

The limits of anti-bullying legislation

A cross-Canada assessment of what legislation can—and can't—do

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EXECUTIVE SUMMARY

Most Canadians believe bullying is a serious problem among students. Increased awareness and media coverage has created country-wide interest in addressing this problem. Bullying is no longer considered “just part of growing up” but is now being described by some as an epidemic.

It's time to examine the provincial and territorial policy response to bullying across Canada. Millions of dollars and numerous programs and policies have already been put in place without evidence that these dollars and policies work; all lack sufficient measures to evaluate the efficacy of these efforts. The introduction of provincial anti-bullying legislation in Ontario, Quebec and Nova Scotia is an escalated response lacking clear evidence of what can be accomplished combined with few tools to evaluate the practical outcomes.

Bullying is a relational problem that impacts the social climate of a school community. The law can provide clear definitions of bullying behaviour, mandate the need for policies, assign responsibility and empower educators with disciplinary tools, but it will be community level involvement that will best address the complex issue of bullying.

Before the rush to legislate, policymakers should consider the following:

- Review existing policies and funding commitments
- Prioritize evaluation and research
- Minimize the scope of legislation, maximize community autonomy
- Communicate clear, pragmatic expectations of legislation

Bullying is a big problem and Canadians often look to government to solve large challenges. The complex nature of bullying requires frontline intervention from parents, students and educators. The law may provide a supporting context, but it cannot regulate and repair school yard relationships.

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INTRODUCTION

No one likes a bully. A proliferation of public awareness campaigns have flooded schools while celebrities have spoken out and made anti-bullying their choice cause. Bullying has become one of the most talked about educational issues in Canada.

Bullying is a serious issue that has been linked to depression, violent behaviour and even suicide. Frequent news stories feature frustrated parents who raised the issue with their local school but felt they did not receive an adequate response. A number of Canadian provinces have introduced or promised to introduce legislation to combat bullying. Next to being a bully, appearing idle on the issue is the greatest offense in the public mind. Political parties have seized the opportunity to address a popular consensus issue.

This paper examines the escalating public policy response to bullying across Canada, and seeks to determine the benefits and limitations of anti-bullying legislation. It questions the efficacy of anti-bullying legislation and concludes that policymakers are introducing legislation with little evidence of what can be accomplished. Also lacking are the tools to evaluate the outcomes of anti-bullying legislation. The paper does not evaluate or recommend specific anti-bullying programs, nor does it assess the psychological and social forces behind bullying.

Canadian policymakers are very motivated to legislate on the bullying issue. However, they must consider the public expectations that legislation creates and concede the limitations the law has in governing the school yard relationships of children and youth.

IS THERE A BULLYING EPIDEMIC?

A number of teen suicides related to bullying have been publicized in the national media as well as extreme measures taken, like a New Brunswick school that provided a teacher's aide to protect a grade seven student from ongoing bullying.¹ Although bullying behaviour is not new, the problem has

1. Boesveld, S. (2012, April 16). Full-time staffer assigned to watch heavily bullied boy in New Brunswick won't help, says anti-bullying advocate. *National Post*. Retrieved from <http://news.nationalpost.com/2012/04/16/full-time-staffer-assigned-to-watch-heavily-bullied-boy-in-new-brunswick-wont-help-says-anti-bullying-advocate/>

not garnered significant public attention until recently. Experts may disagree on whether to declare the problem an epidemic, but what is clear is that bullying is no longer considered “part of growing up.” Research suggests that bullying can have a lifelong impact on children, both those who bully and those who are targets. Social media use has provided a new medium for bullying that has increased the reach of specific incidents. Where bullying may have occurred in the shadows in the past, it is now broadcast publicly.

Determining the prevalence of bullying is difficult because of the lack of consensus in defining the issue. Two key elements found in many definitions of bullying are the presence of a power imbalance and the repeated or ongoing nature of the hostility. Canadian bullying experts Wendy Craig and Heather McCuaig describe bullying as follows:

It is a form of repeated aggression where there is an imbalance of power between the young person who is bullying and the young person who is victimized. Power can be achieved through physical, psychological, social, or systemic advantage, or by knowing another's vulnerability (e.g., obesity, learning problem, sexual orientation, family background) and using that knowledge to cause distress.²

Bullies most often use physical, verbal, cyber or social means. While physical bullying may be more evident and easier to identify, social bullying often results in exclusion or other forms of humiliation that may be harder for school authorities to quantify. The rapid uptake of social media and personal technology like cell phones has become a platform for promoting the anti-bullying message but has also taken bullying beyond the school

yard fence. As a result, educators and public policymakers have struggled to address cyberbullying and its impact on schools. A 2012 compilation of Canadian statistics on bullying suggests that limited data is available and that government and NGO data collected on the issue “are not always congruent.”³ Despite this, valuable observations can be found in the data.

