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# Onlife Harms: Uber and Sexual Violence

Amanda Turnbull\*

## 1. INTRODUCTION

Since Uber Technologies, Inc. launched in 2009 it has been operating in crisis mode, juggling regulatory issues,<sup>1</sup> labour relations controversies,<sup>2</sup> intellectual property problems,<sup>3</sup> workplace sexual harassment concerns,<sup>4</sup> and a deluge of lawsuits from drivers,<sup>5</sup> passengers,<sup>6</sup> and governments.<sup>7</sup> Adding to this tally of

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<sup>1</sup> See e.g. Del Quentin Wilber & Greg Bensinger, “Uber Faces Federal Criminal Probe Over ‘Greyball’ Software”, *The Wall Street Journal* (17 May 2017), online: < [www.wsj.com/articles/uber-faces-federal-criminal-probe-over-greyball-software-1493948944?mod=article\\_inline](http://www.wsj.com/articles/uber-faces-federal-criminal-probe-over-greyball-software-1493948944?mod=article_inline) >; Jon Henley, “Uber Clashes with Regulators in Cities Around the World”, *The Guardian* (20 September 2017), online: < [www.theguardian.com/business/2017/sep/29/uber-clashes-with-regulators-in-cities-around-the-world](http://www.theguardian.com/business/2017/sep/29/uber-clashes-with-regulators-in-cities-around-the-world) > .

<sup>2</sup> See e.g. Greg Bensinger, “Court Upholds Seattle Ordinance Rules Allowing Uber Union Vote”, *The Wall Street Journal* (20 March 2017), online: < [www.wsj.com/articles/court-upholds-seattle-ordinance-allowing-uber-union-vote-1489796331?mod=article\\_inline](http://www.wsj.com/articles/court-upholds-seattle-ordinance-allowing-uber-union-vote-1489796331?mod=article_inline) >; David Doorey, “Uber Reinvents its Controversial Arbitration Clause After Uber v. Heller”, *Canadian Law of Work Forum* (1 September 2020), online (blog): < [lawofwork.ca/ubernewarbitrationclause/](http://lawofwork.ca/ubernewarbitrationclause/) > .

<sup>3</sup> See e.g. Jack Nicas, “Google Parent: Uber Aimed to Buy Engineer’s Startup While he Worked for Us”, *The Wall Street Journal* (3 May 2017), online: < [www.wsj.com/articles/uber-planned-to-buy-engineers-startup-while-he-worked-at-alphabet-lawyers-say-1493841607?mod=article\\_inline](http://www.wsj.com/articles/uber-planned-to-buy-engineers-startup-while-he-worked-at-alphabet-lawyers-say-1493841607?mod=article_inline) >; Kirsten Errick, “Uber v. Uber”, *Law Street Media* (19 March 2020), online: < [lawstreetmedia.com/tech/intellectual-property/uber-v-uber/](http://lawstreetmedia.com/tech/intellectual-property/uber-v-uber/) > .

<sup>4</sup> See e.g. Ben DiPietro, “Crisis of the Week: Uber Faces Workplace Harassment Concerns,” *The Wall Street Journal* (27 February 2017), online: < [www.wsj.com/articles/BL-252B-12256](http://www.wsj.com/articles/BL-252B-12256) >; Jessica Guynn, “Uber Agrees to Pay \$4.4 Million to Settle EEOC Sexual Harassment and Retaliation Probe”, *USA Today* (18 December 2019), online: < [www.usatoday.com/story/tech/2019/12/18/uber-sexual-harassment-investigation-me-too/2694091001/](http://www.usatoday.com/story/tech/2019/12/18/uber-sexual-harassment-investigation-me-too/2694091001/) > .

<sup>5</sup> See e.g. *O’Connor v. Uber Technologies, Inc.*, 82 F.Supp.3d 1133 (N.D. Cal., 2015); *Singh v. Uber Techs Inc.*, 235 F.Supp.3d 656 (D. N.J., 2017); *Uber BV v. Aslam*, [2019] UKSC 29.

<sup>6</sup> See e.g. *Doe v. Uber Techs Inc.*, 2019 U.S. Lexis 203466 (N.D. Cal.); *Doe v. Uber Techs Inc.*, 2017 U.S. Lexis 216416 (W.D. Miss.); *Search v. Uber Techs Inc.*, 128 F.Supp.3d 222 (D.C., 2015); *Nat’l Fed’n of the Blind of Cal v. Uber Techs Inc.*, 103F.Supp.3d 1073 (N.D. Cal., 2015).

troubles, Uber has endured backlash through social media activism such as France's #UberCestOver hashtag on Twitter,<sup>8</sup> which revealed stark accounts of sexual violence perpetrated by Uber drivers, or the #DeleteUber hashtag that arose when Uber allegedly took advantage of a taxi strike at John F. Kennedy airport in New York following former President Donald Trump's immigration ban.<sup>9</sup> #DeleteUber resurfaced<sup>10</sup> following the publication of Susan Fowler's blog<sup>11</sup> in which she detailed the sexual harassment she endured while working at Uber as a site-reliability engineer.

As a means of addressing some of its problems, particularly lack of transparency,<sup>12</sup> which is a common thread in many of these crises, Uber released

<sup>7</sup> See e.g. *Toronto (City) v. Uber Canada Inc.*, 2015 ONSC 3572, 2015 CarswellOnt 10175 (Ont. S.C.J.); *Mississauga (City) v. Uber Canada Inc.*, 2016 ONCJ 461, 2016 CarswellOnt 12510 (Ont. C.J.); *Uber Canada inc. c. Québec (Agence du revenu)*, 2016 QCCS 2158, 2016 CarswellQue 3591 (C.S. Que.), leave to appeal refused 2016 CarswellQue 7178 (C.A. Que.), leave to appeal refused *Uber Canada Inc. v. Québec (Agence du revenu)*, 2017 CarswellQue 897, 2017 CarswellQue 898 (S.C.C.).

<sup>8</sup> See e.g. Sara Leduc, « #UberCestOver : quand la course Uber vire au cauchemar pour les femmes » *France 24* (3 décembre 2019), en ligne : < [www.france24.com/fr/20191203-ubercestover-quand-la-course-uber-vire-au-cauchemar-pour-les-femmes](http://www.france24.com/fr/20191203-ubercestover-quand-la-course-uber-vire-au-cauchemar-pour-les-femmes) >; Yamily Habib E, “Through the hashtag #UberCestOver (“Uber it’s over”), thousands of women have resorted to social media to recount in detail and denounce the harassment and sexual assaults to which they are constantly subjected by choosing Uber to ‘get home safely’” (17 December 2019 at 14:20), online: *Twitter* < [twitter.com/YamilyHabib/status/1207017781381750785](https://twitter.com/YamilyHabib/status/1207017781381750785) >.

<sup>9</sup> See e.g. Elena Cresci, “#DeleteUber: How Social Media Turned on Uber”, *The Guardian* (30 January 2017), online: < [www.theguardian.com/technology/2017/jan/30/deleteuber-how-social-media-turned-on-uber](http://www.theguardian.com/technology/2017/jan/30/deleteuber-how-social-media-turned-on-uber) >; GeekWire, “#DeleteUber starts trending worldwide amid Trump’s anti-immigration ban; Lyft donates \$1M to ACLU” (29 January 2017 at 15:10), online: *Twitter* < [twitter.com/geekwire/status/825798186098888705](https://twitter.com/geekwire/status/825798186098888705) >.

<sup>10</sup> See e.g. Sara Perez, “The #DeleteUber Campaign Returns Following Sexual Harassment Allegations at the Company”, *Tech Crunch* (22 February 2017), online: < [techcrunch.com/2017/02/22/the-deleteuber-campaign-returns-following-sexual-harassment-allegations-at-the-company/?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNhLw&guce\\_referrer\\_sig=AQAAAM-bRow\\_4Q9Zf-F4U2X8mMil6g6s9BMMtveQwk73CKRkEM68HGOMVgCzUcOSm0T1-zl46BX4LNNvhUfve0ur7rgYzPIFMjwIbfATEoAMMb5XafcDNef\\_UQbmpUIo-Do2LLOzZuIrAtb5M7MqjpOsTTKxiI8mirBvjQbXeJ\\_hY-gVH](http://techcrunch.com/2017/02/22/the-deleteuber-campaign-returns-following-sexual-harassment-allegations-at-the-company/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNhLw&guce_referrer_sig=AQAAAM-bRow_4Q9Zf-F4U2X8mMil6g6s9BMMtveQwk73CKRkEM68HGOMVgCzUcOSm0T1-zl46BX4LNNvhUfve0ur7rgYzPIFMjwIbfATEoAMMb5XafcDNef_UQbmpUIo-Do2LLOzZuIrAtb5M7MqjpOsTTKxiI8mirBvjQbXeJ_hY-gVH) >; NYC4 = Access, “An essay published by former #Ubered employee Susan Fowler detailed a prevailing culture of #sexism and sexual #harassment at the company”, NYETA (2 February 2018 at 8:30), online: *Twitter* < [twitter.com/NYETANYC/status/959418671566327808](https://twitter.com/NYETANYC/status/959418671566327808) >.

<sup>11</sup> Susan Fowler, “Reflecting on One Very, Very Strange Year at Uber” (19 February 2017), online (blog): *Susan Fowler* < [www.susanfowler.com/blog/2017/2/19/reflecting-on-one-very-strange-year-at-uber](http://www.susanfowler.com/blog/2017/2/19/reflecting-on-one-very-strange-year-at-uber) > [Fowler, “Strange Year”].

<sup>12</sup> Prior to 2018, arbitration clauses in Uber’s SFC prevented survivors of sexual violence from moving forward with lawsuits. Silencing also perpetuates sexual violence and prevents the public from learning about its frequency. See e.g. Sara Ashley O’Brien, “Uber Will No Longer Force Victims of Sexual Assault into Arbitration”, *CNN* (15 May 2018), online: < [money.cnn.com/2018/05/15/technology/uber-eliminates-forced-arbi](http://money.cnn.com/2018/05/15/technology/uber-eliminates-forced-arbi)

its first — and only — safety report in 2019 outlining incidents that occurred from 2017 to 2018 in the United States (US).<sup>13</sup> It has not issued a report for any other country. The reported data covered motor vehicle fatalities, fatal physical assaults, and sexual assault. The 2019 Report revealed that critical safety incidents occurred in only 0.0003% of rides.<sup>14</sup> At first blush, this statistic seems remarkably low, given that an average of 3.1 million trips took place *daily* in the US during that time frame. However, when the data is isolated, the numbers look different: there were 97 fatal Uber-related crashes over the two years surveyed,<sup>15</sup> 19 fatal physical assaults,<sup>16</sup> and — the most striking statistic — almost 6000 incidences of sexual assault.<sup>17</sup> The sexual assault figures reflect both Uber riders and Uber drivers as victims.<sup>18</sup>

In response, Uber developed a series of initiatives aimed at prevention, including mandatory online anti-sexual violence training modules for drivers;<sup>19</sup> improved safety functionality on its apps through an emergency call function that provides GPS location data as well as the Uber car’s make, model, and

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tration/index.html > ; Laharee Chatterjee, “Uber, Lyft Scrap Mandatory Arbitration for Sexual Assault Claims”, *Reuters* (15 May 2018), online: < [www.reuters.com/article/us-uber-sexual-harassment-idUSKCN11G112](http://www.reuters.com/article/us-uber-sexual-harassment-idUSKCN11G112) > .

<sup>13</sup> “2017-2018 US Safety Report” (5 December 2019), online: *Uber* < [www.uber-assets.com/image/upload/v1575580686/Documents/Safety/UberUSSafetyReport\\_201718\\_FullReport.pdf](http://www.uber-assets.com/image/upload/v1575580686/Documents/Safety/UberUSSafetyReport_201718_FullReport.pdf) > [2019 Report].

<sup>14</sup> This statistic includes sexual assault. *Ibid* at 10.

<sup>15</sup> *Ibid* at 51.

<sup>16</sup> *Ibid* at 57.

