

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

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## A. OFFENCE ELEMENTS

### Extortion

**346 (1)** Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

**(1.1)** Every person who commits extortion is guilty of an indictable offence and liable

**(a)** if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

**(i)** in the case of a first offence, five years, and

**(ii)** in the case of a second or subsequent offence, seven years;

**(a.1)** in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

**(b)** in any other case, to imprisonment for life.

## B. SELECTED CASE LAW

### I. SUPREME COURT OF CANADA

#### i. [1999] 3 SCR 759

In **[1999] 3 SCR 759** the Supreme Court of Canada held that manipulating an individual for sexual favours can constitute criminal extortion.

The Court stated, “[f]reedom of choice in sexual matters is at least as highly valued as freedom of choice in matters concerning property. Accordingly, there is no reason to think that extortion of sexual favours is not also a criminal offence.”<sup>1</sup> Although the case involved the distribution of intimate images, the Supreme Court did not address whether sex carried out under threat of intimate image disclosure can be considered consensual.

Mr. D pretended to be a photographer and offered to help women and girls develop modelling portfolios. He took nude and semi-nude photos of victims aged 15-20, and later threatened to release the photos if the victims did not have sex with him. In one instance, the defendant told a 19-year-old woman that he would distribute her nude photos unless she paid him money. When she could not pay, he offered to give the photos back in exchange for sexual favours. He threatened to publish the photos in a pornographic magazine and send them to the young woman's father if she did not comply with his demands. One of the women had sex with Mr. D over a period of months in exchange for strips of the negatives of the photographs he had taken of her.

The defendant's convictions on two counts of extortion and five counts of sexual assault were ultimately upheld, and the appeal was dismissed.

Also see: [1998] 159 Nfld. & PEIR 273 (Nfld CA) (Appeal); [1993] N.J. No. 257 (sentencing); [1993] N.J. No. 143 (trial); [1992] N.J. No. 342 (ruling on chaste character of complainant and defence of honest belief).

### II. ALBERTA

#### i. 2014 ABCA 221

In **2014 ABCA 221**, Mr. M, appealed his 11-year imprisonment sentence. He had pleaded guilty to 39 criminal charges against 21 victims between the ages of 11 and 16 which the court described as “cyberbullying and online sexual exploitation”.<sup>2</sup> Charges included multiple counts of internet luring, extortion, child pornography offences, fraud and unauthorized use of

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<sup>1</sup> [1999] 3 SCR 759, at para 46.

<sup>2</sup> 2014 ABCA 221 at para 2.

computer with intent to commit mischief in relation to data. While committing his offences over roughly five years, Mr. M worked as a security guard.

Mr. M used Facebook and Nexopia to contact children and request nude photographs and sexual performances on webcam. He also communicated with children—the majority of whom were boys and girls between the ages of 11 and 16—using MSN Messenger and through text messages. If his victims refused to send him nude photographs, Mr. M would use information he had learned about the children in past conversations to hack into their email and social media accounts (for example, by asking questions related to common password reset security questions such as pet names and birthdays). On more than one occasion, Mr. M impersonated his child victims in order to solicit nude photographs from their friends. In other instances, after hijacking his victims' online accounts, he told children they could only regain access to their accounts if they sent him nude photographs. When one child sent Mr. M photos of her in her underwear, he threatened to distribute the photos unless she sent him a fully nude photograph. Mr. M also distributed photos of a naked boy on Tinypic.com. He also manipulated photos to make it appear as though some of the children were naked in the photos.

At sentencing, the Court noted that M's actions were deliberate, persistent, and aggressive. The offences were also sexually motivated, and the Court found that they were "calculated to intimidate, manipulate and psychologically and socially harm the vulnerable child and youthful victims."<sup>3</sup> The only mitigating factors on sentencing were the facts that M pled guilty to all charges and had cooperated with police.

The Court considered some of M's conduct "cyberbullying," and cited *AB v Bragg Communications* **2012 SCC 46** to describe the harm that cyberbullying can do to children. The Court noted that "[Mr. M's] use of the internet, to commit his numerous sexually based criminal offences involving children and young adults, have elements of disturbing online sexual harassment - an adult criminally cyberbullying and cyberstalking, calculated to randomly choose youthful victims to emotionally harass, threaten, intimidate and manipulate in furtherance of his criminal objectives."<sup>4</sup> Mr. M was sentenced to 11-years imprisonment, along with several ancillary orders including prohibitions on possession of firearms and attending places where persons under 16 are present, an order to provide a DNA sample, and an order to comply with the Sexual Offender Information Registry Act. His appeal of this sentence was dismissed, with the court stating:

[...] We know better now than we did then. We have come to understand the full magnitude of the impact such crimes have on children and that some have even resorted to suicide to find relief from online tormentors. In fact, one of the victims here reported having thoughts of suicide to escape the appellant. This and the other victim impact statements provided in this case are poignant reminders of the trauma and suffering caused by these crimes.

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<sup>3</sup> 2013 ABPC 116 at para 34.

<sup>4</sup> 2013 ABPC 116 at para 62.

