Article 1:

Workplace bullying in a professional environment: Perspectives of legal practitioners

Associate Professor Maryam Omari *
Edith Cowan University
Perth, Western Australia
m.omari@ecu.edu.au

Dr Megan Paull
Murdoch Business School
Murdoch University
Perth, Western Australia
m.paull@murdoch.edu.au

* corresponding author

Abstract

Bullying may not be evenly distributed across industry. Zapf, Einarsen, Hoel and Varita (2003) consider bullying to be more prevalent among white collar workers and service employees. This paper reports the findings of a study of workplace bullying in the legal profession in Australia. Members of the professional association were asked to respond to a survey and to provide stories on their perceptions of the nature, causes and consequences of workplace bullying in the legal environment. The survey was dispatched to all members of the association in Western Australia; 327 completed forms were returned. The fiercely competitive nature of the field, and work practices such as ‘billable hours’ were seen as significant contributors to the environment of workplace bullying. Direct and indirect negative behaviours were reported by the respondents with adverse consequences at the individual and organisational levels.

Introduction

A common theme in most definitions of bullying is the experience of negative behaviours (Rayner & Cooper, 2006) and detrimental effects on the victim. There are also clear indications of an imbalance of power, and the exercise of a wide range of techniques and bullying behaviours. Factors such as, organisational culture, the nature of the work, management/leadership role modelling and diversity tolerance all play a part in the labelling of certain behaviours as workplace bullying (Omari, 2007). While the exact causes of any bullying incident may be difficult to determine, Leymann (cited in Einarsen, 2000) has identified four factors which have been found to promote the behaviour: work design, leadership behaviour, victim vulnerability and workplace moral standards. Consequences may range from reduced engagement, productivity and morale; and increased illness, absenteeism and turnover; through to adverse client and industry perceptions and loss of investor confidence (Sheehan, 2004).

There is consensus in the literature that workplace bullying can be context specific (e.g. Rayner, Hoel & Cooper, 2002). It is therefore necessary to have detailed knowledge of the given environment, prevalent issues and those of concern within a particular sector in order to be able to establish acceptable norms, and therefore identify and address inappropriate conduct in the workplace.
In the wake of a number of tragic events, including suicides, the nature of the working environment for the legal profession in Australia has come under recent scrutiny (Kelk, Luscombe, Medlow & Hickie, 2009; Kendall, 2011). The high-pressure environment is seen to cause feelings of loss of control, leading to lowered performance, adverse impacts on the quality of work life, and in extreme cases, psychological injury. One aspect of this intense environment has been found to be workplace bullying.

In 1999, challenges faced by legal practitioners in the workplace including the organisational culture and the legal environment in general were the subject of a Law Society report (LSWA & WLWA, 1999). Findings of this report pointed to difficulties experienced at the workplace which in turn affected quality of work life issues and influenced exit decisions; especially for female legal practitioners. Management practices and the high-pressure environment were recurring themes.

A New South Wales study (Kelk, Luscombe, Medlow, Hickie, 2009, p. 42) found that: “law students and members of the legal profession exhibit higher levels of psychological distress and depression than do community members of a similar age and sex.” This report highlights the highly competitive nature of the profession, an antecedent of negative workplace behaviours, including workplace bullying, as contributing to mental illness. Clear links have been established between workplace bullying and psychological injury, including Post-Traumatic Stress Disorder (e.g. Coyne et al, 2000; Lewis, 1999; Mikkelsen & Einarsen, 2002; Omari, 2007).

In 2011, the working environment and conditions experienced by legal practitioners continue to be of concern (Blades, 2011; Kendall, 2011b). The Law Society of Western Australia’s review of its strategies for mental health and wellbeing in the profession (Kendall, 2011a), makes a number of recommendations with a view to taking an holistic approach to the problems identified, including workplace bullying. Kendall’s report cites a recent address by the West Australian Chief Justice Wayne Martin in which he “called on the legal profession to move away from billable hour requirements” (p. 11). Billable hours refers to the practice of keeping records to charge clients for time spent on their case in small time intervals with set daily, weekly and monthly targets. This results in legal practitioners having to work very long hours and creates competition and conflict while reducing work-life balance.

