



**Examining Tort Law Frameworks for Psychiatric Harm Caused by Cyberbullying and
the Accountability Gap in Digital Platform Liability**

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Abstract

English tort law provides cyberbullying victims with remedies against individual abusers but limited recourse against platforms that host and amplify the abuse. This paper argues that this creates a significant liability gap. It also examines the current tort law frameworks available: the intentional tort in *Wilkinson v Downton*, where subjective intention is difficult to attribute to algorithms, and negligence, where liability is constrained by the law's reluctance to impose duties for omission or third-party conduct. It evaluates these limits through corrective justice and the 'cheapest cost avoider' principles and uses a hypothetical case throughout to test the tort law frameworks. The paper also considers alternative legal routes and compares Canadian legislative approaches. Nova Scotia's legislative response supports the view that platform liability is structural in common law, while British Columbia demonstrates how tailored legislation may provide a model for addressing platform responsibility.

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Introduction

Cyberbullying is the repeated deliberate infliction of psychological harm caused by an unfamiliar set of technologies.¹ Where an individual falls within the definition of a primary victim² established in *Page v Smith*, and is systematically threatened, humiliated, or excluded through repeated messages, images, or posts, English tort law operates as a remedy to help address this gap. Specifically, two established doctrinal routes exist for a primary victim encountering psychiatric harm: negligence, and the intentional tort established in *Wilkinson v Downton*³, later restated in *Rhodes v OPO*.⁴ Both, independently, work reasonably well against the individual who committed the abuse. However, neither works against the platform that hosted, distributed, and — by default, to maximize user interaction — very often amplified it.

This research paper argues that the platform's exclusion is inherent into the common law tort doctrine at two distinct points. First, the intentional tort recognised in *Wilkinson v Downton* and restated in *Rhodes v OPO* requires proof that the defendant subjectively intended to cause severe distress.⁵ Second, negligence's entrenched reluctance to impose liability for omissions, or failure to control conduct of third parties, makes it difficult to hold a platform as a tortfeasor.⁶ This article links this second limitation to its underlying theoretical justifications:

¹ UNICEF, 'Cyberbullying: What Is It and How to Stop It' (*UNICEF*, last updated January 2026) <https://www.unicef.org/stories/how-to-stop-cyberbullying> accessed 2 July 2026.

² '[is] himself directly involved in the accident, and well within the range of foreseeable physical injury' *Page v Smith* [1996] AC 155 (HL) 184 (Lord Lloyd).

³ *Wilkinson v Downton* [1897] 2 QB 57.

⁴ *Rhodes v OPO* [2015] UKSC 32, [2016] AC 219.

⁵ Christian Witting, *Street on Torts* (16th edn, OUP 2021) 271

⁶ John-Paul Swoboda, 'Liability for Omissions: Is the Law as It Should Be?' (12 King's Bench Walk, 6 November 2024) <https://12kbw.co.uk/liability-for-omissions-is-the-law-as-it-should-be/> accessed 28 June 2026

corrective justice and the economic idea of the ‘cheapest cost avoider’, however it argues that neither explain why platforms should escape liability. A hypothetical case study is used to test both doctrinal routes along with establishing their limitations. The paper goes on to examine whether further routes sometimes proposed as solutions, such as the Protection from Harassment Act 1997, the Online Safety Act 2023, and the tort of misuse of private information, could potentially close the gap for an ordinary cyberbullying victim. Finally, a comparative analysis of Canada, in particular Nova Scotia’s repeated attempts to legislate for cyberbullying remedies, tests whether this gap is significant to England alone or if the common law system is confronting a similar issue. Increasingly, it identifies a narrower British Columbian statute, a working model of how to potentially approach this gap in platform liability, albeit within defined limits.

