THE PREVALENCE AND CONSEQUENCES
OF WORKPLACE BULLYING IN SOUTH AFRICA

by

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PROMOTER:
DR P C WAGENER
CONCEPT DECLARATION

I Markus Albertus Momberg declare that the “Study into the Prevalence and Consequences of Workplace bullying in South Africa” is my own work. All the resources I used for this study are cited and referred to in the reference list by means of a comprehensive referencing system.

I declare that the content of this thesis has never before been used for any qualification at any tertiary institute.

Markus A Momberg

January 2010
SUMMARY

A study is made of the ever-growing worldwide social pandemic of workplace bullying. We define workplace bullying in terms of its characteristics and distinguish it from unfair discrimination in the form of harassment.

A survey is presented of its occurrence worldwide and how it manifests as an organisational conflict, both as hierarchical and horizontal abuse. This is analysed in terms of a social science perspective.

We consider grievance reporting as an indication of trends in workplace bullying and discuss the limitations of such reporting. We review the consequent effects of such limitations on the health of workers and workplace efficiency and note the shortcomings of existing labour law in dealing with this inadequacy.

Our findings are summarised, with recommendations for resolving this conflict situation.

Keywords: Workplace bullying, workplace harassment, unfair labour discrimination, workplace efficiency.
PREFACE

Workplace bullying is an ever-growing worldwide social pandemic, which demands the attention of all who are serious about establishing and maintaining a workplace where the intrinsic dignity and value of persons are respected and upheld.

The World Health Organization (WHO) conducted worldwide research into the economic cost of violence in the workplace. It found that 78% of the South African labour force had been bullied at one time or another. It described this state of affairs as ‘abnormally severe’.

Given that workplace bullying is an emerging, ever-increasing labour phenomenon within South Africa, there is a need for current research on the topic. It is recommended that a full scale study on the prevalence of workplace bullying be conducted within South Africa, using the Revised Negative Acts Questionnaire (NAQ-R questionnaire).

This study found that, although various internal and external recourse mechanisms are available to victims of workplace bullying within South Africa, most of these mechanisms have serious shortcomings, when it comes to dealing with instances of workplace bullying. The use of organisational codes of conduct as a means of recourse, and management of instances of workplace bullying, is recommended.

The study concludes with the proposal to write a *Code Of Good Practice In Dealing With Workplace Bullying* in terms of Section 54 of the EEA of 1998. The main aims of such a code would be, amongst other things, to provide clear, ethical and legally correct guidelines in respect of dealing with instances of workplace bullying.
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- Colonel JP Thiele, Section Head: Human Resource Management, SAPS: SCM and my dear friend Superintendent (retired) Onus Malherbe, who persistently motivated me to complete my studies.

I'm forever indebted to you all.

DEDICATION

This work is dedicated to every South African, who has ever been bullied in the workplace. May this research be the foundation on which a new workplace is built, where the intrinsic dignity and value of every person is respected and upheld.
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Chapter 1: WORKPLACE BULLYING IN A LABOUR CONTEXT

Summary: This chapter delineates workplace bullying in a broad labour context and establishes the research problem. It considers the limitations and underlying assumptions, research methodology and relevant definitions. It differentiates between ‘harassment’ and ‘workplace bullying’ and proposes a definition for ‘workplace bullying’. We consider various forms of workplace bullying, which have been identified by a variety of other international authors.

1.1 Introduction

Having worked in the South African labour relations environment for more than ten years, at least once a week an employee would sit across from this author in distress. The employee has become the victim of a workplace bully and is now looking to the Labour Relations Officer to provide him or her with a way of dealing with this problem.

Although South African labour law\(^1\) is regarded as liberal in comparison to that of other countries, it is to a large extent cumbersome to manage workplace bullies within the South African labour environment. Employers often fail to take immediate and appropriate action when reports of bullying are made to them.

Heads of Department may manage a workplace competently, but in many cases, line managers themselves are the bullies. This creates tensions and has a debilitating effect in the workplace.

In terms of existing labour law, employees who fall victim to workplace bullies can use a number of options in dealing with workplace bullying. The most common recourse would be to register a grievance about the bullying, or make use of the counseling

sessions provided by an Employee Assistance Program. This study has shown however, that in most instances employees opt not to utilise the available mechanisms. This study also considers the reasons why employees opt not to use the available mechanisms to deal with workplace bullying. The Employment Equity Act, 1998 (EEA), provides additional recourse, yet few complaints ever make it to court. The reason for this, beckons to be considered.

Occupational diseases such as “Stress” and “Burnout” have exponentially increased in society. Psychologists regard workplace bullying as one of many definitive reasons for the increase of these diseases.

The South African labour environment is arguably regarded as over regulated. The question arises whether a more user-friendly mechanism to deal with workplace bullying should not be contemplated. This treatise, amongst other things, proposes the concept of a Code of Good Practice in Dealing with Workplace Bullying as part of the Labour Relations Act, 1995 (LRA).

From this study, the consequences of workplace bullying, as well as the failure of internal mechanism to deal with it, underscores the need to establish a user-friendly procedure to deal with the problem.

In studying workplace bullying, it was found that significant research has been done in First World countries. Yet, in comparison, very little research has been done in respect of workplace bullying in Africa. The good news is that African research does not have to reinvent the wheel, but rather to adapt international results to its own labour environment.

1.2 Research Problem

Our research problem is as follows:

- Defining workplace bullying as a practice;
- distinguishing between ‘workplace bullying’ and ‘harassment’, as defined in the EEA;
- highlighting the need for a clear vernacular to be developed and adopted in respect workplace bullying;
providing arguments for the term ‘workplace harassment’ to be replaced by ‘workplace bullying’ as defined by this treatise;

explicating the prevalence and consequences of workplace bullying within the South African labour environment;

explicating a lack of awareness of

- workplace bullying as a prohibited form of unfair discrimination; and
- the recourse mechanisms available to address such conduct.

providing a critique of the existing recourse mechanisms and why these fail to deal with workplace bullying; and

proposing the drafting of a Code of Good Practice in Dealing with Workplace Bullying, as a user-friendly means of managing this form of conduct within the SA labour environment.

1.3 Limitations and underlying assumption

The following limitations were experienced:

- The lack of concise, internationally acceptable vernacular in respect of the workplace bullying phenomenon.
- The lack of awareness that workplace bullying is a specifically prohibited form of unfair discrimination.
- The lack of statistical data in respect of the prevalence and consequences of workplace bullying within South Africa.
- Some participants participating in this study insisted on a promise of anonymity as a result of fear of reprisals.

The assumption underlying this study is that there is a high prevalence of workplace bullying within South Africa, which adversely affects South African employees and workplaces alike.
1.4 Research method

The research methodology comprises a literature and internet study, as well as interviews conducted with topical specialists, in a variety of fields and organisations.

1.5 Definitions

The following definitions are considered:

1.5.1 ‘Harassment’

Harassment of an employee is a form of unfair discrimination as contemplated in section 6(3) of the EEA and is prohibited on any single ground, or a combination of such grounds of unfair discrimination, as listed in section 6(1) of the EEA.

The legislature specifies harassment as a form of specifically prohibited unfair discrimination, although it can be regarded as a ‘practice’ as defined in the EEA.

Grogan argues that the legislature’s specific mentioning of harassment as a form of prohibited discrimination, was done to ensure that an employer will not be able to argue that it is not liable for the conduct of one of its employees, who harasses another employee, and the latter institutes a discrimination action against the employer.²

In seeking to define harassment, Grogan quotes the Shorter Oxford Dictionary, which refers to the derivative origin of the word “harass” as the French verb “harer”, which translates to ‘…set a dog on.’³

Although the word has assumed a much wider English usage, it was initially used to describe minor skirmishes, bullying attacks and constant ambushes by one army against another. Grogan holds that nowadays, it refers to ‘constant molesting or persecution, self-evidently with a bad motive.’⁴

The Compact Oxford English Dictionary of Current English (2008) defines “harass” as follows-

‘[T]o torment (someone) by subjecting them to constant interference or intimidation;

⁴ Grogan, Workplace Law, 2003:151.
to make repeated small-scale attacks on (an enemy) in order to wear down resistance.\textsuperscript{15}

1.5.2 ‘Workplace bullying’

According to Smith, Singer, Höel & Cooper, there is currently no general, accepted definition of the concept workplace bullying.\textsuperscript{6} Nevertheless, there is a general agreement that workplace bullying could be defined as a sub-section of aggressive behaviour, which manifests itself in interpersonal work relationships, between two individuals or between an individual and a group. See Dodge, 1991\textsuperscript{7}; Olweus, 1993\textsuperscript{8}; Smith, 1997\textsuperscript{9}; Barron, 1998\textsuperscript{10}; Zapf & Einarsen, 2001.\textsuperscript{11}

In considering workplace bullying Lyons, Tivey & Ball 1995\textsuperscript{12}; Vartia,1996\textsuperscript{13}; Olweus, 1999a\textsuperscript{14}; McAvoy& Murtague, 2003\textsuperscript{15}; Ege, 2004\textsuperscript{16}; Knudson-Baas, Ronvik & Matthiesen, 2004\textsuperscript{17}; Lynch & Moore, 2004\textsuperscript{18}; Matthiesen & Einarsen, 2004\textsuperscript{19}; Soares,
2004\textsuperscript{20}, Walden & Höel, 2004\textsuperscript{21} in their mainstream definitions also refer to the *character* of workplace bullying as:

- An imbalance and abuse of power;
- the willful, intentional conduct of the bullying;
- the frequency and duration of the behaviour itself;
- inability of the victim to defend him or herself;
- the devastating consequences for the victims; and
- lack of support from the organisation and other employees.

Research in workplace bullying has been conducted in countries such as Sweden, Britain, Italy and Japan. Authors such as Matthiesen and Einarsen have revolutionised the way workplace bullying is perceived, with the *Negative Acts Questionnaire* (NAQ) and *Revised Negative Acts Questionnaire* (NAQ-R) developed as a measuring instrument for workplace bullying in the workplace.\textsuperscript{22}

From the research conducted, it was found that these countries differentiate between ‘workplace bullying’ and ‘harassment’, the single biggest difference being the use of the term *harassment*, referring to sexual harassment.

These countries refer to the systematic, vengeful targeting of one employee by another as ‘workplace bullying’ instead of ‘harassment’, as the first term better defines the problem.

\textsuperscript{19} *About Perpetrators and Targets Of Bullying At Work, Some Personality Differences*, Paper presented at the 4th International Conference on Bullying and Harassment in the Workplace, 28-29 June, Bergen, Norway.

\textsuperscript{20} *Bullying, Post-Traumatic Stress Disorders, And Social Support*, Paper presented at the 4th International Conference on Bullying and Harassment in the Workplace, 28-29 June, Bergen, Norway.

\textsuperscript{21} *A Preliminary Analysis of How Bullying and Harassment Issues Are Filtered through the Constructs of UK Law*, Paper presented at the 4th International Conference on Bullying and Harassment in the Workplace, 28-29 June, Bergen, Norway.

\textsuperscript{22} Matthiesen, 2004.
In considering a definition for workplace bullying, on face value the term appears self-evident. Yet, as shown in this treatise, the phenomenon is more complicated.

The International Labour Organisation defines bullying as-

‘[O]ffensive behaviour through vindictive, cruel, malicious, or humiliating attempts to undermine an individual or group of employees’. 23

In an article entitled ‘Nightmares, Demons and Slaves: Exploring the Painful Metaphors of Workplace Bullying’, Tracy, Lutgen-Sandvik, and Alberts define workplace bullying as

‘[A] combination of strategies, in which many types of hostile communication and behaviour are used’. 24

Although the definition of Tracy et.al. is simplistic, it contains the elements of ‘hostile communication’ and ‘behaviour’ as key elements.

Gary and Ruth Namie of the Workplace Bullying Institute go a step further in defining workplace bullying. They define it as

‘[R]epeated, health-harming mistreatment, verbal abuse, or conduct which is threatening, humiliating, intimidating, or sabotage that interferes with work or some combination of the three’. 25

In considering the elements of the above definition, it is clear that workplace bullying is a complex phenomenon.

Dr Pamela Lutgen-Sandvik of the University of New Mexico expands this definition when she defines workplace bullying as-

‘[P]ersistent verbal and nonverbal aggression at work, that includes personal attacks, social ostracism, and a multitude of other painful messages and hostile interactions.’ 26

Davenport, Distler-Schwartz and Pursell-Elliot expand on the definition of workplace bullying by including the concept of “mobbing” as a separate form of workplace bullying. They argue that mobbing as a form of workplace bullying is also

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24 Project for Wellness and Work-Life, Management Communication Quarterly.
26 ‘Take This Job and . . . : Quitting and Other Forms of Resistance to Workplace Bullying’, Communication Monographs, Volume 73, December 2006, 406-433.
‘[A]n emotional assault. It begins when an individual becomes the target of disrespectful and harmful behaviour. Through innuendo, rumors, and public discrediting, a hostile environment is created in which one individual gathers others to willingly, or unwillingly, participate in continuous, malevolent actions, to force a person out of the workplace’. 27

In order to properly define workplace bullying, one also needs to define the conduct in terms of its characteristics. Topical experts characterise workplace bullying as, amongst other things, being:

- Escalative in nature, as the aggression keeps growing during the process;
- repetitive, in that it occurs frequently;
- long-during, in that the conduct is seldom a once-off occurrence;
- it feeds on a power imbalance, in which the target lacks the power, or resources to successfully defend himself or herself) and
- some form of malicious intent can usually be detected in the conduct.

A simple way to decide whether conduct is in fact workplace bullying, will be to test such conduct against the mentioned characteristics. If any one of these characteristics is present, chances are that the conduct is workplace bullying. In this regard, characteristics can be regarded as key indicators for the presence of workplace bullying. These characteristics further distinguish workplace bullying from one-off incidents of trivial behaviour and other types of job related causes of stress.

1.5.3 **Comparison of ‘workplace bullying’ and ‘workplace harassment’**.

Dr Pamela Lutgin-Sandvik raises concerns in respect of the lack of unifying language to properly identify the phenomenon of workplace bullying.28

She argues that without a properly identified phenomenon, individuals in the workplace will have difficulty relating to, and referring to, their experiences for what it is,

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27 *Mobbing: Emotional Abuse in the American Workplace.*
namely workplace bullying. She raises the question as to how an employee will pursue justice against a bully if the conduct is not identifiable, or no understanding exists in respect of the phenomenon. What does the employee complain about if he is unsure?

South African labour law is facing a similar conundrum. It recognises harassment as a specific form of unfair discrimination under the EEA. It acknowledges the existence of different forms of harassment, such as sexual harassment and workplace harassment, although the latter is not properly defined. Grogan captures it as follows:

‘Harassment in its wider sense may include anything from taunting an employee about some personal characteristic, nagging, unpleasantness or persecuting them with frivolous disciplinary action, provided that it is done on one or other of the grounds mentioned in the Act…. However, harassment does not necessarily involve discrimination.’

Rycroft, in an attempt to define ‘workplace bullying’, adapts the definition of ‘harassment’ as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000 (PEPUDA). He defines workplace bullying as

‘[U]nwanted conduct in the workplace which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences.’

Unlike the term ‘sexual harassment’, which clearly identifies a specific problem and field of harassment, workplace harassment, as contemplated in the EEA and the LRA, is still a fairly new social and legal concept. The need for the development of accurate, topic-specific terms, phrases and language to give clarity to workplace bullying has arisen. In this regard, the use of the internationally accepted term ‘workplace bullying’, instead of ‘workplace harassment’, will create more certainty as to what one is dealing with. Given that the term harassment is generally interpreted (rightly or wrongly) to refer to sexual harassment, using it in connection with workplace bullying creates ambiguity.

29 Section 6(3).
30 Grogan, 151-152.
Workplace harassment and workplace bullying refer to the same organisational conduct, the first term being South African and the latter being the more widely used internationally accepted term. To remove uncertainty amongst role-players in the South African labour environment, it is proposed that a single, internationally acceptable term be used to refer to the phenomenon.

1.6 A proposed definition for workplace bullying.

This author proposes the following definition for ‘workplace bullying’ considering the above:

The willful and premeditated abuse of a power imbalance,

- by an organisation, manager/supervisor, individual employee or a group of employees,
- to maintain, or escalate the continuous maltreatment and infliction of emotional, psychological, and physiological distress on another employee,
- by means of verbal, written and nonverbal communication, aggression, sabotage, public discrediting, innuendo, rumors, the creating of a hostile environment and other malicious actions,
- with the aim to
  (a) intimidate,
  (b) humiliate,
  (c) socially ostracise,
  (d) induce submission by actual or threatened adverse consequences, or
  (e) cause any other detriment to an employee.

In January 1996 Tim Field founded of the United Kingdom’s National Workplace bullying Advice Line.32 At present this advice line holds what it is regarded as the largest

internet resource on workplace bullying and related issues such as stress, trauma, Post Traumatic Stress Disorder and bullying related suicide.

Field holds an honours degree in computing science, but experienced workplace bullying first-hand, to the point of having a stress related breakdown. As a direct result he launched the advice line and in 1996 published a book, which proffered information and advice in respect of dealing with workplace bullying.  

Field provides an exposition of no less than fourteen types of workplace bullying. These include:

- **Client bullying** — an employee, such as a subway attendant or public servant, is bullied by those they serve.
- **Corporate bullying** — where an employer mistreats an employee with impunity, knowing the law is weak and the job market is saturated with unemployed employees.
- **Cyber bullying** — the use of information and communication technologies such as e-mail and faxes to support or further deliberate, repeated, and hostile behaviour by an individual or group.
- **Gang bullying or group bullying** — is a serial bully with colleagues. Gangs can occur anywhere, but flourish in an environment where corporate bullying is accepted. It is often also called *mobbing* and usually involves scapegoating and victimisation.
- **Institutional bullying** — this refers to the culture of workplace bullying which becomes entrenched and accepted as part of the way things get done within the organisation.
- **Legal bullying** — refers to the bringing of a vexatious legal action to control and punish an employee. Field regards this as one of the worst forms of bullying.
- **Organisational bullying** — refers to a combination of pressure bullying and corporate bullying. It occurs when an organisation struggles to adapt to changing markets, reduced income, cuts in budgets, imposed expectations and other extreme pressures.
- **Pair bullying** — this takes place with two people bullying an employee. One of these people is active and verbal and one is present, yet passive.

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33 Field, T., *Bully In Sight: How to Predict, Resist, Challenge and Combat Workplace Bullying*, 1996.

34 www.bullyonline.org.
Pressure bullying — refers to having to perform to unrealistic time scales and/or inadequate resources in order to complete a task.

Regulation bullying — where a serial bully forces their target to comply with rules, regulations, procedures or laws, regardless of their appropriateness, applicability or necessity.

Residual bullying — after the serial bully has left or had been fired, the workplace bullying continues on account of the tolerance which existed for the culture of bullying. It can go on for years.

Secondary bullying — the pressure of having to deal with a serial bully causes the general behaviour of other employees to decline and sink to the lowest level. Subsequently, they will also pressurise and bully employees in turn. In hierarchical structures, the senior manager bullies the middle manager, who in turn bullies the employee to get the job done.

Serial bullying — the source of all dysfunction can be traced to one individual, who picks on employee after employee, destroying them and then moving on to the next target. According to Field, this is probably the most common type of bullying.

Vicarious bullying — two parties are encouraged by the bully to engage in conflict. This is the typical ‘triangulation’, where the aggression gets passed around.

From research conducted, workplace bullying can be broken down into two major types of bullying namely 'horizontal bullying’ or ‘vertical bullying’.

‘Horizontal bullying’ refers to instances where fellow employees bully a target. This type of bullying may include ‘pair bullying’ or even ‘group bullying’ as contemplated by Field.

‘Vertical bullying’ refers to instances where the target is bullied by a manager or supervisor. By implication, ‘vertical bullying’ refers to the hierarchical structure of the organisation within which employees find themselves.
Chapter 2: WORKPLACE BULLYING AROUND THE WORLD

Summary: This chapter provides a worldwide perspective on the social pandemic of workplace bullying and considers the phenomenon in countries such as the United States of America, Britain, Japan, Australia, Canada, the European Union, Finland and South Africa.

2.1 A world wide perspective on a social pandemic

Workplace bullying is an ever-growing international social pandemic, prevalent in large corporations as well as in small businesses. From Beijing to Los Angeles, employees experience unfounded criticism, being blamed without factual justification, discriminatory treatment, being sworn at, social isolation, being shouted at and humiliated. They are the target of practical jokes and excessive monitoring. Regulations are applied stricter to some, while other employees remain unconcerned with their plight.

2.2 Workplace bullying in the United States of America

In 2007 Gary and Ruth Namie conducted the Unites States Workplace Bullying Survey, also known as the WBI-Zogby Survey. The results of the survey were shocking and established workplace bullying as an epidemic in the United States. Amongst others, the following findings were made:

- An estimated 54 million people, representing 37% of American workers have been bullied at work.
- When one includes the witnessing of workplace bullying in the statistical analysis of the data, workplace bullying affects half (49%) of American workers, which constitute 71.5 million workers.
- Current law in the United States ignores workplace bullying if it is same-gender or same-race bullying.

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35 Namie, G. and Namie, R., Unites States Workplace Bullying Survey, Workplace Bullying Institute.
Workplace bullying is four times more prevalent than other forms of illegal forms of ‘harassment’.

American employers can, and do, ignore workplace bullying to a large degree.

In 62% of the cases of workplace bullying, when employers are made aware of the bullying, employers worsen the problem, or fail to take any action, despite losing an estimated 21-28 million workers because of such behaviour.

Most workplace bullies (72%) have been found to be bosses. In this respect, the research confirmed the stereotype is real.

Rank-and-file workers constitute 55% of those who are bullied in the workplace.

Women were found to be the most affected by workplace bullying.

Women are more commonly targeted by bullies (in 57% of cases), especially by other women (71% of cases).

Workplace bullying was identified as a real life public health hazard by the survey. In this respect, 45% of bullied employees indicated that stress affects their health. In addition to this, 33% of the affected employees had been suffering from this condition for more than a year.

Victims of workplace bullying are not "Sue Crazy". Many of the victims fail to complain to the appropriate authorities about their experience. Only 3% of bullied employees file lawsuits against perpetrators. A total of 40% of victims of workplace bullying never take any action.

The vast majority of victims of workplace bullying choose to resign from employment to escape the bullying.

In her doctoral thesis Dr. Judy Fisher-Blando studied the prevalence of workplace bullying in the United States. The study determined that almost 75% of U.S employees surveyed had been affected by workplace bullying, either as a victim or as a witness of such behaviour.

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36 Aggressive Behaviour: Workplace Bullying and Its Effect on Job Satisfaction and Productivity.
2.3 Workplace bullying in Britain

James reports on a survey into the prevalence of workplace bullying within Britain. The statistics reveal that a record number of British workers has been bullied in the last six months of 2009.\(^{37}\)

He reveals that statistics obtained from the trade union *Unison*\(^{38}\) show that more than a third of the 7,000 workers who took part in a survey have experienced bullying over the last half a year. This constitutes more than double the number of recorded incidents as reported in the 1997 survey. The survey shows that rudeness, criticism, excessive work monitoring, intimidation, exclusion and withholding information were some of the top complaints listed by employees in the 2009 survey. Of those surveyed, Eighty (80) percent indicated that the abuse had affected their physical and mental health. A further third of the employees had decided to take time off, or even left their jobs as a result of the bullying.

The survey showed a staggering 13.7 million working days are lost every year as a result of stress and depression in the British workplace. The union further advocates that it makes sound moral and financial sense for a country to look after its workforce. It indicated that the trade union would continue with its calls for the government to revise the current “*Dignity in the Workplace Bill*” to include a formal anti-bullying policy.\(^{39}\)

Although the *Protection from Harassment Act*, 1997 has long been passed in Britain, it is clear that the escalating frequency of workplace bullying has increased the need for formal anti-workplace bullying policies to be adopted by the British Government. In terms of the existing British legislation, despite the intention of the legislature to create a safer working environment for British employees, it has stopped short of formalising any anti-bullying policies as part of *The Protection from Harassment Act*, 1997.

The British legislature was of the view that employers had to take charge of the legislation and enforce it themselves. However, the British legislature failed to take into

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\(^{37}\) ‘Instances of Workplace Bullying Double’, 9 November 2009, at www.inthenews.co.uk.

\(^{38}\) Britain’s largest Public Sector Union and the largest member of the British Trade Union Council (TUC) with an approximate membership of 1, 3 million people.

\(^{39}\) TUC.
account that workplace bullying mostly stems from the employers’ abuse of its position of power. As demonstrated by the survey results, the legislation has not been the effective tool which the British legislature had hoped it would be.

2.4 Workplace bullying in Japan

The Japan Industrial Counselors Association, which can be regarded as an oversight body established by the Japanese Government to oversee, amongst other things, the managing of industry specific issues, conducted research into the prevalence of workplace bullying within its respective industries.

Strong arm tactics rule the day in the Japanese workplace, as 8 out of 10 industrial counselors had to deal with cases of workplace bullying. The reports of bullying involve managers and such factors as power tripping (abuse of power), making the workplace hostile, insulting of employees, or other forms of denigration, harassment due to workplace error, and even sexual harassment.

It was found a prevalence of abusive language or shouting, ostracising and getting an employee in trouble with others, within Japanese workplaces.

The study, however, does not make any suggestions as far as regulating such workplace bullying is concerned. The role the counselors play in bullying situations are further not explained, though it would appear that they are there to assist victims to deal with such complaints.

An article published by the Mainichi Daily News mentions that according to records from the Tokyo Metropolitan Government, “power harassment,” where an employee is bullied by his manager, is now on the rise. It states bullying, pestering and persistent reprimands, amongst other behaviour, has become rampant in the workplace and often floundering companies would use this strategy to drive employees to resign from employment.

