¹ The Privacy Act 1993, s 6.

amounts to a collection, use or disclosure of personal information, or where such a step was preliminary to harassment. Complaints of interference with an individual's privacy may be taken to the Complaints Review Tribunal.²² Relief including a restraining order may be granted.²³ However, the effectiveness of the Privacy Act is limited by a domestic affairs exemption²⁴ and an exception which allows collection of personal details from public registers.²⁵

5 Mental health law

Compulsory treatment may sometimes be ordered for an obsessional stalker under the Mental Health (Compulsory Assessment and Treatment) Act 1992.²⁶ However, such an order cannot be made unless the stalker has been diagnosed as having a mental disorder.²⁷

6 Human rights

Where the harassment is the result of a prohibited ground of discrimination²⁸ a complaint may be taken to the Complaints Review Tribunal or a court under the Human Rights Act 1993. A restraining order may be granted.²⁹

B Criminal Law

The criminal law provides some protection. The following offences may be particularly relevant: intimidation, disorderly behaviour, loitering, trespass, assault, threats to kill or cause grievous bodily harm, sending threatening letters and disturbing use of a telephone.³⁰

²² Above n 21, ss 82, 83.

²³ Above n 21, s 85(1)(b).

²⁴ Above n 21, s 56.

²⁵ Above n 21, s 7(6).

²⁶ In *Re IC* [1996] NZFLR 562 The Southern Review Tribunal ordered that the patient continue to be held for compulsory treatment.

²⁷ The Mental Health (Compulsory Assessment and Treatment) Act 1992, s 8.

²⁸ Grounds of discrimination prohibited by the Human Rights Act 1993, s 21 include sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.

²⁹ Human Rights Act 1993, s 86(b).

³⁰ Appendix 2 lists relevant criminal law provisions.

However, although the criminal law targets many of the specific acts that may amount to stalking it does not address the overall behavioural pattern and its impact on the victim. Focusing on one specific act has the effect that:

- The punishment is not proportionate to the harm the victim experiences. Several of the most relevant offences are summary offences which attract maximum penalties of 3 months imprisonment.³¹ There is no provision for an increase in maximum penalty where there is persistent offending although cumulative sentences may be imposed.³²
- By ignoring the context of the action the law does not give adequate consideration to the likelihood of future dangerous acts occurring and of the stalker's mental state.
- Some acts which may be intimidating and harassing in a particular context, for example, sending gifts or non-threatening letters, are not covered by the criminal law because in isolation they are not criminal.

V HOW OTHER COUNTRIES ARE ADDRESSING THE PROBLEM

American, Canadian, Australian and United Kingdom jurisdictions have created or are in the process of creating an offence to deal with stalking behaviour. In addition to this civil orders are available in some states in America and Australia.

A United States

All 50 American states have enacted legislation creating a crime of "stalking".³³ The first anti-stalking law was enacted in 1990 in California.³⁴ Other states use the Californian provision as their model. Anti-stalking offences vary in the

³¹ See appendix 2.

³² Above n 17, 3.

³³ SL Smith "Developments in United States Criminal Law" (1995) 19 CLJ 90.

³⁴ The California Penal Code, s 646.9.

different states but are typically defined in terms of following the victim or engaging in other forms of harassment that either cause emotional distress in the victim or would cause emotional distress in a reasonable person.³⁵ The law in some states requires a credible threat of violence or that the defendant intends to place the victim in fear of violence.³⁶ The requirement of specific intent has been a significant hurdle in obtaining convictions in some states.³⁷

Additionally, the Los Angeles Police Department has established a Threat Management Unit to assess the threat posed by stalkers and to take steps which might stop the stalker before serious violence occurs. The Unit ensures that the stalker is aware that the Police are concerned about the behaviour and helps the victim decide what action to take.³⁸ This initiative could be implemented in New Zealand. The Police, on receiving a complaint of harassment, could inform the alleged victim of protective devices available and also inform the alleged stalker they are aware of the behaviour. In many cases this may be a powerful social deterrent.

B Canada

Canada's anti-stalking law is contained in its federal criminal code.³⁹ It requires that the stalker either knows or is reckless as to the fact the conduct has the effect of harassing the victim. Additionally, victims must reasonably fear for their safety or the safety of anyone known to them. The types of conduct that may amount to stalking are listed as specific acts, rather than referring to a course of conduct as in the United States.

³⁵ For example in the California Penal Code stalking is defined as "Wilfully, maliciously, and repeatedly follows or harasses another and makes credible threat with intent to place another in reasonable fear."

³⁶ Above n 35.

³⁷ Above n 17, 9.

³⁸ Above n 13, Schedule 4.

³⁹ The Canadian Criminal Code, s 264. See appendix 3B.

C Australia

Most Australian states have enacted anti-stalking legislation.⁴⁰ The remaining states (Australian Capital Territory and Western Australia) have it under consideration.⁴¹ Generally stalking is defined as engaging in such behaviour as following, loitering, sending offensive material and interfering with property. Generally the conduct must have occurred on at least two separate occasions, Victoria and New South Wales excepted. All states require some form of specific intention. In Queensland the offender must intend their conduct to be directed at the victim, the victim must be aware that the conduct is directed at them and the conduct must be such that it would cause a reasonable person in the victim's circumstances to believe a violent act is likely to happen. In the Northern Territory, Victoria and South Australia intention to cause physical or mental harm or fear is sufficient. In New South Wales the offender must intend to cause the victim to fear personal injury. Both Victoria and New South Wales provide a further definition of intention: a defendant intends to cause harm if they knew their conduct was likely to cause fear or, ought to have known that their conduct would cause such harm or fear.

Additionally in some states in Australia⁴² civil orders are available which prohibit conduct that amounts to stalking notwithstanding the absence of any domestic relationship. The orders are similar to present protection orders available under the Domestic Violence Act 1995. Breach of an order constitutes an offence.

⁴⁰The Crimes Act 1900 (New South Wales), s 562; The Criminal Code (Northern Territory), s 189, see appendix 3A; The Criminal Code (Queensland), s 240; Criminal Law Consolidation Act 1935 - 1975 (South Australia), s 19AA; The Criminal Code (Tasmania), s 192; The Crimes Act 1958 (Victoria), s 21A.

⁴¹Above n 17, 7.

⁴²New South Wales, Victoria, South Australia.

D England and Wales

The law in England and Wales is similar to that in New Zealand. There are a number of criminal law offences and civil law causes of action which address different aspects of stalking behaviour. However, no comprehensive protection is available.

1 Criminal law protections

A provision which relates most closely to the activities of stalkers provides that it is an offence to use threatening, abusive or insulting words or behaviour with an intent to cause a person to believe that immediate violence will be used against that person,⁴³ or to intentionally cause harassment, alarm or distress.⁴⁴ This is similar to New Zealand's intimidation offence.⁴⁵ Further, the English court has created the new offence of psychological assault.⁴⁶ However, to attain a conviction there must be psychological injury, mere fear, panic or distress is not sufficient.⁴⁷ Other criminal provisions deal with specific aspects of stalking.⁴⁸

2 Civil law protections

Civil law legislative protections include trespass to the person (assault and battery), and trespass to land.⁴⁹

Further, tortious actions may be of variable use. The tort of personal injury by molestation where the defendant has interfered with the plaintiff's right to personal safety by doing acts calculated to cause harm to the plaintiff may provide some protection. However, the plaintiff must have already suffered

⁴³ Public Order Act 1986 (UK), s 4.

⁴⁴ Above n 43, s 4A.

⁴⁵ The Summary Offences Act 1981, s 21.

⁴⁶ In *R v Ireland* [1996] TLR 22 May 1996 telephone calls were held sufficient to constitute assault under s 47 of the Offences Against the Person Act 1861 where the calls placed the victims in immediate fear of their safety with resulting psychological injury.

⁴⁷ T Lawson-Cruttenden and B Hussain "Psychological Assault and Harassment" [1996] NJL 1326.

⁴⁸ The Malicious Communications Act 1988 (UK), s 1(1); The Telecommunications Act 1984 (UK), s 43; The Offences Against the Person Act 1861 (UK).

harm. That harm can include impairment of mental health. Thus in *Burnett v George*⁵⁰ where the plaintiff had been subjected to assault, unwelcome visits and unwanted telephone calls, the defendant was restrained not only from entering her property but also from "assaulting, molesting or otherwise interfering with the plaintiff by doing acts calculated to cause her harm."

Although private nuisance is a tort protecting interests in land the Court of Appeal in *Khorasandjian*⁵¹ rejected a submission that the victim could not sue because she did not have an interest in the land where she was being harassed in her mother's house. It was sufficient the victim was an occupier. Further, an order was granted which restrained actions which had nothing to do with the enjoyment of the land. However, in *Hunter v Canary Wharf Ltd*⁵² the House of Lords held generally only a person with an interest in land can sue in nuisance.

In 1995 *Burris v Azadan*⁵³ potentially established the tort of harassment as a separate tort. The Court allowed an injunction to protect the plaintiff's legitimate interests against acts or intended acts of a defendant which were not necessarily tortious. Commentators are divided as to whether *Burris* established a separate tort of harassment.⁵⁴ In 1988 Waterhouse J said there is no tort of harassment thus an injunction restraining a defendant from approaching within 50 yards of his victim's house was discharged.⁵⁵

⁴⁹ Above n 5, 2.

⁵⁰ [1992] 1 FLR 525.

⁵¹ *Khorasandjian v Bush* [1993] 3 WLR 476.

⁵² Above n 15.

⁵³ [1995] 1 WLR 1372.

⁵⁴ T Lawson-Cruttenden "Is there a Law Against Stalking?" [1996] NLJ 418. T Lawson-Cruttenden who assisted Janet Anderson MP with the drafting of her private member's Bill against stalking in Britain argues a separate tort of harassment has been established.

⁵⁵ *Patel v Patel* [1988] 2 FLR 179.

3 Proposed legislation

The English Government has decided not to leave protection to be developed by the courts.⁵⁶ After initial rejection of a private member's Bill⁵⁷ because it was considered "the Bill would render unlawful behaviour which would ordinarily be lawful"⁵⁸ the English Government is again considering a statutory solution.

The proposed English Bill⁵⁹ envisages that both civil and criminal measures will compliment each other in providing effective legal protection against stalking. Non-molestation orders would be attainable where the court considered molestation had occurred.⁶⁰ Breach of a molestation order would be a criminal offence.⁶¹

The proposed criminal offence does not rely on victims fearing for their safety, but encompasses "engaging in a course of conduct whereby a person molests another person so as to be reasonably likely to cause that other person to feel harassed, alarmed, distressed or to fear for his safety or for that of one or more third persons."⁶² This proposed legislation avoids the problems concerning the stalker's intention and instead focuses on the effects on a reasonable person.

E Scotland

In Scotland the common law crime of breach of the peace is so widely defined a judge or jury can convict where any conduct causes, or is likely to cause, alarm to the public.⁶³ The normal approach taken by the court is that *mens rea* can be inferred from the facts of the case.⁶⁴ The Scottish courts have already been willing to find a man guilty of breach of the peace for sending unwanted love

⁵⁶ Above n 5, 1.

