

**Report on Conference on Harassment in Singapore:
Realities, Conundrums and Approaches Moving Ahead
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By Sim Jui Liang
IPS Research Assistant

The conference on Harassment in Singapore: Realities, Conundrums and Approaches Moving Ahead was organised by the Institute of Policy Studies (IPS) on 18 November 2013. It was attended by about 100 representatives from academia, the legal profession, civil service, non-governmental organisations, voluntary welfare organisations and the media. The conference was opened by Mr K Shanmugam, Minister for Law and Minister for Foreign Affairs, and he also participated in a dialogue session with the participants at the close of the conference.

Below is a summary of the key issues discussed at the conference.

SUMMARY OF OPENING SPEECH BY MR K SHANMUGAM

Mr Shanmugam described harassment as conduct that is manifested in different forms and can happen at home, in school and at the workplace, to adults and children, and by adults and children.

Child bullying is neither new nor uncommon – we are familiar with the kinds of bullying that take place in schools, which include name-calling, intimidating behaviour and physical attacks. The cyber-bullying of children is however a more recent phenomenon. In fact, a Microsoft study conducted in 2012 which examined bullying among youths aged eight to 17 worldwide found that bullying was particularly pervasive in six countries, with Singapore being one of them. Even more worrying was the fact that Singapore had the second highest rate of cyber-bullying among youth in the world, after China.

Another area that warrants attention and action is sexual harassment, which takes place within and outside the workplace. Likewise, stalking can be highly disruptive to the lives of many people, and often in devastating ways.

Mr Shanmugam added that with its unprecedented speed and interactivity, the Internet has transformed the way people interact and socialise with one another. However, the anonymity and the borderless, viral and permanent characteristics of cyberspace have made harassment and bullying easier and at times more egregious. He noted that in the Microsoft

study, Singapore and China were the only two countries among the 25 surveyed where online bullying is more pervasive than bullying in the physical world.

Mr Shanmugam opined that this could be due to the enforcing of strict laws in the physical world. He also stressed that conduct that is unacceptable in the physical world must also be regulated when it happens in the virtual world. There is a need to better protect victims of harassment, both in the real world and online.

Mr Shanmugam noted that based on public feedback, there is a sense that our laws are inadequate. The Miscellaneous Offences (Public Order and Nuisance) Act, at least as the Courts have interpreted it, does not apply to all online conduct which might be considered egregious. Other pieces of legislation, such as the Women's Charter and the Moneylenders Act, address harassment in specific contexts, rather than cover general conduct.

In addition, civil remedies are limited. While civil injunctions are available to restrain the perpetrators, the effectiveness of the intervention may be weakened because the information may already have been disseminated and widely spread.

It would be useful to refer to what other jurisdictions have done, or are doing. For example, in the UK, New Zealand and South Africa, there are standalone Harassment Acts while in Australia and some of the US States, there is comprehensive state/territory legislation providing for criminal as well as civil remedies for harassment.

Mr Shanmugam explained that the law should not be the only response to issues such as bullying and harassment; these challenges also have to be addressed ultimately by society accepting the appropriate conventions, norms or behaviour. In terms of the balance between legislation, self-regulation and self-help, Mr Shanmugam indicated that his preference is to use the law as a last resort. Singapore needs to create an environment where norms of conduct are established and people feel that they ought not to partake in particular types of conduct. For example, if everyone frowns upon sexual harassment, that will create a powerful norm without even having to resort to the law.

In addition, people should be able to turn to self-help remedies without having to go to the police and the Courts. The law can be given some power to intervene at the next layer. Of course, where an act is thoroughly egregious, criminal and civil remedies will come in.

The entire speech is available at: <http://www.mlaw.gov.sg/news/speeches/speech-at-ips-harassment.html>

PANEL 1: SEXUAL HARASSMENT AND STALKING

The first panel was moderated by Mr Wendell Wong, Director (Dispute Resolution) at Drew & Napier LLC and the two speakers were Ms Corinna Lim, Executive Director, Association of Women for Action and Research (AWARE), and Asst. Prof. Goh Yihan, Faculty of Law, National University of Singapore (NUS).

As a litigator, Mr Wong has to advise clients who are either the perpetrator or the victim in harassment cases. He suggested examining whether the line of sexual harassment and stalking might be blurred by cultural norms, especially in a cosmopolitan society and workforce.

SUMMARY OF PRESENTATION BY MS CORINNA LIM

Ms Lim began by saying that she appreciated the Ministry of Law for recognising that Singapore is behind the curve in relation to harassment laws and it has decided to review these laws. The advantage of being behind the curve is that it provides Singapore with opportunities to learn from other countries. She expressed the hope that the Government will ensure Singapore would live up to its reputation as a safe place to live in where men and women are assured that there are comprehensive laws that protect them in the workplace, in schools and the cyberspace.

Ms Lim also noted that Singapore has a legal obligation under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to enact laws that will protect against workplace sexual harassment. In 2011, the CEDAW Committee strongly recommended that Singapore enact legislative provisions on sexual harassment in the workplace to comply with its treaty obligations. She added that AWARE conducted a campaign called Shout (Sexual Harassment Out) this year and 1,729 people signed a petition for the State to introduce legislative protection against workplace sexual harassment, including requiring employers to take steps to prevent sexual harassment and for an authority to handle these complaints. She submitted the petition to the Law Minister at the conference.

Referring to sexual harassment as “any unwelcomed conduct of a sexual nature which has the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the victim”, Ms Lim noted that workplace harassment could happen to men and women, and if the victim is a man, the perpetrator is normally a man. She added that any definition of workplace sexual harassment should cover the following types of sexual harassment: quid pro quo which is not covered by Singapore criminal law (in which promises of rewards/threats of reprisals are made for complying with or not complying with sexual favours), physical (which is covered under rape, molest and sexual assault laws), verbal (such as offensive and sexual comments and favours) and visual (for example, leering at a person’s body). Verbal and visual harassment is partially covered by legislation but they are non-seizable offences; this means that one can make a police report but the police do not have the power to investigate the matter unless they are given a waiver to do so.

According to Ms Lim, workplace sexual harassment is common in Singapore. An AWARE survey conducted in 2008 found that 54.4% of 500 respondents had experienced some form of workplace sexual harassment, with 30% having been harassed several times and 11.4% having received threats of termination. In 2012, the AWARE Helpline received 43 cases of workplace sexual harassment, and by the end of October 2013, it had received 47 cases. AWARE expects a rise of 30% this year due to the increased visibility of AWARE in this area of work, rather than a rise in incidence.

If an anti-harassment law is to be passed, protection should be given to not just employees but also people applying for a job, interns and people on work experience, consultants and contract workers, part-time workers and volunteers. Protection should also extend beyond the office or factory to include all work-related activities in and outside Singapore. The reason being, a lot of workplace harassment takes place at office meetings, business trips and office functions where alcohol might have been consumed. Ms Lim added that Singapore should consider extending harassment protection to educational institutions, homes and shelters, medical and mental institutions and the community sector, such as voluntary welfare organisations.

Sexual harassment can seriously undermine businesses and productivity as a victim is unlikely to be able to concentrate on her work. The productivity of the perpetrator might be adversely affected as well. Sexual harassment in the workplace also affects the productivity of other staff when they start to take sides on the issue. Other negative consequences include staff turnover, legal claims and a damaged reputation for the company concerned.

For the victim, sexual harassment causes misery, pain and suffering. Sometimes, it could be an uphill task for the victim to make a police report due to the workplace dynamics. The victim could be a sole breadwinner during an economic recession and these circumstances made it difficult to report to the police.

Compared to top business centres such as Hong Kong, the US and the UK, Singapore does not have a specific workplace harassment law. The absence of such laws gives rise to a culture that tolerates and condones harassment. There are no strong signals to deter would-be harassers and companies do not feel compelled to care about or act on such cases. Moreover, victims think that they have no rights.

It should be noted that criminal redress offered under general criminal law is insufficient because it basically punishes the harasser. Yet, what victims seek is to put an end to the harassment and not having to work with the harasser, in addition to receiving an apology and some forms of compensation for the medical bills, psychiatric treatment and suffering. Going to the police does not offer these solutions. Usually victims go to the police because they don't want the next victim to suffer. Civil remedies are also extremely limited – legal representation is expensive and hardly worth the effort, as in most cases victims only receive damages for having to leave the company early.