<sup>17</sup> Note that Uber has its own definitions for what constitutes sexual violence. If sexual violence were more adequately defined, the number reflected in the 2019 Report would be much greater. *Ibid* at 62.

<sup>18</sup> Women drivers are also at risk. The 2019 Report states that 42% of those reporting sexual assault were drivers. Uber’s reporting of this statistic, however, is not completely clear; the driver may have been reporting an assault by one passenger on another rather than reporting their own sexual assault. *Ibid* at 61. Note that while the term “survivor” is preferable in reporting sexual violence, I have used “victim” in this instance since the reported statistics of sexual assault include instances resulting in death.

<sup>19</sup> This mandatory training is a one-time-only requirement comprised of six online videos. New drivers will need to log a certain number of rides before completing the training. Topics covered in the new training include the following: respecting privacy, boundaries in conversation, respecting others’ space, sexual violence awareness, and bystander intervention. There is no specific reference to the role that technology plays in the available descriptions of the training. The videos will be made available in English with subtitles for Spanish, Portuguese, Arabic, Mandarin, and French Canadian. Prior to these new mandatory training videos, Uber drivers were required to agree to community guidelines, which included sections on sexual misconduct and how to report it, and which outlined inappropriate behaviours. See Danielle Abril, “Uber has a New Training Requirement for Drivers” (7 August 2020), online: *Fortune* < [fortune.com/2020/08/07/uber-mandatory-sexual-misconduct-assault-driver-training-u-s-canada/](http://fortune.com/2020/08/07/uber-mandatory-sexual-misconduct-assault-driver-training-u-s-canada/) > ; see also Rape, Abuse & Incest National Network, “Our Modules (for Uber)”, online: *RAINN* < [www.rainn.org/uber](http://www.rainn.org/uber) > .

license plate to a 911 dispatcher;<sup>20</sup> a data-sharing system;<sup>21</sup> and an anonymizing feature that disables the sharing of passenger location information to the driver after the ride is complete.<sup>22</sup> Uber also committed \$5 million over a five-year period to support its partner organizations working to end gender-based violence.<sup>23</sup>

The anti-sexual violence initiatives are a response to what the 2019 Report referred to as the “broader problem”<sup>24</sup> — one that “almost 52.2 million [cisgender] women and 27.6 million [cisgender] men live with every single day”<sup>25</sup> in the US. Uber’s post-Report initiatives are, in a sense, commendable since creating a safer environment for everyone is important. However, emerging scholarship on technology-facilitated gender-based violence (TFGBV)<sup>26</sup> reveals that Uber’s initiatives to deal with sexual violence do not adequately tackle how technology is employed as a tool to facilitate sexually based harms. In other words, the preventative measures that Uber put in place are insufficient and do not properly address the problem. Correspondingly, this may be evidenced by the caseload of nearly one thousand sexual assault allegations against drivers for Uber, and its competitor, Lyft, that a San Francisco law firm is currently managing — two years after the 2019 Report.<sup>27</sup> Put most simply, Uber side-stepped dealing with the role of technology in facilitating sexual violence.

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<sup>20</sup> Dara Khosrowshahi, “Raising the Bar on Safety” (5 September 2018), online: *Uber* < [www.uber.com/newsroom/raisingthebar/](http://www.uber.com/newsroom/raisingthebar/) > ; see also “Uber’s Emergency Button” (14 March 2019), online: *Uber* < [www.uber.com/newsroom/emergencybutton/](http://www.uber.com/newsroom/emergencybutton/) > .

<sup>21</sup> Kate Duffy, “Uber and Lyft are Now Sharing Data on Drivers That Have Been Banned for Sexual or Physical Assault. Other Delivery Companies Will Join the Program, They Said” (12 March 2019), online: *Business Insider* < [www.businessinsider.com/uber-lyft-delivery-share-data-deactivated-drivers-sexual-assault-safety-2021-3](http://www.businessinsider.com/uber-lyft-delivery-share-data-deactivated-drivers-sexual-assault-safety-2021-3) > ; Brody Ford, “Uber, Lyft to Share Data on Deactivated Drivers in Safety Push” (11 March 2021), online: *Bloomberg* < [www.bloomberg.com/news/articles/2021-03-11/uber-lyft-to-share-data-on-deactivated-drivers-in-safety-push](http://www.bloomberg.com/news/articles/2021-03-11/uber-lyft-to-share-data-on-deactivated-drivers-in-safety-push) > .

<sup>22</sup> Khosrowshahi, *supra* note 20; “Uber to Disable Creepy Customer-Tracking Feature”, *Reuters* (29 August 2017), online: *NY Post* < [nypost.com/2017/08/29/uber-to-disable-creepy-customer-tracking-feature/](http://nypost.com/2017/08/29/uber-to-disable-creepy-customer-tracking-feature/) > .

<sup>23</sup> Tracey Breeden, “Driving Change — Uber’s \$5 Million Commitment to Prevent Sexual Assault and Domestic Violence” (5 November 2017), online: *Uber* < [www.uber.com/en-QA/newsroom/driving-change-together/](http://www.uber.com/en-QA/newsroom/driving-change-together/) > ; in Canada, Uber extended ongoing partnerships with YWCA Canada and WomanACT, and it began new partnerships with EVA BC and Le Chaînon. See “Driving Change — Our Commitment to Combat Gender-Based Violence in Canada” (27 May 2021), online: *Uber Canada* < [www.uber.com/en-CA/newsroom/driving-change-our-commitment-to-combat-gender-based-violence-in-canada/](http://www.uber.com/en-CA/newsroom/driving-change-our-commitment-to-combat-gender-based-violence-in-canada/) > .

<sup>24</sup> 2019 Report, *supra* note 13 at 6.

<sup>25</sup> *Ibid* at 58.

<sup>26</sup> See e.g. Suzie Dunn, “Is it *Actually* Violence? Framing Technology Facilitated Harms as Violence” in Asher Flynn, Nicola Henry & Jane Bailey, eds, *Technology-Facilitated Violence & Abuse: International Perspectives and Experiences* (Australia: Emerald Publishing, 2021) 25.

This paper argues that Uber needs a better understanding of the phenomenon of TFGBV. Uber's lack of engagement with the role of technology in its sexual violence prevention measures demonstrates that it has not properly addressed its problem with sexual violence. The path to properly grappling with this is through an understanding of TFGBV as being situated on a continuum of interconnected behaviours.<sup>28</sup> After all, properly identifying a problem provides clarity at both the organizational level and in society more generally.<sup>29</sup> This argument will unfold in three parts: first, through an explanation of TFGBV and the role digital platforms play in its propagation; second, through an analysis of Uber's platform infrastructure and TFGBV, framed by Uber's toxic corporate climate of sexual harassment; and third, through a discussion of the direction that Uber may take in light of recognizing TFGBV and its impact.

## 2. THE CONTINUUM OF COERCION AND CONTROL<sup>30</sup>: SEXUAL VIOLENCE IN THE DIGITAL ENVIRONMENT

This section explains the concept of TFGBV and how it proliferates via Uber's infrastructure.

### (a) Technology Heightens the Global Emergency

TFGBV arises out of "misogyny, sexist norms, and rape culture, all of which existed long before the Internet."<sup>31</sup> It is a furtherance or elaboration of gender-based violence<sup>32</sup> that affects approximately 736 million women worldwide.<sup>33</sup> Put succinctly, gender-based violence is a "global emergency."<sup>34</sup> Moreover,

<sup>27</sup> See Brendan Cole, "Uber and Lyft Face Nearly 1,000 Sexual Assault Claims Against Their Drivers", *Newsweek* (1 July 2021), online: < [www.newsweek.com/uber-lyft-face-nearly-1000-sexual-assault-claims-against-drivers-1605864](http://www.newsweek.com/uber-lyft-face-nearly-1000-sexual-assault-claims-against-drivers-1605864) >; see also Tom Maxwell, "Uber and Lyft May Soon be Hit with Hundreds of Sexual Assault Lawsuits" (1 July 2021), online: *Input* < [www.inputmag.com/tech/california-law-firm-plans-1000-law-suits-against-uber-lyft-over-sexual-assaults](http://www.inputmag.com/tech/california-law-firm-plans-1000-law-suits-against-uber-lyft-over-sexual-assaults) >; Ethan Baron, "Dozens of Women Sue Uber Claiming Drivers Sexually Attacked Them", *Mercury News* (29 June 2021), online: < [www.mercurynews.com/2021/06/29/dozens-of-women-sue-uber-claiming-drivers-sexually-attacked-them/](http://www.mercurynews.com/2021/06/29/dozens-of-women-sue-uber-claiming-drivers-sexually-attacked-them/) > .

<sup>28</sup> Dunn, *supra* note 26 at 30.

<sup>29</sup> *Ibid.* at 40.

<sup>30</sup> See Liz Kelly, "The Continuum of Sexual Violence" in Mary Maynard & Jalna Hanmer, eds, *Women, Violence and Social Control* (London: Palgrave MacMillan, 1987) 46.

<sup>31</sup> Cynthia Khoo, "Deplatforming Misogyny: Report on Platform Liability for Technology-Facilitated Gender-Based Violence" (2021), online: *Women's Legal Education & Action Fund* (LEAF) < [www.leaf.ca/publication/deplatforming-misogyny/](http://www.leaf.ca/publication/deplatforming-misogyny/) > at 15.

<sup>32</sup> Anastasia Powell & Nicola Henry, *Sexual Violence in a Digital Age* (London: Palgrave, 2017) at 23.

<sup>33</sup> "Facts and Figures: Ending Violence Against Women", online: *UN Women* < [www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures](http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures) > .

technology heightens this global emergency: “85 per cent of women globally have witnessed or experienced online violence, with young women facing heightening risk.”<sup>35</sup> Further, the violence intensifies when broadening the definition of “women” to include both cis- and transgender women and girls, and those who hold intersecting marginalized identities. In taking an intersectional approach to identity, the scope of violence also escalates to include the additional harms associated with the broadened scope, such as transphobic violence.

Like the work done previously by feminists who fought to have “boys will be boys” behaviour recognized as sexual harassment,<sup>36</sup> Suzie Dunn explains the same challenges of tolerance and understating harms exist around technology-facilitated violence such as online stalking and other behaviours used to degrade women.<sup>37</sup> Lawmakers and the public more generally have not come to terms with whether technology-facilitated behaviours are in fact forms of violence.<sup>38</sup> Failure to recognize the role that technology plays in facilitating abuse may further exacerbate the existing barriers to reporting sexual assault that Elaine Craig identifies in the justice system.<sup>39</sup>

Uber’s response to its problem with sexual violence demonstrates that it has not come to grips with technology-facilitated behaviours. It omits reference to the role that technology played in facilitating sexual violence in its safety report and consequently in its preventative measures. Indeed, the case law from Canada and the US involving Uber and sexual violence demonstrates that courts, too, are floundering to understand the role that technology plays.<sup>40</sup>

<sup>34</sup> “Trailblazing Leaders Commit to End Gender-Based Violence, Drive Equality in Technology and Innovation, and Ensure Economic Justice and Rights for Women and Girls at the *Generation Equality Forum*”, (2 July 2021), online: *UN Women* < [www.unwomen.org/en/news/stories/2021/7/news-gef-paris-leaders-commit-to-end-gbv-drive-equality-in-tech-and-ensure-economic-justice](http://www.unwomen.org/en/news/stories/2021/7/news-gef-paris-leaders-commit-to-end-gbv-drive-equality-in-tech-and-ensure-economic-justice) > .

<sup>35</sup> *Ibid.*

<sup>36</sup> See e.g. Catharine A MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1988); Sheila MacIntyre, “Gender Bias within the Law School: The Memo and Its Impact” (1987) 2:2 *CJWL* 362; Constance Backhouse, *The Secret Oppression: Sexual Harassment of Working Women* (Toronto: Macmillan, 1979); Constance Backhouse, *Sexual Harassment on the Job: How to Avoid the Working Woman’s Nightmare* (Toronto: Prentice Hall, 1981).

<sup>37</sup> Dunn, *supra* note 26 at 40.

<sup>38</sup> *Ibid.*

<sup>39</sup> See Elaine Craig, *Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession* (Montreal: McGill-Queen’s University Press, 2018); see also Khoo, *supra* note 31 at 51-52.

