1. Introduction

Technological advancements and Hong Kong's dense environment make it difficult for victims to escape harassment, which occurs both physically and virtually in various contexts such as debt collection, paparazzi, romantic affairs, and workplace disputes.

In Hong Kong, laws against harassment are limited; existing piecemeal legislation addresses specific acts but a comprehensive law was proposed in 2014 and then suspended. The common law's ambiguity regarding harassment confuses victims, potentially diminishing their chances of compensation and leading them to seek claims in other torts or to refrain from action entirely. This situation is unsatisfactory for both legal clarity and victim protection, necessitating urgent reform.

The essay will explore Hong Kong's current harassment laws and their limitations, propose a comprehensive legislation reform, assess foreign approaches to reform, and offer specific recommendations for Hong Kong reform.

2. Current law

Hong Kong's law on harassment is divided into piecemeal legislation on specific harassment and a disputed common law tort of harassment.

2.1. Legislation overview

Hong Kong's statutory law has created a tort of harassment for specified groups of people under specific circumstances.

Sex Discrimination Ordinance ("SDO") (Cap. 480) explicitly defines sexually harassing a woman and harassing a breastfeeding woman.[1] Under SDO, an act is identified as sexual harassment if it is an unwelcome sexual advance or an unwelcome request for sexual favours, or if the act engages in other unwelcome conduct of a sexual nature to her, where a reasonable person would anticipate that that person would be offended, humiliated or intimidated.[2] The second limb

[1] Sections 2(5) and 2A of Sex Discrimination Ordinance.
[2] See s.2(5)(a) of SDO.

of the definition is referred to as "hostile environment harassment," where "sexual harassment" is defined as a person engaging in conduct of a sexual nature that creates a sexually hostile or intimidating environment.[3] More than a sound definition of "sexual harassment," the Ordinance also provides a wide range of remedies, including specific actions like re-employment, compensation of damages, and punitive or exemplary damages.[4] Other laws exist for specific groups. The Race Discrimination Ordinance (Cap. 602) ("RDO") defines harassment similarly to the SDO, with an unwelcome conduct limb[5] and a second "hostile environment harassment" limb. It establishes a tort for racial harassment in Hong Kong, while a separate tort is created for the disabled[6] and tenants[7]. Besides legislating for specific groups, Hong Kong also legislates against particular acts. Section 20 of Summary Offences Ordinance (Cap. 228) ("SOO") makes it an offence to make telephone calls or, messages or telegrams causing annoyance.

However, legislative protection targets specific groups of people or acts. Not all instances are protected under statutes. In these cases, the plaintiff only risks a more uncertain common law tort.

2.2. Common law tort overview

Oddity arises in the first place- is there a genuine common law tort of harassment? The Court of First Instance (CFI) and the Court of Appeal (CA) have developed two irreconcilable case lines in the past two decades. Though at present District Court (DC) and CFI have followed the stream affirming the existence, it is yet to be confirmed by higher courts. Cases relevant to the discussion of the existence of common law tort of harassment is presented in chronological order below:

[3] Kemal Bokhary, Neville Sarony and D.K. Srivastava (eds), *Tort Law and Practice in Hong Kong* (3rd edn, Sweet & Maxwell/Thomson Reuters 2014) para 5.064.
[4] Section 76(3A) of SDO.
[5] See s.7(1) RDO.
[6] Disability Discrimination Ordinance (Cap. 487).
[7] See s.119V of Landlord and Tenant (Consolidation) Ordinance (Cap. 7), under which an "act calculated to interfere with peace or comfort" amounts to harassment.

Case	Decision
朱祖永 訴 香港警務處 [2002] HKCA 5032	1. Deny the existence of common law tort of harassment: *Patel v Patel* [1988] 2 FLR 179, 182; *Khorasandjian v Bush* [1993] QB 727, 744. 2. Two possibilities to establish cause of action- tort of nuisance or intentional infliction of emotional distress first recognized in *Wilkinson v Downton* [1897] 2 QB 57.
Wong Tai Wai David v HKSAR [2004] HKCA 260	1. *Khorasandjian* is an "illegitimate extension of the law of private nuisance to cover a victim who had no interest in the property in which the harassment (and thus nuisance) took place"[8]: *Hunter v Canary Wharf* [1997] AC 655. 2. Whether there is tort of harassment at all is debatable.

