

DEALING WITH BLACKMAIL – NOTES FROM A ZIMBABWEAN LAWYER

Derek Matyszak

INTRODUCTION

As a lawyer affiliated with the LGBTI activist group Gays and Lesbians of Zimbabwe (GALZ)¹ since 1995, I have frequently had to deal with the issue of blackmail in my work.² In what follows, I set out some of the tactics and techniques that I have found helpful for dealing with blackmailers from this legal perspective. Obviously, the tactics deployed in Zimbabwe may not be applicable in other jurisdictions. Just as the responses to blackmail must be adjusted according to the perpetrator, the victim, and the relationship between them, so they must be adjusted according to the legal framework of the jurisdiction and what is thus at stake for those involved. In a jurisdiction where disclosure makes a victim vulnerable to death by stoning, there is clearly more at stake than where disclosure will attract unwanted outing or a small monetary penalty. The tactics in the latter instance will rarely apply to the former. In writing this chapter, I am acutely aware that dividing it under headings is misleading and suggests that dealing with blackmail is a science rather than an art. Almost all of the factors discussed below come into play concurrently rather than sequentially, and the weight to be accorded to each varies. This requires the exercise of discretion and judgement as to how each particular case should be handled.

Unlike other crimes, there is a unique conjunction of two factors which render any law against sodomy a “blackmailer’s charter.”³ The first is the extreme moral indignation that many sectors of societies still reserve for this particular offence, which appears to be absent even in the case of serious crimes such as theft, rape or murder.⁴ The second is the fact that the

- 1 GALZ is aware that its acronym, formulated some time ago, omits bisexual, transgender, and intersex (BTI) persons. A change of acronym was considered undesirable, as “GALZ” now has some domestic and international recognition. The GALZ constitution, however, makes it clear that it supports and advocates the rights of BTI persons.
- 2 The term blackmail has been used as it is the one with which most readers will be familiar. In Zimbabwe the correct term is “extortion”. See the Introduction to this volume for a discussion of definitions.
- 3 The phrase “blackmailer’s charter” was coined to refer to Section 11 of the Criminal Law Amendment Act of 1885 in the United Kingdom – popularly known as the Labouchere Amendment – which criminalized the vague and expansive category of “gross indecency.”
- 4 The ambit of sodomy as a crime varies in different jurisdictions. In some, it specifically and exclusively refers to male-to-male sexual conduct and requires that there be, as the law delicately puts it, penetration per anum. This was the case in Zimbabwe before the

crime of sodomy is never a solitary activity – unlike, say, theft or fraud, where the perpetrator may seek to reduce the possibility of detection by carrying it out without witnesses or accomplices.⁵ Thus, in the case of an act of sodomy, there is simultaneously a requirement for singular secrecy (predicated on social and juridical censure) and a sharing of that secret. Once disclosed, the holder of the secret is granted the opportunity to appropriate the force of the law for personal benefit. If the opportunity is taken, a discrete and intimate conspiracy of secrecy and silence may develop with the victim, a conspiracy on which the blackmailer thrives.

Another relevant factor which is peculiar to the crime of sodomy is that the question of whether the sexual contact is consensual or not does not prove or disprove an offence – unlike many other sexual offences, where the presence or absence of consent is of fundamental importance.⁶ In the past, the fact that sodomy may not have been consensual was merely relevant to sentencing. In 2006, the Criminal Law (Codification and Reform) Act went into effect in Zimbabwe, which differentiated consensual and non-consensual sodomy under the law. Under this Act, consensual sodomy still constitutes an offence committed by both parties – while consent is relevant to the type of sodomy charge that a defendant faces and the penalty that is imposed, it does not affect whether they face a sodomy charge at all.⁷

The question of consent – that is, whether consensual or non-consensual sodomy is alleged – has an important impact on the dynamics between

passage of the Criminal Law (Codification and Reform) Act, which restored the more encompassing definition of Roman-Dutch Law. In other jurisdictions, the crime of sodomy may also be committed by heterosexuals, and includes almost all sexual activity which does not lead to procreation – for example, anal and oral sex, regardless of the biological sex of those performing the act. This was the case with the legislation under consideration in *Bowers v Hardwick*, which the US Supreme Court found to be legally permissible in 1986. Their finding was overturned in *Lawrence and Garner v Texas* in 2003. For the sake of convenience, I shall use the term “sodomy” here to refer to any same-sex consensual sexual act, as it is such acts which are exploited most frequently by the blackmailer.

