CONFRONTING CYBER-BULLYING

This book is directed to academics, educators, lawyers, and government policy makers who are concerned about addressing emerging cyber-bullying and anti-authority student expressions through the use of cell phone and Internet technologies. There is a current policy vacuum relating to the extent of educators' legal responsibilities to intervene when such expression takes place outside of school hours and off school grounds on home computers and personal cell phones. Students, teachers, and school officials are often targets of such expression. The author analyzes government and school responses to cyber-bullying that are grounded in legally positivist paradigms. Her review of a range of legal frameworks and judicial decisions from constitutional, human rights, and tort law perspectives redirects attention to legally substantive and pluralistic approaches that can help schools balance student free expression, supervision, safety, privacy, and learning.

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Confronting Cyber-Bullying

WHAT SCHOOLS NEED TO KNOW
TO CONTROL MISCONDUCT AND
AVOID LEGAL CONSEQUENCES

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I dedicate this book to my parents, Ramzan and Gulshan Dedhar, for their continued love

* * *

To my sister, Shahira Clemens, for being an exemplary mum to my gifted and beautiful nieces, Saffia and Suraya

* * *

And, last but not least, to my loving husband and children, Zahir, Farhana, and Hanif, for your patience and love always
Contents

Figures xi

Tables xiii

Preface xv

Acknowledgments xix

1 Cyber Misconduct: Who Is Lord of the Bullies? 1

Introduction 1

Peer Cyber-Bullying: A Lord of the Flies Syndrome? 3

Adults as Bullies 5

Antiauthority Cyber Expression 8

A Global Issue 12

Conclusion 13

Policy Guidelines 15

Legal Considerations 15

Tort Law 17

Constitutional Law: Freedom of Expression versus Safety and Privacy 17

Human and Civil Rights Jurisprudence: School Environment 18

2 Profile of Traditional and Cyber-Bullying 22

Introduction 22

What Is Bullying? 22

The Etymology of Bullying 24

Bullying or Teasing? 25

General Characteristics 27

Perpetrators and Targets 29

Types of Bullying 31

Changing Roles 35

Effects of Bullying 37

Bullying Today 38
| Definitions of Cyber-Bullying | 39 |
| Characteristics of Cyber-Bullying | 43 |
| Online Social Communication Tools | 45 |
| Prevalence of Sexual and Homophobic Harassment | 48 |
| Intersecting Forms of Discrimination | 52 |
| Conclusion | 52 |

3 Cyber Libel or Criminal Harassment: When Do Kids Cross the Line? 59

Introduction 59

Chinese Cultural Influences 62

Case 1: Modified Photographs of a Teacher 62

Cases 2 and 3: Piggy and Little Fat Boy 64

Case 4: Ning’s Sexual Harassment of a Teacher 64

Case 5: Internet Slander 65

Case 6: Cyber Vigilantism 66

Japan: Netto Ijime 66

Cases 1 and 2: Female Perpetrators 67

Case 3: Flaming 67

Case 4: Pornographic Novel as Libel 67

Case 5: Physical Assault as Slander 68

Cultural Considerations: Ijime and Netto Ijime 68

Gakko Ura Saito: Mobile-Bullying 69

Ijime-jisatsu (Suicide Linked to Ijime) 70

South Korea 71

India 71

Tort Law: Cyber Libel, Defamation, and Slander 74

Kids’ Perspective – Their Own Private Space 74

Case 1: Brad and His Online Friends 75

Case 2: Bram’s Bad Joke 76

Case 3: Indiana Outrage 77

Cyber Libel: The Canadian Context 78

Cyber Libel: The U.S. Context 85

Negligence, Supervision, and Malpractice 88

Tort Law, Supervision, and Risk 92

4 Student Free Expression: Do the Schoolhouse Gates Extend to Cyberspace? 99

Introduction 99

Supervision: Does School Authority Apply in Cyberspace? 100

Exploring the Cyber Forest 101

Adult Mind-Sets and the Digital Disconnect 103

The Limitations of Mind-Set 1 105
### CONTENTS

**Freedom of Expression versus Safety and Privacy**
- Constitutional Considerations  
  114
- Expression as “Material and Substantive Disruption”  
  116
- Expression as “Disruption of Basic Educational Mission”  
  118
- Nexus: Computers as School Property  
  121
- Conclusion  
  124

**5 Fostering Positive School Environments: Physical and Virtual**
- Introduction  
  127
- Gendered Influence on Cyber-Bullying  
  - Socialization  
  129
  - The Biology of Bullying  
  129
  - Gender Socialization Begins at Home  
  133
  - Female Gender Roles  
  134
  - Male Gender Roles  
  136
- Human and Civil Rights Jurisprudence: School Environment  
  140
- PEW Internet Study  
  - Gender Differences  
  142
  - The Online Rumor Mill  
  143
  - Threats against Older Girls  
  144
  - Why Teens Engage in Cyber-Bullying  
  144
  - Homophobia  
  145
- Montreal Research  
  145
- Adult Perceptions  
  148
- Opinions about Cyber-Bullying  
  148
- Are Child Protection Laws Relevant to Cyber-Bullying?  
  152

