

Social Media and Technology: The Death of Privacy?

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Privacy in the Age of Information

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Tech natives and their language: constant connection as community?



Nostalgia will get you nowhere: Let it Go

- Legislated Nostalgia: to force a body of people to have memories they don't actually possess (from *Generation X: 1991*)
- Coupland, author, artist, and futurist, writes about how the internet has literally changed our brains, and there is nothing we can do about it (*Globe & Mail*, September 27th)
- Everything is interconnected and instantly accessible, and the manifestation in our hypervisual culture is on the screens that substitute for direct experience (from *Forbes* magazine, explaining the flattened, timeless art piece *A Still Life with Twitter*)





Clockwise from above: Rehtaeh Parsons, Halifax 2013; Audrie Pott, Santa Clara, 2012; Amanda Todd, Port Coquitlam 2012

Cyberbullying Defined

Cyber-safety Act, SNS 2013, c 2, 3(1)(b)

“Cyberbullying” means 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 or electronic mail, typically repeated or with continuing effect, that is intended or ought reasonably 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.

III. Responses to the Problem

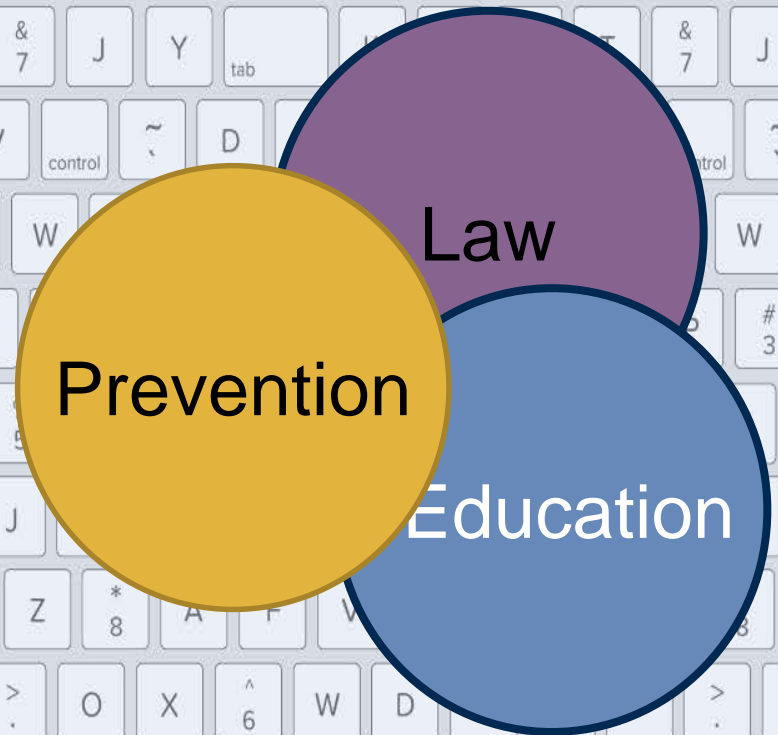
Non-Legal

Who Should Respond

- Parents
- Teachers
- Schools Administrators
- Schools Counsellors
- Justice System
- Judges, Police, Lawyers
- Community
- Internet service providers
- Social Media Networks

How? Prevention, Education, Law

- Whole School and inclusive approach
- Inter-agency governmental response
- Proactive interventions
- Education
- Progressive Discipline
- Restorative Approaches
- Youth Engagement
- Support Network



IV. Responses to the Problem

Legal

Law as Ally or Enemy

Law as Ally: Proposed Amendments to 162(1) in Bill C-13

162(1) 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) of an indictable offence and liable to imprisonment for a term of not more than five years; or

(b) of an offence punishable on summary conviction.

Definition of “intimate image”

(2) In this section, “intimate image” means a visual recording of a person made by any means including a photographic, film or video recording

(a) in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity;

(b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy; and

(c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed.

Law as Ally: Provincial Education Act

Education Act, SNS 1995-96, c1 s122

Where a student enrolled in a public school engages in

- (a) Disruptive behaviour or severely disruptive behaviour on school grounds, on property immediately adjacent to school grounds, at a school-sponsored or school-related activity, function or program whether on or off school grounds, at a school bus stop or on a school bus; or
- (b) Severely disruptive behaviour at a location, activity, function or program that is off school grounds and is not school-sponsored or school-related, if the behaviour significantly disrupts the learning climate of the school,

the principal, or the person in charge of the school, may take appropriate action as specified in the Provincial school code of conduct policy including suspending the student for a period of not more than five school days

Law as Ally: Provincial Human Rights Act

Human Rights Act, RSNS 1989, c214

(o) “sexual harassment” means

(i) vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome.

(ii) a sexual solicitation or advance made to an individual by another individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the individual to whom the solicitations or advance is made, where the individual who makes the solicitations or advance knows or ought reasonably to know that it is unwelcome or

(iii) a reprisal or threat against an individual for rejecting a sexual solicitation or advance.

5 (2) No person shall sexually harass an individual.

