



Surveillance, media and the “panOCTic” prisoner: Natural justice and the private lives of teachers

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Summary/Abstract

Professional regulation and discipline are absolutely essential given the immense role teachers play in working with vulnerable populations. As such, surveillance serves an important, protective function. Yet, with the rise of social media and other technologies, teachers find themselves under a morality microscope, holding them professionally accountable for perfectly legal conduct in their private lives. This paper problematizes contemporary surveillance practices, asking whether panopticism has gone too far. Are teachers “panoptic prisoners,” whose rights as citizens are compromised? Does hyper-surveillance control “dangers” to students, or merely apply punitive discipline that leads to inauthentic performativity in schools? To explore these questions, I apply natural justice as a potentially fruitful antidote to prevailing panopticism.

Introduction: Panopticism in Private and Public Life

Renowned surveillance scholar David Lyon asks, “The question is, what surveillance is appropriate in the human, social world generally?” (Lyon, 2014, p. 30). This paper extends that question to educational settings, asking, what surveillance is appropriate in the context of teachers’ lives?

Though the roots of surveillance come from criminal justice, technology has led to its everyday, everywhere permutations. Surveillance refers to being watched or observed in countless ways, and comes with it both positive and negative connotations (e.g., Barnard-Willis, 2011). On the positive side, surveillance can be seen as a form of safety or protection – for example, cameras placed in shops or on street corners are perceived to help law enforcement capture images of crimes and catch perpetrators, or even to deter crime. In this positive connotation, the vulnerable are protected (Barnard-Willis, 2011). On the flip side, surveillance carries negative connotations that have to do with invasion of privacy, loss of individual liberty, and connotations of “Big Brother” police and quasi-police states (Barnard-Willis, 2011).

Surveillance, then, is closely tied to privacy. While historically, privacy – the right to be left alone – was considered an unequivocal right, it has morphed into a luxury commodity (Papacharissi, 2010). In the past, privacy took the form of dichotomies and divisions: spatial (workplace or home), temporal (“on” or “off” the clock), and object-related (work computer, or

your own tablet) (Marwick, 2012). Many of these dichotomies have become blurred, creating a “context collapse” when people reveal information in ways that distort the boundaries of work and home, school and private life, or friends and family (Marwick, 2012). The right to privacy is willingly exchanged for byte-by-byte access to social media, where personal information is traded for digital access to friends or online services (Papacharissi, 2010). Yet, surveillance through deliberate privacy loss has become so ingrained in life (both private and public) that people often have a hard time seeing beyond privacy as an “antidote to inappropriate or excessive surveillance” (Lyon, 20014, p. 31). While, on the one hand, individuals are often complicit in surrendering their privacy, this is not always the case (for instance, the posting of video, audio, or photographs on social media without permission of all those represented). To conceal one’s identity on social media – or to reverse the loss of privacy by procuring services to erase a person’s digital footprint –requires skills or access to expertise outside of the reach of the average person. This elusive nature of privacy is Papacharissi’s (2010) basis for deeming it a luxury commodity.

In the context of education – and more specifically, the work of teachers – surveillance is intimately tied to regulation and certification. In the course of their work – and perhaps in their private lives, as I will explore later – teachers are increasingly subjected to various forms of surveillance that have punitive, disciplinary consequences and further erode individuals’ privacy. I do not dispute the need for professional regulation and its enforcement through constant surveillance. Teachers work with vulnerable populations, and there is no question that certain types of conduct endangers students. Extreme cases of student-teacher sexual relationships, abuse directed at students and the like unquestionably call for discipline and in some cases removal of teacher certification. Rather, this paper is concerned with how the surveillance operates when members of the teaching profession find themselves caught between their responsibilities to their employers and their rights as individuals to engage in legal behavior on their own time. And that surveillance, while perhaps well-intentioned, can cause undue hardship when disciplinary policy is applied in ways disproportionate to the purported offence.

