

# CYBER-DILEMMAS IN THE NEW MILLENNIUM: SCHOOL OBLIGATIONS TO PROVIDE STUDENT SAFETY IN A VIRTUAL SCHOOL ENVIRONMENT

SHAHEEN SHARIFF *McGill University*

**ABSTRACT.** Cyber-bullying is a psychologically devastating form of social cruelty among adolescents. This paper reviews the current policy vacuum as it relates to the legal obligations and reasonable expectations of schools to monitor and supervise on-line discourse, while balancing student safety, education, and interaction in virtual space. The paper opens with a profile and conditions of cyber-bullying. A brief discussion of the institutional responses to cyber-bullying follows. Finally, emerging and established law is highlighted to provide guidelines that are more likely than arbitrary responses, to help schools reduce cyber-bullying through educational means that protect students and avoid litigation.

**CYBER DILEMMES DANS LE NOUVEAU MILLÉNAIRE : OBLIGATIONS DES ÉCOLES À ASSURER AUX ÉLÈVES LA SÉCURITÉ DANS UN ENVIRONNEMENT SCOLAIRE VIRTUEL**

**RÉSUMÉ.** La cyber-intimidation est une forme psychologiquement dévastatrice et actuellement moins étudiée parmi les adolescents. Cet article passe en revue le manque de politique lié aux obligations légales et aux attentes raisonnables des écoles pour diriger et guider les discours sur Internet pendant qu'ils équilibrent la sécurité, l'éducation et les interactions des étudiants dans cet espace virtuel. Le document commence avec une description du profil de l'intimidation cybernétique et de ses conditions. Une brève description des hiérarchies de pouvoir discussion et des réponses institutionnelles aux cyber-intimidations suit. Finalement, une loi émergente et déjà établie est mise en valeur pour servir de ligne directrice qui, éventuellement, aidera les écoles à réduire l'intimidation cybernétique, et ce, au moyen de contenu éducatif qui protège les étudiants et permet d'éviter les litiges.

## INTRODUCTION

This article joins a body of emerging work on cyber-bullying relating to its impact on student safety and learning in the school context (Willard, 2003; Servance, 2003; Aftab, 2004; Belsey, 2005; Balfour, 2005). Renee Servance and Nancy Willard specifically address legal considerations in the American context, and Claire Balfour has developed important guidelines for schools

in New Zealand; however, in Canada, there has been less attention paid to understanding the role of law as it relates to cyber-bullying in the Canadian educational context.

Building on doctoral work that investigated the role of Canadian law relating to bullying in general, I have recently extended my research to study the legal aspects of cyber-bullying drawing from both the American and Canadian legal frameworks. The contribution of the present article is to provide a general overview of the issues I have recently begun to explore with co-authors from various perspectives (Shariff, 2004; Shariff & Gouin, 2005; Shariff & Johnny, 2005; Shariff & Strong-Wilson, 2005). In separate articles, we have examined the legal considerations relating to freedom of expression and safety under the Canadian *Charter of Rights and Freedoms*; Canadian human rights law and American civil rights law (Title IX) on internet sexual harassment; potential school liability under Canadian and American tort law; and finally, international conventions relating to children's rights. My primary objective with this body of work is to develop local and international policy and practice guidelines to help schools navigate the complex challenges posed by cyber-bullies.

My paper begins with background on the forms and conditions of bullying in general, followed by an explanation of how cyber-bullying differs. These descriptive paragraphs contain excerpts from the body of work mentioned above. Next, I review and analyze relevant case law to identify applicable legal standards for schools. In the absence of established legal precedents specifically relating to cyber-bullying, it is important to identify the policy vacuum that leaves schools confused about their rights, obligations, and limitations, in regard to harassment by students in cyber-space. I close with recommendations for the development of an ontology of the legal boundaries in cyber-space as they relate to school obligations, and introduce a collaborative research project between researchers at McGill University and Simon Fraser University that is currently underway to develop informed guidelines for schools relating to implementation of inclusive, educational, and legally defensible policy approaches to cyber-bullying.

As cyber-bullying is an extension of general bullying in schools, it is important to define the most prevalent forms of bullying and the conditions under which it occurs, before presenting a profile of its cyber-counterpart.

#### **BULLYING: ITS FORMS AND CONDITIONS**

Bullying typically adopts two forms: overt and covert. Overt bullying involves physical aggression, such as beating, kicking, shoving, and sexual touching. It can be accompanied by covert bullying, in which victims are excluded from peer groups, stalked, stared at, gossiped about, verbally threatened,

and harassed (Olweus 2001; Pepler 1997). Covert bullying can be random or discriminatory. It can include verbal harassment that incorporates racial, sexual, or homophobic slurs.

Several conditions are present when bullying occurs in schools. These conditions distinguish bullying from friendly teasing and horseplay. First, bullying is always unwanted, deliberate, persistent, and relentless, creating a power imbalance between perpetrator(s) and victims. Victim blame appears to justify social exclusion from the peer group (Artz, 1997; Katch, 2001). Victims might be excluded for looking different; for being homosexual or lesbian; or simply appearing to be gay (Shariff, 2004). They might be teased about their clothes, accent or appearance; or for being intelligent, gifted and talented, or having special needs and/or disabilities (Glover *et al*, 1998).

#### CYBER-BULLYING AS AN EXTENSION OF BULLYING

Cyber-bullying is a covert form of verbal and written bullying. It is conveyed by adolescents and teens through electronic media such as cell-phones, web-sites, web-cams, chat rooms, and email (Harmon, 2004; Leishman, 2002). Students create personal on-line profiles (Xangas) where they might list classmates that they do not like. Some take on virtual personalities in MUD rooms and harass other players. Cyber-bullying can also take the form of sexual photographs (emailed in confidence to friends), that are altered and sent to unlimited audiences once relationships sour (Harmon, 2004).

