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Cyberbullying and the Justice System

By Ian Fraser, Louise Bond-Fraser, Dave Korotkov, and Shannon Noonan

The issue of cyber-bullying and cyber misconduct currently tops the agendas of government officials, educators, parents, civil libertarians, and legal practitioners. Enter the legal system. Laws have always been necessary to maintain a certain level of social order and compliance to agreed norms of behavior in civil societies. When the boundaries of that normative order shift, traditional modes of legal control no longer apply. The transformed order requires new applications of the law, new law, or alternative means of navigating new dilemmas.^[1]

A study conducted in 2010 by Sameer Hinduja of Florida Atlantic University and Justin Patchin of the University of Wisconsin-Eau Claire, outlined the impact of cyberbullying in a study of middle schools:

[C]yberbullying prevalence rates for individual behaviors ranged from 9.1% to 23.1% for offending and from 5.7% to 18.3% for victimization.... Cyberbullying victims were almost twice as likely to have attempted suicide compared to youth who had not experienced cyberbullying.^[2]

Generation Y, which comprises those people born between 1984 and 2004, is the second largest generation currently living. Called Generation Y because they followed Generation X, they are, in terms of population, second only to the Baby Boomers (1946-64).^[3] Because of their affinity for and reliance on the Internet, this newer generation is frequently referred to as the Internet generation,^[4] though perhaps they might just as readily be called Generation Y-Fi. They, like the rest of us, use this medium for acquiring knowledge, but perhaps more than the older generations, also for entertainment and social connectivity.^[5] This tie to the electronic world is so strong that Generation Y can often become separated from the real world even while trying to navigate their way through it. This observation was underscored by a publicity stunt conducted by a United Kingdom group called 118118, a charity which focuses on making city streets safer for pedestrians. To this end, the charity covered the lamp posts on London's famous Brick Lane with a thick, spongy covering to protect inattentive texters from the adverse effects of walking into them. They also conducted a brief survey, which found that one in ten people admitted to having hurt themselves while distracted by texting.^[6]

The need to stay connected has made millions for people who have designed social networking sites and chat groups. Indeed, social networking websites seem to encourage their members to measure their self-worth by the number of online friends and contacts they have. In fact, one of the instant messaging companies has developed a competition whereby they will indicate the more popular person out of two users based on the number of contacts they have.^[7] However, this newer technology, together with Generation Y's need for connectivity, has given rise to a new type of bullying — cyberbullying. This Internet assault, which reaches far beyond the schoolyard, is more pervasive and relentless as it can be effected 24/7.^[8] Moreover, it can be conducted under a cloak of web-enabled anonymity. The quandary society now faces is whether or not to introduce new legislation to govern behaviour in this new forum.

Cyberbullying, a Social Science Perspective

The term cyberbullying, was first introduced by Bill Belsey^[9] and, in 2004,^[10] he defined it as follows:

Cyberbullying involves the use of information and communication technologies [such as] e-mail, cell phone text (SMS) ... instant messaging (IM), defamatory Web logs (Blogs), and online personal polling websites ... to support deliberate, repeated, and hostile behavior by an individual or group, that is intended to harm others.^[11]

Belsey, a Canadian educator concerned with the gravity of the problem, went on to develop the websites www.bully.org, which deals with bullying in general, and www.cyberbullying.ca, which deals with cyberbullying in particular.^[12]

Since Belsey defined cyberbullying, there have been a number of papers and books on the subject. There have also been a number of surveys conducted in an attempt to assess its prevalence. The evidence suggests that cyberbullying is more common than one might think. A study, conducted by the Cyberbullying Research Centre in 2010, surveyed over 4,000 United States children between the ages of ten and 18.^[13] The researchers noted that 20 percent of the children admitted to having been cyberbullied at least once in their lives and that 17 percent admitted to having been bullied at least twice in the 30 days leading up to the survey.^[14] Closer to home, Wendy Craig, a psychologist from Queen's University and an expert in the area of bullying and cyberbullying, has noted that a recent study, conducted in collaboration with the World Health Organization, ranks Canada sixth out of 38 countries for the highest bullying rates against 11-year-old girls.^[15] It also appears that there is a gender difference in the reporting of cyberbullying. In a separate study conducted by Pew Internet, 38 percent of the teenaged girls surveyed reported having been cyberbullied,

