

## **A Review of Legislation and Bylaws Relevant to Bullying** **Portrait de la législation et de la réglementation ayant trait à l'intimidation**

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Résumé de l'article

Dans cet article, nous passons en revue la législation et la réglementation en lien avec l'intimidation à l'école. Ce portrait cible les différences existant entre les définitions que donnent au phénomène les chercheurs et les législateurs. Il examine également la manière dont certaines lois identifient l'intimidation où d'autres ciblent des actes d'agressions plus généraux. Enfin, certaines lois abordent la problématique au sein du contexte scolaire, alors que d'autres visent les milieux de travail. Par ailleurs, nous faisons l'examen du rôle des règlements dans le traitement de l'intimidation. Nous concluons que l'intimidation est fréquemment ignorée par les législateurs. Lorsqu'intégrée à la législation, sa définition varie considérablement selon les juridictions et/ou omet les formes non-physiques d'agressions.

# A REVIEW OF LEGISLATION AND BYLAWS RELEVANT TO BULLYING

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**ABSTRACT.** In this article we review legislation and bylaws that relate to school bullying. This review focuses on the differences in how bullying is defined by researchers and legislators. It further examines how some laws identify bullying specifically, whereas others address more general acts of aggression. Some laws pertain to the school environment, while others specify the workplace environment. We also examine the role of bylaws in addressing bullying. We conclude that bullying is often absent from legislation, and when it is included its definition varies across jurisdictions and/or omits non-physical forms.

## PROTRAIT DE LA LÉGISLATION ET DE LA RÉGLEMENTATION AYANT TRAIT À L'INTIMIDATION

**RÉSUMÉ.** Dans cet article, nous passons en revue la législation et la réglementation en lien avec l'intimidation à l'école. Ce portrait cible les différences existant entre les définitions que donnent au phénomène les chercheurs et les législateurs. Il examine également la manière dont certaines lois identifient l'intimidation où d'autres ciblent des actes d'agressions plus généraux. Enfin, certaines lois abordent la problématique au sein du contexte scolaire, alors que d'autres visent les milieux de travail. Par ailleurs, nous faisons l'examen du rôle des règlements dans le traitement de l'intimidation. Nous concluons que l'intimidation est fréquemment ignorée par les législateurs. Lorsqu'intégrée à la législation, sa définition varie considérablement selon les juridictions et/ou omet les formes non-physiques d'agressions.

**A** substantial body of research has shown that bullying is associated with a number of long-term negative consequences (Brunstein, Marrocco, Kleinman, Schonfeld, & Gould, 2007; Fosse & Holen, 2006; Smith, Cousins, & Stewart, 2005). Targeted children are likely to be at risk for internalizing disorders, such as depression, anxiety, diminished self-esteem, social withdrawal, suicide ideation, and suicide attempts (Brunstein et al., 2007; Smith et al., 2005). With the increased interest in this field and with a more comprehensive understanding of the negative consequences associated with bullying, a number of countries have proposed amendments to legislation recognizing bullying as a criminal

offence. These laws have been introduced with the intention of preventing and better managing incidents of bullying, particularly when individuals are aware that bullying is illegal and punishable under law.

This paper reviews current legislation relevant to school bullying (separate from workplace bullying) in several countries, including Canada, the United States, the United Kingdom, and Finland. First, current definitions of bullying and related terms used in legislation are discussed. Then, current international legislation that addresses bullying and a review of legislation in Canada are presented. In addition, this paper will review current bylaws that give police officers the authority to fine individuals who bully.

## DEFINITIONS

To ensure a common understanding of legal terms, this paper begins by reviewing a number of important definitions. Legislation is defined as the process of making or enacting a positive law in written form, based on a particular formal procedure, by a branch of government constituted to perform this process (Garner, 2004). A bylaw can be defined as a rule or administrative provision adopted by an institute for its internal governance and its external dealings.

