# Title: Comparative anti-bullying public policy in Australia and Canada

**Name and affiliation: <u>Angie Ng</u>, PhD Student, The University of Sydney**

## Abstract

The aim of this paper is to examine the similarities and differences of anti-bullying public policy in Australia and Canada. Through a historical comparison of anti-bullying public policy with Canada, typologies have been drawn up of how different societies deal with the same problem. The findings reveal that there are four approaches to dealing with the issue of workplace bullying and they are: anti-discrimination, occupational health and safety (OHS), anti-discrimination and OHS (ADOHS), and dignity. By comparing the similarities and differences of the four paradigms in Australia and Canada, we can understand the regulatory progression and the conceptual shift through different institutions, processes and outcomes that promote and inhibit the adoption of anti-bullying legislation. This can also contribute to contemporary public policy debates. The paper concludes that the interaction and overlapping between the concepts of these four paradigms reflect a similar motivation of governing employment relationship that is to ensure a workplace is free from bullying and harassment. This paper echoes the theme of the conference with recognition that the dignity of labour remains a central issue for people around the world.

## Introduction

The legislative development of workplace bullying has begun from the notion of health and safety of the environment in the 1950s and 1960s, and then progressed to the notion of equality rights in the 1970s and 1980s. Since the 1990s, there are now laws to regulate interpersonal relations, particularly with regard to workplace bullying (Jobb, 2005). This paper focuses on four legislative models that were adopted in Australia and Canada to deal with the issue of workplace bullying. The paper begins with the conceptualising workplace bullying and debates on this phenomenon. It then presents the methodology and it examines the conceptual framework of the different anti-workplace bullying legislative models. The conceptual model includes four paradigms and these are anti-discrimination, OHS, ADOHS and dignity. Each paradigm will be defined and explained in the result section of this paper. The paper finally looks at the forces of change, processes and outcomes underlying the development of these legislative models.

## Background

The interest of workplace bullying originated in Scandinavian research, which focused on the relationship between bullying and the quality of the work environment. Prominent among the Scandinavian researchers in workplace bullying is Leymann, who has pioneered the field and began a work trauma clinic in Sweden in the 1980s (Zapf, 1999). It was also Leymann who introduced the concept and coined the term "mobbing" in 1986. Scandinavian research on bullying generated strong public awareness, government funding and trade union participation in preventing it. Legislation specifically against bullying was introduced in Sweden in 1993 and Norway in 1994 (Rayner and Hoel, 1997).

The concept of workplace bullying can be traced back to nineteenth-century Britain, in the emerging capitalist mode of production; exploitation of workers by the owners as a means of increasing production. Ironside and Seifert suggested that workplace

bullying is not a new phenomenon and in Marxist terms, workplace bullying is a routine part of the management, which highlights the unequal balance of power in the workplace (Ironside and Seifert, 2003). Presently, there is no single agreed-upon definition of workplace bullying. However, the conceptual core of the term bullying at work rests on the subjective perception made by the victim that these repeated acts are humiliating (Einarsen, 2000). The following definition of bullying has been suggested by the prominent researchers within the field:

> Bullying at work is defined as "harassing, offending, socially excluding someone or negatively affecting someone's work tasks. In order for the label bullying (mobbing) to be applied to a particular activity, interaction or process it has to occur repeatedly and regularly (e.g. weekly) and over a period of time (e.g. about six months). Bullying is an escalating process in the course of which the person confronted ends up in an inferior position and becomes the target of systematic negative social acts. A conflict cannot be called bullying if the incident is an isolated event or if two parties of approximately equal "strength" is in conflict" (Einarsen *et al.*, 2003:398).

Thus, definitions tend to emphasis four elements and these are the frequency and duration of the bullying, the reaction of the victim, balance of power between the perpetrator and victim and the intent of the perpetrator (Hoel *et al.,* 1999).

Despite the significance of this issue, there is a lack of research on the issue of workplace bullying in industrial relations studies. A major exception is the work of Hoel and Beale (2006). Two of the problems for researchers were the difficulties of measuring bullying and that management does not see it as a priority issue. Most of the action on this issue occurs within the field of the OHS. For instance, the Ordinance of the Swedish National Board of Occupational Safety and Health contains provisions on measures against victimisation at work, which was adopted on September 21, 1993 (Swedish OHS, 1993). One of the reasons why workplace bullying is an OHS issue is because bullying is a source of work-related stress (Rayner, 1998). However, Maxwell argues that 'occupational health and safety is, by definition, an industrial issue, since it is necessarily concerned with the conditions of work' (Maxwell, 2004:192).

