



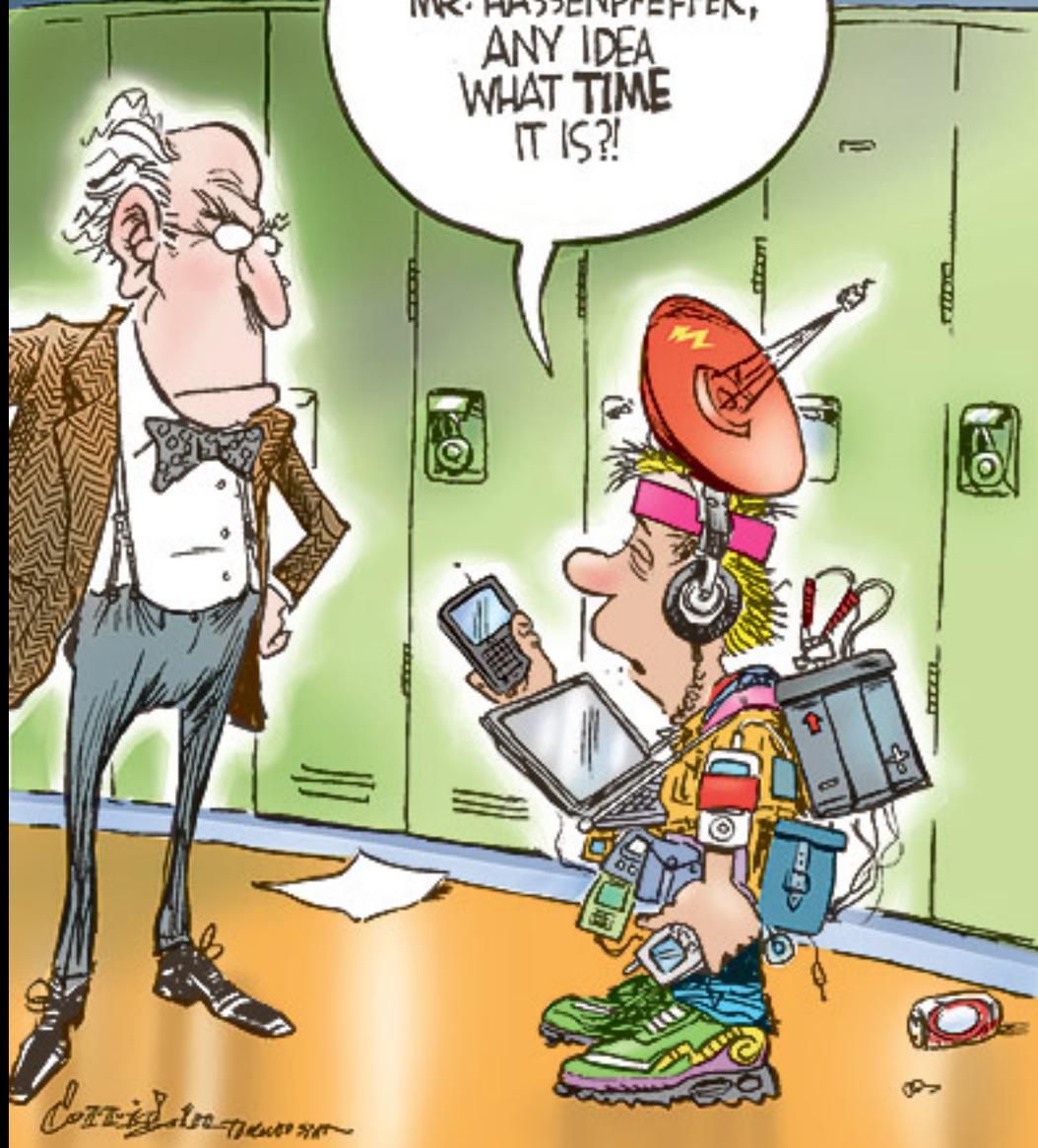
**Technology Changes:  
'Sticks and Stones' Revisited  
in the Internet Age**

