

**Session: Identifying and Eliminating Workplace Bullying, Presented at the 15th Women, Management and Employment Relations Conference, 25 July 2003, Sydney**

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**Discussion Paper: Bullying at Work – Interest-based Approaches – Perspectives and Problems, (Andrew Heys, Lecturer, MGSM, Sydney)**

Workplace bullying is, it seems, a “hot topic” in HR circles at present. The apparent rise and cost of resolving conflicts associated with bullying at work raises all sorts of questions for human resource and line managers, academics, lawyers, unions, employer groups, policy and law-makers alike. These questions include: What is bullying; how do we define it and *differentiate* it from other forms of harassment? What are the statistics concerning bullying and how reliable are they? For example, is bullying on the rise? What sorts of organisations or people fall victim to it; is it organisations that are hierarchical? or that have a pronounced front office/back office dynamic? Perhaps the most pressing question we face is how the various stakeholders to the problem of bullying might best respond from both a policy perspective and also to individual cases as they arise.

This paper seeks to address this final question and looks specifically at the issue from the perspective of what has also been termed an ‘interests-based’ approach<sup>1</sup>. The intent here is not to naively advocate interest-based responses to the problem of bullying to the exclusion of other approaches (namely a legal or ‘rights based’ approach and/or what might be termed an organizational development or culture change approach), rather it is to explore the potential for interest-based approaches and also to look at the potential

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<sup>1</sup> This term is used to describe methods of negotiation and dispute resolution where the focus of discussion is the parties’ individual and mutual interests i.e. their broader concerns and motivations not simply the positions they adopt or their rights.

problems which might accompany such approaches.

Defining bullying is an interesting if somewhat challenging exercise. In a conference paper delivered in 2001, Sheehan, McCarthy, Barker & Henderson<sup>2</sup>, academics well known for their interest in workplace bullying research, detailed a model for assessing the impacts and costs of bullying. This type of research helps to develop an economic or business case for why bullying needs to be addressed by employers and governments. The authors use the following definition of workplace bullying: "the repeated less favourable treatment of a person by others in the workplace, which may be considered unreasonable and inappropriate workplace practice", ie. "bullying refers to behaviour that is offensive, intimidating, humiliating, or that degrades, ridicules or insults the person at work".

Behaviours that could be considered bullying include, but are not limited to; threats, personal abuse, intimidation, duplicity, exclusion, consistently allocating certain individuals unpleasant jobs. Bullying tactics might include: constantly blaming another person's personality traits (for workplace problems or poor performance); arbitrarily denying holiday choices; constantly checking up on someone and the unfair use of disciplinary procedures.

We can identify three main approaches to workplace bullying:

- 1) Legal (or rights based) responses – such responses seek to prove that bullying has occurred or is occurring. Where this occurs internally (for example through an investigation in the Defence Forces), the remedy may involve a strong reprimand for the employee involved (e.g. a demotion or even dismissal). Typically the outcome of legal or rights based approach will be compensation or perhaps reinstatement for the aggrieved employee (victim). For more detail on rights based approaches see Kate Jenkins' paper from this Conference's Proceedings.
- 1) Organisational Development (or culture change) responses – these approaches seek to eliminate or reform a culture that supports and/or encourages workplace

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<sup>2</sup> Michael Sheehan, Paul McCarthy, Michelle Barker, Monika Henderson, 'A Model for Assessing the Impacts and Costs of Workplace Bullying, Paper presented at the Standing Conference on Organizational Symbolism, Trinity College, Dublin, 30 June to 4<sup>th</sup> July, 2001

bullying. This approach involves leadership from the top of the organisation and a strong institutional response<sup>3</sup>. This approach is typified by initiatives such as awareness training and initiatives to instill a culture of responsiveness and zero-tolerance to bullying throughout the organisation. For a good example of this approach see Jim Porteous' case study from the Conference Proceedings.

- 2) Finally, an alternative dispute resolution or 'interest based' approach to the problem – these approaches seem to position the problem as occurring between two individuals or within a work group, as distinct from the culture change approach which sees bullying as a systemic problem. Here the problem is seen as being best dealt with as a private matter by the parties themselves (perhaps with the assistance of a neutral third party) and incidentally one of the parties may well be the management of the organisation. Interest-based approaches are designed to allow the parties to retain some ownership of the problem and encourage adaptive behaviours such as better communication, better mutual understanding, enculturation, greater awareness of diversity and so on. This approach will keep the issue out of the courts, the public eye (the media) and off the public record. It may involve one of a range of methodologies including mediation, conferencing or conciliation and might be coupled with or include organizational development initiatives such as one-on-one coaching or training. For the victim of bullying, interests-based approaches may have some advantages in that the negotiated solution might be pragmatic and it may involve some 'public' vindication for the victim among their peers such as an apology. Further, the outcome may be practical in that the person is able to continue on in their job without the risk of ongoing harassment.