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compared to only 26 percent of the teenaged boys.[\[16\]](#)

However, cyberbullying is not only a problem for the young. In 2009, Statistics Canada released a report which suggested that 7 percent of the adults aged 18 or older who had embraced the Internet had been cyberbullied at least once.[\[17\]](#) A recent article in London's *Daily Mail* addressed the cyberbullying of renowned Welsh soprano, Katherine Jenkins. Jenkins has been the victim of an unrelenting campaign of online abuse apparently by a single aggressor. In the article, the *Mail* quotes an anonymous post on the *We Love Katherine Jenkins* website that is typical of the sort of harassment to which Jenkins has been subject. "KJ is an over-hyped talentless slut with no discernible talent ... she is despised by opera buffs."[\[18\]](#) Perhaps more surprisingly, the *Mail* suggests the culprit is middle aged: too old for the schoolyard, but certainly one would have thought, old enough to know better.

Despite the known evidence of cyberbullying, the authors believe that the statistics may in fact not represent the extent of the problem. Most people are not aware of what actually constitutes cyberbullying. Des Butler, Sally Kift, and Marilyn Campbell in their paper entitled "Cyber Bullying In Schools and the Law: Is There an Effective Means of Addressing the Power Imbalance?" state that most researchers agree that, as with other bullying, there are four necessary components to cyberbullying:

- (1) The bully knowingly engages in the act to harm the victim, "whether emotionally or physically."
- (2) The bullying causes a power imbalance in favour of the bully.
- (3) The bully repeatedly engages in the act of threatening or humiliating the victim.
- (4) The victim is "unable to defend" himself or herself.[\[19\]](#)

However, it should also be noted that when researchers use the term cyberbullying they are typically referring to those acts that are performed by children.[\[20\]](#) Similar acts performed by adults are often referred to as cyberstalking or cyberharassment.[\[21\]](#)

Various Methods of Cyberbullying

As is obvious, the aim of bullying is to hurt the victim. This gives the bully a sense of power.[\[22\]](#) Cyberbullying is much easier to engage in than regular bullying because the bully has ready and instant access to the victim 24/7. In addition, it does not have to be a face-to-face encounter, which may lend the bully a sense of anonymity.[\[23\]](#) Moreover, cyberbullying can be achieved in a variety of different ways. Nancy E. Willard in her book entitled *Cyberbullying and Cyberthreats: Responding to the Challenge of Online Social Aggression, Threats, and Distress*, lists several ways in which a cyberbully can achieve his or her aim.[\[24\]](#)

Harassment

Most people have a general understanding of harassment. Cyberharassment is typically one-sided and consists of persistent, profane, hurtful, and malicious messages. The messages are sent either to the victim's personal email or to an on-line group that the victim visits.[\[25\]](#) Though the victim can avoid the harassment by avoiding any on-line activities, this would be exceedingly difficult for the younger generation.

Cyberstalking

Cyberharassment can become cyberstalking when the bully begins to use cyberthreats; that is to say, threats of actual physical harm to the victim or his or her family and the victim begins to fear for his or her safety or the safety of loved ones.[\[26\]](#)

Exclusion

Studies on the importance of Social Identity Theory and the establishment of in-groups have been well documented in psychological literature.[\[27\]](#) To be shunned or "sent to Coventry" by an in-group immediately makes the victim a part of the out-group or, in other words, an outcast. A cyberbully may persuade others in the group to blackball certain people from chat rooms. This may be achieved either by ignoring their contributions or by using password-protected forums and deliberately barring them. This shunning only really works when victims know why they are being ostracized. Therefore, they are often told either verbally or by email that they are, in some negative way, different.[\[28\]](#)

Denigration

Denigration may be defined as "an abusive attack on a person's character or good name."[\[29\]](#) As the word implies, the point of this type of cyberbullying is to destroy the victim's reputation. If it is written, it constitutes libel. The cyberbully engaging in denigration may publically post libelous comments; for example, the may make statements concerning the victim's allegedly nefarious business dealings or supposed sexual proclivities. He or she may even post doctored images of the victim in compromising situations. These types of comments and pictures are frequently posted on public sites to maximize the negative impact on the victim.[\[30\]](#)

