

CYBER-DILEMMAS: Gendered Hierarchies, Free Expression and Cyber-Safety in Schools.

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Introduction

Much has been written about cyberspace, both about its possibilities and the risks involved in going online. In the nineties, the Internet was touted as a space that allowed people to interact in ways that were free of prejudices because gender, race and ability were not visible. Fifteen years later, there are few people who would argue that cyberspace is free from discrimination or abuse. Consider cyber-bullying for example. This insidious form of covert, electronic bullying among adolescents is the most problematic and least studied form of emerging social cruelty in schools. The rapid transformation of communication using new technologies has created enormous dilemmas for schools.

In this paper, we explore the forms of violence that can be perpetuated online, demystifying the 'real vs. virtual' dichotomy. We address the violence that girls may experience (and engage in) during social interactions in virtual space, and discuss the repercussions of this violence in the physical school setting. Drawing on specific cases, we contend that educational policy-makers, school administrators and teachers ought to play a significantly more active role in fostering inclusive school environments, by critically assessing what they model to young people in physical school settings and in virtual space. Unfortunately, community standards for acceptable social interactions among adults in cyber-space appear to be less rigorous than those accepted face to face. Our paper highlights the need for an ontology that addresses the boundaries of student privacy, freedom of expression, school supervision and legal responsibility as educators strive to keep up with new technologies and what is expected of them. In the face of unprecedented challenges that emerge with new technologies, educators need guidance to address, accommodate, and negotiate students' social realities and education in cyber-space.

Emerging litigation suggests that parents of cyber-bullied victims are increasingly willing to sue schools for failing to protect their children from tortuous school-mates. Given that there is no clear existing ontology of cyber-space or clear standards of applicable law, we highlight a number of key concerns that ought to be addressed. Our objective is to develop guidelines for schools on educational and legally defensible approaches to addressing

cyber-bullying. First, we identify forms and conditions of cyber-bullying. We then address the hierarchies of power and institutional responses to cyber-bullying (particularly as they relate to gender discrimination on the internet). We then consider emerging and established law to suggest the most applicable legal avenues to inform educators' legal obligations and resulting policy approaches. Finally, we describe a research project that is currently underway (the "Cyber-bullying Project") between McGill University and Simon Fraser University in Canada, that is investigating these issues in greater depth to gain an improved understanding of cyber-boundaries and applicable legal standards for educators.

(1) Forms and Conditions of Cyber-Bullying

Cyber-bullying takes many forms. The young people who perpetrate or are victimized on-line are influenced by a range of environmental, social and developmental factors. While it is not within the scope of this paper to discuss these variables; they are detailed elsewhere (Shariff, 2003). We choose to highlight the conditions and forms of gendered discrimination in this paper, because research discloses gender and sexual harassment as the most prevalent forms of cyber-bullying among adolescents and adults. At the outset, it is important to provide some background on the conditions that influence bullying of any kind, physical or virtual.

(a) Conditions of Bullying

Several conditions are present when bullying occurs in schools (during physical, verbal or virtual social interactions or communication among school-mates). These conditions distinguish bullying from friendly teasing and horseplay. First, bullying is always unwanted, deliberate, persistent and relentless creating a power imbalance between perpetrator and victim. Victim blame appears to justify social exclusion from the peer group (Artz, *et al* 2000; Katch, 2001). Victims might be excluded for looking different; for their sexual orientation, or simply for appearing to be gay (Jubran, 2002); for their clothes, accent or appearance; for being intelligent or gifted and talented; for having special needs or disabilities (Glover *et al*, 1998).

To exacerbate the problem, adolescent discourse on a daily basis often includes sexual insults as terms of endearment among friends. Students might jokingly call a friend "homo" or "ho." This makes verbal bullying difficult for teachers to recognize or address because they cannot identify the line at which friendly banter becomes serious harassment. The old saying "Sticks and stones may break my bones but words will never hurt me" appears to be tacitly condoned by teachers (Shariff, 2004). Glover *et al* (1998) for example, found that teachers respond to physical bullying more frequently than verbal (although 90% of children they interviewed experienced verbal bullying). This is because physical injuries are tangible and more easily substantiated by victims. Consequently, they are more likely to result in school liability and litigation (Shariff, 2004). Nonetheless, adolescents have testified in court, that

when the teasing is directed at a victim, it is meant to hurt (Shariff & Strong-Wilson, 2005). Hence verbal bullying in any form appears to receive less attention in schools than physical bullying. Adolescence, as a phase in which youth negotiate social relationships, become more self-conscious, independent and insecure (Boyd, 2000), creates the conditions for bullying and sexual harassment to take place. The Internet provides a perfect medium for adolescent anxieties to play themselves out.

