

## **You \*#%&!: Is this the end of the Toxic Boss?**

### **Judges are sending corporate bullies a message: treat your employees with respect**

**SARAH SCOTT, MACLEAN'S, September 3, 2007**

As the commander of the RCMP's detachment in Merritt, B.C., Donald W. Smith was an old-school military guy, abrupt, even rude, a real straight talker. He barked orders. He swore like a sailor. That was fine in the old days, when men would jump when he ordered them to get things done. But this was the mid-1990s, and here was this young woman, a police officer with a university education who was pregnant for the second time in two years. Smith asked the officer, Nancy Sulz, to check some files. When she asked for help, Sulz later told RCMP investigators, Smith exploded in his trademark way: "Open your f--ing eyes and look at the books." Later, when Sulz drove down to Bellingham, Wash., for a shopping trip while she was on medical leave, Smith blew up again. This time he found little ways to get back, sending Sulz tersely worded letters and complaining about her to the other staff. Soon, fellow police officers were instructed to stop riding in a police car with Sulz because she was supposedly afraid of the dark.

Sulz was rattled. She was already having a tough time managing two kids and a demanding job while her husband worked out of town. So she complained to the higher-ups in the RCMP about harassment. They launched an investigation, which made Smith so mad that Sulz was advised by an RCMP sergeant and personal friend to stay out of the office. "I am terrified to come to work," she said in a statement to her divisional representative. "I cannot eat or sleep. I'm on the verge of tears constantly." By 1996, Smith was ignoring her altogether. Sulz, her weight hovering around 100 lb., fell into the grips of depression. On her doctor's advice, she went on sick leave in February 1996. Then she called the lawyer.

The result is shaking up employers all across Canada. In 2006, Sulz, a \$50,000-a-year police officer with eight years' experience, won nearly \$1 million from the RCMP. As the man in charge, Smith had a "duty to ensure she could work in a harassment-free environment," wrote British Columbia Supreme Court Judge George Lamperson. Although Smith denied harassing Sulz, "There's no question that Smith breached that duty." The Sulz case, and a string of others, show that Canadian judges are sending corporate bullies a sharply worded message: treat your employees with respect, or else.

In the old days, if your boss made a habit of yelling at you in front of your co-workers, "all we could say was tough luck, you've got a crappy boss," says Toronto employment lawyer Janice Rubin. "So maybe look for another job." Then, a decade ago, the corporate bullies met their match: Canadian judges. They started to rule that if a boss was so mean to an employee that he got sick or quit, the boss, or his company, should have to compensate the target for the abuse. In the first batch of cases, judges handed out settlements worth five figures. But in the last two years, the payouts have hit \$1 million or more. "In very serious cases, judges are saying we're not prepared to put up with this," says Rubin. "And they're saying to employers: why didn't you do anything?"

Governments are also beginning to crack down. In 2004, Quebec became the first place in North America to outlaw bullying at work. "Psychological harassment," Quebec law says, is "any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment for the employee." Even a single incident can count as bullying. In the past three years, 6,850 Quebecers have complained they were bullied, and that only includes non-unionized employees. Over a third of the complaints were serious enough to go to a mediator to be resolved between employer and employee. Another 438 proven cases of bullying were sent to the Quebec Labour Relations Board, which has the power to make the employer reinstate the employee, pay lost wages, and even a fine. In its first decision, handed down in January 2006, a Labour Relations Board commissioner ordered Subway Sandwiches to rehire a manager who had booked off sick after the owner yelled at her in front of customers, said she couldn't count, called her "stupid," and belittled her sexual orientation. (Subway is appealing.) Another three employers have been ordered to pay the bullied employees lost wages, and in one case, a \$5,000 fine. Over 200 proven bullying cases have been settled out of court. The new law "is very important for people who have been bullied in the workplace," says Angelo Soares, a Université du Québec à Montréal professor who's organizing the 2008 international conference on workplace bullying in his city. Just knowing that justice will be done "is very important for their mental health." Saskatchewan is seeing it that way too. A new provincial bill amending the Occupational Health and Safety Act outlaws psychological harassment of workers, the kind that would humiliate or intimidate a reasonable person.

