



# CYBER-BULLYING



## Public Policy, Justice and Legal Issues

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# Key Issues: Extent of Legal Obligations?



## Increasingly blurred boundaries:

- Free expression
- Privacy
- Safety
- Supervision

## When expression occurs:

- Outside school hours
- Off-campus (on personal computers and cell phones)



# Raveger



You don't know me. . .

But I know you . . .

I've been watching you at school . . .

**AND if you don't want to die . . .**

I'd sleep with one eye open . . .

**DOWN ON YOUR KNEES BITCH!!!**

Raveger, Raveger



## Policy Vacuum: What are the Gaps?

- International research on profile of cyber-bullying
- Established laws and jurisprudence
- University teacher education programs, professional development and in-service programs lagging behind;
- Insufficient attention to information literacies or inadequate use of trained resources (e.g. librarians)
- Curriculum - reform, restructuring?
- **Informed standards and guidelines for educational policy, pedagogy and practice**



## Our SSHRC Funded Research

- Researching emerging laws and policies internationally
- Reviewing jurisprudence under various legal frameworks:
  - **Constitutional:** Limits on free expression and privacy considerations in cyber-space
  - **Torts:** Cyber-libel, negligence - duty of care
  - **Human rights:** Sexual-homophobic harassment
  - **Criminal:** Can on-line threats be considered “real?”



# Two Profiles of Cyber-bullying



- Peer and Anti-authority on-line expression
- Mediums: Social networking sites, bulletin boards, blogs, chat rooms, Xangas, e-mail, cellular phones, photographic gadgets, text messaging
- Peer cb attracted less calls for banning the technologies
- Anti-authority on-line expression has resulted in calls to teachers' unions, governments to ban social networking sites or invest in more filters

# Characteristics of Cyber-bullying

- Extension of traditional bullying
- Power imbalance
- Exclusion, isolation, dehumanization, justification for harm, persistent, relentless
- Differences on-line:
- Available to infinite audience
- More permanence
- Perpetrators can hide behind screen names



# Impact on Learning

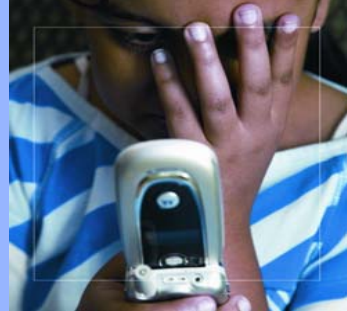


- Bullying in “virtual school environment” impacts learning in physical school setting  
= **HOSTILE SCHOOL ENVIRONMENT**
- Psychologically devastating for victims (health, drop-out, suicide, career)
- Socially detrimental for *ALL* students and educators



# Fiduciary Duty

(R. v. M.R.M. [1998] 3 S.C.R. 393)



Teachers and principals are placed in a position of trust that carries with it onerous responsibilities. When children attend school or school functions, it is they who must care for the children's safety and well-being. It is they who must carry out the fundamentally important task of teaching children so that they can function in our society and fulfill their potential. In order to teach, school officials must provide an atmosphere that encourages learning. During the school day, they must protect and teach our children.

[Note: Must provide an atmosphere that encourages learning]

[AT ISSUE: The “school day” has now become 24 hours because school-mates continue to interact from home]



# Libelous Anti-Authority Expression



## Social Networking Sites (Facebook, MySpace)

Jokes and demeaning statements about authority figures:

- Teachers described as masturbating in class;
- Principals described as pedophiles;
- Sexual orientation, hygiene, teaching styles discussed;
- Unflattering photographs with insults, defamatory statements

## Video-sites (YouTube)

- Teachers provoked, filmed on cellular phones when frustrated, posted on YouTube

# International Examples



Teacher in Foshan Guangdong found photographs of his face on:

- naked human body; body of a monkey; body of a chicken, posted on-line, in the *Foshan Daily Forum*.

The student who modified the photographs

- Claimed he did not know he had broken the law by modifying pornographic photos using Photoshop software.

Perceived his actions would be received as a joke

- Photos not meant to harm his teacher at all.
- Wanted to make his friends laugh (Zhang & Wei, 2007, July 22).



