CHAPTER ONE

Confronting Cyberbullying:
Are We Any Wiser?

The notion of being "sage – good, wise, careful, in line with rules and expectations – is reflected in the picture of the reasonable person in the private law of civil wrongs. "Fun" is necessarily limited by "sagesse": self-fulfillment is necessarily shaped by the obligation not to hurt others. As children explore themselves and their surroundings, gradually becoming aware of others in their lives, they begin the move beyond the realm of "carefree" and into that of "caring." The obligation to care for others is slowly added throughout childhood to one's sense of self.

(Van Praagh, 2007, p.63)

INTRODUCTION

The opening quote by my colleague Shauna Van Praagh (2007) contains in a few sentences the essence of issues I grapple with in this book. It is about understanding the choices children make in being "good, wise, careful, in line with rules and expectations" (p.63). It is about how activities and expressions that children perceive as "fun" are often limited by "sagesse" – as defined by society's rules. And, it is about how children gain the self-fulfillment and awareness of others in their lives so as to move from being "carefree" to "caring." Furthermore, it considers how the obligation to care for others becomes integrated into children's agency and their own sense of self at various stages of moral development and in some cases, moral "*dis*engagement."

This book is also about the "sagesse" (or lack thereof) applied by adults as children move from being carefree to becoming responsible citizens of society. How do we balance the laws and rules, not only in the private law of civil

1

wrongs as in Van Praagh's quote, but also under a range of legal frameworks? As I begin writing this book, I consider why we have not been successful in reducing online abuses that the Supreme Court of Canada (SCC) recently described as a "toxic phenomenon" (*A.B. [Litigation Guardian of] v. Bragg Communications, Inc.*, 2012). Although digital and social media have advanced by leaps and bounds, and despite the large body of research and numerous "anti-bullying experts" around the globe, we do not seem to have made significant progress in reducing the phenomenon we have come to define over the last decade as "cyberbullying."

I question the wisdom of applying criminal law (particularly child pornography laws) to charge young people when the original intent of those laws is to protect children. I draw attention to legal frameworks that are less often invoked, but ought to be, like constitutional and civil protections and international human rights conventions. The principles underlying these legal statutes recognize children's vulnerability to adult-made rules in society, and to the behavior of adults who never made the transition to become caring and who exploit and hurt children. I draw attention to the lack of public legal literacy of these constitutional and human rights protections, which could be invoked to protect the privacy and vulnerability of children. I also address the challenges that judges confront in a digital age, as they are bound by age-old doctrines like the "careful and prudent parent" and "reasonable person" tests under the private law of torts. As societal norms shift with increased globalization and online communication, making a judgment as to what is a "reasonable person" has become increasingly difficult. Moreover, peer pressure, impulsivity, and a sense of perceived anonymity in the virtual realm has complicated the circumstances under which children make the choices to be "good, wise, careful, in line with rules and expectations" (Van Praagh 2007, p. 63).

In *Confronting Cyberbullying* (Shariff, 2009), I compared the online environment and disappearing legal boundaries to William Golding's (1954) seminal work of fiction, *Lord of the Flies*, where the absence of adult supervision, laws, and rules resulted in bullying, anarchy, and breakdown of social norms among a group of children marooned on a deserted island. In making that analogy, I observed that Golding wanted us to realize certain ironies about humans as social beings. Without conventional laws, rules, or supervision, the children in *Lord of the Flies* reverted to subliminal and deep-rooted antisocial messages of hate, prejudice, and scapegoating, which they could only have seen or heard modeled by adults in their everyday lives. The children singled out and isolated peers who deviated from the norm, resulting in the tragic death of an overweight and nearly blind boy, Piggy, who did not fit in with his peers. Golding was talking about survival of the fittest. Readers were left to decide whether the breakdown of social norms was due to the lack of supervision and enforced rules, or whether in fact, as territorial beings, the fittest survived.

WHO IS THE FITTEST ONLINE?