There is longstanding recognition of the prevalence of inappropriate workplace behaviours (e.g. workplace bullying) within the legal environment. These are not unique to this environment, however, the competitive and high-pressure nature of the workplace put the profession at further risk. The Courting the Blues (2009) study which collected data from 924 solicitors and 756 barristers in Australia found that the causes of depression in lawyers were related to the nature of the work and industry, namely:

1. **A culture of competitiveness: fear of failure is common.**
2. **Pessimism: legal work often warding off what will go wrong.**
3. **Learned helplessness: lawyers must follow a client’s instructions, even if those instructions contradict the lawyer’s better judgement.**
4. **Disillusionment: many lawyers feel compromised by ethical dilemma in their work.**
5. **Perfectionism: lawyers tend to be perfectionists, which is related to obsession and anxiety, both fertile grounds for depression** (Kendall, 2011b, 9-10).
This paper reports some of the findings of a larger study of the nature, causes and consequences of workplace bullying involving the membership of a professional association for legal practitioners in Australia. Of particular interest were insights into the competitive and high-pressure environment of the legal profession which were seen to place employees at further risk of workplace bullying.

The Study

Two main data collection processes were employed: a survey and a request for participants to relate their stories. The former had already been tested through a pilot study and another much larger project involving 11 government agencies in Western Australia.

The survey was dispatched to the membership of the professional association; 2688 in total. The number of returned surveys (327) and the associated stories (71) provided valuable insight into the negative experiences of the study participants in the legal profession. The survey (Dignity and Respect at Work) was divided into three main sections: the first collected information on the organisational culture (Cameron & Quinn, 1999) and climate (Stringer, 2002); followed by questions as to whether respondents had been bullied in their current place of employment, and if so, through what behaviours and under what circumstances. The final section of the survey collected demographic and occupation related information. The qualitative data was analysed using a thematic approach.

Slightly more females (55.5%) responded than males, with 65% of respondents being aged between 25-44. The majority had English as a first language (93%) and were from private firms (73%). Their full range of experience in the law spanned 0 – 52 years, with a mean of around 10 years post admission experience. Most had been in their current place of employment for almost 5 years with some respondents having worked in the same place for up to 30 years and others being their in their first year.

Results

This study found that legal practitioners from firms with anti-bullying policies reported lower incidents of the behaviour in their workplace. Anti-bullying policies may go some way in preventing the negative behaviours or perpetuating appropriate standards of conduct, however, to ameliorate the behaviour it is also necessary to have an understanding of context specific behaviours, causes and consequences of workplace bullying.

The nature of workplace bullying in the legal profession

Workplace bullying is generally seen as “unwelcome and inappropriate conduct” (Omari, 2007, p. 105). The nature of workplace bullying spans a range of behaviours from those that are direct and intentional through to indirect and inadvertent.

The survey respondents in this study reported a range of behaviours as workplace bullying in their particular work environment (Table 1). These included behaviours which have been associated with workplace bullying such as intimidation and ‘whiteanting’, as well as some which may be more specific to the legal environment such as unrealistic deadlines and pressure to conform. The latter can be seen as by-products of such practices as billable hours.
Table 1 – Behaviours reported as workplace bullying

- Intimidation, insults, verbal abuse and hostility
- Silent treatment, being sidelined and ignored
- Pressure to conform and shifting goal posts
- Unrealistic deadlines and unreasonable demands
- Withholding information and taking credit for the victim’s work
- Abuse of power, threatening with the sack and use of a patronising tone
- Sarcasm, being made fun of and being sworn at
- Dressing down in public and ‘whiteanting’

The quotes below reinforce the proposition that in general competitive environments and workplace cultures can act as breeding grounds for bullying behaviour.

