

The complexities of workplace bullying

A LOOK AT TWO LABOUR ARBITRATIONS THAT REVEAL THE ROLE OF EMPLOYERS WHEN RNS SAY ENOUGH IS ENOUGH.

BULLYING IN THE WORKPLACE IS not only emotionally charged; it is also complicated from a legal perspective. Courts and labour adjudicators have acknowledged a range of behaviours that constitute bullying, including subtle actions such as gossiping, persistent and unwarranted criticism of one's work, social ostracism, undermining someone in front of colleagues or patients, setting a colleague or subordinate up to fail, and teasing (this list is by no means exhaustive). Adding another layer of complexity unique to nursing is the fact that bullying can come from other nurses, managers, physicians, patients or patients' families.

Two recent labour arbitrations in Canada provide telling examples of how employers can be held liable if they fail to address workplace difficulties, or allow bullying to continue without consequence.

In one case, a newly hired nurse was not given sufficient guidance on her duties and responsibilities. She was uncertain what was expected of her. When she sought clarification from managers and coworkers, she was either derided as incompetent, or mocked. Her coworkers consistently excluded her from the social fabric of the workplace. For example, she was the only employee not invited to coworkers' birthday parties or to join others on daily coffee breaks. The bullying escalated, creating outright hostility

and teasing in the workplace by managers and coworkers, sometimes in front of patients.

When the nurse brought her complaints to higher echelons of management, the employer's response was to question her competence and then fire her. She grieved her termination through her union. An arbitrator determined the nurse had suffered bullying and harassment on the job. As a result, she was never given a chance to perform her job adequately. She was ordered reinstated to her position with full compensation for all lost pay.

In another case, a nurse in a small community in northern Canada was the target of the town's campaign to have her removed from her post. Members of the community heckled her when she was out and about in the town, and even sent a petition to the Department of Health seeking her termination. In response, an investigation was initiated by the Department (also her employer). While interviewing the nurse, the lead investigator asked invasive and offensive questions, inquiring about whether or not she was suffering from menopause, if she was sick, and if permission would be granted to speak with her family physician. In addition, the investigator's questions to community members had the effect of further demonizing the nurse.

Through her union, the nurse filed a grievance claiming harassment, which

was ultimately successful and resulted in monetary compensation. The arbitrator determined that she had suffered harassment, not only from the community but from the employer's investigator. The arbitrator also found the employer was aware that the nurse was suffering abuse and that her position was being threatened, but did nothing to address the issue. In fact, it made matters worse through its faulty investigation. The fact that the townspeople were the chief antagonists did not reduce the employer's responsibility to act on behalf of its employee.

These case examples demonstrate that workplace bullying is a very real problem for nurses, and that there are a number of behaviours that can fall within its definition. However, nurses should be cautious when accusing someone of harassment or bullying. These are serious accusations that can damage reputations and cause untold personal stress. It's important not to contort a negative performance review, constructive criticism, or workplace tension into charges of bullying. For unionized nurses who feel they are being bullied, speak to your union to have the problems addressed. Non-unionized nurses should familiarize themselves with the harassment policy their employer is mandated to create under Ontario's *Occupational Health and Safety Act*, particularly before enlisting the help of a lawyer.

Conversely, people may not always appreciate that their conduct is crossing a line or making a coworker or subordinate feel they are being bullied. Nurses — particularly those in management positions — should always be respectful when dealing with legitimate performance issues and workplace disagreements, whether in relation to a coworker or someone under their charge. If someone suspects their work is being perpetually monitored or second-guessed, they can ultimately feel as though they are being targeted, bullied or set up to fail. This can be devastating for a nurse's morale, and can open management up to charges of bullying. In light of this and the examples outlined above, employers and managers must remember they are liable if they turn a blind eye to bullying, or if they exacerbate the problem. **RN**

CHRIS BRYDEN IS A LAWYER WITH RYDER WRIGHT BLAIR AND HOLMES IN TORONTO. HE HAS REPRESENTED MEMBERS OF RNAO'S LEGAL ASSISTANCE PROGRAM (LAP) FOR TWO YEARS.

To read RNAO's position statement on violence against nurses/nursing students, visit www.RNAO.org/violence. For a copy of our BPG on managing violence in the workplace, visit www.RNAO.org/BPG/violence.