

**Labour law, the queen bee syndrome and workplace bullying:
A contribution to the shattering of at least one glass ceiling for female employees**

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1 INTRODUCTION

In nature, the queen bee dictates the gender of the beehive by excreting pheromones that make other female bees infertile, thereby monopolising the male bees to attend to her every need. Very often, this behaviour seems to be mimicked in the modern workplace:¹ A female – often the only such female – in a senior or authoritative position in a predominantly male workplace would do everything in her power to keep other females from advancing through the ranks. This phenomenon has therefore been termed the queen bee syndrome.

The term ‘queen bee’ was coined in 1974 by Michigan University researchers Staines, Epstein and Tavis,² who found that women operating in male hierarchies set out to preserve their ‘rare turf’ by creating a ceiling for fellow females’ advancement, in effect thwarting all other females’ attempts to rise through the ranks. Subsequently, other studies have also shown that token females in high-ranking positions and work groups are less likely to include both moderately and highly qualified female candidates in their group than women in lower positions,³ although some opposing views have also started to emerge.⁴

It did not take long for popular media such as *Forbes*⁵ and the *Wall Street Journal*⁶ to pick up on the phenomenon of alpha females protecting their hard-earned status in predominantly male working environments. Articles on how these women reportedly maintained control, engaged in ‘turf wars’ with other females and displayed an attitude of

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¹ See <http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100358381> (9 June 2015).

² G Staines, TJ Epstein & C Tavis ‘The Queen Bee Syndrome’ (1974) 7 *Psychology Today* 55 at 55-56.

³ LD Sheppard & K Aquino ‘Much ado about nothing? Observers’ problematization of women’s same-sex conflicts at work’ (2013) 27(1) *Academy of Management Perspectives* 52 at 53.

⁴ Anon ‘“Queen bee syndrome” among women at work is a myth, study finds’ (2015) *The Guardian* <http://www.theguardian.com/world/2015/jun/07/queen-bee-syndrome-women-work-myth-research-columbia-business-school> (accessed 17 June 2015).

⁵ J Baldoni ‘Taking the Sting out of “Queen Bees” Who May Be Out to Get You’ (2013) *Forbes* <http://www.forbes.com/sites/johnbaldoni/2013/03/04/taking-the-sting-out-of-queen-bees-who-may-be-out-to-get-you/> (accessed 7 February 2015).

⁶ P Dexler ‘The Tyranny of the Queen Bee’ (2013) *Wall Street Journal* <http://www.wsj.com/articles/SB10001424127887323884304578328271526080496> (accessed 7 February 2015).

'being downright unhelpful and rude to other women whom they feel threatened by'⁷ soon started to appear. Although young females would often seek out older, successful females to guide them in their careers, more often than not those females have no interest in acting as mentors and may even 'actively attempt to cut [their younger colleagues] off at the pass'.⁸ These queen bees of the workplace reportedly see themselves as 'large and in charge'.⁹

Although this does of course not apply to all females in senior positions,¹⁰ the matter is serious enough to warrant further investigation. In essence, queen bees¹¹ do not behave as would be expected, and to a large extent ignore the needs of female colleagues aspiring to advance their careers. Contrary to the high value that the female gender generally attaches to socialising, small talk or family talk, the queen bee is solely task-orientated, micromanages and displays old-style management behaviour, which leads to alienation and demotivation of female colleagues.¹² These effects are strikingly similar to the negative effects experienced by victims of workplace bullying, as will be illustrated later on.¹³

The queen bee's attempts to block the advancement of fellow females in the workplace can hardly be described as a labour transgression. Instead, as will be argued in this paper, when a female senior executive undermines the confidence of younger female colleagues reporting to her by being unwilling to take their calls, distancing herself from them, refusing to build a working relationship with them and denying her female protégées any assistance in the workplace,¹⁴ this is tantamount to yet another form of gender-specific bullying.

In demonstrating the link between the queen bee syndrome and workplace bullying, this presentation will firstly contextualise the phenomenon of the queen bee by taking

⁷ Anon 'Do You Have a Queen Bee In Your Office?' (n.d.) <http://www.handbagsintheboardroom.com/queen-bee-office/> (accessed 7 February 2015).

⁸ Baldoni n 5 above.

⁹ R Claunch 'Queen Bees, micromanagers, and bullies: Demons in the workplace' (2009) <http://www.dentistryiq.com/articles/2009/11/queen-bees-micromanagers.html> (accessed 7 February 2015).

¹⁰ Dexler n 6 above.

¹¹ The term is often used in a derogatory sense and commonly refers to a woman in a position of authority who uses that authority to preserve her territory by opposing the rise of other women. See Anon n 7 above; R Anderson 'Calling for the end of the queen bee' (2013) <http://thewaywomenwork.com/2013/03/calling-for-the-end-of-the-queen-bee/> (accessed 7 February 2015).

¹² Anon n 7 above.

¹³ S Einarsen, H Hoel & GL Cooper *Bullying and Harassment in the Workplace* (2011) 426; D Salin 'Prevalence and forms of bullying among business professionals: A comparison of two different strategies of measuring bullying' (2001) 10(4) *European Journal of Work and Organisational Psychology* 425 at 426; S Yildiz 'A "new" problem in the workplace: psychological abuse (bullying)' (2007) 9(34) *Journal of Academic Studies* 113 at 115.

¹⁴ Anon n 7 above.

cognisance of the uphill battle females continue to face in making their mark in especially high-ranking jobs. This will provide some background on existing glass ceilings created for women employees, perspectives on female leadership, gender stereotyping and the masculinisation of the modern workplace, which all create fertile breeding ground for the queen bee. Following an analysis of the queen bee syndrome, the focus then shifts to the related phenomenon of workplace bullying and its ill effects. As research has shown that females tend to be more exposed to workplace bullying by fellow females,¹⁵ this paper will then explore whether the link between the queen bee and workplace bullying phenomena perhaps poses greater challenges to employers than what they are able to address through current laws, regulations and policies. In a 2011 study conducted in the United States, 95% of working female respondents reported that they had been undermined by another woman in the workplace.¹⁶ This finding is backed up by recent statistics that show that females in employment tend to be subjected more to bullying by female colleagues than by male co-workers.¹⁷ Women reporting to women are said to show more symptoms of psychological and other stress than those working under male supervision.¹⁸ These and other findings may lead one to conclude that the queen bee's behaviour in the workplace could be regarded as a form of gender bullying, created *by females for females*, which requires investigation and intervention.

Through a comparative study of the legal stance on these matters in the United States, the United Kingdom and Australia, amongst others, the legal position in South Africa will be assessed. The aforementioned comparative jurisdictions were chosen with good reason: Through its Healthy Workplace Bill,¹⁹ the United States has for example attempted to have workplace bullying legislated for quite some time, although in vain thus far, while Australia in January 2015 adopted health and safety codes to regulate and prohibit bullying in employment. The management of workplace bullying is still in its infancy in South Africa, but

¹⁵ Women bully women 68% of the time and have been found to be less equitable than men when choosing their targets. See Workplace Bullying Institute (WBI) *2014 U.S. Workplace Bullying Survey* (2014) <http://workplacebullying.org/multi/pdf/WBI-2014-US-Survey.pdf> (accessed 9 February 2015).

¹⁶ Anon n 7 above.

¹⁷ Workplace Bullying Institute n 15 above at 6-8.

¹⁸ S Schieman & T McMullen 'Relational Demography in the Workplace and Health: An Analysis of Gender and the Subordinate-Superordinate Role-Set' (2008) 49(3) *Journal of Health and Social Behaviour* 286 at 289.

¹⁹ DC Yamada 'First "Healthy Workplace Bill"' (n.d.) <http://abusergoestowork.com/proposed-healthy-workplace-bill/> (accessed 17 June 2015).

scholars of law in this jurisdiction have recently started to show an increasing degree of interest in the matter.