Society cannot tolerate such offences and we are determined to do what we can to protect children from cyberbullying and exploitation. In cases such as that before us, we must resort to imprisonment, emphasizing the sentencing objectives of protection, punishment and deterrence.<sup>5</sup>

Also see: 2013 ABPC 116

**ii. 2011 ABPC 354**

In **2011 ABPC 354**, Mr. M, a 26-year-old man, pleaded guilty to 16 counts of internet luring, sexual interference, invitation to sexual touching, extortion, counselling individuals to commit sexual interference, and possessing, accessing, making, and distributing child pornography. Over a 16-month period Mr. M would meet prepubescent and teen girls on the internet and ask them to send videos and pictures of themselves to him, either nude or engaging in sexual activity. He tried to convince them to have unprotected sex with him so he could get them pregnant. There was evidence that he had interacted with over 300 girls during that time period, but the police could only identify nine of them. The girls that were identified were between the ages of 10-15 years old. His conversations included sexually graphic and violent language. Two of the girls he communicated with he convinced to have unprotected sex with him. He also asked the girls he chatted with online to find girls as young as 7-years-old, so he could drug them and have sex with them. If he received nude or sexual pictures, he would threaten to distribute the pictures to the girl's parents unless they sent more pictures of themselves or other girls, or engaged in sexual activity with him.

Aggravating factors included the girls young age (10-15 years old), the length of the time the offences occurred (over a 16 month period), the level of deliberation and persistence, the disregard for the impacts on the victims psychological and sexual integrity, his attempts to access even younger girls, his diagnosis as a pedophile and a paraphile with a high risk of re-offending, the unprotected sexual assaults of the two girls, and the child pornography in his possession related to his interests in prepubescent girls were aggravating factors.

He was sentenced to a 10-year period of incarceration, as well as ancillary orders to provide a DNA sample, be registered as a sex offender for life, and a prohibition on being near young people or places with young people.

**iii. 2011 ABPC 116**

In **2011 ABPC 116**, Mr. E, a 39-year-old American business man, created a false email account in an attempt to extort money out of Mr. AB who worked for an American hockey team. Mr. E sent emails to Mr. AB demanding money and hockey memorabilia or else he would sell his story and the accompanying video and audio footage to the media. He claimed to have evidence of

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<sup>5</sup> 2014 ABCA 221 at paras 17-18.

Mr. AB using an escort while on the road with his job and sent emails claiming this to Mr. AB, his wife, and his employer stating so. Mr. AB's victim impact statement said that "I was a victim of daily threats against me. During this time, I went through emotional hardship, sleepless nights, and the embarrassment of e-mails sent by the accused to co-workers in which I was employed. [...] The greatest effect this crime has had in my life is the end result of losing employment."<sup>6</sup> The police were able to track Mr. E down through the IP address and bank account he was using during the incidents.

He was sentenced to 10 months' incarceration.

**iv. 2008 ABCA 129**

In **2008 ABCA 129**, 24-year old Mr. I had pleaded guilty to two counts of luring a child, one count of counselling making child pornography, and two counts of extortion. Mr. I had solicited sexually explicit images and videos from 12 and 13-year-old girls he met on Nexopia, including recording live sexual video chats without the girls consent or awareness. He was persistent, threatening, and in some cases, had established long term friendships with his victims to gain their trust by making up fake accounts and striking up a friendship. He sometimes played his fake accounts off of each other to try and solicit more photos and manipulate the girl. In one case, he threatened to share the images he obtained with the victim's friend list. The court noted the internet is being used as a tool to exploit children:

As recognized by the courts, the internet has provided a means by which individuals like [Mr. I] may now easily solicit children to engage in online conversations. The Crown makes the point that years ago, someone like [Mr. I] would have had to approach a child, say, on a playground, face-to-face, in order to engage that child in conversation. Being propositioned by [Mr. I] in such circumstances might result in extreme alarm, as in a face-to-face context a number of factors, particularly age, would be readily apparent to the child. The internet, however, deprives these children of the protection that their senses would ordinarily provide to them. This makes them particularly vulnerable to internet predators.<sup>7</sup>

It further noted that girls are not to blame for their victimization and that "Teen girls, who are subjected to peer pressure, and exposed regularly to media images glorifying a specific body image, and sexuality, are entitled to use the technology that is presented to them, the same way that they are entitled to attend school grounds and shopping malls."<sup>8</sup>

The judge stated that, "the circumstances of the present case are characterized by such aggravating factors that the level of abuse invokes a sentence approaching that imposed for a

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<sup>6</sup> 2011 ABPC 116 at paras 14-15.

<sup>7</sup> 2007 ABPC 237 at para 64.

<sup>8</sup> 2007 ABPC 237 at para 80.

major sexual assault.”<sup>9</sup> Mr. I was sentenced to 7-years imprisonment, along with several ancillary orders including prohibitions on possession of firearms and attending places where persons under 16 are present, an order to provide a DNA sample, an order to comply with the Sexual Offender Information Registry Act, and an order to forfeit any computer equipment used in committing the offences for which he was convicted.

Mr. I’s appeal of his sentence was dismissed and his sentence was confirmed. In his appeal the court noted:

Each victim was told that the accused had a very compromising recorded video of her which he threatened to publish more or less to the world. (In one case, he said that it was going to be displayed all over the victim’s school.) Publication does not seem to have happened in either case, and in one case probably it was technically impossible. In the other case, the offender did have such a recording and it is likely impossible to be certain that it will never happen. In both cases, this fear must have consumed the victims for some time. Even public defamation stings in a way that those who have not experienced it cannot understand; what this sort of public degradation and exposure would have done to a young teenage girl we can scarcely imagine. The mere threat of it would be almost as bad, especially when the offender was pretending to be two people while working his sinister game. This was premeditated torture, and no less so for being mental.<sup>10</sup>

**v. 1992 ABCA 243**

**1992 ABCA 243** involved a man, Mr. RLB, threatening to release his ex-wife’s nude photos unless she forgave his child support payments. At trial, Mr. RLB was sentenced to a two-year penitentiary term, in part so that he could receive psychiatric counselling services. The Court of Appeal held that this was an error of principle and that the sentence was too high. Although the Court of Appeal determined that a custodial sentence was necessary because Mr. RLB committed a “serious crime which threaten[ed] the harmony of the family,” Mr. RLB’s sentence was reduced from 24-months imprisonment to 9-months imprisonment.

