



# Cyberbullying

Empowering children and youth  
to be safe online and responsible  
digital citizens

November 2015



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
*for British Columbia*

Protecting privacy. Promoting transparency.



REPRESENTATIVE FOR  
CHILDREN AND YOUTH



Nov. 13, 2015

The Honourable Linda Reid  
Speaker of the Legislative Assembly  
Suite 207, Parliament Buildings  
Victoria, B.C. V8V 1X4

Dear Ms. Speaker,

We have the honour of submitting to the Legislative Assembly of British Columbia this joint special report *Cyberbullying: Empowering children and youth to be safe online and responsible digital citizens*. This report is prepared in accordance with Section 6 (1)(c) of the *Representative for Children and Youth Act*, which makes the Representative responsible for monitoring and reviewing the provision of services and commenting publicly upon her findings, and Section 42 of the *Freedom of Information and Protection of Privacy Act*, which enables the Commissioner to make a special report and comment publicly about matters relating to the duties of the Commissioner.

Sincerely,



Elizabeth Denham  
Information and Privacy  
Commissioner for British Columbia



Mary Ellen Turpel-Lafond  
Representative for  
Children and Youth

pc: Mr. Craig James, QC  
Clerk of the Legislative Assembly

Ms. Jane Thornthwaite, MLA  
Chair, Select Standing Committee on Children and Youth



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*Children have the ability and resiliency to protect themselves and others and to alter their own behaviour once they are effectively informed about the risks. We should be empowering children at an early age to become good digital citizens and make informed and responsible choices when they use online media.*

– Marvin Bernstein, UNICEF Canada

## Executive Summary

Cyberbullying involves the use of digital technologies and services including social media, texts, and instant messaging to repeatedly harass and intimidate others. The issue of how best to reduce and penalize cyberbullying has not been resolved by any jurisdiction to date.

However, just because the task is difficult doesn't mean that there is any less onus on governments to do their best to protect and prevent young people from involvement in cyberbullying – as victims, perpetrators, or, as this report shows, sometimes as both.

The high-profile suicides in recent years of Canadian teenagers – including British Columbia's Amanda Todd – appeared to be a response to particularly vicious cyberbullying. These tragic cases, and many other instances of exploitation of young people, have brought the issue of cyberbullying to the forefront of public consciousness. The provincial government's approach to cyberbullying has initiated some dialogue on these issues, but difficult and pressing questions remain to be addressed.

This report, a joint effort by B.C.'s Information and Privacy Commissioner and Representative for Children and Youth, provides important context and background on the issue of cyberbullying, with a particular focus on this province. More importantly, it provides recommendations for how the provincial government can comprehensively address cyberbullying – including education and prevention efforts for young people, protection of privacy concerns, and appropriate prosecution of offenders. It also includes a discussion about a role in the dialogue on cyberbullying for social media companies operating from, or reaching into, B.C.

This report also highlights the concept of digital citizenship, which broadly refers to the responsible use of communication technologies in the online world. Digital citizenship education addresses cyberbullying and other issues related to it, such as privacy and security, relationships and communication, Internet safety, the digital footprint, legal and ethical aspects of online behaviour, and the role of information and communication technology in society. Prevention efforts must include promoting a greater acceptance and understanding of digital citizenship.

What this report shows is that there is still much to be learned about cyberbullying, its causes and effects, and how it differs from face-to-face bullying. The report also explores the potential for cyberbullying to touch thousands of lives, given that children and youth spend a great deal of their lives online and on social media, in large part through mobile devices that can connect them from virtually anywhere.

The Commissioner and the Representative, two independent and non-partisan Officers of the B.C. Legislature, recommend a cross-ministry, comprehensive, evidence-based strategy on cyberbullying that would include the B.C. Ministries of Education and Justice.

The Officers jointly call for a child-focused approach that includes a strong prevention and education component and also balances concerns about the protection of privacy for children and youth. This report recommends that a single point of accountability be identified within the B.C. government with responsibility for the work of the two ministries in planning and implementing the recommendations from this report as soon as possible.

While the province has in place an anti-bullying program (ERASE) that enables victims and their families to anonymously report bullying (including cyberbullying) with reports going directly to schools for action, the Representative and Commissioner also recommend the Ministry of Education ensure that developmentally appropriate learning objectives about cyberbullying and digital citizenship be included in the provincial school curriculum and delivered to all school-age children as soon as possible. These subjects should further be included as a mandatory part of professional development programs for all B.C. teachers going forward.

A key question with regard to cyberbullying is how best to deal with it as an offence. The Representative and Commissioner agree with UNICEF's call for a child-centred approach when applying criminal law to this issue. Government must carefully balance the effect that criminal charges may have to denounce the harms of bullying with the damage that criminalizing young people can inflict on their futures while also recognizing the often-complicated dynamics of cyberbullying in which young people can be both perpetrator and victim. This report recommends that the Attorney General consider developing prosecution guidelines for how to apply criminal law to cases of cyberbullying in B.C.

The Commissioner and Representative recognize that social media companies and Internet providers operating in B.C. bear some responsibility to the young people who use their products. This report recommends that social media companies develop processes and policies that facilitate the removal of personal information from social networks in cases of cyberbullying or in cases where personal information has been inappropriately posted without consent. In keeping with the child-centred focus, these processes should be simple and easy for children and youth to understand and use.

Further, the Representative and Commissioner recognize the importance of parental support as children learn to navigate the online world, including social media. With respect to maintaining and upholding the privacy and safety of children online, as well as encouraging good digital citizenship, parents are key. There are many useful resources to assist parents with identifying if their child is involved in a bullying situation and equipping their child with tools and knowledge to be safe online and use technology responsibly. However, an understanding of digital citizenship must be fully integrated into the educational, legal, social, and program responses to cyberbullying.

## Introduction

Although evident to young people for a number of years, it has become increasingly apparent to adults in this country that online bullying, or cyberbullying, is a significant problem. Extensive media coverage of the recent suicides of two young women in Canada accelerated a discussion that has included widespread calls for action. This joint report of two Officers of the Legislative Assembly of B.C. – the Information and Privacy Commissioner and the Representative for Children and Youth – identifies some key issues associated with cyberbullying and provides recommendations for action.

The Information and Privacy Commissioner has a mandate to provide independent oversight and enforcement of B.C.'s privacy and access to information laws through investigations, public comment, research, and education.<sup>1</sup> The Representative for Children and Youth has a mandate to improve services and outcomes for children and youth in B.C. through advocacy, accountability, and review. The Representative is concerned with the impact online bullying may have on vulnerable children and youth. The Commissioner's work includes educating young people about their privacy and access to information rights, including in the online world. Both Officers advocate for the inclusion of privacy and children's rights and best interests in the dialogue on how best to address cyberbullying.

### Youth Voices in this Report

Three focus groups were conducted with youth in July 2015 on the topic of cyberbullying with the help of the McCreary Centre Society. Feedback from youth is included throughout this report.

It is important to note that the perspectives and experiences of youth described in this report may not be representative of all youth in B.C. Nevertheless, these findings provide the most recent account of the experiences and opinions of youth on the topic of cyberbullying.

This report begins with a review of the present-day context of cyberbullying, including the increasing extent to which young people are living their lives online, and a review of what makes cyberbullying unique in comparison to other forms of bullying. This is followed by a review of research findings, examples of some of the current programs in place, an analysis of policy and legislative changes taking place across the country, and a discussion about the role that social media companies can play in responding to the issue. The report also includes feedback directly from youth on the topic, gathered during three focus groups conducted in July 2015 with the help of the McCreary Centre Society. The Officers make five recommendations to address cyberbullying in this report.

<sup>1</sup> Including the *Freedom of Information and Protection of Privacy Act (FIPPA)* [RSBC 1996] (Public Sector), which applies to more than 2,900 public bodies including ministries, local governments, schools, Crown corporations, hospitals, municipal police forces, and more, and the *Personal Information Protection Act (PIPA)* [SBC 2003] (Private Sector), which applies to more than 380,000 private-sector organizations including businesses, charities, associations, trade unions and trusts.



## Cyberbullying in Context

Cyberbullying has received significant attention in recent years. The discussion has, in part, been driven by two recent widely reported suicides of young women who were both victims of cyberbullying. While the circumstances of the two young women were different, both experienced relentless online abuse. Both were also examples of the increased amount of time young people spend online, and the power and impact that this form of bullying can have on vulnerable children and youth. It is clear from both of these cases that we must equip our young people with the tools they need to make good decisions when they are online and with strategies to deal with risks when they arise. This section examines our current knowledge of the impact of cyberbullying on the lives of today's young people and begins with a review of the circumstances in the deaths of these two young women.

### A Lesson from our Losses: We Must Improve our Outcomes

In October 2012, Amanda Todd, a 15-year-old girl, took her life at her home in Port Coquitlam. Before doing so, she posted a self-produced YouTube video describing her sadness and humiliation as a result of being cyberbullied. In her own words, she “*cried every night*” and “*lost all my friends and respect people had for me,*” after an explicit photo of her was shared online with her school peers via Facebook. As well as experiencing ridicule and physical assaults from peers face-to-face, she repeatedly received abusive messages through Facebook.<sup>2</sup> Her mother informed the RCMP several times about the sexual extortion and was advised that Amanda should close her Facebook and email accounts.<sup>3</sup> This case prompted a national discussion on criminalizing cyberbullying.<sup>4</sup> As of November 2015, a resident of the Netherlands continued to face five Canadian criminal charges for possession and distribution of child pornography, extortion, criminal harassment and Internet luring.<sup>5</sup>

In the second case, a 17-year-old Nova Scotian, Rehtaeh Parsons, committed suicide after being extensively cyberbullied through abusive text and Facebook messages after a photo of her from an alleged sexual assault by peers at a party was widely circulated in her networks. Forced to change schools in order to try to escape the ongoing vicious ridicule and teasing, the bullying followed her. The media attention generated by her parents' advocacy after her death resulted in the perpetrators

<sup>2</sup> CBC News. (November 15, 2013). Amanda Todd suicide: RCMP repeatedly told of blackmailer's attempts. Retrieved from <http://www.cbc.ca/news/canada/amanda-todd-suicide-rcmp-repeatedly-told-of-blackmailer-s-attempts-1.2427097>

<sup>3</sup> West Coast LEAF. (June 2014). *#CyberMisogyny: Using and strengthening Canadian legal responses to gendered hate and harassment online*, p. 51. Retrieved from <http://www.westcoastleaf.org/our-work/cyber-misogyny/>

<sup>4</sup> Government of Canada. (2012). Federal/Provincial/Territorial Ministers conclude productive meeting on Justice and Public Safety [News release]. Retrieved from <http://www.publicsafety.gc.ca/cnt/nws/nws-rlss/2012/20121106-2-eng.aspx>. See also Government of British Columbia. (2013). B.C. supports national cyberbullying recommendations [News release]. Retrieved from <http://www.newsroom.gov.bc.ca/2013/07/bc-supports-national-cyberbullying-recommendations.html>

<sup>5</sup> Criminal Justice Branch. (29 October 2015). Personal correspondence.

being charged under the Canadian *Criminal Code* with the production and distribution of child pornography. Crown prosecutors were of the opinion that there was insufficient evidence for laying charges for the alleged sexual assault. A review of the prosecution was also recently concluded.<sup>6</sup> Two young men subsequently pleaded guilty to the child pornography charges.

The circumstances leading to the deaths of these two young women highlight the significant pain and suffering young people can endure when they are faced with repeated cruel treatment by their peers through online means. While there are a number of factors that contributed to the two deaths, we can reasonably conclude that online bullying played a significant role in the eventual outcomes.

These losses indicate a need to improve our understanding of cyberbullying and the particular challenges it presents to young people. It is a phenomenon that will negatively influence the lives of young people in B.C. and elsewhere unless we take steps to counter it.

Of particular concern and falling directly under the mandate of the Representative is the threat that cyberbullying poses to B.C.'s most vulnerable children – the approximately 7,200 children in permanent care of the provincial government and the 650 youth living out of the parental home on youth agreements as well as those receiving services. Children in foster care can be more susceptible to cyberbullying than their non-care peers as they typically do not have the same family support and may not be as well-equipped to handle a situation in which they are being bullied or harassed online. As well, children who are receiving mental health services from government – or in many cases, waiting to receive those services<sup>7</sup> – may be at greater risk due to their fragile state and the fact that, in lieu of accessible services, they may seek solace in social media.

