

**TECHNOLOGICALLY-FACILITATED VIOLENCE AGAINST WOMEN:  
LURING A CHILD CASE LAW**

<b>A. SELECTED CASE LAW</b>	<b>3</b>
<b>I. ALBERTA</b>	<b>3</b>
i. 2013 ABPC 116	3
ii. 2007 ABPC 237	4
<b>II. BRITISH COLUMBIA</b>	<b>4</b>
i. 2013 BCPC 421	4
<b>III. ONTARIO</b>	<b>5</b>
i. 2014 CanLII 33080 (ONSC)	5
<b>IV. PRINCE EDWARD ISLAND</b>	<b>5</b>
i. 2011 PESC 8	5

## A. OFFENCE ELEMENTS

### Luring a child

s 172.1(1) Every person commits an offence who, by a means of telecommunication, communicates with

(a) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence with respect to that person under subsection 153(1), section 155, 163.1, 170, 171 or 279.011 or subsection 279.02(2), 279.03(2), 286.1(2), 286.2(2) or 286.3(2);

(b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to that person; or

(c) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 with respect to that person.

## A. SELECTED CASE LAW

### I. ALBERTA

#### i. 2013 ABPC 116

In 2013 ABPC 116, Mr. M pleaded 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 pleaded 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.

**II. BRITISH COLUMBIA**

**i. 2013 BCPC 421**

In **2013 BCPC 421**, Mr. R was charged with possessing child pornography and sexually interfering with a minor. During the investigation, an undercover police officer had posed as a 14-year-old girl on Nexopia, and had chatted with R on MSN Messenger. R said he always wanted to take a girl's virginity, and asked if the undercover officer ever needed someone to help her

babysit. He later tried to find out whether she was going to be home alone that evening and whether he could come by.

The police later discovered child pornography on R's laptop, and learned that he had a profile on an adult site for members only. He had uploaded 31 images of his ex-girlfriend to online sites — at the times the photos were taken, his ex-girlfriend was 16-17 years old. Mr. R also distributed intimate videos using MSN Messenger. R had no criminal history, demonstrated remorse, and was noted as presenting a low risk of future offenses. The Court sentenced R to 90 days imprisonment for possessing child pornography, and 12 months imprisonment for luring, followed by 3-years probation.

### III. ONTARIO

#### i. 2014 CanLII 33080 (ONSC)

In 2014 CanLII 33080 (ONSC), the Court imposed a 7-year and 7-month global sentence for luring, child pornography, sexual interference and other offences, against 6 victims, 5 of whom were minors.

Mr. D, a self-diagnosed hebephile and former theatre director, used various social media platforms to contact, groom, and exchange sexually explicit photos and conversation with children. Mr. D exchanged sexually explicit instant messages and photographs with three teenage boys and girls. He also videotaped a former adult girlfriend during sex, without her knowledge or consent. His original list of charges was 29 counts long and all dealt with some area of sexual exploitation. He pleaded guilty for 12 of these counts and was subsequently convicted.

### IV. PRINCE EDWARD ISLAND

#### i. 2011 PESC 8

In 2011 PESC 8, 23-year old J was found guilty of one count of luring a child. Thirty-five Facebook messages were entered into evidence that detailed ongoing sexualized conversations between J and a 14-year old female foster child who lived in J's mother's care. No actual sexual activity took place, but the messages revealed extensive planning and a failed attempt that was thwarted when J arrived late at the victim's home. The messages ended when discovered by a third party.

Defense counsel attempted to secure a conditional sentence for the accused in lieu of the more traditional custodial term, stressing that J never actually engaged in sexual activity with the victim. The Court rejected this logic, finding:

[t]hat, in my view, puts [J] in the same boat as the perpetrator who goes to the agreed location thinking he is to meet the child, only to find out the child is actually an adult police officer. The fact that he didn't meet the child for the purpose of facilitating the sexual encounter was only because he was late.<sup>1</sup>

However, the Court concluded that a custodial sentence on the lower range was appropriate given that searches of J's computers revealed no evidence that he was in possession of child pornography or that he had been trolling for other underage youth online. J was ultimately sentenced to 6-months imprisonment and 2-years probation, followed by a number of statutory terms, in addition to several ancillary orders including to provide a DNA sample, and to comply with the Sex Offender Information Registry.

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<sup>1</sup> 2011 PESC 8 at 39.