Law as Ally: Privacy & Common Law

- Defamation (more on *Bragg* below)
- Psychological Harm
- Tort of Privacy (*Tsige v Jones*)

Law as Enemy: Rights of Perpetrators

Constitutional Considerations

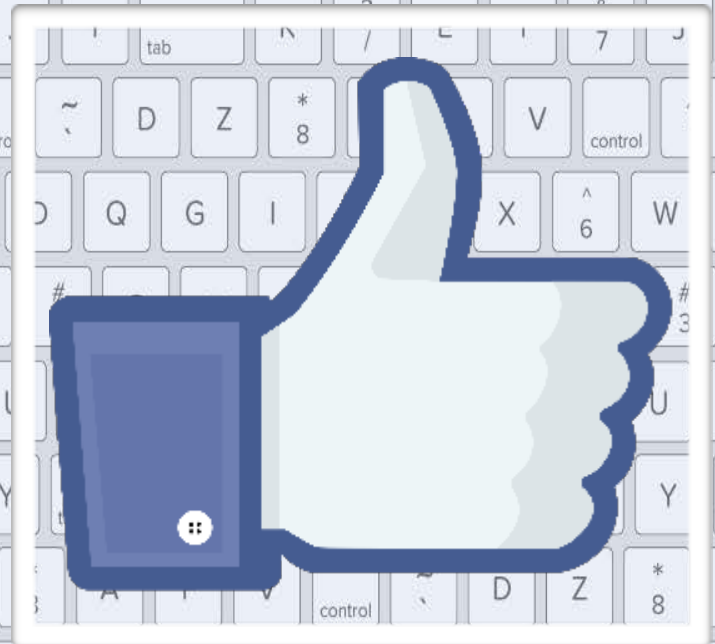
- Right to privacy (ss 7-8)
- Fair process (ss 7-14)
- Free speech (s 2b)

Is there a right to anonymity?

Law as Enemy: Privacy & American Perspective

A Facebook “like” is the internet equivalent of displaying a political sign in one’s front yard, which the Supreme court has held is substantive speech.”

(*Bland v Roberts*, 2013, 4th Circuit)



How might anonymity be differently protected in Canadian and American perspectives?

V. Constitutional Conflicts

Freedom of Press v
Privacy

Law as Enemy: Privacy for Leaders v Speech for Constituents



Clockwise from above:
Andrea Paul; Lenore Zann

AB v Bragg Communications 2012 SCC 46, 2 SCR 567

- Plaintiff, a victim of cyberbullying, could not pursue her tort case without name being published, according to lower courts
- The Supreme Court, however, disagreed, and allowed AB to proceed anonymously
- The SCC recognized that there are interests sufficiently compelling to justify restricting the access to her information: **privacy and the protection of children from cyberbullying**
- “The girl’s privacy interests in the case are tied both to her **age** and to the **nature of the victimization** she seeks protection from. It is not merely a question of her privacy, but of her privacy from relentlessly intrusive humiliation of sexualized bullying.”

AB v Bragg Communications

“As the Kids Help Phone factum constructively notes, protecting children’s **anonymity** could help ensure that they will seek therapeutic assistance and other remedies, including legal remedies where appropriate... Child victims need to be able to trust that their privacy will be protected as much as possible by those whom they have turned to for help.”

1 800 668 6868
KidsHelpPhone.ca

Kids Help Phone

AB v Bragg Communications 2012 SCC 46, 2 SCR 567

Justice Abella took judicial notice on objectively discernible harm based on the applicant's age, and the sexual nature of the case:

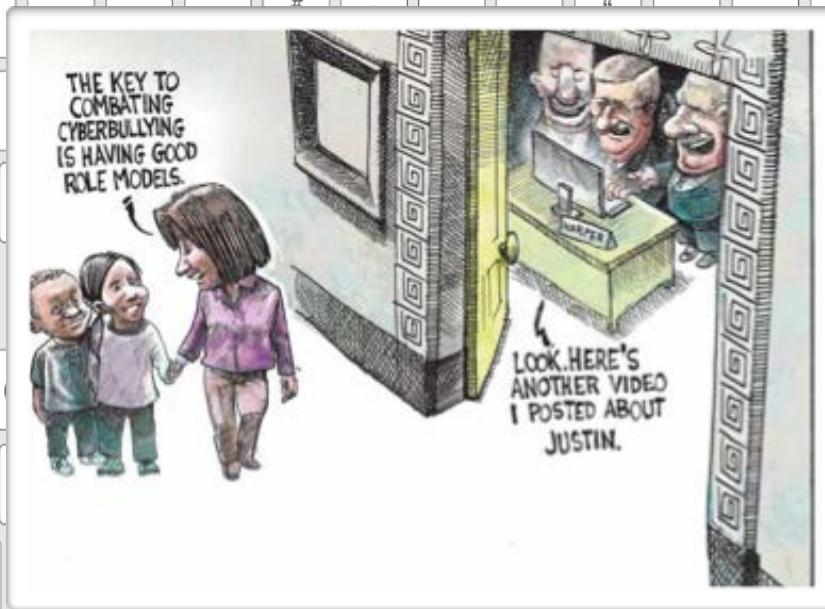
“If we value the right of children to protect themselves from bullying, cyber or otherwise, if common sense and the evidence persuade us that young victims of sexualized bullying are particularly vulnerable to the harms of revictimization upon publication, and if we accept that the right to protection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

How specific or generalizable will this case be: just young persons, only sexual?

Crime Control v Constitutional Protection



Conclusion: Is Privacy Dead?



“Bullying is a major social issue throughout the world and is one of the symptoms of a deeper problem in our society: ***the deterioration of respectful and responsible human relations.*** The magnitude of the problem is daunting and there are no simple solutions on the horizon. There are, however, some effective strategies.” (From Respectful and Responsible Relationships, There’s No App for That: The Report of the Nova Scotia Task Force on Bullying and Cyberbullying)