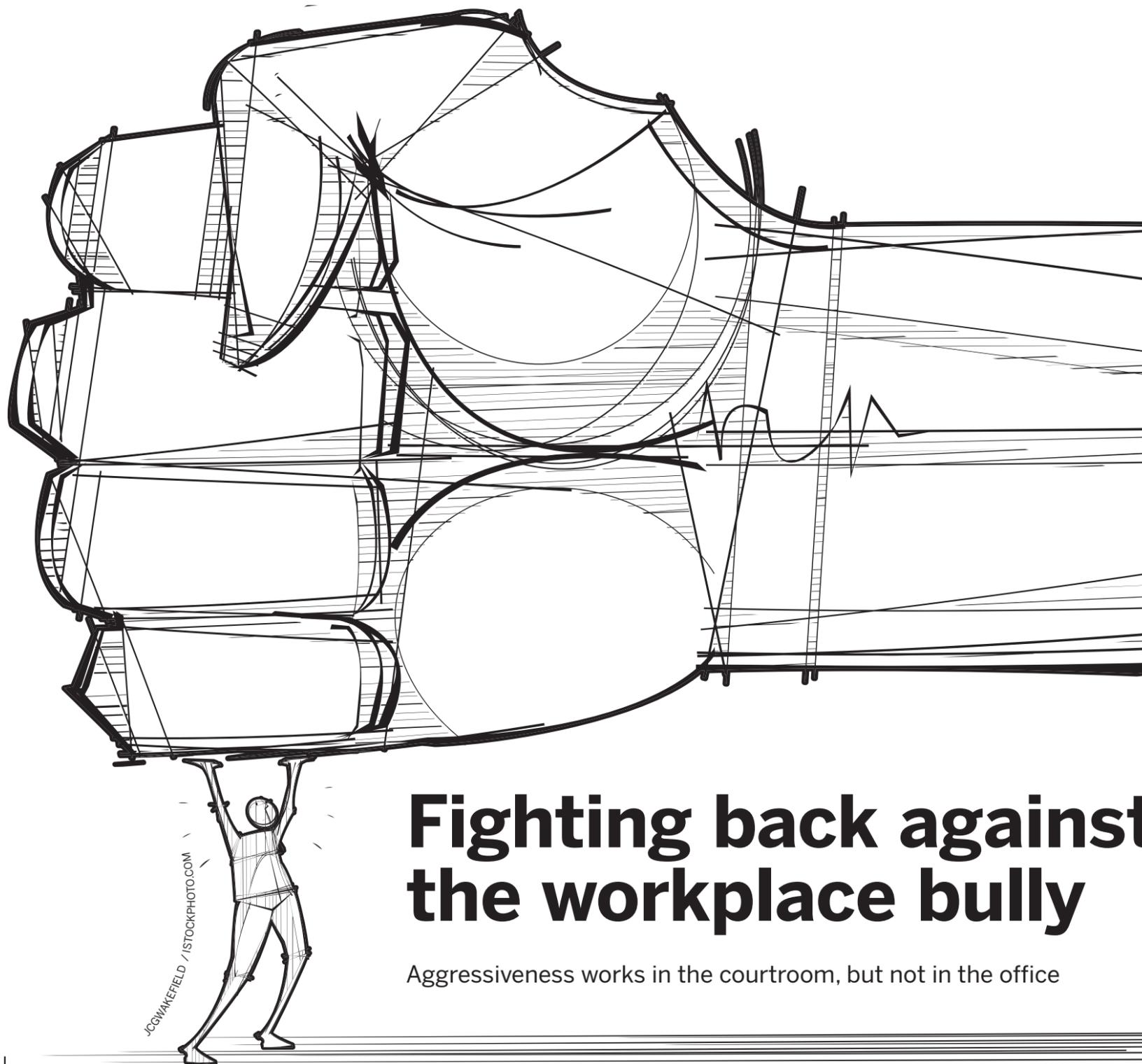


Business & Careers



Fighting back against the workplace bully

Aggressiveness works in the courtroom, but not in the office

MEGAN O'TOOLE

Employment lawyer Hermie Abraham knows firsthand what it's like to deal with workplace bullies.

As a junior lawyer who ran her own practice before joining a larger firm, she encountered aggressive behaviour from opposing counsel and paralegals who tried to push her around because of her relative inexperience. For Abraham, who came from a human resources background, the prevalence of such conduct was alarming.

"Having worked for 10 years in the human resources profession prior to law school, I was surprised by the culture of bullying that exists within the profession and which seems to go unchecked,"

Abraham said. Some younger lawyers are essentially subjected to "hazing" by their veteran counterparts, in the form of yelled commands or humiliating requests.

Workplace bullying can affect any industry, but experts say those in inherently adversarial positions — such as law — must be doubly vigilant to ensure it does not creep into their own firms.

"[Lawyers] are skilled at the art of negotiating or argument, but they need to recognize that's something that needs to be turned on and off," said Catherine Benesch, spokeswoman for the Canada Safety Council. "There's a place for being argumentative and persuasive and aggressive, and that is in the courtroom."

The council, an independent

charitable organization dedicated to promoting safety, defines bullying as intimidation through verbal, mental or physical abuse. In the workplace, that could take the form of sexual harassment, racial discrimination, physical threats or manipulative behaviour, such as going through a colleague's e-mails.