The most serious problem is that, most organisations do not have any sexual harassment policies or procedures in place. Those that do may not communicate the procedures to their employees. Hence, victims quit their jobs instead of telling their companies about the harassment as they assumed that their companies would not do anything. The Ministry of Manpower has no formal authority except in cases of unlawful dismissal. Similarly, the Tripartite Alliance for Fair Employment Practices (TAFEP) has no direct authority over organisations. While unionised workers can lodge complaints with their unions, only 25% of the workforce is unionised.

Hence, AWARE put forth the following recommendations for workplace sexual harassment protection: implement specific sexual harassment laws; impose a statutory obligation on

employers; put in place a complaint mechanism which does not require lawyers (it would be an alternative to reporting to the police); and provide enhanced civil remedies so that the victims could receive some compensation for their emotional distress.

Ms Lim also urged employers to be proactive, as they are best placed to prevent and stop harassment. Victims expect their employers to protect them and when this fails, they develop a very deep sense of injustice and anger. Thus, whatever the legislation that is adopted, there is a need to impose an obligation on employers to have zero-tolerance policies, establish documentation procedures to manage the incidents, and train their staff and managers. This would lead to a healthy working environment and less occurrences of workplace sexual harassment – would-be harassers would get the message and victims would be empowered to say “no” to harassment since they would be informed of their rights by such policies.

As such, Ms Lim called for a single Protection of Harassment Act to send a strong signal to deter harassment and to create a positive culture in the cyberspace, workplace and home. It would also have the benefit of having a comprehensive approach that would avoid gaps, rather than the existing piecemeal legislation.

She then proposed a model for the Harassment Act through the adoption of the Family Violence framework. This framework would be simple enough for a victim to get protection without having to go to the police or lawyers. It should cover all forms of harassment and there would be a simple initiating process involving a magistrate in court or administrative body with the necessary powers. This framework consists of a two-step procedure: first, a victim could get an anti-harassment order on the spot by showing evidence of eminent danger and second, if the order was breached, an order of arrest would be made by the police. The procedure will be based on a civil set of proof.

For workplace sexual harassment, employers are liable for harassment unless they can demonstrate they have taken all reasonable steps to prevent harassment. The proposed Act should also factor in provisions to facilitate amicable settlements. The Court or the tribunal should also be able to exercise additional powers, such as directing police investigation, ordering Internet Service Providers (ISPs) to provide information, and ordering compensation for victims to take into account emotional distress.

The implementation of a harassment protection legislation should also be complemented by a substantial awareness campaign to ensure the message would reach out to all stakeholders. There should be also training for the administrative tribunal and the police. The police should also be empowered to make arrests when a breach has taken place.

SUMMARY OF PRESENTATION BY ASST. PROF. GOH YIHAN

Prof. Goh started his presentation with a definition of stalking: “the pursuit by one person of what appears to be a campaign of harassment or molestation of another”. Hence, stalking is a subset of harassment so once we have defined harassment, stalking is but an example of harassing conduct.

Looking at the existing protection from harassment in Singapore, Prof. Goh turned his attention to the Common Law and Statutory Law. The Common Law protects a person's right to quiet enjoyment of his property and right to be free from bodily harm. These rights are recognised in the law of torts. However the definitions of these torts restrict their application. For example, the tort of private nuisance requires one to have a proprietary interest before one can sue. Since most harassment takes place outside of a person's home, the requisite proprietary interest to sue in private nuisance is absent. Similarly, harassment may not involve bodily harm or the threat of bodily harm. So these torts are limited in protecting against harassment.

Statutory protection against harassment in Singapore is piecemeal in fashion; there is no unified general legislation against harassment per se. What is in existence is a series of legislation that have within them provisions that criminalise harassing conduct or offer limited civil remedies for harassment. For example, under the Miscellaneous Offences Act, any person who causes harassment is guilty of an offence. The Penal Code also contains provisions that criminalise harassment, including criminal intimidation which would cover the more serious forms of harassment. Section 509 of the Penal Code potentially could cover sexual harassment but it is not targeted at sexual harassment as such – it mentions words or gestures intended to insult the modesty of a woman. In so far as civil remedies are concerned, it is possible to seek a protection order under the Women's Charter.

There are four limitations to the existing Common Law protection, which is the Common Law tort of harassment. First, there is the uncertain ambit after the AXA Insurance case in which the High Court said that because Parliament has enacted laws to deal with harassment in the criminal sphere, it is therefore Parliament's domain to decide whether to extend such protection in the civil sphere. Therefore, this ruling has introduced uncertainty to the status of the tort of harassment in Singapore. Second, there is a limited or uncertain definition of what constitutes harassment. Hence, courts are not proceeding on the same starting point as they are using different sources to define harassment. This may lead to uncertainty in the case law that develops. Third, there are limited remedies available under the Common Law. There is an open question whether damages can be awarded for harassment in the Common Law action. It is also unclear what the exact measures of damages are. Finally, there is a lack of a signalling effect – to bury the Common Law action in the books of the Common Law is to deny its accessibility to the man on the street. The layperson may not be aware of such a law.

As for the existing statutory protection, there are several gaps. In Singapore, we have disparate statutes covering acts of harassment. However, these acts are tied to the context of their parent act. For example, the Women's Charter affords protection against domestic harassment but it does not extend beyond its family context. Likewise the Computer Misuse and Cyber Security Act only applies when there is misuse of computers. There are also limited remedies available under the statutory regime – civil remedies are not easily available unless one seeks a protection order under the Women's Charter. Moreover, protection across different statutes creates limited signalling effect for both victims and offenders.

Assuming that legislation is to be implemented, there are two models for consideration – a blanket legislation to target harassment or piecemeal legislation which is the status quo in Singapore. Prof. Goh suggested a blanket legislation is a better option as it sends a stronger signalling effect, is more uniform and more accessible to victims of harassment.

Another point for consideration is the definition of harassment: Should we adopt a very detailed and exhaustive definition of harassment, or a broad but sparse definition of harassment, or there be no definition at all? For example, the UK Act does not provide any definition of harassment and leaves it to courts to decide on its definition. On the other hand, the South African Act provides a highly detailed and exhaustive definition of harassment. Prof. Goh opined that a detailed and exhaustive definition is perhaps not ideal as the legislation will not be future-proof, and the legislation will quickly becoming outdated with technological changes. The key is to strike a balance between a statutory definition that is broad and the Common Law interpretation of the statute.

The range of remedies available also needs to be considered, with injunctive relief being perhaps the most relevant remedy. Making restraining orders available to the victims should be included in the legislation. The legislation could also stipulate the kind of damages for harassment to be awarded and the kind of measures these damages ought to be based on.

Also to be considered is the nature of enforcement – the best drafted legislation has to be accessible to the layperson or the victim. There is a need to strike a balance between having too simple an approach that could encourage frivolous claims and having too complex an approach that would discourage victims. Prof. Goh suggested taking a leaf from the model adopted by Singapore's Family Court which has extensive assistance by the sidelines to provide guidance to laypersons to make use of the court process. Frivolous cases could be turned away as the involvement of court processes may have some deterrent effect. At the same time, extensive assistance on the sidelines could enable victims to make use of the court process easily.

QUESTION AND ANSWER SESSION WITH THE SPEAKERS

Mr Wong asked Ms Lim about the role that the community can play in terms of providing non-legal solutions to the problem of sexual harassment at the workplace. Ms Lim replied that the community always has a role to play but presently, the norms in the workplace are not the healthiest. Many of the victims who approached AWARE mentioned about colleagues being unsupportive and telling the victims to accept the situation. Meanwhile, the harasser was allowed to continue in his job for many years. Such a norm is wrong and with legislation, the community can enforce a culture that does not condone harassment. So, there is a need to change the norm with legislation first.

Addressing Cultural Differences

Mr Wong noted that the notions of culturally acceptable behaviours such as hugging differ among societies. Hence, he asked Ms Lim how different cultural norms could be calibrated in a cosmopolitan society and workforce. Ms Lim recognised the existence of different cultures with some cultures not requiring much body distance. Dealing with such issues does

not require the involvement of the law as a first option. If the victim is empowered to say “Please stop, I am uncomfortable” and if the other party continues, then it becomes sexual harassment. However, many men and women don’t even feel comfortable in saying “no” because of the lack of such norms in the workplace. Also, under the law, many statutes contain a reasonable test which considers all the circumstances to determine whether the behaviour is reasonable or offensive. Still, there is no reason to not have a law or change the norm.

