

The Law Needs to Catch Up to the Realities of Cyberbullying:

In 2014 I wrote a paper: "*Cyberbullying: The Current State of Our Privacy and Technology Law*" (available online: <http://www.lutz.nb.ca/14%2009%2024%20The%20Presentation.pdf>). This report provided a review of cyberbullying legislation across Canada, including the relevant case law. This is a new, and fast-changing, area of the law. Since I wrote the paper, there have been new developments with the Nova Scotia Supreme Court, thus the striking down of that province's cyberbullying law. Striking it down for infringing privacy rights set out in the *Charter of Rights and Freedoms*. Nova Scotia's *Cyber-Safety Act* had been the most comprehensive among Canadian provinces.

An article in Canadian Lawyer magazine by David Fraser of the law firm McInnes Cooper entitled: "Nova Scotia's cyberbullying law is a disaster" referring to the civil liberties infringements from the legislation's broad wording which captured activities that would be considered beyond cyberbullying. He argued in court this legislation should be struck down.

Meanwhile, the problem of cyberbullying is hardly going away, with the increasing pervasiveness of social media platforms from twitter to Facebook to Snap Chat and many more. With laptops, tablets, and smartphones, the internet is mobile, everywhere, creating a disturbing new dimension to cyberbullying.

As I wrote in my 2014 report:

Technology has made it extremely easy to bully any individual on a 24/7 basis. Not only can a teenager, a child, a parent, a friend, or a co-worker be bullied at school, at work or so forth, now with technology it can follow them everywhere.

It was this type of cyberbullying that drove Amanda Todd in British Columbia and Rehtaeh Parsons in Nova Scotia to suicide. Amanda Todd, age fifteen, was blackmailed into exposing her breasts via webcam and faced taunts on her Facebook page from a failed suicide attempt. She told her heartbreaking story through flashcards posted on Youtube.

Rehtaeh Parsons, after being gang raped, had a photo of the incident distributed over the internet and faced derogatory messages on social media. Her suicide attempt led her to be on life support which she was ultimately disconnected from when recovery was beyond possible.

These tragic consequences show the effects of this new form of bullying.

More recently, there was an incident of a fifteen year old girl posting a nude photo of another girl.

Dalhousie University law professor Wayne MacKay, who led Nova Scotia's cyberbullying taskforce, stated to the Canadian Press:

It is kind of both surprising and somewhat disturbing that these things keep happening in spite of all that has gone on with the Rehtaeh Parsons case... There's a really important role for schools, for parents, for the media, for everyone in society to send the message that

this is not acceptable conduct. It's not just illegal conduct, it's conduct that can make a huge difference in the life of the person affected.

In addition to these headline grabbing incidents of suicide from cyberbullying, such action, especially given its pervasiveness beyond the schoolyard, can hurt self-esteem, school performance, and be harmful in many other aspects of a young person's life.

This is a marked departure from earlier decades and it demands legislative action. Law enforcement needs to have the tools to deal appropriately with cyberbullying. Rather than using other legislative tools, such as child pornography laws, that could either be too strict, too lenient, or simply not capture the nature of the action.

While effective laws capturing the problem of cyberbullying are needed, these laws must not be so overbroad to capture forms of speech beyond cyberbullying. As Fraser highlighted in his article, regarding the Nova Scotia legislation, actions such as contentious political speech online (something that is a part of dialogue and exchange in a democratic society) was captured by this legislation.

Fraser gives examples of CyberSCAN, the province's cyber-bullying investigative unit, capturing political speech as cyberbullying based on the legislation in Nova Scotia. In one example provided by Fraser, "after a teenager started a Twitter argument with MLA Lenore Zann, the CyberSCAN folks called an individual who regularly tweets about Nova Scotia politics and told him to remove his tweets or there would be unspecified 'further action.'"

Fraser highlights that the definition of cyberbullying in the legislation, as "any electronic communication... that ought reasonably be expected to cause... humiliation, distress or other damage or harm to another person's self-esteem or reputation" is an example of an overbroad definition that would violate the Charter.

In my paper, written before the Nova Scotia law was struck down, I emphasized the need for effective legislation that provides the needed tools to combat cyberbullying while also respecting civil liberties and the Charter. My report contained a warning that the Nova Scotia legislation may not stand up to legal challenge.

Thankfully, the Nova Scotia government will be drafting new legislation which should combat the threat of cyberbullying while also respecting civil liberties and free speech.

Given the ongoing reality of cyberbullying, and its pervasiveness beyond the schoolyard due to the mobile nature of the internet in the 21st century, it is imperative effective legislative and law enforcement tools are available. As discussed, this is a new area for legislators and courts to grapple with, hence a patchwork across the country.

There is the need to balance effective law enforcement with civil liberties and free speech.

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