THE INCESSANT IMAGE:
HOW DOMINANT NEWS COVERAGE
SHAPED CANADIAN CYBERBULLYING LAW

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Bill C-13, the *Protecting Canadians from Online Crime Act*,[1] reflects a uniquely Canadian construction of cyberbullying as a social problem. Although the legislation does not specifically make use of the term "cyberbullying", the Honourable Steven Blaney, Minister of Public Safety and Emergency Preparedness, and the Honourable Peter MacKay, Minister of Justice and Attorney General of Canada, connect the term to Bill C-13.[2] It is written in response to public outrage generated by high profile teen suicides such as Amanda Todd and Rehtaeh Parsons.

Most cyberbullying literature examines it as an emerging but extant problem. Few, however, examine the phenomenon as a social construction, or the implications thereof. First, this paper reviews how cyberbullying was constructed internationally, specifically analysing how United States law in response to cyberbullying mirrors concerns conveyed through the framing of high profile cases in that country. This paper then continues by highlighting some of the high profile cases that have made cyberbullying an issue in Canada. Next, this article considers some of the public responses to Bill C-13. I then share the results of a mixed method content analysis of Canadian print news frames of the deaths of four teens identified as victims of cyberbullying: Jamie Hubley, from Ontario, who died at age 15; Amanda Todd, from British Columbia, who died at age 15; Rehtaeh Parsons, from Nova Scotia, who died at age 17; and Todd Loik, from Saskatchewan, who died at age 15. Analysis shows that the mediated public discourse of cyberbullying as a social problem closely aligns with the image of cyberbullying as defined in the *Protecting Canadians from Online Crime Act*.

Having examined the public discourse used to construct the Canadian iteration of cyberbullying, I then discuss what the academic literature reveals on the topic. While the federal response to this issue mirrors public discourse generated from

1 2nd Sess, 41st Parl, 2014 (as passed by the House of Commons 20 October 2014).

2 Steven Blaney & Peter MacKay, "Statement from Ministers Blaney and MacKay on Bullying Awareness Week" (18 November 2013), online: Public Safety Canada <www.publicsafety.gc.ca/cnt/nws/nws-rlss/2013/20131118-eng.aspx>.

news coverage, these cases ultimately misrepresent the majority of cyberbullying in Canada. I argue that social reform on this issue will need proactive responses, pairing education with law enforcement. It will take parents, schools, RCMP officials, and community members advocating for respectful online communication to reduce electronic peer harassment, rather than the current legislative response.

Global Movement of Cyberbullying

Peer harassment is not a new phenomenon. While the term "bullying" goes back at least to the 18th century according to the *Oxford English Dictionary*,[3] the establishment of it as a social problem originates in Norway during the 1980s. In 1982, three Norwegian boys, aged 10 to 14, died by suicide attributed to bullying. In response, trait psychologist Dan Olweus took on a government commission to study the issue.[4] Since that time, Olweus has grown into the world's foremost bullying expert. In response to his work, many European nations began to look critically at schoolyard peer aggression. Bullying research and governmental responses followed internationally. In fact, by 2002, the World Health Organization conducted one of the most comprehensive bullying studies in the world, involving 35 countries and more than 162,000 youths.[5] They found that, on average, 11% of children bullied others at least twice a month during the survey window, and the same percentage claimed to be victimized at least twice a month. These rates differed greatly by country, however. Victimization rates were as low as 4% for females in Malta and Sweden, and as high as 36% for males in Lithuania.[6] Studies like this cemented bullying as an international social problem.

Japan framed bullying as a social problem beginning in 1984-1985, when media outlets reported on the suicides of 16 students attributed to "ijime" (bullying). What Westerners might call bullycide the Japanese called "ijime-jisatsu", or suicide linked to bullying.[7] Because suicide was once viewed as a responsible method for handling a no-win situation, it does not have the same taboo present in most Western societies. By 1985, however, this attitude began to shift as a result of ijime-jisatsu deaths. As electronic communication technology reached students, the term "netto ijime" (internet bullying) was coined to describe computer-mediated harassment. Bullying done by cell phones, however, gained its own phrase: "gakko ura saito" (mobile-bullying). This is more common with Japanese youth, because most have cell

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[3] *The Oxford English Dictionary Online*, *sub verbo* "bullying", online: <www.oed.com>.

[4] Philip C Rodkin & Karla Fischer, "Cyberbullying from Psychological and Legal Perspectives" (2012) 77 Miss L Rev 619.

[5] Robin M Kowalski, Susan P Limber & Patricia W Agatston, *Cyber Bullying: Bullying in the Digital Age,* 2nd ed (Malden, MA: Wiley-Blackwell, 2008) at 19-20.

[6] *Ibid* at 20.

[7] Shaheen Shariff, *Confronting Cyber-bullying: What Schools Need to Know to Control Misconduct and Avoid Legal Consequences* (New York: Cambridge University Press, 2009) at 70-71.

phones with little monitoring or regulation from their parents, while their home computer use is more restricted.[8]

Interestingly, treatment of bullying as a social problem did not register as quickly in North America. Although media supported a focused campaign against hazing in the mid-1990s, the United States largely ignored the bullying movement spreading across Europe from Norway and Sweden. All that changed with the Columbine High School mass shooting in 1999.[9] Many media outlets portrayed the shooters as bullied youths acting out against a school system and peers who marginalized them. Kowalski, Limber, and Agatston noted a dramatic rise in attention to the issue after that event.[10] Running a Lexis/Nexis search with the terms "bullying" and "school", they found only 86 results in 1998, but a steady increase leading to 1,930 results in 2010. Follow-up coverage of other school mass shootings bolstered the anti-bullying movement. This perception was supported when a United States Secret Service study stated that two-thirds of school shooters had themselves been victims of bullying, some of which "reached the level of severe tormenting".[11]

The result of this increased attention was state-by-state legislative responses. Within a few short years, 30 states had specific bullying laws;[12] as of January 2015, all but one state (Montana) had bullying laws, mostly requiring schools to have specific bullying policies and preventative measures.[13]

In the midst of these legislative responses, several high profile cases shifted the conversation from bullying to what the media termed cyberbullying. Perhaps the first case to receive media attention was the October 2003 death of Ryan Halligan.[14] After his grieving father, John Halligan, reviewed Ryan's computer and electronic communications, he uncovered years of harassment from peers who called him gay, a female peer who pretended to like him over the summer only so she could shame him in front of her friends in the fall, and a former friend who encouraged him to kill himself. In response, Halligan actively lobbied for cyberbullying legislation in Vermont and began speaking to school groups.[15]

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[8] *Ibid*.

[9] *Ibid*; *supra* note 4.

[10] *Supra* note 5.

[11] Nancy Willard, *Cyberbullying and Cyberthreats: Responding to the Challenge of Online Social Aggression, Threats, and Distress* (Champaign, IL: Research Press, 2007) at 39.

[12] *Supra* note 5.

[13] Sameer Hinduja & Justin W Patchin, "State Cyberbullying Laws: A Brief Review of State Cyberbullying Laws and Policies" *Cyberbullying Research Centre* (January 2015), online: <www.cyberbullying.us/Bullying-and-Cyberbullying-Laws.pdf>.

[14] Laura Finley, ed, *Encyclopedia of School Crime and Violence* (Santa Barbara, CA: ABC-CLIO, 2011) at 70.

[15] *Ibid* at 439.

Some attribute the first use of the term cyberbullying to Canadian Bill Belsey in 2005, and others to American lawyer Nancy Willard in 2003.[16] Although a 2007 version of the *Oxford English Dictionary* had a sub-listing for the term "cyber-harassment", the term disappeared in 2009 when "cyber-bullying" entered the dictionary.[17] Discussion around Halligan's death included efforts to separate his harassment experiences from what people thought of as ordinary bullying. This led to discourse separating bullying mediated through electronic communication from in-person bullying as early as 2003.

