

LAW AMENDMENTS COMMITTEE

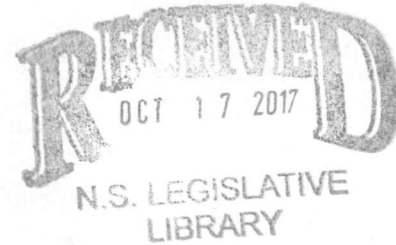
Red Chamber, Province House

Monday, October 16, 2017

9:00 a.m.

Bill #16 - Adult Capacity and Decision-making Act

- 9:00 a.m.
1. Professor Sheila Wildman
 2. Wendy Lill
Community Homes Action Group
 3. Charlie Macdonald
 4. Michael Bach, Managing Director
Institute for Research & Development on Inclusion in Society (IRIS)
- 10:00 a.m.
5. Brenda Webb
 6. Darrell Webb
 7. Dave Kent
People First Nova Scotia



Bill No. 29 - Marine Renewable-energy Act (amended)

- 10:45 a.m.
1. Jamie MacNeil

Bill #7 - Workers' Compensation Act (amended)

- 11:00 a.m.
1. Janet Hazelton, President
Nova Scotia Nurses' Union
 2. Jason MacLean, President
NSGEU
 3. Mary Lloyd
Larry Maloney
Pictou County Injured Workers Association
 4. Micah MacIsaac

12:00 noon

~~5. Judy Lewis~~ cancelled

6. Jim Cormier, Atlantic Director
Retail Council of Canada

7. Richard Biggar DIDN'T APPEAR

8. Debra Fortune

1:00 p.m.

9. Shaun Watters

10. Kevin Johnson

11. Rachel Barbour

12. Dean Tupper DIDN'T APPEAR

13. Terry Chapman

Bill No. 15 - Environment Act (amended)

2:00 p.m.

1. Stephen Thomas
Ecology Action Centre

2. Brian Gifford, Chair
Affordable Energy Coalition

3. Daniel Roscoe, P. Eng, Partner
Roswall Incorporated

4. Christine Saulnier, Nova Scotia Director
Canadian Centre for Policy Alternatives

Bill #7 - Workers' Compensation Act (amended) - continued

3:00 p.m.

14. Eunice Abaga

Bill No. 17 - Solemnization of Marriage Act (amended)

No representation

Bill No. 19 - An Act to Amend Various Consumer Protection Statutes

No representation

Bill No. 27 - Intimate Images and Cyber-protection Act

No representation

Bill No. 33 - Gas Distribution Act (amended)

No representation

From: Flora Doehler [REDACTED]
Sent: Monday, October 16, 2017 12:53 AM
To: Office of the Legislative Counsel; gwilson@claredigby.ca; Lenore Zann, MLA
Subject: Comment : Bill 27, The Intimate Images and Cyber-protection Act

To the Honourable members of the Law Amendments Committee:

Mark Furey, *Chair*
Gordon Wilson, *Vice Chair*
Suzanne Lohnes-Croft
Keith Irving
Brendan Maguire
Karla MacFarlane
Brad Johns
Lenore Zann
Claudia Chender

I understand that Nova Scotia's Law Amendments Committee will hear from the public on Bill 27, The Intimate Images and Cyber-protection Act, on Monday, Oct. 16, 2017

As I am unable to attend the session, I am writing this letter to give my input.

First of all, I want to thank the Committee for persisting in creating a law that will provide online protection for the wellbeing and privacy of young and old people. I congratulate you for leading the country in this way.

I have read the proposed act and while I am pleased to see more specific language in it, there is an area that I am very concerned with. I am urging your committee not to withdraw the direct support of a Justice Department lawyer in assisting victims in taking their cases to court. Even to civil court.

I was a victim-participant in the recent government-sponsored focus groups to provide feedback about Bill 27.

The strong, unanimous message that I heard from all participants was that the involvement of the CyberScan unit was crucial in supporting us through the entirety of our cases, including those that went to court. In fact the discussion around this aspect of the Bill elicited tears in some participants.

