

Seminar Note

**Harassment, Nuisance and (Un) Neighbourly Disputes – A New Neighbour Principle?
Recent Statutory Reforms in Singapore**

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1. Opening remarks - Chair: Professor Rick Glofcheski

Professor Amirthalingam is a Professor of Law at the National University of Singapore (NUS) and has over the years held many positions at NUS including vice-deanship roles. He was also Director of the Asian Law Institute and is currently Chair of the NUS Teaching Academy.

The speaking points of today's seminar will revolve recent legislation implemented in Singapore concerning 'harassment' and 'community disputes'.

2. Background: Protection from Harassment Act (POHA) and Community Disputes Resolution Act (CDRA)

What sparked the legislative process behind the Acts?

In 2012-13, there was public outrage in Singapore when mainland Chinese immigrants complained about the smells of curry from their Indian neighbours. The matter went to community mediation where the mediator concluded that curry should not be cooked when the Chinese families were home and could be disturbed by the smell. This outraged Singaporeans across the country.

Statistics following the introduction of POHA and CDRA

Between November 2014 and July 2016, 222 applications for protection orders were made under POHA.

Between October 2015 and July 2016, 930 inquiries and 80 claims were brought under CDRA. Almost 70% involved complaints of excessive noise. In that regard, religious leaders were invited to become involved. These leaders were helpful in bringing cases to mediation as they were able to explain the difference between religious practices which cause noise (which is to be afforded high degree of respect) and cultural practices with cause noise.

3. Protection from Harassment

Does the tort of harassment exist under the common law?

The short answer is that there is much confusion on the matter. In *Malcomson v Mehta* [2001] the High Court of Singapore held the time has come to recognize a tort of harassment. The tort in *Malcomson* was later recognized in a case by the Court of Appeal in 2013. However, it was held in a subsequent case that there was no jurisprudential basis for the tort in *Malcomson*.

It is also worth noting that in *Malcomson*, the Court found that while the criminal law of harassment existed, it didn't extend to electronic communications. Conversely, harassment under POHA covers acts communicated electronically.

Harassment under statute (POHA)

POHA was enacted in 2014 and abolished the common law tort of harassment. POHA created torts and crimes for acts of harassment. One interesting aspect of POHA is that the conduct amounting to harassment does not have to be persistent or repetitive. Therefore, in theory, one single act could potentially amount to harassment. Another interesting aspect of POHA is that it appears to characterize harassment as a type of conduct: S.4(1)(b) "make any threatening, abusive or insulting communication". Conversely, the common law appears to characterize harassment as a type of injury.

Controversy arose over S. 15 of POHA which prohibits 'false statements of fact'. While the provision sits in the 'remedy' rather than 'offences' part of the Act, it is not in actuality a remedy. Instead, it creates a cause for remedy. This raised the question of whether the provision was for the purpose of suppressing free speech. This concern was settled in *Ting Choon Meng* [2016], where it was held that: (1) S. 15 could not be used by government; and (2) S. 15 doesn't govern all false statements, only those that can lead to emotional or psychological impact.

4. Community dispute resolution v. private nuisance

While CDRA is based on nuisance, there are some differences:

- i. Nuisance is concerned with balancing the competing interests of the claimant and defendant, while CDRA is concerned with facilitating community (rather than individual) disputes;
- ii. Nuisance is not fault-based but CDRA is concerned with the respondent's conduct. Unlike nuisance, CDRA is concerned with whether the respondent's conduct was intentional, reckless or negligent;
- iii. Who can sue?
 - Under nuisance, a party must have legal interest in property to have standing;
 - Under CDRA, an individual who lawfully resides in a place of residence in the same building as or within 100m from the respondent's residence will have standing;

- iv. Nuisance has defences such as statutory authority for inevitable nuisances but CDRA does not;
- v. Remedies for injunction, damages or specific performance are common to nuisance and CDRA. However, CDRA provides the option of an apology;
 - For CDRA, the court considers the impact not only on the respondent but any individual who lives in the same residence or any person who can reasonably be expected to be affected by the order.
- vi. Pursuant to S. 23, CDRA tribunal isn't bound by rules of evidence; and
- vii. Pursuant to S. 29, at CDRA tribunal, legal counsel is not permitted unless all parties agree and leave is granted.
 - However, on appeal to the court, legal representation is allowed.

