TECHNOLOGICALLY-FACILITATED VIOLENCE AGAINST WOMEN: CRIMINAL HARASSMENT CASE LAW

A. OFFENCE ELEMENTS

Criminal Harassment

264 (**1**) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (**2**) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

Prohibited conduct

(**2**) The conduct mentioned in subsection (1) consists of

(**a**) repeatedly following from place to place the other person or anyone known to them;

(**b**) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

(**c**) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or

(**d**) engaging in threatening conduct directed at the other person or any member of their family.

Punishment

(**3**) Every person who contravenes this section is guilty of

(**a**) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(**b**) an offence punishable on summary conviction.

Factors to be considered

(**4**) Where a person is convicted of an offence under this section, the court imposing the sentence on the person shall consider as an aggravating factor that, at the time the offence was committed, the person contravened

(**a**) the terms or conditions of an order made pursuant to section 161 or a recognizance entered into pursuant to section 810, 810.1 or 810.2; or

(**b**) the terms or conditions of any other order or recognizance made or entered into under the common law or a provision of this or any other Act of Parliament or of a province that is similar in effect to an order or recognizance referred to in paragraph (a).

Reasons

(5) Where the court is satisfied of the existence of an aggravating factor referred to in subsection **(4),** but decides not to give effect to it for sentencing purposes, the court shall give reasons for its decision.

In R v Sillipp, the Alberta Court of Appeal set out a widely-cited five-part test for criminal harassment:

> 1. It must be established that the accused has engaged in the conduct set out in s. 264(2) (a), (b), (c), or (d) of the Criminal Code;
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> 2. It must be established that the complainant was harassed;
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> 3. It must be established that the accused who engaged in such conduct knew that the complainant was harassed or was reckless or wilfully blind as to whether the complainant was harassed;
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> 4. It must be established that the conduct caused the complainant to fear for her safety or the safety of anyone known to her; and
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> 5. It must be established that the complainant's fear was, in all of the circumstances, reasonable.[1]

Furthermore, in *R v Kosikar,* the Ontario Court of Appeal held that "[h]arassment means causing someone to be tormented, troubled, worried continually or chronically plagued, bedevilled and badgered."[2] If a complainant is only "vexed, disquieted or annoyed", criminal harassment will not be made out.

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[1] 1997 ABCA 346 at para 18.
[2] *R v Kosikar*, [1999] OJ No 3569 at para 24.

B. SELECETED CASE LAW

I. ALBERTA

i. 2015 ABPC 234

In **2015 ABPC 234**, a recently-divorced man, Mr. E, was charged with two counts of criminal harassment after repeatedly communicating with his ex-wife, Ms. E, and asking about their relationship, children, and separation. He sent her 20-30 text messages a day, called her 5-10 times per day, and sent her daily emails. In one instance, he also followed her to an ice hockey arena.

In relation to the first count of harassment — for following his wife to the arena — the court held that E did not follow her "from place to place" or cause her to reasonably fear for her safety as required under s 264 of the *Criminal Code*. In relation to the second count of harassment, for repeated communications, the Court cited 2015 ONSC 1630, and affirmed that "the Court must not too hastily characterize the stress and anxiety arising from a marriage break-up and stressful negotiations as harassment, even if one or both parties feel harassed…."[3] The Court concluded that, at most, Ms. E was disquieted or annoyed by her ex-husband's repeated communication. The Court also determined that E did not know his ex-wife felt harassed, and stated that Ms. E would not have reasonably had to fear for her physical safety. As a result, E was acquitted of all charges.

ii. 2012 ABPC 229

In **2012 ABPC 299**, the Court considered distribution of intimate images and harassing phone calls. After separating from his girlfriend, Mr. K distributed a cell phone video of her performing oral sex on him. He temporarily posted the video on an unnamed website and later uploaded it

[3] 2015 ABPC 234 at para 67.

to a pornography website. He also made multiple, persistent harassing phone calls to the victim and to her mother, which included graphic threats.

