



# Child pornography/Revenge Porn

Lisa Henderson – Provincial Crown Coordinator

Provincial Strategy to Combat Internet Crimes Against Children

# The Law and the Internet

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



Uttering threats

Voyeurism

Criminal Harassment

Child Pornography

Extortion

Personation

Hate Crimes

*Defamatory Libel*

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

# But.....

Morality infuses the criminal law. But the law does not seek to criminalize all immorality. The principal objective of the criminal law is the public identification of wrongdoing *qua* wrongdoing which **violates public order** and is **so blameworthy that it deserves penal sanction**. *R. v. Mabior*, [2012] S.C.J. No. 47

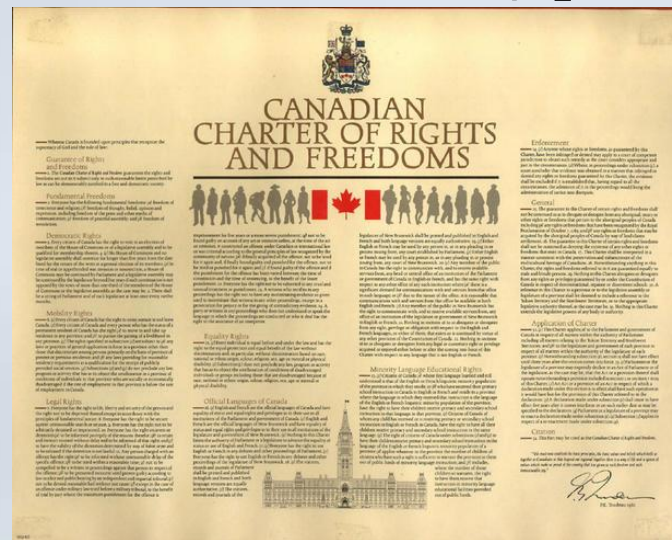
- **Conduct which is mean, petty, uncooperative and spiteful is not the stuff of the criminal law....**
- **Criminal law is a blunt and costly instrument ...So criminal law must be an instrument of last resort.**
- **The watchword is restraint – restraint applying to the scope of criminal law, to the meaning of criminal guilt, to the use of the criminal trial and to the criminal sentence.** *R. v. McDougall*, [1990] OJ No. 2343 (C.A.)

# Defamatory Libel



# Defamatory Libel

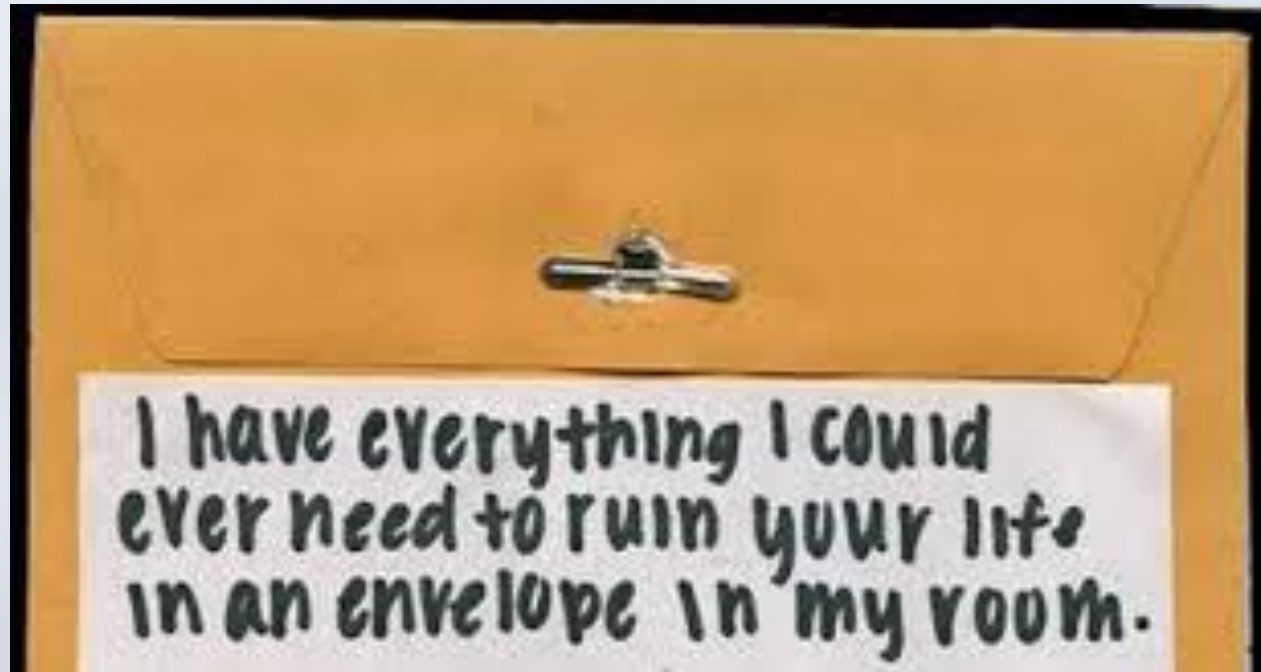
- Libel not known to be false unconstitutional at trial level in 3 provinces. (In Ontario since 1996)
- Libel known to be false – not unconstitutional *R. v. Lucas*, [1998] 1 S.C.R. 439