The hypothetical case

Given that there are no reported cases in which a cyberbullying claimant sued an individual or a platform in English law, this paper uses the following hypothetical facts as the basis for its analysis:

A fifteen-year-old is targeted for months by a former friend, who creates parody accounts in their name, encourages classmates to pile on, and shares an edited and explicit image of them in a class group chat. The platform hosting the accounts is slow to act on reports, and its recommender system circulates the image further; the claimant then develops a diagnosed depressive disorder and stops attending school.

This paper consists of four parts. Part I outlines the main legal framework when addressing psychiatric injury: two legal routes, a third statutory mechanism, and distinguishes between active conduct and a failure to prevent harm. Part II applies those legal rules to two possible

defendants: the former friend and the online platform. Part III introduces potential alternative pathways along with their significant gaps. Finally, Part IV introduces Canada's provincial legislative actions as a comparative benchmark against which to test the reach of English tort law on platform liability.

I. Part I – Two Legal Routes & Statutory Mechanism

Two causes of action allow a primary victim to recover for psychiatric injury. The first is one of negligence. To succeed a claimant must prove four factors: duty, breach, causation, and damage, with damage restricted to a recognised psychiatric illness rather than mere distress.⁷ Platform liability for online bullying raises a 'novel' duty, as courts have not yet recognised a duty of care to users for bullying-related psychiatric harm. Given its novel status, the *Caparo v Dickman* three-stage test applies to establish the necessary duty: the harm must be foreseeable, there should be sufficient proximity, and the imposed duty should be fair, just and reasonable.⁸ The third limb matters most here because courts have historically resisted to impose broad duties for third party harm, a reluctance that Part II shows weighs more heavily against platforms than individual bullies. The case *Robinson v Chief Constable of West Yorkshire* later refined the third limb by limiting the full *Caparo* policy analysis to novel cases, while established or analogous cases should be resolved by precedent.⁹ The decision held by the Supreme Court in *Paul v Royal Wolverhampton NHS Trust* presents a further obstacle by tying negligence claims for psychiatric-injury to a single, identifiable event.¹⁰

⁷ *Page v Smith* [1996] AC 155 (HL).

⁸ *Caparo Industries plc v Dickman* [1990] 2 AC 605

⁹ *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4, [2018] AC 736.

¹⁰ *Paul v Royal Wolverhampton NHS Trust* [2024] UKSC 1.

Cyberbullying, however, typically causes cumulative harm over time, making it structurally difficult to fit within the negligence framework.

The second route is the intentional tort set out in *Wilkinson v Downton*, restated in *Rhodes v OPO* which has three elements: ‘conduct directed towards the claimant for which there is no justification or reasonable excuse’¹¹; there must be subjective intention, established as a matter of fact rather than imposed by law, and the conduct must result in actual physical harm or recognised psychiatric illness.¹² In contrast to negligence, no assessment of proximity is required, however the mental element – in other words ‘subjective intention’ – required by the law in *Wilkinson* becomes the decisive factor, as the person must have been in a strictly defined state of mind.¹³

A third statutory instrument, useful once negligence and the *Wilkinson* tort are tested against an individual defendant in Part II: the Protection from Harassment Act 1997 (PHA). Section 3 of PHA allows a claimant to sue for damages if the defendant pursued a ‘course of conduct’ – at least two connected incidents – that was oppressive and unacceptable.¹⁴ Unlike the first two routes, it does not demand proof of psychiatric injury. Damages, under this act, may be awarded for anxiety alone and, where the facts justify it, may extend to full compensation for injury.¹⁵

One further distinction matters as it shapes what follows in this article. The law considers both the harm suffered and how it was caused, distinguishing positive acts from failure to

¹¹*Rhodes v OPO* (n 2) [74].

¹²*ibid.* , [69]-[88].

¹³ *Wilkinson v Downton* [1897] 2 QB 57 (QB) 59 (Wright J).

¹⁴ Protection from Harassment Act 1997, ss 1, 3.

