



Legal protections: What laws apply to you?

Background

To support the safety and privacy of women¹ experiencing technology-facilitated violence, it is important to take technology-facilitated violence and stalking seriously. This includes assessing all ways that technology is being misused to perpetrate harm, and, considering all potential legal avenues that could or should be applied to the situation.

When a perpetrator misuses technology to harm a woman, there are various criminal and civil laws that may hold them responsible for their illegal behaviour. These laws can be applied to ensure perpetrator accountability and to promote women's safety.

There are a number of Canadian federal, provincial and territorial laws that apply to certain experiences of technology-facilitated violence.

Members of the justice system, lawyers and anti-violence workers can help women identify laws that address violence and abuse and where they explicitly or implicitly include the use of technology and electronic communications. This guide includes a list of statutes that pertains to technology-facilitated violence in the *Criminal Code of Canada*, the *BC Privacy Act*, and BC civil law protections. This is not meant to be an exhaustive list of all laws that could apply to technology-facilitated violence, but instead, lists many of the more common laws that could apply.

These laws pertain to experiences of:

- Stalking and cyberstalking
- Harassment, threats, assault, criminal extortion
- Domestic violence, dating violence, sexual violence, sexual exploitation
- Child pornography and sexual interactions with children in digital spaces, electronic transmission of harmful information to minors, providing obscene material to a minor, inappropriate images of minors, and luring a child
- Bullying and cyberbullying
- Child abuse

¹ In this toolkit we will be using the term “woman”, “violence against women” and feminine pronouns for simplicity and to recognize the significant impact technology-facilitated violence has on women and girls. Women and girls face higher rates of most forms of technology-facilitated violence. They also experience some of the most serious consequences as a result of this violence. However, technology-facilitated violence impacts transgender, non-binary, male and female people. We hope that all people impacted by this violence will find these documents useful.



- Facilitating crimes through technology

It is also helpful to think beyond the more obvious domestic and sexual assault charges and identify possible statutes related to technology, communications, privacy and confidentiality such as:

- Unauthorized access, unauthorized recording/taping, illegal interception of electronic communications, illegal monitoring of communications, surveillance, eavesdropping, wiretapping, unlawful party to call
- Computer and internet crimes such as fraud and network intrusion
- Identity theft, impersonation, pretexting
- Financial fraud, telecommunications fraud

There may also be violations to women's privacy and confidentiality when technology-facilitated violence is experienced. This can include:

- Reasonable expectation of privacy and voyeurism: upskirting, downblousing, secretly recording a person in the nude
- Laws that apply to the agency the perpetrator works for
- Defamatory libel, slander, economic or reputational harms, privacy torts
- Burglary, criminal trespass, reckless endangerment, disorderly conduct, mischief, obstruction of justice, possession of a device for unlawful purposes
- Violation of no contact, protection and restraining orders

This document contains a list of Canadian criminal and British Columbia's civil laws that can be applied to women's experiences of technology-facilitated violence.

This resource is current as of March 2021



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Note: As the law is always changing, we cannot guarantee these laws are up to date. If proceeding with a legal matter, please consult with a lawyer or the relevant legislation and case law to determine the current state of the law.

Criminal Code of Canada, RSC 1985, c C-46.

Sexual Interference (s 151)

Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years:

- (a)** is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or
- (b)** is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days.

Invitation to Sexual Touching (s 152)

Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years,

- (a)** is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or
- (b)** is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days.

Sexual Exploitation (s 153)

(1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who,

- (a)** for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or
- (b)** for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.



Punishment

(1.1) Every person who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

Inference of Sexual Exploitation

(1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including

(a) the age of the young person;

(b) the age difference between the person and the young person;

(c) the evolution of the relationship; and

(d) the degree of control or influence by the person over the young person.

Definition of young person

(2) In this section, young person means a person 16 years of age or more but under the age of eighteen years.

Sexual Exploitation of a Person with Disability (s 153.1)

(1) Every person who is in a position of trust or authority towards a person with a mental or physical disability or who is a person with whom a person with a mental or physical disability is in a relationship of dependency and who, for a sexual purpose, counsels or incites that person to touch, without that person's consent, his or her own body, the body of the person who so counsels or incites, or the body of any other person, directly or indirectly, with a part of the body or with an object, is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.



Definition of consent

(2) Subject to subsection (3), consent means, for the purposes of this section, the voluntary agreement of the complainant to engage in the sexual activity in question.

When no consent obtained

(3) No consent is obtained, for the purposes of this section, if

- (a)** the agreement is expressed by the words or conduct of a person other than the complainant;
- (b)** the complainant is incapable of consenting to the activity;
- (c)** the accused counsels or incites the complainant to engage in the activity by abusing a position of trust, power or authority;
- (d)** the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
- (e)** the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

Subsection (3) not limiting

(4) Nothing in subsection (3) shall be construed as limiting the circumstances in which no consent is obtained.

When belief in consent not a defence

(5) It is not a defence to a charge under this section that the accused believed that the complainant consented to

the activity that forms the subject-matter of the charge if

- (a)** the accused's belief arose from the accused's
 - (i)** self-induced intoxication, or
 - (ii)** recklessness or wilful blindness; or
- (b)** the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.



Accused's belief as to consent

(6) If an accused alleges that he or she believed that the complainant consented to the conduct that is the subject matter

of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

Voyeurism (s 162)

(1) Every one commits an offence who, surreptitiously, observes — including by mechanical or electronic means — or makes a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy, if

- (a)** the person is in a place in which a person can reasonably be expected to be nude, to expose his or her genital organs or anal region or her breasts, or to be engaged in explicit sexual activity;
- (b)** the person is nude, is exposing his or her genital organs or anal region or her breasts, or is engaged in explicit sexual activity, and the observation or recording is done for the purpose of observing or recording a person in such a state or engaged in such an activity; or
- (c)** the observation or recording is done for a sexual purpose.