The next teen death attributed to cyberbullying gained intense international attention, due largely to the nature of her persecutor. After Megan Meier's October 2006 suicide, police uncovered the identity of the boy who initially flirted with Meier, only to turn on her and tell her the world would be a better place if she died. To the shock of much of the world, this MySpace profile was operated by Lori Drew, the mother of one of Meier's former friends. Prosecutors attempted to convict Drew of every related crime for which they could potentially lay charges, focussing on her breaking MySpace user agreements and lying to open the account.[18] Although initially convicted, the ruling was overturned on appeal.

A federal proposal for what was called the *Megan Meier Act* was the result of public outrage that more justice could not be sought for Meier.[19] Though the legislation died in committee, this was the first push for a national response to cyberbullying. Missouri also passed Megan's Law in 2008, criminalizing electronic harassment of juveniles by adult perpetrators.[20] Outside of Missouri, the American response to cyberbullying remains largely focused on the school system.

Early international media coverage of cyberbullying focused on blame and punishment mixed with a sentiment for victims to shake it off or just not go online.[21] This conversation shifted once the public saw such a powerful example of a youth being actively persecuted by an adult hiding behind a screen profile. The need to protect a child from a more powerful perpetrator altered the global view of this issue. Following the Meier case, Zinga noted a shift in public discourse to holding people accountable for their actions and a push to create new laws.[22] The coverage went from being reactive to proactive about cyberbullying.

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[16] *Supra* note 7.

[17] *The Oxford English Dictionary Online, sub verbo* "cyber-harassment", "cyber-bullying", online: <www.oed.com>.

[18] Dawn Zinga, "Boundaries in Cyber-Space: Media and Stakeholders as Policy Shapers" in Shaheen Shariff & Andrew H Churchill, eds, *Truths and Myths of Cyber-Bullying: International Perspectives on Stakeholder Responsibility and Children's Safety* (New York: Peter Lang, 2010) 105.

[19] US, Bill HR 1966, *Megan Meier Cyberbullying Prevention Act,* 111th Cong, 2009.

[20] Lance Whitney, "Cyberbullying Case to Test Megan's Law", *CNet* (28 August 2009), online: <www.cnet.com/news/cyberbullying-case-to-test-megans-law/>.

[21] *Supra* note 19 at 105.

[22] *Ibid.*

Global acceptance of the existence of the problem also grew. Shaheen Shariff remarked in 2009 that "[m]any countries have only recently become aware of the fact that cyber-bullying exists".[23] This strong assertion that cyberbullying is a "fact" is accompanied by a review of international cases, mostly of youth deaths associated with cyberbullying, from countries including Japan, China, Canada, India, Australia, England, and America. While Megan Meier's death did not solidify cyberbullying as an international social problem, her news coverage did raise general awareness that was then paired with more local cases to advance public discourse.

As American legislators debated a federal response, media outlets continued the public discussion of cyberbullying through incidents such as the 2010 suicides of Phoebe Prince and Tyler Clementi, as well as the 2012 Steubenville, Ohio rape case.

Peers harassed Prince, an immigrant from Ireland, largely because she was different. Following her death, Massachusetts passed anti-bullying legislation,[24] and six teens from her high school were prosecuted for crimes ranging from criminal harassment and stalking to statutory rape. Five of the six pleaded guilty to lesser charges, and the family dropped charges against the sixth.[25]

Clementi died by suicide after his college roommate used a webcam to broadcast Clementi's romantic encounter with another male while texting announcements advertising the show. The roommate, Dharun Ravi, was convicted on 15 counts of invasion of privacy.[26] He is currently appealing the ruling.

The identity of the victim in the Steubenville rape case is protected. A viral photo of several males carrying her unconscious body through a party so they could gang rape her, along with a large number of text messages, other teens' photos, and shared videos is what led to mass public attention in this case. Trent Mays and Ma'lik Richmond were convicted of rape for this incident.[27]

Sustained media attention to cyberbullying through these American cases led to action. As incidents such as these fuelled public debate, many states amended their existing bullying legislation to include cyberbullying. To date, 20 states have legislation specifically addressing cyberbullying, and 47 states (all but Alaska,

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[23] *Supra* note 7 at 14.

[24] Fred Contrada, "Massachusetts Anti-bullying Bill, Passed in Response to Suicides of Phoebe Prince and Carl Walker-Hoover, Touted as 'Gold Standard'", *MassLive* (3 May 2010), online: <www.masslive.com/news/index.ssf/2010/05/massachusetts_anti-bullying_bi.html>.

[25] Kayla Webley, "Teens Who Admitted to Bullying Phoebe Prince Sentenced", *Time* (5 May 2011), online: <newsfeed.time.com/2011/05/05/teens-who-admitted-to-bullying-phoebe-prince-sentenced/>.

[26] "Tyler Clementi", *The New York Times* (16 March 2012), online: <topics.nytimes.com/top/reference/timestopics/people/c/tyler_clementi/index.html>.

[27] Steve Almasy, "Two Teens Found Guilty in Steubenville Rape Case", *CNN* (17 March 2013), online: <www.cnn.com/2013/03/17/justice/ohio-steubenville-case/>.

Montana, and Wisconsin; again, Montana is the only state with no bullying legislation) have legislation specifically addressing electronic harassment.[28]

The other outcome of such media attention has been the development of cyberbullying experts. These experts come from several different fields of study. Robin Kowalski and Susan Limber are both psychologists. Michele Ybarra is from the Family Online Safety Institute, and Kimberly Mitchell is from the Crimes Against Children Research Center. Nancy Willard is a lawyer and the Director of the Center for Safe and Responsible Internet Use. With a criminal justice background, Sameer Hinduja and Justin Patchin have built their careers on cyberbullying, much like Dan Olweus has done with bullying. Patchin and Hinduja launched the website cyberbullying.us in 2005 and regularly conduct survey research. According to the website, they have presented to more than 100,000 educators. They even offer support material for educator groups to conduct book groups using their materials. They have co-published four books and a number of articles on cyberbullying, mostly focusing on their research of over 14,000 youth. They have additionally served as expert witnesses in court cases and consulted with attorneys.[29] Outrage generated by news coverage of several high profile deaths has led to the stable status of cyberbullying as a social problem in the United States. This trajectory has been mirrored to some extent in Canada, albeit with different framing as well as alternative social and legislative responses.

Canadian Development of Cyberbullying

Canadian progression of cyberbullying as a social problem took a familiar path but followed a separate timeline. It was really a pair of youth suicides in 2000 that first spurred a bullying focus in Canada. In March 2000, Hamed Nastoh's death received mild news coverage. A Factiva search of his name in Canadian newspapers produces 86 articles; however, only 10 of these articles appear before the second teen suicide that year. The first article to report his death, "Teasing Drives Teen to Suicide", is a short piece that uses the term teasing in the article rather than bullying.[30] Similarly, CBC stories used the term "bullying" in the text but not the headline.[31] Many of the other nine early articles focus on the suspension of two teachers who added to the "teasing" because they claimed the boy was gay. However, when Dawn-Marie Wesley died in November 2000, the term "bullying" appeared in even the first reports of her suicide. For example, one of the first articles was titled "Girl's Death to Escape Bullying Shocks Town".[32] Part of what kept this death in media focus was the prosecution of two teen girls in this case. One was convicted (at age 16) of criminal

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[28] *Supra* note 14.

[29] "About Us", *Cyberbullying Research Centre*, online: <www.cyberbullying.us/about-us>.

