TECHNOLOGICALLY-FACILITATED VIOLENCE:
HARASSING COMMUNICATIONS

A. OFFENCE ELEMENTS

Harassing Communications

372(3) Everyone commits an offence who, without lawful excuse and with intent to harass a person, repeatedly communicates, or causes repeated communications to be made, with them by a means of telecommunication.

Punishment

(4) Everyone who commits an offence under this section is

(a) guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or

(b) guilty of an offence punishable on summary conviction.

B. SELECTED CASE LAW

I. ALBERTA

i. 2002 ABQB 862

In **2002 ABQB 862,** Ms. M was found guilty repeatedly calling Mr. M and stealing his mail, but was acquitted of theft. Mr. M began receiving nuisance phone calls at his home and place of business. He and his employees began making a record of the calls. Among hundreds of calls, 94 were hang up calls, and some were pornographic in nature. Mr. M answered the calls and some of Mr. M's employers answered some of the calls. Telus was able to trace the calls back to three phone numbers associated with Ms. M. Additionally, mail from Mr. M's business went missing and then was later returned, one package was opened and human feces were found in it. Ms. M's vehicle had reportedly been spotted near the mail box, but there was no other evidence that Ms. M had taken the mail.

The court noted that typically the harassing communication has to be received by the intended target but also noted that there is jurisprudence that finds the particular target does not have to be the recipient of the calls. In this case it was sufficient that the calls had been intended to annoy Mr. M, even though some of his employees answered the calls. The court also held that harassment is synonymous with annoyance and the number of calls were sufficient to annoy Mr. M.

Ms. M was sentenced to 12 months' probation and $700 in fines. She appealed both the conviction and the sentence. The appeal was dismissed on the charge of harassing calls but was allowed on the conviction of the mail theft, due to the lack of evidence that Ms. M had tampered

with the mail, which could go to a new trial. The court maintained the sentence of 12 months' probation and the $500 fine.

ii. 2002 ABPC 137

In **2002 ABPC 137** Mr. F, a 36-year-old man, pleaded guilty to the possession of stolen property, harassing phone calls, and criminal harassment. Mr. F would attend open houses in to steal women's underwear. After stealing the undergarments, Mr. F anonymously called 13 of the women whose underwear he stole. One woman received around 25 calls where Mr. F told her he knew her, wanted to see her in the underwear he stole no matter what it took, and made comments about his genitals and a desire for sexual relations with her. When Mr. F was arrested, the police discovered the undergarments and Mr. F admitted his involvement to the police.

Upon sentencing, the court took Mr. F's disgrace and humiliation into account, as well as the media attention garnered about Mr. F's conduct. Mr. F attempted suicide after being charged. However, a suspended sentence was not considered appropriate. He was sentenced to 6 months' incarceration and 12 months' probation, ancillary orders included donating $1,000 to a charity for women, an alcohol prohibition, some financial restitution to some of the victims, and a no contact order with the 13 victims.

II. BRITISH COLUMBIA

i. 2017 BCPC 118

In **2017 BCPC 118**, Ms. S testified that she met Mr. O online through mutual Facebook friends. She claimed she never had any personal contact with him, but Mr. O said they had met in the past when they were teens. On several occasions, Mr. O transferred money to Ms. S as a gift

without her asking. After some time, Ms. S no longer wanted to communicate with Mr. O because she thought he was a "weirdo", but her persisted in communicating with her after she asked him to leave her alone. He would initiate many Facebook messages in rapid succession, which Ms. S would not respond to. Ms. S tried blocking and deleting him on social media, but he continued to text her. His communication escalated to threats and vile language. She contacted the police, who contacted Mr. O to tell him that his communication was unwanted and that he should stop contacting Ms. S. This warning did not deter Mr. O, who kept communicating with Ms. S and her two daughters who were 17 and 20-21.

Mr. O was found guilty of repeated harassing communication by means of telecommunication based on the Facebook messages.

At trial Ms. S asked for testimonial accommodation and was allowed to testify via CCTV in another room.

Also see: 2016 BCPC 362 (Pre-trial – accommodation)

ii. 2010 BCSC 779

In **2010 BCSC 779**, Mr. L appealed his conviction of uttering threats and making harassing phone calls, arguing his personal and health conditions impacted his defence and that the judge displayed bias, among other things. Mr. L had called the complainants and said he would be coming after them in the "dead of night" at a time of his choosing. The threats were directed at Mr. V and Ms. V. He was sentenced to a conditional discharge and 9 months' probation.

His appeal was dismissed.