Teachers have long been subject to certain standards and legislation that govern their work. Since its establishment in 1867, Ontario’s *Education Act* has articulated teachers’ duties including:

to inculcate by precept and example respect for religion and the principles of Judeo-Christian morality and the highest regard for truth, justice, loyalty, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance, and all other virtues (sec. 264.(1)).

As such, Ontario teachers have historically been responsible for their moral conduct beyond technical competence. In his work on discourses of good teaching, Moore (2004) found that teachers themselves felt that the perceptions of others – the gaze of the “other” – were central to their work. Teachers expressed that they wanted to be seen as doing a good job by administrators, pupils and peers. He quotes one of his research subjects:

With teaching, it’s not just how you see yourself, it’s about how you see how other people see you: how you see yourself as being seen...What you inevitably end up doing is looking at the pupils and judging yourself through them. (Moore, 2004, p. 18)

This quotation highlights the traditional view that teachers are indeed observed and judged by others – though the subject appears to be referring to the workplace.

Attention to teachers’ moral conduct both on and off the job were further reinforced with the introduction of *The Ontario College of Teachers Act, 1997*. The *OCT Act* established the Ontario College of Teachers (OCT) as an independent (but arms’-length) body to regulate and govern the teaching profession in the public interest. Teachers working in publicly funded schools in Ontario must be certified by the OCT and remain members in good standing. Prior to 1997, teachers were licensed by the Ministry of Education.

With the rise in social media, the introduction of the OCT and its disciplinary functions, teacher surveillance has markedly increased. While these changes are by no means unique to Ontario’s education landscape, this paper will focus on how surveillance has caused regulation to take on new and invasive forms. The recent growth of public shaming rituals associated with institutional surveillance extends to teachers’ conduct in their personal lives.

This paper addresses surveillance through the iconic panoptic metaphor. Foucault's (1979) *panopticon* is based on Bentham’s design for an eighteenth century model prison, consisting of a central tower and a circular structure, divided into individual cells surrounding it. The original panopticon used backlighting in the central tower, so that prisoners could not discern whether or not they were being watched by the supervisor. Foucault (1979) adapted the panopticon as a modern metaphor to describe how discipline operates through a variety of social and institutional apparatuses. But the surveillance does not only originate from the central tower but also from the “conscious and permanent visibility” (Foucault 1979, p. 201) that forces the individual to self-monitor out of fear that others might be watching. This phenomenon is known as panoptic performativity (Perryman, 2006), in which individuals perform compliantly in order to escape the regime.

The modern panopticon is invisible and operates through multiple eyes whose gaze seems natural and makes us blind to its effects (Davies, 2003). It enables meticulous control over networks of power relations that produce and sustain the truth claims of an institution by means of surveillance.

This has several functions. The panopticon ensures compliance when which teachers are bound by “fear and guilt” (Davies, 2003). It also disguises coercion by increased emphasis on personal responsibility (Davies, 2003). Electronic communication (email, social media, etc.) have amplified the invisibility of panoptic surveillance in everyday life (Bryant, 1995; Campbell, 2005; Papachirissi, 2010).

Tensions between PanOCTic surveillance, natural justice and procedural fairness

So far, I have described the dual nature of surveillance as positive and negative, and pointed to its pervasiveness as part of the regulatory frameworks governing teachers and citizens. In this

section, I explore the procedural mechanisms in place to address allegations of misconduct that arise out of teacher surveillance. My interest is in how natural justice can be used to understand these procedures, and how procedural fairness has shifted since the introduction of the Ontario College of Teachers (OCT).

Natural justice describes an overall commitment to fairness in an administrative setting in situations where *audi alteram partem* (the right to be heard, or the hearing rule) and *nemo iudex in parte sua* (no person may judge their own case, or the bias rule) apply (Groves, 2013). The principles of natural justice were derived from the Romans who believed that some legal principles were "natural" or self-evident and did not require a statutory basis. These two basic legal safeguards govern all quasi-judicial or judicial decisions. The guiding principle is that every decision-making body has the duty to act fairly. In the present day, natural justice is premised on the precept that people are innocent until proven guilty, with the onus on the accuser to prove her case (Thomas, 1996). When the accused must prove her innocence, it is much easier for accusers to allege, and this turns traditional justice on its head (Groves, 2013; Thomas, 1996). Yet, some OCT practices in dealing with surveillance-based allegations call the application of natural justice into question.