The definition of bullying is critical to understanding relevant legislation. Within the academic community, researchers studying bullying tend to operationalize bullying as an aggressive behaviour that is intended to cause distress or harm, exists in relationships where there is an imbalance of power whereby the targeted child is unable to defend him/herself, and is repeated over time (Limber & Small, 2003; Nansel et al., 2001; Olweus, 1993). The perpetrator is likely to feel excited and powerful, whereas the targeted child is likely to feel hurt, embarrassed and publicly humiliated (e.g., *R. v. D.W. and K.P.D.* [2002] BCPC 96). Indeed, about 85% of bullying incidents occur before an audience of peers (Craig & Pepler, 1997). Repetition and power differential are considered core to the definition of bullying (Olweus, 2001) and differentiate bullying from other forms of aggression (Beran, 2006).

Bullying behaviours have been categorized along two main dimensions: direct behaviours that include verbal abuse (e.g., name calling, threatening and taunting) and physical actions (e.g., hitting, kicking, and shoving). Included in this dimension are sexual behaviours (e.g., unwanted kissing, touching, flirting) (Espelage & Holt, 2007; Pepler et al., 2006). These behaviours are directly experienced by a targeted child. Another group of bullying behaviours is described as indirect, or covert, whereby a child is targeted circuitously through other peers. These behaviours include threatening, gossiping, spreading rumors, and social alienation (deliberately excluding someone from the peer group). A newly emerged form of bullying is cyber-bullying (electronic or on-line bullying) that involves the use of technology such as e-mails and cell phones to send hurtful or intimidating messages to peers (Beran & Li, 2005). These

behaviours are considered indirect because the encounter is not face-to-face, but rather is through an interface.

Although bullying behaviours have been specifically and consistently defined in the research, definitions of bullying, if they even exist, vary widely across legislative Acts. In the United States, the definition varies across states. Of the 22 states that have legislation pertaining to bullying, only nine provide a definition of the scope of behaviours that constitute bullying. Some states provide a narrow definition of bullying that focuses exclusively on physical actions of students (Limber & Small, 2003), and some have a definition that is synonymous with harassment and intimidation, resulting in a broad definition of bullying. An example of a broad definition is taken from Louisiana's (2002) statute:

Harassment, intimidation, and bullying shall mean any intentional gesture or written, verbal, or physical act that: (a) a reasonable person under the circumstances should know will have the effect of harming a student or damaging his property or placing a student in reasonable fear of harm to his life of person or damage to his property; and (b) is so severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for a student.

Bullying definitions used in legislation typically include the aggressive and intentional nature of an individual, yet often neglect to include less overt forms such as threatening, gossiping or spreading rumors (Limber & Small, 2003). The courts may perceive the latter behaviours as minimally harmful or violent to the individual experiencing them (Shariff, 2005). Thus, legislation that perceives bullying as solely physical or verbal undermines and underestimates the negative impact of other types of bullying (e.g., indirect) on individuals. A number of negative consequences associated with indirect forms of bullying have been empirically supported in the literature (Beran & Li, 2005; Brunstein et al., 2007; Mishna, Scarcello, Pepler, & Wiener, 2005; Shariff, 2005; Smith et al., 2005).

Due to inconsistencies in the definition of bullying in the statutes, there is great variation in how the law is applied to bullying (Limber & Small, 2003). This makes it challenging for individuals who are required to carry out the provisions of anti-bullying laws. We recommend that legislators develop precise and consistent definitions that conform more closely to the recognized definition of bullying used in the research community (Limber & Small, 2003).