The article further records that the Tokyo Metropolitan Government found that one out of every three people who consulted the Labour Standards Bureau in the 2008 financial year, expressed being unduly pressured to resign and complained of emotional problems, which stems from bullying.

In addition, the Tokyo Metropolitan Government has found that those employees citing harassment in the workplace as the cause of their emotional problems exceeded 30% of employees assisted. This statistic was significantly higher, than those who were affected emotionally by such trauma as bankruptcy and other issues. As can be expected, the statistics reflect that the bulk of retrenchments, which stems from the current economic slump, have had significant emotional impact on workers.

The Ministry of Health, Labour and Welfare of Japan indicated that of the consultations made by workers with prefectural labour bureaus in the 2008 financial year, 22,433 cases raised ‘encouragement to resign’, as the issue in contention. Furthermore, 32,242 cases of ‘bullying and harassment’ were recorded by workers. The Ministry indicated that both these figures were the highest it had ever been.

The Tokyo Labour Consultation Center investigated the link between ‘emotional problems’, and ‘forced resignations’. It considered self-reported instances of insomnia, depression, and other symptoms. It was found that of 2207 cases stemming from “forced resignation,” 738 (33.4%) complained of emotional difficulties. Of 1260 cases stemming from harassment from co-workers, 391 (31%) complained of worsening of emotional well being.

In cases concerning retrenchments, 5.9 % complained of negative emotional impact, while the figure was 2.8 % for cases involving company bankruptcies. The highest rate at which emotional trauma was reported was for cases of sexual harassment, in which employees are either transferred to a different position or fired, depending on how they respond to a sexual proposition. This statistic is a staggering 40.2%.

The ILO indicated in a press release that a bullying hotline established by the Tokyo Managers’ Union received more than 1,700 requests for consultation in two short
periods in June and October 1996. The issues raised included sexual harassment, bullying and stress.\[42\]

2.5 **Workplace bullying in Australia**

The Victorian Workcover Authority defines workplace bullying as ‘repeated, unreasonable behaviour directed towards an employee or a group of employees, which creates a risk to health and safety’.\[43\] A recent Morgan Poll found that 46% of Australians have been verbally or physically abused by someone with whom they work.\[44\]

The statistics on the prevention of Australian workplace bullying reflect a worldwide trend and are disturbing. According to the Tasmanian Anti Discrimination Commissioner, workplace bullying and harassment are significant by-products of privatisation, restructuring and downsizing in government, business and industry.\[45\]

Generally, a significant proportion of claims lodged with the Tasmanian Anti Discrimination Commissioner relates to bullying, harassment and employment discrimination. The South Australian Office of the Employee Ombudsman receives over 500 complaints each year on workplace bullying issues, and the figure is increasing.

Dr. Paul McCarthy of the Griffith University has estimated that 350 000 Australians are subjected to long-term bullying in that country; while 2.5 million experience some aspect of bullying over the course of their working lives. Workplace bullying may be costing Australian business up to $3 billion annually.\[46\]

As part of the Australian Council of Trade Unions’ (ACTU) National Health and Safety Campaign entitled *'Being Bossed Around Is Bad For Your Health - The Workplace Is No Place For Bullying'*\[47\], some affiliated unions surveyed workers about bullying.

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\[43\] *Summary of Evaluations on Workplace Bullying and Guidance Note* (2006), Victoria Workcover Authority.


\[45\] www.ohsrep.org.au.


Results from over 3,000 responses received by the ACTU, from a range of unions representing the health, education, finance, manufacturing, clerical and administration, in the public and private sectors, are listed below:

- Almost 70% of respondents report that either a manager or supervisor is the perpetrator of the bullying behaviour, whilst 14% say it is the employer.
- Horizontal bullying, where the bullying is carried out by fellow workers or by clients or customers, represent approximately 30% of bullying incidents.
- Around a third of respondents report pressure of impossible targets and demands to perform tasks for which they have not been adequately trained.
- A total of 44% of respondents say that they are afraid to speak up about bullying behaviour in their workplaces, or about working conditions and health and safety.
- Only 18% of respondents say that something is being done to stop the bullying behaviour within their workplaces.
- Over half the respondents (53%) report an unhappy and oppressive workplace.
- A total of 54% of respondents say that intimidating behaviour such as shouting, ordering and belittling people, happens in their workplaces. Almost a third report abusive language being the order of the day.
- Furthermore, respondents report a range of symptoms as a result of being bullied, including feeling stressed (73%); feeling angry (67%); feeling depressed (59%); sleep difficulties (48%); headaches, and feeling helpless (45%); feeling fearful (29%); and stomach problems (24%).
- Workplace bullying is affecting 60% of respondents’ home and social life, and 44% say that they have taken time off work due to being bullied. Many respondents (39%) have taken sick leave, whilst 8% have used recreation leave and 6% have taken leave without pay. Surprisingly, only 4% of respondents have received workers' compensation as a result of being bullied.
Employers and bosses have threatened 20% of respondents with dismissal, whilst 10% have experienced physically threatening behaviour, and 5% report being physically assaulted at work.

In October 2003 employees residing in the state of Victoria indicated that 14% had experienced bullying at work during the preceding six months. Of those who reported they had been bullied, 71% had been bullied by a manager.

Workcover New South Wales (NSW) estimated that the cost of violence-related injuries in NSW in the financial year 1997/1998 was in excess of $13 million.  

The Victorian Workcover Authority reported that workplace bullying claims in Victoria exceeded $57 million in the financial year 2001/2002.

Workplace bullying is not expressly prohibited by legislation in Australia, as is the case in many other countries. However, this kind of behaviour is unlawful when one considers the broader responsibilities of employers within the Australian workplace.

In all States and Territories legislation exist governing occupational health and safety. As a result, Australian employers have an obligation to provide and maintain, so far as is practicable, a working environment that is safe and without risk to health.

Workplace bullying and occupational violence is also unlawful by virtue of the various anti-discrimination statutes in Australia. Such statutes prohibit discrimination against employees because of a particular attribute (such as their age, race or sex) and also prohibit sexual harassment. Quite commonly, workplace bullying can contravene such anti-discrimination legislation. Despite existing legislation, workplace bullying is widely prevalent within Australia.

2.6 Workplace bullying in Canada

Very little statistics exists in respect of Canadian workplace bullying. However, in the U.S. Workplace Bullying Survey it was found that 37% have been bullied at their place of employment.  

49 Unites States Workplace Bullying Survey, Workplace Bullying Institute.
In addition, 45% of the victims of workplace bullying reported stress levels that adversely affected their health. Sweet’s article entitled "Beating bullying" indicates that 17% of workers who have reported workplace bullying prior to the study experienced workplace bullying in their first year of employment. Furthermore 33% of nurses experienced workplace bullying in their first year of employment.50

One sector in which statistics for workplace bullying can be provided is the Canadian community care sector. Rowell found that workplace bullying is increasing in the health and community care sector specifically, and it was found that such behaviour is four times more prevalent than sexual harassment.51

Nurses in the health care profession have identified workplace bullying as the most devastating form of violence which they experience. Given that nurses account for about 77% of the healthcare workforce in Canada, it is easy to understand that workplace bullying may have been a contributing factor in the current recruitment and retention crisis within the nursing workforce of Canada.

Recent research specifically into the area of "nurse burnout" in Canada suggests that shrinking healthcare resources, reformation of structures and traumatic work environments are causative to the prevalence of workplace bullying within this profession.

Rowe and Sherlock found that nurses whom experiencing a higher rate of burnout, were more likely to abuse other nurses under their supervision and are now seen as a major source of verbal aggression in the workplace. Previously, physicians were found to have been the main bullies within this profession.52

Although very little statistical research is available to quantify the Canadian workplace bullying experience, the health and community care sector can reasonably be regarded as a good barometer of what is happening elsewhere within Canadian workplaces.

2.7 Workplace bullying in the European Union

In a 2004 survey, Lehto, examines the manner in which workplace bullying and harassment issues have been studied in the national surveys of European countries. Every five years, the European Foundation for the Improvement of Working and Living Conditions (the Foundation) conducts a survey into the working conditions in Europe. The survey has been carried out four times: in 1990/91, 1995/96, 2000 (extended to cover the 10 new member states, Bulgaria, Romania and Turkey in 2001/02) and 2005 (31 countries).

Fieldwork for the Foundation's most recent Working Conditions Survey was carried out in 25 EU countries, which include Bulgaria, Croatia, Norway, Switzerland, Romania and Turkey.

The surveys provide an overview of the state of working conditions throughout Europe, and indicate the extent as well as type of changes affecting the workforce and the quality of work. The recurring nature of the survey enables the end-user to perform trends analysis in respect of the working conditions throughout Europe.

The Foundation indicates that survey questionnaires have grown from twenty questions in the first version, to nearly one hundred questions and sub-questions in the 2005 survey. Topics covered in the surveys include, amongst other things, working time, work organisation, pay, work-related health risks and health outcomes, and access to training.

The European surveys on working conditions use the random walk procedure, a method of selecting a random sample in door to door surveys. The respondents (employees and self-employed people) were interviewed face-to-face in their own homes, outside normal working hours, which resulted in respondents feeling freer to answer questions posed to them.

The Violence, Bullying and Harassment in the Workplace survey aimed to define workplace bullying and harassment more clearly and formulate appropriate questions to be raised with employees during the survey. It found it difficult to express

54 Violence, Bullying and Harassment in the Workplace, European Working Conditions Observatory, Document ID: TN0406TR01.
an opinion as to how these forms of behaviour have increased due to raised awareness of the issues. It found that the heightened levels of such behaviour being experienced by employees should be regarded as an indication of what was happening within the respective labour environments.

It also became apparent in the study that physical violence, bullying and sexual harassment are different concepts and cannot be regarded in the same way. This means that measures in the workplace must be tailored to fit each of these behavioural problems.

The issues of violence and harassment in the workplace have gained interest across Europe in recent years. The Foundation and the Member States of the EU have carried out some initial studies in this field.

In the Foundation’s paper *Quality of Work and Employment in Europe: Issues and Challenges*, four aspects have been identified as key dimensions of quality of work and employment:

- career and employment security;
- health and well-being;
- skills development;
- reconciliation of working and non-working life.\(^5\)

The second dimension, health and well being, contains issues which relate closely to the concepts of violence and harassment. The health and well-being of employees are endangered if forms of physical or psychological violence occur within the workplace. The results of different studies show that the consequences of physical violence and mental harassment can be very harmful, both to the victims and to the organisation.

The survey intended to uncover the extent and distribution of the harassment and workplace bullying, rather than the characteristics of the victims or perpetrators.

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Two main reasons were provided for why this was not done. In the first instance, large surveys which will be the main data sources for the survey, cannot be used for analyzing individual characteristics. In this regard, more qualitative research would be required to come to informed findings and recommendations. Secondly, the survey’s aim was to establish more information in respect of societal factors behind these issues, in order to tackle the underlying related problems.

Di Martino, Höel and Cooper collected information from European countries on violence and harassment at the workplace and considered the relevant legislation in each of the respective countries.\textsuperscript{56} Their report has set the scene for additional research into these phenomena in Europe.

The International Labour Organisation (ILO) and the European Commission have also conducted research into these phenomena in Europe with the aim to improve organisational development.

In many member states of the European Union, where the issue of workplace bullying is not a subject of specific attention in national working conditions surveys, other surveys carried out by major organisations or media articles, court cases, etc. indicate growing awareness and public debate on these issues.

On the legal front, work is continuing towards a European directive on violence and harassment at the workplace. The 2001 \textit{European Parliament Resolution on Harassment at the Workplace} the European Parliament urged role-players:

\textit{‘[T]o consider a clarification or extension of the scope of the framework directive on health and safety at work or, alternatively, the drafting of a new framework directive as a legal instrument to combat bullying and as a means of ensuring respect for the worker’s human dignity, privacy and integrity; emphasises in this connection the importance of systematic work on health and safety and of preventive action.’} \textsuperscript{57}

The European Working Conditions Survey enquired about violence and harassment in the 1995/6 and the 2000 surveys, but in different ways. In the 1995/6 survey, only personal experiences were considered, i.e. whether the employees had

\textsuperscript{56} \textit{Preventing Violence and Harassment in the Workplace}, European Foundation for the Improvement of Working and Living Conditions.

\textsuperscript{57} Di Martino et al, 6.
been subjected to violence or harassment over the previous twelve months. The following kinds of behaviour were treated separately: physical violence, intimidation, sexual discrimination, unwanted sexual attention, age discrimination, discrimination linked to nationality, ethnic background/race, disability and sexual discrimination.

Lethu cites the 2000 European Working Condition Survey, which considered the question concerning physical violence at work. The survey differentiated between 'violence from people from your workplace' and 'violence from other people'.

As a result of the changes, comparisons between 1995/6 and 2000 are difficult to formulate. Some of the statistical data retrieved from the survey is reflected in the graphs below:

Figure 2.1  Percentage Awareness Of Physical Violence By Workplace, European Working Conditions Survey, 2000.

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58 Di Martino et al, 6.
Countries, which have large welfare service sectors, especially in health and social care, also report a higher prevalence of physical violence in the workplace. In Finland and Sweden, a particularly large number of women are employed in these sectors. Here, women identify more physical violence at the workplace than in the other countries.

Figure 2.2 Percentage of Intimidation by Industry: Own Experience, European Working Conditions Survey 1996 and 2000.
Figure 2.2 presents the distribution of intimidation by sector. The results are quite similar to those for percentages reflected in respect of physical violence. This indicates that the idea of ‘intimidation’ is very close to that of threatening and is perhaps translated using concepts that are more reminiscent of it than of ‘bullying’.

A similar conclusion can be drawn from the distribution of awareness of intimidation by country as shown in Figure 2.3. The statistical pecking order of the countries is almost the same as for physical violence.

Finland, Sweden and the Netherlands indicated the highest awareness of intimidation in the workplace. From the countries which indicated a high awareness of intimidation in the workplace, it is noteworthy that women have indicated a higher awareness of intimidation. This is generally in line with workplace bullying trends across the globe.

**Figure 2.3  Awareness Of Intimidation At Workplace By Country, European Working Conditions Survey, 2000.**
The European occupations, which are most exposed to the threat of physical violence are nurses (21%), healthcare workers and teachers (26%). By sector, the greatest threat is to be seen in health services (14%), home care and 24-hour care centers for adults (24%), passenger transport (19% of men), finance and retail (about 9%). Incidences of actual violence were found to be low overall, resulting in difficulty to distinguish differences. Nonetheless, the health profession (6% of women), and home care and 24-hour care centers for adults (17% of women) are most likely to experience some form of physical violence.

Figure 2.4  Employees Who Experienced Violence At Work, The Quality Of Work Life Survey, Finland, 2003.

From Figure 2.4 it can be seen that Health Care Workers experience violence at work 52% of the time, followed by Social Care Workers (39%) and Service Workers (25%). The statistics paint a bleak picture of these professions and their exposure to violence.
When 'violence from customers only' is considered, occupational and sector groups are in different positions. Physical violence from colleagues is so rare that it is not worth comparing occupations. The occupational groups most exposed to violence from customers are health care workers (37%), teachers (15%), service workers (12%), drivers/transport workers (9%) and commercial/retail workers (8%). By sector, violence is most typical in health care and social work (26%), public administration (11%), education (11%), and wholesale and retail trade (8%).

2.8 Workplace bullying in Finland

According to Finnish and European studies on conditions at work, workplace bullying is more common in Finland than in other member state of the European Union. One in five Finns report being harassed at work. Women are more likely to be victims than men. Olavi Parvikko of the occupational safety section of the Ministry of Social Affairs and Health says that Finns top European statistics in violence and workplace bullying.59

Parvikko states that Finns fall victim to workplace harassment approximately twice as frequently as the average European. Countries that come after Finland in workplace harassment include Belgium, France, Ireland and the Netherlands.

The problem of workplace bullying is significantly lower in the other Nordic countries. For instance, in Sweden, the figures are just one quarter of that of Finland. Parvikko holds the view that Sweden has managed to improve the situation significantly, but Finland, not at all.

Lehto of Statistics Finland holds the view that the reason why the Swedes experience much lower workplace bullying is because public debate about the subject has been ongoing for quite some time.60

Statistics Finland is working on new Finnish figures in respect of workplace bullying and these are expected to be available around Christmas 2009. Initial data indicate that bullying has further increased in Finland and that women are typically

60 ‘Finland Leads Europe in Workplace Bullying’.
bullied by co-workers, while men tend to be harassed by bosses. The research, although not public yet, reveals that teachers for instance, are often harassed by their pupils. Harassment is seen to be endemic to state and municipal workplaces, where most of the employees of the workforce are women.\(^{61}\)

Professions include health care, social work and teaching. Especially prone to bullying are professions where there is high stress, frequent major changes to workplaces and low job security. Parvikko notes that rules of good behaviour have been drafted at many work places to avoid harassment and bullying. Unfortunately, no decline in bullying has been noted yet.

The European picture of workplace bullying reflects clear similarities with that in other countries such as Canada, especially considering the similarities in the exposure of health care workers to workplace bullying.

**2.9 Workplace bullying in South Africa**

Susan Marais-Steinman first created awareness about workplace bullying in the regional newspaper *The EastRander* in July 1994. She coined the phrase the ‘Corporate Hyena’ as a typology of office bullies in general.

The book "Corporate Hyenas at Work" was published in 1997.\(^{62}\) The Foundation for the Study of Work Trauma held the first International Conference on Workplace Trauma on 8 and 9 November 2000, in Johannesburg. It raised interest from the public and private sectors about the topic.

Currently there is an increasing awareness and concern about workplace bullying in South Africa, yet this country is lacking behind First World countries in conducting research into the phenomenon.

There had been a few research projects prior to 2001, partially devoted to the phenomenon of workplace violence, more specifically, in the health sector. One of these, is the doctoral thesis of Dr Arthur Ngwezi at the University of Pretoria in 1997 entitled ‘Work Stress in a group of black nurses.’\(^{63}\) Although this study is not

\(^{61}\) ‘Finland Leads Europe in Workplace Bullying’.
\(^{62}\) Marais-Steinman, S. and Herman, M., 1997, Corporate Hyenas at Work.
\(^{63}\) Work Stress in a group of black nurses, University of Pretoria.
representative of the health sector population, it illustrates the high levels of stress that could result from workplace violence.

Marais-Steinman holds that it can be accepted that workplace violence is present in all economic sectors. During 1998-1999 an Internet communication survey was conducted by Marais-Steinman. It was found that 78% of respondents reported that they had been victimised at least once during their careers.

The World Health Organisation (WHO) conducted worldwide research in 2004 into the economic cost of violence in the workplace. It found that 78% of the South African labour force had been bullied at one time or another, and described this state of affairs “abnormally severe.” The WHO’s research confirms the South African statistical prevalence findings of Steinman.

In comparison, developed countries fared poorly too, with a country such as Great Britain obtaining a statistic of 53% in respect of violence in the workplace. South Africa, by comparison to Great Britain, had a 25% higher incidence of workplace bullying overall. This fact highlights the severity of the problem within the South African working environment.

The Western Cape Province was singled out in the report as a region which is experiencing serious consequences in respect of the cost of violence in the workplace. In terms of the report, incidents of murder cost the Western Cape Province approximately $300 million or almost R2 billion per year. To understand the immensity of the cost involved to the region, the cost mentioned can be compared to half of the operational cost for running a country such as New Zealand.

In the foreword of the report, former State President Nelson Mandela commented that he has seen a culture of violence establish itself within South Africa, during and after the Apartheid Era.

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South Africa is one of many countries where consciousness of, and research into workplace bullying, is still in its infancy. Marais-Steinman (1998), and Kirsten, Rossouw and Viljoen (2005) are amongst the few researchers who studied workplace bullying in the South Africa labour environment.

Charlotte Pietersen of the Department of Business Management of the University of Limpopo conducted research into the individual experiences of seven informants’ encounters with interpersonal bullying behaviour in the South African labour environment. She considered four general themes:

- A lack of acknowledgment,
- discrimination,
- obstructionism, and
- isolation.

She found that both male and female perpetrators of workplace bullying predominantly used verbal and indirect negative acts to bully their subordinates. Interestingly, she also found that racial tensions contributed to bullying behaviour. While a phenomenological approach shows promise to explore local bullying behaviour, she is of the view that more research is needed to broaden understanding of the phenomenon. Pietersen is also of the view that attention should be given in research to expound bullying through the eyes of both affected bystanders and alleged perpetrators of bullying.

Pietersen applied the phenomenological approach in conducting the research. This approach is based on the methodological style of the authors mentioned. It entails the following steps:

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identification of the phenomenon;

- selection of informants;

- obtaining first person descriptions (protocols);

- transcribing the descriptions; reading the descriptions;

- breaking the descriptions down into natural meaning units (NMUs);

- clustering the NMU’s into themes; and

- explicating the data.

A natural meaning unit or “NMU” is defined by Stones as-

‘[A] statement made by an individual which is self-defining and self-delimitating in the expression of a single, recognizable aspect of the individual's experience...’

Pietersen applied purposive, snowball sampling in the study, since in phenomenological research data-collection interviews usually continue until the informants do not introduce new perspectives. Davey72 and Groenwald73 are amongst those researchers who advocate the use of purposive sampling to enhance the trustworthiness of a phenomenological study. Boyd is of the view that a maximum of ten informants are generally sufficient to reach data saturation.74

Pietersen found that all the informants experienced downward bullying perpetrated by both male and female managers. All the perpetrators used verbal and, or indirect tactics to bully their victims.

Furthermore, Pietersen found that although all the incidents of bullying took place over an extended period of time (9 months to 3 years), the findings seemed to indicate

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72 Rigorous Sex Research: A Phenomenological Perspective, Paper presented at the 1st Association for Qualitative Research, International Conference, Melbourne, Australia.
that bullying is not always a process, as proposed by Bjorqkvist et al. (1992) and Einarsen et al. (1994). The findings did, however, supported Crawford’s theory that people tend to use subtle, ‘civilized’ bullying tactics more readily, rather than the more ‘primitive’, direct forms of bullying.

Currently South Africa is characterised by high levels of violent crimes. South Africa has been referred to as a society, which endorses and accepts violence as an acceptable and legitimate means to resolve problems and achieve goals.

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Chapter 3: WORKPLACE BULLYING AS ORGANISATIONAL CONFLICT

Summary: This chapter considers workplace bullying as a form of organisational conflict from a social sciences perspective and deals with the origins of workplace bullying, a first-hand experience of workplace bullying, how conflict spreads in an organisation and the factors which exacerbate organisational conflict and workplace bullying.

3.1 Introduction

Organisations in the 21st century call for a ‘quick fix’ when it comes to encountering and dealing with organisational conflict. Organisational conflict is often played down to a basic view of a ‘clash of personalities’.

Similarly, workplace bullying is played down to similar simplistic explanations. Yet, workplace bullying may also be the symptom of a larger organisational culture of discrimination and intolerance, which has not been addressed.

In most instances, employers fail to see that workplace bullying is part of organisational conflict. To a degree, it would account for the fact that employers are generally reluctant to take decisive, immediate action where workplace bullying is reported to them. Employers will often hide behind longwinded legal arguments or lengthy management processes when justifying their action or lack thereof. This management strategy can be seen in South African harassment case law.

In dealing with workplace bullying as part of organisational conflict, it would be a mistake to limit the scope of any conflict intervention to dealing with conflicting employees only. A multi-disciplinary approach is the only way to deal effectively with such conflict. For this reason, it is paramount to look at the surrounding and underlying circumstances from which workplace bullying grows.

Understanding how workplace bullying slots into organisational conflict is of importance to empower organisations to deal with it decisively and transparently.

3.2 Defining organisational conflict

It is necessary to establish a definition for organisational conflict. What does it entail? The American Heritage Dictionary of the English Language defines ‘conflict’ as follows:
‘A state of open, often prolonged fighting; a battle or war; a state of disharmony between incompatible or antithetical persons, ideas, or interests; a clash;

Psychology: A psychic struggle, often unconscious, resulting from the opposition or simultaneous functioning of mutually exclusive impulses, desires, or tendencies;

opposition between characters or forces in a work of drama or fiction, especially opposition that motivates or shapes the action of the plot’. ⁷⁷

The American Heritage Dictionary also defines ‘organisation’ as:

‘the act or process of organizing; the state or manner of being organized: a high degree of organisation; something that has been organized or made into an ordered whole; something made up of elements with varied functions that contribute to the whole and to collective functions; an organism; a group of persons organized for a particular purpose; an association: a benevolent organisation; a structure through which individuals cooperate systematically to conduct business; the administrative personnel of such a structure.’ ⁷⁸

In view of the abovementioned definitions this author defines ‘organisational conflict’ to be:

The state of disharmony which exists between opposing personnel, ideas or interests, within a formal structure (organisation) where such persons or parties cooperate systematically to conduct business.

### 3.3 Interrelationship of various conflict types

To understand conflict as an experience, it is essential to contextualize it in terms of the interrelationship between the various types of conflicts. These are: intrapersonal conflict, interpersonal conflict and intergroup conflict.

Bradshaw illustrates the interrelationship of conflict types as illustrated below.

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Since conflict is a multi-dimensional phenomenon, the individual affected by it will often experience conflict, on various fronts simultaneously. To explain the sketch above, one can use the following example: James, an employee with 30 years exemplary service and team leader of a division of a multi-national company, is severely bullied by his new manager. He has just learnt that he will face a disciplinary hearing for not making a target set to him by the new manager. His manager has previously threatened to dismiss poor performers in an open staff meeting.

Given this upsetting news, James is bound to have severe intrapersonal conflict. This conflict in turn will spill over to his interpersonal relationships, for example, to his spouse. What will he tell her had happened? How will she deal with the news? What if he loses his employment at his age?

The conflict James experiences at home will spill over into his workplace. James might react due to the conflict with his wife. He might deal with other employees harshly (intergroup conflict). This conflict will in turn breed new conflict and further harm his mental health (Intrapersonal).

