

**SOUTH AFRICAN LAW REFORM COMMISSION**

**ISSUE PAPER 22**

**PROJECT 130**

**STALKING**

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## Introduction

The South African Law Reform Commission was established by the South African Law Reform Commission Act, 1973 (Act 19 of 1973).

The members of the Commission are –

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The Honourable Madam Justice M L Mailula (Vice-Chairperson)  
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The researcher assigned to this project is Ms DM Clark.

## **Preface**

The aim of the issue paper is to serve as a basis for Commission deliberations regarding the topic of stalking.

The issues contained in the issue paper are raised to identify and delineate the issues which need further debate. The comments of all persons regarding the issues contained in the issue paper and related issues which may need inclusion in the debate are sought. Such comments are of vital importance to the Commission.

The Commission will assume that respondents agree to the Commission quoting from or referring to comments and attributing comments to respondents, unless representations are marked confidential. Respondents should be aware that the Commission may in any event be required to release information contained in representations under the Promotion of Access to Information Act, 2000 (Act 2 of 2000).

Respondents are requested to submit written comment, representations or requests to the Commission no later than 30 September 2003. Any request for information and administrative enquiries should be addressed to the Secretary of the Commission or the researcher assigned to this project, Ms DM Clark.

This document is also available on the Internet at: [www.law.wits.ac.za/salc/salc.html](http://www.law.wits.ac.za/salc/salc.html) .

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## INTRODUCTION

The South African Law Reform Commission's investigation into stalking emphasises the need to address the pressing and complex problems relating to stalking with a view to reforming the manner in which it is dealt with in terms of current law.

The Domestic Violence Act 116 of 1998 has provided a much-needed forum for addressing the scourge of domestic violence and the option of using a civil procedure to redress the imbalance of power in the arena of inter-personal relations has resulted in a deluge of applications for interdicts. However, troubled homes are a mere reflection of a troubled society. The unprecedented increase in inter-personal violence such as rape and murder bears testimony to this. Despite the fact that there is no statutory definition of stalking in South Africa, newspapers abound with stories about stalking such as 'husband terrorised by scorned wife'<sup>1</sup>; 'my husband stalked me'<sup>2</sup>; 'rapist "predator" sent for mental observation'<sup>3</sup>; 'actress lives in fear of SA men'<sup>4</sup>; 'sniff out serial killers'<sup>5</sup>; 'nasrec killer gets 17 life terms'<sup>6</sup>; 'weirdo says he is my dad and wants to take me home'<sup>7</sup>; 'stalking is a growing menace in SA',<sup>8</sup> to mention but a few. These reports clearly indicate that stalking is prevalent in the South African context.

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- 1 Sunday Times 'Husband 'terrorised' by scorned wife' 10 Sep 2000 as at 27 May 2003  
<http://www.sundaytimes.co.za/2000/09/10/news/durban/ndbn01.htm>.
  - 2 Sunday Times 'My husband stalked me' 11 Nov 2001 as at 27 May 2003  
<http://www.sundaytimes.co.za/2001/11/11/news/durban/ndbn09.asp>.
  - 3 Sunday Times 'Rapist 'predator' sent for mental observation' 18 Feb 2001 as at 27 May 2003  
<http://www.sundaytimes.co.za/2001/02/18/news/durban/ndbn02.htm>.
  - 4 Sunday Times 'Actress lives in fear of SA men' 23 Feb 2003 as at 27 May 2003  
<http://www.sundaytimes.co.za/2003/02/23/news/news20.asp>.
  - 5 News24.Com 'Sniff out serial killers' 28 May 2003 as at 28 May 2003  
<http://www.news24.com/News24/Technology/News>.
  - 6 Sunday Times 'Nasrec killer gets 17 life terms' as at 27 May 2003  
<http://www.sundaytimes.co.za/zones/sundaytimes/newsst/newsst1038916966.asp>.
  - 7 Sunday Times 'Wierdo says he is my dad and wants to take me home!' 19 Nov 2000 as at 27 May 2003  
<http://www.sundaytimes.co.za/2000/11/19/news/gauteng/njhb02.htm>.
  - 8 Sunday Times 'Stalking is a growing menace in SA' 18 May 2003 as at 27 May 2003  
<http://www.sundaytimes.co.za/2003/05/18/news/durban/ndbn05.asp>.