Both Nancy Willard in *Cyberbullying and Cyberthreats* and Shaheen Shariff in *Confronting Cyberbullying: What Schools Need to Know to Control Misconduct and Avoid Legal Consequences* report that this method has been used by students against their teachers.[\[31\]](#) Indeed, an increasing number of teachers are complaining about having become victims of denigration. Shariff notes that due to the frequency of complaints, the Canadian Teachers' Federation has set up a task force to investigate the problem.[\[32\]](#) However, to social scientists it may not constitute cyberbullying because the student does not gain the balance of power and, moreover, he or she may not be intentionally attempting to hurt the teacher. As Shariff points out, in a number of cases in which students have been caught, they have argued that the teacher was not supposed to have seen the information and that it was meant only as a joke among friends. Students in these cases may claim that they were merely exercising their right to freedom of speech. Certainly, most of us can remember conversing with our friends in the schoolyard or phoning each other after school and making disparaging comments about our teachers. It has been argued that the Internet is simply a different forum where a new generation is expressing such views.[\[33\]](#)

Outing

Outing occurs when a person receives a private and personal communiqué from someone and then deliberately distributes it to others. This type of communiqué can either be textual or visual and the purpose of promulgation is to embarrass or otherwise negatively affect the original sender.[\[34\]](#)

Trickery and Impersonation

The information used in outing may be elicited by underhanded means such as by posing as the victim's friend to give the impression that the information is part of a private exchange, while nevertheless planning to make the information public. The cyberbully may also impersonate the victim, sending personal, private information as though from the victim. This may include a suggestive email together with the victim's contact information. Moreover, the cyberbully might simply hack into the victim's social networking page and post as though the victim. Information posted in this way may be used to impact the victim's credibility.[\[35\]](#)

Flaming

In addition to the other forms of cyberbullying already mentioned, some researchers include flaming. Nancy Willard defines flaming as follows:

Flaming is a heated, short-lived argument that occurs between two or more protagonists. Flaming generally includes offensive, rude, and vulgar language, insults, and sometimes threats. A longer series of such messages is called a "flame war."[\[36\]](#)

However, flaming itself does not truly follow the characteristics of cyberbullying as all parties are equally involved in the exchange.[\[37\]](#) In this light, it could simply be viewed as an argument that takes place in a new forum.

A Legal Perspective

So far we have outlined the definitions that society in general has given to the anti-social behaviour of cyberbullying. Certainly, it seems that the Internet has given us not only a new forum for bullying, but also new terms to add to our lexicon. However, in terms of recourse, it is necessary to delineate cyberbullying from a legal standpoint. The Canadian Bar Association, British Columbia Branch (CBABC) defines it as follows:

Cyberbullying is a type of harassment using new technology. Whether it is criminal harassment depends on the facts of a case. Cyberbullies use social media (such as Facebook, Twitter, and YouTube), blogs, texting, instant messaging, and other internet avenues to engage in deliberate, repeated, and hostile behaviour intended to harm, embarrass, or slander someone. Although their work is public, cyberbullies are anonymous and it is often harder to identify and stop them.[\[38\]](#)

As can be seen, there are a number of similarities between the CBABC's definition and the definition first proposed by Belsey in 2004. For example, both definitions refer to the fact that the behaviour is both deliberate and repeated with the intent to harm. Neither the CBABC's nor Belsey's original definition refers to any age limitations. Furthermore, neither definition overtly lists all four of the components that social scientists feel are necessary to define an act as cyberbullying. For example, neither definition refers to a power imbalance or to the fact that, as a result, the victim feels helpless. However, some might argue that the very mantle of self-protecting anonymity that the cyberbully can so readily assume itself engenders a feeling of helplessness in the victim and gives the control to the culprit.[\[39\]](#) A discussion of the CBABC's definition of cyberbullying is beyond the scope of this paper; however, the mere fact that the CBABC has referred specifically to the act of cyberbullying on its website demonstrates that the judicial system is taking this new type of bullying very seriously. In fact, the CBABC website lists a series of actions that a victim of harassment or cyberbullying can take:

1. First, if the harassment is attempted communication with you, tell the person to stop. Otherwise, they may not know that they are harassing you. Otherwise, never reply to harassing messages.
2. Call the police to report the problem. Record the details of every incident, including time, date, place, who was involved, and what was said and done. Keep letters, notes, voicemail messages, emails, texts, instant messages, and social media and internet posts. Give them to the police.
3. If the harassment happens at school, report it to the school authorities, as well as to the police. If it happens at work, report it to your boss, plus the police.
4. Report cyberbullying or other harassing communication to your internet or cellphone company. Most companies have policies on acceptable use of their services, and can cancel the service of a customer who violates those policies. The company can also help police find a cyberbully who is using their network.
5. If you get a harassing phone call on a landline, dial *57 immediately when the call ends. The phone company will record the phone number that made the call, so the police can get it. If you receive harassing calls on your cell phone, call the phone company for help in tracking the calls.
6. You can also seek a civil restraining order in court. But to do this, you need legal advice.[\[40\]](#)

Though the Canadian judicial system is giving serious attention to cyberbullying, it seems as though the laws that may be used to govern such behaviour are insufficient. If a person seeks a resolution through the courts, the matter will proceed against a defendant under existing civil or criminal laws.[\[41\]](#)

Civil Laws

Two of the most common civil resolutions for a victim of cyberbullying are to apply for a protection or restraining order, or to seek redress under a defamation lawsuit. The British Columbia Ministry of Justice describes a protection order as follows:

Protection orders are made by a judge in court or by police to help protect one person from another. A protection order contains a condition that affords the safety and security to a specified (named) person or persons. An order must contain a "no contact", "limited contact", or other protective condition to be considered a protection order.[\[42\]](#)

Such issues are covered in the booklet entitled *For Your Protection: Peace Bonds and Restraining Orders: Information for women in relationships who need protection from violence or the threat of violence* which may be accessed on the British Columbia Ministry of Justice website. Though specifically referring to women in relationships, it applies also to people who are being cyberbullied and who feel that they are in immediate danger. The booklet strongly suggests that if a victim feels that she or her family is in immediate danger, she should call 911. The police will then decide whether or not to arrest the alleged aggressor. However, if the police believe there is not enough evidence to arrest, the victim may instead apply for a restraining order.[\[43\]](#)

The specifications of either "no contact" or "limited contact" apply readily to the use of the Internet. Nevertheless, these do not apply to situations in which the cyberbully is not in direct contact and is no

immediate threat, but is, instead, spreading rumours about the victim in an attempt to destroy his or her reputation. In this situation the victim may opt to sue for defamation. The CBABC describes defamation as follows:

Defamation is communication about a person that tends to hurt the person's reputation.... The communication must be made to other people, not just to the person it's about. If it is spoken, then defamation is termed "slander." If it is written, it is termed "libel." It can also be a gesture, which is a type of slander.

The law protects your reputation against defamation. If someone defames you, you can sue them to pay money (called "damages") for harming your reputation. You have to sue in Supreme Court, not Provincial Court, and you have to sue within 2 years of the defamation.... [You don't have to prove that the people who heard or read the defamation actually believed it. Even if they knew it was false, it can still be defamation. Courts realize that lies can take on a life of their own.]

The law doesn't protect you from a personal insult or a remark that injures only your pride; it protects reputation, not feelings. So if someone calls you a lazy slob, you might be hurt, but you probably don't have a good reason to sue. If he goes on to say you cheat in your business dealings, you probably do have a good reason to sue, as long as he says it to someone else, not just to you. If he says it only to you, you can't sue because he has not hurt your reputation."[\[44\]](#)

A cursory review of the Quicklaw database shows that there have been a number of cases in which defamation of character has been used in what social scientists would consider cyberbullying cases. It must be noted, however, that only three of the cases documented on Quicklaw make a direct reference to the term cyberbullying. The most germane, in relation to this paper, is the case of *A.B. v. Bragg Communications Inc.*, in which the legal guardian of a teenaged girl was trying to make the Internet provider disclose the identity of the person who put up a fake Facebook page using the girl's pictures and personal information. The page was demeaning and hurtful and the legal guardian wanted to sue the anonymous creator for defamation. The judge ruled in favour of disclosure. The head note states:

