Examining Workplace Bullying in Canada: A Content Analysis of Canadian Arbitration and Court Cases

By

Jodi Murphy

University of Prince Edward Island

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Advisor: Wendy R. Carroll, PhD
Associate Professor
UPEI School of Business
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Name of Author: Jodi Murphy

Department: School of Business

Degree: Master of Business Administration  Year: 2012

Name of Supervisor(s): Wendy Carroll

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Address: UPEI School of Business
550 University Avenue
Charlottetown, PE C1A 4P3
Abstract

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Workplace bullying is costing organizations millions if not more each year. The costs associated with workplace bullying come from loss of productivity, legal settlements and loss of good employees who have been bullied and chose to leave the organization. Workplace bullying has negative effects on the target of the bullying, the other employees who witnessed the incidents, the organization as a whole and some believe there are societal consequences as well. To examine the current state of workplace bullying in Canada an analysis was completed on the legislation in Canada as well as a content analysis on Canadian Supreme Court and arbitration cases pertaining to workplace bullying.

This study illustrates that for such a serious problem Canada has been slow to implement legislation which would make workplace bullying illegal. There is no national legislation in Canada dealing with workplace bullying and only four provinces have adopted provincial legislation to make workplace bullying illegal. Those provinces are Quebec, Ontario, Manitoba and Saskatchewan. There are an increasing number of court cases dealing with workplace bullying in recent years. This study discusses some key descriptive statistics such as the sex of the bully and sex of the target, industry, and type of bullying ie: boss-to-employee, employee-to-employee or employee-to-boss. The directions and decisions of the arbitrators and judges were examined closely to uncover common themes. The themes included (1) precedence for constructive dismissal; (2) lack of proof, (3) harassment policies; (4) the bully not taking responsibility for their actions; (5) repairing the employment relationship; (6) credibility and (7) progressive discipline programs. This analysis of Canadian court cases can provide insight to academics and practitioners into the position of workplace bullying in Canada and the direction the courts are taking.
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CHAPTER 1: INTRODUCTION

Workplace bullying continues to be a major concern for employers. According to the Carbo & Hughes, 2010 study, millions, if not billions, of dollars are lost each year to direct and indirect consequences of workplace bullying, Query and Hanley (2010) report the cost to corporate America of employees who leave their organizations because of workplace bullying at being $64 billion annually. Although much attention has been raised about the economic and psychological implications of this phenomenon, less has been done to understand the legislative policies and effective implementation of such policies in organizational settings.

Workplace bullying has negative effects on many people. The target of the bullying may face many health consequences some physical and others impacting their psychological well being. The organizations where the incident occurs also face many negative effects such as a drop in productivity, possible law suits, and expensive settlements (Namie, 2007). Namie, 2007 also suggests that the other employees that witness incidents of bullying may also be negatively impacted. Beyond the organizational implications, Carbo and Hughes (2010) suggest that there are also negative consequences from a societal perspective as well.

The purpose of this study is to examine the legislative/practice gap in Canada through reviewing provincial policy and legislation as well as arbitration and court cases pertaining to workplace bullying in Canada. The aim of this study is to examine the current state of workplace bullying in Canada. This project will discuss the background literature on workplace bullying, what legislation is in place in Canada regarding workplace bullying, what themes are being discussed in court cases involving workplace
bullying and what comparisons if any can be made between the Canadian Supreme Court cases and arbitration cases and the literature and legislation.

**Research Overview**

This project used two approaches to its research.

**Study 1:** First, it has reviewed the provincial policies involving workplace bullying. An examination of legislation in each province in Canada was completed to develop the core tenets of each of these legislations. The history of where and when workplace legislation has been implemented throughout the world has been examined followed by an analysis into current provincial legislation or policy on workplace bullying. This section of the study finishes by discussing the overall policy and legislation Canada has regarding workplace bullying.

**Study 2:** Second, a content analysis has been completed on the legal cases of workplace bullying in Canada. Both arbitration cases and Supreme Court cases have been reviewed. An analysis into the descriptive statistics of these cases was completed followed by a thorough examination of the conclusions and decisions given by the judges and arbitrators. The common themes found in the cases will be highlighted in this study.

Examining arbitration cases will demonstrate the current trends in workplace bullying incidents being reported. These cases will illustrate the affects workplace bullying has on the targets, witnesses, and employers. Themes within the decisions of these cases can help guide employers in becoming more knowledgeable in the topic of workplace bullying and use this knowledge when dealing with incidents in their organization and when developing internal policies. The analysis of these cases will also
cull out what type of bullying is most often occurring and whether males or females are most often the bully and/or the target.

A review of the provincial legislation will demonstrate which provinces have developed and implemented province wide laws prohibiting workplace bullying. This legislation may or may not explicitly state the term bullying. Legislation gives all employees protection against bullying even those who work in workplaces where there is no internal policy pertaining to workplace bullying.

**Organization of this Thesis**

This research paper is organized in chapters. Chapter 2 includes the literature review that provides background on the history of workplace bullying, definitions, descriptions of workplace bullies, workplace strategies and workplace bullying legislation. Chapter 3 discusses the approach used in this study and the process used for case inclusion. Chapter 4 depicts the findings from the study, including descriptive statistics and themes from the case discussions and conclusions. Finally, chapter 5, the final chapter examines the discussion and conclusion; it summarizes the literature review and court analysis and makes comparisons between the two. This final chapter also looks at the limitations of this study and areas of future research.
CHAPTER 2: LITERATURE REVIEW

The literature discussed in this section will provide an overview of the history of workplace bullying. Information on where and why research began on workplace bullying and how far it has come since the 1980’s will provide the basis of its importance in today’s organizations. The definition of workplace bullying is examined. With many definitions existing in the literature it is important to clarify which was used for this study. An introduction into who are the bullies is also discussed in this section. An area important for practitioners is the strategies that can be used to deal with workplace bullying incidents and methods to prevent future incidents. This paper will examine the strategies suggested in the literature. This is practical, useful information for making evidence based decisions within organizations regarding how to handle and prevent workplace bullying. A brief history of workplace bullying legislation that exists throughout the world will be discussed before a more in depth examination into the Canadian legislation is overviewed. The worldwide legislation is important as Canada is lagging behind many other countries in enacted legislation to combat workplace bullying. Progress has been made in Canadian legislation but this paper will point out that much still needs to be done.

History

Research on workplace bullying began in the 1980’s in Sweden with Heinz Leymann who used the term ‘mobbing’ to describe “hostile and unethical communication at work directed in a systematic way by one or a few individuals toward one individual who is unable to defend himself or herself. Typically, this occurs at least once a week over a period of at least 6 months.” (Namie & Namie, 2009, p. 202). In 1992 British
journalist Andrea Adams coined the term ‘workplace bullying’. Adams’ interest in this topic began when she did some investigating into mistreatment of employees at a bank.

During the 1990’s individuals from countries such as Australia, Finland, Italy, and Germany began to research workplace bullying and several associations were set up to protect targets of workplace bullying. Different countries use different terminology for workplace bullying: ‘psychological violence’ is used in Finland and based on Leymann’s work, ‘mobbing’ is used by Italy and Germany (Namie & Namie, the Bully at Work, 2000).

Lutgen-Sandvik and Tracy (2011) reference Carroll Brodky’s book, The Harassed Worker (1976), as being the first study focused on workplace bullying in the United States. Ruth Namie and Gary Namie introduced workplace bullying to the popular press in the United States in 1998 (Namie G., 2003). Namie and Namie, 2000 also gave credit to Loraleigh Keashly who wrote a report in 1998 using the terminology ‘emotional abuse’ in the workplace. They also gave credit to Karen Jagatic, Joel Neuman, Judith Richman, and David Yamada for their work on workplace bullying in the United States. These works provided a foundation to structure definitions of workplace bullying to guide practice and research.

