

“She’s Such a Slut!”: The Sexualized Cyberbullying of Teen Girls and the Education Law Response

Gillian Angrove

Introduction

Sexualized Cyberbullying and the Canadian Context

On 27 September 2012, the Supreme Court of Canada released *A.B. v. Bragg Communications Inc.*,¹ in which a teenage girl “sought to unmask her cyberbullies”² in order to pursue a defamation action, while still protecting her own anonymity. In 2010, A.B. discovered that someone had created a fake Facebook profile using her picture, a slightly modified version of her name, and other identifying particulars.³ In addition to the photo, the creator of the profile had included “unflattering commentary about the girl’s appearance along with sexually explicit references.”⁴

At issue in the case was a balance between the freedom of the press and open court principles on the one hand, and the privacy and protection of children from sexualized cyberbullying on the other.⁵ Further, A.B. argued that unless her privacy was protected, “young victims of sexualized cyberbullying like her would refuse to proceed with their protective claims,” and therefore be “denied access to justice.”⁶ Justice Abella, writing for the Court, commented on A.B.’s privacy interests in the case, and observed, “it is not merely a question of her privacy, but of her privacy from the relentlessly intrusive humiliation of sexualized online bullying.”⁷ She further reasoned that:

If we value the right of children to protect themselves from bullying, cyber or otherwise, if common sense and the evidence persuade us that young victims of sexualized bullying are particularly vulnerable to the harms of revictimization upon publication, and if we accept that the right to protection will disappear for most children without the further protection of anonymity, we are compellingly drawn in this case to allowing A.B.'s anonymous legal pursuit of the identity of her cyberbully.⁸

Less than two weeks after the decision in *A.B. v. Bragg* was released, 15-year-old Amanda Todd committed suicide in British Columbia. Prior to her death, Amanda posted a video on YouTube to tell her story of taking a nude image of herself via a webcam, and the subsequent blackmail, stalking, and harassment that followed by tormentors in cyberspace and in the schoolyard.⁹ In Amanda's case, she was deeply affected by both the aggressive cyberbullying and bullying conducted at the hands of her peers, and the deliberate sexual extortion, or "sextortion,"¹⁰ by unknown online predators.¹¹

Officials at the school districts where Amanda spent her final months say they employed strategies such as preventative action, restorative justice, and mediation to stop "bullying" – but they admitted to having "limited reach beyond the schoolyard."¹²

In April 2012, 17-year-old Rehtaeh Parsons passed away after an attempted suicide. In November 2011, Rehtaeh was allegedly sexually assaulted by four perpetrators while attending a house party. A cell-phone photo of the sexual assault was shared repeatedly by students at her school and across social media sites.¹³ Subsequently, Rehtaeh was subjected to relentless sexualized bullying and cyberbullying.¹⁴ Leah Parsons, Rehtaeh's mother, has explained "she was never left alone ... boys she didn't know started texting her and Facebooking her asking her to have sex with them. It just never stopped."¹⁵

The administration at Rehtaeh's school, Cole Harbour High School, knew of the allegations that four boys (who also attended Cole Harbour High) had sexually assaulted her, but "did not step in to question those involved or address bullying."¹⁶ Halifax regional school board spokesman Doug Hadley said the school administration "didn't want to interfere with the police investigation."¹⁷

Sexualized cyberbullying is a troubling and complex problem that in particular affects teen girls across the country. In *The Report of the Nova Scotia Task Force on Bullying and Cyberbullying* ("the Nova

Scotia Task Force Report"), Professor Wayne MacKay explains that the struggle against cyberbullying "must be waged on many different fronts," including prevention education, criminal legislation and tort liability, and restorative approaches.¹⁸ Although a holistic approach to cyberbullying is ideal, in large part, Canadian policymakers, the media, and the public have assigned responsibility of the so-called "cyberbullying problem"¹⁹ to our schools and the education system.²⁰ Only more recently have other sorts of specific criminal law and tort-based statutory approaches begun to emerge.²¹ To the extent that we have framed cyberbullying as an education – and education law – issue, there are challenges and opportunities. This framing influences the way we collectively perceive the problem and how we collectively respond. Although education law cannot provide exact solutions to the many challenges in addressing cyberbullying, it can provide a useful framework within which students, teachers, administrators, policymakers, and society can begin to find ways to meet the challenges.²²

Whether or not we agree with categorizing cyberbullying as an education issue, an essential role of schools is to "teach good citizenship and basic values," including equality.²³ Teachers are "well placed to promote equality" and to act as exemplars for their students.²⁴ There is significant, and relatively untapped, potential for preventing and responding to sexualized cyberbullying through education law. This potential can be realized if equality is the "driving force" behind education legislation. That is, equality in education legislation cannot just be an "add-on,"²⁵ but it must be "the substance behind creating safe schools."²⁶ Equality as the substance behind education law will help facilitate and encourage the development of schools with inclusive and equality-driven approaches; and schools with inclusive and equality-driven approaches may foster students' empathy, respect for peers, self-esteem, and sense of belonging to the school community and larger society.²⁷

Equality-driven education legislation that allows for and facilitates inclusive schools may also enable students, teachers, and administration to understand, identify, question, and stand up against different forms of oppression and discrimination – for only with "such understanding is it possible to work together to build a more just society."²⁸

Therefore, this paper will investigate the sexualized cyberbullying of teen girls at secondary schools in Canada and the current

education law response. Specifically, provincial education law in British Columbia, Ontario, and Nova Scotia will be examined to ascertain whether equality is a “driving force” behind the legislation – and how, if at all, the law responds to or prevents sexualized cyberbullying.²⁹

Applying a Substantive Equality Lens to Education Law

In order to fully comprehend the implications of sexualized cyberbullying, I have chosen to apply an equality lens to all facets of the discussion. An equality lens insists on equal treatment and equal opportunity for all, regardless of gender and other intersecting forms of oppression. An equality lens also acknowledges that the impacts of sexualized cyberbullying and sexualized violence affect girls and women differently than they do boys and men. That is, if we truly want to understand the impacts of sexualized cyberbullying, we must question exactly *who* is likely to be victimized and how. We must also consider the systemic inequalities that disproportionately expose Canadian women and girls to sexualized violence. An equality lens will locate sexualized cyberbullying within these systemic inequalities, and will guide my consideration of the appropriate education law response. This lens is essential because much of the current literature and legislation pertaining to cyberbullying is gender “neutral”; however, the risks of sexualized cyberbullying and sexualized violence are unevenly borne by girls and women (and also by members of the LGBTQ community).³⁰

Women and girls experience systemic inequality in myriad forms, including sexual targeting, domestic violence, and sexual abuse.³¹ According to a 2013 Statistics Canada report, women had a much higher rate of police-reported violence than men in Canada.³² Women are eleven times more likely than men to be sexually victimized, three times as likely to be stalked, and twice as likely to be the victim of indecent and harassing phone calls.³³ MacKinnon argues that women are sexually assaulted “not individually or at random, but on the basis of sex.”³⁴ Accordingly, sexualized violence can be understood as “an indication and a practice” of sex inequality that both “symbolizes and actualizes” women’s “subordinate social status to men.”³⁵

Importantly, the women who remain further disproportionately affected by sexualized violence are women of colour and Indigenous women, trans people, women with disabilities, non-status women,

women with addictions, and women living in poverty.³⁶ For example, approximately 40 percent of women with disabilities in Canada will be assaulted, sexually assaulted, or abused throughout their lifetime.³⁷ Aboriginal women are 3.5 times more likely than non-Aboriginal women to experience incidents of violence.³⁸ Arguably, this reality is "the product of the racist, colonialist, ableist, ageist, capitalist, misogynist system within which our society exists."³⁹ Therefore, in order to respond to the sexualized cyberbullying of girls, we should also aim to understand the interconnectedness of gender, race, and class and other oppressions.⁴⁰