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; Mitchell, 2004; Cyber-libel website, 2004). A recent survey of 3,700 middle school students in the U.S. disclosed that 18% experienced cyber-bullying (Chu, 2005). A similar Canadian study of 177 middle school students in Calgary, Alberta (Li, 2005), disclosed 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, and 16% by multiple sources including school-mates.

Three aspects of cyber-bullying make it a challenge for schools to supervise and monitor. First, cyber-bullying is anonymous. For example, in Li's (2005) study, 41% of the students surveyed did not know the identity of their perpetrators. Second, it allows participation by an infinite audience. A third concern is that sexual harassment is a prevalent aspect of cyber-bullying.

#### *Anonymity*

Most cyber-bullying is anonymous because perpetrators are shielded by screen names that protect their identity. Anonymity in cyber-space adds to the

challenges for schools (Harmon, 2004). Furthermore, although cyber-bullying begins anonymously in the *virtual* environment, it impacts learning in the *physical* school environment. The consequences can be psychologically devastating for victims, and socially detrimental for all students (Gati, *et al*, 2002). Fear of unknown cyber-perpetrators among classmates and bullying that continues at school distracts *all* students (victims, bystanders, and perpetrators) from schoolwork. It creates a hostile physical school environment where students feel unwelcome and unsafe. In such an atmosphere, equal opportunities to learn are greatly reduced (Devlin, 1997; Shariff & Strong-Wilson, 2005).

### *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 (Henderson *et al*, 2002), 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 (see examples in Shariff, 2004; Shariff & Strong-Wilson, 2005).

### *Prevalence of sexual harassment*

Preliminary 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. However, studies (Dibbel, 1993; Evard, 1996) have shown that teenage girls have more often been at the receiving end of cyber violence.

A review of the scholarly literature (Shariff & Gouin, 2005) finds that 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. According to Adams (2001), one in three female children reported on-line harassment in 2001. Moreover, adolescent hormones rage and influence social relationships as children negotiate social and romantic relationships and become more physically self-conscious, independent, and insecure (Boyd, 2000). Research on dating and harassment practices at the middle school level (Tolman *et al*, 2001) shows that peer pressure causes males to engage in increased homophobic bullying of male peers and increased sexual harassment of female peers to establish their manhood. During this confusing stage of adolescent life, the

conditions are ripe for bullying to take place. The Internet provides a perfect medium for adolescent anxieties to play themselves out.

These three aspects of cyber-bullying present a number of unprecedented legal and educational concerns for schools. The first involves a determination of the boundaries of supervision. Schools find it difficult to monitor students' on-line discourses. This is because cyber-bullying typically occurs outside supervision boundaries, and this raises important legal questions about the extent to which schools can be expected to intervene when their students cyber-bully off campus, outside school hours, and/or from home computers. Currently, the legal boundaries regarding freedom of expression, student privacy, and protection in cyber-space remain unresolved (Wallace, 1999; Shariff & Johnny, in press). Meanwhile, frustrated parents are beginning to sue schools for failing to protect their children from on-line harassment and abuse.

#### **ROLES AND RESPONSIBILITIES: SCHOOLS OR PARENTS?**

While its nebulous nature and ability to spread like wildfire are indeed challenging, cyber-bullying does not elicit school responses that differ significantly from reported reactions to general forms of bullying (Shariff, 2004; Harmon, 2004).

My 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, 2003). According to some parents surveyed during that research, school administrators allegedly: a) assumed that the victim-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. Despite well-meaning and seemingly sensible anti-bullying programs, this approach means that some educators tacitly condone negative and non-inclusive attitudes, thus sustaining the power structures that exist in a discriminatory school environment. For example, some scholars argue that the tendency in schools to implement blanket zero-tolerance policies (Skiba & Petersen, 1999; DiGiulio, 2001; Giroux, 2003) overlooks the various forms of oppression that marginalize some students in schools.

Not surprisingly, these responses have produced minimally effective results, other than to criminalize young people and add a burden to the criminal justice system (Artz, 1997; Anand, 1999; Giroux, 2003, DiGiulio, 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's "behaviour" cannot be the sole focus of policy – multi-disciplinary attention

to *institutional context* is crucial. This is where schools can implement their mandate as educational leaders. While parents undeniably have an obligation to monitor their children's activities on the Internet, teachers, school counselors, administrators, and policy makers have no less a responsibility to adapt to a rapidly evolving technological society, address emerging challenges, and guide children to become civic-minded individuals.

It is reasonable to suggest that the fact that schools use technology to deliver curriculum and assign homework makes it imperative that attention is paid to how their students use it. They need 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 educators in fostering inclusive and positive school environments would benefit from scholarship, legal and policy guidelines, teacher preparation programs, and professional development. The study of bullying and especially cyber-bullying must be re-conceptualized from a multi-disciplinary, institutional, educational, and legal perspective.

#### LEGAL OBLIGATIONS AND THE EDUCATIONAL POLICY VACUUM

Schools need guidelines that provide reasonable boundaries and direction as to the extent of their responsibility. This would alleviate their reluctance to breach freedom of expression guarantees or student privacy rights. Educators need to know the extent to which they have the authority to protect victims from abuse by their classmates – and their ultimate responsibility to foster inclusive school environments that encourage socially responsible discourse – on or off school grounds, in the physical school setting and in virtual space.

Traditional responses to bullying are largely ineffective because of the anonymous nature of cyber-bullying, its capacity for an infinite audience, and participation by large numbers of young people. In this regard, it is important to consider the emerging legal stance adopted by the courts towards cyber-harassment.

#### *Freedom of expression rights: Canada and the U.S.*

Canadian school officials and Internet providers worry that if they intervene with student discourses in cyber-space, they might face challenges under Section 2(b) of the *Charter of Rights and Freedoms* (the “*Charter*”) for infringement of student free expression rights. Freedom of expression, thought, and opinion is guaranteed to all Canadians, including students, under Section 2(b) of the *Charter*. These freedoms are only limited by Section 1 of the *Charter*, which helps the courts weigh and balance individual rights with the collective rights of the greater good in a democracy. Section 1 of the *Charter* states that the rights set out in it are subject “only to such reason-

able limits prescribed by law as can be demonstrably justified in a free and democratic society.” Any school policy that infringes individual rights must therefore, be justified by the policy-maker as having a *pressing and substantial objective* to protect the greater good. The onus also rests with policy-makers to establish that the rights in question will be infringed *as minimally as possible* (*R. v. Oakes*, 1986).

