

THE LAWYERS WEEKLY

Parrying thrusts of the cyberbully

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January 13 2012

Being pushed around in the playground has taken on a whole new meaning in the Internet environment. It can take place 24/7, and the playground has become global. Now the public, its elected leaders, and the legal community are fighting back.

Nova Scotia has become the first jurisdiction in Canada to establish a cyberbullying task force, following the suicide of two young girls in which bullying was a key factor. The task was formed by provincial Minister of Education Ramona Jennex to explore and make recommendations in four areas: intervention, education, assessment and policy.

There are thorny legal issues that arise in connection with cyberbullying, starting with jurisdiction, says task force chair Wayne MacKay.

"A lot of schools say cyberbullying is happening in bedrooms and malls, not within the school jurisdiction," he said. But he points out that courts in the United States and Canada disagree. "The Americans have taken the position that what negatively affects the school climate is within jurisdiction. The Ontario education authorities have added to their jurisdictional act a clause that says much the same thing," said MacKay, a professor in the Schulich School of Law at Dalhousie University in Halifax.

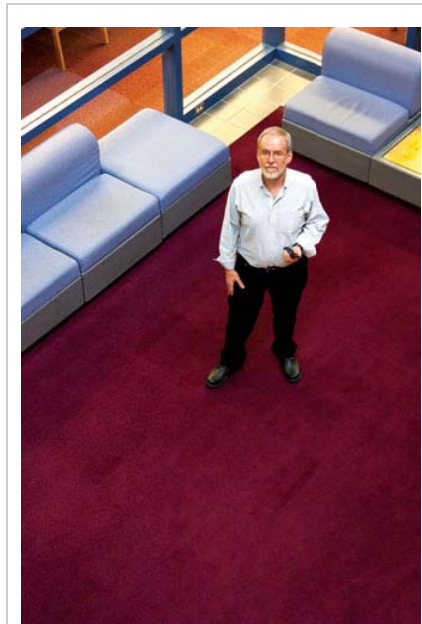
In Bill 212, Ontario's amended education act, bullying became express grounds for student discipline, a legal tenet the provincial Child and Family Services Review Board took to heart in *R.T v. Durham Catholic District School Board* (EA s.311.7), 2008 CFSRB, when a 13-year-old girl was expelled from school for cyberbullying, including death threats.

The jurisdictional question extends to fundamental issues of who actually owns the online environment, MacKay said. "There is a debate about who has jurisdiction over the Internet generally."

Answers are proving elusive to many basic questions such as that. Another is how to define cyberbullying itself. There are academic definitions and policy definitions, with important distinctions. Right now, Nova Scotia's Cyberbullying Task Force is trying to determine which is the most appropriate — or even if the definition should depend on the context.

The issue even encompasses the word "bullying" itself. "Some research has observed 'bullying,' as a term, may be too soft for the consequences," said MacKay, a former executive director of the Nova Scotia Human Rights Commission. "It is believed to be a rite of passage. The terminology may send a message that it is less serious than it is. The word seems so soft compared to 'assault' and 'intimidation.'"

Cyberbullying goes beyond being mean. "In some ways, it is an access to justice issue, especially from the victim's perspective," MacKay said.



Dealing with cyberbullying comes with a number of legal issues, says Wayne MacKay, chair of Nova Scotia's Cyberbullying Task Force. He is shown at Dalhousie University's Schulich School of Law. [Photo by David Grandy for The Lawyers Weekly] Click [here](#) to see full sized version.

"For ages, bullying has been a dynamic where the oppressed have no justice," he said in a presentation he gives, entitled Task Force on Cyber-bullying: A Lawyer's Primer. "Anti-bullying efforts may teach kids early about justice as a part of their lives."

Grappling with cyberbullying requires tried-and-true legal approaches, he said. For example, restorative justice, which focuses on the needs of the victim and the community as well as on the accused, is an important element, and several schools in Nova Scotia are experimenting with this model.

"A school is like labour relations. It's ongoing," MacKay said. "The players all have ongoing relationships. It becomes important to have all the parties recognize what's going on."

Disciplinary sanctions must also be in place, he said. "There is no specific Criminal Code section on this, but there are sections that apply, especially when coupled with the Youth Criminal Justice Act."

Another route that some parents and students are using is tort liability to sue school boards and schools, he added. "It's happening a lot more than people think."

The courts also seem to have little tolerance for inaction. In *School District No. 44 (North Vancouver) v. Jubran*, 2005 BCCA 201, the B.C. appeal court found that school boards have a legal duty to try and ensure students have a discrimination-free school environment.

Even though the board had taken the traditional steps, including suspension and expulsion, it was not seen as sufficient. "They did not provide training and prevention," MacKay said.

There is also a human rights component as some students are singled out more than others for bullying, he said. "A large number of those targeted are gay and lesbian. There is scope for saying this is a form of harassment based on a prohibited ground. Human rights commissions could be a way of responding, particularly under the harassment umbrella."

These and other legal remedies are likely to be considered more often and more critically as cyberbullying escalates. A study conducted last year by Ipsos Reid found that eight per cent of Canadian parents said their children had been bullied online. The figure rose with the age of the affected child, hitting 11 per cent among 16- to 17-year-olds.

Nova Scotia's Cyberbullying Task Force is expected to submit its report to Jennex by the end of this year.

In the meantime, the province has drawn its own line in the sand. "We take bullying, in all its forms, seriously," Jennex said in an editorial published in local media. "This is a societal problem that requires a societal response. We cannot allow any more suffering. We cannot allow any more tragedies."