OCT's disciplinary procedures are carried out by the OCT's 37-member Council. Twenty-three of those members are elected by their peers and, 14 members are appointed by the provincial government. In addition to setting Standards for the Teaching Profession, the OCT also investigates allegations of misconduct made against members, carries out disciplinary hearings, and can exercise various levels of disciplinary consequences to members of the profession. Complaints can be initiated by anyone – a parent, a supervisor or board, or even by the College itself. The OCT's media department conducts ongoing press sweeps of local and provincial newspapers, and has initiated investigations against members based on what has been published about them.

Once a complaint is made against a member, the OCT initiates an investigation through the Investigation Committee. If the complaint is deemed to have merit, disciplinary action begins through a referral to the Discipline Committee. The OCT claimed that approximately four out of five complaints are not referred to the Discipline Committee but are dismissed or resolved by other means (OCT, n.d.). Examples of cases considered by the Investigation Committee and not referred to a hearing are provided here.

The Discipline Committee determines the teacher's guilt of professional misconduct or incompetence and, if so, imposes a penalty. These may include (OCT, n.d.): revoking the member's Certificate of Qualification, suspending the Certificate of Qualification for up to 24 months, imposing terms, limitations or conditions on the Certificate; place a reprimand or admonishment on the member's Certificate, which then appears on the public register; fining the member; and/or publishing the findings. Disciplinary hearings are open to the public and a summary of hearings and their outcomes is published in the College's magazine, *Professionally Speaking*, in a section called "The Blue Pages" (which appear to have been recently renamed

“Governing Ourselves”) and also available on the OCT’s website. Examples of disciplinary actions published in the Blue Pages.

Complaints are considered against *Regulation 437/97* of the *Ontario College of Teachers’ Act* (1996). This piece of legislation is objectionably vague – and as such, when applied, they result in penalties for OCT members that can be unfair. For example, point 19 from Section 1, “Conduct unbecoming a member,” is frequently used as a rationale for this.

The OCT has experienced several challenges to procedural fairness in Disciplinary Hearings. For instance, in *Kalin v. Ontario College of Teachers, Ontario Reports citation 75 O.R. (3d) Part 7*, the court found that OCT applied 1997 standards of conduct to incidents that were alleged to have happened in 1991; thus “offending the rule against retrospective application of legislation” (p. 523), in addition to failing to provide reasons for its procedural rulings. Similarly, *J.M.S.L. v. Ontario College of Teachers* raised questions about procedural fairness where limited information was provided to the accused (Singleton, 2009). Singleton concluded that the accused’s “right to respond to a complaint before the Investigation Committee is a statutory mirage, appearing substantial, but signifying nothing.”

The high stakes and very public nature of OCT Investigations Committee reviews and Disciplinary Hearings “public hearing into professional misconduct may result in irreparable damage to her personal and professional reputation, as well as causing anguish and emotional distress” (Singleton, 2009, p. 64). In practice, the public flogging of the hearings – as well as publication in the “Blue Pages” seem to contravene *audi alteram partem* and *nemo iudex in parte sua*, both central to a naturally just procedure for dealing with complaints.

