

SUPREME COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Public Safety) v. Lee*, 2015 NSSC 71

Date: 20150305

Docket: *Halifax*, No. 434983

Registry: Halifax

Between:

The Director of Public Safety

Applicant

v.

Joseph Lee

Respondent

Judge: The Honourable Justice Arthur LeBlanc

Heard: February 3, 2015, in Halifax, Nova Scotia

Counsel: Angela Jones, for the Applicant
Joseph Lee, self-represented – did not appear

By the Court:

Introduction

[1] Cyberbullying is a destructive phenomenon. By its nature, it involves the use of electronic platforms and methods that pose serious challenges for the law. The Nova Scotia Legislature has addressed this problem by means of the *Cyber-safety Act*, S.N.S. 2013, c. 2 (the CSA). The CSA is a comprehensive regime in its own right, but it also amended other statutes, including the *Safer Communities and Neighbourhoods Act*, S.N.S. 2006, c. 6 (the SCNA).

[2] The Director of Public Safety (“Director”) applied for a Cyberbullying Prevention Order against Joseph Lee, pursuant to s. 26D(1) of the SCNA, on January 6, 2015. The Director maintained that there was a progression of online abuse through email and social media directed at Ms. Murray by Mr. Lee, who is her brother, soon after the death of their mother, Angela Lee.

[3] This matter came before the court on February 3, 2015. Mr. Lee did not attend, nor was he represented by counsel. On behalf of the Director, counsel requested a Cyberbullying Prevention Order providing that Mr. Lee shall not engage in cyberbullying; communicate, directly or indirectly with or contact Veronica Murray; or communicate, directly or indirectly, about Veronica Murray; and requiring him to remove and delete all cyberbullying electronic communication with or about Veronica Murray. The Director also requested that Mr. Lee be ordered to pay the costs of the application in the amount of \$750. I granted the order requested, reserving the right to release more detailed reasons in a written judgment. My reasons are as follows.

Background

[4] Ms. Murray and Mr. Lee’s mother suffered from cancer. Ms. Murray, who is a nurse, moved in with their mother during her illness. She died on June 8, 2014. Ms. Murray was the sole beneficiary under the will. She decided to stay at the home with her husband and two children. The electronic correspondence and Facebook posts at the foundation of this complaint began shortly thereafter. I will not attempt to summarize all of this material. What follows is a summary of the key correspondence and posts.

[5] Mr. Lee contacted Ms. Murray by email shortly after their mother's death to inquire about the contents of the will and the power of attorney. On June 21, 2014, Ms. Murray responded, attaching electronic copies of the documents. She also requested that he call to discuss whether there was anything specific of their mother's that he or his daughters wanted before she started going through the possessions herself. Mr. Lee replied that he preferred to discuss such matters via email.

[6] On June 24, 2014, Mr. Lee notified Ms. Murray via email that he would be contesting the will. He followed up the next day with two more emails. In the first email, he sought Ms. Murray's word that she would not dispose of or alter anything until the will was probated. In the second email, he requested information about their mother's debts and bank account. He also asked for keys to the house for him and their two other brothers, asserting that he had "just as much legal right to [their] family home as [she does] until the will is probated."

[7] The alleged cyberbullying began in earnest on June 25, 2014, with a text message from Mr. Lee to his sister stating "[y]ou are dead to me get your lying manipulative abusive [a—] out of that [f—g] house or I will send the RCMP." He went on to accuse her of fraud, breach of trust, and elder abuse. The alleged cyberbullying became public on June 26, 2014, when Mr. Lee made the following Facebook post:

If you do not wish people to disown you and out you as a lying manipulating sleazy sack of [s—t], then please do not be a sleazy lying manipulative sack of [s—t]. Simple solution, you cannot blame others for something you do.

