

✦ TWILIGHT SEMINAR  
and TELECONFERENCE

*Trends in*  
*Employment Law*



**Seminar**  
Wednesday 23 May 2001  
5.30pm – 7.30pm  
Law Society House

**Regional Teleconference**  
Wednesday 23 May 2001  
5.30pm – 7.30pm  
via teleconference



# *Trends in Employment Law*

Kathryn J. Feeley

# Trends in Employment Law

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There are many human actions that have consequences that are not always perceived and understood.

Workplace victimization and the subsequent injuries are such actions.

Bullying, victimization and harassment have been defined by Einarsen and Skogstad as:

*A person is defined as bullied if he or she is repeatedly subjected to negative acts in the workplace. However, to be a victim of such bullying one must also feel inferiority in defending oneself in the actual situation.*<sup>1</sup>

Victimization or bullying conjures up scenes from the playground or schoolyard and is usually shrugged off as fact of growing up. In fact it occurs in homes, institutions, workplaces, and even in the Australian Parliament.

Victimization is targeting at a specific person/s with actions, words, directions and implied threats to enshrine the 'power' and 'self-importance' of the perpetrator - usually done by a middle-management Machiavelli. Colloquially defined<sup>2</sup> as "bitch acts/words by an insecure, power-hungry individual to diminish and/or destroy the victim". It should not be confused with a mere difference of opinion within the workplace.

It goes far beyond being a social stressor within the workplace environment. It is neither gender nor age specific. It can be defined as either pronounced and/or insidious conflict aimed at the 'target' in order to humiliate or denigrate the 'target' and moreover that the 'target' is aware of this fact. The actions are deliberate ploys which empowers the bully to the dizzying heights of their own self actualization and importance at the expense of injuring not only the 'target' but the welfare of the organization.

Workplace bullying (or 'mobbing' as it is called in Sweden) is defined in the Department of Employment training and Industrial Relations guide as "the repeated less favourable treatment of a person by another or others in the workplace, which may be considered unreasonable and inappropriate workplace practice".<sup>3</sup>

It can be defined as action meant to humiliate and intimidate the victim. The actions will also offend and degrade the employee.

## MP Denounces Bullying Behaviour<sup>4</sup>

*I will work to overcome bullying, mean-spiritedness and rank abuse of power...Bullying in its many forms is one of the most serious and endemic problems in our community. Bullying is the deliberate and persistent intimidation, coercion, oppression and/or persecution of those less powerful or in a weaker position... Bullying in all walks of life leaves permanent scars and pain...Bullying is wrong and must be named, spoken of and overcome. By fostering a hostile work environment where bullying is tolerated,, firms are partly responsible and they can be made liable*

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<sup>1</sup>. Einarsen, S., and Skogstad, A., "Bullying at Work: Epidemiological Findings in Public and Private Organizations", *European Journal of Work and Organizational Psychology*, 5(2) 1996 pp185-201 at 187.

<sup>2</sup>. This definition has been coined from a composite of victims' descriptions of their encounter with 'victimization'. Not surprisingly, the victims I have interviewed all expressed 'victimization' in much the same terminology.

<sup>3</sup>. Department of Employment Training and Industrial Relations. Division of Workplace Health and Safety. *Workplace Bullying - an employer's guide*. 1998.

<sup>4</sup>. Extract from the maiden speech by Frances Bedford, Member for Florey, In Hansard, House of Assembly, South Australia, Tuesday 17 February, 1998.

*if they fail to act...Bullying or harassment of any kind is about power. It is an action or set of actions or a circumstance which leave uncomfortable and vulnerable a person over whom the perpetrator has some authority. It does not matter whether it is intended or unintended...*

The California Occupational Safety and Health Administration<sup>5</sup> guidelines on workplace violence has described three types of workplace violence.

Type III<sup>6</sup> involves an assailant who has some employment relationship to the workplace whether it is another employee, supervisor or former employee.

The historiography of nursing depicts persons who put up with appalling working conditions, long hours and a passive willingness to endure hardship for the sake of the patient.<sup>7</sup> An essential quality to become a nurse used to be to display a heroic stoicism and not be a trouble maker.

Last year, members of the Queensland nursing profession received a mammoth survey to determine the extent of workplace victimization. The response rate was a staggering 47%.

When analyzing the results of the survey, it became apparent that among the nursing professionals in Queensland, victimization and bullying has become the dancing partner of burnout and demoralization on the job. It is particularly disconcerting, that although many of the victimized and bullied within the nursing profession had as their primary concern the welfare of their residents and patients, nevertheless, they felt powerless to change the status quo.

Throughout the survey, employees described the victimization as "being punched in the stomach". That is, the victimization had resulted in an actual physical injury with the ensuing pain associated with a physical injury. It had, therefore, become a biological injury.

## **Some comments from the Queensland nursing profession**

### **Female RN 41-50. Public Hospital.**

I get very upset with the victimization due to the work environment but I don't let it show. I just work on as usual.

A Registered Nurse tried to have me dismissed for reporting her for resident abuse.

This subject said the victimization was not serious but it just went on continually for over 6 months. She also reported some of the symptoms of Post Traumatic Stress Disorder. (PTSD).

### **Female 31-40. Nurse manager. Public Hospital.**

Lost interest in my position because of the work place environment. I lost all confidence and self esteem.

Appraisals were wrongly written. I refused to sign them. I finally had to resign.

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<sup>5</sup>. California Occupational Safety and Health Administration (Cal/OSHA) (1995) *Cal/ OSHA Guidelines for Workplace Security*, San Francisco, CA: State of California, Department of Industrial Relations, Division of Occupational Safety and Health.

<sup>6</sup>. Type I is where an employee is face to face with an assailant.i.e. a planned robbery for drugs. Type II comprises of an assault by someone in receipt of a service by the victim or the organization.i.e.where clients or their relatives assault the care givers.

<sup>7</sup>. Briggs, A., *Report on the Committee on Nursing*.London, HMSO, 1972.

**Female 51-60. Enrolled Nurse. Aged persons Home.**

Victimized by the Director Of Nursing. Feel angry whenever I see her anywhere.

I've lost confidence in myself. I just can't talk about subjects I know about. I get very anxious. I just can't say anything at all.

**Female 31-40. Registered Nurse. Public Hospital.**

The work environment make me feel angry, anxious, sleeplessness. Have required sick leave because of the victimization. I'm tired all the time. I've lost confidence and my self-esteem.

It is very demoralizing. I have sense of no self worth now.

Who do you complain to? These people are at the top. Where can you go without being victimized further.

**Female 51-60. Registered Nurse. Public Hospital.**

The victimizing work environment caused me drastic weight loss, uncontrollable crying, insomnia, agitation, depression, restlessness and an increased alcohol intake.

I had no orientation at this hospital.

I am ridiculed, isolated and given angry looks to put me down.

Staff members have devalued my experience and contributions. The allocation of work is always unfair then I am over supervised.

I now have low self esteem and decreased self confidence.

I didn't report any of the victimization as I was told that new staff members were "picked on" and singled out by the "old timers" and that this was tolerated the DON. This has been going on for years.

**Male 31-40. Clinical Nurse Specialist. Private Hospital.**

Have been verbally intimidated by a junior medical officer when going over his head.

Have lost confidence and self esteem.

I find it very hard to cope with these people as they cover up their incompetence and are unprofessional.

I applied for a promotion but was knocked back for no specific reason. I was then disciplined for other unrelated matters.

I resigned. I did not report any of the incidents of victimization for fear of not getting another job.

**Male 41-50. Registered Nurse. Public Hospital.**

The work environment has caused me depression and I have had numerous physical illnesses (asthma, backache, gastric upset etc.)

The manager is abusive and undermining. Because of my depression, I required medication.

The abusive manager was backed up by the whole management structure.

I reported the incidents but nothing happened as the workplace was management controlled.

This subject reported some of the symptoms of PTSD.

**Female 51-60. Assistant in Nursing. Aged Persons Home. Private Hospital.**

I was advised by my GP to take my sick leave as I was under stress from bullying from my supervisor and that it would be hard to prove,

I dreaded going to work. I found myself worrying when off duty. I felt tearful and sick in the stomach.

The supervisor made my life hell. Rosters were changed, and I was spoken about at meetings.

I have been threatened with reduced shifts or no shifts at all. I have been told to find another job if you don't like your shifts.

I didn't report any of the victimization because the boss never backed up staff and I had witnessed what had happened to other staff members who tried to get help.

I contacted the union, however the matter further involves legal action. The financial and psychological cost isn't worth it.

This subject reported some of the symptoms of PTSD.

**Female 31-40. Registered Nurse. Public Hospital.**

The work environment which has cause me psychological distress has made me very tired, demotivated, tearful, burnt-out and causes me to succumb to respiratory infections.

I have been bullied on the wards and have been the victim of malicious gossip within earshot.

**Female 31-40. Registered Nurse. Public Hospital.**

I suffered with headaches, a feeling of losing control and have lost all confidence due to the psychological distress emanating from work environment.

**Female 41-50. Technician. Public Hospital.**

The boss and his colleagues were deliberately baiting me and setting traps for me. They singled me out of three people in my work group.

I thought I was losing my mind.

My confidence was undermined.

My immediate boss set a trap to cause an argument. He also booked lectures when I wasn't there because of work and then abused me in front of the other staff. He was threatening as well as abusive.

He intimidated me almost daily over trivial matters.

I put in a grievance. It took three months to be addressed and seven months to be given a face to face meeting. I was made to look like a fruit cake.

I just let sleeping dogs lie. I am told there are worse bosses.

This subject reported many of the symptoms of PTSD.

**Female 51-60. Assistant in Nursing. Private Aged Persons Home.**

Too many Chiefs and no Indians. Never told what my duties will be.

I am made to feel stupid and treated as useless.

I help others who get the verbal abuse. I feel frustrated and angry. I get caught in arguments between others but was not able to defend her truthfully.

I get blamed for others' mistakes. They don't own up.

There is no one to report the grievances to, anyway I don't want to make wars.

**Male 51-60. Registered Nurse, Public Hospital**

I work in an environment with high potential for actual aggression.

I have feelings of inadequacy because I am unsure of, or afraid to confront the aggressor.

The psychological intimidation is having a person using her power to prevent me using my skills to full potential for the benefit of the clients.

Victimized and intimidated because of different methods of nursing between myself and a supervisor/superior who I perceive to be a "power junkie".

There is much apathy and negativism amongst colleagues because of the changes in workplace direction.

To report the incidents would be like "hitting my head against a brick wall".

There is a lack of support from superiors.

**Other reactions from workplace victimization**

- The work environment and psychological distress makes me cry all the time. Feel unable to continue working. Felt physical ill and unable to cope.
- Continual harassment, threats and actual physical violence. Work is a place where I feel diminished as a human being - too much negative reinforcement. Complaints of ill treatment dismissed in an offhand way with blame redirected towards me.
- Constantly put down and yelled at to make the bully look good. Threatened to be sued. Constantly put down. I sobbed and sobbed. It was most destroying. There is great mistrust in this workplace. The leader yells at me and intimidates me.
- I did not report the incidents because I did not have the confidence. How do you put in a grievance if it comes from a top position? My observation is recently I have seen a lot of bullying with the colleague that I work with. There is a total lack of confidence because of the level of the profession that it (the bullying) comes from. I have recently seen people in tears but there is a hopelessness around them. They see the only answer is to resign and work elsewhere. They do not have the confidence to go through grievance procedures because the complaint is about their superior. Is there a way that persons could go to an outside mediator for abuse first?