K was convicted on two counts of criminal harassment and sentenced to 9-months imprisonment and 18-months probation. Although the Court held that threatening to post the explicit video online was an aggravating factor on sentencing, the Court decided there was not sufficient evidence for it to could conclude that K posted the video beyond a reasonable doubt.[4]

iii. 2012 ABPC 338

In **2012 ABPC 338**, an 18-year-old woman T was charged with criminal harassment after distributing the nude photos of a 14-year-old female acquaintance. Ms. T and her 17-year-old male friend (the original recipient of the nude photos) disseminated the victim's photos together. T encouraged her friend to distribute the photos by text, gave him the phone numbers of her desired recipients, and "thereafter attended at the complainant's school to bully her by taunting and calling her names."[5]

T was sentenced to 12-months probation, while her 17-year-old male accomplice received a conditional discharge. Aggravating factors on sentencing included the fact that the victim was underage, the fact that the crime was vindictive, planned and deliberate, and the fact that the offence had a serious impact on the victim. Mitigating factors included the fact that T was a youthful first offender and otherwise of good character.

iv. [2006] AJ No 965 (ABPC)

[2006] AJ No 965 (ABPC) is an early cyber-stalking and "revenge porn" case. Mr. B used a keylogger to access his former girlfriend's passwords, computer contents, and intimate images.

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[4] 2012 ABPC 299 at para 18.
[5] 2012 ABPC 338 at 24.

As the Court writes, "[B] disrupted her life with a specific plan of making her pay. It was a mean act. It's devastating…"[6]

The Court contrasts B's "extreme" cyber-stalking with "a more traditional form of harassment by phone calls, stalking, leaving things with full malice of forethought, that a person protects themselves by [...] changing address, phone number, even hiring security people." While, as the Court notes, those cases involve fear, "a measure of some relief of the fear can be possible, although not much."[7] With online attacks, however, the Court "wonders where the end of the road is in our society today."[8]

The Court calls cyber-stalking "a serious concern for the community"[9] and ultimately sentences B to 20-months imprisonment. B's sentencing appeal was dismissed.[10] With regard to the non-consensual disclosure of the victim's intimate photos, the Court states, "As a trial judge and a male I will say to [the victim], it happened. Try not to be embarrassed by it. One is better off if one can accept it in that fashion. This man is the abuser. You are not. And acting as a mature person in an intimate relationship is hardly anything to criticize of any human being in my opinion."[11]

v. 2002 ABPC 115

In **2002 ABPC 115**, 28-year-old Ms. C harassed her former partner with repeated phone calls, threatening statements, and unwanted deliveries after learning that he was involved with another woman. C sent anonymous letters to local businesses warning that the former partner, a dentist, had HIV and was infecting his patients. She also wrote that he molested her daughter. Ul-

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[6] [2006] AJ No 965 at para 18.
[7] [2006] AJ No 965 at para 18..
[8] [2006] AJ No 965 at para 18.
[9] [2006] AJ No 965 at para 1.
[10] 2006 ABCA 295.
[11] [2006] AJ No 965 at para 26.

timately, the Court held that C intended "not to break the law, but want[ed] [the victim] to hurt as much she had been hurt by him."[12] She was sentenced to 18-months imprisonment followed by 3-years probation.

II. BRITISH COLUMBIA

i. 2015 BCPC 203

2015 BCPC 203 involved the online abuse tactics of "doxing"[13] and "swatting."[14] The offender, 17-year-old Mr. B plead guilty to 23 of 48 counts of criminal misconduct including nine counts of criminal harassment, eight counts of mischief, four counts of extortion, one count of uttering a threat, and one count of breaching a recognizance. B used a variety of tactics to harass, threaten, and harm his victims, many of whom were female video gamers he encountered online. For example, he remotely interfered with his victims' internet service, made fraudulent 9-1-1 calls to victims' homes, and disclosed victims' credit card information online.

B's doxing efforts were sophisticated and involved corporate social engineering. In one instance, B posed as an Amazon employee and obtained a victim's telephone number and address from Amazon's technical support. He then phoned Rogers, pretending to be a Rogers employee, and used the victim's phone number to request account information, including her address. He then dialed 9-1-1 and had an emergency dispatch team sent to her home to investigate a bomb threat.