In applying this analogy to the online world, we might ask who are the fittest members of society in an online world where laws and rules are difficult to define? Is it "cappers"[1] and "trolls"[2] who perpetrate specific types of online sexual violence and cyberbullying? Or, could the fittest members be individuals with the vision to secure the benefits of a global online world to make it a better place? Could the fittest be among those who lead the way to defining the lines between socially responsible digital citizenship and harm that cannot be considered legally, ethically, or socially acceptable?

It is difficult to categorize the participants of a digital world where norms of social communication have crept toward increased tolerance for sexism, misogyny, and homophobia and where popular culture, especially online marketing, comedy, and reality shows place physical appearance, social conformity, objectification of women, sarcasm, and demeaning humor on the highest pedestals of socially acceptable behavior. We might also ask whether this shift in acceptable norms of communication originates and resides only among young people growing up immersed in digital media. Or, is it simply a virtual extension of the antisocial physical world that adults have created? Children confront difficult challenges at both ends. They try to prove their strength in a digital and online social network where even friends can demean them publicly and excuse themselves with "jk" (just kidding) or "lol" (laugh out loud). When under peer pressure, they might impulsively react or post comments and photographs in response to things they might have ignored in different circumstances. Such reactions could get them into serious trouble with the law as, increasingly, law enforcement and governments grapple to find and develop appropriate laws and legal frameworks to deal with the range of possible online offenses.

SEEKING SUITABLE DEFINITIONS FOR DIGITAL GENERATIONS

Prensky (2001) defined young people who are growing up immersed in digital media as "digital natives." Although this term was commonly applied and taken up in academic and popular discussions over the past decade (e.g. Tapscott, 1998; 2009), it has also become highly polemic. So much so, that

[1] Cappers are pedophiles who coerce young people to take and share intimate and sexual photographs of themselves through webcams and videos. Morris, K. (November 13, 2012). The "Daily Capper" exposes alleged culprit in Amanda Todd Suicide. *The Daily Dot*. Retrieved from www.dailydot.com/news/daily-capper-amanda-todd-kody-viper/

[2] Trolls are a subculture of Internet users who wreak havoc on social media sites and online communities, posting offensive, violent, and cruel messages to invoke an emotional reaction from their targets. Schwartz, M. (August 3, 2008). The Trolls Among Us. *The New York Times*. Retrieved from www.nytimes.com/2008/08/03/magazine/03trolls-t.html?pagewanted=all

some academic conferences have asked people to remove the term from their papers to be considered for submission while other conferences continue to debate its definition as a category of new digital learners (Thomas, 2011). In the collected essays of *Deconstructing Digital Natives: Young People, Technology, and the New Literacies*, Thomas (2011) identifies three major themes that encapsulate existing discourses around the term, which include: 1) young people born after 1980 are homogenous; 2) they learn differently from previous generations; and 3) they require new ways of teaching and learning. My decision to move away from this term stems primarily from the first tenet; that is, the fact that "digital natives" tends to essentialize differences and similarities between generations (Buckingham, 2011). Rather than reinforce the divides between generations, I move in the direction of Thomas' suggestion; that is, research "should engage with the diversity rather than the conformity suggested by young peoples' use of digital technologies" (p. 9). Moreover, three major themes in the discourse that Thomas (2011) identifies are also reflected in news media reports, parent and teacher advocacy for harsher laws around cyberbullying, and the rhetoric used by politicians that single out these generations as troublesome in the ways that they use digital and social media. Popular narratives around this concept place digital technologies as something that can emancipate and empower young people to become anything they want to be. In certain cases this may be so, but these qualities of digital technologies are often exaggerated, tending to overlook the aspect of technological continuity between generations (Buckingham, 2011). One need only think about how many people over the age of fifty use and integrate digital technology every day: grandparents sending emails, texting, and Skyping; aging baby boomers buying the latest tablets or smart phones; or long-established small businesses integrating digital systems to shift to online appointment bookings to accommodate their clientele. All of this is to say there are differences and similarities among and between the generations, many of which correspond to socioeconomic status and the question of access.

