

Gendered Bullying and Cyberbullying: Assessing Ontario's New Legislation

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## Abstract

This research considers gendered bullying and cyberbullying and assesses the ways Ontario's reformed *Education Act* confronts these challenges. This thesis reviews the problems of homophobic and sexist bullying, particularly sexist bullying of young women in the wake of sexting incidents, as well as protective factors to minimize gendered bullying in school and online. The new *Education Act* represents a significant step forward in encouraging schools to better respect the rights of sexual and gender minority students and female students. However, the *Act* nevertheless has several weaknesses in key areas such as concrete implementation measures.

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## Introduction

### Bullying and Cyberbullying in the News

In October 2011, Ottawa teenager Jamie Hubley took his own life after years of battling bullying<sup>1</sup> and depression.<sup>2</sup> Jamie was the only openly gay student at his Kanata high school, where he was repeatedly subjected to homophobic<sup>3</sup> taunting by peers.<sup>4</sup> The story of Jamie's suicide made headlines in Ottawa,<sup>5</sup> in national Canadian media outlets such as the *Canadian Broadcasting Corporation (Radio Canada)*<sup>6</sup> and the *National Post*<sup>7</sup> and in international media including the *Huffington Post*<sup>8</sup>. These reports found that Jamie had documented his struggle with depression and bullying, as well as happier aspects of his life, in a Tumblr blog.<sup>9</sup> Jamie's blog ultimately served as the forum in which he left his heartbreaking suicide note.<sup>10</sup> It is probably too simplistic to deem bullying to be *the* cause of suicide in Jamie's case or in other cases.<sup>11</sup>

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<sup>1</sup> See *infra* Part 2.3.2 for a definition of this term.

<sup>2</sup> CTVNews.ca Staff, "Ottawa teen details final suicidal thoughts on blog" *CTV News* (17 October 2011), online: CTV <<http://www.ctvnews.ca/ottawa-teen-details-final-suicidal-thoughts-on-blog-1.712337>>.

<sup>3</sup> *Infra* Part 2.3.1 for a definition of this term.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> CBC News, "Gay Ottawa teen who killed himself was bullied" *CBC* (18 October 2011), online: CBC Radio Canada, <<http://www.cbc.ca/news/canada/ottawa/story/2011/10/18/ottawa-teen-suicide-father.html>>.

<sup>7</sup> Post Media News, "Bullied teen Jamie Hubley remembered as 'natural-born' performer at funeral" *The National Post* (20 October 2011), online: National Post, <<http://news.nationalpost.com/2011/10/20/700-gather-to-mourn-gay-teen/>>.

<sup>8</sup> "Jamie Hubley, Gay 15-Year-Old Ottawa, Canada Teen Commits Suicide, Cites Depression, School Troubles" *The Huffington Post* (18 October 2011), online: The Huffington Post.com Inc <[http://www.huffingtonpost.com/2011/10/17/jamie-hubley-commits-suicide\\_n\\_1015646.html](http://www.huffingtonpost.com/2011/10/17/jamie-hubley-commits-suicide_n_1015646.html)>.

<sup>9</sup> CTVNews.ca Staff, *supra* note 2. Tumblr, founded in 2007, is a popular web logging or blog site: see Tumblr, "About", online: <<http://www.tumblr.com/about>>.

<sup>10</sup> *Ibid.*

<sup>11</sup> Suicide is probably too complex a problem to trace to a single cause: see Suzanne McLeod's comments in *Cyberbullying Hurts: Respect for Rights in the Digital Age* (Senate, Standing Committee on Human Rights, *Cyberbullying Hurts: Respect for Rights in the Digital Age* (December 2012) (Chair: Mobina Jaffer) [*'Cyberbullying Hurts'*] at 48. Bullying and cyberbullying do, however, seem to be contributing factors to suicidal thoughts ("suicidal ideation") in young people, as are other types of victimization such as sexual abuse and abuse by parents or guardians: see, for example, Heather A. Turner et al, "Recent Victimization Exposure and Suicidal Ideation in Adolescents" (2012) 166:12 *Archives of Pediatric and Adolescent Medicine* 1149. Sameer Hinduja and Justin Patchin likewise note a relationship between bullying, cyberbullying and suicide attempts, though they reiterate that (cyber)bullying itself leads to suicide: see Sameer Hinduja and Justin W. Patchin, "Bullying, Cyberbullying, and Suicide" (2010) 14:3 *Archives of Suicide Research* at 216-217.

However, Jamie Hubley's story reminds us that bullying can be extremely serious for young victims.

In October of 2012, Amanda Todd took her own life at her home in Port Coquitlam, British Columbia.<sup>12</sup> Like Jamie, Amanda Todd was a victim of persistent bullying at her high school. Amanda Todd's victimization also demonstrated gendered<sup>13</sup> or sexualized harassment and online dimensions. When she was in seventh grade, Amanda bowed to pressure to send a topless photo of herself to an anonymous man she met online.<sup>14</sup> Her tormenter then redistributed this photo via social networking web sites. Instead of recognizing that Amanda was a victim in this situation and reacting with compassion, many of Amanda's peers responded by bullying Amanda, both physically and via the Internet.<sup>15</sup> Moreover, in yet another parallel to Jamie Hubley's story, Amanda attempted to document her struggles online by describing her experiences in a Youtube video which she released prior to her suicide.<sup>16</sup>

In April of 2013, Rehtaeh Parsons, a seventeen year old from Cole Harbour, Nova Scotia, took her life after a similar experience of sexual assault followed by widespread sexualized bullying.<sup>17</sup> When she was fifteen, Rehtaeh was sexually assaulted by several boys at a party.<sup>18</sup> Perpetrators took digital photographs of the assault and distributed them throughout Rehtaeh's

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<sup>12</sup> See e.g. Canadian Press, "Weeks after posting haunting Youtube video on her years of torment at classmates' hands, 15-year-old B.C. girl commits suicide" *The National Post* (12 October 2012), online: National Post, <<http://news.nationalpost.com/2012/10/12/amanda-todd-suicide-2012/>>.

<sup>13</sup> *Infra* Part 2.3.1 for a definition of "gendered bullying".

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*; see also Petti Fong, "Amanda Todd: Suicidal teen talked to her mother about death" *The Toronto Star* (16 October 2012), online: Toronto Star Newspapers Ltd <[http://www.thestar.com/news/canada/2012/10/16/amanda\\_todd\\_suicidal\\_teen\\_talked\\_to\\_her\\_mother\\_about\\_death.html](http://www.thestar.com/news/canada/2012/10/16/amanda_todd_suicidal_teen_talked_to_her_mother_about_death.html)>.

<sup>16</sup> Canadian Press, *supra* note 12.

<sup>17</sup> Wendy Gillis, "Rehtaeh Parsons' friends were silent about alleged sexual assault" *The Toronto Star* (10 April 2013), online: Toronto Star Newspapers Ltd <[http://www.thestar.com/news/canada/2013/04/10/rehtaeh\\_parsons\\_friends\\_were\\_silent\\_about\\_alleged\\_sexual\\_assault.html](http://www.thestar.com/news/canada/2013/04/10/rehtaeh_parsons_friends_were_silent_about_alleged_sexual_assault.html)>.

<sup>18</sup> *Ibid.*

school, leading peers to bully Rehtaeh relentlessly and brand her a ‘slut’.<sup>19</sup> The sexual assault, the consistent bullying and an inadequate police response to Rehtaeh’s complaint all seemed to contribute to Rehtaeh’s spiral into depression and, ultimately, suicide.<sup>20</sup>

Although the particulars of these tragedies differ, these three incidents have noteworthy similarities. First, all three cases highlight the fact that bullying among school aged children can carry messages about gender or sexuality, including homophobia and misogyny or “slut-shaming”.<sup>21</sup> Second, the suicides of Jamie Hubley, Amanda Todd and Rehtaeh Parsons highlight the role that the Internet can play in bullying and harassment. The Internet can serve as a venue for the abuse of young people by peers or, potentially, adult predators. It can also allow victims to be revictimized should evidence of harassment or crimes committed against them go “viral” on social media and become a form of entertainment for online bystanders, as in the Rehtaeh Parsons case. Conversely, victims may try to use the Internet as a tool for documenting violence against them or as a venue through which to seek help. These three incidents demonstrate the central role which technology is coming to play in the lives and tragedies of Canadian teenagers today.

These three cases attracted significant media attention.<sup>22</sup> Although it is difficult to speak of any good emerging from the suicides of tormented teenagers, we can at least be cautiously hopeful that these highly publicized tragedies have moved the Canadian public and spurred greater discussion (perhaps even greater understanding) of bullying, sexual assault and

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<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> See *infra* Part 2.3.2 for a definition of this term.

<sup>22</sup> On the Jamie Hubley suicide, see CTV News Staff, *supra* note 2; see also CBC News, *supra* note 6; see also Post Media News, *supra* note 7; see also Huffington Post, *supra* note 8. For a sample of the coverage of the Amanda Todd case, see Canadian Press, *supra* note 12; see also Fong, *supra* note 15; for examples of coverage of the Rehtaeh Parsons case, see Gillis, *supra* note 17.

sexualized bullying, and youth mental health. As I detail below, these tragedies – and, sadly, other, similar incidents which are too numerous to discuss here – seem to have elicited a flurry of responses from Canadian policy makers. By way of introduction to my thesis, I explore some of these responses in the following section.

### **Political and legislative responses to bullying and cyberbullying in Canada**

Over the last several years, a number of Canadian provinces have amended their respective education acts or other educational frameworks to better address bullying and cyberbullying,<sup>23</sup> its online counterpart. For example, Ontario’s government introduced the *Accepting Schools Act* in 2011.<sup>24</sup> This Act, which received Royal Assent in June 2012, mandates inclusive education policies and interventions for bullying. Notably, the Act amends the *Education Act* to include an expansive definition of cyberbullying.<sup>25</sup> The *Accepting Schools Act* also mandates that schools support student-led initiatives to enhance the acceptance of bullied or marginalized students and groups, including gay-straight alliances and support groups for other minority students.<sup>26</sup> In this respect, this particular legislative initiative may have come as a response to the suicide of Jamie Hubley and to the plight of other LGBTQ youth.

Furthermore, I note here that this is not the first time Ontario’s Legislative Assembly has amended the *Education Act* in an attempt to improve school climates. Ontario enacted Bill 212, *An Act to amend the Education Act, in respect of behaviour, discipline and safety*, in 2007.<sup>27</sup> Bill 212 introduced a framework of progressive discipline and interventions for disruptive or

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<sup>23</sup> *Infra* Part 2.3.2 for a definition of this term.

<sup>24</sup> Bill 13, *Accepting Schools Act*, 1<sup>st</sup> Sess, 40<sup>th</sup> Leg, Ontario, 2012 (assented to 10 June 2012), SO 2012 c 5; see also *Accepting Schools Act*, SO 2012 c5.

<sup>25</sup> *Education Act*, RSO 1990 c E2, s 1.0.0.2.

<sup>26</sup> *Accepting Schools Act*, *supra* note 24, s 12; see also *Education Act*, *supra* note 25 s 303.1.

<sup>27</sup> Bill 212, *An Act to amend the Education Act, in respect of behaviour, discipline and safety*, 2<sup>nd</sup> Sess, 38<sup>th</sup> Leg, Ontario, 2007 (assented to 4 June 2007), SO 2007 c 14.

dangerous student conduct including bullying.<sup>28</sup> The progressive discipline strategy enacted under the Liberal government in 2007 responded to criticisms of the previous government's more punitive approach.<sup>29</sup> The earlier *Safe Schools Act* of 2000 sought to “ensure that all members of the school community [...] are treated with respect and dignity;” however, it addressed peer physical assaults by mandating suspensions or expulsions for aggressors, an approach which attracted considerable criticism.<sup>30</sup>

Although Ontario's approaches to school discipline have changed over the years, successive governments have all been concerned about bullying. Further, the province's gradual movement towards including cyberbullying could indicate that Ontario legislators are becoming more aware that verbal, relational and electronic bullying can be as serious as physical assaults, and that schools should intervene in at least some online, off-campus incidents.<sup>31</sup>

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<sup>28</sup> *Ibid*, s 2.

<sup>29</sup> For a discussion of these changes to Ontario's education law framework, see Eric M. Roher, “Will the New Safe Schools Legislation Make Ontario Schools Safer?” (2007) 17 *Educ & LJ* 203; see also Elementary Teachers' Federation of Ontario, “Safe Schools Legislation - Bill 212”, online: ETFO, <<http://www.etfo.ca/issuesineducation/safeschools/pages/default.aspx>>.

<sup>30</sup> *Safe Schools Act*, SO 2000 c 12.

<sup>31</sup> I note that Ontario is not the only jurisdiction in Canada that has taken legislative action to curb bullying and cyberbullying. Manitoba adopted its *Safe Schools Charter* in 2004 to mandate safe, caring and respectful school environments for students and acceptable Internet use policies for schools: see Bill 30, *The Safe Schools Charter (Various Acts Amended)*, 2<sup>nd</sup> Sess, 38<sup>th</sup> Leg, Manitoba, 2004 (assented to 10 June 2004), SM 2004, c 24, cl 1(1). Manitoba subsequently enacted the *Public Schools Amendment Act (Reporting Bullying and Other Harm)* in 2011 to enhance reporting requirements for bullying behaviour in school: see Bill 28, *The Public Schools Amendment Act (Reporting Bullying and Other Harm)*, 5<sup>th</sup> Sess, 39<sup>th</sup> Leg, Manitoba, 2011 (assented to 16 June 2011), SM 2011, c 18. In September 2013, Manitoba's legislature passed Bill 18, *The Public Schools Amendment Act (Safe and Inclusive Schools)*, which adds more robust definitions of bullying and cyberbullying and obliges schools to promote respect for human rights, including supporting and accepting student-led gay-straight alliances: see Bill 18, *The Public Schools Amendment Act*, 2<sup>nd</sup> Sess, 40<sup>th</sup> Leg, Manitoba, 2013 (assented to 13 September 2013); see also CBC News, “Bill 18 passes in Manitoba legislature” *Canadian Broadcasting Corporation* (13 September 2013), online: <<http://www.cbc.ca/news/canada/manitoba/bill-18-passes-in-manitoba-legislature-1.1829690>>. Quebec's *Assemblée nationale* introduced Bill 56, *An Act to prevent and stop bullying and violence in schools*, in 2012: see Bill 56, *An Act to prevent and stop bullying and violence in schools*, 2<sup>nd</sup> Sess, 39<sup>th</sup> Leg, Quebec, 2012 (assented to 15 June 2012), SQ 2012 c 19. This *Act* amended two existing education statutes to establish standards for student conduct, to mandate intervention plans for bullying in schools and to offer an expansive definition of bullying that includes cyberbullying: see cl 2. The Quebec legislative amendments may have been inspired by another high profile teen suicide, that of Marjorie Raymond, who took her own life in November 2011: see, for example, Post Media News, “‘I have a hard time leaving this world,’ teen writes in suicide letter after years of bullying” *The National Post* (30 November 2011), online: National Post, <<http://news.nationalpost.com/2011/11/30/i-have-a-hard-time-leaving-this->

Ontario and several other Canadian provinces have begun transforming social concern about bullying and cyberbullying into concrete action, typically in the field of education law.<sup>32</sup> Likewise, federal legislators have recognized that they, too, have a role to play. For example in September 2011, Hedy Fry, the Member for Vancouver Centre, introduced Bill C-273, *An Act to amend the Criminal Code (Cyberbullying)* in Parliament. Bill C-273 would have amended the *Criminal Code* to clarify that existing offenses such as harassment (s. 264), false messages (s. 372.1), indecent telephone calls (s. 372.2) and harassing telephone calls or messages (s. 372.3) include all forms of electronic communications.<sup>33</sup> Although the House of Commons Standing Committee on Justice and Human Rights ultimately chose not to proceed with C-273,<sup>34</sup> federal legislators seem increasingly aware of the problems of bullying and cyberbullying. In June 2013, the federal government pledged \$250 000 in support to a Red Cross-led initiative training Canadian youth to take a stand against bullying and cyberbullying.<sup>35</sup> Also in 2013, the government introduced 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*.<sup>36</sup> This bill would amend the *Criminal Code* to add a new offense specifically dealing with the non-consensual redistribution of intimate images.<sup>37</sup> However, this bill digresses from the

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[world-teen-writes-in-suicide-letter-after-years-of-bullying/](http://www.huffingtonpost.ca/2011/11/30/marjorie-raymond-bullying-suicide_n_1121235.html)>; see also Nelson Wyatt, The Canadian Press, "Marjorie Raymond Suicide: Quebec Teen Was Tormented By Bullying, Says Her Mother" *The Huffington Post* (30 November 2011), online: HuffingtonPost.ca <[http://www.huffingtonpost.ca/2011/11/30/marjorie-raymond-bullying-suicide\\_n\\_1121235.html](http://www.huffingtonpost.ca/2011/11/30/marjorie-raymond-bullying-suicide_n_1121235.html)>. For further information on legislative initiatives addressing (cyber)bullying across Canada, see Media Smarts, "Cyberbullying and the Law Fact Sheet", online: MediaSmarts.ca <<http://mediasmarts.ca/backgrounder/cyberbullying-law-fact-sheet>>.

<sup>32</sup> For a summary of developments in Manitoba, Quebec and other provinces, see *ibid*.

<sup>33</sup> Bill C-273, *An Act to amend the Criminal Code (cyberbullying)*, 41<sup>st</sup> Parl, 1<sup>st</sup> Sess.

<sup>34</sup> Standing Committee on Justice and Human Rights, 19<sup>th</sup> Report, 41<sup>st</sup> Parl 1<sup>st</sup> Sess.

<sup>35</sup> See Drake Fenton and Natascia Lypny, "National anti-bullying program enlists teens to hold prevention workshops" *Ottawa Citizen* (4 June 2013), online: *Ottawa Citizen*, <<http://www.ottawacitizen.com/life/National+anti+bullying+program+enlists+teens+hold+prevention+workshops/8470783/story.html>>.

<sup>36</sup> 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*, 2<sup>nd</sup> Sess, 41<sup>st</sup> Parl, 2013 (first reading 20 November 2013).

<sup>37</sup> *Ibid*, cl 2.

government's stated commitment to combat cyberbullying and includes several provisions that would expand police surveillance of online data.<sup>38</sup> The bill has been criticized for paying minimal attention to cyberbullying/malicious sexting,<sup>39</sup> showing no leadership regarding prevention, and making the introduction of some potentially helpful provisions conditional on accepting expanded state surveillance of individuals.<sup>40</sup>

Similarly, the Senate Standing Committee on Human Rights undertook a major study on cyberbullying beginning in late 2011. The study focused in particular on the ways cyberbullying undermines children's rights, and on the actions or initiatives Canada's federal government can take to better meet our obligations under the *United Nations Convention on the Rights of the Child*.<sup>41</sup> The study resulted in several recommendations, focusing mainly on opportunities for federal-provincial cooperation on the subject.<sup>42</sup> Moreover, the Senate study was neither the first nor the only major Parliamentary inquiry into cyberbullying in Canada. In the spring of 2011, Nova Scotia's Minister of Education established a Task Force with the mandate to inquire into cyberbullying within the province and to propose possible solutions.<sup>43</sup> Tragically, it seems that the Nova Scotia Task Force, like so many government initiatives addressing bullying and

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<sup>38</sup> See *ibid*, cl 8.

<sup>39</sup> *Infra* Part 2.3.2.

<sup>40</sup> See Jane Bailey, "Bill C-13: The Victims of "Cyberbullying" and Canadians Deserve More" (28 November 2013) *The eGirls Project Blog*, online: eGirlsproject.ca, < <http://egirlsproject.ca/2013/11/28/bill-c-13-the-victims-of-cyberbullying-and-canadians-deserve-more/> >; see also Tabatha Southey, "Bill C-13 is about a lot more than cyberbullying" (6 December 2013) *The Globe and Mail*, online: The Globe and Mail Inc, <<http://www.theglobeandmail.com/globe-debate/columnists/maybe-one-day-revenge-porn-will-be-have-no-power/article15804000>>; for a discussion of some of the specific privacy threats in Bill C-13, see also Michael Geist, "The Privacy Threats in Bill C-13, Part One: Immunity for Personal Info Disclosures Without a Warrant" (25 November 2013) *MichaelGeist.ca*, online: < <http://www.michaelgeist.ca/content/view/7006/125>>.

<sup>41</sup> *Cyberbullying Hurts*, *supra* note 11.

<sup>42</sup> *Ibid* at 2-3.

<sup>43</sup> See CBC News, "N.S. announces cyberbullying task force" *CBC News* (6 April 2011), online: CBC Radio Canada, <<http://www.cbc.ca/news/canada/nova-scotia/story/2011/04/06/ns-cyberbullying-task-force.html>>; see also Nova Scotia Task Force on Bullying and Cyberbullying, *Respectful and Responsible Relationships: There's No App for That* (Halifax: Nova Scotia Task Force on Bullying and Cyberbullying, 2012) [*"Respectful and Responsible Relationships"*].

cyberbullying, was also motivated by a string of highly publicized teen suicides in the province.<sup>44</sup>

### **Emerging trends in (cyber)bullying incidents: the relevance of my research**

The case studies as well as the legislative and political responses above suggest several things. First, it seems that the Canadian public and Canadian policy-makers recognize that bullying is not just a “normal if unpleasant” part of childhood. Instead, online and offline bullying can have extremely serious consequences for victims. The broad public outcries over suicides like those of Jamie Hubley, Amanda Todd, Marjorie Raymond and Rehtaeh Parsons drive this point home. These tragedies may also have spurred legislative and political action. Policy makers in the provinces as well as at the federal level have made efforts to reduce bullying, both on and offline – two interrelated problems which present similar, though not identical, challenges to educators and policy makers seeking to craft responses.<sup>45</sup>

Furthermore, peer bullying and harassment (whether online or offline) can present strongly sexist and homophobic dimensions. The anecdotes above remind us that young people who engage in bullying may draw on gendered discourses to attack their victims. Sexual minority youth (or youth perceived as having a minority sexual orientation or gender) may endure homophobic harassment, while other young people – especially young girls – may also be vulnerable to harassment and humiliation relating to their gender or their perceived sexual activities. Youth who engage in “sexting”, or who distribute sexually explicit images or messages or find that someone has distributed such an image of them, may be particularly

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<sup>44</sup> See “N.S. announces cyberbullying task force”, *ibid.*

<sup>45</sup> On the interconnectedness of online and offline bullying, see e.g. Dan Olweus, *Cyberbullying: An overrated phenomenon?* (2012) 9:5 *European Journal of Developmental Psychology* 1; see also Sameer Hinduja and Justin Patchin, “Cyberbullying: Neither an epidemic nor a rarity” (2012) 9:5 *European Journal of Developmental Psychology* 539 at 541 for a further discussion of the overlap between online and in person bullying.

vulnerable to shaming should their “sexts” go “viral”.<sup>46</sup> Although sexting is not identical to cyberbullying, sexts can be another potent tool in the arsenal of young people who wish to harass their peers.<sup>47</sup>

I explore the sexist and homophobic dimensions of bullying and cyberbullying in greater detail below. I argue that peer bullying and harassment among school age youth frequently draw on gendered discourses and stereotypes. Subsequently, I advocate that legislative and policy responses to cyberbullying and offline bullying must be sensitive to specifically sexist or homophobic forms. I consider recent developments in Ontario education law and policy, and assess how effective these new initiatives may be in addressing gendered peer harassment.

In Chapter One, I set out the theoretical assumptions that underlie my reading of gendered (cyber)bullying. I also review the existing literature on this topic, and define the terms that I will use in this thesis. In Chapter Two, I explore the phenomenon of anti-LGBTQ bullying as well as recent Ontario legislative and educational initiatives that attempt to address this problem. In Chapter Three I examine the teen practice of sexting and sexting related harassment via several case studies, before arguing that Ontario education legislation and policy may offer some tools for addressing these issues. Finally, in Chapter Four, I summarize why I believe that challenging gendered (cyber)bullying is an important part of furthering young people’s rights and safeguarding the equality and equal dignity and participation in their communities of all Canadian youth.

I believe that my research can engage and address Canadian policy makers as they attempt to respond to cyberbullying and other forms of bullying. I argue that these responses

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<sup>46</sup> See e.g. Nancy E. Willard, “Sexting and Youth: Achieving a Rational Response” (2010) 6:4 *J Social Sci* 542.

<sup>47</sup> *Ibid.*

must be cognizant of gendered bullying and must address systemic factors that underlie peer bullying and harassment. Further, while my analysis focuses primarily on legal and policy responses to gendered (cyber)bullying within education law, I hope this thesis will also offer some insights to other fields and industries.. Finally, my objective is to provide an analysis that will serve policy-makers, researchers, educators and other stakeholders who are working to ensure that young Canadians can enjoy the opportunities which modern education and modern technology offer without fear of bullying or harassment.

## Chapter One: Theoretical Considerations, Terminology and a Review of the Literature

### 1.1 Theoretical Considerations

In this research, I adopt what I describe as a liberal feminist approach to cyberbullying and bullying. I believe the liberal conception of individual rights-bearing human beings remains an effective framework for addressing complex social questions such as gender inequality and homophobia, including bullying and harassment that draw upon and perpetuate these inequalities. I affirm that people have inherent worth and dignity, which “[deserve] respect from laws and social institutions”.<sup>48</sup> I argue that, consistently applied, liberal principles of equal rights, dignity and agency which apply regardless of personal characteristics are a promising framework for advancing the rights of members of disadvantaged groups, including women and sexual minorities.<sup>49</sup> In Part 1.1.1, I briefly review some of the tenets of liberal thought. In Part 1.1.2, I discuss some feminist interventions in liberal paradigms. In Part 1.2, I advance what I call a liberal feminist model to assist in my reading of bullying and cyberbullying. I note that a review of all aspects of liberalism (or, indeed, liberal feminism) is beyond the scope of this thesis. However, I will sketch several assumptions that underlie my reading of gendered bullying and cyberbullying, as well as some brief background to liberal feminist thought.

#### 2.1.1 Liberalism

Liberalism grew out of Western Enlightenment ideas in the eighteenth and nineteenth centuries.<sup>50</sup> Enlightenment ideologies and subsequent liberal ideologies viewed adult humans as rational individuals whose capacity for choice and reasoning merit equal participation and equal

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<sup>48</sup> Martha Nussbaum, *Sex and Social Justice* (Oxford: Oxford University Press, 1999) at 5.

<sup>49</sup> Nussbaum, *ibid*, 57-58.

<sup>50</sup> See e.g. Chris Beasley, “Chapter One: An Overview” in *Gender & Sexuality: Critical Theories, Critical Thinkers* (London: SAGE Publications Ltd, 2005).

rights within a political community.<sup>51</sup> Liberalism is strongly concerned with individual choice and freedom,<sup>52</sup> though it is also concerned with articulating the entitlement of all individuals to equal dignity and respect.<sup>53</sup> As Martha Nussbaum writes in her description of the classical liberal tradition, liberalism “is at its core antifeudal, opposed to the political ascendancy of hierarchies of rank, caste, and birth”.<sup>54</sup> These hierarchies or categories should be considered “morally irrelevant”,<sup>55</sup> and should not determine individuals’ place or rights within society, or constrain individuals’ ability to make choices about their own lives.

Early liberal political theory developed alongside theories of constitutional government.<sup>56</sup> In this respect, liberalism responded to political absolutism and insisted that governments behave in accordance with the rule of law and with regard for the fundamental rights of individual citizens.<sup>57</sup> Liberalism conceived of citizens or subjects as equally entitled to inherent rights.<sup>58</sup> However, the liberal tradition is an old and broad family of philosophical outlooks and political practices. It is therefore far from monolithic. Liberals disagree and have historically disagreed about important principles. For example, the liberal tradition has grappled with the question of whether rights are primarily negative, articulating citizens’ rights to be let alone that may be held up against intrusive states, or whether there can be positive substantive content to individual

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<sup>51</sup> Beasley, *ibid.*

<sup>52</sup> Nussbaum 11.

<sup>53</sup> *Ibid.*

<sup>54</sup> Nussbaum 10.

<sup>55</sup> Nussbaum 57.

<sup>56</sup> See e.g. David Johnston, “Liberalism” in Mark Bevir, ed, *Encyclopedia of Political Theory* (London: SAGE Publications Ltd, 2010).

<sup>57</sup> *Ibid.*

<sup>58</sup> See e.g. John Locke on the equal status of individual humans in the State of Nature, cited in Bradley C. S. Watson, *Civil Rights and the Paradox of Liberal Democracy* (Lanham, Maryland: Lexington Books, 1999).

rights. This latter interpretation may oblige states to take an interventionist approach that ensures citizens benefit from certain basic goods.<sup>59</sup>

This debate within liberalism is old and well-established.<sup>60</sup> However, it remains relevant today in the tension between libertarian-leaning liberals and egalitarian or welfare liberals.<sup>61</sup> Egalitarian liberals urge states to take a more robust role in addressing social and economic inequalities to ensure that citizens may benefit from substantive equality of opportunity. This greater role for the state has provided a helpful model for liberal feminists who argue for state actions in addressing other forms of inequality such as sex inequality.<sup>62</sup> For this reason, I wish to outline some significant trends in egalitarian or welfare liberalism.

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<sup>59</sup> See e.g. Rosemary Tong, *Feminist Thought: A More Comprehensive Introduction*, 3d ed (Philadelphia: Westview Press, 2009) at 12-13, 35-36; see also Nussbaum 57; see also Johnston, *supra* note 56, for a brief discussion of the development of liberal ideas of the bureaucratic state as a counterbalance to economic inequality. Some non-liberal feminists have criticized the notion of “negative rights” in liberal rights theory: see Lisa Schwartzman, “Liberal Rights Theory and Social Inequality: A Feminist Critique” (1999) 14:2 *Hypatia* 25, for an overview of this critique. However, some liberal feminists argue that liberal justice and equality – particularly the Rawlsian conception of justice as fairness, in which all members of a political community have equal access to basic goods – can require substantial restructuring of social institutions and substantial redistribution of wealth to ensure that men and women share equally in the benefits and burdens of social cooperation: see, for example, S. A. Loyd, “Situating a Feminist Criticism of John Rawls’s Political Liberalism” (1995) 28 *Loyd L. A. L. Rev.* 1319 at 1331-1332, reviewing some of Susan Moller Okin’s ideas; see also Hilde Bojer, “Women and the Rawlsian Social Contract” (2002) 15:4 *Social Justice Research* 393 at 403-406, for consideration of possible state measures to equalize men’s and women’s roles in family life and opportunities for earning independent income outside the family; see also Deborah L. Rhode, “Feminism and the State” (1994) 107 *Harvard L Rev* 1181 at 1196-1198 and 1201-1203, for similar considerations and strategies. Liberal feminism can and has advocated robust state interventions in workplaces, schools, and even families in order to realize substantive rather than merely formal equality of opportunity between men and women.

<sup>60</sup> See Johnston, *supra* note 56.

<sup>61</sup> Classical or libertarian liberals prize the free market and argue that the state should protect civil liberties, rather than take an active role in addressing economic disparities; egalitarian or welfare liberals, by contrast, urge states to focus on and address economic inequalities as well so that individuals can attain more substantive equality of opportunity and so that severe social inequalities do not become entrenched: see e.g. Tong at 12-13. Tong notes that most liberal feminists today are welfare or egalitarian liberals: see Tong 12-13. For more on egalitarian or welfare liberalism, see Colin Patrick Farrelly, *Contemporary Political Theory: A Reader* (London: SAGE Publications Ltd, 2004); see also Amy Baehr, ed, *Varieties of Feminist Liberalism* (Lanham, MD: Rowman & Littlefield Publishers, 2004) at 12, on the proposition that much liberal feminism builds on and looks to egalitarian liberalism.

<sup>62</sup> Tong, *ibid*; see also Baehr, 12; see also Bojer, *supra* note 60; see also Loyd, *supra* note 60; see also Rhode, *supra* note 60.

John Rawls is perhaps the most prominent proponent of this egalitarian liberalism, which responds to shallower or more “hands off” conceptions of the liberal state.<sup>63</sup> Some traditional and contemporary forms of liberalism do privilege limited government and individual autonomy supported by formal equality. These “hands off” states may guarantee *only* the formal equality of citizens, an approach which can be criticized as inadequate to countering deep-seated substantive social inequalities.<sup>64</sup> By contrast, egalitarian liberalism argues that justice requires more than this simple vision of equality and this limited state role.<sup>65</sup> Egalitarian liberalism emphasizes fair and substantive equality of opportunity between individuals as a fundamental tenet of liberalism.<sup>66</sup> Moreover, as Rawls argues, citizens cannot benefit from genuine equality without “adequate access to equal basic liberties” and full equality of opportunity.<sup>67</sup> Rawlsian liberalism therefore demands greater standards of social and economic fairness than do some other, more libertarian, forms of liberalism.