This subject knows of a person who did a drastic act<sup>8</sup> because of workplace intimidation and victimization.

- I have suffered mental injuries in the workplace but it is too painful and long to describe. I was forced to supervise a man who was a well-known pedophile. I felt totally repulsed by him. He is white and he exploited black kids. I felt powerless to protect children from him. I had to leave the job in the end because I could not stand being in his company. I failed the kids but did everything I could do to change the situation. There is no justice. I received no support. Management only looked after themselves. The union looked after the pedophile because he is very cunning and manipulative. I could not prove he was abusing kids because everyone was too frightened to speak up because he is a powerful white man. The Aboriginal mob don't trust police and other authorities so it's an impossible situation. I was victimized and intimidated at work because I was told I was trying to obstruct Aboriginal self-determination by attempting to support Aboriginal people in organizing a meeting by themselves for themselves. No action was ever taken - only lots of fluffy talk. I was too frightened of legal repercussions. I quit my job and changed professions. I was so pissed off and obviously still am.

This subject reported some of the symptoms of Post Traumatic Stress Disorder.

- Felt suicidal, depressed, anxious and began to wonder if "they" were right and I was mental.
- Feel weepy and 'floaty' when stressed because of the bullying at work. Forever going to the toilet and experiencing abdominal pain. The work environment makes me suffer acute headaches.
- I am resentful for having to work. The victimization breaks down my self esteem and I find that I have difficulty in focusing on and prioritizing even simple tasks. I tried to report the incidents of psychological intimidation, but this only increased the isolation.
- There is never anyone to report the acts of victimization to. The union representative is unsupportive and unable to assist. Due to victimization, I had decreased productivity, anxiety, depression, panic attacks, low self esteem and confidence and felt distrustful and resentful.
- The psychological distress in my work environment gives me lethargy, anxiety, irritability, acute anger, headaches and depression.
- Dread going to work. Started worrying about the next shift as soon as the current one finished. Loss of appetite. Trouble sleeping. Felt nervous at work.

This subject reported some of the symptoms of PTSD.

- I did not want any other staff to know I was stressed due to conflict with management. Feeling unable to cope with work load. Physical heart palpitations, knots in the stomach, sleeplessness, took time off.
- I am sworn at and treated like dirt.
- I am a manager. I suffer frequent migraines, loss of concentration and am poorly motivated with work issues. I constantly cry when faced with the bully. I had to take Zoloft. I have never taken nerve pills in my life up to this point. A close friend (a manager also) was interrogated and then sacked. I was in the room while they interviewed her but I was told I could not intervene. The allegations made about my friend were false. I feel my workplace only plays lip service to the harassment legislation, Workplace Health and Safety and WorkCover requirements. In the end I resigned as the abuse continued. Since then, many of my co-managers have also left.

This subject reported symptoms of PTSD.

- I was victimized and harassed by my immediate supervisor to the point where I had to leave the job after 18 months of abuse.

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<sup>8</sup>. A 'drastic act' is likely to be attempted suicide or actual suicide. This could not be detailed in the survey because of *Ethics*. Subjects who have been through the 'terror workplace' could be vulnerable to any suggestion of this nature. From interviews with victimized workers, it was patently clear that the term 'drastic act' was indeed identified as an attempted suicide or actual suicide.

This subject reported some of the symptoms of PTSD .

- When I experience an event at work that resulted in a serious mental injury to myself, I cried for days and felt very fearful when my boss informed me that there would be a lot of hostility towards me from "certain members of the team" who felt that I had no rights for grievance in view of my circumstances. I love the work that I do and am a very competent practitioner but am beginning to doubt my role as an individual in a team of overtly hostile and collaborating colleagues.

This subject reported some of the symptoms of PTSD.

- Thought that I may do harm to the person doing the bullying. Not wanting to go to work. Nauseated at the thought of entering the building. Management constantly deride staff efforts at bringing safety issues to their attention. Staff are not supported. I am screamed at and threatened with dismissal all the time. I can't report the incidents as the victimization and intimidation is done by management who are careful to make sure that there are no witnesses. No representation is allowed. Threatened with adverse work appraisal reports.

This subject reported some of the symptoms of PTSD.

After a victim has endured a lengthy period of time being bullied, that person eventually realizes that the bullying will not end and subsequently, and usually at the instigation of friend or family member, the victim will put in a grievance as per the procedure of the workplace.

The following is a letter to a victim who put in a grievance. The letter is almost a pro forma that is sent to a victim who dares to complain. I have seen many of these letters and only the names and departments appear to differ. They are meant to intimidate and are a veiled threat. It is usually at this time the victim will come to you for legal advice.

Dear .....

I am in receipt of a report from the Investigation Officers appointed to conduct the investigation into allegations raised by you in your grievance. I am advised that a copy of this report was delivered to you on (date).

After giving careful consideration to all evidence available to me so far in respect of these allegations, I am giving serious consideration to implementing all of the recommendations contained in the report. These recommendations are:

- You are actively performance managed on each area where a deficit or difference in output is found compared to a reasonable workload of another (professional title);
- That you be offered the services of the Employment Assistance Service;
- That you be required to undergo a medical examination to determine your ability to undertake the work you are engaged in;
- That you be made accountable to the .....team and that you acknowledge and action your professional accountability to the .....Department and the senior .....of the team;
- That you acknowledge and action as appropriate all reasonable and lawful directives from your line managers. If you fail to take such actions, disciplinary proceedings should be implemented;
- That.....and..... (the bullies) be exonerated of all allegations;
- That the managers of all departments be reminded that they have a duty of care to their employees, especially with respect to unpaid overtime and supervision of work practice.

In accordance with the principles of natural justice, no determination has been made, or will be made until you have had the opportunity to formally respond to the report and the recommendations.

Accordingly, you are required to reply to the report and the recommendations, in writing, that is by (date), by providing any material you wish to be considered.

If you do not respond, or if your response is received later than (date), I will make a decision on the material currently available to me.

In addition, I refer you to my letter of (date) in which I offered you the opportunity to show cause why a proposed disciplinary penalty, a reprimand, should not be imposed. You were subsequently advised by e-mail from ..... on (date) that you would be required to respond to this letter at the same time you responded to the Investigation Report.

The Employee Assistance Service offers a confidential counselling to all employees of ..... and you may wish to discuss with them your situation.

Should you have any queries etc.....

This letter was sent to an employee of a hospital after she endured 6 years of insidious victimization. She always thought that the next day would be better and that eventually the victimization would disappear.

The solicitor and myself informed her that the bullying will never stop. It will destroy her and give her severe health problems. She was reluctant to put in a claim with WorkCover as she informed us that when applying with other positions, there is usually a requirement on application forms to disclose to future employers if they have made a WorkCover claim. That of course, is impairment discrimination. The victim simply wants to work. She did not seek litigation or compensation. From her statement, it appeared impossible for her to return to her present workplace. She would need to put in a WorkCover claim, get medical certificates that the present workplace was toxic to her health and well-being, be assigned a rehabilitation officer from WorkCover, then be offered a position in another workplace. If she was to be placed in the present workplace, there would be an action for a lack of duty of care and negligence as that would be detrimental to her health.

This is not an uncommon scenario. Unfortunately, most victims feel as though they have no options and cower down on obeisance and suffer the consequences.

By its very nature, any survey is analogous in that it is a snapshot of a particular time. However several of the subjects reported the negative experiences, aspects of victimization and the psychological distress that they left their workplace for that very reason. It is a fact that workplace victimization leaves subjects feeling powerless and vulnerable and this can endure for years after the events have happened.

## Depression

Depression is a usual symptom of a person who has been victimized in the workplace. Too often it is easily dismissed as "psychological" or "a state of mind".

Major depression is a biological depression. Dr. William Wilkie, a Brisbane psychiatrist who specializes in work-related stress due to victimization states that:

*Endogenous depression, also called major depression or biological depression, is a mood disorder in which the person feels weak and tired, experiences broken sleep or early morning waking, feels worse at a particular time of day, especially in the mornings, and feels generally sad, sometimes enough to suicide. It is called endogenous because it is caused by some imbalance within the body's chemistry, rather than the result of a disappointment of loss. ..if not treated medically, there is a significant risk of suicide.<sup>9</sup>*

Essentially the neuro-transmitters in the brain, Serotonin, becomes too quickly reabsorbed in the bloodstream and the modern day anti-depressants inhibit this process.

A victimized employee will almost certainly be diagnosed with "anxiety". However, "anxiety" is often passed over as a minor mental state. It is not merely a 'state of mind' but presents a very real range of physical symptoms.

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<sup>9</sup>. Wilkie, Dr. W. *Understanding Stress Breakdown*, Millennium Books, Greenhouse Publications, Australia. 1995. p. 38.

## Anxiety.

The changes on blood supply and function of the internal organs.

*Anxiety symptoms over a prolonged period can cause a number of problems in the abdominal organs. The preparation or fight or flight is the function of the sympathetic nervous system - one of the automatic regulatory systems overseeing all the necessary processes going on in your body at the moment. Most organs have sympathetic and parasympathetic fibres, which oppose each other...the interaction between sympathetic and parasympathetic activity controls the function of many organ systems in the body. Prolonged anxiety can change this happy equilibrium and cause spasm in hollow organs like the large bowel and bladder, and dyspepsia from disordered contractions of the stomach.<sup>10</sup>*

From Dr. Wilkie's description, it is imperative that a case of anxiety due to workplace victimization is neither trivialized nor dismissed. It is, indeed, a very real physical injury .

## Some Physical Symptoms of Anxiety

- Hypoglycemia or low blood glucose which interferes with the function of the brain;
- Changes in blood flow;
- Changes in the activity of the internal organs
- Spasms in the lower esophagus
- Tension headaches
- Chronic headaches
- Stiff and sore muscles

These physical injuries induced by work stress are to put the body on alert as the flow of blood is diverted from non-essential functions so that the nerve network is stimulated. The network, known as the parasympathetic nervous system activates when the body is resting. However, with frequent anxiety reactions, the parasympathetic nervous system must oppose the effects of adrenaline and noradrenaline that are released during anxiety. As a consequence, there can occur irregular contractions in the hollow organs in the body, with spasm and associated pain. (e.g. irritable bowel symptoms and frequency of urination).

## Anxiety and Work Stress

Dr. John Raftos, specialist physician whose primary research and clinical interests concerned hypertension and coronary disease, and was the visiting cardiologist at St. Vincent's Hospital, Sydney has stated that:

*"Acute emotional stress can result in identifiable physiological changes, increases in pulse rate, and blood pressure and these, depending upon the stimulus and upon the recipient, may be absolutely maximal. "<sup>11</sup> (my emphasis)*

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<sup>10</sup>. *ibid.* p22.

<sup>11</sup>. Raftos, J., "Stress in the Workplace Leading to Heart Related Diseases", *Practical Medicine for Lawyers*, Ed. K. Cooper, Sydney College of Law. 1986.pp 110 - 111.

A person suffering from work related stress situations will often have premonitory symptoms such as fatigue, irritability, insomnia and an inability to cope.