As MacKay and Burt-Gerran’s explain in their article in this issue of the Journal, expression is constitutionally protected as long as it is not violent (see for example, *Irwin Toy Ltd. v. Québec (A.G.)* [1989]). This means that *any expression that intends to convey non-violent meaning* is normally safeguarded by the courts. This interpretation has been extended to the school setting. For instance, one of the best known cases of protected freedom of expression in schools involved a rap song that contained a message to students to reduce promiscuity (*Lutes v. Board of Education of Prairie View School Division No. 74* [1992]). The case involved a song entitled “Let’s Talk About Sex” by Queen Latifa. The song had been played in a morning key boarding class at Lutes’ school. The Assistant Director had informed the school principal that he found the song inappropriate. Lutes sang the song to the Assistant Director at noon that day, knowing that he found it offensive. The song had never been banned by the district; however, the principal referred to it as “banned” in a letter to Lutes’ parents. The school suspended Lutes, who then sought judicial review. The court found that his freedom of expression rights under Section 2(b) had been violated and that the suspension did not reasonably justify the infringement of those rights. In fact, the court stated that this was an overreaction to an educational song about sexual abstinence.

This raises important legal questions as they relate to cyber-bullying. Is on-line harassment considered to be a violent expression? Even though physical force cannot take place online, victims can (and do) perceive on-line sexual threats as very real. The impact on the victim is no different from 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 perceive 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). Herring (2002) explains that on-line harassment which negatively impacts the physical, psychological, or emotional well-being of a victim constitutes a form of actual violence. Barak (2005) notes that harassers can use sexual coercion through several means – directly offensive sexual remarks that humiliate the victim; passive sexual harassment by using nicknames and online identities such as “wetpussy” or “xlargetool”; or graphic gendered harassment which includes sending unwanted pornographic content; sexual jokes and other graphic sexual context. These forms of on-line harassment make recipients feel powerless, demeaned, and threatened.

Some American judges, however, have refused to acknowledge that on-line harassment contains a violent message. Consider some of the initial court rulings on cyber-harassment 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. The court explained that:

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 cyber-space is not surprising. The courts have typically adopted a hands-off approach in matters of educational policy. 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 soured. The boundaries of this type of harassment need clarification. Laws against the distribution of pornography have been in existence for many years, but they need upgrading to address virtual infringements of privacy.

Moreover, Servance (2003) confirms that when addressing cases of cyber-bullying in the school context, American courts continue to apply a standard for protecting student free expression that goes back to the 1960's when students protested against the Vietnam war. They continue to apply the standards established in three landmark cases (the "Triumvirate"): *Tinker* (1969), *Fraser* (1986), and *Hazelwood* (1988). *Tinker* (1969) involved a silent student protest against the war by the wearing of black arm bands, despite the school administrator's warnings not to do so. The students were suspended and sued the school administration. The court held in favour of the students – establishing the famous directive that students cannot be expected to shed their free expression rights at the school house gate. That said, the court acknowledged that unless the speech *materially and substantially* disrupts learning, schools cannot restrict it. If this is applied to the cyber-bullying context, research has established (Devlin, 1997; Gati *et al*, 2002) that harassment in cyber-space impacts learning and emotional well-being in the school setting. Based on the research, a strong case could be advanced that cyber-bullying *materially and substantially* disrupts learning.

A new standard was set in the second case in the Triumvirate in 1986. The Supreme Court held in *Fraser* (1986) that schools may prohibit speech that undermines their *basic educational mission*. The case involved a campaign speech made by student Matthew Fraser that contained insinuations to sexual and political prowess:

I know a man who is firm – he's firm in his pants . . . [He] takes his pants and pounds it in . . . . He doesn't attack things in spurts – he drives hard, pushing and pushing until finally --- he succeeds . . . [He] is a man who will go to the very end --- even the climax for each and every one of you. (p. 1227)

The school suspended Fraser, noting that his speech distressed some students at assembly. He was not allowed to speak at graduation and sued the school under his First Amendment rights to free speech. Responding to the dissenting opinions in *Tinker* (1969), the court voiced its concerns about the need for schools to retain control over student behaviour and noted that schools are not the arena for the type of vulgar expression in Fraser's speech. Importantly, the judge noted that schools should not have to tolerate speech that is inconsistent with school values. While he acknowledged that it is crucial to allow unpopular speech, he emphasized that schools have a vital role in preparing students to participate in democratic society by teaching appropriate forms of civil discourse that are fundamental to democratic society.

Of significant relevance to cyber-bullying today, this ruling also stated that schools must teach students the boundaries of socially acceptable behaviour. The court stated that threatening or offensive speech has little value in a school setting and cannot be ignored by schools. Moreover, the court noted

that the speech infringed the rights of others (although it did not specifically state it, the rights of females in the audience). The sexual insinuations were clearly offensive and threatening to students.

The *Fraser* (1986) decision extends *Tinker* (1969) and is also, in my view, applicable to student freedom of expression in the cyber-bullying context. As I have explained in the profile of cyber-bullying, a substantial amount of the emerging research on Internet communications discloses sexual harassment, sexual solicitation, and threats against women or female students. Homophobia is also prevalent. Not only does this form of cyber-bullying materially disrupt learning and impede educational objectives, it creates power imbalances within the school environment and distracts female and gay or lesbian students from equal opportunities to learn. Consistent with the *Fraser* ruling, expression of this nature infringes their constitutional rights in an educational context and creates a hostile and negative school environment (physical and virtual).