[8] *Wong Tai Wai David*, at [26].

Lau Tat Wai v Yip Lai Kuen Joey [2013] HKCFI 639	1. Using existing causes of action in dealing with harassment is inappropriate. 2. Recognize an independent tort of harassment. 3. Adopt the definition of harassment in *Malcomson Bertram & Anr v Naresh Mehta*[9]that harassment is, not exhaustively: *"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."*[10] 4. Mental element expands to recklessness as to whether the victim would suffer injury from his act.[11] 5. The egg skull rule applies.[12] 6. Recovery of damages includes aggravated damages and exemplary damages.[13] Interests can be awarded.[14] Injunctions can be granted.[15]
Shen Xing v Li Jun [2014] HKCFI 672	1. Recognize harassment as a cause of action. 2. Grant aggravated damages and exemplary damages.
Lin Man Yuan v Kin Ming Holdings	Similar decision as above.

[9] [2001] 4 SLR 454 at 470H to 474A.
[10] *Lau Tat Wai* at [62].
[11] Ibid, [65].
[12] Ibid, [66].
[13] Ibid, [71]-[77].
[14] Ibid, [78].
[15] Ibid, [79].

International Ltd and another [2015] HKCFI 919	
Pong Seong Teresa and Others v Chan Norman [2015] HKCA 126	1. Affirm the CFI judgment that there was no tort of harassment in Hong Kong. 2. "It would not be appropriate to set out our views on this important and possibly far-reaching issue in an obiter decision."[16]
Secretary for Justice v Persons Unlawfully and Wilfully Conducting Etc [2019] HKCFI 2773	1. "It could not be said that [tort of harassment] was not recognised in Hong Kong." [17] 2. "At least sufficiently seriously arguable that such a tort did exist for the purposes of granting interlocutory relief." [18]

Table 1: Cases discussing existence of common law tort of harassment

Theoretically, *Pong Seong Teresa* as a CA decision is still binding, while the cases supporting the existence of harassment as the cause of action lie in CFI and DC. *Lau Tat Wai* cannot overrule *朱祖永* and *Pong Seong Teresa* anyway. Hence, the current certainty is temporary. Legislation or a Court of Final Appeal decision to reconcile the propositions is urgently needed.

Other cases further clarified three issues: the test of harassment, the boundary between "regrettable" and "unacceptable," and whether a corporate entity has the cause of action under the tort of harassment.

In *X& Anor v Z*[19] Coleman J adopted the objective-subjective test to determine whether there is harassment. The assessment should include "whether the conduct has crossed the boundary from the regrettable to the unacceptable, or from the unattractive to the oppressive."[20] The same judgment also reiterated that

[16] *Pong Seong Teresa*, at [30.3].
[17] *Secretary for Justice*, at [23].
[18] Ibid, [40].
[19] [2020] HKCFI 826.
[20] Ibid, [15].

"whether that boundary has been crossed may depend on the context, including the social or working context, in which the conduct occurs."[21]

In *Sir Elly Kadoorie & Sons Ltd v Samantha Jane Bradley*[22], the CA allowed the appeal from the plaintiff company that it has *locus standi* to bring an action for harassment on its own capacity. The court suggested that the concept of "worry, emotional distress or annoyance" defined in *Lau Tat Wai* might extend to officers or employees of a corporation facing the defendant's harassment. However, the court finds it unnecessary to address this in the present appeal. Additionally, CA emphasizes that the tort of harassment should not be limited by initial considerations of recognizing the existence of the tort. The multiple ways of and technological aid to harassment must be borne in mind.[23]