[30] Canadian Press, "Teasing Drives Teen to Suicide", *Waterloo Region Record* (16 March 2000).

[31] "School Teasing Blamed in Surrey Teen's Suicide", *CBC News* (17 March 2000), online: <www.cbc.ca/news/canada/school-teasing-blamed-in-surrey-teen-s-suicide-1.221495>.

[32] Caroline Alphonso, "Girl's Death to Escape Bullying Shocks Town" *The Globe and Mail* (17 November 2000).

harassment, while the other was acquitted of uttering threats. The case drew international attention for setting a precedent of prosecuting teens for peer harassment.[33]

In April of 2003, Quebec teens published a video file of one of their fellow students, Ghyslain Raza, who was imitating Darth Maul's lightsaber fighting from a *Star Wars* film. They did this without his knowledge or his permission. Labelled "The *Star Wars* Kid", Raza's video went viral; in just three years, it was viewed at least 900,000,000 times. It also inspired countless edited versions, adding visual and sound effects. Raza spoke out against what he called cyberbullying due to the viral video. When Raza's family sued the families of the students who posted the video, the defendants settled out of court, agreeing to pay damages of an undisclosed amount. Despite the use of the term cyberbullying in this incident, public awareness did not lead to any calls for legislation or government intervention beyond the civil lawsuit. Though the *Star Wars* Kid became infamous, his claims that he had been cyberbullied did not seem to hold resonance with the general public. Fans of the video, however, did lobby to have Raza granted a cameo appearance in the next *Star Wars* film.[34] This is one of the earliest high profile cases of Canadian cyberbullying, but use of the term by Raza did not incite public advocacy on his behalf.

It was the suicides of Amanda Todd in 2012 and Rehtaeh Parsons in 2013 that made cyberbullying a Canadian social problem. In Todd's case, an unknown perpetrator convinced her to lift her shirt for the webcam as he chatted with her through social media. He captured the image and threatened to expose the photo to her peers if she did not provide a show for him. This online harassment continued for years. Ultimately, he started a Facebook page with that image as the profile photo. Todd moved several times but, at each school, she found the perpetrator had contacted teens and forwarded the image, as well as insulting comments. It wasn't until 2014 that Dutch police identified her perpetrator, Aydin Coban, and arrested him for exploiting and extorting victims in the Netherlands, the United Kingdom, and Canada. He reportedly had male and female victims that included children as well as adults. Part of what made Todd's death an international news story was the nine-minute video she posted to YouTube prior to her death. In it, she details the harassment she experienced from her unknown cyberbully as well as other peer conflicts she faced by holding written cards in front of the camera. As of April 2015, the video had been viewed more than 10,500,000 times.[35]

Parsons' case is eerily similar to the Steubenville rape. It was a photo of her severely intoxicated, mostly unconscious, and being sexually violated by a male while he gestured a thumbs up to the camera, that provided the main source of her taunting.

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[33] *R v DW and KPD,* 2002 BCPC 96 at para 22.

[34] Anne SY Cheung, "Tackling Cyber-Bullying from a Children's Rights Perspective" in Michael Freeman, ed, *Law and Childhood Studies: Current Legal Issues Volume 14* (Oxford: Oxford University Press, 2012) 281 at 284.

[35] TheSomebodytoknow, "My Story: Struggling, bullying, suicide, self harm" (7 September 2012), online: YouTube <www.youtube.com/watch?v=vOHXGNx-E7E>.

This image was sent throughout her peer group, leading to many derogatory comments online and in person. At least four males were involved in the incident. Although police decided not to make any initial arrests, public outcry after her death led to a reversal of that decision. Two teens were arrested; one pleaded guilty to producing child pornography, and the other pleaded guilty to distributing child pornography. Each was sentenced to a year of probation.[36]

These cases led to local legislative changes such as the Nova Scotia *Cyber-safety Act*, enacted in May 2013,[37] and a 2012 amendment to the New Brunswick *Education Act*.[38] The Department of Justice provides an overview of cyberbullying legislative movements inspired by high profile cases, listing both Todd and Parsons in the footnotes.[39] At least nine provinces now have legislation or new laws addressing cyberbullying.[40]

Anti-cyberbullying attention is moving from provincial to national responses. Even before either of these deaths, the Standing Senate Committee on Human Rights received an assignment to research cyberbullying in November 2011. This assignment came due to Canada's obligations under the United Nations Convention on the Rights of the Child.[41] In December 2012, they issued a report titled *Cyberbullying Hurts: Respect for Rights in the Digital Age*.[42] In June 2013, the Coordinating Committee of Senior Officials Cybercrime Working Group issued a report to the FPT Ministers responsible for Justice and Public Safety. The report was titled *Cyberbullying and the Non-consensual Distribution of Intimate Images*, and it focused on looking for gaps in the Criminal Code.[43] In response to these reports and public pressure regarding cyberbullying, legislators proposed Bill C-13 in the fall of 2013. This legislation has received Royal Assent and was enforced as law beginning in March 2015.

For Canada, the issue of cyberbullying likely begins with Olweus and early anti-bullying claims. This issue gained broad acceptance as a social problem following the conviction of Dawn-Marie Wesley's tormentors. The *Star Wars* Kid brought some of the earliest Canadian attention to cyberbullying, but public reaction did not create

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[36] "Rehtaeh Parsons Case: Teen in Explicit Photo Gets Probation", *CBC News* (15 January 2015), online: <www.cbc.ca/news/canada/nova-scotia/rehtaeh-parsons-case-teen-in-explicit-photo-gets-probation-1.2901502>.

[37] SNS 2013, c 2.

[38] SNB 1997, c E-1.12.

[39] Lisa Ha, "A Snapshot of Cyberbullying" (2014) *Victims of Crime Research Digest,* online: Department of Justice <www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd7-rr7/p2.html>.

[40] Lindsey Panjvani, "An Overview of Anti-Bullying Legislation and Alternatives in Canada", *LawNow* (2013), online: <www.lawnow.org/an-overview-of-anti-bullying-legislation-and-alternatives-in-canada/>.

[41] *Supra* note 40.

[42] Canada, Standing Senate Committee on Human Rights, *Cyberbullying Hurts: Respect for Rights in the Digital Age*, (online: <www.parl.gc.ca/Content/SEN/Committee/411/ridr/rep/rep09dec12-e.pdf>, 2012).

[43] Canada, CCSO Cybercrime Working Group, *Cyberbullying and the Non-consensual Distribution of Intimate Images* (online: <www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdncii/>, 2013).

much of a sentiment of injustice, and Ghyslain Raza was able to settle his civil case against the boys who posted his video. As bullying and cyberbullying received global attention throughout Europe and Japan, however, the United Nations Convention called for steps to protect children from all forms of harm, which included both physical and mental violence. This call for action included a response to cyberbullying.[44] Despite the agreement to research and report on this issue, legislative proposals to address cyberbullying in Canada began in earnest following the intense media coverage and public outcry in response to Todd's and Parsons' suicides. Local and provincial initiatives addressed the issue as concerns culminated with federal legislation to address the problem.

