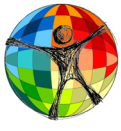
INTERNATIONAL HUMAN RIGHTS INTERNSHIP PROGRAM | WORKING PAPER SERIES

VOL 7 | NO. 1 | FALL 2019

Technologically-Facilitated Violence Against Women and Girls: The Canadian Compromise

Maia Stevenson

McGill Centre for Human Rights and Legal Pluralism



Centre sur les droits de la personne et le pluralisme juridique de McGill

McGill | Faculty of Law | Faculté de Droit

ABOUT CHRLP

Established in September 2005, the Centre for Human Rights and Legal Pluralism (CHRLP) was formed to provide students, professors and the larger community with a locus of intellectual and physical resources for engaging critically with the ways in which law affects some of the most compelling social problems of our modern era, most notably human rights issues. Since then, the Centre has distinguished itself by its innovative legal and interdisciplinary approach, and its diverse and vibrant community of scholars, students and practitioners working at the intersection of human rights and legal pluralism.

CHRLP is a focal point for innovative legal and interdisciplinary research, dialogue and outreach on issues of human rights and legal pluralism. The Centre's mission is to provide students, professors and the wider community with a locus of intellectual and physical resources for engaging critically with how law impacts upon some of the compelling social problems of our modern era.

A key objective of the Centre is to deepen transdisciplinary collaboration on the complex social, ethical, political and philosophical dimensions of human rights. The current Centre initiative builds upon the human rights legacy and enormous scholarly engagement found in the Universal Declartion of Human Rights.

ABOUT THE SERIES

The Centre for Human Rights and Legal Pluralism (CHRLP) Working Paper Series enables the dissemination of papers by students who have participated in the Centre's International Human Rights Internship Program (IHRIP). Through the program, students complete placements with NGOs, government institutions, and tribunals where they gain practical work experience in human rights investigation, monitoring, and reporting. Students then write a research paper, supported by a peer review process, while participating in a seminar that critically engages with human rights discourses. In accordance with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded. Therefore, papers in this series may be published in either language.

The papers in this series are distributed free of charge and are available in PDF format on the CHRLP's website. Papers may be downloaded for personal use only. The opinions expressed in these papers remain solely those of the author(s). They should not be attributed to the CHRLP or McGill University. The papers in this series are intended to elicit feedback and to encourage debate on important public policy challenges. Copyright belongs to the author(s).

ABSTRACT

This paper locates the point of interaction between the multiple and different human rights that exist in cyberspace, from within the context of technologically-facilitated VAWG in Canada. Part II delves deeper into technologically-facilitated VAWG, exploring definitions and manifestations, causes, harms, and acknowledgments from international bodies. Part III argues that the right of women and girls to be free from technologically-facilitated violence is intimately intertwined with the rights to privacy, anonymity, and freedom of expression online. Part IV uses two forms of technologically-facilitated VAWG (the propogation of hate and the non-consensual distribution of intimate images) in order to examine how Canadian law and jurisprudence attempts to balance the various rights and freedoms in tension. Ultimately this paper argues that in comparison to other jurisdictions internationally, Canada walks a valuable, middle road of legal compromise between privacy and freedom of expression on the one hand, and equality on the other. This legal position can be supplemented by education, social change, and accountable evolution from within the private sector.

CONTENTS

My Internship Experience & Introduction

Last February, I published a post on the *Canadian Civil Liberties Association* (CCLA)'s student-run blog, "Rights Watch".[1] The post covered and translated an original story from Radio-Canada about a young man who had non-consensually recorded and distributed intimate images of some of his female peers.[2] He pled guilty to the criminal offence of sharing intimate images of others without their consent and received an absolute discharge.

After publishing this blog post, I was contacted online by someone purporting to be a 'family friend' of the accused and I was asked by this person to remove the blog post. A quick Twitter search indicated that this person was a 'designer of data privacy technologies' and a 'data destruction expert'. I learned that this 'family friend' had also contacted a student reporter at the *McGill Daily* and asked her to remove from the Internet an opinion piece of hers about the young man's offences. Furthermore, since the Radio-Canada article, search engine results of this young man's name mysteriously generate numerous insubstantial filler websites that associate his name with vague mentions of community work, human rights, family, and peanut butter products in a clear attempt to bury the story of his criminal guilt. Ironically, it was the man who had invaded the privacy of the women he had filmed who was now also suffering from a lack of control over his privacy and reputation online.

During my internship at the CCLA I was able to attend *RightsCon*, an annual, international conference about human rights in the digital age. A memorable panel on technologically-facilitated violence against women and girls (VAWG) challenged me both intellectually and morally. As the pathologies and depravities of society are replicated, facilitated, and often enhanced by cyber spaces and Internet-enabled technologies, it can be difficult to remain a staunch proponent of a free, open, and accessible Internet. The question of cyber-regulation is a

---

[1] Maia Stevenson, "The Non-Consensual Sharing of Intimate Images: Young McGill Student Recieves Absolute Discharge" (3 February 2018), *Rights Watch* (blog), online: <http://rightswatch.ca/2018/02/03/the-non-consensual-sharing-of-intimate-images-young-mcgill-student-receives-absolute-discharge/>.

[2] Geneviève Garon, L'absolution après avoir filmé ses partenaires sexuelles et partagé les images", *Radio-Canada* (31 January 2018), online: <https://ici.radio-canada.ca/nouvelle/1081445/absolution-ezra-cohen-filme-partenaires-sexuelles-partage-images-etudiant>.

fascinating moral and legal conundrum: how can states protect the human rights of a targeted group in cyber space while both empowering that group and maintaining the vitality of human rights online for all?

These experiences at the CCLA raised questions for me about the tensions between: 1) efforts to protect individuals from invasions of privacy by other *individuals*; 2) efforts to protect citizens from unnecessary invasions of privacy on the part of the *state;* 3) efforts to keep the Internet free from censorship, surveillance, and de-anonymization and; 4) efforts to protect both the victim and the perpetrator's rights to privacy in an era defined by a medium that never forgets.

My aim with this paper is to locate the point of interaction between the multiple and different human rights that exist in cyberspace, from within the context of technologically-facilitated VAWG in Canada. First, I will delve deeper into technologically-facilitated VAWG, exploring definitions and manifestations, causes, harms, and acknowledgments from international bodies. Secondly, I will argue that the right of women and girls to be free from technologically-facilitated violence is intimately intertwined with the rights to privacy, anonymity, and freedom of expression online. Thirdly, I will use two forms of technologically-facilitated VAWG in order to examine how Canadian law and jurisprudence attempts to balance the various rights and freedoms in tension. Ultimately this paper argues that Canada walks a valuable, middle road of legal compromise between privacy and freedom of expression on the one hand, and equality on the other, and that this legal position can be supplemented by education, social change, and accountable evolution from within the private sector.

Technologically-Facilitated Violence Against Women and Girls

Early in the age of the Internet, John Perry Barlow, a cyberlibertarian and co-founder of the *Electronic Frontier Foundation*[3], asserted that the Internet would marshal in "a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity".[4] Indeed, the Internet and communications

[3] https://www.eff.org/

[4] John Perry Barlow, "A Declaration of the Independence of Cyberspace" (8 February 1996), online: < https://www.eff.org/cyberspace-independence>.

technologies have rapidly created new digital spaces, transforming how people live and interact.[5] While the Internet is surely one of history's greatest tools, the hope and promise of the end of the twentieth century has given way to alarm and skepticism: "The public sees hate, abuse and disinformation in the content users generate. Governments see terrorist recruitment or discomfiting dissent and opposition. Civil society organizations see the outsourcing of public functions, like protection of freedom of expression, to unaccountable private actors".[6] The costs of a free and open Internet are more apparent than ever.

Unfortunately, among the many things facilitated by the Internet and communications technologies are society's ugliest phenomena, including sexist and misogynistic behaviour. Technologically-facilitated VAWG is in many ways simply the re-packaging of a problem as old as human history. The core women's human right instruments, such as the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Declaration on the Elimination of Violence against Women*, and the *Beijing Declaration and Platform for Action*, predate the development of the Internet and communications technologies. Since then however, the Committee on the Elimination of Discrimination against Women has made clear that the *Convention* is fully applicable to technology-mediated environments, settings where contemporary forms of violence against women and girls are frequently committed in their redefined form.[7]

What is "Technologically-Facilitated VAWG"?

Online violence is not a gender-neutral phenomenon.[8] Despite the empowering potential of the Internet, when women

---

[5] Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective*, UNGAOR, 38th Sess, UN Doc A/HRC/38/47 (2018) 4 [HRC 38/47].

[6] Human Rights Council, *Report of the Sepcial Rapporteur on the promotion and protection of the right to freedom of opinion and expression,* UNGAOR, 38th Sess, UN Doc A/HRC/38/35 (2018) 3 [HRC 38/35].

[7] Committee on the Elimination of Discrimination against Women, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No.19,* CEDAW Rec 35, UNCEDAWOR, 2017, UN Doc CEDAW/C/GC/35 [CEDAW No. 35].

