Comparative Anti-workplace Bullying Public Policy
in Australia, Canada and the United States

Angie Ng

A thesis submitted in fulfilment
of the requirements for the degree of
Doctor of Philosophy

Work and Organisational Studies
University of Sydney Business School
June 2012
Statement of Originality

I hereby declare that this thesis is my own work and that, to the best of my knowledge and belief, it contains no material previously published or written by another person nor any material which to a substantial extent has been accepted for the award of any other degree or diploma of a university or other institute of higher learning, except where due acknowledgment is made in the text.

Angie Ng

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This thesis seeks to compare the anti–workplace bullying movements in Australia, Canada and the United States. It gives a broad perspective on how each country initiated its anti–workplace bullying measures and highlights the distinct roles that different actors can play in the process of social change. Although the three countries of focus are federated nations and have similar economies, cultures and historical backgrounds, the pace of anti–workplace bullying movement has varied between Australia, Canada and the US. This thesis argues that the key factors influencing anti–workplace bullying initiatives in the three countries are the political and economic environment and the role of specific actors (including the state, unions, non-traditional actors and employers) in employment relations, as well as the strength of the labour movement. Employers in the three countries generally hinder anti-bullying initiatives due to the fear of litigation and the cost involved in settling bullying cases.

Compared to Australia and Canada, the anti–workplace bullying movement in the US has fallen behind. This can be attributed partly to the recent economic recession, the fact that labour relations systems in the US are less pro-labour, the relatively low rate of union density compared to Australia and Canada, the traditional culture of power imbalance in employment relationships and employers’ opposition. As a result of these factors, the anti–workplace bullying lobby in the US started from a grassroots movement, which has advocated to unions and lobbied government for anti-bullying legislative change; in Australia and Canada, on the other hand, it was the collaboration of interest groups and the unions lobbying the government that advanced the development of anti-bullying legislation.

In terms of motivation to support the anti-bullying movement in the three countries, there are generally three reasons why the advocates, legislators and unions do so: political motivation, concern for workers’ dignity and rights and a moral argument based on personal experience.
The anti-workplace bullying movement in the three countries have made some progress toward raising awareness of bullying at work. In Canada, the province of Quebec has unique protection against psychological harassment under the Labour Standard Act. Saskatchewan and Ontario have protection under their occupational and health safety frameworks; such protection also exists at the federal level. In Australia, the first state to generate a legislative definition of workplace bullying was South Australia. In the US, while a Bill has been submitted to a number of state legislatures, there is still no specific legislation against workplace bullying and no legal definition of the term. This thesis concludes that pursuing the enactment of a specific anti–workplace bullying law has proved to be challenging, as regulating interpersonal behaviour in the workplace can be tricky and difficult to quantify.
ACKNOWLEDGMENTS

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I was motivated to select the research topic of this thesis from my previous work experience in various multinational companies in Australia and Hong Kong, where I personally witnessed many workplace bullying incidents, most of which are still unresolved in these market-driven global companies. Such inaction directly promotes a bullying culture at work. Witnessing this injustice drove me to dig deeper into the issue of workplace bullying to investigate how other countries deal with the same issue; I wanted to explore further how the workplace bullying issue emerges and how the issue can be dealt with from the public policy perspective. This project has indeed served as a platform to speak to experts in the field of workplace bullying; the people that I encountered were very generous with their time and insights, and this has been beneficial to both my research project and my personal growth. I would like to express my sincere thanks to some of the legislators, advocates, unions and academics gave me their advice for my research project. The leading researchers at the Workplace Bullying and Harassment Conference 2010 also took time to provide insights for my research project, and I was honoured to speak to them. Some of the people that I wanted
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<tr>
<td>ABE</td>
<td>Au bas de l’échelle</td>
</tr>
<tr>
<td>ACCI</td>
<td>Australian Chamber of Commerce and Industry</td>
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<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
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<td>ACTU</td>
<td>Australian Council of Trade Unions</td>
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<td>AFEI</td>
<td>Australian Federation of Employers and Industries</td>
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<tr>
<td>AFL-CIO</td>
<td>American Federation of Labour and Congress of Industrial Organizations</td>
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<td>BBA</td>
<td>Beyond Bullying Association</td>
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<tr>
<td>BCA</td>
<td>Business Council of Australia</td>
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<tr>
<td>BQ</td>
<td>Bloc Québécois</td>
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<tr>
<td>CAW</td>
<td>Canadian Auto Workers</td>
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<tr>
<td>CCF</td>
<td>Co-operative Commonwealth Federation</td>
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<tr>
<td>CFIB</td>
<td>Canadian Federation of Independent Business</td>
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<tr>
<td>CHWA</td>
<td>California Healthy Workplace Advocates</td>
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<tr>
<td>CKSACC</td>
<td>Chatham-Kent Sexual Assault Crisis Centre</td>
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<tr>
<td>CLC</td>
<td>Canadian Labour Congress</td>
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<tr>
<td>CLSC</td>
<td>Centre Local de Services Communautaires</td>
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<tr>
<td>COHS</td>
<td>Canada Occupational Health and Safety</td>
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<tr>
<td>CSQ</td>
<td>Centrale des syndicats du Québec</td>
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<tr>
<td>CUPE</td>
<td>Canadian Union of Public Employees</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>GFC</td>
<td>Global Financial Crisis</td>
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<td>HRSDC</td>
<td>Human Resources and Skills Development Canada</td>
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<tr>
<td>HSE</td>
<td>Health Safety Executive</td>
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<tr>
<td>IIED</td>
<td>Intentional Infliction of Emotional Distress</td>
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<tr>
<td>LNP</td>
<td>Liberal-National Party</td>
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<tr>
<td>LO</td>
<td>Landsorganisationen I Sverige</td>
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<tr>
<td>MLA</td>
<td>Member of the Legislative Assembly</td>
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<td>MSF</td>
<td>Manufacturing, Science and Finance</td>
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<td>NAGE</td>
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<td>NDP</td>
<td>New Democratic Party</td>
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<td>NFIB</td>
<td>National Federation of Independent Businesses</td>
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<tr>
<td>NLRB</td>
<td>National Labor Relations Board</td>
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<td>NOHSC</td>
<td>National Occupational Health and Safety Commission</td>
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<tr>
<td>NSW</td>
<td>New South Wales</td>
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<tr>
<td>NYS</td>
<td>New York State</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<tr>
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<td>Occupational Health and Safety</td>
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<td>PQ</td>
<td>Parti Québécois</td>
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<td>PSAC</td>
<td>Public Service Alliance of Canada</td>
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<td>QWWC</td>
<td>Queensland Working Women Centre</td>
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<tr>
<td>SA</td>
<td>South Australia</td>
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<tr>
<td>SACO</td>
<td>Sveriges Akademikers Centralorganisation</td>
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<tr>
<td>SAF</td>
<td>Svenska Arbetsgivareningen</td>
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<tr>
<td>SAP</td>
<td>Socialdemokratiska Arbetarpartiet</td>
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<tr>
<td>SEIU</td>
<td>Service Employees International Union</td>
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<td>SFL</td>
<td>Saskatchewan Federation of Labour</td>
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<td>SNBOSH</td>
<td>Swedish National Board of Occupational Safety and Health</td>
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<tr>
<td>TCO</td>
<td>Tjanstemannents Centralorganisation</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
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<td>US</td>
<td>United States</td>
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<tr>
<td>WA</td>
<td>Western Australia</td>
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<tr>
<td>WBI</td>
<td>Workplace Bullying Institute</td>
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<tr>
<td>WHC</td>
<td>Workers Health Centre</td>
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<td>WHS</td>
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Chapter 1 Workplace Bullying Movement: Introduction to the Study

Workplace bullying has become an increasingly important area of debate over the past few decades, and the body of research on this subject is growing rapidly in Europe, as well as in English-speaking countries such as Australia, Canada and the United States (US). Persistent exposure to bullying behaviour may lead to posttraumatic stress syndrome and the organisational costs associated with workplace bullying are significant. Bullying costs the Australian economy between $6 billion and $13 billion annually in lost productivity and damage to mental health.\textsuperscript{i} It has been demonstrated that bullied employees are more likely to leave their jobs, and their psychological injuries may lead to long-term unemployment, which will certainly pose a burden to society at large.

While the significant cost created by bullying is a central concern to society, identifying the solution to bullying at work is a complex process due to the involvement of different parties, a lack of focus on the psychological hazards in the occupational health and safety (OHS) framework and the difficulties of defining workplace. Bullying involves many parties, including individuals, management, organisations, trade unions and possibly third-party mediators or government. Ideally, this issue can be resolved through the involvement of the affected parties with trade union support or a third-party mediator, or through intervention by the management and human resources practitioners in the workplace. However, the fact that management may be in collusion with the perpetrator complicates the intervention process.

Rather than reporting bullying to the management, it might be rational for an employee to assume that enforcement can only come from government. However, there is a limitation on the government’s ability to deal with the problem, since the concept of psychological injuries has less focus in the OHS legislation than the traditional physical forms of occupational violence. This is because overt forms of hazard are relatively easier to prove and quantify than covert forms of injuries. As a result, it is still difficult for workers who experience bullying to access remedies with the involvement of the OHS agency. This confusion is compounded by the fact that in practice, bullying is very unlikely to be eliminated in the workplace due to the human need to control others’ behaviours. As claimed by Brodsky (1976), this unacceptable behaviour ‘may be an inherent characteristic and a basic mechanism within all human interaction,’ which is embedded in most organisational culture. Hence, bullying at work is difficult to manage since it is human nature to seek power and control over others. However, this inappropriate behaviour is sometimes entrenched in the organisational culture and the issue becomes yet more complex with the inevitable disconnection between policy and practice.

The multifaceted nature of this problem has received substantial attention. The discussion on the topic of workplace bullying is broad, with some researchers looking at the issue at the micro level, and limited research being conducted at the macro level. At the micro level, research involves examining the behaviours and characteristics of victims, bullies or bystanders or group dynamics; other researchers have looked at factors related to the organisation, such as different leadership styles and organisational culture. Organisational psychologists have conducted most of the research on the issue of bullying at work, since they were first to discuss the problem

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of bullying. Furthermore, legal researchers have approached the phenomenon from a legal perspective. For instance, they have evaluated the effectiveness of the existing anti-bullying legislation and proposed new or improved legal frameworks and remedies to deal with the issue. However, despite the extensive research in this area, very little has focused on the macro level of workplace bullying, which creates a gap for further research. This thesis explores workplace bullying from a macro perspective and assesses how the political-economic environment shapes policy development, the role of the state in influencing policy and the significance of industrial relations and historical contexts in a comparison of Australia, Canada and the United States. Exploring the issue on a macro level can allow us to circumvent taking a limited ‘snapshot’ of the issue, and can therefore bridge the gap between the established bodies of published work.

In terms of legislative development, in 1993, Sweden put in place the first legislation to combat workplace bullying; however, the development of legislation is not limited to Europe. There was also similar legislation adopted in Quebec, Canada in 2004, and in South Australia in 2005; the US, however, has fallen behind Canada and Australia. This thesis examines the comparative anti–workplace bullying public policy in Australia, Canada and the US, asking how workplace bullying as an industrial/OHS issue has emerged and come to be regulated in these countries. These three countries are examined because they were all British colonies, have adopted federal political systems and have similar economies, cultures and historical traditions; furthermore, with the exception of Quebec civil law in Canada, their legal systems are all derived from British common law. Since these countries have similar systems, the researcher

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can control certain variables and have a greater chance of identifying differences. iv

Through comparisons, typologies can be drawn up as to how these countries deal with
the issue of bullying; this, in turn, can enhance the adoption of good practices for
other societies.

This research does not simply focus on the traditional industrial relations actors—
trade unions, employers and the state; rather, emphasis is also placed on non-
traditional actors. The concept of actors is drawn from the typology of John Dunlop,
whose work is highly influential in the industrial relations field. Dunlop (1969)
arues that there are three well-defined categories of actors in every industrial
relations system. The first category is “a hierarchy of managers and their
representatives in supervision”; the second is “hierarchy of workers (non-managerial)
and any spokesmen”; and the third is “specialized governmental agencies (and
specialized private agencies created by the first two actors) concerned with workers,
enterprises, and their relationships”. v Changes can be initiated by traditional actors in
employment relations, but non-traditional actors have often played an important role
as well. Some examples of these non-traditional actors are the social media, feminist
groups, local entrepreneurs, local, state and federal politicians, the press and social
organisations. vi Approaching the problem of workplace bullying from the traditional
and non-traditional actors’ perspectives on the issue enriches public policy debate.
Thus, this thesis seeks to broadly explore the issue of bullying at work by

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iv G.S. Kealey and G. Patmore, ‘Comparative Labour History: Australia and Canada,’ Labour/Le


vi G. Patmore, ‘Changes in the Nature of Work and Employment Relations: An Historical Perspective,’
in R. Callus and R.D. Lansbury (eds), Working Futures: the Changing Nature of Work and
emphasising its wider socioeconomic context. Moreover, it compares the anti–workplace bullying legislations of the three countries selected from 1980 to 2010.

This introductory chapter begins with a definition of workplace bullying. It examines the key characteristics of the concept and highlights the definitional issues for cross-country comparison. Then, an analysis is given of the strengths of using a comparative historical approach; furthermore, the challenges of using this approach for the present research project are discussed. Finally, a review of the structure of the succeeding chapters is given.

**Definition**

Workplace bullying refers to a specific phenomenon where hostile behaviours systematically target one or more individuals in the workplace, leading to victimisation. The term *mobbing* has more commonly been used in Europe since the early 1980s, and *bullying* is generally used by English-speaking countries. The word ‘mobbing’ is preferred in the Scandinavian countries: Heinz Leymann, a psychologist and the pioneer of workplace bullying research in Sweden, deliberately chose this word in his work, with the reasoning that the word ‘bullying’ implies physical aggression, which generally happens in school bullying but is rarely found at work.vii  

*Mobbing* was originally used to describe animal group behaviour and was introduced into the English language by Konrad Lorenz, an ethnologist. Lorenz explained the phenomenon of mobbing as a group of smaller animals threatening a single larger

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animal. This word was then adopted in the Scandinavian workplace context, as the nature of bullying in Scandinavia is different from that in other countries. For example, while bullying by managers or superiors (vertical bullying) is more prevalent in countries such as Britain, bullying between colleagues (horizontal bullying) is more common in Sweden.

Leymann intentionally differentiated the word ‘bullying’ (used for children and teenagers at school) and ‘mobbing’ (used to refer to adult behaviour). ‘Mobbing’ involves ‘ganging up on someone,’ whereas ‘bullying’ or ‘psychological terror’ involves subjected someone to ‘a systematic stigmatisation process and encroachment of his or her civil rights.’ Prolonged exposure to mobbing will ultimately render an individual incapable of performing their job and leaving their job to work elsewhere. These two terms are currently used interchangeably, although mobbing generally refers to a group of people bullying an isolated individual. Some of the bullying behaviours that take place at work involve intimidation, physical or social isolation and withholding information. The victims are repeatedly and frequently exposed to these negative behaviours, making them feel humiliated, and this may cause severe long-term psychological damage.

The concept of workplace bullying has given rise to considerable debate on the elements of its definition, although most of the literature has emphasised the important elements of bullying as a persistent behaviour involving an imbalance of

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x Ibid.

xi Ibid.

power between the parties. There is currently no single agreed-upon definition of workplace bullying. For the purpose of this thesis, the definition below is adopted. According to the leading workplace bullying researchers Stale and colleagues, the term can be defined as follows:

harassing, offending, socially excluding someone or negatively affecting someone’s work tasks. In order for the label bullying (or 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’ are in conflict.

Arising from this definition, the term target is used to describe victims. Individuals do not want to be perceived as victims of workplace bullying and the term victim is perceived as a derogatory term and it takes away their power further.

The definition also highlights that bullying at work has four essential characteristics: the frequency and duration of acts which the targets of workplace bullying experience, the reaction of the target, the imbalance of the power between the parties and the intent of the perpetrator.

xiii Hoel and Beale, ‘Workplace Bullying, Psychological Perspectives and Industrial Relations,’ p. 255.
xiv Einarsen, Hoel, Zapf and Cooper, ‘The Concept of Bullying at Work,’ p. 15.
The first dimension is the frequency and duration of the acts. This core element is stressed by Einarsen and Skogstad (1996), who noted that the person is exposed to persistent and continuous negative behaviour from another individual or group of people for a period of at least six months.\(^{xvi}\) This dimension is crucial, since countries such as Sweden use this characteristic as a determining factor in their anti-bullying legislation; Swedish law has determined that the frequency should be around one incident a week for six months.\(^{xvii}\) The time element is essential in the bullying process, since it differentiates bullying from workplace violence. The major difference between these two terms is the duration and repetitiveness of the negative behaviours.\(^{xviii}\) Lee, however, argues that a single bullying incident should also be included in the conceptualisation of workplace bullying. She contends that insisting on persistence is limiting, since bullying at work shares a similar construct with workplace sexual harassment. Whether relating to a one-off incident or a continual behaviour, both concepts involve an individual’s misuse of his/her power in order to harm another person. As a result, Lee has proposed that one-off incidents are as important as persistent acts, and should also be considered bullying.\(^{xix}\) However, if a single incident is considered bullying, this may create ambiguity, since bullying is an escalating process and typically develops over time, allowing the bully to push the target into a helpless position.\(^{xx}\) Although frequency and duration are recognised as


core areas in the definition of workplace bullying, there is still debate concerning these dimensions.

The reaction of the target is another essential conceptual element of bullying at work. Victims must have felt powerless in order for the behaviour to be considered workplace bullying. Bullied employees are easy targets, since they lack status and connections in the organisation; they usually consider themselves to belong to the ‘out group.’ The targets feel helpless and perceive the aggressive behaviours as hostile; they feel unable to defend themselves against these negative acts. This dimension is closely related to the third characteristic, which is the power imbalance between the two parties. Bullying occurs when someone misuses his/her power over another person. Having said that, ‘it takes two to tango and two to have a bullying event.’xxi In other words, the victim has to perceive the bully as having power to make him/her feel inferior, while the bully thinks that he/she has the power to continue engaging in this inappropriate behaviour. There is a dependency between the parties which may be due to either their different social statuses in the organisational hierarchy, the victim’s lack of psychological wellbeing, the physical power distance between the two parties or their economic condition. Regardless of whether there is a formal or informal power relationship between the perpetrators and the victims, the bullied employees are pushed into a defenceless position and are unable to cope.xxii

Although a power imbalance is a core element in the definition of workplace bullying, it is difficult to use this aspect to compare the prevalence of this issue across countries, since power distances vary in different national cultures. A power distance can be defined as difference in the interpersonal power between two individuals.

xxii Einarsen, ‘Harassment and Bullying at Work,’ p. 383.
Countries with a lower power distance generally have a lower frequency of bullying, while those with a higher power distance have a higher frequency of bullying. For instance, there is a relatively higher frequency of workplace aggression in the US than in Scandinavian countries due to the larger power distance in the US.xxiii A systematic assessment between these countries’ national culture, work culture and power distance can provide evidence to explain how these factors affect the extent of workplace bullying in each country.

The intent of the perpetrator is the last characteristic of workplace bullying. The intentionality of the behaviour can be difficult to verify with the perpetrator, which makes it hard to measure in the legal context. For instance, employees may feel bullied, but the supervisor’s intent could be to test their capability to work under pressure. In another example, an individual might perceive being transferred to another department as humiliating, but this might be the organisation’s legitimate decision. As a result, it is problematic to include this dimension in defining workplace bullying since it may be difficult to confirm the alleged bully’s motives. Furthermore, even when aggressors’ state their intentions, they may not give an honest answer.xxiv While this element seems less important than the other dimensions because of its difficulty to prove, it is really the intention of the aggressor that causes harm to the victim, so that this intention is integral to bullying. Similar to the previous three dimensions, there is still a lack of consensus in defining intent.

Formulating a definition is central to the development of public policy related to bullying. The challenge of having specific legislation against workplace bullying partly involves the lack of clarity in the definition of the concept: Workplace bullying

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xxiv Hoel, Rayner and Cooper, ‘Workplace Bullying,’ p. 198.
crosses over with other workplace phenomena, and there are problems related to the subjective nature of interpreting bullying behaviours. As discussed previously, the four characteristics of the definition require further clarification and they need to be measurable. When all of these elements are put in place, legislation can be enhanced.

Another factor that has hindered the development of legislation is that the concept of workplace bullying overlaps with those of other workplace phenomena such as violence, harassment and discrimination. For instance, violence can take different forms, commonly described as physical violence and psychological violence. However, as stated by Di Martino, ‘Physical and psychological violence often overlap in practice, making any attempt to categorise different forms of violence very difficult.’ Di Martino further explained that terms such as harassment, bullying and sexual harassment are often used and associated with violence, as violence covers both physical injuries and psychological abuse. In Quebec, the term psychological harassment also has a similar meaning to bullying at work. These overlapping concepts and definitions, as well as the categorisations of these concepts, can vary between institutions. This may open the door to more problematic complaints and makes the evaluation of bullying intervention and training programmes difficult.

Lastly, perceptions of bullying behaviour vary. What is considered acceptable behaviour by one individual may be seen differently by another, and the tolerance for bullying behaviours varies among different workplaces, industries and cultures. As will be examined in the literature review in chapter 2, occurrences such as initiation

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xxvi Di Martino, Relationship Between Work Stress and Workplace Violence in the Health Sector; Milczarek, Workplace Violence and Harassment.

xxvii Einarsen, ‘Harassment and Bullying at Work,’ p. 393.
rites can be seen as acceptable behaviour, particularly in predominately male industries such as the Rockhampton railway workshops in Queensland, Australia, from the 1940s to late 1980s. However, such initiation rites can also been seen as a bullying behaviour by new apprentices, since they are exposed to intimidation and violence during the events.xxviii Thus, the adoption of specific legislation against workplace bullying has progressed slowly in all of the states/provinces in Australia, Canada and the US because drafting law to deal with bullying requires a universally accepted definition with solid parameters, and this is hard to generate.

**Methodology**

A comparative historical study method was used in this research. This involved analysing documents, interviewing people in the field and gaining insights from different geographical perspectives. History provides researchers with a long-term perspective, since the focus is on the process of development; thus, researchers are able to develop dynamic rather than static theoretical frameworks.xxix It also helps to place employment issues in the context of broader social values and ideologies. Evidence drawn from the past can be helpful in understanding the present, in turn contributing to contemporary public policy debate.xxx One particular advantage of comparative historical research is that it allows you to see what is not there. It allows to understand why particular ideas or methods of action were not adopted in some countries and why they were adopted in others. It is a powerful tool for developing an

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xxviii B. Webster, “They’d Go Out of their Way to Cover Up for You:” Men and Mateship in the Rockhampton Railway Workshops, 1940s-1980s,’ *History Australia*, vol. 4, no. 2, 2007, p. 43.1–43.15.


understanding of the progress towards anti-workplace bullying legislation in the
countries examined in this thesis.xxxi

At present, very little research on this topic has used the historical comparative
method. Most studies have adopted a quantitative method to explore the issue of
workplace bullying, since they operate within the broader traditions of
psychology.xxxii The problem with quantifying workplace bullying is that measuring
such a subjective topic using methods that are designed to offer objective results may
result in unreliable findings.xxxiii Very few authors have attempted systematic
comparisons, and most of the research has remained within specific national
boundaries, leaving the reader to compare scattered case studies. The lack of
comparative analysis is due to the logistical difficulty and cost of undertaking
research in other countries.

Under the “small-N method”, a small number of countries is chosen. Charles Ragin
in 1987 developed qualitative comparative analysis to better understand the causal
inferences arising from a small number of cases over a long period of time. Small-N
researchers use the method to compare patterns of causality in certain aspects and
across cases.xxxiv The benefit of selecting a small number of countries, for example
Australia, Canada and the US, is that it provides an opportunity to examine each
country’s policy in detail and identify subtle factors that explain similarities and
differences. This research utilises the ‘most similar systems’ approach to comparative
policy analysis, which utilises ‘systems as similar as possible with respect to as many

xxxi G. Kealey and G. Patmore, ‘Comparative Labour History: Australia and Canada,’ Labour/Travail,
xxxiii A.P.D. Liefooghe and R. Olafsson, “Scientists” and “Amateurs”: Mapping the Bullying Domain,’
xxxiv C.C. Ragin, The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies,
features as possible to constitute the optimal samples for comparative inquiry.\textsuperscript{xxxv} For instance, while recognising the special status of Quebec in Canada, it is useful to compare Anglo-Saxon countries such as Australia, Canada and the US. As mentioned above, they have similar economies, cultures and historical traditions, and the legal systems of these countries are historically grounded in common law. Other similarities include the following: the three countries are all federated nations, they were ‘born outside of feudal heritage’ and they share a common language and a liberal democratic political system.\textsuperscript{xxxvi} The ‘most similar systems’ approach utilises the ‘maximum’ strategy, examining each country’s policy in detail, finding subtle factors that explain similarities and differences between the countries, and identifying the influence of actors’ orientations within those countries. A comparative approach can also provide a solid basis on which to assess the policy consequences of political institutions and highlight the influence of government in shaping public policy. This may enhance concept development and generalisations in policymaking.\textsuperscript{xxxvii}

While there are benefits to using a comparative historical approach, challenges arise when historical research is undertaken, such as the memory of the interviewees, the accessibility of confidential and sensitive written records, regional differences in cultural background within a country and the evaluation of the effectiveness of the countries’ jurisdictions. Firstly, interviewees’ memory can be vague on the timelines of the specific events that occurred at the time of legislative development. This would

seem reasonable, since some of the discussions on workplace violence that touched on psychological injuries started in the 1980s. Having said this, the participants answered the interview questions to the best of their ability; they also provided backup documentation to illustrate their points. Other potential interviewees involved at the time of the research had retired or moved on to other roles, and were reluctant to participate in the interviews.

The second challenge is the collection of sensitive material; government agencies tend not to release meeting minutes and internal reports due to confidentiality. Furthermore, some documents have been lost. Not only are government agencies reluctant to disclose documents, but the pioneers of anti-bullying advocacy in the US, Dr Gary Namie and Dr Ruth Namie, and the author of the Healthy Workplace Bill, David Yamada, also have reservations when it comes to releasing their private archives. This is due to the sensitivity of the issue, the confidentiality of correspondence with legislators and union delegates and the fact that these advocates are still trying to push for legislation in different US states. Despite the lack of success in accessing some written material, these key advocates in the US all agreed to participate in an in-depth interview and provide documents that were less sensitive in relation to their advocacy work.

In addition to this, comparison of public policy between countries in the sphere of industrial relations frameworks can be problematic. Regional differences in cultural background within a country may pose further difficulties in attempts to use a universal basis with which to compare anti-bullying initiatives and generalise about the development of anti-bullying policy. In fact, this thesis seeks to compare the anti-bullying movement and legislative development at the state/provincial level rather
than trying to establish which country is ahead in the race to prevent workplace bullying. It is also difficult to ensure that concepts and terminology are used and understood in the same way across societies.

The last difficulty encountered in conducting this research was assessing the effectiveness of anti–workplace bullying policy. Since the three countries use different legislative frameworks to address the issue of bullying at work, it is still too early to fully evaluate the effectiveness of their methods of addressing this issue; this poses a challenge to the evaluation process.

In spite of the challenges, both primary and secondary sources were used, although an emphasis was placed on primary sources. The primary sources included interviews, minutes, speeches, legislative papers, parliamentary debates and newspapers. The secondary sources included books, theses and journal articles. The research for this thesis was undertaken through documentary searches in Australia, Canada and the US. Some organisations accessed during research were Unions New South Wales, Sydney; the Saskatchewan Legislative Library, Regina; the Quebec Commission des normes du travail (Labour Standards Commission), Montreal; the California State Archives, Sacramento; and collections from the New York Healthy Workplace Advocates, New York.

In addition to collecting documentary material from research institutions, in-depth, semi-structured interviews were conducted with a total of 58 participants with extensive knowledge and experience related to the issue of bullying at work. Each interview lasted between 60 and 90 minutes. Participants included legislators, trade union officials, leaders of community groups, key anti–workplace bullying activists, academics and employer association representatives in Australia, Canada, the United
Kingdom, where the key US anti-bullying advocates, Dr Gary Namie, Dr Ruth Namie and David Yamada, were interviewed at the 7th International Conference on Workplace Bullying and Harassment in Wales, Cardiff, UK, 2010, and the US. Following referrals from Dr Gary and Ruth Namie and David Yamada’s, the state coordinators of campaigns for legislative reform for New York, Massachusetts and California were also interviewed for an understanding of their perspectives and how they used the resources provided by Dr Gary and Ruth Namie to lobby the legislators.

Gaining insight through in-depth personal interviews was crucial in this research project, as some of the historical data/documents have not been archived for researchers to access due to the contemporary nature of the issue and sensitivity of the information. Hence, the combination of archival data and the interviews provided significant insights for the research and increased the validity and reliability of this thesis’s findings. The primary and secondary sources are listed in the bibliography at the end of the thesis.

**Structure**

In addition to an introduction (Chapter 1) and conclusion (Chapter 8), the thesis has six chapters. Chapter 2 is a literature review that charts the emergence of workplace bullying as a concept and analyses the subsequent literature. The chapter highlights significance of comparative historical method for examining the issue of workplace bullying. It looks at the literature on workplace bullying from three main perspectives: its nature and causes, its impact and how to manage the problem in the policy context. The chapter assesses the findings on the impact of workplace bullying internationally on individuals, organisations and society as a whole and the extent of the issue. The chapter identifies the research methods that are currently used to
identify bullying, asks who can resolve this issue and looks at different approaches to tackling the problem of workplace bullying. Chapter 3 reviews the origins of workplace bullying public policy; it explores the development of the concept of workplace bullying and explains why the issue first began to be addressed in Scandinavia, as well as how this phenomenon spread to other parts of the world.

The next three chapters explore the anti–workplace bullying public policy in Australia, Canada and the US. These three countries have been chosen because of their similar cultural traditions and because they possess federal systems of government. There are advantages and disadvantages to federalism in developing public policy in regard to labour relations. One view of federalism is that state and provincial governments may be better able to solve workplace issues at a local level and that decentralisation allows state and provincial governments to be more flexible and experimental in labour relations. There are less consequences for the national level if an experiment fails in terms of economic cost and political consequences. For lobbyists, particularly in the US, the complexity of achieving consensus at the federal level, may make key sympathetic states the best initial starting points for bringing about reform.xxxviii

In this thesis, each chapter is structured to provide a chronological overview of the issue of workplace bullying, and the discussion is organised around three main themes. The first focuses on the development of a public awareness of workplace bullying. This involves exploring how workplace bullying has emerged as an issue, its prevalence in different institutions and the impact of the changing nature of the workplace. The next theme is the identification of agents of change in each country in

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regard to challenging bullying in the workplace. The major actors promoting policy change in this area are unions, community groups, pressure groups and employers’ associations. As a result, the following types of questions are posed: Are unions effective in dealing with this issue? Are employers an impediment to change? What role do non-traditional actors such as pressure groups play in bringing about legislative reform? The final theme is the legislative response to workplace bullying. This involves examination of the following issues: Why have some jurisdictions been more active in this area than others in these countries with federal forms of government? Why have some jurisdictions adopted different approaches to deal with the issue? Are some legislative responses to workplace bullying more effective than others? These three chapters seek to explore the anti-workplace bullying movement in each country systematically.

Chapter 7 compares and explains the similarities and differences of the anti–workplace bullying public policy in Australia, Canada and the US. This chapter shows that the strength of the union movement and the presence of labour parties such as the New Democratic Party in Canada and the Labor Party in Australia can account for such difference. The chapter also asks: Is the level of employer resistance significant? Do differences in broader social values and ideology play a role? Hence, this comparative chapter is built around the three previous chapters and examines the similarities of anti-bullying actors’ contributions across the three countries in relation to anti-bullying legislative development and explains why there are differences in the pace of such development among the three countries.

General conclusions from the research project are explored in Chapter 8. This chapter outlines the major findings of the thesis and synthesise all the theoretical and
empirical findings concerning the role of traditional and non-traditional industrial relations actors in the development of public policy relating to workplace bullying.
Chapter 2 Literature Review

The development of legislation to deal with workplace bullying originated with the notion of environmental health and safety in the 1950s and 1960s, and then became associated with the notion of equality in the 1970s and 1980s. Since the 1990s, laws have sought to regulate interpersonal relations, particularly with regard to workplace bullying. For instance, Sweden was the first country in the world to legislate against workplace bullying; the Ordinance of the Swedish National Board of Occupational Safety and Health (1993) contained provisions and measures to combat victimisation at work. Interest in workplace bullying has continued to grow since the 1990s; international debate has been generated and the research literature on the topic has proliferated.

This chapter provides a brief overview of the debate on workplace bullying and how it relates to the present study, highlighting the need for a comprehensive historical comparative analysis of anti–workplace bullying public policy in Australia, Canada and the US. The literature review includes European, UK, Australian, Canadian and US studies. It then proceeds to explain the problem of bullying at work and summarises the effects of workplace bullying and the challenges of existing measurement instruments. It then examines the roles played by different agents in initiating policy changes, including those of the employer, unions and government. The review finally explores non-legislative and legislative approaches to combating bullying at work and concludes by proposing the importance of the comparative

historical method to explore anti–workplace bullying public policy in Australia, Canada and the US.

**Workplace Bullying – An Overview of the Debate**

The issue of bullying originally arose in schools. For generations, children have been bullied and victimised in school. Similarly, workers have always been abused by their colleagues and supervisors in the workplace. As stated by Harvey and his colleagues, ‘The unfortunate reality is that bullying is moving from the playground of our childhood, to the offices and boardrooms of our adult business arenas.’ Discussions of bullying originated in Scandinavian research; this generated broader interest in other matters associated with the quality of working life and quickly spread to the wider international community. Prominent among the Scandinavian researchers in workplace bullying is Heinz Leymann, who pioneered the field; Leymann also began a work trauma clinic in Sweden in the 1980s. He introduced the term ‘mobbing’ in 1986, the word often used in Scandinavia, German-speaking countries, the Netherlands and some Mediterranean countries to describe bullying. In Britain and other English-speaking countries, the term ‘bullying’ is preferred. In

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xlv Einarsen, Hoel, Zapf and Cooper, *Bullying and Emotional Abuse in the Workplace: International Perspectives in Research and Practice*, p. 4–5.
North America, the phenomenon has a wide range of labels, including workplace aggression,\textsuperscript{xlvii} emotional abuse\textsuperscript{xlviii} and workplace incivility.\textsuperscript{xlviii}

The term ‘workplace bullying’ might be used differently in various time frames, but the issue of unfair treatment within the employment relationship remains unchanged. The concept of workplace bullying can be traced back to nineteenth century Britain, where exploitation of workers was commonly used to increase production in the emerging capitalist mode of production. Ironside and Seifert suggested that workplace bullying is not a new phenomenon, and in Marxist terms, it is an integral characteristic of management, highlighting as it does the unequal balance of power in the workplace.\textsuperscript{xlix}

**Explaining the Problem**

Understanding the causes of workplace bullying can assist the formulation of policy at the organisational level. The major contributing factors to bullying involve the culture of the organisation, including the drive system, a joking culture, autocratic and 

\textit{laissez-faire} leadership style and facets of globalisation.

Organisational culture can promote bullying activities in the workplace. Historically, the methods used by foremen to increase the productivity of workers were known as the ‘drive system.’ This can be defined as ‘the policy of obtaining efficiency not by


rewarding merit, not by seeking to interest men in their work…but by putting pressure on them to turn out a large output.\textsuperscript{1} The drive method of supervision involves closely monitoring workers’ performance and strictly regulating their behaviour in order to increase production. For instance, in the Australian steel industry, it was common for the foremen to yell at workers and exercise a combination of bullying and authoritarian rule to maximise work output.\textsuperscript{2} Employers found that the ‘foreman-in-charge’ method and the drive system were cost-effective ways to motivate workers’ productivity. The drive method of supervision promoted bullying behaviour, but, in spite of the emergence of human resources departments, specialists and policies, bullying persists today. This demonstrates that regardless of the timeframe, a harmful culture such as the drive system breeds bullying behaviours.

In addition to the drive system, other elements can make an organisation dysfunctional: A joking culture can also go sour and turn into bullying. Workshop cultural practices, like initiation rites among apprentices, can be seen as a form of harmless entertainment, but in fact this is one form of workplace violence. In earlier years, initiation rites were seen as a ceremonial way to create bonds among young workers in the tough, male-dominated shop floor; this made them acceptable in the culture of the workshop.\textsuperscript{3} For instance, one of the favourite initiation rites to greet new apprentices in the Rockhampton railway workshops in Queensland, Australia was to insert handfuls of graphite grease into their trousers; this occurred regularly.

from the 1940s to the late 1980s. \(^{liii}\) Other bullying behaviours, like making derogatory remarks, were also tolerated in workshop culture. A BHP employee who worked in the Rod Mill in Newcastle from the 1960s to its closure in 1999 revealed that in the old days, BHP ‘used to say “You’re not paid to think, you’re paid to do as you’re told,” and everybody accepted that.’ \(^{liv}\) When workers lack autonomy and have low job satisfaction, they may use jokes or pranks to create humour; this is perhaps why such behaviour was perceived as appropriate. However, the atmosphere of workshop management in Australia changed radically in the 1980s as a result of new Occupational Health and Safety legislation. \(^{lv}\)

With the protection of legislation in place, it seems that bullying behaviour should be diminished. However, practical jokes and pranks still exist in the workplace. For example, an Australian technical officer working in the New South Wales police force workshop suffered from an acute acoustic trauma to his right ear in 2001 due to ‘a joke gone wrong’ when co-workers let off a 100-watt siren in his vicinity—this led to 11 months of sick leave followed by medical retirement and permanent damage to his employability. Although the concept of initiation rites, practical jokes and workplace bullying can overlap, they all create a health and safety risk to workers, and often cause long-term psychological damage to the targets. \(^{lvi}\)

Inadequate leadership style is another cause of bullying. There are different types of leadership style, including participative, autocratic and \textit{laissez-faire} management. Of these, participative management is most likely to reduce the number of bullying cases.

\(^{liii}\) B. Webster, “‘They’d Go Out of their Way to Cover Up for You”: Men and Mateship in the Rockhampton Railway Workshops, 1940s-1980s,” \textit{History Australia}, vol. 4, no. 2, 2007, p. 43.8.


\(^{lv}\) Oliver, ‘‘The Peanut King’ and other Pranks.’

Leaders adopting this style will involve employees in problem solving and the
decision-making process, thus giving them a voice to raise their concerns and
empowering them. On the other hand, autocratic and laissez-faire leadership styles
are positively associated with bullying at work; they operate at two extreme ends of
the spectrum. The autocratic leadership style tries to control employees’ behaviours,
whereas the laissez-faire leadership style discourages interference when employees
are engaging in bullying activities. The lack of management intervention could
signal that bullying is an acceptable behaviour in the workplace. For instance, a study
that examined the largest UK trade union, UNISON, which represents workers in the
public service, showed that 84 per cent of management already knew that bullies were
regularly engaging in hostile acts but did not stop them. With no intervention and
no policy to punish the perpetrator, these inappropriate behaviours are in effect
‘permitted’ by the organisation. Thus, bullying is inevitably linked to the culture of
any organisation that tolerates weak leadership.

In addition to an organisational culture that tolerates poor leadership, globalisation
can also allow bullying activities to flourish. Although globalisation can achieve
certain economies of scale, it also increases competition. In order to survive in a
competitive environment, it is inevitable for an organisation to go through the process
of restructuring and downsizing in order to cut costs. According to an Australian
study of a business that went through a restructuring in 1995, 60 per cent of the
respondents reported that they were under pressure to work longer hours and bring

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lvii D. Salin, ‘Ways of Explaining Workplace Bullying: A Review of Enabling, Motivating and
Precipitating Structures and Processes in the Work Environment,’ Human Relations, vol. 56, no. 10,
2003, p. 1213-1232; Salin, ‘Organisational Measures Taken Against Workplace Bullying,’ p. 5.
lviii C. Rayner, ‘The Incidence of Workplace Bullying,’ Journal of Community and Applied Social
lx H., Hoel and D. Salin, ‘Organisational Antecedents of Workplace Bullying.’ In S. Einarsen, H. Hoel,
D. Zapf, & C.L. Cooper (Eds.), Bullying and Emotional Abuse in the Workplace. International
work home. The process of restructuring creates work intensification that promotes coercive managerial behaviours—thus generating a fertile ground for bullying.\textsuperscript{lx}

Globalisation also means that organisations will expand their business operations internationally. Integration between home country, host country and third country nationals can be a challenging process. Integrating operations across countries requires a management team that understands how to manage employees from diverse cultural, social and religious backgrounds. This process involves some groups having to exercise power over other groups, which means that mistreatment of employees is likely to arise if management is inexperienced in working with a variety of ethnic groups. The combination of complex operations with a management that lacks the skills to manage diversity can intensify bullying behaviours.\textsuperscript{lxi}

As discussed above, the major causes of workplace bullying are correlated with particular kinds of workplace culture. The problem is that most organisations only focus on the ‘bottom line’, and align their cultures and leadership styles to achieve objectives such as profit maximisation, high productivity and cost containment. With the emphasis on these goals, organisations neglect their employees’ physical and psychological wellbeing, which may affect their sustainability in the long run. The issue of workplace bullying must be seen as part of a broader policy that seeks to improve the wellbeing of the organisation. Looking at the causes of workplace bullying is an initial step that can assist organisations in developing the necessary policy to address the issue. If the causes of bullying are not understood, there can be harmful consequences for both employees and employers.


The Impact of Bullying

Workplace bullying can have a significant impact on employees’ health and wellbeing, and there are associated costs for the organisation. At the individual level, an employee’s mental health will suffer if she/he experiences persistent exposure to bullying at work. Since bullying is an escalating process, bullied employees will gradually lose their sense of control at work due to deteriorating perceptions of themselves and others. They may perceive their work environment to be threatening and dangerous. An increasing level of psychological distress can lead to posttraumatic stress syndrome, and this may also trigger suicidal thoughts. For instance, Heinz Leymann, claimed that in the early 1990s, one in seven adult suicides was due to mobbing at work. The ‘ripple effect’ of bullying episodes can also spill over to the individual’s friends and family. Hence, damaged psychological wellbeing not only affects employees’ performance and poses a burden to their friends and family, but is also costly to the organisation.

