

Cyber-safety Act

CHAPTER 2 OF THE ACTS OF 2013



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An Act to Address and Prevent Cyberbullying

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(The table of contents is not part of the statute)

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PART VI

Coming into Force

Effective date 42

Short title

1 This Act may be cited as the *Cyber-safety Act*. 2013, c. 2, s. 1.

Purpose of Act

2 The purpose of this Act is to provide safer communities by creating administrative and court processes that can be used to address and prevent cyberbullying. 2013, c. 2, s. 2.

Interpretation

3 (1) In this Act,

(a) “Court” means the Supreme Court of Nova Scotia and includes a judge of the Court;

(b) “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;

(c) “electronic” includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means;

(d) “Minister” means the Minister of Justice;

(e) “minor” means a person who is less than 19 years of age;

(f) “parent” includes, in respect of a minor, any person who is under a legal duty to provide for the minor or any person who has, in law or in fact, the custody or control of the minor.

(2) For the purpose of this Act, where a person who is a minor engages in an activity that is cyberbullying and a parent of the person

(a) knows of the activity;

(b) knows or ought reasonably to expect the activity to cause fear, intimidation, humiliation, distress or other damage or harm to another person’s health, emotional well-being, self-esteem or reputation; and

(c) fails to take steps to prevent the activity from continuing,
the parent engages in cyberbullying. 2013, c. 2, s. 3.

PART I

PROTECTION ORDERS

Interpretation

4 In this Part,

- (a) “applicant” means a person applying for a protection order;
- (b) “police officer” means a member of an agency as defined in the *Police Act*;
- (c) “protection order” means an order made under Section 8;
- (d) “respondent” means a person against whom a protection order is sought;
- (e) “specified person” means a person specified in a protection order and includes a member of a group of persons specified in a protection order;
- (f) “subject” means a person who, in an application for a protection order, it is alleged was subjected to cyberbullying. 2013, c. 2, s. 4.

Application for protection order

5 (1) An application for a protection order may be made to a justice, without notice to the respondent, in the form and manner prescribed by the regulations, by

- (a) the subject, if the subject is not a minor; or
- (b) where the subject is a minor,
 - (i) the subject’s parent,
 - (ii) a person designated by the regulations for this purpose, or
 - (iii) a police officer.

(2) Subject to subsection (3), an application for a protection order must name as a respondent any person associated with an electronic device, Internet Protocol address, website, username or account, electronic-mail address or other unique identifier, identified as being used for cyberbullying, or a parent of the person if the person is a minor.

(3) Where the name of the respondent is unknown and cannot easily be ascertained, an application for a protection order may identify the respondent by an Internet Protocol address, website, username or account, electronic-mail address or other unique identifier, identified in the application as being used for cyberbullying.

- (4) An application for a protection order may be submitted
- (a) in person, by the applicant; or
 - (b) in person or by telephone or other means of telecommunication, by a lawyer, a police officer or a person designated by the regulations for this purpose, with the applicant's consent.
- (5) Evidence adduced in support of an application for a protection order must be given under oath. 2013, c. 2, s. 5.

Application by telecommunication

6 (1) A person submitting an application for a protection order by telephone or other means of telecommunication is required to

- (a) possess any document that is to be used in support of the application at the time the application is submitted;
- (b) communicate the content of the document to the justice in a manner satisfactory to the justice; and
- (c) transmit the document to the justice as soon as practicable in the manner prescribed by the regulations.

(2) A justice may administer an oath to a person and receive the person's evidence by telephone if the oath and evidence are recorded word for word by the justice.

(3) A justice shall, as soon as is reasonably possible, certify as to time, date and contents the record or transcription of an oath administered and evidence received by the justice under subsection (2) and cause the record or transcription to be filed with the clerk of the Court.

(4) A justice who hears an application for a protection order need not wait for the transmission of a document under clause (1)(c) before deciding whether to make a protection order.

(5) A protection order that is based on an application submitted by telephone or other means of telecommunication has the same effect as a protection order based on an application submitted in person. 2013, c. 2, s. 6.

Identifying respondent

7 Where an application for a protection order identifies the respondent in a manner set out in subsection 5(3), the justice may

- (a) order any person having custody or control of information respecting the ownership or use of any electronic device or use of any Internet Protocol address, website, username or account, electronic-mail address or other unique identifier, identified as being used for cyberbullying, to disclose information to assist in identifying the respondent or, where the person is a minor, a parent of the person; and
- (b) make any other order that is necessary to identify the respondent. 2013, c. 2, s. 7.

Grounds for protection order

8 Upon application, a justice may make a protection order, where the justice determines, on a balance of probabilities, that

- (a) the respondent 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. 2013, c. 2, s. 8.