Conflict can thus be regarded as a vicious circle, where each of the conflict types will inadvertently influence and contribute to the other conflict types. To fully understand

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conflict, the interrelatedness of conflict types must constantly be borne in mind. No conflict type can be managed in isolation as a separate entity.

3.4 **Workplace bullying as a form of organisational conflict**

Workplace bullying mostly slots in at the level of interpersonal conflict, where an individual experiences conflict with another single individual. However, as the definition of workplace bullying indicates, some instances of bullying may involve *mobbing*, the practice where a group teams up against an individual or smaller group. Given the theory of interrelatedness of the various conflict types, this form of interpersonal or intergroup conflict will affect all the other types of conflict.

3.5 **Origins of workplace bullying**

To a large extent, workplace bullying stems from the same sources as organisational conflict. These include: interest-based conflict, needs-based conflict, data-based conflict, value-based conflict, structural conflict and relationship conflict. The following are listed as some of the causes for organisational conflict workplace bullying:

3.5.1 **Organisational Change**

Organisational change, for the sake of change, or on account of political motives, often leads to workplace bullying. In this instance, the new “master” of the organisation decides that the “old way” of doing things was wrong and changes it without good reason, or without understanding the consequences of such a change.

An example is, where strategic managers are singled out to perform impossible tasks or reach impossible targets, because the new manager demands it without any justification. As an example, consider how the policing of crime has deteriorated since the South African Police Force became the South African Police Service in 1995. In this respect, politically motivated change to the SAPS has paralysed the organisation to a point where police officers find it difficult to carry out their constitutional mandate to keep citizens safe. Workplace bullying as a result of change is rife within the SAPS to this day.
3.5.2 Personality Clashes

Personality differences can form the basis of intense workplace bullying. When employees join an organisation, they bring with them the sum of what they are, their upbringing, training, skills and experience and employment history. Insecure managers will often seek out vulnerable employees and victimise these employees presumably because they are ‘not as good or competent’ as the managers are. On the other hand, managers will bully employees into submission, when the employees express views, which are contrary to popular belief, or to the manager’s opinion.

3.5.3 Abuse of management prerogative

Employees are often bullied when managers are unfair in the way they administer discipline, or assess the performance of employees. Bullying often comes in the form of unfair workload distribution or inconsistent treatment of staff. These factors result in employees suffering from burnout, stress disorders, sleep disorders, alcoholism, drug abuse, absenteeism and a variety of other domino effects, which severely harms the organisation, its service delivery and reputation.

3.5.4 Lack of accurate information

The single biggest source of workplace bullying, in the view of this author, is the withholding of accurate information by managers.

All decisions made within the running of an organisation, are based on the information at hand. The quality of a decision can therefore only be as good as the information used to reach it. If the information is inaccurate, incomplete and not up to date, the decisions made will be to the detriment of the organisation, its operations and services.

Poor decisions will further be criticised by the employee’s managers. This starts a vicious cycle of workplace bullying.

3.5.5 Poor Communication

Poor communication is another cause of workplace bullying. An organisation might have accurate information, but if the organisation communicates this information poorly, the employee and organisation will suffer as a result of it.
It is critical that organisations communicate effectively and accurately from managerial level to employees and vice versa. Managers will often use “noise or barriers to communication” as a way of distorting information, to the detriment of the bullied employee.

Poor communication often ends in a culture of distrust. Distrust in turn results in selective communication between parties, which further perpetuates the breakdown of communication between parties. Where information does not reach decision makers or policy makers in time, conflict is bound to be the result.

3.6 Goal Setting as source of conflict.

3.6.1 Individual goal setting
Given the diversity, which exists in humans, the goals which we strive towards as individuals will invariably differ. Cowan holds that individuals bring the sum of what they are to the organisation they belong to, thus all their knowledge, skills, experience, good and bad habits and even their working procedures. When

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persons from such diverse backgrounds are thrown together into a single organisation, conflict will emanate from individualistic goals as not everyone’s goals will always align. Employees who do not conform to the aspirations of managers may fall prey to being bullied, for they may be accused of lacking ambition.

3.6.2 Organisational goal setting
What happens when Management sets goals for an organisation but employees do not buy into those goals? Worse still, what happens if those goals set by management are ill-defined and not thought through? In such cases, employees are often bullied by managers and referred to as “non-team players”.

3.6.3 Role Conflicts
Managers often do not realise the boundaries of their powers. It is common for role conflicts to start within organisations where roles are not properly clarified or defined. Emerging or developing organisations are especially prone to this kind of conflict, as organisational structures and responsibilities might still be in the process of being negotiated. In these instances, employees may be bullied by the new manager on account of his newly found status and power.

3.6.4 Unfair resource allocation
Some unfair managers know that there is no better way to bully an employee than by unfair resource allocation. Managers will allot unequal resources to divisions within the organisation; yet expect the same results from all divisions. This leads to competition for resources within the organisation, instead of shifting the focus to core deliverables. When the under-sourced division fails to perform, it creates the opportunity for managers to bully those employees on account of their failure to perform.

3.7 A first-hand experience of workplace bullying
Three basic questions were put to fifteen people within various organisations, holding executive management, middle management and regular employee positions respectively. The following results were found:
Table 3.1  
**Employee Perceptions Of Management, Intensity And Frequency Of Workplace Bullying In South African Organizations.**

<table>
<thead>
<tr>
<th>Employee level (Five employees per level chosen)</th>
<th>Question 1</th>
<th>Question 2</th>
<th>Question 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Is workplace bullying managed effectively in your organisation? Yes or no.</td>
<td>Indicate the intensity level of workplace bullying in your organisation, using a scale of high, medium or low.</td>
<td>Indicate the frequency level of workplace bullying in your organisation using a scale of frequent, not so often, or hardly ever.</td>
</tr>
<tr>
<td>Executive Managers</td>
<td>Yes 0</td>
<td>No 5</td>
<td>HIGH 5</td>
</tr>
<tr>
<td>Middle Managers</td>
<td>Yes 0</td>
<td>No 5</td>
<td>HIGH 3</td>
</tr>
<tr>
<td>Regular Employees</td>
<td>Yes 0</td>
<td>No 5</td>
<td>HIGH 4</td>
</tr>
<tr>
<td>Total</td>
<td>Yes 0</td>
<td>No 15</td>
<td>HIGH 13</td>
</tr>
<tr>
<td>Total as %</td>
<td>Yes 0</td>
<td>100</td>
<td>HIGH 85</td>
</tr>
</tbody>
</table>

The following is noted:

- Hundred percent of employees, within all three levels of the organisations are of the opinion that workplace bullying is not effectively managed in their organisations.
- Workplace bullying’s intensity ranges from medium intensity level (15% of respondents) to 85% of the respondents indicating a high intensity level.
- Workplace bullying is a frequent occurrence with 73,3% of respondents indicating high frequency and 26,7% indicating medium frequency.

The above findings broadly correlate with the experience of most individuals in respect of workplace bullying within the South African labour environment.
Callahan\textsuperscript{82} indicates that managers spend up to 30\% of their time dealing with conflict. To better understand the consequences of workplace bullying, Lynne Eisaguirre reflects that- 

\begin{itemize}
  \item Fortune 500 senior executives spend 20\% of their time in litigation activities.
  \item Typical managers spend up to 30\% of their time dealing with conflict.
  \item The turnover costs for an employee are 75\% - 150\% of their annual salary.
  \item A total of 16\% of employees report conflict with a supervisor as the main reason for leaving their last job.\textsuperscript{83}
\end{itemize}

The serious issues raised by these statistics are self-evident. Having worked in the labour law field personally for an extensive period of time, this author recalls from experience, some first-hand experiences in respect of poorly managed organisational conflict:

\begin{itemize}
  \item Culture of distrust which spreads and poisons the organisation;
  \item Breakdown in communication;
  \item Poor performance and a lack of staff commitment towards projects; management and the organisation;
  \item Large numbers of grievances; and
  \item Large numbers of disciplinary hearings.
\end{itemize}

Given the precarious difficulty in dealing with intrapersonal and interpersonal conflict, most persons have developed some level of distrust in others. This lack of trust in others results in the fact that people, who are often in a position to assist embattled employees in dealing with conflict, are not engaged for assistance in dealing with such

\textsuperscript{82} ‘Does Your Organization Have Enough Conflict?’, International Institute for Learning, Inc.
\textsuperscript{83} http://www.workplacethatwork.com.
conflict. Distrust in a care-giver of an Employee Assistance Program of an organisation, can result in a HIV positive employee not seeking support when the organisation ostracises him, when he declares his HIV status.

According to Cowan, some of the destructive consequences of not seeking help to deal with intrapersonal en interpersonal conflict include:

- Compromised potential and productivity;
- Distress causing distraction from work;
- Inability to assimilate training material due to neuro-mechanisms rendered inoperable by emotional distress;
- Isolation and refusal to accept good intentioned help;
- Over development of vulnerability;
- Performance plummets;
- Self-esteem is eroded;
- Sense of inadequacy develops;
- Serious personal and social consequences.\(^{84}\)

Given these consequences, what is even more alarming is the interrelatedness of the various conflict types and how these would influence the organisation where the individual is employed. If not managed in time, all of the above have the potential to become catalysts for serious organisational conflict or workplace bullying.

### 3.8 How does conflict spread in an organisation?

Cowan explains how conflict is spread within organizations.\(^{85}\) He mentions the following factors in the spreading of organisational conflict, which also apply to the spreading of workplace bullying:

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\(^{84}\) Cowan 1995.

3.8.1 Conflict affects all involved.

Workplace bullying as a type of organisational conflict, often occurs where innocent bystanders are indirectly affected by the interpersonal conflict of others. An organisation’s failure to manage such conflict timeously can result in a relatively innocent conflict, escalating seriously.

3.8.2 The correlation between personal conflict management and organisational conflict management.

Employees who are unable to manage personal conflict effectively, ultimately poison the organisational environment. In cases where an organisation has a large number of these poisonous employees, the organisation will develop a reputation for not being able to deal with conflict.

The spreading of conflict and workplace bullying, as a form of organisational conflict, is best explained as follows:

A long row of dominoes is stacked up on their sides. Each domino represents an employee in the organisation. Workplace bullying can be likened to the pushing over of that first “employee” domino. If management waits too long to intervene (poor management) the first domino will fall over and pull the whole organisation down with it. If the “bullying push” is managed in time, by the organisation or management, that first domino will not fall over and all the dominoes (read the organisation) will stand unaffected.

3.8.3 Conflict produces change as an inevitable consequence.

Conflict, being a dynamic process, always results in some form of change, be it positive or negative. Relationships, personalities, circumstances or procedures change inevitably at the outset of conflict. One school of thought within the management fraternity holds the view that conflict can be harnessed to unleash a significant driving force for change within the organisation. These managers believe conflict motivates employees to find creative ways of solving existing problems.

Osler claims:
Organisations worldwide are inherently conflictual. During any time of transition and uncertainty, organisations are especially subject to stress and — if conflict is managed well — to significant growth. To survive, organisations need long-term strategic planning, involving all their people in charting their future.”

Osler’s remark highlights an issue, which skillful managers have known for some time, namely that effective conflict management, can be a tool to launch a process of change. Such growth and change can benefit the whole organization.

3.9 Factors which exacerbate organisational conflict.

3.9.1 Organisations as a source of status and identity

Since people spend much of their time and energy within organisations, it is clear that a person’s personal status can become associated with his or her position in the organisation. It is not uncommon for persons to be recognised in terms of their rank or status within the organisation.

As rank and status represent the investment, which an individual has made in an organisation, managers will often abuse their influence and authority to bully employees. Employees are forced to do certain things “because the boss says so”. Bosses bully employees in the knowledge that they can get away with this behaviour based on their seniority or position in the organisation.

3.9.2 The hazard of being a “non-team player”

Managers often bully members of an organisation when they are deemed to be “a non-team player”. In most cases, employees are belittled and ridiculed in the presence of fellow colleagues. In such environments, disagreement with the manager is frowned upon by the organisation and its members. This organisational mobbing is destructive and makes managing workplace bullying difficult as mobbing is often an organisationally entrenched culture.

In organisations where a mobbing culture exists, one often find that management of conflict is a superficial process, which deals with surface conflicts only. This kind of environment gives rise to suppression of natural conflict. Many

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86 ‘Diagnosing Organisational Conflict: Key questions to ask.’, The Child Care Worker, September 1993.
organisations have become bogged down with a plethora of suppressed conflicts. When such festering conflicts finally explode, it destroys lives and often the very organisation or a part thereof.

3.9.3 **Hierarchy of the organisation**

The hierarchy of an organisation may contribute to organisational conflict and workplace bullying. Often, in over-structured organisations, senior members will ignore operational issues and conflict and distance themselves from these processes. In doing so, they will delegate responsibilities to employees, which is above their scope and managerial skills. When disasters strikes, the manager might take some of the responsibility, but certainly not all of it. The overworked, bullied employee will take the brunt for the things gone wrong.

The hierarchical structure of the organisation in itself can be the source of the conflict, especially in young, growing organisations or in military or para-military institutions. A classic example of such bullying is where a non-commissioned officer becomes an officer in any of the armed forces. The new officer now has greater privileges and authority. Employees who have ‘annoyed’ this officer previously, could experience the brunt of his newly found authority.

Often role-players have the view that the structure of an organisation cannot be changed. They also hold the view that the organisational structure is a topic which is not open for discussion. These views obstruct dealing with organisational conflict and sometimes needs to be resolved by an external facilitator.

3.9.4 **Performance orientation of the organisation.**

Nowadays organisations are more performance orientated than ever. Good performance is rewarded by bonuses, monetary rewards for creativity and invention and even corporate gifts, such as overseas holidays. On the other hand, poor performance is punished and frowned upon. These competitive environments lead to zero sum outcomes for the organisation.

Western culture attaches great value to winning, sometimes at all cost. Managers bully employees by disparaging losers and making fun of them in front
of colleagues. This attitude of winning at all cost exacerbates organisational conflict and workplace bullying.

Cowan holds the view that “no one wins in organisational conflict unless everyone wins.” Any person who perceives himself as a loser in an organisation will ultimately causes losses. These might come in the form of low productivity, low morale, poor communication or even faction fighting within the organisation.

Keeping a balanced view in respect of performance will ensure that organisational conflict is better managed and often avoided.

87 Cowan, 1995.
Chapter 4: GRIEVANCE TRENDS AS BAROMETER FOR WORKPLACE BULLYING IN SA.

4.1 Summary: This chapter considers grievance trends in the South African Public Service as barometer for work place bullying, considering that the public service constitutes approximately 20% of the South African work force. It considers the role and limitations of the Public Service Commission (PSC) as well as the grievance resolution avenues available to public servants. The chapter scrutinises the statistics and nature of grievances reported by public servants in the 2006/2007, 2007/2008 and 2008/2009 financial years as an indication of the prevalence of work place bullying within the South African labour force.

4.2 Introduction

South Africa has a public service of 1248 660 employees. This represents approximately 20% of the South African work force. Grievances trends analysis of public servants is an important tool to gauge, amongst other things, the prevalence of workplace bullying.

Bohlander & Snell highlight the following advantages of the effective application of a grievance procedure:

- Flexibility in the adjudication of labour problems of employees;
- Provision of a communication channel for employees to express their dissatisfaction; and
- Decreasing the ‘us vs. them’ attitude.

They state that an effective grievance procedure identifies practices, procedures, and administrative policies, which are the root causes of employee dissatisfaction. This allows interventions to be introduced in order to facilitate change in the workplace.

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88 Head count for public servants as at 31 March 2009 by the Department of Public Service and Administration, www.DPSA.gov.za.
authors believe that grievances provide valuable feedback to managers regarding smaller organisational units or the bigger labour picture.

4.3 Grievance Rules for South African public servants

The Grievance Rules for the Public Service (the Grievance Rules) are firstly aimed to promote sound labour relations within the Public Service. Its second aim is to provide employees with the opportunity and procedure to raise issues of dissatisfaction with the employer.

The Grievance Rules are aligned with fair labour principles such as consistency, transparency and the resolution of grievances, as close to the point of origin as possible. The authors of the Grievance Rules were hoping that the procedure would be regarded as more than a means of managing conflict within the workplace, but also as a management tool to ensure labour harmony.

Grogan advises that an employee should use the grievance procedure, before he or she pursues any other form of statutory relief. He refers to Mackay v ABSA and another in which the Labour Court held that the grievance procedure should be utilised to promote labour peace. Mackay failed to use the grievance procedure before seeking statutory relief. The Court held that the employer was unaware of Mackay’s dissatisfaction and subsequently found in favour of ABSA. The Court also clarified that no employee should be victimised through dismissal or any form of prejudice, on account of utilising the grievance procedure.

4.4 Role of the Public Service Commission (PSC)

The Public Service Commission (PSC) was established in terms of Chapter 9 of the Constitution of South Africa. Its role, amongst other things, is to act as an oversight body over government departments in respect of the functioning of those departments, with the aim to be the ‘custodian of good (governmental) governance’. The promotion of sound labour relations, *inter alia* forms part of this role. As a result, the PSC drafts,

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91 Workplace Law, 2003:89.
amongst other things, a Grievance Trends Report\textsuperscript{94} and alternates it every second year with a Grievance Trend Fact Sheet.

The Grievance Trends Report covering the period 01 January 2005 to June 2006 provided –

- a statistical overview of grievances in the Public Service for the period under review;
- an analysis of the trends and causes of grievances;
- an overview of the management of grievances; and
- provides recommendations on the improvement of grievance management.

The PSC produced a second Grievance Trends Report, covering the periods 1 April 2006 to 31 March 2007 and 1 April 2007 to 31 March 2008.

The first Grievance Trends Report covered six-monthly reporting periods. It considered the period from 1 January 2005 to 30 June 2006. However, this report deals with the ‘grievance resolution reports’ in the Public Service in respect of the 2006/2007 and 2007/2008 financial year’s reporting periods. The statistics in the report therefore included three months of the reporting period April to June 2006, which was covered by the PSC in its first Grievance Trends Report.

The objectives of the second Grievance Trends Report was to –

- provide a statistical overview of grievances managed by departments and grievances referred to the PSC for consideration;
- analyse grievance trends and causes;
- assess overall management of grievance resolution;
- provide a report on grievance trends; and

\textsuperscript{94} “See the PSC’s Grievance Trend Reports for the 2006/2007 and 2007/2008 financial years at www.psc.gov.za.”
make recommendations on the management of grievances.

4.5 **Mandate of the PSC**

In terms of section 196 (4) of the Constitution, the PSC is mandated -

“(a) to promote the values and principles set out in section 195, throughout the public service;

(b) to investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service;

(c) to propose measures to ensure effective and efficient performance within the public service;

(d) to give directions aimed at ensuring the personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195;

(e) to report in respect of its activities and the performance of its functions, including any finding it may give, and to provide an evaluation of the extent to which the values and principles set out in section 195 are complied with; and

(f) either of its own accord or on receipt of any complaint –

(i) to investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature;

(ii) to investigate grievances of employees in the public service concerning official acts of omissions, and recommend appropriate remedies;

(iii) to monitor and investigate adherence to applicable procedures in the public service; and

(iv) to advise national and provincial organs of state regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service.”

In terms of section 196 (5) of the Constitution, the PSC is accountable to the National Assembly.

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95 *Constitution of the Republic of South Africa.*
Section 11 of the *Public Service Commission Act*, provides that the PSC may make rules as to

“(a) the investigation, monitoring and evaluation of those matters to which section 196(4) of the Constitution relates…”

In terms of section 35(1) of the *Public Service Act*, (as amended), an officer or employee may, for the purpose of asserting his/her right in this regard, lodge a complaint or grievance concerning an official act or omission with the an executing authority under the circumstances, conditions and manner laid down by the PSC’s rules. If that complaint or grievance is not resolved to the satisfaction of the employee, the relevant executing authority shall submit the complaint or grievance to the PSC, in the manner and time prescribed by the PSC.

The Grievance Rules were negotiated and agreed upon in the Public Service Co-ordinating Bargaining Council (PSCBC). The Grievance Rules came into effect on 19 September 2003. Rule I.1 of the Grievance Rules determines that Heads of Department must ensure that grievance resolution is evaluated by maintaining a record of the number of grievances resolved from the beginning of each calendar year. They must report to the PSC on a six-monthly basis. In terms of Rule I.2 of the Grievance Rules, the PSC must report on the management of grievances and the efficiency of the grievance procedure to the National Assembly at least once a year and in respect of its activities in a province, to the legislature of that province.

Service departments falling outside the *Public Service Act*, 1994 have developed their own grievance rules in terms of collective agreements. These service departments are:

- the South African Police Service (SAPS);
- the Department of Defence (SANDF);

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the South African Secret Service (SASS);
the National Intelligence Agency (NIA); and
the Department of Correctional Services (DCS).

However, these grievance procedures do not preclude the jurisdiction of the PSC to investigate grievances emanating from these departments. Before entering into such investigations however, the PSC must allow for the departmental grievance process to first run its course. The PSC investigates the grievances referred to it by the Service Departments in terms of its powers outlined in section 196 (4) (f) (ii) of the Constitution.

Two databases containing information on grievances are maintained by the PSC. They are:

- Resolved grievances reported by departments on a six monthly; and
- an internal PSC grievances database, which reflects data captured from grievances referred to the PSC by departments. This database includes grievances that have been referred to the PSC before the internal procedure has been finalized. Information captured on these two databases, reflect the following categorisation:

  - The number of grievances lodged in each department;
  - The number of grievances finalised in each department;
  - The number of grievances finalised in each department within the prescribed time limit;
  - The number of grievances pending in each department as at end of reporting period;
  - A breakdown of the causes and or nature of grievances in each department; and
  - A breakdown of the race and gender distribution of the aggrieved in each department.
The research conducted by the PSC is based on the above categories and a statistical analysis is provided in respect of these classifications.

Furthermore, a number of hearings were held by the PSC where Heads of Departments were summoned to account as to why grievances which were referred back to them for finalisation were not concluded within the specified time frames.

4.6 **Limitations experienced by the PSC**

As the PSC captures all grievance reports of departments on a database, non-compliance in respect of reporting on grievance management results in delays when capturing and analyzing data.

Despite being provided with a reporting format, departments submit inaccurate and incomplete information to the PSC. In such cases the PSC returns the reports to the departments for rectification.

The PSC’s reporting format disseminated to departments provides categories of grievances and their definitions. However, departments use their own categories, which make it difficult to capture on the database of the PSC. The PSC must interpret the categories developed by departments, to be able to slot these into the existing grievance categories of the PSC.

The PSC does not verify data due to capacity constraints. Information received is taken at face value and the PSC uses a ‘margin of error factor’ of 3% as a norm.

Due to the overlap of three months in the reporting period of the second and first Grievance Trends reports, comparisons cannot be made on statistics submitted by departments for those periods.

4.7 **Grievance resolution in the Public Service**

To manage dissatisfaction in the workplace, suitable procedures grievances procedures are necessary. Nel et al is of the view that -

“[D]ealing with grievances is a dynamic process of preventing grievances, handling grievances effectively when they arise and restoring the climate in the
unit after resolution of the grievance in order to enhance labour peace and thus achieve the goals of the department. 98

His view supports that of Bendix. 99 She holds that the need for dealing with grievances in a consistent and proper manner originates from both the employees’ rights to a formal channel of communication through which dissatisfaction may be expressed and from the danger that grievances may escalate and encourage industrial unrest.

Employers should therefore ensure that all efforts are made to handle a grievance immediately. Many grievances can be resolved quickly by merely correcting a misunderstanding or clearing communication channels between employees and supervisors. Applying grievance procedures correctly will save the organisation time and resources.

4.8 Existing grievance procedures of the Public Service

Depending on the sector in which public servants are employed, all employees in the Public Service have access to a formal grievance procedure. The following table provides a summary of the various grievance procedures, which exist within the Public Service at present:

<table>
<thead>
<tr>
<th>SCOPE OF APPOINTMENT</th>
<th>LEGISLATIVE PROVISIONS THAT INFORM THE VARIOUS GRIEVANCE PROCEDURES</th>
<th>KEY PRINCIPLES OF THE VARIOUS GRIEVANCE PROCEDURES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>¶ Prescribed grievance form must be used.</td>
</tr>
</tbody>
</table>

100 Grievance Trend Reports 2006/2007 and 2007/2008 financial years, PSC.
<table>
<thead>
<tr>
<th>SCOPES OF APPOINTMENT</th>
<th>LEGISLATIVE PROVISIONS THAT INFORM THE VARIOUS GRIEVANCE PROCEDURES</th>
<th>KEY PRINCIPLES OF THE VARIOUS GRIEVANCE PROCEDURES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>☐ No time limit to register.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Forums manage the above.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Resolve at lowest point.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Prescribed grievance form must be used.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Time limits applicable.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Follow reporting lines.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Highest level of grievance resolution with President.</td>
</tr>
</tbody>
</table>

- Time limit to lodge a grievance.
- Clear communication protocols to address a grievance.
- Aim to resolve as close to point of origin.
- Time limits applicable to resolve grievance.
- Designated employee to facilitate investigation.
- Highest level of grievance resolution within a department by Executive Authority (EA).
- Aggrieved may request referral to PSC via EA if not satisfied with outcome.
- Time limit for PSC to consider.
<table>
<thead>
<tr>
<th>SCOPE OF APPOINTMENT</th>
<th>LEGISLATIVE PROVISIONS THAT INFORM THE VARIOUS GRIEVANCE PROCEDURES</th>
<th>KEY PRINCIPLES OF THE VARIOUS GRIEVANCE PROCEDURES</th>
</tr>
</thead>
</table>
4.9 **Procedure for dealing with the grievances of public servants.**

Grievances are dealt with in terms of the procedure provided for it in the Grievance Rules. The most important underscoring principles of the Grievance Rules are to promote the speedy, impartial and equitable handling of grievances, promote sound labour relations, and resolving of individual grievances at the lowest possible level in a department. The employer must ensure that a grievance is dealt with in a fair, impartial and objective manner and that the principles of natural justice are observed. No employee may be victimised of prejudiced, directly or indirectly as a result of lodging a grievance.

