

In Hong Kong, due to technological advancement and a dense living environment, it is hard for victims to escape harassment. Harassment can take place in the physical sphere or virtually in various forms. Due to the limitations of established causes of action, victims sometimes frame their claims as the tort of harassment. However, uncertainties remain regarding this tort.

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

1. Introduction

1.1 In recent years, social media platforms and popular online forums have also accelerated the speed at which information is disseminated. Furthermore, the widespread use of CCTV, in-car surveillance cameras¹ on public transport and the growing prevalence of drones² also pose new issues in addressing harassment torts. Victims are often forced to rely on a sub-optimal cause of action that is not tailored to their problem.

1.2 In this essay, I argue that the common law tort of harassment is inadequate, and I propose to reform the doctrine. [Part 2](#) of the essay will explain the common law proposition in Hong Kong. [Part 3](#) explains the criticisms against the law in its current formulation. [Part 4](#) will cover how different common law jurisdictions address the tort of harassment through statutes and case laws. [Part 5](#) will cover how Hong Kong can reform its own common law tort of harassment.

¹SCMP, Celebrity scandal raises concerns over dashcams

<<https://www.scmp.com/comment/insight-opinion/article/3006798/celebrity-scandal-raises-concerns-over-dashcams>>

² SCMP. First person arrested in Hong Kong for alleged voyeurism offence involving use of drone to film people in hotels, flats

<<https://www.scmp.com/news/hong-kong/law-and-crime/article/3198452/first-person-arrested-hong-kong-alleged-voyeurism-offence-involving-use-drone-film-people-hotels>>

2. Current State of the Law

2.1 Whilst the existence of the tort of harassment was in debate for many years, recent case authorities have now recognised the existence of this tort. In *Lau Tat Wai v Yip Lai Kuen Joey*³, his Hon Mr. Justice Anthony Chan cites from *Tort Law in Hong Kong* and noted that support can be found in the judgment of Cheung J in *Wong Tai Wai v Hong Kong SAR Government* where he said: “...disregarding the statute, it is arguable that a tort of harassment *per se*, or as part of a tort of intentional (or reckless) infliction of injury (physical or mental), exists at common law...”⁴

2.2 He then said that he is ‘unable to see any reason why there should not be a tort of harassment to protect the people of Hong Kong who live in a small place and in a world where technological advances occur in leaps and bounds.’⁵

2.3 To show harassment, a litigant must show that ‘there is a course of conduct by a person by words or action directly or through third parties, sufficiently repetitive in nature that that person ought reasonably to know would cause worry, emotional distress or annoyance to another person. The mental element required is being reckless as to whether the victim would suffer injury from the conduct. The victim must be able to show that there is damage. Anxiety capable of constituting damage, and financial loss would also be recoverable.’⁶

2.4 Since harassment activities may also come into play with an individual’s privacy, other than mounting a harassment claim, a

³ [2013] 2 HKLRD 1197.

⁴ *Ibid*, [56](5)(2).

⁵ *Ibid*, [59].

⁶ *Secretary for Justice v Persons Unlawfully and Willfully Conducting Themselves in Any of the Acts Prohibited Etc* [2019] 5 HKLRD 500

plaintiff may also be available compensation under Section 66 of the Personal Data (Privacy) Ordinance (Cap.486) ('PDPO'), which allows an individual who suffers damage by reason of a contravention of a requirement under PDPO by a data user which relates to the personal data that the individual is the data subject.

3. **Criticisms against the existing law**

3.1 **Harassment – A Defective Definition**

3.1.1 In the landmark Singapore case *Malcomson v Mehta*⁷ (which is partially adopted in *Lau Tat Wai*), Lee JC noted that the definition of harassment from Black's Law Dictionary 'was not intended to be an exhaustive definition, but rather, one that 'sufficiently encompasses the facts of the present case in order to proceed with a consideration of the law'.⁸

3.1.2 The definition can be described as broad-brushed in nature with a catch-all purpose in mind. The drawback is that such formulation does not clearly pinpoint the act in question that a tortfeasor should be liable for, which has a limited effect in deterring people from engaging in such activities. The definition reflects that the judicial development of this tort is largely influenced by in-person interaction, which is only one way of showing how a person can experience harassment.

