

Presentation to the Standing Committee on Justice and Human Rights
Bill C-273: An Act to amend the Criminal Code (cyberbullying)
Presented by Peter Jon Mitchell, Senior Researcher on February 27th, 2013

Mr. Chair and committee members,

Thank you for the opportunity to appear today regarding C-273 on behalf of the Institute of Marriage and Family Canada, a social policy think tank that conducts and compiles research on issues pertaining to the Canadian family.

Just last week another study published in a peer reviewed journal linked the damage done by bullying during childhood with an increased risk of mental health related issues in young adulthood.¹ The consequences of unaddressed bullying are severe.

As I continue to review research and engage with parents, I encounter a high level of anxiety and a sense of helplessness among parents of bullied children. Many of our attempts to stay ahead of cyberbullying are akin to refereeing a soccer game from outside the stadium. As parents and caring adults we prepare our children acknowledging that once they enter the online world they are on their own. It is as if we are left peering at the field of play through a gap in the fence. Caring adults are largely absent in the online world of children and teens. Bullies know it and thrive where adults are absent.

Conceptually, enforcing full weight of the criminal code on bullies appeals to a popular sense of justice. But this simplifies what is often a complex issue where many bullies are also victims. Functionally, the criminal law occupies the far end of a continuum in a series of bullying interventions among children and youth –the demographic I want to focus on today. The criminal code can protect victims and the community from escalating harm, but it is a very particular tool within limited circumstances. Before speaking to the specific merits and concerns with C-273, I want to acknowledge two limits to the function of the criminal code that should ground our expectations of what it can accomplish.

Use of the criminal code won't eradicate bullying.

First, applying the criminal law does not address the nature of bullying. At its core, bullying is a relational issue that requires relational intervention. Canadian clinical and developmental psychologist Gordon Neufeld understands bullying to be an instinctual social and emotional issue. Children, like adults, instinctually connect and attach to others, forming care giving and care receiving relationships. This is easily observed when watching children play. Neufeld argues that these natural forming hierarchies facilitate the drive to care for others. But where instinct should draw upon empathy, the bully, often impaired by his or her own emotional trauma, is compelled to expose and exploit perceived weakness.² Unmaking a bully takes time and requires relational capital.

Second, the criminal code is limited in the ability to prevent and deter young cyberbullies. As Wayne MacKay who chaired the Nova Scotia Task Force on Bullying and Cyberbullying noted in his report, "[T]he criminal law, while necessary and useful in certain serious cases, is a limited and often ineffective tool against the social problem of bullying."³ Professor MacKay notes that criminal law has limited impact on prevention and deterrence. In fact, until very recently the YCJA omitted the principle of deterrence during sentencing in part because of the assumption that youth are less likely to be deterred by criminal sanctions. American criminologist Thomas Holt has summed it up well when he argued, "It's very hard to say that any 14-year-old with a cell phone who can text is going to think about a cyberbullying law when they're communicating with peers."⁴

The best response to bullying is a community level response that brings together parents, caring adults like educators and children and youth. Research demonstrates that home and school environments are key to preventing the escalation of bullying. Authentic relationships between youth and adults are critical to shielding young victims and unmaking bullies.

Justin Patchin, a criminologist at the U.S. based Cyberbullying Research Center who testified before the Canadian Standing Senate Committee on Human Rights as said elsewhere, “The vast majority of cyberbullying incidents can and should be handled informally: with parents, schools, and others working together to address the problem before it rises to the level of a violation of criminal law.”⁵

But of course there are situations where use of the criminal code is necessary to protect victims and the community from escalating harm. What are the merits of C-273?

- First, the bill brings the stated sections of the criminal code into the 21st century by addressing common tools of communication. Some have argued that the criminal code is already sufficiently broad to encompass electronic bullying behaviours, particularly section 264. The amendment to section 264 may be unnecessary.
- Second, the modifications are modest and clarify existing sections of the criminal code rather than proposing new, untested sections to the criminal code.

Finally, there are some serious considerations around the implementation of C-273;

- First, we can expect that clarifying the criminal code in this manner will lead to an increase in its use. Increased use of these provisions may draw more youth into the criminal justice system many who would fair best if dealt with outside the justice system.
- Second, the committee should consider how the increased use of the criminal code will impact school based responses to bullying. Could the adversarial nature of the criminal justice process inhibit community based responses to bullying?
- Finally, it remains unclear whether legislation reduces bullying. In the United States between 2000 and 2010, over 125 pieces of legislation on bullying were passed yet the problem seems to remain as persistent as ever.

To conclude, bullying among children and youth requires a community level approach. On some occasions cyberbullying may escalate to a point where the criminal code is a necessary to protect victims and the community. C-273 appears to be a modest modernization of existing criminal code provisions. But at what cost? Consideration should be given to the possibility that increased use of the criminal code will create a chill on the community level approach, particularly by drawing more youth into the justice system. Refereeing cyberspace is a difficult task. Our best approach is to empowering parents, educators, children and teens to work together.

Endotes :

¹ Copeland, W.E., et al (2013) Adult psychiatric outcomes of bullying and being bullied by peers in childhood and adolescence. JAMA Psychiatry published online on February 20th, 2013.

² Neufeld, G. (2012, Oct. 24). Bullies: Their making and unmaking. A presentation for the Centre of Excellence for Behavioural Management of the Riverside School Board, Montreal.

For a summary of Neufeld's comments see Mitchell, P.J. (2012, Nov. 22) Want fewer bullies? Expert calls for actively engaged parents. Ottawa: Institute of Marriage and Family Canada. Retrieved from http://www.imfcanada.org/sites/default/files/ereview_November_22_12_0.pdf

³ MacKay, W. and Hughes, E. (2012, February 29) The legal dimensions of bullying and cyberbullying. Appendix I Respectful and responsible relationships: there's no app for that. The report of the Nova Scotia Task Force on Bullying and Cyberbullying. p.9.

⁴ T. Holt as quoted in US cyberbullying laws do little to deter behaviour, expert says (2008, Dec. 17) The guardian. Retrieved online from <http://www.guardian.co.uk/world/2008/dec/17/cyberbullying-laws-myspace-stalking>

⁵ Patchin, J.W. (2010, Oct. 12) Most cyberbullying cases aren't criminal. Cyberbullying Research Center. Retrieved from <http://cyberbullying.us/blog/most-cyberbullying-cases-arent-criminal.html>