**Definition**

According to Namie (2007), there is a consensus among researchers and experts in the field on the following definition of workplace bullying - “Repeated mistreatment by one or more perpetrators of an individual or group” (Namie G., 2007, p. 43). Although this definition has been widely accepted, another definition has been accepted and is often used when guiding researchers in studies - “Workplace bullying is the
unwanted, unwelcome, abuse of any source of power that has the effect of or intent to intimidate, control or otherwise strip a target of their right to esteem, growth, dignity, voice or other human rights in the workplace” (Carbo & Hughes, 2010, p. 397).

Through their work on workplace bullying over the past decade, Namie and Namie have developed a more expansive definition that captures the essence of the two above and is as follows:

“Workplace Bullying is repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators that takes one or more of the following forms: Verbal abuse, Offensive conduct/behaviors (including nonverbal) which are threatening, humiliating, or intimidating, work interference, sabotage, which prevents work from getting done.”


In addition to the above elements of the definition of workplace bullying, multiple sources in the literature also state that there must be repetition of incidents for a certain length of time (Namie & Namie, 2009, Baillien, Neyens, & De Witte, 2011).

The Bully: who they are

Namie’s 2003 research shows that women are more likely to be the bullied (58%) and that most bullying occurs within the same sex. Namie’s research also shows that bullying shows disregard for boundaries of gender, race, and organizational rank (Namie, 2003). Workplace bullying can be found anywhere within organizations. This research was based on an unscientific online survey completed by 1000 voluntary unscreened individuals (Namie, 2007). This research also found that woman-to-woman bullying accounted for 50% of all bullying and that 71% of the time the bully outranked their
target. The newest version of this survey shows some key findings and some small differences. In Namie’s 2010 survey, men were more likely to be the bully (62%) and 58% of the targets were female. This finding is different from the 2003 study when females were more often the bully. Most bullying still occurs within the same-sex. In 80% of the incidents where the women is the bully, the target is also a woman. The prevalence of bullying in the workplace shows that 35% of workers have experienced bullying firsthand and that bullying is four times more prevalent than illegal harassment (Namie & Namie, Results of the 2010 and 2007 WBI U.S., 2011-2012).

*Strategies for reducing workplace bullying*

The literature presents some consensus on strategies that workplaces and organizations can adopt to reduce workplace bullying and foster a healthy, safe environment. Overall the literature emphasizes the use of internal anti-bullying policies, enforcement procedures, training and education, properly responding to bullying complaints, including outside agencies when appropriate and helpful, organization wide commitment and that sometimes culture and climate changes may be required (Lutgen-Sandvik & Tracy, 2011, Namie, 2007, Namie, 2003, Namie & Namie, 2009, Query & Hanley, 2010, Baillien, Neyens, & De Witte, 2011).

Other strategies discussed in the literature include Query and Hanley (2010) guidance encouraging organizations to complete academic research on workplace bullying as well as internal research in the form of staff surveys before they begin to address the issue and write a policy. Gary Namie, one of the more predominate researchers in the area of workplace bullying, calls their solution to workplace bullying “the Blueprint for a Bullying-Free Workplace.” This process includes “1. Create an
explicit anti-bullying policy. 2. Design credible enforcement procedures 3. Provide restorative interventions for bullied individuals and affected work teams. 4. Education and training are critical.” (Namie, 2007, p. 49). An excerpt containing a full description of this process from Namie’s 2003 paper can be seen in Appendix A.

Addressing the public opinion and reaction to incidents of bullying is also an area organizations should examine when implementing an anti-bullying campaign (Lutgen-Sandvik & Tracy, 2011). The public including other members of the organizations can downplay bullying incidents and even blame the target. Adding a public awareness piece to the campaign which publicizes the prevalence of workplace bullying may also be beneficial (Lutgen-Sandvik & Tracy, 2011). If an organization can do a cost analysis of how much bullying is costing their organizations this information can be helpful in getting buy-in from top executives and other key individuals (Query & Hanley, 2010).

**Legislation**

Sweden was the first country to introduce legislation to respond to workplace bullying. The Ordinance on Victimization at Work was enacted in 1993. This legislation required employers to prevent workplace mobbing and provide assistance to employees who have been targeted (Canada H. R., 2011). France was next in introducing legislation, Social Modernization Law, in 2002. The French legislation focused on the intent of the perpetrator as well as the effects on the target, there does not have to be intent on the part of the perpetrator for the behavior to be considered moral harassment. In 2004, Belgium introduced legislation which included a provision that every enterprise required a “specialized prevention adviser” to address sexual harassment, moral harassment and violence at work (Canada H. R., 2011). In 2005, legislation was enacted
in Ireland, several Australian states and several European countries (Namie & Namie, 2009).

Canadian provincial workplace bullying legislation is difficult to find and in many provinces it does not exist. Provinces have Workplace Health and Safety Legislation and Human Rights Legislation, but in many provinces there is no specific workplace bullying legislation. Workplace bullying is a relatively new topic from a research perspective, having only commenced in the 1980’s. Grounds and grievances for workplace bullying complaints are often filed under harassment legislation. For example, a high profile case of harassment within the RCMP was recently released to the media. Some forms of continual harassment fall under the workplace bullying umbrella. In cases where the harassment fits within the parameters of a Human Rights complaint all individuals have an avenue for redress. In the case of this RCMP allegation it is an incident where the harassment may have been based by gender and therefore would fall under the Human Rights parameters. When the bullying and/or harassment occur outside of Human Rights parameters, there is disconnect with legislation. Without further legislation some employees have no opportunity for redress.

Workplace bullying legislation in Canada and the United States has lagged Europe and Australia. In Canada under the Human Rights legislation, any harassment that is based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted (Canada, 1985-2012) is considered illegal. In all provinces except Quebec, Ontario, Manitoba, and Saskatchewan, this is the only legislation in which workplace bullying would classify. If the bullying does not occur based on these
Human Rights criteria it is not considered illegal. Employer’s can have their own workplace harassment policies in these provinces but there is no province wide legislation. Quebec was the first North American jurisdiction to bring in legislation that addressed workplace bullying. In June, 2004, the Quebec Labour Standards Act introduced legislation specifically to prevent psychological harassment. In 2007, Saskatchewan revised legislation in the Occupational Health and Safety Act to prohibit harassment in the workplace (Namie & Namie, 2009). In Saskatchewan, bill 66 includes cases of harassment that do not fit under the Human Rights Complaints. In 2009, Ontario enacted a bill (168), similar to that of Saskatchewan. Ontario’s policy includes the responsibility for employers to prepare, post, and review internal policies regarding workplace bullying. In 2010, Manitoba amended their Workplace Health and Safety Act to include harassment not based on Human Rights complaints in the harassment legislation. In Prince Edward Island as well as Newfoundland and Labrador, the provincial government has their own policy for their employees and workplaces but not full legal provincial legislation. In the other provinces, British Columbia, Alberta, Nova Scotia and New Brunswick no additional harassment legislation other than what falls within the Human Rights complaints could be found.

The New Democratic Party (NDP) of Canada brought forward Bill c-276 regarding psychological harassment in the workplace in 2009. This act had its first reading in January of 2009 and would have amended the Canada Labour Code. This act would extend protection beyond that of the Canadian Human Rights Act. There has been no progress made in the adoption of this bill. It has not gone further than the first
The intention of the NDP was to provide a uniform policy for the whole country. Some recommendations to improve legislation would be for all provinces to adapt legislation that would broaden the scope of what classifies as harassment. The literature and studies discussed earlier in this chapter acknowledge that most incidents of bullying would not qualify as a human rights complaint. Overall in Canada there is no national policy or legislation and only four provinces have implemented their own provincial policies. That leaves six provinces where workplace bullying is not considered illegal unless the complaint can be filed under the Human Rights legislation.

US legislation is even further delayed than in Canada. There are no state laws prohibiting workplace bullying that does not fall within discrimination based on areas protected by Human Rights laws. There has been progress since 2003 with 16 states having introduced anti-bullying legislation and another 10 states having the legislation pending but workplace bullying is still not covered under any law (Query & Hanley, 2010).