At the organisational level, there are cost implications involved in bullying at work; for example, there are litigation costs for bullying claims, the costs of intervention and rehiring costs due to higher staff turnover. Firstly, legal actions associated with bullying can be expensive to the organisation. For instance, litigation regarding workplace bullying cost Walmart in 1995 over US$50 million, which the company had to pay out to two former employees. Not only is the cost of litigation punitive,

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but the effects of bullying can also be detrimental to the business reputation of the organisation. Expensive settlement of lawsuits can attract media attention and can create potential negative publicity.\textsuperscript{lxxv}

The cost of intervention is another expense incurred by the organisation to solve the problem of bullying. The intervention by personnel officers, external consultants, different levels of management and occupational health staff conservatively cost US$30,000–$100,000 for companies in some Scandinavian countries.\textsuperscript{lxxvi} Despite costly intervention relating to dealing with the bullying problem, however, employees may still choose to leave the company. According to UK survey data, bullied employees leave their jobs at a rate of about 25 per cent.\textsuperscript{lxxvii} The loss of human capital means that organisations have to go through the selection process again, which involves the costs of rehiring. A high turnover rate signals a significant cost of replacement and training new recruits, which in turn decreases the organisation’s productivity.

Overall, the total costs associated with the effects of workplace bullying are difficult to measure. They are not limited to the costs of litigation, intervention and rehiring; they also relate to harm done to the company’s image as a result of bullying, which is more difficult to assess from the viewpoint of cost. Thus, the negative influence of bullying activities relates to significant costs incurred by the individual, the organisation and ultimately society at large. The traumatised targets of workplace


\textsuperscript{lxxvii} Rayner, ‘Incidence of Workplace Bullying.’
bullying may eventually become long-term unemployed and suffer from illness, thereby further increasing the costs to society.

Challenges of Measurement Instruments

As mentioned above, the extent and the impact of workplace bullying are difficult to measure. As discussed in the introductory chapter, using an objective instrument to measure a subjective topic can be problematic. Measurement instruments such as self-reporting, witness reports and bully reports can be useful to assess the prevalence of bullying at work. However, the problem with self-reporting is that having subjects keep a diary that details events chronologically on a regular basis results in a high dropout rate due to a perceived lack of incentives. Some targets also have problems with documenting the facts about bullying due to possible trauma and obsession with the details of their mistreatment. In terms of witness reports, witnesses may be unwilling to testify about bullying claims or may be forgetful if events occurred some time ago; the person who bullies will naturally tend to underestimate his or her aggressiveness in the bully reports. This makes the reporting measurement instrument less than reliable. It is also true that perceptions and beliefs about what constitutes bullying vary among individuals. Other qualitative measures, such as the critical incident technique, in-depth interviews, focus groups and case studies can all provide a framework to study bullying, but are time consuming when it comes to administering the process and gathering data. On the other hand, quantitative measurement instruments such as questionnaires and surveys can be used to collect large amounts of data in a relatively short time; however, surveys can only provide a ‘snapshot’ and represent a rather static approach to the study of bullying at work.

unless they are supplemented by other methods. Hence, measuring the extent and the impact of workplace bullying can be problematic, and the validity and reliability of the measurement tools discussed above are questionable.

**Combating Workplace Bullying**

The impact of bullying is detrimental to the individual, organisation and society. Initiating change is vital when it comes to combatting the issue of bullying; such measures might involve the employer, union and government, which all play a part in mobilising the required changes in policy and workplace culture.

**Policy Context**

**The Employer**

At the individual level, a bullied employee has a very limited capacity to change the bullying situation, especially if he/she is not a trade union member. For employees that do not belong to unions, the intervention has to come from the organisation. An exploratory study has shown that targets do not simply use the ‘fight or flight’ strategy to deal with the bullying situation. The results indicated that targets used a complex sequence of reactions to deal with bullying. Most initially employed a constructive problem-solving process, and tried to communicate with their superiors to express their concern. Others focused on their work, putting in more effort and increasing their loyalty to impress their supervisor. However, when the bullying situation did not improve or even worsened, these targets started to reduce their commitment and

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eventually left the organisation. This study demonstrates that early intervention by management can be a constructive way to deal with bullying at the individual level.\textsuperscript{lxix}

The organisation plays a pivotal role in dealing with workplace bullying. With management support, workplace bullying can be eliminated. Organisations can develop specific policy to tackle this issue, for example, anti–workplace bullying policy, training and education programs, counselling, reward systems, disciplinary actions if necessary and most importantly, benchmarking and monitoring systems to evaluate the effectiveness of all related policies.

The bullying initiative can start with the recruitment and selection process. A thorough investigation of candidates’ previous employment, combined with reliable selection instruments, can reduce the recruitment of potential bullies.\textsuperscript{lxxi} Rayner (1999) argued that while looking at the screening stage can only deal with individual cases, it also challenges the culture of an organisation that tolerates or even permits workplace bullying. Creating a bullying-free environment requires a coordinated effort initiated by committed people that hold power in the organisation.\textsuperscript{lxii}

Another initiative is to develop and implement an effective anti–workplace bullying policy. The policy should include a clear definition of the term bullying, with a list of examples of what constitutes bullying behaviour, the process for dealing with bullying cases and consequences for not complying with the policy.\textsuperscript{lxiii} A good example can


be found in the Midland Bank in the United Kingdom. The bank has a highly publicised anti–workplace bullying policy that exceeds the minimum statutory requirements. It includes ‘gross misconduct’ procedures that are clearly linked to the dismissal process, as well as a trained team with expertise in gathering evidence about bullying cases.\textsuperscript{\textit{lxxiv}} This demonstrates that the organisation can play a key role in stopping these inappropriate behaviours.

Formulating a policy is central, but implementing the policy with transparency is equally important. For example, one study examining employees’ perception of anti–workplace bullying policy in a public sector organisation in Ireland showed that while 77 per cent of employees were aware of the policy, only 36 per cent had actually seen it. The findings showed that employees had concerns in regard to the transparency and the enforcement of the policy.\textsuperscript{\textit{lxsv}} Both policy formulation and policy implementation are crucial to a bullying-free environment.

Training, education programs and counselling support need to be available for management and employees to deal with workplace bullying. The purpose of having training sessions and education programs is to raise awareness of bullying and to increase managers’ competency to act on this interpersonal conflict. With suitable resources available, they can learn to deal with difficult employees. For instance, coaching by professionals can be helpful if managers require better leadership skills. Emotional intelligence skill development is also important for management. As argued by Sheehan, this area is generally ignored, but with this skill in place, management can influence their employees without undue manipulation or abuse of

\textsuperscript{\textit{lxxiv}} C. Rayner and C. Cooper, ‘Workplace Bullying: Myth or Reality—Can We Afford to Ignore It?’, \textit{Leadership and Organisational Development Journal}, vol. 18, p. 211-214.
\textsuperscript{\textit{lxsv}} Salin, ‘Organisational Measures Taken Against Workplace Bullying,’ p. 20–21.
their authority, and this can certainly reduce bullying incidents.\textsuperscript{lxxvi} Counselling support should also be extended to targets. An example of this would be ensuring that bullied employees can immediately access confidential discussions with management and professional counsellors after the bullying episode. This can reduce their anxiety and embarrassment. In addition to counselling, it is also helpful to encourage the employee to volunteer outside the organisation and use this opportunity to praise his/her contribution publicly: This can rebuild a target’s confidence.\textsuperscript{lxxvii} While training, education programs and counselling support are essential, it is unclear whether organisations will put bullying on the top of their agenda, since it incurs costs and commitment. Other, less costly approaches are needed, such as creating incentives for bystanders to intervene in bullying situations.

An organisation can implement a reward system to support anti–workplace bullying initiatives or to shed light on bullying behaviours. Incentives can be set up to encourage bystanders to report bullying incidents, or to eliminate vertical or horizontal bullying. Rewarding bystanders who report inappropriate behaviours can also promote a bullying-free work culture. With this involvement, bystanders can play a central role in either ‘extinguishing’ or ‘encouraging’ this dysfunctional activity. Both bystanders and managers can set a benchmark for a future observer to report on this unacceptable bullying behaviour, and ensure that adequate incentives are built in to the system.\textsuperscript{lxxviii}

In addition to the participation of the bystanders, reward systems can also address the issue of vertical and horizontal bullying in the workplace. Vertical bullying (when a superior bullies a subordinate) can be decreased by means of an incentive scheme to

\textsuperscript{lxxvi} Sheehan, ‘Workplace Bullying,’ p. 64–65.
\textsuperscript{lxxviii} Harvey, Heames, Richey and Leonard, ‘Bullying in Global Organisations,’ p. 198.
give supervisors an opportunity to support an underperforming subordinate instead of allowing the use of hostile acts to remove the employee from the organisation.

Horizontal bullying (also known as peer-to-peer bullying) can also be eliminated when remuneration is based on collective effort instead of rewarding a high achiever in the team. On the other hand, rewards can also be used to promote anti-bullying behaviours. For instance, it is very common to use performance-related pay in a market-driven company to reward outstanding employees. These high performers may be ‘fireproofed’ when they engage in bullying behaviours, since they hold positions of power.\textsuperscript{lxxix} Thus, an effective reward system needs to be built into the culture of the organisation in order to minimise the number of negative acts.\textsuperscript{lxxx}

Organisations can also take disciplinary actions to guard against people engaging in bullying activities. The disciplinary procedures should be properly set up and enforced. This involves offering the bully an opportunity for formal counselling services and coaching skills. If the bully refuses to improve his/her behaviours at work, the organisation can then give formal warnings and ultimately dismiss the employee.\textsuperscript{lxxxi}

Benchmarking policy with other industries and monitoring the policy on an ongoing basis are also crucial strategies in dealing with the issue of bullying at work. The process of benchmarking enables an organisation to measure itself against other industries’ policy standards and compare its internal policy with industry best practices. This allows the organisation to learn about the most efficient approaches to combating workplace bullying and apply them internally. It also requires an

\textsuperscript{lxxx} Salin, ‘Ways of Explaining Workplace Bullying,’ p. 1223–1224.
organisation to monitor its policy on a regular basis and continually update policies to ensure that bullying issues are being managed. An ongoing assessment does not stop after the investigation process, but rather follows through with policy modification based on the evaluation. The problem is that most organisations generally do not disclose how they evaluate policy effectiveness or may not even collect any statistical information on this issue.\textsuperscript{lxiii} With a lack of motivation to track the effectiveness of their policies, evaluation and benchmarking are more difficult to achieve.

Even if an anti–workplace bullying policy and monitoring system is in place and employees are well informed and resourced to tackle this issue, they are still very unlikely to experience a fair outcome. We tend to look at bullying as an individual and interpersonal type of conflict, and this can be misleading. Bullying can also come from the organisation itself. The notion of a ‘bullying organisation’ has been highlighted by Liefooghe’s (2003) study, which was based on several qualitative case studies. It explored bullying in two companies in the UK: one was the call centre of a telecommunications company, and the other was a high-street bank. The findings of these studies clearly refute the idea that bullying takes place exclusively on an individual or interpersonal level. The perpetrator can be the organisation itself, which can adopt a Taylorist or scientific management approach and be impersonal in the way it treats its employees. As a result, employees cannot depend on the organisation to deal with bullying cases openly and fairly.\textsuperscript{lxiii} It would appear that organisations have an obligation to promote a bullying-free culture, but in practice they tend to in fact encourage a bullying culture. Factors that promote a bullying culture can include


a lack of employee involvement in management and conflicting obligations of human resource practitioners, who are expected to protect their employer’s interests rather than those of the employees. Management can often be the perpetrator, and the confusion is compounded by the fact that the organisation itself, at the highest level, can also be the bully.\textsuperscript{lxxxiv} In this case, enforcement can only come from unions and the government.

\textbf{Unions}

Unions are important in raising awareness of the issue of workplace bullying and advocating legislative change. In the UK, unions have played a major role in raising awareness of workplace bullying. Two unions, UNISON and the Manufacturing, Science and Finance (MSF) Union are most active in the UK. For instance, UNISON was formed on 1 July 1993 by merging three public service unions. UNISON, which has 1.4 million members, is the largest trade union in the UK, and is at the forefront of research in workplace bullying. The union commissioned Staffordshire University to undertake a survey of UNISON members working in the public service in 1998. The survey seeks to identify preventive measures and methods of intervention that help targets to cope with workplace bullying.\textsuperscript{lxxxv}

MSF represents a range of skilled and professional occupations. In 1996, MSF led a campaign to change UK law. The Dignity at Work Bill was introduced in the House of Lords late in the year, and was aimed specifically at the prevention of bullying in the workplace. Although the bill failed to pass, the debates concerning it succeeded in

\textsuperscript{lxxxiv} Hoel and Beale, ‘Workplace Bullying,’ p. 245.
raising awareness of workplace bullying among the general public, and the phrase ‘dignity at work’ generated debate in the wider arena of industrial relations.\textsuperscript{lxxxvi} In due course, the bill was resurrected and it was finally introduced into the House of Lords in December 2001. The Dignity at Work Bill, as the name implies, provides employees with the right for dignity in the workplace; it prohibits bullying, harassment and any type of conduct which could cause employees to be distressed. The bill was not enacted, however, and no comparable legislation emerged until 2007.\textsuperscript{lxxxvii} Despite such setbacks, unions are crucial to initiating policy change, since they provide a voice for their members’ concerns and may have the resources to deal with the issue both at a workplace level and at the level of government.

\section*{The Role of Government}

\subsection*{Non-Legislative Approaches}

Ideally, the issue of workplace bullying could be self-regulated in each industry. However, when there is deficiency of leadership and a dysfunctional organisational culture, the government can play a significant role in ensuring that employers meet their obligations under the existing regulations and that the law is adequately enforced. As stated by Ayres and Braithwaite, however, ‘persuasion is preferable to punishment as the strategy of first choice.’\textsuperscript{lxxxviii} Using punitive enforcement as the primary choice is an expensive and counterproductive method. Employing a punishment strategy is like a game of cat and mouse: Organisations will try to find loopholes in the law, which means that the state has to set up more rules to deal with the loopholes, and this is not cost effective. By the same token, punitive enforcement

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\item \textsuperscript{lxxxvi} Ibid., p. 52–53.
\item \textsuperscript{lxxxvii} Ibid.
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can also weaken the government’s relationship with many corporate actors which are responsible and committed to complying with the law.\textsuperscript{lxxxix} Hence, instead of using enforced regulation as an initial choice, the government can first intervene through persuading businesses to use guidelines/codes of practice to prevent bullying activities.

Measures to deal with workplace bullying can involve pre-emptive solutions that keep bullying from happening in the first place. Although codes of practice and guidance material are not legally enforceable, they can serve as guiding principles for employers and employees to follow. For instance, the Irish Health and Safety Authority developed a code of practice called Prevention of Workplace Bullying for employers and employees; this provides guidelines and practical guidance for employers to identify and prevent bullying at work.\textsuperscript{xc} Similar to the case of Ireland, there have been codes of practice and guidance material produced in Australian states and territories under OHS legislation to educate employers on and assist them in dealing with the psychosocial hazards of bullying. The problem with using guidance material is that it is up to the company to comply, which opens up the possibility of interpretation. As stated by Quinlan and his colleagues, guidance material ‘carries less weight in terms of enforcement’ than legislation.\textsuperscript{xci} Johnstone has also emphasised that it is not an offence if employers fail to meet the obligation of the code and guidance material, although this can provide evidence of non-compliance with the legislation.\textsuperscript{xcii} As a result, producing preventive guidelines can be ineffective

\textsuperscript{lxxxix} Ibid.
\textsuperscript{xc} McKay, Arnold, Fratzl and Thomas, ‘Workplace Bullying in Academia.’ p. 78.
when it comes to promoting a bullying-free environment, since some irresponsible corporate citizens may simply ignore the preventive measures.

If the employer does not comply with the codes of practice and guidance material, alternative dispute resolution (ADR) may be an option to resolve the conflict outside the courtroom. As described by the European Foundation for the Improvement of Living and Working Conditions (2010), a narrow definition of ADR is the use of third parties to take part in the process of mediation, conciliation and arbitration before any court hearings occur. Using ADR can be a cost-effective way of dealing with the issue of bullying. The benefit of this approach is the reduction of the cost of litigation; furthermore, this process can also help to restore the employment relationship. The idea of maintaining the employment relationship is supported by David Yamada, author of the Healthy Workplace Bill in the US; Yamada argued that the objective of the anti–workplace bullying movement is to preserve existing employment relationships. Thus, while litigation will only increase the tensions and break the psychological contract between the employers and employees, ADR can be seen as a quicker and less costly manner of resolving conflicts within the workplace.

ADR includes mediation, conciliation, arbitration and using labour inspectors or ombudspersons to resolve the conflict. In the case of mediation, its benefit is having a neutral third party assess the bullying case. This third-party-intervention process provides the target with a chance to reflect on the situation in a nonthreatening environment; he/she may then be more willing to reveal the underlying causes of the

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conflict. This can be a valuable resource for bullied employees when it comes to reducing feelings of powerlessness.\textsuperscript{xcv} *Conciliation*, a term with different meanings in different justice systems, is another process of ADR. In some countries, conciliation implies that a judge facilitates the discussion, but some lawmakers use mediation and conciliation interchangeably. In countries such as Italy, the UK and Norway, the parties have to go through compulsory conciliation before they can bring the issue to a hearing. If both mediation and conciliation fail, arbitration can be a last resort when it comes to settling the dispute, where the arbiter makes an obligatory ruling on the matter.\textsuperscript{xcvi}

In addition to mediation, conciliation and arbitration, some countries use labour inspectors or ombudspersons to deal with individual disputes within the organisation. These trained specialists exist in countries such as the Netherlands and Norway. Not only can private companies employ ombudspersons to resolve the disputes, but the state can also appoint these experts to tackle a specific issue such as discrimination.\textsuperscript{xcvii} Thus, compared to the cost of litigation in bullying cases and the risk of breaching the psychological contract of the employment relationship, alternative dispute resolution remains is a more cost effective option to settle disputes without using the traditional court system or the worker losing their employment.

Given that ADR may not always work in the employment relationship, the government can then escalate its regulatory strategy to punish the employer and enforce certain requirements in order to achieve compliance. There are four main legislative approaches to regulating workplace bullying: 1) employment

\textsuperscript{xcv} Hoel, Rayner and Cooper, ‘Workplace Bullying,’ p. 196–213.
\textsuperscript{xcvi} European Foundation for the Improvement of Living and Working Conditions, *Individual Disputes at the Workplace*.
\textsuperscript{xcvii} Ibid.
discrimination law, 2) labour relations law, 3) occupational health and safety law and
4) criminal law.

Legislative Approaches

Employment discrimination law can support employee claims about bullying,
particularly where the bullying is linked to discrimination on grounds such as gender
or race. This legislation generates discussions on equality at work and why abusive
behaviour is unacceptable in the workplace. However, the problem with employment
discrimination law is that its primary objective is to provide some redress for
employees that experience harassment on prohibited grounds such as race, sex or
disability. That means, employment discrimination law is not specifically to protect
targets of bullying, although it does provide some redress for bullied employees that
experience harassment on prohibited grounds.

Apart from antidiscrimination law, labour relations law and the common law may
protect workers from bullying. Legislatively protected collective agreements or
industrial awards issued by tribunals may contain provisions that either implicitly or
explicitly protect employees’ mental health. For instance, according to the most
recent available public data, there were 90 enterprise bargaining agreements in
Australia that included anti-bullying provisions in 2003. In addition to labour
relations law, common law can also protect bullied employees, although this is
derived from judges’ decisions rather than through legislative statutes or constitutions.
For those employees that are non-union, employers still have the responsibility to

G. Hanley, ‘Don’t Do What I Do—Just Bloody Well Do What I Say! The Workplace Bullying
Experiences of Australian Academics,’ 2003, available from
2011); P. McCarthy, J. Rylance, R. Bennett and H. Zimmermann (eds), Bullying: From Backyard to
protect them from bullying under the common law. Brooks stated that the common law has a ‘contractual duty to take reasonable care for the safety of employees while in the course of their employment.’98 Hence, labour relations law and the common law provide relief to targets, since employers have statutory obligations to protect employees from psychological injury.

Another approach to regulating bullying at work is the occupational health and safety (OHS) model, which sees bullying as a health and safety issue instead of a product of discrimination. The OHS legislation historically focused on factory-based physical hazards; which originated from the world’s first factory legislation, The Health and Morals of Apprentices Act (1802) in the UK, which aimed to regulate working conditions.9 Since this legislation was developed from factory legislation, with its focus on physical forms of injuries, it is unsurprising that psychological harassment was not a primary concern, which makes bullying claims more difficult to prosecute than physical injury. Workers are generally reluctant to file formal complaints, and even when they do, they do so anonymously because they are afraid to lose their jobs. This results in delayed investigations, and many complaints may not even make it through the investigation process as far as prosecution because such claims are extremely complex.9

Overall, while a range of laws, including OHS law, discrimination law and workers’ compensation can make employers accountable for their actions, each type of

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legislation has its own weaknesses. For example, one problem with OHS legislation is that it punishes perpetrators but does not compensate targets; antidiscrimination law, on the other hand, is not enforceable if issues of racial and sexual harassment are not specifically relevant to the bullying situation. Similarly, workers’ compensation is often very limited in scope.\textsuperscript{cii}

The strongest legislative approach when it comes to punishing the bully is to use the criminal law. Bullying behaviour can be seen as violating human dignity. As claimed by Pico della Mirandola and Sacks, dignity is a core human characteristic and separates human from animal life.\textsuperscript{ciii} This notion has been recognised in the United Nations, which made clear that treating humans with integrity at work is a collective effort instead of an individual one. Organisations such as the International Labour Organisation also advocate ‘decent work’, the aim of which was to support human dignity at work.\textsuperscript{civ}

The criminalisation approach looks at workplace bullying as infringing on employees’ dignity, and this approach is concerned with a global revolution in how employees should be treated. The idea of dignity is emphasised in the European employment relationship, and entails a responsibility to protect the dignity of everyone in the workplace. Such measures are more established in civil law systems than common law ones. This can be explained in that, during the twentieth century, most of the populations of Germany and France were treated disrespectfully, except for people with high status in society. This phenomenon eventually became socially

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unacceptable. According to Friedman and Whitman, European anti-bullying laws are therefore based on a dignity paradigm, since the development of continental law was founded on ‘a long history of resentment of status-difference of the past.’ For instance, a criminalisation approach is used in France, and this was the only nation to use both the civil and criminal code under the Law on Social Modernization of 2002 to punish people engaging in bullying activities. Unfortunately; however, an employee lost the first criminal case in the Criminal Court of Paris in 2002, and after this decision, the scope of this law was narrowed.

This literature review has examined both non-legislative and legislative approaches to resolving the issue of workplace bullying. Among these approaches, using guidelines is the weakest (persuasion) approach and adopting criminalisation is the strongest (punishment) approach to tackling the issue of bullying. Whatever their differences, in a broader sense, all of these approaches attempt to regulate the employment relationship and to ensure equality, health and safety, dignity and freedom from workplace bullying and harassment for all employees.

A Comparative Historical Approach

Despite significant contributions to the research over the past two decades in which the workplace has been examined from a legal perspective, there remain gaps in our understanding of the comparative historical development of bullying at work from the viewpoint of public policy. Furthermore, due to the complexity of comparing different jurisdictions and industrial relations, there are very few studies giving a


comparative analysis of workplace bullying. Beale and Hoel’s study explored workplace bullying in terms of industrial relations; they deliberately chose two countries with different historical backgrounds. However, there are very few similar studies which explore the distinctive industrial relations and political-economic models among countries. Guerrero examined the development of moral harassment (or mobbing) law in Sweden and France. Although these two countries have similar backgrounds and both belong to the European Union, this research focused on comparing the legal perspectives of these two countries. Similar to Guerrero, Lueders looked at the legal side of the European model, and examined the applicability of transferring European workplace bullying laws into American jurisdictions, thereby comparing countries with very different systems. The researchers look at countries that are different rather than similar. As a result, there is room for further research which adopts an approach of comparing ‘similar systems’. This thesis looks at workplace bullying from the public policy perspective, and focuses on the debates related to how socioeconomic factors have impacted policy development in Australia, Canada and the US. Exploring the issue of anti–workplace bullying public policy from a broader perspective and analysing three countries that have similar systems in a detailed and systematic fashion can help to bridge the gaps in the contemporary literature and bring new insights into this issue. Thus, there are grounds for examining anti–workplace bullying public policy in a comparative framework.

cvii Beale and Hoel, ‘Workplace Bullying, Industrial Relations and the Challenge for Management in Britain and Sweden,’ p. 101–118.
Conclusion

This chapter has provided an overview and outlined the various debates over the complex issue of workplace bullying from an international perspective. The chapter started by outlining the debate on workplace bullying and gave a definition of bullying at work. It then identified the causes of workplace bullying, examined the impact of bullying and explored the challenges of existing measurement instruments. It also discussed how policy change regarding workplace bullying can involve the employers, unions and governments. Since bullying is a workplace issue, the intervention must come from the organisation and be supported by the management team. At the organisational level, change begins in the selection process, and then involves implementing anti–workplace bullying policy, developing training and education programs to raise awareness of the issue, providing counselling services, setting up reward systems, exercising disciplinary actions if necessary, benchmarking the policy with similar industries and lastly, monitoring internal policy on a regular basis.

Ideally, this workplace issue can be settled at the organisational level, but sadly, organisations and management themselves can also be the bully. Therefore enforcement needs to come from the government. Legislative approaches are often used to address bullying at work. Other methods, such as producing guidelines, developing codes of practice and alternative dispute resolution can also be used to deal with this issue. Thus, legislation on its own is not sufficient, but with the collaborative effort of the organisation and in consultation with unions and employees, this can be seen as an integral part of anti-bullying policy. The next chapter examines the origins of anti–workplace bullying public policy and the role of
actors in supporting or hindering its development. It also looks at Swedish culture and the effectiveness of the legislation in Sweden. Subsequently, it focuses on how anti–workplace bullying policy has spread to other countries.
Chapter 3 Origins of Workplace Bullying Public Policy

Although Sweden has a relatively low prevalence of bullying compared with other European countries, it became the first country to legislate against bullying at work. This chapter explores why Sweden pioneered anti–workplace bullying public policy. This development may be attributed to the role of anti-bullying actors in the employment relationship, as well as the country’s workplace culture. The role of actors in the policy change will form the first discussion in this chapter; this includes the state, the unions and employers’ associations. Subsequently, Swedish culture is investigated. The chapter then reviews the effectiveness of the country’s anti–workplace bullying legislation. Finally, anti–workplace bullying legislation beyond Sweden is discussed. The terms ‘mobbing’ and ‘bullying’ are used interchangeably in this chapter, as ‘mobbing’ is the preferred term in Sweden.

The Background

The general interest in workplace harassment can be traced back to 1976. Carroll Brodsky, a US psychiatrist, described bullying in his book The Harassed Worker as ‘harassment behaviour [that] involves repeated and persistent attempts by a person to torment, wear down, frustrate, or get a reaction from another person.’i This dimension of persistent and repeated negative acts is widely used in current bullying definitions.ii Brodsky’s work generated very little interest at the time, but was rediscovered by Scandinavian researchers many years later.

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ii Ibid.
Scandinavian researchers independently began to study the issue of workplace bullying in the 1980s. Initially, the focus was on education, with research being undertaken in schools. However Scandinavian research soon came to centre on the relationship between bullying and the quality of the work environment. This represented the most advanced and developed work in terms of the psychological aspect of the work environment because it generated strong public awareness, government funding and trade union participation. It was also reflected in the establishment of anti-bullying legislation.iii Sweden was the first European Union country to enact anti–workplace bullying legislation, and is at the forefront of public policy on this topic. While there is currently no specific legal framework in the European Union as a whole to address the problem of workplace bullying, there are directives focussed on harassment and discrimination issues.iv

The issue of workplace bullying is more significant than most people realise, and some dramatic claims about its impact have been made. Prominent researchers such as Heinz Leymann stated that an estimated 10 to 20 per cent of individuals who have experienced mobbing will develop posttraumatic stress disorder symptoms, and one in seven adult suicides are a result of workplace bullying.v Although this suicide rate is distressing, there is a low prevalence of bullying related to Scandinavian culture. In the Swedish workforce, 3.5 per cent of employees have been the targets of bullying, having been exposed to this type of behaviour for a minimum of once per week over at least six months. This rate is lower than in most European countries. In France, for


v Ibid., p. 183.
example, the prevalence of workplace bullying is 10 per cent, while in Turkey it is 55 per cent.\textsuperscript{vi}

**The Origins of Workplace Bullying**

In Sweden, workers’ protection has moved from a focus on physical risks to the psychological aspects of the work environment. During the 1970s, physical risks at work such as the dangers of chemicals were primarily emphasised, but this gradually shifted towards attention to psychological aspects in the workplace such as stress at work. In 1977, the Work Environment Act was passed by the Swedish parliament and came into force on 1 July 1978. The act regulates the work environment in the labour market and is administered by the Swedish Work Environment Authority. This authority is responsible for monitoring the implementation of the Work Environment Act and is also involved in labour inspections.\textsuperscript{vii}

The Swedish Work Environment Act is a framework law for reducing the risk of ill health and workplace accidents. It also promotes improvements in the work environment on an ongoing basis. The act replaced the 1949 Health and Safety at Work Act.\textsuperscript{viii} The Work Environment Act was expanded to cover psychological aspects of the work environment. For example, one of the essential parts of the act which states that, ‘work shall be adapted to the mental and physical capabilities of the employee;’ covers psychological factors affecting the employee as well as physical


The act also changed the term ‘employee protection issues’ to ‘work environment issues,’ since the quality of the work environment is an important part of the workplace for Swedish people. In 1980, research concerning ‘social and psychological aspects in the work environment’ began to be published, and such publications informed the public debate. Hence, Sweden began to address the psychological ramifications of the work environment in 1978, although the term ‘mobbing’ was not specifically mentioned in the Swedish Work Environment Act.

Research funding is an essential part of raising awareness about the issue of bullying at work. The Swedish state has invested a substantial amount of funding into supporting work life reforms. The Swedish Work Environment Fund was created in 1972 to actively support research in the area of the work environment. Its original scope was dealing with work safety issues. This was broadened by parliament with the new Co-determination Act, which came into force in 1977. This Act gave unions and employers the right to negotiate and required employers to provide information to unions on request. This increased the transparency of the company’s operations for employees and empowered employees to influence the decision-making process in the organisations. The law was introduced as a result of pressure from Swedish trade unions in the 1970s, which included the democratisation of the workplace and education throughout individuals’ working life as significant elements. These reforms in industrial and economic democracy were intended to limit the managerial prerogative and give workers a greater say over their working life. The Swedish

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x Ibid.

xi Ibid.

Work Environment Fund has made a substantial contribution to developing an understanding of workplace bullying. It financed some of the research by Leymann and his colleagues’ on the issue of mobbing.\textsuperscript{xiii}

Leymann began to bring the mobbing phenomenon to the attention of the inspectorate in the Swedish National Board of Occupational Safety (SNBOSH) when he worked there as a researcher. However, the issue initially did not receive much interest. In the 1980s, Leymann began a work trauma clinic in Sweden; it was here, in 1984, that he began to conduct his important studies on the issue of mobbing, a term he introduced into the literature in 1986. When Leymann’s empirical work supported his claims about the significance of the issue of mobbing, and the 1992 results of the national survey reported that there a total of 3.5 per cent of Swedish employees were being bullied persistently, SNBOSH increased its interest in the issue. Consequently, the Inspectorate Director requested Anita von Scheele, who at the time was an inspector for occupational stress issues, to set up guidelines to deal with mobbing. Before the guidelines went for consultation, she was asked to incorporate them into a statutory regulation; this became the Ordinance Against Victimization, which was enacted by Swedish Parliament in 1993. The ordinance then was disseminated by the SNBOSH with the powers given to them in the Swedish Work Environment Act of 1994.\textsuperscript{xiv}


The Role of the State

Sweden led the world in terms of enacting legal regulations combating workplace bullying; this also led other countries towards concept development on this topic. The legislation was not an impulsive act as it was the result of 10 years of research.\footnote{Leymann, ‘The Content and Development of Mobbing at Work.’} As will be seen, the government also played an important role in supporting legislative development.

Although Sweden developed into an industrial society later than other countries such as Britain, Australia, Canada and the United States, the country has been transformed from a poor agrarian society to a highly developed welfare state and service society. The unemployment rate is constantly lower than that of many other countries, such as Germany and France. This can be partly explained by the very strong growth of local and regional government since the 1960s. In Sweden, there were six political parties after the 1994 election. Among these, there were four liberal conservative (bourgeois) parties: the Conservative Party, Centre Party, Liberal Party and Christian Democratic Party. On the left of these parties is the Social Democratic Party (Socialdemokratiska Arbetarpartiet, SAP), which returned as a minority government in 1994. There is also the small left-wing Environment Party, which has never formed part of any Swedish government, but has been an ally to the SAP.\footnote{O. Hammarstrom and T. Nilsson, ‘Employment Relations in Sweden,’ in G. J. Bamber and R. D. Lansbury (eds), International and Comparative Employment Relations, A Study of Industrialised Market Economies, Sydney: Allen & Unwin, 1998.}

Out of the six political parties, the SAP played a significant role in bringing forth progressive labour policies. The SAP government transformed Sweden from a poor country into one of the best-organised, most stable labour markets in the world.

\footnote{National Board of Occupational Safety and Health, Victimization at Work Ordinance (AFS 1993: 17), Solna, Sweden: Author, 1994.}
Formed in 1889, it is the oldest and largest political party in Sweden, and originally operated as a union confederation. It formed the government from 1932 to 1991 and from 1994 to 2006. This virtually continuous period of administration provided a solid platform to promote and sustain policy reform in areas such as legislation against workplace bullying. Ideologically, the party espouses democratic socialism, which means that its policies maintain a balance between ideological aspirations and practical demands, and fosters a compromise between labour and capital.\textsuperscript{xvii}

Sweden has been recognised throughout the world for its progressive labour policies and promotion of worker rights. There is a close relationship between the SAP and the unions, in particular the Swedish Trade Union Confederation (\textit{Landsorganisationen I Sverige}, LO). For example, in 1972, under strong demand from both the LO and the Confederation of Professional Employees (\textit{Tjanstemannents Centralorganisation}, TCO), the influential white-collar union, the Social Democratic Governments led by Otto Palme passed a series of legislation including the Worker Protection Act (1974) and the Co-determination Act (1977).\textsuperscript{xviii}

**The Role of Unions**

The distinctive nature of Swedish industrial relations is another factor that led to the development of policy. The ‘Swedish Model’ of industrial relations, as it is known, can be described as a consensual system which developed after World War II. The


\textsuperscript{xviii} Asard, ‘Employee Participation in Sweden.’
model incorporates a high degree of self-regulation and a lack of state intervention.\textsuperscript{xix}

It mainly depends on bipartite agreements, and the philosophy behind the model is to promote a cooperative spirit between unions and employers. During its most influential period, the Swedish model relied primarily on agreements negotiated between strong unions and employers’ organisations. Government intervention was regarded as unwelcome by both sides.\textsuperscript{xx} This means that unions and employers shared full responsibility in the negotiation for wage determination and industrial peace with the aim of evading government interference in collective bargaining. Government action ensured that full employment and economic stability are protected.

Unionism came fairly late to Sweden, as the trade union movement did not really evolve until the 1880s. There are currently three main union confederations in Sweden. The LO was established in 1898; this is the largest and most influential trade union confederation, and represents 90 per cent of Swedish blue-collar workers. The second is the TCO, which was formed in 1944 as a result of a merger between two white-collar confederations that represented private and public sector employees, represents 75 per cent of white-collar employees. Finally, there is the Swedish Confederation of Professional Associations (Sveriges Akademikers Centralorganisation, SACO), which was formed in 1947 and covered graduate employees with a university degree who are mainly employed in the public sector. Although the TCO and SACO were formed after the LO, their affiliated unions have gained a better position in the labour market as Swedish society has transformed from


an industrial to an information society.xxi Unions receive support from the state, and most of the existing legislation on working life issues is the result of union pressure on the SAP to create a better working environment and less degrading jobs.xxii

Trade unions played a significant role in establishing anti-bullying legislation in Sweden, which reflects their relative strength compared to other countries. Similar to the other Nordic countries, trade union density is high in Sweden. For example, during the mid-1980s, union density reached about 86 per cent and declined to just over 80 per cent by mid-1994. In 2007, the level of trade union density was 73.8 per cent.xxiii Although this decline has weakened some of the unions’ values, such as commitment to social solidarity, union density is still considered relatively high compared to that in the other Western European countries. For example, in 2007, Austria was at 30.8 per cent and Belgium at 52.9 per cent.xxiv High union density can therefore be considered one of the reasons why anti-bullying legislation was successfully established in Sweden, since unions have a strong voice to represent workers’ rights.

Employers’ Organisations

In Sweden, employers are also organised. The leading employers’ organisation is the Swedish Employers’ Confederation (Svenska Arbetsgivareningen, SAF), which was

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formed in 1902. The SAF includes 41,000 private-sector member companies which employ nearly 1.2 million workers. Even until the late 1960s, there existed centralised collective bargaining between the SAF and LO, which formed the central part of employment regulation. However, with the changes in industrial relations in Sweden, the traditional view of having strong, centralised systems with trade unions and employer organisations changed. In the 1980s, the employers’ organisations were the driving force behind the move to decentralise the collective bargaining system and diminish the role of unions to the enterprise level. As a result, employer organisations opposed anti–workplace bullying legislation in 1993, as they preferred to have freedom to manage the issue of bullying at work in their own way. They did not think that regulation was the right tool to use. For instance, the Confederation of Swedish Enterprises stated that ‘it is all about attitudes, human relations and human experiences—and this is impossible to regulate by means of legal text.’ In addition, with their intention to promote a deregulatory policy in recent times, their preference in relation to the issue of workplace bullying was to simplify the work environment regulations and they viewed anti-bullying legislation as a problem insofar as it limited businesses’ growth.

**Swedish Culture**

In addition to the role of actors in policy change, cultural factors can influence the number of bullying incidents. The relative lack of bullying in Scandinavian countries can be attributed to its lower power distance and feminine society, as defined below;

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xxv Hammarstrom and Mahon, ‘Sweden: At the Turning Point?’
xxvii Beale and Hoel, ‘Workplace Bullying, Industrial Relations and the Challenge for Management in Britain and Sweden.’
Scandinavian culture has also been described as egalitarian. Power distance can be defined as the inequality of power between two people, which is an important element of workplace bullying. With the low power distance in Sweden and other Scandinavian countries, communication is less formalised between individuals; this helps to explain why there is less bullying in Sweden. Hofstede (1980) also claims that the Scandinavian countries are feminine-oriented societies. These countries have feminine values such as an ideal of interdependence, people orientation and emphasis on individual well-being; adherence to such values may also involve less tolerance of aggressive behaviour. For instance, in Sweden, industrial conflict tends to be solved through the use of dialogue.\textsuperscript{xxviii} Such factors result in a reduced incidence of bullying in Scandinavian countries.

Workplace culture can also create an environment which is open to policy change. Scandinavian countries are very well developed as welfare states and have an extremely low tolerance for violence. The avoidance of conflict is also demonstrated in Swedish workplace behaviour. Since Scandinavians typically seek harmony, the decision-making process in their workplace is consensus oriented. For instance, there is a high level of collegiality between all levels in an organisation, and Scandinavian attitudes promote peer relationships and focus firmly on aggression-free environments.\textsuperscript{xxix} In addition, the Swedish workplace culture emphasises group cohesion, and workplace conflict is predominantly solved within the group. Management generally uses a ‘hands-off approach’ when dealing with workplace issues. This non-interventionist method entails a lack of management involvement in


the conflict resolution process, leaving the group members to handle their own issues; this is more likely to encourage horizontal bullying within the team, and may be another reason why legislation was required to protect individuals’ rights. Hence, workplace culture has indeed influenced legislative development in this country.

**Effectiveness of the Legislation**

It appears that with strong union support, sophisticated industrial relations and government funding for work-life issues, the anti-bullying legislation was able to provide a sound platform for execution. In reality, however, although Sweden can claim the first legislation against workplace bullying and has raised awareness of the issue, the success of this legislation is questionable according to the two leading researchers in workplace bullying, Professor Stale Einarsen and Dr Helge Hoel, who recently evaluated its effectiveness. Einarsen and Hoel commented that while the Swedish Ordinance is very sound, no work has been done to translate it into a format for effective use in the workplace. They view ‘translation’ as meaning the adoption of an integrated approach. Such an approach would involve a collaborative effort among organisational psychologists and researchers, working together with lawyers, the labour inspectorate, labour unions and employers to translate the law for effective use in the workplace. As Swedish legislation has neglected the ‘translation’ aspect, this raises the question of how practical the legislation really is for managers in the workplace.

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xxix Beale and Hoel, ‘Workplace Bullying, Industrial Relations and the Challenge for Management in Britain and Sweden.’

xxxi Personal interview with S. Einarsen, Professor of the University of Bergen, 5 June 2010; personal interview with H. Hoel, Senior Lecturer of the University of Manchester, 5 June 2010.
In addition to the questionable practicality of the ordinance, other shortcomings were experienced when the anti-bullying legislation was implemented in 1993. During the 1990s, Sweden was experiencing an economic downturn and organisational restructuring. The economic crisis affected the trade unions’ priorities and their concerns were focused on saving jobs rather than bullying issues. Local trade unions also sided with the group rather than the individual when there were occurrences of bullying in the workplace, which was unfair to individual members. Moreover, employer confederations were reluctant to embrace the change; they were sceptical about the regulations and questioned how the law could possibly regulate people ‘being nice to each other.’ Furthermore, the decline of union density since the 1990s and the SAP’s loss of dominance in Swedish politics have contributed to the lack of recent action. The SAP lost power in the election of 2006 and a centre-right four-party alliance among the Moderate Party (Moderaterna), the Centre Party (Centerpartiet), the Liberal People’s Party (Folkpartiet Liberalerna) and the Christian Democrats (Kristdemokraterna) came into power and continue to be the current government. With the departure of the SAP and the shifting away from the Swedish model, the world’s first anti-bullying legislation has not achieved its potential.