3.1.3 Another problem relates to the issue of circularity. In *X & Y v Z*⁹, the Hon. Coleman J distilled a number of themes from *Dowson v The Chief Constable of Northumbria Police*¹⁰. He

⁷ [2001] 4 SLR 454

⁸ *Ibid*, at [31]

⁹ [2020] HKCFI 826

¹⁰ [2010] EWHC 2612 (QB)

noted that ‘harassment is generally described as conduct that targets an individual calculated to produce alarm or distress.’¹¹ And the aim of the tort is to prevent damages ‘in the form of worry, emotional distress or annoyance, anxiety...’¹² The prohibited act is described in largely identical terms as the intended outcome of the law which does not help in deconstructing the legal problem.

3.1.4 Conducts that can cause worry, emotional distress or annoyance to another person, such as online stalking and publication of personal information that are common in cyberbullying and serious privacy invasion, should be more specifically characterised so that the law is more legally certain so that it is adaptable to technological advancements.

3.2 User-unfriendly Process for Invoking Personal Privacy Protection

3.2.1 In the absence of a reasonable expectation of privacy, it can be said that there are very few circumstances in which a data user is barred from collecting personal data where there is a lawful purpose relating to his function or activity.¹³ In circumstances where an individual enjoys a reasonable expectation or absolute expectation of privacy, no personal data collection should take place to draw a clear line between the public and the private domain, and liability should be attached accordingly.

3.2.2 DPP 3 only limits the purpose of the disclosure or use of personal data rather than aiming at protecting the private life of individuals from unwarranted publicity and thus offers limited protection to people whose personal data are

¹¹ *Ibid*, at n9 [23(2)]

¹² *Ibid*, at [23(5)]

¹³ DPP 1, Schedule 1, PDPO

revealed as a consequence of a crime, accident or tragedy.¹⁴

3.2.3 Furthermore, a victim needs to report a possible breach of the PDPO requirement to the Privacy Commissioner, who will then investigate and may issue an enforcement notice directing remedial steps to be taken. Only when there is a contravention of such notice will it constitute a criminal offence. Before being able to obtain legal assistance for seeking compensation under Section 66, an individual will need to go through the complaint and investigation process under the PCPD which may take a long time.

3.2.4 A tort is needed, in addition to PDPO, to effectively and efficiently protect personal privacy and remedy the invasion of privacy caused by harassment.

3.3 Lack of Uniform Cause of Action

3.3.1 Where a victim is being harassed, he will need to consider suing for tort of private nuisance, tort of intimidation, breach of confidence, breach of PDPO requirements, and defamation. There are an assortment of statutory and common law causes of action designed for matters that are not always intended to address harassment.

3.3.2 Litigants often have no choice but to sue with a scattergun approach and find themselves without a suitable recourse. Without a tailored cause of action, it also means that courts have to spend more time and resources than they need to filter out and dismiss meritless claims.

3.4 Sufficiency in Repetitiveness

¹⁴ The Law Reform Commission of Hong Kong, *Report Civil Liability for Invasion of Privacy* ch 2 paragraph 2.54

3.4.1 To successfully rely on the tort of harassment as a cause of action, a sufficiently repetitive course of conduct is a significant threshold that the claimant needs to show. There has been little judicial guidance on why a sufficiently repetitive course of conduct is a necessary requirement for causing harm.

3.4.2 In the case of cyberbullying, it may be difficult for a claimant to show that the same person owns accounts under various pseudonyms to satisfy the sufficiently repetitive course of conduct requirement. Even if a claimant is able to show that the person owns accounts under various pseudonyms, it can only be done by going through complex civil procedure applications such as discovery, which is time and cost-consuming for the victims.

3.4.3 For example, in the case of *Tsang Po Mann v Tsang Ka Kit & Anor*¹⁵, the conduct of using photos from CCTV recording footage and accusing the plaintiff of being pretentious by ‘frequently using English to quarrel with neighbours’ and engaging in unpleasant behaviour of ‘opening the doors to the house of others without authority or consent...let the dog defecate and urinate anywhere’.

