

**TECHNOLOGICALLY-FACILITATED VIOLENCE:  
INTIMIDATION CASE LAW**

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## A. OFFENCE ELEMENTS

### Intimidation

**423(1)** Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,

(a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property;

(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;

(c) persistently follows that person;

(d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;

(e) with one or more other persons, follows that person, in a disorderly manner, on a highway;

(f) besets or watches the place where that person resides, works, carries on business or happens to be; or

(g) blocks or obstructs a highway.

Intimidation: *Criminal Code*, RSC 1985, c C-46, s **423**.

**Exception**

**(2)** A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

## B. SELECTED CASE LAW

### I. BRITISH COLUMBIA

#### i. 2007 BCSC 1596

In 2007 BCSC 1596 Mr. M was charged with two counts of uttering threats and one count of intimidation. He was a teaching assistant at a university that was involved in a labour dispute between teaching assistants and the university that resulted in a government order to return to work. He sent an anonymous email to the university president during the labour dispute that referenced “suicide bombers and conspiratorial attacks, wrapped in the context of terrorism, was meant to terrorize the complainant and called for the administration's immediate and total capitulation. The public would shudder with both disgust and fear when reading the e-mail.”<sup>1</sup>

The university president and her family moved from their resident, rented a different vehicle, and experienced stress and disruption in their lives after receiving the letter. After being arrested the police found a disk in Mr. M's backpack that contained the threatening letter. Other evidence showed that the email had been sent from the university computer lab and his ID number had been used to log in. He argued that his wife had sent the email from the lab without his knowledge, using his account, but the court found this alibi unbelievable and self-serving. He was convicted of intimidation and the two counts of uttering threats were stayed. Mr. M was given a suspended sentence with one year of probation. Additional orders included a weapons ban, a

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<sup>1</sup> 2005 BCPC 608 at para 20.

Intimidation: *Criminal Code*, RSC 1985, c C-46, s 423.

prohibition from being on the university property, and to stay away from certain persons' workplaces, residences and educational facilities. Mr. M's appeal was dismissed.

Also see: 2005 BCPC 608 (Sentencing)

## **II. NEW BRUNSWICK**

### **i. 2005 CarswellNB 796 (NBPC)**

In 2005 CarswellNB 796 (NBPC), Mr. M, a 29 year old man, was charged with intimidation. Mr. M's newly born child had been apprehended by Child and Family Protection. During his trial Dr. T was subpoenaed to testify, as well as a social worker Ms. C. Dr. T's report had resulted in the Child and Family Protection investigating the case of his child. At court Mr. M told Ms. C that there was a gun in a large purse he was carrying for his partner "with [Ms C's] name on it" told her to "be afraid [Ms. C], very afraid". He also put his face close to Dr. T and said "You're a baby stealer. I'm going to get you". Mr. M also tried calling Ms. C's home. When her daughter picked up he tried to get her to tell him what their home address was. Mr. M also called Dr. T's office and tried to book an appointment, which made her fearful. Mr. M also called her from jail when he had a no contact order in place.

He was sentenced to one year incarceration and two years' probation for threatening violence and 4 months' incarceration for breaching his no contact order. He was ordered not to contact Dr. T, Ms. C or their family members and was ordered to stay away from certain locations. His leave to appeal was dismissed.

Also see: 2006 NBCA 6 (Leave to appeal)

## **III. NOVA SCOTIA**

**i. 2018 NSSC 156**

In 2018 NSSC 156, three men who were involved in a motorcycle club were accused of harassment, threatening to cause serious bodily harm, extortion, and intimidation committed in association of a criminal organization. Mr. M tried to start a new motorcycle club. He spoke with Mr. J, who ran another motorcycle club, about bringing in a new chapter of a different club to Nova Scotia. Mr. J told him not to and demanded that Mr. M destroy any of the vests he had made associated with the new club and to bring him the remains. He also demanded the Mr. M never ride a motorcycle again and never to attend a motorcycle event in Nova Scotia. Mr. M and his wife sold their motorcycles as a result. Mr. J, Mr. P and Mr. H threatened, harassed and intimidated Mr. M during this time to discourage him from starting his motorcycle club. Part of the attacks against Mr. M happened over email and text, and Mr. M was required to post certain statements on Facebook about not starting up a new motorcycle club. All three men were convicted on all counts.

We could not locate a sentencing decision for this case.

Also see: 2017 NSSC 213 (Evidence), 2017 NSSC 210 (Evidence), 2017 NSSC 199 (Evidence), 2017 NSSC 177 (Evidence), 2016 NSSC 328 (Evidence), 2016 NSSC 267 (Evidence), 2016 NSSC 184 (Charter), 2016 NSSC 151 (Charter), 2016 NSSC 140 (Evidence).

**ii. 2017 NSSC 292**

In 2017 NSSC 292, the victim, Ms. B, was dependent on drugs. Ms. B was exchanging drugs for sex with Mr. R, who was also recording the sexual encounters on his home surveillance recordings. Mr. R had a home video recording system that utilized 16 cameras that recorded the inside and outside of his home 24 hours per day, including his master bedroom. 14-15 days' worth of videos were found by the police. Ms. KB stated that Mr. R threatened to show the video tapes

of their sexual encounters to the police, and her child's father and her mother-in-law if she did not continue on with the sexual relationship. She also claimed that he repeatedly contacted her and would drive outside of her home. Mr. R was charged with obtaining sexual services of Ms. B for consideration, intimidating Ms. B, trafficking drugs, harassing Ms. B by following her place to place, harassing Ms. B by repeatedly communicating with her, harassing her by watching her dwelling home, and attempting to extort Ms. B to engage in sexual activity.

