CHAPTER XI

Defining the Legal Lines: eGirls and Intimate Images

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Introduction

The objective of this chapter is to address the nuanced complexities relating to sexting in the context of sexualized cyberbullying among youth, and related legal and educational dilemmas in public policy. We focus on key societal and legal issues to address why recent legislative proposals and legal responses to sexualized cyberbullying are misguided. To provide the context behind the legalities, we first highlight the scholarly discourse around the dynamics of rape culture to draw attention to the fact that sexting, and the nonconsensual distribution of intimate images among youth, is not a new online phenomenon created by teens. Rape culture concerns the way societal attitudes condone, minimize, and/or normalize sexual violence against women through social institutions, communities, and individuals.[1] Thus, when we discuss the advent of sexualized cyberbullying among teens, we also argue that it belongs to preestablished social norms embedded in and perpetuated by adult society. What has changed is the rapid pace at which various forms of expression, including offensive and demeaning photographs and images, can be distributed and shared online, and the hurdles involved in having such content removed. We present this context by highlighting three disturbing trends:

1. Patterns in social media communication and popular culture that suggest a misogynist backlash against influential women and girls.
2. The gendered dimensions and perceptions of harm, responsibility, and culpability regarding sexting, and the non-consensual distribution of intimate images, as they emerge in popular culture and research involving children and teens aged 9 to 18.
3. Concerns regarding reactive legislative and public policy responses to sexting and cyberbullying among children and youth.

We draw on existing scholarly literature to address the behaviour of slut shaming as an expression of victim blaming,[2] along with well-publicized cases of sexualized cyberbullying. We then turn to explore the degree to which slut shaming and rape culture surfaced in research findings from two overlapping research projects on youth and sexting undertaken in Dr. Shariff's Define the Line projects at McGill University (the DTL research). Drawing from this research, we conclude that meaningfully responding to sexualized cyberbullying (including non-consensual distribution of intimate images) will require multi-pronged strategies that incorporate proactive educational initiatives. We examine the shortcomings of Canada's most recent reactive legislative response: criminalization of the non-consensual distribution of intimate images in the controversial Bill C-13.

We conclude our chapter with recommendations for a rethinking of legal responses that pay more attention to human rights and educational initiatives. We argue that rather than looking solely to criminal law, which is punitive and reactive, constitutional and human rights frameworks offer a proactive approach that might allow for greater consideration of the complex and nuanced online social contexts we highlight here. As some scholars suggest, the "big stick sanctions"[3] that criminalize children fail to directly address the deeply embedded systemic forms of misogyny in greater society. We suggest that given the current policy vacuum resulting from unprecedented dilemmas arising from digital technologies, thoughtful, proactive, and non-arbitrary responses (as opposed to reactive and arbitrary ones) show greater promise for addressing problems arising from sexting and sexualized forms of cyberbullying.

To that end, we recommend that a practical starting point would be to enhance public legal education and critical media literacy. In 1973, then–Chief Justice of Canada Bora Laskin argued that public legal literacy was long overdue,[4] but little has been done to address that gap in public knowledge across Canada. As society becomes increasingly immersed in online communication, it is essential that people should be better apprised of their legal rights and responsibilities, and of the emerging legal risks to their privacy and safety. As we present our discussion of rape culture and slut shaming in this chapter, it will become quickly apparent to readers why it is particularly important for all members of society to become better informed about the legal rights of girls and women, both online and offline. Legal literacy could, for example, play a key role in raising young people's awareness about issues of consent in cases of sexting. If legal responses continue to ignore issues of misogyny, homophobia, sexism, racism, and other forms of discrimination within society, and their influence on perpetuating cyberbullying and sex-related online offences, the policy vacuum will continue to prevail.

Backlash Against Influential Women Online

The prevalence of sexist and misogynist attitudes online is well documented.[5] These attitudes are not new to North American society, but online forums amplify and intensify the spread and coverage such attitudes receive.[6] In this section, we set the stage for understanding how sexist and misogynist attitudes enable rape culture to thrive online and offline. Women and girls can encounter these views daily, both directly and indirectly, and it is glaringly evident when women attempt to assert their views online. In short, when women claim space that challenges the traditional and underlying assumption that public space is male space—and heterosexual at that—misogynist attitudes surface through various forms of online abuse. Similarly, Shariff has noted that when women in positions of cultural or political influence use their agency to express informed opinions and/or when they assert feminist perspectives, they often threaten insecure males, leading to (often sexualized) attacks.[7] We outline below a handful of high-profile examples.

