

Bullying victims are taking schools to court

Fed up with ineffective policies, parents are suing for millions
by Stephanie Findlay on Wednesday, September 14, 2011



Ward Perrin/PNG/Vancouver Sun

In 2009, Daniela Cervini, a Toronto-based lawyer, was approached by a group of parents whose children were bullied at an elementary school in Owen Sound, Ont. For years, the parents claim they had been trying the prescribed channels—meetings with vice-principals, principals, police, board superintendents—with what they perceived as no results. They turned to litigation, “just because they weren’t being heard,” says Cervini. This year, four claims were filed in Ontario Superior Court against the Bluewater District School Board involving three schools, five teachers, three principals and one vice-principal. All are for gross negligence—the failure to protect students from bullies. Each lawsuit is for \$8.5 million, well above the \$1-million standard in personal injury claims. Together, at \$34 million, the Bluewater suits are the biggest of their kind in Canada. As Cervini puts it: “You hear so much of this talk in the media and current culture of zero tolerance and bullying. It would seem that the schools have this under control. They don’t.” She expects them to deny the allegations; so far they have filed only a notice of intent to defend.

Bullying lawsuits have appeared in Vancouver, Winnipeg, Ottawa and Waterloo, Ont., as parents turn to the civil courts for justice. And while policies may be consistent in some school districts or provinces, how effective those policies are remains open to debate.

Bullying may have found its way into Ontario courts because the province’s approach has been more focused on discipline. “The easy fix to school boards seems to be you just suspend a kid that did the bullying, which doesn’t fix anything,” says Martha Mackinnon, executive director of Justice for Children

and Youth, a Toronto-based legal-aid clinic for children. In Ontario's initial anti-bullying legislation, the Safe Schools Act, vice-principals and principals were recast as police, required to conduct formal investigations of bullying complaints and penalize offenders according to a graduated system. It's also known as the "zero tolerance" act.

Mackinnon says the act led to more suspensions—penalties that the Ontario Human Rights Commission later found to disproportionately discriminate against racial minority students and students with a disability—and did little to change the school culture. Zero tolerance has since been refined—for example, Bill 157, introduced in 2010, emphasizes communicating bullying incidents with parents. But Mackinnon says in many ways it remains the philosophical backbone of bullying prevention programs, and it's been hard for school administrators and teachers to back down from zero tolerance and contemplate alternative approaches.

"I've been involved with a few families over the last year, and the inability of principals and teachers to do something constructive is depressing to me," says Debra Pepler, a psychology professor at York University and co-director of PREVNet, a Canadian bullying prevention think tank. "We haven't trained them adequately in understanding children's development. You hear principals saying to get thicker skin, just ignore it, walk away."

If the policy breaks down, says Naeem Siddiq, president of the Ontario Principals' Council, it's when adults aren't on the same page. "It's our job [as principals] to be leaders and to make sure that everybody is living up to their responsibilities," says Siddiq, "but how that plays out can be very different depending on the information, the needs of students involved, the school culture."

Alana Murray, superintendent of education at the Bluewater District School Board, declined to comment on the lawsuits, but did say in an email to *Macleans*' that schools alone cannot eliminate bullying. "Legislation is most effective when school, home and community work together to address issues." On the home front, there have been high-profile suicides, like Dawn-Marie Wesley, 14, from Mission, B.C., who in November 2000 left a suicide note after being bullied by three girls at school that read, "If I ratted they would get suspended and there would be no stopping them." There have been other court cases, notably School District No. 44 (North Vancouver) vs. Jubran, (2005), where the B.C. Court of Appeal and Supreme Court of Canada ruled the school board was liable because it had not done enough to stop the harassment of a student, Azmi Jubran.

Overseas, it's different. In the past 30 years, Norway has reduced bullying in its primary, elementary and secondary schools by 40 per cent. In 1983, when three young boys committed suicide after being bullied, the Norwegian government commissioned Dan Olweus, a psychology professor at the University of Bergen, to develop a prevention program. Instituted nationwide in 2001, his program is preventative rather than punitive.

In 1998, the Olweus program was introduced to the U.S.; now there are 7,000 schools using it. At first, "it was kind of like, 'what are you talking about? Bullying is the least of our problems. I was bullied as a kid and it made me stronger,'" says Marlene Snyder, director of development for the U.S. program. "But then along came Columbine." (On April 20, 1999, two social outcasts who had been bullied killed 12 fellow students and a teacher at Columbine High School in Jefferson County, Colo., before killing themselves.)

Now the Olweus program appears to be having an effect. An internal report of the U.S. Olweus program, collected from 56,137 students in 39 Pennsylvania schools from 2008 to 2010, found as much as a 41

per cent reduction in bullying incidents two to three times a month or more. After the program, high schoolers were 32 per cent more likely to feel a peer would intervene.

Since the first school in Canada adopted the program in 2006, over 12 schools in Alberta have used it, four in Ontario, two in Quebec, and one in Labrador.

For some, bullying lawsuits like Bluewater could be the beginning of education reform. In Toronto earlier this spring, at a conference hosted by the Canadian Association for the Practical Study of Law in Education, a team of psychologists and lawyers presented a paper titled "Education's perfect storm," which advocated more lawsuits against schools. "We don't want to blame the bully," says Bob Konopasky, a psychology professor at St. Mary's University in Halifax, and co-author of the paper. "What we want to do is hold someone responsible who has the resources to act and dampen bullying. That's the school board and the school." For the moment, the struggle is for parents, teachers and administrators to make the current system work. In Toronto, Cervini receives a call a day from parents across Ontario seeking advice. The personal-injury lawyer is now handling 10 bullying cases, which have already inspired urgency in schools. "All these people wanted were to be heard," she says of the parents, "and it's the dollar amounts that made them be heard."