CHANGING OUR CULTURE

Take steps towards a new story: Bullying or harassment involving clients

BY **VALERIE BLAND**

THERE'S A LOT FOR ME THAT'S 'NEW' – new law firm, new policies, new culture, new employees, being a new employer, and new client engagements. My new firm, Extra Law, provides legal services in a new manner and I am keen to look at issues that may arise for my firm in a new way, too. The legal profession is reeling with recent stories of harassment and bullying and the "unprecedented media attention and the criticism that has followed" [Tim Jones, *LawTalk* 916, April 2018 page 11]. These emerging stories have led me to focus on potential bullying and harassment episodes particularly between the client's staff and the law firm's staff.

Extra Law, as an Alternative Legal Services Provider, provides its clients with lawyers on a flexible basis, delivering legal services as a temporary team member within the client organisation. Extra Law's employees are working in the client's office on a day-to-day basis and an individual employee's interactions are predominantly with the client's staff rather than other Extra Law staff. This increases the odds that an episode may involve the client's staff and means that purely internal policies on minimising harassment and bullying, and processes for dealing with any episodes, would not be a total solution. What can be done if an Extra Law employee is being harassed or bullied by a client? How can the firm Extra Law confidently assure its clients that it has taken steps to avoid introducing a "cuckoo in the nest" – a lawyer employee who could harass or bully the client's staff?

Bullying and harassment between the client's staff and the law firm's staff is not just a concern for Extra Law. The New Zealand Law Society's recent webstream on dealing with bullying and harassment in the workplace had an anticipated attendance of more than 2,000. During the online chat, and in the questions afterwards, the issue of bullying or harassment by clients was raised multiple times. Questions about client bullying or harassment focused on balancing the ethical obligation to complete a client engagement, with "firing" an abusive client. One of the presenters told us that they had recently "fired" a client for that reason – and the post-presentation answers confirmed the view that serious or repeated harassment by a client could be a good reason to disengage under Rule 4.2.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

Being assured that a law firm may have good reason to disengage, should not be the end of the matter though; client relationships and employee relationships are of the utmost importance and law firms want safe, rewarding and continuing engagements in both cases.

What the law says

The Human Rights Act 1993 and Employment Relations Act 2000 require an employer, in certain situations, to take steps to minimise the chances of a harassment episode taking place *before* it arises. In a moral sense, we would prefer that episodes of bullying and harassment didn't occur in the first place, or at least were nipped in the bud to attempt to alleviate further damage to the participants. From a business point of view it would be desirable to take steps before any episode took place that provided some confidence that we could together reach a solution that is fair and supportive to the participants, but does not end either the client or employee relationship. And, if we had to take the ultimate step of "firing" a client, wouldn't it be easier to do so if there had also been some ground work from the start: that the client was aware of how, and why, that could happen, and was involved in the process?

The Health and Safety at Work Act 2015 requires the employer to take all reasonable steps to ensure the health and safety of its workers, and bullying and harassment are

recognised hazards. Where an employee's role involves client contact, it is arguably a clearly reasonable step to have some pre-agreed protocols about bullying and harassment between client and law firm, depending on the extent of that contact.

Where a law firm employee is on secondment to a client (and based in their premises), the mental and physical safety of that employee in that client's office may already be a dual responsibility: the law firm employer has the duty to ensure, so far as is reasonably practicable, the health (physical and mental) and safety of its employees at work (section 36); and the client who manages or controls the workplace has the duty to ensure that the workplace and anything arising from the workplace are without risks to the health (physical and mental) and safety of the law firm employee who is lawfully at the workplace (section 37). A dual responsibility under the Health and Safety at Work Act 2015 means that the parties must, so far as is reasonably practicable, consult, cooperate, and coordinate activities, with each other (section 34): these would be in respect of the law firm employee's health (physical and mental) and safety, whilst he or she is on the client's premises.

Good sense to consult

So in an engagement (new or ongoing) between client and law firm, where there will be more than minimal contact, it makes good sense for a law firm to consult, cooperate, and coordinate activities, with the client, about bullying and harassment. We can take steps to show an awareness that a healthy understanding will inform the engagement at all levels. The law firm can demonstrate an alignment with its client on health and safety matters. We mutually want any stress during the engagement to be healthy; recognising that there may be challenging and robust situations at times, such as working late together or the job not going well. At all stages of a client engagement, the law firm will be wanting to show itself in a good light, and ease of working together is an important element to display.

So bringing all those factors together, Extra Law intends to take the following steps:

1 Develop anti-bullying and harassment policies that also focus on the relationship between the law firm and its clients. The policies in relation to clients could include most aspects recommended in the webstream post-presentation answers to encourage both the clients and the law firm to address concerns early and directly, before they become major issues, such as: information on reporting concerns; clear and transparent processes for dealing with reported concerns; natural justice and discretion; support for the person who complains, for the person whose behaviour is the subject of the complaint, and for anyone else involved; strategies for low-key informal solutions; and mechanisms to rebuild relationships;
2 Seek input on the policies from employees and modify as necessary;
3 Include a concise document about expectations of working together (including staff working together) based on the policies, at the start of each client engagement, or at an appropriate time if the engagement has already commenced. Consult, coordinate and cooperate with that client, including exchange of policies, and modify the document as necessary;
4 Ask for feedback as part of ongoing client and employee arrangements, and, following consultation, coordination, and cooperation, update the policies and the document accordingly.

we would prefer that episodes of bullying and harassment didn't occur in the first place, or at least were nipped in the bud to attempt to alleviate further damage to the participants. From a business point of view it would be desirable to take steps before any episode took place

Now is a good time to share new stories about the steps that law firms are taking to address bullying and harassment, and to minimise the frequency of episodes and their impact, no matter where, and between whom, they occur. We are in an industry based on understanding the written and spoken language, and we should back ourselves that, with nuanced and sophisticated messaging, we can take positive steps to minimise the potential for bullying and harassment, whilst enhancing our employee, and our client, relationships:

> "Step out of the history that is holding you back. Step into the new story you are willing to create." — Oprah Winfrey ■

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