¹⁵ *ibid.* , ss 1, 3(2).

prevent harm.¹⁶ According to Lord Goff, ‘whenever the harmful conduct of another is reasonably foreseeable [causing injury through careless conduct], it is our duty to take precautions against it’;¹⁷ no proximity inquiry is in question at all. However, the position is different where the defendant has merely failed to prevent harm. As a general rule, the common law does not enforce liability for pure omissions, nor does it require one person to control another’s conduct to prevent harm to a third party.¹⁸ As described by *Dixon J*, such duty is ‘exceptional’ a position that has subsequently been recognised in English law.¹⁹ This distinction is what separates the individual cyberbully from the platform that hosted the bullying.

Theoretical Basis of the Omissions Rule

Two vital theories help explain why tort law generally does not impose liability for harm caused by third parties. Applying these theories to online platforms suggests that their exclusion from liability results more from the structural makeup of existing tort law than from a deliberate policy choice.

Firstly, corrective justice, as developed by Ernest Weinrib, argues that tort liability should be established from the defendant’s own wrongful act rather than from a failure to prevent the wrongdoing of others.²⁰ This helps further explain the restrictive approach to omissions as well as *Wilkinson’s* requirement of ‘subjective intention’. However, such reasoning does not

¹⁶ Simon Deakin and Zoe Adams, *Markesinis and Deakin's Tort Law* (8th edn, OUP 2019) ch 3.

¹⁷ *Smith v Littlewoods Organisation Ltd* [1987] AC 241, 271 (Lord Goff).

¹⁸ *Michael v Chief Constable of South Wales Police* [2015] UKSC 2, [2015] AC 1732 [97] (Lord Toulson).

¹⁹ *Ibid.*, 256 (Dixon J).

²⁰ Ernest J Weinrib, *The Idea of Private Law* (Harvard University Press 1995).

exclude liability for a platform's own conduct. Where a platform's system actively amplifies harmful content, the alleged wrong arises from the platform's own choice of design rather than its failure to control a third party.²¹ Therefore, corrective justice may be applied to platform liability where it is evidenced that the platform's own systems contribute directly to the claimant's harm.²²

The economic idea, associated with Calabresi, instead inquires who could prevent the harm at the lowest cost.²³ Applied to cyberbullying this may be subjected to platforms. Individual users have limited control over the spread of content, whereas platforms control the recommendation systems, reporting mechanisms, and moderation processes that influence the reach of content.²⁴ In this case, platforms may be suitable to prevent or reduce harm.

Neither theory, however, provides a strong reason why platforms should be protected from liability. Instead, the exclusion is largely produced from existing tort rules that were developed for different harms and do not accommodate algorithmic amplification of online harm. If the gap does result from existing law rather than a deliberate decision, it may therefore be addressed through legislative intervention.²⁵

²¹ Sabriyya Pate, 'Platform Liability for Platform Manipulation' (2025) 125 Columbia Law Review 873.

²² *Ibid.*, 55

²³ Guido Calabresi, *The Costs of Accidents: A Legal and Economic Analysis* (Yale University Press 1970).

²⁴ Chris Meserole, 'How Do Recommender Systems Work on Digital Platforms?' (*Brookings*, 21 September 2022) <https://www.brookings.edu/articles/how-do-recommender-systems-work-on-digital-platforms-social-media-recommendation-algorithms/> accessed 28 July 2026

²⁵ Mirzhalol Allakuliev, 'Tort Liability of Digital Platforms for User-Generated Content' (2025) 3(5) Uzbek Journal of Law and Digital Policy 20 <https://doi.org/10.59022/ujldp.376> accessed 27 August 2026

