

CYBER-SAFETY ACT

Policy Brief
October 2014

Issue:

The unintended consequences of Nova Scotia's *Cyber-safety Act* include an increase in young people's exposure to criminal liability and prosecution, financial and emotional burdens on parents, especially single-parent and immigrant families, and social isolation for youth who receive a Prevention Order, which restricts their internet access and online presence.

Background:

On May 10, 2013 the Nova Scotia government passed the *Cyber-safety Act* in order to protect bullying victims by holding offenders and their parents accountable.

Under this new law:

- The Cyber SCAN investigation unit was created to investigate complaints of cyberbullying
 - Anyone can contact the Cyber SCAN to file a complaint; this includes youth, teachers, parents, or other members of the public
 - Investigators will strive to solve the problem informally, but as a last resort, Cyber SCAN has the authority to apply for a Protection Order on behalf of the victim
- Cyberbullying behavior was established as tort – meaning that victim could sue their cyberbully in court
 - If the victim is a minor (under the age of 19), parents could be liable for damages
- Victims can apply for a Protection Order through the justice of the peace without notifying the offender
 - If their request is successful, the conditions for the offender include:
 - Prohibiting contact with the victim
 - Prohibiting the bully from communicating about the victim
 - Prohibiting or restricting the use of electronic communications
 - Prohibiting or restricting internet access
 - Confiscating electronic devices (such as computers or phones) from the offender
 - If the offender disobeys the above conditions, they can be charged with a fine up to \$5000, go to jail for up to 6 months, or both for a first offense
 - Prevention Orders may be active for up to one year and can be renewed
- Through amendments to the Education Act, the *Cyber-safety Act* provides principals with the authority to respond to cyberbullying incidents, which occur off school property and after school hours, as long as it affects the learning environment of the school
 - Under a restorative justice approach, the school takes the position that youth who bully must be held accountable for their actions, but the discipline methods must ultimately focus on restoring relationships in order to foster a healthy school environment
- Through amendments to the Education Act, the *Cyber-safety Act* also encourages co-operation between school boards, the provincial government and its agencies (such as Cyber SCAN) in order to promote safe and respectful cyber communications

Context:

The *Cyber-safety Act* was created as a response to the bullying-related youth suicides in Nova Scotia, the most well known example being Rehtaeh Parsons. Rehtaeh was a 17-year-old girl who died from attempted suicide, after her schoolmates had passed around sexually explicit images of her on social media sites.

Key Messages:

- The intent behind this new legislation is admirable, but its implementation is flawed
- Punitive sanctions may be appropriate in extreme cases of cyber bullying, but the tendency to apply them to inappropriate cases is harmful to society - restorative justice approaches are often more effective and appropriate
- The technological divide between children and parents affects the parents' ability to adequately monitor their children's cyber communications. Single parents and immigrant families often face financial and language barriers, which further inhibits their monitoring skills. Both of these populations tend to be lower-earning households and being financially liable for their child's cyberbullying can have significant impacts on their households financial and emotional wellbeing
- In the technological age, cyber communications are imbedded within a child's socialization. Limiting a child's access to the Internet – due to a Protection Order – can cause the child to feel socially isolated
- Limiting an individual's access to the Internet can also limit their educational and career opportunities.

Analysis:

As mentioned above, the *Cyber-safety Act* was created in response to a number of bullying-related youth suicides in Nova Scotia. The death of Rehtaeh Parsons was highlighted by the media and created public hype, which resulted in political pressure on the government to create new legislation, which protected citizens from cyber bullies. The problem with this legislation is that it was founded in the context of extreme cases – namely the suicide of Rehtaeh Parsons – and thus targets the extreme cases by being more punitive in practice.

The positive aspects of this legislation include the creation of the Cyber SCAN unit, the increased co-operation between school boards and government agencies, and the school boards commitment to teach children of a young age about healthy relationships.

Recommendations:

- To alter the *Cyber-safety Act* so that it is less punitive in practice and more in line with Canada's case law
 - For example, the laws addressing acts of vandalism apply parent liability narrowly and only when the courts can clearly demonstrated that the parent knew of the child's intent and did not act to prevent it. By contrast, the *Cyber-safety Act* penalizes parents who lack the time and skills to adequately monitor their child's cyber communications. Following case law, parents should not be liable unless there is proof that the parent knew of their child's intent.
 - There also needs to be a shift in emphasis from punitive practices to restorative justice approaches, which focus on fostering healthy relationships between all of those involved. It is recommended that Protections Orders be used as a last resort, and in order to file a Protection Order the victim must first be notified.
 - Restricting the offenders Internet access is also discouraged because it can limit the offender's reintegration into society by limiting their social networks, career and educational opportunities.
- That fiscal spending is placed on preventative measures
 - For example, programs the build the capacity of children and parents to use, and monitor, cyber communications effectively or health services which foster the mental wellbeing of young people.

References:

- Government of Nova Scotia (n.d.). *Cyber-safety act*. Accessed on 17 October 2014 via http://novascotia.ca/just/global_docs/Cyberbullying_EN.pdf
- Government of Nova Scotia (n.d.). *Bullying and cyberbullying: what we need to know*. Accessed on 17 October 2014 via http://antibullying.novascotia.ca/sites/default/files/HowToPreventBullying_en.pdf
- Ng, K. (2012). Digital dilemmas: Responding to cyberbullying in Nova Scotia. *Education and the Law Journal*, 22, 63 – 91.
- O'Keefe, K. (2014). A unique law in Nova Scotia to help victims of cyberbullying. *Kennedy Schofield Lawyers*, Retrieved from http://www.kennedyschofield.ca/publications/Cyberbullying_June2014.pdf
- Unicef Canada (2013). *Legislative responses to cyberbullying in Canada*. Accessed on 17 October 2014 via http://www.unicef.ca/sites/default/files/imce_uploads/statement_on_legislative_responses_to_cyberbullying_in_canada_september_2013_unicef_canada.pdf