

Cyber-bullying & The Law



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What is Cyber-bullying?



- “Cyber-bullying involves the use of information and communication technologies such as e-mail, cell phone and pager text messages, instant messaging, defamatory personal Web sites, and defamatory online personal polling Web sites, to support deliberate, repeated, and hostile behaviour by an individual or group, that is intended to harm others.”
 - Bill Belsey, cyberbullying.ca

What is Cyber-bullying Cont'd



- Verbal or written
- Flaming
- Threats
- Ethno-cultural, racial, sexual or homophobic harassment
- Severity can vary

Differences from other forms of bullying



- Anonymity – protection for perpetrator
- Perpetrator cannot see the impact of their behaviour
- Continuous – can happen at any time in various settings
- Victim may not want to tell parents because don't want to lose computer or cell phone privileges

Differences Cont'd

- Infinite audience
- Faster medium
- Reproduction prolongs victimization
- Impacts direct bullying
- Individuals who would not otherwise bully may do so

Similarities to Other Types of Bullying

- Subset of indirect, relational or social bullying
- Establishment of power and control over the victim through:
 - Humiliation
 - Social exclusion
 - Damage to reputation or status in the peer group

Effect on Victim



- Feelings of being trapped or helpless
- Problems with Socialization
- Academic Performance
- Mental Health
- Externalized Problems
- Can be perceived to be as real as face-to-face situations by victims

Effect on Bully

- Moral disengagement
- Delinquency and/or substance abuse
- Bullying in other relationships
- May continue to bully as an adult
- Adult criminality

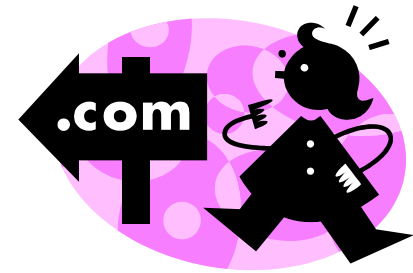


Effect on Bystanders



- Peers present in 85% of playground incidents
 - 53% passively observe
 - If peers intervene, 57% of the time they stop the incident within 10 seconds
 - Safe Schools Action Team
- No statistics for peer impact on cyber-bullying

Internet Use by Youth



*Young Canadians in a Wired World II, 2005
(YCWII):*

- 94% youth had Internet access from home
- 23% had own cell-phone
- 86% use email accounts
- 28% of grade 4's, 43% of grade 5's, and 86% of grade 11's use Instant Messaging on a daily basis

Prevalence of Cyber-bullying



- YCWW II: 34% of grades 7-11's had been bullied
 - 74% of bullying had been at school
 - 27% had been over the Internet
- OSDUS: 31% of grades 7-12's had been bullied
 - Incidence decreases as students get older

Prevalence Cont'd

Beran and Li:

- 60% had heard of incidents of cyber-harassment
- 21% had been harassed several times
- 3% had harassed

Importance of the Internet



- New and important forum for social interaction
- Majority of experiences good

Disconnect between Adults and Youth

- For adults the Internet is a practical tool
- For youth new medium with its own language

Impact on the School Environment



- Use of school computer systems
- Off-site spill over creates:
 - behavioural issues
 - social issues



Safe Schools Action Team

- Bullying, including cyber-bullying, a significant problem
- *Shaping Safer Schools – A Bullying Prevention Action Plan 2005*: bullying prevention should be a priority

Legal Implications: Outline

- Duties of Schools and Administrators
 - Statutory and Common law
- Negligence
- Discipline of Students
- Freedom of Expression
- Defamation
- Human Rights Code
- Criminal Code





Duties of Schools - Statutory

- Principals' duties:
 - Maintain proper order and discipline
 - Pay assiduous attention to the health and comfort of pupils
 - Organize and manage the school
 - Provide for supervision of pupils during the time in which the school building and property are open to the pupil
 - Report promptly any neglect of duty or infraction of the school rules by a pupil to the parent or guardian