The OCT and its magazine, *Professionally Speaking*, may attempt to protect vulnerable populations or perhaps instill confidence through regulation. Teacher disciplinary decisions are published monthly in a *Professionally Speaking* section titled “The Blue Pages,” transforming teacher discipline into a spectacle involving “public flogging for offenses that critically damage the public trust that teachers are bound to uphold” (Page, 2013, p. 237). The inclusion of decisions on minor or questionable misconduct in summaries of disciplinary action skews statistics, and does so in an attempt to “promulgate the image of a government [or, in this case, regulatory body] that is decisive in tackling problem teachers” (Page, 2013, p. 237). Even if a teacher conducts herself with utmost professionalism, she may be subject to false or inappropriate allegations from anyone – a disgruntled student or parent or co-worker. In other situations, teachers may engage in conduct they deem ethical, yet face disciplinary action that is reported out of context. The “Blue Pages” regularly reports instances of misconduct in which Ontario teachers fail to adequately follow standardized test preparation instructions (e.g., providing homework questions similar to those which will appear on a future test) (Pinto, 2016). Yet, in-depth research by Childs and Umezawa (2009) reveals that Ontario teachers report that in cases where they perceive test instructions to be unreasonable, they do not view violations as unethical, since they believe their actions are in the best interest of students. The sorts of discipline just described are carried out under the objectionably vague *Regulation 437/97: Professional Misconduct of the Ontario College of Teachers Act, 1996 – O* that allows

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for broad interpretation of what constitutes “conduct unbecoming to a member.” Some of these disputes over the application of the “unbecoming to a member” clause have arisen in Ontario courts, as have the objectionable procedures used within the hearings themselves (Singleton, 2009).

This fear of this surveillance publicized in the “Blue Pages” is, at best, an added stress to consider in daily work. At worst, it can result in extremely unpleasant consequences associated with (sometimes severe) disciplinary action. This creates a “blame culture” punctuated with tight surveillance and limits teacher risk-taking for fear of repercussions (Avis, 2003, p. 328). I want to take a moment to describe the very real personal consequences and stigma of a “Blue Pages” published ruling. One year when I was supervising practicum for a university, I placed a student with a supervising teacher who was highly recommended. The student teacher telephoned me shortly after receiving her placement, extremely distraught because she had looked up the teacher’s name in the OCT Public Register, only to learn that he had been disciplined. She did not know the nature of the allegation or ruling, but expressed that perhaps he was a sexual predator and demanded her placement be changed. I did not allow this. Later, she learned that the supervising teacher was the subject of this ruling, published in the March, 2008 issue of *Professionally Speaking*:

A Discipline Committee panel held a public hearing into five allegations of professional misconduct against a teacher for failing to seek help for an assaulted student following a pre-Halloween scuffle.

The panel heard evidence that the member ran after a trespasser he suspected of pelting his house with eggs and paintballs during “Devil’s Night” pranks on October 30, 2007. Upon catching the winded youth, a student at his school, **but not in his class**, the teacher observed that the 15-year-old had a backpack containing a carton of eggs, some of which were missing. The boy denied throwing eggs at the member’s house when asked.

The teacher left to find a garbage can to dispose of the eggs. In the meantime, a crowd of onlookers circled the boy, grabbed his hair, assaulted him, threw an egg or eggs at him and then dispersed. The teacher returned to find the boy’s face and neck had been injured and asked the boy if he wanted him to take him home or call the police. The **boy said he wanted to be left alone and didn’t need any help**. The teacher then returned to his house without getting help for the boy or trying to contact his parents. The boy, meanwhile, walked home, at least one kilometer away.

The teacher acknowledged that after he became aware of the assault, he ought to have notified the appropriate authorities and/or the boy’s parents, prior to returning home.

The student teacher reported that the supervising teacher was routinely teased by his work colleagues about the incident, which is how she learned of it. Yet conversely, the public floggings of teachers carried out by governments, employers and professional regulatory bodies call attention to teacher misconduct; leaving parents, students and members of the public potentially less trustful of teachers (Pinto, 2016). Ironically, accountability “provides parents and politicians with more information, it also builds suspicion, low morale, and professional cynicism” (Sahlberg, 2010, p. 57 in Pinto, 2016). This is especially the case when teacher misconduct makes headlines, and media consumers may (mistakenly) arrive at the conclusion that many teachers are involved in transgressive behaviour based on one salacious example. And fallacious conclusions or extrapolation of isolated cases that make headlines simply create more fear, and may amplify public calls for enhanced surveillance.