Also see 2010 BCSC 397 (Post trial procedure)

i. 2007 BCCA 252

In **2007 BCCA 252**, Ms. B applied for an extension for time for leave to appeal from a conviction of making repeated phone calls to Mr. G with the intent to harass. Her application was eight years late. Mr. G had given her an incomplete mark while she was a student at the university he taught at and she wanted to contest the wrongness of the mark and began making the calls. She was sentenced to two years' probation.

The court denied her application and refused the extra time because the application was untimely and without merit.

ii. 2004 BCSC 683

In **2004 BCSC 683**, Ms. S appealed her conviction of making harassing phone calls and criminal harassment after calling a real estate agent, Mr. M, and some other people non-stop. She had pleaded guilty at her show cause hearing. Ms. S had previous experiences with the criminal justice system, was unrepresented, and the judge was familiar with her personal circumstances. Upon receiving a sentence of 60 day's incarceration and three years' probation, she sought an appeal and new trial. Her appeal was dismissed as her guilty plea had been entered voluntarily and the accused was familiar with the justice system.

iii. 2003 BCPC 293

In **2003 BCPC 293,** Mr. K was charged with criminal harassment, harassing phone calls and assault. He was convicted of the two harassment charges but was acquitted of the assault. Ms. K had been living with Mr. K. She testified that their relationship was volatile and included shoving matches. She claimed he threatened to kill her and her child with a gun. Mr. K admitted that he

said that "nothing would give him more pleasure than to see her dead on a cold slab of cement" which Ms. K interpreted as a threat to her physical safety, but Mr. K claimed was reference to her dying from addiction issues. He denied threatening to kill her and her son the with a gun.

After a dispute with Mr. K, Ms. K went to stay with her mother and Mr. K called the house persistently. Her mother told Mr. K to stop calling or she would call the police. He continued to call the house and leave derogatory messages. Ms. K met Mr. K in a park to discuss their son and to pick up items for her son. The police became involved and noted 24 calls from Mr. K in a 3-4 hour period at 3-5 minute intervals.

The court held that there were repeated calls to Ms. K at her mother's home, but that Ms. K was not harassed because she did not stop all contact with the accused. It noted that "Ms. K actively participated in these telephone calls from the accused. Ms. Ms. K. continued to discuss matters with the accused and engaged in arguments with him over the telephone. She was concerned about the accused because he had threatened suicide and, for this reason, felt she could not just hang up on him every time he called."[1]

The court did find that Ms. K's mother was harassed. She called the police and repeatedly asked Mr. K to stop calling her home. However, because the calls were intended to harass Ms. K, not her mother, the *mens rea* required for the offence was not proven beyond a reasonable doubt.

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[1] 2003 BCPC 293 at paras 63-64.

Mr. K was convicted of uttering threats due to the "cold slab" comment, but was acquitted of assault based on insufficient evidence and acquitted of the harassing phone calls as the *mens rea* element was not met.

iv. 2000 BCCA 411

In **2000 BCCA 411**, Mr. P was convicted of two counts of harassing phone calls. He had a disagreement with the Superintendent of motor vehicles regarding his driver's licence. Mr. P contacted the department, when he was unable to reach the person he wanted to talk to, he became upset and began calling repeatedly, using unacceptable and profane language. He was sentenced to a conditional discharge, 18 months' probation and was ordered not to contact certain people at the department and the Premier's office.

Mr. P's appeal was dismissed. He sought funding from Legal Aid for an application for leave to appeal, but his application was denied. He applied for a court order for the appointment of counsel but the application was dismissed.

III. MANITOBA

i. 2016 MBQB 171

In **2016 MBQB 171**, Mr. H, a 34-year-old man, met a 20-year-old woman at the gym and invited her to his home to watch a movie on two different occasions. After the two movie dates, the woman informed Mr. H she was not interested in seeing him again. Over the next three years her persisted in communicating with her by phone, letter and email. At various times, he would phone her 10-15 times a day and leave voice messages pleading for another chance, he bought her unwanted gifts, he sent her unwanted letters professing his love and describing his sexual

fantasies about her. The police warned him not to contact her and a peace bond prohibited him from contacting her. His contact continued. He sent unwanted Facebook messages, emails and gifts. In those communications he subtly threatened the woman. During the legal proceedings, he prolonged the criminal trial, commenced civil action against her and others involved in the trial, and he brought private prosecutions against the woman, with a stay of proceedings each time.