## LEGISLATION ACROSS COUNTRIES

There is considerable variability in legislation relevant to bullying across countries. For example, some countries have identified bullying as "moral harassment," or "mobbing" and typically include repeated, non-physical acts of harassment at the workplace, occurring over a significant time period that have

a humiliating effect on the victim. Others have defined bullying to exclusively include physical harm (Limber & Small, 2003; OPSEU, 2007). In addition, some countries have considered bullying in several contexts, whereas other countries have explicitly discussed bullying within the workplace. Although moral harassment is considered to be covered under the Safety and Health Framework Directive (89/391/EEC), (The European Union On-Line, 2009) current discussion about moral harassment suggests that further EU legislation, likely in the form of a new directive or an amendment to the Safety and Health Framework Directive, may be pending.

Many European and Scandinavian countries, including Germany, Italy, Sweden, The Netherlands, Denmark, Finland, and Norway have introduced laws to deal with psychological aggression (OPSEU, 2007). Belgium and France introduced legislation against moral harassment (bullying) at work covering a range of behaviours, including verbal abuse, bullying, mobbing, and sexual harassment (OPSEU, 2007). The French law includes “moral harassment” as a criminal offence. Punishments for this type of crime can be as severe as imprisonment and fines (OPSEU, 2007). In the United Kingdom, Ireland, and Australia, psychological violence is included under existing workplace safety legislation (OPSEU, 2007).

As mentioned previously, the differences in legislation can be, to some extent, due to the differences in legislators’ understanding of bullying. Thus, it is reasonable to suggest that legislators and communities that perceive bullying as having little impact on an individual’s psychological, emotional, or cognitive well-being are unlikely to include bullying in criminal law. It is important to recognize that some countries discuss bullying legislation only in the context of the workplace. Therefore, one is required to interpret existing laws as applicable to the school context. Countries reviewed here include the United Kingdom, the United States, and Finland because they represent various types of legislation relevant to bullying.

### *United Kingdom*

The United Kingdom does not currently have laws pertaining to school bullying. Instead, individuals must interpret the law to make the case that it is applicable to bullying, and these can generally be drawn from workplace laws. However, there is no workplace bullying law.<sup>1</sup> For example, the *Protection from Harassment Act* (1997) may be of use if the bullying occurs frequently. Examples of such behaviours include making regular phone calls to an individual’s home during unsocial hours or during a leave of absence. Thus, the Act is essentially used to protect individuals from stalkers; however, it has been used against bullies in the workplace. Because this Act considers bullying in the workplace to be inappropriate and criminal, it seems reasonable to interpret this law as being applicable within the school environment. Other Acts relevant to bullying within the school system include: the *Negligence Act*, the *Criminal Justice*

& *Public Order Act* (1994), and the *Malicious Communication Act* (1988). Each Act and its relevance to school bullying will be discussed below.

First, the *Negligence Act* provides protection against psychiatric injury arising out of the employer's failure to protect employees from bullying, harassment, and victimization. Thus, it is reasonable to assume that principals can be held accountable for negligence if they place no effort in protecting students and teachers against bullying in school or in school-related activities. Thus, principals may be held liable for negligence in cases where students are negatively impacted by bullying if they have not taken action to prevent or minimize the bullying incidents. Second, the *Criminal Justice & Public Order Act* (1994) protects against intentional harassment. This means harassing, or causing alarm or distress to, another individual by using threatening, abusive, or insulting words or behaviour. This Act can be applicable to school bullying, where students who bully other students, both on and off school property, causing distress or alarm will be held accountable for their actions. Third, the *Malicious Communication Act* (1988) protects against harassing and abusing phone calls. The *Malicious Communication Act* is an example of an Act in the UK that protects against some technological forms of bullying, and can be interpreted to include other electronic communicative devices, including the Internet, answering machines, etc.

### *United States*

The concern of school bullying has intensified since school policy makers have made the safety of U.S. schools an important issue (National Conference of State Legislatures, 2007a). State legislators articulate that a safe and civil school environment is necessary for student learning and high academic achievement (National Conference of State Legislatures, 2007a). About 20 states (including two political territories) in the United States currently have school bullying laws (National Conference of State Legislatures, 2007b). Each state has a separate school safety enactment and the description of state legislation varies across each. However, most states include at least one or more of these components: statement prohibiting bullying, definition of bullying, state-level support, school intervention strategies, individual reporting and immunity, public school reporting, parental rights, teacher and staff training, prevention task forces and programs, and integrated curriculum instruction (National Conference of State Legislatures, 2007a). For a detailed analysis of characteristics of these anti-bullying laws, see Greene and Ross (2005).