(b) Covert and Insidious

Cyber-bullying consists of covert, psychological bullying, conveyed through the electronic mediums such as cell-phones, web-logs and web-sites, on-line chat rooms, "MUD" rooms (multi-user domains where individuals take on different characters) and Xangas (on-line personal profiles where some adolescents create lists of people they do not like). It is verbal (over the telephone or cell phone), or written (flaming, threats, racial, sexual or homophobic harassment) using the various mediums available.

(c) Hiding behind Virtual Identities

Disturbingly, most cyber-bullying is anonymous because perpetrators are shielded by screen names. Preliminary research discloses that 99% of teens use the internet regularly; 74% of girls aged 12-18 spend more time on chat rooms or instant messaging than doing homework; one in every seventeen children is threatened on the internet; and, one in four youth aged 11 -19 is threatened via computer or cell phone (Leishman, 2002; Snider, 2004; Mitchell, 2004; Cyber-libel Website, 2004). A recent survey of 3,700 middle schoolers disclosed that 18% experienced cyber-bullying (Chu, 2005). A similar Canadian study of 177 middle school students in Calgary, Alberta (Li, 2005), revealed that 23% of the respondents were bullied by email, 35% in chat rooms, 41% by cell phone text messaging, 32% by known school-mates, 11% by people outside their school, 16% by multiple sources including school-mates. Not surprisingly, 41% did not know the identity of their perpetrators.

Significantly, although cyber-bullying begins anonymously in the *virtual* environment, it impacts learning in the *physical* school environment. Fear of unknown perpetrators among classmates, and bullying that continues at school can be psychologically devastating for victims; it is also socially detrimental to *all* students (victims, bystanders and perpetrators) detracting them from schoolwork (Olweus, 2001; DiGuilio, 2001). It creates unwelcome physical school environments where equal opportunities to learn are greatly reduced (Shariff, 2003).

(d) An Infinite Audience

Research on general bullying finds that 30% of on-lookers and by-standers support perpetrators instead of victims (Salmivalli *et al*, 1996; Boulton, 1993).

The longer it persists, the more by-standers join in the abuse, creating a power imbalance between victim and perpetrators. Isolation renders victims vulnerable to continued abuse, and the cycle repeats itself. What might begin in the physical school environment as friendly banter, can quickly turn into verbal bullying that continues in cyber-space as covert psychological bullying. The difference in cyber-space is that hundreds of perpetrators can get involved in the abuse, and class-mates who may not engage in the bullying at school, can hide behind technology to inflict the most serious abuse. Power imbalances between victims and perpetrators are intensified by the extent of the audience available to aggressors. Racist, sexist or homophobic statements and compromising sexual photographs (emailed in confidence to friends), can be altered and sent to unlimited audiences once relationships sour (Harmon, 2004). Cyber-space facilitates relentless bullying by increasing numbers of peers. Take for example, the case of 13 year-old Taylor Hern who was added to a "List of Hos" found on a peer's Xanga. The perpetrator (who went by the screen name Immsgirlsgot2hell) had left Taylor a message suggesting: "go to my Xanga, bitch" (Chu, 2005, p. 42). Cyber-space provides the venue for other lists – including death lists. As Chu (2005) explains:

Cyber-bullying can mean anything from posting pejorative items like the List of Hos to spreading rumours by e-mail to harassing by instant messaging....And incidents of online bullying are like roaches: for everyone that's reported, many more go unrecorded (p. 42).

This view is supported by David Knight, a cyber-bullied victim who is now suing his former high school and Internet provider. David explained in an interview (Leishman, 2002), that the most devastating aspect of being bullied was the humiliation he suffered every time he logged onto the Internet. Students from his school had set up a website about him where they continued the threats, insults and gossip.

"[I]t's up there for 6 billion people to see. Anyone with a computer can see it...And you can't get away from it. It doesn't go away when you come home from school. It made me feel even more trapped." (p.1).

