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Alberta Government Considers Strategies to Address Bullying—Is Legislation the Answer?

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Event commented on: [Rocky Mountain Civil Liberties Association Discussion on Anti-bullying Legislation](#)

On January 30, 2014, the [Rocky Mountain Civil Liberties Association](#) (RMCLA) hosted a panel discussion on anti-bullying legislation in Alberta. The panel members were Sandra Jansen, Calgary-North West MLA, and Associate Minister of Family and Community Safety; Peter Brown, current Mayor of Airdrie; and Derek From, a constitutional lawyer from the Canadian Constitution Foundation.

Sandra Jansen spoke about the cross-ministerial initiative to address bullying, cyber bullying, family violence and sexual exploitation. She has been working on the new initiative for a few months and has been looking at what other provinces, such as British Columbia, are doing about these issues. There is a great deal of public interest in addressing bullying in Alberta, perhaps through provincial legislation. Alberta's new *Education Act*, SA 2012, c E-0.3, section 1 (effective 2015) defines bullying as:

(d) “bullying” means repeated and hostile or demeaning behaviour by an individual in the school community where the behaviour is intended to cause harm, fear or distress to one or more other individuals in the school community, including psychological harm or harm to an individual’s reputation . . .

When Albertans (age 16 and over) were surveyed by IPSOS Reid in 2012, 93% indicated that they have a personal responsibility to reduce bullying in their community, and 87% indicated that bullying prevention should be an urgent government priority (see Government of Alberta, Alberta Children and Youth Services: [Albertans’ Perceptions of Family Violence and Bullying Survey 2012](#) at 3).

Ms. Jansen stated that the Alberta Government had undertaken a number of initiatives, which included preparing three bullying prevention websites, instituting a 24-hour help line (available in over 170 languages), sponsoring anti-bullying advertising campaigns, and initiating partnerships with six schools to address bullying. She also consulted youth from other

jurisdictions about how bullying awareness was addressed in their communities. There are also anti-bullying projects being implemented in communities across Alberta.

The conclusion Sandra Jansen has drawn thus far is that bullying is often related to mental health issues (both in the bully and later in the victims). Support and resilience efforts need to be provided for all children in order to address bullying behavior. The emphasis is that we are concerned with bullying *behavior* by people and not “bullies”.

While there is anti-bullying legislation in Nova Scotia, British Columbia, Manitoba and in some municipalities in Alberta, Sandra Jansen wonders whether provincial legislation will ultimately protect victims, and change people’s attitudes and behaviours. She believes that the intent behind this legislation is commendable, but that the issue needs more analysis and debate. Any legislation would have to respect division of powers issues (e.g., the federal government has jurisdiction over criminal law) and *Canadian Charter of Rights and Freedoms* issues, such as limits on freedom of expression.

Finally, Sandra Jensen is aware that parents struggle with their children being exposed to bullying and cyber bullying, but believes that any government approach to these issues has to address public attitudes, the role of bystanders and the response of victims.

Airdrie Mayor, Peter Brown, discussed a new by-law amendment that was passed by Airdrie Council. A father of four children, he is aware that there are children, seniors, and workers who are bullied. The *Anti-Bullying Bylaw*, [Bylaw B-22/2013](#), amends the *Public Behaviour Bylaw* No. B-09/2007. The key provisions read:

NOW THEREFORE the Municipal Council of the City of Airdrie in Council duly assembled enacts as follows that:

1. Section 2.1 be amended to include:

a) “‘**bullying**’ means repeated and hostile or demeaning behaviour by an individual in the municipality, either directly or through any medium whatsoever, where the behaviour results in harm, fear or distress to one or more individuals in the municipality including, but not limited to, physical harm, psychological harm or harm to an individual’s reputation.”

2. The following section be inserted before the section entitled “**FIGHTING**”:

“**BULLYING**

3.1 No person shall bully any person in any public place.

3.2 No person shall participate in or encourage by verbal or public means the bullying of any person in any public place.

3.3 Any person who contravenes sections 3.1 or 3.2 is guilty of an offence.”

3. Section 8.5 be added to read:

“With respect to any person who contravenes the section entitled ‘**BULLYING,**’ the Court may order the person with or without their legal guardian to attend an anti-bullying counselling session(s) or educational program recommended by the prosecutor. Successful completion of the anti-bullying counselling session(s) or educational program recommended by the prosecutor will result in a reduced fine as outlined in this Bylaw.”

...

5. Schedule “A” be amended to include:

SECTION DESCRIPTION SPECIFIED PENALTY

“3.0 Bullying

(a) First offence* \$500.00

(b) Second and subsequent offences \$1000.00

*The fine for the first offence will be reduced to \$125.00 if the offender successfully completes an approved anti-bullying counselling session(s) or educational program.

Although Mayor Brown was initially opposed to the proposed by-law, he eventually became convinced that it will serve an educational function with respect to intolerance. The focus of the by-law is the provision of community resources to address both the victim and the bullying behavior (\$50,000 has been allocated towards these resources). Mayor Brown believes that Airdrie had jurisdiction to pass the by-law under the *Municipal Government Act*, RSA 2000 c M-26, section 7, which permits councils to pass by-laws for municipal purposes for matters of safety, health and welfare of the people and the protection of people and property, among other matters. He asserts that the by-law has dual emphases on public safety and education. Interestingly, Mayor Brown believes that there won’t be many tickets and fines issued under the new by-law in the next few months. He is more interested in seeing the resources allocated to the RCMP, community, professionals and schools for counselling put to use.

The third speaker, Derek From, has written an article about several smaller centres in Alberta passing anti-bullying by-laws. (See “[Alberta’s Municipal Anti-Bullying Laws are Deeply Flawed](#)” (24 September 2013) Huffpost Alberta). In the article, he reviews by-laws from Consort, Grand Prairie, Rocky Mountain House and Hanna, and, he also commented on Oyen’s by-law at the presentation. (The other presenters noted that there is a by-law in Red Deer, too. See [Bylaw No. 3383/2007](#)). While Derek From complimented Mayor Brown and Airdrie’s by-law as being “the best I’ve seen in Alberta”, he argued that this by-law, together with the by-laws in the other centres, are outside of the municipality’s jurisdiction, because they attempt to restrict freedom of expression. He further states that under the *Constitution Act, 1867*, provincial laws may only incidentally restrict expression provided the laws are otherwise within provincial jurisdiction. For example, Grande Prairie’s by-law defines bullying as an “objectionable or inappropriate comment, conduct or display” directed at an individual “which causes or is likely to cause physical or emotional distress.” (City of Grande Prairie Bylaw C-1103). He is also concerned that the by-laws are redundant (they address already illegal behaviour), vague (poorly drafted) and too subjective (e.g., how do you determine whether a statement is likely to cause emotional distress?). While the local anti-bullying message is important, it should not be made with laws that are illegal. This diminishes respect for the rule of law.

All of the speakers agreed that bullying is not acceptable and that by-laws do get this message across. However, where they part ways is in whether the by-laws (or provincial legislation) are the best method for addressing bullying. Sandra Jansen is concerned about spending resources and time passing a law that would be found to be unconstitutional and would not necessarily address the complexities of the issue—reducing or eliminating bullying behavior and its effects on all parties concerned (including by-standers).

I was glad to see the Alberta government taking time to examine what other jurisdictions are doing before deciding on the best approach(es) for dealing with bullying. Any approach should be sustainable and multi-faceted (i.e. not just legal). And, any legal approach should be constitutional. RMCLA hosted a very informative panel discussion.

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