For example, according to several years of data taken from Statistic Canada's *Census at School* surveys, about 25 percent of students report being bullied in the month prior to answering.⁴ It suggests that most targets experience occasional bullying with few being bullied more than once a week.⁵

The compilation of statistics also demonstrates that gender is an important factor in understanding data on bullying. Boys are more likely to engage in physical intimidation while girls are more likely to use social exclusion to bully others.⁶

A 2010 World Health Organization study investigated 26 000 young people's experiences with bullying by asking them to reflect on the two months prior to the survey. When compared with two previous rounds of the survey conducted in 2002 and 2006, the study found the number of students who were bullied increased slightly from 20 percent to 22 percent, while the percentage of those who engaged in bullying behaviour decreased from 15 percent to 12 percent. The percentage of students who reported both participating in bullying and being a target dipped slightly in 2006 from 2002, but then increased slightly again in 2010. Most striking was that 41 percent of respondents involved in bullying incidents identified as being both targets and bullies within the previous two months.⁷

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2. Craig, W. and McCuaig, H. (2011). Bullying and fighting. In *The health of Canada's young people: a mental health focus*. Ottawa: Public Health Agency of Canada. Retrieved from <http://www.phac-aspc.gc.ca/hp-ps/dca-dea/publications/hbsc-mental-mentale/bullying-intimidation-eng.php>
 3. The Evangelical Fellowship of Canada. (2012, April). By the numbers: Rates and risk factors for bullying. A brief examination of Canadian bullying statistics. Ottawa: The Evangelical Fellowship of Canada Centre for Faith and Public life, p. 6. Retrieved from http://files.efc-canada.net/si/Education/By_the_Numbers_Bullying_Report_April_2012.pdf
 4. By the numbers, (2012), pp. 8, 30.
 5. By the numbers, (2012), p. 8.
 6. By the numbers, (2012), p. 7.
 7. By the numbers, (2012), pp. 8-9.

South of the border, 48 pieces of legislation on bullying were passed between 2000 and 2006 with an additional 78 pieces of legislation passed in the following four years. Revisions and amendments are the norm as politicians grapple with how to enact the legal approach to bullying

Bullying is a relational problem that is more complex than simply identifying bullies, targets and bystanders. Psychiatrist and anti-bullying expert Stuart Twemlow argues that most people exhibit some of the qualities that bullies, victims and bystanders have, however, in bullying the problem is exacerbated and requires intervention.⁸ Policymakers must recognize that some students engage in all three social roles at the same time. As a result, crafting legislation that adequately recognizes the complexity of the problem is difficult.

PUBLIC POLICY RESPONSES TO SCHOOL BULLYING

The bullying narrative replayed in the media has focused on the tragic and fatal consequences, namely suicide, and the failure of educational institutions to identify and effectively respond to incidents of bullying. Provincial politicians across the country are proposing anti-bullying bills or promising forthcoming legislation. 2012 will be known as the year anti-bullying legislation swept across Canada.

Canadian political parties recognize the benefit of denouncing the universally rejected pattern of behaviour. In late 2011, in Ontario, the ruling Liberals and opposition Progressive Conservatives introduced competing anti-bullying bills on the same day. A similar legislative horse race occurred in Nova Scotia where the Progressive Conservatives pulled ahead by a nose when they introduced private members bills one day ahead of the NDP government's anti-bullying bill.

Quebec introduced Bill 56 early in 2012 while Alberta proposed anti-bullying legislation among other education policy changes under Bill 2, a bill that died on the order paper when the 2012 spring election was called. New Brunswick and British Columbia have promised forthcoming legislation; PEI and the Northwest Territories have presented anti-bullying motions in the legislature to further investigate bullying. While other territories and provinces do not have specific anti-bullying legislation, the issue is at least referenced in safe school policies. Although the move to enact specific anti-bullying legislation is new in Canada, provinces have already spent millions of dollars over the last decade to address the problem through educational institutions. Despite considerable funding, the problem persists.