- 5 This was not always the case. The sin of onanism (masturbation), which fell into the same category as sodomy or *venus monstrosa* (unnatural vice), was punishable by death in early Roman-Dutch law.
- 6 This remains true even for some offences where the victim is deemed incapable of consent, as in cases where the victim is underage or mentally handicapped. In these cases, there will be an enquiry around these aspects precisely to determine whether the victim was incapable of consent, with the presence or absence of consent thus remaining a central feature of the offence.
- 7 The penalty is specifically stated to be the same as rape where consent is absent. In the case of consensual sodomy the maximum penalty is one year’s imprisonment – see Sections 66(2) and 73(1) of the Criminal Law (Codification and Reform) Act, Chapter 09:23.

the victim and the blackmailer. Most critically, the allegation of non-consensual sodomy reinforces the blackmailer's need to portray a scenario in which the victim is framed as solely responsible for the act. The need for this fantasy scenario is fostered by the fact that the crime of blackmail carries its own moral approbation, and the blackmailer often needs to exonerate himself from his own disapproval and the disapprobation of others. The dynamics this creates allow the development of several defensive tactics outlined in this chapter.

Beyond these general factors regarding the crime of sodomy and how it creates a vulnerability to blackmail, there are many other factors that affect the power dynamic within individual cases. As a lawyer interviewing a target of blackmail, one is primarily concerned with assessing the nature and extent of the blackmailer's power, as this will determine the most appropriate response. This will be contingent upon a variety of factors: what is subjectively at stake for the victim; what the blackmailer currently perceives to be at stake; what led to the blackmail opportunity; the character of the blackmailer; and the character of the blackmail. While the tactics for dealing with blackmail differ from situation to situation, these factors provide a useful framework to formulate an optimal strategy.

WHAT IS AT STAKE FOR THE VICTIM?

The weapon of the blackmailer is disclosure, but the nature of that disclosure varies. Generally, disclosure can be placed into two categories: first, disclosure of the victim's sexual orientation to some person or body to whom the victim does not want it disclosed; and secondly, disclosure to the police with the implication that criminal charges will result. The former is less often encountered, as it requires the blackmailer to have knowledge of the victim's personal circumstances – which do not typically arise in a casual encounter. It is, however, sometimes more difficult to deal with, as the juridical mechanisms available where disclosure to the police is threatened cannot be deployed. Regardless of the form that blackmail takes, one needs to assess, from the point of view of the victim, the repercussions of disclosure and the extent to which the blackmailer is aware of this.

Disclosure of Sexual Orientation

The best counter to the threat of disclosure is either to be “out” or choose this moment to come out. If this is a possibility for the blackmail victim, several methods of dealing with the blackmailer are then available.

If the target is already out, the blackmailer should be made aware of this immediately. He⁸ should be told that disclosure to the intended persons is not feared – and that it will not be treated as news by them, but as an attempt to extort money for which he will be made to face the consequences. It is also useful to point out to the blackmailer that it is not against the law to be gay, despite what is suggested by the hype in the media. Depending on the character of the blackmailer, both points can be made directly by the target to the blackmailer or conveyed in a formal legal letter – that is, a legalistic letter bearing the letterhead of a firm of attorneys.⁹

If the target is not out, one can assess whether it is possible for the target to neutralize the blackmailer's threat of disclosure by coming out. The choice of whether to come out (and to whom) involves a number of very personal considerations, and is best referred to LGBTI counsellors. Advising on this issue is usually not within the expertise of most lawyers. It is nonetheless important that the lawyer is not dismissive of the victim's fear of outing. The victim may fear familial disapproval, which can vary from mere disaffection to ostracism, expulsion from the home, or physical harm. In other instances, the victim's career or job objectively may be at risk if a disclosure is made. The lawyer must respect the subjective concerns of the victim, while at the same time forming some objective, if preliminary, consideration of what is at stake. Indeed, the lawyer may be able to qualify or dispel any unfounded fears of prosecution arising from disclosure, as LGBTI persons may believe the law to be more extensive in its reach than it is in fact.

Before referring the victim to a counsellor, it is necessary for the lawyer to make a frank assessment of the options, and to trace for the victim the most likely course of events pursuant to making any payment to the blackmailer. A lawyer needs to make the consequences of yielding to the blackmailer clear, without any attempt to minimise the possible repercussions. Frankness here will almost certainly heighten the distress of the victim and needs to be handled sympathetically. However, the victim needs to be aware that any worst fears in this situation may be well-placed, and they must make their decision

8 The blackmailer has invariably been a male in the cases which give rise to this chapter. Although it is theoretically possible for the blackmailer to be a woman, in all cases, the blackmailer has been a man who has alleged homosexual sexual contact with the target of the blackmail. The victims I have dealt with as a lawyer have thus far been exclusively male. Sex between two women is no longer an offence in Zimbabwe – though the threat of disclosure, rather than criminal prosecution, may still suffice as a weapon of blackmail in the case of women.

9 Examples of the contents of such a letter are given below.

with an informed understanding of the situation they are in and the available options. The repercussions of yielding to a blackmail demand then can be weighed against any subsequent advice given by counsellors. Counsellors can then help to explore the likely repercussions of coming out in the victim's particular circumstances, allay unreasonable fears, provide coping mechanisms by reference to the past experience of others, and help the victim access support mechanisms. The target may well determine that coming out is the lesser of two evils – but in either case, they will be better equipped and supported as they make an informed decision.