Within all legal systems the general criminal law prohibits personal violence offences and in some systems, such as our own, domestic violence legislation provides recourse in the form of a protection order to prevent future incidences of personal violence. Despite this apparent level of protection, the enactment of specific anti-stalking legislation in numerous jurisdictions bears testimony to the realisation that limited protection is available to people who fear that they will become victims of violent activity in the immediate future. The object of this form of legislation is to reduce and prevent violence in inter-personal relationships (real or imagined) by recognising that violence, in all its forms, is unacceptable behaviour, and ensuring that there is effective legal protection for victims of stalking. Specific stalking legislation also recognises that the string of actions which constitute stalking cause mental and psychological harm and may result in grave danger to the person being pursued. The widespread enactment of specific stalking legislation is adequate proof that existing law, civil and criminal, has been found wanting in comparative jurisdictions.

### **Origin of the investigation**

The Discussion Paper on Sexual Offences the Substantive Law *inter alia* briefly explored the necessity of addressing the phenomenon of stalking and the topic of sexual harassment within the broader framework of sexual offences.<sup>9</sup> The Commission concluded that including stalking and/or harassment in legislation specifically aimed at criminalising specific sexual conduct would not afford all victims of stalking or harassment the protection that they deserve. In this paper the Commission recommended that in keeping with numerous foreign jurisdictions,<sup>10</sup> a separate investigation be conducted to ascertain the need to enact comprehensive legislation prohibiting stalking.

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<sup>9</sup> South African Law Reform Commission **Discussion Paper 85 Sexual Offences: the Substantive Law** 1999.

<sup>10</sup> Comprehensive 'anti-stalking' legislation has been enacted in most Australian jurisdictions, 49 states in the United States of America, including the District of Columbia, Canada and the United Kingdom.

This recommendation endorsed the finding made in the Commission Research Paper on Domestic Violence that although stalking is often associated with domestic violence, it is a problem that is much broader than the domestic sphere.<sup>11</sup> The Commission recommended that the inclusion of harassment in the definition of domestic violence would accommodate acts amounting to stalking. However, the Commission noted that an investigation into the criminal-law response to stalking fell outside the Commission's terms of reference.<sup>12</sup>

Based on the recommendation contained in the Discussion Paper on Sexual Offences: The Substantive Law, the Minister for Justice and Constitutional Development approved the inclusion of an investigation into stalking in the programme of the Commission on 21 January 2003.

#### **PURPOSE OF THE ISSUE PAPER**

The issue paper introduces the topic of stalking for legal debate. It aims to identify aspects relating to stalking in need of legal intervention or reform and in turn to delineate the boundaries of the investigation. Its purpose is to initiate and stimulate debate, to seek proposals for legal reform and to serve as a basis for further in-depth deliberation.

Following the issue paper, the Commission will publish a discussion paper setting out preliminary recommendations and draft legislation, if necessary. The discussion paper will take the public response to the issue paper into account and will test public opinion regarding solutions identified by the Commission. On the strength of these responses a report will be prepared with the Commission's final recommendations. The report (with draft legislation, if necessary) will be submitted to the Minister of Justice and Constitutional Development for his consideration.

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<sup>11</sup> South African Law Reform Commission **Research Paper on Domestic Violence** 1999.

<sup>12</sup> South African Law Reform Commission **Discussion Paper 70 Domestic Violence** 1997.

Respondents are requested to respond as comprehensively as possible and are invited to raise additional issues that are not covered in the questions, should they wish to do so.

**LIST OF SOURCES**

Clark & Van der Walt 'Stalking: Do we need a Statute?'(1998) **South African Law Journal** 729.

Daily News 'Newspaper man welcomes damages award' June 10 2003.

Manitoba Law Reform Commission **Report on stalking** 1997.

Milton JRL **South African Criminal Law and Procedure (Volume II) Common Law Crimes** (third edition) Kenwyn: Juta 1996.

New South Wales Law Reform Commission Discussion Paper 45 **Apprehended Violence Orders: Part 15A of the Crimes Act** November 2002

News24.com Entertainment Abroad "Britney negotiating with 'stalker'" 1 March 2003 as at 8 May 2003 <http://www.news24.com/News24/Entertainment/Abroad>.

News24.com South Africa Gauteng "Police apprehend rape suspect" 25 May 2002 as at 8 May 2003 [http://www.news24.com/News24/South\\_Africa/Gauteng/0,,2-7-829\\_1190268,00.html](http://www.news24.com/News24/South_Africa/Gauteng/0,,2-7-829_1190268,00.html).

News24.com Technology Infotech "Woman up for cyber-stalking" 21 December 2001 as at 8 May 2003 [http://www.news24.com/News24/Technology/Infotech/0,,2-13-45\\_1123537,00.html](http://www.news24.com/News24/Technology/Infotech/0,,2-13-45_1123537,00.html).

