

**TECHNOLOGICALLY-FACILITATED VIOLENCE AGAINST WOMEN:  
EXTORTION CASE LAW**

<b>A. OFFENCE ELEMENTS</b>	<b>2</b>
<b>B. SELECTED CASE LAW</b>	<b>3</b>
<b>I. SUPREME COURT OF CANADA</b>	<b>3</b>
i. [1999] 3 SCR 759	3
<b>II. ALBERTA</b>	<b>3</b>
i. 2013 ABPC 116	3
ii. 2007 ABPC 237	5
iii. 1992 ABCA 243	5
<b>III. BRITISH COLUMBIA</b>	<b>5</b>
i. 2014 BCPC 197	5
ii. 2006 BCSC 1681	6
<b>IV. MANITOBA</b>	<b>7</b>
i. 2015 MBPC 50	7
ii. 2014 MBPC 63	8
<b>V. NOVA SCOTIA</b>	<b>9</b>
i. 2015 NSPC 14	9
<b>VI. ONTARIO</b>	<b>10</b>
i. 2012 ONCJ 835	10
ii. [2009] OJ No 1378 (ONCJ)	12

## A. OFFENCE ELEMENTS

### Extortion

**346 (1)** Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

**(1.1)** Every person who commits extortion is guilty of an indictable offence and liable

**(a)** if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

**(i)** in the case of a first offence, five years, and

**(ii)** in the case of a second or subsequent offence, seven years;

**(a.1)** in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

**(b)** in any other case, to imprisonment for life.

## B. SELECTED CASE LAW

### I. SUPREME COURT OF CANADA

#### i. [1999] 3 SCR 759

In [1999] 3 SCR 759 the Supreme Court of Canada held that manipulating an individual for sexual favours can constitute criminal extortion. Although the case involved the distribution of intimate images, the Supreme Court did not address whether sex carried out under threat of intimate image disclosure can be considered consensual.

Mr. D pretended to be a photographer and offered to help women and girls develop modelling portfolios. He took nude and semi-nude photos of victims aged 15-20, and later threatened to release the photos if the victims did not have sex with him. In one instance, the defendant told a 19-year-old woman that he would distribute her nude photos unless she paid him money. When she could not pay, he offered to give the photos back in exchange for sexual favours. He threatened to publish the photos in a pornographic magazine and send them to the young woman's father if she did not comply with his demands.

The defendant's convictions on two counts of extortion and five counts of sexual assault were ultimately upheld, and the appeal was dismissed.

### II. ALBERTA

#### i. 2013 ABPC 116

In 2013 ABPC 116, Mr. M pled guilty to 39 criminal charges against 21 victims. Charges included multiple counts of internet luring, extortion, child pornography offences, fraud and unauthorized use of computer with intent to commit mischief in relation to data. While committing his offences over roughly five years, M worked as a security guard.

M used Facebook and Nexopia to contact children and request nude photographs and sexual performances on webcam. He also communicated with children—the majority of whom were boys and girls between the ages of 11 and 16—using MSN Messenger and through text messages. If his victims refused to send him nude photographs, M would use information he had learned about the children in past conversations to hack into their email and social media accounts (for example, by asking questions related to common password reset security questions such as pet names and birthdays). On more than one occasion, M impersonated his child victims in order to solicit nude photographs from their friends. In other instances, after hijacking his victims' online accounts, he told children they could only regain access to their accounts if they sent him nude photographs. When one child sent M photos of her in her underwear, he threatened to distribute the photos unless she sent him a fully nude photograph. M also distributed photos of a naked boy on Tinypic.com.

At sentencing, the Court noted that M's actions were deliberate, persistent, and aggressive. The offences were also sexually motivated, and the Court found that they were “calculated to intimidate, manipulate and psychologically and socially harm the vulnerable child and youthful victims.” The only mitigating factors on sentencing were the facts that M pled guilty to all charges and had cooperated with police.