<sup>40</sup> *R. v. Ali*, 2019 ONSC 5740, 2019 CarswellOnt 16059 (Ont. S.C.J.); *R. v. Singh*, 2019 ONSC 4331, 2019 CarswellOnt 11742 (Ont. S.C.J.); *Doe v. Uber Techs, Inc.*, 2021 U.S. Dist. LEXIS 109092, 2021 WL 2382837 (D. Md., 2021); *Doe v. Uber Techs, Inc.*, 2019 U.S. Dist. LEXIS 203466, 2019 WL 6251189 (N.D. Cal., 2019); *Doe v. Uber Techs, Inc.*, 2017 U.S. Dist. LEXIS 83462, 2017 WL 2352032 (N.D. Cal., 2017); *MM v. Police Prosecutions*, [2021] SASC 1; *N v. Police*, [2021] SASC 49; *Muhammad Naveed v. R.*, [2019] NSWCCA 149.

TFGBV may “be recognized by looking for behaviors that control, dominate, and instill fear in the person targeted.”<sup>41</sup> These behaviours may range from hate speech, voyeurism, spying or monitoring through account hacking, defamation, non-consensual distribution of intimate images (NCDII), and stalking.<sup>42</sup> Some phenomena are unique to TFGBV, such as abuse occurring simultaneously in several locations,<sup>43</sup> the scope of the audience that is witness to the abuse,<sup>44</sup> and the replicability of digital content.

TFGBV breaks down the distinction between the online and the offline worlds. The perception that there is a contrast between gender-based violence in the online and offline worlds effectively creates a “false dichotomy”<sup>45</sup> given that “technologies play an increasingly central part in where and how we work, learn, play and communicate.”<sup>46</sup> The solution of simply reducing or avoiding online activities, which is a common response to online abuse and harassment, is not a realistic solution, since it deprives or restricts individuals from fully participating in the contemporary public sphere.<sup>47</sup> Mireille Hildebrandt’s notion of the “onlife” world “singles out the fact that our ‘real’ life is neither on- nor offline,”<sup>48</sup> and it is a life that we are still discovering. This is helpful in thinking about how TFGBV is both an evolving and cross-cutting issue.

In the recent Women’s Legal Education and Action Fund report, “Deplatforming Misogyny,” Cynthia Khoo finds that “[n]early all TFGBV on digital platforms is committed through online expression, whether through speech, images, videos, or other multimedia.”<sup>49</sup> “Nearly all” implies that a majority of TFGBV is committed through online expression. The TFGBV related to Uber, as this paper will show, is a splinter group — or a minority — in that the design of the platform itself is one that enables coercion and control through algorithmic governance as well as one that intersects with other technologies that create opportunities for TFGBV, such as Snapchat.<sup>50</sup> Since technology is the product of its design, the TFGBV associated with Uber is

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<sup>41</sup> Dunn, *supra* note 26 at 40.

<sup>42</sup> For a more complete list, see *ibid* at 30.

<sup>43</sup> Jane Bailey & Carissima Mathen, “Technology-Facilitated Violence Against Women & Girls: Assessing the Canadian Criminal Response” (2019) 97:3 Can Bar Rev 664 at 676.

<sup>44</sup> Suzie Dunn, “Technology-Facilitated Gender-Based Violence: An Overview” (7 December 2020), online: *Centre for International Governance Innovation* < <https://www.cigionline.org/publications/technology-facilitated-gender-based-violence-overview/> > at 4.

<sup>45</sup> Khoo, *supra* note 31 at 15.

<sup>46</sup> Powell & Henry, *supra* note 32 at 51.

<sup>47</sup> Khoo, *supra* note 31 at 2.

<sup>48</sup> Mireille Hildebrandt, *Smart Technologies and the End(s) of Law* (Northampton, MA: Elgar Publishing, 2015) at 42.

<sup>49</sup> Khoo, *supra* note 31 at 2.

<sup>50</sup> “Snapchat”, online: < [www.snapchat.com](http://www.snapchat.com) > .



generated through Uber’s default settings and via online expression. We could say then that the devil is in both the defaults<sup>51</sup> and the dissemination.

Moreover, online platforms such as Twitter, Facebook, and others have become in some cases general hubs of expression-based TFGVBV,<sup>52</sup> while some “purpose-built platforms” exist solely for its perpetuation, such as “The Dirty,” which was established for the purpose of NCDII.<sup>53</sup> Simply put, technology gets employed as a tool by perpetrators to broaden the scope of violence and to facilitate abusive behaviour.<sup>54</sup>

### (b) What is a Platform?

It is worth elucidating what is meant by “platform” in the context of this paper since it is not uniformly used across differing discourses. Platforms facilitate “transactions between buyers and sellers.”<sup>55</sup> In the pre-digital context, a village market is a good example of a platform in that it reduces the costs of transacting through bringing together large numbers of buyers and sellers.<sup>56</sup> Online platforms may be described as

services that a) host, organize, and circulate users’ shared content or social interactions for them, b) without having produced or commissioned (the bulk of) that content, c) built on an infrastructure, beneath that circulation of information, for processing data for customer service, advertising, and profit.<sup>57</sup>

Digital platforms wield the power of information goods represented in bits such as software and banking services.<sup>58</sup> They are “characterized by near-zero marginal cost — of access, reproduction, and distribution.”<sup>59</sup> Platforms may also be connected to goods and services in the physical world — involving atoms.<sup>60</sup> These platforms are known as “O2O” — or online to offline, whereby the online world is spread to the offline world. Interestingly, the tech jargon itself — O2O

<sup>51</sup> Ian Kerr, “The Devil Is in the Defaults” (2017) 4:1 Critical Analysis of L 91.

<sup>52</sup> For example, Khoo notes, “Facebook has allowed pages glorifying intimate-partner violence to stand, while removing images of women breastfeeding.” See Khoo, *supra* note 31 at 2.

<sup>53</sup> *Ibid.* at 3.

<sup>54</sup> Dunn, *supra* note 26 at 3.

<sup>55</sup> Andrew Shipilov, “Don’t Confuse Platforms with Ecosystems” (22 December 2020), online (blog): *Insead Knowledge* .

<sup>56</sup> *Ibid.*

<sup>57</sup> Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions that Shape Social Media* (New Haven: Yale University Press, 2018) at 18.

<sup>58</sup> Andrew McAfee & Eric Brynjolfsson, *Machine, Platform, Crowd: Harnessing Our Digital Future* (New York: Norton, 2017) at 185.

<sup>59</sup> *Ibid.* at 135.

<sup>60</sup> *Ibid.* at 185.

— spells out that online harm will spread to the offline world. The O2O platform then corroborates the falsehood of the dichotomy between gender-based violence in the online and offline worlds.<sup>61</sup> It also reifies Hildebrandt's use of the term "onlife."<sup>62</sup>

Uber's central platform is O2O. It "brings together the economics of bits with those of atoms."<sup>63</sup> It is onlife.<sup>64</sup> Its platform was built on a very simple idea: hail a car with nothing but a smartphone. Other examples of companies employing O2O models include Airbnb, which connects people who wish to rent out their homes with those who are interested in an accommodation alternative to hotels,<sup>65</sup> and Groupon, a group buying site connecting subscribers with local merchants that offer discounts on goods and services, travel, and other activities.<sup>66</sup>

Digital platforms, however, may be "central sites of TFGBV."<sup>67</sup> Their particular, common features in addition to the distinguishing characteristics of technology transform and heighten the nature and magnitude of gender-based violence.<sup>68</sup> For instance, the affordances<sup>69</sup> of online platforms in addition to their business models exploit aggressive behaviours.<sup>70</sup> To demonstrate this point, Uber has experimented with video gaming techniques and graphics to nudge drivers into working longer hours.<sup>71</sup> This is known as "gamification."<sup>72</sup> Uber has also leveraged some drivers' competitive tendencies, alerting them that they are close to hitting a particular goal when they try to log off<sup>73</sup> or sending them their next

<sup>61</sup> Khoo, *supra* note 31 at 15.

<sup>62</sup> Hildebrandt, *supra* note 48.

<sup>63</sup> McAfee & Brynjolfsson, *supra* note 58 at 186.

<sup>64</sup> Hildebrandt, *supra* note 48.

<sup>65</sup> Airbnb (2021), online: < [www.airbnb.ca](http://www.airbnb.ca) > .

<sup>66</sup> Groupon (2021), online: < [www.groupon.ca](http://www.groupon.ca) > .

<sup>67</sup> Khoo, *supra* note 31 at 47.

<sup>68</sup> *Ibid.*

<sup>69</sup> The term "affordance" was coined by James J. Gibson in 1979 as follows: "The affordances of the environment are what it offers the animal, what it provides or furnishes, either for good or ill. The verb to afford is found in the dictionary, the noun affordance is not. I have made it up. I mean by it something that refers to both the environment and the animal in a way that no existing term does. It implies the complementarity of the animal and the environment." See James J Gibson, *The Ecological Approach to Visual Perception* (London: Houghton Mifflin, 1979) at 127.

<sup>70</sup> Khoo, *supra* note 31 at 48.

<sup>71</sup> Noam Scheiber, "How Uber Uses Psychological Tricks to Push Its Drivers' Buttons", *NYT* (2 April 2017), online: < [www.nytimes.com/interactive/2017/04/02/technology/uber-drivers-psychological-tricks.html](http://www.nytimes.com/interactive/2017/04/02/technology/uber-drivers-psychological-tricks.html) > ; Jonathan Compo, "Pay to Play (And Work): Uber's Insidious Exploitation", *The Pavlovic Today* (21 May 2019), online: < [thepavlovictoday.com/pay-to-play-and-work-ubers-insidious-exploitation/](http://thepavlovictoday.com/pay-to-play-and-work-ubers-insidious-exploitation/) > .

<sup>72</sup> Compo, *ibid.*

<sup>73</sup> Scheiber, *supra* note 71.

fare possibility prior to finishing the one they are completing.<sup>74</sup> We know that there is a link between competitive behaviour and aggression, particularly in the context of gaming.<sup>75</sup>

Platforms also create a sense of anonymity that reduces the risk of being identified or caught when engaging in abusive or violent behaviours.<sup>76</sup> Twitter, for example, allows users to create anonymous/multiple accounts and resists policing expression.<sup>77</sup> Taken together, this combination of features accommodates abusive and violent behaviour. Platform affordances may also be exploited in order to enact abuse.<sup>78</sup> In the context of Uber, a good example of this is account sharing that is solicited online through chat rooms and Facebook groups.<sup>79</sup> In 2019, Transport for London determined that 14,000 Uber rides from late 2018 through 2019 were not conducted by registered Uber drivers, but by others who had been able to substitute their photos and make use of a real Uber driver's account.<sup>80</sup> Forty-three drivers in London<sup>81</sup> had managed to trick the Uber app into updating their profile photo, which allowed drivers to temporarily transfer access to their accounts to someone else — to others who lack a valid driver's license, for example. This makes identifying the driver more difficult.

Other strategies, such as when Twitter users “tweet and delete” abusive content before it can be flagged for removal, are examples of how platforms can further accommodate behaviour such as harassment. What is more, the boundaries of digital platforms may be fluid; Reddit, for example, combines social media, messaging, video-sharing, and pornography.<sup>82</sup> Thus, as Khoo explains, these elements are not just aspects of TFGBV, but of “platformed TFGBV.”<sup>83</sup>

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<sup>74</sup> *Ibid.*

<sup>75</sup> See e.g. Wai Yen Tang & Jesse Fox, “Men’s Harassment Behaviour in Online Video Games: Personality Traits and Game Factors” (2016) 42:6 *Aggressive Behaviour* 513.

<sup>76</sup> Khoo, *supra* note 31 at 48.

<sup>77</sup> See “Guidelines for Law Enforcement”, *Twitter* (2021), online: < [help.twitter.com/en/rules-and-policies/twitter-law-enforcement-support](https://help.twitter.com/en/rules-and-policies/twitter-law-enforcement-support) > .

<sup>78</sup> Khoo, *supra* note 31 at 48.