Bill C-13: Protecting Canadians from Online Crime Act

Opponents of Bill C-13 expressed privacy and constitutionality concerns. Both opponents and advocates of the Bill associate cyberbullying with the nonconsensual distribution of intimate images. The tendency to think of cyberbullying this way reflects an understanding formed through public discourse of the Todd and Parsons cases. Bill C-13 amends the Criminal Code in several ways; for ease of reference, the text of the Bill is reproduced herein:

> This enactment amends the Criminal Code to provide, most notably, for
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> (a) a new offence of non-consensual distribution of intimate images as well as complementary amendments to authorize the removal of such images from the Internet and the recovery of expenses incurred to obtain the removal of such images, the forfeiture of property used in the commission of the offence, a recognizance order to be issued to prevent the distribution of such images and the restriction of the use of a computer or the Internet by a convicted offender;
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> (b) the power to make preservation demands and orders to compel the preservation of electronic evidence;
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> (c) new production orders to compel the production of data relating to the transmission of communications and the location of transactions, individuals or things;
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> (d) a warrant that will extend the current investigative power for data associated with telephones to transmission data relating to all means of telecommunications;
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> (e) warrants that will enable the tracking of transactions, individuals and things and that are subject to legal thresholds appropriate to the interests at stake; and
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> (f) a streamlined process of obtaining warrants and orders related to an authorization to intercept private communications by ensuring that those warrants and orders can be issued by a judge who issues the authorization

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[44] *Ibid.*

and by specifying that all documents relating to a request for a related warrant or order are automatically subject to the same rules respecting confidentiality as the request for authorization.

The enactment amends the Canada Evidence Act to ensure that the spouse is a competent and compellable witness for the prosecution with respect to the new offence of non-consensual distribution of intimate images.

It also amends the Competition Act to make applicable, for the purpose of enforcing certain provisions of that Act, the new provisions being added to the Criminal Code respecting demands and orders for the preservation of computer data and orders for the production of documents relating to the transmission of communications or financial data. It also modernizes the provisions of the Act relating to electronic evidence and provides for more effective enforcement in a technologically advanced environment.

Lastly, it amends the Mutual Legal Assistance in Criminal Matters Act to make some of the new investigative powers being added to the Criminal Code available to Canadian authorities executing incoming requests for assistance and to allow the Commissioner of Competition to execute search warrants under the Mutual Legal Assistance in Criminal Matters Act.[45]

On 27 May 2014, Gaylene Schellenberg and Marian K. Brown of the Canadian Bar Association testified on Bill C-13 for the Standing Committee on Justice and Human Rights. Michael Spratt of the Criminal Lawyers Association also testified. Both groups expressed concerns with the Bill and suggested it should be split. The Canadian Bar Association believed that provisions for lawful access should be separated from the cyberbullying provisions.[46] Spratt agreed, claiming that the Bill was too broad and potentially unconstitutional, placing privacy rights below the rights of law enforcement.[47] Carol Todd, mother of Amanda Todd, also called for a division of the Bill in her testimony during an evidence meeting for the same committee, saying that warrants should be needed for police to gather evidence and that she did not want people's privacy to be invaded in her daughter's name.[48]

Calls for a split in the Bill conflate cyberbullying with the non-consensual distribution of intimate images due to Parsons' and Todd's case. For example, NDP Charmaine Borg argued:

We asked for the bill to be divided. The provisions pertaining to cyberbullying, namely the specific clauses that deal with the distribution of

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[45] *Supra* note 1.

[46] "Justice Committee on May 27th, 2014" *OpenParliament.ca* (27 May 2014) (Gaylene Schellenberg), online: <openparliament.ca/committees/justice/41-2/26/gaylene-schellenberg-1/?page=2>.

[47] *Ibid*.

[48] "Justice Committee on May 13th, 2014" *OpenParliament.ca* (13 May 2014) (Carol Todd), online: <openparliament.ca/committees/justice/41-2/24/>.

images without consent, could already be law and could already be protecting children.[49]

Many MPs mentioned Todd and Parsons during the House Debate, including conservatives like Bob Dechert[50] and liberals like Sean Casey.[51] Parents of three cyberbullying victims, Amanda Todd,[52] Rehtaeh Parsons,[53] and Jamie Hubley,[54] testified at the evidence meeting alongside two living victims who experienced harassment due to the non-consensual distribution of images online. Hubley's case did not include cyberbullying in the way this law characterizes it; his harassment did not come in the form of distributed images, but in a written nature. Allan Hubley, his father, testified full support of Bill C-13 as written, claiming that it was time to give "law enforcement the tools needed" to combat cyberbullying.[55] His support of this Bill is not limited to the first clause that focuses on image distribution.

Rehtaeh Parsons' father, Glen Canning, also supported the full, undivided Bill, saying that "someone in Rehtaeh's shoes won't be helped unless the speed of that help is as viral as the problem is."[56] Bill C-13 is clearly written in the image of cyberbullying as portrayed through the high profile deaths of teens such as Parsons and Todd, given that the emphasis is on distributed photos more than written or verbal harassment.

Lidsky and Garcia review United States case law in order to justify their claim that educational intervention is preferable to passing new laws for cyberbullying. They write:

> The critical constitutional flaw in much of the new criminal legislation is that, in its attempt to 'eliminate' cyberbullying, it conflates the definition of cyberbullying as a social problem with the legal definition of cyberbullying as a crime, leading to laws that violate the First Amendment.[57]

The same might be said of Canadian responses to cyberbullying. Opponents to Bill C-13 express concern that, in the name of protection for our children, the *Protecting*

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[49] *House of Commons Debates*, 41st Parl, 2nd Sess, No 127 (10 October 2014) (Charmaine Borg), online: <openparliament.ca/bills/41-2/C-13/?page=3>.

[50] *House of Commons Debates*, 41st Parl, 2nd Sess, No 90 (27 May 2014) (Bob Dechert), online: *supra* note 47.

[51] *House of Commons Debates,* 41st Parl, 2nd Sess, No 113 (22 September 2014) (Sean Casey), online: <openparliament.ca/debates/2014/9/22/sean-casey-10/>.

[52] *Supra* note 49.

[53] *Ibid*.

[54] *Ibid*.

[55] *Ibid.*

[56] *Ibid*.

[57] Lyrissa Lidsky & Andrea Pinzon Garcia, "How Not to Criminalize Cyberbullying" (2012) 77 Mo L Rev 693 at 698.

Canadians from Online Crime Act grants potentially unconstitutional investigative powers to law enforcement. News coverage of the suicides of Hubley, Todd, Parsons, and Loik oversimplify the details of each case in an effort to establish a clear pattern and construct the Canadian definition of cyberbullying as a social problem. However, as Lidsky and Garcia note, legal definitions and social problem definitions are often incongruent.[58]

A social problem definition works well for establishing awareness and educational programs to reform social practices. In the Criminal Code, social problems definitions often become murky legal terms hindering the process of jurisprudence. In order to understand how the federal response to cyberbullying came to focus on the non-consensual distribution of intimate images, it is important to examine how public discourse shaped a Canadian understanding of cyberbullying.

Canadian Print News Construction of Cyberbullying as a Social Problem

(A) Content Analysis of Print News

Print media is one cultural artifact revealing the mediated portrayal of a social issue. It is not the direct cause of legislation; however, it reflects the public discourse preceding political action on the issue. In order to examine the public discourse of cyberbullying, I conducted a qualitative and quantitative content analysis of Canadian print news coverage of four teens whose deaths were linked with cyberbullying. I balanced my data set by selecting two males and two females. I used the time frame between the death of the teen and when local or provincial politicians announced a legislative response as a result of cyberbullying public concerns as limiting factors for the data set.

Factiva is a searchable database that includes international news archives. Using this search engine, I conducted a keyword search of Canadian print news containing both the first and last name of the victim in the specified date range to produce a data set. I then conducted a content analysis of those articles in order to examine both the prevalence of these cases in local and national news coverage, as well as to identify themes in representation.

Jamie Hubley died 15 October 2011. On 30 November 2011, officials announced the *Accepting Schools Act*.[59] This date range produced 154 unique articles, once duplications were eliminated from the set.

Amanda Todd died 10 October 2012. Just five days later, on 15 October 2012, officials announced a House of Commons motion to study cyberbullying.[60] While the

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[58] *Ibid*.

