TECHNOLOGICALLY-FACILITATED VIOLENCE:

CRIMINAL HARASSMENT CASE LAW

A. OFFENCE ELEMENTS

Criminal Harassment

264 (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in sub-section

(2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

Prohibited conduct

(2) The conduct mentioned in subsection (1) consists of

> **(a)** repeatedly following from place to place the other person or anyone known to them;
>
> **(b)** repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
>
> **(c)** besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
>
> **(d)** engaging in threatening conduct directed at the other person or any member of their family.

Punishment

(3) Every person who contravenes this section is guilty of

> **(a)** an indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.

Factors to be considered

(4) Where a person is convicted of an offence under this section, the court imposing the sentence on the person shall consider as an aggravating factor that, at the time the offence was committed, the person contravened

(a) the terms or conditions of an order made pursuant to section 161 or a recognizance entered into pursuant to section 810, 810.1 or 810.2; or

(b) the terms or conditions of any other order or recognizance made or entered into under the common law or a provision of this or any other Act of Parliament or of a province that is similar in effect to an order or recognizance referred to in paragraph (a).

Reasons

(5) Where the court is satisfied of the existence of an aggravating factor referred to in subsection **(4),** but decides not to give effect to it for sentencing purposes, the court shall give reasons for its decision.

In *R v Sillipp*, the Alberta Court of Appeal set out a widely-cited five-part test for criminal harassment:

1. It must be established that the accused has engaged in the conduct set out in s. 264(2) (a), (b), (c), or (d) of the Criminal Code;

2. It must be established that the complainant was harassed;

3. It must be established that the accused who engaged in such conduct knew that the complainant was harassed or was reckless or wilfully blind as to whether the complainant was harassed;

4. It must be established that the conduct caused the complainant to fear for her safety or the safety of anyone known to her; and

5. It must be established that the complainant's fear was, in all of the circumstances, reasonable.[1]

Furthermore, in *R v Kosikar,* the Ontario Court of Appeal held that "[h]arassment means causing someone to be tormented, troubled, worried continually or chronically plagued, bedevilled and badgered."[2] If a complainant is only "vexed, disquieted or annoyed", criminal harassment will not be made out.

[1] 1997 ABCA 346 at para 18.
[2] *R v Kosikar*, [1999] OJ No 3569 at para 24.

B. SELECETED CASE LAW

I. ALBERTA

i. 2018 ABQB 178

In **2018 ABQB 178**, Mr. L was charged with harassment, breaking and entering, and mischief. Mr. L began having an affair with the complainant shortly after her husband's suicide. Mr. L moved into the complainant's home with her and her four children and began helping at the store the complainant owned, including assisting with IT issues. Eventually the relationship broke down and the complainant asked Mr. L to move out. She asked him to stay away from her home and business, but Mr. L would regularly arrive at the properties uninvited. He would park outside of her store and home and occasionally write messages on the dirt on her car. There was occasional contact during that time, including visits with the children and sexual relations with the complainant, but the complainant would reiterate that she did not want him to continue contacting her. He also withheld passwords he changed while working at the store and a computer that the complainant needed to operate her business for a period of time. During one of his visits to the complaint's home an argument broke out where Mr. L grabbed her arm pushed her into a chair, after which, the complainant hid in the bathroom and Mr. L proceeded to break the door of the washroom down. Following the breakdown of the relationship, he would send relentless amounts of email, text messages and telephone calls, some of which he expressed suicidal ideation to keep the complainant in contact with him. After the complainant terminated the relationship Mr. L sent 31 emails in one day and sent 519 texts over 106 days in an effort to re-engage the complainant, most of which the complainant did not reply to. He also sent unwanted gifts on a near daily basis and regularly called her at her place of work. He once followed her and her children to a place they were on vacation uninvited. The complainant contacted the police who warned Mr. L to stop communicating with her, but Mr. L would not stop communicating with and visiting the complainant. His actions made the complainant feel trapped, followed and threatened and he had no legitimate reason for the ongoing communication.

Mr. L was found guilty of harassment for the relentless unwanted communication, visits and gifts, as well as following her and threatening suicide. His threats of suicides were found to coerce her and caused psychological harm to the complainant. He was found guilty of mischief by willful damage of property for damaging the bathroom door. He was acquitted of the break and enter because it was not clear how he gained entrance into the home. He was sentenced to six months of imprisonment and three years of probation. Mr. L is currently appealing this decision.

In **2016 ABPC 197**, Mr. L was also found guilty for a breach of recognizance when he attended a church where the complainant and her children were known to go and did not leave when they did in fact attend the church. Mr. L had a no contact order that prohibited him from being near the complainant and her children.

Also see: ABCA 209 (Application for bail pending appeal); [2018] SCCA No. 79 (Leave to appeal); 2018 ABCA 5 (Leave to appeal); 2016 ABPC 197 (Trial, breach of recognizance).

ii. 2017 ABCA 204

In **2017 ABCA 204**, Mr. W appealed his sentence for criminal harassment for messages he had posted on Twitter. He had been found guilty of criminal harassment and was sentenced with a conditional discharge, 18 months of probation and additional orders including a no contact order with the victim, a weapons prohibition and a DNA order. Mr. W brought a *Charter* challenge, arguing that the criminal harassment provisions and probation order violated his freedom of expression rights. The court held that the criminal harassment provisions had already been found constitutional and do not violate Mr. W's freedom of expression (See: *R v Krushel*, 2000 CanLII 3780 (ONCA); *R v Sillipp*, [1995] 99 CCC (3d) 394 (ABQB)) and dismissed that ground of appeal. The court also held that the court did not err when ordering a weapons prohibition and DNA order as the weapons prohibition is mandatory for individuals convicted of criminal harassment and the DNA order was discretionary but had been agreed to as part of the joint sentencing submission and the judge had not erred in making this order. The court dismissed the appeal.

iii. 2016 ABQB 648

In **2016 ABQB 648**, Mr. A, a 19-year-old male, was convicted of multiple counts of possession of child pornography, luring a child, criminal harassment, uttering threats and sexual interference. He had contacted multiple children and young adults through various websites including meetme.com, tagged.com, facebook.com, KIK and Skype to engage in explicit sexual discussions with apparently underage individuals and share pornographic images, including child pornography. 39 complaints were reported to the US based, National Centre for Missing and Exploited Children, which found the IP address associated with the complaints was located in Canada. It passed this information on to the Canadian National Child Exploitation Coordination Centre, which is operated by the RCMP. Not all of the complaints were criminal. A search of Mr. A's electronic devices revealed communication with 12 underage girls, who are the complainants in this case.

During these conversations Mr. A, at one point or another depending on the girl he was communicating with, expressed desires to make pornographic films with the girl, manipulated the girl by telling him he loved her, attempted with some success to arrange to meet with the girl for sexual encounters (some consensual, some non-consensual), requested sexual images, claimed to be a pedophile, discussed watching child pornography, masturbated on Skype, sent nude photos, sent child pornography, made derogatory and sexist comments about the girl, threatened rape and other forms of violence, and threatened their family members. He primarily communicated with the girls via social media sites, but also called at least one of the girls on the phone. One girl blocked him and told him that she did not want further communication with him, but Mr. A switched platforms to continue the unwanted communication with the girl. Two girls threatened to call the police. Several girls explicitly told him that they were fearful of him and were very uncomfortable with his communication. He also posted racist comments about one girl's boyfriend on Facebook.

Mr. A was found guilty of multiple charges of criminal harassment, uttering threats, possessing child pornography, sexual interference, and child luring.

Mr. A brought several constitutional challenges including seeking a stay of proceeding due to his treatment in custody, and *Charter* challenges against the minimum punishments for sexual interference and corrupting children, and on the limits on credit for time served while on remand. The court held that there were some instances where Mr. A's treatment was constitutionally impermissible, but that a stay of proceedings not appropriate and the violation was addressed in sentencing instead. The constitutional challenges respecting credit for time served and minimum sentences were also dismissed.

Taking the *Charter* violation into account, Mr. A was sentenced to 12 years and three months of incarceration, and additional orders including DNA sample, registration as a sex offender, no-contact orders with the victims, 10-year limitation on his ability to work or volunteer, communicate with people under 16, limitations on his use of the internet or internet connected devices while on parole, and limitations on using the internet anonymously or with encryption.

iv. 2015 ABPC 234

In **2015 ABPC 234***,* a recently-divorced man, Mr. E, was charged with two counts of criminal harassment after repeatedly communicating with his ex-wife, Ms. E, and asking about their relationship, children, and separation. He sent her 20-30 text messages a day, called her 5-10 times per day, and sent her daily emails. In one instance, he also followed her to an ice hockey arena.

In relation to the first count of harassment — for following his wife to the arena — the court held that Mr. E did not follow her "from place to place" or cause her to reasonably fear for her safety as required under s 264 of the *Criminal Code*. In relation to the second count of harassment, for repeated communications, the Court cited 2015 ONSC 1630, and affirmed that "the Court must not too hastily characterize the stress and anxiety arising from a marriage break-up and stressful

negotiations as harassment, even if one or both parties feel harassed…."[3] The Court concluded that, at most, Ms. E was disquieted or annoyed by her ex-husband's repeated communication. The Court also determined that E did not know his ex-wife felt harassed, and stated that Ms. E would not have reasonably had to fear for her physical safety. As a result, E was acquitted of all charges.

v. 2015 ABCA 332

In **2015 ABCA 332**, Mr. K appeal his sentence imposed on convictions for harassment and obstructing police officers in execution of their duty. Mr. K had filed a complaint with the police against a soccer federation that was suing him. Before the investigation began, Mr. K sent an email to the police expressing contempt for and suspicion of police practices. After the Crown decided not to prosecute as they believed Mr. K was only trying to settle a personal score, Detective M informed Mr. K who replied he would make it his life mission to cross-examine the police procedure followed. He later left the detective a voicemail saying he was holding him personally responsible for the lack of charges laid. On a website, Rotten Apples, he publicly accused Detective M of negligence and deception and reported him to the Professional Standards Branch. He also told another police officer that he knew how to use a gun and gestured he would kill the two detectives involved.

When Detective M opened a cold case, Mr. K falsely told the mother of the dead boy in question that the detective was under sanctions and made additional posts on Rotten Apples about the cold case, the detectives lack of ability and integrity. He manipulated an important witness in the case and pushed her into sending aggressive and irrelevant emails to Detective M's partner, Detective F. Mr. K authored the content of the emails. The police-witness relationship deteriorated,

[3] 2015 ABPC 234 at para 67.

as did Ms. S's mental health due to Mr. K's increased aggression, bullying, and belittling of her. The appeal was dismissed.

See 2015 ABCA 200 (appeal) and 2015 ABCA 289 (application for release pending appeal).

vi. 2012 ABPC 338

In **2012 ABPC 338**, an 18-year-old woman, Ms. T, was charged with criminal harassment, the possession of, access to and distribution of child pornography after distributing the nude photos of a 14-year-old female acquaintance. Pursuant to a plea bargain, Ms. T pleaded guilty to criminal harassment and the Crown withdrew the other three charges. Ms. T and her 17-year-old male friend (the original recipient of the nude photos) disseminated the victim's photos together. T encouraged her friend to distribute the photos by text, gave him the phone numbers of her desired recipients, and "thereafter attended at the complainant's school to bully her by taunting and calling her names."[4] The fear of her psychological safety resulting from the bullying, including not wanting to attend school anymore, was agreed to meet the fear element in the criminal harassment charge.

Ms. T received a suspended sentenced and 12-months of probation, while her 17-year-old male accomplice received a conditional discharge. Aggravating factors on sentencing included the fact that the victim was underage, the fact that the crime was vindictive, planned and deliberate, and the fact that the offence had a serious impact on the victim. Mitigating factors included the fact that T was a youthful first offender and otherwise of good character.

vii. 2012 ABPC 229

In **2012 ABPC 299**, Mr. K, a 26-year-old man, pleaded guilty to criminal harassment. After his girlfriend, Ms. S, broke up with him, Mr. K used a cell phone video of her performing oral sex on

[4] 2012 ABPC 338 at 24.

him to threaten Ms. S and coercer her into communicating with him. He later posted the video on an unnamed website for two days. In an attempt to stop his behaviour, Ms. S returned to the relationship and asked him to delete the video. Mr. K continued to make threats to her and her family and made constant phone calls to Ms. K and her family during the day and night, as well as sending threatening text messages to Ms. S. On certain days she received approximately 50 calls or texts from him. He also made multiple, persistent harassing phone calls to the victim and to her mother, which included graphic threats to kill her. The family eventually changed their phone number. Mr. K later uploaded the oral sex video to a pornography website. He would also park at her home overnight. His actions caused Ms. S and her family to fear for their safety for over a year. Ms. S's victim impact statement stated "While I was with [Mr. K] during our rough times, I had no quality of life. I was always scared and had no desire to live."[5]

Mr. K was convicted on two counts of criminal harassment and sentenced to 9-months imprisonment and 18-months of probation, and additional orders including a weapons prohibition, a no contact order with the victim and several other people, a DNA order, and a forfeiture of the items seized by the police in the course of the investigation.

The Court held that threatening to post the explicit video online was an aggravating factor on sentencing, particularly its use to compel Ms. S to stay in the abusive relationship. Despite the fact that Mr. K told Ms. S he had posted the video on the internet the Court decided there was not sufficient evidence for it to could conclude that K posted the video beyond a reasonable doubt.[6] The court, finding Ms. S's victim impact statement to be credible and trust worthy, found that the harassment was a serious personal injury offence under section 752 due to the psychological damage it caused Ms. S.

[5] 2012 ABPC 299 at para 11.
[6] 2012 ABPC 299 at para 18.

viii. 2012 ABCA 127

In **2012 ABCA 127**, Mr. K was charged with one count of harassment against his wife and four against his children. Mr. K was emotionally and physically abusive to his children and wife. He stated that his wife needed a "tune-up" every two weeks, which consisted of physically attacking his wife. His wife fled the home to a shelter with her children and later moved to a new home. Mr. K was able to contact the family and leave messages, despite them not sharing the new telephone numbers with him. He also called Ms. K at work. Ms. K contacted the police and had an emergency protection order put in place. The police warned Mr. K not to contact Ms. K or his children without their consent. Mr. K would appear at places where the children and the mother were and repeatedly call Ms. K, breaching the no contact order. He was convicted of harassment including for repeated telephone communication and for watching his daughter at a bus stop. He was acquitted of the harassment charges related to the other three children. His pre-charge conduct and ability to find unlisted numbers factored into his family's reasonable experience of fear.