Obligations of Employers

A participant asked Prof. Goh to comment on Ms Lim’s call for employers to be held responsible for workplace harassment and if it is possible to make the harassment law broad enough to make employers liable. Prof. Goh suggested that under a general legislation against harassment, subsidiary legislation could be provided to deal specifically with workplace harassment. That would provide both a general legislation that has a targeted signalling effect and also an effect on specific instances such as workplace harassment.

Mr Wong added that we could also consider best practices as a layered response since the business community might be concerned about the cost of doing business with the implementation of such legislation. Hence, there should be dialogues with corporate stakeholders on the appropriate measure. Nevertheless, he agreed with Ms Lim about the need to educate and empower employees to say “no” to harassment.

In response, Ms Lim raised the example of a voluntary code implemented in Malaysia where in two years, only one per cent of companies had implemented such a policy. A more positive example is Japan which implemented the equal employment opportunity law. It was found that many companies (71%) had implemented the guidelines because of the change in law. She added that to not legislate because of business costs would be short-sighted because of the great losses stemming from workplace harassment.

Another participant asked if legislation would discourage the promotion of friendliness in the workplace, as people could become fearful of being misunderstood. Prof. Goh opined that the concerns could be addressed by defining harassment in an appropriate manner and by providing within the legislation sufficient defences against what might otherwise be normal behaviour. The definition should not be so general as to include normal behaviour and at the same time, it should stamp out harassment. Another solution is to educate people on the aims of legislation – it is not meant to target everyday behaviour but harassing conduct. To Ms Lim, a framework is still needed as for some victims, the workplace has become an unfriendly place and they have developed a fear of workplaces in general.

The next question was related to the kind of civil remedies against employers – should victims be empowered to sue their employers for monetary compensation if the latter are liable for workplace harassment? Prof. Goh felt that such guidelines are useful but it should not be left to individual companies to define what amounts to harassment, it has to be top-down and legislated. If a company does not implement those guidelines, it is subject to criminal or financial sanctions. At the individual remedy level, if an individual has suffered

harassment because the guidelines have been breached, he or she can then seek civil remedy.

Need for Education

A participant commented that besides the workplace, education about harassment also has to start with the schools in the form of prevention programmes. In response, Ms Lim agreed that education is important and AWARE has suggested expanding the focus on workplace harassment to educational institutions as it has seen an increase of cases in these institutions. In fact, AWARE has already conducted educational programmes in schools.

Reasons for Long Overdue Legislation

Another participant wondered about why it took Singapore so long to consider a specific law on workplace harassment. She also noted that in many cases of sexual harassment, there were neither witnesses nor evidence so she questioned the practicality of having harassment protection legislation. Prof. Goh suggested that for a long time, the Singapore Courts were highly influenced by the English court's decisions, and for a long period, the English courts did not recognise the tort of intentional harassment. Hence, it took a long time for Singapore Courts to develop a tort of harassment. Mr Wong added that other pieces of legislation such as the Women's Charter and the Miscellaneous Act are available to address some of the issues pertaining to harassment.

To Ms Lim, it is the pro-business climate in Singapore and a general reluctance to impose too many regulations on businesses that explain the long overdue need for legislation. Moreover, sexual harassment is not seen as a serious problem. However, if people are not aware of their rights, they would not seek help from the authorities. More stories and cases of harassment surfaced only when AWARE started to highlight the issue of workplace harassment. As for the issue on the lack of evidence or witnesses, the law has provisions for such scenarios: "For the criminal standard of proof, it's proof beyond a reasonable doubt and for the civil standard, it's on a balance of probabilities. Any mechanism should be a balance of probabilities."

Another participant was curious about the reaction of companies to the idea of adopting a voluntary code concerning workplace harassment. Ms Lim noted that the Singapore National Employers Federation's (SNEF) record shows the take-up rate for a voluntary code with regard to dealing with AIDS in companies is very low, which makes a stronger case for legislation.

PANEL 2: HARASSMENT IN SCHOOLS AND BULLYING OF CHILDREN AND YOUTH

Moderated by Mr Yap Teong Liang, a family lawyer with T L Yap & Associates, the panel saw two representatives from non-governmental organisations sharing their experiences in dealing with child and youth bullying. The two speakers were Ms Esther Ng, President and Founder of the Coalition against Bullying for Children and Youth (CABCY), and Ms Tan Bee Joo, Co-Director of the Singapore Children's Society (SCS).

Mr Yap noted that as a society that always strives to be the best, a Microsoft survey in 2012 that ranked Singapore second amongst 25 countries for cyber-bullying among children and youth is not something worth celebrating. He hoped that the panel session would uncover solutions and Singapore would become inconspicuous in such survey rankings eventually.

SUMMARY OF PRESENTATION BY MS ESTHER NG

A definition of bullying was proffered by Ms Ng at the start of her presentation. Bullying refers to a series of behaviour comprising the intention to hurt. Bullying is hurtful and involves power imbalances, in the sense that there is an unjust use of power. Bullying is typically repeated but one-off bullying can produce negative consequences too. There is also evident enjoyment by the bully while the victim experiences a whole range of emotions, from feeling embarrassed, overpowered, depressed, angry to being worried. Sometimes victims end up taking the route of suicide.

Bullying manifests in different forms, and includes physical bullying, verbal bullying and non-verbal bullying which can be painful and hurtful even if no words were used. Cyber-bullying is an extension of traditional on-site bullying brought to cyberspace through technology. The anonymity of cyberspace also allows the perpetrator to hide behind the computer screen. As cyber-bullying compresses time and space, children are no longer safe in their own bedrooms. As for the forms of cyber-bullying, they include threats, intimidation, harassment and the public posting of messages and pictures which can be traumatising for the victim to view. In addition, children and youth are not the only ones who have been cyber-bullied, school staff are not spared either.

Cyberspace also provides a platform for bystanders – when bystanders fail to take a stand, they become an accessory to the bullying. When bystanders keep quiet, they are in effect endorsing the act of cyber-bullying or harassment. Hence, school principals and teachers need to be able to identify children who are excluded, suffering or could be bullied instead of simply telling children to “tough it up”. Stakeholders in the educational system need to do something about school policies and the way schools manage bullying.

Ms Ng also showed a video clip of a female student in Malaysia who was repeatedly smacked by her classmates. Her classmates also snipped away her hair because they did not like how it looked. Ms Ng noted that the perpetrators recorded the bullying act and uploaded it onto the Internet. Two years after the incident, the footage was still available worldwide. Ms Ng then asked, “What legislation is available to ensure this (video clip) is taken down when it is reported?”

In cyberspace, the act of bullying gets spread in a rapid manner. In an on-site situation where bullying happens, it is possible to assure the victim that the act would not occur again. In cyberspace, the spread of the bullying act is not only rapid; it is also repeated since footages of the act are archived online. Furthermore, in some cyber-bullying cases, because the identity of the perpetrator is unknown, the victim keeps imagining that the perpetrator is still lurking around. The degree of damage increases as the act of bullying resurfaces. Ms Ng shared that, as a therapist, she finds it very difficult to help her clients find closure.

Sometimes, emotional trauma drives some victims to exact revenge or attempt suicide. Examples include the massacres at Virginia Tech and Port Arthur. The perpetrators of the Columbine High School massacre in 1999 were said to have been bullied and had planned “revenge”. Ms Ng presented the perpetrators’ drawings of weapons, bombs and maps which indicated that their attack was pre-mediated. The case of a Primary Two boy who drew pictures of weapons and a map to attack his bullies showed the extent of anger and thoughts of revenge that victims of bullying can be driven to. In Singapore, a survey conducted by the CABCY found that one in eight children were bullied on a weekly basis, while one in four were cyber-bullied.

Besides the need for schools to adopt an anti-bullying policy and intervention programmes, teachers need to be trained to identify students who are bullied. A humanistic approach in which the needs of both bullies and victims are considered is also important. Bullies should not be labelled as bullies as they are children. Instead there should be a shared concern that something needs to be done for them and a whole-school approach should be considered.

Towards the end of her presentation, Ms Ng expressed her hope for an anti-bullying school policy to be implemented in every school. She disclosed that in the past seven years of advocacy work, some schools were hesitant to implement an anti-bullying policy, preferring to have guidelines for pro-social behaviour instead. Unfortunately, the children and youth bullying situation has worsened as attested by the survey findings. Hence, there is a need to make clear statements, embrace shared concerns, support victims and their families, empower bystanders, and allow bystanders and victims to say “this is bullying”.