3. Limitations of present common law

3.1. Uncertainty and inconsistency in definition

First, consider the uncertainties in common law judgments. When *Lau Tat Wai* introduced the *Malcomson* definition to Hong Kong, Antony Chan J noted is not intended to be exhaustive and only "encompasses the facts of the present case in order to proceed with a consideration of the law."[24] Moreover, *Lau Tat Wai* is more than the first case to adopt a definition of harassment from *Malcomson*; it is also the first case to alter *Malcomson*'s definition. Such alteration to qualify the definition to fit the facts of the case is regarded by a Singaporean scholar as an "inadvertent forewarning of the deficiencies posed by the common law."[25] It rings the bell that further definition changes could open litigation floodgates and further distort the ordinary meaning of harassment. Additionally, in *Sir Elly Kadoorie & Sons Ltd*, though it was found unnecessary to deal with the issue, CA is already willing to expand the definition of "person" to include companies with harassed employees.

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[21] Ibid, [23].
[22] [2024] HKCA 747.
[23] Sir Elly Kadoorie & Sons Ltd, at [67].
[24] *Lau Tat Wai,* at [62].
[25] Joel Soon, "A Comparative Analysis of Legislative Protection from Harassment: A View from Singapore" (2022) 22 *Oxford University Commonwealth Law Journal* 177, DOI: 10.1080/14729342.2022.2109272.

Second, consider the inconsistency between common law and piecemeal legislation. Currently, the definition of harassment in piecemeal legislation is broader than in common law. SDO, RDO, and DDO specify conduct with "sexual," "racial," or "disabled" components but define "harassment" itself as some act that merely makes the victim feel "offended, humiliated or intimidated." It is not required to be "*sufficiently repetitive in nature as would cause*" as defined in the common law even after the introduction of the common law definition. Suppose legislation and common law evolve with distinct definitions of the same word; confusion arises when, in some instances, harassment has a higher common law tort standard and others a statutory law standard. This parallel definition could result in contradictory legal outcomes

3.2. Uncertainty in remedies

Even after recognizing the existence of a tort of harassment, Antony Chan J in *Lau Tat Wai* acknowledged the weakness of the development in common law tort. It is "incremental, responding to the facts of the cases brought before the court." He hoped that "a codified body of law to provide for a remedy against harassment will soon come into place" to replace the "piecemeal development" of the law.[26]

Empirically, Antony Chan J is correct. It is still uncertain how the courts will decide on the scope of remedies. In the District Court case *Kwong Yiu Keung Stanley and another v Chiu Sin Shum and another*[27], which involves the defendant's counterclaim on the plaintiff's six "prank calls" via the building's intercom system at the entrances without saying a word, the court refused to grant aggravated damages and/or exemplary damages. Instead, Hon Andrew Li J awarded the defendant general damages and held that "I do not think this is the worst kind of behavior when comparing with the acts mentioned in the other cases cited above under the discussion of harassment"[28]. The learned judge explained that the tort of harassment has not been well developed, and hence, there are not many cases that can be used as a reference.[29] This suggests that the criterion for damages shall be determined upon the facts, i.e., the severity of

[26] See [63].
[27] [2021] HKDC 158.
[28] *Kwong Yiu Keung Stanley*, at [295].
[29] Ibid, [294].

harassment subjective to the facts themselves, leaving too much space for judges' own perception of the fact pattern. It took over a decade to fully acknowledge the existence of the tort of harassment as a decade since the types of remedies were established. Yet, still, there are few case laws on damages, leaving claimants uncertain about what they might receive. This piecemeal evolution of tort law is inadequate, and the uncertainty in available remedies may deter victims from filing claims.