I am part of a group of 7 individuals who worked closely with the CyberScan unit in 2015 to seek justice as a result of a local cyberbully who maligned and humiliated over 25 residents of Bear River in a website that has been live for 7 years.

Our case went to court and was adjudicated by Justice Muise. He ruled in our favor and the offending website was made 'private'. Two weeks later the law was rescinded and within an hour of the announcements, the website was made public again with a new threat of publishing our court affidavits. The site is, unfortunately, still public.

I cannot emphasise enough how stressful and debilitating it is to be lied about online.. Of the original 25 victims in Bear River, only 7 of us followed through with working with the CyberScan Unit. All 25 of us were:

- fearful of repercussions if the bully knew of us approaching the CyberScan Unit
- overwhelmed and intimidated by the court system
- fearful that the bullying would be worse if the court action 'failed'

As a first step, our bully was asked to remove her site by the CyberSCAN Unit, but refused. The court was the only authority that she recognized, proving that court action is necessary for some offenders.

The Department of Justice tasked lawyer Terry Potter with presenting our cases. He and Gregory Keagan worked with us. There is no way any of our group would have been able to handle the court procedure without the help of both these men.

I am assuming that the rationale for the government in dropping the support of a lawyer is a cost saving measure. I would argue that dedicating a lawyer to this Bill will develop an expertise in that person and in the department that will better serve the public. Vulnerable victims are not in any position to prove that 'harm' has been done. Dropping the lawyer support will weaken this Bill. Many fewer people will come forward knowing they will have to face their oppressor in the end, alone.

Respectfully,
Flora Doehler
Bear River, Nova Scotia.

Links:

Concerns raised over loss of Cyber Bullying law. - CTV Atlantic news

http://atlantic.ctvnews.ca/video?clipId=773236&binId=1.1145463&playlistPageNum=1#_gus&gucid=&gup=Facebook&gsc=Q4sYxzY

Bear River's gossip blog grips Nova Scotia Village in Controversy (CBC)

<http://www.cbc.ca/news/canada/nova-scotia/bear-river-gossip-blog-nova-scotia-1.3416067>

Bear River gossip blogger pulls site amid controversy (CBC)

<http://www.cbc.ca/news/canada/nova-scotia/bear-river-gossip-blog-pulled-1.3419968>

The Bear River Tides (Blog of Zoe Onysko)

<http://thebearrivertides.com/>

Justice Muise's Ruling:

The Director of Public Safety v. Zoe Onysko, Dig. No. 444718 Decision of Justice Pierre Muise November 18, 2015

*The application was made based upon materials published or posted by the Respondent in the monthly newsletter and the blog both entitled "The Bear River Tides". The applicable portions of those publications/postings relate to a **campaign of denigration** against seven individuals who filed complaints with the Director of Public Safety, many of which are members of the Bear River Board of Trade, which board is also a target.*

The affidavit evidence presented reveals a large volume of personal attacks in deliberately insulting and sarcastic language which the evidence indicates are false or misleading and which incite feelings of anger or hatred against the targets. There are comparisons with Hitler and Nazi Germany. There are sarcastic comments regarding personal religious beliefs or lack thereof. There are statements of criminal and/or otherwise illegal behavior which the affidavit evidence states are unfounded. There are postings of the photographs of some of the target's personal properties as well as publication of information regarding absences from their homes for extended periods.

The materials have caused damage to the personal, business and professional reputations of the targets. They have caused unnecessary anxiety, distress, upset, anguish, depression, worry and fear involvement in public organizations as well as fear of volunteering in the community. For some of the targets, they have also caused fear of postings or publishing information regarding their own activities for fear of their words being twisted and used in a misleading manner against them. Obviously, it's also raised issues of a fear of vandalism or breaking into their homes if people know that they are absent for a significant period of time. And further, for some of the targets, it has even caused fear of their personal safety due to people travelling to Bear River to confront the targets of the postings in *The Bear River Tides*.

