

5 February 2010

Business, director, three workers convicted and fined for bullying

WorkSafe has issued a plea to employers and workers to maximise anti-bullying efforts and to deal with it if it occurs.

WorkSafe's acting Executive Director, Stan Krpan, said today's sentencing of four men, one a company director, and his company on charges relating to bullying sent a message to the entire community.

WorkSafe told Melbourne Magistrate Peter Lauritsen waitress Brodie Panlock, 19, was bullied by three workmates while her employer allowed it to go on. An earlier Coroners inquest found Brodie committed suicide after being bullied in 2006.

Magistrate Lauritsen said the working environment at Hawthorn's Café Vamp was poisonous and the persistent bullying of Ms Panlock was in the worst category, yet nothing was done to stop it.

Magistrate Lauritsen convicted and fined the four individual defendants, including the director of the company that owns Café Vamp a total of \$115,000 and her employer, Map Foundation trading as Café Vamp, \$220,000 (individual details below).

Outside the court, Mr Krpan hoped today's case would bring about a turning point with the community no longer tolerating bullying.

"Employers must set and enforce clear standards for their staff and act when it is identified.

"Unlike most other workplace safety issues, this is one that cannot be resolved simply after-the-event. By the time it has been raised with WorkSafe, often, the damage is done.

"Failing to set and maintain standards in this area can destroy employment relationships and irretrievably undermine individuals and the business. As this case shows, the outcome can be disastrous.

"Employers and the working community must play its role and adopt a stronger stance against this pervasive behaviour.

"It does not mean you can't have fun at work. Workplace bullying is repeated unreasonable behaviour directed toward an employee or group of employees that creates risks to health and safety.

Mr Krpan said bullying was not about managers or employers making legitimate business decisions, managing performance in an appropriate way or just having a 'bad day'.

“Prevention of bullying is about treating people with respect.”

WorkSafe is prosecuting at least two other serious cases of bullying and investigating many more but Mr Krpan said this was not the most effective method of addressing bullying.

WorkSafe has produced two useful guides on bullying – [Prevention and responding to bullying at work](#) and [What to do if bullying happens to you](#). These can be found online or call WorkSafe’s confidential advisory service on 1800 136 089 for more information.

The charges:

Map Foundation Pty Ltd trading as Café Vamp - 1 x s21 (2a) of the OHS Act 2004.
Convicted and fined \$110,000.

1 x s21 (2e) of the OHS Act 2004 - Convicted and fined \$110,000.

Marc Da Cruz – director of Map Foundation Pty Ltd

1 x s21 (2a) and s144 of the OHS Act 2004 - Convicted and fined \$15,000

1 x s21 (2e) and s144 of the OHS Act 2004 - Convicted and fined \$15,000.

Nicholas Smallwood 1 x s25 of the OHS Act 2004 - Convicted and fined \$45,000

Rhys MacAlpine 1 x s25 of the OHS Act 2004 - Convicted and fined \$30,000

Gabriel Toomey 1 x s25 of the OHS Act 2004 - Convicted and fined \$10,000

What the law says:

Section 21 of the Occupational Health and Safety Act 2004- Duties of employers to employees

(1) An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.

(2) Without limiting sub-section (1), an employer contravenes that sub-section if the employer fails to do any of the following—

(a) provide or maintain plant or systems of work that are, so far as is reasonably practicable, safe and without risks to health;

and

(e) provide such information, instruction, training or supervision to employees of the employer as is necessary to enable those persons to perform their work in a way that is safe and without risks to health.

Section 25. Duties of employees

(1) While at work, an employee must—

(b) take reasonable care for the health and safety of persons who may be affected by the employee's acts or omissions at a workplace.

Section 144. Liability of officers of bodies corporate

(1) If a body corporate (including a body corporate representing the Crown) contravenes a provision of this Act or the regulations and the contravention is attributable to an officer of the body corporate failing to take reasonable care, the officer is guilty of an offence and liable to a fine not exceeding the maximum fine for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate.

(2) An offence against sub-section (1) is summary or indictable in nature according to whether the offence constituted by the contravention by the body corporate is summary or indictable.

(3) In determining whether an officer of a body corporate is guilty of an offence, regard must be had to—

- (a) what the officer knew about the matter concerned; and
- (b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and
- (c) whether the contravention by the body corporate is also attributable to an act or omission of any other person; and
- (d) any other relevant matter.

(4) An officer of a body corporate may be convicted or found guilty of an offence in accordance with sub-section (1) whether or not the body corporate has been convicted or found guilty of the offence committed by it.

(5) An officer of a body corporate (including a body corporate representing the Crown) who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

Note: "Officer" of a body corporate includes a person who makes or participates in the making of decisions that affect the whole or a substantial part of the body corporate's business and a person who has the capacity to affect significantly the body corporate's financial standing.

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