

Court orders removal of Facebook posts under cyber-bullying law

Litigation | Litigation & Dispute Resolution | Remedies | Removal of online posts

6 January 2023

The use of social media to threaten, intimidate or harass someone is an obvious cause of concern in our society. Young people are particularly vulnerable to social media harassment or what has become called “cyber-bullying”. This concern has led to some positive legislative changes in most provinces through amendments made to their respective education legislation and in Canada through amendments to the Criminal Code. Civil courts have also been sensitive to online harassment, particularly in the area of defamation law. However, the incremental changes in the civil courts and the amendments to education legislation and the Criminal Code may not represent the best response to cyberbullying. As demonstrated in *Benoit v. Langille (Facebook Group “Stop Gail Benoit”)*, 2022 NSC 374 (not on CanLII), the best response may be in the form of legislation that is specifically designed to provide a victim with remedies for cyber-bullying.

In this Nova Scotia case, the applicant used Nova Scotia’s *Intimate Images and Cyber-Protection Act* (the “**Cyber-Protection Act**”) to obtain an order for, among other things, the removal of harassing Facebook posts and to prevent the respondent from further cyber-bullying without having to rely on the criminal justice system or to engage in costly or cumbersome litigation involving the actual posters of harassing, threatening and intimidating statements.

The applicant had become the subject of cyber-bullying as a result of having been involved in multiple Court proceedings related to her mistreatment of dogs. In 2010, for example, the applicant was found guilty for breaching the *Animal Cruelty Act* and for assaulting a peace officer.

The activities of the applicant led the respondent to create a Facebook group which focused on the applicant and her treatment of animals. The respondent was the administrator of the group and people were allowed to join the group and to leave comments, which were accessible to the public.

The applicant alleged that the comments posted on the group were harmful because they encouraged violent harm to her or warned that she should be watched. The comments, among others, also alleged that the applicant was watching people’s home to observe their pets in preparation to steal them, that the applicant should be beaten to a pulp, and that the applicant drove while drunk and unlicensed. The applicant stated that these posts caused her fear and anxiety. Accordingly, she sought remedies under the *Cyber-Protection Act*.

Under the *Cyber-Protection Act*, “cyber-bullying” is defined as “an electronic communication, direct or indirect, that causes or is likely to cause harm to another individual’s health or well-being, where the person responsible for the communication maliciously intended to cause harm to another individual’s health or well-being or was reckless with regard to the risk of harm to another individual’s health or well-being.” The definition includes a non-exhaustive list of activities that could fall within it.

Section 7 of the *Cyber-Protection Act* also contains a list of factors that a Court is required to consider on an application for an order and what order to make.

Unlike offences prosecuted under the *Criminal Code*, the standard of proof under the *Cyber-Protection Act* is a balance of probabilities.

In *Fraser v. Crossman*, 2022 NSC 8, the court explained that in order to succeed on a cyberbullying application, the following four elements had to be proven:

1. the information in question must be an electronic communication;
2. electronic information may be direct or indirect;
3. electronic communication must cause or be likely to cause harm to another individual’s health or well-being; and
4. the person responsible for the communication must maliciously intend to cause harm to another individual’s well-being or was reckless with regard to the risk of harm to that individual’s health or well-being.

The court found that the Facebook posts were an electronic communication and that the electronic communication was both direct and indirect to the applicant and others. The applicant was the sole focus of the Facebook group and the group was open and public.

The court further found that the communications might cause or were likely to cause harm to the applicant's health or well-being because some of the posts contained graphic threats to the applicant.

Lastly, with respect to the fourth element of the test, the court accepted the applicant's contention that there was recklessness on the part of the respondent to allow the posts which created a risk of harm to the applicant. Even though the court noted that certain aspects in some of the communications post were true with respect to the applicant having been found guilty of causing harm to animals and to police involved in animal welfare, the court found that "...the Facebook group encouraged members to engage in a new, and disturbing, form of cyber vigilantism, facilitated by social media".

In the result, the court ordered that the respondent was:

1. prohibited from making any further communications that would constitute cyber-bullying via Facebook;
2. required to take down her Facebook group;
3. to take down any communications that were cyber-bullying, including, but not limited to, Facebook postings that referred directly or indirectly to the applicant and which referenced or encouraged violence or threats of violence against her;
4. to disable access to any communications that were cyber-bullying if such communications could not be taken down; and
5. prohibited from any communications, directly or indirectly, with the applicant except through a lawyer.

The applicant, however, was not awarded any damages because of insufficient evidence.

This case demonstrates the effectiveness of legislation that is specifically designed to combat cyberbullying. The applicant was not required to engage police or the criminal justice system and was not required to commence proceeding against all of the individuals who had posted harmful comments on the Facebook group. The applicant was only required to commence her proceeding against the group's administrator. Accordingly, this case serves as a warning to online forum or chat group administrators in Nova Scotia to be vigilant in vetting potentially harmful comments that are posted thereon, especially if accessible to the public, and as a shining example of legislation that should be considered by other provinces. A person who is the victim of cyberbullying ought to have easy access to the courts and should not be required to engage in costly or cumbersome litigation to obtain a remedy against potentially anonymous harassers. A PDF version is available to download [here](#).

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



Stephen A. Thiele

Partner

416.865.6651

sthiele@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com