⁵⁷ Private member's Bill - Janet Anderson MP.

⁵⁸ T Lawson-Cruttenden "Stalking Farce" (1996) 93 Gazette 15.

⁵⁹ Stalking (No. 2) HL Bill 176.

⁶⁰ Above n 5, 6.

⁶¹ Above n 59, cl 4.

⁶² Above n 59, cl 1.

⁶³ *Ferguson v Carnochan* (1889) 16 R 93.

letters to a woman over many years.⁶⁵ Specialised legislation is therefore not needed.

A Key Feature of the Proposed Legislation

This approach could not be followed in New Zealand because all criminal offences are statutory offences. Conduct can only be prosecuted under a statute if the act falls within the scope of the offence. It is unlikely that a statute could be enacted which could replicate the wide powers that the Scottish courts have to interpret common law offences such as breach of the peace.

VI THE NEED FOR SPECIALIST LEGISLATION

Statistics and anecdotal evidence show that stalking is a very real problem which has a significant impact on the lives of those who encounter it. The current law, although addressing many aspects of stalking behaviour, is inadequate in providing the comprehensive protection needed. The need to address stalking behaviour has been recognised and met in Australia, Canada and the United States with specialist legislation. The problem is currently being addressed in the United Kingdom. Due to the tardy progress of the United Kingdom legislature in providing adequate protection the English courts have responded with radical judicial developments in both criminal law, with the emergence of psychological assault, and civil law with the developments in the tort of personal injury by molestation and potentially a separate tort of harassment. These tortious action could be cultivated by the New Zealand courts. However, such developments notwithstanding, comprehensive, effective and easily accessible protection is best provided by specialist legislation.

⁶⁴ A Bonnington "Stalking and the Scottish Courts" [1996] NLJ 1394.

⁶⁵ *PF v Dollar* Unreported, 1986, Glasgow Sheriff Court.

VII THE PROPOSED LEGISLATION

A Key Contents of the Proposed Legislation

The specialist legislation currently under consideration by the Justice and Law Reform Select Committee is entitled the "Harassment and Criminal Associations Bill". This Bill comprises a package of measures that aim to provide better protection from harassment generally and to place restrictions on the activities of criminal associations or gangs.⁶⁶ Parts I - IV address harassment.⁶⁷ The remaining parts, which are not relevant to this discussion, address concerns about gang activities.

The Bill creates a new offence of criminal harassment which targets the more serious forms of harassment.⁶⁸ It would be an offence punishable by imprisonment for a maximum of 2 years to harass another person so that that person fears for their safety or the safety of a person with whom they have a family relationship. The harasser must intend to cause fear or know that the behaviour is likely to cause fear. Harassment is defined as a pattern of behaviour that includes certain specified acts.⁶⁹ The behaviour constituting the harassment must have occurred on at least 2 separate occasions within a 12 month period.

The Bill also provides for the making of civil restraining orders⁷⁰ which are likely to be used where the harassment is at a lower level but is still distressing to the victim. Breach of a restraining order is an offence punishable by imprisonment for a maximum period of 6 months or a fine not exceeding \$5,000.⁷¹ Persistent

⁶⁶ Explanatory Note, General Policy Statement, Harassment and Criminal Associations Bill.

⁶⁷ Appendix 1 contains Harassment and Criminal Associations Bill, Parts I - IV.

⁶⁸ Harassment and Criminal Associations Bill, cl 8.

⁶⁹ Above n 68, cl 3.

⁷⁰ Above n 68, cl 13.

⁷¹ Above n 68, cl 21(2).

breach is punishable by imprisonment for a maximum of 2 years.⁷² The type of conduct that may amount to harassment is the same as that listed for the criminal offence. However, there is no requirement that the perpetrator intentionally or recklessly cause fear. It is sufficient if in all the circumstances the behaviour reasonably causes the applicant distress, or threatens to reasonably cause the applicant distress, to such an extent that an order should be made. Further, an order must be necessary for the protection of the victim from further harassment.⁷³

There is also provision for the making of an order against an associate of the respondent where, at the instigation of the respondent, the associate has engaged in specified acts which, either alone or together with any specified acts committed by the respondent or by any other person with the encouragement of the respondent, would amount to harassment of the victim.⁷⁴

Lastly, the Bill includes a statutory power for Police, upon receipt of a complaint of harassment, to approach the suspected harasser and require their name and address.⁷⁵ Those details can then be forwarded to the victim to enable an application for a civil restraining order to be made.⁷⁶ It is an offence, for which a person can be arrested without warrant, to fail or refuse to provide particulars when requested to do so.⁷⁷ These provisions are intended to be of use where the suspect is a stranger to the victim. They also enable the Police to become involved at an early stage where there is insufficient evidence to charge the suspect with criminal harassment.

⁷² Above n 68, cl 21(3).

⁷³ Above n 68, cl 13.

⁷⁴ Above n 68, cl 15.

⁷⁵ Above n 68, cl 22.

⁷⁶ Above n 68, cl 24.

⁷⁷ Above n 68, cl 23.

B General Assessment of the Proposed Legislation

If enacted this legislation would largely meet the need for comprehensive protection from stalking behaviour.

The Bill is commendable in that it encompasses the need for the availability of both civil orders, which can be used where the harassment is at a lower level but is still distressing to the victim, and of a criminal offence to target more serious forms of harassment.

The involvement of the criminal law in serious cases enables the Police to investigate and prosecute the offender. This relieves the victim of the emotional and financial stress of taking proceedings.

Care must be taken in defining the necessary mental element of the stalker in the criminal offence provision. To secure conviction under the offence provision the stalker must intend to cause fear or know that the behaviour is likely to cause fear. The harasser may be deluded that the victim enjoys the attention and may not realise their conduct has the effect of harassing the victim.⁷⁸ This may cause similar problems in securing convictions as faced in some United States jurisdictions.⁷⁹ However, it is important that serious criminal offences require proof of criminal intent. Although it is suggested some modification is desirable to make a criminal conviction easier to secure,⁸⁰ this potential obstacle in obtaining protection is somewhat alleviated because a civil restraining order can be obtained for the same conduct without proving the perpetrator has intentionally or recklessly (knowing it was likely) caused fear.

The value of civil orders to compliment the use of a criminal offence has been recognised in some Australian states and in the proposed English legislation.

⁷⁸ Sufferers of erotomania have a persistent erotic delusion that they are loved by their victim.

⁷⁹ See text at n 37.

⁸⁰ See VII, C, 1, (a).

Where legislation provides solely for a criminal offence, which encompasses a requirement that the stalker cause fear in the victim or that the stalker have a specific intention to cause fear, protection against all forms of stalking is inadequate. "Soft" stalking where the stalker besieges the victim with unwanted but unthreatening attention would not usually create the necessary element of fear. A recently publicised case of soft stalking concerns an Auckland lawyer who was harassed by a female admirer for 11 years.⁸¹ She besieged him with love letters, visits, biscuits and smiles. Although escaping prohibition under the definition of the criminal offence, protection against such conduct is justified because it creates an unacceptable intrusion into the victim's private life. Under this Bill a civil order would be available to protect against soft stalking. It is not necessary for the victim to be in fear of their personal safety before a civil order would be available. The specific acts which encompass harassment are wide enough so that intrusive and annoying but non-threatening behaviour can be prohibited by an order where the court recognises there is such a need.

The provision for an order to be made against an associate of the respondent further adds to the comprehensive nature of the protection available.

In determining whether to grant a restraining order, the court must look at whether the behaviour reasonably causes the applicant distress "in all the circumstances".⁸² This is commendable. It recognises that in isolation the acts may appear minor but when viewed in context they may assume a greater significance. This phrase may have been adopted from the Canadian federal legislation.⁸³ It is also similar to the provision in the Domestic Violence Act which requires the court have regard to the nature or seriousness of the behaviour from the perception of the applicant.⁸⁴

⁸¹ G Chapple "Love Gone Wrong" *New Zealand Listener*, 23 November 1996, 25.

⁸² Above n 68, cl 13(b).

⁸³ Above n 39.

⁸⁴ Above n 8, s 14(5).

The empowerment of the Police to ask the alleged harasser's details, enables the Police to become involved at an early stage before a crime has been committed. This is commendable. It will have a similar effect to the Los Angeles Threat Management Unit initiative which ensures that the stalker knows that the Police are aware and concerned about the behaviour.⁸⁵

Similarly to Canadian and Australian legislation the types of conduct that may amount to harassment are listed as specified acts. Clause 3 defines harassment as engaging in a pattern of behaviour that includes doing any specified act against the victim on at least 2 separate occasions within a period of 12 months. Specified acts include watching, loitering near, following, accosting, telephoning or otherwise communicating. As noted, United States legislation and the proposed English legislation refers to a course of conduct causing distress rather than listing qualifying acts. However, the Bill contains a catch-all provision⁸⁶ which ensures that any behaviour not envisaged, which could reasonably cause the victim, given all the circumstances, to fear for their safety, is included.

As noted, on conviction of criminal harassment the offender is liable for a maximum of 2 years imprisonment.⁸⁷ Breach of a restraining order is an offence punishable by imprisonment for a maximum period of 6 months or a fine not exceeding \$5,000,⁸⁸ whereas persistently breaching a restraining order is punishable by imprisonment for a maximum of 2 years.⁸⁹ These two different levels of punishment are commendable. They recognise the more serious nature and greater potential danger imposed by perpetrators of the offence of criminal harassment and stalkers who illustrate they are prepared to disregard a civil order. Parliament has indicated conviction for the more serious offences

⁸⁵ See text at n 38.

⁸⁶ Above n 68, cl 4(1)(f).

⁸⁷ Above n 68, cl 8.

⁸⁸ Above n 68, cl 21(2).

⁸⁹ Above n 68, cl 21(3).

should result in a term of imprisonment. There is no express provision for a fine in lieu of imprisonment for these more serious offences. This mirrors the provisions in the Domestic Violence Act 1995⁹⁰ in relation to breach of a protection order granted under that Act. However, the Criminal Justice Act provides although the statute may only provide for imprisonment, the court may sentence an offender to pay a fine in lieu of imprisonment unless it is expressly prohibited.⁹¹ Although the court is free to give a fine in lieu of imprisonment the presumption of imprisonment has potent protective potential for victims of stalking behaviour and further this presumption of imprisonment provides a strong deterrent effect. An amendment which could further improve the protective ability of the Bill is to allocate the more severe penalty where the stalker was on any occasion to which a charge relates either in possession of an offensive weapon, or contravening a condition of bail. This approach is taken in the Northern Territory legislation.⁹²

C Problems and Inadequacies with the Proposed Legislation

1 Issues arising from the definition of the offence of criminal harassment

Clause 8 defines and categorises criminal harassment as an offence. There are several flaws in this fundamental provision.

(a) Harasser must “know” or “intend” to create fear

The definition of criminal harassment in clause 8 includes where the harasser *intends, or knows that it is likely*, the harassment will cause the victim to fear for their safety, or the safety of any person with whom the victim has a family relationship. It may become a common defence that the harasser did not “know” or “intend” their behaviour to be intimidatory. Often the stalker has a mental

⁹⁰ Above n 8, s 49.

