

TECHNOLOGY-FACILITATED VIOLENCE AGAINST WOMEN & GIRLS: ASSESSING THE CANADIAN CRIMINAL LAW RESPONSE

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Alongside increasing awareness of the ways in which digital technologies can be used to facilitate violence against women and girls, there have come questions about the applicability and efficacy of Canadian criminal law responses. Rooted in a feminist perspective and based on a review of over 400 reported cases involving technology-facilitated violence (TFV), the authors argue that Canadian criminal law both can and should respond. Technology-facilitated violence against women and girls (TFVAWG), like violence against women and girls (VAWG) more generally, undermines their rights to sexual integrity, dignity, autonomy and to equal participation in public and private life. Criminal law responses are an important mechanism for expressing public disapprobation of TFVAWG's negative effects on these fundamental rights. However, the authors' review reveals certain shortcomings in achieving survivor-centred outcomes. Recognizing these and other limitations of criminal law, the authors also assert that proactive approaches aimed at broader social transformation will be essential to ensuring the full and equal participation of women and girls in a digitally connected world.

De pair avec l'accroissement de la sensibilisation envers les façons dont les technologies numériques peuvent être utilisées pour faciliter la violence à l'encontre des femmes et des filles, des questions se sont posées au sujet du caractère applicable et efficace des mesures adoptées en droit criminel canadien pour y répondre. S'appuyant sur un point de vue féministe et sur un examen de plus de 400 cas signalés comportant de la violence facilitée par la technologie numérique, les auteures affirment que le droit criminel canadien peut et devrait réagir à cette forme de violence. La violence à l'encontre des femmes et des filles facilitée par la technologie, tout comme la violence à l'encontre des femmes et des filles en général, nuit à leurs droits à

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l'intégrité sexuelle, à la dignité, à l'autonomie et à une participation égalitaire à la vie publique et privée. Une prise en charge par le droit criminel constitue un important mécanisme pour exprimer la réprobation publique contre les effets négatifs, sur ces droits fondamentaux, de la violence à l'encontre des femmes et des filles facilitée par la technologie. Toutefois, l'étude réalisée par les auteures révèle certaines lacunes dans l'atteinte de résultats axés sur les personnes ayant survécu à cette forme de violence. Reconnaisant ces limites du droit criminel, parmi d'autres, les auteures affirment en outre que des approches proactives visant une transformation sociale de plus grande envergure seront des éléments fondamentaux pour garantir la participation entière et à parts égales des femmes et des filles dans un monde branché.

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Introduction

With growing public awareness of the ways in which technologies, in various forms, can be used to facilitate violence against women and girls (“VAWG”) have come sometimes-conflicting concerns that existing criminal law provisions either may not apply, ought not to or cannot be applied effectively.

Rooted in a feminist perspective,¹ and based on our review of reported cases involving technology-facilitated violence (“TFV”), we argue that the law can and should respond. Behaviours such as non-consensual distribution of intimate images should be understood not only as individual harms, but also as public wrongs violating sexual integrity, autonomy and equality.² They form part of a larger systemic problem of gender-based violence (“GBV”) in which threats and acts of violence are tools for the subordination of those who identify or are identified as women and girls. The risk is exacerbated for individuals experiencing racism, colonialism, homophobia and transphobia. Any systemic refusal or failure to apply criminal law would suggest that such attacks, and the crucible of subordination in which they are incubated, are not to be understood as harms worthy of public sanction.

We recognize that the criminal law can be disproportionately enforced against those who are marginalized. Thus, meaningful criminal justice procedures and remedies³ are but one component of a repertoire of both proactive and reactive responses. In the context of technology-facilitated violence against women and girls (“TFVAWG”), that repertoire must aim at disrupting “the re-responsibilization of women” for crimes against them.⁴ Criminal sanctions used alone cannot achieve that—broader social and cultural transformation are required. Response effectiveness should be measured in terms of whether it promotes “survivor-centred outcomes, including the extent to which the law reflects women’s experiences ... from the standpoint of survivors.”⁵

¹ Lise Gotell, “Reassessing the Place of Criminal Law Reform in the Struggle Against Sexual Violence: A Critique of Carceral Feminism” in Anastasia Powell, Nicola Henry & Asher Flynn, eds, *Rape Justice: Beyond the Criminal Law* (London: Palgrave MacMillan, 2015) 53.

² It is worth noting that the concurring reasons in the Supreme Court of Canada’s decision in a recent voyeurism case explicitly adopted a sexual integrity analysis of sexual offences: *R v Jarvis*, 2019 SCC 10 at para 127, 433 DLR (4th) 195 [*Jarvis*], citing Elaine Craig, *Troubling Sex: Towards a Legal Theory of Sexual Integrity* (Vancouver: UBC Press, 2012).

³ See e.g. Jane Bailey, “[Abusive and Offensive Speech Online: An Overview of Canadian Legal Responses Focusing on the Criminal Law Framework](#)” (2018) online (pdf): *British Law Commission* <s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2018/11/Canada-J-Bailey.pdf> at 2–3; Jane Bailey, “[Canadian Legal Approaches to ‘Cyberbullying’ and Cyberviolence: An Overview](#)” (2016) University of Ottawa Faculty of Law Working Paper No 2016-37, online: SSRN <papers.ssrn.com/sol3/papers.cfm?abstract_id=2841413>.

⁴ Gotell, *supra* note 1 at 69.

⁵ *Ibid* at 67, referring to Wendy Larcombe, “Falling Rape Conviction Rates: (Some) Feminist Aims and Measures for Rape Law” (2011) 19:1 *Fem Leg Stud* 27; Clare McGlynn, “Feminism, Rape and the Search for Justice” (2011) 31:4 *Oxford J Leg Stud* 825.

Part 1 provides an overview of TFVAWG and of the related Canadian criminal law cases we reviewed. It introduces some technology-specific language, describes our methodology and provides an overview of some behaviours and resulting criminal charges. Part 2 addresses the wrongfulness of TFVAWG and why it merits criminal censure and acknowledges the risks and limitations of a criminal law response. Part 3 returns to some of the cases outlined in Part 1 in order to explore two ways in which survivor-centred outcomes were compromised in those cases: the sometimes-competing assessments of concepts such as “harm”, “violence” and “injury” and implicit and explicit judgments about which victims are deserving of the criminal law’s protection.⁶

1. Overview

A) TFVAWG —What Is It?

Some studies of TFV have focused specifically on sexual violence. For instance, Nicola Henry and Anastasia Powell’s review of empirical research focused on “a range of behaviors where digital technologies are used to facilitate both virtual and face-to-face sexually based harms.”⁷ Other studies, such as that of Jordan Fairbairn and Dillon Black, include violence that is not “only or even primarily physical,” but that also “does psychological or emotional harm to those who experience it,” although it can result in physical harm in some cases.⁸ They treat “cyberviolence” as an umbrella term,⁹ which can take a variety of forms, including: online sexual harassment, non-consensual sharing of intimate images, recording and distribution of sexual assault, cyberstalking and digital dating abuse, online hate, cyberharassment (e.g. trolling), outing and exploiting vulnerabilities online and impersonation and identity theft.¹⁰

Women, girls and members of other vulnerable communities are disproportionately negatively affected by TFV, particularly in its sexualized

⁶ Inadequate attention to women’s and girls’ rights to privacy in the voyeurism case law we reviewed has now been addressed by the Supreme Court of Canada in *Jarvis*, *supra* note 2, meriting separate treatment of that topic in future research and writing.

⁷ Nicola Henry & Anastasia Powell, “Technology-Facilitated Sexual Violence: A Literature Review of Empirical Research” (2016) 19:2 *Trauma, Violence & Abuse* 195 at 195 [Henry & Powell, “Literature Review”].

⁸ Jordan Fairbairn & Dillon Black, “[Cyberviolence Against Women & Girls](#)” (May 2015) online (pdf): *Ottawa Coalition to End Violence Against Women* <www.octevaw-cocvff.ca/sites/default/files/CyberViolenceReport_OCTEVAW.pdf> at 14.

⁹ *Ibid* at 15–21.

¹⁰ *R v BLA*, 2015 BCPC 203 at para 4, 2015 CarswellBC 1978 (WL Can) [BLA]. This is not an exhaustive list. Other uses of technology, such as malware, may emerge in future years. We thank an anonymous review for this point.

form.¹¹ This suggests that underlying oppressions such as misogyny, homophobia and transphobia that inform GBV more generally may also be at play in the context of TFV.

B) Canadian Criminal Law Cases Involving TFVAWG

We have focused on reported criminal cases. Such decisions provide a publicly accessible body of data and a primary source for analysis. That said, the fact patterns and outcomes we recount will be skewed by both the overrepresentation of members of marginalized communities as defendants and their probable under-representation as complainants in criminal prosecutions.¹² Such outcomes themselves reflect systemic oppressions and prejudices that lead, among other things, to the over-policing of Indigenous and Black community members,¹³ and a greater likelihood that convictions of members of marginalized communities will result from plea bargains that tend to go unreported.¹⁴ They are also reflected in alarming rates of police refusal to press charges, leading to drastic under-representation of the prevalence and nature of sexual violence in criminal courtrooms.¹⁵ This exacerbates the negative interactions marginalized communities have with police and the state,¹⁶ leading to under-reporting and under-representation of their experiences of violence.