The third American court decision, *Hazelwood vs. Kuhlmeier* (1988), addressed the question of whether the First Amendment compelled schools to allow free speech on school sponsored projects. The case involved the principal's decision to censor portions of the school newspaper. The students had written two articles: one on teen pregnancy and one on divorce. The principal was worried that although the sources were not disclosed the students who were interviewed for the articles would be recognized. The students sued, citing infringement of their First Amendment rights to free speech. The court in *Hazelwood* created yet another standard. It reasoned that, because schools are entitled to exercise control over school sponsored speech, they are not bound by the First Amendment to accept or tolerate speech that goes against the values held by the school system.

It is plausible that the reasoning in *Hazelwood* might be extended to cyber-bullying that originates on school computers. First, it is important to note that unlike the *Tinker* (1969) case, which questioned whether a school should *tolerate* particular student speech, in *Hazelwood* the courts questioned whether the First Amendment requires a school to *promote* student speech. They noted that "the standard articulated in *Tinker* (1969) for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression" (p.509). Certainly, when a school allows students to use its computers for both classroom-related and extracurricular activities it is providing students with resources and thereby becoming a tacit sponsor of such activities. Therefore, it would seem that educators do not violate First Amendment rights when they exercise control over inappropriate forms of communication disseminated using school computers.

Moreover, the courts noted that an educator's authority over school sponsored activities (whether or not they occur in the traditional classroom setting) can be characterized as part of the school's curriculum. This means that schools are not legally obliged to promote school-sponsored speech that is incompatible with its educational goals. This point is firmly solidified in *Fraser* where, as previously noted, a student could be disciplined for speech that is "wholly inconsistent with the 'fundamental values' of public school education" (Serrance, p. 1218).

If we apply this logic to the cyber-bullying context, it seems reasonable for schools to place limitations on any form of student expression (including digital forms) that either infringes upon the rights of others or is inconsistent with school values. Similarly, it could be argued that school computers are school property; therefore, any emails or correspondence between students, including websites created using those computers, could be censored. This rationale is along the line of cases that have confirmed that school lockers are the property of schools and therefore it is not an infringement of constitutional rights to search and seize the contents, if they breach school policies. For example, in *People v. Overton* (1967), the courts noted that schools can issue policies regarding what may be stored in school lockers. Correspondingly, educators are entitled to conduct spot checks or involuntary searches of lockers to ensure that students comply with these regulations. In fact, the courts regard the inspection of student lockers not only as a right but also as a duty of schools when it is believed that a student is using school property to harbour illegal materials.

This logic could certainly be applied to the cyber-bullying context if schools have a policy regulating the type of content that may be sent or received from school computers. For instance, it could be argued that, similar to lockers, emails are owned by the school because they are transmitted using school property. Therefore, if a student is suspected of sending harassing comments via email or has found such comments while browsing on school computers, the school should consider it their responsibility to monitor and discipline this activity. This point might be further justified by cases such as *Garrity v. John Hancock Mut. Life Ins. Co.* (D. Mass. May 7, 2002), where it was found that employers have a right to inspect employee email accounts in cases where employees have been warned their messages are accessible to the organization. With regards to school searches, we can also consider cases such as *New Jersey v. T.L.O.* (1985). In this ruling it was found that although students have a legitimate expectation of privacy within the school setting, schools also have a right to search student property, without a warrant, if there are reasonable grounds for suspecting that the student is violating either the law or the regulations of a school. Again, it would seem reasonable for schools to apply this rationale, if there is reason to believe

that students are using school computers to conduct illegal activity such as the harassment of others.

While U.S. courts lean towards supporting student free expression, they stress certain limits in the school context. Thus, expressions that substantially or materially disrupt learning, interfere with the educational mission, utilize school-owned technology to harass, or threaten other students are not protected by the *First Amendment* and allow school intervention. The reasoning in these decisions does not substantially differ from a Supreme Court of Canada decision in *R. v. M.R.M.* [1998] relating to the right of schools to restrict constitutional rights when school property and student privacy rights are involved.

### *Canadian courts: Student privacy and cyber-bullying*

Under Section 8 of the *Charter*, everyone has the right to be free from unreasonable search and seizure. Hence protection of privacy is guaranteed within reasonable limits in a free and democratic society. Furthermore, Section 7 of the *Charter* states that “everyone has the right to life, liberty, and security of the person.” In the cyber-bullying context, both these sections are relevant. The boundaries with respect to the obligations on schools to override search and seizure rights to protect others must be balanced with the right to life, liberty and security of the person. Furthermore, victims might argue that their rights to life, liberty, and security of the person are infringed under Section 7 when schools fail to intervene and protect them from cyber-bullying.

Based on Section 1 considerations, the courts generally give priority to the safety of the greater number of stakeholders as justification for overriding privacy rights. In *R. v. M.R.M.* [1998] for example, the Supreme Court of Canada ruled that as long as a school principal is not acting as an agent of the police, he or she can search student lockers if there is a suspicion of hidden weapons or drugs. The high court held that school lockers are the property of schools. When there is a danger to safety and/or the learning of the students, the infringement on student privacy rights can be reasonably justified under Section 1 of the *Charter*. Given the devastating psychological consequences of cyber-bullying on victims and the entire school environment, it is quite possible that a *Charter* interpretation that requires a balancing of the victim’s right to safety under S. 7 and the perpetrators’ right to computer privacy under S. 8 and free expression under S. 2(b), the court might rule in favor of the victim.

