Should the common law tort of harassment in Hong Kong be reformed? If so, why and how? If not, why not?

A. Introduction

In Hong Kong, due to technological advancement and a dense living environment, it is hard for victims to escape harassment, which can take place in the physical sphere or virtually in various forms. However, absent any legislation against harassment and limited causes of action, it is not unusual for these victims to frame their claims as the tort of harassment ("TH"). Unfortunately, there is much uncertainty and ambiguity regarding this particular area of tort within the common law landscape of Hong Kong, making it difficult for victims to make actionable claims, and for legal practitioners to advise on and adjudicate cases. Reforms are direly needed.

This essay is divided into three parts. Section B provides an overview of the law on TH in Hong Kong. Section C discusses problems with the current legal regime. Criticisms include (i) lingering uncertainty regarding the existence of TH in Hong Kong, (ii) the potentially problematic nature of the element of repetitiveness, and (iii) the lack of defense/control mechanism. Section D proposes three reforms that aim to solve these problems. They include (i) replacing the element of repetitiveness with gravity, (ii) introducing a defense of reasonableness, and (iii) enacting a general anti-harassment legislation.

B. The Law on TH in Hong Kong

Unlike Singapore or the UK, there is currently no local legislation on TH in the city. Prior to 2013, there was much ambiguity as to whether TH existed in the common law. While *Yau Kwong Chiu v Yau Kwong Ha*[1] was arguably the earliest case that accepted harassment as a cause of action, the CA denied its existence less than two

[1] Unreported, HCA 2607/1997, 20 February 2001.

years later[2]. In 2004, *Wong Tai Wai v HKSAR*[3], Cheung J of the CA declined to strike out a claim for harassment on the ground that it was "arguable" such tort action did exist. Two years later, Deputy Judge Carlson granted summary judgment to the plaintiffs for distress suffered on the basis of TH in *Etacol v Sinomast*[4].

Until today, the 2013 case *Lau Tat Wai v Yip Lai Kuen Joey*[5] is perhaps the most influential local decision on the issue of TH. A woman tormented her ex-boyfriend for six years, sending spam messages and threatening harm to him and his parents. Anthony Chang J, having considered the Singaporean case *Malcomson v Mehta*[6], decided to award the victim damages and order an injunction on the basis of TH. On top of recognizing TH, he defined harassment as "a course of conduct by a person, whether by words or action, directly or through third parties, ***sufficiently repetitive in nature*** as would cause, and which he ought reasonably to know would cause, worry, emotional distress or annoyance to another person" (emphasis added)[7]. In the same judgment, Anthony Chan J also expressed the need for a mental requirement of the wrongdoer but ruled that the lower threshold of recklessness instead of intention would suffice[8]. As regards the kind of injury or damage which may ground an action in TH, he ruled that harassment could result, at one end of the scale, physical injury, and at the other end, mere humiliation. He also suggested that a wrongdoer must take his victim as he finds him[9].

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[2] *朱祖永訴香港警務處* [2002] HKCA 5032.
[3] [2004] HKCA 260.
[4] [2006] 4 HKC 572.
[5] [2013] 2 HKLRD 1197.
[6] [2001] 4 SLR 454.
[7] See *n5*, [62].
[8] Ibid, [64-65].
[9] Ibid, [66].

Subsequent to *Lau*, another case, *X v Z*[10], attempted to elaborate on element of repetitiveness as mentioned by Anthony Chan J. The court stated that the course of conduct amounting to harassment must have occurred on at least two occasions in relation to the person allegedly harassed, in order to be sufficiently repetitive[11].

C. Criticisms on the Legal Regime of TH in Hong Kong

C1. Lingering uncertainty regarding existence of TH

Although *Lau* has, until now, been affirmed and applied in a number of CFI and CA decisions[12], the legitimacy to recognize TH cannot be determined merely by the number of cases applying this tort as a cause of action. This is not how the common law operates, especially when the tort action being contemplated might create rights that are significantly different from those provided in established tort law[13]. In reality, even after *Lau*, some court still decided to follow the pre-*Lau* position and declare that an actionable claim on the basis of TH did not exist.