(e) Gendered violence in cyber-space

The research suggests that although both genders engage in cyber-bullying, there are differences (Chu, 2005; Li, 2005). It has been argued that children who engage in any form of bullying are victims. They are influenced by biological and environmental forces, including intersecting and interlocking systemic barriers of oppression based on race, gender, sexual orientation, (dis)abilities, cultural hegemony, androcentrism and Eurocentrism that continues to pervade many institutions including schools and courts (Razack, 1999; Shariff, 2003). It appears however, that girls and women emerge as the primary targets in cyber-space. Given that preliminary research on cyber-

bullying discloses a significant amount of sexual harassment and gender differences in the way Internet harassment is engaged in, we outline and define manifestations of online violence. We draw on examples and statistics impacting young women and school environments. Later, we highlight initial court responses to legal claims of sexual harassment in cyber-space to illustrate the judicial system's reluctance to open the floodgates to litigation.

The issue of online gendered violence is a hot topic. People have written about online gender harassment (Brail, 1996; Finn, 2004; Gáti, Tényi, Túry, & Wildmann, 2002; Herring, 1999; McCormick & Leonard, 1996). Some have outlined categories of online sexual harassment – gender harassment, unwanted sexual attention and sexual coercion (Barak, 2005). Others have written about virtual rape (Dibbell, 1993; MacKinnon, 2001), cyberstalking (Adam, 2001, 2002; Spitzberg & Hoobler, 2002; Tavani & Grodzinsky, 2002), identity theft (Finn & Banach, 2000), cyber bullying (Shariff, 2004; Ybarra & Mitchell, 2004a, 2004b) and cyber violence more generally (Herring, 2002). The studies discussed below illuminate ways in which gender-based cyber-bullying or violence differs from and is linked to what occurs in physical (non-virtual) space.

(i) Cyber-Victims

Barak (2005) defines three categories of sexual harassment: 1) gender harassment; 2) unwanted sexual attention; and 3) sexual coercion. She divides the first category into 4 subcategories: 1) active verbal sexual harassment, which includes offensive sexual messages from harasser to victim, gender humiliating comments and sexual remarks; 2) passive verbal sexual harassment, which includes offensive nicknames and online identities (such as wetpussy, xtargetool); 3) active graphic gender harassment, which includes unwanted erotic and pornographic content through mail or posting them in online environments; and 4) passive graphic gender harassment, including pictures and movies published on pornographic sites (such as forced pop up windows). The second category, unwanted sexual attention, “refers to uninvited behaviors that explicitly communicate sexual desires or intentions toward another individual” (p. 78). Finally, sexual coercion entails the use of various on-line means to pressure the victim into sexual cooperation. Even though the use of force is not possible on-line, the threats can be perceived by the victim as being as realistic as a face to face situation. This is illustrated by the telephone threat that caused Canadian teenager Dawn Marie Wesley to commit suicide. The words “You’re f.....g dead!” by a classmate caused her to believe real harm would come to her. Her perpetrator was convicted of criminal harassment because the court observed that perceived harm by the victim amounts to the same thing as actual harm (Shariff, 2004).

This perspective is supported by Herring (2002), who explains that online behavior that leads to assault against the physical, psychological or emotional well-being of an individual or group in effect constitutes a form of violence. She distinguishes four types of cyber violence: 1) online contact leading to off-line abuse (misrepresentation leading to fraud, theft, unwanted sexual contact); 2) cyber stalking, which comprises online monitoring or tracking of

users' actions with criminal intent; 3) online harassment, which consists of unwanted, repeated and deliberate threats, abuses and alarms; and 4) degrading on-line representations of women through words or images that invite disrespect or put-downs.

Studies have shown that teenage girls have more often been at the receiving end of cyber violence. According to Herring (2002), 25% of Internet users aged 10-17 were exposed to unwanted pornographic images in the past year. 8% of the images involved violence, in addition to sex and nudity. The Alberta study of middle school children referred to earlier (Li, 2005) disclosed that boys owned up to cyber-bullying more frequently and girls were more frequently victimized. Furthermore, Mitchell *et al.* (2001, cited in Barak, 2005), in a survey of American teenagers, found that 19% of these youths (mostly older girls) had experienced at least one sexual solicitation online in the preceding year. Adams (2001) observes that cyber-violence studies disclose that the majority of perpetrators are men and the majority of victims are women. He reports that as many as one out of three female children reported having been harassed on-line in 2001 alone. Among children, girls appear to be targeted twice as much as boys (Finkelhor *et al.*, 2000 in Herring, 2002).