Ultimately, this paper will explore whether the queen bee syndrome really exists and, if so, to what extent; whether there is any correlation between the queen bee and workplace bullying phenomena, and, if the queen bee syndrome could indeed be labelled as a form of gender bullying, whether existing legal remedies will suffice or whether legal or other interventions are required. The end goal will be to tender possible solutions from a law perspective to prevent females from creating yet another glass ceiling for fellow women in the workplace. By viewing this problem through the prism of gender differences²⁰ and gender inequity, and paying particular attention to the nexus between the queen bee syndrome and workplace bullying, it is hoped that the discourse on the topic of female bullying in the workplace will be advanced and that a contribution will be made to the search for an appropriate vehicle to both prevent and rectify this destructive phenomenon in employment.

2 DECONSTRUCTING THE QUEEN BEE SYNDROME IN THE WORKPLACE

2.1 *The lonely uphill battle to get to the top, and the turf war to be the only one there*

Judging by the available literature, it is safe to say that females did (and still do) not have it easy in breaking through the proverbial glass ceiling created by a predominantly masculine world of work in order to advance in the workplace.

Whilst men traditionally represent authority and leadership at work, women offer listening skills and empathy. These stereotypes have typically served as a hindrance for females aspiring to positions of power, and have been putting females at a disadvantage due to their less obvious relationship with power.²¹ In addition, although opinions differ on whether females should remain the primary caretakers of their children throughout childhood, the presumption certainly is that they should.²² The latest Pew survey, for example, indicates that 68% of women with children still prefer to work only part-time or

²⁰ KL Stone 'From Queen Bees and wannabes to worker bees: Why gender considerations should inform the emerging law of workplace bullying' (2009) 65(35) *New York University Annual Survey of American Law* 35 at 62.

²¹ V Beaufort & L Summers 'Women on Boards: Sharing a rigorous vision of the functioning of boards, demanding a new model of corporate governance' (2014) 4(1) *Journal of Research in Gender Studies* 101 at 107.

²² PM Wald 'Myths about Women's Careers in Law' (2013) 2(1) *University of Baltimore Journal of International Law* 1 at 8.

not at all, despite the fact that modern fathers' contribution to households and childcare has tripled since 1965.²³ Since the corporate world is known as a place of social power²⁴ and human resource research has shown that females bring a much-needed socially attuned leadership style to boards, including empathy, a focus on teamwork, emotional intelligence, courage, caution and/or risk aversion and common sense,²⁵ it seems strange that a recent survey of almost 6 000 companies in 45 countries reveals that women still hold only 11% of board seats in the world's largest and best-known companies.²⁶ The answer to the question whether discriminatory forces are indeed at work against females in employment, creating an invisible barrier – the so-called glass ceiling – to both the entry and advancement of women into senior positions, or whether the difference in gender representation at these employment levels should merely be seen as the result of the choices that females make,²⁷ is not clear-cut. However, certain existing barriers unrelated to females' own life choices are undeniable.

These barriers include inadequate management of the leadership pipeline, lack of gender awareness and the positive spin-offs of diversity, existing 'male-orientated' selection criteria, and family-and-work incompatibility.²⁸ Also, females are still regarded as being lower in status,²⁹ with the very existence of the queen bee syndrome having ironically been blamed for the different statuses attached to men and women's work.³⁰ Gender inequality is well documented, and the role incongruity brought about by senior positions has been offered as an explanation for the apparent disparity in gender representation in the workplace:³¹ Once a woman behaves like a female, she is no longer regarded as 'managerial'; once she displays male characteristics, she is no longer seen to be feminine.³² Therefore, men still prefer to promote men, whose style they understand.³³ Should females

²³ Wald n 22 above at 8.

²⁴ Beaufort & Summers n 21 above at 102.

²⁵ Beaufort & Summers n 21 above at 102, 127.

²⁶ Beaufort & Summers n 21 above at 104-105.

²⁷ N Smith, V Smith & M Verner 'Why are so few females promoted into CEO and vice president positions? Danish empirical evidence, 1997-2007' (2013) 66(2) *ILR Review* 380 at 381.

²⁸ Beaufort & Summers n 21 above at 108.

²⁹ M Conway, T Pizzamiglio & L Mount 'Status, Communitarity and Agency: Implications for stereotypes of gender and other groups' (1996) 71(1) *Journal of Personality and Social Psychology* 25 at 33.

³⁰ Sheppard & Aquino n 3 above at 53.

³¹ Sheppard & Aquino n 3 above at 53.

³² S Marvin 'Queen bees, wannabees and afraid to bees: No more "best enemies" for women in management?' (2008) 19(s1) *British Journal of Management* s75 at s77.

³³ Beaufort & Summers n 21 above at 119.

wish to compete, they are in effect expected to act against their nature, adopting the ‘warlike conquest and solitary exercise of vertical power’, instead of the more typically female style of collective leadership and decision-making.³⁴ A small percentage of women succeed in doing so.

This, then, is precisely where the queen bee starts operating. Despite the desire for companionship in the often lonely boardroom, the arrival of another female reduces the top female executive’s uniqueness and originality, requiring her to share the limelight and attention,³⁵ which creates the need in the queen bee to protect what has become ‘her hive’. Schieman and McMullen refer to the ‘intra-gender competition effect’, which sees women struggling to obtain support from other women, and female superiors in a male-dominated context having the support of males whilst denigrating fellow women.³⁶ Interestingly, the males in the male-dominated workplace where the queen bee is at work tend to pit highly competitive females against each other,³⁷ merely adding to the psychological distress already prevalent in these circumstances. And, as this research will show, the negative effects suffered by women working for females who managed to shed their femininity to climb the ladder of corporate status³⁸ in predominantly male environments are similar to those experienced by the victims of bullying – both physically and psychologically.³⁹

Thus, the queen bee syndrome clearly does exist. The question is to which extent it exists in workplaces across the globe, which particular factors encourage this negative behaviour, and whether jurisdictions worldwide have taken note of and are equipped to deal with the phenomenon from a legal perspective.

2.2 The reign of the queen bee: The extent of the problem, and its negative effects

One would expect female senior executives, who themselves had to battle to reach positions of power, to support and mentor fellow women and assist them to move up the

³⁴ Beaufort & Summers n 21 above at 121.

³⁵ Beaufort & Summers n 21 above at 123.

³⁶ Schieman & McMullen n 18 above at 289.

³⁷ Schieman & McMullen n 18 above at 289.

³⁸ Schieman & McMullen n 18 above at 296.

³⁹ See DC Yamada ‘Human Dignity and American Employment Law’ (2009) 43 *University of Richmond Law Review* 523 at 531; Yildiz n 13 above at 115; H Hoel, B Faragher & CL Cooper ‘Bullying is detrimental to health, but all bullying behaviours are not necessarily equally damaging’ (2004) 21(2) *British Journal of Guidance & Counselling* 367 at 368. All of these authors refer to an increase in cardiovascular disease, bowel and stomach problems, low energy levels, insomnia, feeling sick, suffering from stress, post-traumatic disorder, depression and palpitations.

ranks. In addition, as new-generation females are better educated than their mothers, grandmothers and young male counterparts,⁴⁰ one would expect them to have significant representation in high-status jobs or earn more than, or at least the same as, their male counterparts. However, for some reason, this is not happening.⁴¹

According to the European Commission, it would take 40 years for companies to naturally achieve gender-balanced boards⁴² and 70 years for the United Kingdom in particular to achieve gender equity on boards, with only 20,7% of the board seats of the FTSE 100 being occupied by females.⁴³ Due to women's slow progress at corporate board level, 12 countries enacted legislation to prescribe quotas for females in positions of power,⁴⁴ while another 16 countries adopted softer 'comply or explain' legislation.⁴⁵ There are arguments for and against quotas: The main counterargument is that a quota system causes females to be stigmatised even more than before, as it is believed that they advance through the ranks only based on their gender; thus, a quota system is generally seen as a 'necessary evil'.⁴⁶ As females are already at a disadvantage in employment, and their precarious position is further exacerbated by queen bees and same-sex bullying, it seems unlikely that women will ever attain true equity in the workplace. Instead, therefore, an investigation into the integration of women in the world of work – as opposed to equality in numbers – serves to put the imbalance of representation in perspective.