[8] HRC 38/47, *supra* note 5 at 10.

and girls have access to Internet-enabled and communications technologies, they inevitably face new manifestations of gender-based violence.[9] Technologically-facilitated VAWG consists of any violence that is committed, assisted or aggravated in part or fully by the use of the Internet or communications technologies (including social media platforms, email, forums and websites, messaging platforms, smartphones, etc.) against a woman because she is a woman, or that affects women disproportionately.[10] Examples include "slut-shaming", "revenge pornography" (the non-consensual distribution of intimate images), "sextortion", "doxing" (the publication of private information such as a phone number or an address), physically and sexually violent threats and slurs, stalking, harassment, defamation, and impersonation. Due to the nature of the Internet, violent content or behaviour is more easily perpetuated anonymously and without a need for physical contact, although online and offline VAWG often go hand in hand. Due to its nature, technologically-facilitated VAWG can also be fast-spreading across borders ("viral"), globally accessible or searchable, persistent, and widely replicable, despite any efforts by domestic law enforcement or courts.

Because technologically-facilitated VAWG, like most VAWG, is chronically underreported, data collection on the experiences of Canadian women and girls has been limited.[11] Noting the fact of underreporting, in the United States, a 2016 study by the *Data & Society Research Institute* found that one in ten women under the age of 30 have experienced threats of "revenge porn".[12] In the European Union, 18 percent of women have experienced a form of "serious Internet violence" since the age of 15.[13] At the international level, the UN estimated in 2014

---

[9] *Ibid* at 5.
[10] CEDAW No. 35, *supra* note 7.
[11] House of Commons, Standing Committee on the Status of Women, *Taking Action to End Violence Against Young Women and Girls in Canada: Report of the Standing Committee on the Status of Women* (March 2017) 35 (Chair: Marilyn Gladu) [HoC Standing Committee 2017].
[12] Amanda Lenhart, Michele Ybarra & Mysehia Price-Feeney, "Nonconsensual Image Sharing: One in 25 Americans has been a victim of 'revenge porn' (2016), *Data & Society Research Institute* at 5, online: <https://datasociety.net/pubs/oh/Nonconsensual_Image_Sharing_2016.pdf>.
[13] "Violence against women: an EU-wide survey" (2014), *European Union Agency for Fundamental Rights,* online: < http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>.

that 73% of women globally have been exposed to or have experienced a form of online violence.[14] Important to note is that women are often targeted online on the basis of a combination of factors, such as race, ethnicity, caste, sexual orientation, gender identity and expression, abilities, age, class, income, culture, religion, and urban or rural setting. Women playing certain roles in the public eye, such as human rights defenders, politicians, journalists, and bloggers, are also particularly targeted.[15]

New World, Old Problems

Unsurprisingly, the digital world reproduces, and sometimes amplifies[16] and redefines, the discriminatory and patriarchal patterns that result in VAWG in the "real" world; digital violence cannot be committed except in *interaction* with the "real" world and it may be difficult to separate actions that are initiated in cyberspaces from offline realities, and vice versa. Technologically-facilitated threats, harassment, stalking, and abuse in general may often just be one of the many tools of individuals, groups, and systems causing psychological, physical, sexual, and economic harm to women and girls in the "real" world.

An example will illustrate this interaction. A woman has just ended a relationship with an abusive partner who continues to show up unannounced at her residence and workplace, send her pleading and threatening text and Facebook messages, and call her cellphone number every day for weeks, leaving her vulgar and violent voicemails. Clearly, this situation is about much more than the technology-facilitated contact; it is occurring within a particular "real" world relationship and context that carries ideas about the degree to which women are entitled to autonomy, self-determination, and dignity. VAWG, including in digital contexts,

---

[14] HoC Standing Committee 2017, *supra* note 11 at 35.

[15] "Combating Sexist Hate Speech" (2016), *The Council of Europe* at 4; Human Rights Council, *Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective*, UNGAOR, 35th Sess, UN Doc A/HRC/35/9 (2017) 4 [HRC 35/9].

[16] Nosheen Iqbal, "Donna Zuckerberg: 'Social media has elevated misogyny to new levels of violence'" (11 November 2018), *The Guardian*, online: <https://www.theguardian.com/books/2018/nov/11/donna-zuckerberg-social-media-misoyny-violence-classical-antiquity-not-all-dead-white-men?CMP=Share_iOSApp_Other>.

"is a global phenomenon rooted in historical and structural inequalities in power relations between women and men, which further reinforce gender stereotypes and barriers to women's and girls' full enjoyment of human rights".[17] The root causes of any sexist behaviour "precede the onset and advancement of technology and are fundamentally linked to the persistent unequal power relations between women and men".[18] In his report bridging the gender digital divide[19], the United Nations High Commissioner for Human Rights stressed that online violence against women must be dealt in the broader context of offline gender discrimination and violence.[20]

Thus, both legal and extra-legal efforts to combat technologically-facilitated VAWG must necessarily involve broader considerations of power, history, and culture.

The Harms of Technologically-Facilitated VAWG

Technologically-facilitated violence can result in psychological, physical, sexual and economic harm to women and girls.[21] Victims and survivors experience depression, anxiety, shame, paranoia, and fear, and in some cases may also consider suicide as a way out of a violent or oppressive situation. In 2013, Canadians were deeply disturbed by the respective suicides of Rehtaeh Parsons and Amanda Todd, two young Canadian women who experienced extensive real-world and cyberviolence and subsequently committed suicide.[22] These well-publicized cases demonstrated the persistent nature of cyber-violence: sometimes changing schools, leaving the community in which the violence

---

[17] Human Rights Council, *Accelerating efforts to eliminate violence against women and girls: preventing and responding to violence against women and girls in digital contexts*, UNGAOR, 38th Sess, UN Doc A/HRC/38/L.6 (2018) 3 [HRC 38/L.6].

[18] "Combating Sexist Hate Speech" (2016), *The Council of Europe* at 2.

[19] HRC 35/9, *supra* note 15.

[20] HRC 38/47, *supra* note 5 at 12-13.

[21] *Ibid* at 7; also see webpage of the *Association for Progressive Communications* on violence against women online at www.genderit.org/onlinevaw/countries.

[22] "Rehtaeh Parsons' death changed the conversation about sexual assault and consent", *Canadian Broadcasting Corporation* (6 April 2018), video online: < https://www.cbc.ca/news/thenational/rehtaeh-parsons-death-changed-the-conversation-about-sexual-assault-and-consent-1.4609675>; "Another family grieves", *Canadian Broadcasting Corporation* (15 April 2013), video online: < https://www.cbc.ca/news/thenational/another-family-grieves-1.435799>; Hoc Standing Committee, *supra* note 11 at 36-37.

occurred, or retreating from the Internet altogether are not enough to overcome victimization.

Furthermore, in some cases, violence online can have consequences for the safety of women and girls in the "real world", for example, when identifying information is distributed online, such as a home or work address.[23] Economic harm may also result, for example, when happenings on social media cause difficulty for a victim trying to find employment, prevent a victim from seeking employment, or result in a victim spending resources on legal services.[24]

On a more systemic level, even online content with no direct victim can be harmful to *all* women and girls: for example, as a society, we are yet to fully understand the repercussions of the mass availability of sexist, misogynistic, degrading, and stereotyped portrayals of women in online pornography. The House of Commons Standing Committee on the Status of Women in 2017 heard evidence from witnesses that young women and girls "internalize the negative and hypersexualized messages they see on the Internet, which often leads to poor self-image and self-esteem"[25] and the acceptance of sexist interactions in real life and online. Thus, the harms of technologically-facilitated VAWG are varied, long-term, and systemic.

The Self-Censorship of Women and Girls

One particular harm of technologically-facilitated VAWG worth addressing in more detail for the purposes of this paper is the risk of the self-censorship of women and girls. "Revenge porn and other forms of online sexual violence are about much more than humiliation, harm to reputation, and violations of privacy. These acts marginalize and hinder individual public participation based on gender and sexuality".[26] Non-victims and victims alike may retreat from the Internet, digital spaces, technologies, certain professions, and social and political circles in an effort to protect themselves or avoid violence, with serious and lasting consequences for victims' fundamental freedoms and quality of

---

[23] HRC 38/47, *supra* note 5 at 7.
[24] *Ibid*.
[25] HoC Standing Committee, *supra* note 11 at 38.
[26] Jordan Fairbairn, "Rape Threats and Revenge Porn: Defining Sexual Violence in the Digital Age" in Jane Bailey & Valerie Steeves, eds, *e-Girls, e-Citizens* (Ottawa: University of Ottawa Press, 2015) 229 at 244.

life, as well as more widescale consequences for the empowerment of women and girls through digital technologies, the richness and representativeness of politics, journalism, democracy, society, and culture. Research from India reveals that 28 percent of women who suffered technologically-facilitated violence in the country subsequently intentionally reduced their presence online.[27]

The Internet is not only a place for women and girls to experience sexualized violence; the UN Committee on the Elimination of Discrimination against Women recognized the important role of online spaces and communications technologies for women's empowerment.[28] Included in empowerment is the idea that women and girls should have access to online, age-appropriate, sexually explicit material and to information on sexual health and sexual activity in order to "facilitate informed and autonomous decisions in matters regarding their own bodies"[29] and in order "for developmentally appropriate sexual curiously and self-definition".[30] The promotion of women's sexual autonomy and pleasure can be aided through the empowerment of women and girls to use online resources and spaces safely.[31] As Profesor Karaian explains:

> "...there are lots of panics around hyper sexualization and the sexualization of young people, lots of fears about exploitation of young women, that don't take into consideration how sexual expression by young women is in fact an integral part of their self-development, their ... self-understanding as individuals with autonomy, who are not only sexual objects but also sexual subjects".[32]

---

[27] Japleen Pasricha, "'Violence' Online in India: Cybercrimes Against Women & Minorities on Social Media" (2016), *Feminism in India*; HRC 38/47, *supra* note 5 at 7.
[28] Committee on the Elimination of Discrimination against Women, *General recommendation No. 33 on women's access to justice,* CEDAW Rec 33, UNCEDAWOR, 2015, UN Doc CEDAW/C/GC/33.
[29] HRC 38/L.6, *supra* note 17 at 4.
[30] HoC Standing Committee, *supra* note 11 at 40-41.
[31] HoC Standing Committee, *supra* note 11 at 40-41.
[32] *Ibid*.