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[12] 2002 ABPC 115 at para 67.
[13] The Court defines "doxing" as "publishing on the internet identifiable personal information about an individual that has usually been obtained from social media sites and from hacking into private systems." It notes that, depending on the information disclosed, victims of doxing may feel "distress, fear, embarrassment and shame" and may become the targets of identity theft, extortion, and fraud efforts: 2015 BCPC 203 at para 3.
[14] The Court defines "swatting" as "tricking an emergency service agency into dispatching an emergency response based on a false report of an ongoing critical incident." The Court notes that swatting can lead to evacuations, bomb squad deployment, and other frightening assaults on a victim's home: 2015 BCPC 203 at para 4.

Nearly all of B's 23 victims were young women. As the Court notes, "Male victims were usually only selected because they were related to [B's] female victims or in some way attempted to intervene on behalf of [his] female victims."[15] B's pre-sentencing report makes note of his misogynistic attitudes, and finds that his actions were primarily motivated by pleasure from his victim's distress and prestige gained within an online peer group. B's psychiatric report notes that his "victims are quite disproportionately female" and finds that "it is possible that he has focused his behaviours on females as a way of reacting to his childhood experiences with his mother."[16] The latter report finds no clear evidence of a sexual motivation underpinning B's crimes, but does state that "some of his humiliation of female victims involves a sexual component" — such as, for example, asking one of his victims to send him pictures of her feet and toes.[17]

The Court ultimately sentenced B to 16-months imprisonment followed by 8 months of community supervision. Noting that B posed a high risk for future internet-based offences, the Court also imposed a full technology ban, authorizing a police officer to enter his residence at any time and search for computers or other internet-enabled devices.

ii. 2014 BCPC 279

In **2014 BCPC 279**, three 14-year-old boys pleaded guilty to criminal harassment after distributing nude photos of their underage female peers. The boys persistently asked girls for the photos, and were originally charged with distributing child pornography. All three boys were first-time offenders, and all expressed remorse for their actions.

Although no victim impact statements were filed, the Court determined that the girls were emotionally harmed by the disclosure of their images. The Court remarked that the original child pornography charges were unfortunate, and stated that the evidence supported the charge of

[15] 2015 BCPC 203 at para 43.
[16] 2015 BCPC 203 at para 47.
[17] 2015 BCPC 203 at para 47.

criminal harassment, particularly with regard to the boys' persistent requests for intimate images.

The Court held that a conditional discharge was in the best interests of the offenders and was not contrary to the public interest. Accepting that "the distribution of such photos is a common practice among youth today in their attempts to learn of and struggle with their own sexuality,"[18] the Court also held that the boys must keep the peace and be of good behaviour for six months. The Court further ordered the boys to report to a youth worker; not possess a cell phone, iPhone, smart phone, or other electronic device capable of accessing the internet (or ensure that picture messaging, video message, and data transmission functions are disabled) during that time; attend counselling; apologize to the victims; and complete 20 hours of community work.

iii. 2014 BCPC 327

In 2014 BCPC 327, F broke into his former partner's home and stole two iPads which contained sexually explicit photos and videos. F then distributed those intimate images to the victim's coworkers and to her 23-year-old son. F was ultimately convicted of criminal harassment and two counts of breaking and entering, and sentenced to 2-years imprisonment followed by 3-years probation.

F was a repeat offender. After separating from his previous wife in 2009, F sent 150 sexually explicit photos and four video clips to the woman's new partner. He was convicted of criminal harassment in that case, and sentenced to 18-months probation. Noting his "bad habit ... of doing this,"[19] the Court in the 2014 proceedings imposed a novel condition on F's probation, writing that, "for three years after the release from custody I think it is highly appropriate and necessary for the protection of the community that before [F] engage in any intimate relationships

[18] 2014 BCPC 279 at 30.
[19] 2014 BCPC 327 at para 67.

that person needs to be notified of [his] pattern of behaviour."[20] The Court further states, "Hopefully, steps can be taken, such as not taking these sexually explicit photos or videos and, therefore, not exposing themselves to the same kind of criminality which your two former spouses have experienced."[21] The Court does not elaborate further on how F must notify his future partners.

iv. 2012 BCPC 561

In **2012 BCPC 561**, the offender used private Facebook posts to threaten and intimidate his former romantic partner. Mr. C had assaulted the victim, Ms. X, twice in the past. He had also been previously convicted of mischief after installing a webcam in her bedroom. Ms. X moved with their children from Ontario to British Columbia in 2010.[22]