Amanda Hess, a prominent journalist and frequent tweeter, received death threats on her social media pages for writing about issues around sex. She encountered a barrage of tweets, which

ranged from attacks on her appearance, "I see you are physically not very attractive," to physical threats on her life, "happy to say we live in the same state. I'm looking you up, and when I find you, I'm going to rape you and remove your head."[8] Hess has suggested that similar disturbing forms of misogyny too often happen to women. Anita Sarkeesian, feminist pop culture critic, had her Wikipedia page hacked repeatedly with obscenities and pornography after the launch of her campaign that examines the sexist and misogynistic portrayals of women in video games. One man even went so far as to create a video game that allowed players to beat up and inflict black eyes and cuts on a virtual Sarkeesian.[9] Blogger and programmer Kathy Sierra received death threats too, which caused her to cancel a public appearance and freeze her blog.[10] These forms of harassment can be devastating, and the humiliation can affect women's health, academic success, and careers.[11] The examples discussed above point to the insidious backlash against women in positions of influence, who may or may not express feminist views, yet can become targets of extreme sexual harassment and online ridicule simply by asserting themselves in public online spaces.

The integration of online and offline sexism has become increasingly transparent in recent incidents on Canadian university campuses. For example, in early 2014, the University of Ottawa's female student council president was targeted in an online exchange between some of her male colleagues. Below is a pseudonymized excerpt from that exchange as reported in the blog, The Belle Jar:[12]

> A [a non-elected [male] student]: Let me tell you something right now: the "tri-fluvienne" [nickname for someone from Trois-Rivières, Quebec] president will suck me off in her office chair and after I will fuck her in the ass on [a third party's] desk.
> B [male VP Social for the Criminology Student Association]: Someone punish her with their shaft.
> C [male member of the board of directors of the Student Federation of the University of Ottawa]: Well Christ, if you fuck [female student council president's name] I will definitely buy you a beer.

The excerpt illustrates the glorification of heteronormative violence—a kind of violence that polices sexuality and gender roles, and hinges on the assertion of the sexual dominance of the alpha,

hetero male.[13] Other recent Canadian university examples include frosh chants endorsing non-consensual sex at the University of British Columbia and St. Mary's University, which were reported in mainstream media in the fall of 2013.[14] These events further highlight the depth of the internalization of rape culture, given that the video in the St. Mary's incident shows young women chanting these violent lyrics alongside their male counterparts. Rape culture affects not only relationships between males and females, but also between members of the same sex. For example, in 2005, senior members of McGill University's football team used a broomstick to sexually assault a male freshman player.[15] This latter incident speaks to the functions of rape culture: the assertion and maintenance of heteronormative male power and dominance. According to Pascoe, there is peer pressure among young males to prove their heterosexuality to their peers,[16] which can lead to acts of sexual harassment of females and homophobic harassment among males.[17] Although the definition of rape culture in our introduction defines it as sexual violence that specifically targets women and, while we recognize that rape culture disproportionately affects females,[18] the discussion above seeks to address its pervasiveness as it functions to reinscribe gender norms and inequality. In so doing, we emphasize the fact that both adolescent girls and boys must navigate this corrosive environment.

Situating the Gendered Dimensions of Sexting within the Context of Slut Shaming and Rape Culture

Social media has introduced new avenues for communication and expression of one's identity. The extent to which social media has shifted behavioural norms and boundaries is only beginning to be understood, but these changes are well-reflected in some of the attitudes and behaviours of adolescents who live a seamlessly integrated online/offline existence.[19] One of these behaviours is the practice of sexting. Adolescents exploring their sexuality are doing so in an online era; many, but not all, even choose to express these personal explorations through digital technologies such as smartphones, tablets and laptops – as though these are extensions of their corporeal selves.[20]

Sexting is typically used to refer to the sending and/or receiving of sexual or sexually suggestive images or videos, nude or semi-nude, through cellphones and social media apps.[21] Snapchat has become

one of the social media applications favoured as a forum for sexting amongst adolescents. This app allows users to take images, record videos, and send them to recipients with a limited time to view. One concern is that the platform might lead adolescents to believe they can act without worrying about creating a lasting record when, in fact, their actions are traceable. Although Snapchat deletes the files from the recipient's as well as the application's server, recipients can take a screenshot of the image sent. In a matter of seconds, images intended to be privately communicated can be widely disseminated online.

