Bullying Prevention and Intervention

Workplace Violence and Harassment

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What happens, ... if you don't care?

- April 2012 - New Jersey Ramsey School District
- For 3 months, a 12-year-old e-mailed his guidance counsellor for help ... he was being bullied.
- The bully then punched that victim in the torso. The blow caused a clot in a major artery supplying blood to the spine. Paralysis from the waist down.
- The bully had punched another student a year earlier, but no records were kept, nor any progressive discipline initiated. No Safe Schools Incident Reporting Form - P/PM No. 144.
- School District paid $4.2 million.

- Maclean's 2011/09/14
- Four claims filed in Owen Sound 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.

(Bullying lawsuits have commenced in Ottawa, Owen Sound, Waterloo, Winnipeg, and Vancouver.)

- Bullying - Education Act Subsection 1(1)
- "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;"

Accepting Schools Act, 2012

- Equity and Inclusion
- LGBTTIQ - Lesbian, Gay, Bisexual, Transgender, Transsexual, Two-Spirited, Intersex, Queer and Questionning
- Cyber-Bullying
- creating a web page or a blog in which the creator assumes the identity of another person
- impersonating another person as the author of content or messages posted on the internet
- communicating material electronically to more than one individual or posting material on a website that may be accessed by one or more individuals

- Bill 33, Toby's Act (Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression), 2012

Current Status: Royal Assent received Chapter Number: S.O. 2012 C.7

An Act to amend the Human Rights Code with respect to gender identity and gender expression

The Bill amends the Human Rights Code to specify that every person has a right to equal treatment without discrimination because of gender identity or gender expression with respect to,

(a) services, goods and facilities (section 1 of the Code);

(b) accommodation (subsection 2 (1) of the Code);

(c) contracting (section 3 of the Code);

(d) employment (subsection 5 (1) of the Code); and

(e) membership in a trade union, trade or occupational association or self-governing profession (section 6 of the Code).

The Bill also amends the Code to specify that every person has a right to be free from harassment because of sexual orientation, gender identity or gender expression with respect to,

(a) accommodation (subsections 2 (2) and 7 (1) of the Code); and

(b) employment (subsections 5 (2) and 7 (2) of the Code).

URGENT!

- Your Bullying Prevention and Intervention Policy (P/PM No. 144) needs to be immediately revised to ensure compliance with the Accepting Schools Act, 2012 and the Ontario Human Rights Code.
- Never promise no bullying. You will fail.

- Workplace Violence and Harassment
- Two Newer Developments ...
- ... and one smile ...

- A recent decision by the Ontario Labour Relations Board decision limits employer duties.

Harper v Ludlow Technical Products Canada Ltd.

Employee alleges that she was harassed by co-workers.

OLRB rules that, under the OHSA, the employer has specific obligations and duties related to harassment and workplace violence, including:

an assessment of the risks of workplace violence;

the establishment of a program to implement the employer's policy countering workplace harassment; and

providing information and instruction to employees regarding the employer's workplace harassment policy and program.

There is no obligation on the part of the employer, and no jurisdiction provided to the OLRB, to ensure that the workplace is actually free of harassment. Similarly, the OLRB has no jurisdiction to ensure that a workplace harassment policy instituted by an employer is effective.

Providing Warnings about Workers with a History of Violence

An employer may be aware that a worker has a history of violent behavior. If another worker can be expected to encounter this person in the course of his or her work, and the risk of workplace violence involving the violent worker is likely, then the employer has a duty to provide the other worker with information (including personal information) related to such a risk of workplace violence. However, no employer shall disclose more personal information than is reasonably necessary to protect workers from physical injury.

Failure to comply results in fines to a maximum of $500,000 for corporations, and up to $25,000 or 12 months imprisonment for individuals.

- July 2012 - PVYW v Comcare (No 2), [2012] FCA 395
- An employee was injured on a work-related trip to a country town in New South Wales. The injuries were sustained, not while she was conducting budget reviews and staff training, but instead during the course of a sexual encounter in her motel room with an old friend she had hooked up with. "The respondent was injured whilst engaging in sexual intercourse when a glass light fitting above the bed was pulled from its mount and fell on her...", ... as noted by the court.
- The issue was whether the physical and psychological injuries sustained while swinging from the chandelier in off-hours while on a business trip were compensable under the Safety Rehabilitation and Compensation Act 1988.

The employment tribunal rejected the claim, concluding that at the time of the injury the employee was not engaged in acts 'associated with her employment' or 'at the direction or request of her employer', nor was the injury 'sufficiently connected' with her job.

The Australian Federal Court allowed the claim. The employee was in the motel room only because her job required it, and an interlude in an overall period or episode of work was still part of being on the job, whether she was playing cards in her room or doing something more fun, ... unless it involved gross misconduct or self-inflicted (rather than accidental) injuries.

On further appeal [2012] FCAFC 181 the Full Court agreed with the interval/interlude analysis in circumstances where the employer has induced or encouraged the employee to spend the interval or interlude in a particular place or way, absent gross misconduct.