

CYBERBULLYING: SHOULD SCHOOLS CHOOSE BETWEEN SAFETY AND PRIVACY?

M Laubscher*

WJ van Vollenhoven**

SUMMARY

In this theoretical article, we explore the tangled messiness of the application of human rights versus the 21st-century monster called "cyberbullying" in schools and focus on some of the challenges schools face daily. The research will reveal that cyberbullying victims were almost twice as likely to attempt suicide as youth who had not experienced cyberbullying, which implies that this is a phenomenon schools ought not to take lightly. We argue that everyone has a right to the freedom of expression, including in cyberspace, and begin by exploring how legal principles evolved in an attempt to deal with the limitations placed on an individual's right to freedom of expression. As we are about to reveal, though, matters become even more complicated when this freedom of expression relates to cyberspace, a space where users might have an expectation of privacy and even enjoy a state of anonymity. Clearly, the right to privacy and the right to freedom of expression need to be balanced and respected should school authorities be called upon to identify and discipline a cyberbully. This balancing act is one that needs to be investigated and carefully expounded upon, and is an issue that has not yet been sufficiently addressed in South Africa. Seeing that countries such as the United States of America and Canada have attempted to deal with this issue, it would be prudent to discuss the strides these countries have made, the challenges they have faced, and the insights they have gained, in an attempt to alert South Africa to the complex issues cyberbullying could raise. Working from this premise, this article will focus on the right to privacy, specifically in relation to Bill C-13 recently passed in Canada and the resultant

* Michael Laubscher MA LLB. Lecturer, Faculty of Law, North-West University. E-mail: michael.laubscher@nwu.ac.za.

** Willie (J) van Vollenhoven B Ed M Ed PhD. Associate Professor: Academic Manager for the Faculty of Education Sciences: Unit for Open Distance Learning, North-West University, Potchefstroom Campus. E-mail address: willie.vanvollenhoven@nwu.ac.za.

Canadian Supreme Court decision in the case *R v Spencer*, a case that shed further light on the issue of privacy in cyberspace. We conclude the discussion by highlighting several potential pitfalls legislation such as Bill C-13 could create, and ask that constitutionally sound legal remedies be developed without delay to assist South African school governing bodies in the arduous task of having to deal with cyberbullying, to ensure that they are not faced with the question as to whether their learners' safety or privacy should come first.

KEYWORDS: cyberbullying, privacy, freedom of expression, Bill C-13, safety, schools.