Bennett and Maton (2011) discuss how even within affluent societies there are gaps in digital proficiency between young people. Moreover, the authors argue that most claims around digital natives lack strong empirical evidence. The authors cite a series of studies that offer evidence of the variation of digital proficiency and usage among young people. One such study examined young people's usage of digital technologies. The results revealed that a greater proportion of respondents used the technology for communication and consumption of information instead of creative or gaming-related activities. Bennett and Maton surmise that such empirical-based research reveals that a range of access, use, and skills exists even within the supposed generation of digital natives. To Prensky's credit, his terms ignited a decade-long debate around the merits and limitations of such a concept. Recently, Prensky (2011) wrote that the distinction between "digital natives" and "digital immigrants," those born before the advent of digital technology, was meant as metaphoric – it gave a "shorthand name to a phenomenon" that previously remained unclassified (p. 15).

My purpose in providing a brief snapshot of these current discussions is not to weigh in on either side, but rather, to position my work to move beyond these binary-like debates. The research and analysis contained in these chapters provides insights into the complex and nuanced relationships young people have with digital technologies and the legal challenges and dilemmas these relationships present for policy makers. Over the past decade, technologies have emerged that offer new ways to connect and express oneself. In spite of these opportunities, there remains a gap in societal understandings around legal frameworks, the application of law, and its intersections with youth culture in the twenty-first century. Disturbing trends in law have emerged that place these intersections in the adult realm and within the contexts of online harassment and rape culture. I argue that these adult crimes are much more complicated to assess when they involve youth. Therefore, they should not be addressed through blanket legal responses that tackle them under the umbrella of cyberbullying. As I argue in this book, the roots of these various forms of cyberbullying are deeply buried in systemic and hegemonic forms of discrimination, which are currently playing out through sexist and homophobic online expressions.

"GENERATION EMPOWERED" OR "GENERATION SCREWED"?

When we look to how youths are defining themselves, we also observe some pessimistic views about their futures. This is reflected in a cruder self-description that has recently been adopted by young people to depict their circumstances in life as a "Generation Screwed" (Seidman, 2014; Mansbridge, 2014). This self-proclaimed and self-defeating title speaks to the challenges youth confront in a world where economic and natural resources are depleting, the environment and climate are being destroyed, and traditional forms of employment and career options are reduced and uncertain. Moreover, educational systems catering to these digital generations are slow to keep up with technologies. Elementary and postsecondary curricula are often irrelevant and out of touch with young people's lived realities (Lankshear & Knobel, 2006; Gee 2004). "Digital technologies collapse social contexts," states boyd (2009, para. 8), which in turn, requires schools and teachers to consider how their roles extend beyond the institution's walls to support students in their online lives. boyd (2014) argues that overzealous applications of paternalism and protectionism impede young peoples' abilities to develop as thoughtful and knowledgeable citizens able to make informed decisions about how they conduct their lives. In addition, legal penalties that are being applied to "control" online communication among these youth reside in ancient laws – and the new laws are being applied without attention to unprecedented social and learning challenges. When we apply antiquated laws to youth behaviors that do not fit the offense, and create new laws that ignore the context in which youth are growing up, it could indeed be concluded crudely that the younger generation is a "generation screwed."

DIGITALLY EMPOWERED KIDS, YOUNG ADULTS, AND GENERATIONS

If we return to Golding's survival of the fittest analogy, it is partly true that digital expertise among all generations can better position and "empower" them to succeed in a future of evolving technologies. For youth, this may require several career changes and creative entrepreneurship, which they are in a stronger position to take advantage of than older generations who may be more generally established in traditional careers and ways of communicating. With this in mind, I have decided to give every generation a positive term of reference. To facilitate the discussion around research and specific issues that relate to youth and uses of digital and social media, I use the term Digitally Empowered Kids (DE Kids). When I specifically refer to young adults such as college and university students, I call them Digitally Empowered Young Adults (DE Young Adults). And when I discuss adults and youth as they engage in and are immersed in online forms of communication, I collectively refer to everyone as Digitally Empowered Generations (DE Generations).