The action from Quebec and Saskatchewan, which echoes long-standing anti-bullying laws in most European countries, is long overdue. Office bullies are more common than you might think. One U.S. survey estimates that at least one in six workers has been bullied, which may explain what's driving up sales of Stanley Bing's book, *Crazy Bosses*, re-released this spring, or self-help manuals like *Bully Proof Yourself*, which you can buy on the Internet for just \$27, a real deal compared with an hour with your therapist. Bullying is three times more common than sex harassment, and women are just as likely to be *Devil Wears Prada* she-wolves as men are, says Dr. Gary Namie, a U.S. social psychologist who advises companies on workplace bullying. He's not referring to an arched eyebrow or a one-day blowout, either. "I'm talking about a systematic campaign of interpersonal destruction that has no reasonable place in the modern workplace, but is accepted."

Yet companies often don't want to hear about it. They like bullies. For all the talk in management journals about the virtue of being the new empathetic manager who's quiet and humble, many workplaces actually protect and reward bullies, says Namie. They admire them, especially if they meet quarterly targets and push up the stock price. They are what Stanford professor Roderick Kramer calls the "Great Intimidators." They are "not adverse to causing a ruckus, nor are they above using a few public whippings or ceremonial hangings to get attention," he wrote in *Harvard Business Review* recently. But unlike the schoolyard bully, the Intimidators bully to get things done. Some of them -- like Disney's Michael Eisner, Miramax's Harvey Weinstein and Hewlett-Packard's Carly

Fiorina -- fall from power, amid nasty stories about their toxic behaviour. But how, Kramer asked, did they get to the top in the first place? The fact is that "many leaders who rule through intimidation have been doing just fine for a very long time." A little bullying, in his view, can muscle a man, or a woman, to the top -- and even achieve results.

So companies quietly encourage bullies. Take the CEO of one large Canadian multinational. He screamed and swore at his staff for years, and obviously didn't bother to respond to a company-wide memo on Quebec's new anti-bullying law. The board knew his behaviour was a problem, but didn't do anything. After all, the CEO was shaving costs and tripling the stock price. The company lawyer nearly quit but stuck around for financial considerations -- and consulted a psychologist for advice on how to deal with the bully CEO. On the way out, the lawyer vowed never to work for a boss again.

Companies may dismiss the complaints but they have a tangible reason to crack down on bullies, says Namie. Bullies can literally make their targets sick. European researchers have found that nearly four in 10 targets of bullying suffer from clinical depression, while a Swedish psychiatrist has found that a significant number -- 30 per cent of women and 21 per cent of men -- show signs of post-traumatic stress syndrome. The psychological toll of workplace bullying is becoming more visible in Canada. "In the last five years, we've seen a huge increase in psychological claims, like anxiety, depression and stress," says Tony Fasulo, the Toronto-based managing partner of Acclaim Ability Management, which helps companies steer disabled employees back to work. His company's investigations reveal that 10 per cent of those psychological claims are caused by bullying. The bullies can be expensive. One bully in a mid-size company who drives four middle-aged guys out of work and onto long-term disability can cost the company \$1 million. Companies that deny bullying is a problem should take a long look at that number, said Namie: "These jerks cost money."

Yet in the United States, courts aren't stopping them. You won't win against a bully in a U.S. court unless you can prove that he singled you out because you were female or black or another protected minority, says Chicago employment lawyer Paul Starkman. If you're a white guy in the U.S. and you're being bullied by your boss, you're out of luck, he says: "Unless your boss is female, gay or another religion, you have virtually no claim. And if the guy is a jerk to everyone, it's a defence. I've won cases on it." The equal-opportunity bully, in other words, gets off.