*My supervisor/partner withheld information, gave misleading information, fabricated incidents and took credit when it was not due. It was intentional and systematic.*

*The scenarios range from; giving no work or work in excess of legitimate expectations.*

Examples such as the ones above might be found in any workplace, however, some respondents’ experiences were more specific to the legal environment:

*The whole idea of billable hours results in lawyers ultimately becoming enslaved in an unhealthy work-life balance that is unavoidable. It is my sincere belief that any practitioner in private practice needs to work a 12 hours day in order to bill the required 6.5 – 7 hours per day.*

*I was told in a threatening and aggressive way that I needed to change my personality to suit the firm’s style of marketing and mould, for my apparent level of shyness.*

Some victims believed that many of the bullies who were partners were protected by the organisation. These senior staff were seen as being instrumental to the organisation attaining its goals and remaining competitive. The bully’s relative value to the firm protected them thus reinforcing the negative behaviours. The following quotes demonstrate the self-perpetuating nature of this situation:

*The bully was a senior partner who was known within the firm to be difficult to work with. However, no one makes complaints against the bullying ... because you know that nothing will come of it. Partners who make lots of money for the firm are tolerated and are effectively immune from the firm’s bullying policy.*

*Behaviour which would result in sacking in junior staff is ignored it’s indulged in by senior management and you get labelled as someone to be ‘dealt’ with, they want people who will ’shut up and bill’.*

One respondent provided an interesting perspective on the behaviours of top management and their role in shaping the climate and culture of the organisation:

*I was in a top tier law firm for the first 5 years of my career. In my opinion if you wanted to design a workplace to get the worst out of people, you should start off with a major firm as your base. The ridiculous hours you are expected
to work mean it is just not possible to have a balanced work life. The people that thrive in that environment, and hence become partners and managers of other people, generally have ‘abnormal’ personalities and as a result perpetuate the miserable working environment. I knew it was time to leave when at my annual performance review I was told that the quality of work was excellent, the turnaround time on my work was great and the clients enjoyed dealing with me BUT it had been noted that I left work most nights before 5.30 pm and I “should try and spend a bit more time in the office”.

The causes of workplace bullying in the legal profession

The causes of workplace bullying were reported at the individual and organisational levels. At the individual level the cause factors related to the power, behavioural traits, competence, confidence and resilience. Organisational culture, size and policies and practices, as well as the nature of the profession were also found to create breeding grounds for bullying. One respondent offered the following:

Financial systems in organisations create behavioural issues. Having come from one of the largest law firms in Australia in my view the behaviour was counterproductive. All forms of financial performance were monitored. People became individually focused and lack of trust was high. In a new firm where this doesn’t happen, it is surprisingly refreshing. People enjoy coming to work and it achieves better results because of the commitment to each other. Interestingly, it is more profitable.

This example contrasts a large law firm with an entrenched culture with another where the work environment is positive.

The consequences of workplace bullying in the legal profession

The environment, including organisational culture, contributed to consequences for both individuals and organisations. At the individual level both the work and personal life of the victim were affected, as well as the state of health, attitudes and behaviours. An extreme case was reported: The bullying in my workplace was so severe that I attempted suicide on two occasions and have been chronically depressed for 3 years. Another respondent indicated: I grew ill, developed diabetes, hypertension and stress related ailments.

Aside from personal consequences, individuals also reported the impact on their work:

Table 2 – Consequences of bullying for the individuals’ work

<table>
<thead>
<tr>
<th>Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Go slow attitude</td>
</tr>
<tr>
<td>- Worked harder</td>
</tr>
<tr>
<td>- Inability to perform, paralysed</td>
</tr>
<tr>
<td>- Productivity the same, job enjoyment low</td>
</tr>
<tr>
<td>- Feeling incompetent and inadequate</td>
</tr>
<tr>
<td>- Double and triple checked everything, lost time and productivity</td>
</tr>
</tbody>
</table>

The work consequences related to a range of factors including loss of trust and respect:

Dynamics between teams and individual lawyers are very poor and there is a lack of respect for one another (this is even evident between the partners in
question). This makes for a far less pleasant, more competitive environment for employees as teams actively compete against each other, and do work within another team’s area of specialisation, on a regular basis rather than working together for the benefit of our client. Accordingly little trust exists between those teams. This contributes significantly to employee stress and even seems to have an impact on loyalty to the firms.

and unproductive behaviours resulting from loss of confidence and self efficacy:

Spent time worrying about bullying and so often spent time working longer hours to keep up with his demands.