## The Meaning of Employment

Employment does not merely mean the act of being employed but the work which the worker is required to do.<sup>12</sup> In *Thom v Sinclair*<sup>13</sup>, Lord Shaw of Dumferline said that "employment" included all its elements, "its nature, its conditions, its obligations and its incidents".

According to Lord Dunedin in *Charles R Davidson & Co v Mc Robb*<sup>14</sup> the term employment naturally extends to matters "naturally incidental" to the contract.

Kitto J. in *Federal Broom Co Pty. Ltd. v Semlitch*<sup>15</sup> held that 'employment' refers to "some incident or state of affairs to which the worker was exposed in the performance of his duties and to which he would not otherwise have been exposed". . Also in this case, Windeyer J. said at 641 that 'employment' included "some characteristic of the work or the conditions in which it was performed... (and furthermore) the contributing factor must in my opinion be either some event or occurrence in the course of the employment or some characteristic of the work performed or the conditions in which it was performed." (my emphasis)

The characteristic of 'employment' must also include that which a worker was reasonable required, expected or authorized to do to carry out his work.<sup>16</sup>

In the case of *Humphrey Earl Ltd. v Speechley*, Dixon J. defined the peripheral of 'employment'.

*The acts of a workman which form part of his service to his employer are done, needless to say, in the course of his employment. The service is not confined to the actual performance of the work which the workman is employed is employed to do. Whatever is incidental to the performance of the work is covered by the course of employment.*<sup>17</sup>

Management of businesses and organizations should concern themselves with workplace bullying and not dismiss it as an aspect of workplace practice to enhance the bottom line. There have been many occasions where employees have had a case against their employer but nevertheless are too frightened to act. In fact many have told me that they would rather put the episodes behind them and move on. Unfortunately, the victims keep reliving the trauma and feel an acute sense of justice as the perpetrators "get away with it".

## Psychological Terror

Victimization in the workplace bears close resemblance to 'psychological terror'<sup>18</sup> in the workplace which encompasses hostile communication systematically directed to individual/s who are pushed into a defenceless position and held there with continued unethical communication.

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<sup>12</sup>. *Stewart v NSW Police Service* (1998) 17 NSWCCR 202 at 216 per Neilson J.

<sup>13</sup>. *Thom v Sinclair* [1917] AC 127.

<sup>14</sup>. *Charles R Davidson & Co V McRobb* [1918] AC 304 at 321.

<sup>15</sup>. *Federal Broom Co Pty Ltd v Semlitch* (1964) 110 CLR 626 at 632.

<sup>16</sup>. *Stewart v NSW Police Service* (1998) 17 NSWCCR 202 at 216 per Neilson J.

<sup>17</sup>. *Humphrey Earl Ltd. v Speechley* (1951) 84 C.L.R. 126 at 133.

<sup>18</sup>. Leymann, Heinz. "Explanation of the Operation of the LIPT Questionnaire" (Leymann Inventory of Psychological Terror), translated from the original German by Helga Zimmermann, consulting psychologist, Brisbane. February 1997.

It is significant that the actions of a psychological terrorist are not a 'one off' but in fact occur on a frequent basis over a prolonged period of time resulting in considerable psychological and psychosomatic injuries. Occasional organizational conflict is a fact of life and shouldn't be confused with prolonged psychosocial situations which culminate in psychiatrically pathological conditions in the workplace. Victimization, as a toxic workplace phenomena consists of frequent actions that produce psychological conditions and physical stress-related injuries that results in extended stress leave applications.

These somatoform disorders are characterized by the presence of physical symptoms for which there is no demonstrable organic cause. Both the DSM IV<sup>19</sup> and the ICD 10<sup>20</sup> indicate that they can be associated with distressing experiences. Psychiatric injury can have specific physical consequences,<sup>21</sup> and ...stress can have an adverse affect on the immune system.<sup>22</sup>

There is substantive evidence from the survey that workplace stressors occur because of bullying, harassment and victimization which emanates from a workplace conflict. Subsequently, the conflict becomes central in creating further stress and igniting more conflict, culminating in severe workplace injuries which can be identified with the DSM IV criteria for Post Traumatic Stress Disorder.

Scrignar<sup>23</sup> compiled the following table of the cardinal characteristics of PTSD.

- (a) Nervousness. The person is apprehensive, on edge, tense, jumpy, easily startled, and fearful.
- (b) Preoccupation with the trauma. The person talks a great deal about the (event).
- (c) Pain or physical discomfort. The person complains of pain or physical discomfort that appears disproportionate to the actual injury.
- (d) Sleeplessness. The person complains of insomnia with resultant tiredness and fatigue.
- (e) Flashbacks and nightmares. The person relives the trauma during flashbacks or nightmares with similar emotional reactions as if the (event) were happening again. Intrusive thoughts related to the (event) are common.
- (f) Deterioration of performance. The person experiences inability or difficulty in carrying out usual life activities such as work, family responsibilities, social and recreational activities, or any activity engaged in before the (event).
- (g) Phobia. The person experiences fearfulness and avoidance of the place where the (events) occurred or extreme apprehension associated with some activity related to the (events).<sup>24</sup>
- (h) Personality change. The person becomes withdrawn, moody, irritable, distracted, forgetful, and unlike his or her usual self.

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<sup>19</sup>. *The Diagnostic and Statistical Manual of Mental Disorders*, published by the American Psychiatric Association, the current being the 4th, 1994.

<sup>20</sup>. *The ICD 10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines* which is part of the 10th revision of the international classification of diseases and related health problems, published by the World Health Organization, Geneva, 1992.

<sup>21</sup>. Napier, M., Wheat, K., *Recovering Damages for Psychiatric Injury*, Blackstone Press Limited, London. 1995. p. 47

<sup>22</sup>. Calabrese et al. (1987) cited in Gunn and Taylor (eds), *Forensic Psychiatry, Clinical, Legal and Ethical Issues.*, Butterworth-Heinemann. 1993. p.993.

<sup>23</sup>. Scrignar, C.B., *Post-traumatic Stress Disorder*, 2nd ed. (New Orleans LA: Bruno Press, 1988. pp.89-90.

<sup>24</sup>. Note. With workplace trauma, avoidance of the place is impossible due to the necessity to earn money, however, all subjects interviewed expressed the fact that they suffered from symptoms such as vomiting, anxiety and stomach pains as they approached their place of employment each day.

- (I) Dudgeon. The person gives expression to frequent unprovoked outbursts of anger with complaints about the carelessness of others and retributive attitude. Quarrelsome behaviour may be evident.
- (j) Depression. At some point following the (events) the person feels 'blue' or 'down in the dumps'. A loss of self-confidence, a pessimistic attitude, brooding about past event, of feeling sorry for self may be noted. Social withdrawal, lack of pleasure, and a look of sadness on the face of a person formally cheerful and outgoing may be extant.

Having identified the behaviour that can be injurious in a toxic workplace, it is necessary to look at the actual actions in the workplace which cause injuries. One of the difficulties with a traumatized client at the first interview is their incoherency in attempting to describe the actual workplace behaviour that led to their impaired state as the toxic behaviour is not usually immediately apparent, and is definitely difficult to articulate when a person is asked to start from the beginning.

## Identification of the toxic workplace

If suddenly there was discovered in the workplace, a green iridescent slime running down the wall, immediately it would be identified by Workplace Health and Safety officials as a toxic workplace - AND SOMETHING WOULD BE IMMEDIATELY DONE ABOUT IT as it would pose a serious health threat to the employees.

But a toxic workplace cannot always be immediately identified. It is equally a threat to and employee's health and safety

*Workplace victimization can be compared with a malignant cancer. Unlike a cyst, it does not have defined edges. It is fuzzy and the boundaries are indefinable. Allowed to grow unchecked, the results are totally destructive. It must be cut out of the workplace, destroyed or else treated until the threat of destruction is no longer there.*

## Client check list

The following incidents have been taken from clients' statements which gave them stressors culminating in workplace injuries. The list is what I term as "common-denominator stressors". That is, they frequently occur with all clients. Other stressors are specific job-culture related and further exacerbate the work-place injury with the common denominator stressors.

The incidents described, in isolation, could appear petty and merely mischievous, however, clustered, on a regular basis, instigate a 'terror workplace' that is unhealthy, dangerous and totally unacceptable. In neither the interviews or the survey did any one report of just a single incident. Invariably, the socio-deviant behaviour was clustered for maximum effect.

I devised these questions to assist with litigation when interviewing clients and these were included in the survey.

### **Acts of workplace victimization - Ask the client these questions.**

- Have malicious rumors been spread about you which are unfounded and groundless in order to undermine your credibility? What are they?
- Have you been persistently criticized either privately or within the hearing of others? What was said? By whom? When?
- Has a colleague or supervisor delighted in persecution through instilling fear and issuing threats either to your face or through a third party? If possible, quote the exact words that were said. When? Where?
- Have you been repeatedly shouted at and sworn at both publicly and in private? Once again, use quotations.
- Have you been subjected to personal insults or name calling in public or private? Quote the words spoken.
- Is your point of view never taken into account? Give examples. Dates.
- Are you labelled at work? What were the labels? Were they verbal or written?
- Does your boss/supervisor fly into rages usually over some trivial matter to instill fear in you? What was the situation and what was spoken? Use quotation marks.
- Are you publicly humiliated by your boss/supervisor or a work colleague? What was said or done? What were the circumstances?
- Are you constantly criticized? How are you criticized? What were the words?
- Do you feel frozen out by being ignored and excluded? Describe the circumstances.
- Are your efforts constantly undervalued? How is this happening?
- Does your supervisor/colleagues make sure they receive the praise and kudos for your ideas and work? Give examples.
- Have you been manipulated into a smaller office in a corner? How was this achieved?
- Does your boss/colleagues deliberately talk to a third party and obviously isolate you? When? At meetings?
- Does your boss/supervisor dispense punishment out of the blue usually for something you cannot even remember? Describe the circumstances.
- Are you given tasks that are not suitable to your physical capabilities or health? Give examples.
- Have you been threatened with a physical attack or have even suffered a physical attack? What date? What happened?

**Insidious workplace behaviour - has this happened to your client? Have your client detail these events.**

- Your work is being sabotaged or someone is tampering with your computer. State the circumstances, what happened, and what were the consequences.
- You receive long memos which contain inaccurate accusations and inaccurate information. Keep these memos.
- You detect an interference with your correspondence or e-mail.
- List the dates (or "on or about"). What happened?
- You are given menial tasks or your area of responsibility has been vastly diminished. Describe your usual work and responsibilities. Who changed your work schedule? Why?
- Your work is being maliciously overmonitored with or without your knowledge. Be specific here. This is victimization.
- You receive constant changes over guidelines and targets then have to suffer the consequences. Who is giving you the changes in your work guidelines and targets? Why? What were the consequences?
- You have been supplied with incorrect information or otherwise information is deliberately withheld from you. Write down the details.
- You have been set up to fail. This encompasses directions given to you or information circulated about you. Be specific. What were the circumstances. What was the information circulated about you? Why was it incorrect?
- Every time you apply for a promotion, training or leave, your applications are mysteriously blocked. Make a list. If possible produce copies of your applications. Why do you suppose your applications were mysteriously blocked? What were the reasons?
- Your personal report marks or appraisals have been changed. Produce copies of the reports.
- You were bullied or harassed into signing an incorrect appraisal of your work. Who did this? What were the circumstances?
- Your relationships with your peers has been destroyed behind your back. Describe what happened? How did this affect you?