The evidence shows that the Respondent intended or ought reasonably to have expected these things to result from her publishing or posting the impugned materials. In my view, **the materials go beyond what is deserving of protection as a free speech and property rights when balanced against the cyberbullying nature of those materials.** The materials import malice and a corresponding intention to damage the reputation of the targets. More likely than not, they are engineered to incite hatred of or anger towards those targets. No affidavit evidence was provided to refute that submitted by the applicant.

Based on the evidence presented, I am satisfied that the materials constitute cyberbullying as defined in Section 2(1)(ba) of the Safer Communities and Neighbourhoods Act.

(bolding is mine)

From: Veronica Murray [REDACTED]
Sent: Monday, October 16, 2017 1:49 AM
To: Office of the Legislative Counsel
Cc: Greenough, Lisa; Veronica Murray
Subject: Bill 27 a victim's perspective

I would like the opportunity to voice my concerns as Nova Scotia's Law Amendments Committee meets regarding Bill 27. I am one of only 10 victims whose cyberbullying case was taken to court under the previous legislation and I believe that Cyberscan's role in the process was crucial; their ability to investigate my complaint, meet with the cyberbully and make application for a court order was the beginning of the end of my nightmare. It is important to note that my case also went to criminal court and the cyberbully was also found guilty of criminal harassment, and if I had been made to wait for that process to get relief I would have been subject to attack for over an additional year.

As I read about the new legislation, I am pleased that there will be something in place but feel that the law ties the hands of the Cyberscan unit and my experience tells me that is where the bulk of change was happening when the previous legislation was in place.

I think the new rules governing Cyberscan's role fail to appreciate the state of victims and the powerlessness that cyberbullying creates in victims. The goal of the cyberbully is to beat down their victim, and they take great pains to ensure that victims are degraded, humiliated and generally distraught. The tactics taken are generally very successful. Without the Cyberscan unit initiating meetings and following up with the application to court my cyberbullying would not have stopped because I would not have had the personal fortitude to do the things necessary to get a court order. I believe this legislation fails victims because the underlying assumption is that victims have the capacity to investigate, enforce or make court applications as Cyberscan will have been stripped of these authorities.

I had the misfortune of being targeted by a relentless cyber bully, but then isn't that what makes the offender a bully is their relentless nature? For 2 years I was tortured with baseless accusations, vile descriptors of me and my family and occasionally a rallying cry from the cyberbully that he and his audience should ensure that I pay for what he perceived as my indiscretions. These posts were spewed on social media for all to see. I placed calls to police who then contacted the offender: he posted mockingly on social media. Cyberscan called and met with him during their investigation: he posted vile messages about me and the investigator. He did not show up to court where the order was granted and despite the order continued to post on social media. After breaching the court order, he received a warning and I finally got some peaceuntil the law was repealed at which time he was once again posting about me on social media until a criminal court order prevented him from doing so.

Without the Cyberscan investigator taking the necessary steps to have an order granted, what could I possibly have done to protect myself and my family? I can assure you that with the onslaught of cyberbullying I have experienced(several hundred pages of social media posts were presented as part of my affidavit in court) my mental state left me unable to self-advocate. I ask you as legislators, what good is a law that requires a victim to do the leg work of investigators and make applications to court when you are so beaten down you are paralyzed?I say this not as a vulnerable teenager (which let be honest people believe it's just a teenagers problem), I say this as a 46 year old university-educated professional who was so traumatized by cyberbullying that my only option was to abdicate my personal power. Fortunately for me, Cyberscan was able to step in and move things forward in the courts.

So, while I am unable to be in Halifax to attend, I would like my voice heard and I am begging you to please reconsider Cyberscan's role in the new legislation. The legislation is not the problem, the role that Cyberscan is relegated to playing needs to be reevaluated. I'm not saying they need Carte Blanche, but in my opinion

they need the authority to investigate and make application to the court; they need to be able to advocate for victims who have been made powerless by a cyberbully attack.