**Beyond Sweden**

Leymann’s work generated a lot of attention and was followed by studies by other Scandinavian researchers. The Swedish legislation also attracted interest in a number of countries including the UK, Ireland and France. International debate on the topic of workplace bullying has flourished since the 1990s. In parallel with the

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**xxxii** Hoel and Einarsen, ‘Shortcomings of Anti-Bullying Regulations.’

Scandinavian countries, the issue of bullying was brought to the agenda in the United Kingdom by journalist Andrea Adams in the early 1990s. Adams wrote a popular book on the subject in 1992, having had some personal experience of workplace bullying. She also produced radio programmes that captured listeners’ attention, such that they even voluntarily shared their bullying experiences on the air. In 1994, this programme was followed by two surveys exploring the prevalence of bullying at work. The BBC commissioned Staffordshire University researchers to conduct one of the surveys and in the results, 53 per cent of 1,137 locally employed people surveyed reported having been bullied. Another survey was conducted by the Manufacturing, Science and Finance Union (MSF, now called Amicus), which represents a range of skilled and professional occupations, and the results showed that 70 per cent of respondents had suffered bullying or witnessed such behaviour in the workplace.

Another well-known activist in the UK was Tim Field. He spent almost 20 years in the computing industry, and was bullied out of his job as a customer service manager in 1994, at which time he had a stress breakdown. In January 1996, Field founded the UK National Workplace Bullying Advice Line to support bullied individuals. This support line has received over 930 calls wherein individuals reported having similar bullying experiences to his. In 1996, he published a book entitled *Bully in Sight*, which was the first book to document the sociopathic bully in the workplace. He also set up a website called Bully Online at www.bullyonline.org, which was the world’s largest internet resource on workplace bullying; furthermore, he wrote regularly for

Bullying Times, a publication which provides updates on successful case settlements.xxxvi Field died in 2006.

Amicus led a campaign to change UK law. The Dignity at Work Bill, drafted by the union, has gained support from the trade union movement. Lord Monkswell was the first to present the Bill to the House of Lords in 1996. There was second attempt to present the Bill was Baroness Gibson of Market Rasen in 2001. However, employers’ representatives opposed the bill, arguing that the existing harassment legislation provided enough protection for the employees. As a result, the Dignity at Work Bill has still not been passed because there has been a lack of political will when it comes to addressing the issue and concerns over the legal definition of bullying.xxxvii

The concerns with the practicality of anti-workplace bullying legislation continue in the UK. David Palferman, a senior psychologist with the Health Safety Executive (HSE), a government body that provides advice to employers on health and safety issues at work, has explained that it is difficult to implement anti–workplace bullying legislation, as bullying behaviour involves perceptions and cultural norms. It is possible that different industries view bullying behaviour in different ways. For example, the culture in the construction industry is different from that in an academic environment, so bullying may be perceived differently in these two industries.xxxviii

Due to these issues, legislating against bullying at work in the UK has been a slow process.

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xxxviii Personal interview with D. Palferman, senior psychologist of the Health and Safety Executive, 10 June 2010.
In addition to the UK, Ireland has also done some work in terms of anti-bullying initiatives, such as its Code of Practice and Dignity at Work Charter. This started when the Minister for Labour Affairs, Tom Kitt T.D., formed the Task Force on the Prevention of Workplace Bullying in September 1999; in March 2001, the Task Force published a report called ‘Dignity at Work—The Challenge of Workplace Bullying’. The report recommended that a code of practice on workplace bullying be put in place to lay out guidance for both employers and employees.\textsuperscript{xxxix}

The Irish Task Force also recommended a ‘Dignity at Work Charter’ and that an anti-bullying policy be made available in every workplace. The charter includes principles, objectives and a declaration, and aims to ensure that dignity is upheld in the work environment by management and employees. The two main objectives are to

1. create and maintain a positive working environment that recognises the right of each individual to dignity at work; and

2. ensure that all individuals are aware of and committed to the principles set out in the charter.

The charter concludes with a declaration that ensures individuals are committed to treating each other with respect.\textsuperscript{xl}

The model of the Dignity at Work Charter has had an influence by Ireland. As will be shown later, Unions New South Wales in Australia has adopted the charter.


\textsuperscript{xl} \textit{Ibid.}
Like in the UK and Ireland, there has also been interest in workplace bullying in France. In 1998, Marie-France Hirigoyen, a French psychologist, published her book *Le harcèlement moral, la violence perverse au quotidien*. In it, she introduced the concept of ‘moral harassment’, which is a type of behaviour that exposes the employee to humiliation. This type of harassment refers more to psychological than physical behaviour. Hirigoyen’s publication of this text resulted in substantial media coverage and public interest in the issue. In 2002, the French National Parliament enacted the Law on Social Modernisation, which established moral harassment as being unacceptable in the labour and criminal codes in France. The Labour Code ‘now provides that no employee shall suffer repeated acts of moral harassment, which have the purpose or effect of causing a deterioration in working conditions by impairing the employee’s rights and dignity, affecting the employee’s physical or mental health, or compromising the employee’s professional future.’ The Penal Code also includes a practically identical definition of moral harassment. Both the Labour Code and the Penal Code impose fines and imprisonment on offenders.\textsuperscript{xli} As will be examined later, this legislation subsequently inspired other French-speaking regions such as the province of Quebec in Canada to enact similar laws.\textsuperscript{xlii}

**Conclusion**

This chapter has reviewed the origins of workplace bullying public policy. It began with a discussion of the workplace bullying phenomenon and explained why there is a


low prevalence of bullying at work in the Scandinavian culture. It then examined how the issue of bullying was brought to the attention of Swedish society and how anti-bullying legislation came to be passed. It also explored why Sweden was able to lead other countries to legislate against workplace bullying highlighting the role of the state, unions and culture. Whereas employer organisations did not support the anti-bullying legislation, they did not have sufficient political influence to stop its passage.

The chapter then evaluated the Swedish anti-bullying legislation which, due to changing political and industrial relations environments, has not achieved its full potential. Finally, it looked at how measures to address workplace bullying spread to other countries, such as the UK, Ireland and France. Still, the development of anti-workplace bullying legislation is not limited to Europe. The Irish experience has directly impacted on Australia, while the French experience has had an impact on Quebec in Canada. The following chapter explores how workplace bullying has emerged as an issue in Canada, as well as the role of traditional and non-traditional actors in lobbying governments to enact anti-bullying legislation at work.
Chapter 4 Workplace Bullying in Canada

In Canada, most of the legislative initiatives dealing with psychological hazards in the workplace have been limited to issues of violence and harassment. The legal initiatives to tackle the issue of psychological hazards involve three types of legislation: occupational health and safety (OHS) laws, which are enforced by labour inspectors; workers’ compensation legislation; and human rights legislation. In Canada, only the federal government, Quebec, Saskatchewan and Ontario provide protection against psychological harassment in the workplace. Quebec was the first province in Canada to address the issue of psychological harassment through legislation. Quebec did this through amendments to its Labour Standards Act in June 2004, whereas the second province, Saskatchewan, brought forward this legislation through its amendment to the OHS Act in October 2007. This was followed by federal regulation on the development of violence prevention in the workplace, which is Part XX of the Canadian Occupational Health and Safety Regulations and came into force in May 2008. Following the federal regulation, Ontario amended its Occupational Health and Safety Act in June 2010 to include protection from violence in the workplace. With all of these legal initiatives, Quebec and Saskatchewan are the leading governments in North America in terms of taking action against psychological harassment.

The aim of this chapter is to examine the workplace bullying movement in Canada. It looks at the forces of change, as well as processes and outcomes underlying the development of anti–workplace bullying legislation. In this chapter, it is argued that management in advanced, industrialised countries has been reluctant to deal with the

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issue of workplace bullying, and that progressive political parties, trade unions and community groups have led the way in attempting to challenge workplace bullying through legislation.

This chapter looks at the development of psychological harassment in the workplace, examining the provincial legislation in Quebec, Saskatchewan and Ontario, as well as the Canadian federal regulations. The economic and political contexts of Canada are first explored; then, the three main legislative paradigms used to regulate workplace bullying in Canada are discussed, specifically antidiscrimination, OHS and dignity. A conceptual framework of the workplace bullying legislative model is presented in the same section. The chapter then follows the sequence of how legislations/regulations were enacted to protect bullied employees in the selected provinces and at the federal level. Five themes are examined in relation to each province and the federal regulation, namely the (1) triggering events that led to the anti-bullying reforms, (2) the political environment at the time the legislation/regulation was enacted, (3) the role of traditional actors, (4) the role of non-traditional actors and (5) the employers’ view in the change process. The chapter subsequently focuses on how other Canadian provinces have dealt with psychological harassment in the workplace. Finally, the effectiveness of the legislations/regulations that have been put in place is assessed. The terms psychological harassment, personal harassment and workplace bullying will be used interchangeably in this chapter, with ‘psychological harassment’ the preferred term in Quebec and ‘personal harassment’ the preferred term in Saskatchewan.
Economic and Political Context

Canada has a stable economy. Organisation for Economic Cooperation and Development (OECD) statistics from the past decade indicate both the country’s real income per capita and employment rates are among the highest in the world. Canada is full of natural resources, making the country more self-sustainable. Gross Domestic Product growth was 0.2 per cent in 1990, a low of –2.8 per cent in 2009 and a high of 5.5 per cent in 1999, while it was 3.2 per cent in 2010. Unemployment has fluctuated in recent years with an unemployment rate of 10.5 per cent in 1985, 6.8 per cent in 2000 and 2005, and 8.0 per cent in 2010. The workforce is highly skilled and educated, with Canada having the highest proportion of workers with postsecondary education in the OECD. With the Global Financial Crisis, there was infrastructure stimulus provided by the Canada’s Economic Action Plan, which has boosted the economy since early 2009.ii Canada is also well known in the world for its strong banking systems and has played a leading role in developing financial regulations.iii

At the federal level, there are four significant political parties in Canada: the Conservative Party, the Liberal Party, the New Democratic Party (NDP) and the Bloc Québécois (BQ).iv Canadian politics can be described as ‘moderate’, since Canada is a predominately middle-class nation and there is no party on the extreme left or right.v The Liberals tend to be characterised as the natural party of government, as the party

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was in office for seventy of the last hundred years, but these days it looks considerably less secure. Since February 2006, the Conservative Party has formed the federal government, first as a minority government, and then as a majority government after the May 2011 federal election.\textsuperscript{vi}

Canada has changed from a liberal political culture into a conservative political culture. There are currently two major political parties, the centre-right Conservative Party in power and the centre-left NDP as the official opposition. The significant win of Prime Minister Stephen Harper altered the political landscape in Canada on 2 May 2011 and the Conservatives are in the position to replace Liberals as the dominant governing party. For six decades, the Conservative Party has had a strong presence in the West in Canadian politics. This was evident in the 2011 election, where the Conservatives obtained an average of 55 per cent of the votes in the western provinces of Manitoba, Saskatchewan, Alberta and British Columbia. Harper led the takeover of the conservative Canadian Alliance in 2003 and the merger of the Canadian Alliance with the old moderate middle party, the Progressive Conservatives. He became the leader of the Conservative Party in 2004, which has now succeeded in marginalising the Liberal Party. Harper’s party appeals to working-class and lower-middle-class conservative voters and has an ideology of fiscal conservatism. Further, Harper is committed to promoting provincial autonomy in advocating ‘state rights.’\textsuperscript{vii}

The merger of the Canadian Alliance and the Progressive Conservatives inspired the formation of the Liberal National Party in Queensland, Australia.


A crucial party for understanding the introduction of legislation in Canada is the New Democratic Party (NDP). The NDP was founded in 1961. Its predecessor was the Farmer-Labour Party, which was renamed the Co-operative Commonwealth Federation (CCF) in 1934. Although the CCF’s principles were influenced by the British Labour Party, Fabianism and the Social Gospel, the CCF had limited success as the Canadian equivalent of the British Labour Party. Canada has never had a mass labour party. This can be dated back to the 19th century, when a scattered Canadian working class turned for assistance to the stronger American unions. As a result, the majority of Canadian unions became members of US-based international unions, which have a tradition of being hostile to a Labor Party.

The Canadian Congress of Labor (CCL) in 1943 endorsed by the CCF as its preferred arm for working-class interests. Although union memberships increased after the merger of the CCL with the rival Trades and Labour Congress of Canada in 1956, unions affiliated with the NDP were a minority voice when it came to national and provincial party bodies. The CCF in Saskatchewan, for example, was essentially radical agrarian rather than industrial working class. The old-left-populist base weakened due to the decline of the family farm and the shrinking rural population of Saskatchewan. In 1971, under the leadership of Allan Blakeney, the Saskatchewan NDP transformed from a rural to an urban formation with a middle-class membership. As stated by Palmer, however, the NDP is not a true labour party; its inability ‘to grow and draw more unionists is a reflection of the failure of social

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viii Saskatchewan New Democrats website.
ixi Ibid.
xii P. Hansen, ‘Saskatchewan Politics: Beyond Social Democracy,’ *Canadian Dimension*, vol. 34, no. 3, 2000, p. 41.
democracy to deepen its relationship to class in Canada.\textsuperscript{xiii} The next section explores the legislative paradigms in Canada.

**Legislative Paradigms**

As examined in Chapter 2, there are four main legislative approaches to regulating workplace bullying: 1) employment discrimination law, 2) labour relations, 3) OHS law and 4) criminal law. This section will build on the previous chapter and elaborate on the historical background of the three distinct theoretical approaches—antidiscrimination, OHS and dignity—which have determined how different Canadian provinces deal with the issue of workplace bullying. The historical background of each paradigm is examined first, and then the cases of the federal regulation and the provincial legislations in Quebec, Saskatchewan and Ontario are reviewed in the next section.\textsuperscript{xiv}

Figure 1 reveals that anti-bullying public policy in Canada can be divided into the three paradigms of antidiscrimination, OHS and dignity. Prior to the 1990s, research on workplace harassment focused primarily on the serious issues of racial discrimination and sexual harassment.\textsuperscript{xv} The antidiscrimination paradigm marked the beginning of a legislative response to the issue of workplace bullying, with individuals being protected from bullying on prohibited grounds such as racism and sexism. Thus, the earlier approach in responding to workplace bullying started with an adoption of the antidiscrimination paradigm, which viewed bullying at work as a


product of discrimination. As stated by Carla Goncalves Gouveia, ‘Canadian provincial human rights codes are examples of the antidiscrimination paradigm.’ Gouveia further explained that both Canada and the US use human rights laws to combat discrimination and to ‘affirm principles of equality and non-discrimination.’

There is an extensive array of legislation in regard to anti-discrimination in Canada. The federal parliament enacted Canadian Human Rights Act in 1977. It is an extensive antidiscrimination legislation administered by a federal human rights commission, but applies only to federally regulated employees. Supplementing the federal legislation there is also antidiscrimination law at the provincial and territorial level. These antidiscrimination acts prohibit discrimination on the grounds of characteristics such as race, sex, religion and age. This paradigm was the first approach used to deal with the issue of workplace bullying in Canada.

The second paradigm is OHS, and this approach focuses on the issue of health and safety at work. Canadian OHS legislation was influenced by the British Robens model of OHS regulation. This paradigm originated with the world’s first factory legislation, enacted in Great Britain in the early 19th century: the Health and Morals of Apprentices Act, 1802. The purpose of this act was to regulate working conditions. In 1970, the British government established a committee chaired by Lord Robens to review OHS. The enactment of the Safety at Work Act 1974 in the UK was based on Robens and his committee’s recommendations. In Robens’ vision,

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xvi Gouveia, ‘From Laissez-faire to Fair Play,’ p. 147.
consultation with employees and OHS representatives was part of employers’ statutory duty to ensure a safe and healthy work environment.xix In the case of Canada, the enforcement of OHS laws is mainly dependent on the provinces, with the federal government having limited power to enact national OHS legislation.xx The provinces in Canada play a significant role in raising awareness of the issue of workplace bullying, which can lead to inconsistencies across jurisdictions. This second approach looks at the issue of workplace bullying as a health and safety issue.

The last paradigm centres on the notion of dignity, which is based on the civil law system. As mentioned in Chapter 2, European anti-bullying laws are based on a dignity paradigm, which arises from a deep-rooted continental tradition, as ‘continental law has developed in the shadow of a long history of resentment of status-difference of the past.’xxi This European dignity paradigm clearly identifies workplace bullying as objectionable conduct. Hence, the three paradigms in Figure 1 share a common objective to achieve a fundamental goal in the employment relationship: workers’ rights.


The following sections will now examine the development of the legislation against workplace bullying in chronological order of enactment. It will first examine the province of Quebec, which adopted the dignity paradigm and then Saskatchewan which applied the OHS model. It will follow these pioneer provinces by exploring the developments at the federal level and in Ontario.

**Legislating Against Workplace Bullying**

**Quebec**

In Quebec, there are three political parties: the Parti liberal du Québec, the Parti Québécois (PQ) and the Action démocratique du Québec. The French initially colonised Quebec, but eventually lost their colony to the English. As a result, there is a continuing tension between English Canada and French Canada. The rise of the PQ, which was formed in 1968, was part of an emerging trend to promote sovereignty for Quebec. The separatist PQ was led by René Lévesque, a former Liberal. The success of the PQ when it came to convincing voters to support independence was a function
of the language and cultural division of labour in Quebec. The persistence of the linguistic division of labour and disadvantages suffered by Francophones in employment and education led to the PQ’s growth in the early 1970s.xxii

The PQ won office in the 1976 provincial elections. It had a centre left political philosophy and was sympathetic to the concerns of workers and unions. When the PQ government came to power, one of the first things it did was to prohibit the use of replacement workers during a labour dispute. Another priority for the PQ government was to enact in 1979 OHS legislation, which was mostly preventative in nature and included the right to refuse to work if the work was dangerous.xxiii Thus, the PQ government introduced a considerable amount of legislation to support workers.

As mentioned above, Quebec was the first province to legislate against psychological harassment in North America. The emphasis on dignity in the employment relationship is more common in civil law systems than in common law systems, and this can be seen in the Quebec Civil Code, where respect for dignity is inscribed in the law. This legislation does not require proof that harassment has affected the employee’s health; rather, a harmful work environment is seen to necessarily affect employees’ psychological integrity.xxiv

The dignity paradigm reflects the strong links between the French speaking Quebec and France. The French psychologist Marie-France Hirigoyen’s 1998 book, Le harcèlement moral, la violence perverse au quotidien, which introduced France to the

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xxiii Personal interview with P. Lefebvre, conseiller syndical, Centrale des syndicats du Québec, 5 October 2010.

xxiv Ibid.
concept of moral harassment; was also a bestselling book in Quebec. The enactment of the French Law on Social Modernisation in 2002 also had an impact on Quebec, reflecting the continual traditional impact of French Law on Quebec. The concept of human dignity also appealed to the French-speaking Canadians, who felt like second-class citizens in Canada. The basis for the surge of Quebec can be found in the Quiet Revolution of the 1960s, when the Liberal provincial government elected in June 1960 began challenging the traditional values of Quebec. For example, the provincial government took over the areas of education and health from the Roman Catholic Church. The period also had a dramatic growth in Quebec nationalism, which accompanied both social and economic development. Quebec portrayed itself as having ‘social and welfare policies of which any modern society can be proud.’ The calls for Quebec sovereignty culminated in the election of the separatist PQ in 1976. The PQ in 1980 and 1995 organised unsuccessful referendums in Quebec on the question of independence. However, these failed attempts did not prevent French Canadians from exploring other means of recognising the importance of human dignity.

The examination of the workplace issue of psychological harassment began in Quebec in 1999. Diane Lemieux, Minister of Labour, formed an interdepartmental committee to investigate this problem and to make recommendations to the government to reduce

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psychological harassment at work. During the same year, the Centrale des syndicats du Québec (CSQ), the federation of Quebec public sector unions, actively supported the fight against psychological harassment. Community groups and unions such as the CSQ made recommendations to Labour Minister Jean Rochon in October 2001 and urged employers to prepare effective mechanisms for prevention and redress in order to counter psychological harassment in the workplace. The CSQ also supported Quebec academic, Professor Angelo Soares, to conduct psychological harassment research on CSQ members. Soares’ findings showed that 63 per cent of those who have been bullied for two years or more, and 29 per cent have been bullied for over five years. The surprising severity of bullying at work of CSQ members was one of the factors leading to the CSQ support of anti–psychological harassment reform in Quebec. Hence, unions did play a role in supporting such reform in this province.

Non-traditional actors have played a key role in campaigns against psychological harassment in Quebec. The community group called Rank and File (known in French as Au bas de l’échelle, ABE) was the driving force behind the legislation. The political voice and lobbying was mostly from the ABE. This organisation was founded in 1975 by three social workers and started as a project initiated by the Centre Local de Services Communautaires (CLSC, or Local Community Service Centre) network. Fifty per cent of the funding for this project came from the United Way of Canada, which is a charity organisation that aims ‘to improve lives and build

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community by engaging individuals and mobilising collective action.331 The CLSC is an autonomous organisation operated by a voluntary board of directors chosen from the community it serves. In Quebec, CLSC has free community health care clinics which are run by the provincial government. The CLSC network offers a wide variety of services, including psychological and health services. Around 5 per cent of ABE’s funding comes from unions. ABE also receives funding from different ministries, such as the Ministry of Labour and Ministry of Justice. The objective of the ABE is to reach the people at the bottom of the social hierarchy, and it is a well-known community group. ABE also specialises in labour law for nonunionised workers and acts as an advocate for workers in relation to the issue of raising the minimum wage above the poverty level.332

ABE has used strategies to raise awareness about the issue of psychological harassment. Marie-Josée Dupuis, the responsable des services d’information juridique (person in charge of legal information) of ABE, volunteered in this organisation from 2002 until 2008. The large-scale reform of the anti-bullying law occurred in year 2002. Dupuis has a bachelor’s degree in business, a master’s in industrial relations (IR) and had started pursuing a PhD in IR. She worked on this last degree for four years, but ultimately decided to work for the ABE because she is more interested in the application of industrial law. Dupuis has been involved in the anti-bullying reform in ABE. One ABE strategy was to hire Françoise David as a spokesperson for reform. David had a large network of contacts in Quebec and a high media profile. She was formerly the president of the Fédération des Femmes du

332 Personal interview with Marie-Josée Dupuis, responsable des services d'information juridique of Au bas de l'échelle, 5 October 2010.
Québec, the major feminist organisation in Quebec. David went on an extensive road trip with ABE across the province to ask for support from unions and local groups, explaining the problems related to labour standard reforms, including the issue of psychological harassment. ABE also lobbied policymakers, including meeting with the Quebec Commission of Labour, and held local conferences that sent the message to the regions that psychological harassment is an important problem.xxxiii

ABE also had important allies in the PQ Government. The health minister, Jean Rochon, was well known and respected by his colleagues, holding qualifications both as a lawyer and a medical doctor. Rochon had the experience to explain to the industry why there was the need for reform.xxxiv The campaign also gained the eventual support of Premier Bernard Landry, the PQ leader.xxxv

Psychological harassment was part of a broad-based package of reforms to the Labour Standard Act that aimed to protect low-income workers. Although the goal of this initiative was to provide better protection for employees, employer lobby groups such as the Canadian Federation of Independent Business (CFIB) assessed the impact of this reform for small and medium-sized enterprises and claimed that this policy ‘could bring investment to a halt.’xxxvi As further stated by the CFIB’s vice-president, Richard Fahey, ‘You have to consider that 97% of Quebec companies employ fewer than 50 people. Changes to the labour standards that affect these companies head on will not only increase operating costs, but also add to their administrative

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xxxiii Ibid.
xxxiv Ibid.
In other words, the CFIB did not support the anti–psychological harassment reform, since this could add overhead costs to the business, and as a result of reform, small and medium-sized businesses would become less competitive. Like the CFIB, the Small Business Council also opposed reform. Before the enactment of the initial legislation against psychological harassment in Quebec, Ann Lebel, a leader of the Small Business Council—an association representing 300 companies—voiced her opposition to it, claiming that ‘it was too vague in its definition of what constitutes harassment’ and ‘it [put] too much burden on employers to police behaviour in their workplaces.’

Hence, employer groups in Quebec did not support the new legislation against psychological harassment in the Labour Standards Act.

Despite this opposition, on 1 June 2004, Quebec became the first North American jurisdiction to introduce provisions against bullying through the Labour Standards Act. Quebec passed a law mandating that employers take reasonable action to prevent and stop psychological harassment; this law further provided that ‘a single serious incident of such behaviour’ can constitute bullying. In terms of Quebec’s anti–psychological harassment legislation, it is modelled after moral harassment laws in France, Sweden and Belgium; but was particularly inspired by French Law on Social Modernisation.

This European paradigm is unique to Quebec; there are no other Canadian provinces with similar legislation. Overall non-traditional actors led the traditional actors to become promoters of social change in the case of Quebec.

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xxxix Quebec Labour Standards Act, Section 81.18 (R.S.Q., chapter N-1.1).


xli Harding, ‘Taking Aim at Bullies.’
Saskatchewan

Saskatchewan was another province to tackle workplace bullying. It was the first province in North America to legislate against psychological harassment using the OHS paradigm. Saskatchewan’s labourist NDP and its predecessor, the CCF, have had a long history as frontrunners of social reform in Canada. Under the leadership of Tommy Douglas, the NDP/CCF created 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 OHS legislation in 1972. In 1993, the NDP government again led the continent by introducing anti-harassment protections into its OHS legislation; it remains at the forefront of this important issue. In 2007, Saskatchewan became the first English-speaking province in Canada to address the issue of workplace bullying through its OHS Act.

In terms of the labour movement, the Saskatchewan Federation of Labour (SFL) is as progressive and as forward looking as any other federation of labour in Canada. As stated by Larry Hubich, President of Saskatchewan Federation of Labour, the SFL has a strong history of advocating for workers. The SFL is a peak union organisation with 37 affiliated unions. Among its political successes include the 1972 OHS Act, which includes three rights: the right to participate, the right to know and the right to refuse. Hence, Saskatchewan was at the forefront of workers’ rights and the SFL has been instrumental in supporting the anti-bullying legislative change. The trade

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xliii Saskatchewan New Democrats website; Canadian Plains Research Centre, University of Regina website.
xliv Government of Saskatchewan, ‘Province Strengthens Workplace Protection for Saskatchewan People.’
xlv Personal interview with L. Hubich, president of the Saskatchewan Federation of Labour, 14 September 2010.
unions and the NDP were to play a crucial role in introducing innovative anti-bullying legislation in Saskatchewan.

In addition to the SFL, Canadian Union of Public Employees (CUPE) in Saskatchewan also contributed to the legislative change related to anti-bullying. CUPE is the largest union in Saskatchewan, representing over 29,000 members, and has diverse membership which includes sectors such as health care, municipalities, universities and community-based organisations.\textsuperscript{xlvi} CUPE Saskatchewan was active in lobbying the government for the alteration of the OHS Act to include protection against psychological harassment. As stated by Jacquie Griffith, CUPE education officer and the former co-chair of the OHS Committee:

\begin{quote}
the issue of psychological harassment was always on CUPE’s agenda but the union got more serious after Quebec made it possible to have legislation against psychological harassment in 2004. We realised that our province could have similar protection against psychological harassment, but we wanted to ensure the protection of psychological harassment was tied to the OHS Act instead of the Labour Standard Act like Quebec, since it is more clear-cut to go through the health and safety legislation.\textsuperscript{xlvii}
\end{quote}

In Saskatchewan, there were major reforms in 2007. The 1993 OHS legislation definition of workplace harassment was limited to objectionable conduct directed at a worker that posed a threat to his or her health and safety and which was made on the basis of certain prohibited grounds such as race, religion and sex. As of 1 October 2007, due to the passage of the OHS (Harassment Prevention) Amendment Act, the

\textsuperscript{xlvii} Personal interview with J. Griffith, education officer, Saskatchewan Canadian Union of Public Employees, 13 September, 2010, Regina, Saskatchewan, Canada.
statutory definition of harassment in Saskatchewan was expanded to include personal harassment in the workplace, such as abuse of power and bullying, under amendments to the OHS Act.\textsuperscript{xlviii} In addition to broadening the definition of harassment, a special adjudicator was also created to independently resolve harassment appeals.

Saskatchewan’s OHS legislation is distinctive, since this anti-harassment legislation incorporates protection on grounds such as age, race and sexual orientation. Discrimination on these grounds is prohibited in the OHS Act and the Saskatchewan Human Rights Code,\textsuperscript{xlix} which is based on antidiscrimination principles.\textsuperscript{l} This hybrid approach combines both antidiscrimination and OHS.

During the debates over the 2007 legislation, Nancy Heppner, the Opposition Saskatchewan Party Member of the Legislative Assembly (MLA), supported the legislation. However, she claimed that ‘The NDP’s Bill today is more smoke and mirrors to divert attention from their appalling record on enforcement of sexual harassment legislation\textsuperscript{li} and that the bill ‘is not so much about protecting workers but about protecting the NDP from the continued backlash that they’re facing because of […] Murdoch Carriere.’\textsuperscript{lii} Murdoch Carriere, a former public service manager, was convicted of assaulting his former employees at Saskatchewan’s forest protection office in Prince Albert in 2003, which is the third largest town in the province. According to the Canadian media, the harassment case became ‘a political hot potato’ after the NDP government agreed to an out-of-court settlement where Carriere would

\textsuperscript{xlviii} ‘Saskatchewan’s Workplace Bullying Ban Now in Effect,’ \textit{CBC News}, 1 October 2007.
\textsuperscript{l} Gouveia, ‘From Laissez-Faire to Fair Play,’ p. 147–149.
\textsuperscript{lii} \textit{Ibid.}, p. 1396.
be paid $275,000 several years after he was fired. Pat Atkinson, the minister responsible for the Public Service Commission (the central human resource agency for the Government of Saskatchewan that provides human resource services to the public service) pointed out that while Carriere’s case did not appear to have anything to do with bullying at work, it was important that harassment regulations be improved, since personal harassment is unacceptable in the workplace.

Despite such criticism, the NDP persisted with its reforms. Lorne Calvert was the NDP premier of Saskatchewan from February 2001 to November 2007, and his government had supported progressive labour legislation. Two strong supporters of anti-bullying legislation in the NDP government were Pat Atkinson and Labour Minister David Forbes. Pat Atkinson was the first strong advocate for the anti-bullying reform. Atkinson has two degrees—a bachelor of arts and a bachelor of science—and has served the community as a teacher and community organiser. As a politician, she is motivated by a desire to mobilise people and initiate change.

Atkinson was a principal and teacher-therapist with the Radius Community Education Center in Saskatoon prior to her election to the Legislative Assembly in 1986. She was appointed as a Minister responsible for the Public Service Commission in 2003. Atkinson became involved in the Carriere case due to the payout made by the Ministry of Environment, and therefore dealt with this case after the fact. As she explained, the issue was difficult to articulate to the public, as under the Public

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lii Saskatchewan’s Workplace Bullying Ban Now in Effect.’
liii ‘Saskatchewan Government Pushing Law to Crack Down on Workplace Bullies,’ Canadian Press in Solidarity, Fall 2007, p. 16.
lix Government of Saskatchewan website.
Service Commission Act, neither the premier nor the deputy minister has the authority to dismiss a public servant. lviii

The payout of $275,000 in the Carriere case, which Government could do little about under the Public Service Act, created a huge public outcry. Carriere had been illegitimately harassing people and had appeared in criminal court. He was not found guilty of harassment, and it became clear to Atkinson that there was bullying involved in this case. Particularly, Carriere bullied co-workers by claiming that he had friends in high places. It appeared to Atkinson that Carriere used his position of power to intimidate and bully employees. lix

Another strong NDP supporter of anti-bullying reform was David Forbes. Before entering politics, Forbes was an elementary school teacher, and was a principal of a school in northern Saskatchewan. He spent 18 years teaching, and was very involved in community work in the early 1980s. Forbes received his education degree from the University of Regina, as well as a master’s of education and administration from the University of Saskatchewan. With his involvement in the community and strong history of social activism, he saw it as a natural progression to become involved in the politics. He was elected in 2001 and served as the Minister of Environment from 2003 to 2006. He was then appointed Minister of Labour in February 2006 in the NDP government. lx

The issue of workplace bullying was very near and dear to Forbes. Although he was never bullied by other teachers, he witnessed many incidents of bullying in the

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lviii Personal interview with P. Atkinson, minister responsible for the Public Service Commission, Saskatchewan, 13 September 2010.
lix Ibid.
lx Personal interview with D. Forbes, labour minister, Saskatchewan, 13 September 2010.
workplace. He knew from experience that it was a real issue, particularly in the public sector. As described by Forbes, 2007 was a stormy time in Saskatchewan. The amendment of the OHS Act moved very quickly, and there was no consultation with unions, community groups or employers’ groups. He believed that if there had been such consultation, the legislation may not even have passed due to employer opposition. Forbes’s view was that it was necessary to ‘do something very positive work to resolve the issues raised by the Carriere case with a long term solution.’ Hence, both David Forbes and Pat Atkinson were motivated to push forward the legislative initiative to assist workers and eliminate harassment/bullying in the workplace.

Despite the positive implications of this legislation for dealing with workplace bullying, Marilyn Braun-Pollon, provincial director of the CFIB questioned whether the new law was needed. Braun-Pollon agreed that harassment should not be tolerated in the workplace. However, her view was that the Human Rights Charter covered and dealt with many human rights issues; thus, adding another legislation to protect against personal harassment was rather confusing, and as a result, the organisation did not support further anti-bullying initiatives. She claimed that the bill ‘seems like a knee jerk reaction’ and noted that there was no advance consultation when it came to the changes being proposed. Braun-Pollon stated that business ‘would rather have government review existing pieces of legislation to ensure they adequately address harassment.’ Similar to the CFIB’s view, the Saskatchewan Chamber of Commerce stated that the existing harassment legislation under the OHS Act was enough to protect employees in the workplace. The SFL, in contrast, supported the

\[\text{i}x\] Ibid.
\[\text{iii}\] Ibid.
NDP amendment and saw the legislation as long overdue.\textsuperscript{lxiv} Thus, although some of the reforms that took place have been met with opposition, Saskatchewan remains at the forefront on this important issue due to its strong historical development of social policy and its progressive political party.

The major difference between Quebec and Saskatchewan in the anti-bullying regulations that were adopted is in their legislative framework. As discussed earlier, the protection of psychological harassment in Quebec was adopted under the Labour Standard Act, whereas Saskatchewan used the OHS model. As explained by Atkinson and Forbes, the OHS model was found to be more appropriate in Saskatchewan to deal with the issue of psychological harassment, since Labour Standards Acts tends to deal with fairness issues and benefits such as statutory holidays, holiday pay and the basic concerning pay. In contrast, the OHS model deals with health and safety issues. In Atkinson and Forbes’ view, it is more appropriate for the issue of workplace bullying to fall under the OHS Act, which was ground breaking, since it expanded the scope of protection from physical hazards to psychological harassment.\textsuperscript{lxv}

Despite the difference in the chosen legislative model, there are similarities between Quebec and Saskatchewan in the measures these provinces have adopted. As noted by Larry Hubich, ‘when people look at the progressive and innovative legislation in the area of workers’ rights in Canada, they often look to Quebec and Saskatchewan.’\textsuperscript{lxvi} The province of Saskatchewan has a long tradition of social democratic governments compared to the rest of Canada. Likewise, Quebec has a social democratic orientation; with the PQ supporting leftist politics, progressive

\textsuperscript{lxiv} Ibid.
\textsuperscript{lxv} Personal interview with P. Atkinson; personal interview with D. Forbes.
\textsuperscript{lxvi} Personal interview with L. Hubich.
rights, trade unions and health and safety. There are a lot of similarities between Quebec’s advancements and workers’ right in Saskatchewan, so it was a natural progression for these two provinces to lead the rest of Canada in initiating anti-bullying protection.\textsuperscript{lxvii}

**Federal Measures**

Subsequent to measures put in place by the provinces of Quebec and Saskatchewan, federal regulation was enacted in May 2008 in the form of the Violence Prevention in the Workplace Regulation, Part XX of the Canada Occupational Health and Safety Regulations (COHS), pursuant to the Canada Labour Code. The legislative changes in the federal system in Canada responded to the workplace bullying issue more slowly than was evidenced at the provincial level, such as in Quebec and Saskatchewan. Unions such as the Canadian Labour Congress (CLC), the Canadian Auto Workers (CAW), the CUPE, the Public Service Alliance of Canada (PSAC), and the Canadian Union of Postal Workers (CUPW) were involved in bringing about legislative change at the federal level.

Both public- and private-sector unions in Canada are actively involved in preventing workplace violence. These unions promoted employer awareness that violence is an occupational hazard and put pressure on the government to enact the legislation necessary to address this issue and set up provisions in collective bargaining.\textsuperscript{lxviii} For instance, the CLC, the peak union body in Canada, as well as its affiliated unions, took a proactive role in initiating legislative campaigns. The CLC is an umbrella organisation of unions representing about 2.3 million unionised workers in Canada.

\textsuperscript{lxvii} Ibid.

Andrea Peart, national representative for health and safety at the CLC, commented that the amendment of the Canadian OHS regulations can be attributed to the consistent effort of the affiliated public and private unions. Peart stated:

The CLC took the lead in doing the legislative work, thereby reflecting the concerns of its unions back to the government, whereas the affiliated unions such as the Public Service Alliance of Canada and the Canadian Union of Public Employees spearheaded the antiviolence initiatives and were dedicated to the OHS issues. The Canadian Auto Workers, also contributed significantly to the change process. The ongoing push from the unions and the involvement of the CLC Women’s Committee increased the priority of dealing with violence issues in Canada at the government level.\textsuperscript{lxix}

In terms of the private sector’s union contribution to the development of federal regulations, CAW became involved in 1992. The CAW is the largest private-sector union in Canada, with over 200,000 members from coast to coast. It was founded in 1985, and has a diverse membership that works in different economic sectors, including aerospace, mining, fishing, auto and specialty vehicle assembly, auto parts, hotels, airlines, rail, education, hospitality, retail, road transportation, health care, manufacturing, shipbuilding and others.\textsuperscript{lxx} Cathy Walker had been a national union representative responsible for health, safety and environment since 1975. She became the national health and safety director of CAW in 1992 and was involved in drafting of amendments to the Canada Labour Code, Part II which provided for the development of a workplace violence prevention regulation. Walker commented that:

\textsuperscript{lxix} Personal interview with A. Peart, national health and safety representative of the Canadian Labour Congress, 27 September 2010.
Around the late 1980s and 1990s, there were many workplace violence incidents such as when workers were assaulted or murdered on shift. At the same time, though in Canada at that time we didn’t use the term ‘bullying’, the issue of workplace violence was also about unfair treatment by supervisors. Our union was among the very first private-sector unions to have a campaign for anti-harassment policies in the workplace in the late 1980s and the early 1990s. This happened after we broke away from the American union (the United Auto Workers union) in 1985 and was reflective of the increasing number of women members of the union. Although at first we tended not to use the term ‘bullying’, we certainly included all aspects of harassment — physical intimidation, emotional harm and certainly bullying. By the time the OC Transpo case came to light in 1999, involving workplace violence that turned into tragedy, we had already started working on federal regulation.

The government acted on the unions’ ongoing push, as it became increasingly difficult for the employers and the federal government to deny the existence of violence in the workplace. An act to amend the Canada Labour Code, Part II with respect of occupational health and safety became law in 2000.\textsuperscript{lxixi}

Hence, CAW was one of the early private sector unions involved in the development of federal regulation against violence in the workplace.\textsuperscript{lxixii}

Unions took the initiative in conducting surveys on the workplace violence issue. Among other unions, CUPE was very active in pursuing legislative change and using collective agreements as solutions to violence at work. With 600,000 members,

\textsuperscript{lxixi} Phone interview with C. Walker, national health and safety director of the Canadian Auto Workers, 13 October 2010.
\textsuperscript{lxixii} Ibid.
CUPE is currently the largest union representing employees in the provincial public sector. Anthony Pizzino, who joined CUPE in 1985 and is currently national director of research, described unions as ‘the best pressure groups in Canada.’ Pizzino claimed that CUPE has been at the forefront of the violence prevention issue since 1989–1990, stating that:

We [CUPE] were involved in dealing with workplace violence in Canada before the 2008 federal regulation. For instance, ‘I was the senior officer of health and safety Department in CUPE in 1993, which was involved in conducting the most comprehensive survey among the Canadian trade unions on the prevalence of violence at work, laying the foundation for a federal legislative campaign. The survey showed that we mistakenly thought that our members were working in a very safe work environment, but indeed this was not the case and violence was a serious issue that caused damages to the physical and mental well-being of workers. In the same year, PSAC conducted a similar survey that captured the statistics of physical and verbal aggression within the organisation.’

These surveys pointed to the severity of violence and aggression in the workplace, which was a serious health and safety issue on the job.

The CUPE and PSAC surveys had a direct impact on federal government policy. The OHS division of Human Resources Development Canada (now known as Human Resources and Skills Development Canada, HRSDC) produced a discussion report in

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June 1995 on ‘Violence Prevention in the Workplace in the Federal Jurisdiction’
following these surveys. The aim of the report was to review Part II of the Canada
Labour Code and it proposed that the Code be amended to include a violence
prevention program under the employer’s control. It also recommended the formation
of a working group that included management representatives, labour representatives,
government representatives and a facilitator provided by HRSDC’s Labour Branch to
develop a violence prevention program under the employer’s control. This
recommendation for a tripartite review was not to be acted upon until 1999 following
a tragic event in Ottawa, despite continued union calls for legislative reform.

Pierre Lebrun, a former Ottawa bus driver, brought a gun to the workplace on 6 April
1999 and killed four colleagues before taking his own life. On the surface, this
looked like violence at work, but the underlying issue had to do with workplace
bullying. Although there was ongoing bullying in the workplace in this case prior to
Lebrun’s violent actions, his employers, OC Transpo, turned a blind eye to the
workplace culture. The coroner’s inquest after the shootings concluded that the
OC Transpo incident occurred due to painful teasing that Lebrun had suffered from
his co-workers concerning his speech impediment, as well as the lack of management
support at work to address the issue. These aspects drove Lebrun to commit this
tragic act. The coroner also issued a recommendation on 30 April 2000, which called

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lxxiv Personal interview with N. Baker, manager of the Occupational Health and Safety Division,
Human Resources and Skills Development Canada, 8 October 2010.
Human Resources Development Canada, June 1995.
lxxvi Personal interview with J. Bennie, national health and safety officer, Public Service Alliance
Canada, 1 October 2010.
for federal and provincial legislation to set up mandatory zero-tolerance workplace violence and harassment policies.\textsuperscript{lxxvii}

With the OC Transpo case and unions’ ongoing demands for action the Canadian federal Liberal government finally established a tripartite working group in 1999 to develop violence prevention regulations; this included employer, employee and government representatives that brought in different actors’ viewpoints on specific issues with the job of examining alternatives, comprising both regulatory and non-regulatory options to prevent incidents involving bullying and violence at work.\textsuperscript{lxxviii}

Despite the taskforce and continued union lobbying, the federal regulation was not changed until 2008. There was a temporal gap between the initial discussion of the Violence Prevention Regulations and the eventual legislative change that occurred in terms of the amendment to the Canada Labour Code Part II (Canada’s federal OHS legislation) in 2008. The delay in this federal regulation may be attributed to three factors: environmental components, the policy development process and a series of workplace tragedies.