To characterize these approaches this way may imply that they are applied as separate or distinct methodologies and this provides an inaccurate perspective. Indeed each of these approaches may be used in combination – an 'interests-based' approach such as negotiation for example may be tried first and if not effective, the case may then be escalated to 'rights based' forum, e.g., through representation by a lawyer, a tribunal or even an industrial or in some rare cases criminal court proceeding. Such an instance would then be likely to lead on to the organisation being ordered to take various steps to

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<sup>3</sup> See also Lowe, Anthea, 'Preventing Bullying' in *CCH Master Human Resources Guide 2003*, CCH Sydney, pp.517 – 539, for a description of the steps involved in setting up a bullying prevention policy in your organisation.

reform the organisation, in effect to a series of culture change initiatives. In this way the three approaches can be undertaken simultaneously or sequentially.

Audience members today may well have strong views on the relative merits of each of these approaches and our views will undoubtedly be shaped by a range of concerns including utility (what is the quickest or most cost effective way of approaching this problem), ideology (instilling a particular view of workplace relations) and so on. And each approach applied indiscriminately would no doubt be open to criticism. The legal approach could be criticized as unnecessarily escalating the problem to adjudication and making the victim feel further victimized ie. we could argue it is a lose/lose outcome; the culture change approach for being too slow or letting individual offenders 'off the hook'. The interests-based approach for allowing organisations to avoid public scrutiny. There are a number of arguments we could all no doubt make. The challenge seems to be to apply the appropriate individual, managerial or institutional response to the problem on the basis of a sound investigation and balanced assessment of the case at hand. A conflict-resolver or leader in this setting must ask his or herself: what is the best way to approach this problem factoring in issues such as the personalities and skills of the people involved, legal compliance and indeed the longer term organizational legacy (i.e. in settling this case out of court or negotiating a private settlement am I leaving a culture in place that has contributed to this problem?)

In any response to conflict there are a number of core principles one can and should follow before settling on a course of action. The first of these is analysis or investigation of the conflict<sup>4</sup>. Good analysis initially involves the collection of relevant data on the conflict at hand; this involves gathering a range of facts and perspectives from relevant stakeholders through interviews and additional research, secondly it involves reviewing the relevant policies or legislation to ensure a sound awareness of relevant rights and responsibilities, these may both shape and restrict what can be done. Finally, good analysis involves a consideration of the organizational and political context in which the conflict is taking place.

Investigation of the complaint or the apparent problem is an important and also

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<sup>4</sup> For a description of the process of conflict analysis see Tillet, Gregory, *Resolving Conflict; A Practical Approach (2<sup>nd</sup> edition)*, Oxford University Press, Melbourne, 2002, pp.21-32

challenging exercise one should undertake effectively before any intervention can be considered. This applies to all conflicts. Investigation involves effectively interviewing the key players to the dispute to determine the nature of the incident(s), who is involved, and what can and should be done. The interviewer or intervener is often from HR manager or in a line role with HR responsibility. This immediately raises a problem if HR is perceived, as they often are, of taking a managerial perspective on the problem. Establishing some neutrality then is the first challenge for a member of an organisation's management team. When interviewing, an important mindset to put in place is to view all the information being gathered as simply data not as gospel or fact. People in these types of situations are prone to distorting their story out of defensiveness or to try and save face. When gathering data then, a healthy balance of empathy with circumspection is required.

There is an extensive literature on the different conflict styles people adopt when attempting to resolve conflict. Authors such as Blake and Mouton, Thomas and Kilman and Rahim have identified 5 common strategies for resolving conflict, these are:

competition (contending);  
smoothing (accommodating);  
avoiding;  
collaborating (problem solving) and  
bargaining (compromise)<sup>5</sup>.

Naturally there is a tendency for people to use more passive strategies such as smoothing, avoiding and bargaining when negotiating with senior colleagues. Someone being bullied by his or her manager is therefore unlikely to use a more active conflict strategy such as competition or even collaboration, so the old adage of "standing up for yourself" may not be the best advice. It may also mean that in an interview situation the victim of the bullying would be less likely to adopt an active or assertive style of communication. An interviewer would need to be very aware of putting the person at ease. Here the difficult issue of confidentiality arises. Often in order to promote disclosure mediators, counselors and managers assure their "clients" of confidentiality.

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<sup>5</sup> Rahim, M. A *Managing Conflict in Organizations*, (2<sup>nd</sup> ed.) Praeger, Westport CT, Thomas, K.W. and Kilman, R.H. , *Thomas and Kilman Conflict Mode Survey*, Xicom Tuxedo, NY

In some cases managers may inadvertently imply that they are in a confidential meeting. What happens then when an employee discloses an incident or report of bullying to a HR manager in the course of what was supposed to be a confidential meeting? The HR manager is clearly faced with a choice; keep the confidence of the employee versus break the confidence and confront the bully or the bully's manager on the employee's behalf.

