



Cyber-harassment/bullying

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The Law and the Internet

- Generally, if it's a crime in the real world, it's a crime on the Internet



Uttering threats

Voyeurism

Criminal Harassment

Child Pornography

Extortion

Personation

Hate Crimes

Defamatory Libel

- Other crimes specific to computers/telecommunications
 - unauthorized use of computer system
 - mischief to data
 - luring

But.....

- Morality infuses the criminal law. But the law does not seek to criminalize all immorality. The principal objective of the criminal law is the public identification of wrongdoing *qua* wrongdoing which **violates public order** and is **so blameworthy that it deserves penal sanction**.

R. v. Mabior, [2012] S.C.J. No. 47

But.....

- **Conduct which is mean, petty, uncooperative and spiteful is not the stuff of the criminal law....**
- **Criminal law is a blunt and costly instrument ...So criminal law must be an instrument of last resort.**
- **The watchword is restraint – restraint applying to the scope of criminal law, to the meaning of criminal guilt, to the use of the criminal trial and to the criminal sentence.**

R. v. McDougall, [1990] OJ No. 2343 (C.A.)

Criminal Liability of Children

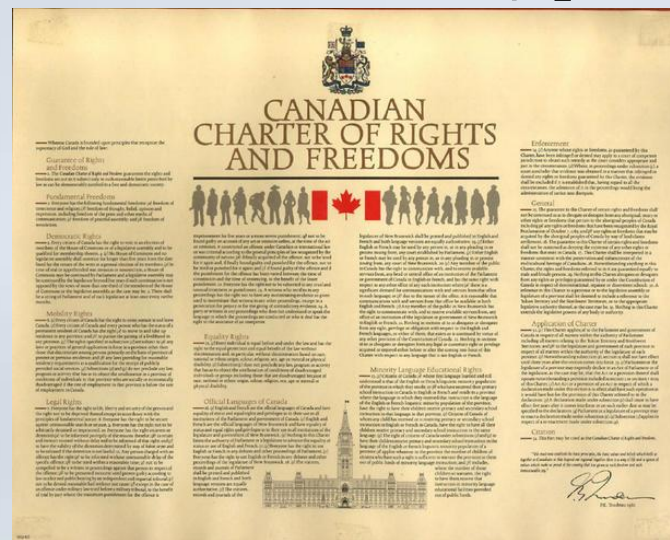
- **Under 12 years of age:**
- s.13 *Criminal Code*
 - "No person shall be convicted of an offence in respect of an act or omission on his part while that person was under the age of twelve years"
- **Between 12-18 years of age:**
- *Criminal Code* offences apply but governed by the *Youth Criminal Justice Act (YCJA)*
 - Applies to the Criminal Code in a manner which reflects the reduced level of maturity of youthful offenders.

Defamatory Libel



Defamatory Libel

- Libel not known to be false unconstitutional at trial level in 3 provinces. (In Ontario since 1996)
- Libel known to be false – not unconstitutional R. v. Lucas, [1998] 1 S.C.R. 439



