

# DEFINING WORKPLACE HARASSMENT: WHO IS THE BULLY?

Diana Ayling  
Senior lecturer in law  
School of accountancy law and finance  
Unitec, Auckland  
dayling@unitec.ac.nz

**Abstract:** This paper provides a brief overview of approaches to development of legal definitions of bullying and harassment in the workplace. The paper discusses the early definitions in Sweden and reviews recent developments in the United Kingdom, the United States of America, Australia and New Zealand. Definitions from the European Commission and the International Labour Organisation are discussed together with the material from the on-line “bullybusting” campaigns. Definitions are analysed with a view to finding the best definition for the modern organisation. The paper includes some suggestions for confronting bullying and harassment in the short and long-term.

**Key words:** harassment, bullying, personal grievance

## INTRODUCTION

“All Human Beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attacks upon his honor and reputation. Everyone has the right to protection of the law against such interference or attacks.”

Articles 1 and 12 Universal Declaration of Human Rights 1948.

At 3 a.m. on 16 March, 2000 Donna McDaniel,<sup>1</sup> a 60 year old divorced administrative assistant at the University of California stood in her front garden. Next to her, leaning on a tree was a sign “UC Davis Burnout”. Donna took a .38 special, raised it to her right temple and ended her life.

Donna had a history of depression and financial problems, and her workplace environment was bullying, stressful and demanding. In the last months of her life Donna’s pleas for help from her employer, the University of California were ignored. Instead the University chose to chase a \$900 overpayment to Donna while she was on stress leave.

Donna’s stress leave resulted from working for hostile supervisors intent on terminating her employment. In her time at the University Donna had become depressed and required leave from work. She considered she was overworked and underpaid. Donna described her manager as having a mean spirited and conflicting style of management.

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<sup>1</sup> Jones, S. (2001). Last Words. *Sacramento News and Review*, Dec 21

On returning to work after six months stress leave, Donna was required to attend a performance evaluation meeting at which she was given six weeks to improve her performance or lose her job. Facing bankruptcy and overwhelmed with pressure and pain Donna became more and more depressed until she ended her life. In doing so she hoped to make a statement to her employer about their destructive and bullying work practices.

Donna is only one person, however her story is one of many. Fortunately few employees take their own lives,<sup>2</sup> but many suffer physically and psychologically from harassment in the workplace. Trauma caused by harassment in the workplace is real and costly<sup>3</sup>. The purpose of this paper is to define and explain the nature of workplace harassment and to review some recent international developments in this area.

## **WHAT IS WORKPLACE HARASSMENT?**

Workplace harassment is a new and developing area of employment law. It is developing in different ways in different jurisdictions. Currently there is active worldwide campaigning to educate employers about workplace harassment and bullying and to legislate against such behaviour. There are two highly successful websites in the United Kingdom and the United States that educate, support and lobby for legal protection for “Targets”<sup>4</sup>. The development of workplace harassment law is not unlike the development in the law of sexual harassment some years ago.

Cast your mind back to the media circus that surrounded the early sexual harassment cases. As the women fought in the Courts for protection and compensation from harassers in the workplace, the media followed with glee. Just as with sexual harassment, the targets of harassing and bullying behaviour are fighting to establish their legal rights to protection from bullying behaviour, and to receive compensation for physical and psychological damage.

In New Zealand we have clear protection from sexual harassment in the workplace<sup>5</sup>. However, we do not have the same legislated protection from bullying and harassment in the workplace. Many workplaces have harassment policies and try to resolve their own conflicts internally. Other organisations without policies find themselves in mediation or before the Employment Relations Authority. Harassment Targets may bring claims under the Employment Relations Act 2000 as personal grievances, under the heading of unjustified disadvantage while still employed or alternatively sue for constructive dismissal after leaving the workplace.<sup>6</sup>

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<sup>2</sup> see *Matheson v. Transmission and Diesals Ltd* (2001) 6 NZELC 98,641 where an employee took his own life following high work stress and the perception of an unsupportive work environment.