The Grievance Rules provide for compulsory time frames to be adhered to, unless both parties agree to the extension of these. According to the Grievance Rules, a grievance must be lodged with the employer within 90 days from the date on which the employee became aware of the official act or omission which adversely affects him/her.
Furthermore, the department, including the Executive Authority (EA), has 30 days to deal with a grievance, which period may be extended by mutual agreement in writing. Should the department fail to respond to the aggrieved employee’s grievance within the prescribed 30 days, the aggrieved employee may lodge his/her grievance with the PSC directly; or in the case of an alleged unfair labour practice, with the Public Service Coordinating Bargaining Council (PSCBC) or the relevant sectoral council, whichever is applicable.

In order to resolve grievances, the designated responsible employee (read grievance officer) must liaise with the relevant structures of authority. Although the designated employee is responsible for the resolution of grievances, a grievance may be resolved by any person within the relevant structures who has the authority to do so.

A grievance must be lodged on the prescribed grievance form. If a grievance is not resolved internally, the employee must confirm this writing. If a grievance cannot be resolved, the executing authority (EA) must inform the aggrieved employee accordingly. An aggrieved employee may demand that his or her grievance be referred to the PSC within 10 days after receiving the EA’s decision. The EA must then in terms of section 35(1) of the Public Service Act, 1994 forward the grievance and relevant documentation to the PSC for consideration. After the referral and receipt of all documentation, the PSC must, consider the grievance and inform the EA of its recommendation and the reasons for its decision in writing within 30 days. Upon receipt of the PSC’s recommendation, the EA must, within five days, inform the employee and the PSC of his/her decision in writing.

Heads of National Departments may submit their grievance to the President. However, a Head of a Provincial Department may submit a grievance to the relevant Premier. The President and the Premier also have 30 days within which they have to resolve the grievance. The period may be extended by mutual agreement in writing. Heads of Department may request that their grievances be referred to the PSC, if they remain dissatisfied after finalisation of the internal process.

Heads of Department must ensure that grievance resolution is evaluated in their departments and maintain records of resolved grievances from the beginning of each calendar year. They must also report on a six-monthly basis to the PSC. The PSC
recommended that the six-monthly grievance resolution reporting period be amended to be in line with the financial year whilst awaiting the PSCBC to finalise the proposed amendment to the Grievance Rules.

4.10 **Grievance resolution in the Public Service Coordinating Bargaining Council (PSCBC)**

The PSC is not the only arbiter of grievance resolution within the Public Service. In terms of Section 36 of LRA, the PSCBC may perform “…all the functions of a bargaining council …”

The resolution of employee grievances within national and provincial departments should not be seen in isolation to the dispute resolution procedures concluded at the PSCBC. Numerous employee grievances are referred to the PSCBC as disputes. These disputes are typically noted as:

- disputes of rights;
- disputes of interest;
- interpretation and application of a collective agreement; and
- unfair labour practices (the majority of disputes are lodged in this regard).

In establishing the PSCBC, the LRA sought to provide a platform for the social partners, the State as the employer, and the Public Service Unions, representing approximately 1, 2 million employees to engage constructively over matters of mutual interest.

Similar to the bargaining councils of the private sector, the purpose of establishing the PSCBC was to provide a forum whose sole purpose is to create and maintain sound labour relations in the Public Service through the collective bargaining process. The PSCBC has the following objectives:

- The promotion of relations between the parties;
providing a forum for the parties to engage in collective bargaining; and

providing a mechanism for dispute prevention and resolution.

The PSCBC is also required to conclude, supervise and enforce collective bargaining agreements and deal with any other matters that may affect its organisational interest. The powers and duties of the PSCBC are to –

(a) negotiate and conclude collective agreements in respect of matters regulated by section 36(2) of the LRA;

(b) supervise and enforce collective agreements concluded in the Council;

(c) prevent and resolve labour disputes. 101

Should the parties fail to reach an agreement, the PSCBC’s own dispute resolution mechanism will apply. This however, does not preclude an aggrieved party from seeking any other recourse as provided for in terms of section 191 (13) of the LRA. This provision provides that an employee may refer a dispute concerning an alleged unfair labour practice to the Labour Court.

According to the PSCBC’s Annual Report for the period 2006/2007, 56% of the disputes that were referred to the PSCBC or Sectoral Bargaining Councils relate to an ‘unfair labour practice’, of which 49% related to promotion, demotion, training and benefits. 102

Overall, the inability of departments to deal with grievances within the prescribed periods, remain a challenge. This results in employees utilising external fora like the PSC, PSCBC and other sectoral bargaining councils to ensure resolutions of their grievances.

4.11 Statistical analysis of Grievances of Public Servants

In 2009, the PSC drafted a Fact Sheet in respect of grievances management in the Public Service. The Grievance Trends Reports together with the Fact Sheet consider the statistics for the 2006/2007, 2007/2008 and 2008/2009 financial years and provides insight in respect of grievance trends in the Public Service. The Fact Sheet considered the following:

- grievances handled at departmental level, reported to the PSC in terms of Rule I.1 of the Grievance Rules, 2003, for the period 01 April 2008 until 31 March 2009; and
- grievances referred to the PSC in terms of section 35(1) of the Public Service Act, 1994 (as amended) for the period 01 April 2008 until 31 March 2009.

The statistics listed below were retrieved from the Fact Sheet and Grievance Trend Reports of the PSC for the 2006/2007, 2007/2008 and 2008/2009 financial years.

4.11.1 Grievances recorded at national and provincial level

National and Provincial departments reported that a total of 6067 grievances were lodged by public servants during the 2008/09 financial year.

Figure 4.1 shows that 51% (3075) of such grievances were lodged at provincial level and 49% (2992) were lodged at national level. The Department of Public Service and Administration (DPSA) provided a head count for public servants as at 31 March 2009 and indicated that 32% (390 760) of public servants are employed by national departments and 68% (857 900) employed by provincial departments.

Despite being a much smaller group, employees at national level use the grievance procedure more often their counterparts in provinces as can be seen below.

---

In comparison with the previous financial year (2007/2008), the total number of grievances has decreased by 10.80% in the 2008/09 financial year. A summary of the total number of grievances lodged by public servants over the past three financial years, are provided below:

### Table 4.2 Origin of grievances

<table>
<thead>
<tr>
<th>Origin of grievances</th>
<th>2006/07</th>
<th>2007/08</th>
<th>2008/09</th>
</tr>
</thead>
<tbody>
<tr>
<td>National</td>
<td>3788</td>
<td>3854</td>
<td>2992</td>
</tr>
<tr>
<td>Provincial</td>
<td>1967</td>
<td>2948</td>
<td>3075</td>
</tr>
<tr>
<td>Total</td>
<td>5755</td>
<td>6802</td>
<td>6067</td>
</tr>
</tbody>
</table>

### 4.11.2 Grievances lodged at National level within Departments 2008/2009 financial year.

The department of Correctional Services and the SAPS recorded the highest number of grievances of all departments with 411 and 1361 grievances respectively.

---

The combined total of grievances of the two departments represents 65% of all grievances reported by national departments. This fact could be attributed to the size of the two departments, who collectively employ 57% of public servants at national level. Furthermore the hierarchical structures of these departments make them more prone to organisational conflict.

From the statistics provided to the PSC, it appears that departments which reported high numbers of grievances for the previous financial years experienced a noteworthy decrease in the number of grievances it recorded.

The statistics in respect of the number of grievances reported over the last three financial years are incorporated into the table below.

**Table 4.3 Comparison: Number of Grievances for the 2006/2007, 2007/2008 and 2008/2009 Financial Years**

<table>
<thead>
<tr>
<th>National Departments</th>
<th>No of aggrieved employees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2006/07</td>
</tr>
<tr>
<td>Agriculture</td>
<td>32</td>
</tr>
<tr>
<td>Arts &amp; Culture</td>
<td>19</td>
</tr>
<tr>
<td>Communications</td>
<td>11</td>
</tr>
<tr>
<td>Correctional Services</td>
<td>701</td>
</tr>
<tr>
<td>Defence</td>
<td>45</td>
</tr>
<tr>
<td>Education</td>
<td>8</td>
</tr>
<tr>
<td>Environmental Affairs &amp; Tourism</td>
<td>24</td>
</tr>
<tr>
<td>Foreign Affairs</td>
<td>3</td>
</tr>
<tr>
<td>Gov Communications</td>
<td>0</td>
</tr>
<tr>
<td>Health</td>
<td>15</td>
</tr>
<tr>
<td>Home Affairs</td>
<td>46</td>
</tr>
<tr>
<td>Housing</td>
<td>7</td>
</tr>
</tbody>
</table>

---

### 4.11.3 Unresolved grievances

The timely and conclusive investigation of grievances is an important element in developing a harmonious workplace. Unaddressed grievances have the potential to escalate into organisational problems, causing conflict, low morale and reduced productivity.

<table>
<thead>
<tr>
<th>Department</th>
<th>Cases</th>
<th>Evaluated</th>
<th>Resolved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent Complaints Directorate</td>
<td>3</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Justice &amp; Constitutional Development</td>
<td>610</td>
<td>649</td>
<td>421</td>
</tr>
<tr>
<td>Labour</td>
<td>42</td>
<td>21</td>
<td>16</td>
</tr>
<tr>
<td>Land Affairs</td>
<td>26</td>
<td>27</td>
<td>29</td>
</tr>
<tr>
<td>Minerals &amp; Energy</td>
<td>24</td>
<td>21</td>
<td>12</td>
</tr>
<tr>
<td>National Treasury</td>
<td>8</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>Provincial &amp; Local Government</td>
<td>8</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>PSC</td>
<td>2</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Public Works</td>
<td>92</td>
<td>57</td>
<td>98</td>
</tr>
<tr>
<td>Science &amp; Technology</td>
<td>1</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Secretariat for Safety &amp; Security</td>
<td>0</td>
<td>0</td>
<td>No report</td>
</tr>
<tr>
<td>PALAMA</td>
<td>3</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>SAPS</td>
<td>1867</td>
<td>1688</td>
<td>1361</td>
</tr>
<tr>
<td>Social Development</td>
<td>4</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Sport &amp; Recreation SA</td>
<td>4</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Statistics South Africa</td>
<td>90</td>
<td>22</td>
<td>24</td>
</tr>
<tr>
<td>The Presidency</td>
<td>2</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>Trade and Industry</td>
<td>20</td>
<td>12</td>
<td>18</td>
</tr>
<tr>
<td>Transport</td>
<td>5</td>
<td>10</td>
<td>23</td>
</tr>
<tr>
<td>Water Affairs &amp; Forestry</td>
<td>56</td>
<td>59</td>
<td>42</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>3788</strong></td>
<td><strong>3854</strong></td>
<td><strong>2992</strong></td>
</tr>
</tbody>
</table>
Unresolved or poorly handled grievances may also lead to costly litigation. The Grievance Rules, 2003 therefore provide for compulsory time frames to be adhered to, unless both parties agree to the extension of these time limits.

Only 46% (2784) of the grievances lodged during the 2008/09 financial year were finalised, a matter of grave concern. A total of 53% (3208) of grievances were pending and 1% (75) of grievances was withdrawn. According to the information provided by departments in respect of the grievances lodged in the 2008/09 financial year, only 25.5% (1427) of the grievances were finalised within the prescribed time frame.\textsuperscript{109} This is a worrying trend, which has continued since the previous reporting period.

**Figure 4.2 Status Of Grievances 2008/2009\textsuperscript{110}**

4.11.4 Substantiation of grievances

The outcome of 44% (1226) of the grievances finalised by departments were found to be substantiated.\textsuperscript{111} Of the cases which were found not to be substantiated,

\textsuperscript{109} Fact Sheet: Grievance Resolution for the 2008/2009 financial year, (2009) PSC.
\textsuperscript{110} Fact Sheet: Grievance Resolution for the 2008/2009 financial year.
\textsuperscript{111} Fact Sheet: Grievance Resolution for the 2008/2009 financial year.
245 grievances (20%) were referred to other agencies, such as the Public Service Coordinating Bargaining Council or a Sectoral Council.

The fact that 56% of the grievances were found to be unsubstantiated, is an indication that departments are managing human resource practices in the departments. However, if it is considered that 44% of the grievances were found to be substantiated, it appears that there is still room for improvement.

**Figure 4.3 Substantiation of Grievances**

![Substantiation of Grievances](chart.png)

4.11.5 Causes of grievances in the Public Service

Grievances are valuable indicators of labour trends in can provide insight into current or future challenges of an organisation. The nature of grievances assists in identifying issues which may be hindering the morale of employees.

The nature of grievances lodged during the 2008/09 financial year is reflected below. Performance assessment constitutes 30% and salary problems 28% of grievances recorded by public servants.

These categories of grievances impact on the financial position of employees and the high number of grievances is not surprising in the current economic climate. Unfair treatment grievances (17%) are the third most prevalent category recorded during the 2008/2009 financial year.

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112 Fact Sheet: Grievance Resolution for the 2008/09 financial year.
113 Fact Sheet: Grievance Resolution for the 2008/2009 financial year.
4.11.6 Nature of grievance lodged with the PSC

Most grievances (210 or 32%) referred to the PSC relate to issues of salary matters, followed by performance assessment and unfair treatment. The outcome of performance assessments or the failure by departments to assess employees, account for 158 (24%) of the grievances.

Fact Sheet: Grievance Resolution for the 2008/2009 financial year.
4.12  Workplace bullying as part of ‘unfair treatment’ grievances.

As stated, the lack of clear vernacular in respect of workplace bullying raises concerns. From the statistics of grievances reported by Government Departments in the last three financial years, it can be seen that the term ‘workplace bullying’ does not appear anywhere in the statistics. Does this mean that workplace bullying does not exist within the South African labour environment?

The Director: Labour Relations Improvement in office of the Office of the Public Service Commission, Ms AM Pool, revealed the opposite.115 This Directorate is responsible for the collation of all public service grievance statistics, as well as the drafting of Trends Reports on Grievances and the Fact Sheet on Grievance Management. The aim of the interview was to obtain a broad perspective on the prevalence of workplace bullying within the Public Service.

Pool indicated that workplace bullying slots into the ‘unfair treatment’ grievances category. She pointed out that not all grievances in respect of ‘unfair treatment’ was the result of workplace bullying. She indicated that a large number of grievances reported by departments and those forwarded to the PSC, was characterised by elements of workplace bullying. This is regarded as a cumbersome trend.

Pool conservatively estimates that 15 % of ‘unfair treatment’ grievances could be the direct result of workplace bullying.

A total of 1154 ‘unfair treatment’ grievances were reported to the PSC during the 2008/2009 financial year.116 This includes 133 ‘unfair treatment’ grievances referred to the PSC. In applying Pool’s estimate to these numbers, a total of 173 grievances could be the direct result of workplace bullying.

Pool further pointed out that the statistics which the PSC provides in its reports and Fact Sheets reflect only formalised and reported grievances. In many cases grievances are not recorded by the targets. Given this position, the PSC’s statistics on workplace bullying grievances provides only part of a picture.

116 Fact Sheet: Grievance Resolution for the 2008/2009 financial year.
The above facts must be considered against the backdrop of the vernacular problem where employees, amongst other things, do not know how to refer to this behavior. As Lutgen-Sandvik indicated, employees will be unable to lodge grievances about workplace bullying when they do not know what this behavior is called.\textsuperscript{117} Considering this, it is self-evident that workplace bullying is a bigger problem in the public services than reflected by the statistics.

Pool expressed the view that employees would hesitate to use the grievance procedure, if they believed that workplace bullying would not receive fair treatment or where a history of poor management of such grievances exists.\textsuperscript{118}

Pool raised concern about the fact that grievances must in terms of the existing grievance procedures be dealt with by the line supervisors of employees. Most researchers indicate that workplace bullies are often line managers and supervisors themselves. This is another reason why employees do not use the grievance procedure as way of resolving workplace bullying.

To bring further perspective in respect of ‘unfair treatment’ grievances, it needs to be born in mind that there was a noted escalation in respect of this form of grievances. The table below depicts the total number of grievances per category for the two reporting periods 2006/2007 and 2007/2008, as captured by the PSC. It also reflects the aggregate ranking order of these causes.

The table indicates the statistical percentage of increase or decrease which serves as a trends indicator.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|}
\hline
Category & Number of Grievances \hline

\end{tabular}
\end{table}

\textsuperscript{117} Lutgin-Sandvik, P., 2003.

\textsuperscript{118} Interviews with Pool, A.M., Director: Labour Relations Improvement, Office of the Public Service Commission, 4 November 2009 and 9 November 2009.
### Table 4.4 Causes of Grievances in National Departments

<table>
<thead>
<tr>
<th>Causes of grievances</th>
<th>Number of grievances</th>
<th>2006/2007</th>
<th>2007/2008</th>
<th>Percentage increase or decrease</th>
<th>Total</th>
<th>Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance assessment</td>
<td></td>
<td>1382</td>
<td>1278</td>
<td>-7,5%</td>
<td>2660</td>
<td>1</td>
</tr>
<tr>
<td>Salary problem (adjustment/increase/payment etc)</td>
<td></td>
<td>723</td>
<td>880</td>
<td>+21,7%</td>
<td>1603</td>
<td>2</td>
</tr>
<tr>
<td>Recruitment and selection</td>
<td></td>
<td>766</td>
<td>686</td>
<td>-10,4%</td>
<td>1452</td>
<td>3</td>
</tr>
<tr>
<td>Unfair treatment (other than what is listed)</td>
<td></td>
<td>517</td>
<td>590</td>
<td>+14,1%</td>
<td>1107</td>
<td>4</td>
</tr>
<tr>
<td>Application approval/Refusal to approve application</td>
<td></td>
<td>165</td>
<td>220</td>
<td>+33,3%</td>
<td>385</td>
<td>5</td>
</tr>
<tr>
<td>Disciplinary matter</td>
<td></td>
<td>146</td>
<td>113</td>
<td>-22,6%</td>
<td>259</td>
<td>6</td>
</tr>
<tr>
<td>Not listed</td>
<td></td>
<td>46</td>
<td>69</td>
<td>+50%</td>
<td>115</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>3788</td>
<td>3854</td>
<td>+1,7%</td>
<td>7642</td>
<td></td>
</tr>
</tbody>
</table>

In terms of the above, ‘unfair treatment’ grievances held the 4th position in terms of ranking order. However, in the 2008/2009 financial year ‘unfair treatment’ grievances rose to the third highest ranking position, with 1023 such grievances having been recorded. See graph below:

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A disconcerting trend emerges from the analysis of ‘unfair treatment’ grievances over the 2006/2007, 2007/2008 and 2008/2009 financial years. ‘Unfair treatment’ grievances have risen dramatically. Since workplace bullying falls within this category, it too, is undoubtedly on the rise. Table 4.5 illustrates this escalation.

**Table 4.5** Comparison of the Number of ‘Unfair Treatment’ Grievances Reported To the PSC Over the 2006/2007, 2007/2008 and 2008/2009 Financial Years

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of ‘unfair treatment’ grievances recorded by public servants</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006/2007</td>
<td>517</td>
</tr>
<tr>
<td>2007/2008</td>
<td>590</td>
</tr>
<tr>
<td>2008/2009</td>
<td>1154</td>
</tr>
<tr>
<td>% increase (+)</td>
<td>+ 14.1%</td>
</tr>
<tr>
<td>or decrease (-)</td>
<td>+ 95.59%</td>
</tr>
</tbody>
</table>

The PSC’s grievance statistic is at present the only source of current information from which a perspective can be formed in respect of the prevalence of workplace bullying within South Africa. Almost six years have lapsed since the WHO’s study into

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120 Fact Sheet: Grievance Resolution for the 2008/09 financial year.
the Cost of Workplace Violence which indicated that 78% of South Africans have been exposed to violence in the workplace. In view of this author, the time is ripe to conduct new research into the prevalence and consequences of workplace bullying within South Africa.

Chapter 5: CONSEQUENCES OF WORK PLACE BULLYING

Summary: Workplace bullying has significant consequences for those exposed to it. It alters the personalities and behaviour of all involved. The financial consequences of workplace bullying are significant. This chapter deals with these issues and also discusses the consequences of workplace bullying as part of organisational conflict.

5.1 Health effects of workplace bullying.

Workplace bullying damages the health of targets. Organisations are beginning to take note of this fact, as the costs to organisations continue to escalate.

Scholars at the Project for Wellness and Work-Life at Arizona State University linked workplace bullying to a host of physical, psychological, organisational, and social costs. The most predominant health effect associated with workplace bullying in organisations is stress.\(^\text{122}\)

Farrell & Geist-Martin show that workplace stress has negative effects that are linked to poor mental and physical health. These in turn result in employees using more sick leave and time off, from work.\(^\text{123}\)

Lutgen-Sandvik reports that co-workers, who witness workplace bullying, also present negative effects, such as fear, stress, and emotional exhaustion.\(^\text{124}\) Those who witness repetitive workplace mistreatment often choose to resign from employment. Workplace bullying further hampers organisational dynamics such as group cohesion, peer communication, and overall performance.

5.2 Health effects of stress caused by workplace bullying

Field lists general, physical, psychological, behavioural, and personality effected symptoms of stress caused by workplace bullying. He holds that victims of workplace bullying display the same symptoms as victims of Post-Traumatic Stress Disorder (PTSD).\(^\text{125}\) These symptoms are listed below:

5.2.1 General effects of stress.

The following general symptoms of stress are listed:

- anxiety,
- fatigue (including Chronic Fatigue Syndrome - see below),
- sleeplessness, and
- trauma.

5.2.2 Physical symptoms of stress.

Stress also creates the following physical symptoms:

- aches & pains (with no clear cause - this lack of attributability suggests stress as the cause sometimes diagnosed as fibromyalgia);
- back pain;
- chest pains and angina;
- emotional numbness (including anhedonia, an inability to feel joy and love);
- excessive or abnormal thirst;
- headaches and migraines;
- high blood pressure;
- hormonal problems (disturbed menstrual cycle, dysmenorrhoea, loss of libido, impotence);
- irritable bowel syndrome or IBS;
- loss of appetite overeating;
- palpitations;
- paruresis;
- petit mal seizures;
• physical numbness (especially in toes, fingers, and lips);
• reduced immunity to infection leading to frequent colds, coughs, flu, glandular fever, etc;
• skin irritation and disorders (e.g. athlete's foot, eczema, psoriasis, shingles, internal and external ulcers, urticaria);
• sweating;
• thyroid problems;
• trembling; and
• waking up more tired than when you went to bed, etc.

5.2.3 Psychological symptoms of stress
The psychological symptoms of stress include the following:

• acute anxiety at the prospect of meeting the bully or visiting the location where the bullying took place, or at the thought of touching the paperwork associated with the case;
• desperation;
• disbelief and confusion and bewilderment;
• excessive fear;
• excessive guilt;
• flashbacks and replays;
• forgetfulness;
• impoverished or intermittently functioning memory;
• insecurity;
• panic attacks;
• poor concentration;
• reactive depression (which some people describe as Adjustment Disorder with depressed mood);
• sense of isolation;
• stress breakdown (this is a psychiatric injury, *not* a mental illness);
• suicide and thoughts of suicide;
• unable to attend disciplinary meetings; and
• vomiting before, during or after the meeting, sometimes at the thought of the meeting or on receiving a threatening letter insisting one attends (These are PTSD diagnostic criteria B4 and B5)

### 5.2.4 Behavioural symptoms of stress

Behavioural symptoms of stress include:

• angry outbursts;
• comfort spending (and consequent financial problems);
• excessive biting, teeth grinding, picking, scratching or tics;
• hyper vigilance (feels like but is *not* paranoia);
• hyperawareness (acute awareness of time, seasons, distance travelled);
• hypersensitivity (almost every remark or action is perceived as critical even when it is not);
• increased reliance on drugs (tannin, caffeine, nicotine, alcohol, sleeping tablets, tranquillisers, antidepressants, other substances);
• indecision;
• irritability;
• loss of humour;
• mood swings;
• obsession (the experience takes over your life);
• phobias (especially agoraphobia), etc;
• sullenness (a sign the inner psyche has been damaged);
• tearfulness; and
• withdrawal.

5.2.5 Effects of stress on personalities

Stress has the following effects on personalities:

• loss of self-worth and self-love;
• low self-image; and
• shattered self-confidence and self-esteem.

Kivimäki, et al considers the link between workplace bullying and the risk of cardiovascular disease and depression. The researchers set out to examine exposure to workplace bullying as a risk factor for cardiovascular disease and depression in 5432 hospital employees over a two year period.

The prevalence of bullying was 5% in the first survey and 6% in the second survey. Two percent reported bullying experiences in both surveys, which is an indication of prolonged bullying.

After adjustment for sex, age, and income, the odds ratio of incident cardiovascular disease for victims of prolonged bullying compared to non-bullied employees was 95%. A further adjustment for overweight at baseline attenuated the odds ratio to 95%. The study found the association between prolonged bullying and incident depression to be significant, even after these adjustments.

126 Workplace Bullying and the Risk of Cardiovascular Disease and Depression, Occupational and Environmental Medicine, Volume 60: 779-783.
The researchers concluded that the strong association between workplace bullying and subsequent depression suggests that bullying can be regarded as a cause of mental health problems. Victims of bullying are also at greater risk of cardiovascular disease, but this risk may partly be attributable to overweight.

5.3 **Other effects of workplace bullying**

Ashforth highlights the following effects which workplace bullying has on individuals:

- Frustration;
- Stress;
- Helplessness;
- Lowered self-esteem;
- Lowered productivity;
- Low work cohesiveness within the organisation.\(^{127}\)

5.4 **Financial cost of workplace bullying to employers**

Several studies have attempted to quantify the cost of workplace bullying to organisations.