In the context of bullying and cyberbullying, much of the gender "neutral" education legislation focuses on naming, prohibiting, and punishing certain types of behaviour. This approach is problematic because it tends to misunderstand equality. Professor Donn Short has written extensively about the bullying of sexual-minority youth in Canada and the necessary response from schools. He argues that in order to prevent bullying of sexual-minority youth, education law should "allow for" and "facilitate" an equitable school culture. Although Short's argument is located in the lived experiences of sexual-minority youth and argued through an equity lens, its conceptual foundation should apply equally to the misogynistic and racist underpinnings of the sexualized cyberbullying of teen girls. That is, education law should not be restricted to solely naming, prohibiting, and punishing sexualized cyberbullying, but it should actively facilitate a school culture predicated on principles of equality. MacKinnon has stated that "law has a choice"—it can either inscribe misogyny on society, or it can dynamically move against inequality by promoting equality.⁴¹ School cultures are a microcosm of societal culture—and if our schools are rooted in and facilitate equality, perhaps we may begin to tear down some of the structural inequalities that disproportionately expose Canadian women and girls to sexualized violence.

Defining the Terms: Cyberbullying and Sexualized Cyberbullying

In order to effectively respond to the challenges of sexualized cyberbullying, it is critical to define the seemingly basic terms that are at the heart of this paper. Although cyberbullying is a term that most Canadians are relatively familiar with, "a universal definition of cyberbullying does not yet exist" and the "concept itself is actually hard to define."⁴² For example, from a legal perspective, if the

definition contains too many elements it could make establishing a violation very difficult; however, from a school administrator perspective it is important to have enough detail to distinguish “bullying” from other forms of school violence.⁴³

How, then, can education law define “cyberbullying” so that the rights and expectations of victims are respected, while at the same time ensuring that the definition does not serve as a catch-all for every unwelcome behaviour? The *Nova Scotia Task Force Report* proposed a definition specifically for the purposes of education legislation that seeks to achieve this balance:

Bullying is typically a repeated behaviour that is intended to cause, or should be known to cause, fear, intimidation, humiliation, distress or other forms of harm to another person’s body, feelings, self-esteem, reputation or property.

Bullying can be direct or indirect, and can take place by written, verbal, physical or electronic means, or any other form of expression.

Cyberbullying (also referred to as electronic bullying) is a form of bullying, and occurs through the use of technology. This can include the use of a computer or other electronic devices, using social networks, text messaging, instant messaging, websites, e-mail or other electronic means.

A person participates in bullying if he or she directly carries out the behaviour or assists or encourages the behaviour in any way.⁴⁴

This definition is “conceived broadly” and also “includes the role of bystanders and others who may encourage such behaviour.”⁴⁵

The definition of “sexualized cyberbullying” as a form of cyberbullying has received less attention. “Sexualized bullying” is a term that has been used to describe bullying of a sexual nature. It has been defined as “unwanted sexual attention that makes the recipient feel uncomfortable, demeaned or humiliated.”⁴⁶ Further, it is “usually directed against females” and can include obscene gestures or communication, remarks about a person’s body, sexual demands, and can also include criminal offences such as unwanted sexual touching, assault, and rape.⁴⁷

The Scope of the Problem

There are statistical inconsistencies on the prevalence of cyberbullying in Canada. However, there is a growing body of research and commentary that demonstrates that girls and women are more likely to experience sexualized cyberbullying.⁴⁸ The sexualized cyberbullying of teen girls may manifest itself in numerous ways, including: slut shaming, threats of sexual violence, harassment, cyber stalking, exclusion, and "outing" (revealing that someone is LGBTQ), and can "extend to highly sexual comments and visual pornography that dehumanizes women."⁴⁹

The Effects of Sexualized Cyberbullying on Teen Girls

The immediacy and prevalence of electronic communications and social networking websites have intensified sexualized cyberbullying.⁵⁰ Cyber-insults are now so common that many teens downplay the incidents as digital "drama."⁵¹ Unfortunately, the lived experiences of too many Canadian girls have proven that sexualized cyberbullying and its effects are not always just drama.⁵²

The personal characteristics of the victim, her surrounding environment,⁵³ and her exposure to repeat victimization⁵⁴ can affect the severity of the impact of cyberbullying. Potential effects include academic difficulties, anxiety, depression, low self-esteem, and physical symptoms (including headaches, stomach pains, back pains, and dizziness),⁵⁵ as well as self-harming behaviours such as self-mutilation and eating disorders.⁵⁶ Less obvious, but potentially equally serious effects include internalized oppression, harmful impacts on self-identity, and distorted attitudes about one's gender group.⁵⁷

Further, sexualized cyberbullying affects girls' perception of self, and inhibits their participation online.⁵⁸ For girls who are concerned about their peers' approval, "checking Facebook provides a barometer about how much they are liked or how appealing they are."⁵⁹ As demonstrated in the eGirls Project findings reported by Professors Bailey and Steeves in their chapters in this volume, girls' online presentations of self also "involve complex negotiations" between "online self-exposure" and the "gendered risk of harsh judgment" that goes along with slut shaming.⁶⁰ In a hypersexualized online world where girls are taught to walk a fine line between "sexy" and "slut," it is likely that girls may, and often do, confuse

sexualized cyberbullying with “the acceptance they seek from others.”⁶¹

The effects of sexual bullying/assault and cyberbullying can be exacerbated when a student seeks out help and the school fails to effectively respond.⁶² For example, in Australia, a 15-year-old girl approached her school principal to request a meeting with a counsellor after being sexually assaulted by a peer. The principal responded by telling her that the counsellor “did not have time for such petty things.”⁶³ Again, in Rehtaeh Parsons’ case, the administration at Rehtaeh’s school “did not step in to question those involved or address bullying.”⁶⁴

Given the seemingly commonplace nature of cyber-insults, and the potentially tragic consequences associated with sexualized cyberbullying, how can our education law and schools respond effectively?

The Role of Education Law and Its Application in Nova Scotia, Ontario, and British Columbia

Education Law as a Response to Sexualized Cyberbullying

If cyberbullying is predominately framed as an “education issue,” schools, school boards, teachers, and ministries of education may be deemed the appropriate actors to respond to the issue.

It is worthwhile to pause and consider the complex and varying roles faced by today’s teachers and school administrators. They are often required to act “not only as a parent but also as a police officer, social worker, and professional educator,” and as such find themselves “confused and frustrated” with the multiple roles and jurisdictions assigned to them.⁶⁵ For example, many teachers and administrators may find it difficult to intervene in cases involving sexualized cyberbullying, given that much of it occurs off school-grounds. School administrators often cite the lack in education law of explicit authority to act in regards to off-school conduct as the reason for failing to intervene.

Despite the numerous roles and jurisdictions assigned to teachers and school administrators, both are well placed to promote, educate, and exemplify equality.⁶⁶ Further, ambiguities in legislation may be overcome if there is clear and equality-based education law. In order to truly achieve “safe schools,” education law must engage equality as a substantial part of how “safety” is conceptualized.

Indeed, effective education law should "conceptualize safety broadly in order to give voice" to equality and social justice "as proactive components of the goal of constructing safe schools."⁶⁷ Professor Short emphatically argues that education law should actively "facilitate" an equitable school culture. He suggests that to "prevent" bullying and cyberbullying, and not just respond to it, a cultural transformation is needed – that is, "a conception of safety that includes and proactively pursues" equality and social justice should "not only be a worthy idea but also a reality."⁶⁸

Short identifies the need for curriculum change to include queer content and to recognize queer families in order to ensure that social justice is not just an idea but a reality. However, he notes that the curriculum will not change "unless education ministries direct it to change" and unless "queer youth are reconstructed legally as full citizens within schools."⁶⁹ Similarly, if education law is to ensure equality and prevent the sexualized cyberbullying of girls, it needs to facilitate a culture where children and youth are taught to identify discrimination and the effects of discrimination, and how to respond effectively.