<sup>3</sup> Yandrick, Rudy M. (1999) Lurking in the Shadows, *HR Magazine*, Vol 44, Issue 10.

<sup>4</sup> Employees who find themselves in a bullying working environment prefer to be called Targets rather than Victims.

<sup>5</sup> Section 108 Employment Relations Act 2000 and sections 21 and 22 Human Rights Act 1993.

<sup>6</sup> *Ibid.* Section 103.

## **EARLY DEVELOPMENTS IN WORKPLACE HARASSMENT LAW**

Sweden was the first country to legislate against bullying and harassment in the workplace. The Swedish National Board of Occupational Safety and Health regarded bullying and harassment as preventing the wellbeing of employees at work. The Board included harassment as part of “victimisation” in the workplace and defined bullying behaviour as:

“...recurrent, reprehensible or distinctly negative actions which are directed against individual employees in an offensive manner and can result in those employees being placed outside the workplace community”.<sup>7</sup>

It is interesting to note the Swedish definition is not confined to the manager/employee relationship. The definition is wide enough to encompass “mobbing”, where employees group together to intimidate or ostracise another employee. Conflict may arise in any of the vast variety of relationships in the workplace.

Based on research in Sweden,<sup>8</sup> Heinz Leymann, introduced the concept of mobbing (bullying) as a severe form of harassment in organisations. Mobbing is defined as:

“ psychological aggression that often involves a group of "mobbers" rather than a single person. Theoretically, mobbing is an extreme type of social stressor at work. Unlike "normal" social stressors, mobbing is a long-lasting, escalated conflict with frequent harassing actions systematically aimed at a target person.”<sup>9</sup>

The Ordinance of the Swedish National Board of Safety and Health was adopted in September 1993, and contains guidelines to prevent workplace harassment such as the organisation and planning of work, discouragement of victimising practices and procedures for resolving conflict and enacting counter-measures when incidents occur in the workplace. The definition focuses on the workplace community and the employee’s role within that community, both as a recipient of unacceptable behaviour and as participating member of the organisation. The Swedish approach is to clarify unacceptable behaviours, support the Target and to encourage the early resolution of conflict at work.

## **DEVELOPMENTS IN THE UNITED KINGDOM**

In the United Kingdom the Manufacturing Science and Finance Union (MSF) have for some years campaigned against bullying in the workplace. The Union has actively supported the Dignity at Work Bill, which successfully passed through the House of Lords in May of this year. The MSF define bullying as;

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<sup>7</sup> Section 1, Ordinance of the National Board of Occupational Safety and Health, Sweden. *Victimisation at Work*, Adopted 21<sup>st</sup> September 1993, [On-line] Retrieved 23 June 2002:

<http://www.successunlimited.co.uk/action/victwork.htm>

<sup>8</sup> Leymann H. (1996) The Content and development of mobbing at work, *European Journal of Work and Organisational Psychology*, Vol 5.

<sup>9</sup> Zapf, Dieter (1999), Organisational, work group related and personal causes of mobbing/bullying at work. *International Journal of Manpower*, Vol. 20 Issue 1.

“Persistent, offensive, abusive, intimidating, malicious or insulting behaviour, abuse of power or unfair penal sanctions, which make the recipient feel upset, threatened, humiliated or vulnerable, which undermines their self confidence and which may cause them to suffer stress.”<sup>10</sup>

This definition emphasises the effects of bullying on the individual employee, with particular concern for stressors that cause physical or psychological harm to the Target. This focus is natural as the United Kingdom employer is required by law to take reasonable care for the safety of their employees, including a safe place of work, equipment, and safe system of work, which does not inflict an unreasonable workload creating stress for the employee<sup>11</sup>.