If the American experience is any indication, the proposed provincial bills will only be the beginning in a long line of legislative action. Only one state, Montana, was *without* anti-bullying legislation at time of printing. The Columbine school shooting in Littleton, Colorado in 1999 was a catalyst in the rapid growth of anti-bullying legislation. States like New Jersey now boast about the "toughness" of their anti-bullying laws.

8. Twemlow, S. W. (2011, Oct. 26). Can we eliminate bullying from schools and communities? *Psychiatric News Update*, Vol.1, No. 10. Retrieved from http://www.psychnews.org/update/experts_1_10.html

A report on state legislation up to April 2011 prepared for the United States Department of Education found that 48 pieces of legislation on bullying were passed between 2000 and 2006 with an additional 78 pieces of state legislation passed in the following four years. The report's authors suggest that revisions and amendments are the norm for legislation in the United States as politicians grapple with how to enact the legal approach to bullying.⁹

The same report notes that while anti-bullying legislation varies from state to state, some common elements exist. Similarities include developing a definition of bullying, requiring school districts to develop anti-bullying policies, student discipline guidelines and determining the scope schools have in enforcing anti-bullying policies. Very few state anti-bullying laws address mental health issues and counselling referrals.¹⁰

With the proliferation of legislation there has been a growing debate surrounding the effectiveness of outlawing bullying. A 2009 review by the Associated Press concluded at that time that few initiatives ensured that policies were being enforced even in cases where the law required reporting and enforcement. The AP investigation also reported that anti-bullying legislation appeared to be failing to address repeated bullying behaviour.¹¹

The result is that some argue for stronger legislation, while others observe this as evidence that little is gained on the ground from enacting state law.

ANTI-BULLYING, PROVINCE BY PROVINCE

Canadian provinces are eager to introduce anti-bullying laws, but this follows years of action taken against bullying and school violence.

British Columbia

The BC Safe School Centre was established in 1998 with an estimated annual budget of \$300,000. The purpose of the centre was to offer information, resource materials and review best practices. The centre was funded by the Ministry of Education and the Attorney General's office but came under the University of the Fraser Valley in 2004 with an advisory committee that includes government and community organizations.

The 2000 BC auditor general's report on the education system examined the province's safe learning environment initiatives and concluded that insufficient data had been collected to determine which behaviours had been influenced by the initiatives.¹² Anecdotal evidence pointed to success, however, the auditor general argued that the failure to record why students were suspended made it difficult to evaluate.¹³ The auditor general also noted that the mere presence of anti-violence materials did not always lead to hands on application in the classroom.¹⁴

The BC government has undertaken reforms since the auditor general's report including amending the 2007 School Act to include school codes of conduct that meet provincial standards. Premier Christy Clark has indicated that specific anti-bullying legislation is forthcoming.

9. Stuart-Cassel, V., Bell, A. and Springer, J.F. (2011). Analysis of state bullying laws and policies. Washington D.C.: U.S. Department of Education, p. 79.

10. *Ibid.*

11. Associated Press. (2009, Sept. 14). School bullying laws give scant protection. *USA Today*. Retrieved from http://www.usatoday.com/news/education/2009-09-14-bullying-laws_N.htm

12. Strelieff, W.K. (2000, June). Fostering a safe learning environment: How the British Columbia public school system is doing. p. 10. Retrieved from <http://www.bcauditor.com/pubs/2001/annual/20002001-annual-report-auditor-general-british-columbia>

13. Strelieff, Fostering a safe learning environment, (2000, June), p. 11.

14. Strelieff, Fostering a safe learning environment, (2000, June), p. 12.

Alberta

Alberta enacted the Safe and Caring Schools initiative in 1996 following two provincial forums on school violence. The initiative included workshops, materials and violence prevention programs.¹⁵ The province also amended the School Act in 1999 to emphasize the responsibility of school boards to ensure safety in their schools.

In 2004, the Alberta Teachers' Association took the lead when their work on school violence was integrated into the Safe and Caring Schools initiative while the government continued to provide cross-ministry support.

In 2012, Alberta introduced Bill 2, The Education Act. The Bill died on the order paper when the provincial election was called, however, little to no attention was drawn to the anti-bullying statutes. Bill 2 section 31 states,

A student, as a partner in education, has the responsibility to...

(e) 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 means¹⁶

The bill goes on in section 36 to state that if, in the opinion of a teacher or principal, a student fails to comply with section 31, the teacher or principal may suspend the student. Next to expulsion, suspension is the toughest disciplinary action schools can dispense. This bill targeted not only bullies but bystanders with suspension, including those who witness cyberbullying. In practice, this could have made students who simply viewed a Facebook post liable for suspension.