Sauter, et. al. reflects that mental illness among the U.S workforce leads to a loss in employment amounting to $19 billion and a drop in productivity of $3 billion.\(^{128}\)

In a report commissioned by the ILO, Höel, Sparks, & Cooper analysed the costs of workplace bullying. The cost of workplace bullying to employers, was estimated to be £1.88 Billion annually. This amount does not include the cost of lost productivity.\(^{129}\)

Fox and Spector refers to research done by Rayner and Keashly who found that the replacement cost of employees who leave organisations as a result of being bullied

\(^{127}\) *Bullying and Emotional Abuse in the Workplace*, 2003:128.


\(^{129}\) *The Cost of Violence/Stress at Work and the benefits of a violence/ stress free working environment Bullying At Work*. 
or having witnessed bullying is estimated to be approximately $1.2 million U.S. in an organisation with 1000 employees. Again, this estimate does not include the cost of litigation of employers.\textsuperscript{130}

Kivimaki et al. studied 5,000 hospital staff and found that those who had been bullied had 26% more certified sickness absence than those who were not bullied. He holds that these figures are probably an underestimation, as many of the victims were likely to have been bullied prior to the establishing of the base-line measures at the outset of the study.\textsuperscript{131}

5.4.1 Estimated worldwide cost of stress/violence to society

Höel, Sparks and Cooper indicate that they will make no attempt to provide any detailed cost calculations in respect of the cost of violence in the workplace.\textsuperscript{132} The researchers indicate that too many variables need to be considered. However, they do point to previous studies by economists, which estimated the costs of workplace bullying incurred by employers. These economists considered the cost to employers as a result of accidents and ill health. The researchers indicate that even these experts differ significantly in their respective estimates.

The economists suggest that stress and violence account for approximately 30% of the overall costs of ill-health and accidents. This estimate was sited by a number of studies. This figure suggests that stress/violence may account for as much as 0.5 – 3.5% of the worldwide GDP per year. The cost of violence in the workplace is thus a substantial figure.

5.5 The consequences of workplace bullying as part of organisational conflict

Cowan highlights three areas of concern, which is impacted by organisational conflict, namely: \textit{productivity, quality and resource distribution}.\textsuperscript{133}

\textsuperscript{130} In \textit{Counterproductive Work Behaviours}, 2004: 271-296.
\textsuperscript{131} \textit{Workplace Bullying and Sickness Absence in Hospital Staff}, Occupational Environmental Medicine, Volume 58, 610.
\textsuperscript{133} Cowan, 1995.
5.5.1 Linking conflict to productivity

It is self-evident that conflict will have a definite impact on the productivity of an organisation. Just looking at the destructive consequences mentioned above, it is clear that productivity of the organisation will ultimately suffer.

Cowan is of the view, that to fully understand the impact of conflict on organisations, that the link between a person’s ability to manage conflict and their self-esteem needs to be explored.134

Mruk considers new mainstream ideas in respect of self-esteem and its link to, amongst other things, academic achievement. He points out that self-determination and increasing worthiness will have direct links to academic achievement.135

However, Holly compiled a summary of 50 studies, which considered the link between self-esteem and academic achievement. He questions whether self-esteem is not the result, rather than the cause of academic achievement.136 Since raising this question, the debate of this viewpoint rages on.

Most research regarding the link between self-esteem and achievement centers around the link between self-esteem and the academic achievement of adolescents. In the view of this author, this narrow application of the link is alarming, as it has wider implications for society, than the current research suggests.

The California State Department of Education established the California Task Force to Promote Self-esteem and Personal and Social Responsibility. In its final report the following findings were reflected:

‘Skills are the building blocks of self-esteem, thus the more skills a person has, the better the chances of that individual coping with the situation. Fostering personal and social skills improve behavioural options of individuals. The more behavioural options are available to an individual, the easier it is to make ethical choices. The social skill of being able to manage conflict and

136 Self Esteem: Does it contribute to Students’ Academic Success, University of Oregon.
confrontation is a highly rated skill. Productivity is directly related to the amount of individual and organisational training an employee is exposed to.¹³⁷

Training directed solely at job-related tasks was found to be less effective than training which incorporated measures to improve interpersonal relationships. 

Cowan reflects that The Carnegie Foundation for the Advancement of Teaching found that as much as 85% of job success and effective job performance is due to well-developed interpersonal skills. Furthermore, workers who feel more competent become more effective and in turn more productive.¹³⁸

The term ‘organisational self-esteem’ reflects the esteem in which employees or the public holds an organisation. It also reflects the esteem in which the individuals hold themselves within the context of the organisation. It is measurable by two major factors, namely workplace satisfaction and job satisfaction. If both of these factors are highly rated, the organisation has a high self-esteem. If the self-esteem of employees is threatened by the organisational conflict, the results are devastating.

Organisations, which assist employees to manage conflict properly within the working environment, will increase the levels of self-esteem of employees and the organisation, secondly, production and efficiency will improve.

5.5.2 Linking conflict to quality

Organisations are either the client of a service provider, or the provider of a service to their clients. Cascading this concept further, individual employees will ultimately be accountable to ‘enable that company’ to render the goods, or the service to its clients. Often organisations forget this fact. See the American Heritage Dictionary of the English Language’s definition below:

“[A] structure through which individuals cooperate systematically to conduct business”.¹³⁹ (own emphasis)

¹³⁷ 'Toward a State of Esteem', 1990, California State Department of Education.
¹³⁸ Cowan, 1995.
¹³⁹ American Heritage Dictionary of the English Language.
In a time where the pursuit of quality is emphasised, failing to understand that individuals within an organisation are accountable to it, for the 'systematic conduction of business', is often organisation's Achille's heel. Often, employees fail to understand that they 'are the organisation'. Rendering a service or product of poor quality creates conflict with clients and service providers alike.

In the pursuit of quality, organisations often find themselves face to face with organisational conflict. The pursuit of quality may manifest itself in, amongst other things, restructuring of the organisation or improvements being made to services or products.

Organisational conflicts often stem from emerging role conflicts, where employees are exposed to changing responsibilities and relationships. Unprepared organisations will experience the devastation of such conflicts first hand. It is not uncommon for these organisations to abandon the pursuit of quality, when the going gets tough.

The process of conflict should not be confused with the results of poorly managed conflict. Where organisations are prepared for conflict, it was found that the goals set by the organisation at the outset of the process, such as the pursuit of quality, are almost always achieved.

5.5.3 Linking conflict to resources

The Distributive Negotiations Process teaches that all resources are finite. At some stage the resources will run out. Having an unfair distribution of such resources creates conflict.

Resources are split into two categories, namely 'hard resources' and 'soft resources'. A hard resource would, for example, be consumables, such as stationery, ingredients, parts for manufacturing, computers or even finances.

Soft resources, on the other hand, would entail, for example, energy, time, office space or knowledge. Soft resources are mostly intangibles.

A second link exists between conflict and cost of resources. Employees use resources when they deal with conflict. Consider how much time and energy are spent
by employees, who are experiencing or managing conflict. Consider how much more productive and successful the organisation could be if the time and energy spent on conflict and its management had been harnessed to achieve the organisation’s aims or core business focus.

Eisaguire’s findings demonstrate the link between the cost of conflict and resources. Having a careless attitude towards resources such as organisational time, compensation and staff has serious cost implications.

Fortune 500 senior executives spend 20% of their time in litigation activities.

Typical managers spend up to 30% of their time dealing with conflict.

The turnover costs for an employee are 75% - 150% of their annual salary.

A total of 16% of employees report conflict with a supervisor as the main reason for leaving their last job.\(^{140}\)

Organisations waste vast resources when they fail to deal with conflict constructively. Each wasted resource could have been utilised towards the achieving the aims of that business. The better an organisation is at dealing with organisational conflict, the fewer resources it will be expended.

5.6 Absenteeism, grievances and industrial action

Einarsen record absenteeism, grievances and industrial action as some of the effects of workplace bullying.\(^{141}\)

5.6.1 Absenteeism

A high rate of sickness-related absenteeism is recorded. In Britain alone, 18 million lost workdays is recorded as a result of workplace violence per annum.

Furthermore, 29% of periods of absenteeism are in respect of periods longer than 13 days and 13% are in respect of periods longer than 60 days.

\(^{140}\) [http://www.workplacesthatwork.com](http://www.workplacesthatwork.com).

5.6.2 Grievances and complaints

Grievances and complaints involve many role players and drain resources. Where grievances or complaints were unsuccessful, feelings of animosity and resentment lingered long after the incident. This destabilised the workplace.

Suspensions of alleged offenders, where they are feared to be able to manipulate investigations, cost employers a great deal of money without having the benefit of the production of those employees.

Occupational Health Practitioners working in Employee Assistance Programs become swamped with the large volume of complaints.

Transfers of employees have repercussions to the operational running of the organisations.

Litigation and payment of compensation increase significantly.

5.6.3 Industrial Action

Organisations with a history, or reputation of workplace bullying, experience damage to their reputations by media coverage. These in turn affect the relationships between organisations and customers.

Industrial action also results in employees being wary to work for employers who had built up a bullying reputation. This results in skilled labour not being attracted to these employers.

The damaging consequences of workplace bullying, as documented by these authors, should be of concern to all employers.
Chapter 6: RECOUSE FOR DEALING WITH WORKPLACE BULLYING IN SOUTH AFRICA

Summary: This chapter concerns itself with the various available avenues of recourse when one has been bullied at work. It amongst others, considers lodging of a formal complaint against the perpetrator, invoking the grievance procedure when bullied, seeking assistance from employee assistance programmes of the employer, instituting formal disciplinary complaints as well as recourse under the CCMA. Each one of the aforementioned however has severe short falls and as such fails to address workplace bullying effectively.

6.1 Failure of internal mechanisms to deal with workplace bullying.

Internal recourse mechanisms such as the grievance procedure, disciplinary procedure and the Employee Assistance Program often fail to effectively deal with workplace bullying. An explication of this view, highlighting some of the major difficulties of each of these mechanisms follows below.

6.2 Grievance procedures

Most employers in South Africa have grievance procedures in place. Bendix defines a grievance as-

“A complaint, other than demands formulated by a collective body, which is related to the employee’s treatment or position within his daily working routine and which, because it may result in a dispute, warrants the formal attention of management.”

Bendix lists the objectives of the grievance procedure:

- It creates the opportunity for employees to communicate upward with management.
- It ensures that complaints are effectively dealt with by management.
- It prevents disputes from arising in the workplace.

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It renders disciplinary proceedings more acceptable since employees also have means of objecting to management performance.

It creates awareness of employee problems or problem areas which management needs to address.

It emphasises management's concern for the wellbeing of employees.\textsuperscript{143}

Bendix further holds that the following general rules should apply in dealing with grievances:

- Employees should be entitled to bring their grievances to the attention of management, even if it is done in stages.
- The employee should be allowed representation by a fellow colleague or union representative.
- Management at various levels must consider the grievance carefully and make genuine attempts to resolve the grievance.
- The grievance will not be resolved until the employee indicates such.
- Time limits should be established for each of the steps within the procedure.
- Should the grievance remain unresolved, the employee has the right to declare a dispute about it.
- Grievances should generally be managed by line manager, but other staff for example; the Human Resources Manager may act in an advisory capacity.\textsuperscript{144}

The Labour Court asserted the purpose of the grievance procedure in \textit{Mackay v ABSA and another}\textsuperscript{145}, to be that the grievance procedure should be utilised to promote labour peace in the working environment.\textsuperscript{146}

The Court further entrenches the principle that no employee should be victimised through dismissal or any form of prejudice, on account of the employee utilising the internal grievance procedure.

Grogan advises that an employee should resort to the grievance procedure, before he or she pursues any form of statutory relief.\textsuperscript{147}

\textsuperscript{143} \textit{Industrial Relations in the new South Africa}: 349.
\textsuperscript{144} Bendix, 1996:350.
\textsuperscript{145} \textit{Mackay v ABSA and another} (2000) 21 ILJ 2054 (LJ).
\textsuperscript{146} Grogan, \textit{Workplace Law}, 2003:89.
The importance of lodging a grievance in respect of any dissatisfaction becomes more evident given the following two recorded cases:

In *Donaldson v Kees Beyers Imports & Distribution CC* (2007) the CCMA concluded that Ms Donaldson (the employee) had failed to prove constructive dismissal.148

The employer unilaterally changed the employee’s remuneration structure from a monthly salary plus commission to a fixed monthly salary, and reduced her petrol allowance. In turn, she referred an unfair labour practice dispute to the CCMA. The employer threatened Donaldson with disciplinary action when she declined to sign a new contract. She did not return to work and referred a constructive dismissal dispute to the CCMA.

The CCMA found that the employee had not lodged a formal grievance with her employer and failed to give an explanation for this. The Commissioner found that the conduct of the employer, when it changed the remuneration structure of the employee, was unreasonable. The employee was therefore entitled to refer the unfair labour practice, as she did. When this was not resolved, the employer presented her with a new contract and threatened her with disciplinary action if she failed to sign. This new contract was held to have been an attempt by the employer to resolve the issues raised by the employee and as a result, it was held that the employer’s conduct was not objectively calculated to coerce the employee into leaving.

The employee had the option to follow the grievance procedure to address any further grievances she had, including the grievance she had about being threatened with disciplinary action, if she did not sign the new contract. The CCMA held that she had no reason to believe that her concerns would not be addressed by the employer. The Commissioner further held that resignation was ‘not the only option available to the employee’, but only a reasonable option. In this case, the Commissioner held that resignation was not a reasonable option for the employee and as a result, that she had not been constructively dismissed as claimed.

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147 Grogan: 89.
148 *Selected CCMA Arbitration Awards Summaries: January – June 2008*, CCMA Research Unit: Operations & Information Department, CCMA.
In *Pieterse v AGI (Pty) Ltd* (2007) heard by the Metal and Engineering Industries Bargaining Council, the Arbitrator also considered a claim of constructive dismissal. 149

Pieterse was the respondent’s Human Resources Manager and resigned after 16 years’ service, claiming constructive dismissal. He alleged that he had been constructively dismissed because of ‘severe confrontation and abuse’ from the MD during a performance appraisal. This he claims, was followed by further strain and the relocation of his office. He also alleged that his position had been removed from the company’s organogram.

The respondent stated that the applicant had been given a performance review, to which he responded ‘too negatively’ and that the MD had been ‘firm and frustrated, but not abusive’. It also claimed that all managers with the exception of the MD and CFO had been asked to vacate their offices, in an attempt to turnaround poor company performance. The respondent denied the position of HR Manager had been removed from the organogram and the applicant’s successor gave evidence to that affect.

The Commissioner noted that whilst the applicant may have been unhappy about the manner in which he had been treated by the MD, he had not lodged a formal grievance to address his dissatisfactions. In the circumstances, the Commissioner found that the applicant had not met the legal requirements for a constructive dismissal, namely that the respondent’s treatment of the applicant was ‘so intolerable that he had no option but to resign’. The employer did not have the opportunity to address the concerns of Pieterse, as it was never raised in a grievance.

Considering the above case law, the grievance procedure would appear to be the first step to be used by aggrieved employees to normalise the working environment and ensure labour peace.

A grievance at its heart, is nothing more than another form of organisational conflict which needs to be resolved, in order for the organisation and the employee to function optimally.

Bradshaw illustrates the levels of intervenor control within resolving of conflict in the sketch below.

In applying Grogan’s and the courts’ position, that employees must firstly utilise the grievance procedure before seeking external statutory relief. Bradshaw’s illustration, highlights that adjudication must be seen as a ‘last resort’. The lodging of a grievance starts with a low level of external intervenor intervention. It should only be escalated to a point of adjudication, if the matter cannot be resolved by any other means.

The Court’s position as mentioned in the *Mackay v ABSA*, is one wherein it supports the lowest possible level of external intervenor intervention. This subscribes to the goal of resolving grievances as close to its point of origin as possible, which is a fundamental principle of effective grievance management.

If the grievance procedure is so well-established in the South African labour environment, why does workplace bullying feature so seldom as a topic of grievances? Why don’t employees use the grievance procedure as a way of dealing with workplace bullying?

Bendix’s views on the goals and general rules in respect of the management of grievances are somewhat naïve. Experience in grievance management within South Africa has shown the following general pitfalls in the grievance process:

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Managers do not view the grievances procedure as a communication process between employees and themselves. The loss of integrity in the communication process ultimately leads to the breakdown of such communication between the employee and the manager. This adds additional strain to the dissatisfactory situation and grievance process and perpetuates the ‘us versus them’ experience.

Managers often feel threatened by grievances, as it exposes their lack of knowledge or people management skills. They will try to hide their inadequacies in any way possible, which often result in the grievance not receiving the attention it deserves.

If the above is allowed to continue unabated in the workplace, a culture will develop, in which grievances are not dealt with properly. When this occurs, employees lose faith in the grievance process and will not use it to resolve their issues of concern.

6.2.1 Reasons for failure of the grievance procedure

6.2.1.1 Management fails to deal effectively with workplace bullying complaints.

Many reasons exist as to why managers fail to address grievances effectively. Amongst the most important are the following:

- Few managers are skilled in resolving grievances.
- Managers fail to understand the seriousness and scope of the problem.
- Managers lack authority to deal with grievances in over-structured and over-regulated environments.
- The silofication of work environments prevents the resolving of grievances by an appropriate person working elsewhere within the organisation.
- Managers are implicated in grievances and do not wish their own roles to be exposed to their superiors.
- Office politics dictate that managers act in specific ways.
- Interpersonal conflicts between managers and employees cloud the judgement of managers and in turn they often abuse their powers by not investigating grievances timeously.
6.2.1.2 Invoking the grievance procedure causes conflict and polarises the workplace.

Where employees lodge grievances, it polarises the workplace, often splitting the workplace into different camps.

Employees, who record grievances on a regular basis, are often branded as ‘trouble makers’. Management will not consider the grievances of these employees with the attention they deserve. This results in festering conflicts within the organisation.

6.2.1.3 The grievance procedure fails as a means of objecting to Management’s performance.

Bendix’s argument that employees are empowered to object to Management’s performance by using the grievance procedure can only be true in organisations where the grievance management process is managed correctly and transparently. Few organisations fall within this category.

When testing Bendix’s theory in respect of the above with employees at grass root level, no employee indicated that they deem the grievance procedure to be a means to challenge Management’s performance or actions. From the interviews it appear that employees are afraid to put pen to paper, as employees who have done so, have been subtly victimised by their employers. In this respect, employees remain aware of the unequal footing of power, in which Management is the dominant force.

6.2.1.4 The grievance procedure fails to create awareness of employee problems.

Despite employees recording numerous grievances about the same topic, the problem is ignored by managers. One of the reasons for this is the prevalence of office politics, which dictates how managers should act.

An example of this reluctance to act, is where Management fails to act against a fellow manager who treats employees with disdain and disrespect. In this regard, management is aware of the problem, but for reasons, known to them only, they fail to take action against the perpetrator. These grievances are seldom resolved and fester within organisations as latent conflicts, waiting to flare up.

Although the lodging of grievances may draw attention to a particular problem, management’s lack of action in these matters, shatters Bendix’s theory in this respect.
6.2.1.5 Management’s concern for the wellbeing of employees is not reflected by the grievance procedures.

In a labour environment where inter-organisational competition for market share is extreme and the organisational focus is on the financial “bottom line”, not all employers are as concerned with the wellbeing of their employees, as Bendix would have one believe.

Managing grievances of employees has become a resource consuming, cumbersome task, which managers place on the back burner, as other ‘more pressing management matters require their immediate attention’. Although some operational issues might take priority for a while, the ‘back burner approach’, as displayed by some managers, doesn’t support the theory of ‘management’s genuine concern for employee wellbeing’.

In larger, hierarchically structured organisations, some managers abdicate the responsibility of looking after the wellbeing of their employees. Alternatively, these managers pass employees on to the Employee Wellness Programme, which must deal with the aggrieved employees and their wellbeing. These referrals take place despite sound grievance practice requiring that first line managers resolve grievances of employees as close as possible, to the source of the conflict.

6.2.1.6 Employees are not allowed to bring their grievances to the attention of management.

In organisations, where being a “team player” is valued, grievances by employees are often directly discouraged by management and fellow employees alike. Grievances are deemed to break down the ‘team spirit’ and the moral of employees.

In such environments, lodging a grievance is frowned upon and managers are encouraged to deal decisively with so called ‘problem employees, who fail to understand what is in the best interest of the organisation’.

Employees are allowed to be represented by a fellow colleague or union representative, should they choose to do so. Yet, managers do not readily allow union or other representatives to assist with the resolving of grievances. The adversarial history of trade unions and employers in the South African workplace is largely to blame for this.
Managers fear that allowing employees representation in any form, will unnecessarily escalate the grievance.

Where employees requested to be allowed to have representation during the management of their grievances, it was found to further fragment the workplace and to escalate the “us versus them” sentiment, thereby stirring up interpersonal and organisational conflict alike.

6.2.1.7 Management fail to consider grievances carefully and to make genuine attempts to resolve them.

In hierarchical organisations, where structured grievance procedures are in place, first line managers often ignore grievances of employees.

Often a simple apology from a manager, or a minor change to the day to day operations within the workplace, can resolve a grievance. Yet this does not happen. Managers fail to assume accountability for their roles within the workplace, citing a lack of authority to resolve a grievance, whilst they are in the most suitable position to resolve the grievance. After the grievance has been escalated to higher levels of authority, it is sent back down the hierarchy to the same manager, who should have resolved it in the first instance. The time delay and frustration caused by this unnecessary referral of grievances is demoralising. In addition, consider the implications if the line manager was accused to be bullying the employee and that same manager must now resolve the bullying grievance.

6.2.1.8 Employers indicate whether the grievance has been resolved.

Management usurps employees’ right to decide whether a grievance has been resolved or not. They often take a hard line approach with less knowledgeable, aggrieved employees. This may be on account of a legal position, organisational policy, regulations, procedures, or even office politics.

Employers realise that employees are not always familiar with ‘legal prescript and dictate’ and as such, will tell employees that it “is the best that the organisation can do under the existing circumstances”. Less knowledgeable employees would accept the outcome, despite it not being in their interest or the grievance not being resolved.
Employers may use strong-arm tactics to force employees into submission, using the threat of losing employment, costly legal battles and so forth to discourage employees from proceeding with a grievance and to rather accept the outcome which the employer proposes. In this regard, the aggrieved employee becomes a victim of secondary workplace bullying.

6.2.1.9 **Employers ignore time limits of the grievance procedure.**

In formal grievances a ‘procedurally set’ timeframe exists. Informal grievance procedures, on the other hand, have an ‘agreed time frame’, wherein the employer and employee agree to resolve the grievance within a specified period of time.

A cumbersome trend within the South African labour environment is that role players fail to adhere to these time frames. The importance of the timely resolution of grievances has been emphasised in the PSC’s Grievance Trend Reports and Fact Sheet.151 The failure by government departments to resolve grievance of employees within the prescribed time frames highlights the norm of this failure in the wider South African labour environment.

This failure to adhere to time frames borders on an unfair labour practice. Du Toit et. al. expresses it as:

“Unfair implies failure to meet an objective standard and may be taken to include arbitrary, capricious or inconsistent conduct, whether negligent or intended.”152

Although this statement appears harsh, the trend identified throughout the PSC’s report indicates that departments continuously fail to comply with the standards provided in the grievance rules.

Depending on the grievance procedure in the various government departments, a grievance is regarded as finalised if all provisions for resolution in terms of the grievance procedure are met. Again the employer, instead of the employee, decides when a grievance is resolved.

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In the 2006/2007 and 2007/2008 financial years, government finalised 3912 grievances out of 7642. This translates to 51% of grievances having been finalised during the two reporting periods.\(^\text{153}\) A total of 49% of grievances remained unresolved in that financial year. From this it can be deduced that time frames are generally not adhered to within the South African labour environment.

If Government, who is ultimately responsible for developing and enforcing labour law, has this poor record of maintaining time frames, the question beckons as to how can it hold other employers to a higher standard?

6.2.1.10 According to Nel et. al. "A neglected grievance, or a delayed response to it, is often the origin of a new grievance."\(^\text{154}\)

The necessity for prompt response in respect of the resolution of grievances is therefore endorsed in the Grievance Rules of the PSC. Consider the intrapersonal, interpersonal and organisational conflict, which might follow, where a workplace bullying grievance is not dealt with within the time frame. Given the South African trend not to finalise grievances within the prescribed or agreed time frames, the question arises how the grievance procedure can be considered as an effective mechanism to resolve workplace bullying. Employees who declare disputes experience retaliatory bullying.

Although South African labour law indicates that no employee may be victimised in any way for lodging a grievance or dispute, in practice employees who do so often become the target of retaliatory workplace bullying.

Employers will use all 'lawful' means at their disposal to make it impossible for an employee to stay on in their employment. Examples of retaliatory bullying are:

- ‘Pressure bullying’, where an employee has to perform to unrealistic time scales or with inadequate resources to complete a task,

- ‘Regulation bullying’, where serial bullying forces their target to comply with rules, regulations, procedures or laws, regardless of their appropriateness, applicability or necessity.


As a result employees will resign and sue for constructive dismissal.

In the case of *Kannemeyer vs Workforce Group* (2005), the employee lodged a grievance because her commission rate had been reduced without her consent. Thereafter, according to her, she was victimised for having lodged this grievance. She resigned and claimed constructive dismissal on the grounds of her reduced commission rate and because the employer, claimed that she had resigned in anticipation of the outcome of a poor work performance hearing. The employer denied that she had resigned due to victimisation, but rather because she wanted to avoid being dismissed for poor performance.