We recognize, therefore, that our conclusions only partially reflect the interactions of TFVAWG with Canadian law. Research focused on a diversity of communities will provide a fuller picture upon which to base

¹¹ Jane Bailey, “Sexualized online bullying’ through an equality lens: Missed opportunity in *AB v. Bragg?*” (2013) 59:3 McGill LJ 709 at 712; Anastasia Powell & Nicola Henry, “Technology-Facilitated Sexual Violence Victimization: Results from an Online Survey of Australian Adults” (2016) 34:17 J Interpersonal Violence 3637.

¹² Sherene Razack, “Gendering Disposability” (2016) 28:2 CJWL 285; Sherene Razack, “Sexualized Violence and Colonialism: Reflections on the Inquiry into Missing and Murdered Indigenous Women” (2016) 28:2 CJWL i; Jamil Malakieh, “[Adult and Youth Correctional Statistics in Canada, 2016/2017](#)” (19 June 2018), online (pdf): *Statistics Canada* <www150.statcan.gc.ca/n1/en/pub/85-002-x/2018001/article/54972-eng.pdf?st=xupQRjsM>.

¹³ David Tanovich, *The Colour of Justice: Policing Race in Canada* (Toronto: Irwin Law, 2006).

¹⁴ Canada, Department of Justice (Research and Statistics Division), *Guilty pleas among Indigenous people in Canada*, (Report) by Angela Bressan & Kyle Coody (Ottawa: Department of Justice Canada, 2017).

¹⁵ Holly Johnson, “Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault” in Elizabeth Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women’s Activism* (Ottawa: University of Ottawa Press, 2012) 613.

¹⁶ Michelle Jacobs, “The Violent State: Black Women’s Invisible Struggle Against Police Violence” (2017) 24:1 Wm & Mary J Women & L 39 at 82.

policy decisions. Still, many of the scenarios presented in the case law that we reviewed reflect wider trends identified in some of the social science research to date.¹⁷

In the first phase of our review, we worked with a definition of “technology-facilitated” that, like other studies, focused primarily on digital communications technologies and platforms. Like Fairbairn and Black, we did not limit our review to cases involving *sexual* violence but took a broader approach that also included other forms of physical, emotional and psychological violence.

We consulted secondary sources and conducted keyword searches of three legal databases (CanLII, Westlaw and Quicklaw) in order to identify reported cases involving social media websites, dating websites and other keywords such as “online”, “sext” and “cyber”. From those results, we identified a list of potential criminal offences and conducted online searches for those offences, in combination with terms such as “technology” or “online” in order to focus on technology-facilitated crimes. From there, we narrowed further to focus on cases in which women or girls were the targets of the crime or crimes prosecuted. Our Phase I review yielded 113 cases brought under 16 provisions: criminal harassment (section 264), extortion (section 346), voyeurism (section 162), sexual assault (sections 265 and 271), non-consensual distribution of intimate images (section 162.1), defamatory libel (section 298), identity fraud (section 403), human trafficking (section 279.01), advertising sexual services (section 286.4) and mischief in relation to data (section 430), as well as a set of cases involving offences against minors, including: sexual interference (section 151), invitation to sexual touching (section 152), sexual exploitation (section 153), child luring (section 172.1) and child pornography (section 163.1).¹⁸ In approximately 93% of cases, only males¹⁹ were accused, while in 6% of cases only females were accused. These results are summarized in Table 1 below.

¹⁷ Henry & Powell, “Literature Review”, *supra* note 7.

¹⁸ Case law relating to these provisions can be found at [“Tech-Facilitated Violence: Criminal Case Law—Criminal Offences”](#) (last visited 1 December 2019) online: *The eQuality Project* <www.equalityproject.ca/cyberviolence-criminal-case-law/cyberviolence-criminal-case-law-offences-against-adults/>.

¹⁹ These statistics are based on the courts’ descriptions of the gender of the accused persons in the cases we reviewed.

TABLE 1—RESULTS OF PHASE I REVIEW

Number of cases	113
Number of provisions	16
Number of cases with male only accused	105
Number of cases with female only accused	7
Number of cases with male & female co-accused	1

In Phase II, we conducted systematic searches of reported case law at all levels of court relating to each of the *Criminal Code*²⁰ provisions identified in Phase I to identify cases involving TFV (using the broad approach we employed in Phase I) reported prior to mid-2018, except in relation to the child pornography provisions. Given the sheer number of cases generated under the child pornography provisions, we limited our review of those cases to those reported at courts of appeal and the Supreme Court of Canada from the mid-1990s to mid-2018 and at trial courts between 2016 and mid-2018. Additional relevant *Criminal Code* provisions emerged, and we expanded our search to include them. As of January 2019, our Phase II review had yielded 410 cases brought under 27 provisions, including the 16 provisions identified in Phase I as well as: conspiracy (section 465), sexual exploitation of a person with a disability (section 153.1), making sexually explicit material available to children (section 171.1), uttering threats (section 264.1), unauthorized use of a computer (section 342), surreptitious recording of a conversation (section 191), intimidation (section 423), hate propaganda (section 319), prostitution (section 212), false information, indecent communication, harassing communication (section 372) and exposure of genitals to a person under 16 (section 173(2)).

In 91% of cases, the accused persons were identified as male. In about 7% of cases the accused were identified as female and in about 1% of cases there were co-accused of both genders. Over 76% of cases involved only female complainants, about 9% involved only male complainants, almost 12% of cases involved both male and female complainants and in about 2% of cases, the complainants' gender was not specified. These results are summarized in Table 2 below.

²⁰ *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*].

TABLE 2—RESULTS OF PHASE II REVIEW

Number of cases	410
Number of provisions	26
Number of cases with male only accused	375
Number of cases with female only accused	30
Number of cases with male & female co-accused	5
Number of cases with male only complainants	37
Number of cases with female only complainants	314
Number of cases with male & female complainants	49
Number of cases not specifying complainants' gender	10

Many of the cases involved charges laid under multiple provisions: in 430 cases, there were 739 charges laid. Convictions were registered with respect to 559 charges, acquittals for 93 and 104 did not have determinable outcomes. Sixty-six percent of the charges related to provisions involving sexual offences, while 34% related to non-sexual offences. Strikingly, regardless of whether the case involved charges for a sexual offence, the overwhelming majority of cases in which women and girls were targeted included some form of sexualized attack.

We expected to and did find incidents of sexualized violence, such as non-consensual surreptitious recording of sexually explicit images and use of social media and gaming platforms such as Plenty of Fish,²¹ Model Mayhem,²² Nexopia,²³ Minecraft²⁴ and MSN Messenger²⁵ to facilitate sexual violence in cases involving voyeurism, non-consensual distribution of intimate images, sexual assault, human trafficking and sexual offences against minors. Less expected, however, was the sexualized nature of cases involving non-sexual offence charges. For example, threatened and actual abuse of complainants' intimate images featured prominently in cases involving criminal harassment,²⁶ (including persistent requests for intimate images²⁷ and use of a keylogger to access a complainant's intimate

²¹ *R v Dadmand*, 2016 BCSC 1565, 2016 CarswellBC 2430 (WL Can).

²² *Ibid.*

²³ *R v Saadatmandi*, 2008 BCSC 250, 2008 CarswellBC 425 (WL Can) [*Saadatmandi*].

²⁴ *R v Tetlow*, 2014 SKPC 156, 453 Sask R 72.

²⁵ *Saadatmandi*, *supra* note 23.

²⁶ *R v Cholin*, 2010 BCPC 417, 2010 CarswellBC 3847 (WL Can) [*Cholin*]; *R v CL*, 2014 NSPC 79, 350 NSR (2d) 111 [CL].

²⁷ *R v SB*, 2014 BCPC 279, 2014 CarswellBC 3599 (WL Can) [SB].

images²⁸), as well as in cases involving unauthorized use of computers,²⁹ extortion,³⁰ intimidation³¹ and mischief in relation to data.³² Similarly, a defamatory libel case involved posting sexually explicit messages and photos of the complainant while impersonating her,³³ a hate propagation case featured promotion of hatred by advocating sexual violence against women,³⁴ and an intimidation case involved online ads for the sexual services of the complainant accompanied by a threat to show them to her boyfriend.³⁵

A small but not insignificant portion of cases involved non-sexualized violence, in which technology was used to coerce, intimidate, immobilize or instill fear in complainants. They included criminal harassment and harassing communications charges involving doxing,³⁶ swatting,³⁷ repeated texting,³⁸ a tweeted threat to bomb a public figure³⁹ and the online posting of a video showing the defendant punching a door, while the song “How am I Supposed to Live Without You?” is playing in the background.⁴⁰ Cases of uttering threats included using phones,⁴¹ email,⁴² and Facebook discussion forums⁴³ to threaten complainants and others, and to send terrorizing messages about suicide bombers.⁴⁴ In other cases, hatred against women and Jewish, Black, Muslim and LGBTQ+

²⁸ *R v Barnes*, 2006 ABCA 295, 2006 CarswellAlta 2027 (WL Can).

²⁹ *R v Cole*, 2012 SCC 53, [2012] 3 SCR 34.

³⁰ *R v Davis*, [1999] 3 SCR 759, 179 DLR (4th) 385; *R v MDW*, 2014 BCPC 197, 2014 CarswellBC 2711 (WL Can); *R v RLB*, 1992 ABCA 243, 131 AR 216; *R v Hassan*, [2009] OJ No 1378 (QL), 2009 CarswellOnt 1811 (WL Can) (Sup Ct J); *R v Walls*, 2012 ONCJ 835, 2012 CarswellOnt 17235 (WL Can) [*Walls*]; *R v Innes*, 2007 ABPC 237, 423 AR 14 [*Innes*]; *R v Chartier*, 2015 MBPC 50, 322 Man R (2d) 80; *R v “Y”*, 2015 NSPC 14, 357 NSR (2d) 340.