Saskatchewan

The province of Saskatchewan announced an anti-bullying strategy in 2005. The strategy focuses on several initiatives including an enhancement of anti-bullying and suicide prevention initiatives by contributing \$250, 000 over three years to partner with the Canadian Mental Health Association. The strategy also held school boards accountable for bullying awareness programs and defined their responsibilities within the community. These responsibilities included overseeing the development of school codes of conduct, anti-bullying policies and crisis response plans.¹⁷ As for legislation, the strategy proposed that the province encourage the federal government to review the criminal code and Youth Criminal Justice Act pertaining to how these laws could be amended to respond to incidents of bullying.¹⁸

Manitoba

In 2004 Manitoba introduced the Safe Schools Charter amending the Public School Act. The charter covered the implementation of school codes of conduct specifically denouncing bullying. The charter also called for the creation of emergency response plans and the development of policies concerning the use of school based email and internet.¹⁹ Manitoba currently does not have specific anti-bullying legislation.

Ontario

Ontario is among the first provinces to introduce legislation specifically addressing bullying. As noted above, two bills were introduced on the same day in 2011; Bill 13 by the government and Bill 14 by the opposition.

Six years earlier in November 2005, the province introduced *Shaping safer schools: a bullying prevention action*

15. Government of Alberta. CRSLE history. Retrieved from <http://education.alberta.ca/teachers/safeschools/crslehistory.aspx>

16. Education Act 2012, 5th session, 27th legislature, Alberta. (2012). Retrieved from http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_27/session_5/20120207_bill-002.pdf

17. Saskatchewan Learning. (2005). Anti-bullying strategy. Retrieved from <http://education.gov.sk.ca/anti-bullying-strategy>

18. *Ibid.*

19. The Safe Schools Charter 2004, 2nd session, 38th legislature Manitoba. (2004). Retrieved from <http://web2.gov.mb.ca/laws/statutes/2004/c02404e.php>

plan which was the first part of a three phase school safety initiative. Under the plan the province funded professional educators' associations to provide anti-bullying training for their members. The province also provided \$8 million to school boards to purchase anti-bullying materials and an additional \$1 million annually for a partnership with Kids Help Phone. In addition to these resources, the government mandated an anti-bullying pamphlet for parents, school climate surveys and designated a section of the Ministry of Education website to school safety resources and information.²⁰

When all safe school programs are considered, Ontario spent almost \$150 million between 2007 and 2010. A 2010 report from the auditor general noted that the government plan dispersed funds inefficiently and lacked sufficient reporting measures

In June of 2006, the province presented phase two, *Safe schools policy and practice: an agenda for action*. The document reviewed policies, practices and legislation regarding school safety. The province promised to provide \$34 million annually to school boards to hire psychologists, social workers and youth workers for at-risk students and those who were expelled or suspended. A majority of the money went to creating academic and non-academic

programs for suspended and expelled students. One reason funds were funnelled this way was that under the policy, the Education Act was amended to include bullying as an offense worthy of consideration for suspension or expulsion. The province introduced a provincial code of conduct and moved away from zero tolerance discipline policies toward a progressive discipline approach.²¹

The government introduced phase three in December 2008, *Shaping a culture of respect in our schools: promoting safe and healthy relationships*. Under this initiative, the government required educators to bring serious incidents

to the school principal, who was required to contact parents under revisions to the Education Act. Under this policy, the province provided school boards with \$4 million to ensure school safety including equity and inclusive education.²²

When all safe school programs are considered, Ontario spent almost \$150 million between 2007 and 2010. In his 2010 Annual Report, Ontario's Auditor General Jim McCarter noted that several aspects of the government's plan dispersed funds in less than efficient ways while other aspects lacked sufficient

reporting measures resulting in the ministry being unable to track the effectiveness of the policy on student behaviour.²³ The report left one anti-bullying activist to bemoan, "All this money spent and we can't measure if, in fact, it's working."²⁴

With Bill 13, the Ontario government announced many of the existing policies regarding bullying, such as designating an anti-bullying week, will be codified

20. McCarter, J. (2010). 2010 Annual Report. Toronto: Queens Printer of Ontario, p. 274-275. Retrieved from http://www.auditor.on.ca/en/reports_en/en10/2010ar_en.pdf