I certainly acknowledge these descriptive terms might fall into the trap of overemphasizing the benefits of digital and social media. That being said, a positive connotation that allows for the benefit of doubt is especially important when discussing difficult topics like cyberbullying. There has been so much negative discourse around young people using this term, that it seems to me cyberbullying has become synonymous with kids and youth. In fact, so much so, that as I illustrate in upcoming chapters, sexually offensive online forms of communication and extortion by adults are all lumped together by news media, researchers, and politicians as cyberbullying. I want to emphasize the danger of this because it is this stereotype of children that fuels reactive measures to control, punish, and criminalize them. And I argue in this book that we must first look at adult forms of online and offline communication, in which are rooted the most intolerant forms of discrimination such as sexism and misogyny, homophobia, racism, ableism[3], and other forms of xenophobia. Consequently, I would argue that it is not younger generations who are a "generation screwed" but the boomer generations who are, to put it crudely, more "screwed" up. I discuss scholarly discourses that show how it is the older generations that influence kids through models in popular culture and rape culture, which is now increasingly prevalent in colleges and universities and filtering down to school children in the form of sexting. Interestingly, many kids are all too aware of the conflicting messages they receive from adults from early childhood. Consider the following anonymous quote posted on a young adult's Facebook page:

Me behave? Seriously? As a child, I saw Tarzan almost naked, Cinderella arrived home after midnight, Pinocchio told lies, Aladdin was a thief, Batman drove over 200 miles an hour and Snow White lived in a house with 7 men…The fault is not mine!

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[3] Ableism refers to the discrimination of people with disabilities.

In this sense, one could argue that Prensky's (2001) "digital natives" are in fact "digital immigrants" because they are forced to live in a world that still runs under adult rules. As noted in the introduction, these rules may not reflect the realities of youth as they move from being carefree to responsible and caring. And DE Kids' notions of fun, as I establish in Chapter 2, are very different from fun in the minds of most adults who make and apply the rules. When DE Kids as a matter of course integrate their virtual and physical worlds without clearly differentiated boundaries, such as public or private, it is adults who raise the loudest objections, preferring to ban technologies from classrooms and lobby governments to clamp down on children's behaviors. Thus, it is important for my concept of digital empowerment to create a space for generative thinking – one that includes, rather than excludes, possibilities for each generation – children, teens, adults, and even grandparents.

The DE Kids and DE Young Adults definitions help us begin the conversation about youth from a positive and optimistic place. It gives youth the benefit of the doubt they deserve and recognizes their digital abilities and potential to succeed in a technologically driven world. It also reflects my position throughout the book that it is adult generations who created, sustain, and perpetuate a society and popular culture where misogyny, sexism, homophobia, racism, and other forms of discrimination thrive. Yet when youth imitate and reflect those attitudes and behaviors through digital and social media, we attempt to apply outdated or irrelevant sections of the law to control and punish those behaviors. Moreover, we have begun to develop new laws specifically to criminalize them.

Hence, I argue about the importance of gaining a better understanding of how DE Kids and DE Young Adults think about their engagement and social relationships on- and offline; what motivates them; how their social norms continue to evolve; and how we as adults can guide and facilitate (not control) their ethical judgments about where to define the lines with respect to online expression. I propose that if we decide to use existing legal frameworks and create new laws to address it, we need to ensure we understand the social contexts and levels of circumstances in which such communications occur.

In later chapters, I unpack the legal issues and examine several legal frameworks to address their relevancy and applicability to the types of offenses committed by some youth and the motivations behind them. I believe upcoming generations have enormous potential and the capacity to overcome the challenges the boomer generation leaves them. This is not to suggest that all adults are unsupportive of youth or that some adults are not equally proficient in using digital media. I strongly believe, however, that in general, DE Kids and DE Young Adults could use more collaborative support, guidance, and benefit of the doubt to enhance their leadership and promote more socially responsible on- and offline citizenship. Elsewhere (Shariff, 2008–2009), I have explained why this is especially true of their learning experiences in schools. Digital spaces give them the depth of perspective and creative lenses to spearhead boundless opportunities for connected, collaborative, and peaceful societies in the future. What they need most of all is guidance to realize the impact of their

sometimes impulsive online postings. They also need legal literacy to recognize when such postings might result in legal liability and/or criminal convictions, landing them in jail.