Rawls’s “original position” thought experiment draws on social contract theory to advocate his conception of justice as fairness.<sup>68</sup> In the hypothetical original position, representatives of a community agree upon acceptable principles to govern the basic structure of society from behind a “veil of ignorance” as to their own personal characteristics.<sup>69</sup> These characteristics include the decision-makers’ class or position within society and natural talents or

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<sup>63</sup> Farrelly, *supra* note 62.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> See, for example, John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 1971) [“*A Theory of Justice*”] at 60-61; see also John Rawls and Erin Kelly, ed, *Justice as Fairness: A Restatement* (Universal Law Publishing Co Ltd, Delhi: 2004) at 42-44.

<sup>68</sup> See Rawls, *A Theory of Justice*, *ibid*; see also Rawls and Kelly, ed, *Justice as Fairness*, *ibid*; see also e.g. Morris B. Kaplan, *Sexual Justice: Democratic Citizenship and the Politics of Desire* (Routledge: New York, 1997) at 28-33.

<sup>69</sup> See Rawls, “The Original Position” in *A Theory of Justice*, *ibid.*

abilities.<sup>70</sup> Feminists<sup>71</sup> and queer theorists<sup>72</sup> have argued that sex and sexual orientation belong on that list as well. Without knowing in advance what their own economic positions, gender, sexual orientation or other characteristics would be, parties to a social contract would implement principles of justice that are fair to all community members. The hypothetical original position thus illustrates the justification for fair laws and the legitimacy of social structures that conceive of justice as fairness. A society that accepts “justice as fairness” as a guiding principle ensures that all citizens can genuinely benefit from the liberal ideals of equality and freedom. The original position, consistently applied, also argues for fair treatment for all genders and sexual orientations. Rawlsian liberalism suggests that liberal equality of opportunity may require proactive state policies to ensure substantive equality among citizens. These considerations are relevant to several feminist interventions in liberalism, as I now elaborate.

### 1.1.2 Feminism and Liberal Feminism

Liberal feminism uses liberalism as a starting point to advocate women’s equality. Liberal feminists have been instrumental in exposing the masculine biases of traditional liberalism<sup>73</sup> and critiquing traditional liberalism’s omission of women from its purportedly universal vision.<sup>74</sup> Liberal feminists assert that the heretofore overlooked category of sex is another morally irrelevant characteristic which cannot legitimately serve as a basis for social hierarchies.<sup>75</sup> Accordingly, women should not be excluded from the opportunities or fields that are available to men. In this respect, proto-feminist philosophers such as Mary Wollstonecraft

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<sup>70</sup> *A Theory of Justice* at 137.

<sup>71</sup> See, for example, Susan Moller Okin, “Equal Citizenship: Gender Justice and Gender: An Unfinished Debate” (2004) 72:5 *Fordham L Rev* 1537 at 1547-1551.

<sup>72</sup> See e.g. Kaplan, *supra* note 69 at 28-33.

<sup>73</sup> Beasley, *supra* note 50.

<sup>74</sup> *Ibid.*

<sup>75</sup> Nussbaum 10.

writing in the late eighteenth century<sup>76</sup> and John Stuart Mill<sup>77</sup> and Harriet Taylor<sup>78</sup> writing in the late nineteenth began to articulate liberal feminist critiques of liberalism early on. These thinkers were among the first to challenge women's exclusion from the emerging liberal rights discourse and from public participation.<sup>79</sup> Much so-called First Wave and Second Wave feminism sought to counter these exclusions on the basis of sex and to reform laws and social structures in order to enable greater participation by women in liberal institutions.<sup>80</sup> Liberal feminism has argued that women's subordination is incompatible with cherished liberal principles.<sup>81</sup> It does not, however, generally challenge liberalism's emphasis on individual rights, equality and freedom.

More recently, some feminists have turned away from liberal feminism, arguing that liberal and liberal feminist theoretical frameworks are inadequate to respond to the needs of women.<sup>82</sup> A detailed review of these debates is beyond the scope of this thesis; however, I briefly address some critiques and responses which illuminate my own liberal feminist assumptions below.

First, liberalism and liberal feminism have been criticized for doing more to preserve the status quo than to challenge it.<sup>83</sup> However, liberal feminism need not entail leaving conventional values or social structures unchallenged.<sup>84</sup> Amy Baehr speaks to this criticism in reviewing the

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<sup>76</sup> Tong 13-16

<sup>77</sup> Nussbaum 10.

<sup>78</sup> See e.g. Nussbaum 24.

<sup>79</sup> See Tong at 13-26 for an overview of the history of liberal feminism from the eighteenth century through to the women's rights movements of the 1960s.

<sup>80</sup> *Ibid.*

<sup>81</sup> See e.g. Nussbaum 65-66.

<sup>82</sup> See Nussbaum 9; see also Baehr 5-6, 16-17. For a feminist critique of liberal rights discourse (though not specifically of rights as conceived by liberal feminism), see Schwartzman, *supra* note 60.

<sup>83</sup> For such a criticism of liberal rights discourses, see Schwartzman, *ibid.*; see also Baehr 5-6, formulating a liberal feminist response to the charge that liberalism inevitably endorses dominant values by allowing individuals to choose their own conception of the good life – which may entail sex inequality..

<sup>84</sup> See Baehr 5-6, *ibid.*

variety that is possible in liberal feminist – and, indeed, all liberal – views of justice.<sup>85</sup> Liberal views of justice may be stereotyped as “shallow”, i.e., serving to promote a mere “common denominator” form of justice.<sup>86</sup> In this view, the liberal state may only minimally impair or challenge individual conceptions of “the good life” – an approach which may seem incompatible with feminism. After all, feminism, as a “deep” account of justice, “fundamentally challenges many conceptions of the good life held by citizens in society” by asserting the superiority of gender equality over inequality.<sup>87</sup> Similarly, by advocating gender equality in the so-called private as well as the public domain, feminism appears at first glance to be “wider” than liberalism.<sup>88</sup> However, liberal feminists such as Martha Nussbaum<sup>89</sup> and Amy Baehr<sup>90</sup> establish that there are different voices within the liberal, feminist and liberal feminist intellectual traditions. Liberal feminism is often much “wider” and “deeper” than commonly thought; liberal feminists take a more proactive role in challenging inequality across a variety of domains of life than is always acknowledged.<sup>91</sup> Egalitarian liberals (whether or not they are also feminists) argue that states must ensure fair and substantive equality of opportunity and access to basic goods for all citizens, in order to realize liberal ideals such as equal rights and equal civic participation. (One may call these forms of liberalism “wide”, as they reach into economic relations that have historically been considered private.<sup>92</sup>) Liberal feminist scholars have drawn upon egalitarian liberalism and have advocated and justified proactive state policies to achieve

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<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> Baehr 6.

<sup>88</sup> *Ibid.*

<sup>89</sup> See, for example, Nussbaum 57.

<sup>90</sup> Baehr 6-7.

<sup>91</sup> See e.g. Baehr 8-11, discussing the breadth of liberal feminist thought expressed within a single collection of essays.

<sup>92</sup> Baehr 12.

greater substantive equality between men and women.<sup>93</sup> Liberalism and liberal feminism do not, however, necessarily mandate that one leave the status quo intact by unduly constraining state action. These “wide” and “deep” strains within liberal feminism and egalitarian liberalism are relevant to the new liberal feminism that I propose for my analysis of bullying, cyberbullying and children’s rights.

Second, some feminists have also criticized liberalism for promoting excessive individualism.<sup>94</sup> Allison Jaggar, for instance, disputes liberalism’s focus on individual humans who are, purportedly, cut off from the context of relationships – families, classes and other communities – in which they live.<sup>95</sup> This vision is unrealistic and may foster egoism or what Jaggar terms “political solipsism”.<sup>96</sup> Contemporary liberal feminists such as Martha Nussbaum have responded to this charge by clarifying that liberalism need not entail selfishness or egoism.<sup>97</sup> It does, however, argue that political systems make the rights and well-being of individual persons a primary consideration. Liberalism and liberal feminism also argue that each individual should be treated as an end in him- or her- self.<sup>98</sup> Nussbaum reminds us that women “have too rarely been treated as ends in themselves, and too frequently treated as means to the ends of others,” a practice that generally (and unsurprisingly) disadvantages women.<sup>99</sup> An ideology that treats individual women as “ends in themselves” should not be dismissed out of hand by feminists; indeed, this viewpoint may offer compelling advantages for advancing

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<sup>93</sup> *Ibid*; see also Loyd, *supra* note 60 at 1331-1332, and Rhode, *supra* note 60 at 1196-1198 and 1201-1203, for examples of liberal feminist scholars who advocate and justify considerable state intervention in institutions such as workplaces, schools and families in the name of substantive equality between men and women.

<sup>94</sup> See Nussbaum 59-60, citing and discussing Jaggar’s critique.

<sup>95</sup> *Ibid*.

<sup>96</sup> See Nussbaum 61.

<sup>97</sup> Nussbaum 61-62.

<sup>98</sup> Nussbaum 62-63.

<sup>99</sup> *Ibid*.

women's rights.<sup>100</sup> In this respect, I agree with Nussbaum that liberalism's insistence on individual well-being may be an advantage rather than a hindrance for feminists. I revisit this point in articulating a new liberal feminism that is relevant to children and teens marginalized on the basis of gender, below.

## 1.2. A "new" liberal feminism for my reading of bullying and cyberbullying

Having considered several basic principles of liberalism and liberal feminism, I now articulate some assumptions that underlie my own liberal feminist views. These assumptions and starting points will guide my reading of bullying and cyberbullying, as expressed in subsequent chapters of this thesis.

First, my views prioritize individual rights and individual well-being.<sup>101</sup> The rhetoric of treating all individuals, including women and children, as "ends in themselves" appeals to me greatly. As I suggest above, I believe that liberal feminism's insistence on the individual is one of the greatest strengths of liberal feminist discourse, and is in no way a weakness of liberal feminist (and all liberal) thought. I emphasize the importance of treating individuals, including youth, as ends in themselves, rather than as means to the ends of others.

My focus on individual youth and their rights will not, however, preclude consideration of relationships, communities and other contexts in which young people live. Indeed, I accept

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<sup>100</sup> *Ibid.*

<sup>101</sup> Theories prioritizing individual rights contrast with those that may prioritize collective rights as asserted by collectives or communities: see, for example, Miodrag A. Jovanović, "Introduction" in *Collective Rights: A Legal Theory* (Cambridge: Cambridge University Press, 2012). Collective rights theories may be better suited to certain contexts, such as the assertion and preservation of Aboriginal rights: see e.g. Thomas Isaac, "Case Comment: Individual Versus Collective Rights: Aboriginal People and the Significance of *Thomas v. Norris*" (1992) 21 Man LJ 619, for a discussion of some of the tensions between individual and collective rights in litigation affecting Aboriginal communities; see also Thomas Isaac, "Canadian Charter of Rights and Freedoms: The Challenge of the Individual and Collective Rights of Aboriginal People" (2002) 21 Windsor Y B Access Just 431, for a discussion of the role of both individual and collective rights discourses in Aboriginal law developments under the *Charter of Rights and Freedoms*.

and argue that taking into account relationships and behaviour within the broad context of communities can be important in articulating policies that promote or safeguard individuals' rights.<sup>102</sup> Nevertheless, I believe that the rights of individual community members (rather than the community or any other collectivity as such) are and should remain an important consideration in these debates and in policy making.

Second, I seek to articulate a wide and deep liberal feminism that, in my view, demands that accepted liberal visions of individual rights and equality be applied more consistently and more proactively than they have been – even when this vision may require robust and proactive state action. This expanded role for the state, particularly in education, would enhance respect for individual rights, dignity and equality. Further, I believe that proactive state policies to minimize bias-based bullying and harassment on the basis of sex, gender, and sexual orientation are necessary to achieve fair equality of opportunity between all students, as I elaborate below. My views can be termed “wide” because they assert the importance of advocating and infusing liberal values of dignity, equality (including genuine equality of opportunity) and respect in domains such as children’s education that may not be subject to state intervention in all forms of liberalism. This assumption differs from some “hands off” conceptions of the liberal state, but it is a departure that can further essential liberal values rather than detract from them. Similarly, my liberal feminism is a “deep” view because it emphasizes the superiority of formal *and* substantive equality in matters of gender and sexual orientation over inequality. This deep view necessarily challenges at least some people’s conception of an appropriate or good life, in which sexism, homophobia and other forms of inequality may be defended or even promoted as right

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<sup>102</sup> Some relational feminists have gone even further in articulating a greater role for relationships and for traditionally feminine values such as caring and interdependence in legal discourses: see, for example, Jennifer Nedelsky, “Reconceiving Rights as a Relationship” (1994) 1 Rev Const Studies 1; see also Robin L. West, “Justice and Care” (1996) 70 St. John's L Rev 31; see also Mary Becker, “Patriarchy and Inequality” (1999) U Chi Legal F 21.

and normal. I believe that the more robust articulation and advocacy of liberal values which I defend is justified. As I argue below, sexist and homophobic/transphobic harassment are forms of violence which reinforce *de facto* hierarchies that are incompatible with fundamental liberal values of substantive equality and equal dignity and participation for all community members. Challenging inequality in these circumstances furthers fundamental liberal values.

A discussion of substantive equality is in order here. I advocate state measures to reduce bullying and cyberbullying in the interest of achieving greater substantive equality of opportunity among all individual students, including students marginalized on the basis of sex, gender, or sexual orientation. As noted above, substantive and genuinely fair equality of opportunity is an important value to many contemporary liberal feminists, who have advocated robust state involvement in measures to ensure that adult men and women benefit from equitable division of labour within families and a level playing field from which to pursue aspirations outside the family. Some proposals include, for example, state policies to correct sexist biases in educational institutions, initiatives to encourage the equitable and non-sexist division of labour within the family, and incentives and regulations for work places (public and private) to better accommodate family responsibilities.<sup>103</sup> While these proposals are important steps toward substantive equality between adult men and women in public life, my thesis concerns younger citizens and different milieus, i.e., schools and online milieus which increasingly impact and replicate school dynamics between students who use these forums. However, I look to “interventionist” liberal feminists as a model and a justification for proactive and comprehensive state policies to counter systemic inequalities and to ensure that all students may access educational opportunities on a substantively equal playing field.

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<sup>103</sup> See Rhodes, *supra* note 60 at 1198; see also Loyd, *supra* note 60, at 1331-1332.

Elementary and high school education are necessary to give students basic academic, social, and professional skills, and to ground higher education for those who wish to pursue it. As I argue in later chapters, gendered bullying and cyberbullying (or, indeed, other forms of bullying, though I cannot address *all* motivations for peer aggression in this thesis) can make attending and succeeding at school extremely difficult if not impossible for victims. Such students do not have genuine substantive equality of opportunity, even if public schooling is formally available to all young people regardless of sex, gender, sexual orientation, or other characteristics. State efforts to counter student biases, to improve school climates, and to ensure substantive equality for marginalized students are, I believe, not only justifiable, but vital.

In advocating these measures, I draw an analogy to liberal feminist proposals for state incentives and regulations to ensure greater substantive equality of opportunity between men and women in the workplace. While this analogy is not exact, it is of value in articulating the appropriate role of the state in achieving genuine liberal equality. Liberal feminists generally acknowledge that most professions have eliminated formal barriers to women's equal participation.<sup>104</sup> However, informal barriers, such as workplace discrimination and sexual harassment, a lack of adequate childcare, family leave, or flex time, and social assumptions that women should assume a greater role than men in caring for families, can prevent women from competing on equal footing with men in pursuing economic independence and fulfilling their career aspirations.<sup>105</sup> These informal barriers to substantive equality between men and women merit state intervention.

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<sup>104</sup> See e.g. Patricia Smith, "Autonomy, Aspiration and Accomplishment: Some Steps and Barriers to Equality for Women" (1998) 9 J. Contemp. Legal Issues 257 at 265 on the removal of formal barriers precluding women from entering professional life, and the presence of at least token women in nearly all significant fields.

<sup>105</sup> See Rhode, *supra* note 60; see also Smith, *ibid*, at 266-269.

I argue in favour of state measures to counter sexist and sexual orientation-based bullying for similar reasons. While educational opportunities are formally available to all students regardless of sex, sexual orientation, or gender, informal barriers such as widespread peer harassment and violence and, potentially, lacklustre (or non-existent) school discipline for aggressors actually prevent bullied students from participating and competing on an equal footing with their peers who do not face these forms of hostility. Students who are unable to thrive in – or even attend – school environments because of victimization therefore lack genuine substantive equality of opportunity. These inequalities violate liberal feminist principles emphasizing the right of all citizens to participate equally in their communities and, eventually, in public life such as the work place and the political community regardless of personal characteristics including sex, gender, and sexual orientation. I believe the state has a role to play in creating conditions in schools that correct or at least minimize these inequalities and level playing fields between sexual and gender minority and majority students, and between boys and girls.

Systemic and proactive state interventions are particularly important because minors may be unable to address their victimization effectively through individual legal actions. They may lack knowledge about legal and human rights processes and may have inadequate independent financial resources to undertake complaints.<sup>106</sup> Further, in the province of Ontario, minors under eighteen cannot be parties to most civil suits<sup>107</sup> or human rights complaints<sup>108</sup> without being

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<sup>106</sup> UN Human Rights Council, “Annual Full-day Meeting on the Rights of the Child: Access to Justice for Children” (13 March 2014) at 2, online: Office of the High Commissioner for Human Rights <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/AnnualFullDayMeetingRightsChild.pdf>>.

<sup>107</sup> *Rules of Civil Procedure*, RRO 1990, Reg 194, s 7.01(1). For examples of other provinces with similar constraints, see *Court of Queen’s Bench Rules*, Man Reg 553/1988, s 1.03; see also *Rules of Court*, NB Reg 1982-73, s 7.01.

<sup>108</sup> Ontario, Social Justice Tribunals of Ontario, *Common Rules*, r A10.

represented by a litigation guardian, typically a parent or guardian. Because families of queer youth – and even girls who are sexually active – sometimes disapprove of or reject their children, victims of homophobic and sexualized or sexting related harassment may be unwilling to involve parents in prospective legal actions, despite being unable to proceed without an adult representative.<sup>109</sup> Persistent homophobic and gendered bullying in schools and online, as well as the difficulty minors likely face in obtaining individual legal remedies, call for proactive state policies to encourage greater equality of opportunity in the form of safe and non-discriminatory schools for all students. Such policies and environments would better respect students’ right to participate equally in their school communities and eventually in higher education, recreation, the workplace, and other aspects of civic life requiring K-12 education (and, increasingly, requiring familiarity with and access to digital tools and environments).

Furthermore, accepting widespread bullying and violence based on sex, sexual orientation, or gender models unjust, hierarchical, and illiberal attitudes that are incompatible with liberal principles of equal respect for all citizens regardless of morally irrelevant personal characteristics. If schools and other communities serving young people accept these forms of harassment and violence, then they may in essence demonstrate to young citizens that it is

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<sup>109</sup> On the rejection of queer youth by families, see Sonia Renee Martin, “A Child’s Right to be Gay: Addressing the Emotional Maltreatment of Queer Youth” (1996) 48 *Hastings L.J.* 167; see also Willoughby et al, “Victimization, Family Rejection, and Outcomes of Gay, Lesbian, and Bisexual Young People: The Role of Negative GLB Identity” (2010) 6:4 *Journal of GLBT Family Studies* 403. The McCreary Centre likewise found that queer youth in British Columbia felt less cared about by their families than heterosexual control groups: see McCreary Centre Society, *Not Yet Equal: The Health of Lesbian, Gay & Bisexual Youth in BC* (Vancouver: The McCreary Centre Society, 2007), online: < [http://mcs.bc.ca/pdf/not\\_yet\\_equal\\_web.pdf](http://mcs.bc.ca/pdf/not_yet_equal_web.pdf) > [“*Not Yet Equal*”] at 238. Young women may also face condemnation from families for being sexually active and threatening or negative messaging intended to pre-empt female sexuality: see, for example, Laura A. Barbour, *Seeking Authenticity: Young Nova Scotian Women’s Construction of Sexuality* (MA Thesis, Dalhousie University, 2007) [unpublished], at 139-144. Interestingly, while there lacks large scale research on family rejection or condemnation of young women for involvement in sexting, danah boyd reports one anecdote that emerged in qualitative interviews with American students of a young woman who was kicked out of her parents’ house after a sexual video she made for a male partner went viral online: see danah boyd, “Teen Sexting and Its Impact on the Tech Industry” (Lecture delivered at the Read Write Web 2WAY Conference, New York, NY, 13 June 2011), online: <<http://www.danah.org/papers/talks/2011/RWW2011.html>>.

acceptable to disregard their peers' rights. This, in turn, may impair young people's ability to recognize and to act with due regard for the rights of others. Socialization which effectively allows – or even encourages – young people to discriminate against peers on the basis of sex, gender, or sexual orientation is detrimental to a political community (in which today's youth will be tomorrow's active voters and participants) that extends equal rights to all citizens, regardless of these and other characteristics. I therefore believe that a state which guarantees liberal rights to all citizens has an interest in preventing public educational institutions from effectively disregarding these rights of sexual and gender minority youth and of young women.<sup>110</sup>

Finally, I believe that working within existing frameworks and discourses, while integrating critiques of earlier liberalisms where appropriate, can be a pragmatic strategy for advancing change. In particular, I argue that proactive education which teaches young persons to recognize their liberal rights – and the inherent dignity and equality of all,<sup>111</sup> regardless of gender or sexual orientation – is fully compatible with liberal democratic ideals, consistently applied. Canadian society has, over the last few decades, taken much-needed steps towards repudiating, or attempting to repudiate, the categories of sexism and heterosexism and enshrining equality in law – at least formally. It is important that we articulate these commitments clearly to the next generation through our education system. One could even argue that doing so is a natural outgrowth of the steps toward liberal equality that we have already taken. By contrast, a failure

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<sup>110</sup> Liberal feminist scholars have raised similar concerns about family structures which socialize boys and girls to accept sex inequality, sexist divisions of labour, and diminished career or public aspirations for young women, and have criticized such family structures for potentially preventing children from recognizing men's and women's entitlement to equal rights and citizenship: see e.g. Andreas Follesdale, "Exit, Choice and Loyalty: Religious liberty versus gender equality" (2005) 36:4 J of Social Philosophy 407 at 408, summarizing some of Susan Moller Okin's concerns; see also Susan Moller Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989) at 98-100; see also Linda McClain, "The Domain of Civic Virtue in a Good Society: Families, Schools and Sex Equality" in Baehr, ed, *supra* note 62.

<sup>111</sup> See e.g. *Vriend v. Alberta*, [1998] 1 SCR 493 at paras 30 and 67-68 for an example of the use of equality and dignity as values in Canadian human rights case law dealing with sexual orientation; see also *Egan v Canada*, [1995] 2 SCR 513 at page 543.

to deter or condemn the public expression or enactment of sexist and homophobic attitudes that violate the rights of community members is incompatible with a liberal commitment to equal dignity and participation. I would argue, as well, that allowing some community members to privately re-enact or re-establish illiberal attitudes which our society has formally and publically repudiated is equally incompatible with liberal values.<sup>112</sup> These assumptions and commitments underlie my approach to bullying and cyberbullying.

## 2.3 Terminology

In this section, I define several of the terms that I use throughout this thesis. In Part 2.3.1, I outline the parameters of gendered bullying as I understand this concept. In Part 2.3.2, I define several other terms that are important to understand in order to follow my reading of this problem.

### 2.3.1 Understanding gendered bullying and cyberbullying

My conception of gendered bullying draws on Elizabeth Meyer's feminist analysis of gendered harassment in schools.<sup>113</sup> Meyer defines gendered harassment as "any behaviour that [asserts] the boundaries of traditional gender norms: heterosexual masculinity and femininity."<sup>114</sup> In this definition she includes heterosexual sexual harassment, homophobic harassment and harassment for gender non-conformity.<sup>115</sup> These forms of harassment police gender

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<sup>112</sup> For a similar liberal feminist defense of hate crime legislation, see Amy R. Baehr, "A Feminist Liberal Approach to Hate Crime Legislation" in Baehr, ed, *supra* note 62.

<sup>113</sup> See Elizabeth Meyer, *Gender, Bullying and Harassment: Strategies to end sexism and homophobia in schools* (New York: Teachers College Press/Columbia University, 2009) ["*Gender, Bullying and Harassment*"]; see also Elizabeth Meyer, "A Feminist Reframing of Bullying and Harassment" (2009) 43:1 McGill Journal of Education 33 ["A Feminist Reframing"]; see also Elizabeth Meyer, *Gender and Sexual Diversity in Schools: An Introduction* (Dordrecht, Netherlands: Springer Science + Business Media, 2010) ["*Gender and Sexual Diversity*"].

<sup>114</sup> "A Feminist Reframing" at 34.

<sup>115</sup> *Ibid*; see also *Gender, Bullying and Harassment* at 8.

performance,<sup>116</sup> draw upon social constructs of masculinity and femininity,<sup>117</sup> and make non-conforming students particularly vulnerable to victimization.<sup>118</sup> Meyer's definition of gendered harassment resembles the British National Society for the Prevention of Cruelty to Children's definition of sexual bullying, which the NSPCC defines as "any bullying behaviour, whether physical or non-physical, that is based on a person's sexuality or gender. It is when sexuality or gender is used as a weapon by boys or girls towards other boys or girls - although it is more commonly directed at girls. It can be carried out to a person's face, behind their back or through the use of technology."<sup>119</sup> My understanding of gendered bullying draws on these two, similar, definitions. I understand gendered bullying and harassment to mean bullying or harassment in which perpetrators target victims on the basis of their sex, sexual orientation, gender, gender identity or gender non-conformity.

Meyer defines homophobic harassment as "any behavior that reinforces negative attitudes toward gay, lesbian and bisexual people",<sup>120</sup> including verbal slurs and mocking behaviour.<sup>121</sup> Heterosexual harassment ranges from the sexual objectification of women in men's or boys' discourse<sup>122</sup> to physical harassment or sexual assault.<sup>123</sup> Meyer argues that these forms of sexual harassment make up a public performance of normalized, hegemonic and heterosexual

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<sup>116</sup> *Ibid.* Compare Judith Butler's theory of gender as action or performance, in which individuals enact or "cite" gender norms: see e.g. Judith Butler, *Gender Trouble* (Routledge: New York, 1990).

<sup>117</sup> *Gender, Bullying and Harassment* at 8.

<sup>118</sup> See e.g. *Gender, Bullying and Harassment* at 4.

<sup>119</sup> National Society for the Prevention of Cruelty to Children, "Sexual Bullying in Schools" (2014), online: NSPCC <[http://www.nspcc.org.uk/Inform/research/questions/sexual\\_bullying\\_wda70106.html](http://www.nspcc.org.uk/Inform/research/questions/sexual_bullying_wda70106.html)>.

<sup>120</sup> *Gender, Bullying and Harassment* at 5.

<sup>121</sup> *Ibid.* I note that in this thesis, I use the phrases homophobic bullying to encompass behaviour that target gay, lesbian, bisexual, trans, queer, questioning or other sexual and gender minority students. While, in some instances, more specific terms such as transphobic or biphobic may be more exact, I use the phrase homophobic bullying as a catch-all, for the sake of concision.

<sup>122</sup> *Gender, Bullying and Harassment* at 9.

<sup>123</sup> *Ibid.*

masculinity, in which women are subordinated to men.<sup>124</sup> However, men may also be victims of sexual harassment, albeit “much of it homophobic in nature”.<sup>125</sup> Similarly, young women may victimize one another using sexualized or other insults.<sup>126</sup> Finally, Meyer remarks that harassment for gender nonconformity is an under-researched but prevalent phenomenon.<sup>127</sup> Harassment for gender nonconformity can affect a wide range of students. For example, boys who are simply interested in the arts and/or academics may be put down for being gay or “sissies”, while girls may face similar harassment if they appear too athletic or assertive.<sup>128</sup> As Meyer’s examples suggest, many students may, at some points, wish to engage in behaviour or develop interests that will not necessarily conform to their peers’ gender stereotypes. In such instances, many students may face harassment that is incompatible with liberal feminist values of equal dignity, agency and choice. Peer enforcement of rigid gender stereotypes can undermine the experiences and potential of a broad variety of students.

Meyer distinguishes harassment from bullying in several ways. First, she suggests that bullying generally means a situation in which perpetrators act intentionally to inflict harm.<sup>129</sup> The broader category of “harassment”, however, also includes unintentional behaviour.<sup>130</sup> Second, Meyer defines bullying as targeting a specific individual.<sup>131</sup> Harassment, by contrast, need not be directed at a specific victim.<sup>132</sup> Instead, harassment can be subtler and may target or demean whole groups in a more widespread manner (for example, when students use the word “gay” as a

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<sup>124</sup> *Gender, Bullying and Harassment* 9-10.

<sup>125</sup> *Gender, Bullying and Harassment* at 10.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Gender, Bullying and Harassment* 6-8

<sup>128</sup> *Gender, Bullying and Harassment* 7-9

<sup>129</sup> *Gender, Bullying and Harassment* at 2.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

generic slur without necessarily targeting a specific gay peer).<sup>133</sup> Bullying and harassment often overlap,<sup>134</sup> and I do not distinguish as strictly as Meyer does between bullying and harassment. Instead I use the terms “harassment” or “harassing” in place of bullying for stylistic reasons. I do, however, adopt Meyer’s broad conception of gendered harassment as in school harassment that seeks to police sexualities and gender performances, and that targets victims on the basis of their sex, sexual orientation, gender or gender identity.

### 2.3.2 Other definitions

“Bullying” is the exposure of an individual to repeated and negative peer actions.<sup>135</sup> The discourse around bullying owes a debt to psychologist Dan Olweus. Olweus’ definition emphasizes the repetition or consistency of the negative actions and the presence of a power imbalance, in which the victim cannot readily defend him/herself.<sup>136</sup> Although definitions of bullying vary somewhat, they typically invoke the following elements: the subjection of a victim to repeated, unwanted and deliberately harmful behaviour within the context of a power imbalance.<sup>137</sup> I use the term bullying to mean such a course of action. I also note that I use the terms bullying, face to face (or in person) bullying and traditional bullying to refer to in person conduct, in contrast with electronic, online or cyberbullying, below.

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<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.* For a similar statement comparing and contrasting the categories of bullying and harassment in Meyer’s understanding, see *Gender and Sexual Diversity* at 102. The definition of bullying invokes repeated and deliberate negative actions towards a specific victim: see *infra* note 126. Harassment, in Meyer’s understanding, may include intentional or unintentional negative actions that are nevertheless discriminatory in nature; these actions need not involve a specific victim: see *Gender and Sexual Diversity* 102. However, given the interrelation of these two concepts and my desire to minimize redundancy, I speak of both bullying and harassment.

<sup>135</sup> See Dan Olweus, “School Bullying: Development and Some Important Changes” (2013) 9:7 *Annual Review of Clinical Psychology* 51 at 55 [“*School Bullying: Development*”].

<sup>136</sup> *Ibid.*

<sup>137</sup> See *Respectful and Responsible Relationships* at 39; see also Shaheen Shariff, “Cyber Dilemmas in the New Millennium” (2005) 40:3 *McGill J of Education* 467 at 469 [“*Cyber Dilemmas*”].

The phrase “cyberbullying” currently does not have a consistent definition that is used across studies or legislative provisions dealing with the topic.<sup>138</sup> This fact no doubt contributes to the disparate findings regarding the prevalence of cyberbullying.<sup>139</sup> Instead, different stakeholders have proposed a number of different definitions of cyberbullying. The Standing Senate Committee on Human Rights cited the lack of a consistent definition as a difficulty for policy makers and researchers.<sup>140</sup> Divergent definitions can make it difficult to research and address this problem. For example, an overly broad definition of cyberbullying may cover too many conflicts or comments, and may expose young people who simply tease others or continue offline conflicts online to serious consequences.<sup>141</sup> An overly broad definition of cyberbullying could also suggest to young Canadians that adult policy makers are out of touch with the reality of their social lives, in which teasing or conflict sometimes occur online or via other communications technologies. Shaheen Shariff of McGill University has written about the importance of recognizing – and teaching young people to recognize – the lines between joking or teasing and harassment.<sup>142</sup> Education laws and policies cannot treat these distinct phenomena identically.

Consequently, technological neutrality is another consideration in drawing up a definition of cyberbullying. Some witnesses before the Senate Human Rights Committee suggested “electronic bullying” is preferable to cyberbullying because it encompasses more technologies

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<sup>138</sup> See e.g. *Cyberbullying Hurts* at 8-9.

<sup>139</sup> See, for example, Dan Olweus, “An overrated phenomenon?” *supra* note 45; contrast with Hinduja and Patchin, “Neither an epidemic nor a rarity”, *supra* note 45; see also “Cyber Dilemmas”, *supra* note 138 at 469, citing several earlier Canadian studies on the rates of cyberbullying.

<sup>140</sup> *Cyberbullying Hurts*, *supra* note 11 at 8-9.

<sup>141</sup> Students may not always be aware that their comments can inflict serious emotional harm on targets: see, for example, Shaheen Shariff, cited in *Cyberbullying Hurts* at 25-26.

<sup>142</sup> See, for example, Shaheen Shariff, “Definition”, online: Definetheline.ca, <<http://definetheline.ca/dtl/cyberbullying/definition/>>.

than “cyberbullying”, which may connote only activities taking place in cyberspace.<sup>143</sup> This is an important definitional consideration, as children may engage in bullying using forums other than Internet sites, for example, through text messages. It would also enable responses developed today to apply to future technologies.

