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The Forms and Limits of Judicial Inquiry: Judges as Inquiry  
Commissioners in Canada and Australia

Grant R. Hoole

The Judicial Regulation of Lawyers in Canada

Amy Salyzyn

Remedies for Non-Citizens under Provincial Nominee Programs:  
Judicial Review and Fiduciary Relationships

Delphine Nakache and Catherine Blanchard

A Canadian Model of Corporate Governance

Carol Liao

Labour Rights as Human Rights: Turning Slogans into Legal Claims

Judy Fudge

TWU Law: A Reply to Proponents of Approval

Elaine Craig

Time to Unpack the Juggernaut?: Reflections on the  
Canadian Federal Parliamentary Debates on "Cyberbullying"

Jane Bailey

Bad Company! The Assumptions Behind Proxy Advisors'  
Voting Recommendations

Bryce C. Tingle

Thin-Skull Plaintiffs, Socio-Cultural "Abnormalities" and the Dangers  
of an Objective Test for Hypersensitivity

Eugene C. Lim

New Hactivists and the Old Concept of *Levée en Masse*

Christopher Waters

Shareholder Liability in Nova Scotia Unlimited Companies

Mohamed F. Khimji

Guilty Displeasures: White Resistance in the Social Justice  
Classroom

Rakhi Ruparelia



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Jane Bailey\*

Time to Unpack the Juggernaut?: Reflections  
on the Canadian Federal Parliamentary Debates  
on “Cyberbullying”

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*Cyberbullying has come to the fore in federal parliamentary debate largely in the last two years in tandem with high profile media reporting of several teen suicides. The government responded with the Protecting Canadians from Online Crime Act that incorporates, among other things, criminal law responses to non-consensual distribution of intimate images and gender-based hate propagation, but only at the expense of expanded state surveillance. However, a review of the parliamentary debates reveals a richer array of approaches in which the efficacy of criminal law responses was contested. This article reports on the diversity of viewpoints that emerged within the debates, first contextualizing them within the conceptual complexity of the term “cyberbullying” and the media focus on suicide cases. It suggests that “cyberbullying” has become less a problem and more a political juggernaut for transporting a broad range of issues, as well as ideologies, onto the public agenda. The conceptual elasticity of the term has to some extent facilitated co-optation of tragic suicide cases as a guise for pushing a tough on crime agenda, while obscuring underlying relational and systemic issues repeatedly identified by many claimsmakers within the debates.*

*La cyberintimidation s'est faufilée à l'avant-plan dans les débats parlementaires fédéraux, surtout au cours des deux dernières années, parallèlement avec la multiplication d'articles dans de grands médias traitant de nombreux suicides d'adolescents. Le gouvernement a réagi en adoptant le projet de loi C-13, Loi sur la protection des Canadiens contre la cybercriminalité. La loi comporte, entre autres dispositions, des réponses pénales à la distribution non consensuelle d'images intimes et à la propagande haineuse fondée sur le sexe, mais uniquement au prix d'une surveillance accrue par l'État. Toutefois, un examen des débats parlementaires révèle un tableau beaucoup plus varié des façons dont l'efficacité des mesures de droit criminel a été contestée. L'auteure fait d'abord état de la diversité des points de vue qui sont ressortis des débats : elle les place d'abord dans le contexte de la complexité conceptuelle du mot « cyberintimidation » et de l'accent mis par les médias sur les suicides. Elle avance que la cyberintimidation est aujourd'hui moins un problème qu'un véritable mastodonte politique qui englobe un large éventail de questions et d'idéologies pour en faire des enjeux de la politique de l'État. L'élasticité conceptuelle du mot a, dans une certaine mesure, favorisé la cooptation des suicides tragiques sous prétexte de faire avancer un programme de lutte contre la criminalité tout en masquant les problèmes relationnels et systémiques sous-jacents mentionnés à maintes occasions par de nombreux intervenants pendant les débats.*

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*Introduction*

- I. *Approach to reviewing the debates*
- II. *Contextualizing the federal parliamentary debates*
  1. *Conceptual complexity*
  2. *Media reporting*
  3. *Parliamentary engagement*
- III. *Federal parliamentary debates on cyberbullying*
  1. *Areas of greater consistency*
    - a. *Cyberbullying is a serious problem*
    - b. *Cyberbullying is worse than other forms of bullying*
      - i. *Anonymity and intermediation*
      - ii. *Ubiquity*
      - iii. *Weakened parental ability to intervene*
    - c. *Examples of cyberbullying*
      - i. *Targets that committed suicide*
      - ii. *Targets that did not commit suicide*
      - iii. *Perpetrators*
  2. *Areas of greater diversity*
    - a. *The nature of cyberbullying and underlying issues*
      - i. *Is cyberbullying clearly defined?*
      - ii. *The scope of cyberbullying*
      - iii. *Issues underlying cyberbullying*
      - iv. *Is cyberbullying a gendered phenomenon?*
      - v. *Do the same people bully and cyberbully?*
      - vi. *Does (cyber)bullying produce extreme social outcomes (like suicide)?*
    - b. *Barriers to address in order to respond to cyberbullying*
      - i. *Gaps in law*
      - ii. *Multi-faceted problem requires multi-pronged solution*

*Conclusion*

*[P]art of the problem is that focusing on the term  
cyber-bullies is distracting us from the facts.*

—Helen Kennedy, *EGALE*, presentation to  
the Senate Standing Committee on Human Rights<sup>1</sup>

### *Introduction*

Bullying and “cyberbullying”<sup>2</sup> have been on the agenda of several legislative bodies in Canada for some time. However, cyberbullying has come to the fore in federal parliamentary debate largely in the last two years in tandem with high profile media reporting of several teen suicides.<sup>3</sup> In its 2013 speech from the throne the Canadian federal government referred specifically to the tragic cases of Amanda Todd, Rehtaeh Parsons and Todd Loik, and pledged to “focus on protecting the most vulnerable of all victims” by introducing “legislation giving police and prosecutors new tools to effectively address cyberbullying that involves criminal invasion of privacy, intimidation and personal abuse.”<sup>4</sup> Less than a month later, in the midst of Bullying Awareness Week, federal Justice Minister Peter

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1. Senate, Standing Committee on Human Rights, *Evidence*, 41st Parl, 1st Sess, Issue 14 (4 June 2012) (Helen Kennedy, Executive Director, Egale Canada).

2. The term “cyberbullying” is placed in quotation marks here and in the title to register from the outset my concern that the widespread use of the term itself to describe a remarkable variety of situations and behaviours risks obscuring fundamental differences between those situations and behaviours. In particular, its application to situations of sexual, racial and other forms of online harassment can too easily eclipse underlying systemic structures of discrimination that expose members of particular groups to attack and violence.

3. Todd Loik, 15 (died 8 September 2013 in Saskatchewan); Rehtaeh Parsons, 17 (died 7 April 2013 in Nova Scotia); Amanda Todd, 15 (died 10 October 2012 in British Columbia); Marjorie Raymond, 15 (died 28 November 2011 in Quebec); Jamie Hubley, 15 (died 14 October 2011 in Ontario); Jenna Bowers-Bryanton, 15 (died January 2011 in Nova Scotia): CBC News, “Sask. teen Todd Loik takes life after being bullied, mother says,” *CBC News Saskatoon* (25 September 2013), online: CBC <<http://www.cbc.ca/news/canada/saskatoon/>>; CBC News, “Rape, bullying led to N.S. teen’s death, says mom,” *CBC News Nova Scotia* (9 April 2013), online: CBC <<http://www.cbc.ca/news/canada/nova-scotia/>> [CBC 9 April 2013 Parsons]; CBC News, “B.C. girl’s suicide foreshadowed by video,” *CBC News British Columbia* (11 October 2012), online: CBC <<http://www.cbc.ca/news/canada/british-columbia/>>; Nelson Wyatt, “Marjorie Raymond Suicide: Quebec Teen Was Tormented By Bullying, Says Her Mother,” *The Canadian Press* (30 November 2011), online: Huffington Post <<http://www.huffingtonpost.ca/>>; The Canadian Press, “Jamie Hubley, Ottawa Teen Suicide: Bullying Was A Factor, Says Father,” *The Canadian Press* (17 October 2011), online: Huffington Post <<http://www.huffingtonpost.ca/>>; CBC News, “Bullied teen’s death sparks campaign,” *CBC News Nova Scotia* (28 March 2011), online: CBC <<http://www.cbc.ca/news/canada/nova-scotia/>>.

4. Canada, Governor General, “Seizing Canada’s moment: prosperity and opportunity in an uncertain world: Speech from the Throne” (Ottawa: 16 October 2013) at 13, online: Government of Canada <[http://speech.gc.ca/sites/sft/files/sft-en\\_2013\\_c.pdf](http://speech.gc.ca/sites/sft/files/sft-en_2013_c.pdf)>. See also: Coordinating Committee of Senior Officials, Cybercrime Working Group, *Report to the Federal/Provincial/Territorial Ministers Responsible for Justice and Public Safety: Cyberbullying and the Non-consensual Distribution of Intimate Images* (June 2013), online: <<http://www.justice.gc.ca/>> [Cybercrime Working Group Report].

MacKay tabled Bill C-13, the *Protecting Canadians from Online Crime Act*,<sup>5</sup> describing it as the government's way of responding to the "horrible crime of cyberbullying."<sup>6</sup> Bill C-13 would amend the *Criminal Code* to, among other things, prohibit non-consensual distribution of intimate images, extend the grounds covered by the criminal hate propaganda provisions, and amend prohibitions on false, indecent and harassing communications to specifically refer to use of telecommunications systems.<sup>7</sup> However, the vast majority of Bill C-13's provisions are not directly connected to cyberbullying, but to expanded state surveillance powers writ large. For those following cyberbullying in the media, Bill C-13 might appear to be the obvious policy choice in light of the tragic cases reported on. However, a review of the federal parliamentary debates on bullying and cyberbullying reflects a much richer array of approaches, of which reactive criminal responses were only one—and a heavily contested one at that.

The cacophony of voices within the federal parliamentary debates on bullying and cyberbullying, facilitated in large part by the Senate Standing Committee on Human Rights' hearings on these issues, revealed both the diversity and the complexity of the issues submerged within these popularly used, yet loosely defined terms. In addition to reactive criminal law responses, a plethora of claimsmakers painted cyberbullying as a multi-faceted issue requiring a multi-pronged approach. Some claimsmakers advocating for a multi-pronged approach completely dismissed reactive criminal law responses as unlikely to be effective. Others asserted that if criminal law responses were to be adopted, it was essential that they be only part of a well-developed multi-pronged strategy that emphasizes proactive responses aimed at addressing broader issues such as healthy relationships, systemic prejudice and discrimination, and online architectures that work to promote bullying.

Both the parliamentary debates and the federal government's chosen response in Bill C-13 reveal cyberbullying less as *a* problem and more as an intellectual and political juggernaut for transporting a broad range of individual and social issues, as well as political ideologies, onto the public agenda. The conceptual elasticity of the term has, to a certain

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5. Bill C-13, *An Act to amend the Criminal Code, the Canada Evidence Act, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act*, 2nd Sess, 40th Parl, 2013 (first reading 20 November 2013) [Bill C-13]. Since the writing of this article, Bill C-13 received Royal Assent and will come into force in March 2015: *Protecting Canadians from Online Crime Act*, SC 2014 c 31.

6. CBC News, "RAW Bullying awareness announcement," *CBC News* (20 November 2013) (video), online: CBC <<http://www.cbc.ca/player/News/>> [MacKay announcement].

7. Bill C-13, *supra* note 5 at ss 3, 13 & 18.

extent, facilitated co-optation of tragic suicide cases and protection of “innocent” children<sup>8</sup> as a guise for a long-standing agenda to expand state surveillance, while offering no comprehensive plan for addressing the relational and systemic issues and responses repeatedly highlighted within the debates themselves.

There are sound reasons to be concerned about the broad range of issues currently packed inside the cyberbullying juggernaut: sexual, homophobic and racial harassment; extortion; and sexual exploitation, to name a few. However, this article suggests that getting clearer and more specific about the components currently subsumed within the broader term would better facilitate development of a meaningful comprehensive strategy. Such a strategy could assist in prioritizing initiatives in a world of limited resources, and tailoring responses to meaningfully address those priorities. It could also assist in ensuring that reactive criminal responses do not supplant proactive approaches aimed at dismantling the intersecting sexist, homophobic, racist, classist, ableist, and colonialist social structures that render girls, women, and members of the LGBTQ community particularly vulnerable to sexualized attacks both online and off.

This article reports the findings of a review of federal parliamentary debates and hearings about bullying and cyberbullying in both the House of Commons and the Senate, primarily in the period from 2008 to 2013. Part I describes our approach to reviewing the parliamentary debates, as well as briefly highlighting Joel Best’s rhetorical framework for policy analysis,<sup>9</sup> which we used to organize the material we identified. Part II situates the federal policy process within a broader social and theoretical context in order to highlight parallels between theoretical and media reporting developments, and federal parliamentary engagement with the issues of cyberbullying and bullying more generally. Part III analyses the debates, beginning with a focus on the general (though not unanimous) consistency among claimsmakers as to the seriousness of the cyberbullying problem and the high profile examples often used to frame understanding of the problem. It then analyzes areas in which a broader diversity of viewpoints was offered: the definition, scope and underlying causes of cyberbullying; the issues said to stand in the way of resolving the problem; and the recommended responses. The conclusion highlights the risks of

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8. MacKay announcement, *supra* note 6.

9. Joel Best, “Rhetoric in Claims-Making: Constructing the Missing Children Problem” (1987) 34 *Social Problems* 101 [Best 1987]; Joel Best, ed, *Images of Issues: Typifying Contemporary Social Problems*, 2nd ed (Hawthorne, NY: de Gruyter, 1995); Joel Best, *Social Problems* (New York, NY: Norton, 2008).

maintaining the umbrella term “cyberbullying” for policy purposes and suggests the need for caution in relying primarily on extreme mediatized cases as the primary method for defining the matters of policy interest. Ultimately, it recommends unpacking the cyberbullying juggernaut to look candidly at the individual and relational issues, and discriminatory social structures currently packed inside as a first step toward building the comprehensive national strategy recommended by many participants in the debates.

### I. *Approach to reviewing the debates*

This article focuses on findings relating to cyberbullying and, to a lesser extent, the related topic of bullying, which made up one component of a larger study on the ways in which children (particularly girls, where mentioned) and technology have been discussed in Canadian federal parliamentary debates and related committees from 1994 to date. In the larger study, Hansard was searched for terms including technology, internet, girls, youth and children, as well as various combinations of those terms, initially from 1994 to 2011.<sup>10</sup> The larger study yielded some initial references to bullying and cyberbullying, which were supplemented by a subsequent search of the terms “bullying” and “cyberbullying” in both the debates of the House of Commons and the Senate, as well as related committees for the period from 2011 to 2013.

The purposes of the larger study were twofold. First, we sought to identify the kinds of claims made about children (particularly girls, where mentioned) in the context of policy discussions related to technology, as well as to identify claims made about technology (especially the internet) within these discussions.<sup>11</sup> Second, we sought to explore the ways in which the framing of these claims about children and technology affected the policy responses proposed. The purposes of the targeted study relating to bullying and cyberbullying were to identify how these terms were defined and characterized, and what recommendations were made with respect to responding to them. The findings were organized using Best’s framework for analyzing claimsmaking in policy processes.

10. Aspects of the findings from that review were reported upon in Jane Bailey & Valerie Steeves, “Will the Real Digital Girl Please Stand Up?,” in Hille Koskela & Macgregor Wise, eds. *New Visualities, New Technologies: The New Ecstasy of Communication* (Ashgate Publishing: 2013). An overview of results is also available in Hannah Draper, “Canadian Policy Process Review 1994–2011,” *eGirls Project* (March 2012), online: eGirls Project <<http://egirlsproject.ca/research/research-memos-backgrounders/2013-policy-discourses-jurisdictions/#CdnFed>>.

