

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE PROTECTION AND REMEDIES IN
CASES INVOLVING STALKING; TO ESTABLISH AN
INVESTIGATIVE AND COMPLAINTS PROCEDURE IN RELATION TO
ALLEGATIONS OF STALKING; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE STALKING (CIVIL JURISDICTION) BILL, 2018

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to introduce civil remedies to prevent or reduce harm brought about by stalking.

PART 1 - PRELIMINARY

Part 1 contains preliminary provisions which comprise clauses 1 to 3.

Clause 1 of the Bill provides the short title.

Clause 2 is the definition clause. It defines several important terms including “stalking”, “complainant”, “respondent”, and “protection order”.

Clause 3 identifies the elements that would constitute stalking. In this regard, stalking requires a course of conduct, directed towards a specific person on two or more occasions within a period of twelve months and the conduct should cause that person to fear for that person’s safety or the safety of someone known to that person.

PART 2 - PROTECTION ORDERS, CONDITIONS AND DURATION

Part 2 deals with the application for and granting of a protection order. It contains clauses 4 to 10.

Clause 4 provides for the procedure to be followed when seeking to apply for a protection order. It permits an application to be made against the respondent or any other person counselled or procured by the respondent to stalk the complainant.

Clause 5 provides that a person may apply to the court to be appointed as a representative for a person who has been or is being stalked. Persons who may be represented include-

- (a) a child; or
- (b) a person over the age of seventeen years who, due to physical incapacity, fear of injury or any other sufficient cause, is unable or unwilling to apply for a protection order.

Clause 6 stipulates that a person, on whose behalf an application for a protection order is made, is not precluded from being heard in the proceedings.

Clause 7 provides that the court shall, as soon as is reasonably practicable, consider an application submitted to it for a protection order.

Clause 8 permits a protection order to be made on an ex parte application if the court is satisfied that the delay that would be caused by proceeding on summons may result in a risk to the personal safety of the complainant or the safety of a person known to the complainant. .

Clause 9 provides that a protection order shall, for the purpose of protecting the complainant or any other person mentioned in the order from conduct which amounts to stalking, prohibit the respondent from-

- (a) engaging in or attempting to engage in a course of conduct which constitutes stalking;
- (b) enlisting the help of another person to engage in a course of conduct which constitutes stalking;
- (c) approaching or otherwise making contact the complainant; and
- (d) committing any other act as specified in the protection order.

Clause 10 empowers the court to make a protection order for such period as is necessary to protect the complainant from further stalking.

PART 3 - INVESTIGATION OF STALKING COMPLAINTS AND CONDUCT OF PROCEEDINGS

Part 3 deals with the manner in which stalking complaints are to be investigated and the proceedings conducted. It contains clauses 11 to 22.

Clause 11 provides for the issuance of a direction by the court to a police officer to investigate an allegation of stalking.

Clause 12 provides for the issuance of directions to a service provider to assist in identifying a respondent where the complainant is being stalked by means of an ICT Service or ICT Network of the service provider. It further provides that a service provider commits an offence if the service provider -

- (a) fails without reasonable excuse to comply with a direction of the court;
- (b) destroys, alters or conceals or causes to be destroyed, altered or concealed any information or thing required to be produced under subsection (4);
- (c) hinders, obstructs, prevents or interferes with a police officer in the exercise of the police officer's powers; or
- (d) provides any information or makes a statement knowing that the information or statement is false or misleading.

Clause 13 empowers the court, at any stage of proceedings, to order any person to attend as a witness at those proceedings or to provide any information or thing if the evidence of that person appears to the court to be essential in arriving at a just decision. A person who is ordered to attend proceedings and fails to comply with the order of the court commits an offence.

Clause 14 provides that the court may, in the interests of any person and the public interest, make an order prohibiting the publication of any report or account of the whole or part of the proceedings.

Clause 15 permits a police officer who has knowledge of the name or address, or both, of a person who is alleged to be stalking another person or has stalked another person, to request that other person or that other person's representative to disclose the information to the court.