However, there was evidence that Mr. R threatened to release the video tapes but there was no evidence of extortion for sexual favours and was acquitted on that offence. There was also a lack of evidence on the harassment charges. The court found there was reasonable doubt for the intimidation, criminal harassment and extortion charges, which he was acquitted of. He was convicted of obtaining sexual services of Ms. B for consideration and drug trafficking.

#### **IV. ONTARIO**

##### **i. 2017 ONCA 602**

In 2017 ONCA 602, Mr. B was convicted of an attempt to intimidate and breaching his probation. He had sent what the trial judge found to be aggressively worded text messages and had an in-person encounter with the victim that the trial judge interpreted as intimidating.

He appealed the decision. At the Court of Appeal the court held that there was no direct evidence that the purpose of the accused conduct was to intimidate or to compel the complainant to avoid being in public without fear. The court held that there were various reasons the accused could have texted beyond intimidation, for example, to annoy the complainant, and the trial judge had not explained why the purpose of the in person encounter would have been to intimidate. The appeal was allowed.

**ii. 2016 ONSC 7062**

In **2016 ONSC 7062**, Mr. M had been convicted of intimidation, two counts of assault and two counts of sexual assault. He had also been acquitted of a third count of sexual assault.

Mr. M, a 20-year-old man, met Ms. B, an 18-year-old woman, while at a party while they were in college. Ms. B told Mr. M he could connect her with a drug dealer who could sell him fentanyl patches. The drug deal went wrong and Ms. B was robbed of all but \$200 of Mr. M's \$1,800. Upon learning this Mr. M physically assaulted Ms. B and demanded that she sell sexual services to earn money to pay him back. She was reluctant to do this, but Mr. M was angry and demanded that she do it. An online sexual services ad was created and Ms. B began giving Mr. M the money she was paid for those services to Mr. M.

Ms. B was late in meeting Mr. M on one occasion. He had been texting her demanding that she meet with him. He threatened to tell her boyfriend and brother that she was working as a prostitute and threatened to show them the pictures on the online ad. He physically assaulted her again and told her that when he tells her to be somewhere "she'd better be there, he's not fucking around". During this period the two engaged in an intimate relationship, but on three occasions Ms. B stated that she asked him to stop their sexual interaction but he refused to. The court found that two of the sexual interactions were sexual assault, but acquitted Mr. M of the third count.

He was sentenced to 15 months' imprisonment, 18 months' probation and to pay a \$2,000 fine.

On appeal, Mr. M argued that the trial judge had misapprehended evidence and that by convicting him of two sexual assaults, but not the third, the decision was inconsistent. The court disagreed and his appeal was dismissed.

Also see: 2016 ONCJ 512 (Sentencing)

**iii. 2015 ONCJ 392**

In **2015 ONCJ 392**, Ms. C was charged in Youth Court with procuring Ms. T to become a prostitute, attempting to procure Ms. B to become a prostitute, failing to comply with a youth sentence, intimidating Ms. T to perform acts of prostitution, and participating in a criminal organization to traffic a minor. Ms. H was charged in Youth Court with obstructing a police officer, failing to comply with a youth court order, procuring Ms. T to become a prostitute, aiding and abetting Ms. T to engage in prostitution, living on the avails of Ms. T's prostitution, trafficking Ms. T, intimidating Ms. T to perform acts of prostitution, and participating in a criminal organization to traffic a minor.

Ms. C was recruiting teenage girls to provide sexual services for money. Ms. H acted in a supervisory role in the enterprise and profited from the exchanges. Ms. C tried to recruit Ms. AB into prostitution a month earlier. Ms. AB confirmed that Ms. T was comfortable with the idea of going to a city for the purposes of prostitution. Ms. T went to a city with other girls when she was 14, she was unfamiliar with the city, had no money, phone, or personal connections in Toronto. She claimed she did not know the purpose of the trip. When Ms. T's father began looking for her, her friends, including Ms. C, provided misinformation so he would not find her. While in the city, two other men joined the group and advertisements for Ms. T's sexual services were placed on Backpage's website through one of the men's phone, including sexualized images of Ms. T and Ms. H. This group of people had organized trips like this before. Ms. T provided sexual services over 10 days and was not allowed to keep any of the money she was paid, she was told that unnamed persons "were after her". Ms. T returned home 10 days later sick, malnourished and with infected and injured genitalia.

Ms. C was convicted with procuring Ms. T to become a prostitute, attempting to procure Ms. B to become a prostitute, and failing to comply with a youth sentence. She was acquitted of

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intimidating Ms. T to perform acts of prostitution and participating in a criminal organization to traffic a minor. Ms. H was convicted with obstructing a police officer, failing to comply with a youth court order, procuring Ms. T to become a prostitute, and aiding and abetting Ms. T to engage in prostitution. She was acquitted of living on the avails of Ms. T's prostitution, trafficking Ms. T, intimidating Ms. T to perform acts of prostitution, and participating in a criminal organization to traffic a minor.