Snapchat was involved in a November 2013 situation in which ten boys between the ages of 13 and 15 were arrested in Laval, Quebec. Media reports indicated that the boys had convinced several female classmates to use Snapchat to send them intimate photographs. One news media report describes the girls' actions as "flirty-fun,"[22] assuming that the girls did not realize that Snapchat did not guarantee the absence of a digital record. The boys reportedly took screenshots of the girls' nude and intimate images, and distributed them via social media. They were subsequently charged with distribution and possession of child pornography. Two of the boys face additional charges of production of child pornography. All await court hearings.[23]

While some statistics suggest that girls and boys are equally likely to send sexts,[24] the potential consequences of sexting are deeply gendered, exposing girls to greater risks of shaming and humiliation that are tied to a sexual double standard.[25] Young girls who have trusted male peers and sent sexualized images online have sometimes paid the heavy price of public humiliation, ruined reputations, and blame for bringing it on themselves through slut-shaming.[26] In the result, we suggest that the gendered dimensions of sexting need to be understood within the broader contexts of slut shaming, sexualized stereotyping in media, and rape culture.

Slut Shaming and Sexualized Sterotyping in Media

Slut shaming tends to target females when they express their sexual agency beyond what society deems culturally appropriate for women and girls.[27] For the purposes of this chapter, we define sexual agency as purposeful decisions made by women or girls to express their sexuality on their own terms (versus ways in which society pressures them to express it). At the same time, we also acknowledge later in

this section that feminist scholarship has taken issue with the way that neo-liberal market forces are usurping women's notions of sexual agency and spinning them as choices to self-objectify.[28] Slut shaming reveals that women and men do not enjoy the same privileges when it comes to the expression of sexuality, pointing to the entrenched gender inequality within North American society.[29] Slut shaming's foray onto the internet provides a context for opinions to spread rapidly and widely, intensifying and amplifying the shame of targeted girls and women, even though slut shaming itself is certainly not a new phenomenon.

In the mid-seventeenth century, men who employed female domestics reportedly used the term "slut" as both an affectionate and condescending term.[30] Female domestics often had to navigate sexual harassment by the males in the households where they worked. By the late eighteenth century, middle-class women appropriated the term to pejoratively refer to female domestic servants. In this way, the term became a means for women of higher socioeconomic status to distinguish themselves from women of lower socioeconomic status, while also allying themselves with men.[31] The term functioned to draw class (and in some cases race) lines between the "morality" and "purity" of the middle class and the "impurity" of the lower-class female servants. In many cases, the term rendered sexually exploited domestic servants as "a source of filth and became a prelude to their dismissal."[32] While the term has continued to morph and shift in its etymology, one thing that has remained disturbingly consistent is how often women use it to police one another.[33] Internalization of heteronormative male-dominated narratives about the limits of female sexual agency by both men and women facilitates the production and reproduction of rape culture within society.[34] These problems are compounded by approaches to online behaviours such as cyberbullying that focus largely on the outward behaviours of youth from developmental perspectives and that fail to take environment into account, rather than targeting confusing and conflicting media messages around sexuality and misogynistic and homophobic attitudes among adults.

Contemporary examples of slut shaming abound online, from a viral Tumblr post, "Hey Girls. Did You Know?", that paired photos of women's exposed breasts with the phrase, "Hey Girls. Did You Know … that uhm, your boobs go inside your shirt," and resulted in other posts, including, "Hey Girl. Did you know? That you spread Nutella

… not your legs,"[35] to the online posting of images of two teenaged Steubenville boys raping a 16-year-old girl at a party[36] that resulted in online attacks on the victim, including, "Shouldn't they charge the lil' slut for underage drinking?" or, "I honestly feel sorry for those boys in that Steubenville trial, the whore was asking for it."[37]

Slut shaming, like other exercises of power, whether engaged in by men or women, needs to be understood as a mechanism to police and govern societal norms.[38] Slut shaming polices the extent to which women, and especially adolescent girls, can freely express their sexual agency before enduring scorn from society; hence, creating a double standard and marking female sexuality as deviant.[39] Further, slut shaming helps to shape social understandings of rape. As Poole has noted, "peers, adults, media and courts all give attention to how much make-up a girl uses, the type of clothing she wears, how late she stays out, and how she acts towards males."[40] Notwithstanding the policing of the sexual agency of women and girls that is deeply entrenched in North American society, popular culture in North America regularly confronts female adolescents with quite contradictory messages about sexuality; a conflict that Attwood appropriately describes as the archetypal "Madonna-Whore binary."[41]