**Methods**

A comparative historical method is used in this research. History allows researchers to develop dynamic rather than static theoretical frameworks (Patmore, 1998). The benefit of choosing a comparative approach is that it provides an opportunity to examine each country's policy in detail and find subtle factors that explain similarities and differences between the countries and the actors within those countries. Australia and Canada have similar economies, cultures, and historic traditions. For instance, Australia and Canada are settler economies and federal systems of government. The legal systems of Australia and Canada are historically grounded in common law, with the exception of Quebec civil law (Kealey and Patmore, 1996). The data for this research was drawn from secondary sources including books, law journals, government reports, legislative papers and newspapers. Through analysing documents and gaining insights from a comparative perspective, new insights can be illuminated.

**Results**

Through the historical comparison of anti-bullying public policy in Australia and Canada, typologies have drawn up of how these two countries deal with the issue of workplace bullying. Figure 1 shows the conceptual framework of workplace bullying

legislative model. The figure reveals that anti-bullying public policy can be divided into four paradigms and these are anti-discrimination, OHS, ADOHS and dignity.

The earlier approach in response to workplace bullying started with an adoption of the anti-discrimination paradigm that views bullying at work as a product of discrimination. The first countries to introduce anti-discrimination legislation were the US, Canada and the UK. The Civil Rights Movement began in the US and led to the US Civil Rights Act in 1964.  This Act was intended to help African-American against discrimination on the ground of race, colour, religion, sex or national origin in the area of employment (Ronalds, 1979). Canadian provincial human rights codes are examples of the anti-discrimination paradigm (Gouveia, 2007).

The second legislative model is OHS paradigm. OHS Act in Australia and Canada were influenced by the British Roben model of OHS regulation. The OHS paradigm originated from the world's first factory legislation that was enacted in Great Britain in the early 19th century, the *Health and Morals of Apprentices Act,* 1802 (Johnstone, 1997). The purpose of this Act is to regulate working conditions.  In 1970, Lord Robens and his committee were assigned by the British Government to review occupational health and safety.  The enactment of Safety at Work Act 1974 in UK was based on Robens and his committee's recommendations (Jamieson and Westcott, 2001).  In the Roben's vision, consultation with employees and OHS representatives were part of a statutory duty for employers, which was to ensure a safe and healthy work environment (National Research Center, 2008). Furthermore, the enforcement of OHS laws in Australia and Canada is mainly dependent on the states/provinces, with the respective federal governments having limited power to enact national OHS legislation (Johnstone, 1997 and Quinlan, 2007). Hence, the states and provinces in Australia and Canada play a significant role in raising awareness of the issue of workplace bullying, which can lead to inconsistencies across jurisdictions. Also OHS standards have historically focused on factory-based physical hazards, with psychological harassment such as workplace bullying not a primary concern.

The third paradigm, ADOHS, is an integrated framework, which incorporates an anti-discrimination paradigm in OHS Act. It is found in the Canadian province of Saskatchewan. This hybrid model is different from the traditional OHS model since it strengthens OHS legislation and tackled both the harassment issue and the issue of workplace bullying in the legislation. The Saskatchewan OHS legislation in 1993 recognised personal harassment on prohibited grounds such as race, colour, sex and religion. The Saskatchewan Human Rights Code in October 2007 also expanded the definition of harassment to include personal harassment in the OHS Act, which covered workplace bullying (WorkSafe Saskatchewan, 2008 and Saskatchewan OHS Division, 2009).

The last legislative model centers on the notion of dignity which is based on the civil law system. European anti-bullying laws are based on a "dignity" paradigm, which arises from a deep-rooted continental tradition that "continental law has developed in the shadow of a long history of resentment of status-difference of the past" (Friedman and Whiteman, 2003:241-274). The importance of continental dignity is driven by a reaction against fascism, and especially against Nazism during the 1930s and 1940s. Indeed, well into the twentieth century, only persons of high status could expect to be treated with respect in the daily life of Germany or France and be protected in continental courts, which mean the majority of the population were not treated with respect. It has gradually become unacceptable that only people with status could enjoy legal protections for their "dignity" (Whiteman, 2004). This European dignity paradigm clearly identifies that workplace bullying is an objectionable conduct and it

broadens the scope of worker's right to protect the dignity of everybody in the workplace.