That is, education law should serve as a catalyst and motivator for teachers, administrators, and students to foster a culture in which understandings of concepts like safety are rooted in a deep understanding of equality. Wayne MacKay has argued that law is a "lighthouse of equality" that can guide "educators through the fog of educating in a complex society."⁷⁰ Education law can "provide a useful framework" within which those on the front lines of education can respond to inherently complex challenges such as sexualized cyberbullying.⁷¹ MacKay further explains that the concept that schools should be "discrimination free zones" and have a positive duty to promote equality originates from the Supreme Court of Canada in *Ross v. New Brunswick Board of Education No 15.*, where Justice La Forest writes:

The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. As the Board of Inquiry stated, a school board has a duty to maintain a positive school environment for all persons served by it.⁷²

Importantly, if education law enables schools to develop safe and equality-based cultures that promote “qualities such as trust, mutual respect, caring and consideration for others, then bullying is more likely to be marginalized.”⁷³

The next three subsections analyze existing public secondary school education law in British Columbia, Ontario, and Nova Scotia to determine which of these provinces have taken the lead on equality-based education law, and which, if any, have fallen behind. I have chosen to focus on these three provinces because “cyberbullying stands apart as the foremost topic of discussion” within these jurisdictions.⁷⁴ In addition, I believe these provinces in particular will represent a diverse range of education law responses.

Preventing and Responding to Sexualized Cyberbullying in British Columbia Education Law

In British Columbia (BC), education is governed by the *School Act*.⁷⁵ The statute does not contain a provision that defines or addresses bullying or cyberbullying; nor does the statute assign responsibility to school boards, schools, or staff to create safe or equality-based environments at schools. The preamble to the legislation states, *inter alia*:

WHEREAS it is the goal of a democratic society to ensure that all its members receive an education that enables them to become literate, personally fulfilled and publicly useful, thereby increasing the strength and contributions to the health and stability of that society;

AND WHEREAS the purpose of the British Columbia school system is to enable all learners to become literate, to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy.⁷⁶

In *Chamberlain v. Surrey School District No 36*,⁷⁷ Chief Justice McLachlin explained that the message of this preamble is “clear” and that “the British Columbia school system is open to all children of all cultures and family backgrounds. All are to be valued and respected.”⁷⁸ With respect to Chief Justice McLachlin, although the preamble may be “clear,” the subsequent provisions are less emphatic with regard to school values and respect. The only provisions in the *School Act* and

School Regulation that allude to student safety refer to the installation and operation of surveillance cameras,⁷⁹ and the development of and compliance with school rules and codes of conduct. For example, sections 85(1.1) and 168(2)(s.1) of the *School Act* make it mandatory for boards of education to establish codes of conduct and to ensure that schools within their school district implement the codes. Section 6(1) of the *School Act* states:

- 6(1) A student must comply
 - (a) with the school rules authorized by the principal of the school or Provincial school attended by the student, and
 - (b) with the code of conduct and other rules and policies of the board or the Provincial school.⁸⁰

Further, section 4(1)(c) of the *School Regulation* states:

- 4(1) The duties of a teacher include the following:
 - [...]
 - (c) ensuring that students understand and comply with the codes of conduct governing their behaviour and with the rules and policies governing the operation of the school.⁸¹

These provisions conceptualize "security" as the "primary focus of ensuring a safe school environment."⁸² When education law focuses on physical security, measures can include "surveillance cameras, dress policies, security guards, and an emphasis on containing or, if unsuccessful, responding to violent behaviours."⁸³ Within this approach schools "perceive their own students as the threat to certifying the safety of the school."⁸⁴

The *School Act* is problematic because the statute does not affirmatively enable students, teachers, and administrators to pursue goals of equality and social justice. The legislation does not distinguish between on- and off-school conduct, it does not define in-person or online behaviour that is unacceptable, nor does it encourage affirmative measures that require equality-enhancement, such as curriculum development. Incorporating equality into education law in BC should encourage a "proactive approach in which justice is looked for in the school environment and sought in the larger community as well."⁸⁵ That is, a focus on equality in the legislation may

empower students to seek out justice and therefore stand up against the sexualized cyberbullying of their peers.

Although the “hard” education law in BC is relatively silent in regards to safe and equality-based schools, the province’s Ministry of Education has addressed “safe, caring and orderly schools.”⁸⁶ In 2002, the Minister of Education appointed a Safe Schools Task Force to meet with parents, students, and educators across BC to identify ways to address violence in schools,⁸⁷ and in 2003, the task force’s report contained a number of recommendations for improving school safety, which led to the development of *British Columbia’s Safe, Caring and Orderly Schools Strategy* (“the Strategy”).

According to the Strategy’s guide (“the Guide”), BC schools use efforts to “build ‘community,’ fostering respect, inclusion, fairness and equity,” and “set, communicate and consistently reinforce clear expectations of acceptable conduct.”⁸⁸ The Guide suggests some practices for achieving caring schools, including that the environment of a school should be “inviting and welcoming, fostering feelings of acceptance and belonging for members of the school community”; that members of the school should “relate to one another in supportive ways”; and that regular opportunities are offered “to learn about and celebrate human rights, diversity in the community and other key elements of caring schools.”⁸⁹ However, the guide does not explicitly discuss how to facilitate an equality-driven school culture, nor does it provide any empirical data to suggest whether this is being achieved in practice.

The provincial standards for codes of conduct at schools in BC are set out in subordinate legislation in the *Provincial Standards for Codes of Conduct Order* (“the Ministerial Order”)⁹⁰ which were issued according to sections 85(1.1) and 168(2)(s.1) of the *School Act*. These standards set out process and content elements that must be addressed in the development of all codes of conduct at schools. Some of the process elements include involving students, parents, and staff in the development and review of codes of conduct; ensuring that there is clear knowledge of the code of conduct; and keeping codes of conduct current and relevant.⁹¹ The content requirements are set out in section 6 of the Ministerial order, and include:

6. Boards must ensure that the following elements are included in their codes of conduct:

- (a) one or more statements that address the prohibited grounds of discrimination set out in the BC Human Rights Code in respect of discriminatory publication and discrimination in accommodation, service and facility in the school environment;
- (b) a statement of purpose that provides a rationale for the code of conduct, with a focus on safe, caring and orderly school environments;
- (c) one or more statements about what is
 - i. acceptable behaviour, and
 - ii. unacceptable behaviour, including aggressive behaviours such as bullying behaviours while at school, at a school-related activity or in other circumstances where engaging in the activity will have an impact on the school environment;
- (d) one or more statements about the consequences of unacceptable behaviour, which must take account of the student's age, maturity and special needs, if any;
- (e) an explanation that the board will take all reasonable steps to prevent retaliation by a person against a student who has made a complaint of a breach of a code of conduct.⁹²

BC has also produced a companion document to the Ministerial Order and the Strategy, titled *Developing and Reviewing Codes of Conduct: A Companion* ("Code of Conduct Companion"). The document explains that codes of conduct have great potential, specifically that:

Codes can be used to teach and model socially responsible behaviour, and the language and concepts of the codes reinforced through teaching and student leadership. A sense of pride in the code should be part of students' experience. We want every student to feel a sense of belonging and pride in his or her school, that people in the school community are respectful and fair, and that they feel safe.⁹³