An intermediate tactic may also present itself in situations where homophobia is not generalised and severe. If the blackmailer has threatened disclosure to a particular person or body, the counsellor may discuss with the victim the extent of coming out to that particular person or body only. It should be noted that unless the blackmailer has detailed knowledge of the victim's circumstances, he is unlikely to know which threats of disclosure would provide the most leverage over the victim. If a sympathetic response from the person or body targeted for disclosure is possible, the victim may come out to that person or body specifically to neutralize the threat. In the most favourable circumstances, the target of the disclosure can be enlisted for assistance when approached by the victim, counsellor, or lawyer. For example, the victim's employer might agree to write to the blackmailer, indicating an awareness of the victim's sexual orientation and demanding that the blackmailer desist from his behaviour. This targeted disclosure may then prevent disclosure to the company staff as a whole.

If the target is not out, but has considered the possibility and remains undecided, he may wish to keep his options open. The target may bluff by claiming to be being out already, and then deal with the consequences if the blackmailer calls that bluff. The blackmailer may decide that he does not actually have the weapon of disclosure and back off. Alternately, the blackmailer might decide to test the claim of "outness." The blackmailer ought to have been cautioned early, however, in the same way as suggested for an out person above, that the persons to whom he makes disclosure will treat the disclosure as a blackmail attempt and appropriate action will be taken. While this threat may be ineffective against a more skilled blackmailer who will test the "out" claim in a fairly subtle way – for example, by making an offhand comment in causal conversation and gauging the reaction – it does cause added difficulties for the blackmailer. The blackmailer has to

engineer an opportunity to do this, which may be difficult. Furthermore, even an offhand comment may precipitate disclosure, which would then disarm any further threat the blackmailer might make. The information about the target thus becomes useless to the blackmailer unless this disclosure can be contained and used as proof that the blackmailer will carry out threats of further disclosure to other people. The assessment of the difficulty this strategy might pose for the blackmailer depends upon the victim's particular circumstances and the ability and determination of the blackmailer.

There are two interrelated downsides to this “outsurance” as a defensive strategy against blackmail. The first is that, by being out, the mere threat of disclosure of sexual orientation no longer suffices for the purpose of blackmail. The second is that being known as LGBTI immediately identifies a person as a possible blackmail target. The blackmailer's threat cannot therefore be one of disclosure of sexual orientation alone, and may instead become a fabricated allegation of a sexual encounter – something that not only triggers social disapproval, but qualifies as a criminal offence. The fabrication will usually contain an allegation of non-consensual sex, since both parties commit an offence under the laws of Zimbabwe if the encounter is consensual. The Director of GALZ, for example, received a blackmail demand which explicitly threatened an allegation of non-consensual sex. The threat was made by an individual he had never met, who was simply aware of the Director's position and sexual orientation from press reports and could fabricate allegations based on this information. This threat of the allegation of a criminal offence then leads to a consideration of the second type of disclosure mentioned, the threat of disclosure to the police.

Disclosure of an Alleged Offence

The blackmailer's threat of a report to the police immediately brings the issue into a juridical realm and presents opportunities for response that do not arise, for example, in the case of disclosure to family or colleagues. The availability of additional remedies can pose difficulties for the blackmailer that need to be fully exploited by those responding to the threat.

Of course, the threat of exposure to the police may coexist with a threat of exposure in more personal settings – the two forms of blackmail are not mutually exclusive. A victim may fear the disclosure of his sexual orientation that almost inevitably arises from prosecution more than the prosecution itself. Since this possibility only arises when the prosecution is underway, however, the blackmailer's threats are usually focused on the

initial disclosure to the police. It is best to keep any fear the victim feels regarding disclosure well-hidden from the blackmailer when responding so as to avoid unnecessarily boosting the blackmailer's confidence.

In cases of threatened reports to the police, the blackmailer faces two inherent difficulties. The first difficulty is that because consensual same-sex activity is an offence, the blackmailer will be equally guilty in any sexual encounter that has taken place between the two parties and that he threatens to report. The blackmailer thus feels compelled to change the narrative of the encounter to make it presentable to the police, and invents a fantasy that absolves him of any complicity. The constructed narrative will need to be one that negates consent or wilful action by alleging the use of force or loss of consciousness – whether induced by drugs, alcohol or, as in one reported case, the complainant simply being asleep at the time.¹⁰ Given that his story is fabricated, the blackmailer is likely to feel less than secure in his position. Lawyers must leverage that insecurity by pointing out at the first opportunity that it is not merely moral opprobrium that attaches to the lie, but that making a false complaint to the police bears criminal sanction.