As Mackay and Burt-Gerrans explain in this journal, the rationale used by the Supreme Court in *R. v. M.R.M.* [1998] was that students should already have a lowered expectation of privacy because they know that their school principals or administrators may need to conduct searches in schools, and

that safety ought to be the overriding concern. The high court explained its interpretation of a safe and ordered school environment:

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. (p. 394)

Although Justice Cory was talking about the need to protect students, he also emphasized an atmosphere that encourages learning and also provides equal opportunities to learn. The high court has established in *Ross v. New Brunswick School District No. 15* [1996], that schools must provide conditions that are conducive to learning. Although the Ross case involved the free speech of a teacher who distributed anti-Semitic publications outside of school, the following statement from the ruling has been quoted in almost every *Charter* argument for a positive school environment:

[S]chools are an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. As the board of inquiry stated, a school board has a duty to maintain a positive school environment for all persons served by it. (para 42)

Even though Ross's anti-semitic publications were distributed outside the school context, the court noted that he poisoned the school and classroom environment for his Jewish students. They knew about his publications and felt threatened, fearful, and uncomfortable. This is highly applicable to the cyber-bullying context. For example, schools often maintain that cyber-bullying falls outside their realm of responsibility because it occurs after regular schools hours. However, if we are to draw upon the rationale used in the preceding case, it would seem that the on-campus/off-campus (physical vs. virtual space) distinction is moot. It is the effect of the harassment, bullying, and threats (despite the fact that they are made outside of the physical school setting) that is important. Although the Ross decision was primarily related to teacher behaviour, the court's ruling that "schools. . . must be. . . premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate" (para. 42) has broader application in the school context. The ruling is sufficiently broad to include *all* members of the school community. It suggests that when certain members of a school community promote intolerant attitudes or engage in anti-social behaviour (whether it is on or off campus), the school environment will be "poisoned." While this ruling makes it incumbent on teachers to ensure that their off-campus actions do not cause a negative impact within the school, it is also reasonable to expect schools to teach their students that social

responsibility, civic virtue, inclusive discourse and respect for differences do not end when they leave the school house gates or log into virtual spaces to communicate with classmates.

Constitutional claims are expensive and time consuming. When suing schools, parents often turn first to the law of torts and negligence because it is remedial and plaintiffs can seek compensation for torts or “wrongs” by the institution. Negligence in supervision of children at school is one form of a tort.

### *Law of Torts and Negligence*

When a claim in negligence is brought against a school, the plaintiff must establish that there was a duty of care and tangible harm, that the tangible harm was foreseeable, and that the school official’s actions or omissions either proximately or remotely caused the injury. Even though physical injuries are tangible and (in Canada) easier to establish (MacKay & Dickinson, 1998), the threshold for claimants in the U.S. is very high. Paradoxically, the same courts have supported claimants in cases involving suicide or psychological harm that could potentially result in suicide (Shariff, 2003). Bullying research and numerous media reports confirm that “bullycide” (suicide by victims of bullying) is on the rise (Lagerspetz *et al.*, 2000; 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 (Linden, 1994). The tort law criteria for third party liability requires strong evidence of proximate cause (namely, that injuries sustained by the victim must be caused directly by the actions or omissions of a school official or teacher). Nonetheless, the courts may need to develop new tort law criteria to address negligence suits against schools by victims and parents, if they are to address educators’ duty of care in virtual school environments.

### *Canadian human rights and American civil law*

Another area of law that relates to cyber-bullying (particularly with respect to sexual harassment in institutional settings), is Canadian human rights law. Moreover, American civil law under Title IX has also established an institutional obligation to protect sexual harassment victims. To illustrate, I present three 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]). 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 victims must face their tormentors in the workplace imposes an obligation on the employer to address the problem effectively. This case is highly 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.

It could well be argued that it is unreasonable to hold schools responsible for behaviours they have no authority to control. However, the issue does not turn on *whether* schools have the authority to control cyber-bullying. What needs to be determined is the extent of *institutional responsibility* to intervene in cyber-space, when anti-social behaviour among students takes place outside the physical school setting. When students harass their classmates on-line, they are still from the same school. If they are not allowed to bully their classmates at school, this should not change simply because they are using a different medium to harass. It is not the *medium* that determines school responsibility or authority, it is the *behaviour, and the players involved*. What the *Robichaud* decision contributes here is recognition by the Supreme Court of Canada of institutional responsibility. This landmark Canadian human rights decision establishes that institutional responsibility extends to off-work harassment. It thereby provides institutions with the “authority” to intervene when a victim has to face his or her harasser in the institutional context, even if the harassment takes place outside institutional walls. This institutional responsibility can be extended to schools as public institutions.

A second example involves the homophobic harassment of a male high school student of Iranian heritage in British Columbia, Canada (*Jubran v. North Vancouver School District* 2002). Even though Azmi Jubran was not gay, his appearance caused the majority of students in his class to tease him as being gay for the duration of his four years at Handsworth Secondary School in North Vancouver. The British Columbia Human Rights Tribunal ruled that the school had created a negative school environment in failing to protect Jubran, or disciplining the perpetrators. The tribunal ruled that they did an inadequate job of educating the students to be inclusive and socially responsible. Upon appeal by the school board and the high school, the British Columbia Supreme Court adopted a narrow construction of the case. The judge ruled that, because the claim was brought under S. 8 of the *Human Rights Code* (which protects homosexuals from harassment), and because Jubran claimed that he was *not* homosexual – he had no claim! Fortunately, the British Columbia Court of Appeal rendered a more thoughtful and practical ruling, overturning the Supreme Court decision and re-instating the tribunal decision. The court re-iterated that Jubran had every right to a claim against the school and school board because they fostered and

sustained a negative school environment in which he was prevented from equal opportunities to an education free of discrimination and harassment (see Shariff & Strong-Wilson, 2005).

Finally, in a controversial landmark decision in 1998, the American Supreme Court broke its tradition of avoiding the floodgates to litigation. The case of *Davis v. Munroe* (1988) involved the persistent sexual harassment of a grade 5 female student, 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 who their perpetrators are. It could be one individual or the entire class. This uncertainty would surely create fear and distraction preventing victims from equal opportunities to learn.