⁹¹ The Criminal Justice Act 1985, s 26(1).

⁹² The Northern Territory Criminal Code, s 189, see appendix 3A.

illness known as "erotomania" where the stalker believes the victim is in love with him or her. Their intentions are amorous rather than intimidatory.⁹³ They would not conceive that their behaviour is unwelcome. Although in such cases a civil protection order would be available, there may be some cases where there is a risk of imminent danger and it is important a conviction could be secured immediately. A conviction for criminal harassment is likely to be accompanied by a sentence of imprisonment thus providing complete protection.⁹⁴ However, as noted, it is important that serious criminal offences require proof of criminal intent. More comprehensive protection could be made available by inserting "or should know" in addition to "knows". This would not contravene the ideal of proof of criminal intent but simply subject the stalker to an objective test. This objective concept of knowledge was used in Victoria⁹⁵ and New South Wales⁹⁶ legislation.

(b) Criminal harassment occurs where the necessary element of fear is held in relation to "any person with whom the primary victim has a family relationship" but not other persons with whom the primary victim has a close relationship

Clause 8 is activated where the stalker intends or knows the victim fears for their safety or the safety of *any person with whom they have a family relationship*. This includes both partners and family members of the applicant.⁹⁷

⁹³ Christchurch Community Law Centre *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*, 24 April 1997.

⁹⁴ See text at n 91. Further, if the court decides to substitute the prescribed penalty with a fine, which they may do, particularly if it is a first offence, conviction for criminal harassment will likely have greater deterrent effect than merely securing a civil order therefore it is nonetheless important a conviction for criminal harassment can be secured in cases where there is a imminent risk of danger.

⁹⁵ The Crimes Act 1958 (Victoria), s 21A.

⁹⁶ The Crimes Act 1900 (New South Wales), s 562.

⁹⁷ Above n 68, cl 2(2).

“Family member” is defined as:

- (a) Any other person who is or has been related to the person by blood, marriage, or adoption;
- (b) Any other person who is a member of the person’s whanau or other culturally recognised family group;
- (c) In the case of partners who are not legally married, any other person who would be a family member of that person pursuant to paragraph (a) or (b) of this definition if the partners were, or were able to be married to each other;

“Partner” is defined as:

- (a) Any other person to whom the person is or has been legally married;
- (b) Any other person (whether the same or the opposite gender) with whom the person lives or has lived in a relationship in the nature of marriage (although those persons are not, or were not, or are not or were not able to be, legally married to each other);

Clearly there exists other close relationships such as boyfriend/girlfriend relationships or close friendships which do not fit within these definitions. Behaviour aimed at such individuals should also be prohibited as it may be an obvious and effective means for the stalker to cause distress to the primary victim. This omission should be rectified by including behaviour aimed at any person with whom the primary victim has a “close relationship”. The court could determine in the individual case whether the relationship was sufficiently close to justify conviction. The Canadian offence of criminal harassment is activated where the fear is held in relation to “anyone known” to the primary victim.⁹⁸

Clause 4(2) and clause 5 similarly require amendment.

⁹⁸ Above n 39.

(c) Reasonably causing fear?

Clause 8(1)(b) requires the stalker knows that the harassment is likely to "reasonably cause" fear. The notion of reasonableness appears to be misrelated to the act of causing fear instead of the experience of the fear itself. It appears that what is meant is the stalker knows that the harassment is likely to give the victim "reasonable cause to fear..."⁹⁹

2 Inadequacies in the definition of harassment necessary to apply for a civil restraining order

(a) Lack of protection from some causes of emotional harassment

In determining whether harassment has occurred clause 4(2) includes as a specified act, circumstances where the stalker does a specified act directed at a relative¹⁰⁰ of the applicant where this could reasonably cause the applicant to fear for their own safety. This omits the situation where the applicant fears for that relative's safety (but not their own safety). Clause 2 defines "safety" as including "mental well-being", therefore this situation is included where fearing for the relative's safety has reasonably affected the applicant's mental well-being. However, the aim of the civil order is to prohibit lower level harassment reasonably distressing to the applicant. Emotional harassment, through the targeting an applicant's relative, should be able to be protected against by a civil restraining order although the applicant's mental well-being may not be damaged.

⁹⁹ Legislation Advisory Committee *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*, 5 May 1997.

¹⁰⁰ Where "relative" means any person with whom the applicant has a family relationship as defined in the Harassment and Criminal Associations Bill, s 2.

(b) Inclusion of conduct aimed at "any person with whom the applicant has a family relationship" but not other persons with whom the applicant has a close relationship

A civil order would not be able to be made where the distressing conduct is directed at a person with whom the applicant has a close relationship which is not a family relationship. As already noted,¹⁰¹ clause 4(2) and clause 5 require amendment.

3 The wide power to make civil restraining orders may inhibit lawful activity

Parliament should ensure that legitimate activity is not unduly restricted by provisions which address stalking behaviour. There is no danger that legitimate activities of reporters or debt collectors would be restricted by the criminal offence provisions in clause 8 because in order for criminal harassment to have occurred the person being harassed must have reason to fear for their own or another person's safety. It should indeed be illegal for reporters or debt collectors to carry out their duties in such a manner.

However, a restraining order could potentially be used in an attempt to delay or prevent legitimate activity such as inquiries from journalists or debt collectors.¹⁰²

Clause 13 authorises the court to grant a restraining order where:

- (a) The respondent has harassed, or is harassing, the applicant; and
- (b) In all the circumstances, the behaviour in respect of which the application is made reasonably causes the applicant distress, or threatens to reasonably cause the applicant distress, to such an extent that an order should be made; and

¹⁰¹ See text at VII, C, 1, (b).

¹⁰² Commonwealth Press Union, New Zealand Section *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*.

- (c) The making of an order is necessary to protect the applicant from further harassment.

Harassment encompasses a pattern of behaviour that includes doing any specified act against the applicant on at least 2 separate occasions within a period of 12 months. The specified acts include telephoning, or other communication with that person.¹⁰³ Thus potentially an order could be made against a journalist or debt collector who has on 2 occasions contacted the applicant for comment and it is likely this will happen again.

It is probable such contact would satisfy clause 13(1). Firstly, the applicant has been "harassed", namely they have been subjected to two specified acts (the contact, even merely by telephone) within 12 months. Secondly, although the acts may be lawful or justified for example where a debt collector persistently calls to collect a debt, or a reporter calls to uncover a story the applicant does not want revealed, the applicant may be reasonably distressed in the circumstances as they are naturally sensitive to the demands. Thirdly, it is likely the reporter or debt collector would attempt further contact if an order was not made. Therefore the court would consider an order was necessary to prevent further "harassment" (namely further contact).

Clause 14 provides for a defence in these circumstances where the respondent proves that the specified act was done for a lawful purpose. However, the burden of proof is on the person accused of harassment. This could be amended by requiring the applicant to discharge an initial burden of proof by raising some evidence that the act complained of is not lawful or justified. This would not hinder an applicant seeking a restraining order where a bona fide case of harassment exists as raising evidence would not be difficult in such

¹⁰³ Above n 68, cl 4.

cases. This would be especially important if the court was authorised to issue ex parte orders.¹⁰⁴

4 Restrictive requirement that applications for restraining orders be made on notice

Applications for restraining orders must be made on notice.¹⁰⁵ The respondent, and any associate in respect of whom a direction is sought, then has 30 days to produce a statement of defence.¹⁰⁶ These time delays leave the victim vulnerable. Further, the harasser may seek to defend the application despite lack of reasonable grounds as it provides an opportunity to gain access to the victim in court.¹⁰⁷ The Ministry of Justice justified the position that orders should be available on notice only by claiming the behaviour that is the target of the civil remedy is less serious in nature and effect than that required to make out the criminal offence.¹⁰⁸ As a consequence the need for urgency is reduced. But as has been discussed a criminal conviction can only be secured where the harasser has intent or knowledge of the fear he or she is creating. Situations not encompassed within these criteria may nonetheless require urgent protection. The Police are concerned that all victims should have adequate protection in the period before a protection order is obtained.¹⁰⁹ Ex parte orders are available in domestic violence cases.¹¹⁰ Such protection is no less important for victims of harassment outside of a domestic relationship. Provision should be made to enable the court to grant ex parte interim orders prior to making a final order.

¹⁰⁴ The Bill does not authorise the court to issue ex parte orders but the author argues such orders should be available. See text at VII, C, 4.

¹⁰⁵ Above n 68, cl 12.

¹⁰⁶ District Court Rule # 128, High Court Rule #120.

¹⁰⁷ In one case of which the author is aware the stalker took every opportunity to defend applications for tortious injunctions against the advice of counsel because it facilitated access to the victim during the hearing.

¹⁰⁸ Minister of Justice *Memorandum for Cabinet Social Policy Committee - Proposals to Give Greater Protection to Victims of Harassment* 24 June 1996, 9.

¹⁰⁹ Above n 108, 8.

¹¹⁰ Above n 8, s 13.

Admittedly, not all applications should proceed without notice. The serious consequences of a breach of an injunction make it important for there to be safeguards when applications are made to the court without notice to the defendant. The option of granting an ex parte interim order should be available at the discretion of the court which should consider the risk of harm if the order was not made immediately, and whether the defendant was deliberately evading service of the notice of the application. The defendant could be given an opportunity to make representations as soon as just and convenient, at a full hearing.¹¹¹

5 Concerns about the Police power to request details of alleged harasser

Clause 22 grants the Police the power to require an alleged harasser to supply to the Police their name and address. Clauses 22(5) and 23 make it an offence not to do so. Clause 24 permits the Police to give the information to the alleged victim to enable an application for a restraining order to be made. This power is wider than that usually granted to the Police. Such power is normally predicated on a suspicion that a criminal offence has been committed.¹¹²

There should be a duty resting on the Police to have reasonable grounds to believe that there is a valid basis for the complaint before requiring the alleged harasser to give any information¹¹³ rather than merely being satisfied that there is "some basis for the complaint."¹¹⁴ Further, under s 22(5) the Police should be required to warn the alleged harasser that the request is being made as a result of a complaint of harassment, that the particulars will be passed on to the complainant to enable an application for a restraining order to be made, and that

¹¹¹ The United Kingdom Government supports provisions for an interim order to be awarded at the discretion of the Judge after consideration of these factors. Above n 5, 7.

¹¹² For example in the Summary Offences Act 1981, s 39 and the Crimes Act 1961, s 317A(3)(a).

¹¹³ The New Zealand Law Society advocated this in their submission on the Bill. New Zealand Law Society *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*.

¹¹⁴ Above n 68, cl 22(3).

it is an offence to refuse to supply the particulars.¹¹⁵ This would have three benefits. It would protect the rights of the alleged harasser and facilitate their co-operation in supplying details. Further, it would have a similar effect to the Los Angeles Threat Management Unit initiative which ensures that the stalker knows that the Police are aware of and concerned about the behaviour.

