



TEACHERS' RIGHTS

in Newfoundland & Labrador

Dealing with Difficult Situations





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Introduction

Teachers have the right to be treated with respect and to work in an environment free from harassment and abuse. Teachers in Newfoundland and Labrador are increasingly reporting incidents of inappropriate behaviour from students, parents and other adults. The information in this publication is intended to raise awareness of the problems teachers are facing and to provide general information about the law in this area. Readers are encouraged to seek legal advice for their specific questions on the law.

What kinds of incidents involving students, parents and other adults are teachers concerned about?

- Parents coming into schools/classrooms and yelling at teachers.
- Teachers receiving angry or inappropriate comments in public.
- Inappropriate comments or behaviour in the classroom.
- Threats received at home or at school.
- False and/or malicious accusations and allegations.
- Damage to property at home or at school.
- Pushing or other unwelcome physical contact.
- Repeated phone calls.
- Cyberbullying, Facebook, other social media.

When is behaviour inappropriate?

Several laws and policies define and address inappropriate behaviour inside and outside the school. Below are some highlights of these Acts and policies.

Safe & Caring Schools Policy

Department of Education and school board policies address concerns related to school safety. Much attention has been paid in recent years to creating safe schools and developing effective ways of preventing bullying. The provincial Department of Education's Safe and Caring Schools Policy is meant to "provide guidance to educational stakeholders, particularly to schools and districts, in the development and maintenance of a safe, caring and inclusive learning environment". The Policy defines violence as "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation". Violent and threatening actions are noted in the list of inappropriate behaviours contained in the school Code of Conduct Template which accompanies the Policy. The Policy further states that schools have an obligation to implement violence prevention



initiatives and recognizes the need for schools to impose consequences for inappropriate student behaviour. The school Code of Conduct states that consequences, including suspensions, should be in proportion to the severity and frequency of the actions, as well as the specific circumstances of the incident(s).

Some types of behaviour considered unacceptable in the Policy include:

- harassment;
- intimidation;
- discrimination;
- bullying;
- aggression;
- violence.

The full policy can be read online at:

www.ed.gov.nl.ca/edu/K12/safeandcaring/policy.pdf

Schools Act, 1997, S.N.L. 1997, c. S-12.2

Principals, teachers, school boards, directors, and school councils are tasked with promoting a safe and caring learning environment under sections 24.3(e.1), 33(d.1), 75(1)(c.1), 80(1)(i.1) and 26.2(a.1) of the Act. Section 26.1, requires every school to have a school code of conduct setting out behavioral standards, proactive and reactive strategies and consequences for failing to comply with the code of conduct.

The *Schools Act, 1997* also provides that students must comply with school rules and discipline. In some cases, it may be necessary to remove a student from the classroom in order to address incidents of violent/aggressive behaviour and ensure safety. Under section 36 of the *Schools Act*, teachers have the authority to suspend a student from a class period, as long as this is done in accordance with the process for student suspension set out in school board by-laws. Teachers should be careful to adhere to relevant school discipline procedures and/or policies in imposing class suspensions for any reason. A school principal may suspend a student for up to a maximum total of 30 days in a school year. The *Schools Act* also provides for the expulsion of students from school where circumstances warrant. Proper process must be followed in such cases and the decision to expel a student can only be made by the school board director after the student and parents have had an opportunity to make representations.



Under section 21, parents of students under the age of 19 and students are liable for any intentional or negligent destruction of or damage to property owned by the school district or its employees caused by students.

Principals are responsible for ensuring that order and discipline are maintained in schools. Section 41 of the Act prohibits any person from disrupting or interrupting the proceedings of a school, school council or board and from loitering or trespassing in a school building.

Any person, aged 18 or older, who violates a provision of the Act may be charged with an offence and face a penalty ranging from a fine up to a maximum of six months imprisonment. A young person, aged 12 to 17, who violates the Act may also be charged, and is liable to punishment under the provincial *Young Persons Offences Act*.

Criminal Code, R.S.C. 1985, c. C-46

The *Criminal Code* sets out the offences for which criminal charges may be laid. Some of the offences specifically address harassing, abusive and threatening behaviour. The following are some examples of criminal offences victimized teachers may face:

- Criminal Harassment (s. 264) – conduct that causes the other person to reasonably fear for their safety or the safety of others. This includes: following the person, repeatedly contacting the person directly or indirectly, stalking the person, and threatening conduct towards the person or their family.
- Harassing telephone calls (s. 372(3)) – it is an offence to make repeated phone calls with the intent to harass someone.
- Assault (s. 265) – assault is the intentional use of force against somebody without his/her consent. Also included are attempts to use force or threatening to use force.
- Theft (s. 322) – taking something, fraudulently and without colour of right, from someone either permanently or temporarily with the intent to deprive the owner of it.
- Uttering Threats (s. 264.1) – threats of death or bodily harm to any person, to damage real or personal property, or to cause harm to a pet.