[59] SO 2012, c 5.

[60] "In wake of Amanda Todd suicide, MPs to debate anti-bullying motion", *CTV News* (14 October 2012), online: <www.ctvnews.ca/canada/in-wake-of-amanda-todd-suicide-mps-to-debate-anti-bullying-motion-1.995254>.

motion was already in process, media coverage following her death purportedly caused an earlier release for this motion. Five days of news coverage for Todd produced 192 unique articles.

Rehtaeh Parsons died 7 April 2013. A few weeks later, officials announced the Nova Scotia *Cyber-safety Act* on 25 April 2013. [61] This date range produced a set of 407 unique news articles.

Finally, Todd Loik died 9 September 2013. Though Loik's province already had cyberbullying legislation in place following the trend of past deaths, officials announced *Saskatchewan's Action Plan to Address Bullying and Cyberbullying* on 14 November 2013.[62] This date range produced a data set of 48 unique articles, once duplicates were eliminated.

These 801 articles were used in the quantitative content analysis. Given that it took longer for officials to respond in the deaths of the male victims than in the case of the females, and that three-fourths of the news coverage between the date of death and political response focused on female victims, it is evident that public discourse of cyberbullying emphasizes Parsons' death and Todd's over other victims. This is reflected in the legislative debate of Bill C-13.

(B) Cyberbullying as a Social Problem News Frame

In order to code the data, it was necessary to bring the qualitative sample for each victim to a more normalized set. I sought to evenly represent the news coverage over time and publications. I qualitatively coded between 48 and 64 unique articles for each of the victims using framing theory. Frame analysis is important because it reveals the subtle beliefs that affect message delivery and prime an audience to endorse the ideology promoted by claims makers of social problems. According to Entman,

> Framing essentially involves selection and salience. To frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation for the item described.[63]

By examining which themes are emphasized in the news portrayals of these deaths, frame theory reveals how public discourse mediated through mass media serves to socially construct the concept of cyberbullying. In order to examine the frames present in these news stories, I utilized content analysis to code which topics are emphasized in coverage. My categories for analysis began with Entman's

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[61] *Supra* note 38.

[62] Saskatchewan, Ministry of Education, *Saskatchewan's Action Plan to Address Bullying and Cyberbullying*, (online: <www.gov.sk.ca/adx/aspx/adxGetMedia.aspx?mediaId=584fefe2-c769-4c12-a91a-fa3e49353b11&PN=Shared>, 2013).

[63] Robert Entman, "Framing: Toward Clarification of a Fractured Paradigm" (1993) 43:4 J Communications 51 at 52.

definition of what frames do: definition, cause, moral judgment, and remedy. I applied four other categories—effect, blame, establishing a pattern, and defensiveness—to my analysis. This produced 4,245 excerpts, coded according to one of those eight categories and assigned specific descriptors. The three most common categories were remedies (35%), effects (22%), and definitions (13%).

Overall, I found that news coverage frames cyberbullying as a social problem. The dominant characteristic of the social problem frame is solution-based. Claims makers argued for 17 described remedies to the deaths of these victims. At 36%, public attention was the most commonly mentioned remedy. Public discourse focused on the use of social media and awareness programs, as well as famous advocates, to draw attention to cyberbullying. Many articles also quote and praise parents of the victims for becoming advocates to the cause. The second most common remedy suggested was new legislation addressing cyberbullying (14%). Many also advocated for school responses and education (12%). Others called for a criminal investigation using existing laws (10%). The emphasis on remedies through public attention and new legislation demonstrate the frame of cyberbullying as a social problem present in these news articles.

Media coverage portray dire consequences for cyberbullying. Of the 16 effects teens experienced due to the computer-mediated harassment they experienced, most focused on suicide (44%) and death (25%). The only other effect mentioned enough to be significant was depression (10%). This conveys high stake consequences in the construction of this emerging social issue.

Teen suicide, even when preceded by peer harassment, is rarely covered by mainstream news media, primarily because it is believed that such news coverage may lead to "copycat" incidents.[64] However, when the harassment is technologically mediated, reporters tend to utilize the term "cyberbullying" and act as agenda setters and gatekeepers in prioritizing these cases. The *Canadian Press Stylebook* cautions reporters on coverage of suicide:

> To be sure, care is always called for when covering stories that involve suicide. Media outlets have long been mindful of 'suicide contagion'—a phenomenon in which coverage of a news story that involves someone taking their own life can heighten the risk of others trying to follow suit.[65]

According to the *Stylebook*, an exception to this rule is made when there is "a compelling public interest" such as "the teen targeted by online bullying".[66] The specifically identified exception of teen cyberbullying to the restriction against suicide

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[64] Nicholas J Russel, *Morals and the Media: Ethics in Canadian Journalism,* 2nd ed (Vancouver, BC: UBC Press, 2006) at 117, 167.

[65] James McCarten, ed, *The Canadian Press Stylebook: A Guide for Writers and Editors,* 17th ed (Toronto, ON: The Canadian Press, 2013) at 26.

[66] *Ibid.*

stories in the most recent edition of the *Stylebook* is evidence that cyberbullying is coming into its own as an established social problem.

Likewise, typical cases of cyberbullying do not draw media attention. However, when the two factors combine, journalists categorize teen suicide linked with cyberbullying as newsworthy. Early news coverage snowballs into sustained coverage debating the issue of cyberbullying and using the death of the teenager as the case necessitating the discussion. Attention to such high profile cases suggests that suicide and cyberbullying are strongly correlated, since instances of cyberbullying that do not end in death rarely make the news. Thus, selective news coverage creates a skewed representation of the nature of cyberbullying.

Canadian print news coverage defines cyberbullying using 12 descriptors. This category was more evenly distributed. The most common descriptor under the definition category was circulating humiliating photos (20%), followed by online bullying (17%), repetition (16%), verbal or written harassment (12%), social media (10%), deliberate harm (9%), sexual harassment (7%), and ubiquitous (3%). The emphasis on circulating humiliating photos is reflected in the first Article of Bill C-13, as is the notion of the act being deliberate and involving sexual harassment. The online nature and aspects of social media are reflected in the other aspects of Bill C-13, empowering law enforcement to more easily use electronic communication media as evidence.

The cyberbullying as a social problem frame is designed to motivate social change, largely in the form of a legislative response. Had the deaths of these teens been framed, for example, as criminal cases, emphasis would have focused on perpetrators, victims, and law enforcement. Rather, the social problem frame shifts blame from individuals committing crimes to a fault in society that needs redress.

One impetus for such a frame is the age of the perpetrators in these cases. The law calls for anonymity when reporting on juvenile cases. Likewise, society in general tends to see juvenile offenders as individuals who are less culpable for their actions. In Todd's case, the unknown perpetrator is easily vilified in an abstract way, given the lack of information on his identity during the time frame of my study. Despite having a villain for the case, the emphasis still focuses more on teenage use of technology than on criminal behaviour. In Parsons' case, the sense of outrage is somehow more focused on the photo of what her family calls sexual assault than on the violent act or the perpetrators of that act. The Hubley case tends to shift focus from teenage perpetrators to a society that tolerates homophobia. In Loik's case, there is minimal mention of the actions of his harassers. Articles covering his death tend to simply fold the details of his life into an emerging pattern of cyberbullying causing the suicide of teens.

Overall, the dominant frame in mainstream news coverage of the death of these teens focuses on cyberbullying as a social problem in need of reform. Such a frame clusters disparate cases into a recognizable pattern, minimizing attention to unique circumstances and emphasizing common characteristics in the name of advancing a social cause. Though this frame is effective for socially constructing a recognizable problem, this treatment oversimplifies individual cases and strips these

teens of personhood as they become little more than victims for a cause. Another problem with the frame of cyberbullying as a social problem is that characterizing the problem according to the most intense circumstances omits discussion addressing the most common forms. These consequences are reflected in the legislation that emerges as a direct result.

