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ARE WE ON THE WAY TO A LEGISLATION ON CYBERBULLYING?

By Mr. David Lam Tai Wai, JP

When I was a kid, the word “cyberbullying” did not exist, because we had no personal computers at that time. The portable phone was not invented either.

One morning on my birthday, someone knocked on the door. The man behind the door said he had a telegram for me. I was a bit scared when I opened the door because I had never received any telegram before. I was in my early teens at that time, still in secondary school, and not engaged in any form of business; “why would someone send me a telegram?” I thought. I opened the envelope with utmost curiosity and much anxiety, and found a short message typed in blue. The message was “Happy Birthday”, and contained the name of the sender. It was sent by my classmate who happens to like doing outstanding things for himself and others. Now, being indulged in the study of cyberbullying and school bullying, I wonder how I would have reacted and what I would have done if the message was sent with threatening words.

With the advancement of technology, and with the help of social media platforms, we now send to our recipient instant written messages and even photographs, without the need to deliver them to our door. However, the traditional way of sending someone a greeting card can still be a nice gesture. It is now the advancement of technology that connects two persons instantly. Friendly and loving

messages are for smiles, productive business messages give hope, but what about those unwanted and hostile messages that make you feel threatened, and those horrific photographs that are intimidating or make you feel sick.

Doxxing is a form of cyberbullying. Someone who sends out an electronic message containing personal information of a certain individual intending to cause harm to the individual or his/her family member is certainly an ill form of social behaviour. The Personal Data (Privacy) Ordinance, Cap. 486 giving the Privacy Commissioner for Personal Data to control and prosecute this kind of unwelcome behaviour is the testament of sensible governance. This type of cyberbullying is therefore illegal.

But this is only the beginning of using legislation to combat cyberbullying. What if the electronic messages have nothing to do with disclosing personal data and yet make the recipient feel harassed or intimidated? The Personal Data (Privacy) Ordinance however has no provision for this.

One piece of legislation which comes close to tackling cyberbullying in Hong Kong, and may not be related to personal data appears to be section 20 of the Summary Offences Ordinance, Cap.228, which deals with “offences in connection with telephone calls or messages or telegrams”. Part of the section reads:

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*Any person who (a) sends any message by telegraph, telephone, wireless telegraphy or wireless telephony which is grossly offensive or of an indecent, obscene or menacing character...shall be liable to a fine at level 1 (i.e. \$2,000) and to imprisonment for 2 months.”*¹

The interpretation of “any message by telegraph, telephone, wireless telegraphy or wireless telephony” does cover messages on smart phones but does not appear to include electronic messages in email or on social media platforms.

Interestingly, Singapore has the Protection from Harassment Act. Section 3(1) of the Act reads:

“An individual ... must not, with intent to cause harassment, alarm, or distress to another person (called in this section the target person), by any means –

- (a) Use any threatening, abusive or insulting words or behaviour;*
- (b) Make any threatening, abusive or insulting communication; or*
- (c) Publish any identity information of the target person or a related person of the target person,*

*and as a result causing the target person or any other person (each called in this section the victim) harassment, alarm or distress.”*²

In the interpretation section of the Protection from Harassment Act, “communication” is defined as:

*“any words, image (moving or otherwise), message, expression, symbol or other representation that can be seen, heard or otherwise perceived by any person, or any combination of these”*³

The Singaporean law appears to be a fantastic combination of legal provisions tackling bullying, cyberbullying, and doxxing in one go. Section 3(1)(a) of the Act combats certain form of bullying. Section 3(1)(b) of the Act tackles cyberbullying directly. Section 3(1)(c) of the Act deals with doxxing, somewhat similar to what is provided for in the Personal Data (Privacy) Ordinance in Hong Kong.

When there is a new law enacted, there must be a need for it, and it is mostly for the reason to protect its citizens and to let them get on with their lives with security and comfort. So, when the time comes for us to have a comprehensive law on cyberbullying, and hopefully for school bullying as well, it is hoped that the law from the Lion City can shed us some light.

References:

1. HK e-Legislation, elegislation.gov.hk
2. Protection from Harassment Act 2014, Singapore Statutes Online, sso.agc.gov.sg
3. Ditto