SUMMARY OF PRESENTATION BY MS TAN BEE JOO

Ms Tan commenced her presentation by sharing with the audience the school bullying-related work the SCS has been involved in over the years. In 2004, the SCS started the Bully-Free Campaign in which its social workers conducted school assembly talks, teachers’ training and parenting workshops to promote a bully-free environment in schools. To complement these advocacy efforts, the SCS subsequently embarked on two research studies on primary and secondary school students. This culminated in the publication of a monograph in 2008 on school bullying in Singapore.

According to the findings, one in five primary school students and one in four secondary school students are bullied in schools. Hence, school bullying is relatively prevalent in Singapore. The studies also found that bullying is not a random occurrence between unfamiliar students; typically, the bullies and their victims are of the same gender, are likely to be from the same educational level and more often than not, are classmates. In addition, bullying is more likely intra-ethnic than inter-ethnic, which means that ethnicity is not a salient factor in determining whether a student is bullied.

In 2009, the SCS embarked on another study to investigate the possibility of long-term effects of school bullying on adults in Singapore. The results illustrate that on average, respondents who were bullied during their school days had lower self-esteem, poorer well-being and were more depressed than those who were not bullied.

With a better understanding of the long-term implications of school bullying, the SCS introduced a more holistic “Whole School Approach” to its bully prevention work. Underpinned by the belief that no single person of the school community is solely responsible for bullying, the “Whole School Approach” involves not only the head of the school, but also teachers, school administrators, students and parents in planning and executing the programme.

Having an anti-bullying policy helps to reinforce the anti-bullying stance the school takes in the entire school community. It also clarifies to every member of the school community how bullying incidents are addressed in the school. This is achieved by designing a clear incident response flow chart to ensure all staff and parents know how to respond to a breach of the anti-bullying policy or code of conduct. An anti-bullying policy should also include consequences for bullying behaviour outside the school, such as the cyber-bullying of students after school hours or bullying in school buses. Ms Tan stressed that for the policy to be effective, it should be developed in consultation with staff, parents and students.

Training the relevant school personnel is another vital component under the “Whole School Approach”. For example, teachers must be trained on how to intervene in bullying incidents effectively, especially when students are encouraged to report bullying incidents to the school authorities. Trained teachers should be able to detect changes in the students’ behaviours which could be a sign of students being victimised.

An advantage of adopting the “Whole School Approach” is that it focuses on preventive work, as under this approach, schools will implement strategies in preventing or reducing bullying. For instance, a Bully-Free Campaign creates awareness among the school community and by participating in fun-filled activities designed to promote pro-social behaviours, students can share openly their opinions on the issue of school bullying under the guidance from teachers.

To reach out to parents, information on school bullying and cyber-bullying is disseminated via the schools’ newsletters and parenting workshops that impart tips on supporting children are conducted. Bystanders are also included in the Anti-Bullying Policy as intervention by witnesses to an act of bullying is likely to put a stop to that act. Hence, students are trained to behave in a supportive way towards their peers who are being bullied, to intervene where possible and to report the incident to a teacher.

To conclude, Ms Tan left the audience with two recommendations to ponder on: First, the Ministry of Education (MOE) could explore the possibility of introducing the “Whole School Approach” to more if not all the local schools because prevention works better if it starts from young. Second, the National Institute of Education (NIE) could consider including a component on managing school bullying when training new teachers. In this way, the future generations of educators would be equipped with the necessary knowledge and skills to support their pupils who encounter bullying incidents.

By putting a strong emphasis on preventive work in schools to curb bullying, it is hoped that the law would only need to serve as a deterrent.

QUESTION AND ANSWER WITH THE SPEAKERS

Mr Yap noted that from the speakers' presentations, it was obvious that we are looking at a multi-pronged approach starting with the recognition that there is a problem. This recognition paves the way for implementing measures to prevent the problem from escalating. The laws and legislation come at the end to respond to the extreme cases. He also observed that many bullying cases go unreported for a variety of reasons. Some victims do not recognise that they themselves are being bullied in subtle cases of bullying; some children are afraid to report bullying as they want to belong to a group and not be isolated. He then invited the audience to share their experiences and thoughts.

Need for Information-Sharing

The first participant commented that people working in the anti-bullying sector need to have a holistic approach to collect information on all anti-bullying initiatives in order to synergise and collaborate with one another. Ms Ng agreed that the people who are concerned with the issue of bullying should get together for discussion. She hopes that a unified approach with a humanistic touch would be realised and while we discuss sanctions and punitive measures, we should also look into rehabilitating the perpetrators of school bullying since they are young in age. Ms Tan also agreed that there would definitely be a lot of inputs if the various parties working on school bullying-related work were to come together. She added that the SCS is currently working with various agencies such as the Institute of Mental Health, University of Turku (in Finland) and the NIE Psychological Studies Branch on a study to look at the impact of cyber-bullying and Internet addiction on adolescents' physical and psychological health.

The Perils of Labelling

Another participant made several comments with regard to the presentations. Referring to the video footage of a group bullying the female student, he described it as similar to a case of "happy slapping" – the students beat up their victim and laughed about it as they did not perceive it as bullying or evil. To them, it was fun. Hence, he suggested that outreach programmes for students should help them recognise this phenomenon and explain to them that such enjoyment of fun comes at the expense of the victim. The participant also shared that his daughter was a victim of cyber-bullying. He believed that parents have an important role to play in this situation and the outreach programmes should provide parents with real-life examples to better cope with the problem. Peers are another important leverage point and they could serve as counsellors since they matter much to pupils. The participant also suggested that we should be careful about labelling – sometimes there is no clear-cut bullying, and the victim can be a bully and a bully can be a victim. Moreover, part of having group identity is about learning to work with peers and it's a growing up process. So if we intervene too quickly and label the actors involved, we may not be helping them.

In response, Ms Tan informed the audience that under the Bully-Free Campaign, students are educated on the different types of cyber-bullying. Addressing the participant's personal experience and his query of when parents should step in, she advised that parents should be available to listen to their children when they share their experiences of being bullied. It is

important for parents to understand how their children are being affected. The severity of bullying depends on the frequency of the act and the impact on the victim. So parents should assess the severity and converse with the child on how he or she intends to respond or how the child hopes the parents would intervene. Ms Ng noted that if a mandatory anti-bullying policy was put in place in the school, parents would know the reporting procedure and proper measures for intervention. When an anti-bullying policy becomes mandatory in schools, it would facilitate the work of stakeholders in dealing with bullying.

Another participant commented that she did not realise school bullying was such a huge problem. She wondered about the factors that caused bullying to be a problem and MOE's reaction to the suggestion of having a national policy on anti-bullying.

Ms Tan replied that MOE responded positively to the Bully-Free Campaign. MOE subsequently introduced the Bullying Management Tool Kit to primary and secondary schools. The kit served as a guide for school counsellors to manage school bullying issues. However, such initiatives are insufficient and it is good to adopt a "Whole School Approach" framework because school counsellors come and go. Also, besides the school counsellors, teachers are usually the first line of contact since bullying happens between classmates. Teachers have shared that it was not that they were reluctant to do anything, they just did not know what to do. If the victims were to complain to teachers, they might get it worse from the bullies as a consequence. So teachers need to know how to support the victim.

A participant responded to the question of whether school bullying is a new phenomenon by quoting the phrase "children can be cruel". The phrase has been around for a long time so the problem is not new. However the problem has been amplified manifold by social media. She observed that MOE is cognisant of the problem as evident in the introduction of the cyber-wellness programme and character education in schools. She added that MOE is very open to hearing the issues and working with the various agencies.

Helping the Bully Too

Several other questions followed: Would putting bullies through the criminal justice system be a useful mechanism? Have studies been done to examine the profile of bullies as sometimes, they have bigger problems than victims? What are the specifics in the anti-bullying policy as sometimes, a victim has to leave school while the perpetrator gets to remain in school?