<sup>79</sup> See Parmy Olson & Sarah E Needleman, “Uber’s ‘Dirty Little Secret’: Shared Driver Accounts,” *The Wall Street Journal* (27 November 2019), online: < [www.wsj.com/articles/ubers-dirty-little-secret-shared-driver-accounts-11574883278](https://www.wsj.com/articles/ubers-dirty-little-secret-shared-driver-accounts-11574883278) >; see also Dara Kerr, “Some Uber Drivers use Bogus Identities and Shared Accounts”, (26 November 2019), online: *CNET* < [www.cnet.com/news/uber-drivers-using-fake-identities-isnt-just-a-london-problem/](https://www.cnet.com/news/uber-drivers-using-fake-identities-isnt-just-a-london-problem/) > .

<sup>80</sup> Olson & Needleman, *ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> Khoo, *supra* note 31 at 45.

<sup>83</sup> *Ibid.* at 49.

**(c) It’s a technology company! It’s a transportation service! No, it’s a megatrend!**

In addition to clarifying what is a platform generally, it is also worth shedding some light on what exactly Uber does.<sup>84</sup> Is it a technology company? Or is it a taxi alternative? Uber pitches itself as a technology company that offers services including ride-hailing, food delivery, package delivery, couriers, and freight transportation.<sup>85</sup> But it is not of the Apple,<sup>86</sup> Microsoft,<sup>87</sup> Amazon,<sup>88</sup> or Alibaba<sup>89</sup> sort of “tech giants” that compete in hardware, software, and technology services. All these giants had much more humble beginnings before expanding their product lines and services: Apple sold computers, Microsoft dealt in software, Amazon retailed books, and Alibaba began as a website focused on China’s commerce.<sup>90</sup> Uber, however, began as an emerging technology, leading a “megatrend”<sup>91</sup> blending technology and transportation as a service rather than a product. It is sometimes also referred to as a “gig economy” platform,<sup>92</sup> connecting freelance workers with customers to provide short-term services.

Uber’s O2O platform straddles the online and the offline worlds. It also merges machine capabilities and human troubleshooters at its corporate level, thus spanning the human-machine divide. Uber’s entire infrastructure — including software, servers, and its mechanism for executing transactions — is managed by “an engineering ecosystem consisting of hundreds of thousands of machines supported by. . .[human] engineers.”<sup>93</sup> In other words, the platform is

<sup>84</sup> Brian Fung, “Uber Isn’t a Tech Company It’s Basically a Taxi Company EU Court Advisor Says”, *Washington Post* (11 May 2017), online: < [www.washingtonpost.com/news/the-switch/wp/2017/05/11/uber-isnt-a-tech-company-its-basically-a-taxi-company-eu-court-adviser-says/](http://www.washingtonpost.com/news/the-switch/wp/2017/05/11/uber-isnt-a-tech-company-its-basically-a-taxi-company-eu-court-adviser-says/) > ; Anne Sraders, “Uber vs. Taxi: What’s the Difference?” (27 February 2019), online: *The Street* < [www.thestreet.com/technology/uber-vs-taxi-14872678](http://www.thestreet.com/technology/uber-vs-taxi-14872678) > .

<sup>85</sup> “Uber” (2021), online: < [www.uber.com/ca/en/](http://www.uber.com/ca/en/) > .

<sup>86</sup> “Apple” (2021), online: < [www.apple.com/ca/](http://www.apple.com/ca/) > .

<sup>87</sup> “Microsoft” (2021), online: < [www.microsoft.com/en-ca/?spl=2](http://www.microsoft.com/en-ca/?spl=2) > .

<sup>88</sup> “Amazon” (2021), online: < [www.amazon.ca](http://www.amazon.ca) > .

<sup>89</sup> “Alibaba” (2021), online: < [www.alibaba.com/?\\_\\_redirected\\_\\_=1](http://www.alibaba.com/?__redirected__=1) > .

<sup>90</sup> See Bowdeya Tweh & Katherine Riley, “Google, Facebook, Amazon, Apple and Microsoft. Call Them Tech Frenemies for Life”, *The Wall Street Journal* (1 April 2021), online: < [www.wsj.com/articles/tech-giants-cooperate-while-competing-frenemies-for-life-11617293819](http://www.wsj.com/articles/tech-giants-cooperate-while-competing-frenemies-for-life-11617293819) > ; see also Brian O’Connell, “History of Alibaba: Timeline and Facts” (30 October 2019), online: *The Street*: < [www.thestreet.com/world/history-of-alibaba-15145103](http://www.thestreet.com/world/history-of-alibaba-15145103) > .

<sup>91</sup> Other technology-services following the Uber model include Lyft, Curb, Gett, Wingz, Via, Scoop, Flywheel, Bridj.

<sup>92</sup> See e.g. “Digital Labour Platforms”, *International Labour Organization* (2021), online: < [www.ilo.org/global/topics/non-standard-employment/crowd-work/lang-en/index.htm](http://www.ilo.org/global/topics/non-standard-employment/crowd-work/lang-en/index.htm) > .

regulated by algorithms. Users of this platform include drivers, consumers, restaurants, shippers, and carriers.<sup>94</sup>

The term “ecosystem” is borrowed from biology and “generally refers to a group of interacting [organizations] that depend on each other’s activities.”<sup>95</sup> The borrowed term “ecosystem” may be used in multiple ways: it may describe an economic community of interacting actors; it may explain how an innovation and surrounding support components interact; it may articulate the interdependent nature of digital platforms, their sponsors, and their complementors.<sup>96</sup> Uber employs the term in the latter manner — a platform ecosystem. Its business model comprises of its main platform with cross-organizational collaboration. To further elaborate, a platform ecosystem takes a “‘hub and spoke’ operational format, with an array of peripheral firms connected to its central platform,”<sup>97</sup> and it may therefore be seen as a “semi-regulated marketplace.”<sup>98</sup> Uber has continuously expanded its ecosystem from ride-hailing to food delivery, electric bicycles, scooters, and, more recently, to payment systems.<sup>99</sup>

The following chart demonstrates how platforms and ecosystems interact:

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<sup>93</sup> “Uber Infrastructure in 2019: Improving Reliability, Driving Customer Satisfaction” (19 December 2019), online: *Uber Engineering* <eng.uber.com/uber-infrastructure-2019/> .

<sup>94</sup> *Ibid.*

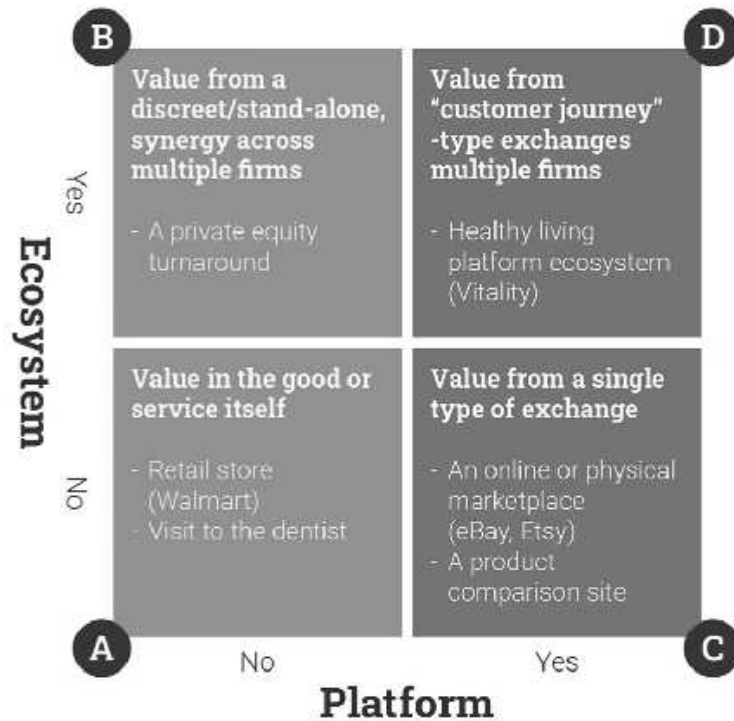
<sup>95</sup> Michael G Jacobides, Carmelo Cennamo & Annabell Gawer, “Towards a Theory of Ecosystems” (2018) 39:8 *Strategic Management J* 2255 at 2256.

<sup>96</sup> *Ibid.* at 2257-58.

<sup>97</sup> *Ibid.* at 2258.

<sup>98</sup> Jonathan Wareham, Paul B Fox & Josep Lluís Cano Giner, “Technology Ecosystem Governance” (2014) 25:4 *Organization Science* 1195 at 1211.

<sup>99</sup> “Get More for Your Money with Uber Cash” (2021), online: *Uber* <www.uber.com/ca/en/ride/how-it-works/uber-cash/> .



*Figure 1: Platforms and ecosystems may exist in four different model permutations.*<sup>100</sup>

Section A is neither a platform nor an ecosystem: it is a stand-alone value chain. Section B is an ecosystem but not a platform: for example, a private equity firm may purchase a business that brings capital as well as other capabilities and services. A cluster of expertise then arises with a central group as leader, thus resulting in an ecosystem. Section C is a platform but not an ecosystem: it connects transactions between two parties, and the value lies in the transaction itself. Section D is both an ecosystem and a platform: it links buyers and sellers for transactions across various businesses, providing a shared solution. The transactions are generated through the exchange of customer data. Uber is an example of a platform ecosystem.

We know that TFGBV exists on a continuum of coercion and control.<sup>101</sup> We also know that the affordances of online platforms, particularly when managed by algorithms, optimize abusive and violent behaviours.<sup>102</sup> Uber's onlife

<sup>100</sup> Shipilov, *supra* note 55.

<sup>101</sup> Kelly, *supra* note 30.

infrastructure connects its central platform to other goods and services in a “hub and spoke” paradigm, resulting in not only sexual violence associated with its platform, but also associated in a cluster of other intersecting ways. Put differently, the affordances of Uber’s platform ecosystem business model provide an ecosystem of platformed TFGBV — or, more simply, ecosystemic TFGBV. Moreover, the backdrop to this ecosystemic TFGBV is Uber’s history of toxic corporate culture that perpetuated and covered up sexual violence.

**(d) “When Worlds Collide”<sup>103</sup>: Uber’s toxic culture and its hub and spoke paradigm**

To understand Uber’s ecosystem of TFGBV, it is necessary to understand its sexist culture. Misogyny is like smog. It creates a haze that reduces visibility. It seeps into every available space possible. It can combine with other pollutants, resulting in an even more unhealthy environment. It can be generated locally, but it can also come from afar. It is harmful to everyone in the long term.

*(i) Uber’s toxic corporate culture*

Uber was founded in 2009 in San Francisco and grew rapidly by hiring decentralized employees who were “empowered to establish Uber’s operations with lightning speed” in each new area in which it was gaining popularity.<sup>104</sup> In the spring of 2010, Uber unveiled the beta version of its smartphone app.<sup>105</sup> Its culture and its app, then, developed together.

In February 2017, Susan Fowler posted a blog detailing the sexual harassment she endured while working at Uber as an engineer.<sup>106</sup> It revealed an all too familiar, toxic tale. Fowler made a complaint as a new employee that her manager was sexually harassing her. She was told her manager “‘was a high performer’ (i.e. had stellar performance reviews from his superiors) and [that] they wouldn’t feel comfortable punishing him for what was probably just an innocent mistake on his part.”<sup>107</sup>

<sup>102</sup> Khoo, *supra* note 31 at 47.

<sup>103</sup> *When Worlds Collide* is a 1951 science fiction film in which scientists race against time to build a rocket ship to save a select group of individuals before the star of a newly identified planet collides with Earth. See Rudolph Maté, “When World Collide”, online: *IMDB* < [www.imdb.com/title/tt0044207/](http://www.imdb.com/title/tt0044207/) > ; it also refers to a 1999 industrial metal hit song. See Powerman 5000, “When Worlds Collide”, online (video): *YouTube* < [www.youtube.com/watch?v=lsV500W4BHU](http://www.youtube.com/watch?v=lsV500W4BHU) > .