11. Some of these claims were then relayed to girls and young women aged 15–17 and 18–22 during interviews and focus group discussions in January and February 2013 in order to get their perspectives on whether these representations were or were not accurate.

Best’s framework focuses on five aspects of the rhetorical process of making policy claims: (i) grounds, (ii) examples, (iii) estimates, (iv) warrants and (v) conclusions.<sup>12</sup> Grounds, examples and estimates are used to shape and define the nature and scope of a new or existing problem that a claimsmaker wishes to assert must be addressed. These definitional and scope aspects of claimsmaking assist in determining both what will be included and what will be excluded from debate relating to the problem,<sup>13</sup> as well as in garnering support for the idea that something must be done about it.<sup>14</sup> Warrants are often used to add value statements supporting the idea that maintaining the status quo is unacceptable. They are frequently tied to the conclusions offered about what should be done as a result.<sup>15</sup> For example, a warrant that suggests a gap in existing policy in relation to the problem as presented, might be used to support the conclusion that action must be taken to fill that policy gap (e.g. by passing legislation).<sup>16</sup>

Best’s framework was used to break down and organize the claims made by participants in the federal process into their component parts. This approach allowed for better mapping of the ways in which claims made about the nature, scope and underlying causes of the problem were connected with the barriers to resolution identified and the responses recommended by each claimsmaker. We then examined our analyses of individual claimsmakers to identify dominant themes and issues. This article discusses the dominant themes and issues identified and provides specific examples through quotations from Hansard, as well as media and other related written reports.

## II. *Contextualizing the federal parliamentary debates*

Obviously, legislative debates do not arise in a contextual vacuum. Policy processes can be informed by any number of factors. Our review of the federal parliamentary debates on bullying and cyberbullying both reflects and reveals a level of complexity around the meaning and social relevance of these terms that is also present in scholarly research on these issues. It also reveals the impact of media reporting on the policy agenda.

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12. Best 1987, *supra* note 9.

13. *Ibid* at 105.

14. *Ibid* at 107-108.

15. *Ibid* at 108-109.

16. *Ibid* at 112-113.



1. *Conceptual complexity*<sup>17</sup>

Research and scholarship around bullying and cyberbullying is evolving, both with respect to definitions and in relation to which sorts of acts ought to be focused upon as policy matters. Swedish researcher Dan Olweus's seminal definition of bullying involved three key elements: (i) *repeated* acts, of (ii) *intentional* aggression, (iii) in a relationship where there was a *power imbalance* that made it "difficult for the student being bullied to defend himself or herself."<sup>18</sup> This approach can encompass a variety of situations: physical contact, unprovoked or proactive aggression, reactive or defensive aggression, indirect or relational aggression, and bias-based attacks (thus incorporating "bullying that co-occurs with discriminatory prejudice such as racism, sexism and" homophobia).<sup>19</sup>

Researchers in the United States have tended toward use of the term "peer victimization," emphasizing effects on those targeted and de-emphasizing the intentionality component of Olweus's definition.<sup>20</sup> Finkelhor, Turner and Hamby have also raised concerns about the power imbalance component of the classic bullying definition, suggesting that, as a policy matter, it unduly limits the scope of behavior that ought to be of interest to policy makers, such as one-time serious acts of aggression.<sup>21</sup> Finkelhor and his co-authors also note that the power imbalance requirement is difficult to define and that, in any event, this criterion may preclude cyberbullying in which purveyors are often unknown, thereby undermining prospects for determining whether a power imbalance exists.<sup>22</sup>

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17. This section is not intended to fully report the tremendous body of research and writing on the topics of bullying and cyberbullying. Rather, it is intended to demonstrate some of the key developments that highlight the ways in which the terms have evolved, as well as the ongoing debate over how the term ought to be defined, and whether the term addresses the sorts of social aggression that ought to be of most concern from a policy perspective. For a fuller account, see: Debra Pepler & Wendy Craig, eds, *Understanding and Addressing Bullying: An International Perspective* (Bloomington, IN: AuthorHouse, 2008); Justin Patchin & Sameer Hinduja, eds, *Cyberbullying Prevention and Response* (New York: Routledge, 2012); Nova Scotia, 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* (29 February 2012).

18. Dan Olweus, *The Olweus Bullying Questionnaire* (Centre City, MN: Hazeldean, 2007) at 2 [Olweus].

19. Nathaniel Levy et al, "Bullying in a Networked Era: A Literature Review," *Kinder & Braver World Project: Research Series* (September 2012), Harvard Law at 9, online: <<https://cyber.law.harvard.edu/node/7491>>.

20. PREVNet, *Bullying: Definitions*, fact sheet (2009) at 1, online: <<http://www.prevnet.ca/research/fact-sheets>> [PREVNet *Bullying*].

21. David Finkelhor, Heather Turner & Sherry Hamby, "Let's prevent peer victimization, not just bullying" (2012) 36 *Child Abuse and Neglect* 271 at 271-272 [Finkelhor et al].

22. *Ibid* at 272.

In Canada, cyberbullying or electronic bullying is variously defined. For example, in 1999, Alberta teacher Bill Belsey, founder of [www.bullying.org](http://www.bullying.org), defined cyberbullying as involving “the use of information and communication technologies to support deliberate, repeated, and hostile behaviour by an individual or group, that is intended to harm others.”<sup>23</sup> Notably, this approach maintains intentionality, but does not incorporate power imbalance. The research network Promoting Relationships and Eliminating Violence Network (PREVNet) defines electronic bullying or cyberbullying as “willful and repeated harm inflicted through electronic media,” including “use of electronic devices or the internet to threaten, harass, embarrass, socially exclude, or damage reputations and friendships.”<sup>24</sup> This approach appears to incorporate an intentionality component (willful), but like the Belsey definition does not include a power imbalance requirement.

In January 2014, the US Centers for Disease Control and Prevention (CDC) issued a “uniform definition” of bullying as “any unwanted aggressive behavior(s) by another youth or group of youths who are not siblings or current dating partners that involves an observed or perceived power imbalance and is repeated multiple times or is highly likely to be repeated.”<sup>25</sup> The CDC noted bullying may involve direct or indirect modes, and physical, verbal, relational acts and/or damage to property, and may inflict social, physical, psychological or educational harm or distress.<sup>26</sup> It stated that “cyber-bullying is bullying that happens through email, chat rooms, instant message, a website, text message or social media.”<sup>27</sup>

Perhaps reflecting the complexities around definitional issues that the recent CDC “uniform definition” is meant to address, social science evidence with respect to the prevalence of cyberbullying varies considerably. “[P]erpetration rates range from 4–18% and victimization rates...[range from] 7–35%.”<sup>28</sup> The nature and underlying issues associated with bullying and cyberbullying are also, to some extent, in transition,

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23. Bill Belsey, “Cyberbullying: An Emerging Threat to the ‘Always On’ Generation,” *cyberbullying.ca* (undated), online: <<http://www.cyberbullying.ca/>> at 1 [Belsey definition].

24. PREVNet, *Electronic Bullying: Definition and Prevalence*, fact sheet (2009), online: <<http://www.prevnet.ca/research/fact-sheets>> at 1 [PREVNet *Electronic Bullying*].

25. R Matthew Gladden et al, *Bullying Surveillance Among Youths: Uniform Definitions for Public Health and Recommended Data Elements, Version 1.0* (Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention & US Department of Education, 2014), online: Centers for Disease Control and Prevention <<http://www.cdc.gov/violenceprevention/>> at 7.

26. *Ibid.*

27. Centers for Disease Control, “Youth Bullying: What Does the Research Say?” (22 January 2014), online: Centers for Disease Control and Prevention <<http://www.cdc.gov/violenceprevention/>>.

28. PREVNet *Electronic Bullying*, *supra* note 20 at 2.

with some researchers encouraging a reconceptualization of bullying as “a relationship problem that requires relationship solutions,” rather than as a largely individual behavioural issue.<sup>29</sup> Other researchers emphasize recognition of broader discriminatory social structures that inform and facilitate bullying and cyberbullying, leaving members of socially vulnerable groups disproportionately exposed as targets.<sup>30</sup> Some research also questions whether policymaker attention should shift away from bullying or cyberbullying per se to focus on more broadly defined issues such as “peer victimization and peer aggression”<sup>31</sup> or “school violence.”<sup>32</sup>

Thus, even this very brief highlighting of some theoretical and conceptual developments reveals complexities around what bullying and cyberbullying are, how they should be thought of for policy purposes, and whether they continue to be socially useful constructs in terms of identifying the issues of greatest policy concern. As discussed in Part III below, this conceptual complexity is also reflected in the Canadian federal parliamentary debates and hearings reviewed in this article.

## 2. *Media reporting*

Bullying and cyberbullying have become particularly hot topics of media reporting over the last several years.<sup>33</sup> Canadian media reports on the suicides of Jamie Hubley, Amanda Todd and Rehtaeh Parsons were particularly widespread. In October 2011, numerous local and national media outlets reported that fifteen-year-old Jamie Hubley had committed suicide, following a battle with depression and years of bullying over being

29. PREVNet *Bullying*, *supra* note 20 at 1. See also: Debra Pepler et al, “A developmental perspective on bullying” (2006) 32 *Aggressive Behaviour* 376.

30. Donn Short, “*Don’t Be So Gay!*” *Queers, Bullying and Making Schools Safe* (Vancouver, BC: UBC Press, 2013); Elizabeth Meyer, *Gender, Bullying and Harassment: Strategies to End Sexism and Homophobia in Schools* (New York: Teachers College Press, 2009); Shaheen Shariff, *Cyber-bullying: Issues and Solutions for the school, the classroom, and the home* (Abington, UK: Routledge, 2008). See also: Danielle Keats Citron, “Law’s Expressive View in Combating Cyber Gender Harassment” (2009) 108 *Michigan LR* 373.

31. Finkelhor et al, *supra* note 21 at 273-274.

32. Lucia Williams & Ana Carina Stelko-Pereira, “Let’s prevent school violence, not just bullying and peer victimization: A commentary on Finkelhor, Turner and Hamby (2012)” (2013) 37 *Child Abuse and Neglect* 235 at 236.

33. See notes 3, 34 and 37-47.

gay.<sup>34</sup> The only openly gay boy in his school, Jamie’s bullying reportedly began in grade 7 when “teens tried to stuff batteries down his throat on the school bus because he was a figure skater.”<sup>35</sup> During his life, Jamie used social media as a forum to discuss being bullied and its effects. After Jamie’s death his father pointed out that “cyber-bullying ha[s] created a new problem” because “Children often feel there is no safe place to go; even when they are at home they can still be victims.”<sup>36</sup>

About one year later, in October 2012, local, national and international media outlets reported on the suicide of fifteen-year-old BC teen Amanda Todd.<sup>37</sup> Amanda killed herself following an extended period of online and offline verbal attacks after someone electronically distributed a screenshot of her exposed breasts captured during a chat session.<sup>38</sup> Amanda also used social media (including a widely viewed YouTube video) to report on her experience of exploitation and the subsequent abuse she endured from peers.<sup>39</sup> The media reported in 2013 that although Amanda’s mother had reported extortion attempts against Amanda on five separate occasions before her suicide, it was only after Amanda’s death that the RCMP assigned 20 officers to her case.<sup>40</sup>

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34. “Gay Ottawa teen who killed himself was bullied,” *CBC News* (19 October 2011), online: CBC <<http://www.cbc.ca/news/>> [CBC 19 October 2011 Hubley]; “Jamie Hubley, Ottawa Teen Suicide: Bullying Was A Factor, Says Father,” *The Huffington Post* (17 October 2011), online: Huffington Post <<http://www.huffingtonpost.ca/>>; Matthew Pearson, “Suicide of gay teen Jamie Hubley puts scrutiny on educators over bullying,” *National Post* (18 October 2011), online: Postmedia Network <<http://news.nationalpost.com/>>; “Ottawa teen details final suicidal thoughts on blog,” *CTV News* (17 October 2011), online: Bell Media <<http://www.ctvnews.ca/>>; Heather Mallick, “Meet the boy the bullies broke,” *The Star* (18 October 2011), online: Toronto Star Newspapers <<http://www.thestar.com/news/>> [Mallick].

35. CBC 19 October 2011 Hubley, *ibid.*

36. Mallick, *supra* note 34.

37. “B.C. girl’s suicide foreshadowed by video,” *CBC News British Columbia* (11 October 2012), online: CBC <<http://www.cbc.ca/news/canada/british-columbia/>>; Andree Lau, “Amanda Todd: Bullied Teen Commits Suicide,” *The Huffington Post B.C.* (11 October 2012), online: Huffington Post <<http://www.huffingtonpost.ca/>> [Lau]; “Weeks after posting haunting Youtube video on her years of torment at classmates’ hands, 15-year-old B.C. girl commits suicide,” *National Post* (12 October 2012), online: Postmedia Network <<http://news.nationalpost.com/>>; Christina Ng, “Bullied Teen Leaves Behind Chilling YouTube Video,” *ABC News* (12 October 2012), online: ABC News <<http://abcnews.go.com/international/>>.

38. Michelle Dean, “The Story of Amanda Todd,” *The New Yorker* (18 October 2012), online: Condé Nast <<http://www.newyorker.com/online/blogs/>>.

39. Lau, *supra* note 37.

40. “Amanda Todd suicide: RCMP repeatedly told of blackmailer’s attempts,” *CBC News Canada* (15 November 2013), online: CBC <<http://www.cbc.ca/news/canada/>>.

In April 2013, local, national and international media outlets were again reporting on another Canadian teen suicide.<sup>41</sup> Seventeen-year-old Nova Scotia resident Rehtaeh Parsons committed suicide after being bullied in relation to a photograph circulated online which allegedly depicted her being sexually assaulted at a party more than a year before.<sup>42</sup> Although Parsons' family reported prior to her death that Rehtaeh had been raped, authorities declined to press charges against the alleged perpetrators until after her death, at which time two minors were charged with child pornography offences.<sup>43</sup> After her death, Parsons's mother was reported to have commented, "[s]he would not be gone today if that didn't happen—not just the rape. What made it so much worse is the people who turned their back on her, the name-calling."<sup>44</sup>

The Hubley, Todd and Parsons families all subsequently became very involved in public campaigns with respect to various related issues including teen suicide, mental health, bullying and cyberbullying.<sup>45</sup> The media closely covered Prime Minister Stephen Harper's personal reactions to the Parsons situation, as well as his in-person meeting with the family after Rehtaeh's death.<sup>46</sup> The CBC quoted Harper as saying:

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41. CBC 9 April 2013 Parsons, *supra* note 3; Josh Visser, "The justice system failed her': Nova Scotia teenager commits suicide after being raped, bullied: mother," *National Post* (9 April 2013), online: Postmedia Network <<http://news.nationalpost.com/>>; Wendy Gillis, "Rehtaeh Parsons: A family's tragedy and a town's shame," *The Star* (12 April 2013), online: Toronto Star Newspapers <<http://www.thestar.com/news/>>; Paul Wright and agencies, "Rehtaeh Parsons: Canadian police re-open case into rape of suicide teen," *The Telegraph* (12 April 2013), online: Telegraph Media Group <<http://www.telegraph.co.uk/news/worldnews/>>.

42. "Rehtaeh Parsons cyberbullying report calls for hospital review," *CBC News Nova Scotia* (14 June 2013), online: CBC <<http://www.cbc.ca/news/canada/nova-scotia/>>.

43. CTV News Staff, "Two teens charged in Rehtaeh Parsons case," *CTV News* (8 August 2013), online: Bell Media <<http://www.ctvnews.ca/>>.

44. Tu Thanh Ha & Jane Taber, "Bullying blamed in death of Nova Scotia teen," *The Globe and Mail* (9 April 2013), online: The Globe and Mail <<http://www.theglobeandmail.com/>>.