21. McCarter, 2010 annual report, p. 275.

22. *Ibid.*

23. McCarter, 2010 annual report, p. 276.

24. C Morrison as quoted in Zarzour, K. (2010, Dec. 13). School bully program success unclear: Auditor General. *YorkRegion.com*. Retrieved from <http://www.yorkregion.com/yorkregion/article/916026>

into law.²⁵ Much of the public debate has focused on the prioritization of anti-bullying measures aimed at the LGBTQ demographic, which is a serious issue, but accounts for a small portion of bullying incidents.²⁶

Quebec

In 2008 the province of Quebec announced a three-year, \$16.8 million anti-violence plan that included anti-bullying initiatives in school. The initiative was partly in response to recommendations from the provincial Auditor General who challenged the Ministère de l'Éducation, du Loisir et du Sport (MELS) to collect data on school violence to assist in preventing further incidents.

The action plan presented approximately 20 measures that included training, anti-violence resources and school emergency response plans.²⁷ The province provided \$5.25 million to school boards for support services to assist suspended and expelled students.²⁸ The action plan was to be evaluated halfway through the three-year mandate and again at the plan's completion. According to the *Montreal Gazette* the promised portrait of violence in Quebec schools was never completed but the government indicated it would begin monitoring school violence later in the spring of 2012.²⁹

Anti-violence and safe school plans address more than just bullying. So not all the funds spent on these plans go to direct anti-bullying efforts. Many incidents of bullying involve no threat of physical violence, but

instead apply social coercion or exclusion. In early 2012 the province introduced Bill 56, *An act to prevent and deal with bullying and violence in schools*. The bill emphasizes the responsibility of school boards to ensure school safety through implementing anti-bullying and anti-violence plans that include reporting and response procedures. The MELS requires boards to submit annual reports to the minister itemizing reported bullying incidents. The bill empowers the MELS to fine institutions that fail to comply.³⁰

In addition to the legislation, the provincial government has pledged \$1 million annually for three years towards anti-bullying advertising and university-based research. The government promised to extend its funding commitment of \$6 million annually for anti-bullying activities.³¹

New Brunswick

The province has been an advocate of inclusive education. The Ministry of Education adopted policy 703 *Positive Learning and Working Environment* in 1999. In June 2010 the province hosted an anti-bullying summit that included students, parents, educators, NGOs and representatives from the provincial and federal government.

Education minister Jody Carr told the media in early 2012 that anti-bullying legislation was currently being prepared and would reflect input from a ministerial

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25. For a further explanation see Mitchell, P.J. (2012). *Ontario's equity and inclusive education strategy* reviewed. Ottawa: Institute of Marriage and Family Canada. http://www.imfcanada.org/article_files/Equity_in_Education.pdf
26. By the numbers, (2012), pp. 10, 16-20.
27. Ministère de l'Éducation, du Loisir et du Sport. (2009). *Violence in the schools: Let's work on it together!* Gouvernement du Québec, p. 3. Retrieved from http://www.mels.gouv.qc.ca/sections/publications/publications/EPEPS/Formation_jeunes/ViolenceEcole_a.pdf
28. Action plan targets school violence. (2008, April 21). *Montreal Gazette*. Retrieved from <http://www.canada.com/montrealgazette/news/story.html?id=088ad144-704e-4c5c-868a-210bc7569de1&k=15418>
29. Branswell, B. (2012, Feb. 10). Quebec to announce steps to improve action plan to stop bullying. *Montreal Gazette*. Retrieved from <http://www.montrealgazette.com/news/Quebec+announce+steps+improve+action+plan+stop+bullying/6136146/story.html#ixzz1rr9p7JA9>
30. The text of Bill 56 is available here; <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-56-39-2.html>
31. Dunlevy, T. (2012, Feb. 12). Quebec targets bullying with new legislation, million-dollar ad campaign. *Montreal Gazette*. Retrieved from <http://www.montrealgazette.com/life/Quebec+targets+bullying+with+legislation+million+dollar+campaign/6141501/story.html#ixzz1rqBPVpuj>

advisory committee. Legislation would include changes to the Education Act and support further anti-bullying education.³²

Nova Scotia

The province of Nova Scotia commissioned a task force on bullying and cyberbullying that produced a report in February 2012. The task force offered 85 recommendations covering a wide range of responsibilities. On the legislative front, the report recommended that Nova Scotia follow a similar course of action as Ontario and move toward amending the provincial Education Act to incorporate a definition of bullying. It also recommends clear consequences for bullying under a progressive discipline policy and ensuring schools have policies outlining procedures for responding to bullying.³³

In response to the report, the opposition Progressive Conservatives proposed three private members bills and the governing NDP proposed Bill 30, *Promotion of respectful and responsible relationships act*. The government bill proposes to establish a provincial school code of conduct, as well as requiring data collection and the monitoring of reported incidents. The bill also defines bullying and cyberbullying in the existing Education Act.³⁴

PEI

In April 2012 the Legislative Assembly passed Motion 14 to “encourage the government in the adoption of anti-

bullying legislation in Prince Edward Island.”³⁵ As other provinces move towards anti-bullying legislation, it is plausible PEI will follow the motion with anti-bullying laws.