A third way is to approach the supervisor/manager (the bully) or their manager in a less specific way – engaging the person concerned in a discussion around potentially “detrimental elements” of their management style. This is a lower key approach to the problem which may or may not work but which may be worth trying in the first instance. An HR manager may even be inclined to invent some non-specific scenarios designed to obscure the source of the complaint.

The worst-case scenario here is that the manager may identify the source of the complaint and the bullying may escalate as a result of the HR manager's intervention. The HR manager is now part of the problem and hence needs to take a far more active role in managing the situation. Perhaps a less damaging scenario would be that the manager might identify the complainant, perhaps acknowledge that they have been taking a firm approach in managing that person and then “push back” against the substance of the complaint citing the complainant as an under-performer whom they are simply attempting to motivate. This is what could be called the rough justice defense; where the bully almost plays judge, jury and executioner.

The senior management of an organisation has a responsibility to intervene in response to substantiated reports of isolated incidents of rough justice by reiterating the organisation's commitment to both EEO principles and also to ensuring the management style that is practiced in the workplace does not put workers at risk of undue psychological distress or injury in accordance with the duty of care principles that underpin OH&S legislation and managerial best practice. Two clear steps here are relevant the development of an individual manager's awareness of their responsibilities and of the law and also the development of the manager's people skills, their ability to monitor performance (including maintain order) and motivate their staff without resorting to bullying.

What happens when the victim of bullying *is* an under-performer? In this case, that person's manager might deem that person a "passenger" within the organisation others in the team may also see the person as dragging the team down. However, bullying in whatever shape or form it may take is quite clearly a poor replacement for effective performance feedback and management. Good performance management systems are designed to draw a balance between on the one hand offering employees the opportunity to receive honest and helpful evaluations of their performance, relevant and timely feedback and the opportunity to develop their performance and at the same time offering employers the opportunity to maximise the effectiveness and contribution of their employee and if necessary to give them the scope (within the boundaries of relevant unfair dismissal legislation) to manage poor performers out of their organisations.

Another issue here is of course is the scenario where the 'victim' is indeed mounting a mischievous complaint and their performance is in fact under close scrutiny or indeed under formal review. Under threat some employees may well be prompted to mount a counter attack alleging harassment against their supervisor or manager in the form of bullying – typical allegations here would be of micro-management or setting unreasonable or unachievable targets. The issue of performance raises of course the possible involvement of the industrial courts particularly when a complainant is alleging a case of unfair dismissal or constructive dismissal. Here when a complaint is lodged to the IRC (in the relevant state or territory) a much more formal process ensues although the Commissioner assigned the complaint is likely to use conciliation (an interests-based approach) in the first instance in seeking to resolve the complaint.

Generational issues may also play a significant part in the discussion about bullying in organisations; for example when an older worker uses power via a method of coercion that may at one time have been regarded as an acceptable way of influencing subordinates or peers. Here one might argue that the person's age is a mitigating factor, with their ignorance of any wrong-doing going some way to their defense. An analogy here is that many of us can no doubt think of many (mostly) male managers who use inappropriate terms of endearment with younger female workers with no obvious malicious intent, more because these terms are so ingrained in their vernacular: referring to support staff as 'the girls' for example. Often co-workers will give an older worker greater license around sexist language because they sense he means 'no harm'.

Perhaps he is charismatic or a long-term employee? The appropriate response here seems to be around raising the awareness of an employee who is out of touch with contemporary standards of interpersonal communication and modes of address. One wonders then; does the same dynamic apply in some cases of bullying and is the same degree of license sometimes inadvertently allowed? Equally one might argue that a problem exists when there is an HR manager closer in age to the manager involved who adopts a “supportive” style of counsel with a key message of “he means no harm, it’s just a busy time of year” or “stand up for yourself”. Doubtless there are times of the year or phases in a business when there is extra pressure on; however this does not excuse bullying. Yet an HR manager closer in age to the offender may take a “hands off” approach toward a complaint where bullying is being implied if not directly being alleged. This is especially so if it is considered part of the culture. The issue here is one of awareness and adopting a sensible and common sense approach. Not leaping to conclusions and labeling every misdemeanor as bullying but by the same token not dismissing an allegation purely in order to avoid conflict. In the final analysis a generation gap is not a legitimate defense.

The issue of age relates not simply to generations having different values or approaches to communication but can also relate to the problem of young or fast track executives who have not developed sufficient emotional intelligence to manage without resorting to a command and control style of management: i.e. when the ‘bully’ is a very high performer or rising ‘star’ in the organisation. This has without doubt been the excuse on many occasions for offering greater license to a rude, intimidating, if not bullying manager and it is only with the growing legitimacy of upward feedback mechanisms within performance management systems that this problem is slowly and I stress slowly being addressed. Nevertheless, performance is still largely measured around quantitative measures with other behavioural and values based measures of performance carrying less weight when performance ratings, promotions and bonuses are being considered.