45. Jessica Beddaoui, "Family marks one-year anniversary of bullied Ottawa teen Jamie Hubley's death," *Ottawa Sun* (15 October 2012), online: Canoe Sun Media <<http://www.ottawasun.com/>>; Jennifer Ditchburn, "Ottawa to launch national anti-bullying program in wake of 15-year-old Jamie Hubley's suicide," *National Post* (2 June 2013), online: Postmedia News <<http://news.nationalpost.com/>>; Gillian Shaw, "Amanda Todd's mother speaks out about her daughter, bullying," *The Vancouver Sun* (13 March 2013), online: Postmedia Network <<http://www.vancouver.sun.com/>>; "Amanda Todd's anti-bullying legacy, 1 year on," *CBC News British Columbia* (10 October 2013), online: CBC <<http://www.cbc.ca/news/canada/british-columbia/>>; Kim Mackrael, "Prime Minister, Parsons's family discuss bullying laws," *The Globe and Mail* (23 April 2013), online: The Globe and Mail <<http://www.theglobeandmail.com/>>; Sheena Goodyear, "Cyberbullying becomes a national issue in wake of family's 'unending nightmare,'" *Toronto Sun* (28 December 2013), online: Canoe Sun Media <<http://www.torontosun.com/>>.

46. "Rehtaeh Parsons's family has 'heartfelt' talk with Harper," *CBC News Nova Scotia* (23 April 2013), online: CBC <<http://www.cbc.ca/news/canada/nova-scotia/>>.

I think we've got to stop using just the term bullying to describe some of these things. Bullying to me has a kind of connotation...of kids misbehaving. What we are dealing with in some of these circumstances is simply criminal activity. It is youth criminal activity, it is violent criminal activity, it is sexual criminal activity and it is often internet criminal activity....<sup>47</sup>

### 3. *Parliamentary engagement*

Bullying and cyberbullying were topics of Canadian federal parliamentary debate in the period from 2008 forward, but have intensified since 2010, in tandem with high profile media cases like Hubley, Todd and Parsons. One of the earliest mentions of cyberbullying in our review of the Parliamentary debates came in 2008 when the Standing Committee on Canadian Heritage engaged in discussions on Bill C-327, *an act to amend the Broadcasting Act to reduce violence in television broadcasts*.<sup>48</sup> In this context, cyberbullying was described as an

online culture of cruelty...[that is] closely linked to violence in television broadcasting, as many of the same assumptions on context and outcomes are relevant in promoting an ambivalence towards the use of violence in our daily lives.<sup>49</sup>

The widespread adoption of “new communication technology” by Canadian children was heralded as an opportunity, albeit that “with the new opportunities...come new negative realities.”<sup>50</sup> Moreover, cyberbullying’s “even more profound” impacts were noted on the basis that “the child who is being victimized often doesn’t know who’s doing the harassing, and many people can covertly witness or join in the bullying.”<sup>51</sup>

These themes continued to be repeated in subsequent cyberbullying debates at the federal parliamentary level that included: proposed *Criminal Code* amendments to address cyberbullying,<sup>52</sup> the proceedings of the Standing Senate Committee on Human Rights with respect to cyberbullying in 2011,<sup>53</sup> a 2012 House of Commons proposal to create a non-partisan

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47. “Stephen Harper ‘sickened’ by Rehtaeh Parsons story,” *CBC News Nova Scotia* (11 April 2013), online: CBC <<http://www.cbc.ca/news/canada/nova-scotia/>> [Harper ‘sickened’].

48. House of Commons, Standing Committee on Canadian Heritage, *Evidence*, 39th Parl, 2nd Sess, Nos 19-23 (4 March 2008–1 April 2008).

49. *Ibid*, No 22 (13 March 2008) at 1542 (Emily Noble, President, Canadian Teachers’ Federation).

50. *Ibid* at 1544.

51. *Ibid*.

52. Bill C-355, *An act to amend the Criminal Code (cyberbullying)*, 2nd Sess, 40th Parl, 2009 (first reading 1 April 2009; reinstated in 3rd Sess, 3 Mar 2010); Bill C-273, *An act to amend the Criminal Code (cyberbullying)*, 1st Sess, 41st Parl, 2011 (first reading 19 September 2011) [Bill C-273].

53. Senate, Standing Committee on Human Rights, *Cyberbullying Hurts: Respect for Rights in the Digital Age* (December 2012) (Chair: Hon Mobina SB Jaffer) [Senate Committee Cyberbullying Report].

committee to investigate and propose a national strategy with respect to bullying and cyberbullying,<sup>54</sup> a 2013 federal contribution to a Red Cross anti-bullying program,<sup>55</sup> and proposed *Criminal Code* amendments to prohibit the non-consensual distribution of intimate images, first tabled in an NDP private member's bill in June 2013,<sup>56</sup> and subsequently included in omnibus government Bill C-13.<sup>57</sup> The announcement of the contribution to the Red Cross program was closely tied with the Hubley case in media reports and by the government itself.<sup>58</sup> Similarly, the media and federal government linked the drafting and tabling of Bill C-13 with the Parsons case,<sup>59</sup> as well as the results of a working group report on cyberbullying to the Federal Provincial Territorial (FPT) Ministers Responsible for Justice and Public Safety.<sup>60</sup> In that report, the working group stated:

Finally, the Working Group acknowledges that cyberbullying is, in fact, a recent manifestation of the longstanding social problem of bullying. The Working Group believes that a multi-faceted approach should be taken, which would include modernizing the *Criminal Code*. In that vein, the Working Group recommends that all levels of government continue to adopt and support a multi-pronged approach to addressing these issues.<sup>61</sup>

With this brief overview of some of the key aspects of the conceptual, media and parliamentary contexts with respect to bullying and cyberbullying in place, Part III provides a more detailed discussion of some of the key trends we noted in our review of the federal parliamentary debates themselves.

### III. *Federal parliamentary debates on cyberbullying*

The areas of greatest consistency among claimsmakers involved in the federal debates tended to be overshadowed by areas in which a broad range of viewpoints were offered. This may be a reflection of the breadth of participation in the debates (facilitated in large part by the Senate Standing

54. Private Members' Business, Motion M-385, House of Commons, *Journals*, 41st Parl, 1st Sess, No 161 (15 October 2012) at 1100 (Dany Morin).

55. House of Commons, *Edited Hansard*, 41st Parl, 1st Sess, No 261 (3 June 2013) at 1437 (Hon James Moore, Minister of Canadian Heritage and Official Languages); CBC News, "Feds pledge \$250K to youth-led anti-bullying project," *CBC News Ottawa* (2 June 2013), online: CBC <<http://www.cbc.ca/news/canada/ottawa/>> [Feds pledge \$250K].

56. Bill C-540, *An Act to amend the Criminal Code (non-consensual making or distribution of intimate images)*, 1st Sess, 41st Parl, 2013 (first reading 17 June 2013; reinstated in 2nd Sess, 16 October 2013).

57. *Supra* note 5.

58. Feds pledge \$250K, *supra* note 55.

59. Harper 'sickened,' *supra* note 47.

60. Cybercrime Working Group Report, *supra* note 4.

61. *Ibid* at 2-3.



Committee’s cyberbullying hearings) and the conceptual complexity discussed above.

1. *Areas of greater consistency*

While certainly not approaching unanimity, there was considerable consistency among claimsmakers that cyberbullying is a serious problem—a claim that was often tied to the claim that cyberbullying is worse than other forms of bullying. Similarly, there was a significant degree of consistency in the examples of cyberbullying referred to during debates, with frequent reliance on high profile media reported suicide cases. Although claimsmakers sometimes interpreted the meaning and significance of a single example quite differently.

a. *Cyberbullying is a serious problem*

Claimsmakers frequently noted that cyberbullying is a serious problem. Perhaps the most extreme form of this claim was made by children’s advocate Christian Whalen: “cyberbullying is without a doubt one of the worst problems facing young people today....”<sup>62</sup> Some linked the problem’s seriousness to public perceptions that bullying in general was a serious problem.<sup>63</sup> Others linked it to claims about the size of the problem in terms of numbers of people affected,<sup>64</sup> even though (as discussed below), a diverse range of prevalence statistics were offered. Often claimsmakers tied the seriousness of cyberbullying to the claim that *cyberbullying* was worse than other forms bullying.<sup>65</sup>

b. *Cyberbullying is worse than other forms of bullying*

The claim that *cyberbullying* was worse than other forms of bullying was a central feature in grounding rhetorical claims about the nature

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62. Senate Ctte (4 June 2012), *supra* note 1 (Christian Whalen, Acting Child and Youth Advocate, Office of the Ombudsman of New Brunswick, Canadian Council of Provincial Child and Youth Advocates).

63. See, e.g., House of Commons, *Hansard*, 41st Parl, 1st Sess, No 109 (24 April 2012) at 1818 (Hon Kerry-Lynne Findlay, Parliamentary Secretary to the Minister of Justice, speaking to C-273).

64. See, e.g., House of Commons, *Hansard*, 41st Parl, 1st Sess, No 134 (5 June 2012) at 1802 (Kevin Lamoureux, MP, speaking to C-273), and at 1810-1811 (Hon Hedy Fry, MP, speaking to C-273); House of Commons, Journals, 41st Parl, 1st Sess, No 161 (15 October 2012) at 1144 (Randall Garrison, MP, speaking to M-385); House of Commons, *Hansard*, 41st Parl, 1st Sess, No 181 (20 November 2012) at 1901 (Christine Moore, MP, speaking to M-385).

65. See, e.g., House of Commons (24 April 2012), *supra* note 63 at 1753 (Robert Goguen, Parliamentary Secretary to the Minister of Justice, speaking to C-273), and at 1825 (François Choquette, MP, speaking to C-273); MP Kevin Lamoureux at House of Commons (5 June 2012), *supra* note 63 at 1758-1802; Hon Hedy Fry at House of Commons (5 June 2012), *supra* note 64 at 1811-1815; House of Commons (20 November 2012), *supra* note 64 at 1823 (François Choquette, MP, speaking to M-385), and at 1850 (Sylvaine Chicoine, MP, speaking to M-385); House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 41st Parl, 1st Sess, No 61 (27 February 2013) at 1540-1541 (Paul Taillefer, President, Canadian Teachers’ Federation).



and seriousness of cyberbullying and the need for a response to it. These claims tended to involve references to the anonymous, intermediated, and ubiquitous nature of electronic forms of communication: “[The] immediacy and broad reach of new technologies has made bullying easier, faster, anonymous, more prevalent, permanent and more cruel than ever before.”<sup>66</sup> As discussed below, some claimsmakers connected these features of digitized communication with a weakened parental ability to intervene.

i. *Anonymity and intermediation*

It was often claimed that the anonymity and intermediated nature of electronic communications reduced inhibitions by comparison with face-to-face confrontations, thereby leading to harsher attacks online. For example, Irwin Cotler referred to the findings of Qing Li, stating:

as a result of the impersonal nature of the Internet, whereby we do not experience the same feelings of regret or shame that come hand-in-hand with personal interaction...the ability to cloak oneself in the shadows of cyberspace removes barriers, decreases the likelihood of punishment and, thus, results in more bullying and more victims.<sup>67</sup>

Further, the anonymity of online digital environments was said to render *cyberbullying* both more unnerving and more difficult to stop:

[W]ith the anonymous settings on so many websites, you do not know, you cannot know who it was. It could be someone in your class. It could be someone you see every day, but you would not know. It is really hard to find that source. Sometimes we do, and sometimes there is a consequence and sometimes it stops, but often there is no way of knowing....

[I]f we do not know the source of the bullying, then we cannot always make it stop.<sup>68</sup>

In contrast, however, Matthew Johnson of Media Awareness Network (now MediaSmarts) noted that, “[i]n most cyberbullying cases among youth, the target knows or believes that he or she knows who the perpetrator is.”<sup>69</sup>

66. House of Commons (24 April 2012), *supra* note 63 at 1816 (Hon Kerry-Lynne Findlay).

67. House of Commons (24 April 2012), *ibid* at 1808 (Hon Irwin Cotler, MP, speaking to C-273). For similar statements with respect to anonymity, see: House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 41st Parl, 1st Sess, No 60 (25 February 2013) at 1542 (Hon Hedy Fry, MP, introducing C-273 to Committee); Senate Ctte (4 June 2012), *supra* note 1 (Samantha Hoogveld, Student at Springbank Middle School); Senate, Standing Committee on Human Rights, *Evidence*, 41st Parl, 1st Sess, Issue 15 (11 June 2012) (Lauren Seager-Smith, Coordinator, Anti-Bullying Alliance).

68. Senate Ctte (4 June 2012), *supra* note 1 (Molly Turner, Student at Springbank Middle School).

69. Senate, Standing Committee on Human Rights, *Evidence*, 41st Parl, 1st Sess, Issue 11 (30 April 2012) (Matthew Johnson, Director of Education, Media Awareness Network).

Debra Pepler, Scientific Co-Director of PREVNet, advised the Senate Standing Committee on Human Rights of the empathy-diminishing effects of intermediation in cyberbullying:

When you are being bullied electronically or when you are witnessing this, you are removed from the face-to-face cues that you get in normal human interaction, such as the visible sadness and the distress. Many things happen during face-to-face interactions that can signal something is really wrong and someone is really distressed.<sup>70</sup>

As a result, the sentiment was regularly expressed that “so often the perpetrator does not see the impact of what is happening.”<sup>71</sup> The anonymity and intermediary features of digital communications technologies were also indicated as facilitators of a new sort of participant in bullying—the bully-victim:

Our research shows that with electronic bullying, distinctions between the bully and victim roles are often blurred, more so than the traditional bullying. Children are more likely to admit being both bully and victim.<sup>72</sup>

## ii. *Ubiquity*

Similarly, cyberbullying was argued to be different from, and worse than, other forms of bullying because targets were more exposed to cyberbullying due to the ubiquity of digital communications technology. As one grade 8 student submitted to the Senate Standing Committee on Human Rights: “[W]e can be targets of cyberbullying 24/7, and that makes you feel as if there is no safe place.”<sup>73</sup> The ubiquity of technology was also linked to intensified and long-lasting impacts, as well as enhanced opportunities for highly-orchestrated attacks above and beyond those thought to be available for traditional forms of bullying:

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70. Senate, Standing Committee on Human Rights, *Evidence*, 41st Parl, 1st Sess, Issue 6 (12 December 2011) (Debra Pepler, Scientific Co-Director, PREVNet, York University).

71. House of Commons (5 June 2012), *supra* note 64 at 1727 (Hon Geoff Regan, MP, 2nd reading of C-273). For similar sentiments with respect to the effects of intermediation, see: Senate Ctte (12 December 2011), *supra* note 70 (Bill Belsey, bullying.org).

72. Senate, Standing Committee on Human Rights, *Evidence*, 41st Parl, 1st Sess, Issue 12 (7 May 2012) (Shelley Hymel, Professor, Department of Educational and Counselling Psychology, and Special Education, University of British Columbia). For similar sentiments see: Senate, Standing Committee on Human Rights, *Evidence*, 41st Parl, 1st Sess, Issue 13 (14 May 2012) (Jennifer Shapka, Professor, Department of Educational and Counselling Psychology, and Special Education, University of British Columbia).

73. Senate Ctte (4 June 2012), *supra* note 1 (Mariel Calvo, Student at Springbank Middle School). For similar sentiments, see also: Senate Ctte (12 December 2011), *supra* note 70 (Bill Belsey); House of Commons (15 October 2012), *supra* note 64 at 1145 (MP Randall Garrison); Senate Ctte (14 May 2012), *supra* note 72 (Michel Boivin, Professor and Canada Research Chair in Child Development, School of Psychology, Université Laval); Senate Ctte (4 June 2012), *supra* note 1 (Seth M Marnin, Assistant Director, Legal Affairs, Civil Rights Division, Anti-Defamation League).