## ■ Criminal Harassment



- Criminal Harassment
- Uttering Threats/Extortion



- Criminal Harassment
- Uttering Threats/Extortion
- Identity Fraud





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



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



- Crim
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- Child pornography
- Non-consensual distribution of intimate images



Chief in

[Nova Scotia](#)

## **Pictou women's photos posted on amateur porn site under investigation**

RCMP officer initially said posts weren't illegal but retracted that after reading Criminal Code update

Cassie Williams - CBC News

# In force – March 10, 2015

## *Protecting Canadians from Online Crime Act* - Bill C-13

- Result of a working group struck by the Federal government looking at the possibility of creating an offence of cyberbullying.

## No criminal record for Toronto man who put womens' photos, contact info online

Former photography store worker and blogger Ren Bostelaar agreed to a one-year peace bond on Wednesday in Old City hall court that limits his Internet privileges.



Tweet



reddit this!



TORSTAR NEWS SERVICE

"It's been scary," said one of Ren Bostelaar's victims. "To know that it was someone I trusted has screwed up my ability to trust other men."

By: Staff Torstar News Services Published on Wed Jul 05 2017

- s.810 peacebond section amended to include fear of commission of a s.162.1 offence.

# “Publication etc. of an intimate image without consent”

s.162.1 makes it an offence to:

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

# “intimate image”

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



An illustration of a hand holding a smartphone against a bright pink background. A black banner with the word 'EXPLICIT' in white, bold, sans-serif capital letters is superimposed over the phone. The hand is rendered in shades of orange and red, with simple line art for fingers. The smartphone is grey with a white screen.

**EXPLICIT**

# Child Pornography

## **Criminal Code Section 163.1(1)**

- (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;**

# NARROWER

- Only applies to under 18
- Has to be for a sexual purpose  
(if not explicit sexual activity)

# B R O A D E R

- Doesn't have to be "real"

# Nudity not required

- Section 163.1(1)(a)(ii) does not require that the “sexual organ” or “anal region” of a person under the age of eighteen be visible or exposed. Nudity is not required.

*R. v. Rudiger*, [2011 BCSC 1397](#) (CanLII), leave to appeal to BCCA denied July 2012;

*R. v. Meikle*, [\[2011\] O.J. No. 4151](#) (C.J.) at para. 5;

*R. v. T.W.*, [2014 ONSC 4532](#) paras 25-27

# More offences...

- Criminal NOT just to SHARE but to

- POSSESS
- ACCESS



# COMMON LAW DEFENCES –

## *R. v. Barabash*, [2015] S.C.J. No. 29

- It is not illegal to make or possess visual recordings of sexual activity with a person under 18 where:
  - The sexual activity depicted is lawful;
  - All parties depicted consented to the creation of the material; and
  - The material is possessed for the personal/private use of “those involved\*”,
  - (\*those involved means that 3(a) the possessor must have created or be depicted in the material.)
- **All** of these conditions must be met before the “private use/*Sharpe* exception” applies.

# SPEX/sexting

- Distinguishing stupidity from malice



- Police – reasonable grounds to believe offence has been committed
  - Even where the police have the appropriate grounds to lay a charge, they still have discretion not to."

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



- not "on"/"off" switch – either criminal charges or nothing

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

- Voyeurism





# Odds and sods of new bill....

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