#### *Perceived intent: Criminal harassment in Canada*

While the cases of criminal harassment in cyber-space have not been successful, an example provided earlier, involving the suicide of Dawn Marie Wesley, is relevant here (*R. v. D.W. and K.P.D.* 2002). Dawn Marie's perpetrator was charged 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. The decision signals that schools ought to take reports of bullying in any form (whether physical, verbal or virtual) very seriously. If schools ignore reports by victims who perceive that their cyber-perpetrators will carry out their threats, they may be faced with tragic consequences, as in Dawn-Marie's decision to commit suicide.

## CONCLUSION AND IMPLICATIONS

This paper has drawn attention to the complexities of cyber-bullying, its insidious and anonymous nature, and the forms through which it is conveyed. I have explained that it is most prevalent among adolescents and that it comprises a significant amount of gendered-based harassment and homophobia.

I have conducted a review of the legal considerations that arise with respect to freedom of expression, student safety, and privacy in the school context and explained that although on-line harassment occurs in virtual space, it nonetheless constitutes a form of "real" violence and ought to be understood and interpreted this way by schools and courts.

The American constitutional cases covered in this paper disclose that while courts continue to consider freedom of expression from a geographical perspective – namely, on-campus versus off-campus expression, *Tinker* (1969) is applicable to cyber-bullying because it allows schools to intervene if such expression materially and substantially disrupts learning. Furthermore, *Fraser* (1986) confirms that schools are well within their rights to intervene when expression impedes the educational mission of the school. Finally, as *Hazelwood* (1988) and *R. v. M.R.M.* [1998] confirm, student privacy rights are subject to school authority in cases where student safety is concerned – justifying school locker searches. It can be argued that when cyber-bullying is conducted on school computers, such communication can be confiscated and dealt with by school officials.

The right of schools to intervene to reduce cyber-bullying is also related to their obligations to provide students with a safe school environment that provides equal opportunities to learn. Canadian constitutional decisions in *Ross* (1996) and *R. v. M.R.M.* [1998] support the need for schools to provide positive school environments, which I have argued extend to virtual space. Furthermore, human rights jurisprudence on sexual harassment in Canada and the U.S. has supported the institutional obligation to address harassment regardless of whether it takes place on or off school property.

Until the courts provide schools with policy directions that specifically address cyber-bullying, these rulings at least provide reasonable guidelines to inform educational policy and practice. In the meantime, more research is needed on this emerging and complex form of virtual harassment. To that end, I have collaborated as Principal Investigator with my colleagues, Dr. Wanda Cassidy (Centre for Education, Law and Society), and Dr. Margaret Jackson (School of Criminology) of Simon Fraser University, as Co-Investigators, and Professor Colleen Shepperd (McGill's Law Faculty) as Collaborator, to embark on a three year research project on cyber-bullying. The project is funded by the Social Sciences and Humanities Research Council of Canada. Our goal is to develop legal standards and guidelines for educators through a more thorough and updated review of emerging law and academic literature, as well as qualitative research in Quebec and British Columbia schools at the Grades 7 – 9 level. Our objective is to develop guidelines that will help schools reduce cyber-bullying and protect victims. We will incorporate the standards extrapolated from the project to inform teacher preparation courses and professional development at the university level.

In the meantime, it is important for schools to ensure they foster inclusive school environments and attend to every complaint of cyber-bullying through educational and communicative means. As some of the authors in this volume have expressed (Mackay & Burt-Gerrans; Cassidy & Jackson,), zero-tolerance policies, suspension and criminal harassment charges against adolescents rarely solve school problems (Giroux, 2003; DiGuilio, 2001). In

this regard, it is important for schools to take the lead in acknowledging their important role as educators, to work with parents towards developing positive and educational programs and tools that provide students with beneficial Internet experiences. A Canadian Internet organization that supports schools, Media Awareness Network has recently released its results on positive and negative uses of the Internet (Steeves & Wing, 2005). Its website provides excellent programming options for students at all grade levels.

In this vein, university faculties of education and law need to work together to develop guidelines for schools and incorporate knowledge of the legal issues raised here, through teacher education and professional development programs. It is imperative that Ministries of Education, law enforcement providers, the legal community, education and legal academics, Internet corporations and community organizations collaborate to reduce cyberbullying. The first step is to provide educators with the tools they need to develop and implement inclusive, educational, and legally defensible policies and practices in a rapidly evolving age of new technologies. Once that process is well underway, we stand a better chance of keeping students safe and schools out of court.

#### REFERENCES

- Adam, A. (2001). Cyberstalking: Gender and computer ethics. In E. Green & A. Adam (Eds.), *Virtual gender: Technology, consumption and identity* (pp. 209-224). New York: Routledge.
- Aftab, P. (2004). Understanding the cyber-harassment problem. *Information Week*. <http://www.informationweek.com/story/showarticle.jhtml?articleID=29116706>. Retrieved July 12, 2005.
- Anand, S. S. (1999). Preventing youth crime: What works, what doesn't and what it all means for Canadian juvenile justice." *Queens Law Journal*. 25(1), 179-249.
- Artz, S. (1998). Where have all the school girls gone? Violent girls in the school yard. *Child & Youth Care Forum*, 27(2). Victoria, BC: Human Sciences Press.
- Artz, S., & Riecken, T. (1997). What, so what, then what? The gender gap in school-based violence and its implications for child and youth care practice. *Child & Youth Care Forum*, 26(4). Victoria, BC: Human Science Press.
- Balfour, C. (2005). A Journey of Social Change: Turning Government Digital Strategy Into CyberSafe Local School Practices. Paper presented at *Oxford Internet Institute, Oxford University, U.K. International Conference on Cyber-Safety*. Paper available at [www.oii.ox.ac.uk/cybersafety](http://www.oii.ox.ac.uk/cybersafety)
- Barak, A. (2005). Sexual harassment on the Internet. *Social Science Computer Review*, 23(1), 77-92.
- Belsey, B. (2005). *Internet usage: facts and news*. <http://www.cyberbullying.ca/fact.html>. Retrieved July 8, 2005.
- Boulton, M. J. (1993). A comparison of adults' and children's abilities to distinguish between aggressive and playful fighting in middle school pupils. Implications for playground supervision and behaviour management. *Educational Studies*. 19, 193-203.
- Chu, J. (8 August, 2005). You wanna take this online? Cyberspace is the 21<sup>st</sup> century bully's playground where girls play rougher than boys. *Time*, 42-43. Toronto.
- Curtis, P. (1997). Mudding: Social phenomena in text-based virtual realities. In S. Kiesler (Ed.), *Culture of the internet* (pp. 121-142). Mahwah, NJ: Lawrence Erlbaum Associates.