Whatever their differences, the four paradigms in figure 1 share the common objective that is to achieve the fundamental issue in employment relationship, workers' right.

Figure 1 Conceptual Framework of Workplace Bullying Legislative Model
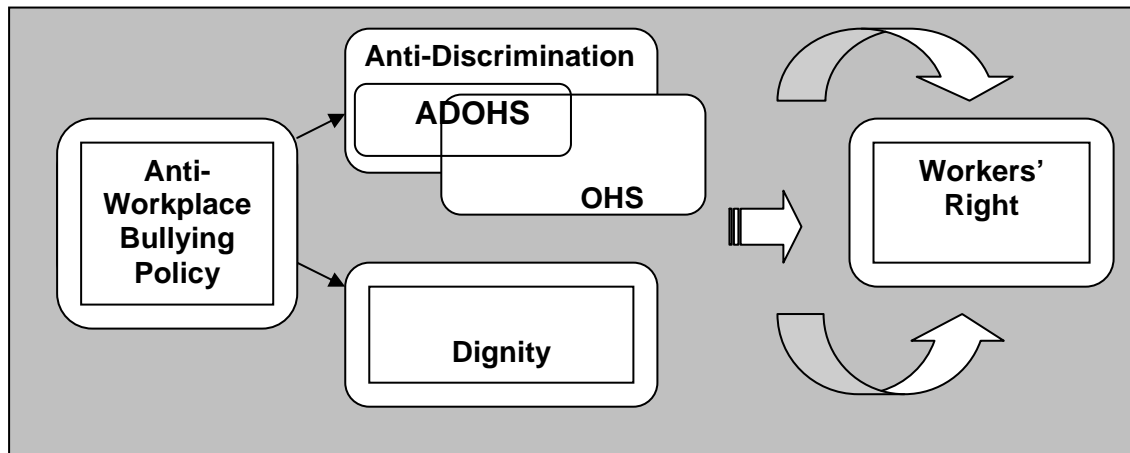


## Discussion

The following discussion involves four paradigms: anti-discrimination paradigm, OHS, ADOHS and dignity. The discussion focuses on the forces of change, processes and outcomes of anti-bullying policy in Australia and Canada. Prior to the 1990's, research on workplace harassment focused primarily on the serious issues of racial discrimination and sexual harassment (Saunders, 2007). Both Australia and Canada adopted the anti-discrimination paradigm to address the issue of workplace bullying. In Australia, the first national discrimination law was aimed at race discrimination and enacted by the Whitlam Labour Government in October 1975 (Ronalds, 1979). In Australia the debate was built on the notion of equality with a focus on the rights of disadvantaged groups, particularly on the newly arrived migrants who used English as a second language. Furthermore, the feminist movement in the late 1960s and the 1970s contributed to the Anti-Discrimination Act (Law Reform Commission NSW, 2009). Thus, the anti-discrimination paradigm marked the beginning of a legislative response to the issue of workplace bullying, with individuals being protected from bullying on a prohibited ground such as racism and sexism.

There has been limited legislative development progress in Australia towards the OHS paradigm. In Australia, there is no statutory definition to address the issue of bullying, except in the case of the South Australian occupational health and safety legislation (Catanzariti, 2006). In August 2005, South Australia amended its Occupational Health, Safety and Welfare (SafeWork SA) Amendment Act 2005, to include a definition of bullying behaviour in Section 55A. This section was primarily designed to provide a channel for conciliation involving inappropriate behaviour at work between employers and employees (SafeWork South Australia, 2008). Employers in Australia do not support the anti-bullying legislation. In response to a bullying guide introduced by the state-based WorkCover NSW, Garry Brack, CEO of Employers First stated: "It's the legal system going berserk and constraining human relations so businesses can't function. Many aspects of human interaction will drop into the net of bullying" (Quinlan, 2007:395-396). As a result of the hostility from the Australian employer associations, government initiatives in relation to bullying are still very limited. On the other hand, unions supported the anti-workplace bullying

legislation. For instance, ACTU has launched a successful campaign on October, 2000 named "Being Bossed Around" and the purpose of this campaign was to raise awareness among the community, workers, unions and employers that bullying was a serious health and safety hazard (ACTU Website, 2009). This campaign received positive results.