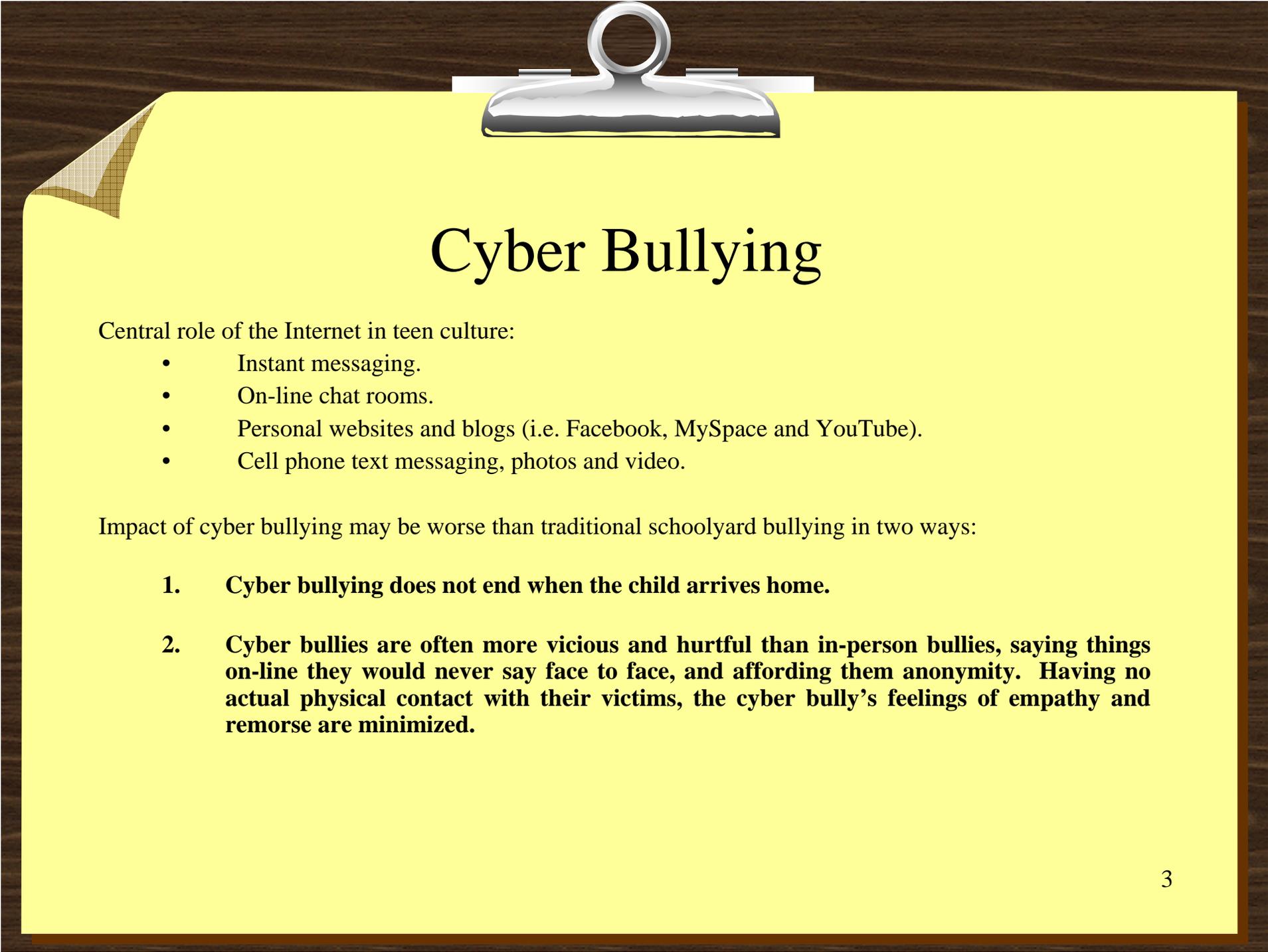
**Presented by Robert H. Brent**  
Thomson, Rogers

Ontario School Boards' Insurance Exchange – Risk Management Seminar  
November 1, 2007

SCHOOLS PONDER  
CELL PHONE BAN...

HEY!...  
MR. HASSENPFEFFER,  
ANY IDEA  
WHAT TIME  
IT IS?!





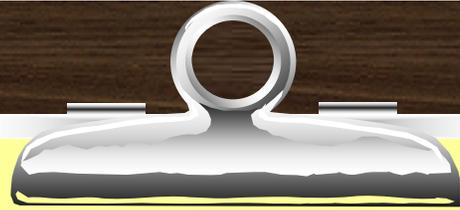
# Cyber Bullying

Central role of the Internet in teen culture:

- Instant messaging.
- On-line chat rooms.
- Personal websites and blogs (i.e. Facebook, MySpace and YouTube).
- Cell phone text messaging, photos and video.

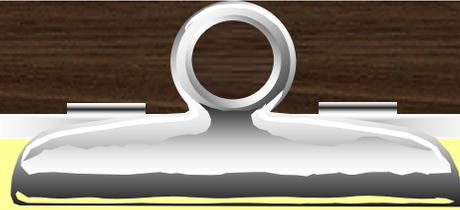
Impact of cyber bullying may be worse than traditional schoolyard bullying in two ways:

1. **Cyber bullying does not end when the child arrives home.**
2. **Cyber bullies are often more vicious and hurtful than in-person bullies, saying things on-line they would never say face to face, and affording them anonymity. Having no actual physical contact with their victims, the cyber bully's feelings of empathy and remorse are minimized.**



# Cyber Bullying Under the Safe Schools Act

- Mandatory expulsion or suspension only where infractions committed by the student “while he or she is at school or is engaged in a school-related activity”.
- Could cyber bullying be considered school-related activity?
- Argument that “school-related activity” should be broadly interpreted, so long as there was some nexus or connection to the school and/or its students.
- Board authority to establish discretionary suspensions or expulsions under sections 307 and 310 of the *Education Act* for activities contrary to Board policy.
- Also O. Reg. 474/00: principal may exclude a student from the school premises where “his or her presence is detrimental to the safety and well-being of a person on the premises”.