Definition of visual recording

(2) In this section, visual recording includes a photographic, film or video recording made by any means.

Exemption

(3) Paragraphs (1)(a) and (b) do not apply to a peace officer who, under the authority of a warrant issued under section 487.01, is carrying out any activity referred to in those paragraphs.

Publication, etc., of an intimate image without consent (s 162.1)

(1) Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty

- (a)** of an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b)** of an offence punishable on summary conviction.



Definition of *intimate image*

(2) In this section, *intimate image* means a visual recording of a person made by any means including a photographic, film or video recording,

- (a)** in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is 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.

Defence

(3) No person shall be convicted of an offence under this section if the conduct that forms the subject-matter of the charge serves the public good and does not extend beyond what serves the public good.

Question of fact and law, motives

(4) For the purposes of subsection (3),

- (a)** it is a question of law whether the conduct serves the public good and whether there is evidence that the conduct alleged goes beyond what serves the public good, but it is a question of fact whether the conduct does or does not extend beyond what serves the public good; and
- (b)** the motives of an accused are irrelevant.

Prohibition order

162.2 (1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection 162.1(1), the court that sentences or discharges the offender, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.



Duration of prohibition

(2) The prohibition may be for any period that the court considers appropriate, including any period to which the offender is sentenced to imprisonment.

Court may vary order

(3) A court that makes an order of prohibition or, if the court is for any reason unable to act, another court of equivalent jurisdiction in the same province may, on application of the offender or the prosecutor, require the offender to appear before it at any time and, after hearing the parties, that court may vary the conditions prescribed in the order if, in the opinion of the court, the variation is desirable because of changed circumstances after the conditions were prescribed.

Offence

(4) Every person who is bound by an order of prohibition and who does not comply with the order is guilty of

- (a)** an indictable offence and is liable to imprisonment for a term of not more than four years; or
- (b)** an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months.

Corrupting Morals (s 163)

(1) Every person commits an offence who makes, prints, publishes, distributes, circulates or has in their possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or any other obscene thing.

Idem

(2) Every person commits an offence who knowingly, without lawful justification or excuse,

- (a)** sells, exposes to public view or has in their possession for that purpose any obscene written matter, picture, model, phonograph record or any other obscene thing; or
- (b)** publicly exhibits a disgusting object or an indecent show.
- (c) and (d)** [Repealed]



Defence of public good

(3) No person shall be convicted of an offence under this section if the public good was served by the acts that are alleged to constitute the offence and if the acts alleged did not extend beyond what served the public good.

Question of law and question of fact

(4) For the purposes of this section, it is a question of law whether an act served the public good and whether there is evidence that the act alleged went beyond what served the public good, but it is a question of fact whether the acts did or did not extend beyond what served the public good.

Motives irrelevant

(5) For the purposes of this section, the motives of an accused are irrelevant.

(6) [Repealed]

(7) [Repealed]

Obscene publication

(8) For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

Child Pornography (s 163.1)

Definition of *child pornography*

(1) In this section, *child pornography* means

(a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years;

(b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act;



(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act; or

(d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act.

Parent or Guardian Procuring Sexual Activity (s 170)

Every parent or guardian of a person under the age of 18 years who procures the person for the purpose of engaging in any sexual activity prohibited by this Act with a person other than the parent or guardian is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year.

Making Sexually Explicit Material Available to a Child (s 171.1)

(1) Every person commits an offence who transmits, makes available, distributes or sells sexually explicit material to

(a) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence under subsection 153(1), section 155, 163.1, 170 or 171 or subsection 212(1), (2), (2.1) or (4) with respect to that person;

(b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to that person; or

(c) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 with respect to that person.

Punishment

(2) Every person who commits an offence under subsection (1)

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years and to a minimum punishment of imprisonment for a term of 90 days; or

(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than six months and to a minimum punishment of imprisonment for a term of 30 days.



Presumption

(3) Evidence that the person referred to in paragraph (1)(a), (b) or (c) was represented to the accused as being under the age of 18, 16 or 14 years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused believed that the person was under that age.

No defence

(4) It is not a defence to a charge under paragraph (1)(a), (b) or (c) that the accused believed that the person referred to in that paragraph was at least 18, 16 or 14 years of age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person.

Definition of sexually explicit material

(5) In subsection (1), sexually explicit material means material that is not child pornography, as defined in subsection 163.1(1), and that is

(a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a person who is engaged in or is depicted as engaged in explicit sexual activity, or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a person's genital organs or anal region or, if the person is female, her breasts;

(b) written material whose dominant characteristic is the description, for a sexual purpose, of explicit sexual activity with a person; or

(c) an audio recording whose dominant characteristic is the description, presentation or representation, for a sexual purpose, of explicit sexual activity with a person.

Corrupting Children (s 172)

(1) Every one who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(2) [Repealed]



Definition of child

(3) For the purposes of this section, child means a person who is or appears to be under the age of eighteen years.

Who may institute prosecutions

(4) No proceedings shall be commenced under subsection (1) without the consent of the Attorney General, unless they are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court.

