THE TIMES
THE SUNDAY TIMES

From The Times

November 7, 2006

How a stalkers' law is now being used to catch 'bullies'

An Act to control harassment has had unexpected results

By Clive Coleman

WHY is an Act of Parliament intended to outlaw stalking being used to sue mothers-in-law from hell and terrify employers whose staff claim that they have been bullied? The answer? Despite the best efforts of our parliamentary draftsmen, that law of unintended consequences occasionally bites even them.

In the early 1990s a number of well-publicised stalking cases exposed a loophole in the law. Stalkers whose behaviour was a nuisance and menacing — but not directly threatening — were escaping conviction. There was widespread agreement among judges, lawyers and politicians that something needed to be done, and in 1997 Michael Howard, then Home Secretary, introduced the Protection from Harassment Act. It passed through Parliament rapidly, the Commons debate taking place in a single day.

And it remained in force, doing its job quite happily until a clever lawyer noticed just how broadly it was drafted. **John Rosley, a Nottingham solicitor,** was acting for Gina Singh, a young woman getting a divorce. Singh had entered an arranged marriage and been subject to appalling ill-treatment at the hands of her mother-in-law. Her hair was cut off, her face scrubbed with bleach and she was made to cook and clean for up to 17 hours a day. **Rosley** realised that Singh could bring a civil claim using the Protection from Harassment Act. She succeeded and her former mother-in-law was ordered to pay £35,000 in compensation.

The case has important implications. As well as offering battered spouses a financial remedy within marriage, it could allow a spouse who is the subject of domestic violence in divorce to sue for substantial damages. In practical terms it brings an element of fault into the division of financial assets, where it does not generally apply. It would do this by allowing a separate action to run alongside the divorce and ancillary relief proceedings. If that action succeeds, it could take a big chunk of the “harassing” spouse’s assets.

But it is not just divorce lawyers who are getting excited about the Act. In July the House of Lords ruled in the case of Majrowski v Guy’s & St Thomas’ NHS Trust. Majrowski worked as a health service administrator and alleged that he had been bullied at work by a former manager. He used

the stalking law to sue and their lordships held that he was entitled to do so. Their decision is one that should have employers quaking.

The Protection from Harassment Act differs from the mass of discrimination legislation in that it does not provide the traditional "employer's defence". In other words, an employer cannot defend a claim brought under the Act by proving that he had done everything reasonable to prevent bullying. He can, in effect, have the best anti-bullying policy in the world and it will still not allow him to defend the case. In addition, the harassment is very much in the eye of the beholder and the threshold is low. A claim can get off the ground if the employee has felt anxious twice. And there is yet another attractive distinction for potential litigants between the Act and the mass of discrimination legislation. An employee does not have to be employed for a year to bring a claim.

So what was Parliament's intentions in drafting the Act? Did it envisage these new and novel interpretations? Michael Howard told *Law In Action* on Radio 4 last week that Parliament could not have intended the Act to apply to bullying in the workplace. In his view the law lords got the decision in Majrowski wrong.

There is support for his views from unlikely quarters. Guy Dehn is the director of Public Concern at Work, the whistle-blower charity that you would expect to support any beefing-up of employees' rights. He, too, believes that their lordships erred. He points out that though the word "employment" does appear in the Act, it must surely have been placed there in error. In support of his contention, he says: "At the same time as the Commons was debating the Protection from Harassment Act, the Lords were debating the Dignity at Work Bill. It was designed to make employers liable for workplace bullying. It failed for lack of support and was reintroduced in 2001, when it failed again. Surely Parliament would not have reintroduced it if felt that it had already dealt with the problem?"

Dehn also makes the broader point that the Act may actually make employers less likely to deal with bullying. If they respond to an employee's complaint and find substance in it, they are then powerless to defend a claim. The temptation to sweep complaints under the carpet could be irresistible. That would lead to the undesirable result that an employee would have to take his or her claim to court rather than have it dealt with in the workplace.

So are we about to see a torrent of bullying claims fuelled by this new interpretation of the law on stalking? It is already happening, says Mark Fowles, a solicitor with Veitch Penny in Exeter, who represents local authorities. "Fifty per cent of the bullying claims I'm dealing with have been amended to plead the Protection from Harassment Act."

With the House of Lords decision firmly entrenched, how can the situation be corrected? Howard is in no doubt: "There would need to be primary legislation to put back what I'm certain was the original intention of Parliament." Unless and until that happens, employers, spouses and mothers-in-law beware.

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