The judgment of *Pong Seong Teresa v Chan Norman*[14] was delivered in August 2014, sometime after *Shen Xing v Li Jun*[15], a case applying *Lau* that involved a 7-month period of harassing phone calls and uninvited visits. In *Pong*, the plaintiffs alleged that one of the defendants harassed them on several occasions, including swearing at them every time they saw each other and spraying paint on the wall outside their residence. Deputy Judge Linda Chan SC at the CFI rejected the cause of action of

[10] [2020] HKCFI 826.
[11] Ibid, [14].
[12] Examples include *Shen Xing v Li Jun* [2014] HKCFI 672, *Lin Man Yuan v Kin Ming Holdings International Ltd* [2015] HKCFI 919, *Law Ka Yan Thompson v Ho Kang Wing* [2016] CFI 279, and *Sir Elly Kadoorie & Sons Ltd v Bradley* [2023] 3 HKLRD 587, [2024] 4 HKLRD 428.
[13] Rick Glfcheski, *Tort Law in Hong Kong* (5th edn, Sweet & Maxwell 2023), p741.
[14] [2014] 5 HKLRD 60.
[15] See *n12*.

TH when adjudicating the plaintiffs' claims, stating that she was bound by a pre-*Lau* precedent, *朱祖永訴香港警務處*[16], to conclude that TH did not exist at common law in Hong Kong[17]. She also ruled that *Malcomson*, heavily relied upon by Anthony Chan J in *Lau* to recognize TH, should have no application in Hong Kong due to the absence of a similar statute in Hong Kong to the Miscellaneous Offences (Public Order and Nuisance) Act (Cap.184), 1997 edition, in Singapore[18].

This decision was in conflict with not only *Lau* and *Shen*, but also subsequent cases which nonetheless continued to apply *Lau*, such as *Lin Man Yuan v Kin Ming Holdings International Ltd, Law Ka Yan Thompson v Ho Kang Wing*[19], and *Sir Elly Kadoorie & Sons Ltd v Bradley*[20]. Almost a decade after *Lau*, in the case of *勤學樂園訴黎嘉年*[21], the District Court still refused to recognize the existence of TH on the basis that it was bound by *朱祖永*, despite acknowledging the presence of numerous CFI judges who did not follow this case and supported the existence of TH at common law in Hong Kong[22].

Having reviewed the local common law development after *Lau*, it is clear that there is still not a universal consensus among Hong Kong courts on whether TH exists as a cause of action. The conflicting precedents generate legal uncertainty, making it difficult for judges to adjudicate cases and for lawyers to advise clients.

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[16] See *n2*.
[17] See *n14*, [57-61].
[18] Ibid, [60(3)].
[19] See *n12*.
[20] [2023] 3 HKLRD 586, [2024] 4 HKLRD 428. In the former judgment (at CFI), the court stated at [54] that it is "undisputed between the parties the tort of harassment exists in Hong Kong and that it is rooted in the common law". In the latter judgment (appeal at CA), the court stated at [24] that it is "not in dispute that the tort of harassment is a recognized tort under common law in Hong Kong".
[21] [2024] HKDC 585.
[22] See *n20*, [34].

C2. Element of repetitiveness might be potentially problematic

Recalling relevant passages in *Lau* and *X*[23], the conduct establishing TH must have occurred repeatedly, on at least two occasions, in relation to the person allegedly harassed. This element can be found in other common law jurisdictions, one example being Ontario. In *AHS v Johnston*[24], a landmark case recognizing the existence of TH in the Canadian province, the Court of King's Bench of Alberta ruled that the essence of harassment is repeated or persistent behavior, where a single instance of threats, insults or other offensive behavior may not be actionable on the basis of harassment. The court added that harassment occurs when the behavior is recurring and creates an oppressive atmosphere, thus any definition must specify that the behavior is repeated[25].

However, this author argues that the strict emphasis on repetitiveness is overly harsh and rigid because it overlooks cases of harassment which, despite occurring only once, inflict damage on the victim with an intensity comparable to other cases of harassment which may have occurred more than once.

One example found in the community of Hong Kong is doxxing. Doxxing usually refers to the publication of sensitive and private information of an individual on publicly accessible platforms, with a view to shame or embarrass him or her. Under Section 64(C) of the Personal Data (Privacy) Ordinance (Cap.486), a person commits an offence if he or she discloses any personal data of a data subject without the relevant consent of the data subject, with an intent to cause or being reckless as to whether it would cause any specified harm towards the data subject or the data

[23] See *n7* and *n11*.
[24] 2023 ABKB 209.
[25] Ibid, [106].

subject's family member. The formulation of this criminal offence is similar to that of TH, yet there is no requirement of repetitiveness for it to be established. This is likely because doxxing on one occasion can have an effect severe enough to cause grave damage to the data subject and his or her family, attracting criminal liability. It seems rather unreasonable for the law on TH to impose an even higher threshold than criminal law, which may result in the overlooking of single-instance harassment cases like the doxxing example mentioned.