Luring a Child (s 172.1)

Every person commits an offence who, by a means of telecommunication, communicates with

(a) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence with respect to that person under subsection 153(1), section 155, 163.1, 170, 171 or 279.011 or subsection 279.02(2), 279.03(2), 286.1(2), 286.2(2) or 286.3(2);

(b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to that person; or

(c) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 with respect to that person.

Punishment

(2) Every person who commits an offence under subsection (1)

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

Presumption re age

(3) Evidence that the person referred to in paragraph (1)(a), (b) or (c) was represented to the accused as being under the age of eighteen years, sixteen years or fourteen years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused believed that the person was under that age.



No defence

(4) It is not a defence to a charge under paragraph (1)(a), (b) or (c) that the accused believed that the person referred to in that paragraph was at least eighteen years of age, sixteen years or fourteen years of age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person.

Agreement or Arrangement – Sexual Offences Against a Child (s 172.2)

(1) Every person commits an offence who, by a means of telecommunication, agrees with a person, or makes an arrangement with a person, to commit an offence

(a) under subsection 153(1), section 155, 163.1, 170, 171 or 279.011 or subsection 279.02(2), 279.03(2), 286.1(2), 286.2(2) or 286.3(2) with respect to another person who is, or who the accused believes is, under the age of 18 years;

(b) under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to another person who is, or who the accused believes is, under the age of 16 years; or

(c) under section 281 with respect to another person who is, or who the accused believes is, under the age of 14 years.

Punishment

(2) Every person who commits an offence under subsection (1)

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

Presumption

(3) Evidence that the person referred to in paragraph (1)(a), (b) or (c) was represented to the accused as being under the age of 18, 16 or 14 years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused believed that the person was under that age.

No defence

(4) It is not a defence to a charge under paragraph (1)(a), (b) or (c) that the accused believed that the person referred to in that paragraph was at least 18, 16 or 14 years of age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person.



No defence

(5) It is not a defence to a charge under paragraph (1)(a), (b) or (c)

(a) that the person with whom the accused agreed or made an arrangement was a peace officer or a person acting under the direction of a peace officer; or

(b) that, if the person with whom the accused agreed or made an arrangement was a peace officer or a person acting under the direction of a peace officer, the person referred to in paragraph (1)(a), (b) or (c) did not exist.

Indecent Acts (s 173)

(1) Everyone who wilfully does an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person,

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years; or

(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than six months.

Exposure

(2) Every person who, in any place, for a sexual purpose, exposes his or her genital organs to a person who is under the age of 16 years

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years and to a minimum punishment of imprisonment for a term of 90 days; or

(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than six months and to a minimum punishment of imprisonment for a term of 30 days.

Indecent Exhibition (s 175(b))

(1) Every one who

[...]

(b) openly exposes or exhibits an indecent exhibition in a public place,

[...]

is guilty of an offence punishable on summary conviction.



Interception (s 184)

(1) Every one who, by means of any electro-magnetic, acoustic, mechanical or other device, wilfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Saving provision

(2) Subsection (1) does not apply to

(a) a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it;

(b) a person who intercepts a private communication in accordance with an authorization or pursuant to section 184.4 or any person who in good faith aids in any way another person who the aiding person believes on reasonable grounds is acting with an authorization or pursuant to section 184.4;

(c) a person engaged in providing a telephone, telegraph or other communication service to the public who intercepts a private communication,

(i) if the interception is necessary for the purpose of providing the service,

(ii) in the course of service observing or random monitoring necessary for the purpose of mechanical or service quality control checks, or

(iii) if the interception is necessary to protect the person's rights or property directly related to providing the service;

(d) an officer or servant of Her Majesty in right of Canada who engages in radio frequency spectrum management, in respect of a private communication intercepted by that officer or servant for the purpose of identifying, isolating or preventing an unauthorized or interfering use of a frequency or of a transmission; or

(e) a person, or any person acting on their behalf, in possession or control of a computer system, as defined in subsection 342.1(2), who intercepts a private communication originating from, directed to or transmitting through that computer system, if the interception is reasonably necessary for

(i) managing the quality of service of the computer system as it relates to performance factors such as the responsiveness and capacity of the system as well as the integrity and availability of the system and data, or



(ii) protecting the computer system against any act that would be an offence under subsection 342.1(1) or 430(1.1).

Use or retention

(3) A private communication intercepted by a person referred to in paragraph (2)(e) can be used or retained only if

- (a)** it is essential to identify, isolate or prevent harm to the computer system; or
- (b)** it is to be disclosed in circumstances referred to in subsection 193(2).

Interception of radio-based telephone communications (s 184.5)

(1) Every person who intercepts, by means of any electro-magnetic, acoustic, mechanical or other device, maliciously or for gain, a radio-based telephone communication, if the originator of the communication or the person intended by the originator of the communication to receive it is in Canada, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Other provisions to apply

(2) Section 183.1, subsection 184(2) and sections 184.1 to 190 and 194 to 196 apply, with such modifications as the circumstances require, to interceptions of radio-based telephone communications referred to in subsection (1).

Possession [of surreptitious recording device] (s 191)

(1) Every person who possesses, sells or purchases any electro-magnetic, acoustic, mechanical or other device or any component of it knowing that its design renders it primarily useful for surreptitious interception of private communications is guilty of

- (a)** an indictable offence and liable to imprisonment for a term of not more than two years; or
- (b)** an offence punishable on summary conviction.

Counselling Suicide (s 241)

(1) Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years who, whether suicide ensues or not,

- (a)** counsels a person to die by suicide or abets a person in dying by suicide; or
- (b)** aids a person to die by suicide.