Application for abridgement of the notice period, an order requiring the respondent internet provider to disclose the identity of the user of a particular IP address and for a publication ban or use of pseudonyms for the teenage applicant and her litigation guardian. The applicant alleged that an unknown person created a fake Facebook profile that used her picture and a variation of her name, disclosed personal information about her and made sexual commentary. The profile was removed in March 2010, the same month the applicant had discovered it. The applicant did not know who created the profile, however, but wanted to find out so that she could take legal action. Facebook had disclosed the IP address the profile had been created from, which was allocated to the respondent. The respondent internet provider did not object to a disclosure order. The respondent media outlets objected to any confidentiality order.

HELD: Application allowed in part. The court exercised its discretion to abridge the notice period. The applicant had made out a prima facie case of defamation. The statements made on the fake profile were clearly published and tended to lower the reputation of the applicant. The applicant had no other way to obtain the identity of the creator, other than through the respondent, so disclosure was ordered. The user of the IP address did not have a reasonable expectation of privacy while setting out to publicly destroy the applicant's reputation. Disclosure was in the public interest. It was also in the public's interest to publish information about the proceedings in order to educate the public about the negative aspects of social networking and the problems of cyber bullying. Given that the fake profile had already been removed and the applicant had not adduced any evidence she would be seriously harmed by publication, it was unclear how a publication ban or pseudonym order would benefit her, so no such order was made."[\[45\]](#)

Both applying for a restraining order and the filing of defamation-of-character law suits will surely become increasingly common in the future, as more people who are being cyberbullied will seek resolution or recompense through the courts. Willard suggests that defamation lawsuits, especially if directed at the parents of underage bullies, will send a message to parents that they need to monitor their child's behaviour on the Internet.[\[46\]](#) However, as Laura N. Casaway of the University of North Carolina's law school points out, proving defamation in the US, is difficult:

A statement is not considered defamation if it cannot reasonably be interpreted as stating actual facts about a person. This rule immunizes from defamation law: (1) statements that are too fantastic or improbable to be believed as factual (i.e., Jerry Fallwell *had sex with his mother in an outhouse!*); (2) words used in a loose figurative sense (i.e., that teacher is a *beast!*); and (3) rhetorical hyperbole (i.e., the mayor is *blackmailing* the city in his tough real estate negotiations!). Similarly, epithets, insults, and non-specific accusations of racism or bigotry are not actionable as defamation. As a result, a statement that a teacher or fellow student "stole all the school's money to build a golden sailboat," "is a traitor," "is a brainless witch," or "is a racist," would not be considered defamatory."[\[47\]](#)

Moreover, in Canada, the CBABC points out that statements can only be deemed as defamatory if they have been shared with others.[\[48\]](#) So, if the cyberbully is continually emailing nasty, demeaning or derogatory comments to the victim alone, it cannot be considered defamatory in a legal sense, though it falls very much under the definition of cyberbullying. Furthermore, the bully could combine pejorative comments with other forms of bullying, such as exclusion, and yet still could not be charged with defamation of character.

Criminal Law

Another recourse available to victims of bullying, especially if they fear that they or their immediate families are in danger, is to press charges under section 264 of the Canadian *Criminal Code of Harassment*:

No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonable, in all circumstances, to fear for their safety or the safety of anyone known to them.