6 Court authority and requirement to consider whether a psychiatric assessment should be made

The government in considering protective legislation recognised that overseas evidence suggests that many stalkers suffer from mental disorders.¹¹⁶ Specific provisions should be introduced to require the court to consider whether, when a conviction of criminal harassment is made, or a restraining order is granted, the stalker should undergo psychiatric assessment.

The court has jurisdiction to order an assessment by a psychiatrist where the stalker is charged with an offence punishable by imprisonment.¹¹⁷ Where convicted either for criminal harassment or for breach of a civil order the stalker may be liable to imprisonment,¹¹⁸ thus the court could order a psychiatric assessment for a stalker charged with such offences.

However, where the court is considering whether to grant a civil restraining order there is not comprehensive authority to order a psychiatric assessment. The High Court has the authority to order a person party to civil proceedings to submit to a psychiatric assessment where their mental condition is relevant to the proceedings.¹¹⁹ However, the District Court does not have similar authority.

¹¹⁵ Above n 113.

¹¹⁶ Above n 13, 13.

¹¹⁷ Above n 91, s 121.

¹¹⁸ Above n 68, cl 8, cl 21.

¹¹⁹ The Judicature Act 1908, s 100.

Such authority should be granted in the Bill because most applications for civil orders would be heard in the District Court.¹²⁰

Further, a specific provision requiring the court to exercise a discretion to determine whether an order for a psychiatric assessment should be made would ensure any mental disability the stalker had was not overlooked.

7 Lack of specific provision authorising discretion to make a subsidiary order concerning the possession of weapons

It is a standard provision under the Domestic Violence Act 1995 that where a protection order is made the respondent must not possess, or be in control of any weapon, and must not hold a firearms licence.¹²¹ Although the court has authority to impose special conditions,¹²² a specific reference to a discretion to impose a similar condition would ensure it was not overlooked in appropriate cases.

8 Discharge of an order against the respondent automatically discharges an order against an associate respondent

Where an order is discharged against the respondent, this automatically discharges the order against any associate respondent.¹²³ An order can be discharged against the associate respondent leaving intact the order against the respondent.¹²⁴ The converse should be available for cases where the associate respondent has become a greater problem than the respondent. Otherwise the court will have to maintain the order against the respondent until an order can be sought against the associate respondent in their own capacity. This may be unjust where an order against the respondent is no longer necessary to protect

¹²⁰ Only where an order is made or refused, or proceedings are otherwise determined or dismissed may appeals be made to the High Court. Above n 68, cl 28.

¹²¹ Above n 8, s 21.

¹²² Above n 68, cl 17.

¹²³ Above n 68, cl 20(3).

¹²⁴ Above n 68, cl 20(5).

the applicant from further harassment. Further, this will require the victim to return to court to demonstrate the order against the associate respondent remains necessary for their protection from harassment.

9 Lack of provision for an order against a child

Clause 11 provides that no restraining order can be made against a child under 17 who has not been married. There is also a concern that a minor cannot be joined as an associate respondent in a restraining order.¹²⁵ Although this restriction is consistent with the prohibition on granting protection orders against minors under the Domestic Violence Act,¹²⁶ particular concern is created in this instance because young people are often perpetrators of harassment or easily encouraged by older people to act on their behalf. Where a charge against a young person is proved the Youth Court may make a supervision order.¹²⁷ This may be a more appropriate method of dealing with applications for restraining orders against young people. Provision should be made in the Bill directing that the Youth Court consider whether a supervision order should be made against a young person engaging in stalking behaviour.

10 Lack of provisions addressing concerns about public registers

Currently where a victim of stalking behaviour takes steps to avoid further harassment by moving house, obtaining an unlisted telephone number and using a post office box their efforts may be undermined as, notwithstanding the Privacy Act 1993, information which is compulsorily obtained for public registers is available for public search.¹²⁸ Examples of public registers are the electoral roll and motor vehicle register.¹²⁹ The Domestic Violence Act provides that an

¹²⁵ Concern was expressed by the National Council of Women of New Zealand in their submission. National Council of Women of New Zealand *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*, 24 April 1997.

¹²⁶ Above n 8, s 10.

¹²⁷ The Children Young Persons and Their Families Act 1989, s 307.

¹²⁸ Above n 21, s 7(6).

¹²⁹ Other statutory registers which have been declared to be "public registers" for the purposes of the Privacy Act are set out in Privacy Act 1993, Second Schedule.

individual who has obtained a protection order can apply to any agency which maintains a public register requiring identifying information about them to be held confidentially.¹³⁰ That right should be available to individuals who obtain a restraining order under the Harassment and Criminal Associations Bill.¹³¹ Currently there is provision for people who fear for their safety to have details held on a confidential list in respect of some public registers including the electoral roll¹³² and motor vehicle register,¹³³ but not all victims of harassment fear for their safety. Nonetheless they may dread continuing attempts at contact from the harasser and the case for keeping details confidential is strong. Such provisions could be made in this Bill or the issue could be addressed more comprehensively in the Privacy Act by changing the basis for the use of public registers from a confidential holding of information in "exceptional cases" to a release of information on a "need to know" basis. This would benefit other categories of people such as jury members who may have been threatened, witnesses of offences, and public figures.

11 Drafting problems in the Bill

(a) Complexity of the Bill

The Bill is very complex and difficult to follow.¹³⁴ In particular clauses 2 to 6 require rationalisation to make the legislation more accessible by improving clarity. Clauses 2, 3, 4 and 5 all contain interpretations and definitions with confusing and complex cross referencing. Clause 2 gives the interpretation of key terms. Clause 3 defines "harassment" which contains a reference to both "specific act" and "against". "Specific act" is defined in clause 4. "Against" is

¹³⁰ Above n 8, s 108.

¹³¹ This was advocated by the Privacy Commissioner in his submission on the Bill. The Privacy Commissioner *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*, 23 January 1997.

¹³² The Electoral Act 1993, s 155.

¹³³ The Transport (Driver and Vehicle Licensing and Registration) Act 1986, s 19(5).

¹³⁴ The Legislation Advisory Committee expressed concern at the lack of clarity in the Bill in their submission on the Bill. Above n 99.

defined in clause 5. All interpretation could be undertaken in a more comprehensive interpretation section.

(b) Definition of “against”

Clause 5 defines the “meaning of specified act *against* a person”. Clause 3 refers to both “a pattern of behaviour that is directed *against* that other person” and “any specified act *against* the other person”. It is unclear whether it is intended that the meaning of “against” as defined in clause 5, as it relates to “specified act”, should also be related to “a pattern of behaviour that is directed against”.¹³⁵

The clarity of the legislation could be improved by omitting clause 5 and including in the “specified acts” circumstances where these acts are directed at a relative¹³⁶ of the primary victim due to the primary victim’s relationship with that relative. This is almost already achieved, albeit in a confusing and complex manner, by clause 4(2). However, clause 4(2) has the additional requirement that that primary victim must reasonably fear for their own safety. If this additional requirement was omitted clause 5 and clause 4(2) would be essentially the same.

(c) Prohibition of encouragement of another person to do a specified act

The incompleteness and complexity of these interpretation and definition clauses creates problems in later substantive clauses. Namely, clause 13(2) concerning the power to make a restraining order provides “[f]or the purposes of [whether there exists the power to make an order] a respondent who encourages another person to do a specified act against the applicant is regarded as having done that specified act personally.” This subsection would be unnecessary if

¹³⁵ The Legislation Advisory Committee noted this apparent oversight in their submission on the Bill. Above n 99.

¹³⁶ Where “relative” means any person with whom the applicant has a family relationship as defined by s 2 of the Bill.

included in the "specified acts" was the encouragement of another person to do a specified act. Furthermore, it is more appropriate to prohibit encouragement prima facie than artificially deem that person to have personally done the act concerned.

12 Inclusion in legislation predominantly targeting concerns about gang behaviour

This specialist legislation is included in a Bill predominantly directed at increasing Police powers to investigate criminal gang activities. This raises an issue of accessibility and detracts from the message that the provisions are available for general application.¹³⁷

13 Choice of terminology - stalking or harassment?

The Bill uses the term "harassment" rather than "stalking". The explanation given for this choice of terminology is: "The term "stalking" is an emotive and somewhat misleading term. It conjures up an image of a prowler or an obsessive person who, either out of misguided adoration or hatred, persistently follows and harasses their victim. However, persistent and on-going harassment can occur in a variety of situations, all equally disturbing to the victim."¹³⁸ Harassment is thus used to avoid the stereotypical images of "stalking".

However, the term harassment causes image problems. It does not necessarily convey the idea that the Bill is aimed at providing protection against persistent harassment or a pattern of behaviour rather than isolated incidents. "Harassment" is often associated with sexual or racial harassment which often occur in isolated incidents. A person seeking recompense or protection from such isolated incidents of harassment will find no remedy in this Bill. The term stalking may be emotive but correctly describes the behaviour targeted.

¹³⁷ The Legislation Advisory Committee expressed such a concern in their submission on the Bill. Above n 99.

¹³⁸ Above n 17, 1.

"Stalking" is accepted as an appropriate label in United States and Australian legislation and the proposed English legislation. Further, the powerful connotation attributable to the term stalking creates a stronger socially condemnatory and deterrent effect.

14 Choice of terminology - protection or restraining orders?

Clause 6 states that the object of this Bill is to "provide greater protection to victims of harassment...". However, civil orders under this Bill are known as "restraining orders" which refers to the behaviour of the harasser rather than "protection orders" which would refer to the effect on the victim. Orders under the Domestic Violence Act are called "protection orders" and are similar in purpose to orders under this Bill. In contrast, orders under the Proceeds of Crime Act 1991¹³⁹ which allows property to be seized are called "restraining orders". It would be more appropriate for this Bill to use the term "protection order". However, if consistent terminology was desired amendments to other legislation would also be necessary. Orders available under the Children, Young Persons and Their Families Act which have the purpose of protecting children and young persons are also called restraining orders.¹⁴⁰

VIII CONCLUSION

It is commendable that the recognised need for specialised legislation is now being addressed in the Harassment and Criminal Associations Bill. It is clear this proposal draws on the experience of the effectiveness and drawbacks of legislation in other jurisdictions. The proposal largely meets the need for comprehensive protection although a number of problems and inadequacies are evident and these should be addressed before the Bill is enacted.

¹³⁹ The Proceeds of Crime Act 1991, s 39.

¹⁴⁰ The Children, Young Persons and Their Families Act 1989, s 87.

APPENDIX 1: Parts I - IV Harassment and Criminal Associations Bill

As it is desirable that protections be enacted without prolonged delay it may be inevitable that some loopholes and complexity, which may make the final legislation difficult to apply, will remain. For this reason it would be beneficial if a review of the effectiveness of the legislation in providing comprehensive protection could be undertaken after a suitable period of its operation.