Ms Ng replied that if the policy is clear, teachers and parents would be familiar with the boundaries, in terms of what they can do and who to go to for assistance. The policy should also be clear to students, so they know they cannot bully others. Thus this is the first step to prevent bullying from happening. When we define bullying for students, we don't have to go to the point of intervention. Ms Ng also acknowledged that some principals and teachers have tried to assure the affected students and to make it easier for victims to return to school, despite the absence of an anti-bullying policy. She added that in the US, anti-bullying policies and intervention programmes have led to a reduction in school bullying cases. In addition, intervention is not about sanctions; it is also about helping the bully, to make the bully become a better person.

On the question of whether the bully should be jailed, Ms Tan suggested that they should not be jailed because they are minors and prosecuting them should be the last resort. Hence the focus of the SCS lies in preventive work and education. As for the question on the specifics of an anti-bullying policy, she stressed the importance of schools having a detailed flow chart on the course of action for mild and severe cases of bullying. It is important that bullies are told that their behaviours are not acceptable or tolerated. The bully's parents should also be informed of the consequences. The response should also not end with warning the bully. The relevant departments and counsellors should also do their part, in terms of counselling and meting out the punishment.

Mr Yap noted that of all the 50 states in the US, only Montana does not have bullying laws. All the other states have bullying policies in the schools. But only 12 states have criminal sanctions – in the form of jail terms or fines – in addition to school sanctions. So not many US states are receptive to having criminal sanctions.

Looking into Sexual Grooming

A participant suggested the need to look at the issue of sexual grooming, as the young are increasingly exposed to the Internet and are helpless to some of these activities taking place online. Ms Ng agreed that there is a risk of girls and boys being subjected to sexual grooming. She mentioned a case of a girl being bullied and sexually harassed online. She was also groomed by the perpetrator. When she decided to tell her parents, they refused to report to the police because of the face value issue and a fear of embarrassment. So we need to protect our children in this aspect.

To conclude, Mr Yap reminded the audience that bullying can also take place outside the school compound and beyond the purview of principals and teachers. So when we develop the protocol and legislation, we have to take these considerations into account.

PANEL 3: CYBER HARASSMENT

Online harassment, observed moderator Dr Carol Soon, appears in different forms and shades, from assuming another person's identity, spreading rumours and lies about the victim to posting pictures of victims without their consent and inciting hatred against them. Online harassment can lead to the victim experiencing severe anxiety and emotional trauma. The victims' helplessness and distress is aggravated by the anonymity of perpetrators as well as the permanence and multiplier effects of the Internet. Governments in different countries have implemented new legislation or amended existing laws to deal with online communications that are threatening, offensive, indecent or knowingly false.

Issues such as existing legal provisions and gaps pertaining to cyber-harassment and the feasibility of non-legal measures were addressed by the two speakers in this panel. They were Mr Jonathan Yuen, Partner (Commercial Litigation), Rajah & Tann LLP and Prof. Tan Cheng Han, Chairman, Centre for Law & Business, Faculty of Law, NUS.

SUMMARY OF PRESENTATION BY MR JONATHAN YUEN

To Mr Yuen, a key theme that ran through all three panels is the issue of identifying the perpetrator. In some instances, the perpetrator is actually a known entity. However, increasingly, perpetrators prefer the anonymity of the Internet which empowers them to spew vitriol online.

The definition of harassment, as Mr Yuen demonstrated with a series of examples, is not always straightforward. While a spurned former boyfriend who repeatedly made threats to his ex-girlfriend via e-mails could be charged with criminal intimidation, other cases are less certain. For example, without making any threats, a spurned ex-boyfriend sent multiple text messages professing his undying love to his ex-girlfriend and begging her to reconsider their relationship. This latter example illustrates an apparent legislative lacuna – the police might be reluctant to intervene as it could be seen as a civil matter, notwithstanding that the behaviour could reasonably be distressing and at the very least a severe annoyance. Hence, there is a need to address such legislative lacunae in the law.

Moreover, the range of anti-social behaviour online is quite wide-ranging, from people making tasteless and irresponsible statements that are factually inaccurate, to defamatory statements and harassing behaviour. He thus asked the question of whether the law should step into this area if the discourse is disagreeable but still civil. Other types of anti-social behaviour online include abusive and provocative language, defamation, the posting of personal information online and people impersonating others or creating fake online identities. There is also the issue of trolling where people intentionally start arguments, or go off-topic and attack people online purely to get a response. Anonymity, according to Mr Yuen, has allowed individuals to get away with such behaviour.

Unfortunately, there is no statutory framework to compel ISPs and website owners to reveal details about these harassers. Self-help remedies can also be expensive and painful. Such remedies range from blocking a harassing user from one's blog, changing privacy settings to reporting to the administrator. Dealing with ISPs and foreign e-mail operators to address cyber-harassment can be an onerous battle as law suits are likely to take place in the US where the major search engines are based. In the case of local ISPs, they sometimes request victims of harassment to present them with a court order before acting on the matter. From a point of principle, Mr Yuen also opined that it would be unfair for victims of harassment to bear the burden of avoiding the harassers by changing their privacy settings or seeking help from website owners to remove offending posts for instance.

Mr Yuen then re-emphasised the point made by Prof. Goh Yihan that Singapore does not have a standalone piece of legislation dealing with harassment – instead, there is a patchwork of legislation such as the Women's Charter and the Miscellaneous Offences Act which deals with harassment, but only within the context of the parent legislation. Therefore, conduct that falls short of an offence but nonetheless causes great emotional distress, worry or annoyance is not covered under the law. Injunctive relief such as restraining orders is not provided for statutorily in Singapore for the purposes of restraining harassment.

Turning to jurisdictions in other countries, Mr Yuen examined some comparable legislation that Singapore could refer to. In the UK, the Defamation Act 2013 creates a “safe harbour” provision for websites by setting up a system whereby if something inaccurate, offensive or libellous is put on the website, the victim can write in to the website. The law requires the complaint to be forwarded to the poster and the poster has to respond. If the poster is anonymous, not contactable or refuses to remove the information, the law compels the website to take down the posting.

He also raised the example of Canada where anti-harassment provisions are included within their Education Act. This reflects the Canadian thinking that legislation on anti-bullying and anti-harassment should start from the schools, so as to establish social norms for everyone as they grow up.

A more extreme response to online harassment could be seen in South Korea, where due to a series of online abuse cases which led to the suicides of some young female starlets, the government passed legislation to create the Korean Communications and Standards Commission (KCSC). The KCSC was established to “safeguard the public nature and fairness of broadcasting content, to promote a sound Internet culture, and to create a safe online environment”. The KCSC is empowered to suspend users who have been identified as those posting inappropriate writing and it also acts as a mediator for online disputes concerning defamation. In addition, the South Korean approach includes a name registration requirement for all major web portals to develop a real name system for their users. When the cloak of anonymity was removed, the number of inflammatory comments decreased. Mr Yuen suggested the South Korean legislation might be worthy of discussion in Singapore.

Mr Yuen ended his presentation with some food for thought: Should we maintain the status quo and let the online “community” self-regulate? Or should we shift the burden of managing harassment to ISPs through legislation, similar to what the UK has done? He stressed that the community should set the standard on what is acceptable and what is not, and it cannot be a government-dictate approach. In addition, Mr Yuen agreed with Mr Shanmugam that any proposals to deal with harassment cannot have the Courts as a first port of call; instead it may be more effective to establish a tribunal or commission that provides self-help remedies or administers dispute resolution services.

Finally, Mr Yuen stated that it may be time for Singapore to have a standalone piece of legislation dealing with harassment, howsoever occurring – from sexual harassment at the workplace, at school, to online harassment or stalking, etc. He drew a parallel between how, by passing the Personal Data Protection Act, Parliament created a standalone act to define and protect personal data. The same could be done with the issue of harassment. By way of reference, Mr Yuen referred to Section 507 of the Penal Code which prescribes additional punishment where an act of criminal intimidation is committed “by an anonymous communication” and suggested that perpetrators who hide behind the veil of anonymity online to harass their victims should be similarly dealt with since there is a clear legislative precedent for a harsher punishment in such instances.

SUMMARY OF PRESENTATION BY PROF. TAN CHENG HAN

When it comes to the Internet and social media, the importance of media literacy and education cannot be underestimated, stated Prof. Tan. As the Internet and social media is a relatively new phenomenon, people may not know that certain social norms should continue to apply. As such, the existing excesses of behaviour would eventually be mitigated and largely ameliorated. To speed up the process, education is required.