Cases have occurred in Hong Kong where debt-collectors as perpetrators and harassers target shift workers in indebted companies. Harassment might occur repeatedly against the company's staff collectively but not individually[26]. This creates another scenario where the current law on TH in Hong Kong might lead to injustice. Harassment towards individual staff might not necessarily be "repeated" in the strictest sense, but the whole conduct still has the same effect of causing worry, emotional distress or annoyance as any other form of harassment. In this case, it might be difficult for the targeted company or its staff to claim on the basis of TH and be awarded relief for their suffering.

Is this element of repetitiveness strictly necessary? Looking at the Protection from Harassment Act 2014 in Singapore, it is observed that no requirement of repetition or repetitiveness is mentioned for a criminal offence of harassment to be established[27]. Under this Act, victims can also bring civil proceedings against person(s) alleged to have committed the offence of harassment without having to

[26] Denis Chang's Chambers, "An Evolving Landscape: How Recent Developments are Reshaping Harassment Law on Multiple Fronts" (*Insights*, 6 June 2024) <https://dcc.law/an-evolving-landscape-how-recent-developments-are-reshaping-harassment-law-on-multiple-fronts/> accessed 4 January 2025.
[27] Protection from Harassment Act 2014, s 3(1) and s 4(1).

establish any additional element[28], meaning that the requirement of repetition or repetitiveness is not needed for them to have an actionable civil claim. Furthermore, several single-instance harassment scenarios are contained within the Act to provide illustrations for the provisions[29] where the element of repetition or repetitiveness is obviously not involved.

Although the element of repetitiveness was mentioned as an important requirement of TH in previous precedents, it is clear that the element itself is potentially problematic. When applying the law on TH, injustice might result in certain scenarios where strict emphasis on the repetition of the harassing conduct might bar victims from actionable claims. Seeking reference from the Singaporean legislation, it can be observed that the element of repetitiveness or repetition might not be as strictly necessary as contended.

C3. Lack of defense/control mechanism

Under the current regime, the law on TH stipulates a low threshold for both the mental requirement and the kind of injury or damage necessary to establish an actionable claim. Regarding the mental requirement, as mentioned in Section B, it is not necessary to show intention on the part of the wrongdoer to cause injury to the victim, a lower threshold of recklessness as to whether the victim would suffer injury from his act could suffice[30]. In *X*, the court merely stated that the mental element required of TH is being reckless as to whether the victim would suffer injury from the conduct[31]. Regarding the injury or damage, mere humiliation could satisfy the threshold for this cause of action. Anthony Chan J in *Lau* further exemplified by

[28] Ibid, s 11(1).
[29] See *n27*, under *Illustrations*.
[30] See *n8*.
[31] See n10, [15].

saying that a wrongdoer must take the victim as he finds him, be it a mature and confident person who may feel humiliated about a course of conduct, or a younger and more sensitive person who may be affected with serious anxiety[32]. His statement seemed to suggest that a thin-skull principle is applicable to this tort.

The problem with having a low threshold for establishing TH is that floodgate might result without adequate defenses or control mechanisms. Absent any local legislation, rules on TH in Hong Kong can only be derived from precedents. So far, there has not been any mentioning of defenses or control mechanisms regarding TH in local case law. No such defenses or control mechanisms have been advocated or suggested either. It is foreseeable that when the common law landscape of Hong Kong develops to a point where TH becomes a solid cause of action, unjust towards certain defendants may result. Over-sensitive victims of minor inconveniences or annoyances might file claims against them, leading to disproportionate liabilities. Taking into consideration the need for judicial efficiency and the fact that tort law does not purport to encourage blame culture[33] or to entertain trivial complaints (*de minimis non curat lex*), the lack of defense or control mechanism under the current legal regime might be dangerous.

[32] See *n9*.
[33] *Tomlinson v Congleton B*C [2003] UKHL 47. At [81], Lord Hobhouse stated that "[t]he pursuit of an unrestrained culture of blame and compensation has many evil consequences and one is certainly the interference with the liberty of the citizen".