3.4.4 The conduct of taking photos of Ms. Tsang without her consent and sending the photos to third parties for asserting unpleasant and unfounded allegations could be an act that causes harassment but for the repetitive conduct requirement.

4. Legal Developments in Other Jurisdictions & Comparative

¹⁵ [2021] 1 HKLRD 1301

Analysis

- 4.1 When examining the legal developments in various common law jurisdictions, key observations can be made. Many jurisdictions have passed legislation establishing the statutory tort of harassment. Given how a number of harassment activities may also have the effect of encroaching upon an individual's privacy, some jurisdictions also used the law of privacy torts to solve the problem.

Development Overview

4.2 Legal developments concerning the tort of harassment:

- 4.2.1 **Statutory approach:** Jurisdictions such as England & Wales and Singapore have codified the tort of harassment and enacted statutory provisions which criminalise harassment behaviour and, in conjunction, provide civil remedies for victims. South Africa has enacted the Protection from Harassment Act but did not frame it as a statutory tort.
- 4.2.2 **Common law development:** Canada does not have a uniform statutory tort of harassment at the federal level. The development of the common law tort takes place at state-level courts.

4.3 Legal developments concerning privacy torts:

- 4.3.1 **Statutory tort of invasion of privacy:** Australian courts have not recognised common law harassment as a cause of action, but the country has recently passed legislation enacting the statutory tort for serious invasions of privacy. The Singapore Law Reform Committee recommended the introduction of a new statutory tort for misuse of private information.
- 4.3.2 **Common law development:** New Zealand recognises common law torts of intrusion upon seclusion and misuse of

private information.

Developments of the Tort of Harassment

4.4 England & Wales

4.4.1 Whilst cases such as *Wilkinson v Downton*¹⁶ acknowledged torts of intentional infliction of emotional distress, the common law tort of harassment did not grow exponentially. In *Patel v Patel*¹⁷, Waterhouse J said that in ‘the present state of the law there is no tort of harassment’.

4.4.2 Although the gap alluded to the absence of tort of harassment was considered in *Khorasandjian v Bush*¹⁸, Lord Goff in *Hunter v Canary Wharf*¹⁹ said, “In truth, what the Court of Appeal appears to have been doing was to exploit the law of private nuisance in order to create by the back door a tort of harassment which was only partially effective in that it was artificially limited to harassment which takes place in [the victim’s] home”. He then said that it is ‘unnecessary to consider how the common law might have developed’ as ‘the law of harassment has now been put on a statutory basis (see the Protection from Harassment Act 1997)’. The 1997 Act, amongst other things, criminalises harassment, stalking, and putting people in fear of violence. The Act also contains a provision for claiming civil remedies such as damages, the right to seek an arrest warrant, and the right to apply for an injunction.

4.5 Singapore

4.5.1 In *AXA Insurance Singapore Pte Ltd v Chandran s/o*

¹⁶ [1897] 2 QB 57

¹⁷ [1988] 2 FLR 179

¹⁸ [1993] QB 727

¹⁹ [1997] AC 655

*Natesan*²⁰, the insurance company sued a customer who had allegedly sent 19 emails and called at least 7 times over 9 working days to the insurance company and external lawyers for making a motorcycle accident claim. The company claimed that he used vulgar and abusive language on more than one occasion, which amounted to harassment.²¹

4.5.2 Choo Han Teck J said that from the company's perspective, his behaviour amounted to harassment, but 'from the point of the defendant, he was pressing for his rights as a policyholder. We do not know who was right... [T]here may be other employers, unlike this plaintiff, who might rely on a loosely proclaimed law of harassment to oppress its weaker and poorer opponent... if the defendant, in this case, did not use abusive language, would their conduct still be regarded as harassment? Would a loosely recognised law of harassment be used to oppress others and avoid one's legal obligations?'²²

4.5.3 He also 'doubt[ed] that a clear and comprehensive law on harassment as a civil cause of action can be effectively formulated in a judicial pronouncement, more so because there are, in modern times, calls for laws relating to privacy. Civil action in harassment and laws relating to privacy are complex and connected and must be considered together.' (Emphasis added).