**Gaps and Future Research**

This research will contribute to the literature on Canadian workplace bullying legislation and policies, in addition to exploring another angle, analyzing the Canadian court and arbitration case decisions that have pertained to workplace bullying. These decisions and discussion of legislation will provide an overview of the status of workplace bullying in Canada. The limited legislation dealing with workplace bullying leaves a unique opportunity for research to be completed on the impact new legislation has on provinces as it is enacted. Examining if legislation leads to better awareness of the topic and exploring whether the prevalence of workplace bullying will be reduced in
provinces where legislation is introduced could provide further support for other jurisdictions to adopt workplace bullying legislation. Studies on this topic may be difficult to quantify with the amount of variables but could lead to some useful findings.
CHAPTER 3: METHODOLOGY

This study was conducted using Weber’s (1990) content analysis methodology. Canadian court cases and arbitration cases were analyzed to describe trends in communication. By analyzing the case decisions this research project will examine the use of the Canadian court system in regards to workplace bullying incidents.

Research Framework

The purpose of this study was to examine the legislative/practice gap in Canada through reviewing provincial policy and legislation as well as arbitration and court cases pertaining to workplace bullying in Canada. A qualitative approach to analyzing the arbitration and court cases was taken. Various descriptive areas were analyzed such as the sex of the bully, the sex of the target, whether the bullying was done by bosses or employees of the same rank, and Canadian region of the claims. A further analysis was done on the decisions and conclusions given by the arbitrators and judges. This analysis closely examined the findings and uncovered themes that were common among numerous cases.

Court can be the venue for employers and employees to settle their disagreements. Arbitration is often where employees and unions settle disputes with employers. The decisions made by arbitrators and judges regarding workplace issues can set direction for how organizations should handle situations. Case decisions provide direction into how the legal system distinguishes between inappropriate and appropriate workplace practices. Arbitrators and judges have the responsibility to hear the evidence provided by both parties and make a decision to resolve the situation.
Case Selection Criteria

The search into court cases was narrowed to one legal database, Quicklaw. Quicklaw was chosen as it is one of the most comprehensive legal databases available. From there a two step process was used to further narrow the search.

The first step was to do a broad search of all court cases and tribunal cases in the Quicklaw database using the high-level search terms. The second step was used to further narrow down the cases to those that truly fit with workplace bullying in Canada.

To determine this several criteria steps were taken:

1. The case must have a main focus on workplace bullying. Workplace bullying or bullying must be cited as grounds for the grievance.
2. The case must describe the definition of bullying even if the term bullying was not cited directly as grounds for the grievance.
3. There must be more than one incident of harassment.
4. Workplace bullying must be central to the case even if it was not cited directly as the grounds for the grievance.
5. A final decision must have been rendered.

These steps were guided by the use of Namie and Namie’s definition of workplace bullying used for this study.

“Workplace Bullying is repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators that takes one or more of the following forms: Verbal abuse, Offensive conduct/behaviors (including nonverbal) which are threatening, humiliating, or intimidating, work interference, sabotage, which prevents work from getting done.”

Research Summary

To summarize, this research will uncover trends and themes in Canadian Supreme Court and arbitration cases dealing with workplace bullying. These trends and themes provide important direction for employers about what they should be doing to help prevent workplace bullying in their organization. It also provides direction for Canadian politicians and policy makers about what can be done to amend current legislation to cover incidents of workplace bullying in an effort to reduce its prevalence. This study contributes to the workplace bullying literature that has already completed by offering an examination into Canadian court cases regarding the current direction workplace bullying case decisions are taking.
CHAPTER 4: FINDINGS

An analysis was completed on all cases that fit the inclusion criteria discussed in chapter three. The analysis framework examined such elements as the type of complaints, nature of the grievance, dates of the grievance, descriptor facts of the griever, sex of the bully and target, province, size of the union, and judge/arbitrator decision rationale.

Case Inclusions

Considering both arbitration and Supreme Court cases within the database, a two step process was used to narrow the search. The key search terms used in the first step were “workplace” and “bullying.” Sixty-one Supreme Court cases were found ranging in date from February 1997 to December 2011. Within the Tribunal or Arbitration cases 371 cases were found ranging in date from October 1987 to December 2011.

When examining the initial cases found and considering the criteria set out in the second step of the search process, a number of cases were eliminated from consideration. Some of the reasons that cases did not meet the criteria included: (1) the central theme of the case was not workplace bullying, these cases contained both key words but not in the proper context for this paper. (2) Some of the cases only dealt with one incident of harassment which does not fit within the definition of workplace bullying used in this study. (3) A final decision had not been rendered as of the date the search was completed. After a review of all cases fitting specifically within the case inclusion criteria, the total number of cases included in the study was 12 court cases and 24 arbitration or tribunal cases. As a result, 36 cases were identified for inclusion for the content analysis.
Through analysis of the cases two tables were created to categorize important elements of each case. The first table was created as a data collection framework which captured the descriptive statistics from each case such as: the title, province, date, names of arbitrators or judge, union, employer, sex of the bully and target, industry, type of bullying (boss-to-employee, employee-to-employee or employee-to-boss), brief case summary and decision. The second table was an analysis framework used to capture and organize the themes and trends uncovered through the critical analysis completed on the decision and conclusion sections of the cases. This analysis framework was used to narrow the themes to those that had the highest saturation levels (see Appendix B).

**Results**

*Descriptive Statistics*

The 36 cases identified for inclusion in the content analysis were found to be dated between 1994 and 2011. See figure 1 for the distribution of the cases. As demonstrated in figure 1 the majority of the cases meeting the outlined criteria were after 2009. Until 2009, the number of cases was less than two, while between 2009 and 2011 the cases ranged from four to eight.
There were very minimal differences between the Supreme Court cases and the arbitration cases when considering sex of the bully or the region where the case was heard. In both the Supreme Court cases and the arbitration cases the bully was more often a male around 70% (69% in court cases and 71% in arbitration cases) and the provinces that had the highest number of cases of either type were Ontario (47%), British Columbia (19%) and Alberta (17%), these are overall percentages for both types of cases.

There were differences between the Supreme Court cases and arbitration cases when analyzing the individuals involved in the bullying. In the Supreme Court cases 75% (9 of 12) of the time it was a boss bullying an employee with 16.7% (2 of 12) of the cases involving employee to employee bullying. In the arbitration cases 21% (5 of 24) were dealing with boss to employee bullying whereas 79% (19 of 24) of the cases involved employee to employee bullying. Only two cases (one of each type) involved employee to boss bullying. Figure 2 provides an illustration of the differences among who was involved in the bullying. It is important to note that the totals do not add up to 36 because in one of the cases there was more than one type of bullying.
Another difference between the two types of cases was who was filing the complaint. In court cases 9 of the 12 complaints were filed by the target involved in the bullying situation while only 7 of the 24 complaints in the arbitration cases were filed by the target. There were no noteworthy comparisons to be made in regards to the industry where the workplace bullying incidents took place. In both courts the complaints came from a variety of industries including: manufacturing, health, education, banking, sales, etc. When considering if the judge or arbitrators overall decisions was made in favor of the target or the bully there were differences in the two types of cases. For this analysis, wins or partial wins by the target were grouped with losses for the bully and losses or partial losses by the target with wins for the bully. 25% of the court cases sided with the target, whereas in the arbitration cases 71% of the cases had the decisions favour the target or against the bully. Although this is an interesting finding it cannot be generalized as each case is different in many ways and the reasons for the judge and arbitrators decision vary as well.
There were some similarities with who was being targeted in the incidents of workplace bullying discussed in the cases. In 28 out of the 36 cases the targets of the bullying were females, 11 were males and in 5 incidents the sex of one or more of the targets was not specified. Figure 3 below will illustrate the sex of the bully and target in each incident. In 18 of 36 cases the bully was a male and their target was a female and in 3 of 36 cases the bully was female and the target was male. In cases where a female was the bully 71% of the time another female was the target.

