

Practice Note: Is Mediation Suitable for Complaints of Workplace Bullying?

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This article draws on research that sheds light on whether mediation is an appropriate intervention in complaints of workplace bullying. The different types of bullying that can be perpetrated are discussed. While mediation may be appropriate for most bullying complaints, when used alone it fails to address the antecedents that have been identified as contributing both to the development and maintenance of workplace bullying. This article examines these antecedents and argues that the sustainability of mediated outcomes may be at risk if mediation is used as the sole intervention to address complaints of workplace bullying.

Introduction

At a recent International Workplace Bullying Conference, and National Mediation Conference, there was rigorous debate (both formal and informal) as to whether mediation was a suitable intervention in workplace bullying complaints. Research shows that the main approach taken by organizations to address workplace bullying is usually conciliatory (Salin, 2007, 2008; Saam, 2010); however, there continues to be debate as to whether this is an appropriate course of action. Both sides have compelling viewpoints and the paucity of empirical argument that many delegates used to put forward their perspectives is notable. The aim of this article is to examine the bullying literature to help shed light on the question: “Is mediation suitable for workplace bullying complaints?”

What Is Bullying?

One of the main reasons why mediation as an intervention for workplace bullying complaints is so keenly debated is that there is no uniform definition of

bullying. Therefore, when people talk about workplace bullying they are often talking about related, but different concepts (Branch, 2008; Caponecchia and Wyatt, 2009). European researchers studying workplace bullying provide a rigorous definition that frames bullying in the context of repeated exposure to negative behaviors that are specifically directed at a target or a group of targets. They report that in order for behavior to be labeled as bullying, the negative behavior needs to occur on a regular (at least weekly) basis and over a particular time period (six months) (Einarsen, Hoel, Zapf, and Cooper, 2003).

Unlike normal conflict, bullying is viewed in this way as an escalating process where the target is placed in a more and more inferior position to the bully (Einarsen and others, 2003). Since workplace bullying is a relatively new concept in the United States, and there is no uniform legislation in relation to workplace bullying, the behaviors and concepts underlying the concept are broad and undefined (Fox and Stallworth, 2009). Even in Australia, where workplace bullying is defined within most State Occupational Health and Safety legislations, the definitions and behaviors captured within these differ. Further, the term *workplace bullying* is often used interchangeably with other negative workplace behaviors that may or may not fall under the broad definition of bullying, such as incivility (Andersson and Pearson, 1999; Lim, Cortina, and Magley, 2008), harassment (Salin, 2009), workplace violence (Hockley, 2002), counterproductive behaviors (Fox, Spector, and Mills, 2001; Marcus and Schuler, 2004), or abusive supervision (Tepper, 2000). Therefore, the use of the term *bullying* by researchers, practitioners, and employees needs to be approached with caution because it is often used in a much more liberal manner than intended; it is not always clear whether the term *bullying* is being used in relation to behaviors that, although interrelated, are not bullying (Branch, 2008; Caponecchia and Wyatt, 2009). Thus, it is easy for the term *workplace bullying* to be confused with a number of other types of negative workplace behaviors, and it is also common for bullying to be labeled something other than *bullying*.

Bullying is viewed as an Occupational Health Safety and Welfare (OHSW) issue because of its potential to cause psychological injury to a target through repeated exposure to negative acts (Dollard and Knott, 2004; Caponecchia and Wyatt, 2007). The acceptance of bullying as an OHSW hazard has resulted in bullying being part of occupational health and safety legislation in many Australian jurisdictions.

For the purposes of this article, *workplace bullying* refers to any repeated behaviors that target an employee or group of employees, that a reasonable person, taking into account all of the circumstances, would expect to undermine,

victimize, or threaten the employee(s), and that potentially pose a risk to the target's health and safety. This definition is based on the one given in the South Australian Occupational Health and Safety legislation (section 55) and takes into account the repeated nature of the negative behaviors as well as the power difference between perpetrator and target. It also acknowledges the threat to the target's health caused by the unreasonable and repeated behaviors.