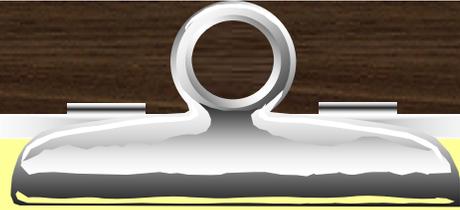
# Safe Schools Action Team

- *Safe Schools Act* introduced by Harris Government in 2000.
- Criticism and confusion since, culminating in a 2005 Ontario Human Rights Commission complaints.
- Safe Schools Action Team created by the McGuinty Government in late 2004 to review the Safe Schools Act and anti-bullying initiatives.
- Province-wide consultation with more than 700 educators, parents, students and other community members.



# Anti-Bulling and Respect Initiatives

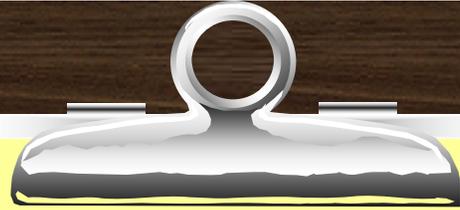
- Mandate of the Safe Schools Action Team included development of a province-wide bullying prevention plan.
- November 2005 report: *Shaping safer schools: A bullying prevention plan.*
- Prevention Plan broadly defines the term “bullying” to mean:  
... a dynamic of unhealthy interaction. It is a form of repeated aggression used from a position of power. It can be physical, verbal, or social.
- Social bullying includes the emerging area of cyber bullying.



# Statistics on Bullying

2005 OSDUS Mental Health and Well-Being Report, a province-wide survey of Grade 7 to 12 students conducted by the Centre for Addiction and Mental Health:

- Among all students, 31 per cent (representing about 310,000 student in Ontario) reported being bullied at school since the previous September;
- 27 per cent of students reported bullying others at school;
- The most common form of bullying was verbal (25 per cent), while 4 per cent of students said they had been physically bullied and 2.5 per cent said they were victims of theft or vandalism;
- About 10 per cent of students reported being bullied on a daily or weekly basis, and about 20 per cent said they were bullied monthly or less often;
- More females are bullied than males (34 per cent to 28 per cent).