Moreover, everyone has a right to privacy. It is enshrined in Article 12 of the *Universal Declaration of Human Rights*.<sup>8</sup> In B.C., the right to privacy is protected through laws governing the private sector, the public sector, and relations between individuals.<sup>9</sup> The laws governing the private and public sector set out privacy protection with respect to personal information – which is defined as information about an identifiable individual. Often cases of cyberbullying involve personal information, and ensuring that young people are informed about their rights can enhance the tools at their disposal when they are confronted with cyberbullying.

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<sup>6</sup> Segal, M. (2015). Independent Review of the Police and Prosecution Response to the Rehtaeh Parsons Case. Retrieved from <http://novascotia.ca/segalreport/Parsons-Independent-Review.pdf>

<sup>7</sup> For more information on wait times for children and youth seeking mental health services, see Representative for Children and Youth, British Columbia. (April, 2014). *Still Waiting: First-hand Experiences with Youth Mental Health Services in B.C.* Retrieved from <https://www.rcybc.ca/reports-and-publications/reports/monitoring-reports/still-waiting-first-hand-experiences-youth>

<sup>8</sup> Article 12 states: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

<sup>9</sup> See the *Freedom of Information and Protection of Privacy Act* [RSBC 1996] (Public Sector), the *Personal Information Protection Act* [SBC 2003] (Private Sector), and the *Privacy Act* [RSBC 1996].

## Young People: Living Online and Valuing their Privacy

Young people participate in the online world on a daily basis as an integral part of their lives. A recent Canadian survey found that 99 per cent of youth have access to the Internet outside school.<sup>10</sup> Seventy-two per cent of students post comments or pictures on their own social network sites – 41 per cent<sup>11</sup> do so at least once a week, while 52 per cent will comment, read, or post on other people’s social network sites at least once a week.<sup>12</sup>

Social media is a significant component in the daily lives of young people. In most cases, young people participate in social media through portable devices, to which they have access 24 hours a day. One study determined that 80 per cent of students in Grade 9 and above had a cell/smart phone<sup>13</sup> and that young people sent between 50 and 60 text messages on average, every day.<sup>14</sup> A 2013 nation-wide survey of students showed that 20 per cent of those in Grade 4 and more than half of those in Grade 11 slept with their phones in case they were to receive a message at night.<sup>15</sup> Another 2013 survey of B.C. adolescents found that nine out of 10 students reported that they had a cellphone or other portable electronic communication device and 96 per cent had used their device on the previous school day. The most common uses of these devices were to communicate with friends or parents, play games, chat online, engage in social networking and find information.<sup>16</sup>

Young people live a great deal of their lives online during years that are critical to their development. Arguably the distinction between life online and life offline is blurring. We have yet to fully understand the implications of this phenomenon or the long-term effects of this deep integration of online life into offline life, but the practical reality for modern adolescents is that *“being connected [online] is literally their social lifeblood.”*<sup>17</sup>

### Youth Voices

*“What else would I do with my life [if not go online]?”*

*“You know what everyone is doing at the same time [as you].”*

*“I use social media to stay connected with my family.”*

### Youth Voices

*“Online you can be open – it’s a place where you can express yourself. When you interact with people face-to-face, though, you have to filter yourself.”*

<sup>10</sup> Steeves, V. (2014). *Young Canadians in a Wired World, Phase III: Experts or Amateurs? Gauging Young Canadians’ Digital Literacy Skills*. Ottawa: MediaSmarts. Retrieved from <http://mediasmarts.ca/ycww/experts-or-amateurs-gauging-young-canadians-digital-literacy-skills>, p.3.

<sup>11</sup> Ibid., p.31

<sup>12</sup> Ibid., p.32.

<sup>13</sup> Ibid., p.14.

<sup>14</sup> Standing Senate Committee on Human Rights. (December 2012). *Cyberbullying Hurts: Respect for Rights in the Digital Age*. Retrieved from <http://www.parl.gc.ca/Content/SEN/Committee/411/ridr/rep/rep09dec12-e.pdf>, p. 37.

<sup>15</sup> Steeves, V. (2014). *Young Canadians in a Wired World, Phase III: Trends and Recommendations*. Ottawa: MediaSmarts. Retrieved from [http://mediasmarts.ca/sites/mediasmarts/files/publication-report/full/ycwwiii\\_trends\\_recommendations\\_fullreport.pdf](http://mediasmarts.ca/sites/mediasmarts/files/publication-report/full/ycwwiii_trends_recommendations_fullreport.pdf), p.16.

<sup>16</sup> Smith, A., Stewart, D. Poon, C., Peled, M., Saewyc, E., & McCreary Centre Society. (2014). *From Hastings Street to Haida Gwaii: Provincial results of the 2013 BC Adolescent Health Survey*. Vancouver, B.C.: McCreary Centre Society, p. 62.

<sup>17</sup> Ibid., p.37.

This intersection between technology, social connectedness, and child and adolescent development indicates a need for a thoughtful response to cyberbullying. For young people, halting use of social media, websites, cellphones or email accounts is an impractical solution – it would be the equivalent of house arrest and social deprivation. Social connection is a critical part of healthy development, particularly in childhood and adolescence. The need for connection is one of the factors that leaves young people vulnerable to cyberbullying; the more vulnerable young people are because of the circumstances of their lives, the more likely they are to become victims.

Parental monitoring and surveillance is of limited benefit in protecting young people from cyberbullying. Open and caring relationships with a parent lead to better protection for children and adolescents than monitoring does.<sup>18</sup> A quick search for “cyberbullying” and “monitoring” yields a wide variety of results, including software programs to sites asserting that schools, parents, and communities can protect young people by monitoring their activities online, and requiring students to hand social media passwords over to schools in the context of cyberbullying allegations.<sup>19</sup>

While these tools enable monitoring of young people online in real time and on an ongoing basis, such surveillance techniques deprive young people of their right to privacy and are ultimately ineffective. Young people adopt techniques to safeguard their privacy. Technology researcher danah boyd has found that young people will seek privacy “*in relation to those who hold power over them,*” and will employ a variety of techniques to do so such as shifting to social media services that their parents don’t know about (e.g., from Facebook to Snapchat), using different media (e.g., from social media platforms to text messages), or creating content that is only accessible to limited audiences through means such as encoding messages.<sup>20</sup> In other words “*they try to find privacy within public settings.*”<sup>21</sup>

### Youth Voices

Youth in all three focus groups said that parents should be checking in with them regularly to ensure they were feeling safe, doing the right thing and knew what to do if they were in an unsafe situation.

*“As a parent you need to understand your kid.”*

*“It’s about parents being aware of what their child is up to.”*

<sup>18</sup> Law, D., Shapka, J., Olson, B. (2010). “To control or not to control? Parenting behaviours and adolescent online aggression.” *Computers in Human Behaviour*, 26, 1651-1656.

<sup>19</sup> See Herold, B. Schools Weigh Access to Students’ Social-Media Passwords. *Education Week*. Retrieved from <http://www.edweek.org/ew/articles/2015/02/18/schools-weigh-access-to-students-social-media.html>. Ortiz, E. (September 15, 2013). Student Monitoring: Cyberbullying leads Los Angeles-area school district to spy on students’ Facebook, Twitter. *NY Daily News*. Retrieved from <http://www.nydailynews.com/news/national/area-school-district-monitors-students-facebook-twitter-article-1.1456842>. Allen, S. (March 8, 2015). Schools keep an eye on students’ social media. *Telegram news*. Retrieved from <http://www.telegram.com/article/20150308/NEWS/303089616/1101>

<sup>20</sup> For a detailed discussion on young people using these techniques for privacy, see boyd, d. (2014). *it’s complicated: the social lives of networked teens*. Yale University Press, p. 54-76.

<sup>21</sup> Ibid., p. 76.

These kinds of behaviours illustrate the importance that young people place on privacy, and are entirely consistent with what we know about the relationship between privacy and sense of self:

*Even though its meanings are multiple and complex, privacy is closely connected with the emergence of a modern sense of self. Its jeopardy signals serious risk to the very conditions people need to enjoy the kind of self that can experiment, relax, form and enjoy intimate connections, and practice the development of ideas and beliefs for valued expression.<sup>22</sup>*

Privacy-seeking behaviours by young people also underscore the importance of context to understanding communications between young people. Research shows that we need to be cautious: *“It’s essential that concerned outsiders do not take what they see on social media and make assessments without trying to understand the context.”<sup>23</sup>* Our online behaviour (i.e., the web pages we visit, the social networks we use, the people we engage with, our purchasing habits) all leave an indelible trace, or a “digital footprint,” that can reveal a lot of information about us, but not the whole picture. The kind of digital footprints young people create can provide opportunities for caregivers to be in conversation with their children about their lives and their relationships with others, rather than an opportunity to place them under surveillance.<sup>24</sup>

### Youth Voices

*“I was in a chat group with a lot of people and friends and broke up with my boyfriend who was also in the chat group online. But his best friend was in the chat and started calling me a b\*tch etc.”*

This is particularly important because privacy is an underlying requisite to responsible citizenship and healthy democracies. As the Supreme Court of Canada has stated:

*The ability of individuals to control their personal information is intimately connected to their individual autonomy, dignity and privacy. These are fundamental values that lie at the heart of a democracy.<sup>25</sup>*

We often explore our values and identity in private. Young people are no different in this respect. Through that process, we come to know who we are and how we want to be in the world.

We need to work with young people to illuminate the connections between privacy, the online world, and citizenship so that when they are online they are making responsible decisions as members of society as a whole.

<sup>22</sup> Galison, P. and Minow, M. Our Privacy, Ourselves in the Age of Technological Intrusions. In R. Ashby Wilson (Ed.), *Human Rights in the ‘War on Terror’*. (p.258). Cambridge: Cambridge University Press.

<sup>23</sup> boyd, d. (2014), p. 133-134.

<sup>24</sup> Ibid., p. 133.

<sup>25</sup> Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401, [2013] S.C.J. No. 62. Retrieved from <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13334/index.do>



## Distinguishing Cyberbullying from Face-to-Face Bullying

While there are similarities and often interconnections between face-to-face bullying and cyberbullying, there are also differences.

There is greater potential for victimization to have a wide audience when it happens online. Control over the contents and dispersal of the posts is outside the influence of the victim, and a post can go viral in an instant. This is exacerbated by the fact that content has a longer shelf-life online than face-to-face interactions, making it accessible indefinitely unless taken down. However, taking something down on one site does not mean that it is not available on other sites. Indeed, it can easily spread to hundreds, if not thousands, of other sites. The more graphic the content, the more widely it is likely to be spread. As such, there is a

### Youth Voices

*"In real life, you can walk away but online it's harder."*

*"You feel worse about it [in person], whereas online, you're not bullying a real person."*

*"There would be a lot less bullying if there wasn't an anonymous button."*

sense of permanence to cyberbullying that is not present with face-to-face bullying. While the two often occur simultaneously, face-to-face bullying may stop once the victim changes schools. Cyberbullying victims may have a sense that the abuse is never-ending, eliciting a sense of helplessness and hopelessness.

Mobile devices make it possible for cyberbullying to follow young people wherever they are. This can make cyberbullying difficult to escape, especially given that the vast majority of high school students own cell phones or smartphones. This, coupled with the extensive audience that the online medium delivers, produces a sense on the part of young people that the abuse is

unavoidable and the effort to remove offending material is futile for the affected individual. The following posting from the Stop-A-Bully website shows the stress and anxiety this can create:

*... just last week she came to a park that i was at and showed up with at least 12-17 people i don't know if i should say something to someone or keep it to myself and its everywhere its on Facebook its on kik ITS EVERYWHERE!!!!!!!<sup>26</sup>*

Amplifying these issues is the fact that cyberbullies may be anonymous, either because they disguise their identities through fake usernames, or because anonymity may be a built-in feature of the interaction site. This contributes to the sense in victims that the bullying is pervasive and completely beyond their control, a particularly devastating circumstance for young people who are striving to gain mastery over their lives as they move towards adulthood. Lack of success in this key developmental task can have significant short- and long-term negative consequences. The emotional stress and trauma of online victimization can create urgent situations for families and schools.