In 2009, I initiated a discussion around the growing public policy vacuum and the rapid blurring of legal boundaries that exacerbate the difficulties of navigating free expression, safety, privacy, supervision, and regulation of negative and offensive online communication. Although there is significantly more public awareness about cyberbullying and online sexual abuse, the policy gaps remain. While new legislation has been introduced across North America, and numerous programs, websites, and publications attempt to guide parents and educators, young people still do not receive the help and support they need to stand up to perpetrators of cyberbullying.

Despite a robust body of research largely conducted and reported from behavioral psychology, criminology, and developmental perspectives on relational-aggression (Mishna, 2004; Werner & Crick, 2004; Beran & Wade, 2011; Cassidy, Faucher & Jackson, 2013), we are no further ahead in finding ways to guide, redirect, and support the increased number of teen suicides that are in some way connected to cyberbullying (Blanchard, 2014; Sonawane, 2014; Hinduja & Patchin, 2010). News media reports about teen suicides have become almost regular occurrences, especially in cases where young women such as Amanda Todd (Grenoble, 2012) and Jane Doe[4] (Huffington Post, April 9, 2013) have either been raped or coerced into sharing intimate photographs, which are then distributed online.

"CYBERBULLYING," CHILD PORNOGRAPHY, OR "FLIRTY FUN"?

Though we now have an improved understanding of the complexities and nuances involved in what has become widely recognized over the last decade as cyberbullying, clear definitions of this phenomenon continue to elude us, and the public policy dilemma persists. The word "bullying" has taken on such wide application, that despite hundreds of attempts by scholars to describe and define it, overuse has resulted in burnout and resistance to the word, especially in schools. Despite the proliferation of well-intentioned non-profit organizations, government agencies, and anti-bullying "consultants" and "experts" who provide schools with "toolkits" and "rubrics," a range of behaviors categorized as bullying continues. As explained in my earlier books (Shariff, 2008–2009), there is always a power imbalance that supports harassment, ostracism, threats, and embarrassment of targeted individuals.

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[4] While I feel that the term "Jane Doe" is impersonal, I am restricted to its use due to a publication ban on this particular high profile child pornography case. Jane Doe's father does not agree with the publication ban on her identity because he feels it protects the perpetrators and not his daughter. The interview can be found at: www.cbc.ca/day6/blog/2014/10/03/his-daughters-name-secre/; http://www.cbc.ca/day6/popupaudio.html?clipIds=2541120.

Though I have used the word "cyberbullying" in the title of this book to reach audiences with a vested interest in the issues raised here, I plan to reduce my use of the word bullying because generic use places it in a separate category from its discriminatory, misogynist, xenophobic, and intolerant roots. Instead, I refer to traditional, offline bullying as abuse, harassment, threats, physical beatings, physical or sexual assault, rape, and so on, indicating the legal frameworks under which they might be prosecuted and litigated.

Readers might wonder why for example, I substitute the word "rape" for an act of what the media might describe as "bullying." Unfortunately, rape prominently features in some teen sexual assaults that perpetrators film and distribute non-consensually. These violent acts have also been a common theme in a large number of the teen suicide cases described by the news media under the general umbrella term of cyberbullying.[5] This highlights the need to call an act what it is. In most cases, the rapists receive less attention than perpetrators who did not participate physically, but instead filmed and posted the attack online. The act of rape is illegal in most jurisdictions.[6] It is a violent sexual and physical assault. It is often used against women and children as a weapon of war. While there is definitely a power imbalance involved in acts of rape, as there is in bullying, the news media spotlight on the video-recorded distribution of this act as cyberbullying, directs the focus away from the extreme physical violation and emotional harm experienced by the victim. This is not to downplay the added humiliation experienced by the victim when she is re-victimized through the repeated online viewing of her rape. My point is that describing the videoing and distribution of images of rape as cyberbullying trivializes the act of rape. Although the taunting and public humiliation that follow such postings involves a power imbalance between perpetrators and victims, all the publicity around the online postings misdirects the public into thinking of those who post such videos as the primary perpetrators. While I do not argue that they too should not face consequences for their thoughtless actions, I want to emphasize the actual rapists as initiators of the crime and that they should also be the focus of public anger. Consequently, the definitions we give to people's actions can sometimes divert the focus from where it should be.