These considerations are only some of the difficulties involved in defining cyberbullying. Before developing my own definition for the purposes of this thesis, I compile several definitions from the literature and examine common elements.

In one study, Faye Mishna and her colleagues define cyberbullying as “includ[ing] the use of e-mail, cell phones and Internet sites to threaten, harass, embarrass, exclude or damage reputations or friendships.”<sup>144</sup> Similarly, Shaheen Shariff has defined cyberbullying as “a covert form of verbal and written bullying [...] conveyed by adolescents and teens through electronic media such as cell-phones, web sites, web-cams, chat rooms and e-mail [...]”<sup>145</sup> Shariff provides several possible examples of cyberbullying, such as creating online profiles listing peers whom one dislikes, harassing other players in virtual reality games, or altering and/or redistributing intimate photographs of peers or romantic partners.<sup>146</sup>

Governments and Parliamentary task forces have also struggled to define cyberbullying. The Nova Scotia Task Force on cyberbullying defines cyberbullying as follows:<sup>147</sup>

“Cyberbullying, which is also referred to as electronic bullying or online bullying, occurs through the use of technology and includes spreading rumours,

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<sup>143</sup> See e.g. *Cyberbullying Hurts* at 12.

<sup>144</sup> Faye Mishna et al, “Real World Dangers in an Online Reality: A Qualitative Study Examining Online Relationships and Cyber Abuse” (2009) 33:2 *Social Work Research* 107 [“*Real World Dangers in an Online Reality*”] at 108.

<sup>145</sup> Shariff, “Cyber Dilemmas” at 469.

<sup>146</sup> *Ibid.*

<sup>147</sup> *Respectful and Responsible Relationships* 40.

making harmful comments and posting or circulating pictures or videos without permission. This can include sexting (sending nude or suggestive photos) and other less dramatic invasions of privacy. Cyberbullying can be done by means of a variety of forms of technology using social networks, text messaging, instant messaging, websites, email or other electronic media.”<sup>148</sup>

Ontario defines cyberbullying in relation to bullying. The *Accepting Schools Act* amended the *Education Act* to define bullying and cyberbullying thus:

“ “Bullying” means aggressive and typically repeated behaviour by a pupil where,

(a) the behaviour is intended by the pupil to have the effect of, or the pupil ought to know that the behaviour would be likely to have the effect of,

(i) causing harm, fear or distress to another individual, including physical, psychological, social or academic harm, harm to the individual’s reputation or harm to the individual’s property, or

(ii) creating a negative environment at a school for another individual, and

(b) the behaviour occurs in a context where there is a real or perceived power imbalance between the pupil and the individual based on factors such as size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, gender

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<sup>148</sup> *Ibid.*

identity, gender expression, race, disability or the receipt of special education;  
 (“intimidation”)<sup>149</sup>

[...]

(1.0.0.1) For the purposes of the definition of “bullying” in subsection (1), behaviour includes the use of any physical, verbal, electronic, written or other means.

#### Cyber-bullying

(1.0.0.2) For the purposes of the definition of “bullying” in subsection (1), bullying includes bullying by electronic means (commonly known as cyber-bullying), including,

(a) creating a web page or a blog in which the creator assumes the identity of another person;

(b) impersonating another person as the author of content or messages posted on the internet; and

(c) communicating material electronically to more than one individual or posting material on a website that may be accessed by one or more individuals.”

Finally, the Standing Senate Committee on Human Rights established parameters for the phrase “cyberbullying” by drawing elements common to several definitions which witnesses proposed in Committee. According to the Committee, cyberbullying is a form of bullying that

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<sup>149</sup> *Accepting Schools Act* s 1(1).

“involves the use of electronic devices (computers, cell phones and other electronic devices) to intimidate, embarrass, threaten or harass a person or group”;<sup>150</sup> cyberbullying also generally presupposes that “the bully has acted willfully to inflict harm”.<sup>151</sup>

I have discussed these possible definitions of cyberbullying in such depth partly because the lack of consistency is an important challenge in responding to this problem and also because these proposed definitions inform my own understanding of the term.

I define cyberbullying as a form of bullying or aggression in which harassing, hurtful, hateful or embarrassing comments are communicated through electronic media or devices, either directly to the victim or indirectly to other parties. I note that cyberbullying “exists along a continuum”;<sup>152</sup> although I believe this definition would apply to all instances of cyberbullying, instances are *not* necessarily equally damaging.<sup>153</sup> Responses to cyberbullying (and other forms of bullying) must allow for nuanced forms of intervention, with varying degrees of seriousness. Moreover, I will use the terms cyberbullying, electronic bullying and online bullying interchangeably.

It is necessary to establish a definition of sexting for the purposes of this thesis as well. Jane Bailey and Mouna Hanna define sexting as able to “[encompass] a variety of behaviour, modes of transmission, and content. Broadly defined, sexting may include sending, receiving, forwarding, and/or posting sexualized images and/or text through a variety of digital platforms

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<sup>150</sup> *Cyberbullying Hurts* at 10.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid* at 12-13.

<sup>153</sup> I note that I do not mean to create a hierarchy of victims. Ultimately, the severity of any incident will depend on the individual victim’s understanding and experience of it.

including text messaging, social networking sites, e-mail, and blogging.”<sup>154</sup> While sexting usually refers to the exchange of such images between peers,<sup>155</sup> this practice is not always consensual and is not always confined to peer groups. Peers who receive sext images may betray the sender’s confidence and transmit these images to a wider community; further, sexual abusers (including adult aggressors) may circulate images of their victims. Both these situations can lead the victims’ peers to join in with follow on harassment. Sexting, as I elaborate, can encompass consensual and non-consensual situations. I therefore use the phrase sexting to mean the exchange through digital technologies of typically self-created sexual images or messages depicting minors, who usually anticipate exchanging these images among one or more peers. I use the phrase sexting related bullying to refer to bullying, harassment and “slut shaming” (whether in school or online, or both) that follows in the wake of sexual images or videos that go “viral”, as well as the non-consensual distribution or redistribution of such images. Slut shaming, as the term implies, refers to the derogation of women and girls for allegedly being promiscuous.<sup>156</sup> These behaviour denigrate and blame women for engaging in sexual activity, sexting or even for being victims of sexual assault. It is difficult to divorce these concepts from one another.

Further, the phrase 2SLGBTQIA refers to two-spirited, lesbian, gay, bisexual, transgender, queer/questioning, intersex and asexual people and issues.<sup>157</sup> Because my research does not

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<sup>154</sup> Jane Bailey and Mouna Hanna, “Assessing the Gendered Dimensions of Sexting” (2011) 23:2 Can J of Women and L 405 at 409.

<sup>155</sup> Center for Missing and Exploited Children, “Child Molesters: A Behavioral Analysis” 119, online: <[http://www.missingkids.com/en\\_US/publications/NC70.pdf#page=13](http://www.missingkids.com/en_US/publications/NC70.pdf#page=13)>.

<sup>156</sup> See, for example, Lijia Gong and Alyna Hoffman, eds, “Sexting and Slut-Shaming: Why Prosecution of Teen Self-Sexters Harms Women” (2012) 13 *Geo. J. Gender & L.* 577 at 580. Gong and Hoffman describe slut shaming as “a term used to describe the act of criticizing or insulting individuals for their perceived sexual availability, behavior, or history as a way to “shame or degrade them” and note that slut shaming is most commonly directed at women and women’s expression of sexual desires.

<sup>157</sup> See e.g. Michael Schulman, “Generation LGBTQIA” *New York Times* (9 January 2013), online: The New York Times Company <[http://www.nytimes.com/2013/01/10/fashion/generation-lgbtqia.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/01/10/fashion/generation-lgbtqia.html?pagewanted=all&_r=0)>.

address intersexuality or asexuality, I use the term LGBTQ to refer to lesbian, gay, bisexual, transgender, queer or questioning persons. I also use the term queer as an umbrella term for LGBTQ persons. The phrase “queer” can encompass almost any combination of gender identity, sexual orientation and sexual practice outside the bounds of heterosexuality and binary male/female identities.<sup>158</sup>

I will refer to the whole school (or whole community) approach as a relatively effective model for bullying prevention. Whole school approaches are anti-bullying interventions that engage adults and impact various aspects of school and community life, including using questionnaires to assess the rate of bullying within the school, establishing clear and proactive school policies against bullying and enforcing these policies through consistent, non-violent consequences, modelling positive relationships, supervising students, particularly during unoccupied periods, and engaging students and parents in serious discussions of bullying.<sup>159</sup>

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<sup>158</sup> The advent of the term queer is related to the development of queer theory. Queer theory grows out of post-modernism and post-structuralism but emphasizes sexuality and gender: see e.g. Max H. Kirsch, *Queer Theory and Social Change* (New York: Routledge, 2000) at 33. Queer theory also calls into question the heterosexual/homosexual binary and the strict identity categories of male/female and heterosexual/homosexual evident in many forms of discourse, including some feminist discourse: see, for example, Eve Kosofsky Sedgwick, *Epistemology of the Closet* (Berkeley: University of California Press, 2008); see also Martha Fineman, “Introduction” in Martha Fineman et al, eds, *Feminist and Queer Legal Theory* (Farnham, United Kingdom: Ashgate Publishing Group, 2009) at 1-6; see also Kirsh at 34.

<sup>159</sup> See Ministry of Education, “A Whole-School Approach to Promoting a Safe, Inclusive, and Accepting School Climate”, (June 2013) online: <<http://www.edu.gov.on.ca/eng/policyfunding/memos/june2013/TipSheetFundingCAP.pdf>>; see also Violence Prevention Works, “Ten Tips for Administrators to Address Bullying in School” (2014), online: The Hazelden Foundation <[http://www.violencepreventionworks.org/public/bullying\\_tips\\_for\\_administrators.page](http://www.violencepreventionworks.org/public/bullying_tips_for_administrators.page)>; see also Dan Olweus, Dan Olweus, “Bully/victim problems in school: Facts and intervention” (1997) 12:4 *European Journal of Psychology of Education* 495; see also Natasha Pearce et al, “Current Evidence of Best Practice in Whole-School Bullying Intervention and Its Potential to Inform Cyberbullying Interventions” (2012) 21:1 *Australian Journal of Guidance and Counselling* 1; see also Stephen James Minton et al, “A whole school/community approach to preventing and countering bullying: the Erris anti-bullying initiative (2009-2011)” (2013) 32:2 *Irish Educational Studies* 233. Ttofi and Farrington likewise found that intensive, multi-pronged bullying reduction strategies tended to be the most effective, including strategies which comprised firm discipline, meetings and collaboration with parents, and increased playground supervision: see Maria M. Ttofi and David P. Farrington, “Effectiveness of school-based programs to reduce bullying: a systematic and meta-analytic review” (2011) 7 *J Exp Criminol* 27. These protective factors are similar to the ecological factors which fifth to eighth grade students themselves recommended for anti-bullying programming in a qualitative study by Charles Cunningham, Lesley J. Cunningham, Jenna Ratcliffe and Tracy Vaillancourt: see Cunningham et al, “A Qualitative Analysis of the Bullying Prevention and Intervention Recommendations of Students in Grades 5 to 8” (2010) 9 *Journal of School Violence* 321; see also

Whole school approaches have generally been found to be successful in reducing bullying, though some studies evaluating school attempts to implement whole school anti-bullying measures have shown mixed or insignificant results.<sup>160</sup> Natasha Pearce and her colleagues proposed adapting whole school intervention measures to cyberbullying and suggested that such an approach may be helpful in reducing online bullying, given the overlap between online and offline victimization.<sup>161</sup> I will encourage using and adapting similar principles to reduce gendered bullying and cyberbullying.

Finally, as my topic examines electronic bullying among high school students, I will use the terms “teenagers”, “youth” and “adolescents” as well as students, for stylistic reasons.<sup>162</sup>

## 2.4 Literature Review

Previous scholarship has explored many aspects of bullying, cyberbullying and sexting. In the following section, I canvas some of the trends within the research that are most relevant to my thesis. I note that because this thesis focuses on legislated responses to gendered bullying in Ontario, I have sought out and prioritized Canadian sources where appropriate. When Canadian sources are limited, I draw on American and international sources from law and other disciplines.

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Cunningham et al, “Modeling the Bullying Prevention Program Design Recommendations of Students From Grades Five to Eight: A Discrete Choice Conjoint Experiment” (2011) 37 *Aggressive Behaviour* 521.

<sup>160</sup> See Pearce et al, *ibid*, at 3-4 for a review of the literature assessing the effectiveness of whole school interventions; see also Susan Swearer et al, “What Can Be Done About School Bullying?: Linking Research to Educational Practice” (2010) 39:1 *Educational Researcher* 38, for a similar meta analysis of various anti-bullying programs and their effectiveness.

<sup>161</sup> See Pearce, *ibid*.

<sup>162</sup> This thesis examines gendered bullying and cyberbullying in school contexts, and does not address gendered bullying among young Canadians who are high school aged but not enrolled in a school program. Dropout rates in some Ontario school boards can easily reach 20% or more: see, for example, Robert S. Brown for the Toronto District School Board, “Making the Grade: The Grade 9 Cohort of Fall 2002”, online: <<http://www.tdsb.on.ca/Portals/0/AboutUs/Research/MakingTheGrade2002-07Overview.pdf>>, on efforts to reduce dropout rates in the TDSB between 2002 (at which time there was a 23% dropout rate) and 2007 (by which point the dropout rate had decreased to 20%).

## Legal scholarship

### *Bullying and cyberbullying*

A number of Canadian researchers have examined the legal duties on schools to ensure student safety. Eric Roher, for example, summarizes the common law and statutory duties and liabilities which schools face in peer bullying incidents in his 2003 article “When Push Comes to Shove: Bullying and Legal Liability in Schools”.<sup>163</sup> Similarly, Shaheen Shariff examined legal and ethical standards regarding bullying interventions in schools in her doctoral thesis.<sup>164</sup> Several Canadian legal scholars have also critiqued the application of “zero tolerance” approaches to bullying and other student discipline issues.<sup>165</sup> These policies have sometimes gained favour among educators and among legislators amending education statutes.<sup>166</sup> Zero tolerance discipline has, however, been criticized as excessively punitive and likely to impose severe and long-lasting stigma on young people.<sup>167</sup> Such policies have also been criticized for having a potentially disproportionate effect on racialized and other marginalized student groups.<sup>168</sup>

Some Canadian scholars have also looked at the emerging problem of cyberbullying and potential legal responses. Andrew Di Manno, for instance, considered the possibility of criminalizing online bullying.<sup>169</sup> Katherine Ng likewise considered responses to cyberbullying in Canada and particularly in Nova Scotia, and argued against the development of a distinct

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<sup>163</sup> Eric M. Roher, “When Push Comes to Shove: Bullying and Legal Liability in Schools” (2003) 12 *Educ & L J* 319.

<sup>164</sup> Shaheen Shariff, *A System on Trial: Identifying Legal Standards for Educational, Ethical and Legally Defensible Approaches to Bullying in Schools* (PhD Thesis, Simon Fraser University, 2003) [unpublished].

<sup>165</sup> See Nora M. Findlay, “Should There be Zero Tolerance for Zero Tolerance School Discipline Policies?” (2008) 18 *Educ & L J* 103; see also Roher, “Will the New Safe Schools Legislation Make Ontario Schools Safer?”, *supra* note 29; see also Janet E. Mosher, “Lessons in Access to Justice: Racialized Youths and Ontario’s Safe Schools” (2008) 46 *Osgoode Hall LJ* 807.

<sup>166</sup> See e.g. Findlay, *ibid.*

<sup>167</sup> See e.g. Findlay, *supra* note 165; see also Mosher, *supra* note 165.

<sup>168</sup> See Mosher, *supra* note 165.

<sup>169</sup> Andrew DiManno, *New Technologies and Criminal Law: Criminalizing Cyberbullying* (MA Thesis, Carleton University, 2009) [unpublished].

criminal provision to address this problem.<sup>170</sup> Further, several researchers have considered the unique legal issues that may arise as Canadian schools begin to face liability for online, off-campus incidents and may need to justify intervening to stop online student expression.<sup>171</sup> In this respect, the Canadian legal literature on cyberbullying so far mirrors the American literature on the same topic, which typically focuses on potential responses to this problem. Much of the American literature is narrowly focused and assesses approaches proposed by individual state legislatures to cyberbullying (and sometimes bullying in general) or advocates particular approaches for states to adopt in tackling these issues.<sup>172</sup> As well, concerns about the constitutional and/or freedom of speech implications inherent in legislating responses to cyberbullying have also attracted scholarly consideration. Much of the American legal literature on cyberbullying addresses the tension between disciplining harmful student speech and respecting students' rights to freedom of expression, in light of the "triumvirate" of seminal American cases on student free speech starting with *Tinker v Des Moines*.<sup>173</sup> As well, some

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<sup>170</sup> Katherine Ng, "Digital Dilemmas: Responding to Cyberbullying in Nova Scotia" (2012) 22 Educ & LJ 63.; see also Karen D. Levin, "La Cyberintimidation: un analyse juridique" (2010) 8 Can. J L & Tech 65.

<sup>171</sup> See, for example, Eric M. Roher, "Dealing with Off-School Conduct: Cyberbullying, Drug Dealing and Other Activities Outside of School Premises" (2012) 21 Educ. & L.J. 91; see also Shaheen Shariff and Leanne Jonny, "Cyber-libel and Cyber-bullying: Can Schools Protect Student Free Expression and Reputations in a Digital Environment?" (2007) 16:3 Education L J 107 ("Cyber-Libel"); see also "Cyber Dilemmas", *supra* note 138.

<sup>172</sup> See, for example, Bethan Noonan, "Crafting Legislation to Prevent Cyberbullying: The Use of Education, Reporting and Threshold Requirements" (2011) 27 J Contemp Health L & Pol'y 330; see also e.g. Gregory Ainsley, "Cyberbullying: The New Gender Harassment and How Legislatures Can Protect Free Speech While Ensuring That Laws Keep Pace With Technological Advances" (2011) 26 Wis J L Gender & Soc'y 313.

<sup>173</sup> See, for example Susan W. Brenner and Megan Rehberg, "'Kiddie Crime'? The Utility of Criminal Law in Controlling Cyberbullying" (2010) 8 First Amend L Rev 1; see also Stacy M. Chaffin, "The New Playground Bullies of Cyberspace: Online Peer Sexual Harassment" (2008) 51 Howard L J 773. The United States Supreme Court has considered the lines between school discipline and student freedom of expression in several prominent cases: see *Tinker v Des Moines*, 390 US 503 (1969), *Bethel School District No 403 et al v Fraser*, 478 US 675 (1986), *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), *Morse v Frederick*, 439 F. 3d 1114. In *Tinker*, the Court held that it was inappropriate for a school to discipline students for wearing black armbands to protest against the Vietnam War, as the wearing of the armbands did not cause any substantial interference with the work of the school, nor did their speech impinge upon the rights of other students. The Court held that students and school staff do not shed their right to free speech at the schoolhouse gate, though speech and conduct which cause substantial disorder or which interfere with the rights of other students are not immunized by the First Amendment. The Court subsequently revisited school speech in *Fraser* and narrowed the *Tinker* standard somewhat. The Court held that *Fraser's* school had acted appropriately in suspending *Fraser* for delivering a sexually explicit speech in a student

authors, in attempting to suggest legal instruments or policies to address cyberbullying, have drawn on the experiences of particularly vulnerable student groups, such as LGBTQ or disabled students<sup>174</sup> and have advocated measures to protect such student groups.<sup>175</sup>

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government campaign assembly and that the school's decision to ban Fraser from speaking at the graduation was also appropriate. Fraser's speech was found to have caused significant disruption during and after the assembly and to have made some students feel uncomfortable. The Court also held that one of the missions of public education is to teach students how to function in civil society, which includes understanding manners and the appropriate boundaries of civil discourse. *Hazelwood* further elaborated on student expression on school-sponsored projects. In *Hazelwood*, the Court upheld a principal's refusal to include several stories that were submitted to the school newspaper as part of a journalism class. Some stories discussed several students' experiences with pregnancy, sexual activity and birth control; another discussed the experiences of students with divorced parents. The Court distinguished *Tinker* and held that the school's decision did not violate the students' First Amendment rights, as schools need not tolerate speech that is at odds with their basic educational mission.<sup>173</sup> *Hazelwood* also clarified that school authorities have more latitude in regulating the content of school-sponsored projects than they do in limiting speech (such as the protests in *Tinker*) which merely takes place at school. These three decisions, *Tinker*, *Fraser* and *Hazelwood* form the so-called *Tinker* trilogy on student free speech in the United States. A fourth decision, *Morse v Frederick*, touches on the problem of discipline for off-campus speech. The Court found that Morse, the school principal, acted appropriately in suspending Frederick for displaying a banner with the phrase "Bong Hits 4 Jesus" outside the school. Frederick unfurled his banner across the street from the school as students and staff were leaving the campus to observe the relaying of the Olympic Torch as the procession passed the street where the school was located. The Supreme Court rejected Frederick's contention that the case was purportedly not a school speech case, and held that the school's participation in the Olympic procession was a school-sponsored event and that Frederick deliberately directed his banner at other students. These decisions offer parameters for disciplining student speech which may be relevant to educators, legislators and other policy-makers. However, I note that they are something of a digression from my assessment of Ontario's responses to gendered bullying, which is why I have not addressed them in greater detail. The 2005 British Columbia Court of Appeal case, *School District No. 44 (North Vancouver) v. Jubran*, 2005 BCCA 201, appears more relevant. *Jubran* addresses the question of whether a student who is not gay-identified could claim against a school for homophobic harassment endured at the hands of his peers. The BC Court of Appeal upheld a Human Rights Commission finding that the homophobic bullying Jubran suffered constituted sexual orientation discrimination even though Jubran identified as heterosexual. The Court of Appeal upheld the Commission's finding that Jubran's school was liable and that Jubran was entitled to damages. However, this thesis will not address in-depth questions of school board liability or of standing to bring a claim for discrimination when one may or may not clearly fit within a prohibited ground. I therefore will not cover the *Jubran* case in more depth.

<sup>174</sup> See e.g. Chaney Hall, "Sticks and Stones May Break My Bones But Will the Law Ever Protect Me? Ensuring Educational Access Through Federal Prohibition of Peer-on-Peer Harassment" (2009) 29 Child Legal Rts J 42. GLSEN (the Gay, Lesbian & Straight Education Network) also examines cyberbullying of LGBTQ youth in its report, *Out Online: see GLSEN et al, Out online: The experiences of lesbian, gay, bisexual and transgender youth on the Internet* (New York: GLSEN, 2013).

<sup>175</sup> See, for example, Bruce MacDougall and Paul Clarke's invaluable arguments in favour of gay-straight alliances in Canadian schools. MacDougall and Clarke address the issue from both an educational perspective and a legal one: see MacDougall and Clarke, "The Case for Gay-Straight Alliances (GSAs) in Canada's Public Schools: An Educational Perspective" (2012) 21 Educ & LJ 143 ["*An Educational Perspective*"] and MacDougall and Clarke, "The Case for Gay-Straight Alliances (GSAs) in Canada's Public Schools: A Legal Perspective" (2012) 21 Educ & LJ 197 ["*A Legal Perspective*"].

## *Sexting*

The teen practice of sexting (transmitting nude or sexual images through digital communications devices) has inspired significant legal controversy and considerable scholarship. Discussions of sexting are particularly common in the American literature. Many of these discussions critically consider the prosecution of minors who create, transmit or retransmit sexts under child pornography statutes.<sup>176</sup> Generally, scholars argue that child pornography statutes are overly harsh and blunt tools for addressing most teenage sexting, bullying or peer harassment.<sup>177</sup> Furthermore, in addition to critiquing the application of child pornography provisions to the distinct – and novel – problem of sexting, a number of articles have either proposed intermediate provisions that would allow states to address sexting through more minor offences or misdemeanours, or have commented on initiatives in certain states to develop new criminal offences (or other responses, such as educational initiatives) that are more appropriate to teenaged sexting.<sup>178</sup> In general, the American legal scholarship on sexting has documented and critiqued the sexting-as-child-pornography response. Some authors have nonetheless raised free speech concerns inherent in sexting<sup>179</sup> and/or classed sexting as a specific form of cyberbullying.<sup>180</sup> That view seems to have attracted relatively little attention, perhaps because scholarly and media commentary have so far been focused on the more egregious prosecutions of minors distributing sexts as child pornographers. Lijia Gong and Alina Hoffman consider the gendered dimensions of sexting and argue that overzealous prosecutions of young women who

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<sup>176</sup> See, for example, Nancy Willard, “Sexting and Youth: Achieving a Rational Response” (2010) 6:4 *Journal of Social Sciences* 542 (“Sexting and Youth”); see also Todd A. DeMitchell and Martha Parker Magagna, “Student Victims or Student Criminals?: The Bookends of Sexting in a Cyber World” (2011-2012) 10 *Cardozo Public Law, Policy & Ethics Journal* 1; Elizabeth C Eraker, “Stemming Sexting: Sensible Legal Approaches to Teenagers’ Exchange of Self-Produced Pornography” (2010) 25 *Berkeley Technology Law Journal* 555; see also Jamie L. Williams, “Teens, Sexts & Cyberspace: The Constitutional Implications of Current Sexting & Cyberbullying Laws” (2012) 20 *William & Mary Bill Rights Journal* 1017.

<sup>177</sup> See e.g. Willard, *ibid*; see also Eraker, *ibid*.

<sup>178</sup> See e.g. Eraker, *supra* note 177.

<sup>179</sup> Williams, *supra* note 177.

<sup>180</sup> See Willard, *supra* note 177.

may initially create these images can exacerbate victim-blaming attitudes and further marginalize vulnerable or victimized girls.<sup>181</sup>

I note that as of this writing, prosecutions of minors for sexting are more common in the United States than they are in Canada.<sup>182</sup> However, Canadian scholars have begun to consider the implications of sexting for Canadian youth as well as for policy makers and the legal system. For instance, Jane Bailey and Mouna Hanna have considered the gendered dimensions of sexting.<sup>183</sup> Feminist approaches to sexting are important because young men and young women seem to experience the practice differently, as I elaborate below.

### Non-legal scholarship

There is a vast body of scholarly literature on peer bullying among youth. Researchers have considered too many aspects of bullying for me to address in this thesis, including the extent of bully-victim problems in different schools and contexts,<sup>184</sup> and different intervention strategies.<sup>185</sup>

As cyberbullying becomes increasingly prevalent, researchers have also considered this type of bullying behaviour and its relation to “traditional” or in person bullying.<sup>186</sup> As well,

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<sup>181</sup> Lijia Gong and Alina Hoffman, eds, *supra* note 157.

<sup>182</sup> See, for example, Willard, *supra* note 177, at 545-546 for a review of several criminal prosecutions involving sexting in the US.

<sup>183</sup> See Bailey and Hanna, “Assessing the Gendered Dimensions of Sexting”, *supra* note 155.

<sup>184</sup> See, for example, Dan Olweus, “Bully/victim problems”, *supra* note 159; see also Olweus, “School Bullying: Development”, *supra* note 136; see also Joseph A. Dake et al, “The nature and extent of bullying at school” (2003) 73:5 *The Journal of School Health* 174.

<sup>185</sup> Leila Rahey and Wendy M. Craig, “Evaluation of An Ecological Program to Reduce Bullying in Schools” (2002) 36:4 *Canadian Journal of Counselling* 281; see also Faye Mishna, “An Overview of the Evidence on Bullying Prevention and Intervention Programs” (2008) 8:4 *Brief Treatment and Crisis Intervention* 327; David J. Smith et al, “Antibullying Interventions in Schools: Ingredients of Effective Programs” 28:4 *Canadian Journal of Education* 739; see also Pearce et al, *supra* note 160.

<sup>186</sup> See e.g. Danielle M. Law et al, “The changing face of bullying: An empirical comparison between traditional and internet bullying and victimization” (2012) 28 *Computers in Human Behavior* 226; see also “Cyberbullying: An overrated phenomenon?”, *supra* note 45 and “Cyberbullying: Neither an epidemic nor a rarity”, *supra* note 45, for a discussion of the relative frequency of cyberbullying versus in person bullying; see also Sonja Perren1 and Eveline

literature on cyberbullying has looked at the impact of online bullying on victims,<sup>187</sup> risk and protective factors,<sup>188</sup> shifting patterns from victim to aggressor,<sup>189</sup> and youth perceptions of cyberbullying and its prevalence.<sup>190</sup> Research has also considered the links between bullying, cyberbullying and suicide<sup>191</sup> and strategies for intervention in cyberbullying and cyber abuse.<sup>192</sup>

Finally, given my interest in gender and bullying, I have reviewed resources that address homophobic, sexist and other gendered forms of peer harassment. Some research examines gender differences in cyberbullying<sup>193</sup> and bullying behaviour.<sup>194</sup> Further, there is a significant body of research on the prevalence and impact of homophobic bullying as well as certain initiatives developed to address it.<sup>195</sup>

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Gutzwiller-Helfenfinger “Cyberbullying and traditional bullying in adolescence: Differential roles of moral disengagement, moral emotions, and moral values” (2012) 9:2 *European Journal of Developmental Psychology* 195.

<sup>187</sup> See e.g. Frithjof Staudé-Müller et al, “How stressful is online victimization? Effects of victim’s personality and properties of the incident” (2012) 9:2 *European Journal of Developmental Psychology* 260.

<sup>188</sup> Kostas A. Fanti et al, “A longitudinal study of cyberbullying: Examining risk and protective factors” (2012) 9:2 *European Journal of Developmental Psychology* 168; see also Faye Mishna et al, “Risk factors for involvement in cyber bullying: Victims, bullies and bully–victims” (2012) 34 *Children and Youth Services Review* 63.

<sup>189</sup> Danielle M. Law et al, “Are Cyberbullies really bullies? An investigation of reactive and proactive online aggression” (2012) 28 *Computers in Human Behavior* 664.

<sup>190</sup> See e.g. Faye Mishna et al, “Ongoing and online: Children and youth's perceptions of cyber bullying” (2009) 31 *Children and Youth Services Review* 222; see also Faye Mishna et al, “Real-World Dangers in an Online Reality”, *supra* note 145; see also Mishna et al, “Cyber Bullying Behaviors Among Middle and High School Students” (2010) 80:3 *American Journal of Orthopsychiatry* 362.

<sup>191</sup> See e.g. Hinduja and Patchin, “Bullying, Cyberbullying, and Suicide”, *supra* note 11.

<sup>192</sup> See e.g. Mishna et al, “Interventions to Prevent and Reduce Cyber Abuse of Youth: A Systematic Review” (2011) 21:1 *Research on Social Work Practice* 5; see also Robert Slonje et al, “The nature of cyberbullying, and strategies for prevention” (2013) 29 *Computers in Human Behavior* 26.

<sup>193</sup> See e.g. Patricia A. Snell and Elizabeth K. Englander, “Cyberbullying Victimization and Behaviors Among Girls: Applying Research Findings in the Field” (2010) 6:4 *Journal of Social Sciences* 510.

<sup>194</sup> See e.g. Kristin Carbone-Lopez et al, “Correlates and Consequences of Peer Victimization: Gender Differences in Direct and Indirect Forms of Bullying” (2010) 8:4 *Youth Violence and Juvenile Justice* 332.

<sup>195</sup> See Catherine Taylor and Tracey Peter for Egale Canada, *Every Class in Every School: Final Report on the First National Climate Survey on Homophobia, Biphobia and Transphobia in Canadian Schools* (Toronto: Egale Canada Human Rights Trust, 2011) [‘*Every Class in Every School*’] for a large-scale study of Canadian students’ experiences with homophobic bullying; see also e.g. Arnold H. Grossman et al, “Lesbian, Gay, Bisexual and Transgender Youth Talk about Experiencing and Coping with School Violence: A Qualitative Study” (2009) 6 *Journal of LGBT Youth* 24; see also Whitney W. Black et al, “Effects of “Safe School” Programs and Policies on the Social Climate for Sexual-Minority Youth: A Review of the Literature” (2012) 9 *Journal of LGBT Youth* 321; see also Stephen T. Russel et al, “Safe Schools Policy for LGBTQ Students” (2010) 24:4 *Sharing Child and Youth Development Knowledge*; see also Carol Goodenow et al, “School Support Groups, Other School Factors and the Safety of Sexual Minority Adolescents” (2006) 43:5 *Psychology in the Schools* 573; see also V. Paul Poteat and

My research has yielded little scholarship specifically addressing sexist bullying in schools. Neil Duncan has looked at bullying behaviour among and facing girls in the United Kingdom.<sup>196</sup> Similarly, some authors have written about bullying, competition and relationship difficulties among girls.<sup>197</sup> There is also some literature on the sexual harassment of young women (and young men) in school environments, though I have not found as much literature on this topic as I anticipated.<sup>198</sup> As mentioned previously, I have drawn extensively on Elizabeth Meyer's work.<sup>199</sup> Meyer carefully examines the interrelatedness of homophobic, transphobic and sexist harassment, as well as schools' liability in cases of peer harassment, and explores reasons why school staff may not or cannot always challenge these behaviour effectively, and strategies for intervention.