The environmental factors include the political environment and the priorities related to the issue in the legislative agenda, which deferred the amendment of the Violence Prevention Regulation. The change in government also played a role in the legislative development process. The Liberal Party was in power in 1999, while the Conservative government came into power in 2006; however, the Conservative Party held a minority government. Even in the 2008 election, although they attained a


\textsuperscript{lxxviii} \textit{Ibid.}
larger minority, the Conservatives remained a minority government. With this
government make up, the Conservatives were more likely to try to appease the BQ
and NDP. Denis St-Jean is a PSAC national health and safety officer who has been
an OHS activist for over 20 years, as well as being involved as an Employee
Representatives in the Working Group for the Violence Prevention Regulation in
1999. In relation to the political climate at the time, he commented: ‘The Bloc
Québecois and the NDP were very supportive of the proposed federal regulations.’
It would have been costly for the Conservatives to contravene the will of the BQ and
NDP by refusing to support the new regulations.

Another environmental factor that caused delay in the amendment had to do with the
priority of the violence issue in the legislative agenda. As stated by St-Jean, the delay
of the regulation can be explained as follows:

The gap between 2004 and 2008 was unusually long. We were told that it was
mainly due to the low priority of any work involving OHS regulations within
the Justice Department. You have to keep in mind that the most pressing
priority back then within the federal government was the work on the long set
of security related legislations and regulations following the September 11,
2001 terrorist attacks.

Hence, the political environment and the country’s security issues delayed the
amendment of Canada’s federal OHS legislation.

D. Patty, ‘Canadian Election Returns Conservative Minority Government,’ Guardian, 15 October
2008.
Correspondence with D. St-Jean, National Health and Safety Officer, Public Service Alliance of
Canada, 25 May 2012.
Correspondence with D. St-Jean, national health and safety officer, Public Service Alliance of
Canada, 24 May 2012.
In addition to the environmental factors, the process of developing federal jurisdictions took time. The HRSDC was represented in the Working Group of Violence Prevention Program Regulation in 1999. The HRSDC’s Labour Program develops OHS regulations for industries in Canadian federal jurisdictions. These affect the entire Canadian economy, which involves federally regulated business and industries such as most federal Crown corporations, banks and railway and road and air transportation. These businesses represent 10 per cent of the Canadian economy. From a policy development perspective, Nancy Baker, former manager of the OHS Division of the HRSDC Labour Program, commented that ‘the processes of development, consultation and drafting of the regulation in English and French could all take a long time.’

The repeated workplace tragedies also put pressure on government to implement protection against workplace violence. One fatal event was the Lori Dupont murder in Windsor, Ontario on November 2005. This led to a coroner’s inquest in December 2007, which is examined in the next section. In Montreal, another shooting occurred at Dawson College in September 2006; one woman was shot dead and 19 people were injured. This series of workplace tragedies made clear the growing problem of workplace violence and the need for federal regulations.

In terms of the federal regulation, it includes requirements for employers to develop a workplace violence prevention policy, conduct hazard identification and assessment, control hazards, ensure the training of all employees who are exposed to or at risk of


workplace violence and investigate all acts of violence. The regulation covers many areas essential in the prevention of and protection against violence in the workplace.\textsuperscript{lxxxiv}

Gayle Bossenberry, first national vice-president and Serge Champoux, national health and safety representative of CUPW, both commented that:

> Although the regulation is very comprehensive, the real challenge lies in its implementation. In our experience, employers do not generally comply with this regulation; for instance, if there are workplace violence incidents, employers tend to refer back to us [CUPW] and ask us to deal with the issue. In fact, it is the responsibility of the employer to take ownership by dedicating sufficient resources to workplace violence prevention and following the procedures in the regulations to resolve issues directly with the employees.\textsuperscript{lxxxv}

Hence, from the union viewpoint the federal regulation falls short in the area of enforcement.

While employers did not oppose the regulation, they wanted to ensure that it did not interfere in the management of their organisations. Some of the employer’s representatives on the working group for the Regulatory Review of the COHS Regulations in 1999 included the Canadian Broadcasting Corporation, Treasury Board Secretariat, Bank of Montreal, Canadian Pacific Railway, Canadian Bankers Association and Canada Post Corporation. Normand Cote was an employer representative in the working group for the Regulatory Review. He was then the senior manager, employee industrial relations with Bank of Montreal at the time and

\textsuperscript{lxxxiv} Ibid.
\textsuperscript{lxxxv} Personal interview with G. Bossenberry, first national vice-president and S. Champoux, national health and safety representative of the Canadian Union of Postal Workers, 30 September 2010.
is currently the director of employee relations at the Bank of Montreal Financial Group. Cote, like other employers, wanted to ensure that the legislation was flexible enough to adopt. Cote stated that:

We did not oppose the regulation, but we wanted to see a regulation that was adaptable to different workplaces and did not have a one size fits all approach. We as employer groups have the view that we are a community, and while we have corporate social responsibilities, we also want to sustain our businesses, since we represent both large organisations and smaller firms with as few as three employees. We needed regulations that were adaptable and with which we would realistically be able to comply. The proposed regulation could not be too prescriptive and restrictive, as this could be too costly for us. As a result, we needed a regulation that would be flexible for many different types of business.\textsuperscript{lxxxvi}

Hence, unions in the federal level helped to push for violence prevention regulation, whereas employers groups wanted to loosen the legislation and make it less restrictive.

As mentioned above, it took a long time for legislative change to occur at the federal level as a reaction to the issue of workplace violence/harassment. Although discussion on the issue began in the early 1990s, the Violence Prevention in the Workplace Regulation, Part XX of the COHS Regulation, pursuant to the Canada Labour Code was not enacted until 2008. At the federal level, the establishment of antiviolence regulations was initiated by unions; in Quebec, on the other hand, community groups played a key role when it came to pushing anti-psychological

\textsuperscript{lxxxvi} Phone interview with N. Cote, employer representative, Violence Prevention Program Regulation Working Group, 30 September 2010.
harassment legislation forward and in Saskatchewan’s case, it was the Labour
Minister that initiated the policy change process. The next sections explore the
legislative developments in the province of Ontario.

**Ontario**

Ontario uses an OHS framework to address the issue of workplace violence and
harassment, in a manner similar to Saskatchewan. On 20 April 2009, Ontario
Minister of Labour Peter Fonseca introduced Bill 168 to amend the OHS Act with
respect to violence and harassment in the workplace, as well as other matters. The
Bill was passed and came into force on 15 June 2010. This act addresses both
violence and harassment in the workplace; the latter being defined broadly in section
1 as ‘engaging in a course of vexatious comment or conduct against a worker in a
workplace that is known or ought reasonably to be known to be unwelcome.’

One significant innovation in the Ontario legislation was the recognition that domestic
violence in home could spill over into the workplace. Section 32.04 of the Ontario
legislation states that ‘If an employer becomes aware, or ought reasonably to be
aware, that domestic violence that would expose a worker to physical injury may
occur in the workplace, the employer shall take every precaution reasonable in the
circumstances for the protection of the worker.’ Previously, there was no
requirement in the Ontario OHS Act that specifically addressed workplace domestic
violence or harassment, and these issues were covered under the general duty clause

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lxxxvii K. Lippel, ‘The Law of Workplace Bullying: An International Overview,’ *Comparative Labor
lxxxviii Ibid.
of the OHS Act, which required employers to protect workers from the hazard of workplace violence\textsuperscript{xxxix}.

The amendment of the Ontario OHS Act to include definitions of workplace violence and workplace harassment was influenced by the highly publicised Theresa Vince and Lori Dupont tragedies. On June 2, 1996, Theresa Vince was murdered by her supervisor, who then killed himself. This brutal act occurred even though she had made complaints to her employer, Sears Canada, a retailer that operates in all provinces and territories across the country, a year and a half previously. This case was considered to be an example of sexual harassment. In the spring of 1997, the Conservative government conducted a provincial review of the OHS Act through the Ministry of Labour. One of the questions raised in the review was whether sexual harassment should be included in the act, yet there was no legislative change after the review was completed. The inquest into the death of Theresa Vince also emphasised the potential role of the OHS Act in preventing similar cases in the future. Four private member bills requesting change to the act as a result of the Vince murder were introduced between 2001 and 2004, but they all died on the order paper. A major problem for reform was that the Conservative government, which was in power from 1996 to 2003, was not sympathetic to women’s issues\textsuperscript{xc}.

In addition to the Theresa Vince case, another significant murder case involving workplace harassment was the November 2005 case of Lori Dupont. Her former partner murdered her at the Hotel-Dieu Grace Hospital before killing himself. As a result of the inquest into the death of Lori Dupont, the coroner recommended to the


Ministry of Labour that the occurrence of domestic violence in the workplace should be included in the OHS legislation. The inquest also recommended that any review should also look into workplace safety from an emotional or psychological perspective, not just a physical one. Lori Dupont’s mother, Barbara Dupont, worked with others to form the Inquest Action Group, which pushed the jury recommendations into the public eye, and lobbied the Provincial Parliament for legislative change to the OHS Act. The Liberal Party, which won the Ontario election of October 2003, was more sympathetic to women’s issues than its Conservative predecessors and eventually reformed the OHS legislation in 2009.xci

The CAW was another major supporter of anti-bullying reform in the amendment of the OHS Act in Ontario. As described by Sari Sairanen, national health and safety director for the CAW, ‘the CAW is a social union and has always been pushing a social agenda, and we have a social consciousness. We not only look at the benefits of our members but we also contribute to our society at large.’xcii As explained by another CAW colleague, Patricia Cunningham, the CAW national employment equity coordinator for Chrysler Canada, ‘the CAW is committed to taking the social issues and giving back to the community, which was always their mandate.’xciii For instance, the CAW Social Justice Fund assists humanitarian projects within Canada and internationally to elevate working conditions. The CAW is helping to build a training centre in Mozambique, and assisting the citizens of Mozambique in removing landmines and improve their living conditions. In addition, over the years, the CAW

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xcii Phone interview with S. Sairanen, national health and safety director of the Canadian Auto Workers, 9 September 2010.  
xciii Phone interview with P. Cunningham, national employment equity coordinator for Chrysler Canada, 28 September 2010.
has been at the forefront of the campaign to end workplace harassment, and has an anti-harassment training procedure and policy in place. x civ

The CAW lobbied the Liberal Provincial Government in the lead up to the amendment of the Ontario OHS Act. Sairanen prepared a report to the Ontario Ministry of Labour in regards to amending the legislation. There was other CAW lobbying for change. Sandra Dominato, an activist from CAW Local 444, sent a letter to Brad Duguid Liberal Minister of Labour, on 17 December 2007, recommending that the amendments to the OHS Act include ‘safety from emotional or psychological harm, rather than merely physical harm.’ x cv Dominato also asked the Minister to develop educational materials that could ‘provide support to all workplaces in the way of training for all employees and employers about the real dangers of workplace violence.’ x c vi

The CAW, despite the amendment of the legislation, believed that the Liberal Government did not go far enough. Sairanen noted that: ‘We are pleased the revolutionary concept of domestic violence in the workplace was included in the amendment of Ontario OHS Act. However, this is not a complete victory since we lobbied the government to include workplace violence, workplace harassment, and workplace bullying concepts in the amendment, but the government only included violence and harassment.’ x cv ii

There were also criticisms from the opposition Progressive Conservatives. John O’Toole, a Progressive Conservative member in the Ontario Legislature was

xciv Phone interview with S. Sairanen.
x cv Correspondence from Sandra Dominato, women’s activist, Local 444 of Canadian Auto Workers to the Honourable Brad Duguid, Minister of Labour, 11 December 2007.
x cvi Ibid.
x cv ii Phone interview with S. Sairanen.
concerned with the language of the Act, which implied that the employer ‘ought to have known’ about the threat to the employee. There is a transfer of liability in the language, as the legislation implies that employers have an assumed responsibility to know that harassers’ actions are inappropriate. Randy Hillier, a Progressive Conservative MPP, supported the intentions behind the bill. However, Hillier pointed out that the Liberal government delegated its responsibility to employers. During the debates over the legislation in 2009, Hillier further elaborated that the Liberal Party, ‘[i]nstead of giving the law over to police officers and judges, [was] making individual business owners responsible for the private lives of their employees.’ According to Hillier, it was supposed to be the police and courts’ responsibility to help protect citizens, but this bill changed the dynamic of that relationship. Thus, the Progressive Conservative politicians agreed to the right to refuse unsafe work but had concerns regarding the language of the legislation and the delegation of responsibilities in the Bill.

In response to the stakeholders’ comments on the Legislature’s failure to include the concept of bullying in the amended legislation, Brian Hanulik and Yvette Shirtliff, policy advisors at the Ontario Ministry of Labour, stated that their policy unit had researched other potential regulatory frameworks from provinces such as British Columbia, Saskatchewan and Quebec. They said that ‘[a]fter widely consulting with the public and consideration of 200 detailed submissions from women’s organisations, employer groups, labour unions, individuals, and other ministries, and reviewing other Canadian jurisdictions’ legislative or regulatory requirements, the

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  c Ibid.
amended legislation adopted a definition of workplace harassment that is broad enough to include “bullying”. In addition, considering our current Ontario OHS framework, we concluded that specific requirements regarding domestic violence fit well with the OHS Act, and were consistent with the existing OHS framework focusing which focuses on physical hazards.\textsuperscript{ci} The enforcement of the OHS Act is the responsibility of health and safety inspectors. Although the inspectors would not specialise in enforcing the specific part of the legislation addressing workplace harassment per se, they would receive training in amendments to the OHS Act.\textsuperscript{cii}

Non-traditional actors also played an important role in lobbying the government to change the legislation in Ontario. In response to the Teresa Vince and Lori Dupont tragedies, community pressure groups became actively involved in pushing for OHS legislative change. The women’s movement’s response to the issue of workplace bullying has been fragmented reflecting the wide variety of women’s groups that advocated change without a co-ordinated voice and definite leadership. These groups generally had limited resources due to a lack of government funding. These groups included the Chatham-Kent Sexual Assault Crisis Centre (CKSACC), the Ontario Coalition of Rape Crisis Centres and Women in Labour, feminist lawyers and researchers, survivors and others, all sought to ensure that the issue of workplace violence, including harassment, was in the public eye and/or on the political agenda.\textsuperscript{ciii}

The CKSACC particularly played a significant role in mobilising a public response to the workplace murder of Theresa Vince through organising public meetings and

\textsuperscript{ci} Phone interview with Y. Shirltiff and B. Hanulik, policy advisor, Ontario Ministry of Labour, 30 September 2010.
\textsuperscript{cii} Ibid.
\textsuperscript{ciii} Phone interview with B. MacQuarrie, community director, Centre for Research and Education on Violence against Women and Children, University of Western Ontario, 28 September 2010; Correspondence with M. Schryer, executive director, Chatham-Kent Sexual Assault Crisis Centre, 20 September 2011.
addressing parliamentary committees. The CKSACC is a grassroots service provider that was founded in 1985. Its sexual assault crisis centre is funded and run by a small group of volunteers, and aims to support the community and mobilise resources to improve people’s lives and initiate long-term change in the local communities.

Michelle Schryer of the CKSACC was involved in coordinating the lobbying of the Ontario government for legislative change after Theresa Vince’s death. Schryer has worked for the CKSACC since 1990, and her current role is Executive Director. The CKSACC became involved in this lobbying for change because Theresa Vince’s husband Jim Vince, and their adult children along with other members of her family that wanted an explanation for her death. CKSACC invited their local women’s shelter and labour council to join in forming the coalition that worked together to lobby for an inquest. As explained by Schryer, after the Theresa Vince inquest, she and her colleagues worked on legislative change to the Ontario OHS Act. CKSACC learned at the inquest that even though Theresa had reported her case to the Human Rights Commission, the process was such that it would not have helped to save her life. Health and safety legislation focused on physical hazards and it did not take into account stress-related symptoms or illness due to psychological or emotional harm. Inspectors were also not trained to investigate complaints of sexual harassment. Both the human rights legislation and OHS legislation lacked teeth. This case demonstrated the lack of protection offered by the existing legislations. While the Conservative Government was in power, provincially, they did not enact any changes in either the Human Rights Code or the Occupational Health and Safety Act.civ

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civ Phone interview with M. Schryer, executive director of the Chatham-Kent Sexual Assault Crisis Centre, 28 September 2010; Chatham-Kent Sexual Assault Crisis Centre Year Book, Recognising 25 years of Service and Activism.
Another group involved in initiating legislative change was called the Lori Inquest Action Group, which set up in memory of the murdered Lori Dupont. Following the Lori Dupont inquest, a group of women from a broad range of backgrounds formed ‘The Inquest Action Group.’ The idea of the group was to push for the advancement of the jury’s recommendations. The group agreed that the first task was the passing of OHS reform. Lori Dupont’s mother, Barbara, was a founding member of the Inquest Action Committee and Theresa Vince’s daughter, Catherine Kedziora, was also involved in some of the committee’s work.\textsuperscript{cv} As described by Carol Libby, the key coordinator of the Inquest Action Group, the role of this group is to lobby all the local members of Provincial Parliament and the Minister of Labour to advocate for legislative change to the Ontario OHS Act. This advocacy work collected about three thousand signed petitions from places all over Ontario. For example, one of the Inquest Action Group’s coalition partners is the CAW. Patricia Cunningham, a CAW activist at Chrysler, was also a member of the Inquest Action Group, and was involved in collecting 3,000 signatures from union members in support of the group’s demand for legislative change. But in the end, the Inquest Action Group did not need to present the signed petitions to the Legislature since they had drafted the legislation. Members of the Inquest Action Group testified at a Legislative hearing at Queen’s Park in Toronto. Lori’s mother, Barbara Dupont, testified, along with Action Group member Michelle Schreyer of Chatham Ontario, and dozens of others testified, mostly in support of the new legislation.\textsuperscript{cvi}

\textsuperscript{cv} Correspondence with M. Schryer, executive director, Chatham-Kent Sexual Assault Crisis Centre, 20 September 2011.

\textsuperscript{cvi} Phone interview with C. Libby, coordinator of the Lori Inquest Group, 30 September 2010.
Another way in which the group lobbied for legislative change was to ask people to write to their MPs. Further, this organisation kept up the pressure through the media. When the group organised any major event, it would contact the *Windsor Star* newspaper, and a great deal of media coverage resulted. This effort raised awareness of the issue. As Libby noted, the target’s mother, Barbara Dupont, had a significant impact in showing her dignity, determination and demonstrations of grief when she spoke in public and to legislators, and inspired the group to continue pushing for changes in the legislation until the introduction of the Bill by the Liberal Government in 2009.\textsuperscript{cvii} Thus, both unions and non-traditional actors contributed to the legislative change in the Ontario OHS Act.

**Other Canadian Provinces**

Currently, there is little OHS legislation in Canada that specifically deals with psychological harassment in the workplace. Having said this, there is a general duty provision in most of the other Canadian OHS legislations stipulating that the employer has a duty to provide a healthy and safe environment for employees, although the coverage of such legislation varies slightly across the provincial and federal jurisdictions. As mentioned earlier, Quebec and Saskatchewan have more explicit protection against psychological harassment in their Labour Standard Act and OHS legislation, respectively; other provinces such as Alberta, British Columbia, Manitoba, Prince Edward Island and Nova Scotia have specific violence prevention regulations that require employers to conduct a risk assessment and establish a violence prevention policy in the workplace.\textsuperscript{cviii} However, these provinces all have OHS legislations focused on protecting against physical danger rather than explicitly

\textsuperscript{cvii} *Ibid.*

protecting against actions related to workplace bullying. This may be attributed to a lack of support from employers, who are concerned that legislating against workplace bullying would increase litigation in the workplace.\textsuperscript{cix}

Although in 1995 British Columbia was the only other jurisdiction to have regulations to protect workers from violence, there has been no further discussion in that province proposing amendments of the OHS Act to include psychological harassment in the legislation. This may be due to the changes in government. While NDP did hold office in British Columbia from 1991 to 2001, the pro-business Liberal Party has held office since then. Unions such as the local CUPE have long campaigned for a ‘respectful workplace.’ In 1994, the management of the British Columbia Rapid Transit Co Ltd. (SkyTrain) and CUPE Local 7000 worked together for more than a year to draft a policy aimed at providing a safe work environment for employees. This project involved comprehensive input from employees to create a ‘respectful’ workplace policy and was very effectively implemented at SkyTrain.\textsuperscript{cx} 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.\textsuperscript{cxi} Hence, in BC, unions have been proactive in raising awareness of this issue.

Apart from unions, non-traditional actors have emerged such as No Bully for Me BC, set up in early 2003 by two targets of workplace bullying. This was the first group in the province to generate discussion on workplace bullying and acted as a support group for targets. It also provided information about workplace bullying on its

\textsuperscript{cix} Gouveia, ‘From Laissez-faire to Fair Play.’
website. However, as of the end of April 2010, No Bully For Me has been a static site, and no new content has been added. Another group called BullyFreeBC has become involved in advocacy work and has begun to lobby the government for legislative change. The project coordinator, Diane Rodgers, was one of the organisers who started BullyFreeBC because of her personal experience with being bullied in her own workplace and due to an interest in social justice. Rodgers said that the group started in 2007 with support from Lorne Mayencourt, provincial Liberal MLA for Vancouver–Burrard from 2001 to 2008. Mayencourt’s interest in the workplace bullying arose from his activities in preventing bullying in schools. He co-chaired the provincial Safe Schools Task Force in 2003 and introduced the Safe Schools Act to combat school bullying. Drawing from these experiences, BullyFreeBC was born. The first organised event was a symposium that took place in 2008, inviting people with a professional interest in this issue to participate in a wide-open, roundtable dialogue. There were 80 attendees. At the end of the event, it was the consensus of the participants that awareness needed to be raised and legislation needed to be amended in BC to recognise the issue of workplace bullying. After Mayencourt stepped down as chair, Susan O’Donnell, Executive Director of the BC Human Rights Coalition, replaced him.

Although other provinces—such as New Brunswick—are aware of the amendment to include psychological harassment in Quebec, Saskatchewan and Ontario, union representatives such as Robert Hicks, Maritime regional director, CUPE New Brunswick, have found that the existing OHS legislation in New Brunswick sufficiently covers violence in the broader sense, including physical aggression and workplace harassment. Further, Norma Dubé, assistant deputy minister of the

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cxiii Phone interview with D. Rodgers, project coordinator of BullyFreeBC, 8 September 2010.
Executive Council Office in New Brunswick, whose administrative position focuses on violence against women, economic security of women and the elimination of discrimination against women, sees the focus of the New Brunswick Government as being on general violence against women rather than workplace bullying. Thus, protection against psychological harassment in other Canadian provinces is limited, and the main focus is still on physical violence in the workplace.\textsuperscript{cxiv}

\textbf{Effectiveness of Anti-Bullying Legislations/Regulations}

The legislative framework influences the effectiveness of the legislation. As examined by Rachel Cox, a lawyer and law professor at the University of Québec in Montréal, the problem with regulating psychological harassment by ‘the Labour Standard Act is that there is only recourse but there is no enforcement.’\textsuperscript{cxv} If the protection were under the OHS Act, there would be more mechanisms to prevent and intervene in psychological harassment before the harassment occurs at work.\textsuperscript{cxvi} When Cox spoke to the unions, she found that 30 cases out of 150 had been settled in ways that did not involve arbitration. Another reason that fewer court cases occur is that psychological harassment can be resolved through alternative conflict resolution such as mediation rather than going through grievance or lawsuits.\textsuperscript{cxvii}

\textsuperscript{cxiv} Personal interview with R. Hickes, Maritime regional director, SCFP Canadian Union of Public Employees, 28 September 2010; personal interview with N. Dubé, assistant deputy minister, Executive Council Office in New Brunswick, 27 September 2010.

\textsuperscript{cxv} Personal interview with R. Cox, professor of law, University of Québec in Montréal, 6 October 2010; R. Cox, ‘Psychological Harassment Legislation in Quebec: The First Five Years,’ \textit{Comparative Labor Law and Policy Journal}, vol. 32, no. 1, 2010, p. 55–89.

\textsuperscript{cxvi} Personal interview with K. Lippel, professor of law, University of Ottawa, 30 September 2010; personal interview with R. Cox, professor of law, University of Québec in Montréal, 6 October 2010; R. Cox, ‘Psychological Harassment Legislation in Quebec: The First Five Years,’ \textit{Comparative Labor Law and Policy Journal}, vol. 32, no. 1, 2010, p. 55–89.

\textsuperscript{cxvii} Ibid.
In Quebec, awareness of the issue of psychological harassment grew after the introduction of the legislation. Carole Dupéré, senior counsellor of the Labour Standard Commission was in charge of tracking psychological harassment in Quebec. She stated that:

I was brought in after the introduction of the legislation. Since the inception of the legislation, 8,631 non-unionised employees filed complaints on psychological harassment at our Commission, between June 1, 2004 and March 31, 2008. Most people prefer to settle the cases outside court as it could take time to go through the settlement. However, the figure does not reflect the whole population in Quebec, since 40 per cent of workers are unionised and it is up to the individuals to file their complaints to their unions through the grievance procedures. This shows that people in Quebec became aware of psychological harassment through education.\textsuperscript{cxviii}

Indeed, the awareness of the issue of psychological harassment has increased in Quebec. Education is also important in preventing psychological harassment from occurring in the first place. As stated by Pierre Lefebvre, the health and safety advisor to the CSQ, notes ‘the legal approach has been rather limited because the issue of psychological harassment is very hard to prove; it takes 15 to 20 days of hearing and the lengthy hearing process is time and energy consuming.’ As a result, most cases are settled out of the court before arbitration and unions such as the CSQ work more on prevention strategies.\textsuperscript{cxix}

\textsuperscript{cxviii} Personal interview with C. Dupéré, senior counsellor - psychological harassment, Direction de la Recherche, de la Planification et de la Prévention, Commission des normes du travail (Labour Standard Commission), 7 October 2010.
\textsuperscript{cxix} Personal interview with P. Lefebvre; personal interview with R. Cox.
In addition to Quebec, Saskatchewan also made some progress with regards to the development of anti-bullying legislation in its OHS framework. After the expansion of the definition of personal harassment on 1 October 2007, the number of inquiries received by the OHS Harassment Unit increased. Jennifer Fabian, director of safety services, and Susan Boan, supervisor of the Harassment Unit of the Saskatchewan OHS Division, said that the positive impact of amending the OHS legislation was that awareness has been raised on the issue of personal harassment and that the cases of alleged harassment and harassment inquiries have also increased. Before the amendment of the legislation, between 1 April 2007 and 30 March 2008, there were a total of 212 harassment enquiries; from 1 April 2009 to 30 March 2010, there were 864 harassment enquiries, with 760 enquiries on personal harassment and 104 enquiries based on harassment on the prohibited grounds such as race, sex or age. These figures show that enquiries relating to personal harassment have tripled since the amendment. In terms of responding to cases of alleged harassment (investigations), in 2007/2008 there were a total of 57 cases, whereas in 2009/2010 there was a total of 243 cases, with 211 cases of personal harassment under investigation and 32 being investigated on harassment based on the prohibited grounds. These figures show that the number of enquiries and cases under investigation concerning the issue of personal harassment in the workplace has significantly increased. Such complaints have been dealt with through providing information to the workers or investigating workplace practices. However, there are currently no data available for the number of prosecutions after investigation.

cxx Personal interview with S. Boan, supervisor of the Harassment Unit of Saskatchewan Occupational Health and Safety Ministry of Labour Relations and Workplace Safety, 17 September 2010; personal interview with J. Fabian, director, Safety Services, Occupational Health and Safety Ministry of Labour Relations and Workplace Safety, 14 September 2010; Occupational Health and Safety Division,
In contrast to such measures in Quebec and Saskatchewan, the federal COHS Regulations and the Ontario OHS Act are both very new and the results or the effectiveness of these two anti-bullying initiatives are not available for public access. Although these measures are waiting to be reviewed, the respective governments are expecting positive results.

Conclusion

This chapter has examined the anti–workplace bullying movement in Canada through reviewing different institutions, processes and outcomes that either encourage or inhibit the adoption of anti–workplace bullying legislation. The aim of this chapter was to broaden the debate about the historical development of anti–workplace bullying public policy in Canada through an analysis of three legislative paradigms: antidiscrimination, OHS and dignity. By comparing the similarities and differences of these three paradigms, it becomes clear that in Canada, the legislative movement against workplace bullying started from an antidiscrimination paradigm, and then progressed to OHS and dignity. The OHS paradigm applies to Saskatchewan, Ontario and federal regulation while the dignity paradigm applies to Quebec. The interaction and overlapping between the concepts of antidiscrimination, OHS and dignity paradigms reflect a similar motivation for governing the employment relationship, specifically, to ensure that workplaces are free from bullying and harassment. By examining the different legislative reforms dealing with the issue of workplace bullying, we can understand the regulatory progress that has been made.

The traditional actors, including progressive political parties and unions, are regarded as agents of reform, since they actively pushed for legislation against psychological harassment. Further, non-traditional actors such as community groups and women’s rights activists have also played a role in pushing for legislation. Conservative parties and employers have generally opposed what they see as another challenge to managerial authority in the workplace. The government bodies working with these three paradigms have tried to regulate the employment relationship to ensure freedom from workplace bullying and harassment. In contrast, Canada’s next-door neighbour, the United States, is lagging behind Canada and the rest of the world in terms of the development of anti-bullying legislation. The next chapter will explore the movement against workplace bullying in the United States, examining the important role of non-traditional actors in driving anti-bullying reform in that country.
Chapter 5 Workplace Bullying in the United States

Workplace issues, including bullying at work, sexual harassment and equal employment opportunity share a similar focus on protecting employee physical and psychological integrity. The similarities between these three workplace issues point toward legislation against sexual harassment, promoting equal employment opportunity and initiating an anti-bullying legislative campaign, all aimed at changing workplace behaviour. In a broader sense, these legal changes are intended to protect employee equality in the workplace. The political movement toward protection of individual rights began in the 1960s and continued through the 1970s; this period ushered in significant changes in workplace equality. National and state governments in the US were more proactive in enacting legislation on equal employment opportunity, affirmative action regulations to protect employee rights and due-process governance. At one time, the term equality was defined by post-war liberals as collective rights; however, during the civil rights period, the concept evolved and became centred on individual rights. US civil rights statutes have transformed the legal environment, putting pressure on employers to look after the rights of individual employees. Specifically, Title VII of the 1964 Civil Rights Act imposes a statutory obligation on employers and unions not to discriminate against any individual. Formalisation of the employment relationship and legalisation of workplace behaviour in a broader sense both focus on individual employee rights and on maintaining equality in the workplace; this legalisation was aimed mainly at non-union, white collar employees. Corporate management interests at the same time promoted legalisation which increases managerial control over workers and which impedes unionisation. Also during this period, the legal system took the initiative to modify organisational behaviour which could undermine employers’ right to hire and
fire employees, and to eliminate discriminatory forms of policy in the workplace; this legal trend may pose a threat to employer and union interests, because of its support for individual employee rights.\textsuperscript{cxxi}

The US started exploring the issue of workplace bullying in the 1990s.\textsuperscript{cxxii} According to the US Workplace Bullying Survey, conducted by Zogby in 2007, 54 million people (37 per cent of the American workforce) have been bullied at the workplace, and 77 per cent of those people have lost their jobs. Workplace bullying, abuse and harassment are four times more prevalent than sexual harassment. According to the Workplace Bullying Institute, on 7 April 2010, 17 states in the US had introduced the Healthy Workplace Bill since 2003, to combat workplace bullying, but none of them had enacted it. The following states are listed in order of the first to introduce it to the last: California, Oklahoma, Hawaii, Washington, Oregon, Massachusetts, Missouri, Kansas, New York State (NYS), New Jersey, Montana, Connecticut, Vermont, Utah, Illinois, Nevada and Wisconsin.

The previous chapter examined the workplace bullying movement in Canada by looking at different legislative approaches that have been developed and adopted in different Canadian provinces. Although the US is close to Canada in a geographic sense, no specific legislation addresses the issue of workplace bullying in the US. The aim of this chapter is to examine why the US is lagging behind other countries, as well as to look at the role of both traditional and non-traditional actors in the employment relationship lobbying for change. It begins with a discussion of the

\textsuperscript{cxxxii} G. Namie and R. Namie, \textit{The Bully at Work: What You Can Do to Stop the Hurt and Reclaim Your Dignity on the Job}, Naperville, IL: Sourcebooks, 2000.
economic and political context and then the existing US legislation providing a legal response to workplace bullying. It goes on to analyse the role of traditional actors (i.e. the state, unions and employers) in supporting and opposing the anti-bullying reforms, as influenced by macro-level factors (i.e. the labour law system, union structure/density, political culture, the complexity of federalism, the employment structure and the level of involvement of business groups). Emphasis is also given to the non-traditional actors initiating anti-bullying legislative campaigns in the US, and the chapter examines why their efforts are so significant in pushing the legislation. The anti-bullying movement was initiated by individuals as non-traditional actors—Drs Gary and Ruth Namie (the Namies)—but then gained support from other advocates who volunteered for the Namies to promote the anti-bullying legislation in their own states.

This chapter focuses on three states: California, NYS and Massachusetts, which were chosen because of significance in the movement to bring about legislation against workplace bullying. For instance, California was the first state to initiate the anti-bullying movement in the US. NYS has the most organised anti-bullying effort, and compared with other states, generated the most debates during its legislative campaigns. Massachusetts is believed to be the first state to include the clause of ‘mutual respect’ in the collective agreement with employees. In all these states non-traditional actors such as the Namies have played a crucial role in promoting reform. The chapter finally evaluates the effectiveness of raising awareness of the anti-bullying initiatives.
Economic and Political Context

In the US, the unemployment rate was generally stable, as indicated by the fact that it was at or below 6.5 per cent from the 1993 to 2007. This rate ranged from 6.5 per cent in 1993 to a low of 3.9 per cent in 2000. It then rose to 4.4 per cent in 2006, 7.3 per cent in 2008, and reached its highest value of 9.9 per cent in 2009 and then dropped slowly to 9.4 per cent in 2010. The increase from 2008 to 2010 may partly have been due to the recession in the US and the global financial crisis.\textsuperscript{cxiii}

In addition to the unemployment rate, the Gross Domestic Product remained positive throughout 1990 to 2010 in the US, except for three years: In 1991, it was –0.2 per cent, in 2008, it was –0.3 per cent and in 2009, it was –3.5 per cent. In 2010, it once again reached a positive figure, at 3.0 per cent.\textsuperscript{cxxiv}

The US has a two-party system; this has been dominated by the Democratic Party and the Republican Party for the past 150 years. The Democratic Party is the oldest political party in the US, and one of the oldest in the world. The first popular party in the US, it was founded by Thomas Jefferson in 1796. The two parties can be considered the most fragmented political organisations in the democratic world. This can be attributed to the diffusion of party membership and the splits between the different wings (i.e. presidential, congressional, state and local).\textsuperscript{cxxv}

Due to the more liberal orientation of the party, the Democrats are more likely to support progressive policies (e.g. Healthy Workplace Bill) than members of the Republican Party. Republican Senators blocked a union-sponsored attempts to reform the union representation provisions of the National Labor Relations Act and

\textsuperscript{cxiii} United States Department of Labor, Unemployment Rate.
\textsuperscript{cxiv} GDP Statistics by Country—World Economic Outlook 2011.
strengthen the workers’ right to organise.\textsuperscript{cxxvi} The Republican Party has generally also been hostile to reforms in regard to challenging workplace bullying, whereas the Democrats sponsored the Healthy Workplace Bill in all 12 states until 2007.\textsuperscript{cxxvii} Conservative Republicans have found support from the Tea Party Movement, which reflects some American dissatisfaction with the current political and economic situation and started in 2009. The Tea Party movement is not sympathetic to either unions or government regulation. The Tea Party represents a small minority of Americans, and comprises loosely interrelated networks, the participants of which are conservative Republicans. Although the Tea Party lacks structure and is scattered all over the US, Sarah Palin, the former Alaskan governor, endorsed the movement and ‘intimated that the national Tea Party was something more than a ginger group reminding the Republicans of their libertarian heritage.’\textsuperscript{cxxviii} Tea Party members use online organising tools, such as the website MeetUp, to arrange face-to-face meetings.\textsuperscript{cxxix} Some of the antigovernment campaigns have included a massive Washington, DC rally on 12 September 2009 and a Nashville conference in February 2010. Tea Party demonstrators condemned government policy such as the federal debt, as well as its creeping socialism. Their dissatisfaction showed when they carried pictures linking President Obama with Hitler at the rally.\textsuperscript{cxxx} An example of local Tea Party action is the Rome Tea Party in Georgia, which is a small group with 800 members that calls for the total defunding of the Department of Labor and particularly its Occupational Safety and Health Act (OSHA) division:

\begin{enumerate}
\item Ibid.
\end{enumerate}
‘Now is the time to defund the entire Department of Labor and OSHA with it. Billions of dollars will be saved. Defunding the entire Department of Labor, including OSHA, will start the process of restoring Freedom and prosperity to the American people and fiscal responsibility to their government. Congress will only act if the people demand it.’

With its antigovernment attitude, the Tea Party and its political allies in the Republican Party are unlikely to favour legislation against workplace bullying, at either the state or federal level.

Existing Legislation

The legal systems in the US are historically grounded in common law. No US state has a legislative definition of workplace bullying. Although there is no specific legislation at the federal or state level providing recourse for targets of workplace bullying in the US, there are various existing employment laws that can provide a legal response to workplace bullying. These include those dealing with intentional infliction of emotional distress (IIED) and intentional interference with the employment relationship, discrimination law and occupational safety and health law. Within existing employment law, the tort claim of IIED is appropriate as a means of protection against workplace bullying; however, the court requires a complaint about extreme and outrageous behaviour to justify bullying claims.

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Apart from IIED, the OSHA is a federal legislation that was enacted in 1970. This was created to provide workers with an environment that is free from safety and health hazards, such as toxic chemicals and excessive noise levels. Employers must also comply with safety and health standards to maintain a safe working environment for their workers. Since this federal legislation primarily focuses on preventing physical injuries, only the most severe forms of physical injury caused by workplace bullying may fall under the standard of the OSHA. There is also a state occupational safety and health law, and the state law basically mirrors the federal OSHA. In addition to this, although the National Institute for Occupational Safety and Health (NIOSH), the federal agency responsible for conducting research and making recommendations concerning work-related injuries, has conducted research on workplace bullying, there appear to be no recommendations leading to policy development on the issue of workplace bullying in OSHA. Thus, existing laws in the US fail to provide adequate relief to severely bullied employees.

Having said that, the strengthening of the federal occupational safety and health (OHS) law, regulations and guidelines can be seen as an effective means of tackling workplace bullying, as it gives the federal OHS agency the capability to enforce protection for bullied employees. According to Harthill, the OSH Act could be utilised to incorporate coverage of bullying as a health and safety hazard in the workplace. The OSH Act is already supported by two recognised federal agencies—

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the OSH Administration and NIOSH – which are able to produce employer/employee guidelines on workplace bullying. However, the agency is criticised of being ineffective owing to inadequate penalties, underfunding and understaffing, and low compliance rates. Although the non-traditional actors have no enforcement powers like the federal agencies, it too plays a role in mobilising the legislative campaign at state level.\textsuperscript{cxxxiv}

The Role of Traditional Actors

Policy change can be initiated by the traditional actors—trade unions, the state and employers—and these actors play a key role in employment relationships, which are influenced by environmental factors (i.e. the labour law system, union structure/density, political culture, the complexity of federalism, the employment structure and the level of involvement of business groups). Labour law systems can influence the pace of anti-bullying policy development. In the US, a majority vote in a workplace ballot is needed in order for the union to be allowed to represent the workers. While it is possible for a union to represent a worker in a workplace where there was no representation, it is unlikely that a union would use its resources unless it was part of an organising campaign.\textsuperscript{cxxxv}

The union movement in the US is comparatively weak and the political and ideological climate tends to favour business. There are very low rates of

\textsuperscript{cxxxiv} Harthill, ‘The Need for a Revitalized Regulatory Scheme to Address Workplace Bullying in the United States: Harnessing the Federal Occupational Safety and Health Act.’

For instance, in 1983, the union membership rate was 20.1 per cent, whereas by 2008, it had dropped to 12.4 per cent. As the Republican Party is seen as hostile to labour unions, this creates an incentive for unions to form alliances with the Democratic Party. Even into the 1990s, the relationships were strong between union leaders and Democrats, especially in Congress. This can be seen in that both President Jimmy Carter and President Bill Clinton maintained close ties to the labour movement. For instance, in 1996, the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO), the umbrella organisation for the US unions, used over $35 million to help the Democrats win control of Congress and re-elect President Clinton. As public sector unions grow steadily despite the overall unionisation rate drop in the US, they also donate funding to support Democratic political activities. Clinton supported unions; for example, when he vetoed the Teamwork for Employees and Managers (TEAM) Act, which was passed by the Republican Congress. Labour unions strongly opposed this legislation as it would have permitted employers to establish employee representation schemes to discuss workplace issues. In addition to this, Clinton supported legislation that favoured unions, such as the Family and Medical Leave Act. Despite Clinton’s pro-labour initiatives, however, he supported the new free trade agreements and the Wall Street investment bankers, and was more interested in reducing the federal budget deficit than spending on infrastructure investment. Unions lost their

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political clout and no longer had influence in the policymaking process during the Clinton administration.\textsuperscript{cxl}

Having said this, unions are still backing Democrats for the presidential nomination. For instance, the Service Employees International Union (SEIU), which with 1.9 million members is the second largest public employees’ union and the largest health care union in the US, supported Barack Obama’s presidential election campaign in 2008. SEIU’s political action committee made more than $27 million in independent expenditures to back Obama for the Democratic presidential nomination.\textsuperscript{cxli} Hence, while union membership may not be as high as it once was, the relationship between the unions and the Democrats still exists. Even though unions generally support anti-bullying initiatives, the recent economic recession and the weaker union power keep the priority of anti-bullying initiatives from the forefront of their activities.