He was sentenced to 45 days' conditional imprisonment and two years of probation. Mr. K appealed his conviction of criminal harassment in **2012 ABCA 127** seeking an absolute discharge, but his appeal was dismissed because Mr. K provided no evidence that society would benefit from his discharge, particularly given the seriousness of his crimes.

Also see: 2011 ABCA 318 (Appeal); (Application for adjournment of appeal); 2009 ABCA 253 (Application to dismiss appeal for want of prosecution); 2011 ABCA 25 (Application to dismiss appeal for want of prosecution); [2012] AWLD 3588 (ABQB) (Trial).

ix. 2009 ABCA 328

In **2009 ABCA 328**, Mr. W was convicted of criminal harassment after sending hundreds of threatening, harassing, and sexually suggestive emails, texts, and voice mail messages to his former partner who had terminated the relationship. These communications caused the complainant to fear for his safety, including fearing for his life, for the year and a half the harassment continued.

He moved to Toronto to avoid the harassment, but Mr. W did not stop harassing him. Among other things, Mr. W disseminated the victim's nude photos in a ten-page fax and posted fake profiles of the victim on social media sites claiming that the victim was spreading HIV. He also used false identities to make it appear as though others were communicating to and about the victim. He would engage in conversation with men in chat rooms and invite them to the complainant's apartment for sexual encounters without the complainant's knowledge. The police investigated the harassment early on, but Mr. W was able to conceal his harassment through the use of third party computers, offshore websites and public telephones. The court noted that "the intimidation caused by the harassment is a real form of harm, and unlike with more conventional modes of harassment, the victim of cyber-stalking is less able to escape or hide from their tormentor."7 His harassing conduct stopped after Mr. W was charged and he often blamed the victim and did not accept full responsibility for his conduct.

He was sentenced to 90-days imprisonment (to be served intermittently) and to be bound by a probation order for the duration of the sentence, with additional orders including a curfew, a weapons prohibition, and a DNA order.[8]

The Crown sought leave to appeal the sentence for not sufficiently denouncing and deterring Mr. W's conduct, and for not being proportionate to the gravity of his offence. The Alberta Court of Appeal held that "the appropriate range for harassment of this duration and sophistication is 9-24 months imprisonment."[9] The Court also found that the trial judge failed to consider key aggravating factors, including (i) the persistent, unrelenting nature of the harassment, (ii) the inherent danger of sending strangers, who were expecting sexual encounters, to the victim's home, and (iii) the advanced planning and deliberation of the attacks.[10] Despite stating that the appropriate sentence in this case would be 12 months in prison (and not 90 days as W had received at

[7] 2009 ABPC 126 at para 36.
[8] 2009 ABPC 126.
[9] 2009 ABCA 328 at para 37.
[10] 2009 ABCA 328 at para 35.

trial), the Court of Appeal found that, "having regard to the history [including pre-trial custody and pre-sentence custody already served by W], we are not persuaded that further imprisonment is warranted, and decline to grant the Crown leave to appeal."11 The appeal was dismissed.

Also see: 2009 ABPC 126 (Trial).

x. 2007 ABCA 38

In **2007 ABCA 38**, Mr. L, a 39-year-old man, pleaded guilty to nine counts of criminal harassment, one count of possession of stolen property, one count of careless storage of a firearm, and one count of breach of recognizance. Mr. L had harassed 32 women who, save one, were strangers to him over an 11-year period totalling 283 documented incidents. He would see these women in his neighborhood or near their work and begin campaigns of harassment against them. His behaviour included placing pornographic material and graffiti that referenced the complaint's name and appearance on the complainant's vehicles or mail boxes, stealing personal items from their car, calling women with obscene messages, calling women to tell them very personal information he had gathered about them, and calling women and remaining silent, breathing deeply, or hanging up. He suggested that he had been watching them while they were at home. Several women were harassed over several years. Mr. L displayed a pattern of behaviour that was not deterred even by warnings by the police. He contacted five of his victims when he had been ordered not to while on bail. A search warrant executed in his home found a list of over 150 women's names and phone numbers, including the complainants'. His long-term harassment had significant psychological and emotional impacts on his victims, causing real fear of being alone in their homes, being alone in the street, or answering their phone. Several victims kept weapons in the home for self-defence, due to the nature of the harassment.

[11] 2009 ABCA 328 at para 40.

Although Mr. L was a first offender, because his conduct occurred over 11 years, this was not considered a mitigating factor. He was sentenced to 54 months of imprisonment, a ten-year fire-arms prohibition, forfeiture of the weapons and other items seized in the search warrant.

Mr. L appeal his sentence for being demonstrably unfit. The court of appeal substituted his sentence with two years less a day incarceration, 3 years of probation, and additional orders including limitations on using public telephones or telephones not registered to Mr. L, a weapons probation, and an order to keep his distance from his victims.

Also see: [2006] AJ No 431 (ABQB).

xi. 2006 ABCA 295

2006 ABCA 295, is an early cyber-stalking and "revenge porn" case. Mr. B pleaded guilty to harassment, uttering threats to damage property, unlawfully entering a dwelling, and breaching bail orders. Mr. B used a keylogger to access his former girlfriend's passwords, computer contents, and intimate images. He proceeded with an organized attack against her that included recruiting others to add to the harassment and continuing to harass Ms. B when he was in another country. As the Court writes, "[Mr. B] disrupted her life with a specific plan of making her pay. It was a mean act. It's devastating…"[12] He engaged in harassing behaviour over an 8-month period and disregarded orders not to contact her following a conviction for uttering threats.

The Court contrasts B's "extreme" cyber-stalking with "a more traditional form of harassment by phone calls, stalking, leaving things with full malice of forethought, that a person protects themselves by [...] changing address, phone number, even hiring security people." While, as the Court notes, those cases involve fear, "a measure of some relief of the fear can be possible, although

[12] [2006] AJ No 965 at para 18.

not much."[13] With attacks by electronic means, however, the Court "wonders where the end of the road is in our society today."[14]

The Court calls cyber-stalking "a serious concern for the community"15 and notes unauthorized access to Ms. B's computer as an "intolerable breach".16 With regard to the non-consensual disclosure of the victim's intimate photos, the Court stated:

> It is a graphic lesson in life today that those practices which are those things that people do in intimate relationships that bring great joy and togetherness and intimacy in a relationship, proper relationship, can be perverted and abused in this. As a trial judge and a male I will say to [Ms. B], it happened. Try not to be embarrassed by it. One is better off if one can accept it in that fashion. This man is the abuser. You are not. And acting as a mature person in an intimate relationship is hardly anything to criticize of any human being in my opinion.[17]

The court held that Mr. B was not a good candidate for a conditional sentence because of his history of breaching court orders, his lack of accountability, his motivation for revenge, and his risk to the public.

Mr. B was sentenced to 20 months' incarceration and three years of probation, additional orders including a prohibition from alcohol or drug use, a firearms prohibition for 10 years, no contact with the victim, her family and some other people and an order to keep distance from them and the University of Calgary. The court declined a prohibition on computer use.

Mr. B appealed his sentence of incarceration for 20 months and three years of probation. The appellate court held that Mr. B's crime was a predatory one and the risk for public safety made a conditional sentence inappropriate and dismissed the appeal.

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[13] [2006] AJ No 965 at para 18.
[14] [2006] AJ No 965 at para 18.
[15] [2006] AJ No 965 at para 1.
[16] [2006] AJ No 965 at para 23.
[17] [2006] AJ No 965 at para 26.

Also see: [2006] AJ No 965 (ABPC).

xii. 2006 ABCA 168

In **2006 ABCA 168**, Mr. S harassed three complainants who were his ex-girlfriends over a three-year period. He would leave messages on their answering machines or voicemail. He called Ms. M over 300 times, Ms. K 88 times and Ms. B 340 times at home and at work making demeaning and obscene comments. Mr. S also assaulted the three women and threatened to kill them, including assaulting and uttering threats to Ms. M when she had a peace bond in place that ordered he not contact her. One of the women had to move due to her fear of Mr. S and one or two of them lost their jobs due to Mr. S' unwanted visits to their workplace.

He was found guilty of harassment, breach of recognizance, and a breach of an undertaking to not contact Ms. M and to keep his distance from her address. He was sentenced to 45 months of incarceration, and additional orders including a weapons prohibition. An appeal of that sentence was dismissed.

Also see: [2005] AJ No 1409 (ABQB).

xiii. 2003 ABCA 184

In **2003 ABCA 184**, Mr. V appealed his 18-month sentence. He had been convicted of criminal harassment and driving a motor vehicle when prohibited. Over several months Mr. V had made harassing phone calls to his girlfriend's home and work place, sent her unwanted letters, and threatened to publish intimate photos of her. He had driven the car to aid in his harassment of the complainant, was on probation at the time, and had been warned twice by police to stop harassing the complainant. The appeal was dismissed.

xiv. 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.

xv. 2002 ABPC 115

In **2002 ABPC 115**, 28-year-old Ms. C harassed her former sexual partner, Dr. D, with repeated phone calls and letters, threatening statements, and unwanted deliveries after learning that he was engaged to another woman. Ms. C sent anonymous letters to local businesses warning that Dr. D, a dentist, had HIV and was infecting his patients. She also wrote that he molested her daughter, although she did not have a daughter. She sent over 100 letters to his colleagues and neighbors with various allegations aimed at negatively affecting his reputation and career. At one point, over a two-day period she phoned Dr. C over 50 times, leaving threatening and abusive messages. She also called members his family, his fiancé and member's her family. She continued to contact him despite a civil restraining order and a peace bond that forbade contact with Dr. C and certain members of his family. Ms. C would deliver unwanted gifts and services to his residence or place of work. Ms. C tried to counsel an undercover officer to make harassing calls to Dr. C and his family members. Ultimately, the Court held that Ms. C intended "not to break the

law, but want[ed] [the victim] to hurt as much she had been hurt by him."[18] She breached a recognizance order that prohibited contact with her ex-partner and encouraged one other person to harass him. Ms. C pleaded guilty to multiple counts of harassment, breach of recognizance, assault, and counselling another person to commit a crime (criminal harassment). She was sentenced to 18-months imprisonment followed by 3-years of probation, additional orders including a weapons prohibition, prohibition from possessing or using a cellphone or pager without authorization, to keep her distance from Dr. C, his parents, and their place of employment, a no contact order for Dr. C and his parents, and a DNA order.

II. BRITISH COLUMBIA

i. 2018 BCSC 2286

In **2018 BSCS 2286**, Mr. S was charged with sexual interference, child luring, sexual assault and criminal harassment.

Mr. S was more than 25 years older than Ms. J and was a member of her extended family. She described him as her uncle. He had been acquitted of sexually assaulting Ms. J several years earlier. Ms. J stated that Mr. S would visit her home where she lived with her grandmother and try to kiss her, undress her and touch her sexually, with some success. Mr. S denied this, which the court did not accept.

Evidence of their text messages showed that Mr. S called Ms. J "babe", referred to her "cute butt" and invited her to spend time with him. He also messaged her on Facebook and Kik, which he acknowledged was inappropriate. Ms. J mainly responded about 20 times to his approximately 100 messages with brief one-word answers. Ms. J's brother told Mr. S to stop messaging Ms. J.

[18] 2002 ABPC 115 at para 67.

The court found that the purpose of the messages was to facilitate visits so he could have sexual contact with Ms. J.

Mr. S was found guilty of sexual assault, sexual interference and child luring involving Ms. J. The sexual assault charge was stayed based on the *Kienapple* principle. He was not found guilty of the harassment offence. It was clear that his communication made Ms. J uncomfortable, but did not amount to the level of harassment. The court noted Ms. J had blocked him, but then un-blocked him, responded to some of his messages, and did not "unfriend" him on Facebook.

Mr. S was sentenced to 12 months' incarceration and 24 months' probation for the sexual interference, and 6 months' incarceration for the luring to be served consecutively. Additional orders included a DNA order, a lifetime registration as a sex offender, a no-contact order, and limitations on internet use and being near persons under 16 while on probation.

The Court found the mandatory minimum sentence for indictable offences under the luring provision violated Mr. S' right to be free of cruel and unusual punishment. The Crown argued that although it was not saved by section one of the *Charter*, that the court should read in a 90-day minimum sentences. The court disagreed, finding that including a new mandatory minimum would be better addressed by Parliament.

Also see: 2018 BCSC 2044 (Sentencing); 2016 BCSC 2468 (Trial).

ii. 2017 BCCA 349

In **2017 BCCA 349**, Ms. Y was charged with harassing the complainant over text message. Following several applications, the court ordered a stay of proceedings and the case was dismissed.

Also see: [2017] SCCA No. 497 (Appeal); 2017 BCSC 838 (Costs).

iii. 2017 BCSC 2361

In **2017 BCSC 2361**, Mr. F had been found guilty by a jury of criminal harassment and being in possession of firearms at a place other than where he was authorized to possess them. During an acrimonious custody battle, Mr. F began a harassing his wife, Ms. C. Mr. F lived in Canada and Ms. C lived in the United States. In emails, public statements, and comments to the RCMP he stated that he wanted to devote his life to a campaign to make her life a miserable as possible, ideally harming her reputation and driving her to financial ruin or suicide. His intention was to do whatever he could within the confines of the law to undermine her relationships, employment, and general well-being. This campaign included created a website using his ex-wife's first and last name that published private photos of her, her friends, and family members, including her child from another partnership; her full name, address, and contact information; allegations that she was a white supremacist, a sociopath, and an unfit mother, among other things; disparaging comments about her and people she associated with; private email communications between the two; and a blog purportedly written in the perspective of Ms. C describing her as a terrible person. He sent the website link to her colleagues at work. He threatened to hire someone to get "intimate photos" that he could post on the site. When Ms. C made an effort to get the website taken down, he moved the website to an overseas server to make it more difficult.

Mr. F also sent her hundreds, if not thousands, of emails to her and people she knew with the intention of degrading, humiliating and tormenting her. The emails included comment such as ""I will destroy you — slowly and incrementally ... [e]very moment of my life is focused on the single goal".19 He copied their son on many of the emails he sent to Ms. C and actively sought to poison his son's relationship with Ms. C.