Employee Accounts of Bullying

It is important that all organizations define what bullying is, and also outline what it is not, in their anti-bullying policies and complaint processes. However, they need to also recognize that employees refer to a number of different behaviors as bullying, including those that do not fit recognized definitions. Employee accounts of bullying often describe negative organizational interactions that are not necessarily personal interactions but are negative relations with the organization, as well as interpersonal conflicts that do not meet recognized definitions. Employees categorize a number of negative workplace experiences as bullying (Lewis, Sheehan, and Davies, 2008). Research by Liefoghe and McKenzie-Davy (2003, 2010) found that employees do not have a single clear definition of bullying, and that the term is often used to express discontent with a number of organizational practices and conflicts. This loose use of the term *bullying* has implications when allegations are made by employees who are disgruntled with management decisions and organizational practices. From the employees' perspective, they believe they are being bullied. That is, that they are being subjected to repeated negative interactions or behaviors by a person or authority with a greater power than themselves. Informing a complainant that his or her complaint does not qualify as bullying, without offering remedial action, is likely to be met with resentment and a sense of injustice against the organization. This injustice can lead to retaliatory and counterproductive workplace behaviors (Fox, Spector, and Mills, 2001). Further, to wait for a conflict to escalate to the point of bullying before addressing the complaint potentially leaves the organization open to a range of legal and retaliatory actions from the target.

Types of Bullying

Early bullying research describes bullying as an intention or a perceived intention to harm, with the bully being predatory in nature (Einarsen,

1999). For example, in some organizations bullying may be institutionalized as part of leadership and management practice (Ferris, 2004), or the target may be persecuted because he or she belongs to a certain out-group, such as a sole woman working in a male-dominated industry. Some early studies suggest that predatory bullying occurs as the result of a psychopathic or tyrannical personality on the bully's part (Ashforth, 1994; Field, 1996). This perception of bullies as psychopaths is encouraged by the popular media with titles of books such as "Snakes in Suits: When Psychopaths go to Work" (Babiak and Hare, 2006) and "Working with Monsters: How to Identify and Protect Yourself from the Workplace Psychopath" (Clarke, 2005). However, the likelihood of all bullies having a psychopathic personality or all being predators has been questioned in a number of studies (Caponecchia and Wyatt, 2007, 2009), and it is statistically very unlikely that all accused bullies are psychopaths. Instead, most bullying comes about through a process of conflict escalation.

Bullying as a Process of Conflict Escalation

Most workplace bullying emerges from an escalation of workplace conflicts, where one person is more powerful than the other by virtue of his or her hierarchical position in the organization, knowledge, status, personality, or other personal attributes. Several researchers have highlighted that as conflict increases, it develops into bullying because of the power difference between the parties in dispute (Einarsen and Stogstad, 1996; Zapf and others, 2003). Unlike normal conflict, in which both parties are able to engage on an equal footing, bullied targets report being unable to retaliate. One of the reasons that bullied targets are usually found to be workers, and managers the perpetrators, is because of the in-built formal power structure of the workplace between employees and those in more senior positions. However, informal power structures exist in most workplaces, with some employees having more power or influence because of their increased knowledge, experience, or job security/employability than others. They may also hold more influence than the other party in a particular dispute. Other informal power structures may include race, gender, sexuality, age, and ability.

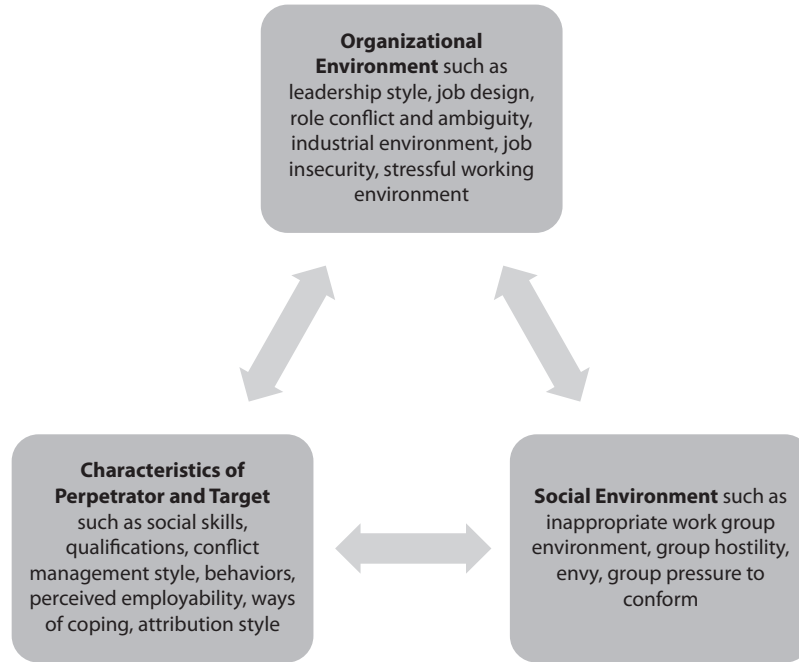
Notwithstanding the power imbalance inherent in workplace bullying complaints, when examining bullying from a conflict escalation approach, there are stages in the conflict when the power differences can be managed more easily and mediation can take place in good faith. Zapf and Gross