Another factor is that there is no labour party in the US. Despite a substantial effort to establish such a party in the early 1890s, the rejection of labour party politics became firmly entrenched due to strong opposition by the president of the AFL, Samuel Gompers. The AFL and later the AFL-CIO rejected party politics.\textsuperscript{cxlii} The absence of a labour party in the US and the lack of close relationships with unions may create an unfavourable political climate for the promotion of anti-bullying policy change. The lack of a Labor Party and the tenuous links with the Democratic Party may help explain the lack of political progress in regard to workplace bullying, with the AFL-

\textsuperscript{cxl} Dark, \textit{The Unions and the Democrats}.
CIO campaign to raise the public awareness of workplace bullying only starting late
in 2006.

In the US, the AFL-CIO organised the first ‘My Bad Boss’ contest in 2006 and held a
further contest in 2007. These initiatives in the US came much later than they did in
the rest of the world. The two online ‘Bad Boss’ contests were sponsored by Working
America, an advocacy group with 1.6 million members affiliated with the AFL-CIO.
The objectives of the contests were to raise issues concerning bad bosses and provide
a platform for workers to express their views on their bosses’ misconduct. Both the
2006 and 2007 contests accepted entries for the worst boss in the country, and the
prize for the ‘Most Outrageous’ bad boss story was a one-week vacation.\textsuperscript{cxliii}
Although the contests generated considerable media interest, the AFL-CIO has not
formally linked the contests to the legislative campaign organised by the Workplace
Bullying Institute (the only nongovernmental organisation in the US that has
undertaken legislative advocacy on the issue of workplace bullying).

The pace of anti-bullying initiatives is also influenced by political culture and
economic conditions. Labour relations in the US can be seen as antagonistic due to
the American political culture. The antagonistic approach in the US is reflected in the
recent struggle over the public sector’s bargaining rights in Wisconsin. In 1959,
Wisconsin was the first state to give collective bargaining rights to its public
employees. Nevertheless, in March 2011, Governor Scott Walker signed legislation

\textsuperscript{cxliii} M. Selvin, ‘Bad Bosses Rankle Masses,’ \textit{Los Angeles Times}, 22 August 2007; M. Srivastava, ‘Bad-
boss Contest Entries Range from Rude to Crude: A Union Group’s Website has Drawn Nearly 900
to end the collective bargaining rights of most public employees in the state, although

Federal systems can also affect policy change. The US has a federal system and there
are examples of states leading reform in the area of labour relations.\footnote{G. Patmore, \textit{The Origins of Federal Industrial Relations Systems: Australia, Canada and the USA}, \textit{Journal of Industrial Relations}, vol. 51, no. 2, 2009, p. 151–172.} For instance, Maryland had the first legislation to provide state benefits in the form of a cooperative
insurance law, which was enacted in 1902. New York enacted the first law of general
workers’ compensation in 1910, with 42 states following New Yorks lead and
enacting compensation laws from 1911 to 1919. Massachusetts was the first
American state to pass a minimum wage law, which was enacted in 1912.\footnote{J.R. Commons and J.B. Andrew, \textit{Principles of Labor Legislation}, New York and London: Harper & Brothers Publishers, 1920.} Hence, US states can be innovative in terms of labour relations initiatives and provide
leadership for the rest of the country.

The attitudes of employers are an important factor in the progress towards anti-
bullying legislation in the US. ‘At-will’ employment is allowed in the American
labour market, enabling employers to fire employees without giving them any notice
or explanation. States such as Pennsylvania have recognised the prevalence of
workplace bullying, but they still have at-will employment, which permits bullying
associated with it influence policy development. In addition to this, as explained by
Logan, ‘employers enjoy almost unilateral control of non-union workplaces.’ He
describes this phenomenon as a ‘control gap’ rather than a ‘wage gap’,\textsuperscript{cxlviii} meaning that employers have the power to make an impact in the labour market and are more hostile towards organised labour.

US employers have played a significant part in opposing anti-bullying initiatives. Their resistance has retarded policy development in this area. For example, the US Chamber of Commerce did not support the Healthy Workplace Bill, describing it as a ‘killer bill’.\textsuperscript{cxl} With employer associations strongly opposing anti-bullying initiatives, promoting legislation against workplace bullying in the US is a slow process.

There has not been a tradition in the US of encouraging dialogue in the area of OHS. In the US, a consensus does not need to be reached between these parties before a rule is promulgated by the OSHA. There is also no obligation for US legislation to establish bipartite workplace safety committees or to provide health and safety representatives in the workplace.\textsuperscript{cl} Hence, with this regulatory framework in the US, the lack of involvement of business groups and labour in the regulation of OHS legislation in the US has removed the possibility of a forum for employers and labour to discuss issues such as workplace bullying.

It is clear that an understanding of the perspectives of traditional actors—especially the state and the trade unions—in the employment relationship helps to explain why the US has made slower progress than other countries. However, approaching the problem of workplace bullying from the perspective of traditional actors tells only


part of the story. It is also important to look at the role of non-traditional actors in the change process.

The Role of Non-traditional Actors

Given the lack of support from traditional actors in the US, non-traditional actors such as grassroots pressure groups and social media are becoming increasingly important in mobilising change in the area of legislative initiatives against workplace bullying. Gary and Ruth Namie were pioneers in the US of the anti–workplace bullying movement. Gary Namie has a PhD in social psychology, while Ruth Namie has a doctorate in clinical psychology. They founded the Workplace Bullying Institute and then set up its legislative advocacy arm to promote policy change. The Campaign against Workplace Bullying (which made heavy use of media to raise the issue of workplace bullying and set up the www.bullybuster.org website) was launched on 1 January 1998.\textsuperscript{cli} Ruth Namie had first-hand experience with workplace bullying, as she was bullied by her female boss in a large health maintenance organisation. Ruth Namie was a clinician there and worked with addiction clients, including people with alcohol problems and prisoners who had been released from incarceration in San Francisco. Namie was bullied by her boss in 1995. As she described, her boss would chase her down the hall, criticise what she did and yelled at her during a staff meeting. She suffered from such stress that she used to throw up when she got to work. She quit this job in 1996. When she told her husband about the bullying, they hired an attorney, but they found out that there is no legal redress those who have been bullied in the workplace. Namie found that her supervisor apparently did not break the law, since woman-on-woman harassment did not fall into the category of discrimination.

\textsuperscript{cli} Namie and Namie, \textit{The Bully at Work}. 
She then discovered that there was a term used outside the US that appropriately described her experience: workplace bullying. Gary and Ruth Namie introduced the concept of workplace bullying into the US through campaigns against this type of behaviour in US workplaces. As they explained, “we do not model other countries’ campaigns against workplace bullying, and our model is based on our own experience of counselling and interacting with targets using our knowledge and expertise that employs the scientific method to help others.” This husband and wife team initiated the anti–workplace bullying movement in the US.

Another significant advocate is David Yamada, professor at Suffolk University Law School and a leading authority on the legal implications of workplace bullying. Professor Yamada has argued for a new, status-blind harassment law, and drafted a model legislation called the Healthy Workplace Bill, which addresses ‘non-status’ abusive behaviour in the workplace. An ‘abusive work environment’ is considered to exist ‘when the defendant, acting with malice, subjects the complainant to abusive conduct so severe that it causes tangible [psychological or physical] harm to the complainant.”

Yamada, the first American legal scholar to address workplace bullying, practiced law as a public defender and as a labour lawyer for six years. He then launched his academic career in the 1990s, becoming a law professor specialising in employment labour law. He noticed a lot of what he came to call ‘bullying’ in academic life. This led him to ask whether there was any legal recourse for these targets. It was around that time that he discovered the work of Gary and Ruth Namie, who were then launching the Campaign against Workplace Bullying, as well as their website.

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dii Personal interview with Dr G. Namie and Dr R. Namie, founders of the Workplace Bullying Institute, 2 June 2010.
diii Yamada, ‘Workplace Bullying and American Employment Law.’
Yamada contacted them to ask if they were looking at the legal and public policy implications of workplace bullying. At the time, the Namies saw law reform as a longer-term project; they were mainly focusing on talking to targets and looking at the organisational/behavioural aspects of workplace bullying. Yamada persuaded them to examine the legal side of workplace bullying as well.

Yamada spent most of the summer of 1998 researching the potential protections in American employment law for targets of severe workplace bullying. He primarily examined personal injury IIED lawsuits that had been brought by employees against co-workers and employers for bullying-type treatment. He also looked at workplace safety law, collective bargaining law and discrimination law. After he examined the many different aspects of these types of law, he concluded that many varieties of severe workplace bullying fell short of current American employment law and drafted the first bill to address the issue of workplace bullying and fill in the gap.

As described by Yamada, “it was [the] ongoing friendship and working relationship with the Namies that got [me] collaborating with the Namies in this work” for over a decade. Yamada later noted that:

I did not dream 10 years ago that 17 plus states would at least be considering this legislation in the context of social and legal reform; that’s pretty good. I won’t be satisfied with this, and it may be a longer-term effort to start seeing these bills turn into law.

Yamada commented further on the impact of having a bill language to advocate the legislative change:

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cliv Personal interview with D. Yamada, author of the Healthy Workplace Bill, 2 June 2010.
clv Ibid.
clvi Ibid.
If you have the bill language, you are way ahead of everyone else who has not drafted anything, especially in the state legislative situation where they don’t have extensive staff. You might find—say, in the US Federal Congress—that if you have ready-made language that is tight and sounds good, then oftentimes, they will take what you have, and if it looks good, that will be the basis of what is introduced.\textsuperscript{clvii}

This demonstrates that having legal expertise in the advocacy group can provide an advantage in the legislative change process.

The Namies also organised a group of volunteer state coordinators to convince legislators, unions and the public to support the Healthy Workplace Bill. These advocates have made extensive use of social media to organise support for anti-bullying activities, including legislative advocacy and communicating with supporters. The following sections focus on California, NYS and Massachusetts, and illustrate the effort that advocates have made to promote the legislative campaigns of the Healthy Workplace Bill.

\textbf{California}

California, the most populous state in the US and the world’s fifth largest economy, is experiencing a desperate economic downturn. The new Democrat governor of California, Jerry Brown, faced a serious deficit of around $26 billion in 2011. This deficit is larger than the total budget that existed when Brown previously served as governor of California in 1975. In addition to the deficit, the unemployment rate was 11.5 per cent in 2009, which was two points higher than the national average.

\textsuperscript{clvii} \textit{Ibid.}
California also had the second-highest state income tax in the United States after Hawaii.\textsuperscript{clviii} Although the previous governor of California, Arnold Schwarzenegger (2003–2011), was a longstanding liberal Republican, he was pro-business and wanted to free businesses from high taxes and reduce the number of regulations. Even with his pro-business approach, however, California lost jobs to other states such as Texas.\textsuperscript{clix}

There are also constraints on what a Californian Governor can do, as 75 per cent of the budget is outside of the governor’s control. A large amount of this money (such as the health and school budget) comes from the federal government, which means that money has to transfer back and forth from Sacramento and other cities in California to Washington. This poses complications for Californian politicians when it comes to being made accountable for any part of government.\textsuperscript{clx} Hence, California is facing a weak economy and limits on what the state government can do to fix the problem. In this state, union membership rates have been higher than the national average since 1990. Union membership was 17.5 per cent in 2010, lower than the rate of 20.1 per cent in 1983, but still higher than the national average of 11.9 per cent.\textsuperscript{clxi}

California was the first state in the US to introduce the Healthy Workplace Bill to try to outlaw workplace bullying. Gary and Ruth Namie promoted Assembly Bill 1582 in California in 2003, since this was their home state, and the Californian legislature was more convenient for them to lobby. Sadly, the bill was opposed by the California State Association of Counties, the League of California Cities, the Campaign for

California Families and the Professionals in Human Resources Association. These organisations did not agree with legislating a civility code, since ‘this bill makes it easier for a bad employee or a homosexual activist to put a company out of business by suing the employer’, and the enactment of the bill would mean ‘say[ing] good-bye to the California economy’. As a result, there was no hearing date scheduled and the bill died in committee. The former California State Assemblyman Paul Koretz (Democrat, West Hollywood), who introduced the bill in 2003, said he had no intention of trying again under the pro-business Republican Schwarzenegger administration.

Despite this setback, Carrie Clark and Michelle Smith co-founded the California Healthy Workplace Advocates (CHWA). The mission of the CHWA was to ‘raise awareness and to compel our State to correct and prevent abusive work environments through legislation’. Clark and Smith formed the CHWA after attending a workshop conducted by Gary Namie with a group of 40 people in Sacramento in August 2004. During the workshop, Namie instructed the group on how to start a grassroots movement and become effective political lobbyists in regard to a campaign to outlaw workplace bullying. Clark and Smith then became organisers at the monthly advocates’ meeting in California. They are also the state coordinators to raise awareness of the issue of workplace bullying.

Smith was a single mother supporting her family and herself. She had an associate degree and worked for herself for about 14 years. She published a monthly
newspaper in Foothill, Sacramento. With her publishing experience, she then purchased a newspaper business and became an entrepreneur for a few years. She was very confident in her skills and abilities until she worked for different universities and encountered workplace bullying in these environments. Having been a target, Smith cited the following reason for getting involved as an advocate: ‘I would like to put meaning to my pain, and if I can empower myself and engineer social change, then it might not happen to anyone else.’

Clark had a successful 20-year career as an English teacher and taught at both the high school and university level. However, she was bullied by an abusive school superintendent and was ultimately declared severely and permanently disabled by the California State Teachers Retirement System. According to Clark’s description, ‘After I left education in 1995, I hid in my home for 3 years. I suffered from Post-Traumatic Stress Disorder with conversion to a physical condition called myoclonus—the involuntary contraction of voluntary muscles.’ Furthermore, ‘the work abuse I sustained damaged my brain severely and I was wildly spastic and suffered from a speech impediment.’

Clark soon contacted Gary Namie and joined the legislative campaign in California. Because Clark lived in Sacramento, the state capital, Gary Namie thought she was well placed to directly lobby state legislators, highlighting her own experiences with workplace bullying. When California Assembly Bill 1582 – Abusive Work Environment was drafted, Clark talked to legislators, noting that they ‘...were shocked and horrified to see an English teacher who had been so abused by a school...’

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clxvi Phone interview with M. Smith, co-founder of California Healthy Workplace Advocates, 8 September 2010.
clxvii Correspondence with C. Clark, co-founder of California Healthy Workplace Advocates, 9 September 2011.
clxviii Ibid.
superintendent that she would become spastic and lose her ability to speak clearly.\textsuperscript{clxix} Following this first experience with lobbying, she has become a volunteer advocate for state-level legislation to outlaw workplace bullying.

While there have been no further bills introduced in California since the first in 2003, regular meetings of advocates have continued. CHWA annually drops off anti-bullying flyers at the State Capitol to raise awareness of this issue. Apart from distributing the flyers, Smith and Clark are affiliated with another group, the Bay Area 9to5 National Association of Working Women. This organisation has a California state chapter and lobbies issues specifically affecting single women (e.g. equal pay, sick leave). Moreover, this group promotes fairness and supports the Healthy Workplace Bill nationally.\textsuperscript{clxx} The CHWA is laying the foundation for future lobbying work. The problem with the existing environment is that although California symbolised prosperity and political stability in the past, unemployment is currently at its highest in 70 years, and the government is issuing IOUs.\textsuperscript{clxxi} With this economic instability, employment issues take priority over workplace issues.

In addition to the economic conditions, as Smith explained, a great deal of advocacy work depends on who is the governor. For example, ‘even if the Healthy Workplace Bill gains support from the legislators, when it gets to the Republican Governor, Arnold Schwarzenegger’s desk, who is pro-corporation, it will most likely be vetoed.\textsuperscript{clxxii} Unlike former Governor Arnold Schwarzenegger, who was not sympathetic to the unions during his term, his successor, Democratic Governor Brown, seems to take a more friendly approach to the unions. Governor Jerry Brown

\textsuperscript{clxix} Ibid.
\textsuperscript{clxx} Ibid.
\textsuperscript{clxxii} Phone interview with M. Smith.
is pro-labour, and has supported bills initiated by labour unions. This is partly because they contributed more than $29 million to his party and spent millions more directly on his 2010 election campaign. Furthermore, the Democrats—Brown’s party—currently dominate both houses of the State Legislature.\textsuperscript{clxxiii} As Clark explains, the CHWA has recently communicated with the head of Sacramento County unions, and Clark anticipates that the unions might take their future bill forward. Clark believes this might increase the chances of passing the Healthy Workplace Bill during Brown’s administration.\textsuperscript{clxxiv} Indeed, the political party does affect the speed at which Healthy Workplace Bill is promoted in California.

Massachusetts

The Commonwealth of Massachusetts is the home of the Kennedy family, the state has been a stronghold of Democrats. For 40 years, up to 1998, Democrats had a monopoly in Massachusetts politics. In Massachusetts, union membership was 14.5 per cent in 2010, lower than in 1995, when it was 16.2 per cent, but still above the national average of 11.9 per cent.\textsuperscript{clxxv}

Massachusetts has a more highly educated population, higher personal income and lower unemployment rates than the national average. In 1986, Massachusetts had an unemployment rate of 3.7 per cent and its personal income ranked fourth in the nation. According to the Massachusetts Economic Due Diligence Report for the fourth quarter of 2011, the number of adults with a bachelor’s degree or higher in

\textsuperscript{clxxiv} Correspondence with C. Clark, co-founder of California Healthy Workplace Advocates, 12 October 2011.
2009 was 38.2 per cent, which was higher than the 27.9 per cent for the entire US. In 2010, the personal income per capita in Massachusetts was $51,552, whereas it was $40,584 for the US at large. The unemployment rate in Massachusetts was 7.6 per cent in June 2011 (seasonally adjusted), which was lower than the general US unemployment rate of 9.1 per cent. However, Massachusetts’ economy has deteriorated since 2007, when the unemployment rate was only 4.4 per cent.

Although young people come in droves to study at the state’s first-rate schools, they tend to leave the region when they reach their 20s and 30s, choosing to live in other states such as Florida, Texas or Colorado.

While Massachusetts was the sixth state to introduce the Healthy Workplace Bill in the US, a union led the way through a collective agreement. In Massachusetts, the legislative effort has been shared between Greg Sorozan and David Yamada. Sorozan, president of SEIU and the National Association of Government Employees (NAGE) Local 282, based in Massachusetts, made the issue of workplace bullying a union priority and allocated union lobbyists to pressure the legislators in Massachusetts to adopt the Healthy Workplace Bill.

The SEIU had over 4,000 members throughout Massachusetts under the terms of the Commonwealth Bargaining Agreement. NAGE is affiliated with the SEIU. Awareness of the issue of workplace bullying began to be raised in SEIU/NAGE when the state coordinator, Kevin Preston, invited David Yamada to educate approximately 200 stewards about this issue in the union’s annual steward meeting in

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The Massachusetts Economic Due Diligence Report Fourth Quarter FY 2011, produced by the University of Massachusetts President’s Office, Donahue Institute Economic and Policy Research Unit.


Personal interview with G. Sorozan, president of NAGE/SEIU Local 282, 20 October 2010.
November 2007. During his presentation, Yamada described the symptoms of workplace bullying and when he asked the union stewards who had experienced them; almost every hand went up. At the end of his presentation, Yamada suggested that the unions include measures relating to workplace bullying and abusive supervision in their contract negotiations. In addition to Yamada’s suggestions, Sorozan saw the overwhelming response in the meeting, deciding, ‘I need to do something to improve the working lives of our members and see that the members are treated with dignity.’ After the conference, Sorozan approached Yamada and indicated that he wanted to work with him and bring some protection to the bullied employees in the collective agreement.

In addition to Yamada and Sorozan, another advocate in Massachusetts is Deb Falzoi, a professional web designer and print design expert. She coordinates communications for the Massachusetts legislative campaign and helps to raise awareness of the issue of workplace bullying through the media. Falzoi was responsible for coordinating the social media websites such as Facebook and Twitter and designing a newsletter to support the Healthy Workplace Bill.

Falzoi experienced workplace bullying at a major university in Boston while she was working there. Due to her bullying experience, Falzoi approached Yamada in 2008, explaining that she wanted ‘to be proactive about her bullying experience’. Falzoi also put together a variety of outreach Healthy Workplace Bill committees based on the industries that have the highest incidences of workplace bullying. These committees cover health care, higher education, the non-profit sector, support staff...

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clxxix Ibid.
clxxx Ibid.
clxxxi Personal interview with Deb Falzoi, Communication Officer, Massachusetts Healthy Workplace Advocates, 20 October 2010.
and public awareness. Each committee is led by a group leader and reaches out to a different target audience. For instance, the health care committee reaches out to employees of Massachusetts hospitals, while the higher education committee reaches out to college employees through Facebook and other avenues.\footnote{Ibid.}

As explained by one of the coordinators in the support group committee, Kim Webster, who was a target of bullying, she wanted to advocate for legislative reform due to her personal experience. She found that ‘even unions had a hard time helping the targets of bullying incidents, since the issue of bullying is difficult to quantify.’\footnote{Ibid.} She found that approaching people to support the bill was challenging, since ‘the committee is still new, and it will take time to strategise to approach the people to support the bill.’\footnote{Ibid.}

Among all the advocates in Massachusetts, Sorozan was instrumental in bringing the term ‘mutual respect’ into the collective agreement with the Commonwealth of Massachusetts. Sorozan underwent a total career change when he became NAGE president in Massachusetts. Prior to becoming union president, Sorozan worked for the Commonwealth of Massachusetts for roughly 36 years. He was a social worker in public welfare and after being promoted several times, became the senior training coordinator at the Department of Social Services; he literally trained every social worker in Massachusetts for 15 years.\footnote{Ibid.} Sorozan was bullied by his director when he was working as senior training coordinator. Although the director was eventually fired, his personal experience motivated him to find language to protect other people from bullying. In 2007, Sorozan was one of the lead negotiators who achieved the

\footnote{Ibid.}
\footnote{Personal interview with K. Webster, Support Group Committee, Massachusetts Healthy Workplace Advocates, 20 October 2010.}
\footnote{Ibid.}
\footnote{Ibid.}
\footnote{Personal interview with G. Sorozan.}
addition of a new article (Article 6A) regarding mutual respect in the collective
agreement, and now, ‘The Commonwealth of Massachusetts and the Union agree that
mutual respect between and among managers, employees, co-workers, and
supervisors is integral to the efficient conduct of the Commonwealth’s business.’clxxxvi

The Massachusetts SEIU/NAGE also provided ongoing support to the legislative
campaign associated with the Workplace Bullying Institute and the Massachusetts
Healthy Workplace Bill.clxxxvii

Jim Redmond, a SEIU/NAGE lobbyist, is responsible for lobbying for the Healthy
Workplace Bill in the Massachusetts legislature. Redmond describes his role as ‘one
part educator, one part cheerleader, and one part communicator.’clxxxviii This involves
educating and building good relationships with legislators. Redmond further
explained that talking to the right legislators—those who care about the issue of
workplace bullying and educating committee members (e.g. the Joint Committee of
Labour Workforce in the Massachusetts legislature)—is important when it comes to
keeping the Bill moving. Another responsibility includes guiding targets through the
hearing process and ensuring that they prepare a brief testimony.clxxxix The active role
of the SEIU/NAGE is major boost for those groups supporting the passage of the
Healthy Workplace Bill.

Massachusetts Democratic Senator Joan Menard was the lead sponsor and introduced
Senate Bill No. 699 in 2009–2010. Tony Sousa, the legislative director for Senator
Menard, commented that she ‘has a longstanding relationship with NAGE, and she
files other bills for NAGE, and this seems like a natural progression for her to file

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clxxxvi Workplace Bullying Institute, ‘Workplace Bullying for Unions’, available from
clxxxvii Yamada, ‘Workplace Bullying and American Employment Law.’
clxxxviii Personal interview with J. Redmond, lobbyist of NAGE/SEIU Local 282, 20 October 2010.
clxxxix Ibid.
Senator Menard supported this bill not because of her personal experience, but because of her holistic view that people should be treated with dignity and respect. When Menard saw the statistic sheet provided by the lobbyists indicating that 37 per cent of people experience some type of workplace bullying, this suggested to her that it is a serious issue. This was confirmed by the number of phone calls her office received from constituents after the Bill was filed. As further explained by Sousa, passing legislation is a long process, and it will take time to get the bill passed. Generally, ‘only 2 per cent or 3 per cent of the bills passed become law.’ In terms of the opposition from the employer groups, Sousa contended that as this was a new bill, it may not have been on their radar yet.

Similar to California, the Healthy Workplace Bill has been sponsored by the Democratic Party in Massachusetts. Unlike California, however, Massachusetts has a lobbyist to advocate the issue of workplace bullying, since the union leader Sorozan has taken an interest in this issue. The in-house expertise in the legislative process and the lobbying effort of the legislative team in SEIU/NAGE makes the lobbying effort more cost effective and efficient than those of individual advocates. In contrast to the following case—New York—that involved strong employer opposition, ‘there has been no announced opposition to the Healthy Workplace Bill in Massachusetts.’

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^cxc Personal interview with T. Sousa, legislative director, Office of Senator Joan M. Menard, assistant majority leader, Commonwealth of Massachusetts, Massachusetts Senate, 19 October 2010.
^cxci Ibid.
^cxcii Correspondence with D. Yamada, author of Healthy Workplace Bill, 9 September 2010.
New York State

New York has traditionally been a Democratic state. While Republicans are favoured in upstate New York, there is a strong Democratic presence in New York City, which can partly be attributed to the city’s historical background. The political system in NYS depends, to a certain extent, on the cultural backgrounds and the heterogeneity of its population. Immigrants have a long history of labour organisation. For example, the Jewish-American trade unions established their roots in New York. In the 1990s, a quarter of the city’s population was foreign born. While the current Mayor of New York City is a former Republican and now an Independent, the majority of voters in New York City supported Barack Obama in the 2008 Presidential election.\(^{cxciii}\)

While New York has a Democratic tradition, with the recession affecting union dues, unions are currently more focused on supporting the party that can advance their interests than on blindly supporting the Democrats. As stated by James P. Hoffa, president of the Teamsters (1.4 million members strong in the building trades alone), labour unions were not created ‘to become ATM machines for the Democratic National Committee.’\(^{cxciv}\) This perspective can be further illustrated by the views of Denis M. Hughes, president of the New York State AFL-CIO; when he explained that the reason his organisation had supported former Republican New York governor, George E. Pataki, was that Pataki knew what they wanted and was able to deliver.\(^{cxcv}\)


This indicates that unions are willing to support any party that can further their political and economic interests.

Labour unions have a great deal of political power in NYS. The state has had the highest union membership rate in the US for 14 of the past 16 years. The high union density in New York can partly be explained by the living conditions—characterised by close physical proximity—since this promotes a culture of mutualism, thereby enhancing political networks. There were only three states with above 20 per cent union membership in 2010, and NYC had the highest rate at 24.2 per cent—Alaska was second with 22.9 per cent, followed by Hawaii with 21.8 per cent. However, Mike Neidl, legislative director of New York State AFL-CIO, cautioned that although the union density in NYS is almost 25 per cent, which is higher than that of any other state in the country, higher union density does not necessarily mean a higher chance of passing the Healthy Workplace Bill. He also stated, ‘I think union density makes our case stronger, but it does not mean the legislation will enact quicker than other states.’

Because NYS is highly unionised and a big player in politics, unions can easily use their political influence through the Democrats and mobilise their resources to fight for legislation on workplace bullying. However, instead of focusing on the broad goal of unions—to protect workers’ rights—unions have focused on electoral politics and funding issues. As claimed by Philips-Fein, a writer in New York City, ‘unions did not organize millions of industrial workers in the 1930s by funding the Democratic Party’ and engaging endorsed political candidates, ‘[n]or did the civil rights

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*cxcviii* Phone interview with M. Neidl, legislative director, New York State AFL-CIO, September 24, 2010.
movement triumph by funneling money to Lyndon Johnson. This point can be further reinforced by the statement of Kevin Finnegan, political director of 1199 SEIU United Healthcare Workers East, to the effect that ‘Our primary goals are to get people elected in the office and get funding through the contribution of individuals.’ The emphasis is on politics and supporting legislation against workplace bullying is a secondary consideration.

In terms of the NYS economic environment, the unemployment rate was 8.8 per cent in February 2010, which was lower than the general US unemployment rate of 9.1 per cent. A poor economy in New York has affected current employment opportunities. The economy of New York City depends on Wall Street. However, the financial market’s volatility and poor performance has affected the entire country. For instance, it has been estimated that the securities industry in New York City could lose up to 10,000 jobs by the end of 2012. In September 2011, the Bank of America announced that 30,000 positions would be cut over the next five years. In addition to this, state wide, 845,000 New Yorkers were out of work and searching for jobs in February 2010 and more than 607,000 New Yorkers were collecting unemployment benefits at this time. For unions, creating jobs is at the top of the agenda. Thus, the push for the Healthy Workplace Bill in NYS is largely dependent on non-traditional industrial relations actors.

While NYS was the ninth state to introduce the Healthy Workplace Bill, the supporters of the Bill have been more organised than in other states. This can be

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 cc Personal interview with K. Finnegan, political director, 1199 SEIU United HealthCare Workers East, New York, 21 November 2010.
 cci 'Analysis Wall Street Set to Shrink as Job Cut, Bonuses at Risk,' Reuters News, 12 October 2011.
attributed to the combination of both the efforts of the New York Healthy Workplace Advocates (NYHWA) and the political environment. The NYHWA is a self-funded, grassroots organisation, and its objective is to pass the Healthy Workplace Bill. The NYHWA is affiliated with the Workplace Bullying Institute (WBI) legislative campaign effort.

Mike Schlicht and Tom Witt, the NYHWA, were motivated to become part of the campaign for legislative reform in NYS as a result of their own experiences with workplace bullying. Schlicht was working in a very successful career in information technology at the University at Buffalo and was later promoted within the university. When a new supervisor was introduced, however, he could do nothing right, and resources were taken away from him. He then came across the book *Bully in Sight – How to Predict, Resist, Challenge and Combat Workplace Bullying*, which was written by Tim Field, the UK anti-workplace bullying activist, and strongly identified with it. Schlicht then started corresponding with Gary Namie in 2005–2006 in an effort to find a solution to the problem. Later on, Namie approached him and asked him whether he would be interested in becoming the state coordinator in NYS. Subsequently, Schlicht started lobbying for the Healthy Workplace Bill in Buffalo, where he lived in 2006–2007, but bill S2715 became a study bill. A study bill requires further research and recommendation because it is a new bill, such a bill is unlikely to pass into law.

Tom Witt worked as a library director and had to deal with two abusive trustees of his public library board. Like Schlicht, he was a target who experienced bullying from two of the board members at the library. As the issue was escalating, Witt read the

\footnote{Personal interview with M. Schlicht, state coordinator, New York Healthy Workplace Advocates, 20 September 2010.}
Namies’ book *Bully-proof Yourself at Work*. He then emailed the Namies and indicated that he would like to receive information regarding the legislative activity that had taken place in New York State. Witt and Schlicht then agreed to divide their responsibility. Schlicht, who started and named the New York Healthy Workplace Advocates became the upstate coordinator for the legislative campaign, while Witt became the downstate coordinator.\(^{cciv}\)

The Namies provided the coordinators with a range of data on the prevalence of bullying and the histories of the campaigns for the Healthy Workplace Bill in each US state to assist their lobbying of legislators and unions to gain support for the Bill. When it came to strategising, Schlicht and Witt came up with their own ideas. For instance, they set up as many appointments as possible with legislators in Albany, the state capital of New York, in order to meet with them and/or their representatives, and present their case for the Healthy Workplace Bill directly. In 2009, they split the workload and eventually contacted all 212 the New York State legislative offices. They also brought targets with them who shared their bullying experience with the legislators. They became more informed and kept track of the support they were obtaining from both Democratic and Republican members of the state legislature.\(^{ccv}\)

Although the legislative effort began in 2006, it is important to focus on the recent Bill of 2009–2010 (A5414/ S1823).

Both Republican Senator Thomas P. Morahan and Democrat Assemblyman Steve Englebright sponsored the Healthy Workplace Bill, (A5414/S1823) and the Bill was bipartisan. Assemblyman Englebright began his career as an educator specialising in

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\(^{ccv}\) Personal interview with T. Witt and M. Schlicht.
geology and biology. He broadened his interests to include the protection of people’s health, safety and quality of life. As described by Elizabeth Nostrand, legislative director of Assemblyman Englebright, ‘[H]e is a very thoughtful and caring legislator, and he believes this legislation is important.’ Having had conversations with people who had direct experience with workplace bullying, Englebright was aware of and sensitive to this issue. Awareness began to be raised when the advocate Tom Witt approached Englebright. As described by Nostrand, ‘Tom and Mike worked tirelessly to raise awareness of the issues and inspired many legislators to sponsor it.’ They were the driving force behind the legislative movement in NYS.

Republican Senator Thomas P. Morahan was the co-sponsor of the bill. Steve Powers, legislative director for Senator Morahan in the NYS Senate, described his boss as a very persuasive legislator. The senator considered himself a lawmaker and passed more bills than anyone else since he was able to work with both Democrats and Republicans. Both Powers and Morahan became passionate about the issue of workplace bullying after reading letters and receiving phone calls from their constituents. Powers was previously a senior county attorney, and his current role as a legislative director involved getting bills passed. As explained by Powers, Senator Morahan became interested in the issue of workplace bullying when one of his employees, Ron Lavin, the communication director at the senator’s office, told Morahan of his wife’s months of humiliation and mental abuse by a supervisor, saying that she could not get the human resources department to intervene. In addition to Lavin’s case, the senator’s office also received numerous requests from

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cvi Phone interview with E. Nostrand, legislative director, Assemblyman Englebright, member of assembly, 4th District, 22 September 2010.
various workers that had allegedly been psychologically abused by their supervisors. Senator Morahan introduced the bill late in the fall of 2008.\textsuperscript{ccvii}

Prior to becoming a state senator, Morahan was employed by a telephone company in New York, where he eventually worked his way up to management level. As described by Powers, his boss ‘knew what was in the work world and was known to look out for the unfortunate.’\textsuperscript{ccviii} Literally at his deathbed, the senator wanted to see this bill passed. He was diagnosed with leukaemia in January 2010, but he still made it to Albany three times, as he wanted to put the bill on the calendar before going back for treatment. For the senator, this bill was personal, and his physical presence in Albany meant a lot to the other legislators. Hence, passing this bill was more about personal issues than the political environment.\textsuperscript{ccix}

In addition to the support of legislators, there were labour unions in NYS that supported the anti-bullying initiatives. The organisations that issued the memorandums of support for A5414/S1823 include the New York State United States Teachers (NYSUT), New York State AFL-CIO, Professional Employees Federation, Rochester Teachers Association, Empire State Regional Council of Carpenters, Local 289, the Amalgamated Transit Union and Local 1342. Moreover, the United University Professions (Women’s Rights and Concerns Committee) issued resolutions of support. While unions are more concerned with this issue than they were previously, the current economic conditions mean that there is a still a focus on jobs. As explained by Mike Neidl, presently, the issue of workplace bullying is less of a

\textsuperscript{ccviii} Ibid.
priority: ‘[T]he first priority is to ensure members are working, since you are certainly
not getting bullied if you don’t have a job.’ Indeed, unions support the anti-
bullying initiatives, but the poor economic conditions mean that they must first focus
on more pressing issues, such as the employability of members.

The Nurses Association believed that the Bill would significantly help its members in
the fight against workplace bullying. John Berry, senior associate director of the New
York State Nurses Association, noted that ‘our priority of the bill has changed from a
second-tier to a first-tier issue, since safety is such an important part of the nurses
association.’ In addition to the New York State AFL-CIO and the New York State
Nurses Association, the Amalgamated Transit Union and Local 1342 also supported
the bill, since ‘the enactment of this legislation will help provide the legal
inducements necessary to encourage offending employers to halt this practice and to
encourage other employers to take a more activist role in encouraging this situation
among workers.’ Other unions such as the New York State Public Employees
Federation supported the bill, since ‘this creates a civil cause action in cases of an
abusive workplace environment.’ The Empire State Regional Council of
Carpenters also supported the bill, since it would create ‘zero tolerance for any threats
(verbal, physical, psychological) or abusive behaviour.’

Despite the support from the unions, the New York State Assembly Labor Committee
did not support the Healthy Workplace Bill. The Labor Committee advocates for the

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ccx Phone interview with M. Neidl, legislative director, New York State AFL-CIO, 24 September 2010.
ccxi Personal interview with J. Berry, associate director of the New York State Nurses Association, 23 September 2010.
ccxii Correspondence with Assemblyman S. Englebright, Amalgamated Transit Union Local Union 1342, A.5414/S.1823, 10 September 2009.
ccxiii New York State Public Employees Federation AFL-CIO, Memorandums of Support, A.5414/S.1823, 30 June 2009.
ccxiv Empire State Regional Council of Carpenters, Local 289, Memorandums of Support, A.5414/S.1823, 24 November 2009.
rights of both employers and employees and tries to balance the interests of the two parties. After considering the impact of the bill and the two parties’ interests, the Labor Committee had reservations about supporting it, partly due to employers' opposition.\textsuperscript{ccxv}

A number of employers and their organisations opposed the bill. These included the City of New York, the Greater New York Hospital Association, the National Federation of Independent Businesses (NFIB), the Business Council of NYS and the Partnership for New York City. Although the City of New York supports the redress of abusive work environments, it was found that the legislation was unnecessary and that the bill ‘gives employees a redundant weapon against employers.’\textsuperscript{ccxvi} Further, some sections, such as section 763, ‘make an employer strictly liable for the abusive conduct, regardless of whether the employer knew about it,’ and this would prove a huge burden to employers.\textsuperscript{ccxvii} Mayor Michael Bloomberg also commented on the costly litigation that could arise. Similarly to the City of New York, the Greater New York Hospital Association found that the bill was ‘so broad and undefined’ that this would force ‘employers into a constantly defensive posture, allowing a rash of cases based on necessarily subjective personal opinions which lower the efficiencies in the workplace.’\textsuperscript{ccxviii} Another opposing organisation, the NFIB, is a leading organisation representing 10,000 independent businesses in every industry from farms to factories. As explained by Mike Elmendorf of NYS, director of NFIB, ‘the wellbeing of employees depends on having a job and having an economy that creates jobs, and the

\textsuperscript{ccxv} Personal interview with D. Trombley, Senior Analyst, Assembly Committee on Labor, 22 September 2010.
\textsuperscript{ccxvi} The City of New York, Office of the Mayor, Memorandum in Opposition, S.1823B/A.5414B, 14 May 2010.
\textsuperscript{ccxvii} Ibid.
Healthy Workplace Bill is an anti-job policy. In other words, this bill would worsen the state’s already poor business climate.

Likewise, the Business Council of New York strongly opposed this bill. The council is an employers’ advocate and the leading business organisation in New York State. It is made up of thousands of member companies, local chambers of commerce and professional and trade associations. It represents the interests of large and small firms throughout the state, and its members employ more than 1.2 million New Yorkers. Moreover, these members are some of the largest corporations in the world, including IBM, Citigroup and JP Morgan Chase. The Business Council of New York opposed the bill because everyday disagreements between co-workers or employees and supervisors would enable employees to profit. In addition, the council claimed that sarcastic remarks could be misperceived and increase the possibility of litigation.

The Partnership for New York City represents international business leaders and major employers dedicated to working with the government, labour and not-for-profit sectors and their members. This organisation employs 1.3 million people throughout the state and contributes $202 billion per year to the state GDP. It opposed the bill because it would ‘add to the cost and legal risk of doing business in NYS and make New York an outlier among states that are competing for business investment and jobs.’ Thus, all the opposing organisations wanted to tighten the definition of the

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bill and avoid using the term ‘bullying’, since this is open to legal interpretation and could lead to high litigation costs.

In terms of the three states’ bill sponsors, Democratic bills were sponsored in both California and Massachusetts, whereas NYS received bipartisan support. These three states all have higher union membership than the national average. A favourable political environment and a strong labour movement have created better opportunities for the anti-bullying movement in these three states. However, the unions/Democrats have been distracted by the poor economy.

The effectiveness of the anti–workplace bullying movement in the US can be evaluated by examining the legislation in place, the compliance rate and the remedies used. In the case of the US, there has been no specific legislation to address the issue of workplace bullying since the legislative movement began in 2003. However, awareness has been raised, and this has generated discussion in mainstream publications such as *The Wall Street Journal, Lawyers USA, U.S. Law Week* and *The National Law Journal*. Furthermore, the movement has featured national programs sponsored by groups such as the Association of American Law Schools and the Labor and the Employment Relations Association. The problem of workplace bullying was also recognised as a ‘hot’ area of practice in the American Bar Association’s legal practice management newsletter in 2009.

**Conclusion**

This chapter began with a discussion of the existing legislation on workplace bullying in the US. It then moved on to a discussion of anti-bullying actors (i.e. traditional and

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ccxiii Yamada, ‘Workplace Bullying and American Employment Law.’
non-traditional actors) in the employment relationship that were influenced by the macro-level factors (i.e. the labour law system, union structure/density, political culture, the complexity of federalism, the employment structure and the level of involvement of business groups). This explained why the US has fallen behind other countries and why it has no legislation protecting bullied targets.

As we saw in the cases of California, NYS and Massachusetts, the lobbying effort depends on the expertise of the individuals involved. Since these lobbyists have limited resources and few connections with government agencies, the lobbying effort may not be as effective and systematic as it would be if it were organised by the labour unions. If the push starts from the labour movement, the voice will be stronger, as unions have more resources and expertise to mobilise the change. With the current economic recession and the low union density, government has tended to prioritise the employment issue and reducing debt. This also explains why the anti-bullying campaign started with non-traditional actors instead of traditional ones.