From the survey, not one of the socio-deviant behaviours was an isolated incident. All were cumulative and clustered to produce the devastating effects of the workplace injuries to an employee. All of the behaviour patterns of incidents happened regularly over a period of time either directly or indirectly while the victim was in a subordinate position.

The following questions included in the survey were taken from the DSM IV for the diagnosis of post traumatic stress disorder.

1. Have you experienced an event/s at work that involved your serious injury (mental and physical)?
2. Has your response involved fear or helplessness?
3. Are your recollections recurrent?
4. Do you constantly dream of the events (incidents in the workplace)?
5. Do you relive your workplace experiences in flashbacks?
6. Do you suffer psychological distress in your work environment?
7. How do you react physically to your work environment? (describe your physical symptoms).
8. Do you try to avoid thoughts of your work environment?

Victimization in the workplace results in injuries. The physical and psychological injuries are not isolated in a workplace where victimization occurs.

This was first identified by Leymann whereby work-related problems could have a health damaging biological basis.

*Stress is ... regarded as a biological condition.*

*...Mobbing (victimization and bullying) is one of these social stressors which create a psychological stressor which can lead to a biological stress reaction of the organism and will be accompanied by typical symptoms...Stress symptoms...are the subjective form of experience of what is occurring biologically in the body.<sup>25</sup>*

Stress due to workplace victimization is therefore a biological condition. The victimization and bullying is a social psychological stressor which is in fact a biological stress reaction of the organism.

Symptoms include:

1. Heart palpitations.
2. Skin irritation and blotches.
3. Insomnia.
4. Anxiety.
5. Backache.
6. Stomach and bowel problems.
7. Lethargy.
8. Feelings of nausea before work and during the working day.
9. Migraine or severe headaches.
10. Severe depression almost bordering on thoughts of suicide.

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<sup>25</sup>. op. cit. 18.

11. Murderous feelings and acute anger.
12. Panic attacks.
13. Constant feelings of irritability.
14. No motivation.
15. Loss of confidence and self-esteem.

These symptoms can be related to "shock" and that organically the body gears itself for the fight or flight reaction.

## Reasons for workplace harassment, bullying and victimization

- To "punish" someone who does not fit into the workplace culture
- Reasons of nepotism
- To have revenge on a 'whistleblower'
- An active dislike for someone
- For self promotion
- Vindictiveness

In essence, it is about power. It is inappropriate. It adversely affects employees' health and safety and required legal address if it is maliciously and systematically imposed upon a victim as they go about their work.

Power is equated to entitlement.

*"Feeling entitled to judge may increase powerholders' confidence in their own beliefs, including their stereotypes...because Western cultures hold that people gain power because they earn it - i.e. because they have requisite skills or expertise - the powerful can feel that their beliefs ...are particularly valid."*<sup>26</sup>

## The Response of the Courts and the Legal System

The Court of Appeal in *Rogers v Brambles Australia Ltd.* held that a civil action might be brought by persons damaged by failure to comply with s9(1) of the Workplace Health and Safety Act 1989.<sup>27</sup>

Also, that in an action under s9(1) the onus of proving impracticability of a suggested remedial measure lay upon the employer.

In this case the appellant sued in the District Court for damages for negligence and breach of statutory duty.

Pincus J.A. quoted *Council of the Shire of Wyong v. Shirt* :<sup>28</sup>

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<sup>26</sup>. Goodwin S.A., Gubin, A., Fiske, S.t., Yzerbyt V.Y., "Power Can Bias Impression Processes: Stereotyping by Default and by Design", *Group Processes & Intergroup Relations*, Vol. 3(3) 2000. pp227 - 256 at 229.

<sup>27</sup>. Section 9(1) of the *Workplace Health and Safety Act* 1989 provides:

"An employer who fails to ensure the health and safety of all his employees, save where it is not practicable for him to do so, commits an offence against this Act."

<sup>28</sup>. *Council of the Shire of Wyong v Shirt* (1980) 146 C.L.R. 40 at 47

*"The perceptions of the reasonable man's response [to a foreseeable risk of injury] calls for a consideration of the magnitude of the risk and the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may have"...*

*Even though "the risk of occurrence of this precise sort of accident was clearly slight...that is not to say that the risk...was so insignificant or such as could properly be neglected."<sup>29</sup>*

With regard to the action for a breach of statutory duty, Pincus J.A. stated that the provision of the terms of s9(1) of the Workplace Health and Safety Act 1989 creates not only an offence but that a civil action may be brought by persons damaged by failure to comply with the provision. Furthermore, such an action is available to employees even though the damage they suffer is indirect.

Pincus J. A. stated that the onus of proving impracticability of a suggested remedial measure lay upon the employer.

### **Rogers v. Brambles Australia Ltd.<sup>30</sup>**

It was held in this case that a civil action may be brought by persons damaged by failure to comply with the provisions of s9(1) of the Workplace Health & Safety Act 1989.

The Workplace and Safety Act 1989 was also relied upon in *Carlile v Council of the Shire of Kilkivan and Brietkreutz*<sup>31</sup>. Mr. Carlile was subjected to a series of harassment as well as humiliating behaviour by his foreman Mr. Brietkreutz. The harassment included:

- harassed for eating an orange
- being called 'stupid'
- being told he was of no use
- being ordered to perform menial tasks
- being ordered to undertake dangerous tasks
- being ordered to undertake unnecessary tasks

Mr. Carlile informed the shire clerk and the shire engineer of Mr. Brietkreutz's behaviour. Very little was done. District Court Justice Dodds found that the council: -

- was in breach of its duty to provide its employees with a safe working environment;
- was in breach of its contract of employment with Mr. Carlile;
- was in breach of its statutory duty imposed by the Workplace Health and Safety Act 1989 (Qld.).

That Act has since been repealed by the Workplace Health and Safety Act 1995 (Qld.) which commenced on 1 July 1995.

### **Workplace Health and Safety Act (the Act) 1989 section 9(1)**

"An employer who fails to ensure the health and safety of all his employees, save where it is not practicable for him to do so, commits an offence against this Act."

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<sup>29</sup>. *Rogers v. Brambles Australia Ltd.* (1998) 1 Qd.R. 212 at 216.

<sup>30</sup>. *ibid* p212

<sup>31</sup>. *Carlile v. Council of the Shire of Kilkivan and Brietkreutz* (unreported, District Court of Queensland, No.12 of 1992, Dodds J, 2 December 1995.

Pincus J.A. stated in *Rogers v Brambles Australia Ltd.* "Although the provision in its terms merely creates an offence, it was conceded, and I think correctly, that a civil action may be brought by persons damaged by failure to comply with the provision...(and) that such an action is available to an employee, although the damage he suffers is indirect".

### **Kingshott v Goodyear Tyre & Rubber Co. Australia Ltd.<sup>32</sup>**

"Increasing expectations...may be demanded of a reasonably prudent employer"

"...the employer...will have at its disposal precisely the kind of information which the decision-maker needs in order to judge the issue of practicability... whilst these matters can sometimes be proved by a claimant worker, the means of knowledge is best found in the employer..."

and

"There shall so far as is reasonably practicable be provided and maintained in every factory a safe means of access to every place at which any person has at any time to work"

This was cited by Pincus J. in *Rogers v Brambles Australia Ltd.* where he said that he was "of opinion that the relevant onus under the Queensland provisions is on the employer".

In *Nimmo v. Alexander Cowan & Sons Ltd.*<sup>33</sup>, Lord Upjohn stated "...it is not merely the fact that doing what is necessary to maintain safety is more within the knowledge of management, but, not only the sole power, but the sole duty to make the place of work comply with section 29<sup>34</sup> rests upon management"... (and furthermore)

*...it is the duty of the employer to make the place safe so far as is reasonably practicable. It is his duty with his experts to consider the state of the place of work in all its circumstances and to take whatever steps he can, so far as reasonably practicable, to make it safe.*

### **Hamilton v. Nuroof (W.A.) Pty. Ltd.<sup>35</sup> (1956) 96 C.L.R. 15 at 25**

The relevant duty owed by the respondent as employer to the appellant as employee was "to take reasonable care to avoid exposing the employees to unnecessary risks of injury".

*Council of the Shire of Wyong v. Shirt* <sup>36</sup>(1980) 146 C.L.R. 40 at 47.

The perception of the reasonable man's response [to a foreseeable risk of injury] calls for a consideration of the magnitude of the risk and the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may have."

### **Mason J. at 47-48**

*...when we speak of a risk of injury as being 'foreseeable' we are not making any statement as to the probability or improbability of its occurrence, save that we are implicitly asserting that the risk*

<sup>32</sup>. *Kingshott v. Goodyear Tyre & Rubber Co. Australia Ltd.* (No. 2) (1987) N.S.W.L.R. 707.

<sup>33</sup>. *Nimmo v Alexander Cowan & Sons Ltd* [1968] A.C. 107 at 127

<sup>34</sup>. Section 29 (1) of the *Factories Act*, 1961: "There shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person has at any time to work, and every such place shall, so far as is reasonably practicable, be made and kept safe for any person working there".

<sup>35</sup>. *Hamilton v. Nuroof (W.A.) Pty. Ltd.*(1956) 96 C.L.R. 15 at 25

<sup>36</sup>. *Council of the Shire of Wyong v. Shirt* 1980) 146 C.L.R. 40 at 47.

*is not one that is far-fetched or fanciful. Although it is true to say that in many cases the greater the degree of probability of the occurrence of the risk the more readily it will be perceived to be a risk, it certainly does not follow that a risk which is unlikely to occur is not foreseeable. (my emphasis)*

This is an important case regarding workplace injuries and foreseeability. It is common for employers to state that the victimization was only a "perception" of the employee -

*In deciding whether there has been a breach of the duty of care the tribunal of fact first must ask itself whether a reasonable man in the defendant's position would have foreseen that his conduct involved a risk of injury to the plaintiff or to a class of persons including the plaintiff.*

Mc Lean v Tedman<sup>37</sup>- The High Court has stated: "The duty to provide a safe system of work extends to maintaining and enforcing it:

In essence, it is the duty of the workplace not only to have a workplace policy regarding victimization and bullying, but to follow up with training sessions and awareness programmes. It must be emphasized that victimization and bullying is indeed a workplace health and safety issue. A policy pinned to a staff room notice board is next to useless, and is certainly no defence for an organization or management.

Mt. Isa Mines v Hopper<sup>38</sup>- To avoid successful vicarious liability claims it is not enough for management to have policies that promote workplace equity for all. There is an ongoing responsibility to educate all staff about those policies, to provide effective and ongoing workplace training, to monitor policies to ensure they are up to date and relevant, and to demonstrate real commitment to those policies.

## **Conclusion**

There are many unseens in this world.

They are not to be measured, weighed or quantified.

Stress is to be numbered among them. Some human beings can withstand it with apparent dispassion. It would be unreal for us to ignore the fact that it can have a ravaging effect on many people and lead indeed to psychological and physical distress.

As the world grows smaller and technology intensifies, it would be unreal of us to ignore the ravages that stress can cause to the human mind and frame.