In addition, eight states have enacted cyber bullying legislation; each state's legislation is distinct and, therefore, varies to some extent. However, each state's legislation includes electronic communication as a component of bullying (National Conference of States Legislatures, 2007c). States that have integrated cyber bullying in the legislation include Arkansas, Delaware, Minnesota, Or-

egon, Washington, South Carolina, Idaho, and Iowa (National Conference of States Legislatures, 2007c).

### **Finland**

There are four laws relevant to bullying in Finland. First, bullies can be fined, regardless of their age. This law came into effect in 1995, after two 15-year-old individuals were charged with systematically bullying one of their peers both physically and psychologically. Each bully was fined 1,200 Euros for inducing mental pain and 120 Euros for physically abusing the victim. This case set the precedent for individuals found guilty of bullying (Bjorkqvist & Jansson, 2001). Second, in 1999, new school legislation was developed emphasizing school safety (Bjorkqvist & Jansson, 2001). Third, in addition to being fined, bullies can be presented with a restraining order by the court (Bjorkqvist & Jansson, 2001). In 2000, two 16-year-old individuals were presented with restraining orders, forbidding them to go near a peer that they had bullied. This particular case set precedent to prevent bullies from interacting with individuals they had bullied. Fourth, school authorities can be held accountable for negligence in cases involving bullying and school violence. Thus, school authorities may be fined if found guilty of neglect (Bjorkqvist & Jansson, 2001). The Finnish Code of Law concerning comprehensive schools, the Code of Law for senior secondary schools, and the Code of Law for vocational schools each state that all individuals have the right to a safe school environment (Bjorkqvist & Jansson, 2001). Thus, these laws cover physical safety as well as protection against bullying and exposure to violence in school (Bjorkqvist & Jansson, 2001). School authorities who neglect to ensure a safe and healthy school environment for students can be held culpable of neglect under Finnish law. In addition, the *Finnish Basic Education Act* (628/1998/paragraph 29) specifies a student's right to a safe study environment and freedom from violence or bullying at school or in any school activity.

### **CURRENT STATUTES IN CANADA DIRECTLY RELATED TO BULLYING**

Only two provinces in Canada have developed statutes on school bullying: *the Public Schools Act Part III* in Manitoba and the *Education Act* in Ontario. That said, other provinces address issues of bullying under workplace Acts that, while not designed specifically around school, do have legislative governance of this issue. Each Act, as it pertains to school bullying, is discussed below.

#### **Manitoba**

There are three sections specific to anti-bullying policies found in the *Public Schools Act III*. Section 47. 1(1), *Codes of Conduct and Emergency Response Plans*, instructs the principal for each school, in collaboration with the school advisory committee, to establish a code of conduct for pupils and staff and an emergency response plan for the school that is reviewed at least annually.

Section 47.1(2) insists that the content of the Code of Conduct include five components.

1. It must include a statement that pupils and staff behave in a respectful manner and comply with the code.
2. It must include a statement illustrating that bullying, or abusing any person physically, sexually, or psychologically, orally, in writing or otherwise is unacceptable. Furthermore, discriminating unreasonably on the basis of any characteristic set out in subsection 9(2) of the *Human Rights Code*, as well as using, possessing, or being under the influence of alcohol or illicit drugs at school, is unacceptable.
3. A statement regarding the intolerance of gang involvement and weapon possession must be included.
4. A statement that pupils and staff must abide by the school policies respecting appropriate use of electronic material and the Internet, including the prohibition of accessing, uploading or distributing material that the school has determined unacceptable, must be included in the Code of Conduct.
5. The Code must include the disciplinary consequences, in as much detail as is reasonably possible, of violating the code, and the process of appealing disciplinary decisions. In addition, the code must meet any other requirements prescribed by regulation under *The Education Administration Act*.