### Youth Voices

*"Parents can't stop kids from seeing certain things, like violence, but parents need to teach kids how to behave on the Internet."*

*"[Bullying] is more brutal online."*

*"Online is more scary because it's more hidden, there's no one else to witness it."*

*"Online, a bully might be there all the time, and you can't get away from it."*

<sup>26</sup> Stop-A-Bully support letters. Retrieved from <http://www.stopabully.ca/bullying-support-letters.html>

## The Research: What We Know and Next Steps

Cyberbullying is still a new area of study. However, there are some early findings in the areas of prevalence of cyberbullying activity, the ages when this activity peaks, the negative associated effects, and the dynamics of cyberbullying.

### A Common Definition and Terminology

It is critical that we have a commonly accepted definition of cyberbullying and terminology for talking about it. This enables research to be compared across studies, and promotes a clear conversation across academics, legislators, policy-makers, educators, young people, and families about cyberbullying and how to deal with it.

Unlike more historically common forms of bullying (direct and indirect), there is no generally accepted definition of cyberbullying. Researchers use widely different definitions on surveys and questionnaires, making cross-study comparisons very difficult. The varied conceptualizations of cyberbullying are not surprising. In everyday life, there is a continuum of negative behaviours, ranging from annoying, irritating or disappointing, to severe, persistent, and pervasive attacks on others. The point at which these behaviours move from the less- to more-severe is still unclear as the experience is subject to the individual interpretation of the victim.<sup>27</sup> What can be experienced as an irritation by one person could be devastating to another. Cyberbullying is similar to traditional bullying in that it includes intent to harm, often includes an element of repetition, and is deliberate. Broadly defined, cyberbullying is any behaviour performed through the medium of electronic or digital media by individuals or groups that repeatedly communicates hostile or aggressive messages intended to inflict harm or discomfort on others. Unlike most traditional forms of bullying, the identity of the bully may or may not be known.<sup>28</sup>

#### Youth Voices

*"Cyberbullying is when you bring someone down in an emotional way."*

*"Cyberbullying is when you purposefully harm someone over the Internet – it's usually anonymous, but sometimes not."*

#### Youth Voices

*"[What worries me is the] possibility of someone being you, stealing your identity."*

*"[My sister] says that when you post something [online] people all over the world can see it and then it's your weakness. People could blackmail you. You don't want your stuff published all over the world."*

<sup>27</sup> Sabella, R.A., Patchin, J.W. & Hinduja, S. (2013). Cyberbullying myths and realities. *Computers in Human Behavior*, 29, 2703-2711.

<sup>28</sup> Tokunga, R. S. (2010). Following you home from school: A critical review and synthesis of research on cyberbullying victimization. *Computers in Human Behavior*, 26, 277-287.

## The Research

A typology of cyberbullying behaviours often cited in the research lists the following:<sup>29</sup>

1. Flaming: angry and vulgar online exchanges.
2. Harassment: repeated sending of nasty and insulting messages to the victim.
3. Denigration: spreading of rumours and gossiping about a person online to damage his/her reputation or friendships.
4. Impersonation: to cause someone to get into trouble or to damage someone's reputation by pretending to be that person and sending material on that person's behalf.
5. Outing: sharing secrets or humiliating information of another person on the Internet.
6. Trickery: to convince someone to share humiliating information, then making the information available online.
7. Exclusion: to intentionally exclude someone from an online group in order to cause hurt to the person.
8. Cyberstalking: to repeatedly harass.

While still relevant concepts, additional subsets of these types of behaviour have developed in the intervening years with the advent of newer technology (e.g., smartphones with cameras). For example, the sharing of intimate photos of someone without their consent is viewed as a form of cyberbullying and has become a criminal offence in Canada.<sup>30</sup>

What is clear is that we need a comprehensive and widely accepted definition if we are to increase our capacity to research and understand how to effectively respond to cyberbullying, as well as educate and support digital citizenship. A clear definition of cyberbullying will also help young people understand which behaviours are appropriate and which are not. Commonly accepted terminology also promotes dialogue and supports the development of effective courses of action.

### Youth Voices

*"I'm scared of people threatening me with my pictures or making fun of me."*

*"In the real world, you have social etiquette. Online is similar. There's certain acceptable and unacceptable things to do and ways to interact with people."*

<sup>29</sup> Willard, N. (2007). *Educator's guide to cyberbullying and cyberthreats*. Center for Safe and Responsible Use of the Internet. Retrieved from [https://www.google.ca/?gws\\_rd=ssl#q=nancy+willard+educator%27s+guide+to+cyberbullying+\(pdf\)](https://www.google.ca/?gws_rd=ssl#q=nancy+willard+educator%27s+guide+to+cyberbullying+(pdf))

<sup>30</sup> This became a criminal offence on March 9, 2015. S. 162.1 of *The Criminal Code of Canada*, R.S.C., 1985, c. C-46.



## Prevalence

There is not yet agreement on the prevalence of cyberbullying, in part because of inconsistent definitions and varied data collection methods across studies.<sup>31</sup>

For example, Hinduja and Patchin reviewed some of the earliest literature on cyberbullying and determined that approximately 15 to 35 per cent of students have been victims of cyberbullying, while about 10 to 20 per cent of students admit to cyberbullying others.<sup>32</sup> Mishna, Khoury-Kassabri, Gadalla, and Daciuk had response rates of victims at 24 per cent, bullies eight per cent, bully-victims (youth who both send and receive bullying messages) 26 per cent, and youth not involved 43 per cent.<sup>33</sup> By comparison, Pettalia, Levin, and Dickinson had response rates of victims at 17 per cent, bullies five per cent, bully-victims 44 per cent, and youth not involved at 33 per cent.<sup>34</sup> The most robust research into the topic to date, an analysis of longitudinal data from Norway and the United States, demonstrated that, compared to face-to-face verbal bullying victims (average 17.6 per cent), only a small percentage of youth (4.5 per cent) reported being cyberbullied.<sup>35</sup>

Taken together, estimates on the number of teens who have been victims of cyberbullying range from 4.5 to 35 per cent, while the number of youth who admit to cyberbullying others at some point in their lives ranges from five to 20 per cent. Thirty-three to 43 per cent of teens have not been a part of cyberbullying.<sup>36</sup>

Researchers have also been examining the particular ages at which cyberbullying tends to begin and end. A review of the literature shows that participation in cyberbullying behaviour appears to have a slow start in junior high, with participation accelerating rapidly and peaking around Grades 7 and 8.<sup>37</sup> In a MediaSmarts 2013 survey of young people across Canada, researchers found that online threats are more often viewed by young people as a problem from Grades 4 through 8, peaking in Grade 5.<sup>38</sup>

### B.C. Youths' Experience

The recently released RCY report *Growing Up In B.C. – 2015* reported that in a school-based province-wide survey of B.C. youth, 14 per cent reported being bullied or picked on through technology and seven per cent reported having bullied or picked on someone through technology. It is also notable that in comparing across indicators, youth who did not participate in bullying and were not targets of bullying indicated higher levels of school connectedness. Overall, youth who had been in government care were more likely to indicate being a victim or perpetrator of bullying.

<sup>31</sup> Sabella, Patchin, and Hinduja, 2013, p. 2705.

<sup>32</sup> Hinduja, S. & Patchin, J.W. (2010). *Bullying, cyberbullying, and suicide*. Archives of Suicide Research, 14(3), 206-221.

<sup>33</sup> Mishna, F., Khoury-Kassabri, M., Gadalla, T. & Daciuk, J. (2012). Risk factors for involvement in cyber bullying: Victims, bullies and bully-victims. *Children and Youth Services Review*, 34, 63-70.

<sup>34</sup> Pettalia, Levin, and Dickinson, 2013, p. 2761.

<sup>35</sup> Olweus, D. (2012). Cyberbullying: An overrated phenomenon? *European Journal of Developmental Psychology*, 9 (5), 520-538.

<sup>36</sup> Sabella, Patchin, and Hinduja, 2013, p. 2705.

<sup>37</sup> Tokunga, 2010.

<sup>38</sup> Steeves, 2014, p.23.

## The Research

Some research has also looked at gender dynamics in cyberbullying activity. A B.C. school-based survey found that males were more likely than females to use their phone to bully others and females were more likely to report being cyberbullied.<sup>39</sup> This corresponds with findings from a U.S. study that males are three times more likely to cyberbully others.<sup>40</sup>

We do not fully understand the conditions that help extinguish this behaviour. For example, do young people reduce their participation in cyberbullying as they develop a more developmentally sophisticated sense of empathy? Are they discouraged by some type of informal social control among their peer group (i.e., does it become “uncool”)? Does harassing peers simply just get boring as other activities engage their interests? Are our educational interventions effective? A greater understanding about the mechanisms that either initiate the fall-off period or intensify youths’ participation is needed if we are to develop effective prevention and intervention strategies and policy and legislative responses to the issue.

## Associated Negative Effects

We also do not yet know the causal relationships between cyberbullying and negative outcomes. There is a need for longitudinal studies that examine the dynamics and consequences for victims and perpetrators of cyberbullying in order to develop effective prevention, intervention, policy and legislation.

The research reveals a range of short- and long-term consequences to cyberbullying. Some victims report feeling helplessness, anger, sadness, worry, loneliness, and frustration. These feelings may be shorter term or last a long time. The added dimensions of the inescapable nature of cyberbullying, its anonymity, and the potentially large number of spectators can contribute to and intensify any negative effects.<sup>41</sup> It is important to note that, as previously stated, the experience is subjective and some victims also respond with a level of indifference, reasoning that it is not real because it is not physical. The examples of the high-profile deaths of the two young women and other research demonstrate that one outcome may be a greater risk of suicidal thoughts. The lack of control that some victims experience can lead to feelings of helplessness and hopelessness which is one of the major contributors to suicidal behaviour.<sup>42</sup>

### Youth Voices

*“The Internet is a scary place.  
People can give you all this hate.”*

*“When you’re being cyberbullied,  
you think about it all the time. You  
start doubting yourself.”*

*“It isn’t real life. So you can ignore  
it more.”*

*“There aren’t any physical effects  
because it’s online.”*

*“You build up stress.”*

*“It makes you feel negative inside.”*

*“You start believing the things  
[the bully] said.”*

<sup>39</sup> Smith, Stewart, Poon, Peled, Saewyc, and McCreary Centre Society, 2014, p. 64.

<sup>40</sup> Bauman, S., Toomey, R., and Walker, J. (2013). Associations among bullying, cyberbullying, and suicide in high school students. *Journal of Adolescence*, 36, p. 341-350.

<sup>41</sup> Slonje, R., Smith, P.K. and Frisen, A. (2013). The nature of cyberbullying, and strategies for prevention. *Computers in Human Behaviour*, 29, 2703-2711.

<sup>42</sup> Bauman, Toomey, Walker, 2013, p. 347.

There is growing evidence that cyberbullying is implicated in two specific negative outcomes: an erosion of external relationships and academic performance, and the development of psycho-social problems and affective disorders, most significantly suicidality.<sup>43</sup> However, some researchers have suggested that:

*... it is unlikely that experience with cyberbullying by itself leads to youth suicide. Rather, it tends to exacerbate instability and hopelessness in the minds of adolescents already struggling with stressful life circumstances.*<sup>44</sup>

Thus victims of cyberbullying, as with other forms of bullying, are often although not exclusively those who are already struggling in life. Research suggests victims often come from a non-traditional family structure (a family of other than two biological parents) and has linked cyberbullying victimization with psychosomatic problems such as headaches and sleep issues, as well as emotional and peer problems. Research indicates that both victims and cyberbullies themselves report feeling unsafe at school. With respect to cyberbullies exclusively, research further shows high levels of conduct problems and substance use. Bully-victims have been associated with all of these problems and are clearly the most troubled group.<sup>45</sup>

Cyberbullying and negative effects are often studied together without paying attention to other factors which may be creating vulnerability and hardship in the lives of young people. Unfortunately, we do not yet know how cyberbullying interacts with pre-existing trauma and depression. While further research into the interaction of social problems, mental health and cyberbullying are required, it is clear that cyberbullying participants require intervention and targeted support.