**III. BRITISH COLUMBIA**

**i. 2015 BCPC 203**

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<sup>9</sup> 2007 ABPC 237 at para 60.

<sup>10</sup> 2008 ABCA 129 at para 7.

**2015 BCPC 203** involved the online abuse tactics of “doxing”<sup>11</sup> and “swatting.”<sup>12</sup> 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 who he demanded pictures of. For example, he remotely interfered with his victims’ internet service, made fraudulent 9-1-1 calls to victims’ homes, disclosed victims’ credit card information online, and posted fake ads on Craigslist using his victim’s personal name and address saying she wanted sex.

Mr. B’s doxing efforts were sophisticated and involved corporate social engineering. In one instance, Mr. 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. He used a bot to send one victim 218 text messages simultaneously. He called in numerous false bomb threats and false scenarios that would trigger police attending a residence, such as false hostage situations. These events were often triggered by the victims’ refusing a friend request from the accused.

Nearly all of Mr. B’s 23 victims were young women. As the Court notes, “Male victims were usually only selected because they were related to [Mr. B’s] female victims or in some way attempted to intervene on behalf of [his] female victims.”<sup>13</sup> Mr. B’s pre-sentencing report makes note of his misogynistic attitudes, and finds that his actions were primarily motivated by pleasure from his victim’s distress and prestige gained within an online peer group. Mr. 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.”<sup>14</sup> 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.<sup>15</sup>

The Court ultimately sentenced B to 16-months imprisonment followed by 8 months of community supervision. Noting that Mr. B posed a high risk for future internet-based offences,

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<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> 2015 BCPC 203 at para 43.

<sup>14</sup> 2015 BCPC 203 at para 47.

<sup>15</sup> 2015 BCPC 203 at para 47.

the Court also imposed a full technology ban unless under supervision, authorizing a police officer to enter his residence at any time and search for computers or other internet-enabled devices.

**ii. 2014 BCPC 197**

In **2014 BCPC 197**, a 20-year-old man, W, threatened to distribute a stolen cell phone video of his underage classmate having sex with her boyfriend. Mr. W told the victim that he would post the video to Facebook if she did not send him five nude photos within 24 hours. When he did not receive the photos, he sent the explicit video to some of her Facebook friends. He also posted the video on a pornography website with her full name in the video title. The victim was devastated, quit school, and became depressed.

Mr. W was sentenced to 60-days imprisonment, served on the weekends. The Court held that mitigating factors on sentencing included Mr. W's guilty plea, his remorse, and the fact that he was a youthful first offender. Aggravating factors on sentencing included the fact that he threatened to post the video online and later posted it on a pornography site. The Court also found that Mr. W's actions were "planned and deliberate [and] done with the intention to humiliate and embarrass [the victim]." <sup>16</sup>

The Court noted that Mr. W's offences put the Court in the "position of not being able to impose a sentence that can correct the situation" because his conduct was "just about hurt and [...] was mean, terribly mean." <sup>17</sup> Yet, as the Court warned, "What is to be taken from this decision is this: For those who wish to prey on the vulnerability of others to take advantage of their vulnerability even with significant mitigating factors that are present in this case, you are going to jail." <sup>18</sup>

**iii. 2015 BCCA 338**

In **2015 BCCA 338**, Mr. M was convicted of fraud, sexual assault, assault, uttering threats, and extortion.

Mr. M was a serial con-artist who abused, threatened, and defrauded women he met on online dating sites. He pretended to be a wealthy Sicilian businessman and claimed that, in his culture, women and men who dated automatically became married spouses, that husbands maintained complete domination and control over their wives in these relationships, and both spouses had to uphold gruesome and patriarchal family traditions. For example, Mr. M told women that

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<sup>16</sup> 2014 BCPC 197 at para 18.

<sup>17</sup> 2014 BCPC 197 at para 20.

<sup>18</sup> 2014 BCPC 197 at para 30.

spouses needed to tattoo “Property of [Spouse’s Name]” on their stomachs. He convinced one woman to get the tattoo and told others that they could be killed for disobeying him.

Mr. M also claimed to be a gynecologist and often performed fraudulent gynecological exams on his victims. He lied and said that women had sexually transmitted infections when they did not, and submitted his victims to cruel and degrading punishments. In one case, Mr. M told a young immigrant woman that he had reported her to immigration officers because she had “sexually teas[ed] him.” He said that she would be deported unless they had sex, because she had “touched him and did not have sex in the end.” When the woman protested, Mr. M remarked, “Don’t you know we have lots of human rights laws in Canada?” She eventually had sex with him, fearing that she would be deported if she did not.<sup>19</sup>

Mr. M was ultimately declared a dangerous offender and sentenced to an indeterminate period of imprisonment, a decision which was upheld on appeal.

Also see: 2014 BCCA 302 (Appeal); 2012 BCCA 364 (Application for order that offender not be moved to penitentiary); 2012 BCSC 957 (Application for dangerous offender declaration); 2006 BCSC 1681 (Trial).

**iv. [1996] BCWLD 2733 (BCCA)**

In **[1996] BCWLD 2733 (BCCA)**, the accused was a 44 year old man who lived in the same house as a 22 year old woman. The two were friends and at some point had sex, which the accused filmed without her consent or knowledge. According to the victim, he then later threatened to disclose the tape unless she continued their sexual relationship. The decision was upheld on appeal.