³¹ *R v Rouse*, 2017 NSSC 292, 2017 CarswellNS 804 (WL Can).

³² *R v Maurer*, 2015 SKQB 175, 477 Sask R 27.

³³ *R v Simoes*, 2014 ONCA 144, 2014 CarswellOnt 2045 (WL Can).

³⁴ *R v Sears*, 2019 ONCJ 104, 2019 CarswellOnt 2752 (WL Can).

³⁵ *R v McCart*, 2016 ONSC 7062, 2016 CarswellOnt 18020 (WL Can).

³⁶ *BLA*, *supra* note 10; *R v Korbut*, 2012 ONCJ 522, 2012 CarswellOnt 10112 (WL Can) [*Korbut*].

³⁷ *Ibid.*

³⁸ *R v Erickson*, 2015 ABPC 234, 2015 CarswellAlta 2121 (WL Can); *R v Alvarez-Gongora*, 2014 ONCJ 712, 2014 CarswellOnt 18418 (WL Can) [*Alvarez-Gongora*]; *R v HB*, 2016 ONSC 594, 2016 CarswellOnt 4029 (WL Can).

³⁹ *R c Le Seelleur*, 2014 QCCQ 12216, 2014 CarswellQue 13487 (WL Can).

⁴⁰ *R v Broydell*, 2017 CanLII 80475 (Prov Ct) at para 10, [2017] NJ No 399 (QL).

⁴¹ *R v Brame*, 2004 YKCA 13, 2004 CarswellYukon 92 (WL Can).

⁴² *R v Ahmad*, 2017 ONSC 6972, 2017 CarswellOnt 18697 (WL Can).

⁴³ *R c Rioux*, 2016 QCCQ 6762, 2016 CarswellQue 13004 (WL Can).

⁴⁴ *R v Mirsayah*, 2007 BCSC 1596, 2007 CarswellBC 2629 (WL Can).

communities was willfully promoted through internet platforms,⁴⁵ like YouTube⁴⁶ and other social media accounts,⁴⁷ and telephone messages.⁴⁸ Some cases involved both sexualized and non-sexualized attacks.⁴⁹

2. The Wrongfulness of TFVAWG

In Part 1, we provided an overview of the reported Canadian criminal law cases involving TFVAWG as well as the provisions under which they were prosecuted. Like all criminal offences, the provisions have various elements that must be proved beyond a reasonable doubt. The criminal law framework is, quite properly, a rigorous one. It is attended to by several important procedural and substantive safeguards that are appropriate to the serious consequences of a conviction.

In this section, we shift from an operational to a theoretical focus. We discuss the role and function of criminal law provisions used to address TFVAWG. When dealing with an emergent social problem, it is not always apparent whether, and to what extent, criminal sanctions are warranted. The answers to this help to rationalize the structure of relevant offences, and to shape the decisions of criminal justice actors. They can also have significant social consequences in at least two ways. First, criminalization of certain behaviours serves as a signal that those behaviours are public wrongs worthy of disapprobation. Where the behaviours denounced through criminalization are disproportionately targeted at oppressed communities, criminal censure can also be understood to express a commitment to the equality, dignity and autonomy of members of those communities. Second, criminalization of certain behaviours in a social context rife with the over-policing of subordinated communities can also *undermine* equality by disproportionately exposing members of those communities to criminal sanction. Given the social equality consequences at stake, it is essential to be able to articulate clearly principled bases for concluding that criminal sanction is a just and warranted response to an emergent social problem. Below we explain our conclusion that, just as VAWG should be understood to be a social problem worthy of censure through criminal sanction, so too should technology-facilitated forms of such violence.

It is important not to over-extrapolate from the reported cases in our review. Not all criminal cases in Canada are publicly reported. In addition,

⁴⁵ *R v Bahr*, 2006 ABPC 360, 434 AR 1; *R v Topham*, 2017 BCSC 551, 2017 CarswellBC 1079 (WL Can); *R v Noble*, 2008 BCSC 215, 2008 CarswellBC 329 (WL Can).

⁴⁶ *R c Castonguay*, 2013 QCCQ 4285, 2013 CarswellQue 4476 (WL Can).

⁴⁷ *R v MG*, 2017 ONCJ 565, 2017 CarswellOnt 12898 (WL Can).

⁴⁸ *R v Harding* (2001), 57 OR (3d) 333, 207 DLR (4th) 686 (CA).

⁴⁹ *Cholin*, *supra* note 26; *CL*, *supra* note 26.

the incidents captured under the relevant offences vary widely with respect to motivation, method, circumstance and consequences. That said, we have noted certain core unifying elements that make it appropriate to speak of them as a class. We do not suggest that these elements necessarily figure into the definition of the offences under Canadian criminal law. Rather, they serve to characterize the various activities in an analytic sense and provide a way to understand them as criminal behaviour.

The first element is the defendant's use of technology. That use may be at a relatively low level, such as using a device to record illicit images. It may also involve more complex leveraging of online tools, such as posting material to platforms like Facebook, which is then potentially distributed to millions. The Internet's ever-increasing scope into all social relations and everyday life represents a challenge to ensuring that any criminal law response is effective, just and proportional.

The second element is how the technology is harnessed to capture or control information that is about or affects an individual or group of individuals. In recent years, a great deal of social attention has been drawn to cases involving images, but other information that is specifically identifiable, such as a phone number or address, may also be featured. The use of technology is not uniform. In some cases, the accused will leverage it to create the information. In others, the information is manipulated by stealing, lying or dissemination. Sometimes, the defendant uses multiple technologies against the victim.

The third element is that in many cases the victim's will is overborne in a non-trivial way. Sometimes, the victim is stripped of agency by the defendant from the outset, such as when she is not involved in the initial decision to create the particular information (say, intimate images). Other times, the images or information are initially shared or consented to, but the subject's consent is not considered by the defendant in later uses or manipulations. In still other cases, technology becomes a tool of intimidation and coercion, leaving the subject with no real option but to agree to act as the defendant demands. This absence of meaningful consent is important to our analysis below.

The fourth element is objectification. "Objectification" is capable of multiple meanings. For example, it could mean the deliberate depiction of someone as a "sex object". That phenomenon is important, as it can produce great personal harm. But our use of "objectification" is not limited to that. Instead, it refers to the way in which TFVAWG often seizes something that is valuable, intimate and personal to the victim, sometimes turning it into a weapon against them. It can also refer to processes of dehumanization in

which women and girls, either individually or collectively, are singled out as objects for inhumane and violent treatment.

What, precisely, does TFVAWG “take” from the victim? We suggest that the kinds of behaviours described in Part 1 represent various forms of coercion that interfere with aspects of victims’ bodily, emotional and sexual integrity and, in so doing, frequently undermines their right and ability to equal participation in public and private life. Interference with victims’ sexual integrity arises in many of the cases we reviewed given the frequent undercurrent of sexual violence (for example, through communications that falsely depict the victim as being available for sex) and the impact of such activities on victims’ exclusive right to decide whether and how to represent their own sexual agency on their own terms.

To be sure, the term “sexual integrity” carries some risks. It could suggest a need to examine whether the accused’s own motivation was sexual in nature. In our opinion, such a focus inappropriately directs attention away from the accused’s wrongdoing to his state of mind.⁵⁰ The term could, further, encourage investigations into the prior “sexual persona” of the complainant. That, too, would be a concern, since historically the criminal law has failed utterly to prevent such investigations from becoming tainted by sexist mythology.

It might be argued that an exclusive focus on “emotional integrity” or “psychological integrity” would be preferable. But those terms come with their own problems. Harming a person’s emotional well-being, without more, is rarely considered a criminal act. The law often has nothing to say about much human behaviour that reasonable people would consider morally reprehensible but is not recognized as a form of public harm. At the same time, the Supreme Court of Canada has stated that “serious bodily harm” includes psychological harm that “substantially interferes with the health or well-being of the complainant.”⁵¹ That suggests that psychological or emotional harm can constitute harm that informs, at least in part, the work of the criminal law. We will return to this issue in Part 3(A). In any event, as discussed below, “sexual integrity” in particular is already specifically recognized in the criminal law as something worth protecting. For those seemingly frequent instances of TFVAWG involving sexualized attacks, threats and innuendo, we find it an appropriate and accurate term.

⁵⁰ *R v Jarvis*, 2015 ONSC 6813, 2015 CarswellOnt 17226 (WL Can).

⁵¹ *R v McCraw*, [1991] 3 SCR 72, 1991 CarswellOnt 113 (WL Can) at para 23 [*McCraw*], cited in *R v NG*, 2014 MBPC 63 at para 26, 311 Man R (2d) 286 [NG].

The element of sexual integrity is important to understanding the process of objectification in these cases. Equally relevant is the accused's appropriation of another person's sexual integrity for his own ends. That is what objectifies the complainant—reducing her to a means to achieve some purpose or goal unrelated to her own aspirations, desires or self-interest. The accused does not treat her as an equal, worthy of respect and entitled to choose how her personal information is shared with others. Instead, the accused instrumentalizes her—using her to achieve his own goals and sublimating her will to his. This instrumentalization of victims or identifiable groups to which they belong is present in most forms of TFVAWG identified in our case law review, whether or not explicitly sexualized attacks were involved.