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Ian Rivers, "The use of homophobic language across bullying roles during adolescence" (2010) 31 *Journal of Applied Developmental Psychology* 166; see also Molly O'Shaughnessy et al, *Safe Place to Learn: Consequences of Harassment Based on Actual or Perceived Sexual Orientation and Gender Non-Conformity and Steps for Making Schools Safer: a Report of the California Safe Schools Coalition* (San Francisco: California Safe Schools Coalition, 2004); see also Faye Mishna et al, "Bullying of Lesbian and Gay Youth: A Qualitative Investigation" (2009) 39 *The British Journal of Social Work* 1598. Some Canadian scholars have also looked at the implementation of particular anti-homophobia programs in Canadian schools: see Tara Goldstein et al, "Anti-Homophobia Education in Public Schooling: A Canadian Case Study of Policy Implementation" (2007) 19: 3/4 *Journal of Gay and Lesbian Social Services* 47 and Catherine G. Taylor, "A Human Rights Approach to Stopping Homophobic Bullying in Schools" (2007) 19: 3/4 *Journal of Gay and Lesbian Social Services* 157.

<sup>196</sup> See Neil Duncan, "Bullying, Social Power and Heteronormativity: Girls' Constructions of Popularity" (2011) 25 *Children & Society* 306; see also Duncan, "Sexual Bullying in Secondary Schools" (1998) 16:2 *Pastoral Care* 27.

<sup>197</sup> See, for example, Rachel Simmons, *Odd Girl Out: The Hidden Culture of Aggression in Girls* (San Diego: Harcourt Books, 2011); Lyn Mikel Brown, *Girlfighting: Betrayal and Rejection Among Girls* (New York: New York University Press, 2003).

<sup>198</sup> See the American Association of University Women, *Hostile Hallways: Bullying, Teasing and Sexual Harassment in Schools* (New York: AAUW Educational Foundation, 2003), online: <<http://www.aauw.org/files/2013/02/hostile-hallways-bullying-teasing-and-sexual-harassment-in-school.pdf>>; see also e.g. Mark Totten and Perpetua Quigley, "Parental knowledge of child-reported bully-victim and sexual harassment problems in seven Canadian schools: implications for policy and program development" (2005), online: <<http://www.tottenandassociates.ca/wp-content/uploads/2012/01/parent-child-bully-paper-nov-6-05a.pdf>>; see also June Larkin, *Sexual Harassment: High School Girls Speak Out* (Toronto: Second Story Press, 1994).

<sup>199</sup> See *Gender, Bullying and Harassment*, *supra* note 114; see also Meyer, "A Feminist Reframing", *supra* note 114; see also Meyer, *Gender and Sexual Diversity*, *supra* note 114.

## *Sexting*

Sexting is a relatively new phenomenon. Several studies have examined the prevalence of sexting among young people.<sup>200</sup> Some researchers have also looked at young people's beliefs and values regarding sexting.<sup>201</sup> I have not encountered substantial research that examines the interconnectedness of youth sexting with other risks or other forms of victimization, such as sexual harassment and (cyber)bullying; however, I have encountered some small scale studies on the subject.<sup>202</sup> I also draw on Jessica Ringrose and her collaborators' extremely interesting, small scale qualitative study on the often oppressive and misogynist context in which young people sext and the particular risks which they face in several UK schools.<sup>203</sup>

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<sup>200</sup> See, for example, the Pew Internet and American Life Project, "Teens and Sexting" (15 December 2009), online: <<http://www.pewinternet.org/Reports/2009/Teens-and-Sexting/Overview.aspx>>; see also The National Campaign to Prevent Teen and Unplanned Pregnancy, "*Sex and Tech: Results from a Survey of Teens and Young Adults*", online: TheNationalCampaign.org, <<http://www.thenationalcampaign.org/sextech/>>." Jessica Ringrose cites several European studies on the prevalence of sexting among studies in Europe: see Jessica Ringrose et al, A qualitative study of children, young people and 'sexting': A report prepared for the NSPCC (2012) [*"A Qualitative Study"*], online: <[http://www.nspcc.org.uk/inform/resourcesforprofessionals/sexualabuse/sexting-research-report\\_wdf89269.pdf](http://www.nspcc.org.uk/inform/resourcesforprofessionals/sexualabuse/sexting-research-report_wdf89269.pdf)>.

<sup>201</sup> See C.J. Pascoe, "Resource and Risk: Youth Sexuality and New Media Use" (2011) 8 Sex Res Soc Policy 5; see also Kath Albury & Kate Crawford, "Sexting, consent and young people's ethics: Beyond Megan's Story" (2012) 26:3 Continuum: Journal of Media & Cultural Studies 463.

<sup>202</sup> See e.g. Bradford W. Reynolds et al, "The unintended consequences of digital technology: exploring the relationship between sexting and cybervictimization" (2013) 36:1 Journal of Crime and Justice 1.

<sup>203</sup> See Ringrose et al, *supra* note 201.

## Chapter Two: Bullying and Cyberbullying of Queer Youth

Jamie Hubley's struggle with homophobic bullying and torment is hardly an isolated case. As explored in my literature review, homophobic bullying in schools is a well-documented and all too frequent phenomenon.<sup>204</sup> A number of studies in the United States have monitored anti-LGBTQ prejudice among youth.<sup>205</sup> In 2011, Egale Canada conducted Canada's first national survey of school climates for sexual and gender minority students.<sup>206</sup> A similar McCreary Centre Society study of LGBTQ youth and their heterosexual counterparts in BC also offers valuable insights about social and health risks facing queer children.<sup>207</sup> Where Canadian materials are lacking or limited, I refer to international studies and surveys as appropriate. In the following section, I set out some trends in homophobic harassment and bullying in Canadian schools as well as in the online milieu. I will then look at protective factors as identified in the research, both in Canada and on the international scale. Finally, I assess how Ontario's new safe and accepting schools framework fares in attempting to curb homophobic bullying/cyberbullying and in implementing protective factors for queer children.

### 2.1 Scholarship on this Problem and its Remedies

#### Anti-gay bullying in schools

Sexual and gender minority youth are frequently victims of bullying and cyberbullying. Further, LGBTQ youth navigate school cultures where abusive homophobic slurs and behaviour

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<sup>204</sup> See e.g. *Gender, Bullying and Harassment* at 5-6.

<sup>205</sup> See, for example, Patricia Williams for Human Rights Watch, *Hatred in the Hallways* (New York: Human Rights Watch, 2001), online: <<http://www.hrw.org/reports/2001/uslgbt/toc.htm>>. The US-based Gay, Lesbian and Straight Education Network (GLSEN) likewise conducts regular surveys of school climates for queer youth; see the Gay, Lesbian & Straight Education Network, *The 2011 National School Climate Survey: The Experience of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* (New York: GLSEN, 2012), online: <<http://glsen.org/sites/default/files/2011%20National%20School%20Climate%20Survey%20Full%20Report.pdf>>.

<sup>206</sup> See *Every Class in Every School*, *supra* note 196.

<sup>207</sup> McCreary Centre Society, *Not Yet Equal*, *supra* note 110.

are pervasive, if sometimes undirected.<sup>208</sup> For example, according to Egale, 70.4% of LGBTQ and non-LGBTQ students reported hearing slurs such as “that’s so gay” on a daily basis, a figure which is consistent with youth surveys in the U.S. and the U.K as well.<sup>209</sup> Interestingly, Egale found that 58% of heterosexual students found anti-gay slurs upsetting, a figure which may suggest an important though untapped level of solidarity among youth.<sup>210</sup> Nevertheless, 50.8% of Egale’s LGBTQ respondents had suffered direct verbal harassment about their sexual orientation,<sup>211</sup> with 48.6% being verbally harassed over their perceived sexual orientation or gender identity.<sup>212</sup> Interestingly, Egale found that 8% and 8.5% of heterosexual youth were also harassed over their sexual orientation or perceived sexual orientation/gender identity, respectively.<sup>213</sup> The McCreary Centre Society found somewhat higher levels of verbal harassment against gay, lesbian and bisexual students: 61% of gay males, 66% of lesbian females and 48% and 54% (respectively) of bisexual males and females reported experiencing verbal harassment.<sup>214</sup>

Anti-LGBTQ harassment in schools does not stop at homophobic language or verbal harassment. According to Egale’s survey, more than one in five (20.8%) LGBTQ students experienced physical assaults due to their sexual orientation or gender identity.<sup>215</sup> Heterosexual students also sometimes face physical violence over their perceived sexual orientation, gender or gender identity, though at significantly lower rates than LGBTQ youth.<sup>216</sup> The McCreary Centre study reported similar findings regarding the victimization of sexual minority students. Gay and

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<sup>208</sup> See e.g. *Every Class in Every School* 47-48.

<sup>209</sup> *Ibid.*

<sup>210</sup> *Every Class in Every School* 74, 10.

<sup>211</sup> *Ibid* 58.

<sup>212</sup> *Ibid* 58.

<sup>213</sup> *Ibid.*

<sup>214</sup> *Not Yet Equal* 13.

<sup>215</sup> *Every Class in Every School* 63-64.

<sup>216</sup> *Ibid* 64.

lesbian youth were more likely than heterosexual youth to experience physical assaults, with 7% of gay males and 20% of lesbian females reporting being physically assaulted at school in the past year.<sup>217</sup> Bisexual youth were also common targets of physical harassment, with 28% of boys and 19% of girls reporting physical victimization.<sup>218</sup> Given these findings, it comes as no surprise that LGBTQ-identified children feel unsafe at school. Sixty four per cent of LGBTQ participants in Egale's survey reported feeling unsafe in everyday school environments.<sup>219</sup> Moreover, online and electronic communications technologies provide additional opportunities for perpetrators of homophobic (and other) harassment to harm their victims. Twenty seven per cent of Egale's LGBTQ respondents had homophobic lies and rumours spread about them via text messaging and/or the Internet, compared to 5.7% of non-LGBTQ students.<sup>220</sup> A recent American study by GLSEN (the Gay, Lesbian and Straight Education Network) found that queer-identified children (who tend to spend somewhat more time online than their heterosexual-identified peers<sup>221</sup>) felt less safe online and were bullied more frequently online, via text message or phone and in person, compared to their heterosexual counterparts.<sup>222</sup> The Internet can offer LGBTQ youth access to important resources and support.<sup>223</sup> However, the specter of cyberbullying and homophobic attacks online still looms large for queer children.

The effects of consistent abuse can be pernicious. Students may begin skipping school due to feeling unsafe, a practice which 30.2% of Egale's LGBTQ respondents reported.<sup>224</sup> That figure

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<sup>217</sup> *Not Yet Equal* 16.

<sup>218</sup> *Ibid.*

<sup>219</sup> *Every Class in Every School* 78. These numbers are similar to the McCreary Centre's findings, in which only 30% of gay boys and 29% of bisexual boys reported always feeling safe at school: see *Not Yet Equal* at 17. The McCreary Centre's results were comparable for bisexual girls (31% of whom reported always feeling safe at school) and were even worse for lesbian girls, with only 18% saying they always felt safe at school.

<sup>220</sup> *Every Class in Every School* 68-69.

<sup>221</sup> *Ibid* 5.

<sup>222</sup> *Ibid* 6-8.

<sup>223</sup> *Ibid* ix, x, 12-15.

<sup>224</sup> *Every Class in Every School* 89.

was considerably higher than the 11% of heterosexual students who reported skipping school because they felt unsafe – though that number is also alarming.<sup>225</sup> Once again, the McCreary Centre’s data is generally consistent with Egale’s: the McCreary Centre found that lesbian and bisexual girls and bisexual boys were more likely than heterosexual students to have skipped school within the past month.<sup>226</sup> In turn, both surveys found that sexual minority youth reported lower levels of school attachment than their sexual majority peers.<sup>227</sup> On average, LGBTQ students experienced higher levels of emotional distress, higher levels of suicidal ideation and more suicide attempts than non-LGBTQ students.<sup>228</sup> Not *all* of these troubles are the direct result of peer bullying or cyberbullying; however, Canadian schools present hostile environments for sexual and gender minority students. For LGBTQ children, hostility at school and among peer groups may compound rejection or perceived rejection within families: according to the McCreary Centre, queer youth felt less connected to their families and felt less care from their parents.<sup>229</sup> Students who lack understanding and support at home may, in turn, be particularly vulnerable to discriminatory school environments, and may be unable to pursue legal remedies against peer harassers or negligent school authorities.

Homophobic harassment undermines queer children’s access to education by making schools seem so unsafe that students may avoid them. Such harassment also undermines LGBTQ students’ equality and dignity, and may prevent queer youth from participating equally in educational opportunities along with their heterosexual peers. Fortunately, research has identified several protective factors that can make school environments safer and more welcoming for

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<sup>225</sup> *Ibid.*

<sup>226</sup> *Not Yet Equal* 17. Curiously, these findings did not indicate a significant difference in school attendance between gay male students and heterosexual students.

<sup>227</sup> See *Every Class in Every School* 94; see also *Not Yet Equal* 38.

<sup>228</sup> *Not Yet Equal* 29-31.

<sup>229</sup> *Ibid* 38.

LGBTQ youth – and more respectful of LGBTQ students’ right to equal dignity and participation. The following section canvases some of these factors.

### 2.1.2 Protective Factors

The literature on challenges facing LGBTQ students recommends several important protective factors which schools can implement to make school climates safer for queer youth. These protective factors may advance a liberal feminist project by encouraging peers and other members of school communities to respect and to act in accordance with the equality and equal dignity of LGBTQ students. They include inclusive enumerated anti-discrimination policies, in-school support groups for queer youth, staff sensitivity and intervention, and normalizing curricula/resources. Below, I review some of the data on these policies. I note that – once again – this section draws on Canadian resources where available as well as on international (primarily American) materials when Canadian data is limited or lacking.

#### *Inclusive and Enumerated Anti-Discrimination Policies for Schools*

Addressing homophobia explicitly in school bullying policies is an important step in protecting queer children. In Egale’s school climate survey, LGBTQ students from schools or school divisions with explicit anti-homophobia policies fared significantly better than their counterparts in schools that lacked comparable policies.<sup>230</sup> For example, students in schools with harassment/bullying policies that prohibited homophobia reported lower levels of homophobic harassment than students in schools with generic anti-bullying policies or none at all.<sup>231</sup> LGBTQ students in schools with explicit anti-homophobia policies also reported significantly lower levels of feeling unsafe in school environments,<sup>232</sup> greater willingness to inform staff of

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<sup>230</sup> See, for example, *Every Class in Every School* 18.

<sup>231</sup> *Ibid* 115.

<sup>232</sup> *Ibid* 119- 120.

homophobic incidents,<sup>233</sup> and more effective staff intervention.<sup>234</sup> These results are consistent with American findings. For example, a report of the California Safe Schools Coalition found that inclusive harassment policies were associated with lower levels of harassment based on sexual orientation or gender, greater school connectedness and greater perceptions of safety at school.<sup>235</sup> A Massachusetts study likewise found that school anti-bullying policies had a significant negative association with suicide attempts among LGB students.<sup>236</sup>

### *Gay-straight Alliances and Other Support Groups*

School-based support groups for sexual and gender minority youth are another helpful protective factor for LGBTQ students. A number of schools in the US and Canada have implemented such groups, which are often called gay-straight alliances or GSAs, though other names may be used. GSAs or other LGBTQ-positive campus groups are typically student-led initiatives with one or two faculty advisors.<sup>237</sup> These groups may educate members and other students about LGBTQ issues, challenge bullying and homophobia in the school environment, or simply provide a social network for members.<sup>238</sup> Further, because GSAs are typically open to students of all sexual orientations and gender identities, they can help foster a culture of openness, compassion and solidarity between sexual/gender minority and majority students.<sup>239</sup> At a minimum, the presence of a GSA sends the message that queer students have at least one safe and accepting group or network at school.

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<sup>233</sup> *Ibid* 118.

<sup>234</sup> *Ibid*.

<sup>235</sup> See O'Shaughnessy et al, *supra* note 196 at 18.

<sup>236</sup> See Goodenow et al, *supra* note 196 at 585. GLSEN reviews several additional studies on inclusive anti-bullying policies; see also Russell for GLSEN, *supra* note 196 at 8-10. This review of existing data suggests that inclusive anti-bullying policies enumerating sexual and gender minority youth as a 'protected class' are generally one among several important predictors of student well-being.

<sup>237</sup> See MacDougall and Clarke, "An Educational Perspective", *supra* note 176 at 151-152.

<sup>238</sup> *Ibid*.

<sup>239</sup> *Ibid*.

Research suggests that these groups have concrete positive effects for students. Egale, for instance, found that students in schools with GSAs were more likely to say their schools were supportive of LGBTQ people, more likely to be open with at least some peers about their sexuality and more likely to report that their schools were becoming less homophobic.<sup>240</sup> American literature also suggests important associations between the presence of a GSA at school and better outcomes for queer children. Carol Goodenow and her colleagues found a significant association between GSAs and greater perceptions of safety among LGB youth in Massachusetts schools.<sup>241</sup> Moreover, LGB students in schools with GSAs were less likely to suffer dating violence, to report threats or injuries at school, to skip school out of fear or to undertake multiple suicide attempts.<sup>242</sup> Similar research in California tends to confirm these benefits of GSAs. There, students in schools with GSAs reported safer school climates, higher levels of feeling safe at school and lower levels of homophobic harassment.<sup>243</sup> In this survey, GSA members were also less likely to be harassed due to their sexual orientation or gender, and were more likely to feel that their schools were safe for LGBTQ students.<sup>244</sup>

Despite the demonstrated benefits of GSAs, school communities do not always accept them. School systems, particularly those that are religious, often mount significant resistance to GSAs or other supports for marginalized sexual and gender minority youth. Religious schools in particular may feel that offering school-sanctioned safe spaces for queer or questioning youth contradicts common interpretations of religious teachings that condemn non-heterosexual sexualities.<sup>245</sup> Some school administrators may also be uncomfortable with discussing sexuality,

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<sup>240</sup> *Every Class in Every School* 128.

<sup>241</sup> Goodenow et al 580.

<sup>242</sup> *Ibid.*

<sup>243</sup> O'Shaughnessy et al at 20.

<sup>244</sup> *Ibid.*

<sup>245</sup> See e.g. MacDougall and Clarke, "An Educational Perspective" at 155.

especially minority sexualities, at school. Others may fear that conservative parents will create a backlash, or allege that having students openly discuss their sexuality would merely encourage bullies.<sup>246</sup> I note that the literature contradicts that claim: as stated above, at least some studies suggest that GSA members themselves report lower than usual levels of homophobic harassment.<sup>247</sup>

School authorities who oppose GSAs can compound rejection, hurt and frustration for marginalized or bullied students.<sup>248</sup> Indeed, it seems that Jamie Hubley faced this type of rejection among others at his school before his death.<sup>249</sup> School staff frustrated Jamie's ambition to start a GSA because they would not accept the title "gay-straight alliance" for the proposed group.<sup>250</sup> While schools may think that insisting on less 'controversial' titles, such as "rainbow alliances" or "human rights clubs", is a legitimate compromise between promoting harmony while still avoiding school-sanctioned discussions of sexuality, this is not the message sexual minority students receive. Instead, these "official closetings"<sup>251</sup> reinforce the pervasive message that LGBTQ children are not truly equal or welcome in their schools. Institutional resistance to

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<sup>246</sup> *Every Class in Every School* 129.

<sup>247</sup> O'Shaughnessy et al 20. Of course, some LGBTQ students (or allied heterosexual students) may be bullied because of their involvement with a GSA or may begin to suffer bullying (or more severe bullying) if they acknowledge their sexuality openly in the context of a queer-positive group. However, the research suggests that that is not necessarily the case and that GSAs do not inevitably "give bullies ideas". Admittedly, there may be several factors at work in the data I cite. For example, school administrators who support a GSA may be more likely to undertake additional, simultaneous initiatives to counter homophobia in schools, such as adopting and enforcing policies against homophobic bullying. The presence of a GSA combined with one or several other protective factors may be more powerful in countering homophobic bullying than a GSA would be alone. Conversely, school administrators who are not supportive of a GSA (and who offer students resistance and excuses) may be equally unlikely to implement other protective factors.

<sup>248</sup> See e.g. MacDougall and Clarke, "A Legal Perspective", *supra* note 176 at 206.

<sup>249</sup> MacDougall and Clarke, "An Educational Perspective" 147.

<sup>250</sup> *Ibid.*

<sup>251</sup> MacDougall and Clarke, "A Legal Perspective" 206.

supportive, positive discussions of LGBTQ issues also models and justifies the homophobic attitudes which students demonstrate through peer bullying and cyberbullying.<sup>252</sup>

### *Curricular and Educational Resources*

Another protective factor is curricular or educational resources. Sexual minority students fare better when LGBTQ issues are portrayed in a positive light in schools. Curricular changes may, admittedly, seem like an indirect way to combat victimization and to enhance school connectedness and other markers of well-being for LGBTQ children. However, studies demonstrate that curricular representation can be helpful for improving school climates. Egale found that LGBTQ children were better off when LGBTQ matters were addressed in their school curricula. These students were more likely to feel “like a real part of [the] school”, to feel that they were treated with equal respect, and to feel that their school communities are supportive of LGBTQ people and are becoming less homophobic over time.<sup>253</sup> Molly O’Shaughnessy et al found that California students who learned about LGBT issues in school reported lower levels of harassment based on sexual orientation and gender and higher levels of safety and fair treatment by staff.<sup>254</sup> California students who had resource people (peers or school staff) with whom they could discuss issues around sexual orientation or gender likewise reported greater feelings of safety and school connectedness.<sup>255</sup> Another California study also found higher levels of safety

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<sup>252</sup> See Elizabeth Meyer’s testimony before the Senate: Senate, *Proceedings of the Standing Senate Committee on Justice and Human Rights*, 41<sup>st</sup> Parl, 1<sup>st</sup> Sess, Issue 14 (4 June 2012).

<sup>253</sup> *Every Class in Every School* 123. Egale notes that nearly one quarter of students felt that the representation of LGBTQ people and issues in their schools was actually negative representation. When only students who were exposed to positive discussion of LGBTQ issues/people were counted, the statistical differences between students who benefited from curricular representation and those who did not were even more significant.

<sup>254</sup> O’Shaughnessy 22.

<sup>255</sup> O’Shaughnessy 21.

(among LGBTQ and non-LGBTQ students) and lower levels of harassment among students who learned about LGBTQ issues in their curricula.<sup>256</sup>

### *Staff Support and Intervention*

Finally, it is important for school staff to be sensitive to the needs of LGBTQ youth. Intervening in homophobic harassment is particularly important. American research suggests that students feel safer, report safer school climates and are less likely to experience harassment when teachers consistently intervene to stop homophobic comments and incidents.<sup>257</sup> Unfortunately, teachers do not always address discriminatory behaviour. American surveys have found that students generally perceive that teachers intervene less frequently in homophobic or gender-based incidents than they do in racist or sexist incidents.<sup>258</sup> Teachers and other school staff can also contribute to the problem by making inappropriate homophobic or gendered remarks themselves.<sup>259</sup>

Egale's data on Canadian schools is similar to American findings. About 1/3 of Canadian LGBTQ students reported that school staff never intervened in homophobic comments, as did 19% of non-LGBTQ students.<sup>260</sup> Most LGBTQ youth also agreed that teachers were ineffective in addressing homophobic harassment.<sup>261</sup> Only a quarter of LGBTQ youth said that staff intervened most of the time or always.<sup>262</sup>

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<sup>256</sup> S. Russell et al for the California Safe Schools Coalition, *LGBT Issues in the Curriculum Promotes School Safety* (San Francisco: California Safe Schools Coalition, 2006), online: <<http://www.casafeschools.org/FactSheet-curriculum.pdf>>.

<sup>257</sup> O'Shaughnessy 19.

<sup>258</sup> See Harris Interactive & GLSEN, 2005 and Kosciw et al., 2008, cited in Russell et al, *supra* note 196 at 10.

<sup>259</sup> *Ibid.*

<sup>260</sup> *Every Class in Every School* 110.

<sup>261</sup> *Ibid.*

<sup>262</sup> *Ibid* 50.

There are a variety of factors that impact staff members' willingness to challenge anti-LGBTQ bullying and cyberbullying. Elizabeth Meyer explores several of these factors in her research.<sup>263</sup> She discusses the formal and informal structures that affect teachers' willingness and ability to challenge gendered harassment. Formal structures can include official policies and procedures on topics such as bullying or equity and discrimination, curricular demands and workloads, and teacher training programs.<sup>264</sup> By contrast, informal structures can include social norms such as perceptions of administrators, interpersonal relationships, and community values.<sup>265</sup> In her interviews with teachers, Meyer found that teachers are often unclear as to whether schools have formal policies regarding gendered bullying and harassment, and unsure what the content of such policies may be.<sup>266</sup> Many teachers also felt that administrators did not support their efforts to discipline sexual orientation harassment (and sexual harassment), particularly verbal forms of harassment.<sup>267</sup> Meyer's interviewees likewise suggested that their workloads often made it difficult to intervene in students' behaviour. Finally, teachers said that their experiences in teacher training and professional development courses were typically unhelpful and unrelated to bullying and harassment – especially gendered bullying and harassment.<sup>268</sup>

Informal structures also play a significant role in undermining teachers' ability to challenge gendered harassment. For example, when administrators behave as if they do not value all students equally or take all forms of bullying equally seriously (as is sometimes the case with gendered harassment), it becomes increasingly difficult for individual teachers to combat

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<sup>263</sup> For an overview of teacher responses to homophobic and other gendered harassment, see *Gender, Bullying and Harassment* 23-37.

<sup>264</sup> *Ibid* 24.

<sup>265</sup> *Ibid* 28.

<sup>266</sup> *Ibid* 24-25.

<sup>267</sup> *Ibid* 26.

<sup>268</sup> *Ibid* 26-27.

discriminatory student conduct.<sup>269</sup> Similarly, progressive teachers may find that their colleagues are overwhelmed and/or apathetic – and therefore inconsistent in challenging student cruelty.<sup>270</sup> Sometimes administrators and/or faculty members may actually model cruel and discriminatory conduct themselves.<sup>271</sup> Peer pressure and inconsistent responses from colleagues can undermine school discipline, as can hostile parents.<sup>272</sup> Finally, the dominant socio-cultural values in schools can also influence school cultures – though Meyer found that even very different backgrounds and communities all contributed in different ways to sexist and heterosexist cultures.<sup>273</sup>

In conclusion, sexual and gender minority students (or students who are coded as belonging to sexual and gender minorities) face persistent victimization in school. Fortunately, there are ways to minimize this victimization. Research shows important associations between protective factors and greater student safety. Schools that are committed to improving conditions for sexual/gender minority youth can implement inclusive anti-bullying and anti-discrimination policies,<sup>274</sup> support GSAs or similar groups,<sup>275</sup> and develop normalizing curricula related to minority sexualities/gender identities.<sup>276</sup> As well, schools can impress upon staff the importance of intervening consistently in bullying (including sexual orientation/gender related bullying) and can support relevant professional development for teachers.<sup>277</sup>

Policy makers also have a role to play in creating safer and more inclusive schools that better respect the rights of all students, including LGBTQ youth, to equal dignity and participation.

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<sup>269</sup> *Ibid* 28-30.

<sup>270</sup> *Ibid* 30-32.

<sup>271</sup> See e.g. Elizabeth Meyer, “Gendered harassment in secondary schools: understanding teachers’(non) interventions” (2008) 20:6 *Gender and Education* 555 [“*Understanding Teachers’ (Non)Interventions*”] at 564.

<sup>272</sup> *Gender, Bullying and Harassment* at 35-36.

<sup>273</sup> *Ibid* 36-37.

<sup>274</sup> *Every Class in Every School* 18; see also O’Shaughnessy 18.

<sup>275</sup> *Every Class in Every School* 128; see also Goodenow 580; see also O’Shaughnessy 20.

<sup>276</sup> *Every Class in Every School* at 123; see also O’Shaughnessy 22.

<sup>277</sup> O’Shaughnessy 19.

Education statutes and policies can offer schools and school boards important guidance on keeping students safe. Legislation can likewise impose duties or obligations on educators. Ontario's recent *Safe and Accepting Schools Act* is the latest initiative in a series of changes to education law and policy that have sought to enhance student safety. In the following section, I outline some of the strengths and weaknesses of current Ontario law in protecting LGBTQ students.

## 2.2 How Successful is Ontario Law in this Regard?

The reforms enacted under the *Accepting Schools Act* are an important though imperfect attempt to improve the school lives of bullied youth, including sexual/gender minority youth. The newly reformed *Education Act* shows promise on several fronts, though it is less clear or silent with regard to other protective factors. In this section, I assess some of the strengths of the *Act* while raising questions about its weaknesses and omissions. I also look at province-wide education policies and policy memoranda that supplement the legislative materials, where appropriate.

### *Inclusive and enumerated anti-discrimination policies for schools*

The *Accepting Schools Act* amends the *Education Act* to recognize explicitly the importance of safe school climates for all students, including students belonging to vulnerable groups such as sexual and gender minorities. The preamble to the *Accepting Schools Act* states that “all students should feel safe at school and deserve a positive school climate that is inclusive and accepting, regardless of [...] sexual orientation, gender identity, gender expression”.<sup>278</sup> The Preamble also specifically states that students must be encouraged to take action to make schools

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<sup>278</sup> *Accepting Schools Act*, *supra* note 24, Preamble.

and communities more equitable for everyone, including LGBTQ individuals.<sup>279</sup> These are explicitly inclusive and progressive statements of government policy. Further, the new *Education Act* includes sexual orientation, gender, gender identity and gender expression as factors that can contribute to power imbalances within the context of bullying.<sup>280</sup> Section 169.1 of the *Education Act* likewise clarifies that it is a duty of school boards to promote positive school climates that safeguard and promote the wellbeing of all children, “including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability”.<sup>281</sup>

Moreover, the revised *Education Act* amends the standards of conduct which schools are expected to set for their students.<sup>282</sup> These provisions transform the government’s stated commitment to the equality of all students into concrete standards for individual schools. As I note above, s. 169.1(a.1) articulates the duty of school boards to promote positive climates for all students including LGBTQ youth.<sup>283</sup> Section 300.0.1 of the *Education Act* likewise states that preventing inappropriate behaviour including bullying, homophobia, transphobia and biphobia is one of several purposes of school discipline.<sup>284</sup> Section 302 articulates additional guidelines with respect to conduct and discipline within schools:

“302. [...]

(1) Every board shall establish policies and guidelines with respect to the conduct of persons in schools within the board’s jurisdiction and the policies

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<sup>279</sup> *Ibid.*

<sup>280</sup> *Education Act* 1.1.

<sup>281</sup> *Ibid* 169.1(a.1).

<sup>282</sup> *Ibid.*

<sup>283</sup> *Ibid.*

<sup>284</sup> *Ibid* s 300.0.1(2).

and guidelines must address such matters and include such requirements as the Minister may specify. [...]

(2) Every board shall establish policies and guidelines with respect to disciplining pupils, and the policies and guidelines must,

(a) be consistent with this Part and with those established by the Minister under section 301;

(b) address every matter described in clauses 301 (6) (a) to (h); and

(c) address any other matter and include any other requirement that the Minister may specify. 2012, c. 5, s. 11 (1). [...]"<sup>285</sup>

Section 301 authorizes the Minister of Education to establish a Code of Conduct for Ontario schools.<sup>286</sup> I note that this provision was brought in in 2000; however, the *Accepting Schools Act* amended subsection 301(6) to include gender-based and anti-LGBTQ violence.<sup>287</sup> In this respect, the school board discipline policies which boards must develop under s. 302(2)(b) must be consistent with s. 301(6)(a)(i)'s explicit prohibition of gender-based violence and homophobia, transphobia or biphobia.<sup>288</sup> The Minister may also require schools to submit their policies and guidelines developed under s. 302 and to implement any changes which the Minister requires.<sup>289</sup>

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<sup>285</sup> *Ibid* s 302.

<sup>286</sup> *Ibid* s 301.

<sup>287</sup> *Ibid* s 301(6)(a)(i).

<sup>288</sup> *Ibid* s 301(6)(a)(i).

<sup>289</sup> *Ibid* s 301(11).