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[5] For example, the video distribution of the rape of Jane Doe in Nova Scotia resulted in the Canadian government introducing Bill-13 known as the anti-cyberbullying law; the Steubenville rape case in the United States.; Amanda Todd's extortion by pedophilic "cappers." Morris, K. (November 13, 2012). The "Daily Capper" exposes alleged culprit in Amanda Todd Suicide. *The Daily Dot*. Retrieved from www.dailydot.com/news/daily-capper-amanda-todd-kody-viper/; Drimonis, T. (March 6, 2014). Steubenville Rape. *The Huffington Post Canada*. Retrieved from www.huffingtonpost.ca/news/steubenville-rape/

[6] As per section 271 of the *Criminal Code*, "everyone who commits a sexual assault is guilty of an indictable offense and is liable to imprisonment." In the United States, there is no national law for sexual assault in the United States – instead, each state has its own laws (e.g., Section 130 of the New York Penal Code and Section 261 of the California Penal Code both define "rape" or "sexual assault" and provide for the penalties for those who commit these offenses).

One of the reasons that I believe we have not made much progress in understanding cyberbullying is because the term is overbroad. I mentioned it has almost become synonymous with the sum of all online behaviors of children and youth. Even when adult pedophiles engage in it, as I will show later in my discussion of specific legal cases, the news media always manages to connect that behavior to the negative online behaviors of kids. In this book I want to emphasize repeatedly, at the risk of redundancy, that we cannot and must not mistake kids' online activities, especially when they include sexual content, for insidious and abusive forms of pedophilia and extortion driven by adults. Child pornography is not the same thing as kids experimenting with sexual and social relationships in their blended on- and offline worlds. Unfortunately, the word cyberbullying has become so generic that I have no choice but to use it in descriptions of the scholarly research, my own research, and the case law that refers to it. However, I am beginning to move away from its overuse in this book to define the online activities within the context of the legal rules and frameworks under which they are being considered. Thus, I call "sexual harassment" what it is; spreading of rumors, demeaning and malicious comments and gossip "libel, defamation or slander" as the case may be; and "criminal threats" what they are. The challenge for law enforcement, as I discuss in Chapter 3, is how to define children's sexting and "flirty fun" online activities when they are less serious than the distribution of images and videos that depict rape.

There is clearly a range of kids' online sexual communications – and most of them, with the exception of deliberate distribution of films depicting rape, can be categorized more accurately as "flirty fun." More often than not, the term cyberbullying is actually rooted in serious and offensive forms of sexist, misogynist, and/or homophobic harassment. These offensive forms include, but are not limited to the posting and distribution of physical sexual assaults and rapes as well as non-consensual online dissemination of intimate images by a trusted partner or friend. Moreover, these behaviors have also been linked in the media to tragic suicides of mostly female victims who felt trapped by the shame of their re-victimization while their sexual assaults were distributed publicly. In light of these unsettling trends, a new set of terms has also emerged to describe some online actions, including the term "selfie," which refers to a digital image taken of oneself and posted online. Perpetrator names such as "cappers" refer to those who extort and collaborate to distribute sexually offensive online material whereas "trolls" refer to those who are known to continue their online abuse of individuals even after they have committed suicide (Shariff, Wiseman & Crestohl, 2013).

The bulk of research in the field continues to place a significant amount of attention on statistics about relational-aggression and youth behavior, ignoring the discriminatory roots and attitudes that inform such behavior (Olweus, 2012; Cassidy, Faucher & Jackson, 2013; Sugarman & Willoughby, 2013). Although relational-aggression and behavioral studies are important in