[T]he audience is much bigger in the case of cyberbullying, and that means that the repercussion potential is much higher; ...[A]nother important element is probably networking. ...Cyberbullying is also about the capacity to get organized to marginalize certain people, which is an additional tool for groups of children.<sup>74</sup>

Additionally, the ubiquity of digital communications was tied to an enhanced replicability and greater permanence of derogatory attacks online:

Time and time again, we have had reports that it is very difficult to remove content from websites such as Youtube and Facebook and that, even if you do remove it, it does tend to pop up again somewhere else very quickly.<sup>75</sup>

The permanence of ubiquitous digital communications was also linked to worsened effects of *cyberbullying* compared to traditional forms of bullying: “[I]ts public and permanent character...can seriously damage reputations and future educational and employment prospects.”<sup>76</sup>

iii. *Weakened parental ability to intervene*

Numerous claimsmakers also drew on the highly connected status of Canadian children, as compared to their allegedly technologically-clueless parents, as a further complicating factor that made *cyberbullying* more difficult to address: “Right now children are the experts. They learn technology faster. They’re more effective at it. So we have to catch up; we’re in the catch-up generation.”<sup>77</sup>

This gap in technological know-how and inexperience with *cyberbullying* were seen to undermine solutions that emanated primarily from parents on the basis that many parents “do not understand the world

74. Senate Ctte (14 May 2012), *supra* note 72 (Michel Boivin). For similar sentiments see also: Senate Ctte (4 June 2012), *supra* note 1 (Helen Kennedy).

75. Senate Ctte (11 June 2012), *supra* note 67 (Lauren Seager-Smith).

76. Senate Ctte (4 June 2012), *supra* note 1 (Marvin Bernstein, Chief Advisor, Advocacy, UNICEF Canada).

77. House of Commons Ctte (25 February 2013), *supra* note 67 at 1725 (Wendy Craig, Scientific Co-Director, PREVNet, Queens University). For similar sentiments see: House of Commons Ctte (27 February 2013), *supra* note 65 at 1554 (Bill Belsey, President, bullying.org); Senate Ctte (30 April 2012), *supra* note 69 (Faye Mishna, Dean and Professor, Factor-Inwentash Faculty of Social Work, University of Toronto); Senate Ctte (14 May 2012), *supra* note 72 (Jennifer Shapka); Senate Ctte (14 May 2012), *supra* note 72 (David Birnbaum, Executive Director, Quebec English School Boards Association); Senate Ctte (4 June 2012), *supra* note 76 (Marvin Bernstein); Senate Ctte (4 June 2012), *supra* note 1 (Marie-Eve Villeneuve, Director, Corporate Communications, Vidéotron); Senate Ctte (11 June 2012), *supra* note 67 (Lauren Seager-Smith); Senate Ctte (11 June 2012), *supra* note 67 (A Wayne MacKay, Professor and Associate Dean of Research, Schulich School of Law, Dalhousie University and Senator Ataullahjan).

the kids are in or the extent to which their kids are on technology.”<sup>78</sup> One claimmaker asserted that children often do not report cyberbullying to their parents out of fear parents will take away their technology, leaving them “out of touch with the world.”<sup>79</sup> Further, Wendy Craig and Debra Pepler suggested that the ubiquity of digital communications undermined parental influence on youth behaviour and increased peer influence, as compared with prior generations: “Now, with the cyber-world, it is all different. You are connected much less with your parents and much more with your peers.”<sup>80</sup>

c. *Examples of cyberbullying*

When claimmakers referred to specific examples of cyberbullying, many relied upon high profile mediatised cases. Often the focus was on cyberbullying targets or perpetrators where the victim had committed suicide, although claimmakers some times used the same example to make very different points.<sup>81</sup> Notwithstanding the prevalence of tragic high profile media examples, some claimmakers, such as Faye Mishna, explicitly raised concerns about the risks of framing the problem through these examples:

The other issue is that when we notice bullying, when the media has noticed it is when there are extreme cases. The irony about cyberbullying is because it is dramatic and can be seen on YouTube, we take note of the dramatic cases. On the one hand, the good news about that is that at least we notice it and know it is serious; but on the other hand, it is only the extreme cases, and that can cause a very reactive kind of situation.<sup>82</sup>

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78. Senate Ctte (11 June 2012), *supra* note 67 (Stan Davis, Co-researcher, Youth Voice Project, Stop Bullying Now). See also: Senate Ctte (7 May 2012), *supra* note 72 (Elizabeth Meyer, Professor, School of Education, California Polytechnic State University and Concordia University).

79. Senate Ctte (11 June 2012), *supra* note 78 (Stan Davis).

80. Senate Ctte (12 December 2011), *supra* note 70 (Debra Pepler).

81. Claimmakers also discussed a variety of positive examples and outcomes, including anti-bullying organizations and educational responses, such as those of the Red Cross: Senate Ctte (4 June 2012), *supra* note 1 (Chris Hilton, Senior Manager, Government Relations, Canadian Red Cross); Finland’s KiVa program: House of Commons (24 April 2012), *supra* note 63 at 1775 (Dany Morin, MP, speaking to C-273), and House of Commons (5 June 2012), *supra* note 64 at 1752 (Anne Minh-Thu Quach, MP, speaking to C-273); Bill Belsey’s websites: <<http://www.bullying.org>>, <<http://www.cyberbullying.ca>>; and PREVNet’s programs, including the WITS program, in collaboration with the RCMP: House of Commons (5 June 2012), *supra* note 64 at 1733 (Hon Rob Moore, Minister of State, speaking to C-273). Also, student-led initiatives, like Fondation Jasmin Roy, founded by Jasmin Roy (a gay male in Quebec): House of Commons (24 April 2012), *supra* note 63 at 1823 (MP François Choquette).

82. Senate Ctte (30 April 2012), *supra* note 77 (Faye Mishna).

i. *Targets that committed suicide*

Targets of cyberbullying predominated among examples offered by claimsmakers, with an emphasis on a number of tragic cases in which a targeted individual later committed suicide.<sup>83</sup> With respect to the connection between cyberbullying and suicide, Pepler advised:

The other question you asked is whether there are more suicides. I think that is a very hard question to answer. For the ones that have been in the paper, it seems like electronic bullying has been part of a constellation of abuses that have been borne by the youth who have committed suicide. It is difficult to say.<sup>84</sup>

Within the group involving suicides, examples of girls tended to predominate,<sup>85</sup> followed by examples of gay male youths. Many of the suicides by girls related to instances of sexualized attacks,<sup>86</sup> with numerous references to Amanda Todd and Rehtaeh Parsons.<sup>87</sup> Notwithstanding the consistency of examples, different claimsmakers used the same example to make very different points. For example, MP Randall Garrison claimed the Amanda Todd case illustrated a broader social issue:

The tragic suicide of Amanda Todd in Coquitlam just a few days ago is powerful testimony to the destructive power of bullying when backed by the oppressive cult of unrealistic body images for young women and the powerful pressures on adolescent women to seek personal validation in sexual activity they may not be ready for.<sup>88</sup>

83. House of Commons Ctte (27 February 2013), *supra* note 65 at 1601 (Robert Goguen, Parliamentary Secretary to the Minister of Justice, speaking to C-273).

84. Senate Ctte (12 December 2011), *supra* note 70 (Debra Pepler).

85. These included numerous mentions of Amanda Todd, Rehtaeh Parsons, and Jenna Bowers-Bryanton, as well as mentions of Marjorie Raymond: House of Commons Ctte (27 February 2013), *supra* note 83 at 1604 (MP Robert Goguen), and House of Commons (20 November 2012), *supra* note 64 at 1815 (Massimo Pacetti, MP, speaking to M-385); Megan Meier: House of Commons (24 April 2012), *supra* note 63 at 1811 (Hon Irwin Cotler); Courtney Brown: House of Commons (5 June 2012), *supra* note 71 at 1725 (Hon Geoff Regan); Hope Witsell: Senate Ctte (7 May 2012), *supra* note 78 (Elizabeth Meyer); and Katie's friend: Senate Ctte (4 June 2012), *supra* note 1 (Katie Allan, Student at Springbank Middle School).

86. There were references to other kinds of attacks on girls. For example, Marjorie Raymond, an Ontario sixteen-year-old whose attack was posted online: House of Commons (5 June 2012), *supra* note 71 at 1725 (Hon Geoff Regan); and Katie's friend, see *ibid*.

87. House of Commons (15 October 2012), *supra* note 64 at 1142 (MP Randall Garrison); House of Commons Ctte (27 February 2013), *supra* note 83 at 1604 (MP Robert Goguen); House of Commons (15 October 2012), *supra* note 64 at 1142 (Candice Bergen, Parliamentary Secretary to the Minister of Public Safety, speaking to M-385); House of Commons (3 June 2013), *supra* note 55 at 1437 (Hon James Moore); House of Commons Ctte (25 February 2013), *supra* note 67 at 1540 & 1550 (Hon Hedy Fry); Bruce Cheadle, "Rob Nicholson, Justice Minister, Says Victims' Rights Bill Months Away," *The Canadian Press* (23 April 2013), online: Huffington Post <<http://www.huffingtonpost.ca/>>.

88. House of Commons (15 October 2012), *supra* note 64 at 1142-1143 (MP Randall Garrison).

In contrast, MP Hedy Fry argued that the Todd case demonstrated the inadequacy of existing law enforcement tools:

In the case of Amanda Todd, for instance, even though the police were trying to track the criminal harassment and the person who criminally harassed, they didn't have all the powers to do it. That's why the police boards are supporting my bill. They feel they don't have the correct tools.<sup>89</sup>

Numerous federal politicians referred to the Rehtaeh Parsons case during parliamentary debate, referring to the situation variously as “a heartbreaking situation,”<sup>90</sup> a “tragic loss”<sup>91</sup> and a “horrible and unspeakable tragedy”<sup>92</sup> that “goes well beyond bullying” because “what is being alleged is criminal.”<sup>93</sup> Thomas Mulcair characterized the example as one demonstrating that “[t]here are realities in today's society that [the *Criminal Code*] simply does not address.”<sup>94</sup>

In contrast, Prime Minister Stephen Harper cited the case as illustrating that “investigative tools for our police officers have not kept pace with the Internet age,” declaring “this must change.”<sup>95</sup> Expounding yet another angle on the situation, MP Robert Chisholm requested a moment of silence and asked that “all members of this House . . . think about how they can help to prevent violence against women and children.”<sup>96</sup>

Also prominent among examples of cyberbullying related suicides were two young gay men: Jamie Hubley<sup>97</sup> and Tyler Clementi.<sup>98</sup> As noted above, fifteen-year-old Jamie Hubley committed suicide in 2011 after years of suffering from depression and being bullied (online and offline)

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89. House of Commons Ctte (25 February 2013), *supra* note 67 at 1550 (Hon Hedy Fry).

90. House of Commons, *Hansard*, 41st Parl, 1st Sess, No 232 (15 April 2013) at 1400 (Robert Chisholm, MP).

91. House of Commons, *Hansard*, 41st Parl, 1st Sess, No 239 (24 April 2013) at 1505 (Scott Armstrong, MP), and at 1506 (Hon Peter MacKay, Minister of National Defence); House of Commons, *Hansard*, 41st Parl, 1st Sess, No 240 (25 April 2013) at 1831 (Hon Geoff Regan, MP).

92. House of Commons (24 April 2013), *supra* note 91 at 1422 (Right Hon Stephen Harper).

93. House of Commons (24 April 2013), *ibid* at 1506 (Hon Peter MacKay).

94. House of Commons (24 April 2013), *ibid* at 1422 (Hon Thomas Mulcair, Leader of the Opposition).

95. House of Commons (24 April 2013), *ibid* at 1423 (Right Hon Stephen Harper).

96. House of Commons (15 April 2013), *supra* note 90 at 1400 (MP Robert Chisholm).

97. See for example: House of Commons (24 April 2012), *supra* note 63 at 1736 (Hon Hedy Fry, MP, speaking to C-273); House of Commons Ctte (27 February 2013), *supra* note 82 at 1604 (MP Robert Goguen); House of Commons (15 October 2012), *supra* note 64 at 1101 (Dany Morin, MP, moving M-385); House of Commons (15 October 2012), *supra* note 64 at 1143 (MP Randall Garrison); House of Commons (20 November 2012), *supra* note 85 at 1815 (MP Massimo Pacetti); Helen Kennedy at Senate Ctte (4 June 2012), *supra* note 1.

98. See for example: House of Commons (24 April 2012), *supra* note 63 at 1736 (Hon Hedy Fry); House of Commons (24 April 2012), *supra* note 63 at 1811-1812 (Hon Irwin Cotler); Senate Ctte (4 June 2012), *supra* note 1 (Helen Kennedy); Senate Ctte (30 April 2012), *supra* note 78 (Faye Mishna).

for being gay.<sup>99</sup> Eighteen-year-old Tyler Clementi was a college student in the US when he committed suicide after being subject to online ridicule because his roommate had used a webcam to watch Tyler in an intimate encounter with another man and invited others to view the encounter online.<sup>100</sup> MP Hedy Fry referred to both young men during debates about proposed *Criminal Code* amendments to address cyberbullying:

As with Jamie Hubley and the high-profile case of Tyler Clementi in the United States, cyberbullying can affect one's mental health, well-being, academic performance and ability to get a job. For people who were cyberbullied when they were 25 years old, if that was pulled up when they were trying get a promotion at age 50, it might be conceived as true and the answer to the promotion might be no. It affects every aspect of one's life.<sup>101</sup>

Rather than citing the Hubley case as an example highlighting the mental health consequences of bullying and cyberbullying, MP Randall Garrison chose to raise a broader point about systemic discrimination: "This case is testimony to the enormous challenges of being one of the only out teenagers in a high school where homophobia often made that pressure unbearable. In the case of Jamie, it led to his suicide."<sup>102</sup>

In contrast, Helen Kennedy of EGALE framed Jamie Hubley's suicide somewhat differently, as an example that caught media attention *because* of its cyber-related aspects:

Another problem is our focus on cyberspace as the problem. Would Jamie Hubley's suicide have caught the media's attention if it had not been shown in cyberspace? Much of the media reporting on harassment in cyberspace spins cyberspace itself as a lawless frontier that needs to be colonized by adult surveillance systems to enforce good behaviour on youth.<sup>103</sup>

## ii. *Targets that did not commit suicide*

To a lesser extent, claimsmakers also referred to a variety of examples of targets of cyberbullying *not* involving suicides. Included among the examples of targets who had not committed suicide were: girls targeted

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99. Mallick, *supra* note 34.

100. The Tyler Clementi Foundation, Tyler Clementi, online: <<http://www.tylerclementi.org/tylers-story/>>.

101. House of Commons (24 April 2012), *supra* note 63 at 1736 (Hon Hedy Fry).

102. House of Commons (15 October 2012), *supra* note 64 at 1143 (MP Randall Garrison).

103. Senate Ctte (4 June 2012), *supra* note 1 (Helen Kennedy).



by sexualized cyberbullying;<sup>104</sup> young members and presumed members of the LGBTQ community;<sup>105</sup> youth targeted by suggestions that they should kill themselves or be killed;<sup>106</sup> an eighth-grade girl falsely alleged online to have contracted SARS after she returned from her grandmother’s funeral;<sup>107</sup> a Sri Lankan girl told in an online forum to “go back to your own country”;<sup>108</sup> an overweight Osaka male freshman, of whom a surreptitiously made video was non-consensually circulated online;<sup>109</sup> and an adult woman who was impersonated in an online dating site.<sup>110</sup>

### iii. *Perpetrators*

Claimsmakers also referred to a wide variety of behaviours by cyberbullying<sup>111</sup> perpetrators, including girls using social media to “take down” other girls,<sup>112</sup> sending mean messages on Tumblr telling people to die and calling them names,<sup>113</sup> and boys posting pictures of other youth online with nasty messages attached to them.<sup>114</sup> Particular examples of cyberbullying perpetrators included: Keeley Houghton, the first girl charged and convicted for uttering death threats online in the UK;<sup>115</sup> boys in Maple Ridge, British Columbia who posted a rape online;<sup>116</sup> and a Facebook poster who claimed he and fifteen other Canadians had

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104. Alisha Virmani was sexually harassed on Twitter by a male football player who she stated was treated by adults with a “boys will be boys” attitude: Senate Ctte (4 June 2012), *supra* note 1 (Alisha Virmani, Youth Leader, Canadian Red Cross).

