

# Delicate balance exists between desires, threats



The distinction between expressing desires and uttering threats is a fairly subtle one that requires close examination before determining whether an offence has been committed, says criminal lawyer [Jacob Stilman](#).

Referring to a case that deals with an 18-year-old boy convicted on one count of threatening bodily harm after a Facebook conversation with a young girl, Stilman says proving that certain words weren't meant to be threatening can be difficult.



“If the accused made an utterance which he did not personally intend to be taken as a threat, then that may be able to defeat the charge. But in most of the cases where that argument is made, there will have to be some actual evidence of the accused’s subjective state of mind, which will almost always have to issue from the accused,” says Stilman.

“It’s not surprising that this argument failed to persuade the trial judge since the same argument could be made in respect to many instances where threatening charges are laid. There is always going to be both an objective and subjective element to this offence.”

The teenaged boy described his desire to cause the girl bodily harm as a source of sexual gratification during the online chat, the *Toronto Star* reports. [Read Toronto Star](#)

The article says Justice Joseph De Filippis described the accused as a “sadist.” He was sentenced to a probationary period of three years, along with being required to receive 18 months of counseling from an Intensive Support and Supervision Program.

“Objectively speaking, it is not hard to see why the recipient of these utterances would feel threatened by them,” says Stilman. “How is the girl supposed to interpret this language, unless it can be shown that she truly felt that it was a joke and not meant to be taken as a threat?”

“Moreover, as in any threatening case, she need not actually believe him capable of committing the actions, but merely feel that they were intended to be taken as intimidation, in order for it to constitute a threat.”

While the girl’s initial reaction to the communications indicated she was not taking it seriously, Stilman says she’s also entitled to change her view of the interaction later.

The *Star* article notes that courtroom observers wondered whether they were looking at a future psychopath, comparing the young man to a “before” picture of some of Canada’s most notorious sexual deviants.

“The predictive abilities of the criminal courts are poor,” says Stilman. “No one will be able to determine if this child will be the next notorious sexual offender. However, a pattern of offending in certain areas will provide useful indicators.

“By its nature, the courts can only be reactive, rather than proactive, until the offender reaches the point where he satisfies the legal definition of a long term or dangerous offender, at which point he may be incarcerated indefinitely, or placed on long-term supervision orders. At this stage, this offender clearly has not established the requisite ‘track record,’ thus the court is limited in what it can do.”

While the case is unusual, Stilman says it’s not entirely unique.

“A similar situation occurred in B.C. with a female subject who expressed all manners of sadistic sexual and violent fantasies, and has been under close scrutiny as a result,” he says. “However, extreme examples such as this are rare, which is perhaps why the Russell Williams’ of this world are usually only caught after they have committed serious offences.”