(2001) draw attention to Glassl's (1994) model of conflict escalation, where interventions are distinguished by a number of phases in the conflict escalation processes. In the early stages of bullying, both parties are often interested in resolving the conflict reasonably and mediation would be optimal at this time. However, as the conflict escalates and one or more parties becomes more aggressive, while mediation may still be appropriate, the mediator will have to be particularly aware of the power differences between the parties, the importance of addressing the antecedents to the bullying complaint, and the importance of follow-up built into a settlement agreement. If the conflict is predatory in nature, or has reached a destructive phase where the intent of either party is to destroy or at least control the other through violence, then mediation is not suitable, and the mediator needs to recognize the potential health and safety risks for the parties, and cease the mediation (Keashly and Nowell, 2003). When this occurs, other options such as arbitration and implementing specific strategies to manage the behavior of the parties in relation to the organization's zero tolerance approach to bullying are recommended (Keashly and Nowell, 2003). Mediation may, however, be appropriate following investigation and disciplinary action taken against an alleged perpetrator (whether he or she is found guilty or not), in order to address the ongoing relationship and behaviors of both parties. However, even in highly emotive situations, where there is significant hostility, mediation can be successful, because it deals directly with the relationship issues, high level of emotions, and perceived threats, and establishes a problem-solving approach to the issues identified. However, in identifying that mediation is an appropriate intervention in most bullying complaints, if the organization does not take into account the antecedents that may have contributed to the complaint of bullying, mediation may do little to prevent reoccurrence of the conflict.

The Importance of Addressing the Antecedents to Workplace Bullying

If a decision is made to employ mediation in a bullying complaint, it is important that the mediator take into account research that has drawn attention to the workplace environment as being a key factor in the development and maintenance of bullying. The importance of this wider perspective on bullying dynamics cannot be underestimated but is rarely taken into account by mediators, who tend to prioritize the interpersonal dynamics between the complainant and the respondent. While it could be

Figure 1. Factors that contribute to the development and maintenance of workplace bullying



argued that addressing the environmental or systemic nature of the bullying complaint is not the mediators' job, research suggests that if a mediation settlement is to be sustainable, these environmental factors must be addressed. As illustrated in Figure 1, a number of factors have been found to contribute to workplace bullying. Without taking these factors into account, mediation on its own may be futile in sustaining a long-term resolution. Whether the bullying is a result of escalated conflicts or is predatory in nature, placing the parties back into the environment that contributed to the bullying allegation will mean that it is likely that the bullying will continue, perhaps in a more subtle form.

Organizational dynamics has been established as one of the contributing factors in workplace bullying (Vartia, 1996; Zapf, Knorz, and Kulla, 1996; Zapf, 1999; Hoel and Salin, 2003), and evidence suggests that a stressful environment is one of the primary factors in both development of the conflict and escalation of the conflict into workplace bullying.

The organizational environment has been defined as how work is organized, the culture or climate of the organization, and the nature of the

leadership within the organization (Zapf, 1999; Hoel and Salin, 2003). In particular, role conflict and role ambiguity have been linked to workplace bullying. Both targets and observers of bullying are likely to report high levels of role conflict and perceptions of contradictory expectations, demands, and goals (Einarsen, Raknes, and Matthiesen, 1994). Similarly, bullying has been found to be closely related to poorly organized work environments with ambiguous roles and command structures (Leymann, 1996) and high levels of stress and conflict (Hauge, Stogstad, and Einarsen, 2009). In one of the few studies that have examined workplace bullying from the perpetrators' perspective, bullying perpetrators themselves reported elevated levels of role stress and competing demands and expectations around their work (Matthiesen and Einarsen, 2007).