On the one hand, women and girls are encouraged to take on leadership roles and positions of power traditionally held by males. On the other hand, popular culture also suggests that women's power flows from performances that push conventional social boundaries around female sexuality and publicly represent strong messages of sexual independence.[42] The marketization of the modern woman – strong and sexually assertive – dominates popular culture storylines across the music, film, advertising, and television industries.[43] Suddenly, "high-heeled shoes are emblematic of confident, powerful femininity."[44] As Gill notes, marketers have (re)packaged and incorporated a non-threatening neo-liberal version of feminism in their advertising in order to sell products, rather than to liberate women from traditional subjugated positions.[45] Where adolescents are concerned, since the 1990s, ideas of "Girl Power" have led to the proliferation of images of overtly sexualized women in mass media, offered as proof of women's empowerment and agency.[46] These marketing tactics spin the notions of agency and independence as a part of a sexually liberated woman's choice to voluntarily self-objectify.[47] Music videos glamorizing female stripper-pimps and a naked young woman swinging on a wrecking ball can be understood as marketing

mechanisms for a heteronormative economy through which adolescent girls are socialized[48] to understand women's bodies "as the primary source of woman's capital."[49]

Girls and young women (as well as boys and young men), then, face conflicting and confusing[50] messages that on the one hand depict sexualized self-representations as a primary source of agency and empowerment for females and on the other hand can result in renewed efforts to control them through sexual violence, embarrassment, and slut shaming.[51] As Steeves notes[52], girls are thus left to negotiate an unspoken line in teen digital culture in relation to expressions of their sexuality. Too much and they are perceived to be "sluts." Too little isolates them from the popular peer group.[53] Patterns, behaviours, and risks related to sexting must be understood and evaluated in light of this context. Otherwise, we will miss important opportunities to proactively mitigate the risks of gendered harms currently disproportionately borne by women and girls. Through critical media literacy education, for example, we can assist girls (and boys) to recognize that sexualized celebrity culture is a business that is not only occurring within a larger economy that positions power, pleasure, and agency in relation to heterosexual relationships, but also, streamlines what kind of bodies (read race and body type) are seen as beautiful.[54]

Rape Culture: Gang Rapes, "Up for It," and "Asking for It" on Social Media

In the sections above, we defined rape culture as both an individual and systemic response to sexual violence against women that functions to condone, normalize, and/or minimize these sexually violent behaviours and attitudes.[55] We considered the pervasiveness of rape culture in order to contextualize how both females and males navigate, internalize, and perform these violent societal norms in online spaces. While we maintain that rape culture disproportionately affects women and girls, the emergence of rape culture online presents a disturbing new trend of concern to all.

Over the past couple of years, another dimension of rape has emerged; that is, some adolescent boys have begun to post videos and images of gang rape on social media forums, such as Facebook. This iteration of sexually violent acts online re-victimizes girls every time the videos of their physical and sexual abuse are distributed,

viewed, saved, and reviewed on e-mail, smartphones, and social media. Recent mediatized examples include cases in Maple Ridge, Steubenville, Nova Scotia, and Chicago. In the Maple Ridge case, the female victim was drugged and gang-raped at a rave party while a 16-year-old male watched the rape, videotaped the incident, and passed it to an older friend to post on Facebook.[56] In Chicago, three teenaged boys raped and sodomized a 12-year-old girl, after luring her into one boy's home, and days later posted the act on Facebook.[57]

The cases cited above also involved public backlash against the victims, which we suggest reflects the insidious impacts of rape culture. For example, in the Maple Ridge case, once the video went viral, there was significant discussion on social media as to whether the girl who was raped had "asked for it" and whether the images in the video made it look as though she "enjoyed" it.[58] Similarly, in the Steubenville rape, discussion over social media forums contained comments that blamed the victim by naming her a "slut" and "whore," as though she was "asking for it."[59] We will return to this notion of "asking for it" momentarily, as it also provides an occasion to think about rape culture and its relationship to adolescent males. First, we return to our earlier discussion on the neo-liberal constructions of femininity and depictions of the modern, sexually empowered woman within popular culture and advertising. In doing so, we not only begin to understand how adolescent females are negotiating their identities within a society saturated with contradictory messages, but also, we can begin to discuss how adolescent males are negotiating their understandings of female sexuality amidst North American society's sexist and misogynist portrayals of women and girls. In the last decade, Gill notes, a new figure of femininity has been constructed within media and advertising: "a young, attractive, heterosexual woman who knowingly and deliberately plays with her sexual power and is always 'up for it' (that is, sex)."[60]