- Cyber-Libel Website. <http://www.cyberlibel.com/bibl.htm>. Accessed May 2, 2004.
- Devlin, A. (1997). Offenders at school: links between school failure and aggressive behaviour. In D. Tattum, & H. Graham, (Eds.), *Bullying: Home, school and community*. (pp. 149-158). London: David Fulton.
- Dei, G. S. (1997). Race and the production of identity in the schooling experiences of African-Canadian youth. *Discourse Studies in the Cultural Politics of Education*, 18(2), 241-257.
- Dibbell, J. (1993, December 21). A rape in cyberspace. *Village Voice*, 38.
- DiGiulio, R. C. (2001). *Educate, medicate, or litigate? What teachers, parents, and administrators must do about student behavior*. Thousand Oaks, CA: Corwin Press.
- Evard, M. (1996). "So please stop, thank you": Girls online. In L. Cherny & E. R. Weise (Eds.), *Wired women: Gender and new realities in cyberspace* (pp. 188-204). Toronto: Seal Press.
- Gáti, Á., Tényi, T., Túry, F., & Wildmann, M. (2002). Anorexia nervosa following sexual harassment on the Internet: A case report. *The International Journal of Eating Disorders*, 31(4), 474-477.
- Giroux, H. (2003). *The Abandoned Generation: Democracy beyond the culture of fear*. New York: Palgrave MacMillan.
- Glover, D., Cartwright, N., & Gleeson, D. (1998). *Towards bully-free schools*. Buckingham and Philadelphia: Open University Press.
- Harmon, A. (26, August, 2004). Internet Gives Teenage Bullies Weapons...from afar. New York Times. <http://www.nytimes.com/2004/08/26/education>. Accessed August 26, 2004.
- Herring, S. C. (1999). The rhetorical dynamic of gender harassment on-line. *The Information Society*, 15, 151-167.
- Herring, S. C. (2002). Cyber violence: Recognizing and resisting abuse in online environments. *Asian Women*, 14, 187-212.
- Internet Bullying Website: [http://www.slais.ubc.ca/courses/libr500/02-o3-wtl/www/L\\_Serviss/index](http://www.slais.ubc.ca/courses/libr500/02-o3-wtl/www/L_Serviss/index). Accessed May 21, 2004.
- Jubran v. North Vancouver School District* (2002) BCHRT 10.
- Katch, J. (2001). *Under deadman's skin: Discovering the meaning of children's violent play*. Boston: Beacon Press.
- LaRocque, L. & Shariff, S. (2001). An analysis of anti-violence policies and programs in British Columbia schools. Report prepared for British Columbia Ministry of Education.
- Leishman, J. (10, October, 2002). Cyber-bullying: The Internet is the latest weapon in a bully's arsenal. CBC News, The National. <http://cbc.ca/news/national/news/cyberbullying/index.html>. Accessed January 27, 2003.
- Li, Qing (2005). Cyber-bullying in schools: The nature extent of adolescents' experience. Paper presented at the American Education Research Association (AERA) Conference in Montreal, Quebec, Canada, April, 2005.
- Mitchell, A. (Saturday, January 24, 2004). Bullied by the click of a mouse. *The Globe and Mail*. [http://www.cyberbullying.ca/globe-mail\\_January24.html](http://www.cyberbullying.ca/globe-mail_January24.html). Accessed May 21, 2004.
- Olweus, D. (2001). Peer harassment: A critical analysis and some important issues. Introduction in J. Juvonen & S. Graham (Eds.), *Peer harassment in school: The plight of the vulnerable and victimized* (pp. 3-20). New York, NY: Guilford Press.
- Pollack, W. (1998). *Real Boys*. Markham, ON: Fitzhenry & Whiteside Ltd.
- Riley, D. M. (1996). Sex, fear and condescension on campus: Cybercensorship at Carnegie Mellon. In L. Cherny & E. R. Weise (Eds.), *Wired women: Gender and new realities in cyberspace* (pp. 158-168). Toronto: Seal Press.
- Razack, S. (1999). *Looking white people in the eye: Gender, race and culture in courtrooms and classrooms*. Toronto: University of Toronto Press.