5. CDRA enforcement

Enforcement under CDRA follows a 'step up' approach whereby the consequences of non-compliance become progressively grave.

Under CDRA, the Court may impose a bond condition on another person to ensure that the contravening party complies with the Court's direction. This provision was meant to deal with those with mental health issues by making their family members responsible. However, it is worded very broadly and it is uncertain who could or would be placed under a bond condition. S. 11 provides that a landlord could be subject of a bond over his tenant. In that situation, the landlord would also be allowed to repossess with just 14 days' notice.

Non-compliance by a contravening party to a special direction from the Court is a criminal offence. S. 9(1) of CDRA states that non-compliance with a special direction allows the favoured party to apply to the court to exclude the non-complying party from his place of residence. This is an extremely draconian measure. If parties are excluded from their homes for non-compliance with a special direction, where will they go?

It remains to be seen how CDRA provisions will be applied in practice

It has been questioned whether some provisions under CDRA are too broad. For instance, S. 4(2)(e) proscribes "surveillance of the neighbor or of the neighbour's place of residence, where the surveillance is done at or in the vicinity of that place of residence". While this serves to protect privacy, it may be unreasonable or unfair if the CCTV was for the respondent's own security purposes.

The role of judges and mediators under CDRA is also a question - are they adjudicators or regulators?

6. Concluding thoughts

Do the Acts create a new neighbour principle or a new neighbourhood principle?

Three questions are worth examining in light of the recent developments surrounding POHA and CDRA: (i) is legislation or the common law better to deal with harassment and un-neighbourly conduct?; (ii) philosophically, is the underlying approach a top-down regulatory approach or a bottom-up rights-based approach?; and (iii) how does one strike a balance between individual rights and community interests?

7. Q&A

Professor Simon Young: Hong Kong has struggled to enact a stalking law and one reason is the concern of rights groups that the law would be used against the media. Has this discussion been raised in Singapore? Are there any safeguards included in POHA to address that concern? Is S. 21 on exemptions of classes of persons such a safeguard?

Professor Amirthalingam: A similar issue (concerning freedom of expression rights) was discussed in light of S. 15 in Singapore but that was put to rest by a judgment from the courts. There has not been so much debate otherwise. It is unlikely that S. 21 is intended to exempt classes of people such as the media from POHA. It is more likely to apply to protect government officials, such as police, who may speak on matters that inflame the public.

Question from audience: I am also concerned with rights issues such as the freedom of expression. Amos Yee in Singapore was originally charged under POHA for making remarks about Lee Kuan Yew, why were those charges later dropped?

Professor Amirthalingam: This is a contentious issue in Singapore. Amos Yee's actions were both politically sensitive (because it insulted Lee Kuan Yew) and religiously and racially sensitive (matters which are taken very seriously in Singapore). Initially, all charges were dropped after an investigation and warning but the issue heated up again when Amos Yee refused to stop. There is a lot of noise surrounding the case but it does raise the question – to what extent should people be allowed to speak their minds? Freedom of expression is different in Singapore than it is in the U.S.

Professor Glofcheski: What is the relationship between the CDRA and nuisance?

Professor Amirthalingam: You cannot bring an action in both, but you can choose which law to bring your claim under. However, there is a practical difference between the two in that, in most nuisance cases in Singapore, the concern is property damage while CDRA has handled primarily complaints concerning noise.

Professor Glofcheski: What is the relationship between POHA and the common law tort of harassment?

Professor Amirthalingam: POHA doesn't affect *Malcomson* but S. 14 expressly abolishes the tort and precludes civil proceedings for harassment to be brought under the common law. What is interesting is that S. 14 prefaces the abolishment provision with the words "to avoid doubt". It seems as though the legislature was unsure whether or not the tort of harassment existed under the common law.

Comment from audience: "To avoid doubt" may be reference to the competing authorities on harassment under the common law and POHA rather than the question of whether the tort exists at common law.

Professor Amirthalingam: That may be true but legislation is supposed to be clear and precise and even in that case, the words "to avoid doubt" would be redundant.

Question from audience: Regarding the false statements pursuant to S. 15 of POHA, would a more appropriate remedy be to seek the input of community leaders instead of applying to the District Court for an order?

Professor Amirthalingam: Seeking the input of community leaders may be more relevant for matters under CDRA. However, matters under POHA are more serious – it is concerned with the protection of victims, and therefore a court order makes more sense.