The blackmailer's second difficulty is that he has only one card to play – the threat of making a report to the police – and typically, he has little to gain by actually making this report.¹¹ When the threat is executed, the blackmailer loses his only bargaining chip. Moreover, the process is fraught with difficulty for the blackmailer, who must simultaneously avoid incriminating himself. The blackmailer can be reminded of these difficulties – which are exacerbated by his evidential insecurity – if he seems intent on carrying out his threat. The victim or their lawyer can exploit these weaknesses by responding with a lawyer's letter to the blackmailer containing a very clear description of the potential repercussions of such a threat. The typical contents of such a letter to a blackmailer, applying Zimbabwean law, is as follows:

- a. that the client has received demands for cash or goods and that the client and now lawyer have clear evidence of this – usually

10 Usually, the blackmailer claims to have been forcibly anally penetrated by their victim. I am only aware of one bizarre instance where this was not the case, and only the victim was the recipient of anal sex. In this case, it was alleged that the blackmailer and victim had fallen into step on a dark road walking back from a bar on the outskirts of the town. They had moved off the road and engaged in anal sex. On reaching the town centre, the blackmailer then claimed shock and surprise when the lights revealed his sexual partner to be male. A complaint of sodomy on this basis was eventually made to the police.

11 The more experienced blackmailer will be aware, however, that he can still gain from the report to the police in instances where the police may effectively act as collection agents.

- in the form of a written demand; and
- b. that blackmail is a serious offence under the law and carries a sentence of two years imprisonment; and
- c. that consensual same-sex activity is regarded by the police as a minor offence with which both parties can be charged but carries only a small fine;¹² and
- d. that any further demand for money will be treated as an attempt to engage in blackmail and that a report will be made to the police.

The letter is backed by reasoning which emphasizes the precarious position of the blackmailer and the very real threat that their attempted victimization will backfire. It emphasizes the fact that the blackmailer seeks to involve the police when he himself is committing an offence. It plays into the blackmailer's insecurities by contrasting the clear evidence of blackmail against the fabricated claim of coerced sex. It raises a counter-threat of the possibility of two years imprisonment if things go wrong for the blackmailer as a result of his making allegations to the police.

Where the threat of allegations of non-consensual same-sex activity has arisen as a result of a consensual encounter, the blackmailer may gain some confidence knowing that he can, for example, describe the victim's bedroom or usually hidden features of his anatomy. In this instance – and only in this instance – is (c) in the list above mentioned. This then ignores the fantasy of coerced sex entirely and only allows that consensual sex might be under scrutiny – and implies that this holds no terror for the victim. The law is simply stated in the abstract, and no admission of consensual sex is made that might encourage the blackmailer. If the primary concern is to deal with the immediate problem of a particular blackmailer, it is important not to claim that blackmail has already taken place – despite the fact that it clearly has.¹³ Although the letter should state that the client has received demands for cash or goods (for which there is evidence) it should not label this as blackmail nor refer to the party as a “blackmailer.” An unskilled and unsophisticated blackmailer may take even more fright than intended by the letter and believe that he is about to be charged with blackmail following

12 Highlighting the relative seriousness of the two offences may not, of course, be an option in other jurisdictions where even consensual homosexual sex carries a more severe penalty than blackmail.

13 A more proactive approach attempted is detailed below.

a complaint by the lawyer. The blackmailer may then believe that his only option is to take pre-emptive steps and make his report to the police. It is thus necessary to emphasise that only a further demand for money will bring about a charge of blackmail, encouraging the blackmailer to drop the matter and desist with any threats.

It is then a question of who blinks first. The blackmailer is aware that his power derives from the threat of the report to the police, not the report itself. He generally has little to gain from actually making the report and becoming embroiled with the police and with the criminal process. The lawyer's letter will have made it clear that, indeed, he has the potential to lose a great deal.

In the vast majority of cases, a lawyer's letter to the blackmailer suffices as a deterrent. In a few isolated instances this has not been the case and the blackmailer has carried through his threat. This was not due to any inherent fault in the general approach but rather as a result of ill-advised handling of the blackmailer in the first instance – for example, when the blackmailer was initially dismissed out of hand and has then sought to reverse the slight and prove his power, or when the blackmailer does, in fact, have something to gain by making a report to the police. The latter instance has occurred in the case of a fairly sophisticated network of blackmailers targeting a group of victims who are known to one another. Under such circumstances, a report to the police in relation to one victim is intended to have a coercive effect on others.

As a coda here, it is worth noting that there are occasions when one's duties as a lawyer may conflict with broader LGBTI activism objectives. On one hand, any attempt at blackmail should be reported to the police as such, both as a matter of principle and to deter other potential blackmailers. On the other hand, the duty of the lawyer is to keep his or her client out of custody and to avoid prosecution when possible. Given the discriminatory manner in which the police often handle issues of this nature, it is usually desirable to avoid police involvement and to prevent the allegations being reported to the police. The circumstances of the particular case will determine which strategy is most legally and ethically sound.

DEALING WITH THE POLICE

A victim of blackmail under threat of a false allegation of homosexuality to the police should be in no different a position than that of a person threatened with a false report of another crime – for example, of theft or fraud. The police should examine the report closely for credibility before taking any further action. Unfortunately, in a homophobic society, the police tend to

give credence to the person making the report of same-sex activity much more readily than is warranted – a fact of which many blackmailers are aware.