Importantly, the Code of Conduct Companion also provides content suggestions for codes of conduct in BC. Some of these suggestions address conduct that occurs off school property, and provide

definitions of “bullying behaviour” and “cyberbullying” for schools to use in their respective codes of conduct. The document states that boards *may* wish to include statements in their codes that explain school responsibilities in regards to student conduct that occurs off the school grounds. Further, the definitions of bullying and cyberbullying provided for use in codes of conduct are also discretionary.⁹⁴

Although these content suggestions for codes of conduct are a step in the right direction, they remain *suggestions*. Content components that have the potential to address sexualized cyberbullying are not mandatory, and therefore some schools in BC may not have the appropriate tools via the code of conduct to effectively prevent or respond to incidents of sexualized cyberbullying. It is unclear why the government in BC has yet to amend its *School Act* to include mandatory safe school provisions. However, in 2012 the BC government opted to invest in a \$2 million, 10-point strategy to address bullying in schools and “ensure students feel safe, accepted and respected.”⁹⁵ The strategy is based on a “policy-to-action” formula, and includes the development of an anonymous online reporting tool for students, stronger codes of conduct for schools, online resources for parents, and dedicated safe school co-ordinators in every school district.⁹⁶ Obviously, the contribution of financial resources to prevent and address bullying and cyberbullying is valuable; however, BC should also amend its *School Act* to include an equality lens in order to demonstrate that equality-based and safe schools are a priority within the province.

Preventing and Responding to Sexualized Cyberbullying in Ontario Education Law

In Ontario, the *Education Act*⁹⁷ governs the operation of schools and delivers education throughout the province. Ontario has taken the lead in developing education law with equality as its “substance” with the *Accepting Schools Act*,⁹⁸ which amended the *Education Act*. As a result, the *Education Act* is comprehensive, and includes the rights and responsibilities of teachers, schools, school boards, and ministries in regards to preventing and intervening in bullying and cyberbullying. At the forefront of the legislation is the *prevention* of bullying and cyberbullying, and an equality and gender-based lens, with part of the preamble stating:

The people of Ontario and the Legislative Assembly:

[...]

Believe that all students should feel safe at school and deserve a positive school climate that is inclusive and accepting, regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability;

Believe that a healthy, safe and inclusive learning environment where all students feel accepted is a necessary condition for student success;

[...]

Recognize that a whole-school approach is required, and that everyone—government, educators, school staff, parents, students and the wider community—has a role to play in creating a positive school climate and preventing inappropriate behaviour, such as bullying, sexual assault, gender-based violence and incidents based on homophobia, transphobia or biphobia.⁹⁹

Unfortunately, although part of the Preamble states that all students should feel safe at school "regardless of race," there is no mention of racialized violence in the paragraph that requires a whole-school approach to preventing inappropriate behaviour, including "bullying, sexual assault, gender-based violence and incidents based on homophobia, transphobia or biphobia."¹⁰⁰ This absence is troubling, given that racialized and Indigenous girls and women are disproportionately affected by violence.

The *Accepting Schools Act* also amended the *Education Act* to include a definition of cyberbullying, and the legislation states that for the purposes of the definition of "bullying," cyberbullying is included.¹⁰¹ Perhaps more striking is the amendment of section 8(1) (29.1), which allows the Minister to "require boards to develop and implement an equity and inclusive education policy."¹⁰² Further, section 303.1(1)(a) states that every board shall support students who want to establish and lead activities and organizations that promote a safe and inclusive learning environment, including "activities or organizations that promote gender equity."¹⁰³

Section 301(1) allows the Minister to "establish a code of conduct governing the behaviour of all persons in schools."¹⁰⁴ The purposes of the code of conduct include promoting "responsible citizenship by

encouraging appropriate participation in the civic life of the school community” and to “prevent bullying in schools.”¹⁰⁵

The need for *intervention* in sexualized cyberbullying is also stressed. For example, section 301(7.1) states that the Minister shall establish policies and guidelines with respect to bullying prevention and intervention in schools, including training for all teachers and other staff; resources to support students who have been bullied; resources to support students who have engaged in bullying; procedures for responding appropriately and in a timely manner to bullying; and matters to be addressed in bullying prevention and intervention plans established by the board.¹⁰⁶

The *Education Act* also extends the right to discipline to include actions that occur off school property and outside school activities where engaging in the activity will have an impact on the school climate.¹⁰⁷ Eric M. Roher has explained that “under [the] Ministry of Education policy, the term ‘school climate’ is defined as ‘the sum total of all personal relationships within a school’ and in accordance with Ministry policy, a positive climate exists when all members of the school community feel safe, comfortable and accepted.”¹⁰⁸ However, the *Education Act* itself does not define “school climate,” nor do its regulations. Roher further explains that the courts and administrative tribunals have determined that in order to discipline for off-school conduct, there needs to be a direct and causal link or nexus to the school.¹⁰⁹ However, it is not made clear what evidence is needed to establish that nexus.

The Ministry of Education first released the Provincial Code of Conduct (“PCC”) as a result of Bill 212, the *Education Amendment Act (Progressive Discipline and School Safety)*.¹¹⁰ It was further amended by the *Accepting Schools Act* to include the prevention of bullying in schools under the purposes of the PCC. Under the PCC, school boards have a responsibility to develop effective intervention strategies and respond to all infractions related to the standards for respect, civility, and safety.¹¹¹ Under the “leadership of their principals,” teachers and other staff are expected to “hold everyone to the highest standard of respectful and responsible behaviour.”¹¹² Teachers and school staff uphold these high standards when they “help students work to their full potential and develop their sense of self-worth” and by empowering “students to be positive leaders in their classroom, school and community.”¹¹³ Further, “students are to be treated with respect and dignity” and in return, they must

"demonstrate respect for themselves, for others, and for the responsibilities of citizenship through acceptable behaviour."¹¹⁴

According to Ministry policy, the PCC sets "clear provincial standards of behaviour."¹¹⁵ The standards of behaviour in codes of conduct specific to Ontario school boards must be consistent with, and include, the standards stated by the PCC. Further, if a school board requires a principal to develop codes of conduct specific to their school, the code must set out "clearly" what is "acceptable and what is unacceptable behaviour" for all members of the school community.¹¹⁶ Clear standards are fundamental in order to ensure consistent application and enforcement of the PCC across the province.

The explicit references to bullying, sexual assault, gender-based violence, and equity in Ontario's *Education Act* are laudable and should be replicated in other jurisdictions. Unfortunately, while the legislation gives voice to equality, equity, and social justice, it falls short of *requiring* curriculum that teaches and pursues equality in schools. However, the Ontario Ministry of Education has announced a revised health and physical education curriculum to go into effect in September 2015, which moves toward active facilitation of an equality-based school culture.¹¹⁷ While incorporating educational initiatives aimed at alerting students to risk and ways of protecting themselves from risk,¹¹⁸ the revised curriculum also specifically incorporates units for elementary students on understanding and challenging media stereotypes, developing healthy relationships, and respect for diversity,¹¹⁹ and content for secondary students on consent and sexual limits, and factors affecting gender identity and sexual orientation (including unrealistic and exclusionary media bias and stereotyping and how to challenge them).¹²⁰ While not necessarily explicitly teaching children and youth the meaning of equality, development of these kinds of skills academically may well contribute to a "growing recognition of the gender-specific consequences of cyberbullying," and hopefully, a more effective means of prevention and intervention.¹²¹

Preventing and Responding to Sexualized Cyberbullying in Nova Scotia Education Law

Nova Scotia is actively responding to cyberbullying with the appointment of the Nova Scotia Task Force on Bullying and Cyberbullying, the *Task Force Report*, and subsequent legislation: the *Promotion of Respectful and Responsible Relationships Act*¹²² and the *Cyber-safety*

Act.¹²³ Through the *Task Force Report*, Nova Scotia has “overtly recognized the heightened vulnerability of girls in the context of cyberbullying,” and has explicitly discussed the “sexualization of girls and/or young women in the media ... as a contributing factor to the problem of cyberbullying.”¹²⁴

In Nova Scotia, the primary piece of education legislation is the *Education Act*.¹²⁵ In the Preamble, the *Education Act* references “equitable participation” in the education system. The *Promotion of Respectful and Responsible Relationships Act* further amended the Preamble to state that all members of a school community share responsibility for creating a school-wide approach that maintains a positive and inclusive school climate.¹²⁶ The Preamble also states that students must be held accountable for their actions, and that “responsibility and accountability can be fostered through preventative, proactive and restorative approaches.”¹²⁷

The *Promotion of Respectful and Responsible Relationships Act* also amended the *Education Act* to establish a Provincial school code of conduct policy that considers cyberbullying.¹²⁸ Section 141(1)(ja) of the *Education Act* now states:

141(1) The Minister may

[...]