However, researcher and writer Tim Field defines workplace harassment from a different perspective. Drawing from studies of organisational culture and industrial psychology<sup>12</sup> the definition analyses the behaviour of the bully in the work environment, concluding that it is;

“... a compulsive need to displace aggression and is achieved by the expression of inadequacy (social, personal, interpersonal, behavioural, professional) by projection of that inadequacy onto others through control and subjugation (criticism, exclusion, isolation etc). Bullying is sustained by abdication of responsibility (denial, counter-accusation, pretence of victim-hood) and perpetuated by a climate of fear, ignorance, indifference, silence, denial, disbelief, deception, evasion of accountability, tolerance and reward (eg promotion) for the bully.”<sup>13</sup>

This definition explains the reasons for bullying behaviour as “personal inadequacies”, and how the bullies’ behaviour manifests itself by criticism, exclusion and isolations. There is a clear acknowledgement within the definition that bullying behaviour requires an environment in which it can establish and thrive. The features of this environment are that of “fear, ignorance (and) indifference” but more concerning are those of management’s “tolerance and reward”. Some managers appear to encourage a culture of bullying and some organisations historically tolerated such behaviours.<sup>14</sup>

The Dignity at Work Bill is another attempt to address the issues of bullying and harassment in the workplace. The Bill moves away from legislating against harassment to introducing a

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<sup>10</sup> Manufacturing Science and Finance Union, 1994

<sup>11</sup> *Hatton v Sutherland* [2002] 2 All ER 1 and *Waters v Commissioner of Police of the Metropolis* [2000] 4 All ER 943.

<sup>12</sup> Field, Tim. (1996). *Bully In sight*. United Kingdom: Success Unlimited; Namie, Gary and Namie, Ruth. (2000). *The Bully At Work: What you can do to stop the hurt and reclaim your dignity on the job*. USA: Source Book Inc.

<sup>13</sup> Field, Tim. (1999). *Definitions of bullying, Those who can, do. Those who can't, bully*. [On-line] Retrieved June 26, 2002: <http://www.sucessunlimited.co.uk/bully/dfns.htm>

<sup>14</sup> Archer, D. (1999). Exploring “bullying” culture in the para-military organisation. *International Journal of Manpower*, Vol. 20 Issue 1; Magnier, Mark (1999, July 24). Japanese firms use bullying to thin their ranks. *Los Angeles Times*. [On-line] Retrieved from <http://www.bullybusters.org/home/twd/bb/bbstudies/japanese>.

new employee right to “dignity at work”. The Bill proposes every employee has the right to dignity at work, and this right is a term of the employment contract.<sup>15</sup>

The responsibility is placed with the employer to ensure the employee does not suffer conduct “which causes him to be alarmed or distressed”.<sup>16</sup> Behaviours specifically excluded are those that are “offensive, abusive, malicious, insulting or intimidating”, unjustified criticism, unjustified punishment, and unreasonable changes to work duties.<sup>17</sup> The Bill includes protection from “victimisation”<sup>18</sup> and discrimination against contract workers.<sup>19</sup>

The Bill provides complaint procedures, remedies, and an employer’s defence.<sup>20</sup> The defence involves the development and reasonable enforcement of a Dignity at Work policy, and the appointment of a competent person to assist with the implementation of the policy.

The Bill had an unopposed third reading in the House of Lords. Earlier a full committee room heard testimony after testimony from Targets, who had travelled at their own expense to support the Bill. Many told stories of the pain and anguish they suffered from bullies and the cost to their personal lives and their family’s lives. The Bill now moves to be considered by the House of Commons, with some early support from the Labour Party.<sup>21</sup> The passage to law will not be an easy one with opponents of the Bill mounting a “scare” campaign to employers.<sup>22</sup>

## GLOBAL DEVELOPMENTS

On a larger scale other international organisations seek to define workplace harassment and bullying as part of their activities to encourage better work practices.