Figure 3: Sex of Bully and Target (first sex indicates that of the bully)

Court Case Analysis

Twelve court cases met the criteria for analysis. Nine of the twelve were dealing with complaints for wrongful or constructive dismissal or demotion. Six of the nine cases were complaints brought forward by the target of bullying, in three cases the target won, in two they lost and in the other case the courts dismissed the complaint. In the two cases
where the targets were not successful there was lack of proof and other circumstances that lead to the court’s decision not to rule in favor of the target. The dismissal was due to the courts lack of jurisdiction, the complaint filed fell under the collective agreement.

All of the three cases that were not dealing with constructive dismissal were brought forth by the target. One case was dismissed as it fell under the jurisdiction of the collective agreement. In Kiewning v. Communications, Energy and Paperworkers Union of Canada, CEP Local 324 (2011) the target had a partial loss. The courts felt the bully had been punished internally and the courts would not have handled it any differently. The Cholan v. Cadsky (2007) case was described by the judge as a “power struggle” work environment. The claims were not fully made out and the target did not win their case.

*Arbitration Case Analysis*

Twenty-four cases met the criteria for analysis. Seventeen of the cases were involving grievances filed by the bully. In all of these cases the grievance issue was dealing with a dismissal, suspension or transfer that the bully thought was unjust. In thirteen cases or 76% the bully was not successful in his or her grievance. The arbitrator’s decisions were often based on history of prior incidents of complaints against the bully and if the bully had been given opportunity to improve their behavior. In many incidents a progressive type of disciplinary system was in place where the arbitrator decided that the bully had had opportunity to improve and had not done so. In those cases the employer was seen as justified and that their discipline was not excessive. In one of the cases where the bully was partially successful (reinstated but their suspension was upheld without compensation) the arbitrator recommended the employer put a
progressive disciplinary system in place (Burnaby Villa Hotel v. Hotel, Restaurant & Culinary Employees & Bartenders Union Local 40, 1994). As part of many of the progressive disciplinary systems discussed in the cases the final step is the “last-chance” agreement between the employer and the employee having disciplinary issues. A last chance agreement is described as “a type of settlement agreement whereby discipline is withdrawn and the griever returned to work subject to compliance with certain conditions. Typically, such agreements provide that non-compliance will result in dismissal, and arbitral review is limited by the terms of the agreement” (Cumberland Health Authority v. Canadian Union of Public Employees, Local 2525 (Allen Grievance), 2007, paragraph 47). In another case, where the bully was partially successful, the arbitrator suggested the employer look into conflict resolution programs for their employees.

In the seven cases where the target filed the complaint the target was successful in two cases, partially successful in three and not successful in two. The reasons the arbitrators gave for the unsuccessful or partially successful often were in regards to the way the complaint was framed. If the complaint did not fit the specific area the target was grieving the arbitrator did not rule in their favor. In one case where physical and verbal bullying had allegedly taken place the target was successful in regards to the physical bullying but was unable to prove the verbal bullying. There were conflicting witness statements with the verbal bullying incidents but the physical bullying (the bully grabbed the target by the chin) was witnessed.
Themes

A thorough analysis, which focused on the conclusion/decision sections of the cases, was completed on all cases that fit the criteria. The conclusion/decision section is where the arbitrator sums up their interpretation of the evidence and gives their award or remedy. A full list of all main areas looked into by the arbitrators or judges can be found in Table 1. This table also includes the list of which cases discussed each theme and the percentage of saturation in each type of case and overall percentage of saturation. After analyzing the cases and listing the main reasons for the arbitrator’s decisions some common themes were evident.
<table>
<thead>
<tr>
<th>Discussion points found in conclusion sections of cases</th>
<th>Case Numbers</th>
<th>Percentage of</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) failure to report prior incidents does not nullify claim</td>
<td>1</td>
<td>8% 3%</td>
</tr>
<tr>
<td>(B) Shah v. Xerox Canada Ltd. and Farber v. Royal Trust Precedence for constructive dismissal, fit under constructive dismissal</td>
<td>1,2,4,11,12</td>
<td>42% 14%</td>
</tr>
<tr>
<td>(C) target suffered mental distress beyond what would be considered normal distress upon dismissal</td>
<td>1,2,8,10</td>
<td>33% 11%</td>
</tr>
<tr>
<td>(D) fell under the collective agreement</td>
<td>2,8</td>
<td>17% 6%</td>
</tr>
<tr>
<td>(E) lack of proof/claim not made out/lack of evidence</td>
<td>1,8,16,18,21,23 / 4,6,7,9,10</td>
<td>25% 42% 31%</td>
</tr>
<tr>
<td>(F) Bully should have been given opportunity to be heard and/or improve</td>
<td>3</td>
<td>4% 3%</td>
</tr>
<tr>
<td>(G) Progressive discipline and/or no warning and Last-chance agreements</td>
<td>3,4,9,10,11,13,15,24 / 5,11</td>
<td>33% 17% 28%</td>
</tr>
<tr>
<td>(H) employers obligation to other employees, all have right to workplace free of abuse, non-poisoned work environment</td>
<td>2,5,7,10,13,14,23 / 1,4,12</td>
<td>29% 25% 28%</td>
</tr>
<tr>
<td>(I) whether conduct contravened the harassment policy and/or discussed harassment policies</td>
<td>4,9,10,16,17,18,19,21,22,24 / 1,3,4,5</td>
<td>42% 33% 39%</td>
</tr>
<tr>
<td>(J) behaviour continued through discipline efforts</td>
<td>3,4,5,9,10,13,20,22</td>
<td>33% 22%</td>
</tr>
<tr>
<td>(K) bully takes no responsibility for their behaviour and/or blames others</td>
<td>2,3,4,5,6,7,9,10,11,14,15,21,23</td>
<td>54% 36%</td>
</tr>
<tr>
<td>(L) see no chance to repair employment relationship and/or bully likely to repeat behaviour</td>
<td>3,4,5,6,12,13,14,15,20,22</td>
<td>42% 28%</td>
</tr>
<tr>
<td>(M) Letter of discharge substantiated by evidence</td>
<td>7</td>
<td>4% 3%</td>
</tr>
<tr>
<td>(N) Pattern of bullying conduct justifies termination</td>
<td>2</td>
<td>4% 3%</td>
</tr>
<tr>
<td>(O) Find insufficient grounds to substitute a lesser penalty</td>
<td>2</td>
<td>4% 3%</td>
</tr>
<tr>
<td>(P) Employers attempt to reform the employee’s misconduct</td>
<td>3</td>
<td>4% 3%</td>
</tr>
<tr>
<td>(Q) Bully’s ability to understand &amp; correct the pattern of behaviour</td>
<td>3</td>
<td>4% 3%</td>
</tr>
</tbody>
</table>