## The Dynamics of Cyberbullying

There is little research focused on the different dynamics that occur within cyberbullying activity. While cyberbullying has some similarities to face-to-face bullying, the online ecosystem creates a more complex dynamic. We need to better understand these dynamics if we are to effectively deal with the problem.

### Youth Voices

*"All forms of bullying and cyberbullying start with power ... makes you feel powerful."*

<sup>43</sup> Tokunga, 2010, p. 281; Hinduja and Patchin, 2010, p. 217.

<sup>44</sup> Hinduja and Patchin, 2010, p. 217.

<sup>45</sup> Sourander, A., Klomek, A., Ikonen, M., Lindroos, J., and Luntamo, T. (2010). Psychosocial Risk Factors Associated With Cyberbullying Among Adolescents: A Population-Based Study. *Arch Gen Psychiatry*, 67(7), 720–728.

## How Online Bullying Unfolds

Most of the studies available on cyberbullying use cross-sectional, point-in-time survey methods and draw their findings from random samples of youth in national youth surveys, or specific youth in school-based surveys. This is useful for gauging the general experience of cyberbullying. However, we also need a better understanding of the interplay between students' school networks and their online networks. This type of knowledge will best come from engaging young people in deeper discussions if we want to better understand how cyberbullying happens amongst young people who are networked together online.

The social media landscape changes rapidly as new platforms enter the market (Ello, Whisper, Secret), maturing platforms add or expand existing features (Reddit, Facebook, Snapchat, Instagram), or legacy networks fade into disuse (MySpace, BeBo). The experiences of users across the platforms may be very different depending on the parameters provided by the platform, and how people accumulate, or are subjected to other users. We need to better understand how young people interact in and across platforms and the ways in which these online networks and interactions are similar to those in the real world. A better understanding would enhance our response to interactions when they become problematic.

Thorough investigations of the practical process of cyberbullying among online and socially networked youth are missing from the literature. Only occasionally are studies supplemented with interview data from a small group of youth. It would be informative for crafting anti-bullying policy to have a better understanding of how cyberbullying functions in practice rather than just frequency data. This understanding can only come from listening to young people's experiences of cyberbullying.

## The Bully-Victim

Bully-victims are young people who both send and receive bullying messages, engaging in online behaviour that is simultaneously proactive and reactive, aggressive and protective. As noted by Pettalia, Levin, and Dickinson

*... this unique and confounding group of children are adept at understanding the perspective of others and the emotions that others may feel, yet they are engaging in hurtful behavior on the internet – the very behavior that they have been recipients of in the past.<sup>46</sup>*

In other words, bully-victims are highly empathic with a very good understanding of the kind of harm their actions will inflict, as well as the kind of harm they will in turn have to endure.

### Youth Voices

Across all three focus groups, youth agreed that anyone could be a perpetrator of cyberbullying, and anyone the victim, and that often the same person could be both perpetrator and victim.

<sup>46</sup> Pettalia, J.L., Levin, E. & Dickinson, J. (2013). Cyberbullying: Eliciting harm without consequence. *Computers in Human Behavior*, 29, 2758-2765.

Other research shows that a significant proportion of young people have both given and received cyberbullying behaviours online: “23 per cent of students have said or done something mean or cruel to someone online, and 37 per cent report that someone has said or done something mean or cruel to them online that made them feel badly.”<sup>47</sup> However, of that 37 per cent of students who say someone has been mean or cruel to them online, most do not view it as a problem: “70 per cent of those students report that this is never or rarely a problem for them” and “only 11 per cent say this is sometimes (8 per cent) or often (3 per cent) a problem for them.”<sup>48</sup> What’s more, it may be the same young people who are both giving and receiving mean or cruel online behaviours: “there is a significant overlap (39 per cent) between students who have said or done mean things and students who have had mean things said to them.”<sup>49</sup>

As an example of a common finding in the research, detailed by Law et al., an offensive post by a youth about another youth on a social media site elicits a mean, aggressive response from its target.<sup>50</sup> Practically, both youth have engaged in bullying behaviour, and have also been victims of this behaviour. It is not uncommon for the initial event to snowball into a back-and-forth exchange of mutual aggression between the two youth. Both individuals have been aggressive, and both see their behaviour as a form of defensible retaliation to perceived aggression, making it difficult to distinguish between bully and victim. These hostile exchanges, given their very public profile, have the potential to attract other youth into the fray and produce a whole other set of bully-victims.<sup>51</sup>

The co-occurrence of aggression and retaliation in the same young people suggests that a different dynamic might be at work: cyberbullying may be more of a reciprocal behaviour and less about a power differential between youth, and may be further evidence that some youth view the potential to cause discomfort through cyberbullying as entertainment.<sup>52</sup> In addition, students participating in cyberbullying report involvement in verbal or physical school aggression significantly more often than students who were not involved in cyberbullying.<sup>53</sup>

### Youth Voices

“I remember I was being bullied so I became a bully to get back at them.”

“[Whether you’re the bully or the victim] depends on how you feel – sometimes I’m mean and I’m an asshole.”

“Victim and bully aren’t clearly defined, it’s just back and forth.”

<sup>47</sup> Steeves, V. (2014). *Young Canadians in a Wired World, Phase III: Cyberbullying: Dealing with Online Meanness, Cruelty and Threats*. Ottawa: MediaSmarts, p.9. Retrieved from <http://mediasmarts.ca/ycww/cyberbullying-dealing-online-meanness-cruelty-threats>

<sup>48</sup> Ibid., p.11 and p.4.

<sup>49</sup> Ibid., p.10.

<sup>50</sup> Law, D.M., Shapka, J.D., Hymel, S., Olson, B.F. & Waterhouse, T. (2012). The changing face of bullying: An empirical comparison between traditional and internet bullying and victimization. *Computers in Human Behavior*, 28, 226-232.

<sup>51</sup> This reciprocal dynamic is observed in other studies as well (Kwan and Skoric, 2013; Olweus, 2012; Pettalia, Levin, Dickinson, 2013; Law, 2012; Bauman et. al, 2013).

<sup>52</sup> Bauman, Toomey, and Walker, 2013, p.17. Associations among bullying, cyberbullying, and suicide in high school students. *Journal of Adolescence*, 36, 341-350.

<sup>53</sup> Mishna, Khoury-Kassabri, Gadalla, and Daciuk, 2012, p. 68.

The bully-victim dynamic appears to have emerged with the development of social media and would benefit from further careful study and monitoring of this phenomenon. These individuals do not fit either the traditional archetype of the physically/socially aggressive bully, nor the passive, defenceless victim. They operate in both the electronic and material world administering and receiving bullying behaviour, even apparently when they have a good understanding of the negative consequences of their action.

## Dealing with Cyberbullying: Privacy, Monitoring, and Trust

In order to be effective, our response to cyberbullying must be multifaceted. For example, the Standing Senate Committee on Human Rights of the Canadian Parliament identified roles for a range of stakeholders, including whole communities, children and youth, schools, adults and parents, businesses and corporations, and government in its report *Cyberbullying Hurts: Respect for Rights in the Digital Age*.<sup>54</sup>

One common response in cyberbullying discussions is that we need to monitor our kids online. It often originates in the private sector, in the form of software companies offering monitoring software to track the activities of a child or youth online in order to keep them safe. Names like “Cyberbullyshield,” “Safe Eyes Parental Control Software,” and “TeenSafe” reflect these assurances.<sup>55</sup>

The RCMP in B.C. has also suggested that parents monitor the activities of their children online while maintaining conversations with children. Non-profit organizations encourage monitoring but highlight the importance of not cutting young people off from the Internet.<sup>56</sup> Schools also attempt to monitor the activities of young people online. This is a tempting response to the issue, but it is not as effective as is generally assumed. As previously discussed, young people can and do find ways around these efforts. Indeed, the very platform is designed to create spaces that can evade real-time adult supervision.

### Youth Voices

Youth unanimously felt that it was impossible to tell if something online was truly safe but felt they had a good understanding of what to do to stay as safe as possible.

<sup>54</sup> Standing Senate Committee on Human Rights. (December 2012). *Cyberbullying Hurts: Respect for Rights in the Digital Age*, p. 55. Retrieved from <http://www.parl.gc.ca/Content/SEN/Committee/411/ridt/rep/rep09dec12-e.pdf>

<sup>55</sup> See “Cyberbullyshield.com” at <http://cyberbullyshield.com/>; “Safe Eyes Parental Control Software” at <http://www.internetsafety.com/how-safe-eyes-can-help-with-cyberbullying.php>; and the “TeenSafe” iPhone tracker at <http://www.teensafe.com/>

<sup>56</sup> For example, see Helpguide.org, Dealing with Cyberbullying, p. 55. Retrieved from <http://www.helpguide.org/articles/abuse/cyberbullying.htm>



We need to deepen the dialogue around monitoring children and youth. It is desirable for young people to be enabled to make responsible choices on their own. Constant monitoring can erode trust, which is a necessary backdrop to building important skills in young people so that they will engage online in a manner that is not harmful to others. While monitoring and surveillance is one way to control what may be happening with young people online, research shows that it ignores *“the role that trust plays in developing a child’s capacity to eventually handle such situations on their own”* and that the damage to a trust-based relationship has the potential to be far greater when a young person learns after the fact about monitoring and surveillance.<sup>57</sup> It is important when we address cyberbullying that we acknowledge with young people the importance of privacy and trust as they discover who they are in relation to their social networks. The development of feelings of privacy and trust are key developmental milestones for young people.

While there may be circumstances in which surveillance is warranted to address cyberbullying, such as in the context of a law enforcement investigation, ongoing or routine monitoring of young people online will not solve the problem of cyberbullying. Ongoing surveillance can have significant effects on a child’s development and sense of self. Further public discussion is needed about the role and limits of online monitoring in the context of cyberbullying, including when it is appropriate for victims or alleged perpetrators to be under surveillance, and how and whether surveillance materials – including images and other materials specific to cyberbullying incidents – are managed and disposed of in a privacy-sensitive way.

In addition, in order to make responsible decisions online, young people need to have the skills to make decisions autonomously. It is simply not feasible or desirable for parents, teachers, police, or government to spend time constantly and intrusively monitoring young people’s activities online. Instead, we should focus on improving our understanding about how young people arrive at making autonomous, responsible decisions online:

*By monitoring Internet use, parents and teachers fail to allow for the development of autonomy. These monitoring techniques may also lead youth to believe that behaviour is only inappropriate if they are caught doing it, resulting in the development of strategies*

### Youth Voices

All youth were in agreement that there was always a way to get around online restrictions and there was nothing parents could really do. For example, a few youth said that even if their parents took their phones away, this would not restrict their online activity because they had a secret phone their parents did not know about.

### Youth Voices

Youth across all three focus groups were adamant that because online activity is global and can often be anonymous, it cannot be controlled. Youth did not believe that institutions such as schools and government could do much to improve online safety and reduce cyberbullying, and appeared to firmly believe it was their personal responsibility to control the online space they inhabited.

<sup>57</sup> Rooney, T. (2010). Trusting children: How do surveillance technologies alter a child’s experience of trust, risk, and responsibility. *Surveillance & Society*, 7(3/4) p. 351.

## The Research

*to evade monitoring. A better strategy is to allow youth the opportunity to communicate, and then provide avenues for correction or learning if and when they act inappropriately.*<sup>58</sup>

We can foster the research and supports necessary to promote making autonomous and responsible decisions online. A key strategy is to make young people active agents in building these skills. It has been recommended that monitoring or surveillance be used in limited situations *“when a significant risk has been identified; all other avenues of learning and negotiation have been followed through and where there is evidence that the use of surveillance might lead to a reduced risk for the child.”*<sup>59</sup>

Navigating the interaction between child and adolescent development and the risks of the online world is a learning process for us all. A true understanding of this interaction requires answering some important questions:

- What skills do young people already employ for staying safe online?
- How can we best support young people to develop the necessary skills to make autonomous and responsible decisions online?
- What roles do privacy and trust have in building those skills in relation to teachers, parents, police, friends, and how might they differ across those relationships?