105. These included LGBTQ youth targeted in Burnaby British Columbia, which led to a purple letter campaign: House of Commons (5 June 2012), *supra* note 64 at 1807-1808 (Kennedy Stewart, MP, speaking to C-273); and Azmi Jubran who initiated a human rights claim against his school board for failing to take sufficient steps to address bullying: Senate Ctte (30 April 2012), *supra* note 69 (Shaheen Shariff, Associate Professor, Department of Integrated Studies in Education, McGill University).

106. These included tennis player Rebecca Marino who eventually quit tennis and resigned from participating in social media: House of Commons Ctte (25 February 2013), *supra* note 67 at 1540 (Hon Hedy Fry); and fourteen-year-old Ghyslain Raza labeled the “star wars kid” when a video of him imitating a Star Wars conflict was non-consensually distributed online leading to intense ridicule: House of Commons (5 June 2012), *supra* note 81 at 1745 (MP Anne Minh-Thu Quach).

107. House of Commons (15 October 2012), *supra* note 64 at 1135 (Hon Hedy Fry, MP, speaking to C-273).

108. Senate Ctte (4 June 2012), *supra* note 104 (Alisha Virmani).

109. House of Commons (15 October 2012), *supra* note 107 at 1135 (Hon Hedy Fry).

110. House of Commons Ctte (25 February 2013), *supra* note 67 at 1538 (Hon Hedy Fry). Notably, this case involved two women, proceeded to trial, and resulted in a conviction at first instance.

111. Other kinds of intolerant behaviours were also discussed, including homophobic remarks made by kindergartners: Senate Ctte (30 April 2012), *supra* note 77 (Faye Mishna); and attacks by politicians: House of Commons Ctte (27 February 2013), *supra* note 77 at 1558 (Bill Belsey).

112. Senate Ctte (4 June 2012), *supra* note 67 (Samantha Hoogveld).

113. Senate Ctte (4 June 2012), *supra* note 73 (Mariel Calvo).

114. Senate Ctte (4 June 2012), *supra* note 1 (Emilie Richards, Student at Springbank Middle School).

115. Senate Ctte (11 June 2012), *supra* note 67 (Lauren Seager-Smith).

116. Senate Ctte (30 April 2012), *supra* note 105 (Shaheen Shariff).



convinced three young women in Nova Scotia to commit suicide.<sup>117</sup> In the latter case, police reportedly investigated, identified the individual poster and concluded that nothing could be done.<sup>118</sup> This kind of example prompted Wayne MacKay to conclude:

There are some really outrageous cases where something needs to be done....I find that shocking. That is both the RCMP and the local police saying they cannot deal with that within the existing structure. If that is true and if they cannot deal with that, then I say you need something to deal with that.<sup>119</sup>

## 2. *Areas of greater diversity*

The complexity of bullying and cyberbullying was highlighted in the range of claims made with respect to their nature and underlying issues, including: the meaning and clarity of the term cyberbullying; the scope of the problem; the key issues underlying cyberbullying; whether cyberbullying is a gendered phenomenon; and the degree to which both bullying and cyberbullying produce extreme social outcomes (such as suicide). Predictably, this wide range of claims about the nature of and issues underlying cyberbullying yielded identification of a diverse set of barriers to resolving the problem, and a diverse series of recommended responses. Despite the broad range of claims delivered, in many cases (with the notable exception of criminal law responses), claimsmakers did not directly disagree with others' claims, but simply offered their own accounts.

### a. *The nature of cyberbullying and underlying issues*

#### i. *Is cyberbullying clearly defined?*

Many of the claimsmakers involved in the cyberbullying debates reviewed indicated little concern about whether cyberbullying was a sufficiently well-defined term. Belsey's definition referred to above (or minor variations thereof) were regularly cited and relied upon without comment.<sup>120</sup> However, other claimsmakers (particularly researchers) noted with some concern that "there is no universally accepted definition"<sup>121</sup> and that some

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117. This situation related to the suicides of Emilie McNamara, Jenna Bowers-Bryanton and Courtney Brown: Senate Ctte (11 June 2012), *supra* note 77 (A Wayne MacKay).

118. *Ibid.*

119. *Ibid.*

120. House of Commons (24 April 2012), *supra* note 81 at 1804 (MP Dany Morin); House of Commons (5 June 2012), *supra* note 81 at 1745 (MP Anne Minh-Thu Quach); House of Commons (20 November 2012), *supra* note 64 at 1854 (Sylvaine Chicoine, MP, speaking to M-385).

121. House of Commons Ctte (25 February 2013), *supra* note 77 at 1646 (Wendy Craig).

behaviours that might be included within currently accepted definitions were often not understood to be bullying by youth, while inclusion of an intent requirement imposed overly onerous burdens of proof on targets.<sup>122</sup> This latter group of claimsmakers suggested that a clearer definition was essential for purposes of policy development, particularly if criminal consequences were going to be imposed.

ii. *The scope of cyberbullying*

Most of the claimsmakers who attempted to estimate the size of the cyberbullying problem indicated that it was a growing problem that affected a significant proportion of children and youth.<sup>123</sup> For example, MP Hedy Fry stated: “Cyberbullying is a problem that touches over half of Canada’s youth, whether they witness bullying, are victims or are bullies themselves.”<sup>124</sup> It was also claimed, however, that the problem was not necessarily age related – that it could affect anybody,<sup>125</sup> creating a “vested interest” for all Canadians in the issue.<sup>126</sup>

Claims as to the breadth and seriousness of the issue were also bolstered by references to thinking among teachers that cyberbullying is serious, and to the fact that numerous jurisdictions had legislation addressing it.<sup>127</sup> References were also made to statistical reports, some of which did not coincide. While one claimmaker referred to an Ipsos Inter@ctive Reid report that one in five teens had witnessed someone known to them being

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122. *Ibid*; Senate Ctte (30 April 2012), *supra* note 69 (Cathy Wing, Co-Executive Director, Media Awareness Network); Senate Ctte (30 April 2012), *supra* note 105 (Shaheen Shariff); Senate Ctte (14 May 2012), *supra* note 72 (Justin Patchin, Co-director, Cyberbullying Research Center, University of Wisconsin-Eau Claire).

123. House of Commons (24 April 2012), *supra* note 65 at 1749 (MP Robert Goguen); House of Commons (24 April 2012), *supra* note 63 at 1807 (Hon Irwin Cotler); House of Commons (5 June 2012), *supra* note 81 at 1745-1747 (MP Anne Minh-Thu Quach); House of Commons (15 October 2012), *supra* note 64 at 1144 (MP Randall Garrison); House of Commons (20 November 2012), *supra* note 64 at 1830-1832 (Lise St-Denis, MP, speaking to M-385); House of Commons Ctte (25 February 2013), *supra* note 77 at 1647-1648 (Wendy Craig); House of Commons Ctte (25 February 2013), *supra* note 67 at 1658 (Cathryn Palmer, Vice-President, Canadian Association of Police Boards); House of Commons Ctte (27 February 2013), *supra* note 65 at 1540 (Paul Taillefer); Senate Ctte (7 May 2012), *supra* note 72 (Tina Daniels, Associate Professor, Department of Psychology, Carleton University); Senate Ctte (4 June 2012), *supra* note 67 (Samantha Hoogveld); Senate Ctte (4 June 2012), *supra* note 73 (Mariel Calvo); Senate Ctte (4 June 2012), *supra* note 114 (Emilie Richards); Senate Ctte (4 June 2012), *supra* note 68 (Molly Turner); Senate Ctte (4 June 2012), *supra* note 85 (Katie Allan); Senate Ctte (4 June 2012), *supra* note 1 (Emily Dickey, Student at Springbank Middle School).

124. House of Commons, *Edited Hansard*, 41st Parl, 1st Sess, No 015 (19 September 2011) at 1517 (Hon Hedy Fry, MP, moving C-273).

125. House of Commons (24 April 2012), *supra* note 97 at 1734 (Hon Hedy Fry); Senate Ctte (4 June 2012), *supra* note 1 (Sloane Anderson, Student at Springbank Middle School; and Oliver Buchner, Student at Springbank Middle School).

126. House of Commons (5 June 2012), *supra* note 64 at 1758 (MP Kevin Lamoureux).

127. House of Commons (24 April 2012), *supra* note 63 at 1817 (Hon Kerry-Lynne Findlay).

bullied online,<sup>128</sup> another referred to UK studies showing that “8 per cent of children and young people said they had been cyberbullied.”<sup>129</sup> Kids Help Phone advised that “65% of the respondents to their 2011 survey reported having been the targets of cyberbullying at least once” a result they found to be “both surprising and concerning because current research indicates approximately one quarter to one third of young people have been cyberbullied.”<sup>130</sup> Justin Patchin reported that when results of published studies are averaged out, it appears that somewhere between 6 and 30 per cent of children have experienced cyberbullying.<sup>131</sup> Claimsmakers also advised that in Canada, since cyberbullying is not a crime in and of itself (reflecting in part the fact that the definition can encompass such a broad spectrum of behaviour, including other existing crimes), there is no way of tracking the number of reports to police using the Uniform Crime Reporting system.<sup>132</sup>

However, more than one claimmaker emphasized that although the prevalence of *cyberbullying* had become a recent concern, targeting of certain groups is an age-old problem.<sup>133</sup> EGALE Executive Director Helen Kennedy pointed to EGALE’s 2009 study that showed 70 per cent of students had heard words like “gay” used to denote something as stupid or worthless every day at school, and 50 per cent had heard derogatory use of terms like lezzie, dyke and faggot on a daily basis, while 30.7 per cent of female sexual minority students, 23.2 per cent of gay boys and 40.7 per cent of trans students reported online harassment compared with only 5.7 per cent of straight students.<sup>134</sup> Kennedy concluded:

Part of the problem is that we do not want to deal with homophobia in a vigorous way because we are afraid of media attention and parental backlash, but part of the problem is that focusing on the term cyberbullies is distracting us from the facts.<sup>135</sup>

128. House of Commons Ctte (27 February 2013), *supra* note 65 at 1543 (Paul Taillefer).

129. Senate Ctte (11 June 2012), *supra* note 67 (William Gardner, Chief Executive Officer, Childnet International).

130. Senate Ctte (14 May 2012), *supra* note 72 (Sharon Wood, President and CEO, Kids Help Phone).

131. Senate Ctte (4 June 2012), *supra* note 73 (Mariel Calvo); Senate Ctte (4 June 2012), *supra* note 114 (Emilie Richards); Senate Ctte (14 May 2012), *supra* note 122 (Justin Patchin).

132. Senate Ctte (7 May 2012), *supra* note 72 (Inspector Michael Lesage, Acting Director General, National Aboriginal Policing, Royal Canadian Mounted Police).

133. Senate Ctte (14 May 2012), *supra* note 72 (A Wayne MacKay, Professor and Associate Dean of Research, Schulich School of Law, Dalhousie University); Senate Ctte (7 May 2012), *supra* note 78 (Elizabeth Meyer).

134. Senate Ctte (4 June 2012), *supra* note 1 (Helen Kennedy). See also: C Taylor & T Peter, “Every class in every school: The first national climate survey on homophobia, biphobia, and transphobia in Canadian schools,” Final report, (Toronto, ON: Egale Canada Human Rights Trust, 2011) at 69.

135. *Ibid.*

Discussion around the disproportionate targeting of certain groups surfaced throughout the debates, particularly with respect to the issues underlying cyberbullying.

iii. *Issues underlying cyberbullying*

The debates highlighted the complexity of issues underlying cyberbullying, with three general categories surfacing regularly: developmental and relational issues, poor parenting, and group-based discriminatory norms and practices. With respect to the first, it was suggested that “[c]yberbullying meets the same needs, leads to the same emotions, and is motivated by the same desire for power, status and control as are other forms of bullying behaviour.”<sup>136</sup> Other claimsmakers suggested that both those who bully and those who cyberbully may suffer from mental health and behavioural problems,<sup>137</sup> and may be negligently parented, particularly in relation to moral and ethical value systems.<sup>138</sup>

However, unlike topics focused on in other parliamentary debates relating to children and technology, the cyberbullying debates did not concentrate solely on individually-based explanations for the social problems at issue.<sup>139</sup> Instead, a number of claimsmakers in the cyberbullying debates (particularly those called before the Senate Standing Committee on Human Rights) pointed to group-based explanations as factors underlying many cases of both cyberbullying and traditional forms of bullying. In the House of Commons, for example, MP Randall Garrison asserted: “I can only speculate, but it appears to me that the deep-rooted sexism and homophobia in our society all too often reinforce and validate the attitudes and actions of bullies.”<sup>140</sup> Other claimsmakers shared Garrison’s characterization of the discriminatory roots underlying certain kinds of bullying and cyberbullying:

Biased-based cyberbullying, as well as traditional bullying, is linked to larger social and public policy issues. While homophobia, racism,

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136. Senate Ctte (7 May 2012), *supra* note 123 (Tina Daniels). For expressions of similar sentiments, see also: House of Commons Ctte (25 February 2013), *supra* note 77 at 1646-1655 (Wendy Craig); Senate Ctte (14 May 2012), *supra* note 72 (Stu Auty, President, Canadian Safe School Network); House of Commons Ctte (25 February 2013), *supra* note 67 at 1558 (Hon Hedy Fry); Senate Ctte (4 June 2012), *supra* note 67 (Samantha Hoogveld).

137. Senate Ctte (14 May 2012), *supra* note 122 (Justin Patchin); House of Commons Ctte (25 February 2013), *supra* note 67 at 1726 (Pierre Jacob, MP, speaking to C-273).

138. Senate Ctte (11 June 2012), *supra* note 67 (Justin Patchin, Co-director, Cyberbullying Research Center, University of Wisconsin-Eau Claire); Senate Ctte (11 June 2012), *supra* note 77 (A Wayne MacKay).

139. For examples of individualistically based characterizations of social problems relating to law and technology, see: Bailey & Steeves, *supra* note 10.

140. House of Commons (15 October 2012), *supra* note 64 at 1142 (MP Randall Garrison).

sexism and other forms of marginalization are apparent in cyberbullying, we must confront these biases in society.<sup>141</sup>

In terms of social science evidence at the time, Craig and Pepler noted the absence of any studies with respect to ethnic and religious based *cyberbullying*. However, they reported that 17 per cent of refugee and immigrant elementary school children and 21 per cent of refugee and immigrant high school youth who responded to their survey reported having been racially bullied.<sup>142</sup>

Several claimsmakers referred to research findings that young women, LGBTQ youth, visible minorities and the disabled were disproportionately likely to be targeted both in bullying and cyberbullying scenarios.<sup>143</sup> As Elizabeth Meyer put it with respect to sexual orientation and gender identity:

The issues of sexual orientation, whether you are perceived to be gay, lesbian or bisexual, issues of gender expression, whether you are seen to be as masculine as other boys or as feminine as other girls, those are highly involved reasons that students are targeted....They are not even acknowledged as forms of bullying because they are so embedded in the psyche and culture of our nation....The kids do it because it is completely modelled, condoned and accepted. They do not even have to justify it because it has already been justified for them.<sup>144</sup>

Further, Pepler reported having found a significant body of discrimination-based bullying in their research:

In terms of women, disability and age, I think those are very important issues. We found in our own research a high level of sexual harassment from boys to girls but also girls were doing it, and there was a lot of homophobic harassment. I think that the gender issue is important.<sup>145</sup>

The underlying issue of systemic discrimination also surfaced in discussions around whether gendered patterns were notable in cyberbullying. Again,

141. Senate Ctte (30 April 2012), *supra* note 77 (Faye Mishna).

142. Senate Ctte (12 December 2011), *supra* note 70 (Wendy Craig, Scientific Co-Director, PREVNet, Queens University); Senate Ctte (12 December 2011), *supra* note 70 (Debra Pepler).