Finally, in December 2012, the Ministry of Education released its Policy/Program Memorandum No. 128, containing the updated Code of Conduct for Ontario schools.<sup>290</sup> The Memorandum requires schools to update their internal policies and to make sure that their internal codes of conduct for school community members comply with the province-wide Code.<sup>291</sup> School boards and school principals must also inform all members of the school community of changes to their board/school codes.<sup>292</sup> The provincial Code of Conduct establishes standards of behaviour for all members of the school community, which boards and schools must import into local codes. The newly revised province-wide Code requires members of school communities to “respect and treat others fairly, regardless of, for example, race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, gender, sexual orientation, age, or disability [...]”<sup>293</sup>

These initiatives are a step forward in establishing province-wide anti-bullying and harassment policies that specifically protect LGBTQ youth. The government articulates its commitment to safeguarding queer children and their right to equality in the *Accepting Schools Act* and in the *Education Act* itself. One hopes that these top-down statements of government policy will have some positive influence on public opinion and will even make LGBTQ youth more aware of their own rights within Ontario society. Furthermore, Ontario’s legislators did not merely articulate an abstract commitment to equality for LGBTQ students. Instead, the reformed *Education Act* and the revised provincial Code of Conduct require that all school boards and schools prohibit homophobic behaviour explicitly at the local level as well. The *Education Act* clarifies that school discipline must extend to homophobic and related behaviour. Further, the

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<sup>290</sup> Ministry of Education, Policy/Program Memorandum No. 128 (2012) [“*Policy /Program Memorandum No. 128*”], online: Ontario Ministry of Education, <<http://www.edu.gov.on.ca/extra/eng/ppm/128.pdf>>.

<sup>291</sup> *Ibid* 3.

<sup>292</sup> *Ibid* 2.

<sup>293</sup> *Ibid* 4.

new Code of Conduct puts in place a provincial standard for conduct which mandates respectful behaviour towards all members of school communities, explicitly including LGBTQ children. The Minister of Education also reserves the right to require schools boards “to submit any policy or guideline established under section 302 to the Minister and to implement changes to the policy or guideline as directed by the Minister” in section 301(11) of the *Act*.<sup>294</sup> Although as of this writing I have been unable to determine whether the Minister of Education has verified that local school boards comply with the Ministerial Code of Conduct on matters such as discipline and school safety (including safety for LGBTQ youth and discipline for homophobic incidents), the Minister and delegates have concrete power to verify that all school board discipline and anti-bullying policies address the matters which they must address under the *Act*.

### *Gay straight alliances*

The reforms to Ontario’s *Education Act* are also helpful with regard to GSAs or similar organizations. Section 303.1(1) states that school boards must support students who wish to establish in-school organizations that promote a positive school climate, including activities or organizations promoting respect for people of all gender identities and sexual orientations.<sup>295</sup> Importantly, section 303.1(2) clarifies that school administrators cannot prohibit the use of the name “gay-straight alliance” or a similar title.<sup>296</sup>

Ontario legislators deserve credit for including this provision despite political controversy.<sup>297</sup> Section 303.1 takes a strong stand toward empowering LGBTQ youth and their allies who wish to support marginalized peers and/or educate the broader school community. Importantly, the

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<sup>294</sup> *Education Act* 301(11).

<sup>295</sup> *Education Act* 303.1(1)(d).

<sup>296</sup> *Ibid.*

<sup>297</sup> See e.g. MacDougall and Clarke, “An Educational Perspective” 158-160; see also, for example, Daniel Schwartz, “‘Gay-straight alliance’ name forces debate in Ontario” *CBC News* (30 May 2012), online: CBC <<http://www.cbc.ca/news/canada/gay-straight-alliance-name-forces-debate-in-ontario-1.1188147>>.

provision also addresses the discomfort which some school boards or administrations might have about allowing discussions of minority sexualities and explicit support groups for LGBTQ students. By prohibiting prejudicial interference with the names of student-led organizations, the *Act* can minimize student harassment or frustration by school authorities and make a stand against “official closetings”<sup>298</sup> of queer youth.

### *Staff support and Intervention*

Updates to Ontario education law and policy also go some way toward addressing the need for consistent staff intervention in bullying, including homophobic bullying. Several provisions of the new *Education Act* as amended by the *Accepting Schools Act* are relevant in this regard. Additionally, several Ontario education policy documents set groundwork for more consistent staff intervention in homophobic incidents (as well as other bullying incidents). I note that there is, of course, a wide gulf between the words of a statute or of a government document and the myriad ways individuals charged with enforcing them will respond to every day scenarios. However, recent statutory and policy directions are a positive step in articulating consistent duties for staff in Ontario schools.

First, as I discuss above, s. 301(6) of the *Education Act* requires the Minister of Education to establish consistent policies and standards for school discipline.<sup>299</sup> These standards oblige schools to identify homophobic behaviour as inappropriate for the purpose of school discipline.<sup>300</sup> School discipline guidelines must also provide for “appropriate consequences” for students,<sup>301</sup> including progressively more serious consequences for repeated behaviour;<sup>302</sup>

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<sup>298</sup> See MacDougall and Clarke, “A Legal Perspective” 206 on the importance of names for GSAs and other gay pride initiatives.

<sup>299</sup> *Education Act* s 301(6).

<sup>300</sup> *Ibid* s 301(6)(a)(i).

<sup>301</sup> *Ibid* s 301(6)(a)(ii).

likewise, school discipline policies must provide “early and ongoing intervention” in inappropriate behaviour.<sup>303</sup> Additionally, this section mandates training<sup>304</sup> and opportunities for teachers and other staff to “increase their ability to address inappropriate pupil behaviour”,<sup>305</sup> as well as procedures for responding to incidents.<sup>306</sup> Section 302 articulates the duty of school boards to establish local discipline policies. These local policies must, in turn, be consistent with the Ministerial guidelines in s. 301(6).<sup>307</sup> Taken together, these provisions articulate a consistent standard for school discipline: schools must intervene in serious incidents (including bullying in general and homophobic and other bias-motivated bullying in particular) early and in an ongoing manner. The *Act* also states that the Minister must develop policies mandating that school staff receive training on responding to student behaviour issues (again, including homophobic behaviour) that is consistent with the Ministerial guidelines in s. 301(6).<sup>308</sup>

New education policy documents and memoranda further enhance the duties incumbent on school staff to intervene in bullying. Policy/Program Memorandum No. 144 addresses bullying prevention and intervention.<sup>309</sup> This Memorandum reiterates and provides additional details on several relevant duties for school boards. School boards must establish policies and guidelines regarding bullying prevention and intervention according to s. 302(3.4) of the *Education Act*. Following s. 306(1) of the *Education Act*, principals must suspend students for bullying if the student has already served a suspension and if the student’s presence creates an unacceptable risk to others. Principals must also suspend students who bully if their actions are motivated by bias –

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<sup>302</sup> *Ibid* s 301(6)(a)(iii).

<sup>303</sup> *Ibid* s 301(6)(iv).

<sup>304</sup> *Ibid* s 301(6)(d).

<sup>305</sup> *Ibid* s 301(6)(c).

<sup>306</sup> *Ibid* s 301(e).

<sup>307</sup> *Ibid* s 302(2).

<sup>308</sup> *Ibid* s 301(7.1).

<sup>309</sup> Ministry of Education, Policy/Program Memorandum No. 144 (2012) [“*Policy/Program Memorandum No. 144*”], online: Ontario.ca, <<http://www.edu.gov.on.ca/extra/eng/ppm/144.pdf>>.

including bias on the basis of sexual orientation or gender, gender identity or gender expression.<sup>310</sup> School boards must use the definition of bullying in s. 1 of the *Education Act* which explicitly includes homophobic and transphobic behaviour (and that also incorporates cyberbullying).<sup>311</sup> Finally, the Memorandum addresses the need for school staff to intervene promptly when children bully, to take advantage of “teachable moments”<sup>312</sup> and to respond to all allegations of bullying in a timely, supportive and sensitive manner.<sup>313</sup>

The provincial *Code of Conduct*, contained in Policy/Program Memorandum No. 128, also addresses duties incumbent on various members of the school community including school staff and administrators. Principals must “[demonstrate] care for the school community and a commitment to academic excellence in a safe, inclusive, and accepting teaching and learning environment [and hold] everyone under their authority accountable for his or her behaviour and actions.”<sup>314</sup> Teachers and other staff must “maintain order in the school and [...] hold everyone to the highest standard of respectful and responsible behaviour.”<sup>315</sup> While these particular statements do not reference or prohibit anti-LGBTQ bullying specifically, they do encourage teachers, principals and other school staff to take bullying seriously and to intervene consistently.

These recent Ontario initiatives should address at least some of the formal and informal factors Meyer identifies as undermining staff intervention in gendered bullying. These improvements are particularly relevant to formal factors or structures; legislative duties are, arguably, the highest ranking formal duty or structure in education law (as in other fields). However, because Ontario education legislation requires school boards and schools to enact

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<sup>310</sup> Policy/Program Memorandum No. 144 2; see also *Education Act*, s 306(1).

<sup>311</sup> Policy/Program Memorandum No. 144 4.

<sup>312</sup> *Ibid* at 4-5.

<sup>313</sup> *Ibid* at 8.

<sup>314</sup> Policy/Program Memorandum No. 128, *supra* note 291 at 5.

<sup>315</sup> *Ibid* 6.

consistent discipline policies at the local level, the changes are also relevant to countering at least some informal structures – such as personal attitudes or biases which may make some school staff unwilling to treat all forms of bullying equally seriously.<sup>316</sup> As I note above, school discipline policies must include all students (including LGBTQ students) and all types of bullying equally (including physical, verbal and electronic bullying), as per the definitions in the *Education Act*.<sup>317</sup> Further, school board codes of conduct must also be consistent with the provincial *Code of Conduct*. Importantly, the province-wide *Code* explicitly protects LGBTQ students and other vulnerable student groups.<sup>318</sup> These expectations on schools and school boards could counter some staff or administrators’ disinclination to treat homophobic or other gendered bullying seriously, or some schools’ unwillingness to offer explicit protection to LGBTQ students in school policies.

Similarly, the *Education Act* requires school boards and schools to publicize their disciplinary policies as well as their bullying prevention and intervention plans.<sup>319</sup> The provincial Code of Conduct likewise imposes a duty on school boards to inform students, staff and all other school community members of revisions to the province-wide *Code of Conduct* and to local board codes.<sup>320</sup> Policy/Program Memorandum No. 144 reiterates that school boards must make their bullying prevention and intervention plans available on the board’s web site.<sup>321</sup> The duty to publicize discipline and anti-bullying policies should help to counter staff ignorance of the policies their schools may have in place, one concern which Meyer’s interviewees cite.<sup>322</sup> The

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<sup>316</sup> *Gender, Bullying and Harassment* 28-30.

<sup>317</sup> *Education Act* s 1.1; see also 1.0.0.1 and 1.0.0.2.

<sup>318</sup> Policy/Program Memorandum No. 128 at 4.

<sup>319</sup> See *Education Act* s 302(9.1); *Education Act* ss. 303(3-4).

<sup>320</sup> Policy/Program Memorandum No. 128 at 2.

<sup>321</sup> Policy/Program Memorandum No. 144 at 5.

<sup>322</sup> *Gender, Bullying and Harassment* 24-25.

new language in the *Education Act*<sup>323</sup> regarding professional development could also ensure that Ontario teachers and other school staff have more training and resources to help them intervene in bullying and encourage positive school climates.

Overall, these updates to Ontario's education laws take important steps toward consistency. One hopes that the duties on schools and boards (as expressed in the new *Education Act* and related documents) will compel schools to protect all students from all types of bullying. As well, the duty on schools and boards to inform all community members of new policies should ensure that teachers and staff are more aware of relevant rules, policies and procedures. However, some of Meyer's concerns may be more difficult if not impossible to address through legislative and policy changes alone. For example, workloads and other resources may still make it difficult for teachers to devote optimal time to student behaviour. Further, it remains to be seen just how effective Ontario's revised education policies will be in countering broad community values and in teaching students to respect the equal rights and dignity of all their peers, including sexual and gender minority peers. Although the *Act* articulates admirable and progressive standards, it is generally silent as to how it may be implemented and whether the Minister of Education may impose consequences of any kind for non-compliant schools or school officials. I revisit this concern below.

### *Curricular and Educational Resources*

The revised *Education Act* is somewhat weaker with respect to LGBTQ positive curricula. Section 8(29.1) of the *Education Act* authorizes the Minister to mandate that schools enact equity and inclusive education policies.<sup>324</sup> This section grounds a Ministerial requirement

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<sup>323</sup> See *Education Act* s 170(1).

<sup>324</sup> *Ibid* s 29.1.

that schools implement the equity and inclusive education strategy which Ontario began developing in 2009.<sup>325</sup> This strategy, in turn, grows out of early attempts to combat racism and to foster greater diversity in Ontario schools.<sup>326</sup> Ontario has developed this strategy in several documents. These include Policy/Program Memorandum No. 119, *Realizing the Promise of Diversity: Ontario's Equity and Inclusive Education Strategy*<sup>327</sup> and *Equity and Inclusive Education in Ontario Schools: Guidelines for Policy Development and Implementation*.<sup>328</sup> These policy documents encourage a variety of initiatives, including some that are relevant to school curricula. In the following paragraphs, I review how these statements may be relevant to LGBTQ positive curricular changes, and may enhance or expand on the *Education Act*.

Ontario's Ministry of Education recently updated Policy/Program Memorandum No. 119 to accord with changes to Ontario law.<sup>329</sup> Policy/Program Memorandum 119 reiterates that school board equity policies must address all prohibited grounds of discrimination under the Ontario Human Rights Code, including sex, sexual orientation, gender, gender identity and gender expression.<sup>330</sup> The Memorandum also states that schools must "embed the principles of equity and inclusive education in all their "[...] policies, programs, guidelines and practices."<sup>331</sup> Finally, this document directs schools to use inclusive curricula.<sup>332</sup> Inclusive curricula should represent

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<sup>325</sup> See: Ministry of Education, *Realizing the Promise of Diversity: Ontario's Equity and Inclusive Education Strategy* (2009), online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/eng/policyfunding/equity.html>> ["*Realizing the Promise of Diversity*"].

<sup>326</sup> See Ministry of Education, Policy/Program Memorandum No. 119 (2013) ["*Policy/Program Memorandum No. 119*"], online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/extra/eng/ppm/119.pdf>> at 2-3.

<sup>327</sup> *Realizing the Promise of Diversity*.

<sup>328</sup> Ministry of Education, *Equity and Inclusive Education in Ontario Schools: Guidelines for Policy Development and Implementation* (2009) ["*Equity and Inclusive Education*"], online: <<http://www.edu.gov.on.ca/eng/policyfunding/inclusiveguide.pdf>>.

<sup>329</sup> Policy/Program Memorandum No. 119 at 2-3.

<sup>330</sup> *Ibid* 3-4

<sup>331</sup> *Ibid* 5.

<sup>332</sup> *Ibid* 6.

and empower all students.<sup>333</sup> “Schools must provide students and staff with authentic and relevant opportunities to learn about diverse histories, cultures, and perspectives.”<sup>334</sup> Curricula should also avoid and/or break down stereotypes and other barriers to success for different communities.<sup>335</sup>

In 2009, Ontario’s Ministry of Education published the document *Realizing the Promise of Diversity: Ontario’s Equity and Inclusive Education Strategy*.<sup>336</sup> This publication explains Ontario’s equity and inclusive education strategy in greater detail, and calls on school boards and schools to implement equity strategies at the local level.<sup>337</sup> Boards and schools must also foster positive school climates.<sup>338</sup> The strategy explicitly notes that it is important to counter homophobia and other types of prejudice.<sup>339</sup> This document also acknowledges that it is crucial for marginalized students to see themselves reflected in the curriculum and to see that schools address difficult issues such as school safety and “gender-based violence, homophobia, sexual harassment, and inappropriate sexual behaviour”.<sup>340</sup> Further, in the *Strategy*, the Ontario Ministry of Education pledges to incorporate equity and inclusive education into the provincial curriculum.<sup>341</sup>

Ontario’s Ministry of Education provides additional information on its equity and inclusive education strategy in *Equity and Inclusive Education in Ontario Schools: Guidelines for Policy and Implementation*.<sup>342</sup> The *Guidelines* reiterate that schools boards must consider a variety of

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<sup>333</sup> *Ibid.*

<sup>334</sup> *Ibid.*

<sup>335</sup> *Ibid.*

<sup>336</sup> See *Realizing the Promise of Diversity*, supra note 326.

<sup>337</sup> *Ibid.* 11.

<sup>338</sup> *Ibid.*

<sup>339</sup> *Ibid.* at 7.

<sup>340</sup> *Ibid.* 15.

<sup>341</sup> *Ibid.* 18–19.

<sup>342</sup> *Equity and Inclusive Education*, supra note 329.

areas, such as leadership, community partnerships, school climates and curricula, in establishing equity and inclusive education policies.<sup>343</sup> The document emphasizes that schools should break down discriminatory barriers in curricula *and* should positively represent different groups and their contributions to Canada;<sup>344</sup> all students should see themselves reflected in what they are learning.<sup>345</sup> The *Guidelines* reiterate Ontario’s commitment to supporting “respect for and acceptance of diversity in Ontario’s schools” through curricula.<sup>346</sup> Finally, this guide articulates certain expectations for schools, as follows:

“Schools are expected to give students and staff authentic and relevant opportunities to learn about diverse histories, cultures, and perspectives. Lessons, projects, and related resources should allow students to see themselves reflected in the curriculum (e.g., providing information about women’s contributions to science and technology, about Black inventors, about Aboriginal beliefs and practices related to the environment; using texts written by gay/lesbian authors). Students need to feel engaged in and empowered by what they are learning, supported by the teachers and staff from whom they are learning, and welcomed in the environment in which they are learning”<sup>347</sup>

The *Guidelines* include a self-reflection document for teachers. This document directs teachers to present diversity in classroom materials, to use inclusive and respectful language, to

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<sup>343</sup> *Ibid* 13-14.

<sup>344</sup> *Ibid* 15-16.

<sup>345</sup> *Ibid*.

<sup>346</sup> *Ibid* 20.

<sup>347</sup> *Ibid* 21.

treat all students with equal respect and to improve personal biases that are incompatible with equity.<sup>348</sup>

In conclusion, Ontario's *Education Act* does not address the need for LGBTQ positive curricula directly. In that respect, Ontario law is weaker regarding curricular resources than other protective factors, such as GSAs. However, Ontario has a framework in place to encourage greater diversity in school curricula. Moreover, this framework does recognize explicitly the need to counter homophobia and to include LGBTQ-positive materials. The *Education Act* incorporates by reference the aspirations for curricula that form part of Ontario's equity and inclusive education strategy.<sup>349</sup> I note, as well, that the Ontario Curriculum Council is presently studying ways to enhance equity-related curricula.<sup>350</sup> However, there may nevertheless be room for improvement here. As of this writing, I have been unable to determine to what extent Ontario schools generally take concrete measures to include LGBTQ-positive resources in curricula, or to comply with the equity strategy's directions regarding curricular changes. Furthermore, a government pronouncement in the form of a legislative provision may be a more powerful statement than directions that take the form of memoranda or policy documents (though even legislative schemes may lack concrete measures to ensure compliance with the standards they articulate).

## Conclusions

Research on protective factors for LGBTQ youth suggests that a proactive and consistent approach is helpful. Rather than taking an exclusively reactive approach to incidents of homophobic bullying, schools should proactively cultivate a more accepting environment.

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<sup>348</sup> *Ibid* 58.

<sup>349</sup> *Education Act* s 29.1.

<sup>350</sup> Ministry of Education, "Safe and Accepting Schools" (2013), online: <<http://www.edu.gov.on.ca/eng/teachers/safeschools.html>>.

Schools can do this by, for example, supporting GSAs, developing sensitive curricula and regularly intervening to stop homophobic behaviour that do occur. New Ontario law and policy go some way towards encouraging if not mandating these initiatives. However, the *Education Act* is relatively silent regarding enforcement and monitoring. The *Act* gives the Minister of Education power to review school board codes of conduct and anti-bullying and discipline policies for compliance with the Minister's standards under section 301(11). However, the *Act* is otherwise silent about how its provisions are to be enforced; likewise, the *Act* does not establish a system for monitoring school boards and schools and ensuring that they adopt its provisions in a uniform way. It may be difficult if not impossible for the state to monitor how well individual schools and school staff do in implementing protective factors for LGBTQ youth and in reducing homophobic harassment. While I hope that the provincial government's stated commitment to the equality of all students and the advent of new legal duties will spur action and change attitudes at the level of individual schools, school staff and students, regrettably, this may not always be the case.<sup>351</sup> In the absence of follow up research to determine whether Ontario schools adopt the *Act's* measures and concrete government incentives for school boards to operationalize it (and consequences for school boards which fail to do so), the new *Education Act* may remain limited in its practical utility for LGBTQ students in Ontario, despite the progressive policies that it articulates

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<sup>351</sup> For example, one Mississauga student has gone public and threatened his Catholic school board with a legal challenge over the difficulties the board gave him in establishing a gay-straight alliance and addressing queer issues at his school. Christopher Karas has criticized his school for "trying to degrade" the new *Act* rather than fulfill their duties under it: see Jessica Smith Cross, "Mississauga student challenges Catholic board over Bill 13" *Metro* (17 December 2013), online: Free Daily News Group <<http://metronews.ca/news/toronto/887860/mississauga-student-challenges-catholic-board-over-compliance-with-bill-13>>; see also Jessica Smith Cross, "Christopher Karas accused school of thwarting attempts to set up GSA" *Metro* (20 June 2014), online: Free Daily News Group <<http://metronews.ca/features/pride-2014/1072190/christopher-karas-accused-his-school-of-thwarting-attempts-to-set-up-a-gay-straight-alliance>>.

## Chapter Three: Sexualized and sexting-related bullying of young women

So far, I have argued that homophobic bullying is a significant problem which undermines LGBTQ students' right to equal participation in educational opportunities. I have reviewed a number of protective factors which educators and policy makers can implement in order to help school communities become more respectful of queer students' inherent rights to respect and dignity, as well as to equal participation in school communities, and have assessed Ontario's attempts to implement these factors across its public education system. In this chapter, I explore the emerging problem of sexist harassment of young women in the wake of sexting incidents and argue that Ontario education law can – and should – be adapted to address these challenges as well.

### 3.1 Sexting related harassment: the scope of the problem

Young women face gendered bullying and harassment in schools and online. As I note in Chapter Two, there is a body of research on sexual harassment in school contexts in Canada and the United States.<sup>352</sup> However, bullying research itself may often neglect the overlap between bullying and sexual harassment.<sup>353</sup> The growing field of cyberbullying research appears similar. Some scholars, such as Shaheen Shariff,<sup>354</sup> have looked at the gendered dimensions of cyberbullying and other risks which young women face online and at young women's involvement in cyberbullying incidents. Nevertheless, there is a lack of large scale data on the

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<sup>352</sup> See *Gender, Bullying and Harassment* at 17-18; see also the American Association of University Women, *Hostile Hallways*, *supra* note 199; see also Totten and Quigley, *supra* note 199; see also Larkin, *supra* note 199.

<sup>353</sup> *Gender, Bullying and Harassment* at 16-17.

<sup>354</sup> See Shaheen Shariff & R. Gouin, R, "Cyber-dilemmas: Gendered hierarchies, new technologies and cyber-safety in schools" (2006) 31:1 *Atlantis - A Women's Studies Journal* 26 ["*Gendered Hierarchies*"]; see also Qing Li, "Cyberbullying in Schools: A Research of Gender Differences" (2006) 27 *School Psychology International* 157, reporting on a survey exploring differences between boys' and girls' experiences with cyberbullying; see also Amanda Burgess-Proctor et al, "Cyberbullying Research Summary Victimization of adolescent girls", online: Cyberbullying Research Center, <[http://www.cyberbullying.us/cyberbullying\\_girls\\_victimization.pdf](http://www.cyberbullying.us/cyberbullying_girls_victimization.pdf)>.

experiences young Canadian women have with specifically sexist cyberbullying. In this respect, sexist bullying and cyberbullying may not be as well documented as homophobic bullying.

In contrast, as explored in my literature review, sexting has inspired a significant body of scholarship. However, much of the literature focuses on the prosecution of sexting as a form of child pornography.<sup>355</sup> Only a few scholars have discussed sexting (or, at least, malicious sexting) as a form of bullying or cyberbullying,<sup>356</sup> or investigated potential links between sexting and bullying, cyberbullying, sexual harassment or other forms of harassment.<sup>357</sup> Nevertheless, the news media is replete with stories of sexualized, sexting-related (and, sometimes, sexual assault-related) bullying. Amanda Todd's and Rehtaeh Parsons' tragic stories are two examples of this larger pattern. Similar tragedies involving teen harassment and, too often, suicide are also evident around the world.<sup>358</sup>

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<sup>355</sup> See, for example, Eraker, *supra* note 177; see also Willard, "Sexting and Youth", *supra* note 177; see also Eric S. Latzer, "The Search for a Sensible Sexting Solution: A Call for Legislative Action" (2011) 41 Seton Hall L. Rev. 1039; see also Kimberlianne Podlas, "The Legal Epidemiology of the Teen Sexting Epidemic: How the Media Influenced a Legislative Outbreak" (2011) 12 Pitt J Tech L & Pol'y 1, arguing that media treatments of sexting as an "epidemic" strongly influenced legislative responses.

<sup>356</sup> See e.g. Willard, *ibid*. As well, some researchers have begun to investigate young people's experiences of sexting and their beliefs regarding the ethics and risks of the practice: see e.g. Pascoe, *supra* note 202; see also Albury and Crawford, *supra* note 202.

<sup>357</sup> Some smaller-scale research has looked at the relationship between sexting and other forms of online victimization: see Reysn et al, *supra* note 203. However, this study did not examine in depth the linkages between sexting and cyberbullying or in person bullying. Similarly, Jessica Ringrose et al examined the interconnectedness of sexting, sexual harassment and other malicious behaviour and attitudes in one in-depth small-scale study that was localized to several schools in England: see Ringrose et al, *supra* note 201.

<sup>358</sup> See, for example, two relevant American teen suicides, that of Hope Witsell and Jessica Logan. Hope Witsell, as I elaborate below, engaged in sexting on two occasions and was repeatedly bullied and sexually harassed by peers before taking her own life: see Andrew Meacham, "Sexting-related bullying cited in Hillsborough teen's suicide" *Tampa Bay Times* (27 November 2009), online: Tampa Bay Times <<http://www.tampabay.com/news/humaninterest/sexting-related-bullying-cited-in-hillsborough-teens-suicide/1054895>>. Jessica Logan likewise sent one or more sext images to her then-boyfriend, who redistributed the photos throughout their peer group: see Huffington Post Tech, "Jessica Logan Suicide: Parents Of Dead Teen Sue School, Friends Over Sexting Harassment" *Huffington Post* (May 25 2011), online: theHuffingtonPost.com, Inc <[http://www.huffingtonpost.com/2009/12/07/jessica-logan-suicide-par\\_n\\_382825.html](http://www.huffingtonpost.com/2009/12/07/jessica-logan-suicide-par_n_382825.html)>. Jessica's peers labelled her a "slut", a "whore" and a "skank" and subjected her to relentless harassment; she killed herself about a month after graduating high school. The suicide in Italy of teenager Carolina Picchio presents similar dimensions: see The Telegraph, "Italian prosecutor may put Facebook staff under investigation after girl's suicide over online 'bullying'" (26 May 2013), online: Telegraph Media Group Limited <<http://www.telegraph.co.uk/technology/facebook/10081689/Italian-prosecutor-may-put-Facebook-staff-under>

In this chapter, I examine these issues in greater detail. I assess the phenomenon of sexting-related bullying and “slut-shaming” that occurs in schools and online and probe the ways Ontario educators and policy makers could adapt current law to address the sexist bullying of girls in the wake of these incidents. I begin by offering some context to the sexting debate and to the risks inherent in this practice. Next, I briefly examine one response to sexting – prosecuting minors who sext as child pornographers. I argue that this approach is generally inappropriate, though it may be useful in some circumstances, and suggest that an education-focused approach, perhaps making use of standards and language in the *Education Act*, should precede and complement any criminal measures. Finally, I discuss three case studies in which teenage girls suffered bullying, slut shaming and harassment as a result of malicious sexting. I argue that a more proactive human rights-focused education could be helpful in addressing and preventing these tragedies.

The scope of this paper prevents me from addressing all the forms of sexual harassment, sexualized bullying or sexist insults that occur in schools – phenomena which are, sadly, so commonplace as to be almost normalized.<sup>359</sup> As well, given the lack of research on sexting related bullying and slut shaming, this chapter is speculative in nature and draws to a greater extent on small scale research, case studies and news stories. Finally, I reiterate that I use the phrase sexting related bullying to refer to bullying and harassment (whether in school or online, or both) that follows in the wake of sexual images or videos that have gone viral, as well as the non-consensual distribution or redistribution of such images. I note as well that while sexting often refers to the exchange of sexual images, text or video among peers, sexting related bullying and harassment can also follow incidents in which teenage girls are the victims of adult predators

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investigation-after-girls-suicide-over-online-bullying.html>. Carolina was subjected to harassment after several boys, including her ex-boyfriend, posted videos of her appearing drunk and disheveled in a bathroom at a party. I note, however, that these videos do not appear necessarily to be sexual or sexts.

<sup>359</sup> See e.g. Ringrose et al, *supra* note 201.

– or even abusers within their peer groups. In this section, I refer to “sexting” and “sexting related bullying/harassment” or “follow on harassment” to encompass all of these incidents. I also reiterate that I use slut shaming to refer to the denigration of women and girls for alleged promiscuity.<sup>360</sup>

Such interrelated concepts are difficult to divorce from one another. For example, peers may harass, bully and slut shame a girl for (allegedly) engaging in sexual activity and/or for appearing in sexts; this harassment may transpire online and in person. Sexting seems, however, to provide ample fodder for sexual harassment, bullying and cyberbullying because explicit digital images can go “viral” among large groups very easily. To that end, this section focuses on bullying, cyberbullying and harassment that follow in the wake of sexting incidents.

### 3.1.1 Context to the sexting debate

Digital communications technologies are an essential part of young people’s lives today.<sup>361</sup> In fact, the most common communication methods for contemporary teenagers are the Internet and cell phones.<sup>362</sup> Not surprisingly, teenagers explore flirting and sexuality through digital media and technologies. Estimates of the prevalence of sexting vary. However, studies suggest that a significant minority of teenagers have either sent or received sexts. A 2009 survey by the Pew Internet & American Life Project found that 4% of teenagers aged 12-17 had sent sexts, while 15% had received sext images of someone they know.<sup>363</sup> Another study of students from schools in the American Midwest found that 17% of students had engaged in sexting.<sup>364</sup>

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<sup>360</sup> See again Gong and Hoffman, *supra* note 157 at 580.

<sup>361</sup> See, for example, “Cyber Dilemmas”, *supra* note 138 at 469; see also Lenhart, cited in Joseph A. Dake et al, “Prevalence and Correlates of Sexting Behaviour in Adolescents” (2012) 7:1 American Journal of Sexuality Education 1 [“*Prevalence and Correlates*”] at 15.

<sup>362</sup> See Lenhart, cited in Joseph A. Dake et al, *ibid.*

<sup>363</sup> See the Pew Internet & American Life Project study *Teens and Sexting*, *supra* note 201.

<sup>364</sup> See Dake et al, “Prevalence and Correlates”, *supra* note 362 at 15.

The EU Kids Online Project suggests that teenagers in Europe sext at similar rates, with 4% of children 11-16 in the UK admitting to posting or sending sexts, and 12% saying that they viewed or received sext messages.<sup>365</sup> A further study by the US National Campaign to Prevent Teen and Unplanned Pregnancy found significantly higher rates of sexting, and reported that 21% of teenage girls and 18% of teenage boys have posted or sent sexts.<sup>366</sup>

As a liberal feminist, I do not think all sexting is an evil or a problem. Just as much teenage sexual experimentation is a consensual, normal and harmless part of growing up, some sexting may be equally consensual and harmless. Arguments that all sexting must be discouraged (even prosecuted) are extreme and counterproductive, and ignore young people's agency. Minors who have reached the age of consent may lawfully engage in consensual sex acts with partners from their peer group. One would think that seeing a nude image of a peer/partner may be equally acceptable in certain circumstances, provided that both parties consent to the taking, sharing and viewing of these images. I maintain that the prosecution of children who have sent or received sexts as child pornographers and sex offenders is typically a misguided and harmful practice and that proactive, systemic policies may better address the challenges of malicious sexting; I revisit these arguments below. Consensual sexting should not necessarily carry criminal penalties, certainly not any as severe, long-lasting and potentially devastating as child pornography charges.

Serious difficulties can arise, however, when one party makes or redistributes sexts without the consent of all parties involved. Further, sexting may be particularly risky because digital images can readily circulate to larger groups than anticipated. For example, a teenage girl

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<sup>365</sup> Ringrose et al, *supra* note 201.

<sup>366</sup> See *Sex and Tech: Results from a Survey of Teens and Young Adults*, *supra* note 201. I note that this study has been criticized as potentially unrepresentative: see Ringrose et al, *supra* note 201.

may willingly send sexts to her boyfriend within a consensual dating relationship. Upon a breakup, the jilted boyfriend may decide to humiliate or intimidate his ex by redistributing those images.<sup>367</sup> Conversely, even if this hypothetical boyfriend does not wish to harm his partner and tries to keep the sexts to himself, a malicious third party may nevertheless gain access to his phone and circulate the images.<sup>368</sup>

My example is gendered in that it portrays girls as most likely to self-represent in sexts and to become victims, while boys seem more likely to receive sexts and redistribute them maliciously. This may not always be the case, as boys also sext; boys and girls may even do so at similar rates.<sup>369</sup> Nevertheless, there are several reasons why girls may be at a higher risk of victimization in sexting. Researcher danah boyd has found in interviews with American teenagers that sexual pictures of girls generally spread faster and to more people than images of boys.<sup>370</sup> Both boys and girls will retransmit sexts involving female peers, but boys are unlikely to circulate images of other boys for fear that they will be perceived as gay.<sup>371</sup> boyd's research suggests that girls are at a higher risk of having their sexts go viral than boys are. Further, high-profile Canadian and American news stories involving viral sexting and related bullying have featured primarily female victims.<sup>372</sup>

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<sup>367</sup> This was a factor in the tragic case of American high school student Jessica Logan: see Huffington Post Tech, *supra* note 359.

