

**TECHNOLOGICALLY-FACILITATED VIOLENCE AGAINST WOMEN:  
MISCHIEF IN RELATION TO DATA CASE LAW**

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## A. OFFENCE ELEMENTS

### Mischief in relation to data

s 430 (1.1) Everyone commits mischief who wilfully

- (a) destroys or alters computer data;
- (b) renders computer data meaningless, useless or ineffective;
- (c) obstructs, interrupts or interferes with the lawful use of computer data; or
- (d) obstructs, interrupts or interferes with a person in the lawful use of computer data or denies access to computer data to a person who is entitled to access to it.

### **Punishment**

(5) Everyone who commits mischief in relation to computer data

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
- (b) is guilty of an offence punishable on summary conviction.

### **Definition of computer data**

(8) In this section, computer data has the same meaning as in subsection 342.1(2) [“computer data means representations, including signs, signals or symbols, that are in a form suitable for processing in a computer system”].

## B. SELECTED CASE LAW

### I. 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. SASKATCHEWAN

### i. 2015 SKQB 174

In 2015 SKQB 175 Mr. M, who had experience working with computers, offered to fix his girlfriend's laptop when it stopped working. After determining that the laptop could not be fixed, M offered to sell the laptop for parts and transfer his girlfriend's files to a new computer. While working on her computer, M found and kept nude photographs that she had sent to a previous boyfriend. When the couple later broke up, he posted the photographs online and distributed them to the victim's work colleagues. M was ultimately charged with theft.

At trial, the Court held that data was not property capable of theft. In the alternative, the Court determined that if data could be stolen, M had nonetheless not committed theft because he did not intend to deprive his former girlfriend of her interest in the nude photographs. Because the elements of the theft offence were not made out, M was acquitted at trial.

The Saskatchewan Court of Queen's Bench affirmed the trial judge's findings and held that data could not be the object of theft because data theft does not deprive the victim of the data itself. Both the trial judge and Court of Queen's Bench acknowledged that M's conduct was criminalized in Bill C-13 (non-consensual distribution of intimate images), but noted that the

Mischief in relation to data: *Criminal Code*, RSC 1985, c C-46, s **430(1.1)**.

law was not in force when M distributed his former girlfriend's photographs online. Both courts ultimately found M's conduct despicable but not criminal in the circumstances.