Clause 16 provides for the defences which a respondent may rely upon to justify the respondent's conduct. These include-

- (a) the respondent's conduct was pursued for the purpose of preventing or detecting a crime;
- (b) the respondent's conduct was pursued under an enactment or a rule of law;
- (c) the respondent's conduct was pursued in order to comply with a condition or requirement imposed by a person acting under an enactment; or
- (d) the respondent's conduct was reasonable for the protection of the respondent or another person or for the protection of the respondent's property or the property of another.

Clause 17 provides that a question of fact arising in any proceedings under this legislation, other than criminal proceedings, shall be decided on a balance of probabilities.

Clause 18 provides that in any proceedings under this legislation, other than criminal proceedings, the court may receive any evidence that would not otherwise be admissible in a court if the court is satisfied that the admission of the evidence is required in the interests of justice.

Clause 19 permits a court to hear and determine an application for a protection order in conjunction with one or more other applications for a protection order in any case where all the applications are made against the same person.

Clause 20 permits the court to dismiss any proceedings instituted under this legislation if it is satisfied that those proceedings are frivolous, vexatious or an abuse of the process of the court. It further makes it an offence for a person to knowingly or wilfully make a false, vexatious or frivolous complaint against another person for an alleged contravention of any provision of this legislation.

Clause 21 provides for the award of costs against any person if the court is satisfied that he acted frivolously or vexatiously or abused the process of the court.

Clause 22 provides that a person who is being or has been stalked by another person or a person who has been the subject of a frivolous or vexatious claim may institute civil proceedings in order to claim damages for any-

- (a) anxiety or distress caused by the stalking;
- (b) financial loss resulting from the stalking;

- (c) harm resulting from the stalking; or
- (d) other matter which the court believes justifies an award of damages.

PART 4 – GENERAL

Part 4 sets out general provisions and comprises clauses 23 to 25.

Clause 23 provides for an appeal to be made to the Grand Court or the Court of Appeal by a person aggrieved by-

- (a) the making of an order or the issuance of a direction by the court;
or
- (b) the refusal of the court to make an order or issue a direction.

Clause 24 provides the making of rules under the Grand Court Law (2015 Revision) or the Summary Jurisdiction Law (2015 Revision) for the purpose of giving effect to this legislation.

Clause 25 provides that Cabinet may make regulations for the effective implementation of this legislation.

THE STALKING (CIVIL JURISDICTION) BILL, 2018

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CAYMAN ISLANDS

A BILL FOR A LAW TO PROVIDE PROTECTION AND REMEDIES IN CASES INVOLVING STALKING; TO ESTABLISH AN INVESTIGATIVE AND COMPLAINTS PROCEDURE IN RELATION TO ALLEGATIONS OF STALKING; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. This Law may be cited as the Stalking (Civil Jurisdiction) Law, 2018.

Short title

2. In this Law -

Interpretation

“child” means a person under the age of eighteen;

“complainant” means a person who has applied for a protection order or on whose behalf an application for a protection order has been made;

“court” means the Grand Court or a court of summary jurisdiction;

“Court of Appeal” means the Court of Appeal of the Cayman Islands;

“ex parte application” means an application made without notice to the respondent;

“harm” includes any psychiatric, psychological, physical or economic harm;

“ICT” has the same meaning assigned by section 2 of the Information and Communications Technology Authority Law (2017 Revision);

(2017 Revision)

“ICT network” has the same meaning assigned by section 2 of the Information and Communications Technology Authority Law (2017 Revision);

“ICT service has the same meaning assigned by section 2 of the Information and Communications Technology Authority Law (2017 Revision);

“police officer” means a member of the Royal Cayman Islands Police Service;

“protection order” means an order made pursuant to section 4 and includes an interim protection order;

“respondent” means the person who is alleged to have stalked another person; and

“service provider” means a person who is licensed under the Information and Communications Technology Authority Law (2017 Revision) to provide an ICT Service or operate an ICT Network.

Stalking

3. (1) A person stalks another person if the first-mentioned person intentionally engages in a course of conduct specified under subsection (2), which -

- (a) is directed towards the second-mentioned person;
- (b) occurs on two or more occasions within a period of twelve months;
- (c) causes the second-mentioned person to fear for the second mentioned-person’s safety or the safety of someone known to second-mentioned person;
- (d) would cause a reasonable person to fear for the second-mentioned person’s safety or the safety of someone known to the second-mentioned person; and
- (e) the first-mentioned person knows or ought to know would cause that second-mentioned person to fear for the second-mentioned person’s safety or the safety of someone known to the second-mentioned person.