<sup>368</sup> This appears to have been the case in the tragic suicide of Hope Witsell: see Meacham, *supra* note 359.

<sup>369</sup> See, for example, Pew Internet and American Life Project, "Teens and Sexting", *supra* note 201; see also danah boyd, "Teen Sexting and Its Impact on the Tech Industry", *supra* note 110.

<sup>370</sup> *Ibid.*

<sup>371</sup> *Ibid.*

<sup>372</sup> For some examples, see Fong on the Amanda Todd case, *supra* note 15; see also Gillis on the Rehtaeh Parson suicide, *supra* note 17; see also Meacham on Hope Witsell, *supra* note 359; see also Huffington Post Tech on Jessica Logan, *supra* note 359. These are only several examples of high-profile bullying and harassment cases involving female victims who had sexualized images of them redistributed. I note that as of this writing, the closest comparable case which involved a male victim was the Tyler Clementi suicide: see Ed Pilkington, "Tyler Clementi, student outed as gay on internet, jumps to his death" *The Guardian* (30 September 2010) online: Guardian Unlimited < <http://www.theguardian.com/world/2010/sep/30/tyler-clementi-gay-student-suicide>>. However, this

More generally, women and girls contend with sexist double standards that condemn them for being sexually active while typically giving men and boys a pass.<sup>373</sup> At the same time, women and girls face tremendous social pressure to be sexually attractive, alluring and available to men.<sup>374</sup> These pressures impact youth sexting behaviour as well. The National Campaign to Prevent Teen and Unplanned Pregnancy found that 51% of girls reported pressure from a boy as a reason to sext.<sup>375</sup> By contrast, only 18% of boys reported sexting in response to pressure from girls.<sup>376</sup> It seems that teenage girls face greater pressure to sext than their male peers, and greater risks if their sexts attract community scrutiny.<sup>377</sup>

Tragic suicides such as Amanda Todd and Rehtaeh Parsons in Canada and Hope Witsell and Jessica Logan in the United States have drawn significant media attention to the dangers of ‘sexting gone wrong’, or non-consensual sexting. In response, policy makers in Canada, the US and other jurisdictions have tried to address problematic sexting. In the next section, I discuss the treatment of sexting as a form of child pornography. I argue that this response is generally inappropriate, before moving on to suggest that an educational response may be more helpful and to explore how Ontario education law could ground such a strategy.

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incident involved an example of brutal homophobia and does not exactly fit the pattern of sexualized harassment and slut shaming in the wake of sexting incidents.

<sup>373</sup> See e.g. Ringrose et al, *supra* note 201 at 45-46.

<sup>374</sup> See Ringrose et al 45-46 and 47; see also Neil Duncan, *Bullying, Social Power and Heteronormativity: Girls’ Constructions of Popularity*, *supra* note 197 at 307 and 312, on the importance of sexual attractiveness to boys as a factor in female popularity.

<sup>375</sup> The National Campaign, “Sex and Tech”, *supra* note 201 at 4.

<sup>376</sup> *Ibid.* This study suggests that both boys and girls are subject to pressure from friends to sext (23% of girls and 24% of boys, respectively), though it does not specify whether friends in this context refers to same gender friends or co-ed groups of friends.

<sup>377</sup> See again Ringrose et al at 45-47; see also Bailey and Hanna, *supra* note 155 at 411-415 for an exploration of the greater sexting-related risks which young women seem to face when compared to young men.

### 3.1.2. The prosecution of sexting as child pornography

There are several reasons why prosecutors may charge teenagers who sext with offences such as producing, distributing or possessing child pornography. Teenage sexting may fall within the literal wording of criminal child pornography provisions. This is true in some American jurisdictions.<sup>378</sup> It also appears true in Canada. At present, there have been relatively few Canadian prosecutions of sexting-related activities.<sup>379</sup> However, s. 163.1(1) of Canada's *Criminal Code* defines child pornography as follows:

“[...] a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years [...]”<sup>380</sup>

Teen-created digital images that graphically depict minors' sexual activities or sex organs may fit within this definition.<sup>381</sup> Canada's Supreme Court has, however, developed some

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<sup>378</sup> See e.g. DeMitchell et al, *supra* note 177 for a review of several US cases involving prosecutions of teenagers involved in sexting for child pornography offenses.

<sup>379</sup> See Bailey and Mouna at 418. However, I note that child pornography charges have been laid against two teenagers involved in the Rehtaeh Parsons case: see The Canadian Press, “Delay in case of teens facing child pornography charges in Rehtaeh Parsons case” *CTV News* (9 January 2014), online: Bell Media, <<http://www.ctvnews.ca/canada/delay-in-case-of-teens-facing-child-pornography-charges-in-rehtaeh-parsons-case-1.1631911>>. Additionally, in January 2014, a 17 year old British Columbia girl was convicted of distributing child pornography and uttering threats: see Dirk Meissner, “Sexting B.C. teen found guilty of child pornography” *CTV News* (10 January 2014), online: Bell Media <<http://bc.ctvnews.ca/sexting-b-c-teen-found-guilty-of-child-pornography-1.1633678>>. The accused in this case had redistributed sext messages initially created by her boyfriend's former girlfriend; she also apparently threatened the other girl.

<sup>380</sup> *Criminal Code*, RSC 1985, c C-46 s 163(1).

exceptions to the child pornography provision. The *Sharpe* exceptions may protect some – though not all – sexting.<sup>382</sup> In *R v Sharpe*, the accused challenged the constitutionality of the child pornography provisions, alleging that they infringed his constitutional guarantee of freedom of expression.<sup>383</sup> The Supreme Court of Canada carved out two exceptions to the legislation. Section 163.1 of the *Criminal Code* should be read to exclude the possession of private expressive material (such as journals or drawings) created by one person alone and held for his or her private use.<sup>384</sup> The provision was also read to exclude personal and private auto-depictions of young people alone or of persons engaged in lawful sexual activity, provided the following conditions are met:

“The second category would protect auto-depictions, such as photographs taken by a child or adolescent of him- or herself alone, kept in strict privacy and intended for personal use only. It would also extend to protect the recording of lawful sexual activity, provided certain conditions were met. The person possessing the recording must have personally recorded or participated in the sexual activity in question. That activity must not be unlawful, thus ensuring the consent of all parties, and precluding the exploitation or abuse of children. All parties must also have consented to the creation of the record. The recording must be kept in strict privacy by the person in possession, and intended exclusively for private use by the creator and the persons depicted therein. Thus, for example, a teenage couple would not fall within the law’s purview for creating and keeping sexually explicit pictures featuring each other

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<sup>381</sup> See Bailey and Hanna at 426-431.

<sup>382</sup> *R v Sharpe*, 2001 SCC 2.

<sup>383</sup> *Ibid.*

<sup>384</sup> *Sharpe* para 115.

alone, or together engaged in lawful sexual activity, provided these pictures were created together and shared only with one another.”<sup>385</sup>

This exception would protect most teenaged couples who engage in lawful, consensual sexual activity and agree to “immortalize” their acts by sexting each other – and *only* each other.<sup>386</sup> The exception, however, does not apply to young people who intend to share their sexual images with others.<sup>387</sup> Such teens may be guilty of “transmit[ing], mak[ing] available, distribut[ing] [...] or possess[ing] for the purpose of transmission, making available, distribution” child pornography.<sup>388</sup> A literal reading of child pornography provisions in Canada and elsewhere could therefore encompass some teenage sexting.

Prosecutors can also invoke policy reasons to justify treating sexting as a form of child pornography. Those law makers who see sexting as inherently dangerous or wrong seek to stop it at any cost; crackdowns in the form of child pornography prosecutions, they believe, can deter this risky behaviour.<sup>389</sup> Further, prosecutors and commentators sometimes argue that teenagers’ self-created sexts can serve the same functions as other child pornography.<sup>390</sup> Sext images can

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<sup>385</sup> *Sharpe* para 116.

<sup>386</sup> See also Bailey and Hanna 426-428.

<sup>387</sup> *Ibid.* Some teenagers who “sext” may be able to demonstrate the requisite intention to keep the images private within their romantic relationship: see the Florida case *AH v. State*, 949 So 2d 234 (Fl Ct App 2007), in which a teenage girl was convicted of creating and distributing child pornography even though she and her boyfriend intended to keep images depicting their sexual activity private. This fact scenario may have fared differently in Canada: see Bailey and Hanna at 428. However, some teenagers who sext intend to show these images to others. Boys may collect sexual images of female peers and display their ‘collections’ to male friends as a status symbol: see Ringrose et al at 54. Teenagers may also send sexts to peers or post sexual images online in hopes of attracting a mate or achieving a level of fame: see again Meacham on the Hope Witsell incident, *supra* note 359. It seems that Hope initially sent sext images to a boy on whom she had a crush. Teenagers, particularly young women, may also hope to achieve other goals by promoting sexualized images of themselves to audiences: danah boyd writes about one student she interviewed who hoped to break into the modeling industry by making public a highly sexualized Myspace profile; see boyd, *supra* note 110.

<sup>388</sup> *Criminal Code* s 163.1(3).

<sup>389</sup> See e.g. Bailey and Hanna at 415-417 on approaches that US educators, prosecutors, police and commentators have suggested to discourage sexting.

<sup>390</sup> See *AH v State*, *supra* note 388; see also Dena Sacco et al, “Sexting: Youth Practices and Legal Implications” (2010) Berkman Ctr for Internet & Soc’t at Harvard Univ, online:

depict minors nude and/or in graphic sexual situations; adults who seek out child pornography could acquire these images, and benefit from teens' indiscretions, or willingness to betray their peers' confidence. States may therefore allege an interest in ensuring that sexual images of teenagers are not created in the first place.<sup>391</sup> Finally, child pornography charges may sometimes be helpful (or appear helpful) in addressing malicious sexting. Many jurisdictions have not yet adopted laws that specifically address cyberbullying or the malicious use of sexts.<sup>392</sup> Child pornography provisions may sometimes seem like the only option to address wrongdoing.<sup>393</sup>

However, there are serious problems with this approach to sexting. Convictions under child pornography provisions generally carry significant jail time.<sup>394</sup> In Canada, for example, persons convicted of making or distributing child pornography are liable to a minimum one year prison sentence on indictment, or a minimum term of six months on summary conviction.<sup>395</sup> Possessors of child pornography are liable to a minimum of six months in prison on indictment.<sup>396</sup> These minimum terms seem needlessly harsh for teenagers who show off their

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<[http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Sacco\\_Argudin\\_Maguire\\_Tallon\\_Sexting\\_Jun2010.pdf](http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Sacco_Argudin_Maguire_Tallon_Sexting_Jun2010.pdf)> at 27.

<sup>391</sup> See *AH*, *supra* note 388.

<sup>392</sup> See e.g. Maryam F. Mujahid, "Romeo and Juliet: A Tragedy of Love by Text: Why Targeted Penalties That Offer Front-end Severity and Backend Leniency Are Necessary to Remedy the Teenage Mass-Sexting Dilemma" (2012) 55 *Howard L.J.* 173 at 193-196 for an overview of some American states that *have* adopted or proposed more tailored sexting provisions.

<sup>393</sup> This appears to be the case following Rehtaeh Parsons' suicide. Rehtaeh alleged that four boys sexually assaulted her at a house party in November 2011; peers circulated images of the assault and bullied Rehtaeh over them. However, police closed their initial investigation into the sexual assault because they believed there was insufficient evidence, and claimed that they could not determine who had begun the spread of the photo. After Rehtaeh's April 2013 suicide, police reopened the case and laid charges against two boys for circulating child pornography: see Tu Thanh Ha, "Police arrest two in Rehtaeh Parsons bullying suicide" *The Globe and Mail* (8 August 2013), online: *The Globe and Mail*, < <http://www.theglobeandmail.com/news/national/two-arrests-made-in-rehtaeh-parsons-case/article13655110/>>; see also CBC News, "Rehtaeh Parsons suspects in court to face child porn charges" *CBC News Nova Scotia* (15 August 2013), online: *CBC*, < <http://www.cbc.ca/news/canada/nova-scotia/story/2013/08/15/ns-rehtaeh-parsons-accused-appearance.html>>.

<sup>394</sup> See Sacco et al, *supra* note 391 at 11-12.

<sup>395</sup> *Criminal Code*, s 163.1(2)-(3).

<sup>396</sup> *Criminal Code*, s 163.1(4).

own bodies to their peers, or who wish to brag about their sexual exploits.<sup>397</sup> Furthermore, a teenager who has been convicted of producing, possessing or distributing child pornography may have to register as a sex offender for years to come.<sup>398</sup>

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<sup>397</sup> Criminal sanctions for adolescent sexting, particularly viral sexting, may mesh uncomfortably with the principles and objectives of sentencing, as stated in section 718 of the *Criminal Code* and section 38 of the *Youth Criminal Justice Act*. The *Criminal Code* addresses several objectives and principles of sentencing. Section 718 of the *Code* lists the following objectives of sentencing: “to denounce unlawful conduct; (b) to deter the offender and other persons from committing offences; (c) to separate offenders from society, where necessary; (d) to assist in rehabilitating offenders; (e) to provide reparations for harm done to victims or to the community; and (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community”. The *Youth Criminal Justice Act* is similar in its principles and objectives. Although the *Youth Criminal Justice Act* emphasizes rehabilitation and reintegration into society (see *Youth Criminal Justice Act*, SC 2002 c 1, s 38(1)) and the reduced culpability of young offenders (see s 3(1)(b)), it sets out several principles and objectives of sentencing that are similar to adult sentencing principles under the *Criminal Code*. The *Youth Criminal Justice Act* states at s 38(1) that the purpose of sentencing “is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society”. The *Act* states further that courts imposing youth sentences on young persons shall determine the sentence in accordance with the principles in s 3 and 38(2) of the *Act*. Section 38(2) emphasizes that youth sentences must not result in greater punishment than would be appropriate “for an adult who has been convicted of the same offence committed in similar circumstances”; that the sentence must be similar to sentences imposed in the region for the same offence on similar young persons; that the sentence “must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence”; and that all available sanctions other than custody “that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons”. The *Act* also requires that sentences be “the least restrictive sentence that is capable of achieving the purpose set out in subsection (1)”; that sentences be most likely to rehabilitate the young person and reintegrate him or her into society; and that sentences must “promote a sense of responsibility in the young person, and acknowledgement of the harm done to victims and the community”. Finally, section 38(2)(f) of the *Act* also authorizes courts to consider the objectives of denouncing unlawful conduct and deterring the young person from committing offences.

The principles in the *Criminal Code* and the *Youth Criminal Justice Act* are relevant to prospective uses of criminal law to counter sexting or, specifically, malicious or non-consensual sexting. First, the adoption of criminal sanctions for distributing sext images or messages could serve to denounce this conduct, in accordance with section 718(a) of the *Code* and section 38(2)(f) of the *Act*. However, denouncing as unlawful the initial and consensual creation of any sext images could effectively denounce as criminal consensual sexual exploration. Narrower proposed offenses that would apply only to the non-consensual distribution of intimate images are more appropriate, as it is this non-consensual (and potentially harmful) conduct which should be denounced, rather than all sexting. Further, using child pornography provisions to address malicious sexting, and denouncing individuals (often youth) who may betray, harass and/or bully their peers by using such images as child pornographers, seems extreme. While denouncing the non-consensual redistribution of sexts can be an appropriate goal for criminal sanctions, more tailored provisions, such as that proposed in C-13 (the Bill’s other faults notwithstanding), may serve this purpose without labeling malicious “sexters” child pornographers. Second, the objective of deterrence in sentencing under the *Code* includes both specific deterrence (i.e., deterring the offender in question from re-offending) and general deterrence (warning the community not to commit similar illegal acts); section 38(f) of the *Act* refers only to specific deterrence. The effectiveness of criminal sanctions as a deterrent to adolescent offenders has been called into question (see e.g. Carla Cesaroni and Nicholas Bala, “Deterrence as a Principle of Youth Sentencing: No Effect on Youth, but a Significant Effect on Judges” (2008) 34 *Queen’s LJ* 447, discussing the applicability of deterrence as a sentencing principle in Canada’s young offenders legislation, and concluding from social science research that the severity of punishments under criminal law has little to no deterrent effect on young offenders). It is unclear the extent to which the presence of criminal sanctions for malicious sexting (either through using child pornography provisions, or through the development of new offences) would achieve either specific or general deterrence.

Additionally, teen sexting does not fall within the intended purpose or the policy reasoning behind most child pornography provisions.<sup>399</sup> Child pornography provisions seek to protect children from the harms of sexual abuse.<sup>400</sup> They were unlikely to have been intended to prevent minors from exploring their own sexuality. The prosecution of sexting is particularly alarming because it can allow overzealous prosecutors to charge children who commit victimless acts, such as taking semi-nude photos of themselves as a joke or as a means of exploring their own developing bodies.<sup>401</sup> In such cases, child pornography provisions can be used to harm minors rather than protect them. These misuses of child pornography laws raise compelling privacy and freedom of speech concerns. They also highlight how closed-minded adults can use

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Similarly, it seems unclear whether separating offenders from society in accordance with section 718(c) of the *Code* would be helpful, especially as viral sexting incidents suggest that the harms of having sexts redistributed seem to continue and to engage broad peer networks beyond and without necessarily requiring further action from the initial distributor of the image. Punishing a single individual and potentially separating him or her from society by imposing criminal consequences may disregard other community members who continue redistributing an image and/or bullying the victim, while also imposing a significant burden on the individual who has been sentenced. Further, the stigma of criminal sanctions may be counterproductive to the goal of rehabilitation as emphasized in the *Code* and the *Act*, particularly when the offender in question is an adolescent. Finally, while sentencing individuals who maliciously redistribute sexts to criminal sanctions may acknowledge the harm done to the victim and the community, a legitimate objective under both the *Code* and the *Act*, it is unclear whether criminal sanctions are the most effective way to promote responsibility in individuals who distribute or redistribute sexts without consent. It seems plausible that in some viral sexting incidents, one or a small number of perpetrators may be prosecuted for distributing or redistributing images, while the broader community continues to redistribute the images in question to wider networks and to slut shame and bully the victim depicted. If this were to be the case, it may appear that the individuals facing criminal sanction were scapegoated while other community members continued to exacerbate the incident and harm the victim. Such a scenario would not be conducive to rehabilitating the individual(s) so punished and would not necessarily instill in them a sense of responsibility; such a course of action may also be inadequate to protect victims from widespread harassment even in the absence of the initial distributor. While I do not think criminal sanctions should be off the table for all malicious sexting, the incidents of viral sexting and follow on harassment that have attracted media attention in Canada and the United States suggest the need for a more systemic approach.

<sup>398</sup> Canada's child pornography offences, for example, are designated offences leading to sex offender registration: see *Criminal Code*, s 490.011(1).

<sup>399</sup> See, for example, Boyd, *supra* note 110; see also Sacco et al at 10-12.

<sup>400</sup> See e.g. Sharpe at paras 15, 31 and 103; see also Boyd, *supra* note 110; see also Brian M. Blugerman, "Beyond Obscenity: Canada's New Child Pornography Law" (1994) 11 Ent & Sports L J 3 at 4-5.

<sup>401</sup> See *Miller v Skumanick*, 605 F Supp 2d 634 (Dist. Court, MD Pennsylvania 2009). In *Miller*, District Attorney Skumanick attempted to press charges against several 13-year old girls who had taken cell phone pictures of themselves in towels, training bras and bikinis. The photos began to circulate in the girls' school community. DA Skumanick offered the young women depicted in the photos an ultimatum: they must either enroll (at their families' expense) in a course explaining why their actions were wrong and exploring topics such as "what it means to be a girl today", or face child pornography charges. Several of the girls' families successfully sued for an injunction against prosecution.

prosecution to restrict and control the private sexual development of young people, including (perhaps especially) young women.<sup>402</sup>

Finally, prosecuting teens who sext may actually hurt victims of adult predation and of malicious sexting. If prosecutors charge and penalize teenagers who merely create sext images of themselves, as in some American cases,<sup>403</sup> then victims of adult predators or peer abusers may worry that they will face criminal penalties along with their abusers. Children may be less likely to report malicious sexting or even sexual predation by adult child pornographers if they fear that they, too, will face prosecution.<sup>404</sup> Some commentators have also argued that punitive attitudes to sexting – or at least to minors who initially sext images of themselves – can contribute to a culture of “slut-shaming” and victim-blaming young women who sext images of themselves and who are already vulnerable to harassment and condemnation.<sup>405</sup>

Prosecuting teenage sexting as child pornography is a weak strategy for addressing the harms of sexting, which is why legislators in several jurisdictions have considered or implemented more tailored responses to sexting.<sup>406</sup> In Canada, federal legislators have recently suggested creating a new offense tailored to the non-consensual distribution of intimate images;<sup>407</sup> this offense would carry lesser penalties than the child pornography provisions, and

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<sup>402</sup> See again *Miller, ibid*, for an alarming example of this; see also Sacco et al at 7; see also Gong and Hoffman, eds, *supra* note 157 for an exploration of how prosecutions of minors who initially create sexts can actually perpetuate slut shaming attitudes and harm female victims.

<sup>403</sup> See *AH, supra* note 387; see also *Miller, supra* note 402.

<sup>404</sup> See *AH, supra* note 387. AH, a sixteen year old girl who had sexted with her boyfriend, complained to police that she feared her boyfriend may redistribute the images. Both AH and her boyfriend (who does not appear to have redistributed the sexts after all) were prosecuted and convicted under the state’s child pornography laws.

<sup>405</sup> See again Gong and Hoffman, *supra* note 157.

<sup>406</sup> See again DeMitchell, *supra* note 177, and Mujahid, *supra* note 393, for an overview of the problems of prosecution as a response to sexting and more tailored responses to sexting that have been proposed in some American states.

<sup>407</sup> Canada, Department of Justice, CCSO Cybercrime Working Group, *Cyberbullying and the Non-Consensual Distribution of Intimate Images* (Ottawa: Report to the Federal/Provincial/Territorial Ministers Responsible for Justice and Public Safety, 2013), online: <<http://www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdncii/p6.html>>. I

may be more helpful in addressing viral teenage sexting. The creation of this offense could also serve an expressive and educational role by stating clearly that Canadian society condemns the non-consensual distribution of sexual images.<sup>408</sup> However, while this proposal may be a positive step, prosecutions alone are unlikely to reduce sexting related bullying and harassment. As the case studies below suggest, viral sexting incidents do not typically have single perpetrators. While a single perpetrator may initiate these incidents by distributing images of his victim, other members of the victims' community typically exacerbate these situations. Bystanders may turn against the victim and further humiliate her by bullying, slut shaming or harassing her; they may also redistribute the sexts to even wider groups. A holistic approach to sexting related bullying must address bystanders' behaviour as well. Furthermore, because much of the post-sexting bullying and harassment of girls is sexist in nature and draws on sexist double standards,<sup>409</sup> a proactive and educational approach to sexting should confront and disrupt misogynist ideas. I develop these points in the following sections.

### **3.2 Sexting related bullying and 'slut-shaming'**

Below, I present several case studies in sexist harassment in the wake of sexting incidents. In Part 4.1.2, I discuss the Amanda Todd, Rehtaeh Parsons and Hope Witsell incidents in more depth than I have so far. I have chosen these three narratives as case studies because they present a spectrum of sexting related harassment while also illustrating several common themes. Subsequently, in Part 4.2.2, I examine the common themes which emerge from these three

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note once again that the federal government introduced Bill C-13 purportedly to address the non-consensual distribution of intimate images: see Bill C-13, *supra* note 36.

<sup>408</sup> For an exploration of law's expressive role in combatting online sexual and gendered harassment more broadly, see Danielle Keats Citron, "Law's Expressive Value in Combatting Cyber Gender Harassment" (2009) 108 *Michigan L Rev* 373.

<sup>409</sup> See e.g. Bailey and Hanna at 415.

incidents. Finally, in Part 4.3, I argue that sexting related harassment, such as these young victims faced, can and should be addressed through Ontario education law and policy.

### 3.2.1. Case studies

#### *Amanda Todd*

When Amanda Todd was twelve years old, she agreed to flash what she thought was a peer flirting partner via webcam.<sup>410</sup> Amanda could not have foreseen that the person at the other end of the webcam was in fact an adult stalker who would begin a campaign of extortion, nor could Amanda have known that her own peers would blame her for her situation. However, a year after flashing her webcam stalker, Amanda's stalker resurfaced and demanded additional sexual favours from the girl.<sup>411</sup> Amanda refused to comply. The stalker, who had acquired contact information for members of Amanda's "real life" peer group, distributed her photo to her peers.

Instead of showing Amanda compassion, many of Amanda's peers bullied and harassed her. In the heartbreaking video she posted to YouTube before her suicide, Amanda writes of being shunned by former friends. Peers ceased to respect her, she wrote; "nobody liked me... name calling, judged..."<sup>412</sup> Amanda's peers taunted her for being a "porn star" and other epithets at school. Amanda tried moving and switching schools. However, her stalker repeatedly acquired contact information for students at Amanda's successive schools and would forward the image to her new peer groups, allowing peers to restart bullying and harassing Amanda as a "slut". In one

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<sup>410</sup> See Gillian Shaw, Vancouver Sun, "Amanda Todd's mother speaks out about her daughter, bullying" *Vancouver Sun* (March 13 2013), online: <<http://www.vancouversun.com/Amanda+Todd+mother+speaks+about+daughter+bullying+with+video/7384521/story.html#ixzz2gVubZcWU>>.

<sup>411</sup> See Amanda Todd, "My story: struggling, bullying, suicide, self-harm" (7 September 2012), online: YouTube <<http://www.youtube.com/watch?v=vOHXGNx-E7E>>.

<sup>412</sup> *Ibid.*

incident, Amanda was physically assaulted by several former classmates from a previous school.<sup>413</sup> She was left in a ditch where her father found her.<sup>414</sup> Even the news that Amanda attempted suicide failed to inspire empathy in her classmates. Instead, peers began taunting her for being “crazy” and “a psycho”.<sup>415</sup> Amanda committed suicide on October 10, 2012, after struggling with ostracism, harassment, depression and anxiety.

### *Rehtaeh Parsons*

When Rehtaeh Parsons was fifteen, she was sexually assaulted by several boys at a party.<sup>416</sup> Rehtaeh was drunk at the time and could not remember all the details of the incident. However, four boys seem to have participated in the assault.<sup>417</sup> At least one of the boys suggested that the others photograph Rehtaeh with a cell phone. When Rehtaeh returned to school, she found that the photographs documenting her suffering were already circulating.

As in the Amanda Todd case, Rehtaeh’s peers began a campaign of revictimizing her. Rehtaeh’s friends and peers turned against her and bullied her, labelling her a slut for having been involved in an incident of sexual assault.<sup>418</sup> Boys from Rehtaeh’s peer group would send her text and Facebook messages asking her to have sex with them, since she “had had sex with their friends” already.<sup>419</sup> Rehtaeh suffered relentless harassment at the hands of her schoolmates. However, when she reported the incident to police, the police response was also disappointing. Police stated that this was a “he said she said” situation and that there was insufficient evidence

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<sup>413</sup> Canadian Press, “Weeks after posting haunting Youtube video on her years of torment at classmates’ hands, 15-year-old B.C. girl commits suicide” *National Post* (October 12 2012), online: Post Media Network Inc <<http://news.nationalpost.com/2012/10/12/amanda-todd-suicide-2012/>>.

<sup>414</sup> *Ibid.*

<sup>415</sup> See Shaw, *supra* note 411.

<sup>416</sup> CBC News, “Rape, bullying led to N.S. teen’s death, says mom” *CBC* (April 12 2013), online: Canadian Broadcasting Corporation <<http://www.cbc.ca/news/canada/nova-scotia/rape-bullying-led-to-n-s-teen-s-death-says-mom-1.1370780>>.

<sup>417</sup> *Ibid.*

<sup>418</sup> *Ibid.*

<sup>419</sup> *Ibid.*

to proceed.<sup>420</sup> Police also informed Rehtaeh and her family that the photographs did not engage *Criminal Code* provisions, even though Rehtaeh was underage at the time when she was depicted in the photographs. Rehtaeh Parsons committed suicide in April 2013, two years after the assault.

### *Hope Witsell*

Hope Witsell was a middle school student in Ruskin, Florida. When she was thirteen years old, she sent a topless cell phone photo of herself to a male crush at her school.<sup>421</sup> Another girl appears to have borrowed the boy's phone before he could delete the photo.<sup>422</sup> The girl then forwarded the image, which ultimately went viral in Hope's community.

Once again, Hope's peers were not understanding or empathetic enough to let the incident rest. Instead, peers labelled Hope a "slut" and a "whore" and began a campaign of bullying her in school as well as online.<sup>423</sup> Some of Hope's friends defended her and would surround her in the hallways in an attempt to insulate her from the sexualized taunting.<sup>424</sup> Hope, however, was deeply upset by her classmates' hateful responses. She wrote in her journal that "Tons of people talk about me behind my back and I hate it because they call me a whore [...]", even though she was "too inexperienced".<sup>425</sup>

The adults in Hope's life also failed her. When school authorities learned of the topless photo, they suspended Hope instead of punishing the students who were circulating it and/or

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<sup>420</sup> *Ibid.*

<sup>421</sup> Emily Bazelon, "Hope Witsell's Sexting Suicide: Why kids self-destruct with cell phones and online" *Slate* (8 December 2009), online: <[http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2009/12/hope\\_witsells\\_sexting\\_suicide.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2009/12/hope_witsells_sexting_suicide.html)>.

<sup>422</sup> *Ibid.*; see also Meacham, *supra* note 359.

<sup>423</sup> Randi Kaye, "How a cell phone picture led to girl's suicide" *CNN* (7 October 2010) online: Cable News Network <<http://www.cnn.com/2010/LIVING/10/07/hope.witsells.story/index.html>>.

<sup>424</sup> Meacham, *supra* note 359.

<sup>425</sup> *Ibid.*

bullying the girl.<sup>426</sup> Hope's parents likewise grounded her for much of the summer, though they allowed her to attend a Future Farmers of America conference.<sup>427</sup> This conference proved tragic for Hope. Several older boys at Hope's hotel coerced Hope into sending them additional sexts. When Hope returned to school at the start of the next year, her peers continued harassing, bullying and slut shaming her, and the school authorities continued to blame and stigmatize Hope by barring her from participating in the FFA. Hope hanged herself in her bedroom in September of 2009, days after signing a "no harm" contract with the school guidance counselor, who noticed that Hope was cutting herself.

### 3.2.2. Common themes in these cases

These three case studies have several common and noteworthy elements. First, Amanda Todd, Rehtaeh Parsons and Hope Witsell were all subjected to intense victim blaming. Amanda Todd and Rehtaeh Parsons were branded "sluts" and "whores" by their peers despite being the victims of an online adult predator and a gang assault, respectively. Hope Witsell's story is somewhat different in that she initially sexted her crush consensually. However, Hope's peers shamed, harassed and ostracized her for what is a relatively common teen practice – sexting and exploring one's sexuality broadly speaking. Further, officials at Hope's school punished her for the disruption the sexting caused, even though she had not wanted her image to be redistributed and was a victim rather than an instigator of the widespread bullying (and subsequent sexual coercion and harassment) that resulted.

Inextricable is the misogyny that these three young women faced. It seems that women and girls, and not men or boys, face blame for their sexual conduct (or "misconduct"), including

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<sup>426</sup> *Ibid.*

<sup>427</sup> *Ibid.*

viral sexting incidents.<sup>428</sup> Such “conduct” may, in fact, be consensual and normal behaviour, such as exploring one’s body or sexuality through sexting a peer/partner. However, even when male aggressors trick, coerce or force young women to sext or to participate in other forms of sexual activity, female victims still face the “slut” label.<sup>429</sup>

Finally, Amanda Todd, Rehtaeh Parsons and Hope Witsell all faced widespread harassment, bullying and ostracism well after the initial photos or sexts began to circulate. Many of their peers contributed to their suffering. This peer harassment compounded the actions of the initial aggressors (i.e., Amanda’s online stalker, Rehtaeh’s assailants, and Hope’s betrayer). Consequences for individuals who sexually assault or coerce minor (or adult) victims are an essential part of a legal response to malicious sexting and, indeed, any form of sexual abuse. However, malicious sexting seems to involve more participants than single initial aggressors. The role of decentralized peer networks that redistribute sexts to ever widening groups and that may further harass victims cannot be ignored in responding to sexting related bullying. I argue below that a proactive and educational approach may be an important tool for sensitizing peer groups and reducing the likelihood that victims of viral sexting will also face widespread sexualized bullying and slut-shaming.