Shortly after he was released from prison, C started a relationship with a new woman in British Columbia, close to where Ms. X had settled with the children. He told the new woman that he wanted to kill X, a statement which formed the basis charging him with uttering threats. He also told the new woman that he wanted to post photos online to show that he was in X's vicinity. At trial, the woman testified that C told her "I want [X] to look behind her back for the rest of her life," or "I want her to know that I'm close."[23]

C had blocked X from viewing his Facebook account, and she could only see his posts by logging onto her sister's account. Still, X wanted to view his Facebook profile to see if he knew she had fled to British Columbia. When she viewed his profile using her sister's account, she saw photographs near her new workplace and at locations she often visited. She also saw diary-like Facebook Notes expressing his love and longing for her, and a link to the song "Every Breath

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[20] 2014 BCPC 327 at para 67.
[21] 2014 BCPC 327 at para 67.
[22] Ms. B alerted police that she feared Mr. C would come looking for her, and discussed safety measures with the officers: 2012 BCPC 561 at para 32.
[23] 2012 BCPC 561 at para 47.

You Take" by The Police. Fearing for her safety, X stopped visiting the places pictured in the photographs.

At trial, defence counsel successfully argued that C's conduct needed to be objectively threatening on the evidence to constitute criminal harassment. The Court held that "the pictures [C posted] were non-threatening and neutral in nature. Objectively, they were of a benign character as were the comments about the complainant." The Court further noted that:

> It may well be that some of the images had a special meaning or significance to [X] subjectively viewed whether because they were of businesses or places she visited or attended, or because they were of a location near her place of employment. However, none of these either individually or collectively were specifically directed to the complainant. Rather, they were placed on the accused's Facebook for any Facebook user to view.[24]

According to the Court, since X could not see the posts without logging on to her sister's account, C's posts were not directed at her and did not constitute criminal harassment.

In finding C not guilty of criminal harassment, the Court noted that "it would seem that there could not be any harassment until such time as the complainant decided to view it," and "that step introduced an element of uncertainty to the completion of the offence as it is outside the control of the accused."[25] Ultimately, the Court determined that "Whether or not the complainant was harassed was thus dependent solely on her actions and not the accused's."[26] C was, however, convicted of uttering a threat. He appealed his conviction in 2016, claiming that the judge had improperly intervened in the trial proceedings, but his appeal was dismissed.[27]

v. 2010 BCPC 417

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[24] 2012 BCPC 561.
[25] 2012 BCPC 561 at para 91.
[26] 2012 BCPC 561 at para 91.
[27] 2016 BCCA 76.

In **2010 BCPC 417**, 39-year-old C pleaded guilty to one count of criminal harassment after stalking a young television actress. Mr. C became fixated on the actress after first seeing her in person when she was only 12 years old. Two years later, he found her Nexopia profile online and began sending her increasingly disturbing messages. When she blocked his account on Nexopia, he contacted her other friends and created aliases to get around the block. When she terminated her Nexopia account, he found her on Facebook and pursued her on that platform. Over the next three years, C sent overtly sexual messages to the actress and stated he wanted to kidnap her for sex. He made physical as well as online advances and once had to be escorted off her network's premises.

At trial, the Court found that C did not appreciate that his actions were criminal, and held that he posed a high risk to re-offend. C was ultimately sentenced to 18-months imprisonment and 3-years probation. He was ordered to give police officers permission to view logs of his internet activity while on probation, and forbidden from accessing or possessing any pornography. Although C appealed his sentence as being unnecessarily harsh, that appeal was dismissed in 2011.[28]

III. NOVA SCOTIA

i. 2014 NSPC 79

In **2014 NSPC 79**, C pleaded guilty to criminal harassment after sending threatening Facebook messages to his ex-girlfriend. The Court considered whether 6-months imprisonment, 15-months probation, and a total ban on social media use would be a fit and proper sentence, and ultimately found that it was. The Court agrees with the Crown's analogy at trial:

[28] 2011 BCCA 116.

> [I]f you commit an offence with a motor vehicle, you lose driving privileges; if you commit an offence with a weapon, you lose the privilege to use, possess or own same. And so it should be with 'social media.'[29]

C was ultimately banned from social media until "he understands the need for respectful and responsible relationships among young people and society in general,"[30] and was ordered to delete his Facebook, Twitter and Instagram accounts within 24 hours.

