

# Supreme Court of Canada Protects Victims of Cyber Bully Abuse

On September 27, 2012, in the case of A.B. v. Bragg Communications, the Supreme Court of Canada determined that a 15 year old girl can proceed anonymously in a cyber bullying case. The Court said the interest of privacy and protection of children from cyber bullying is sufficiently compelling to justify restricting the public's interest in open courts and free press. The 15 year old girl A.B. found out that someone had posted a Facebook profile with her picture, a modified version of her name and other identifying particulars. The profile included demeaning comments about her appearance and sexually explicit references.

Facebook provided the IP address associated with the cyber bully - a Nova Scotia account holder. The internet provider Eastlink agreed to provide much more specific information about the address if a Court authorized it to do so. A.B. brought an application to the court requesting this detailed information. Both the motions court and the Court of Appeal held that the media's right to access to and report on the facts of the case outweighed AB's right to privacy and denied her application to proceed anonymously. The Supreme Court of Canada overturned these lower Courts' decisions and said:

*"if we value the right of children to protect themselves from bullying, cyber or otherwise, if common sense and the evidence persuade us that young victims of sexualized bullying are particularly vulnerable to the harms of revictimization upon publication, and if we accept that the right to protection will disappear for most children without further protection of anonymity, we are compellingly drawn in this case to allowing AB's anonymous legal pursuit of the identity of her cyber bully."*

The limits imposed by prohibiting identity disclosure on the media's right to the freedom of the press are minimal. The media can still be present at the hearing, report the facts and conduct of the proceedings, without revealing the 15 year old girl's identity.

This decision may be seen as a significant step for the protection of privacy interests. It may be very important for abuse survivors who wish to proceed in either criminal or civil cases against their perpetrators while maintaining their privacy. This case opens doors for arguments for the protection of privacy on the basis of common sense reason and logic rather than exclusively on the basis of evidence of direct harm to the individual. However, the Court did focus on the unique vulnerability of children and the context of cyber bullying. The decision leaves open the questions of how the Courts will deal with protecting the privacy of adults in similar cases or in cases involving historical abuse. Therefore, in cases where abuse survivors are adults, it may still be prudent to provide the Court with evidence of psychological harm to support a request for anonymity. ♦



Any enquires arising out of this article should be directed to Loretta P. Merritt at 416-777-5404.

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**Torkin | Manes**  
Barristers & Solicitors

**Loretta P. Merritt**  
Civil Sexual Assault Group

Tel: 416 777 5404 | Fax: 1 888 497 8644 | [lmerritt@torkinmanes.com](mailto:lmerritt@torkinmanes.com)

[www.sexualabuselawyer.ca](http://www.sexualabuselawyer.ca)

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