Nordic women were among the first in the Western world to enter the labour market during the 1960s and 1970s, and Denmark is currently rated seventh (out of 135 countries) in respect of the overall gender gap, according to the World Economic Forum's 2011 report.⁴⁷ Unfortunately, however, women are still vastly underrepresented on the boards of most member countries of the Organisation for Economic Cooperation and Development (OECD), even though females are as educated as their male counterparts and have been in

⁴⁰ Pew Research Centre 'On pay gap, millennial women near parity – for now' (2013) <http://www.pewsocialtrends.org/2013/12/11/on-pay-gap-millennial-women-near-parity-for-now/> (accessed 7 February 2015).

⁴¹ ML Shetsky *The Queen Bee Syndrome Revisited: A Phenomenological Study of the Lived Experiences of Baby Boomer Women Leaders in the Pharmaceutical Industry* PhD dissertation Chicago School of Professional Psychology (2013) 90.

⁴² Beaufort & Summers n 21 above at 113.

⁴³ Beaufort & Summers n 21 above at 115.

⁴⁴ Norway, Finland, Quebec, Israel, Spain, Iceland, Kenya, France, Belgium, Italy, Netherlands and Germany, as per Beaufort & Summers n 21 above at 109.

⁴⁵ Beaufort & Summers n 21 above at 110

⁴⁶ Beaufort & Summers n 21 above at 117.

⁴⁷ Smith *et al.* n 27 above at 380, 381.

the labour market for a long time.⁴⁸ Despite Denmark's good performance on the Gender Gap Index, female chief executive officers (CEOs) in that country occupy only 7% of board seats in companies with more than 50 employees, whilst the proportion of women among CEOs is even smaller.⁴⁹ In this respect, Denmark ranks extremely low in the 78th spot out of the 135 countries surveyed.⁵⁰ Wald confirms the underrepresentation of females by stating that even though female lawyers in the United States are generally better qualified than their male counterparts, they are not made partners.⁵¹ In addition, although women make up half the workforce, they still hold fewer than 15% of executive positions in the United States and corporate positions in the Fortune 500 companies.⁵² Moreover, the pay gap between males and females seems to be widening, especially at the higher end of the skills spectrum,⁵³ which is exactly where the queen bee may be at work.

It is Ellemers and colleagues who then articulate the question: Does the underrepresentation of women in certain categories of employment relate to commitment issues or may it perhaps be ascribed to the existence of the queen bee syndrome?⁵⁴ For example, despite female students comprising half of all university students worldwide, underrepresentation of females in academic faculties gradually worsens as academic positions rise and has shown no significant improvement in the last 40 years, with the percentage of female professors being below 10% in 13 of the 16 European countries, below 13% in the United States and below 14% in Australia.⁵⁵ In the Netherlands, an incredibly low 22% of females are reportedly employed in full-time jobs, whilst the figure for the rest of Europe is not much better at only 35%.⁵⁶

Smith and colleagues⁵⁷ rely on various authors' theories in their search for the reasons for this state of affairs. Firstly, they refer to Lazear and Rosen's⁵⁸ prediction of a glass ceiling for females simply due to their gender – without any choice-based decisions being made

⁴⁸ Smith *et al.* n 27 above at 380.

⁴⁹ Smith *et al.* n 27 above at 380.

⁵⁰ Smith *et al.* n 27 above at 381.

⁵¹ Wald n 22 above at 9.

⁵² Sheppard & Aquino n 3 above at 53.

⁵³ Smith *et al.* n 27 above at 381.

⁵⁴ N Ellemers *et al.* 'The underrepresentation of women in science: Differential commitment of the queen bee syndrome?' (2004) 43 *British Journal of Social Psychology* 315 at 315.

⁵⁵ Ellemers *et al.* n 54 above at 316.

⁵⁶ Ellemers *et al.* n 54 above at 319.

⁵⁷ Smith *et al.* n 27 above at 383.

⁵⁸ 1990.

and with males and females possessing similar job skills. Secondly, Booth, Francesoni and Frank⁵⁹ came up with the 'sticky floor' concept to describe a situation where females are promoted to the same extent as males, but show slower subsequent compensation growth than their male counterparts, mainly due to family responsibilities and choices made by females. Thirdly, however, Fryer⁶⁰ and Bjerk⁶¹ seem to downplay the extent of the problem, stating that females may actually be promoted even more than their male colleagues and that whilst discrimination may be suffered in the lower levels of an organisation, they believe it to be absent in the higher levels. So-called 'belief flipping' among females, according to Fryer, may even mean that more females are being promoted to higher positions than men.⁶²

Nevertheless, Sheppard and Aquino⁶³ believe the queen bee syndrome to be prevalent amongst women who are more masculine and who no longer perceive gender discrimination as a barrier to employment, yet still distance themselves from other women in the workplace. In the legal fraternity, for example, many female judges or lawyers are said to have little or no interest in women's issues, neither taking in female law clerks nor mentoring females to close the gender gap.⁶⁴ Queen bees are also often those who experienced frequent gender discrimination during their own battle to the top.⁶⁵ For this reason, Staines and colleagues believe, the queen bee justifies her actions on the basis of 'if I could do it without a whole movement to help me, so can other women'.⁶⁶ Whatever the queen bee's reasons for her actions, though, her conduct often has a far-reaching impact on those female employees in subordinate positions who dare having professional ambitions of their own.

Schieman and McMullen measured both psychological⁶⁷ and physical stress⁶⁸ where the queen bee phenomenon presented itself in professional and senior workplaces, and found

⁵⁹ 2003, as referred to in Smith *et al.* n 27 above at 382.

⁶⁰ 2007, as referred to in Smith *et al.* n 27 above at 383.

⁶¹ 2008, as referred to in Smith *et al.* n 27 above at 383.

⁶² Fryer 2007, as referred to in Smith *et al.* n 27 above at 383.

⁶³ Sheppard & Aquino n 3 above at 55.

⁶⁴ Wald n 22 above at 14.

⁶⁵ Sheppard & Aquino n 3 above at 55.

⁶⁶ Marvin n 32 above at 579, with reference to Staines, Tarvis and Jayerante 1973.

⁶⁷ Victims felt sad, experienced everything as an effort, had trouble sleeping, were unable to shake the blues, worried a lot, felt anxious and stressed. For more information, see Schieman & McMullen n 18 above at 290.

⁶⁸ Victims reported headaches, stomach pain, indigestion and heartburn, chest pain and rapid heartbeats, neck and back pain, feeling tired or run down. For more information, see Schieman & McMullen n 18 above at 290.

that women reporting to women experienced more distress than women reporting to a male supervisor.⁶⁹ The tendency among token females in high-ranking positions and work groups not to select both moderately and highly qualified female candidates into their groups⁷⁰ amounts to the abuse of power, which also happens to be a distinctive feature of workplace bullying. The queen bee is often passive-aggressive, emotional, mean and arrogant in her relationships with other females in the workplace, working against other, upcoming women, criticising their failures, failing to encourage them or advise them on their work and, in particular, tending to play down or overlook their success.⁷¹ This type of aggression in the workplace has adverse effects on the well-being of those on the receiving end, including depression, post-traumatic stress disorder, anxiety and a reduction in job satisfaction.⁷²

2.3 Possible aggravating circumstances: Gender stereotyping and pay

Gender stereotyping⁷³ may be regarded as a possible enabler for the queen bee to operate unhindered. Gender stereotyping in employment is nothing new: Schein and colleagues,⁷⁴ for example, refer to the notion of a widely shared cultural belief that men are more socially competent and better at certain tasks, whilst women are more suited to nurturing tasks and vocations. Perceived indications that this traditional stereotyping has subsided over the years have been shown untrue.⁷⁵ Chavez notes that women find it particularly hard to ‘break through the ceiling’ and obtain high-ranking positions, mainly due to gender stereotypes such as that women are less available to invest themselves in their work, that they lack leadership skills and that leadership is a man’s job.⁷⁶

This stereotyping leads to direct discrimination and bias favouring men in certain spheres of employment and also permeates the leadership role, with the phrase ‘Think manager, think male’ often underpinning and informing the conduct of the few women who do

⁶⁹ Schieman & McMullen n 18 above at 294, 296.