Over the year and a half the harassment continued, Ms. C tried many tactics to get Mr. F to stop including ignoring his emails and responding aggressively to him, but she was never successful. The court noted that: "The harassment was particularly insidious because [Mr. F] kept [Ms. C] in perpetual fear of new ways he would devise to torment her. Mr. Fox's professional expertise is

[19] 2017 BCSC 2361 at 21.

in information technology, and he appeared to [Ms. C] to have an alarming ability to gain access to confidential information about her and the people in her life."[20] His harassment had impacts on her personal and professional life and Mr. F publicly delighted in the misery he caused her.

Further, Mr. F was not allowed to enter the United States, but he sent emails to Ms. C detailing how he could get a gun across the border and was caught shipping several firearms to the United States.

Despite the fact that Ms. C lived in the United States and Mr. F was not allowed to enter the country, the court held that Ms. C had a reasonable fear. The court stated: "As I have explained, [Mr. F] did everything he could to humiliate and torment [Ms. C] to the point that she feared reasonably for her own and her family members' safety. Her and their psychological or emotional well-being was under serious threat, and, because of [Mr. F's] comments about firearms and about shooting her, [Ms. C] also feared reasonably for her physical safety."[21]

Mr. F was sentenced to three years and ten months of imprisonment and three years of probation, additional orders including no contact order with Ms. C, her partner and their son, lifetime firearms prohibition, and to provide a DNA sample. While on probation, Mr. F was prohibited from disseminating information about Ms. C, her partner, their child or any friends, relatives, employers or coworkers, upon release he had to ensure any website or social media posts related to these people are no longer accessible by any means, and internet prohibitions ordered including a requirement to provide any email address he uses or corresponds with to his parole officer.

Also see: 2017 BCSC 1369 (Motion to joint or sever counts); 2017 BCSC 854 (Evidence)

iv. 2017 BCSC 2135

[20] 2017 BCSC 2361 at 29.
[21] 2017 BCSC 2361 at 40.

In **2017 BCSC 2135**, Ms. B appealed her conviction of criminal harassment based on her threatening conduct. Her appeal was granted, her guilty verdict was set aside due to a miscarriage of justice and a new trial was ordered. The appeal judge found that the trial judge had misapprehended evidence related to the conviction.

Ms. B had a short intimate relationship with her male tenant. Following the breakdown of the relationship the complainant found that his tires had been slashed, a false internet dating profile had been made of him, and his boat had been damaged. The complainant received a peace bond ordering Ms. B not contact him. He later found a copy of the peace bond, where certain lines were highlighted, including comments he made to the police about his fear that Ms. B was watching him and may have a gun. The complainant said this and the preceding events made him fear for his life and reported it to the police.

Ms. B admitted that she left the documents on the boat, but stated that they were not meant to intimidate or threaten the complainant, but to point out his hypocrisy after finding his boat moored closely to her house after stating he was fearful of her. She denied the other incidents of damaging his property or creating a false dating profile.

On appeal the court found that the trial judge misstated Ms. B's testimony when it found that Ms. B said she left the documents on the boat with to show she was "still there" and that the only logical inference was that she knew it would be perceived as a threat, which the appellant judge found did not accurately reflect the appellant's evidence.

v. 2017 BCPC 233

2017 BCPC 233 was a pretrial hearing. Mr. W was accused of uttering threats, assault with a weapon, and harassment. Mr. W's girlfriend, Ms. B, allegedly overheard Mr. W speaking on the phone with someone where he threatened to cut off Ms. B's head with a chainsaw. However, the dates on the indictment alleging harassment were not consistent with the date on which Ms. B

began fearing for her safety and therefore Mr. W could not be convicted on the harassment charge and it was dropped.

vi. 2016 BCPC 300

In **2016 BCPC 300**, Mr. F was found guilty of criminal harassment and threatening conduct but was acquitted of uttering threats. After the end of a long-term tumultuous relationship, Mr. F began following his ex-partner, Ms. S, and engaging in unwanted communication. He would make comments such as "If I can't have you, no-one can. I don't care if I go to jail".[22] Mr. F would park outside of locations where he knew she was and repeatedly call and text her. A protection order was put in place where Mr. F was only allowed to contact Ms. S in regard to their children. One night when her new boyfriend spent the night at her house, Mr. F parked outside blocking her driveway and called several times throughout the night. Ms. S did not notice the calls because her phone was off. When she did turn her phone on she answered a call from Mr. F who demanded to know whose vehicle was in the driveway, that she give him his gun, which Ms. S refused, and that she come out and speak with him. He followed this conversation with 40 minutes of texting before he left. The courts found him guilty of harassment by repeated communication causing fear, watching and besetting, and threatening conduct due to the (i) repeated telephone calls which were unanswered; (ii) a telephone call that was answered; (iii) text communications; (iv) telephone calls where he engaged Ms. S; (v) driving his truck to a location where he knew Ms. S. to be and using that truck to block the egress by any motor vehicle from the driveway; (v) utilizing words of contempt towards Ms. S in an intimidating and frightening manner. The court considered his history of disrespectful and aggressive behaviour, noting that he knew what behaviours would make Ms. S fearful. The court noted that multiple unanswered telephone calls can meet the repeated communication requirement for harassment (See 2012 BCCA 469).

[22] 2016 BCPC 2016 at para 25.

He was given a 60-day conditional sentence and 18 months of probation, other orders included a 10 year firearm prohibition, a lifetime prohibited firearms prohibition, a DNA order, a no contact order with the victim, and an order to keep his distance from the victim's residence and other places it is known she may be.

Also see: 2016 BCPC 299.

vii. 2016 BCCA 76

In **2016 BCCA 76**, Mr. C appealed his conviction for uttering threats. He argued that the judge should have recused him or herself due to a reasonable apprehension of bias. The appeal was dismissed.

At the trial level, Mr. C was acquitted of harassment but was found guilty of uttering threats.

Mr. C had a history of domestic violence with his ex-partner Ms. B, including several incidents where Ms. B had to call the police. On various occasions Mr. C had assaulted her, called her at her work throughout the day threatening her, yelled at her and the children, and he once hid a webcam in her bedroom that was connected to the internet and pointed towards her bed. He was convicted of assault and mischief. Out of fear of Mr. C, Ms. B moved from Ontario to British Columbia while he was imprisoned for one of these offences.

The trial judge stated that this was a unique case in that the harassment charge: "relies on a number of postings placed on the accused's personal account on the social media site, 'Facebook.' These included an apology, an expression of his love for the complainant and begging her forgiveness in the 'basic information about Wayne' section on the Info Page. He also posted a number of pictures on a separate Page entitled 'Wall' on which was also a link to the song by The Police 'Every Breath you Take,' alongside the comment 'I miss you, [Ms. B], very much.' Some of the pictures were meaningful to the complainant and combined with the other materials she

viewed on his Facebook account, she felt that they were directed at her and meant to tell her that he was close by and watching her."[23]

Shortly after he was released from prison, Mr. C started a relationship with a new woman in British Columbia, close to where Ms. B had settled with the children. He told the new woman that he wanted to kill Ms. B, a statement which formed the basis charging him with uttering threats. He also told the new woman that he wanted to post photos online to show that he was in Ms. B's vicinity. At trial, the woman testified that C told her "I want [Ms. B] to look behind her back for the rest of her life," or "I want her to know that I'm close."[24]

Mr. C had blocked Ms. B from viewing his Facebook account, and she could only see his posts by logging onto her sister's account. Still, Ms. B wanted to view his Facebook profile to see if he knew she had fled to British Columbia. When she viewed his profile using her sister's account, she saw photographs near her new workplace and at locations she often visited. She also saw diary-like Facebook Notes expressing his love and longing for her, and a link to the song "Every Breath You Take" by The Police. Fearing for her safety, Ms. B stopped visiting the places pictured in the photographs.

At trial, defence counsel successfully argued that Mr. C's conduct needed to be objectively threatening on the evidence to constitute criminal harassment. The Court held that "the pictures [Mr. C posted] were non-threatening and neutral in nature. Objectively, they were of a benign character as were the comments about the complainant." The Court further noted that:

> It may well be that some of the images had a special meaning or significance to [Mr. B] subjectively viewed whether because they were of businesses or places she visited or attended, or because they were of a location near her place of employment. However, none of these either individually or collectively were specifically directed to the

[23] 2012 BCPC 561 at para 3.
[24] 2012 BCPC 561 at para 47.

> complainant. Rather, they were placed on the accused's Facebook for any Facebook user to view.[25]

According to the Court, since Mr. B could not see the posts without logging on to her sister's account, Mr. C's posts were not directed at her and did not constitute criminal harassment.

In finding Mr. C not guilty of criminal harassment, the Court noted that "it would seem that there could not be any harassment until such time as the complainant decided to view it," and "that step introduced an element of uncertainty to the completion of the offence as it is outside the control of the accused."[26] Ultimately, the Court determined that "Whether or not the complainant was harassed was thus dependent solely on her actions and not the accused's."[27] Mr. C was, however, convicted of uttering a threat. He appealed his conviction in 2016, claiming that the judge had improperly intervened in the trial proceedings, but his appeal was dismissed.[28]

Also see: 2012 BCPC 561

viii. 2016 BCPC 50

In **2016 BCPC 50**, Mr. P, a 37-year-old man, pleaded guilty to harassment, obstruction of justice, stealing personal property, assault a police officer and breaching his curfew.

Mr. P was in a long-term relationship with Ms. A, who was the mother of their seven children. He had a history of convictions and had conditions not to contact Ms. A. While in custody, Mr. P called Ms. A 60 times using another inmates phone card to mask the calls. When he was out of jail he would call her from a private number, trying to convince her to drop the charge. He also called her sister. In another attempt to convince her to drop the charges he entered her home and locked himself in her bedroom. He would make veiled threats that frightened her, send her

[25] 2012 BCPC 561.
[26] 2012 BCPC 561 at para 91.
[27] 2012 BCPC 561 at para 91.
[28] 2016 BCCA 76.

letters, and call her even though she communicated that she did not want contact with him. He pleaded guilty to harassing Ms. A and attempting to obstruct justice.

Unrelated to Ms. A, he also broke into a band's tour bus and stole some electronic equipment, failed to meet his curfew, and fled from the police when they tried to arrest him.

He was sentenced to 22 months and 21 days of incarceration, three years of probation and additional orders including a lifetime firearms prohibition, a DNA order, a no contact order with the victim, and an order to not attend a school, residence or workplace of the victim.

ix. 2016 BCPC 24

In **2016 BCPC 24**, Mr. K pleaded guilty to criminal harassment. After his romantic relationship with Ms. L broke down, he began hearing persistent voices and was later diagnosed with schizophrenia, but would refuse to take his medication. For over three years he sent repetitive and threatening communications to Ms. L that were nonsensical, disturbing and accusatory. His communications became more threatening and bizarre over time including sending videos with violent content and communications that suggested he gave her HIV. Ms. L contacted the police and was placed on conditions not to contact Ms. L. He continued to contact her through Facebook, emails, letters, and emails to places where she worked and volunteered. She repeatedly told him to stop contacting her or she would call the police. Mr. K believed he was entitled to communicate with her and that her rejections were written by her or his computer or hackers. He was found not criminally responsible by reason of a mental disorder.

x. 2015 BCPC 203

2015 BCPC 203 involved the online abuse tactics of "doxing"[29] and "swatting."[30] The offender, 17-year-old Mr. B plead guilty to 23 of 48 counts of criminal misconduct including nine counts of criminal harassment, eight counts of mischief, four counts of extortion, one count of uttering a threat, and one count of breaching a recognizance. Mr. B used a variety of tactics to harass, threaten, and harm his victims, many of whom were female video gamers he encountered online. For example, he remotely interfered with his victims' internet service, made fraudulent 9-1-1 calls to victims' homes, made fraudulent bomb, kidnapping and death threats to the police, and disclosed victims' credit card information online.

B's doxing efforts were sophisticated and involved corporate social engineering. In one instance, B posed as an Amazon employee and obtained a victim's telephone number and address from Amazon's technical support. He then phoned Rogers, pretending to be a Rogers employee, and used the victim's phone number to request account information, including her address. He then dialed 9-1-1 and had an emergency dispatch team sent to her home to investigate a bomb threat.

Nearly all of B's 23 victims were young women. As the Court notes, "Male victims were usually only selected because they were related to [B's] female victims or in some way attempted to intervene on behalf of [his] female victims."[31] He threatened to release one girl's credit card rating online unless she showed him her butt. The police told her to ignore his calls. He posted a false ad on Craigslist pretending to be another girl stating that she was looking for sex, along with her name and address. He claimed to have nude photos of another girl and threatened to post them online. He used bots to send over 200 texts to one girl. B's pre-sentencing report makes note of his misogynistic attitudes and finds that his actions were primarily motivated by pleasure

[29] The Court defines "doxing" as "publishing on the internet identifiable personal information about an individual that has usually been obtained from social media sites and from hacking into private systems." It notes that, depending on the information disclosed, victims of doxing may feel "distress, fear, embarrassment and shame" and may become the targets of identity theft, extortion, and fraud efforts: 2015 BCPC 203 at para 3.
[30] The Court defines "swatting" as "tricking an emergency service agency into dispatching an emergency response based on a false report of an ongoing critical incident." The Court notes that swatting can lead to evacuations, bomb squad deployment, and other frightening assaults on a victim's home: 2015 BCPC 203 at para 4.
[31] 2015 BCPC 203 at para 43.

from his victim's distress and prestige gained within an online peer group. B's psychiatric report notes that his "victims are quite disproportionately female" and finds that "it is possible that he has focused his behaviours on females as a way of reacting to his childhood experiences with his mother."[32] The latter report finds no clear evidence of a sexual motivation underpinning B's crimes, but does state that "some of his humiliation of female victims involves a sexual component" — such as, for example, asking one of his victims to send him pictures of her feet and toes.[33] He continued to commit offences while on bail and under an internet prohibition.

The Court ultimately sentenced B to 16-months imprisonment followed by 8 months of community supervision. Noting that B posed a high risk for future internet-based offences, the Court also imposed a full technology ban, authorizing a police officer to enter his residence at any time and search for computers or other internet-enabled devices.

xi. 2014 BCPC 279

In **2014 BCPC 279**, three 14-year-old boys pleaded guilty to criminal harassment after distributing nude photos of their underage female peers. The boys persistently asked girls for the photos and were originally charged with distributing child pornography. The girls did not intend on having the images distributed beyond the original recipient. All three boys were first-time offenders, all expressed remorse for their actions, and complied with their bail conditions that included a complete ban on owning internet connected mobile devices and restricted their internet use to only educational purposes.

