

Is bullying a societal trait?

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Abstract

Bullying is a major public health issue. The cost to organisations alone is estimated at billions of dollars, the costs to the health services and individuals are unknown. Anti-bullying policies are failing because they commonly assume that the problem lies with individuals, i.e. they ignore the circumstances and the environment in which bullying is carried out. It is argued that bullying can only flourish where socio-political processes give rise to and condone a bullying culture. Such a culture breeds and nurtures bullying to the extent that bullying has now become a management tool to control staff/people. Therefore, bullying is rampant in the public service arena, workplace, schools, and in cyber space. In New Zealand, cyberspace aside, bullying is confused with 'tough' decision making and has become a management tool. For example, CEOs and senior managers employ bullying tactics to manage staff out of work, or engaging in sexual liaisons in the workplace to gain promotion, are not uncommon. A bullying management culture also leads to covert and overt bullying activities by managers, human resources (HR), and lawyers, deliberately inflicting physical and mental harm on an employee. It is plausible that in New Zealand an indifferent Law Society, Trade Unions, and politicians are not only responsible for the increase in bullying but are also part of the problem.

Introduction

In New Zealand bullying in the workplace is common and is a huge problem. New Zealand has the world's second highest rate of bullying (Media, 2008, 2012, 2015a). Resolving a workplace conflict or disagreement between management and staff is perceived as a weakness so management will often resort to making the workplace intolerable for the victims so they are left with no choice but to leave.

The bullying strategy follows a pattern of covert and overt harassment, e.g. staff are isolated, overloaded with work and given unrealistic deadlines, belittled, constantly criticised, and access to career development and promotion blocked. Moreover, achievements and successes are not acknowledged and are credited to someone else, denial of workplace stress and refusal of stress-leave, intimidation, and so on. The bullying pattern includes delaying tactics which sometimes includes a cat and mouse strategy of repeatedly making false and baseless

allegations, arranging disciplinary meetings for trivial non-operational matters with pre-determined outcomes.

The literature on bullying frequently discusses the personal traits of the victims and the adverse and poor health outcomes of bullying by a workmate or a manager (S Shahtahmasebi, 2004). Current anti-bullying policies are based on these conclusions. However, after decades of anti-bullying and anti-harassment policies, the problem is not only present in our society but has become worse and also includes cyber and other forms of bullying. In a case study which was reported in 2004 (S Shahtahmasebi, 2004), it was argued that bullying in the workplace occurs not because there are no anti-bullying policies, but because of a bullying management culture.

This article provides a summary of the dynamics of bullying in the workplace, drawing evidence from ten cases reported in an earlier paper (Said. Shahtahmasebi, 2015).

The common theme in all the cases reported in (Said. Shahtahmasebi, 2015) was non-performance related reasons for targeting a staff member – the cases were typically motivated, highly experienced and productive, and were able to articulate critical opinions.

Patterns of management bullying include deception and evidence tampering. For example, a case was issued with a written warning during a meeting that had been called to address the case's complaints against a manager (Said. Shahtahmasebi, 2015)! In another case where the disciplinary meeting was being audio recorded by the employer and the victim's lawyer, the employer accepted wrong doing and promised to drop all allegations and make an apology. However, some weeks after the meeting the employer terminated the victim's contract. When asked for a transcript of the meeting the employer claimed that the recording device had failed and there was no audio recording, and produced affidavit from the disciplinary panel to support HR's claim. Is this not calculated behaviour? The matter never reached the court because the circumstances dictated that the victim accept a settlement offer.

Anti-bullying policies ignore the important factors that give rise to bullying in the first place, and subsequently prevent a fair resolution, thus making the policies and policy makers part of the problem (e.g. (Media, 2013a; PSA, 2015)). The flipside of the coin is that if anti-bullying policies had effected positive change then bullying should be on the decrease.

Therefore, bullying has its roots in the social culture and in order to effectively address the various components and stakeholders must be identified and included in the process of anti-bullying policy making. This article is an attempt to identify and highlight the various actors and stakeholder to assist with further research in this important aspect of health and social policy development.

1. The employer and working environment.

Most institutions' have governance principles which provide code of conduct and institutional values to prevent harassment in the workplace and to provide a "safe" and "happy" working environment. In contrast, the case studies reported in (S Shahtahmasebi,

2004; Said. Shahtahmasebi, 2015) provide evidence of a breach of institutional governance by senior management and an institutional bullying culture (e.g. sexual favours to gain promotion) that nurtures an atmosphere of fear in the workplace, leading to an 'unsafe', 'sick' and 'unhappy' working environment. Clearly in such a management culture all staff are targeted from the outset to prevent critical expressions by staff.

2. Trade unions and working conditions.

Anecdotal evidence suggests that in New Zealand a staff member's lifestyle means that they have a high level of financial commitment (e.g. large mortgage, outdoor activities, school fees) so they waive their rights and continue to work in a poisonous environment so as not to lose their livelihood and lifestyle. Some staff will find the pressure and damaged reputation too much to handle and leave their employment. While others will seek union support and intervention and then settle for an exit package.

