

BILL 45

An Act to Amend the Education Act

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1 Section 1 of the Education Act, chapter E-1.12 of the Acts of New Brunswick, 1997, is amended by adding the following definitions in alphabetical order:

“positive learning and working environment” means a safe, productive, orderly and respectable learning and working environment free from bullying, cyberbullying, harassment and other forms of disruptive or non-tolerated behaviour or misconduct, including behaviour or misconduct that occurs outside school hours and off the school grounds to the extent the behaviour or misconduct affects the school environment; (*milieu propice à l’apprentissage et au travail*)

“serious misconduct” means any behaviour exhibited by a person that is viewed by the school or school district officials as extreme and unacceptable in the New Brunswick public education system, including (*inconduite grave*)

- (a) bullying,
- (b) cyberbullying,
- (c) hazing or any other form of intimidation,
- (d) possessing, using or providing weapons,
- (e) possessing, using or selling illegal or dangerous substances or objects,
- (f) disseminating hate propaganda material, and
- (g) any other behaviour that would reasonably be considered a serious misconduct;

2 Paragraph 13(1)(b) of the Act is amended by striking out “best interests of the child” and substituting “best interests of the child and the school community”.

3 Subsection 27(1) of the Act is amended by adding after paragraph (b) the following:

- (b.1) implementing the positive learning and working environment plan,

4 Subsection 28(2) of the Act is amended by adding after paragraph (c) the following:

- (c.1) ensuring that a positive learning and working environment plan is developed and implemented, in collaboration with the Parent School Support Committee at the school and, where appropriate, with students, and report regularly to the Parent School

Support Committee at the school and the superintendent of the school district with respect to the progress and effectiveness of the plan,

(c.2) to report any incident of serious misconduct to the superintendent of the school district,

5 Section 33 of the Act is amended by adding after subsection (1) the following:

33(1.1) The Parent School Support Committee at the school shall advise the principal of the school respecting the establishment, implementation and monitoring of the positive learning and working environment plan, which may include

(a) strategies and practices to promote respectful behaviour and a positive and inclusive social climate for all students and staff,

(b) strategies and programs to prevent disrespectful behaviour or misconduct,

(c) policies and practices to address disrespectful behaviour or misconduct in a timely manner and in a way that teaches and reinforces respect for other persons, and

(d) appropriate support strategies for students participating in disrespectful behaviour and students who have been affected by the disrespectful behaviour of others.

Forms of Cyberbullying

Insulting: Posting or spreading false information about a person that will cause harm to that person or that person's reputation.

Targeting: Singling someone out and inviting others to attack or make fun of her or him.

Identity theft: Pretending to be someone else to make it look like that other person said things he or she doesn't believe or that aren't true about him or her.

Uploading: Sharing images of a person, particularly in an embarrassing situation, without her or his permission, or sharing emails without the writer's permission.

Excluding: Pressuring others to exclude someone from a community (either online or offline).

Harassment: Repeatedly sending someone nasty, mean and insulting messages.

How the Law Addresses Cyberbullying

Cyberbullying can be addressed under **civil law** or **criminal law**, based on the situation.

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.

In libel cases, the target can lay a suit against the person making the statement. If the suit is successful, the person making the statement will have to pay **damages** (money) to the target.

A person accused of libel may defend himself or herself by saying that the statement was **true**, that it was a **fair comment** (a genuine criticism, not a personal attack), or that he or she **innocently reproduced** the statement without knowing what it was.

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.

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.

Criminal law: This branch of law determines which actions are crimes against the state. In criminal law, there are two approaches to cyberbullying:

1. **Harassment** is a crime under the Criminal Code. Harassment is when something a person says or does makes someone fear for his or her safety, or for the safety of others. **Even if the perpetrator did not intend to frighten someone, she or he can be charged with harassment if the target feels threatened.** Criminal harassment is punishable by up to 10 years in prison.
2. **Defamatory libel** is a crime under the Criminal Code. It is most often treated as a crime if the libellous statement is directed against a person in authority and could seriously harm his or her reputation. Defamatory libel is punishable by up to five years in prison.

3. **Section 2 of the Canadian Charter of Rights and Freedoms** guarantees freedom of expression. However, this right is guaranteed "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" and, in the case of cyberbullying, must be weighed against Section 7. The latter section guarantees "the right to life, liberty and security of the person." In general, Section 2 of the Charter has not been accepted as a defence in civil or criminal bullying cases.