[32] 2015 BCPC 203 at para 47.
[33] 2015 BCPC 203 at para 47.

Although no victim impact statements were filed, the Court determined that the girls were emotionally harmed by the disclosure of their images. The Court remarked that the original child pornography charges were unfortunate and stated that the evidence supported the charge of criminal harassment, particularly with regard to the boys' persistent requests for intimate images.

The Court held that a conditional discharge was in the best interests of the offenders and was not contrary to the public interest. Accepting that "the distribution of such photos is a common practice among youth today in their attempts to learn of and struggle with their own sexuality,"[34] the Court also held that the boys must keep the peace and be of good behaviour for six months. The Court further ordered the boys to report to a youth worker; not possess a cell phone, iPhone, smart phone, or other electronic device capable of accessing the internet (or ensure that picture messaging, video message, and data transmission functions are disabled) during that time; attend counselling; apologize to the victims; and complete 20 hours of community work.

xii. 2014 BCPC 327

In **2014 BCPC 327***,* Mr. F, a 54-year-old man, broke into his former partner's home and stole two iPads which contained sexually explicit photos and videos. Mr. F then distributed those intimate images to the victim's coworkers and to her 23-year-old son. He also texted a nude image to his ex-wife and told her that everyone in her contact list had been sent that photo. He had also been texting her after she told him to stop, although that did not form a part of the criminal harassment charge. When a no contact order was in place, Mr. F hacked into his ex-wife's email to send messages to her new email account.

Mr. F was a repeat offender. After separating from his previous wife in 2009, Mr. F sent 150 sexually explicit photos and four video clips to the woman's new partner, posted intimate images on a website with the intention to humiliate his ex-wife, and threatened to send them to her

[34] 2014 BCPC 279 at 30.

friends, family and co-workers. He was convicted of criminal harassment in that case, **2009 BCPC 61**, and sentenced to 18-months' probation and a $500 fine. The court warned him that any future behaviour of this type would result in harsh consequences, but did not order that he not possess any pictures of videos of this type or restrain his computer use.

Mr. F pleaded guilty to criminal harassment, break and enter and theft, and breaches of a no contact order and was sentenced to 2-years less a day imprisonment followed by 3-years probation, additional orders included a no contact order with his ex-wife and her immediate family, an order to keep his distance from his ex-wife's residence or workplace, a weapons prohibition, a DNA order, an internet and texting limitation where he is only permitted to use those things for work purposes and a requirement that he report any future intimate relationships to his parole officer, who would review his convictions with that person.

Noting his "bad habit ... of doing this,"[35] the Court in the 2014 proceedings imposed a novel condition on F's probation, writing that, "for three years after the release from custody I think it is highly appropriate and necessary for the protection of the community that before [F] engage in any intimate relationships that person needs to be notified of [his] pattern of behaviour."[36] The Court further states, "Hopefully, steps can be taken, such as not taking these sexually explicit photos or videos and, therefore, not exposing themselves to the same kind of criminality which your two former spouses have experienced."[37]

Also see: 2009 BCPC 61; 2009 BCPC 60

xiii. 2014 BCCA 304

[35] 2014 BCPC 327 at para 67.
[36] 2014 BCPC 327 at para 67.
[37] 2014 BCPC 327 at para 67.

At the trial level, **2012 BCSC 2009**, Mr. T was found guilty of criminal harassment and breaching his probation. He and Ms. C were involved in an on again/off again relationship involving domestic violence. While Mr. T was imprisoned for threatening, assaulting and unlawfully confining Ms. C, she met another man and married him. Mr. T did not want to accept that the relationship was over. When he was released from custody, his probation order prohibited him from contacting Ms. C directly or indirectly but Mr. T called and left a voicemail on her phone naming her husband. This caused Ms. C fear, because he had used threatening referenced to people she was close to in the past, where they lived and how he could reach them to frighten her. He also approached her in a parking lot, left items on her vehicle, sent emails to people they knew asking about Ms. C, and sent emails to politicians, news outlets, and police officers expressing concern about Ms. C and her husband. The information in those emails indicated that Mr. T had been accessing and reading Ms. C's personal email account. This conduct consisted of repeated harassing behaviour. Mr. T would also watch her apartment from the McDonald's across the street, used a video camera to film her apartment, and claimed to have recorded his conversations and meetings with Ms. C. This consisted of "watching" harassing behaviour. Mr. T waited for Ms. C in her parking lot and her husband told him to leave. Mr. T knelt down in a position of someone pointing a gun at them. This counted as threatening harassing behaviour.

He was sentenced to 4.5 years of incarceration, was ordered to surrender any weapons and given a 10 years weapons prohibition.

Mr. T appealed his conviction, but the appeal was dismissed. He also appealed his sentence which was varied to give him additional credit for time served.

Also see: 2014 BCCA 138; 2012 BCSC 2209; 2012 BCSC 2208.

xiv. 2013 BCCA 177

In **2013 BCCA 117**, Ms. H was convicted of criminal harassment, uttering threats, breaching conditions of her judicial interim release, and counselling a person to commit and indictable offence.

After learning that her son and Mr. S' son were involved in the sale of drugs, Ms. H phoned Mr. S and threatened to kill his son and firebomb their family if his son did not stay away from her son. She was arrested and ordered not to contact Mr. S or go near his home. Ms. H proceeded to phone and threaten Mr. S, shout at him while outside of his apartment, and counselled her roommate, Mr. A, to harm Mr. S and his son and to steal and damage Mr. S' vehicle. Ms. H was acquitted of one count of uttering threats, one count of failing to comply with an undertaking, and one count of counselling someone to commit assault, but was found guilty of the other charges of harassment, uttering threats, failure to comply with an undertaking, and counselling Mr. A to commit assault, mischief and theft.

Ms. H appealed the conviction of uttering threats, which was allowed and judicially stayed pursuant to the Kienapple principle.

xv. 2012 BCCA 469

In **2012 BCCA 469**, Mr. S appealed his conviction of breach of probation and criminal harassment. He was found guilty of both offences, but the breach of probation was given a conditional stay. Mr. S contacted and harassed his ex-wife, Ms. S, while on probation with an order not to contact Ms. S. He sent two text messages and made five calls to her phone. Mr. S had a history of harassing and threatening Ms. S. The texts included details about Ms. S' appearance. The text messages claimed to be from a different person and the phone was registered under someone else's name. Ms. S suspected it was Mr. S and called the police, who called the number and asked if it was Mr. S when someone picked up. He said it was and was invited to the police station, which he attended. Mr. S was then charged with harassment. At trial, he argued that there was no evidence that he sent the texts or made the calls. He was convicted of criminal harassment.

Mr. S appealed the decision, arguing it was an unreasonable verdict due to the fact that the trial judge made an inference that the calls were from him and that the victim's fear was reasonable. The appeal court held that the trial judge had not erred on determining on circumstantial evidence that the phone calls were from Mr. S, due to their communication with him on the same

number, and that the wife's fear was reasonable based on previous incidents with Ms. S. The appeal was dismissed.

xvi. 2011 BCCA 116

In **2011 BCCA 116**, Mr. C, a 39-year-old man, pleaded guilty to criminally harassing a young girl over a four-year period. Mr. C became obsessed with a 12-year-old television actress who he believed was communicating with him through pictures and videos. He contacted her, her friends, members of her family, and fellow cast members through social media networks and other forms hundreds of times. His messages were disturbing, and some contained overtly sexual messages. He also sent her inappropriate gifts and came to the studio where she worked uninvited. When speaking to the police he admitted to masturbating to her photos. Over time he manipulated people into disclosing contact information and personal information about the girl and her family. Police intervention did not stop his communication, neither did the complainant's efforts to block him on social media and her requests that he stop contacting her. He would create new profiles and aliases on social media sites in an attempt to reach her. He created a fan site on the internet about her without her approval. At one point he communicated that planned to kidnap her and have a sexual relationship with her when she turned 16.

His communication caused her and her family to live in fear.

He was sentenced to 18 months of imprisonment, three years of probation and additional orders to complete the Forensic Sex Offender Treatment, a DNA order, no contact order with Ms. A, her family or friends including (para 54) "emails, text messages, social networking sites, messages passed through friends and any other form of electronic communication", keep his distance from places Ms. A or her family may be, prohibited from accessing the internet or possessing devices that allow access to the internet, including cellphones, not to access or possess pornography, report any current ISP accounts he has to RCMP, allow the police to examine his electronic devices, and prohibitions on his contact with children under the age of 16.

He appealed his sentence arguing 1) he was not appropriately credited for time in pre-trial custody; 2) due to a misapprehension of the evidence, the trial judge treated him as a pedophile or sex offender; and 3) the sentence was unduly harsh and ought to be found unfit. The Crown sought to vary the sentence to include a firearms prohibition. The appellant court added the mandatory firearms prohibition, but did not otherwise vary the sentence.

Also see: 2010 BCPC 417.

xvii. 2009 BCPC 61

In **2009 BCPC 61**, Mr. F was convicted of criminal harassment. After separating from his second wife in 2009, Mr. F mailed 150 sexually explicit photos and four video clips on a DVD to the woman's new partner, posted intimate images on a website with the intention to humiliate his ex-wife, and threatened to send them to her friends, family and co-workers. Mr. F had filmed some of the sexual activity when they were together, after which Ms. F requested that he delete the content, which he said he would do and did not. He would call her on the phone to question what she was doing, threaten her if she did not do what he asked, and make various other threats.

He was convicted of criminal harassment and sentenced to 18-months' probation, with additional orders including a no contact order with the victim, an order to keep his distance from her, a DNA sample, the forfeiture order of the hard drives of three computers seized from Mr. F, and an order to destroy the images. The court warned him that any future behaviour of this type would result in harsh consequences, but did not order that he not possess any pictures of videos of this type or restrain his computer use as requested by the Crown.

Also see: 2009 BCPC 60 (Sentencing); 2014 BCPC 327 (Related case)

xviii. 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.

xix. 2006 BCCA 498

In **2006 BCCA 498**, Mr. H was charged with criminal harassment and uttering threats. Mr. H had threatened five employees of the BC government after his licence was suspended and required a psychological assessment to determine if he was fit to drive. He called these employees demanding his licence. He swore and threatened them, stating something along the lines that his psychologist told him there was an 85% chance he would kill government employees within a year and 100% chance that he would get away with it. The employees called security and the police, some called and warned their families. He was convicted of harassment and sentenced to three years of imprisonment and a 10 years firearms prohibition.

On appeal the court held that the conviction of harassment and uttering threats should be stayed under the Kienapple principle, as such the conviction of uttering threats was stayed. An appeal of his sentence was dismissed.

Also see: 2007 BCCA 487 (Appeal of sentencing); 2005 BCSC 247 (Sentencing); 2005 BCSC 48 (Trial).

xx. 2006 BCCA 100

In **2006 BCCA 100**, the court of appeal affirmed Mr. B's conviction of criminal harassment and assault.

In this case Mr. B, a software developer, had been abusive to his wife for most of their 17-year marriage. After separating from her husband, posting an online dating profile, and beginning to date another man, Mr. B began making harassing calls on her cell phone and at her work several times a day, threatening to harm her, her possessions and her new boyfriend. Mr. B acknowledged that he hacked her computer at one point. One day, he called her to tell her to turn on the television where the news was showing a story about men who killed their families and their selves and told her he had been nice up until this time, but now he was going to start taking action. On another occasion he pushed into her home, grabbed her and spat in her face, threatening to destroy her property. Other times he would drive to her property. He was convicted of criminal harassment and assault.

Also see: [2004], 2004 CarswellBC 3662 (BCSC) (Summary conviction appeal); 2003 CarswellBC 3784 (BCPC) (Trial decision).

xxi. 2005 BCPC 288

In **2005 BCPC 288**, Mr. P was charged with criminal harassment and public mischief for making false statements to the police. The two had separated and were engaged in a Family Court proceeding related to their daughter. The court had ordered that Ms. K provide Mr. P with phone access to his daughter three times per day. Mr. P called 911 several times and the Ministry of Family and Child Services, accusing Ms. K of child abuse, that caused the police to go to Ms. K's home. The court acquitted Mr. P. It was not satisfied that Mr. P intended to harass Ms. K or that she reasonably feared for her safety.

Mr. P had previously been convicted of harassment and had been ordered not to contact Ms. K other than as required by the Family Law Court order to facilitate contact between Mr. P and

their daughter. He had called Ms. K 100-150 times in two hours and later breached to the no contact order. He had a previous history of physically abusing Ms. K.

xxii. 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.

xxiii. 2004 BCCA 28

In **2004 BCCA 28**, Det. C had been investigation a break and enter involving Mr. S and his former girlfriend. Following this investigation, Mr. S left four messages on Det. C's answering machine and five on the machine of his former girlfriend's mother that were directed at Det. C that contained veiled threats. The trial judge did not find that Det. C was harassed because it was "not the repeated communication that led to this fear, but the content of the messages".38 However, at the appellant level, the court found that the trial judge had combined considerations under 264(2)(b) – harassment for repeated communication - and 264(2)(d) – harassment caused by threats, which resulted an error in law.

A new trial was ordered.

xxiv. 1997 CanLII 3717 (BCCA)

[38] 2003 BCPC 86 at para 12.

In **1997 CanLII 3717 (BCCA),** Ms. G appealed her conviction of harassment. Ms. G was an articling student who became fell in love with a lawyer in her firm, who did not reciprocate her feelings. She acted inappropriately at the firm and was consequently fired. She persisted to contact the lawyer in person, in writing and over the phone, causing him to change his phone number and run away from her in the street. A criminal charge and being released on bail did not stop her communications. She was convicted of harassment. Her appeal was dismissed as the lawyer had experienced real psychological fear.

Also see: 2003 BCPC 86.

xxv. 1994 CanLII 2309 (BCCA)

In **1994 CanLII 2309 (BCCA),** Mr. K, a 40-year-old man, and his wife separated. He frequently harassed her with abusive and threatening phone calls. He would also threaten her on the high-way, leave notes in her home, and threaten her with a knife. He was convicted of criminal har-assment and assault with a weapon. He was sentenced to 18 months of imprisonment, probation for two years, and additional orders including to keep distance from victim. The court noted that he had acted over a long period of time, engaged in frightening conduct and involved the abuse of a spouse.

