



Technology Safety for Women and Children: Legal Remedies for Stalking and Cyberstalking

INTRODUCTION

This information sheet is designed to assist frontline anti-violence workers, usually non-lawyers, to better understand the legal causes of action related to stalking and cyberstalking and the possible legal remedies for their clients when they are addressing these incidents. The sheet provides general legal information. Legal advice or representation must come from a lawyer who can advise you whether you should do something in a lawsuit or whether you should take certain actions in a court matter.

Stalking is repeatedly following, tracking, or communicating with a person. If it is unwanted, it can amount to harassing behaviour. The perpetrator may stalk a victim online or through another means, including telephone calls, text messages, emails, profile or email hacking, spyware, or through forms of GPS tracking.

There are several Canadian cases that illustrate what the courts have found as an actionable case for stalking. In *R v Kordrostami*¹, several hang-up calls over the span of a few days amounted to harassing behaviour after the victim told the perpetrator to leave her alone. In *R v Labrentz*², driving around the victim's apartment building as well as repeatedly sending her emails and letters amounted to harassing behaviour. In *R v Amiri*³, the perpetrator repeatedly communicated with the victim by way of text messages, Facebook messages, and phone calls.

WAYS TO COLLECT EVIDENCE

Before collecting evidence ensure you are doing so safely. Ensure to the best of your ability that all the devices are not being monitored, tracked or spied on. For more information on safety on technology safety strategies

http://nnedv.org/downloads/SafetyNet/OVW/NNEDV_TechSafetyQuickTipsChart_2011.pdf

If you or someone you know is being stalked, it is best to contact the police and fill out a police report. Keep a record, perhaps in a log or book, of all forms of contact made by the perpetrator. Record the date, time, and form of contact. If a witness is present at the time, record their name and contact

¹ 2000 Carswell Ont 554.

² 2010 ABPC 11.

³ 2013 ONCJ 829.



information. If the perpetrator is contacting you directly, tell them to stop and keep a record of you doing so.

If the perpetrator phones you, write down all details of the conversation if any is had. Do not make an audio recording of the conversation, as this will likely not be admissible in court. If the perpetrator leaves a message on your answering machine, save the message. If the perpetrator sends you a text message, email, or message through an online social platform, save the message. As well as saving these last forms of contact, it is best to preserve them further. Print off emails. Take a screen shot photo of any text messages, but first ensure the phone number of the sender is visible on the screen (as opposed to only a contact name). It is best to also take a photo, with another camera, of the cell phone with the message visible on the screen. Do the same for an instant messaging platform. For those available on a computer or lap top, use the print screen function. Again, it is best to also take a photo of the computer screen with the message visible on the screen.

POSSIBLE LEGAL REMEDIES

If a person is being stalked or cyberstalked by another person there are civil and criminal remedies to consider for protection, to stop the stalking, and to hold the person accountable.

A. Protection Orders

Peace Bond

A peace bond requires a potential perpetrator keep the peace and follow any other conditions specified by the court (e.g. not contact the victim). If the peace bond is entered into and any of its conditions are violated, the perpetrator can be charged criminally. You can report any violations directly to the police. Generally, the peace bond lasts for one year and there is no fee to apply. If necessary, you can apply to the court at a later stage to change or cancel the order.

If you fear that someone might commit an offence against you or somebody you know, you can ask the police to draft a peace bond. If you do not want to involve the police, you can go directly to the courthouse and ask to speak with the clerk of the criminal court, who will help you with the process.

Family Law Act Protection Order

A family law act protection order protects you and your family from physical, emotional, verbal, psychological, and sexual abuse by another family member. The definition of family member includes present or past spouses, a past or present person you've lived with in a marriage-like relationship, and a parent or legal guardian (or any of their relatives) of your child. The order can



require that your family member not contact or follow you as well as stay away from your home, workplace, or any other place you frequently visit. If the family law protection order is entered into and any of its conditions are violated, the perpetrator can be charged criminally. You can report any violations directly to the police. There is no fee to apply so long as you do so in the BC Provincial Court. If necessary, you can apply to the provincial court at a later stage to change or cancel the order.

You can apply for a family law protection order directly at a provincial court to protect you and/or other members of your family from past or present family members.

B. Criminal Proceeding:

In a criminal proceeding, it is the Crown or government that starts the proceedings against a perpetrator, the accused. The purpose of the proceeding is to prosecute the accused. The victim aids only by reporting the offence, complying with police investigations, and potentially being a witness in court.