It is important to have the support of the unions to make sure an employer follows due process. But unions are powerless in levelling the playing field and prevent bullying because employers only need to demonstrate that they are operating within union law. For example, a common practice is to manage the victim out by restructuring the victim's job. The process is extremely stressful for the victim and involves some or all of the bullying tactics mentioned above. Union rules support restructuring so long as there is a case for it. The unions are not experienced in challenging the employer on disingenuous motives and are only interested in union rules being followed. Trade unions also appear weak in preventing employer malpractice against staff. The case studies reported by Shahtahmasebi (S Shahtahmasebi, 2004; Said. Shahtahmasebi, 2015) suggest that the employers did not follow due process or natural justice, and were able to vilify their victims. The trade unions failed to bring the employer to account for their actions. In the cases where the unions were involved they neither consulted/engaged the services of the unions' own lawyer, nor provide the victims with financial support to hire their own lawyer.

It is not surprising that trade union membership in New Zealand (and globally) has fallen. In New Zealand trade unions do not have the power they once had and despite their involvement the government continues to change the employment laws in favour of the employer (e.g. see (Media, 2013b)).

As well as institutional governance, there is also a legal provision to protect staff from being bullied out of the workplace which is known as 'constructive dismissal'. So why are more and more employers not prosecuted for constructive dismissal? Perhaps the next two sections can, at least in part, explain this phenomenon.

3. Employment lawyers and the law.

Lawyers representing victims of workplace bullying are often incensed at the way the employers breach their own processes in order to victimise an employee. Naively, the lawyers assume that by lodging a personal grievance, the matter will be resolved. In cases reported in (S Shahtahmasebi, 2004; Said. Shahtahmasebi, 2015), the employers' legal

representatives predictably used manufactured allegations and denied that they had breached due process. When the manufactured evidence was challenged the employers' lawyers withdrew the accusations but replaced them with new allegations. This pattern needlessly prolonged the dispute.

Clearly, the above pattern suggests a strategy designed to inflict maximum impact on the victim. The stress of financial hardship and legal fees, coupled with false allegations, isolation, defamation, etc, can often lead to adverse health and social outcomes such as mental illness, relationship break ups, suicide, and so on. The vast majority of victims leave their jobs without compensation or at best with a basic contractual exit package. Moreover, by the time the case reaches the employment court the majority of those who do take legal action have no funds left to proceed and end up settling out of court.

Legal fees can very quickly debilitate a victim, while the employers have access to unlimited 'public' resources. It is not surprising that the game of cat and mouse is a favourite ploy of employers and their lawyers. But in the game of cat and mouse there is no judge or no referee, which in turn makes a mockery of natural justice, and creates an unfair and uneven playing field.

The evidence from the case studies (S Shahtahmasebi, 2004; Said. Shahtahmasebi, 2015) suggest that, i) wearing the victim down is an accepted defence strategy by lawyers, ii) the strategy is designed to run the victim into the ground mentally, physically and financially, iii) reduces the chances of the case reaching court, iv) so it is plausible to assume that this strategy is planned and recommended to employers by their lawyers. Therefore, lawyers acting for employers have become part of the bullying problem.

4. Law society, politicians, and social justice

Activities that are aimed at prolonging a dispute and which deliberately harm the opposing party are considered unethical and forbidden by the legal fraternity. Yet, current evidence (S Shahtahmasebi, 2004; Said. Shahtahmasebi, 2015) suggests that the strategy of wearing down the victim is an accepted but unacknowledged gold-standard for employers' and their lawyers to deal with disputes. In other words, bullying is not confined within the workplace -victims are further bullied into submission by the system that is designed to protect them, so employers avoid being prosecuted in courts.

Anecdotal evidence suggests that the Law Society of New Zealand does not view such behaviour as cause for complaints/concern or that it is outside of its code of conduct.

However, under both legislation and the common law a bullied employee has legal claims against their employer (New Zealand at Work, 2009). If, as the Law Society claims that engaging in a dangerous cat and mouse game is actually within the code of conduct of the Law Society, then the Law Society is in breach of Health and Safety laws, and therefore is part of the problem.

Conclusions

A thriving bullying culture and our inability to eradicate it is a concerning commentary on our society. Increased incidence of bullying and its adverse health and social outcomes (such as mental illness, suicide, and ill health) are symptomatic of socio-political processes, which will burden and possibly drain health and social resources. In other words, the failure of anti-bullying policies and awareness campaigns to date indicates that bullying is part of the cultural fabric and socio-political processes. Employers practise it, the NZ Law Society condones it, politicians ignore it (and often practise it themselves, e.g. see (Media, 2010, 2015c, 2015d)), trade unions play along, and society ignores it.

Until bullying is addressed as a dynamic process the problem will continue to get worse - bullying is a social process and will involve the whole of society in eradicating it, perhaps by levelling the playing field where victims have a better chance of surviving the ordeal. New legislation in New Zealand has made cyber bullying a criminal act (Media, 2015b), perhaps legislation is also needed to criminalise a bully management culture and the processes that nurture and support it.

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