**ARBITRATION CASES**

**COURT CASES**

Table 1: Areas Discussed by Arbitrators and/or Judges
<table>
<thead>
<tr>
<th>Discussion points found in conclusion sections of cases</th>
<th>Case Numbers</th>
<th>Percentage of</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(R ) Medical Reasons (psychiatric assessments, alcoholism, disability, etc)</em></td>
<td>3,4,5,12,14,19,21 / 1,4,6</td>
<td>29% 25% 28%</td>
</tr>
<tr>
<td><em>(S) Grieve’s version not believable, lack of credibility</em></td>
<td>3,4,5,7,8,9,11,12,15,16,20,21,23 / 1</td>
<td>54% 8% 39%</td>
</tr>
<tr>
<td><em>(T) Racist, Sexist behaviour, sexual harassment, sexual preference</em></td>
<td>3,5,7,10,15,16,17 / 1,3,6,8</td>
<td>29% 33% 31%</td>
</tr>
<tr>
<td><em>(U) Mitigating Factors</em></td>
<td>3,4,7,9,11,20,22 / 5,11,12</td>
<td>29% 25% 28%</td>
</tr>
<tr>
<td><em>(V) Dismissed for just cause</em></td>
<td>5,7,9,14,20</td>
<td>21% 14%</td>
</tr>
<tr>
<td><em>(W) disciplinary record</em></td>
<td>5,6,9,11</td>
<td>17% 6%</td>
</tr>
<tr>
<td><em>(X) intention to follow through on threat</em></td>
<td>5</td>
<td>4% 3%</td>
</tr>
<tr>
<td><em>(Y) non-culpable or culpable behaviour</em></td>
<td>5</td>
<td>4% 3%</td>
</tr>
<tr>
<td><em>(Z) insubordinate behaviour</em></td>
<td>7</td>
<td>4% 3%</td>
</tr>
<tr>
<td><em>(AA) Time for rehabilitation to occur and/or time given to improve, opportunity to be heard</em></td>
<td>10 / 5,9</td>
<td>4% 17% 8%</td>
</tr>
<tr>
<td><em>(BB) Recommended training, conflict resolution</em></td>
<td>11,23,24</td>
<td>13% 8%</td>
</tr>
<tr>
<td><em>(CC) Damages for Injury, Dignity, Feelings &amp; Self Respect or punitive damages</em></td>
<td>19,24 / 1,9,10</td>
<td>8% 25% 14%</td>
</tr>
<tr>
<td><em>(DD) Internal Appeal Route</em></td>
<td>3</td>
<td>8% 3%</td>
</tr>
<tr>
<td><em>(EE) Organization’s responsibility for employees actions</em></td>
<td>4,6</td>
<td>17% 6%</td>
</tr>
<tr>
<td><em>(FF) Elements of defamation</em></td>
<td>6</td>
<td>8% 3%</td>
</tr>
<tr>
<td><em>(GG) Qualified Privilege</em></td>
<td>6</td>
<td>8% 3%</td>
</tr>
<tr>
<td><em>(HH) Malice</em></td>
<td>6</td>
<td>8% 3%</td>
</tr>
<tr>
<td><em>(II) chance of success with Human Rights complaint</em></td>
<td>7</td>
<td>8% 3%</td>
</tr>
</tbody>
</table>

**ARBITRATION CASES**  **COURT CASES**
As can be seen in Table 1 there were some themes that were only found in one or a few cases whereas other themes were identified in many cases. The arbitrators all had unique findings based on the facts and situations involved in each case. Although all findings were unique, there were some common themes discussed by the arbitrators and judges. To justify a significant theme a saturation point of being cited in 40% of either type of cases was used. Using the 40% point there were six themes that showed significance, four within the arbitration cases and two within the court cases (see Table 2 for significant themes and saturation levels). No theme showed a significance of 40% when considering both case types together. The common themes were: (1) Shah v. Xerox Canada Ltd. and Farber v. Royal Trust. Precedence for constructive dismissal, fit under constructive dismissal, (2) lack of proof/claim not made out/lack of evidence, (3) whether conduct contravened the harassment policy and/or discussed harassment policies, (4) bully takes no responsibility for their behavior and/or blames others, (5) see no chance to repair employment relationship and/or bully likely to repeat behavior, and (6) Grievers version not believable, lack of credibility.

<table>
<thead>
<tr>
<th>Discussion points found in conclusion sections of cases</th>
<th>Case Numbers</th>
<th>Percentage of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>{B} Shah v. Xerox Canada Ltd. and Farber v. Royal Trust Precedence for constructive dismissal, fit under constructive dismissal</td>
<td>1,2,4,11,12</td>
<td>0% 42% 14%</td>
</tr>
<tr>
<td>{F} lack of proof/claim not made out/lack of evidence</td>
<td>1,8,16,18,21,23 / 4,6,7,9,10</td>
<td>25% 42% 31%</td>
</tr>
<tr>
<td>{I} whether conduct contravened the harassment policy,</td>
<td>4,9,10,16,17,18,19,21,22,24 / 1,3,4,5</td>
<td>42% 33% 39%</td>
</tr>
<tr>
<td>{K} bully takes no responsibility for their behaviour and/or blames others</td>
<td>2,3,4,5,6,7,9,10,11,14,15,21,23</td>
<td>54% 0% 36%</td>
</tr>
<tr>
<td>{L} see no chance to repair employment relationship and/or bully likely to repeat behaviour</td>
<td>3,4,5,6,12,13,14,15,20,22</td>
<td>42% 0% 28%</td>
</tr>
<tr>
<td>{S} Grievers version not believable, lack of credibility</td>
<td>3,4,5,7,8,9,11,12,15,16,20,21,23 / 1</td>
<td>54% 8% 39%</td>
</tr>
</tbody>
</table>

Table 2: Main Discussion Themes
Constructive dismissal, suspension or transfer was the reason for 9 of the 12 workplace bullying court case grievances discussed in this paper. In these court cases the judges cited two cases for setting precedence on which they based their decisions on. The two court cases that set precedence for these judges were Farber v. Royal Trust Co., (1997) 1 S.C.R. 846 and Shah v. Xerox Canada Ltd. (1998), 49 C.C.E.L. (2d) 30 (Ont. Ct. Gen. Div.) aff’d (2000), 131 O.A.C. 44. The Shah v. Xerox (1998) case is a case where an employee who felt harassed or bullied withdrew from employment due to the conduct of management. “The test is objective, that is, the conduct of the employer must be such that a reasonable person in the circumstances should not be expected to persevere in the employment.” (Cooke v. HTS Engineering Ltd., 2009, paragraph 3). The two cases in which the judges cited the Shah v. Xerox case in their conclusions were both grievances filed by the target. Both claims fit this precedence and the judges found both targets had been constructively dismissed and were awarded damages.

In the Chandran v. National Bank of Canada (2011), a grievance filed by a bully, the judge used the test set out in Farber v. Royal Trust Co. (1997) 1 S.C.R. 846, paragraph 26,

“To reach the conclusion that an employee has been constructively dismissed, the court must therefore determine whether the unilateral changes imposed by the employer substantially altered the essential terms of the employee’s contract of employment. For this purpose, the judge must ask whether, at the time the offer was made, a reasonable person in the same situation as the employee would have felt that the essential terms of the employment contract were being substantially changed. (emphasis added)”
In this case the bully was successful as the judge found that he was constructively dismissed. In Hagan v. Drover the judge found the target, an independent contractor working with a firm, did not fit one of the requirements for constructive dismissal which was there had to be an employee/employer relationship. Some circumstances that were filed under constructive dismissal involved transfers or demotions. In some cases, the employer took away supervisory responsibilities and in others, a deduction in pay but not in all.

(2) Lack of proof/claim not made out/lack of evidence

Lack of proof or evidence or the inability for the griever to fully make out their case was a theme in 11 of 36 cases. Eight of the 11 cases were filed by the target. In one case the arbitrator found the griever's (targets) claim of harassment and abuse was entirely without merit and proof and suggested that the alleged targets owed the accused a public apology. The arbitrators and judges had to weigh the credibility of the witnesses and compare the evidence being brought forward. In one case the arbitrator found there was enough proof in the incident of physical harassment but that the targets claims for other verbal incidents of harassment and bullying were vague and not fully made out. In one of the cases filed by the bully the judge found that the employer did not prove the bully was guilty of serious misconduct which would have justified immediate dismissal. In many of the cases the availability and credibility of witnesses provided a lot of evidence or lack of evidence as did any documentation of prior incidents.
(3) Harassment Policies (Whether conduct contravened the harassment policy and/or discussed harassment policies)

Arbitrators use existing harassment or similar policies to guide their conclusions. In four of the cases, the arbitrator concluded that the behavior of the bully contravened the policies around harassment at that workplace. In two cases the arbitrators findings were that the bully’s behavior did not contravene the policy. In Smith v. Menzies Chrysler Inc. (2009) there was no harassment policy in place but the facts of the case fell contrary to several sections of the Ontario Human Rights Code (see Appendix C). The arbitrator decided in favour of the target with financial awards of more than fifty thousand dollars. The arbitrator also ordered that the employer put a very specific discrimination and harassment policy in place. “I find it appropriate to require the corporate respondent to develop a human rights policy and complaints procedure and for all respondents, as well as the employees of the corporate respondent, to receive human rights training.” (Smith v. Menzies Chrysler Inc., 2009, paragraph 185). The arbitrator set out a timeline that the corporate respondent was ordered to meet. The arbitrator in this case used their power to direct the employer to do what the arbitrator thought was needed to promote compliance to the Ontario Human Rights Code within this organization.