**IV. MANITOBA**

**i. 2018 MBCA 48**

In **2018 MBCA 48**, Mr. M appealed his sentence of 18 months’ imprisonment and three years’ probation after pleading guilty to voyeurism, the non-consensual distribution of intimate images, and extortion, along with conditions that he report intimate images to probation services and not possess devices that can access the internet without permission. The judge stated that this “sentence appeal illustrated the pernicious effects that the misuse of technology can have on personal privacy and sexual integrity.”<sup>20</sup>

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<sup>19</sup> 2006 BCSC 1681 at para 123.

<sup>20</sup> 2018 MBCA 48 at para 1.

When Mr. M was 19, he surreptitiously filmed his sister's 17-year-old friend while she undressed and showered at their family home. He admitted to being aroused by "peeping tom" pornography and the feeling of being in control. Five years later, he tried to use the film to extort the woman in the film by threatening to disseminate images from the film online.

The court noted that Mr. M engaged in the following behaviour:

To carry out the sextortion, he created multiple email accounts under pseudonyms, he extracted several nude or semi-nude still images from the 2010 recording and he manipulated the image using software to hide their source.

Between July and October 2015, he sent emails from the fake accounts with the intimate images to the complainant and her sister. The emails were menacing. The emails said that cooperation with the demands was the only way to avoid internet publication.<sup>21</sup>

The complainant informed the police, but she did not know who had taken the images and who the extortionist was. The police had difficulties investigating the account because he had deleted the email accounts after using them to send the images. The police were eventually able to discover that the emails had come from Los Angeles.

She wrote back to one of the emails asking what the extortionist wanted and he requested an image of her in a bra, which she refused. Mr. M later contacted the victim claiming his email had been hacked and he had received a copy of the photos, offering to have his tech-savvy friends help her by using more sexualized images of her as bait to trap the extortionist. She thought this was suspicious and reported it to the police. Upon moving back to Winnipeg, the police searched Mr. M's computer and found the images. He confessed to taking the images and using them to extort her upon arrest.

The court noted the significant impact the offence had on the victim, stating:

The events terrified her, exacerbated her anxiety disorder and took over her life. She lived in constant fear that the extortionist had more intimate images of her and was going to eventually hurt, rape or kill her. She struggled in university, was physically ill and could not sleep. She became disassociated and lost her self-esteem. The intensity of her emotions and fear became so unbearable that she contemplated suicide to free herself from the grip of the extortionist. While the accused's arrest brought some closure, she is haunted by the experience and is so fearful of surveillance that she routinely checks for hidden cameras in bathrooms. She is afraid of being physically harmed by the accused and men generally.<sup>22</sup>

The court also noted that:

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<sup>21</sup> 2018 MBCA 48 at paras 5-6.

<sup>22</sup> 2018 MBCA 48 at para 11.

It is also important to appreciate that sextortion is a form of sexual violence even though it occurs through the medium of the internet. As with physical abuse, a victim's freedom of choice over his or her sexual integrity is violated. The long-term psychological harm to a victim, as was seen here, closely resembles what happens in a case of physical sexual assault (see *R v Innes*, 2008 ABCA 129 at paras 7, 11; and *R v NG et al*, 2015 MBCA 81 at para 33). Finally, it is difficult to hold such offenders accountable because the crime is remotely committed and the nature of the internet provides predators with a degree of anonymity; in this case, it took the efforts of five different law-enforcement agencies in two countries over many months to solve the case.<sup>23</sup>

It also noted that the non-consensual distribution of intimate images and voyeurism are both sexual offences and a privacy offences.

The court allowed the for an adjustment of the sentences for voyeurism (reduced to 3 months) and extortion (reduced to 15 months), did not change the sentence for the non-consensual distribution of intimate images (6 months) and deleted the condition of probation that required him to report intimate images to his probation officer, but it did not change the combined length of imprisonment (18 months) nor remove his internet limitations.

**i. 2015 MBPC 50**

In **2015 MBPC 50**, a young woman, Ms. C, was sentenced to 18-months imprisonment and 2-years' probation after impersonating public figures online to extort money and nude photos from unsuspecting victims. She was convicted of extortion, threats to cause bodily harm, fraud, and personation. Ms. C pretended to be a professional video game player, an NBA player, and a television actress, and she carried out elaborate and deceptive online schemes. In sentencing Ms. C, the Court noted that:

As technology rapidly develops, so do the opportunities to exploit unsuspecting users, both financially and emotionally. The combination of the global scope and anonymous nature of the internet results in fertile ground for online criminality. It follows that misuse of the internet in circumstances where the offender is able to anonymously manipulate his or her victims should be met with a sentence that places import on deterrence and denunciation.<sup>24</sup>

Ms. C was ordered not to use the Internet, except for educational and employment purposes, during her probationary term. She was sentenced to 18 months of incarceration, two years of probation, 200 hours of community service, along with orders to remain within the jurisdiction, attend counselling, not to use the internet except for educational and employment purposes

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<sup>23</sup> 2018 MBCA 48 at para 19.

<sup>24</sup> 2015 MBPC 50 at para 40.

when supervised by Probation Services, no contact with the victims, and a forfeiture of the nude images and all other items seized.

An appeal of the case was dismissed.