I appreciate the opportunity to have my voice heard,
Veronica Murray

From: Kimberly D. Tetreault <TetreaultK@ccrsb.ca>
Sent: Monday, October 16, 2017 12:24 PM
To: Office of the Legislative Counsel
Cc: pictouwestmla@bellaliant.com
Subject: Bill No. 27

I understand that the Nova Scotia's Law Amendments Committee will hear from the public on Bill 27, The Intimate Images and Cyber-protection Act, on Monday, Oct. 16. I do not feel the bill, as it is written, should pass.

I have had the opportunity to work with the CyberScan Unit in the past and I think their importance to this bill needs to be recognized.. They are crucial to the investigation of these charges and I feel they should play a much more active role in the investigation. It is not fair to the victims that they should have to go through this without the active support of the CyberScan Unit. Utilizing them as a resource, only, is not enough! Cyberscan needs to be given their power back - we need advocates for the victims. Police and RCMP do not always want to be involved with these investigations. We need the Cyberscan unit because they are well versed in explaining to the accused the severity of their actions and the severity of the consequences. I also feel that the parents of children who are cyberbullying should be much more responsible for their children. This idea that they are not financially liable will not be effective.

I am hoping that my email will be read at the Law Amendments Committee today.
Thank you

Kim Tetreault
Vice-Principal
West Pictou Consolidated School
902-485-7960 (p) 902-485-7966 (f)

✓

From: Quentin Herritt [REDACTED]
Sent: Saturday, October 14, 2017 2:45 PM
To: Office of the Legislative Counsel
Subject: Amendment

Bill 27

Hello and thank you for your work on this new amended act. By virtue of my own dealings with a bully on Facebook, I cannot express strongly enough that you HAVE to allow the Cyberscan Unit to have the authority to do what is necessary to stop the offending party. Otherwise they become as ineffective as the RCMP. These bullies know they are untouchable and there is no quick way to stop them. This is how they can continue until their prey does the unthinkable. They are of a psyche that they are in charge - this is how toxic narcissists think. And right now, they are unstoppable. Please stop them. Before more commit suicide.

LAW AMENDMENTS COMMITTEE

Red Chamber, Province House

Monday, October 23, 2017

Bill #27 - Intimate Images and Cyber-protection Act

10:30 a.m.

1. Dr. A. Wayne MacKay,
Professor Emeritus, Schulich School of Law

Bill #39 - Financial Measures (2017) Act

No representation



From: dilruba rahman <[REDACTED]>
Sent: Monday, October 16, 2017 9:14 PM
To: Ferrara, Sonya A; Office of the Legislative Counsel
Subject: Re: Bill 27, The Intimate Images and Cyber-protection Act, on Monday, Oct. 16

Thank you for including me to have a look on the proposed bill.

My few comments about the Bill 27 given my experience and observation dealing with young adults who have experienced Cyber Bullying:

1. Definition of Cyber Bullying--needs further inclusion of exchanging offensive emails in group setting, using different/foreign language to take advantage in different cultural background, religious bias to impose bully, using online resources to take advantage of intellectually disabled people
2. I am not sure where the situation falls where I have heard that kids at school using friends/victim's own cell phone to use offensive texts/photo shop/ social media and later accusing them as the bully/perpetrator.
3. The Intimate Images Cyber-protection act--would be helpful to include potential risk even though the act is minimal as in my clinical experience it causes significant amount of psychological damage into individual's ability to be assertive and resilient. (insecure with low self esteem, fearful in conflict resolution and risk of self harm and escaping into substance misuse/eating disorder)
4. Time line--in my opinion, it would be helpful for children and teen age kids to know that any one can step forward with any bullying event at any time regardless of how many time/years has passed. As we will be seeing more and more cyber related psychological insults and we are still unaware of its long term consequences (relationships, employment, security and criminal record check).
5. I would like to see some mandatory educational session on cyber safety and communication skills and, or, counselling services for both victims and alleged individuals. Its very important for all of us to caution and punish the inappropriate act but not the person. Often time they are in the same class/year/ peer groups and both of them need to feel safe and protected.

Thank you!