Lawyers can play a spirited and vital role in stirring public awareness and consciousness.

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<sup>37</sup>. *McLean v Tedman* (1984) 155 C.L.R. 306.

<sup>38</sup>. *Mt. Isa Mines v Hopper* [1997] EOC 92-879.



*Everything you always wanted  
to know about bullying  
- but - were too bullied to ask*

Susan Moriarty

# Everything you Always Wanted to Know About Bullying –but– Were too Bullied to Ask

Susan Moriarty BA, LLB (Honours)

## Outline

The outline of this Paper is as follows:

1. Introduction
2. Contemporary Corporate Culture – Are you breeding a potentially harmful environment?
3. Warning Signs – understanding behaviours
4. Managing the Issues
5. Preventative Strategies
6. The Possibility of Change

## The Presentation

I will speak generally to each of these themes. In most instances, what I say will be faithful to the Paper, though there will be some allowable departures for developments which post-date the preparation of the Paper.

## The Purpose

The purpose of this Paper is two-fold : firstly to present you with an understanding of the values which underpin and are celebrated by contemporary corporate culture in market democracies and the implications and effects on workplace relations utilising the Queensland Public Service as a case study; and secondly, to summarise the practical measures which you as employment specialists should urge on those of your client employers who have a genuine intelligent, interest in creating workplaces built on co-operativeness, collaboration and organic solidarity. Along the way, I will argue, these employers wisely minimise their exposure to industrial litigation.

## Introduction – A personal interest becomes a professional pursuit

What is bullying? According to the third edition of the Australian Pocket Oxford Dictionary a bully is a “person coercing others by fear”. As a verb it means to “persecute or oppress by force or threats”<sup>1</sup>. Sexual harassment is described by civil rights lawyer, Moira Rayner as “bullying with a sexual element”<sup>2</sup>. Bullying is rife in Australian society, and the workplace, like every other institution in which there exists a legitimate power imbalance<sup>3</sup>, is a perfect crucible for its manifestation<sup>4</sup>. Australian workplaces are deeply scarred by a high incidence of bullying, victimisation and harassment but, curiously, knowledge of its extent and of its

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<sup>1</sup> See page 129 of the Dictionary

<sup>2</sup> Equal Opportunities Tribunal publication

<sup>3</sup> see the spectacular instances of bullying recently exposed at Trinity College, one of Australia’s most prestigious private schools

<sup>4</sup> the ACTU now has a specific-purpose “Bullying” website for general browsing

critical effects on the psychological health of workers as people appears understated, even among industrial lawyers<sup>5</sup>.

Bullying can lead to death. Perhaps the most infamous example of the most extreme reaction of bullying involved a former drug company executive whose wife committed suicide after his employer arranged for him to be detained and imprisoned without trial following its discovery that he had made disclosures concerning serious company malpractice to a North American regulatory authority. The employer was none other than Roche Chemicals<sup>6</sup>, an international pharmaceutical manufacturing company.

More recently, there is the shocking suicide of career public servant and agent, Mervyn Jenkins on his 49<sup>th</sup> birthday. From documents obtained by his widow's lawyers, it appears that there had been substantial "turf wars" involving the Department of Foreign Affairs and Trade, the Defence Intelligence Organization and the Office of National Assessments. Mr Jenkins was accused of leaking confidential material to the CIA to do with post-referendum developments in East Timor. During his interrogation by DFAT investigators for alleged security breaches, they admitted to telling him that there were considering the preferment of treason charges against him and that he would face imprisonment if convicted at the subsequent court-martial. Mr Jenkins hung himself shortly afterwards at his home. In a subsequent investigation of the investigation, by the Inspector General of Security and Intelligence, the inquiry head, Tony Blunn concluded that it was reasonably well-known that relations between Mr Jenkins and his Defence Intelligence Organization colleagues in Washington were "poisonous and dysfunctional", that the conduct of the DFAT investigation had been "oppressive" and that the causal connection between the threats made during interrogation and his subsequent suicide had been corroborated by "the notes he left" at the time of his suicide. Mr Jenkins' widow is suing the Federal government. I suspect the government may wish to settle quietly out of court so that they can stem the flow of demonstrably damaging and embarrassing disclosures concerning workplace relationships in one of Australia's most prestigious agencies.

My contention, on which I will elaborate in greater detail later in the Paper, is that the abuse and misuse of human resource management policies, procedures, delegations and powers has become the preferred form of bullying in the public sector generally. Its human effects include disabling psychological injury accompanied by physical illnesses, ranging from the irritating to chronic, not to mention a veritable avalanche of claims for Workcover with which Workcover itself can barely cope<sup>7</sup>. In the private sector, bullying, victimisation and harassment take a more overt form. Consider for example, the prevalence of pornographic downloads by email as a form of harassment<sup>8</sup>; the incidence of gratuitous sexual harassment of women<sup>9</sup> and the inherently victimising way in which many employees are dismissed from private enterprise employment<sup>10</sup>.

In my own practice, I don't have any clients who have committed suicide but I have one who is borderline and many others who I suspect contemplate it from time to time – though never seriously. My own interest in the changing nature of work in Australia emanates from political events occurring on the 15<sup>th</sup> July 1995, when the Goss Labor government lost power, eight months later in February 1996, losing government. Based on my own experiences as a middle ranking public servant from 1993 through to 1996, I concluded that it was the manner in which the Goss Labor government had implemented its workplace reforms of the

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<sup>5</sup> At the Industrial and Employment Law conference sponsored by the Qld Bar Association in mid-April, there was not one Paper which addressed the rise of workplace bullying. Dr Max Spry was the only presenter to raise the issue when he said "the extent of workplace bullying is of great concern". This was the only remark other than the one I made on the subject during the three days of the conference.

<sup>6</sup> Extensively documented in the book by the former executive entitled "Roche v Adams". At the time of the reprint some five years ago, Mr Adams had still not been able to secure employment

<sup>7</sup> According to a Courier Mail Report this year, Workcover had received 1700 claims for psychological injury, most of which I think we can safely conclude, have bullying as their foundation

<sup>8</sup> see "Shield & Ors v Gillespie & Ipex Information Technology P/L, Channel 7 "Today Tonight" 1996

<sup>9</sup> Almost all of the respondents to successful sexual harassment actions heard by the Qld Anti-Discrimination Tribunal are private sector employees and employers

<sup>10</sup> see Bird v Florencia Nightingale Rehab Centre for an example of how not to dismiss an employee of 24 years service; see also Emmerson v Housing Industry Association Ltd where the Federal Court concluded that the dismissal was concocted and the manner of the punitive and reactionary

Queensland Public Service which had substantially led to its defeat, but it was not until I left the State Justice Department to set up my own law firm that the truth of widespread bullying, victimisation and harassment across the Queensland public service generally became undeniable.

My knowledge of this phenomena as a real life experience was accelerated by the response to an article written by Kris Olsson for the Courier Mail and which relied on an interview with me about bullying in the public service<sup>11</sup>. The article originally began its life as a Letter to the Editor<sup>12</sup> I penned following a small article which appeared in the Courier-Mail column entitled “Bottom Line”. I had been retained by a high-ranking public servant in one of the Queensland government’s central agencies to provide him with covert assistance in negotiating the removal of a recommendation of disciplinary action which he was facing following a complaint of a breach of the Code of Conduct made against him by an influential politician to the Director-General of his Department.

The article in question concerned the fate of a number of high-ranking career public servants who were suffering undue anxiety arising out of a failure to complete outstanding recruitment and selection processes for their positions. In March 1998 I had written an article in which I had expressed somewhat robust views concerning the Goss Labor governments’ workplace reform of the Queensland Public Service. I expressed high hopes for a change in culture, principally because I assumed (wrongly as it turned out) that the personality of the leader is an integral influence on the manner in which administrative reform is implemented and evaluated. I had assumed that the oppressive nature of much of the supervision of public service work during the Goss years had arisen out of the dark side of the values which Goss personally embodied, namely, gravity, clarity, discipline, focus and an obsession with accountability in a strictly “Cromwellian” sense.<sup>13</sup> These values, I observed, when unaccompanied by a willingness to doubt, a tolerance for ambiguity and an understanding that fear makes people stupid can quickly disintegrate into the misuse and abuse of systems of control and discipline which those on the receiving end experience as workplace bullying, victimisation and harassment. Goss personally never meant to be unkind but his definition of professionalism was experienced by many public servants as bullying and victimising; and the institutions which he created and shaped shared that reputation<sup>14</sup>.

I thought the arrival of Beattie would signal a sea change. Alas, it did not. Despite Beattie’s own personal style in which he wisely blends both a love of merriment and serious leadership, his refusal to recreate two of Goss’s change-management agencies, his reappointment of humane Directors-General such as James Varghese in Main Roads, now Education, and the appointment of a intelligent, savvy and affable Director-General as head of Premier’s the shock has been to learn that key appointments of this kind as an instrument of change may be negligible in tempering the values which characterise contemporary corporate culture. If I am correct, the centrality of leadership exulted by management theorists is questionable.

## **Contemporary Corporate Culture**

What are the values of contemporary corporate culture?. Do they unwittingly promote thuggish behaviour in the workplace?

The world of work has undergone massive change in the past twenty years.<sup>15</sup> It is characterised by chronic insecurity and has become a darker, more uncertain place for most employees<sup>16</sup>. Uniting all manner of social

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<sup>11</sup> see Attachment 1

<sup>12</sup> See Attachment 2 – “Back to the Future”

<sup>13</sup> some might even say “Orwellian” sense!

<sup>14</sup> The Office of Cabinet was known as the “Death Star”

<sup>15</sup> Numerous works abound with themes dedicated to charting the changes in work and workplace rhythms. Amongst the most popular would be “The End of Work” by Jeremy Rifkin circa 1995; and the trilogy by Charles Handy commencing with “The Age of Unreason” in 1991, followed by “The Empty Raincoat” in 1995 and “The Hungry Spirit” in 1998.

<sup>16</sup> “Full Employment is a Half Empty Glass” by David Brooks in the Sydney Morning Herald, 22 July 2000; “The Terminator Strikes” in Your Business, published by Telstra, Spring 2000 edition; “Can’t buy me Contentment” an interview with Robert Lane author of “The Loss of Happiness in Market Democracies, Yale University, USA, 2000;

theorists is the observation that the employer/employee relationship has undergone fundamental transformation within the space of two generations.<sup>17</sup>

For fully 25 years of the post-war period (1945 – 1970), the model career was male, linear, long-term and hierarchical. Organisational structures rested on assumptions that men would and did seek continuity and permanence and one-track career ascent. The ideal career was smooth, uninterrupted and continuous. The ideology of the model career in the 50's, 60's, and early part of the 70's, was of a smooth upward trajectory, ideally with one employer, maybe two - , certainly no more than three provided each move represented a step up the ladder of opportunity.

