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### LEGAL TOPIC: THE OFFENCE OF HARASSMENT

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#### 1. INTRODUCTION

The Offence of Harassment is governed by the **Offences Against the Person Act Chapter 11:08** of the Republic of Trinidad and Tobago. This Act makes it a Criminal Offence to harass a person and provides a mechanism for a person who is being harassed to seek relief should they feel as though their safety is being threatened by an Offender. Furthermore, the Act allows for a Complaint to be made and for Protection to be sought by the person making the Complaint **before** any further harm is caused to them by the Offender, such as the Offences of Assault and Battery.

#### 2. WHAT IS HARASSMENT?

**The Offences Against the Persons Act** (hereinafter called the "Act") provides a definition of what constitutes Harassment in Section 30A(1)(a). The Act states that harassment of a person includes alarming the person or causing the person distress by engaging in a course of conduct such as:

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- (i) Following, making visual recordings of, stopping, or accosting the person;
- (ii) Watching, loitering near or hindering or preventing access to or from the person's place of residence, workplace or any other place frequented by the person;
- (iii) Entering property or interfering with property in the possession of the person;
- (iv) Making contact with the person, whether by gesture, directly, verbally, by telephone, computer, post, or in any other way;
- (v) Giving offensive material to the person or leaving it where it will be found by, given to, or brought to the attention of the person;
- (vi) Acting in any manner described in (i) to (v) towards someone with a familial or close personal relationship to the person; or
- (vii) Acting in any other way that could reasonably be expected to alarm or cause the person distress.

In order for the above listed behaviours to amount to a “course of conduct” for the purposes of the Act, it should be noted that conduct of the kind listed must have been carried out on **at least two occasions** according to section 30A(1)(b) of the Act.

There is room for a broader interpretation in section 30A(1)(a)(viii) of the Act which functions as a “sweep-up” clause to cover behaviours which may not be specifically itemized above, by stating that “acting in any other way that could reasonably be expected to alarm or cause the person distress” would fall within the definition of “Harassment.” The Court, under this section, would therefore decide what constitutes harassment based on the facts of each case once it doesn't fall within one of the specified categories set out above.

In the following cases the **Protection from Harassment Act 1997** of the United Kingdom, which has similar provisions to the provisions for Harassment in the **Offences Against the Person Act** within the Republic of Trinidad and Tobago, discussed what constituted harassment in relation to the course of conduct of the Harasser:

In ***Pratt v DPP [2001] EWHC 483*** the Appellant was convicted of the offence of Harassment based on his course of conduct. Prior to the incidents that gave rise to his conviction, the Appellant gave an undertaking in Court not to use or threaten violence against his wife and not to intimidate, harass, or pester her. On one occasion in December 1999, after the Appellant gave the undertaking, the Appellant tried to start an argument with his wife, followed her into their kitchen and threw a beaker of water over her. Subsequently, in March 2000, the Appellant chased his wife through their house while swearing and repeatedly questioning her. It was found that these two incidents amounted to a course of conduct and the Appellant ought to have known that his conduct would amount to harassment, especially given his previous undertaking to the Court. It was stated in this case that the incidents which give rise to a course of conduct must be connected in type and in context so as to justify the conclusion that they can amount to a course of conduct; and in this case, they clearly did.

In ***Regina v SPC [2001] EWCA Crim 1251*** it was determined that a number of letters written by the Appellant and sent to a local Member of Parliament on numerous occasions containing abuse and materials which could be construed as threats would amount to a course of conduct, especially given the severe distress these letters caused the recipient, who began to suffer from nightmares due to them. We can translate this in our present context to someone using the internet or social media to threaten, abuse or harass someone so that it can amount to the Criminal Offence of Harassment.

### 3. **PENALTIES ASSOCIATED WITH THE OFFENCE**

Harassment is a Criminal Offence and as such there are penalties affixed once it is found by the Courts that the offensive behaviour falls within the definition of Harassment as outlined in the Act.

Section 30A(2) of the Act states that a person who pursues a course of conduct which amounts to harassment of another, and which he knows or reasonably ought to know amounts to harassment of the other is guilty of an offence and is liable on summary conviction to a fine of **Two Thousand Dollars (\$2,000.00) AND** imprisonment for six (6) months.

For the purposes of determining whether the offender knows that his conduct amounts to harassment, section 30A(3) of the Act states that a person is deemed to know that his course of conduct amounts to harassment of another if “a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.”

In addition to being liable for the Offence of Harassment, there is also a penalty for Putting a Person in Fear of Violence. This occurs where a person who is accused of conduct which may constitute harassment, and which causes the other person to fear that violence will be used against him and the person knows or ought to know that his conduct will cause the other person to fear that violence will be used against him, will be liable to conviction on indictment to a fine of **Ten Thousand Dollars (\$10,000.00) AND** imprisonment for six (6) months in accordance with section 30B of the Act. A person will be deemed to have known that his conduct will cause the other person to fear that violence will be used against him if “a reasonable person in possession of the same information would think the course of conduct would cause the other person so to fear.”

It should also be noted that, if a person charged with Putting a person in Fear of Violence is found not guilty, this does not mean that he may not still be found guilty of the Offence of Harassment in accordance with section 30A of the Act. In fact, the Court

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may still deem that the person's behaviour amounted to a course of conduct which falls into the definition of harassment, even though it did not put the person who he was harassing in fear of violence.

#### 4. **DEFENCES**

Section 30C of the Act outlines the Defences that may be available for a person charged with an offence under section 30A or 30B, that is, for the Offence of Harassment or for Putting a Person in Fear of Violence. To attempt to mount a credible Defence, the Person Charged must show that:

- (a) His course of conduct was pursued for the purpose of preventing or detecting crime; or
- (b) His course of conduct was pursued under any written or unwritten law or to comply with any condition or requirement imposed under any written or unwritten law; or
- (c) In the particular circumstances, the pursuit of the course of conduct was reasonable.

#### 5. **REMEDIES AVAILABLE**

Aside from punitive measures that would be enforced against someone found guilty of Harassment, the Act outlines additional Remedies that may be available to a person who is being harassed in Section 30D. A Court may make an Order for Protection or Compensation. Additionally, a Court where necessary may make an Order that the harasser be committed to a Psychiatric Hospital in accordance with the **Mental Health Act Chapter 28:02.**

#### **Protection:**

An Order for Protection may be made by the Court in accordance with section 30D of the Act. This Order shall direct a person to cease from engaging in conduct which:

- (a) Constitutes or may constitute harassment; or

(b) Will cause fear of violence.

Failure of the offender to comply with any such Order would amount to an Offence and the offender would be liable on summary conviction to imprisonment for six (6) months.

### **Compensation:**

An Order for Compensation may be made by the Court against the Offender in favour of the person who was being harassed in order to compensate the aggrieved person for any costs which may have arisen in relation to the harassment which they received.

Compensation may include:

- (a) Loss of earnings;
- (b) Medical expenses;
- (c) Moving to a different location and accommodation expenses; and
- (d) Reasonable legal costs

### **Mental Health Act**

Where circumstances require, the Court may make an Order in accordance with section 6 of the **Mental Health Act Chapter 28:02** which provides that every person who is or is reasonably believed to be in need of such treatment as is provided in a psychiatric hospital may be admitted by Order of the Court.

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