- Mischief (s. 430) – includes not only willful destruction of property, but can also include interference with the use, enjoyment or operation of property.
- Defamatory Libel (s. 298-301) – it is an offence to unlawfully publish information with the intent to injure the reputation of, insult or expose any person to hatred, contempt or ridicule. A person who knowingly publishes false information in these circumstances is liable to even harsher penalties under the *Criminal Code*.

Human Rights Act 2010, SNL2010 Chapter H-13.1

The objectives of the provincial *Human Rights Act* are to protect individuals from discrimination and harassment and promote equality of opportunity. The Act protects against discrimination and harassment based on identified characteristics, such as race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, disability, disfigurement, sex (including pregnancy), sexual orientation, gender identity, gender expression, marital status, family status, source of income and political opinion. It also prohibits discrimination or refusing to employ or to continue employing a person because they have been convicted of an offence unrelated to their employment.

Complaints of a violation of the Act are made to the Human Rights Commission. The Commission is responsible for advising and helping individuals, groups, organizations and governments on matters related to human rights and receiving, recording and investigating written complaints that allege violation of the *Human Rights Act*, as well as promoting, through education and research, an awareness of human rights that will lessen discrimination. There is a limitation period which applies for making complaints.

The Human Rights Commission of Newfoundland and Labrador has a website which contains helpful information (www.justice.gov.nl.ca/hrc/index.html).

Respectful Workplace Policies

School Districts have policies and/or procedures in place to investigate and address conflict in the workplace and complaints of harassment, violence and bullying in the workplace. Teachers should check their school district policies for procedures required for filing a harassment complaint. If you have concerns of this sort, you are encouraged to contact the NLTA for assistance.



NLTA Collective Agreement

Article 57 of the Provincial Collective Agreement (Article 60.03) of the Labrador West Collective Agreement states:

The School Boards agree that there will be no discrimination or coercion exercised or practised by it with respect to any employee by reason of age, sex, race, colour; marital status, political or religious affiliation, physical or mental disability, sexual orientation, or by reason of their membership in the Association.

Article 58.01 of the Provincial Collective Agreement (Article 59.01 of the Labrador West Collective Agreement) states:

The Boards and the Association recognize the right of all teachers to work in an environment free from harassment and shall work together to ensure that harassment is actively discouraged. All reported incidents of harassment shall be thoroughly investigated as quickly and as confidentially as possible. The Employer and the Association agree to take reasonable steps to ensure that the harassment stops and that individuals who engage in such behaviour are appropriately disciplined. The Employer agrees that victims of harassment shall be protected, where possible, from the repercussions which may result from a complaint.

Article 58.02 goes on to define harassment of a sexual and personal nature.

Children and Youth Care and Protection Act, SNL2010 Chapter C-12.2

Under the *Children and Youth Care and Protection Act* (CYCPA), teachers have a statutory duty to report to proper authorities where they have information that a child is or may be in need of protective intervention. The legislation also prohibits interference with or harassment of a person who makes such a report. A person can be charged with an offence under the Act if they engage in such conduct against a reporting teacher. The CYCPA also addresses the issue of violent behaviour by younger students. Section 10 of the CYCPA includes in its definition of a child in need of “protective intervention” a person under the age of 12 who: has allegedly seriously injured or killed another person or caused serious damage to their property; or, has, on more than one occasion, caused or threatened to cause (with or without weapons) injury to another person or other living thing either with the parent’s encouragement or because the parent does not respond adequately to the situation.



In such circumstances, teachers are obligated to make a report to proper authorities – generally, child protection officials or the police. Reports of such behaviour can lead to intervention by social workers and/or medical professionals that may help address the child’s behaviour as well as enable the school to successfully make a case for additional school-based supports.

Occupational Health and Safety Act, R.S.N.L. 1990, c. O-3

Pursuant to section 4 of the *Occupational Health and Safety Act* (OHSA), employers must, within reasonably practical limits, provide a work environment that ensures the health and safety of its employees. No law or policy can eliminate all risk in any workplace; however, schools and districts should have clear expectations and effective protocols in place for managing unsafe student behaviour. Teachers and administrators should be aware of these procedures and policies and apply them consistently. In the school setting, this means that, with respect to students, parents/guardians or other adults who are physically aggressive/violent, school boards have a legal responsibility to ensure that the proper supports and training have been put in place to enable teachers to work without unreasonable threat to their own safety. What is necessary to ensure employee safety is case specific and depends on the nature of the situation.