(2) For the purposes of subsection (1), a course of conduct in relation to a person includes -

- (a) watching, besetting or loitering near that person;
- (b) approaching or entering a place where that person resides, works or visits;
- (c) preventing or hindering access to or from that person’s place of residence, business, employment, learning or any other location which that person visits;
- (d) following or accosting that person;
- (e) entering or interfering with that person’s property;

- (f) engaging in verbal, written, electronic or any other form of communication with that person;
- (g) giving offensive, abusive or threatening material to that person or leaving it where it will be found by, given to, or brought to the attention of that person;
- (h) sending, delivering or showing to that person letters, images telegrams, packages, facsimiles or electronic messages;
- (i) acting covertly in a way that could reasonably be expected to arouse apprehension or fear in that person; or
- (j) intimidating, harassing or molesting that person.

(3) A course of conduct under subsection (2) may be the same course of conduct or different courses of conduct pursued on each occasion in a public or a private place.

PART 2 - PROTECTION ORDERS, CONDITIONS AND DURATION

4. (1) A person who is being, or has been stalked by another person may apply to the court for a protection order.

Application for protection order

(2) Every application for a protection order shall be served personally on the respondent and on any other person counselled or procured by the respondent to engage in stalking the complainant.

(3) An application under subsection (2) may be served by the complainant or any other person acting on behalf of the complainant.

5. (1) A person may apply to the court to be appointed as a representative for any other person who has been or is being stalked.

Application by representative

(2) A person appointed under subsection (1) may represent-

- (a) a child; or
- (b) a person over the age of seventeen years who, due to physical incapacity, fear of injury or any other sufficient cause, is unable or unwilling to apply for a protection order.

(3) Where the person stalked is a child or a person suffering from a mental disability and he wishes to apply for a protection order, an application shall be made on behalf of that child or mentally disabled person through a representative appointed by the court.

(4) A person is not eligible to be appointed as a representative if-

- (a) that person is under eighteen years of age; or
- (b) that person is suffering from a disability which impairs that person's ability to properly act on behalf of a person seeking to apply for a protection order.

(5) If a person applying for a protection order or that person's representative is not represented by an attorney-at-law, the court shall inform that person or that person's representative of -

(2018 Revision)

- (a) the relief available under this Law; and
- (b) the right to make a criminal complaint for stalking against a respondent pursuant to the relevant provisions under the Penal Code (2018 Revision).

(6) Where an application for the appointment as a representative is made, the court shall make the appointment if it is satisfied-

- (a) that reasonable steps have been taken to ascertain the wishes of the person to whom the application relates;
- (b) that it is in the best interests of the person to whom the application relates for the appointment to be made;
- (c) that the proposed appointee consents in writing to the appointment; and
- (d) that there is unlikely to be any conflict between the interests of the proposed appointee and the interests of the person in respect of whom the application is made.

Involvement in proceedings where representative appointed

6. (1) A person on whose behalf an application for a protection order is made is not precluded from being heard in the proceedings.

(2) If a representative applies on another person's behalf for a protection order and at any time before the application is determined, the other person objects to the continuation of the proceedings, then no further steps may be taken in the proceedings, unless the court is satisfied that the objection was made with undue influence.

Power to consider and make a protection order

7. (1) The court shall, as soon as is reasonably practicable, consider an application submitted to it for a protection order and may consider any additional evidence it deems fit, including oral evidence or evidence by affidavit, which forms part of the record of proceedings.

(2) If the court makes a protection order against a respondent, the court may direct that the order also apply against any other person if it is satisfied that the respondent has counselled or procured that other person in the stalking of the complainant.

(3) A direction shall not be made under subsection (2) unless the court is satisfied that -

- (a) the person is stalking or has stalked the complainant; and
- (b) the making of a direction is necessary to protect the complainant from further stalking conduct.