**6 Censoring Cyberspace: Can Kids Be Controlled?**
- Introduction  
  159
- Teachers Shape Law and Sometimes Impede Learning  
  - Teachers as Targets  
  161
  - What Drives the Urgency?  
  166
  - A Wall of Defense  
  167
  - Tacit Condoning of Peer-to-Peer Bullying  
  168
- Parent versus Teen Cyber-Bullying  
  170
- School Officials, School Reputations, and the “Official” Story  
  170
- The Official Story  
  173
- Selection or Censorship?  
  - Parents as Censors  
  174
  - Government Influence  
  180
- School Boards  
  181
  - Media Influence on Censorship and Positivist Laws  
  182
- Reconceptualizing Law in Cyberspace  
  186
7 The Tragedy of the Commons: Lessons for Cyberspace? 190

Introduction 190
Law: A Question of Individual (Student) Decision Making 192
Legal and Policy Responses: A Few Examples 195
Deleting Online Predators Act (DOPA; H.R. 5319, 2006) 195
Educational Use of Technologies 198
Library Support for Online Education 199
European Union 200
Council of Europe 201
Council of Europe Draft Convention on Cyber Crime (2001, June 29) 201
Europe's Information Society: Public Consultation – Safer Internet and Online Technologies for Children 201
Safer Internet Plus Program 202
Legislation in France 203
Canadian Responses 203
British Responses 205
Back to the Drawing Board 209

8 Cyber Collaboration: Models for Critical Legal Pluralism in Teacher Education Programs 212

Introduction 212
A Typology of Laws: Comprehensive Legal Frameworks 214
A Critical Legal Literacy 215
A Critical Legal Literacy Model for Teacher Education 218
Practical Solutions: Online Limitations 221
Raising Student Awareness of Censorship 226
A Concept Map: Positive School Environments 230
The Stakeholder Model 232
Poisoned Environment 233
Conclusion 243

Notes 249

Cases 259
Chapter 1 259
Chapter 2 259
Chapter 3 259
Chapter 4 260
Chapter 5 260
Chapter 6 260
Chapter 7 261
Chapter 8 261

Index 263
Figures

5.1. What is the school’s role?  
5.2. What about rights?  
6.1. Typical forms of cyber-bullying  
6.2. School’s position on cyber-bullying  
6.3. Students harassing students  
6.4. Canadian Teachers’ Federation communications technology concern resolution  
6.5. School policy  
8.1. Critical Legal Literacy Model  
8.2. Concept map incorporating critical legal literacy
Tables

3.1. Tort Law: Cyber Libel and Negligence  
4.1. Some Dimensions of Variation between the Mind-Sets  
4.2. Freedom of Expression Standards  
5.1. Experience Being Cyber-Bullied  
5.2. Would I Report It?  
5.3. Legal Standards  
6.1. Teachers on the Experience of Cyber-Bullying  
8.1. A Plurality of Legal Standards Relevant to Cyber-Bullying  
8.2. Validating Stakeholder Claims
My interest in the intersection of law and education began with my return to graduate school in Vancouver, Canada, as a mature student. I had worked at law firms for about twenty years while raising two children. As they reached their teens, I returned to university to pursue an academic career. The Centre of Education, Law and Society at Simon Fraser University, spearheaded by Professor Michael Manley-Casimir, provided an opportunity, under his mentorship and that of Dr. Roland Case, an active member of the centre, to study the range of ways in which the law (normative, legislative, and judicial) affects every aspect of school life and ultimately shapes policy decisions and educational practices resulting from those decisions.

As my children went through school, there were several incidents in which they were bullied by peers but received little intervention on the part of school administrators and teachers. This led me to study, as part of my doctoral work, the legal obligations of schools to address bullying. At that time, the Internet was not as powerful as it is now, and cyber-bullying did not exist. However, I had already learned about the challenges schools face in navigating stakeholder rights and interests relating to freedom of expression, equality, and safety. These challenges became evident during my master’s degree study of a controversial court case involving the banning of three children’s books recommended for discussion of same-sex parents in kindergarten classrooms. I learned that school officials and teachers need guidance in navigating and balancing stakeholder claims to control of knowledge, learning, and expression in school contexts.