(ja) establish a Provincial school code of conduct policy with respect to promoting school and student safety that includes a Provincial school code of conduct and provisions regards student conduct and consequences for disruptive behaviour and severely disruptive behaviour, including incidents of bullying and cyberbullying;¹²⁹

In 2013, Nova Scotia enacted the *Cyber-safety Act*. This legislation creates a tort of cyberbullying, creates a protection order for victims of cyberbullying, and establishes a Cyber SCAN investigative unit to investigate cyberbullying throughout the Province. The *Cyber-safety Act* also defines “cyberbullying” as:

3(1) In this Act,

[...]

(b) “cyberbullying” means any electronic communication through the use of technology including, without limiting the generality of the foregoing, computers, other electronic devices,

social networks, text messaging, instant messaging, websites and electronic mail, typically repeated or with continuing effect, that is intended or ought reasonably [to] be expected to cause fear, intimidation, humiliation, distress or other damage or harm to another person's health, emotional well-being, self-esteem or reputation, and includes assisting or encouraging such communication in any way.¹³⁰

This definition is also included in the Regulations to the *Education Act*.¹³¹ Both the definition and the *Cyber-safety Act* have received mixed responses. Critics have asserted that the law has "sweeping parameters,"¹³² that it "essentially makes 'being mean' against the law,"¹³³ and that it "makes bullies of us all."¹³⁴ On the other hand, some academics were encouraged by the definition of cyberbullying, noting that judges will work with the definition and "apply it in a way that's effective without getting overly broad."¹³⁵

The *Cyber-safety Act* also amended the *Education Act* to provide that the principal may apply the school code of conduct for incidents that occur off school grounds and outside school activities where the behaviour "significantly disrupts the learning climate of the school."¹³⁶ In the *External Review of the Halifax Regional School Board's Support of Rehtaeh Parsons*, authors Debra Pepler and Penny Milton explain that regardless of this amendment, "it is unclear how principals may investigate off-school activities; whether the principal should investigate allegations that are under police investigation; and how to deal with situations in which the school has no direct knowledge."¹³⁷ Any ambiguity in the *Education Act* regarding when a school can intervene is problematic and should be clarified. Nova Scotia has already experienced first-hand the effects of ambiguous legislation, given that in Rehtaeh Parsons's case the "school was unsure whether it should take further action because of the criminal investigation."¹³⁸

The current Provincial School Code of Conduct has not been updated since the *Promotion of Respectful and Responsible Relationships Act*. The document currently states the standards of behaviour for school members, including respecting the "diversity of all school members regardless of their race, culture, ethnicity, religion, gender, sexual orientation, age, or ability"; exhibiting "behaviour that avoids all forms of intimidation, harassment, racism, and discrimination"; and using information and communications technology, including

the internet and e-mail communication, in a responsible and appropriate manner consistent with the Nova Scotia Public School Network Access and Use Policy.¹³⁹

The Provincial School Code of Conduct also categorizes bullying, sexual harassment, sexual assault, and racial and/or discriminatory misconduct as “behaviour that is serious enough to significantly disrupt the learning climate of the school, endanger the well-being of others, or damage school property.”¹⁴⁰ However, the document is relatively silent in terms of equality, cyberbullying, or the gendered impacts of cyberbullying.

Although Nova Scotia is actively responding to cyberbullying, there is more to be done, including a greater focus on student empowerment and equality in the *Education Act*. For example, this could be achieved in part by a provision that requires curriculum that enables students to understand, prevent, and respond to oppression and discrimination. Further, any ambiguities in the legislation should be clarified to ensure that it is consistently and effectively applied.

Effective Implementation of Education Law and the “Unofficial” Codes of Conduct

Of course, developing equality-based education law is only half of the battle. As was previously stated, the law must be clear and consistently applied so that schools are able to commit to the promotion of a safe and inclusive culture. Education legislation and provincial codes of conduct must be free from ambiguity, and must affirmatively promote equality, while maintaining meaningful consequences for those who breach the standards.

In order to ensure consistent application and enforcement of education law, it is essential to define within the legislation the responsibilities of school administration and teachers when it comes to intervening in sexualized cyberbullying. In her testimony to the Senate Standing Committee on Human Rights, Elizabeth Meyer noted:

Teachers feel they have very limited influence and authority in school settings, especially related to cyberbullying. However, they are often the ones tasked with tackling these complex and difficult issues because they have the most direct contact with the students ... conflicting legal decisions leave schools with no

clear guidance on how to respond. Teachers and administrators feel insecure and powerless to intervene. Schools need clear jurisdiction to be able to address incidents that take place off-campus but clearly impact students' feelings of safety at school and, by extension, in their community.¹⁴¹

School administrators, teachers, and students must be empowered and given the appropriate tools to prevent sexualized cyberbullying. It is clear that when teachers and administrators feel "insecure and powerless to intervene," there is a greater risk that victims of sexualized cyberbullying will continue to be isolated from support systems.¹⁴²

It may also be worthwhile to consider the "unofficial codes of conduct" that govern secondary schools. Donn Short has stated that there are "hidden and informal practices that are inevitably positioned in schools" and that the effectiveness of equality policies are "negatively impacted not by structural obstacles to their implementation but by the presence of other interacting normative regimes that complicate the effectiveness of policies."¹⁴³ He further explains that the literature thus far on bullying and cyberbullying has not investigated the overlap between "formal state law" (education acts, provincial codes of conduct) and the "normalizing culture of the daily life of schools with respect to gender, sexuality, and other norms ... which complicates and interacts with formal law."¹⁴⁴ It is important to question whether "formal state law" can ever fully address sexualized cyberbullying if it fails "to account for the perpetuation of social norms within youth culture."¹⁴⁵

Of course, "laws, policies, and procedures can only do so much."¹⁴⁶ Laws and policies do not ensure an equality-based normative regime between students at schools. Nor do they "guarantee good relationships."¹⁴⁷ However, "good relationships" and inclusive "unofficial codes of conduct" can be created through positive school climates, which can have a significant impact on eliminating instances of cyberbullying.¹⁴⁸ Developing a positive school climate with equality as its "substance" may be a challenge; however, "progress can be made by recognizing that everyone in the broader school community is an equal participant in fostering change."¹⁴⁹ In his testimony to the Standing Senate Committee on Human Rights, William Gardner explained:

The response we advocate in terms of cyberbullying for schools is something we call the whole-of-school-community approach. This reiterates some of what the previous witnesses were saying about the school reaching beyond the school gate There is a role for everyone within this community in preventing and responding to cyberbullying, and we want to engender that approach when we talk about cyberbullying in schools.¹⁵⁰

