

TECHNOLOGICALLY-FACILITATED VIOLENCE:

IDENTITY FRAUD

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A. OFFENCE ELEMENTS

Identity fraud

403 (1) Everyone commits an offence who fraudulently personates another person, living or dead,

(a) with intent to gain advantage for themselves or another person;

(b) with intent to obtain any property or an interest in any property;

(c) with intent to cause disadvantage to the person being personated or another person;
or

(d) with intent to avoid arrest or prosecution or to obstruct, pervert or defeat the course of justice.

Clarification

(2) For the purposes of subsection (1), personating a person includes pretending to be the person or using the person's identity information — whether by itself or in combination with identity information pertaining to any person — as if it pertains to the person using it.

Punishment

(3) Everyone who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or

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

I. ALBERTA

i. 2013 ABPC 116

In **2013 ABPC 116**, Mr. M, a security guard in his twenties, pleaded guilty to 39 criminal charges against 21 child victims over a five-year period. Charges included multiple counts of internet luring, extortion, child pornography offences, invitation to sexual touching, identity fraud, unauthorized use of computer with intent to commit mischief in relation to data, and failure to comply with recognizance which prohibited his contact with a person under the age of 18 without supervision and prohibited Mr. M's use of the internet.

Over a five-year period, Mr. M used Facebook, Nexopia, and other messaging programs to contact children and request photographs of them in their underwear or in the nude, and/or for them to expose themselves or engage in sexual behaviour 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, Mr. 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) and threaten them. On more than one occasion, Mr. 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 Mr. M photos of her in her underwear, he threatened to distribute the photos unless she sent him a fully nude photograph. He also sent explicit photos to some victims. Mr. M also distributed photos of his victims on the internet. If he had copies of photographs of the children in their underwear or in the nude, he would occasionally post those pictures on the child's social media or upload them as the child's profile picture in order to extort more pictures. In some conversations, he requested the children to touch themselves sexually and have sexually explicit conversations

with him. Mr. M also altered photos to appear as though the child was naked. Several parents reported his behaviour to the police and to the social media companies, some of whom alerted the police of the problematic behaviour.

At sentencing, the Court noted that Mr. 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 Mr. M pleaded guilty to all charges and had cooperated with police.

The Court considered some of Mr. 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 "[Mr. 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." Mr. 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, prohibiting being in a position of authority with persons under the age of 16, an order to provide a DNA sample, and an order to comply with the Sexual Offender Information Registry Act.

An appeal of the case was dismissed.

See also: 2014 ABCA 221 (Appeal).

II. BRITISH COLUMBIA

i. 2007 BCPC 257

In **2007 BCPC 257**, Mr. W, a 47-year-old man, used false identification to obtain a cellphone in the name of Mr. C, which he then used to harass his ex-wife, Ms. C. He also let the air out of Ms. C's tires, sent her unwanted mail, made it seem as though he had put sugar in the gas tank of her vehicle, falsely told the police his ex-wife's mother had murdered someone, and falsely reported his wife for abusing their child. Mr. W had a lengthy criminal history, including multiple convictions of identity fraud and a history of harassment against his ex-wife. He pleaded guilty to one count of criminal harassment, one count of identity fraud, and one count of disobeying a court order for contacting Ms. C. He was sentenced to 24 months of imprisonment. 18 months of imprisonment for harassment, 18 months for identity fraud to be served concurrently, and six months for disobeying a court order to be served consecutively.

III. MANITOBA

i. 2015 MBPC 50

In **2015 MBPC 50**, Ms. C, a 27-year-old reclusive woman living in an isolated community, impersonated various people over a three-year period, including a professional video game player (Mr. TT), a 17-year-old girl from California (Ms. PD) and her mother, an NBA star (Mr. CA), and a famous musician (Mr. E). She defrauded several people, including an NBA star (Mr. CA), a television actress (Ms. NP), a girl from California (Ms. PD), and a vulnerable Texan woman (Ms. JH) while communicating with them over the internet. While impersonating Mr. CA, Ms. C convinced Ms. PD to send nude photos to her, then distributed those photos to the real Mr. CA. Then pretending to be Mr. CA, threatened to distribute the images further, and threatened to physically harm her. Ms. PD's mother contacted the police about "Mr. CA's" threats and sexual interactions with her underage daughter. Ms. C threatened Mr. CA while impersonating Ms. PD's mother and convinced him to send her \$3,000. While impersonating Mr. CA, Ms. C