D. Proposed Reforms

D1. Determine whether a conduct amounts to harassment by its gravity instead of repetitiveness

As discussed in Section C2, the element of repetitiveness required to establish TH might be potentially problematic. It is proposed that gravity of the alleged harassing conduct should be the determinative element instead of its repetitiveness.

Looking at foreign jurisprudence, it is true that the UK's Protection from Harassment Act 1997 defines harassment as a course of conduct which involves conduct on ***at least two occasions*** in relation to a single victim[34]. However, the rationale for qualifying conduct as harassment under this Act was well explained by Lord Nicholls in *Majrowski v Guy's and St Thomas' NHS Trust*[35] at [30]: "[Where] the ***quality of the conduct*** said to constitute harassment is being ***examined***, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognize the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the ***gravity of the misconduct*** must be of an order which would sustain criminal liability under section 2" (emphasis added). It can be seen from this comment that the courts should put their focus on the quality instead of quantity of the alleged misconduct. A misconduct possessing sufficient gravity which crosses the line from common annoyances to oppressive harassment would

[34] Protection from Harassment Act 1997, s 7(3).
[35] [2007] 1 AC 224.

attract criminal liability (which, under the same Act[36], would simultaneously attract civil liability).

Another commentary can be found in *Iqbal v Dean Manson Solicitors*[37]. At [45], though Lord Rix stated that the Act is concerned with courses of conduct instead of individual instances of harassment, he acknowledged that these individual instances make up the course of conduct, and the focus of the court should be on determining whether that course of conduct has the ***quality*** of amounting to harassment. Once again, whether the quality of (mis)conduct amounts to harassment becomes the determinative question. The quality carries more significance than the quantity. Under local case law, the CFI in *X* ruled that in assessing whether a claim under TH is established, the court's assessment includes whether the conduct has crossed the boundary from regrettable to the unacceptable, or from the unattractive to the oppressive[38], reinforcing the point that it is the quality of (mis)conduct, not quantity, that matters most.

Thus, having reviewed both foreign and local jurisprudence, it is proposed that the common law of TH in Hong Kong should be reformed so that the focus of the court's assessment is not on whether a conduct or misconduct is sufficiently repetitive enough to amount to harassment, but whether the quality (i.e. gravity) of it suffices to be seen as harassment. The relevant parameters for such assessment might take reference from the passages of respectable judges and courts cited above.

[36] Protection from Harassment Act, s 3(1).
[37] [2011] IRLR 436.
[38] See *n31*.

Some may rebut this proposal by arguing that removal of the element of repetitiveness further blurs the line between tort of intimidation and harassment. As explained by *Law Ka Yan Thompson*, to establish the tort of intimidation, the plaintiff has to prove (i) the unlawful threat, (ii) the intention to cause harm with the threat, and (iii) damage to the plaintiff himself or herself[39]. The case also stated that the difference between tort of intimidation and harassment lies in the extra element of repetition for the latter[40]. It seems to suggest that once the element of repetitiveness is removed, these two torts will become much more indistinguishable.

With respect, this author disagrees that the element of repetitiveness is the only difference between tort of intimidation and harassment. In fact, the CFI in *X* pointed out that the essence of tort of intimidation is coercion, since there must be a threat which puts pressure on the person to whom it is addressed to take a particular course of action. Such threat must also be capable of being effective to produce the desired result and be more than idle abuse[41]. For TH, the element of coercion is not needed, nor does the plaintiff have to prove any intention of the defendant to coerce him or her to take (or not take) certain actions by means of threat. Additionally, it is clear that an act of intimidation involves an intention to change the course of the victim's actions, while an act of harassment involves mere intention to cause or recklessness as to whether this act would cause worry, annoyance or emotional distress. Therefore, any rebuttal to the proposed reform on the ground that removal of the repetitiveness element would blur the line between tort of intimidation and harassment is unsound.

[39] See *n12*, at [38].
[40] Ibid, at [39].
[41] See *n10*, at [25].

D2. Introduce a defense of reasonableness to the law of TH

It has been discussed in Section C3 that the lack of defense and control mechanism within the law on TH might be dangerous. Absent any useful guidance from the existing law of Hong Kong, reference must be drawn from foreign jurisprudence.