Statutory Duties Cont'd

- Boards are responsible through the Principal for establishing and maintaining a safe supervision system for pupils

Duties of Schools – Common Law

- Duty of care owed to students
- School boards and employees are held to the standard of care of a reasonably prudent or careful parent in the circumstances (*Myers v. Peel County Board of Education* (1981), 123 S.C.R. (3d) 1)

Duties: Common Law Cont'd

- “In order to teach, school officials must provide an atmosphere that encourages learning.”
 - *R. v. M.R.M.*, [1998] 3 S.C.R. 393 at para.35
- “[A] school board has a duty to maintain a positive school environment for all persons served by it.”
 - *Ross. v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 at para. 42

Negligence

- Elements:
 - Defendant owes the plaintiff a duty of care
 - Defendant breached the standard of care
 - The breach was the proximate cause of the plaintiff's injury
 - Plaintiff suffered an actual injury or loss

Negligence Cont'd

- A nexus between the school's conduct and the student's injury
- Schools not required to constantly supervise students
- Schools will not be liable for an unforeseeable event or for unforeseeable intervening events

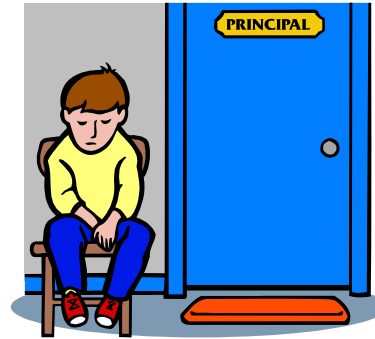
Negligence Cont'd

- Boards can be liable in negligence through vicarious liability
- School official must have been found to have acted with deliberate indifference
- School engaged in intentional or reckless conduct which shocks the conscience

Discipline of Students

- ***Education Act:***
 - **Suspension**
 - **Expulsion**
 - ***Ontario Code of Conduct***

Discipline Cont'd



- Need clear expectations of appropriate behaviour
- Impose consequences for unacceptable behaviour
- Communicate the impact of behaviour
 - Safe Schools Action Team

Discipline for Out of School Conduct

- School policies should identify cyberbullying as an infraction
- Explicitly subject to discipline
- Must impact school
 - Disruption
 - Poisoned environment

Discipline Cont'd



- Each situation must be examined on its own facts

Freedom of Expression

Charter of Rights and Freedoms

- Section 2(b) provides that everyone has the fundamental freedom of thought, belief, opinion and expression...



Freedom of Expression Cont'd

- Any limit to the right of freedom of expression must be demonstrably justified in a free and democratic society

Freedom of Expression Cont'd

- Reasonable limits on freedom of expression include:
 - Cannot propagate hate against an identifiable group
 - Cannot defame other people

Defamation

- Statement tends to harm, adversely effect or discredit the reputation of a person
 - Statement must be false
- Libel – fixed medium
- Slander – oral defamation

Defamation Cont'd

- Different characteristics of libel in cyber-bullying:
 - Dissemination
 - Reproduction
 - Anonymous
 - Information can be easily and repeatedly recalled

Shariff, *et al.*

Defences to Defamation

- Three defences to defamation:
 1. Justification
 2. Fair Comment
 3. Qualified Privilege

Defences Cont'd

1. Justification:

- Statement true
- Complete defence, even if malicious
- Must be proven on a balance of probabilities

Defences Cont'd

2. Fair comment:

- An opinion
- Based on facts that are true
- Made honestly and fairly, without malice
- Concerns a matter of public interest

Defences Cont'd

3. Qualified privilege:

- Person who made the statement has an interest or duty to communicate the information
- Recipients have a corresponding duty to receive the communication
- Information need not be true

Defences Cont'd

- Qualified privilege defeated where:
 - Dominant purpose is actual or express malice; or
 - Statement is not reasonably appropriate in the circumstances

Defences Cont'd

- Parents have the right to raise concerns and to criticize
 - Protected by qualified privilege and/or fair comment
- Legal advice should be sought on each case

Defamation Cont'd

- *Newman v. Halstead*, [2006] B.C.J. No. 59 (S.C.)
 - Action in defamation against parent by nine teachers, one retired trustee, and parent
 - Extreme case
 - Damages awarded, including punitive damages
 - Injunction granted

Human Rights Code

- Every person has the right to equal treatment with respect to services without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability (section 1).
- Education is a service.

