

SOUTH AFRICAN LAW REFORM COMMISSION

DISCUSSION PAPER
September 2004

PROJECT 130

STALKING

Closing date for comments:
15 November 2004

ISBN:

Introduction

The South African Law Reform Commission was established by the South African Law Commission Act, 1973 (Act 19 of 1973).

The members of the Commission are –

The Honourable Madam Justice Y Mokgoro (Chairperson)
The Honourable Madam Justice M L Mailula (Vice-Chairperson)
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The researcher allocated to this project is Ms DM Clark.

Preface

This Discussion Paper expands on some of the issues raised in the Issue Paper on stalking. It also presents an overview of the submissions received on the Issue Paper. It has been prepared under the guidance of the project leader Ms Z Seedat and reflects discussions held with an expert group constituted for the purpose of informing the direction of the Discussion Paper and to guide further deliberations on the topic of stalking.

The Discussion Paper, which includes draft legislation, aims to provide persons and bodies wishing to make comment or make suggestions for the reform of this particular area of the law with sufficient information to enable them to place focused submissions before the Commission. The comments of all persons are sought regarding the issues contained in the Discussion Paper and related issues which may need inclusion in the debate. Such comments are of vital importance to the Commission. The Commission wishes to express its gratitude to all of the respondents to the Issue Paper. The Commission is conscious of the fact that it took a great deal of courage for many of the respondents to expose the impact that stalking has had or still has on their lives. The Commission acknowledges the desperation and helplessness experienced by not being able to find adequate legal remedies to stop the stalking behaviour.

The Commission will assume that respondents agree to the Commission quoting from or referring to comments and attributing comments to respondents, unless representations are marked confidential. Respondents should be aware that the Commission may in any event be required to release information contained in representations under the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

Respondents are requested to submit written comment, representations or requests to the Commission no later than 15 November 2004. Any request for information and administrative enquiries should be addressed to the Secretary of the Commission or the researcher allocated to this project, Ms DM Clark.

This document is also available on the Internet at: www.doj.gov.za/salrc/index.htm .

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INTRODUCTION AND BACKGROUND

Introduction

The South African Law Reform Commission's investigation into stalking is aimed at addressing the growing and complex problems relating to stalking with a view to defining stalking within the South African context and by introducing criminal and civil remedies in order to prevent or reduce violence in inter-personal relationships.

Jurisdictions across the globe are now beginning to take legal action against stalking behaviour, recognising it as a public problem which merits attention. The effects of stalking upon an individual may include behavioural, psychological and social aspects. Specific risks to the victim include a loss of personal safety, the loss of a job, sleeplessness, and a change in work or social habits. These effects have the potential to produce a drain on both criminal justice resources and the health care system, and it is therefore in the best interests of society to take swift action when cases are presented to them.¹

The Commission proposes changes to the civil and criminal law in order to provide effective legal protection to all victims of stalking by recognising that violence, in all its forms, is unacceptable behaviour.

Origin of the investigation

The Discussion Paper on Sexual Offences: the Substantive Law *inter alia* briefly explored the necessity of addressing the phenomenon of stalking and the topic of sexual harassment within the broader framework of sexual offences.² The Commission concluded that including stalking and/or harassment in legislation specifically aimed at criminalising specific sexual conduct would not afford all victims of stalking or harassment the protection that they deserve. In this paper the Commission recommended, that in keeping with numerous foreign jurisdictions,³ a

¹ [Http://www.crimelibrary.com/criminal_mind/psychology/cyberstalking/7.html?sect=19](http://www.crimelibrary.com/criminal_mind/psychology/cyberstalking/7.html?sect=19) as at 2003/12/10.

² South African Law Reform Commission **Discussion Paper 85 Sexual Offences: the Substantive Law** 1999.

³ Comprehensive 'anti-stalking' legislation has been enacted in most Australian

separate investigation be conducted to ascertain the need to enact comprehensive legislation prohibiting stalking.

This recommendation endorsed the finding made in the Commission's Research Paper on Domestic Violence that stalking is an identified form of abuse. However the Commission found that although stalking is often associated with domestic violence, it is a problem that is much broader than the domestic sphere.⁴ The Commission recommended that the inclusion of harassment in the definition of domestic violence would accommodate acts amounting to stalking. However, the Commission noted that an investigation into the criminal-law response to stalking fell outside the Commission's terms of reference.⁵

Based on the recommendation contained in the Discussion Paper on Sexual Offences: The Substantive Law, the Minister for Justice and Constitutional Development approved the inclusion of an investigation into stalking in the programme of the Commission on 21 January 2003.

Purpose of the Discussion Paper

The Issue Paper on Stalking was published in August 2003 with the aim of introducing the topic of stalking for legal debate. Its aim was to identify aspects relating to stalking in need of legal intervention or reform, and in turn to delineate the boundaries of the investigation.

The purpose of the Discussion Paper is to set out preliminary recommendations accompanied by draft legislation to address behaviour which constitutes stalking. The Discussion Paper takes cognisance of and reflects the manner in which select comparative jurisdictions address stalking behaviour. It also takes the substantial and valuable public response to the Issue Paper into account and aims to test public

jurisdictions, 49 states in the United States of America, including the District of Columbia, Canada and the United Kingdom.

⁴ South African Law Reform Commission **Research Paper on Domestic Violence** 1999.

⁵ South African Law Reform Commission **Discussion Paper 70 Domestic Violence** 1997.

opinion regarding solutions identified by the Commission.

The Commission's continuing working methodology

This Discussion Paper presents the current thinking and opinion of the Commission regarding the reform of the law in relation to stalking behaviour as it has been informed by research and consultation, as well as by the submissions received. However at this stage the proposals put forward are still tentative and may be influenced by the workshopping of the Discussion Paper, further consultation and submissions on the proposed reforms.

The Commission invites submissions and discussion on the proposals presented in this Discussion Paper and draft legislation. As stated, the views contained in this Discussion Paper are not the Commission's final views and the Discussion Paper is published precisely to elicit public comment with a view to compiling a final report and finalising the draft legislation. The Discussion Paper will be workshopped and interested parties are invited to avail themselves of the opportunity to influence the drafting of legislation at this early stage.

After submissions and input from the consultation process have been integrated into the proposals and draft legislation, a report will be prepared and submitted to the Minister for Justice and Constitutional Development for her consideration. The Commission expresses its gratitude to all those who made submissions in response to the Issue Paper, particularly those persons who are being subjected to this form of behaviour, for their invaluable contribution to this process.

Respondents are requested to respond as comprehensively as possible and are invited to raise additional issues that are not covered in the questions, should they wish to do so.

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Ms Palmer;

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Ms Van Niekerk, the National Coordinator of Childline;

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