The arbitrator found that the employer had brought no evidence disputing the employee’s allegations of victimisation. Instead of resigning, the employee could have considered lodging a second grievance against the way in which her first grievance had been handled. However, as she had received a negative response to her first grievance, she could be excused for having lost faith in the grievance process.

While the poor performance charges appeared to be genuine, the employee had been victimised for lodging her grievance. This treatment was sufficient to claim constructive dismissal. The employer was required to pay the employee eight months’ remuneration as compensation.

In the light of the above it is crucial for employers who receive grievances to-

- ensure that the employee is not mistreated in any way after lodging the grievance;
- investigate each grievance thoroughly, while keeping an open mind; and
- judge the validity of the grievance on the facts and not on who has lodged the grievance, or, who has been named in the grievance.

Existing grievance procedures are not suited for dealing with workplace bullying, as most bullying is committed either by the target’s line manager, or by a co-worker, often with the line manager’s active encouragement. Anyone electing to use the grievance procedure as a means to remedy workplace bullying may therefore demand that their grievance be dealt with by individuals not connected to the alleged bully. It is a

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155 *Kannemeyer vs Workforce Group* (2005), 8 BALR 824.
breach of natural justice for the alleged bully to be in any way involved with the investigation and judgment of any grievance.

Considering-
- the above information;
- the role of managers in the management of grievances; and
- that managers themselves have been shown to be responsible for workplace bullying,

we conclude that the grievance procedure is not an effective management tool for workplace bullying.

6.2.2 Failure of Employee Assistance Programs (EAP’s) to resolve workplace bullying.

Some conflict management theorists make an argument for workplace bullying to be addressed by the Employee Assistance Programs of organisations. To evaluate this argument, it is necessary to consider the history of EAP’s, both internationally and locally. One must also consider the state of EAPs and the role it plays within the workplace. Thereafter the reasons why the EAP has failed as a mechanism to deal with workplace bullying will be considered.

6.2.2.1 Defining EAP

Jantjie gives a good exposition of the role and functioning of Employee Assistance Programs which will serve as the backdrop against which EAPS will be considered as a mechanism to deal with workplace bullying. 156

Jantjie cites the EAP Association of South Africa, which defines EAP as a work site-based program, designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns, but not limited to health, marital, family, financial, alcohol, drug, legal, emotional, stress, or other personal concerns which may adversely affect employee job performance. 157

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156 Jantjie, 2009:100.
Assistance Programs have been used as part of the business strategy to enhance employee functioning, loyalty, and performance in organisations around the world.

Jantjie cites Beidel, and Brennan (2006:36) refer to EAP practice as an approach with core expertise dealing with:

- Appropriate use of constructive confrontation.
- Development of linkages with external other community resources.
- Identification of employees' behavioural problems on the basis of their job performance. The emphasis is on delineating job stressors.
- Provision of consultation with supervisors, managers, and shop stewards in assisting them with training regarding EAP utilisation and accessibility.\textsuperscript{158}

An EAP is a work-based counseling programme that needs to be implemented strategically in order to impact on the life of employees. Involving key important persons such as the Chief Executive Officer (CEO), the Chief Operating Officer (COO), and Unions is important to ensure the success of it.

An EAP can also be regarded as the culmination of programmes, combining concerns for production and compassion with employees' experiences within the workplace. Many reasons exist for organisations to adopt an EAP. Amongst other things, it stems from the belief that helping employees resolve their problems is good for workers and in the best interest of the organisation. Certain employers promote belonging to EAPs to avoid unionisation of the workplace, in this way retaining control over the workforce. Given the history of organised labour within South African, few employers have adopted this strategy. Employees have always regarded trade unions as a means to resolve issues within the workplace. Only in recent years have employers started to promote employee wellness programs within South African workplaces.

Jantjie holds that there are two driving factors for having an EAP in the workplace. The first driving factor is to identify social problems at work, originating from:

- low productivity

\textsuperscript{158} Jantjie: 100.
counseling for personal, psychological or alcohol-related problems;  
- high costs of recruitment;  
- high turnovers;  
- strikes;  
- the need to motivate workers towards greater productivity; and  
- violence in the workplace.  

Secondly, the employers' social responsibility towards its employees requires the implementation of the EAP within the workplace. Happy employees are productive, profitable employees.

6.2.2.2 Historical overview of the EAP

EAP have their origins in the Occupational Alcoholism Programme (OAP) model of the 1940’s, established in the United States of America. These programs were started during World War II by the American Government seeking to, amongst other things, minimise the abuse of alcohol within the workplace.

The Kemper Group (USA) launched one such a program in 1962 to root out drinking on duty to improve job performance. Alcohol abuse in the workplace lead to lower productivity and ultimately affected the Groups’ economic efficiency. The approach adopted was constructive confrontation, meaning supervisors were encouraged to confront employees with evidence of their substandard job performance, coach them on job improvement, encourage them to use employee assistance programmes and explain the consequences of continued poor performance. The assumption therefore was that the approach could be effective for other human problems, thus the establishment of EAPs.

EAPs in many countries and have had their origins in the establishing of chemical dependency programs for employees.

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159 Jantjie:108.  
160 Jantjie:102.  
161 Jantjie:102.
6.2.2.3 EAPs in South Africa

It is imperative that the EAP provides timely, professional help for employees whose personal problems are disturbing their work performance. The effect of one problem employee or troubled employee can change organisational goals, especially in small organisations. Furthermore, as alluded to in Chapter 5, a conflicted employee will have a snowball effect, which can impede the productivity of other employees in a work unit. Employees do not often leave their troubles at home. The problems stay with them, haunt them and sometimes reduce work performance.

Jantjie cites Kurzman & Akabas, who indicated that the benefits of an EAP may be summarised as-

- cost effectiveness, in that it reduces the cost of health care cost;
- enhances corporate image;
- improves social functioning and self-esteem;
- minimises appeals, grievances, and arbitrations - especially when there is an improved relationship between union and management.
- provides a mechanism, which reinforces basic management practices; and
- provides measurable cost savings e.g reduced absenteeism, improved error judgment, and less late-coming.\textsuperscript{162}

The benefits of EAPs are evident. The question which needs to be considered, is whether or not it is an appropriate tool to deal with workplace bullying.

From experience, this author holds the view that the EAP fails as a mechanism to deal with workplace bullying. Some of the reasons are:

- Workplace bullying, as with the management of grievances, should be resolved as quickly and as close to the source as possible, in order not to destabilise the workplace. Referring complaints of workplace bullying to EAPs delays the resolving of such complaints, more so, where EAPS have to cope with the demands of a big organisation or where EAPs are external service providers.
- Given that a large percentage of bullies are found to be managers, EAP staff often do not have the seniority or authority to enforce processes or resolution strategies on managers.

\textsuperscript{162} Jantjie: 112.
Managers often have an apathetic attitude towards the EAP and its functions. As such, where the EAP makes recommendations to them, in respect of, amongst other things, workplace bullying, managers tend to ignore the recommendations.

Managers often have an inadequate understanding of the role and functions of the EAP. In large, hierarchical structured organisations, EAPs may make up only a small portion of that organisation. As EAPs are not linked with the main business purpose of the organisation, managers often regard the EAP as irrelevant.

Organisational cultures and sub-cultures may prevent employees from using EAP’s to resolve conflict. Employee Assistance Practitioners are often referred to as ‘shrinks’ or ‘headshrinkers’ and employees who visit these professionals are ridiculed for doing so.

EAP’s are often under-resourced and under-staffed, as they are not linked with the core business purpose of the organisation. Organisations prefer to distribute their resources to those divisions entrusted with the realisation of its core business goals.

Managers do not acknowledge the EAP as a mechanism to deal with workplace bullying. Instead they insist that employees, who have been bullied, must make use of the grievance procedure or lodge a formal complaint.

6.2.3 Disciplinary codes, investigations and hearings as a means to manage workplace bullying.

It is generally accepted by employers, employees and trade unions that the employer has the right to maintain and enforce discipline in the workplace. This right has its origin in the Common Law and more particularly, in the contract of employment.

The ‘right to discipline’, is a term which is implied by law, in the contract of employment. The right to discipline is linked to the employee’s duty to observe all lawful and reasonable instructions. To give effect to this right, employers adopt and implement disciplinary rules which establish the standard of conduct required from their employees.

The aim of these rules are to create certainty and consistency in the application of discipline. These rules should be unambiguous and readily available to employees.

The Code of Good Practice: Dismissal indirectly recognises the common law right of employers to discipline their employees, when it states:

‘All employers should adopt disciplinary rules which establish the standard of conduct required of their employees’.\(^{163}\)

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Further, employers have a duty to provide safe working conditions for their employees.\textsuperscript{164} This duty is also encapsulated in the Occupational Health and Safety Act.\textsuperscript{165}

Most disciplinary codes indicate the following purposes:

- Supporting constructive labour relations in the workplace;
- promoting mutual respect between employees and between employees and the employer,
- ensure that managers and employees share a common understanding of misconduct and discipline, which would
  - (i) promote acceptable conduct in terms of the provisions of the code;
  - (ii) provide a user friendly framework in the application of discipline; and
  - (iii) prevent possible arbitrary actions by supervisors towards employees in the event of misconduct.

Disciplinary codes subscribe to the following principles:

- An employee is entitled to impartiality of investigation, of the investigating officer and of the presiding officer;
- disciplinary proceedings should not emulate court proceedings;
- disciplinary proceedings must be instituted and finalised despite the fact that the act of misconduct might be a criminal offence of which a criminal investigation is in process;
- discipline is a corrective and not a punitive measure;
- discipline is a line management function;
- discipline must be applied in a prompt, fair, consistent and progressive manner;
- employees appointed to investigate the alleged misconduct must as far as possible be of higher rank than the employee being investigated;
- in all disciplinary proceedings the employee has the right to be represented by a union representative or a fellow employee;
- proceedings must be comprehensible to all employees;
- the disciplinary proceedings should take place in the workplace;

\textsuperscript{164} Section 8 of the Basic Conditions of Employment Act, Act No.: 75 of 1997.
\textsuperscript{165} Section 8 of the OHS Act, Act No.: 85 of 1993.
fair treatment of employees by ensuring that they (i) enjoy a fair hearing in both the formal and informal proceedings; (ii) are timeously informed of allegations of misconduct made against them; (iii) receive written reasons explaining the rationale for any decision taken; and (iv) have the right to appeal against any finding of misconduct made at a disciplinary hearing or sanction imposed at such a hearing;

where employees deny allegations of less serious misconduct, the disciplinary code in instances require a formal disciplinary to commence.

How does employers’ ‘right to discipline’ and their obligation to ensure a safe working environment relate to workplace bullying?

Given the fact that workplace bullying is regarded as a form of specified unfair labour practice within the South African labour environment, it follows that such behaviour could be dealt with by investigating it in terms of the disciplinary procedures of organisations. Some disciplinary codes, such as that of the SAPS, allow for a transgression of any existing law to be used in the formulation of disciplinary charges. Other disciplinary codes are more ambiguous by stating that "the list of misconduct reflected in the code is not exhaustive." This implies that the organisation has ‘carte blanche’ to regard any action of an employee as misconduct,

6.2.3.1 Failure of disciplinary codes, investigations and hearings as a means to manage workplace bullying.

Having worked as an employer representative for the SAPS, in what this author regards to be a workplace in which workplace bullying is widespread, it is strange that in 12 years, no such disciplinary investigations or hearings ever crossed this author’s desk. One reason for this could be the fact that employees were unaware that this kind of behaviour was deemed to be unlawful and that they could complain about it.

The organisational culture further entrenched workplace bullying as normal and acceptable practice in that, ‘real or good police officers did not make an issue of such conduct.’ Reporting workplace bullying for the purpose of launching a disciplinary investigation or disciplinary hearing, would be frowned upon by colleagues and

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166 Regulation 20(a) of the SA Police Service Discipline Regulations, 2006.
managers alike. Using the disciplinary code of an organisation to deal with workplace bullying can only be done in environments where-

- discipline management is done in a transparent, timely and consistent manner;
- the disciplinary code expressly prohibits such conduct;
- management has adopted a ‘zero tolerance’ stance to instances of such behaviour and has indicated its intention to rid the workplace of such conduct;
- the sanctions handed down by presiding officers support this stance of ‘zero tolerance’;
- management supports the ‘zero tolerance’ stance consistently without fear or favour; and
- the aim of disciplinary action is to deal proactively and reactively with instances of such misconduct.

In organisations where discipline is managed in any manner, other than stated above, the target of the bullying could experience a second round of victimisation, in instances where employers deal with such matters in a haphazard way, or with concealed, ulterior motives.

Furthermore, in what many deem to be an overregulated labour environment, despite employers’ best intentions, disciplinary proceedings become emulative of court proceedings. The atmosphere in these proceedings are often formal and tense, which in itself can not be regarded as conducive to getting to the truth, or dealing with complaints of workplace bullying.

Furthermore, victims of workplace bullying exhibit the same health effects and symptoms as those exposed to Post-traumatic Stress Disorder. Despite the noble attempts to keep disciplinary hearings informal and relaxed, the adversarial nature of disciplinary hearings (‘us vs them’) exacerbates the tension of these proceedings. Victims of bullying would often not like to testify against the bully in disciplinary hearings, as they would have to face their harasser directly. This prospect creates secondary trauma for the bullied employee. This is contrary to a code of good practice.

Unforeseen, unpreventable and, on the other hand, intentioned delays often prejudice the rights of victims, employers and bullies, to have disciplinary matters

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resolved as soon as possible. Where employer representatives and presiding officers are unskilled, defence representatives will often use delays as a defence strategy. Where matters are not resolved speedily, they would argue that ‘justice delayed is justice denied’.

‘Representation’ has become contentious, with such cases as *Hamata and Another v Chairperson, Peninsula Technikon*, wherein it was held that the employer has an obligation to at least consider allowing an employee to use legal representation in disciplinary hearings. The Supreme Court of Appeal held that:

“The failure of the Internal Disciplinary Committee (IDC) to exercise a discretion to allow outside legal representation was raised pertinently in the founding affidavit at paragraph 27.3. It also formed the basis of the declaratory order sought in the first part of prayer 3 of the notice of motion. Moreover, in paragraph 30 of the heads of argument in the Court a quo the appellants argued: “The rule relating to the IDC does not expressly permit outside legal representation; but nor does it expressly prohibit it. It is silent on the subject. The IDC, however, interpreted it as entailing an absolute prohibition on representation by an attorney. In construing the provision in this way, it is submitted that the IDC, and the other committees, again misconstrued the nature of the discretion conferred by the regulation. The Court a quo considered and rejected the argument. This Court took a different view.”

Consider how the victim of workplace bullying may be affected by an application brought before a presiding officer, to allow a legal representative to represent the bully and such application is the allowed. Lawyers can often tear into complainants under cross examination, especially in instances where Presiding Officers are not in control of proceedings or lacking knowledge. Employees are aware that presiding officers do not protect them in such instances and this discourages victims of workplace bullying to use the disciplinary code.

From experience, it was found that discipline management is not effected in a transparent, timely and consistent manner. Often managers would use the disciplinary code arbitrarily to bully employees. These managers show favour to some employees, whilst other employees are managed strictly in terms of the disciplinary code. This

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creates a lack of trust in the disciplinary code. For this reason employees often opt not to use the disciplinary code to remedy workplace bullying.

Furthermore, disciplinary codes are often silent on the management of workplace bullying and fail to expressly prohibit such conduct. In this regard defense representatives would argue that the employer can not regard the conduct to be misconduct, but rather ‘conflict’ which needs to be managed in another forum, for example by the EAP.

Management fails to appreciate the court’s ‘zero tolerance’ stance, in which workplace bullying is regarded as serious misconduct. Furthermore, they do not practice this stance without ‘fear or favour’. Office politics often dictates the way in which disciplinary hearings are conducted or the decisions relating to the process, despite the fact that it should not do so.

Sanctions handed down by presiding officers are often inadequate. Although the seriousness of workplace bullying often warrant dismissal for such conduct, presiding officers fail to send a strong message that this kind of behavior will not be tolerated. As such, transgressors are sanctioned with cautions, verbal or written warnings, or counseling sessions with an EAP. In many instances employers do not keep accurate record of these proceedings or sanctions issued to employees. This makes it difficult for employees who wish to pursue justice, where a history of bullying is attributed to a specific employee, as no record of such transgression or sanction exists, which could be used to create a disciplinary profile of such transgressors.

Jackson argues the importance of proper record keeping. He argues that employers who do not maintain detailed records of disciplinary action taken against employees, including sanctions imposed, are in peril.

He cites Gcwensha v CCMA & others, in which the employee had been dismissed for gross negligence. In this case the employer’s thorough record-keeping showed that the employee had a number of previous warnings for incompetence, negligence and inefficiency. At the time of his dismissal, the employee was on a current warning, which had the effect of ‘placing him on’ terms. The CCMA found that the

169 The Vital Importance of Keeping Records’, www.labourguide.co.za/records.
employee had a ‘deplorable record’ which the employer was entitled to consider when deciding on a suitable sanction for the current transgression.\textsuperscript{170}

On the other hand, in \textit{NUMSA v John Thompson Africa (Pty) Ltd}, the lack of proper record-keeping landed the employer in trouble and in the end, the employee was reinstated. The employee was dismissed for willful damage to, and deliberate misuse of company property, using abusive language, and being under the influence of an intoxicating substance.\textsuperscript{171}

The employee was dismissed and instituted his employer’s appeal procedure. No record of the proceedings at the disciplinary hearing was available for the appeal chairperson. Since there was no record of the evidence led at the disciplinary hearing, there was no evidence to indicate that the employment relationship had been irretrievably harmed by the employee’s behaviour and as such the employee was reinstated.

The Code of Good Practice: Dismissal requires that the employers should keep record of all disciplinary action taken against employees, including the reason for it, and the outcome of disciplinary action.\textsuperscript{172} The case law above highlights the importance of employers’ duty to keep records as required by Schedule 8(5) of the Code of Good Practice: Dismissal.

Employees who opt to use the disciplinary process as a means to remedy workplace bullying often find that employers have failed to keep records about incidents of employees who have been found guilty of workplace bullying. This creates an almost insurmountable obstacle for bullied employees in their pursuit of justice.

Disciplinary codes and procedures, despite their shortcomings as indicated above, remain a way of dealing with workplace bullying. The question beckons, as to how disciplinary codes and procedures can be optimised to ensure that they become a more effective recourse mechanism for dealing with workplace bullying?

One suggestion would be, to consider establishing a forum, which would expressly record the issues, scope and outcome of disciplinary hearings conducted.

\textsuperscript{170} ‘The Vital Importance of Keeping Records’.
\textsuperscript{171} ‘The Vital Importance of Keeping Records’.
\textsuperscript{172} Schedule 8(5) of the \textit{Code of Good Practice: Dismissal}, LRA, 1995.
throughout South Africa. Such a forum could address many of the existing shortcomings in the management of workplace discipline.

This author proposes that the goals of such a forum could *inter alia* be:

- To provide guidelines to employers in the consulting, drafting and implementation of disciplinary codes;
- To establish statistics and trends in respect of discipline management;
- To establish, implement and learn from best practices in respect of discipline management;
- To establish a general standard of conformity in the management of disciplinary matters;
- To assist the CCMA, given its limited capacity, with the provision of training for employer representatives and presiding officers;
- Provide guidelines in respect of sanction appropriateness.

It is foreseen that applying the proposed goals of the forum to workplace bullying as a specified form of misconduct will-

- Provide guidelines to employers in the consulting, drafting and implementation of disciplinary codes, which amongst other things, would expressly prohibit workplace bullying and list this behaviour as a form of ‘serious misconduct’;
- establish statistics and trends in respect of workplace bullying;
- establish, implement and learn from best practices in respect of workplace bullying;
- establish a general standard of conformity in the management of workplace bullying matters;
- assist the CCMA with the provisioning of training for employer representatives and presiding officers in respect of workplace bullying; and
- provide guidelines in respect of sanction appropriateness for employees found guilty of workplace bullying

The establishment of the proposed forum in respect of the management of workplace discipline can be regarded as an expansion of schedule 8(5) of the Code of Good Practice: Dismissal.
6.3 Workplace harassment in the South African labour fora

6.3.1 Overview of the Commission for Conciliation, Mediation and Arbitration (CCMA) and its dealings with harassment matters

The LRA set out to create institutions, which would be able to resolve conflict in the workplace effectively through conciliation and agreement building.\(^{173}\) In the event that conciliation fails, these institutions are tasked to arbitrate all disputes arising from collective agreements and other routine disputes which do not raise new questions of law. These matters are dealt with by the CCMA.

The Labour Court was established in terms of the LRA to produce authoritative precedents and supervise the arbitral institutions.

The CCMA is an autonomous statutory agency with legal personality.\(^{174}\) Although it is independent of the State, it is also an organ of the State in terms of the Constitution.

This view was confirmed by the Labour Appeals Court in *Carephone (PTY) LTD v Marcus No & Others*, 1998. Judges Myburgh, Froneman, Cameron held as follows:

“The LRA created both the CCMA and the Labour Court to resolve labour disputes, but made the nature and extent of their respective competencies quite different. Although the commission is an independent body with jurisdiction in all the provinces, it was not created as a court of law (ss 112-114 of the LRA, read with ss 165 and 166 of the Constitution). It thus has no judicial authority in constitutional terms. It is, nevertheless, a public institution created by statute. When it conducts an arbitration, this involves the exercise of a public power and function, because it resolves disputes between parties in terms of the LRA without needing the consent of the parties. This makes the commission an organ of state in terms of the Constitution”.\(^{175}\)

The CCMA has national jurisdiction and holds offices in all nine provinces of South Africa. The governing body of the CCMA appoints commissioners for fixed periods as full time employees, or as part time independent contractors.\(^{176}\) Bargaining councils and other non-statutory institutions are also linked to the CCMA.

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\(^{173}\) Section 1(d)(iv) of the LRA, 1995.

\(^{174}\) Section 112 of the LRA, 1995.

\(^{175}\) *Carephone (PTY) LTD v Marcus No & Others*, 1998, Case No. JA52/98.

\(^{176}\) Section 117(2) of the LRA, 1995.
6.3.1.1 Functions of the CCMA

The primary function of the CCMA is to conciliate and arbitrate disputes referred to it in terms of the LRA, 1995 and other labour statutes. The CCMA Regulations provide prescribed forms for referring various types of disputes for conciliation or arbitration.

The CCMA may offer to conciliate public interest disputes which have not been referred to them.\(^{177}\)

Additional tasks entrusted to the CCMA include-

- accrediting and monitoring of bargaining and statutory councils and private dispute resolution agencies;\(^{178}\)
- compiling and publishing information and statistical reports on its own activities;\(^{179}\)
- endeavouring to facilitate an agreement when required to do so by any party to a strike or establish picketing rules;\(^{180}\)
- helping to establish workplace forums;\(^{181}\)
- investigating a secondary strike and submitting a report to the Labour Court when requested to do so;\(^{182}\) and
- providing procedural advice if asked, or assisting with the provision of legal advice or representation.\(^{183}\)

The CCMA may also conduct the following discretionary functions:

- Providing advice on request or assisting to provide legal representation via the Legal Aid Board.\(^{184}\)
- Conducting, overseeing or scrutinising any election or ballot of a registered trade union or employer’s organisation.\(^{185}\)

\(^{177}\) Section 115(2) read together with section 150 of the LRA, 1995.

\(^{178}\) Section 127 of the LRA, 1995.

\(^{179}\) Section 115(1)(d) of the LRA, 1995.

\(^{180}\) Section 69(4) and (5) of the LRA, 1995.

\(^{181}\) Section 115(c) read together with section 80 of the LRA, 1995.

\(^{182}\) Section 66(4) of the LRA, 1995.

\(^{183}\) Section 115(2)(a) and (b) of the LRA, 1995.

\(^{184}\) Section 149 of the LRA, 1995.
Issuing rules and guidelines in respect of a variety of labour topics;\(^{186}\)

Offer advice or training on request from employers, trade unions, employer organisations, federations and councils.\(^{187}\)

### 6.3.1.2 The CCMA and its position on workplace harassment.

The CCMA recognised harassment as a threat to workplace stability. In an Information Sheet compiled with the aim to provide guidelines to employers and employees to help avoid harassment, the CCMA defines harassment as follows:

“Harassment is an incident that has happened to an individual at the workplace that is unwelcome, unwanted and has a destructive effect. Examples of harassment are—

- bullying;
- spreading malicious rumours, or insulting someone,
- particularly on gender, race or disability grounds;
- ridiculing or degrading someone – picking on them
- or setting them up to fail;
- exclusion or victimisation;
- unfair treatment, for example based on race, gender
- sexual orientation, pregnancy, age, disability,
- religion, HIV status, etc;
- overbearing supervision or other misuses of power or position;
- unwelcome sexual advances – touching, standing
- too close and displaying of offensive material;
- making threats/comments about job security without foundation;
- deliberately undermining a competent worker by
- overloading and constant criticism;
- preventing individuals progressing by intentionally
- blocking promotion or training opportunities.\(^{188}\)

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\(^{185}\) Section 115(2)(f) of the LRA, 1995.

\(^{186}\) Section 115(2)(a) of the LRA, 1995.

\(^{187}\) Sections 115(2)(a), 115(3) of the LRA, 1995.