3.3. Lukewarm reaction from society

The limitation of common law renders a lack of signaling effect on society. Common law is often not as alarming as statutes. Laypersons may not be aware of its existence, let alone the procedure of how to sue. On the other hand, prevention is always better than cure. Unawareness of the law, in turn, cannot sufficiently deter persons from performing such an act in the first place without knowledge of such tort. Moreover, since an inclination to adopt common law would make it almost an absolute certainty that no consolidated harassment ordinance would be in place, Hong Kong's statutes on harassment will still be scattered here and there in numerous ordinances. A fragmented law would only lessen deterrence.[30]

3.4. Question of judicial activism

A final question to ask is, to frame it into Lady Hale's minority judgment in *Granatino v Radmacher*[31], how far the issue of tort of harassment should be determined by judicial decisions and how far it should be left to the legislature? In the age of statutes, perhaps courts have gone too far in Hong Kong to create a new tort by judicial decisions alone. This should not have happened in the first place.

Indeed, the common law world would perhaps never agree on the extent to which judges make new laws. However, there is at least agreement that creating new causes of action should be limited. The UK Supreme Court evaluates whether to extend or to restrain common law tort by an analysis of both "policy" (balancing

[30] Yihan Goh, 'The Case for Legislating Harassment in Singapore' (2014) 26 *Singapore Academy of Law Journal* 68, 87.
[31] [2010] UKSC 42.

benefits of legal change against its harms) and "doctrinal fit."[32] Lady Hale opined that judges now see themselves as institutionally incompetent to create an entirely new cause of action or criminal offences.[33] Three leading cases in Canada and Singapore echo this observation.

The 2019 Ontario Court of Appeal case *Merrifield v The Attorney General of Canada*[34] clarified that recognizing a tort of harassment individually would create a brand-new tort without existing legal basis, which exceeds the boundaries of legitimate judicial action. It would be a usurpation of power for the courts.[35] Four years later, the Alberta Court of King's Bench in *Alberta Health Services v Johnston*[36] upheld a harassment tort, citing support from s.264 of the Canadian Criminal Code (the criminal offence of harassment) as a doctrinal fit. Conversely, The Singapore case of *AXA Insurance Singapore Ltd v Chandran s/o Natesan*[37] declined to follow *Malcomson*, the case recognizing harassment tort adopted in Hong Kong because there was "no basis or principle upon which the tort of harassment is founded"[38] and that the development remained within the purview of Parliament and beyond the scope of court.

Here, though the rulings differ regarding the outcome, all three judgments are based on whether there is in principle or "in doctrine" fit for the courts to decide on the issue. None of the courts, including Alberta, recognize harassment torts on policy alone.

Hong Kong seems to have stepped too far in recognizing the existence of the tort of harassment in cases like *Lau Tat Wai*, which is solely based on the issue of policy. [39] The series of cases decided by CFI and CA all neglect the question discussed in Canada and Singapore of whether the courts have the "doctrinal fit" to develop a new cause of action. The neglect shakes the very foundation of the

[32] Dan Priel, '"That Is Not How the Common Law Works": Paths to Tort Liability for Harassment' (2020) 52 Ottawa L Rev 87 at 93.
[33] Lady Hale, "Legislation or Judicial Law Reform- Where Should Judges Fear to Tread?" (Delivered at the Society of Legal Scholars Conference, 7 September 2016) at 17-18.
[34] 2019 ONCA 205.
[35] Priel, 'Paths to Tort Liability for Harassment' (2020) 52 *Ottawa L Rev* 105.
[36] 2023 ABKB 209.
[37] [2013] SGHC 158.
[38] Ibid, [31].
[39] "The court was unable to see any reason why there should not be a tort of harassment to protect the people of Hong Kong who lived in a small place and in a world where technological advances occurred in leaps and bounds."

cases that have been decided on. There is no doctrinal fit in Hong Kong to justify the creation of a new cause of action like an existing statutory offence in *Alberta Health Services*. The definition and scope of current piecemeal legislation do not correspond to that in common law tort, as discussed in 3.1. Hence, Hong Kong courts cannot find a "doctrinal fit" from piecemeal legislation. Hong Kong may have evaded the issue by broadening an existing cause of action, such as incorporating harassment into established torts like negligence by extending the negligence tort's definition.[40] However, the court's acceptance of *Hunter* in *Wong Tai Wai* also rejected this approach. This creates a Catch-22. The only solution may be legislation criminalizing harassment and a decision by a court similar to that in Alberta. But as we are legislating anyway, why not legislate comprehensively?