## **V. NEW BRUNSWICK**

### **i. 2014 NBCA 71**

In **2014 NBCA 71**, a 41-year-old trusted elected municipal officer, pastor, community activist, and out-reach worker – who worked with underprivileged youth and acted as a foster parent – pleaded guilty to 46 offences including: child pornography offences, sexual interference, invitation to sexual touching, sexual exploitation, child luring, sexual assault and extortion against young boys, including one of his foster children.

A police investigation into online child exploitation led to Mr. S's collection of thousands of unique child pornography images and evidence of other abuse. The police were able to identify 17 young boys in their investigation.

Beyond his collection of child pornography, Mr. S engaged in a campaign of abuse. Mr. S allowed young boys to consume alcohol and marijuana and engage in sexual activity at his home, including him sexually abusing the boys himself. The boys were between 6 and 15 years old, and some were paid for their sexual activity. He also used the internet to live stream his sexual offences and to view young boys acting sexually, videotaped their sexual activity, and used images he had of the boys to extort them. At times he posed as a teen girl to engage boys in sexual chats online and obtain sexual images and to extort more images from them. His interactions with them show a callous disregard for the boys and their well-being and an abuse of his position of power and trust. One child was ostracized from his social group for complaining of the abuse and he was not believed.

He was sentenced to 18 years of imprisonment, which was on the high end of the spectrum of sentences for this type of offence, but the sentence was affirmed as reasonable upon appeal, largely due to the court's belief that adult sexual predators of children should pay a "heavy price" for their offences.

Also see: 2013 NBPC 17 (Sentencing).

## **VI. NEWFOUNDLAND & LABRADOR**

### **i. [2017] 143 WCB (2d) 618 (NFPC)**

In **[2017] 143 WCB (2d) 618 (NFPC)**, Mr. H, a 22-year-old man, threatened to post sexual images of his ex-girlfriend unless she told their friends that they had not separated. He sent Ms.

X text messages threatening suicide and to post the images unless she acquiesced, which she did due to the threats. Commenting on the challenges with extortion in the digital age, the court stated:

The present day access to social media sites has dramatically changed the potential impact of extortion. For instance, a present day threat to release intimate photographs through social media sites allows for the sharing and dissemination of such photographs on a worldwide basis. This technology also makes it impossible for the victim to limit circulation or to retrieve the photographs. This modern day form of extortion is much different and more serious than older forms of extortion. The sentencing for such offences must reflect the changes in the sharing of information and the impact upon victims. General deterrence and denunciation must be the primary principles of sentencing applied.<sup>25</sup>

He was sentenced to 9 months' incarceration, 2 years' probation, a no contact, prohibition from commenting about her on social media, order to attend counselling, pay \$200 victim surcharge, and provide a DNA sample.

## VII. NOVA SCOTIA

### i. 2017 NSSC 292

In **2017 NSSC 292**, the victim, Ms. KB, was suffering from a drug addiction. Mr. R was exchanging drugs for sex with Ms. KB and was also recording the sexual encounters on a video tape. Ms. KB stated that Mr. R threatened to show the video tapes to the police, and her child's father and her mother-in-law if she did not continue on with the sexual relationship. However, there was evidence that Mr. R threatened to release the video tapes but there was no evidence of extortion for sexual favours and was acquitted on that offence.

### ii. 2015 NSPC 66

In **2015 NSPC 66**, a young man was found guilty of extortion, possession of child pornography and possession of child pornography for distribution after inducing a teenage girl, Ms. A, to send him nude photographs online. The case is unique because it involved an unknown accomplice, Mr. Z, who Mr. Y allowed to remotely log into his computer to engage with Ms. A. Mr. Y befriended Mr. Z while playing Habbo, an online game, when he was 11 or 12 years old. Both young men were involved in sending deceptive messages to Ms. A from several fake Facebook accounts.

Mr. Y and Mr. Z's online scam had serious real-world consequences. When the young men decided to "kill off" one of their shared fake online personas, someone Ms. A considered a good

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<sup>25</sup> Para 8.

friend, both Ms. A and her friend Ms. B were so distraught about the alleged death that they tried to kill themselves. Both girls were hospitalized. When Ms. A figured out that she had been catfished, she asked to know who her online friend really was. Mr. Y said he would tell her only if she sent over a picture of her breasts, which she later did. Mr. Z threatened to share the image unless they got more nude content and when A did not send more images, Mr. Z posted that image to her Facebook account and sent it to several people.

The Court describes Mr. Y's offences as ones which "exploited the murky opportunities afforded by internet anonymity."<sup>26</sup> The court found that even though Mr. Z may have penned many of the messages that would count as extortion and the distribution of child pornography, Mr. Y aided him by opening up the fake accounts, allowing Mr. Z remote access to his computer to use the fake accounts, and watching Y post harmful messages without stopping him. Mr. Y was to defend his actions but the judge stated:

"A" sent the "selfies" of her breasts to the L.W. account being controlled, unbeknownst to her, by "Y" and "Z". This falls well outside what is required for the "private use" defence I discussed earlier. These were not photographs that were obtained on the basis of informed consent and kept privately for private use, rendering "the potential for its harmful use by others minimal." (Sharpe, paragraph 105) They were obtained through deceit and misrepresentation and shared by "Y" and whomever "Z" may be. Applying the "private use" defence on the facts of this case would be a distortion of the constitutional protection extended to expressive conduct which underpins the defence.<sup>27</sup>

The crimes were considered "violent offences" for sentencing purposes, and the Court recognized that Mr. Y endangered the life or safety of Ms. A by creating a substantial likelihood of causing psychological harm."<sup>28</sup> However, noting that Mr. Y's "precarious mental health, social dysfunction and isolation" contributed to his actions, the Court ultimately convicted Mr. Y of extortion, possession of child pornography, and the possession of child pornography with the intent to distribute it, and sentenced him to a two-year conditional discharge with strict internet restrictions.<sup>29</sup>

Also see: 2015 NSPC 19 (Application for a psycho-sexual assessment); 2015 NSPC 14 (Trial)

## ii. 2013 NSPC 98

In, **2013 NSPC 98**, Mr. D, a 21-year-old man, pleaded guilty to sexual assault, extortion, damages to property, obstruction, breach of undertaking to an officer, and breach of an undertaking of a judge.

