



Level: Grades 9 - 12

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Duration: Two Hours

Lesson

Cyberbullying and the Law

Overview

In this lesson, students learn about and discuss the legal aspects of cyberbullying. They review a variety of hypothetical scenarios and a case study, and they consider the seriousness of the situations, who is legally responsible, what action (if any) should be taken and by whom. To determine this, students will seek answers to the following questions: How does cyberbullying differ from offline bullying? What aspects of a cyberbullying case make it a cause for legal action? What determines whether it is a civil or a criminal matter? How should rights to freedom of expression, guaranteed under the Canadian Charter of Rights and Freedoms, be balanced against rights to security of person? When and how are schools responsible for cyberbullying cases?

Students will also be introduced to two main sources of information on criminal law: the online Criminal Code and the *Canada Gazette*. The latter publishes laws and regulations that are to be introduced or amended, allowing citizens to participate in the legislative system by commenting on the proposed laws or changes.

Learning Outcomes

Students will be able to:

- analyze scenarios and case studies, and make judgments on them
- consider and discuss factors that affect whether online actions are, in fact, cyberbullying
- demonstrate knowledge of legal terms and definitions related to cyberbullying
- demonstrate knowledge of responsible citizenship and ethical behaviour online
- argue and support an opinion

Preparation and Materials

- Read the following backgrounders for teachers:
 - Cyberbullying – Rights and Responsibilities
- Photocopy the following handouts:
 - Cyberbullying and the Law Fact Sheet
 - Cyberbullying Scenarios
 - Cyberbullying Case Study

Procedure

Distribute the Cyberbullying Scenarios handout. Ask students to quickly read each hypothetical scenario and rank each one from 1 to 5, where:

- 1 = Totally acceptable and appropriate
- 2 = Possibly wrong, but no action needs to be taken
- 3 = Wrong, and school authorities or Internet service providers should take action
- 4 = Wrong, and civil action could be taken by the target or the target's parents
- 5 = Wrong, and criminal charges should be pressed

Class Discussion

Read through each of the scenarios with students and ask how they ranked each one. Some will likely have obvious and unanimous rankings (i.e. the negative review of the band is a 1), but most will involve some debate. Ask students to explain what makes some scenarios more or less acceptable than others, especially those that are closely related (2, 4, 5 and 13, for instance, or 8 and 10).

For several scenarios, the answer will probably be "it depends." This is good: push the class to consider what the answer depends on, to bring out further aspects of the issue.

Major issues that should come out of this discussion are:

- Defamation – harm done to a person's reputation, and slander (spoken) versus libel (written)
- Whether a statement is seen or heard by a third party or parties
- Whether the identity of the target is clear
- Anonymity – does it make the perpetrator more or less responsible?
- Harassment – what does it involve?
- Duty to provide a safe work or study environment – what roles do schools and teachers play?
- Right to freedom of expression – what limits should be placed on it?
- Right to security of person – should people be protected from **written or verbal attacks**?
- Defences and confounding factors – what makes a possibly libellous statement okay?
- Truth – when the statement is accurate
- Fair comment – a legitimate journalistic intent
- "The reasonable person" – how offensive does something have to be before it becomes libellous?

Distribute the handout Cyberbullying and the Law Fact Sheet, and review it with the class. Where appropriate, return to the Cyberbullying Scenarios that the class discussed as examples (for instance, in cases where the class gave a rank of 3, 4 or 5, ask what action should be taken).

Case Study Exercise

Distribute the handout Cyberbullying Case Study, and review it with the class. Divide the class into six groups and assign each group to a role as follows:

- Perpetrator
- Target
- Parents of target
- Bystanders (people who know the target and saw the Web site)
- Teacher of perpetrator and target
- Police

Ask each group to analyze the case from their assigned point of view, considering the issues that came up in the class discussion and that were covered in the Cyberbullying and the Law Fact Sheet. Give each group an additional question to consider:

- **Scott:** How can you defend your actions?
- **Colin:** Was what you did cyberbullying as well? If so, how can you accuse Scott? If not, why not?
- **Colin's parents:** What should school and civil authorities do about this case? Why?
- **Other members of Scott's Facebook group:** What can you do, and should you have done, in this case? Why?
- **Teacher:** What can you do, and should you have done, in this case? Why?
- **Police:** Should criminal charges be laid in this case? If so, which ones and why? If not, prepare an explanation of why not for the target's parents.