■ Criminal Harassment



s.264 Criminal Harassment

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

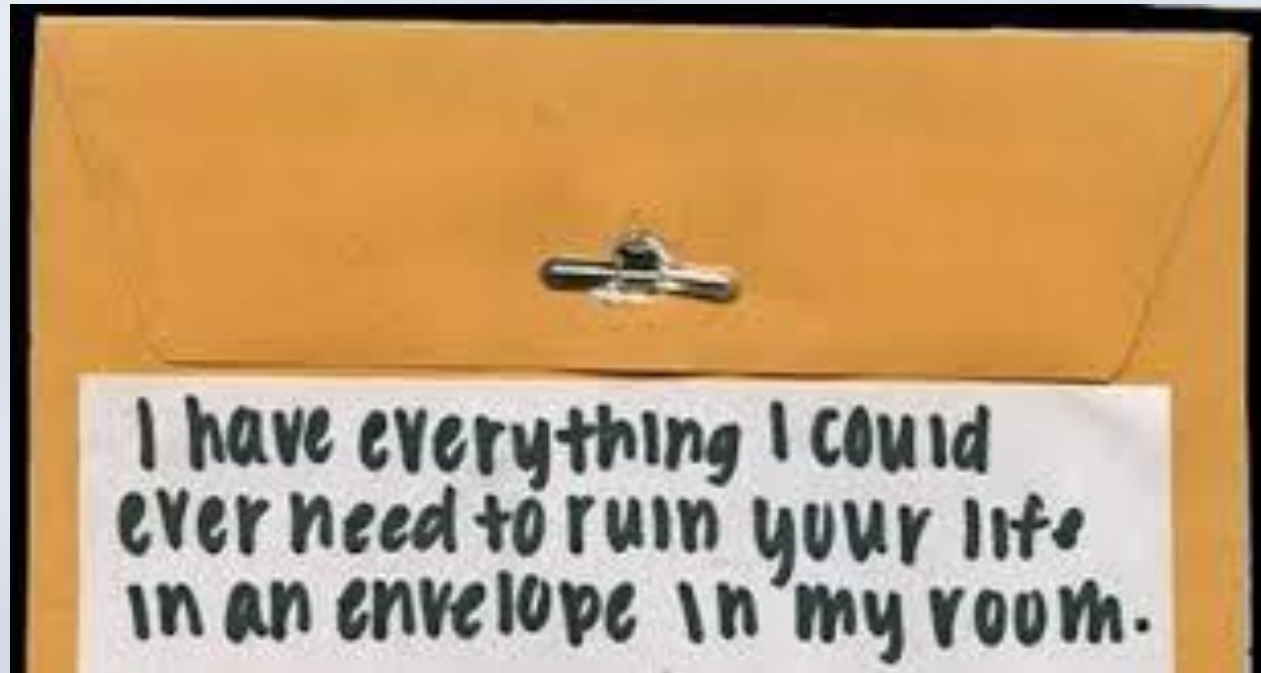
subsection (2)

- 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
- d) engaging in threatening conduct directed at the other person or any member of their family**

R. v. Korbut, [2012] O.J. No. (P.C.)

- It seems to me that **to argue that a woman who has had her most private and intimate personal images distributed electronically to every friend, relative and church-attending associate has not necessarily suffered a grave and serious fear-inducing harm is to ignore the perspective of women.**
- The publication and wide distribution of these images constituted an action of such catastrophic (a word used by Mr. Korbut) significance that, in my view, impacted heavily upon the life and health of Ms K and would have had the same effect on any woman who found herself in the same position. **The inevitable conclusion in the mind of the recipient of this devastating psychological injury would reasonably be that the perpetrator would be someone capable of great harm and would reasonably be a person to be feared.**

- Criminal Harassment
- Uttering Threats/Extortion



s.264.1 Uttering Threats

- “Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat
 - a) to cause death or bodily harm to any person
 - b) to burn, destroy or damage real or personal property, or
 - c) to kill, poison or injure an animal or bird that is the property of any person.”

s.346 Extortion

- “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 show, to do anything or cause anything to be done.”

- Criminal Harassment
- Uttering Threats/Extortion
- Identity Fraud



s.403 Identity Fraud

Every one commits an offence who fraudulently personates another person, living or dead,

- a) with intent to gain advantage for themselves or another person
- b) With intent to obtain any property or an interest in any property
- c) With intent to cause disadvantage to the person being personated or another person, or
- d) With intent to avoid arrest or prosecution or to obstruct, pervert or defeat the course of justice.

2)personating a person includes pretending to be the person or using the person's identity information – whether by itself or in combination with identity information pertaining to any person – as if it pertains to the person using it.

- Criminal Harassment
- Uttering Threats/Extortion
- Identity Fraud
- Unauthorized Use of a Computer/Mischief in Relation to Data



342.1 Unauthorized Use of Computer

- Every one who, fraudulently and without colour of right,
 - a) obtains, directly or indirectly any computer service,...is guilty of an indictable offence.