Another unifying element about the offences, dramatically illustrated in the cases we reviewed, is their gendered nature. The use and misuse of technology, of course, is not gender-specific. Nonetheless, as Phase II of our review revealed, the reported case law reveals an inescapable gender component, which is consistent with the broader social problem of GBV. First, the cases suggest a decided gender imbalance in terms of perpetrators and victims, with women and girls more likely to be targets, particularly with respect to sexualized attacks.⁵² Second, even absent that disparity, the circumstances in which the acts are committed will likely cause at least partially differentiated effects based on pre-existing disadvantage and vulnerability among different sets of victims, including on the basis of sex and gender. This is not to dismiss the trauma that can be inflicted upon any victim of such behavior, including men. However, the gendered dynamics of sexual inequality are likely to be reflected in the impact of technology-facilitated humiliation, bullying or revenge. In other words, the patterns of oppressing, silencing and demeaning women that are endemic in a patriarchal culture, reproduce themselves in the offences, and are thus a proper consideration in framing an appropriate response.

A final unifying element is that the use of technology, particularly when it involves the internet, has a unique, and uniquely damaging, impact. The internet is iterative, with boundless capacity for reproduction, dissemination and publicity. The consequences for victims are correspondingly staggering.⁵³ Not only does the internet's sheer size and

⁵² This gender imbalance is also reflected in other studies on these issues. See e.g. Asia Eaton, Holly Jacobs & Yanet Ruvalcaba, "[2017 Nationwide Online Study of Nonconsensual Porn Victimization and Perpetration](#)" (2017) online (pdf): *Cyber Civil Rights Initiative* <www.cybercivilrights.org/wp-content/uploads/2017/06/CCRI-2017-Research-Report.pdf> at 11.

⁵³ See e.g. Gabrielle Fahmy, "[Victim of 'revenge porn' in campus emails files complaint with RCMP](#)" (28 February 2017), online: *CBC* <www.cbc.ca/news/canada/new-brunswick/university-moncton-revenge-email-complaint-1.4002859>.

scope have severe limiting effects on any remedial measures, it also can lead to extreme psychological harm⁵⁴ and emotional suffering.

The latter component might be thought to best explain *why* such activities would be a concern of the criminal law. It is easy to see how the near-limitless reach of the internet exponentially multiplies the harm to one's reputation, social standing, future prospects, personal relationships and, even, personal security when intimate information (or in some cases, misinformation) about her is distributed through those means. The sheer magnitude of the exposure can itself be understood as an aggravating factor—transforming what might ordinarily be understood as a private law harm (say, defamation) into a criminal law one. That reality is slowly being recognized by courts. Indeed, the Supreme Court's recognition of the "particularly harmful [effects of online attacks] because the content can be spread widely, quickly—and anonymously"⁵⁵ in the private law context has also been reflected in criminal cases involving TFVAWG.⁵⁶

It is certainly true that victims of these crimes experience diverse harms. Those harms include: invasion of privacy; lack of control over intimate aspects of their personhood; uncertain knowledge of exactly how far their information has spread and the impossibility, often, of ensuring that offending material is fully removed.

Nonetheless, we do not favour a harms-based analysis as the primary justification for the use of the criminal law in this area. First such an approach may lead to cases being minimized or ignored if proof of such harm is unavailable. For example, it may be difficult to show how many people received, or opened, a particular message. While there may be forensic evidence that records the numbers of "clicks" on a blogpost or the number of times that a video is downloaded, such facts may be difficult to establish on the criminal standard of proof beyond a reasonable doubt. Or, the Crown may simply not be in a position to obtain such evidence.

Second, a harms-based approach misstates or, at least, inadequately captures the role of the criminal law in general and particularly in these cases. That function, we argue, is in large part expressive.⁵⁷ That is, the

⁵⁴ Jacquelyn Burkell, "Remembering Me: Big Data, Individual Identity and the Psychological Necessity of Forgetting" (2016) 18:1 *Ethics & Info Tech* 17.

⁵⁵ *AB v Bragg Communications Inc*, 2012 SCC 46 at para 22, [2012] 2 SCR 567 [AB].

⁵⁶ See e.g. *NG*, *supra* note 51; *R v Mackie*, 2013 ABPC 116, 2013 CarswellAlta 569 (WL Can) [*Mackie*].

⁵⁷ See Joel Feinberg, "The Expressive Function of Punishment" (1965) 49:3 *The Monist* 397 at 400; SE Marshall & RA Duff, "Criminalization and Sharing Wrongs" (1998) 11:1 *Can JL & Jur* 7 at 13; Jonathan Allen, "Balancing Justice and Social Unity: Political

criminal law serves to *guide* citizens away from, and to *express* broader social disapprobation of, certain conduct. The motivation for such guidance *may* rely on an apprehension of the harm of particular behaviour but not necessarily. What *is* a constant is that the criminal law power is harnessed against behaviour that the state considers and wishes to single out as *wrongful*. It is that aspect of TFVAWG that we think more clearly justifies the application of criminal law sanctions in cases where those who are targeted wish to pursue state vindication of their claims. It is also one of the key reasons why we are concerned about distinctions in the case law between worthy and unworthy victims, which we discuss in detail in Part 3(B) below.

To be sure, criminal law is intended to serve other goals. They include deterrence, both specific and general, risk-management and denunciation.⁵⁸ The criminal law is also concerned with meting out appropriate punishment as a way to exact social consequences against persons who contravene its norms. These goals are important, but they do not fully explain the role of the criminal law.

A separate but equally important reason why focussing on risk, harm and punishment is inadequate is that, in a free and democratic society such as Canada, the criminal law is necessarily under-inclusive. Canadian society cannot, plausibly, pursue the elimination of *all* harm, the mitigation of *all* risk and the punishment of *every* person who breaches its limits. To do so would require a level of surveillance and enforcement that would conflict with other important norms such as personal privacy and the right to not engage with investigative authorities. It would require, essentially, a police state that almost all citizens would find intolerable and unjustified. And, the consequences of such an approach would be exacerbated for members of marginalized communities who already labour under excessive state surveillance, policing and control, even as crimes against them are treated less seriously or even systematically ignored. Absolute enforcement would also require the removal of a great deal of discretion by criminal justice actors such as the police and Crown attorneys. To be clear, there are legitimate concerns with such discretion and the opaque decision-making processes to which that discretion contributes. The problem is especially acute when trying to review individual exercises of

Theory and the Idea of a Truth and Reconciliation Commission” (1999) 49:3 UTLJ 315 at 327. For further elaboration and critique, see Jean Hampton, “Punishment, Feminism, and Political Identity: A Case Study in the Expressive Meaning of the Law” (1998) 11:1 Can JL & Jur 23; Guyora Binder, “Authority to Proscribe and Punish International Crimes” (2013) 63:2 UTLJ 278 at 308.

⁵⁸ We acknowledge the debate over whether it is possible to achieve general deterrence through the use of criminal law. We simply note that it continues to be cited by state actors as a motivation in criminal law policy.

prosecutorial discretion. But removing all such discretion in the hopes of arriving at a “zero-tolerance” model of criminal law would be highly problematic.

Fourth, the wrongfulness of such acts is not necessarily linked to harm *per se*. It is, instead, based on something deeper—it links to what might be thought of as quite separate sets of offences: (i) sexual assault and its variants and (ii) crimes of coercion and intimidation. While the majority of cases of TFVAWG we reviewed most closely resemble the existing criminal category of sexual wrongdoing against the person (albeit sometimes linked with coercion and intimidation), there was a smaller but not insignificant portion in which sexual attacks did not appear to play a part. Given the overwhelming presence of cases linked to sexual wrongdoing, we begin with that analysis before moving on to discuss TFVAWG’s connection with coercion and intimidation.

At its core, sexual assault is an offence concerned with preserving an essential feature of human well-being and autonomy: control over one’s status and use as a sexual being. It is preoccupied with the importance of protecting sexual integrity. While this historically may have reflected long-discredited sexist myths and stereotypes valorizing a woman’s “chastity” that nonetheless continue to surface in Canadian law, we argue that the right to self-determine one’s status and use as a sexual being remains an integral aspect of human dignity and equality. Just as with the offences under discussion here, it is necessary to look beyond the frequent physical and psychological harms of sexual assault to recognize its true import for the criminal law.

While harm will often result from sexual assault, it is not the core of the offence. Consider John Gardner and Stephen Shute’s example of a victim of a sexual assault who is unaware that such a violation has taken place and, for that reason, arguably has suffered no discernible physical or psychological injuries. Does that lack of discernible injury have a bearing on criminal culpability? Gardner and Shute suggest, reasonably in our view, that it does not.⁵⁹ No right-thinking person would conclude that, merely because of the *lack* of such an injury, the assailant engaged either in no wrongdoing or in wrongdoing that properly escapes the criminal law.

⁵⁹ John Gardner & Stephen Shute, “The Wrongness of Rape” in Jeremy Horder, ed, *Oxford Essays in Jurisprudence, Fourth Series* (Oxford: Oxford University Press, 2000). For comment on the basic argument, see Daniel Statman, “Gardner on the Wrongness of Rape” (2012) 4:1 *Jerusalem Rev Leg Stud* 105; Douglas Husak, “Gardner on the Philosophy of Criminal Law” (2009) 29:1 *Oxford J Legal Stud* 169 at 184. For critique, see Alessandro Spina, “Harmless Rapes? A False Problem for the Harm Principle” (2010) 10 *Diritto & Questioni Pubbliche* 497 at 497–98.