It is at this point that the genesis of the particular blackmail opportunity is of relevance. The blackmailer may simply be aware of or suspect the target's sexual orientation. Alternatively, there may have been an actual or attempted sexual encounter of some sort between the blackmailer and the target. The latter circumstance has benefits and disadvantages for the victim. The blackmailer may feel that his position is fortified by the possession of knowledge that he would be forced to fabricate if there had not been a sexual encounter. However, where the threat is to disclose the encounter to the police, in the case of consensual sexual encounters (those we are concerned with here) the blackmailer faces an immediate difficulty. He has also committed an offence and in order to make the encounter presentable to the police he is forced to construct a narrative of coerced sex.

While it may seem reasonable to challenge this narrative, if a sexual encounter has in fact taken place, caution must be exercised in doing so in the presence of the police. In trying to expose the lie, the victim may confirm or reveal facts that the police perceive as supporting the blackmailer's story. In addition, by pointing to flaws in the narrative, the blackmailer (and police) may simply adjust the account accordingly prior to any court proceedings (and silently thank the lawyer or victim for their assistance). If some sexual contact has taken place, the blackmailer may, for example, be able to furnish the police with intimate details about the victim's anatomy or details relating to the victim's home or bedroom that appear corroborative. The question of whether the sex was consensual or not will likely appear to the police to be a minor detail – either way, an offence has been committed in term of the criminal law. GALZ has, as a preventative strategy, urged members not to have casual sex at home with unknown people in order to avoid thereby affording knowledge to a potential blackmailer.¹⁴

The blackmailer's narrative therefore often revolves around the question of coercion or lack of consent – a charge which must then be disputed, and, if possible, without admitting a consensual encounter. A likely weakness in the blackmailer's narrative is that an allegation of coercion is usually accompanied by a claim that a threatening weapon was used to secure submission – usually

14 The suggestion that LGBTI persons should be obliged to restrict their behaviour in this way – and for this reason – has sparked some debate. In making this recommendation, GALZ merely points out that some activities in life are high-risk, and that individuals will have a more difficult time dealing with blackmail in Zimbabwe if some basic precautions are not taken.

a gun or knife. The credibility of the blackmailer is severely undermined by the inability to show possession of such a weapon (after a search by the police of the target's premises, if necessary) or by a demonstration that it is impossible for the victim to have performed the alleged act while wielding the alleged weapon. If the blackmailer alleges that the act took place during a loss of consciousness, it then becomes problematic for him to explain how he is aware of the alleged sexual act. A medical examination can be suggested to corroborate allegations of forced anal sex. When a victim is falsely accused of non-consensual sex, they should request that such an examination be conducted, and any refusal to undergo such an examination should be highlighted as negatively affecting the credibility of the blackmailer.

A blackmailer rarely expects the initial demand to be met immediately. The blackmailer might expect an interval between the demand and payment while the victim absorbs the helplessness of his situation. Sometimes, the blackmailer is also aware of the practical difficulties of finding the money to meet the demand. The delay may also be the result of a deliberate tactic by the victim. Any delay severely undermines the credibility of any subsequent report of coercive sex. The police fully expect that a man who has been forced to have sex with another man would be so aggrieved as to report the matter as soon as they are able. The delay in filing the report can thus be highlighted to the police as further undermining the credibility of the blackmailer. This is especially true when there is written evidence of the blackmailer's demand, providing evidence of the self-interested motivation of the blackmailer. Here, police homophobia can be used to the victim's advantage. Police typically expect that a person who had been forced into homosexual sex would demand that the full wrath of the law be deployed, rather than being eager to accept monetary compensation for their complicity.¹⁵

It is sometimes clear that the blackmailer's charge will be pursued, regardless of the extent to which the victim or their lawyer exposes inconsistencies and fabrications in the story. In these instances, any attempts to show the implausibility of the narrative will simply assist the blackmailer (and

15 Of course, questions of force, consciousness, medical proof, and delayed reporting do not themselves disprove charges of rape. While they can be helpful in those instances where it is very clear that a client has been falsely accused of rape as part of a blackmail scenario, they may also reinforce arguments used to discredit and deny justice to rape victims. Lawyers must critically and carefully navigate these arguments, and think about the effect they have beyond the immediate case at hand. The presence of force, unconsciousness, medical proof, and swift reporting should not be invoked as litmus tests that prove or disprove a rape allegation in and of themselves.

the police) by revealing where adjustments are required to make the narrative plausible and persuasive as the case proceeds. In these instances, this course of action should not be pursued at this initial stage of the criminal process.

Possible Police Responses

The manner in which the police respond to false reports of coercive homosexual sex varies widely. The sympathetic end of the spectrum is illustrated by a case in Zimbabwe in November 2007. In this case the police recognised the dubious nature of the blackmailer's story and assisted the victim by requiring the blackmailer to obtain a medical examination before they would proceed further. The hostile end of the spectrum is illustrated by cases where the police not only accept the blackmailer's narrative readily, but seek to join the process and extort money themselves by threatening to proceed with prosecution of sodomy charges unless money is paid. This latter approach may be done more or less subtly. The police officers may bluntly demand money for themselves in exchange for dropping the matter – often with the knowledge that the blackmailer's complaint is fabricated and that there will be no consequences if they fail to investigate or pursue it. Alternately, they may act as collection agents for the blackmailer, using the power of the law to ensure the blackmailer is paid and then taking a commission. In this instance, the police purport to have facilitated a “settlement” between two feuding parties and the successful restoration of community relations.