[8] Mr. Lee also sent Ms. Murray a series of emails in which he threatened to inform her employer of her alleged misdeeds with respect to their mother's estate. The first email was dated June 29, 2014:

Heads up... I will also be contacting [Cape Breton District Health Authority] with my allegations.... being an RN and caregiver in this situation is quite relevant to your position.... Hence the "breach of trust"... they should actually teach you guys this stuff at university... or when you get that mensa card you keep waving around

[9] Mr. Lee withdrew this threat the following day:

After some deep meditation and contemplation, I have decided not to inform your employer, as I do not have reason to believe you would do this to any people

other than you [sic] Dad, Mom and brothers.... To cause your family the undue hardship of your job loss would serve no usefull [sic] purpose.

[10] In other messages Mr. Lee professed his continued love for his sister, followed shortly by a message announcing that he had “a week [sic] moment” and should have known better.

[11] Mr. Lee continued to make threats involving potential charges from the RCMP. On July 30, 2014, he e-mailed, “Oh boy have I got a surprise for you, hopefully the RCMP will deliver it within the next few days.” Meanwhile, Mr. Lee continued to post on Facebook. On August 9, 2014, he posted the following:

Does anybody out there in Facebook land think it is ok for the caregiver of a 67 year old lady dying of brain tumours & loaded up with narcotics, take that 67 year old lady into the lawyers office days (literally days) before the lady dies of those same brain tumours and have the lady sign everything she owns (and some stuff she didn't own) over to the caregiver???? Because that is exactly what my sister did And [sic], any of you cowards in my family that read this and then go “tsk tsk” behind my back and leave my Mother dead and undefended should be as ashamed of yourselves as Veronica should be.

[12] The CyberSCAN unit opened a file in response to Ms. Murray's complaint on August 13, 2014. The Director assigned Lisa Greenough to investigate. She contacted Ms. Murray on August 14, 2014. On September 5, 2014, Ms. Greenough telephoned Mr. Lee. She advised him that his actions amounted to cyberbullying. She requested that he stop this activity and that they meet to discuss the matter. Ms. Greenough and Mr. Lee exchanged correspondence over the next several weeks. Mr. Lee was not receptive to Ms. Greenough's request. He expressed concerns about the lack of evidence being presented to him and expressed his distaste for Ms. Greenough and Ms. Murray on Facebook on September 11, 2014:

Lisa Greenough from cyber bullying task force, you are as full of [s—t] as my sister Veronica.... And you can both go [f—k] yourselves.... P.s. I am sure both of you snoopy arrogant deceitful lying [s—t] bags are reading this... go [f—k] yourselves!!!!

[13] On September 19, 2014, Ms. Greenough and Greg Keagan of the CyberSCAN Unit met with Mr. Lee. Ms. Greenough proposed that Mr. Lee agree to an informal resolution to stop cyberbullying Ms. Murray and remove the posts he made on Facebook about her. Mr. Lee said he wanted to discuss the matter with a lawyer. He notified Ms. Greenough by email on September 21, 2014, that he would not remove the Facebook posts. However, Ms. Greenough noticed on the

following day that most of the Facebook posts had been removed. She met with Ms. Murray on September 25 to advise her that Mr. Lee's Facebook comments were no longer visible to the public and that this concluded her investigation. On September 26, the Director of Public Safety sent a warning letter to Mr. Lee. The Director stated that Mr. Lee's actions constituted cyberbullying, and explained that he might commence a court application for a prevention order if Mr. Lee's activities continued.

[14] On October 6, 2014, Mr. Lee put up the following Facebook post:

I said my sister was a lying, manipulative fraudulent thief..... The Cyberscan people said I really should apologize, so here goes, and it is heartfelt and sincere. I am truly deeply and sincerely sorry that my sister is a lying, manipulative, fraudulent thief.

[15] Later that month Mr. Lee posted a gruesome Facebook post wishing suffering and disease on his sister, concluding, "I absolutely hate her with every fiber of my being."

