

Confronting Facebook, YouTube and MySpace: **Cyberbullying In Schools**

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In February 2007 the Robert F. Hall Catholic Secondary School located in Caledon East faced widespread publicity surrounding the use of the Internet by certain students. It started out as an opportunity for students to vent about their principal. As more and more students logged on to the popular social networking site Facebook.com, the venting became vulgar.

The postings included sexually explicit, derogatory and demeaning remarks about the principal. As a result of the cyberbullying, 11 students were suspended for up to eight days.

The school took the position that the postings violated the Dufferin-Peel Catholic District School Board's Code of Conduct. It states:

Using computer technology to communicate inappropriate, demeaning, harassing or threatening messages shall be subject to disciplinary action. Police may be contacted.

The disciplinary action taken by the school attracted considerable controversy. Some students argued that because they sent comments from home computers and away from school property, they should not have been suspended.

Welcome to the world of cyberspace where the rules are changing rapidly.

In this new age of internet technology, cyberbullying and harassment have been widespread among students from elementary to university age. For example, a group of Pickering elementary students recently apologized for posting a video on YouTube mocking a schoolmate who suffered a stroke. A 16-year-old student at Birchmount Park Collegiate Institute was recently suspended for creating a site on Facebook that targeted the school's vice-principal, using degrading and offensive language. This was part of an ongoing attempt to undermine the authority of the vice-principal.

Cyberbullying has been defined by educator Bill Belsey as the use of information and communication technologies, such as e-mail, cell phone, pager text messages, instant messaging, defamatory personal websites and defamatory online personal polling websites, to support deliberate, repeated and hostile behaviour by an individual or group, that is intended to harm others.

Cyberbullying, like other forms of bullying, is about human relationships, power and control. Bullying is a form of aggression used from a position of power. The child who bullies is attempting to use power to control and cause distress to another. The child who is victimized may become trapped in a relationship in which he or she is being abused.

Young people are increasingly communicating in ways that are often unknown by adults and away from their supervision. Cyberbullies can communicate their hurtful messages to a very wide audience with remarkable speed. Cyberbullies often do not take ownership for their actions, as it may be difficult to identify them and they do not fear being punished for their conduct.

A recent study conducted by the University of Calgary found one in four students in Grade 7 reported being a victim of cyberbullying. In her study, Professor Quing Li surveyed 177 students in two middle schools. She found that more than half (53%) of the students reported that they knew someone being harassed or intimidated online. Fifteen per cent said that they bullied others using electronic communication tools.

Professor Li reported that she did not find any significant gender gap in either the victims or perpetrators of cyberbullying. Among the 25 per cent of students who reported being victims of cyberbullying, 23 per cent had been assaulted by e-mail, 36 per cent in chat rooms, and the remaining 42 per cent by multiple sources, including cell phone text messaging.

Recent studies reveal the following facts:

- Forty-eight per cent of Canadian students spend at least an hour a day surfing the World Wide Web.
- Almost 60 per cent of Canadian students use chat rooms and instant messaging.
- Only 16 per cent of students say they talk to their parents about what they do online.

- A 2004 British Columbia study of grades 4 to 8 students found that 35 per cent of students reported that they were threatened online.

From a school perspective, this may be a particularly difficult issue as unlike physical bullying, cyber-threats are often sent anonymously and from home computers. While cyberbullying can be as devastating as traditional forms of bullying, some students will not complain for fear that adults may overreact and the students will lose their mobile phone or computer privileges. In addition, victims of cyberbullying are afraid of reporting it, as they are fearful of possible reprisals and retaliation. They are afraid that the bullying will become worse, if they report it.

The question arises as to whether and to what extent cyberbullying is outside the legal reach of schools and school boards. What steps can an educator take where online threats and harassment are brought to his or her attention? Can a principal discipline a student for conduct that takes place outside of school on home computers or mobile phones? What is the educator's standard of care? What steps can school officials take to protect a student from cyberbullying?