\(^{188}\) Information Sheet on Harassment, January 2002, CCMA.
The CCMA emphasises that each individual has the right to be treated with dignity and respect at work. It states that harassment of any kind is in no one’s interest and should not be tolerated at the workplace. It expressed the view that employers have a duty to protect their workers from harassment and to inform and educate them about this issue.\(^\text{189}\)

The CCMA recognised and expressed the need for a regulatory framework to deal with such conduct and as such, propagated the need for employers to develop a ‘code of conduct on harassment’ in consultation with employees and employee representatives. It recognised harassment to be an issue protected by the law and that it constitutes unfair discrimination.\(^\text{190}\)

The Information Sheet identifies the following reasons as to why harassment should not be ignored in the workplace:

- The conduct is regarded as morally unacceptable conduct;
- Harassment causes organisational problems including –
  - violations of human rights;
  - poor morale; and
  - poor employee relations
- it threatens the physical and psychological performance of employees;
- it results in unexplained absenteeism, late coming and poor concentration at work;
- it creates a hostile intimidating and offensive work environment and it can lead to loss of productivity and often to employees resigning.\(^\text{191}\)

The CCMA recommends, amongst other things, dealing with harassment by:

- keeping a record of all incidents, noting dates and times, potential witness and what was done;
- confronting the harasser by firstly informally speaking to the harasser directly, taking a witness with;

\(^{189}\) Information Sheet on Harassment. \(^{190}\) Information Sheet on Harassment. \(^{191}\) Information Sheet on Harassment.
lodging a formal complaint with the employer;

lodging a grievance or disciplinary action as a formalised way of dealing with harassment cases. Report the matter to the appropriate person at work:

- If employees are members of a union or employees’ association, their shop steward or representatives’ help must be enlisted in dealing with the harassment.

- If the employee is not a union member, the company’s Human Resources Manager or someone in a position of authority, such as a supervisor or senior manager’s help must be enlisted to deal with the harassment;

contacting the CCMA for assistance in respect of their rights in terms of the labour laws, where employees work in small business and the above options are not available to the employee;

referring the harassment complaint to the CCMA for conciliation and, if unresolved, the matter could be referred to the Labour Court for adjudication.\textsuperscript{192}

The CCMA reflects that 7\% of matters heard by it, dealt with unfair labour practices.\textsuperscript{193} This statistic remained unchanged from the 2007/2008 reporting year. According to Pool,\textsuperscript{194} workplace bullying falls within the same category of grievances. The fact that the CCMA only published a Fact Sheet is not sufficient to create significant awareness of the scope and implications of the workplace bullying phenomenon. Although the Fact Sheet is a handy quick reference, the CCMA should increase its prioritisation of workplace bullying to eradicate this form of unfair discrimination from the workplace.

Rycroft lists the following cases in which the CCMA dealt with ‘workplace harassment’ cases since 1998.\textsuperscript{195}

**Aggression:**

-  \textit{Visser and Amalgamated Roofing Technologies t/a Barloworld} (2006) 27 ILJ 1567 (CCMA)

\textsuperscript{192} \textit{Information Sheet on Harassment.}

\textsuperscript{193} \textit{Annual Report of the CCMA, 2008/2009, CCMA.}

\textsuperscript{194} Interviews with Pool, A.M., Director: Labour Relations Improvement, Office of the Public Service Commission, 4 November 2009 and 9 November 2009, OPSC.

\textsuperscript{195} \textit{Workplace Bullying: Unfair Discrimination, Dignity Violation Or Unfair Labour Practice?}
Creating an unhealthy working environment:


Intolerance of psychological, medical or personal problems

- Wylie and Standard Executors Trustees (2006) 27 ILJ 2210 (CCMA)

Pressure to engage in illegal activities:

- Bonthuys and Central District Municipality (2007) 28 ILJ 951 (CCMA)

Recommendation to resign:

- Dark and Ex Hex Boerdery (Pty) Ltd (2008) 29 ILJ 3092 (CCMA)

Verbal abuse:

- Visser and Amalgamated Roofing Technologies t/a Barloworld (2006) 27 ILJ 1567 (CCMA) 1569

Unreasonable targets:

- Puren v Victorian Express (1998) 19 ILJ 404 (CCMA)

The above cases indicate that the CCMA does deal with bullying.

6.3.2 Workplace harassment matters before Bargaining Councils and Courts of Law

The following workplace harassment matters were heard by the South African labour fora:

Abuse of disciplinary processes

- Gobey v Grinkaer-Lta Duraset [2007] JOL 19017 (MEIBC)

Assault

- Le Monde Luggage CC t/a Pakwells Petje v Dunn NO & others (2007) 28 ILJ 2238 (LAC) para 5
- Ndebele v Foot Warehouse (Pty) Ltd t/1 Shoe Warehouse (1992) 13 ILJ 1247 (LC)
Creating an unhealthy working environment

- Naude and Stealth Marine (2004) 25 ILJ 2402 (BCA)

Demotion or transfer

- Steward Wrightson (Pty) Ltd v Thorpe 1977 (2) SA 943 (A)
- Van der Riet v Leisurenet Ltd t/a Health & Racquet Club [1998] 5 BLLR 471 (LAC)
- Van Wyk v Albany Bakeries Ltd [2003] 12 BLLR 1274 (LC)
- Mhlambi v CCMA & others (2006) 27 ILJ 814 (LC)

Intolerance of psychological, medical or personal problems

- Pedzinski v Andisa Securities (Pty) Ltd (formerly SCMB Securities (Pty) Ltd) (2006) 27 ILJ 362 (LC)
- Marsland v New Way Motor & Diesel Engineering (2009) 30 ILJ 169 (LC)

Humiliating or demeaning conduct

- Pretoria Society for the Care of the Retarded v Loots (1997) 18 ILJ 981 (LAC)

Marginalisation


Recommendation to resign

- Unilong Freight Distributors (Pty) Ltd v Muller [1998 (1) SA 581 (SCA)
- Dalgleish v Ampar (Pty) Ltd t/a Sol Energy [1995] 11 BLLR 9 (IC)
- Dallyn v Woolworths (Pty) Ltd (1995) 16 ILJ 696 (IC)
- Jooste v Transnet Ltd t/a SA Airways (1995) 16 ILJ 629 (LAC)

Unreasonable targets

- Solid Doors (Pty) Ltd v Theron & others (2004) 25 ILJ 2337 (LAC)

Verbal abuse

- R & C X-Press Freight v Munro (1998) 19 ILJ 540 (LAC);
- Lang v Daliff Precision Engineering (Pty) Ltd (1993) 14 ILJ 1359 (IC) 1360-1361
Considering the case law above, it is clear that South African Courts and labour fora have dealt with workplace harassment matters since 1998.

6.4 Recourse for dealing with ‘harassment’ under the EEA

The Employment Equity Act, 1998, prohibits policies or practices that discriminate against employees on specified grounds. These include, but are not limited to, the following:

- age;
- belief;
- birth;
- colour;
- conscience;
- culture;
- disability;
- ethnic or social origin;
- family responsibility;
- gender;
- HIV status;
- language;
- marital status;
- political opinion;
- pregnancy;
- race;
- religion;
sex; and
sexual orientation.  

Section 6 of the EEA, 1998, prohibits unfair discriminatory employment practices or policies. Grogan states that the meaning of the word 'practice' as used in the definition of 'unfair labour practice', used in conjunction with the term 'policy' as found in section 6, is to be interpreted to have a similar meaning.

He holds that 'practice' refers to a single act or omission or a series of acts, omissions other than dismissals, which are specifically catered for in section 10 of the EEA and thus excluded from the ambit of section 6 of the EEA. At present no definition exists for the term 'policy'. Grogan argues that a 'practice' would include or be implemented in terms of a policy.

This raises the question why the legislature elected to use both these terms. It is self-evident that the legislature aimed to ensure that organisational policies do not escape being scrutinized by it, in terms of section 6, even if these policies have not been put into practice.

The legislature probably had in mind *a course of action*, rather than a *single act or omission*, when it used the word 'policy' in section 6. This should be interpreted to mean that the term is not necessarily confined to formal plans, but could extend to any regular course of conduct or standing organisational practice.

The prohibition against unfair discrimination applies to *persons*, as juxtaposed to *employers in* unfair labour practice. The key requirement, however, is that the discrimination must flow from an employment practice or policy.

The term ‘employment policy’ is specifically defined to include, amongst others-

- advertising and selection criteria;
- appointments and the appointment process;
- demotion;

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196 Section 6(1) of the EEA, 1998.
197 Grogan, 2008:143.
198 Grogan, 2008:143.
disciplinary measures other than dismissal; 
- dismissal; 
- employment benefits; 
- job assignments; 
- job classification and grading; 
- performance evaluation systems; 
- promotion; 
- recruitment procedures; 
- remuneration; 
- terms and conditions of employment; 
- the working environment and facilities; 
- training and development; and 
- transfers.\(^{199}\)

6.4.1 **Harassment as a specifically prohibited form of unfair discrimination.**

No clear reason exists, as to why the legislature deemed it necessary to particularly list ‘harassment’ of an employee as a form of prohibited 'unfair discrimination', as contemplated in section 6(3) of the EEA,1998. It is self-evident that harassment is in fact a ‘practice’, which is already included in terms of section 6(1).

In needs to be borne in mind that harassment does not necessarily involve discrimination. It would therefore appear that the legislature’s intent with the specific mentioning of ‘harassment’ as a specifically prohibited ground of unfair discrimination, was twofold, namely to ensure that-

- employers would be unable to argue that harassment by one of its employees by another did not constitute an organisational employment policy or practice.; and

\(^{199}\) Grogan, 2008:143.
employers would be unable to escape the reach of section 6, by arguing that a particular form harassment does not constitute discrimination.

Grogan indicates that the term ‘harassment’ has come into popular usage chiefly as a means of describing unwanted sexual advances. However, the EEA does not confine prohibited harassment to harassment of a sexual nature. Any form of harassment of an employee on one of the prohibited grounds will be covered by the definition.\textsuperscript{200}

Grogan defines ‘Harassment’ in its wider sense to include-

"[A]nything from taunting an employee about some personal characteristic, nagging, unpleasantness, or persecuting them with frivolous disciplinary action, provided this is done on one of the grounds mentioned in the Act."

Prior to ‘harassment’ being included in the EEA as a prohibited form of discrimination, the only remedy afforded to employees in terms of the labour legislation, was to resign from employment and claim constructive dismissal. However, since its inclusion in the EEA of 1998, harassed employees may compel their employers to take measures against perpetrators by bringing actions under the EEA.

Section 60 is of significance in claims of harassment, more especially since the employer itself is unable to physically harass an employee, except through the actions of its other employees. It requires any employee who alleges that he or she is being harassed by a colleague, to immediately bring that conduct to the attention of the employer. The employer in turn is compelled to-

- 'consult all relevant parties'; and
- 'take the necessary steps to eliminate the alleged conduct and comply with this Act'.\textsuperscript{202}

\textsuperscript{200} Grogan, 2008: 151.
\textsuperscript{201} Grogan, 2008: 152.
\textsuperscript{202} Section 60(2) of the EEA, 1998.
If an employer fails to take action upon the receipt of a rapport of harassment and the alleged perpetrating employee is found guilty of such conduct, the employer will also be deemed to be guilty of the same conduct.\textsuperscript{203}

These provisions make it clear that the legislature does not intend to impose strict liability on employers for harassment by their employees as is the case in terms of the Common Law. Grobler v Naspers, SCA is an example in which the High Court has held the employer vicariously liable for the conduct of one of its employees.\textsuperscript{204}

The EEA states that-

\begin{align*}
[D] & \text{espite subsection (3), an employer is not liable for the conduct of an} \\
& \text{employee if that employer is able to prove that it did everything possible to} \\
& \text{prove that it did all that was reasonable practicable, to ensure that the} \\
& \text{employee would not act in contravention of this Act}. \textsuperscript{205 (Own emphasis)}
\end{align*}

From the above it would appear that an employer cannot be held liable for harassment by one or more of its employees, if management was unaware of it. However, once the harassment has been brought to the attention of management, the only way the employer can escape liability is to take the necessary steps to prevent such harassment. In respect of what the ‘necessary steps’ may comprise, will vary from one case to the next. In extreme cases of harassment, such as sexual harassment, the dismissal of the perpetrator will be the safest course action.

At present, the courts have not yet dealt with harassment cases in which the victim suffered in silence and where the employer remained completely unaware of the perpetrator’s conduct. Current cases on vicarious liability suggest that the victim’s silence will not constitute an insurmountable defence. It remains to be seen whether liability will be extended to employers in those circumstances. In the view of this author and considering section 60(4), it appears unlikely that the Courts would go that far.

\textsuperscript{203} Section 60(3) of the EEA.
\textsuperscript{205} Section 60(4) of the EEA, 1998.
6.5 Summary

The existing recourse mechanisms to deal with workplace bullying all have significant shortcomings. Victims of workplace bullying are often faced with these shortcomings when deciding on a mechanism to remedy this behavior.

Given these shortcomings, it is understandable why victims of such behaviour often relent on taking any action whatsoever, as all these mechanisms arguably perpetuate workplace bullying to some degree.

How do victims then seek justice and recourse? It would appear that at present, victims of workplace bullying would need to consider the facts of their individual cases against, amongst other things, the organisational policies, culture and even ‘office politics’, before selecting the lesser of the ‘recourse evils’, which would provide them with the highest chance of success. This might not be as easy as it sounds, as often, employees are not aware of all the factors which might impinge on their decision.

The flowchart below provides the processes which can be followed, as well as the available fora which exist to assist with the resolution of workplace bullying cases within the South African labour environment.

Figure 6.2 Flowchart: Resolution Fora In The Management Of Harassment Cases Under The EEA, 1998.
Chapter 7: FINDINGS AND RECOMMENDATIONS

Summary: This chapter considers the findings of the research conducted in respect of the prevalence and consequences of workplace bullying within South Africa. It highlights the need for an unambiguous vernacular in respect of workplace bullying and the lack of general awareness, as well as effective recourse mechanisms to deal with workplace bullying. In conclusion it proposes that research be conducted into the possibility to establish a Code of Good Practice in Dealing with Workplace Bullying.

7.1 Findings and recommendations

The following findings and recommendations are made:

7.1.1 Finding 1: The need for unambiguous vernacular in respect of workplace bullying

As indicated, Lutgin-Sandvik raises concerns in respect of the lack of an unifying vernacular to properly identify the phenomenon of workplace bullying. She states that the lack of a single vernacular to identify workplace bullying adds to employees' difficulties in dealing with 'workplace bullying'. She rightfully raises the question as to how an employee could pursue justice against a bully if one is unable, amongst other things, to describe the conduct adequately. What do employees complain about if they are not familiar with the type of conduct?

As seen earlier in this treatise, South African labour law is facing a similar conundrum. It recognizes harassment as a discriminatory practice under the EEA. It acknowledges the existence of different forms of harassment, such as sexual harassment and workplace harassment, although the latter is not yet properly defined.

However, employees at grass root level, who are not experts at labour law, do not realise that 'harassment' as defined in the EEA, relates to harassment other than 'sexual harassment'. In a small sample, a total of 9 out of 10 employees were unable to identify what 'workplace harassment' is as contemplated in the EEA. Most employees indicated that 'workplace harassment' refers to 'sexual harassment'.

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208 Section 6 of the EEA, 1998.
The above result supports the concerns raised by Lutgin-Sandvik and shows that employees within South Africa are mostly unaware of this form of unfair discrimination.

On the other hand, the same group could give a fair account of what ‘unfair discrimination’ entails. However, the group did not extend the definition of ‘unfair discrimination’ to include ‘workplace harassment’. Instead they cited prohibited discriminatory grounds of race, age, sex and so forth, as contemplated in section 6(1) of the EEA with which they are familiar.

Asking the same group of employees to explain ‘workplace bullying’, it was found that most employees could explain, to some extent, the concept of ‘workplace bullying’ in contrast to that of ‘workplace harassment’. The employees could further give examples of workplace bullying behaviour and listed, amongst others, the following examples:

- belittling employees in front of colleagues;
- creating a hostile working environment;
- intimidation of employees;
- swearing at employees;
- threatening behaviour;
- unfair performance assessment.

Asking employees in various organisations to differentiate between ‘workplace bullying’ and ‘workplace harassment’ produced similar results.

Understandably, workplace harassment, as defined in South African Labour Law, is still a fairly new social and legal concept. Given this fact, the need for accurate topic-specific terms, phrases and language to give clarity to the workplace bullying phenomenon, has become urgent.

Although the terms ‘workplace bullying’ and ‘workplace harassment’ are used interchangeably by various authors, the uncertainty it creates with employees is notable. Research has shown that workplace bullying is a worldwide phenomenon, impacting on
workplaces everywhere. It follows that the problem in respect of the lack of vernacular is also a worldwide problem.

Given that there appears to be an universal view (rightly or wrongly) that ‘harassment’ refers mainly to sexual harassment, it is necessary to resolve this issue in the interests of those affected by workplace bullying. In this regard, using the predominant international term ‘workplace bullying’ instead of ‘workplace harassment’ will clarify the present confusion.

Biswa reflects on the importance of using appropriate vernacular in the dissemination of information.209 His article deals with the way in which HIV/AIDS information is disseminated amongst communities in India. It highlights that, when HIV/AIDS information material is prepared, adequate attention is not paid to its suitability for the target audience.

His paper reflects, amongst other matters, on the World Health Organisation’s HIV/AIDS literature targeting truck drivers. It was found that the vernacular in this literature was too sophisticated for the truck drivers and it was evident that they were not going to be interested in the literature or topic.

His paper also found that a country such as India, with higher education and English medium education available only to the better off, and where about 80% of residents live in rural villages, the vernacular should be simple and reader-friendly to be effective in its purpose. 210

The report makes the following recommendations:

- Due to culture differences, the need and format of the disseminated information might have to be different. Enough flexibility should exist to adopt to these needs, though the basic information must remain the same.

- Prior to preparing information material, the community should be brought into discussion so that the material adequately serves the purpose it was intended for.

210 Vernacular: Media for More Effective Information Dissemination.
Reporters in the vernacular media in print/broadcasting should be encouraged to cover HIV/AIDS. 211

The similarities between India and South Africa are noteworthy. These include:

- The majority of South Africans live in rural areas.
- South Africa, like India, has a variety of indigenous languages, which must be catered for in the dissemination of important information.
- The need to disseminate information to grass root level in such a manner that the information remains technically correct and serves the purpose it was intended for, is often overlooked.

Understanding that the majority of South Africans have languages, other than English as their first language, creates challenges in the dissemination of technical information to the masses. South Africa, like India, is gripped in the scourge of HIV/AIDS and must disseminate technical information about this disease and other related assistance programs to the masses. In this respect, South Africa has achieved much, as HIV information is currently being disseminated in all eleven official South African languages. 212

Given the technical nature of law, making a concept such as ‘workplace harassment’, as defined in the EEA, understandable to the general populace in South Africa, remains a challenge. Most South Africans will in their lives at best deal superficially with the law. Fifteen years into democracy a significant portion of the population is still coming to grips with such fundamental constitutional concepts as ‘human rights’.

Furthermore, the term ‘harassment’ is regarded as a ‘western concept’ by many South Africans. Not all indigenous languages have a correlating translation, which adequately translates it. This perpetuates the difficulty to make the term accessible to

211 Vernacular: Media for More Effective Information Dissemination.
212 The Centre for AIDS Development, Research and Evaluation (CADRE).
the people. Although the legislature might deem the term ‘harassment’ to be appropriate, the question remains how this legal jargon becomes comprehensible to a population that have English as a second language and who are regularly affected by workplace bullying.

Dr Bikram Gill, holds that vernacular language is the best medium to transmit knowledge and information to the masses.²¹³ He indicated that effective communication in the local Indian vernacular of Punjabi has resulted in the efficient transfer of agricultural knowledge to farming communities in that area. Dr Gill holds the view that it is the duty of researchers to convey information in simple terms and understandable language.

An argument can be presented that law ultimately is written ‘by the people for the people’. It needs to serve the people and their interests. Although topical issues might serve the interests of the people, researchers and authors often forget that their work must be accessible and understandable to ordinary people. Considering that English is not the first language of most South Africans, it raises the question as to how accessible and understandable South African laws are, to the ordinary South African.

**Jargon**

The word ‘jargon’ comes from an old French word meaning ‘the twittering and chattering of birds’. It came into English in the fourteenth century, when its meaning was extended to include ‘meaningless talk’ or ‘gibberish’.

The Longman Dictionary of Business English defines jargon as:

*a.* “language, written or spoken, that is difficult or impossible for an ordinary person to understand because it is full of words known only to specialists;

*b.* language that uses words that are unnecessarily long and is badly put together.

Many linguists believe that the word ‘jargon’ would be best reserved for
the first of these definitions. Some people also refer to this as ‘technical
jargon’, ‘shop talk’ or ‘terms of art’.214

Hirst considers the use of scientific and technical jargon together with specialised
terminology.215

He views jargon or scientific terminology’s use to be essential for designating new
concepts for which the existing language has no name. He argues that the use of jargon
makes for economy, accuracy and the precision required in scientific research.

He further argues that although jargon plays an important role in scientific and
technical communication, its proper use continues to be a point of discussion, given the
concern with audience adjustment, metaphorical explanation and purpose, and ethics.

Hirst states that it is important to teach students and to convince scientists,
engineers, and other writers and speakers, to focus their topical vernacular to cater for:

- the specific group of recipients of their communication, thus who will be served by the
  communication;
- the occasion calling for the communication;
- the goal which needs to be accomplished through the communication, and
- the ethical goals of safety, helpfulness, empowerment, and truth in communication.216

He further expresses the argument that writers should also be teaching and
convincing students and professionals to:

- appreciate what makes jargon either good or bad;
- distinguish jargon usage from other aspects of scientific and technical writing styles; and

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215 ‘Scientific Jargon, Good and Bad’ (2003), Journal of Technical Writing and Communication, Volume 33:
201–229.
216 Scientific Jargon, Good and Bad’. 
recognise that in every context, jargon should be used judiciously to ensure that it remains helpful, creates understanding, and does not tax its audience.\textsuperscript{217}

Hirst argues that the excessive use of technical terms impede the advancement of science as -

“\textit{It kills the grace and purity of the literature by means of which the discoveries of science are made known}”.\textsuperscript{218}

Hirst’s four goals to teach students and other authors to focus topical vernacular makes good sense. Scientists and other writers often fail to take the issues, which Hirst raises, into account. Case in point: the legislature’s referral to workplace bullying as ‘workplace harassment’.

It is the view of this author that the legislature’s use of the term ‘workplace harassment’ creates ambiguity and fails to cater for the needs of the majority of South Africans. It creates confusion rather than clarity. It unnecessarily complicates a phenomenon that could easily be explained by using less technical jargon.

The average employee, who is bullied at work can become intimidated or confused by over technical vernacular used in source documents of recourse mechanisms. Given that the legislature’s aim with including section 6(3) of the EEA was to root out workplace bullying, the usage of the term ‘workplace harassment’ should be reconsidered.

The ethical goals listed by Hirst, namely safety, helpfulness, empowerment, and truth in communication are also not served by the legislatures’ use of the term ‘workplace harassment’.

Carr considers the value of jargon to be both necessary and useful for members of a profession or other relevant groups in order to communicate clearly and succinctly with each other.\textsuperscript{219}

\textsuperscript{217} Scientific Jargon, Good and Bad’.
\textsuperscript{218} Scientific Jargon, Good and Bad’.
She explains that jargon acts as a kind of shorthand, allowing persons to express specialist concepts concisely. It improves communication, and saves time and money. However, Carr warns that the use of specialised technical jargon becomes problematic when it is used in writing to people who are not familiar with it and where authors fail to explain what it means.

Nevertheless, Carr recommends the inclusion of technical jargon in documents for the public and other groups’ consumption, even if they are not familiar with it. She qualifies this statement by adding that the jargon needs to be well-explained. She cites two reasons for this:

- From a practical point of view, it is impossible to replace most technical jargon words and phrases which are concise and accurate in meaning with other plain-English translations.

- From an ethical point of view, exposing the audience to technical jargon can help them to understand more about the field. This would empower the audience.\(^\text{220}\)

Carr’s emphasis on ‘proper explanation’ of the technical jargon being used, is thus a prerequisite to ensure that recipients of the information are empowered.

Given the fact that the legislature has not endeavoured to properly define or explain ‘workplace harassment’ within the scope of South African labour law, it follows that the legislature’s use of the term ‘workplace harassment’ can be deemed to be unsuitable jargon.

7.1.1.1 Recommendation 1: Research and formulation of workplace bullying vernacular.

From the above, it is clear that there is a need for a technically formulated, accurate and user-friendly vernacular in respect of workplace bullying, which would –

- empower ordinary South Africans to better understand the phenomenon,
- explain their rights in respect of such behaviour;

highlight the serious implications of the phenomenon; and

to explain the various forms of recourse available to them.

The definition of ‘workplace bullying’ as considered in Chapter 1 of this treatise is in the view of this author the start of a journey to establish such a purposeful vernacular.

Consider further that research has shown that 78% of South Africans have indicated that they have been bullied in the workplace, and one finds that the number of ‘workplace harassment’ cases reported to labour fora appears hugely disproportionate. Carr’s arguments of ‘proper explication’ as a prerequisite to understanding jargon makes it clear that the ambiguity of the term ‘workplace harassment’, as used by the legislature, can be regarded as one reason why so few workplace bullying cases make it to South African labour fora. Most South Africans are not familiar with the term, let alone the legal implications and recourse available to deal with such behaviour.

To further explain the need for a simple understandable vernacular of concepts within South Africa, Aitchison et al., illustrate that illiteracy in South Africa poses significant challenges. The survey takes into account the 1996 General Population Census and 1995 October Household Survey. The latter summary found that --

- of the more than 26 million adults (people aged 15 and over), about 12 to 13 million (roughly 50%) had less than a full (grade 9) general education;
- about 7.4 to 8.5 million of the employees mentioned (roughly 75%), had less than grade 7, which is often used as a minimum education level indicator of sustainable functional literacy; and
- about 2.9 to 4.2 million people had no schooling at all and were presumably, by definition, illiterate. (Own emphasis)

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221 The Cost Of Violence/Stress At Work And The Benefits Of A Violence/ Stressfree Working Environment, University of Manchester.
The researchers also noted that these figures of functional illiteracy tended to be used rather loosely, with some scientists indicating that about ‘12 million people are illiterate’ when these scientists should in fact say that ‘12 million people have an incomplete general education’.