Deepening the dialogue on these issues will help us to ensure that young people have the skills they need to be respectful, stay safe, and develop sound judgment as to when to reach out to a parent, teacher, or law enforcement.

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<sup>58</sup> MediaSmarts. “Types of Surveillance,” at: <http://mediasmarts.ca/privacy/types-surveillance>

<sup>59</sup> Rooney, T., p. 354.



# Responses to Cyberbullying

There is currently a wide range of responses to cyberbullying. They range from social and educational programs to policy and legal responses aimed at prevention, amelioration, and prosecution of cyberbullying activity. These responses need to be evaluated on an ongoing basis so that we can better understand what is effective in dealing with cyberbullying. We know that we cannot address cyberbullying in silos. However, we also need to understand it within the fuller context of human rights, including privacy rights, so that adults and young people can understand how behaviours in one area can impact rights and responsibilities in others.

## Program Responses

There are a number of programs designed to address cyberbullying in B.C., Canada, and around the world. Most programs are in the arena of awareness-raising initiatives, such as “days of action” sponsored by various organizations informing children, youth, and parents about bullying. There are also prevention programs and reporting tools which allow anonymous reporting of bullying situations to the authorities involved.

### British Columbia

Victims and their families in B.C. have access to the Ministry of Education’s cyberbullying strategy as well as the B.C. school curriculum on digital literacy, providing a district or teacher has brought them into the classroom.

The Ministry of Education introduced the Expect Respect and a Safe Education (ERASE) bullying prevention and intervention strategy in June 2012. The strategy includes a program which can be used to intervene in bullying situations. An online tool for reporting to school officials can be used anonymously by students to report incidents of bullying. Information is then relayed directly to the schools for action.

ERASE also provides information for parents and children about how parents can detect if their child is involved in bullying and what children can do if

### Youth Voices

Youth felt that because of the risks of Internet use, children should be taught from a young age how to deal with unsafe situations, recognize cyberbullying, and protect their privacy.

### Digital Literacy Framework

The Ministry of Education is transforming curriculum to include learning activities involving digital literacy skills and tools as part of a student’s learning process. Currently, a Digital Literacy Framework includes developmentally appropriate learning objectives about cyberbullying, Internet safety, privacy and security, relationships and communication, digital footprint and reputation, and self-image and identity. This framework supports B.C.’s redesigned curriculum.

### Youth Voices

Overall, youth from all three focus groups felt that their schools did not do enough to educate students about online safety. They also suggested that current presentations should be improved to be more interactive and include elements such as role play or sketches.

### ERASE

B.C.'s ERASE Strategy was launched in 2012 and includes a five-year, multi-level training program for educators and community partners to help them proactively identify and address all forms of bullying and undertake threat assessments. The Ministry of Education has committed \$4 million to the program. As part of the training, educators also learn how to identify and respond to mental health and domestic violence issues.

The four levels of training include:

- Level 1 – Preventing Bullying/Ensuring Safe and Caring School Communities
- Level 2 – Basic Violence/Threat Risk Assessment
- Level 3 – Advanced Violence/Threat Risk Assessment
- Level 4 – Train the Trainer.

Approximately 11,000 educators and community partners have been trained in the first three levels which incorporate the areas of positive mental health promotion, school connectedness, bullying prevention, and violence threat risk assessment.

All levels of training are reported to have been well received by educators and community partners. All levels of the training program focus on educating professionals on the importance of understanding, preventing, and providing effective intervention as they relate to the issues of bullying, cyberbullying, and other harmful online behaviours.

The Integrated Services and Safe Schools Team within the Ministry of Education, comprising four positions, administers the ERASE strategy as part of its mandate of being responsible for all aspects of student health, well-being, and safety in the province. Safer Schools Together is the contracted agency for the training component of the strategy.

they are involved in or witness bullying.<sup>60</sup> ERASE aims its messaging at young people, parents, and schools in a manner intended to promote community-wide discussions.

An ERASE student advisory group has published social media guidelines which address both cyberbullying and sexting, and set out guidelines for behaviour of students, parents, teachers, and school staff.<sup>61</sup> This resource includes a number of guidelines that encourage young people to attend to their own privacy, as well as the privacy of others.

### Youth Voices

Youth suggested that, when parents and teachers are teaching youth about bullying or are running anti-bullying programs, they should talk more specifically about cyberbullying as it can look very different than in-person bullying, and it can be difficult to use some of the same techniques suggested to deal with in-person bullying.

<sup>60</sup> [www.erasebullying.ca](http://www.erasebullying.ca)

<sup>61</sup> ERASE Student Advisory. *Social Media Guidelines Resource*. ERASE Bullying. Retrieved from [http://www.erasebullying.ca/assets/pdf/social\\_media\\_guidelines.pdf](http://www.erasebullying.ca/assets/pdf/social_media_guidelines.pdf)

The Ministry of Education has also developed a Digital Literacy Framework that provides educators with a framework for developing digital literacy in the classroom. One key component is digital citizenship, which addresses cyberbullying as well as other topics.<sup>62</sup> The key learning objectives are for students to be able to recognize cyberbullying and to learn how they can deal with it. The framework includes information for teachers about other issues that can be related to cyberbullying, such as privacy and security, relationships and communication, Internet safety, the digital footprint and reputation, self-image and identity, legal and ethical aspects, and understanding and awareness of the role of information and communication technology in society.<sup>63</sup>

We do a service to young people when we place education on cyberbullying – whether it happens in schools or in our communities – into the larger context within which it occurs. This includes attention to human rights, including privacy rights, but also to the links between living in a networked society and a healthy democracy. This nexus of issues can be addressed through the topic of digital citizenship, a term that encapsulates the concept of the responsible use of online technologies. All of this requires a comprehensive approach by government to address the many dimensions of cyberbullying.

## Canada–Wide

There are several websites that provide information for parents and youth in Canada, including PREVNet, a network of research and organizations from across Canada, and the Canadian Centre for Child Protection. Both of these organizations provide resources that can be used in classrooms. The Government of Canada also has a website titled “Stop Hating Online/Get Cyber Safe,” providing information for parents and children on what to do if bullying or cyberbullying is encountered.<sup>64</sup>

### Youth Voices

Youth reported that, if they went to a teacher or counsellor with a problem related to being online, these adults did not really know what to do and did not take steps to address the issue.

*“They would be polite about it and say ‘Oh it’s a problem and we’ll help you’ but will never follow up.”*

*“They say fancy words but don’t help – they think we’re stupid.”*

*“Schools often say they help, but actually they don’t do anything.”*

### Youth Voices

Only two of the youth consulted had heard of the term “digital citizenship.” They explained it as being a guideline for acting responsibly and respectfully when online or when part of an online community.

<sup>62</sup> The Digital Literacy Framework can be viewed online at: [https://www.bced.gov.bc.ca/dist\\_learning/docs/digital-literacy-framework.pdf](https://www.bced.gov.bc.ca/dist_learning/docs/digital-literacy-framework.pdf)

<sup>63</sup> Amongst others. See the Digital Literacy Framework for further details.

<sup>64</sup> [www.getcybersafe.gc.ca](http://www.getcybersafe.gc.ca)

MediaSmarts is another Canadian organization that provides classroom resources for addressing cyberbullying and it also provides an online tutorial for parents on instilling digital literacy in children.<sup>65</sup> Its information on digital literacy recognizes that understanding the privacy implications of one's online activities is a key part of being technologically literate, and that these are both important aspects of digital citizenship, which itself is about "*rights and responsibilities, participation or civic engagement, norms of behaviour or etiquette and a sense of belonging and membership*" in a networked world.<sup>66</sup> Including digital citizenship in curricula on cyberbullying helps provide young people with tools and a context in which they can be positive agents in their own lives and communities.

In the corporate sector, TELUS has launched an initiative to address Internet and smartphone safety. The Canada-wide program TELUS WISE (Wise Internet and Smartphone Education) consists of in-person seminars and online resources, targeted at children ages eight to 18 and at adults. It has been developed with the assistance of MediaSmarts and other industry experts.<sup>67</sup> The program includes in-person seminars and website-based resources. Many of the materials aimed at young people are delivered in plain language, through formats such as comics and YouTube videos, and address a variety of topics – such as cyberbullying – that relate to the topic of keeping a “clean” digital footprint.

UNICEF Canada's initiative Rights Respecting School (mentioned in the Senate Committee's report *Cyberbullying Hurts*<sup>68</sup>) is a program which attempts to empower children by teaching them about their rights using the *UN Convention on the Rights of the Child (UNCRC)*<sup>69</sup> as a basis for enhancing an inclusive and respectful school culture for children and adults. Using a consistent, rights-respecting approach to policy, decision-making, school and classroom programming, school staff and children learn about the importance of rights and the responsibilities that accompany them. This initiative works

### Promising Practices

Cape Horn Elementary School in Coquitlam became Canada's first Rights Respecting school in 2008. Researchers from Cape Breton University's Children's Rights Centre were involved in this initiative. Kathrine Covell and Brian Howe's research findings demonstrate that comprehensive rights-respecting initiatives in schools result in: increased levels of participation in all aspects of schooling, a reduction in detentions by up to 50 per cent, and a boost in the morale of teachers. Other Rights Respecting schools have been established in B.C. since 2008; however, confirmed numbers were unavailable.

<sup>65</sup> [www.mediasmarts.ca](http://www.mediasmarts.ca)

<sup>66</sup> <http://mediasmarts.ca/digital-media-literacy-fundamentals/digital-literacy-fundamentals.ca>

<sup>67</sup> TELUS website. [https://about.telus.com/community/english/about\\_us/for\\_our\\_customers/wise\\_info](https://about.telus.com/community/english/about_us/for_our_customers/wise_info)

<sup>68</sup> Standing Senate Committee on Human Rights, 2012.

<sup>69</sup> United Nations. (1989). *Convention on the Rights of the Child*. Retrieved from <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

on enhancing a school's culture and the work already being done rather than operating as an add-on initiative.<sup>70</sup> It is thought that by enhancing a community's appreciation for – and understanding of – rights, the harm and inappropriateness of bullying behaviours can be better understood and reduced.

## International

Several international programs provide information and educational resources, including the Red Cross RespectED program that provides prevention work in schools,<sup>71</sup> Kids Internet Safety Alliance (KINSA) that runs the Nobody Stands Alone cyberbullying education campaign,<sup>72</sup> and the Cybersmile Foundation, whose website provides research on cyberbullying as well as helpful information for parents and children.<sup>73</sup>

## Raising Awareness

There are several organizations promoting awareness of bullying and cyberbullying and their impacts. In addition to the work of organizations, schools, families, and young people, there are days of action that can be used as focal points for organizing, raising awareness, and action. Some of the current campaigns being sponsored both nationally and internationally include Pink Shirt Day<sup>74</sup> and UN International Anti-Bullying Day.<sup>75</sup>

The Commissioner and the Representative find that the current program response to cyberbullying in B.C. is fragmented, consisting mainly of the ERASE program based in the B.C. school system and a number of national and international initiatives. It is impossible at this point to assess the impact of ERASE on children and youth as no evaluation of the program or data are available. In addition, it is a very small initiative in terms of resources and does not represent a comprehensive response to the issue.

More focus and leadership needs to be brought by the provincial government to create a comprehensive and integrated, made-in-B.C. response to cyberbullying that will include help for those involved as perpetrators, victims, or both; that will have strong education and prevention components that include the broader context of digital citizenship and digital literacy; and that will produce measurable results so that we can better understand whether and how our actions are fulfilling intended goals.

<sup>70</sup> UNICEF Rights Respecting Schools Initiative. Retrieved from [www.rightsrespectingschools.ca](http://www.rightsrespectingschools.ca)

<sup>71</sup> [www.redcross.ca/what-we-do/violence--bullying-and-abuse-prevention](http://www.redcross.ca/what-we-do/violence--bullying-and-abuse-prevention)

<sup>72</sup> <http://kinsa.net>

<sup>73</sup> <http://www.cybersmile.org>

<sup>74</sup> [www.pinkshirtday.ca](http://www.pinkshirtday.ca)

<sup>75</sup> [www.state.gov/j/drl/rls/rm/2012/189663.htm](http://www.state.gov/j/drl/rls/rm/2012/189663.htm)

## Recommendation 1

That the Government of British Columbia lead the development of a comprehensive and evidence-based strategy to address cyberbullying.