⁷⁰ Sheppard & Aquino n 3 above at 53.

⁷¹ D Mahaffey *Exploring the lived experience of women affected and transformed by female rivalry in the workplace* PhD dissertation School of Organisational Leadership University of the Rockies (2013) 36.

⁷² Mahaffey n 71 above at 40.

⁷³ Beaufort & Summers n 21 above at 106.

⁷⁴ VE Schein *et al.* ‘Think manager – think male: A global phenomenon?’ (1996) 17 *Journal of Organisational Behaviour* 33 at 33.

⁷⁵ Schein *et al.* n 74 above at 39-40.

⁷⁶ Beaufort & Summers n 21 above at 106.

eventually manage to occupy senior positions in male-dominated workplaces.⁷⁷ In fact, Professor Belle Derks of Leiden University is reported to have said that the existence of the queen bee syndrome may be attributed to this very reason:

‘Being a token female executive in a male-dominated environment places women in precarious positions where they have to show that they can play well with the boys rather than mentor women below them.’⁷⁸

This hypothesis of ‘Think manager, think male’ is well documented in all management practices and refers to the tight relationship between gender role stereotyping and the required features of a manager.⁷⁹ Both males and females have very specific ideas of the characteristics or gender stereotype required of an employee to become a CEO.⁸⁰ Interestingly, research has shown that females, Danish females in particular, hold more such gender-stereotyped views than their male colleagues, which can by means of inference be seen as a manifestation of the queen bee syndrome.⁸¹ Further building on gender stereotyping is the suggestion that females in power use typical constructs of femininity in the workplace to get ahead, such as being flirtatious and admiring men in positions of power – thereby in effect undermining their own authority – to reaffirm heterosexual forms of dominance and subordination,⁸² a recipe that fails when they are faced with other senior women in the workplace and then results in the queen bee syndrome.

Research has indicated that in law firms with few females, those women behave more competitively towards each other and are less likely to regard fellow women as supportive role models in the workplace.⁸³ Mentoring studies also indicate that women prefer to network with high-ranking males instead of asking females for career advice, and that women experience the presence of other highly successful females as a threat to their self-esteem.⁸⁴

⁷⁷ VE Schein ‘A global look as psychological barriers to women’s progress in management’ (2001) 57(4) *Journal of Social Issues* 675 at 676, 683-684.

⁷⁸ Anon n 7 above; Sheppard & Aquino n 3 above at 55.

⁷⁹ Smith *et al.* n 27 above at 383.

⁸⁰ Smith *et al.* n 27 above at 383.

⁸¹ Smith *et al.* n 27 above at 383.

⁸² Marvin n 32 above at s76.

⁸³ Sheppard & Aquino n 3 above at 54.

⁸⁴ Sheppard & Aquino n 3 above at 55.

It is clear, therefore, how gender stereotyping could act as an enabler for the queen bee, and is something of which employers should be aware.

Another factor that may add to women's already restricted room to advance in the workplace – and which the queen bee may use to her advantage – is pay. In 2012, a study in the United States found that the hourly earnings of working women aged 25 to 34 were 93% of men's and that the hourly pay of working women among all workers was 84% of men's, even though women were more likely to hold a bachelor's degree.⁸⁵ Although a 25% median increase has taken place over the last 30 years,⁸⁶ factors such as gender stereotyping, discrimination and other, less easily quantifiable factors continue to contribute to gender differentials in pay.⁸⁷ According to another study, the hourly wages of women in the Netherlands account for only 77% of men's.⁸⁸ And the queen bee syndrome simply seems to aggravate and perpetuate this existing pay ceiling for female employees.

According to Marvin,⁸⁹ some female employees regard the queen bee as a woman who has reached senior status by 'destabilising the gender order'. In an attempt to re-establish the gender order they are used to, these females disassociate themselves from the queen bee and construct top management as a 'bad place' for women.⁹⁰ This results in females' tendency to cluster together in traditional, less senior and, thus, lower-paid 'women's jobs' such as human resources,⁹¹ as a 2001 study conducted in the United States showed. In the same vein, Wald reports that although 64% of females in the top 200 law firms in the USA are associates, only 17% of partners are women – a situation which this former chief judge of the United States appeals court ascribes to the 'largely un-shattered glass ceiling for equity partnerships'.⁹² Therefore, a (potentially unintended) consequence of the queen bee's efforts to maintain control is the relegation of women to positions with lower pay, perpetuating the pattern of gender inequity in the workplace and adding further injustice to an already gender-biased environment.

Thus, as higher positions come with higher pay, it is not difficult to see how the queen bee's attempts to deter other women from progressing through the ranks may contribute to

⁸⁵ Pew Research Centre n 40 above.

⁸⁶ Pew Research Centre n 40 above at 3.

⁸⁷ Pew Research Centre n 40 above at 1.

⁸⁸ Ellemers *et al.* n 54 above at 319.

⁸⁹ Marvin n 32 above at s76.

⁹⁰ Marvin n 32 above at s76.

⁹¹ Beaufort & Summers n 21 above at 109; Smith *et al.* n 27 above at 405.

⁹² Wald n 22 above at 4-5.

the existing pay differential between male and female employees, thereby reinforcing the existing glass ceilings that women in employment face.

3 WORKPLACE BULLYING, AND POTENTIAL LINKS WITH THE QUEEN BEE SYNDROME

3.1 Defining workplace bullying

There is no single, agreed definition for workplace bullying.⁹³ However, what is clear from the multiple definitions offered in the literature on the subject is that bullying represents an assault on the victim's dignity.⁹⁴ Bullying is generally seen as 'unwanted, offensive, humiliating, undermining behaviour towards an individual or group of employees'⁹⁵ and a form of repeated mistreatment and 'abusive conduct'.⁹⁶ Although different authors suggest different specific features as essential components for an incident to qualify as bullying, including the duration, frequency and nature of the behaviour and the intention and perception of victims,⁹⁷ it stands firm that both victims and bystanders of workplace bullying suffer tremendously and either fall ill or leave their jobs after suffering physical and/or emotional harm.⁹⁸

Workplace bullying has been defined as the systematic abuse of power in interpersonal relationships, taking the form of conscious, wilful and deliberate hostile activity intended to harm, induce fear through the threat of further aggression and the creation of terror.⁹⁹ Three elements seem to be included in all definitions, namely 'intent to harm, a power imbalance, and a threat of further harm'.¹⁰⁰

Extrapolated into practice, this may include aggressive eye contact; giving the victim the silent treatment; finger-pointing, slamming doors or throwing objects; yelling, screaming and cursing; angry outbursts; accusations of wrongdoing; excessive or harsh criticism of

⁹³ J Carbo 'Strengthening the Healthy Workplace Act: lessons from Title VII and IIE litigation and stories of targets' experiences' (2009) 14(1) *Journal of Workplace Rights* 97 at 98, with reference to Randall 2005.

⁹⁴ Carbo n 93 above at 101; N Deniz & OG Ertosun 'The relationship between personality and being exposed to workplace bullying or mobbing' (2010) 7(Jun) *Journal of Global Strategic Management* 129 at 130, with reference to Einarsen *et al.* 2003, Einarsen 2000, Einarsen & Skogstad 1996, Leymann 1993 and Zapf 1999, defining workplace bullying as '... harassing, offending, socially excluding someone or negatively affecting someone's work tasks'.

⁹⁵ G Vega & DR Comer 'Sticks and stones may break your bones, but words can break your spirit: bullying in the workplace' (2005) 58(13) *Journal of Business Ethics* 101 at 103.

⁹⁶ WBI n 15 above .

⁹⁷ S Magnuson & K Norem 'Bullies grow up and go to work' (2009) 37(2) *Journal of Professional Counselling Practice, Theory and Research* 34 at 36.