HARASSMENT AND CRIMINAL ASSOCIATIONS

ANALYSIS

1. Short Title and commencement	22. Power to require persons to supply names and addresses
2. Offences	23. Offences
3. Harassment	24. Police may require information to make applications for restraining orders to be made
4. Restraining orders	PART IV
5. Offences in connection with restraining orders	General Provisions
6. Offences in connection with restraining orders	25. Duration of order
7. Offences in connection with restraining orders	26. Extension of order
8. Offences in connection with restraining orders	27. Copies of orders to be sent to Police
9. Offences in connection with restraining orders	28. Appeals
10. Offences in connection with restraining orders	29. Appeals to High Court
11. Offences in connection with restraining orders	30. Appeals to Court of Appeal
12. Offences in connection with restraining orders	31. Appeals to be heard in open or private court
13. Offences in connection with restraining orders	32. Effect of appeal
14. Offences in connection with restraining orders	33. Power to Close Court and Restrict Publication of Proceedings
15. Offences in connection with restraining orders	34. Power to Close Court and Restrict Publication of Proceedings
16. Offences in connection with restraining orders	35. Commencement of certain orders under section 22
17. Offences in connection with restraining orders	36. Rules and Regulations
18. Offences in connection with restraining orders	37. Rules of Court
19. Offences in connection with restraining orders	38. Regulations
20. Offences in connection with restraining orders	39. Saving
21. Offences in connection with restraining orders	40. Other remedies for harassment not limited or affected
	PART V
	Enforcement of Orders
	41. Power to be used with Criminal Act 1991
	42. Power to be used with Criminal Act 1991
	43. Power to be used with Criminal Act 1991
	44. Power to be used with Criminal Act 1991
	45. Power to be used with Criminal Act 1991
	46. Power to be used with Criminal Act 1991
	47. Power to be used with Criminal Act 1991
	48. Power to be used with Criminal Act 1991
	49. Power to be used with Criminal Act 1991
	50. Power to be used with Criminal Act 1991

APPENDIX 1: Parts I - IV Harassment and Criminal Associations Bill

Hon. D. A. M. Graham

HARASSMENT AND CRIMINAL ASSOCIATIONS

ANALYSIS

Title	<i>Power to Require Person to Supply Name and Address</i>
1. Short Title and commencement	22. Power to require person to supply name and address
PART I	23. Offence
PRELIMINARY PROVISIONS	24. Police may release information to enable application for restraining order to be made
2. Interpretation	PART IV
3. Meaning of "harassment"	GENERAL PROVISIONS
4. Meaning of "specified act"	<i>General Provisions</i>
5. Meaning of specified act "against" a person	25. Standard of proof
6. Object	26. Admission of evidence
7. Act to bind the Crown	27. Copies of orders to be sent to Police
PART II	<i>Appeals</i>
CRIMINAL HARASSMENT	28. Appeals to High Court
8. Criminal harassment	29. Appeals to Court of Appeal
PART III	30. Appeals to be heard as soon as practicable
CIVIL HARASSMENT	31. Effect of appeal
<i>Applications</i>	<i>Powers to Clear Court and Restrict Publication of Proceedings</i>
9. Application for restraining order	32. Power to clear court and restrict publication of proceedings
10. Contents of application	33. Contravention of orders made under section 32
11. Application against minors	<i>Rules and Regulations</i>
12. Applications for restraining order to be on notice	34. Rules of Court
13. Power to make restraining order	35. Regulations
14. Defence to prove that specified acts done for lawful purpose	<i>Saving</i>
15. Protection from respondent's associates	36. Other remedies for harassment not limited or affected
<i>Conditions of Restraining Orders</i>	PART V
16. Standard conditions of restraining orders	AMENDMENTS TO CRIMES ACT 1961
17. Court may impose special conditions	37. Part to be read with Crimes Act 1961
<i>Duration, Variation, and Discharge of Restraining Orders</i>	38. New heading and section inserted
18. Duration of restraining order	<i>Participation in Criminal Gang</i>
19. Power to vary restraining order	98A. Participation in criminal gang
20. Power to discharge restraining order	39. New heading and section substituted
<i>Enforcement of Restraining Orders</i>	
21. Offence to contravene restraining order	

*Harassment and Criminal Associations**Interpretation*

- 312A. Interpretation
- 40. New heading inserted
- 41. Application by Police for warrant to intercept private communications
- 42. Matters on which Judge must be satisfied in respect of applications
- 43. New heading and sections inserted

Applications for Interception Warrants in Relation to Serious Violent Offences

- 312CA. Application by Police for warrant to intercept private communications in relation to serious violent offences
- 312CB. Matters on which Judge must be satisfied in respect of applications relating to serious violent offences
- 44. New heading inserted
- 45. Contents and term of warrant
- 46. Renewal of warrants
- 47. Emergency permits
- 48. Destruction of irrelevant records made by use of listening device
- 49. Destruction of relevant records made by use of listening device
- 50. Inadmissibility of evidence of private communications unlawfully intercepted
- 51. Inadmissibility of evidence of private communications lawfully intercepted
- 52. Commissioner of Police to give information to Parliament
- 53. New sections substituted
 - 317A. Power to stop vehicles
 - 317AA. Powers incidental to stopping vehicles
 - 317AB. Offences relating to stopping vehicles
- 54. Road blocks
- 55. New Sixth Schedule substituted

PART VI

AMENDMENTS TO CRIMINAL JUSTICE ACT 1985

- 56. Part to be read with Criminal Justice Act 1985
- 57. Non-association order
- 58. Cumulative orders and sentences
- 59. Commencement of period of non-association
- 60. Effect of subsequent sentences
- 61. Variation or cancellation of order
- 62. New sections substituted
 - 77B. Court may impose conditions of non-association on release on parole or final release date
 - 77BA. Variation or discharge of conditions of non-association

PART VII

AMENDMENTS TO LOCAL GOVERNMENT ACT 1974

- 63. Part to be read with Local Government Act 1974

- 64. New Part inserted

PART XLIIIc

REMOVAL ORDERS

Application for Removal Order

- 692Zc. Interpretation
- 692Zd. Application for removal order
- 692Ze. Evidence of convictions
- 692Zf. Form of removal order

Objection to Removal Order

- 692Zg. Notice of objection
- 692Zh. Court may confirm, vary, or discharge order

Compliance with Removal Order

- 692Zi. Compliance with removal order
- 692Zj. No civil proceedings against person executing removal order

Miscellaneous Provisions

- 692Zk. Rules of Court
- 65. Removal of fences, structures, and vegetation
- 66. Savings and transitional provision

PART VIII

AMENDMENTS TO MISUSE OF DRUGS ACT 1975

- 67. Part to be read with Misuse of Drugs Act 1975
- 68. Meaning of "Amendment Act"
- 69. Interpretation
- 70. New heading substituted
- 71. Matters on which Judge must be satisfied in respect of applications
- 72. New heading and sections inserted

Applications for Interception Warrants in Relation to Prescribed Cannabis Offences

- 15A. Application by Police for warrant to intercept private communications in relation to prescribed cannabis offences
- 15B. Matters on which Judge must be satisfied in respect of applications relating to prescribed cannabis offences
- 73. New heading inserted
- 74. Contents and term of warrant
- 75. Renewal of warrants
- 76. Emergency permits
- 77. Destruction of irrelevant records made by use of listening device
- 78. Destruction of relevant records made by use of listening device
- 79. Inadmissibility of evidence of private communications unlawfully intercepted
- 80. Inadmissibility of evidence of private communications lawfully intercepted
- 81. Privileged evidence

Harassment and Criminal Associations

3

82. Commissioner of Police to give information to Parliament
83. New First Schedule substituted

85. Interpretation
86. Associating with convicted thieves
87. Associating with violent offenders
88. Intimidation
89. Fines increased Schedules

PART IX

AMENDMENTS TO SUMMARY OFFENCES ACT 1981

84. Part to be read with Summary Offences Act 1981

A BILL INTITULED

An Act to provide greater protection against harassment and impose greater restrictions on criminal associations; and, in particular,—

- 5 (a) To provide criminal and civil remedies in respect of harassment; and
- (b) To amend the Crimes Act 1961—
- 10 (i) To prohibit participation in criminal gangs; and
- (ii) To extend the circumstances in which the Police may be authorised to intercept private communications to include certain serious violent offences in which groups of persons are involved; and
- 15 (iii) To extend the powers of the Police to search vehicles stopped by them in certain circumstances; and
- (c) To amend the Criminal Justice Act 1985 in relation to the imposition of non-association orders and conditions; and
- 20 (d) To amend the Local Government Act 1974 to strengthen the existing power to remove gang fortifications; and
- 25 (e) To amend the Misuse of Drugs Act 1975 to extend the circumstances in which the Police may be authorised to intercept private communications to include certain cannabis offences in which members of organised criminal enterprises are involved; and
- 30 (f) To amend the Summary Offences Act 1981—
- (i) To make habitual association with a violent offender an offence; and
- (ii) To extend the ambit of the offence of intimidation; and

4 *Harassment and Criminal Associations*

(iii) To increase the maximum fines that may be imposed under that Act

BE IT ENACTED by the Parliament of New Zealand as follows:

- 1. Short Title and commencement**—(1) This Act may be cited as the Harassment and Criminal Associations Act 1996. 5
 (2) Except as provided in sections 37 (2), 56 (2), 63 (2), 67 (2), and 84 (2) of this Act, this Act shall come into force on the 1st day of January 1997.

PART I

PRELIMINARY PROVISIONS 10

- 2. Interpretation**—In this Part and Parts II to IV of this Act, unless the context otherwise requires,—

“Applicant” means a person who applies for an order under this Part and Parts III and IV of this Act on his or her own behalf: 15

“Associated respondent” means a person against whom a restraining order applies by virtue of a direction made pursuant to section 15 of this Act:

“Child” means a person who is under the age of 17 years; but does not include a person who is or has been married: 20

“Court” means a District Court; and includes a District Court Judge:

“Encourage” includes to incite, counsel, or procure:

“Family member”, in relation to a person, means,— 25

(a) Any other person who is or has been related to the person by blood, marriage, or adoption:

(b) Any other person who is a member of the person’s whanau or other culturally recognised family group: 30

(c) In the case of partners who are not legally married, any other person who would be a family member of that person pursuant to paragraph (a) or paragraph (b) of this definition if the partners were, or were able to be, married to each other: 35

“Harassment” has the meaning set out in section 3 of this Act; and “harass” has a corresponding meaning:

“Partner”, in relation to a person, means—

(a) Any other person to whom the person is or has been legally married: 40

(b) Any other person (whether the same or the opposite gender) with whom the person lives or has

lived in a relationship in the nature of marriage (although those persons are not, or were not, or are not or were not able to be, legally married to each other):

5 “Property”, in relation to a person, means property (whether real or personal) that—

(a) The person owns; or

(b) The person does not own but—

(i) Uses or enjoys; or

10 (ii) Is available for the person’s use or enjoyment; or

(iii) Is in the person’s care or custody; or

(iv) Is at the person’s dwellinghouse:

15 “Registrar” means the Registrar of a Court; and includes a Deputy Registrar of a Court:

20 “Respondent” means the person against whom an application for a restraining order has been made under this Part and Parts III and IV of this Act; and includes a person (other than an associated respondent) against whom a restraining order is made under this Part and Parts III and IV of this Act:

“Restraining order” means an order made under section 13 of this Act:

25 “Safety”, in relation to any person, includes that person’s mental well-being:

“Special condition”, in relation to a restraining order, means any condition of the order imposed pursuant to section 17 of this Act:

30 “Specified act” means one of the types of activity specified or described in section 4 (1) of this Act.