Provincial and Territorial Laws

Several provinces and territories have laws specifically dealing with online and offline bullying:

Ontario: The Education Act now includes a specific definition of "bullying":

"bullying" means aggressive and typically repeated behaviour by a pupil where,

(a) the behaviour is intended by the pupil to have the effect of, or the pupil ought to know that the behaviour would be likely to have the effect of,

(i) causing harm, fear or distress to another individual, including physical, psychological, social or academic harm, harm to the individual's reputation or harm to the individual's property, or

(ii) creating a negative environment at a school for another individual, and

(b) the behaviour occurs in a context where there is a real or perceived power imbalance between the pupil and the individual based on factors such as size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, gender identity, gender expression, race, disability or the receipt of special education.

The following definition of cyberbullying is also given:

(1.2) Without limiting the generality of the definition of "bullying" in subsection (1), bullying includes bullying, known as cyber-bullying, that is done through any form of electronic means using any technique, including,

- (a) creating a web page or a blog in which the creator assumes the identity of another person;
- (b) impersonating another person as the author of posted content or messages; and
- (c) communicating material to more than one person or posting material on an electronic medium that may be accessed by one or more persons.

The amended Act also requires schools to provide “instruction on bullying prevention during the school year for every pupil,” “remedial programs designed to assist victims of bullying” and “professional development programs that are designed to educate teachers in schools within its jurisdiction about bullying and strategies for dealing with bullying.” Each school board is also required to “establish a bullying prevention plan for bullying in schools within the board’s jurisdiction.”

Quebec: *An Act to prevent and stop bullying and violence in schools* modifies the Education Act and the Act Respecting Private Education. It defines bullying as “any behaviour, speech, actions or gestures, including cyberbullying, expressed directly or indirectly, in particular through social media, having the aim of injuring, hurting, oppressing or ostracising an individual” (tout comportement, parole, acte ou geste, y compris la cyberintimidation, exprimés directement ou indirectement, notamment par l’intermédiaire de médias sociaux, ayant pour but de léser, blesser, opprimer ou ostraciser). School boards are required to create anti-bullying plans and all school staff must take part in the plan.

Alberta: The Education Act was revised in 2012 to define bullying as “repeated and hostile or demeaning behaviour by an individual in the school community where the behaviour is intended to cause harm, fear or distress to one or more other individuals in the school community, including psychological harm or harm to an individual’s reputation.” The Act requires students to “refrain from, report and not tolerate bullying or bullying behaviour directed toward others in the school, whether or not it occurs within the school building, during the school day or by electronic means,” while school boards must “establish, implement and maintain a policy respecting the board’s obligation under subsection (1)(d) to provide a welcoming, caring, respectful and safe learning environment that includes the establishment of a code of conduct for students that addresses bullying behaviour.” **Alberta’s law is notable because it requires students to report cyberbullying if they witness it, with penalties including suspension and expulsion possible for those who do not.**

Nova Scotia: In 2013 the province legally defined bullying as “behaviour, typically repeated, that is intended to cause or should be known to cause fear, intimidation, humiliation, distress or other harm to another person’s body, feelings, self-esteem, reputation or property, and can be direct or indirect, and includes assisting or encouraging the behaviour in any way” and cyberbullying as “bullying by electronic means that occurs through the use of technology, including computers or other electronic devices, social networks, text messaging, instant messaging, websites or e-mail.” **The Cyber-Safety Act lets targets of cyberbullying apply for “protection orders” that may put limits on perpetrators’ actions or make them identify themselves, and makes parents of perpetrators responsible for their child’s actions if the perpetrator is under 18.**

New Brunswick: Section 1 of the Education Act includes both online and offline bullying in its definition of “serious misconduct.” Students are also guaranteed a “positive learning and working environment” free from “bullying, cyberbullying, harassment and other forms of disruptive or non-tolerated behaviour or misconduct, including behaviour or misconduct that occurs outside school hours and off the school grounds to the extent the behaviour or misconduct affects the school environment.” **Principals are required to develop a positive learning and working environment plan and to report any incident of serious misconduct to the superintendent of the school district.** Each school also must have a Parent School Support Committee that advises the principal on how to promote respectful behavior and prevent misconduct, helps to develop policies on how to prevent disrespectful behaviour or misconduct and how to support both those students who have participated in disrespectful behaviour and those who have been affected by it.

Manitoba has a bill currently in the legislature that, if it passes, will define bullying in a way that specifically includes cyberbullying, requires schools to have a written Acceptable Use Policy and a written policy "concerning respect for human diversity" and requires teachers and other school staff to report cyberbullying to their principal, and will apply to anyone who "intentionally assists or encourages the bullying behaviour in any way" as well as the original perpetrator.

[1] University of Toronto, March 2008.

[2] Quing Li, *New Bottle but Old Wine: A Research of Cyberbullying in Schools*, Elsevier Ltd., Calgary, Alberta, 2005.