⁹⁸ Salin n 13 above at 426; Einarsen *et al.* n 13 above at 470, 476; Yildiz n 13 above at 115.

⁹⁹ Magnuson & Norem n 97 above at 36.

¹⁰⁰ Magnuson & Norem n 97 above at 36.

work performance, often in the presence of others; insulting or belittling employees, also often in front of others; spreading false rumours; withholding essential information, and taking credit for the victim's work.¹⁰¹ These acts may be personal (such as insults), work-related (such as withholding information) or may include social isolation that is long-standing and may intensify over time.¹⁰² Ostracism is regarded as one of the most powerful ways to bully in the workplace,¹⁰³ while Le Roux and colleagues add boycotting and disregarding fellow employees as further examples.¹⁰⁴

Workplace bullying is not restricted to a specific occupation or profession,¹⁰⁵ nor is it easy to detect, identify or categorise.¹⁰⁶ For this reason, statistics on the prevalence of workplace bullying vary. According to Seagriff, more than 23 million American employees experience workplace bullying at some stage of their work lifetimes, thus presenting a serious problem for both employers and employees.¹⁰⁷ Other estimates based on 2007 statistics put this number at 54 million, while a further 19 million are exposed to further bullying.¹⁰⁸ The 2006 International Labour Organisation studies as well as the 2014 Workplace Bullying Institute report also show that workplace bullying is on the increase,¹⁰⁹ making this all but a temporary problem.¹¹⁰ In fact, the Namies regard bullying at work as a 'silent epidemic'¹¹¹ with 20% of employees in the United States having been bullied, 7% being bullied at present and 21% of the workforce witnessing bullying.¹¹²

¹⁰¹ BL Seagriff 'Keep your lunch money: Alleviating workplace bullying with mediation' (2010) 25 *Ohio State Journal on Dispute Resolution* 575 at 578.

¹⁰² E Baillien, N de Cuyper & H de Witte 'Job autonomy and workload as antecedents of workplace bullying: A two-wave test of Karasek's job demand control model for targets and perpetrators' (2011) 84 *Journal of Occupational and Organisational Psychology* 191 at 128.

¹⁰³ M Gamian-Wilk 'Does bullying increase compliance?' (2013) 8(2) *Social Influence* 131 at 133.

¹⁰⁴ R le Roux, A Rycroft & T Orleyn *Harassment in the workplace: Law, Policies and Processes* (2010) 54.

¹⁰⁵ D Viljoen 'Do you have a bully in the workplace?' (2013) June *Forensics ENSight* <https://www.ensafrica.com/news/Do-you-have-a-bully-in-the-workplace?Id=1053&STitle=forensics%20ENSight> (accessed 17 June 2015).

¹⁰⁶ C Rhodes *et al.* 'Violence and Workplace Bullying. What are organisations' ethical responsibilities?' (2010) 32(1) *Administrative Theory & Praxis* 96 at 99.

¹⁰⁷ Seagriff n 101 above at 575.

¹⁰⁸ G Namie & R Namie *The bully at work: What you can do to stop the hurt and reclaim your dignity on the job* (2009) 5.

¹⁰⁹ WBI 'Stability of workplace bullying: Prevalence since 2007' (2010) http://www.workplacebullying.org/2010/09/17/comparison_2010_wbi/ (accessed 7 February 2015); Namie & Namie n 108 above at 5; WBI n 15 above.

¹¹⁰ T Kalliath & P Kalliath 'Changing work environments and employee well-being: an introduction' (2012) 33(7) *International Journal of Manpower* 729 at 731.

¹¹¹ Namie & Namie n 108 above at 5.

¹¹² WBI n 15 above.

The negative effects of workplace bullying include depression, post-traumatic stress disorders, physical illness, poor work performance, increased absenteeism, suicide and stress disorders.¹¹³ Over 70% of all bullied employees leave their jobs.¹¹⁴ Those who do not leave their jobs¹¹⁵ sue their employers, who may be held vicariously liable, and companies therefore incur additional costs. Also, once a professional person is lost as a result of workplace bullying, replacing that employee in South Africa costs between R25 000,00 and R45 000,00, excluding days lost in court, legal costs, ill health packages or early retirement.¹¹⁶ Kaplan too underlines that bullying in the workplace may cause severe psychological harm, which may end up costing employers millions of dollars annually.¹¹⁷

Zooming in on women as the targets of workplace bullying, the Workplace Bullying Institute's latest survey conducted in the United States contains some interesting statistics.¹¹⁸ According to the survey report, female employees are bullying targets in 60% of cases, 21% of which comprise women-on-women bullying.¹¹⁹ Altogether 77% of bullying victims are bullied by members of the same gender, with women bullies choosing women targets 68% of the time.¹²⁰ A total of 89% of bullied females eventually lose their jobs.¹²¹ For most bullied women who stay on in their jobs, the bullying escalates, causing the victims to take sick or stress leave.¹²² Recent research indicates that women in particular require a long time to restructure their identities following bullying, and experience a lack of sufficient support once they have reported bullying, feeling that co-workers do not understand how 'diminished, trapped, traumatised, and powerless' they feel.¹²³

3.2 The law and workplace bullying

¹¹³ Yamada n 39 above at 531; Einarsen *et al.* n 13 above at 25; Salin n 13 above at 426.

¹¹⁴ J MacIntosh 'Workplace bullying influences women's engagement in the workforce (2012) 33(11) *Issues in Mental Health Nursing* 762 at 762, with reference to the WBI's 2010 Workplace Bullying Survey.

¹¹⁵ SB Matthiessen & S Einarsen 'MMPI-2 configurations among victims of bullying at work' (2001) 10(4) *European Journal of Work and Organisational Psychology* 467 at 470; Salin n 13 above at 426.

¹¹⁶ ILO 'Country case study: Workplace violence in the health sector' (2003) http://www.who.int/violence_injury_prevention/violence/interpersonal/en/WVcountrystudysouthafrica.pdf (accessed 17 June 2015) 41.

¹¹⁷ JF Kaplan 'Help is on the way: A recent case study sheds light on workplace bullying' (2010) 47 *Houston Law Review* 141 at 172, 173.

¹¹⁸ WBI n 15 above.

¹¹⁹ WBI n 15 above at 7.

¹²⁰ WBI n 15 above at 7-8.

¹²¹ WBI n 15 above at 8.

¹²² MacIntosh n 114 above at 764.

¹²³ MacIntosh n 114 above at 766, 767, also with reference to Lutgen-Sandvik 2008.

What makes workplace bullying tricky to address by way of legal or regulatory intervention is that this pattern of destructive and demeaning behaviour is not necessarily illegal in all instances,¹²⁴ yet its effects are devastating to all parties concerned. Thus, victims are in effect rendered without sufficient legal protection.¹²⁵ However, with 40% of all bullying victims in the United States quitting their jobs, 24% getting dismissed and 13% being transferred, but only 23% of bullying perpetrators being punished,¹²⁶ dealing with bullying in a legal sense is no longer optional but imperative.

According to Yamada,¹²⁷ neither the United Kingdom nor the United States have enacted legal protections specifically in response to workplace bullying,¹²⁸ and efforts to obtain relief are currently based on a patchwork of existing statutory and common-law measures governing discrimination, personal injury, wrongful discharge and workplace safety. Apart from Australia, where codes of practice and guiding documents have been introduced to curb bullying specifically, Sweden, France, Canada and Belgium have responded legally to curb the psychological harm done by workplace bullies, with varying success.¹²⁹ Even the European Parliament in 2002 called on all European nations to help victims of bullying by passing anti-bullying legislation, and based this call on three factors, namely the prevalence of workplace bullying based on studies conducted, the severe health consequences for victims of bullying, and the costs associated with bullying for the individual and organisations.¹³⁰

South African workplaces are no exception when it comes to the severe and pervasive nature of bullying. Yet, little has been done to address this phenomenon in South Africa. It has therefore been suggested that the country should establish reliable cross-industry prevalence statistics based on research, once a definition of and approach to workplace bullying has been agreed with all stakeholders. However, at present, although no-one should have to endure bullying in the workplace,¹³¹ current laws do little to provide

¹²⁴ Vega & Comer n 95 above at 101.