Guidelines on Accessible Education, Ontario Human Rights Commission

- Standard for educators
- Human Rights Code applies where harassment creates a poisoned school environment

Guidelines Cont'd

- Duties of educators and schools:
 - to maintain a safe, positive, non-discriminatory learning environment
 - to take steps to educate students about human rights
 - to implement strategies to prevent discrimination and harassment;
 - to take immediate remedial action once made aware of harassing conduct

Guidelines Cont'd

- Sanctions may be imposed where:
 - Education providers harass a student
 - Education providers know or ought to know that a student is being harassed and do not take effective remedial steps
 - Access to education is impaired by poisoned educational setting

Guidelines Cont'd

- Schools can prevent incidents
 - Exhibit attitude of tolerance
 - Communicate consequences clearly
 - Educate students about disability issues
 - Educate students about the impact
 - Respect the confidentiality of students who report
- A clear, comprehensive anti-harassment policy can help promote harassment free environment

Jubran Case



North Vancouver School District No. 44 v. Jubran, [2005] B.C.J. No. 733 (C.A.)

- Student subjected to insults and harassment of a homophobic nature discriminated against by the Board on the ground of sexual orientation

Jubran Cont'd

- Board had a duty to maintain a positive school environment for all persons
- Schools have duty to educate students about human rights and implement principles to prevent harassment and discrimination

Jubran Cont'd

- Board liable for discriminatory conduct of the students because it had a duty to maintain a non-discriminatory educational environment
- Board had failed to discharge its duty to accommodate to the point of undue hardship

Jubran Cont'd

- School administration knew of bullying from grade 9:
 - Met with victim and parents more than once
 - Investigated reported incidents
 - Disciplined students involved
 - Provided and discussed Code of Conduct
 - Principal hired consultant to train staff
 - Board provided awareness resource package and workshop
 - Button-up campaign

Jubran Cont'd



- The Board had not responded in an effective way:
 - Ineffective disciplinary approach pursued
 - School staff lacked resources to adopt broader approach to deal with issues
 - Board failed to provide those resources to the school staff
 - Steps taken by staff only after complaint filed
 - Board strategy to address harassment and discrimination established after Jubran graduated

Jubran cont'd

“ In the end, the School Board had implemented the policies and procedures that could reasonably be required to create a discrimination-free school environment; its failure was in not doing so during the time Mr. Jubran could have had some relief.”

Criminal Code

- Relevant provisions:
 - Criminal harassment
 - Nuisance
 - Uttering threats
- **Police should be contacted immediately if the victim is in fear for their safety**



Criminal Code Cont'd

***R. v. DH*, [2002] B.C.J. No. 2136**

- Threat to injure someone could constitute a threat to commit bodily harm
- Actual intention to carry out the threat irrelevant
- Aggravating factors on sentencing:
 - There had been many threats and acts aggression
 - Accused had recruited others to assist in the domination

Preventing Cyber-bullying

- The keys to prevention are:
 - Awareness
 - Education



Boards should....

- **Train Staff**
- **Have Anti-bullying policies in place**
- **Create Acceptable Use Policies**



Acceptable Use Policies

- Board wide
- Extend reach of policy to home use of technology
- Involve parents
- Include consequences for students who breach policy
- Advise that contravention may result in disciplinary action up to and including expulsion

Victims Should

- Not respond
- Save as much information as possible
- Inform parent(s) or guardian(s)
- Inform school
- Inform Internet Service Provider

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