It could be argued that the use of technology is inherently less “intrusive” upon a complainant’s sexual integrity than the direct non-consensual contact involved in a sexual assault. The purported lack of immediacy or directness might seem to muddy attempts to draw a link between technological harassment/exploitation and the specific offence against the person represented by sexual assault. In effect, it could be argued that we go too far in calling such behaviour reprehensible, though it might be “violence”. In other words, it could be argued, the term we adopt in this paper—technology-facilitated violence against women and girls—is inapposite.

It is interesting to note that in defining offences, Canadian criminal law generally does not use the term “violence” (an exception is the crime of intimidation).⁶⁰ Although, as discussed in Part 3(A)(iii) below, courts sometimes must define “violence” for purposes of imposing sentences.⁶¹ The law does, however, clearly separate out crimes that involve some interference with the physical person. Nonetheless, the focus in recent years on the gravamen of sexual assault, while obviously being concerned with sexual touching, reflects a preoccupation with a type of wrong that goes deeper than mere physical interference.

The essence of sexual assault is objectification that is wrongful in a special way, a way that merits the imposition of criminal culpability. While all forms of assault supersede an individual’s physical and psychological integrity, sexual assault is particularly marked by what might be called the perpetrator’s sheer use of another person.

The intuition that when we sexually objectify people in certain ways we do something wrong, and not merely harmful, helps to explain the particular function of consent for sexual assault. Parliament has enacted a special set of rules unique to sexual offences. The Supreme Court of Canada, too, has confirmed that sexual assault is not only about “having control over who touches one’s body, and how.”⁶² The court has adopted an approach to the fault element for sexual assault in which a defendant cannot rely upon objectifying attitudes and beliefs to excuse mistakes about consent.⁶³

That is why, in Canada, proof of harm is not a precondition to a conviction for sexual assault *simpliciter*. It explains the centrality of consent to the offence as part of both the *actus reus* and *mens rea*. Objectification

⁶⁰ *Criminal Code*, *supra* note 20, s 423(1)(a).

⁶¹ See e.g. *NG*, *supra* note 51.

⁶² *R v Ewanchuk*, 1999 SCC 711 at para 28, [1999] 1 SCR 330 [*Ewanchuk*]. See also *R v Jarvis*, *supra* note 2 at para 127.

⁶³ *Ewanchuk*, *supra* note 62 at para 65.

occurs when one person uses another without taking into account, or ignoring or being indifferent to, that person's desires, aspirations, projects and plans. In the sexual assault context, the risks of such objectification are deemed crucial enough to warrant a special duty to take steps to ascertain whether consent is present, should the accused later wish to rely on a mistaken belief in consent.⁶⁴

Of course, the criminal sanction cannot, and probably should not, apply to *all* the ways that people objectify one another. Such an approach would inappropriately expand the criminal law (because objectification is a pervasive part of the human condition). It also would risk capturing valuable behaviour in which one person assumes responsibility for another's welfare.

But even if not all objectification can or should be addressed through criminal sanctions, the objectification at work in offences like the non-consensual distribution of intimate images is of a particularly troubling kind. The perpetrator acts with either the knowledge of the complainant's non-consent or is reckless to the possibility. It is difficult, for example, to make the case for an honest but mistaken belief about that consent. The circumstances under which a defendant might credibly argue that he was under a mistaken belief that he had a woman's consent to distribute her naked images online would surely be very rare. It is hard to posit realistic circumstances under which he could argue that she was indifferent to or welcomed it—at least without slipping into now-familiar mythology that if a woman consented before (e.g. by posting a nude or semi-nude photo of herself on a prior occasion) she is more likely to have consented this time. If anything, the scope for such an argument seems even narrower than in sexual assault itself. Sexual assault, at least, involves the messy and unclear ways in which people communicate their desires and expectations, and the unfortunate and sometimes-dangerous human tendency to believe something to be true because one wishes that it was. In the situation of dissemination of sexualized images online, it seems unlikely that a defendant could be under similar misapprehensions.

Thus, we argue that in the vast majority of the cases in our study, TFVAWG is conceptually linked with those criminal offences against the person that recognize the wrongfulness of interfering with, manipulating and, at times, harming a person's sexual integrity. The legislative process undergirding the enactment of these offences has not occurred in a neat or linear manner. They were created at quite different times, and they respond to different social mores. In some cases, offences may need to be updated or amended to better reflect the concern with wrongful

⁶⁴ *Criminal Code*, *supra* note 20, s 273.2.

objectification. But, for those offences that have been enacted or amended in the last decade, we believe it appropriate to describe them as united by a focus to single out wrongful behaviour, regardless of the level or extent of harm suffered by the individual victim. And it is entirely justifiable, not to mention analytically coherent, to view them as responding to a type of wrongdoing that is closely linked to sexual assault, even in cases not involving charges specific to sexual violence, which also frequently included sexualized threats or valorize sexual violence against women.

Having said that, a small number of the TFVAWG cases that we reviewed do not fit neatly within our sexual integrity analysis because of a lack of any clear connection with sexual violence. Included among these are some of the cases relating to harassment, uttering threats, coercion and intimidation, examples of which are discussed above in Part 1. We suggest, however, that the wrongfulness of these behaviours shares much in common with the wrong of undermining a person's sexual integrity.

Notwithstanding the absence of sexual violence within this smaller cohort of TFVAWG cases, they too involve harms to autonomy and dignity. Harassing communications, death threats and threats of bodily harm, coercion and intimidation can all be understood as mechanisms that can severely compromise the ability of those victimized to move, think, express and interact as free, autonomous agents. Fear of harm and acute awareness of being under another's surveillance are forms of control that are easier to exert due to the pervasiveness of digital technologies such as cell phones, GPS tracking systems, and increasingly tiny recording devices. Such behaviours can be combined with digital technologies in ways that provide unprecedented opportunities for isolating and immobilizing those victimized, occasioning what is arguably equally unprecedented interference with a target's ability to exercise and enjoy fundamental aspects of individual autonomy and human dignity. Thus, like interferences with sexual integrity, these forms of TFVAWG also instrumentalize and objectify the victimized, sublimating their will to that of the defendant.

That such interference is a wrong of long-standing importance to the criminal law is evident in the wide array of *Criminal Code* offences unrelated to sexual violence successfully prosecuted in the cases we reviewed. Although the internal limits on these offences may be more stringent than those imposed for offences relating to sexual assault and its variants (e.g. the offence of criminal harassment requires proof of a reasoned apprehension of harm), we argue that they nonetheless signal both an appropriate and longstanding interest of the criminal law to limit interference with human autonomy and dignity. Further, they express

social disapprobation for a form of coercive violence that has particularly detrimental effects on women's autonomy, dignity and equality in public and private spheres.⁶⁵

Finally, whether the TFVAWG cases we have reviewed better align with our sexual integrity analysis, or one that is focused on coercion and intimidation, our study suggests that, overall, such intrusions were disparately borne by those identified or identifying as women and girls. In this way, they, like other forms of GBV, serve to collectively undermine the right to equal participation in public life regardless of gender.⁶⁶ For the reasons set out above, we argue that criminal law both can and should be available to address TFVAWG. Below, we turn to the question of how well criminal law, in its application to TFVAWG in the cases we reviewed, responds to the needs of survivors.

3. Achieving Survivor-centered Outcomes

A number of feminist scholars⁶⁷ have proposed measures for evaluating the criminal law's ability to respond to sexual violence against women. Gotell suggests considering the degree to which criminal prosecutions can disrupt what she calls the "re-responsibilization" of women, and cultivate a societal sense of taking responsibility for violence against them.⁶⁸ For Wendy Larcombe, feminist aims for criminal law reform include ensuring that a survivor's experience is "not 'disqualified' by the legal reproduction of rape myths, that the price of seeking legal redress is not re-victimization and that women's complaints are not treated with suspicion, incredulity or disdain."⁶⁹

In this section, we focus on two areas in which achieving survivor-centered outcomes was compromised in the cases we reviewed: (i) analyses of the concepts of "harm", "violence" and "injury" and (ii) explicit or implicit judgments about whether a victim is worthy of criminal law protection.

⁶⁵ For further discussion of the role of coercion in the context of intimate partner violence see Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (New York: Oxford University Press, 2007).

⁶⁶ Danielle Keats Citron, *Hate Crimes in Cyberspace* (Cambridge: Harvard University Press, 2014).

⁶⁷ See e.g. Gotell, *supra* note 1.

⁶⁸ *Ibid* at 69.

⁶⁹ Larcombe, *supra* note 5 at 35.

A) Understanding “harm”, “violence” and “injury”

Isabel Grant has described the discriminatory impact of judicial application of the so-called “objective” standard in assessing whether a woman’s fear for her safety in a criminal harassment case is “reasonable” in the circumstances.⁷⁰ Here, we apply that analysis not only to criminal harassment, but to extortion and child pornography in cases involving non-consensual distribution of intimate images of teen girls.

i) What makes a victim’s fear for her safety “reasonable”?