¹²⁵ Namie & Namie n 108 at 15.

¹²⁶ Namie & Namie n 108 at 10; WBI n 15 above at 8.

¹²⁷ Yamada 2003, as cited in Vega & Comer n 95 above at 105.

¹²⁸ WBI n 15 above at 8.

¹²⁹ MN Browne & MA Smith 'Mobbing in the workplace: the latest illustration of pervasive individualism in American law' (2008) 12 *Employment Rights and Employment Policy Journal* 131 at 134-137.

¹³⁰ See European Parliament Resolution on Harassment at the Workplace 2001/2339 (INI), arts 1, 3, 6, 8, 2002 O.J. (C 77) 138 (EC) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:077E:0138:0141:EN:PDF>.

¹³¹ Carbo n 93 above at 97.

adequate remedies for bullying victims, and no law in South Africa, as in most other international jurisdictions, prohibits bullying *per se*.¹³²

3.3 *Workplace bullying and the queen bee syndrome*

What should have become clear from the discussion on workplace bullying above is the striking similarities between the behaviour of the queen bee and the typical workplace bully.

Firstly, the type of actions employed by the queen bee towards female colleagues in an attempt to remain the only female in control of the otherwise male-dominated workplace are very similar, if not identical, to the actions of the workplace bully. To illustrate this point, extracts from the description of workplace bullying have been taken from the discussion under paragraph 3.1 above and matched with the corresponding sections of the following breakdown of the various types of queen bees emerging in the workplace:

‘... the Queen Bee who stings, having made it in the man’s world and stopped identifying with women; the Fortress Queen Bee who rules the fiefdom, keeping intruders out [**workplace bullying**: ‘ostracism’, ‘giving the victim the silent treatment’]; the Guardian of information and power who keeps others ignorant [**workplace bullying**: ‘withholding essential information’]; the Petty Gossipers who maintain pecking orders, competing with others for recognition and benefits [**workplace bullying**: ‘spreading false rumours’; ‘accusations of wrongdoing’; ‘insulting or belittling employees’]; the Cry Baby whose only interest is her own [**workplace bullying**: ‘finger-pointing, slamming doors or throwing objects; yelling, screaming and cursing; angry outbursts’; ‘taking credit for the victim’s work’]; and the Old Guard whose purpose is to keep all new ideas out [**workplace bullying**: ‘boycotting and disregarding fellow employees’; ‘excessive or harsh criticism of work performance, often in the presence of others’].¹³³

Other acts and omissions of the queen bee have also been described in similar terms to those used for the workplace bully, such as backhanded compliments, snide remarks made with a smile, setting workers up for failure – all forming part of the queen bee’s strategy to hurt other successful and smart females.¹³⁴ In a PhD dissertation,¹³⁵ the experience of a female employee who had to work under a queen bee was even described as follows: ‘... the

¹³² WBI n 15 above at 8.

¹³³ Marvin n 32 above at s80, with reference to Luongo 2002.

¹³⁴ Claunch n 9 above at 3.

¹³⁵ Shetsky n 41 above at 77.

female executives that should have been my role models weren't there ... they ate nails for breakfast, and they behaved like men, and *she was behaving like a bully*¹³⁶ (italics added). By obstructing the success of upcoming females, the queen bee can thus be regarded as a workplace bully.

Secondly, the effects of workplace bullying and the queen bee's abuse of power are similar and equally devastating, ranging from depression and physical illness to poor work performance and increased absenteeism.¹³⁷

A third link between the two phenomena is that although the workplace bully could be a subordinate, co-worker, supervisor or the CEO, 60% of bullies are of a higher institutional status than the victim, with only 20% being of a lower status and 20% of an equal status.¹³⁸ It follows, then, that the queen bee's position of power in relation to her female subordinates renders her a textbook perpetrator of workplace bullying, fully meeting the requirement of a power imbalance between the bully and the victim.

Fourthly, although it is indeed difficult to differentiate bullying from a tough management style, the essential difference between a 'tough boss' and a bully lies in the person's orientation, with the former being objective and fair-minded, always driving the goals of the enterprise, and the latter being personally focused, forever driving their self-interest.¹³⁹ With a bully, it has been said, 'there is no goal orientation. There's nothing to do with your job. There's nothing to do with the company ... It's simply something that has irritated the individual. It has driven them to the point that they are driven to make a person's life miserable ...'¹⁴⁰ When looking back at the distinction between the various types of queen bees above, this description of the workplace bully's orientation seems to correspond closely with the 'Cry Baby [Queen Bee] whose only interest is her own'. Keeping others ignorant ('the Guardian [Queen Bee]') and keeping all new ideas out ('the Old Guard [Queen Bee]') cannot be seen to be in the interest of the company either, but is also much rather aimed at advancing own interests, thus rendering the queen bee a workplace bully by definition.

¹³⁶ Shetsky n 41 above at 77.

¹³⁷ Yamada n 39 above at 531; Einarsen *et al.* n 13 above at 25; Salin n 13 above at 426 in respect of workplace bullying, and Mahaffey n 71 above at 40 in respect of the queen bee syndrome.

¹³⁸ Seagriff n 101 above at 578; Deniz & Ertosun n 94 above at 131, with reference to VanderKerckhove 2006.

¹³⁹ TA Daniel *Stop bullying at work: Strategies and tools for HR & legal professionals* (2009) 69.

¹⁴⁰ Daniel n 141 above at 71.

7 POSSIBLE SOLUTIONS TO QUEEN BEES/BULLIES IN THE WORKPLACE

Before proposals can be tendered on how to potentially deal with the queen bee/bully at work, it seems apt to first establish how employers currently respond to this phenomenon and what seems to be the outcome of most workplace bullying incidents at present. In this regard, Namie¹⁴¹ found that employers 'fail to appropriately react to conduct much more frequently than they take positive steps to ameliorate bullying', which leads to 61% of victims losing their jobs. He then goes on to share a few other interesting statistics: In 29% of bullying cases, the destructive behaviour stops when the victim exits the workplace, as opposed to only 5% of cases in which the behaviour ceases when the perpetrator leaves. In 19% of bullying cases, the behaviour stops when the victim is eventually forced out of the business, whilst only 10% of perpetrators end up being dismissed and 11% are punished. Another outcome seen in 13% of bullying cases at present is that the bullying stops when the target is transferred.¹⁴² Adding to the problem is that 72% of employers still deny, discount or defend bullying, even though as many as 65,6 million American workers are affected by it, with 68% of cases taking the form of women-on-women bullying.¹⁴³ Clearly, there is an urgent need for appropriate interventions. The following sections explore some options.

7.1 Possible legal interventions

Considering the significant number of employees affected by bullying in the workplace, it is not surprising that many scholars are strong proponents of the United States Healthy Workplace Bill. This draft statute has been tendered before Congress time and time again, but has failed to be enacted thus far, primarily due to the belief that the existing patchwork of legislation in the United States, particularly laws on the so-called 'protected classes', is sufficient to deal with workplace bullying. Of concern, however, is the fact that many employees are rendered without remedy and protection if their workplace bullying claims do not neatly fit into any of the protected classes and, therefore, do not qualify to be pursued on that basis. Although, as Lueders point out, Americans are often regarded as

¹⁴¹ WBI n 15 above.

¹⁴² WBI n 15 above.

¹⁴³ WBI n 15 above.

petty and prone to seeing the legal system as a chance for a 'big payout',¹⁴⁴ the negative effects of bullying should outweigh the fear of being labelled overly litigious.

However, even though the passing of new legislation such as the Healthy Workplace Bill may prove useful in taking the sting out of the queen bee/bully, Hoel and Einarsen believe that new legislation in itself may not be the be-all and end-all solution to effectively root out bullying in employment.¹⁴⁵ As experience has shown that it is extremely difficult to regulate intangible issues associated with human interaction and relationships, such as the queen bee's bullying behaviour, these authors believe it sensible to also implement training programmes and effective prevention, timely intervention and appropriate rehabilitation efforts¹⁴⁶ in addition to the passing of new or the application of current legislation. And given the drive in South Africa to create jobs, the country's past, the dynamics in its business sector, the fear of frivolous law suits and harm to its developing economy, South African stakeholders will be well advised to take some lessons from these proposals.