This entails instilling in people the awareness that what they do in the online world has real repercussions. With the rise of social media, it is artificial to think of the online and offline worlds as separate. Unfortunately, some people adhere to this distinction and end up doing things in the online world that they will not do in the offline world. While anonymity is a huge problem today, it will be less of a problem in the future with the rise of social media which has been increasing the connectedness among people. It will be more inconvenient remaining anonymous moving forward.

To the Media Literacy Council, the message is that what is true in the offline or real world is also true in the online world. The Council also places an emphasis on the importance of universal values – respect, integrity, empathy, responsibility – and its educational programmes revolve around these core values. These values should guide people in their interaction in the online and offline world.

Prof. Tan then proceeded to speak on the rule of law in the area of cyber-harassment and legal symbolism. He acknowledged that the legal enforcement of anonymous behaviour that take place overseas may pose many practical problems. Nevertheless, law represents to a large extent what society considers as proper behaviour. Law still has a role in shaping the way we look at issues, in addition to playing an educational function in setting standards of acceptable and unacceptable behaviour. In sum, laws help to reinforce social norms.

He also noted that to a certain extent, Singapore has laws to address harassment. However, if we look at what other jurisdictions have done, they have made explicit what is implicit in our legislation. In our legislation, it is implicit that the law also covers activities online but we do not make it explicit. Hence, our legislation can be improved by making it explicit that the online behaviour we seek to criminalise is reprehensible. The law will then set a clear marker and people cannot feign ignorance or claim that the law is unclear.

There is also a role for civil remedies. Allowing people to exercise a measure of self-help is useful and therefore we ought to explicitly make it a tortious act, that is, a civil wrong, given the uncertainty in the state of the law at the present time. A civil wrong opens up opportunities for people to ask for civil remedies and to stop the act from being perpetrated if the perpetrator can be identified. Because it is practically difficult to identify the real perpetrator, it is more useful to reach out to websites or forums that allow the comments to be posted. A lot of the harm can be undone even if the unidentified perpetrator went unpunished.

Prof. Tan also mentioned that he was a member of the Advisory Council on the Impact of New Media on Society (AIMS) and one of the Council's recommendations was that if a

defamatory statement is posted on an intermediary or third-party website and that particular website is not the originator of the statement, the person who is defamed could notify the website. If the website removes the defamatory posting within a certain time, it would have immunity from any subsequent civil or criminal claim. This immunity, in legal jargon, is referred to as a “safe harbour”. Prof. Tan suggested that Singapore could revisit this idea as it would incentivise people who run websites to act responsibly. It also protects persons who may not know that the post was wrongful or who may not have the resources to vet every post. It allows a self-help remedy and precludes the need to go to court if the matter can be resolved. Hence it is a far more efficient and true communitarian approach to a real problem. Whether it’s having the website publish a right of reply or getting the website to take down the posting, this practical option also gives victims of cyber-harassment some form of vindication.

Another suggestion made by Prof. Tan is that instead of having recourse to the Courts for such matters, Singapore could establish a specialist tribunal, similar to the copyright tribunal, to look into cases of harassment. For example, if websites do not take down the comments or postings, victims can seek help from the tribunal. The tribunal process can be made more informal and speedy, and it can consist of people reasonably well known on this issue. By issuing a decision in the victim’s favour, the tribunal could give the victim a sense of redress and vindication, enabling him or her to overcome the sense of powerlessness. Prof. Tan admitted that he was unsure if these suggestions would be a panacea to the problem of cyber-harassment. Nevertheless, they represent a starting point to address an issue as complex as cyber-harassment, in which enforcement is problematic.

QUESTION AND ANSWER WITH THE SPEAKERS

The first question was raised by Dr Soon who noted that given the wide spectrum of potentially harassing behaviours that can occur in the online space, should the new legislation be broadly or narrowly defined?

Harassment as Medium Neutral

Prof. Tan stated that harassment should be medium neutral – it should not matter whether it is in the written, traditional or oral form – taking into account changes in technology and how people perpetrate acts of harassment. The definition of harassment itself is the key. He noted that Singapore’s legislative approach tends to be quite broad, to paint a particular offence or activity in the broadest of terms and leave it to prosecutorial discretion as to what cases to bring to the Courts. So only the most egregious of cases are prosecuted. Since harassment is medium neutral, we can be a lot more defined in how we determine harassment. If laws are too broadly drawn up, decisions would be left to prosecutorial discretion but Prof. Tan wondered if prosecution authorities are always the most qualified to judge whether a particular case should be brought to trial. He felt that Parliament, reflecting the will of the people, should have a proper definition of harassment instead of having a very broad definition that may catch acts that might not necessarily be intended. If a law is to be acceptable to the public and backed by moral force, it is necessary to define with a certain degree of exactitude. Mr Yuen added that some form of legislation is required but he

preferred that the definition of harassment be kept broad to enable the Courts to have the flexibility when dealing with current and new forms of harassment.

Dealing with Factual Inaccuracies

A participant wondered about the types of statements that would be covered under the harassment legislation. He added that he would be concerned if the legislation is applied to merely factual inaccuracies as there could be a lot of disputes as to what constitutes factual accuracy. He added that when there is a takedown provision, the burden of proof is now reversed – the burden is now placed on the person who put up the statement to decide on whether the statement is fair comment. So it is good to not leave the process to the Court but to involve a tribunal or ombudsman. Also, the participant suggested that we should avoid a situation where a powerful party can force the weaker party to take down certain information when the latter has the right to put up the information in the first place. He also wondered if takedown provisions should apply to third parties who did not originate the material but merely forwarded it, and what happens if the material was forwarded for warning, educational or research purposes?

Prof. Tan acknowledged that his proposals do not deal with factual inaccuracies and he opined that the law should not get involved each time there is a factual inaccuracy, provided it does not cross certain threshold behaviour. He also agreed that any regime should not lead to a reversal of the burden of proof. The threshold question that we need to ask ourselves is whether acts of harassment should be a civil wrong to begin with. If so, once the act is committed, the wrong is already done. So all we are doing is to give the third party the opportunity to reverse the action. Of course, the third party can disagree. In which case, if the victim has to go to a tribunal or court, he or she still has to provide the proof. So there is no real reversal of the burden of proof. Prof. Tan also believes that third parties who repost information ought to be subjected to this regime – once the third party removes the message, the issue will largely be resolved. On the liability for third parties to be served, Mr Yuen pointed that in Australia, a defence of innocent dissemination or for the purposes of political debate is available to third parties like newspapers that forward or reprint information that may eventually be deemed defamatory, provided they are merely reproducing the information in full. These defences are not available in Singapore. On the issue of takedown provisions applying to factual inaccuracies, Mr Yuen pointed that the right of reply is a first step to enable the victim to have at least some way of responding beyond issuing his or her own statement, to compel the website to have the clarification or rebuttal appear on the website. Notwithstanding the requirement for a right of reply, Mr Yuen stated that this does not mean that the authors of online posts may irresponsibly post content; and they should not get upset when they are asked to justify their statements.

A participant shared that in South Korea, web portals operate within the “safe harbour” approach. Victims can ask a web portal to remove a posting within 30 days which the web portal has to comply with. During that period, the web portal could decide to remove the comment permanently or to go to the court to settle the dispute. However, this practice has attracted concerns and criticisms – most of the time, web portals simply remove the comment – even if it is defamatory – and it became convenient for portals to be absolved

from any blame. Also, users are required to use their real names when posting comments. The malicious comments went down initially but the numbers increased thereafter. The participant also noted that malicious comments were made by primary school kids, so it is important to introduce cyber-wellness training from an early age.

Harassment beyond Local Jurisdiction

Another participant noted that in cyberspace, jurisdiction is extremely difficult to define and enforce. Hence he asked the speakers to comment on how harassment across the border or beyond the jurisdiction in Singapore could be addressed. He also asked Prof. Tan if his notion of legal symbolism could be reconciled with the dictum “regulate what is regulable” since legislation has absolutely no effect in cyberspace.

Prof. Tan acknowledged that there would be significant enforcement issues in relation to acts originating outside of Singapore as these are not likely to be extraditable offences so little can be done. While civil remedies could be an option, it is not a practical remedy for many people to pursue court cases in other countries. Nevertheless, if an act’s effects do occur in Singapore, there is still a potential for it to be defined as an offence or civil wrong. He opined that law having jurisdiction is not a problem in itself but enforcement would be a problem. Then again, there will be people who commit acts within jurisdiction and there should be recourse against them. Therefore, the law will not be completely devoid of effect. On the issue of legal symbolism, if an act is truly reprehensible and cannot be condoned by society, we need to take a stand and enshrine it in the law.