The European Agency for Safety and Health at Work (EASHW), as part of the Commission for the European Communities, acknowledged there is no internationally agreed definition of bullying and published it’s own definition and explanations.<sup>23</sup>

“Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.”<sup>24</sup>

Within this definition:

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<sup>15</sup> Clause 1(1) Dignity at Work Bill as introduced in the House of Lords on 3<sup>rd</sup> December 2001.

<sup>16</sup> Ibid. Clause 1(2).

<sup>17</sup> Ibid. Clauses 1(2)(a)-(d).

<sup>18</sup> Ibid. Clause 2

<sup>19</sup> Ibid Clause 3

<sup>20</sup> Ibid Clauses 4, 5 and 6.

<sup>21</sup> Ball, Chris. (2002. 30 May). Lords pass UK Dignity at Work Bill, as bullied workers tell it as it is. *Amicus News*. [On-line] Retrieved from <http://www.msf.org.uk/cgi-bin/news.htm>

<sup>22</sup> Dignity at Work bill. (2002, Jan 15). *The Times* [On-line] Retrieved from <http://www.newint-archive.co.uk/pages>

<sup>23</sup> *Bullying At Work*, Facts 23, European Agency for Safety and Health at Work.

<sup>24</sup> *Draft Code of Practice for the Prevention of Bullying and Violence in the Workplace*. Worksafe Victoria, 2001.

“Unreasonable behaviour” means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten.

“Behaviour” includes the actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining or threatening.

“Risk to health and safety” includes risk to the mental or physical health of the employee”

As the European Commission works towards a global approach to well-being at work, one of its key objectives is the prevention of social risks including, stress, and harassment.<sup>25</sup>

The definition is crisp and clear. The bullying behaviour must be part of a pattern of behaviour and not a “one-off” incident. The behaviour must be unreasonable, and directed towards employees by any person within the work environment. The definition acknowledges such behaviour creates a health and safety risk. The introduction of the reasonableness test moves away from the MSF definition that focussed on the perception of the Target. While the “feelings” of the Target are important they must be balanced by an “objective” test. Both mental and physical well-being are included as being at risk from harassment and bullying.

The International Labour Organisation grappled with the issues of harassment in the workplace. The 1998 ILO definition lacked the clarity of the EASHW definition above. It focused on the socially unacceptable practices of bullying and harassment and on attempts to undermine the individual. The definition describes bullying and harassment as behaviour that “...constitutes offensive behaviour through vindictive, cruel, malicious or humiliating attempts to undermine an individual or groups of employees....”<sup>26</sup> Once again the emphasis is on the behaviour and the target, but there is no “reasonableness” test or acknowledgement of the effects of such behaviour on the work place.

The world-wide web and new technologies provide tools for ardent campaigners against workplace harassment and bullying to disseminate information, and support Targets through on-line support groups.<sup>27</sup> One of the two strongest of these groups is the Campaign Against Workplace Bullying. The “bully busters” define the phenomenon as,<sup>28</sup>

“repeated, health-endangering mistreatment of a person (the Target) by a cruel perpetrator (the bully).

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<sup>25</sup> *Adapting to change in work and society: a new Community strategy on health and safety at work 2002-2006*. Commission of the European Communities, Brussels, 2002, Mar 11.

<sup>26</sup> International Labour Organisation, *Violence on the Job – a Global Problem*. (1998, 20 July) [On-line] Retrieved 22 November 2001: <http://www.bullybusters.org/home/twd/bb/res/ilo.html>.

<sup>27</sup> See the activities of [www.bullybusters.org](http://www.bullybusters.org) and [workbully-support@yahoo.com](mailto:workbully-support@yahoo.com).

<sup>28</sup> *Campaign Against Workplace Bullying*. [On-line] Retrieved 8 November 2001: <http://www.bullybusters.org/def.html>

Is best understood through the bully's behaviours – acts of commission (hostile verbal, nonverbal communication and interfering actions) and omission (the withholding of resources – time, information, training, support, equipment- that guarantee failure) which are all driven by the bully's need to control the target.”