(2) For the purposes of this Part and Parts II to IV of this Act, a person is in a family relationship with another person if the person—

35 (a) Is a partner of the other person; or

(b) Is a family member of the other person.

40 **3. Meaning of “harassment”**—(1) For the purposes of this Part and Parts II to IV of this Act, 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 against the other person on at least 2 separate occasions within a period of 12 months.

(2) The specified acts required for the purposes of subsection (1) of this section may be the same type of specified act on each

separate occasion, or any number of different types of specified acts.

4. Meaning of "specified act"—(1) For the purposes of this Part and Parts II to IV of this Act, a specified act, in relation to a person, means any of the following acts: 5

(a) Watching, loitering near, or preventing or hindering access to or from, that person's place of residence, business, employment, or any other place that the person frequents for any purpose: 10

(b) Following, stopping, or accosting that person: 10

(c) Entering, or interfering with, property in that person's possession:

(d) Telephoning, or otherwise communicating with, that person:

(e) Giving offensive material to that person, or leaving it where it will be found by, given to, or brought to the attention of, that person: 15

(f) Acting in any other way that could reasonably cause that person, given his or her particular circumstances, to fear for his or her safety. 20

(2) Without limiting the generality of paragraph (f) of subsection (1) of this section, an act is a specified act, in relation to a person, for the purposes of that paragraph if—

(a) The act involves acting in a particular way in relation to any other person with whom the first-mentioned person is in a family relationship; and 25

(b) The doing of the act is due, in whole or in part, to the first-mentioned person's family relationship with the other person; and

(c) Acting in that way in relation to that other person could reasonably cause the first-mentioned person, given his or her circumstances, to fear for the first-mentioned person's safety, whether or not acting in that way causes or is likely to cause the other person to fear for the other person's safety. 30 35

5. Meaning of specified act "against" a person— Without limiting the generality of section 4 (1) (f) of this Act, a specified act is done against a person, for the purposes of this Part and Parts II to IV of this Act, if that act is done—

(a) In relation to that person; or 40

(b) In relation to any other person with whom the first-mentioned person is in a family relationship, and the doing of the act is due, in whole or in part, to the

first-mentioned person's family relationship with the other person.

- 5 **6. Object**—(1) The object of this Part and Parts II to IV of this Act is to provide greater protection to victims of harassment by—
- (a) Recognising that behaviour that may appear innocent or trivial when viewed in isolation may amount to harassment when viewed in context; and
- (b) Ensuring that there is adequate legal protection for all victims of harassment.
- 10 (2) This Part and Parts II to IV of this Act aim to achieve their object by—
- (a) Making the most serious types of harassment a criminal offence:
- 15 (b) Empowering the Court to make orders to protect victims of harassment who are not covered by domestic violence legislation:
- (c) Providing effective sanctions for breaches of the criminal and civil law relating to harassment.
- 20 (3) Any Court which, or any person who, exercises any power conferred by or under this Part and Parts II to IV of this Act must be guided in the exercise of that power by the object specified in subsection (1) of this section.

7. Act to bind the Crown—This Part and Parts II to IV of this Act bind the Crown.

25

PART II

CRIMINAL HARASSMENT

- 8. Criminal harassment**—(1) Every person commits an offence who harasses another person, in any case where—
- 30 (a) The first-mentioned person intends that harassment to cause that other person to fear for—
- (i) That other person's safety; or
- (ii) The safety of any person with whom that other person has a family relationship; or
- 35 (b) The first-mentioned person knows that the harassment is likely to reasonably cause that other person to fear for—
- (i) That other person's safety; or
- (ii) The safety of any person with whom that other person has a family relationship.
- 40 (2) Every person who commits an offence against this section is liable, on summary conviction, to imprisonment for a term not exceeding 2 years.

PART III

CIVIL HARASSMENT

Applications

9. Application for restraining order—(1) Subject to subsection (2) of this section, any person who is being or has been harassed by another person may apply to the Court for a restraining order in respect of that other person. 5

(2) A person who is or has been in a domestic relationship with another person may not apply under this Part and Parts I and IV of this Act for a restraining order in respect of that other person. 10

(3) For the purposes of subsection (2) of this section, “domestic relationship” has the same meaning as it has in the Domestic Violence Act 1995.

Cf. 1995, No. 86, s. 7 15

10. Contents of application—Any application for a restraining order may seek a direction under section 15 of this Act that the order apply against a particular person, being a person whom the respondent has encouraged or is encouraging to engage in behaviour that, if engaged in by the respondent, would amount to harassment of the applicant. 20

Cf. 1995, No. 86, s. 8

11. Application against minors—(1) No application for a restraining order may be made against a child.

(2) The Court must not make a direction under section 15 of this Act that a restraining order apply against a child. 25

(3) For the avoidance of doubt, it is hereby declared that—

(a) An application for a restraining order may be made against a minor who is or has been married, or who has attained the age of 17 years, and orders may be made on the application, and enforced; and 30

(b) The Court may make a direction under section 15 of this Act that a restraining order apply against such a minor,—

as if the minor were of full age. 35

Cf. 1995, No. 86, s. 10

12. Applications for restraining order to be on notice—Every application for a restraining order must be made on notice to—

(a) The respondent; and 40

(b) Every person in respect of whom a direction under section 15 of this Act is sought—
in accordance with rules of Court.

5 **13. Power to make restraining order**—(1) Subject to section 14 of this Act, the Court may make a restraining order if it is satisfied that,—

(a) The respondent has harassed, or is harassing, the applicant; and

10 (b) In all the circumstances, the behaviour in respect of which the application is made reasonably causes the applicant distress, or threatens to reasonably cause the applicant distress, to such an extent that an order should be made; and

15 (c) The making of an order is necessary to protect the applicant from further harassment.

(2) For the purposes of subsection (1) (a) of this section, a respondent who encourages another person to do a specified act against the applicant is regarded as having done that specified act personally.

20 (3) For the avoidance of doubt, an order may be made under subsection (1) of this section where the need for protection arises from the risk of the respondent doing, or encouraging another person to do, a specified act of a different type from the specified act found to have occurred for the purposes of
25 paragraph (a) of that subsection.

Cf. 1995, No. 86, s. 14

30 **14. Defence to prove that specified acts done for lawful purpose**—A specified act may not be relied on to establish harassment for the purposes of section 13 (1) (a) of this Act if the respondent proves that the specified act was done for a lawful purpose.

35 **15. Protection from respondent's associates**—(1) Subject to subsection (2) of this section, where the Court makes a restraining order against the respondent, the Court may also direct that the order apply against a person whom the respondent is encouraging, or has encouraged, to do any specified acts against the applicant, where those specified acts, whether alone or together with any specified acts against the applicant done by the respondent or by any other person with
40 the encouragement of the respondent, amount to harassment of the applicant.

10

Harassment and Criminal Associations

(2) No direction may be made under **subsection (1)** of this section in respect of a person unless the Court is satisfied that,—

- (a) The person is doing, or has done, a specified act against the applicant; and 5
- (b) In all the circumstances, the behaviour of the person reasonably causes the applicant distress, or threatens to reasonably cause the applicant distress, to such an extent that a direction under this section should be made; and 10
- (c) The making of a direction under this section is necessary to protect the applicant from further harassment.

(3) A direction may be made pursuant to **subsection (1)** of this section whether the specified acts against the applicant were done before or after a restraining order was made. 15

(4) **Subsections (2) and (3) of section 13** of this Act, and **section 14** of this Act, apply, with the necessary modifications, in respect of an application for a direction pursuant to **subsection (1)** of this section.

Cf. 1995, No. 86, s. 17 20

Conditions of Restraining Orders

16. Standard conditions of restraining orders—(1) It is a condition of every restraining order that, except as permitted under any special condition of the restraining order, the respondent must not— 25

- (a) Do, or threaten to do, any specified act against the person for whose protection the order is made; or
- (b) Encourage any person to do any specified act against the person for whose protection the order is made, where the specified act, if done by the respondent, would be prohibited by the order. 30

(2) Where, pursuant to a direction made under **section 15** of this Act, a restraining order applies against an associated respondent, the provisions of this section apply, with all necessary modifications, in respect of the associated respondent. 35

Cf. 1995, No. 86, s. 19

17. Court may impose special conditions—(1) Where the Court makes a restraining order, it may impose any conditions that are reasonably necessary, in the opinion of the Court, to protect the person for whose protection the order is 40

made from further harassment by the respondent, or the associated respondent, or both.

(2) Where the Court imposes a condition under this section, it may specify the period during which the condition is to have effect.

(3) In the absence of a direction under subsection (2) of this section, a special condition has effect for the duration of the restraining order, unless sooner varied or discharged.

Cf. 1995, No. 86, s. 27

10 *Duration, Variation, and Discharge of Restraining Orders*

18. Duration of restraining order—(1) A restraining order may be made for such period (whether longer or shorter than 1 year) as the Court considers necessary to protect the applicant from further harassment.

15 (2) A restraining order continues in force until,—

(a) It is discharged pursuant to section 20 of this Act; or

(b) Where the Court directs that the order is to be in force for a specified period, the expiry of that period; or

(c) In the absence of such a direction, the expiry of 1 year from the date on which the order is made.

20 Cf. 1995, No. 86, s. 45

19. Power to vary restraining order—(1) The Court may, if it thinks fit, on the application of the applicant or the respondent, vary a restraining order,—

25 (a) By varying or discharging any special condition:

(b) By imposing any special condition:

(c) Subject to subsection (4) of this section, by varying the duration of the order, whether by making a direction pursuant to section 18 of this Act or by varying any such direction.

(2) Where a restraining order applies against an associated respondent, the Court may, if it thinks fit, on the application of the applicant or the associated respondent, vary the restraining order, in so far as it relates to the associated respondent,—

35 (a) By varying or discharging any special condition:

(b) By imposing any special condition:

(c) Subject to subsection (4) of this section, by varying the duration of the order, whether by making a direction pursuant to section 18 of this Act or by varying any such direction.

(3) The Court may, if it thinks fit, on the application of the applicant, vary a restraining order by directing, pursuant to

40

section 15 of this Act, that the restraining order apply against a particular person.

(4) The Court must not extend the duration of a restraining order pursuant to this section unless the Court is satisfied that the extension is necessary to protect the applicant from further harassment. 5

Cf. 1995, No. 86, s. 46

20. Power to discharge restraining order—(1) The Court may, if it thinks fit, on the application of the applicant or the respondent, discharge a restraining order. 10

(2) On an application under subsection (1) of this section, the Court may discharge a restraining order even though the order applies against an associated respondent pursuant to a direction made under section 15 of this Act.

