

## Focus PERSONAL INJURY

# Law takes aim at cyberbullies



**Anna Matas**

Cyberbullying is a broad term encompassing a range of verbal and emotional abuse that occurs over the Internet. Unlike traditional bullying, which generally requires bully and victim to be in the same place at the same time, cyberbullies can inflict harm asynchronously, while remaining remote in time and space from their victims. Victims, especially young people who are highly connected to the Internet and social media, report it is nearly impossible to escape from a cyberbully. The nature of the Internet compounds victims' injuries, as by default, harmful content is preserved indefinitely.

Sexting refers to the electronic sharing of intimate images. When this is done without the consent of the person photographed, sexting can be a particularly devastating form of cyberbullying. The deaths of teenagers Amanda Todd in 2012 and Rehtaeh Parsons in 2013 are but two examples of the tragic consequences that may arise from sexualized cyberbullying.

The law is grappling with how to address sexting and cyberbullying. In some cases, these behaviours may amount to criminal acts. Depending on the underlying details, police may lay charges including criminal harassment, uttering threats, extortion, counseling suicide, incitement of hatred, or child pornography. As of last March, police may also charge cyberbullies with the new crime of "non-consensual distribution of intimate images."

The civil law has not yet developed a uniform response to cyberbullying. Nationally, the victims of cyberbullying (whether or not sexualized) should consider whether they have a claim in defamation, or for the intentional infliction of mental suffering. If the cyberbullying causes a person to apprehend a risk of impending bodily contact, a victim may be able to base a claim on the tort of assault.

Certain provincial legislation could also be used to ground an action based on cyberbullying. For example, in British Columbia, the *Privacy Act* creates a tort of invasion of privacy. In Nova Scotia, the *Cyber-safety Act* creates a tort of cyberbullying. There are not yet any reported cases in which a victim of cyberbullying has sought compensation pursuant to the tort provisions of these laws; it is likely, however, that we will see such decisions in the future.



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Several provinces, including Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario, and Quebec have school-related legislation that defines bullying and/or cyberbullying, and requires the creation by schools or school boards of policies or codes of conduct mandating appropriate Internet use. Under these laws, the penalties for cyberbullying include suspension and expulsion, which in some cases may be applicable even when the harmful conduct takes place outside of school. If a school or board fails to enact or enforce required policies, student victims should consider whether they have a claim against their school or board based in negligence. Schools can protect themselves by always ensuring that cyberbullying and sexualized cyberbullying are promptly and effectively addressed.

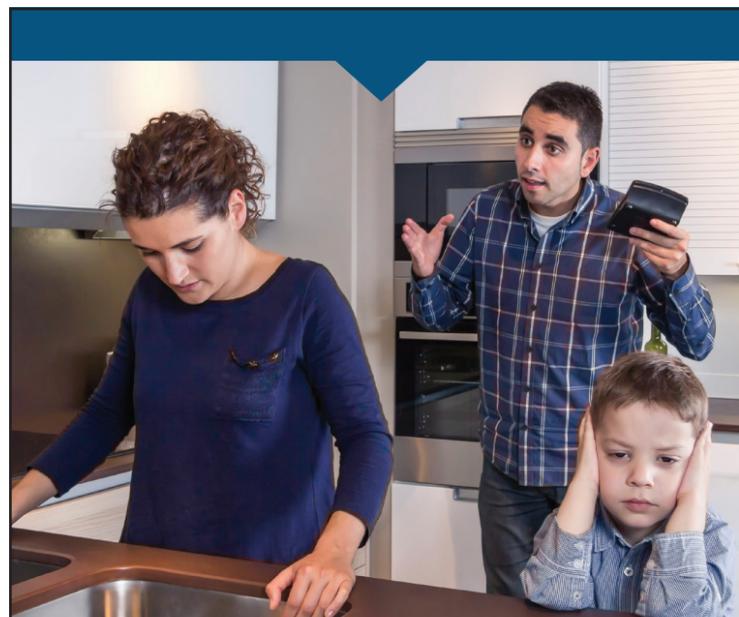
In tandem with developments in the law based on the possible causes of action described above, we can expect to see developments in areas related to cyberbullying, such as protection for the privacy of victims as they seek justice through the legal system.

A victim's request for anonymity, and avoidance of re-victimization through the disclosure of her identity, was at issue in *A.B. v. Bragg Communications Inc.* [2012] S.C.J. No. 46. In that case, a 15-year-old girl applied for an order requiring an Internet service provider to disclose the identity of a person who used the provider's IP address to publish a fake Facebook profile containing her picture and sexualized content. In addition to a request for anonymity, the applicant sought a publication ban on the fake profile's contents.

The court granted the applicant's request for anonymity on the basis that a minor's privacy interests, and the goal of protecting children from cyberbullying, were sufficiently compelling to warrant restrictions on the freedom of the press and the principle of open courts. It balanced this decision by finding that once anonymity was granted, a publication ban was not necessary. It is noteworthy that the minor in this case did not submit evidence of harm stemming from the cyberbully's actions: the court concluded this was unnecessary, as the harm inflicted by sexualized cyberbullying is objectively discernable.

As society continues to gain a fuller appreciation of the harms arising from cyberbullying, and in particular sexualized cyberbullying, the number of civil claims based on these acts is likely to rise. Access to justice for the victims requires concurrent developments in related areas of law, including the protection of victims' privacy. Over time, one can hope these developments will lead to effective recourse for victims, as legal tools develop to remove the asynchronous advantage held by bullies, and to restore victims' privacy and dignity.

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