(4) A protection order may be made for the same course of conduct, or different courses of conduct, committed on each occasion in a public or a private place.

8. (1) A protection order may be made on an ex parte application if the court is satisfied that the delay that would be caused by proceeding on a summons may result in a risk to the personal safety of the complainant or the safety of a person known to the complainant.

Ex parte application for protection order

(2) A protection order made on an ex parte application shall be an interim order.

(3) Where a protection order is granted on an ex parte application, it shall be served personally on the respondent who may apply to the court for it to be discharged.

9. (1) A protection order shall, for the purpose of protecting the complainant or any other person mentioned in the order from conduct which amounts to stalking, prohibit the respondent from -

Protection order, conditions and offence

- (a) engaging in or attempting to engage in a course of conduct which constitutes stalking;
- (b) enlisting the help of another person to engage in a course of conduct which constitutes stalking;
- (c) approaching or otherwise making contact with the complainant;
- (d) committing any other act as specified in the protection order.

(2) The court may impose any additional conditions on the respondent which it deems reasonably necessary to protect and provide for the safety of the complainant or a person known to the complainant.

(3) The court may order a police officer to-

- (a) seize any weapon in the possession or under the control of the respondent;
- (b) accompany the complainant or a person known to the complainant to a specified place to assist with arrangements regarding the collection of personal property identified in the application for the protection order; or
- (c) investigate the complaint of stalking with a view to instituting a criminal prosecution against the respondent.

(4) The court may, in making a protection order, direct the respondent to submit to -

- (a) psychological treatment;
- (b) an alcohol and drug treatment programme;
- (b) anger management instruction;

- (c) counselling; or
- (d) the compulsory attendance or residence at a specified facility for a specified purpose.

(5) If the court is of the opinion that any provision of a protection order deals with a matter that should, in the interests of justice, be dealt with further in terms of any other relevant law, the court may order that the prohibition remain in force for a determined period in order to afford the person concerned the opportunity to seek appropriate relief in terms of that other law.

(6) A person who acts in contravention of a protection order commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year or both.

(7) In the case of a continuing breach of a protection order, a person may be ordered by the court to pay a further sum of one hundred dollars for each day that such breach continues after the date of its proof.

Duration, discharge and variation of a protection order

10. (1) A protection order may be made for such period as the court considers necessary to protect the complainant from further stalking and continues in force until the expiry of that period or in the absence of a specified period, after the expiry of one year from the date on which the order is made.

(2) A complainant or a respondent may, upon notice to the other party and the court, apply for the variation or discharge of a protection order.

(3) If the court is satisfied that circumstances have materially changed since the granting of the original protection order and that good cause has been shown for the variation or discharge of the protection order, it may issue an order to this effect.

(4) The court shall -

- (a) grant an application made under subsection (2) only if it is satisfied that the application is made without any undue influence; and
- (b) forward a notice to the affected parties if a protection order is varied or discharged.

PART 3 - INVESTIGATION OF STALKING COMPLAINTS AND CONDUCT OF PROCEEDINGS

Court may order investigation to ascertain name and address of respondent

11. If an application for a protection order is made under section 4 and the court is satisfied that a protection order is justified as a result of the stalking of the complainant and the identity or address of the respondent is not known, the court may issue a direction to a police officer to investigate the matter with a view to determining the name and address of the respondent or obtaining any other information which may be required in order to identify or trace the respondent.

12. (1) If an application for a protection order is made pursuant to section 4 and the court is satisfied that a protection order must be issued as a result of the stalking of the complainant by means of an ICT Service or ICT Network of a service provider and the identity of the respondent is not known, the court may issue a direction which requires the service provider to provide -

Service provider to
furnish particulars to
court

- (a) information that facilitates the identification of the origin and destination of the communication;
- (b) the date and time the communication was sent, delivered, received or transmitted, or was intended to be sent, delivered, received or transmitted; and
- (c) any other information that is available to the service provider which may be of assistance to the court in identifying the respondent and source of the communication.

(2) If the court issues a direction under subsection (1) it shall order that the direction be served on the service provider.

(3) The information referred to in subsection (1) shall be provided to the court within five days from the time that the direction is served on a service provider.

