



Law Enacted to Protect Youth From Cyber-Bullying Gives Businesses a Weapon to Battle Online Harassment

by Danielle Stone

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A new Nova Scotia law enacted to prevent cyber-bullying could turn out to be a powerful tool for combating online harassment of your business, your professional practice, and you.

The *Cyber-safety Act* came into force in August. Thanks to the new *Act*, any electronic communication – including text messages, emails, and even posts on social networks – that might reasonably be expected to “humiliate, intimidate or distress” someone, or cause other damage or harm to their “emotional well-being or self-esteem or reputation” – can be the subject of a lawsuit brought under the legislated claim of “cyber-bullying.”

This new form of claim is extremely broad. It applies to people of all ages (not just children), and because “person” is defined so broadly under Nova Scotia law, it also applies to corporations and other entities. It creates claims for conduct that could never be stopped under existing defamation or criminal laws. As drafted, it appears to provide a remedy to people who can establish reasonable feelings of distress or humiliation or that their emotional well-being, self-esteem, or reputation is harmed. These legal rights run broader than traditional libel and slander law.

The *Cyber-safety Act* results from last April's attempted suicide and subsequent death of Dartmouth teenager Rehteah Parsons, which were attributed to online distribution of photos of an alleged gang rape in November, 2011.

As it turns out, however, a piece of legislation intended to protect the young and vulnerable in our society could have far-reaching consequences and could apply to situations not contemplated. What was intended to help protect our children from the consequences of online bullying may be used to check criticism of a commercial nature, too.

But this potentially attractive quality is not without its potentially unattractive consequences. While the new law might be another tool to stop unfair commercial sabotage perpetrated online, it may also be used to curtail free speech. It could stop the publication of statements that are either true or obvious opinions of the author.

It is not difficult to conceive of situations beyond classic cyber-bullying that may fall within the scope of the new legislation. Do you feel like a customer has been harsh in his criticism of your handling of his complaint? Has he posted that criticism along with your name and number on every message board he can find? Does this cause you distress? You now have a potentially new weapon in your arsenal to combat the harassment.

Has an anonymous online poster used Photoshop to transform your corporate profile photo into an embarrassing parody and then posted it online? Do you feel humiliated? The court can intervene in a multitude

of ways - from putting a gag order on the cyber-bully through a protective order, to awarding monetary damages in a civil action. It can also compel Internet Service Providers to reveal the name of those anonymous cyber-bullies.

At this time, the biggest limit to this new law is jurisdictional. Only Nova Scotia has passed such a broad law, so unless you can establish a substantial connection to Nova Scotia, it will have no application. Similar laws could emerge in other parts of the country. It has already caught the attention of Alberta. It could conceivably land on Ontario's legislative agenda too.

Meanwhile, companies that are doing business in Nova Scotia or with Nova Scotians, and believe they are being maligned online have new grounds for legal action.

Ontario media and reputation lawyers will, no doubt, be maintaining a watching brief on the situation for clients doing business in Nova Scotia. They can also be expected to keep an eye out for developments in other provinces, where legislators are studying the Nova Scotia statute.

While the *Cyber-safety Act* has praiseworthy intentions, it remains to be seen how broadly it will be interpreted and whether it will survive a *Charter* challenge for being too restrictive of freedom of speech. In the meantime, and in the right circumstances, the new legislation provides a powerful tool for combating online professional, commercial and personal harassment.

(Blaney McMurtry lawyer Danielle Stone was assisted in the preparation of this article by Jessica Freiman, an articling student at the firm.) ■