143. Senate Ctte (14 May 2012), *supra* note 133 (A Wayne MacKay); House of Commons (5 June 2012), *supra* note 81 at 1747 (MP Anne Minh-Thu Quach); Senate Ctte (7 May 2012), *supra* note 78 (Elizabeth Meyer); Senate Ctte (4 June 2012), *supra* note 1 (Helen Kennedy); Senate Ctte (30 April 2012), *supra* note 69 (Matthew Johnson); Senate Ctte (14 May 2012), *supra* note 72 (Jennifer Shapka); Senate Ctte (14 May 2012), *supra* note 122 (Justin Patchin).

144. Senate Ctte (7 May 2012), *supra* note 78 (Elizabeth Meyer).

145. Senate Ctte (12 December 2011), *supra* note 70 (Debra Pepler).

the debates highlighted the complexity of the issues and the mixed results within the social science evidence to date.<sup>146</sup>

iv. *Is cyberbullying a gendered phenomenon?*

A significant portion of the cyberbullying debates around gender focused on whether cyberbullying was like traditional social/verbal bullying in that it was more likely to be both perpetrated by and targeted at girls. For example, MP Scott Armstrong speculated:

With boys, it can be a bit physical, and that’s why I think we’re seeing more suicides by girls across the country than boys. Intimidation lasts forever. Exclusion lasts forever. With boys, it can be quicker; it’s dealt with and it’s done and they can be friends two minutes later. With girls, sometimes it lasts a lot longer, particularly with teenage girls.<sup>147</sup>

It was also suggested that studies indicate that boys are more likely than girls to engage in physical bullying, but that girls are more likely than boys both to perpetrate and to be targeted by social forms of bullying.<sup>148</sup> MP Sylvain Chicoine put it this way:

Studies also show that boys are more likely to engage in bullying and to be bullied than girls. With boys, bullying takes many forms, especially physical aggression and the use of force, whereas girls seem to prefer indirect forms of bullying, including social isolation, spreading rumours and maligning others.<sup>149</sup>

Connecting social forms of bullying to cyberbullying, Shelley Hymel advised:

Some have described electronic bullying as simply a new medium through which to engage in relational or social aggression, and this makes some sense in that when sex differences are found, both forms are perpetrated more often by girls.<sup>150</sup>

Similarly, Craig reported that “girls are much more likely to do the bullying than boys in an electronic context.”<sup>151</sup>

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146. PREVNet Electronic Bullying, *supra* note 20 at 1.

147. House of Commons Ctte (25 February 2013), *supra* note 67 at 1723 (Scott Armstrong, MP, speaking to C-273).

148. Senate Ctte (7 May 2012), *supra* note 72 (Daniel Sansfaçon, Director, Policy, Research and Evaluation, National Crime Prevention Centre, Public Safety Canada); Senate Ctte (4 June 2012), *supra* note 1 (Helen Kennedy); Senate Ctte (4 June 2012), *supra* note 1 (Scott Hirschfeld, Director of Curriculum, Anti-Defamation League); Senate Ctte (4 June 2012), *supra* note 1 (Bill Belsey, Teacher, Springbank Middle School).

149. House of Commons (20 November 2012), *supra* note 120 at 1855 (MP Sylvaine Chicoine).

150. Senate Ctte (7 May 2012), *supra* note 72 (Shelley Hymel).

151. Senate Ctte (12 December 2011), *supra* note 70 (Wendy Craig).

Bill Belsey also asserted that girls were cyberbullied about different issues than boys:

Girls tend to be bullied over something to do with their physical attributes and for boys who are bullied online, it tends to be more about their sexuality. In middle school and high school, you will hear the words, “he is so gay.” Those words are used as a threat or a weapon.<sup>152</sup>

Despite these asserted differences, Belsey reported that regardless of gender, the underlying reasons for bullying and cyberbullying were the same:

Whether they choose to do it verbally, psychologically, socially or by cyber-bullying, it is a relationship issue whether it is online or not, and is about power and control.<sup>153</sup>

However, not all claimmakers shared the view that bullying and cyberbullying exhibited notable gender differences. For example, Marla Israel, the Acting Director General of the Centre for Health Promotion at the Public Health Agency of Canada reported research findings showing cyberbullying rates of 17–19 per cent for girls in grades 6 to 10, with only a slightly higher figure for boys.<sup>154</sup>

Adding further nuance to the question of whether girls were more likely than boys to perpetrate cyberbullying (and/or other “social” forms of bullying), Tina Daniels advised:

Many studies do not find gender differences, but when they do, they are small and it is girls who are more frequently experiencing these behaviours, in particular being called names, having rumours spread about them, and having someone pretend to be them online. These behaviours are what I would refer to as social or relational forms of bullying, which we do see in girls in traditional bullying as well.<sup>155</sup>

However, she noted that while “girls may be targets a little more, ... perpetration seems to be equal across genders” and that the reasons girls tend to give for social bullying relate to “power, control, status and self-interest” and “unrealistic expectations for close friendships and high levels of jealousy and desire for exclusivity.”<sup>156</sup>

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152. Senate Ctte (12 December 2011), *supra* note 71 (Bill Belsey).

153. *Ibid.*

154. Senate Ctte (7 May 2012), *supra* note 72 (Marla Israel, Acting Director General, Centre for Health Promotion, Public Health Agency of Canada).

155. Senate Ctte (7 May 2012), *ibid.* (Tina Daniels).

156. *Ibid.* See also: Senate Ctte (7 May 2012), *supra* note 148 (Daniel Sansfaçon).



Mishna advised that her study revealed little difference between boys and girls in terms of rates of bullying and bullying victimization, but notable gender differences in the way they were targeted:

Girls are more likely, for example, to be bullied in cyberspace by receiving sexual pictures, being asked to do something sexual or being coerced through pressure to send out a picture, whereas boys might be more likely to be bullied through name-calling or threatening.<sup>157</sup>

Related discussion focused on the question of whether those who perpetrate bullying are also likely to perpetrate cyberbullying. Here, competing viewpoints emerged.

v. *Do the same people bully and cyberbully?*

Hal Roberts of Stop Bullying Now asserted that unlike “traditional schoolyard bullying,” in cyberbullying

the imbalance of power between the victim and the bully is no longer strictly delineated, and the roles that the children and youth play online may move quite fluidly among each of the roles of victim, perpetrator and witness.<sup>158</sup>

In contrast, Pepler reported that her research results indicated consistency between the group of youth who bully and those who cyberbully:

99 per cent of the youth who bully electronically also bully in traditional ways. There is a substantial overlap, which was a surprise to us. When we started this research, we thought that there would be this secret group of youth who were not empowered face-to-face that would go into this covert, removed, potentially anonymous—although it is not largely—type of bullying to get revenge.<sup>159</sup>

vi. *Does (cyber)bullying produce extreme social outcomes (like suicide)?*

A number of claimsmakers asserted that cyberbullying was similar to traditional forms of bullying in terms of its relationship with negative social outcomes, including: lower self-esteem for perpetrators and targets

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157. Senate Ctte (30 April 2012), *supra* note 77 (Faye Mishna).

158. Senate Ctte (30 April 2012), *supra* note 69 (Hal Roberts, Vice-President, Stop a Bully). The emergence of the bully-victim in cyberbullying was also noted by: Senate Ctte (7 May 2012), *supra* note 72 (Shelley Hymel); and Senate Ctte (14 May 2012), *supra* note 72 (Jennifer Shapka).

159. Senate Ctte (12 December 2011), *supra* note 70 (Debra Pepler).



of cyberbullying when compared with those not exposed to it,<sup>160</sup> increased risk of physical and mental health issues,<sup>161</sup> such as suicidal ideation,<sup>162</sup> and increased risk of depression,<sup>163</sup> as well as increased risk of criminality for perpetrators later in their lives.<sup>164</sup> However, Pepler and Craig emphasized their research finding that “there is an additional form of harm when this electronic bullying occurs,”<sup>165</sup> such that “[c]yber-bullying makes it worse. It makes all of the outcomes worse if one is also cyber-bullied.”<sup>166</sup>

Many claimmakers asserted a connection between bullying and cyberbullying and suicide,<sup>167</sup> often characterizing the issue as a matter of public health. For example, MP Christine Moore stated:

It is a national epidemic. As we have seen, with great regret, the consequences can be extremely serious. I am thinking about the young people of 11, 15 or 17 who committed suicide because they believed their torture would never end.<sup>168</sup>

Other claimmakers emphasized more nuanced accounts of the relationship between bullying and cyberbullying and suicidal ideation:

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160. Senate Ctte (14 May 2012), *supra* note 72 (Suzanne McLeod, Curriculum Developer, Centre for Suicide Prevention). See also: House of Commons (24 April 2012), *supra* note 63 at 1823 (MP François Choquette); Senate Ctte (11 June 2012), *supra* note 67 (Jenna Burke, National Youth Policy Coordinator, Congress of Aboriginal Peoples); Senate Ctte (4 June 2012), *supra* note 73 (Mariel Calvo); Senate Ctte (4 June 2012), *supra* note 1 (Emilie Richards); Senate Ctte (14 May 2012), *supra* note 72 (Justin Patchin).

161. House of Commons Ctte (27 February 2013), *supra* note 65 at 1543 (Paul Taillefer); House of Commons (15 October 2012), *supra* note 109 at 1131 & 1134 (Hon Hedy Fry); Senate Ctte (14 May 2012), *supra* note 72 (Paul Taillefer, President, Canadian Teachers’ Federation); Senate Ctte (7 May 2012), *supra* note 154 (Marla Israel); Senate Ctte (4 June 2012), *supra* note 73 (Mariel Calvo); Senate Ctte (4 June 2012), *supra* note 114 (Emilie Richards); Senate Ctte (14 May 2012), *supra* note 72 (Justin Patchin).

162. Senate Ctte (14 May 2012), *supra* note 70 (Suzanne McLeod); House of Commons (20 November 2012), *supra* note 120 at 1856 (MP Sylvaine Chicoine); House of Commons (20 November 2012), *supra* note 64 at 1901 (Christine Moore, MP, speaking to M-385); Senate Ctte (4 June 2012), *supra* note 73 (Mariel Calvo); Senate Ctte (4 June 2012), *supra* note 114 (Emilie Richards); Senate Ctte (14 May 2012), *supra* note 72 (Justin Patchin).

163. House of Commons (20 November 2012), *supra* note 64 at 1844-1845 (Paulina Ayala, MP, speaking to M-385); House of Commons (20 November 2012), *supra* note 70 at 1856 (MP Sylvaine Chicoine); House of Commons (15 October 2012), *supra* note 64 at 1146 (MP Randall Garrison).

164. House of Commons (20 November 2012), *supra* note 70 at 1857 (MP Sylvaine Chicoine); Senate Ctte (7 May 2012), *supra* note 148 (Daniel Sansfaçon); Senate Ctte (12 December 2011), *supra* note 142 (Wendy Craig); Senate Ctte (12 December 2011), *supra* note 70 (Debra Pepler).

165. Debra Pepler, *ibid.*

166. Senate Ctte (12 December 2011), *supra* note 70 (Wendy Craig).

167. See notes 83-89 & 97-98.

168. House of Commons (20 November 2012), *supra* note 70 at 1901 (MP Christine Moore). For another characterization of the problem as an “epidemic,” see: House of Commons (20 November 2012), *supra* note 85 at 1821-1823 (MP Massimo Pacetti).

Despite the fact that there are an increasing number of suicide-related incidents that point to cyberbullying as a contributing factor, there is a relative dearth of solid research that establishes a direct relationship between cyberbullying and suicide. We just do not have that information out there.

There is, however, a proven link between traditional bullying, peer harassment and victimization that contribute to depression, loss of self-worth, hopelessness and loneliness. These are all precursors to suicidal thoughts, behaviours and attempts.<sup>169</sup>

Finally, some claimmakers suggested that bullying and cyberbullying were alike in that some forms of these behaviours, such as sexist and homophobic harassment, resulted in more “intense consequences.”<sup>170</sup> With respect to LGBTQ youth, Helen Kennedy of EGALE advised:

There is a solid bank of scholarly research showing that depression and “suicidality” skyrocket after disclosure of sexual identity to parents and family members. ...For LGBTQ youth, homophobic cyberbullying broadcasts their sexual or gender identity to the world. ...Despite the gains made in LGBTQ rights in recent years, it is still deadly to be identified as LGBTQ in some circles.<sup>171</sup>

Similarly, Suzanne McLeod advised that the depressive impacts of cyberbullying were magnified for Aboriginal youth:

When an incident such as a suicide happens in a[n Aboriginal] community, very frequently we have suicide clusters, one after another, especially among our youth. It vicariously affects every single individual in that community.

...

What we are seeing is that the bullying and the cyberbullying are having devastating effects among our youth.<sup>172</sup>

Without questioning that bullying and cyberbullying could have devastating effects, Cathy Wing, Co-Executive Director of Media Awareness Network (now MediaSmarts), pointed to the fact that not all children were affected in similarly extreme ways, and emphasized the importance of directing scarce resources to those most at risk:

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169. Senate Ctte (14 May 2012), *supra* note 65 (Suzanne McLeod). See also: Senate Ctte (12 December 2011), *supra* note 70 (Debra Pepler); Senate Ctte (30 April 2012), *supra* note 77 (Faye Mishna).

170. House of Commons (15 October 2012), *supra* note 64 at 1141 (MP Randall Garrison).

171. Senate Ctte (4 June 2012), *supra* note 1 (Helen Kennedy).

172. Senate Ctte (14 May 2012), *supra* note 72 (Suzanne McLeod).

Many of the youth in our study actually demonstrated strong resiliency when it came to cyberbullying. They had very clear strategies they had developed for dealing with situations.<sup>173</sup>

Predictably, the diversity of input on the nature of cyberbullying (including what it is, who perpetrates it and who is targeted by it), and the factors underlying it (including both individually and collectively based explanations), yielded identification of a variety of barriers to responding to the problem and the course(s) of action recommended.

b. *Barriers to address in order to respond to cyberbullying*

Claimsmakers warranted that a number of existing barriers were inhibiting an effective response to cyberbullying, which they in turn relied upon to justify their conclusions about what course(s) of action should be adopted. Two of the most prominent barriers, one of which was heavily contested, will be explored here. First, some claimsmakers (particularly some MPs and policing agencies) suggested that gaps in the existing criminal law and law enforcement powers (and to a lesser extent in education law) necessitated new or amended criminal laws and expanded surveillance powers. In contrast, many other claimsmakers (especially researchers and youth advocacy groups) strongly contested the efficacy of punitive responses, both in relation to criminal law and zero tolerance school-based policies. Debate around these issues raised fundamental (though often unacknowledged) issues about claimsmakers' different perceptions of the nature and purpose of law, and in some senses mirrored the conceptual complexity of the term cyberbullying itself. Second, claimsmakers generally acknowledged cyberbullying as a multi-faceted problem requiring a multi-pronged solution. Different claimsmakers emphasized the importance of different prongs, including with respect to whether we ought to focus on training individuals to deal with the technology as is, or whether technological architectures themselves could and should be intervened upon.

i. *Gaps in law*

Those who claimed gaps in the law tended to focus their remarks on criminal law and criminal law enforcement tools, although a handful also discussed education law.<sup>174</sup> With respect to criminal law, Hedy Fry

173. Senate Ctte (30 April 2012), *supra* note 69 (Cathy Wing). See also: Senate Ctte (11 June 2012), *supra* note 78 (Stan Davis).