convinced Ms. NP to donate \$2,000-\$3,000 worth of clothing to Ms. C and to send a bottle of wine to Ms. JH in Texas. While impersonating Mr. TT, including leaving “voice messages from a male voice that the offender was able to generate from the internet”¹, Ms. C engaged in an 8-year long controlling and abusive online relationship with Ms. JH, and convinced Ms. JH to send her money, iTunes cards, Xbox credits and books. When Ms. C was initially charged she tried to convince Ms. JH to take responsibility for the offences, breaching her bail orders not to use the internet. Ms. C pleaded guilty to extortion, uttering threats to cause bodily harm, fraud under \$5,000 and four counts of identity fraud. In sentencing Ms. C, the court stated:

Deterrence and denunciation are important sentencing factors for this offender. In both sets of offences before the court, the offender has offended using the internet. In many respects the internet has become the last lawless frontier of our society. It is a place where it is easy to remain anonymous. Cyber predators can offend from behind their keyboards without regard to the victims they leave in their wake, no matter what real life borders separate them from their victims. The online predator hides in a cyber forest of IP addresses, usernames, and passcodes; buttressed by the fact that real world boundaries cause jurisdictional issues for the authorities.

[...]

The internet is a tool of daily use for most citizens of the developed world for commerce, recreation, education, and in almost all facets of life in general. In order to properly utilize the services available on the internet, one must be able to trust that information will be protected. 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 anonymously manipulate his or her victims should be met with a sentence that places import on deterrence and denunciation.²

¹ 2015 MBPC 50, at para 49.

² 2015 MBPC 50, at para 39-40.

Taking Ms. C's Gladue report into consideration she was sentenced to 18 months of incarceration, two years' probation, 200 hours of community service, along with orders to remain within the jurisdiction, attend counselling, not to use the internet except for educational and employment purposes when supervised by Probation Services, no contact with the victims, and a forfeiture of the images of Ms. PD and all other items seized.

IV. NEW BRUNSWICK

i. 2001 NBBR 242 (NBQB)

In 2001 NBBR 242 (NBQB), Ms. G was a 24-year-old woman who phoned 35 young girls aged 11-17, one adult and one teenage boy pretending to be a one of two men, Mr. G and Mr. M, in order to engage in sexually explicit conversation with them. Ms. G was a single mother with learning difficulties. During these calls, she encouraged the young girls to touch themselves sexually. She also exchanged letters and gifts with the victims. The relationships with the people she called lasted between a few weeks to close to a year and many believed they were in a dating relationship in which Ms. G could be very controlling. On some occasions, Ms. G threatened to send someone to harm the person she was speaking with or commit suicide if she attempted to end the relationship. One of the parents of the girls called the police to report the behaviour. Victim impact statements described the trauma, humiliation, and lack of trust that resulted from these offences. Ms. G pleaded guilty to 36 counts of identity fraud, five counts of invitation to sexual touching, and one count of uttering threats to cause bodily harm. She was sentenced to two years less a day to be served in the community, 100 hours of community service, 2.5 years of probation, as well as orders to attend counselling and programming, remain in the jurisdiction, abstain from drugs or alcohol, provide a DNA sample, not be employed in a position of authority of persons under the age of 14 and not be in contact with the victims.

V. ONTARIO

i. 2016 ONSC 5707

In **2016 ONSC 5707** Mr. B was found guilty of fraudulently impersonating Mr. A with intent to gain an advantage for himself (sexual intercourse with Ms. MB), breaching the conditions of his long term supervision orders (not to leave specified territorial boundaries, to report relationships with females to his parole officer, not to own, access or possess pornography, not to possess a cellphone unless his parole officer was aware of it; not to own a phone capable of taking photographs, not to access the internet or use a computer, failure to abstain from drug and alcohol use) and two counts of sexual assault.