Education law “is certainly not the only tool for reform.”¹⁵¹ The *Task Force Report* stresses that “partnering and networking among the many stakeholders, educating the various audiences and implementing preventative measures” are all crucial aspects to reducing sexualized cyberbullying.¹⁵² However, education law is a key vehicle that reflects “our core values and principles and indicate[s] what we stand for as a society.”¹⁵³ In that context, education law should serve as the “lighthouse of equality,” guiding administrators, teachers, and students to equality, safety, and inclusivity.¹⁵⁴

Conclusion

One goal of education in Canada is to promote “equality, respect and tolerance.”¹⁵⁵ As stated in the seminal United States case *Brown v. Board of Education of Topeka*, “education is perhaps the most important function of state and local governments ... it is the very foundation of good citizenship.”¹⁵⁶ The Supreme Court of Canada has explained, “education awakens children to the values a society hopes to foster and to nurture.”¹⁵⁷ However, education can only do this if our schools are equality-based, inclusive, and safe. Effective education law can and should serve as a catalyst for change amongst administration, teachers, and students to ensure an equal and inclusive environment. With equality as its foundation, education law can give a voice to those who have experienced sexualized cyberbullying – and will ensure that the experiences of too many girls, including Rehtaeh, Amanda, and A.B., lead to positive change.

Acknowledgements

I was inspired, in part, to write this paper after reading Donn Short’s book *Don’t Be So Gay! Queers, Bullying, and Making Schools Safe*,¹⁵⁸ and after conversation with Jane Bailey, who highlighted the value in

examining the impacts of cyberbullying on teen girls from the perspective of an equality lens. I would like to thank the participants of the eGirls Project workshop, and Jane Bailey, Val Steeves, Ben Bisset, Wayne MacKay, Glen Canning, and Leah Parsons for their thoughtful comments.

Notes

- 1 *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, <<https://scc-csc.lexum.com/scc-csc-scc-csc/en/item/10007/index.do>>, [2012] 2 S.C.R. 567.
- 2 Kalen Lumsden, "Bullying and Balancing Rights in *A.B. v. Bragg Communications*," IP Osgoode, 16 November 2012, <<http://www.iposgoode.ca/2012/11/bullying-and-balancing-rights-in-ab-v-bragg-communications/>>.
- 3 *A.B. v. Bragg*, *supra* note 1 at para 1.
- 4 *Ibid.*
- 5 Lumsden, *supra* note 2.
- 6 *A.B. v. Bragg*, *supra* note 1 at para 10.
- 7 *Ibid.*, at para 14.
- 8 *Ibid.*, at para 27.
- 9 Gillian Shaw, "Amanda Todd's Mother Speaks Out about Her Daughter, Bullying," *Vancouver Sun*, 13 March 2013, <http://www.vancouversun.com/news/Amanda+Todd+mother+speaks_about+daughter+bullying+with+video/7384521/story.html>.
- 10 "The Sextortion of Amanda Todd," Documentary, *The Fifth Estate*, CBC, 2013.
- 11 Jennifer Dunning, "Amanda Todd, Sextortion and Cyberbullying," CBC, 13 November 2013, <<http://www.cbc.ca/newsblogs/yourcommunity/2013/11/amanda-todd-and-sexortion.html>>.
- 12 Tara Carman, "Amanda Todd: School Districts Have Limited Reach with Anti-bullying Tactics," *Vancouver Sun*, 16 October 2012, <<http://www.vancouversun.com/news/Amanda+Todd+School+districts+have+limited+reach+with+anti+bullying+tactics/7394300/story.html>>.
- 13 Jordan Venton-Rublee, "Rehtaeh Parsons' Father Speaks at McGill," *McGill Daily*, 7 October 2013, <<http://www.mcgilldaily.com/2013/10/rehtaeh-parsons-father-speaks-at-mcgill/>>.
- 14 "Rehtaeh Parsons, Canadian Girl, Dies after Suicide Attempt; Parents Allege She Was Raped by 4 Boys," *Huffington Post*, 9 April 2013, <http://www.huffingtonpost.com/2013/04/09/rehtaeh-parsons-girl-dies-suicide-rape-canada_n_3045033.html>.
- 15 *Ibid.*

- 16 Frances Willick & Sherri Borden Colley, "School Administration Didn't Probe Incident," *Chronicle Herald*, 9 April 2013, <<http://www.thechronicle-herald.ca/metro/1122506-school-administration-didn-t-probe-incident>>.
- 17 *Ibid.*
- 18 Task Force on Bullying and Cyberbullying, *Respectful and Responsible Relationships: There's No App for That: The Report of the Nova Scotia Task Force on Bullying and Cyberbullying* (Nova Scotia: The Task Force, 2012) at 48.
- 19 Framing "cyberbullying" as an "education issue" also influences the terminology we use. Academics have criticized the term "cyberbullying" for being over broad, and have argued it is "an umbrella term for a wide variety of issues and behaviours." Others suggest that the term may be too "soft" for the actual consequences experienced by victims. See Jane Bailey, "Bill C-13: The Victims of 'Cyberbullying' and Canadians Deserve More", The eGirls Project, 28 November 2013, <<http://www.egirlsproject.ca/2013/11/28/bill-c-13-the-victims-of-cyberbullying-and-canadians-deserve-more/>>; Donalee Moulton, "Parrying Thrusts of the Cyberbully," *Lawyers Weekly*, 13 January 2012, <<http://www.lawyer-sweekly.ca/index.php?section=article&articleid=1568>>. For the purposes of this contribution, I use the term "cyberbullying" but do agree that in many circumstances the preferred terminology should include "sexual violence," "assault," "intimidation," and "harassment."
- 20 Designating cyberbullying as an "education issue" is demonstrated in part by lawsuits filed by parents against school boards for failing to address bullying. For example, in 2011 four claims were filed in Ontario against the Bluewater School Board for failing to protect students from bullies. Similar lawsuits have also appeared in Vancouver, Winnipeg and Ottawa. See Stephanie Findlay, "Bullying Victims Are Taking Schools to Court," *Maclean's*, 14 September 2011, <<http://www.macleans.ca/news/canada/taking-schools-to-court/>>.
- 21 See *Cyber-safety Act*, SNS 2013, c. 2, <http://www.nslegislature.ca/legc/bills/61st_5th/3rd_read/b061.htm> and Bill C-13, *Protecting Canadians from Online Crime Act*, 2nd Sess, 41st Parl, 2014. The inadequacy of a purely criminal law approach is addressed in Shariff & DeMartini, Chapter XI.
- 22 A. Wayne MacKay, "Safe and Inclusive Schooling = Expensive/Quality Education = Priceless/ For Everything Else There are Lawyers," *Education & Law Journal* 18 (2008): 21, ISSN: 0838-2875.
- 23 *Ibid.*
- 24 A. Wayne MacKay, Lyle Sutherland & Kimberley D. Pochini, *Teachers and the Law: Diverse Roles and New Challenges*, 3rd ed. (Toronto: EMP, 2013), 115.
- 25 Tim McCaskell, *Race to Equity: Disrupting Educational Inequality* (Toronto: Between the Lines, 2005), 182.