In addition, section 47.1(3), *Content of emergency response plans*, outlines the school's responsibility to respond to any threats posed by a person having a weapon on the school site, dealing with bomb threats, fires, evacuating school buildings, and carrying out practice drills. These three sections provide general expectations about the inappropriateness of bullying by requiring a code of conduct, specifying its content, and managing emergencies. Because the second section identifies bullying specifically, it acknowledges these behaviours as unacceptable.

### **Ontario**

Part XIII of Ontario's *Education Act* also pertains to misbehaviours that presumably include bullying. Specifically,

1. *Section 306(1)* instructs mandatory suspension of an individual if the individual commits 1 of 6 infractions while at school or while participating in school-related activities. Such infractions include uttering a threat to inflict serious bodily harm on another person, swearing at a teacher or at another person in a position of authority, committing an act of vandalism that causes extensive damage to school property, or engaging in another activity that, under a policy of the board, is one for which a suspension is mandatory.
2. *Section 306(2)* describes the duration mandatory for a suspension, which ranges from one day to twenty days.
3. *Section 306(3)* indicates that teachers may suspend the individual or refer the matter to the principal.



4. Section 301(2) discusses six purposes of the Code of Conduct. One purpose is to ensure that all members of a school community, especially people in positions of authority, are treated with respect and dignity. Second, it promotes responsible citizenship by encouraging appropriate participation in the civic life of the school community. Third, it maintains an environment where conflict and difference can be addressed in a manner characterized by respect and civility. Fourth, it encourages the use of non-violent means to resolve conflict. Fifth, it promotes the safety of people in the schools. Last, it discourages the use of alcohol and illegal drugs (Education Act, section 301(2)).

The Ontario Ministry of Education has recently proposed changes to the *Education Act* designed to stop students from posting online attacks against other students and teachers (CBC News, 2007). Education Minister Kathleen Wayne explained that cyber-bullying has been added to the list of offences in the Act. In a press conference at Queens Park in Toronto, Wayne suggested that the amendments are intended to address a number of issues. First, it is expected that there will be strong consequences for inappropriate behaviours. It is uncertain as to whether the intent is for these to be restorative and corrective, or punitive. The former is suggested by the second announcement: there will be reconciliatory programs provided for students to help them re-integrate into the classroom. Third, with this new amendment to the Act, the zero tolerance provisions to the Act will be eliminated. The elimination of the zero tolerance disciplinary rule resulted from a complaint on behalf of the students by the Ontario Human Rights Commission, alleging that the strict school policy was having “disproportionate impact on racial-minority students and students with disability” (CBC News, 2007). Even though the government has proposed such changes to the Act, section 306(1) discussed above is still active and applicable in the court of law. Therefore, at the present time, students can still receive mandatory suspensions if they violate any part of the Code of Conduct stated in the *Education Act*.

In addition, during the same press release, the Minister of Education indicated that the government of Ontario allocates over 20 million dollars a year to provide programs for expelled or suspended students (CBC News, 2007). In addition, these funds were provided to develop training programs for both principals and vice principals to effectively discipline students in a non-punitive manner, presumably with the intention of reducing the number of expulsions (CBC News, 2007). Thus, this announcement appears to recognize that punishment, in the form of suspension and expulsion, does not deal with the source of the bullying. Moreover, resources may now be allocated to resolve bullying situations.

### Quebec

Quebec Acts do not make reference to school bullying specifically. Rather, the *Occupational Health and Safety Act* refers to workplace bullying. It uses the term “psychological harassment,” defined as any vexatious behaviour (can

occur within a single serious incident) in the form of repeated and hostile or unwanted conduct, verbal comments, actions, or gestures that affect an employee's dignity or psychological or physical integrity and that result in a harmful work environment for the employee. This Act can be extended to bullying in schools because school is considered an occupational environment. Thus, this Act can be extended to the harm experienced by students as a result of bullying.