After each group has shared its analysis, ask the class to find a consensus on how the case should be handled.

Final Activity

Have each group research the legislation on cyberbullying and determine whether this type of bullying needs to be addressed specifically in law:

- Instruct each group to research sections of the Criminal Code to find which ones currently apply to cyberbullying. (*You may wish to direct them to Section 264, Criminal Harassment; Section 264.1, Uttering Threats; Sections 298-311, -312, -315, Defamatory Libel; and Section 319, Public Incitement of Hatred. Students may use a print copy of the Code or may access it online at www.efc.ca/pages/law/cc/cc.html.*)
- Explain to students that any new laws or proposed changes to laws must be published in the *Canada Gazette*, a print and online publication of the federal government that has been published since 1841. To see whether any changes to the Code are currently being considered, direct students to the *Canada Gazette* search page (<http://www.gazette.gc.ca/search-recherche-eng.html>) and instruct them to search for the various sections of the Code that they found applied to cyberbullying.

Ask each group to prepare a report (this may be written, presented in class or both) that provides answers to the following questions:

- What criminal legislation currently applies to cyberbullying?
- Do you feel it is adequate? Why or why not?
- Should a charge of cyberbullying or online harassment be added to the Criminal Code? Why or why not?
- Should schools or Internet service providers be required to actively block and remove cyberbullying material? Why or why not?
- Is criminal prosecution the best reaction to cyberbullying? Why or why not?

Cyberbullying – Rights and Responsibilities

Types of Cyberbullying

Peer Against Peer

In 2008, nearly one in five Canadian students surveyed reported having been bullied online in the past three months, according to a University of Toronto cyberbullying survey.¹ Some examples of cyberbullying against peers include Web pages created to mock a student, false messages sent in a student's name, uploading of an embarrassing video or photos of a student, and organized exclusion from online communities.

Perpetrators may be more inclined toward bullying online because they do not see or hear the consequences of their behaviour, which discourages the development of empathy.

Student(s) Against Authority

There have been a number of reports of students engaging in online bullying behaviour against teachers and administrators. Most often this has taken the form of Web pages created to criticize or mock teachers, photos of teachers manipulated to be embarrassing or offensive, and uploading of embarrassing videos.

The Internet makes this kind of behaviour easier because young people feel that they are out of the school's reach on the Internet, and because it permits a cloak of anonymity.

Legal Approaches

Criminal law: harassment and defamatory libel

Criminal harassment is an offence under the Criminal Code. It consists of communication that causes another person to fear for his or her life or the lives of others. It can also apply to "stalking" behaviour, where frequency (rather than content) causes the fear.

Defamatory libel is also an offence under the Criminal Code. It consists of communication that can severely harm the reputation of an individual. There have been few recent cases of defamatory libel, all of them against people in positions of authority such as police, judges and prison guards. (For details, go to www.answers.com/topic/defamation-1 .)

Civil law: defamation

Defamation in civil law means communicating a false statement (which does not have to be in words – it could be an image, a movie, etc.) that will do harm to the reputation of another person. It must have a clear and obvious target and be accessible to one or more people besides the person making the statement and the target.

Generally speaking, spoken or transitory defamation is called **slander** and written or permanent defamation is called **libel**. Both can be the subject of lawsuits by the target.

¹ University of Toronto, March 2008

“The reasonable person”: To be libellous, the material must seem defamatory to a person who is “reasonable,” not a person with delicate or fragile sensibilities. There is no absolute legal test for this and it must be defined case-by-case, though there are precedents.

Innocent reproduction: A person who knowingly reproduces or forwards defamatory material, or causes it to be distributed, can be held liable for her or his actions. The exception is where she or he had no reasonable way of knowing that the material was defamatory. For instance, a teacher would be liable if the defamation appeared on the school Web site (where he or she has final approval over its content) but probably not if it appeared in an e-mail sent from the school’s computer lab, since the teacher could not reasonably supervise what every student was doing at every moment.