In South Africa, therefore, a possible solution to deal with the queen bee bully in the workplace lies in existing legislation, a brief analysis of which follows below, as well as a concerted drive to create awareness of the problem,¹⁴⁷ something which has been sorely lacking up to this point.

A breach of the common-law duty in South Africa to furnish an employee with a safe workplace could lead to an action brought against the employer in delict.¹⁴⁸ This, however, is an expensive *ex post facto* remedy, which is not preventative in nature.

Similarly, a claim for constructive dismissal could be lodged, with the bullied or 'stung' victim claiming compensation.¹⁴⁹ Again, however, such a claim does not prevent the queen bee from operating in the workplace and can only be instituted once a dismissal has occurred.¹⁵⁰

¹⁴⁴ AE Lueders 'You'll need more than a voltage converter: Plugging European workplace bullying laws into the American jurisprudential outlet' (2008) 25(1) *Arizona Journal of International & Comparative Law* 197 at 226.

¹⁴⁵ H Hoel & S Einarsen 'Shortcomings of anti-bullying regulations: the case of Sweden' (2010) 19(1) *European Journal of Work and Organisational Psychology* 30 at 46.

¹⁴⁶ Hoel & Einarsen n 147 above at 46.

¹⁴⁷ Hoel & Einarsen n 147 above at 47.

¹⁴⁸ AA Landman & MM Ndou 'The Protection from Harassment Act and its implications for the workplace' (2013) 22(9) 81 at 89; *Media 224 v Grobler* [2005] 7 BLLR 649 (SCA) 666.

¹⁴⁹ Le Roux *et al.* n 104 above at 65.

¹⁵⁰ Landman & Ndou n 150 above at 89.

The Employment Equity Act (EEA),¹⁵¹ as amended,¹⁵² may offer some relief to the queen bee's victims, as it could be argued that bullying is a form of unfair discrimination or harassment.¹⁵³ Such a claim could be brought on the listed ground of gender discrimination/harassment, on the newly introduced 'any other arbitrary' ground, which was recently added to the prohibited grounds of discrimination, or on an unlisted ground. The EEA could enable harassed employees to bring a claim against and hold liable the employer for the harassment of its employees by other employees, provided that the requirements of section 60 are met,¹⁵⁴ which inter alia create a defence for employers.

Another vehicle to be explored in an effort to soften the sting of the queen bee in South African workplaces is the Protection from Harassment Act.¹⁵⁵ However, certain features of this act make it less ideal for use in employment: The fact that the magistrate's court has sole jurisdiction to issue a protection order does not advance labour protection, while the requirement that the conduct concerned must qualify as harassment or stalking (for which purposes the act was originally passed) makes this a possible yet unlikely tool in the battle against the bully bee. Interestingly, the similarly named act in the United Kingdom¹⁵⁶ does provide *ex post facto* relief for the victims of workplace bullying. Also, while the criminal sanctions proposed by the South African statute may serve to protect one of the most fundamental human rights, namely the right to be free from harassment,¹⁵⁷ they are not suitable for the employment sphere, as the transfer of either the bullying perpetrator or victim would render a warrant superfluous, and potential police involvement would make it almost impossible to mend relations between the affected parties or for the 'harasser' and complainant to continue working together.¹⁵⁸

Le Roux and colleagues¹⁵⁹ have proposed the creation of a new cause of action, namely the 'intentional infliction of a hostile work environment' to both prevent and deal with bullying in employment. This may be well worth investigating as a partial solution to the

¹⁵¹ 55 of 1998.

¹⁵² By Act 47 of 2013.

¹⁵³ Section 6(1) of the EEA.

¹⁵⁴ Landman & Ndou n 150 above at 90.

¹⁵⁵ 17 of 2011.

¹⁵⁶ 1997. See <http://www.legislation.gov.uk/ukpga/1997/40/content> (accessed 6 September 2013).

¹⁵⁷ Section 9 of the Constitution of the Republic of South Africa, 1996; Landman & Ndou n 150 above at 81.

¹⁵⁸ M Meyerowitz & S Johnson 'Harassment in the workplace, restraining orders and the Protection from Harassment Act' (n.d.) <http://www.labourguide.co.za/most-recent-publications/harassment-in-the-workplace-restraining-orders-and-the-protection-from-harassment-act> (accessed 2 October 2013).

¹⁵⁹ Le Roux *et al.* n 104 above at 65.

problem, although the cost and time requirements attached to such a process should also be considered.

Other acts such as the Promotion of Equality and Prevention of Unfair Discrimination Act¹⁶⁰ (PEPUDA) find little application in the workplace, because although PEPUDA prohibits harassment based on gender, sex and sexual orientation,¹⁶¹ it does not apply to any organisation where the EEA applies.

An anti-bullying provision could be considered for inclusion in contracts of employment¹⁶² in an effort to afford 'everyone' fair labour practices.¹⁶³ In this regard, the reciprocal right to fair dealings as applied by Judge Cameron in his judgement in the matter of *Murray v Minister of Defence*,¹⁶⁴ and also followed in *Kotze and Agricultural Research Council of SA*,¹⁶⁵ implies the right also to be free from the bullying acts of the queen bee, as everyone in the employment sphere should be treated honestly, openly, fairly and in a dignified fashion. Underlining the importance of the protection of employees' dignity in the working environment, Le Roux and colleagues argue for the use of the words 'moral harassment' instead of bullying to strengthen the link between bullying and an assault on human dignity. Whitcher also agrees that public humiliation, which is typical of the queen bee, may fall under the domain of bullying as a dignity violation.¹⁶⁶ Ultimately, as remarked in *Pretoria Society for the Care of the Retarded v Loots*,¹⁶⁷ where employees feel that they have been humiliated, marginalised and demeaned in the workplace, these feelings should be assessed based on the merits of each case and, if found reasonable and sensible, the employee should not have to put up with it. Possibly, a set of guidelines to integrate the subjective feelings of victims with an objective set of *boni mores* in order to ground feelings in a measurable way¹⁶⁸ may be a way forward in this regard.

As this discussion shows, however, there are various potential legal avenues through which to address the queen bee syndrome as a form of bullying, yet not a single deadly accurate one. Where the queen bee's destructive behaviour does not by law fit into certain

¹⁶⁰ 4 of 2000.

¹⁶¹ Section 5(3) of PEPUDA. This act largely finds application in government.

¹⁶² Daniel n 141 above at 80.

¹⁶³ Section 23 of the Constitution of the Republic of South Africa, 1996.

¹⁶⁴ [2008] 29 ILJ 1369 (SCA) 1375.

¹⁶⁵ [2007] 28 ILJ 261 (CCMA) 267.

¹⁶⁶ B Whitcher 'Workplace bullying law: Is it feasible?' (2010) 31 *Industrial Law Journal* 43 at 49.

¹⁶⁷ [1997] 18 ILJ 981 (LAC) 982.

¹⁶⁸ Whitcher n 168 above at 49.

very specific categories of transgressions, her victims are left with insufficient legal protection. Therefore, even though the use of existing legislation and the creation of a new cause of action may compel the queen bee to be 'nice' to other female employees, may police 'snide remarks' and may compel employers to battle lawsuits,¹⁶⁹ victims will still face the problem of having to frame claims to fit some or other legal avenue amidst the maze of possible options available, and will have already been exposed to the queen bee and have suffered the negative consequences thereof.

7.2 Possible soft-law interventions

For this reason, traditional, *ex post facto* legal interventions such as those discussed above cannot be the only avenues to explore. Potential solutions may also be found in soft-law approaches. This sentiment is echoed by Hoel and Einarsen,¹⁷⁰ who in their study of the success of bullying legislation in Sweden clearly stated that one should not overestimate the legislative regulation of bullying and that more emphasis should be placed on ongoing prevention and control of bullying through policies and procedures to deal with problems internally as they arise.