This was not the first time he had become obsessed with a woman he barely knew and was convicted of criminal harassment (see 2007 MBCA 69). The court noted that he was obsessed, unrepentant and lacked insight into his behaviour. He had originally been charged with both criminal harassment and harassing phone calls, but the court moved forward on the criminal harassment charges and quashed a committal under the harassing communication provision.

A jury found him guilty of harassment.

In an unusual decision, the judge sentenced him to two years less a day in the community and three years of probation, stating that jail time would only reinforce Mr. H's sense of victimhood and that Mr. H had maintained his job as a firefighter for many years and may lose focus if he were to lose that job. Additional orders included a curfew, no contact with complainant or witnesses, keeping his distance from complainant's home and work, and a 10-year weapons prohibition (lifetime for restricted weapons).

Also see*:* 2017 MBCA 1 (Appeal of dismissal of application for post-conviction disclosure), 2015 MBCA 17 (Motion to dismiss appeal from dismissal of motion for stay of charges re: abuse of process), 2014 SCCA No 224 (SCC) dismissed (Appeal of prelim), 2013 MBCA 59 (Appeal of prelim), 2012 MBQB 120 (Preliminary inquiry).

ii. 2010 MBPC 9

In **2010 MBPC 9**, Mr. S, a 20-year-old man, was diagnosed with having a cognitive disability including personality disorders and multiple deviant sexual practices, including sexual sadism. He paid two women for sexual services on separate occasions. He tried to push one into a river and the other he tried to strangle with a shoe lace. He also made harassing phone calls to a female defence lawyer who he had never met. He had got her number from a fellow inmate. He called her 50 times and hung up, and left seven voicemails with sexually suggestive messages, claiming he loved her, that he had some of her underwear, and in one call he whipped a belt in the background. He had a previous conviction of harassing calls.

He pleaded guilty to assault, assault with a weapon, and harassing communication. Mr. S was sentenced to 9 months' imprisonment. Additional orders included providing a DNA sample, a weapons prohibition for life and a 20-year registry on the sexual offenders' registration.

An application to declare him a dangerous offender was dismissed, but he was designated as a long-term offender.

IV. NEW BRUNSWICK

i. 2015 NBQB 61

In **2015 NBQB 61**, Mr. H was convicted of uttering threats to Mr. T and a charge of harassing phone calls was withdrawn. Mr. H called Mr. T, an engineer, in regard to a jobsite they worked on. Mr. H called Mr. T vulgar names and threatened to break his neck if he did not bring certain information to a meeting. He called several more times, hanging up or leaving messages. Mr. H denied threatening Mr. T.

Mr. H appealed his conviction, requesting a trial with fair representation, arguing there were irregularities in the judge's behavior, and said the decision was circumstantial.

His appeal was dismissed.

Also see: 2015 NBCA 66 (Leave to appeal refused)

ii. [1990] NBJ No 441 (NBQB)

In **[1990] NBJ No 441 (NBQB)**, Mr. S made repeated calls to his former employer, a university security department. He would not say anything when one of the security guards picked up the phone. He called 14 times in 8 minutes, each time Mr. M picked up. At the trial level Mr. S was acquitted of making harassing phone calls. The trial judge held that a silent call could not amount to an intent to harass, as it could only be annoying.

On appeal, court disagreed, and found that the silent calls on their own were sufficient and no words needed to be spoken for the calls to be harassing. It also found that harassment was synonymous with annoyance and that Mr. M had been harassed by the calls. It also held that the "caller does not have to have a particular person in mind as the target of his harassment. One who picks a telephone number at random, for instance, and makes repeated calls to that number

without any idea of the identity of the person or persons at the receiving end may thereby commit an offence against s. 372(3)."[2]

The acquittal was set aside and Mr. S was sentenced to an absolute discharge.

V. NEWFOUNDLAND & LABRADOR

i. [2018] 144 WCB (2d) 480 (NLPC)

In **[2018] 144 WCB (2d) 480 (NLPC)**, Mr. B, a 29-year-old man, dated a woman for a few months and did not want the relationship to end. After she ended the relationship, Mr. B continued to call and text her. He went to her home uninvited and threatened suicide when she told him she did not want a serious relationship. He texted her pictures of blood along with suicidal threats. The first time she called the police, she did not seek charges as she was afraid he would kill himself but did get a peace bond that prohibited contact. After this, Mr. B continued to contact her, including sending her texts of popcorn and comments on her appearance when she was at the movies with her son. He sent her 100 texts in one night and went to her house intoxicated with unwanted gifts and would not leave when she asked him to leave. She called the police who took him to the hospital but did not charge him as she did not want to charge him. At some point, she began blocking his number, but Mr. B would use other people's phones to call and text her, sometimes impersonating other people. He also sent Facebook messages and posted videos

[2] [1990] NBJ No 441 (NBQB) at para 17.

online, including one of himself punching a door while singing, "How am I supposed to live without you?" on social media. When she did communicate with him, she told him that the relationship was over and that she felt stalked and threatened. He was eventually charged and convicted with criminal harassment, unlawfully entering a dwelling house, possessing stolen goods (a copy of her house key), harassing communication, and interfering with her enjoyment of property.