His appeal 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.

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); 2016 MBQB 171 (Sentencing); 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. 2015 MBCA 103

In **2015 MBCA 103**, the accused, a 40-year-old man, pleaded guilty to child pornography, sexual interference, voyeurism, and criminal harassment. An allegation of industrial espionage led to the police searching his computer and discovering 6,935 unique images of child pornography and 134 unique videos of child pornography of girls aged eight and thirteen years old. Some of the

videos he had made himself, including surreptitiously recording the genitalia of his two twin eight-year-old daughters and their friend while they were in the bathroom. Other images were altered to make it appear as if his friend's prepubescent daughter was performing sexual acts on him. The computer also contained information related to the accused's historic sexual interference of his friend's daughter when she was eight years old and one of his daughter's friends. The accused also surreptitiously filmed sexual acts between himself and his girlfriend. His girlfriend ended their relationship upon the discovery and the accused "then began to incessantly contact her and follow her, despite her moving residences". He was later arrested in her apartment and charged with criminal harassment. The trial judge sentenced him to a combined total of 105 months incarceration. On appeal, the judge ordered some of his sentence be served concurrently, not consecutively, and his global sentence was reduced to 87 months. In deciding this the judge stated:

> The judge properly recognized the seriousness of the crime of making child pornography. Victims are harmed not only by the initial production of the child pornography, but also perpetually if the material is made available or distributed. Once on the Internet, sexually explicit material is impossible to eradicate and will be used by other offenders domestically and internationally for the purposes of sexual gratification or to exploit other children. Sentences accordingly must be severe for making child pornography to reflect the gravity of this pernicious crime.[39]

However, the judge also noted that the accused did not solicit sexual acts from the children nor make the pornography he made available to others. He was sentenced to eight years and nine months of incarceration, and ordered to provide a DNA sample, comply with the sex-offender registration for 20 years, not be near places with children, to be placed on the Child Abuse Registry, and to not possess firearms.

Also see: 2014 MBPC 57

[39] At para 14.

iii. 2007 MBCA 69

In **2007 MBCA 69**, Mr. H met a woman in a bar and asked her out on a date. After the coffee date she told him she was not interested in further dates. Despite her telling him she did not want to be in contact with him, he repeatedly communicated with her sending her gifts, going to her workplace uninvited, phoning her, sending her letters, telling her he loved her, threatening to "ruin her life" and communicating with her as though they were in a relationship. She told him directly, indirectly through friends and through the police that she did not want to communicate with him and made safety plans with her parents due to his harassment. This continued for almost four years. He was found guilty of harassment. He was sentenced to two years less a day served in community, probation three years, including orders to follow a curfew, no contact with complainant or witnesses, must keep distance from complainant's home and work, and a 10-year weapons prohibition (lifetime for restricted weapons).

Mr. H later had another similar charge where after two dates with a woman he proceeded with unwanted communication over a several years (See: 2016 MBCA 171).

Also see: 2006 CarswellMan 493 (MBQB) (Trial); 2014 MBQB 213 (Motion for disclosure); 2017 MBCA 1 (Appeal of denied motion for disclosure); 2012 MBQB 260 (Vacating protection order).

iv. 2001 MBCA 69

In **2001 MBCA 69**, Mr. G appealed his sentence and conviction of harassment. Prior to being convicted, he had been convicted of uttering threats and was sentenced to 12 months of imprisonment. While serving that sentence, Mr. G convinced others to harass the complainant with phone calls and letters and was convicted of harassment and sentenced to four years imprisonment. The accused remained in custody after his release date for his time served for uttering threats for an additional 19 months. The trial judge gave him credit for 18 months of pre-sentence custody. On appeal, Mr. G argued he should have been awarded time on a two for one basis. The appellant judge did not find that a two for one credit was warranted but did find that more than

18 months credit was. The appeal was allowed, and the sentence was reduced to two years less a day with three years of probation and additional orders including a no contact order, and a weapons prohibition.

IV. NEW BRUNSWICK

i. 1999 CanLII 13126 (NBCA)

In **1999 CanLII 13126 (NBCA)**, Mr. B was found guilty of harassment, breaching a court order and breaching probation that prohibited contact with his former partner. The no contact order was related to previous domestic disputes with his spouse, Ms. B. Following that order, Mr. B had entered Ms. B's home at night when she was sleeping, refused to leave and frightened her. She called the police who removed Mr. B and Mr. B later told her he would kill her if she kept up that type of behaviour. He would also call Ms. B and leave voicemails that threatened to hurt her unless she talked to him. He called her over 90 times over a 5-month period.

He was sentenced to 12 months' imprisonment. At the Court of Appeal, he appealed his conviction, arguing there was an error in law in that his actions did not constituted criminal harassment, that questions that went to Ms. B's creditability were incorrectly disallowed, the court did not have jurisdiction to enter Mr. B into a recognizance, among other things. He appealed his conviction, arguing that the Kienapple principle should apply to the uttering threats and breaching a court order, and that 12 months was excessive as there was not physical contact and he did not have a previous record.

The court held that the court order and accompanying recognizance was valid, Ms. B had good reason to be fearful and his behaviour constituted criminal harassment; that the Kienapple principle did not apply to the violation of the court order and uttering threats, as they did not overlap or rely on the same elements and facts; and that the sentence was not too severe with the court

stating "this Court is not inclined to be indulgent of belligerent conduct in domestic disputes".[40] The appeal was dismissed.

V. NEWFOUNDLAND & LABRADOR

i. 2018 CanLII 1161 (NLPC)

In **2018 CanLII 1161 (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 didn't 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 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

[40] [1999] NBJ No 462 (NBCA) at para 15.

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. 2017 CanLII 32769 (NLPC)

In **2017 CanLII 32769 (NLPC)**, Mr. T could not accept that his relationship with Ms. H was over. For over one month, he continuously sent her text messages and drove by her residence. He called her 59 times in one day. The police had warned him not to contact Ms. H, but he sent an additional 19 messages after being warned. Ms. H made several complaints before Mr. T was eventually arrested and pleaded guilty to harassment. In sentencing him, the court noted the need to denounce harassment between spouses as individuals are entitled to end romantic relationships when they wish. However, Mr. T received a conditional sentence to be served in the community for five months as well as two years' probation, additional orders included a no contact order for Ms. H and another person, a ten year weapons prohibition, and a DNA order.

iii. [2016] NJ No 303 (NLPC)

In **[2016] NJ No 303 (NLPC)**, Mr. G, a 43-year-old man, was in a relationship with Ms. B. After the relationship ended, he began harassing her. He was released on a recognizance with a no contact order, but he continued contacting Ms. B. He sent 57 emails and left two voicemails and pleaded guilty to a breach of the recognizance. The court stated: "The fact that the contact was by e-mail does not lessen the seriousness of the offence. Electronic communication is now the norm for large segments of our society. Contacting a complainant or victim is the most serious form of breach of a court order. It offends the essential role and purpose of the judicial process: protection of the public."[41]

[41] [2016] NJ No 303 (NLPC) at para 38.

Mr. G was sentenced to 30 days imprisonment to be served on an intermittent basis, two years' probation and additional orders including a no contact order with Ms. B and limitations on being near certain places.

iv. 2015 CanLII 14186 (NLPC)

In **2015 CanLII 14186 (NLPC),** Mr. A, a 54 year old man, had befriended Ms. M after she separated from her husband. Mr. A wanted a romantic relationship but Ms. M did not. He called her multiple times and she did not answer. Her friend, Mr. F, answered one of his calls and Mr. A arrived at Ms. M's home intoxicated and Ms. M said she did not want to see him. Mr. A said unkind things to Ms. M and punched her in the face and chest after Ms. A slapped the top of his head. He was released on an undertaking and ordered not to contact Ms. M. Mr. A called her and contacted her after this order. Ms. M said he ranted, said he was suicidal, threatened her and her children and said she "will get what's coming to her".

He was sentenced to 12 months' less one day incarceration and three years' probation for breach of undertaking, criminal harassment and assault. Additional orders included a 10-year weapons ban, a DNA order, and a no contact order with Ms. M.

v. 2014 CanLII 74041 (NLPC)

In **2014 CanLII 74041 (NLPC)**, Mr. P was dating Ms. S. When the relationship ended Mr. P began to harass Ms. S. He did not want the relationship to end and continued to call and text Ms. S and visit her home and her work place. He was warned by the police to quit contacting her. He was later arrested and charged with criminal harassment and ordered to not communicate with Ms. S or Ms. W, a friend of Ms. S who he was also harassing. He was also charged with failing to notify the owner of a vehicle he collided with. He pleaded guilty to both charges.

He was given a suspended sentence and 24 months' probation for criminal harassment, additional orders included a DNA order, and a ten years weapons prohibition.

vi. 2007 CanLII 18 (NLPC)

In **2007 CanLII 18 (NLPC)**, Mr. D was in a long-term relationship with the complainant. He was angry after the relationship ended and repeatedly called her, her friends, her siblings, her doctor's office and a nightclub to find out information about her. She reported Mr. D to the police and Mr. D was arrested and released on an undertaking that required him not to drink alcohol or contact the complainant. He was seen drinking in a pub and was arrested again but released. He called the complainant and was arrested a third time. He pleaded guilty to the harassment and breaching the orders.

He was given a suspended sentence and two years' probation that included an order not to contact the victim.

vii. 2002 CanLII 28410 (NLPC)

In **2002 CanLII 28410 (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 he physically and verbally abused her. 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.[42]

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."[43]

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, releasing him in such a fashion creates the danger that [Mr. G] might conclude that

[42] [2002] NJ No 310, (NLPC) at paras 5-6.

[43] [2002] NJ No 310, (NLPC) at para 8.

> 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.[44]

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. 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 with 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 that 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.

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[44] [2002] NJ No 310, (NLPC) at para 10.

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 complainant, Ms. B, was dependent on drugs. Mr. R was exchanging drugs for sex with Ms. B and was also recording their 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. B 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.

There was evidence that Mr. R threatened to release the video tapes but there was no evidence of extortion for sexual favours and he 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.

iii. 2014 NSPC 79

In **2014 NSPC 79**, Mr. L, a 17-year-old, pleaded guilty to criminal harassment after sending threatening Facebook messages to his ex-girlfriend, Ms. B, over a two-day period. He also pleaded guilty to assault, assault with a weapon, sexual assault and mischief. He had been physically and sexually violent with his former girlfriend. The Court considered whether 6-months' imprisonment,

15-months' probation, and a total ban on social media use would be a fit and proper sentence, and ultimately found that it was. The Court agrees with the Crown's analogy at trial:

> [I]f you commit an offence with a motor vehicle, you lose driving privileges; if you commit an offence with a weapon, you lose the privilege to use, possess or own same. And so it should be with 'social media.'45

Mr. L was ultimately banned from social media until "he understands the need for respectful and responsible relationships among young people and society in general,"[46] and was ordered to delete his Facebook, Twitter and Instagram accounts within 24 hours. He was sentenced to six months' deferred custody and supervision order, 15 months' probation, with orders to delete his Facebook, Twitter and Instagram accounts within 24 hours, a ban on social media use, a ban from opening social media accounts under an alias, an order to provide the probation officer with current names and passwords of social media accounts, a DNA order, and a two years weapons prohibition.

iv. 1997 NSCA 91

In **1997 NSCA 91**, Mr. P, a man in his late 30's met a 21-year-old woman, Ms. H. He made inappropriate comments to her and began calling her home and confronting her in the street. She did everything in her power to avoid him and the police warned him not to contact her. When she returned from university for the winter holiday she received a card from him with a letter and a poem by Mr. P that she found disturbing and terrorizing. He was found guilty of harassment. His appeal was dismissed.

VII. ONTARIO

i. 2018 ONCA 535

[45] 2014 NSPC 79 at 69.
[46] 2014 NSPC 79 at 52.

In **2018 ONCA 535**, Mr. K had harassed Ms. D and her parents in 2006. Mr. K would call Ms. D constantly, call Ms. D's sister's residence, and attempt to deliver unwanted flowers to Ms. D. A no contact order was put in place, but Mr. K continued to contact them. He sent 17 vulgar and sexually explicit letters to Ms. D and phoned her parents. Ms. D did not know Mr. K, other than knowing they went to the same high school. He pleaded guilty to criminal harassment and two counts of failure to comply with a recognizance and was found not criminally responsible due to a mental disorder. He was found to pose a significant threat to the safety of the public and was under supervision following his conviction.

His appeal for a new risk assessment in 2018 was allowed and the court granted an absolute discharge.

Also see: [2017] SCCA No. 317 (Appeal of Ontario Review Board), 2017 ONCA 379 (Appeal of Ontario Review Board), 2016 ONCA 742 (Appeal of Ontario Review Board), 2011 ONCA 703 (Appeal).

ii. 2018 ONSC 471

In **2018 ONSC 471**, Mr. E, a 27-year-old man, was convicted of several charges, including trafficking drugs, careless storage of a firearm, trafficking and assaulting two young women, criminally harassing one of them, and breaching a non-communication order related to the other.

Both Ms. J and Ms. B had approached Mr. E at different times to begin working in the sex trade. Ms. J was 18 at the time she approached him and Ms. B was 19. Ms. J provided sexual services under Mr. E's control and direction for approximately three years. During this time Mr. E physically assaulted her several times and threatened to kill her. He also controlled her rates and services, kept tabs on her through text message, and kept all of her earnings. At one-point Ms. J left Mr. E, he texted and called her relentlessly. He once called and texted her 137 times in a 32-

minute period. He also posted fake escort ads using her real photo and phone number and included a warning that Ms. J had a sexually transmitted infection in the ad. This caused Ms. J to call the police and report him for harassment.

Ms. B provided sexual services under Mr. E's control and direction, also dictating her location, some of her service hours, and keeping all of her earnings for three months. He kept tabs on Ms. B's hours and earnings through text messages.

He was acquitted of procuring the young women and several other charges related to the firearm were conditionally stayed. He was convicted of exploitation, assault, and criminal harassment against Ms. J. He was also convicted of drug trafficking and possessing a loaded, prohibited firearm without a licence.

Mr. E was sentenced to 10 years' incarceration, with additional orders including, registering as a sex offender for life, a weapons prohibition for life, a DNA order, and a no contact order and order to keep at least 500 metres distance from Ms. J and Ms. B.