In this vein, Darvis¹⁷¹ rightly argues for tensions in women management in the workplace to be brought to the surface and to no longer be masked. The queen bee syndrome, as a form of gender bullying, could certainly be regarded as such an issue of women management that should be unmasked. Ignorance about the way in which the queen bee operates should no longer rob females of attaining gender equity and advance in employment. Women-on-women bullying should be brought to the attention of all employers and employees, and care should be taken to root out the gendered workplace the queen bee creates and perpetuates. Mahaffey¹⁷² agrees that the queen bee syndrome can be prevented by open and honest communication, using dialogue to iron out the challenges posed by women's natural tendency to compete with other females in the workplace.

As a starting point to encourage this dialogue, it is suggested that employers draft their own internal policies and be held responsible to implement and comply with them. There

¹⁶⁹ Browne & Smith n 129 above at 149, 150.

¹⁷⁰ Hoel & Einarsen n 147 above at 47.

¹⁷¹ Marvin n 32 above at s83.

¹⁷² Mahaffey n 71 above at 37, with reference to Ellemers 2004.

should be sanctions for non-compliance, which should apply to all stakeholders in the workplace. According to Lutgen-Sandvik & Tracy,¹⁷³ bullying prevention programmes should be formulated to speak to the individual (on a micro-level), the organisation (on a meso-level) as well as the community (on a macro-level) in order to be effective. The drafting of own policies and drives to raise awareness could be tailor-made to suit even smaller businesses in an effort to establish a widely accepted, uniform understanding of the meaning, prevention and management of workplace bullying, including the queen bee syndrome. Such a policy should be accompanied by employee education on the matter, and upper management's support must be made visible.¹⁷⁴

Although the law does not describe in detail how company policies should be drafted, it is widely accepted that social partners at a sector level should collaborate with employers in drafting their policies.¹⁷⁵ Hoel¹⁷⁶ also calls for employee involvement and joint ownership to ensure a bullying-free environment. She further highlights the need for training in problem recognition and for the establishment of a zero-tolerance policy in a joint partnership¹⁷⁷ to combat workplace bullying. These suggestions could prove useful in the South African setting also. According to Namie and Namie,¹⁷⁸ policies should at least include the following:

- 'A statement of organisational opposition to bullying
- Rationale for the policy
- Name for the phenomenon
- A clear definition of workplace bullying
- An illustrative set of examples of the unacceptable conduct
- Guaranteed manager's rights for as long as they are not abused
- An anti-retaliation clause'

¹⁷³ P Lutgen-Sandvik & SH Tracy 'Answering five key questions about workplace bullying: How communication scholarship provides thought leadership for transforming abuse at work' (2011) XX(X) *Management Communication Quarterly* 1 at 6.

¹⁷⁴ Vega & Comer n 95 above at 107, with reference to Hubert 2003.

¹⁷⁵ European Agency for Safety and Health at Work *Workplace Violence and Harassment: A European Picture* (2010) 36.

¹⁷⁶ Hoel 'Workplace Bullying in the United Kingdom' Paper delivered at JILT International Labour Forum on Workplace Bullying and Harassment (2013) 72.

¹⁷⁷ Hoel n 178 above at 73.

¹⁷⁸ G Namie & R Namie 'US workplace bullying: Some basic consultation interventions' (2009) 61(3) *Consulting Psychology Journal: Practice and Research* 202 at 213.

In turn, Sanders and colleagues¹⁷⁹ propose the following ten steps:

- 'State a workplace rule against bullying, include it in a policy and enforce it.
- Since bullies are likely to hire bullies, include civilised people in job interviews.
- Get rid of bullies fast, even if they do other things really well.
- Treat bullies as incompetent. Promote good people and watch them carefully, as promoted power may corrupt.
- Respect the pecking orders in organisations, but downplay and reduce unnecessary status differences.
- Correct behaviour timeously.
- Model and teach constructive confrontation.
- Set good examples, because people follow rules better when there are some examples of bad behaviour.
- Link big policies to small decencies – no-one likes a bully.'

Le Roux and colleagues¹⁸⁰ have also added their voices to the call for internal workplace policies to prevent bullying. They believe the problem to be far too serious to simply ignore until the National Economic, Development and Labour Council (NEDLAC), the South African Law Commission, trade unions, employers and other interested parties have finally developed new legislation or a code to deal with it. Their advice is as follows:

- 'Employers need to develop their own anti-bullying policies.
- Employers need to educate managers and employees on suitable workplace behaviours.
- Employers have to establish and/or advertise grievance procedures to report and investigate allegations of workplace bullying.
- Human resource practitioners should be educated in investigation processes to investigate bully claims.
- Work cultures of private and public sectors organisations should be monitored to identify any stress-related absence due to bullying.
- Long-term absences from work should be monitored to identify any stress-related absence due to bullying.
- Suitable reporting mechanisms should be established between human resource departments and senior management to report workplace bullying.

¹⁷⁹ DE Sanders, P Pattison & JD Bible 'Legislating "nice": analysis and assessment of proposed workplace bullying prohibitions' (2012) 22(1) *Southern Law Journal* 1 at 33-34, citing Sutton.

¹⁸⁰ Le Roux *et al.* n 104 above at 66, with reference to Kiesecker & Marchant; Rayner & Cooper; Kelloway *et al.*

- Senior management should actively support the introduction of procedures, policies and practices to alleviate workplace bullying.¹⁸¹

However, drawing on South Africa's own experience in the drafting of sexual harassment policies, it is clear that the mere existence of a policy is not enough to succeed – it should be clearly phrased, readily displayed at strategic points, and regularly evaluated to ensure its relevance.¹⁸² Policy intervention should also be underpinned by coaching and mediation tools.¹⁸³ Typical procedures would include a normal informal investigation, a formal complaint procedure and proper investigation, assurances of confidentiality, consequences for retaliation, dissemination of the decision, innovative remedies/punishment, restorative practices, where applicable, and support for the team who witnessed the bullying.¹⁸⁴ There should be a clear response to formal complaints as well as an external body such as an astute inspectorate (similar to the South African Commission for Conciliation, Mediation and Arbitration) to deal with the process.¹⁸⁵

In creating a truly integrated conflict resolution system that would afford employees the right to choose a problem-solving approach and to exercise their rights in the workplace,¹⁸⁶ internal policies may also be supplemented with specially created hotlines to report queen bee behaviour.¹⁸⁷

Being equal with males in the enjoyment of all rights entrenched in the Constitution of the Republic of South Africa, females in employment should be allowed to work in a respectful environment. This makes it imperative for all stakeholders to face the facts and see the queen bee syndrome for what it is – yet another form of workplace bullying. To stop these overly competitive female executives from clipping the wings of other ambitious women in the workplace – in effect abusing their power to attack the dignity of their victims – all role-players need to start talking and acting to smoke out the queen bee bully from her hive. Treating this as a form of gender-based workplace bullying could be instrumental in

¹⁸¹ Le Roux *et al.* n 104 above at 66, with reference to Kieseker & Marchant; Rayner & Cooper; Kelloway *et al.*

¹⁸² P Joubert, C van Wyk & S Rothmann 'The effectiveness of sexual harassment policies and procedures at higher education institutions in South Africa' (2011) 9(1) *SA Journal of Human Resource Management* 1 at 2.

¹⁸³ Namie & Namie n 180 above at 213.

¹⁸⁴ Namie & Namie n 180 above at 214.

¹⁸⁵ Hoel & Einarsen n 147 above at 47, with reference to Einarsen & Hoel 2008.

¹⁸⁶ S Fox & LE Stallworth 'Building a framework for two internal organizational approaches to resolving and preventing workplace bullying: Alternative dispute resolution and training' (2009) 61 *Consulting Psychology Journal: Practice and Research* 220 at 231.

¹⁸⁷ Seagriff n 101 above at 594.

reducing the existing barriers for female employment and could help shatter at least one of the glass ceilings restricting women's advancement at work.