

Working Toward #NotUsToo

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Over the last five months, we have been inundated with stories about powerful men who have been swiftly felled by allegations of sexual misconduct, including sexual harassment. The fields of entertainment, media and politics have been rocked by the fallout. Some are asking if and when the day of reckoning will come for the legal profession. As lawyers, many of us have watched the evolution of the #MeToo movement with mixed feelings: great relief that women and men who have been victimized by those in positions of power now feel they can speak out and be heard; and yet keenly aware that the court of public opinion is a dangerous place to be tried.

In light of the widespread public discussion on this topic, it's timely to consider some of the issues in the context of our profession.

Why this Affects Us All

Many of us have heard about senior lawyers who are reputed to engage in sexual misconduct with junior lawyers, students or staff. While stories circulate through the rumor mill, partners may turn a blind eye, especially if the individual in question is a rainmaker. In the current climate, it's less likely that this behavior can be quietly swept under the rug. And it's about time. Sexual harassment is against the law and is a violation of the *Code of Professional Conduct*.

If you're a partner in a firm or a manager in a law office, you need to be aware that the *Code of Professional Conduct* defines harassment to include *failure by a lawyer who knew, or ought reasonably to have known of the harassment, to take reasonable steps to prevent or stop the harassment* by any of their partners, employees, associates or agents under their direction or control. Manitoba human rights legislation contains similar provisions. Willful blindness isn't a defence.

There has long been a legal and ethical imperative to address these situations, but increasingly, it's also a matter of risk management, and simply good business. A sexual harassment scandal could cause significant damage to the reputation and bottom line of a firm or organization. There can be far reaching ripple effects, including poisoning of the workplace culture and difficulties with hiring and retention.

So What Should You Do?

Be proactive and prepared. If your office doesn't already have a respectful work place policy dealing with harassment, develop one. Then be sure that everyone – support staff, students, associates and partners – is aware of it. If possible, designate someone trusted within your organization to handle complaints when they arise and provide training for that individual on dealing with these issues, especially if the person alleging harassment wants an assurance of confidentiality. Offer regular work place training for all staff on equity issues and what constitutes harassment. If you know of a colleague who has engaged in this type of behavior, you can't afford to overlook it, regardless of their billings or influence. It's time to address it head on.

Err on the Side of Caution

We all have different personal boundaries, perspectives and senses of humour. However the definition of harassment is not concerned with the intentions behind the behavior, rather the focus is on its effect. Sexual jokes or images shared by email may seem funny and innocuous to the sender, while being offensive and demeaning to the recipient.

The practice of law often involves long hours and the lines between personal and professional lives can sometimes blur. Lawyers work closely with junior colleagues, students and support staff on demanding files and work days can extend into

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evenings and include dinners or drinks. If you're in a position of authority, think twice about how you conduct yourself. Repeatedly asking your junior or articling student to go out with you may be sexual harassment. As cordial or friendly as your work relationships may be, they're professional ones. Remember that people who work for you may feel obliged to defer to you.

If you think you may have experienced sexual harassment in your workplace, you can contact the Law Society of Manitoba's Equity Officer to discuss your options on a confidential basis.

The definition of sexual harassment under the *Code of Professional Conduct* (section 6.3-3 and 6.3-4 - page 93) can be found [here](#).

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