Abstract

The common law of negligence imposes a duty of care on schools to ensure that the safety of their students is met and to take reasonable measures to prevent foreseeable risks to the care and support of their students. The rapid dissemination of digital technologies is making this duty of care more difficult and is extending the schools duty of care way beyond the confines of the bricks and mortar of the physical building. Multimedia technologies have created new domains in which young people learn and interact however they have also provided an abundance of avenues in which bullying can now occur. This poses a problem to schools and to the nature of their duty of care as imposed at common law and by student codes which have been developed to address cyber bullying.

The Shades of Grey of Cyber Bullying

Legal frameworks regarding bullying are diverse and in Australia, due to the federal nature of law this diversity is exasperated from jurisdiction to jurisdiction. In Victoria the Crimes Act 1958 encompasses the concept of cyber bullying through s21A which addresses the notion of stalking via electronic communications. The Victorian Department of Education and Early Childhood Development have also attempted to address the notion of cyber bullying through the strategy ‘Safe Schools are Effective Schools.’ This strategy demands that all Victorian public schools must develop and implement a Student Code of Conduct which incorporates and addresses cyber bullying and includes anti-bullying and anti-harassment strategies (DEECD 2007).

The guidelines for the development of the Student Code of Conduct, empowers each school to construct a document that fosters a healthy school culture and incorporates the statewide framework of the Student Discipline Procedures, 1994. The procedures grew out of section 25 of the Education Act 1958 (Vic) and provides detailed procedures that must be followed in disciplining all students within Victorian state schools. The legislation also addresses issues such as records to be kept in relation to disciplinary action and the process of suspension and expulsion.

Cyber bullying now presents new challenges to schools and to society in general. Presently there have been no documented cases of successful prosecution for cyber bullying in Australia (Abrahams, 2009) however cyber bullying seems to be a type of bullying which is becoming increasingly prevalent amongst our young people throughout the world (Whitney & Smith, 1993; Oliver & Candappa, 2003). Cyber bullying is different to traditional forms of bullying and there are now few areas of a young person’s life in which cyber bullying cannot penetrate. This makes this type of bullying potentially more malicious and damaging to the health and wellbeing of young people and increasingly more difficult for schools to address.

The Student Code of Conduct developed by every state school in Victoria has attempted to address cyber bullying however given the mobile nature of this type of bullying it may be extremely difficult for any school to effectively enforce. Current Student Codes of Conducts support the notion that bullying behaviour in schools should be addressed as a part of a school’s duty of care to provide a safe
and supportive environment however where and when this duty of care commences and ceases appears to be a grey area and presently remains undefined.

Safe and supportive schools promote and embed a culture of anti-bullying within the ethos and philosophy of the school, and foster and teach a variety of strategies that can empower students to deal effectively with bullying and increase resilience. However current Student Codes of Conduct cannot effectively tackle the issues surrounding cyber bullying due to the multitude of places and spaces in which it can potentially evolve. If cyber bullying takes place outside the hours and walls of the school but impacts on a child’s wellbeing at school does the schools duty of care for that student extend beyond that child’s time at school or is it merely applicable during that child’s time at school? Does a school’s duty of care encompass the evenings when its students are bullying other students via Myspace or Facebook or through Mobile Phones? And does a school’s duty of care empower the school to address issues that are happening after hours? These are questions that demand immediate clarification however they are issues that are yet to be addressed by legislation or departmental policies; they are the shades of grey that schools are left to decipher.

According to Bamford (2004), schools must play a leading role in the effort to ensure that young people learn to use the internet in a safe and responsible manner. The Student Code of Conduct supports this notion however if schools are effective leaders in teaching young people to learn how to use the internet safely it is imperative that schools know when and where this obligation begins and ends. When does this teaching and responsibility become that of the parents and when do schools have a legal obligation to address cyber bullying – especially if it takes place outside the hours and confines of the school building? Until these questions are addressed schools are currently being left open to compensation claims for psychological injury from victims of cyber bullying at common law, they are potentially at risk.

