SUPREME COURT OF NOVA SCOTIA

Citation: *Benoit v. Langille (Facebook Group "Stop Gail Benoit")*, 2022 NSSC 374

Date: 20221216
Docket: *Bwt. No.*, No. 510197
Registry: Halifax

Between:

Gail Ruth Benoit

Applicant

v.

Facebook Group, Administrator Elizabeth Langille "STOP Gail Benoit From Ever Dealing with Dogs", Facebook.com/groups/120674814788024

Respondent

Judge:	The Honourable Justice Diane Rowe
Heard:	July 28, 2022
Oral Decision:	December 13, 2022, in Bridgewater, Nova Scotia
Counsel:	Gail Benoit, self represented Elizabeth Langille, self represented

By the Court, Orally:

[1] Ms. Benoit is seeking a cyber-protection order pursuant to the *Intimate Images and Cyber-Protection Act* SNS 217, c. 7 (*Cyber-Protection Act*) against the Facebook group, “Stop Gail Benoit From Ever Dealing With Dogs” (Stop Gail Benoit) and its administrator, Elizabeth Langille. In keeping with the *Act*, the unique identifier number associated with the Facebook group is stated in the style of cause and application.

[2] Ms. Benoit is requesting an Order that the Court declare that: the communication contained on the “Stop Gail Benoit” group’s page is cyber-bullying; prohibit communications that would be cyber-bullying; prohibit Ms. Langille from contact with the applicant; require the Group to take down or disable access to the communication that is cyber-bullying; and that damages be paid to the applicant with an accounting for profits.

[3] These claims are included in a drop down list contained on the Cyber-bullying *pro forma* application. There is no claim for costs made.

[4] Ms. Benoit is a self-represented person. She filed the notice of application, and affidavit, using forms and templates available to the public. She did not file a written brief, but made oral representations at her hearing.

[5] The respondent, Elizabeth Langille, was served with Ms. Benoit's application and affidavit on May 17, 2022. Ms. Langille did not make any responsive filings or appear at the hearing, which took place in general Chambers in Bridgewater on July 28, 2022.

[6] Ms. Benoit was the subject of Court proceedings concerning the mistreatment of animals, specifically dogs, and their sale, in which she was found guilty. This Court has made a determination on one of these matters in a separate proceeding, *R v. Benoit*, 2010 NSSC 97, in which the Provincial Court's finding of guilt was upheld in the conviction of the applicant for breaches of the *Animal Cruelty Act*, and for assaulting a peace officer pursuant to the *Criminal Code of Canada*. This Nova Scotia Supreme Court decision was also upheld by the Nova Scotia Court of Appeal.

[7] There have been additional proceedings involving Ms. Benoit and charges concerning her manner of dealing with dogs and their care and welfare since these decisions.

Law

[8] While Ms. Benoit did not file a legal brief, and was self-represented throughout the application, she made oral submissions in support of a properly filed application, accompanied with an affidavit. It was possible for the Court to determine the grounds of her application, specifically she submitted that the Facebook group, "Stop Gail Benoit" was established for the purposes of cyber-bullying her specifically, and that there are posts contained on it that are permitted by the administrator that contains threats, intimidation or menacing conduct, done in keeping with the site's purpose to deter Ms. Benoit from obtaining or dealing with dogs.

[9] I will begin by quoting paragraph 32 of the decision of the Nova Scotia Court of Appeal in *Nova Scotia (Community Services) v. J.P* 2021 NSCA 45 concerning the principle that a judge may conduct their own legal research.

> Para 32 **Fruits of the Judge's Legal Research**
>
> [32] A judge may conduct research (*IWA v. Consolidated-Bathurst Packaging Ltd.*, 1990 CanLII 132 (SCC), [1990] 1 S.C.R. 282, ¶32 per Sopinka J. dissenting in result). However, it is an error for a judge to do so if it changes the nature of the issues under review, thereby failing to afford an opportunity to the parties to address those issues.