The Court considered some of M's conduct “cyberbullying,” and cited *AB v Bragg Communications* **2012 SCC 46** to describe the harm that cyberbullying can do to children. The Court noted that “[M's] use of the internet, to commit his numerous sexually based criminal offences involving children and young adults, have elements of disturbing online sexual harassment - an adult criminally cyberbullying and cyberstalking, calculated to randomly choose youthful victims to emotionally harass, threaten, intimidate and manipulate in furtherance of his criminal objectives”. M was sentenced to 11-years imprisonment, along with several ancillary orders including prohibitions on possession of firearms and attending places where persons under 16 are present, an order to provide a DNA sample, and an order to comply with the Sexual Offender Information Registry Act.

ii. **2007 ABPC 237**

In 2007 ABPC 237, 24-year old Mr. I pleaded guilty to two counts of luring a child, one count of counselling making child pornography, and two counts of extortion. Mr. I had solicited sexually explicit images and videos from 12 and 13-year-old girls he met on Nexopia. He was sentenced to 7-years imprisonment, along with several ancillary orders including prohibitions on possession of firearms and attending places where persons under 16 are present, an order to provide a DNA sample, an order to comply with the Sexual Offender Information Registry Act, and an order to forfeit any computer equipment used in committing the offences for which he was convicted.

iii. **1992 ABCA 243**

1992 ABCA 243 involved a man, RLB, threatening to release his ex-wife's nude photos unless she forgave his child support payments. At trial, Mr. RLB was sentenced to a penitentiary term, in part so that he could receive psychiatric counselling services. The Court of Appeal held that this was an error of principle and that the sentence was too high. Although the Court of Appeal determined that a custodial sentence was necessary because RLB committed a "serious crime which threaten[ed] the harmony of the family," RLB's sentence was reduced from 24-months imprisonment to 9-months imprisonment.

III. **BRITISH COLUMBIA**

i. **2014 BCPC 197**

In 2014 BCPC 197, a 20-year-old man, W, threatened to distribute a stolen cell phone video of his underage classmate having sex. Mr. W told the victim that he would post the video to Facebook if she did not send him five nude photos within 24 hours. When he did not receive the photos, he sent the explicit video to her Facebook friends. He also posted the video on a pornog-

raphy website with her full name in the video title. The victim was devastated, quit school, and became depressed.

Mr. W was sentenced to 60-days imprisonment, served on the weekends. The Court held that mitigating factors on sentencing included Mr. W's guilty plea, his remorse, and the fact that he was a youthful first offender. Aggravating factors on sentencing included the fact that he threatened to post the video online and later posted it on a pornography site. The Court also found that Mr. W's actions were "planned and deliberate [, and] done with the intention to humiliate and embarrass [the victim]."<sup>1</sup>

The Court noted that Mr. W's offences put the Court in the "position of not being able to impose a sentence that can correct the situation" because his conduct was "just about hurt and [...] was mean, terribly mean."<sup>2</sup> Yet, as the Court warned, "What is to be taken from this decision is this: For those who wish to prey on the vulnerability of others to take advantage of their vulnerability even with significant mitigating factors that are present in this case, you are going to jail."<sup>3</sup>

## ii. 2006 BCSC 1681

2006 BCSC 1681 involved a serial con-artist who abused, threatened, and defrauded women he met on online dating sites. Mr. M pretended to be a wealthy Sicilian businessman and claimed that, in his culture, women and men who dated automatically became spouses, that husbands maintained complete domination and control over their wives in these relationships, and both spouses had to uphold gruesome and patriarchal family traditions. For example, M told women that spouses needed to tattoo "Property of [Spouse's Name]" on their stomachs. He convinced one woman to get the tattoo and told others that they could be killed for disobeying him.

---

<sup>1</sup> 2014 BCPC 197 at para 18.

<sup>2</sup> 2014 BCPC 197 at para 20.

<sup>3</sup> 2014 BCPC 197 at para 30.

M also claimed to be a gynecologist and often performed fraudulent gynecological exams on his victims. He lied and said that women had sexually transmitted infections when they did not, and submitted his victims to cruel and degrading punishments. In one case, M told a young immigrant woman that he had reported her to immigration officers because she had “sexually teas[ed] him.” He said that she would be deported unless they had sex, because she had “touched him and did not have sex in the end.” When the woman protested, M remarked, “Don’t you know we have lots of human rights laws in Canada?” She eventually had sex with him, fearing that she would be deported if she did not.<sup>4</sup>

M was ultimately convicted of four counts of fraud, four counts of sexual assault, one count of assault, one count of uttering threats, and one count of extortion. M was ultimately declared a dangerous offender and sentenced to an indeterminate period of imprisonment, a decision which was upheld on appeal in 2015 BCCA 338.