Dr. Dilruba Rahman
MBBS, MD, FRCPC
Psychiatrist

October 20, 2017

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Honourable Members:

Thank you for the opportunity to provide my views on Bill 27, the *Intimate Images and Cyber-protection Act*.

I am a lawyer with McInnes Cooper whose practice is focused on internet and privacy law matters. I need to emphasise from the outset that these are my own personal and professional comments, and do not necessarily represent the views of my firm, its clients or any other organizations with which I am associated. I have been practicing in this area of law for over fifteen years. In this context, I am perhaps best known as being a vocal critic of the *Cyber-Safety Act* and being the lawyer who argued in Court that the old Act was unconstitutional.

If I could first comment on a matter of process, I am disappointed that I am not able to appear before the committee and answer any questions you may have. When this bill was first considered on October 16, 2017, I had less than one business day's notice of the hearing and was scheduled to be out of town. I was then advised on Thursday, October 19 that the Bill would again be before the committee on Monday, October 23. That's one and a half day's notice and I will again be out of town on Monday. If the government were serious about getting this right, surely it would make it easier for experts to appear on the Bill. I am sure the Committee would benefit from testimony from Canadian Civil Liberties Association or the Canadian Bar Association, but these organizations can't just drop tools, consult with their stakeholders and develop a coherent and helpful position with that kind of notice. I can name at least five people who have immense expertise in the field of civil rights, cyberbullying, restorative justice and youth suicide who this Committee and Nova Scotians should hear from, but none will have a chance to provide their well-informed and expert views. I do not know if this

is peculiar to this bill, but it certainly was the case with the original *Cyber-Safety Act* and Nova Scotians have suffered as a result.

In the meantime, the government has had a number of targeted consultations. I did meet with Justice officials to provide my views, with the final meeting commenting on a draft of the bill. I had some misgivings then which I will share with you today.

While the law was formally and officially declared unconstitutional on December 10, 2015, it was unconstitutional on the day it was introduced on April 25, 2013, fewer than three weeks after the tragic death of Rehtaeh Parsons.

I stood up in court and called the *Cyber-Safety Act* a “dumpster fire”. Justice McDougall called it, much more politely, a “colossal failure” as far as the *Charter* is concerned.

I argued, and the Court agreed, that the law had two principal failures. The first was that the definition of “cyberbullying” was far, far too broad and would include anything that could hurt someone’s feelings (including legitimate, political speech). The second failure was that a complainant could get a protection order without the alleged cyberbully ever having an opportunity to defend themselves. The justice of the peace would make a decision on the basis of only hearing one side of the case. And the first that the respondent would hear of it would be when a police officer would show up at their house -- usually at night -- and serve them with the order.

Both of these issues have been addressed in the new Bill. The definition of “cyberbullying” raises the bar much, much higher. It may be too high, by requiring “malice”, but it does capture communications that are intended to harm the victim. The issue of procedural fairness has certainly been addressed, but I am afraid the pendulum may have swung too far the other way.

The way the Bill sets it out, a victim of cyberbullying has only one option: to commence an application in the Supreme Court of Nova Scotia following the Nova Scotia *Civil Procedure Rules*. I have 100% confidence in the fairness of a judge of the Supreme Court and the court’s processes. But forcing a victim of cyberbullying to start a conventional lawsuit will represent a huge barrier to access to justice.

What I am saying is completely contrary to my own pecuniary self interests. I am a lawyer who practices law in this area. My law partners much prefer that I charge clients for my time and for my services. While we have a great *pro bono* program -- I think it’s one of the best in the country of any law firm that I am familiar with -- I am not able to take on the cases of all victims of cyberbullying. To my knowledge, none of these proceedings would fall within the scope of Nova Scotia Legal Aid.