[16] Ms. Murray provided Ms. Greenough with a statement describing the impact of her brother's campaign against her on September 14, 2014:

I became so upset I was unable to eat or sleep, I could not focus and I actually became afraid to be alone. I am a 43 year old woman and there were times when I would have to leave my home just to feel safe, have you any idea the feeling of powerlessness that comes with having to leave your own home? [...] From this point on, my declining emotional state took a toll on my husband and children. My grown boys looked broken as they stood beside me, hugging me while I cried and was visibly coping poorly [...] I felt responsible for the increased humiliation in our lives; not only were we bereft, this constant presence of public humiliation tainted every faction of our lives. I knew it had become fodder for public opinion when I walked into my chiropractor in July and was greeted with "so you're all over Facebook."

[17] Ms. Murray said her emotional state continued to deteriorate even after she contacted Cyber SCAN:

As things unfolded with Cyberscan I continued to fear for my safety and that of my family, I called police [*sic*] to discuss the situation and made a plan to meet with an officer at the police station on September 16, 2014. I [*sic*] had sat in the parking lot of the police station on 2 previous occasions but could not gather the courage to go inside. I imagined the response my [*sic*] doing so would have on Joe; my mind's eye could envision him losing control; he was vacillating between

outbursts of rage and brief interludes of stating that he wasn't going to be publicly discussing it further/he needed to forgive me for his own sake.

[18] Ms. Murray suggested that she had contemplated suicide at one point, as well as giving in to her brother and “and giving him what he wants so that he will just go away and leave me and my family to live in peace, but I do not believe that he will ever voluntarily leave me in peace.”

The legislation

[19] The Nova Scotia legislature passed the CSA partly in response to a report written by Professor A. Wayne MacKay, Q.C, of Dalhousie University (*Respectful and Responsible Relationships: There's No App for That* (Halifax: Nova Scotia Task Force on Bullying and Cyberbullying, 2012)). Professor MacKay discussed the causes, scope, and effects of cyberbullying, which, he observed “knows no boundaries and it permeates all aspects of the victims' lives. It is also corrosive for the bullies and the bystanders as well, and one role sometimes morphs into another” (p. 1). Professor MacKay noted the spatial and temporal dimensions of the internet and the challenges they pose to civil relations, at p. 84:

Cyberbullying poses a particular challenge to the community because it happens in a sort of “no man's land”. The cyber-world is a public space which challenges our traditional methods of maintaining peace and order in public spaces. It is too vast to use traditional methods of supervision. It easily crosses jurisdictional boundaries. It takes place 24 hours a day, seven days a week, and does not require simultaneous interaction for communication to take place. If we continue to rely on traditional methods of responding to bullying, these challenges will be too daunting.

[20] During the second reading of the bill, the Minister responsible for the Advisory Council on the Status of Women Act explained the purpose of the bill, emphasizing the dangers of cyberbullying in relation to young people: Nova Scotia, Legislative Assembly, Hansard, 61st Leg, 5th Sess, (26 April 2013) at 1482-1484 (Marilyn More). However, cyberbullying is not specific to any age group, nor is the legislation so limited. People of all ages are grappling with the challenges posed by social media.

[21] The purpose of the SCNA amendments was described in the CSA as “to provide safer communities by creating administrative and court processes that can be used to address and prevent cyberbullying”: CSA, s. 2. Cyberbullying is defined in s. 3 (1)(b) of the CSA and s. 2 (1)(ba) of the SCNA:

“cyberbullying” means any electronic communication through the use of technology including, without limiting the generality of the foregoing, computers, other electronic devices, social networks, text messaging, instant messaging, websites and electronic mail, typically repeated or with continuing effect, that is intended or ought reasonably [to] be expected to cause fear, intimidation, humiliation, distress or other damage or harm to another person’s health, emotional well-being, self-esteem or reputation, and includes assisting or encouraging such communication in any way...