Thus, both legal and extra-legal efforts to combat technologically-facilitated VAWG must also always be alive to the right of women and girls to self-development and -expression, which can be greatly facilitated by online spaces and digital technologies.

The Rights to Privacy and Freedom of Expression Online

The facilitation of the development and self-expression of women and girls is just one example of how the elimination of technologically-facilitated VAWG requires a nuanced approach to the interactions between the rights to equality and dignity, freedom of expression, and privacy online. It is unnuanced to simply say that equality is *in tension* with the rights to privacy and freedom of expression online; while privacy rights and freedom of expression can certainly function to protect perpetrators of technologically-facilitated VAWG, they are increasingly essential for *all* users of the Internet and communications technologies, including women and girls suffering from violence.

Privacy encompasses *both* the "right to be left alone by other people" *and* the "right to be left alone by the state."[33] The right to privacy is recognized under article 12 of the *Universal Declaration of Human Rights* and under article 17 of the *International Covenant on Civil and Political Rights*. Observation, surveillance, or a *lack* of privacy, supresses freedom of opinion, expression and association. "To be free to think and to form beliefs and opinions requires not just public spaces for expression and debate but also private spaces for thought and contemplation, for reading controversial and uncontroversial material alike, for exploring with friends and colleagues ideas that may later be qualified or rejected".[34]

The Internet has profound value for freedom of opinion and expression, as it magnifies the voice and multiplies the information within reach. Freedom of expression, enshrined in article 19 of the *Universal Declaration on Human Rights* and article 19 of the *International Covenant on Civil and Political*

---

[33] *R v Jones* [2017] 2 SCR 696 at para 39, 2017 SCC 60; *R v Orlandis-Habsburgo*, 2017 ONCA 649 at para 42, 352 CCC (3d) 525; see the factum of the intervenor, *Canadian Civil Liberties Association* in *Sean Patrick Mills v Her Majesty the Queen* (SCC file #37518), p 8, heard 25 May 2018.
[34] Hamish Stewart, "Normative Foundations for Reasonable Expectations of Privacy" (2001) 54 SCLR 335 at 345.

Rights, applies to the digital and cyber worlds, and includes "the right to seek, receive and impart information freely on the Internet without censorship or other interference".[35]

Encryption and anonymity are examples of online tools that can create zones of privacy that function to protect freedom of expression and access to information[36]; journalists, researchers, lawyers and civil society rely on encryption and anonymity to shield themselves (and their sources, clients and partners) from surveillance and harassment.[37] Citizens, artists, activists - many rely on encryption and anonymity for their freedom of expression, both in climates where the state creates limitations but also where society does not tolerate unconventional opinions.[38]

The tools that facilitate privacy and anonymity can greatly enhance the experiences of women and girls online, as well as other at-risk populations, such as informants or whistle-blowers, journalists, and those in abusive relationships. According to the UN's current Special Rapporteur on violence against women, Dubravka Šimonović, "women's access to ICT is part of their right to freedom of expression, and is necessary for the fulfilment of other basic human rights, such as the rights to participate in political decision-making and to non-discrimination."[39] By facilitating the *anonymous* participation of women on a variety of platforms, access and participation in general may be facilitated by virtue of the safety that privacy and anonymity provide (i.e. by decreasing the likelihood of receiving gender-based verbal abuse, by protecting personal, identifying information, by masking one's real world identity).

Privacy- and anonymity-enhancing tools, such as messaging applications that encrypt communications, making them unreadable by third parties, as well as private Internet browsers like "Tor", that mask IP addresses, are frequently vilified by law enforcement agencies. "They claim that the Internet is 'going dark' as a result of these technologies and that widespread access to effective digital security tools threaten law enforcement's

---

[35] HRC 38/47, *supra* note 5 at 11-12.
[36] *Ibid*.
[37] Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye,* UNGAOR, 29th Sess, UN Doc A/HRC/29/32 5-6.
[38] *Ibid*.
[39] HRC 38/47, *supra* note 5 at 12.

ability to de- anonymize individuals, monitor communications, and access evidence required to bring wrongdoers to justice—including wrongdoers engaged in gender-based violence, abuse, and harassment."[40] In response, law enforcement often asks for increased powers of lawful access in order to keep pace with modern crime. Without a doubt, technology presents new challenges to lawful investigations and law enforcement. However, there is a high risk that the vulnerability of women and girls and other groups in online spaces has and will be exploited in order to justify "new and potentially rights-infringing state powers to surveil, de-anonymize, police, and censor citizens in digital spaces, actions which may in fact disproportionately affect women and girls' use of technology".[41] A prime example of this was the Harper government's *Protecting Canadians from Online Crime Act*, introduced to the House of Commons in 2013 following the suicides of Parsons and Todd that same year. The bill was fiercely criticized by privacy advocates for having "little to do with cyberbullying" and for creating new and opaque investigative powers for police that allowed for easier access to "a detailed profile of an individual's [online] activities".[42]

A Balancing Act: Where Does Canada Land?

Over time, states have developed nuanced understandings of the interaction between the rights to privacy, freedom of expression, and freedom from violence in cyberspace. While technologically-facilitated VAWG interacts with many different types of law in Canada, including human rights codes, criminal

---

[40] The Citizen Lab, *Submission of the Citizen Lab (Munk School of Global Affairs, University of Toronto) to the United Nations Special Rapporteur on violence against women, its causes and consequences, Ms. Dubravka Šimonović* (2 November 2017) 7-10.

[41] *Supra* note 40 at 1; Jonathon W. Penney, "Internet surveillance, regulation, and chilling effects online: a comparative case study," Internet Policy Review, 6(2).

[42] *Protecting Canadians from Online Crime Act*, SC 2014, c 15; Daniel Therrien (Privacy Commissioner of Canada), *Submission to the Standing Senate Committee on Legal and Constitutional Affairs*: *Bill C-13, the Protecting Canadians from Online Crime Act* (19 November 2014), Office of the Privacy Commissioner of Canada, online: <https://www.priv.gc.ca/en/opc-actions-and-decisions/advice-to-parliament/2014/parl_sub_141119/>; "CCLA Appears Before Committee Considering Bill C-13 (Protecting Canadians From Online Crime Act)" (6 June 2014), *Canadian Civil Liberties Association,* online: <https://ccla.org/ccla-appears-committee-considering-bill-c-13-protecting-canadians-online-crime-act/>.

law, and the private law, in general, this paper argues that Canada is walking a middle path between restricting privacy and freedom of expression in cyberspace and providing victims of technologically-facilitated violence with options for redress, in affirmation of their equality and human dignity. Furthermore, in terms of the criminal law, which strongly signals a society's willingness to condemn certain behaviours at the expense of rights and freedoms, Canada may in fact be "the embodiment of compromise"[43] when placed in comparison with other Western, liberal democracies.

This section of the paper will argue that Canadian law has achieved a "middle path" by critically examining two different but common forms of technologically-facilitated VAWG: online hate propagation, such as rape or death threats, and "revenge porn" or the non-consensual distribution of intimate images. In doing so, attention will be paid to both the *characterizations* of the rights in question and their *ultimate balancing or reconciliation*, in both the criminal and private laws of Canada (and beyond). As Bailey argues, privacy is approached or articulated by courts differently in Canada depending on the nature of the violating behaviour. I add support to Bailey's argument that "the privacy interests of the equality-seeking communities…are more directly addressed in child pornography cases than in hate propaganda and obscenity cases"[44] by arguing that countervailing considerations for freedom of expression may be less important as states act to address the forms of technologically-facilitated VAWG closest in nature to child pornography, the classic affront to the male-perceived-purity of the agentless female victim.

Case Study #1: the Criminal Law & the Propagation of Hate

Users of the Internet and social media will likely be familiar with online hate speech and threats of VAWG: when a female politician, celebrity, artist, or otherwise, tweets, posts a photo to Instagram, or somehow has her identity or voice engaged by the

---

[43] David Butt, "Canada's law on hate speech is the embodiment of compromise", *The Globe and Mail* (19 January 2015), online: <https://www.theglobeandmail.com/opinion/canadas-law-on-hate-speech-is-the-embodiment-of-compromise/article22520419/>.