(3) Where a restraining order to which subsection (2) of this section relates is discharged, the order ceases to have effect against the associated respondent as if that person had applied for and been granted a discharge of the order pursuant to subsection (4) of this section. 15

(4) Where a restraining order applies against an associated respondent pursuant to a direction made under section 15 of this Act, the associated respondent may apply for the order to be discharged in so far as it relates to him or her. 20

(5) On an application under subsection (4) of this section, the Court may, if it thinks fit, discharge a restraining order in so far as it relates to the associated respondent. 25

Cf. 1995, No. 86, s. 47

Enforcement of Restraining Orders

21. Offence to contravene restraining order—(1) Every person commits an offence who, without reasonable excuse,— 30

- (a) Does any act in contravention of a restraining order; or
- (b) Fails to comply with any condition of a restraining order.

(2) Subject to subsection (3) of this section, every person who commits an offence against subsection (1) of this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$5,000. 35

(3) Every person who commits an offence against subsection (1) of this section is liable, where—

- (a) That person has previously been convicted on at least 2 different occasions of a qualifying offence; and 40

Harassment and Criminal Associations

13

(b) At least 2 of those qualifying offences were committed not earlier than 3 years before the commission of the offence being dealt with by the Court,—
 5 on summary conviction, to imprisonment for a term not exceeding 2 years.

(4) For the purposes of subsection (3) of this section, a qualifying offence, in relation to the offence being dealt with by the Court, is an offence against subsection (1) of this section, where the 2 offences are committed in respect of—

- 10 (a) The same restraining order; or
 (b) Restraining orders made for the benefit of the same person.

Cf. 1995, No. 86, s. 49

Power to Require Person to Supply Name and Address

15 **22. Power to require person to supply name and address—**(1) This section applies where—

- (a) A complaint is made to a member of the Police alleging that a particular person (in this section referred to as the alleged harasser) is harassing, or has harassed,
 20 another person; and
 (b) The person making the complaint does not know the name, or the address, or both, of the alleged harasser.

(2) It is not necessary, for the purposes of this section, that
 25 the harassment to which the complaint relates constitutes an offence against section 8 of this Act.

(3) Where this section applies, and a member of the Police is satisfied that there is some basis for the complaint, any member of the Police may require the alleged harasser to give
 30 particulars of his or her name and address to that member of the Police.

(4) If the member of the Police has reasonable ground to suppose that any such particulars are false, that member of the Police may require the alleged harasser to supply satisfactory
 35 evidence of those particulars.

(5) If any person, without reasonable excuse, refuses or fails to supply any particulars or evidence when required to do so by any member of the Police under this section, and persists in that refusal or failure after being warned by the member of
 40 the Police, that person may be arrested, without warrant, by any member of the Police.

14 *Harassment and Criminal Associations*

(6) For the purposes of this section, an alleged harasser includes a person who is being, or has been, encouraged, by another person, to do any specified act against a person.

(7) Nothing in this section limits or affects any other power conferred on a member of the Police to require a person to supply any particulars. 5

Cf. 1989, No. 63, s. 176 (1)-(3)

23. Offence—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$500 who, having been required by any member of the Police to supply any particulars or evidence under **section 22** of this Act, without reasonable excuse,— 10

(a) Refuses or fails to supply the particulars or evidence; or

(b) Supplies any particulars or evidence knowing that the particulars or evidence are false in a material respect. 15

Cf. 1989, No. 63, s. 176 (4)

24. Police may release information to enable application for restraining order to be made—Where a member of the Police has the name or address, or both, of a person who is alleged to be harassing, or to have harassed, another person (whether or not that information was obtained pursuant to **section 22** of this Act), any member of the Police may, at the request of the other person, disclose that information to that other person for the sole purpose of enabling that other person to apply for a restraining order against the alleged harasser. 20 25

PART IV

GENERAL PROVISIONS

General Provisions

25. Standard of proof—Every question of fact arising in any proceedings under **this Part and Parts I and III** of this Act (other than criminal proceedings) must be decided on the balance of probabilities. 30

Cf. 1995, No. 86, s. 85

26. Admission of evidence—In any proceedings under **this Part and Parts I and III** of this Act (other than criminal proceedings), and whether by way of hearing in the first instance or by way of appeal, or otherwise, the Court may receive any evidence that would not otherwise be admissible in a court of law, if the 35

Court is satisfied that the admission of the evidence is required in the interests of justice.

5 **27. Copies of orders to be sent to Police**—(1) This section applies to the following orders made under this Part and Parts I and III of this Act:

(a) A restraining order:

(b) Any order varying or discharging a restraining order.

10 (2) On the making of an order to which this section applies, the Registrar of the Court in which the order is made must ensure that a copy of the order is made available, without delay, to the officer in charge of the Police station nearest to where the person for whose protection the order was made resides.

15 (3) For the purposes of this section, a copy of an order may be made available in any of the following ways:

(a) By sending the copy by means of electronic transmission (whether by way of facsimile transmission, electronic mail, or other similar means of communication):

20 (b) By entering the copy on a database maintained in electronic form, where that database may be accessed by the person or persons to whom the copy is required to be made available:

25 (c) By making the copy available in such manner as is prescribed by regulations made under section 35 of this Act:

(d) By making the copy available in such other manner as is appropriate in the circumstances.

Cf. 1995, No. 86, s. 88

Appeals

30 **28. Appeals to High Court**—(1) Where, in any proceedings under this Part and Parts I and III of this Act, a Court—

(a) Has made or refused to make an order; or

35 (b) Has otherwise finally determined or has dismissed the proceedings,— any party to the proceedings may appeal to the High Court in accordance with this section.

(2) An appeal pursuant to this section must be made—

40 (a) Within 28 days after the making of the order or decision, or within such further time as the Court may allow in accordance with section 73 (1) of the District Courts Act 1947; and

(b) In accordance with the provisions of Part V of that Act (except subsections (1), (3), and (5) of section 71A), which apply with any necessary modifications.

(3) The Court appealed from may, on the *ex parte* application of the appellant, order that no security under section 73 (2) of the District Courts Act 1947 be given. 5

(4) Subject to section 29 of this Act, the decision of the High Court on an appeal to that Court under this section is final.

Cf. 1995, No. 86, s. 91

29. Appeals to Court of Appeal—(1) A party to any appeal under section 28 of this Act may, with leave of the Court of Appeal, appeal to the Court of Appeal against any determination of the High Court on a question of law arising in that appeal. 10

(2) On an appeal to the Court of Appeal under this section, the Court of Appeal has the same power to adjudicate on the proceedings as the High Court had. 15

(3) The decision of the Court of Appeal on an appeal to that Court under this section, and on application to it under this section for leave to appeal, is final. 20

Cf. 1995, No. 86, s. 93

30. Appeals to be heard as soon as practicable—Every appeal under section 28 or section 29 of this Act must be heard as soon as practicable after the appeal is lodged.

Cf. 1995, No. 86, s. 94

25

31. Effect of appeal—Except where the Court making the order appealed from otherwise directs,—

(a) The operation of an order made under this Part and Parts I and III of this Act is not suspended by an appeal under section 28 or section 29 of this Act; and 30

(b) Every order made under this Part and Parts I and III of this Act may be enforced in the same manner in all respects as if no such appeal were pending.

Cf. 1995, No. 86, s. 95

Powers to Clear Court and Restrict Publication of Proceedings 35

32. Power to clear court and restrict publication of proceedings—(1) Where, in any proceedings under this Part and Parts I and III of this Act, the Court is of the opinion that it is desirable to do so, after having regard to the interests of any person (including, without limitation, the privacy of the 40

applicant) and to the public interest, the Court may make any one or more of the following orders:

- (a) An order forbidding publication of any report or account of the whole or any part of—
- 5 (i) The evidence adduced:
(ii) The submissions made:
- (b) An order forbidding the publication of—
- 10 (i) The name of any person, or any name or particulars likely to lead to the identification of that person:
(ii) The affairs of any person:
- (c) An order excluding all or any persons other than the parties to the proceedings, any lawyer engaged in the proceedings, and any officer of the court, from the whole or any part of the proceedings.
- 15 (2) Every application to the Court for an order under this section may be heard in open court or in chambers.
- (3) An order made under subsection (1) (a) or subsection (1) (b) of this section,—
- 20 (a) May be made for a limited period or permanently; and
(b) If it is made for a limited period, may be renewed for a further period or periods by the Court; and
(c) If it is made permanently, may be reviewed by the Court at any time.
- 25 (4) Nothing in this section limits or restricts any other power of the Court—
- (a) To prohibition or restrict the publication of reports or particulars relating to proceedings; or
(b) To hear proceedings in private or to exclude any person from the Court.
- 30

Cf. 1985, No. 129, s. 138 (2), (4)

33. Contravention of orders made under section 32—

- (1) Every person commits an offence who breaches any order made under subsection (1) (a) or subsection (1) (b) of section 32 of this Act or evades or attempts to evade any such order.
- 35 (2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction,—
- (a) In the case of an individual, to a fine not exceeding \$1,000:
- 40 (b) In the case of a body corporate, to a fine not exceeding \$5,000.

(3) The breach of any order made under section 32 (1) (c) of this Act, or any evasion or attempted evasion of it, may be dealt with as contempt of court.

Cf. 1985, No. 120, s. 138 (7), (8)

Rules and Regulations

5

34. Rules of Court—(1) In addition to all other powers conferred by the District Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules—

- (a) Regulating the practice and procedure of District Courts in proceedings under this Part and Parts I and III of this Act: 10
 - (b) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Part and Parts I and III of this Act and for their due administration. 15
- (2) Without limiting subsection (1) of this section, rules made pursuant to that subsection may—
- (a) Prescribe the procedure for the service of notices and other documents for the purposes of this Part and Parts I and III of this Act, and provide for substituted service, and for service to be dispensed with, in such circumstances as are specified in the rules: 20
 - (b) Prescribe such forms as are necessary for the purposes of this Part and Parts I and III of this Act, or authorise any specified person or persons to prescribe or approve forms, and require the use of such forms: 25
 - (c) Apply, with or without modification, provisions of the District Courts Rules 1992.
- (3) In the absence of any rules under this section or in any situation not covered by any such rules, the District Courts Rules 1992 apply, with all necessary modifications, to proceedings under this Part and Parts I and III of this Act. 30

Cf. 1995, No. 86, s. 126

35. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for such matters as are contemplated by or necessary for giving full effect to the provisions of this Part and Parts I and III of this Act and for their due administration. 35

Saving

36. Other remedies for harassment not limited or affected—Nothing in this Part and Parts I to III of this Act limits or 40

APPENDIX 2: Relevant Criminal Law Provisions

The Crimes Act 1961, Parts VII, VIII, X, XI. Relevant offences include:

- sexual offences (ss 12-13)
- murder, manslaughter, culpable homicide, infanticide, abortion, and suicide
- assaults and injuries to the person (ss 187-188)
- burglary (entering with intent to commit a crime, being armed with intent to break or enter) (ss 241-243)
- offences against personal privacy (ss 216B-216D)
- threatening to kill or do grievous bodily harm, or sending or causing to be received, knowing the contents thereof, any letter or writing containing a threat to kill or do grievous bodily harm (s 306)
- threatening to destroy property (s 307)
- threatening act with intent to intimidate or annoy a person (breaking or damaging or threatening to break or damage a house or attempting to alarm any person in any house) (s 308)

The Summary Offences Act 1981

Apart from common assault which has a maximum term of imprisonment of 6 months and a fine not exceeding \$2,000, the maximum term of imprisonment that can be imposed for a summary offence is 3 months imprisonment.