4.5.4 Fearing for 'creating a blockbuster tort which will have unpredictable consequences' by 'allowing litigants to sue

²⁰ [2013] 4 SLR 545

²¹ *Ibid*, at [3]

²² *Ibid*, at [9]

when they feel harassed when there is no direct contact nor proof of damage’, he said that the court has ‘no basis or principle upon which the tort of harassment is founded, save that it was thought to be a necessary step in the development of the law.’ He is ‘of the view that a law against harassment must be legislated by Parliament...’ and for them ‘to determine whether the law should be used to govern annoyance caused by means of letters, emails, and telephone messages and whether the present law ought to be expanded to allow a claim for civil remedies.’²³

4.5.5 Soon after the handing down of *AXA*, the Singapore Parliament passed The Protection from Harassment Act 2014. The Act abolishes the common law tort of harassment. The Act is largely similar to the English Act, which criminalises harassment, stalking, and putting people in fear of violence, with some key differences. Section 3 and 4 of the Act both expressly prohibit (a) the use of any threatening, abusive or insulting words or behaviour and (b) making any threatening, abusive or insulting communication which perceived by victims as likely to cause harassment, alarm or distress or intentionally cause harassment, alarm or distress.

4.5.6 Furthermore, Section 3 also prohibits the publishing of any identity information of the target person or a related person of the target person. Identity information includes information that identifies or purports to identify an individual, such as the individual’s name, residential address, email address, telephone number, date of birth, national registration identity card number, passport number, signature (whether handwritten or electronic) or password,

²³ *Ibid*, at [10]

any photograph or video recording of the individual as well as any information about the individual's family, employment or education.

4.5.7 In terms of civil remedy, Section 11 of the Act gives the right for victims under Sections 3, 4, 5 or 7 to bring civil proceedings against any contravening individuals or entity to seek damages. A victim may also make an application for protection order, expedited protection order²⁴, and mandatory treatment order. Against false statements, a court may issue stop publication orders²⁵, correction orders²⁶, disabling orders²⁷, targeted correction orders²⁸, and general correction orders²⁹.

4.5.8 The Protection from Harassment Court has been set up as a specialized court to handle all civil and criminal harassment claims.

4.5.9 In contrast to both England and Singapore, Hong Kong courts were more inclined to accept that the tort of harassment exists in common law since the handing down of *Lau Tat Wai* in 2013. Unlike *Malcomson*, *Lau* was never challenged by the appellate court. This explains the difference in the English and Singaporean legal landscape where the tort of harassment is a statutory construct that is so markedly different to that of Hong Kong.

²⁴ In cases requiring urgent intervention. The court has powers to refer the matter to the police for investigation under Section 13A.

²⁵ An order which stops the publishing of statement.

²⁶ An order requiring a correction of a false statement.

²⁷ Requiring an internet intermediary to disable access to material containing the statement.

²⁸ Requiring an internet intermediary to distribute a correction of the statement to views of the statement on its platform.

²⁹ Requiring a prescribed entity to publish a correction of the statement in specified manner where there serious reputational harm.

4.6 South Africa

4.6.1 Although South Africa does not treat harassment as a tort, Protection from Harassment Act 2011 still criminalises harassment behaviour.

4.6.2 The Act defines harassment as engaging in conduct that would cause harm. The Act concisely puts these activities into three groups:³⁰

- i. Following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or related person resides, works carries on business, studies or happens to be (Harassment by stalking)
- ii. Engaging in verbal, electronic or any other communication aimed at the complainant or related person by any means whether or not conversation ensues (Harassment by communications)
- iii. Sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of the complaint or a related person (Harassment by post)

4.7 Canada

4.7.1 The Ontario Superior Court in *Caplan v Atas*³¹ recognized a new common law tort of internet harassment. Ms. Atas was a real estate agent in the 1990s who lost a mortgage enforcement proceeding³² Afterwards, she made

³⁰ Section 1(1)(a)(i-iii), Protection from Harassment Act, 2011

³¹ 2021 ONSC 670

³² *Ibid*, at [8].

anonymous and pseudonymous posts on major social media platform making unfounded allegations of pedophilia and sexual predation aimed at causing emotional harm to her targets.³³