(2) Prohibited conduct — The conduct mentioned in subsection (1) consists of repeatedly following from place to place the other person or anyone known to them;

(a) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

(b) repeatedly communicating with, either directly or indirectly, the other person or anyone

known to them;

(c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on a business or happens to be; or

(d) engaging in threatening conduct directed at the other person or any member of their family.[\[49\]](#)

As Gasaway indicates, however, this type of case can also be very difficult to prove:

Most cyberbullying is made up of repeated behaviors, but it may not be easy to show in all cases that the bully engaged in the subject behavior with the requisite intent. Whether deemed a joke, a prank, or something else, defendants in most cases will argue that their actions were not meant to cause any real harm, and, especially in the case of minors, juries might be apt to believe them. Cases of direct cyberbullying will be easier to successfully prosecute as stalking or harassment crimes, especially if the behavior is frequent and virulent. It will likely be difficult to show that perpetrators of indirect cyberbullying, those who, for example, create MySpace pages dedicated to poking fun of a teacher, possessed the requisite intent to be convicted of stalking or harassment.[\[50\]](#)

One of the problems, it seems, is that civil and criminal laws have not kept pace with the electronic age. It is apparent that new laws are needed to deal with cyberbullying.

Where Are We Now?

Since laws act as guides to acceptable behaviour, it is important to have laws that reflect what is important to society. The problem of bullying and cyberbullying is growing at an alarming rate and some steps have already been taken to address it. One of the first forms of recourse for a victim of cyberbullying is to seek a remedy through the school, university or workplace to which they belong. Many universities and workplaces now have policies in place and some provinces have begun to tighten up their education acts in response to the problem. The Province of Ontario, for example, has passed Bill 212, which made amendments to the *Education Act*. The Act now includes bullying as grounds for disciplinary action.[\[51\]](#) The Province of New Brunswick has also passed similar legislation regarding misconduct within the public school system. The *Positive Learning and Working Environment Policy* makes direct reference to cyberbullying under the heading Serious Misconduct. It reads:

6.3.1 The following are examples of behaviours exhibited by any person that are viewed as extreme and unacceptable in the New Brunswick public school system:

bullying, hazing or any form of intimidation;

cyber bullying - including, but not limited to, posting inappropriate material online, sending harassing, deliberate or repeated emails and posting items online without permission of those involved;

possession, use or provision of weapons — a weapon can be any object used, or intended to be used, to cause injury or death, or to threaten or intimidate a person. Discipline decisions will take into account the inherent or perceived danger of the object involved;

possession, use or selling of illegal or dangerous substances or objects - examples include the use of illegal drugs, tobacco and alcohol, possession of drug paraphernalia and possession of explosives;

possession of or sharing pornographic materials (including electronic images);

physical violence — the use of force or inciting others to use force to cause physical injury;

sexual assault, harassment, abuse and misconduct;

dissemination of any hate propaganda material, including hate literature;

harassment — causing a person to fear for their safety or the safety of a person known to them by repeatedly following them from place to place or repeatedly communicating directly or indirectly (e.g. by leaving notes, making or sending persistent or harassing telephone calls or e-mails, etc.);

uttering threats — communicating the intent to hurt or damage a person, an animal, place or thing;

vandalism causing extensive damage to school property and on school property;

theft;

disruption to school operations — any behaviour which threatens the health or safety of any person, including school personnel (e.g. arson, bomb threats and tampering with safety equipment such as fire alarms); and

any other behaviour that, in the opinion of school or school district officials, would reasonably be considered serious misconduct.

6.3.2 These behaviours represent a significant disruption to the learning and working environment, endanger others or significantly impair the operation of the school and the maintenance of a positive learning and working environment. These behaviours will normally result in the exclusion of a person from school property and, in the case of a student; these behaviours will result in an immediate suspension, in addition to other interventions. In most cases, due to the gravity of these behaviours, their occurrence will require the involvement of law enforcement officers.[\[52\]](#)

More recently, in response to a couple of high-profile cyberbullying cases, the provincial government of Nova Scotia's education minister set up a commission to look into the problem and to make recommendations concerning education, prevention, and policy.[\[53\]](#)

Calls for legislation have come from many groups within our society. Teachers, parents, police, lawyers, and politicians are seeking new laws and tougher penalties for cyberbullying. In 2010, for example,

the Canadian Association of Police Boards, which represents the majority of municipal police forces across Canada, publically called for tougher penalties for cyberbullies.^[54] Even though there have been calls for change, these calls have met with equal resistance by other organizations that feel the existing laws already deal with cyberbullying and that new laws are therefore not necessary. The opponents not only feel that such laws are unnecessary, but that they may, in fact, infringe upon a person's freedom of speech. As mentioned earlier, students who have been caught denigrating their teachers on the web have argued that it was not meant to hurt the teacher and that they have a right to express their opinion. In fact, in one case where the student was reprimanded by having some of his liberties removed, the student body of the school held a demonstration in support of his right to voice his feelings.^[55]