Section 21 Intimidation where a person who, with intent to frighten or intimidate:

- threatens to injure a person, family or property;
- threatens to injure or damage property;
- follows from place to place, hides property;
- deprives a person of the use of his or her property;
- watches or besets places of residence, work, business or another place where that person may happen to be, or approaches such a place;
- follows a person with 2 or more other persons in a disorderly manner in or through a street or road.

APPENDIX 2: Relevant Criminal Law Provisions

The Crimes Act 1961, Parts VII, VIII, X, XI Relevant offences include:

- sexual offences (ss 127-144)
- murder, manslaughter etc (ss 67-181)
- assaults and injuries to the person (ss 188-204)
- burglary (entering with intent to commit a crime, being armed with intent to break or enter) (ss 241-243)
- offences against personal privacy (ss 216B-216D)
- threatening to kill or do grievous bodily harm, or sending or causing to be received, knowing the contents thereof, any letter or writing containing a threat to kill or do grievous bodily harm (s 306)
- threatening to destroy property (s 307)
- threatening act with intent to intimidate or annoy a person (breaking or damaging or threatening to break or damage a house or attempting to alarm any person in any house) (s 308)

The Summary Offences Act 1981

Apart from common assault which has a maximum term of imprisonment of 6 months and a fine not exceeding \$2,000, the maximum term of imprisonment that can be imposed for a summary offence is 3 months imprisonment.

Section 21 Intimidation where a person who with intent to frighten or intimidate:

- threatens to injure a person, family or property;
- threatens to injure or damage property;
- follows from place to place, hides property;
- deprives a person of the use of his or her property;
- watches or besets places of residence, work, business or another place where that person may happen to be, or approaches such a place;
- follows a person with 2 or more other persons in a disorderly manner in or through a street or road.

Sections 3-5A Disorderly Behaviour

- Offensive language, disorderly or offensive behaviour and disorderly assembly in or within view of or within hearing of any public place.
- Disorderly behaviour on private premises by persons with convictions for violent offences.

Sections 9-11, 13-13A Offences against persons or property

- Assault (intentionally applying or attempting to apply force to another person, or threatening to do so).
- Wilful and reckless damage to property.
- Prohibitions on acts and things endangering safety and regarding the possession of knives (but this is only applicable in a public place).

Sections 29-30 Loitering and trespass

- Being found on property without reasonable excuse.
- Peering into a house.
- Loitering near it by night.

Section 33 Defacing

- Affixing material bearing writing or pictorial representation to a structure or tree or marking any structure.

The Trespass Act 1980

Sections 3 - 4 Trespass after warning to leave and trespass after warning to stay off is punishable by a fine not exceeding \$10,000 and up to three months imprisonment.

The Telecommunications Act 1987

Section 164 Offensive language and disturbing use of a telephone punishable by 3 months imprisonment and a fine of up to \$2,000.

APPENDIX 3A: Northern Territory Criminal Code, s 189 - Unlawful Stalking

In May 1994 the Northern Territory Criminal Code was amended to include the offence of unlawful stalking (s 189). Section 189 of the Code provides as follows:

- (1) A person stalks another person if, on at least 2 separate occasions -
 - (a) the person -
 - (i) follows the other person;
 - (ii) loiters outside or enters the place of residence or employment of the other person or some other place frequented by the other person;
 - (iii) interferes with property (whether or not the person has an interest in the property) in the possession of the other person;
 - (iv) keeps the other person under surveillance; or
 - (v) acts covertly in a way that could reasonably be expected to arouse the other person's apprehension or fear; and
 - (b) the person intends to cause -
 - (i) physical or mental harm to the other person or a third person; or
 - (ii) apprehension or fear.
- (2) A person who stalks another person is guilty of an offence and is liable -
 - (a) to imprisonment for 2 years; or
 - (b) where -
 - (i) the person's conduct contravened a condition of bail or an injunction or order imposed by a court (either under a law of the Commonwealth, the Territory, a State or another Territory of the Commonwealth) ; or
 - (ii) the person was, on any occasion to which the charge relates, in the possession of an offensive weapon,to imprisonment of 5 years.

APPENDIX 3B: Canadian Federal Criminal Code, s 264 - Criminal Harassment

In 1993 the Canadian Federal Criminal Code was amended to include the offence of criminal harassment (s 264). Section 264 of the Code provides as follows:

- (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.
- (2) The conduct mentioned in subsection (1) consists of
 - (a) repeatedly following from place to place the other person or anyone known to them;
 - (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
 - (c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
 - (d) engaging in threatening conduct directed at the other person or any member of their family.
- (3) Every person who contravenes this section is guilty of
 - (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
 - (b) an offence punishable on summary conviction.

I TABLE OF LEGISLATION

A *New Zealand Legislation*

The Children Young Persons and Their Families Act 1989, ss 87, 307.

The Crimes Act 1961, Parts VII, VIII, X, XI.

The Criminal Justice Act 1985, s 26(1), 88.

The Domestic Violence Act 1995, ss 4, 7, 10, 13, 14, 21, 108.

The Electoral Act 1993, s 155.

The Judicature Act 1908, s 100.

The Human Rights Act 1993, ss 21, 86(b).

The Mental Health (Compulsory Assessment and Treatment) Act 1992, s 8.

The Privacy Act 1993, ss 6, 7, 56, 82, 83, 85.

The Proceeds of Crime Act 1991, s 39.

The Summary Offences Act 1981, ss 3-5A, 9-11, 13-13A, 21, 29-30, 33.

The Summary Proceedings Act 1957, s 186.

The Telecommunications Act 1987, s 164.

The Transport (Driver and Vehicle Licensing and Registration) Act 1986, s 19(5).

The Trespass Act 1980, ss 3-4.

B *Foreign Provisions Creating an Offence of Stalking*

1 *Australian*

The Crimes Act (New South Wales), s 562.

The Criminal Code (Northern Territory), s 189.

The Criminal Code (Queensland), s 240.

The Criminal Law Consolidation Act (South Australia), s 19AA.

The Criminal Code (Tasmania), s 192.

The Crimes Act (Victoria), s 21A.

2 *American*

The California Penal Code, s 646.9.

3 *Canadian*

The Canadian Criminal Code, s 264.

C *Bills*

Harassment and Criminal Associations Bill, Parts I - IV.

Stalking (No. 2) HL Bill 176 (UK).

II TABLE OF CASES

Burnett v George [1992] 1 FLR 525.

Burris v Azadani [1995] 1 WLR 1372.

Ferguson v Carnochan (1889) 16 R 93.

Hunter v Canary Wharf Ltd [1997] 2 WLR 684.

Khorasandjian v Bush [1993] 3 WLR 476.

Patel v Patel [1988] 2 FLR 179.

PF v Dollar Unreported, 1986, Glasgow Sheriff Court.

R v Ireland [1996] TLR 22.

Re IC [1996] NZFLR 562.

T v H [1996] NZFLR 865.

T v H (No 2) Unreported, 16 October 1996, Family Court, New Plymouth Registry, FP 043 302/96.

III BIBLIOGRAPHY

A ***Submissions to Parliamentary Select Committee on Harassment and Criminal Associations Bill***

Christchurch Community Law Centre *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*, 24 April 1997.

Commonwealth Press Union, New Zealand Section *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*.

Legislation Advisory Committee *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*, 5 May 1997.

National Council of Women of New Zealand *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*, 24 April 1997.

New Zealand Law Society *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*.

The Privacy Commissioner *Submission to Justice and Law Reform Select Committee on Criminal Associations and Harassment Bill 1994*, 23 January 1997.

B ***Submissions to Parliamentary Select Committee on Domestic Violence Bill***

His Honour Judge PD Mahony *Submission to Justice and Law Reform Select Committee on Domestic Violence Bill 1994*, 10 April 1995.

C Reports from Government Departments to Ministers

Letter to Minister of Justice, From Secretary for Justice *Protection from Violence: Coverage For Other Groups*, 30 November 1994.

Letter to Minister of Justice, From Secretary for Justice *Stalking*, 9 October 1995.

Letter to Minister of Justice, From Secretary for Justice *Stalking*, 8 December 1995.

Letter to Minister of Justice, From Secretary for Justice *Stalking*, 12 February 1996.

Minister of Justice *Memorandum for Cabinet Social Policy Committee - Proposals to Give Greater Protection to Victims of Harassment*, 24 June 1996.

United Kingdom Government *Stalking: The Solutions - Consultation Paper*, 1996.

D Articles

A Bonnington "Stalking and the Scottish Courts" [1996] NLJ 1394.

G Chapple "Love Gone Wrong" *New Zealand Listener*, 23 November 1996, 25.

T Lawson-Cruttenden "Is there a Law Against Stalking?" [1996] NLJ 418.

T Lawson-Cruttenden "Stalking Farce" (1996) 93 Gazette 15.

T Lawson-Cruttenden and B Hussain "Psychological Assault and Harassment" [1996] NJL 1326.

L Leiter "The Struggle to Stretch the Long Arm of the Law" *Insight*, 15 July 1996, 18.

SL Smith "Developments in United States Criminal Law" (1995) 19 CLJ 90.

E Other Publications

W McLennan *Women's Safety Australia 1996*, (Australian Bureau of Statistics, Canberra, 1996).

C Reports from Government Departments to Ministers
Letter to Minister of Justice, From Secretary for Justice Protection from Violence
Coverage For Other Groups, 30 November 1994

Letter to Minister of Justice, From Secretary for Justice Stalking, 9 October 1995

Letter to Minister of Justice, From Secretary for Justice Stalking, 8 December
1995

Letter to Minister of Justice, From Secretary for Justice Stalking, 12 February
1996

Minister of Justice Memorandum for Cabinet Social Policy Committee -
Proposals to Give Greater Protection to Victims of Harassment, 24 June 1996

United Kingdom Government Stalking: The Solutions - Consultation Paper, 1996

D Articles

A Bonnington "Stalking and the Scottish Courts" [1996] N.L.J. 1394

G Chaplin "Love Gone Wrong" New Zealand Listener, 23 November 1996, 25

T Lawson-Cutlerden "Is there a Law Against Stalking?" [1995] N.L.J. 418

T Lawson-Cutlerden "Stalking Facts" (1995) 93 Gazette 15

T Lawson-Cutlerden and B Hussain "Psychological Assault and Harassment"

[1996] N.L.J. 1326

J Leifer "The Struggle to Stretch the Long Arm of the Law" Inq. 16 July 1996,

18

SL Smith "Developments in United States Criminal Law" (1995) 19 C.L.J. 60

E Other Publications

W McLennan Women's
Cancers, (1996)

VICTORIA UNIVERSITY OF WELLINGTON LIBRARY



3 7212 00542456 7

e

l

Folder

Mu

Muir, Natalie Helen

The need for specialist
legislation to address stalking