While this definition is unlikely to become an accepted legal definition it explores the effects of the bullying on the Target and the active/inactive nature of the bullies behaviour. Many of those Targets who seek online support and information become fully aware of the impact of bullying on their lives by reading this definition.<sup>29</sup>

## DEVELOPMENTS IN THE UNITED STATES

In the United States the development of legal rules has been far slower than in some other jurisdictions. The US Equal Employment Opportunity Commission provides guidelines for employers regarding their legal risks and obligations with regard to employment matters. Based on the decisions in *Burlington Industries, Inc. v. Ellerth*<sup>30</sup> and *Faragher v. Boca Raton*,<sup>31</sup> the Commission rewrote the guidelines on discrimination and harassment. The Guidelines state,

“An employer is always liable for harassment by a supervisor on a prohibited basis that culminates in a tangible employment action. No affirmative defense is available in such cases.”<sup>32</sup>

A tangible employment action is a “significant change in employment status” such as termination, demotion or failure to promote, undesirable reassignment, decrease in benefits, and work assignments. This action must be observable and documented in the workplace.

This definition relates only to harassment by a supervisor and relies on the definition of “supervisor” in each particular circumstance. The definition is restrictive in that many of the behaviours discussed above such as “mobbing” and inappropriate comments about work performance would not be covered by this definition.

However the guidelines consider the employer will be liable when the supervisor unlawfully harasses an employee (not being a ‘tangible employment action’), unless the employer can show they have discharged their duties with reasonable care.

Their duties are to prevent the harassment occurring and if it does happen to take prompt and corrective action when it is drawn to their attention. Once the offer of corrective action is

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<sup>29</sup> Many Targets subscribing anonymously to [workbully-support@yahoogroups.com](mailto:workbully-support@yahoogroups.com), stated they refused to acknowledge they were a Target of bullying until they read a full explanation and realised it was happening to them regularly.

<sup>30</sup> 524 U.S. 742,752, 141 L. Ed. 2d 633, 188 S. Ct. 2257 (1998)

<sup>31</sup> 542 U.S. 775, 786, 141 L. Ed. 2d 662, 118 S. Ct. 2275 (1998)

<sup>32</sup> *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, United States Equal Employment Opportunity Commission, 18/6/99 part IV Harassment by Supervisor that Results in a Tangible Employment Action.

made to the Target, the employer had discharged their responsibility even if the Target refuses to accept the corrective action. The Guidelines state:

“When harassment by a supervisor creates an unlawful hostile environment but does not result in a tangible employment action, the employer can raise an affirmative defense to liability of damages, which it must prove by preponderance of the evidence. The defence consists of two necessary elements:

the employer exercised reasonable care to prevent and correct promptly any harassment; and

the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.”<sup>33</sup>

These guidelines will provide the definitive rules for employers in the US for many years to come and indicate that the emphasis in the United States is on the “duty of reasonable care to prevent bullying and harassment”. When such behaviour is drawn to the manager’s attention there is a duty to take reasonable corrective action. However, unlawful harassment remains undefined and the guidelines apply only to those in supervisory roles.

## **THE LAW IN AUSTRALIA**

In the case of *Kelson v. Forward*<sup>34</sup> the Federal Court of Australia considered bullying and harassment in the workplace. The case centred on the validity of an inquiry by the Merit Protection and Review Agency into the work environment at the Australian War Memorial. As part of the inquiry into workplace practices and staff management the investigator ignored the published definition of workplace harassment in the Public Service Commission Guidelines and adopted their own definition.

The definitions are quite different. The investigator defined harassment as:

“any type of behaviour that can be reasonably expected to cause a person to feel threatened, uncomfortable or unable to cope with their work environment.”

The definition was drawn from a combination of dictionary meanings together with reference to the Public Service Guidelines.

