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## THE HIGH PRICE OF WORKPLACE BULLYING:

### Record penalties imposed following prosecution for workplace bullying

Traditionally, prosecutions for breaches of occupational health and safety (OHS) legislation have primarily been for physical injury caused in the workplace, predominantly in industrial environment. However, there has been a small but significant trend towards prosecution for psychological injury in recent years. Of these, the most significant in terms of consequences for the parties involved and the penalties imposed was a recent decision in Victoria concerning the bullying of a young woman who worked in a café.

The decision was handed down by Magistrate Lauritsen of the Magistrates Court of Victoria on **8 February 2010**. This matter involved a case in which a 19 year old female employee of Café Vamp at Hawthorn in Melbourne, Ms Brodie Panlock, had committed suicide as a consequence of relentless bullying by workmates. This was conduct which was knowingly permitted by her employer.

#### Key facts

Ms Panlock commenced employment as a waitress at Café Vamp in early 2005. She was subsequently subjected to persistent physical and emotional bullying by three workmates at Café Vamp – Nicholas Smallwood (the Manager of the Café), Rhys McAlpine and Gabriel Toomey.

Ms Panlock was bullied by her co-workers six days a week for more than a year. The bullying included: being held down by workmates; having fish oil poured into her bag; being drenched in chocolate sauce; being told repeatedly that she was worthless; having rat poison left in her pay envelope; being spat upon and called names, such as "fat" and "ugly".

Ms Panlock committed suicide in September 2006. A coronial inquest was held into her death in 2008. At this inquest evidence about the bullying of Ms Panlock at her workplace was given by another workmate.

At the conclusion of the coronial inquest the Coroner, Mr Peter White found that Ms Panlock was "emotionally vulnerable" after joining the Café because of low self-esteem, age and inexperience. He noted that Ms Panlock had become "infatuated" with Nicholas



## **PENALTIES IMPOSED BY THE COURT:**

**Employer: \$220,000**

**Director: \$30,000**

**Employees: \$45,000,  
\$30,000 and \$10,000**

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bullying of  
Ms Panlock was in  
the worst category,  
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done to stop it**

## **KEY PRINCIPLES**

- Employees are entitled to come to work and perform their duties free from any form of harassment or bullying.
- Risks to health and safety include not only physical but also psychological injury.
- Employers are obliged to be active in identifying and then eliminating/controlling risks to health and safety at work.

Smallwood and they had had an intermittent intimate relationship for 15 months until her death. He found that Ms Panlock had been treated in an "extremely aggressive and intimidating manner" and that Mr Smallwood and Mr McAlpine had been "relentless in their efforts to demean her". The Coroner concluded that on the night Ms Panlock committed suicide she had felt what she considered to be an "unbearable level of humiliation" as a consequence of an "almost daily routine of inappropriate pressure at work".

The prosecution by Worksafe Victoria was brought against the corporate entity (Map Foundation Pty Ltd), the director of Map Foundation Pty Ltd and three individual employees. Each of the defendants pleaded guilty to the charges brought against them. Magistrate Lauritsen accepted the pleas of guilty and concluded that the pleas indicated remorse on the part of the defendants.

## **Penalties**

Map Foundation Pty Ltd was convicted on two charges of failing to provide and maintain a safe working environment and was fined \$110,000 on each charge.

Marc Da Cruz, the director of Map Foundation Pty Ltd was convicted of two charges and fined \$15,000 for each fine.

Nicholas Smallwood, an employee of Map Foundation Pty Ltd was convicted on a charge of failing to take reasonable care for the health and safety of persons and fined \$45,000.

Rhys McAlpine, an employee of Map Foundation Pty Ltd was convicted on a charge of failing to take reasonable care for the health and safety of persons and fined \$30,000.

Gabriel Toomey, an employee of Map Foundation Pty Ltd was convicted on a charge of failing to take reasonable care for the health and safety of persons and fined \$10,000.