However, this approach requires that educators address complex and systemic issues such as sexism and sexist standards. It may also be politically unpalatable for policy makers to adapt education legislation, policies and curricula to address these issues. Further, it may be difficult for policy makers, educators and the public to acknowledge that the sexist double standards at

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<sup>428</sup> See e.g. Bailey and Hanna at 415.

<sup>429</sup> The misogyny in these case studies resembles the misogynist standards evident in the schools Jessica Ringrose et al studied in their qualitative study of sexting: see Ringrose et al, *supra* note 201. Ringrose et al found that sexting engages pervasive and longstanding gender double standards, in which women risk being branded ‘sluts’ for being sexually active, while boys face no equivalent condemnation: see page 45.

the forefront of sexting related harassment are, in fact, a form of sexism. Some policy makers and educators may hold victim blaming attitudes themselves.<sup>430</sup> Moreover, it may be difficult to identify sexting related bullying as a form of sexism because young women can (and do) use these bullying and slut shaming tactics against other young women.<sup>431</sup> Women themselves may internalize oppressive, sexist language and double standards and seek to enforce these standards against other women.. Research suggests that women and girls “police” other women’s and girls’ sexuality and criticize and/or engage in acts of aggression against peers they deem to be overly “sexy”.<sup>432</sup> Girls’ use of sexist and slut shaming language against their female peers may be an example of lateral oppression or lateral violence, the use by members of an oppressed or marginalized group of abusive behaviour or tactics against peers.<sup>433</sup> These forms of aggression

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<sup>430</sup> The problem of blaming and scrutinizing female victims instead of perpetrators has historically plagued legal and public responses to sexual assault: see, for example, L’Heureux-Dube’s J opinion in *R v Seaboyer*, [1991] 2 SCR 577; see also Elizabeth Sheehy, “From Women’s Duty to Resist to Men’s Duty to Ask: How Far Have We Come?” (2000) 20 Canadian Woman Studies 98 for an overview of historical and contemporary incarnations of the notion of “great resistance”, which effectively imposed on women a duty to resist rape and covertly blamed women for not resisting. Similar victim blaming attitudes – i.e., that girls should not sext and not “invite” the redistribution of such images and related follow on harassment – may be evident in some responses to sexting, for example, the school authorities in the Hope Witsell case: see, for example, Meacham.

<sup>431</sup> See e.g. Ringrose et al at 45-47; see also Emily Bazelon, *Sticks and Stones: Defeating the Culture of Bullying and Rediscovering the Power of Character and Empathy* (New York: Random House, 2013) [“*Sticks and Stones*”] at 95-96.

<sup>432</sup> For one empirical survey of females’ hostility toward “sexy” peers, see Tracy Vaillancourt and Aanchal Sharma, “Intolerance of Sexy Peers: Intrasexual Competition Among Women” (2011) 37 *Aggressive Behaviour* 569; see also Ringrose et al, *supra* note 201; see also Barbour, *supra* note 110 at 192-193.

<sup>433</sup> Lateral oppression has been studied in the context of marginalized Aboriginal communities, in which a history of colonization and abuse contributed to peer or lateral abuse as well: see, for example, The Aboriginal Healing Foundation, “Origins of Lateral Violence in Aboriginal Communities: A Preliminary Study of Student-to-Student Abuse in Residential Schools” (7 July 2014), online: Aboriginal Healing Foundation <<http://www.ahf.ca>>; see also Linda D. Theis, *Enculturation and Posttraumatic Growth Factors in Native Americans* (PhD Thesis, Walden University, 2014) [unpublished] at 258-260; see also Australian Human Rights Commission, “Chapter Two: Lateral violence in Aboriginal and Torres Strait Islander communities” in *Social Justice Report 2011* (Sydney: Australian Human Rights Commission, 2011), online: <<https://www.humanrights.gov.au/publications/social-justice-report-2011>>, for a review of similar concerns in Australian Aboriginal communities. Competition among sex workers and the marginalization sex workers face may also contribute to lateral violence within this group: see Sarah Beer, *The Sex Worker Rights Movement in Canada: Challenging the ‘Prostitution Laws’* (PhD Thesis, University of Windsor, 2010) [unpublished] at 78. Laura A. Barbour identified lateral oppression by other young women as well as their mothers as a significant concern for young Nova Scotia women developing and negotiating sexual relationships. Barbour links these young women’s adoption of sexist double standards and attitudes in policing other women’s – and even their own – sexual behaviour to Adrienne Rich’s and Kathleen Barry’s conception of male-identification and the internalization (by women) of sexist male values: see Barbour at 192.

should be recognized and confronted as sexist even when young women themselves engage in them. Proactively confronting sexism in education (regardless of its source) *and* teaching young people respect, empathy and compassion could be important strategies for reducing sexting related harassment. In the following section I explore some of Ontario's current provisions and initiatives which may be adaptable to these purposes.

### 3.3. Addressing sexting related bullying: adapting existing Ontario law and policy

Ontario's *Education Act* as amended by the *Accepting Schools Act* already contains language that can challenge sexist ideas and that may help to reduce misogynist bullying of girls in the wake of sexting incidents. Several provisions address equity, sexism and sex/gender discrimination. Further, Ontario has made significant strides in confronting homophobia in education, despite criticism from some groups and commentators. Policy makers in Ontario have shown commendable courage in their commitment to addressing homophobia and transphobia, even where critics alleged that gay straight alliances and similar measures would undermine families' religious freedoms and/or lead to teaching sexually explicit same sex behaviour in schools.<sup>434</sup> Policy makers and educators in Ontario should demonstrate similar forward-thinking with regard to the sexist double standards that plague sexting victims. The *Act's* provisions on homophobia often address and condemn other forms of discrimination including sex discrimination as well. Educators and policy makers should recognize sexting related bullying and double standards as discrimination. They should also challenge this behaviour in order to carry the *Act's* equity-enhancing provisions through to their logical conclusions. I set out some

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<sup>434</sup> See, for example, the presentation by the Institute for Canadian Values before the Standing Committee on Social Policy alleging that the *Accepting Schools Act* represented a denigration of the Bible and a program of "radical sex education": Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 40<sup>th</sup> Parl, 1<sup>st</sup> Sess, SP 5 (7 May 2012) at 27-29 (Charles McVety and Rabbi Mendel Kaplan); see also the presentation by the Pan-Orthodox Association of Greater Hamilton Eastern Orthodox Clergy Fellowship of Toronto for a similar diatribe: Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 40<sup>th</sup> Parl, 1<sup>st</sup> Sess, SP 7 (14 May 2012) at 91-93 (Father Geoffrey Korz).

relevant provisions in the *Accepting Schools Act* and the *Education Act*, below, before suggesting ways in which they may be used to reduce sexist and sexting related bullying.

The Preamble to the *Accepting Schools Act* states that “[t]he people of Ontario [...] believe that all students should feel safe at school and deserve a positive school climate that is inclusive and accepting, regardless of [...] sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.”<sup>435</sup> The Preamble also asserts that “a whole-school approach is required, and that everyone — government, educators, school staff, parents, students and the wider community — has a role to play in creating a positive school climate and preventing inappropriate behaviour, such as bullying, sexual assault, gender-based violence and incidents based on homophobia, transphobia or biphobia.”<sup>436</sup> I note that this Preamble strongly endorses a proactive whole school approach to school climates.<sup>437</sup> Furthermore, the *Act* recognizes that sex discrimination, gender discrimination and sexual and gender-based violence detract from school climates and should be addressed in education.

The new *Education Act* likewise contains several helpful provisions. First, its definition of bullying lists gender as one factor that may contribute to power imbalances in bullying;<sup>438</sup> these factors (which also include sexual orientation, gender expression, race, religion and a variety of other grounds) are non-exhaustive.<sup>439</sup> Similarly, s. 169.1(1) mandates that schools promote positive school climates which accept and include all pupils regardless of sex, sexual

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<sup>435</sup> *Accepting Schools Act*, *supra* note 24, Preamble.

<sup>436</sup> *Ibid.*

<sup>437</sup> To reiterate, whole school approaches involve modeling positive relationships, establishing firm rules against bullying and inappropriate behaviour and consistently enforcing such rules with non-violent consequences, among other tenets: see, for example, Mintor, *supra* note 160; see also Ministry of Education, “A Whole-School Approach to Promoting a Safe, Inclusive, and Accepting School Climate”, *supra* note 160; see also Olweus, “Bully/victim Problems”, *supra* note 160. The Olweus model of bullying intervention is a well-known example of a whole school or whole community approach and advocates these principles.

<sup>438</sup> *Education Act* 1(1).

<sup>439</sup> *Ibid.*

orientation and other grounds.<sup>440</sup> Section 300.0.1 also highlights that creating inclusive climates for *all* pupils and eliminating bullying, sexual assault and gender based violence are among the purposes of school discipline.<sup>441</sup>

Section 301(6) requires the Minister to develop a standardized framework regarding student discipline policies. These policies must identify inappropriate behaviour and must specifically include and address “bullying, sexual assault, gender-based violence and incidents based on homophobia, transphobia or biphobia” behaviour.<sup>442</sup> Further, the Minister’s policies must “[provide] support for pupils who are impacted by inappropriate behaviour, and for pupils who engage in inappropriate behaviour, to assist them in developing healthy relationships, making good choices, continuing their learning and achieving success.”<sup>443</sup> Finally, while section 303.1(1) attracted significant attention for mandating school support of gay-straight alliances, the provision may be helpful for a wide range of student initiatives. The provision obliges schools to support student organizations that seek to improve school climates and enhance “acceptance and respect for others”,<sup>444</sup> including groups that seek to enhance gender equity.<sup>445</sup>

The relevance of these provisions to sexting-related harassment may not be immediately apparent. On one level, these provisions highlight the fact that gender equity is an important value in Ontario’s education system. On another, they emphasize that sex discrimination in schools must be addressed in ways that promote fundamental values such as equal dignity and equal participation for all students. Sexting related pressures and bullying – which affect girls disproportionately – undermine young women’s equal participation in education, and should

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<sup>440</sup> *Education Act*, s 169.1(1).

<sup>441</sup> *Ibid* s 300.0.1

<sup>442</sup> *Ibid* s 301(6)(a)(i).

<sup>443</sup> *Ibid* s 301(6)(a)(iv).

<sup>444</sup> *Ibid* s 303.1(1)

<sup>445</sup> *Ibid*.

therefore be understood as forms of sex discrimination. With that understanding in mind, I believe that the provisions I list above can serve as starting points to address sex discrimination broadly speaking and sexting (and sexting related bullying or harassment) in particular.

The Preamble to the *Accepting Schools Act* sets strong grounds for addressing sex discrimination. As I suggest above, schools should explicitly link the pressure on girls to sext and the simultaneous harassment of girls who are caught sexting to broader sexist attitudes. Practically, schools may wish to address these issues through health and physical education/sex education primarily, but should also discuss sexism and concrete examples of sexist attitudes, including sexting related harassment, in other contexts. Ontario's government could offer schools guidance on how to challenge these forms of discrimination through policy documents and memoranda, such as the equity policies discussed in Chapter Four.

Further, the Preamble to the *Accepting Schools Act* articulates the importance of a whole school approach in creating safe school climates and in reducing discrimination. This is an important point for reducing sexting-related harassment among other forms of sex discrimination. As the case studies in 5.2.1 suggest, victims of severe harassment in the wake of sexting incidents typically face shaming and bullying from a broad network of their peers. Even where one or a small group of individuals sets the harassment in motion (for example, by sexually assaulting a young woman and then distributing photos of that act, or by redistributing a purportedly private sext from a partner to classmates), it seems that many subsequent students and community members join in the harassment and victim-blaming. Further, school staff may model insensitive or victim-blaming attitudes themselves by punishing victims instead of perpetrators of sexting related bullying. Implementing a proactive whole school approach that also confronts sexism and double standards may be helpful in changing behaviour. Whole school

approaches aspire to model and teach students respect and empathy,<sup>446</sup> which could, over the long term, lead students to behave with more understanding towards peers who have sexted. School staff adopting a whole school approach should also model greater empathy and understanding than school authorities sometimes do in sexting incidents. I reiterate that this approach should be combined with discussions of sexism and concrete examples thereof, including gender differences in sexting and related victimization, as I note above. Once again, Ontario policy makers could offer schools guidance on how to confront sexism (in the context of sexting and in other contexts) and how to intervene in incidents of harassment such that interventions are consistent with respect, empathy and the whole school model.

Finally, another important tool in the Preamble to the *Accepting Schools Act* is the explicit reference to sexual assault and gender based violence. Schools can and should address, define and teach about gender based violence proactively in order to sensitize students; schools should also address the broad spectrum of concrete behaviour which may constitute gender based violence, including sexual harassment (which often overlaps with gendered bullying)<sup>447</sup>. In this context, educators could address and include pressures to sext as well as the harassment of (typically female) victims of viral sexting incidents, and could emphasize the importance of treating victims with empathy and dignity. The Minister of Education could draft one or more memoranda on addressing sexism, sexual assault and sexual harassment in the context of viral sexting (consensual or otherwise) to give schools greater guidance.

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<sup>446</sup> See Ministry of Education, “A Whole-School Approach to Promoting a Safe, Inclusive, and Accepting School Climate”, *supra* note 160.

<sup>447</sup> Gender based violence can include sexual harassment: see European Institute for Gender Equality, *What is gender-based violence?*, online: <<http://eige.europa.eu/content/what-is-gender-based-violence>>; see also United Nations High Commissioner for Refugees, *Preventing gender-based and sexual abuse*, online: <<http://www.unhcr-centraleurope.org/en/what-we-do/caring-for-the-vulnerable/violence-against-women-and-children.html>>.

Educators and policy-makers should also use the new *Education Act* to justify a proactive approach to sexism and sexual and sexting related harassment. For example, in complying with s. 169.1(1) – promoting positive climates for all students regardless of sex or other factors – schools should be aware of the double standards around sexting and the particular risks of harassment which young women may face. These pressures and risks can adversely impact school climates and can be detrimental to young women’s experiences, as the case studies demonstrate.<sup>448</sup> Similarly, in developing discipline policies that are consistent with the *Act*, schools should address and prohibit sexist behaviour and sexual or gender-based violence, including non-consensual sexting and slut shaming sexual harassment of female students in the wake of sexting incidents.

Finally, while the new *Education Act* contains a number of provisions that are relevant to sexting related bullying, the *Act*’s weaknesses regarding enforcement remain a problem. Regrettably, there may be considerable variation in the extent to which school boards and schools will recognize that pressures and harassment surrounding sexting affect female students disproportionately and seek to address these challenges in order to make schools more equitable for young women. In the absence of concrete implementation and enforcement measures, the *Act*’s language – though laudable – may be only minimally helpful in driving consistent improvements in Ontario schools.

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<sup>448</sup> See also Ringrose et al, *supra* note 201.

## Chapter Four: Analysis and Conclusions

In my view, there are several important factors in addressing gendered forms of (cyber)bullying and improving young Canadians' equal access to online and educational opportunities. Generally, anti-bullying education and the teaching of empathy, respect and compassion should be proactive and consistent across a variety of school initiatives.<sup>449</sup> Adults should draw upon a whole school approach, model respectful conduct, intervene regularly in aggressive incidents, and encourage student "by-standers" to intervene as well.<sup>450</sup> School administrators should also seek support in these initiatives from the majority of school staff.<sup>451</sup> Reducing bullying and aggression is the responsibility of all members of a school community. Further, schools cannot curb bullying through reactive discipline alone, nor can this responsibility be left to single staff members such as an administrator or counselor.

Some of the lessons of more general anti-bullying initiatives are relevant to anti-LGBTQ bullying as well. It is an overarching theme of anti-bullying and cyberbullying education that the most effective interventions are consistent and proactive and include all students, rather than just the immediate victims and perpetrators. This appears true for homophobic bullying as well. Research suggests that LGBTQ students fare better in schools where staff members intervene consistently in homophobic incidents.<sup>452</sup> Further, LGBTQ-specific measures such as sensitizing curricula and gay-straight alliances are also proactive in that they can pre-emptively instill empathy and understanding in students and help to counter prejudice. However, research on interventions in homophobic bullying suggests that deep-seated prejudices such as homophobia cannot be addressed adequately through general anti-bullying measures or policies. It is

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<sup>449</sup> See Ministry of Education, "A Whole-School Approach to Promoting a Safe, Inclusive, and Accepting School Climate", *supra* note 160; see also Olweus, "Bully/victim Problems", *supra* note 160.

<sup>450</sup> Olweus, *ibid.*

<sup>451</sup> *Ibid.*

<sup>452</sup> O'Shaughnessy 19.

important that school and school board discipline policies specifically identify and prohibit homophobic behaviour. I suggest that these measures, while specifically tailored to homophobic harassment, also make a proactive statement regarding the dignity and equality of all students. These statements are consistent with liberal and liberal feminist values of equal rights and equal human dignity for all community members regardless of personal characteristics. Moreover, concrete, evidence-based measures to eliminate homophobic and other biases and to create discrimination-free learning environments enhance substantive equality of opportunity for LGBTQ youth to attend and benefit from schools. In addressing anti-LGBTQ bullying and other bias-based bullying, Ontario's revamped *Education Act* attempts to translate liberal and liberal feminist values of equal dignity, equal respect, and genuine equality of opportunity into Ontario's education system.

The new *Education Act* also contains language that may be helpful in addressing sexist bullying, including the specific forms of sexist and sexual harassment which girls sometimes face in the wake of sexting incidents. However, given the novelty of sexting and related forms of harassment, there remains work to be done on addressing these issues. Ontario policy makers should support more research on sexist bullying, sexting and the interconnectedness of sexting with bullying and (sexual) harassment. Policy makers should also acknowledge that the specific problem of bullying and harassment in the wake of sexting highlights broader forms of sexism, such as the misogynist double standard that sexually active women are somehow inferior (even when they have been coerced into sexual activities, including sexting). This recognition could be communicated to Ontario educators and other citizens through policy documents or perhaps even further changes to the *Education Act* that would offer guidance on addressing sexist and sexting related bullying specifically. Ontario policy makers should also encourage – perhaps even

require – educators to address these issues, to model behaviour and attitudes that are free of victim-blaming, and to challenge sexist double standards through curricula and interventions in student-on-student harassment. Although more research on sexting and related harassment is needed, I argue that policy makers and educators should start to recognize the particular victimization which girls face in the context of sexting as a type of sexism and should address it as such.

Further, it seems that anti-bullying interventions generally and anti-homophobia interventions specifically may offer relevant lessons for reducing sexist bullying in the context of sexting incidents. Efforts to reduce sexist harassment of girls who sext should be proactive and should address all students, as victims often face widespread harassment in these circumstances, rather than a single perpetrator. However, given widely held sexist attitudes and double standards regarding women (particularly sexually active women), confronting these misogynist prejudices specifically (rather than subsuming them into general anti-bullying policies) may also be necessary.

Finally, as a liberal feminist, I note that the widespread phenomena of homophobic and sexist (cyber)bullying are incompatible with liberal values such as equal dignity, equal respect, and equal participation within one's community regardless of personal characteristics such as sex or sexual orientation. As I suggest above, homophobic bullying can severely undermine LGBTQ students' ability to attend school safely and to benefit from educational opportunities on an equal footing with heterosexual students. Additionally, online homophobic harassment can undermine queer students' access to online resources or supports; homophobic cyberbullying may also offer

harassers from a school peer group additional opportunities to bully their victims.<sup>453</sup> These forms of bullying leave LGBTQ students at a significant disadvantage relative to students who do not face similar victimization, and may make it impossible for marginalized students to benefit from educational and online environments as their peers can. Substantive equality of opportunity, i.e., a level playing field from which to attend, benefit from, and utilize educational and online opportunities, is not available to such students. Further, the failure of authority figures to correct homophobic attitudes in schools models, or at least tacitly accepts, illiberal discrimination.

Regrettably, the research on sexting and bullying in the wake of sexting incidents remains underdeveloped when compared to the research documenting homophobic bullying. However, the peer discourse around girls who are caught sexting draws on sexist double standards whereby women who are sexually active deserve public shaming or ostracism. Young men who are sexually active or who sext do not face the systematic harassment which their female peers risk.<sup>454</sup> As of this writing, the news stories and case studies involving teen sexting victims who suffered severe harassment and ultimately took their own lives feature female victims. In that respect, viral sexting incidents both highlight and draw on sexist double standards and attitudes. These attitudes in turn impose pressures and limitations on girls which boys do not face.

Sexist double standards limit girls' and women's equality in several ways.<sup>455</sup> The slut shaming of girls hinders young women's autonomy regarding sexual behaviour by threatening

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<sup>453</sup> See *Every Class in Every School* 68-69; also GLSEN, *Out Online*. I reiterate that cyberbullying and in person or offline bullying seem to intersect frequently; online incidents often grow out of offline bullying incidents: see, for example, Dan Olweus, *Cyberbullying: An overrated phenomenon?*, *supra* note 45 and Hinduja and Patchin, "Cyberbullying: Neither an epidemic nor a rarity", *supra* note 45.

<sup>454</sup> See Ringrose et al, *supra* note 201 at 7 and 45-46.

<sup>455</sup> For a further discussion of sexual double standards and of the imposition of social and legal sanction on sexually active women, without comparable sanction for men, see Sylvia A. Law, "Rethinking Sex and the Constitution" (1984) 132:5 U Penn L Rev 955 at 960 n 19; see also Margaret Jackson, "Sex, Class and Hetero-Relations Feminism and the Politicization of Sexuality in Victorian and Edwardian England" in *The Real Facts of Life: Feminism and the Politics of Sexuality circa 1850-1940* (London: Taylor and Francis, 1994), for a historical overview of feminist critiques of the sexual double standard and other aspects of the sexual morality of nineteenth and early twentieth

peer recrimination for girls who choose to sext or engage in other sexual activities, a threat which young men apparently do not have to live with. Further, harassment and bullying in the wake of sexting incidents are not only uncondusive to developing agency and autonomy about girls' developing sexuality. These types of harassment can also severely undermine young women's ability to participate safely in school peer groups or online by creating an environment that is hostile to girls (either because they face harassment for sexting or being sexually active, or because male students continually pressure them to engage in these activities).<sup>456</sup> Once again, gendered pressures (to sext), double standards (punishing girls, not boys, who are sexually active or involved in sexting) and related harassment (specifically targeting girls) undermines substantive equality of opportunity for young women. Young women may face poisoned educational environments just as adult women subjected to workplace sexual harassment may face poisoned work environments. These types of harassment erode opportunities for young women to attend and benefit from schools on truly equal footing with young men. If adult actors – at the level of school authorities as well as at the political level – accept these behaviour and, perhaps, engage in victim-blaming or sexist behaviour themselves, then they effectively model sexist inequality for youth. Accepting and certainly modeling these attitudes are incompatible with liberal values consistently applied.

Sexist and homophobic bullying can therefore reinforce hierarchies of sex, gender, and sexual orientation in school communities. Heterosexual students – or at least stereotypically masculine or feminine presenting, heterosexual-identified students – do not face sexual

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century England; see also Roy F. Baumeister and Jean M. Twenge, "Cultural Suppression of Female Sexuality" (2002) 6:2 *Review of General Psychology* 66, for an evaluation of several theories that attempt to explain the emergence of these sexual double standards and the suppression of female sexuality; see also Derek A. Kreager and Jeremy Staff, "The Sexual Double Standard and Adolescent Peer Acceptance" (2009) 72:2 *Social Psychology Quarterly* 143, for an evaluation of the effects of the double standard on the acceptance of adolescents among peer groups.

<sup>456</sup> See Jessica Ringrose et al, *supra* note 201.

orientation harassment in the way that LGBTQ students do.<sup>457</sup> Similarly, young men do not seem to face the sexist harassment and bullying and the “slut shaming” behaviour that young women face in the wake of sexting incidents; boys may also be spared some of the peer pressure to engage in sexting in the first place.<sup>458</sup> These forms of bullying and the discriminatory attitudes that underlie them arbitrarily disadvantage certain classes of students (such as queer youth and female students, especially female students who are involved in sexting). These gendered forms of bullying also highlight the fact that Canada still has a way to go in creating a society where all individuals have genuinely equal opportunities for participation in public goods, such as education.

Through recent changes to its *Education Act*, Ontario has gone some way towards trying to correct these hierarchies and implement liberal feminist values in its education system. This intervention is justifiable and indeed commendable, given the particular vulnerability of youth and the way bullying drawing on prejudices such as sexism and homophobia adversely impacts students’ ability to participate equally in education while also modeling discriminatory and illiberal behaviour for all students. The changes to Ontario education law recognize the importance of systemic or contextual factors in reducing peer harassment and in allowing individual students to better develop their potential. The new *Education Act* and related documents encourage schools to address homophobia and other forms of discrimination-motivated bullying proactively. In so doing, the *Act* encourages schools to work towards improving broad community behaviour and attitudes, rather than to react to individual instances of discriminatory behaviour or bullying. These provisions respond to evidence which suggests

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<sup>457</sup> As I note in chapter three, some heterosexual-identified students do face homophobic harassment, perhaps because they do not conform to prevailing gender stereotypes in their school communities: see *Every Class in Every School* 58 and 64; see also *Gender, Bullying and Harassment* at 6-9.

<sup>458</sup> See Ringrose et al; see also “Sex and Tech”, *supra* note 201.

that proactive and systemic initiatives to change attitudes and school cultures are important in reducing bullying in general and homophobic bullying specifically. These initiatives can, in turn, make schools safer for individual students, including LGBTQ students, and enhance respect for their individual rights while also instilling a deeper respect for liberal rights in all members of the school community.

Further, as sexting related harassment and bullying have drawn considerable media and public attention, I am hopeful that Ontario policy makers and educators will work together to address this issue. I reiterate that further research on sexist harassment of girls and harassment in the wake of sexting would be helpful. Ontario should support such research. However, my research on anti-bullying initiatives and initiatives to reduce homophobic harassment suggests that similar proactive policies could enhance gender equity and diminish the sexist harassment and “slut shaming” of young women.

I argue that law and education should seek to instill in students greater respect for gender equity and an awareness (and healthy skepticism) of sexist double standards, such as the double standards which underlie “slut shaming” behaviour. Encouraging community members, including students, educators and members of the public, to examine their biases and to abandon sexist attitudes could enhance genuine substantive equality of opportunity (i.e., to participate in education without facing sexist harassment) for young women. Ontario policy makers and educators should assess how current law and policy can be used to address the sexualized harassment and bullying of girls. If necessary, policy makers should also consider further action, including further education law amendments, to ensure that liberal feminist values of equal participation, equal rights and equal opportunity are to be the reality for all students regardless of

participation in sexting or other sexual activity, sexual orientation or other personal characteristics.

## **Bibliography**

### **Legislation**

#### **Statutes**

*Accepting Schools Act*, SO 2012 c5.

Bill 13, *Accepting Schools Act*, 1<sup>st</sup> Sess, 40<sup>th</sup> Leg, Ontario, 2012 (assented to 10 June 2012), SO 2012 c 5.

Bill 18, *The Public Schools Amendment Act*, 2<sup>nd</sup> Sess, 40<sup>th</sup> Leg, Manitoba, 2013 (assented to 13 September 2013).

Bill 28, *The Public Schools Amendment Act (Reporting Bullying and Other Harm)*, 5<sup>th</sup> Sess, 39<sup>th</sup> Leg, Manitoba, 2011 (assented to 16 June 2011), SM 2011, c 18.

Bill 30, *The Safe Schools Charter (Various Acts Amended)*, 2<sup>nd</sup> Sess, 38<sup>th</sup> Leg, Manitoba, 2004 (assented to 10 June 2004), SM 2004, c 24.

Bill 56, *An Act to prevent and stop bullying and violence in schools*, 2<sup>nd</sup> Sess, 39<sup>th</sup> Leg, Quebec, 2012 (assented to 15 June 2012), SQ 2012 c 19.

Bill 212, *An Act to amend the Education Act, in respect of behaviour, discipline and safety*, 2<sup>nd</sup> Sess, 38<sup>th</sup> Leg, Ontario, 2007 (assented to 4 June 2007), SO 2007 c 14.

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*, 2<sup>nd</sup> Sess, 41<sup>st</sup> Parl, 2013 (first reading 20 November 2013).

Bill C-273, *An Act to amend the Criminal Code (cyberbullying)*, 41<sup>st</sup> Parl, 1<sup>st</sup> Sess.

*Education Act*, RSO 1990 c E2.

*Safe Schools Act*, SO 2000 c 12.

*Youth Criminal Justice Act*, SC 2002 c 1.

#### **Regulations**

*Court of Queen's Bench Rules*, Man Reg 553/1988.

*Rules of Civil Procedure*, RRO 1990, Reg 194.

*Rules of Court*, NB Reg 1982-73.

#### **Rules of Practice**

Ontario, Social Justice Tribunals of Ontario, *Common Rules*, r A10.

## **Jurisprudence**

*AH v. State*, 949 So 2d 234 (Fl Ct App 2007).

*Bethel School District No 403 et al v Fraser*, 478 US 675 (1986).

*Egan v Canada*, [1995] 2 SCR 513.

*Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

*Miller v Skumanick*, 605 F Supp 2d 634 (Dist. Court, MD Pennsylvania 2009).

*Morse v Frederick*, 439 F. 3d 1114.

*R v Seaboyer*, [1991] 2 SCR 577.

*School District No. 44 (North Vancouver) v. Jubran*, 2005 BCCA 201.

*Tinker v Des Moines*, 390 US 503 (1969).

*Vriend v. Alberta*, [1998] 1 SCR 493.

## **Secondary sources and other materials**

### ***Books***

Baehr, Amy, ed, *Varieties of Feminist Liberalism* (Lanham, MD: Rowman & Littlefield Publishers, 2004).

Bazon, Emily, *Sticks and Stones: Defeating the Culture of Bullying and Rediscovering the Power of Character and Empathy* (New York: Random House, 2013).

Beasley, Chris, *Gender & Sexuality: Critical Theories, Critical Thinkers* (London: SAGE Publications Ltd, 2005).

Bevir, Mark, ed, *Encyclopedia of Political Theory* (London: SAGE Publications Ltd, 2010).

Butler, Judith, *Gender Trouble* (Routledge: New York, 1990).

Farrelly, Colin Patrick, *Contemporary Political Theory: A Reader* (London: SAGE Publications Ltd, 2004).

Fineman, Martha, *Feminist and Queer Legal Theory* (Farnham, United Kingdom: Ashgate Publishing Group, 2009).

Jackson, Margaret, *The Real Facts of Life: Feminism and the Politics of Sexuality circa 1850-1940* (London: Taylor and Francis, 1994).

Kaplan, Morris B., *Sexual Justice: Democratic Citizenship and the Politics of Desire* (Routledge: New York, 1997).

Kirsch, Max H., *Queer Theory and Social Change* (New York: Routledge, 2000).

- Kosofsky Sedgwick, Eve, *Epistemology of the Closet* (Berkeley: University of California Press, 2008). Jovanović, Miodrag A., *Collective Rights: A Legal Theory* (Cambridge: Cambridge University Press, 2012).
- Larkin, June, *Sexual Harassment: High School Girls Speak Out* (Toronto: Second Story Press, 1994).
- Meyer, Elizabeth, *Gender, Bullying and Harassment: Strategies to end sexism and homophobia in schools* (New York: Teachers College Press/Columbia University, 2009).
- Meyer, Elizabeth, *Gender and Sexual Diversity in Schools: An Introduction* (Dordrecht, Netherlands: Springer Science + Business Media, 2010).
- Mikel Brown, Lyn, *Girlfighting: Betrayal and Rejection Among Girls* (New York: New York University Press, 2003).
- Nussbaum, Martha, *Sex and Social Justice* (Oxford: Oxford University Press, 1999).
- Okin, Susan Moller, *Justice, Gender and the Family* (New York: Basic Books, 1989).
- Rawls, John and Erin Kelly, ed, *Justice as Fairness: A Restatement* (Universal Law Publishing Co Pvt Ltd, Delhi: 2004).
- Rawls, John, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 1971).
- Simmons, Rachel, *Odd Girl Out: The Hidden Culture of Aggression in Girls* (San Diego: Harcourt Books, 2011).
- Tong, Rosemary, *Feminist Thought: A More Comprehensive Introduction*, 3d ed (Philadelphia: Westview Press, 2009).
- Bradley C. S. Watson, *Civil Rights and the Paradox of Liberal Democracy* (Lanham, Maryland: Lexington Books, 1999).

### ***Periodicals***

- Ainsley, Gregory, "Cyberbullying: The New Gender Harassment and How Legislatures Can Protect Free Speech While Ensuring That Laws Keep Pace With Technological Advances" (2011) 26 Wis J L Gender & Soc'y 313.
- Albury, Kath & Kate Crawford, "Sexting, consent and young people's ethics: Beyond Megan's Story" (2012) 26:3 Continuum: Journal of Media & Cultural Studies 463.
- Bailey, Jane and Mouna Hanna, "Assessing the Gendered Dimensions of Sexting" (2011) 23:2 Can J of Women and L 405.
- Baumeister, Roy F. and Jean M. Twenge, "Cultural Suppression of Female Sexuality" (2002) 6:2 Review of General Psychology 66. Becker, Mary, "Patriarchy and Inequality" (1999) U Chi Legal F 21.