Michael Deturbide, the Associate Dean of Law at Dalhousie University, believes we should be reluctant in attempting to criminalize cyberbullying. He feels that the more extreme cases are already covered in law under criminal harassment and that to criminalize cyberbullying will, indeed, trample on a person's freedom of speech. In an interview with Lyndsie Bourgon of The Canadian Press, he said:

We do have freedom of expression in Canada and that means sometimes you can say unpopular and even nasty things, and there is a line that's crossed.... That line is already in the Criminal Code and I'm not quite sure why we need a specific law targeting the Internet.^[56]

However, the Media Smarts website suggests freedom of speech should be balanced against section 7 of the *Canadian Charter of Rights and Freedoms*:

Section 2 of the Canadian Charter of Rights and Freedoms guarantees freedom of expression. However, this right is guaranteed "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" and, in the case of cyberbullying, must be weighed against Section 7. The latter section guarantees "the right to life, liberty and security of the person." In general, Section 2 of the Charter has not been accepted as a defence in civil or criminal bullying cases.^[57]

Obviously, there is much to debate in terms of the law, but some believe that ultimately the solution may lie not in litigation, but in education.

It has been suggested that the problem is that young people are not aware of what is and is not appropriate and that a more effective strategy would be to develop greater awareness through education.^[58] Ignorance may indeed be a factor and education may indeed prove useful; however, an article published by the *Calgary Herald* entitled "Cyberbullying Laws Already Exist" suggests that education may not be enough, as it "does not provide bullies with any consequences for their actions and the lack of consequences has been a persistent problem with this issue."^[59] The article goes on to point out that the major recourse available to schools at the moment is to expel the student, which may be seen by the bully as a reward rather than a punishment. The article suggests that there is no need for new legislation, but instead full advantage should be taken of the existing civil and criminal laws.^[60]

Conclusion

Whatever the solution to the issue of cyberbullying, the authors believe that the dialogue should not only continue, but should be made a priority and, moreover, not only at the school level. The Internet is not a passing phenomenon, but is undoubtedly going to provide the standard method of communication well into the future. Already, we are feeling the effects of the Internet in all aspects of our lives as increasing numbers of people are able to work, shop, and socialize from home using their computers. The next generation, Generation Z, will inherit the real safeguards we provide in this virtual world. We need to prepare them for the future with guidelines for the appropriate use of this technology. The existing laws of libel and criminal harassment only reduce the size of cyberbully's arsenal, leaving the bullying behaviours of shunning, debasing, and negativity without legal redress. If these issues were merely confined to the schoolyard, it would be one thing, but thanks to the Internet, the effects of such bullying behaviours can be magnified to global proportions and have devastating effects on the victim's well-being.

It is society's responsibility to determine acceptable and unacceptable behaviour both off and on the Internet, but while not every action should be actionable, it seems as though specific laws may indeed be needed to protect those who use this mushrooming form of communication from the potentially devastating effects of its fall-out. It is already been suggested by some that we may not be able to rely solely on laws that were in force before the Internet was born. As Wayne McKay, a professor in the Schulich School of Law at Dalhousie University and the chair of the Nova Scotia Task Force, was noted as saying: "The law generally has lagged behind technology."^[61] If we are not proactive, we shall be continually reacting. McKay also notes that creating new laws concerning cyberbullying will require some tough talk and tough decisions.^[62] However, such tough decisions to criminalize cyberbullying are currently being considered in the US and, according to a recent poll conducted by Angus Reid, most Canadians would like to follow suit:

In the United States, a proposed federal law would make it illegal to use electronic means to "coerce, intimidate, harass or cause other substantial emotional distress." Nine in 10 Canadians would like to see a similar cyber bullying laws [sic] enacted in their own province."^[63]

Whatever happens, we cannot simply stand by and hope that the problem will disappear into the ether.

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