The Public Service Guidelines are much more specific removing the element of “feeling” by the Target to the more objective standard. The definition is worthy of full quotation for the careful explanation of behaviours, effects and the relationship between management and harassment.

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<sup>33</sup> Ibid, Part V: Harassment by Supervisor that Does Not Result in a Tangible Employment Action.

<sup>34</sup> (1996) 39 ALD 303, 317.

“Workplace harassment is offensive, belittling or threatening behaviour directed at an individual worker or group of workers. Harassment is often focused on the sex, culture or racial background or disability of an individual or group.

Harassment is behaviour that is unwelcome, unsolicited, usually unreciprocated and usually (but not always) repeated. It makes the workplace or association with work unpleasant, humiliating or intimidating for the individual or group targeted by this behaviour. It can make it difficult for effective work to be done.”

The associated notes explain the application of these principles in the workplace.

“Workplace harassment should not be confused with advice or counselling on work performance or work-related behaviour of an individual or group, which might include critical comments indicating performance deficiencies. Feedback or counselling on work performance differs from harassment, in that feedback or counselling is intended to assist employees to improve their work performance or the standard of their behaviour. Feedback or counselling should always be carried out in a constructive way that is not humiliating or threatening.

The maintenance of courteous workplace behaviour is not intended to impose unnecessary rigidities on individual workplace styles or on workplace and work-related relationships and social activities. Rather, it is a recognition that people with different backgrounds, interests and friendship groups need to get along with each other in the workplace if an organisation is to be effective.

For harassment to occur, there does not have to be an intention to offend or harass. Moreover, harassing behaviour may be of a minor nature. Individual incidents may seem too trivial to warrant attention, or the person subject to harassment may seem unaffected. Where the behaviour continues over a period and it is not addressed, however, such behaviour can undermine the standard of conduct within a work area.”

These guidelines are informative because they address the problem of confusion over the right of managers to manage and provide constructive feedback to employees and that of harassment. The emphasis in the notes is on the creation of a positive work environment that encourages constructive feedback on performance. The definition does not include a “reasonableness test”. The definition applies to everyone in the workplace and is not restricted to managers and supervisors.

Following the publicity surrounding this case and the media interest in harassment in the workplace some Australian States have sought to introduce their own codes. There is no Federal legislation covering workplace harassment. In Victoria the Workcover Authority, under the Occupational Health and Safety Act 1985, has adopted the EASHW definition of workplace harassment. Workcover developed a Proposed Code of Practice for the Prevention of Bullying and Violence in the Workplace in 2001 and called for public comment. Submissions received by Worksafe are currently being considered.

## AND IN NEW ZEALAND.....

The Employment Relations Act 2000 provides protection for those who are discriminated against in employment.<sup>35</sup> The discrimination must be based on one of the prohibited grounds stated in section 105 or involvement in union activities.<sup>36</sup> The prohibited grounds stated in section 105 include ethical beliefs, colour, race sex, disability and political opinion. Sexual harassment and racial harassment are further defined in sections 108 and 109. However, these sections are of little assistance to a Target who is the recipient of harassing behaviour not linked to any of the prohibited grounds. While remaining in their employment they may bring an action under section 103 as a personal grievance and rely on section 103(1)(b):

“that the employee’s employment, or 1 or more conditions of the employee’s employment (including an condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee’s disadvantage by some unjustifiable action by the employer.”

If the Target has left their employment because they find the bullying and harassment intolerable, they may bring a claim against their employer of constructive dismissal. Relying on the established principles of constructive dismissal in *Auckland Electric Powerboard v Auckland Provincial District Local Authorities Officers IUOW Inc.*,<sup>37</sup> the unjustifiable action must go to the heart of the employment relationship and destroy the mutual confidence and trusts that exists between employer and employee.<sup>38</sup>

However, there is no clear definition of harassment in the workplace to provide guidance to mediators and Employment Authority members. Each case is decided on its own merits. There is confusion in the New Zealand workplace as many different organisations operate harassment policies that have vastly different definitions of harassment. This does not assist the Target in seeking redress.