Going to the Supreme Court requires that a victim understand and follow the *Civil Procedure Rules*. They’ll have to read and understand Rules 4, 5, and 6. They have to prepare a notice of application in court and an affidavit, all according to the rules. They’ll have to hire a process server to serve the documents on the respondent. They likely have to be in court across from their tormentor to schedule the next steps and the court

hearing. They get a written affidavit from the respondent. They can then maybe file another response affidavit. They can maybe cross-examine the respondent outside of Court, assuming they are in a position to pay a court reporting service to transcribe the cross-examination on an expedited basis. Then they have to file their brief. And then they have their day in Court, except they never get to directly tell a judge their story. They don't get to testify on their own behalf, since their testimony is only in their affidavit.

I would expect it would cost at least \$10,000 for me to represent an applicant in this process. That is daunting. But what's equally daunting is the prospect of a traumatized cyberbullying victim having to find, understand and precisely follow, the *Civil Procedure Rules*. That greatly troubles me and I think it should trouble you.

The legislature should seriously consider a different approach. I do not think I have all the answers, but I would suggest that the legislature should consider a less formal approach that still preserves the procedural fairness that was lacking in the old *Cyber-safety Act*. While the current procedure for a peace bond is not without its shortcomings, there should be a procedure through which an applicant can go to court and tell their story. The respondent has the same right to know what is being alleged, to appear, to present their story and possible justification. If neither adduced evidence about some of the essential factors to be considered under the *Act*, the judge can ask them questions. And a decision follows. This can be before the Supreme Court of Nova Scotia or a judge of the Provincial Court.

I do agree with sidelining the CyberSCAN unit from enforcement of the law. In my experience and in my opinion, they were the wrong tool for the job. While perhaps not representative of all the people with whom they interacted, I consistently heard from and about people whose political or legitimate *Charter*-protected speech was removed from the internet because members of CyberSCAN bullied the people into removing it under threat of unspecified "legal action" that could include removing their internet access. It may have been a matter of who they hired for the role or how they were led, but the CyberSCAN unit was part and parcel of the speech suppression that the law represented. When I asked Roger Merrick how the CyberSCAN unit took the *Charter* into account in doing their jobs, I was told that the legislature took it into account when the bill was passed by this House. That was clearly incorrect.

I do think the CyberSCAN unit or some replacement of it could go good things. Education and awareness are important. Providing support to victims is important. I am sure that victims will need a lot of help in figuring out how to have their day in court, and CyberSCAN can be a resource for that.

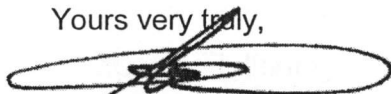
One final concern that I have is that the legislation says that if the victim is a minor, their parent or guardian has to commence the application on their behalf. There should be a mechanism by which a minor can do this on their own. First of all, there may be a case related to intimate images where the minor does not want to tell their parents. Secondly, I can imagine a scenario where the parent is either the perpetrator or is unwilling to help

the child. Some safeguard needs to be in place to give a child direct access to the courts.

I do want to take the opportunity to praise the manner in which the non-consensual distribution of intimate images is treated in the statute. By separating this from the definition of cyberbullying, it will effectively shield this from being struck down if the conventional cyberbullying aspect is found to be unconstitutional.

Again, I regret that there was not enough notice for me to appear in person and answer any questions by the Committee. However, I am easy to find and I would be pleased to discuss this important matter with any Committee members or their staffers.

Yours very truly,

A handwritten signature in black ink, consisting of several loops and a horizontal stroke, positioned above the printed name.

David T.S. Fraser

DEFEATED

Bill #27
Intimate Images and Cyber-protection Act

CHANGE RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE

PAGE 3, subclause 6(1)

- (a) add after paragraph (d) the following:
 - (e) an order restricting the person's access to the internet;
- (b) reletter clauses (e) to (i) as (f) to (j).

PAGE 6, subclause 12(1)

- (a) add after paragraph (c) the following:
 - (d) advise victims of intimate image distribution without consent and cyber-bullying respecting the criminal justice system and proceedings under this Act;
- (b) reletter clauses (d) and (e) as (e) and (f).

PAGE 6, Clause 12 - add after subclause (2) the following:

- (3) The agency may refer matters to the police.
-