FREE EXPRESSION

WE'RE WATCHING YOU
Cyberbullying legislation threatens free expression

By Paula Todd

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, 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 websites and social media operators—who have access to everything you’ve said, searched or done online—are free to collect, store and sell 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 stockpile 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, 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 derivative conclusions—conclusions about whom you know and associate with, for how long and where you go. This heightens concern, too, about social media more online can be stockpiled, perused and held against you without any judge first deciding whether that’s fair.

Even when police do ask 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 offence has been or will be committed.” That’s a low hurdle to jump, especially since sexual images are routinely 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?

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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’ve been 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 gooch-chases from strong police work. Unchecked trafficking in citizens’ personal information is no better than sharing intimate images without permission.

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

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