Teachers have the right to work in an environment that is as safe as is reasonably practicable. Ultimately, if a teacher has reasonable grounds to believe that specific work circumstances are dangerous to his/her health and safety and has brought this to the attention of his/her principal, that teacher has the right, pursuant to the OHSA and OHS Regulations, to refuse unsafe work until remedial action has been taken. Any teacher who feels that their situation may warrant this type of response is advised to contact the NLTA for advice before exercising the right of refusal under the OHSA. The legislation also specifically addresses some kinds of violence in the workplace. The *Occupational Health and Safety Regulation, 2012* define violence as “the attempted or actual exercise by a person, other than a worker, of physical force to cause injury to a worker, and includes threatening statements or behaviour which gives a worker reason to believe that he or she is at a risk of injury.” Where there is risk of violence, or the potential is known to exist, the school District must perform a risk assessment and establish procedures, policies and work environment arrangements to eliminate the risk to workers from violence or, where elimination of the risk to workers is not possible, establish procedures, policies and work environment arrangements to minimize the risk to workers.



What should I do if I am a victim?

If you feel you are the victim of inappropriate or harassing behaviour, there are various ways to address the situation.

- If you feel comfortable and safe doing so, you can meet with the person responsible for the inappropriate behaviour and tell them that their actions or comments are unwelcome and unacceptable. You do not have to do this alone. In some situations this may be enough to resolve the problem.
- If you are intimidated or uncomfortable dealing with the individual yourself, you should consider seeking help from your school, district, or professional association.
- If you are afraid for your personal safety or the safety of someone else, you should contact the police immediately.
- It may be wise to keep notes to ensure you have accurate information about the incidents should you choose to take further action.
- Write down the appropriate contact numbers and keep them in your purse or wallet where you can quickly access them should a problem arise.

What can the school do?

If there is conflict between a parent or student and a teacher, the first step is often to meet one-on-one with the parent/student and attempt to resolve the problem or come to an agreement. If this initial meeting is unsuccessful, the principal may be involved and attempt to bridge the gap between the people involved. A mediated approach, sometimes with the assistance of school district personnel, can often help to resolve conflicts.

In cases where there has been a serious incident or ongoing problems with an individual, he or she may be barred from school property. Trespassing on school property is an offence under the provincial *Petty Trespass Act*.

If the problem persists, the teacher and principal may wish to bring the complaint to the employer through the appropriate contact at the school district office.

What can the NLTA do?

It is the employer's duty to provide teachers with a safe work environment and to support teachers who are being harassed or threatened. If you feel you are not receiving the help you need from the employer, the Newfoundland and Labrador Teachers' Association will provide you with



advice and assistance, and if necessary, intercede on your behalf. Also, under NLTA policy, legal assistance may be available to teachers for cases that meet the criteria set out in its Legal Aid policy. If you are in need of assistance from the NLTA, call 726-3223 or toll-free at 1-800-563-3599 to be directed to the appropriate person. You can also send a message to mail@nlta.nl.ca and it will be forwarded to the appropriate person.

What can police do?

If you have been threatened, assaulted, or if you are worried about your safety, you should consider contacting the police in addition to notifying school officials. They can intervene and, in cases of criminal behaviour, they can lay charges against the student, parent or other adult.

If you are concerned for your safety, your family or your property, you may want to consider obtaining a peace bond through the Provincial Court of Newfoundland and Labrador. The court has a peace bond information pamphlet which can be accessed at www.court.nl.ca/provincial/goingtocourt/peacebondhearings.html.

As a victim, can I get compensation for damage caused or harm done?

If you have been physically harmed or suffered damage to your property or reputation and wish to have compensation, you should consult a lawyer who can advise you based on the details of your specific situation.



FOR MORE INFORMATION:

Province of Newfoundland and Labrador
Schools Act, 1997

Young Persons Offences Act

Children and Youth Care and Protection Act

Petty Trespass Act

Human Rights Act, 2010

Occupational Health and Safety Act

(Provincial statutes and regulations can be accessed at www.gov.nl.ca/hoa/sr/)

Safe & Caring Schools Policy:

www.ed.gov.nl.ca/edu/K12/safeandcaring/policy.pdf

Assaulted, Threatened or Harassed

www.justice.gov.nl.ca/just/victim_services/pdf/assault.pdf

Justice Canada

Stalking is a Crime Called Criminal Harassment

www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/har/har_e-har_a.pdf

Criminal Code R.S.C. 1985, c. C-46

laws-lois.justice.gc.ca/eng/acts/c-46

Public Legal Information Association of NL (PLIAN)

The following publications are available online (www.publiclegalinfo.com):

- Sexual Harassment in the Schools (2nd edition)
- Your Rights as a Victim (2nd edition)
- Victim Impact Statement (2nd edition)



TIPS for teachers dealing with inappropriate behaviour:

- **Don't blame yourself.**
- **Don't ignore it.** Ongoing harassment can affect your physical and mental well-being, concentration and job performance.
- **Tell someone you trust.** It is important to have emotional support.
- **Keep written records.** Write down what happened, dates, names of witnesses and how you reacted.
- **Read up on the subject and ask questions.**
- **Cooperate in the investigation.** If you lodge a complaint, it is important to cooperate at all stages of the investigation. If you are uncomfortable or nervous, ask to have a friend come with you to the interview.
- **Be proactive.** Initiate or participate in workshops or events that engage discussion between parents, students and teachers about appropriate behaviour in and out of school.