[22] There are two avenues available to cyberbullying victims under the legislation. Under the ss. 5 and 6 of the CSA itself, a complainant can apply to a justice of the peace for a protection order. Pursuant to s. 9, the justice of the peace can grant an order if he or she is satisfied on a balance of probabilities that (a) the respondent has engaged in cyberbullying of the subject; and (b) there are reasonable grounds to believe that the respondent will engage in cyberbullying of the subject in the future. Pursuant to s. 12, the justice of the peace must forward a copy of the order and all supporting documentation to the Court, which may confirm, vary, or terminate the order.

[23] The second avenue – which Ms. Murray has pursued in this case – arises from the provisions added to the SCNA by way of the CSA amendments. Pursuant to s. 26A(1), a person can make a complaint to the Director:

26A (1) A person who wishes an order to be made under this Act to deal with cyberbullying shall first make a complaint to the Director stating that the person believes that the person or another person is being subjected to cyberbullying.

[24] The Director is given a number of investigative powers under s. 26B(1):

At any time after receiving a complaint, the Director may

- (a) investigate the complaint;
- (b) require the complainant to provide further information;
- (c) send a warning letter to the person who is identified as engaging in cyberbullying, or a parent of the person if the person is a minor, to a person associated with an electronic device, Internet Protocol address, website, username or account, electronic-mail address or other unique identifier, identified in the complaint as being used for cyberbullying, or to a parent of the person if the person is a minor or to anyone else the Director considers appropriate;
- (d) request an Internet service provider to discontinue service to an Internet Protocol address, website, username or account, electronic-mail address or other unique identifier, identified in the complaint as being used for cyberbullying;

- (e) attempt to resolve the complaint by agreement or informal action;
- (f) apply for an order under Section 26C, 26D, 26E or 33C;
- (g) decide not to act on the complaint;
- (h) take any other action that the Director considers appropriate.

[25] The exercise of these powers is within the Director's sole discretion: s. 26B(2). The Director is not required to give reasons for a decision: s. 26B(4).

[26] As referenced in s 26B(1)(f), pursuant to s. 26D(1), the Director may apply to the Court for a cyberbullying prevention order. The court can grant this order under s. 26F if it determines on a balance of probabilities that the respondent engaged in cyberbullying of the subject. The permissible terms of such an order are set out in s. 26G (1):

A cyberbullying prevention order may include any of the following provisions that the Court considers necessary or advisable for the protection of the subject:

- (a) a provision prohibiting the respondent from engaging in cyberbullying;
- (b) a provision restricting or prohibiting the respondent from, directly or indirectly, communicating with or contacting the subject;
- (c) a provision restricting or prohibiting the respondent from, directly or indirectly, communicating about the subject;
- (d) a provision restricting or prohibiting the respondent from using a specified or any means of electronic communication;
- (e) an order confiscating, for a specified period or permanently, any electronic device capable of connecting to an Internet Protocol address associated with the respondent or used by the respondent for cyberbullying;
- (f) an order requiring the respondent to discontinue receiving service from an Internet service provider;
- (g) any other provision that the Court considers necessary or advisable for the protection of the subject.

[27] The CSA is new legislation. It has only been applied by this court once, by Robertson J in *Director of Public Safety v Prosper* (11 February 2014), Halifax 423784. The CSA and cyberbullying in general have been considered by the Provincial Court in two reported decisions. The first such decision was *R. v C.L.*, 2014 NSPC 79, a sentencing decision of a youth offender convicted of offences including sexual assault, harassment, and assault with a weapon. Although in

obiter, Whalen J noted in her decision that much of the offender's behavior towards the victim constituted cyberbullying under the CSA:

53 A few days later between December 6th and December 8th, 2014 C.L. began a long, insulting, misogynist diatribe on Facebook towards A.B. The repetitive, vil [*sic*] nature clearly shows he wanted to cause harm, fear and humiliation.