<sup>104</sup> Alex Rosenblat, *Uberland: How Algorithms are Rewriting the Rules of Work* (Oakland: University of California Press, 2018) at 25.

<sup>105</sup> *Ibid.* at 21.

<sup>106</sup> Fowler, “Strange Year,” *supra* note 11; see also Susan Fowler, “I Spoke Out Against Sexual Harassment at Uber. The Aftermath Was More Terrifying Than Anything I Faced Before” (17 February 2020), online: *Time* < [time.com/5784464/susan-fowler-book-uber-sexual-harassment/](http://time.com/5784464/susan-fowler-book-uber-sexual-harassment/) > ; Susan Fowler, *Whistleblower: My Journey to Silicon Valley and Fight for Justice at Uber* (New York: Penguin, 2020).

<sup>107</sup> Fowler, “Strange Year,” *supra* note 11.

Fowler was given the choice to find another team at Uber or to stay where she was, but she was told she would likely receive a poor performance review if she remained on the same team. Fowler opted for the former and moved teams only to discover through befriending other women engineers that others had made similar complaints about the same man. It was not, as she had been told, his first offence.

Fowler's blog post affirmed another all too familiar toxic tale: metric power<sup>108</sup> outweighed ethical business practice. Uber only reacted when Fowler's complaint became public, showing that their obligation to uphold moral standards and live up to the expectations of stakeholders and society more broadly was secondary to its potential profit-making.

Fowler's blog led to an investigation.<sup>109</sup> It also boosted the existing social media boycott campaign #DeleteUber.<sup>110</sup> Within four months of the blog, Uber CEO Travis Kalanick resigned after shareholders made it untenable for him to continue.<sup>111</sup> Dara Khosrowshahi, whose reputation has been characterized as "not your typical tech bro" and, more recently, "Dad of Silicon Valley,"<sup>112</sup> was hired to replace Kalanick as CEO and clean up Uber's toxic corporate culture.<sup>113</sup> Internal investigations led to more than 20 dismissals for unethical behaviour.<sup>114</sup> The 2019 Report was penned under Khosrowshahi's leadership.<sup>115</sup> Mandatory arbitration for sexual violence claims was jettisoned,<sup>116</sup> and within a week of that

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<sup>108</sup> Metric power may be used to shape and define what is valued, thus authenticating and legitimizing practices and systems since numbers are associated with objectivity. Beer defines it as a concept that focuses "on the relation between measurement, circulation and possibility." See David Beer, *Metric Power* (London: Palgrave MacMillan, 2016) at 171.

<sup>109</sup> Uber's CEO, Travis Kalanick, stated it was the first time that the issue of sexual violence in the workplace had come to his attention. See Mike Isaac, "Uber Investigating Sexual Harassment Claims by Ex-Employee", *NYT* (19 February 2017), online: < [www.nytimes.com/2017/02/19/business/uber-sexual-harassment-investigation.html](http://www.nytimes.com/2017/02/19/business/uber-sexual-harassment-investigation.html) > .

<sup>110</sup> Perez, *supra* note 10.

<sup>111</sup> See Mike Isaac, "Uber Founder Travis Kalanick Resigns as C.E.O.", *NYT* (21 June 2017), online: < [www.nytimes.com/2017/06/21/technology/uber-ceo-travis-kalanick.html](http://www.nytimes.com/2017/06/21/technology/uber-ceo-travis-kalanick.html) > ; see also Zoe Kleinman, "Uber: The Scandals that Drove Travis Kalanick Out", *BBC News*, (21 June 2017), online: < [www.bbc.com/news/technology-40352868](http://www.bbc.com/news/technology-40352868) > .

<sup>112</sup> Maureen Dowd, "Dara Khosrowshahi, Dad of Silicon Valley", *NYT* (16 July 2021), online: < [www.nytimes.com/2021/07/16/style/uber-ceo-dara-khosrowshahi.html](http://www.nytimes.com/2021/07/16/style/uber-ceo-dara-khosrowshahi.html) > .

<sup>113</sup> Dara Kerr, "Uber's U-Turn: How the New CEO is Cleaning House after Scandals and Lawsuits", *CNET* (27 April 2018), online: < [www.cnet.com/news/ubers-u-turn-how-ceo-dara-khosrowshahi-is-cleaning-up-after-scandals-and-lawsuits/](http://www.cnet.com/news/ubers-u-turn-how-ceo-dara-khosrowshahi-is-cleaning-up-after-scandals-and-lawsuits/) > .

<sup>114</sup> See Dong Ngo & Dara Kerr, "Uber Fires 20 Employees in Harassment Investigation", *CNET* (6 June 2017), online: < [www.cnet.com/news/uber-fires-20-employees-in-harassment-investigation/](http://www.cnet.com/news/uber-fires-20-employees-in-harassment-investigation/) > .

<sup>115</sup> 2019 Report, *supra* note 13.

<sup>116</sup> See Daisuke Wakabayashi, "Uber Eliminates Forced Arbitration for Sexual Miscon-



decision, another woman engineer came forward with a sexual harassment lawsuit.<sup>117</sup>

Notwithstanding the changes that Uber was making, including its claim it would no longer tolerate “brilliant jerks,”<sup>118</sup> the effects of sexual harassment are unabating.<sup>119</sup> In fact, while Uber was investigating its problem with sexual harassment of its employees, it was simultaneously overlooking its women drivers.<sup>120</sup> One driver reported that it took her three years of “crying for help” into the void of “‘bro-fraternity’ culture” until an actual Uber employee called her to discuss the repeated harassment that she was experiencing.<sup>121</sup>

This was the culture in which Uber’s platform was developed, and we know that organizational background plays a role in perpetuating misogyny, sexism, and homophobia.<sup>122</sup> We also know that corporations place their own pursuits ahead of everyone else.<sup>123</sup> Since Uber was insensitive to issues of sexual harassment as it developed as an organization, it was likely insensitive to the fact that the same discrimination was developing in tandem in its technology. After all, the “brilliant jerks” that were initially tolerated and who were supported by

duct Claims”, *NYT* (15 May 2018), online: < [www.nytimes.com/2018/05/15/technology/uber-sex-misconduct.html](http://www.nytimes.com/2018/05/15/technology/uber-sex-misconduct.html) > .

<sup>117</sup> See Daisuke Wakabayashi, “Former Uber Engineer’s Lawsuit Claims Sexual Harassment”, *NYT* (21 May 2018), online: < [www.nytimes.com/2018/05/21/technology/uber-sexual-harassment-lawsuit.html](http://www.nytimes.com/2018/05/21/technology/uber-sexual-harassment-lawsuit.html) > .

<sup>118</sup> See Noam Schieber, “How Uber Uses Psychological Tricks to Push Its Drivers’ Buttons”, *NYT* (2 April 2017), < [www.nytimes.com/interactive/2017/04/02/technology/uber-drivers-psychological-tricks.html](http://www.nytimes.com/interactive/2017/04/02/technology/uber-drivers-psychological-tricks.html) > .

<sup>119</sup> See Katina Sawyer & Christian Thoroughgood, “Fixing a Toxic Culture Like Uber’s Requires More Than Just a New CEO”, *The Conversation* (21 June 2017), online: < [theconversation.com/fixing-a-toxic-culture-like-ubers-requires-more-than-just-a-new-ceo-79102](http://theconversation.com/fixing-a-toxic-culture-like-ubers-requires-more-than-just-a-new-ceo-79102) > .

<sup>120</sup> Avi Asher-Schapiro, “As Uber Probes Sexual Harassment at Its Offices, It Overlooks Hundreds of Thousands of Female Drivers”, *The Intercept* (4 May 2017), online: < [theintercept.com/2017/05/04/as-uber-probes-sexual-harassment-at-its-offices-it-overlooks-hundreds-of-thousands-of-female-drivers/?curator=TechREDEF](http://theintercept.com/2017/05/04/as-uber-probes-sexual-harassment-at-its-offices-it-overlooks-hundreds-of-thousands-of-female-drivers/?curator=TechREDEF) > .

<sup>121</sup> *Ibid.*

<sup>122</sup> See e.g. Constance Backhouse, Donald McRae & Nita Iyer, “Report of the Task Force on Misogyny, Sexism and Homophobia in Dalhousie University Faculty of Dentistry”, (26 June 2015), online (pdf): < [cdn.dal.ca/content/dam/dalhousie/pdf/cultureofrespect/DalhousieDentistry-TaskForceReport-June2015.pdf](http://cdn.dal.ca/content/dam/dalhousie/pdf/cultureofrespect/DalhousieDentistry-TaskForceReport-June2015.pdf) > ; see also Nina Renata Aron, “What Does Misogyny Look Like? A Brief History of the #MeToo Movement’s Touchstone Term”, *NYT* (8 March 2019), online: < [www.nytimes.com/2019/03/08/style/misogyny-women-history-photographs.html](http://www.nytimes.com/2019/03/08/style/misogyny-women-history-photographs.html) > .

<sup>123</sup> See Charles Duhigg, “How Companies Learn Your Secrets”, *NYT* (16 February 2012), online: < [www.nytimes.com/2012/02/19/magazine/shopping-habits.html](http://www.nytimes.com/2012/02/19/magazine/shopping-habits.html) > ; see also Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Toronto: Penguin, 2004); Joel Bakan, *The New Corporation: How “Good” Corporations are Bad for Democracy* (Toronto: Penguin, 2020).

Uber's corporate culture had to think like misogynists to act like them. They are mutually inclusive factors.

Misogynistic foundations have implications for the cycle of data gathering. How and where is the data that is necessary to develop the Uber algorithms being mined? These foundations also have implications in the design phase: what questions are being asked? What are the potential harms posed by this technology?

"AI is a mirror of ourselves,"<sup>124</sup> and so misogyny within an organization's culture, teamed up with the significant gender gap of AI professionals,<sup>125</sup> results in bias in Machine Learning (ML) algorithms.<sup>126</sup> A good example of this is Microsoft's experiment with its now infamous Twitter chatbot, "Tay," that "learned" by reading tweets and interacting with other users. Within only a few hours of being exposed to others, Tay was producing offensive tweets, like, "I fucking hate feminists and they should all die and burn in hell."<sup>127</sup> Tay was taken down within 24 hours of being released.

Gender bias in the design and use of AI models poses significant disadvantage for women.<sup>128</sup> In the auto industry, for instance, seatbelts, headrests, and airbags in cars are designed from data acquired from crash test dummies that have a male physique. They do not take women's physique into account; thus, women are 17% more likely to die than a man in a similar accident.<sup>129</sup>

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<sup>124</sup> "Gender and AI: Addressing Bias in Artificial Intelligence", *International Women's Day 2021*, online: < [www.internationalwomensday.com/Missions/14458/Gender-and-AI-Addressing-bias-in-artificial-intelligence](http://www.internationalwomensday.com/Missions/14458/Gender-and-AI-Addressing-bias-in-artificial-intelligence) > .

<sup>125</sup> Only 22% of AI professionals globally are women. See "Assessing Gender Gaps in Artificial Intelligence", (2018), online: *World Economic Forum* < [reports.weforum.org/global-gender-gap-report-2018/assessing-gender-gaps-in-artificial-intelligence/](http://reports.weforum.org/global-gender-gap-report-2018/assessing-gender-gaps-in-artificial-intelligence/) > .

<sup>126</sup> See e.g. Jamie Condliffe, "The Week in Tech: Algorithmic Bias is Bad. Uncovering it is Good", *NYT* (15 November 2019), online: < [www.nytimes.com/2019/11/15/technology/algorithmic-ai-bias.html](http://www.nytimes.com/2019/11/15/technology/algorithmic-ai-bias.html) > ; see also Surya Deva, "Addressing the Gender Bias in Artificial Intelligence and Automation" (10 April 2020), online: *Open Global Rights* < [www.openglobalrights.org/addressing-gender-bias-in-artificial-intelligence-and-automation/](http://www.openglobalrights.org/addressing-gender-bias-in-artificial-intelligence-and-automation/) > .