II. Part II – Testing the Frameworks: Individual and Platform Liability

When examining the hypothetical, all actions by a former friend - creating the parody accounts, encouraging the pile-on, and sharing the manipulated image – engage the three frameworks to support individual liability, with a few limitations. In principle, negligence is available: two classmates in daily contact likely satisfy the proximity requirement in *Caparo* and *Robinson*, while psychiatric injury from a sustained, targeted campaign is reasonably foreseeable.²⁶ However, *Paul v Royal Wolverhampton*'s insistence on tracing the injury to a 'single identifiable victim', as identified in Part I, sits uneasily with cyberbullying harm that accumulated over time.²⁷ *Wilkinson v Downton* fits better for individual liability: the defendant's conduct (the former friend) is directed at an identifiable claimant, and an intention to cause distress is inferred from the creation of a parody account and the circulation of a modified image. The Protection from Harassment Act 1997 can be easily satisfied in this scenario, where a month's long scheme of bullying exceeds the two-incident minimum and is oppressive and unacceptable.²⁸ The case *Green v DB Groups Services* shows that where such cumulative act causes psychiatric injury, it can ground liability in personal injury, rather than searching for one triggering incident.²⁹ The claimant should be entitled to recover compensation in full under any of the three routes, though the Act offers the most direct route. The claimant also does not need to sue every classmate who joined the pile-on separately: the organiser of the campaign can be held responsible for the whole campaign, even if other people carried out part of it.³⁰

²⁶ *Caparo Industries plc v Dickman* (n 8); *Robinson v Chief Constable of West Yorkshire Police* (n 9).

²⁷ *Paul v Royal Wolverhampton NHS Trust* (n 10).

²⁸ Protection from Harassment Act 1997 (n 14).

²⁹ *Green v DB Group Services (UK) Ltd* [2006] EWHC 1898 (QB), [2006] IRLR 764.

³⁰ *Hourani v Thomson & Ors (Rev 1)* [2017] EWHC 432 (QB) [95] (Warby J).

On the other hand, every legal avenue fails against the platform. The tort of negligence fails twice: at the ‘duty of care’ stage, no English court has held a platform owes a user a duty for harm caused by another user’s content, courts are reluctant to impose liability for harm caused by third parties. Consequently, a platform’s failure to detect or remove harmful content is treated as an omission rather than a positive act. *Smith v Littlewoods* makes the point by comparison because it involves a similar three party structure as a platform: a defendant controlling the space, a third party using that space to cause deliberate harm, and a victim suffering the consequences. The defendant failed to secure an abandoned building causing vandals to enter and start a fire that spread to the neighbour’s property.³¹ The House of Lords found no liability: the vandals caused the harm, and the owner’s failure to prevent their individual wrongdoing did not itself impose a duty.³² Platforms occupy that same three-party position: it controls the space – the service it hosts – a third party uses that space, and the victim suffers as a result of that third party’s choice, not the platform’s own direct conduct. *Smith* therefore suggests that foreseeability of misuse alone is insufficient, and additional criteria such as creation of danger, a special relationship, or assumption of responsibility is required before a duty to prevent third party wrongdoing arises.³³ This produces a perverse result: whether the platform ignores the report completely or tries unsuccessfully to help remove the content, it may escape liability in both scenarios. Even organisations with a duty of care escape once harm moves outside their control; a school’s duty to protect students from bullying stops at the school gate,³⁴ and a platform ‘has no gate

³¹ *Smith v Littlewoods* (n 13)

³² *ibid.*, 268

³³ *Smith v Littlewoods Organisation Ltd* [1987] AC 241 (HL) 272–273 (Lord Goff).

³⁴ *East Suffolk Rivers Catchment Board v Kent* [1941] & *Stovin v Wise* [1996]

at all', in other words, a defined physical space or boundary, so its responsibility is less defined and accounted for.

Furthermore, causation adds a problem: digital harm may involve multiple, anonymous contributors and platform amplification, making it harder to prove that a specific platform failure caused the harm.³⁵ The rule originating in *Wilkinson v Downton*, as clarified by the Supreme Court in *Rhodes*, ultimately restricts the tort to cases involving a 'subjective intention', inferred from 'an ordinary state of health and mind'.³⁶ Therefore, an algorithmic recommender system, initially designed to maximise engagement cannot – by proper legal reasoning – be said to possess deliberate intention to cause harm at a particular individual.