Despite these statistics, we also need to look at how men and boys are socially constructed as perpetrators, and women as victims. There is a need to understand the gendered nature of the phenomenon (Adam, 2002). Adam contends that the ways in which virtual and non-virtual violations of the body enforce authority and reinforce the submission of the victim cannot be discounted. We agree, especially as there is also sufficient evidence in the research to suggest that homophobia directed at male victims is prevalent on the Internet (Harmon, 2004; Leishman, 2002, Chu, 2005). However, to ignore the larger gender pattern associated with violence is to miss a basic insight into the social reality of violence as a means of control and intimidation. In other words, it tends to be perpetrated downward along a power hierarchy, reinforcing societal gender inequalities (Herring, 2002).

(ii) Female Perpetrators

While girls may be more likely targets of cyber violence because of their location along a hierarchy of power, adolescent girls are increasingly surfacing as active instigators of cyber-bullying. Although Ybarra and Mitchell (2004a) found that males and females were equally likely to report having harassed someone online, a recent study of 3,700 adolescents (Kowalski, as cited in Chu, 2005) found that in a two-month period, 17% percent of the girls surveyed confessed to on-line bullying compared to 10% of the boys. Given that girls aged 12 to 18 have been found to spend at least 74% of their time on chat rooms or instant messaging (Berson & Ferron, 2002), these results are not surprising.

One plausible explanation might be that girls, who may be more submissive in face-to-face communications, may not feel so constrained by online communications. Their assertive online communication skills may lead to online harassment. Ybarra and Mitchell (2004a) found that youth who are victims of bullies in offline environments are significantly more likely to harass

others in online environments (51%). This issue is further complicated by caregiver-child relationships, delinquency, psychosocial challenges, and Internet use. Similarly, Wolack, Mitchell and Finkelhor (2003) found, children who had high levels of conflict with parents and those who were highly troubled (with higher levels of depression and victimization or troubling life events), were more likely to engage in close online relationships, increasing their vulnerability to online exploitation. As Wolak *et al* (2003) observe, “Masquerading online may be harmless for many youth, but adolescents who are relying on online relationships to fill a void in their lives may find the deceptions of online relationships difficult to understand, confusing and painful” (p.116-117, referencing Turkle, 1995).

(2) Hierarchies of Power and Institutional Responsibilities

(a) Hierarchies of Power

We have explained earlier that bullying in any form involves power. Gender and race are not only matters of representation and performance – what people look like or how they act – they are intimately linked to power structures in society. Patriarchy and White supremacy maintain a hierarchy that places certain people in power and oppresses others. One need only look at who profits from the Internet, who participates and who puts computer pieces together to expose this hierarchy of power (Gramsci, 1995; Apple, 1990; 2000).

The Internet is a textual space and it makes sense to use textual approaches to analysis (Dietrich, 1997). We need to keep in mind however, the structures behind the texts, which perpetuate and reproduce violence against women and girls. Gender in cyber-space is not *virtual*. It is evident in the choices people make about which gender they ‘choose’ online. Curtis (1997), the creator of LambdaMOO, a popular multi-user domain, observes that the majority of male players present themselves as male characters or choose a female gender out of curiosity, to stand out, deceive others, or to entice men into sex talks. *Real* power is exerted in the virtual world in multiple ways. It is expressed in various electronic mediums through controlling topics available for discussion, posting inflammatory messages, and flaming, for example (Carstarphen & Johnson Lambiase, 1998). MUD wizards, often men, have more power over controls, commands, toading (transforming a player into a toad, the equivalent of a death sentence) and kicking (booting a player out of a room or out of the MUD, forcing the player to sign in again). Herring (1999) comments that “The Internet itself is organized hierarchically, with certain individuals—system operators, Usenet administrators, IRC administrators, MUD wizards, etc.—empowered to make policy decisions that affect thousands of users. The people who occupy these administrative positions are also overwhelmingly middle-class, white, English-speaking males” (p.163).

Carstarphen *et al.*'s (1998) research tracked gender and race in a student electronic discussion group, demonstrating male dominance of space, the silencing of women and gender/racial discrimination. Herring (1999), who conducted a study of two extended Internet interactions – an Internet relay chat and an asynchronous discussion list – demonstrates how power is used to limit girls' and women's participation by presenting them with limited, undesirable choices: conform or be kicked out and vilified. As Herring (1999) explains:

Thus, a context for gender disparity on the Internet is present in preexisting social and historical conditions that accord greater privilege and power to males. The playing field is not level, even when it might superficially appear that every user has an equal opportunity to participate in any given interaction. The larger context helps to explain the female-discriminatory outcomes of the specific interactions analyzed here—since women do not control the resources necessary to insure equal outcomes, it is hardly surprising that such outcomes are not achieved, despite the efforts of outspoken and persistent female participants” (p.163).