(4) A service provider on whom a direction is served may apply to the court for -

- (a) an extension of the period of five days for a further period of five days on the grounds that the information cannot be provided within the time directed; or
- (b) the cancellation of the direction on the grounds that -
 - (i) it does not provide an ICT Service or operate an ICT Network;
 - (ii) the requested information is not available in the records of the service provider; or
 - (iii) the requested information is incapable of retrieval.

(5) After receipt of an application made under subsection (4) the court -

- (a) shall consider the application;
- (b) if it deems fit may request any additional evidence by way of affidavit from the service provider;
- (c) shall give a decision in respect of the application; and
- (d) shall inform the service provider of the outcome of the application.

(6) Any data, records or information that is the subject of an investigation shall, where physically and electronically possible, be retained by a service provider for such period as the court may by order direct.

- (7) A service provider who -
- (a) fails without reasonable excuse to comply with a direction of the court;
 - (b) destroys, alters or conceals or causes to be destroyed, altered or concealed any information or thing required to be produced under subsection (4);
 - (c) hinders, obstructs, prevents or interferes with a he officer in the exercise of the police officer's powers; or
 - (e) provides any information or makes a statement knowing that the information or statement is false or misleading,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars or imprisonment for a term of one year or both; and in the case of a continuing breach, a service provider may be ordered by the court to pay a further sum of one hundred dollars for each day that such breach continues after the date of its proof.

Attendance of witnesses

13. (1) The court may, at any stage of proceedings under this Law, order any person to attend as a witness at those proceedings or to provide any information or thing if the evidence of that person appears to the court to be essential in arriving at a just decision.

(2) A person who is ordered by the court to remain in attendance at the proceedings shall remain in attendance unless that person is excused by the court.

(3) Where a person is ordered to attend proceedings and that person is not excused in accordance with subsection 2 but fails to -

- (a) attend or to remain in attendance;
- (b) appear at the place and on the date and time to which the proceedings relate; or
- (c) produce any book, document, data, object or any other thing specified by order of the court,

that person commits an offence and is liable on summary conviction to a fine of two thousand dollars or imprisonment for a term of one year or both; and in the case of a continuing breach, a person may be ordered by the court to pay a further sum of one hundred dollars for each day that such breach continues after the date of its proof.

Prohibition against publication of information

14. (1) In any proceedings under this Law and having regard to the interests of any person and to the public interest, the court may make an order -

- (a) prohibiting the publication of any report or account of the whole or any part of -
 - (i) the evidence adduced; or

- (ii) the submissions made;
 - (b) prohibiting the publication of -
 - (i) the name of any person, or any name or particulars likely to lead to the identification of that person; or
 - (ii) the affairs of any person; or
 - (c) excluding all or any persons other than the parties to the proceedings, attorneys-at-law involved in the proceedings and any officer of the court, from the whole or any part of the proceedings.
- (2) The court may make an order under this section on its own motion or on the application of any party to the proceedings.
- (3) An application to the court for an order under this section may be heard in open court or in chambers.
- (4) An order made under subsection (1)(a) or (b) -
- (a) may be made for a limited period or permanently;
 - (b) may be renewed for a further period by the court; and
 - (c) may be reviewed by the court at anytime.
- (5) Nothing in this section limits or restricts any other power of the court-
- (a) to prohibit or restrict the publication of reports or particulars relating to the proceedings; or
 - (b) to hear proceedings in private or to exclude any person from the court.
- (6) Where a witness in proceedings under this Law is a child, the court may direct that no person, other than the witness and his parent or guardian or a person in loco parentis may be present at the proceedings, unless that other person's presence is authorised by the court.
- (7) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of six months or both.

15. (1) Where a police officer has knowledge of the name or address, or both, of a person who is alleged to be stalking another person or has stalked another person, the police officer may, at the request of that other person, or if a representative of the other person has been appointed, at the representative's request, disclose that information to the court.

Police may release information to enable application for protection order to be made

(2) If information is disclosed to the court pursuant to subsection (1), the court staff shall treat that information as confidential and shall not disclose the information other than for purposes of subsection (3).