The group social culture has also been identified as contributing to bullying. In particular, this culture can contribute to predatory bullying when the group tries to oust a target that differs from the dominant group culture (Einarsen, 1999). The difficulty that targets have in complaining about inappropriate behaviors within this group emphasizes the potential strength of social processes that these group behaviors set up (Hoel and Salin, 2003). The way that targets react to the group behavior can further isolate him or her from the work group, where inappropriate behaviors are considered the norm. Targets complaining about these norms or challenging them may become stigmatized and find it more difficult to become part of the group, exacerbating their isolation and victimization (Leymann, 1996; Lewin and Peterson, 1999).

When highlighting targets' characteristics that may contribute to bullying, it is important not to blame them, but to draw attention to the reason for which they may be singled out. Targets do not very often acknowledge that their own behavior might have triggered the bullying. However, a number of studies have identified that targets feel that their inability to stand up for themselves, their lack of coping resources, their shyness, or poor conflict management skills may have contributed to the bullying (Einarsen, Raknes, and Matthiesen, 1994). In a study by Zapf (1999), reasons that some victims believed were a factor in their bullying included their own poor performance, poor social skills, "being difficult," or being too aggressive or complaining. In my own practice, the distinction between the bully and the target has sometimes been difficult to make, with the target being identified as the first of the disputing parties to lodge the complaint. Other practitioners have also described a blurred boundary between targets and perpetrators, with both parties at times reporting inappropriate and

reactive behaviors, and both complainants and alleged perpetrators reporting feeling like victims (Tehrani, 2003). The emergence of upward bullying as a problem in some organizations (Branch, Ramsey, and Barker, 2007) means that some managers who have been labeled bullies may in fact be victims of workplace bullying. These clinical findings support studies that show that being a target of workplace bullying, regardless of the frequency of the behavior, is strongly predicative of bullying others (Hauge, Skogstad, and Einarsen, 2009), and that it is often difficult to tell which party is the target and which the bully (Tehrani, 2003). This means that at times both disputants may have engaged in inappropriate behaviors and the boundary between the perpetrator the victim is blurred. It is important for mediators to take this into account.

Mediating Bullying Complaints

Although most mediators would like to see a balanced power relationship between disputants, this type of relationship is not the norm in any mediation (Moore, 2003). Therefore, one of the primary roles of the mediator is to manage the power relationships between the parties (Wall, 1981), irrespective of whether the issue has been labeled bullying by one of the parties. Some of the ways in which this can be done are through the use of support persons and by ensuring that both parties are aware of their rights and are familiar with the mediation process. Other strategies, such as reality testing the options available to both parties should the mediation not work or holding individual sessions if need be, can also assist in balancing the power differences between parties. Complainants who choose mediation as a conflict resolution option within an integrated conflict management system usually have a choice to have the complaint investigated if the mediation is unsuccessful or the conflict continues following mediation.

In Australia and other countries that have specific anti-bullying legislation, targets of bullying also have the option of lodging a formal complaint outside the organization with an external government authority at any time. If the bullying involves sexual harassment or other behaviors that target an employee's specific characteristics, such as race, age, sex, or disability, they may also be able to lodge sexual harassment or discrimination complaints with relevant government authorities. Informing both parties of these options is one way of balancing the power between them. Conflict coaching can also be utilized with both targets and alleged perpetrators, as preparatory measure for face-to-face mediation (Brinkert, 2006). Following mediation,

ongoing conflict coaching can be used to provide the parties with the framework and structure necessary to achieve settlement goals.