Also see: 2018 ONSC 471 (Sentencing); 2017 ONSC 7285 (Certiorari application); 2017 ONSC 4028 (Trial); 2017 ONSC 3141 (Search and seizure).

v. 2017 ONCJ 943

In **2017 ONCJ 943**, Mr. R was engaged to marry the victim however, an incident occurred that Mr. R wanted to keep secret and later the relationship ended. He was a specialist in information technology and had access to his fiancé's school account, school email, and Facebook account. During their relationship, the victim had sent multiple nude images to Mr. R. Following the breakdown of the relationship, he threatened to share the intimate images with her parents if she did not agree to follow his side of the story in relation to the incident that he wanted to keep secret. She told Mr. R she no longer wanted any contact with him, but he continued to persistently contact her electronically. The messages were often non-sensical ramblings with ominous tones.

Later, several friends and family members of the victim received an anonymous email with several intimate images of the victim and copies of her Facebook messages about a previous boyfriend. A second anonymous email with an intimate image was sent to her father. Her school supervisor also received an anonymous email accusing the victim of fraud. Mr. R denied sharing the images or sending the images, suggesting an anonymous hacker must have sent them. During one conversation with the victim Mr. R claimed that intimate images with victim's name attached had been posted on Reddit. However, the victim Googled her name and did not find evidence of this. Mr. R continued to send harassing messages to the victim and about the victim on his social media, some of which suggested that he was watching the victim. Someone had also changed the password to the victim's Facebook account, locking her out of the account. At trial Mr. R's story about the images changed several times, at some point he claimed to have not seen the nude photos at all, that had not wanted to receive the photos, and to have seen them but deleted them later.

Mr. R's one sided and persistent contact with the victim was enough to convict him on the criminal harassment charges, however, because the images had been sent anonymously, the courts had to consider whether there was enough evidence to determine whether Mr. R sent the messages. The Court concluded that R did send the images, taking into account that Mr. R had access to the victim's various digital accounts, including her Facebook where the message had been copied from, that the list of people who the images were sent to suggested they were sent from someone who knew the victim well, and that the messages contained information that only Mr. R and his fiancé would be aware of. The court held that "[t]he alternative anonymous hacker theory is devoid of any realistic foundation in this case."[47]

The judge in this case suggested that the victim could have avoided Mr. R's harassment by removing WhatsApp from her phone or blocking Mr. R from contacting her, but after considering

[47] 2017 ONCJ 558 at para 146.

the victim's testimony, recognized that she had chosen to keep the line of contact open so that she could monitor Mr. R's state of mind and capture concerning messages.

Mr. R was sentenced to nine months' incarceration and 30 months' probation. Additional orders included, no contact order with complainant, family and other particular individuals; an order to keep 200 meters distance from the complainant and family home; a DNA order; an internet prohibition for five years, save for educational and employment purposes (only using the school's and employer's devices) and to pay bills, obtain services from the government and correspond for purposes of employment and education; and a two year social media and WhatsApp prohibition.

Also see: 2017 ONCJ 558 (Trial).

iii. 2017 ONSC 1434

In **2017 ONSC 1434**, Mr. C was charged with harassment, mischief, and a breach of his long-term supervision order. Ms. H, a 47-year-old woman, worked at a book company where Mr. C was hired as a seasonal employee. They began an intimate relationship, but she was his supervisor and was worried she would get in trouble at work if her employer found out. Mr. C had a history of criminal harassment and was obliged to report any relationship he had with a woman to his parole officer. He began leaving many messages and texts for her to contact his parole officer to tell him or her that the relationship was going well. He threatened to get her fired if she did not say positive things to his parole officer. Mr. C followed her places, texted her and accused her of being with other men if she didn't reply immediately. He called her at work and came to her apartment where he poured water over her TV, Xbox and cable box. His texts and calls were continuous, she once received 29 texts and 14 calls in one day. His contact made Ms. H fearful.

Mr. C was convicted of criminal harassment, mischief to property and breach of his long-term supervision order. He was sentence to six years of incarceration, additional orders included a

DNA order, Dangerous Offender designation, a long-term supervision order for 10 years, firearms prohibition, and a no contact order with Ms. H or her family.

Also see: 2017 ONSC 1434 (Trial for harassment, mischief, and extortion); 2014 ONSC 1778 (Trial for breach of long-term supervision s. 753.3(1))); 2013 ONSC 7291 (Application for publication ban).

iv. 2016 ONCJ 547

In **2016 ONCJ 547**, a young musician, Mr. Z, pleaded guilty to criminal harassment after putting his 17-year-old girlfriend's nude photos up on a pornography site with the caption "rate and what you do to her. Cum on her pics."[48] Z left the photos up for two years and they were viewed 1,333 times. The victim had not consented to this and was devastated when she discovered they were on the pornography website. Her face was visible in the images. As she wrote in her victim impact statement:

> There was no way I could make the 1,300 people who viewed the thread "unsee" my naked underage body. There was no way I could erase the images off of the computers of the people, who downloaded them. There was no way I could prevent these images from surfacing in the future and destroying my career and life that I have worked so hard to build. I have never felt more violated, belittled, and vulnerable.
>
> […]
>
> [Z] was young when he did this to me but I was younger... he took advantage of me as a child and destroyed my life...He had two and a half years to remove the images but instead left them up for the world to view. [Z] is set to start his career and graduate in four years. Because of his actions he took that opportunity away from me.[49]

The young woman stopped attending school, fell into a downward spiral, and experienced depression and anxiety.

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[48] 2016 ONCJ 547 at 2.
[49] 2016 ONCJ 547 at s 3-4.

The Court discusses "sexting" and refers to this as a case of "non-consensual sexting."[50] The Court also refers to the new *Criminal Code* provision criminalizing non-consensual distribution of intimate images, and writes:

> Incidents of non-consensual distribution of intimate images and non-consensual sexting dove tail the increased use of technology for communication purposes in our society, and the escalating risk-taking behaviour that sexting leads to, which has in turn created a new class of vulnerable persons requiring the Court's protection, and a crime that is more prevalent in our community than was previously the case.[51]

The Court notes that Mr. Z was originally charged with possessing, accessing, and distributing child pornography, and he was severely stigmatized when his school community learned of the charges.[52] Because he had already served four days in pre-sentence custody, and because a criminal conviction for harassment would impact his promising music career, the Court ultimately suspends Mr. Z's sentence and places him on a non-reporting probation period for twelve months.

Emails between Mr. Z and the victim are included in an Appendix to the decision. In one email, Mr. Z wrote:

> Yes 1000+ saw it but that is 1000 in the world out of the billions of people. […] These thoughts might not be the most comforting thoughts right now hut it is the truth. I'm not here to justify my actions, I'm just trying to take responsibility and make things better for you and make you view it in different angle. Nudes of celebrities and important figures get leaked all the time but they keep their head strong and are able to get over it, if those high profile figures can, you can too.[53]

When he suggests that they may be able to get together again someday, the young woman replies, "for your own safety and for my sanity, stay the hell away from me. Forever."

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[50] 2016 ONCJ 547 at 22.
[51] 2016 ONCJ 547 at 21.
[52] 2016 ONCJ 547 at 6.
[53] 2016 ONCJ 547, Appendix.

Mr. Z was given a suspended sentence, 12 months' probation, and additional orders including no contact with the victim, and a prohibition on possessing any intimate images of the victim.

v. 2016 ONSC 2154

In **2016 ONSC 2154***,* 54-year-old Mr. B was found guilty of criminal harassment after sending repeated text messages to a woman he had an affair with, Ms H, after she ended the affair. In one message, he threatened to go "Rambo" on the victim, and then said he was on his way to her house. He also left a disturbing message on her voice mail and repeatedly texted her. Ms. H also alleged that he had non-consensual sexual contact with her, but Mr. B was acquitted of that charge. Mr. B received a suspended sentence and was put on probation for 18 months, additional orders included a DNA order, a 10-year weapons prohibition, a no contact order and an order to keep distance from Ms. H. The Court rejected defence counsel's request for a conditional discharge, noting the seriousness of the "Rambo" threat. It noted that "Relationship partners like [Ms. H] deserve to be listened to when they say that it is over. Persistent harassment of a partner is simply inexcusable."[54]

Also see: 2016 ONSC 594 (Trial).

vi. 2016 ONCJ 35

2016 ONCJ 35 involves criminal harassment charges stemming from Twitter messages directed at two feminist activists. Mr. E was known in for having problematic communication with female Twitter users and many had accused him of harassing women.

This case examined the use of hashtags, Twitter handles, sub-Tweeting, and indirect Tweeting. The court considered the volume of Tweets, the content of the Tweets, and the women's responses to Mr. E's Tweets.

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[54] 2014 ONCA 324 at para 25.

The Court found that Mr. E could not have known that Ms. G felt fearful. Blocking him and telling him to stop Tweeting at her or about her was not sufficient notice that his behaviour was causing her fear. The court found that no one had directly told Mr. E that his behaviour was harassing Ms. G and that his Tweets were neither threatening nor sexual on their face. However, the court did find that Mr. E was reckless as to whether Ms. G was harassed. He was aware that she did not want to hear from him, but he continued to Tweet at her handle or in reference to her. In assessing her fear, the court stated:

> That [Ms. G] is a woman is relevant. Crown counsel submits that "a reasonable person, especially, a woman, would find [Mr. E's] tweets and behaviour concerning and scary." Women are vulnerable to violence and harassment by men, and [Ms. G] advocates for understanding and change. I must judge the reasonableness of [Ms. G's] fear in all the circumstances and on the evidence.[55]

The court held that Mr. E's volume of Tweets were harassing, but that there was no conclusive evidence of contact that could cause her a reasonable sense of fear in this case.

In the case of Ms. R, Mr. E also Tweeted at her repeatedly and she explicitly asked him to stop multiple times. The court held that Mr. E's cruel and repetitive Tweets were harassing, but that she did not express any feelings of fear to the police, only frustration. Ms. R did state that she was concerned his behaviour would go from online to offline. She also responded to Mr. E forcefully on Twitter. The courts held that Ms. R did not express fear on Twitter or in her testimony.

The court held that although both women were sincerely harassed by the offender's tweets, and that the offender knew, or ought to have known, that the women felt harassed,[56] Mr. E's tweets did not amount to criminal harassment because neither woman reasonably communicated fear for their safety.

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[55] 2016 ONCJ 35 at 442.
[56] 2016 ONCJ 35 at 77, 83.

The Court concluded by stating that "asking a person to stop reading one's feed from a freely chosen open account is not reasonable. […] To subscribe to Twitter and keep your account open is to waive your right to privacy in your tweets. […] Blocking only goes so far, as long as you choose to remain open."[57]

Mr. E was acquitted.

vii. 2015 ONCJ 741

In **2015 ONCJ 741**, the accused, Mr. T, was charged with voyeurism, mischief, and criminal harassment after capturing images of a woman's buttocks while she was wearing a bikini on a public beach. Mr. T took videos of many women, zooming his camera lens to a three to four-foot vantage point, and hiding the camera in a rolled-up beach towel. The complainant, Ms. S, reported that Mr. T had done the same thing twice a few years earlier in the same part of the beach. There was no evidence that he ever posted the videos online.

Mr. T was ultimately found guilty of mischief and sentenced to seven days in prison and two years' probation. The voyeurism charge against Mr. T was dismissed because the Crown could not prove that the images were taken for a sexual purpose. The Court wrote that the photos could have been taken for an aesthetic purpose. The criminal harassment charge was also dismissed because it was not clear that the victim feared for her safety. In assessing Ms. S's fear, the Court referenced the audio recording of her 9-1-1 call to police and noted that "her voice does not sound panicked or distraught."[58] The Court also did not find that Mr. T was "watching or besetting" Ms. S, and could not conclude that he knew, or was reckless to the fact that he was harassing women on the beach.[59]

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[57] 2016 ONCJ 35 at 83.
[58] 2015 ONCJ 741 at para 39.
[59] 2015 ONCJ 449 at paras 41-42.

Also see: 2015 ONCJ 449 (Trial).

viii. 2013 ONCJ 829

In **2013 ONCJ 829**, Mr. A was convicted of criminal harassment after following his ex-girlfriend, Ms. S, to work and home, texting, Facebook messaging and calling her repetitively, and using fake Facebook accounts to repeatedly contact her after their breakup. Ms. R communicated to Mr. A that she felt harassed and scared. In one of their online exchanges, Mr. A wrote, "Until the day that I die, I will always follow you. At work you're going to see me, in front of your house you're going to see me, I'm just going to be everywhere".[60] Mr. A also stated that he hoped Ms. S would call the police because then he could take her to trial and publish her case on his website "so that when people Google her they will know who she really is."[61] In one Facebook message, he wrote:

> Just in case for your references [sic] if the case goes to trial your lawyer who you have to pay $5000 will have to provide me your phone records and I will supeona [sic] every single guy you had contact with from the time I met you until the offence date. So these guys will come to court and testify to describe your character.

He closed that message by writing, "I am only letting you everything in advance cause I still care for you."[62]

She blocked him on Facebook and an app they were using to communicate, BuddyFriend. She also changed her cell phone number.

Although Mr. A and Ms. S led opposing evidence about the Facebook messages and subsequent events, the Court found Ms. S' evidence to be forthright, credible, reliable and trustworthy. Mr. A's Facebook message stating "You got me crazy now, so I can be your best friend or your worst. Make your choice wisely, please!" was confirmed as a threat to Ms. S' safety.[63] While the Court

[60] 2013 ONCJ 829 at para 44.
[61] 2013 ONCJ 829 at para 42.
[62] 2013 ONCJ 829, Appendix A.
[63] 2013 ONCJ 829 at para 116.

expressed concern about the credibility and authenticity of Facebook messages and text messages (many of which Ms. S copied into a Word document before submitting as evidence) it nonetheless found Mr. A guilty of criminal harassment.

2015 ONSC 5842 (Application by accused for appointment of counsel); 2013 ONCJ 829 (Trial); 2013 ONCJ 828 (Application for Stay of Proceedings); 2012 ONSC 7554.

ix. 2014 ONCJ 712

In **2014 ONCJ 712**, Mr. G was charged with criminal harassment for visiting Ms. P's workplace and sending her repeated text messages. Mr. G initially met his female friend, Ms. P, online on a friendship/dating website. Although she wanted a friendship, he wanted a romantic relationship. He often brought her gifts, and they spoke frequently.