[10] As there was little law before the Court, I refer to the relevant legislation and related caselaw. The *Cyber-Protection Act* defines "cyber-bully" at subsection 3(c) as follows:

> (c) **"cyber-bullying" means an electronic communication, direct or indirect, that causes or is likely to cause harm to another individual's health or well-being where the person responsible for the communication maliciously intended to cause harm to another individual's health or well-being or was reckless with regard to the risk of harm to another individual's health or well-being, and may include**
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> (i) creating a web page, blog or profile in which the creator assumes the identity of another person,
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> (ii) impersonating another person as the author of content or a message,
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> (iii) disclosure of sensitive personal facts or breach of confidence,
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> (iv) **threats, intimidation or menacing conduct,**
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> (v) communications that are grossly offensive, indecent, or obscene,
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> (vi) **communications that are harassment,**
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> (vii) **making a false allegation,**
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> (viii) communications that incite or encourage another person to commit suicide,
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> (ix) communications that denigrate another person because of any prohibited ground of discrimination listed in Section 5 of the Human Rights Act, or
>
> (x) **communications that incite or encourage another person to do any of the foregoing;**
>
> (emphasis added)

[11] Further, s. 7 of the *Act* provides a list of factors that the Court shall consider in determining whether to make an order, and what the order to make as follows:

> (a) the content of the intimate image or cyber-bullying;
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> (b) the manner and repetition of the conduct;

> (c) the nature and extent of the harm caused;
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> (d) the age and vulnerability of the person depicted in the intimate image distributed without consent or victim of cyber-bullying;
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> (e) the purpose or intention of the person responsible for the distribution of the intimate image without consent or the cyber-bullying;
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> (f) the occasion, context and subject-matter of the conduct;
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> (g) the extent of the distribution of the intimate image or cyber-bullying;
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> (h) the truth or falsity of the communication;
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> (i) the conduct of the person responsible for the distribution of the intimate image or cyber-bullying, including any effort to minimize harm;
>
> (j) the age and maturity of the person responsible for distribution of the intimate image without consent or cyber-bullying;
>
> (k) the technical and operational practicalities and costs of carrying out the order;
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> (l) the Canadian Charter of Rights and Freedoms; and
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> (m) any other relevant factor or circumstance.

[12] *Candelora v. Feser* 2019 NSSC 370 canvassed the *Cyber-Protection Act*, with Justice Arnold noting at paragraph 46 that the burden of proof, on a civil claim made in the context of the *Act*, is on a balance of probabilities and rests with the applicant.

[13] Justice Keith in *Fraser v. Crossman*, 2022 NSSC 8, a more recent decision of the Court, set out the following analysis at paragraphs 42-44:

> [42] As is clear from this definition and as Justice Arnold confirmed in Nova Scotia's leading case *Candelora* v. *Feser*, 2019 NSSC 370 ("***Candelora***"), there are four distinct elements to this statutory cause of action based on "cyber-bullying". They are:
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> 1. the information in question must be an electronic communication;
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> 2. electronic communication may be direct or indirect;

> 3. electronic communication must cause or be likely to cause harm to another individual's health or well-being; and
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> 4. the person responsible for the communication must maliciously intend to cause harm to another individual's well-being or was reckless with regard to the risk of harm to that individual's health or well-being.
>
> [43] Section 3(c) goes on to describe a number of types of communication that may satisfy the definition of cyber-bullying and are described in Justice Arnold's decision as "Other 3 (c) Considerations".
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> [44] I note that the specific examples of problematic communications or "other considerations" listed in section 3(c) do not constitute "cyber-bullying" by themselves (i.e., in the absence of the other statutory preconditions that comprise the elements of "cyber-bullying"). For example, and among other things, a communication which may contain a false statement, but it must also be an *electronic* communication (direct or indirect) to constitute "cyber-bullying". Similarly, **even if an electronic communication (direct or indirect) contains a false statement, the author must also have maliciously intended to cause harm to another individual's health or well-being or be reckless with regards to the risk of such harm**. In short, each element of the claim must still be proven. And the burden of proof obviously rests with the person alleging to have been a victim of "cyber-bullying". (emphasis added)

Analysis

[14] In this matter, where the respondent did not appear to give submissions or test the evidence, the Court must weigh the evidence placed before the Court by Ms. Benoit's affidavit and engage in an analysis of the application.

