

A Call to Curb Cell Phones in Class

By **Andrea M. Wilson**, Student-at-Law, Borden Ladner Gervais LLP

Introduction

Cell phones have become ubiquitous in Canadian society and for most teenagers they are a must-have accessory. In 2005 the Media Awareness Network reported that six per cent of Grade 4 students owned a cell phone. This proportion increased to 46% of students by Grade 11. Of those youth who reported owning a cell phone, 56% had text messaging, 44% had Internet access and 25% said they had a camera feature on their cell phone.

These devices, not only make and receive calls, but also send e-mail, play music, connect to the Internet and take pictures. They are causing problems in classrooms throughout Canada. A phone ringing in the middle of class is distracting and disruptive to the teacher and to other students. Students are also distracted when they give into the temptation to send text messages during class time. Text messaging and cell phones with access to the Internet offer new means for students to cheat on examinations, while cell phones with cameras can be used inappropriately in washrooms and locker rooms raising privacy concerns. Some educators even argue that excessive cell phone use by students impedes their engagement in socially acceptable and genuine human interaction, an important life-skill that should be nurtured in school.

Cyberbullying is yet another problem that is associated with cell phone use in schools. Cell phone technology allows cyberbullies to communicate hurtful messages in the form of words or pictures to wide audiences with remarkable speed while maintaining anonymity. Perpetrators believe that they are immune from punishment for such conduct.

Cell phones can also be used by students to harass teachers. In November 2006 students at Ecole Secondaire Mont-Bleu in Gatineau, Quebec provoked a teacher into a temper tantrum, recorded this on a cell phone and posted the video clip on YouTube, a video-sharing website that is popular among teens. The school eventually convinced YouTube to remove the video footage from its website. However, the teacher, who has more than 30 years' experience, went on stress leave as a result of the incident. Cell phones have also been involved in perpetrating violent behaviour. Cell phones were recently used by students in Milwaukee to call in reinforcements for friends who were engaged in a brawl at school.

Measures to Address Cell phone Use in Schools

The Ontario Ministry of Education has no official policy on cell phone use in schools. Education Minister Kathleen Wynne has said that students should not be allowed to use their phones in class, but has left it up to individual school boards to restrict their use in schools. As a result,

varying approaches have been taken by schools and school boards to address the problem. The Dufferin-Peel Catholic District School Board recently passed a policy mandating that all personal hand-held electronic devices be turned off on school premises, and during after-school activities. The Durham District School Board has prohibited cell phone use during school hours, but students may keep their phones in their knapsacks or lockers throughout the day. At Westmount High School in Montreal, cell phones are confiscated if they are seen or heard on school property. Students at Montreal's John Rennie High School, are only permitted to use their cell phones in the main foyer and cafeteria.

Private schools have also taken action to limit the use of cell phones by students. Branksome Hall has a formal policy that forbids the use of cell phones in the classroom. Similarly, at Havergal College and Greenwood College School, students must keep their phones off during class time and in school hallways. Senior boys at Upper Canada College must step outside in order to use their cell phones.

In late January of this year, Trustee Josh Matlow of the Toronto District School Board tabled a motion calling for a report on the feasibility of a board-wide cell-phone ban. A report on this issue was presented to trustees in April 2007. Trustee Matlow's suggestion is not out of the ordinary. School boards in New York, Boston, Milwaukee, Los Angeles, Kelowna, Hamilton and Brantford have already instituted bans on cell phone use in schools.

Banning the Use of Cell phones in Schools: Implications

An effort by schools and school boards throughout North America to curb cell phone use in schools raises the important question of the legality of such measures. Cell phones are the personal property of students. However, placing restrictions on the use of cell phones in schools has a basis in law.

The common law clearly establishes that school authorities have a special duty of care towards students. Educators have a duty to protect students from any reasonably foreseeable risk of harm. In



addition to the common law, teachers, principals and students have statutory duties. In Ontario, the *Education Act* imposes a duty on principals to maintain proper order and discipline in the school. Principals have a duty to provide assiduous attention to the health and comfort of pupils under their care. Under Regulation 298, the principal is in charge of the “instruction and discipline of pupils in the school” and has the duty to provide for the supervision of students during the period of time during each school day when the school building is open.