My subsequent doctoral work on the legal obligations of schools comprised an in-depth review of tort law cases on negligence of supervision in the school context, of constitutional obligations such as equality and freedom of expression rights of children, and of human and civil rights to learn in environments free from discrimination and harassment. These pluralistic legal frameworks enabled me to develop a set of standards for bullying in schools, informed by comprehensive review of the research on the forms of bullying, its etymology and history, and its prevalence and impact, all of which provided a context for the legal frameworks.
Once I began my academic career at McGill University, expanding this research to identify a set of legal standards and responsibilities of schools to address cyber-bullying was a natural extension of my work. I secured two grants from the Social Sciences and Humanities Research Council of Canada to engage in national and international research on cyber-bullying in Canada, the United States, Japan, China, India, New Zealand, Australia, and Great Britain. The international work is just beginning, and hence only preliminary results could be reported in this book. Little did I realize when I embarked on this research, however, how complex and challenging it would become. Nor had I envisioned the amount of attention it would receive or the extent of the fear, controversy, and interest the topic would attract. Cyber-bullying is now at the forefront of many public policy debates and legislative initiatives and a focus of the media worldwide.

As technologies evolve and advance at rapid rates and children are immersed in them at increasingly younger ages – and as adolescents become proficient and comfortable with social networking sites, blogs, chat rooms, and mobile phones – many adults, whose use of computers is limited to e-mail and word processing, find themselves incapacitated and left behind – or as some would say, technologically challenged. With lack of familiarity comes discomfort. With discomfort comes fear of the unknown, and with fear of the unknown comes loss of a sense of control. This fuels the desire to regain control and power over the ways in which children learn and express themselves. Technologies place newfound power in the hands of young people, and cyberspace provides fluid, as opposed to rigid, boundaries within which to move. While young people test out their newfound spaces, parents, teachers, and school administrators confront a policy vacuum with regard to the extent they can be expected to supervise student expression and online interaction as the lines between freedom of expression, safety, privacy, and supervision become increasingly blurred.

Although most scholarly research and books on bullying focus on children’s behavior and look for ways to treat it using behavior modification techniques or positivist modes of discipline, my book addresses an important gap in the scholarship on bullying and cyber-bullying. I provide a unique perspective that directs educators, government policy makers, and legal practitioners to reconceptualize their policy responses through critical pedagogy and legally pluralistic responses that are grounded in substantive principles of law.

This book also discloses the extent and potential of cyber-bullying to spread in countries with large populations such as India and China. The international research also discloses a tendency in Asia, like the West, to adopt a punitive rather than educational approach, although a number of interesting cultural nuances are disclosed. A profile of bullying and cyber-bullying is included in Chapter 2. Chapters 3 to 5 each address a specific aspect of law relating to cyber-bullying, such as cyber libel and defamation, freedom of expression, and human rights issues, framed within a contextual discussion of the issues and presented through analysis of case studies and research. Chapter 6 considers supervision and censorship of student spaces and expression.
Chapter 7 undertakes a discussion of positivist versus legally pluralistic perspectives and highlights proposed or emerging legislation in Europe and North America to address cyber-bullying. Finally, in Chapter 8, I present teacher education and professional development models that are grounded in substantive law, legal pluralism, and critical educational pedagogies. These are alternatives to the popular reliance on disciplinary approaches that are rooted in military models. The approaches I advocate in this book lend themselves to significantly more ethical, nonarbitrary, and legally defensible policy and practice responses than do punitive responses that enhance intolerance, criminalize children, and censor useful educational technologies.

Technologies are here to stay. The behavior of young people on the Internet is simply an extension and reflection of the attitudes and forms of discrimination adults model on a regular basis in the physical world. Although disciplinary approaches that are rooted in positivist perspectives of the law might be well intentioned and seem sensible, such responses will only serve to exacerbate an already complex phenomenon. If I can convince readers that there are intelligent and thoughtful alternatives that also reside in law but are grounded in the fundamental principles of social justice and legal pluralism, I believe we will be on our way to resolving the so-called battle in cyberspace, as the issue has been defined in the media. Ultimately, it is less a question of winning a war than of developing constructive and collaborative relationships with young people that allow us all to use technologies and engage in digital literacies to gain their maximum learning and social potential.

It will be evident to readers, commencing with the opening quote in Chapter 1, that some of the examples of cyber-bullying in this book contain lewd and obscene language. It should be noted that the language in these quotations is either taken directly from fictional texts as referenced, or represents actual examples of cyber-bullying that were detailed in judicial transcripts, using the authentic language. It is important for judges to do this for the purpose of judicial analysis as set out in their reasons for judgment. I have chosen to use the authentic words no matter how lewd to illustrate their full impact on those who are victimized as a result of such expression and to be consistent with the court transcripts. The accuracy of the words used, therefore, originates in the judicial transcripts and fictional writing.

As such, I cannot take responsibility for any misquotes.

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