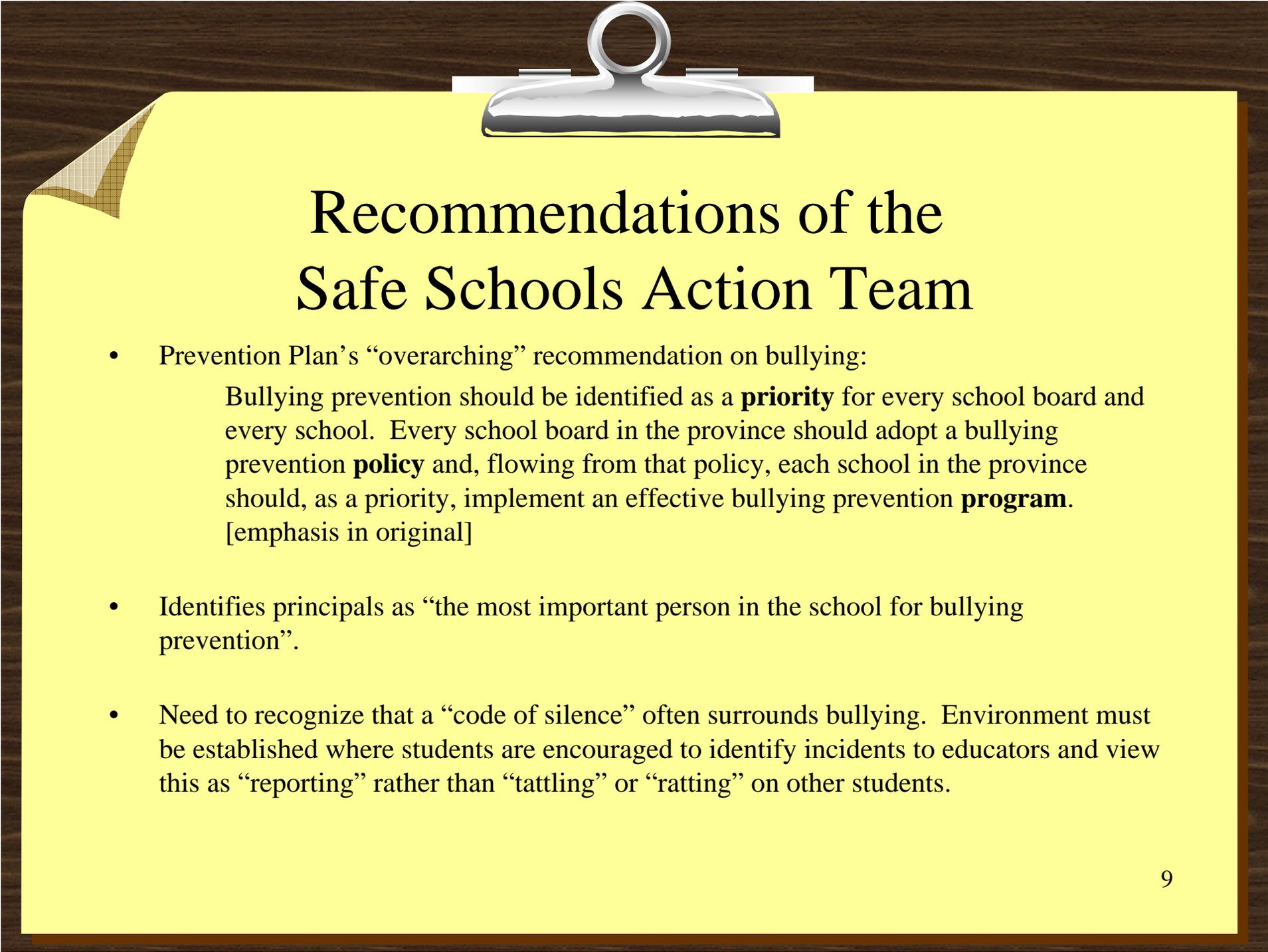


# Statistics on Bullying

Action Team says bullying should not be seen as a schoolyard rite of passage:

Victims of bullying often deal with social anxiety and loneliness, withdrawal, physical ailments such as headaches and stomach aches, low self esteem, school absenteeism, diminished academic performance, phobias, depression, aggressive behaviour. In the most extreme cases, the result is suicide. Students who drop out to escape bullying suffer the long-term personal and socio-economic consequences of an interrupted education...

Too often, bullying has been downplayed as simply “part of growing up”. On the contrary, research and experience have consistently shown that bullying is a serious issue, with far-reaching consequences to individuals, their families, peers, and the community at large.



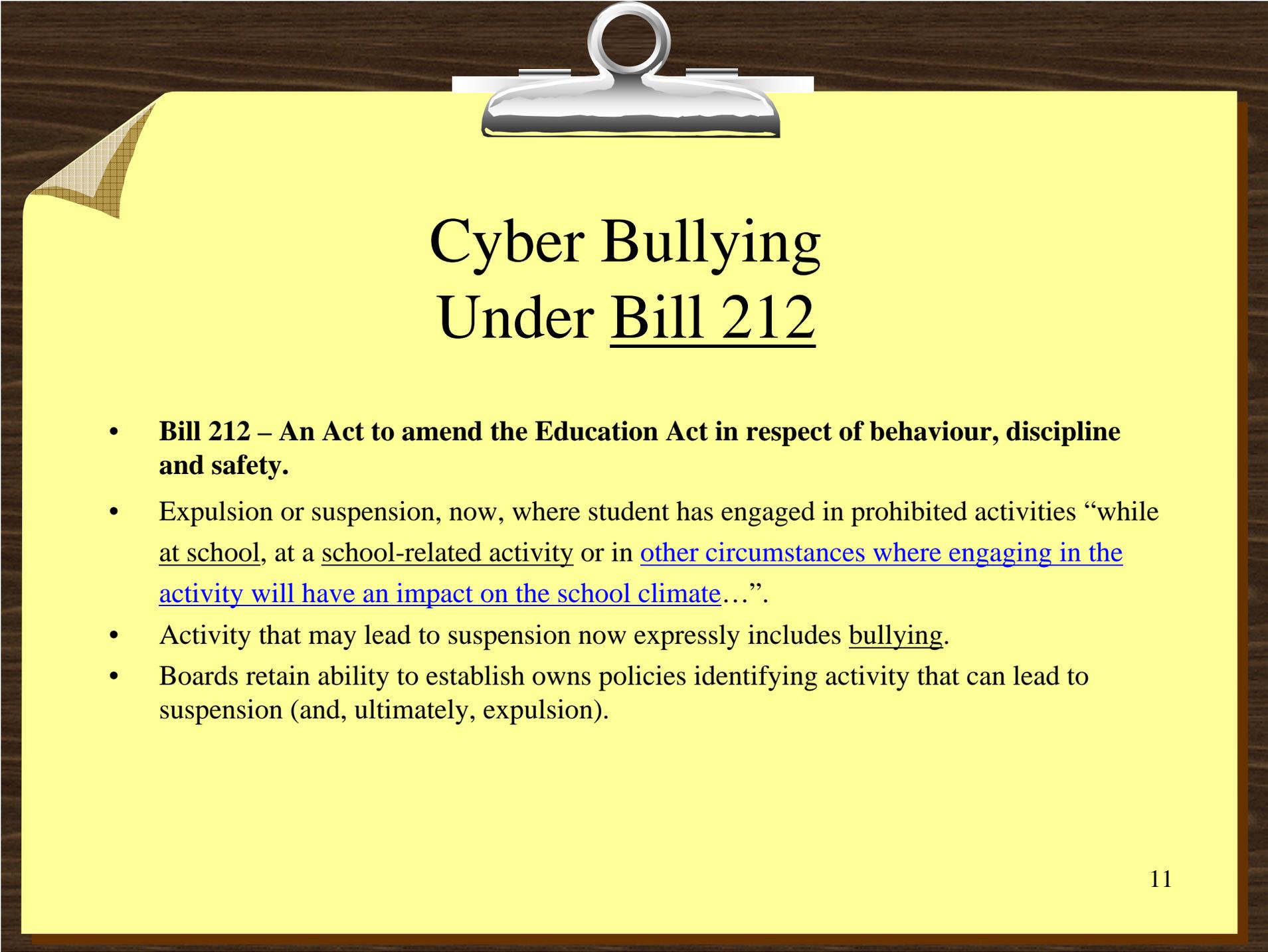
# Recommendations of the Safe Schools Action Team