Newfoundland and Labrador

The government of Newfoundland and Labrador established the *Safe and Caring Schools* policy in 2006, which includes a code of conduct and support for creating healthy school environments. The policy was developed from the 2003 Safe and Caring Schools Action Plan that had its roots in a broader 2001 initiative. The 2001 initiative led to a provincial anti-bullying forum in 2002.³⁶ The government has not proposed specific anti-bullying legislation.

The Territories

The Legislative Assembly of the Northwest Territories debated Motion 5-17(2) regarding anti-bullying measures in February 2012. The motion called for a territory-wide campaign against bullying and for the government to review legislative measures in other jurisdictions.³⁷

Yukon introduced a Safe and Caring School policy in 2008. The policy defines bullying and outlines how schools are to respond to incidents of bullying.

As with the other territories, Nunavut does not have specific anti-bullying legislation.

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32. McHardie, D. (2012, Feb. 16). Jody Carr promises stronger anti-bullying laws. *CBC News*. Retrieved from <http://www.cbc.ca/news/canada/new-brunswick/story/2012/02/16/nb-carr-education-bullying-law-202.html>
- Carr promises more than anti-bullying laws. (2012, Feb. 21). *CBC News*. Retrieved from <http://www.cbc.ca/news/canada/new-brunswick/story/2012/02/21/nb-carr-bullying-changes.html>
33. See Mackay, A.W. (2012, Feb. 29). Respectful and responsible relationships: There's no app for that. *Nova Scotia Task Force on Bullying and Cyberbullying*. Retrieved from <http://cyberbullying.novascotia.ca/media/documents/Respectful%20and%20Responsible%20Relationships,%20There%27s%20no%20App%20for%20That%20-%20Report%20of%20the%20NS%20Task%20Force%20on%20Bullying%20and%20Cyberbullying.pdf>
34. See Promotion of respectful and responsible relationships act of 2012, 4th Session, 61st General Assembly Nova Scotia. (2012). Retrieved from http://nslegislature.ca/legc/bills/61st_4th/1st_read/b030.htm
35. Motion 14: Encourage government in the adoption of anti-bullying legislation in Prince Edward Island 2012. 2nd Session, 64th General Assembly PEI. (2012). Retrieved from <http://www.assembly.pe.ca/sittings/2012spring/motions/14.pdf>
36. Safe and caring schools action plan. (2003). Ministry of Education, Newfoundland and Labrador. Retrieved from <http://www.ed.gov.nl.ca/edu/publications/k12/SafeCaringSchoolsActionPlan.pdf>
37. Hansard Thursday, February 16, 2012. 2nd Session, 17th Assembly Northwest Territories. (2012). pp. 482-487. Retrieved from http://www.assembly.gov.nt.ca/_live/documents/content/hn120216.pdf

Laws cannot be a substitute for the community level involvement needed to address bullying

Provincial summary

Bullying in school is not a new issue and the majority of jurisdictions have some policy in place, usually under a broader safe school or anti-violence initiative. In some cases such as Ontario and Quebec, millions of dollars have been committed to managing the problem. Are these provinces any further ahead? There are few available measures that would help answer this question. These two provinces along with Nova Scotia have pursued the next step in the progression in the campaign against bullying by proposing legislation. Other jurisdictions are sure to follow suit, yet we have no proof that legislation results in an identifiable reduction in school bullying.

The question is: Can anti-bullying laws meet public expectation?

THE LIMITS OF ANTI-BULLYING LEGISLATION

While there are few issues on which most Canadians agree, the public distaste for bullying behaviour in school certainly seems to be one. Public opinion polls continue to indicate that Canadians believe bullying is a serious issue. A 2012 Angus Reid poll found that 84 percent of Canadians believe bullying behaviour should be criminalized.³⁸

While certain bullying behaviour contravenes the criminal code and Youth Criminal Justice Act, the ability of the law to regulate school yard relationships should be questioned. Laws cannot be a substitute for the community level involvement needed to address bullying. Current legislation introduced in Ontario, Quebec and Nova Scotia amends education legislation but does not address the criminal code.