- Black, Whitney W. et al, "Effects of "Safe School" Programs and Policies on the Social Climate for Sexual-Minority Youth: A Review of the Literature" (2012) 9 Journal of LGBT Youth 321.
- Bojer, Hilde, "Women and the Rawlsian Social Contract" (2002) 15:4 Social Justice Research 393.
- Blugerman, Brian M., "Beyond Obscenity: Canada's New Child Pornography Law" (1994) 11 Ent & Sports L J 3.
- Brenner, Susan W. and Megan Rehberg, " 'Kiddie Crime'? The Utility of Criminal Law in Controlling Cyberbullying" (2010)8 First Amend L Rev 1.
- Carbone-Lopez, Kristin et al, "Correlates and Consequences of Peer Victimization: Gender Differences in Direct and Indirect Forms of Bullying" (2010) 8:4 Youth Violence and Juvenile Justice 332.
- Cesaroni, Carla and Nicholas Bala, "Deterrence as a Principle of Youth Sentencing: No Effect on Youth, but a Significant Effect on Judges" (2008) 34 Queen's LJ 447
- Chaffin, Stacy M., "The New Playground Bullies of Cyberspace: Online Peer Sexual Harassment" (2008) 51 Howard L J 773.
- Cunningham, Charles E. et al, "A Qualitative Analysis of the Bullying Prevention and Intervention Recommendations of Students in Grades 5 to 8" (2010) 9 Journal of School Violence 321.
- Cunningham, Charles E. et al, "Modeling the Bullying Prevention Program Design Recommendations of Students From Grades Five to Eight: A Discrete Choice Conjoint Experiment" (2011) 37 Aggressive Behaviour 521.
- Dake, Joseph A. et al, "Prevalence and Correlates of Sexting Behaviour in Adolescents" (2012) 7:1 American Journal of Sexuality Education 1.
- Dake, Joseph A. et al, "The nature and extent of bullying at school" (2003) 73:5 The Journal of School Health 173.
- DeMitchell, Todd A. and Martha Parker Magagna, "Student Victims or Student Criminals?: The Bookends of Sexting in a Cyber World" (2011-2012) 10 Cardozo Pub. L. Pol'y & Ethics J. 1.
- Duncan, Neil, "Bullying, Social Power and Heteronormativity: Girls' Constructions of Popularity" (2011) 25 Children & Society 306
- Duncan, Neil, "Sexual Bullying in Secondary Schools" (1998) 16:2 Pastoral Care 27
- Eraker, Elizabeth C., "Stemming Sexting: Sensible Legal Approaches to Teenagers' Exchange of Self-Produced Pornography" (2010) 25 Berkeley Tech LJ 555.
- Fanti, Kostas A. et al, "A longitudinal study of cyberbullying: Examining risk and protective factors" (2012) 9:2 European Journal of Developmental Psychology 168
- Findlay, Nora M., "Should There be Zero Tolerance for Zero Tolerance School Discipline Policies?" (2008) 18 Educ & L J 103.

- Follesdal, Andreas, "Exit, Choice and Loyalty: Religious liberty versus gender equality" (2005) 36:4 *J of Social Philosophy* 407.
- Gong, Lijia and Alyna Hoffman, eds, "Sexting and Slut-Shaming: Why Prosecution of Teen Self-Sexters Harms Women" (2012) 13 *Geo. J. Gender & L.* 577.
- Goodenow, Carol et al, "School Support Groups, Other School Factors and the Safety of Sexual Minority Adolescents" (2006) 43:5 *Psychology in the Schools* 573.
- Grossman, Arnold H. et al, "Lesbian, Gay, Bisexual and Transgender Youth Talk about Experiencing and Coping with School Violence: A Qualitative Study" (2009) 6 *Journal of LGBT Youth* 24.
- Hall, Chaney, "Sticks and Stones May Break My Bones But Will the Law Ever Protect Me? Ensuring Educational Access Through Federal Prohibition of Peer-on-Peer Harassment" (2009) 29 *Child Legal Rts J* 42.
- Hinduja, Sameer and Justin W. Patchin, "Bullying, Cyberbullying, and Suicide" (2010) 14:3 *Archives of Suicide Research* at 216-217.
- Hinduja, Sameer and Justin Patchin, "Cyberbullying: Neither an epidemic nor a rarity" (2012) 9:5 *European Journal of Developmental Psychology* 539.
- Isaac, Thomas, "Case Comment: Individual Versus Collective Rights: Aboriginal People and the Significance of *Thomas v. Norris*" (1992) 21 *Man LJ* 619.
- Isaac, Thomas, "Canadian Charter of Rights and Freedoms: The Challenge of the Individual and Collective Rights of Aboriginal People" (2002) 21 *Windsor Y B Access Just* 431.
- Danielle Keats Citron, "Law's Expressive Value in Combatting Cyber Gender Harassment" (2009) 108 *Michigan L Rev* 373.
- Kreager, Derek A. and Jeremy Staff, "The Sexual Double Standard and Adolescent Peer Acceptance" (2009) 72:2 *Social Psychology Quarterly* 143.
- Latzer, Eric S., "The Search for a Sensible Sexting Solution: A Call for Legislative Action" (2011) 41 *Seton Hall L. Rev.* 1039
- Law, Danielle M. et al, "Are Cyberbullies really bullies? An investigation of reactive and proactive online aggression" (2012) 28 *Computers in Human Behavior* 664.
- Law, Danielle M. et al, "The changing face of bullying: An empirical comparison between traditional and internet bullying and victimization" (2012) 28 *Computers in Human Behavior* 226.
- Law, Sylvia A., "Rethinking Sex and the Constitution" (1984) 132:5 *U Penn L Rev* 955.
- Levin, Karen D., "La Cyberintimidation: un analyse juridique" (2010) 8 *Can. J L & Tech* 65.
- Li, Qing, "Cyberbullying in Schools: A Research of Gender Differences" (2006) 27 *School Psychology International* 157.

- Loyd, S. A., "Situating a Feminist Criticism of John Rawls's Political Liberalism" (1995) 28 Loy. L. A. L. Rev. 1319.
- MacDougall, Bruce and Paul Clarke, "The Case for Gay-Straight Alliances (GSAs) in Canada's Public Schools: An Educational Perspective" (2012) 21 Educ & LJ 143.
- MacDougall, Bruce and Paul Clarke, "The Case for Gay-Straight Alliances (GSAs) in Canada's Public Schools: A Legal Perspective" (2012) 21 Educ & LJ 197.
- Martin, Sonia Renee, "A Child's Right to be Gay: Addressing the Emotional Maltreatment of Queer Youth" (1996) 48 Hastings L.J. 167.
- Meyer, Elizabeth, "A Feminist Reframing of Bullying and Harassment" (2009) 43:1 McGill Journal of Education 33.
- Meyer, Elizabeth, "Gendered harassment in secondary schools: understanding teachers'(non) interventions" (2008) 20:6 Gender and Education 555.
- Minton, Stephen James et al, "A whole school/community approach to preventing and countering bullying: the Erris anti-bullying initiative (2009-2011)" (2013) 32:2 Irish Educational Studies 233.
- Mishna, Faye, "An Overview of the Evidence on Bullying Prevention and Intervention Programs" (2008) 8:4 Brief Treatment and Crisis Intervention 327.
- Mishna, Faye et al, "Risk factors for involvement in cyber bullying: Victims, bullies and bully-victims" (2012) 34 Children and Youth Services Review 63.
- Mishna, Faye et al, "Ongoing and online: Children and youth's perceptions of cyber bullying" (2009) 31 Children and Youth Services Review 222.
- Mishna, Faye et al, "'Real-World Dangers in an Online Reality: A Qualitative Study Examining Online Relationships and Cyber Abuse" (2009) 33:2 Social Work Research.
- Mishna, Faye et al, "Cyber Bullying Behaviors Among Middle and High School Students" (2010) 80:3 American Journal of Orthopsychiatry 362.
- Mishna, Faye et al, "Interventions to Prevent and Reduce Cyber Abuse of Youth: A Systematic Review" (2011) 21:1 Research on Social Work Practice 5-14.
- Mishna, Faye et al, "Bullying of Lesbian and Gay Youth: A Qualitative Investigation" (2009) 39 The British Journal of Social Work 1598.
- Moller Okin, Susan, "Equal Citizenship: Gender Justice and Gender: An Unfinished Debate" (2004) 72:5 Fordham L Rev 1537.
- Mosher, Janet E., "Lessons in Access to Justice: Racialized Youths and Ontario's Safe Schools" (2008) 46 Osgoode Hall LJ 807.

- Mujahid, Maryam F., "Romeo and Juliet: A Tragedy of Love by Text: Why Targeted Penalties That Offer Front-end Severity and Backend Leniency Are Necessary to Remedy the Teenage Mass-Sexting Dilemma" (2012) 55 *Howard L.J.* 173
- Nedelsky, Jennifer, "Reconceiving Rights as a Relationship" (1994) 1 *Rev Const Studies* 1.
- Ng, Katherine, "Digital Dilemmas: Responding to Cyberbullying in Nova Scotia" (2012) 22 *Educ & LJ* 63.
- Noonan, Bethan, "Crafting Legislation to Prevent Cyberbullying: The Use of Education, Reporting and Threshold Requirements" (2011) 27 *J Contemp Health L & Pol'y* 330.
- Olweus, Dan, "Cyberbullying: An overrated phenomenon?" (2012) 9:5 *European Journal of Developmental Psychology* 1.
- Olweus, Dan, "Bully/victim problems in school: Facts and intervention" (1997) 12:4 *European Journal of Psychology of Education* 495-510.
- Olweus, Dan, "School Bullying: Development and Some Important Challenges" (2013) 9:7 *Annu Rev Clin Psychol* 51.
- Pascoe, C.J., "Resource and Risk: Youth Sexuality and New Media Use" (2011) 8 *Sex Res Soc Policy* 5.
- Pearce, Natasha et al, "Current Evidence of Best Practice in Whole-School Bullying Intervention and Its Potential to Inform Cyberbullying Interventions" (2012) 21:1 *Australian Journal of Guidance and Counselling* 1.
- Perren1, Sonja and Eveline Gutzwiller-Helfenfinger "Cyberbullying and traditional bullying in adolescence: Differential roles of moral disengagement, moral emotions, and moral values" (2012) 9:2 *European Journal of Developmental Psychology* 195.
- Podlas, Kimberlianne, "The Legal Epidemiology of the Teen Sexting Epidemic: How the Media Influenced a Legislative Outbreak" (2011) 12 *Pitt J Tech L & Pol'y* 1.
- Poteat, V. Paul and Ian Rivers, "The use of homophobic language across bullying roles during adolescence" (2010) 31 *Journal of Applied Developmental Psychology* 166.
- Rahey, Leila and Wendy M. Craig, "Evaluation of An Ecological Program to Reduce Bullying in Schools" (2002) 36:4 *Canadian Journal of Counselling* 281.
- Reyns, Bradford W. et al, "The unintended consequences of digital technology: exploring the relationship between sexting and cybervictimization" (2013) 36:1 *Journal of Crime and Justice* 1.
- Rhode, Deborah L., "Feminism and the State" (1994) 107 *Harvard L Rev* 1181.
- Roher, Eric M., "Will the New Safe Schools Legislation Make Ontario Schools Safer?" (2007) 17 *Educ & LJ* 203.
- Roher, Eric M., "When Push Comes to Shove: Bullying and Legal Liability in Schools" (2003) 12 *Educ & L J* 319.

- Roher, Eric M., "Dealing with Off-School Conduct: Cyberbullying, Drug Dealing and Other Activities Outside of School Premises" (2012) 21 *Educ. & L.J.* 91.
- Russell, Stephen T. et al, "Safe Schools Policy for LGBTQ Students" (2010) 24:4 *Sharing Child and Youth Development Knowledge*.
- Smith, Patricia, "Autonomy, Aspiration and Accomplishment: Some Steps and Barriers to Equality for Women" (1998) 9 *J. Contemp. Legal Issues* 257.
- Schwartzman, Lisa, "Liberal Rights Theory and Social Inequality: A Feminist Critique" (1999) 14:2 *Hypatia* 25.
- Shariff, Shaheen & R. Gouin, R, "Cyber-dilemmas: Gendered hierarchies, new technologies and cyber-safety in schools" (2006) 31:1 *Atlantis - A Women's Studies Journal* 26.
- Shariff, Shaheen, "Cyber Dilemmas in the New Millennium" (2005) 40:3 *McGill J of Education* 467.
- Shariff, Shaheen and Leanne Jonny, "Cyber-libel and Cyber-bullying: Can Schools Protect Student Free Expression and Reputations in a Digital Environment?" (2007) 16:3 *Education L J* 107.
- Sheehy, Elizabeth, "From Women's Duty to Resist to Men's Duty to Ask: How Far Have We Come?" (2000) 20 *Canadian Woman Studies* 98.
- Slonje, Robert et al, "The nature of cyberbullying, and strategies for prevention" (2013) 29 *Computers in Human Behavior* 29 26.
- Smith, David J. et al, "Antibullying Interventions in Schools: Ingredients of Effective Programs" 28:4 *Canadian Journal of Education* 739.
- Snell, Patricia A. and Elizabeth K. Englander, "Cyberbullying Victimization and Behaviors Among Girls: Applying Research Findings in the Field" (2010) 6:4 *Journal of Social Sciences* 510-514.
- Staudemüller, Frithjof et al, "How stressful is online victimization? Effects of victim's personality and properties of the incident" (2012) 9:2 *European Journal of Developmental Psychology* 260.
- Susan Swearer et al, "What Can Be Done About School Bullying?: Linking Research to Educational Practice" (2010) 39:1 *Educational Researcher* 38.
- Taylor, Catherine G., "A Human Rights Approach to Stopping Homophobic Bullying in Schools" (2007) 19: 3/4 *Journal of Gay and Lesbian Social Services* 157.
- Ttofi, Maria M. and David P. Farrington, "Effectiveness of school-based programs to reduce bullying: a systematic and meta-analytic review" (2011) 7 *J Exp Criminol* 27.
- Turner, Heather A. et al, "Recent Victimization Exposure and Suicidal Ideation in Adolescents" (2012) 166:12 *Archives of Pediatric and Adolescent Medicine* 1149.
- Tracy Vaillancourt and Aanchal Sharma, "Intolerance of Sexy Peers: Intrasexual Competition Among Women" (2011) 37 *Aggressive Behaviour* 569.

West, Robin L., "Justice and Care" (1996) 70 St. John's L Rev 31.

Willard, Nancy E., "Sexting and Youth: Achieving a Rational Response" (2010) 6:4 *J Social Sci* 542.

Williams, Jamie L., "Teens, SEXTS & Cyberspace: The Constitutional Implications of Current Sexting & Cyberbullying Laws" (2012) 20 *Wm & Mary Bill Rts J* 1017.

Willoughby, Brian L. B. et al, "Victimization, Family Rejection, and Outcomes of Gay, Lesbian, and Bisexual Young People: The Role of Negative GLB Identity" (2010) 6:4 *Journal of GLBT Family Studies* 403.

### ***Conference presentations***

Danah Boyd, "Teen Sexting and Its Impact on the Tech Industry" (Lecture delivered at the Read Write Web 2WAY Conference, New York, NY, 13 June 2011), online: <<http://www.danah.org/papers/talks/2011/RWW2011.html>>.

### ***Reports and studies***

Aboriginal Healing Foundation, "Origins of Lateral Violence in Aboriginal Communities: A Preliminary Study of Student-to-Student Abuse in Residential Schools" (7 July 2014), online: Aboriginal Healing Foundation <<http://www.ahf.ca>>.

Australian Human Rights Commission, "Chapter Two: Lateral violence in Aboriginal and Torres Strait Islander communities" in *Social Justice Report 2011* (Sydney: Australian Human Rights Commission, 2011), online: <<https://www.humanrights.gov.au/publications/social-justice-report-2011>>.

American Association of University Women, *Hostile Hallways: Bullying, Teasing and Sexual Harassment in Schools* (New York: AAUW Educational Foundation, 2003), online: <<http://www.aauw.org/files/2013/02/hostile-hallways-bullying-teasing-and-sexual-harassment-in-school.pdf>>.

Brown, Robert S., for the Toronto District School Board, "Making the Grade: The Grade 9 Cohort of Fall 2002", online: <<http://www.tdsb.on.ca/Portals/0/AboutUs/Research/MakingTheGrade2002-07Overview.pdf>>.

Burgess-Proctor, Amanda et al, "Cyberbullying Research Summary Victimization of adolescent girls", online: Cyberbullying Research Center, <[http://www.cyberbullying.us/cyberbullying\\_girls\\_victimization.pdf](http://www.cyberbullying.us/cyberbullying_girls_victimization.pdf)>.

Gay, Lesbian & Straight Education Network, *The 2011 National School Climate Survey: The Experience of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* (New York: GLSEN, 2012), online: <<http://glsen.org/sites/default/files/2011%20National%20School%20Climate%20Survey%20Full%20Report.pdf>>.

Gay, Lesbian & Straight Education Network et al, *Out online: The experiences of lesbian, gay, bisexual and transgender youth on the Internet* (New York: GLSEN, 2013).

McCreary Centre Society, *Not Yet Equal: The Health of Lesbian, Gay & Bisexual Youth in BC* (Vancouver: The McCreary Centre Society, 2007), online: <[http://mcs.bc.ca/pdf/not\\_yet\\_equal\\_web.pdf](http://mcs.bc.ca/pdf/not_yet_equal_web.pdf)>.

National Campaign to Prevent Teen and Unplanned Pregnancy, The, “Sex and Tech: Results from a Survey of Teens and Young Adults”, online: TheNationalCampaign.org, <<http://www.thenationalcampaign.org/sextech/>>.

O’Shaughnessy, Molly et al, *Safe Place to Learn: Consequences of Harassment Based on Actual or Perceived Sexual Orientation and Gender Non-Conformity and Steps for Making Schools Safer: a Report of the California Safe Schools Coalition* (San Francisco: California Safe Schools Coalition, 2004).

Pew Internet and American Life Project, “Teens and Sexting” (15 December 2009), online: <<http://www.pewinternet.org/Reports/2009/Teens-and-Sexting/Overview.aspx>>

Ringrose, Jessica et al, A qualitative study of children, young people and ‘sexting’: A report prepared for the NSPCC (2012), online: <[http://www.nspcc.org.uk/inform/resourcesforprofessionals/sexualabuse/sexting-research-report\\_wdf89269.pdf](http://www.nspcc.org.uk/inform/resourcesforprofessionals/sexualabuse/sexting-research-report_wdf89269.pdf)>.

Taylor, Catherine and Tracey Peter for Egale Canada, *Every Class in Every School: Final Report on the First National Climate Survey on Homophobia, Biphobia and Transphobia in Canadian Schools* (Toronto: Egale Canada Human Rights Trust, 2011)

Totten, Mark and Perpetua Quigley, “Parental knowledge of child-reported bully-victim and sexual harassment problems in seven Canadian schools: implications for policy and program development” (2005), online: <<http://www.tottenandassociates.ca/wp-content/uploads/2012/01/parent-child-bully-paper-nov-6-05a.pdf>>.

Williams, Patricia for Human Rights Watch, *Hatred in the Hallways* (New York: Human Rights Watch, 2001), online: <<http://www.hrw.org/reports/2001/uslgbt/toc.htm>>.

### ***Theses***

Barbour, Laura A., *Seeking Authenticity: Young Nova Scotian Women's Construction of Sexuality* (MA Thesis, Dalhousie University, 2007) [unpublished].

Sarah Beer, *The Sex Worker Rights Movement in Canada: Challenging the ‘Prostitution Laws’* (PhD Thesis, University of Windsor, 2010) [unpublished].

DiManno, Andrew, *New Technologies and Criminal Law: Criminalizing Cyberbullying* (MA Thesis, Carleton University, 2009) [unpublished].

Shariff, Shaheen, *A System on Trial: Identifying Legal Standards for Educational, Ethical and Legally Defensible Approaches to Bullying in Schools* (PhD Thesis, Simon Fraser University, 2003) [unpublished].

Theis, Linda D., *Enculturation and Posttraumatic Growth Factors in Native Americans* (PhD Thesis, Walden University, 2014) [unpublished].

### *News sources*

- Bazon, Emily, "Hope Witsell's Sexting Suicide: Why kids self-destruct with cell phones and online" Slate (8 December 2009), online: <[http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2009/12/hope\\_witsells\\_sexting\\_suicide.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2009/12/hope_witsells_sexting_suicide.html)>.
- Canadian Press, "Weeks after posting haunting Youtube video on her years of torment at classmates' hands, 15-year-old B.C. girl commits suicide" National Post (October 12 2012), online: Post Media Network Inc <<http://news.nationalpost.com/2012/10/12/amanda-todd-suicide-2012/>>.
- CBC News, "Rape, bullying led to N.S. teen's death, says mom" CBC (April 12 2013), online: Canadian Broadcasting Corporation <<http://www.cbc.ca/news/canada/nova-scotia/rape-bullying-led-to-n-s-teen-s-death-says-mom-1.1370780>>.
- CBC News, "Rehtaeh Parsons suspects in court to face child porn charges" CBC News Nova Scotia (15 August 2013), online: CBC, <<http://www.cbc.ca/news/canada/nova-scotia/story/2013/08/15/ns-rehtaeh-parsons-accused-appearance.html>>.
- CBC News, "Bill 18 passes in Manitoba legislature" *Canadian Broadcasting Corporation* (13 September 2013), online: <<http://www.cbc.ca/news/canada/manitoba/bill-18-passes-in-manitoba-legislature-1.1829690>>.
- CBC News, "Gay Ottawa teen who killed himself was bullied" *CBC* (18 October 2011), online: CBC Radio Canada, <<http://www.cbc.ca/news/canada/ottawa/story/2011/10/18/ottawa-teen-suicide-father.html>>.
- CBC News, "N.S. announces cyberbullying task force" *CBC News* (6 April 2011), online: CBC Radio Canada, <<http://www.cbc.ca/news/canada/nova-scotia/story/2011/04/06/ns-cyberbullying-task-force.html>>.
- CTVNews.ca Staff, "Ottawa teen details final suicidal thoughts on blog" *CTV News* (17 October 2011), online: CTV <<http://www.ctvnews.ca/ottawa-teen-details-final-suicidal-thoughts-on-blog-1.712337>>.
- Fong, Petti, "Amanda Todd: Suicidal teen talked to her mother about death" *The Toronto Star* (16 October 2012), online: Toronto Star Newspapers Ltd <[http://www.thestar.com/news/canada/2012/10/16/amanda\\_todd\\_suicidal\\_teen\\_talked\\_to\\_her\\_mother\\_about\\_death.html](http://www.thestar.com/news/canada/2012/10/16/amanda_todd_suicidal_teen_talked_to_her_mother_about_death.html)>.
- Fenton, Drake and Natascia Lypny, "National anti-bullying program enlists teens to hold prevention workshops" *Ottawa Citizen* (4 June 2013), online: Ottawa Citizen, <<http://www.ottawacitizen.com/life/National+anti+bullying+program+enlists+teens+hold+prevention+workshops/8470783/story.html>>.

Gillis, Wendy, "Rehtaeh Parsons' friends were silent about alleged sexual assault" *The Toronto Star* (10 April 2013), online: Toronto Star Newspapers Ltd  
<[http://www.thestar.com/news/canada/2013/04/10/rehtaeh\\_parsons\\_friends\\_were\\_silent\\_about\\_alleged\\_sexual\\_assault.html](http://www.thestar.com/news/canada/2013/04/10/rehtaeh_parsons_friends_were_silent_about_alleged_sexual_assault.html)>.

Huffington Post Tech, "Jessica Logan Suicide: Parents Of Dead Teen Sue School, Friends Over Sexting Harassment" *Huffington Post* (May 25 2011), online: theHuffingtonPost.com, Inc  
<[http://www.huffingtonpost.com/2009/12/07/jessica-logan-suicide-par\\_n\\_382825.html](http://www.huffingtonpost.com/2009/12/07/jessica-logan-suicide-par_n_382825.html)>.

HuffPost Gay Voices, "Jamie Hubley, Gay 15-Year-Old Ottawa, Canada Teen Commits Suicide, Cites Depression, School Troubles" *The Huffington Post* (18 October 2011), online: The Huffington Post.com Inc <[http://www.huffingtonpost.com/2011/10/17/jamie-hubley-commits-suicide\\_n\\_1015646.html](http://www.huffingtonpost.com/2011/10/17/jamie-hubley-commits-suicide_n_1015646.html)>.

Kaye, Randi, "How a cell phone picture led to girl's suicide" *CNN* (7 October 2010) online: Cable News Network <<http://www.cnn.com/2010/LIVING/10/07/hope.witsells.story/index.html>>.

Meacham, Andrew, "Sexting-related bullying cited in Hillsborough teen's suicide" *Tampa Bay Times* (27 November 2009), online: Tampa Bay Times  
<<http://www.tampabay.com/news/humaninterest/sexting-related-bullying-cited-in-hillsborough-teens-suicide/1054895>>.

Post Media News, "Bullied teen Jamie Hubley remembered as 'natural-born' performer at funeral" *The National Post* (20 October 2011), online: National Post,  
<<http://news.nationalpost.com/2011/10/20/700-gather-to-mourn-gay-teen/>>.

Post Media News, "'I have a hard time leaving this world,' teen writes in suicide letter after years of bullying" *The National Post* (30 November 2011), online: National Post,  
<<http://news.nationalpost.com/2011/11/30/i-have-a-hard-time-leaving-this-world-teen-writes-in-suicide-letter-after-years-of-bullying/>>.

Schulman, Michael, "Generation LGBTQIA" *New York Times* (9 January 2013), online: The New York Times Company <[http://www.nytimes.com/2013/01/10/fashion/generation-lgbtqia.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/01/10/fashion/generation-lgbtqia.html?pagewanted=all&_r=0)>.

Shaw, Gillian, Vancouver Sun, "Amanda Todd's mother speaks out about her daughter, bullying" *Vancouver Sun* (March 13 2013), online:  
<<http://www.vancouversun.com/Amanda+Todd+mother+speaks+about+daughter+bullying+with+video/7384521/story.html#ixzz2gVubZcWU>>.

Southey, Tabatha, "Bill C-13 is about a lot more than cyberbullying" (6 December 2013) *The Globe and Mail*, online: The Globe and Mail Inc, <<http://www.theglobeandmail.com/globe-debate/columnists/maybe-one-day-revenge-porn-will-be-have-no-power/article15804000>>.

Telegraph, The, "Italian prosecutor may put Facebook staff under investigation after girl's suicide over online 'bullying'" (26 May 2013), online: Telegraph Media Group Limited  
<<http://www.telegraph.co.uk/technology/facebook/10081689/Italian-prosecutor-may-put-Facebook-staff-under-investigation-after-girls-suicide-over-online-bullying.html>>.

Thanh Ha, Tu, "Police arrest two in Rehtaeh Parsons bullying suicide" *The Globe and Mail* (8 August 2013), online: *The Globe and Mail*, <<http://www.theglobeandmail.com/news/national/two-arrests-made-in-rehtaeh-parsons-case/article13655110/>>.

Wyatt, Nelson, *The Canadian Press*, "Marjorie Raymond Suicide: Quebec Teen Was Tormented By Bullying, Says Her Mother" *The Huffington Post* (30 November 2011), online: *HuffingtonPost.ca* <[http://www.huffingtonpost.ca/2011/11/30/marjorie-raymond-bullying-suicide\\_n\\_1121235.html](http://www.huffingtonpost.ca/2011/11/30/marjorie-raymond-bullying-suicide_n_1121235.html)>.

### ***Other online materials***

Bailey, Jane, "Bill C-13: The Victims of "Cyberbullying" and Canadians Deserve More" (28 November 2013) *The eGirls Project Blog*, online: *eGirlsproject.ca*, <<http://egirlsproject.ca/2013/11/28/bill-c-13-the-victims-of-cyberbullying-and-canadians-deserve-more/>>.

Center for Missing and Exploited Children, "Child Molesters: A Behavioral Analysis" 119, online: <[http://www.missingkids.com/en\\_US/publications/NC70.pdf#page=13](http://www.missingkids.com/en_US/publications/NC70.pdf#page=13)>.

Elementary Teachers' Federation of Ontario, "Safe Schools Legislation - Bill 212", online: ETFO, <<http://www.etfo.ca/issuesineducation/safeschools/pages/default.aspx>>.

Geist, Michael, "The Privacy Threats in Bill C-13, Part One: Immunity for Personal Info Disclosures Without a Warrant" (25 November 2013) *MichaelGeist.ca*, online: <<http://www.michaelgeist.ca/content/view/7006/125>>.

Media Smarts, "Cyberbullying and the Law Fact Sheet", online: *MediaSmarts.ca* <<http://mediasmarts.ca/backgrounders/cyberbullying-law-fact-sheet>>.

Ministry of Education, "Safe and Accepting Schools" (2013), online: <<http://www.edu.gov.on.ca/eng/teachers/safeschools.html>>.

National Society for the Prevention of Cruelty to Children, "Sexual Bullying in Schools" (2014), online: NSPCC <[http://www.nspcc.org.uk/Inform/research/questions/sexual\\_bullying\\_wda70106.html](http://www.nspcc.org.uk/Inform/research/questions/sexual_bullying_wda70106.html)>.

Russell, S. et al for the California Safe Schools Coalition, *LGBT Issues in the Curriculum Promotes School Safety* (San Francisco: California Safe Schools Coalition, 2006), online: <<http://www.casafeschools.org/FactSheet-curriculum.pdf>>.

Sacco, Dena et al, "Sexting: Youth Practices and Legal Implications" (2010) Berkman Ctr for Internet & Soc't at Harvard Univ, online: <[http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Sacco\\_Argudin\\_Maguire\\_Tallon\\_Sexting\\_Jun2010.pdf](http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Sacco_Argudin_Maguire_Tallon_Sexting_Jun2010.pdf)>.

Todd, Amanda, "My story: struggling, bullying, suicide, self-harm" (7 September 2012), online: YouTube <<http://www.youtube.com/watch?v=vOHXGNx-E7E>>.

Violence Prevention Works, "Ten Tips for Administrators to Address Bullying in School" (2014), online: *The Hazelden Foundation* <[http://www.violencepreventionworks.org/public/bullying\\_tips\\_for\\_administrators.page](http://www.violencepreventionworks.org/public/bullying_tips_for_administrators.page)>.

## **Government documents**

### ***Debates***

Elizabeth Meyer's testimony before the Senate: Senate, Proceedings of the Standing Senate Committee on Justice and Human Rights, 41st Parl, 1st Sess, Issue 14 (4 June 2012).

Ontario, Legislative Assembly, Official Report of Debates (Hansard), 40th Parl, 1st Sess, SP 5 (7 May 2012) at 27-29 (Charles McVety and Rabbi Mendel Kaplan).

Ontario, Legislative Assembly, Official Report of Debates (Hansard), 40th Parl, 1st Sess, SP 7 (14 May 2012) at 91-93 (Father Geoffrey Korz).

### ***Parliamentary reports and papers***

House of Commons, Standing Committee on Justice and Human Rights, 19<sup>th</sup> Report, 41<sup>st</sup> Parl 1<sup>st</sup> Sess.

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

### ***Non-parliamentary papers***

Canada, Department of Justice, CCSO Cybercrime Working Group, Cyberbullying and the Non-Consensual Distribution of Intimate Images (Ottawa: Report to the Federal/Provincial/Territorial Ministers Responsible for Justice and Public Safety, 2013), online: <<http://www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdncii/p6.html>>.

Ministry of Education, "A Whole-School Approach to Promoting a Safe, Inclusive, and Accepting School Climate", (June 2013) online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/eng/policyfunding/memos/june2013/TipSheetFundingCAP.pdf>>

Ministry of Education, Policy/Program Memorandum No. 119 (2013), online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/extra/eng/ppm/119.pdf>>.

Ministry of Education, *Policy/Program Memorandum No. 128* (2012), online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/extra/eng/ppm/128.pdf>>.

Ministry of Education, *Policy/Program Memorandum No. 144* (2012), online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/extra/eng/ppm/144.pdf>>.

Ministry of Education, *Realizing the Promise of Diversity: Ontario's Equity and Inclusive Education Strategy* (2009), online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/eng/policyfunding/equity.html>>.

Ministry of Education, *Equity and Inclusive Education in Ontario Schools: Guidelines for Policy Development and Implementation* (2009), online: Ontario Ministry of Education <<http://www.edu.gov.on.ca/eng/policyfunding/inclusiveguide.pdf> >.

Nova Scotia Task Force on Bullying and Cyberbullying, *Respectful and Responsible Relationships: There's No App for That* (Halifax: Nova Scotia Task Force on Bullying and Cyberbullying, 2012).

UN Human Rights Council, "Annual Full-day Meeting on the Rights of the Child: Access to Justice for Children" (13 March 2014), online: Office of the High Commissioner for Human Rights <<http://www.ohchr.org>>.