Not in Canada, though. "There is a pronounced judicial trend to allow employees to litigate against their employers in circumstances in which they have been abused, humiliated, harassed, bullied, or otherwise mistreated at work," Rubin told fellow Ontario lawyers in a special lecture sponsored by the Law Society of Upper Canada last April. The trend began a century ago when a Saskatchewan farmhand complained that his boss called him a bastard and a cur. The judge ruled that the servant was entitled to "decent treatment." Nearly 70 years later, the Supreme Court laid the groundwork for the crackdown on bullies when it observed that, for an employee, work is not just a

paycheque, but "an essential component of his or her sense of identity, self-worth and emotional well-being." As Canadian judges started to rethink what it means to be employed, they came to the conclusion that bosses were obliged to treat their employees with respect.

The need for that legal protection was amply demonstrated when Lorraine Boothman, a former curatorial assistant at the National Museums of Canada, was hired in July 1984 to work for Tomas Stalinski, a minor bureaucrat in Calgary. "What followed," according to Federal Court Justice Simon Noël, "is a tale of what can be modestly described as a stormy and tumultuous working relationship and a most disruptive working environment." Over the next six months, he hurled a steady stream of insults and threats at her, and even slammed the door in her face. Stalinski exploded on a regular basis, sometimes brandishing a screwdriver or a hammer on his desk as he threatened to "bash your head in." Boothman, emotionally fragile before the ordeal, sank into such a state of nervous shock afterwards that she was incapable of working. In 1993, as a result of what Noël called Stalinski's "outrageous and unacceptable behaviour," she was awarded \$40,000.

That sum seems small compared with the payouts today. The big boost came from a seminal case in 1997, when the Supreme Court ruled that someone being fired has the right to be treated properly on his way out. Since then, Canadian judges have expanded that idea to create new obligations for Canadian employers to treat their employees with respect. It's still, apparently, okay to argue, criticize an employee's performance, or even shout. But if a boss humiliates the employee to such an extent that the employee gets sick, or quits, the boss has gone too far.

Take Viren Shah, once a computer electronics expert at Xerox Canada. His career was progressing steadily until he accepted a new job working for a combative boss, Mike Harvey. They did not get along. Harvey, unhappy with Shah's performance, "became more authoritarian, impatient and intolerant while Shah became increasingly reticent and withdrawn," according to the Ontario Court judge who reviewed the case in 1998. Then Shah got depressed, an illness provoked by Harvey's "arbitrary and authoritarian" manner. Shah quit, and won a year's pay on account of Harvey's behaviour.

Then there's the story of Larry Saunders, a regional sales manager for Château des Charmes Wines Ltd. After 10 years with the Ontario winery, his relationship with his boss, Paul-André Bosc, had deteriorated badly, according to a review by a judge in the Ontario Superior Court. Then, while Saunders was driving on Highway 401 to Kingston, Bosc called him on his cellphone and spent the next 3½ minutes yelling and swearing at him. "I was made to feel like a little boy who had misbehaved," Saunders later told the court. Ontario Superior Court of Justice Frances Kiteley was not impressed: "Paul [Paul-André] was hostile, aggressive, profane, demeaning and intimidating," she concluded in 2002. "No employee should be subjected to such behaviour." The result: Saunders got a year's pay worth \$75,000, plus an extra \$18,750 for Bosc's bad behaviour.

The payouts jumped sky high in 2004 when a Newfoundland trial judge ruled that a \$30,000-a-year RCMP jail guard deserved \$500,000 from the RCMP because it failed to stop a fellow officer from harassing him at work. (The judgment, though, was overturned in 2005 by the Newfoundland Court of Appeal, led by former premier Clyde Wells, on the grounds that the case should have been handled by worker's compensation, not in court.) The next year, in 2006, a case against Honda Canada startled a lot of corporate HR honchos. This is the story of Kevin Keays, a "dedicated and conscientious worker," as Ontario Superior Court Justice John McIsaac described him in his review of the case. Keays worked at Honda's Alliston, Ont., plant for 14 years. From nearly the beginning he was chronically tired and often booked off work for what his doctor later diagnosed as chronic fatigue syndrome. He went on disability for two years, until Honda's insurer cut off payments and sent him back to work. That's when the trouble began. Keays was falling asleep at his workstation, and whenever he was absent, which was often, Honda would make him get a doctor's letter before returning to work. Other employees deemed to be disabled didn't have to do this. Then one of the company's doctors threatened to send him back to a physically demanding job on the assembly line. After Keays found a lawyer, Honda ordered him to visit another company doctor, an occupational medicine specialist. The doctors were clearly skeptical Keays was medically unable to work. Keays refused to go, so he was fired. He says he suffered a case of "post-traumatic adjustment disorder," according to the judge's review, and has been unable to work since.