Aitchison further noted that there were no signs of a decrease in the percentage of functionally illiterate adults in the population. Some statisticians looked at illiteracy from the viewpoint that adults were persons aged 20 and over. Some government publications, on the other hand, used the age of 16, as the lowest age to be considered an adult. Though this differentiation made direct comparisons difficult, these statistics did not materially alter the picture of illiteracy outlined in their study.223

Explaining a technical concept such as workplace bullying to employees with such high levels of illiteracy would pose self-evident challenges.

It is recommended that the legislature be approached with a recommendation to contemplate altering the term ‘workplace harassment’ to ‘workplace bullying’, which is the more self-explanatory and user-friendly term for such behaviour. Making this change is the first step towards empowering employees to recognize this form of unlawful discriminatory behaviour.

Once employees understand the concept and recognise that such behaviour is unlawful, greater awareness about the phenomenon will automatically be created. It stands to reason that employees will more readily take action against the perpetrators of such conduct, once they understand the phenomenon, its scope, consequences and the resources available.

An added benefit of amending the term ‘workplace harassment’ to ‘workplace bullying’ is that it would bring South Africa in line with the international usage of the terminology, amongst others, by the International Labour Organisation.

Furthermore, it is recommended that the ILO should be approached for assistance in the conducting of a study of international best practice, in respect of the usage of topic-specific vernacular for workplace bullying. ILO member countries, amongst other role players, should provide inputs in this regard, in order to address the lack of a single vernacular. The member countries’ input will be used to formulate a

223 University Of Natal Survey Of Adult Basic Education And Training: South Africa.
scientifically accurate, internationally acceptable vernacular for workplace bullying. Although this might be a costly exercise, the cost should be counterbalanced against the ever-increasing cost of workplace bullying around the world.

**7.1.2 Finding 2: Prevalence of workplace bullying in South Africa**

The escalation of workplace bullying may be deduced from the statistical information on public servants’ grievances reported to the Public Service Commission (PSC) over the past three financial years. As alluded to above, workplace bullying falls in the category of ‘unfair treatment’ in these reports. The PSC conservatively estimated that as much as 15% of ‘unfair treatment’ grievances could be attributed directly to workplace bullying. It did not want to estimate the amount of grievances in which workplace bullying played an indirect part.224

A total of 1154 ‘unfair treatment’ grievances were recorded during the 2008/2009 financial year.

A total of 173 of these grievances could thus be regarded to be the direct result of workplace bullying. The significant escalation in unfair treatment grievances is reflected in Table 4.5.225

Given the alarming rise in ‘unfair treatment’ grievances (95% increase in the 2008/2009 financial year) and considering the fact that workplace bullying falls within the scope of this category and constitute an estimated 15% of these cases, it is safe to deduce that workplace bullying may have drastically increased within South Africa, during the previous financial year.

If research is to be believed, that 78% of South Africans have been bullied in the workplace at one time or another, it raises the question as to why so few grievances reflect workplace bullying as a topic of concern.

Some of the reasons why employees choose not to use the grievance procedure as a remedy for workplace bullying have been considered. These reasons correlate directly with the statistical data from the PSC, which estimates that only 15% of ‘unfair treatment’ cases are directly linked to workplace bullying. It needs to be highlighted that

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225 “See page 76.”
the 15% of grievances as contemplated above, represents only those employees who
did elect to use the grievance procedure as remedy for workplace bullying and as such
have reported instances of bullying.

This statistic, despite being indicative of the presence of workplace bullying within
the Public Service, can therefore not be regarded as conclusive quantification of the
phenomenon within the South African labour environment, but rather a suggestion in
respect of the prevalence and increase thereof.

In further attempting to quantify the prevalence of workplace bullying this author
looked to the South African Police Service (SAPS) as it is currently the biggest employer
on the African continent, with 182 754 employees in its service.\textsuperscript{226} Having worked in the
SAPS for 20 years, this author can report that, for a variety of reasons, workplace
bullying is common in that organisation.

The prevalence of the workplace bullying phenomenon within the SAPS was
discussed with clinical psychologists and a senior employee (hereafter referred to as
‘the group’) of the Spiritual Services Division of the SAPS. These employees are tasked
with, amongst other things, providing trauma counseling to the employees of the SAPS.
The group indicated a willingness to discuss the phenomenon on the promise of
anonymity. From the information already provided in respect of the SAPS, the reasons
for this request are self-evident.

The group indicated that no official terminology for this behaviour is in use within
that organisation. Furthermore, instances of workplace bullying are not reported to them
in their ‘official capacities’ for counseling, or other purposes. They could not articulate
reasons, as to why this was the case.

When asked whether they were aware of recourse mechanisms to deal with
workplace bullying, some members of the group mentioned the SAPS grievance
procedure but indicated some hesitation in advising employees to use this mechanism.

The group indicated that in respect of the prevalence of workplace bullying they
regularly experience this phenomenon where employees discuss such behaviour at
teatimes and lunchtimes, venting their frustration to one another in respect of such
behaviour and the perpetrators thereof.

Despite the fact that the SAPS, in the view of this author, is an organization with a ‘policy or statistics for just about anything’, the employees responsible to assist other employees to deal with workplace bullying could not give a statistical indication of the prevalence of workplace bullying within that organization. One has to rely on the ‘teatime and lunchtime venting experience’

7.1.2.1 Recommendation 2: Researching the prevalence and consequences of workplace bullying in South Africa.

The research in this treatise has indicated that no definitive, up to date statistics are available in respect of the prevalence of workplace bullying within South Africa. The last research conducted within South Africa is almost 7 years old at the time this treatise was written.²²⁷

Countries such as Japan, Britain, Sweden, Norway, Italy, Portugal and Australia have all used the Negative Acts Questionaire- Revised (NAQ-R) to gauge the prevalence and consequences of workplace bullying. This questionnaire developed by Einarsen et al is regarded as the foremost scientific instrument in measuring exposure to workplace bullying. Many countries have used and made minor adaptations to this questionnaire in order to evaluate workplace bullying within the ambit of their unique societies. The NAQ-R is an improvement on the previous NAQ of Einarsen & Raknes, (1991, 1997) and of Mikkelsen & Einarsen, (2001).²²⁸ Based on a review of the literature and a series of case studies, the original scale had 23 items describing negative acts of a personal as well as a work-related nature.

Although this scale showed high internal consistency, containing items with good face validity and with evidence of good construct validity, the scale also had some serious shortcomings.

Its items were overly influenced by the perspectives of severely affected victims of workplace bullying. Furthermore, the original questionnaire was developed at a time

when most bullying research and debate were confined to the Nordic countries. Its validity was only tested within a limited Scandinavian cultural context. When translated into English, the face validity of some items was questionable, with other items revealing a cultural bias.229

A further weakness was found in its factor structure, although a two-factor solution associated with work-related and a personal bullying was respectively used. Hence, a revised scale for use in other national settings was needed.230

The NAQ-R was therefore created with the aim of establishing a reliable, valid, comprehensive, yet relatively short scale questionnaire. It was tailor-made for use in a variety of occupational settings, and especially adapted to Anglo-American cultures.

The authors developed and refined items based on the original scale, conceptual reasoning and a focus group study, employing 11 focus groups with 61 participants from a variety of UK occupations and positions across organisational hierarchies. This resulted first in a 29-item new version of the NAQ and on the basis of further analyses, a 22-item version was proposed.

The 22-item scale taps direct and indirect aspects of bullying and contains items that can be construed as work-related bullying, person-related bullying or physical intimidation respectively. All items are written in behavioural terms with no reference to the terms “bullying” or “harassment,” following recommendations in relation to sexual harassment. Although based on self-report, such an approach is considered to provide a more objective estimate of exposure to bullying behaviours, than self-labeling approaches.

Einarsen and the University of Bergen have consented to allow this author to use the NAQ-R questionnaire to measure workplace bullying within the South African labour environment. It is proposed that further research be conducted into the statistical prevalence of workplace bullying within the South African labour environment using the NAQ-R questionnaire as a scientific instrument.

229 Measuring Exposure to Bullying and Harassment at Work: Validity, Factor Structure and Psychometric Properties of the Negative Acts Questionnaire-Revised.

It is foreseen that some adaption to the NAQ-R questionnaire will be necessary to cater for African cultures. Making such amendments is possible as can be seen in the Italian study.\textsuperscript{231}

**7.1.3 Finding 3: Lack of awareness and recourse mechanisms.**

It was found that most South African have experienced workplace bullying or are aware of it within their workplaces. The same employees were, however, unaware that workplace bullying is a form of specifically prohibited unfair discrimination, as contemplated in the EEA. Consequently, it was found that employees were not knowledgeable about the various mechanisms available to them to resolve instances of workplace bullying.

In weighing the number of cases of workplace bullying which have been heard by South African labour fora against statistical findings, which indicate that 78\% of South Africans have experienced workplace bullying, it is evident that, in comparison to the high prevalence cited by the last research, very few cases of workplace bullying have been considered by these fora.

Lutgen-Sandvik’s averment that employees ignorant about this form of harassment would find it difficult to resolve their situations has been proven valid within the South African context.

Although a high percentage of South African employees has experienced workplace bullying, or is aware of it within the workplace, not knowing that this behaviour amounts to prohibited unfair discrimination is the main reason why so few cases have been considered by South African labour fora.

**7.1.3.1 Recommendation 3: National Workplace Bullying Awareness Campaign**

The Department of Labour is tasked to ensure that the EEA has been implemented by all employers within South Africa. Together with existing labour fora, it is tasked to ensure compliance with the prescripts of the Act.

This raises the question as to why employers and employees know so little about workplace harassment as contemplated in the act.

\textsuperscript{231} The NAQ-R questionnaire in Italy’, Prevention Today, October- December 2008: 71-86.
The reason appears to be that more emphasis is placed on the prohibited grounds of discrimination, as contemplated in section 6(1) of the EEA. The reason why such a high emphasis is placed on section 6(1) discriminatory practices can be attributed to the fact that most unfair discrimination cases, which are heard by South African labour fora, deals with instances where section 6(1) was contravened. In comparison, few cases of section 6(3) contraventions are heard by South African labour fora.

Considering the responsibility of the Department of Labour, in conjunction with labour fora, to regulate and adjudicate workplace bullying matters, more should be done by these role players to highlight workplace bullying as a specifically prohibited form of unfair discrimination.

Although one form of unfair discrimination can never be regarded as 'more significant' than others, it is the view of this author that the Department of Labour and labour fora have unwittingly succumbed to such a perception. Both have a responsibility to ensure that it avoids creating just such a perception. In this regard it is recommended that, once the South African statistical data in respect of the prevalence and consequences of workplace bullying has been obtained by using the NAQ-R survey, the Department of Labour be engaged to consider establishing a national workplace bullying awareness campaign.

The aims of the proposed national campaign would be amongst other things to --

- explain in layman’s terms what workplace bullying is;
- explain that this behaviour forms part of specifically prohibited unfair discrimination in terms of section 6(3) of the EEA;
- highlight internal and external mechanisms for dealing with such conduct;
- promote the use of the proposed Code Of Good Practice In Dealing With Workplace Bullying upon conclusion of its design;
- provide contact details for legal assistance available through various legal assistance centres.
7.1.4 Finding 4: Inefficiency of existing recourse mechanisms

It is evident from the research conducted that various resource mechanisms for dealing with workplace bullying exist within the South African labour environment. These mechanisms are tabulated below:

Table 7.1 Recourse Mechanisms For Dealing With Workplace Bullying Within The South African Labour Environment.

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<th>Internal mechanisms</th>
<th>External mechanisms</th>
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<td>• Bargaining Councils</td>
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<td>• Complaints</td>
<td>• CCMA</td>
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<td>• Disciplinary investigations and proceedings</td>
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In comparison to the high prevalence of workplace bullying in South Africa, few cases are dealt with by the labour fora. However, from considering the inadequacies of internal mechanisms such as the grievance procedure, EAP and disciplinary processes it is understandable why employees do not opt to use these as a remedy for workplace bullying.

On the other hand, considering external labour mechanisms as an option to resolve workplace bullying has its own pitfalls. The single biggest factor preventing employees from suing employers for workplace bullying is the high legal cost of bringing such matters to these courts.

Despite the assistance of trade unions in such matters, it is known that where matters are escalated to and past the Labour Court, employees must often pay large portions of the costs of their cases. It is clear that employers have an unfair advantage in the amount of resources they have access to, compared to those of the ordinary employee.
Furthermore, many employees employed by small businesses do not have the benefit of belonging to trade unions. These employees do not have the benefit of the knowledge, infrastructure and support of trade unions and must therefore deal with instances of workplace bullying themselves. Without union support such employees can expect further bullying.

Although the external labour fora have thus far adjudicated a number of workplace bullying cases, the question arises as to how many more workplace bullying cases might be considered and resolved if there were cheaper, yet effective alternatives available. Considering that best practice dictates that conflict should be resolved as close to the source of origin as possible, adjudication should be seen as a last resort intervention.

Given that South African courts carry immense case loads, one also has to consider the time delay in dealing with workplace bullying matters and the impact which such a delay would have on the employment relationship.

Once a complaint of workplace bullying has been laid against a person or employer, the relationship between the victim and the other parties will be strained. This is the normal result of conflict. Exposure to a prolonged conflict-filled atmosphere will further fragment the existing employment relationship and in severe cases might lead to its complete disintegration. Such conflict may also result in a plethora of adverse psychological and environmental consequences as cited in Chapter Five.

7.1.4.1 **Recommendation 4: Establishing codes of conduct for dealing with workplace bullying.**

Codes of conduct designed to specifically deal with workplace bullying can be effective.

Turney considers a tripartite approach, which targets three levels in order to establish effective ways of dealing with workplace bullying. These are:

- the societal level,
- the workplace culture and
• the individual level.\textsuperscript{232}

At the societal level, she indicates a need to change the communication strategies which informs organisations' understanding of appropriate behaviour at work. She holds that this will result in a new consciousness regarding the improved behaviour and new practices to be established.

Turney refers to the case of Australia, in which with most states have introduced either legislation or ‘codes of practice’ to manage and regulate workplace bullying. She states that the challenge in her view is to provide a clear definition, focused on those practices directly threatening a person’s ability to perform his or her duties. She argues that this approach will reduce the instances of people inconsiderately engaging in workplace bullying and create awareness of the consequences of their being joined as co-accused in such matters.\textsuperscript{233}

In the second targeted level, namely the organisational culture, Turney makes a case that training within the workplace can be used to change the organisational culture in respect of workplace bullying. Training can produce conformity to normative behaviour, which the organisation seeks to inculcate. She argues that emphasising workplace bullying as a serious danger to mental health, as well as a serious occupational health and safety issue, will result in greater awareness of its prevalence.\textsuperscript{234} Training in respect of codes of conduct dealing with workplace bullying will achieve the same result.

At the workplace level, Turney proposes an approach, which exposes workplace bullying practices occurring within hierarchical interpersonal relationships. She claims that if organisational training encourages a state of acquired helplessness and passive acceptance of inappropriate criticism of one’s work, the educational value of it needs to be questioned.

Turney also insists that a clear system for reporting abuses of power or experience of bullying should exist. Where such formal structures do not exist within an

\textsuperscript{232} Mental Health And Workplace Bullying: The Role Of Power, Professions And On The Job Training’ Australian e-Journal for the Advancement of Mental Health, 2003: 1-9.
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organisation or in cases where the bully is the boss, the need for an *independent body* with powers to investigate and take remedial action is proposed. Finally, she argues that the bullied employee has a fundamental right to –

- report workplace bullying instances;
- be heard;
- be believed; and
- not face reprisals as a result of speaking out.²³⁵

Considering the above, a code of conduct in respect of workplace bullying can be a valuable tool to manage such behaviour within the workplace.

Turney reflects that her analysis has shown that in most circumstances where hierarchical workplace bullying occurs, individual counseling and mediation sessions will not adequately address the issue at the individual level.

She states that some bullies act in full knowledge of the power they exercise and with the knowledge that their actions enjoy immunity from scrutiny or reprisal on account of their positions within the organisation. These bullies also bully employees on account of the power they obtain from understanding and manipulating the systems of their organisation. Turney expresses the need for affirmative action, which will benefit those employees who have been disempowered and degraded on account of simply doing their job.

It is recommended that employers be encouraged to develop their own code of conduct in respect of the management of workplace bullying. This should form part of the proposed national workplace bullying awareness campaign as recommended in 7.1.3.1.

One of the main aims of establishing a code of conduct in respect of the management of workplace bullying would be to protect and enhance employees’ constitutional right to dignity in the workplace.

²³⁵ *Mental Health and Workplace Bullying: The Role of Power, Professions and On the Job Training*. 
The UK based website Bullyonline\textsuperscript{236} gives valuable insight into what it takes to develop an anti-bullying workplace policy. Their advice is summarised below:

- An anti-bullying policy should apply to all employees in the organisation, irrespective of their hierarchical position or whether they are permanent, part time or contracting employees.
- The policy must state clearly that workplace bullying is a serious disciplinary offence and which will be dealt with in terms of the disciplinary procedures of the organisation.
- Confidentiality in respect of such allegations should be guaranteed as far as possible.

Most policy recommendations suggest a two-tier procedure: an informal procedure and then, if the remains unresolved or is of a serious nature, a formal procedure.

**Informal procedure**

- Discuss the workplace bullying with somebody who is trained in these issues. If genuine, the bullied employee will gain strength to continue its course of action; if frivolous, the individual and their circumstances can be assessed and advised accordingly.
- Identify the type of bullying. This can be established through an informal investigation. The person who undertakes this role must be impartial and fully trained in dealing with workplace bullying and investigation techniques.
- Address unwitting and organisational bullying at this stage to avoid escalating matters to the formal procedure. With unwitting bullying a quiet word or a letter constructed with assistance from expert staff will often be sufficient to stop the behaviour.
- Arrange assistance for the unwitting bully. Sometimes their behaviour has deteriorated due to excessive workload, change in their job, inadequate training or lack of support. Arranging appropriate assistance can stop unwitting behaviour.

\textsuperscript{236} http://www.bullyonline.org/action/policy.htm#Policy.
With serial bullies, the informal procedure may require that the bullies are made aware of their behaviour and the harmful effects on their target.

Remind the bully that bullying is a serious disciplinary offence and repeated incidents may render them likely to be charged in a formal disciplinary hearing, where their dismissal might be considered if they are found guilty.

Record keeping is regarded as optional at this stage. It is however suggested that a note is kept on file which could include a statement from the complainant. This should only be taken into account if a further procedure is initiated.

Once-off informal interventions need not be held against the individual, especially in instances of unwitting bullying.

The anti-bully policy should have a clear statement of intent in respect of employees who do not wish the employer to investigate incidents of bullying or take remedial action against bullies. The website makes the following suggestion for phrasing such a statement of intent:

‘The employer has a legal obligation called a Duty of Care to provide both a safe place and a safe system of work; any bullying that is reported must be investigated, first informally, and later, if appropriate, formally, in order to comply with this duty of care. This duty of care cannot be derogated.’

Derogated is interpreted to mean ‘avoided or abdicated’ or ‘passed to someone else for any reason’. Should employees opt not to pursue the matter, the employers retain the right to have such incidents or conduct investigated and where necessary take remedial action.

The policy must contain a clause stating that victimisation of employees, who reported bullying and harassment, will be regarded as serious misconduct and which will automatically trigger a formal investigation. In the event that the allegation of victimisation is found to be substantiated, the disciplinary sanction could be severe and might even include dismissal.

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The policy also needs a balancing clause, which would indicate that the making of false or malicious complaints of bullying and harassment will be regarded as a serious misconduct.

Flowing from the needs of the bullied employee and the results of the informal investigation, one can consider bringing the two sides together for a mediation meeting, especially in cases of unwitting bullying, in order to normalise the workplace situation.

In instances where a serial bully is involved, it is advisable not to bring the parties into contact unless the target requests it. Many targets of serial bullies have been traumatised by the time they report the bullying. Being coerced into close proximity with the serial bully will cause further trauma.  

**Formal procedure**

If the bullying cannot be resolved by the informal procedure, the target, or the employer if they feel it is appropriate under their duty of care, can initiate the formal disciplinary procedure against the transgressor.

The formal procedure must be reduced to writing and must state clearly what the procedural steps involve. The written procedure must also reflect what the possible outcomes of each of the steps could be. Rights of appeal for both parties should also be included in the procedure.

Most companies have disciplinary regulations which explain the scope of application, principles, procedures, sanctions and appeal process.

**7.1.5 Finding 5: A prepared playing field**

The LRA includes various codes of good practice such as the Code of Good Practice: Dismissal, the amended Code of Good Practice on the Handling of Sexual Harassment Cases or the Code of Good Practice: Key Aspects of HIV/AIDS and Employment. One of the main aims of these codes is to provide clear, ethical and legally correct guidelines in relation to the topics these Codes cover.

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Most employers have policies which deal with the same topics, either in full, or to some degree. Yet, the legislature thought it appropriate to provide these Codes of Good Practice as a further way of ensuring that these topics are dealt with in a uniform way within the broader South African labour environment.

In terms of section 16 of the EEA a ‘designated employer’ as defined by the Act must take reasonable steps to consult with employees. It states --

“(1) A designated employer must take reasonable steps to consult and attempt to reach agreement on the matters referred to in section 17-

(a) with a representative trade union representing members at the workplace and its employees nominated by them; or

(b) if no representative trade union represents members at the workplace, with its employees or representatives nominated by them.

(2) The employees or their nominated representatives with whom an employer consults in terms of subsection (1) (a) and (b), taken as a whole, must reflect the interests of-

(a) employees from across all occupational categories and levels of the employer's workforce;

(b) employees from designated groups; and

(c) employees who are not from designated groups.

(3) This section does not affect the obligation of any designated employer in terms of section 86* of the Labour Relations Act to consult and reach consensus with a workplace forum on any matters referred to in section 17 of this Act.”

Section 17 of the EEA deals with matters for consultation and states --

“A designated employer must consult the parties referred to in terms of section 16 concerning-
Section 18 of the EEA relates to disclosure of information and states-

“(1) When a designated employer engages in consultation in terms of this Chapter, that employer must disclose to the consulting parties all relevant information that will allow those parties to consult effectively.

(2) Unless this Act provides otherwise, the provisions of 16 of the Labour Relations Act, with the changes required by context, apply to disclosure of information”.

Section 19 of the EEA deals with analysis of information and states-

“(1) A designated employer must collect information and conduct an analysis, as prescribed, of its employment policies, practices, procedures and the working environment, in order to identify employment barriers which adversely affects people from designated groups.

(2) An analysis conducted in terms of subsection (1) must include a profile, as prescribed, of the designated employer’s workforce within each occupational category and level in order to determine the degree of underrepresentation of people from designated groups in various occupational categories and levels in that employer’s workforce”.

Section 54 of the EEA deals with the establishment of Codes of Good Practice and states that-
“(1) The Minister may, on the advice of the Commission
   (a) issue any code of good practice; and
   (b) change or replace any code of good practice.

(2) Any code of good practice, or any change to, or replacement of, a code of
good practice must be published in the Gazette”.

7.1.5.1 Recommendation 5: Proposing a Code of Good Practice in Dealing with
Workplace Bullying

The legislature intended to create an enabling Act by including section 54 in the
EEA. One can argue that the playing field has been prepared for just such a measure.
Codes of good practice are intended to provide employers with information, which might
assist them in the implementation of this Act, more specifically in relation to ‘affirmative
action’ as contemplated in Chapter 3 of the EEA.

That having been said, nothing prevents the Commission for Employment Equity
to advise the Minister of Labour to promulgate a Code Of Good Practice In Dealing With
Workplace Bullying.

In this respect, the Commission would have to firstly comply with the spirit of
section, 16, 17, 18 and 19 of the EEA by-

- complying with its general duty to consult sufficiently with all identified role players;
- considering the outcome of the proposed research to be conducted into the prevalence and
  consequences of workplace bullying within the South African labour environment; and
- sharing information in respect of the phenomenon and research results openly and freely.

Upon conclusion of the above steps, it is recommended that a Code Of Good
Practice In Dealing With Workplace Bullying should be negotiated as part of the LRA by
all role players, in a similar way as has been done with, amongst others, the Code of
Good Practice: Dismissal.

Although the process to write a Code Of Good Practice In Dealing With
Workplace Bullying will be a labour intensive and costly project, the negative
consequences and impact of workplace bullying far outweigh this cost. Not writing such a Code of Good Practice, when the playing field is ready to commence with such a project, could be regarded to be irresponsible.

It is recommended that once a study has been done in respect of the statistical prevalence of workplace bullying, the writing of a *Code Of Good Practice In Dealing With Workplace Bullying* should commence without delay.

### 7.2 Conclusion

Given the findings of this research, much needs to be done to create awareness about workplace bullying, its prevalence and consequences and to establish effective recourse mechanisms for dealing with this discriminatory practice within the South Africa labour environment.

In order to achieve this, labour role-players will have to commit to a process of long term negotiation in which the strategic issues of this phenomenon can be dealt with adequately.

Arguably, those who hold that the South African labour environment is overregulated might not support the idea to further regulate this behavior by establishing codes of conduct and a ‘code of good practice’ in dealing with workplace bullying.

In reply one could argue that sexual harassment was once where workplace bullying is now. Although legal recourse existed for it, the *Code of Good Practice on the Handling of Sexual Harassment Cases* was negotiated and implemented on account of the need to do so.

All discrimination should be regarded as equally villainous, but because some forms of discrimination appear more frequently before South African labour fora, other types of harassment such as workplace bullying and its consequences are overlooked.

Proceeding with the course of action proposed in this treatise will send the message to Government and other role-players to regard workplace bullying to be just as serious as any other form of discrimination. It would underline a commonality in purpose to deal with, and to eradicate, such discriminatory practices from the workplace.
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