Note: there are exceptions for professionals and support persons who are supporting patients in legal medically assistance in dying such as doctors, nurses, pharmacists, social workers, psychologists, psychiatrists, therapists, medical practitioners, or other health care professionals.

Criminal Harassment (s 264)

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 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.

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*, 1997 ABCA 346 at paragraph 18, the Alberta Court of Appeal set out a widely-cited five-part test for criminal harassment:

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;

It must be established that the complainant was harassed;

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;

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

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

Furthermore, in *R v Kosikar*, 1999 CanLII 3775 (ONCA) at paragraph 24, the Ontario Court of Appeal held that "[h]arassment means causing someone to be tormented, troubled, worried continually or chronically plagued, bedevilled and badgered." If a complainant is only "vexed, disquieted or annoyed", criminal harassment will not be made out.

Uttering Threats (s 264.1)

(1) 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.

Punishment

(2) Every one who commits an offence under paragraph (1)(a) is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.



Idem

(3) Every one who commits an offence under paragraph (1)(b) or (c)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

Sexual Assault (ss 265, 271)

Assault (s 265)

(1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

Application

(2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

Consent

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

(a) the application of force to the complainant or to a person other than the complainant;

(b) threats or fear of the application of force to the complainant or to a person other than the complainant;

(c) fraud; or

(d) the exercise of authority.



Accused's belief as to consent

(4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

Sexual Assault (s 271)

Everyone who commits a sexual assault is guilty of

- (a)** an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or
- (b)** an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

Trafficking in persons (ss 279.01, 279.011, 279.02, 279.03)

(1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

- (a)** to imprisonment for life and to a minimum punishment of imprisonment for a term of five years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or
- (b)** to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of four years in any other case.

Consent (2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Trafficking of a person under the age of eighteen years

279.011 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable



(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.

Consent (2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Material benefit — trafficking (s 279.02)

(1) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.01(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

Material benefit

(2) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.011(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years.

Withholding or destroying documents — trafficking (s 279.03)

(1) Everyone who, for the purpose of committing or facilitating an offence under subsection 279.01(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Withholding or destroying documents — trafficking of person under 18 years

(2) Everyone who, for the purpose of committing or facilitating an offence under subsection 279.011(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year.



Exploitation (s 279.04)

(1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

Factors

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused

- (a)** used or threatened to use force or another form of coercion;
- (b)** used deception; or
- (c)** abused a position of trust, power or authority.

Commodification of Sexual Activity (ss 286.1-286.4)

Obtaining sexual services for consideration (s 286.1)

(1) Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years and a minimum punishment of,

(i) in the case where the offence is committed in a public place, or in any place open to public view, that is or is next to a park or the grounds of a school or religious institution or that is or is next to any other place where persons under the age of 18 can reasonably be expected to be present,

(A) for a first offence, a fine of \$2,000, and

(B) for each subsequent offence, a fine of \$4,000, or

(ii) in any other case,

(A) for a first offence, a fine of \$1,000, and

(B) for each subsequent offence, a fine of \$2,000; or



(b) an offence punishable on summary conviction and liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years less a day, or to both, and to a minimum punishment of,

(i) in the case referred to in subparagraph (a)(i),

(A) for a first offence, a fine of \$1,000, and

(B) for each subsequent offence, a fine of \$2,000, or

(ii) in any other case,

(A) for a first offence, a fine of \$500, and

(B) for each subsequent offence, a fine of \$1,000.

Obtaining sexual services for consideration from person under 18 years

(2) Everyone who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person under the age of 18 years is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of

(a) for a first offence, six months; and

(b) for each subsequent offence, one year.

Subsequent offences

(3) In determining, for the purpose of subsection (2), whether a convicted person has committed a subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(a) an offence under that subsection; or

(b) an offence under subsection 212(4) of this Act, as it read from time to time before the day on which this subsection comes into force.

Sequence of convictions only

(4) In determining, for the purposes of this section, whether a convicted person has committed a subsequent offence, the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences, whether any offence occurred before or after any conviction or whether offences were prosecuted by indictment or by way of summary conviction proceedings.



Definitions of place and public place

(5) For the purposes of this section, place and public place have the same meaning as in subsection 197(1).

Procuring (s 286.3)

(1) Everyone who procures a person to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(1), recruits, holds, conceals or harbours a person who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

Procuring — person under 18 years

(2) Everyone who procures a person under the age of 18 years to offer or provide sexual services for consideration or, for the purpose of facilitating an offence under subsection 286.1(2), recruits, holds, conceals or harbours a person under the age of 18 who offers or provides sexual services for consideration, or exercises control, direction or influence over the movements of that person, is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of five years.

Advertising sexual services (s 286.4)

Everyone who knowingly advertises an offer to provide sexual services for consideration is guilty of

- (a)** an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b)** an offence punishable on summary conviction.

Immunity — material benefit and advertising (s 286.5)

(1) No person shall be prosecuted for

- (a)** an offence under section 286.2 if the benefit is derived from the provision of their own sexual services; or
- (b)** an offence under section 286.4 in relation to the advertisement of their own sexual services.



Defamatory Libel (ss 298, 299, 300, 301, 302)

Definition

(1) A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.

Mode of expression

(2) A defamatory libel may be expressed directly or by insinuation or irony

- (a)** in words legibly marked on any substance; or
- (b)** by any object signifying a defamatory libel otherwise than by words.

Publishing (s 299)

A person publishes a libel when he

- (a)** exhibits it in public;
- (b)** causes it to be read or seen; or
- (c)** shows or delivers it, or causes it to be shown or delivered, with intent that it should be read or seen by the person whom it defames or by any other person.