The judge, smelling a corporate "set-up," as he put it, threw the book at the automaker. Keays got 15 months' pay -- plus an extra nine months for Honda's "outrageous conduct." On top of that, the judge ordered the company to pay Keays a whopping \$500,000 penalty. The company also had to pay \$610,000 for his lawyer's bills. The total bill for Honda: over \$1.2 million, not including its own Bay Street legal fees. The Ontario Court of Appeal subsequently cut the \$500,000 penalty to \$100,000, but it's still a chilling wake-up call to big employers. On appeal, the case is going to the Supreme Court next February.

These days, you'll be in trouble even if you let one of your staff bully someone else in the company. "In this climate, an employer who thinks he can ignore a workplace bully better think again," says Rubin. "They do so at their own peril." Any complaints of bullying or "personal harassment" need to be investigated, which is turning into a thriving business for Rubin and her partner Christine Thomlinson. In their new book, *Human Resources Guide to Workplace Investigations*, they advise employers to watch out for behaviours that should raise red flags, especially if they're part of a pattern. It's a long list: "Shouting, profanity and abusive language, use of violent language, use of props suggestive of violence, slamming doors, throwing objects, persistent practical jokes where one person is the object of the joke, isolation and shunning, gossip, rumour, negative blogging and cyberbullying, retaliation, bullying, unsubstantiated criticism, unreasonable demands, lying about a person's job status, blow-ups and eruptions, especially behind closed doors, insults and name-calling, physical contact and violence." In this new world, if the boss acts out some of the behaviours on the list, and the person goes home feeling unhappy or sick, that could turn into a big court case.

Take the female supervisor Rubin once interviewed on one of her investigations. She was "officious, brusque, and quite cold," says Rubin. Employees were complaining: she didn't say good morning to the staff. She was a "bitch." She made them feel one-inch high. "The impact was so severe that several employees were sick and couldn't work," says Rubin. When she confronted the supervisor with the staff's complaints, the supervisor was "shocked." If she didn't change, Rubin says, the employer could have faced legal trouble. So being cold and dismissive can land you in court? "These days," Rubin replies, "people want to go to work and feel respected."

The classic bully, who needs to dominate and doesn't care how his target feels, has probably found his tactics to be most effective. That's a challenge for Namie, who is often asked by U.S. employers to investigate and reform the bully on staff. "We don't expect the person to change," says Namie, who gives speeches all over the continent. So he tells the bully that from now on, he'll have to play by a different rule book, a code of conduct that will be monitored on a routine basis, with information flowing from the bully's subordinates. "Usually they leave," he says. "They don't like to be monitored. They don't like to be held accountable."

Companies are starting to reconsider the value of having a Great Intimidator on their team. It's not just the \$1-million penalties levied by Canadian judges, or the hidden cost of long-term disability if the bully makes his or her targets psychologically incapable of working again. But now, if word gets around that a company tolerates bullying behaviour, the employer may have trouble hiring people, or keeping them, says Rubin. These days, employees are rebelling against the old authoritarian management techniques of the previous generation, she notes. Bullying is in the same position sex harassment was back in the 1970s -- uncomfortable but accepted. "What's changed is that judges and adjudicators are saying no, it's not acceptable." They're right, Rubin says: "Why should people go to work and be abused? Why do bullies get a free pass?"