Adults in a workplace may be even less likely to speak up to stop bullying than children on a playground, Benesch said. "People feel that their jobs may be on the line, so they may be more hesitant to identify bullying and put a stop to it, especially when the bullying comes from management."

Bullying within a law firm can affect productivity by making targeted lawyers feel uncomfortable

or unsafe, decreasing their level of engagement and even prompting them to stay home whenever possible. Instead of focusing on case work, they expend mental energy focusing on how to avoid or "out-smart" the bully, Benesch said. "It's poisonous to the environment and it's something that managers need to be aware of."

Employment lawyer Ronald Minken said bullying — not to be confused with a strong management or delegation style — can be damaging to the morale of both the firm and to individuals. It can cause disharmony and a disrespectful work environment, raising the possibility of retaliatory bullying, he said; meanwhile, those who are targeted by bullies

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Target: Have zero tolerance, but offer help

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may become frustrated, isolated and lacking in confidence.

In the field of law, there is an important distinction between bullying and appropriate advocacy for clients, Minken said. "Strong advocacy should not be considered bullying or an excuse to bully. As advocates we are all to carefully review the [Law Society of Upper Canada guidelines] so that our conduct never crosses the line, as in the heat of the moment it is very tempting to cross the line."

The Law Society has a civility complaints protocol aimed at improving "civility and professionalism" among lawyers, laying out a procedure for judges to refer possible misconduct to the society or request that lawyers receive mentoring from a panel of senior bar members.

Minken says he has assisted law firms with everything from "conduct that is plain stupid" to severe bullying that has prompted employees to harm themselves.

"Berating students or newly called lawyers, or continuing to provide impossible deadlines designed to have them fail, are examples we have seen," Minken said, adding that the workplace can extend into the courtroom, clients' offices and other venues.



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Employment Lawyer

Because lawyers deal with clients who are often facing "pressure situations," bullying can also emerge in that context, with troubled clients lashing out at legal counsel, Abraham said. In general, the profession may attract people who thrive on confrontation, she said.

"The requirement for lawyers to act as zealous advocates for our clients may encourage lawyers to be more confrontational with each other," Abraham said. She has heard of instances of greater incivility between lawyers dealing with more contentious areas, such as family or criminal law. "This 'need to win' can also manifest in bullying behaviours."

So how can law firms stop bullying, or prevent it from happening in the first place? The first step, experts say, is to learn how to recognize the signs of bullying, such as a climate of fear or decreased engagement.

Lawyers often view themselves as "protectors" of the law rather than offenders, Abraham pointed out. Consequently, "the senior lawyers and managing partners of a firm may not reflect inwardly to determine whether their workplace [has] policies and procedures to deal with bullying and whether these policies are integrated in the everyday practices of the firm."

Zero tolerance for bullying must become part of the day-to-day culture, Benesch said. She advises all lawyers to pay attention to how others respond to them; bullies may not even realize the extent of their behaviour until they observe the impact it has on others. An anonymous comment box could be another way to generate feedback and encourage bystanders to speak up, she said. Anger management courses or other counselling methods may help bullies grapple with their own shortcomings.

Minken said lawyers should ask their colleagues to weigh in if they are concerned they may be engaging in bullying behaviours. "If certain conduct is in doubt, it is always best to err on the side of caution and cease the conduct."

Law firms must take the issue seriously when it arises, Abraham added, or targeted lawyers may find themselves adrift, with nowhere to turn.

"They could go to courts and tribunals, but it's difficult because they also live in the courts and tribunals. I find it's less likely that somebody will want to, simply because it's a small bar, so it might be seen as career-limiting."

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Tenure: Established leader gives firm recruitment advantage

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also allows them to understand what competitor systems are working better than the firm's current model over time, allowing them to make adjustments to the benefit of the firm where required.

Leadership

The other great benefit a long-term managing partner affords the firm is the ability to enact longer term strategies, particularly around growth and focus of

the firm's profile in the market. Repositioning a firm for growth often requires a staged approach — strategies that may require longer than a normal firm's standard 2- to 3-year term. Similarly, a long-term managing partner can make difficult decisions: When to cut losses on a pilot project, when to abandon an underperforming practice group, or when to contemplate a merger, having had the benefit of understanding both the firm internal dynamics and the local market circumstances. These are perhaps among the greatest benefits a long-term managing partner can provide towards the long-term success of a firm.

Effective recruitment

Finally, a long-term managing partner can play a key role in the effective recruitment of lateral talent. There are plenty of articles highlighting that the No. 1 priority of leadership is to focus on the growth and expansion of human capital, and law firms are no exception. A well-established managing partner is at a significant advantage in the market to effectively recruit in the market — he or she has the ability to both learn and monitor the overall health of competitor firms over an extended time, allowing them to wait for the perfect opportunity

to maximize their chance of landing star talent in the market. Long-term managing partners are also able to forge strategic alliances with recruiters, as they are often better able to assess who is best able in the market to assist them over the long term in achieving their recruitment objectives.

Of course, there are challenges with the role of long-term managing. Many of the issues are predicated on the managing partner being the right person, and having the ability to win the long-term confidence of the firm to take maximum advantage of the benefits afforded by such a role. However, provided the right person can be found to lead, and of course, provided the firm can afford to properly compensate for the role, law firms would be well served to at least consider whether such a position may make better long-term sense as they grow and evolve in the market.

Warren Smith is managing partner of Counsel Network. He is the only Canadian elected to the board of directors for the National Association of Legal Search Consultants. Contact: wsmith@thecounselnetwork.com.

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