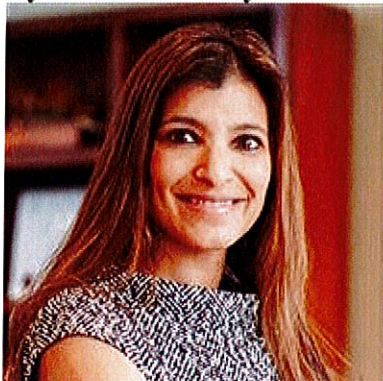


# Exploring cyberbullying through a legal lens

By [AdvocateDaily.com Staff](#)



Cyberbullying has become increasingly prevalent in Canada in recent years, but for lawyers looking for guidance, case law is hard to come by, says Toronto personal injury lawyer [Jasmine Daya](#).

“Cyberbullying is a relatively new area to the civil legal system in Canada,” says Daya, managing partner of [Fireman Daya & Co.](#), who focuses much of her practice on minors.

While the internet has been around since the early 1990s, “the law lags behind in the sense that something has to occur, and then there has to be an issue taken with what has occurred. Then the law has to catch up and figure out how to deal with the situation,” Daya tells [AdvocateDaily.com](#).

Bullying is nothing new, she says, but the internet has added a new wrinkle, ushering in cyberbullying — which includes sending mean or threatening emails or text messages, posting embarrassing photos of someone online, creating a website to make fun of others, pretending to be someone else by using their name, and tricking someone into revealing personal information and sending it to others.

“If children were bullied at school or at the playground or at a friend’s house, they could go home and feel safe within their home, with their family. Unfortunately, one of the negatives of the internet is that these kids are no longer safe anywhere,” Daya says, adding that it’s virtually impossible to erase something that’s been posted online.

“We want to make people aware that there are legal consequences to their actions. Just because an individual is a minor doesn’t mean there’s not going to be a cause of action against them,” she says. And if cyberbullying is originating from a minor’s home, where parents are supposed to provide supervision, the parents should be held responsible, Daya adds.

The same applies to schools, which can be held legally responsible by providing Wi-Fi, for example, or by being aware that cyberbullying is occurring on their premises and failing to take action, she says.

A cease-and-desist order from a court is one way to confront cyberbullying, but Daya explains that by the time someone comes to her office seeking help, “the individual is traumatized and they’re looking for a remedy from a civil perspective. If they just need a court order, they probably wouldn’t go to a personal injury lawyer.”

A damages award is the desired result of cyberbullying litigation, she says. That could include the loss suffered by the victim, as well as future care needs, such as psychological treatment.

“If any Ministry of Health services are used as a result, there would be reimbursement of the services provided,” she says.

Daya points to several torts that could be used in cyberbullying legal actions, including intrusion upon seclusion, public disclosure of embarrassing private facts and intentional infliction of mental suffering.

Intrusion upon seclusion was recognized as a new common law tort for invasion of privacy by the Ontario Court of Appeal in a 2012 [case](#). The court described the tort as: “One who intentionally intrudes, physically or otherwise, upon the seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the invasion would be highly offensive to a reasonable person.”

In 2016, an Ontario Superior Court of Justice [decision](#) recognized public disclosure of embarrassing private facts as a new privacy tort. Similar to intrusion upon seclusion, the court wrote: “One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.”

There is also legislation designed to discourage and punish cyberbullying. In addition to the Criminal Code, which addresses the practice through such offences as criminal harassment, defamatory libel, mischief, corrupting morals

and child pornography, the *Protecting Canadians from Online Crime Act* took effect at the federal level in March 2015. It includes amendments to several statutes as a way to address cyberbullying.

Under Ontario’s *Safe Schools Act*, “Schools are required to provide a safe environment,” Daya says, adding that it

was recently amended to include online behaviour. "Students can now be suspended or expelled for cyberbullying, even if it is done outside the school," she says. As well, the *Education Act* now defines both bullying and cyberbullying.

"Because these are minors, we don't know the long-term consequences of the actions that they're enduring right now. We don't know if these individuals are going to bounce back, go to college, do something great with their lives," Daya says.

"Or are there going to be significant psychological repercussions from this? Is there some post out there that is going to be detrimental to them getting a job one day?"