# New trial ordered for Alberta blogger who threatened Prime Minister

The Alberta Court of Queen's Bench has ordered a new trial for a Canmore man acquitted of uttering death threats towards Prime Minister Stephen Harper on his blog.[1] Patrick David Fenton wrote the threats on his Windows Live Spaces blog, titled the "Drunken Soldier," in 2006. When arrested, Fenton admitted he was the author of the blog. He argued that he wrote the threats through the alter ego of the "Drunken Soldier" as a joke and that the content of the blog, paired with an image of a ski-masked man holding a knife, were meant to convey its absurdity.

The trial judge acquitted Fenton of knowingly uttering a threat to cause death against Mr. Harper contrary to s. 264.1 of the Criminal Code.[2] Several constitutional issues were examined. The judge decided that the defendant possessed a "literary license" to publish his remarks that was protected under the right of freedom of expression s. 2(b) of the Charter of Rights. Additionally, the judge acquitted Fenton on the basis that his comments were protected by the right to "freedom of the press," stating that "in our country we value freedom of the press more than the moral content of what people write."[3]

The Court of Queen's Bench overturned the acquittal on April 18, 2008. The Court rejected both constitutional grounds on a technicality. Notably, however, the Court did not necessarily reject the substantive content of the trial judge's arguments of the protection that should be afforded bloggers. The Court ordered a new trial for Fenton on the basis that the judge granted the acquittal on Charter grounds that were not argued by the defendant. A party is required to give notice to the other side when arguing a Charter issue. None was given here. Nor did the defence raise the Charterissues relating to freedom of press or freedom of expression during arguments. Accordingly, the judge examined the Charter issues without any submissions from counsel on either side. The Court also ordered a new trial on the basis that the trial judge failed to apply the proper test in deciding whether or not Fenton possessed the required intent for uttering the threats.

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[1] R. v. Fenton, 2008 ABQB 251 [Fenton].
[2]R.S.C. 1985, c. C-46.

[3] Fenton, supra note 1 at para. 111.