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<sup>26</sup> 2015 NSPC 14 at 2

<sup>27</sup> 2013 NSPC 98 at para 45.

<sup>28</sup> 2015 NSPC 14 at 53.

<sup>29</sup> 2015 NSPC 14 at 55.

Mr. D had been in a relationship with Ms. M for about five and a half years. During their relationship, when she was between the ages of 14 and 16, he physically and sexually assaulted her.

They had been separated for about two or three months when he texted and called Ms. M threatening to post naked photos of her on the internet. He mocked her about raping her and threatened to put the images on Facebook and told her she would have to pay him to take them down.

He was sentenced to four years in jail, registered as a sex offender for 20 years, had a firearm prohibition, a DNA order and a no-contact order with the victim. He was ordered not to have contact with Ms. M nor possess a cellphone, pager, blackberry or computer.

## VIII. ONTARIO

### i. 2018 ONSC 2299

In **2018 ONSC 2299**, Mr. S was accused of trying to extort money from Ms. K by threatening to post intimate images on Facebook and Skype where her friends and family would see the images. He allegedly posted two images online (on three Facebook accounts and one Skype account) without her consent when she did not give him any money. He was charged with extortion and the non-consensual distribution of intimate images. Mr. S claimed he had a legitimate reason to ask for the money and claimed Ms. K had posted the images on their joint accounts, not him.

Evidence included 557 pages of texts between the parties over various social media accounts, as well as text and video messages from Skype.

Ms. K acknowledged there were many photos of her in the nude, alone and having sex with men. She and Mr. S enjoyed going to nude resorts where they would sometimes film her engaged in sex acts with other men. She claimed she did not have access to those images that were posted and claimed only Mr. S had access to them. However, she had shared other intimate images with people she had been intimate with, some friends, cousins and a sister. She did not consent to having any of the images of her sexually engaging with someone else to be put on the internet. However, she had put some nude images of her on the internet in the past including at least one video of her engaging in sexual activity with Mr. S.

The images that had been posted online were of her engaged in sex acts with other men. The court noted:

Prior to leaving this issue I would like to make it clear that the fact that Ms. L.K. may herself have distributed intimate images of herself, or consented to the accused putting intimate images of her on the Internet, (other than the two images in

question) does not equate with consent to the two images in question. Consent to each image must be given. Consistent with that observation, Ms. L.K. acknowledged that she had consented to many other intimate images of her having been placed on the Internet, and acknowledged having done so herself. There is no suggestion that an individual consent had been given to each image. Rather, I was left with the impression that it was a blanket consent or understanding between Ms. L.K. and Mr. S.S. related to a specific group of images. I conclude that consent can be given to either individual images or groups of images provided they are identifiable.<sup>30</sup>

There was dispute about who had created and had control over the social media accounts the images were posted up on, who had copies of the images, and who posted the images. There were significant issues around credibility and authenticity around much of the evidence of this trial. There was evidence that the images were intimate and were placed online, however, who put the images online and whether Ms. K had consented to them being posted or withdrawn consent for them to be posted was unclear. Mr. S was acquitted of the non-consensual distribution of intimate images. He was also acquitted of extortion because the language he used was not considered threatening by the court and because the integrity of the evidence had been severely compromised, as some of the messages were missing from the evidence.

**ii. 2016 ONCJ 325**

In **2016 ONCJ 325**, a 17-year-old youth offender, Mr. R, pleaded guilty to four counts of internet luring, one count of possessing child pornography and eleven counts of extortion. Using a fake Facebook account, he contacted three girls between the ages of 12 and 13 asking for naked photos, all three girls reported the incident to the school, who later referred the incidents to the police. Using the same profile, he asked another 13-year-old girl for nude images that included her face, she sent him a picture with her breasts. Once he received it, he demanded more images and nude images of her older sister. Her sister was able to identify who he was. He also contacted a 15-year-old autistic girl, who he demanded nude pictures from and then used those images to try and extort her for more images. He went on to contact nine other people, requesting images and threatening to post them when he received them from four out of the nine. The last girl he contacted was babysitting a 7-year-old, and he directed her to take nude photos of the child and photos of her engaging sexually with the child, she sent a non-sexual picture of the child, which Mr. W threatened to post unless she sent nude pictures.

Mr. W was diagnosed with defiant disorder as a young person and had said he posted the images because he was angry his girlfriend had broken up with him and he wanted others to experience the pain he felt. He showed little empathy for his victims and breached his recognizance while on bail. He received a 6-month custodial sentence, was ordered to not contact the victims or be near females under the age of 16 and not to possess or access any form of pornography. He was ordered not to possess a computer or electronic device without

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<sup>30</sup> At para 29.

permission from his youth worker, nor contact anyone via a computer or device without using his full name and to ensure he knows the age of the person he is contacting.

**iii. 2014 ONSC 7347**

In **2014 ONSC 7347**, several men kidnapped Ms. B. They took her to a basement where they took off her blouse and took semi-nude photos of her to use for extortion purposes. They then tied her to a bed and physically and sexually abused her. Her kidnappers forced her to provide them with her bank cards and pin codes, and threatened her family for more money. Someone called 911 and she was discovered. Two of the accused were convicted and the other was acquitted.