There is also limited legislative progress in Canada towards the OHS paradigm. Canadian provinces such as Alberta and British Columbia both adopted the OHS paradigm. The provisions in these two provinces focus on protecting against physical danger rather than explicitly protecting against actions related to workplace bullying (Gouveia, 2007). Currently, there is little occupational health and safety legislation in Canada that specifically deals with bullying in the workplace except Saskatchewan (Canadian Centre for OHS, 2009). This can be attributed to the lack of support from the employers, who are concerned that legislating against workplace bullying would probably increase litigation in the workplace. Despite the lack of support from the employers, Canadian Union of Public Employees (CUPE), the largest Canadian union in Canada, has actively involved in raising awareness of bullying at work. In 1994, management of British Columbia Rapid Transit Co Ltd. (SkyTrain) and CUPE Local 7000 worked together for more than a year of policy drafting which aimed at providing safe work environment for the employees. This project involved comprehensive input from employees to create a "respectful" workplace policy and it has been very effectively implemented at SkyTrain. (Hood, 2004) Furthermore, in November, 2008, CUPE British Columbia also funded the "Creating Respectful Workplaces Conference" and played a leading role on raising awareness of workplace bullying (CUPE Website).

Saskatchewan has moved further than other Australian and Canadian jurisdictions by adopting the third paradigm, ADOHS. Saskatchewan's labourist NDP and its predecessor the CCF, has a long history as a leader of social reform in Canada. Under the leadership of Tommy Douglas, the NDP/CCF passed many social policies that included Canada's first Bill of Rights in 1947 and full medicare in 1962. The Saskatchewan NDP was the pioneer of North America's first comprehensive occupational and health and safety legislation in 1972. In 1993, the NDP government again led the continent by introducing anti-harassment protections into its occupational health and safety legislation and remains at the forefront on this important issue (Saskatchewan NDP Website and Canadian Plains Research Centre, 2007). In 2007, Saskatchewan became the first English speaking province in Canada to address the issue of workplace bullying through its OHS Act (Government of Saskatchewan, 2007). After its expansion of the definition of personal harassment on October 1, 2007, the number of inquiries received by OHS Harassment Unit more than tripled in four months (Saskatchewan OHS Division, 2009).

The last legislative response is the dignity paradigm. An example of this model is Quebec. Quebec was originally a French colony and French speaking Canadians, the Quebecois, felt like second-class citizens in Canada. The enactment of Social Modernisation Law in France inspired Quebec. In 1998, the French psychologist Marie-France Hirigoyen's book about moral harassment, *Le harcelement moral, la violence perverse au quotidian*, introduced this concept into France and was a best selling book in Quebec (Parkes, 2004 and Isabel and Guerrero, 2004). The issue generated public interest and eventually led to the French Government intervention. Protection against moral harassment in France came into effect with Social Modernization Law of January 17, 2002 that added both civil and criminal provisions into the code (Yuen, 2005).

The emphasis on dignity in employment relationship is more established in the civil law systems such as Quebec more than in the common law systems (Parkes, 2004).

Before the enactment of the first legislation of psychological harassment in Quebec, Ann Lebel, a leader of the Small Business Council, an association that represents 300 companies, opposed the Quebec legislature in 2002. Lebel claimed that 'it was too vague in its definition of what constitutes harassment' and 'it puts too much burden on employers to police behaviour in their workplaces' (Wallace, 2004:3). Despite the opposition, in June 1, 2004, Quebec became the first North American jurisdiction to introduce the provision against bullying through Labour Standards Act. Quebec passed a law mandating that employers take reasonable action to prevent and stop psychological harassment and it further provides that "a single serious incident of such behaviour" can constitute bullying (Quebec Labour Standards Act, 2004). Thus, the dignity paradigm addresses the broad scope of human rights, which is different from the previous three approaches. This European paradigm is unique to Quebec and there are no other Canadian provinces and Australian states with this equivalent.

## Conclusion

This paper intends to broaden the debate about the comparative historical development of anti-workplace bullying public policy through an analysis of four legislative paradigms: anti-discrimination, OHS, ADOHS and dignity. By comparing the similarities and differences of four paradigms in Australia and Canada, we understand that legislative movement against workplace bullying starts from an anti-discrimination paradigm and then it progresses to OHS, ADOHS and dignity. The ADOHS and dignity paradigms are only applied to Saskatchewan and Quebec. Sympathetic labourist parties, such as the ALP and the NDP, have pushed anti-bullying legislation in Australia and Canada, usually against employer opposition. Whatever their differences, these four paradigms try to regulate the employment relationship to ensure equality, health and safety, dignity and freedom from workplace bullying and harassment.

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