PanOCTic Prisons: Professional and Personal Lives Collide

Teachers are caught between their professional responsibilities during work time, and their rights as citizens to engage in perfectly legal behavior on their own time. Headlines featuring teachers disciplined over private, off-work behavior abound as educators find themselves under a “morality microscope” (Pinto, 2016; Turley, 2012). A Georgia teacher was forced to resign after the school principal found vacation photos of her on Facebook holding what appears to be beer because the photo “promoted alcohol use,” and a Pennsylvania teacher was suspended after a third party posted a Facebook photo of her at a bridal shower with a male stripper (Turley 2012). A vegan Ohio teacher was fired for voicing his disapproval of dairy farming practices on social media (Nethers, 2014). A 73-year-old Montreal teacher lost her job after it was discovered she appeared nude in several films in Europe more than 40 years ago (Peritz, 2014). Ontario teachers have found themselves disciplined for driving students home and offering job references on the grounds that these actions cross inappropriate boundaries. In the United Kingdom, things such as “having pupils as your Facebook friend,” failing to report an absence properly, and encouraging students to create get well cards for a prisoner warranted formal discipline from the UK regulatory body, Ofsted (Page, 2013). Canadian teacher unions have advised teachers not to use email or any other electronic means (including class/course websites) to communicate for fear that those emails could lead to misunderstandings that launch OCT investigations or other disciplinary action (Bartlett, 2015), and have faced for seemingly legal and appropriate off-time actions (giving a student a ride home, writing a letter of reference).

What makes teachers’ professional conduct especially unique is regulation that extends to conduct in their personal lives. The director of Simon Fraser University's Centre for Education, Law & Society, said that young teachers “often have trouble understanding that freedom of expression does not trump professionalism. Many ‘think that they're entitled to say what they want and do what they want online and haven't really thought about the implications’” (Bielski, 2011). Some legal scholars have described the problematic nature of this area. Courts have limited teachers’ equality rights claims through the application of the “an uncritical pronouncement that teachers as a group cannot in any circumstances be compared to the public at large” (Dickinson, 2005, p. 402). Can and should teachers’ personal liberty be limited to this extent? Who decides what constitutes “conduct unbecoming to a member”?

In an era of increased professional scrutiny, Ontario’s College of Teachers has devised a *panOCTicon* that places teachers in the position of not knowing the extent of their surveillance and impinging on their personal activity. The panopticon creates a situation in which a teacher self-censors her conduct and comments because she never knows who might be listening or who might make a complaint against her. In this way, it creates a certain type of “prison” for the teacher.

The panoptic practices and ensuing discourses stemming from the OCT and related media hype heighten awareness of potential sexual misconduct inadvertently, but this leads to

another kind of awareness of the student as a sexualized subject (Grondin, 2010). Because of the alarmist talk that “that one’s perceived innocuous behaviour can be interpreted by others as sexually inappropriate” (Grondin, 2010, p. 134), teachers face added pressure to signify their ‘appropriate’ intentions to others in order avoid potential incrimination (Grondin, 2010). Moreover, awareness of the potential for accusations of sexual misconduct may compel teachers to reinterpret “platonic” actions, to which they might not otherwise have given a second thought, as potentially sexualized (Grondin, 2010).

Conclusion

I return to David Lyon’s thought-provoking question: What surveillance is appropriate in the human, social world generally? And what is appropriate for teachers? As I stated at the outset, professional regulation is essential to ensure vulnerable populations are safe. However, I have taken issue with the pervasive surveillance practices encouraged and facilitated by the OCT. Coupled with a disregard for natural justice and procedural fairness, today’s teachers are left in panOCTic prisons, in which they fear scrutiny in their private and public lives. They are not entitled to the “luxury” of privacy in their personal lives due to the social construction of the teacher as always “on duty,” and the inescapable eye of social media.

This exploration points to several important areas for future research and action. First, to what extent are cases investigated by OCT questionable from a privacy perspective? Second, can surveillance, investigation, and hearing procedures be improved by seriously integrating the fundamental precepts of natural justice? How can systems open dialogues to better support teachers and stakeholders in ways that would allow them appropriate levels of privacy and freedom of expression and association without fear of punitive discipline?

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