IV. ONTARIO

i. 2016 ONCJ 35

2016 ONCJ 35 involves criminal harassment charges stemming from Twitter messages directed at two feminist activists. The Court finds that both women were sincerely harassed by the offender, Mr. E's, tweets, and also finds that the offender knew, or ought to have known, that the women felt harassed.[31] Nonetheless, the Court concluded that E's tweets did not amount to criminal harassment because neither woman reasonably feared for their safety.

The Court concluded by stating that "asking a person to stop reading one's feed from a freely chosen open account is not reasonable. […] To subscribe to Twitter and keep your account open is to waive your right to privacy in your tweets. […] Blocking only goes so far, as long as you choose to remain open."[32] As a result, E was acquitted.

ii. 2016 ONCJ 547

In **2016 ONCJ 547**, a young musician, Mr. Z, pleaded guilty to criminal harassment after putting his 17-year-old girlfriend's nude photos up on Tumblr with the caption "rate and what you

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[29] 2014 NSPC 79 at 69.
[30] 2014 NSPC 79 at 52.
[31] 2016 ONCJ 35 at 77, 83.
[32] 2016 ONCJ 35 at 83.

do to her. Cum on her pics."[33] Z left the photos up for two years, and the victim was devastated when she discovered they were online. As she wrote in her victim impact statement:

> There was no way I could make the 1,300 people who viewed the thread "unsee" my naked underage body. There was no way I could erase the images off of the computers of the people, who downloaded them. There was no way I could prevent these images from surfacing in the future and destroying my career and life that I have worked so hard to build. I have never felt more violated, belittled, and vulnerable.
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> […]
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> [Z] was young when he did this to me but I was younger... he took advantage of me as a child and destroyed my life...He had two and a half years to remove the images but instead left them up for the world to view. [Z] is set to start his career and graduate in four years. Because of his actions he took that opportunity away from me.[34]

The young woman stopped attending school, fell into a downward spiral, and experienced depression and anxiety.

The Court discusses "sexting" and refers to this as a case of "non-consensual sexting."[35] The Court also refers to the new *Criminal Code* provision criminalizing non-consensual distribution of intimate images, and writes:

> Incidents of non-consensual distribution of intimate images and non-consensual sexting dove tail the increased use of technology for communication purposes in our society, and the escalating risk-taking behaviour that sexting leads to, which has in turn created a new class of vulnerable persons requiring the Court's protection, and a crime that is more prevalent in our community than was previously the case.[36]

The Court notes that Z was originally charged with possessing, accessing, and distributing child pornography, and he was severely stigmatized when his school community learned of the

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[33] 2016 ONCJ 547 at 2.
[34] 2016 ONCJ 547 at s 3-4.
[35] 2016 ONCJ 547 at 22.
[36] 2016 ONCJ 547 at 21.

charges.[37] Because he had already served four days in pre-sentence custody, and because a criminal conviction for harassment would impact his promising music career, the Court ultimately suspends Z's sentence and places him on a non-reporting probation period for twelve months.

Emails between Z and the victim are included in an Appendix to the decision. In one email, Z writes:

> Yes 1000+ saw it but that is 1000 in the world out of the billions of people. […] These thoughts might not be the most comforting thoughts right now hut it is the truth. I'm not here to justify my actions, I'm just trying to take responsibility and make things better for you and make you view it in different angle. Nudes of celebrities and important figures get leaked all the time but they keep their head strong and are able to get over it, if those high profile figures can, you can too.[38]

When he suggests that they may be able to get together again some day, the young woman replies, "for your own safety and for my sanity, stay the hell away from me. Forever."

iii. 2016 ONSC 594

In **2016 ONSC 594**, 54-year-old BH was found guilty of criminal harassment after sending repeated text messages to his former partner. In one message, he threatened to go "Rambo" on the victim, and then said he was on his way to her house. He also left a disturbing message on her voice mail. BH received a suspended sentence and was put on probation for 18 months. The Court rejected defence counsel's request for a conditional discharge, noting the seriousness of the "Rambo" threat.

iv. 2015 ONCJ 449

In **2015 ONCJ 449**, the accused was charged with voyeurism, mischief, and criminal harassment after capturing images of a woman's buttocks while she was wearing a bikini on a public

[37] 2016 ONCJ 547 at 6.
[38] 2016 ONCJ 547, Appendix.

beach. Mr. T took videos of many women, zooming his camera lens to a three to four foot vantage point, and hiding the camera in a rolled up beach towel. The complainant, Ms. S, reported that T had done the same thing twice a few years earlier in the same part of the beach. There was no evidence that he ever posted the videos online.