The Bystander Effect

A different participant felt while there is always a place for legislative intervention, there is another form of intervention within the control of ordinary citizens: by conducting within the realm of the normative and to be kind. For example, when we see an e-mail containing defamatory comments, we can take charge by speaking up. The problem is the bystander who witness harassment is not taking a moral responsibility.

Mr Yuen applauded the participant’s call for people to stand up when they witness harassment. Mr Yuen pointed to the earlier research findings presented in Panel 2 which indicated that when a bystander intervenes in an act of bullying or harassment, the act usually stops or decreases. He also noted that cyberspace is increasingly controlled by a vocal vindictive minority that has the power to drown out any sensible voice. So if users attempt to put a stop to a defamatory or harassing act, they themselves might invite retaliation such as having their e-mails hacked. So there is a dearth of people willing to stand up, as they would become targets.

Another question from the floor concerns whether there should be an omnibus legislation for all the different forms of harassment or there should be a special legislation for cyber-harassment. The participant noted that sometimes sexual harassment could be cyber in nature. She also asked if there should be a special tribunal or court, and whether this tribunal would have the necessary powers. For instance, would that tribunal’s directions be regarded as a court order?

Prof. Tan replied that what he had in mind was an omnibus legislation to first, address the difficulties of distinguishing the different forms of harassment, and second, to avoid the problem of having many different types of legislation dealing with an issue on a piecemeal basis. As to the question pertaining to the powers of a tribunal, he believed that a tribunal should have powers equivalent to that of a district court.

One participant noted that Prof. Tan preferred harassment laws to be medium neutral while Mr Yuen mentioned that intimidation is different when it takes place behind a cloak of anonymity. Adding that online harassment is speedy and readily accessible, she wondered if there should be another piece of legislation for the Internet.

Mr Yuen noted that a consistent position in this conference is the call for an over-arching harassment act that will cover the broad definition of harassment and leave it to the Common Law to apply it in incremental fashion. Without this basic piece of legislation, we cannot build on it to address different forms of harassment. He added that the level of online animosity is quite high because of the cloak of anonymity.

The participant who had earlier urged bystanders to stand up to bullying added a comment that individuals who are trying to intervene in bullying situations should be protected by the law. Finally, on the issue of harassment being medium neutral, another participant wondered if the trauma experienced by victims who are bullied online would actually disappear, and how we can strike a balance between not having too many forms of legislation and recognising that the impact of psychological trauma can be real especially when the images of bullying can be revisited online.

Prof. Tan acknowledged that the reach of cyber-bullying is really broad and given the existence of digital footprints, it would be traumatic for the victims. He also clarified that when he mentioned about harassment being medium neutral, what he meant was that it should not matter what the medium is. More importantly, in terms of the remedies available, the tribunal or the court is entitled to look at the gravity of the act perpetrated and should be able to take that act into account when imposing sanctions.

DIALOGUE SESSION WITH MR K SHANMUGAM AND MS INDRANEE RAJAH

Before Mr Mahizhnan invited questions from the audience, he noted that Minister Shanmugam's exhortation of "not law first but law last" was taken to heart by the conference's participants. The first participant to address the ministers and audience was heartened to note there is political will to enact some legislation to improve the harassment situation in Singapore. She supported the enactment of an omnibus legislation offering protection from harassment as the signalling effect of a single piece of legislation is much stronger than that of piecemeal legislation, and the educational impact of the legislation would be greatly increased.

Mr Shanmugam shared that his initial thinking was to make some changes to the Miscellaneous Offences Act and other pieces of legislation. However, he noted the overwhelming consensus for a standalone harassment bill and said his Ministry would give

serious consideration to the matter. He added that no one should underestimate the importance of dealing with sexual harassment, and that it should be made clear that the law does not approve of it. In terms of a framework, depending on where within the continuum of actions an act falls, there could be criminal or civil remedies and, at a lower scale, something that does not amount to damages or criminal or civil liability, but that still allows some remedy for the person that has been impacted.

As for putting the onus on employers to protect their employees from harassment, he emphasised that this does not come within the purview of the Ministry of Law, but nevertheless suggested the need to exercise care given the wide range of businesses, from multinational companies to small and medium-sized companies. Given that 80% of sexual harassment victims are women, another approach could be to strengthen women's rights. He added that the petition from AWARE (which was presented to the Minister at the conference) that seeks the setting of workplace standards to guard against sexual harassment in the workplace will be passed to the Ministry of Manpower to continue the discussion. He suggested that the first step should be to put in place some form of legislation to address harassment.

Mandatory Anti-Bully Policy in Schools

Another participant enquired about the possibility of having a mandatory anti-bullying policy across all schools, with all schools adhering to the same anti-bullying policy. Ms Rajah stated that the MOE's position is clear – bullying is not condoned and it should not be prevalent in schools in any shape or form. She also indicated that measures are already being implemented in schools which indicate or signal that bullying ought not to take place. She opined that the idea of an anti-bullying policy is vague. If an anti-bullying policy means implementing certain norms and measures, that policy could be looked into. The ultimate goal is to create a school environment in which children can grow and flourish. Students should not be afraid to step into the classroom because they are afraid that someone will pick on them. Any measures we take have to be practical and workable. Principals and teachers should be equipped with the right skills and the students' parents need to be engaged. Ms Rajah also reiterated MOE's willingness to collaborate with the various parties in this area.

A participant shared that when she asked MOE for statistics on non-academic issues like school discipline or the number of children being bullied, MOE informed her that they do not collect data nationwide. She felt that such data would be of interest to parents and asked if MOE would publish the relevant data as it could also inform the discussion on bullying and harassment. In response, Ms Rajah said that she will check with MOE on the issue of data-collection, adding that if MOE did not collect the data, they would not be able to publish it. While acknowledging the use of data for policymaking, she cautioned against ending up with a situation where people become fixated with statistics and neglect the overall big picture. She suggested leaving it to MOE to examine the issue to see if it is a problem that needs addressing in detail, and that a public dialogue is not required for every issue. Ms Rajah was confident that MOE will release whatever information that it is able to release.

The Law to Enable Non-Legal Remedies

Mr Mahizhnan asked Mr Shanmugam if it is possible for the law to enable non-legal remedies and Mr Shanmugam replied that it has to be so. Non-legal remedies enable individuals to settle disputes on their own. In the case of disagreement between parties, rather than going to the High Court or the Subordinate Courts, a tribunal could deal with it and lawyers might not even be required. He added that he is not too keen on setting up another tribunal outside of the Courts; but even within the Subordinate Courts, there could be streamlined positions with specialists dealing with harassment-related issues. The hope is that the parties do not need to spend too much on lawyers when, for example, a norm is established that takedown requests should be taken seriously, failing which court action will ensue. But ultimately, these non-legal remedies have to be backed by law. If people know that there is the backing of the law, they may be more reasonable with each other.

Mr Mahizhnan also asked if it is possible to create obligations on the part of employers without the implementation of an omnibus legislation. In response, Mr Shanmugam stated that conceptually, with legislation on harassment, the harasser and the victim can be defined and the rights of the victim can be stipulated. However, Mr Shanmugam noted that what the earlier participant who recommended such legislation wanted was to impose an obligation on the employer, a third party who does not have an obligation at this stage. In a sense, the employer also functions as a tribunal which also takes on a proactive obligation to create “a safe workplace”. While Mr Shanmugam expressed that many of these are good things, the question is the extent to which these should be legislated and the extent to which smaller employers are ready to take on these obligations. These matters require the involvement of the Ministry of Manpower, as they are not within the purview of the Law Ministry. The first step is to ensure that the victim has some clear rights that he or she can take up.

Making Employers Liable

The participant who asked the first question clarified that it was not a question of imposing a new set of obligations on employers. It was more of a case of reversing the burden of proof when there has been a case of workplace sexual harassment. She noted that currently employers under contract have obligations to provide a safe place of work but it is not clear that they have to provide a harassment-free workplace.

Mr Shanmugam felt that it was arguable whether an employer is liable if it was an individual act of an employee. He explained that he was not rejecting this idea but that it calls for further discussion with employers together with their federations and business houses. He reiterated that the first step is to empower people who are harassed with rights.