Moreover, to think about the ways popular culture and advertising construct this new femininity, is to also think about the ways that male sexual fantasy perpetuates this notion of the sexually insatiable female figure. Or, as Evans, Riley and Shankar note, this "up for it" femininity[61] that some suggest is reflected in the emergence of pole-dancing classes or the popular re-emergence of burlesque dance classes.[62] Gill suggests that the neo-liberal transformation of feminist ideals of sexual agency and empowerment has turned

feminism into a sexy kind of "feminism lite"—a form of feminism that poses no threat to the patriarchal norms that govern political and economic relations within mainstream society.[63] This kind of "feminism lite" creates a market (from pop icons to car advertisements) that cultivates a popular belief among consumers that women live in an era where feminism is no longer relevant. However, Gill argues that hetero male sexual fantasy, and its widespread production, "made real" these sexually assertive females as role models for women of the millennium by guising and selling it to women as if these attitudes were "authentically owned by women."[64] It is important to note that our examination of women does not presume them to be passive, but as active subjects that are also subjected to intricate belief systems and norms that are sexist and misogynist. Perhaps a weakness in Gill's analysis, as Evans, Riley, and Shankar point out, is her homogeneous portrayal of women's engagement with neo-liberal marketization of the modern women.[65] Even as we discuss the ways in which sexist views intertwine with popular culture, we must keep in mind that women's experiences of these trends depend on their varying positionalities within society.

Gill's work is influenced by Turner's examination of how "straight porn" has moved from the realm of fantasy to mainstream society, conveniently coinciding with the emergence of the "up for it" female figure in popular culture and advertising. As Turner has put it:

> Once porn and real human sexuality were distinguishable. Not even porn's biggest advocates would suggest a porn flick depicted reality, that women were gagging for sex 24/7 and would drop their clothes and submit to rough, anonymous sex at the slightest invitation. But as porn has seeped into mainstream culture, the line has blurred. To speak to men's magazine editors, it is clear they believe that somehow in recent years, porn has come true. The sexually liberated modern woman turns out to resemble—what do you know!—the pneumatic, take-me-now-big-boy fuck-puppet of male fantasy after all.[66]

One potential problem of the marketing of the "up for it" female stereotype to hetero male consumers is that male youth may draw their understandings of female sexuality from sources in popular culture, normalizing male sexual violence against girls. Herein lies the toxic,

destructive force of rape culture: its impact on youth culture and its incorporation into sexual exploration.

Issues around slut shaming and rape culture memes around "asking for it" also arose in the findings of the DTL Research Project related to sexting.

Define the Line: DTL Research

Methodology

In 2012, DTL conducted one online survey with 1,088 North American students between the ages of 9 and 18. The age range was further broken down into two groups: pre-Facebook age (9 to 12) and Facebook age (13 to 17)—the latter indicative of the legal age at which adolescents can obtain a Facebook account. The results of this study were previously published on the Define The Line website[67] as well as in Shariff's book.[68] Since most participation on Facebook involves posting of images, comments, and messages, the online survey was designed to present participants with hypothetical case studies to analyze and gauge their responses to what took place.[69] One of these scenarios is discussed in more detail below.

In addition to the survey, twenty focus groups of four to eight students were also conducted at participant schools in Montreal, Vancouver, and Seattle. The data were coded and analyzed in 2013, using NVivo software to derive patterns from the open-ended questions and focus group discussions. The goal of the study was to learn more about how students in these age groups perceive or define the line between what they consider to be harmless teasing, joking, and sarcasm or bantering among friends on social media, and harmful or illegal conduct. Among other things DTL researchers sought to determine

- the extent to which these participants recognized the legal risks involved in sexting;
- the forms of discrimination that informed their attitudes such as sexism and homophobia, and;
- their perceptions regarding privacy and ownership of content once it is posted online, especially as it pertains to sexting and the non-consensual distribution of intimate images.

Slut Shaming and "Asking for It"

In the focus group sessions, participants viewed videos entitled "The Cell Phone" and "La Photo" on the Define the Line website, (www.mcgill.ca/definetheline.ca). In both video- vignettes a teenage girl is coerced into sending a nude photograph of her breasts to a male classmate under the pretence that he would maintain its confidentiality. He then promptly distributes the photograph online. A lack of empathy for the female victim in the videos was evident in some of the reactions to the actors, with some participants assigning more blame to the girl who sent the original photo than to the boy who passed it to his friends. As one participant put it, "I think it's 60 percent the girl's fault and then 40 percent the guy's fault, because she starts the whole process of it being sent to everyone." Another participant also seemed to empathize with the male perpetrator in terms of the photo spreading, noting: "Sometimes it just spirals out of control."