### Details:

- This strategy should include the efforts of the Ministry of Education and Ministry of Justice, and engage educational partners to provide a child-focused approach that integrates the broader context within which cyberbullying occurs.
- The strategy should make a measurable difference in the lives of children and youth affected by cyberbullying and help to prevent additional children and youth from being affected.
- A single point of accountability should be identified in government to be responsible for this strategy and its implementation.

Government to present a draft strategy to the Commissioner and Representative by March 31, 2016.

## Criminal Law

The *Criminal Code of Canada*<sup>76</sup> has several provisions that can be applied in the context of extreme cyberbullying behaviours. However, criminal law is only one of an array of tools to address cyberbullying, and a rights-based approach suggests that caution should be used whenever applying criminal law for cyberbullying, particularly when children are the perpetrators.

*Criminal Code* provisions that can be applied in cyberbullying cases include:

- criminal harassment (s. 264)
- uttering threats (s. 264.1)
- intimidation (s. 423(1))
- defamatory libel (s. 298-301)
- assault (s. 265-273)
- mischief in relation to data (s. 430 [1.1])
- unauthorized use of computer (s. 342.1)
- identity fraud (s. 403)
- extortion (s. 346)
- false messages, indecent or harassing telephone calls (s. 372)
- counselling suicide (s. 241)
- incitement of hatred (s. 319)
- child pornography offences (s. 163.1) and
- the non-consensual distribution of intimate images (s. 162.1)<sup>77</sup>

<sup>76</sup> R.S.C. 1985, c. C-46, s. 745.

<sup>77</sup> List adapted from the CCSO Cybercrime Working Group. (June 2013). *Cyberbullying and the Non-consensual Distribution of Intimate Images*. Report to the Federal/Provincial/Territorial Ministers Responsible for Justice and Public Safety. Retrieved from <http://www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdncii/p4.html>



However, recent case law suggests that there are legal limits to the use of criminal law to address cyberbullying when it infringes on freedom of speech as enshrined in the *Charter of Rights and Freedoms* (the Charter).<sup>78</sup> In Saskatchewan (*Human Rights Commission*) v. *Whatcott*, the Supreme Court of Canada considered Saskatchewan’s human rights legislation, specifically its provision prohibiting hate publications.<sup>79</sup> The court found that prohibiting language that “. . .ridicules, belittles or otherwise affronts the dignity of”<sup>80</sup> to be overly broad and struck it from *The Saskatchewan Human Rights Code*.<sup>81</sup> As a result, any law that attempts to criminalize bullying language, which often “ridicules,” “belittles,” and “affronts the dignity” of others, may be unconstitutional. As it currently stands, it is not possible to criminalize this type of bullying activity according to Canadian criminal law.

The Coordinating Committee of Senior Officials (CCSO) Cybercrime Working Group, a group of senior government officials working under federal, provincial, and territorial ministers responsible for Justice and Public Safety, was formed in January 2013 to study cyberbullying. It concluded that bullying and cyberbullying both include such a broad range of behaviour that no single offence could encompass and prohibit all cyberbullying behaviour.<sup>82</sup> As such, it suggested that a legal response should only be regarded as one piece of an overall anti-bullying strategy, particularly in a democratic society where there would likely be a reluctance to bring the law to bear on human interactions to the extent necessary to ban all behaviour considered bullying. Essentially, responsible and respectful behaviour cannot be legislated.

#### Youth Voices

*“The Internet is a hard place to control.”*

The CCSO and others supported the creation of a criminal offence to address the harm that can arise from sexting.<sup>83</sup> The harm from sexting behaviour occurs when intimate images are shared with others without the consent of the subject of the photo, sometimes resulting in humiliating and devastating consequences. This is sometimes referred to as “revenge porn”. It has recently been added as an offence in the *Criminal Code of Canada* through Bill C-13, the *Protecting Canadians from Online Crime Act*, as an offence for the non-consensual distribution of intimate images.

<sup>78</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

<sup>79</sup> 2013 SCC 11, [2013] 1 S.C.R. 467.

<sup>80</sup> S.S., 1979, c. S-24.1, s. 14(1)(b).

<sup>81</sup> S.S., 1979, c. S-24.1.

<sup>82</sup> CCSO Cybercrime Working Group, June 2013.

<sup>83</sup> CCSO Cybercrime Working Group, June 2013; West Coast LEAF, June 2014. Note that “sexting” is the term given for the practice of sharing an intimate image of oneself through text message – which is much broader than sharing it with consent or for revenge. This practice is surprisingly common among youth. A recent Canadian survey found that of the Grade 7 to 11 students who had access to a cell phone, 24 per cent reported having received a sext, eight per cent had sent a sext of themselves to someone else, and just under one-quarter of these students had a sext forwarded to someone else. (The sample size was 5,436 of Grade 4 to 11 students). See *Young Canadians in a Wired World, Phase III: Sexuality and Romantic Relationships in the Digital Age*. (2014). *MediaSmarts* p.24.

## The Offence of Non-Consensual Distribution of Intimate Images

Bill C-13 made it a criminal offence in Canada to knowingly publish, distribute, transmit, sell, make available, or advertise an intimate image of a person. Making, possessing, or accessing such an image is not included in the offence. The offence also requires that there must have been circumstances at the time of the recording that would give the depicted person a reasonable expectation of privacy. The *Criminal Code* is clear that where an offence has an element of communication, the use of any kind of telecommunications device would qualify.

Prior to Bill C-13, there was no criminal recourse when an intimate image was shared without consent, unless the sharing also violated current child sex abuse image laws, or the image was recognized as child pornography under provisions of the *Criminal Code*. The child pornography provisions in the *Criminal Code* make it an offence to share intimate images if the subject is younger than 18 and is “depicted as engaged in explicit sexual activity” or the “dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region.”<sup>84</sup> This section of the code is directed at the making, distribution, accessing, and possession of child pornography and is obviously intended to deal with those engaged in profiting or accessing child sex abuse images. However, in the absence of a more appropriate option, this section of the *Criminal Code* has been applied to a range of cases of sexting involving young people.<sup>85</sup> The new offence under Bill C-13 provides prosecutors with options other than the child pornography offence in cases involving young people and sexting or revenge porn.

This bill also introduced judicial orders to assist with collecting evidence for crimes committed online. A preservation demand or order can be authorized when the police have reasonable grounds to suspect that an offence has been or will be committed. It allows the police to have an Internet service provider preserve computer data in its control. When law enforcement requires computer data to conduct a criminal investigation, a preservation demand can be made by the police while an order can be granted by a judge at the request of the police. These are temporary measures, as a preservation demand is in effect for 21 days while an order is in effect for 90 days.

Through Bill C-13, the courts also now have the power to order that anyone who is convicted of an offence under the *Criminal Code* can also be “prohibited from using the Internet or other digital network.”<sup>86</sup> Given the realities of today’s wired world, such a ban could have far-reaching consequences for an individual’s social, emotional and professional life.<sup>87</sup>

## A Child Rights Approach in Applying Criminal Law to Cyberbullying

Canada has international obligations under the *UNCRC* to respect and promote the rights of all children in the country. The nature of this treaty obligation imposes a duty to bring domestic law into conformity with obligations under international law.<sup>88</sup> Several provisions of the *UNCRC* appear

<sup>84</sup> Section 163.1, *Criminal Code*, RSC, 1985.

<sup>85</sup> For a detailed examination of how these cases have been treated in Canada, see Shariff S. (2015). *Sexting and Cyberbullying: Defining the Line for Digitally Empowered Kids*. New York, Cambridge University Press. p. 87.

<sup>86</sup> Section 162.2 of the *Criminal Code*.

<sup>87</sup> UNICEF Canada, April 2014, p. 16.

<sup>88</sup> Brownlie, I. (1998). *Principles of Public International Law*. New York: Oxford University Press. p. 35.



to have application with regard to cyberbullying. Article 19 of the *UNCRC* recognizes that children have a right to be protected from all forms of physical or mental violence. The UN Committee on the Rights of the Child has found that Article 19 applies to cyberbullying.<sup>89</sup>

Cyberbullying may also interfere with children's rights to education and health, both enshrined in the *UNCRC* in Articles 24 and 28. Canada's failure to live up to its treaty obligations regarding bullying was noted by the Senate Committee on Human Rights in 2007. Its report recommended a national strategy to combat bullying, including a national education campaign to teach children, parents, and teachers about bullying and to promote conflict resolution and effective intervention strategies.<sup>90</sup> Little has been done on a national strategy to date.

Caution must be employed in applying any criminal offences to cyberbullying, including the new criminal offence for the non-consensual distribution of intimate images, because of the potential threat to children's rights. Criminally charging children for online behaviour may be inappropriate for a number of reasons. UNICEF Canada has noted that increasing the exposure of children and youth to criminal liability and prosecution is a harm to them that must be considered and ought to be avoided, especially in cases where a youth's "*actions reflect a youthful exploratory instinct or a lack of awareness of the consequences and have no malicious intent.*" UNICEF also noted that the harms to children once they are criminalized include "*reputational damage, a permanent stigma negatively affecting education and employment opportunities, potential acts of self-harm resulting from a sense of embarrassment and humiliation.*"<sup>91</sup>

A charge under the child pornography provision can have dire consequences for a young person as it can involve mandatory minimum sentences, listing on the sex offender registry, and inclusion in a DNA databank. It could also prevent future enrolment in professional post-secondary programs, restrict employment opportunities, and prevent travel outside of the country. It carries a lifetime stigma of being labeled a child pornographer. This provision of the *Criminal Code* is designed for offences relating to the sexual exploitation of children by pedophiles.<sup>92</sup>

The new offence for the distribution of intimate images without consent does not always require that a child or young person "knowingly" commits such an act; a young person can be prosecuted for "*being reckless as to whether or not that person gave their consent to that conduct.*"<sup>93</sup> This is a lower standard than intent and one that could have unintended consequences. For example, it could catch

<sup>89</sup> General comment no. 13. (2011). United Nations. *Convention on the Rights of the Child*. Retrieved from [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf)

<sup>90</sup> Standing Senate Committee on Human Rights. (April 2007). *Children: The Silenced Citizens, Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*. Retrieved from <http://www.parl.gc.ca/Content/SEN/Committee/391/huma/rep/rep10apr07-e.pdf>

<sup>91</sup> UNICEF Canada. (Feb. 16, 2011). *Bill C-22: An Opportunity to Protect All of Canada's Children in a New Digital Generation*: Brief submitted by UNICEF Canada to the Senate Committee on Legal and Constitutional Affairs, p.5.

<sup>92</sup> West Coast LEAF, 2014, P.43. Retrieved from [http://www.unicef.ca/sites/default/files/imce\\_uploads/TAKE%20ACTION/ADVOCATE/DOCS/UNICEF%20Canada%20submission%20-%20Bill%20C-22%20\(FINAL\).pdf](http://www.unicef.ca/sites/default/files/imce_uploads/TAKE%20ACTION/ADVOCATE/DOCS/UNICEF%20Canada%20submission%20-%20Bill%20C-22%20(FINAL).pdf)

<sup>93</sup> S. 162.1 of the *Criminal Code* states that "Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty..."

a young person who shares an intimate image from a website of someone they do not know (such as a celebrity) and therefore have no way of obtaining consent.<sup>94</sup> UNICEF Canada also raised this concern in its submission to the parliamentary committee that reviewed the legislation.<sup>95</sup> A child rights approach requires caution in applying criminal prosecutions to young people, and even greater caution is warranted when the alleged act is the result of a reckless or immature action.