An Educator's Duty of Care

The common law in Canada clearly establishes that school authorities have a special duty of care towards students in their charge. This duty is imposed upon them by the unique nature of their work. Because parents are obligated to either send their children to school or provide home schooling, they are entitled to expect that schools will take reasonable measures to prevent risks of harm in the school environment.

Generally speaking, the standard of care owed by educators to students is that of a reasonably careful or prudent parent. This includes the duty to protect students from any reasonably foreseeable risk of harm.

In addition to the common law, teachers, principals and school boards have statutory duties. For example, in Ontario the *Education Act* imposes a duty on principals to maintain proper order and discipline in the school. In addition, principals have a duty to give assiduous attention to the health and comfort of pupils under their care. Under Regulation 298 the principal is in charge of the "instruction and discipline of pupils in the school" and has a duty to provide for the supervision of pupils

during the period of time during each school day when the school buildings and playgrounds are open to pupils. Regulation 298 also provides that the principal has a duty to report promptly any neglect of duty or infraction of the school rules by a pupil to the parent or guardian of the pupil.

The *Ontario Schools: Code of Conduct*, which became a policy of the Ministry of Education on September 1, 2001, establishes standards of behaviour on a province-wide basis. It provides that all students, parents, teachers and staff have:

the right to be safe, and feel safe, in their school community. With this right comes the responsibility to be law-abiding citizens and to be accountable for actions that put at risk the safety of others or oneself.

Among other things, the Code of Conduct provides that all school members must treat one another with dignity and respect at all times, and especially when there is disagreement.

The *Education Act* provides that a student will be immediately suspended for uttering a threat to inflict serious bodily harm on another person. A student will also be suspended for engaging in an activity that, under a policy of the school board, is one for which suspension is mandatory.

With respect to off-school conduct, Canadian courts have held that a school official has the right to impose school discipline for conduct that occurs off school property, where there is a sufficient nexus or connection to the school.

Where there is evidence that an online threat or intimidation by one student against another student which takes place off school premises results in a disruption in the school community, the creation of a poisonous learning environment or represents conduct that is harmful to the moral tone of the school or to the physical or mental well-being of others, there may be a sufficient nexus or link to the school to impose school discipline. Each case will be assessed based on its individual facts and circumstances. However, in order to impose school discipline, there must be sufficient evidence, after a full and thorough investigation, that the online threat or intimidation was initiated by a particular identifiable student.

Criminal Liability

It also should be recognized that some forms of cyberbullying may be criminal acts. Under the *Criminal Code*, it is a crime to communicate repeatedly with someone if your communication causes him or her to fear for his or her own safety or the safety of others. The offence of threatening death or bodily harm is set out in section 264.1 (1) (a) of the *Criminal Code*, which reads:

Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat

(a) to cause death or bodily harm to any person;

Bodily harm is defined as:

any hurt or injury to a person that interferes with the health or comfort of the person that is more than merely transient or trifling in nature.

Case law has elaborated on these sections by establishing certain principles. Bodily harm includes psychological as well as physical hurt or injury. The threat does not have to be directed at a particular person, but simply an ascertainable or identifiable group. In addition, the offence does not require that the threatener have any intention to carry out or act on the threat. Furthermore, the *Criminal Code* contains provisions intended to prevent harm caused to racial, ethnic and religious groups by hate propaganda or the promotion of hatred.

Increasingly, the criminal courts in Canada have voiced serious concern about the implications of bullying and intimidation in schools. The courts have indicated that given the increasing number of threats by young people and growing incidents of bullying, a strong message must be sent to the community that this conduct will not be condoned. The Supreme Court of Canada has said that a threat is a "tool of intimidation" which is designed to instil a sense of fear in its recipient. It has asserted that the aim and purpose of the *Criminal Code* offences is to protect against fear and intimidation.