### *Saskatchewan*

Similar to Quebec, the *Occupational Health and Safety Act* in Saskatchewan can be extended to school jurisdictions. The *Occupational Health and Safety Act* was amended in 2006-2007, based on Bill Number 66, to include section 2(1b) regarding harassment (Bill 66, 2007). Specifically, this amendment redefines harassment as a means of any inappropriate conduct, comment, display, action, or gesture by a person that either: (a) is based on race, creed, religion, colour, sex, sexual orientation, marital status, family status, disability, physical size or weight, age, nationality, ancestry, or place of origin, or (b) adversely affects the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated, or (c) constitutes a threat to the health and safety of other workers (Bill 66, 2007).

Therefore, based on this Act, it can be interpreted that students who negatively affect the psychological or physical well-being of another student or teacher, or who intimidate or humiliate another individual, can be guilty of a criminal offense. Thus, the amended *Occupational Health and Safety Act* can be interpreted to be applicable to individuals who bully in the school system.

Other provinces specify safety and respect in their school Acts. For example, in Alberta, a board shall ensure that each student enrolled in a school operated by the board is provided with a safe and caring environment that fosters and maintains respectful and responsible behaviours. Other provincial Acts such as in British Columbia refer to general codes of conduct.

### **CURRENT BYLAWS IN CANADA ON BULLYING**

To date, Regina and Edmonton are the only two large cities in Canada with bylaws that give fines for bullying (CBC News, 2006; Toronto Star, 2003). Rocky Mountain House town council has also recently passed an anti-bullying bylaw that targets youth, adults, and bystanders (Town of Rocky Mountain House Bylaw 04/05V). Also North Battleford and Moose Jaw, Saskatchewan, have similar bylaws. Edmonton was the first city in Canada to develop such a bylaw. It gives authority to police officers to fine perpetrators of bullying a minimum of \$250. Bylaw fines range from \$125 in North Battleford to up to \$1000 for a second offence in Rocky Mountain House. Bullying behaviour,

according to these bylaws, includes acts that are physical and acts that threaten and intimidate others (*Toronto Star*, 2003). Physical fights are also included in some of these bylaws. The intention is to prevent individuals from continuing to engage in bullying and escalating in their behaviours (e.g., assault, gang violence, and harassment) by making bullying a criminal offence. This is significant because bullying has been shown in the research to be a risk factor for these more severe behaviours (Farrington & West, 1993; Olweus, 1991). In addition, supporters of the bylaw believe that the ability to fine individuals who threaten or intimidate others will deter such individuals from such behaviour (*Toronto Star*, 2003).

The Regina *Anti-Bullying and Public Fighting Bylaw* is somewhat different from the Edmonton bylaw. The former is applicable to bullying both in the community as well as online spaces, and to physical fights. It also allows higher fines, ranging from \$100 up to \$2000, and tickets are issued to the parents rather than to the youth between the ages of 12 to 16 years (City of Regina Bylaw #2006-38). This bylaw states that bullying another person in any public place or through written or electronic devices is illegal. In addition, taking pictures or videos of individuals fighting and then posting them online is an illegal behaviour. The intention of this bylaw is to reduce the bullying behaviours and decrease tolerance for such behaviours.

These bylaws may have a significant impact. In particular, they give recognition to the emotional and psychological suffering of the victim (Langevin, 2004). In addition, they may serve as a deterrent for individuals. Making bullying a criminal offence, with ensuing consequences, draws awareness to bullying behaviours and can challenge myths about bullying being a “rite of passage” (Langevin, 2004).