Mr. B was not accountable for his actions and believed he did not do anything wrong. He was sentenced to 90 days' conditional sentence and 12 months' probation, additional orders included no contact with the complainant or her child, an alcohol prohibition, a lifetime weapons prohibition, and a DNA order.

Also see: [2017] 143 WCB (2d) 331 (NLPC) (Trial)

ii. [2015] 370 Nfld & PEIR 235 (NLPC)

In **[2015] 370 Nfld & PEIR 235 (NLPC)**, Mr. H, a 58-year-old man, contacted his former spouse, Ms. H contrary to an undertaking. Mr. H's doctor said that he was depressed and suicidal after the separation. Mr. H began making harassing and repeated phone calls to Ms. H's home and workplace. At one point he had left 20 messages on her voicemail. The calls were sometimes nasty and other times apologetic. He was arrested and released on an undertaking not to contact Ms. H. He then sent her an email with their marriage certificate and spoke with her in the parking lot at her workplace.

He was charged and pleaded guilty to breaching his undertaking and harassing communication.

Mr. H was given a conditional discharge, 12 months' probation and additional orders that included a no contact order with Ms. H, an order to refrain from entering her workplace, an order to make a $100 donation to a food bank and to pay a $100 victim surcharge fee.

iii. [2005] NJ No 110 (NLPC)

In **[2005] NJ No 110 (NLPC)**, Mr. M, a 30-year-old man, pleaded guilty to damaging property, making harassing phone calls, theft, and breach of undertaking. He had been in a relationship with Ms. H but had become aggressive and threatening. He left her voicemails that were long, tedious and insulting. Ms. H reported the harassing calls and the police arrested Mr. M. While on an undertaking for this offence he was caught shoplifting.

Mr. M was sentenced to five months' incarceration and two years' probation. Additional orders included no contact with Ms. H and not to go near certain addresses.

iv. [2003] NJ No 307 (NLPC)

In **[2003] NJ No 307 (NLPC)**, Mr. S had a history of failing to obey orders under recognizance, undertakings and probation. The court noted that these types of orders failed to provide security for those he was prohibited from contacting because Mr. S ignored those orders. He was convicted of uttering threats against his former spouse, Ms. S, and her friend, Mr. BS, and failing to comply with an undertaking that prohibited contact with either of those people. He breached this order a few days after it was put in place.

Mr. S had called Ms. S' home in the middle of the night, approached her at a club, where he assaulted her friend and threatened Mr. BS, and was drinking alcohol, despite being prohibited from drinking. He was arrested and released on a recognizance, which he breached by calling Ms.

S at her work and home several times. He would let the phone ring 20 times before hanging up, and he called her from another province when he was not supposed to leave Newfoundland.

Mr. S expressed no remorse, no empathy for his victims, and would not assure the court he would not contact the victims again. The court stated:

> These type of offences strike at the heart, purpose and intent of our system of criminal justice. These offences rob their victims of any sense of security that the Court might attempt to provide to them from its orders. They make the Court look impotent. Victims of crime quickly learn that court orders provide them with no respite from unwanted and uninvited contact. [Mr. S] has proven to [Ms. S], [Ms. K] and to [Mr. BS], that the police and the courts are unable or unwilling to adequately deal with him. It must be disheartening to victims of crime to complain to the police, to see an offender appear in court and be released pursuant to an order prohibiting contact, only to be contacted by the offender again, to complain to the police again, to see the offender arrested again and for the offender to be released by the police or by the court on yet another undertaking prohibiting contact.[3]

Mr. S pleaded guilty to breaches of probation, assault, breaches to undertakings, and harassing phone calls. He was sentenced to 12 months' incarceration, three years' probation, and orders included a DNA order, a no contact order with Ms. S, Ms. K and Mr. BS, and a prohibition from calling or entering their places of employment, being on any street they live on, or going to any bar they are in. This sentence was longer than what was recommended by the Crown. The court

[3] [2003] NJ No 307 (NLPC) at para 42.

noted that Mr. S was a persistent and repeat offender who ignored orders and targeted the same victims.

v. [2002] NJ No 310 (NLPC)

In **[2002] NJ No 310 (NLPC)**, Mr. G, a 41 year old taxi dispatcher, had been charged with entering a dwelling house without a lawful excuse, criminal harassment, harassing telephone calls, breach of probation, uttering threats, and breaching an undertaking. He sought an order to grant him judicial interim release, which was denied.