Also see: 2016 ONCA 108 (Appeal on costs); 2015 ONSC 6823 (Application for a mistrial); 2015 ONSC 6312 (Ruling on s. 8 and s. 10(b) Charter violations); (Ruling on s. 24(2) application); (Application for an order prohibiting cross-examination on prior record); (Application for a voir dire); 2015 ONSC 7261 (Application to lead statements); 2014 ONSC 7347 (Application for stay of proceedings based on Charter violation); 2014 ONSC 6512 (Application to adduce evidence of a third party suspect); 2014 ONSC 6511 (Application to exclude photographs and to edit statements); 2015 ONSC 6345 (Admissibility of statements); 2014 ONSC 7095 (Reasonable expectation of privacy); 2014 ONSC 2848 (Costs); 2014 ONSC 897 (Stay or proceedings); 2014 ONSC 369 (Application to edit oral statements); 2013 ONSC 7893 (Admissibility of statements and Charter applications); 2013 ONSC 7310 (Admissibility of statements).

**iv. 2015 ONSC 2590**

In **2015 ONSC 2590**, a 52-year-old man, Mr. G pleaded guilty to 21 offences of a sexual nature that occurred over three years against girls under the age of 16 including internet luring, invitation to sexual touching, sexual interference, possession of child pornography, extortion, and breaches of recognizance.

The girls were located in Ontario, Scotland and the United Kingdom. Mr. G communicated with the girls over the internet and asked them to perform sexually online and exposed his penis to them. He had used multiple fake accounts to lure the girls, a search of his home led to the discovery 16 different email addresses and 18 different aliases that he had used to contact 2295 unique email addresses. Mr. G created a spreadsheet to keep track of who had contacted, what alias he was using, whether he had web-cammed with them and other details. He often posed as a teenager to begin talking with the girls. He had developed a pattern to gain the girls' trust to get nude photos, have them engage sexually online, and to try and convince them to meet him in person for sex. He used the images he received to threaten and extort the girls for more images and sexual favours. He was able to convince some of the girls to meet him in person and engaged in inappropriate sexual contact with them, sometimes forced. The girls he communicated with were as young as 10 years old.

Mr. G had above average computer knowledge and was using tactics to conceal his activities. There was evidence of this abuse occurring over 7 years. Most contact was initiated over the internet, but there were cases in 2004 where he had sought out victims in a public library and picked them up from their school. Those offences, led to an order a no-contact order and was not allowed to possess or access a device with the internet, which he ignored and continued to talk sexually with girls online.

Mr. G also possessed child pornography with images of very young children, including toddlers.

Victim impact statements show that that some victims faced severe psychological trauma, low self-esteem, depression, and post-traumatic stress disorder. One victim has attempted suicide multiple times and had to be hospitalized. The mother of one girl stated that it is difficult to feel safe even in their own home.

He was designated as a dangerous offender, who was diagnosed with pedophilia with a high risk to offend. The court noted that this offender would need a complete prohibition on accessing and using the internet to prevent his behaviour but that this would be difficult, if not impossible to control in the digital age.

**v. 2014 ONCA 69**

In **2014 ONCA 69**, Mr. N was convicted of voyeurism and extortion after using his iPhone to record his sexual partner while she was coming out of the shower. On appeal, MN's counsel argued that the word "surreptitiously" includes a *mens rea* element, and asserted that the trial judge was equivocal about whether Mr. N intended to record the victim without her knowledge. The Ontario Court of Appeal dismissed Mr. N's appeal<sup>31</sup> and his attempt to appeal to the Supreme Court of Canada was unsuccessful.

Also see: [2015] SCCA no 278 (Leave to appeal).

**vi. 2012 ONCJ 835**

In **2012 ONCJ 835**, Mr. W threatened to disclose nude webcam images of his ex-girlfriend unless she had sex with him again. He initially met her on a videochat service called "Camfrog" when he was 18 and she was 15, and the two entered into a long-distance intimate relationship shortly after. Although they sometimes shared webcam videos, Mr. W never, in fact, recorded his ex-girlfriend's nude images. He contacted her two years after the relationship ended threatening to disclose the images.

The Court considered whether extortion in these circumstances constituted a serious personal injury offence, thus barring a conditional sentence order. Because Mr. W threatened the victim

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<sup>31</sup> 2015 CarswellOnt 13002.

with disclosure of intimate images and not with a weapon, the Court determined that he did not commit a serious personal injury offence, noting:

While abhorrent and clearly extortionate, the option - in the absence of the sex - to expose [the victim's] naked images to public scrutiny to humiliate her, does not, in my view, amount to the use or attempted use of violence. The attempted compulsion that is at the heart of this particular offence does not, in my view, rise to the level of violence contemplated by the legislators.<sup>32</sup>

Mr. W told his ex-girlfriend that when they did have sex, it would be “rough and unenjoyable” for her and described in graphic detail what he planned to do to her.<sup>33</sup> The Crown argued that this amounted to an explicit threat of violence. The Court held that “the remarks concerning the “rough sex” were more in the nature of adolescent fantasizing, or even self-aggrandizing braggadocio, rather than threats to inflict violence upon her.”<sup>34</sup> However, she did note that “some threats will be considered to be acts of violence or attempted violence,”<sup>35</sup> even if this one did not,<sup>36</sup> and that the sexual intercourse would not have been considered consensual if it had occurred.<sup>37</sup>