[44] Jane Bailey, "Missing Privacy through Individuation: the Treatment of Privacy in the Canadian Case Law on Hate, Obscenity, and Child Pornography" (2008) 31:55 Dalhousie L.J. at 1-2 (SSRN).

public eye on the Internet, cue the violent, misogynist response. "A woman's opinion is the mini-skirt of the internet", said Laurie Penny, a British journalist, columnist, and author.[45] This first case study will examine how Canadian criminal law views and categorises the online propagation of hate as a form of VAWG, ultimately demonstrating that Canada favours clarity and under-criminalization.

Criminal Law Characterizations

While criminal prosecutions come with particular barriers, namely the high burden of proof, the control of the case by the Crown, and the potential for the re-traumatization of the complainant during the trial, an examination of the criminal law is useful for determining the position of Canadian law and society on the balancing of rights and freedoms engaged by a given reprehensible act.

Under the *Criminal Code,* hate propagation[46], harassment[47], uttering threats[48], intimidation[49], defamatory libel and extortion by libel[50], and assault (including threatening to apply force)[51] all constitute crimes that carry the possibility of imprisonment upon conviction. The Supreme Court of Canada has articulated a deep unwillingness to characterize speech that promotes violence as "expression" for the purposes of s. 2(d) *Charter* protection: in 1999, the Supreme Court of Canada decided in *R v. Keegstra* that the *Criminal Code* prohibition on the "willful promotion of hatred" limited expression that was far from core democratic values, while serving the pressing objective of promoting equality.[52]

That being said, the offences of public incitement of hatred and willful promotion of hatred, both of which fall under the wider

---

[45] Laurie Penny, "A woman's opinion is the miniskirt of the internet", *The Independent* (4 November 2011), online: <https://www.independent.co.uk/voices/commentators/laurie-penny-a-womans-opinion-is-the-mini-skirt-of-the-internet-6256946.html>.
[46] *Criminal Code,* RSC 1985, c C-46, ss 318(1), 319(1), 319(2) [*Criminal Code*].
[47] *Ibid*, ss 264, 267.
[48] *Ibid*, s 264.1.
[49] *Ibid*, s 423(1).
[50] *Ibid*, s 298-300.
[51] *Ibid*, s 265.
[52] *R v Keegstra* [1990] 3 SCR 697, 117 NR 1.

category of "hate propaganda", have strict requirements: they require statements likely to result in a breach of the peace, suggesting an *immediate danger*, or statements that reflect the *willful* promotion of hatred, respectively.[53] Thus, "...it is not illegal simply to say things that are grossly rude, wildly offensive, blatantly false, callously hurtful, or even disgustingly hateful.....Society's condemnation of those things comes from sources other than the criminal law...".[54] The highest court of Canada has determined that "promotion" must go *beyond encouragement*: "it is not a criminal act to encourage people to hate."[55]

The propagation of hate or violence that occurs in *private* may fall under harassment[56], knowingly uttering threats[57], intimidation[58], or assault[59]. Similar to the public propagation of hate, the bar for criminal harassment is high – the charge requires that the target of the harassment *reasonably fears for her own safety or the safety of anyone known to her,* measured by the use of an objective standard. The crime of "uttering threats" also requires that the perpetrator make *serious threats* as to death, bodily harm, or the destruction of property and does so knowingly or with the intention that his words be taken seriously. Thus, there are many forms of "harassment" or "threats" that will not provoke the purview of the *Criminal Code* because the complainant's fear is not deemed objectively reasonable or the accused's threats are not deemed objectively serious. In a review of the ability of the criminal law to respond to technologically-facilitated VAWG, Bailey and Mathen note that "jurisprudential analyses of 'harm', 'violence', and 'injury' often fails to grasp the very real, but in many cases non- physical, harms that impair women's and girls' ability

[53] *Criminal Code, supra* note 46 at ss 319(1) and (2); *R v A.B.,* 2012 NSPC 31 at paras 11-13, 316 NSR (2d) [*A.B.*].
[54] *A.B., supra* note 53 at para 15.
[55] *Ibid* at para 20.
[56] *Criminal Code, supra* note 46 at ss 264, 267.
[57] *Criminal Code, supra* note 46 at s 264.1.
[58] *Ibid*, s 423(1).
[59] *Ibid*, s 265.

to function as equals in our increasingly digitally networked society".[60]

Thus, in many instances of technologically-facilitated VAWG, the bar set by the Canadian criminal law will be too high or too difficult to establish the offence beyond a reasonable doubt. One possible explanation is that Canadian criminal law *wants* to appropriately address technologically-facilitated VAWG, but is inadequate due to engrained perceptions of the definition of violence. Another possibly concurrent explanation, is that, for reasons related to the balancing of constitutionally-protected rights and freedoms, Canadian criminal law remains reserved for only the most obviously and objectively serious instances of violence.

International Comparisons: the United States of America & France

Without delving into jurisprudential analysis, comparing the Canadian criminal law position on the value and characterization of violent speech to those of other Western liberal democracies allows us to appreciate where Canada stands in this balancing act. The United States is known around the world for going to extreme lengths to defend freedom of expression, which is protected under its Constitution and Bill of Rights. To this effect, while the US ratified the *International Covenant on Civil and Political Rights*, they did so with reservations; among other things, the US exempted itself from the application of Article 20, which mandates "legal prohibitions against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence".[61] Furthermore, United States Supreme Court jurisprudence is fairly settled on a definition of freedom of expression that does not make exceptions for hate speech. However, individual states may criminalize speech if it incites "imminent lawless action."[62] Thus, inciting lawless action at

---

[60] Jane Bailey & Carissima Mathen, "Technologically-facilitated Violence Against Women & Girls: If Criminal Law *Can* Respond, *Should* It?" (2017) Ottawa Faculty of Law Working Paper No 2017-44 at 1-2 [Bailey & Mathen].
[61] Office of the High Commissioner, "Status of Ratification Interactive Dashboard" (lasted updated 4 December 2018), *United Nations,* online: < http://indicators.ohchr.org/>.
[62] *Brandenburg v Ohio* 395 U.S. 444 (1969).

an undetermined time in the future remains protected under the first amendment.

On the other end of the liberal democratic spectrum, particular members of the European Union, such as Germany and France, are known for going to lengths to *prohibit* hate speech, including the public denial of the existence of the crimes against humanity committed by Nazi Germany during World War II.[63] Within the European Union, the regulation of hate speech is generally left to the national laws of member states, although all laws must comply with the *European Convention of Human Rights* (ECHR). Article 10 of the ECHR grants freedom of expression to all, while conditioning the exercise of this freedom on "the protection of the reputation and rights of others."[64] In France, Article 24 of *La loi du 29 juillet 1881* prohibits the public or private incitement of discrimination, hate, or harm of a person or group for belonging, or not, to an ethnicity, nation, race, religion, sex, sexual orientation, or disability.[65] Articles 32-33 and 624-3/4/7 also prohibit the public *or* private defamation or *insult* of a person or group on the basis of any of these grounds.[66] Thus, far from requiring a "imminent lawless action" or even a "serious threat", in France, one perpetuating hate against women through their speech, even by way of a privately-communicated insult, is in theory subject to the domestic criminal law.

Case Study #2: the Criminal Law & the Non-Consensual Distribution of Intimate Images

Compared to hate speech, "revenge porn", or more broadly, the non-consensual distribution of intimate images, is a relatively recent and rapidly growing area of cyber-crime that violates the sexual integrity, privacy, autonomy, and dignity of women and girls. Again, the interaction between the "real" and "online" world is undeniable: often the intimate images that are the subject of these criminal cases have previously been intentionally and consensually shared by the complainant to the defendant, who later, typically upon being rebuked romantically,

---

[63] See e.g. *Loi no 90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xenophobe*, JO, 14 July 1990, 8333.
[64] *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 UNTS 221 at 12 (entered into force 3 September 1953).
[65] *Loi du 29 juillet 1881 sur la liberté de la presse*.
[66] *Ibid*.

shares or distributes the intimate images as an act of spite or revenge.

Criminal Law Characterizations

While the crime of child pornography is as old as Canada's *Criminal Code*, only as recently as 2015 did Parliament criminalize "revenge porn", which applies to minors *and* adults. Under the new offence, every person who knowingly publishes, distributes, transmits, sells, or makes available an intimate image of a person, knowing that the person depicted did not give their consent to that sharing, is guilty of an indictable offence and liable to imprisonment for a term of up to five years.[67] To be found guilty of the non-consensual distribution of intimate images, a person must either know or be reckless to the fact that the person depicted in the image did not consent to its distribution. As a possible defence, the defendant can argue that the image "does not extend beyond what serves the public good." What qualifies as serving the public good is unclear at this point.[68] The first application of this new offence in 2016 sent a Winnipeg man who posted intimate images of his ex on Facebook to prison for 90 days.[69]

The new provision is quite broad in its application, covering a range of behaviour that may constitute sharing. "For example, it criminalizes the sending of a single image of an unidentifiable person by text message to a single recipient. It also prohibits sharing an image using a social media application with a limited audience capable of viewing the sharer's account. Finally, as in this case, it includes non-consensual uploading of photos and videos through a more generally accessible medium such as a website."[70]

The contrast between the careful, limited restriction on speech in Canada and the relatively sudden criminalization of

---

[67] *Criminal Code, supra* note 46 at s 162.1.
[68] Erin Kelley, "Revenge Porn: The Consequences of Posting Naked Photos of Your Ex – Part 2" (28 April 2017), *Nelligan O'Brien Payne* (blog), online: <https://nelligan.ca/blog/family-law/revenge-porn-consequences-publishing-naked-photos-ex-part-2/>.
[69] Tamara, Khandaker, "Canada's First Revenge Porn Convict Gets 90 Days in Jail" (24 March 2016), *Vice News,* online: <https://news.vice.com/article/canadas-first-revenge-porn-convict-gets-90-days-in-jail>.
[70] *R v* A.C., 2017 ONCJ 317 at para 19 [2017] OJ No 2867 (QL).

another form of expression, the publication of images, can arguably be explained by societal conceptions of particular rights and freedoms: speech, as originating from within the mind of the speaker and as possibly the purest form of expression, results in a balancing act that may stray toward the protection of the perpetrator at the cost of the victim, while the appropriation of another's intimate property rarely involves such consideration of freedom of speech, preferring instead to focus on the right to privacy emanating from the complainant. This is true even in the United States, as we shall see next, and I will later consider this contrast again in section D of this paper.