Another participant referred to a recent case in which a worker set fire to a fellow co-worker. The Court in that case held that the matter was covered under the Work Injury Compensation Act, and recognised that workplace interaction and the social component of the workplace is a large part of workplace safety. It is therefore arguable that some kind of precedent is already in place to impose obligations on employers. Mr Shanmugam expressed that he understood where the participant was coming from, and said that the

issue of workplace safety and the requirements on the employer is complex. He added that there is case law that goes in different directions.

Another participant noted that the conference provided great value in learning about the various initiatives in different parts of Singapore. She said that non-governmental organisations (NGOs) can also be of great value to the Government, especially in the realm of the Internet. She pointed out that in South Korea, people are wary of governmental initiatives pertaining to the Internet, so grassroots initiatives by NGOs are important and are more well-received by the people. It is vital to have alliances among like-minded NGOs but funding would be a challenge. As such, governments should support such alliances as they could suggest policies to governments. Ms Rajah replied that, when it is appropriate and the right organisations are identified, the Government would take the opportunity to work with them and to share ideas.

According to a participant, agencies dealing with physical violence have noticed a rise in online harassment. There are also threats of violence by people who are not related to the victim. She also noted that personal protection orders will only protect victims who are related to their perpetrators. She asked the Minister for his views on having preventive tools in place that could help a victim who, for example, is being harassed, stalked and threatened by a former lover to make intimate photographs public.

Mr Shanmugam noted that the participant made a fair point and he added that the Singapore approach to the law has been reactive. He added that any legislation has to be balanced with the right of free speech, but that the suggestion should be conceivable if the law is drafted carefully and targeted at illegal conduct. Mr Shanmugam said that the suggestion is of a different genus, but that it is a matter that he will give thought to.

Harassment Beyond Borders

Given that jurisdiction is extremely difficult to define and enforce in cyberspace, Mr Mahizhnan asked the Minister if he was prepared to make harassment offences extraditable and what kind of harassment activities would be covered. Mr Shanmugam replied that extra-territoriality does not really come into the question of criminality if the impact is felt in Singapore. However, if the person who committed the offence is not in Singapore, the issue becomes complex. Mr Mahizhnan then asked Mr Shanmugam if there were any examples of anti-harassment being part of bilateral or multilateral agreements. Mr Shanmugam replied that bilateral agreements are more typical. He added that some kinds of conduct that fall within the rubric of harassment are possibly extraditable, but not all. Nevertheless, he noted that the bulk of harassment takes place within Singapore. He also noted that defining what is or is not criminal could shape future conduct and has powerful norm-setting value.

Another participant noted that it was heartening to hear that the Ministry of Law is considering a standalone harassment law. She noted that in the absence of specific cyber-bullying laws in some European countries, the commitment of several social networking sites have been enlisted to protect user privacy. Under this agreement, the sites must make it easy for users to report inappropriate behaviour and provide default private settings for the profiles of users who are under 18 years old. She asked if the Minister foresees the

possibility of Singapore working with third party sites as partners. The Minister said that he is aware of the existence of such agreements between governments and websites. He asked the participant to share the research with his Ministry and said they would look at it. He acknowledged this is a new field for his Ministry as well and they are moving into a new territory, so different viewpoints are welcomed.

One participant proposed that the Family Violence Framework be examined to ascertain if it could be applied to the area of harassment. The two-step framework entails getting a restraining order and upon a breach of that, the police can be empowered to act. While a burden should not be imposed on the police, sometimes they need to be involved as it would be useful. She suggested that this could be especially useful in stalking cases. She asked if the Minister would consider this seriously. Any victim could go a special tribunal or the Courts to make an application for a protection order or an anti-harassment order.

Mr Shanmugam felt this framework certainly had to form part of a suite of remedies. The process could be streamlined within a tribunal. If reasonable basis is shown, like that for a normal injunction, this could be possible. Mr Shanmugam also noted the police are already empowered to act when a protection order was breached, but they usually do not because such cases are considered as a civil remedy. Mr Shanmugam noted that the participant wanted the police to act in situations where they would not previously act and stated that he would not want to answer on behalf of the Ministry of Home Affairs. However, he opined that he could see some objections to this. For every one case of a serious nature there could be several cases where the allegations are not substantive. It must therefore be weighed whether the criminal law and the police should be brought in over a trivial matter.

Adding to the discussion, Ms Rajah noted that the Ministry of Law is working on family law reforms, and is looking into a range of issues including access to justice in courts, how such access could be structured, and how the system can start upstream even before the problem gets bad. Family violence is one part of this. Ms Rajah also said she could have a discussion with the participant on this issue.

Addressing the Problem of Anonymity

Another participant asked if there was any movement towards addressing the issue of anonymity on the Internet, as it is difficult for people to deal with anonymous harassment or anonymous vicious online defamation. He asked if it was possible to have some form of adjudication authority that will apply a test to make it easier for people to bring their grievances to this authority, and to ask for a non-legal response, failing which there could be a takedown of sorts.

Mr Shanmugam explained that there are different issues to this matter: one, anonymity of the Internet; and two, what sorts of remedies one should have. In respect of anonymity, Mr Shanmugam opined that online conduct improves tremendously when anonymity is removed. There is no reason why people cannot put their names to their viewpoints. He added that one of the benefits of this conference is to hear the participants' viewpoints and that he would consider all the suggestions. However, he also noted that there is no point in pursuing action that is in practice not doable.

On the second issue of remedies, Mr Shanmugam offered the example of people getting upset over factual inaccuracies. He noted that people have different views over what constitutes factual inaccuracy, so there must be objectivity involved. A tribunal could deal with disagreeing parties over factual inaccuracies, and again it should not require lawyers, civil action and damages. If the tribunal agrees with the applicant, then corrections ought to be put up or the article ought to be clarified. In this manner, all parties have their right to getting the facts out. They would feel less upset or harassed. That is probably a workable structure.

The same participant followed up with another question; he noted that solicitors acting on behalf of ISPs often used the common argument of contractual confidentiality to avoid disclosing details such as the identity of users. As a result, they are precluded from assisting the victim. He asked what could be done to make it easier for ISPs to assist the victim in identifying the culprits.

Mr Shanmugam replied that the tribunal could intervene in such cases but it should only be in cases where there is criminality or there is a clear breach of a civil right. In a situation where one party wants to make corrections while the other party refuses and prefers to hide in anonymity, there could be some sort of rights-based approach. However, it cannot be applied to all situations where nothing has been breached and an individual just wants to find out about the identity of the user. This should be avoided, although it could apply where personal rights are infringed so badly that it amounts to a criminal offence or gives rise to a civil course of action. He added that these aspects could be looked into.

Protecting the Intervener

The next participant said that there is a need to encourage people to intervene in cases of harassment and bullying. Yet, there is fear among people that they would get attacked or “flamed” if they intervene. He asked if the law could intervene to protect the intervener. In response, Mr Shanmugam suggested that in the first place, we need to identify the rights that require protection. In this case the right concerned is the right to freedom of speech. People must also be able to protect themselves from being attacked or flamed by others. However, people have the right to criticise and we cannot and should not intervene in that right. If such criticism extends to personal attacks or if people threaten to put up information about a person, both scenarios could amount to harassment and there are grounds to act. If people make rude or unkind remarks about a person, it would be difficult to legislate on people’s right to say what they want until it crosses the line of physical or mental abuse or a threat that harasses the person. Mr Shanmugam opined that it would be difficult to have legislation stipulating that people cannot criticise each other for having a viewpoint.

A participant noted that victims in stalking cases could not apply for personal protection orders if they are not married to the perpetrator. She also shared an anecdote in which a victim was physically stalked but because she is not a wife or relative of the stalker, she was not successful in obtaining a personal protection order. Mr Shanmugam noted that while the protection order regime may not apply because there is no pre-existing family relationship, he highlighted that there is a generic offence of harassment under the Miscellaneous

Offences Act, and stalking would be part of the rubric of this piece of legislation and an offence under the present situation.

Another participant noted that often, the police did not take up such cases because these offences were considered non-seizable. Mr Shanmugam noted that the victim can file a Magistrate's complaint, the Magistrate will issue an order and the police will act on the complaint. To conclude, Mr Shanmugam said that the harassment regime under consideration should cover more broadly stalking, whether it is seizable or non-seizable, and to what extent the police would be empowered to act.

If you have comments or feedback, please email ips.eneews@nus.edu.sg



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