Protection order may include

9 (1) A protection order may include any of the following provisions that the justice 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 or a specified person;
- (c) a provision restricting or prohibiting the respondent from, directly or indirectly, communicating about the subject or a specified person;
- (d) a provision prohibiting or restricting 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 justice considers necessary or advisable for the protection of the subject.

(2) A justice may make a protection order for a period not exceeding one year. 2013, c. 2, s. 9.

Order in writing and filed with evidence

10 (1) A justice who makes a protection order shall immediately arrange for the preparation of a written copy of it.

(2) The justice shall immediately forward a copy of the protection order and each document submitted in support of the application to the clerk of the Court. 2013, c. 2, s. 10.

Service

11 (1) A protection order must be served on the respondent in the manner prescribed by the regulations.

(2) A respondent is not bound by a protection order until served with the order.

- (3) Where, upon application to a justice, it appears that
- (a) attempts at service or substituted service of the protection order on the respondent have failed; and
 - (b) the respondent is evading service,

the justice may by order dispense with service of the protection order and the respondent is thereby deemed to be served with and have notice of the protection order.

(4) Where the subject is a minor aged 12 years of age or more, the subject must be served with the protection order in the manner prescribed by the regulations.

(5) Where the subject is a minor, a parent of the subject must be served with the protection order in the manner prescribed by the regulations. 2013, c. 2, s. 11.

Court procedure

12 (1) As soon as practicable after making a protection order and in any event within two working days, the justice shall forward a copy of the order and all supporting documentation, including a transcript or recording of the proceedings, to the Court in the prescribed manner.

(2) Within such period as the regulations prescribe of the receipt of the protection order and all supporting documentation by the Court, the Court shall review the order and, where the Court is satisfied that there was sufficient evidence before the justice to support the making of the order, the Court shall

- (a) confirm the order; or
- (b) vary the order,

and the order as confirmed or varied is deemed to be an order of the Court.

(3) Where, on reviewing the protection order, the Court is not satisfied that there was sufficient evidence before the justice to support the making of the order, the Court shall direct a hearing of the matter in whole or in part before the Court.

(4) Where the Court directs that a matter be heard, the clerk of the Court shall

- (a) issue a summons in the prescribed form requiring the respondent to appear before the Court; and
- (b) give notice of the hearing to the subject or, where the subject is a minor, a parent of the subject,

and the subject or, where the subject is a minor, a parent of the subject, is entitled to attend and may fully participate in the hearing personally or by counsel.

(5) The evidence that was before the justice must be considered as evidence at the hearing.

(6) Where the respondent fails to attend the hearing, the protection order may be confirmed in the respondent's absence.

(7) At the hearing, the Court may confirm, terminate or vary the protection order. 2013, c. 2, s. 12.

Court may confirm, vary or revoke order

13 (1) Where satisfied that it is fit and just to do so, the Court, upon application at any time after a protection order is confirmed or varied by the Court, may by order

- (a) remove or vary any term or condition in the order;
- (b) add terms and conditions to the order; or
- (c) revoke the order.

(2) Where the Court is advised that there is an agreement that the protection order should be varied or revoked, but is not satisfied that the agreement is free and voluntary, the Court may adjourn the hearing to allow legal or other advice to be obtained.

(3) Section 11 applies *mutatis mutandis* to an order made pursuant to this Section. 2013, c. 2, s. 13.

Appeal

14 (1) The respondent or the applicant may appeal to the Nova Scotia Court of Appeal a decision made under Section 12 or 13, on a question of law, in accordance with the *Civil Procedure Rules*.

(2) An appeal does not operate as a stay of proceedings, and the protection order under appeal may be enforced as though no appeal were pending unless a judge of the Supreme Court of Nova Scotia or the Nova Scotia Court of Appeal otherwise orders. 2013, c. 2, s. 14.

Application for new protection order

15 (1) An application for a new protection order may be made in accordance with Section 5 if

- (a) a protection order has expired or will expire within the next 30 days; and
- (b) a person believes that there is a continuing need for a protection order.

(2) The respondent's compliance with a protection order does not by itself mean that there is not a continuing need for a protection order. 2013, c. 2, s. 15.

Publication ban for minors

16 (1) Where any person involved in a proceeding relating to an application for a protection order is a minor, no person shall publish or broadcast the name of that person, or any information likely to identify that person.

(2) For greater certainty, subsection (1) continues to apply once the subject, respondent or witness is no longer a minor. 2013, c. 2, s. 16.

Publication ban to ensure safety

17 On the request of any person involved in a proceeding relating to a protection order, the Court may make an order prohibiting the publication or broadcast of the name of a person involved in a proceeding relating to the protection order, or any information likely to identify that person, if the Court is satisfied that the publication or broadcast could endanger the safety or well-being of that person. 2013, c. 2, s. 17.