The *Ontario Schools: Code of Conduct* (April 2000) provides that all students, parents, teachers and staff have “the right to be safe, and feel safe, in their school community.” With this right comes the responsibility to be law-abiding citizens and to be accountable for actions that put at risk the safety of others or oneself. The Code of Conduct also provides that all school members must treat one another with dignity and respect at all times.

As a result of the disruption that cell phones can cause in the classroom, limiting their use at school can be justified on the basis of maintaining order, discipline and creating a positive learning environment for students. Exercising one’s duty as an educator to protect students from reasonably foreseeable risks of harm could involve prohibiting the use of cell phones in classrooms and during instructional time. A restrictive cell phone policy can also be justified on the basis that it creates a more respectful environment for teachers and students, especially in the classroom.

While there are clear justifications for restricting the use of cell phones in classrooms, banning them completely from school property may present challenges. A school board in New York City that adopted a complete ban, and resorted to searching students upon entry into school, now faces a lawsuit by parents opposed to such a restrictive policy. The board’s latest offer to settle this dispute involves setting up special outdoor lockers where students can check their cell phones before entering school premises for \$1.00 a day.

Many parents consider it important that their children be able to reach them at any time of day via cell phone, in case of an emergency or to confirm after-school plans. Given events like the Dawson College shooting in September 2006, parents in Montreal who have been surveyed by the media are especially keen on ensuring that their children can reach them at all times. In fact, some schools in Canada and the United States that had restrictive cell phone policies in place relaxed the rules after the shootings at Columbine High School in Colorado in 1999.

It is also argued that banning cell phones from schools completely is not appropriate given the reality of the times. There will always be some new technology on the market and many teachers and school administrators believe that they have an obligation to teach students how to use these technologies respectfully and responsibly. Students must learn to turn off their phones and to

refrain from text messaging upon entry into the classroom out of courtesy and respect for their fellow students and teachers.

Conclusion

A clear policy that restricts the use of cell phones by students in classrooms and during instructional time has merits. Prohibiting students from bringing their phones onto school property will likely be met with considerable opposition from parents and students, where suitable alternatives are clearly available. Schools can adopt a policy requiring students to keep all cell phones and other electronic devices in their lockers during the school day and to refrain from making calls or text messaging in the hallways.



Many school administrators have taken the position that school rules should prohibit the use of cell phones during instructional time, during tests/exams, in washrooms and in change rooms. Students should be made aware that they will be disciplined if they use cell phones for the purposes of defamation, bullying and/or harassment. All rules adopted in a school with respect to cell phone use should be made clear to parents as well as students and should be consistently enforced.

Teaching staff should set an example to students by not making or receiving calls during class time. Teaching staff should avoid taking pictures of students engaged in misconduct for the purpose of using it as evidence, unless it is necessary to verify the identity of a student. Frequent reliance on pictures taken by cell phone could create the expectation that images, as opposed to a teacher’s verbal evidence, are necessary to establish such misconduct. Furthermore, taking and/or using a photograph to establish student misconduct may result in a complaint to the Privacy Commission. In addition, restraint should be exercised in searching students for electronic devices. Any search of a student should be minimally intrusive and respectful of a student’s privacy.

Prior to adopting any policy that restricts the use of cell phones in schools, the principles of procedural fairness should be maintained. School administrators should consult with the parent and student community on the purpose, objective and operation of the policy. Information about the policy should be made available to all members of the school community.

Students and parents should be reminded that in the case of an emergency, the office phone is always available. Any policy should ensure reasonable accommodation for students whose personal circumstances warrant carrying a cell phone with them at all times. Finally, school policies on cell phone use should seek to teach students how to use new technology in a responsible and respectful manner.

Contact Andrea M. Wilson at 416-350-2588
or e-mail: awilson@blgcanada.com for further information.