III. Part III - Alternative Routes

These alternative mechanisms appear as ways around the gap of holding platforms liable. However, although each option provides some protection, none fully helps an ordinary victim of cyberbullying hold a platform liable.

Protection from Harassment Act of 1997

The Protection from Harassment Act 1997 is a UK statute that protects people from continued and repeated harassment.³⁷ In this scenario it fails in holding platforms liable because a platform that hosts or displays harassing content is not in itself engaging in the course of conduct. Three features of online bullying: anonymity, virality, and the nature of shared

³⁵ 'Harmful Effects of Digital Tech – the Science "Needs Fixing", Experts Argue' (*St John's College, Cambridge*, 5 January 2025) <https://www.joh.cam.ac.uk/about-us/news-and-research/harmful-effects-of-digital-tech---the-science-needs-fixing-experts-argue> accessed 18 August 2026.

³⁶ *Rhodes v OPO* [2015] UKSC 32, [35].

³⁷ Protection from Harassment Act 1997 (s.1).

content, each sharpen this problem further. Anonymity prevents the identification of the individual defendant required under each legal pathway.³⁸ The European Court of Human Rights found precisely this failure in *KU v Finland*, where Finnish authorities were unable to identify the individual who anonymously published a sexual advertisement using a 12-year-old's identity, which the Court found breached the State's positive obligations under Article 8.³⁹ Virality spreads responsibility across many small contributors instead of one clear decision-maker, defeating the intentional tort's purpose in the need of a single deliberating mind and complicating negligence's causation inquiry even further.⁴⁰ The feature of permanence presents a further challenge, as harmful material can remain accessible and be repeatedly reshared.⁴¹

Online Safety Act 2023

The Online Safety Act 2023 does not close this gap in platform liability, and its purpose is not designed to address liability for individual instances of harmful content. Instead, its purpose is to hold platforms accountable for how their whole system works.⁴² Woods and Perrin's proposal, which the Act followed, modelled its statutory duty of care on the Health and Safety at Work Act 1974: a systemic, preventative obligation which assess risks, builds

³⁸ Ronen Perry and Tal Zarsky, 'Who Should Be Liable for Online Anonymous Defamation?' (2015) 82 University of Chicago Law Review Dialogue 162.

³⁹ *KU v Finland* App no 2872/02 (ECHR, 2 December 2008).

⁴⁰ Lorna Woods and William Perrin, 'Online Harm Reduction – A Statutory Duty of Care and Regulator' (Carnegie UK Trust, 8 April 2019) <https://carnegieuk.org/wp-content/uploads/2024/10/Online-harm-reduction-a-statutory-duty-of-care-and-regulator-2.pdf> accessed 4 August 2026

⁴¹ *ibid.*, 83

⁴² Department for Science, Innovation and Technology, 'Online Safety Act: Explainer' (*GOV.UK*, 24 April 2025) <https://www.gov.uk/government/publications/online-safety-act-explainer/online-safety-act-explainer> accessed 9 August 2026.

safer systems, and takes reasonable steps to prevent harm.⁴³ Such is enforced by an expert regulator, Ofcom, rather than through individual litigation. The decision of having a regulator was intentional, since a private right of action was thought likely to be available only to claimants who could afford to bring proceedings against a well-funded platform without legal aid.⁴⁴ Compliance with the Act can be used as evidence in a negligence claim, but simply breaching the Act does not automatically create a negligence claim, in this case all four elements of negligence must be established.⁴⁵

Misuse of Private Information

Misuse of Private Information (MPI) fails to fill this liability gap too. *Wainwright v Home Office* confirms that no free-standing privacy tort is available in English law under this cause of action.⁴⁶ Specifically, MPI targets active disclosure rather than a failure to act. However, as established in *Weller v Associated Newspapers Ltd [2015]*, a child claimant is better placed to bring a misuse of private information claim, because courts give significant weight to children's privacy interests.⁴⁷ In this hypothetical scenario, a manipulated image may fall outside the tort as a manipulated image may not disclose private information, while platform liability for algorithmically amplifying such information remains uncertain.⁴⁸ Data protection law offers a similar statutory ruling, but still requires proof of real, individual harm, not just a

⁴³ Woods and Perrin (n 40), s 9.