Ms. A had left her relationship with Mr. G because of physical and verbal abuse. Ms. A complained to the police about harassing phone calls Mr. G made to her. She was told to make a log of the calls and to come back to the police later. The court stated:

> Providing such advice to complainants can only serve to discourage women who are or have been harassed by their spouses or boyfriends from complaining to the police and it must have been disheartening to [Ms. A] to have received such a reaction to her request for police assistance.
>
> Women who are being harassed by their former partners or boyfriends should not have to conduct their own investigations. Instead, the police may wish to consider section 492.2 of the *Criminal Code*. It is important that the police realize that the provision of such advice can place women at risk. What commences as verbal harassment can quickly escalate into violence being inflicted upon complainants in such cases. Criminal harassment is a serious criminal offence and it should be treated accordingly. It is important to realize that if a "pattern of harassing conduct continues and is not properly dealt with...the result could be very serious physical and/or emotional harm to the victim" (*R. v. Wall* (1995), 136 Nfld. & P.E.I.R. 200 (P.E.I. C.A.) , at page 203). In *R. v. Denkers* (1994), 69 O.A.C. 391 (Ont. C.A.), at page 394, the Ontario Court of Appeal stated:
>
> This victim, and others like her, are entitled to break off romantic relationships. When they do so they are entitled to live their lives normally and safely. They are entitled

> to live their lives free of harassment by and fear of their former lovers. The law must do what it can to protect persons in those circumstances.[4]

Four days after Ms. A reported the calls to the police, Mr. G showed up drunk at her residence and entered the residence without permission. She asked him to leave and he refused, her nephew then told him to leave and he did. She called the police and reported the unwanted visit. The police then warned him to stop contacting Ms. A.

The court noted the potential danger in solely issuing warnings. It stated that these types of warnings "may suggest to certain offenders that the police are not taking the matter seriously and therefore it could cause the harassment to become worse."[5]

The police took her statement at this time and she reported receiving 40-60 calls from Mr. G, that Mr. G followed her, assaulted her, and was constantly around her residence. The police then arrested Mr. G but he was released on an undertaking. The court stated:

> Considering the circumstances of the offence, that [Mr. G] was subject to a probation order that arose out of his contact with a former girlfriend, [Mr. G's] record for similar behaviour in the past and his having breached release orders on numerous occasions,

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[4] [2002] NJ No 310, (NLPC) at paras 5-6.

[5] [2002] NJ No 310, (NLPC) at para 8.

> releasing him in such a fashion creates the danger that [Mr. G] might conclude that the police did not consider his actions or [Ms. A's] complaints to be serious. The undertaking required that [Mr. G] abstain from any contact with [Ms. A] and that he refrain from the consumption of alcohol.[6]

A month later Ms. A had to contact the police again. Mr. G had told a fellow employee that Mr. G would go to jail for killing Ms. A if the employee was dating her.

Mr. G's application for judicial interim release was denied. The court stated that he was a danger to any woman who enters a relationship with him. Allowing him to be released would cause the public's confidence in the administration of justice to be adversely affected.

vi. [1992] NJ No 73 (NLSC)

In **[1992] NJ No 73 (NLSC)**, Ms. S was convicted with making harassing calls to Mr. J's business. Ms. S had dated a man Ms. C used to date. Ms. C worked at Mr. J's business and would call Ms. S' phone and either hang up or scream in the phone. Ms. S knew the calls were coming from Mr. J's business and were from Ms. C because she would call back and the same music would be playing in the background of the business. She told Ms. C to stop calling or she would make 10 calls for every call she made. Mr. J said the calls were interrupting his business and reported them to the police. Mr. J's phone company was able to trace the calls made to Mr. J's business and Ms.

[6] [2002] NJ No 310, (NLPC) at para 10.

C confirmed that the harassing calls were happening at the times that Ms. S' phone number was traced to calling Mr. J's business.

The trial judge did not accept computer print outs of the call-tracing procedure from the phone company as reliable evidence and held that the Crown had not given adequate notice to submit them as evidence. Ms. S was acquitted.

The Crown appealed the court's decision on the admissibility of the evidence but the appeal was dismissed.

