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978-0-521-87723-7 - Confronting Cyber-Bullying: What Schools Need to Know to Control Misconduct and Avoid Legal Consequences

Shaheen Shariff

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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.

Dr. Shaheen Shariff is an associate professor in the Faculty of Education at McGill University. Her book publications include *Censorship! . . . or . . . Selection?: Confronting a Curriculum of Orthodoxy through Pluralistic Models* and *Cyber-Bullying: Issues and Solutions for the School, the Classroom, and the Home*.

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Confronting Cyber-Bullying

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

Shaheen Shariff, Ph.D.

McGill University



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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*

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Preface

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.

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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.

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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.

Shaheen Shariff, Ph.D., Faculty of Education, McGill University

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A special thank-you to my legal research assistants; Thomas Bernard McMorro for his brilliant paper on legal pluralism and cyber-bullying; Pavel Matrosov for help with the legal citations; and Sujith Xavier, Amar Khoday, Katy Frattina, and Sarah O'Mahoney for their valuable contributions on international legislation and case law on cyber-bullying.

To my research assistants in the Faculty of Education, who have worked on both my cyber-bullying Social Science and Humanities Research Council of Canada (SSHRC) research projects, I thank you for your conscientious commitment and dedication. In particular, I thank Andrew Churchill for his leadership, enthusiasm, and intelligent insight; Tomoya Tsutsumi for his precision in encoding the data in Quebec; and Julie d'Eon, Yasuko Senoo, and Lanxu Zhang for providing the cultural insight into the Japanese and Chinese contexts, for helping me develop collaborative networks in Japan and China, and for translating the research.

I also thank SSHRC for making possible the research that went into this book and related projects. It is encouraging to have a federal government granting agency that recognizes the need for cutting-edge research on a moving target, bringing together interdisciplinary research paradigms such as law, technology, and education in an international forum. Connected with my SSHRC projects, I thank my colleagues: Professor Colin Lankshear, who was instrumental in helping me bring together my understanding of the mind-sets people adopt with respect to digital literacies, as well as Dr. Dawn Zinga, Dr. Dianne Hoff, Mr. Roderick Flynn, Dr. Roland Case, Dr. Edward Brown, Professor Motohiro Hasegawa, Mr. Wenqi Zhang, Dr. Jaishankar Karuppannan, Dr. Patricia

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Thank you to my family – Zahir, Farhana, and Hanif – for believing in what I do and for your patience, despite the fact it takes me away from you for long hours.