The Court also noted that the victim met with a counselor after the offence, helping her to “put this incident into perspective.”<sup>38</sup> Finding that the victim took steps to mitigate her fear and humiliation, and noting that her victim impact statement did not describe fear, the Court stated that:

[the victim] indicates that she is less embarrassed and less fearful of the consequences of having reported [Mr. W] to the police. As a result of this information, I am satisfied that his conduct did not endanger the complainant's life or safety, nor did it cause severe psychological damage to her.<sup>39</sup>

Ultimately, Mr. W pleaded guilty to and was convicted of extortion. He received a 15-months' house arrest followed by 21-months' of probation. He was also banned from watching or possessing pornography during his probation or possessing a device capable of accessing the internet without permission from his supervising officer. If permitted to have a device, his supervising officer was permitted to install blocking and tracking software on any devices and he was ordered to consent to the police from searching his device without prior judicial notice. The judge stated: “For greater clarity, you are to have no privacy interest in any device capable

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<sup>32</sup> 2012 ONCJ 835 at para 28.

<sup>33</sup> 2012 ONCJ 835 at para 29.

<sup>34</sup> 2012 ONCJ 835 at para 29.

<sup>35</sup> 2012 ONCJ 835 at para 25.

<sup>36</sup> 2012 ONCJ 835 at para 25.

<sup>37</sup> 2012 ONCJ 835 at para 26.

<sup>38</sup> 2012 ONCJ 835 at para 32.

<sup>39</sup> 2012 ONCJ 835 at para 32.

of accessing the internet for the term of this order.”<sup>40</sup> During his bail, he breached his bail conditions by possessing a cellphone with a camera.

**vii. 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 victim 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”<sup>41</sup> 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 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.”<sup>42</sup> 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.”<sup>43</sup> 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)

**viii. [2009] 84 WCB (2d) 716**

In **[2009] 84 WCB (2d) 716**, 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 355(b) of the Criminal Code. The accused was expected to plead guilty to criminal harassment and have the extortion charged withdrawn.

**ix. [2008] 77 WCB (2d) 257 (ONSC)**

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<sup>40</sup> 2012 ONCJ 835 at para 43.

<sup>41</sup> 2009 CanLii 34031 at para 13.

<sup>42</sup> 2009 CanLii 34031 at para 31.

<sup>43</sup> [2009] OJ No 1378 (ONCJ) at para 5.

In **[2008] 77 WCB (2d) 257 (ONSC)**, Mr. P pleaded guilty to falsely representing himself as a police officer, extortion and sexual assault.

Ms. L was 17 at the time of the offences. According to Ms. L's testimony, which the court accepted, she and her boyfriend were parked in a vehicle engaging in sexual activity at night when Mr. P approached their car claiming to be looking for someone who was selling him a car. Unbeknownst to them, he followed their vehicles and when Ms. L arrived at home, Mr. P told her he had a video of her and her boyfriend engaged in sexual activity and told her what they had been doing in the parking lot was illegal. He pretended to be a police officer and threatened that he would take it to the police and she would go to jail unless she complied with his demands. Ms. L was worried about her parents finding out she was engaged in sexual activity with her boyfriend and they were parked outside of her home where she lived with her parents. He claimed the video was in his car. Ms. L followed him to his car where he asked her to touch his crotch or give him oral sex in exchange for the video; she said no, but he persisted. She put her hand on his crotch and he tried to kiss her. She gave him a false name. Mr. P admitted to claiming to have a video but denied that he asked for sexual favours.

He was found guilty of falsely representing himself as a police officer and of extortion, but was acquitted of sexual assault because Mr. P did not apply force to Ms. L.

**x. [2005] OJ No 3777 (ONCA)**

In **[2005] OJ No 3777 (ONCA)**, Mr. A operated a private investigation firm. On several occasions, he used his staff in order to extort people he had personal litigation or disputes with. He hired women who had acted as escorts to pose potential clients of the victims who would then try to lure the victims into hotels or apartments that were rigged with hidden audio or video equipment to capture them in compromising positions. Mr. A would then try and use those recordings to extort payments out of them. One victim was recorded having sex with one of these women and Mr. A mailed him photos of the footage demanding payment. In another case, the woman told the victim what Mr. A was planning. His colleague Mr. B found the women to hire for this work. Both were found guilty but appealed the conspiracy convictions, which they were acquitted of, as Mr. B was aware of the tasks of the staff, but was not aware that the content would be used for extortion purposes. However, Mr. A's convictions for possessing an electro-magnetic device for surreptitious interception of private communication as well as extortion. Due to the acquittals, his sentence was reduced to 10 months of incarceration.

Also see: [2003] OJ No 6211 (Supplementary reasons); 2003 CarswellOnt 9140 (ONSC).

**IX. SASKATCHEWAN**

**i. 2016 SKCA 93**

In **2016 SKCA 93**, Mr. M pleaded guilty to 11 counts of luring, extortion, child pornography offences, and sexual interference. He was 18-years-old at the time of the offences and targeted four girls between the ages of 12 and 14-years-old. Mr. M established individual relationships with these girls and then convinced them to send sexually explicit photos to him via text and internet messaging. He put extensive pressure on the girls to send images and directed them to engage in specific sexual activities in the photos. In the appeal, the Court emphasized the special vulnerability of children to internet-based sexual offences. His original sentence of two years less a day and three years of probation was increased to three years of incarceration. Ancillary orders included a no-contact order, required counselling, prohibition from possessing devices capable of accessing the internet, providing a DNA sample and being registered as a sex offender.