The common elements of legislation in both the US and Canada include the responsibilities of school boards to enact codes of conduct, anti-bullying policies, awareness campaigns, bullying response policies and the empowering of teachers and principals to use suspensions and expulsions. Most laws have some component requiring school boards to report progress in implementing anti-bullying policies if not reporting the number of bullying incidents. In the US, school boards have expanded their policies beyond state requirements. However, the US Department of Education study cautioned that they did not evaluate the actual implementation of policies and that policy implementation might be inhibited by available resources.³⁹

The law and school discipline

Legislation can regulate the discipline policies schools use, but the ability of the law to modify student behaviour is less clear. During the 1990s many jurisdictions enacted zero tolerance discipline policies. The model promoted strict adherence to consequences including the use of suspensions and expulsions.

38. Angus Reid Public Opinion. (2012). Many Canadians believe bullying should be considered a crime, February 14-15, 2012, http://www.angus-reid.com/wp-content/uploads/2012/02/2012.02.29_Bullying_CAN.pdf

39. U.S. Department of Education, p. 80.

However, when the American Psychological Association reviewed the use of zero tolerance policies in schools they concluded that suspending children predicts future disciplinary action against a student, raising the question about whether suspensions work.⁴⁰ The APA task force also argued that the evidence shows that higher expulsion rates correlated to less satisfaction with the social climate of a school.⁴¹ Finally, the APA concluded while some students respond to zero tolerance initiatives; other students see suspensions and expulsions as ineffective and unfair.⁴² Where suspensions and expulsions are used there has been an increasing amount of funds directed to providing alternative education and resources to those who have received this type of discipline.

While the APA frowns on suspensions and expulsions, many anti-bullying bills propose greater freedom for teachers and principals to use these tools, even in jurisdictions such as Ontario that have moved away from zero tolerance policies towards progressive discipline models. Many progressive discipline models intend to focus on repairing relationships and restoring school communities. The problem is that repeat offenders may not face serious consequences until behaviour has become progressively worse. As bullying is often a reoccurring experience, targets may feel that the school administration is not doing enough to address the problem by merely handing out the proverbial “slap on the wrist.” The recent proposed anti-bullying legislation across Canada reveals the tension in maintaining an effective discipline model.

The law and cyberbullying

Another challenge for lawmakers is keeping up with the rapid development of technology. Cyberbullying presents

a difficult and complicated challenge. As lawmakers take on bullying, they are challenged to include measures to address this problem. Legislation holds schools accountable to intervene when cyber activity is perceived to impact the school environment, even when it occurs after hours.

Requiring schools to police student cell phone use, even after hours, presents pragmatic problems. As seen in Alberta’s now defunct Bill 2, this responsibility was passed along to students to participate in policing the internet under threat of suspension. In Nova Scotia the private members bill *Cyberbullying Intervention Act* moves beyond the school yard. The bill proposes that young people who engage in cyberbullying be liable for fines or alternative measures. Parents would be held civilly liable and could be fined under the proposed act. Whether such legislation would reduce cyberbullying is unknown, yet policymakers feel compelled to use the law as a measure of prevention.

The National Association of School Psychologists suggests “[w]hile policies do not necessarily change behaviour, they stipulate that bullying in the school environment will not be tolerated and they delineate consequences from bullying others.”⁴³ Perhaps this is the crucial misunderstanding perpetuated by anti-bullying laws. Legislation can codify responsibilities and expectations of students but not necessarily change bullying behaviour. As an interpersonal relationship issue occurring in the socio-ecological environment of the school, the success of policies and programs will come down to those at ground zero; students, parents, teachers and the community. Legislation may increase the speed at which school boards adopt policy, though in places like Ontario many of the directives are already being observed. With legislation comes accountability and the Ministry of Education in

40. American Psychological Association Zero Tolerance Task Force. (2008). Are zero tolerance policies effective in the schools? An evidentiary review and recommendations. *American Psychologist*, Vol.63, No.9, p. 854. Retrieved from <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>

41. *Ibid.*

42. *Ibid.*

43. National Association of School Psychologists. (2012). Bullying prevention and intervention in schools [position statement]. Bethesda, MD, p.3.

various provinces could legislate a reporting process. The experience of several provinces over the last decade demonstrates the difficulty in collecting and tracking information on bullying and violent incidents.