VI. NOVA SCOTIA

i. 2004 NSCA 69

In **2004 NSCA 69**, Mr. S was convicted of three counts of breaching his probation. He had received a conditional sentence that included an order not to contact his ex-wife, Ms. S and his daughter. Mr. S had a history of convictions of harassment, breaching probation, and failure to comply with a recognizance. The victims of these crimes had been his former wife or daughter. In 2003 he was found guilty of breaching a no contact order, breaching recognizance, and making harassing phone calls. He made 35 calls to his daughter, many of which were foul and aggressive.

The breaches of recognizance and harassing phone calls were sentenced together. Mr. S was sentenced to 6 months' imprisonment and two years' probation. He appealed his conviction and sentence on all counts arguing that he did not have counsel at the trial, did not have a fair trial, and that the sentence was excessive. The appeal was dismissed in part because Mr. S was familiar with the nature of the offences and the criminal justice system due to his prior criminal history, and that the judge provided him with appropriate assistance in the trial. The sentence was not

found to be excessive and was not appropriate to be served in the community, as Mr. S' previous community-based sentences had not deterred him from harassing his ex-wife and daughter.

Also see: 2003 NSCA 118 (Release pending appeal)

ii. 1996 NSCA 159

In **1996 NSCA 159**, Mr. W, a 15-year-old boy, threw rocks through his teacher's window, threw eggs at his property, and made harassing phone calls to him using profane language and telling him to watch out. He planted a homemade bomb in another teacher's car, which detonated and cause significant damage to the vehicle. A police search located shot gun shells in Mr. W's possession. Mr. W was found guilty of damaging property, making harassing calls, possessing explosives, and failing to comply with a probation order.

The Crown appealed the original sentence, which was varied. The court held that the trial judge had failed to consider aggravating factors including the young person's lengthy criminal record and disrespect and disregard for the law and adults who wished to help him. His open custody sentence was extended from 4.5 months to 8 months, and his probation was extended from 12 months to 16 months. Additional orders including a requirement to attend school, a prohibition from drugs and alcohol, a curfew, and a requirement to attend counselling.

VII. ONTARIO

i. [2008] OJ No 2234 (ONSC)

In **[2008] OJ No 2234 (ONSC)**, Mr. F, a 60-year-old contractor, appealed his conviction of two counts of break and enter, one count of sexual assault, one count of harassing phone calls and

one count of criminal harassment. Mr. F was a contractor working on Ms. V's home. Mr. F was married but began having an affair with Ms. V. When Ms. V ended the relationship, Mr. F did not accept it was over. He made excessive, unwanted, and disturbing calls to her business and home. He would yell at her in public, slam her car door, and drive next to her car and yell at her. He broke into her home while she was asleep and sexually assaulted her on three occasions and sexually assaulted her in a forested area. He did not accept responsibility for his actions.

In Ms. V's victim impact statement, she stated:

> He turned my home into a place where I felt victimized and humiliated and upset every time the phone rang or I heard the door open since I knew it was likely going to lead to another very unpleasant and unhappy exchange. I had no privacy or sense of security and often felt forced to spend extended periods away from my house whenever possible around my work schedule just to be able to briefly escape the persecution I felt at home.

She worried about how the calls impacted her staff and clientele. The phone calls began early in the morning. His behavior persisted after she contacted a lawyer and the police. She told him the relationship was over, she didn't want to see him again and didn't want to speak to him ever again. He would persist in calling her in an attempt to control, manipulate, intimidate and scare her.

He was sentenced to 48 month's imprisonment, registered on the sex offender registry, prohibited from possessing firearms for life, and required to give a DNA sample. He appealed the conviction on the grounds of an unfair trial but his appeal was dismissed.

Also see: 2012 ONCA 419 (Appeal)

ii. 2011 ONCJ 14

In **2011 ONCJ 14**, Mr. P was charged with assault, breaching an undertaking and making harassing phone calls. He pleaded not guilty. Mr. P was separated from his wife, Ms. P. Ms. P said that Mr. P had assaulted her during a dispute. Mr. P said he only applied force in self-defence. He was arrested with an undertaking not to contact Ms. P. He called his ex-wife several times and she did not answer. He left a voicemail. He denied that his intention was to harass or annoy.