4. **Analysis: is comprehensive legislation a better solution?**

4.1. Evaluating foreign jurisdiction solutions

Many common law nations has enacted "blanket" legislative protection. Aiming to protect persons from "harassment act and similar conduct," the United Kingdom enacted the Protection from Harassment Act 1997[41] ("PHA (UK)"). Singapore was in a similar position as Hong Kong in the early 2000s. The Law Reform Committee of the Singapore Academy of Law drafted a report to propose legislation to curb stalking in 2002, but no further action was taken to put forward legislation. Courts in Hong Kong and Singapore took a very similar route in common law development until 2014 when the Protection from Harassment Act 2014 ("PHA (SG)") was legislated. Common law tort of harassment is declared to be abolished and no civil proceedings may be brought for the tort of harassment except under PHA (SG)[42].

Definition

There are two approaches to definition of harassment. The first approach is PHA (UK) which is reluctant to define the term "harassment" in the statute. Only that s.1(2) lays down the test for harassment is a reasonable person test, while s.7(2)

[40] There is little dispute that the courts are competent to do so without much doubt, see: Lady Hale, "Legislation or Judicial Law Reform", at 17.
[41] c. 40.
[42] Section 14(1) of PHA (SG).

stipulates, “References to harassing a person include alarming the person or causing the person distress.” No further statutory language elucidates the issue. “A course of conduct” is defined in s.7(3) as meaning conduct on at least two occasions.

The UK Supreme Court provided one in the common law. In *Hayes v Willoughby*[43], Lord Sumption held that the term of harassment is “an ordinary English word with a well understood meaning.” It is “a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear, or distress.”

An alternative is the “hybrid” approach represented by PHA(SG), which defines harassment through legislation with sections for court guidelines. PHA(SG) outlines five offenses. The elements are act and causation. The acts include (a) using threatening or abusive words; (b) making threatening, abusive, or insulting communication; or (c) publishing identity information of the victim or their associates. Causation means it either (1) causes harassment, alarm, or distress, or (2) is likely to do so by any individual, including the victim.

For the offence of stalking, s.7(3) provides six examples of stalking, while s.7(5) provides guidelines for courts to consider when determining whether an act amounts to “cause harassment, alarm, or distress,” including: the number of occasions, the frequency and the duration of the acts or omissions, the manner of the acts or omissions, the circumstances, the combination of acts or omissions, the effects of the curse of conduct, and the victim’s subjective circumstances.

The UK legislation cannot address limitations of uncertainty in the definition proposed earlier. If Hong Kong takes a similar route as the UK and legislates an ordinance without a specific definition, the disadvantage may be enduring. Lord Sumption’s judgment was delivered in a Supreme Court case, while the current definition is from a CFA case. It would wait until the confirmation of CA or CFA till the definition gains sufficient authority and certainty.

Singapore’s definition can be a better reference as it balances specificity and flexibility. For one thing, harassment is defined, but not so specific as to bar the

[43] [2013] UKSC 17 at [1].

possibility of future development- s.7(3)'s original wording is "example," which indicates the non-exhaustive nature, moreover, a comprehensive guideline for the courts to take into account ensures the consistency and impartiality in the judgment, while guarantees as well that when new situations occur outside the scope of s.7(3), a court can still expand the ambit of definition.

Hence, it is submitted that a statutory definition should be agreed upon in Hong Kong for legal certainty, with statutory examples and guidelines available for legal development.

Integration of civil tort and criminal offence

Another trait in PHA (UK) and PHA (SG) is the creation of the criminal offence of harassment and acknowledging a statutory tort, integrating the two into one piece of legislation. PHA (UK) created three offences, while PHA (SG) has five.