Human rights law: safe work environment

All employers are required to guarantee a safe work environment to their workers. This applies to teachers – school boards and administrators must act against any bullying behaviour toward their teachers – and it also applies to students. Therefore, school boards, administrators and teachers have a responsibility to guarantee a safe learning environment for their students. Even if bullying is taking place outside the school (such as on a Web site), the school has a responsibility to act if the situation is preventing any student from enjoying a safe learning environment.

Duty of care: Schools have an additional responsibility to act *in loco parentis*, or in the place of parents, because they have charge of children. Therefore, their duty to prevent and act on cyberbullying extends beyond that of employers.

Teachers and administrators must be aware of **tangible** and **foreseeable harm** that might come to students under their care. For teachers or administrators to be held liable, the harm done must be related to an **action** or **omission** on their part.

Rights and Responsibilities Under Civil Law

The following is a composite list of the rights and responsibilities of students and teachers in regard to cyberbullying under civil law. Individual schools, school boards, and provinces or territories may have their own formal codes of rights and responsibilities.

Summary of a student’s rights and responsibilities:

- A right to learn in a safe environment.
- A right to be treated with respect by teachers, staff and other students.
- A right to free expression where that right does not libel another person, cause another person to fear for her or his safety, or interfere with the operation of the class and school, and the creation of a safe learning environment for all students.
- A responsibility to treat all teachers, staff and other students with respect.
- A responsibility to use school space and equipment, including computers, in a responsible and appropriate way.
- A responsibility to report to the teacher or administration anything that may interfere with maintaining a safe learning environment.

Summary of a teacher’s rights and responsibilities:

- A right to be treated with respect by students, colleagues and staff.
- A right to take appropriate action, or recommend appropriate action to the administration, to maintain a safe learning environment.
- A right to free expression where that right does not libel another person, cause another person to fear for his or her safety, or interfere with the operation of the class and school, and the creation of a safe learning environment for all students.

- A responsibility to treat all students, colleagues and staff with respect.
- A responsibility to take seriously and act on anything she or he feels may interfere with maintaining a safe learning environment.
- A responsibility to ensure that school space and equipment, including computers, are used in an appropriate and respectful way.
- A responsibility to take all necessary steps to maintain a safe learning environment.

Cyberbullying and the Law Fact Sheet

According to a 2008 University of Toronto cyberbullying survey, nearly one in five Canadian students surveyed reported having been bullied online in the past three months. In an Alberta study, one-third of students who had cyberbullied had also been victims of it.

Cyberbullying can be much more severe in its effects than offline bullying because the targets feel they have no escape. Also, because of the wide scope of the Web, there can be many more witnesses to the bullying.

Perpetrators may be more likely to engage in bullying behaviour online because they can't see or hear the effects of their actions, and because it's possible to be anonymous online.

Forms of Cyberbullying

Insulting: Posting or spreading false information about a person that will cause harm to that person or that person's reputation.

Targeting: Singling someone out and inviting others to attack or make fun of her or him.

Identity theft: Pretending to be someone else to make it look like that other person said things he or she doesn't believe or that aren't true about him or her.

Uploading: Sharing images of a person, particularly in an embarrassing situation, without her or his permission, or sharing emails without the writer's permission.

Excluding: Pressuring others to exclude someone from a community (either online or offline).

Harassment: Repeatedly sending someone nasty, mean and insulting messages.

How the Law Addresses Cyberbullying

Cyberbullying can be addressed under **civil law** or **criminal law**, based on the situation.

Civil law: This is the branch of law that deals with **property rights, personal dignity and freedom from injury**. Under civil law, there are three approaches to cyberbullying:

1. A cyberbully may be engaged in **defamation**. This is when the bully causes harm to someone's reputation by spreading false information about that person. In general, defamation that appears temporarily (as unrecorded speech or in a live broadcast) is called **slander**, and defamation that appears permanently (in a book or on a Web site) is called **libel**.