In other cases where the workplace had policies the complaint did not always fall under the policy and the arbitrator sided in favor of the bully. In deciding on the Saskatoon (City) v. Canadian Union of Public Employees (2011) case the arbitrator referred to the City’s Respectful Workplace Policy and their Workplace Harassment Policy. In this case, the arbitrator’s decision was in favor of the bully who had filed the grievance for receiving a three day suspension. The arbitrator noted that “Neither the
Respectful Workplace Policy nor, for that matter, the Workplace Harassment Policy, should be taken so far in the circumstances to force employees to like each other sincerely.” (Saskatoon (City) v. Canadian Union of Public Employees (Zapski Grievance), 2011, paragraph 85). The arbitrator found that although the behavior may have been unsatisfactory it did not contravene any of the policies in place by this organization.

**(4) The Bully Took No Responsibility for Their Actions and/or Blames Others & (5) See no chance to repair employment relationship and/or bully likely to repeat behavior**

In eleven cases the arbitrators discussed theme four, the absence and lack of responsibility the bullies had for their actions. In all of these cases the bully was not successful. In the ten cases that discussed theme five, see no chance to repair employment relationship, all were filed by a bully who had been suspended or terminated for their bullying behavior. In all cases the arbitrator considered whether there was a possibility for the bully to return to work successfully. In all cases the arbitrator could not see any way for the bully to return to work in a positive, successful manner. The arbitrators did not see the ability for the bully to repair its relationship with the employer and other employees.

These themes are being discussed together as most arbitrators cited the inability to take responsibility as a hindrance to the bully re-entering the workplace in the future. One arbitrator stated “In the absence of any indication whatsoever that Mr. Napier understands the inappropriateness of his behavior, it makes it impossible to conclude that the employment relationship could be restored.” (Labatt Brewing Co. v. Brewery Winery and Distillery Workers' Union, Local 300 (Napier Grievance), 2002) The arbitrators also
considered if the bully had apologized to the targets and in some cases apologies to the employers and witnesses were expected. These actions or lack of action were considered by arbitrators as aspects to signal if a bully would bully again. In one case being overseen by a board the arbitrator stated “Those were the troublesome factors that caused the board to conclude that if reinstatement were to be ordered, a high likelihood existed for repeated confrontation and violence.” (Dynatech Corp. v. United Steelworkers of America, Local 2020 (Morin Grievance), 2005) Arbitrators consider how successful a return to work could be for an employee who has been accused and found to have been the perpetrator of bullying behaviors. In addition to considering if the bully took responsibility for their actions, arbitrators also considered if the bully had learned from past disciplinary actions. The welfare of the other employees especially the target was seen as a concern for the arbitrators.

(6) Griever's version not believable, lack of credibility

There were thirteen cases in which the arbitrator cited the griever’s credibility as one of the important elements they considered when coming to their conclusions. This theme may not be unique to workplace bullying cases as arbitrator’s discussion of having to distinguish between credible and non-credible witnesses while analyzing the facts and coming to their conclusions is probably common in all types of cases. Out of these 13 cases, which directly discuss this theme, ten were filed by the bully and in seven the bully lost and in two the bully was found partially successful. One judge also discussed this theme in the court cases analyzed in this paper. The arbitrator’s had to weigh the credibility and reliability of the griever against that of the other witnesses. In some cases the griever’s version of events were found to be partially believable but not wholly. The
arbiter in one case described the truth as to most likely lie somewhere between the varying versions of the events. Where the griever was not found believable or credible the arbitrator did not decide in their favor or fully in their favor.

Additional Theme

A seventh theme will also be considered. Themes labeled G, J, P and W in Appendix 3 all fell within a similar theme regarding discipline and more specifically continued disciplinary efforts (see Table 3 for list of these themes). When considering the four themes together as one theme they have a 50% saturation level in the arbitration cases.

<table>
<thead>
<tr>
<th>Discussion points found in conclusion sections of cases</th>
<th>Case Numbers</th>
<th>Percentage of</th>
</tr>
</thead>
<tbody>
<tr>
<td>(G) Progressive discipline and/or no warning and Last-chance agreements</td>
<td>3,4,9,10,11,13,15,24 / 5,11</td>
<td>33% 17% 28%</td>
</tr>
<tr>
<td>(J) behaviour continued through discipline efforts</td>
<td>3,4,5,9,10,13,20,22</td>
<td>33% 22%</td>
</tr>
<tr>
<td>(P) Employers attempt to reform the employee's misconduct</td>
<td>3</td>
<td>4% 3%</td>
</tr>
<tr>
<td>(W) disciplinary record</td>
<td>5,6,9,11</td>
<td>17% 6%</td>
</tr>
<tr>
<td>Totals</td>
<td>3,4,5,6,9,10,11,13,15,20,22,24 / 5,11</td>
<td>50% 17% 39%</td>
</tr>
</tbody>
</table>

Table 3: Additional Theme

**Progressive Discipline Policies and “Last-Chance” Agreements**

One of the more common themes among the arbitration cases was the idea of a progressive type of discipline policy and the use of last chance agreements, these themes were also discussed in two of the court cases. Arbitrators discussed the positive use of these programs in cases where the employer already had such a policy in place and in other cases they recommended to the employer that they should implement one. One arbitrator gave this for reasons for implementing a progressive discipline policy, “Had it
not been for the fact that management had failed to effectively address the Grievor’s serious performance and attitude problems in the past, I would have recommended that the Grievor be dismissed.” (Burnaby Villa Hotel v. Hotel, Restaurant & Culinary Employees & Bartenders Union Local 40, 1994) The arbitrator acknowledges the seriousness of the bully’s behavior but without the prior warnings a progressive discipline program would have provided the bully, the arbitrator found it unfair to uphold the dismissal. In one case the employer had a progressive discipline program in place but the arbitrator found the bully’s behavior did not warrant immediate discharge and the arbitrator ordered the employer to reinstate the employee and put a “last-chance” agreement in place.

The arbitrator in the Allen Grievance (2007) describe Last-chance agreements as

“Last-chance agreements are a type of settlement agreement whereby discipline is withdrawn and the grievor returned to work subject to compliance with certain conditions. Typically, such agreements provide that non-compliance will result in dismissal, and arbitral review is limited by the terms of the agreement. (emphasis added)”
(Cumberland Health Authority v. Canadian Union of Public Employees, Local 2525 (Allen Grievance), 2007, paragraph 47)

In three other cases that involved “last-chance” agreements, the bully who had filed the grievance lost due to the number of prior incidents and some form of ‘last-chance’ agreement between themselves and their employer.

The common themes and the descriptive statistics examined in this study give an overall view of what type of workplace bullying incidents were put before the courts. The themes provide insight into the directions the arbitrators and judges took when faced with various situations. In the cases analyzed in this study the bully was most often a male and the target most often a female, the type of bullying in arbitration cases was most
often employee to employee whereas in the court cases analyzed the type of bullying was most often between a boss and an employee. The provinces with larger populations were the jurisdictions with the higher number of cases. The common themes covered precedence for constructive dismissal, lack of proof, harassment policies, bullies taking responsibility, credibility and progressive discipline programs. This analysis of Canadian court cases can provide insight to academics and practitioners into the position of workplace bullying in Canada and the direction the courts are taking.
CHAPTE R 5: DISCUSSION AND CONCLUSION

The purpose of this study was to examine the legislative/practice gap in Canada through reviewing provincial policy and legislation as well as arbitration and court cases pertaining to workplace bullying in Canada. The aim of this study was to examine the current state of workplace bullying in Canada. This project discussed the background literature on workplace bullying, what legislation is in place in Canada regarding workplace bullying, and what themes are being discussed in court cases involving workplace bullying. This final chapter will discuss and make comparisons between the Canadian Supreme Court cases/arbitration cases and the literature and legislation.