Mr. B, a 35-year-old man, met the victim, Ms. MB when she was 18 years old. B wanted to pursue a romantic relationship with Ms. MB, but Ms. MB explicitly refused to be more than friends with him. At all times during their friendship, Ms. MB told Mr. B she had no interest in a romantic or sexual relationship with him. Soon after they met, Mr. B claimed to be close friends with a man who was an acquaintance of Ms. MB's boyfriend named Mr. BP, who Ms. MB had only once seen at a bus stop. Mr. B said Mr. BP was like an adopted brother in his family. Mr. B began impersonating Mr. BP and contacting Ms. MB via email and text, stating "Mr. BP" was only a nickname, but his actual name was "Mr. A". Mr. MB believed "Mr. A" to be the real person she had seen at the bus stop and began communicating with "Mr. A" regularly. Ms. MB connected with "Mr. A" via a Facebook account that she believed to belong to "Mr. A". All communications between Ms. MB and "Mr. A" occurred via text and digital messages, save a few short phone calls. Ms. MB never met "Mr. A" in person.

Ms. MB and "Mr. A" developed a romantic relationship and "Mr. A" requested sexually explicit photos and videos from Ms. MB, which she regularly sent. On one occasion "Mr. A" made plans with Ms. MB to meet him at a hotel room with Mr. B. Mr. B took her to the hotel room where he gave her a drink that made her lethargic and they smoked a joint of marijuana, she fell asleep and felt drugged. She woke up several times during the night with Mr. B sexually touching her. Mr. B took a photo of her during this time. After the assault, she communicated

with “Mr. A” who convinced her that the joint she smoked with Mr. B was laced with drugs, causing her to pass out and causing Mr. B to behave erratically and assault her. “Mr. A” convinced Ms. MB not to call the police, claiming Mr. B would commit suicide if she reported the offence. “Mr. A” convinced her to continue her friendship with Mr. B.

During a later incident, Mr. B texted her to tell her that “Mr. A” had been injured and was in a semi-coma and required surgery at a hospital in Michigan. During this time “Mr. A” proposed to Ms. MB via text, which Ms. MB accepted and she believed she became engaged to “Mr. A”. “Mr. A” claimed to need a surgery that Mr. B would pay for and stated he would not have the surgery unless Ms. MB had sex with Mr. B to repay Mr. B for paying for the surgery. “Mr. A” and Mr. B claimed that if “Mr. A” did not have the surgery, “Mr. A” would die. Ms. MB was convinced the only way to save her fiancé was to have sex with Mr. B. She had sex with Mr. B under this pretext. Ms. MB said she would not have had sex with otherwise and later told Mr. B he should not have any physical contact with her in the future. Mr. B later texted Ms. MB stating that “Mr. A” had died. Prior to his death, Mr. B claimed “Mr. A” had texted Mr. B stating that if he died Ms. MB should be in a romantic relationship with Mr. B. Ms. MB told Mr. B she had no interest in a romantic relationship with him. Ms. MB became suicidal after “Mr. A’s” supposed death. Mr. B later claimed that “Mr. A” was alive and in a witness protection program. Ms. MB then continued communication with “Mr. A”.

Mr. B’s parole office spoke with Ms. MB at one point and Ms. MB lied about her friendship with Mr. B to protect him, as he had asked her to do, believing he had been wrongly convicted of his previous crimes because “Mr. A” and Mr. B had told her that Mr. B was going to sue the police for a wrongful conviction. However, Mr. B was arrested at which time all communication from “Mr. A” ceased. Trying to get back in contact with her fiancé, Ms. MB spoke with Mr. B’s father who told her that their family did not have an adopted son “Mr. A”. Upon learning this, Ms. MB called Mr. B’s parole officer and told her she thought Mr. B might have been impersonating “Mr. A” and informed the parole officer about the two sexual assaults. On cross-examination, Ms. MB was challenged about the unusual circumstances of her relationship with “Mr. A”,

including becoming engaged via text message with someone she had never met, but Ms. MB insisted that it was not unusual and “Today texts are our letters”.³ At all times during their communication she believed the person she had been in regular contact to be real.