Cyberbullying Literature

Public discourse presenting cyberbullying with a social problem frame oversimplifies complex and diverse cases in an effort to define a problem and establish a clear pattern. This simplified image of cyberbullying is effective for spurring legislative change; however, it does not reflect what academic studies have to say about the complexity of cyberbullying. Studies connect suicide with cyberbullying, but it is likely not a causal relationship. Though high profile cases characterize extreme circumstances, cyberbullying is quite prevalent in less serious forms. These cases portray the teens as clear victims; however, studies show that most cyberbullying is relational, and that the roles of victim and bully often overlap.

Although the cyberbullying as a social problem frame conveys a growing epidemic, bullying is still more prevalent than cyberbullying. The simplified image of cyberbullying through extreme cases in the news mischaracterizes cyberbullying in everyday life.

Given that most of the highest profile cyberbullying cases make headlines only after the victim dies by suicide, it is not surprising that suicide is often discussed in correlation with cyberbullying. Karen Sternheimer recognizes the irony that though teens are often presumed to be at high risk of suicide, a 2009 report by the Centers for Disease Control and Prevention (CDC) shows that of all the age groups, teens are the least likely to die by suicide.[67] This statistic is often misunderstood because teens are highly unlikely to die due to illness or health-related problems. This translates into the more common statistic scholars cite from the 2009 CDC report: suicide is the third leading cause of death among teens.[68] Social advocates present statistics from this CDC report, emphasizing different aspects of the findings, in order to better support their claims. For those who think cyberbullying suicides are creating a public overreaction, the finding that teens are the least likely age group to commit suicide attempts works best. Those seeking to advance anti-cyberbullying measures are likely to cite the notion that suicide is among the leading causes of death for teens. Many note that bullying victims and perpetrators alike are generally more likely to attempt and to complete suicide.[69]

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[67] Karen Sternheimer, "Does Social Networking Kill? Cyberbullying, Homophobia, and Suicide" in Karen Sternheimer, ed, *Connecting Social Problems and Popular Culture: Why Media is not the Answer*, 2nd ed (Boulder, CO: Westview Press, 2013) 47.

[68] Sheri Bauman, Russell B Toomey & Jenny L Walker "Associations Among Bullying, Cyberbullying, and Suicide in High School Students" (2013) 36:2 J Adolescence 341.

[69] *Ibid*; see also Lisa Hepburn et al, "Bullying and Suicidal Behaviors Among Urban High School Youth" (2012) 51:1 J Adolescent Health 93.

Hinduja and Patchin set out to discover whether the same trends were true for cyberbullying. They found that victims of both conventional bullying and cyberbullying were more likely to have suicidal thoughts and attempts than non-victims. Both cyberbullies and victims were more connected with suicide than conventional bullies or victims, and the group with the highest likelihood of suicidal ideation was the cyberbully and his or her victim.[70] They temper these findings with acknowledging other factors in many of the high profile cases, noting that they usually "coincided with other issues (such as offline mistreatment, emotional and psychological problems, academic difficulties, low self-esteem, clinical depression, and a lack of support structure, etc.)".[71] This led the researchers to declare, "[I]t 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".[72]

These statements open a murky set of assumptions. Many studies establish a correlation between cyberbullying and depression, anxiety, low self-esteem, and other mental health problems.[73] An Australian study that supports these findings notes an important distinction, however: "Although these longitudinal studies are not proof of a causal relationship between bullying victimisation and mental health problems, they do suggest a cyclical pattern of influence".[74] Do depressed and anxious teens become victims more often than those without mental health problems, or does victimization from cyberbullying lead to mental health problems? If the suicide victims in high profile cases all suffered from other emotional and psychological problems and seemed to endure bullying as well as cyberbullying, how does one determine what causes the other? No existing research answers that question.

A review of 29 studies conducted in 12 countries (Australia, Belgium, Canada, Germany, Israel, Netherlands, Poland, Spain, Switzerland, Turkey, the United Kingdom, and the United States) shows that reported cyberbullying prevalence ranges

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[70] Sameer Hinduja & Justin W Patchin, "Bullying, Cyberbullying, and Suicide" (2010) 14:3 Archives Suicide Research 206.

[71] *Ibid* at 208.

[72] *Ibid* at 217.

[73] See e.g. Linda Beckman, Curt Hagquist & Lisa Hellstrom, "Does the Association with Psychosomatic Health Problems differ between Cyberbullying and Traditional Bullying?" in Peter K Smith, ed, *Emotional and Behavioural Difficulties Associated with Bullying and Cyberbullying* (New York: Routeledge, 2014) 192; Samuel C McQuade III, James P Colt & Nancy Meyer *Cyber Bullying: Protecting Kids and Adults from Online Bullies* (Westport, CT: Praeger, 2009); Dorit Olenik-Shemesh, Tali Heiman & Sigal Eden, "Cyberbullying Victimisation in Adolescence: Relationships with Loneliness and Depressive Mood" in Peter K Smith, ed, *Emotional and Behavioural Difficulties Associated with Bullying and Cyberbullying* (New York: Routeledge, 2014) 133; Steven Reinberg, "Cyberbullies and Victims have Mental and Emotional Health Problems" in Louise I Gerdes, ed, *Cyberbullying: At Issue* (Detroit: Greenhaven Press, 2012) 48; *supra* note 7.

[74] Marilyn Campbell et al, "Victim's Perceptions of Traditional and Cyberbullying, and the Psychosocial Correlates of their Victimisation" in Smith, *ibid* at 161.

anywhere from 4.5% to 45%.[75] Many studies report a 25-30% range of victimization. The most recent major Canadian study describes specific behaviors considered by Nancy Willard to represent the spectrum of cyberbullying behaviors. The survey included 260 Ontario students aged 12-15. Their survey showed that 95% of these students use the internet two days per week or more. The majority of the students were coded as combined cyberbully/cybervictims (44.6%). The next group consisted of those not involved in any cyberbullying (33.1%). Cyberbullying victims came next (17.3%), with the smallest group being cyberbullies (5%).[76]

Most of the international studies sought to separate respondents into categories such as cyberbullies, cybervictims, and uninvolved. However, seven of the 29 studies also allowed a category for those coded as combined cyberbully/victims. Most research discussing bullying traits or effects acknowledge an overlap between cyberbullies and victims. Rodkin and Fischer argue that bullying is a relationship. They admonish researchers to resist coding respondents into categories of victim and perpetrator, stating, "This procedure puts bullies and victims into separate boxes and overemphasizes their separateness […]. Reality is more complicated".[77] Kowalski, Limber, and Agatston agree when they argue, "Bullying is more accurately understood as a group phenomenon in which children may play a variety of roles".[78] They list a continuum of eight roles participants may take, ranging from the person who initiates the bullying to the one who is bullied, noting overlap and movement between roles. An important lesson here is that both bullying and cyberbullying are phenomena involving complicated social roles among many parties.

Another trend common in these studies is that cyberbullying is less common than other forms of bullying. Some, such as bullying expert Olweus, argue that cyberbullying concerns are overly inflated and that public focus should remain on conventional bullying.[79] Indeed, all of the 29 studies that measured cyberbullying against conventional bullying reported conventional bullying showing a higher rate, most reporting it about twice as common as cyberbullying. For example, Li reports 54% as conventional bullying victims, and 25% as cyberbullying victims; 32% were conventional bullies, and 15% cyberbullies.[80] Similarly, the National Center for Educational Statistics 2013 Report found that 27.8% of students claim to be bullying

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[75] For a complete examination of these studies and the results therein, see the sources identified in Appendix A.