Under the Protection from Harassment Act 1997 of the UK, a course of conduct will not amount to harassment and attract criminal or civil liability if in the particular circumstances the pursuit of the course of conduct was reasonable[42]. In *Thomas v News Group Newspapers Ltd*[43], Lord Phillips elaborated on the nature of reasonable conduct with regards to the Act and journalistic publications: "Subject to the law of defamation, ***the press was entitled to publish an article, or series of articles, about an individual, notwithstanding that it could be foreseen that such conduct was likely to cause distress to the subject of the article***...The 1997 Act has not rendered such conduct unlawful. In general, press criticism, even if robust, ***does not constitute unreasonable conduct and does not fall within the natural meaning of harassment***" (emphasis added)[44].

In another case, *Suttle v Walker*[45], the defendant posed on Facebook videos and images showing the plaintiff, which were accompanied by shouted allegations of animal abuse and aggressive comments against her. The defendant even launched an online campaign to disclose the plaintiff's name and address for the purpose of arousing public hate and confrontation. The High Court in this case granted damages to the plaintiff under the Protection from Harassment Act 1997, stating that the defendant's actions were clearly directed towards the plaintiff and intended to cause

[42] Protection from Harassment Act 1997, s 1(3)(c).
[43] [2002] EMLR 4.
[44] Ibid, at [33-34].
[45] [2019] EWHC 396 (QB).

her distress, which could not be justified by the Facebook page's objective of confronting animal abuse[46]. This case should be contrasted with *Thomas* – while the Act provides a defense of reasonableness for media and online publications against harassment claims, materials that aim to bring shame or arouse hatred towards particular individuals would fall outside the spectrum of reasonableness, thus amounting to harassment.

Similarly, Section 4(3)(b) of Singapore's Protection from Harassment Act 2014 provides a defense, against a harassment claim, for the accused individual or accused entity that the accused's conduct was reasonable. This defense was invoked in *Benber Dayao Yu v Jacter Singh*[47]. The respondent of the case posted on his public business website molest allegations against the appellant, his former employee, along with other inaccurate claims. The court declined to accept the respondents' defense of reasonable conduct, as it considered the web post strongly-worded and clearly intended to frame the appellant as a molester to "name and shame" him[48]. Like *Suttle*, this Singaporean case illustrates that the defense of reasonableness is not without limits. Materials that are directly targeted at shaming individuals could not be justified regardless of their initial objectives.

It is not uncommon in Hong Kong for news or media outlets to publish materials that might consist of criticisms or opinions about individuals, especially public figures, which might lead to their distress. If all such publications are subject to claims on the basis of TH, constitutional rights of freedom of publication and press protected under Article 27 of the Basic Law might be seriously affected. However,

[46] Ibid, at [57-58].
[47] [2017] SGHC 92.
[48] Ibid, at [44-46].

when publications and materials are published with the intention to cause distress, shame or public hatred towards particular persons, the victims' honor, reputation and right to privacy must be protected by the law[49]. A defense of reasonableness, formulated with reference to foreign jurisprudence cited above, should be incorporated to the existing body of common law on TH in Hong Kong. In doing so, a balance can be struck between press freedom and the protection of individual rights under the law of tort.

D3. Alternatively, a general legislation may be enacted against harassment

So far, this Section has been focusing on common law reforms. However, this author recognizes the problem of relying only on the common law to develop the legal regime on TH in Hong Kong. Any common law development must be incremental and under an appropriate case, which makes the development of the law on TH slow and ineffective. This concern was expressed sympathetically by Anthony Chan J in *Lau*, who advocated for local legislation on a remedy against harassment: "it should be remembered that the development of common law is incremental, responding to the facts of the cases brought before the court. Hopefully, a codified body of law to provide for a remedy against harassment will soon come into place, and that will avoid a piecemeal development of the law which is inherent in the common law system"[50]. Also, reluctance of local courts in adopting foreign cases on the basis that legislations have been made in those common law jurisdictions point to the direction that it is perhaps time for Hong Kong to enact its own legislation against harassment. For example, in the appeal judgement of *Sir Elly Kadoorie*[51], the CA supported the

[49] The Hong Kong Bill of Rights, art 14. This article states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Paragraph 2 of the same article adds that everyone has the right to the protection of the law against such interference or attacks.
[50] See *n5*, at [63].
[51] See *n12* and *n20*.