Existing legislation and Departmental Policies have failed to keep up with advances in technology and do not effectively address the problems surrounding cyber bullying, both within society and within our schools, nor do they protect schools from common law compensation claims. Current legislation is extremely limited and requires the adaptation of other legal mechanisms such as anti-stalking and harassment laws to address cyber bullying (Smith, 2007). Departmental policies are not explicit enough in defining a school’s legal responsibility and obligations in relation to the duty of care surrounding issues of cyber bullying. It appears that current laws and policies have stemmed from face-to-face bullying measures and are therefore ineffective in the 21st century.

In a digital world that is highly connected and that has an enormous emphasis on multimodal collaboration, it is imperative that legislation and policy address cyber bullying effectively. Schools need to be provided with clear boundaries in which their duty of care extends, and students and parents need to be provided with clear avenues to pursue outside of the school grounds. Until these areas are addressed, schools and students will fall victim to cyber bullying and the shade of grey that currently clouds existing policy and legislation will remain. Schools will be left opened to a variety of potential legal ramifications and victims will not have viable options to explore for remedy. The cyber bully will continue to prosper and increase in potency and the demands on schools to address the cyber bully will continue to grow.

In comparison to face-to-face bullying cyber bullying has a number of unique elements that have an enormous potential to magnify the damage caused to victims. Such potentials include the cyber-bullies perception of anonymity often resulting in them engaging in a higher level of risk-taking behaviour, the lack of observation of the effect of the behaviour on the victim and the speed in which bullying can occur (Bauman, 2007). It is a growing and damaging phenomenon and at the moment there appears to be very little that the law, parents or schools can do to stop it.

Management practices that educate community in relation to cyber bullying need to be adopted by school leaders and nurtured by policy makers. It is imperative that schools and parents work alongside one another to develop a consistent range of strategies to combat cyber bullying and that a clear
definition of responsibilities or duty of care is both communicated and established within the school community. It is imperative for the wellbeing and best possible outcomes for our students and for the reduced exposure to legal risk for our schools.

Multimedia technologies have created new domains in which young people learn and interact however they have also provided an abundance of avenues in which bullying can now occur. If cyber bullying is to be dealt with effectively and our young people are supported to reach their full potential in a safe and nurturing environment it is vital that legislation and policy reflects this change and supports schools to address such issues in a child centred and risk-free environment. It is also vital that society has a clear understanding of when and where a school's duty of care commences and ceases given the changing nature of the times, places and spaces of learning. The shades of grey need to be eliminated

The change process in developing such understandings, guidelines and policies will, like any other change process, take a considerable amount of time to stabilize and work effectively. During this process it is imperative for schools and education departments to establish, define and communicate the schools' responsibilities in regard to after school internet usage. Schools need to be specific on where they believe their duty of care commences and ceases and they need to communicate these understandings clearly to their school communities, ensuring that evidence is collected to ascertain parental understandings. If parents are informed as to when the school will address incidents of cyber bullying and when it becomes parental responsibility not only will they better informed as to how they can effectively protect their children but they will be better informed as to how to effectively address such incidents. Risk management is imperative for schools whilst policies and law “catch-up” with the 21st century.

It is imperative that schools employ a variety of strategies such as communicating responsibility and duty of care requirements via written documentation, and through ensuring that parents have a clear understanding of these requirements by providing written verification (signing and returning acknowledgement and understanding of documentation to schools). This will ensure that effective risk management is in place and that our schools are protected from possible litigation and compensation claims.

Cyber bullying poses a very different threat to our young people as it has the potential to envelope and surround, not only their time at school, but also their time at home. As technology rapidly expands so too do the potentials of the cyber-bully. Society is already demanding that schools take responsibility for student incidents outside of school time (Year 12 muck up day) but this responsibility should not extend to twenty four hours a day, seven days per week.

In order for schools to reduce future risk it is now imperative that they take affirmative action and communicate and advocate the results of this action to their communities. It is also vital that they demand that policy and law catch up with the digital age. Current law and policy that stems from face-to-face action is not viable in a 21st century world, it is the shade of grey and it needs to be eradicated so that both our schools and our students are not hindered in striving to reach their full potential in a digital world.
References