# Judicial Responses



## Anti-Authority Student Expression (American courts)

*(J.S., a Minor, v. Bethlehem Area School District (2000))*

Teacher Sux' website:

Why Fulmer should be fired

She shows of her fat f\_\_\_\_\_ legs

She's a bitch

Why should she die?

Give me \$20 to help pay for the hitman

Diagram of Mrs. Fulmer with her head cut off



# Anti-Authority Student Expression . . .



Hey you piece of greencastle shit

What the fuck do you think of me [now] that you can[‘t] control me?  
Huh?

Ha ha ha guess what I’ll wear my fucking piercings all day long and  
to school and you can[‘t] do shit about it! Ha ha fucking ha!  
Stupid Bastard!

Oh and kudos to whomever made this [I’m] pretty sure I know  
who).

Get a background. (Appellant’s application p. 69)

The next day she posted: die . . . gobert . . . die.” (Ibid., p.70).  
Separate

*A.B. v. State of Indiana*, No. 67A01-0609-JV-372, 2007 Ind. App.  
LEXIS 694 (Ind. Ct. App. Apr. 9, 2007)



. . . as opinion

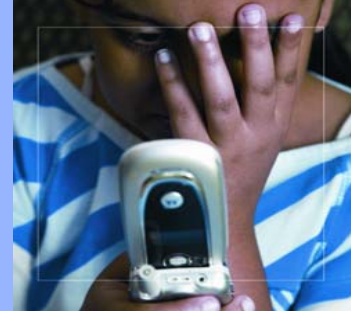


We are mindful that political expression is not shielded from all criminal liability . .

Here, the State failed to produce any evidence that A.B.'s expression inflicted particularized harm analogous to tortuous injury on readily identifiable private interests as required to rebut A.B.'s claim of political speech. Based on the evidence before us, we find that there is insufficient evidence to support that A.B.'s adjudication of harassment based on her posted message of February 15, 2006, is consistent with her right to free speech contained in Article 1, Section 9 of the Indiana Constitution. Therefore, we hold that A.B.'s conviction for harassment contravened her right to speak, as guaranteed by the Indiana Constitution. (Judgment, p.10)



# Canadian Supreme Court: Expression vs. Reputation



TEST: If an ordinary person is likely to believe the on-line comments this constitutes unfair comment, ruining reputation:

A good reputation is closely related to the innate worthiness and dignity of the individual. *It is an attribute that must, just as much as freedom of expression, be protected by society's law . . . Democracy has always recognized and cherished the fundamental importance of an individual . . .* The reputation tarnished by libel can seldom regain its former lustre. A democratic society therefore, has an interest in ensuring that its members can enjoy and protect their good reputation so long as it is merited. [Emphasis added]

*SCC: Hill v. Church of Scientology of Toronto (1995)*



# Adult Perpetrator: Anti-Authority (Halstead case)



- Libel of teachers by an adult, not a student.
- Numerous plaintiff school teachers filed lawsuit for defamation
- Community activist on matters of education through parent organizations and school bodies.
- Used e-mail and websites to accuse teachers of violence, bullying and other inappropriate behavior (both in and out of school).
- Implied some were under criminal investigation (untrue)
- Court held her accountable for libel and damages of \$626,000

*Newman et al v. Halstead (2006)*



# Students: Bram, Brad and Xiaorong



## Student perspectives:

- Right to free expression in cyber-space - private conversations
- Not directly targeting teachers/administrators therefore not bullying

## Parent perspectives (can be, or perceived to be over-protective):

- No different from traditional bullying or graffiti on washroom walls
- School had no right to intervene on home computers, private cell-phones
- Punishment too harsh e.g. if student set up website but didn't engage in bullying
- School responses - zero-tolerance as "Wall of Defence"



# Policy Considerations



- Rightly concerned about reputations, undermined authority of those demeaned and defamed through cyber-bullying or anti-authority expression;
- Believe they need to control the situation -- kids getting out of hand - need consequences
- Parents over-protective and even harassing school
- Teachers sometimes feel that administration not supporting them.