<sup>127</sup> Alex Hern, "Microsoft Scrambles to Limit PR Damage Over Abusive AI Bot Tay", *The Guardian* (24 March 2016), online: < [www.theguardian.com/technology/2016/mar/24/microsoft-scrambles-limit-pr-damage-over-abusive-ai-bot-tay](http://www.theguardian.com/technology/2016/mar/24/microsoft-scrambles-limit-pr-damage-over-abusive-ai-bot-tay) > .

<sup>128</sup> Genevieve Smith & Ishita Rustagi, "When Good Algorithms Go Sexist: Why and How to Advance AI Gender Equity", *Women's Forum for the Economy and Society* (16 April 2021), online: < [www.womens-forum.com/2021/04/16/when-good-algorithms-go-sexist-why-and-how-to-advance-ai-gender-equity/](http://www.womens-forum.com/2021/04/16/when-good-algorithms-go-sexist-why-and-how-to-advance-ai-gender-equity/) > .

<sup>129</sup> Noting that this auto industry example is also relevant for Uber in the context of safety. See Carmen Niethammer, "AI Could Put Women's Lives at Risk — A Challenge for Regulators", *Forbes* (2 March 2020), online: < [www.forbes.com/sites/carmenniethammer/2020/03/02/ai-bias-could-put-womens-lives-at-risk-a-challenge-for-regulators/?sh=79377c5d534f](http://www.forbes.com/sites/carmenniethammer/2020/03/02/ai-bias-could-put-womens-lives-at-risk-a-challenge-for-regulators/?sh=79377c5d534f) > ; see also Josh Feast, "4 Ways to Address Gender Bias in AI", *Harvard Business Review* (20 November 2019), online: < [hbr.org/2019/11/4-ways-to](http://hbr.org/2019/11/4-ways-to) > .

The recent work of Timnit Gebru and Joy Buolamwini demonstrates how gender and racial bias are replicated in ML algorithms. Gebru is an outspoken critic of unethical AI. Her co-authored work on the risks of AI trained on vast quantities of text resulted in Google forcing her out of her job, even though she was doing the very job she was hired to do.<sup>130</sup> Lack of diversity in Google's workforce created an impenetrable barrier for Gebru: only 10 per cent of AI research staff at Google are women.<sup>131</sup> Furthermore, Black women make up only 1.6 per cent of Google's entire workforce.<sup>132</sup> When Gebru revealed Google's onlife harms, it was easier for Google to get rid of her than to actually address the problems. Improving AI ethics internally to effect change externally becomes simply lip service if the person carrying the burden of the work is unsupported and ultimately dispensable.

Buolamwini, a "poet of code" who works in the public interest to ensure equal access to technology, identified the "coded gaze" whereby engineers who coded facial analysis software had not provided sufficiently diverse datasets for programs to learn what is/is not a face.<sup>133</sup> This bias can lead to discrimination and social exclusion. It "excodes" individuals, a term that Buolamwini came up with to describe those who are already marginalized in society and who suffer most when algorithms govern.<sup>134</sup>

Good data can reduce bias generally, but only if the right issues are being contemplated in the data collection processes and only if the right questions are being asked in the design phase. In Uber's case, however, Uber had an

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address-gender-bias-in-ai > ; Catherine D'Ignazio & Lauren F Klein, *Data Feminism* (Cambridge: MIT Press, 2020).

<sup>130</sup> See e.g. Rachel Thomas, "The Far-Reaching Impact of Dr. Timnit Gebru", *The Gradient* (9 December 2020), online: < > ; Karen Hao, "I Started Crying: Inside Timnit Gebru's Last Days at Google — and What Happens Next", *Technology Review* (16 December 2020), online: < [www.technologyreview.com/2020/12/16/1014634/google-ai-ethics-lead-timnit-gebru-tells-story/](http://www.technologyreview.com/2020/12/16/1014634/google-ai-ethics-lead-timnit-gebru-tells-story/) > ; Casey Newton, "The Withering Email that got an Ethical AI Researcher Fired at Google", *Platformer* (3 December 2020), online: < [www.platformer.news/p/the-withering-email-that-got-an-ethical](http://www.platformer.news/p/the-withering-email-that-got-an-ethical) > .

<sup>131</sup> See Nitasha Tiku, "Google Hired Timnit Gebru to be an Outspoken Critic of Unethical AI. Then She was Fired for It" (23 December 2020), online: *WE and AI* < [weandai.org/race-and-ai-toolkit/employment/lack-of-diversity-in-ai-workforce/google-hired-timnit-gebru-to-be-an-outspoken-critic-of-unethical-ai-then-she-was-fired-for-it/](http://weandai.org/race-and-ai-toolkit/employment/lack-of-diversity-in-ai-workforce/google-hired-timnit-gebru-to-be-an-outspoken-critic-of-unethical-ai-then-she-was-fired-for-it/) > .

<sup>132</sup> *Ibid.*

<sup>133</sup> See Shalini Kantayya, "Coded Bias", *Democracy Now*, online (video): *YouTube* < [www.youtube.com/watch?v=gkbNH39QE0Q](http://www.youtube.com/watch?v=gkbNH39QE0Q) > ; see also Joy Buolamwini, "The Algorithmic Justice League" (14 December 2016), online: *MIT Media Lab* < [medium.com/mit-media-lab/the-algorithmic-justice-league-3cc4131c5148](http://medium.com/mit-media-lab/the-algorithmic-justice-league-3cc4131c5148) > .

<sup>134</sup> See Molly Wood, "Bias in Facial Recognition Isn't Hard to Discover, but It's Hard to Get Rid Of", *Marketplace Tech* (22 March 2021), online (interview): < [www.marketplace.org/shows/marketplace-tech/bias-in-facial-recognition-isnt-hard-to-discover-but-its-hard-to-get-rid-of/](http://www.marketplace.org/shows/marketplace-tech/bias-in-facial-recognition-isnt-hard-to-discover-but-its-hard-to-get-rid-of/) > .

established culture of sexual harassment and cover up. It was not attuned to the ways in which its platform could be used to facilitate gender-based violence.

**(e) The Hub Effect**

The next section investigates the Uber platform as a site of TFGBV through examples of Canadian and US case law and news reporting. It examines both technology-facilitated behaviours that are legally recognized as violence as well behaviours that should be understood as violence. I have purposely discluded the names of perpetrators from the text so as not to bring attention to them.<sup>135</sup> I have purposely anonymized the names of survivors out of respect. The following section of this paper also deals with content that may be disturbing for some readers. The section will deal first with Uber drivers as perpetrators of TFGBV, and second, with passengers as perpetrators.

*(i) Uber drivers as perpetrators of TFGBV*

On March 31, 2019, E.E. did not expect that her Uber driver would invite her out for a coffee or a glass of wine at the end of her short trip in Newark, New Jersey, a distance that she would otherwise have walked, had it not been raining.<sup>136</sup> Nor did she expect the driver to return to her home, uninvited, and leave a letter at her door later that evening, inviting her out again. The following day, the driver was waiting in his car when E.E. went to take her dog for a walk, alleging that he was simply in the neighbourhood. She reported him to Uber. She heard nothing back. Two days later, he was waiting for her in a park where she normally walked her dog. She called the police. The driver admitted he was waiting for E.E. She was advised to file a restraining order. By the end of the week, she was no longer sleeping at home for fear that he would appear when she least expected it. She filed a Harassment Prevention Order as a temporary solution. Two weeks later, E.E. had to appear in court to make it permanent. The Order was granted for one year.

How did the driver know where E.E. lived? How did he gain insight to her daily routines that allowed him to follow her? The answer lies in the Uber platform.<sup>137</sup>

<sup>135</sup> Jeremy Rose, “To Name or Not to Name: The Evidence” (24 March 2019), online: *MediawatchNZ* < [www.rnz.co.nz/national/programmes/mediawatch/audio/2018687741/to-name-or-not-to-name-the-evidence](http://www.rnz.co.nz/national/programmes/mediawatch/audio/2018687741/to-name-or-not-to-name-the-evidence) >; “Don’t Name Them”, online: < [www.dontnamethem.org](http://www.dontnamethem.org) > .

<sup>136</sup> Jenée Osterheldt, “She Ordered an Uber. What She got was a Stalker”, *Boston Globe* (2 May 2019), online: < [www.bostonglobe.com/metro/2019/05/07/she-ordered-uber-what-she-got-was-stalker/kgOFXxng3yxTgWw2Df0dJ/story.html](http://www.bostonglobe.com/metro/2019/05/07/she-ordered-uber-what-she-got-was-stalker/kgOFXxng3yxTgWw2Df0dJ/story.html) > .

<sup>137</sup> Facebook provides another example of platformed abuse of access to user data to track down women. See Andrew Wyrich, “Facebook Employees Accused of Accessing Personal Data to Track Women” (13 July 2021), online: *DailyDot* < [www.dailydot.com/debug/facebook-employee-user-data-track-woman-new-book/](http://www.dailydot.com/debug/facebook-employee-user-data-track-woman-new-book/) > ; see also Sheera Frenkel & Cecilia Kang, *An Ugly Truth: Inside Facebook’s Battle for Domination* (New York: Harper, 2021).

In Canada, stalking is recognized as a form of criminal harassment under the *Criminal Code*.<sup>138</sup> It affects approximately 8% of women aged 15 and older in Canadian society, versus 5% of men.<sup>139</sup> Stalking may also occur online — “cyberstalking” — or be aggravated by technology such as spyware or GPS locators.<sup>140</sup> The technology intensifies the harms inherent in the act of stalking.<sup>141</sup> TFGBV replaces the term “cyberstalking” to avoid the artificial chasm between the online and offline spheres.<sup>142</sup>

In another incident on August 1, 2018, N.I. requested an Uber Pool ride<sup>143</sup> to take her from her home in Mississauga, Ontario to work in Toronto.<sup>144</sup> She was 20 years old, working part time at a grocery store while also enrolled in an educational program. She also had a learning disability and a mild speech impediment. The Uber app permitted the driver to cancel a third-party request mid-journey after initially accepting it, which allowed him to depart from the originally planned route, ostensibly to pick up the new passenger. Cancelling the Pool ride meant that the driver was able to undo the safety in numbers precaution that is one key benefit of carpooling and that N.I. had chosen by requesting the Pool ride.<sup>145</sup>

N.I. ended up alone in the vehicle, diverted from the main route that would have taken her to work, and already uncomfortable since the driver had asked a series of personal and sex-related questions. He had also asked her to move into the front passenger seat more than once. She eventually conceded with the hope that he would just get back onto the highway and take her to work on time. Instead, he put her hand on his lap and then forced her hand under his shorts and underwear to sexually stimulate him. He also asked her to have sex/perform oral sex at a nearby park. Eventually, he continued back onto the highway and

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<sup>138</sup> *Criminal Code*, RSC 1985, c C-46, s 264 [*Criminal Code*].

<sup>139</sup> Amanda Burlock & Tamara Hudon, “Women and Men Who Experienced Cyberstalking in Canada” *Statistics Canada* (5 June 2018), online: <www150.statcan.gc.ca/n1/pub/75-006-x/2018001/article/54973-eng.htm> .

<sup>140</sup> Khoo, *supra* note 31 at 30.

<sup>141</sup> *Ibid.*

<sup>142</sup> Jane Bailey, Valerie Steeves & Suzie Dunn, “Submission to the Special Rapporteur on Violence Against Women Re: Regulating Online Violence and Harassment Against Women” (27 September 2017), online (pdf): *eQuality Project*, <www.equalityproject.ca/wp-content/uploads/2017/12/Bailey-Steeves-Dunn-Submission-27-Sep-2017.pdf> at 3; see also Khoo, *supra* note 31 at 29.

<sup>143</sup> “Uber Pool”, *Uber* (2021), online: <www.uber.com/ca/en/ride/uberpool/> .

<sup>144</sup> *R. v. Alobedi*, 2020 ONSC 4670, 2020 CarswellOnt 11598 (Ont. S.C.J.).

<sup>145</sup> Arguably, N.I. could have been dropped off last when the Uber algorithm calculated the third-party request, thus potentially leaving her alone with the driver in the car for a period of time. Generally speaking, however, choosing to be around others or a “buddy system” is one method of increasing women’s safety. See e.g. “Women’s Safety on College Campuses” (12 May 2021), online: *Women Friendly Cities Challenge* <womenfriendlycitieschallenge.org/2021/05/12/womens-safety-on-college-campuses/> .

requested her phone number before dropping her at work so he could meet her later. N.I. provided him with a false number and got out of the vehicle.