- Ross-Epp, J. (1996). Schools, Complicity, and Sources of Violence. In J. Ross-Epp & A. M. Watkinson (Eds.), *Systemic violence: How schools hurt children* (pp. 1-25). London: Falmer Press.
- Salmivalli, C. (2001). Group view on victimization: Empirical findings and their implications. In J. Juvonen & S. Graham (Eds.), *Peer harassment in school: The plight of the vulnerable and victimized* (pp. 398-419). New York, NY: Guilford Press.
- Servance, R. (2003). Cyber-bullying, cyber-harassment, and the conflict between schools and the First Amendment. *Wisconsin Law Review*. 1213 at 1215.
- Shariff, S. and Johnny, L. (in press). The Role of the Charter in Balancing Freedom of Expression, Safety and Equality in a Virtual School Environment. (Michael Manley-Casimir, Ed., 2005). *Courts, Charter and the Schools: The Impact of Judicial Decisions on Educational Policy and Practice*. Toronto, ONT: University of Toronto Press. (Chapter and page numbers to be determined).
- Shariff, S. (in press). Cyber-Dilemmas: Balancing Free Expression and Learning in a Virtual School Environment. *International Journal of Learning*. Altona, Victoria, Australia: Common Ground Publishing (page numbers to be determined).
- Shariff, S. (in press). Cyber-Hierarchies: A new arsenal of weapons for gendered violence in schools. (Claudia Mitchell and Fiona Leech, Eds. 2006). *Combating Gender Violence in and around Schools*. London, Eng: Trentham Books (chapter and page numbers to be determined).
- Shariff, S. and Gouin, R. (2005). CYBER-DILEMMAS: Gendered Hierarchies, Free Expression and Cyber-Safety in Schools. Paper presented at *Oxford Internet Institute, Oxford University, U.K. International Conference on Cyber-Safety*. Paper available at [www.oii.ox.ac.uk/cybersafety](http://www.oii.ox.ac.uk/cybersafety).
- Shariff, S. and Strong-Wilson, T. (2005). *Bullying and New Technologies* (Kincheloe, J. Ed. 2005). *Classroom Teaching: An Introduction*, Ch. 14, pp. 219-240.. New York: David Lang.
- Shariff, S. (2004). Keeping Schools Out of Court: Legally Defensible Models of Leadership to Reduce Cyber-Bullying. Educational Forum, *Delta Kappa Pi*. 68(3) 222 – 233.
- Shariff, S. (2003). *A System on Trial: Identifying Legal Standards for Educational, Ethical and Legally Defensible Approaches to Bullying in Schools*. Doctoral Dissertation. Simon Fraser University, Burnaby, B.C.
- Skiba, R., & Peterson, R. (1999, January). The dark side of zero tolerance: Can punishment lead to safe schools? *Phi Delta Kappa*. 80 (5): 372-6, 381-3.
- Steeves, V. and Wing, C. (2005). Young Canadians in a Wired World. Media Awareness Network. [www.media-awareness.ca](http://www.media-awareness.ca).
- Tolman, D.L., Spencer, R., Rosen-Reynoso, M., and Porches, M. (2001, April 13). "He's the man!" Gender ideologies and early adolescents' experiences with sexual harassment. Paper presented at the American Educational Researchers Association (AERA), Seattle, Washington.
- Wallace, P. (2001). *The Psychology of the Internet*. Cambridge, UK: Cambridge University Press.
- Willard, N. (2005). Educator's Guide to Cyber-Bullying: addressing the harm caused by online social cruelty. <http://cyberbullying.org>. Retrieved July 19, 2005.
- Wolak, J., Mitchell, K. J., & Finkelhor, D. (2003). Escaping or connecting? Characteristics of youth who form close online relationships. *Journal of adolescence*, 26, 105-119.

#### LIST OF CASES

- Bethel School District No. 403 et al. v. Fraser, a minor, et al.*, 478 U.S. 675 (1986);
- Garrity v. John Hancock Mut. Life Ins. Co.* 18 IER Cases 981 (D. Mass. May 7, 2002)
- Hazelwood School District v. Kuhlmeier*. 484 U.S. 260 (1988).
- Irwin Toy Ltd. v. Québec (A.G.)* [1989] 1 S.C.R. 927.
- Jubran v. North Vancouver School District* (2002) BC Human Rights Trib. 10. [http://www.bchrt.bc.ca/decisions/2002/pdf/jubran-v-boardof-trustees-2002\\_bchrt-10.pdf](http://www.bchrt.bc.ca/decisions/2002/pdf/jubran-v-boardof-trustees-2002_bchrt-10.pdf)

## *Cyber-dilemmas in the New Millennium*

*Lutes v. Board of Education of Prairie View School Division No. 74* (1003), 101 Sask. R. 232 (Sask. Q.B.).

*New Jersey v. T.L.O.* 469 U.S. 325 (1985)

*People v. Overton* 20 N.Y. 360 (1967)

*R. v. D.W. and K.P.D.* 2002 British Columbia Provincial Court 0386. File No. 7221-1. Abbotsford. [http://www.provincialcourt.bc.ca/judgments/pc/2002/03/p02\\_0386.htm](http://www.provincialcourt.bc.ca/judgments/pc/2002/03/p02_0386.htm).

*R. v. M.R.M.* [1998] 3 S.C.R. 393

*R. v. Oakes* [1986] 1 S.C.R. 103, 26 D.L.R. 94th) 200, 24 C.C.C. (3d) 321

*Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R.

*Ross v. New Brunswick School District No. 15* [1996] 1 S.C.R. 826,

*Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)

**SHAHEEN SHARIFF** is an Assistant Professor in the Faculty of Education, McGill University, Montreal, Quebec. Her appointment is in leadership, policy studies and education law, informed by human rights, constitutional, international and tort law. She is the Principal Investigator on two research projects funded by the Social Sciences and Humanities Research Council of Canada: 1) to investigate cyber-bullying and the legal obligations of schools; and 2) to investigate the impact of Quebec's intercultural policies on immigrant students post-September 11<sup>th</sup>. Dr. Shariff is currently writing two books: 1) *Censorship in Schools*; and 2) "A System on Trial" which involves the development of guidelines for educators on emerging legal challenges, liability and student safety issues relating to new technologies.

**SHAHEEN SHARIFF** est professeure adjointe à la Faculté des sciences de l'éducation de l'Université McGill, à Montréal, Québec. Son affiliation est en leadership, en études des politiques et du droit en éducation, en lien avec les droits de l'homme, constitutionnels, internationaux et les actes délictueux. Elle est la chercheuse principale sur deux projets de recherches fondés par le Conseil de recherches en sciences humaines du Canada : 1) Enquêter sur l'intimidation cybernétique et les obligations légales des écoles et 2) Enquêter sur l'impact, post 11 septembre, des politiques interculturelles québécoises sur les étudiants immigrants. Docteur Shariff est actuellement impliquée dans l'écriture de deux livres : 1) « La censure dans les écoles » et 2) « Un système passe en jugement » qui impliquent le développement de lignes directrices pour des éducateurs sur des défis légaux émergents, les situations de responsabilité et de sécurité des étudiants en matière de nouvelles technologies.