#### IV. MANITOBA

##### i. 2015 MBPC 50

In 2015 MBPC 50, a young woman, Ms. C, was sentenced to 18-months imprisonment and 2-years probation after impersonating public figures online to extort money and nude photos from unsuspecting victims. C pretended to be a professional video game player, an NBA player, and a television actress, and she carried out elaborate and deceptive online schemes. In sentencing C, the Court noted that:

As technology rapidly develops, so do the opportunities to exploit unsuspecting users, both financially and emotionally. The combination of the global scope and anonymous nature of the internet results in fertile ground for online criminality. It follows that misuse of the internet in circumstances where the offender is able to

---

<sup>4</sup> 2006 BCSC 1681 at para 123.

anonymously manipulate his or her victims should be met with a sentence that places import on deterrence and denunciation.<sup>5</sup>

C was ordered not to use the Internet, except for educational and employment purposes, during her probationary term.

ii. **2014 MBPC 63**

In **2014 MBPC 63**, two 17-year-old twin brothers NG and FG used social media to bully and sexually exploit a 14-year-old girl. NG and FG pled guilty to invitation to sexual touching, possession of child pornography, distribution of child pornography, and transmission of sexually explicit material to a child.

An 18-year-old man, ZM, initially coerced the victim into taking nude photographs of herself. ZM communicated with the victim over social media and threatened to “do something to her” if she did not comply with his demands. After the victim sent ZM a photo of her breasts, ZM threatened to distribute the photographs if she did not send him more. She complied, sending photographs of her genitals and breasts. ZM then told NG and FG, the accused twins, about how he had been able to extort photos from the victim online. The twins began communicating with the victim, and demanded that she also send them explicit images. When the victim eventually sent photographs of herself, FG and NG distributed those photos to people in her community, including her classmates. The photographs showed her face, as well as her genitals and breasts.

Although the victim did not file a victim impact statement, her mother filed a statement on behalf of the family. This statement indicated that the victim stopped eating, grooming, and sleeping as a result of the offences.

---

<sup>5</sup> 2015 MBPC 50 at para 40.

At trial, the Court recognised that the offenders' actions were violent and had caused the victim bodily harm:

The psychological damage to the victim is long-term and profound. Her reputation in the community has been damaged and she has been ridiculed at school. Given the difficulty in controlling the use of images, once they enter cyberspace, the harmful impact on the victim may well be long-term.<sup>6</sup>

Accordingly, the trial judge determined that a custodial sentence was available and sentenced the brothers to 16 months of secure custody, followed by 8 months of community supervision and a year of probation. The Manitoba Court of Appeal varied this sentence to 12 months of secure custody, 6 months of community supervision, and 6 months of probation to bring the sentence in line with the 2-year maximum sentence available under the *Youth Criminal Justice Act*. The Court of Appeal unanimously held;

[...] the moral culpability of the appellants in this case is on the high end of that spectrum. First, there was a significant age difference between the appellants and the victim. Second, the conduct engaged in by the appellants was not childhood exploration. It was aggressive, relentless, sexually abusive and humiliating. The images were extracted from the victim in a systematic manner by the appellants causing her to virtually break down. Third, the images included the victim's face, breasts and vagina. They were distributed by way of social media to her community. Fourth, as can be expected, the victim and her family continue to suffer the effects from the commission of these offences.<sup>7</sup>

## V. NOVA SCOTIA

### i. 2015 NSPC 14

In 2015 NSPC 14, a young man was found guilty of extortion, possession of child pornography and possession of child pornography for distribution after inducing a teenage girl, A, to send

---

<sup>6</sup> 2014 MBPC 63 at 41.

<sup>7</sup> 2014 MBPC 63 at 37.

him nude photographs online. The case is unique because it involved an unknown accomplice, Z, who remotely logged into Y's computer. Y befriended Z while playing Habbo, an online game, when he was 11 or 12 years old. Both young men were equally involved in sending deceptive messages to A from a fake Facebook account.

Y and Z's online scam had serious real-world consequences. When the young men decided to "kill off" one of their shared fake online personas, both A and her friend B were so distraught about the alleged death that they tried to kill themselves. Both girls were hospitalized. When A figured out that she had been catfished, she asked to know who her online friend really was. Y said he would tell her only if she sent over a picture of her breasts, which she later did.