The court found that Mr. P had not been properly served the undertaking but was aware that he was under an undertaking not to contact his ex-wife when he made the call. He was not guilty of the assault and harassing phone calls but was found guilty of the breach of undertaking.

iii. 2009 ONCJ 734

In **2009 ONCJ 734**, Mr. D was charged with uttering threats and harassing communication. Mr. D threatened his girlfriend, Ms. P and her children over email, writing that he hoped her kids would die and made derogatory comments about Ms. P. Ms. P claimed he had called her work and told her employee she was a drug addict, repeatedly called Ms. P's home, cellphone and parents' phone, among other calls. There was no record of those calls and Ms. P's credibility was damaged due to her demeanor and strong dislike of Mr. D.

Mr. D was found guilty of uttering threats and was acquitted of the harassment charges.

iv. [2005] OJ No 4602 (ONCJ)

In **[2005] OJ No 4602 (ONCJ)**, Ms. L was convicted of harassing her former colleague and friend, Ms. B. Ms. L made calls to Ms. B using vile and obscene language. She claimed to have a lawful reason for the calls, asking for a dress to be returned, and only became upset when she was hung up on and when Ms. B asked her to introduce her to a man who was already in a relationship.

However, the 26 calls over a 3-day period were verbally abusive and many calls had no reference to the dress. Ms. B told her to stop calling her and began to record the unwanted calls.

Ms. L was found guilty of making the harassing calls.

Also see: [2007] SCCA No 530 (Appeal, leave to appeal dismissed)

v. [2007] 76 WCB (2d) 200 (ONSC)

In **[2007] 76 WCB (2d) 200 (ONSC)**, Ms. K was charged with harassing calls and breach of recognizance for harassing current and former employees of a grocery store chain. She sought to subpoena 104 current or former employees, suppliers and lawyers of the business. The court held that these individuals were unlikely to give material evidence and quashed the subpoenas.

vi. [2004] OJ No 2440 (ONCA)

In **[2004] OJ No 2440 (ONCA)**, Mr. N was found guilty of harassing phone calls and sentenced to 74 days' incarceration and 3 years' probation. His appeal against the conviction was dismissed. The harassing conduct had begun six months prior to the laying of the information and continued afterwards. The court held that as long as the Crown could prove the conduct was ongoing during the 6 months period, it did not need to frame the information to include proceeding conduct.

Mr. N had made repeated phone calls to police officers to the Police Complaints Commission and left abusive and vulgar messages on three employees' answering machines. The court held that the primary purpose of the calls was to harass and there was no lawful purpose to calls. The court stated that:

> if the primary purpose of a telephone call was to harass, then the call cannot be said to have been for a lawful purpose. A creditor, for example, is not entitled to phone a debtor at all hours and make rude, vulgar, or obscene comments because the creditor is owed money. Most individuals who harass others in our society, likely feel a sense of betrayal or a grievance, either real or imagined. A motivation, whether legitimate or not, is not an excuse or a defence for criminal behaviour. The defence, in their able submissions, quite correctly points out that the Court must not allow vulgar, uncivilized or unacceptable behaviour or conduct to be vested with criminal consequences unless it is an offence. I agree completely with that submission. If there was any doubt that the purpose of the calls in question was vested with a lawful purpose; that is, if the Crown were unable to prove that the accused's purpose was to harass, then the accused would be entitled to an acquittal.[7]

His conviction was not overturned on appeal.

Also see: [2004] SCCA No 331 (SCC) (Appeal), [1999] 41 WCB (2d) 190 (ONCJ) (Appeal against conviction), [1996] 31 WCB (2d) 445 (ONCJ) (Trial), [1995] OJ No 4250 (ONCJ) (Evidence)

vii. [1998] OJ No 3973 (ONCJ)

In **[1998] OJ No 3973 (ONCJ)**, Mr. R was convicted of threatening to cause serious bodily harm, breaching his probation and making harassing phone calls, with suspended sentences, short jail terms, community service, fines, and probation having no effect on his behavior. One of his victims hung up on him, which led Mr. R to damage his car and set fire to his home. Mr. R was diagnosed with multiple paraphilias, including homosexual paedophilia, sexual sadism, sexual

[7] [2004] OJ No 2440 (ONCA) at para 11.

masochism, and telephone scatologia (making obscene telephone calls), and had a long history of making harassing calls, often to male victims.

The Crown applied to have him declared a long-term offender. Mr. R was obsessed with making phone calls to strangers, he got sexual gratification from engaging his victims in discussion about what type of boots they wore. The conversations would grow increasingly sexual, violent, menacing and sinister over time, including asking his victims to harm him in sexually graphic ways and threatening to hurt them. His calls included grotesque descriptions of violence. He called one business on its 1-800 number 10-20 times. He had no empathy for his victim and had no interest in treatment.

