

# WE'RE WATCHING YOU

*Cyberbullying legislation threatens free expression*

By Paula Todd

**E**LAINA\* is a 14-year-old Toronto student who thought her life was over after her “enemy,” Lisa\*, also 14, snapped pictures of her naked body in the gym change room and sent the photos to guys in their class. “I was so embarrassed I couldn’t bear to go to school,” Elaina says in a telephone conversation. “I’ve always been shy, and now everyone is calling me a slut.”

Sadly, Elaina’s case is not rare. Electronic devices give us the unprecedented power to communicate and educate—along with the ability to humiliate and harm each other, not to mention harass, sexually extort and blackmail, as has been alleged in the cases of Amanda Todd and Rehtaeh Parsons. But, in riding to the rescue, Canada’s federal government is once again camouflaging a power grab beneath a needed social protection.

Bill C-13 would make it a crime to use intimate images without consent of the person pictured: *162.1 (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 (a) of an indictable offence and liable to imprisonment for a term of not more than five years; or (b) of an offence punishable on summary conviction.*

In addition, though, Bill C-13 would permit anyone to voluntarily give massive amounts of personal material to police and government without risking any civil or criminal punishment. This means that Internet service providers (ISPs), telecommunications companies, and website and social media operators—who have access to everything you’ve said, searched or done online—are free to collect, store and hand over your personal data without risk. In other words, spying, recording,

stockpiling and sharing your personal information becomes the norm.

Equally unsettling, the proposed law would make it legal for anyone—child, youth or adult, including “enemies” and cyberbullies, or cyberabusers—to provide your personal data to the government without you knowing about it or being able to protest. How?

Under Bill C-13, briefly known as the “Protecting Canadians from Online Crime Act,” but formally and more transparently titled “An Act to amend the Criminal Code, the Canadian Evidence Act, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act,” the government proposes to:

■ Make it legally impossible for you to take criminal or civil action against any “person,” including an Internet service provider (ISP) or a telecom company, who voluntarily preserves and turns over personal information to law enforcement. In other words, all that you write, speak, text, video-record and

tinely posted on a vast number of websites, including those that forbid sexual content. If you see them, share them or “like” them, without knowing whether consent was involved, are you liable to be monitored by authorities?

■ Anyone who is ordered to collect and preserve data but refuses to could face a maximum fine of \$250,000 or imprisonment for up to six months, or both.

■ The federal government also wants the power to see all of your “transmission data” (metadata), such as the origin, destination, date, time, duration, type and quantity of your phone calls and online communications, as well as “tracking data,” which pinpoints the location of a person or object. This “information about information” doesn’t include content, so authorities are at risk of reaching false, misleading and damaging—not to mention convenient—conclusions about whom you know and associate with, for how long and where you go. This heightens concern, too, about social media

**Electronic devices give us the unprecedented power to communicate and educate—along with the ability to humiliate and harm each other. But, in riding to the rescue, Canada’s federal government is once again camouflaging a power grab beneath a needed social protection.**

more online can be stockpiled, perused and held against you without any judge first deciding whether that’s fair.

■ Even when police do ask a judge for a “demand or preservation” order requiring someone to stockpile and give them your material, they only have to show that they have “reasonable grounds to suspect”—not the tougher standard of “reasonable grounds to believe”—“that an offense has been or will be committed.” That’s a low hurdle to jump, especially since sexual images are rou-

sites that routinely record your “check-in” information, along with the location tracking used by popular mobile apps. Under Bill C-13, authorities could see data about your past movements without a warrant, but they would need one for ongoing “live” tracking and for remotely turning on your cellphone’s GPS.

Chilling? Absolutely. Even law-abiding citizens who think they have nothing to hide cannot predict what will happen in the future, who will govern and what personal data might be used—or mis-

used—against them. Nor should citizens living in a democracy be so freely surveilled on the suspicion they might be doing the wrong thing in the wrong place, especially since the Internet is such a vast space. The Charter of Rights and Freedoms guarantees Canadians the freedom to express themselves, to associate with whom they want, among other protections. Yet, giving the state more power to sneak and peek without supervision, and enlisting others to help without consequence, makes using the Internet to communicate or associate far less appealing.

There is no question that cyberabuse has the potential to do long-lasting psychological and physical damage (such as self-harm and playing a part in suicide). But at the heart of the protest against Bill C-13 is something just as important as ending cyberabuse: protecting every citizen’s right to live in a democracy rather than a police state. And asking our governments to do both simultaneously is hardly unrealistic.