[15] While she appeared in Court on the application, Ms. Benoit confirmed for the Court that she was the person who had taken the screen shots of the group's main page, and the various posts and responses appearing on it, that are attached to

her affidavit. She also submitted evidence that at the time of her affidavit in support of the application that this was a public (or open) group, and was still online. I am prepared to accept some, but not all, of the materials attached to her affidavit.

[16] In reviewing Ms. Benoit's affidavit, I find that there was repetition of some of the documented posts, as well as a reference to a separate Facebook group that is not named as a respondent in this application. This other Facebook group is referred to as "Let's Stop Gail Benoit Anything Goes!!!" There is no link established in the affidavit to establish that Ms. Langille is an administrator for this other group. Further, there are posts attached to Ms. Benoit's affidavit that appear to be linked to this second group, and which the Court has not admitted as evidence for this application.

[17] It appears from the printed screen capture attached to Ms. Benoit's affidavit that the "Stop Gail Benoit" group begins with an "About" stating an intent of "No more Animal Abuse", and indicates the group is public, and visible to anyone on Facebook. There is another document concerning the group, received via Facebook, indicating that the "Stop Gail Benoit" group was created on March 27, 2013.

[18] The next item that the Court accepts as evidence is a post of "Edward Kirk Gil Met" that states "Why not shot her…I in Sydney and will no issue especially if on my property or even nabours (sic)…yup 2 where ever they hit and 1 in back of head." This was in response to a posting by Keady Robinson giving information to members about taking care not to rip down blue ties from trees as they are a memorial to a deceased child. The Edward Kirk Gil Met post was on the Stop Gail Benoit page, as there is a sub-header "To post and comment, join Stop Gail Benoit From Ever Dealing with Dogs!!!"

[19] The next set of postings accepted by the Court also contains this sub-header requiring persons to join the group in order to post, thereby linking it to the "Stop Gail Benoit" group. It contains a post by a Lesley Ann Murray indicating that they "…literally take a charge and beat her where she stood…" and then a response by Cherry Lynn of "I would have no issues breaking her legs. This bitch needs to be stopped but it looks like it's up to us as the law never does a thing to her proof or not."

[20] Yet another page with the sub-header link, as above, to the "Stop Gail Benoit" group, contains a post by Kelsey Rawding that "Yeah someone will be going to jail and it wont be her. But aslong as she get in the ambulance I could probably live with it. I'll tell ya I's be getting my 267 dollars worth tho for an

assault charge. Damn I could kill the bitch teach a criminals for 5 years and be out. Sometimes it's nice living in noca Scotia."

[21] It is not clear whether the screen capture of a Facebook page dated March 30, 2021 at 10:38, indicating that a comment by Kelsey Rawding was reviewed and taken down by Facebook relates to this posting by Kelsey Rawding on the "Stop Gail Benoit" page or if it is in relation to another group. It's noted that the complaint made to Facebook concerning the post that was removed by Facebook was from an account called "Bollivar."

[22] The next page with the sub-header linkage to the "Stop Gail Benoit" group has a post from Keady Robinson stating "how isn't she hospitalized at this point? Cause that's what would happen if I seen her (laughing emoji) for legal reasons this a joke (more laughing emojis)." The reply post to Keady Robinson references a theft allegedly committed by two men. There is no date to establish the post time or date, but it is established it was posted in the "Stop Gail Benoit" group.

[23] There are other postings the Court is satisfied were made on the "Stop Gail Benoit" group that refer to Ms. Benoit allegedly watching people's homes to observe pets in preparation to commit theft, a threat to beat Ms. Benoit to a pulp, alleging Ms. Benoit is driving while impaired and unlicensed, alerting members of

the group to Ms. Benoit's alleged whereabouts in Nova Scotia, and indicating a willingness to harm Ms. Benoit.