Summary of Study Findings

This study uncovered an increasing trend of incidences of workplace bullying complaints being filed in the Canadian court system. The majority of cases examined in this study were filed after 2009. The earliest case was filed in 1994 with more than half of the 36 cases being filed in the three most recent years of the study. The literature discusses a high prevalence of workplace bullying at 35% of all workers experiencing some form of workplace bullying (Namie & Namie, Results of the 2010 and 2007 WBI U.S., 2011-2012). A limitation of this research and an area for future research is that no literature research discussed in this paper examines the area of the number of workplace bullying incidents that end up being settled in court. The analysis to uncover what percentage of workplace bullying incidents get settled in court would be difficult to gather but would be useful when trying to examine any positive affects programs, strategies and legislation may have. A possible cause for the increased number of court cases in recent years could be the increased awareness of and literature on workplace
bullying and harassment. Again, this possible cause has not been proven in this study but could be an area for future research.

This study’s results regarding the sex of the bully supports the most recent WBI results. The 2010 WBI found that 62% of bullies involved in workplace bullying incidents were males (Namie & Namie, 2011-2012), this study also found that the majority (70%) of bullies being male. This case analysis also supports the 2010 WBI in that females are more often the target of bullying. This study found females being the target in 78% of the cases and the 2010 WBI found 58% of the targets were female (Namie & Namie, 2011-2012). This study did not get into why this was, where the bully was more often male and the target more often female but a possible area to examine would be how often workplace bullying involves sexual harassment or gender biases. Something to note is that in this study when the bully was female (14 cases) she was more likely to bully another female (10 out of the 14). This supports the literature which found that 80% of the time when the bully was female the target was also female. Again, researching the reasons behind the bullies motives would be an area of future research that could contribute to helping prevent future workplace bullying incidents.

In the 24 arbitration cases analyzed in this study 21% of them involved a bullying incident where the bully was the boss of their target. This is contradictory to the literature evidence which found 71% of the time the bully out ranked their target (Namie, 2007). The literature is more similar to the percentage found for the Supreme Court cases analyzed in this study where 75% of the cases involved the boss being the bully. A possible reason for this could be that all of the arbitration cases involve unionized environments; this is an area for future research and not analyzed in this study. Another
area that this study which contradicts the literature evidence is that the majority of the cases involved a bully and target of opposite sex. In 18 cases, the bully was male and the target was female. The literature including the WBI surveys completed by Namie and Namie in 2003 and 2010 discuss the majority of bullying to occur within the same sex. This study did not analyze the motives or excuses given by the bullies. As discussed in theme four, most bullies do not take responsibility for their actions, so finding reasons why could be difficult.

This study completed a thorough analysis of the discussion and conclusion sections of the cases in search of common themes. There were six themes found to have a saturation level of 40% or more. There was also an additional theme discussed due to the similarities among some of the other 29 themes listed. The common themes found were (1) Shah v. Xerox Canada Ltd. and Farber v. Royal Trust, Precedence for constructive dismissal, fit under constructive dismissal, (2) lack of proof/claim not made out/lack of evidence, (3) whether conduct contravened the harassment policy and/or discussed harassment policies,(4) bully takes no responsibility for their behavior and/or blames others, (5) see no chance to repair employment relationship and/or bully likely to repeat behavior, and (6) Grievers version not believable, lack of credibility and the additional theme (7) Progressive Discipline Policies and “Last-Chance” Agreements. Themes three and seven were also discussed in the literature research and the analysis of legislation. Workplace bullying policies were discussed in the literature in regards to legislated policies and internal organization policies. Developing a workplace bullying policy with a well laid out plan of education and enforcement is recommended in the literature as a method for addressing workplace bullying. There was also support for
legal legislation to be put in place that would provide protection for all employees even those who work in organizations that do not have internal policies pertaining to workplace bullying. The additional theme of progressive discipline policies was also found in the literature. Namie, 2003, make having a progressive discipline system part of their ‘Blueprint’ for combating workplace bullying. It also discusses a zero tolerance policy for those who are unable to change their behavior, this would be a similar idea as with the ‘last chance’ agreements discussed by the arbitrators and judges. Practitioners could benefit from progressive discipline systems which allow for transparency into what disciplinary actions will take place if misconduct occurs or continues to occur.

**Research Implications**

This study adds to the research emphasizing that workplace bullying is a serious and costly problem in organizations. This study also highlights the need for more legislation that would be used to discipline those who choose to bully others at work. There is no national legislation in Canada in which all workplace bullying incidents are covered and only four provinces have adopted provincial legislation to combat workplace bullying. This study has helped make aware that much research is still needed to better understand workplace bullying and what should be done to prevent it. Although it is a relatively new research topic, more than three decades have been spent researching and most areas in North America still do not have legislation or recognize that workplace bullying as being illegal.

The contribution this study makes to the academic environment is that it is one of the first studies that examined Canadian court cases involving workplace bullying. This initial examination can be extended upon to include a more in depth view of other
jurisdictions or built on in the future as more workplace bullying cases are filed in Canada. This study contributes to practitioner’s perspective by providing human resource managers and other leaders in organizations insights and strategies on a topic that could be costing their organization significant amounts of money.

**Limitations and Future Research**

There are a number of strengths and limitations to this research that must be taken into consideration when interpreting the results of the study. This study is not generalizable; it is has a small sample size of cases and is solely a case study. However, interesting points can be drawn from it to promote future research but findings cannot be generalized into larger groups.

A limitation of this study is that Quebec court cases were not analyzed as they are not included in the Quicklaw database. An area of future research would be to include cases from Quebec to make it a complete Canadian study and to possibly do comparisons between Quebec and the rest of Canada since Quebec was the first province to adopt legislation they may be more advanced in court case precedence and direction.

The current widely accepted definition for workplace bullying that was used for this study includes the requirement for there to be more than a single incident for the abuse or harassment to be considered bullying. Carbo and Hughes (2010) introduced a new definition that would allow for single events as well as repetitive incidents to be included. They introduced this definition: “Workplace bullying is the unwanted, unwelcome, abuse of any source of power that has the effect of or intent to intimidate, control or otherwise strip a target of their right to esteem, growth, dignify, voice or other human rights in the workplace.” (Carbo & Hughes, 2010, p. 397). This definition was
put through a focus group analysis and was viewed favorably and the author’s state it will be tested further using a quantitative survey research (Carbo & Hughes, 2010). If this definition becomes widely accepted then it would be useful to complete another study similar to this one but to include cases of single bullying incidents.

Other areas for future research will be on the development and progress of legislation involving workplace bullying. The timeline of adoption of provincial legislation in Canada and how new legislation effects the prevalence of workplace bullying. Additionally, another area of interest would be a comparison study of different countries and their status of legislation and legal cases dealing with workplace bullying.

**Conclusions**

In conclusion, my study provides evidence that supports the need for more Canadian legislation and workplace policies regarding workplace bullying. This analysis of literature, legislation and Canadian court cases provides a look into the current status of workplace bullying as it pertains to Canadian organizations and policy makers. There is a legislation gap in Canada with only four provinces currently having province wide legislation and no national legislation that would provide consistency and protection within all workplaces in Canada. Work must be done to help policy makers and politicians create and adopt workplace bullying legislation in all provinces and at the national level. Workplace bullying legislation would aspire to ensure a safe and healthy workplace for all individuals working in Canada. The court case analysis provides insight into what type of workplace bullying is occurring in Canada and what direction arbitrators and judges advocate. The recommendations for practitioners from the
literature covered in this study suggest that workplace bullying is a costly issue financially but programs can be put in place to reduce the prevalence. Overall, the literature emphasizes the use of internal anti-bullying policies, enforcement procedures, training and education, properly responding to bullying complaints, including outside agencies when appropriate and helpful, organization wide commitment and that sometimes culture and climate changes may be required (Lutgen-Sandvik & Tracy, 2011, Namie, 2007, Namie, 2003, Namie & Namie, 2009, Query & Hanley, 2010, Baillien, Neyens, & De Witte, 2011). Recommendations given by some of the arbitrators and judges examined in this study were the adoption of a progressive disciplinary program and proper training for all employees within the organization.

