

Cyberbullying and the Law

How we police, protect and punish in the digital era...



*The legal content of this presentation is accurate as
of August 11, 2014*



Introduction

- Background and Bio
- OJEN/HJEN
- Why Cyberbullying?
- Agenda
- Questions?



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What is Cyberbullying?

Insulting: Posting or spreading false information about a person that will cause harm to that person or that person's reputation

Targeting: Singling someone out and inviting others to attack or make fun of her or him

Identity theft: Pretending to be someone else to make it look like that other person said things he or she doesn't believe or that aren't true about him or her

Uploading (or tagging): Sharing images of a person, particularly in an embarrassing situation, without her or his permission, or sharing emails without the writer's permission

Excluding: Pressuring others to exclude someone from a community (either online or offline)

Harassment: Repeatedly sending someone nasty, mean and insulting messages. (www.mediasmarts.ca)

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What is Cyberbullying?

"Cyberbullying involves the use of information and communication technologies to support deliberate, repeated, and hostile behaviour by an individual or group, that is intended to harm others" – Bill Belsey, (www.cyberbullying.ca)

"The Internet has created a new world for people to meet, connect and exchange information. Unfortunately, it has also created another opportunity for bullying.

People can use the Internet to send embarrassing, hurtful and threatening messages. These actions can inflict serious harm on the kids and adults they victimize. This is known as cyberbullying" – (www.bullyfreealberta.ca)

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Who gets Cyberbullied?

According to a 2008 University of Toronto [Cyberbullying survey](#):

“In the past three months **21%** of total students have been bullied online. Some of these students were bullied more than once. The frequencies of the following tables will therefore add up to the total number of bullying incidents rather than the total number of students”

Note: over half of students who are cyberbullied (52%) do not report it...
(www.bewebaware.ca)

Also, 36% of students who bully/get bullied online report bullying/being bullied in real life (*U of T survey*)

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High-Profile Cases

Amanda Todd



Rehtaeh Parsons

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Who are the Bullies?

Just like with regular bullying, there is no pre-defined, stereotypical “cyberbully”

“In the past three months 35% of total students have bullied other kids online. Some of these students bullied others more than once.”

26% of students who bullied others online report bullying others in real life - people feel more empowered behind the computer screen (2008 U of T survey)

“This lack of [immediate physical] feedback minimizes feelings of empathy or remorse. Young people say things online that they would never say face-to-face because they feel removed from the action and the person at the receiving end” (www.bewebaware.ca)

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What are the Impacts?

- Anger, hurt, depression, anxiety, social disorders and suicide
- Decreased school performance
- A feeling of being “unable to escape”
- Powerlessness, frustration, betrayal and perpetual fear
- Surprise at the universality of the internet
- Shame and fear of losing technological privileges at home
- “Social death”
- Unwanted (coerced) sexual activity
- Withdrawal from previously enjoyed activities
- Changes in eating and sleeping habits (www.kidshealth.org and others)

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Cyberbullying “Laws”

Criminal Law

- Criminal Harassment (s. 264)
 - Repeatedly communicating, directly or indirectly, with another person causing reasonable fear for his or her safety
 - Up to 10 years in prison
- Defamatory Libel (s. 297)
 - Deals with the publication (without justification) of material likely to injure one’s reputation
 - Normally associated with prominent public figures
 - Up to five years in prison
- Intimidation (s. 423)
 - Involves threats, intimidation or violence to compel action or inaction



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Cyberbullying “Laws”

Civil (“Tort”) Law

- Defamation/Slander (shorter term)/Libel (longer term)
- **Duty of care** for reasonably foreseeable consequences of one’s actions
- Also, duty of schools to provide a safe and welcoming environment to all students
- Intentional infliction of emotional distress and mental suffering?
- Damages?
- Lost productivity?

(see: www.mediasmarts.ca)



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Cyberbullying “Laws”

Statutory Provisions

- **Bill C-13** This proposed legislation would criminalize the sharing of intimate/sexual video or images of an individual without that person’s consent.

It would also give the police the power to access personal user data from internet service providers without a warrant. If signed into law, this new police power may be struck down as unconstitutional (see *R v Spencer* slide).

- **Charter of Rights and Freedoms (s. 2(b) v. s. 7)**

Section 2 of the **Charter** guarantees freedom of expression, “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

In the context of cyberbullying, this freedom must be weighed against the Section 7 freedoms of the person being bullied. Section 7 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.

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Cyberbullying “Laws”

Statutory Provisions

- Safe Schools Act (*zero-tolerance bill*)
- [Education Act](#) (*recent “bullying week” amendments*)
- Human Rights Legislation
- Youth Criminal Justice Act
- Local school board policies and procedures
- School policies and procedures
- Classroom protocol
- Municipal By-laws?
- Community groups and PTA organizations?

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Why do we have Laws?

- Condemnation
- Deterrence
- Reflect social norms and mores
- Reflect morality (but whose?)
- Punishment
- Taxation
- Encourage certain behaviours
- Discourage others
- Rehabilitation



...but which of these are most important???

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Case Study

A.B. v. Bragg Communications Inc., 2012 SCC 46

“A.B.'s appeal to this Court is based on what she says is the failure to properly balance the competitive risks in this case: the harm inherent in revealing her identity versus the risk of harm to the open court principle in allowing her to proceed anonymously and under a publication ban. Unless her privacy is protected, she argued, young victims of sexualized cyberbullying like her will refuse to proceed with their protective claims and will, as a result, be denied access to justice” (para. 10)

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Case Study

R v Spencer 2014 SCC 43

In this case, the defendant was convicted of possessing child pornography. The police used evidence of his online activity that was provided to them by his Internet Service Provider. Although the Supreme Court ruled that to access this information without a warrant amounted to unconstitutional search. (Nevertheless, the Court allowed the evidence and upheld the conviction under the *Grant* test).

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Any Questions?



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