International Comparisons: The United States of America & France

The United States is a particularly important jurisdiction when it comes to technologically-facilitated VAWG such as "revenge porn" due to the large, online pornography industry in the country. While there is no national criminal law in the US, nor a national law with respect to "revenge porn", forty states have their own laws against this type of invasion of sexual integrity.[71] Many of these laws have been successful in taking down large American websites that perpetrate revenge porn around the globe, and owners have received jail time in Ohio and California.[72]

Generally speaking, states differ in defining unlawful "revenge porn". Florida, unlike Canada, includes malicious intent in its definition of "sexual cyber-harassment" – any non-consensual distribution of intimate images must be *for the purpose of causing substantial emotional distress* before it becomes illegal.[73] Other states do not require intent to harm, such as New Jersey, the first state to pass a law against "revenge porn".[74] Of course, punishments for "revenge porn" also vary within the US: for instance, California's punishment carries a $250 fee with no more than 48 hours of community service following the first and second

---

[71] "40 States + DC Now Have Revenge Porn Laws", *Cyber Civil Rights Initiative,* online: < https://www.cybercivilrights.org/revenge-porn-laws/>.
[72] Jessica Roy, "Revenge-Porn King Hunter Moore Indicted on Federal Charges" (23 January 2014), *Time,* online: <http://time.com/1703/revenge-porn-king-hunter-moore-indicted-by-fbi/>.
[73] FL Stat § 784.049 (2017).
[74] NJ Rev Stat § 2C:14-9 (2013).

offense[75], while in Washington D.C., the distribution of "revenge porn" is a felony, resulting in up to three years in prison.[76]

On the whole, the American and Canadian criminal approaches to "revenge porn" differ only to the extent that the US operates under a different federalist system. Social upset and criminal legal action against "revenge porn" heightened around the same time in both Canada and the US (late 2000s, early 2010s), likely an inevitable consequence of a new generation of young people raised by and with smart phones and social media. This may also be a strong indication of the type of impetus that is the most uncontroversial inspiration for states to legislate in the area of technologically-facilitated VAWG: non-verbal, sexualized violence against young women, that is, as close to child pornography as possible. This theory is corroborated by Bailey and Mathen's finding with respect to Canadian criminal law jurisprudence where a "good victim" or innocence narrative is notable, particularly when judges consider the public wrong of offences against young girls versus older teenage girls and women and occasionally shift onto women the responsibility for the wrongs they have suffered.[77]

In contrast, "le droit à l'image" has a much longer history in civilian jurisdictions, including Québec and France. In Québec, victims of "revenge porn" have long been able to turn to the private law for compensation, while the common law provinces of Canada have only recently started to legislate or adjust the common law to address this invasion of privacy (see part D below). In France, the current criminal offences which relate to violations of privacy (which includes a right to one's image) derive from the *Act of Parliament of 17 July 1970*; as amended in 1994, they now constitute articles 226-1 to 226-9 of the new *Penal Code*, under which it is an offence to intentionally and by means of any process, infringe another's privacy by taking, recording or transmitting, without his or her consent, the picture of a person who is in a private place.[78] This is very similar to art. 35 of the *Civil Code of Québec* which stipulates that the capture or use of

---

[75] CA Penal Code § 647 (2017).
[76] WA Rev Code § 9A.86.010 (2017).
[77] Bailey & Mathen, *supra* note 60 at 1-2.
[78] *Code penal* arts 226-1 et seq; "French Legislation on Privacy" (2 December 2007), *Embassy of France in Washington, D.C.*, online: <https://franceintheus.org/spip.php?article640>.

another's image from/in a private place can constitute an infringement of their right to privacy.[79]

Ultimately, the three above-mentioned jurisdictions have laws that address "revenge porn" that, on their face, achieve a similar balancing between freedom of expression and privacy, that is, a balance that falls towards the prioritization of the privacy rights inherent in one's image. That being said, the *degree* of protection afforded varies greatly. Furthermore, the timing of criminalization in different jurisdictions is not a negligible piece of the puzzle when it comes to comparing priorities: the timing of criminalization may indicate that common law jurisdictions arguably have a more difficult time prioritizing privacy over expression, with politicians requiring strong public pressure.

The Criminal Law & Privacy Rights

Whether the relevant offence is the propagation of hate or "revenge porn", the most challenging legal issue at the intersection of technology and VAWG is the question of whether and how a state's law enforcement will be entitled to identify and pursue perpetrators contrary to their expectations of privacy and anonymity online. To what extent will Canadian law protect the private communications of someone propagating hate and violence against women? To what extent will Canadian law find and protect privacy interests within someone's anonymous, online postings of "revenge porn"? No critical analysis of Canada's position on the balancing of rights online can be complete without an examination of Canadian courts' positions on the accused's rights to privacy, much of which can in fact be found in jurisprudence involving technologically-facilitated VAWG, specifically child pornography. As we shall see, Canada takes an expansive approach to the delineation of an individual's right to be secure against unreasonable search or seizure guaranteed by s. 8 of the *Charter,* regardless of the nature of the violence committed.

The Right to Private Communications & Online Anonymity

The Supreme Court of Canada has found in a number of important cases over the last five years that Canadians have a reasonable expectation of privacy in their technologically-

[79] art 35, para 3 CCQ.

facilitated communications, notwithstanding that we relinquish direct or exclusive control over these messages upon sending them to their recipients and notwithstanding that they may consist of violent, misogynist expression.[80] Furthermore, the Court has emphasized that as Canadians change the mediums over which they have private conversations, the protections afforded to such communications cannot be reduced. This is a very strong stance that arguably expands the protections of privacy previously afforded by s.8 of the *Charter;* it represents acknowledgment from the Court that privacy interests remain robust despite the reality that it is becoming harder and harder to say with any certainty that online spaces and communications are truly private.

R v. Spencer (2014) is essential for understanding the new, Canadian perspective on the tension between the privacy rights of the victim and the privacy rights of the perpetrator. Spencer was charged with the possession and distribution of child pornography following a police investigation in which an officer sent a request to his Internet service provider, asking for the identity associated with a particular IP address. The information provided by Shaw Communications led the police to Spencer. The issue at the Supreme Court was whether Spencer had a reasonable expectation of privacy in his subscriber information, therefore requiring the police to obtain a warrant.

In *Spencer,* the Court discussed the extremely personal and private nature of the different types of information that one generates about themselves while online, including browsing logs, search histories, and "cookies"[81], noting that anonymity remains one of the few ways users might remain in control of their information.[82] The Court emphasized how the ability to enjoy a degree of anonymity is "essential to the individual's personal growth and the flourishing of an open and democratic society".[83] Following the 2014 *Spencer* ruling, Canadian police must now

---

[80] *R v TELUS Communications* Co. [2013] 2 SCR 3, 356 DLR (4th) 195; *R v Jones*, 2016 ONCA 543, 131 OR (3d) 604; *R v Marakah* [2017] 2 SCR 608, [2017] SCJ No 59 (QL).
[81] *R v Spencer* [2014] 2 SCR 212 at para 46, 375 DLR (4th) 255 [*Spencer*].
[82] *Spencer, supra* note 81 at para 57. A "cookie" is a packet of data sent by an Internet server to a browser, which is returned by the browser each time it subsequently accesses the same server, used to identify the user or track their access to the server.
[83] *R v Ward*, 2012 ONCA 660 at para 71, 112 OR (3d) 321; *Spencer, supra* note 81 at para 48.

obtain a warrant in order to access Internet subscriber and address information, effectively shutting down the practice of telecommunications and Internet service providers voluntarily providing this information to police.[84]

This ruling represents several important understandings of the constitutionally-protected right to privacy in Canada: 1) "the nature of the privacy interest does not depend on whether, in the particular case, privacy shelters legal or illegal activity"[85]; 2) privacy includes the ability of individuals and groups "to determine for themselves when, how, and to what extent information about them is communicated to others"[86]; and 3) the right to privacy includes the right to act anonymously in public spaces, the right to present ideas publicly without being identified as their author, which is particularly important in the context of internet usage.[87]

Recent Supreme Court, criminal law jurisprudence on the right to privacy in the modern era is extremely clear: in the name of the preservation of the Canadian flavour of liberal democracy, privacy rights cannot be eroded by the onset of the surveillance state, the migration of the town square to cyberspace, or by the Internet's ability to enhance and proliferate society's darkest dimensions.