- Prevention Plan’s “overarching” recommendation on bullying:  
Bullying prevention should be identified as a **priority** for every school board and every school. Every school board in the province should adopt a bullying prevention **policy** and, flowing from that policy, each school in the province should, as a priority, implement an effective bullying prevention **program**.  
[emphasis in original]
- Identifies principals as “the most important person in the school for bullying prevention”.
- Need to recognize that a “code of silence” often surrounds bullying. Environment must be established where students are encouraged to identify incidents to educators and view this as “reporting” rather than “tattling” or “ratting” on other students.



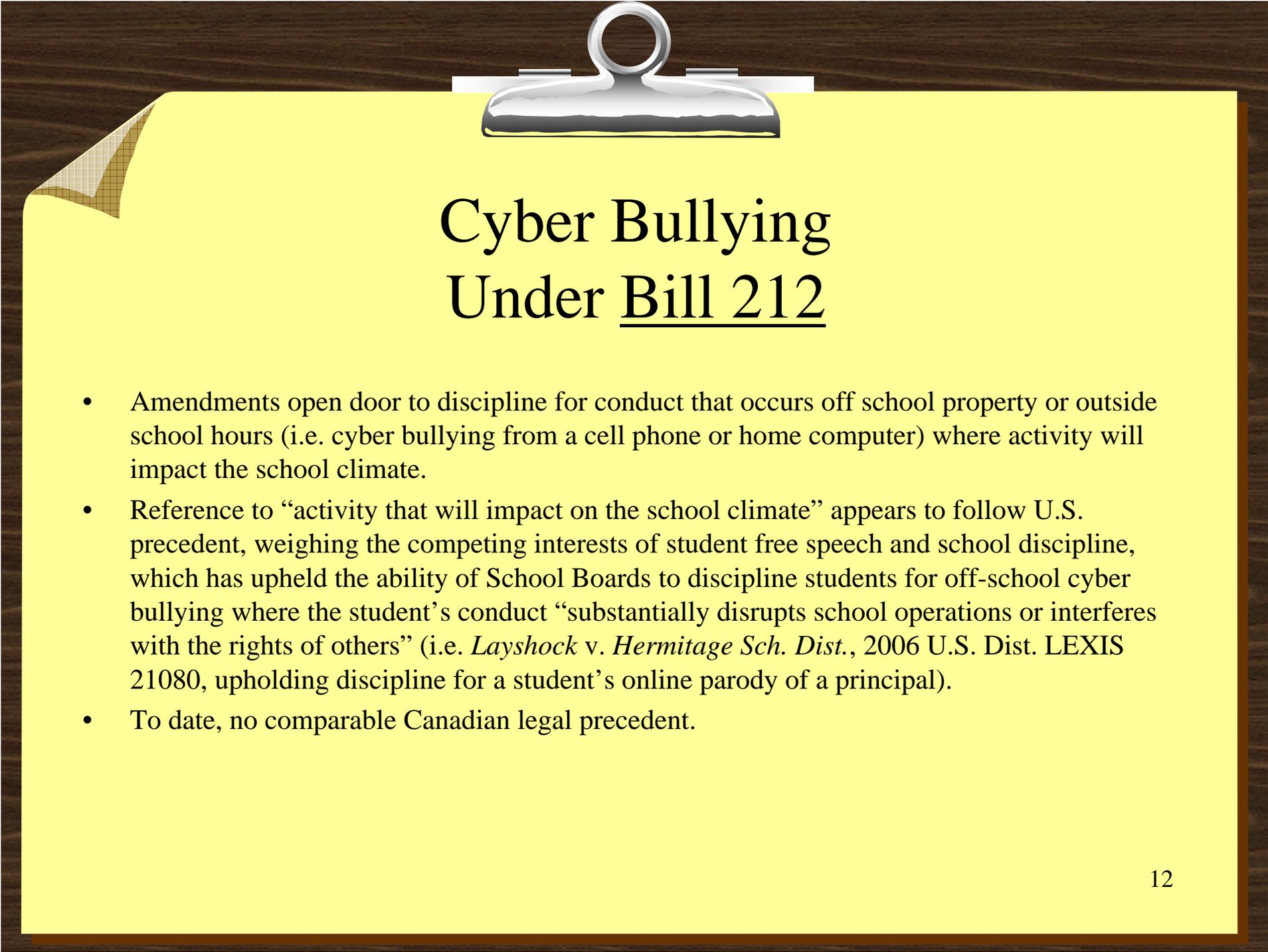
# Recommendations of the Safe Schools Action Team