⁴⁴ *ibid.*, (n 40) [42].

⁴⁵ *ibid.*, (n 40), [7]

⁴⁶ *Wainwright v Home Office* [2003] UKHL 53, [2004] 2 AC 406; *Campbell v Mirror Group Newspapers Ltd* [2004] UKHL 22, [2004] 2 AC 457.

⁴⁷ *Weller v Associated Newspapers Ltd* [2015] EWCA Civ 1176, [2016] 1 WLR 1541, para 29 (Master of the Rolls).

⁴⁸ *Tamiz v Google Inc* [2013] EWCA Civ 68, [2013] 1 WLR 2151.

broken rule.⁴⁹ Therefore, none of these cover the ordinary case – rumours, fake images, pile-ons – which involves no breach of confidence or unlawful data use.

V. Part IV – A Canada Comparative Test

The Canadian comparative test is used here to test one specific question: is the courts' failure to impose liability on platforms a structural feature of the common law, or merely a reflection of the conservatism of English judges? Across Canadian courts, legislatures, provinces, and the federal government, almost none of the measures examined created a claim against the platform hosting the content. Instead, liability and other legal remedies target the individual who created, sent, or shared the content. Therefore, the answer lies in recognising this as a structural feature of the common law system, as will be further demonstrated through Canadian case law.

This makes Canada a particularly strong comparator to this gap, which has primarily been discussed in the context of English law throughout this paper. An English court's refusal to extend liability could be potentially explained by judicial restraint or adherence to precedent. However, this potential assumption cannot be applied to Canadian legislative choices. Following the deaths of two teenagers, Rehtaeh Parsons and Amanda Todd, Canadian lawmakers repeatedly confronted online harm under intense public pressure and were free to design new legal responses without being constrained by existing tort doctrine.⁵⁰ However, those responses still did not impose full liability on platforms. The significance is therefore

⁴⁹ *Lloyd v Google LLC* [2021] UKSC 50, [2022] AC 1217; UK General Data Protection Regulation, arts 17, 82.

⁵⁰ The Canadian Press, 'Death of Nova Scotia Teen Rehtaeh Parsons Draws Comparisons to Amanda Todd Case' (*Global News*, 10 April 2013) <https://globalnews.ca/news/468416/death-of-nova-scotia-teen-rehtaeh-parsons-draws-comparisons-to-amanda-todd-case/> accessed 4 August 2026.

not simply that Canadian courts reached the same position as English courts, Canadian legislatures, despite having greater freedom to depart from existing doctrine, instead decided to reproduce a similar individual-wrongdoer model. This makes English judicial conservatism an insufficient explanation for the continued absence of platform liability.

Nova Scotia's legislative response, a Canadian province, is the clearest example of this continuing individual-focused approach to harm caused by cyberbullying. Following the death of teenager Rehtaeh Parsons in 2013, whose case involved alleged sexual assault, the non-consensual sharing of images, and online bullying, Nova Scotia enacted the Cyber-safety Act.⁵¹ Such act was the first legislation in Canada aimed at cyberbullying, creating civil protection orders against individual harassers and creating a specialised investigative unit dedicated to assisting and supporting victims.⁵² However, the Act was struck down by the Nova Scotia Supreme Court in *Crouch v Snell*, where it was found that the definition of cyberbullying was 'unconstitutionally vague and overbroad',⁵³ violating both the freedom of expression and the right to liberty and security of the person under the Canadian Charter of Rights and Freedoms – in the courts words 'a colossal failure'.⁵⁴

In 2017, Nova Scotia replaced the Act with the Intimate Images and Cyber-protection Act, providing a narrower definition of cyberbullying, targeting non-consensual intimate images

⁵¹ Clayton Rice, 'Cyberbullying Law Ruled Unconstitutional' (*On the Wire*, 18 December 2015) <https://www.claytonrice.com/cyberbullying-law-ruled-unconstitutional/> accessed 2 August 2026.