The Criminal Code, for instance, can be used to counter crimes that take place online, with laws against creation and distribution of child pornography, child abuse, harassment, stalking and threatening, to name but a few. Police and some lawyers say those laws don’t always translate well online, but that’s hardly grounds for throwing citizen protections out the window. The ban on non-consensual sharing of intimate images may be laudable, but the potential for its misuse screams out for judicial oversight. Citizens need not allow the federal government to do through the back door what it cannot do through the front—an old legal trick historically frowned upon. Nor should citizens have to look over their shoulder as they go about their lawful business. We are entitled to express ourselves and associate with whomever we please, until a lawfully justified investigation decides otherwise.

Criticizing Bill C-13 is in no way a measure of how much (or how little) we care about what happens to children, youth and adults online or through other forms of electronic communication. We all care, some of us very deeply.

But we cannot let the government play a similar card to the one it produced back in 2012, when Vic Toews, then public safety minister, tried to shame Canadians into green-lighting the sweeping surveillance bill, C-30, by telling us we were all siding with “child pornographers” if we didn’t give the government more power over us.

Yet again, we’re being asked to stand with the government against cyberabusers by granting it carte blanche to our personal information. Requiring law enforcement—and anyone collecting and sharing our personal data—to act under judicial scrutiny is the best way to filter goose-chases from strong police work. Unchecked trafficking in citizens’

personal information is no better than sharing intimate images without permission. ❧

*Paula Todd is a journalism and digital media professor and a lawyer. She sits on the CJFE Board and chairs its Digital Issues Committee. Her latest book, Extreme Mean: Trolls, Bullies and Predators Online (Penguin/Random House) looks at the causes of cyberabuse.*

*About the cartoons: Cinders McLeod is a writer, a political cartoonist and an illustrator. Visit cindersmcleod.com for info about her art, blog and children’s books, I’m a Girl! and I’m a Boy! (HarperCollins). She is working on a novel.*

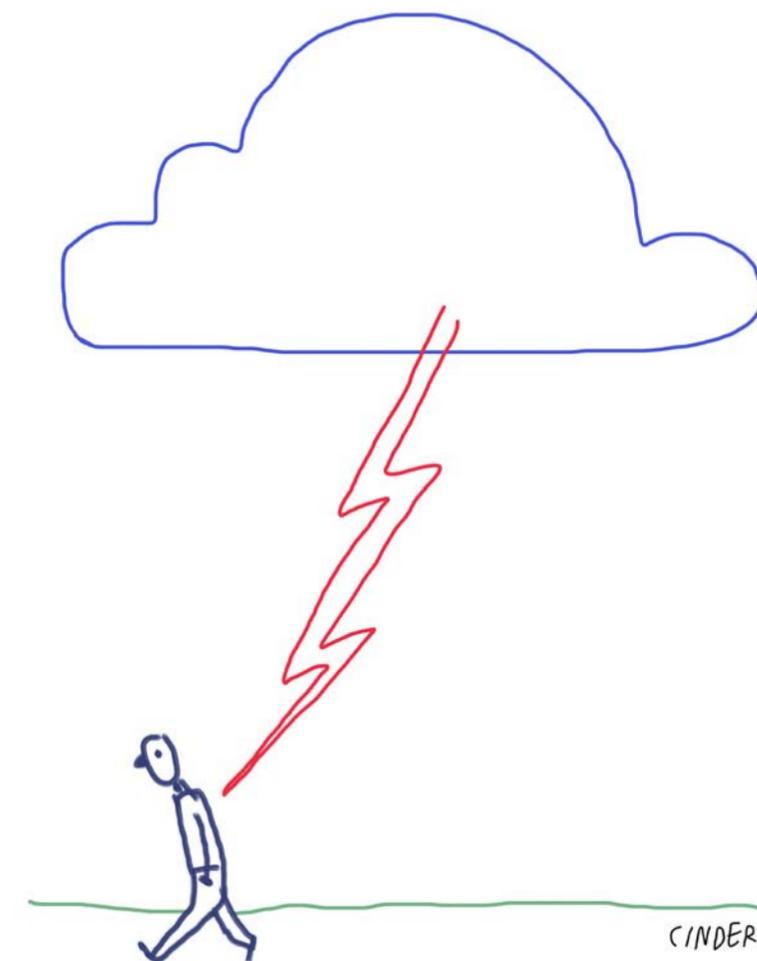


ILLUSTRATION: CINDERS MCLEOD