CONTENTIOUS ISSUE IS:  
**CONSEQUENCES - YES, BUT WHAT SHOULD THE  
CONSEQUENCES BE?**

# Established Legal Standards



Students don't leave rights to free expression at schoolhouse gate

## EXCEPTIONS

- *Tinker* standard: “material or substantive disruption of learning”
- *Fraser* standard: “if it interferes with the educational mission”
- *Hazelwood and Garrity*: school property
- *Morse vs. Frederick* BONG CASE - nexus to school
- Deliberately dangerous environment (*Davis vs. Munroe* US - Title IX)
- Canada - *Robichaud, Ross, Jubran* - poisoned school or work environment



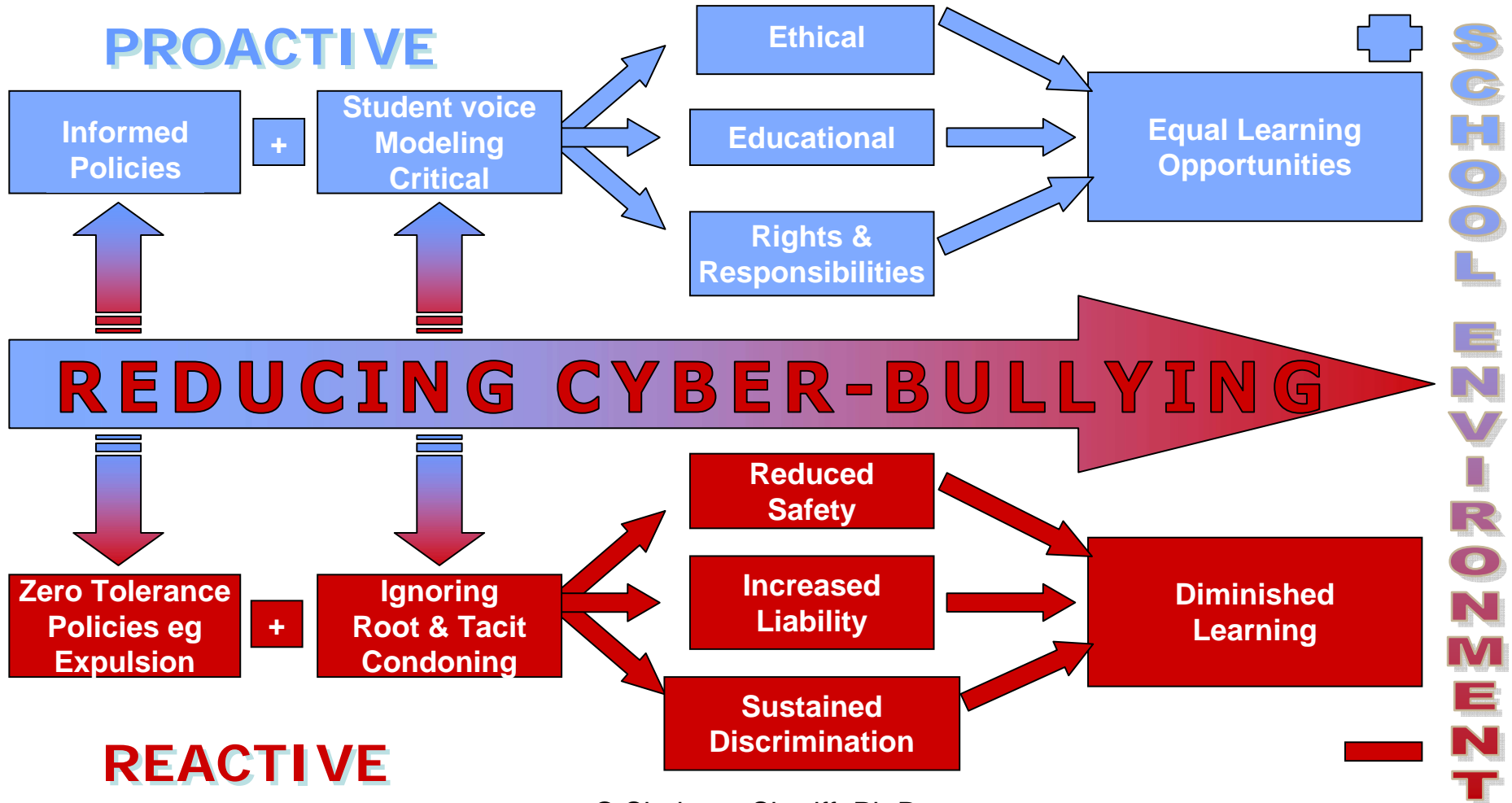
# Responses based on Fear:



## Fear of a loss of control:

- Media perpetuated fears that technologies increasingly place too much power in the hands of kids [war language]
- Perception that they need to be brought under control
- Mindset grounded in legally positivist policy responses (Zero-tolerance - suspensions, expulsions - criminal charges) - Military models
- Less attention to root societal attitudes and discrimination that fuels hostile expression - on and off-line
- Tacit condoning: Teachers pay less attention to verbal than physical (Lagerspetz et al, 2001; Glover et al, 1998)
- Popular adolescent discourse - line from friendly teasing to bullying

# Proactive Policies: Educational, Ethical & Legally Defensible



## Some Responses

- Ontario Legislation (Bill 212)
- Australia filters and results (\$89M) (hacked by student in 30 minutes)
- *Deleting Online Predators Act* (2006 - H.R.5319 - “Dopa”) and
- Alberta police - spends 60% of their time on cyber-bullying
- Germany and Quebec - calls for legislation



# Need: Policy Responses grounded in Substantive Legal Principles



- Focus on root causes of hostile on and off-line behavior and systemic attitudes grounded in discrimination - racism, sexism, homophobia, ableism, difference
- Consider established substantive law - constitutional and human rights jurisprudence
- Consider tort law aspects of educators' duty of care and balance between libel and free expression
- Recognize as symptoms of adult society which regularly models violence and discrimination



# Refocus on EDUCATION



- Review existing and emerging laws and jurisprudence to develop reasonable, informed and non-arbitrary guidelines
- Identify key stakeholders, validate and weigh claims
- Assess responsibilities and accountability
- Develop school environments (physical and virtual) conducive to learning



# Engage and Empower Youth

- To develop codes of conduct and respond to incidents
- To help educate adults on technology use
- Work through diversity and value pluralism
- Improve relevance of curriculum to young people's lived and historical experiences - Context
- Dialogue and raise awareness of impact
- Address adult mindsets on use of technologies (Lankshear & Knobel, 2007)



# What is the Objective?



- Develop capacity in young people to understand impact
- Clarify the boundaries at which teasing and horseplay cross to bullying
- And further cross the line to libel and criminal harassment;
- Empower young people and engage them to take agency and responsibility to raise awareness among peers and stand up to bullying
- MODEL RESPECT ourselves
- Engage with young people, librarians, technology experts to become “information literate” so that we can direct students to educational resources on-line



# How?



- Work creatively towards meeting our legal obligations to provide a “positive school environment” instead of a “deliberately dangerous” or “poisoned” environment as the case has sometimes been.
- Reinforce and model respect in every aspect of school curriculum (Student Engagement project examples).
- Virginia shooting - Facebook Response
- Pink Shirt Campaign
- Media Awareness Network, Citizenshift (NFB) and Educaloi all have excellent interactive websites and examples.



# Stakeholder Collaboration Essential

## WHO?

- Cohesion and coherence among teachers - administration
- Communication and dialogue with parents, transparency
- Communication and dialogue with students, transparency
- Partner with librarians - use as resources for information literacy (for teachers, students and parents) - they are trained in this
- Bring together community organizations (eg social services), academics (psychologists, criminologists, legal-academics), law enforcement personnel, technology providers, government representatives to network (NetSafe, ChildNet)



## Why won't they report it?



It is my problem not the school's (52%) and the school staff could not stop it anyway (50%). Besides the cyber-bully would find out and bully me even more (41%), not to mention my parents who would restrict my access to the internet (40%). Also other students would call me a 'rat' (41%) and my friends could get in trouble (33%). I need to learn to deal with the problem myself(33%).



# SELECTED PUBLICATIONS



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- Shariff, S. and Gouin, R. (2006). Cyber-Hierarchies: A New Arsenal of Weapons for Gendered Violence in Schools. In (Leach, F. and Mitchell, C. Eds., 2006). *Combating gender violence in and around schools*. Stoke on Trent. Trentham. 33-41.
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- Thank you to the Social Sciences and Humanities Research Council of Canada for funding this important research on international and national cyber-bullying.*