The *virtual* world is eerily similar to the *real* world, forcing us to reconsider such a dichotomy. This division is further challenged when we consider the violence that occurs in cyberspace and its very real consequences.

Internet technology is still a male dominated field (Dietrich, 1997) and new technologies build on, rather than reinvent patriarchal society. This does not exclude the possibility of resistance. In one example, a grade 5 girl responded confidently to flaming that occurred on a newsgroup her teacher had set up for the class. She posted a polite request that people respond politely to posts. The flaming stopped (Evard, 1996). The teacher's presence on the newsgroup may have contributed to reducing and adversarial atmosphere, which often causes flaming to get out of hand. A polite response may in some cases (not all), work to reduce the impact and take the wind out of the perpetrators' sails. This takes us to the issue of how schools as educational institutions can contribute to the reduction of cyber-violence and bullying.

(b) Institutional Responsibilities

Research suggests that schools perpetuate hierarchies of power and tacitly condone cyber-bullying by refusing to address it (Razack, 1999; Dei, 1997; Larson, 1997; Giroux, 2003). While its nebulous nature and ability to spread like wildfire are indeed challenging, school responses to reports of cyber-bullying do not differ significantly from reported reactions to general forms of bullying (Shariff, 2004; Harmon, 2004). Over the last decade, schools have grappled with solutions for reducing bullying in the physical school setting. Shariff's (2003) doctoral review of emerging litigation on bullying, disclosed

common patterns in school responses to victim complaints. Plaintiffs explained that when approached for support, school administrators and teachers put up a “wall of defence” (Shariff, 2004). According to some parents surveyed, school administrators allegedly: a) assumed that the victims (plaintiffs) invited the abuse; b) believed parents exaggerated the problem; and c) assumed that written anti-bullying policies absolved them from doing more to protect victims. Emerging litigation against schools suggests that parents of victims are increasingly seeking compensation and protection from courts. And, while parents unquestionably have a supervisory and educational role to play, few researchers have investigated the role that can legitimately be expected of schools. Schools are faced with difficult policy and programming issues. They must balance *legal* constraints such as equality and freedom of expression through innovative, *educational responses* to address bullying.

We believe the wall of defence by some school officials stems from a fear of litigation and lack of knowledge about the complexities of bullying -- particularly cyber-bullying. That fear is driven by a lack of clarity about the legal boundaries of their responsibilities to students. These boundaries are increasingly blurred as technology and diversity change the landscape of North American schools. Shariff’s earlier research suggests that schools have too much information on how to handle bullying, but insufficient *knowledge* about its complexities (LaRocque & Shariff, 2001). Larson (1997) observes that when school administrators are confronted with unprecedented problems, they ignore the root causes and redefine the problem to fit traditional policy approaches. When this does not work, they find it easier to blame victims for inviting the problem; or worse, do nothing in the hopes that the problem will simply go away.

Hierarchies of power also inform the academic study of bullying in general. The “developmental” perspective (Peplar, 2002; Craig, 2005; Hymel, 2005; Coloroso, 2002) has successfully captured the attention of primary media outlets across Canada (National Conference on Bullying “Beyond Rhetoric,” Ottawa, Canada, 2005) and important political bodies such as the United Nations consultations on violence against children (Toronto, Canada, 2005).

We do not suggest that a developmental perspective does not contribute valuable research to the study of bullying -- quite to the contrary. Such a perspective is of critical importance to understand young people’s actions. Nonetheless, it is important to bear in mind that children do not operate in a vacuum (Pollack, 1998; Garbarino, 1999; Ross-Epp, 1996). They attend educational institutions in which power pervades every aspect of school life, and where the systems of oppression (racism, sexism homophobia, ableism) continue to marginalize some more than others. Hence it is time to re-focus the attention away from adolescents and children as requiring “interventions” or “treatment” and turn to what our schools, as educational institutions are doing to protect and educate their students in every aspect of school life, physical and virtual. Thus, is important to consider cyber-bullying in the larger context of adult and media perpetuated violence, within the context of the lived realities of young people who turn to on-line abuse. This means leaving

behind zero-tolerance policies that originate in the American military (Skiba & Petersen, 1999; DiGuilio, 2001; Giroux, 2003). Blanket school policies and practices, ignore the root of the problem and overlook the systemic barriers that marginalize some children more than others. They perpetuate a cycle of bullying and cyber-bullying victimization. Zero-tolerance policies in schools are largely Eurocentric and androcentric, and fail to take into consideration the intersecting and interlocking influences of race, gender, sexual orientation and (dis)ability. Not surprisingly, they have produced minimally effective results, other than to criminalize young people and add a burden to the criminal justice system (Artz, *et al* 1998; Anand, 1999; Giroux, 2003, DiGuilio, 2001; Shariff & Strong-Wilson, 2005). To make matters worse, most Internet providers refuse to close websites or block emails to avoid breaching free expression rights (Leishman, 2002) increasing the danger to victims. Children cannot be the sole focus of policy; multi-disciplinary attention to *institutional context* is crucial.

