Insurance & Personal Injury

I Am Being Stalked. How Would the Law Help Me to Obtain Compensation?

In 2000, the Law Reform Commission of Hong Kong recommended legal reforms to assist victims of stalking. However, the recommendation was not heeded. The torts of private nuisance and trespass to the person may assist victims of stalking to obtain compensation.

Usual types of stalking

Recent news showed stalking to be on the rise. A primary school teacher who was imprisoned for stalking his students continued to stalk his victims after he was released from jail. A student sued the ex-teacher for harm she had suffered. Can victims of stalking resort to civil action to seek compensation and prevent continued harassment by stalkers?

Many scholars and law commissions (e.g. In the United Kingdom and Canada) have tried to define stalking. In its ordinary meaning, many people understand stalking as continuous acts of harassment over a period of time against a person. Common types of stalking includes being followed by a sex predator on the street, receiving continuous unwelcomed telephone calls, letters, gifts from a stalker etc.

Protection under existing civil law

As there is no cause of action in stalking per se, and stalking may take many forms, victims need to consider different causes of action against stalkers. These may include the tort in private nuisance, trespass to the person, sexual harassment and invasion of privacy among others. Some types of stalking may culminate in criminal offences such as loitering, assault and battery, intimidation and false imprisonment. We shall concentrate on the civil torts of private nuisance and trespass to the person.

1. Private nuisance

When a person sues a stalker in private nuisance, he/she has to prove, on a balance of probabilities that the nuisance maker has interfered with the ordinary and reasonable use or enjoyment of the victim’s property.

If the stalking activity does not interfere with the occupation of the victim’s property or when the victim has no interest in the property in question, the action will fail. In Ng Hoi Sze v. Yuen Sha Sha [1999] 3 HKLRD 890, the Court of Appeal held that the Plaintiff may not sue her university roommate in nuisance when the latter allegedly had sex in the Plaintiff’s presence in the hostel room because the Plaintiff had no right of exclusive possession to the
hostel room. The link between the alleged wrong and properties can create peculiar problems. For example, a wife may sue her separated husband in private nuisance if he harasses her at her rented residential property. However, if such harassment takes place at the wife’s work place, she may not sue him in private nuisance as she has no property interest in the work place. She merely has permission from her employer to use the property for the purpose of work.

2. Trespass to the person

Trespass to the person can take the form of attempted or actual battery or assault against a victim. When a stalker attempts or threatens to commit a battery which puts the victim in reasonable fear or apprehension of immediate infliction of an unlawful physical contact, the tort will be applicable.

But mere repeated telephone calls or tailing a person without actual physical contact or putting the person in reasonable fear or apprehension of immediate violence may only be considered as annoyance and are not actionable under the tort of trespass to the person.

Remedies

Private nuisance

Remedies available to victims of nuisance usually include compensation for whatever loss the victims suffer that are foreseeable consequence of the perpetrators’ wrongful acts. Compensation for private nuisance are awarded mainly for the loss of amenity value of the land affected as a result of the nuisance. If the nuisance has caused loss of profits or other expenses, these are also recoverable. However, compensation for personal injury as a result of private nuisance is not recoverable. Another common remedy is injunction which are commonly granted if the harm is substantial, or where compensation alone is not sufficient to help the victim.

Trespass to the person

Victims of stalking may sue in the tort of trespass to the person and obtain compensation from the stalker for mental stress or otherwise suffered under the head of pain, suffering and loss of amenities. They can also obtain compensation in medical expenses; and losses in income if their suffering has prevented them from work.

In the case of the student above mentioned (who was being stalked by her ex-teacher), she may sue in private nuisance if she was stalked at her residence. If her ex-teacher’s stalking caused her fear of immediate infliction of unlawful physical contact, she may sue her ex-teacher in the tort of trespass to the person.
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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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