When it comes to non-traditional actors’ involvement in the legislative movement, it is evident that the US that they have made a coordinated effort to introduce the Healthy Workplace Bill at the national level. The Workplace Bullying Institute coordinates all of the legislative campaigns in the US. The fact that the grassroots movements lack a ‘voice’ in the regulatory process in the US could help to explain the delay in regulating workplace bullying there. Having said this, with the aid of the advocates’ consistent lobbying efforts, the Healthy Workplace Bill has been introduced in 17 states since 2003; but no law has yet been passed. Nevertheless,
advocates have gradually raised awareness of the issue of workplace bullying since the late 1990s. The next chapter traces the workplace bullying movement in Australia.
Chapter 6 Workplace Bullying in Australia

In Australia, there is currently no specific legislation to protect against workplace bullying except in South Australia (SA), and the issue of workplace bullying is considered to be an occupational and health and safety (OHS) hazard in this country. Under OHS legislation, employers have a duty to take all reasonable care to provide a safe and healthy environment for employees. In 2005, SA led the country by amending its workplace safety laws in the Occupational Health, Safety and Welfare Act 1986, to include bullying among the workplace behaviours covered by an employer’s duty of care to its employees. Failure to comply can lead to prosecution and fines.¹

Federal OHS legislation provides general protection for individuals from bullying at work in Australia. Section 16(2)(a)(i) of the 1991 act indicates that an employer must provide an environment ‘that is safe for the employer’s employees and without risk to their health.’² If either employer or employee breaches the duty of care under section 16 and 21 of the OHS Act, Comcare, a federal Australian agency, is responsible for investigating incidents and taking action against them. Comcare Australia also produces resources to educate the public about the issue of bullying, such as a bullying fact sheet and a guide entitled Preventing and Managing Bullying at Work – A Guide for Employers.³

In addition to OHS law, other laws making employers liable for workplace bullying include antidiscrimination law, workers’ compensation law, industrial relations law

³ Ibid., p. 1–14; Comcare, Workplace Bullying Fact Sheet, Commonwealth of Australia.
and common law. Although these laws can make employers accountable for their actions, they all have their own constraints; these were examined in Chapter 2.

This chapter focuses on the workplace bullying movement in Australia and the forces of change that led to the development of anti-bullying policy. It begins with a discussion of the economic and political context in Australia and the legislative development that has occurred, and then moves to focus on the current legislative approaches that deal with the issue of workplace bullying in Australia. The changes in each state after the consolidation of the states’ OHS acts into one consistent OHS legislation—termed ‘harmonisation’—are examined in the following. The chapter also explores the relationship between the Labor Party and the unions in this country, which has shaped the development of anti-bullying policy. It then proceeds to examine the role of traditional actors who have contributed to the anti-bullying movement. In addition, it discusses the contribution of non-traditional actors in this movement.

This chapter then focuses on the anti-bullying initiatives of four states: As in Canada and the US, provinces/states have led the way in many areas of labour relations reform. In New South Wales (NSW), where there have been long periods of Labor Governments, there was a favourable legislative climate that allowed the state to lead the way in Australia on the 40-hour week, long service leave, job security and equal pay for women.\textsuperscript{iv} Similarly, in regard to remedies against workplace bullying SA, Queensland, Victoria and NSW have shown leadership for varying periods. SA, Queensland and Victoria were chosen because they are more active in promoting anti-bullying initiatives than the other states in Australia. NSW was chosen because this

state had the first antidiscrimination legislation in the country focusing on human
equality; at the same time, however, NSW has fallen behind the other major states in
terms of anti-bullying policy development. The chapter finally evaluates the
effectiveness of the existing anti-bullying initiatives.

**Economic and Political Context**

The economic climate can influence the development of anti-bullying initiatives.

Australia has a solid economy that has not been significantly impacted by the Global
Financial Crisis. It has a low unemployment rate, a strong banking system and enjoys
high levels of outside investment. Australia’s economic strength is partly driven by
China and India’s increasing demand for minerals and energy. The Reserve Bank of
Australia has also kept interest rates unchanged, maintaining a rate of 4.75 per cent
even during times of economic turmoil, which has made Australia very competitive
for capital in the global market. These factors have contributed to the maintenance of
a sound Australian economy, particularly in comparison to other Organisation for
Economic Co-operation and Development (OECD) countries.\(^\d\)

As of October 2011, the unemployment rate in Australia was 5.2 per cent. In 2009,
while the average rate among OECD countries was 8.3 per cent, the rate in Australia
was only 5.6 per cent; many countries experienced higher rates, such as 18 per cent in

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\(^\d\) Australian Bureau of Statistics, *Australia’s Unemployment Rate at 5.2 Per Cent in October 2011*,
media release, available from
Australian Bureau of Statistics, International Comparison, available from
Spain, 9.3 per cent in the US and 7.6 per cent in the UK.\textsuperscript{vi} Hence, the economic climate in Australia, with its economic growth and relatively low unemployment, has provided a favourable climate for the development of anti-bullying initiatives.

Australia has three major political parties: the ALP, the Liberal Party, and the National Party, which was formerly known as the Country Party and is known as the Liberal National Party in Queensland, following an amalgamation with the Liberal Party there in 2008. These three major parties have formed every federal government since 1941, with the exception of the Liberal and Country party governments in the 1949 to 1972 period. The Liberals and National Party members generally form an anti-Labor coalition, which since World War II has dominated the federal government, holding power from 1949 to 1972, 1975 to 1983 and 1996 to 2007.\textsuperscript{vii} Labor parties were formed at different points in each of the Australian colonies/states. It was, moreover, only in NSW and Queensland, that clear and distinct Labor parties emerged after the Great Strikes of 1890-91. By contrast, in Victoria “labor” remained closely aligned with liberalism. The ALP, as a national party, was a post-federation product, brought forth by the existence of a Commonwealth Parliament. The ALP was one of the earliest and most electorally successful labour parties in the world. Furthermore, the ALP has operated in all states and at the federal level since 1901. It has been more successful in winning government at the state rather than the federal level, particularly in NSW and Queensland, for most of the 20th century.\textsuperscript{viii}

\textsuperscript{vi} \textit{Ibid.}


State Labor governments took the lead in introducing progressive legislation. State Labor governments were leaders in setting up welfare states before World War II. For example, the Queensland Labor government initiated unemployment insurance policies during the 1920s, while the NSW Labor government introduced widows’ pensions and family allowances. Since the late 1960s, the South Australia Labor Party has had a tradition of being innovators in workplace legislation. Don Dunstan, the Labor premier who came to power in 1967 and held power until 1979, with the exception of the period 1968–1970, was one of the most significant social reformers in Australia in regard to discrimination. Dunstan practised as a barrister before he became involved in Labor politics in the early 1950s. His governments introduced promoted industrial democracy and legislated to end discrimination on the basis of race and against women. The state’s 1967 Racial Discrimination Act and 1975 Sex Discrimination Act led the way for similar changes in other states, as did Dunstan’s rape-in-marriage legislation of 1977. South Australia also pioneered aboriginal land rights, urban planning and consumer protection. Hence, state-level politics were important for the Australian labour movement.

In recent years, the Labor Party has had varying success at the state level. Labor held power in South Australia in 1982–1993 and from 2002 to the present. In Victoria, Labor held power in 1983–1992 and again in 1999–2010. From 1992 to 1999, Victoria was governed by the Kennett Liberal government. In 1995, this government embarked on a path of privatisation and deregulation which included the labour

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ix G. Patmore and D. Coates, Labour Parties and the State and the UK.


xi ‘The Legacy of Don Dunstan,’ Sydney Morning Herald.

xii ‘A Nation’s Valued Voice of Change,’ Advertiser; ‘Dunstan Added to Our Civilisation,’ Courier Mail.

market. In 1996, Kennett handed over the state’s industrial relations powers to the newly elected conservative federal coalition government led by John Howard.\textsuperscript{xiv} It ruled NSW in 1941–1965 and 1976–1988. In 1995, Bob Carr led the Labor Party to power and the party, led by several successive premiers, held power until March 2011 when it suffered Labor’s worst legislative defeat since 1940.\textsuperscript{xv}

Although there are issues on which Labor governments do not agree with unions, and even side with employers, such as in the debates on amendments to workers’ compensation legislation in NSW in 2001, the Labor Party is generally far more sympathetic to union demands than non-Labor.\textsuperscript{xvi} The presence of a Labor Party in Australia with a close relationship with unions has created a favourable political climate for the promotion of policy change in regard to workplace bullying. The ALP in Australia has supported action against workplace bullying. With its more reformist orientation, the ALP is more likely to support progressive policies such as anti–workplace bullying legislation than the Liberal Party in Australia.

One state Labor Party, for example, which has led the way in the area of workplace bullying is that of Queensland. In Queensland, which has a unicameral legislature, the Labor Party has a strong presence. Labor has governed for 20 of the past 22 years in Queensland, and has been in office since 1998. Although it formed a minority government in 1998, it gained a substantial majority of seats in the February 2001 state elections. Peter Beattie was Labor premier from 1998 to 2007 and dominated Queensland politics. After he retired, he was succeeded by Anna Bligh, who became

the first woman premier of Queensland, in addition to being the first female leader of the Queensland Labor Party and the first woman to be elected premier of an Australian state. Labor in Queensland lost office in the March 2012 election. This was the first election in Queensland that has been contested by a single conservative party since 1935.xvii

Labour’s longstanding dominance in Queensland could be ascribed to the incompetent conservative leadership and the internal struggle between the Liberals and Nationals. However, this is probably not the case, since these parties merged into the Liberal-National Party (LNP) in July 2008. The original idea for this single party came from Lawrence Springborg, first elected National Party leader in 2003; his determination to achieve the amalgamation of the conservative parties led him to Canada, where he studied that country’s Conservative Party. The idea of the LNP arose from the merger of the Canadian Alliance and the Progressive Conservative Party.xviii

**Legislative Development**

Legislative developments in Australia promoting a health and safety culture in the workplace can be divided into two approaches: the national approach and the state approach. The national approach dates to OHS dates back to the late 1970s, with increasing trade union campaigns to raise awareness of OHS issues and lobby for legislative reform. This led to the development by the Hawke federal Labor Government of the National Occupational Health and Safety Commission (NOHSC)

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xviii Williams, ‘The Queensland Election of 21 March, 2009.’
in 1985. This was part of the Hawke Government’s implementation of its Prices and Incomes Accord with the Australian Council of Trade Unions (ACTU), whereby income restraint by the unions was given in exchange for legislative reforms such as the NOHSC.\textsuperscript{xix}

The NOHSC consisted of representatives of the Commonwealth, State and Territorial Governments and of the main employee and employer peak national bodies, the ACTU and the Australian Chamber of Commerce. The role of the NOHSC was to lead national efforts to prevent occupational injuries and to provide a healthy and safe working environment.\textsuperscript{xx} Although the NOHSC played a crucial role in addressing OHS issues at the national level and developed national standards in relation to key hazards such as manual handling and hazardous substances, the NOHSC never achieved national uniformity. For example, the different state/territory jurisdictions often used only a modified version of NOHSC’s national standards and sometimes did not use them at all.\textsuperscript{xxi}

The position of the NOHSC declined further after the election of the conservative Liberal and National Party coalition led by John Howard to federal government in March 1996. The federal coalition government advocated a neoliberal policy of reducing state expenditure and involvement in the labour market. This included cutting back the budget of the NOHSC, with the Commission losing half of its staff, and reducing its scientific and research capacities. Hence, during the Howard


\textsuperscript{xx} Ibid.

administration, the focus was more on cost cutting and less on immediate policy reform.\textsuperscript{xxii} Subsequently, the National Commission was abolished by the Howard Coalition in 2005, and was replaced by the Australian Safety and Compensation Council.\textsuperscript{xxiii}

In 2008, with the new administration of the Kevin Rudd federal Labor government, which came to power the previous year, the government created a national agency called Safe Work Australia, which replaced the Australian Safety and Compensation Council. Safe Work Australia is a national organisation and its role is to drive OHS and workers’ compensation policy development. One of its primary functions is to consolidate nine Australian OHS jurisdictions with six state acts, two territorial acts and two commonwealth acts into a consistent national model through harmonisation.

With the introduction of the harmonisation of the OHS regulations in Australia, the new Model Work Health and Safety (WHS) Bill came into force in Australia on 1 January 2012.\textsuperscript{xxiv} There are four elements of OHS harmonisation, including the harmonisation of principal OHS Acts and regulations, the development of national codes of practice and the ensuring of consistent national compliance and enforcement policies. Further, the key objectives of harmonising OHS laws are to reduce


compliance costs for business, improve the efficiency for regulatory agencies and improve safety outcomes.xxv

Despite extensive public consultations, the WHS Act does not specifically mention the term workplace bullying. The Act, dated 23 June 2011 in Schedule 3 – Regulation Making Powers, clause 5, Hazards and Risks, covers the following:

‘Matters relating to hazards and risks including: (a) the prescribing of standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard; and (b) matters relating to safety cases, safety management plans and systems (however described); and (c) matters relating to measures to control risks.’xxvi

This neglect of workplace bullying can be attributed to the employers’ opposition to the legislation, as it was argued that such an inclusion could affect business prosperity and challenge the managerial prerogative. In addition to this, in terms of legislating against psychosocial hazards, it is more difficult to establish such a case than it is with more explicit hazards such as exposure to physical and chemical dangers. These considerations have led regulators to accept a minimal standard, and therefore workplace bullying is not explicitly specified in the WHS Act.

In spite of the exclusion of a specific mention of workplace bullying in the WHS Act, there is a code of practice to address the issue of workplace bullying. Unlike the Act and regulations, a code of practice is not legally enforceable, but can offer advice on how to meet regulatory requirements. Under section 274 of the Work Health and Safety Act, there is the Preventing and Responding to Workplace Bullying Code of

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Practice, developed by Safe Work Australia. This provides practical guidance for any workplace, and the scope of the code includes what workplace bullying is, what is not considered workplace bullying, how to identify and assess the risk of workplace bullying, how to control the risk of workplace bullying and how to respond to workplace bullying through informal and formal resolution as well as monitoring and reviewing control measures. Thus, the new Act is intended to provide a simpler system and to move towards uniform health and safety law in the various states and territories in the commonwealth, while the Preventing and Responding to Workplace Bullying Code of Practice is intended to address the issue of bullying at work.\textsuperscript{xvii}

In addition to the national approach, Australia’s state governments have their own strategies. The states have led the way in regard to OHS legislation against workplace bullying. The Commonwealth of Australia is made up of six states and two territories, specifically the states of NSW, SA, Queensland, Tasmania, Victoria and Western Australia (WA), and the Australian Capital Territory (ACT) and Northern Territories. There are nine legal jurisdictions, including the Commonwealth, states and territories. Each jurisdiction enacts its own laws regulating workplace health and safety, workers’ compensation, discrimination and industrial relations. Further, each jurisdiction has its own individual statutory regulatory body to administer laws and regulations. As discussed in the introduction, SA is the only state in Australia that has defined the concept of bullying in its OHS legislation. In contrast to SA, other states and territories use their existing code of conduct or guidance notes to address workplace bullying. For instance, both WA and Queensland use codes of practice to tackle this issue. The codes of practice generally include practical guidelines and information that defines what bullying is, what bullying behaviour is, how to develop

\textsuperscript{xvii} Preventing and Responding to Workplace Bullying, Draft Code of Practice, Safe Work Australia, September 2011, p. 1–22.
intervention strategies, risk management and how to implement bullying policies and procedures in the workplace.xxviii

The WA code of practice defines workplace bullying as ‘repeated, unreasonable behaviour directed towards a worker or group of workers at a workplace, which creates a risk to health and safety.’ xxix Queensland uses the term ‘workplace harassment’ instead of workplace bullying in its code of practice and defines this term as ‘repeated behaviour... including the person’s employer or a co-worker or group of co-workers of the person that: (a) is unwelcome and unsolicited; (b) the person considers to be offensive, intimidating, humiliating or threatening, (c) a reasonable person would consider to be offensive, humiliating, intimidating or threatening.’ xxx

Compared to WA and Queensland, Tasmania uses the less formal guidance notes. Guidance notes provide information to employers and employees on how to manage bullying in the workplace. The Tasmanian guide does not include a definition, but explains that if ‘behaviour goes beyond a one off-disagreement, if it increases in intensity and becomes offensive or harmful to someone it becomes bullying’, which is a workplace health and safety risk. Similar to Tasmania, ACT also uses guidance notes to address workplace bullying. The similarity among the approaches adopted by all these jurisdictions is that there is provision made for the appointment of OHS inspectors and workplace safety committees.xxxi

At the state level, the OHS legislative framework has changed with harmonisation. Four states—Western Australia, Tasmania, Victoria and South Australia—did not

xxix Ibid.
xxx Ibid.
xxxi Ibid.
adopt the WHS laws that came into effect on 1 January 2012. Furthermore, they will
derer the implementation of the harmonised OHS laws for 12 months until 2013, since
they need more time to assess their jurisdictional impact.xxxii

In Victoria, bullying will be dealt with by other laws. The latest amendments to the
Crimes Act 1958 and the Stalking Intervention Orders Act 2008, also known as
Brodie’s Law, were made effective on 8 June 2011. Brodie Panlock was a waitress
who worked at a Melbourne café and was abused by her colleagues and subjected to
an unbearable level of humiliation that led her to commit suicide. In response to this
incident, an act was passed that codifies bullying as a criminal offence in Victoria,
with a maximum jail term of 10 years given to perpetrators.xxxiii

Two territories and two states, including the ACT, Northern Territory, NSW and
Queensland—and the Commonwealth as a whole are implemented the nationally
harmonised WHS laws in January 2012. In ACT, the territory act reflects the
provisions of the Model Act. As a result of harmonisation, unions in ACT lose the
right to bring prosecutions on behalf of injured workers under territory law. In the
Northern Territory, the WHS laws came into effect in January 2012. In Queensland,
the Work Health and Safety Act 2011 received assent on 6 June 2011. Although it
has some variation, this act has a high degree of consistency with the Model Act. In
New South Wales, the Work Health and Safety Act 2011 (WHS) was made effective
on 1 January 2012. Since harmonisation, the power of NSW unions is restricted, and
it is only allowed to prosecute for alleged category 1 or category 2 safety offences
when the regulator declines to take the advice of the director of public prosecutions in

xxxiii Ibid.
carrying out proceedings. The new WHS Bill gives the NSW Industrial Court jurisdiction to hear civil offences and some less serious criminal offences.xxxiv

**Legislative Approaches**

Against the background of this state and federal legislation, a consensus approach has been adopted in the Australian regulatory framework. This procedure involves employers’ associations, unions and interest groups representing their positions to governments through the tripartite commissions responsible for regulatory reforms related to health and safety issues. The tripartite structure legitimates the role of unions in OHS regulation and allows them the opportunity to represent workers in the process. In addition to this, there is an obligation to establish bipartite workplace safety committees or provide workplace health and safety representatives in OHS legislation.xxxv Thus, there is a collaborative involvement of business groups, unions and government in OHS regulation in Australia.

In addition to the tripartite structure in the regulatory process, there are three approaches that are currently used in Australia to address the issue of workplace bullying. These are developing employer/employee guidelines/codes of practice, providing specialist training to inspectors on psychosocial issues and adopting the concept of an interagency roundtable on workplace bullying.xxxvi

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xxxvi A. Ng, 'Chasing Rainbows: Challenging Workplace Bullying in Australia and the United States.'
Developing employer/employee guidelines/codes of practice can be an effective way to prevent bullying from happening in the first place. The government can first intervene by persuading businesses to use guidelines/codes of practice to prevent bullying activities. Guidance materials and codes of practice have been produced in Australia under the OHS law to educate employers about the psychosocial hazards of bullying, although most of the material is for guidance only. It is up to a company to comply with guidance materials and codes of practice, and this voluntary approach can still leave employees unprotected when it comes to workplace bullying.

However, this approach does provide principles for employers and employees to follow. For instance, WorkSafe Victoria has developed guidance material on the prevention of bullying and violence at work, which explains how to avoid the risk of bullying and clearly states that bullying comes within the scope of the OHS law. In addition, Workplace Health and Safety Queensland has adopted the Prevention of Workplace Harassment Code of Practice 2004, which ‘provides practical advice about ways to prevent or control exposure to the risk of death, injury or illness created by workplace harassment.’

The second approach has to do with training safety inspectors on psychosocial issues; this is a related initiative that can be of assistance in tackling workplace bullying. The fact that the Australian OHS statutes give inspectors the power to enter workplaces, collect evidence, interview workers and initiate prosecutions can be seen as a means of addressing the issue of bullying. For instance, in Queensland, inspectors

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specialising in psychosocial issues have the authority to provide advice and conduct investigations on the issue of workplace bullying.\textsuperscript{xl} This empowers such psychosocially trained inspectors to deal with bullying complaints.

The interagency roundtable is the third approach to resolving the issue of bullying at work, and has been used in SA. Employing interagency roundtables involves collaboration and interaction between different agencies. The agencies represented in the roundtable include the Equal Opportunity Commission SA, Business SA, SA Unions, the WorkCover Corporation, Working Women’s Centre SA Inc., Office of the Employee Ombudsman, SafeWork SA, the Industrial Relations Commission and Traineeship and Apprenticeship Services. The role of the agencies is to provide advocacy, information and advice, and if necessary investigate workplace bullying.\textsuperscript{xli}

This creates a dialogue and draws on the experience not only of government agencies, but also of business and labour organisations, in order to achieve the objectives of reducing bullying activities and protecting workers’ rights. Carolyn Barnett, a former senior manager of the OHS inspectorate at SafeWork SA, chaired an Interagency Roundtable formed to address the issue of workplace bullying. This Interagency Roundtable was formed at the direction of the SA Occupational Health and Safety Welfare Advisory Committee in July 2004. The brief was to develop an interagency cooperative strategy to address the preventative and complaint handling aspects of managing workplace bullying. In particular, the development of an education strategy, a Code of Practice, alternative dispute resolution processes and initiating research. An education campaign, including publications and a dedicated website, was launched by the Minister for Industrial Relations in December 2005. Barnett stated that, ‘it made


logical sense to form the Interagency Roundtable. We found there were an increasing number of complainants regarding workplace bullying, who were running around from one agency to another seeking assistance but getting inconsistent messages.\textsuperscript{xlii}

Stop Bullying in SA is a website that includes the role and responsibilities of each agency and enables the public to access bullying information at a single stop. The Interagency Roundtable on Workplace Bullying launched employer and employee guidelines and the website for SA in December 2005; it drew on the experience of nongovernment and government agencies that are working together to stop bullying at work. With so many agencies participating in the roundtable, the model may lead to problems in navigation for targets to find assistance and create bureaucracy amongst the agencies. Despite the shortcomings of the model, however, the roundtable defines each agency’s role in regard to workplace bullying and aims to ensure consistency in the referral processes between agencies. Although there are cases still waiting to be tested, the government is expecting positive outcomes.\textsuperscript{xliii}

**The Role of Traditional Actors**

**Unions**

The structure of the Australian union movement has been influenced by the country’s colonising power, Britain. Having a predominantly white population of British descent from the 19th century until World War II, Australia has been heavily influenced not only by Britain’s legal and political system, but also by its culture and values. The formation of unions was closely tied to similar developments in Britain, and there are some Australian unions that originally formed as branches of British

\textsuperscript{xlii} Phone interview with C. Barnett, Former senior manager of the OHS inspectorate at SafeWork South Australia, 9 December 2009.

\textsuperscript{xliii} A. Ng, ‘Chasing Rainbows: Challenging Workplace Bullying in Australia and the United States.’
parent organisations. However, the geographical distance between the two countries began to manifest itself in the divergence of their unionisation strategies in the 1890s and later.xliv

The Australian compulsory arbitration system enhanced union growth. Major industrial disputes during the 1890s led to a general interest in conciliation and arbitration. The largest confrontations between unions and employers in 19th century Australia occurred during the 1890 Maritime strike, the pastoral disputes of 1891 and 1894 and the 1892 Broken Hill strike. These actions were carried out in response to employers’ refusal to recognise unions as agencies for negotiating employee wages and working conditions. The compulsory arbitration system gave unions a role in the determination of legally binding awards involving wages and work conditions, and gave a voice to Australian workers.xlv During the 19th century, union growth came mostly through craft unions, with less-skilled manual workers joining the ranks only later. White-collar unions grew extensively from the 1960s onwards and enjoyed a long and fairly stable history.xlvi

Union membership in Australia reached its peak at 61 per cent of the workforce in 1954, and stayed strong until 1992, when it stood at 39.6 per cent. By 2007, union membership had fallen to 18.9 per cent due to the de-collectivist industrial relations laws. State union membership has also followed this downward trend in every state and territory.xlvii In Tasmania, for example, 55 per cent of the workforce was

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unionised in 1986, but this had dropped to 24 per cent in 2007. Compared to the other states and territories, the ACT has the lowest unionisation rate; this was 42 per cent in 1986, and had fallen to 15 per cent by 2007.\textsuperscript{xlviii}

The role of trade unions in Australia has weakened and the workplace rights system changed in favour of the employer after 1996. While unions can represent workers in Australia even if the workplace is largely non-union, their legal standing has declined as the workplace can have non-union enterprise bargaining. Workplace rights were further weakened due to the restructuring of industrial relations that took place between 1996 and 2007, which was led by John Howard’s conservative federal Liberal/National coalition government. Under the Howard government, workplace change involved the reduction of the power of unions and promoted the unilateral actions of employers by expanding management prerogative. With the introduction of Australian Workplace Agreements, which promoted individual agreements between employees and employers under the Workplace Relations Act 1996 (Commonwealth), unions’ organising power was undermined. The next push by the Howard government, the Workplace Relations Amendment of Work Choices Act 2005, further devalued the unions’ position and enabled employers to bypass unions by emphasising individual contracts and non-union collective agreements in Australian labour law.\textsuperscript{xlix} Although the new Labor government led by Julia Gillard has softened the workplace relations policy of the Howard government, there has been no return to the old compulsory arbitration system.


Despite the loss of organised labour’s central role in Australian industrial regulation since the 1990s, it has played a crucial role in promoting healthy and safe environments. The Australian Council of Trade Unions (ACTU) is the national umbrella union representing the Australian workforce. The ACTU does not have to deal with rival peak union organisations and about three-quarters of Australia’s unionists belong to organisations affiliated with the ACTU.¹ The unions, despite their declining membership, enjoy a close relationship with the Australian Labor Party (ALP), particularly at the state level. The strength and influence of the labour movement is also partly explained by the national culture; in Australia, collectivism is more influential than individualism. The notion of ‘mateship’ is entrenched in Australian society, and is linked to the collective basis of trade unionism. As a result, the levels of unionisation have traditionally been high in Australia, except in recent years.²

In terms of union support for the anti-bullying movement, the ACTU has generated organised anti–workplace bullying campaigns. Before 1997, the campaigns organised by the OHS unit of the ACTU were focused on dealing with physical hazards. The organisation lobbied against unsafe chemicals in the workplace in 1995 and against unsafe plants and machinery in the workplace in 1996. The ACTU campaigns gradually shifted from physical hazards to psychological ones during the 1990s, due to an increasing number of work stress claims. The ACTU formed the National Safety Committee, which is made up of affiliated unions and played a crucial role to launch a national survey on stress at work in 1997. The national stress survey brought the issue of workplace bullying to the attention of the Australian trade union

movement. The 1997 survey generated an overwhelming response, with over 10,000 surveys returned, and another 2,200 received by the NSW Public Service Association (PSA). Most people who participated in the survey answered every question, and some even attached lengthy notes to the survey to express their concerns about the issue of workplace bullying.\textsuperscript{iii}

The PSA was very supportive the survey and the recognised need to combat stress in the workplace. It became an active supporter of the ACTU’s efforts to fight work stress. As described by Dr Pam Veivers, OHS industrial officer/OHS education officer of the PSA:

People have the wrong idea about our membership; they think public sector employees are sitting in the ivory tower and that there are fewer workplace injuries than amongst the blue collar workers. However, most of our members are out there doing dangerous jobs. Our members comprise of, for example, prison workers or healthcare workers, and they put their lives in danger. These members were experiencing both physical and psychological injuries at work.\textsuperscript{iii}

After the 1997 stress survey, the ACTU campaign ‘Being Bossed Around Is Bad for Your Health’ of 2000 specifically targeted workplace bullying, with the aim of making people in the community aware that bullying is a serious health and safety hazard.\textsuperscript{liv} As explained by Susan Pennicuik, former national coordinator of OHS in ACTU:

\textsuperscript{iii} \textit{Stress At Work: Not What We Bargained For: A Report On The ACTU 1997 National OHS Survey On Stress At Work}, Australian Council of Trade Unions, 1997; Personal interview with P. Veivers, OH&S Education Officer, Public Service Association of New South Wales, 8 February 2010.
\textsuperscript{liv} ACTU, \textit{Being Bossed Around is Bad for Your Health}, Melbourne, Australia: ACTU, 2000.
Though the 1997 survey was about stress and not bullying, the findings of the stress survey clearly showed the link between poor management behaviour and bullying behaviour. Prior to this survey, nobody had really shown this connection. In 2000, I coordinated the first ACTU anti-bullying campaign ‘Being Bossed Around Is Bad for Your Health’. The purpose of the campaign was to present work related bullying to the public and reach beyond unions and all workers and draw it to the attention to the regulators. The hostile political environment promoted bullying behaviour. At that time, the Howard government, was anti-worker and there was a less cooperative atmosphere in the workplace that certainly promoted managerial prerogatives. It was not open to the idea that poor management behaviour causes people stress. This ‘allowed’ management in some instances to feel that bossing around behaviour was acceptable. After the 1997 survey and 2000 campaign, more people started to make connections between poor management and bullying behaviour and that bullying behaviour while different from mismanagement, can be ‘allowed’ by it and that bullying is a specific term to define this type of intimidating behaviour towards employees lv.

Subsequently, in 2005, the ACTU set up a bullying hotline, which is a national service allowing workers to voice their concerns on the issue of workplace bullying. Trained consultants provide advice to callers lv. Hence, the ACTU has adopted a comprehensive approach to raising awareness of the workplace bullying issue, and has shown interest in this issue since 1997.

lv Phone interview with S. Pennicuik, Australian Council of Trade Unions, 5 March 2010; Stress at Work: Not What We Bargained For.
In addition to the ACTU, other parts of the union movement have been active in promoting the movement against workplace bullying. Unions in NSW, the peak union body in NSW, have also done some work to create awareness of the need for a bullying-free working environment. For instance, in 2004, Unions NSW was the first state labour council in Australia to create a Dignity and Respect Charter. This charter defines what is acceptable behaviour, and what is unacceptable and will be considered bullying. Furthermore, it reminds employers that they have an obligation to identify psychological hazards, since these are workplace risks.\textsuperscript{lvii}

The charter was modelled on Irish guidelines. The main principle in the sample charter is to guarantee ‘a working environment promoting the right to be treated with dignity by management and work colleagues.’ The Irish Task Force (2001) recommendations suggested a definition of workplace bullying, while the Irish Health and Safety Authority established an advisory committee to examine bullying and produce codes of practice, as well as a dignity at work charter. The NSW unions followed the recommendations of the Irish Task Force and launched a campaign at the Sydney Opera House in 2004 to raise awareness of this issue. In NSW, unions took the leading role to create awareness and WorkCover used the materials developed by the unions and announced the issuance of a guide after the campaign.\textsuperscript{lviii}

Further to the anti-bullying campaigns in NSW, the Australian unions are more proactive in putting anti-bullying provisions in place in collective agreements. For instance, there are 90 enterprise bargaining agreements that include anti-bullying provisions. Among these agreements, the University of Queensland Union and the

\textsuperscript{lvii} Personal interview with M. Yagaar, former occupational health and safety/compensation officer, Unions New South Wales, 18 January 2010.

\textsuperscript{lviii} Personal interview with M. Yagaar; personal interview with P. Trompf; Worker’s Health Centre, speech delivered by Ben Bartlett at the 21st Anniversary of the Workers Health Centre.
The Role of the State

As noted earlier, state Labor governments have played a crucial role in promoting progressive legislation in regard to workers. NSW was the first state to introduce an Anti-Discrimination Act, in 1977. On 1 May 1976, Neville Wran led Labor to the electoral victory in NSW. Wran was a lawyer and prominent queen’s counsel whose political prominence arose from a ‘superior media image as well as his undoubted ability and interest in issues with wide appeal, such as civil liberties, law reform and conservation.’

The Wran government announced its commitment to social policy in the run up to its electoral success in 1976; one of the major initiatives was to tackle discrimination against women, migrants and indigenous people. When elected, the Wran government established an Anti-Discrimination Board and responded to the women’s movement by establishing the Women’s Coordination Unit and Women’s Advisory Council.

The Wran Labor government introduced its Anti-Discrimination Bill in 1976 with the objective of protecting the ‘fundamental rights and freedoms of the individual.’

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liii Ibid.

The principle of this bill is that ‘all human beings are born equal, have a right to be
treated with equal dignity, and a right to expect equal treatment in society.’\textsuperscript{lxiv} During
the 1976 debates over Wran’s Anti-Discrimination Bill, Sir Eric Willis, leader of the
opposition, strongly criticised this measure. He emphasised that it was ‘typical Wran
Government packaging—all glitter and show, but when the wrapping is removed little
of value is to be found inside.’\textsuperscript{lxv} Still, the bill was finally passed in 1977. Under the
Wran Labor government, there were two pieces of significant legislation for dealing
with workplace bullying. These were the Anti-Discrimination Act 1977 (NSW) and
the OHS Act 1983 (NSW). The Anti-Discrimination Act 1977 (NSW), when
originally enacted, prohibited discrimination on the grounds of race, sex or marital
status in the areas of employment, the provision of goods and services and
accommodation and on the grounds of race in education. The OHS law was replaced
by a new act as of the year 2000 in OHS 2000 (NSW).\textsuperscript{lxvi}

Both the antidiscrimination legislation and OHS legislation are important law when it
comes to dealing with bullying at work. As examined earlier, bullying can be treated
as a product of discrimination or an OHS hazard. The antidiscrimination model is one
of the earlier models used to deal with workplace bullying, and individuals are
protected from bullying on prohibited grounds such as racism; on the other hand,
bullying can also be seen as a health and safety issue at work, and as a result,
protection can also be provided under the OHS Act.\textsuperscript{lxvii}

\textsuperscript{lxiv} Ibid.
\textsuperscript{lxv} Ibid.
(accessed: 2 January 2009).
\textsuperscript{lxvii} Johnstone, \textit{Occupational Health and Safety Law and Policy}; Patmore, \textit{An Inquiry Into the Norm of
Non-Discrimination in Canada}.
In regard to anti-bullying legislation, the Queensland Labor Government played an important role in progressing this issue. It was during the second term of Peter Beattie’s Labor government that he formed the Workplace Bullying Taskforce. The government considered the severity of the bullying issue in terms of the amount of people experiencing bullying and the overall costs to society. According to Queensland Working Women Centre (QWWC), out of the 4,210 clients who used their services between 2000 and 2001, 30 per cent did so for workplace bullying and harassment, 26 per cent for dismissals and redundancy, 22.9 per cent for employment condition issues, 14 per cent for discrimination and 7.4 per cent for sexual harassment, which showed there were substantial numbers of women experiencing workplace bullying and harassment in the workplace. The Beattie government also looked into the costs of bullying. According to estimations by the Australian Bureau of Statistics, bullying in the workplace could lower the productivity of a bullied staff member and other workers, costing $12 billion a year.\textsuperscript{lxviii}

Beattie’s 2001 February election commitments included ‘WorkCover Queensland—Leading Australia’, ‘putting people and workplaces first’, and ‘renewing our public services.’\textsuperscript{lxix} The aim of these measures was to ensure that Queensland’s laws and policies could catch up with labour market trends and community standards. Beattie’s commitment to ‘[put] people and workplace first’ was the reason behind the creation of Australia’s first workplace bullying task force in July 2001, representing the first Australian public inquiry into the bullying issue. Beattie wanted to comprehensively examine the issue and asked the taskforce to provide recommendations to the


\textsuperscript{lxix} Ibid., p. 4013-14.
government on reducing bullying incidents in the workplace. A quarter of a million dollars in funding was allocated to form this taskforce, showing that the Beattie government was seriously taking on the issue of bullying. The taskforce held public forums across the state and gathered information on the effects of workplace bullying, which led to the development of the *Prevention of Workplace Harassment Advisory Standard 2004*. 

**The Role of Employers**

In Australia, employer groups have opposed anti-bullying initiatives. Employers have played a significant part in Australian industrial relations systems since the 1980s. They have persistently advocated for a more decentralised system of Australian industrial relations, promoting flexibility of negotiation over working conditions. Due in part to employers’ ongoing campaigning, the Workplace Relations Act 1996 (Commonwealth) replaced the former Labor government’s Industrial Relations Act 1988 (Commonwealth). The resulting transformation of the industrial relations framework strengthened the role of employers in Australian industrial relations.

At the national level, there are two major employer groups: the Business Council of Australia (BCA) and the Australian Chamber of Commerce and Industry (ACCI). These two groups are the key players in driving industrial relations policies for employers. The BCA is an association of chief executives of leading Australian

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corporations and was established in 1983. Its membership is made up of the CEOs of 100 of Australia’s top companies, which employ close to one million Australians, thereby representing ‘big business.’ It was formed to provide an avenue for business leaders to contribute to public policy debates. In the BCA’s latest submissions to the National Review to the draft Model Work Health and Safety Regulations and Model Codes of Practice to SafeWork Australia (7 April 2011), it is a strong supporter of developing a harmonised national OHS framework that focuses on the prevention of workplace injury. However, along with the view that ‘the regulations should be simpler, clear and sensibly enforced,’ the BCA has also clarified that ‘businesses should have the flexibility to achieve the objectives of the regulation in the manner most suitable to their circumstances, and regulators should have the discretion to accept a range of valid approaches to compliance.’\textsuperscript{\textsubscript{1xxiv}}

ACCI is Australia’s largest peak council of business organisations, representing the nation’s peak State and Territory Chambers of Commerce and Industry Associations from all sectors; its mandate is to influence policy forums and act as a connector between industry, government and regulators. Like the BCA, in terms of its submission to Safe Work Australia’s Model Workplace Health and Safety laws on 7 April, 2011, the ACCI supported the process of harmonisation but ‘insist[ed] that increasing regulation and the accompanying administrative and regulatory burdens should not outweigh the potential benefits of harmonisation.’\textsuperscript{\textsubscript{1xxv}} The organisation also argued that ‘any regulations should be thoroughly justified and non-

\textsuperscript{\textsubscript{1xxiv}} Submissions to SafeWork Australia, \textit{Draft Model Work Health and Safety (WHS) Regulations and Model Codes of Practice}, Business Council of Australia, 7 April 2011.

prescriptive.\textsuperscript{1xxvi} Hence, both the BCA and the ACCI supported less prescriptive regulations in regard to OHS issues.

In addition to the BCA and the ACCI, Employers First—now the Australian Federation of Employers and Industries (AFEI)—also opposed the idea of prescriptive legislation. The AFEI was founded in 1903 as the Employers’ Federation of NSW, and it is the oldest and independent peak employers group. It has over 3,500 members and has more than 60 affiliated industry associations. Its main role is to represent employers in relation to workplace relations issues, and most importantly, to seek appropriate regulation from government.\textsuperscript{1xxvii} In response to a bullying guide introduced by WorkCover in 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.’\textsuperscript{1xxviii}

Generally, employers oppose governments’ regulation of workplace bullying, as they argue that this places unnecessary restrictions on business operations. They are also concerned that they will face increased litigation costs as a result of bullied employees taking them to court. Consequently, resistance from employers in Australia to a prescriptive regulation has caused delays in anti-bullying policy development.

\textbf{The Role of Non-traditional Actors}

Non-traditional actors have played a key role in lobbying for legislative changes in regard to workplace bullying in Australia. There have been a range of non-traditional

\begin{flushright}
\textsuperscript{1xxvi} Ibid.
\textsuperscript{1xxviii} M. Quinlan, ‘Organisational Restructuring/Downsizing,’ p. 395–396.
\end{flushright}
actors that have advocated anti–workplace bullying initiatives in the country. They include Working Women’s Centres (WWCs), the Beyond Bullying Association in Queensland, JobWatch in Victoria, the Workers Health Centre (WHC) in NSW and the Beyond Bullying website and online resources in NSW. The Beyond Bullying Association in Queensland and Beyond Bullying NSW web-based resources appear to be two separate entities.

The Working Women Centre

The WWCs in Australia have been an important non-traditional actor initiating an anti–workplace bullying movement. WWCs are all separately incorporated organisations. Their growth was inspired by the feminist movement, which began in the late 1960s and 1970s, with the designation by the UN of 1975 as International Women’s Year. The first Working Women’s Centre, which was set up to assist women who were not union members, was founded in 1979 in SA and the project continued to expand over the next 30 years, with centres being established in the Northern Territory and Queensland in 1995. Centres were also set up in NSW and Tasmania. Most women who used the centres’ services did so because they worked in precarious positions, were the sole employees of their employers or came from non–English speaking backgrounds. Such women are quite disempowered as workers and are marginalised in society, which means that it is difficult for them to get their voices heard.\textsuperscript{\textit{lxxix}}

The centres are considered both a pressure group and a support group. They provide advocacy services for women on work-related issues and receive funding from the

\textsuperscript{\textit{lxxix}} Phone interview with S. Dann, director of the South Australia Working Women’s Centre, 4 December 2009.
state/territorial and federal governments,\textsuperscript{lxxx} as well as a small amount of funding from unions. Their roles are to lobby the government on emerging issues and to empower women in their communities. The centres act as a national network and share their resources. However, unfortunately, the centres in NSW and Tasmania have closed down, with the Tasmania centre closing on 30 June 2006 due to funding constraints.\textsuperscript{lxxxi}

One of the most active of the WWCs is the Queensland Working Women’s Centre (QWWC). The QWWC was heavily involved with the state government in conducting research and developing guidelines such as the Industry Code of Conduct on Workplace Bullying. Established in 1995, the QWWC is funded by the federal and state governments to provide information, advice and casework to women on all work-related matters. It has a record of early identification of emerging issues that impact workers. Characteristically, the QWWC was among the early pioneers to address the issue of workplace bullying in Australia, with the other WWCs following suit. Although the QWWC was not set up to deal with the issue of workplace bullying, one of the responsibilities included in the centre’s contract with the government is to map emerging issues. The issue of workplace bullying came on the radar very quickly at the QWWC and raised immediate attention. For instance, after 12 months of operations, 30 per cent of the calls to the centre had to do with workplace bullying. This was identified as a key issue. Kerriann Dear, who joined the QWWC as a counsellor/industrial advisor in 1999 before becoming director in

\textsuperscript{lxxxi} Ibid.
2003, noted that ‘the QWWC was the first organisation to actually take a public stand and promote public policy issues related to workplace bullying in Queensland.’