Offence relating to publication ban

18 (1) A person who contravenes Section 16 or an order made under Section 17 is guilty of an offence and liable on summary conviction

(a) in the case of an individual, to a fine of not more than \$5,000 or imprisonment for a term of not more than two years, or both; and

(b) in the case of a corporation, to a fine of not more than \$50,000.

(2) An officer, director, employee or agent of a corporation who directs, authorizes, assents to, permits or participates or acquiesces in the contravention of Section 16 or an order made under Section 17 may be convicted of an offence under subsection (1), whether or not the corporation has been prosecuted or convicted. 2013, c. 2, s. 18.

Offence relating to protection order

19 (1) Any person who fails to comply with a protection order is guilty of an offence.

(2) Any person who, knowing that a protection order has been made, causes, contributes to or permits activities that are contrary to the order, is guilty of an offence.

(3) A person who is guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or both. 2013, c. 2, s. 19.

Regulations

20 (1) The Minister may make regulations for the purpose of this Part

(a) respecting the forms to be used and procedures to be followed for making an application for a protection order and for hearing applications for protection orders, including the transmission of applications for protection orders;

(b) respecting other forms, including information to be contained on the form of protection orders;

(c) designating persons or classes of persons for the purpose of Section 5;

(d) respecting the forwarding of protection orders and other documents to the Court by justices;

(e) prescribing the period within which the Court must review a protection order and confirm or vary the order;

(f) respecting the form and manner of serving notices, summonses and other documents required to be served, issued or given, including substituted service and a rebuttable presumption of service;

(g) respecting any matter or thing the Minister considers necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2013, c. 2, s. 20.

PART II

LIABILITY FOR CYBERBULLYING

Tort

21 A person who subjects another person to cyberbullying commits a tort against that person. 2013, c. 2, s. 21.

Remedies and parental responsibility

22 (1) In an action for cyberbullying, the Court may

(a) award damages to the plaintiff, including general, special, aggravated and punitive damages;

(b) issue an injunction on such terms and with such conditions as the Court determines appropriate in the circumstances; and

(c) make any other order that the Court considers just and reasonable in the circumstances.

(2) In awarding damages in an action for cyberbullying, the Court shall have regard to all of the circumstances of the case, including

(a) any particular vulnerabilities of the plaintiff;

(b) all aspects of the conduct of the defendant; and

(c) the nature of any existing relationship between the plaintiff and the defendant.

(3) Where the defendant is a minor, a parent of the defendant is jointly and severally liable for any damages awarded to the plaintiff unless the parent satisfies the Court that the parent was exercising reasonable supervision over the defendant at the time the defendant engaged in the activity that caused the loss or damage and made reasonable efforts to prevent or discourage the defendant from engaging in the kind of activity that resulted in the loss or damage.

(4) For the purpose of subsection (3), in determining whether a parent exercised reasonable supervision over the defendant at the time the defendant engaged in the activity that caused the loss or damage or made reasonable efforts to

prevent or discourage the defendant from engaging in the kind of activity that resulted in the loss or damage, the Court may consider

- (a) the age of the defendant;
 - (b) the prior conduct of the defendant;
 - (c) the physical and mental capacity of the defendant;
 - (d) any psychological or other medical disorders of the defendant;
 - (e) whether the defendant used an electronic device supplied by the parent, for the activity;
 - (f) any conditions imposed by the parent on the use by the defendant of an electronic device;
 - (g) whether the defendant was under the direct supervision of the parent at the time when the defendant engaged in the activity;
 - (h) in the event that the defendant was not under the direct supervision of the parent at the time at the time when the defendant engaged in the activity, whether the parent acted unreasonably in failing to make reasonable arrangements for the supervision of the defendant; and
 - (i) any other matter that the Court considers relevant.
- 2013, c. 2, s. 22.

PART III

GENERAL

Additional right of action or remedy not barred

23 A right of action or a remedy created under this Act is in addition to, and does not affect, any other right of action or remedy available to a person under the common law or by statute. 2013, c. 2, s. 23.

Regulations

- 24 (1)** The Governor in Council may make regulations
- (a) defining any word or expression used but not defined in this Act;
 - (b) further defining any word or expression used in this Act;
 - (c) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2013, c. 2, s. 24.

PART IV
EDUCATION ACT

Act amended
25 to 27 *amendments*

PART V
SAFER COMMUNITIES AND NEIGHBOURHOODS ACT

Act amended
28 to 41 *amendments*

PART VI
COMING INTO FORCE

Effective date
42 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2013, c. 2, s. 42.

| | | |
|----------------------------|---|--------------------|
| Proclaimed (except Part V) | - | August 6, 2013 |
| In force | - | August 6, 2013 |
| Part V proclaimed | - | September 25, 2013 |
| In force | - | September 25, 2013 |