T was ultimately found guilty of mischief and sentenced to seven days in prison and two years probation.[39] The voyeurism charge against T was dismissed because the Crown could not prove that the images were taken for a sexual purpose. The Court wrote that the photos could have been taken for an aesthetic purpose. The criminal harassment charge was also dismissed because it was not clear that the victim feared for her safety. In assessing Ms. S's fear, the Court referenced the audio recording of her 9-1-1 call to police and noted that "her voice does not sound panicked or distraught."[40] The Court also did not find that T was "watching or besetting" Ms. S, and could not conclude that he knew, or was reckless to the fact that he was harassing women on the beach.[41]

v. 2014 ONCA 324

2014 ONCA 324 involved, among other things, a man persistently communicating with his ex-wife using a fake Facebook account. During the couple's marriage, Mr. S monitored his wife's phone calls, tried to install tracking devices on her computer, tried to break into her email and MSN accounts, and used a pseudonym on Facebook to communicate with her. After they separated, S created a Facebook profile pretending to be a recently divorced man, and used the fake account to ask his ex-wife for relationship advice. Although his ex-wife quickly figured out the ruse, she played along, telling him that he needed to move on with his life.

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[39] 2015 ONCJ 741 at paras 8-9.
[40] 2015 ONCJ 741 at para 39.
[41] 2015 ONCJ 449 at paras 41-42.

After messaging back and forth using the fake account, S went to his estranged wife's home and strangled her in bed. After taking their daughter to his parent's house, he then returned to the murder site to attempt suicide and to have sex with the victim's corpse. S was found guilty of first degree murder, but appealed the verdict on the grounds that the murder was not planned and deliberate, and that the jury was misdirected at trial. The Court of Appeal dismissed his appeal, finding both planning and deliberation, and holding that the decision tree given to the jury was not misleading.

vi. 2014 ONCJ 712

In **2014 ONCJ 712**, the Court considered criminal harassment with regard to workplace visits and repeated text messages. Mr. AG initially met his female friend, Ms. P, online. Although she wanted a friendship, he wanted a romantic relationship. He often brought her gifts, and they spoke frequently.

One day, after not being able to reach her on the phone, AG sent Ms. P an overwhelming number of text messages. When she received the messages later that day, Ms. P telephoned AG and told him she did not want to be contacted again. He then said that Ms. P's physically abusive ex-husband gave her what "she deserved", and threatened to "hunt her down" because he knew where she lived. The next day, AG visited Ms. P's workplace and demanded that she pay him money that she owed him.

The Court found that the threat to "hunt her down" was made in the "context of [AG] believing that he was owed money by [Ms. P]. He was signaling to her that he was going to come after her for the money he thought he was owed."[42] Based on the telephone call and workplace visit, the Court found that "it is more probable than not that [Ms. P] was reasonably concerned about her personal safety. This meets the balance of probabilities of standard." However, the Court held

[42] 2014 ONCJ 712 at para 25.

that, "The criminal standard of beyond a reasonable doubt is a much higher standard and I am not satisfied on that standard that [Ms. P] feared for her safety."[43] AG was ultimately acquitted of criminal harassment. However, the Court imposed a twelve-month recognizance requiring AG to keep the peace, be of good behaviour, and avoid any future contact with Ms. P.

vii. 2013 ONCJ 829

In **2013 ONCJ 829**, Mr. A was convicted of criminal harassment after following his ex-girlfriend, RS, to work and using fake Facebook accounts to repeatedly contact her after their breakup. In one of their online exchanges, A wrote, "Until the day that I die, I will always follow you. At work you're going to see me, in front of your house you're going to see me, I'm just going to be everywhere"[44] A also stated that he hoped RS would call the police because then he could take her to trial and publish her case on his website "so that when people Google her they will know who she really is."[45] In one Facebook message, he wrote:

> Just in case for your references [sic] if the case goes to trial your lawyer who you have to pay $5000 will have to provide me your phone records and I will supeona [sic] every single guy you had contact with from the time I met you until the offence date. So these guys will come to court and testify to describe your character.