The Court describes Y's offences as ones which "exploited the murky opportunities afforded by internet anonymity."<sup>8</sup> The crimes were considered "violent offences" for sentencing purposes, and the Court recognized that "Y" endangered the life or safety of 'A' by creating a substantial likelihood of causing psychological harm."<sup>9</sup> However, noting that Y's "precarious mental health, social dysfunction and isolation" contributed to his actions, the Court ultimately sentenced him to a two-year conditional discharge with strict internet restrictions.<sup>10</sup>

## VI. ONTARIO

### i. 2012 ONCJ 835

In 2012 ONCJ 835, 18-year-old Mr. W threatened to disclose nude webcam images of his ex-girlfriend unless she had sex with him again. He initially met her on a videochat service called "Camfrog," and the two entered into a long distance intimate relationship shortly after. Alt-

---

<sup>8</sup> 2015 NSPC 14 at 2

<sup>9</sup> 2015 NSPC 14 at 53.

<sup>10</sup> 2015 NSPC 14 at 55.

though they sometimes shared webcam videos, W never, in fact, recorded his ex-girlfriend's nude images.

The Court considered whether extortion in these circumstances constituted a serious personal injury offence, thus barring a conditional sentence order. Because W threatened the victim with disclosure of intimate images and not with a weapon, the Court determined that he did not commit a serious personal injury offence, noting:

While abhorrent and clearly extortionate, the option - in the absence of the sex - to expose [the victim's] naked images to public scrutiny to humiliate her, does not, in my view, amount to the use or attempted use of violence. The attempted compulsion that is at the heart of this particular offence does not, in my view, rise to the level of violence contemplated by the legislators.<sup>11</sup>

W told his ex-girlfriend that “when they did have sex, it would be ‘rough and unenjoyable’ for her.”<sup>12</sup> The Crown argued that this amounted to an explicit threat of violence. The Court held that “the remarks concerning the “rough sex” were more in the nature of adolescent fantasizing, or even self-aggrandizing braggadocio, rather than threats to inflict violence upon her.”<sup>13</sup>

The Court also noted that the victim met with a counselor after the offence, helping her to “put this incident into perspective.”<sup>14</sup> Finding that the victim took steps to mitigate her fear and humiliation, and noting that her victim impact statement did not describe fear, the Court stated that:

[the victim] indicates that she is less embarrassed and less fearful of the consequences of having reported [W] to the police. As a result of this information, I am satisfied that his conduct did not endanger the complainant's life or safety, nor did it cause severe psychological damage to her.<sup>15</sup>

---

<sup>11</sup> 2012 ONCJ 835 at para 28.

<sup>12</sup> 2012 ONCJ 835 at para 29.

<sup>13</sup> 2012 ONCJ 835 at para 29.

<sup>14</sup> 2012 ONCJ 835 at para 32.

<sup>15</sup> 2012 ONCJ 835 at para 32.

Ultimately, W pleaded guilty to and was convicted of extortion. He received a 15-months house arrest followed by 21-months probation. He was also banned from watching or possessing pornography during his probation.

ii. [2009] OJ No 1378 (ONCJ)

In [2009] OJ No 1378 (ONCJ), the offender, Mr. H, threatened to mail his ex-girlfriend's nude photos to her neighbours, coworkers, and others. When he eventually distributed the photos, his victim became very ill, sought short-term disability benefits, and received counselling. H was charged with extortion and nine counts of criminal harassment.

The Court noted that H “used the existence of the embarrassing photos and the threat that they would be disclosed to family [...] as a tool to bend [the victim's] will to suit his needs”<sup>16</sup> Although he was guilty of extortion, the Court was not satisfied that H was also guilty of criminal harassment. As the Court held, “The effect on [the victim] is better described as vexing and annoying. I have not been convinced beyond a reasonable doubt that she was emotionally traumatized or affected to the extent required by section 264.”<sup>17</sup> H was sentenced to 18-months house arrest, followed by 3-years probation.

---

<sup>16</sup> 2009 CanLii 34031 at para 13.

<sup>17</sup> 2009 CanLii 34031 at para 31.