- 26 Donn Short, *Don't Be So Gay! Queers, Bullying, and Making Schools Safe* (Vancouver: UBC Press, 2013), 38.
- 27 New Brunswick, *MacKay Report on Inclusion, Inclusion: What is Inclusion Anyway?* (New Brunswick: MacKay Report, 2007).
- 28 McCaskell, *supra* note 25 at 230–231.
- 29 For the purposes of this paper, I chose to focus on education legislation specific to public schools.
- 30 Jane Bailey, "'Sexualized Online Bullying' Through an Equality Lens: Missed Opportunity in *A.B. v. Bragg?*," *McGill Law Journal* 59 (2013–2014): 709.
- 31 Catharine MacKinnon, "Reflections on Sex Equality Under Law," *Yale Law Journal* 100:5 (1991): 1298, doi:0.2307/796693.
- 32 Statistics Canada, *Measuring Violence against Women: Statistical Trends ed. Maire Sinha*, (Ottawa: StatCan, 2013), <<http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.htm>>.
- 33 *Ibid.*
- 34 MacKinnon, *supra* note 31 at 1301.
- 35 *Ibid.*, at 1302.
- 36 See for example: Maggie Macaulay, "Is Critique of 'Rape Culture' Enough? Waving the Feminist Arms in the Academy," *Rabble* (September 2013), <<http://www.rabble.ca/blogs/bloggers/campus-notes/2013/09/critique-rape-culture-enough-waving-feminist-arms-academy>>; Government of Newfoundland & Labrador, "Violence Against Aboriginal Women Fact Sheet," 2013, <http://www.gov.nl.ca/vpi/facts/VAW_EN_Fact%20Sheet_Aboriginal_Women.pdf>; DAWN Canada, "Women with Disabilities and Violence," DAWN January 2014, <www.dawncanada.net/main/wp-content/uploads/2014/03/English-Violence-January-2014.pdf>.
- 37 Government of Newfoundland & Labrador, "Violence Against Women with Disabilities Fact Sheet," 2013, <http://www.gov.nl.ca/VPI/facts/violence_against_women_with_disabilities_fs.pdf>.
- 38 Government of Newfoundland & Labrador, *supra* note 36.
- 39 Toronto Anarchist Bookfair, "Sexual Assault and Consent Policy Statement," *Toronto Anarchist Bookfair (blog)*, July 2014, <<http://www.toronto-anarchistbookfair.wordpress.com/sexual-assault-and-consent-policy/>>.
- 40 Jo-Anne Lee, "Amanda Todd, More Than Bullying," *Antidote*, November 2012, <<http://www.antidotenetwork.org/2012/11/amanda-todd-more-than-bullying-part-1>>.
- 41 MacKinnon, *supra* note 31 at 1306; Short, *supra* note 26.
- 42 Senate Standing Committee on Human Rights, *Cyberbullying Hurts: Respect for Rights in the Digital Age* (Canada: December 2012), 8–9, <<http://www.parl.gc.ca/content/SEN/committee/411/ridr/rep/rep09dec12-e.pdf>>.
- 43 *Nova Scotia Task Force Report*, *supra* note 18 at 40.

- 44 *Ibid.*, at 42–43.
- 45 *Ibid.*, at 43.
- 46 Keith Sullivan, *The Anti-Bullying Handbook*, 2nd ed. (Ireland: National University of Ireland, 2011), 54.
- 47 *Ibid.*
- 48 See for example: Danielle Keats Citron, “Law’s Expressive Value in Combatting Cyber Gender Harassment,” *Michigan Law Review* 108 (2009), ISSN: 0026-2234: 373; Jane Bailey Valerie Steeves, Jacquelyn Burkell & Priscilla Regan, “Negotiating with Gender Stereotypes on Social Networking Sites: From ‘Bicycle Face’ to Facebook,” *Journal of Communication Inquiry*, doi:10.1177/0196859912473777. Moreover, a recent Canadian survey reveals that “girls are twice as likely as boys to see online threats as a serious problem,” see Valerie Steeves, *Young Canadians in a Wired World, Phase III: Cyberbullying: Dealing with Online Meanness, Cruelty and Threats* (MediaSmarts: 2014), 3, <http://mediasmarts.ca/sites/mediasmarts/files/pdfs/publication-report/full/YCWWIII_Cyberbullying_FullReport.pdf>.
- 49 Susan O’Neil, *Bullying by Tween and Teen Girls: A Literature, Policy and Resource Review*, Ecole Heather Park Elementary, <http://hpar.sd57.bc.ca/~sfleck/HPES_Behavior/bullying/female_relational_agression.pdf>; Keats Citron, *supra* note 48; Bailey et al, *supra* note 48.
- 50 O’Neil, *ibid.*
- 51 *Nova Scotia Task Force Report*, *supra* note 18 at 14. See also Regan & Sweet, Chapter VII, reporting on online drama in the context of the eGirls Project findings.
- 52 Alice Marwick & danah boyd, “The Drama! Teen Conflict, Gossip and Bullying in Networked Publics, paper presented at Oxford Internet Institute’s “A Decade in Internet Time: Symposium on the Dynamics of the Internet and Society,” Oxford, 22 September 2011, <http://www.academia.edu/2672673/The_Drama_Teen_Conflict_Gossip_and_Bullying_in_Networked_Publics>. Distinguishing between situations in which comments made are simply drama without material negative effects and those which lead to serious harm is a key challenge to developing meaningful policy responses, see Steeves, *supra* note 48 at 8.
- 53 Senate, *supra* note 42 at 42.
- 54 *Ibid.*
- 55 *Ibid.*, at 47.
- 56 *Ibid.*
- 57 For example, see Karen D. Pyke, “What Is Internalized Racial Oppression and Why Don’t We Study It? Acknowledging Racism’s Hidden Injuries,” *Sociological Perspectives* 53:4 (2010): 551, for a discussion of internalized oppression and internalized racism. Arguably, internalized oppression in the context of sexualized cyberbullying may have similar deleterious effects as the internalization of racist hate speech.

- 58 Keats Citron, *supra* note 48.
- 59 Laura Choate, *Adolescent Girls in Distress: A Guide for Mental Health Treatment and Prevention* (New York: Springer, 2013), 15.
- 60 Bailey et al, *supra* note 48 at 18. See Bailey, Chapter I; Steeves, Chapter VI.
- 61 Choate, *supra* note 59 at 24.
- 62 Sullivan, *supra* note 46 at 55.
- 63 *Ibid.*
- 64 Willick & Borden Colley, *supra* note 16.
- 65 MacKay et al & Borden Colley, *supra* note 24 at 10.
- 66 *Ibid.*, at 115.
- 67 Short, *supra* note 26 at 101.
- 68 *Ibid.*, at 103.
- 69 *Ibid.*, at 236.
- 70 MacKay, *supra* note 22 at 23.
- 71 *Ibid.*
- 72 *Ross v. New Brunswick School District No 15*, [1996] 1 SCR 825, <<https://www.canlii.org/en/ca/scc/doc/1996/1996canlii237/1996canlii237.html>> [1996] canLII 237 (SCC).
- 73 Sullivan, *supra* note 46 at 18.
- 74 Claire Feltrin, "Girls Online – Canadian Provinces Policy Review," The eGirls Project, May 2013, <<http://egirlsproject.files.wordpress.com/2013/09/canada-provinces-policy-review-2013.pdf>>.
- 75 *School Act*, R.S.B.C. 1996, c. 412, <<http://www.bced.gov.bc.ca/legislation/schoollaw/revisedstatutescontents.pdf>>.
- 76 *Ibid.*
- 77 *Chamberlain v Surrey School District No 36*, 2002 SCC 86, <<http://www.scc-csc.lexum.com/scc-csc/scc-csc/en/item/2030/index.do>>, [2002] 4 S.C.R. 710.
- 78 *Ibid.*, at para 23.
- 79 *School Act*, *supra* note 75, at s. 74.01.
- 80 *Ibid.*, at s. 6.
- 81 *School Regulation*, B.C. Reg. 265/1989, at s. 4, <http://www.bced.gov.bc.ca/legislation/schoollaw/d/bcreg_265-89.pdf>.
- 82 Short, *supra* note 26 at 96.
- 83 *Ibid.*
- 84 *Ibid.*
- 85 *Ibid.*, at 96.
- 86 British Columbia, Ministry of Education, *Safe, Caring and Orderly Schools: A Guide* (BC: 2008), <<http://www.bced.gov.bc.ca/sco/guide/scoguide.pdf>>.
- 87 *Ibid.*
- 88 *Ibid.*, at 9.
- 89 *Ibid.*, at 31.