While parents undeniably have an obligation to monitor their children's activities on the Internet, we must not forget that schools have the capacity to be pivotal *educational* institutions that can positively inform societal progress. Teachers, school counsellors, administrators and policy makers have no less a responsibility than parents, to adapt to a rapidly evolving technological society, to address emerging challenges, and guide children to become civic-minded individuals. The very fact that schools use technology to deliver curriculum and assign homework makes it imperative that attention is paid to how their students use it. Furthermore, it is necessary for schools to recognize and establish standards and codes of conduct with respect to Internet and cell phone use, and define acceptable boundaries for their students' social relationships in cyber-space. The valuable role of these educators in guiding and fostering inclusive and positive school environments and socially responsible discourse both in the physical school setting and in virtual space, ought to be recognized. It must also be acknowledged, encouraged and supported through scholarship, legal and policy guidelines, teacher preparation programs and professional development.

(3) Legal Obligations and the Educational Policy Vacuum

Given that there is a dearth of research on emerging legal standards as they relate to cyber-bullying in schools, schools are not well informed or prepared on how to address cyber-violence. There is currently a policy gap that needs to be addressed. Moreover, not only are traditional responses to bullying ineffective, they are inapplicable to cyber-space given the differences we have pointed out in Section 1. In this section we consider the emerging legal stance adopted by the courts towards cyber-harassment. We then draw from established law to demonstrate applicability of existing legal standards (particularly as they relate to sexual harassment), to the cyber-dilemmas we have introduced in this paper.

(a) Judicial Reluctance to Open Floodgates to Litigation

Although statutes relating to Internet issues are beginning to materialize, few legal cases exist relating to cyber-violence in schools, particularly where young women are victims. To date, the courts have a dismal record of ruling in favor of cyber-victims. Cyber-threats are considered fictional and the aggressors have generally been found innocent of wrongdoing. Take for example, a number of American cases cited by Wallace (1999). In one instance, a student set up a web-site denouncing the administrators and teachers at a university. The judge's response was as follows:

Disliking or being upset by the content of a student's speech is not an acceptable justification for limiting student speech (as quoted in Wallace, 1999, p. 131).

Similarly, in *United States of America, Plaintiff v. Jake Baker* (June 21, 1995, as cited in Wallace, 1999), Jake Baker posted a story to the newsgroup alt.sex.stories. His story graphically described the rape and torture of a university classmate. He also communicated (via email to a friend), his plans to actually carry out the rape. Students who read the story were outraged and charged him with criminal harassment. The district court threw out the claim holding that because there was no possibility of physical rape on the Internet, there could be no claim for harassment. Moreover, the court was reluctant to infringe on Baker's freedom of expression rights. The precedents set by these courts were followed in *The People vs. B.F. Jones* (cited in Wallace, 1999). The case involved sexual harassment of a female participant in a MUD group by Jones, a male participant. This is what the court had to say:

It is not the policy of the law to punish those unsuccessful threats which it is not presumed would terrify ordinary persons excessively; and there is so much opportunity for magnifying undefined menaces that probably as much mischief would be caused by letting them be prosecuted as by refraining from it. (quoted in Wallace, 1999, p. 228).

This reluctance by the courts to avoid involvement in the quagmire of cyberspace is not surprising. The courts have typically adopted a hands-off approach in matters that might open up the floodgates to litigation. In the realm of physical violence in schools for example, American courts have set a very high threshold for plaintiffs to bring claims for negligence against schools, in some cases even when students have been shot or knifed (Shariff, 2003, 2004; Shariff & Strong-Wilson, 2005).

The worrisome aspect regarding the failure of claims for criminal harassment is that pedophiles and predators gain significantly easier access to Internet "Lists of Hos" for example, and capitalize on them. This takes adolescent cyber-bullying into the more dangerous adult realm of pornography. For example, in one case reported by Harmon (2004), photographs of a young girl

who masturbated for her boyfriend were dispersed on the Internet once the relationship ended. The boundaries of this type of harassment need clarification. Laws against the distribution of pornography have been in existence for many years. Moreover, once in the hands of sexual predators such photographs could result in life threatening circumstances for teenage victims if they are contacted and lured into a physical relationship.