Given the diverse responses of the police, the manner of dealing with the situation when and if the blackmail process reaches this point will vary from case to case. The victim and their lawyer must gauge whether any attempt to deconstruct the blackmailer's narrative will yield any positive results or simply help the blackmailer and the police to prepare a sound narrative for the prosecution.

Where the police officer purports to be facilitating a settlement, this is the only occasion where payment may be reasonably assumed to be a singular and final expense. The blackmailer has played his card – reporting to the police – and, as the matter is “settled,” this card cannot be played again. The police and blackmailer buy into the fantasy that this is a “legal settlement” between the parties. A further claim is not normally made, as this would expose the lie and re-categorise the transaction as extortion. Naturally, GALZ discourages such payments. They reward the corrupt and extra-judicial mechanisms that facilitate police complicity in

blackmail, and it is unethical for a lawyer to be involved in the process. It does, however, require a principled commitment to activism and the rule of law on the part of the victim to endure the possibility of days of pre-bail custody, ongoing legal proceedings, and public visibility rather than paying the settlement. The victim and the lawyer will be in the best position to decide what is the wisest and most realistic response when such a settlement is offered.

GALZ members have also been involved in attempting directly to address such corruption. Once, in response to blunt and direct demands from police officers themselves, GALZ members sought to arrange a police trap for the corrupt officers during the interval between their demand and the expected payment. The attempt to expose these police officers failed, but the lessons learned in the process were valuable. In seeking the assistance of another section of the police – the Criminal Investigation Department, or CID – the GALZ members found they had to explain aspects of the plan to various junior officers before reaching someone senior enough in the CID to implement the trap. These junior officers gave forewarning to the corrupt officers who were being targeted, and they thus escaped the trap and proceeded to hold the GALZ members in custody “as punishment.” If setting up a trap for corrupt officers, it thus seems necessary that the arrangement should be made exclusively through officers of a different section of the police, and through those who are of higher rank and can hold any corrupt officers accountable.

A Proactive Approach to the Police

Despite these potential challenges in dealing with the police, LGBTI activists should report blackmail attempts to the police, both as a deterrent and as a matter of principle. The practical reality is that the target of blackmail is likely to face a false charge of coerced sodomy. Unfortunately, the police tend to respond to blackmail based on same-sex activity differently than the manner in which they respond to other crimes. In relation to other crimes, police tend to give credence to the first complaint, and to regard any counter complaint as dubious and raised merely as a false defence to the first report. If the police were to be consistent in their attitudes and apply this standard to cases of blackmail based on same-sex activity, victims of blackmail and extortion could bring their cases to police immediately and trust that they would be acted upon appropriately. The blackmailer’s plea that he was merely trying to get monetary compensation

for the wrong done to him would in such circumstances be treated as a dubious defence, raised only because the blackmailer had been exposed.

Unfortunately, it seems that the police do not act in this manner where LGBTI persons are concerned. This became strikingly apparent in May 1997 when the Director of GALZ, Keith Goddard, went to the police to report that he was being blackmailed. Goddard received three letters from someone he had never met, who threatened to report a non-consensual sexual encounter to the police unless a number of items were delivered to the blackmailer. Knowing the allegations to be false, Goddard took the letters to the police and laid a complaint of attempted extortion. The police questioned the blackmailer, who then recounted to them a lurid narrative of forced oral sex at gunpoint.¹⁶ The two competing testimonies – one alleging that Goddard had never met his blackmailer, who was threatening him for monetary gain, and another alleging that Goddard had met the blackmailer and forced him to have non-consensual sex at gunpoint – were thus put before the police for the facts to be determined.

Astoundingly, in June 1998, the police proceeded to charge both the blackmailer with extortion and Goddard with sodomy – despite the fact that the narratives they presented were factually irreconcilable, and despite the fact that the blackmailer was the chief and only witness in the sodomy case and Goddard was the chief witness in the extortion case. As both charges could not co-exist, the State was legally obliged to determine who was telling the truth and proceed with a single appropriate charge. The criminal charge against Goddard was challenged on this procedural ground, the State became bogged down in technicalities, and neither trial proceeded to its conclusion, as both were apparently abandoned by the State. This caused some discomfort to Goddard, who felt that the matter could be revived at anytime and wanted it to proceed as a matter of principle. Given the attitude of the police and how the matter had unfolded, the legal advice was that the sleeping dog should be left to lie. A judgment from the High Court on the question of inconsistent prosecutions was never given. The saga does not present an optimistic outlook for a proactive approach to the police in cases of blackmail, though GALZ intends to pursue a counter strategy in this regard outlined below.