Punishment of libel known to be false (s 300)

Every one who publishes a defamatory libel that he knows is false is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Punishment for defamatory libel (s 301)

Every one who publishes a defamatory libel is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

Extortion by libel (s 302)

(1) Every one commits an offence who, with intent

- (a)** to extort money from any person, or
- (b)** to induce a person to confer on or procure for another person an appointment or office of profit or trust, publishes or threatens to publish or offers to abstain from publishing or to prevent the publication of a defamatory libel.



Idem

(2) Every one commits an offence who, as the result of the refusal of any person to permit money to be extorted or to confer or procure an appointment or office of profit or trust, publishes or threatens to publish a defamatory libel.

Punishment

(3) Every person who commits an offence under this section is guilty of

- (a)** an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b)** an offence punishable on summary conviction.

Note: Exceptions exist for fair reporting of public meetings, publications for public benefit, fair comment on public person or work of art, true comments, good faith for redress of a wrong, among other things.

Hate Propaganda (ss 318, 319)

Advocating genocide

318 (1) Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Definition of genocide

(2) In this section, genocide means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

- (a)** killing members of the group; or
- (b)** deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

Consent

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

Definition of identifiable group

(4) In this section, identifiable group means any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability.



Public incitement of hatred

(1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

- (a)** an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b)** an offence punishable on summary conviction.

Willful promotion of hatred

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

- (a)** an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b)** an offence punishable on summary conviction

Defences

(3) No person shall be convicted of an offence under subsection (2)

- (a)** if he establishes that the statements communicated were true;
- (b)** if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
- (c)** if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or
- (d)** if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

Forfeiture Confiscation

(4) Where a person is convicted of an offence under section 318 or subsection (1) or (2) of this section, anything by means of or in relation to which the offence was committed, on such conviction, may, in addition to any other punishment imposed, be ordered by the presiding provincial court judge or judge to be forfeited to Her Majesty in right of the province in which that person is convicted, for disposal as the Attorney General may direct.

Exemption from seizure of communication facilities

(5) Subsections 199(6) and (7) apply with such modifications as the circumstances require to section 318 or subsection (1) or (2) of this section.

Consent



(6) No proceeding for an offence under subsection (2) shall be instituted without the consent of the Attorney General.

Definitions

(7) In this section,

communicating includes communicating by telephone, broadcasting or other audible or visible means;

identifiable group has the same meaning as in section 318;

public place includes any place to which the public have access as of right or by invitation, express or implied;

statements includes words spoken or written or recorded electronically or electro-magnetically or other-wise, and gestures, signs or other visible representations.

Unauthorized Use of a Computer (ss 342.1,342.2)

(1) Everyone is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years, or is guilty of an offence punishable on summary conviction who, fraudulently and without colour of right,

(a) obtains, directly or indirectly, any computer service;

(b) by means of an electro-magnetic, acoustic, mechanical or other device, intercepts or causes to be intercepted, directly or indirectly, any function of a computer system;

(c) uses or causes to be used, directly or indirectly, a computer system with intent to commit an offence under paragraph (a) or (b) or under section 430 in relation to computer data or a computer system; or

(d) uses, possesses, traffics in or permits another person to have access to a computer password that would enable a person to commit an offence under paragraph (a), (b) or (c).

Definitions

(2) In this section,

computer data means representations, including signs, signals or symbols, that are in a form suitable for processing in a computer system;

computer password means any computer data by which a computer service or computer system is capable of being obtained or used;



computer program means computer data representing instructions or statements that, when executed in a computer system, causes the computer system to perform a function;

computer service includes data processing and the storage or retrieval of computer data;

computer system means a device that, or a group of interconnected or related devices one or more of which,

- (a) contains computer programs or other computer data, and
- (b) by means of computer programs,
 - (i) performs logic and control, and
 - (ii) may perform any other function;

data [Repealed]

electro-magnetic, acoustic, mechanical or other device means any device or apparatus that is used or is capable of being used to intercept any function of a computer system, but does not include a hearing aid used to correct subnormal hearing of the user to not better than normal hearing;

function includes logic, control, arithmetic, deletion, storage and retrieval and communication or telecommunication to, from or within a computer system;

intercept includes listen to or record a function of a computer system, or acquire the substance, meaning or purport thereof;

traffic means, in respect of a computer password, to sell, export from or import into Canada, distribute or deal with in any other way.

Possession of device to obtain unauthorized use of computer system or to commit mischief (s 342.2)

(1) Every person who, without lawful excuse, makes, possesses, sells, offers for sale, imports, obtains for use, distributes or makes available a device that is designed or adapted primarily to commit an offence under section 342.1 or 430, knowing that the device has been used or is intended to be used to commit such an offence, is

- (a) guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or
- (b) guilty of an offence punishable on summary conviction.



Forfeiture

(2) If a person is convicted of an offence under subsection (1), in addition to any punishment that is imposed, any device in relation to which the offence was committed or the possession of which constituted the offence may be ordered forfeited to Her Majesty and may be disposed of as the Attorney General directs.

Limitation

(3) No order of forfeiture may be made under subsection (2) in respect of any thing that is the property of a person who was not a party to the offence under subsection (1).

Definition of device

(4) In this section, device includes

- (a)** a component of a device; and
- (b)** a computer program within the meaning of subsection 342.1(2).

Extortion (s 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.



False Information: Indecent communication, harassing communications (s 372)

False information

(1) Everyone commits an offence who, with intent to injure or alarm a person, conveys information that they know is false, or causes such information to be conveyed by letter or any means of telecommunication.