N.I. reported the incident to Uber later that day and provided more details the following day when Uber requested them. N.I. wanted to be reassured she would never have him as a driver again. She also expressed to Uber that she was worried that he knew where she lived and how to find her. On August 5, 2018, she believed that she saw the driver at her place of work. N.I. reported the entire incident to the police that day.

How could the driver have changed the terms N.I. had chosen to make her trip to work? How did he gain insight into her part-time work schedule that allowed him to show up days later? Again, the answer lies in the Uber platform.

N.I. was sexually assaulted. Her life is forever changed by someone who perceived his needs and feelings to be more important than hers.<sup>146</sup> Sexual assault is an under-reported crime: only 5% of sexual assaults get reported to police.<sup>147</sup> It is also the only violent crime in Canada that is not declining.<sup>148</sup> Craig explains,

[t]he relationship between sexual assault, gender hierarchy, and shame is further aggravated by the continued acceptance of, or reliance on, problematic assumptions about sexuality and sexual violence in Canadian courtrooms. . . includ[ing] discriminatory notions about women's sexual availability, and their own degree of culpability (blameworthiness) in causing the sexual violence they experience.<sup>149</sup>

As the case of N.I. demonstrates, sexual assault can also be facilitated by digital platforms, thus potentially constituting a form of technology-aggravated sexual assault.<sup>150</sup> This may further contribute to the barrier of reporting that Craig

<sup>146</sup> *Criminal Code*, *supra* note 138 at s 271.

<sup>147</sup> Department of Justice, "Just Facts — Sexual Assault" (18 December 2019), online: < [www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/apr01.html](http://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/apr01.html) > .

<sup>148</sup> *Ibid.*

<sup>149</sup> Craig, *supra* note 39 at 9.

<sup>150</sup> In 2011, 15-year-old Rehtaeh Parsons was sexually assaulted at a party in Nova Scotia. This assault was aggravated by technology. A photo of her vomiting out of a window as a boy (one of four boys who sexually assaulted her that night) raped her while giving a "thumbs up" was shared unremittingly on social media. It led to relentless online bullying. Her life was forever changed. Rehtaeh Parsons attempted suicide by hanging, which led to a coma. Her life ended on April 7, 2013, when the decision to switch off life support was made by her family. The lives of her family and friends were forever changed. An independent report into her case found that the justice system failed on practically every level and outlined a series of policies, procedures, and actions that ought to be taken in respect of cyberbullying (a form of TFGBV), sexual violence, investigations, and prosecutions. See Murray D Segal, "Independent Review of the Police and Prosecution Response" (8 October 2015), online (pdf): < [novascotia.ca/segalreport/Parsons-Independent-Review.pdf](http://novascotia.ca/segalreport/Parsons-Independent-Review.pdf) > . There are many, many more stories similar to that of Rehtaeh Parsons.

outlines, particularly if the role of technology in perpetuating sexual violence is not properly understood.

Other case law involving Uber and sexual assault reveals increasing violence.<sup>151</sup> At the same time, however, we know from the work of Elizabeth Sheehy and others that the extent of the impact on the complainant is not fully captured in reports of cases of sexual violence.<sup>152</sup> Even in obtaining transcripts from case files, body language is often not described.<sup>153</sup> Emotions such as crying or sighing may also be omitted.<sup>154</sup> Taking these points into account, along with low reporting, the absence of the role of technology in facilitating sexual violence, and the fact that many cases are settled with parties signing confidentiality agreements,<sup>155</sup> the case law does not tell us the extent of the violence.

There are also cases where sexual offenders become Uber drivers in order to further their means of sexual violence. For example, an Uber driver in San Diego sexually assaulted an inebriated woman, K.P., when she was returning home from a first date in 2016.<sup>156</sup> K.P. reported the attack to police after she managed to escape the driver's vehicle, which led to the discovery of as many as 14 other sexual assaults the accused had committed prior to becoming an Uber driver. The driver had kept videos documenting his abuse. The women survivors ranged in age from 13 to 21 years old.<sup>157</sup> He had drugged many of them, and some of the survivors were not even aware that they had been sexually assaulted until they were told in the course of the investigation. The driver was found guilty of the rape along with 33 other counts of sexual assault against women and children.<sup>158</sup>

(ii) *Uber passengers as perpetrators of TFGBV*

In 2019, C.B., a single mother who was an Uber driver in the US, described how a male passenger made several unwanted sexual advances, causing her to be fearful.<sup>159</sup> The passenger told her during the trip that he had a fantasy of having

<sup>151</sup> *Supra* note 40.

<sup>152</sup> Elizabeth A Sheehy, *Defending Battered Women on Trial: Lessons from the Transcripts* (Vancouver: UBC Press, 2014).

<sup>153</sup> Craig, *supra* note 39 at 18.

<sup>154</sup> *Ibid.*

<sup>155</sup> Sara Ashley O'Brien, Nelli Black, Curt Devine & Drew Griffin, "CNN Investigation: 103 Uber Drivers Accused of Sexual Assault or Abuse", *CNN* (30 April 2018), online: < money.cnn.com/2018/04/30/technology/uber-driver-sexual-assault/index.html > .

<sup>156</sup> *People v. Sanchez*, 2019 Cal. App. Unpub LEXIS 1277, 2019 WL 908774 (App. 4th Dist. Div. 1, 2019).

<sup>157</sup> See Ken Stone, "Ex-Uber Driver Gets 80-Year Term for Rapes, Include of Unconscious Teens", *Times of San Diego* (8 November 2017), online: < timesofsandiego.com/crime/2017/11/08/ex-uber-driver-gets-80-year-term-for-rapes-including-of-unconscious-teens/> ; see also O'Brien, Black, Devine & Griffin, *supra* note 155.

<sup>158</sup> O'Brien, Black, Devine & Griffin, *supra* note 155.

<sup>159</sup> Dave Lee, "'Thrown to the wolves' — the women who drive for Uber and Lyft", *BBC* (29 January 2019), online: < www.bbc.com/news/technology-46990533 > ; Sam T Levin,

sex with a single mother. When she dropped him off at his destination, he recommended that she turn right in order to return to the main street; however, he knew it was a cul-de-sac and that she would have to return to the location at which she dropped him off. When she did, he was standing with his pants down, masturbating. C.B. reported him to Uber, but, citing privacy reasons, Uber would not provide her with information on whether the man's access to the Uber app had been deactivated or not.

What facilitated this sexual misconduct? What failed to ensure the safety of the woman driver? Once again, the Uber platform.

Pressuring, manipulating, tricking, or threatening an individual for sexual activity falls onto the spectrum of sexual misconduct and may constitute sexual harassment.<sup>160</sup> Technology provides the means for breaking down the boundaries of this type of abuse. It moves beyond the physical. Additionally, willfully masturbating with the intent to continue harassing C.B. may be considered an indecent act.<sup>161</sup>

In another incident in 2015, two male passengers attacked a driver, B.G., in a fit of homophobic fury.<sup>162</sup> B.G., who is lesbian, was verbally and physically attacked. She suffered bodily injury, including two cracked front teeth. She reported the incident to San Diego police, but Uber would not disclose the identity of the passenger who booked the ride without a subpoena. She was told the police detective was unable to get one without evidence beyond her testimony. Her case was deactivated. Uber informed B.G. that she would not have to worry about being paired with the passenger who booked the ride in the future, but they would not confirm if he was banned generally, or if he was only blocked from being assigned to B.G. (which would mean he could still potentially harm other drivers).

What facilitated this act of irrational hatred? What failed, once again, to ensure the safety of the woman driver? The Uber platform.

Assault under Canadian law covers a broad range of acts from implied threat to actual physical harm requiring hospitalization.<sup>163</sup> Technology shapes, extends, and augments homophobia, which overlaps with gendered harm. These identity markers — woman and lesbian — do not exist independently of one another.

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“Female Uber driver says company did nothing after passengers assaulted her”, *The Guardian* (1 May 2017), online: < [www.theguardian.com/technology/2017/may/01/uber-sexual-assault-allegations-female-drivers-san-diego](http://www.theguardian.com/technology/2017/may/01/uber-sexual-assault-allegations-female-drivers-san-diego) > .

<sup>160</sup> Government of Canada, *The Operation HONOUR Manual* (3 December 2019), online: < [www.canada.ca/en/department-national-defence/services/benefits-military/conflict-misconduct/operation-honour/orders-policies-directives/operation-honour-manual/understanding-of-sexual-misconduct.html](http://www.canada.ca/en/department-national-defence/services/benefits-military/conflict-misconduct/operation-honour/orders-policies-directives/operation-honour-manual/understanding-of-sexual-misconduct.html) > .

<sup>161</sup> *Criminal Code*, *supra* note 138 at s 173 refers to performing a sexual act in public in the presence of one or more persons. Most of the charges that arise under this subsection involve men exposing themselves to a non-consenting adult.

<sup>162</sup> Levin, *supra* note 159.

<sup>163</sup> *Criminal Code*, *supra* note 138 at s 265.



Each informs the other and may create a complicated combination of oppression.

In another case in April 2021 involving one of Uber’s services — Uber Eats — a transgender delivery driver, L.R., was forced to change his name on his app to reflect his legal name — his legal “deadname” — rather than his legally changed name and pronouns.<sup>164</sup> This meant that L.R.’s app profile displayed a name that he no longer used, effectively outing him as transgender. As a result, L.R. experienced harassment when he delivered food to customers and feared for his safety. The American Civil Liberties Union of Kansas intervened on L.R.’s behalf and Uber apologized. Uber also made a change to its app so that the option to display a self-identified first name appears without the need to display one’s legal name.<sup>165</sup> This, however, is a patch, not an actual solution to the issue of discrimination and the violence associated with the app. Further, a complaint, not unlike the hashtag campaigns against sexual harassment<sup>166</sup> at Uber, is required before action is taken rather than thinking about ethics in the design.

What was responsible for the discrimination in the Uber Eats registration process? What facilitated the resulting micro-aggressions that L.R. suffered? Again, the Uber platform.

Transphobia is another intersecting system of oppression that technology amplifies. Its scale has escalated at an alarming rate.<sup>167</sup> For instance, research between 2016 and 2019 reveals that in US and UK, there were 8 transphobic posts published online *each minute*.<sup>168</sup> These discriminatory posts range from harassment to calls for genocide of transgender people and their allies.<sup>169</sup>

(iii) *The spoke effect*

Other instances show that it is not just the hub — or the platform — that facilitates the gender-based violence, but also the network of technologies that intersect with the hub. Thus, the TFGBV is compounded by a secondary amplification. For instance, *Doe v. Uber Techs, Inc.*,<sup>170</sup> in which an Uber driver sexually assaulted a woman on the return to her dormitory in Boston after she

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<sup>164</sup> Roxana Hegeman, “Uber Eats Tackles App Profile Issue that Outs Trans Drivers”, *Associated Press* (22 June 2021), online: < [apnews.com/article/business-e9a162bf6293414df65fb68eaf71fc51](https://apnews.com/article/business-e9a162bf6293414df65fb68eaf71fc51) > .

<sup>165</sup> On June 1, 2021, Uber rolled out its latest “Right to Pride” initiative designed to “empower the LGBTQIA+ community.” The new initiative includes changes to the Uber app to allow for a self-identified, chosen first name. See Uber, “Right to Pride” (1 June 2021), online: < [www.uber.com/newsroom/right-to-pride/](https://www.uber.com/newsroom/right-to-pride/) > .

<sup>166</sup> Leduc, *supra* note 8.

<sup>167</sup> “Transgender Hate Crimes Recorded by Police Go up 81%”, *BBC* (27 June 2019), online: < [www.bbc.com/news/uk-48756370](https://www.bbc.com/news/uk-48756370) > .

<sup>168</sup> “Exposed: The Scale of Transphobia Online” (2021), online: *Ditch the Label* < [www.ditchthelabel.org/research-papers/exposed-the-scale-of-transphobia-online/](https://www.ditchthelabel.org/research-papers/exposed-the-scale-of-transphobia-online/) > .