He closed that message by writing, "I am only letting you everything in advance cause I still care for you."[46]

Although A and RS led opposing evidence about the Facebook messages and subsequent events, the Court found RS' evidence to be forthright, credible, reliable and trustworthy. A's Facebook message stating "You got me crazy now, so I can be your best friend or your worst. Make

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[43] 2014 ONCJ 712 at para 30.
[44] 2013 ONCJ 829 at para 44.
[45] 2013 ONCJ 829 at para 42.
[46] 2013 ONCJ 829, Appendix A.

your choice wisely, please!" was confirmed as a threat to RS' safety.[47] While the Court expressed concern about the credibility and authenticity of Facebook messages and text messages (many of which RS copied into a Word document before submitting as evidence) it nonetheless found A guilty of criminal harassment. The decision in which a sentence was imposed on A has not been located.

viii. 2012 ONCJ 522

In **2012 ONCJ 522**, Mr. K was found guilty of theft under $5000 and criminal harassment after stealing his ex-partner's phone, address book, and cellphone, and using those items to distribute her nude photos. K posted his ex-partner's personal information on a dating site, prompting phone calls and visits from strange men at night. He also left a sex tape at her door, calling it a "Valentine's gift."

Mr. K denied physically hurting the victim, stealing her property, or distributing her intimate images. The Court found that his testimony is not credible, and held the ex-partner was harassed, K knew she was harassed, and that she reasonably feared for her safety. K was sentenced to 90-days imprisonment served on weekends.

ix. 2009 ONCJ 28

In **2009 ONCJ 28**, 23-year-old Mr. G was convicted of criminal harassment after sending his ex-girlfriend incessant MSN messages and annoying emails, repeatedly phoning her, and making surprise visits to her home. The Court concluded that G's conduct caused the victim emotional distress and made her fear for her safety. The fear was reasonable, "especially having re-

[47] 2013 ONCJ 829 at para 116.

gard to the defendant's mood swings."[48] The decision in which a sentence was imposed on G has not been located.

x. [2007] OJ No 1350 (ONCJ)

In **[2007] OJ No 1350 (ONCJ),** Mr. O harassed his former common law spouse by repeatedly sending her emails (while pretending to be her new boyfriend), making repeated phone calls to her cell phone, and surreptitiously watching her in her home. Two years earlier, O had been acquitted of assaulting the same woman.

At trial, defence counsel argued that the victim fabricated the harassing emails and "insert[ed] an IP Address associated with [the defendant]" in the email headers. The Court rejected this, finding that O authored the emails, and also that he "beset or watched" the victim's residence. O was convicted of criminal harassment.

xi. [2001] OJ No 2053 (ONCJ)

In **[2001] OJ No 2053 (ONCJ),** Mr. L distributed explicit videotapes of his ex-girlfriend to her neighbours, together with a letter, supposedly from her, offering sexual favours. He also slashed her tires, attempted to burn down her family cottage, and made hundreds of anonymous phone calls to her home and office. In one anonymous call, L had his new girlfriend recite the addresses of the victim's friends and relatives, likely in an effort to intimidate her.

When L was arrested, police found that he was carrying his passport, Canadian and American money, and a black leather organizer containing lists of the names, addresses and telephone numbers of his ex-girlfriend's friends and relatives. The Court found that this was evidence of an organized and concerted effort "to infiltrate the victim's life in order to effectively and criminal-

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[48] 2009 ONCJ 28 at para 40.

ly harass her."[49] L was convicted of criminal harassment and sentenced to 2-years-less-a-day imprisonment, followed by 3-years probation.[50]

V. QUEBEC

i. 2014 QCCQ 12216

In 2014 QCCQ 12216, 19-year-old Ms. LS was convicted of uttering threats but acquitted of criminal harassment after reposing an article about the victim on Twitter and writing, "Good get the bitch out of there before I bomb her." The Court noted that LS had an operating mind when she posted the tweet and had the requisite intention to be taken seriously. The harassment charge was not made out, however, because the Court did not find that the victim feared for her safety.

[49] [2001] OJ No 2053 at para 44.
[50] [2001] OJ No 2396 at para 16-17.