The Employment Relations Authority, recently considered harassment and bullying in the workplace. Ms Varley,<sup>39</sup> who was employed at Technautics brought the action for constructive dismissal. Early in her employment she had a series of incidents with Mr Martinez, her employer, in which he swore in front of her, at her, and it culminated in a incident in which Mr Martinez was “loud, angry and aggressive, swore, kicked out at her computer tower” and ultimately called her a “fucking useless bitch.”

After an attempt to resolve the problem in the office with an apology by Mr Martinez, and a letter of complaint to her employer, the incidents continued and Ms Varley resigned, claiming she was constructively dismissed.

The Employment Authority found:

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<sup>35</sup> Section 104 and section 21-22 Human Rights Act 1993.

<sup>36</sup> Section 107 defines involvement in activities of union for the purposes of S. 104.

<sup>37</sup> [1985] 2 NZLR 372.

<sup>38</sup> *Northern Distribution Workers Union v BP Oil NZ Ltd* [1992] 3 ERNZ 483, at 487.

<sup>39</sup> Unreported judgment Employment Judgments, AA 22/02

“Mr Martinez breached the requirements implied into all employment contracts which precludes conduct (by either party) which deeply impairs or is destructive of the basic confidence or trust which is an essential of the employment relationship.”

The essence of this decision is that the employer was aware of the harassing behaviour. It was drawn to the employers attention at a meeting in early May, followed up by a letter on 14<sup>th</sup> May requesting a meeting to resolve the problem. Mr Martinez did not make himself available for the meeting. The authority found the anger and unacceptable language directed at Ms Varley breached the requirement implied into all employment contracts.

## **STRATEGIES FOR CONFRONTING BULLYING AND HARASSMENT**

There are good reasons for defining workplace harassment and bullying. Definitions give clear guidance to employers and employees as to what is not acceptable behaviour in the workplace. The feelings and emotions of Targets are recognised. Definitions acknowledge the psychological and physical damage to Targets and they can encourage the development of a positive workplace.

Definitions state who is responsible when the workplace is being disrupted by bullying and harassment and clarifies the rights and obligations of the both employees and managers. Clear definitions may impose a test of reasonableness to protect employers from overly sensitive employees.

A good definition is clear and precise, a good example is the EASHW definition.<sup>40</sup> The definition:

- focuses on unacceptable behaviour,
- can apply to a wide group of employees,
- Acknowledges health and safety risks,
- Imposes a test of “reasonableness”
- Explains key terms.

Various writers suggest strategies for dealing with the destructive effects of bullying and harassment in the workplace. Gary and Ruth Namie<sup>41</sup> developed the following strategies for employers who are suddenly informed of bullying and harassment allegations among employees.

1. Separate the Target and the perpetrator. If the business is small this may mean placing one person on paid leave until the matter is resolved.

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<sup>40</sup> See note 23

<sup>41</sup> Namie, Gary and Namie, Ruth. *Short Term Action Plan for Employers to Deal with Bullies/Psychological Violence*, [On-line] Retrieved 22 November 2001 from <http://www.bullybusters.org.home.twd/bb/bbstudies/employeraction.html>

2. Make it clear that bullying and harassment will not be tolerated in the work environment.
3. Investigate the allegations. Ensure an independent and competent person carries out the investigation, and that witnesses feel safe from retaliation.
4. Treat bullying and harassment as a health and safety issue and provide appropriate support to the Target.
5. Do not compel the injured Target to participate in a dispute resolution process. The Target may well need protection from directly facing the perpetrator.
6. Purge, don't promote, the bully. Send a clear message to the workforce that this behaviour is not acceptable.