- Each Board's bullying prevention plan should include:
  - A clear definition of bullying;
  - Formation of a bullying prevention committee of teachers, administrators, parents, community and students;
  - A policy statement that prohibits bullying, which is communicated to the school community;
  - Information for parents;
  - A mechanism for anonymous reporting and investigation of those reports;
  - Use of the positive term "reporting" instead of "tattling";
  - A means to prevent retaliation when bullying is reported;
  - Notice to the parents of both bullies and victims of school's response to bullying and consequence flowing from further acts;
  - Collection of data on the number of reported and verified incidents; and
  - A procedure for evaluating the effectiveness of the program.



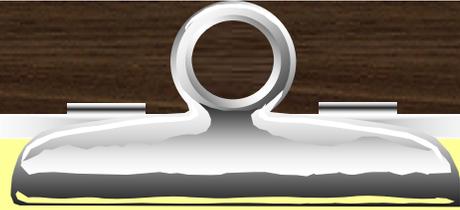
# Cyber Bullying Under Bill 212

- **Bill 212 – An Act to amend the Education Act in respect of behaviour, discipline and safety.**
- Expulsion or suspension, now, where student has engaged in prohibited activities “while at school, at a school-related activity or in [other circumstances where engaging in the activity will have an impact on the school climate...](#)”.
- Activity that may lead to suspension now expressly includes bullying.
- Boards retain ability to establish own policies identifying activity that can lead to suspension (and, ultimately, expulsion).



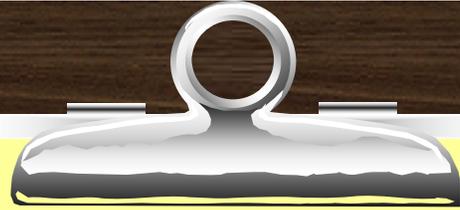
## Cyber Bullying Under Bill 212

- Amendments open door to discipline for conduct that occurs off school property or outside school hours (i.e. cyber bullying from a cell phone or home computer) where activity will impact the school climate.
- Reference to “activity that will impact on the school climate” appears to follow U.S. precedent, weighing the competing interests of student free speech and school discipline, which has upheld the ability of School Boards to discipline students for off-school cyber bullying where the student’s conduct “substantially disrupts school operations or interferes with the rights of others” (i.e. *Layshock v. Hermitage Sch. Dist.*, 2006 U.S. Dist. LEXIS 21080, upholding discipline for a student’s online parody of a principal).
- To date, no comparable Canadian legal precedent.



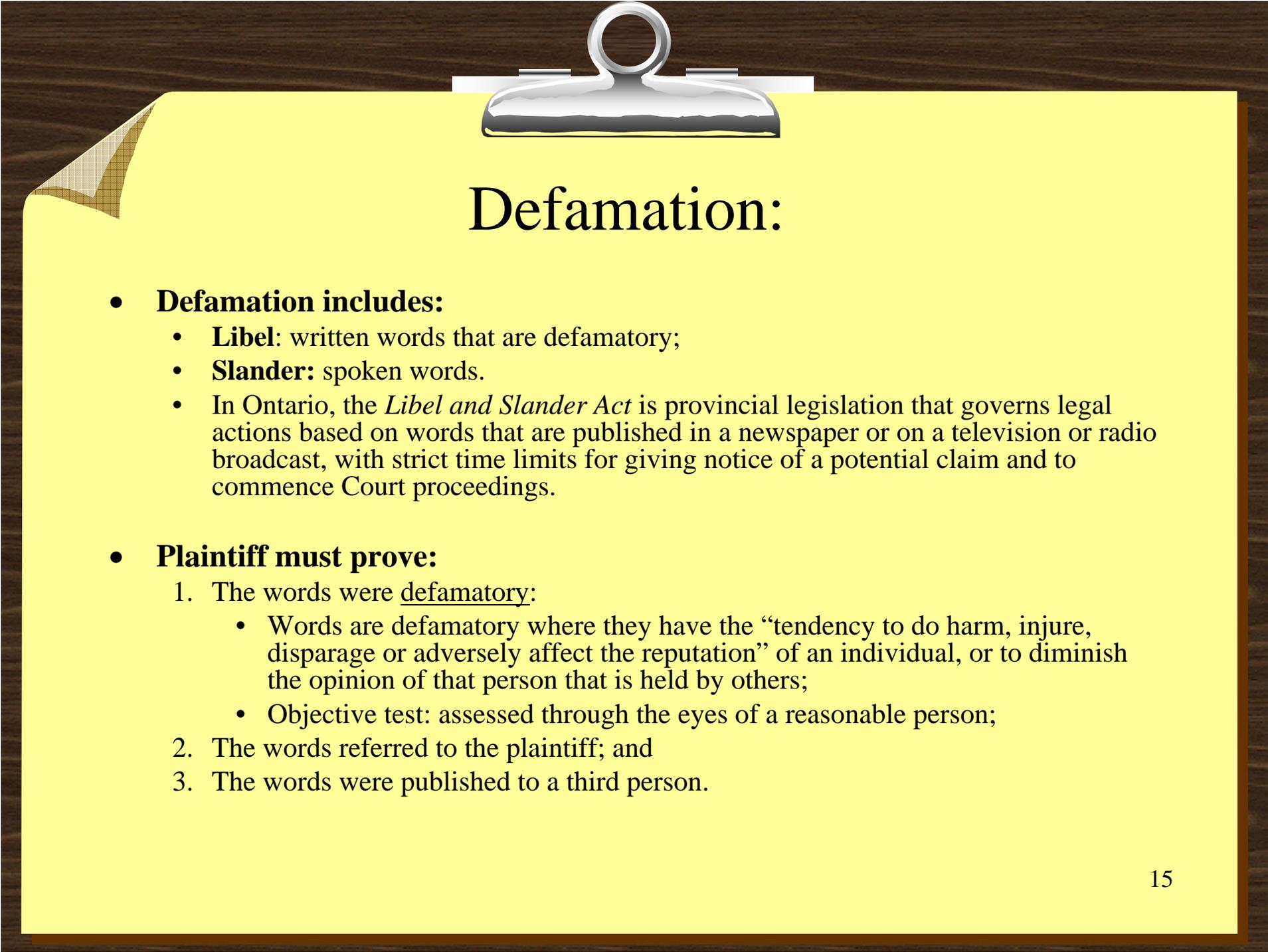
## Purposes of Tort Law:

- **Deterrence:**
  - Prevention of accidents/future harm by enforcing objective standards of conduct, so as to prevent the creation of reasonably foreseeable risks (i.e. encourage risk management/avoidance).
- **Compensation:**
  - Reimburse victims for economic loss, and pain and suffering.



# Standard of Care for Educators

- *Myers v. Peel County Board of Education* – leading case
- **“Careful and prudent parent”** standard of care; depends upon:
  - ◆ number of students;
  - ◆ nature of the exercise or activity;
  - ◆ age of the students;
  - ◆ competency and capacity of the students;
  - ◆ degree of skill and training the students have received;
  - ◆ nature and condition of equipment.



# Defamation:

- **Defamation includes:**
  - **Libel:** written words that are defamatory;
  - **Slander:** spoken words.
  - In Ontario, the *Libel and Slander Act* is provincial legislation that governs legal actions based on words that are published in a newspaper or on a television or radio broadcast, with strict time limits for giving notice of a potential claim and to commence Court proceedings.
  
- **Plaintiff must prove:**
  1. The words were defamatory:
    - Words are defamatory where they have the “tendency to do harm, injure, disparage or adversely affect the reputation” of an individual, or to diminish the opinion of that person that is held by others;
    - Objective test: assessed through the eyes of a reasonable person;
  2. The words referred to the plaintiff; and
  3. The words were published to a third person.



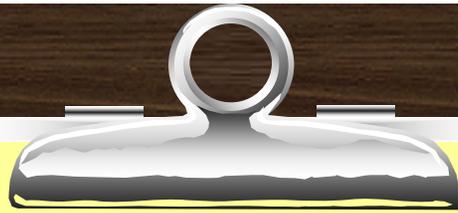
## Defences available to defendant:

- The words are true (**justification**);
- The defendant had the plaintiff's **consent** (consent may be express or implied);
- The words were published/spoken on an occasion of:
  - **absolute privilege**;
    - by public officials holding high or executive office (relating to matters to state);
    - during parliamentary or legislative proceedings (or proceedings of their subcommittees); or
    - in judicial or quasi-judicial proceedings (whether by judges, counsel, parties or witnesses with respect to anything said or done during the course of proceedings, or in supporting documents).