The "asking for it" meme may also help to explain some of DTL's online survey findings with the older adolescents aged 13 to 17. As reported in DTL's recent "Facebook Report,"[70] all participants were presented with two hypothetical situations to analyze:

- The first involved the story of Dana and Louise. Dana passed out drunk at Louise's party, prompting Louise to take a picture of her and share it with others online.
- The second considered the story of Brian and Angee. Angee sent Brian a sexually explicit photo, which he later sent on to others.

The difference in responses to the two scenarios is very interesting. In the first case, participants were asked to check one or the other:

- Dana had a right to object to Louise posting her photo online without her permission; or
- Dana does not have the right to object because the photo was taken at Louise's party where others saw Dana.

Of the 530 youth in the Facebook Age group (aged 13 to 17) who responded to the questions, 522 (99 percent) responded that Dana did have the right to object, whereas only six (1 percent) responded that she did not have the right to object to her photo being posted

online without her permission. That the vast majority responded in favour of Dana's right to object may suggest an element of empathy for Dana in light of the situation.

In the second scenario, participants were asked to check one or the other:

- Angee has the right to object to her photo being shared online without her permission; or
- Angee does not have the right to object to her photo being shared online because she sent it to Brian and so now Brian can do whatever he wants with it.

In this particular case, only 311 out of 581 participants (54 percent) of participants stated that Angee did have a right to object to her sexually explicit photo being shared. The disturbing aspect of our findings is that 270 out of 581 participants (46 percent) of the participants felt that Angee did not have a right to object, because she sent the photograph to Brian. These kinds of results may shed light on the highly publicized news media cases in which youths have non-consensually forwarded intimate images. In this study, almost half of the participants believed it was acceptable to non-consensually distribute intimate images sent to you by another person. These respondents would appear to have attached very little accountability or responsibility to the person who breaches trust.

These very different answers to the two questions create an interesting discrepancy. What motivated the vast majority of participants to find Dana had a right to object while almost half felt Angee did not? While further qualitative research to follow up more specifically on this kind of difference is needed, it may be that this difference reflects less empathy for the target of the sexualized attack, but perhaps also that almost half of respondents felt that by "consenting" to Brian seeing her naked photo, Angee should be taken to have consented to his distributing it. Alternatively, it may be that participants were simply confused about consent altogether. However, when the recipient of an intimate photo passes it on, or it ends up on Facebook's timeline, it can have devastating effects.

These kinds of findings, together with the research relating to slut shaming and rape culture, must be taken into account when we consider how best to respond to non-consensual distribution in light of public pressure on governments to address the too numerous

and tragic teen suicides, most of them by high school girls who were exploited online. Unfortunately, issues such as slut shaming and rape culture have not been well attended to in Canada's most recent response to cyberbullying – Bill C-13, the *Protecting Canadians from Online Crime Act*.[71]

A Reactive Legal Approach

Policymakers have come under significant pressure to develop and implement stronger legislation and harsher punishment for young offenders who engage in cyberbullying and, in particular, non-consensual distribution of intimate images. While police in a number of US jurisdictions initially responded by using child pornography laws to arrest and detain youth, Canadian authorities were slower to do so.[72] However, there have been a few recent instances of Canadian teens being charged with child pornography offences, including two boys in Nova Scotia and a teen girl in British Columbia.[73] US court rulings confirm opinions expressed by many American judges that applying these laws to children's behaviour is like attempting to "fit a square peg in a round hole."[74] While child pornography laws were created to protect children from sexual exploitation, these laws (and Canada's obscenity laws) have been used to charge Canadian youths in connection with instances of non-consensual distribution (including in relation to online postings of alleged sexual assaults).[75]

Canada's Controversial Cyberbullying Legislation: Bill C-13

The Canadian Department of Justice touts Bill C-13 as a "cyberbullying law." However, it has been vigorously criticized as one that has little to do with cyberbullying, and everything to do with surveillance and infringement of Canadians' privacy rights.[76] Here, we highlight the sections on Non-Consensual Distribution of Intimate Images (Non-Consensual Provisions) in order to assess the degree to which they can meaningfully respond to underlying environmental factors such as rape culture and slut shaming that the research discussed above suggests is so heavily informing sexting and related forms of non-consensual distribution among youth.