To be libellous a statement must: do harm to someone's reputation, have a clear and obvious target, and be seen by people other than the person making the statement and the target.

In libel cases, the target can lay a suit against the person making the statement. If the suit is successful, the person making the statement will have to pay **damages** (money) to the target.

A person accused of libel may defend himself or herself by saying that the statement was **true**, that it was a **fair comment** (a genuine criticism, not a personal attack), or that he or she **innocently reproduced** the statement without knowing what it was.

2. A perpetrator may be creating an **unsafe environment** by making the target feel that she or he cannot go to school without facing violence, teasing or exclusion. Schools and workplaces are required to provide a safe environment for their students or employees, and must take any appropriate action to do so. A school, therefore, might punish a student for online behaviour that is making it hard for other students to learn in a safe environment. In Ontario, the Safe Schools Act has been changed to specifically include online behaviour: students can now be suspended or expelled for cyberbullying, even if it is done outside the school.

A school or workplace that does not do everything it can to provide a safe environment can be sued by the target(s). Even if a statement is not libellous, spreading it around might still create an unsafe environment.

3. Finally, a person is responsible for any consequences that he or she might **reasonably have guessed would happen**. Therefore, a perpetrator who suggests that a depressed student should kill herself would be liable if the student actually did kill herself, as long as the perpetrator had reason to believe it was a likely result.

Criminal law: This branch of law determines which actions are **crimes against the state**. In criminal law, there are two approaches to cyberbullying:

1. **Harassment** is a crime under the Criminal Code. Harassment is when something a person says or does makes someone fear for his or her safety, or for the safety of others. **Even if the perpetrator did not intend to frighten someone, she or he can be charged with harassment if the target feels threatened.** Criminal harassment is punishable by up to 10 years in prison.
2. **Defamatory libel** is a crime under the Criminal Code. It is most often treated as a crime if the libellous statement is directed against a person in authority and could seriously harm his or her reputation. Defamatory libel is punishable by up to five years in prison.

Section 2 of the Canadian Charter of Rights and Freedoms guarantees freedom of expression. However, this right is guaranteed “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” and, in the case of cyberbullying, must be weighed against Section 7. The latter section guarantees “the right to life, liberty and security of the person.” In general, Section 2 of the Charter has not been accepted as a defence in civil or criminal bullying cases.

Cyberbullying Scenarios

Remember that **civil** deals with property rights, personal dignity and freedom from personal injury. Civil penalties consist of fines and limitations on behaviour. **Criminal** law makes certain behaviours illegal and punishable by fines and/or imprisonment. (For example, if you don't get your faulty brakes fixed and you hit another car, that will likely fall under civil law. If you ram another car on purpose, that will fall under criminal law.)

Now read each of the scenarios below, and rate the seriousness of each one from 1 to 5, where.

- 1 = Totally acceptable and appropriate
- 2 = Possibly wrong, but no action needs to be taken
- 3 = Wrong, and school authorities or Internet service providers should take action
- 4 = Wrong, and civil action could be taken by the target or the target's parents
- 5 = Wrong, and criminal charges should be pressed

For any scenario you rate as a 3, 4 or 5, think about who is responsible, who should take action and what action should be taken.

1. A student posts a negative review of a concert given by another student's band. The review focuses on the band members' skill as musicians and the quality of their music.

1 2 3 4 5

2. A student posts a story making fun of a teacher, suggesting that he is unqualified to teach. The teacher's name is not used, but he is clearly recognizable to anyone who knows him.

1 2 3 4 5

3. A teacher discovers a Web site that is intended to mock a student in her class and will likely lead to the student being harassed at school. The site was not created at school and is not hosted on school computers (though it can be accessed from them).

1 2 3 4 5

4. A student uploads to *YouTube* a video of his band performing a song that makes fun of teachers. No specific teacher is named or is identifiable from the song.

