

Bill #102
Education Act (amended)

CHANGES RECOMMENDED TO THE
LAW AMENDMENTS COMMITTEE

PAGE 1 - add the following after Clause 3:

4 Chapter 1 of the Acts of 1995-96 is further amended by adding immediately after Section 70 the following headings and Sections:

BULLYING

70A (1) In this Section,

(a) “bullying” means any direct or indirect behaviour, comment, act or gesture, including those made through the use of social media, intended to injure, hurt, oppress, intimidate or ostracize, and includes cyberbullying as defined in clause 70B(1)(c),

(i) by a student against a student, teacher, support staff or volunteer, or

(ii) by a student, teacher, support staff or volunteer against a student;

(b) “inappropriate student behaviour” includes bullying, gender-based violence and incidents based on homophobia.

(2) The Minister shall establish policies and guidelines with respect to bullying prevention and intervention in schools, including

(a) training to be provided for all teachers and support staff;

(b) procedures that allow students to report incidents of bullying safely and in a way that minimizes the possibility of reprisal;

(c) procedures for responding appropriately and in a timely manner to bullying;

(d) the use of disciplinary measures in response to bullying;

(e) resources to be provided to support students who are impacted by bullying; and

(f) resources to be provided to students who have been suspended for bullying.

(3) The Minister may establish policies and guidelines respecting

(a) the use of a disciplinary framework that

(i) identifies inappropriate student behaviour,

(ii) provides for appropriate consequences for a student who engages in inappropriate behaviour, a mechanism to inform the student's parents of the reason for disciplinary action and the action that will be taken in the event of any further inappropriate behaviour,

(iii) provides for progressively more serious consequences for repeated or more serious inappropriate behaviour,

(iv) provides support for students and their parents who are impacted by inappropriate behaviour and for students who engage in inappropriate behaviour to assist them in developing healthy relationships, making good choices and continuing their learning and achieving success,

(v) provides for prevention strategies to be included in the curriculum, and

(vi) provides for early and ongoing intervention strategies to be included in the curriculum;

(b) opportunities for all students and their parents, teachers and support staff to increase their understanding and awareness of inappropriate student behaviour;

(c) training for all teachers and support staff to increase their ability to respond to inappropriate student behaviour; and

(d) procedures for responding appropriately and in a timely manner to inappropriate student behaviour.

(4) Every school board shall establish policies and guidelines with respect to

(a) disciplining students who bully or engage in inappropriate student behaviour consistent with those established pursuant to subsections (2) and (3); and

(b) address any other matter and include any other requirement that the Minister may specify.

(5) Every school board shall prepare an annual report that states

(a) the incidence and nature of bullying and inappropriate student behaviour for each school within its jurisdiction; and

(b) the measures taken to improve each school's results with respect to preventing and intervening in bullying and inappropriate student behaviour and enhancing the quality of its learning environment,

and file it with the Minister and publish it on the school board's website no later than July 1st of each year.

(6) Principals shall support any group of students within their individual schools who wishes to conduct activities the principal of that school considers conducive to reducing and preventing bullying and inappropriate student behaviour.

(7) The school board shall support a group of students who wishes to conduct activities conducive to reducing and preventing bullying and inappropriate student behaviour and that have been endorsed by a principal in its district pursuant to subsection (6).

CYBERBULLYING

70B (1) In this Section,

(a) “cyberbully” means to use the Internet or any other form of electronic communication, including social media, emails and text messages, deliberately or recklessly, to cause, directly or indirectly, harm to another person;

(b) “harm” means physical or emotional harm to a person that would also harm a reasonable person in those circumstances;

(c) “reasonable notice” means, unless a court orders otherwise,

(i) where an application is made within an existing legal proceeding, one day; or

(ii) where an application is made outside of an existing proceeding, five days;

(d) “recklessly” includes by sending electronically or posting online, including in any form of social media, any comment, picture, video or audio if there is a reasonable probability of causing harm to a person;

(e) “youth” means a person under the age of eighteen years;

(f) “youth justice court” has the same meaning as in the *Youth Justice Act*.

(2) Any person who cyberbullies a youth is guilty of an offence.

(3) Any person who fails to comply with an order made under this Act is guilty of an offence.

(4) Where a youth uses an electronic device to commit an offence under this Act, the youth’s parent or guardian

(a) commits an offence under this Act; and

(b) is jointly and severally liable for any injury or loss suffered by any other person for which the youth is held civilly liable,

if

(c) the parent or guardian had been warned that the youth was suspected of cyberbullying; or

(d) the parent or guardian knew or ought to have known the youth was cyberbullying.

(5) In a prosecution for an offence under subsection (4), it is a defence for the person charged to prove that the person has exercised due diligence to prevent the youth from committing an offence.

(6) Section 4 of the *Summary Proceedings Act* does not apply to this Act.

(7) Upon application made in writing served with reasonable notice upon a person, whether within the context of a legal proceeding at any stage or otherwise, a judge of the Provincial Court or of the youth justice court may order that the use by the person of any electronic device or devices be restricted or prohibited for any period of time to prevent cyberbullying if it is in the public interest to make such an order.

(8) An order made pursuant to subsection (7) may include

(a) a provision confiscating temporarily or forfeiting permanently any electronic device, even if owned by a parent or guardian of the person, upon such terms as the court determines; and

(b) a requirement to complete alternative measures pursuant to subsection (10).

(9) Reasonable notice of an application made pursuant to subsection (7) must, where possible, be served upon a parent or guardian of any youth about whom such an application is made.

(10) At any stage in a proceeding prior to the entry of a plea, the informant or a member of the public prosecution service may, by agreement with a youth about whom an information has been sworn or would otherwise be sworn, refer that youth to complete such alternative measures as are prescribed by the regulations.

(11) At any stage in a proceeding, including an application made pursuant to subsection (7), a court may order a youth charged with an offence to complete such alternative measures as the court considers appropriate, but no such referral may be made without the consent of the accused prior to a finding of guilt.

(12) Alternative measures may be ordered instead of or in addition to a sentence, but successful completion of alternative measures must be taken into account in determining the rest of a sentence and sentencing may be adjourned after the making of an order for alternative measures in order to determine the outcome thereof.

(13) Alternative measures must, where reasonably possible, focus on

(a) causing a youth to understand the gravity of what the youth has done and to change the youth's behaviour;

(b) atonement;

(c) restoring the victim of cyberbullying, including restitution for any costs the victim or the victim's family has incurred;

(d) educating members of the community on the perils of cyberbullying, recognizing that the community may be a geographic area or online or both; and

(e) restoring the community to which the youth and the victim belong.

(14) Any passage of time between the time a youth is offered alternative measures and the time the public prosecution service or the investigating police officer is notified that alternative measures have not been successfully completed are not counted in determining an applicable limitation period.

(15) Any person eighteen years of age or older convicted of an offence under this Act is liable

(a) for a first offence, to a fine not exceeding one thousand dollars; or

(b) for a second or subsequent offence, to a fine not exceeding two thousand five hundred dollars.

(16) Any person under the age of eighteen years convicted of an offence under this Act is liable

(a) for a first offence, to a fine not exceeding three hundred dollars; or

(b) for a second or subsequent offence, to a fine not exceeding one thousand dollars.

(17) In addition to an penalty imposed for a conviction under this Act, the judge shall consider and may make an order pursuant to subsection (7).

(18) The Governor in Council may make regulations prescribing alternative measures for the purpose of subsection (10).

(19) The exercise by the Governor in Council of the authority contained in subsection (18) is a regulation within the meaning of the *Regulations Act*.

RENUMBER CLAUSES ACCORDINGLY
