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SEXTING AND CYBERBULLYING

Defining the Line for Digitally Empowered Kids

Directed at policy makers, legislators, educators, parents, members of the legal community, and anyone concerned about current public policy responses to sexting and cyberbullying, this book examines the lines between unintentionally offensive online forms of expression such as jokes, sarcastic comments, and impulsive but non-consensual distribution of intimate images, and potential legal consequences. It offers an analysis of reactive versus preventive legal and educational responses to these issues using evidence-based research with digitally empowered kids.

Shaheen Shariff highlights the influence of popular and "rape culture" on the behavior of adolescents who establish sexual identities and social relationships through sexting. She argues that we need to move away from criminalizing children and toward engaging them in the policy-development process, and she observes that important lessons can be learned from constitutional and human rights frameworks. She also draws attention to the value of children's literature in helping the legal community better understand children's moral development. She highlights the need to understand assumptions about Digitally Empowered Kids (DE Kids) that can inform judicial decisions regarding children's culpability at various ages. She emphasizes the need to engage DE Kids and help them to define the line between jokes and harmful online postings that could land them in jail.

Shaheen Shariff is an Associate Professor at the Faculty of Education at McGill University, an Associate Member of the Law Faculty at McGill University, and an Affiliate Scholar at Stanford Law School's Center for Internet and Society. In 2012, she was awarded a Queen Elizabeth II Diamond Jubilee Medal for scholarship and service to Canada. Shariff is a frequent news media commentator, researcher, and policy advisor who has written extensively on the intersection of law and education, diversity, and pluralism. She has been an expert witness at the Canadian Standing Senate Committee on Human Rights and two House of Commons Committee hearings on legislative amendments involving cyberbullying. She is the author of *Confronting Cyberbullying: What Schools Need to Know to Control Misconduct and Avoid Legal Consequences* (2009) and *Cyberbullying: Issues and Solutions for the School, the Classroom, and the Home* (2008).

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Sexting and Cyberbullying

DEFINING THE LINE FOR DIGITALLY EMPOWERED KIDS

Shaheen Shariff
McGill University

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I dedicate this book to my Define the Line *family at McGill University.*

Through your commitment, each of you models and defines the lines of leadership for future generations.

Mama Bear

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Preface

This book was originally contracted to be the second edition of my earlier book with Cambridge University Press, *Confronting Cyberbullying: What Schools Need to Know to Control Misconduct and Avoid Legal Consequences,* published in 2009. It was certainly time for an update, given the continued media and public policy focus on cyberbullying. However, try as I might, I could not update the book because even though some of the issues remain the same, the modes of expression and digital media used to carry them out have evolved rapidly. That is not to say that the legal and educational dilemmas and challenges I addressed in *Confronting Cyberbullying* are not important, or that they have all been successfully resolved. In fact, the reactive responses I argued against in earlier publications continue, emerging as harsher and often misapplied laws to criminalize children's online behavior. This is a disturbing trend because in adopting reactive responses, we overlook young people's motivations and moral development, or the adult modeling and societal influences that bring out such behavior.

The face of what we broadly refer to as "cyberbullying" has also taken on a more sexually charged and insidious nature. Many news media reports and policy initiatives appear to confuse the actions of pedophiles and online child sexual predators with cyberbullying. Child pornography laws in the United States and Canada are being applied to arrest, charge, and jail adolescents who engage in sexting. However, as the research disclosed in this book illustrates, these kinds of behaviors demonstrated by adolescents are not the same thing as "child pornography." Although some forms of sexting among youth are seriously demeaning and offensive, and need to be prevented, my research finds that most young people are testing social boundaries online as their hormones rage and they attempt to establish social relationships. As one of my doctoral students, Ashley DeMartini, notes, many of these activities of sexual exploration have "moved from the back of a car [as in kissing in the back seat at a drive-in], to playing itself out over social media." The public policy spotlight has been on kids, as though they are the only ones engaging in online forms of harassment, teasing, and demeaning expressions. We should also be looking at what kinds of adult role models children have in popular culture, and the

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thriving rape culture that is increasingly perpetuated online among adults. Once again, I am concerned that we scapegoat kids for adult faults. The underpinnings of public policy are often grounded in assumptions that "kids are bad." But the fact of the matter is that we need to look at ourselves, and at the hostile, misogynist, homophobic, and racist social norms we model for our children. What can we possibly expect from future generations when they are growing up immersed in such a society? They see adult violence on the news and in movies; insulting and offensive put-downs and power plays on sitcoms, in stand-up comedy, and on reality shows; and they hear misogynist and power-driven words in music lyrics. Therefore, it is no wonder young people imitate the norms of modern society. In this book, I highlight examples and scholarship relating to some of these societal norms and their influences on children while also examining some studies on children's moral development.

In Chapter 3, I challenge the wisdom of criminalizing children using laws that are meant to protect them. I argue that we should spend more time finding and putting away pedophiles and online groups of "cappers" who are the real threat to children's safety. More so, umbrella terms, such as "cyberbullying," have resulted in shifting the blame away from the adult realm of rape culture to the turbulent, emotionally and impulsively driven attempts of young people trying to establish their social and sexual identities among peers. At their age, reputation and acceptance in a peer group are everything.

Scholars have always grappled with and debated the true definition of "cyberbullying." This is especially so because as soon as we understand one type of behavior, say, bullying on social media, there are a host of other online applications like Snapchat and Ask.fm that bring out other challenging forms of communication. I realized several years ago that trying to fit young people's online behaviors into an umbrella description, especially when they involve social exclusion, taunting, threats and harassments, and demeaning messages designed to humiliate peers or adults, is futile. Therefore I have also highlighted a range of legal responses that are grounded in constitutional, human rights, and tort law considerations that provide a better fit for these forms of expression, and that also contain an educational message.

I conclude the book with reference to ways in which children's literature can not only help us better understand how judges might apply the law in private civil actions involving defamation, but also how children's literature would be invaluable in helping children and teens define the lines between joking and teasing, especially when it concerns an act so harmful that it could result in legal or criminal liability. Children's literature would also help youths to develop empathy and their "moral underbellies" as they grapple with the challenges of growing up immersed in digital media. I have also emphasized the power of generations working together using social media that can be engaged to enhance socially responsible digital citizenship that is congruent with the substantive principles of constitutional and human rights frameworks.

Without being too legalist, I hope this book will be of interest to anyone who wants to better understand the complexities and nuances of children's online

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communication, and responses that show the greatest promise of balancing free expression and free press, safety, supervision, protection, and regulation in our digital society, while ensuring we avoid censorship, harsh punishment, and overregulation. The answers are clear – we simply need to recognize them. We need to critically question our own assumptions and those of adults who make decisions on how children's behavior ought to be addressed. This includes taking into consideration the norms, assumptions, and biases that might inform the police, prosecutors, and the judiciary – that analysis will follow in a second edition of this book. For now, I have focused on the need, once again, to concentrate our efforts on supporting, protecting, and educating children, instead of blaming and incarcerating them. With the onslaught of new laws and litigation directed at controlling children's online expression, such a focus will be essential if we want to develop future leaders, not criminals.

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