⁵² Cyber-safety Act, SNS 2013, c 2 (repealed).

⁵³ *Crouch v Snell*, 2015 NSSC 340.

⁵⁴ Brett Ruskin, 'Court Strikes Down Anti-Cyberbullying Law Created after Rehtaeh Parsons's Death' (*CBC News*, 11 December 2015) <https://www.cbc.ca/news/canada/nova-scotia/cyberbullying-law-struck-down-1.3360612> accessed 18 August 2026.

and cyberbullying more precisely.⁵⁵ Despite narrowing the type of harm covered, the legislature did not broaden the range of potential defendants: under section 3, the claim persisted against ‘the person responsible for the communication’.⁵⁶ In other words, Nova Scotia legislated twice, changing the scope of actionable harm without extending liability to platforms.

This pattern of holding only individuals accountable, however, is not absolute, and legislative response in the province of British Columbia is the exception. The enactment of British Columbia’s Intimate Images Protection Act (IIPA) came into force since January 2024, as part of the province’s wider, multi-year strategy to address gender-based violence.⁵⁷ The legislation emerged in the light of rapidly increasing digital harms, including 80% rise in police-reported non-consensual intimate-image sharing and increasing concerns over sextortion and AI-generated deepfakes.⁵⁸ Advocacy by those who personally experience online abuse formed an important part of this context. Specifically, Carol Todd, whose daughter Amanda Todd died by suicide in 2012, following prolonged online sextortion⁵⁹, was

⁵⁵ Intimate Images and Cyber-protection Act, SNS 2017, c 7.

⁵⁶ *ibid.*, c 7, s 3(c).

⁵⁷ *Intimate Images Protection Act*, SBC 2023, c 11 (in force 29 January 2024); on Carol Todd's presence: CBC News, "New legislation will help protect against sharing of intimate images without consent" (7 March 2023).

⁵⁸ Ministry of Attorney General (British Columbia), 'New Services Help People Protect Their Intimate Images' (BC Gov News, 29 January 2024) <https://news.gov.bc.ca/releases/2024AG0004-000096> accessed 20 August 2026.

⁵⁹ House of Commons, Standing Committee on Canadian Heritage, *Evidence*, 45th Parl, 1st Sess, No 21 (3 February 2026) (Carol Todd, Founder and Mother, Amanda Todd Legacy Society) <https://openparliament.ca/committees/canadian-heritage/45-1/21/carol-todd-1/only/> accessed 28 August 2026.

among the advocates present when the legislation was introduced and such advocacy, following Amanda's death, helped sustain political attention on online abuse.⁶⁰

However, what makes the IIPA relevant is that it extends accountability directly for online platforms and intermediaries, albeit within carefully defined limits. The law within the Act specifically covers 'internet intermediaries' defining it as any organisation that hosts or helps users find content posted by others.⁶¹ The courts and the Civil Resolution Tribunal can order these platforms to remove or de-index unlawful content and may require them to pay damages. However, a platform may avoid liability if it can show that it took reasonable steps to deal with the unlawful sharing of images through its services.⁶² Such Canadian approach and comparative analysis demonstrate that direct platform liability can be created through targeted legislation. However, the Act's protection is precisely limited to specific harms, such as non-consensual distribution of intimate images, and is not applicable to cyberbullying or online harassment generally. British Columbia therefore did not establish general platform liability for online psychological harm; it created targeted responsibility for a specific category of harmful content. Thus, this supports the article's central argument: existing tort law and general cyberbullying legislation are focused on individual wrongdoers, leaving a broader gap in platform liability.

⁶⁰ Neil Corbett, 'Amanda Todd's Mother Applauds New Safe Social Media Act' (*Maple Ridge News*, 12 June 2026) <https://mapleridgenews.com/2026/06/12/amanda-todds-mother-applauds-new-safe-social-media-act/> accessed 28 August 2026.