Other Legal Avenues: The Private Law & Human Rights Codes

In 2017, Bailey and Mathen reviewed criminal law jurisprudence addressing technologically-facilitated VAWG in Canada. Unsurprisingly, their findings indicate deficiencies in the criminal law responses to technologically-facilitated VAWG, including judicial difficulties grasping the harm of these forms of

---

[84] HoC Standing Committee, *supra* note 11 at 45-46.
[85] *Spencer, supra* note 81 at para 36.
[86] *Spencer, supra* note 81 at para 40; Alan Westin, *Privacy and Freedom* (London: Bodley Head, 1970) at 7.
[87] *Spencer, supra* note 81 at para 41-45; Alan Westin, *Privacy and Freedom* (London: Bodley Head, 1970) at 32; Andrea Slane & Lisa Austin, "What's In a Name? Privacy and Citizenship in the Voluntary Disclosure of Subscriber Information in Online Child Exploitation Investigations" (2011) 57 Crim. L.Q. 486 at 501.

modern sexism, innocence narratives, and the occasional shifting of blame onto "bad victims".[88]

While an examination of the criminal law provides important insight into the moral standards and norms of a society, the availability of non-criminal options also provides insight into the degree to which a society is willing to move outside of the harsh purview of the criminal law, given the high standard of proof, the exclusions of *Charter*-infringing evidence, and general difficulties with sexualized violence, in order to address a wrong. Continuing to work towards the goal of articulating how Canadian law balances the online rights and freedoms at issue, this next section analyzes alternatives to the criminal law for the redress of technologically-facilitated VAWG in Canada: the private law and human rights codes. The story of human rights codes as an alternative to criminal law for the redress of online hate propagation demonstrates how reluctant Canada may in fact be to infringe freedom of expression online outside of the criminal law. On the other hand, the development of civil liability as an alternative to the criminal law for "revenge porn" demonstrates how human rights principles are in constant interaction with the private law.

Human Rights Codes & Online Hate Propagation

An examination of the debate over the most appropriate legal home for the redress of hate propagation reveals the difficulties in balancing various rights and freedoms, especially in online spaces. While both federal and provincial governments have responded to hate propagation (including online hate propagation) through human rights law approaches (which are complainant-initiated, focus on remedies rather than punishment, do not require proof of intention, nor carry the threat of imprisonment), Canadian law-makers have also acted upon a belief that the criminal law is the more appropriate home for limitations upon citizen's freedom of expression in the name of equality. To this end, in 2013 Parliament repealed s.13 of the *Canadian Human Rights Act,* which made it discriminatory to use a computer, among other things, to "repeatedly communicate any matter likely to expose a person or persons to hatred or contempt by reason of their identifiability" on a prohibited ground,

[88] Bailey & Mathen, *supra* note 60 at 1-2.

including gender and sex.[89] This repeal followed a report from the Canadian Human Rights Commission recommending that "the extreme vitriol involved in [these] kinds of cases…ought to be reserved to the purview of criminal prosecution in order to better protect the reputations and expressive freedoms of those exposing others to hatred or contempt".[90]

Interestingly, this repeal came about notwithstanding previous judicial findings of constitutionality. The Supreme Court of Canada found in *Taylor* in 1990 that the provision was a constitutional limitation on freedom of expression since it only applied to expression likely to stir "detestation, calumny, [and] vilification" and was aimed at compensating complainants rather than punishing wrongdoers.[91] In two cases, arguments that s.13's application to the Internet rendered it too broad were also rejected[92], although at least one provincial human rights tribunal has ruled that restrictions on hate propagation in human rights codes cannot be applied to the online world, since only the federal government can regulate communication over the internet.[93]

For now, human rights codes in some Canadian provinces offer one possible legitimate avenue for redress for women and girls suffering from online harassment or hate propagation. However, the challenges to the jurisdiction of human rights tribunals to regulate communication over the Internet as well as Parliament's preference for criminal law as the appropriate legal home for the propagation of hate, are two strong indications that

---

[89] *Canadian Human Rights Act,* RSC 1985, c H-6, s 13 as it appeared on 1 January 2013.

[90] Jane Bailey, "Twenty Years Later *Taylor* Still Has It Right: How the Canadian Human Rights Act's Hate Speech Provision Continues to Contribute to Equality" (2010) 50 SCLR (2d) 349 at 352; Jane Bailey, "Canadian Legal Approaches to 'Cyberbullying' and Cyberviolence: An Overview" (2016) Ottawa Faculty of Law Working Paper No. 2016-37 at 10; Richard Moon, *Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of Hate Speech on the Internet* (October 2008) at 42, online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1865282>.

[91] *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892 at 928, 117 NR 191.

[92] *Citron v Zündel* (2002), CHRC No 1, 44 CHRR D/274 at 303; *Lemire v Canada (Human Rights Commission)*, 2014 FCA 18, [2015] 2 FCR 117.

[93] *Elmasry and Habib v Roger's Publishing and MacQueen (No. 4)*, 2008 BCHRT 378 at para 50.

Canadian law perceives the act of curtailing technologically-facilitated hate speech as necessitating extreme caution.

The Private Law & the Non-Consensual Distribution of Intimate Images

To date, Newfoundland, Nova Scotia, Manitoba, Saskatchewan, and Alberta have also passed laws providing for the civil liability of the perpetrators of revenge porn, providing an alternative, less burdensome and potentially more rewarding route for victims outside of the criminal law. In other provinces, such as Ontario, courts are attempting to adapt the common law of torts to deal with modern invasions of privacy.

The recent development of civil liability schemes for "revenge porn" in Canadian provinces, whether through legislation or the common law, illustrates how the rights and freedoms that form the basis of our liberal democracy can be used at the same time to support legislative restraint *and* judicial activism in the area of technologically-facilitated VAWG. With the adaptation of the private law to deal with modern forms of misogyny and sexualized violence, the tensions between the perpetrator's and the victim's rights and freedoms are more visible than ever in political debates and judicial reasoning.

For example, following public outcry at the suicide of Rehtaeh Parsons, Nova Scotia passed its *Cyber-Safety Act* in 2013, which defined "cyberbullying" extremely broadly as the repeated electronic communication through the use of technology "that is intended or ought reasonably to 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 includes assisting or encouraging such communication in any way."[94] The Act created the opportunity for a complainant to apply for protection orders and to pursue the perpetrator through civil liability.[95]

In 2015 the Nova Scotia Supreme Court struck down the Act for violating freedom of expression and the right to life, liberty, and security of the person, protected by the *Charter,*

---

[94] *Cyber-safety Act*, SNS 2013, c 2, s 1., s 3(1)(b) as it appeared on 1 January 2015.
[95] *Cyber-safety Act*, SNS 2013, c 2, s 1., ss 4-22 as it appeared on 1 January 2015.

finding that "cyberbullying", so long as it does not include actual "violence or threats of violence" is protected expression.[96] The court found fault with the Act for "casting the net too broadly"[97]: it captured too many types of communication, restricted both public and private communications, provided no defences, and required no proof of intent or harm.[98]

Only a year later in 2016, Ontario courts could be found to be using the right to privacy in section 8 of the *Charter* to *justify* the need for the private law to adapt rather than to slow it down. In a 2016 Superior Court decision, *Doe 464533 v N.D.*[99], the court built on the groundwork laid by *Jones v. Tsige*[100], which recognized as authoritative a seminal American legal article, "Privacy", written by William Prosser in 1960. Importantly, the Court of Appeal in *Jones* made a series of comments on the nature of the right to privacy in Canadian law, using public law, and specifically the *Charter,* to justify the need for the common law of torts to deal with invasions of privacy between private individuals:

> "Charter jurisprudence identifies privacy as being worthy of constitutional protection and integral to an individual's relationship with the rest of society and the state. The Supreme Court of Canada has consistently interpreted the Charter's s. 8 protection against unreasonable search and seizure as protecting the *underlying right to privacy*….and observed that the interests engaged by s. 8 are not simply an extension of the concept of trespass, but rather are grounded in an *independent right to privacy held by all citizens*….The explicit recognition of a right to privacy as underlying specific *Charter* rights and freedoms, and the principle that the common law should be developed in a manner consistent with *Charter* values, supports the recognition of a civil action for damages for intrusion upon the plaintiff's seclusion ….".[101]

---

[96] *Crouch v Snell*, 2015 NSSC 340 at para 106 [*Crouch*].
[97] *Ibid* at para 187.
[98] *Ibid* at para 165.
[99] *Doe 464533 v N.D.*, 2016 ONSC 541, 128 OR (3d) 252.
[100] *Jones v Tsige*, 2012 ONCA 32, 108 OR (3d) 241 [*Jones*].
[101] *Ibid* at paras 39, 45-46.

There is a fluidity between the public, private, and human rights laws of Canada - just as the public law can limit the private and human rights law remedies provided by legislatures to equality-seeking communities, so too can public law principles come to the rescue of lagging private law remedies. The interaction and movement confirms that the Canadian legal approaches to technologically-facilitated violence cannot be siloed.