It caused me to second-guess myself, do work which I should have been able to delegate to non-legal staff (i.e. administrative staff), thereby increasing the cost to the client.

The interactive effect of the impact on individuals and their work contributes to wider consequences for the organisation including loss of reputation and reduced productivity (Table 3).

<table>
<thead>
<tr>
<th>Table 3 – Consequences of bullying for organisations</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Lost money, reports and oversight</td>
</tr>
<tr>
<td>- Reputational damage, losing good people</td>
</tr>
<tr>
<td>- Lack of innovation, low morale and loyalty</td>
</tr>
<tr>
<td>- Culture of narcissistic aggressive bullying</td>
</tr>
<tr>
<td>- Lost billing time/productivity</td>
</tr>
<tr>
<td>- Loss of trust and respect for the organisation</td>
</tr>
<tr>
<td>- Toxic environment</td>
</tr>
</tbody>
</table>

Many respondents were acutely aware of the consequences for the organisation:

The firm is not running as efficiently as it could have been because everyone is chronically depressed. 5 of the 8 lawyers are on antidepressants solely due to the work environment ... both my psychiatrist and psychologist describe the work environment as ‘extremely toxic.’

The firm is plodding along where it could be racing along and has very high staff turnover.

Observations of the negative consequences were seen as not being confined to employees:

We almost lost an important client who observed what was happening.

Further, as one legal practitioner commented, there are consequences for the profession as a whole which will have an impact on attraction and retention:

I also believe that being a lawyer has taught me to be negative and has entrenched this thinking. I am looking to change my career in the near future.

The results provide insights into negative behaviours in the legal profession and indicate that in many cases there is a fine line between workplace bullying and a work environment which includes managerial prerogative; operational efficiency; performance driven cultures and
competitive work practices. Organisational history and context act as backdrops, and set the scene for acceptable or unacceptable behaviours and conduct in any given workplace.

**Discussion**

It is important to recognise that the concept of workplace bullying is highly subjective in nature. Behaviour that may be unwelcome or unwanted by one person, may be seen as benign by another. The context of work and the general environment are also critical. Certain behaviours may be seen as acceptable in one setting (e.g. shouting in the military) but inappropriate in another (e.g. shouting in an office environment). It is therefore essential that anti-bullying measures be context specific.

The legal profession is by its nature commercially based and competitive; conflict is inevitable in such settings. Bagshaw (2004) and Kaukianinen et al. (2001) posit that conflict is an inevitable part of human relationships. Conflict in itself may be used as a competitive tool; functional conflict allows for problem solving and better, more innovative ways of attaining goals. Dysfunctional conflict, however, may result in employees resorting to inappropriate and unacceptable strategies (Matthewman & Foss, 2009). It is well recognised in the literature (e.g. Salin, 2001, Zapf, 1999) that workplace bullying is prevalent in competitive settings. There is strong evidence suggesting that the negative behaviours can be a product of the organisational context and culture. Bing (2002, p. xi) author of *What would Machiavelli do: The ends justify the meaness* in the Acknowledgements page of his book writes:

> I'd like to thank the Business pages of the New York Times, for keeping the abuse of power always in vogue by unfailingly extolling the virtues of gigantic Machiavellian monsters that shape our working environment in every industry on a daily basis.