Indecent communications

(2) Everyone commits an offence who, with intent to alarm or annoy a person, makes an indecent communication to that person or to any other person by a means of telecommunication.

Harassing communications

(3) Everyone commits an offence who, without lawful excuse and with intent to harass a person, repeatedly communicates, or causes repeated communications to be made, with them by a means of telecommunication.

Punishment

(4) Everyone who commits an offence under this section is guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or

(a) guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or

(b) guilty of an offence punishable on summary conviction.

Identity Theft (s 402.2)

(1) Every person commits an offence who obtains or possesses another person's identity information with intent to use it to commit an indictable offence that includes fraud, deceit or falsehood as an element of the offence.

Trafficking in identity information

(2) Everyone commits an offence who transmits, makes available, distributes, sells or offers for sale another person's identity information, or has it in their possession for any of those purposes, knowing that or being reckless as to whether the information will be used to commit an indictable offence that includes fraud, deceit or falsehood as an element of the offence.

Clarification



(3) For the purposes of subsections (1) and (2), an indictable offence referred to in either of those subsections includes an offence under any of the following sections:

- (a)** section 57 (forgery of or uttering forged passport);
- (b)** section 58 (fraudulent use of certificate of citizenship);
- (c)** section 130 (personating peace officer);
- (d)** section 131 (perjury);
- (e)** section 342 (theft, forgery, etc., of credit card);
- (f)** section 362 (false pretence or false statement);
- (g)** section 366 (forgery);
- (h)** section 368 (use, trafficking or possession of forged document);
- (i)** section 380 (fraud); and
- (j)** section 403 (identity fraud).

Jurisdiction

(4) An accused who is charged with an offence under subsection (1) or (2) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody. However, no proceeding in respect of the offence shall be commenced in a province without the consent of the Attorney General of that province if the offence is alleged to have been committed outside that province.

Punishment

(5) Everyone who commits an offence under subsection (1) or (2)

- (a)** is guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b)** is guilty of an offence punishable on summary conviction.

Identity Fraud (s 403)

(1) Everyone 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.

Clarification

(2) For the purposes of subsection (1), 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.

Punishment

(3) Everyone who commits an offence under subsection (1)

- (a)** is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or
- (b)** is guilty of an offence punishable on summary conviction.

Intimidation (s 423)

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

- (a)** uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her property;
- (b)** intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;
- (c)** persistently follows that person;
- (d)** hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;
- (e)** with one or more other persons, follows that person, in a disorderly manner, on a highway;
- (f)** besets or watches the place where that person resides, works, carries on business or happens to be; or



(g) blocks or obstructs a highway.

Exception

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

Intimidation of a Justice System Participant or a Journalist (s 423.1)

(1) No person shall, without lawful authority, engage in any conduct with the intent to provoke a state of fear in

(a) a group of persons or the general public in order to impede the administration of criminal justice;

(b) a justice system participant in order to impede him or her in the performance of his or her duties; or

(c) a journalist in order to impede him or her in the transmission to the public of information in relation to a criminal organization.

Punishment

(3) Every person who contravenes this section is guilty of an indictable offence and is liable to imprisonment for a term of not more than fourteen years.

Mischief in Relation to Data (s 430)

(1.1) Everyone commits mischief who wilfully

(a) destroys or alters computer data;

(b) renders computer data meaningless, useless or ineffective;

(c) obstructs, interrupts or interferes with the lawful use of computer data; or

(d) obstructs, interrupts or interferes with a person in the lawful use of computer data or denies access to computer data to a person who is entitled to access to it.

Punishment

(2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life.

Punishment Idem



(3) Every one who commits mischief in relation to property that is a testamentary instrument or the value of which exceeds five thousand dollars

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

(b) is guilty of an offence punishable on summary conviction.

Idem

(4) Every one who commits mischief in relation to property, other than property described in subsection (3),

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.

Mischief in relation to computer data

(5) Everyone who commits mischief in relation to computer data

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

(b) is guilty of an offence punishable on summary conviction.

Punishment

(5) Everyone who commits mischief in relation to computer data

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

(b) is guilty of an offence punishable on summary conviction.

Definition of computer data

(8) In this section, computer data has the same meaning as in subsection 342.1(2) [“computer data means representations, including signs, signals or symbols, that are in a form suitable for processing in a computer system”].

Copyright Act, RSC 1985, c C-42.



3 (1) For the purposes of this Act, *copyright*, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

- (a) to produce, reproduce, perform or publish any translation of the work,
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,
- (d) in the case of a literary, dramatic or musical work, to make any sound recording, cinematograph film or other contrivance by means of which the work may be mechanically reproduced or performed,
- (e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work as a cinematographic work,
- (f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,
- (g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after June 7, 1988, other than a map, chart or plan,
- (h) in the case of a computer program that can be reproduced in the ordinary course of its use, other than by a reproduction during its execution in conjunction with a machine, device or computer, to rent out the computer program,
- (i) in the case of a musical work, to rent out a sound recording in which the work is embodied, and
- (j) in the case of a work that is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the copyright owner, and to authorize any such acts.

Preventative Orders: Peace Bonds and Protection Orders

Peace Bond: *Criminal Code*, , RSC 1985, c C-46, s 810.



If injury or damage feared

(1) An information may be laid before a justice by or on behalf of any person who fears on reasonable grounds that another person

(a) will cause personal injury to them or to their intimate partner or child or will damage their property; or

(b) will commit an offence under section 162.1.

Duty of justice

(2) A justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division.