In considering multiple legal approaches, this section has revealed that the slow relinquishing of the criminal law's exclusive ownership over the condemnation of discriminatory and dehumanizing behaviours will see all branches of government, from legislatures to courts to administrative tribunals, engaging in the careful balancing act between equality, freedom of expression and privacy online.

Complimentary to the findings in section IV part B with respect to the criminal law, the development of the non-criminal law in Canada also suggests that speech as violence may be more problematic for lawmakers, courts, and tribunals compared to the appropriation of images and videos as violence. It may be that the right or freedom that takes centre stage depends mostly on a historic protection of *speech* as the truest form of expression, on conceptions of property and ownership over the products of one's mind and body, and even possibly on ideas about the dignity of women as specifically related to the sequestering of their bodies from the world.

Finally, this section has revealed another way in which legal approaches to technologically-facilitated violence must differ from approaches to "real world" violence: within Canada's federalist system, it is Parliament that legislates in areas that cross borders. This is even more so an issue inherent to online violence when one considers the defining *international* characteristic of the Internet and communications technologies.

Examples of Extra-Legal Alternatives & Conclusion

Technologically-facilitated violence cannot be addressed by law alone. By walking the fine line between censorship and equality, states such as Canada may very well choose to sacrifice potential legal avenues for the justice of victims of online violence. A number of possible extra-legal approaches must serve to fill the

gaps in the law. Suggestions proposed to the House of Commons Standing Committee on the Status of Women in 2017 include empowering the Office of the Privacy Commissioner to examine and respond to reports of online violence, creating educational resources for youth, empowering anti-violence and digital literacy organizations, combatting the gender-imbalance in the technology industry by investing in girls interested in careers in STEM, and applying social and political pressure to online intermediaries to develop systems and processes that address and ultimately reduce the occurrence of gender-based violence online.[102]

Privately-owned Internet intermediaries, including search engines such as Google, social media platforms such as Facebook, Twitter, and Reddit, as well as telecommunications and Internet service providers, are the cross-jurisdictional "focal points of the Internet".[103] As such, with rising concern about technologically-facilitated violence of all kinds, the role of private intermediaries in the regulation and governance of the Internet has progressively come under public and political scrutiny.[104] Internet intermediaries, like other powerful, globally-reaching corporations, are increasingly associated with human rights obligations with respect to vulnerable populations; the days of the neutral platform are coming quickly to an end.

While internet intermediaries arguably present the most efficient means of mitigating the harms of online, violent content[105], "mapping the bounds of the responsibility of platforms is a complex and deeply contested task".[106] The 2015 *Manila Principles on Intermediary Liability* argue for the appropriate, regulatory balancing of law enforcement online with the protection of individual rights and freedoms and the encouragement of investment and innovation in

---

[102] Hoc Standing Committee, *supra* note 11.
[103] Nicolas Suzor, Bryony Seignior & Jennifer Singleton, "Non-Consensual Porn and the Responsibilities of Online Intermediaries" (2017) 40 *Melbourne University Law* Review 1057 at 1066 [Suzor et al.].
[104] HRC 38/47, *supra* note 5 at 15.
[105] Suzor et al., *supra* note 103 at 1066, citing Jack Goldsmith and Tim Wu, *Who Controls the Internet? Illusions of a Borderless World* (Oxford: Oxford University Press, 2006) at 70.
[106] *Ibid* at 1069-1070.

telecommunications.[107] There are also concerns about the prohibitive costs of actively monitoring platforms, the power of intermediary liability to actually guide users' behaviour, and the ability of intermediaries to make the judgement calls necessary in the processing of content.[108]

It is not only law enforcement tactics that risk the censorship of women online. Online intermediaries are arguably more directly capable of censorship. For example, Facebook has removed images of breast-feeding mothers[109], Indigenous women,[110] and overweight women,[111] according to "community standards", suggesting that such guidelines reflect and entrench the prevailing oppressive and disempowering attitudes about women.[112] Research conducted by the Association for Progressive Communications (APC) in 2014 found that Facebook, YouTube, and Twitter, all lack "transparency around reporting and redress processes, reflected in the lack of information about the processes available to victims of technology-related violence".[113] APC also found a "reluctance to engage directly with technology-related violence against women, until it becomes a public relations issue".[114]

APC's findings highlight the ongoing role to be played by the extra-legal forces of social and political pressure. Addressing technologically-facilitated VAWG will require a *cultural* shift that encompasses legal and extra-legal realms. Like all violence

---

[107] Electronic Frontier Foundation et al, *Manila Principles on Intermediary Liability* (2015), online: < https://www.manilaprinciples.org/>.
[108] Frank La Rue, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression,* 17th sess, Agenda Item 3, UN Doc A/HRC/17/27 (16 May 2011) 12.
[109] Georgie Keate, "Facebook Removes 'Offensive' Photo of Breastfeeding Mother", *The Times* (London), 30 October 2014, 29.
[110] Leigh Alexander, "Facebook's Censorship of Aboriginal Bodies Raises Troubling Ideas of 'Decency'", *The Guardian* (online), 24 March 2016 <https://www.theguardian.com/technology/2016/mar/23/facebook-censorship-topless-aboriginal-women>
[111] Sam Levin, "Too Fat for Facebook: Photo Banned for Depicting Body in 'Undesirable Manner'", *The Guardian* (online) 24 May 2016 <https://www.theguardian.com/technology/2016/may/23/facebook-bans-photo-plus-sized-model-tess-holliday-ad-guidelines>
[112] Suzor et al., *supra* note 103 at 1095.
[113] Carly Nyst, "End Violence: Internet Intermediaries and Violence against Women Online (Executive Summary and Findings)", *Association for Progressive Communications*, July 2014.
[114] *Ibid*.

against women and girls, it is not something that the law alone can address, even with novel developments in the public and private laws of states, developments that may in fact favour the protection of freedom of expression and anonymity online, and for good reason. Neither is the problem of technologically-facilitated VAWG something that can be left to private, profit-driven corporations; the challenge of how to *support* rather than *censor* women and girls online cannot be placed in the hands of one type of actor. The problem of technologically-facilitated VAWG is at once unique and timeworn; its solution must comprise open discussion about sexualized violence, in the courthouse and in politics, but also in schools and homes, between individuals, online and offline.

Bibliography

LEGISLATION

Canada

Canadian Human Rights Act, RSC 1985, c H-6, as it appeared on 1 January 2013.

Civil Code of Québec

Criminal Code, RSC 1985, c C-46.

Cyber-safety Act, SNS 2013, c 2, as it appeared on 1 January 2015.

Protecting Canadians from Online Crime Act, SC 2014, c 15.

JURISPRUDENCE

Canada

Canada (Human Rights Commission) v Taylor, [1990] 3 SCR 892, 117 NR 191.

Citron v Zündel (2002), CHRC No 1, 44 CHRR D/274.

Crouch v Snell, 2015 NSSC 340.

Doe 464533 v N.D., 2016 ONSC 541, 128 OR (3d) 252.

Elmasry and Habib v Roger's Publishing and MacQueen (No. 4), 2008 BCHRT 378.

Jones v Tsige, 2012 ONCA 32, 108 OR (3d) 241.

Lemire v Canada (Human Rights Commission), 2014 FCA 18, [2015] 2 FCR 117.

R v A.B., 2012 NSPC 31, 316 NSR (2d).

R v A.C., 2017 ONCJ 317, [2017] OJ No 2867 (QL).

R v Jones [2017] 2 SCR 696, 2017 SCC 60.

R v Jones, 2016 ONCA 543, 131 OR (3d) 604.

R v Keegstra [1990] 3 SCR 697, 117 NR 1.

R v Marakah [2017] 2 SCR 608, [2017] SCJ No 59 (QL).

R v Orlandis-Habsburgo, 2017 ONCA 649, 352 CCC (3d) 525.

R v Spencer [2014] 2 SCR 212, 375 DLR (4th) 255.

R v TELUS Communications Co. [2013] 2 SCR 3, 356 DLR (4th) 195.

R v Ward, 2012 ONCA 660, 112 OR (3d) 321.

GOVERNMENT SOURCES

Canada

House of Commons, Standing Committee on the Status of Women, *Taking Action to End Violence Against Young Women and Girls in Canada: Report of the Standing Committee on the Status of Women* (March 2017) (Chair: Marilyn Gladu).

LEGISLATION

United States

FL Stat § 784.049 (2017).

NJ Rev Stat § 2C:14-9 (2013).

CA Penal Code § 647 (2017).

WA Rev Code § 9A.86.010 (2017).

LEGISLATION

France

Loi no 90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xenophobe, JO, 14 July 1990, 8333.

Loi du 29 juillet 1881 sur la liberté de la presse.

Code penal.

JURISPRUDENCE

United States

Brandenburg v Ohio 395 U.S. 444 (1969).

INTERNATIONAL LAW

"Combating Sexist Hate Speech" (2016), *The Council of Europe*.

Committee on the Elimination of Discrimination against Women, *General recommendation No. 33 on women's access to justice,* CEDAW Rec 33, UNCEDAWOR, 2015, UN Doc CEDAW/C/GC/33.