In a number of cases, courts went to some length to confirm that criminal conduct involves physical *and* psychological/emotional harms. In the Ontario case of *Korbut*, the trial court called for evaluating the reasonableness of fear from a contextualized perspective, noting:

[T]o argue that a woman who has her most private and intimate personal images distributed electronically to every friend, relative and church-attending associate has *not* necessarily suffered a grave and serious fear-inducing harm is to ignore the perspective of women... [the effect] was to deny [the survivor] the right to exercise freedom of choice as to her privacy and sexual integrity.⁷¹

Within the case law we reviewed, courts accepted a variety of circumstances as supporting reasonableness, including: circulation of explicit photos and videos created within a marriage;⁷² long-term systematic threats;⁷³ doxing and swatting;⁷⁴ use of threatening emojis⁷⁵ and other textual symbols;⁷⁶ damage to family members’ property;⁷⁷ breach of trust in an intimate relationship;⁷⁸ photos captioned to encourage their sexual use;⁷⁹ disseminating fake social media profiles claiming the victim was spreading HIV;⁸⁰ distributing sexually explicit photos in the workplace⁸¹

⁷⁰ Isabel Grant, “Intimate Partner Criminal Harassment Through a Lens of Resocialization” (2015) 52:2 Osgoode Hall LJ 552 at 575.

⁷¹ *Korbut*, *supra* note 36 at para 24 [emphasis added]. See also *R v Amiri*, 2013 ONCJ 828, 2013 CarswellOnt 19059 (WL Can).

⁷² *R v Fader*, 2014 BCPC 327, 2014 CarswellBC 4050 (WL Can).

⁷³ *R v Charchuk*, 2002 ABPC 115, 322 AR 331.

⁷⁴ *BLA*, *supra* note 10.

⁷⁵ “Emojis” are small digital images or icons used to express an idea or emotion (e.g. ☺).

⁷⁶ *CL*, *supra* note 26.

⁷⁷ *R v Lepore*, [2001] OJ No 2053 (QL), 79 CRR (2d) 156 (Sup Ct J).

⁷⁸ *R v Zhou*, 2016 ONCJ 547, 2016 CarswellOnt 13938 (WL Can) [*Zhou*].

⁷⁹ *Ibid.*

⁸⁰ *R v Wenc*, 2009 ABCA 328, 460 AR 366.

⁸¹ *Ibid.*

and disseminating sexually explicit photos and videos in which the victim is identifiable.⁸²

Notwithstanding the recognition that courts assess the reasonableness of a victim's fear "having regard for all of the circumstances," in some cases the court did not appear to fully engage with the context. In some cases, this appeared to relate to a lack of understanding of the realities of a digitally connected world.

ii) Subtlety, innuendo and seamless integration

Meaningful responses to TFVAWG must recognize that "online" and "offline" are components of an integrated whole, not separate spheres. Within that integrated existence, comments and posts that seem innocuous on their own can reasonably be understood as threatening.

In a British Columbia trial level case called *R v Corby*,⁸³ for example, the court's analysis of the complainant's subjective fear underestimated the above-noted integration by treating a myriad of behaviours and events as one-off occurrences. After following the victim from Ontario to British Columbia, Corby stated that he wanted the complainant to know he was in her vicinity and posted to Facebook photos of places she often frequented (including her place of work) comments expressing longing for her and a link to The Police song "Every Breath You Take" (the lyrics of which describe obsessive surveillance). The court assessed the individual posts as "benign" noting that while "some of the images had a special meaning or significance to [the complainant]," none were directed at her but were placed "for any Facebook user to view."⁸⁴ Here, the court seems to have overlooked the very real connection between online postings and the fear of physical encounters that they can evoke in real space.

Similarly, in *R v Elliott*,⁸⁵ an Ontario Twitter harassment case, the court seemed to have been looking for particular instances of extreme "smoking gun" sort of content. The court held that if it could be proven that an accused used a hashtag with the intention that someone who followed that hashtag would read it, the "communication" component

⁸² *CL*, *supra* note 26.

⁸³ *R v Corby*, 2012 BCPC 561, 2012 CarswellBC 4456 (WL Can) [*Corby*].

⁸⁴ *Ibid* at para 94. With regard to the song Mr. Corby posted on his Facebook page, the court stated: "[T]he link to the song by The Police 'Every Breath you Take' is one to a current popular song often played on the radio and no doubt enjoyed and appreciated by many in our community, adults and teens alike. In that sense it is 'just a song,' and non-threatening by itself": *Ibid* at para 87.

⁸⁵ *R v Elliott*, 2016 ONCJ 35, 2016 CarswellOnt 631 (WL Can) [*Elliott* cited to WL Can].

of criminal harassment would be satisfied. However, notwithstanding that Elliott communicated via hashtags that the complainants were known to follow, and tweeted at them even after being blocked, the court found that criminal harassment was not made out. The court treated one complainant's subjective fear for her safety based on the sheer volume of tweets as unreasonable because Elliott never "physically hurt", "threatened" or "sexually harassed her"⁸⁶ and was not directly aware of her feelings. With respect to the second complainant,⁸⁷ the court highlighted the complainant's choice to participate on Twitter in an "open" manner, noting that "asking a person to stop reading one's feed from a freely chosen open account is not reasonable."⁸⁸

Corby and *Elliott* could present future roadblocks to criminal law recognition of the significance of unwanted, repetitive online communications over a prolonged period. Knowing, for example, that a person is spending hours a day trying to communicate directly or indirectly with you, and is monitoring your communications online, regardless of whether or not the forums involved are public or private, is essential context for alleged criminal harassment that takes place online. In such cases, the psychological toll of being under constant surveillance by another, combined with the almost seamless integration of online and offline interaction, affects the reasonableness of a victim's fear for her safety. Tying a finding of reasonableness to whether the forum is a "public" one evokes a victim-blaming stereotype that suggests that women who are active on social media are inviting harassment.

iii) "Personal injury", "violence" and sexual violence as a public harm

The extent to which criminal law responses to TFVAWG are meaningful and effective also depends on the sentences imposed. For both constitutional and public policy reasons, sentencing in criminal cases must focus on the accused and be proportionate to the specific crime. Our purpose in this section is not to argue whether the sentences imposed in the cases discussed were appropriate, but to examine what judicial interpretations of sentencing provisions signal about perceptions of TFVAWG as a form of violence and a public wrong.

In *R v Walls*, the perpetrator threatened to disclose nude webcam images of his ex-girlfriend unless she had sex with him again (unbeknownst

⁸⁶ *Ibid* at para 444. But see the decision in *Alvarez-Gongora*, *supra* note 38, where the accused's threat to "hunt down" the complainant was interpreted as related to her owing him money, rather than as a threat of physical harm.

⁸⁷ *Ibid* at para 81.

⁸⁸ *Ibid* at para 511.

to the victim, he had not recorded any). The Ontario Court of Justice gave Walls a 15-month conditional sentence. Since conditional sentences are not permitted for serious personal injury offences, the court had to consider whether the behaviour constituted a serious personal injury. It concluded that it did not, stating:

While abhorrent and clearly extortionate, the option — in the absence of the sex — to expose KL’s naked images to public scrutiny to humiliate her, does not, in my view, amount to the use or attempted use of violence. The attempted compulsion [does not rise] ... to the level of violence contemplated by the legislators.⁸⁹

The perpetrator had told the victim that “when they did have sex, it would be ‘rough and unenjoyable’ for her.”⁹⁰ The court, however, found that such remarks were “more in the nature of adolescent fantasizing, or even self-aggrandizing braggadocio, rather than threats to inflict violence upon her.”⁹¹ Further, the court found that neither the victim’s life nor safety was endangered by the perpetrator because she indicated that she was “less embarrassed and less fearful of the consequences of having reported Mr. Walls to the police.”⁹²

In *R v CNT v BMS*⁹³ and *R v NG*,⁹⁴ Nova Scotia and Manitoba courts interpreted section 39 of the *Youth Criminal Justice Act* (“YCJA”)⁹⁵ under which a judge may not impose a custodial sentence on a young offender unless they have, among other things, committed a “violent offence”. The YCJA defines “violent offence” as an offence that includes an element of “the causing of bodily harm” or an attempt to commit such an offence or one that “endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.”⁹⁶ The Supreme Court of Canada has already concluded that “bodily harm” includes psychological harm that “substantially interferes with the health or well-being of the complainant.”⁹⁷ The question was whether the online sexual aggression in each of these cases met that standard.

In *CNT*, the 14-year-old male accused’s cell phone included explicit images of young females along with a collage of images of 14–16-year-

⁸⁹ *Walls*, *supra* note 30 at para 28.

⁹⁰ *Ibid* at para 29.

⁹¹ *Ibid*.

⁹² *Ibid* at para 32.

⁹³ *R v CNT*, 2015 NSPC 43, 363 NSR (2d) 139 [*CNT*]; *R v BMS*, 2016 NSCA 35, 373 NSR (2d) 298 [*BMS*].

⁹⁴ *NG*, *supra* note 51.

⁹⁵ *Youth Criminal Justice Act*, SC 2002, c 1 [*YCJA*].

⁹⁶ *Ibid*, s 2.

⁹⁷ *McCraw*, *supra* note 51 at para 23.

old female acquaintances in sexually explicit poses. The young women said that CNT had coaxed them into taking and sending him sexualized images and sent persistent text messages to one of the girls threatening to break up with her if she did not. CNT admitted he had sent some of the images to an adult.