4.7.2 He noted that ‘the tort of internet harassment should be recognized in these cases because Atas’ online conduct... seek ... to go beyond character assassination: it is intended to harass, harry and molest by repeated and serial publications of defamatory material, not only of primary victims [and] targeting persons they care about...’³⁴ Observing that the existing tort of intentional infliction of mental suffering does not assist the plaintiffs because they did not suffer visible and probable illness as a result of Atas’s conduct, the judge felt the law is unable to provide a ‘legal remedy’.³⁵

4.7.3 The judge adopted the test from ‘American case laws for the tort of harassment in internet communications: where the defendant maliciously or recklessly engages in communications conduct so outrageous in character, duration, and extreme in degree, so as to go beyond all possible bounds of decency and tolerance, with the intent to cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff, and the plaintiff suffers such harm.’³⁶

4.7.4 The judge awarded: a permanent injunction from publishing any content with respect to all the victims, and an order to vest title to the postings to the plaintiffs and an ancillary

³³ *Ibid*, at [119-120].

³⁴ *Ibid*, at [168].

³⁵ *Ibid*, at [170].

³⁶ *Ibid*, at [171].

order enabling them to have the content removed.³⁷

4.7.5 The formulation is different to the Hong Kong formulation with a narrow focus on communications conduct, expansion of harm to fear, emotional upset, impugnation of dignity and no requirement of repetitiveness.

Developments of Privacy Torts

4.8 Australia

4.8.1 Privacy and Other Legislation Amendment Act 2024 was passed on 29 November 2024. The legislation enacted a statutory tort for serious invasions of privacy and provided redress for the tort. Under this tort, a plaintiff can sue for (1) intrusion upon seclusion³⁸ or (2) misuse of private information.³⁹

4.8.2 Intrusion upon seclusion refers to the physical intrusion of the plaintiff's private space, or by watching, listening to or recording the plaintiff's activities or private affairs.⁴⁰ Misuse of private information covers behaviours such as collecting or disclosing private information about the plaintiff.⁴¹

4.8.3 Intrusion upon seclusion or misuse of private information would be an invasion of privacy when (1) a person in their position would have a reasonable expectation of privacy⁴², (2) the invasion was intentional or reckless⁴³, (3) the

³⁷ *Ibid* at [216-220], [228].

³⁸ Section 7(1)(a)(i), Schedule 2, Privacy and Other Legislation Amendment Act 2024.

³⁹ *Ibid*, Section 7(1)(a)(ii).

⁴⁰ *Ibid*, Section 6.

⁴¹ *Ibid*.

⁴² *Ibid*, Section 7(1)(b).

⁴³ *Ibid*, Section 7(1)(c).

invasion is serious⁴⁴ and (4) the public interest in the plaintiff's privacy outweighed any countervailing public interest⁴⁵. There are also a number of defences available.⁴⁶

4.8.4 Courts may award reliefs such as damages for emotional distress, an account for profits, injunction orders, apology orders, correction orders, and orders for the destruction or delivery of materials obtained.⁴⁷

4.8.5 The Australian Law Reform Commission ('ALRC') noted in a report that invasion of privacy 'may occur with increasing ease and frequency in the digital era'⁴⁸ and notes that certain behaviour qualifying as serious invasion of privacy also amount to harassment⁴⁹. It thus recommends that if the statutory tort of serious invasion of privacy is not enacted, state and territory governments should enact 'uniform legislation'⁵⁰ creating a tort of harassment which will help 'deter and redress some egregious types of invasion of privacy that are not currently the subject of effective legal protection'.⁵¹

4.8.6 Unlike Hong Kong, Australia's development is premised upon the fact that in Australia courts 'have not recognised a common law cause of action for harassment'⁵² and the law 'does not provide civil redress to victims of harassment'⁵³.

⁴⁴ *Ibid*, Section 7(1)(d).

⁴⁵ *Ibid*, Section 7(1)(e).

⁴⁶ *Ibid*, Section 8.

⁴⁷ Section 9, 11-12.

⁴⁸ Australian Law Reform Commission, *Serious Invasions of Privacy in the Digital Era* (ALRC Report 123) ch 1 paragraph 1.1.

⁴⁹ *Ibid*, at ch 15 paragraphs 15.1, 15.7.

⁵⁰ *Ibid*, at ch 15 recommendation 15-1, paragraph 15.25.