This paper emphasizes that workplace bullying is a serious organizational issue in Canada. With its high prevalence rates it should be of every citizens concern that progress be made in combating this problem. Legislation is a method of taking a stand on the issue. Enacting legislation that would make workplace bullying illegal would go a long way in protecting all workers. This paper provides practitioners, academics and policy makers with the evidence to make better informed decisions regarding workplace bullying.
References

Agawa Forest Products v. Industrial Wood and Allied Workers of Canada, Local 1000 (Comeau Grievance), 231 (Ontario Labour Arbitration March 31, 2000).

Alberta Union of Provincial Employees and University of Calgary (Papez Grievance), 28 (Alberta Grievance Arbitration February 26, 1999).


Burnaby Villa Hotel v. Hotel, Restaurant & Culinary Employees & Bartenders Union Local 40, 147 (British Columbia Collective Agreement Arbitration April 15, 1994).

Canada Post Corp. v. Canadian Union of Postal Workers (Boznianin Grievance, CUPW 710-07-00609, Arb. Ponak), 88 (Canada Labour Arbitration May 9, 2011).


Cooke v. HTS Engineering Ltd., 5650 (Ontario Superior Court of Justice December 18, 2009).


Decision No. 328/09, 1110 (Ontario Workplace Safety and Insurance Appeals Tribunal Windsor, Ontario April 30, 2009).

Dynatech Corp. v. United Steelworkers of America, Local 2020 (Morin Grievance), 136 (Ontario Labour Arbitration February 17, 2005).


Frayn v. Quinlan, 84 (Nova Scotia Supreme Court Halifax, Nova Scotia March 6, 2008).

Granter v. Hood Packaging Corp., 308 (Alberta Court of Queen's Bench Judicial District of Calgary March 27, 2008).

Hagan v. Drover, 286 (Newfoundland and Labrador Supreme Court - Trial Division St. John's Newfoundland and Labrador October 16, 2009).

Labatt Brewing Co. v. Brewery Winery and Distillery Workers' Union, Local 300


Metro Ontario Inc. v. United Food and Commerical Workers Canada, Local 175 (DeRose Grievance), 307 (Ontario Labour Arbitration Windsor, Ontario June 25, 2011).

Metro Stores Inc. v. United Food and Commerical Workers International Union, Locals 175 (Livingston Grievance), 445 (Ontario Labour Arbitration Orillia, Ontario August 30, 2010).


March 20, 2012, from Workplace Bullying Institute:


Olah v. Northwest Territories (Commissioner), 96 (Northwest Territories Supreme Court Yellowknife, Northwest Territories November 28, 2007).

Ontario Native Women's Assn., 4739 (Ontario Labour Relations Board December 19, 2011).

Park Place Retirement Residence v. United Steel Workers Amalgamated Local 8327 (Francis Grievance), 228 (Ontario Labour Arbitration Ottawa, Ontario April 23, 2010).


Providence Health Care Society v. Hospital Employees' Union (O'Neill Grievance), 31 (British Columbia Collective Agreement Arbitration February 3, 2003).


Rodrigues v. Shendon Enterprises Ltd., 1325 (British Columbia Supreme Court Rossland, British Columbia April 1, 2010).

Saskatoon (City) v. Canadian Union of Public Employees (Zapski Grievance), 14 (Saskatchewan Labour Arbitration August 24, 2011).

Saunders v. Chateau Des Charmes Wines Ltd., 3990 (Ontario Superior Court of Justice
Siemens VDO Automotive Inc. v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 127 (Schramek Grievance), 571 (Ontario Labour Arbitration September 20, 2006).


Ten Star Financial Services, 2019 (Ontario Labour Relations Board June 3, 2009).

Toronto Transit Commission v. Amalgamated Transit Union, Local 113 (Rao Grievance), 674 (Ontario Labour Arbitration Toronto, Ontario November 27, 2008).

University Health Network v. Ontario Public Service Employees Union (Abraham Grievance), 58 (Ontario Labour Arbitration Toronto, Ontario February 8, 2010).


West Fraser Electro/Mechanical Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 1133 (Hunt Grievance), 109 (British Columbia Collective Agreement Arbitration September 6, 2009).

Appendix A: “Blueprint for a Bullying-Free Workplace”

1. **Create a new values-driven policy**
   Ideal provisions in the policy include:
   • **Declaration of Unacceptability**
     The organization must state its displeasure with the misconduct
   • **Hostile Workplace Protections for Everyone**
     To extend rights to everyone regardless of protected group status
     May extend, combine or replace existing antiviolence & anti-harassment policies
   • **Inescapable Definition**
     To reserve prohibitions only for severe incidents, to clarify the threshold for taking action
   • **Non-Punitive Separation for Safety**
     To appropriately place bullying in the health and safety domain
   • **Documentation of Adverse Impact**
     To discourage frivolous complaints or abuse of the policy
     To incorporate perpetrator pattern & practice over time

2. **New, credible enforcement processes**
   • **Credible Third-Party Investigation & Adjudication Process**
     To foster employee trust, to remove influence of personal relationships
   • **Progressive Disciplinary Action**
     Not zero tolerance, to allow for change in conduct
   • **Retaliation Prohibition**
     To count offenses of retaliation separately, to stop the cycle of violence

3. **Restorative interventions for at-risk teams and individuals**
   • Coaching for identified perpetrators with employment-contingent change contract
   • Interviewing affected workteams to identify those most harmed, to provide counselling

4. **General and specialized education**
   • Executive orientation & commitment
   • Managerial training
   • Specialty preparation for HR, Anti-discrimination Officers, Risk Managers
   • All-Hands training coupled with policy implementation

(Namie, Workplace bullying: Escalating incivility, 2003, pp. 5-6)
Appendix B: Case Analysis Frameworks

Part 1: Descriptive Information

<table>
<thead>
<tr>
<th>Descriptive Information Gathered</th>
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<tbody>
<tr>
<td>Case number</td>
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<tr>
<td>Decision date</td>
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<tr>
<td>Employer's name</td>
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<td>Employer's size</td>
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<td>Grievor's name</td>
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Part 2: Case Decision and Conclusion Themes

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<tr>
<th>Discussion points found in conclusion sections of cases</th>
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<tr>
<td>(A) failure to report prior incidents does not nullify claim,</td>
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<td>(B) Shah v. Xerox Canada Ltd. and Farber v. Royal Trust Precedence for constructive dismissal, fit under constructive dismissal</td>
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<td>(C) Target suffered mental distress beyond what would be considered normal distress upon dismissal</td>
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<td>(D) fell under the collective agreement</td>
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<td>(E) lack of proof/claim not made out/lack of evidence</td>
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<td>(F) Bully should have been given opportunity to be heard and/or improve</td>
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<td>(G) Progressive discipline and/or no warning and Last-chance agreements</td>
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<td>(H) employers obligation to other employees, all have right to workplace free of abuse, non-poisoned work environment</td>
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<td>(I) whether conduct contravened the harassment policy and/or discussed harassment policies</td>
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<td>(J) behaviour continued through discipline efforts</td>
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<td>(K) bully takes no responsibility for their behaviour and/or blames others</td>
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<tr>
<td>(L) see no chance to repair employment relationship and/or bully likely to repeat behaviour</td>
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<tr>
<td>(M) Letter of discharge substantiated by evidence</td>
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<td>(N) Pattern of bullying conduct justifies termination</td>
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<td>(O) Find insufficient grounds to substitute a lesser penalty</td>
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Appendix C: *Ontario Human Rights Code*

**Employment**

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (1); 1999, c. 6, s. 28 (5); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (5).

**Harassment in employment**

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (2); 1999, c. 6, s. 28 (6); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (6).

**Sexual harassment**

**Harassment because of sex in workplaces**

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee. R.S.O. 1990, c. H.19, s. 7 (2).

**Sexual solicitation by a person in position to confer benefit, etc.**

(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person. R.S.O. 1990, c. H.19, s. 7 (3).

**Reprisals**

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c. H.19, s. 8.

**Infringement prohibited**

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. R.S.O. 1990, c. H.19, s. 9.