The trial judge concluded that, since the definition of “child pornography” in section 163.1 includes images and stories that do not involve real people, the offence with which CNT was charged was not violent *per se*. However, taking note of the death of Rehtaeh Parsons in November 2014, the passage of the *Cyber-Safety Act* in Nova Scotia (since declared unconstitutional and replaced by new legislation),⁹⁸ and the new crime of non-consensual distribution,⁹⁹ the trial judge concluded that it was well-recognized that “trauma, psychological harm, serial victimization and predation” could result from non-consensual sexting, noting:

“Sexting” ... almost inevitably inflicts serious harm upon young people who are coaxed or intimidated or enticed into performing it. Sexting is indelible: once an intimate image is transmitted, even if to one recipient only, its digital footprint is embedded in binary cement.¹⁰⁰

Noting that “bodily harm” under section 2 of the *YCJA* includes psychological harm, the trial judge held that the two victim impact statements filed with the court described “shame, regret and anxiety.”¹⁰¹ Finding that “[o]ffences of this nature are ... psychological time bombs,”¹⁰² he concluded that the offence of child pornography in the form of non-consensual solicitation of intimate images from a minor constitutes a crime of violence for which there should “be a meaningful consequence.”¹⁰³ As a result, he imposed a custodial sentence. Prior to the hearing of the Crown’s appeal, CNT’s name changed to BMS.

The Nova Scotia Court of Appeal lowered BMS’ sentence to an 18-month term of probation, finding the trial judge erred in relying on social science evidence and that the victim impact statements fell short of establishing the psychological harm necessary in that, “[w]hile they may speak of shame, regret, and occasional anxiety, there is no indication of any turbulent emotion or continued distress.”¹⁰⁴

⁹⁸ *Cyber-safety Act*, NS 2013, c 2, as repealed by *Intimate Images and Cyber-Protection Act*, NS 2017, c 7.

⁹⁹ *Criminal Code*, *supra* note 20, s 162.1.

¹⁰⁰ *CNT*, *supra* note 93 at para 11.

¹⁰¹ *Ibid* at para 14.

¹⁰² *Ibid*.

¹⁰³ *Ibid* at para 16.

¹⁰⁴ *BMS*, *supra* note 93 at paras 14–15.

Apart from the questionable conclusions about the degree of injury to the victims, *Walls* and *CNT/BMS* also raise a broader issue about how to understand sexual coercion and violence. *Walls* concerned not *sex*, but *sexual assault* because, as the court notes, the accused threatened coercive sexual acts *against the victim's will*. It may be that the real concern in these cases was the youthfulness of the offenders (*Walls* was 20 and *BMS* was 14), which is a legitimate sentencing issue. Still, the reasoning in each case could send a problematic message about the degree to which threatened sexual assault and sexual coercion function as a form of violence, which takes on even more relevance in the context of a digitally networked environment in which rape threats are prevalent.

In contrast, in *NG*, both the trial and appellate courts agreed that the offences were “violent”. In *NG*, the twin, male young offenders had learned about their victim from another male who previously had extorted nude photos from her. The trial judge found that “[t]he accused, acting in tandem, alternatively flattered and abused the victim, demanding progressively more explicit images, instructing the victim as to what sexual acts she was to perform and digitally record.”¹⁰⁵ They, in turn, distributed photos to people in her community, including her classmates.

Relying on the Supreme Court of Canada’s conclusion that “serious bodily harm” encompasses psychological harm,¹⁰⁶ the trial judge concluded that the offence in *NG* qualified as a violent offence. Citing the victim impact statement, it noted both the short and long-term impacts of the perpetrators’ behaviour, including loss of appetite, sleeplessness and lasting feelings of fear and anxiety, as well as the “difficulty in controlling the use of images, once they enter cyberspace,” so that, “the harmful impact on the victim may well be long-term.”¹⁰⁷

Ultimately, the Manitoba Court of Appeal allowed *NG*’s sentence appeal, shortening the period of custody and supervision ordered by the trial judge.¹⁰⁸ Notwithstanding the reduction in sentence, the Court of Appeal distinguished this case from other cases of online sexual aggression perpetrated by young offenders.¹⁰⁹ In seeking to address what may have been an implicit concern in *Walls* and *CNT/BMS* about the youthfulness

¹⁰⁵ *R v NLG*, 2015 MBCA 81, 323 Man R (2d) 73.

¹⁰⁶ *McCraw*, *supra* note 51 at para 22, adopted for purposes of the *YCJA*, *supra* note 95 in *R v CD*, 2005 SCC 78 at para 20, [2005] 3 SCR 668.

¹⁰⁷ *NG*, *supra* note 51 at para 41.

¹⁰⁸ *Ibid* at para 38.

¹⁰⁹ In *R v GJG*, 2015 MBCA 81 at para 37, 323 Man R (2d) 73 [GJG], the Court of Appeal specifically referred to *R v TCD*, 2012 ABPC 338, [2012] AJ No 1372 (QL) [TCD] and *R v SB*, 2014 BCPC 279, 2014 CarswellBC 3599 (WL Can) both of which it said were distinguishable in terms of the degree of moral culpability of the offenders.

of the offenders without diminishing the public harm of sexual coercion, the Court of Appeal in *NG* adopted a spectrum of culpability approach to online sexual aggression perpetrated by young offenders. Factors included: the age difference between victim and offender, whether the behavior was innocent exploration or “aggressive, relentless, sexually abusive and humiliating”; whether the behaviour was systematic; whether the victim was identifiable in the images and whether they were circulated; and current and future consequences to the victim.¹¹⁰

Taking a more textured approach as the court did in *NG* makes particular sense in the context of young offenders, where rehabilitation is a primary consideration. It may be less appropriate in the context of adult offenders, such as in *Slade* where the court opined that not all sexual assaults can be considered violent since some occur “without any force beyond the use of force that naturally occurs during intimacy.”¹¹¹ Such reasoning omits consideration of non-physical forms of violence, as well as the inherent violence of being touched for a sexual purpose *without consent*—a clear interference with the sexual and bodily integrity of the person touched, which we have argued Canadian law clearly considers a public wrong in itself. Such reasoning fails to take seriously the violence of the privacy, dignity and equality violations inherent in non-consensual sexual acts.

B) Deciding who is worthy of protection

Criminal law’s capacity to deliver survivor-centered outcomes can be affected by which victims are considered worthy of protection. In the cases reviewed, for example, sexual violence against girl victims was more likely to be couched in terms of public harm than similar violence against women. Further, some of the analysis seemed preoccupied with “innocent” or “good” victims¹¹²—a phenomenon we refer to as the “innocence narrative”. Finally, and particularly in the case of women, failure to be a “good victim” can lead to shifting responsibility for violence onto survivors themselves.¹¹³

The innocence narrative suggests that girls are more worthy of criminal law protection than women purely because of their age. To be sure, the idea that harms to young people merit particular attention is built into the very fabric of Canadian criminal law. It is demonstrated by harsh

¹¹⁰ *Ibid* at para 37.

¹¹¹ *R v Slade*, 2015 ONCJ 8 at para 152, 2015 CarswellOnt 202 (WL Can) [*Slade*].

¹¹² For further discussion of this issue, see Jane Doe, *The Story of Jane Doe: A Book About Rape* (Toronto: Vintage Canada, 2004).

¹¹³ Isabel Grant has noted a similar pattern in criminal harassment cases: see Grant, *supra* note 70.

sentences (including mandatory penalties) for offences committed against minors.¹¹⁴ It also exists at sentencing, where a victim's youth is considered to be an aggravating factor.¹¹⁵ We do not dispute the idea that girls merit special protection in light of certain vulnerabilities they may face such as lack of life experience and dependence on others for survival. We are, though, concerned by how some courts characterize harms against girls as public harms but harms to women as purely individualized and the accompanying narrative of responsibility.

We suggest that this dichotomy arises at least in part from discriminatory censure of female expressions of sexuality. Girls are presumed "innocent" or asexual and therefore deemed worthy of protection. No such presumption exists for women (although privileged women seem more likely to be perceived as "good victims"). However, the dichotomy between women and girls is not static; girls can easily lose the protective shell of innocence if they exhibit sexuality¹¹⁶ (or where judicial perception of them is distorted by discriminatory stereotypes grounded in racism, transphobia, etc).

i) Special vulnerabilities and presumptions of societal harm

In the cases involving girls or young women that we reviewed, courts often presumed the existence of both individual and societal harm, frequently using evocative language rarely included in cases where the complainants were women. For example, in the Alberta case of *R v Innes* the trial judge cited the following statement from the Ontario Court of Appeal case of *R v PM*:

Young women entering their teenage years face a myriad of confusing feelings regarding their bodies, their emotions, and their sexuality. It is difficult enough to deal with these issues with a judgmental and often cruel peer group. To exploit

¹¹⁴ For example, see *Criminal Code*, *supra* note 20, ss 151–53, 163.1.

¹¹⁵ Common aggravating factors include: underage child victims (see *Slade*, *supra* note 111); the accused's direct seeking out of young victims without remorse (see *R v Bush*, 2009 BCPC 401, 2009 CarswellBC 3674 (WL Can)). See also *R v DMV*, 2015 BCPC 224, 2015 CarswellBC 2286 (WL Can); *Innes*, *supra* note 30 at para 81. For a large age gap between the complainant and accused, see *R v Lowney*, 2015 BCSC 1721, 2015 CarswellBC 2702 (WL Can). The nature of the offence is often exacerbated when coupled with a violation of a young person (see *TCD*, *supra* note 109; *Mackie*, *supra* note 56 at para 42).