(3) The court may, on request, disclose the information to the other person referred to in subsection (1) or that person's representative only if it is satisfied that the other person or that other person's representative is eligible to apply for a protection order against the person to whom this specified information relates.

Defence to prove that conduct was for lawful purpose

16. It is a defence for a respondent to show that -

- (a) the respondent's conduct was pursued for the purpose of preventing or detecting a crime;
- (b) the respondent's conduct was pursued under an enactment or a rule of law;
- (c) the respondent's conduct was pursued in order to comply with a condition or requirement imposed by a person acting under an enactment;
- (d) the respondent's conduct was reasonable for the protection of the respondent or another person or for the protection of the respondent's property or the property of another; or
- (e) the respondent had no reason to believe that there was any person within hearing or sight who was likely to be put in fear as a result of the respondent's conduct.

Standard of proof

17. A question of fact arising in any proceedings under this Law, other than criminal proceedings, shall be decided on a balance of probabilities.

Admission of evidence

18. In any proceedings under this Law, other than criminal proceedings, and whether by way of hearing in the first instance or by way of appeal, or otherwise, the court may receive any evidence that would not otherwise be admissible in a court if the court is satisfied that the admission of the evidence is required in the interests of justice.

Applications may be heard together

19. A court may hear and determine an application for a protection order in conjunction with one or more other applications for a protection order in any case where all the applications are made against the same person.

Vexatious proceedings

20. (1) A court may dismiss any proceedings instituted under this Law if it is satisfied that those proceedings are frivolous, vexatious or an abuse of the process of the court.

(2) If a court is satisfied that a person has persistently instituted vexatious proceedings under this Law, whether against the same person or against different persons, the court may make an order prohibiting that person from commencing any further proceedings or proceedings of any specified kind against any specified person, without the leave of the court.

(3) A court shall not make an order under subsection (2) without giving that person an opportunity to be heard.

(4) Nothing in this section applies in respect of criminal proceedings.

(5) Nothing in this section limits any other power of the court to dismiss proceedings.

(6) A person who, in the opinion of the court, knowingly or wilfully makes a false, vexatious or frivolous complaint against another person for an alleged contravention of any provision of this Law commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year or both.

21. The court may only make an order as to costs against any person if it is satisfied that the person - Costs

- (a) acted frivolously or vexatiously; or
- (b) abused the process of the court.

22. (1) A person who is being or has been stalked by another person may institute civil proceedings in order to claim damages for any - Civil remedy

- (a) anxiety or distress caused by the stalking;
- (b) financial loss resulting from the stalking;
- (c) harm resulting from the stalking; or
- (d) other matter which the court believes justifies an award of damages.

(2) A person who has been the subject of frivolous or vexatious proceedings involving allegations of stalking may institute civil proceedings in order to claim damages for any -

- (a) anxiety or distress caused by the stalking;
- (b) financial loss resulting from the stalking;
- (c) harm resulting from the stalking; or
- (d) other matter which the court believes justifies an award of damages.

PART 4 - GENERAL

23. (1) A person aggrieved by - Appeals

- (a) the making of an order or the issuance of a direction by the court;
or
- (b) the refusal of the court to make an order or issue a direction,

may appeal, where applicable, to the Grand Court or the Court of Appeal.

(2) The operation of an order shall not be stayed pending an appeal unless the court, upon an application and having regard to the circumstances, otherwise directs.

The Stalking (Civil Jurisdiction) Bill, 2018

Rules of Court
(2015 Revision)
(2015 Revision)

24. (1) The Rules Committee, constituted under section 19 of the Grand Court Law (2015 Revision) may make Rules of Court under that section or make Summary Court Rules under section 44 of the Summary Jurisdiction Law (2015 Revision) for the purpose of giving effect to this Law.

(2) The Rules Committee may in particular, but without prejudice to the generality of subsection (1), make provision for the hearing without delay of any application for an order and the procedure upon giving notice of appeal from decisions of a court and the giving of any recognisance thereupon.

Regulations

25. The Cabinet may make regulations for the effective implementation of this Law.

Passed by the Legislative Assembly the day of , 2018.

Speaker.

Clerk of the Legislative Assembly.