(b) Applicability of Established Law and Jurisprudence

Elsewhere Shariff (2003; 2005; manuscript in progress) outlines legal considerations in greater detail. For the purposes of this paper however, we briefly present examples of how established law might be useful to fill the void in policy guidelines that relate to protection and education of victims in cyberspace.

(i) Law of Torts and Negligence

When a claimant brings a claim in negligence against a school, he or she must establish to the court that there was a duty of care, that there was tangible harm, that the tangible harm was foreseeable, and that the chain of events in the actions of the school officials' actions or omissions either proximately or remotely caused the injury. Even though physical injuries are tangible (and in Canada) easier to establish (Shariff, 2003), we have pointed out that the threshold for claimants in the U.S. is very high. Paradoxically, the same courts have supported victim plaintiffs in cases involving suicide or psychological harm that could potentially result in suicide (Shariff, 2003). Bullying research and numerous media reports confirm that "bullyside" (suicide by victims of bullying) is on the rise (Salmivalli *et al*, 1996; DiGuilio, 2001). Similarly, courts in Britain have ruled that bullying is not only an educational problem -- it is also a *health* problem, acknowledging the severe consequences on the emotional and sometimes physical health of victims (Shariff, 2003). Gradually, the courts are beginning to recognize emotional and psychological harm as "tangible," including mental shock and suffering (Shariff, 2003). Therefore, claims for negligence against schools under tort law may be more successful than charges of criminal harassment against perpetrators.

(ii) Canadian Human Rights and American Civil Law

A second applicable aspect in which the jurisprudence is established (particularly as it relates to sexual harassment in institutional settings), is Canadian human rights law. American civil law under Title IX has also established an institutional obligation to protect sexual harassment victims. To illustrate, we present two case examples. The first involved a Canadian case of sexual harassment by a co-worker, both inside and outside the workplace (*Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R.).

The Supreme Court of Canada ruled that institutions are responsible for providing safe environments for their employees even if the sexual harassment by a co-worker occurs outside of the workplace. The fact that the

victim must face their tormentors in the workplace imposes an obligation on the employer to address the problem effectively. This case is very relevant to cyber-bullying because school officials often maintain they are not responsible for harassment by school-mates that occurs outside of school grounds, or outside school hours. As the Supreme Court of Canada confirmed in *Robichaud*, if the victim has to face the perpetrator within the institution, the institution is responsible for correcting the problem no matter where the harassment actually takes place.

In a controversial landmark decision in 1998, the American Supreme Court broke tradition with avoiding the “slippery-slope” syndrome. The case of *Davis v. Munroe* (1988) involved the persistent sexual harassment of a grade 5 girl, Lashonda Davis, whose parents informed the teachers and the school principal numerous times to no avail. Lashonda’s grades dropped and her health was negatively affected. In a majority 5:4 decision, the Supreme Court ruled that in failing to act to protect Lashonda, the school had created a “deliberately dangerous environment” which prevented “equal opportunities for learning.” It could plausibly be argued that cyber-bullying creates a similarly dangerous environment for victims in the physical school setting because they do not know the identities of their perpetrators. This uncertainty would surely create fear and distraction, preventing victims from equal opportunities to learn. As research suggests, in many cases the bullying continues at school making it physically dangerous for students as well.

(iii) Perceived Intent: Criminal Harassment in Canada

While the cases of criminal harassment in cyber-space have not been successful, an example we provided earlier, involving the suicide of Dawn Marie Wesley is relevant here (*R. v. D.W. and K.P.D.* 2002 BCPC 0096). Dawn Marie’s perpetrator was charged and convicted with criminal harassment because the “perceived intent to harm” was taken seriously by the victim as *actual intent* to harm, resulting in her suicide. Although this was a lower court ruling, it may have opened the door to future claims, including those involving cyber-bullying, where perceived intent of harm is very real.

For example, surveying students’ perceptions of ‘potentially harassing acts’ described as occurring online or in a classroom setting, Biber *et al.* (2002, cited in Glaser & Kahn, 2004) discovered that misogynist comments, including unwanted sexual and gender harassment and sexual coercion, were rated as more threatening and harassing when the comments were made on-line. They suggest that the online discourse medium may actually intensify perceived harassment, instead of lessening it. If, as Ybarra and Mitchell (2004a) found, young people are likely to know who they are aggressing (84% of those surveyed knew the target of their aggression), the ‘real’ school environment becomes very frightening for victims who no doubt share the same class, hallway and schoolyard with their aggressor. In fact, for many, it is the continuation of schoolyard bullying (Ybarra & Mitchell, 2004a).