1 2 3 4 5

5. A student writes a letter to the school administration stating that a teacher has used improper discipline in class.

1 2 3 4 5

6. A student creates a fake *Facebook* profile in the name of another student in the class. The other student is Middle Eastern and the profile contains photos of him doctored to look like Osama Bin Laden and statements, supposedly made by him, supporting terrorism.

1 2 3 4 5

7. A student finds that photos of her, which were taken by her (now ex-) boyfriend have been uploaded to his *MySpace* page. Then they were copied and reproduced in many more places, including photo-sharing sites. Her ex-boyfriend says that he is not responsible for what was done with the photos after he uploaded them.
- 1 2 3 4 5
8. A student writes a private email to his girlfriend accusing her of cheating on him.
- 1 2 3 4 5
9. A teacher asks students in her class to help write holiday greetings in a variety of languages for the school's Web site. Without the teacher's knowledge, one of the students' contributions is a false and insulting statement against another teacher.
- 1 2 3 4 5
10. During an instant messaging session with several participants, a student accuses her boyfriend of cheating on her.
- 1 2 3 4 5
11. A student discovers that other students in his class have created an online forum in which students are invited to vote on whether or not the first student should be beaten up.
- 1 2 3 4 5
12. A student creates a Web site in which she criticizes school policies and suggests that several teachers, whom she names, are overly strict in their discipline.
- 1 2 3 4 5
13. A student creates a *Facebook* group in which he states that one of his teachers is a space alien who is scheming to abduct students and take them to her home planet.
- 1 2 3 4 5
14. A student sends frequent emails to his ex-girlfriend. When she asks him to stop, he sends more emails, many of which contain abusive language or pornographic images.
- 1 2 3 4 5
15. A teacher discovers that students are being pressured by a popular student to remove an unpopular student from their *Facebook* "friends" lists.
- 1 2 3 4 5

Cyberbullying Case Study

(What follows is a work of fiction. Any resemblance to real people, places or situations is purely coincidental.)

Scott, a Grade 9 student, transferred to a new school halfway through the semester. He had trouble making friends until he discovered the school's *Facebook* network. Most of the other students on *Facebook* responded to his "friend" requests and he soon began to feel more included, and made friends with some of them at school as well.

After a while, though, Scott noticed that his friends list was shrinking as people removed him from their friends' lists. He was puzzled by this at first until one of his offline friends told him that Colin, a Grade 11 student, had gotten angry at Scott because he had seen Scott talking to Linda, Colin's ex-girlfriend. Colin had begun to pressure everyone he knew to remove Scott and Linda from their friends lists on *Facebook*, and to ignore them at school as well.

One afternoon in the computer lab, Scott got more and angrier at Colin and his friends. Since he had finished his work for the period, he decided to start a *Facebook* group called "Why I Hate Colin," and he invited everyone still on his friends list to join it. It turned out that there were quite a few people at the school who did not like Colin and his friends, and Scott's group grew quickly. Whenever the message traffic on the group slowed, Scott would try to boost it by posting some shocking accusation about Colin, such as suggesting that he had cheated on Linda or that he had hit her when they were dating (Linda was not involved in the group, and had never said any such thing).

Soon other members of the group started to make their own accusations and suggestions about Colin, some even saying that Colin should have water balloons thrown at him when he went up the main stairway. Scott responded to that suggestion, saying rocks should be thrown instead.

After a few weeks, one of Colin's friends discovered the group and reported it to him. Colin told his parents and they decided to report it to the principal and keep him out of school until things had been worked out, as well as to report what Scott had done to the police.

General Questions

- Who is the perpetrator in this case? Who is the target?
- What acts of cyberbullying have happened in this case? How serious would you rank each one as being?

Group Questions

- **Scott:** How can you defend your actions?
- **Colin:** Was what you did cyberbullying as well? If so, how can you accuse Scott? If not, why not?
- **Colin's parents:** What should school and civil authorities do about this case? Why?
- **Other members of Scott's Facebook group:** What can you do, and should you have done, in this case? Why?
- **Teacher:** What can you do, and should you have done, in this case? Why?
- **Police:** Should criminal charges be laid in this case? If so, which ones and why? If not, prepare an explanation for the target's parents as to why not.