CFI's view that courts must be cautious when considering cases from the UK and Singapore because they likely involve interpretations of their respective legislations on the issue of harassment which have no Hong Kong equivalent[52].

It is in light of the above that this author proposes an alternative way of reforming the law on TH by way of local legislation. Such a general legislation may, similar to legislations in the UK and Singapore, include provisions for criminal and civil liability against acts of harassment. Not only can local legislation confirm the existence of TH, resolving the lingering uncertainty mentioned in Section C1, but such a legislation can also codify the complex body of rules currently governing TH in Hong Kong and include the suggested amendments in Sections D1-2. Furthermore, without local legislation, adjudication of cases around TH can only take reference from foreign cases, which, as mentioned by both the CFI and CA decisions in *Sir Elly Kadoorie*, might involve interpretations of foreign legislations not enacted according to social situations and needs in Hong Kong. A local legislation is an effective solution to this issue.

It is suggested that a general legislation against harassment should be enacted instead of a piece of legislation targeting specific harassments. There are already several legislations against harassments particularly targeted at individuals on grounds of sex, disability and race. Relevant provisions can be found in the Sex Discrimination Ordinance (Cap.480), the Disability Discrimination Ordinance (Cap.487) and the Race Discrimination Ordinance (Cap.602). From time to time, it has been suggested that legislations should be made to counter harassment on specific grounds. For example, in *Sham Tsz Kit v Secretary for Justice (No.1)*[53], the CFA at [36] noted that

[52] Ibid, CFI judgement at [68] and CA judgment at [64].
[53] (2023) 26 HKCFAR 385.

the Human Rights Committee was concerned about the "absence of a legal framework to address the discrimination, ***harassment***, hate speech and hate crimes that lesbian, gay, bisexual, transgender and intersex persons continuously face" (emphasis added). Unfortunately, if the government has to make an anti-harassment legislation for every possible ground (e.g. sexual orientation, religion, personality, etc.), the legislative processes would be never-ending. A more ideal solution is to enact a general legislation against harassment to pre-empt all these problems.

Some people have also suggested enacting specific legislations targeting the tort of internet harassment. However, this suggestion has been rebutted by multiple courts in other common law jurisdictions. In *AHS*[54], the Court of King's Bench of Alberta stated at [81]: "If there is a tort of internet harassment but not a general tort of harassment, that means that the mode of harassment – using the internet – determines whether harassment is actionable. While internet harassment is a problem, so too is old-fashioned low-tech harassment". Similarly, in the UK authority *Wainwright v Home Office*[55], the court at [18] stated that "[t]he need in the United States to break down the concept of 'invasion of privacy' into a number of loosely-linked torts must cast doubt upon the value of any high-level generalization which can perform a useful function in enabling one to deduce the rule to be applied in a concrete case". It is obvious that legal authorities from other common law jurisdictions also support the enactment of a general legislation encompassing different modes of harassment and grounds on which the harassment has been carried out.

Therefore, this author suggests local legislation of a general, all-encompassing anti-harassment legislation which can solve the problems discussed in Section C. Legal

[54] See *n24*.
[55] [2004] 2 AC 206.

wisdom may be drawn from the UK Protection from Harassment Act 1997 and the Singapore Protection from Harassment Act 2014, since both are common law countries while Singapore has a similar social situation as Hong Kong.

E. Conclusion

Although rules governing the law on TH in Hong Kong first emerged in 2013, uncertainty and ambiguity still lingers around the existence of such a tort and its constituent elements even until today. Given the increasingly rapid development of internet technology, harassment could easily occur everywhere against anybody. It is therefore of paramount importance that the common law on TH be reformed to deal with criticisms mentioned in this essay, which includes amending its element of repetitiveness and introducing a defense of reasonableness. To further assure the local community of the government's protection of their individual rights, a formal and general anti-harassment should be enacted.

The common law has always operated in tandem with the development of statute[56]. It is hoped that the courts of Hong Kong, the government and the legislature will cooperate to provide a comprehensive legal regime governing rules in the area of tort (and criminal law) to combat harassment in the local community.

[56] This comment comes from the Court of King's Bench of Alberta in *AHS*, at [90]: "The development of the common law, which is judge-made law, has operated in tandem with the development of statute law in Westminster democracies for hundreds of years. The recognition of a new tort of harassment does not usurp the democratic will of the Legislature. Indeed, the Legislature has the power to modify common law torts…"