Even though these bylaws appear to have a significant purpose with clearly defined consequences, there is no documented evidence of their effectiveness. Thus, we interviewed constables from the Edmonton and Regina Police Services to understand their perceptions about the impact of this bylaw. To understand its *effectiveness on outcomes* such as bullying behaviours, we needed to first examine and understand its *process of implementation*. Constables indicated that students who are listed on a bullying complaint, and their parents, are brought together for a meeting with the Student Resource Officer (SRO)<sup>2</sup>, who then explains the offence and bylaw. Once this information is given to the parties involved, the SROs monitor whether the bullying continues towards both the initial victim and any other students. If bullying continued, the ticket would be issued. In addition, SROs use other interventions such as checking on-line student discussions, presenting prevention/intervention programs to schools, and providing referrals for community resources to families.

In terms of outcome effectiveness, constables have indicated that few tickets have yet been issued because once students are aware of this consequence to

bullying, they generally cease the behaviour. There are some advantages to this bylaw. First, it addresses harassing behaviours not covered under the Criminal Code, such as gossiping or other forms of bullying that cause a targeted individual to feel harassed or bothered. Thus, it is seen as augmenting the Criminal Code. Second, the threshold of evidence is minimal, allowing officers to intervene in a variety of bullying situations. Third, the behaviours are broadly defined to allow the bylaw to be applicable to all bullying behaviours. Fourth, alternate forms of bullying, such as more indirect or covert behaviours, have been monitored through interviews with secondary people and do not seem to increase as a result of meeting with the SROs. Thus, once the youth are aware that they are being monitored by the police, they tend to decrease their bullying behaviours. In Edmonton, one SRO is assigned to 1-2 schools, allowing considerable opportunity to monitor bullying incidents and student relationships as well as discuss bullying, its impact, and intervention programs. This emphasis on public education by using the bylaw seemed critical to its effectiveness in both Regina and Edmonton.

In summary, the constables interviewed described the bully bylaw as a real enforceable consequence to bullying that has served as an effective intervention in stopping further bullying. Also, once a ticket has been issued and the bullying continues, police can elevate the charge to a criminal offense. Overall, the constables indicated that this bylaw is not strictly an enforcement law where tickets are automatically issued in any case of bullying. Rather, it was described as a reconciliatory law that, following education for the perpetrator, has been effective in preventing further incidents of bullying.

## CONCLUSIONS

In this paper we have reviewed legislation and bylaws pertaining to bullying to determine the legal authority individuals have to manage this social problem. Several key findings emerged. Of particular importance is the failure in most jurisdictions to include the term *bullying* in school Acts. Bullying is often absent from legislation, and when it is included its definition varies across jurisdictions and/or omits non-physical forms. Despite these insights gained from the review, it is important to acknowledge its limitations. Many search terms and legal sources were used, but it is possible that other definitions and specifications of law exist but were not included here. Also, laws are regularly formed and amended; thus, current laws must always be checked.

Although there is no single solution to the problem of bullying, there are many legal options presented in this paper. It is apparent that there is considerable variability in how legislators from various countries have identified bullying. All have attempted to describe some or many forms, with most of them identifying physical forms. No Acts, however, have included the definition Olweus developed when first studying bullying in the 1970s and that has been widely adopted by

researchers around the world. Rather than *define* bullying, legislation specifies *forms* of bullying. Given that there is an identifiable victim often referred to in these Acts, presumably the perpetrator has power over and repeatedly attacks this victim, which is consistent with Olweus' original definition. In addition, laws are less clear on consequences to bullying in cyber space. See Shariff (2009) for an examination of issues relevant to cyber bullying.

This review also reveals that few countries have created laws addressing bullying specifically, rather focusing on harassment and aggressive behaviour more generally. Bullying is one form of aggression that is related to other forms, such as reactive aggression (aggression in response to a negative emotion such as anger or frustration), peer conflict (equal power balance), and physical fights (mutual aggression). Bullying may also be related to discrimination, racism, and other forms of covert aggression. This broad view of aggression seems to be reflected in many laws.