54 There are 22 references to words like "dead", "die" or "death", clearly trying to provoke A.B. to commit suicide. There are 25 references to "pedo" and "bitch". There are 27 incidents of C.L. calling A.B. a "ho".

...

57 C.L.'s behavior meets the definition of cyberbullying ... cited by the Crown but his behavior went well beyond that to criminal behaviour. He exhibited a "complete breakdown in respect for others", particularly the three victims.

[28] The second decision is *R. v. Avery*, 2014 NSPC 40, [2014] N.S.J. No. 322, another sentencing decision, where the offender was convicted of assault causing bodily harm. The accused had begun anger management prior to sentencing, but made questionable progress as evidenced by a Facebook post that Atwood J found to constitute cyberbullying:

6 Mr. Avery's level of remorse and commitment to rehabilitation are questionable. He approached anger management with what was described by the program facilitator in the pre-sentence report as "a bad attitude", but appeared to adapt positively. However, one must question seriously Mr. Avery's commitment to rehabilitation and anger management given the social-networking post published by Mr. Avery shortly after the court adjourned 20 May 2014. That post was exhibited before the court and reads as follows:

It should just have dropped considering I will already have done about 8 months house arrest. Two nights in Burnside and wrongfully accused of assaulting a girl and breaking into a house. All for beating someone up who a majority would say deserved it just in my opinion.

7 This, in my view, displays a singular lack of empathy and a certain lack of reality. In fact, at the point in time that Mr. Avery composed that message, he had been subject to approximately six and a half months of house arrest rather than the eight referred to by Mr. Avery and the eight to nine mentioned at the sentencing hearing. Furthermore, making public such a comment-- "all for beating someone up who a majority would say deserved it"--causes me to draw the inference that Mr. Avery continues to pose a threat to Mr. Watt, if not of actual physical harm, then of psychological harm, as comments of this nature clearly constitute cyberbullying within the definition of para. 3(1)(b) of the *Cyber-Safety Act*.

[29] Although the foregoing remarks were *obiter*, these decisions demonstrate a recognition by the courts of the seriousness of cyberbullying in the eyes of the Legislature. I note as well that the definition of “cyberbullying” in s. 2(1)(ba) of the SCNA indicates that an objective standard is to be applied: the definition refers to electronic communication “that is intended *or ought reasonably [to] be expected* to cause fear, intimidation, humiliation, distress or other damage or harm to another person’s health, emotional well-being, self-esteem or reputation, and includes assisting or encouraging such communication in any way” (emphasis added).

[30] Upon reviewing the evidence, I am satisfied on a balance of probabilities that Mr. Lee’s actions amount to cyberbullying within the meaning of s. 2(1)(ba) of the SCNA. All of the modes of communication at issue, including social networks, text messaging, and electronic mail, are enumerated in this provision. Mr. Lee repeatedly sent messages and made posts that he either intended or reasonably ought to have expected to cause fear, intimidation, humiliation, distress or other damage or harm to Ms. Murray’s health, emotional well-being, self-esteem *and* reputation. This is clear from the content of the messages, the harm described by Ms. Murray, and the timing of the campaign, being immediately after their mother’s death.

[31] The Director has requested some of the less onerous provisions under section 26G (1) of the SCNA. The Director has not requested any provisions to prohibit Mr. Lee from using of any one form of communication or to confiscate any of his electronic devices capable of connecting to the Internet.

[32] Regardless of the merits of Mr. Lee’s concerns pertaining to the validity of the will, they do not justify his actions. Individuals in this province have several options available to them when they are unsatisfied with or have concerns over the validity of a will, including potential remedies through the *Testators’ Family Maintenance Act*, R.S.N.S. 1989, c. 465, the *Wills Act*, R.S.N.S. 1989, c. 505, or the *Probate Act*, S.N.S. 2001 c. 31.

[33] Accordingly, I grant a cyberbullying order as requested and order Mr. Lee to pay the costs of the application in the amount of \$750.