Adjudication

(3) If the justice or summary conviction court before which the parties appear is satisfied by the evidence adduced that the person on whose behalf the information was laid has reasonable grounds for the fear, the justice or court may order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for a period of not more than 12 months.

Refusal to enter into recognizance

(3.01) The justice or summary conviction court may commit the defendant to prison for a term of not more than 12 months if the defendant fails or refuses to enter into the recognizance.

Refusal to enter into recognizance

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Conditions

(3.1) Before making an order under subsection (3), the justice or the summary conviction court shall consider whether it is desirable, in the interests of the safety of the defendant or of any other person, to include as a condition of the recognizance that the defendant be prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, for any period specified in the recognizance and, where the justice or summary conviction court decides that it is so desirable, the justice or summary conviction court shall add such a condition to the recognizance.

Surrender, etc.



(3.11) Where the justice or summary conviction court adds a condition described in subsection **(3.1)** to a recognizance order, the justice or summary conviction court shall specify in the order the manner and method by which

- (a)** the things referred to in that subsection that are in the possession of the accused shall be surrendered, disposed of, detained, stored or dealt with; and
- (b)** the authorizations, licences and registration certificates held by the person shall be surrendered.

Reasons

(3.12) Where the justice or summary conviction court does not add a condition described in subsection (3.1) to a recognizance order, the justice or summary conviction court shall include in the record a statement of the reasons for not adding the condition.

Supplementary conditions

(3.2) Before making an order under subsection (3), the justice or the summary conviction court shall consider whether it is desirable, in the interests of the safety of the informant, of the person on whose behalf the information was laid or of that person's intimate partner or child, as the case may be, to add either or both of the following conditions to the recognizance,

- (a)** a condition prohibiting the defendant from being at, or within a distance specified in the recognizance from, a place specified in the recognizance where the person on whose behalf the information was laid or that person's intimate partner or child, as the case may be, is regularly found; or
- (b)** a condition prohibiting the defendant from communicating, in whole or in part, directly or indirectly, with the person on whose behalf the information was laid or that person's intimate partner or child, as the case may be.

Form — warrant of committal

(4) A warrant of committal to prison for failure or refusal to enter into the recognizance under subsection (3) may be in Form 23.

Modification of recognizance

(4.1) The justice or the summary conviction court may, on application of the informant or the defendant, vary the conditions fixed in the recognizance.

Procedure



(5) The provisions of this Part apply, with such modifications as the circumstances require, to proceedings under this section.

Protection Orders: British Columbia *Family Law Act*, C 2011, c 25, s 183.

(1) An order under this section

- (a)** may be made on application by a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court's own initiative, and
- (b)** need not be made in conjunction with any other proceeding or claim for relief under this Act.

(2) A court may make an order against a family member for the protection of another family member if the court determines that

- (a)** family violence is likely to occur, and
- (b)** the other family member is an at-risk family member.

(3) An order under subsection (2) may include one or more of the following:

(a) a provision restraining the family member from

- (i)** directly or indirectly communicating with or contacting the at-risk family member or a specified person,
- (ii)** attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,
- (iii)** following the at-risk family member,
- (iv)** possessing a weapon, a firearm or a specified object, or
- (v)** possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;

(b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;

(c) directions to a police officer to

- (i)** remove the family member from the residence immediately or within a specified period of time,



(ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or

(iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);

(d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;

(e) any terms or conditions the court considers necessary to

(i) protect the safety and security of the at-risk family member, or

(ii) implement the order.

(4) Unless the court provides otherwise, an order under this section expires one year after the date it is made.

(5) If an order is made under this section at the same time as another order is made under this Act, including an order made under Division 5 [*Orders Respecting Conduct*] of Part 10, the orders must not be recorded in the same document.

Whether to make protection order

184 (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:

(a) any history of family violence by the family member against whom the order is to be made;

(b) whether any family violence is repetitive or escalating;

(c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;

(d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;

(e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;

(f) the at-risk family member's perception of risks to his or her own safety and security;



(g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.

(2) If family members are seeking orders under this Part against each other, the court must consider whether the order should be made against one person only, taking into account

- (a)** the history of, and potential for, family violence,
- (b)** the extent of any injuries or harm suffered, and
- (c)** the respective vulnerability of the applicants.

(3) For the purposes of subsection (2), the person who initiates a particular incident of family violence is not necessarily the person against whom an order should be made.

(4) The court may make an order under this Part regardless of whether any of the following circumstances exist:

- (a)** an order for the protection of the at-risk family member has been made previously against the family member against whom an order is to be made, whether or not the family member complied with the order;
- (b)** the family member against whom the order is to be made is temporarily absent from the residence;
- (c)** the at-risk family member is temporarily residing in an emergency shelter or other safe place;
- (d)** criminal charges have been or may be laid against the family member against whom the order is to be made;
- (e)** the at-risk family member has a history of returning to the residence and of living with the family member against whom the order is to be made after family violence has occurred;
- (f)** an order under section 225 [*orders restricting communications*] has been made, respecting the at-risk family member, against the family member against whom the order is to be made.

If child a family member

185 If a child is a family member, the court must consider, in addition to the factors set out in section 184 [*whether to make protection order*],

- (a)** whether the child may be exposed to family violence if an order under this Part is not made, and



(b) whether an order under this Part should also be made respecting the child if an order under this Part is made respecting the child's parent or guardian.

Orders without notice

186 (1) An application for an order under this Part may be made without notice.

(2) If an order is made under this Part without notice, the court, on application by the party against whom the order is made, may

- (a)** set aside the order, or
- (b)** make an order under section 187 [*changing or terminating orders respecting protection*].