These are potential offences in the *Criminal Code* that the Crown may charge a perpetrator with in connection to stalking:

- **Criminal Harassment (s 264)** – it is an offence to repeatedly follow, communicate, beset, watch a person's home or workplace, or engage in threatening conduct towards someone, directly or indirectly, in a manner that causes that person to fear for their safety, either physically, emotionally, or psychologically. The perpetrator must know, or be reckless to whether, their behaviour is harassing.
- **Interception (s 184)** – it is an offence to use a device to purposely intercept a private conversation or communication.
- **Harassing Communications (s 372(3))** – it is an offence to repeatedly telephone a person, without a lawful excuse and with the intent to harass that person.
- **Uttering Threats (s 264.1)** – it is an offence to knowingly threaten to harm a person, their property, or their pet.
- **Extortion (s 346)** – it is an offence to use threats, accusations, menaces, or violence to compel or try to compel a person to do something they do not want to do.
- **Intimidation (s 423)** – it is an offence to use intimidating behaviour in order to either prevent a person from doing something they are legally allowed to do, or to compel a person to do



something they do not legally have to do. Intimidating behaviour can include violence, threats, following a person, depriving a person of their property, besetting, watching a person's workplace or home, as well as blocking or obstructing a person on a highway. This offence varies from extortion in that the perpetrator need only to coerce a person's behaviours, as opposed to causing the person to perform some sort of activity.

In *R v Kordrostami*⁴, the perpetrator was convicted of criminal harassment for repeatedly calling the victim after she warned him to never call her again following sexually explicit comments made by the perpetrator.

C. Civil Proceeding:

In a civil proceeding, it is the victim of the stalking, called the plaintiff who starts the case against the perpetrator, who is called the defendant. The purpose of the case is to compensate the plaintiff or order the defendant to do, or stop from doing, certain actions (e.g. stay away from the plaintiff's home). Often a lawyer is helpful, but costly. You may wish to proceed without a lawyer, however, the process can be complex and difficult to manage alone.

There are potential actions that may be used in a civil proceeding against the perpetrator and listed below is what will need to be proven for each action in connection to stalking:

- **Violation of privacy**, as per s 1 of *Privacy Act*
 - the perpetrator intentionally did an act (ex. hacking an email account)
 - that he knew, or should have known, would violate the victim's privacy. The victim is not required to prove any harm resulted.
- **Intentional infliction of mental suffering**
 - very offensive and outrageous conduct by the perpetrator
 - intended to produce harm to the victim
 - resulting in a visible and provable illness to victim (e.g. severe mental suffering; depression; post-traumatic stress disorder).
- **Intimidation**
 - threats by a perpetrator to do something unlawful (e.g. continually harass the victim)
 - in order to get the victim to obey his wishes. Those wishes being: doing something the victim does not have to do (e.g. causing her to continue a relationship with the perpetrator), or having the victim refrain from doing something she is allowed to do (e.g. causing her to no longer see her current boyfriend).

⁴ 2000 Carswell Ont 554.



In the Ontario case, *MacKay v Buelow*⁵, the perpetrator was held liable for invasion of privacy and intentional infliction of mental suffering for repeatedly calling his ex-wife, threatening to kill her and kidnap their child, and for continuously harassing her friends and professional advisors. The perpetrator was ordered to pay the victim a total of \$105,248.15.

CONCLUSION

If working with a person who appears to have a stalking or cyberstalking case remember to review with her the ways to collect and preserve the evidence safely and then have her consider the safety planning and legal remedies available to keep her safe, stop the distribution, and hold the perpetrator accountable.

RESOURCES

General Tools for Victims:

www.justiceeducation.ca/legal-help/lawsuits-legal-system/lawsuits/starting-lawsuit
www2.gov.bc.ca/gov/content/safety/crime-prevention/protection-order-registry/qa
www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/bc-criminal-justice-system/if-victim/publications/hsh-english-stalking.pdf
www.westcoastleaf.org/wp-content/uploads/2014/09/2014-CYBER-MISOGYNY-Legal-Guide.pdf

Legal Consultation:

Law Students' Legal Advice Program: 604-822-5791 www.lslap.bc.ca

Access Pro Bono: 604-878-7400 www.accessprobono.ca

⁵ 1995 Carswell Ont 89.

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