(4) Developing Guidelines for Educators: A Canadian Research Project

Given these emerging educational and legal problems, Shariff has launched a three year research collaborative research project (2005-2008) involving researchers in the Department of Integrated Studies in Education (DISE) and Faculty of Law at McGill University in Quebec, Canada and the Centre for Education, Law and Society, and School of Criminology at Simon Fraser University in British Columbia, Canada. The project is funded by the Social Sciences and Humanities Research Council of Canada (SSHRC – the “Cyber-Bullying Study”). The Cyber-Bullying Study is to help schools better understand the problem of cyber-bullying and guide them to implement improved policies and practices that protect victims; educate students towards inclusive electronic discourse; and, keep schools out of court. The results of the research will also be used to develop teacher education programs and professional development courses at the university level for educators. The study has four specific objectives:

- 1) Developing an ontology of cyber-space, its nature and virtual boundaries;
- 2) Gaining an improved understanding of the realities as experienced by students in two distinct Canadian provinces (Quebec and British Columbia, Canada), and investigating in greater depth how schools currently conceptualize cyber-bullying and respond to it through their policies and programming.
- 3) Simultaneously, we are in the process of examining emerging jurisprudence on human rights and negligence, to clarify the standards expected of schools in both provinces, and help schools avoid legal liability.
- 4) Based on this investigation, we plan to highlight discrepancies (if found), between what the law requires of schools, and how schools perceive their responsibilities.

The study is timely and will contribute to new knowledge in several ways. It will help all schools better understand its impact on students' psychological health, social adjustment and learning. It will also illuminate the need for educationally proactive responses that meet legal standards, save legal costs, and keep schools out of court. More importantly, the study will encourage educational environments (physical and *virtual*), where all children feel safe to learn.

(5) Conclusion and Implications

Our paper draws attention to a range of important issues facing schools with the advance of new technologies. By presenting our preliminary research

findings, we have demonstrated that not only is cyber-bullying prevalent among adolescents, but it also occurs among adults. Of significant concern is the fact that gendered cyber-harassment is commonly engaged in. Moreover, the research suggests that schools, as educational institutions, are reluctant to carry out their responsibilities to protect and educate students in socially responsible and inclusive electronic discourse. It is imperative that schools understand and work towards creating equal opportunities for students to learn – a right that is guaranteed within our Canadian constitution (1982). To this end, school environments must be free of violence and discrimination, both virtual and physical.

We have highlighted the fact that the law is unclear with respect to the unprecedented issues of harassment in cyber-space; yet, we have identified existing law highly applicable to institutional responsibilities and harassment. We have explained that aspects of tort law (American, Canadian and British) have placed an onus on schools to protect children from psychological harm. Sexual harassment cases also support the argument for institutional responsibility, whether or not the harassment takes place within the work or learning environment. Finally, we have observed that the criminal law supports victims when threats are perceived to be *real*.

These and similar court rulings establish relevant standards and guidelines for schools. Our ongoing research project (the Cyber-Bullying Project) will continue to disclose emerging litigation and multi-disciplinary research relating to cyber-bullying. These findings, together with qualitative research conducted in schools will inform a set of guidelines that is under development to fill the current policy vacuum in schools. Ultimately, we need to address the shifting community standards of acceptable behaviour in cyber-space by adults and young people.

With 79% of youth knowing their victims (Ybarra & Mitchell, 2004a), schools are implicated in the harassment, if only as a place where youth socialize. Their implication does not end there. Schools make use of technology and we contend that they also have a responsibility to protect youth who are making use of this technology. If 'virtual' realities are difficult to address in schools, then 'real' hierarchies of power in the classroom and the school could be addressed, which could potentially reduce the incidence of cyber violence. Considering that those who are the targets of 'real' bullying are often perpetrators of cyber bullying (Ybarra & Mitchell, 2004a), we hope that the guidelines developed from our research will go some way towards reducing cyber-bullying by informing teacher education and professional development of school administrators. The rest is the up to educators. To succeed, they will need to let down their wall of defence, do away with blanket zero-tolerance policies and traditional anti-bullying programs, and meet the challenges of cyber-bullying with open minds, legally defensible policies, and inclusive educational practices.

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