Prevention and Early Intervention

In past years, most school boards have developed written computer and Internet acceptable use policies, which set out rules as to what activities are permitted and forbidden. It is recommended that these policies be updated to include harassment, threats or intimidation using mobile and wireless Internet information technologies. Both students and parents should sign the

acceptable use policies and there should be clear and serious consequences for anyone who does not comply with the policies.

It is important for schools to educate students, parents and teachers about the seriousness of cyberbullying. In this regard, students should be taught healthy relations strategies and communication skills. Schools should be encouraged to integrate curriculum-based anti-bullying programs into classrooms. Among other things, bullying prevention programs should encourage and reward fairness, equality, mutual respect and co-operation. Such programs should focus on improving relations among members of the school community and creating a peaceful school culture.

It can be a hurtful and difficult challenge for students and parents to deal with the effects of cyberbullying after it has occurred. It also can be trying to get Internet service providers and mobile telecommunications service providers to respond and deal with a student's complaint about being cyberbullied.

Students should be encouraged not to give out or share their personal information, cell number, e-mail address or passwords with others. Students should also be taught that if someone treats them rudely online they should not respond. In addition, they should not erase or delete messages from cyberbullies. Where there is evidence of an e-mail threat or harassment, the following information should be saved:

- e-mail addresses;
- date and time received; and
- copies of relevant e-mail with full headers.

Students should be informed that they can report an e-mail threat or harassment to their Internet service provider with the full headers displayed. The full header indicates every state of an e-mail's journey. This information can assist a support team to track down where the e-mail came from. In addition, where the conduct involves a criminal offence, such as a physical threat, the student and parents should inform their local police.

Where a school administrator is informed about an incident of cyberbullying or has reason to believe that cyberbullying involving a student has taken place, he or she should conduct a thorough investigation. Such investigation may include:

Prevention and Early Intervention (cont'd)

- Meet with the victims of the cyberbullying incident and his or her parents.
- Request copies of all relevant e-mails and/or the name of the chat room and date, time and description of the chat.
- Try to get as many details as possible.
- Explore the identity of the alleged harasser. Are there certain words or phrases in the e-mail that are used by people that the student knows?
- Ask the student if he or she knows or suspects whether there are other victims.
- Determine the history or background of events.
- Determine whether this was an isolated incident or an ongoing situation.
- Determine whether the student has any fear in coming to school.
- Ask the student to prepare a written statement of the events that have transpired.
- Interview any witnesses to the incident or other students copied on e-mails. Then interview the alleged harasser.

At the conclusion of all interviews, the school official must come to a conclusion about what actually occurred and who was at fault. As part of the investigation of cyberbullying, which took place off school premises, the school administrator must assess whether there is a sufficient nexus or link to the school to impose school discipline. The school official will consider whether there is evidence of a disturbance in the school community, the creation of a poisonous environment or conduct injurious to the moral tone of the school.

Under the provisions of the *Education Act*, an initial determination will be made by the principal. The principal will have to determine whether the incident for which suspension or expulsion is mandatory has occurred. The principal will also assess whether the incident represents a contravention of school board policy. In addition, the principal will review whether any mitigating factors come into play under either the *Suspension of a Pupil Regulation* or *Expulsion of a Pupil Regulation*.

Overall, cyberbullying represents a very serious problem for Canadian schools. School administrators have a duty, to the extent possible, to take prompt and timely action to address and respond to allegations of online intimidation or harassment. Educators should encourage students to take a strong stand against cyberbullying. It should be clear that the school's code of conduct also applies to electronic communications.

Students should be encouraged to speak out when they see someone being mean, threatening or intimidating to another person online. Students should also be encouraged to report incidents of bullying or harassment to a person they trust, such as a parent, teacher or principal. Principals should be able to access district-level support for any situation they feel is a threat to the safety of students, both inside and outside of school. Responding quickly and effectively to allegations of cyberbullying will serve to reduce a school board's legal liability and assist in the creation of a safe learning and teaching environment that promotes responsibility, respect and civility.

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