

KEEPING CURRENT

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Court issues injunction to stop online harassment and intimidation pending trial

By James R.G. Cook

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Online harassment has become a major issue in Canadian society and has resulted in the burgeoning tort of "[internet harassment](#)" specifically designed to address such conduct. Recently, a Toronto motion judge [noted](#) that over the span of ten days, the court dealt with four civil cases in which relief was sought due to online harassment. While a successful tort claim may eventually provide some relief to a plaintiff suffering from internet harassment, civil proceedings are notoriously slow-moving and the pandemic has exacerbated delays in obtaining trial dates. A plaintiff may need to obtain an interim order to stop online harassment from continuing before trial.

The decision of *385277 Ontario Ltd. v Gold*, [2021 ONSC 4717 \(CanLII\)](#) demonstrates that an interim injunction may be available in certain circumstances to stop a defendant from carrying on internet harassment, particularly when the purpose of such conduct is the intimidation of an opposing litigant.

The case arose from a dispute between the plaintiff landlord, a numbered corporation that owned a 10-acre rural property, and the defendants, who entered into a 2-year lease to reside on the property expiring in April 2021. After moving in, the defendants complained about the water pressure and various other issues. The defendants raised their complaints with the landlord's owner and property manager.

In early 2020, the plaintiff and the defendants agreed to terminate the tenancy early, effective as of April 30, 2020. The defendants then requested the return of post-dated rent cheques that they had already provided for the rest of the lease term. The property manager advised that he would return the cheques on the final inspection of the property at the end of the lease. The defendants put a stop order on their post-dated April 2020 rent cheque to prevent the plaintiff from cashing it.

On April 30, 2020, the defendants did not leave. Initially, they said that the COVID-19 pandemic prevented them

from moving out. However, they did not propose a new lease agreement or pay any further rent.

The Ontario Landlord and Tenant Board granted the landlord an interim order requiring the defendants to pay rent while the status of their tenancy was considered. However, the defendants disputed the jurisdiction of the Board over their farm property lease and therefore declined to obey the Board's interim order. The defendants continued to remain on the property without paying any rent.

During this time, the defendants also posted evidence of deficiencies they were experiencing with the property in videos that they uploaded onto the internet platform YouTube. Their comments went beyond personal issues with the landlord and its owner and made statements about the plaintiff's property manager. After the Board ruling, the defendants posted numerous videos disagreeing and complaining about the Board.

Of concern, the defendants posted several videos on their YouTube channel which made explicit or implicit threats to the safety of the landlord's owner and his family. Apart from threats of violence and name-calling, the most telling and important category of videos were those demanding a settlement of the landlord's civil claim. While some of the posts were plainly defamatory, many were generally profane, threatening, and intimidating. The videos were expressly intended to create anxiety and fear over what the defendants might do next.

The plaintiff commenced a civil action and sought an interim injunction to stop the defendants from carrying on with the internet harassment before trial.

In the July 2021 [decision](#), Justice F.L. Myers concluded that the defendants had set out on a

campaign to harass and intimidate the landlord's owner. The court noted that the gravamen of the online harassment at issue was not about defamation or intentional infliction of mental suffering, which requires proof of a visible and provable illness. Rather, the point of harassment is to cause mental suffering or to change another's behaviour by subjecting them to unwelcomed torment. It may not create a threat of imminent physical harm or a provable illness.

While the defendants contended that they were trying to "speak truth to power" and to show a wealthy man that they would not be intimidated by his status and his use of legal process against them, the videos indicated that they would keep uttering outrageous threats, insults, and slurs to distract the plaintiff's owner and upset him until he gave them what they wanted.

The internet itself has changed the nature and potential impact of such harassment:

The threat today of one's life being turned upside down because of something someone else says on the internet that is heard or read by strangers half a world away is real and cannot just be dismissed or ignored like a person with a megaphone on the street.

The court referred to the test for internet harassment outlined in *Caplan v. Atas*, [2021 ONSC 670 \(CanLII\)](#), which is aimed at communications that "go beyond all possible bounds of decency and tolerance, with the intent to cause fear, anxiety, emotional upset or to impugn the dignity of the plaintiff."

Further, the court referred to the little-known tort of "intimidation" recognized by the Supreme Court of Canada in *Central Canada Potash Co.*



Ltd. et al. v. Government of Saskatchewan, [1978 CanLII 21 \(SCC\)](#). The tort of intimidation is essentially a civil form of extortion when a person threatens to take an unlawful act to cause someone else to do something he or she otherwise does not want to do. The Supreme Court of Canada held the threat must be to take an unlawful act and the person threatened must establish that he or she has sustained damage by the threat.

In the case at hand, the court recognized that it is unlawful harassment to use the internet in a manner that is outrageous in character, duration, and extreme in degree, with the intent to coerce behaviour by causing fear, anxiety, emotional upset, or impugning the dignity of the plaintiff online.

The defendants argued that they were using the internet to express their position in the litigation against their landlord. However, the court found the defendants' posts were intended "to make outrageous threats, defamatory statements, and gratuitous personal attacks, imbued with hyperbole, profane and offensive language, and vulgar vitriol with the intent to coerce [the plaintiff] into paying them and/or releasing them from liability by causing him fear, anxiety, emotional upset, and impugning his dignity online."

The court readily concluded that the plaintiffs would suffer irreparable harm if the defendants were not stopped from online harassment pending trial. The intended pain being inflicted by harassment and the internet risks were not readily capable of remedy in monetary damages.

Further, the defendants had remedies in the court process if their concern was truly the improper use of litigation by the landlord. As stated by Myers J., "If one feels harassed by court proceedings, tell the court." It is not a fair or proper basis to justify one's own self-help

campaign of online harassment and intimidation.

In the result, the court ordered an injunction to stop the defendants from continuing with their internet harassment of the plaintiff pending trial. The court awarded costs of the motion given that it was required to stop a deliberate course of harassment which the defendants tried to justify in opposing the injunction.

Contact us

If you have a litigation matter and are in need of legal advice, please contact [James Cook](#) at 416.865.6628, jcook@grllp.com.

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