16 In light of this allegation, the police searched Goddard's house for the weapon. The closest thing they found was that Goddard had two pink water pistols in sealed packets in his cupboard. Farcically, the police actually seized these children's toys as exhibits to be used in prosecuting the case.

HANDLING THE BLACKMAILER

In order to pursue the most strategic and effective approach, it is useful to glean as much information as possible about the blackmailer. It is invaluable to know how the blackmailer seeks to justify what he is doing, how he considers himself to be free from culpability in any sexual encounter that has in fact taken place, and how he avoids the moral disgrace attached to blackmailing. The easiest blackmailer to deal with is a non-aggressive, opportunistic blackmailer. When clearly identified as such, the blackmailer should be promptly stonewalled by making it clear that no matter what action is threatened, no money will be forthcoming and persistence in the demand will result in a complaint to the police. Before adopting this strategy, however, one must be sure that the attempt is an opportunistic, once-off attempt and does not require more delicate and strategic handling. Conversely, the most difficult blackmailer to deal with is a blackmailer who does not engage in prohibited same-sex activity, who has taken on his role after an unsuccessful sexual advance by the victim, and who justifies his blackmail as a vigilante, demanding payment as punitive damages and regarding his blackmail as an honourable defence of society's morals. A similar sort of moral or social justification is often alluded to by those police officers who try to usurp or work in collaboration with the blackmailer.

It is not always possible immediately to assess the blackmailer and his motives, and generally, a stalling tactic is recommended while advice is sought. If the initial demand is made by way of a letter – which is commonly the case – the target should immediately seek assistance from an LGBTI organisation. If the approach is made in person, the blackmailer should be told to return later, using the most convenient and convincing excuse which comes to mind – the victim is busy, about to attend a meeting, etc. At this stage, the victim should neither make any promises nor bluntly refuse to accede to the blackmailer's demands, but should remain neutral and postpone any affirmation or negation of the request. Once this is done, this delay should be used to consult a lawyer and develop a strategy for dealing with the blackmailer.

Avoiding Encouragement and Deterring Abuse

No payment should be made to the blackmailer. A single payment to the blackmailer is akin to blood in the water for a shark. Even a small payment offered as a stalling tactic announces the victim's readiness to cooperate with the conspiracy. It demonstrates that they place a monetary

value on non-disclosure – something that may only be a suspicion for the blackmailer at this point. Each and every subsequent payment affirms the victim's vulnerability and strengthens the blackmailer's hand. The blackmailer will then continually try to determine the maximum value of non-disclosure, testing the victim's endurance both through the frequency and size of his demands for payment. The victim may attempt to reduce the demands made in the face of renewed threats, but having to engage in this negotiation without any real bargaining power is stressful, disempowering, and likely a fruitless exercise.

Although from an objective point of view, it is unwise to pay the blackmailer any money, this is often difficult to grasp when one is actually being blackmailed. The threat of disclosure and the spectre of criminal prosecution are likely to trigger a sense of fear and panic, and the victim may have a strong impulse to make the threat disappear as quickly as possible. The skilful blackmailer often seeks to take advantage of this impulse and to allay the victim's fears by falsely assuring that their demand for payment will not be repeated – a straw at which the victim desperately and futilely clutches. This promise is rarely true, and readily acceding to the blackmailer's demands is likely to place the victim in a more difficult and compromising position at a later stage.

Refusing to Read the Subtext and Breaking the Conspiracy of Silence

Where it is felt that it is inappropriate or unwise to file a charge of blackmail with the police, it may be possible to refuse to read the subtext or accept the blackmailer's invitation to enter into a discreet conspiracy of silence. Few blackmailers in Zimbabwe bluntly convey their demands by insisting, "pay me money or I will tell the police that you engage in homosexual acts." Such a demand would identify the blackmailer as such – not only in the eyes of the victim, but in the eyes of the blackmailer himself. Instead, the blackmailer typically will write a note that conveys this idea under opaque or false pretences. He may suggest that because of "what happened last night," he needs monetary compensation from the victim. Often, the blackmailer alleges that he has "contracted a skin disease" or some other ailment, and requires money for treatment. It is also common for blackmailers to allege that their relatives have discovered the liaison and are demanding compensation – thus appropriating a traditional response to heterosexual seduction to extort money from their victim. The threat to

go to the police, to create pressure to obtain this money, is often implied. It may, however, be contained overtly in the initial letter or spelled out in a subsequent letter if the blackmailer fears that the victim might not have understood the subtext of the original message.

The blackmailer should be encouraged to put his demand in writing – if he has not already done so. The victim can encourage this under the pretext of asking for a breakdown of the “damages” which would have been incurred if the blackmailer’s claim were true – for example, the cost of transport to the doctor, the cost of the consultation, the cost of medicines, etc. It can also be done on the pretext that the demand must be put in writing so that the target knows what is being demanded and to ensure that the demand is not changed, increased, or repeated.