On 9 February 2010 Worksafe Victoria reported that:

*"Magistrate Lauritsen said the working environment at Hawthorn's Café Vamp was poisonous and the persistent bullying of Ms Panlock was in the worst category, yet nothing was done to stop it".*

Further, Worksafe's acting Executive Director Mr Stan Krpan expressed a hope that the case would be a turning point within the community and said that:

*"Employers must set and enforce clear standards for their staff and act when it is identified.*

*"Unlike most other workplace safety issues, this is one that cannot be resolved simply after-the-event. By the time it has been raised with Worksafe, often the damage is done.*

*"Failing to set and maintain standards in this area can destroy employment relationships and irretrievably undermine individuals and the business. As this case shows, the outcome can be disastrous.*

*"Employers and the working community must play its role and adopt a stronger stance against this pervasive behaviour".*



## Comment

This case is essentially a 'textbook' example of many of the common features of bullying cases, (see breakout box outlining risk factors for workplace bullying) including: bullying conduct by one person which spread to others; bullying conduct by a person of influence over the person the subject of the bullying; a person who was vulnerable within the working environment; and, an employer who failed to act. The key lesson of the case is how destructive both bullying and failing to respond effectively to it can be; resulting in the death of a young woman, the irreparable damage to the reputation of the business (leading, reportedly, to it being sold and the owner leaving Victoria) and the infamy of the director and key employees.

While many would question why Ms Panlock would remain in an environment which caused her so much harm, ultimately leading to her death, the very vulnerability which led to her being targeted by her workmates may have been the same reason why she did not have the skills to remove herself from the situation, a reality which was exacerbated by the effects of the conduct towards her. Ultimately, the employer, the manager and the other employees all had very **clear obligations** under OHS legislation to ensure the health, safety and welfare of Ms Panlock and they quite clearly breached those obligations in the most serious manner imaginable.

This decision is significant on a number of levels, including: the fact that OHS prosecutions for workplace bullying are few and far between; it is unusual for employees to be prosecuted for breaches of OHS legislation; and the penalties imposed on each of the defendants was very high. It is a wake-up call for all employers who are reluctant to address the very real risk of bullying in their workplace(s).

With recent research estimating that the cost to the Australian economy of bullying and harassment at work to be close to **\$15 billion** each year, not including certain 'hidden costs' including but not limited to legal action in the form of workers compensation claims, OHS prosecutions, unfair dismissal claims, breach of contract claims and anti-discrimination claims) no individual or organisation can afford to put off addressing the issue any longer.

The challenge for many employers is not only in understanding that bullying is no longer socially acceptable, but also in understanding exactly what it is and isn't, as well as what they can do. It is not a simple matter of having a policy in place but requires a commitment on the part of the employer to ensure a holistic approach to addressing bullying is adopted within the enterprise. How do we know this? Because it is an area we understand well, assisting clients to develop effective risk management strategies that improve their work environment and protect their legal interests.

## RISK FACTORS FOR WORKPLACE BULLYING

In its joint publication with WorkSafe Victoria, *Preventing and Responding to Bullying at Work*, Edition 3, June 2009 (available online at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)), Workcover NSW identifies the following risk factors in relation to bullying in the workplace (at page 8):

- **Organisational change** – in particular, significant technological change; restructuring/downsizing; change in work methods; outsourcing; change in supervisor/manager.
- **Negative leadership styles** – in particular **autocratic leadership** (e.g. strict and directive style, where employees are not involved in decision making and flexibility is not valued) and **laissez-faire leadership** (e.g. inadequate/insufficient supervision).
- **Lack of appropriate workplace systems** – such as the lack of resources, training and role definition, as well as uncertainty about job roles, poor rostering, unreasonable performance measures and time frames.
- **Poor workplace relationships** – such as a high levels of criticism and negative interaction, negative relationships between supervisors and workers, interpersonal conflict, exclusion of some workers.
- **Workforce characteristics** – vulnerable workers, including young workers, new workers, apprentices, injured workers and workers on return to work plans, piece workers, workers in a minority (e.g. because of ethnicity, religion, disability, gender, sexual preference).

## FOR MORE INFORMATION SEE WORKCOVER'S PUBLICATIONS:

*Bullying Risk Indicator* and *Employer Checklist*, both of which are available online at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)



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