¹¹⁶ This was evident in *Bridgeman*, 2011 ONCJ 117 at para 106, 2011 CarswellOnt 1812 (WL), where a boy sought out a sexual relationship with the much older accused. The court concluded: "[he] was not a total innocent. . . . He was however still a young man who was entitled to the protection of the law and of the court".

a young teenager as this man did reveals a level of amorality that is of great concern.¹¹⁷

This kind of generalized assessment of harms to girls and young women also found its way into the context of technology-facilitated abuses, with one court noting that “[c]yberspace ... provides ... unprecedented opportunities for interacting with children that would almost certainly be blocked in the physical world.”¹¹⁸ Courts characterized girls as “a vulnerable class of victims requiring the Court’s protection”¹¹⁹ and connected non-consensual transmission of girls’ intimate images with “tragic” situations of “young women seemingly taking their own lives as a result.”¹²⁰

Cases involving girls as victims also emphasized the broader societal harms of the offences involved. In *R v DMV*, for example, the Provincial Court of British Columbia characterized the sexualized attacks in issue as having “inflicted harm upon society as a whole” by increasing “the risk that some or all of [the victims] may stray further into criminality ... thus becom[ing] a greater risk ... to law-abiding members of society at large.”¹²¹ Similarly, in *R v KF*,¹²² *R v RY*¹²³ and *R v Hewlett*, the courts highlighted the public’s interest in prohibiting sexual offences against children, with the court in *Hewlett* noting society’s “legitimate need to safeguard all children in this category from exploitative conduct.”¹²⁴ The right to be free from exploitation was also extended to children’s online interactions, but found no parallel in cases involving women complainants.

ii) Who has the right to participate online free from violence?

In *Innes*, a 24-year-old man was convicted of luring and extorting a 13 and a 14-year-old girl online.¹²⁵ After describing the offence as “premeditated torture”, the Provincial Court of Alberta opined:

¹¹⁷ *R v PM*, [2002] OJ No 644 (QL) at para 19, 53 WCB (2d) 408, cited in *Innes*, *supra* note 30 at para 22.

¹¹⁸ *R v Alicandro*, 2009 ONCA 133 at para 36, 95 OR (3d) 173.

¹¹⁹ *Zhou*, *supra* note 78 at para 20.

¹²⁰ *R v PSD*, 2016 BCPC 400 at para 9, 2016 CarswellBC 3568 (WL Can).

¹²¹ *R v DMV*, 2015 BCPC 224 at para 37, 2015 CarswellBC 2286 (WL Can).

¹²² In *R v KF*, 2015 BCPC 417 at para 7, 2015 CarswellBC 4011 (WL Can), the court stated: “[t]he public has a keen interest in ensuring that offences involving child pornography are prohibited”.

¹²³ In *R v RY*, 2013 BCPC 421 at para 78, 2013 CarswellBC 4221 (WL Can), the court stated: “[p]ossession of child pornography is a serious crime which affects not only the victims but society as a whole”.

¹²⁴ *R v Hewlett*, 2002 ABCA 179 at para 24, 312 AR 165.

¹²⁵ *Innes*, *supra* note 30, *aff’d* 2008 ABCA 129, 429 AR 164.

Teen girls, who are subjected to peer pressure, and exposed regularly to media images glorifying a specific body image, and sexuality, are entitled to use the technology that is presented to them, the same way they are entitled to attend school grounds and shopping malls ... They are not to blame, they are still children. Children are entitled to explore this world; parents are entitled to some peace of mind, knowing that their teen daughters are using computers.¹²⁶

Our review of TFVAWG cases turned up no comparable articulation of the rights of *women* to engage in online exploration (or indeed to attend schools or shopping malls). Since this kind of analysis often invokes youthfulness and immaturity, that is not surprising. More concerning though, was a tendency to diminish women's rights in the online context, connected to the idea that they brought the harms upon themselves. As Isabel Grant has noted in the context of intimate partner criminal harassment, "requiring the complainant to radically change her life or to take steps to make sure the harassment is minimized shifts the focus onto her behaviour and away from the behaviour of the accused ... and ... the state's obligation to protect women from [harassment]."¹²⁷ Grant's underlying observation is apt to some of the TFVAWG cases we reviewed. Further, in the context of online communications, the result of that dynamic leads to judicial language that either states or implies that women should limit their public participation in order to avoid being harmed.

For example, some of the language in *Corby*¹²⁸ and *Elliott*¹²⁹ resembles the unhelpful and unrealistic advice often given to women and girls about how to "protect" themselves against sexual assault.¹³⁰ In *Corby*, the interpretation of the offence of harassment suggests that only direct threats to a victim (e.g. by email or text message) will satisfy the intent element, since the court noted that the victim only received the information by pulling it towards herself by signing in and viewing the perpetrator's Facebook profile. If this approach were adopted more broadly, a wide variety of mechanisms by which women and girls are threatened online—in blogs, on social media sites, on message boards¹³¹— would fall outside of the criminal prohibition on harassment. Further, it could inhibit women from taking the initiative to protect themselves by investigating whether such information about them has been disseminated.

¹²⁶ *Innes, supra* note 30 at para 80.

¹²⁷ Grant, *supra* note 70 at 588.

¹²⁸ *Corby, supra* note 83.

¹²⁹ *Elliott, supra* note 85.

¹³⁰ Jane Bailey, "A Perfect Storm: How the Online Environment, Social Norms and Law Constrain Girls' Online Lives" in Jane Bailey & Valerie Steeves, eds, *eGirls, eCitizens* (Ottawa: uOttawa Press, 2015).

¹³¹ Keats Citron, *supra* note 66.

Similarly, the conclusion in *Elliott* that the complainants waived their privacy rights by having an open Twitter account, implies that being followed and attacked is simply the price that women must pay for being online. Conditioning women's and girls' right to be free of harassment by staying offline not only misunderstands the contemporary reality that being online is *not a choice* because all aspects of our lives are increasingly associated with being connected, it also plays on long-standing discriminatory tropes that implicitly question women's and girls' rights to public participation.

These tropes appear also to be at play in the British Columbia case of *R v Saadatmandi*. Although it entered a conviction, the trial court lapsed into victim-blaming language describing the complainant as:

freely communicat[ing] with a stranger who contacted her out of the blue on the internet. She flirted with him and foolishly agreed to meet, giving him her first name, address and telephone number. She knew he had mentioned bringing alcohol and drugs and she did contemplate the possibility of a sexual encounter with him. When he showed up near her residence with his friend, she voluntarily got into his car. It was my observation that J.M.'s continued attempts to minimize her provocative and foolish behaviour stemmed from her intense embarrassment that she allowed herself to get into the situation in the first place.¹³²

As Janine Benedet has noted, however: the complainant's behaviour can be labelled "risky" only if it is common for a young woman to encounter men who are willing to have sexual contact with a woman whom they know is not consenting or capable of consent.¹³³

Notwithstanding the "innocence narrative" we noted above relating to girls and young women complainants, girls and young women engaging in such "risky" behaviour may lose their protection. In *R v RO*, for example, the Ontario trial court relied on the young complainants' online exhibition of their sexuality as a basis to infer that they had consented to the subsequent physical encounters.¹³⁴ By focusing attention on the behaviour of girls and women victimized by TFVAWG, these lines of reasoning shift responsibility onto the complainant and treat her claims with suspicion and direct attention away from social responsibility for VAWG.

¹³² *Saadatmandi*, *supra* note 23 at para 86.

¹³³ Janine Benedet, Annotation on *R v Saadatmandi*, 2008 BCSC 250, 56 CR (6th) 57 (July 2008).

¹³⁴ *R v RO*, 2011 ONCJ 464, 2011 CarswellOnt 9716 (WL Can).

Conclusion

In this paper, we set out to determine whether and, if so, how effectively Canadian criminal law is responding to TFVAWG, as well as to explore the justifications for criminal censure of TFVAWG. We conclude that Canadian criminal law *is* responding to TFVAWG, as is evident in the 410 reported cases involving 27 different offences discussed in Part 1(B) above. However, that conclusion is qualified by the fact that our analysis turns on a review of *reported* criminal cases, which represent only a fraction of all cases dealt with in Canadian courts. Almost certainly, there are other cases dealing with TFVAWG that we were not able to access. That said, however many reported and unreported cases involving TFVAWG there may be, the case law that we found almost certainly presents a very rarified picture of the criminal justice system. These were the cases that passed the scrutiny of both police and prosecutors in order to even make it to court. Nonetheless, our review of the reported case law clearly demonstrates that, since there are criminal law provisions in place to address many forms of TFVAWG, if there is a will to publicly censure violations of the sexual, emotional and psychological integrity and equality of women and girls, there is a way to do it.

While we believe that criminal law can and should respond to TFVAWG, the *quality* of that response may be lacking in terms of achieving the kinds of survivor-centred outcomes envisioned by some scholars. Our review of the reported TFVAWG case law identified two different types of constraints on achieving those outcomes: narrow interpretations of harm and violence and responsibilization of women for their attacks.

In taking the position that criminal law can and should respond to TFVAWG, we are not suggesting that criminal law should be the only or even primary response. In many cases, survivors will have good reason to take a different approach. Further, the disproportionate impact of Canadian criminal law on Indigenous peoples and members of other equality-seeking groups also demonstrates its limitations. Finally, the kind of long-term social transformation that will be necessary to eradicate the sorts of GBV evident in cases of TFVAWG far exceeds the capacity of a reactive and punitive criminal law system.

Nevertheless, we argue that TFVAWG is a form of violence against women and girls involving behaviours that are wrong in ways that merit public censure through criminal law. In particular, TFVAWG instrumentalizes women and girls by attacking their sexual integrity, autonomy and dignity. Such activity harms not only the individual targets of TFVAWG, but society as a whole, by using women and girls in ways

that undermine their rights to self-determination and equal participation in an increasingly digitally connected world.