Mediators called in to mediate bullying complaints need to be very aware of the difference between bullying and other workplace conflicts. The OHSW perspective in addressing workplace bullying needs to be taken into account when bullying complaints are lodged. Mediators may need to work closely with human resources professionals, organizational psychologists, and other workplace conflict management specialists to address bullying within this recommended perspective. If these antecedents to workplace bullying are not addressed as potential risk factors for further bullying, there is a good chance that the settlement reached at mediation will not be sustainable. Table 1 illustrates a checklist that can be used as a guide by organizations to identify some of the systemic issues that may have contributed to the complaint of bullying.

Conclusion and Recommendations

There is no definite answer to the question of whether mediation is appropriate for bullying complaints. However, restorative measures remain one of the most popular tools used to address workplace bullying complaints (Salin, 2007; Saam, 2010). Evidence gained from a review of literature suggests that a number of different types of conflicts are labeled as bullying by employees and therefore a thorough assessment of the dispute needs to be undertaken prior to mediation. Whereas predatory bullying can occur, it is less common and dependent on a permissive workplace environment. By far the most common type of bullying occurs through escalation of conflicts, where the more powerful party becomes the perpetrator. At times, the boundary between the perpetrator and the victim may be blurred; at other times these roles are clearer. In either case, mediation may still be a viable option, unless the conflict has become destructive and one party is wanting to destroy the other, or to control the other by violence. If mediation is deemed a suitable intervention, follow-up with both parties and addressing the environmental factors that contributed to the bullying complaint are vital. Further, confidentiality in mediation is never absolute, and mediators are bound by “duty of care” to stop mediation and follow up any threats (either explicit or covert) to the safety of either participant. Mediation with a severely traumatized target is not appropriate without the target receiving significant psychological support and expert counseling with someone who is familiar with the nuances of workplace bullying.

Table 1. Undertaking an Organizational Risk Assessment to Prevent Workplace Bullying and Harassment

Does the organization have a bullying policy with a clear definition of bullying, and multiple options to resolve both conflicts and complaints of bullying?
Are bullying and harassment policies up to date, and are all employees and managers aware of their rights and responsibilities in relation to inappropriate workplace behaviors?
Is there regular training of both managers and staff in relation to the policy and their rights and responsibilities?
Has the organization carried out an assessment of all staff to ascertain whether bullying may be a problem in some departments?
Are high levels of sick leave and absenteeism a problem in some departments?
Are there staff shortages that are contributing to high stress environments?
Has there been any recent change in the way work is carried out (new technology, processes, or equipment)? Do staff in these areas feel they have had adequate training?
Are high levels of work stress and conflict a problem in some departments?
Are there workforce characteristics that could contribute to bullying or harassment within different teams in your organization, (such as younger or older workers, workers with a disability that may put them at risk of being picked on, or team members with a different sexual preference, gender, or ethnicity that may marginalize them from the larger group of workers)?
Are there systems in place to support the integration of new workers?
Do all managers and employees receive regular performance appraisals including feedback on management style and behavior?
Would employees in your department describe their manager as having good interpersonal skills?
Could organizational change be contributing to conflict, confusion, ambiguity, or uncertainty among staff?
Are negative leadership styles (autocratic or laissez-faire) contributing to high levels of conflict, poor interpersonal skills, role ambiguity, and mixed messages provided to staff?

Just because a complaint is labeled as bullying by a complainant or a complaint has been made utilizing an organization's bullying grievance procedure does not mean that the complaint is predatory in nature, or even that the complaint is bullying by definition. The type of bullying, level of conflict, ability of both parties to take part in a mediation, and the scope for resolution is all part of a pre-mediation assessment process that needs to be undertaken before a mediator decides to go ahead with face-to-face mediation.

This approach to mediating bullying complaints takes into account the multiple levels of intervention (including mediation) that have been recommended in a number of studies (Duffy, 2009; Fox and Stallworth, 2009; Bond, Tucky, and Dollard, 2010; Saam, 2010). This systemic approach focuses not only on mediation at the dyadic level but also addresses the group and organizational dynamics that have been shown to contribute to workplace bullying complaints. These antecedents, if not addressed, present an ongoing risk to occupational health and safety concern of vulnerable employees. For this reason, it is important for mediators to discuss these antecedents with organizations following workplace bullying mediations. Addressing these organizational issues will bolster the longevity of mediation agreements and prevent further complaints of bullying that arise from workplace cultures and management styles that contribute to unhealthy conflicts.

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