“computer service” includes data processing and the storage or retrieval of data.

430(1.1) Mischief in relation to data

- Every one commits mischief who wilfully:
 - Destroys or alters data
 - Renders data meaningless, useless or ineffective
 - Obstructs, interrupts or interferes with the lawful use of data or
 - Obstructs, interrupts or interferes with any person in the lawful use of data or denies access to data to any person entitled to access thereto

- Criminal Harassment
- Uttering Threats/Extortion
- Identity Fraud
- Unauthorized Use of a Computer/Mischief in Relation to Data
- Child Pornography



COMMON LAW DEFENCES

- *R. v. Sharpe* - Supreme Court of Canada upheld the constitutionality of the crime of possession of child pornography BUT had to “read in” defence to make it constitutional:
- Not a crime to possess images of sexual activity with person under 18 IF:
 - **You created or are depicted in the material**
 - **The sexual activity was lawful**
 - **You possess the images for your own use**
 - **All parties must also have consented to the creation of the record**

- Police – reasonable grounds to believe offence has been committed
 - Even where have RPG have discretion not to charge.

- Police – reasonable grounds to believe offence has been committed
 - Even where have RPG have discretion not to charge.
- Crown – reasonable prospect of conviction AND the prosecution must be in the public interest

“public interest”

- a) **the gravity or triviality of the incident.**
- b) circumstances and views of the victim including any safety concerns.
- c) **the age, physical health, mental health or special infirmity of an accused or witness. ...**
- e) **the degree of culpability of the accused (particularly in relation to other alleged parties to the offence);**
- f) the prevalence of the type of offence and any related need for specific and general deterrence;
- g) whether the consequences of any resulting conviction would be unduly harsh or oppressive to the accused; ...
- j) the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court;
- k) the strength of the Crown’s case, the staleness of the alleged offence, or the likely length and expense of the trial when considered in relation to the seriousness of the offence.

Balancing Act....

- Devastating impact on person in the images
- Has resulted in suicides in Canada and the US
- Huge numbers of kids often involved
- Time and resource consuming for police – not spent investigating people who may pose a greater risk of harm to children
- If all involved under 18 only probation available in any event as CP not a “serious violent offence” for YCJA sentencing purposes.
- In US where charges laid, especially against person who took photo of self – significant “blow back” against state.

- Canadian Centre for Child Protection (CCCCP)
 - www.protectchildren.ca
(parent agency for cybertip.ca)
- SPEX working group
 - NGOs, law enforcement, educators
 - Materials for schools, parent, students

PENDING LEGISLATION

Protecting Canadians from Online Crime Act - Bill C-13

- Result of a working group struck by the Federal government looking at the possibility of creating an offence of cyberbullying.
- 2nd reading November, 2013

“Publication etc. of an intimate image without consent”

s.162.1 will make it an offence to:

- for knowingly publish, distribute, transmit, sell, make available or advertise
- an intimate image of a person
- knowing that the person depicted in the image did not consent, or being reckless as to consent

“intimate image”

- a visual recording of a person made by any means including a photographic, film or video recording,
 - (a) in which the person is:
 - nude,
 - exposing his or her genital organs or anal region or her breasts or
 - engaged in explicit sexual activity;
 - (b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy; and
 - (c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed.

- “public good” defence like obscenity
- No mandatory minimum sentence (so discharges or conditional sentences available)
- Maximum sentence:
 - 12 mos summary conviction
 - 5 years indictment
- Has it's own “prohibition order” for the Internet or other digital network

Odds and sods of new bill....

- s4(8) For greater certainty, for the purposes of this Act, if the elements of an offence contain an explicit or implicit element of communication without specifying the means of communication, the communication may also be made by a means of telecommunication.
- Adds by means of telecommunication to
 - Conveying false information
 - Indecent communication
 - Harassing telephone calls