Criminalizing harassment enables public prosecution. Victims can report harassment to the police for investigation. If the court deems it an offence, it can initiate a civil tort case for injunctions or damages. Since state criminal investigations take precedence, victims face less pressure to prove their case tort compared to the common law process. The effect of alleviating burden of investigation is significant in the era of increasing instances of harassment online as well, where the harassment comes from unknown persons via social media. Of course, tracing down the message's source would be nearly impossible; there will be debates as to the freedom of expression and privacy of cyber information as well. In the UK, examples have shown that the police and the prosecution failed to relate online abusive content to harassment, which resulted in devastating consequences for some individuals. [44] Nevertheless, the criminalization of harassment acts as a framework allowing the legislature to work more meticulously on the emerging types of harassment, as well as alleviating burden tremendously for victims of the ordinary ones.

Defences

[44] Laura Bliss, 'The Protection from Harassment Act 1997: Failures by the Criminal Justice System in a Social Media Age' (2019) 83 *Journal of Criminal Law (Hertford)* 217-218.

Both legislations in the UK and Singapore recognize the "reasonableness test" as a defence. Section 1(3)(c) of PHA (UK) provided that:

> *Subsection (1) does not apply to a course of conduct if the person who pursued it shows—*
>
> *(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.*

PHA(SG) section 7 (7) has identical phrasing.

Should Hong Kong legislate, no legislation gap would occur as the objective-subjective test adopted in *X& Anor* to determine the standard of harassment is itself a "reasonable test defence."

It is submitted that, for the sake of legislative transparency and continuity of law, the test should be introduced to the statute as a defence.

Remedies

PHA(UK) explicitly stipulated the availability of injunctions and damages may be awarded for anxiety caused by harassment and financial loss resulting from harassment. PHA (SG) s.11(2) is a similar provision. The leading case law *Vento v Chief Constable of West Yorkshire*[45] set up guidelines for courts to translate the qualitative phrase of "anxiety" and other "injury of feelings" into quantifiable calculation of damages. Awards of damages are divided into three bands "most serious," "serious," and "less serious," with damages ranging from £500 to £25,000 depending on the severity of the instance. Scales in *Vento* are decided to be adjusted by later judgments to take into account inflation.[46]

The court further stated that:[47]

> *Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a*

[45] [2003] ICR 318.
[46] See, for example, *Da'Bell v National Society for Prevention of Cruelty to Children* [2010] IRLR 19.
[47] Ibid, [51].

sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury.

Vento is correct in stating the court cannot justify or explain a particular sum of damages awarded to the defendant to prevent both insufficient and unjust enrichment. However, the establishment of bands and set amounts would, to some extent, clarify the amount of damages based on severity and promote predictability of the division. In cases similar to the facts in *Vento,* where sex discrimination in employment is concerned, Hong Kong courts have relied on its guideline[48]. However, for cases outside the scope of SDO, courts followed *Lau Tat Wai*, which granted HK$600,000 for aggravated damages and HK$200,000 for exemplary damages based on another stream of case law. *Vento* guidelines should be adopted for general harassment.

It is submitted that Hong Kong should confirm in the statutes the availability of injunctions and types of damages established in *Lau Tat Wai*, while the courts should have the freedom to develop a *Vento* guideline for quantifying damages for clarity and equity in compensation.

A designated court for harassment

Singapore set up a new Protection from Harassment Court (PHC) in 2021 after the amendment of PHA (SG) in 2019. PHC deals with both online and offline harassment matters. For a claim for damages under specific amount, the court initiates a simplified track, where claimants can claim online and hearings are also quicker. To provide timely relief for victims, hearings for Expediated Protection Orders can be conducted within 48 to 72 hours of application, or if there is violence or a risk of it, the court responds with hearings within 24 hours.[49]

[48] See, for example, *L v David Roy Burton* [2010] HKDC 252.

[49] 'Singapore: Quicker, More Effective Remedies Against Harassment with New Protection from Harassment Court from 1 June 2021' (Singapore Government News, 31 May 2021) <http://eproxy.lib.hku.hk/login?url=https://www.proquest.com/wire-feeds/singapore-quicker-more-effective-remedies-against/docview/2535047609/se-2>.