One day, after not being able to reach her on the phone, Mr. AG sent Ms. P an excessive number of text messages. When she received the messages later that day, Ms. P telephoned Mr. AG and told him she did not want to be contacted again. He then said that Ms. P's physically abusive ex-husband gave her what "she deserved" and threatened to "hunt her down" because he knew where she lived. The next day, Mr. AG visited Ms. P's workplace and demanded that she pay him money that she owed him. He commenced with a small claims court proceeding.

The Court found that the threat to "hunt her down" was made in the "context of [Mr. AG] believing that he was owed money by [Ms. P]. He was signaling to her that he was going to come after her for the money he thought he was owed."[64] Based on the telephone call and workplace visit, the Court found that "it is more probable than not that [Ms. P] was reasonably concerned about her personal safety. This meets the balance of probabilities of standard." However, the Court held that, "The criminal standard of beyond a reasonable doubt is a much higher standard and I

[64] 2014 ONCJ 712 at para 25.

am not satisfied on that standard that [Ms. P] feared for her safety."[65] Mr. AG was ultimately acquitted of criminal harassment. However, the Court imposed a twelve-month recognizance requiring AG to keep the peace, be of good behaviour, and avoid any future contact with Ms. P.

x. 2014 ONCJ 103

In **2014 ONCJ 103,** Mr. G was charged with criminal harassment. He had an intimate relationship with a woman, Ms. M, for around three years, who he met at a hospice support group after the death of Ms. M's husband. After Ms. M ended the relationship Mr. G continued calling her and coming to her home uninvited. He had previously called her friends and told them personal details about her. After Ms. M contacted the police, Mr. G stopped communication. Years later he saw her at church with her boyfriend where Mr. G communicated that he wanted to continue a relationship with her and began leaving Ms. M unwanted voicemails over several days. The voice messages were several minutes long. The court stated that the voice messages consisted of Mr. G "bemoaning the fact that the complainant is with another man, speaking of his continuing love for her and speaking of his inability to get over his love for her. There is nothing specifically or explicitly threatening about them; he does not threaten anyone with bodily harm, he does not threaten harm to himself, although he does refer to the fact that his unrequited love is continuing and it is having an effect on his health."[66]

He also called her new boyfriend. Ms. M told Mr. G not to call anymore and then called the police. The court found that she was distraught and upset about the messages but because she never stated she felt fear for her safety, Mr. G was acquitted. The court noted:

[65] 2014 ONCJ 712 at para 30.
[66] 2014 ONCJ 103 at para 8.

> If the charge had been framed under section 372(3) of the *Code*, I would not need to assess any fear of the complainant and the trial would continue on its facts until concluded. Unfortunately, there is no jurisprudence I am aware of that makes 372(3) an included offence in section 264(1), (2) or (3).[67]

xi. 2014 ONCA 324

In **2014 ONCA 324** Mr. S persistently communicated with his ex-wife using a fake Facebook account. During the couple's marriage, Mr. S monitored his wife's phone calls, tried to install tracking devices on her computer, tried to break into her email and MSN accounts, and used a pseudonym on Facebook to communicate with her. After they separated, Mr. S created a Facebook profile pretending to be a recently divorced man and used the fake account to ask his ex-wife for relationship advice and try and extract information about her. Although his ex-wife quickly figured out the ruse, she played along, telling him that he needed to move on with his life. There was evidence that Mr. S was obsessed with his ex-wife, including keeping semi-nude photos of her after their break up and sneaking into her house to look at her under the covers while she slept.

After messaging back and forth using the fake account, Mr. S went to his estranged wife's home and strangled her in bed. After taking their daughter to his parent's house, he then returned to the murder site to attempt suicide and to have sex with the victim's corpse. Mr. S had used his wife's cellphone to send messages to and call several people, one of which suggested the murder was premeditated. Mr. S was found guilty of first-degree murder but appealed the verdict on the grounds that the verdict of first-degree murder was unreasonable as it was not planned and deliberate and did not involve an element of harassment, and that the jury was misdirected at trial due to a decision tree the judge created to better understand the evidence. The Court of Appeal dismissed his appeal, finding both planning and deliberation, and holding that the decision tree given to the jury was not misleading.

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[67] 2014 ONCJ 103 at para 17.

xii. 2012 ONCJ 691

In **2012 ONCJ 691**, Mr. K was found guilty of theft under $5,000 and criminal harassment after stealing his ex-partner's phone, address book, and cellphone, and using those items to distribute links to her nude photos that Mr. K posted on a website to 20 or 30 of their friends, relatives and church acquaintances. Ms. K met Mr. K on the internet and they were later married. During their marriage, they had taken nude photos and videos of Ms. K, which he had promised to delete after they broke up. Ms. K entered a new relationship that Mr. K opposed. To punish her for entering a new relationship against his wishes, he then posted his ex-partner's personal information on a dating site, prompting phone calls and visits from strange men at night. He also left a pornographic video at her new partner's residence, calling it a "Valentine's gift."

Mr. K denied physically hurting the victim, stealing her property, or distributing her intimate images. The Court found that his testimony is not credible, and held the ex-partner was harassed, Mr. K knew she was harassed, and that she reasonably feared for her safety. Mr. K was sentenced to 90-days imprisonment served on weekends, a 6 month conditional sentence, three years of probation, and additional orders including a firearms prohibition, no contact with the victim and members of her family, to keep his distance from where Ms. K may be, to destroy any photos of videos of Ms. K in his possession, to remove any information he has about Ms. K from any computer he has access to, and to not "publish, post or communicate directly or indirectly with anyone using any form of technology, including phone, text, email, internet communication or electronic information in any form or by any means, any information that could identify Ms. K".[68]

Also see: 2012 ONJC 522 (Trial).

xiii. 2012 ONCA 503

[68] 2012 ONCJ 691 schedule 1.

In **2012 ONCA 503**, Mr. S, a 68-year-old man with a severe drinking problem, visited his ex-partner, Ms. M's, home uninvited and banged on the door until the police intervened. Mr. S had a history of violence and Ms. M had to visit domestic violence shelters on five occasions during their relationship. He did not accept that they were separated and made repeated phone calls to Ms. M, calling her a prostitute and threatening to kill her if anything happened to their son. Ms. M saved 12 recordings of the calls, which she provided to the police. The trial judge convicted him of criminal harassment and uttering threats but also found that Mr. S was not criminally responsible due to alcohol related dementia.

On appeal, Mr. M's argued that he did not receive effective counsel because his counsel put his mental state in issue without his consent, and that the evidence did not make out his offence for criminal harassment or show he was not criminally responsible on account of mental disorder. Mr. M failed to demonstrate either of these arguments were correct and the appeal was dismissed.

Also see: 2007 ONCJ 392 (Trial); 2007 ONCJ 393 (NCR finding).

vi. 2012 ONCA 419

In **2012 ONCA 419**, 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 that 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 months' 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: [2008] OJ No 2234 (ONSC) (Sentencing).

xiv. 2011 ONCA 834

In **2011 ONCA 834**, Mr. H, threatened to mail his ex-girlfriend's nude photos to her neighbours, coworkers, and others. When he eventually distributed the photos, his ex-girlfriend became very ill, sought short-term disability benefits, and received counselling. Mr. H was charged with extortion and nine counts of criminal harassment.

At the trial level, the Court noted that Mr. H "used the existence of the embarrassing photos and the threat that they would be disclosed to family [...] as a tool to bend [the victim's] will to suit his needs"[69] Although he was guilty of extortion, the Court was not satisfied that H was also guilty of criminal harassment. As the Court held, "The effect on [the victim] is better described as vexing

[69] 2009 CanLii 34031 at para 13.

and annoying. I have not been convinced beyond a reasonable doubt that she was emotionally traumatized or affected to the extent required by section 264."[70] The court also stated, "While the photos in question were 'tools of coercion', the fact remains that they were taken with Ms. A.'s consent."[71] Mr. H was sentenced to 18-months' house arrest, followed by 3-years' probation.

An appeal of the conviction was dismissed.

Also see: [2009] 83 WCB (2d) 760 (ONCJ) (Sentencing); [2009] OJ No 1378 (ONCJ) (Trial).

xv. 2011 ONCJ 133

In **2011 ONCJ 133**, Mr. D, a 34-year-old male, was found guilty of four counts of voyeurism. Mr. D and the victim were in a relationship when Mr. D made a sexually explicit video of them without her knowledge or consent. Following the end of the relationship, Mr. D posted the video on a Facebook page and sent an email to 13 of her friends and family, inviting them to watch the video along with an attachment of the video.[72] The Crown failed to prove that the posting resulted in a general release of the video on the internet,[73] but the posting was an aggravating factor on sentencing. The accused continued to express a view that the incident was blown out of proportion, suggesting that the woman wanted to be photographed and only complained when her family

[70] 2009 CanLii 34031 at para 31.
[71] [2009] OJ No 1378 (ONCJ) at para 5.
[72] As the Court notes, "The plan was designed to achieve maximum embarrassment. On Mr. [PD's] own evidence, he published the video to humiliate the victim. Given his past relationship with the complainant, he was aware of the fact the complainant held her brother in high regard and that he was someone she looked to for approval. It was no accident that [PD] chose to forward the email to her brother to 'prove' to the victim he possessed a sex video of her. In doing so he achieved his purpose of maximizing the embarrassment to the victim. In the words of the victim, he 'tortured me by telling me he was sending the video to my brother.' By forwarding the video to their mutual friends, he also ensured, by design, the continued and long term victimization of the complainant." (emphasis added): 2011 ONCJ 133 at para 21
[73] 2011 ONCJ 133 at para 5. However, the Court also finds that, "The accused lost control of the video when he posted it on Facebook and forwarded it as an attachment to emails. But for the fact that the accused was almost immediately contacted by the police resulting in him attempting to cover his tracks by closing his newly minted Facebook account, the distribution of the video would likely have been much more extensive. The steps taken to limit its distribution appeared more by fluke than design": 2011 ONCJ 133 at para 34.

became aware of the video and claimed only to release the video after he found out of her infidelity, which the court found was untrue.

The court stated:

> The most serious of the voyeurism convictions is that of the offence under s. 162(4) of the Code, of distributing the video. The distribution of the video was a planned and contemplated act. It was not the result of a spontaneous outburst of emotion. To effect his plan, [Mr. D] had to think first of the plan, then open a Facebook account specifically to execute his plan; he had to post the video to his Facebook page and he then had to send emails with the video as an attachment to some of the people who could not access Facebook. It took some time to both hatch and execute the plan.
>
> The plan was designed to achieve maximum embarrassment. On [Mr. D's] own evidence, he published the video to humiliate the victim. Given his past relationship with the complainant, he was aware of the fact the complainant held her brother in high regard and that he was someone she looked to for approval. It was no accident that [Mr. D] chose to forward the email to her brother to "prove" to the victim he possessed a sex video of her. In doing so he achieved his purpose of maximizing the embarrassment to the victim. In the words of the victim, he "tortured me by telling me he was sending the video to my brother."
>
> By forwarding the video to their mutual friends, he also ensured, by design, the continued and long term victimization of the complainant. As expressed by Ms. S., it created a negative effect on her reputation by creating a negative image of her. As Madam Crown characterized it, "It poisoned the way people saw her."
>
> The embarrassment was not just isolated to the fact the video was disclosed but that the accused also identified the complainant, whose face could not be seen, as being the person on the video. This ensured that the victim's embarrassment would be relived whenever she meets a person who she knew viewed or was aware of the video. The impact of this was demonstrated when the complainant in her victim impact statement explained how she felt when she had to leave a public function to avoid contact with one of the recipient's of the video and how she had to change her gym, as one of the recipients also was a member of that gym.
>
> I find it also aggravating that the material circulated was a video as opposed to a single still picture.[74]

[74] At para 20-24.

His failure to take responsibility, blaming the victim, and failure to understand the severity on the victim's sexual integrity were factors related to deterrence, as was his use of social media to conduct the violation.

The court stated:

> In addition to the deterrence to the accused, this offence is one where general deterrence plays an enhanced role. With the proliferation of social networking sites, the opportunity to misuse such sites is significant and with devastating results to the victims; many of the impacts are significant and long lasting. This is one of those rare cases where general deterrence may actually play an enhanced and meaningful role in sentencing. The principle of general deterrence has been the subject of considerable judicial comment with great concern expressed over its over-use to justify incarceration, but it remains a recognized sentencing principle. Satisfying general deterrence when it plays an enhanced role is difficult within the context of a conditional sentence. The significant denunciatory effect of jail is needed in expressing the message.[75]

Mr. D also taunted the victim in further emails after she asked him to stay out of her life, including threatening her that things would get worse and that if found out he got and STI from her, she had better be far away. He was sentenced to 7 months globally. 5 months for distributing the video, 2 months of incarceration for the voyeurism and 2 months for the criminal harassment (concurrent), as well as a probationary period of 2 years with an order to attend programming, a ban on weapons and a no contact order with the victim. With respect to PD's distribution of a voyeuristic recording, the Court wrote "The offence of distributing the video under section 162(4) is the most serious of the voyeurism offences. Had the video been shown to have been posted on the internet I would have considered a sentence of 6 months. However, in light of the fact its circulation was more limited, a sentence of 5 months is appropriate."[76]

xvi. 2010 ONCJ 3584

[75] At para 52.
[76] 2011 ONCJ 133 at para 56.

In **2010 ONCJ 3584**, 23-year-old Mr. G appealed his conviction and sentence of criminal harassment. Mr. G was convicted of criminal harassment after sending his ex-girlfriend incessant MSN messages and annoying emails, repeatedly phoning her, and making surprise visits to her home. On one occasion he yelled at her, backed her into a wall and put his arms on either side of her, frightening her. During their on again and off again relationship, their online conversations varied between fighting, light banter, and sexual conversation. At one point he said he would follow her and sit next to her in class, which made her feel fearful. Once they were back in school and no longer dating, Mr. G messaged Ms. C and stared at her in class in ways that made her uncomfortable. The trial judge concluded that G's conduct caused the victim emotional distress and made her fear for her safety. The fear was found reasonable, "especially having regard to the defendant's mood swings."[77]

At appeal, the conviction was quashed and an acquittal was entered. The appellant judge found that the trial judge erred in concluding that Ms. C feared for her safety and that her fear was reasonable. Mr. G's contact was persistent, childish, and annoying but not threatening or harassing, and even if it were, the judge found that there was no evidence that would support a finding that Ms. C reasonably feared for her safety.