This is the era of the “company man”. This is the era in which the office boy could and did rise to Chief Executive Officer, commencing work at 15 or sometimes younger in the enterprise. CEO's of this stature enjoyed the respect and support of their work peers if for no other reason than their vast experience and knowledge of the history of the organisation left them unrivalled. In this era, a CEO spoke and was obeyed. There were no group facilitations, no (or few) advisory boards to monitor or subdue the exercise of his authority. This man was not a leader – he was the boss. Private corporations were unapologetically undemocratic and their leaders no less so. Accountability was minimal involving the routine submission of reports to the Board of Directors. It was unheard of to sack a CEO save for the most heinous of crimes. There were no individual contracts of employment. The corporation genuinely hoped you would stay if not permanently – for a very long time. The post-war corporation valued tenure viewing increasing levels of experience as enriching its own profit horizons. Seniority was the principal basis of promotion. “Merit” as a contrasting principle of selection, was uniquely established by seniority within the corporation – simple as that. Academic qualifications enhanced a man's career prospects; but they were not necessitous. Just as many middle managers prospered in their career without tertiary qualifications as did those with them. After all, the basis of promotion and upward mobility lay in experience, knowledge and seniority – all products of time passing – not by immersion in university courses or attendance on campus.

Culturally, this is an era of prosperity and generosity. This is an era of mutuality and reciprocal obligations. This is an era in which the distribution of income is milder and fairer, in which most of the working population conceive of themselves as “middle class” and rightly so. This is an era in which only one wage in a family household is needed to live the good life<sup>18</sup>. In return for his abiding loyalty to the corporation and its aims, the corporation promised secure, lifetime employment to its male employees. These are the values which underpinned the now defunct social contract between employer and employee – mutuality, patience, seniority, permanence, reciprocity, loyalty and experience.

## **Work – The Way we Are Now**

Who amongst us is not familiar with these themes nowadays ? Restructuring, Downsizing, Managerialism, Outsourcing, De-regulating, Privatising, Corporatising, Commercialising, User Pays, Globalisation, Enterprise Bargaining or with these values - Flexibility, Mobility, Teamwork, Accountability, Best Practice, Efficiency, Productivity.

In place of tenure, employers now demand contract labour. Waterside workers may have always been subject to the vicissitudes of contract or day labour but the truly remarkable twist in the current workplace revolution brought about by the needs of the new economy is the pervasiveness of contract labour in the most sophisticated of enterprises. Corporation after corporation has abolished tenure as a feature of the recruitment process and compelled with none too gentle pressure, all manner of workers to execute

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<sup>17</sup> Some 25 years separates Professor Richard Sennetts two works on the subject of work – “The Hidden Injuries of Class” and “The Corrosion of Character – The Personal Consequences of Work under the New Capitalism” published in 1999. The two books are particularly interesting because the first deals with the blue collar existence of a man called Enrico, while the second deals with the white collar existence of his son, Rico.

<sup>18</sup> For a contemporary portrayal of the pervasiveness of middle-class life in 1950's and 1960's Australia see “Growing Class Demands a Fairer Australia” by Belinda Probert, published in the Sydney Morning Herald on 14 March 2001

individual contracts<sup>19</sup>. Clerical staff, middle managers, directors, professionals – all occupational groups now accept individual contracts as the status quo. There can be little progression through seniority in an enterprise where there is no commitment to it in principle by its Chief Executive Officer.<sup>20</sup>

In the past 20 years, perhaps the most striking manifestation of contemporary corporate culture has been its obsession with reshaping the internal organisation. There is hardly a North American, British or Australian corporation which has escaped one episode of either downsizing or restructuring. Some corporations have undergone up to three individual restructurings top to bottom in as few as five years, eradicating entire departments or divisions in the space of a day. Vast numbers of tenured employees have woken up on a work day, unwrapped their daily newspaper and found to their disbelief that the organisation for which they work has been mortgaged overnight to a junk bond trader, or piled high with unbearable debt levels by a frenzied Board of Directors seeking to escape the grasp of celebrity corporate raiders.<sup>21</sup>

And there is nowhere to hide. All kinds of employers clamour for transformation. Governments of all persuasions have proved enthusiastic supporters of workplace restructuring with scarcely a thought for the plight of those whose expectations and ambitions have been repudiated by the deliberate abolition of positions, hierarchies and structures. Ironically, in the last 10 years in Queensland, to which I have already made reference, most of the confusion, stress and demoralisation afflicting the Queensland public service has been at the hands of the “workers’ party”. The Labor party lost government in 1996, in part, because of the style manner and timing of its workplace reform of the Queensland public sector.<sup>22</sup> In the past 10 years in Australia, governments have restructured, downsized, outsourced, privatised, corporatised and commercialised with a zeal, private enterprise itself has found quite arresting and which markets, notably the stock market, have found breathtakingly profitable.<sup>23</sup>

While private enterprise is fixated by shareholder value, government is fixated by taxpayer value. In the last decade, management consultants have grown in influence and in personal wealth as a multitude of businesses, including governments who think and act like businesses these days – have sought their expertise in securing greater worker productivity in the pursuit of profit maximisation or cost reduction. The brains trust of countless numbers of businesses have taken themselves away for the week-end to lavish resorts, purpose-built for such sabbaticals, thought deeply about their core goals, defined their Mission Statements and developed their Strategic Plan, all under the tutorial guidance of a well-paid Management Consultant. In more recent times, when play has lost its spontaneity and must be scheduled, some more New Age facilitators encourage otherwise middle-aged people of conservative ways and ambiguous health to negotiate white-water rapids, climb mountains, swing from high-wire trapezes. In government, not inconsiderable resources have been thrown at developing Performance Indicators, Workload Indicators, Client Service Standards, Performance, Planning & Review mechanisms and Portfolio Planning Statements. In truth, many public servants complain of the cannibalising tendencies of this degree of accountability as it eats into the time, skill and resources which could be more properly utilised to serve the citizen’s actual needs.

Current human resource management practice now stress “teamwork” and “flexibility”. Academics in management courses now lecture (and hector) students to “take control of their own career” and chide any longings by the heretic who still freakishly believes the corporation owes them a ladder of opportunity. No end of management gurus spend enormous amounts of their clients’ money to tell their client’s workers, that the future of their workplace is uncertain, unpredictable, unlikely to respond to their career aspirations and unwilling to think beyond the short-term. In one law firm the partners Mission Statement reads “You eat

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<sup>19</sup> BHP’s war against the CFMEU is the most contemporary manifestation of the force which enterprises must use in the effort to abolish tenure

<sup>20</sup> In one major national public sector enterprise, the Managing Director circulated a memo in which he said “frankly if you have been here for 7 years, you should be moving on” – anonymous informant, 1998

<sup>21</sup> My personal favourite remains the boss who called a fire drill. When the workers were assembled on the footpath outside their workplace, he opened up the windows on the first floor, announced that he had sold the business, that their services were not required by the new owner then promptly threw all their personal belongings at them from out of the window.

<sup>22</sup> See “Reform under the Goss Labor Government” by Susan Moriarty published in *The Union Voice* in July 1998

<sup>23</sup> The part privatisation of Telstra remains the most profitable one off item, but the Victorian state’s sell off of its electricity industry and other major utilities under the Kennett government remains the most prolific. In all Victoria under Premier Kennett privatised more state bodies than the other 5 states together.

what you kill”.<sup>24</sup> The Mission Statement of the Australian Federal Police is similarly brutal ‘To Fight Crime – and Win’. To the extent that an employee can “walk the talk”, she can aspire to influence, power, status and ever increasing income – but she has a use-by date.

## **Warning Signs – Understanding Behaviours**

But there are costs in valuing and rewarding the autonomous, self-directing, single-minded, free-standing careerists. People at the top and on top hold on to their positions, to their privileges, to its perks, with the certain knowledge that the glory days of feasting out of the public purse or on the private profits will definitely expire – usually without notice and without dignity. The elimination of tenure and the rise of contracts has created a new typology of employee – the tireless self promoter who by default is often also a bully. They have no interest in fostering or preserving collegiate relationships because they are there for the short term and there are no colleagues – only competitors. They job-hop on whim because of its “look good” façade on their all-important CV. The tireless self-promoter is a relentless opportunist: he, or just as likely “she”, always has one eye on the Financial Review – assessing stock options or job opportunities, cruising the “Positions Vacant” pages of prestigious business journalists before the ink is dry on their current contract. Their minds are definitely not on the enterprise. To the extent that they can be personally credited with making it look good, there is a splendid though temporary coincidence of interests. Charmless only to their subordinates in the reporting hierarchy, their own supervisors and managers experience them as agreeable, courteous almost solicitous, delivering results “on time every time” with very little appreciation by executive management supposing they were interested, in the human cost of compliance that the bully is extracting on the shop-floor or in the open-plan several floors below the executive suite.

## **Case Study – The Queensland Public Service**

Human Resource Management in the Queensland public service operates against a punishing matrix of factors, none of which is within its direct control. The matrix consists of declining levels of public finance,

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<sup>24</sup> Anonymous informant, circa 1987

growing citizen demands and a naive adherence to efficiency, productivity and accountability as core values. This matrix guides the development of human resource managerial practice, policy and procedure across the Queensland public sector generally. Under the Public Sector Ethics Act 1996, each of the nineteen portfolios has been required to settle and promulgate a Code of Conduct for their employees. Performance, Planning and Review procedures are tailored now for individual employee specification. There are a plethora of Standards published by the Office of Public Service and Equity and its predecessors, which purport to guide public sector managers in their supervision of the Queensland public servant. There is the Diminished Work Performance Standard, the Disciplinary Standard, the Deployment and Redeployment Directive, the Directive on Managing Organisational Change, and so on. Each agency now has a dedicated Employee Assistance Service to which it may send its troubled or stressed employees for counselling at departmental expense. Superficially, the proliferation of these kinds of human resource management instruments is unremarkable: to the extent that they prevent quirky, capricious, idiosyncratic or sinister management of an employee they are to be applauded. In the same way, we might also view the enactment of ss 85 and 89 of the Queensland Public Service Act 1996. Section 85 empowers managers to direct an employee to under psychiatric assessment in circumstances where they suspect that an employee's absence or poor performance might be related to a psychological disability. Section 89 permits a manager to suspend an officer on full pay in circumstances where the officer may be liable for disciplinary action and it is necessary for the proper administration of the department.

While most of the instruments are used conscientiously and for the purpose for which they were intended, what disturbs me is the increasing number of public servants against whom these instruments have been used rather less benignly. In my own practice, I count eight public servants amongst my clientele, all of whom have sought my assistance on one issue – the application of one or a combination of HR measures which they have experienced as bullying and victimising and profoundly unwarranted.

### **Case Number 1**

“L” is a health professional with over 20 years experience in specialist nursing. At 59, she believes that she is competent to query management decisions in respect of patient care because of her own long-standing experience as an administrator in this field. Her troubles began in 1997 when her position was abolished in a restructure which she believed and said was unnecessary at the time. Just two weeks later she was demoted to a base-grade position by an HR Manager who later confessed to a complete ignorance of the governing Deployment and Redeployment Standard. She brought her entitlements to his attention. He continued to refuse to abide by them. Opportunities to undertake an at-level transfer came and went without notice to her, again in direct contravention of the Standard. Finally, after 12 months of management intransigence she filed a grievance which was substantially upheld on investigation by the Office of the Public Service. Her line manager, one of the officers nominated in the grievance, responded to the Report recommendations by convening, selecting the panellists and participating in my client's Assessment of Suitability for transfer to a vacant at-level position.

At that point she retained me as her lawyer.