BEYOND LEGISLATION

There is no question that schools must respond to bullying. While this paper does examine the public policy response to bullying, and specifically the developing trend to rely on legislative measures, it is important to acknowledge that there are many approaches and programs available. Anti-bullying expert and psychiatrist Stuart Twemlow argues that school programs often have little success and the ones that seem to produce results are costly to maintain.⁴⁴

Twemlow may be correct that many of the programs available don't produce lasting results. It could also be that we simply don't know which programs work or which ones could be widely replicated.

University of Ottawa researcher J. David Smith and his colleague Wendy Ryan argued in a 2009 article that many of the anti-bullying programs evaluated in peer reviewed journals did not meet rigorous evaluation standards. Admittedly, the nature of anti-bullying programs and the challenge of conducting research in schools contributes to this problem. Smith and Ryan conclude:

There are tremendous resources being committed to anti-bullying programs in North American schools in the absence of a body of compelling evidence in the prevention literature that these programs are actually substantially reducing bullying.⁴⁵

Rather than dismissing anti-bullying efforts, Smith and Ryan call for a coordinated research effort to produce a standard measure of evaluation.⁴⁶

Anti-bullying legislation is not equivalent to school based anti-bullying programs, but the law does make demands on schools and school boards to follow policy and address the issue. Requiring school boards to report the number of suspensions or incidents of bullying may provide general data, but it will offer little help in determining what works and what doesn't.

RECOMMENDATIONS

It is clear that parents, students and educators must be proactive in the prevention of bullying and respond to incidents of bullying. A future IMFC publication will explore bullying from the perspective of families and review the literature on family responses to resolving the bullying problem. Prior to that point, however, government legislation is barreling ahead. So how should governments respond?

- **Review existing policies and funding commitments**

Ontario and Quebec are the first provinces to introduce specific anti-bullying legislation, yet as shown above, both provinces have a history of allocating significant funds for anti-bullying measures without sufficient evaluation of how money was used or whether policies met expectations. Legislating existing policies into law or building upon previous policies without evaluation is not prudent

44. Twemlow, Can we eliminate bullying from schools and communities? (2011, Oct. 26).

45. Ryan, W. and Smith, J.D. (2009). Anti-bullying programs in schools: How effective are evaluation practices? *Prevention Science* 10, p. 256.

46. *Ibid.*

- **Prioritize evaluation and research**

The availability of Canadian data on bullying is small and there is a need for robust evaluation measures to determine which anti-bullying approaches are effective. Canadian provinces wish to appear responsive to the bullying problem but are legislating ahead of adequate research and information

- **Minimize the scope of legislation, maximize community autonomy**

Provinces that choose legal statutes rather than issue policy memoranda on bullying should focus on clear definitions of bullying and outline responsibilities and procedures while allowing communities the autonomy to customize community specific programs

- **Communicate clear, pragmatic expectations of legislation**

Legislation will not end bullying in Canadian schools just as bullying still flourishes in American schools over a decade after legal statutes and amendments were introduced. Bullying is a relational problem that is best addressed at the community level. The law has a limited role in the solution, even as the provinces must facilitate safe schools. While many Canadians favour legal intervention, policymakers must champion local community level solutions as the first line of response aided by sound, proven policy

CONCLUSION

Most Canadians agree that bullying is a serious problem, particularly among school age children and youth. Bullying is a complex relational problem that impacts the social climate of schools and communities. Effectively addressing

the bullying problem begins with families, parents, students and educators.

Canadians need to look no farther than the United States for an example of the legislative approach. Over one hundred state level laws have been enacted in the United States in recent years, however, it appears that bullying remains a serious and unresolved problem. The law may provide clear definitions of bullying behaviour, mandate the need for policies, assign responsibility and empower educators with disciplinary tools, but it will be community level involvement that will best address the varying and complex issue of bullying.

Before rushing to enact new legislation, policymakers should review existing policies and funding commitments. Several provinces have not been successful in evaluating previous directives or assessing the effectiveness of previous funding commitments. Policymakers should place significant emphasis on evaluation and research to inform governmental response. Governments should limit the scope of legislation to create a context in which communities understand their responsibilities but have the autonomy to develop prevention and responses that best fit their situation. Finally, policymakers must communicate clear, pragmatic expectations of what the law can accomplish. While many Canadians favour legal intervention, policymakers must champion local community level solutions as the first line of response aided by sound, proven policy.

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