News24.com Entertainment Abroad "Trial for Gere Stalker" 10 May 2002 as at 8 May 2003 <http://www.news24.com/News24/entertainment/Abroad>.

News24.com Offbeat Entertainment "Nicole fearful of stalker" 9 May 2001 as at 8 May 2003 <http://www.news24.com/News24/Offbeat/Entertainment>.

News24.com Entertainment Abroad "Man admits stalking Meg Ryan" 17 March 2002 as at 8 May 2003 <Http://www.news24.com/News24/entertainment/Abroad>.

News24.com Backpage HotGossip "Fans stalk TV Man" 22 March 2003 as at 8 May 2003 <Http://www.news24.com/News24/Backpage/HotGossip>.

News24.com 'Sniff out serial killers' 28 May 2003 as at 28 May 2003 <Http://www.news24.com/News24/Technology/News>.

Orit Kamir 'Every breath you take: stalking narratives and the Law' (2001) 10 **Griffith LR**.

Parenzee, Artz & Moul: **Monitoring the implementation of the Domestic Violence Act First Research Report 2000 – 2001**: Institute of Criminology University of Cape Town.

Riordan JA (Editor in Chief) **The Laws of Australia (Title 17 Family Law)** Sydney: the Law Book Company 1995.

South African Law Commission **Domestic Violence** (Project 100) **Discussion Paper 70** (1997).

South African Law Commission Commission Paper 509 **Domestic Violence** (Project 100) Minority report (1998).

South African Law Commission **Sexual Offences: The Substantive Law** (Project 107)  
**Discussion Paper 85** (1999).

Sunday Times 'Husband 'terrorised' by scorned wife' 10 Sep 2000 as at 27 May 2003  
[Http://www.sundaytimes.co.za/2000/09/10/news/durban/ndbn01.htm](http://www.sundaytimes.co.za/2000/09/10/news/durban/ndbn01.htm).

Sunday Times 'My husband stalked me' 11 Nov 2001 as at 27 May 2003  
[Http://www.sundaytimes.co.za/2001/11/11/news/durban/ndbn09.asp](http://www.sundaytimes.co.za/2001/11/11/news/durban/ndbn09.asp).

Sunday Times 'Rapist 'predator' sent for mental observation' 18 Feb 2001 as at 27 May 2003  
[Http://www.sundaytimes.co.za/2001/02/18/news/durban/ndbn02.htm](http://www.sundaytimes.co.za/2001/02/18/news/durban/ndbn02.htm).

Sunday Times 'Actress lives in fear of SA men' 23 Feb 2003 as at 27 May 2003  
[Http://www.sundaytimes.co.za/2003/02/23/news/news20.asp](http://www.sundaytimes.co.za/2003/02/23/news/news20.asp).

Sunday Times 'Nasrec killer gets 17 life terms' as at 27 May 2003  
[Http://www.sundaytimes.co.za/zones/sundaytimes/newsst/newsst1038916966.asp](http://www.sundaytimes.co.za/zones/sundaytimes/newsst/newsst1038916966.asp).

Sunday Times 'Wierdo says he is my dad and wants to take me home!' 19 Nov 2000 as  
at 27 May 2003 [Http://www.sundaytimes.co.za/2000/11/19/news/gauteng/njhb02.htm](http://www.sundaytimes.co.za/2000/11/19/news/gauteng/njhb02.htm).

Sunday Times 'Stalking is a growing menace in SA' 18 May 2003 as at 27 May 2003  
[Http://www.sundaytimes.co.za/2003/05/18/news/durban/ndbn05.asp](http://www.sundaytimes.co.za/2003/05/18/news/durban/ndbn05.asp).

The Law Reform Commission of Hong Kong Report on **Stalking** October 2000.

The Pocket Oxford Dictionary: Oxford University Press 1983.

Van der Walt & Midgley **Delict Principles and Cases** Second Edition Butterworths

Durban 1997.

Van Winsen, Cilliers & Loots **The Civil Practice of the Supreme Court of South Africa**  
Fourth Edition Juta & Co, Ltd 1997.

Www. Angelfire "Internet Stalking and 'Revenge' Sites" accessed on 2 June 1999  
<http://www.angelfire.com/ga/random/internetstalking.html>.

## **LEGISLATION**

Domestic Violence Act 116 of 1998.

Employment of Educators Act 76 of 1998.

Further Education and Training Act 98 of 1998.

Labour Relations Act 66 of 1995.

Municipal Systems Act 32 of 2000.

The Constitution of the Republic of South Africa Act 108 of 1996.

Trespass Act 6 of 1959.