My appeal to the Public Sector Equity Commissioner on the grounds that it was indefensible to permit an officer against whom my client had filed a successful grievance to co-ordinate her assessment program was summarily dismissed. It goes without saying the Panel unanimously found my client to be totally unsuitable for transfer to a position level which she had held just 2 and a half years ago and to which she had been promoted on merit. She instructed me to file an Appeal. I instructed her to seek access to her personnel file. She assured me there was nothing on file which was controversial. In her appearance before the Appeal Delegate, my client's line manager produced testimonials from her colleagues in which they purported to record her conversations with them and their views on her personality and professional suitability to undertake the duties of the position in question. The testimonials were personally defamatory. Some were undated; others were unsigned. None were sworn. The Manager disclosed that the statements had been retained by her “in a private file in my office”.

Later, during my investigations, I asked to be provided with a copy of the Departmental Policy on the Retention of Adverse Reports on an Employee's file. The policy stated that material, which contained adverse statements concerning an employee's work, had to be sighted and initialled by the employee before it could be placed on their personnel file. My client had never seen this material before the Appeal hearing. Nevertheless, despite my submissions to the Delegate that their prejudicial value outweighed their probative value; he allowed them to form part of his reasons for dismissing my client's Appeal. Their disclosure to my client exacerbated her psychological distress.

For some time she had been on anti-depressant medication and on medication for insomnia but from my observations of, and conversations with, her over the next few months, her mental resilience declined. Any enjoyment she had in working completely evaporated. She lost spontaneity and spoke falteringly all the time wondering if it was being recorded and reported by and to whom. She is not the first public servant to suffer this phobia. One public servant told me when I attempted to discuss the antics of a high-ranking bully in the Department of Justice "I think our phones are tapped" and discontinued the conversation.

On losing the Appeal she was informed that she no longer owned any position in the enterprise where she had worked for almost a decade; that she was a "supernumerary" in that she could - and was - to work where directed; she was stripped of her keys to the medicine box because she no longer had authority to dispense medications to patients, told to report to an officer who had previously been her subordinate, and to undertake compulsory competency assessment for level one nursing duties. I ask you to note - this is a woman who had been in charge of private sector and church run nursing institutions throughout a twenty-year career. Her humiliation was complete. She refused to undertake the competency assessment and was promptly issued with a written warning that the Disciplinary Standard would be invoked if she continued to defy a lawful direction. She subsequently arranged to undertake the competency assessment at a private nursing home where she knew that it would be conducted fairly and without bias. She passed with flying colours.

Her husband telephoned me one evening to say that he feared she was at breaking point. Three days later, she arrived home one evening to find a letter from the Director advising that a formal investigation had been initiated following complaints by her colleagues concerning her behaviour and conduct in the workplace. She promptly suffered a complete physical collapse and has to this day been unable to return to the workplace. On my advice she filed an Application for Workcover which was initially refused on the basis that the investigating psychologist concluded that "reasonable management action had been taken in a reasonable way". She filed an Application for Review. I commissioned Dr Peter Walsh, a clinical psychologist, to review all relevant material and to provide an independent assessment of the reasonableness of management action (and inaction) in administering her deployment process. In summary, he noted the acts and omissions, which had historically characterised her management and concluded that they were "unreasonable". On the strength of his Report, the Q Comp Reviewer upheld the Appeal and accepted the claim.

## Case Number 2

Case Number 2 is if, it is possible, even more fiendish. Clients “R” and “S” are also health professionals working in a major human services agency of the Queensland government. They are starkly different in physiology, personality, social class, and I suspect, political orientation but this difference in profiling have not stopped them from experiencing the same fate.

Both are dedicated to their careers. Both have been employees of the one enterprise for nearly a decade. Both are the victims of “turf wars”. In “Rs” case, she has experienced ongoing bullying by the departmental head. Located in the Nephrology Department but with reporting relationships to the Social Work Department, her reluctance to report on clinical obligations on which she already reports to the medical Director has led to her de facto impeachment. Her resistance to a restructuring of her reporting relationships, which would have consolidated managerial power at the expense of clinical autonomy, was classified by the Director as insubordination; she was placed on a Performance Management Plan.

When she tried to escape by applying for a position elsewhere, she found the long walk to freedom blocked because the manager in question was a selection panel member for the vacant position. During one meeting she broke down after repeated questioning. She got up to leave and heard one of her colleagues shout exultantly “run, R, run”. Management made no attempt to silence the harassers. She filed a grievance against the Social Work Department head which was duly investigated. They gently chided her manager for continuing her participation in a selection exercise when she knew of the animosity which existed between herself and “R” but, astonishingly, recommended that “R” be directed to undergo psychiatric assessment, pursuant to s 85 of the Public Service Act. Consistent with the departmental policy on natural justice, she was instructed to provide a response within 14 days.

She was distraught. She sought an extension of time and took recreation leave to recover her equilibrium. The District Manager wrote to her approving the extension but suspending her on full pay without any explanation whatsoever.

The case of “S” is almost identical.

In 1998, she successfully applied for a health professional position in a major health institution. She discovered she was in the midst of a turf war between two competing professional streams. When the Director retired, a temporary Director was appointed with a brief to undertake a restructure of the Department. “S” found some of the suggested reforms troubling and voiced her concerns both directly and in writing. Tensions increased between the two professional streams. “S” was counselled under the Diminished Work Performance Standard. In September, 2000, her supervisor who had also voiced objections to the restructure was directed to undergo psychiatric examination, pursuant to s 85 of the Act. The psychiatrist concluded that she was at risk of psychological injury if she was permitted to work in such a stressful position. She was involuntarily transferred out of her position. In December, 2000, “S” was directed to undertake a psychiatric examination. The initiating officer refused to provide “S” with a copy of the referral letter. The psychiatrist found that “S” was not suffering from a psychological illness. She was promptly placed on a Performance Plan. She filed a grievance against her manager. During investigation, the Director to whom her manager reported, advised her that he had initiated a formal investigation against her arising out of an inter-agency complaint in respect of her case management. In his letter to her, he gave her 14 days in which to provide him with a response but immediately suspended her on full pay, pursuant to s 89 of the Act – again without explanation.

### **Case Number 3**

This case involves a central agency employee of 13 years standing. After a change of supervisor, she was informed that her performance was deficient and ordered to change locations. In her new location, she sat in a corner directly opposite the new supervisor who warned her about excessive socialising. He appears to have meant any attempt by her to converse with her colleagues. He would glare at her if she greeted anyone who passed her desk and began to document her arrival and departure times, the amount of time she was spending on personal calls. He directed her to provide a medical certificate for one day's sick leave when the Policy requires that an employee provide such a certificate when leave exceeds 3 days sequentially.

The Director appears to have shared her supervisor's management style. On passing her desk, he noticed a magazine on her desk. He telephoned her supervisor complaining it had been open during working hours. She denied the allegation. On another occasion she was called in to provide an explanation to him personally. As she tried to provide a response, he turned away, saying "get out, get out". She commenced binge drinking and suffered from nightmares and insomnia.

In November, last year, she was called to a meeting. The two officers handed her a document purporting to be her supervisor's assessment of her work performance. It was a job lot of detailed criticism. She broke down and the meeting was temporarily abandoned so she could compose herself. She left work on sick leave and visited her family doctor. She was prescribed anti-depressant medication and referred to a psychologist. She has not been back since. She took the document to a Management Consultant who said, "Get yourself a lawyer – you're being set up". Accompanied by her brother, she returned to her workplace one evening to collect her belongings. She was confronted by a colleague who accused her of stealing. As she tried to leave the building, the colleague was screaming "Security! Security!" When they did not appear in time, she called after "M" "I'll be calling the police". No report to the police was ever made, I discovered.

### **Managing the Issues**

How do you know if your client has a culture of workplace bullying? Your suspicions should be aroused the first time you are retained to defend their interests on an unlawful dismissal application, or they receive a visit from a DETIR inspector; or they are named as second respondent in a sexual harassment complaint filed by that "nice receptionist who left so abruptly". On some occasions, it is up front and personal. One of my client's – the principal of a very successful firm – was contacted at work one Saturday morning by a sobbing staff member who told him that she was resigning because she could no longer contain her fear of her supervisor. On subsequent investigation, he discovered that the firm's dramatic increase in staff turnover coincided with the arrival of a particular staff member. He discovered that the remaining staff were planning their escape. He could barely comprehend that the person who greeted him so cheerily; who he had promoted within months of her arrival at the firm; with whom he had shared a meal because she was such pleasant company was the same person who was ordering staff to "sit" to "shut up" to "talk to each other only when she said they could". During my investigation, I discovered she had been hired "on the spot"; no referee checks were made and yet, when I examined her CV in detail, there were a number of curious discrepancies which should have prompted further checking. For example, the last three bouts of employment had lasted, cumulatively, less than three years – and indeed at two of those enterprises, she had been employed six months and seven months respectively. You should be alert to "short, sharp" periods of employment – there might be an innocent explanation, but then again there may not.

I contacted her referees – only one of four had found her a worthwhile employee; two referees told me her work performance was abysmal and she had been "let go"; one other referee told me she would speak candidly providing I did not ask her to repeat it on oath. This referee said that the employee had absolutely "no insight into how she offended people" – her words – that there were significant inter-personal difficulties between her and the staff and that she had only discovered these when she had retrenched her. She said that

she thought the employee was the kind of person who knew how to “manage upwards” and had enjoyed her company.

Truly alarmed, I contacted one of her employers who was not listed as a referee. When I asked the employer to confirm that she had held the position in question, she said that it was a complete misrepresentation; her actual position was accounting clerk; that she had been demoted following repeated warnings and that everyone had breathed a sigh of relief when she resigned.

What are the key issues which emerge from this experience?

7. Recruit in a professional manner – hiring people on the spot is unsatisfactory and indicates a lack of appreciation for how the existing psychology of your workplace can be damaged by a “trifid in the garden of Eden”.
8. Always have a set list of questions which are asked of all referees – phrase these questions in ways which invite candour and intimacy;
9. Always have a senior member of the enterprise contact the referees – referees are impressed when they realise that their views will be influential and that the prospective employer has cared enough to make the call;
10. Look for “short, sharp” periods of employment – ask “why” and check the explanation with the referees;
11. In your discourse to prospective employees, include a reference to the strong accent the enterprise places on mutual respect and courtesy – and mean it.
12. Look for conservative indications that something is wrong – ask yourself why is that employee taking so much sick leave? Why have there been an unusual number of resignations? Why is an employee evasive about their reasons for resigning?
13. Don’t play favourites! The “favourite” can very easily can abuse their special position by bullying those who are not part of the “inner circle”. Treat all employees with equal respect, courtesy and compassion. No single employee must be allowed to manipulate your special affection for them to the disadvantage of your other employees.
14. Work on the culture. Create a culture which implies that inclusiveness is valued. Do not permit some employees to determine who should receive information. To the greatest extent possible, ensure that all employees receive regular updates on matters important to the firm. Many employees misuse power by justifying information restrictions on the basis of “need to know”. Distribute information by global email so that you minimise the opportunities for some employees to act secretly on unco-operatively.
15. Similarly, ensure you have many avenues of communication and feedback. Do not rely on the “trusted source”. Always use diverse means to check information which indicates you have a “problematic” employee; look for evidence, don’t rely on accusation alone.
16. Have regular staff meetings. If it at all possible, organise a roster so that every staff member has the chance to conduct the meeting. Observe how other staff members treat the staff member in charge of the meeting. Who is sarcastic? Who guffaws when someone’s name is announced? Who indicates by their body language or by their constant interruptions that they disrespect the person in charge of the meeting? Who simply does not turn up?
17. Do not allow your staff to denigrate indigenous people or gays, or women or ethnic communities or people of different religion by cruel jokes or other. Allowing this kind of denigration implies to employees that some people can be treated less fairly than others and can lead them to conclude that they can legitimately denigrate people different from themselves who are their colleagues in the workplace.