While the Non-Consensual Provisions would offer an alternative to charging youth with child pornography offences that were originally designed to protect youth, and may also address a gap in

protecting against violations of adult women's privacy rights,[77] we remain concerned about four fundamental issues.

> *1. The Non-Consensual Provisions will do little to undermine the rape culture and slut shaming that inform non-consensual distribution of intimate images among youth.*

The Non-Consensual Provisions react by punishing non-consensual distribution, but offer no proactive strategy for addressing underlying misogynistic attitudes that render teen girls vulnerable in the first place. "Big stick sanctions"[78] are unlikely to change youth behaviour without evidence-based educational supports to help young people understand the lines between harmless and harmful forms of online expression and to understand the rights and entitlements of others.

While the federal government has supported some educational programs, one of the few programs it has chosen to finance is disappointing. The WITS program (Walk Away, Ignore, Talk it out, Seek Help) has received government funding as an educational support for Bill C-13.[79] The fundamental premise of this program is out of touch with young people's digital reality. It advocates "walking away" from the abuse, but most social media participants would agree that it is impossible for victims of cyberbullying and non-consensual distribution to "walk away" when their nude or intimate images appear across the internet. The 24/7 nature of the online/offline world confirms how impossible it is to ignore the overwhelming number of online insults and hateful "slut-shaming" comments.[80] As some of the research discussed above suggests, some youth may believe that anyone who sends intimate images to another is "asking for" non-consensual forwarding by the recipient.

Furthermore, Shariff's earlier research confirms that young people often do not report their own victimization for fear of further retaliation and/or having their online privileges revoked.[81] Therefore, the WITS program suggestion to "seek help" by reporting may be unrealistic. Further, the suggestion to "talk it out" seems quite unhelpful in the case of sexualized attacks: how likely is a target to feel safe discussing the situation with a perpetrator who is slut shaming her? It is equally disappointing that when so many well-researched and evidence-based anti-cyberbullying programs are available and were presented to the Standing Senate Committee on Human Rights, taxpayers' money is spent on programs that are so out

of touch with young people's reality.[82] Ultimately, without effective educational programs, the Non-Consensual Provisions under Bill C-13 seem unlikely to effect the kind of real change that is needed in order to address sexualized forms of cyberbullying.

2. C-13 does nothing to support youth in defining the line between joking and harmful behaviour.

As noted above, young people are navigating complex terrain in terms of proving their strength and status in a digital and online social network and often make decisions premised on the misogynistic and homophobic assumptions represented in the world around them. As a result, they may have difficulty defining the line between jokes and harmful behaviour. While C-13 would react by criminalizing those who non-consensually distribute intimate images of others, it offers nothing to assist youth in decoding the discriminatory messages around them or in learning how to make decisions that are respectful of the rights of others or empathetic to the situation of others.

3. Policy should proactively address rape culture and misogyny, not just its symptoms.

As we have explained earlier in this chapter, girls and young women are both encouraged by media to represent certain forms of sexuality, but are also at risk of slut shaming for doing so. The meaning and consequences of cyberbullying and sexting must be understood in the context of systemic forms of discrimination that disempower women and girls in particular. Addressing the symptoms of disrespect for the rights of girls and women, without proactively addressing the discriminatory roots of that disrespect are unlikely to yield meaningful lasting results.

4. Engage youth in policy development.

As we have shown above, youth are navigating a complex environment that is not necessarily well understood by adults.[83] For that reason, policy processes regarding online issues such as cyberbullying and non-consensual distribution, which so directly affect youth, must also incorporate the voices of youth. As Bailey argues in Chapter I,

engaging youth in policy development permits them to take ownership and gain agency in understanding how the law impacts their online communication.

Conclusion

The contextual issues raised in this chapter suggest that the Canadian public needs improved knowledge regarding the social challenges and mixed messages young people receive from adults through popular culture and modelled behaviours. We examined these contentions through patterns in social media communication and popular culture that suggest a misogynist backlash against influential women and girls, which is also reflected in misogynistic attacks online. Moreover, the gendered dimensions and perceptions of harm, responsibility, and culpability regarding sexting create an uneasy relationship between female expressions of sexuality and societal expectations around the female body. As also indicated in the findings of the eGirls Project,[84] women and girls are simultaneously encouraged to be both sexy and pure, and those who do not carefully negotiate these invisible lines risk slut shaming and victim blaming even when their images are non-consensually redistributed. It is imperative to enhance public legal education relating to all forms of law, including criminal, human rights, constitutional, and private law. As noted in our introduction, there is currently an over emphasis on punitive legal responses, which criminalize children, and which have also been described by scholars as "big stick sanctions" that don't work.[85] It is therefore essential to question what other legal frameworks, such as human rights, constitutional, tort law, and emerging provincial education legislation,[86] might more effectively respond to cyberbullying. Reactive criminal legislation alone does not respond to the underlying environmental problems at the root of non-consensual distribution and other forms of sexualized cyberbullying. We need to work towards proactive educational initiatives that incorporate critical media and legal literacy[87] aimed at addressing rape culture, among other things. We need to especially raise the level of respect for the equality and privacy rights of girls and women. Otherwise, we will always only be dealing with symptoms, and not the foundational problems of sexualized cyberbullying.