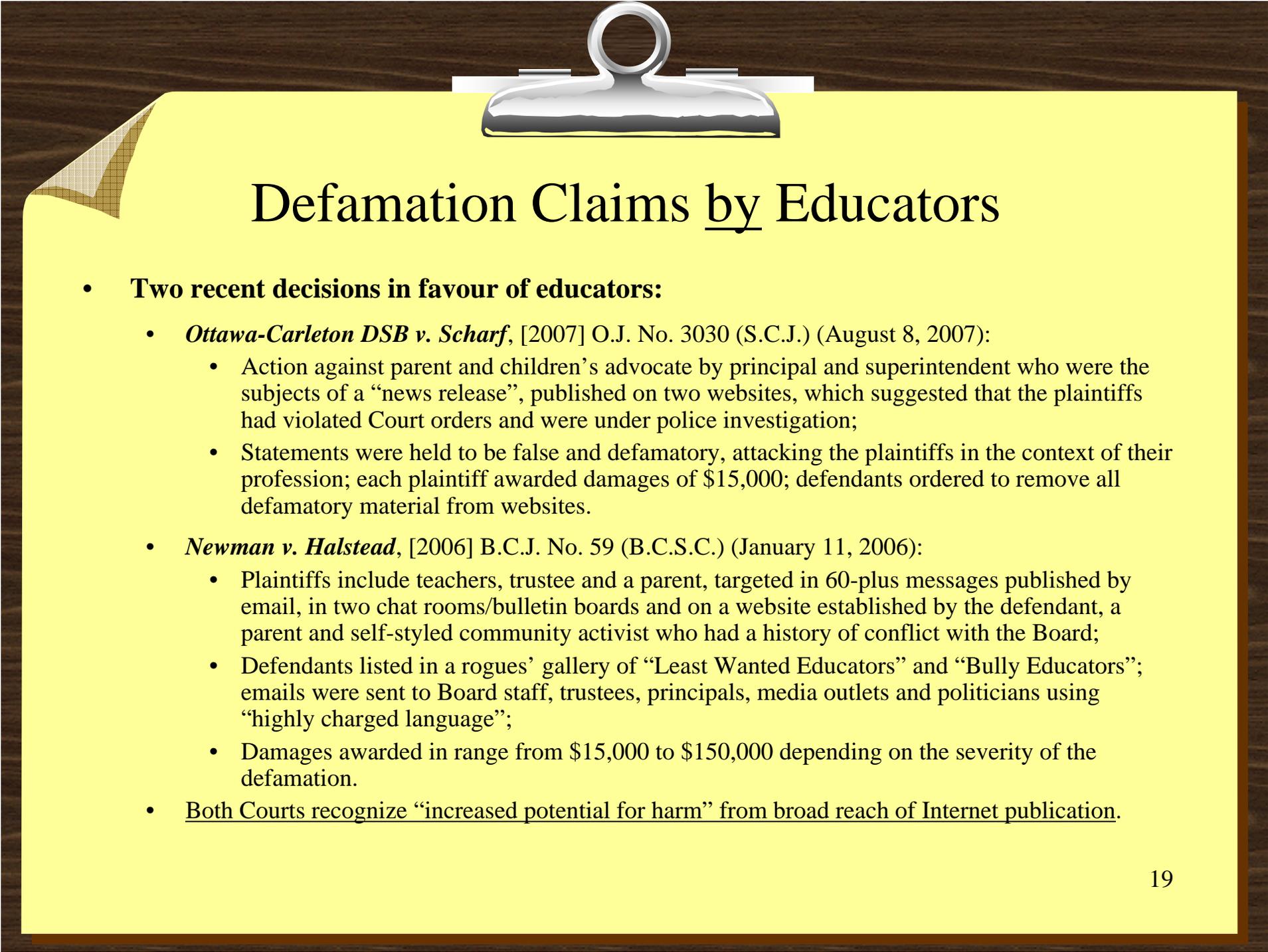
## Defences available to defendant:

- **qualified privilege** and the plaintiff is unable to prove that the defendant was acting with malice:
  - No hard and fast rule about occasions to which qualified privilege will attach;
  - Court will focus on the purpose of the communication and whether it was intended to further the legitimate interests of the defendant (i.e. responding to a personal attack) or another person (i.e. responding to a request by another employer for a reference), or a shared interest (i.e. communications between company personnel) or public interest (i.e. between government officials during the course of their duties);
  - Generally, will not apply to statements made by a public official to the world at large.



## Defences available to defendant:

- The words are **fair comment** (i.e. opinion) made honestly and in good faith on a matter of public interest.
  - Example: *Lane v. Nanaimo-Ladysmith School District No. 68*, 2006 CarswellBC 170 (B.C.S.C.):
    - Duty of elected School Trustees to inform public about dismissal of superintendent;
    - Trustees' comments to media regarding reasons for dismissal of superintendent, while possibly defamatory, represented fair comment on a matter of public interest (and also were shielded by qualified privilege).



## Defamation Claims by Educators

- **Two recent decisions in favour of educators:**
  - *Ottawa-Carleton DSB v. Scharf*, [2007] O.J. No. 3030 (S.C.J.) (August 8, 2007):
    - Action against parent and children’s advocate by principal and superintendent who were the subjects of a “news release”, published on two websites, which suggested that the plaintiffs had violated Court orders and were under police investigation;
    - Statements were held to be false and defamatory, attacking the plaintiffs in the context of their profession; each plaintiff awarded damages of \$15,000; defendants ordered to remove all defamatory material from websites.
  - *Newman v. Halstead*, [2006] B.C.J. No. 59 (B.C.S.C.) (January 11, 2006):
    - Plaintiffs include teachers, trustee and a parent, targeted in 60-plus messages published by email, in two chat rooms/bulletin boards and on a website established by the defendant, a parent and self-styled community activist who had a history of conflict with the Board;
    - Defendants listed in a rogues’ gallery of “Least Wanted Educators” and “Bully Educators”; emails were sent to Board staff, trustees, principals, media outlets and politicians using “highly charged language”;
    - Damages awarded in range from \$15,000 to \$150,000 depending on the severity of the defamation.
  - Both Courts recognize “increased potential for harm” from broad reach of Internet publication.