⁵¹ *Ibid*, at ch 15 paragraph 15.10.

⁵² *Ibid*, at ch 15 paragraph 15.12.

⁵³ *Ibid*.

Australia seems to be codifying common law causes of actions that originated from New Zealand.⁵⁴

4.9 Singapore

4.9.1 In a report issued by the Singapore Law Reform Committee ('SLRC'), it noted that notwithstanding the enactment of the PHA 2014, criminalising provisions may not be triggered in certain circumstances. For example, when 'a victim discovers that a person has taken photographs or video recordings of the victim on a single occasion, intending to keep them for personal gratification without publishing them', the Act cannot come into action.⁵⁵

4.9.2 SLRC recommended the passing of a bill to legislate the only tort of misuse of private information prohibiting the intentional disclosure and serious misuse of private information related to the individual. SLRC describes the concept of intrusion upon seclusion as somewhat 'nebulous' and doubted 'whether seclusion can take place in a public or semi-public place' ⁵⁶. In light of this, it recommended leaving intrusion upon seclusion to be dealt with by the criminal law.⁵⁷

4.9.3 SLRC recommended that a successful plaintiff should be able to claim damages for physical or psychiatric harm suffered and for economic loss. In addition, damages for annoyance, embarrassment or emotional distress should also be available to as the tort intends to safeguard a person's dignity interests. Plaintiffs may also seek

⁵⁴ *Hosking v Runting* [2003] 3 NZLR 385, *C v Holland* [2012] NZHC 2155.

⁵⁵ Singapore Academy of Law. Law Reform Committee, *Report on Civil Liability for Misuse of Private Information* ch 1 paragraph 1.49.

⁵⁶ *Ibid*, ch 2 paragraph 2.5.

⁵⁷ *Ibid*, ch 2 paragraph 2.6.

interlocutory or final injunction to prevent an apprehended invasion or further behaviour. Various types of court orders that a plaintiff can seek under PHA 2014 should also be available.⁵⁸

5. **Recommendations**

5.1 In light of the above, a two-tiered reform is recommended.

5.2 Enacting a statutory tort:

5.2.1 Although Chow JA in *Sir Elly Kadoorie & Sons Ltd v Bradley*⁵⁹ notes that ‘it is not in dispute that the tort of harassment is a recognised tort under common law in Hong Kong’⁶⁰, there is still no tort of harassment case that reached the Court of Final Appeal. In Hong Kong, there remains a line of authorities⁶¹ which disputes the existence of the tort of harassment.

5.2.2 Most harassment cases are resolved at a substantive hearing before the first instance court rather than escalated to appellate courts. This means appellate courts rarely have the chance to discuss unaddressed points of law. Courts may also be wary of launching a full-fledged reform that may bring unintended consequences.

5.2.3 It would be suitable for the legislature to address this as the institution can respond to the socio-legal problem more flexibly and efficiently than the courts. Enacting the tort in a statutory form will allow the legislature to address the gaps and uncertainties in the existing tort. It would also make the law more accessible to the general public.

⁵⁸ *Ibid*, ch 2 paragraph 2.44-2.51.

⁵⁹ [2024] 4 HKLRD 428

⁶⁰ *Ibid*, at [24]

⁶¹ *Pong Seong Teresa v Chan Norman & Anor* [2014] 5 HKLRD 60; *Wong Wai Hing v Hui Wei Lee* [2001] 1 HKLRD 736; 朱祖永訴香港警務處 HCMP 1676/2002

The following measures are recommended to enact a statutory tort:

5.2.4 Refine the definition of harassment:

5.2.4.1.1 Instead of a catch-all provision, Hong Kong should adopt a South Africa-Singapore hybrid definition which covers conduct intentionally or recklessly causes harassment, alarm or distress (1) by stalking, (2) by threatening, insulting, abusive, anti-social communications, (3) by posts, and (4) by publishing of identity information.

5.2.4.1.2 In Singapore's PHA 2014, illustration (c) of Section 3 shows that where a person publish identity information 'intending to cause [the victim] harassment by facilitating the identification or contacting of [the victim] by others', it will also amount to an offence. (emphasis added)

5.2.4.1.3 By concretely describing actions that are known to have the effect of causing harm and distress, the general public will be more aware of prohibited behaviour and individuals will know in what circumstances they are in a position to seek recourse. This will enhance legal certainty and legal accessibility. It will also address the circularity issue as stated above.