Also see: 2009 ONCJ 28 (Trial).

xvii. [2009] 84 WCB (2d) 716 (ONSC)

In **[2009] 84 WCB (2d) 716 (ONSC)**, the Crown sought a publication ban for the victim who had a positive and influential reputation in the community. Mr. M stole intimate photos from the victim's car and then attempted to extort money from her. He was charged with one count of extortion and one count of possessing pictures belonging to the complainant contrary to section

[77] 2009 ONCJ 28 at para 40.

355(b) of the Criminal Code. The accused was expected to plead guilty to criminal harassment and have the extortion charged withdrawn.

xviii. 2007 ONCJ 194

In **2007 ONCJ 194,** Mr. O harassed his former common law spouse, Ms. M, by repeatedly sending her emails (while pretending to be her new boyfriend and containing private details her boyfriend would not have known), making repeated phone calls to her cell phone, and surreptitiously watching her in her home. She received around 5 to 7 "hang up calls" per day, which made her change her cell phone number.

Two years earlier, Mr. O had been acquitted of assaulting Ms. M. While on bail for the assault charge, which included an order to stay away from her home, Mr. O breached that his bail conditions when he drove near the home on one occasion and disconnected a surveillance camera she had installed on another.

At trial, defence counsel argued that the victim fabricated the harassing emails and "insert[ed] an IP Address associated with [the defendant]" in the email headers. The Court rejected this, finding that Mr. O authored the emails, and also that he "beset or watched" the victim's residence. Mr. O was convicted of criminal harassment.

He was given a suspended sentence, placed on probation for 18 months, orders included no contact with Ms. M and to keep his distance from places she lives, works or studies.

Also see: 2007 ONCJ 151 (Trial).

xix. 2005 CanLII 34564 (ONCA)

In **2005 CanLII 34564 (ONCA),** Mr. O appealed his conviction of criminal harassment arguing that his criminal record should not have been put to the jury, and that the trial judge had erred in

instructing the jury on the elements of harassment and the meaning of beyond a reasonable doubt. His appeals were dismissed.

Mr. O, met the complainant, Ms. F, when she was 15 years old and she was working at her family's booth at an exhibition. He persuaded her to give him her phone number and began to make calls that progressively became aggressive, threatening and derogatory. She told Mr. O she was not interested in hearing from him or seeing him, but the calls continued. The police gave Mr. O a warning not to call Ms. F anymore, but he persisted. He left a message on her answering machine threatening to rape and kill her and bomb her house and family. He was convicted of uttering threats and was sentenced to 30 days' imprisonment, three years' probation including an order not to contact Ms. F.

Shortly afterwards, he sent Ms. F a Christmas card which she threw away.

Nine years later she received a handwritten letter from Mr. O that had been sent from a mental health institute, which made her feel fearful. She showed the police, who copied the letter, and sent the letter back, return to sender. 18 months later she received a second letter, this one mailed from with the city she lived in. The letter was cryptic and seemed to blame her for sending him to jail.

The court held that these two communications could be considered "repeated" communication under the harassment provision. He was convicted of harassment and sentenced to three years' imprisonment, and two years' probation.

Also see: [2006] SCCA No 199 (SCC); [2005] 66 WCB (2d) 486 (ONCA).

xx. [2003] 58 WCB (2d) 163 (ONCJ)

In **[2003] 58 WCB (2d) 163 (ONCJ),** Mr. M was charged with assault, uttering threats, sexual assault, harassing phone calls, breach of recognizance, harassment, and assault against Ms. M. Mr. M had previously been arrested for assaulting Ms. M and released with a no contact order.

Ms. M and Mr. M were married and had two children. Ms. M stated that while living together Mr. M threatened to harm Ms. M's niece who was living with them, sexually assaulted Ms. M, physically assaulted Ms. M, physically assaulted their child, and threatened to kill Ms. M if she left. She said he would often threaten her if she spoke to the police or victim services. The couple later separated. Ms. M stated that Mr. M continued to call her, requesting sexual contact with her, describing which lights were on in her house, trying to arrange to come to her home, and threatening her.

At trial Ms. M stated that she did not tell Mr. M about her second pregnancy until two weeks before the birth in order to protect the pregnancy from Mr. M. She instead told him she had cancer, which was reported in a newspaper article following the birth. Ms. M had also lied about her professional medical credentials in the past. There were other major discrepancies in her evidence. This impacted her credibility at trial and the court could not accept her testimony. Phone records were not entered into evidence to corroborate her claims that Mr. M called her.

All charges were dismissed.

xxi. [2001] OJ No 2053 (ONCJ)

In **[2001] OJ No 2053 (ONCJ),** Mr. L distributed explicit videotapes of his ex-girlfriend to her neighbours, together with a letter, supposedly from her, offering sexual favours. He also slashed her tires, attempted to burn down her family cottage, and made hundreds of anonymous phone calls to her home and office. In one anonymous call, Mr. L had his new girlfriend recite the addresses of the victim's friends and relatives, likely in an effort to intimidate her.

When L was arrested, police found that he was carrying his passport, Canadian and American money, and a black leather organizer containing lists of the names, addresses and telephone numbers of his ex-girlfriend's friends and relatives. The Court found that this was evidence of an

organized and concerted effort "to infiltrate the victim's life in order to effectively and criminally harass her."[78]

Mr. L was convicted of criminal harassment and sentenced to 2-years-less-a-day imprisonment, followed by 3-years' probation, additional orders included a prohibition from alcohol and drugs, a prohibition from being in a certain region, no contact with the victim and several other people, and a firearms prohibition.[79]

Also see: [2001] 50 WCB (2d) 270 (ONSC); [2000] OTC 901 (ONSC).

vii. 2000 CanLII 5759 (ONCA)

In **2000 CanLII 5759 (ONCA),** the Crown appealed Mr. B's conviction suspended sentence and three years' probation for criminal harassment, assault, uttering threats and failing to comply with judicial interim release orders. The Crown argued that the sentence was unfit considering the seriousness of the crimes.

Mr. B was married but had dated Ms. E before and during his marriage. Ms. E ended the relationship after Mr. B called her cruel names and became violent. He would not accept that the relationship was over and continued to phone her and visit her house and workplace uninvited. Ms. E called the police and requested protection from the harassment. Soon after, Mr. B sent her a long letter that acknowledged the physical abuse and apologized for not leaving her alone but asked her to reconsider the relationship. Ms. E later reported the previous assault and Mr. R was arrested and released on a promise not to contact Ms. E or two of her friends, stay away from Ms. E's home and workplace, and to not possess a firearm. Ignoring the promises, Mr. B came to Ms. E's home. Over the next few months, he continued to pursue her at her workplace and home, including threatening her with a fake gun and threatening suicide. He was arrested and released

[78] [2001] OJ No 2053 at para 44.
[79] [2001] OJ No 2396 at para 16-17.

several times. Mr. R was eventually convicted of criminal harassment, assault, uttering threats and failing to comply with judicial interim release orders.

The court of appeal noted that:

> Domestic violence and harassment cases most often involve conduct directed by a male spouse or partner against a woman. Yet offenders who feel empowered to harass a partner or former partner with impunity will not necessarily confine their behaviour to that person, but may also harass and terrorize her friends and family members. As this case illustrates, the respondent somehow perceived that his love and need for the complainant allowed him to be an unwanted presence in her life and in the lives of her family and associates, and to threaten and terrorize them to achieve his ends. His irrational actions made him a menace to Ms. Emmett and to those close to her.
>
> Consequently, when an offender like the respondent comes before the court for sentencing, it is important for the court to denounce his conduct in the clearest terms by fashioning a heavy sentence.[80]

Taking into account the serious aggravating factors including an escalating pattern of harassment, threats of homicide and suicide with a realistic looking weapon, failure to comply with release orders, and avoiding the police, the court agreed that the original sentence was unfit. It imposed a sentence of 30 months' imprisonment, three years' probation, firearms prohibition, no contact with Ms. E, her two friends or their family members, and counselling.

viii. [2000] 45 WCB (2d) 394 (ONCA)

In **[2000] 45 WCB (2d) 394 (ONCA)**, Mr. K, a 39-year-old man, met a 14-year-old girl at a McDonald's. He made sexually explicit comments to the girl, asking her inappropriate questions about her sexual experience. The girl denied giving Mr. K her phone number. Mr. K claimed the girl was open to his comments, have given him her phone number, and he was not aware of her age. She

[80] 2000 CanLII 5759 at para 35-36.

told her friends about the incident and they told the manager of the restaurant and wrote down his licence plate number.

The next day, Mr. K called the girl and made additional sexual comments. She told him not to call her, calling him a pervert and saying she would get in trouble if he called again. She noted the number he called from, which was Mr. K's workplace. She was concerned enough to call the police. The girl stated she received several hang up calls over the next few days, some of which were from the same number, which made her feel afraid that Mr. K was stalking her.

Mr. K was convicted of harassment and sentenced to 18 months imprisonment.

On appeal, Mr. K argued that the complainant did not reasonably fear for her safety, was not harassed, and he was not aware he was harassing her, arguing the hang up calls would be better to be suited under the less serious harassing communications provision. The appeal court found that Mr. K had repeatedly communicated with the girl by calling her multiple times, was aware he was harassing her, and the girl had a reasonable fear of Mr. K's calls.

The appeal was dismissed.

VIII. PRINCE EDWARD ISLAND

i. 2017 PESC 34

In **2017 PESC 34**, Mr. A and Ms. M met at an AA meeting. They became friends and later became intimate. Mr. A had a history of harassment and began phoning, emailing and texting the complainant continuously once they became intimate. Mr. A sent 115 pages of 88 emails over a 10-day period that included bizarre, sexual, and threatening content. She contacted the police told Mr. A to stop communicating with Ms. A. He continued to text and email and would leave unwanted pamphlets on her property. He pleaded guilty to criminal harassment and was sentenced to one-year incarceration, three years' probation, and additional orders including no contact with the victim, to participate in an electronic supervision program during probation, to inform his

probation officer of any relationships he has with a female person, and a firearms prohibitions for life.

ii. [1995] PEIJ No. 177, (PEIAD)

In **[1995] PEIJ No. 177 (PEIAD),** Mr. W pleaded guilty to harassing the complainant after their romantic relationship ended. He called her vulgar names in a public place, assaulted her, visited her uninvited, made persistent phone calls, and broke into her residence and damaged her personal property. She found him in her home waiting with a large knife.

He was sentenced to 36 months of probation, and ordered not to contact the victim, her family or friends. The Crown appealed the sentence, seeking jail time, which was dismissed. However, an additional firearms prohibition and an order to surrender any weapons was added to the sentence.

IX. QUEBEC

i. 2014 QCCQ 12216

In **2014 QCCQ 12216**, a 19-year-old woman, Ms. S was convicted of uttering threats but acquitted of criminal harassment.

She reposted an article about the Prime Minister of Quebec on Twitter and writing, “Good get the bitch out of there before I bomb her.” The Court noted that Ms. S had an operating mind when she posted the tweet and had the requisite intention to be taken seriously. The harassment charge was not made out, however, because the Court did not find that the victim feared for her safety.

X. SASKATCHEWAN

i. 2017 SKPC 49

In **2017 SKPC 49**, Mr. D was accused of harassment, uttering threats, and breaching an undertaking.

After his wife filed for divorce, Mr. D began harassing her. He threatened to damage her van and he let the air out of the tires. Ms. D moved to a shelter and received an emergency intervention order that included an order that Mr. D must keep his distance from the home, school and work places of Ms. D and her children.

Ms. D later took possession of the family home. Mr. D frequently texted, emailed, yelled at her, and took photos around where she lived, which made Ms. D feel monitored. He claimed the photos were for a civil law proceeding, but the court held that they were for spying purposes. At trial she had been aware of some of the photographs exhibited, but not was not aware that Mr. D followed her to the shelter, her place of work, her church, out of town and when she was driving to take photographs of her. He once entered her home and threatened to harm their child if he tried to stop him from being in the home.

He was found guilty of uttering threats and harassing her with his repeated communication, monitoring and threats.

When considering Ms. D's fears, the court stated:

> In respect of the contention that she would have taken some kind of action to protect herself if she was actually afraid, I find as follows. First of all it is not a universal truth that a spouse in fear will take action. There are many instances where spouses in fear have lived for decades with an abusive partner. Secondly, LD did do something. She started keeping a journal. She went to see a lawyer. She went to Interval House with her children. She was able to obtain an EIO. Later she got the consent order. She got the trailer removed from the residence. She did what she could.
>
> As previously indicated, I accept that LD had over her adult life learned to live with her fear and to cope with it. That did not mean it was not real or that it is not there.[81]

[81] 2017 SKPC 49 at paras 200-201.

Her fear was found to be reasonable. He was convicted of harassment and uttering threats, but acquitted of breaching an undertaking.

ii. 2016 SKQB 177

In **2016 SKQB 177**, Ms. W, a 61-year-old woman, had previously been convicted of harassing phone calls, assault on a police officer, public mischief, unlawfully being in a dwelling home, and breaching an undertaking in 2013.

The charges were related to a failed relationship with her son and grandchildren. A few days after those charges expired, Ms. W contacted her son. Ms. W had a problem with alcohol and her son did not want her in the lives of his children. He said he did not want contact and she persisted to send him emails. She was charged with harassment and pleaded guilty. She was sentenced to three years' probation, including a prohibition on alcohol. Ms. W appealed the sentencing decision, but it was dismissed, as the sentence was appropriate, if not lenient.

iii. 2011 SKCA 2

In **2011 SKCA 2**, Mr. M appeal his sentence imposed on a conviction for criminal harassment and mischief. He was in his 30s, Indigenous, and struggled with drug addiction. Mr. M had rekindled a romantic relationship while out on statutory release for another conviction. It ended after a few months and Mr. M struggled with accepting the break up. He called her numerous times. She left his belongings out front of her home so he did not need to come into her house, which he responded to by kicking open her back door. He left after she called the police. Four days later, he used his car to block her car from leaving the parking lot and demanded she return his things. When she returned them, he asked her for a kiss. When she refused, he ripped the window out of her car door. She took her phone to call the police but he smashed it before she could. Following the confrontation, he continued to call her home and work up to 60 times a day, waited outside her home and work, and sent her emails with photos of him pointing a handgun at his own

head, threatening her with his own suicide. He had over 80 previous convictions, including violent offences against this same woman. Appeal dismissed.