The QWWC has played an important role in promoting political interest related to the workplace bullying issue. The Beattie Labor government’s Workplace Bullying Taskforce in 2001 was chaired by Cath Rafferty, the former state manager of the QWWC. The taskforce was responsible for providing a report to the Queensland government about the incidence of workplace bullying in the state, its impact on business productivity, its effects on individuals, the legal and policy remedies currently available and how these might be improved. It gave a total of 19 recommendations to the government and the Queensland government adopted some of these in the Prevention of Workplace Harassment Advisory Standard 2004, which defines workplace harassment, describes how to prevent it and explains how to resolve workplace harassment complaints. Queensland is the only Australian state that has used the term ‘workplace harassment’, which is due to the fact that the taskforce recognised that ‘harassment’ was already prohibited conduct in the workplace under anti-discrimination laws. Hence, Queensland was the first state in Australia to set up the Workplace Bullying Taskforce and then translated the taskforce recommendations into an advisory standard.

Another major example of lobbying was the WWC in South Australia. South Australia led the way to initiating legislative reform in the prevention of workplace bullying by amending the OHS Act 1986 in 2005. Sandra Dann is the director of the WWC in SA. Dann worked in a secondary school on Christmas Island, a territory of

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lxxxii Phone interview with K. Dear, director of the Queensland Working Women Centre, 7 December 2009.
lxxxiii Ibid.
lxxxiv Walters and Wilson, Project Manager, Risky Business.
Australia in the Indian Ocean, before moving to Technical and Further Education NSW where she became harassment contact officer and was active in the NSW Teachers Federation. She moved to SA in 1997. As stated by Dann, the WWC was one of the agencies that recommended the definition of workplace bullying—‘inappropriate behaviour towards an employee’—which was included in Section 55A of the SA Occupational Health, Safety and Welfare Act 1986.\textsuperscript{1xxxv} As further noted by Dann:

After I joined WWC in 1997, they had just launched the work on workplace bullying, called *Workplace Bullying: Finding some answers*. Part of my responsibility was to get government and other key players to pick up some of the recommendations suggested in that publication. At the time, the minister’s representatives were not considering legislative changes to give protection to bullied employees. Our centre had reports on workplace bullying and demonstrated the increasing numbers affected by this issue. I also held parliamentary briefings for any parliamentarians that were interested (this was around 1998–1999).

In addition, we also talked to other unions, such as the Australian Nursing Federation, teachers’ unions, and the Public Sector Union. Our centre’s concern was the lack of remedies for bullying and legislation to protect bullied employees. Subsequently, we had the second project, which was more practical, and we talked to employers to try and find out how to eliminate workplace bullying. The organisations involved in this project included Parklyn and Sunset Lodge Aged Care Facilities, and Statewide

\textsuperscript{1xxxv} Phone interview with S. Dann.
Group Training SA; they were willing to report on the incidents of workplace bullying, and they were also willing to do something about it.

Additionally, back in 1999, our centre called together a roundtable with the key stakeholders to discuss the issue of workplace bullying. That was our first attempt to get all the players together to discuss what they thought about bullying.\textsuperscript{lxxxvi}

All of these activities played a crucial role in the legislative change in SA in regard to workplace bullying in 2005.

**Beyond Bullying in Queensland**

The first non-traditional actor to initiate an anti–workplace bullying movement was the Beyond Bullying Association (BBA) in Queensland. Unlike the QWWC, which has a gender perspective, the BBA has an academic focus. It was formed in 1993 by a small group of academics, a clinical psychologist and a psychiatrist who were interested in bullying behaviour and its impact on society. In 1988, Dr Susanne Wilkie, clinical psychologist, attended the World Psychology Congress in Sydney. She heard Professor Dan Olweus from Norway speaking on the five-year follow-up results of a national program to reduce school bullying. After attending the congress, Wilkie and her husband, Dr William Wilkie, clinical psychiatrist, began working on raising public awareness about school bullying. In 1992, William Wilkie had a patient who had been deliberately bullied out of his job as a senior lecturer at Queensland University of Technology. After Wilkie had a letter published in *The Australian* newspaper, he was contacted by Paul McCarthy and Michael Sheehan.

\textsuperscript{lxxxvi} Ibid.
Both were academics and researching the issue of workplace bullying at Griffith University, and they ultimately formed the BBA in Queensland. Through hosting two international conferences in 1994 and 1996 with the participation of well-known researchers such as Heinz Leymann and Dieter Zapf as keynote speakers, the association generated media attention for the promotion of its research on workplace bullying. The BBA’s major contribution involved the development of the Guide to Bullying at Work, which served as a step toward industry self-regulation within the workplace.

**JobWatch Victoria**

In Victoria, JobWatch is a non-traditional actor that has supported anti-bullying initiatives. Unlike the other nongovernment agencies, JobWatch has members with legal expertise. It is based in Melbourne and the telephone and information referral service covers the whole of Victoria. It is an independent, non-profit organisation and serves as a community legal centre funded by the Victorian government. It was set up in 1980 and is the only community legal centre in Australia that specialises in employment law and training-related issues. Advocacy and voicing concern for disadvantaged workers is one of the organisation’s key roles. The tasks of JobWatch include providing telephone advice services, community education programs for workers, students and organisations and legal casework services for disadvantaged workers and workers experiencing serious abuses of human rights. In addition to this,

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lxxxvii Correspondence with W. Wilkie, founder of Queensland Beyond Bullying, 17 December 2009.
JobWatch conducts research and provides the public with policy advice on both employment and industrial law issues.\textsuperscript{lxix}

Since the mid-1990s, JobWatch has played a leading role in representing targets of workplace violence, which includes bullying. Five hundred calls are placed each year reporting workplace violence and bullying, which can occur within the workplace, off-site business-related functions or cover a situation in which, for example, a non-employee perpetrates violence toward an employee in that workplace.

In terms of its research work, in 1998, JobWatch created two detailed discussion papers entitled \textit{Bullies, Media and the Law} and \textit{The Distinction between Workplace Bullying and Workplace Violence and the Ramifications for OHS}; in 2000, the organisation produced a detailed report entitled \textit{Working in Fear: Experiences of Workplace Violence}. Its research activities make it clear that JobWatch is active in advocating for targets of workplace violence and workplace bullying.\textsuperscript{xc}

Oonagh Barron was instrumental in lobbying the issue of workplace bullying in Victoria. Barron studied employment law and industrial relations, and joined JobWatch in 1995. At the time, JobWatch was running a telephone advice service and was dealing with a number of cases of apprentice abuse and psychological torture. JobWatch successfully created a public campaign to raise the issue of workplace violence and used the media to publicise the issue of apprentice abuse. The media have played a role in raising awareness of workplace bullying in Victoria. As explained by Barron,

\textsuperscript{lxix} Submission to Victorian WorkCover Authority on Code of Practice for Prevention of Workplace Bullying, Vera Smiljanic, JobWatch, April 2001.

\textsuperscript{xc} The Distinction Between Workplace Bullying and Workplace Violence and the Ramifications for Occupational Health and Safety, JobWatch, November 1998; Bullies, Media and the Law, JobWatch, 1998.
When I joined JobWatch in 1995, there were cases on apprentice abuse and psychological torture. We created a public campaign and our media strategy was to publicly campaign on the issue of criminal violence. The strategy is the same as campaigning on the issue of bullying. For instance, bullying hit the front page of the major newspaper probably every two or three months for one reason or another. With enough media attention, along with JobWatch’s and WorkCover’s campaigns, there is now a lot of awareness about workplace bullying in Victoria.\textsuperscript{xci}

In addition to Barron’s comment on the media strategy, she also discussed the applicability of the SA Interagency model in Victoria. From her viewpoint:

The Interagency Roundtable would not work in Victoria since different political environments may need to use different approaches. From my experience, however, I have learned that by preparing the workplace bullying guidance note, the most important part is to bring the three parties together—employers, unions and government agencies—since it is a very political environment in Victoria. It is important to align these three stakeholders and get their commitments for any policy change.\textsuperscript{xcii}

JobWatch played an important role in pushing for a guidance note on bullying in Victoria. As a part of its advocacy work, JobWatch has produced a report to the Victorian WorkCover Authority on the Code of Practice for the Prevention of Workplace Bullying in 2001. In it, the organisation proposed that the code of practice be extended beyond workplace bullying to include internal workplace violence. JobWatch argued that the code of practice was crucial to addressing the issue of

\textsuperscript{xci} Phone interview with O. Barron, senior project officer, Strategic Programs and Support Division and former JobWatch employee, 10 December 2009.

\textsuperscript{xcii} Ibid.
workplace violence and bullying at work.\textsuperscript{xciii} After Barron left JobWatch in 2000, given her expertise on the issue of working bullying, she was hired at Worksafe Victoria as senior project officer of the Strategic Program and Support Division, given her expertise on the issue of working bullying, and assisted in the development of the guidance note. These efforts paid off in 2003 when Victoria became the first state in Australia to introduce the \textit{Preventing and Responding to Bullying at Work Guidance Note}.\textsuperscript{xciv}

\textbf{Workers Health Centre New South Wales}

The WHC NSW took the leading role in creating awareness of the issue of workplace bullying in NSW. The centre is a not-for-profit organisation and was established in 1976. It is the oldest workers’ health and safety service in Australia. It was set up by a variety of people, including anarchists, communists, feminists, ALP supporters, trade unions, doctors and health professionals. The WHC, whose first government grant was from the Wran Labor government, was initially concerned primarily with workplace health and safety issues, particularly workplace injuries, and its major clientele group was migrant workers. It is currently funded through the NSW Department of Health and trade unions, but the centre is mainly self-funded through the provision of medical services, rehabilitation services, occupational hygiene and workplace safety audits and OHS training to workers. Since 1988, the centre has included a board of directors from 14 different unions, including the Australian Manufacturing Workers Union, the Construction, Forestry, Mining, and Energy Union and the Teachers Federation, and the director of the WHC reports to this board.

\textsuperscript{xciii} \textit{Ibid.}
\textsuperscript{xciv} \textit{Ibid.}
Although the centre tries to maintain a balance between left-wing and right-wing unions on the board, most are left-wing.\textsuperscript{xcv}

The anti-bullying movement in NSW began when there was an increase in the number of complaints about stress and workplace bullying at the WHC in the late 1990s. Peggy Trompf, former director of the WHC and who worked there from 1996 to 2004, was actively involved in championing the issue of workplace bullying. Trompf has over 20 years of experience working in health and safety services, and used to be the senior officer of the National Occupational Health and Safety Commission (NOSHC). Trompf stated that:

We became aware of the issue of workplace bullying at our Centre as 40 to 50 per cent of calls to the Centre in 1996 were about workplace stress and bullying. This significant number of complaints brought the issue of workplace bullying to our attention, which led us to conduct anti-bullying training for the workers. In terms of raising awareness about the issue of workplace bullying, we were ahead of the Labour Council NSW and WorkCover NSW.\textsuperscript{xcvi} We also proposed coherent strategies to tackle the issue of workplace bullying to the Labour Council NSW such as a user-friendly anti-bullying kit for workers. As a result, the Labour Council committee was formed in 2002 to address the issue of workplace bullying.\textsuperscript{xcvii}

\textsuperscript{xcvi} WorkCover is a statutory authority under the Minister for Finance and its responsibility is to improve workplace safety.
\textsuperscript{xcvii} Personal interview with P. Trompf, former director of the Workers Health Centre, 18 February 2010; Worker’s Health Centre, speech delivered by Ben Bartlett.
The WHC also worked with Labour Council NSW and launched the ‘Bullying at Work’ kit in 2002, which included a series of fact sheets to advise employers and safety representatives on preventive measures and policies to adopt to control this occupational hazard. For instance, some of the topics in the facts sheets included: ‘Defining workplace violence,’ ‘What is workplace bullying?’, ‘What workers can do?’, and ‘How OHS representatives and OHS committees can help prevent bullying?’ As a result of the WHC and NSW unions’ lobbying, WorkCover NSW developed guidance materials. Thus, the WHC was at the forefront of dealing with the issue of workplace bullying in NSW.

NSW’s Guidance Note is similar to Victoria’s. The NSW government’s (WorkCover) latest edition of the publication Preventing and Responding to Bullying at Work was released in June 2009, and is made up of two parts. The first of these concerns preventing bullying at work, and includes topics such as the definition of and risk management related to bullying, which involves identifying, assessing and control of bullying risk factors. The second part of the guide focuses on responding to bullying at work and covers topics such as how to encourage reporting, address bullying and review the work environment.\textsuperscript{xcviii} As Michael McGuren, state coordinator of Psychological Working Environment, NSW WorkCover, has noted:

\begin{quote}
There are reasons that NSW’s Guidance Note is similar to Victoria’s. For instance, Victoria has done more preliminary work, which was driven by WorkSafe Victoria. It also functioned purely as a resource drive. In addition, the two states have fairly identical working environments. With
\end{quote}

\textsuperscript{xcviii} New South Wales Government, Preventing and Responding to Bullying at Work (3rd ed.), WorkCover New South Wales, June 2009.
this convenient relationship and with similar legislation, it is only natural that

NSW is using the Victorian Guidance Note.\textsuperscript{xcix}

Measuring the effectiveness of the anti-bullying policy is problematic. As McGuren stated, that ‘one of the main challenge in capturing information regarding policy effectiveness is the purity of the data; the data are difficult to capture since they are not specific to bullying and it is challenging to tease out the psychosocial indicators.’\textsuperscript{c}

Further, McGuren maintained that the measure of effectiveness of anti-bullying public policy cannot be based solely on the number of prosecutions. Since different states allocate different amounts of resources for enforcement, the number of dedicated staff is affected. While prosecutions are one indicator, other factors such as education, presentation and partnership with other states are also indicators of policy effectiveness.\textsuperscript{ci}

**Beyond Bullying New South Wales**

In NSW, a small group of academics in the state formed Beyond Bullying, constructed around a web-based resource, in 2005. Beyond Bullying is run by two scholars, Dr Anne Wyatt and Dr Carlo Caponecchia. Wyatt has over 30 years’ experience as an OHS management and education consultant. She is a qualified workplace mediator and is often called to be an expert witness in workplace bullying and occupational violence cases. Caponecchia is involved in several research-based consultancy projects with industry groups, provides consultant advice to organisations to prevent workplace bullying and conducts independent investigations in relation to

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\textsuperscript{xcix} Personal interview with M. McGuren, state coordinator (Psychosocial Working Environment) of New South Wales WorkCover, 17 February 2010.
\textsuperscript{c} Ibid.
\textsuperscript{ci} Ibid.
workplace bullying. Both are academics at the University of NSW.\textsuperscript{cii} The motivation for the establishment of the Beyond Bullying website is to raise awareness about workplace bullying and provide consistent information and links on all jurisdictions in relation to workplace bullying in Australia.

Beyond Bullying is currently the major online resource in Australia; it provides workplace bullying information on the site.\textsuperscript{ciii} Its main initiatives relate to researching and publishing to promote awareness among the general public rather than lobbying politicians. As Dr Caponecchia—advisor to Beyond Bullying—stated, ‘advocacy does not necessarily mean going to [the] parliamentary house.’\textsuperscript{civ} The impact of the Beyond Bullying website is mainly in conducting and reporting evidence-based research on workplace bullying and disseminating resources about workplace bullying to the public.\textsuperscript{cv}

**Conclusion**

This chapter has revealed that it is the federated structure in Australia that has enabled the states to take the lead in promoting anti-bullying initiatives. The traditional actors, especially unions and nongovernment agencies, have been most influential in effecting anti-bullying change. In addition to this, the tripartite regulatory structure in Australia has also enhanced policy development and opened the dialogue between labour, business groups and the government. Legislative approaches which can be used to combat workplace bullying have included setting up guidelines/codes of practice and the interagency roundtable. Among states in Australia, SA has attempted to challenge workplace bullying through legislation, and led the country in setting out

\textsuperscript{ciii} Ibid.
\textsuperscript{civ} Personal interview with C. Caponecchia, advisor to the Beyond Bullying website, 3 December 2009.
\textsuperscript{cv} Ibid.
a legal definition of workplace bullying in the OHS regulatory framework to protect bullied employees. Other states, including Queensland and Victoria, have also actively promoted anti-bullying initiatives. While NSW initially led the way in legislative initiatives, it has fallen behind the other states.

This chapter has highlighted the role of traditional and non-traditional actors in promoting anti-workplace bullying initiatives. Unions and the Labor Party, particularly in NSW and Queensland, have played a positive role in regard to the issue. On the other hand, employers opposed what they saw as another challenge to managerial authority in the workplace. Non-traditional actors’ have played a crucial role in raising awareness and promoting legislative reform, especially in SA. With the harmonisation of national OHS legislation, workplace bullying is seen as an important health and safety issue. The following chapter compares the similarities and differences of the anti-bullying movement in Australia, Canada and the US.

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A. Ng, ‘Beyond Traditional Actors: Workplace Bullying Movement in Australia and the USA,’ paper presented at the 7th International Conference on Workplace Bullying and Harassment, Cardiff, Wales, United Kingdom, 2010.
Chapter 7 Comparing the Three Countries

In the previous three chapters, we examined the anti–workplace bullying movement in Australia, Canada and the US. This comparative chapter is built around the three previous chapters and examines the similarities of anti-bullying actors’ contributions across the three countries in relation to anti-bullying legislative development; further, it asks why there are differences in the pace of such development among the three countries. By taking a historical approach to this comparative analysis, this chapter seeks to understand and provide explanations for these differences. The chapter starts by comparing the economic performance of these countries over the period from the 1980s to 2010 with some regional variations within the countries. It then proceeds to compare the strength of the trade unions. Further, the three countries’ federal governments in power, the political system of Quebec and the relationship between the unions and the political parties are also examined. Following this, the chapter assesses the role of the state and then the role of employers in anti-bullying legislative development across the three countries. Subsequently, the crucial role of non-traditional actors in promoting the anti-bullying initiatives in the three countries is examined. The proposed conceptual framework is shown below in Figure 2 which highlights the six factors influencing the three countries’ anti-bullying movement: the economic context, the strength of the trade unions, labour and politics, the role of the state, the role of employers and the role of non-traditional actors in addressing workplace bullying. All of these play equally important roles in strengthening or weakening the anti-bullying movements in Australia, Canada and the US.
**Economic Context**

Economic performance can be an indicator of whether the issue of workplace bullying plays an important part in a country’s national agenda. Economic conditions often dictate how a government, the labour movement and employers prioritise the issue of workplace bullying in a national context.

There are two main indicators for determining the level of activity in an economy: the rate of unemployment and a country’s Gross Domestic Product. Table 1 measures the economic performances of Australia, Canada and the US over the period from 1990 to 2010 in terms of GDP. The table shows that in Australia, there was only one year with a negative GDP, which was -1.1 per cent in 1991. Excluding this anomaly, the country’s GDP ranged from 1.7 per cent in 1990 to a peak of 5.1 per cent in 1998, and...
dropped to a rate of 2.7 per cent in 2010. In Canada, there are two recorded years with a negative GDP, which was -2.1 per cent in 1991 and -2.8 per cent in 2009. The peak Canadian GDP occurred in 1999, when it reached 5.5 per cent, while the GDP for 2010 was 3.2 per cent, which was slightly higher than that of Australia. In the US, three instances of negative GDP rates were recently recorded, with -0.2 in 1991, -0.3 per cent in 2008 and -3.5 per cent in 2009.

As can be seen from the three countries’ GDPs, negative figures were recorded in 1991 in all cases, which was attributable to the economic downturn. The Dow Jones Industrial Average stock market fell significantly on Black Monday, 1987, leading to a recession around the world starting in early 1990 and continuing in 1991. The recession generally influenced the employment market and caused the unemployment rate to rise, as examined in the following. The 1991 recession was not the only negative event to affect the three countries’ economy. The Global Financial Crisis (GFC) from 2007 to 2012 also affected the Canadian economy and hit the US economy particularly hard. However, Australia fared differently in the GFC than in the recession of 1991, maintaining a strong economy, with a GDP growth of 4.6 per cent in 2007, 2.6 per cent in 2008 and 1.4 per cent in 2009; in contrast, the Canadian GDP growth was 2.2 per cent in 2007 and 0.7 per cent in 2008, with GDP declining by -2.8 per cent in 2009. The GFC had the greatest impact on the US economy, which had a GDP growth of 1.9 per cent in 2007, a decline of -0.3 per cent in 2008 and and a further decline of -3.5 per cent in 2009.

The slowdown of the economy, particularly in the US, meant that in terms of the support of legislators and unions, public policy reforms had a lower priority unless it

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directly boosted economic growth. On the other hand, from an anti-bullying advocate’s perspective, this economic downturn in fact provided another reasons to promote the anti-bullying bill. For instance, the New York advocates used this as an opportunity to further demonstrate the significance of the Healthy Workplace Bill, since bullied workers might not voice their concern during a period of financial distress, as secure jobs are important for workers under such conditions. However, while the economic downturn can be seen as an opportunity for advocates to promote the Healthy Workplace Bill, they faced greater resistance because of the economic climate.

Table 1 Selected Gross Domestic Product Growth Percentage in Australia, Canada and the United States

<table>
<thead>
<tr>
<th>Year</th>
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<th>Canada</th>
<th>United States</th>
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<tr>
<td>1990</td>
<td>1.7</td>
<td>0.2</td>
<td>1.9</td>
</tr>
<tr>
<td>1991</td>
<td>-1.1</td>
<td>-2.1</td>
<td>-0.2</td>
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<tr>
<td>1992</td>
<td>2.8</td>
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<tr>
<td>1993</td>
<td>3.9</td>
<td>2.3</td>
<td>2.9</td>
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<tr>
<td>1994</td>
<td>4.8</td>
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<td>1996</td>
<td>4.3</td>
<td>1.6</td>
<td>3.7</td>
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<tr>
<td>1997</td>
<td>4.2</td>
<td>4.2</td>
<td>4.5</td>
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<td>1998</td>
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<td>2001</td>
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<tr>
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<td>4.0</td>
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<td>2009</td>
<td>1.4</td>
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<tr>
<td>2010</td>
<td>2.7</td>
<td>3.2</td>
<td>3.0</td>
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</tbody>
</table>

Source: GDP Statistics by Country – World Economic Outlook 2011

Table 2 below indicates the unemployment rates in Australia, Canada and the US in 1985 to 2010. The unemployment rate in the US throughout 1985 to 2006 was
significantly lower than those of Canada and Australia. For example, in 1985, the US unemployment rate was 7.0 per cent, whereas in Canada it was 10.5 per cent and in Australia it was 8.3 per cent. In 1993, the unemployment rate in the US was even lower, at 6.5 per cent; on the other hand, the unemployment rate in Canada was 11.2 per cent and in Australia it was 10.9 per cent. However, the situation changed in 2007 to 2010 due to the GFC: Both the US and Canada had a consistently higher unemployment rate in those four years than Australia did. For example, the unemployment rate was 5.0 per cent in the US in 2007, and 6.0 per cent in Canada, whereas in Australia it was 4.4 per cent. In 2009, the unemployment rate in the US was even higher, hitting 9.9 per cent. Moreover, it was 8.3 per cent in Canada in this year, whereas in Australia it was just 5.6 per cent. In 2010, Australia’s unemployment rate was 5.2 per cent, significantly lower than the rates in Canada and the US. The unemployment rate was 8.0 per cent in Canada and 9.4 per cent in the US in 2010. The relatively lower unemployment rates of Australia and Canada provided a more favourable climate for the anti-bullying movements in those countries and helped them move ahead of their counterparts in the US.\textsuperscript{cx}

Table 2 Unemployment Rates in Australia, Canada and the United States

<table>
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<tr>
<th>Year</th>
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<th>Canada</th>
<th>United States</th>
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<tbody>
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<td>2010</td>
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Source: Indexmundi, Australian Unemployment Rate; Human Resources and Skills Development Canada, Work – Unemployment Rate; Bureau of Labor Statistics, United States Department of Labor, Unemployment Rate.

The main impetus for reform in the three countries in regard to anti–workplace bullying legislation has been evident at the state rather than federal level, even though the federal level represents the overall economic climate in the three countries. It is therefore important to consider economic performance at a state and provincial level as well. Table 3 below shows the three countries’ selected unemployment rates from 1985 to 2010 with a focus on the provinces/states wherein anti-bullying legislative campaigns have been initiated.
In Canada, the focus is on three provinces—Quebec, Saskatchewan and Ontario. Quebec’s unemployment rate is exhibiting the highest rate in 1993, at 13.2 per cent, and the lowest in 2007 and 2008, at 7.2 per cent. Compared to the national average, Quebec’s unemployment rate was consistently higher than the national figures except in 2010; in this year, both Quebec’s and the national unemployment rate were 8.0 per cent. The unemployment rate in Saskatchewan was consistently lower than the Canadian national average. Saskatchewan’s unemployment rate was highest in 1993, when it reached 8.3 per cent, but even at this time, it was lower than the national average of 11.4 per cent. Unemployment in Saskatchewan was below 4.9 per cent from 2006 to 2009, and then rose again to 5.2 per cent in 2010. It was also lower than most other provinces and territories in Canada during the period from in 1985 to 2010. With the consistently lower unemployment rate in Saskatchewan, the province can dedicate more resources to address issues such as workplace bullying rather than focusing on unemployment. Ontario’s rate has typically been relatively low compared to the national average, but higher than that of Saskatchewan. For example, in 1985, it was 7.9 per cent, whereas the national average was 10.5 per cent. In 1990, it had fallen to 6.2 per cent, while the national average was 8.1 per cent. In 2010, the unemployment rate was 8.7 per cent in Ontario, which was higher than the national average of 8.0 per cent. The relatively low unemployment rates of Saskatchewan and Ontario compared to the national average makes their environments more favourable to the initiation of anti-bullying campaigns and labour policies.

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\textsuperscript{cxii} Ibid.

\textsuperscript{cxi} Ibid.

Saskatchewan and Ontario but Quebec was the first province in North America to have legislation against psychological harassment. The advancement of its legislative development was due to its French root and recognising the importance of human dignity rather than being directly related to the highest unemployment rate of the three provinces.

In Australia, the unemployment rates of four states were examined for the selected period of 1985–2010—Queensland, Victoria, New South Wales (NSW) and South Australia (SA). The rates for the five-year period prior to the anti-bullying initiatives in these four states are compared, followed by a discussion of the similarities between the four states’ economic performance.

The unemployment rate in Queensland was higher than the national average throughout the selected years of 1985, 1990, 1995, 2000 and 2010 except in 2005. For example, it was 8.5 per cent in 1985; this dropped slightly to 8.3 per cent in 1990, then rose to 8.8 per cent in 1995. Subsequently, it dropped to 7.3 per cent in 2000 and much lower to 4.4 per cent in 2005. It then rose to 5.2 per cent in 2010, while the national average for unemployment was 4.9 per cent in this year. As the Workplace Bullying Taskforce was set up in Queensland in 2001, we will examine the six-year period from 1996 to 2001 to determine whether there was a correlation between the unemployment rate and the implementation of the taskforce. The unemployment rate was 7.8 per cent in 2001, which was lower than the rates in 1996 of 8.7 per cent, 1997 of 8.5 per cent and 1998 of 7.9 per cent; however, it was higher than the rate of 7.7 per cent in 1999 and 7.3 per cent in 2000. As the unemployment rate varied throughout this five-year period, and the taskforce was set up in 2001, the implementation of the Taskforce may have been due to the Beattie government’s
the high unemployment figures throughout this period.\textsuperscript{cxiv}

The unemployment rate in Victoria was generally lower than the national average, except in 1995; in 2005 and 2010, it was equal to the national average. In 1985, Victoria’s unemployment rate was 6.3 per cent, lower than the national average of 7.8 per cent; moreover, in 1990, the unemployment rate was 7.2 per cent, which was lower than the national average of 7.7 per cent. In 2000, it was 5.6 per cent, lower than the national average of 6.3 per cent. Looking at the six years period from 1998 to 2003, Victoria’s unemployment rate was 7.2 per cent in 1998, 6.4 per cent in 1999, 5.6 per cent in 2000, 6.5 per cent in 2001 and 5.5 per cent in 2002; in 2003, it was 5.2 per cent. Among these six years, there was a relatively lower unemployment rate in 2003, and a steady economy provided a sound platform to introduce the first

\textit{Preventing and Responding to Bullying at Work Guidance Note} in Australia in the same year.\textsuperscript{cxv}

The unemployment rate in NSW matched the national average in three years—it was 7.8 per cent in 1985, 5.0 per cent in 2005 and 4.9 per cent in 2010. In 1990, NSW’s unemployment rate was lower than the national average, with 6.5 per cent in NSW and 7.7 in Australia. Again, in 1995, it was 7.1 per cent in NSW, which was lower than the national average of 7.9 per cent. In 2000, NSW’s unemployment rate was 5.3 per cent and the national average was 6.3 per cent. Looking at the unemployment rate in NSW from 1999 to 2004, the lowest rate of 4.9 per cent was observed in 2004; in 1999, the unemployment rate was 5.5 per cent, and it was 5.3 per cent in 2000, 6.1 per cent in 2001, 5.6 per cent in 2002 and 5.3 per cent in 2003. Since the Dignity and

\textsuperscript{cxv} \textit{Ibid.}
Respect Charter was introduced in 2004, the timing was appropriate due to the relatively lower unemployment rate compared to the figures from the previous five years.\textsuperscript{cxvi}

The unemployment rate in SA was higher than the national average throughout the selected years in 1985, 1990, 1995, 2000 and 2010, but not in 2005. In this year, the unemployment rate in SA was 4.6 per cent which was lower than the national average of 5.0. The unemployment rate in this state was 8.3 per cent in 1985; this dropped slightly to 7.9 per cent in 1990, then rose to 8.9 per cent in 1995. Subsequently, it dropped to 7.0 per cent in 2000, 4.6 per cent in 2005 and rose again to 5.5 per cent in 2010. Looking at the five-years period prior to SA’s legislative definition of workplace bullying in the OHS Act in 2005, the unemployment rate was significantly lower in 2005 than the previous five years from 2000 to 2004; while it was 4.6 per cent in 2005, it was 5.1 per cent in 2004, 6.0 per cent in 2003, 6.0 per cent in 2002 and 7.0 per cent in both 2001 and 2000. That the lowest unemployment rate compared to the previous five years was observed in 2005 could explain why the state government began to engage in anti-bullying initiatives in this year: They may have been able to allocate more resources to looking into the issue of workplace bullying in this year that had been previously earmarked for fighting unemployment.\textsuperscript{cxvii}

There are similarities among SA, Victoria and NSW—in contrast to Queensland—in regards to the unemployment rate in the period selected. These three states all had relatively lower unemployment rate compared to the previous figures for these states throughout the six-year period. One explanation for why these states are more

\textsuperscript{cxvi} \textit{Ibid.}
\textsuperscript{cxvii} \textit{Ibid.}
advanced in terms of their anti-bullying initiatives is that they had more resources to
address workplace issues such as bullying.

In the US, three selected states have been chosen as a sample to examine the
unemployment rate during the selected period of 1985, 1990, 1995, 2000, 2010:
California, Massachusetts and New York. Unemployment varied in California during
this period. In 1985, the unemployment rate was 7.2 per cent, which was the same as
the national average. It then decreased to 4.9 per cent in 2000, which was above the
national average of 4 per cent. It reached its highest rate of 12.4 per cent in 2010,
which was above the national average of 9.6 per cent. In Massachusetts, the
unemployment rate was generally lower than the national average during the selected
years. The exception was in 1990, when the unemployment rate in Massachusetts
was 6.3 per cent and the national rate was 5.6 per cent. From the selected period of
1985 to 2010, the unemployment rate in Massachusetts was lower than both
California and New York (except for 1990, when the unemployment rate in
Massachusetts was 6.3 per cent, which was 0.5 per cent higher than California and 1
per cent higher than New York). New York’s unemployment rate was lower than the
national average during the selected years except in 1995 and 2000, when the
unemployment rate in New York was 6.4 per cent, while the national average was 5.6
per cent. In 2000, the unemployment rate in New York was 4.5 per cent whereas the
national average was 4.0 per cent. In 2010, both Massachusetts and New York had
unemployment rates lower than the national average; however, California’s
unemployment rate was higher at 12.4 per cent compared to the 9.6 per cent national
average.\textsuperscript{cxviii}

\textsuperscript{cxviii} Bureau of Labor Statistics, United States Department of Labor, Unemployment Rates.
Among the three states, California has a relatively higher unemployment rate than Massachusetts and New York, but it was the first to push the Healthy Workplace Bill in 2003; this has more to do with the bullying experience and later advocacy of Ruth Namie than the economic performance of the state. Ruth and Gary Namie were situated in California at the time, and both of them wanted to test whether the newly drafted Healthy Workplace Bill was sound enough to penetrate into the legal system of the US.\textsuperscript{cxix} Having said this, the higher unemployment rate in California did create a disadvantage in terms of pushing the bill through. In contrast, Massachusetts and New York had relatively lower unemployment rates in most of the selected years from 1985 to 2010; this meant that there was a more receptive political environment in these states when it came to pushing the Healthy Workplace Bill forward.

As examined above in terms of the economic performance of the GDP and the unemployment rate in the selected states/provinces of Australia, Canada and the US, the GDP is among the most important economic indicators to reflect the behaviour of the overall economy. Measuring and comparing growth in the three countries during the period from 1985 to 2010 gives a sense of prosperity in their national economies. Further, comparing the unemployment rates in the different provinces/states at the national levels also shows the health of the three countries’ economy. These indicators could affect the allocation of resources and the priority given by the government to address certain issues at the national level. The comparison of unemployment rates shows that Australia has a relatively lower unemployment rate than Canada and the US (given the GFC, which impacted the GDP and unemployment rates). It also shows that Australia’s economy is more resilient and experienced a lesser impact during the crisis, whereas the US was hit hard.

\textsuperscript{cxix} Personal interview with Dr G. Namie and Dr R. Namie, founders of the Workplace Bullying Institute, 2 June 2010, Cardiff, Wales, United Kingdom.
Governments generally address the employment issue first, and workplace bullying issues have a lower priority. Overall, the economic context is one factor which influences a government’s decisions regarding the allocation of its resources. Where anomalies do arise, such as the case of Quebec, we have to look at other factors to explain why there was progress in regard to legislation against workplace bullying.

Table 3 Selected Unemployment Rates by State/Province in Australia, Canada and the United States

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<thead>
<tr>
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<td>7.7</td>
<td>7.9</td>
<td>6.3</td>
<td>5.0</td>
<td>4.9</td>
</tr>
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<td>5.3</td>
<td>5.0</td>
<td>4.9</td>
</tr>
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<td>Victoria</td>
<td>6.3</td>
<td>7.2</td>
<td>8.2</td>
<td>5.6</td>
<td>5.0</td>
<td>4.9</td>
</tr>
<tr>
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<td>8.3</td>
<td>8.8</td>
<td>7.3</td>
<td>4.4</td>
<td>5.2</td>
</tr>
<tr>
<td>South Australia</td>
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<td>8.9</td>
<td>7.0</td>
<td>4.6</td>
<td>5.5</td>
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<td>Canada</td>
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<td>9.5</td>
<td>6.8</td>
<td>6.8</td>
<td>8.0</td>
</tr>
<tr>
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<td>10.4</td>
<td>11.5</td>
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<td>8.5</td>
<td>8.0</td>
</tr>
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<td>5.2</td>
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<td>5.1</td>
<td>9.6</td>
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<td>5.8</td>
<td>7.9</td>
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<td>5.4</td>
<td>12.4</td>
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<td>2.7</td>
<td>4.8</td>
<td>8.5</td>
</tr>
<tr>
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<td>5.3</td>
<td>6.4</td>
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</tr>
</tbody>
</table>


The Strength of the Trade Unions

The strength of the trade unions in Australia, Canada and the US has influenced the pace of the anti-bullying movements in these countries. This section explores the
three countries’ union structure, trade union density, labour laws, allocation of resources for organising new members, role of union avoidance experts and social values. These aspects all affect the pace of the anti-bullying movements in the three countries.

The three countries differ with respect to their union structures. One of the unique features of Canada is that it has international unions; that is, some of the unions in the US have a branch in Canada. However, during the late 1970s, there was increasing momentum for ‘independence’ among Canadian unions. This led unions such as the Canadian Automobile Workers (CAW) to detach from the US-based United Auto Workers in 1984. In terms of its support for anti-bullying initiatives, the CAW was one of the largest supporters of the provisions of the OHS Act on violence and harassment, which came into force on 15 June 2010 in the province of Ontario.

In addition to the union structure, union density is another key factor in looking at the awareness and legislative lobbying in the three countries. Union density influences the pace of anti-bullying movements. According to the Organisation for Economic Co-operation and Development (OECD) statistics in Table 4 over the period from 1999 to 2010, trade union density in Australia was 24.9 per cent in 1999, and then decreased gradually, starting in 2000, when it fell to 24.5 per cent. By 2006, it had dropped to 19.8 per cent, in 2007 and 2008 it hovered at 18.2 per cent and in 2010 it hit its lowest level, at 18 per cent. As in Australia, trade union density in Canada was relatively high in 1999, standing at 28.1 per cent. This increased to a high of 28.6 per cent in 2003, and then started to drop in 2004, moving to 27.9 per cent. In 2010, union density stood at 27.5 per cent. Union density has been consistently lower in the

US than in Australia and Canada. Starting at 13.4 per cent in 1999, it decreased to 12.9 per cent in 2000, was at 11.5 per cent in 2006 and hit a low of 11.4 per cent in 2010. With relatively higher union density in Australia and Canada, these two countries are more organised in their efforts to represent and fight for the rights of employees who have been bullied at work, whereas the lower union density in the US means that individual workers may need to represent themselves in such cases.

Table 4 Selected Trade Union Densities in Australia, Canada and the United States

<table>
<thead>
<tr>
<th>Year</th>
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<th>Canada</th>
<th>United States</th>
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</tr>
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</tr>
<tr>
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<tr>
<td>2007</td>
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</tr>
<tr>
<td>2008</td>
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<tr>
<td>2009</td>
<td>19.0</td>
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</tr>
<tr>
<td>2010</td>
<td>18.0</td>
<td>27.5</td>
<td>11.4</td>
</tr>
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</table>

*Source:* Organisation for Economic Co-operation and Development (OECD), StatExtracts, Trade Union Density.

Table 5 below shows the union density in the US for the selected period of 1985, 1990, 1995, 2000, 2005 and 2010. The highest levels of union membership in the US tend to be in the western states, including California and Washington, as well as in the north-eastern part of the US, including New York, Massachusetts and Rhode Island, among others. Of these states, New York continues to record one of the highest union membership rates, although it decreased from 30.3 per cent in 1985 to 24.3 per cent in 2010. Hawaii also has a very high rate of union membership. By contrast to the

northeast region of the country, the south-eastern part of the US (which includes North and South Carolina, Georgia, Tennessee and Virginia) tends to have less union membership. From 1985 to 2010, all of these states recorded relatively low union membership levels, ranging from 2.3 per cent in 2005 in South Carolina, which was the lowest, to the highest—13.3 per cent in 1985—in Tennessee. The wide variations in the strength of organised labour at a state level helps to explain why there are variations in the level of activism concerning workplace bullying. States such as California and New York, where there are relatively strong union movements, have provided a good environment for activists desiring to bring about change.\footnote{B.T. Hirsch, D.A. Macpherson and W.G. Vroman, ‘Estimates of Union Density by State,’ Monthly Labor Review, vol. 124, no. 7, 2001, p. 51–55; http://www.unionstats.com.}
Table 5 Selected Union Memberships in the United States

<table>
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<td>5.4</td>
<td>5.6</td>
</tr>
</tbody>
</table>


The differences in the labour laws of the three countries are a key factor influencing the union activities, directly affecting the pace of the anti-bullying movement. For instance, the labour laws in Canada restrict what management can do to oppose unions. Instead of using lengthy legalistic adversarial elections to determine unionisation, unions in Canada employ a simple card check. There are certification votes in Canadian jurisdictions with only a few exceptions where the cards show a significant majority. Unlike in the US, management in Canada is not permitted to engage in massive union-prevention campaigns. Provinces such as Ontario and Quebec have gone even further to protect unions as institutions: Ontario has implemented first contract arbitration and taken a pro–collective bargaining attitude; Quebec employs an extension of contract law by which the provincial Ministry of
Labor extends collective bargaining to unorganised workers.\textsuperscript{cxxiv} Because of the protection of unions’ rights and their strong presence in these two provinces, unions are in a stronger position in Quebec and Ontario to support anti-bullying initiatives/legislation.

In Australia, unionism began in the 1850s, and the discovery of gold transformed the economy. There was a rise of labourism from 1900 to 1921, and by 1920, 50 per cent of all employees were represented by unions. This was supported by the growth of state regulation. The introduction of state and federal systems of compulsory arbitration marked a significant change in the Australian industrial relations framework. Employers had no choice but to recognise the tribunals and unions as the agents of workers within the arbitration system. The commonwealth arbitration system was established in 1905, and at that time, only two states—Western Australia and New South Wales—had their own arbitration systems, which had been in place since 1900. From 1921 to mid-1954, unionism remained dominant in Australian society; union density was steady and even managed to stay above 40 per cent during the Great Depression. In fact, the long union decline began in 1954 due to the structural changes that were implemented in Australia, and continued until 2008. As stated by Bowden, the decline may have been due to ‘the implementation of the organising models or their designs,’ or the conspiracy against the unions under the Howard government.\textsuperscript{cxxv} With this decline, as Bowden further illustrated, the ACTU Right at Work Campaigns demonstrated the resilience of labour.\textsuperscript{cxxvi} Subsequently, a

\textsuperscript{cxxiv} D.G. Blanchflower and R.B. Freeman, ‘Unionism in the United States and Other Advanced OECD Countries,’ \textit{Industrial Relations}, vol. 31, no. 1, 1992, p. 56–79.
\textsuperscript{cxxv} B. Bowden, ‘The Rise and Decline of Australian Unionism: A History of Industrial Labour from the 1820s to 2010,’ Labour History, no. 100, 2011, p. 51–82.
\textsuperscript{cxxvi} \textit{Ibid.}
new industrial relations system came into force in mid-2009, when the Rudd-Gillard government federal Labor Government introduced the Fair Work Act.