5.2.5 Establish a court dedicated to handling claims:

5.2.5.1.1 Hong Kong should establish a court similar to Singapore's Protection from Harassment Court so that harassment claims so that people can seek

recourse more expediently.

5.2.5.1.2 In Singapore, this court targets to hear applications within 4 weeks and 48-72 hours respectively and within 24 hours for urgent cases involving violence.⁶² This level of expediency should be a benchmark for Hong Kong.

5.2.6 Introduce more diverse remedies:

5.2.6.1.1 The diverse types of remedies offered under in *Caplan v Atas* and the Singapore regime should be considered for adoption. Existing orders like injunction and cessation actions are has to effect akin to stop publication orders and disabling orders.

5.2.6.1.2 Even if these orders are put into place, the content in question may have already been widely disseminated through sharing and recirculation function which makes it very difficult to remove disclosed information from the public domain. To effectively rectify the problem, it is essential to adopt correction orders or public retraction declarations to address misinformation and encourage the public to jointly participate in remedial actions.

5.2.6.1.3 Damages for emotional injury and distress that do not reach the level of a psychiatric illness is justified. Whilst it may be hard for courts to

⁶² Singapore Courts, 'Joint media release: Quicker, more effective remedies against harassment with new protection from harassment court from 1 June 2021' (Singapore Courts, 31 May 2021) <<https://www.judiciary.gov.sg/news-and-resources/news/news-details/joint-media-release-quicker-more-effective-remedies-against-harassment-with-new-protection-from-harassment-court-from-1-june-2021>> (accessed 1 January 2025)

differentiate frivolous claims from meritorious claims for a tort that is actionable without proof of damage, such issue should not stop the tort from being in force.

5.2.7 Refine or even abolish the sufficiency threshold:

5.2.7.1.1 In Singapore's PHA 2014, the requirement for a repetitive course of conduct requirement is no longer in place. There is no causal relationship that only sufficiently repetitive conduct will cause a person to suffer worry emotional distress or annoyance.

5.2.7.1.2 Instead of using sufficiency in repetitiveness as a threshold to fend off frivolous claims, the appropriate tool to assess whether a claim is meritorious is whether (1) the behaviour falls into one of the conduct groups in the proposed formulation and (2) there is damage to the victim.

5.2.8 Ensure coherence between civil and criminal tests for harassment:

5.2.8.1.1 The criminal provisions such as those governing doxing, voyeurism and other tech-facilitated offences should be developed coherent alongside civil harassment liability. If an activity only carries criminal liability, a victim will not have basis to seek civil remedies. If an activity only comes with civil liability, it is difficult for law enforcement authorities to intervene and find the tortfeasor.

5.2.8.1.2 Where the actus reus of the criminal offence

subsumes the requirements of civil liability⁶³, the victim can start by seeking help from law enforcement authorities who are equipped with investigative powers. Even if the identity of the tortfeasor/ perpetrator is unknown, the victim can still rely on criminal conviction records⁶⁴ and will not have to prove his case from scratch.

5.3 Enacting a statutory tort of serious invasion of privacy:

5.3.1 Given that harassment and privacy invasion are problems that cannot be considered in isolation, enacting a statutory tort of serious invasion of privacy similar to that of Australia is also recommended.

5.3.2 Even in jurisdictions that have enacted a statutory harassment tort, academics have argued that in an evolving world, the statutory tort is insufficient.

5.3.3 By enacting privacy torts that cover the liability of certain acts not covered by the tort of harassment or other common law torts, it will also provide a mechanism for victims to seek recourse in addition to current PDPO mechanisms.

(Word Count: 4999, excluding question statement)

⁶³ For example, Section 64(3A) governing the offences for disclosing personal data obtained without consent from data subject causing harm is similar to the offence of publishing any identity information under Section 3(c) of PHA 2014 Singapore. Persons convicted under Section 3 PHA 2014 can be sued for civil liability.

⁶⁴ Section 62 of Evidence Ordinance.