

# Punching a Bully Can Be Self Defence

Recently, a high school student (W.R.) was charged with the assault and bodily harm of another older student (M.R.) who had been bullying him. W.R. admitted that he had punched the bully and split his lip. An Ontario judge acquitted W.R. based on the defence of self defence.

W.R. was a soft-spoken 15-year-old grade 10 student who weighed 125 lbs and had a black belt in Jiu-Jitsu. M.R. was an older, larger student who had a history of bullying.

About a month before the assault, M.R. started bullying W.R. by bumping him in the shoulder or chest, staring him down and calling him names. M.R. made fun of W.R.'s clothes, humiliated and embarrassed him in front of other students and muttered things under his breath to his friends about W.R. The bullying was constant and relentless.

The bullying caused W.R. to feel frustrated and stressed. His parents noticed changes in him. He became quiet, was not eating well and had headaches. Eventually, W.R. disclosed the bullying to his parents and they tried to help him by giving him advice. W.R. begged his parents not to tell the school because he did not want to be known as a tattler.

---

## An Ontario judge acquitted W.R. based on the defence of self defence

---

On the day of the assault, W.R. told his friend that he was going to stand up for himself next time M.R. bullied him. When M.R. approached W.R. in the hallway and challenged him with an intimidating stare, W.R. punched him in the face once, splitting M.R.'s lip. W.R. then pressed M.R. to the wall to stop him from hitting him back, at which point M.R. flipped him over and started punching him in the ribs. W.R. was taken to the principal's office where he admitted what he had done and was suspended. Ultimately, the statement was not admitted in Youth Court because W.R. had not been properly advised of his rights or allowed to have his parents present before he admitted what he had done. But in court W.R. again admitted that he punched M.R.

On the first day back at school after the suspension, the other students applauded W.R. and the bullying stopped completely.

The Criminal Code provides that self defence is a legal defence to a charge of assault. It says that everyone is justified in using force to defend himself if he uses no more force than is necessary. At W.R.'s trial, the Crown Attorney argued that he could not rely on self defence because M.R. had never punched him and, therefore, W.R. used excessive force. However, the judge found that W.R. had been

assaulted repeatedly in the hallway at school. W.R. had testified that he hit M.R. "hard", and he did not know how hard because he had never before hit anyone in his life. He had never retaliated in the past despite being bumped and pushed numerous times. The judge found that W.R. was being bullied to the point where it was affecting his health. The judge found that, since M.R. had repeatedly bullied W.R. and continued to do so at the time of the punch, W.R. used force to defend himself and his actions were proportional and reasonable in the circumstances. In finding that W.R. acted in self defence by delivering a pre-emptive strike to prevent further abuse by M.R., the judge emphasized the totality of the abuse inflicted by M.R., including the emotional and psychological harm.

Interestingly, the judge also commented that he has seen a significant number of cases involving threats and violence on school property and he concluded that bullying is "a growing social problem". He said "Bullying can affect a person's self esteem in ways less apparent but at times far more significant than the physical blows."

Research consistently shows that bullying is linked to depression, poor school performance and anxiety for both the victim and the perpetrator. Many schools have adopted anti-bullying programs. Unfortunately, many programs are not customized to the particular characteristics and needs of the particular school. As well, research suggests that educating bystanders to change their behaviour helps reduce bullying. The Canadian Broadcasting Corporation recently ran a documentary which showed that, despite having what parents thought was appropriate instruction with regard to bullying, children often stand by while others are bullied.

The television show "What Would You Do?" provides insight into situations where adult bystanders are confronted with bullying behaviour. It is interesting to see how many people simply stand by and do nothing when they see someone being bullied. If we adults are not willing to act in the face of bullying behaviour, how can we ever expect our children to do so?



*Any enquiries arising out of this article should be directed to Loretta P. Merritt at (416) 777-5404. The issues raised in this release by Torkin Manes Cohen & Arbus are for information purposes only. The comments contained in this document should not be relied upon to replace specific legal advice. Readers should contact professional advisors prior to acting on the basis of material contained herein.*