The court held that Ms. MB had impersonated a real person, the person Ms. MB had seen at the bus stop that her ex-boyfriend knew from jail; Ms. MB had gained an advantage by gaining access to unwanted sexual contact with Ms. MB; and that Mr. B was the author of the texts from “Mr. A”. The court found him guilty of identity fraud and breaching the condition of his long term supervision order. He was also found guilty for the sexual assault in the hotel room and for the sexual assault in the exchange of sex for “Mr. A’s” surgery.

Mr. B had a history of filming women without their knowledge, had drilled holes in a wall to spy on women, had written manipulative letters, sent unwanted gifts, manipulated women into having sex with him, and touched his female cousin while she was sleeping. He was given an indeterminant sentence for the sexual assaults. Ancillary orders included a DNA order, registering as a sexual offender for life, a weapons prohibition for life, and no contact order with the victims.

Also see: 2018 ONSC 3431 (dangerous offender application); 2016 ONSC 5707 (trial); 2016 ONSC 2113 (application to exclude evidence); 2013 ONCA 86 (appeal); 2012 ONCA 256 (appeal); 2010 ONSC 4595 (trial); 2010 ONSC 2089 (application to admit statements and pornographic images).

I. Quebec

i. 2016 QCCQ 6803

³ 2016 ONSC 5707 at para 252.

In **2016 QCCQ 6803** Ms. C, a 32-year-old mother of two, pled guilty to the trafficking of a forged document, the use of forged documents, the use of a badge to falsely represent one's self as a peace officer, fraud under 5000\$, fraud over 5000\$, kidnapping, obstruction of justice, identity fraud, forgery, and failure to comply with condition of undertaking. She also pled guilty to charges related to her using false documents and a false identity in regard to residential leases, for which she is in arrears.

Ms. C used Facebook, email, and a French dating website (Réseau Contact), to connect with three different men, Mr. D, Mr. J, and Mr. A. One had immediately rejected her romantic advances, one went on a date with her prior to rejecting her, and one had a long-term online romantic relationship with her, respectively. Ms. C's fraudulent behaviour towards these men was factually similar in all three cases.

Ms. C used photos of another person on her dating profile to gain contact with men. Upon establishing contact with the men, she would then send two actors who were impersonating police officers to the men's homes with a fraudulent arrest warrant, accusing them of criminally sexual behaviour. Who was accusing them of this behaviour was not clear. The actors were hired under the guise they were participating in an acting contest where they may win a free vacation and were instructed to stay in character during their "performance". Once the men she had met on the dating site believed they had been charged with criminally sexual behaviour, either Ms. C or another person would pretend to be a lawyer and offer legal support to the men who had been "charged". Because she used a false photographs on her dating profile and did not meet all of the men in person, she was able to pretend to be the lawyer herself in some situations. For the men who had met her in person, namely Mr. J, she had another person pretend to be the lawyer. The "lawyer" would then tell the men she had made a deal with the police, in which the men could stay out of jail until trial if they paid a fee to the police and agreed to live with Ms. C in her home and under her supervision until trial. One of the men was suspicious of the situation and contacted the police. When confronted, Ms. C claimed to be filming an American television show and was obliged to do what she did under

her contractual obligations with the show. She had forged police documents that alleged to give her permission to conduct this unusual behaviour. In the cases where the men did not suspect they were caught in a ruse, namely Mr. A, she would eventually tell the men that their lawyer had negotiated an acquittal and told them they would receive financial compensation from the government due to the charges. To convince the men that this negotiation was going on, she included them in false email chains between their “lawyer”, the individual men, and other members of the justice system, who she was impersonating. She would use false bank accounts, cheques, and wire transfers to further belief of payment.

All three men eventually realized they were being duped when a third party identified that the situation was unusual. All three men contacted the police. Mr. A was convinced the longest. He had an online romantic relationship with Ms. C, and lived with her for months believing she was his lawyer, the cousin of the woman he was dating online. His relationship with her caused him emotional distress, trauma, and suicidal ideations. Mr. J also experienced severe emotional trauma but over a much shorter amount of time.