The allocation of resources to organise new members has also influenced the anti-bullying movement in the three countries. Bronfenbrenner argues that ‘the major failure of the American labor movement in the 1970s and 1980s was that they stopped organizing;’ facing strong management opposition in the 1980s, ‘they stood like deer caught in the headlights for almost a decade.’ Indeed, lack of organisation is one of the major factors in the decline of the labour movement in the US. With fewer resources allocated to the organisation of new members, this limits the growth of unions.

In contrast to Australia and Canada, ‘union busting’ is an important feature of US labour relations. Union avoidance experts play a crucial role in American industrial relations and these experts help employers to develop strategies to weaken union strength and the existence of unions in the workplace. The presence of union avoidance experts may be one of the major causes of the decline of US unions, as seen in the drop of private sector union membership to 6 per cent by 2011, which is the lowest it has been since the 1920s. The prominence of union avoidance experts can partly be explained by the political environment. With the election of Ronald Reagan in 1980, limitations on the National Labor Relations Board (NLRB), which oversaw union representation elections, considerably enhanced the growth of consultants’ anti-union campaigns. Part of the union avoidance industry in the US involves consultants and law firms specialising in this field, and their expertise has helped employers to undermine union strength in the country. While the concept of union avoidance consultants and law firms has existed since the beginning of the

post–World War II era, the sophistication of these experts has grown significantly since 1970.\textsuperscript{cxxviii}

Union avoidance experts in the US have a high success rate of defeating union organisation campaigns, and this has created a multi-million dollar business. Some consultancy firms even offer a ‘money-back guarantee’ if they fail to defeat a campaign. For instance, Burke Group, one of the largest union avoidance firms operating in the health sector, has clients such as Coca-Cola, NBC and General Electric. This firm claims that it has the expertise to resist tough campaigns and it boasts a success rate of 96 per cent. Two of Burke Group’s campaigns against the Service Employees International Union in Sacramento and Los Angeles in 1998 earned the firm over US$2.6 million.\textsuperscript{cxxix}

Management law firms have become much more important in the past few decades in relation to anti-union strategies. Some of the first large firms which vigorously engaged in union avoidance campaigns in the 1970s were New York–based Jackson Lewis, Chicago-based Seyfarth Shaw and San Francisco-based Littler Mendleson. These management law firms generally work with consultants, who employ persuasion techniques rather than approaching the employers directly. Lawyers in management law firms often have experience in union avoidance. For example, many of Seyfarth Shaw’s lawyers were previously employed with the national or regional offices of the NLRB, and thus already had experience in dealing with labour issues. Hence, union avoidance experts are not the only source driving employer opposition to unionisation. These experts have joined the mainstream in the industrial relations

\textsuperscript{cxxix} Ibid., p.654-655.
system to help employers establish a union-free environment; this has contributed to the decline of unionisation in the US.\textsuperscript{cxxx}

Beyond union avoidance experts, compared to Australia and Canada the environment in the US is less favourable for union growth in terms of organising and striking. For example, even though US labour law permits workers to ‘self-organise’ and form unions, the law also grants employers the right to intervene in the process. A number of court and administrative decisions have limited employee-union rights, while simultaneously expanding employer rights. This concept extends to strikes. Although workers have the right to strike, they risk being penalised. Furthermore, employers have the right to continue production during a strike, and they can even hire permanent replacement workers. Workers may not be dismissed during the strike, but risk no longer having a job to go back to because they have been permanently replaced.\textsuperscript{cxxxi} It is apparent that the US legal climate gives employers power which makes organising or striking difficult and hinders union strength.

The relative weakness of the US unions is an important factor in explaining why there is no specific campaign organised by unions related to workplace bullying at the national level. In the US, there are two labour union federations, the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) and Change to Win, which recently split off from the AFL-CIO. Both of these federations include among their affiliates private employee unions, public employee unions and some unions with both private and public employees. As examined earlier, although the AFL-CIO organised the first ‘My Bad Boss’ contest in 2006 and a second contest in 2007. No state in the US, however, adopted a Healthy Workplace Bill or followed

\textsuperscript{cxxx} Ibid., p. 658-659.

up on the AFL-CIO initiative after these contests. This may be attributed to the fact that this was not the most pressing concern for American national unions, a reality that become only further apparent as the country’s financial and then economic crisis impacted on the labour market there. Having said this, it is apparent that more anti-bullying initiatives have been organised in Australia, Canada and the US by individual unions than at the national level.

The differences in the labour relations systems of Australia, Canada and the US also affect the motivation of unions in these countries to reach out to workers who are being bullied. Unions in the US, for example, have less incentive to approach bullied employees than those in Australia. In the case of Australia, non-union workers who are being bullied at work can join a union, and the union will fight for their rights even if nobody else in the company is a member of that (or any other) union. As a result, it is sensible for Australian unions to look to targets of bullying as potential issue for recruiting new members. American workers, on the other hand, cannot join a union unless most of their co-workers are either already members or choose to join the same union at the same time. If American workers are being bullied by their co-workers, or if only a few people are targets of workplace bullying, there is often no way for a union to help them. Consequently, in such cases, it does not make as much sense for American unions to reach out to individual targets of bullying as potential new members, and the bullied employees will not be able to obtain protection from a union like they can in Australia.  

Lastly, the differences in the collective versus individualist values of the three countries influenced the government structure, in turn affecting the pace of the anti–

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Correspondence with J. Rudin, Professor of Human Resource Management, Rowan University's Rohrer College of Business, 30 March, 2010.
workplace bullying movements in the three countries. For example, both Canada and Australia rely more on government, state intervention in the economy and collective forms of organisation, whereas the US focuses on free enterprise and individual rights. These value differences have also caused the anti-bullying movement to be delayed in the US, hence making it more difficult to engage in anti-bullying initiatives.

Despite the differences among the three countries, they are similar with regard to the structural changes and demographic factors that led to the union decline, for instance, the shift in employment away from the manufacturing industry towards more service-oriented industries. These structural changes led to an occupational move from heavily unionised blue-collar jobs to less unionised white-collar jobs. Other similarities concern demographic factors, such as the inclusion of more women in the workforce; there has been a shift away from male and full-time employment towards female and part-time employment. The influx of women into the workforce and particularly in the service industry has changed the dynamics of the work culture and heightened concerns about workplace bullying along gender lines. This can partly explain why women’s groups in Queensland, South Australia and Quebec began receiving more bullying/harassment complaints in the 1990s and subsequently became the pioneers of anti-bullying advocacy campaigns in these regions. Since the structural and demographic changes have been similar in the three countries, the low union density in the private sector has more to do with the labour law, and in the case of the US, the level of employer hostility towards labour. Hence, the differences in

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the three countries’ union structure, trade union density, labour laws, allocation of resources for organising new members and social values have influenced the pace of the anti-bullying movement, and this has been complicated by deteriorating economies, where the focus is on other issues.

**Labour and Politics**

Another crucial factor in examining the success of the anti-workplace bullying movement is the relationship between trade unions and the political party. In three countries the strongest links between unions and a political party can be found in Australia, with the Labor Party, which has formed governments both at the federal and state level. There are links between the NDP and trade unions in Canada, but NDP has never formed a federal government and is currently the official opposition in Ottawa. By 1992, the NDP had governed more than half of Canada at provincial level, playing a crucial role, particularly in Saskatchewan, where major progress was made towards anti-bullying legislation in 2007. The NDP no longer governs Saskatchewan but it is currently in power in Nova Scotia and Manitoba. There is no Labor Party in the US and unions generally rely on the Democratic Party through donations and provision of labour in election campaigns to help them meet their objectives in terms of labour reform. The varying levels of the links between unions and political parties have all influenced the pace of the anti-bullying movement, with

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_cxxxv_ Government of Saskatchewan, ‘Province Strengthens Workplace Protection for Saskatchewan People.’; Will the Liberals have a brand outside Green Gables?, http://m.theglobeandmail.com/commentary/will-the-liberals-have-a-brand-outside-green-gables/article4496153/?service=mobile (accessed: 25 August, 2012)
the Australian political environment being the strongest for unions and the US political being the weakest for unions.

As shown in Table 6, which lists the national governments in Australia, Canada and the United States, highlights the recent electoral success of the Labor Party compared to the NDP and the Democrats at the federal level. The Labor Party in Australia held federal office from 1983 to 1996. The Liberal-National Party coalition led by John Howard then took power, remaining in office from 1996 to 2007. The Howard government achieved a restructuring of industrial relations and introduced direct employer-employee agreements (Australian Workplace Agreements). After 11 years as the opposition party, Labor came back into power under Kevin Rudd, in the 2007 federal elections. Labor oversaw Australia’s response to the GFC of 2008. In June 2010, after serving as the deputy prime minister in Kevin Rudd’s Labor government from 2007 to 2010, Julia Gillard became the first female prime minister of Australia.\textsuperscript{cxxxvi}

At the federal level in Canada politics were dominated by the Conservatives and Liberals. The Conservative Party of Canada held power from 1984 to 1993. From 1993 to 2006 the Liberal Party held federal office, led for most of the period by Jean Chrétien from Quebec. The current prime minister of the country is Stephen Harper, who took power in 2006 after winning the leadership of the Canadian Alliance and becoming the official opposition leader. Harper’s was the first Conservative

government to gain power in 13 years. The 2011 federal election was significant for the NDP as for the first time it won enough seats to form the Opposition. cxxxvii

Ronald Reagan was the 40th president of the US. A Republican, he served from 1981 to 1989. The major achievements of the Reagan administration involved stimulating economic growth, controlling inflation, increasing employment and strengthening national defence. These achievements led America to a prolonged prosperity after his administration. After Reagan, George Bush served as president from 1989 to 1993. Bush was also from the Republican Party. He was defeated in the next election by Democrat Bill Clinton. Some of Clinton’s key accomplishments included lowering the unemployment rate, achieving the lowest inflation rate in 30 years and achieving the first balanced budget (and even a budget surplus) in decades. After the Clinton administration, George W. Bush, a Republican, became the 43rd US president, serving from 2001 to 2009. Following Bush, Barack Obama became president. A Democrat, Obama first took office in 2009 and currently continues to serve. cxxxviii

Overall in the US, for the most part, the Republican Party dominated federal politics from 1981 to 2009, except for one Democrat president, Bill Clinton, for eight years.

Table 6 National Governments in Australia, Canada and the United States

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One of the distinctive features in Canada is the French-speaking province of Quebec. This province has unique social, economic and legal traditions due to its French roots. Canada has a bilingual culture, with the English language dominating all the provinces except Quebec. However, Quebec has historically sought independence and held referendums on the subject in 1980 and 1995, albeit with no success. Quebec’s strong nationalism and different legal framework underpinned its different path in the area of initiatives against workplace bullying. This province led North America in initiating the anti-bullying movement, introducing an act concerning respect for labour standards in June 2004; this contains provisions on psychological harassment at work which were modelled after French Law on Social Modernisation.

In terms of the law, both the Canadian and Australian legal systems are relatively friendly to labour in comparison to that of the US. The openness of the state system in Canada is reflected in its political party associated with labour, the NDP. Similar to the NDP, which has the most labour-friendly policies in North America, Quebec’s provincial political party, the Parti Québécois, has traditionally received support from the labour movement.

This Australian and Canadian experience stands in contrast to that of the US, where there is no social democratic or labour party in the US. Although unions still donate money to support the Democrats in their election campaigns, the problem is that the unions are not integrated with the state; thus, they have weak political strength. Acts such as the Reagan administration’s mass firing of striking air-traffic controllers

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would be illegal in Australia, Canada and many other countries, but are perfectly legal in the US.\textsuperscript{cxl} The lack of a labour party in the US does raise the question of whether unions alone can generate the momentum to obtain support from a political party and muster the resources to get the Healthy Workplace Bill passed.

**The Role of the State**

In addition to the relationships between trade unions and the political parties, which influence the pace of the anti-bullying movement, the state in Australia, Canada and the US can support or hinder the movement. This section closely examines the differences among the three countries in terms of legislation, the nature of the judicial system and its relation to the legal process in employment relations. This includes the effect of at-will employment, government involvement in tripartite structures, how labour law treats trade unions and the differences between the three countries’ court systems.

The first difference among the three countries has to do with the existence of at-will employment in the US. This is a feature of employment relations that does not exist in Australia or Canada. The creation of employment at will occurred at the end of the 19th century. From the late 19th century—when the belief in individualism and laissez-faire contractual relations became dominant—to the late 20th century, the culture of individualism spread through American society. *At-will employment* means that the employer can terminate employees for any reason. Although this form of employment was developed using the English legal concept of the master-servant relationship, Feinman has argued that this rule was inconsistent with the contract doctrine and classical master and servant law. He further argued that if the employer-

employee relationship could be formed by a nonbinding agreement that is terminable at will at a moment’s notice, this type of ‘fleeting relationship’ could hardly be considered a contract. Unlike the US, Australia and Canada have statutory provisions that require employers to give reasonable notice to discharge an employee; otherwise, the employer is required to give the employee severance pay upon termination.

Employment at will could create an atmosphere at work that perpetuates bullying. As defined in the introductory chapter, one of the elements of workplace bullying is an imbalance of power. However, the concept of at-will employment gives both the employer and the employee equal footing when it comes to terminating the employment relationship at any time, for any reason and even for no reason, without legal obligation. While this appears to give both the employer and the employee equal power, given the high unemployment rate in the US, this has already caused an imbalance in bargaining power, such that employers have more power over employees. Given the recent economic downturn, employees generally tolerate bullying from management because they do not want to risk losing their jobs. The current situation is even worse due to the falling rates of union density. Thus, management can exercise its managerial prerogatives; whenever the unions support an idea, the recession gives management a clear incentive to fight them. As a result, it is arguable that anti-bullying legislation has become increasingly important and needs to be prioritised during these difficult economic times, since it is during a recession that this type of legislative initiative can provide workers with some sort of protection.


which can also correct the power imbalance. Thus, one of the differences between the
US and Australia and Canada is the uniquely American employment at will.

Another difference among the three countries concerns the structure of their industrial
relations systems. Government involvement in tripartite structures can promote
discussion among the employers, employees and the government, which will help to
develop public policy in relation to anti-bullying initiatives. Compared to the US,
both Australia and Canada generally have a tripartite approach to industrial relations.
Within this structure, labour, government and employers are involved in the
development of legislation. Having national employer and employee organisations
and the major unions representing workers’ rights sit at the bargaining table allows
different views to emerge that can facilitate anti-bullying policy development. When
union leaders serve on many tripartite committees, their voices can be heard in the
committees, which has led them to have greater political power in Canada.\textsuperscript{cxliii}

With regard to bullying, as examined earlier, in Canada, a tripartite working group
that included employer, employee and government representatives was established in
1999 to develop the violence prevention regulation at the federal level. Its mandate
was to examine alternatives, including both regulatory and non-regulatory options to
prevent incidents involving bullying and violence at work like the OC Transpo case
from recurring.\textsuperscript{cxliv} An example of the tripartite structure in Australia is the recent
development of harmonisation, which consolidates national OHS laws across all
states. Safe Work Australia is an Australian government statutory agency which is
also a tripartite body working with governments, peak employers’ groups and workers

\textsuperscript{cxliii} R. Ogmundson, and M. Doyle, ‘The Rise and Decline of Canadian Labour/1960 to 2000: Elites,
Power, Ethnicity and Gender.’
\textsuperscript{cxliv} Frappier, \textit{Violence Prevention in the Workplace in the Federal Jurisdiction Discussion Paper},
Human Resources Development Canada.
to progress towards national OHS laws.\textsuperscript{cxlv} The involvement of these major actors fosters dialogue between various stakeholders, which may promote policy growth. Unlike Canada and Australia, the US’s bipartite structure means less interaction among the government, employers and labour with respect to policy development, which potentially hinders policy development.\textsuperscript{cxlvi}

Lastly, contrary to the situation in Australia and Canada, employment laws in the US are settled through the general court system. Without specialist labour courts or tribunals, the resolution of issues like workplace bullying tends to take a longer time.\textsuperscript{cxlvii} The difficulties associated with solving labour disputes in this way are compounded by complex legal procedures that involve high costs. This provides another justification by employers for opposing the Healthy Workplace Bill in the US.

The role of the state in the US has traditionally involved more support of employer rights than in Australia or Canada. This legal system provides a less sympathetic environment for traditional and non-traditional actors attempting to bring about legislative change in regard to workplace bullying if it impinges on the rights of employers.

**The Role of Employers**

Although employers in all three countries tend to oppose anti-bullying initiatives, those in the US seem to have a stronger voice against legislating workplace bullying. This seems to be directly related to the national history of unionisation and the current


position of organised labour protection and support that has emerged, with American employers nowadays promoting the growth of non-union human resource management systems. There was a period from the mid-1930s to the 1950s when employers in the US were receptive to the unions and cooperated with collective bargaining. This was largely the fruit of the National Labour Relations (Wagner) Act of 1935, the key piece of American legislation bringing labour and employers to the bargaining table, which also protected employees’ rights to organise and bargain collectively and banned conduct by management deemed as ‘unfair labour practices.’

After this period, the 1960s saw a gradual development of managerial resistance to unions in the US, partly caused by and partly coinciding with a growth in non-unionised economic sectors. Economic development from this time saw rising proportions of technical and professional white-collar workers, employee groups generally less inclined to unionisation than industrial, blue-collar workers. Thereafter, in the 1970s, the development of union avoidance strategies by employers became more evident. Employers began to use human resource management systems at the plant level which aimed to decrease the number of organised workers; this strategy included paying competitive market wages to the workers, as well as emphasising high levels of involvement and flexibility in the workplace. This gradual transformation to promote the ‘union-free’ preference indicated that management as an actor no longer considered unions similarly, as a genuine actor in the employment relationship. With the general move to the right in the 1980s, the increase in the non-

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union sector eventually translated into a changed industrial relations framework in which unions were comparatively weak; this continues to be the case.\textsuperscript{cxlix}

Unlike in the US, militant anti-unionism is uncommon in Canada. For instance, major employers’ organisations in this country generally advocate a cooperative relationship with unions, and have not initiated a deregulation of labour markets. Differences in the labour law between the two countries play a major role here; the Canadian legal restrictions on employers operate as a protection for unions and make de-unionisation difficult. In Australia, the situation is yet more favourable for the unions, though less than in the period prior to the election of the Howard federal government, which emphasised individual and non-union collective agreements at the expense of unions.

As noted earlier, the election of a federal Labor Government in 2007 only partly addressed the reverses of the Howard years.\textsuperscript{cl}

US employers’ hostility towards organised labour and the lack of collaborative efforts between employers and unions in a bargaining relationship mean that the employers’ organisations seem to have the louder voice in anti-bullying initiatives in this country. This explains why the pressure groups in the US have been the first and major actors initiating the anti-bullying movement, and why they continue to be the key actors driving this issue forward. In Canada and Australia, on the other hand, the tripartite structure of employers, governments and labour gives each a place at the table and enables them all to contribute their views to the discussion about legislating against workplace bullying. This means that there is a more cooperative spirit and a greater

\textsuperscript{cxlix} Clawson and Clawson, ‘What Has Happened to the US Labor Movement?’

willingness for employers to enter into dialogue about workplace bullying in Australia and Canada than the US.

The Role of Non-traditional Actors

While employers have been hostile towards the anti-bullying legislative initiatives, non-traditional actors have played a significant role in driving the anti-bullying legislative development across Australia, Canada and the US. Having explored the policy changes in these countries brought about by non-traditional actors in the previous three chapters, the findings reveal that there is no consistent pattern in the roles of non-traditional actors. Having said this, there are similarities between Australia and Canada, since it was women’s groups in these two countries that pioneered the anti-bullying movement, whereas the structure of the anti-bullying advocacy work in the US is a unique phenomenon.

In Australia and Canada, disadvantaged women did not belong to unions and turned to anti-bullying groups to seek support. Both countries saw an increasing number of women making phone complaints about bullying in the workplace, although at the time, these women did not label this unacceptable behaviour as bullying. Their bullying experience drew attention to the severity of the issue. As a result, women’s groups led the anti-bullying movement in Australia and Canada.

In Australia specifically, the early pioneers of the Queensland Working Women Centre and the South Australia Working Women Centre were actively involved in pushing through the anti–workplace bullying issue from a public-policy perspective. Similarly, in Canada, it was the women’s group Au bas de l’échelle (ABE) in Quebec that took the lead to launch an anti-bullying campaign in that province. These women’s organisations in Australia and Canada gained support from unions to
advance the legislative movement. These organisations were generally well established and received government funding, which lent credibility to their advocacy of behalf of targets of bullying, particularly in the case of ABE in Quebec.

These non-traditional actors also played a crucial role in the choice of legislative framework. This can be seen in Quebec and Queensland. In Quebec, the women’s community group, ABE, influenced the chosen legislative framework under the Labour Standards Act, which led to workers’ protection against psychological harassment. Similarly the QWWC influenced Queensland’s anti-bullying legislative framework. With recommendations from the Queensland anti-bullying task force, chaired by the former director of the QWWC, Cath Rafferty, the term ‘workplace harassment’ was used and protection from bullying was placed under the industrial relations framework. These two cases indicate that the actors’ profiles can contribute to the choice of legislative framework.

The US anti-bullying movement experience has been unlike that of Australia and Canada. It was not a women’s group that drove the anti-bullying legislative development, but rather individual bullying experiences that led to the anti–workplace bullying movement in the US. One of the key advocates in the US, Ruth Namie, was bullied by her superior, which led her and her husband, Gary Namie, to launch an anti-bullying movement and form the Workplace Bullying Institute (WBI). This start to the movement was quite different from that in the other two countries. Another unique experience in the US is that the anti-bullying legislative language was not drafted by government agencies. Rather, the Healthy Workplace Bill was drafted by the advocate and academic David Yamada. Another difference between the US and Australia and Canada was that the Healthy Workplace Bill was replicated in different
states throughout the country, even though no law has yet been passed. On the other hand, in Australia and Canada, with the lobbying work done by the women’s groups and with the support of unions and the government, the legislative definition of workplace bullying was adopted in SA’s OHS legislation in 2005, while the act respecting labour standards containing provisions on psychological harassment at work was enacted in 2004 in Quebec. This means that non-traditional actors have been more influential in the anti-bullying legislative development in Australia and Canada than in the US.

One organisation in the US, WBI, launched the anti-bullying movement for the entire country on its own. In Australia and Canada, there were many small organisations which lobbied the issue of workplace bullying. In the US, Ruth and Gary Namie were also involved in recruiting volunteers from other states to become the state coordinators to push the bill that Yamada drafted. Similar to Ruth Namie, some of the state coordinators in places such as New York, California and Massachusetts had also experienced bullying at work. These advocates see legislative reform as crucial to solving the workplace bullying problem and want to see the bill become law. Therefore, the anti-bullying model used to launch the legislative movement in the US is distinctive from that of Australia and Canada, since WBI was the only organisation in the US to get involved in the anti-bullying legislative campaign, and this was due to personal motivations of its coordinators stemming from bullying experience.

Although Australia does have a web-based resource, BeyondBullying.com, to provide online information to the public, its main priority is to educate the public and raise awareness about the issue rather than to push a bill to become law. Again, the US model does not apply in Canada and Australia.
Compared to their American counterparts, the non-traditional actors in Australia and Canada have been more successful in achieving legislative change. This can be attributed to their voice in the legislative structure in these two countries. In contrast, advocates in the US lack a presence in the regulatory process, which explains the challenges in regulating workplace bullying there.

The advancement of technology has also played a role in assisting non-traditional actors to launch a legislative movement. The recent phenomenon of social networking services such as Facebook and Twitter helped the Namies and other state coordinators to spread their anti–workplace bullying campaign to the general public to elicit support for the Healthy Workplace Bill. In addition to their legislative advocacy, the Namies also founded the WBI website, which offers comprehensive anti-bullying information to the public on issues such as training for professionals, unions and employers. The heavy use of social networking in the US can also be attributed to the fact that the movement was started at a grassroots level, and had no government or union funding. This can be a cost-effective way to reach the public and the media. In Australia and Canada, on the other hand, social networking media did not play a key role in launching the workplace bullying movement, since there was government and union funding to support the women’s groups advocating the anti-bullying policy change process.

Despite the differences between these three countries, there is one similarity in the tactics adopted by the three movements. They have all focussed their campaigns on state and provincial legislatures—rather than national governments—where they believed they had the best chance of achieving change for political and legal reasons.
Conclusion

This chapter used the previous three chapters as a springboard to explain why Australia, Canada and the US have initiated anti-bullying policies at different paces. As discussed above, Australia and Canada show consistent patterns in terms of the roles of labour union support for their anti-bullying campaigns. This is attributed to the historical roots and strength of the labour movements in these countries. The labour movement is stronger in Australia and Canada than in the US and while the strongest relationship is between the unions and a political party is with the Labor Party in Australia, although there are limitations to this alliance. One of the problems for the Canadian unions is that the NDP has never formed a national government, and has had varying levels of success at the provincial level. There is also an issue unique to Quebec which distinguishes the situation in Canada from that of Australia and the US. The rise of the separatist PQ was characterised by the promotion of Quebec’s independence, creating cultural division between Quebec and the other Canadian provinces. The PQ is generally sympathetic to the workers’ and unions concerns and the PQ was helpful in supporting pro-worker legislation in Quebec such as anti-psychological harassment legislation. The link between unions and the Democratic Party, although it does exist, is weaker in the US. This makes unions in Australia and Canada key actors in taking the lead on anti-bullying issues.

In addition to the traditional actors, non-traditional actors have also played a significant role in driving the anti-bullying movement in these three countries. These include women’s groups, community legal centres and individual advocates who have themselves been bullied. These actors have raised awareness of the issue of workplace bullying and have contributed to anti-bullying policy development. Non-
traditional actors have played a more crucial role in launching the anti-bullying movement throughout the US, partly due to that country’s relatively weaker labour movement. This has led to non-traditional actors in the US taking initiatives to mobilise their resources by promoting anti-bullying legislative campaigns through social media such as Facebook and Twitter. Additionally, economic conditions in the three countries have impacted the priority of addressing the issue of workplace bullying. The serious economic recession and high unemployment rate in the US affected the priority of the unions in supporting anti-bullying initiatives. The priority of the unions in the US was to help union members retain their jobs and emphasis was placed on employment opportunities rather than anti-bullying campaigns. This explains why the state of the economy could be a determining factor influencing the pace of policy development in Australia, Canada and the US.

Despite differences in the strength of the labour movement in the three countries, the role of the state, the economic conditions and the role of non-traditional actors show similarities in the strength of resistance from employers against anti-bullying policies. Employers in the three countries evaluated have typically opposed anti-bullying reforms, with varying levels of power. Compared to Australia and Canada, employer opposition in the US has been particularly strong. Concerns that anti-bullying complaints that might lead to high-cost settlements, employers’ groups in Australia, Canada and the US have been hostile to the adoption of anti-bullying policies.
Chapter 8 Conclusions

The aim of this chapter is to synthesise all the theoretical and empirical findings concerning the role of traditional and non-traditional industrial relations actors in the development of public policy relating to workplace bullying. As the thesis highlights at the outset, there is very little research that examines the movement against bullying in the workplace. This thesis has tried to address this neglect through adopting a comparative historical approach which focuses on Australia, Canada and the US. While these three countries have differences in their economic, political and social systems, they share one important similarity—they are federal states, where change can be shaped by regional differences at the state or provincial level. The focus of this thesis has been on the six aspects that affect the anti-bullying movement, that is, the economic and political environment, labour movement, employers, the state and non-traditional actors.

As examined in the introductory chapters, workplace bullying has been recognised as an international phenomenon that has been increasingly debated since the 1990s. As Chapter 2 highlights, there are major challenges for defining and measuring workplace bullying, which has implications for public policy. The concept itself is a matter of perception, and this creates ambiguity in identifying workplace bullying. Organisations and governments are therefore reluctant to put organisational policy/procedures in place and create specific legislation to tackle the problem.

The thesis looked at the origins of public policy around workplace bullying and the role of the actors in anti-bullying policy development. It showed that Sweden was the first country in the world to legislate an anti-bullying public policy. In this country, it received strong support from the unions and Social Democratic governments, which
provided funding for research. The development of anti-bullying initiatives in Europe is generally ahead of that of English-speaking countries. The enactment of legal protection against workplace bullying in Sweden influenced other nations, such as the UK and France, in launching anti-bullying movements. For example, in parallel with the Scandinavian countries, the UK initiated a legislative campaign through the Manufacturing, Science and Finance (MSF) Union in 1996. The MSF drafted a bill, Dignity at Work, but it has not yet been passed due to a lack of political will. France is another country that was influenced by the Swedish experience. The enactment of the French Law on Social Modernisation in 2002 made moral harassment unacceptable under the labour and criminal codes.

The thesis went on to examine the role of the anti-bullying movements in Australia, Canada and the US. The study of the three countries’ anti-bullying movements revealed similar problems and challenges in developing a public policy framework. Advocates had considered the definition of the concept, the key elements that constitute workplace bullying and methods to measure it. Whether discussing legislative action in the European countries, Australia, Canada or the US, both traditional and non-traditional industrial relations actors play a key role in the success or failure of anti-bullying movements.

The thesis demonstrated that non-traditional actors are as important as traditional actors in initiating the anti-bullying change process. While unions have played a significant role in the movement against workplace bullying, the interest groups that have taken up the issue have been important in raising awareness and lobbying for change. Both unions and these interest groups have been fighting for legislative action in regard to workplace bullying due to their close links with the workplaces and
individuals who have been the targets of such behaviour. The everyday stories of the targets have highlighted the severity of the issue. Cases involving particular individuals have become the rallying point for the movement against workplace bullying in a number of countries. Once actors reported the prevalence of workplace bullying to their respective governments, the governments started to respond to the issue, following the unions and the non-traditional actors in addressing this issue.

Within the public policy framework, the anti-bullying movement can be divided into the micro level, the policies and attitude at the organisational or company level, and the macro level, which is the influence of government. This thesis focused on the macro level, specifically the role of the government and the process of anti-bullying policy development. An examination of European countries and the three countries of focus showed that it would be misleading to look simply at whether the country has legislation in place, and from this, comment about which countries are ahead of others. The important part of public policy is to ensure that government institutions have an ongoing effort to monitor the effectiveness of their policy, as well as sufficient resources to enforce the law and dedicated funding to prevent workplace bullying. Despite Sweden’s initial progress in fighting workplace bullying, very little has happened in recent years due to economic difficulties and the electoral success of conservative political parties. Thus, the legislation alone does not show that workplace bullying has been sufficiently addressed.

Although legislation can be one way to eliminate bullying, it should act only as the backup system; it is the prevention policy at the organisational level that can stop bullying from happening in the first place. Although this thesis emphasises the importance of the role of unions, the state and non-traditional actors in initiating the
anti-bullying movement, the key change agent should be active at the micro level, that is, within the organisation, since bullying is a workplace issue. It is senior management’s responsibility to act as role models to oversee the prevention of workplace bullying, as well as providing their employees with education on the concept and consequences of violating the policy/procedures. This can prevent bullying from occurring. Both the micro and macro level play a part in promoting an anti-bullying environment.

This thesis has also demonstrated that not only do change agents play a key part in social movements, but that the economic performance of the country also has a direct impact on the priorities and the pace of the anti-bullying movement. The driving force behind the anti-bullying movement can largely be influenced by five factors: the economic and political context, the strength of the labour movement, the role of the state, the role of employers and the role of non-traditional actors. The economic and political context is important in explaining the support for the movement against workplace bullying. Where the economic climate deteriorates, workplace bullying is not seen as a priority issue, and support from labour movements may weaken as they focus on unemployment and saving jobs. Examining the effects of the recent global financial crisis highlights that economic conditions can vary dramatically between countries, with Australia remaining prosperous—due to the demand from China and India for its minerals—relative to the US, which slipped into recession as a result of the crisis. While the economic climate is important, it does not explain everything. This can be seen in Quebec’s case—with the highest unemployment rate among the three provinces (in comparison with Ontario and Saskatchewan), Quebec was still a pioneer in that it had the first legislation against psychological harassment in North America. This was due to Quebec’s French roots and the province’s valuing of the
importance of human dignity at work. Hence, in addition to economic performance, it is important to consider other factors relating to the pace of the anti-bullying movement.

The presence of a strong labour movement, particularly at a state or provincial level has been important in the three countries examined. Where the union movement is well organised and has political influence, unions play a major role in supporting the advocates of legislative reform in regard to workplace bullying legislation. The presence of the Labor Party in Australia and the New Democratic Party and Parti Québécois in Canada has resulted in some states/provinces having more progressive anti-bullying initiatives than others. The Democratic Party in the US, which relies upon union support in key states, has supported the proposed Healthy Workplace Bill in greater numbers than the Republican Party. This shows that, in terms of the historical background of the political party and its core beliefs, the strength of the labour movement plays a part in explaining why some states/provinces in Australia and Canada generally have more anti-bullying initiatives than the US.

Non-traditional actors are important in their own right and their presence is significant in the anti-bullying change process. What motivates non-traditional actors is their political background, personal experience, concern for workers’ dignity and/or the increasing number of complaints about workplace bullying received from the community. Their voice to initiate anti-bullying legislative change is generally stronger because it comes from an organisation rather than individual advocates. As examined earlier, the non-traditional actors group takes the form of community organisations in Australia and Canada. They receive funding from the government, and as a result, they have had the resources to conduct research on the prevalence of
bullying in the workplace within communities, report the severity of the problem to government and make suggestions for legislative changes if required. When the push for change comes from organisations with wide community networks, this can influence policymakers.

In conducting this research project on the anti–workplace bullying movement in three countries, one important issue that was uncovered is the question of what drives the non-traditional actors in the US. What has led them to become so involved in initiating the anti-bullying movement, and what makes them so determined to propel the enactment of the legislation? This thesis examined how Dr Gary and Ruth Namie (the Namies) mobilised legislative campaigns and recruited state coordinators, as well as the challenges they have faced as agents of change. The major challenge for the Namies, who are currently based in Bellingham, Washington, is the limited financial and human resources they have at their disposal to fight a campaign across a number of states.

Recruiting the right people in different states and the extensive use of social media have been crucial for their success in raising awareness of workplace bullying in the US. For instance, the Namies had to recruit coordinators in different states to help them to lobby legislators and approach unions to gain support for their Healthy Workplace Bill. In New York, individuals approached the Namies, who then suggested that they become advocates in New York; this is how the New York advocates started the legislative movement. For other states, such as California, the Namies spoke at anti-bullying workshops and looked for audience members that were interested in participating in the anti-bullying movement. In Sacramento, California,
for instance, the Namies asked audiences to take ownership in terms of coordinating regular meetings to raise awareness of workplace bullying in their community.

In addition to the recruitment method, the Namies have also reached out the public to seek support for the Healthy Workplace Bill using social media in conjunction with the Workplace Bullying Institute website, providing resources to the public and giving updates on their legislative effort. Hence, the Namies have mobilised legislative campaigns through approaching people personally and using social media to disseminate their information to the public and communicate with their supporters.

One important feature of the advocates of anti-bullying policy is that they have largely been targets of workplace bullying. The advocates in the US are all high performers in their organisations. Their professions range from an IT assistant director at a university, to a clinical psychologist in a large health maintenance organisation to the president of a union with over 4,000 members in Massachusetts. These high achievers found that management—particularly human resource managers—and unions were incapable of helping them resolve their bullying issues at work. Human resource managers are on the side of the CEO, and the union sometimes represents both the perpetrators and the targets. This makes it difficult for the union to exercise fairness in dealing with the issue of workplace bullying. This conflict has driven the advocates to transform their helplessness into something positive, that is, to become agents for change in the public policy sphere. Their involvement in this change could serve as a healing process for them, and they see their campaigns and engagement with the public to raise awareness about the issue and influence legislators as a stepping stone towards something bigger, that is, to turn
a bill into law. Hence, these non-traditional actors are intrinsically rather than extrinsically motivated, and their efforts may be sustained for a long time.

The findings also show that the degree of motivation may not be the determining factor for success in passing anti-bullying legislation. This is particularly evident in the US context. In Australia and Canada, with the help of the non-traditional actors, some progress has been made in bringing legislative change, whereas although the non-traditional actors in the US also make a consistent effort to lobby this issue, the Healthy Workplace Bill has not been enacted in any state. To initiate public policy change, non-traditional actors require sufficient resources that include funding to investigate the prevalence of the issue in the community and raise awareness about the issue in society. Further, human resource practitioners with knowledge of the issue are also needed to communicate its significance to legislators. With a stable political and economic environment and labour laws favourable to union growth, it is more likely that this will have a positive outcome. This means the degree of motivation for change is only one of the success factors involved in bringing the legislation to fruition. Non-traditional actors need to explore ways to be present at the bargaining table and obtain the backing of the unions and the government. They are an important factor in mobilising change, but their success or failure in initiating policy change is determined by whether they have a voice in the regulatory process.

Employers in all three countries opposed anti-bullying initiatives. Their opposition is strengthened by a weaker union movement and concerns about the costs of addressing workplace bullying in terms of raising employee awareness and possible litigation. As examined earlier, the US Chamber of Commerce described the Healthy Workplace
Bill as a ‘killer bill’. The Business Council of New York is another organisation strongly opposed to the bill, since this organisation considers that everyday disagreement between employers and employees or co-workers could turn into court cases. Employers in New York have even threatened to move to other states if the Healthy Workplace Bill is enacted.

As examined above, both unions and non-traditional actors play an important role in driving the anti-bullying movement, but policy changes can occur without the involvement of these two major actors. It is usually assumed that legislative change will take a long time, and that it would be beneficial to have organised labour and a variety of different stakeholders involved in the legislative process. However, in Saskatchewan’s case, the research shows quite the opposite finding: Policy change can be a quick process without the participation of various actors. In Saskatchewan, NDP politicians, including David Forbes, the former labour minister, and Pat Atkinson, the former minister for the Public Service Commission, argued that the relevant amendment of occupational health and safety legislation to include personal harassment (such as abuse of power and bullying) might risk being quashed if there was wide consultation between unions, community groups and employers’ groups, as employers generally have negative responses to this type of social policy. Having said this, it was during an election period in Saskatchewan that personal harassment in the workplace was included under the 2007 amendments to the OHS Act.

The election in 2007 was the catalyst for the NDP government to include the personal harassment in the workplace under the amendments to the OHS Act in its campaign for re-election. Although the party was defeated by the Saskatchewan Party in 2007,

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the legislation was still on the books. Hence, the political environment can indeed
influence the pace of the process of legislative change, as less consultation and
minimal involvement with wider stakeholders can avoid both delay in the legislative
process and the possibility that the legislation will not be enacted. Through this
research project, it was found that that policy changes can be made efficiently,
without wider consultation, if government finds that the policy is sound enough to put
into place to protect workers’ rights.

This thesis also examined the three different types of legislative models. The first
model is an antidiscrimination paradigm, which looks at bullying as a discrimination
issue. In the second model, bullying is viewed as a health and safety issue, thereby
falling under the occupational health and safety model. The third model is a dignity
paradigm that sees bullying in a broader perspective as a violation human dignity.
The findings show that the legislative paradigm can be influenced by regions’
historical background and the profile of the change agent. The province of Quebec is
a good example to demonstrate how these two aspects influence legislative models:
The use of the dignity paradigm here is due to Quebec’s French historical roots.
Furthermore, a well-known community group in Quebec, ABE, which specialises in
labour law for nonunionised workers, took the lead in the anti-bullying movement in
this province. The organisation’s recommendation became law, showing that the
actors’ profiles can also play a role in driving the types of legislative framework to
protect bullied employees, and the protection against psychological harassment has
been included under the Labour Standard Act in Quebec instead of the OHS
framework as in Saskatchewan, Ontario and at the federal level.
Although each country has made some progress in raising awareness of the issues, it will take time to measure the effectiveness of these policies and the usefulness of their enforcement, particularly in Canada. For instance, it is too early to comment on the legislation in provinces such as Ontario and the federal legislation, since this is new and no statistical information is available to compare the enforcement of the different legislations.

In Australia, time is needed to determine the effectiveness of the changing legislative framework of the national OHS harmonisation in 2012 in terms of the use of a code of practice to combat workplace bullying. Having said this, it is fair to comment on different states in Australia in terms of when they began to promoting awareness of workplace bullying. As discussed in Chapter 6 (Workplace Bullying in Australia), Queensland was the first state to develop an anti-bullying taskforce; South Australia was the first to include the legislative definition of workplace bullying in the Occupational Health, Safety, and Welfare Act of 1986; Victoria was the first to implement *Preventing and Responding to Bullying at Work Guidance Note*; and New South Wales was the first to create a Dignity and Respect Charter. Evidently, different approaches can be used to raise awareness of workplace bullying in Australia and these approaches all represent steps forward in the anti-bullying movement.

Regarding the US, the non-traditional actors are still trying to drive the Healthy Workplace Bill in different states without any signs of success. It will also require time to see whether the actors can gain momentum in enough states to turn the bill into legislation. Although there is no specific legislation against workplace bullying, however, some progress has been made in the US with regards to raising awareness of
the issue. As mentioned above, unlike Australia and Canada, there is no legislative language to define the term ‘workplace bullying’ in the US legal framework. The anti-bullying advocates in the US started to gain momentum by introducing the term in the US workplace and in the US legislature through their advocacy efforts and social media websites in the late 1990s. California was the first state to draw attention to the issue of bullying through the presence of anti-bullying advocates in this state. New York was also actively involved due to the persistence of advocates, the labour presence and the bipartisan support of the Healthy Workplace Bill. Massachusetts activist were active in pushing this issue through the support of a union president.

The motives of the US agents in supporting the anti-bullying movement are very different from those in Australia and Canada. In Australia and Canada, anti-bullying initiatives came from government, unions and women’s groups, and they were not generally motivated by personal experience with bullying. By contrast, in the US, personal experiences (of legislators, union representatives and advocates) were the driving force behind the anti-bullying movement.

Overall, the material presented in this thesis indicates that due to the opposition from employer groups and a weaker union movement, legislating against workplace bullying can be seen as chasing rainbows. There continue to be problems in gaining agreement on what constitutes workplace bullying. Thus, the legislative fight against bullying in the workplace still has a long way to go and may even be reversed if employers persist in their opposition to legislative reforms and the current economic climate deteriorates in any of the three countries examined.
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