

## Case Studies #2: Approaches to laws and law-making regarding VAW Online (15 minutes each)

### Case#1: Cyberbullying in British Columbia, Canada

The Cyber Safety Act 2013<sup>14</sup> was adopted by the Nova Scotia General Assembly in May 2013 and came into force on 6 August 2013. The legislation came about as a direct result of the death of 17-year old Nova Scotia student Rehtaeh Parsons, who took her own life in April 2013 after having been subject to months of harassment and humiliation stemming from the dissemination online of a photo of her being allegedly sexually assaulted. Rehtaeh's parents were primary advocates for the legislation.

Within the Act, "cyberbullying" is defined as (s3(1)):

**"any electronic communication through the use of technology** including, without limiting the generality of the foregoing, computers, other electronic devices, social networks, text messaging, websites and electronic mail, **typically repeated or with continuing effect**, that is **intended or ought reasonably be expected** to cause **fear, intimidation, humiliation, distress or other damage or harm** to another person's **health, emotional well-being, self-esteem or reputation**, and this includes assisting or encouraging such communication in any way."

The Act stipulates that if a minor engages in cyberbullying, and their parent knew of the activity, and knew or ought reasonably to have expected the activity to cause the requisite fear or harm, and failed to take any steps to prevent the activity, the parent is deemed to have engaged in cyberbullying (s3(2)) – and therefore personally liable under the law.

The legislation established a **CyberSCAN** unit tasked with investigating complaints related to cyberbullying, issuing warning letters, requesting ISPs to discontinue service, or applying for a court order requiring an internet intermediary to provide information to identify who may have used an IP address, website, account or username, or particular device; and to produce cell phone records, text message records, internet browsing history records and any other records that would assist in investigating a complaint (s26C(2)).

Additionally, individuals can apply for a protection order against an aggressor, and also sue for damages relating to cyberbullying.

### **Questions for Discussion:**

- [ What implications does this law have on the freedom of expression and the privacy of individuals who are accused of cyber-bullying?
- [ What do you think of the liability placed on parents in the law?
- [ What do you think of the liability placed on internet intermediaries?
- [ What do you think are the weaknesses of this law in providing redress for VAW online?

## **Case Studies #2: Approaches to laws and law-making regarding VAW Online (15 minutes each)**

### **Case #2: SB 255 Electronic Communication Devices: Prohibited Distribution of Personal Information, California, USA, (signed in effect 1 October 2013)**

This Californian law grew out of a spate of incidences in which individuals— primarily women— had nude or sexually explicit photographs of themselves published online, usually by an ex-partner. Many women expressed that their cases had not been appropriately dealt with under existing criminal or civil laws. The original Bill proposed to make the following a misdemeanour offense:

“any person who, with the intent to cause substantial emotional distress or humiliation to another person, by means of an electronic communication device, and without consent of the other person, electronically distributes, publishes, emails, hyperlinks, or makes available for downloading nude images of the other person along with personal identifying information of the other person”.

The law was fiercely criticized for its potential to curtail free speech. The American Civil Liberties Union (ACLU) argued that: “The posting of otherwise lawful speech or images even if offensive or emotionally distressing is constitutionally protected. The speech must constitute a true threat or violate another otherwise lawful criminal law, such as stalking or harassment statute, in order to be made illegal....”.

The final Law that passed held the following caveats:

- the person who distributes the image must have been the same person who created/recorded the image;
- the parties must have agreed or understood that the image would remain private;
- an intimate body part means any portion of the genitals, and in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or visible through less than fully opaque clothing.
- the offence requires an intent on the part of the distributor of causing serious emotional distress, and requires a victim to suffer serious emotional distress as a result.

Holly Jacobs, the founder of the Cyber Civil Rights Initiative and herself a victim of VAW online, believes much of the pushback that came from California legislators was rooted in “victim blaming.” The fact that the legislation excludes “selfies” is of the greatest concern, particularly given that the Cyber Civil Rights Initiative estimates that 80 per cent of images distributed without consent were recorded by the victim themselves. “If you want my honest opinion as to why this law is so weak, I believe it was unfortunately due to victim-blaming on the part of other legislators,” Jacobs said in an e-mail. One bill drafter, Jacobs said, told her people who take intimate self-shots are “stupid.”

#### **Questions for Discussion:**

1. In what ways do you agree or disagree with ACLU’s argument against the original definition of the misdemeanour?
2. Does the argument hold up under agreements on the limits of freedom of expression and the protection of women’s rights to privacy under international law?
3. What do you think are the strengths and weaknesses in the law in providing redress for VAW online?
4. What other types of VAW online involving the taking and distribution of photos/videos are not captured under this law?