Notes

1 Although difficult to pinpoint, the origins of this term surfaced sometime during the 1970s. In 1975, Lazarus and Wunderlich produced the film, *Rape Culture*, which through the perspectives of its interviewees outlined the operatives of this culture in North American society. See Judy Norsigian, "Women, Health, and Films," *Women and Health* 1 (1975): 29–30, doi:10.1300/J013v01n01_07; Nicola Henry & Anastasia Powell (eds.), *Preventing Sexual Violence: Interdisciplinary Approaches to Overcoming a Rape Culture* (London, UK: Palgrave Macmillan, 2014); Anastasia Powell, "Rape Culture: Why Our Community Attitudes to Sexual Violence Matter," *The Conversation* (2014), <http://theconversation.com/rape-culture-why-our-community-attitudes-to-sexual-violence-matter-31750>. For further discussion, see Fairbairn, Chapter IX.

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24 Steeves, *supra* note 19.

25 Jane Bailey & Mouna Hanna, "The Gendered Dimensions of Sexting: Assessing the Applicability of Canada's Child Pornography Provision," *Canadian Journal of Women and the Law* 406 (2011): 405–441; Jane Bailey & Valerie Steeves, "Will the Real Digital Girl Please Stand Up?," in *New Visualities, New Technologies: The New Ecstasy of Communication,* eds. Hille Koskela & Macgregor Wise (London: Ashgate, 2013), 41–66; Michele Ybarra, Kimberly Mitchell, Janis Wolak & David Finkelhor, "Examining Characteristics and Associated Distress Related to Internet Harassment: Findings from the Second Youth Internet Safety Survey," *Pediatrics* 118 (2006): 1169–1177.

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31 Attwood, *supra* note 2.

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33 While for the purposes of our discussion we examine how society uses the term "slut" to shame young female adolescents, Attwood, *supra* note 2, gives a well-rounded examination as to how the term as been (re)appropriated by some feminist scholarship and activism as well as within the gay and bisexual communities.

34 As described in further detail below, we believe that education can play an important role in cultivating media and human rights awareness

amongst adolescent girls and boys as they come of age exploring their sexual identities in an era of social media and cellphones.

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38 Gill, *supra* note 28.

39 Attwood, *supra* note 2.

40 Poole, *supra* note 27 at 242.

41 Attwood, *supra* note 2 at 234.

42 Here we are thinking of celebrity examples such as Lady Gaga, Rihanna, Madonna, Miley Cyrus, and Beyoncé.

43 Chen, *supra* note 28.

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46 Chen, *supra* note 28.

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53 Shariff, *supra* note 50.

54 Gill, *supra* note 28.

55 Powell, *supra* note 1.

56 Shariff, *supra* note 7.

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59 Binder, *supra* note 37.

60 Gill, *supra* note 28 at 41.

61 Adrienne Evans, Sarah Riley & Avi Shankar, "Technologies of Sexiness: Theorizing Women's Engagement in the Sexualization of Culture," *Feminism & Psychology* 20:1 (2010): 114–131.

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82 Examples of such programs include those by EGALE, Define the Line, Kids Help Phone, and SafeTeen: Standing Senate Committee on Human Rights, *supra* note 80 at 111–116.
83 See Slane, Chapter X, for an analysis of the importance of contextualized understandings of youth's online communications practices in criminal cases.
84 See, for example, Steeves, Chapter VI, and Bailey, Chapter I.
85 Kift, Campbell, & Butler, *supra* note 3; see Milford, Chapter II, for further discussion of the limitations of criminal law responses.
86 See Angrove, Chapter XII, for further discussion of equality-based education law responses.
87 See Johnson, Chapter XIII, for further discussion of critical media literacy and digital citizenship initiatives.

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