Operating on the principle of the best interests of the child would mean avoiding the criminalization of children unless doing so would be in their best interests. With this in mind, UNICEF recommended that prosecutorial guidelines be developed that could be used to withdraw charges or stay proceedings against a child who may have committed an offence under the child pornography provisions in the *Criminal Code*. UNICEF Canada also recommended in its submission to the parliamentary committee on Bill C-13 that young people should be exempt from a conviction for non-consensual sharing of intimate images in cases involving two consenting young people.<sup>96</sup>

### Considerations when Applying Criminal Law to Cyberbullying and Young People

While cyberbullying cases that are extreme enough to be considered for criminal prosecution may be small in number and do not represent the majority of cyberbullying incidents that occur on a daily basis, there are several key considerations that should guide police and prosecutors in applying any criminal offence to young people for cyberbullying. These considerations should be viewed within the larger context in which cyberbullying is occurring, bearing in mind the *Criminal Code*, the *Youth Criminal Justice Act*, and the limits to what we know about cyberbullying and its impacts.<sup>97</sup>

First, consideration should be given to current research findings on the complex nature of cyberbullying situations. Is it inaccurate and simplistic to label children and youth as either victims or perpetrators? In many cases, they are both. This needs to be taken into account when charges are being considered. Caution must be employed to be certain that any action taken targets the harmful behaviour it was created to target.

Further, given the possibly high prevalence rates of cyberbullying and the high participation rates of youth in the online world, the use of *Criminal Code* offences should be viewed as one of many tools. Effective education and prevention initiatives should also be undertaken so that children and young people understand the legal consequences of their actions in the online world.<sup>98</sup> Promotion of the

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<sup>94</sup> For a discussion about the potential problems with the recklessness standard see Fraser, D. (November 20, 2013). Some comments on the new Canadian Cyberbullying bill, aka Bill C-13 “Protecting Canadians from Online Crime Act.” *Canadian Privacy Law Blog*. Retrieved from <http://blog.privacylawyer.ca/2013/11/some-comments-on-new-canadian.html>

<sup>95</sup> UNICEF Canada, April 2014, p.15.

<sup>96</sup> UNICEF Canada. (April 29, 2014). *Bill C-13: A Need to Consider the Impacts Upon All Children and Young People, Whether as Victims, (Cyber)Bullies or Bystanders: brief submitted by UNICEF Canada to the House of Commons Standing Committee on Justice and Human Rights*, p. 4. Retrieved from <http://www.parl.gc.ca/content/hoc/Committee/412/JUST/Evidence/EV6645300/JUSTEV28-E.PDF>

<sup>97</sup> The *Youth Criminal Justice Act* (S.C. 2002, c. 1) applies to young people between 12 and 18 years of age who are alleged to have committed criminal offences.

<sup>98</sup> UNICEF Canada, April 2014, p. 16.

concepts of rights, privacy, consent, and digital citizenship are necessary to enable young people to make informed choices about how they behave.

Criminal charges should only be used in the most extreme cases, taking care to appreciate the harms associated with criminalizing children. Only particularly egregious situations, where intent to commit the harm is present and in which consent was absent, should be captured by the charge. Overall, criminal offences should only be one part of a much larger strategy to combat cyberbullying. Charges should be applied in a measured fashion that neither underplays nor sensationalizes the dangers of the online world to children and youth.

### Recommendation 2

That the Attorney General consider developing prosecution guidelines for the application of criminal law to cyberbullying cases. These policy guidelines should reflect a child-centred approach for laying charges against minors and consider the greater impacts of criminalizing children and youth.

## Nova Scotia's Cyber-Safety Act

In 2012, a task force established by the Nova Scotia government released *Respectful and Responsible Relationships: There's no App for That*, putting forward 84 recommendations.<sup>99</sup> Following this, and the high-profile suicide of cyberbullying victim Rehtaeh Parsons, the Nova Scotia government enacted the *Cyber-Safety Act*.<sup>100</sup> This act creates a tort of cyberbullying, which permits civil action against the cyberbully. It defines cyberbullying as:

*... any electronic communication through the use of technology including, without limiting the generality of the foregoing, computers, other electronic devices, social networks, text messaging, instant messaging, websites and electronic mail, typically repeated or with continuing effect, that is intended or ought reasonably to be expected to cause fear, intimidation, humiliation, distress or other damage or harm to another person's health, emotional well-being, self-esteem or reputation, and includes assisting or encouraging such communication in any way.<sup>101</sup>*

The act makes a parent liable for the cyberbullying conducted by his or her child and provides for protection and prevention orders for victims of cyberbullying which can order a person to stop cyber-communication or confiscate the technology used for cyberbullying. It also created a CyberScan investigation unit to investigate complaints and help victims find resolution to bullying situations through informal or legal means.<sup>102</sup> A number of orders have been issued under the new law.

<sup>99</sup> MacKay, A.W. (Feb. 29, 2012). *Respectful and Responsible Relationships: There's No App for That: The Report of the Nova Scotia Task Force on Bullying and Cyberbullying*. Retrieved from [http://webcache.googleusercontent.com/search?q=cache:w5thMB5QCS0J:www.nssba.ca/archived-enevns/doc\\_download/58-nova-scotia-task-force-on-bullying-and-cyber-bullying+&cd=4&hl=en&ct=clnk&gl=ca](http://webcache.googleusercontent.com/search?q=cache:w5thMB5QCS0J:www.nssba.ca/archived-enevns/doc_download/58-nova-scotia-task-force-on-bullying-and-cyber-bullying+&cd=4&hl=en&ct=clnk&gl=ca)

<sup>100</sup> SNS, 2013, c. 2.

<sup>101</sup> S.3(1)(b) of the *Cyber-Safety Act*, SNS, 2013, c. 2.

<sup>102</sup> <http://cyberscan.novascotia.ca/>

Critics suggest the act has had a chilling effect on freedom of expression and that it diminishes the “*Canadian marketplace of ideas*”<sup>103</sup> by being overly broad and capturing behaviour that should not be subject to legal scrutiny.<sup>104</sup> The breadth of its definition of cyberbullying has been criticized as unconstitutional and it is already the subject of Charter-based legal actions.<sup>105</sup> The CyberSCAN investigative unit nevertheless provides a clear place where young people, parents, teachers, and the public can file complaints about cyberbullying for investigation.

### Other Legislative Responses

In a number of provincial jurisdictions, there have been recent amendments to education legislation to address the impacts of bullying and cyberbullying. In Alberta, amendments to the *Education Act* came into force on Sept. 1, 2015, requiring all students to “*refrain from, report and not tolerate bullying or bullying behaviours directed towards others in the school whether or not it occurs within the school building, during the school day or by electronic means.*” Currently, Alberta’s *Education Act* places an obligation on schools to provide a “*welcoming, caring, respectful and safe learning environment.*”<sup>106</sup>

Manitoba’s *Public Schools Act* has been amended to require each school to have a code of conduct which addresses abusive behaviour and use of cell phones and the Internet.<sup>107</sup> In Nova Scotia, as well as having the *Cyber-Safety Act*, the *Education Act* was amended to establish provincial school codes of conduct and require tracking and monitoring of reported incidents of cyberbullying.<sup>108</sup> In Ontario, the *Education Act* has been amended to require school boards to establish bullying prevention and intervention plans and programs. In Quebec, the *Education Act* and the *Respect Private Education Act* have been amended to define terms and responsibilities with respect to bullying and violence and require all public and private schools to adopt and implement an anti-bullying and anti-violence plan.<sup>109</sup> New Brunswick’s *Education Act* was also amended to clarify roles and responsibilities of principals, educators, parents, and students and to establish protocols for discipline and intervention.

In B.C., the *School Act* has been amended to require that boards of education establish codes of conduct in accordance with provincial standards established by the Minister of Education.<sup>110</sup> Codes are required to contain, among other things, a reference to the prohibited grounds of discrimination under *B.C.’s Human Rights Code*, and one or more statements about acceptable and unacceptable behaviour, including bullying and its consequences.

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<sup>103</sup> Zwibel, C.F. (January 2, 2014). Zann case perfect illustration of cyber-safety law’s overreach. *Halifax Chronicle Herald*. Retrieved from <http://thechronicleherald.ca/opinion/1176803-zann-case-perfect-illustration-of-cyber-safety-law%E2%80%99s-overreach>. Cara Faith Zwibel is director of the Canadian Civil Liberties Association.

<sup>104</sup> Editorial. (February 17, 2014). Nova Scotia’s cyberbullying law goes too far. *Globe and Mail*. Retrieved from <http://www.theglobeandmail.com/globe-debate/editorials/nova-scotias-cyber-bullying-law-goes-too-far/article16907312/>

<sup>105</sup> Fraser, D. (February 26, 2015). The disaster of the Nova Scotia cyberbullying law; it’s time to go back to the drawing board. *Canadian Privacy Law Blog*. Retrieved from Feb. 26, 2015, at <http://blog.privacylawyer.ca/2015/02/the-disaster-of-nova-scotia.html>

<sup>106</sup> *Education Act*, S.A., 2012, c. E-0.3, preamble.

<sup>107</sup> *The Public Schools Act*, C.C.S.M. c. P-250.

<sup>108</sup> S.N.S. 1995-96, c1.

<sup>109</sup> <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2012C19A.PDF>

<sup>110</sup> Available online: <http://www2.gov.bc.ca/gov/DownloadAsset?assetId=D4DE4CDF12BD4C5AB1D9EA6D3F8CB222>

In addition, the U.S. has a *Federal Anti-Cyber-Stalking Law* to ban anyone from using telecommunications by any device or software to annoy, abuse, threaten, or harass a person.<sup>111</sup> It provides for a penalty of a fine or imprisonment for up to two years. Forty-five states have laws against bullying. New Jersey now has the most comprehensive example, as its law makes it a crime to bully or harass someone on the basis of race, sex, sexual and gender identity. This law also requires schools to train administrators and teachers and operate anti-bullying programs.<sup>112</sup>

The Commissioner and Representative find that B.C.'s efforts to educate students about cyberbullying and digital citizenship and the Province's enforcement of appropriate behaviour with regard to incidents of cyberbullying need to be intensified and made uniform across B.C. in order for this issue to be addressed consistently by every school and for every student.

### Recommendation 3

That the Ministry of Education ensure developmentally appropriate learning objectives about cyberbullying are part of the re-designed provincial curriculum when it is fully implemented, and that children and youth are educated about the harms of cyberbullying in the context of digital citizenship. The Ministry of Education should work with school districts and the British Columbia Teachers' Federation to ensure that cyberbullying is an element of professional development for teachers.

### Recommendation 4

That the Ministry of Education continue to ensure that all school districts across the province have codes of conduct in place in accordance with provincial standards. These codes should address cyberbullying.

<sup>111</sup> 47 U.S.C. 223.

<sup>112</sup> N.J.S.A. 18A:37-13.

# A Role for Social Media Organizations

Social media companies have a role to play in responding to cyberbullying. Many companies already recognize that they and their users have both social and legal responsibilities with regard to ensuring proper online conduct.

## Terms of Use and Policies

Many social media companies have Terms of Use or Responsible Use policies that prohibit users from engaging in bullying. For example, Facebook states in its policy that “*You will not bully, intimidate, or harass any user,*” that users will not post content that is “*hate speech, threatening, or pornographic,*” and that users will not “*facilitate or encourage any violations of this Statement or [Facebook’s] policies . . .*”<sup>113</sup> The termination provision of the agreement says that if a user violates these or other terms, the site can stop providing services to that user.<sup>114</sup>

Social media companies can also build social responsibilities into their policies and social media tools that can help victims of cyberbullying. In June 2015, Google announced that it would start removing “*revenge porn*” or rude or sexually explicit images shared without consent from its search results upon request. In a written statement announcing the initiative, Google acknowledged that such images “*are intensely personal and emotionally damaging.*”<sup>115</sup> Google operates a search engine in addition to social media platforms such as YouTube and Google+. This policy illustrates one way in which social media companies can demonstrate socially responsible practice with respect to cyberbullying.

## Personal Information and Consent

Social media companies also have obligations around privacy. Cyberbullying often involves the use of personal information, which under privacy laws in B.C. is information “*about an identifiable individual.*”<sup>116</sup> In many cases, a cyberbully is sharing personal information about a person he or she is bullying. If an individual can be associated with the information, then it may be subject to privacy protection.

