WHEN DOES AN ARGUMENT BECOME HARASSMENT?

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Arguments can either diffuse or escalate quickly depending on the parties involved, but what do you do when your argument gets out of control? For example, you have an altercation with your neighbour and your neighbour sends you a scathing email. Accusations are thrown your way and you get defensive and before you know it, a heated argument ensues. You're slamming the keyboard angrily, hateful comments are flung and before you know it, you're in tears. The onslaught continues for weeks even after you have stopped replying, and you feel violated.

Or,

You subscribe to an online forum and another participant decides to lash out at you, berating you and asserting that your comments are silly and irrelevant. You exit the forum but it doesn't end there, your inbox is alive with hate mail from this person and you are subsequently sent a package with a legless doll and a note stating that "*you are next*."

It may sound ridiculous, but occurrences like this happen, and they happen often.

What you can do if you are being harassed

The Protection From Harassment Act 17 of 2011 ("the Act") affords victims of harassment an inexpensive, effective remedy. Victims may approach the relevant magistrates' court to obtain a protection order in terms of the Act. The protection order prohibits the perpetrator from engaging, attempting to engage or attempting to enlist another person to engage with the victim.

Harassment is a broad term, the Act defines it as *any conduct, whether indirect or direct, that the perpetrator knows or ought to know will cause mental, psychological, physical or economic harm or inspires the reasonable belief on the part of the victim and that harm will be caused to a person.*

Harassment includes the following:

- Unreasonable following, watching, pursuing or accosting a person (or related person) or loitering outside of or near a building or place where a person (or related person) resides, works, carries on business, studies or happens to be;
- Unreasonable verbal, electronic or other communication (regardless or not whether a

conversation ensues);
- Unreasonable sending or delivery of letters, telegrams, packages, faxes, email to a person (or related person);
- Sexual harassment;
- Bully, including cyber-bullying.

Anyone may approach the court to grant them a protection order against another, this includes children, and children do not require assistance from their parents or guardians. Further, a protection order can be granted against anyone – even if they are under the age of 18 years old, as long as they are old enough to understand that their actions are harmful.

The complainant need not have suffered actual harm when they apply for the order – if they fear that they may be harmed either psychologically, physically or economically in the future, they may apply. The application, however, must be reasonable enough for the court to issue an order. The Act, however, does not state what is "reasonable" and this is determined on the merits of each application.

I don't know who is harassing me

Too often, people hide behind anonymity to send menacing text messages or emails to victims. Fortunately, the Act compels service providers to give the addresses and ID numbers of perpetrators to the court.

Section 4 of the Act provides that an *electronic communications service provider shall furnish particulars to court upon request.* This means that if someone bullies you on an online forum or sends you threatening text messages, the service provider is obligated to provide information related to the user that will assist in identifying the perpetrator.

The protection order has been issued, now what?

When the court issues a protection order, including an interim protection order, it must simultaneously:

- authorise the issue of a warrant for the arrest of the respondent; and
- suspend the execution of that warrant subject to compliance with any prohibition, condition, obligation or order.

The suspended warrant must be delivered to a police station of the complainant's choice. It remains in force unless the protection order expires, is set aside, or is cancelled after execution.

Phony allegations

In some instances, the complainant may falsely accuse another person, for instance, as an act of revenge. The Act identifies harassment as a serious infringement on an individual's dignity, freedom of person and security. Making false statements regarding material aspects is a criminal offense and the court will throw the matter out and the complainant will be required to cover the other party's legal costs.

Offenses

Section 18 gives teeth to this Act by making it an offense for any person to make a false statement, such a person will be liable to pay a fine or face imprisonment for not exceeding 5 years.

Electronic communications service providers or employees of electronic service providers who fail to furnish the required information within 5 ordinary court days are liable to a fine of up to R10 000.00 and the employee may face imprisonment for a period of up to 6 months.