Changing or terminating orders respecting protection

187 (1) On application by a party, a court may do one or more of the following respecting an order made under this Part:

- (a)** shorten the term of the order;
- (b)** extend the term of the order;
- (c)** otherwise change the order;
- (d)** terminate the order.

(2) An application under this section must be made before the expiry of the order that is the subject of the application.

(3) Nothing in subsection (2) of this section prohibits a person from making a subsequent application for an order under section 183 [*orders respecting protection*].

Enforcing orders respecting protection

188 (1) An order made under this Part may not be enforced

- (a)** by means of any order that may be made under this Act, or
- (b)** under the *Offence Act*.

(2) A police officer having reasonable and probable grounds to believe that a person has contravened a term of an order made under this Part may

- (a)** take action to enforce the order, whether or not there is proof that the order has been served on the person, and



(b) if necessary for the purpose of paragraph (a), use reasonable force.

Conflict between orders

189 (1) In this section, "protection order" means any of the following orders:

- (a)** an order made under this Part;
- (b)** an order, made under the [Criminal Code](#), that restricts a person from contacting or communicating with another person;
- (c)** an order, made by a court in British Columbia or another jurisdiction in Canada, that is similar in nature to an order made under this Part.

(2) If there is a conflict or an inconsistency between a protection order and an order made under a Part of this Act other than this Part, the other order is suspended, to the extent of the conflict or inconsistency, until

- (a)** either the other order or the protection order is varied in such a way that the conflict or inconsistency is eliminated, or
- (b)** the protection order is terminated.

Civil Law

Breach of fiduciary duty

TKL v TMP, 2016 BCSC 789.

In a parent child relationship, including with step-parents, the parent owes a fiduciary duty to the child (*KM v HM*, [1992] 3 SCR 6; *KLB v British Columbia*, 2003 SCC 51; *RD v GS*, 2011 BCSC 1118). This duty can be breached if a parent takes voyeuristic images of their child.

Defamation

Hill v Church of Scientology, [1995] 2 SCR 1130; *Grant v Torstar*, 2009 SCC 61.

A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages:

- (1)** that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;
- (2)** that the words in fact referred to the plaintiff; and



(3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

Also see: *Libel and Slander Act*, RSBC 1996, c-263.

Intimidation

Roman Corp Ltd v Hudson's Bay Oil & Gas Co, [1973] 36 DLR (3d) 413 (SCC) at p 4; *Central Canada Potash Co v Saskatchewan (Attorney General)*, [1979] 1 SCR 42 (SCC) at para 71; *Dusik v Gooderham*, [1985] 62 BCLR 1 (BCCA).

The tort of intimidation occurs if a person threatens another person in order to compel them to do something that causes harm to himself or another person.

Intentional Infliction of Mental Suffering

The test for intentional infliction of mental distress is set out in *Prinzo v Baycrest Centre for*

Geriatric Care, [2002] OR (3d) 474 at para 43, 215 DLR (4th) 31 (ONSC) (Cited in *Young v Borzoni*, 2007 BCCA 16) and requires:

- a) conduct that is flagrant and outrageous;
- b) calculated to produce harm; and,
- c) resulting in visible and provable injury.

Privacy Act, RSBC 1996 c 373, s 1(1), 3.

1 (1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of another.

(2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.

(3) In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.

(4) Without limiting subsections (1) to (3), privacy may be violated by eavesdropping or surveillance, whether or not accomplished by trespass.

Unauthorized use of name or portrait of another

3 (1) In this section, "portrait" means a likeness, still or moving, and includes



- (a)** a likeness of another deliberately disguised to resemble the plaintiff, and
- (b)** a caricature.

(2) It is a tort, actionable without proof of damage, for a person to use the name or portrait of another for the purpose of advertising or promoting the sale of, or other trading in, property or services, unless that other, or a person entitled to consent on his or her behalf, consents to the use for that purpose.

(3) A person is not liable to another for the use for the purposes stated in subsection (2) of a name identical with, or so similar as to be capable of being mistaken for, that of the other, unless the court is satisfied that

- (a)** the defendant specifically intended to refer to the plaintiff or to exploit his or her name or reputation, or

- (b)** either on the same occasion or on some other occasion in the course of a program of advertisement or promotion, the name was connected, expressly or impliedly, with other material or details sufficient to distinguish the plaintiff, to the public at large or to the members of the community in which he or she lives or works, from others of the same name.

(4) A person is not liable to another for the use, for the purposes stated in subsection (2), of his or her portrait in a picture of a group or gathering, unless the plaintiff is

- (a)** identified by name or description, or his or her presence is emphasized, whether by the composition of the picture or otherwise, or

- (b)** recognizable, and the defendant, by using the picture, intended to exploit the plaintiff's name or reputation.

(5) Without prejudice to the requirements of any other case, in order to render another liable for using his or her name or portrait for the purposes of advertising or promoting the sale of

- (a)** a newspaper or other publication, or the services of a broadcasting undertaking, the plaintiff must establish that his or her name or portrait was used specifically in connection with material relating to the readership, circulation or other qualities of the newspaper or other publication, or to the audience, services or other qualities of the broadcasting undertaking, as the case may be, and

- (b)** goods or services on account of the use of the name or portrait of the other in a radio or television program relating to current or historical events or affairs, or other matters of public interest, that is sponsored or promoted by or on behalf of the makers, distributors, vendors or suppliers of the goods or services, the plaintiff must establish that his or her name or portrait



was used specifically in connection with material relating to the goods or services, or to their manufacturers, distributors, vendors or suppliers.

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