When bullying happens face-to-face, privacy laws do not apply. In contrast, when personal information is posted on a social media site, that company may be viewed as collecting, disclosing, and retaining personal information about the cyberbully or the person being bullied – triggering the application of privacy laws. That company may not be responsible for directly obtaining consent for the collection of the personal information of the individual being bullied. However, it may be

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<sup>113</sup> Facebook.com. (n.d.). Terms of Service. Retrieved from <https://www.facebook.com/legal/terms>

<sup>114</sup> Ibid.

<sup>115</sup> See Google’s Public Policy Blog at <http://googlepublicpolicy.blogspot.ca/2015/06/revenge-porn-and-search.html>

<sup>116</sup> *The Personal Information Protection Act*, SBC 2003, s. 1.



required to exercise reasonable due diligence by informing all its users that *they* must obtain appropriate consent before disclosing personal information about third parties online.<sup>117</sup> Ultimately, this means that a social media company can remove personal information about an individual that appears to have been posted by a cyberbully without consent.

When cyberbullying includes personal information about the young person being bullied, that person should be able to request that the social media company remove the personal information. Many social media companies already have similar processes in place for other areas such as alleged copyright infringement, a format that could be extended to cyberbullying and social media in general.

### Clear Notification, Complaints, Openness

Privacy law in B.C. also requires clear notification to individuals about the personal information that an organization is collecting about them and the purpose for that collection.<sup>118</sup> This notification should be clear and easy for users to locate online even if someone is using a mobile device such as a cell phone. The law also requires openness – organizations must identify whom at the organization an individual may contact to make a complaint.<sup>119</sup>

Lessons learned about notice and openness in the area of privacy can be applied to the policies of social media companies more generally to inform young people, parents, teachers, or any supportive person about what they can do if someone is being cyberbullied. For example, social media sites can publish their policies and processes with respect to cyberbullying for young people. This information can include the policy itself, but should also include the point of contact at the company if someone wants to request that certain information be taken down, as well as the processing period for such requests, and options available to the user in the meantime. Privacy commissioners and child and youth advocates have long advocated that websites that have children and youth as users should “adopt privacy policies and usage agreements that are clear, simple, and understandable to the user.”<sup>120</sup> Such policies should also be easy-to-find for young people and companies can consider techniques to make the information accessible and digestible to young people even on a small screen.<sup>121</sup>

<sup>117</sup> See discussion in Denham, E. (July 16, 2009). *Report of Findings into the Complaint Filed by the Canadian Internet Policy and Public Interest Clinic (CIPPC) against Facebook Inc. Under the Personal Information Protection and Electronic Documents Act*, p.74-76. Retrieved from [https://www.priv.gc.ca/cf-dc/2009/2009\\_008\\_0716\\_e.asp](https://www.priv.gc.ca/cf-dc/2009/2009_008_0716_e.asp)

<sup>118</sup> For example, s.10 of the *Personal Information Protection Act* [SBC 2003] requires that organizations disclose the purpose for the collection of personal information.

<sup>119</sup> Sections 4 and 5 of the *Personal Information Protection Act* [SBC 2003].

<sup>120</sup> Children’s Online Privacy, Resolution of Canada’s Privacy Commissioners and Privacy Oversight Officials. (June 2008). Retrieved from [https://www.priv.gc.ca/media/nr-c/2008/res\\_080604\\_e.asp](https://www.priv.gc.ca/media/nr-c/2008/res_080604_e.asp)

<sup>121</sup> Techniques such as layering, using a privacy dashboard, or using visual or graphic cues – as well as consideration to the timing of notice not just when an app is first downloaded, but when it is first used and throughout its use – should be considered. See *Seizing Opportunity: Good Privacy Practices for Developing Mobile Apps*. (October 2012). Office of the Privacy Commissioner of Canada, Office of the Information and Privacy Commissioner of Alberta, Office of the Information & Privacy Commissioner for British Columbia. Retrieved from <https://www.oipc.bc.ca/guidance-documents/1426>

## Social Media Responsibility

Young people are a significant user group for social media companies. These companies have the tools and the means to commit to playing a significant role in addressing cyberbullying. Social media sites that build this into their socially responsibly business ethics will be alert to the possibility of cyberbullying, and will have policies and processes in place that are transparent and accessible to young people by being clear, simple, and understandable.

The Representative and Commissioner believe that social media companies can play a significant role in the response to cyberbullying by making policies and processes clearly available in order to assist young people, their families, and communities in dealing with materials online that they wish to be removed. This will help make the options clear for children, young people, and their supporters when dealing with cyberbullying so that they can pursue the best course of action.

### Recommendation 5

In addition to complying with privacy laws, social media companies that are based in, or reach into, B.C. should play a proactive role in responding to cyberbullying. Social media companies should develop policies and processes that facilitate the removal of personal information from social networks in cases of cyberbullying or where personal information has been inappropriately posted without consent.

#### Details:

- Such policies, including privacy policies, should be clear and simple, and allow children and youth to understand how to take action if they need help.

The Commissioner and Representative would welcome notification by social media companies about policies and/or programs that illustrate such a commitment by July 1, 2016.



## Conclusion

Cyberbullying has several different forms and inflicts harm on adolescents that traditional bullying does not. Cyberbullying can have a larger impact than face-to-face bullying due to a longer shelf-life of abusive messages, a wider audience, and the anonymity that the Internet can provide.

The responses to cyberbullying behaviours are as varied as the manifestations of cyberbullying. While some provinces have chosen to respond with task forces and legislation (e.g., Nova Scotia), others, such as B.C., have relied primarily on prevention initiatives spearheaded by the Ministry of Education.

There are several possible ways to respond to cyberbullying. However, the effectiveness of preventative, education-based approaches or of criminal law interventions is unclear. Individual legal recourse, such as civil remedies in defamation, appropriation of personality, and invasion of privacy, among others, are not easily accessible to victims with limited resources.<sup>122</sup> Criminal prosecution may offer protection for victims in extreme cases, though these cases do not likely represent the cyberbullying that young people generally face.

Most promising are the initiatives that aim to prevent cyberbullying behaviours. They include educational approaches as well as legislative ones that put an onus on school boards and schools to create codes of conduct. Effective prevention demands a culture shift. Although the academic literature does not currently provide a solution to the cyberbullying problem, it could be that a solution lies in supporting schools, families, and communities, and moving toward embracing a greater appreciation and understanding of human rights and digital citizenship – including privacy rights and the important role they play in the development of autonomy and responsible decision-making.

Digital citizenship is a term that encompasses the human rights and civic engagement that come into play in the online world and includes the right to privacy amongst others. The recent Senate Committee report put forward a recommendation that *“the promotion of human rights education and digital citizenship be a key component of any coordinated strategy to address cyberbullying developed in partnership by the federal, provincial and territorial governments.”*<sup>123</sup> Digital citizenship should be at the heart of any prevention efforts on cyberbullying because it permits a contextual approach to the issue that promotes education and awareness across a number of areas.

### Youth Voices

There was consensus on most issues across the youth focus groups, with the most notable exception being around the usefulness of school-based presentations addressing cyber safety. However, whether youth found the presentations they had attended useful or not, all participants agreed that youth should be learning about online security at an earlier age, and that the difference between in-person bullying and cyberbullying should be stressed more by educators.

<sup>122</sup> West Coast LEAF, 2014, p. 26.

<sup>123</sup> Standing Senate Committee on Human Rights, 2012, *Cyberbullying Hurts*, p. 90.

## Conclusion

As discussed previously, the *UNCRC* puts responsibility on signatory states to adhere to its articles by putting children first in the development of services for them. It is imperative that the *UNCRC* be a guide to developing solutions to cyberbullying. Article 3 of the Convention provides that children's best interests be a primary consideration. Any legal and policy reform must first consider whose interests are meant to be served by the changes. Article 19 specifically directs parties to take preventative measures with regard to bullying and Article 29 states that the education of a child must include:

*The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.*<sup>124</sup>

As the *UNCRC* makes clear, it is incumbent upon our governments to guide children and youth in developing respectful relationships. Both federal and provincial governments have a role to play in implementing the education of young people on cyberbullying in a manner that takes account of the broader context within which young people live, which means addressing it in the context of human rights, including privacy rights and digital citizenship.

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<sup>124</sup> United Nations. (1989). *Convention on the Rights of the Child*. Retrieved from <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

## Appendix – Resources

- Canadian Centre for Child Protection - <https://www.cybertip.ca/app/en/about>
  - *Resource Guide for Families*  
[https://www.cybertip.ca/app/en/internet\\_safety#internet\\_safety-self\\_peer\\_exploitation](https://www.cybertip.ca/app/en/internet_safety#internet_safety-self_peer_exploitation)
  - *School and Family Approaches to Intervention and Prevention: Addressing Self/Peer Exploitation*  
<https://protectchildren.ca/app/en/order?action=view&productid=175>
- Cybersmile Foundation – <http://www.cybersmile.org/who-we-are>
- Digital Literacy Framework - [https://www.bced.gov.bc.ca/dist\\_learning/docs/digitalliteracy-framework.pdf](https://www.bced.gov.bc.ca/dist_learning/docs/digitalliteracy-framework.pdf)
- Expect Respect and a Safe Education – ERASE Bullying – <http://www.bced.gov.bc.ca/sco/resources.htm>
- Google policy on “revenge porn” and search – <http://googlepublicpolicy.blogspot.ca/2015/06/revenge-porn-and-search.html>
- Kids in the Know – [https://www.kidsintheknow.ca/app/en/media\\_release\\_201406\\_education\\_modules\\_addressing\\_sexual\\_exploitation](https://www.kidsintheknow.ca/app/en/media_release_201406_education_modules_addressing_sexual_exploitation)
- Kids Internet Safety Alliance – <http://kinsa.net/>
- MediaSmarts – <http://mediasmarts.ca/about-us>
- PREVnet Canada – <http://www.prevnet.ca/>
- Red Cross RespectED – <http://www.redcross.ca/what-we-do/violence-bullying-and-abuse-prevention/educators/bullying-and-harassment-prevention/cyberbullying>
- Safer Schools Together – <http://saferschoolstogether.com/>
- Stop Hating Online, Government of Canada – <http://www.getcybersafe.gc.ca/cnt/cbrblng/tns/index-eng.aspx>
- WITS (Walk away, ignore, talk it out, seek help), University of Victoria – Canada – <http://web.uvic.ca/wits/about-us/>
- Stop A Bully – [www.stopabully.ca](http://www.stopabully.ca)
- TELUS WISE – [http://about.telus.com/community/english/about\\_us/for\\_our\\_customers/wise\\_info](http://about.telus.com/community/english/about_us/for_our_customers/wise_info)
- Youths, “Need Help Now” – <http://www.needhelpnow.ca/app/en/>

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# Contact Information

## Representative for Children and Youth

### *Phone*

In Victoria: 250-356-6710  
Elsewhere in B.C.: 1-800-476-3933

### *E-mail*

[rcy@rcybc.ca](mailto:rcy@rcybc.ca)

### *Fax*

Victoria: 250-356-0837  
Prince George: 250-561-4624  
Burnaby: 604-775-3205

### *Website*

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

### *Offices*

400 – 1019 Wharf Street  
Victoria, B.C. V8W 2Y9

1475 10th Avenue  
Prince George, B.C. V2L 2L2

#150 4664 Lougheed Hwy.  
Burnaby, B.C. V5C 5T5



B.C.'s Representative  
for Children and Youth



[@rcybc](https://twitter.com/rcybc) or [@rcybcyouth](https://twitter.com/rcybcyouth)



[Rep4Youth](https://www.youtube.com/Rep4Youth)

## Office of the Information & Privacy Commissioner

### *Phone*

250-387-5629 (Victoria)  
250-660-2421 (Vancouver)  
800-663-7867 (Elsewhere in B.C.)

### *E-mail*

[info@oipc.bc.ca](mailto:info@oipc.bc.ca)

### *Fax*

250-387-1696

### *Website*

[www.oipc.bc.ca](http://www.oipc.bc.ca)

### *Office*

947 Fort Street  
Victoria, B.C. V8V 3K3



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