⁶¹ *Intimate Images Protection Act*, SBC 2023, c 11, s 1.

⁶² Jasmine Samra and Christopher Oates, 'Navigating British Columbia's Intimate Images Protection Act' (*Gowling WLG*, 26 February 2024) <https://gowlingwlg.com/en/insights-resources/articles/2024/british-columbia-intimate-images-protection-act> accessed 28 August 2026.

Even though Canadian law has developed broader and easier protections for victims of online harm, these developments have not escaped the need for an ‘identifiable victim’. For example, in the case, *Saadati v Moorhead*, the Supreme Court of Canada reduced the threshold for proving mental injury in negligence by removing the need for a recognised psychiatric diagnosis.⁶³ On the other hand, Canadian intentional torts continue to require a ‘subjective mental element’ – where the courts look at what that defendant intended rather than what a reasonable person should have known.⁶⁴ Such approach is similar to the English law case, *Rhodes v OPO*. Further developments in Canadian law, like in *Caplan v Atas*, where a new tort of internet harassment was recognised, the harm was still directed towards individual perpetrators rather than online platforms.⁶⁵ Therefore, Canadian law, similar to English law, shows that stronger protections against online harassment do not necessarily make it easier to hold platforms liable. The common law system contains a structural gap of holding platforms liable and this can be concerning for the different features of internet harm as mentioned, like anonymity, virality, and permanence.

Conclusion

This paper has traced the gap in current tort law frameworks in addressing psychiatric injury caused by digital technologies. Such gap is seen in two main barriers to platform liability in English tort law: the requirement of subjective intention under *Wilkinson v Downton*, and the restrictive approach of negligence, as illustrated by *Smith v Littlewoods* and further cases.

⁶³ *Saadati v Moorhead* [2017] 1 SCR 543, 2017 SCC 28.

⁶⁴ *Boucher v Wal-Mart Canada Corp*, 2014 ONCA 419, [41]–[44], applying *Prinzo v Baycrest Centre for Geriatric Care* (2002), 60 OR (3d) 474 (Ont CA) [61].

⁶⁵ *Caplan v Atas*, 2021 ONSC 670.

Neither corrective justice nor the principle of the cheapest cost avoider justifies this exclusion. Platforms contribute to harm through their own amplification and design choices; therefore, they may be best placed to prevent that harm at the lowest cost. The gap in platform liability, therefore, appears to result from common law doctrines designed for individual wrongdoers, rather than a deliberate exclusion of platforms from liability.

The hypothetical case study, against which Part II tested the available causes of action, illustrated this imbalance and increasingly demonstrated that the Protection from Harassment Act 1997, misuse of private information, and the Online Safety Act 2023 do not adequately address the gap for victims of cyberbullying. The Canadian comparison in Part IV reveals a similar pattern, with most legal frameworks continuing to focus on individual wrongdoers rather than platforms. However, British Columbia's Intimate Images Protection Act shows how specific legislation can define platform harms, impose intermediary duties and defences, and provide redress. Creating a similar model to cyberbullying and platform-amplified harassment may provide a more effective route to reform than attempting to expand existing tort frameworks beyond their current established limits. Until such reform occurs, English tort law is likely to continue treating individual victims and the platforms that assist their harm differently.

Table of Cases

United Kingdom

Campbell v Mirror Group Newspapers Ltd [2004] UKHL 22, [2004] 2 AC 457

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Green v DB Group Services (UK) Ltd [2006] EWHC 1898 (QB), [2006] IRLR 764

Hourani v Thomson & Ors (Rev 1) [2017] EWHC 432 (QB)

Lloyd v Google LLC [2021] UKSC 50, [2022] AC 1217

Michael v Chief Constable of South Wales Police [2015] UKSC 2, [2015] AC 1732

Page v Smith [1996] AC 155 (HL)

Paul v Royal Wolverhampton NHS Trust [2024] UKSC 1

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