Young Man Sentenced for Criminal Harassment for "Sexting"

January 31, 2017

On September 7, 2016, the Ontario Court of Justice ("ONCJ")[1] imposed a suspended sentence on a young man charged with criminal harassment, contrary to section 264 of the *Criminal Code of Canada* (the "Code"), after he posted nude and semi-nude images of his underage girlfriend to a public pornographic website without her consent.

Facts

Botong Zhou became romantically involved with a young woman (the "Complainant") when she was 14 and he was 16. At Mr. Zhou's request, the Complainant took sexually explicit photos of herself and posted them on a private website that only she and Mr. Zhou had access to. After posting the photos to the private website, the Complainant discovered that 10 of her nude and semi-nude photos were posted to a public pornographic website and had been viewed over 1,300 times over a span of two years. Underneath the photos, Mr. Zhou asked viewers to "rate" the Complainant and describe what they would "do to her".

Mr. Zhou's actions had detrimental consequences for the Complainant. She eventually became depressed, anxious and terrified over knowing that 1,300 people had seen her photos and feared that these images would reappear and affect her future.

As a result of his actions, Mr. Zhou was charged with possessing, accessing, and distributing child pornography. However, at the time of sentencing, the child pornography charges were dropped and Mr. Zhou pled guilty to one count of criminal harassment contrary to section 264 of the Code . It provides:

264(1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.[2]

Ontario Court of Justice Decision

At the time of sentencing, the Crown submitted that a suspended sentence with 12 months of probation would be appropriate, while Mr. Zhou sought an absolute discharge.

In determining an appropriate sentence for Mr. Zhou, the Court stressed the heightened public awareness over the prevalence of the non-consensual distribution of intimate images, recently coined "sexting". Particularly, in response to the current "sexting" phenomenon, the federal government created a new criminal offence, under section 162.1, specifically targeting this type of behaviour. Although the new section 162.1 came into force in March 2015, after the commission of Mr. Zhou's offence, the Court stressed that section covers non-consensual sexting, which often begins with consensual texting, as it did in this case. The Court cites Justice Atwood of the Nova Scotia provincial court, who stated that

... this province and this country underwent a transformational shift in recognizing the vulnerability of young people – particularly females – to trauma, psychological harm, serial victimization and predation as a result of people (including — perhaps particularly including — age peers) doing precisely what [the accused] did to his victims.[3]

According to the Court, the increased prevalence of these types of crimes, charged under the rubric of criminal harassment in Mr. Zhou's case, is a factor that heightens the general gravity of the offence. The Court then listed other factors that also heightened the gravity of Mr. Zhou's offence. Most notably,

- Mr. Zhou's conduct persisted over a two-year period and was not 'isolated';
- The 'breach of trust' and ongoing deceit and betrayal occurred while Mr. Zhou continued to be in a romantic relationship with the Complainant;
- The images in question met the Code definition of "child pornography". In particular, their dominant characteristic was the depiction, for a sexual purpose, of the sexual organs of a person that was under the age of 18; and
- The comments posted with the photos of the Complainant demonstrate an intention to degrade and humiliate the victim. The comments not only violated the victim's privacy, but also invited other users to degrade her by describing the sexual acts they would perform.

When assessing the degree of Mr. Zhou's responsibility, the Court also rejected Mr. Zhou's submission that he had no intention to harass the victim and was simply behaving recklessly. Instead, the Court found that Mr. Zhou's actions were thought out and planned. After Mr. Zhou chose which photos he would post and thought about the comments he would post with them, he frequently checked the number of views and comments on the photos. Based on these actions, this was not a momentary lapse of judgment or a thoughtless one-time mistake. Mr. Zhou posted the photos to satisfy his need to brag over the attractiveness of his girlfriend.

However, the Court did acknowledge that Mr. Zhou took responsibility for his actions, cooperated with the police and pled guilty to his charges. Mr. Zhou also attended counselling to gain insight into what caused his harmful criminal behaviour. In addition to his rehabilitation efforts, the Court noted Mr. Zhou's personal circumstances. At the time of sentencing, Mr. Zhou was a talented young pianist with a bright future ahead of him. The Dean of his music school described Mr. Zhou as "an exceptional student on all

levels". Given these circumstances, a conviction would have an above average impact on Mr. Zhou's life.

After an assessment of all aggravating and mitigating factors, the Court was satisfied that Mr. Zhou's case was not one suitable for an absolute discharge. In the Court's view, a short period of custody would have been appropriate. However, Mr. Zhou had already served 4 days in pre-sentence custody, and therefore was sentenced to no more. Ultimately, the Court imposed a suspended sentence with a non- reporting probationary period of 12 months.

Conclusion

Sexting has been defined as sending, receiving or forwarding sexually explicit messages, photographs or images, primarily between mobile phones. It may also include the use of a computer or digital device.

Sexting has become a prevalent practice among youth across Canada. A 2014 MediaSmarts survey on media use by 5,436 Canadian students across the country from Grades 4 to 11 found that 15 per cent of the Grade 11 students surveyed had sent a sext, and 36 per cent said that they had received one.

Many students and their parents are not aware that sexting, even when the images are not shared beyond the sender and receiver, can be considered child pornography under Canadian law.

R. v. Zhou demonstrates the court's intolerance towards the new "sexting" phenomenon. The need to protect vulnerable young people, particularly young women, is prevalent in the decision. While the federal government's response to "sexting" was the implementation of the new section 162.1 of the Code, in this case, the Court was satisfied that a sentence of criminal harassment for Mr. Zhou's actions was appropriate. This case is a shining example of how teenage "sexting" will not be taken lightly by Canadian courts and can have a detrimental impact on a young person's future.

[1] *R. v. Zhou,* 2016 ONCJ 547, 2016 CarswellOnt 13938.

[2] *Criminal Code,* RSC 1985, c C-46, s. 264(1).

[3] *Ibid* at para. 20, citing *R. v. T. (C.N.),* 2015 NSPC 43, 2015 CarswellNS 591 at para. 9.

By

Samantha Bonanno

Expertise

Education

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.