[76] Jennifer L Pettalia, Elizabeth Levin & Joël Dickinson, "Cyberbullying: Eliciting Harm Without Consequence" (2013) 29:6 Computers in Human Behavior 2758.

[77] *Supra* note 4 at 631.

[78] *Supra* note 5 at 32-33.

[79] Dan Olweus, "Cyberbullying: An overrated phenomenon?" 9:5 European J Developmental Psychology 520.

[80] Qing Li, "New Bottle but Old Wine: A Research of Cyberbullying in Schools" 23:4 Computers in Human Behavior 1777.

victims, with 9% claiming to be cyberbullying victims.[81] These studies agree that there is a clear overlap between conventional bullying and cyberbullying. As Rodkin and Fischer claim, "Cyberbullying and traditional bullying may be gateways for one another…the existence of one makes the other more likely".[82] Even studies that emphasize the unique nature of cyberbullying tend to acknowledge the likelihood of cyberbullies and victims to be involved with conventional bullying in some form or another. Hinduja and Patchin acknowledge Olweus' concerns that bullying remains more prevalent in schools, but nonetheless contend that cyberbullying still deserves attention in its own right.[83]

Comprehensive Responses

Given the complex nature of cyberbullying and its prevalence, responses to the problem should be comprehensive and diverse. Once a school-related social problem is established in a community, it is common for schools to find an expert who can advise teachers, administrators, and students on the issue. However, a single day devoted to changing systemic problems is unlikely to alter behaviour. Swearer claims that prevention programs do little to reduce bullying, saying instead that programs that emphasize reporting and punishing are more effective.[84] Cassidy, Brown, and Jackson share an interesting incident from their study that might support this claim. Following a school assembly meant to prevent cyberbullying, a group of students decided to target one student using the very techniques they were advised against in the assembly. They write: "One of the perpetrators admitted that they got the idea from the assembly and that they were also testing out the policy to see if the punishment would be doled out".[85] It is clear that awareness of a problem does not automatically change behaviour.

Despite the vast rhetoric arguing one intervention method over another, very little research has evaluated the actual effectiveness of any prevention methods. Both New Zealand and Australia, however, have implemented interesting, comprehensive programs to address bullying and cyberbullying. The New Zealand program "Kia Kaha" calls on multiple stakeholders, such as police, school administration and teachers, students, parents, and the community at large, to work together at preventing bullying. Research shows that schools and communities involved with the program have lower rates of bullying than those who do not or who only implement limited

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[81] Russell A Sabella, Justin W Patchin & Sameer Hinduja, "Cyberbullying Myths and Realities" 29:6 Computers in Human Behavior 2703.

[82] *Supra* note 4 at 630.

[83] Sameer Hinduja & Justin W Patchin, "Cyberbullying: Neither an Epidemic nor a Rarity" (2012) 9:5 European J Developmental Psychology 539.

[84] Susan M Swearer, "Traditional Forms of Bullying Remain a more Prevalent and Serious Problem" in Gerdes, *supra* note 74 at 23.

[85] Wanda Cassidy, Karen Brown & Margaret Jackson, "'Under the Radar': Educators and Cyberbullying in Schools" 33:5 School Psychology Intl 520 at 525.

aspects of the program.[86] One very promising aspect of programs like this is the coordination between police officers and schools, thus preventing the tendency to try to make intervention someone else's responsibility.

An Australian project titled "SuperClubsPLUS" works to teach students responsible internet practices and use.[87] This program is modelled after a similar one utilized in the United Kingdom. SuperClubsPLUS provides on online social networking environment for elementary students. The purpose is to train responsible internet use at the stage when individuals are first establishing their patterns of internet practices. The interface allows for social networking, research, and creative practices, with clear guidelines and adult monitoring both day and night. Each page has an alarm button that the children can click for adult support if they feel uncomfortable with some form of communication they experience in the program. As they post their creations, they are also reminded of the safe practices rules, should their posts or shared creations violate the safe environment. This is a highly promising program that takes a proactive approach to shape responsible internet use is its formative stages.

Research considering remedies specific to Canada is not as prolific as in other countries. This reflects the recent status of cyberbullying as a Canadian problem. Nevertheless, some recent scholarship examines Canadian responses. The provinces of Nova Scotia, Saskatchewan, and British Columbia, and the municipalities of Port Coquitlam and Regina all have by-laws prohibiting cyberbullying, with fines and jail time up to 90 days and $2,000. Smaller communities such as Blackfalds and Hanna, both in Alberta, have fines of up to $10,000 for repeat offenders.[88] Ng reviews American and Canadian legal precedents, claiming that after looking at American efforts to make cyberbullying a criminal offense, it is not the best course for Canada to take, and that it would be more effective to use "school resources to educate students, parents and others regarding the social unacceptability and consequences of bullying online".[89]

Nova Scotia is one province to take the call for a broad approach seriously. The Report of the Nova Scotia Task Force on Bullying and Cyberbullying, titled *Respectful and Responsible Relationships: There's No App for That*, called for a "strategic and comprehensive approach".[90] The report recognizes the complex nature of cyberbullying as an action embedded in a community of various participants. As such, it recommends a response that involves all parties, including teens, parents,

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[86] Gillian Palmer & Juliana Raskauskas, "Kia Kaha: Police and Schools Working Together to Eliminate Bullying, a New Zealand Intervention" in Shariff & Churchill, *supra* note 19 at 251.

[87] Jennifer Masters & Nicola Yelland, "Changing Learning Ecologies: Social Media for Cyber-citizens" in Shariff & Churchill, *supra* note 19 at 229.

[88] Ryan Broll & Lara Huey, "'Just Being Mean to Somebody isn't a Police Matter': Police Perspectives on Policing Cyberbullying" (2014) 14:2 J School Violence 155

[89] Katherine Ng, "Digital Dilemmas: Responding to Cyberbullying in Nova Scotia" (2012) 22 Education and the Law J 63 at 81.

[90] Nova Scotia Task Force on Bullying and Cyberbullying, *Respectful and Responsible Relationships: There's No App for That*, (online: <antibullying.novascotia.ca/taskforce>) at 9 (Chair: A Wayne MacKay).

school officials, community members, and law enforcement. The Report states: "Bullying and cyberbullying are really symptoms of deeper structural problems in society generally, and in schools. These problems are complex and multi-dimensional as they relate to how we interact as human beings".[91] The Report further acknowledges the link media reports make between cyberbullying and suicide, and cautions against assuming a causal relationship. Recommendations are made to pair proactive preventative measures with supportive responses. "When bullying is widely regarded by students, school authorities and people in general as being unacceptable and ultimately unthinkable, the incidents of bullying and cyberbullying will greatly diminish," the Report claims.[92] Another noteworthy emphasis in the Report is that a school with a zero tolerance policy for bullying is less effective than one that examines each case individually and seeks to educate as well as support all parties involved in an incident.[93]

Many of the recommendations from this report were enacted with the *Cyber-safety Act* in May 2013. Nova Scotians facing cyberbullying may appeal to the CyberSCAN investigative unit for help. That help may come in the form of protective orders, tort liability damages, and other proactive forms of redress. The Act also clarifies the school's jurisdiction to respond to cyberbullying, even if it happens off campus, as long as it significantly disrupts the school learning environment.[94] The *Cyber-safety Act* is a comprehensive response to cyberbullying, enacted with the attention to address many aspects of the complex issue, from prevention to response and it is applicable to schools, communities, and law enforcement.

