

# **Bullying and the Law in Canada: A discussion**

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# Overview of presentation:

- **Education outcomes and the criminal justice system associated with being a bully**
- **International law**
- **Canadian law**
- **Schools Acts and Policy**
- **Discussion**

# Education outcomes and the criminal justice system



- **Bullies are more likely:**
  - ❖ **To be failing students in both middle and high school**
  - ❖ **To end up in the criminal justice system**
- **E.g. longitudinal data following males over a period of eight years discovered that those who continued to be bullies after school completion were at a much greater risk of ending up in prison over an eight year period.**
- **Bullying at school was a strong predictor of self-reported violence, delinquency, and other anti-social outcomes in young adulthood.**
- **The probability for criminal offending up to eleven years later was two and a half times greater for bullies.**

# **International Law - United Nations Convention on the Rights of the Child**



**140 Signatories – Canada is one.**

**Article 19 of the Convention requires States Parties to:**

**“take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.**

**Also Articles 23 and 39.**

# Canadian Charter of Rights and Freedoms



- **Guarantee of Rights and Freedoms**
  - ❖ **Section 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society**
  
- **Fundamental Freedoms**
  - ❖ **Section 2. Everyone has the following fundamental freedoms:**
    - **(a) freedom of conscience and religion;**
    - **(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;**
    - **(c) freedom of peaceful assembly; and**
    - **(d) freedom of association.**

# Canadian Charter of Rights and Freedoms - continued

- **Life, liberty and security of person**
  - ❖ **Section 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.**
- **Equality before and under law and equal protection and benefit of law**
  - ❖ **Section 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.**

# Canadian Human Rights Act (1985)



**Eleven grounds upon which to accept harassment complaints:**

**Race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability.**

# Criminal Code of Canada



**Bullying can be a traumatic experience, and some forms of bullying can even be considered illegal. These include:**

- **Threats** - whether done face to face, online, over the phone or through text messaging.
- **Assaults** - including pushing, tripping, slapping, hitting or spitting.
- **Theft of personal items** - like a backpack, books, electronic devices, etc.
- **Harassment** - repeated tormenting online, with texts, phone calls and/or emails.
- **Sexual Exploitation** - sharing videos or photos with nudity of people under 18.
- **Hate crime** - bullying based on ethnicity, sexual orientation, religious beliefs, etc.



# Protecting Canadians from Online Crime Act



- Not yet tested in the Supreme Court of Canada

# Youth Criminal Justice Act



- **WHEREAS members of society share a responsibility to address the developmental challenges and the needs of young persons and to guide them into adulthood;**
- **WHEREAS communities, families, parents and others concerned with the development of young persons should, through multi-disciplinary approaches, take reasonable steps to prevent youth crime by addressing its underlying causes, to respond to the needs of young persons, and to provide guidance and support to those at risk of committing crimes;**
- **WHEREAS information about youth justice, youth crime and the effectiveness of measures taken to address youth crime should be publicly available;**

# Youth Criminal Justice Act - continued

- **WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, and have special guarantees of their rights and freedoms;**
- **AND WHEREAS Canadian society should have a youth criminal justice system that commands respect, takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons;**

# 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 website) 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. If the suit is successful, the person making the statement will have to pay damages (money) to the target.**

# Civil law - continued

- **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.**

# Civil law – continued



- **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.**

# **BNA Act (1867) Section 93**



- **Provinces are responsible for education in Canada. Provincial Departments of Education are responsible for governing education in the provinces and Territories.**

# Schools Acts



- **The standing of "in loco parentis" has been applied to teachers.**
- **Teachers have the rights and responsibilities of a parent while the student is under their care. This is a comparison only, as it is superseded somewhat by the fact that teachers are government workers. However, in some areas, this comparison of teacher to reasonable parent exists and is the 'norm'. The Supreme Court has used this basis to make rulings on cases involving Teachers and their Students, and parents have grown to expect that when they drop their children off at school, they are being looked after with care and concern.**
- **“Schools leaders must deal with the challenge of two competing legal obligations: the duty to respect the constitutional rights of students to express freedom of expression and the duty to provide a safe and learning environment for students and teachers in schools”.**



# Schools Acts – continued



- **It is recognized by the courts that teachers and students have a special relationship - one that is not unlike that of parents and children. Teachers must be able to protect their students from dangers and need to be able to do whatever it takes to provide a safe school environment, while maintaining order and discipline in their school.**

# Legislation in schools across Canada



- **Overview of Provincial legislation**
  - ❖ **Chart/handout**
- **Definition of bullying and cyberbullying across provinces**
  - ❖ **Chart/handout**
- **School Acts, policies, and bullying prevention plans**
- **Highlights of provincial legislation**

# Dealing with bullying behaviour

- **Responsibilities**

- ❖ **Department of Education**
- ❖ **School Board**
- ❖ **Principals**
- ❖ **Teachers**
- ❖ **Students**
- ❖ **Parents**