[24] On the first element of the analysis set out in *Candelora v. Freser*, *supra*, the Court is satisfied that the Facebook posts are electronic communications.

[25] Then, in regard to the second element, that the electronic communication may be direct or indirect, it was noted in both *Candelora, supra* and *Fraser, supra* (at paragraph 51) that Facebook posts have been held to constitute publication for defamation purposes. Further, as this was an open and public Facebook account at the time of application, it is clear that there was an intent for the "Stop Gail Benoit" group to communicate broadly with the wider world about Ms. Benoit, with the intent that members of the group may impede her, alert the public, and essentially monitor her activities in the broader community, in reference to past criminal offences involving animals. While Ms. Langille did not make the posts herself, the "Stop Gail Benoit" group is administered by her, and Ms. Benoit was the sole focus of the group. I am satisfied that there was indirect and direct communication to Ms. Benoit and beyond in this matter.

[26] On the third element of the test, that the communication must cause or be likely to cause harm to another individual's health or well-being, it is clear that the

content of the posts that the administrator allowed to be posted and accessed by the public on the “Stop Gail Benoit” group, contained graphic threats of harm to Ms. Benoit personally, whether by assault or with a weapon. It is very clear that these posts are likely to cause harm to Ms. Benoit’s health or well-being. Ms. Benoit submitted to the Court that she has experienced fear and anxiety as a result of the “Stop Gail Benoit” group.

[27] The fourth element requires that the Court consider whether the person responsible for the communication must maliciously intend to cause harm to another individual’s well-being or was reckless with regard to the risk of harm to that individual’s health or well-being. The evidence that was accepted by the Court, as referenced in this decision, indicates that the “Stop Gail Benoit” Facebook group encouraged members to engage in a new, and disturbing, form of cyber vigilantism, facilitated by social media.

[28] The repetition of threats of harm to Ms. Benoit is coupled with a sense of righteousness in the group’s member comments that violence, and her surveillance by members in the community, is justified. The post that comments “it’s up to us as the law never does a thing to her proof or not” captures the intent of the “Stop Gail Benoit” group. The rule of law would be subverted readily if cyber vigilantism becomes a norm.

[29] Ms. Benoit has been found guilty in other proceedings of causing harm to animals and to police engaged in animal welfare. That aspect of some of the communications in the group are true.

[30] However, that truth is inextricably linked with encouragement of surveillance of Ms. Benoit in the community and of condoning violence toward her on an ongoing basis for the potential of future conflicts with the law. Protection of the public in accordance with the rule of law is the role of the criminal justice system in our democratic society, rather than of individuals via social media account.

[31] In that regard, the Court is satisfied that there is a recklessness in regard to creating a risk of harm to Ms. Benoit, and which readily arises in the context of this group's activity.

Decision

[32] Ms. Benoit has satisfied the Court that the group and posts contained within the Facebook group "Stop Gail Benoit From Ever Dealing With Dogs" meets the definition of cyber-bullying set out in the *Cyber-Protection Act*.

[33] The Court declares that it is satisfied that the respondent, Stop Gail Benoit, and its administrator, Elizabeth Langille, have engaged in cyber-bullying. I order the following, in accordance with s. 6 of the *Act*, that:

- Ms. Langille is prohibited from making any further communications that would be cyber-bullying via Facebook and specifically to her the group, "Stop Gail Benoit From Ever Dealing With Dogs", which is hereby ordered to be taken down;
- Further, Ms. Langille must:
    i. take down any communications that are cyber-bullying, including, but not limited to, Facebook postings that refer directly or indirectly to Ms. Benoit which reference or encourage violence or threats of violence against Ms. Benoit;
    ii. disable access to any communications that are cyber-bullying if such communications cannot be taken down; and
- Ms. Langille is prohibited from any communications, directly or indirectly, with Ms. Benoit except through legal counsel.

[34] There is no order as to damages as there was no evidence provided to the Court that would support this aspect of the application.

Diane Rowe, J.