174. At least one claimsmaker, MP Charmaine Borg, argued that the law relating to privacy was out of date and should be revised to enhance the powers of the Office of the Privacy Commissioner of Canada to "bring the Privacy Act into the digital age": House of Commons, *Hansard*, 41st Parl, 1st Sess, No 265 (7 June 2013) at 1152 (Charmaine Borg, MP).

described proposed amendments to the *Criminal Code* provisions on defamatory libel, criminal harassment and false messages as necessary to bring the *Code* “up to speed on...using a computer as a means of communication.”<sup>175</sup>

The Canadian Association of Police Boards supported the idea that the law had failed to keep up with “the influence that modern technologies have in our daily life,” noting that the Association’s job was “to ensure that the police have the proper tools they need to do their jobs effectively. Sometimes these tools come in the form of legislation without which their hands are tied.”<sup>176</sup> This sentiment was echoed by Prime Minister Stephen Harper who warranted that police investigative tools had failed to keep “pace with the internet age.”<sup>177</sup>

In contrast, Wayne MacKay was not so sanguine about the existence of a “gap” in the criminal law and highlighted the role of education:

I understand that a lot of police feel that the existing *Criminal Code* provisions are not adequate. Personally, as a legal analyst, I am not sure I agree with that. There are a number of things in terms of defamatory libel, intimidation, criminal harassment, assault—all kinds of things that can be applied—but sometimes there is an educational role.<sup>178</sup>

RCMP Officer Lesage also agreed that existing *Criminal Code* offences could be used for cyberbullying situations.<sup>179</sup>

A number of claimsmakers also asserted that there were gaps in education law in that it was unclear in many jurisdictions whether school officials had authority over cyberbullying situations that occur off of school property.<sup>180</sup> Additionally, at least one claimsmaker asserted a gap in terms of legal requirements for schools to have bullying prevention policies in place.<sup>181</sup>

Claimsmakers were often at odds with respect to whether punitive approaches to cyberbullying would work. Warrants in favour of punitive approaches were grounded in views of law both as a tool for prevention of future incidents and for articulating community values and

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175. House of Commons (24 April 2012), *supra* note 63 at 1734 (Hon Hedy Fry). As noted above, Thomas Mulcair also asserted that the Parsons case exemplified a gap in the criminal law: *supra* note 94.

176. House of Commons Ctte (25 February 2013), *supra* note 77 at 1659 (Cathryn Palmer).

177. House of Commons (24 April 2013), *supra* note 92 at 1423 (Right Hon Stephen Harper). See also Senate Ctte (14 May 2012), *supra* note 72 (Stu Auty).

178. Senate Ctte (11 June 2012), *supra* note 77 (A Wayne MacKay).

179. Senate Ctte (7 May 2012), *supra* note 132 (Michael Lesage).

180. Senate Ctte (11 June 2012), *supra* note 77 (A Wayne MacKay); Senate Ctte (7 May 2012), *supra* note 78 (Elizabeth Meyer); Senate Ctte (4 June 2012), *supra* note 73 (Seth M Marnin).

181. Senate Ctte (4 June 2012), *ibid*.

commitments. With respect to prevention, some argued that imposition of punitive sanctions would raise awareness of cyberbullying and deter future incidents.<sup>182</sup> Additionally it was argued that criminal law responses could be preventative by opening the door for mandating use of restorative approaches, such as ADR (alternative dispute resolution),<sup>183</sup> and for enhanced police tools for getting disclosure of subscriber information from internet service providers (thereby dulling the sense of anonymity said to encourage abusive behaviours).<sup>184</sup>

With respect to using criminal law to communicate community values, MP Francoise Boivin stated:

I seriously wonder whether we should not ensure that this appears in the Criminal Code in order to send a message. I do not think that would be very complicated. It will probably not solve all the problems.<sup>185</sup>

Similarly, Paul Taillefer of the Canadian Federation of Teachers suggested criminal/punitive approaches as part of a larger strategy:

somewhere in there I think it's important for students to understand that they're going into a society where they have to be responsible citizens, where they have to understand that they have laws to follow.<sup>186</sup>

More than one claimmaker warranted, however, that criminal responses should be reserved for the most extreme cases.<sup>187</sup>

Those who highlighted gaps in criminal law and law enforcement tools, unsurprisingly concluded that *Criminal Code* amendments to modify existing offences, add new offences and/or expand law enforcement tools were necessary. With respect to substantive offences, Liberal MP Hedy Fry proposed amendments to existing criminal offences of defamatory libel, criminal harassment and false messages to clarify their application

182. House of Commons (24 April 2012), *supra* note 63 at 1741 & 1745 (Hon Hedy Fry); House of Commons (24 April 2012), *supra* note 67 at 1812 (Hon Irwin Cotler); House of Commons Ctte (25 February 2013), *supra* note 67 at 1556 (Hon Hedy Fry); House of Commons Ctte (25 February 2013), *supra* note 77 at 1657 (Cathryn Palmer); Senate Ctte (4 June 2012), *supra* note 68 (Molly Turner).

183. House of Commons (5 June 2012), *supra* note 71 at 1727 (Hon Geoff Regan); and at 1743-1744 (Jonathan Genest-Jourdain, MP, speaking to C-273); House of Commons Ctte (27 February 2013), *supra* note 65 at 1653 (David Wilks, MP, speaking to C-273).

184. House of Commons Ctte (25 February 2013), *supra* note 67 at 1542 & 1604 (Hon Hedy Fry); House of Commons Ctte (25 February 2013), *supra* note 77 at 1657 (Cathryn Palmer).

185. House of Commons Ctte (27 February 2013), *supra* note 65 at 1624 (Francoise Boivin, MP, speaking to C-273).

186. House of Commons Ctte (27 February 2013), *supra* note 65 at 1614 (Paul Taillefer).

187. Senate Ctte (11 June 2012), *supra* note 77 (A Wayne MacKay); Senate Ctte (11 June 2012), *supra* note 138 (Justin Patchin); House of Commons Ctte (27 February 2013), *supra* note 65 at 1532 (Peter Jon Mitchell, Senior Researcher, Institute of Marriage and Family Canada).

to situations involving digital communications.<sup>188</sup> Further, an NDP Private Member’s Bill tabled in 2013 proposed creation of a *Criminal Code* offence of non-consensual making or distributing of intimate images.<sup>189</sup> And, as noted above, in November 2013 the federal government tabled Bill C-13<sup>190</sup> incorporating, among other things, a *Criminal Code* offence prohibiting non-consensual distribution of intimate images, and expanded state surveillance powers. On the day the legislation was tabled, noting the government’s “clear” position that “there is a point where bullying goes beyond just bullying and becomes criminal behaviour,” MP Wai Young invited Prime Minister Harper to “update” the House on his government’s actions.<sup>191</sup> Harper connected Bill C-13 with his meetings with the families of those who committed suicide “as a result of cyberbullying,” suggesting that “hopefully the actions we are taking today will do some things to change things in the future and will also provide these families with some sense that their concerns are taken seriously and some sense of justice for their daughters.”<sup>192</sup>

In sharp contrast, a number of claimsmakers warranted that criminal/punitive approaches were unlikely to work in relation to youth, either in the deterrent sense or with respect to values communication. With respect to deterrence, a number of claimsmakers noted that criminalization or zero tolerance approaches were unlikely to prevent future recurrence because they failed to address the developmental and relational issues underlying cyberbullying.<sup>193</sup> As Shaheen Shariff put it:

The only purpose [a criminal provision] would serve at this point is to give some comfort to the public that something is being done, but there have been so many band-aid measures. Do we really need piecemeal band-aid measures? Once that’s done, it leaves the impression that we’ve done what we can, but we really need to study this in much more depth and come up with ways to look at it.<sup>194</sup>

Red Cross Youth Advocate Alisha Virmani warranted, with respect to zero tolerance policies in schools:

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188. House of Commons Ctte (25 February 2013), *supra* note 67 at 1532 (Hon Hedy Fry).

189. Bill C-540, *supra* note 56.

190. Bill C-13, *supra* note 5.

191. House of Commons, *Hansard*, 41st Parl, 2nd Sess, No 020 (20 November 2013) at 1446.

192. *Ibid* at 1447 (Right Hon Stephen Harper).

193. House of Commons Ctte (27 February 2013), *supra* note 65 at 1533 (Peter Jon Mitchell); Senate Ctte (4 June 2012), *supra* note 76 (Marvin Bernstein); Senate Ctte (11 June 2012), *supra* note 78 (Stan Davis); Senate Ctte (12 December 2011), *supra* note 142 (Wendy Craig).

194. House of Commons Ctte (25 February 2013), *supra* note 67 at 1717 (Shaheen Shariff, Associate Professor, Department of Integrated Studies in Education, McGill University).

I understand schools have a zero tolerance policy, but a suspension is not teaching anything and it is not breaking a cycle.<sup>195</sup>

Moreover, a number of claimsmakers asserted that punitive criminal measures were unlikely to prevent youth from cyberbullying in future because youth either ignore or are unaware of the law<sup>196</sup> or do not expect that they will be caught or punished.<sup>197</sup> As Bill Belsey put it, with respect to a proposed *Criminal Code* amendment:

This law, the proposed bill, will likely create ripples in the adult world, but I believe its effect in the world that I live in, that of teenagers, will be modest at best. So I think that prevention needs to be our priority.<sup>198</sup>

A number of claimsmakers in this group went on to stress the ways in which punitive approaches could result in unintended consequences. Included among these were: the risk of re-victimizing a former target for bullying done in retaliation (in light of the emergence of the “bully-victim” in cyberbullying studies);<sup>199</sup> application of criminal penalties and labels to a wide berth of behaviour considered ordinary by youth;<sup>200</sup> and chilling the reporting of cyberbullying out of fear of triggering serious criminal consequences.<sup>201</sup>

As a result, numerous claimsmakers suggested that student-led restorative based approaches, as well as human rights based educational approaches, were preferable to, or should, at minimum, augment any criminal law approach taken.<sup>202</sup>

#### ii. *Multi-faceted problem requires multi-pronged solution*

Notwithstanding significant variations in emphasis about the barriers to meaningfully addressing the cyberbullying problem, there was a significant level of consensus among claimsmakers that cyberbullying was a multi-faceted problem requiring a multi-pronged response involving a wide array of community players, including educators, government, parents, youth, and social agencies. Predictably, those who focused on the multi-

195. Senate Ctte (4 June 2012), *supra* note 1 (Alisha Virmani).

196. Senate Ctte (4 June 2012), *supra* note 73 (Mariel Calvo); Senate Ctte (4 June 2012), *supra* note 125 (Sloane Anderson); Senate Ctte (4 June 2012), *supra* note 104 (Alisha Virmani).

197. Senate Ctte (14 May 2012), *supra* note 72 (Justin Patchin); House of Commons Ctte (27 February 2013), *supra* note 77 at 1603 (Bill Belsey).

198. House of Commons Ctte (27 February 2013), *ibid* at 1553.

199. House of Commons Ctte (25 February 2013), *supra* note 77 at 1649 (Wendy Craig).

200. Senate Ctte (30 April 2012), *supra* note 69 (Shaheen Shariff); Senate Ctte (30 April 2012), *supra* note 122 (Cathy Wing).

201. Senate Ctte (30 April 2012), *ibid*; Senate Ctte (4 June 2012), *supra* note 1 (Emily Dickey); Senate Ctte (4 June 2012), *supra* note 1 (Oliver Buchner, Student at Springbank Middle School).

202. Senate Ctte (11 June 2012), *supra* note 77 (A Wayne MacKay).



dimensional nature of cyberbullying, and who had identified barriers to effectively redressing it beyond gaps in criminal law and law enforcement powers recommended markedly different courses of action than those primarily focused on criminal law responses. Even within the group of claimsmakers who disfavoured criminal law responses, there were differences as to which proactive approaches should be emphasized. These differences reflected, at least in part, differences in emphasis between more individual/relational versus more collective/systemic explanations of cyberbullying’s underlying factors.

For example, the Senate Standing Committee on Human Rights issued six recommendations in the report following its hearings. It emphasized development of a comprehensive federal, provincial and territorial strategy, including development of a definition of cyberbullying. The Committee also urged development of proactive measures such as awareness promotion, resources for anti-bullying programs and research initiatives to support evidence-based programming and policy,<sup>203</sup> human rights education and restorative justice practices. The report stressed the importance of research to “enhance our understanding of the phenomenon of cyberbullying,” including to provide information on issues such as “gender differences, risk factors and protective factors.”<sup>204</sup>

There were, however, variations in emphasis among claimsmakers recommending multi-pronged approaches, which again reflected differences in focus on individual/relational versus collective/systemic issues. Even as most claimsmakers within this stream advocated education, for example, some used more individualized language around issues such as safety and behavior modification, while others focused on or incorporated more collective anti-harassment/respect for diversity approaches.

Dialogue around online safety training tended to focus on informing teens of the “dangers of careless surfing, and [programs] for parents, which demystif[y] the Internet and [give] advice on safety and monitoring.”<sup>205</sup> Here the emphasis was on the alleged knowledge gap between children and parents, as well as on street proofing youth to protect themselves online. At least to some extent, this kind of recommendation relied on a framing of cyberbullying as different due to the nature and effect of the medium, as well as alleged ignorance in relation to it.

Individual behavioural approaches, such as “work[ing]...with the individual children involved and teach[ing]...them the skills and the

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203. Senate Committee Cyberbullying Report, *supra* note 53 at 4-5.

204. *Ibid.*

205. House of Commons (5 June 2012), *supra* note 81 at 1753 (MP Anne Minh-Thu Quach). See also House of Commons Cttee (25 February 2013), *supra* note 77 at 1710 (Wendy Craig).



competencies they need to be different,” while also offering “educative consequences” that “teach...the students a new way of being and moving forward”<sup>206</sup> were also put forward. A number of claimsmakers asserted the importance of building bullies’ social and empathy skills so that they more clearly understood the harm they inflicted on their targets.<sup>207</sup> Also suggested were increased mental health professionals in schools,<sup>208</sup> the use of behavior modification programs starting at a young age,<sup>209</sup> adult modeling of good behavior,<sup>210</sup> and programs to encourage those who would otherwise be bystanders to bullying to become engaged.<sup>211</sup> Individual approaches to educating would-be bullying targets included programs to build children’s resilience in responding to harms,<sup>212</sup> and to encourage targets to walk away, ignore, talk it out and seek help.<sup>213</sup>

Other recommendations emphasized systemic issues that informed the sexualized self-disclosures sometimes at issue in prominent cases, leading to emphasis on education to develop critical thinking skills, and to assist in deconstructing stereotypes.<sup>214</sup> For example, youth advocate Jeremy Dias of Jer’s Vision recommended training to assist youth in critically assessing harmful sexist messages conveyed through both mainstream media and pornography:

I do not know where the surprise is coming from with us as a community. We need to be less surprised and more proactive. We need to challenge the messages that youth are facing and give them the tools that my parents have given to me, namely, critical analysis, respectful disagreement and human respect.<sup>215</sup>

Other approaches emphasized improving youth familiarity with human rights,<sup>216</sup> and rewarding teachers and schools who exercise and model best

206. House of Commons Ctte (25 February 2013), *ibid.*

207. Senate Ctte (4 June 2012), *supra* note 1 (Emilie Richards); Senate Ctte (4 June 2012), *supra* note 68 (Molly Turner); Senate Ctte (4 June 2012), *supra* note 85 (Katie Allan); Senate Ctte (4 June 2012), *supra* note 201 (Oliver Buchner); Senate Ctte (4 June 2012), *supra* note 1 (Shelby Anderson, Student at Springbank Middle School). See also: Senate Ctte (4 June 2012), *supra* note 77 (Marie-Eve Villeneuve); Senate Ctte (4 June 2012), *supra* note 104 (Alisha Virmani).