- **Consequences of bullying from the school's perspective**

- ❖ **Suspensions and expulsions**
- ❖ **Legal action**

# Working towards a solution

- **E.g. Nova Scotia as a model of bullying prevention and intervention**
  - ❖ **Cyber-Safety Act**
  - ❖ **Protection Orders**
  - ❖ **Task Force**
- **“In the best schools, every adult, no matter what the position or job title recognizes and accepts the responsibility of role model and educator. Every adult takes the matter of bullying seriously, and sees it as a responsibility to prevent it when possible and intervene if it arises” (The Bully Project)**

# Creating a safe and reflective school environment



- **Create school communities and classrooms that have a democratic culture.**
- **What does a reflective environment look like?**
  - ❖ **Values students' voices, climate of trust and openness**
  - ❖ **Participants are encouraged to speak and listen to each other- facilitates meaningful discussions**
  - ❖ **Opportunities for participation and learning, and personal reflection**
  - ❖ **Helping student appreciate the points of view, talents, and contributions of others (The Bully Project)**

# Discussion



# Resources



## Education outcomes and the criminal justice system associated with being a bully:

- Bender, D., & Losel, F. (2011). Bullying at school as a predictor of delinquency, violence, and other anti-social behaviour in adulthood. *Criminal Behaviour and Mental Health*, 21(2), 99-106. doi: 10.1002/cbm.799
- Center for Disease Control. (2011). Bullying among middle school and high school students – Massachusetts. *MMWR*, 60, 465-471.
- Jiang, D., Walsh, M., & Augimeri, L. K. (2011). The linkage between childhood bullying behaviour and future offending. *Criminal Behaviour and Mental Health*, 21(2), 128-135. doi: 10.1002/cbm.803
- Olweus, D. (2011). Bullying at school and later criminality: Findings from three Swedish community samples of males. *Criminal Behaviour and Mental Health*, 21(2), 151-156. doi: 10.1002/cbm.806
- Ttofi, M. M. & Farrington, D. P., Losel, F., & Loeber, R. (2011). The predictive efficiency of school bullying versus later offending: A systematic/meta-analytic review of longitudinal studies. *Criminal Behaviour and Mental Health*, 21(2), 80-89. doi: 10.1002/cbm.808

## International Law - United Nations Convention on the Rights of the Child:

- <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- [http://www.mun.ca/educ/ed4361/virtual\\_academy/campus\\_b/zlegalzteacher.html#relationship](http://www.mun.ca/educ/ed4361/virtual_academy/campus_b/zlegalzteacher.html#relationship)
- Dandurand, Y. (2014). Article 19 of the CRC and the Criminal Justice System's Duty to Protect Children against Violence. *Canadian Journal of Children's Rights*, 44-84.

# Resources continued...

## Canadian Charter of Rights and Freedoms:

- <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>

## Canadian Human Rights Act (1985):

- <http://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#h-5>

## Criminal Code of Canada:

- <http://laws-lois.justice.gc.ca/eng/acts/C-46/>
- <http://www.rcmp-grc.gc.ca/cycp-cpcj/bull-inti/index-eng.htm>

## Protecting Canadians from Online Crime Act:

- [http://laws-lois.justice.gc.ca/eng/annualstatutes/2014\\_31/](http://laws-lois.justice.gc.ca/eng/annualstatutes/2014_31/)

## Youth Criminal Justice Act:

- <http://laws-lois.justice.gc.ca/eng/acts/y-1.5/page-1.html#docCont>

## Civil Law:

- <http://mediasmarts.ca/background/cyberbullying-law-fact-sheet>

## BNA Act (1867) Section 93:

- <http://laws-lois.justice.gc.ca/eng/Const/index.html>

## Schools Acts and Information

- <http://www.redcross.ca/what-we-do/violence-bullying-and-abuse-prevention/protection-legislation>
- <http://www.prevnet.ca/resources/policy-and-legislation>
- <http://mediasmarts.ca/background/cyberbullying-law-fact-sheet>
- <http://www.lawnow.org/an-overview-of-anti-bullying-legislation-and-alternatives-in-canada/>
- [http://www.mun.ca/educ/ed4361/virtual\\_academy/campus\\_b/zlegalzteacher.html](http://www.mun.ca/educ/ed4361/virtual_academy/campus_b/zlegalzteacher.html)



# Resources continued...



- Broster, R. & Brien, K. (2010). Cyber-bullying of educators by students: Evolving legal and policy developments. *Education and Law Journal*, 20.1 (June 2010), 35-61.
- Roberge, G. D. (2011). Countering school bullying: An analysis of policy content in Ontario and Saskatchewan. *International Journal of Education policy & Leadership*, 6(5), 1-14.

## Other:

- <http://www.prevnet.ca/resources/policy-and-legislation>
- <http://www.thebullyproject.com/>