Once the blackmailer has indicated the guise under which the blackmail will take place, the target may refuse to read the subtext and instead act on the pretence supplied by the blackmailer. If the pretence is one of having contracted a disease as a result of the encounter, the target may offer to arrange and pay for the medical treatment, with the proviso that the examination be done through the target’s own doctor, who is experienced in treating such conditions. If the pretence is one of aggrieved relatives, the target may offer to negotiate with them through lawyers, and insist that the blackmailer should speak with a lawyer and the relatives to set up the date and time for a meeting. The target can also invite the blackmailer to have his relatives put their demand in writing for consideration by the target’s lawyer.

By refusing to accept the subtext of the blackmailer’s demand, the victim does not indicate a refusal to comply, but instead forces the blackmailer to seek an alternative way of threatening disclosure. There are several advantages to this tactic. It delays the matter and engages the blackmailer in protracted negotiations, which undermines the credibility of any later report the blackmailer might make to the police. Moreover, the involvement of a third party – a doctor, lawyer, or other witness – helps foreclose any attempt to initiate the private, intimate, and almost sado-masochistic relationship with the victim which gives the blackmailer confidence and security in their blackmail.

For the same reasons, a lawyer may also be introduced into the relationship by purporting to take the blackmailer at his word that the payment will be once off. The victim can then insist that the blackmailer meet with his lawyer to draw up an agreement to ensure that this is the case.

While such an agreement may not carry legal weight, this pressure to document the agreement often acts as a powerful deterrent to the blackmailer. Again, the victim is ostensibly complying with the blackmailer's demands, but is placing a significant hurdle in the blackmailer's way which he often does not attempt to circumvent. When this offer is taken up by a blackmailer – which occasionally happens – the documents which the lawyer invites the blackmailer to sign are made so obviously incriminating, and the implications of blackmail are spelled out by the lawyer in such a grave fashion, that the blackmailer is often compelled to retreat.

Of course, such retreat is not always the case. One reaction to this kind of tactic has been that the blackmailer has then abandoned the subtleties of blackmail and resorted to overt extortion, such as threatening to assault the victim unless the money is paid. While this obviously places the victim in a difficult and often frightening position, it also signals a significant shift in tactic by the blackmailer. The blackmailer is no longer directly threatening disclosure, but is threatening to resort to physical violence. The blackmailer is relying on his belief that he will be immune from prosecution for any assault, and that the victim will be reluctant to approach the police out of fear that this will lead to the disclosure of their secret. The appropriate response to this threat is to first remove the victim from harm's way, and to then to write a letter to the blackmailer disabusing him of this notion and outlining the legal repercussions that will result from any actual or attempted assault.

CONCLUSION

This chapter has dealt with attempts to address occurrences of blackmail rather than direct attempts to prevent it – although of course ending impunity for blackmail is itself a preventative measure. When GALZ first came out publicly as an LGBTI activist group in 1995, there was a vicious and vitriolic backlash against LGBTI persons upon which blackmailers sought to capitalise. In response, GALZ developed a variety of preventative strategies designed to reduce the opportunities for blackmail – an intervention which has proved enormously successful thus far, even if some of their suggestions are open to objection. Suggestions that casual sexual encounters should not take place at home or encouraging members to conceal one's identity to avoid potential blackmailers have been likened to advice to women not to dress “provocatively” or to avoid certain areas to reduce their risk of rape. Nonetheless, the number of known blackmail attempts against members of GALZ dropped from three or four per month to fewer than three or four per year as a result of these tactics.

A number of incidents do still occur, usually among non-members of GALZ who then approach GALZ for assistance. Blackmail of LGBTI people will continue until unjust and discriminatory criminal sanctions are removed and public contempt for LGBTI persons decreases. While GALZ is committed to these objectives, it has also recognized the importance of interim strategies that might mitigate the consequences of blackmail on the lives of LGBTI people – despite its prevalence.

In keeping with this objective, GALZ intends to lay the groundwork for a proactive approach in relation to reporting blackmail to the police. The organization intends to approach the Attorney General to ask for an official policy outlining the appropriate response of the police to a report of blackmail. It is hoped that the response will clarify that the police ought to charge the blackmailer rather than the target of that blackmail. At the very least, such a policy should caution the police that there must be clear and credible evidence before the victim of blackmail is himself charged. If a favourable response is received and such a policy adopted, copies will be made available to have on hand when filing complaints to the police. Unfortunately, this strategic clarification has been postponed as a result of Zimbabwe's political turmoil. While such a policy is badly needed, pursuing it in the present climate is impractical and potentially counterproductive.

Even when the tactics and strategies outlined here are deployed, some victims believe that they cannot risk exposure of their sexual orientation in any circumstances. These persons continue to yield to blackmailers' demands at enormous personal, emotional, professional, and financial cost. Victims who have the means to emigrate have been motivated to leave the country. In at least one instance, blackmail was the final straw which drove a depressed GALZ member to commit suicide. While tactics and strategies for combating blackmail may mitigate the harm it causes, they cannot wholly negate the damaging and deleterious effect that blackmailers have on the lives of their victims.