- 90 *Provincial Standards for Codes of Conduct Order, Ministerial Order 276/07*, (2007), (*School Act*).
- 91 British Columbia, Ministry of Education, *Developing and Reviewing Codes of Conduct: A Companion* (BC: 2007), <http://www.bced.gov.bc.ca/sco/resourcedocs/facilitators_companion.pdf>.
- 92 *Provincial Standards for Codes of Conduct*, *supra* note 90.
- 93 *Developing and Reviewing Codes of Conduct*, *supra* note 91.
- 94 *Ibid.* The definition of bullying behaviour, and cyberbullying does not address sexualized cyberbullying.
- 95 Dirk Meissner, "Amanda Todd's Legacy: A Look at Canada's Anti-Bullying Efforts a Year after Her Death," *CTV News*, 9 October 2013, <<http://www.ctvnews.ca/canada/amanda-todd-s-legacy-a-look-at-canada-s-anti-bullying-efforts-a-year-after-her-death-1.1490889>>.
- 96 ERASE Bullying, "Policy to Action," <<http://www.erasebullying.ca/policy/policy.php>>.
- 97 *Education Act*, R.S.O. 1990, c. E.2, <http://www.e-laws.gov.on.ca/html/statutes/English/elaws_statutes_90e02_e.htm>.
- 98 *Accepting Schools Act*, S.O. 2012, c. 5, <http://ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2549>.
- 99 *Education Act*, *supra* note 97.
- 100 *Ibid.*
- 101 *Ibid.*, at s. 1.
- 102 *Ibid.*, at s. 8.
- 103 *Ibid.*, at s. 303.
- 104 *Ibid.*, at s. 301.
- 105 *Ibid.*, at s. 301.
- 106 *Ibid.*, at s. 301.
- 107 *Ibid.*, at ss. 306 and 310. These sections were amended as a result of the *Education Amendment Act (Progressive Discipline and School Safety)* S.O. 2007, c. 14, <http://www.e-laws.gov.on.ca/html/source/statutes/English/2007/elaws_src_s07014_e.htm>.
- 108 Eric M. Roher, "Dealing with Off-school Conduct: Cyberbullying, Drug Dealing and Other Activities Off School Property," *Education & Law Journal* 21 (2012): 91, ISSN: 0838-2875.
- 109 *Ibid.*
- 110 *Education Act*, *supra* note 97.
- 111 Ontario, *The Provincial Code of Conduct, Policy No 128*, 2012, <<http://www.edu.gov.on.ca/extra/eng/ppm/128.pdf>>.
- 112 *Ibid.*, at 6.
- 113 *Ibid.*
- 114 *Ibid.*
- 115 *Ibid.*, at 2.
- 116 *Ibid.*, at 3.

- 117 Canadian Press, "What Ontario's New Sex Ed Curriculum Teaches in Grades 1 through 12" *Global News*, 23 February 2015, <<http://globalnews.ca/news/1845754/what-ontarios-new-sex-ed-curriculum-teaches-in-grades-1-through-12/>>.
- 118 For example, students in elementary school will learn about "how to assess risk, respond to dangerous situations, and protect themselves from a variety of social dangers [including] ... bullying ... violence, and technology-related risks," while secondary school students will learn about "responding to bullying/harassment (including sexual harassment, gender-based violence, homophobia and racism)," *The Ontario Curriculum Grades 1–8: Health and Physical Education* (Ontario Elementary, 2015): 127; *The Ontario Curriculum Grades 9 to 12: Health and Physical Education* (Ontario Secondary, 2015): 38.
- 119 Ontario Elementary, *supra* at 82, 127.
- 120 Ontario Secondary, *supra* at 101, 104, 159.
- 121 Feltrin, *supra* note 74.
- 122 *Promotion of Respectful and Responsible Relationships Act*, SNS 2012, c. 14, <<http://www.nslegislature.ca/legc/PDFs/annual%20statutes/2012%20Spring/co14.pdf>>. Nova Scotia Task Force Report, *supra* note 18.
- 123 *Cyber-safety Act*, *supra* note 21.
- 124 Feltrin, *supra* note 74.
- 125 *Education Act*, SNS 1995-96, c. 1, <<http://www.nslegislature.ca/legc/statutes/education.pdf>>.
- 126 *Ibid.*
- 127 *Ibid.*
- 128 CCSO Cybercrime Working Group, *Cyberbullying and the Non-Consensual Distribution of Intimate Images* (Ottawa: Department of Justice Canada, 2013), <<http://www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdncii/pdf/cndii-cdncii-eng.pdf>>.
- 129 *Education Act*, *supra* note 125 at s. 141.
- 130 *Cyber-safety Act*, *supra* note 21 at s. 3.
- 131 *Ministerial Education Act Regulations*, N.S. Reg. 80/97, s. 47, <<http://www.novascotia.ca/just/regulations/regs/edmin.htm>>.
- 132 Robyn Urback, "Nova Scotia Cyber Law Turns Bullied into Bullies", *National Post*, 8 September 2013, <<http://fullcomment.nationalpost.com/2013/08/09/robyn-urback-nova-scotia-cyber-law-turns-bullied-into-bullies/>>.
- 133 *Ibid.*
- 134 Jesse Brown, "Nova Scotia's Awful Cyber Abuse Law Makes Bullies of Us All," *Macleans*, 8 August 2013, <<http://www.macleans.ca/society/technology/nova-scotias-awful-cyber-abuse-law-makes-bullies-of-us-all>>.

- 135 Patricia Brooks Arenburg, "Legal Experts Question Haste of Rehtaeh's Law," *Chronicle Herald*, 16 August 2013, <<http://www.thechronicleherald.ca/novascotia/1148032-legal-experts-question-haste-of-rehtaeh-s-law>>.
- 136 *Education Act*, *supra* note 125 at s. 122.
- 137 Debra Pepler & Penny Milton, *External Review of the Halifax Regional School Board's Support of Rehtaeh Parsons*, (Nova Scotia, 2013), 10, <<http://www.ednet.ca/files/reports/External%20Review%20of%20HRSB%20Final.pdf>>.
- 138 *Ibid.*, at 11.
- 139 Department of Education, *Provincial School Code of Conduct and School Code of Conduct Guidelines*, (Nova Scotia, 2008), <http://www.student-services.ednet.ca/sites/default/files/provincial_school_code_of%20conduct.pdf>.
- 140 *Ibid.*, at 5.
- 141 Senate, *supra* note 42 at 64.
- 142 *Ibid.*
- 143 Short, *supra* note 26 at 178.
- 144 *Ibid.*
- 145 Short, *supra* note 26 at 178. The importance of addressing problematic social norms through digital literacy and digital citizenship initiatives is addressed in detail in Johnson, Chapter XIII.
- 146 Pepler & Milton, *supra* note 137 at 12.
- 147 *Ibid.*
- 148 Senate, *supra* note 42 at 59.
- 149 *Ibid.*
- 150 *Ibid.*
- 151 *Nova Scotia Task Force Report*, *supra* note 18 at 48.
- 152 *Ibid.*
- 153 *Ibid.*
- 154 MacKay, *supra* note 22.
- 155 Ross, *supra* note 73 at para 82.
- 156 *Brown v. Board of Education of Topeka*, 347 US 483 (1954) at 493.
- 157 Ross, *supra* note 73 at para 82.
- 158 Short, *supra* note 26.