208. Senate Ctte (14 May 2012), *supra* note 72 (Paul Taillefer).

209. Senate Ctte (14 May 2012), *ibid.* (Stu Auty).

210. House of Commons Ctte (27 February 2013), *supra* note 77 at 1554 (Bill Belsey).

211. House of Commons (24 April 2012), *supra* note 81 at 1777 (MP Dany Morin); House of Commons (5 June 2012), *supra* note 81 at 1752 (MP Anne Minh-Thu Quach).

212. Including training children to be more resilient to harms: Senate Ctte (7 May 2012), *supra* note 154 (Marla Israel); Senate Ctte (4 June 2012), *supra* note 76 (Marvin Bernstein).

213. Senate Ctte (7 May 2012), *supra* note 72 (Michael Lesage).

214. Senate Ctte (30 April 2012), *supra* note 69 (Cathy Wing).

215. Senate Ctte (11 June 2012), *supra* note 67 (Jeremy Dias, Director and Founder, Jer’s Vision).

216. Senate Ctte (30 April 2012), *supra* note 69 (Shaheen Shariff); Senate Ctte (7 May 2012), *supra* note 78 (Elizabeth Meyer); Senate Ctte (4 June 2012), *supra* note 104 (Alisha Virmani).

practices on human rights, sexuality, digital literacy and multiculturalism in schools.<sup>217</sup> Also within this group were claimsmakers advocating initiatives designed to foster a culture of respect for differences<sup>218</sup> in recognition that systemic structures of prejudice such as “enduring homophobia and transphobia... supply the motive [and] logic” for many incidents described as cyberbullying. These underlying systemic challenges can be obscured if cyberbullying is focused upon exclusively as a reflection or product of *individual* behaviours.<sup>219</sup>

Differences in focus on individual versus systemic approaches also arose in relation to whether initiatives should be aimed at individual uses of technology as is or whether the underlying structures of the technology itself should be addressed. Digital communications technologies themselves were regularly cast as necessary, inevitable and neutral tools, thereby setting the stage for solutions aimed not at the technology (or its designers), but at training youth to make good uses or punishing them for bad uses:

[A]ll of these technologies are both an opportunity as well as a threat. Too many of our debates, be they legislative, moral, behavioural or educational, seem to be narrowly focused on this omnipresent technology and its threat to our young people.

It is our understanding that, first, the one reality we know is that technology will remain omnipresent. We do not have the choice to remove it. The choice we do have is to find ways to embrace it and to circumscribe its negative effects when they are there.<sup>220</sup>

As Paul Taillefer of the Canadian Teachers Federation put it,

Cyberbullying is the act, but what gets us there? Is it the technology? It is not the technology. Andreas Schleicher from the OECD says that technology is not good or bad in itself. In the classroom it is as good as the pedagogy supplied by the teacher. The technology is neutral. Then we are back with the kids. We are back to, “What makes them do that?”... We have to deal with the kids on a social, emotional and cognitive level to address those problems.<sup>221</sup>

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217. Senate Ctte (7 May 2012), *supra* note 78 (Elizabeth Meyer).

218. Senate Ctte (4 June 2012), *supra* note 1 (Scott Hirschfeld); Senate Ctte (4 June 2012), *ibid* (Marvin Bernstein).

219. Senate Ctte (4 June 2012), *supra* note 1 (Helen Kennedy).

220. Senate Ctte (14 May 2012), *supra* note 72 (David Birnbaum). For similar sentiments, see: House of Commons Ctte (27 February 2013), *supra* note 77 at 1556 (Bill Belsey); Senate Ctte (4 June 2012), *supra* note 207 (Shelby Anderson); Senate Ctte (7 May 2012), *supra* note 132 (Michael Lesage).

221. Senate Ctte (14 May 2012), *supra* note 72 (Paul Taillefer).

EGALE Executive Director Helen Kennedy put it this way in her submissions to the Senate Standing Committee on Human Rights:

Much of the media reporting on harassment in cyberspace spins cyberspace itself as a lawless frontier that needs to be colonized by adult surveillance systems to enforce good behaviour on youth.

...

[However] cyberspace is just as happy to be a field of dreams as a stalking ground for LGBTQ youth.<sup>222</sup>

A handful of other claimsmakers, however, suggested that the design of online spaces could, in fact, affect their capacity to facilitate “good” or “bad” uses,<sup>223</sup> such that responses need not focus on users alone. For example, Alisha Virmani (a Red Cross anti-bullying youth facilitator and former target of sexualized online harassment) pointed out that:

There are external applications that students download and put on their Facebook; there are things like Compare People, How Ugly Are Your Friends, Rate My Friends, and Bathroom Wall. These are all applications hosted by third-party companies. They are getting money to run these applications on Facebook, so these are businesses promoting bullying, in a sense.<sup>224</sup>

Similarly, Stan Davis of the Youth Voice Project suggested that Facebook’s default privacy settings structure online interaction in a way that may contribute to the negative effects of cyberbullying:

[T]heir default privacy settings when someone sets up an account are wide open. The default privacy settings involve potentially a great deal of abrogation of privacy.

...

It should be a great deal more difficult for young people, who may not have the best judgment about the future and their situation, to set up an environment in which everyone can have access to all kinds of information about them, but by default. That whole issue of privacy, if that word has any meaning any more, has an importance as well.<sup>225</sup>

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222. Senate Ctte (4 June 2012), *supra* note 1 (Helen Kennedy).

223. For example, acceptable, well-written and enforced user agreements, responsive take-down actions by Internet Service Providers, and responsible business practices when marketing technologies to children: Senate Ctte (12 December 2011), *supra* note 71 (Bill Belsey); Senate Ctte (4 June 2012), *supra* note 73 (Seth M Marnin).

224. Senate Ctte (4 June 2012), *supra* note 1 (Alisha Virmani). It was also suggested that the kinds of applications referred to by Ms Virmani ought to be assessed in terms of their compliance with Article 17 of the UN Convention on the Rights of the Child. See also: Senate Ctte (4 June 2012), *supra* note 62 (Christian Whalen).

225. Senate Ctte (11 June 2012), *supra* note 67 (Stan Davis).

Youth advocate Jeremy Dias suggested other possibilities for handling organizations that provide digital services and fail to react promptly to take down requests related to cyberbullying:

If we cannot police them, if we cannot introduce laws to change how their companies are run, which truthfully we cannot, then we need to tax them, and we need not be afraid of that.<sup>226</sup>

### *Conclusion*

The federal parliamentary debates on bullying and cyberbullying are perhaps best understood as a product of the broader social context, including conceptual complexity and media reporting on these issues. The diverse characterizations of the nature of cyberbullying and its underlying issues within the debates parallel to some extent conceptual debates within the research on these issues. These include questions around whether situations of power imbalance should be de-emphasized, thereby broadening policy focus on peer aggression and violence in situations where a power imbalance is not present.<sup>227</sup> Notably, some current definitions of cyberbullying do not incorporate a power imbalance component.<sup>228</sup>

Interestingly, any conceptual complexity with respect to defining cyberbullying is largely unreflected in media reporting, which has tended to focus on a handful of the most tragic cases involving suicides following acts such as sexualized extortion, homophobic harassment and distribution of images of an alleged rape. With respect to a number of these examples, the political and media arenas appeared to merge as politicians engaged with media to explain how their proposed policies respond to these specific situations. The gravity of these examples seems to have culminated more recently<sup>229</sup> in a federal government response more focused on punitive criminal consequences for individual perpetrators than on development of a comprehensive multi-pronged strategy tailored to unpack and address the complexity of the issues made evident in the debates themselves.

Notwithstanding this complexity our analysis reveals: (i) some consensus around the propositions that cyberbullying is a serious problem and that *cyberbullying* is worse than traditional forms of bullying, and

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226. Senate Ctte (11 June 2012), *supra* note 67 (Jeremy Dias).

227. See discussion in Part II.A above: Olweus, *supra* note 18; and Finkelhor et al, *supra* note 21.

228. Belsey's definition, *supra* note 23; and PREVNet Electronic Bullying, *supra* note 24 at 1.

229. Apart from criminal legislation, the federal government has been involved in a number of other bullying and cyberbullying related projects through the Royal Canadian Mounted Police, the Public Health Agency of Canada, the National Crime Prevention Centre and Public Safety Canada: Cybercrime Working Group Report, *supra* note 4 at 2.

(ii) notable reliance by many claimsmakers on high profile mediatized cases involving suicide to exemplify the problem.

Claimsmakers regularly buttressed claims as to the seriousness of cyberbullying with three other sorts of claims. First, it was frequently claimed that cyberbullying is harsher than traditional forms of bullying because the anonymity and intermediary characteristics of the medium give perpetrators the sense that they will not be caught, and prevent them from seeing the consequences of their attacks, thereby reducing inhibitions that might otherwise be at play in face-to-face bullying situations. Second, it was suggested that the ubiquity of the medium exacerbates the severity of the consequences of cyberbullying, leaving targets feeling unable to escape the attacks (even when at home) and that online documentation of the attacks exaggerated the permanence of their effects. Third, it was often claimed that the relative disparity in technological know-how between parents and children undermined parents' ability to intervene to address cyberbullying attacks, as compared with traditional forms of bullying (although a number of claimsmakers pointed out that electronic forms of bullying had raised greater public awareness of the problem of peer conflict).

Although claimsmakers mentioned numerous examples to illustrate the nature of cyberbullying and the need for a response (and were warned of the risks of relying exclusively on extreme mediatized cases), examples of high profile cases involving suicide tended to eclipse other kinds of examples, including references to perpetrators (often girls) and programs and initiatives said to have yielded positive outcomes. Interestingly, however, different claimsmakers cited the same examples as indicative of quite different problems or issues.

Notwithstanding these areas of some consistency, the debates were largely characterized by diversity on a multitude of issues, including central issues as to: (i) the nature and underlying causes of bullying and cyberbullying, and (ii) the barriers to effective redress and recommended responses to cyberbullying. Almost certainly reflecting the conceptual complexities at issue among researchers, many claimsmakers expressed concern that bullying and cyberbullying were not sufficiently well defined to effectively guide policy decisions. Further, claimsmakers presented diverse estimates of the scope of cyberbullying, ranging from 6 to 65 per cent of youth being affected. A number of claimsmakers emphasized the disproportionate vulnerability of those labeled "different" for reasons relating to systemic discrimination including with respect to race, ability, gender and sexual identity.

Two broad sorts of explanations were emphasized with respect to underlying issues—one more focused on individual/relational issues relating to matters such as behaviour and poor parenting, and the other more focused on systemic issues relating to identity-based discrimination. Within these strands, debate among claimsmakers yielded a complex picture about who bullies and who is bullied, including whether girls were more likely to cyberbully and to be cyberbullied than boys, and whether those who perpetrate bullying are also the same people who perpetrate cyberbullying. Claimsmakers also focused on whether bullying and cyberbullying were responsible for extreme outcomes such as suicide, with researchers and citizens’ groups painting a nuanced account of the contributing role of cyberbullying in conjunction with other factors, and of the heightened vulnerability of LGBTQ and Aboriginal community members.

Claimsmakers also highlighted a variety of barriers standing in the way of effectively responding to cyberbullying, which predictably translated into a variety of different recommended responses. Two broad sorts of claims were apparent in this aspect of the debates: (i) gaps in criminal law and/or criminal investigative tools stood in the way of responding to cyberbullying, thereby necessitating additions to or amendments of *Criminal Code* offences and/or expansion of law enforcement surveillance powers; and (ii) cyberbullying is a multi-faceted problem requiring a multi-pronged approach to meaningfully address it. While there was strong disagreement among claimsmakers about the efficacy of criminal law responses, there was little controversy with respect to the need for a multi-pronged approach to this multi-faceted problem (although different claimsmakers emphasized the importance of different prongs).

Claims that gaps in the criminal law and/or criminal investigative tools stood in the way of responding meaningfully to cyberbullying met with considerable skepticism. Many researchers and citizens’ groups, for example, argued that punitive responses were unlikely to be effective in the long term because they fail to address the underlying reasons for the conduct (whether they be developmental, relational or systemic) and because they risked unintended consequences, such as criminalization of victims who retaliate through bullying. Further, many asserted that, especially with respect to youth, punitive criminal approaches were unlikely to deter cyberbullying because youth often do not know the law and/or do not think that they will get caught. At base, this aspect of the debates tended to reflect fundamentally different philosophies about whether cyberbullying should be treated as an individual act of aggression or whether it has also to be understood as reflecting and reflective of

broader social structures and patterns that are in need of redress, including in relation to discrimination.

While few claimmakers directly disagreed with the claim that cyberbullying was a multi-faceted problem, requiring a multi-pronged solution, as noted above, a strong current of debate nevertheless focused on criminal law responses alone. Moreover, the recommended multi-pronged approaches varied from those that incorporated a criminal law component, to others more focused on education, human rights training, promotion of diversity and other measures designed to address broader systemic issues claimed to lay at the root of cyberbullying. In this case, the disparity between individual and collective accounts of cyberbullying tended to emerge less through proposals that precluded one form of response or another and more through proposals that emphasized one rather than the other. Similarly, diverse viewpoints were offered about whether training of individuals to shape them into good users of neutral technology should be emphasized or whether action could be directed at industry to discourage architectures that shape user experience in ways that enable online attacks.

Our analysis of the federal parliamentary debates relating to cyberbullying reveals broad-based concern about the problem, but a range of possibilities for exactly how to define it, or how best to approach it from either a conceptual or policy perspective. While the term “cyberbullying” carries with it the advantage of immediate recognition and concern in the current climate, its continued use as an umbrella term for such a wide variety of behaviours and social issues seems unlikely to yield meaningful long-lasting responses. It is perhaps trite to say that if we cannot agree on what *it* is that we wish to respond to, identifying measures that meaningfully respond to *it* is likely to be quite difficult.<sup>230</sup> Perhaps worse yet, lack of clarity around the term and lack of explicit recognition that the term itself is not being used to describe one thing, but a multiplicity of things, may well produce policy responses that aggravate the situation. Moreover, we may be lulled into a false sense of complacency that a one-size-fits-all solution can and has been implemented.

Perhaps it is time to unload the cyberbullying juggernaut to expose as candidly as possible the wide range of individual and social issues that the term itself too easily obscures from view. Doing so seems to be an essential first step toward development of a comprehensive multi-pronged strategy reflective of the richness and diversity of all of the issues of concern.

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230. For an exploration of this issue in another policy context, see: Caterina Ruggerir Laderchi, Ruhi Saith & Frances Stewart, “Does it Matter that we do not Agree on the Definition of Poverty? A Comparison of Four Approaches” (2003) 31 Oxford Development Studies 243.



Thereafter, research and consultation with affected constituencies ought to better enable meaningful responses. Such an approach could allow prioritization of issues and development of responses aimed at addressing those most at risk,<sup>231</sup> and capable of accounting for the ways in which individual actions are informed by the social context in which they occur, including well-established structures of discrimination. While individual accountability and punishment may be both necessary and morally satisfying in the short term, longer-term solutions will require attention to broader systemic issues. For example, if as some claimsmakers suggested, girls are more likely to be subjected to sexualized cyberbullying than boys, LGBTQ youth are disproportionately likely to be targeted, and LGBTQ and Aboriginal youth are disproportionately at risk of suicide, it seems clear that crafting enduring, meaningful responses will necessarily involve incorporating approaches aimed at addressing foundational identity-based prejudices and systemic discrimination.

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231. The importance of directing resources to those most at risk is also supported in the findings from the Young Canadians in a Wired World survey reported in Valerie Steeves, *Young Canadians in a Wired World, Phase III: Cyberbullying: Dealing with Online Meanness, Cruelty and Threats* (MediaSmarts: 2014), online: MediaSmarts <[http://http://mediasmarts.ca/sites/mediasmarts/files/pdfs/publication-report/full/YCWWIII\\_Cyberbullying\\_FullReport.pdf](http://http://mediasmarts.ca/sites/mediasmarts/files/pdfs/publication-report/full/YCWWIII_Cyberbullying_FullReport.pdf)> at 8.