18. Treat allegations of unfair treatment seriously. But remain fair. There are serious reasons why people must be asked to modify their behaviour but your clients must approach that task with sensitivity and balance.
19. Do not permit personal invective and do not indulge in it yourself. No shouting, screaming, hurling objects, smashing telephones, hitting computers, hitting employees, swearing, cursing or other loss of control which employees experience as terrifying and destabilising.
20. Do not permit the selective honouring of entitlements. Honour awards, enterprise agreements and let your acknowledgement of the legitimacy of these entitlements be publicly known in the enterprise.
21. If you elect to redesign the internal organization, include all employees in the planning process but make sure it is not kidnapped by the suave, the articulate and the engaging. Don't permit employees to advance suggestions for cost-cutting which involve the removal of existing delegations from a nominated colleague; if this is done publicly, it signals that there conflagration between these employees; if it is done privately, when it does make its way back to the hapless employee – and it will – it can be experienced as bullying.
22. Believe that profit and workplace harmony are of equal value – and practice it in real life.

## **The Possibility of Change**

Corporations cannot flourish in an absence of collegiate co-operation. Systematic bullying and harassment completely undermine workplace harmony. The contemporary mechanical emphasis on “teamwork” is an unconscious imperative in circumstances where many enterprises no longer have any historical or internal coherence to generate the natural co-operativeness which arises amongst tenured employees dedicated to permanent routine tasks. In enterprises where teamwork is understood and the natural response of employees who feel valued and secure, there is no need for constant exhortations to work as a team. “Teamwork” becomes a repetitive exhortation to that ever-growing group of workers with little in common, - the contractors, the part-time, the temporary, the casual, the ones who rent office space, or take term placements – who experience little inter-connection or inter-dependency. Mavericks are a danger to an enterprise<sup>25</sup>. In a world of work where each worker must look out for “Number 1”, the question of loyalty to an enterprise appears foolishly sentimental.

In my view, contemporary corporate values are not unchallengeable and unalterable. The studies on work indicate a dramatic increase in self-employment because employees have grown tired of negotiating the politics of structures and want to regain meaningful control over their working lives. The literature on bullying is growing. The cost of profit maximisation is at last being counted in human terms, if not economic terms. It can only advance if there is a widespread understanding that competition must be balanced by co-operation; that efficiency must be balanced by equity; that work is one of two sources of the greatest happiness to most people; the other being family life. Whatever values prevail at work, they should contribute to people's happiness in their work, not unnecessarily detract from it.

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<sup>25</sup> The Australian Taxation Office in a submission to the Legal and Constitutional Affairs Parliamentary Committee argued for the abolition of performance based pay. The Commissioner said that in reality its investigators were no longer sharing information because the basis of reward was individual achievement. Investigators had stopped sharing information for no other reason than to escalate their own chances of securing the highest levels of performance pay and the Commission's other activities were being hampered.

## Attachment 1

In September 1997, the Borbidge government announced two changes of critical significance to Queensland public servants - no more agency "restructurings" without Cabinet approval, and guaranteed job security for permanent officers. Here Susan Moriarty Ministerial adviser turned public servant argues that Labor's failure to understand the human effects of its public sector reform processes substantially contributed to its electoral misfortune in 1995.

I should have known better. I should have been expected to know better. But although I was "chief bag carrier to a man of power" as Canadian public intellectual, John Ralston Saul so cleverly satirised the job of "adviser", the human impact of the government's public sector reform processes never consciously registered as a critical issue throughout my tenure. I believe there are two factors which explain this oversight. Firstly, despite the existence of a powerful monitoring body, the Public Sector Management Commission, the government as a whole remained unconscious of the political impact of public sector reform processes on public servants. Secondly, the very structure of demarcation physically separating ministerial offices from departments rendered public servants' experiences of workplace reform practically invisible.

My own awakening to the human misery wrought by Labor's reform processes was personally unpleasant but it was apocalyptic in predicting Labor's devastating collapse in political support. Just days after taking up my public service position in December 1993, I met with a senior officer whose hostility towards me was initially mystifying. During the course of our meeting she suddenly turned to me and said "You know, I voted for your mob (the Labor party) in 1989 but I won't be voting for them again. I want you to know your party broke me. I am now about to apply for my position for the third times in three years. Last Saturday I stood in my garden hosing the plants and I just broke down and cried and cried" .

She was not alone. Countless numbers of public servants fought hard to retain their jobs as each wave of restructuring washed over the public service. Countless numbers of public servants subsequently refused to vote for "my mob" on election day leaving both sides of politics precariously perched between government and opposition which the election in Mundingburra would finally decide in favour of the Coalition.

What explains so massive a backlash? Over at the Brisbane City Council, its administration and structure were undergoing equally dramatic reforms but there was never an insurrection by workers of the magnitude directed against the Goss government by its workforce.

This absence, I believe is explained by the very different ways in which both administrations pursued public sector reform. Under the Goss labor government, accountability and efficiency were obsessively and single-mindedly pursued to the point of vendetta. Treasury demands for ever-more performance reports fell on public servants like confetti at a wedding. I myself grew weary of it. Mentioning his imminent retirement, one of Queensland's most distinguished public servants said to me "You know, there was a tremendous reservoir of good will towards your party when it came to government. But it has practically evaporated." In an exasperated

tone he continued: "What on earth is the obsession with performance indicators, client service standards, quality assurance and the like? Goss is an intelligent man - why doesn't someone tell him what effect this stuff is having on people? People want to do their jobs - but they can't - accountability is one thing but this is ridiculous. Half the bloody day is spent just filling in forms!"

Things got worse. In early 1995, I attended a departmental meeting in which a hapless public official was attempting to explain to a room full of hostile peers the necessity for compiling yet another statistical report on performance measurements. Looking (and feeling I suspect) very much like Captain Bligh in his last moments as captain of the "Bounty" he tried to reason with the mutineers until the "Fletcher Christian" amongst us finally declared "Look I've got 16 of these report requests on my desk - I can't even get to the "in" tray - Tell me, when do I do my job? I'll cut you a deal - you pick out the five most important of these

reports and I'll do them. But I am not doing all 16 of them - I've got to get my job done." He practically got a standing ovation from the rest of us.

While the freeway through Koala habitat might explain the loss of four seats on Brisbane southside, it has never explained the general voting trend away from Labor on election day. Certainly some political journalists correctly identified "reform fatigue" amongst Queensland public servants as a critical factor in Labor's dramatic loss of support but none have been sufficiently curious over the last two years to explore the compelling questions underlying that defeat. Why did the ideology of economic rationalism provide the basic framework by which Labor "reformed" the public sector? How did it so manifestly underestimate the political impact of this process on public servants? Most importantly, why did it act so decisively to produce

so much unhappiness and misery amongst the very people whose commitment to the ideals of public service largely determines the effectiveness of a government's program of reform?

Make no mistake, the damage was immense. The combined effects of restructuring, downsizing, corporatising, outsourcing, in the sublimating interests of competition, efficiency and accountability have been decidedly of the defoliant kind – literally stripping the state of its three sources of protection - its people, its prestige and its power.

Since 1989, downsizing and the mere threat of downsizing has stripped the public sector of many of its finest officers to the enormous benefit of the private sector. Downsizing strips the state of its capacity to honour its officers' expectations of an orderly career progression. Many of Queensland's finest officers unwillingly bowed to either disillusionment or simple pragmatism or both, taking up offers in private enterprise they told me without any irony "they simply could not refuse" and with each departure the corporate memory declined.

The socially useful aims of cross-subsidisation were eroded as inter-agency, and later, intra-agency competition, was fostered and the pressures of profit-seeking intensified efforts by agencies to jettison their community service obligations. Competition stripped the essential spirit - public service- from an entire range of activity and enterprise - Enterprises were commercialised, activities outsourced and those unfortunate enough to be unresponsive to either treatment were left as backwaters.

Corporatisation set the corporatised entity against the hapless "welfare" entity. Across agencies, the hapless workers who remained (by choice or necessity) were stripped of any feeling of belonging to a unified whole and the ideal of "state" service -the essential esprit de corps of public service aspiration - disintegrated as the state itself broke up into a discrete, marauding band of territorial entities, profit-driven, composed of contractors, consultants, temporaries, casuals, part-timers the "acting" and, finally, the least insecure (but equally nervous) group of all, those who actually

"owned" their public service position.

It looked to me, until September 1997, that what might have constituted a real opportunity for the conservative government to pursue a more thoughtful, humane and intelligent process of reform had been lost as they too set about recreating the public sector as a mirror image of the private-sector.

Nothing else explained their early persistence in continuing to implement reforms designed to restructure public sector enterprise and working life in the monotonous, one-dimensional interests of that unholy trinity - efficiency, productivity and accountability - even ponying up "the usual suspects" favoured by Labor - downsizing, corporatising and outsourcing to achieve the desired (dead-) ends.

However, just three months ago, Premier Borbidge announced that all future agency restructurings would require Cabinet approval and all permanent public servants would enjoy renewed job security. The government has, pragmatically and astutely, signalled that further public sector reforms are not necessarily at odds with its workforce's need for stability and security. These initiatives are a welcome respite from years of needless uncertainty and anxiety, and will certainly reinvigorate a seriously demoralised workforce. But

they are not enough. Nothing less than a fundamental rethink, in which as much attention is dedicated to understanding what workplace reforms are most productive of human happiness as they are of an efficient and enterprising state is the principal task for all governments.

## Attachment 2

Letters to the Editor

Dear Sir

### Back To The Future

Bottom Line editor Brian Williams says that morale is low in Premiers Department. (“Water Torture, George St Style” – August 11) Has he spoken recently to his informants in the other 17 departments lately? They would probably love to speak to him if only they thought their phones weren’t tapped. Yes, indeed, this is the Queensland public service we are talking about not pre-glasnost Russia.

I had such high hopes when Beattie became Premier.

The public service foundered under the Borbidge administration because it lacked any sense of direction.

Under Goss, the public service near suffocated under the weight of his obsession with accountability. Performance Indicator Reports, Workload Indicator reports; Mission Statements, Strategic Planning exercises, Corporate Planning forums, Managing for Outcomes, Client Service Standards, Portfolio Planning Statements, Monthly Reports, Quarterly Reports, Annual Reports, Budget Briefings, Estimate Committee briefings – it is no small wonder that many an enterprising psychologist set up an Employee Assistance Service to meet the flourishing demand amongst exhausted, defeated public servants.

And then there were the restructurings. Many a heart missed a beat or ten on hearing those dreaded words “Your job has been abolished in the restructuring and your name has been placed on the deployment list”.

Someone, somewhere should have learned something about the nature of Goss’s demise in July 1995. But, sadly, no. Workcover is again being inundated with fistfuls of stress claims from harassed and bullied public servants. Needlessly and pointlessly it’s back to the future.

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