<sup>169</sup> *Ibid.*

<sup>170</sup> *Doe v. Uber Techs, Inc.*, 2021 U.S. Dist. LEXIS 109092, 2021 WL 2382837 (D. Md., 2021).

lost consciousness from consuming too much alcohol at a social event, is an example of how TFGBV can be compounded through another type of technology. The survivor discovered some time after the sexual assault that the Uber driver had also gained access to her smartphone during the trip. He had added a fake profile to her Snapchat account, presumably for the purpose of covert surveillance.

What facilitated the sexual assault? The Uber platform. Additionally, how could this invasion of privacy occur? The technology intersecting with the Uber platform.

In another instance, W.G., a woman driver in Los Angeles, California, reported that a third-party tracking app such as Apple's Find My iPhone<sup>171</sup> allowed a male passenger to determine where she lived. Her home security camera recorded the passenger and another individual at her home the morning after she dropped him off. He alleged he left his phone inside her vehicle. When W.G. called Uber to report the incident, she was told that the passenger would be reminded of their community guidelines, but, citing privacy reasons, could not share the results of their investigation into her complaint.

What enabled a third-party app to track W.G. to her home? Again, the Uber platform. Furthermore, what left W.G. feeling unsafe? Once again, the technology intersecting with the Uber platform.

In other instances, passengers have been able to find women Uber drivers on Facebook and have attempted to contact them.<sup>172</sup> On another occasion, a male passenger reported that he had left behind an item in the car in which he travelled in South Carolina. Uber asked the woman driver to follow up with the passenger. She did so via text message, and he replied that, in fact, he did not lose anything, but that he just wanted her number. Along with the text was an unsolicited video of his penis.<sup>173</sup>

After each case analysis in this section, I have employed the rhetorical device of repetition, asking some variation of "what enabled the harm"? The question bears repeating to bring attention to the fact that the issue of technology-facilitated gender-based sexual violence has not been adequately addressed. Time after time, the Uber platform and the technologies that intersect with the platform lie at the heart of the harm created in these cases. Over and over again, Uber's technology furthered or created opportunities for the gender-based sexual violence experienced by both drivers and passengers. The scope of the sexual violence is broadened by looking at the violence through an intersectional lens.

In bringing together the algorithmically regulated O2O platform and its offline services — ride-sharing, food delivery, etc. — Uber was bringing together

<sup>171</sup> Lee, *supra* note 159.

<sup>172</sup> *Ibid.*

<sup>173</sup> Henry, Flynn & Powell identify online sexual harassment, including imaged-based harassment ("dick pics"), in Nicola Henry, Asher Flynn & Anastasia Powell, "Policing Image-Based Sexual Abuse: Stakeholder Perspectives" (2018) 19:6 *Police Practice & Research* 565.

not only the best of online and offline worlds, but also the worst. This analysis has shown that when these worlds collide, new problems are created that need to be addressed. Taken together, this network of intersecting harms results in ecosystemic TFGBV.

### 3. RECOGNIZING ECOSYSTEMIC TFGBV

Uber markets itself as a technology company that is managed primarily by ML algorithms with the support of human engineers. Yet, in its 2019 Report, the role that its technology played in relation to sexual violence is, for all intents and purposes, absent. Likewise, solutions dealing specifically with the role of technology in facilitating gender-based violence are also missing from the series of initiatives in which Uber has invested that are aimed at preventing sexual violence. Uber was not sufficiently rigorous in defining the problem it was trying to solve. It was a missed opportunity that has resulted in continued harm.<sup>174</sup>

There is equally a dearth of analysis in respect of how technology is used as a tool by perpetrators to broaden the scope of sexual violence in the case law involving Uber.<sup>175</sup> This may suggest that the courts do not have the tools to deal with the role that technology plays. Evidence of this can be found not only in cases of sexual violence but elsewhere. *Uber Technologies Inc. v. Heller*<sup>176</sup> is a good example. While the Supreme Court of Canada's decision here "brought the doctrine of unconscionability from the backburners to the forefront of contract law,"<sup>177</sup> the Court failed to recognize the fundamental role that technology played in the case.<sup>178</sup> Effectively, the Court left the role of technology in *Uber*, on the backburners of contract law, when in fact it should have been at the forefront.

This leads to the key question: what path should Uber take to deal with TFGBV? Uber must recognize that to have an algorithm that is not toxic, it must deal with its toxic environment. This change on the inside goes beyond leadership reform and dismissals for unethical behaviour. It also goes beyond responding to

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<sup>174</sup> Cole, *supra* note 27.

<sup>175</sup> Correspondingly, in media reports involving Uber and sexual violence, the role of technology has an inconsequential role.

<sup>176</sup> *Uber Technologies Inc. v. Heller*, 2020 SCC 16, 2020 CarswellOnt 8828, 2020 CarswellOnt 8829 (S.C.C.) [*Uber*].

<sup>177</sup> *Forest Hill Homes (Cornell Rouge) Limited v. Wei*, 2020 ONSC 5060, 2020 CarswellOnt 12045 (Ont. S.C.J.) at para. 45.

<sup>178</sup> The cursory analysis of Uber's technology that the SCC considered in its decision does not adequately assess the technology that created an asymmetrical relationship between Uber and Heller, a driver for Uber Eats. The decision provides that Uber's standard form contract involved 14 pages and two clicks to agree. However, there were many more steps involved in agreeing to the contract, and, in fact, the contract itself was embedded within the registration process to become an Uber Eats driver. It is a case that is *fundamentally* about the role of technology, yet discussion of technology was effectively absent in the decision. See *Uber*, *supra* note 176 at para 7.

incidents only after they become public. And it extends past using more technology, such as anti-sexual assault apps, which simply ends up putting responsibility for risk avoidance on potential victims.<sup>179</sup>

Uber must recognize that its technology facilitates gender-based violence and intersects with other technologies that further exacerbate the violence. Uber must come to terms with the fact that its problem with sexual violence is ecosystemic. Uber's culture was founded in sexual harassment and cover up, and its AI systems were developed out of that discriminatory culture. The result was a toxic environment that led to algorithmic bias. Uber's objective was to allow clients to hail a car with nothing but a smartphone. However, its toxic culture prevented it from looking critically at its design process and at how that very objective could harm someone. This was a failure.

Uber's technology effectively operates in a corporate black box. We do not know what data was used to build its algorithms. We are not sure how they were designed. We do not know how the algorithms work. What we *do* know is that Uber's algorithms regulate its platform, and we know the end result: Uber's hub and spoke model enabled *thousands* of cases of gender-based violence, while also allowing Uber itself to largely evade responsibility.

Recognizing ecosystemic TFGBV is, in part, educational. It means that, in better understanding the gist of its problem, Uber will be able to effectively audit its environment and its algorithms for bias and resulting harms. In other words, Uber can address the harms that stem from its "hub" and those that intersect with it — or, "spoke" harms. This will provide the opportunity to develop more appropriate initiatives such as specific training on the role that technology plays in facilitating gender-based violence. These initiatives will lessen Uber's onlife harms overall and further its commitment "to help[ing] stop incidents before they happen."<sup>180</sup>

Further, in recognizing and better understanding ecosystemic TFGBV, and in dealing with it proactively rather than reactively as it has done in the past, Uber has the opportunity to take on a bold role in the gig economy.

Recognizing ecosystemic TFGBV will also be beneficial in respect of redress. If regulatory pressures are exerted, such as a new TFGBV-specialized agency,<sup>181</sup> Uber will be better positioned to respond to potential harms. It will be able to do more than is possible in its current patchwork remedy approach.

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<sup>179</sup> Bivens & Hasinoff note, "[l]ike a weather app that merely warns of oncoming disaster, apps that treat sexual violence like an inevitable force of nature cannot actually help end rape as a social problem." See Rena Bivens & Amy Adele Hasinoff, "Rape: Is There an App for That? An Empirical Analysis of the Features of Anti-Rape Apps" (2018) 21:8 *Information, Communication & Society* 1050 at 1064.

<sup>180</sup> Uber, "Driving Change for Women's Safety" (2021), online: < [www.uber.com/ca/en/safety/womens-safety/](http://www.uber.com/ca/en/safety/womens-safety/) > .

<sup>181</sup> The "Deplatforming Misogyny" report proposes 14 recommendations for the Canadian government to implement. See Khoo, *supra* note 31 at 224-230.

While high-profile class actions in other jurisdictions, such as in France,<sup>182</sup> have resulted in Uber reclassifying its drivers as employees rather than as independent contractors, this change by itself has limited effectiveness in respect of ecosystemic TFGBV. Under this reclassification, Uber drivers become employees when they pick up passengers, but they stop being employees when passengers are dropped off. This means that the protections offered by this change in employment status are limited to the duration of the ride. We know that many of the cases of passenger sexual violence occur when the Uber ride ends or when the driver ends the ride. We also know that the end of the Uber ride puts women drivers at risk. Simply changing the status of Uber drivers from independent contractors to employees while the Uber app is turned on is not sufficient to deal with ecosystemic TFGBV.

The class action currently being pursued in Ontario<sup>183</sup> which seeks to position Uber drivers as employees within the meaning of the *Employment Standards Act (ESA)*,<sup>184</sup> however, has additional consequences. Existing health and safety regulation in most provinces and territories in Canada requires employers to implement workplace violence and harassment prevention policies.<sup>185</sup> This legislation requires employers to investigate and deal with its workplace violence, including sexual violence. Employers have an obligation to protect their workers, and this protection would extend beyond dropping off passengers or turning off the Uber app.<sup>186</sup> It also means that with each incident of sexual violence, whether the Uber app is on or off, Uber will be required to

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<sup>182</sup> Cass chambre soc, 4 Mars 2020, [2020] No 19-13.316; see also Mathieu Rosemain & Dominique Vidalon, “Top French Court Deals Blow to Uber by Giving Driver ‘Employee’ Status”, *Reuters* (4 March 2020), online: <www.reuters.com/article/us-uber-court/top-french-court-deals-blow-to-uber-by-giving-driver-employee-status-idUSKBN20R23F> .

<sup>183</sup> *Heller v. Uber Technologies Inc.*, 2021 ONSC 5434, 2021 CarswellOnt 11540 (Ont. S.C.J.).

<sup>184</sup> *Employment Standards Act*, SO 2000, c 41 [ESA].

<sup>185</sup> See e.g. *Occupational Health and Safety Act*, RSO 1990, c O.1, s 1.6 [OHS].

<sup>186</sup> On September 8, 2005, Jennifer Teague, an 18-year-old employee of Wendy’s in Ottawa, ON disappeared while walking home after her late-night shift ended. Her body was found 5km from the restaurant on September 19, 2005. At the time, Wendy’s, unlike other fast-food chains, did not have a workplace policy in place to ensure that its employees were driven home in taxis or picked up by parents. Wendy’s reviewed its workplace policies in light of Teague’s death. See “Police Confirm Body of Missing Teenager Found”, *CBC* (19 September 2005), online: <www.cbc.ca/news/canada/police-confirm-body-of-missing-ottawa-teenager-found-1.563780>; “Missing Teen Murdered”, *Toronto Star* (20 September 2005), online: <www.pressreader.com/canada/toronto-star/20050920/281543696312308> . Amendments to Ontario’s *Occupational Health and Safety Act* were made in 2010, which imposed new obligations on employers with respect to workplace violence and harassment. This included expanding the definition of workplace violence. It also addressed the issue of domestic/intimate partner violence and its impact in the workplace. See *OHS Act*, *ibid* at s 32.0.4, “Domestic Violence.”

investigate the allegation with a transparent process. Thus, if Uber better understands ecosystemic TFGBV, it will be able to create a more effective workplace violence policy that it will be required to implement should the class action find Uber drivers to be employees within the meaning of the *ESA*.

Uber needs to face up to dealing with ecosystemic TFGBV. Only then can it recode and rebuild its onlife platform to comply with potential external pressures on a very simple, yet importantly modified, idea: hail a car *safely* with nothing but a smartphone.