It is submitted that Hong Kong should study the feasibility of a designated court or tribunal specializing in harassment cases for more efficient and effective protection.

4.2. Hong Kong's hurdle in legislation

Plans for legislation have been met with hurdles for more than two decades. The Law Reform Commission ("LRC") published a Consultation Paper on Stalking, and in 2000, the Commission published a Report on Stalking. It was not until 2011 that the Constitutional and Mainland Affairs Bureau ("CMAB") initiated a public consultation exercise 2011 based on LRC's recommendations. The Centre for Comparative and Public Law ("CCPL") of the University of Hong Kong was subsequently commissioned to publish a Study on the Experience of Overseas Jurisdiction in Implementing Anti-Stalking Legislation.[50] The legislation process was halted in June 2014 when CMAB concluded that no approaches had a majority support and there were no favourable conditions to pursue further.[51]

A major reason of the legislation process halted is concerns on press freedom. Of the 506 submissions received by CMAB during the consultation period, more than 40% of views received raised concerns over press freedom and relevant "reasonable pursuit" defence.[52] However, evidence has shown that in legislated advanced common law jurisdictions, there is no clear evidence suggesting that press freedom has been suppressed by relevant legislation.[53] CCPL also presented that in the ten high-profile cases relating to press freedom in the UK, the cases were less criticized by the public as the defendants were infamous paparazzi.[54] A possible explanation for a fierce rejection by the press is the complicated political and social landscape then. Press freedom was a primary social concern, triumphing over the less-exposed issue of harassment. Now, new laws govern the press media, and new types of harassment are emerging, that the situation has changed. It is submitted that fewer hurdles are on the way.

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[50] Shiu Yau Wai Simon, 'Protection of Victims Harassed by Former Intimate Partners and Love Obsessionals in Hong Kong' (2016) 10 *HKJLS* 1.
[51] Legislative Council (n 88) [20]-[21].
[52] Hong Kong Legislative Council, Panel on Constitutional Affairs, 'Administration's Paper on Overseas Experience in Implementing Anti-Stalking Legislation' (The Bureau 2013).
[53] Shiu, 'Protection of Victims Harassed' (2016) 10 *HKJLS* 1.
[54] CCPL, 'Study on the Experience of Overseas Jurisdictions in Implementing Anti-Stalking Legislation' (n 97) 128.

5. The way forward

The following summarises key recommendations:

i) A comprehensive legislation reconciling current common law tort of harassment and piecemeal legislation should be enacted.
ii) A new offence of "harassment", together with ancillary provisions, should be included with the offence. The legislature may consider criminalizing current piecemeal legislation.
iii) Legislation should make clear, once the offence of harassment is established, tort of harassment should be available to grant injunctions and damages.
iv) The UK approach of not defining "harassment" in statutory language should not be followed. The definition for the new offence shall be general, referring to that in *Lau Tat Wai*. Examples of the offence similar to s.7(3) of PHA(SG) and guidelines for courts to determine the definition similar to s.7(5) of PHA(SG) shall be incorporated into legislation.
v) Objective-subjective test in *X& Anor* should be applied as a defence in statutes.
vi) The mental element of the offence and tort shall be intention or recklessness.
vii) A guideline framework for remedies similar to *Vento* shall be developed to reconcile adoption in sexual harassment cases and instances without this nature.
viii) Research on the feasibility of the Singapore approach to establish a specially designated court for harassment cases should be promoted.

6. Conclusion

This essay critiques the common law tort for its uncertainty and minimal social impact. It argues against further development of the tort by the courts due to concerns of judicial over-activism. It calls for the re-initiation of comprehensive legislation while referring to foreign jurisdictions such as the UK and Singapore. The reformed legislation should integrate existing legislation with common law. Another non-law recommendation to study the feasibility of a special court for harassment cases is also proposed.