Committee on the Elimination of Discrimination against Women, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No.19,* CEDAW Rec 35, UNCEDAWOR, 2017, UN Doc CEDAW/C/GC/35.

Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953).

Frank La Rue, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression,* 17th sess, Agenda Item 3, UN Doc A/HRC/17/27 (16 May 2011).

Human Rights Council, *Accelerating efforts to eliminate violence against women and girls: preventing and responding to violence against women and girls in digital contexts*, UNGAOR, 38th Sess, UN Doc A/HRC/38/L.6 (2018).

Human Rights Council, *Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective*, UNGAOR, 35th Sess, UN Doc A/HRC/35/9 (2017).

Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye,* UNGAOR, 29th Sess, UN Doc A/HRC/29/32 5-6.

Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,* UNGAOR, 38th Sess, UN Doc A/HRC/38/35 (2018).

Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective*, UNGAOR, 38th Sess, UN Doc A/HRC/38/47 (2018).

Office of the High Commissioner, "Status of Ratification Interactive Dashboard" (lasted updated 4 December 2018), *United Nations,* online: < http://indicators.ohchr.org/>.

SECONDARY MATERIAL

Bailey, Jane, "Canadian Legal Approaches to 'Cyberbullying' and Cyberviolence: An Overview" (2016) Ottawa Faculty of Law Working Paper No. 2016-37.

Bailey, Jane, "Missing Privacy through Individuation: the Treatment of Privacy in the Canadian Case Law on Hate, Obscenity, and Child Pornography" (2008) 31:55 Dalhousie L.J. (SSRN).

Bailey, Jane, "Twenty Years Later *Taylor* Still Has It Right: How the Canadian Human Rights Act's Hate Speech Provision Continues to Contribute to Equality" (2010) 50 SCLR (2d) 349.

Bailey, Jane & Mathen, Carissima, "Technologically-facilitated Violence Against Women & Girls: If Criminal Law C*an* Respond, *Should* It?" (2017) Ottawa Faculty of Law Working Paper No 2017-44.

Barlow, John Perry, "A Declaration of the Independence of Cyberspace" (8 February 1996), online: < https://www.eff.org/cyberspace-independence>.

Electronic Frontier Foundation et al, *Manila Principles on Intermediary Liability* (2015), online: < https://www.manilaprinciples.org/>.

Factum of the intervenor, *Canadian Civil Liberties Association* in *Sean Patrick Mills v Her Majesty the Queen* (SCC file #37518), heard 25 May 2018.

Fairbairn, Jordan, "Rape Threats and Revenge Porn: Defining Sexual Violence in the Digital Age" in Jane Bailey & Valerie Steeves, eds, *e-Girls, e-Citizens* (Ottawa: University of Ottawa Press, 2015) 229 at 244.

Lenhart, Amanda; Ybarra, Michele; & Price-Feeney, Mysehia, "Nonconsensual Image Sharing: One in 25 Americans has been a victim of 'revenge porn' (2016), *Data & Society Research Institute* at 5, online: <https://datasociety.net/pubs/oh/Nonconsensual_Image_Sharing_2016.pdf>.

Moon, Richard, *Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of Hate Speech on the Internet* (October 2008), online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=186528>.

Nyst, Carly, "End Violence: Internet Intermediaries and Violence against Women Online (Executive Summary and Findings)", *Association for Progressive Communications*, July 2014.

Pasricha, Japleen, "'Violence' Online in India: Cybercrimes Against Women & Minorities on Social Media" (2016), *Feminism in India*.

Penney, Jonathon, "Internet surveillance, regulation, and chilling effects online: a comparative case study," Internet Policy Review, 6(2).

Slane, Andrea & Austin, Lisa, "What's In a Name? Privacy and Citizenship in the Voluntary Disclosure of Subscriber Information in Online Child Exploitation Investigations" (2011) *57* Crim. L.Q. 486.

Stewart, Hamish, "Normative Foundations for Reasonable Expectations of Privacy" (2001) *54* SCLR 335 at 345.

Suzor, Nicolas; Seignior, Bryony; Singleton, Jennifer, "Non-Consensual Porn and the Responsibilities of Online Intermediaries" (2017) 40 *Melbourne University Law* Review 1057.

The Citizen Lab, *Submission of the Citizen Lab (Munk School of Global Affairs, University of Toronto) to the United Nations Special Rapporteur on violence against women, its causes and consequences, Ms. Dubravka Šimonović* (2 November 2017).

Therrien, Daniel, (Privacy Commissioner of Canada), *Submission to the Standing Senate Committee on Legal and Constitutional Affairs*: *Bill C-13, the Protecting Canadians from Online Crime Act* (19 November 2014), Office of the Privacy Commissioner of Canada, online: <https://www.priv.gc.ca/en/opc-actions-and-decisions/advice-to-parliament/2014/parl_sub_141119/>.

"Violence against women: an EU-wide survey" (2014), *European Union Agency for Fundamental Rights,* online: < http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>.

Westin, Alan, *Privacy and Freedom* (London: Bodley Head, 1970).

NEWS SOURCES

Alexander, Leigh, "Facebook's Censorship of Aboriginal Bodies Raises Troubling Ideas of 'Decency'", *The Guardian* (online), 24 March 2016 <https://www.theguardian.com/technology/2016/mar/23/facebook-censorship-topless-aboriginal-women>.

Butt, David, "Canada's law on hate speech is the embodiment of compromise", *The Globe and Mail* (19 January 2015), online: <https://www.theglobeandmail.com/opinion/canadas-law-on-hate-speech-is-the-embodiment-of-compromise/article22520419/>.

Garon, Geneviève, L'absolution après avoir filmé ses partenaires sexuelles et partagé les images", *Radio-Canada* (31 January 2018), online: <https://ici.radio-canada.ca/nouvelle/1081445/absolution-ezra-cohen-filme-partenaires-sexuelles-partage-images-etudiant>.

Iqbal, Nosheen, "Donna Zuckerberg: 'Social media has elevated misogyny to new levels of violence'" (11 November

2018), *The Guardian*, online: <https://www.theguardian.com/books/2018/nov/11/donna-zuckerberg-social-media-misoyny-violence-classical-antiquity-not-all-dead-white-men?CMP=Share_iOSApp_Other>.

Keate, Georgie, "Facebook Removes 'Offensive' Photo of Breastfeeding Mother", *The Times* (London), 30 October 2014, 29.

Khandaker, Tamara, "Canada's First Revenge Porn Convict Gets 90 Days in Jail" (24 March 2016), *Vice News,* online: <https://news.vice.com/article/canadas-first-revenge-porn-convict-gets-90-days-in-jail>.

Levin, Sam, "Too Fat for Facebook: Photo Banned for Depicting Body in 'Undesirable Manner'", *The Guardian* (online) 24 May 2016 <https://www.theguardian.com/technology/2016/may/23/facebook-bans-photo-plus-sized-model-tess-holliday-ad-guidelines>.

Penny, Laurie, "A woman's opinion is the miniskirt of the internet", *The Independent* (4 November 2011), online: <https://www.independent.co.uk/voices/commentators/laurie-penny-a-womans-opinion-is-the-mini-skirt-of-the-internet-6256946.html>.

"Rehtaeh Parsons' death changed the conversation about sexual assault and consent", *Canadian Broadcasting Corporation* (6 April 2018), video online: < https://www.cbc.ca/news/thenational/rehtaeh-parsons-death-changed-the-conversation-about-sexual-assault-and-consent-1.4609675>; "Another family grieves", *Canadian Broadcasting Corporation* (15 April 2013), video online: < https://www.cbc.ca/news/thenational/another-family-grieves-1.435799>.

Roy, Jessica, "Revenge-Porn King Hunter Moore Indicted on Federal Charges" (23 January 2014), *Time,* online: <http://time.com/1703/revenge-porn-king-hunter-moore-indicted-by-fbi/>.

ONLINE SOURCES

"CCLA Appears Before Committee Considering Bill C-13 (Protecting Canadians From Online Crime Act)" (6 June 2014),

Canadian Civil Liberties Association, online: <https://ccla.org/ccla-appears-committee-considering-bill-c-13-protecting-canadians-online-crime-act/>.

Electronic Frontier Foundation, online: <https://www.eff.org/>.

"French Legislation on Privacy" (2 December 2007), *Embassy of France in Washington, D.C.,* online: <https://franceintheus.org/spip.php?article640>.

Kelley, Erin, "Revenge Porn: The Consequences of Posting Naked Photos of Your Ex – Part 2" (28 April 2017), *Nelligan O'Brien Payne* (blog), online: <https://nelligan.ca/blog/family-law/revenge-porn-consequences-publishing-naked-photos-ex-part-2/>.

Maia Stevenson, "The Non-Consensual Sharing of Intimate Images: Young McGill Student Recieves Absolute Discharge" (3 February 2018), *Rights Watch* (blog), online: <http://rightswatch.ca/2018/02/03/the-non-consensual-sharing-of-intimate-images-young-mcgill-student-receives-absolute-discharge/>.

"40 States + DC Now Have Revenge Porn Laws", *Cyber Civil Rights Initiative,* online: < https://www.cybercivilrights.org/revenge-porn-laws/>.