Other initiatives such as Bullying Awareness Week and Pink Shirt Day serve to draw attention to cyberbullying as an issue. Bullying Awareness Week was started by Canadian Bill Belsey and involves activities and themes coordinated through his website.[95] Many Canadian schools encourage students to participate in these awareness activities. Pink Shirt Day began in 2007 when two Nova Scotia teens noticed a fellow student being harassed for wearing a pink shirt. They stood up for their peer and went out and purchased pink shirts of their own to show solidarity. Now a day is set aside each year, and coordinated through a website, to encourage students everywhere to wear pink, symbolically calling for an end to bullying.[96]

However, educational awareness programs alone will not likely produce enough change to reduce incidents. While federal legislation focusing on one aspect

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[91] *Ibid* at 26.

[92] *Ibid* at 52.

[93] *Ibid* at 62.

[94] *Supra* note 38, s 26.

[95] Bill Belsey, "BullyingAwarenessWeek.org: Prevention Through Education and Awareness", (2015) online: <www.bullyingawarenessweek.org/>.

[96] Evan Annett, "It's #PinkShirtDay: Canadians take a Stand against Bullying", *The Globe and Mail* (25 February 2015), online: <www.theglobeandmail.com/news/national/canadians-go-pink-to-take-stand-against-bullying/article23195353/>.

of cyberbullying may help reduce persecution by utilizing photos, it will not affect the full breadth of electronically mediated peer harassment. It is time for a national discourse that recognizes the full complexities of cyberbullying. Until every province enacts programs such as the *Cyber-safety Act*, educators, parents, and law enforcement will continue to respond to cyberbullying concerns with an uncertainty of how to proceed. Whose responsibility is it to stop the harassment? Who has the technological skill set to track down the sender of anonymous messages? If the harassment seems criminal, should the schools leave the response to law enforcement? If the harassment occurs off-campus, is that beyond a school's locus of control?

Given recent high profile attention to cyberbullying, most Canadians recognize it as a social problem. However, if the national response ends with Bill C-13 and public discourse remains confined to the non-consensual distribution of intimate images, the response will be severely limited.

Conclusion

Legislative debate during the House of Commons review of Bill C-13 focused on balancing the need to protect youths such as Parsons and Todd with the rights of privacy of the general public while communicating through electronic means. As the international public gained awareness of cyberbullying as a problem, different countries have focused their response according to the victims who brought the most attention to the issue. For the United States, the response focused on requiring school policies in place to prevent and redress incidents of cyberbullying.

In Canada, Parsons and Todd received the highest profile coverage. Analysis of the news coverage of their deaths reveals a social problem frame in the discussion of cyberbullying. That discourse focuses on the remedies, effects, and definition of cyberbullying. The remedy is most frequently portrayed as public attention and new legislation. Each followed in these cases. Federal legislation, in the form of Bill C-13, reflects the most common definitions of cyberbullying in news media coverage, primarily the non-consensual distribution of intimate images. Although legal experts expressed concerns that Bill C-13 might be overreaching in its empowerment of law enforcement to gain access to electronic communications, the Bill was not split to separate the distribution of images clause from the evidence seeking clauses. This is unsurprising, given the predominance of suicide and death as effects associated with cyberbullying in print news media, and the intensity of news coverage, particularly with Todd and Parsons' deaths. The federal Canadian response to the construction of cyberbullying as a social problem was to amend the Criminal Code, with an emphasis on the non-consensual distribution of intimate images as well as an effort to empower law enforcement in the collection of evidence related to cyberbullying crimes.

Cyberbullying is a complex issue. The reality is that cyberbullying is less common than conventional bullying. Moreover, the two often overlap, such that there are often no clear lines between bullies and victims. While there may be a link between cyberbullying and suicide, it is dangerous to assume a causal link. Media discourse on cyberbullying emphasizes extreme cases and focuses on aspects that fit the general pattern of cyberbullying as a social problem.

While Bill C-13 may fill a legal gap, it should not be seen as the solution to cyberbullying. It is time to broaden the public discourse beyond what some term bullycide, to include a more comprehensive approach. Social change is unlikely until we reconstruct the Canadian definition of cyberbullying to reflect a more complicated issue, one deeply imbedded in teen culture.

APPENDIX A:
Global Prevalence of Cyberbullying[97]

Ana Estévez et al, "Adolescentes Víctimas de Cyberbullying: Prevalencia, y Características" (2010) 18:1 Psicologia Conductual 73.

Anja Schultze-Krumbholz et al, "Emotional and Behavioural Problems in the Context of Cyberbullying: A Longitudinal Study among German Adolescents" in Peter K Smith, ed, *Emotional and Behavioural Difficulties Associated with Bullying and Cyberbullying* (New York: Routeledge, 2014) 102.

Ann Wade & Tanya Beran, "Cyberbullying: The New Era of Bullying" (2011) 26:1 Canadian J School Psychology 44.

Colin Lankshear & Michele Knobel "Foreword (Or Beyond 'Reify, Measure and Treat')" in Shaheen Shariff & Andrew H Churchill, eds, *Truths and Myths of Cyber-Bullying: International Perspectives on Stakeholder Responsibility and Children's Safety* (New York: Peter Lang, 2010) xi.

Dorit Olenik-Shemesh, Tali Heiman & Sigal Eden, "Cyberbullying Victimisation in Adolescence: Relationships with Loneliness and Depressive Mood" in Peter K Smith, ed, *Emotional and Behavioural Difficulties Associated with Bullying and Cyberbullying* (New York: Routeledge, 2014) 133.

Fabio Sticca et al, "Longitudinal Risk Factors for Cyberbulling in Adolescence" (2013) 23:1 J Community & Applied Social Psychology 52.

Francine Dehue, Catherine Bolman & Trijntje Völlink, "Cyberbullying: Youngsters' Experiences and Parental Perception" (2008) 11:2 *CyberPsychology & Behavior* 217.

Jennifer L Pettalia, Elizabeth Levin & Joël Dickinson, "Cyberbullying: Eliciting Harm without Consequence" (2013) 29:6 Computers in Human Behavior 2758.

Marilyn Campbell et al, "Victim's Perceptions of Traditional and Cyberbullying, and the Psychosocial Correlates of their Victimisation" in Peter K Smith, ed, *Emotional*

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[97] *Supra* note 76.

and Behavioural Difficulties Associated with Bullying and Cyberbullying (New York: Routeledge, 2014) 161.

Michel Walrave & Wannes Heirman, "Towards Understanding the Potential Triggering Features of Technology" in Shaheen Shariff & Andrew H Churchill, eds, *Truths and Myths of Cyber-Bullying: International Perspectives on Stakeholder Responsibility and Children's Safety* (New York: Peter Lang, 2010) 27.

Michele L Ybarra & Kimberly J Mitchell, "Prevalence and Frequency of Internet Harassment Instigation: Implications for Adolescent Health" (2007) 41:2 J Adolescent Health 189.

Özgür Erdur-Baker, "Cyberbullying and its correlation to Traditional Bullying, Gender and Frequent and Risky Usage of Internet-mediated Communication Tools" (2010) 12:1 New Media & Society 109.

Ruth Festl & Thorsten Quandt, "Social Relations and Cyberbullying: The Influence of Individual and Structural Attributes on Victimization and Perpetration via the Internet" (2013) 39:1 Human Communication Research 101.

Sameer Hinduja & Justin W Patchin, "Cyberbullying may Exacerbate Problems that can Lead to Suicide" in Louise I Gerdes, ed, *Cyberbullying: At Issue* (Detroit: Greenhaven Press, 2012) 52.

Samuel C McQuade III, James P Colt & Nancy Meyer *Cyber Bullying: Protecting Kids and Adults from Online Bullies* (Westport, CT: Praeger, 2009).