



# Criminal Justice for Victims of Cybercrime:

Case Study on ICT-facilitated Gender-Based Violence  
(aka Cyberviolence)

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## Mapping study on cyberviolence. T-CY (Cybercrime Convention Committee)

### Budapest Convention on Cybercrime (CETS 185)

Substantive  
cybercrime  
offences

Procedural  
Powers:  
collection of  
digital evidence

International  
cooperation  
in criminal justice  
(MLA, etc.)

**“Lanzarote” Convention** on the  
Protection of Children against Sexual Exploitation  
and Sexual Abuse (CETS 201)

**Istanbul Convention.**  
“Council of Europe Convention on  
preventing and combating violence against  
women and domestic violence” (CETS 210)



# Justice for Victims of ICT-facilitated gender-based violence (GBV) (aka cyberviolence)

## **Cyberbullying and Suicide in Canada – Victims and the Long Path to Justice (A Case Study)**

- For a number of years leading up to 2012, reports of “cyberbullying” were circulating among media, law enforcement and government
- In October 2012, Amanda Todd, a 15 year-old girl committed suicide following sustained ICT-facilitated violence by an unknown perpetrator and subsequent cyberbullying by her classmates after images were posted
- Less than 6 months later, 17 year-old Rehtaeh Parsons attempted suicide and died in hospital on April 7, 2013.
  - In 2011, as a 15-year old, she had been sexually assaulted by teenage boys and then photographs associated with the event were posted online. The online cyberbullying led to her death



# Federal and Provincial Governments Respond

- Law enforcement was able to act in some cases: if the posted images legally constituted child pornography
- But the broader phenomena was more complex
- Cases, such as that of Amanda Todd, seemed to combine cyberbullying with computer hacking by an unknown perpetrator
- “Cyberbullying” was not always restricted to those under 18 years of age: under media terms like “revenge porn” cases involved adults who had been intimate partners but were subsequently estranged
- Canada conducted a review of its criminal law to determine if there were legislative gaps with respect to bullying and cyberbullying
- In June 2013 a report was tabled for the Federal-Provincial-Territorial Ministers Responsible for Justice and Public Safety
  - **Cyberbullying and the Non-consensual Distribution of Intimate Images**



# Cyberbullying and the Non-consensual Distribution of Intimate Images

## Key recommendations:

- No need for a stand-alone offence of bullying/cyberbullying;
- Create a new offence relating to the non-consensual distribution of intimate images;
- Modernize and update the investigative powers in the criminal law to allow police to investigate crimes committed via the Internet, or that involve electronic evidence; and
- Support a multi-sectoral, multi-pronged approach to address the issue, including education, public awareness and prevention



# Cybercrime Offences in Canada's Criminal Code

A broad range of *Criminal Code* offences apply to cybercrime and related activities. Some examples of provisions that may be relevant to cybercrimes:

- Mischief in relation to Data (see s.430(1.1))
- Organized Crime offences (see ss 467.11, 467.12, 467.13)
- Theft of Telecommunication Services (see s.326)
- Possession of Device to Obtain Telecommunication Facility or Service (see s.327)
- Unauthorized Use of Computer (see s.342.1)
- Possession of Device to Obtain Computer Service (see s.342.2)
- Interception of Private Communication (see s.184)
- Child pornography/luring (see ss 163.1 and 172.1)
- Forgery (see ss 57, 366, 367, 368)
- Fraud (see s.380)



# Bill C-13:

## *Protecting Canadians from Online Crime Act*

- The Government of Canada enacted Bill C-13, the *Protecting Canadians from Online Crime Act* in March 2015. The Act:
  - created a new offence of non-consensual distribution of intimate images;
  - provided new and updated investigative powers for police to assist in the investigation of cybercrimes, including the new offence; and
  - provided a better basis for international cooperation by harmonizing our substantive and procedural laws with our partners.
- Bill C-13 enabled Canada to ratify the Council of Europe Convention on Cybercrime (the Budapest Convention).



# Non-Consensual Distribution of Intimate Images

**162.1:** Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty of an offence.

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# Non-Consensual Distribution of Intimate Images

- Defines intimate image:
  - Depicting nudity or explicit sexual activity;
  - Taken in private circumstances; and
  - Depicted person retains a privacy interest
- New offence provides flexibility to police and prosecutors in cases where the person depicted is under 18 years of age but also addresses violations involving adult intimate partners



# Complimentary Amendments to the New Offence

Further amendments to complement the new offence:

- empower a court to order the removal of non-consensual intimate images from the Internet;
- permit the court to order forfeiture of the computer, cell phone or other device used in the offence;
- permit the court to prohibit the use of the Internet as part of the sentence;
- provide for reimbursement to victims for costs incurred in removing the Intimate Image from the Internet or elsewhere; and
- empower the court to make an order preventing someone from distributing non-consensual intimate images.



# Non-Legislative Responses

- Non-legislative measures are the most effective way to prevent cyberbullying and the broader phenomena of ICT-facilitated gender-based violence
- Anti-cyberbullying public awareness campaigns were launched in 2014 and new projects continue to be developed and released to address ICT-facilitated gender-based violence broadly
  - In June 2017, *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence* (the Strategy) is the Government of Canada's response to gender-based violence (GBV). It builds on current federal initiatives, coordinates existing programs and lays the foundation for greater action on GBV.
  - Recent projects, initiatives and resources can be found through Women and Gender Equality Canada (<https://women-gender-equality.canada.ca/>)
- The federal government funds numerous projects, including through private-public partnerships:
  - through various departments in relation to youth violence, e.g., RCMP's WITS (Walk Away, Ignore, Talk it Out, Seek Help). ([www.witsprogram.ca](http://www.witsprogram.ca); which will be turned into WITS 2.0 in the coming months (<https://witsprogram.ca/wits-2-0-is-coming/>))
  - the Canadian Center for Child Protection on-line resource has had a series of initiatives in recent years ([www.protectchildren.ca](http://www.protectchildren.ca))
- Provinces and Territories as well as the private sector have taken a similar approach and help prevent ICT-facilitated gender-based violence through education strategies



# Conclusions

An appropriate response to victims of ICT-facilitated gender-based violence must be a holistic response:

- It involves bringing the perpetrators to justice.
- If there are gaps in existing laws, it means amending the legislation.
- If the crimes have an international dimension or the evidence is stored outside one's country, it involves international cooperation and having ratified an instrument such as the *Budapest Convention* to make it possible to obtain that evidence to bring it back to court to prove guilt or innocence.
- If it is clear there is a broader problem, it is also essential to respond with a wide range of education and public-awareness initiatives to help one's country's residents and citizens.



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