Also, some countries have laws particular to the school context, whereas others pertain to the work environment. Although the workplace laws can be extrapolated to schools, these laws were created in consideration of the needs of adults, rather than youth. Moreover, it can be argued that they pertain to bullying against adults in the schools (teachers and administrators) rather than to bullying against students specifically.

Considering that bullying occurs frequently, and that every child is at risk, judges may be reluctant to rule in favor of victims with concern for exponentially increasing the number of formal complaints. Also, many of the laws are reactive, with the exception of the school/education Acts that specify school responsibility for establishing a safe school environment.

Although perpetrators and victims are generally identified in these laws, some also acknowledge responsibilities of bystanders who videotape or participate in public fights. Enforcing consequences for their neglect to act in a prosocial manner in these situations may help reduce bullying, given that bullies are influenced by their peers. It may also reduce fighting in the school yard if fewer students take video footage of the fighting. It is the first author's perception, based on applied work and research-based experiences, that taking pictures of a physical attack and posting them on the internet is not commonly known to be a libelous act. In section 111 under the *Protection of Privacy of Young Persons* within the *Youth Criminal Justice Act*, it states that no person shall publish the name of a child or young person, or any other information related to a child or young person, if it would identify the child/young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person. Unless the child is over age 18 years or the parents consent, no person who is a victim of or witness to an offence can be identified through publication. What this

suggests is that a person who takes a picture of someone being attacked and posts the picture on the web may be held liable.

Finally, although this paper reviews laws that pertain to teachers, the question remains as to the specific responsibilities of teachers regarding bullying. According to the British Columbia Performance Standards guidelines on Social Responsibility (2000), teachers must monitor the social development of their students. If, according to the British Columbia Ministry of Education (1997), students are expected to develop a sense of social responsibility, and a tolerance and respect for the ideas and beliefs of others, does failure to do so suggest educational malpractice? When teachers ignore incidents of bullying, can they be held liable? Rather than mandate student social responsibility, Shariff (2009) recommends mandating professional development for all teachers regarding bullying. Indeed, such initiatives appear successful at increasing pre-service teachers' knowledge and skills to deal with school bullying (Beran & Tutty, 2007). This training can be extended to school administrators as well.

Related to the question about teacher negligence for student social development, can teachers be held liable for demonstrating bullying behaviours? A Canadian judge ruling in the case of a girl who claimed she was bullied by her teacher stated that only if the conduct is "sufficiently egregious and offensive to community standards of acceptable fair play should the courts even consider entertaining any type of claim in the nature of educational malpractice" (*Gould v. Regina (East) School Division, No. 77 (1996) [1997] 3 W.W.R. 177 (Sask.)*, as cited in Shariff, 2009). Thus, although there may be no legal consequence to teacher bullying, Shariff (in press) points out that teachers' demonstrations of disrespect towards students may result in negative on-line communications among students that could be perceived as defamatory and identified as forms of cyber bullying perpetrated by students against teachers. In short, trust and respect between students and teachers is critical in preventing these events.

Although numerous stakeholders have the potential to make a difference when it comes to bullying, no single group can take sole responsibility. Police officers may consider schools to have more authority to deal with bullying as the school Acts tend to allocate responsibility to schools for providing a safe learning environment. However, school officials may need to turn to police to help enforce rules. They may also consider bullying to be a family problem whereby children enact the values and behaviours they learn at home. Moreover, families may see bullying as a school problem, particularly because it occurs among peers at school (although cyber bullying occurs at home and in other community locations). We need to examine responsibility of several groups: when parents actively monitor their children, and model and discuss morals, schools have prevention programs and school policy that enforces corrective consequences to bullying, and community resources are accessed to support families, then laws can reasonably support these efforts.

## NOTES

1. The Dignity at Work Bill has been proposed to specifically address workplace bullying.
2. Trained police officers who work in schools

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