There is a however a growing literature emerging around what has been termed ‘executive derailment’ focusing in on behaviours that can derail promotion into executive ranks for otherwise high potential managers. The literature essentially argues that many behaviours that help to propel the careers of aggressive young managers and that see

them earmarked for senior executive careers are the very same behaviours that can ultimately derail those same careers<sup>6</sup>. This argument provides an HR manager with a persuasive lever into the discussion about the appropriateness of a command and control style of management. Bunker et al offer a set of remedial strategies for how to tackle this problem among young 'guns'. All these strategies involve an HR or line-manager engaging the young bully at the level of their longer-term interests. Yes they may want and expect the next position in the hierarchy as soon as it becomes available however in view of certain deficiencies in their management style it will ultimately be in the employee and the organisation's longer term interests for them to further develop their people management skills at their current level.

The scenario that Bunker et al identify is one that they term "the young and the clueless". Other recommendations Bunker et al offer in dealing with this HR issue include:

Deepening the level of 360-degree performance management, including allowing the manager to read verbatim responses to open ended questions, exposing them to peers and subordinates constructive feedback more readily,

Interrupting the ascent of star performers with a rotation into an area outside their technical expertise or where they can no longer rely solely on a command and control style of management but rather have to use persuasion and negotiation skills;

Act on commitments, the authors point out although many rising stars may receive feedback at some point on negative style or inadequate grasp of relationship skills they tend to discount the relevance of this feedback because their managers do not act on these warning signs and continue to promote the person regardless. A boy who cried wolf pattern emerges.

Institutionalize Personal Development – through personal coaching, and by making emotional competencies more a part of a future executive's development. The authors also advocate including behavioural skills as well as technical ability in determining job criteria.

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<sup>6</sup> Bunker, K, Kram, K.E., and Ting, S., The Young and the Clueless, *Harvard Business Review* December, 2002, pp.81-87.

Cultivate Personal Networks – a process akin to mentoring where younger executives interact with an older and more experienced work partner in a formal development program designed to help pass on life experience and maturity.

When can an HR or line manager advocate or indeed conduct a more direct face-to-face session between two parties to a conflict that centers around an accusation of bullying – where does it or can it occur successfully? The most likely application of a third party method such as mediation is in relation to when the bullying is at a relatively, 'low level' i.e. the incidence of bullying is isolated or not deeply offensive to the employee (e.g. I don't like how you talk to me) or the worker has not sustained a psychological injury as a result. In such cases the intervention of a third party, preferably one who can demonstrate impartiality and neutrality and gain the confidence of the parties might be able to go some way to repairing the working relationship between the parties. It is important to remember however an important pre-requisite before attempting conflict resolution is volition among the parties – they want to resolve the conflict. Hence it may be incumbent upon an HR manager in such a circumstance to try to help build this volition; arguments that are carefully constructed around themes such as executive derailment and also legal compliance should be relatively persuasive to even the most boorish of managers.

Another example of where mediation can be successful is when psychological damage appears not to have occurred, the victim of the bullying is more-thick skinned or perhaps more senior, or they have a strong support network of other employees to call on for support. Finally organisations may be inclined to attempt a negotiated settlement of the case when the case is clear cut; that is the organisation has acknowledged that the bullying has occurred but has determined they do not see it as serious enough to dismiss the bully. Here the focus of the mediation is perhaps re-negotiating the rules of the two parties' working relationship, alternatively when fault is acknowledged a negotiated settlement can be simply be about negotiating a payout for an employee who does not wish to continue in the organisation. The mediation style here becomes akin to the model used for divorcing couples. The parties here are not trying and save their relationship, rather they are negotiating a settlement to distribute their shared assets and establish ground rules and support or access provisions for their children.

'Interest-based' approaches have the potential to promote good outcomes to bullying related conflict in organisations but they do not come without some challenges. Managers need to consider the needs of a range of stakeholders in such situations and think very carefully about the repercussions of their actions. Clearly a very strong understanding of the law and of ways to instigate change in the culture are important considerations, however, so too are well developed negotiation, conflict resolution and influencing skills. The ability to exercise a balanced judgment in how to handle a situation and utilize the right approach based on an accurate analysis of the situation seems critical. Interests-based approaches such as negotiation, meditation and facilitating behavioural changes in others through targeted interventions, awareness raising for those out of touch or more thoughtful and active career management for 'The Young and the Clueless' seem to be active steps that HR and line managers can take to help address cases of bullying as they arise. This is particularly so in the early cases of incidents of bullying and also when the bullying appears not to have caused a psychological injury.