Role modelling for a nation commences with its politicians and their standards of conduct. For many decades, society has been critical of the public and private behaviours of Australian politicians. Many observers of the phenomenon are of the opinion that popular culture including the advent of reality TV has been detrimental to advances in recognising and addressing workplace bullying. Programs such as: Next Top Model, Idol, Big Brother and Hell’s Kitchen glamorise the abuse and torment of others to obtain entertainment for the masses. Popular drama series such as House and NCIS have lead characters who use physical, verbal and psychological tactics in intimidating their direct reports in order to obtain ‘desired results’.

The organisational context plays a significant role in bullying scenarios. Culture establishes accepted norms of conduct and behaviour; role modelling by organisational leaders perpetuates and reinforces these norms. The legal environment has specific characteristics conducive to workplace bullying. In the legal profession, due to culture of protecting senior staff who deliver income and results for the firm at ‘all costs’, power differentials are perpetuated, removing the ability of others to defend themselves.

Work intensification is also found to relate to workplace bullying, where volume and pace are high, for example, in an environment of billable hours, there is increased work pressure possibly resulting in unacceptable behaviours. Intensification of work can often result in long hours. A common theme in many responses to the survey related to the difficulties associated with long working hours (including late nights and weekend work). Porter (cited in Burke &
McAteer, 2007, p.155) proposes two explanations of the motivation to work long hours: the first one borne of engagement and enjoyment, and the second, not so positive, associated with a requirement for “superhuman standards”. Such pressure can in turn lead to psychological distress, depression and burnout, currently a key concern in the legal profession in Australia (Kelk, Luscombe, Medlow & Hickie, 2009; Kendall, 2011a/b).

It may be overly ambitious to expect the eradication of workplace bullying, as it is a by-product of human interactions and an integral part of the fabric of our making. Further, Keashly and Nowell (2003, p. 348) contend that even when conflict is dissipated, a psychological “residue” may remain, preventing complete resolution of the issue. We can, however, work to significantly reduce the occurrence of the behaviours and related consequences.

Measures to address bullying often include anti-bullying policies and codes of conduct. In this study, the existence of anti-bullying policies were found to have a positive impact on reducing the prevalence of the behaviour. One of the reasons for this may be that rules and procedures are in keeping with the nature of the legal environment.

A policy in itself will not be a panacea for all workplace issues. A more holistic approach is recommended. This includes: raising awareness of employee rights; greater open debate and discussion of the issues; positive leadership styles; the provision of (generic/soft skills) training and support; grievance handling procedures and more open organisational cultures. In the legal profession, efforts to ameliorate bullying should not only draw on the broader understanding of management of bullying in the workplace, but should also identify and address the key characteristics of the professional environment which create and perpetuate the behaviour. It is important for law firms to review their strategies, policies and practices to ensure all staff conduct themselves appropriately. A recurring theme in the findings of this study was the sheer volume of work, and expectations that work would come first with ‘billable hours’ taking precedence over an employees’ personal life. The profession should seek behaviours that preserve the right of employees to dignity and respect at work.

Concluding Comments

Bullying is a complex behaviour with multiple interrelated antecedents and consequences. Effective preventative strategies therefore need a multi-pronged approach involving organisational leaders, managers, policy makers, human resource (HR) practitioners and the involvement of employees at all levels. The particular organisational and professional context should be an important consideration in the development of an integrated strategic approach. There is also a need for congruence between anti-bullying policies and other regulatory mechanisms within organisations. Such policies should provide the framework for implementing anti-bullying strategies.

The legal profession is unique and complex. Competition is strong and fierce between, and within, law firms. The high stakes nature of the environment results in undue stressors and pressure on legal practitioners. The results may manifest themselves in different ways including ill-health and negative behaviours, including workplace bullying. In this context, employing firms have a duty of care to ensure staff are equipped with the necessary skills, knowledge and abilities to improve their resilience and solve workplace problems (including those involving the human element). There is also a requirement to review industry standards and work practices to ensure employee rights are maintained and staff are afforded due dignity and respect at work.
References


Law Society of Western Australia (LSWA) and Women Lawyers of Western Australia (WLWA). (1999). *Report on the retention of legal practitioners* (Final report).