In the long term, an employer may have a real challenge to change a work environment that has tolerated the bully. Each organisation needs a clear harassment policy detailing unacceptable behaviours and procedures for complaints and investigations. The policy should be developed in consultation with the workforce and supported with education and training programmes. Management needs to take a strong stance to change a bullying culture.

## CONCLUSION

The paper provides an overview of international developments in defining and addressing bullying and harassment issues in the workplace. Clearly the law is developing in different ways in different jurisdictions, and the work the European Commission and the International Labour Organisation are strong influences. The online organisations are providing advice and support for organisations all over the world seeking to raise public awareness of the consequences of bullying and harassment. These organisations provide important support and advice for victims and encourage research and change in the modern workplace.

The definitions of bullying and harassment are varied. Some definitions have weaknesses and I suggest the EASHW definition is the most appropriate to the modern work environment and one that could be adopted in New Zealand. A clear definition will assist organisations to develop and promote their own harassment policies.

Through discussion and education public awareness and tolerance for workplace bullying and harassment will change. The benefits for us all are clear, as no one wants to work in an organisation where employees are abused, belittled, intimidated and threatened. These actions by bullies cause damage to Targets and their families, with many needing treatment for physical illnesses caused by stress. Far more damaging is the psychological damage suffered by Targets. Post-traumatic stress disorders often require long-term treatment and many sufferers are unable to return to the workforce. These are compelling reasons for addressing bullying and harassing in the workplace. Change starts with a clear definition.

## SOME INDICATORS OF BULLYING AND HARASSING BEHAVIOUR.

<b>Manager/Leader</b>	<b>Bully</b>
<b>Attributes</b>	
Leader	Bully, coward

Decisive	Random, impulsive
Consistent	Inconsistent
Truthful	Economical, uses distortion and fabrication
Confident	Insecure, arrogant
Behaviourally mature	Behaviourally immature
Emotionally mature, High EQ (Emotional intelligence)	Emotionally immature, low EQ
Good interpersonal skills	Poor interpersonal skills
Good workplace etiquette	Poor workplace etiquette
Balanced objectivity	Exclusive self or group interest
Assertive	Aggressive
High expectations of colleagues	Low Expectations of colleagues
Focused on the future	Obsessed with the past
Respected	Loathed
High moral code and integrity	Amoral behaviour, no integrity
Honesty	Exhibits hypocrisy and duplicity

<b>Actions</b>	
Accepts responsibility	Abdicates responsibility
Shares credit	Plagiarises and take all the credit
Acknowledges failings	Denies failings, always blames others
Treats all equally, fair	Inconsistent, critical, shows favouritism, has targets
Values others	Constantly devalues others
Includes everyone	Includes and excludes selectively
Leads by example	Dominates and sets a poor example
Cares about colleagues and the organisation	Cares only about self
Respects clients	Is contemptuous of clients
Delegates	Dumps
Motivates	De-motivates, frustrates
Listens, guides and instructs	Tells
Always strives for clarity	Revels in confusion, divides and rules
Allows and trusts colleagues to get on with the job	Constantly interfering, dictating and controlling
Rarely uses disciplinary procedures	Frequently imposes warnings without justification.

<b>Skills</b>	
Has good appreciation of short, medium and long term needs, goals and strategy.	Rigidly short term
Learns from experience and applies knowledge gained to improve business, and communication skills.	Has a learning blindness, cannot apply knowledge gained without being devious and manipulative
Seeks and retains people more knowledgeable and experienced than themselves	Favours weaker employees, recruits henchmen (women)
Gets on well with people at all levels and from all backgrounds	Identifies only with themselves or others like them
Uses influencing skills	Alienates, creates fear and uncertainty
Only addresses genuine performance issues and then focuses on performance and behaviour	Makes false claims about performance, focuses complaint on the person
Shares fairly	Withholds information, resources etc

Adapted from *The Difference Between Bullying and Management*, Tim Field, [On-line]  
Retrieved 26 June 2002: <http://www.successunlimited.co.uk/bully/manage/htm>.