He was sentenced to 24 months' imprisonment, additional orders included Mr. R being housed at facility with programs for special needs and sex offenders, prior to release being prescribed sex drive reducing medication, supervised as a long-term offender for 5 years, attend a relapse-prevention program for sex offenders, and have no-contact with victims or be near their home or work.

viii. [1997] OJ No 534 (ONCJ)

In **[1997] OJ No 534 (ONCJ)**, Mr. T was charged with making harassing calls to his father-in-law in order to reach his estranged wife. His wife had moved in with her parents after staying in a shelter with her children. The charge was made out even though the calls were meant to harass his wife but were received by her father who was the complainant in this case. Mr. T also claimed he had lawful reason to call regarding access to his child, but his wife did not want to alter their access arrangement. The court held that he could have left a note or asked her to call back rather than

make the repeated calls. The police had told him to stop calling her parents' house. He had called 135 times over a two-week period.

Mr. T appealed the conviction, but it was dismissed.

VIII. SASKATCHEWAN

i. 2013 SKQB 239

In **2013 SKQB 239**, Mr. W was charged with making harassing phone calls. He had called his ex-girlfriend, Ms. G, 26 times in one day. He would yell, scream, and call her names and leave messages on her machine. She would cry and ask him to leave her alone. She received hundreds of unwanted calls that made her frightened. Mr. W once pounded on her door for two hours. The court noted that:

> to determine whether the phone calls made by the accused in that period of time, caused her to be harassed, that he did it — if he harassed, did it without lawful excuse, and that he did have the intent to do it. Having said that though, obviously the whole context of the relationship, everything else that goes on, is relevant when one looks at the telephone call — when one looks at the telephone calls to exaggerate, to demonstrate the point, if a person said, and this is an exaggeration, when I say the sky is red, that means I'm going to kill you, and then he phones somebody and said the sky is red, looked at alone, the sky is red, there's nothing to

> it, but when you look at the background it obviously has meaning beyond the statement that the sky is red.[8]

He sentenced to 4 months' imprisonment, 1 years' probation, and was given a $3,500 fine, and no-contact order.

On appeal, he argued he had been misrepresented by his lawyer who called insufficient evidence, but his appeal was dismissed.

Also see: [2012] 108 WCB (2d) 281 (SKPC) (Trial and sentencing)

ii. 2012 SKQB 507

In **2012 SKQB 507**, Mr. B applied to extend his time to appeal his conviction and sentence. He had pleaded guilty to assault, breach of probation, and harassing phone calls, among other things and had been given an 18 months' conditional sentence and 12 months' probation. He had conditions not to contact his ex, Ms. M, however he contacted her, communicated with her, called her and attended her residence. He did not deny that he applied force to his ex or that he repeatedly called or contacted her, but he claimed he was the victim in the relationship. He claimed that Ms. S exaggerated the assaults and initiated contact with him, and that he only pleaded guilty to get out of jail. The court granted Mr. B's application to extend his time to appeal and his convictions.

[8] 2013 SKQB 239 at para 3.

iii. 2010 SKCA 152

In **2010 SKCA 152**, Mr. C was convicted of repeated harassing phone calls at the trial level. Mr. C had made repeated phone calls to his ex-wife that were of harassing nature. He would call multiple times a day and say offensive and abusive things. This continued for four months. He appealed the conviction and the sentence and sought to adduce fresh evidence that showed he had been acquitted or stayed of a similar charge in the past based on similar behaviour. A new trial was ordered, but the judge denied the application to introduce new evidence. The Crown appealed the order for a new trial and the court of appeal denied the application to introduce fresh evidence because it would not support Mr. C's contention that he had a lawful excuse to make the harassing calls.

Also see: 2009 SKQB 193 (Appeal), 2009 SKCA 128 (Appeal).

iv. 2001 SKQB 298

In **2001 SKQB 298**, Ms. K was convicted of harassing Ms. LK. Ms. LK and several other women had been receiving hang up calls from the same pay phone number. During one of the calls Ms. LK and her boyfriend ran to the pay phone and found Ms. K inserting coins, dialing numbers and hanging up. They confronted her about the calls, but she denied she was making harassing calls. Several women in the area were receiving similar calls, all of whom knew a man named Mr. B. The court held that there was sufficient evidence to make a reasonable inference that Ms. K was making the calls. Ms. K had lived with Mr. B but they were no longer living together and claimed to have also received the calls. But the times she claimed to have received the calls, did not match up with the times that other women were receiving the calls. There was evidence she had been tracking Mr. B and his movements.

Ms. K appealed the conviction, but it was dismissed.