



Agenda

Benchers

Date: Saturday, June 8, 2019

Time: **7:30 am** Continental breakfast
8:30 am Call to order

Location: Ballroom, The Beach Club Resort, Parksville

Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.*

CONSENT AGENDA:

Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Governance & Board Relations prior to the meeting.

1	Minutes of May 3, 2019 meeting (regular session)
2	Minutes of May 3, 2019 meeting (<i>in camera</i> session)
3	External Appointments: Legal Services Society Appointment

REPORTS

4	President's Report	Nancy G. Merrill, QC
5	CEO's Report	Don Avison
6	Remarks from President, Federation of Law Societies of Canada	Ross Earnshaw
7	Remarks from Treasurer (President), Law Society of Ontario	Malcolm Mercer

DISCUSSION/DECISION

8	Benchers' Nominee for 2020 Second Vice-President	Nancy G. Merrill, QC
9	Equity and Diversity Advisory Committee's Proposed Name Change	Jasmin Ahmad
10	Executive Committee Election Rules	Steven McKoen, QC
11	Bencher Code of Conduct	Steven McKoen, QC



Agenda

GUEST PRESENTATION		
12	Dr. Peter German, QC – Phase Two Report – Session with Benchers	Dr. Peter German, QC
UPDATES		
13	Legal Aid Advisory Committee: Mid-Year Report	Nancy G. Merrill, QC
14	Access to Legal Services Advisory Committee: Mid-Year Report	Michelle D. Stanford, QC
15	Report on Outstanding Hearing & Review Decisions <i>(To be circulated at the meeting)</i>	Craig Ferris, QC
FOR INFORMATION		
16	IBA Report on Bullying and Sexual Harassment in the Legal Profession	
17	Law Society Submission to 2019 Judicial Compensation Committee	
18	Canadian Military Memorial Registration: Law Society Honor Roll	
19	Three Month Bencher Calendar – June to August 2019	
IN CAMERA		
20	Other Business	



Minutes

Benchers

Date: Friday, May 03, 2019

Present:

Nancy G. Merrill, QC, President	Geoffrey McDonald
Craig Ferris, QC, 1 st Vice-President	Steven McKoen, QC
Dean P.J. Lawton, QC, 2 nd Vice-President	Christopher McPherson, QC
Jasmin Ahmad	Jacqui McQueen
Jeff Campbell, QC	Phil Riddell, QC
Pinder Cheema, QC	Elizabeth Rowbotham
Jennifer Chow, QC	Mark Rushton
Barbara Cromarty	Carolynn Ryan
Jeevyn Dhaliwal	Karen Snowshoe
Martin Finch, QC	Michelle D. Stanford, QC
Brook Greenberg	Sarah Westwood
Lisa Hamilton, QC	Michael Welsh, QC
Roland Krueger, CD	Tony Wilson, QC
Jamie Maclaren, QC	Guangbin Yan
Claire Marshall	Heidi Zetzsche

Unable to Attend: Anita Dalakoti

Staff Present:

Don Avison	Jason Kuzminski
Barbara Buchanan, QC	Michael Lucas
Natasha Dookie	Alison Luke
Su Forbes, QC	Jeanette McPhee
Mira Galperin	Eva Milz
Kerryn Garvie	Doug Munro
Andrea Hilland	Annie Rochette
Jeffrey Hoskins, QC	Veronica Padhi
David Jordan	Lesley Small
	Adam Whitcombe, QC

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Beatriz Contreras	Member of the Equity & Diversity Advisory Committee
	Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Dr. Lisa Gunderson	Senior Consultant and Trainer & Associate Program Director for Masters of Counseling Programs at City University
	Shawn Mitchell	CEO, Trial Lawyers Association of BC
	Caroline Nevin	CEO, Courthouse Libraries BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Kerry Simmons, QC	Executive Director, Canadian Bar Association, BC Branch
	Bill Veenstra, QC	Past President, Canadian Bar Association, BC Branch
	Karenn Williams	External Relations Executive Member, Aboriginal Lawyers Forum

CONSENT AGENDA

1. Minutes of April 5, 2019 meeting (regular session)

The minutes of the meeting held on April 5, 2019 were approved as circulated.

2. Minutes of April 5, 2019 meeting (*in camera* session)

The minutes of the *in camera* meeting held on April 5, 2019 were approved as circulated.

3. Code Amendment – Removing Gender Specific Language

The following resolution was passed unanimously and by consent.

Be it resolved that:

The Commentary [5] to rule 3.3-3 of the BC Code be amended to reflect the changes indicated in the ‘red-lined’ version of the rule and Commentary presented below.

For convenience of review, the current text of the BC Code provision is also provided below, following the ‘red-lined’ version.

The ‘red-lined’ version of rule 3.3-3 and Commentary [5] of the BC Code (incorporating the Model Code’s language) is as follows:

Future harm / public safety exception

3.3-3 A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.

Commentary

...

[5] If confidential information is disclosed under ~~this rule~~ 3.3-3, the lawyer should prepare a written note as soon as possible, which should include:

- (a) the date and time of the communication in which the disclosure is made;
- (b) the grounds in support of the lawyer’s decision to communicate the information, including the harm ~~he or she~~ the lawyer intended to prevent, the identity of the person who prompted ~~him to~~ the lawyer to communicate the information as well as the identity of the person or group of persons exposed to the harm; and
- (c) the content of the communication, the method of communication used and the identity of the person to whom the communication was made.

4. Discipline and Credentials Committee Terms of Reference

The Discipline and Credentials Committee Terms of Reference provided in the agenda package were passed unanimously and by consent.

5. Nomination Process for 2020 Second Vice-President

This item was removed from the consent agenda at Ms. Ahmad's request.

Ms. Ahmad observed that there are no formal rules about the Benchers' selection of a nominee for second vice-president. A practice has developed as to how the nomination process takes place, which is set out in the memorandum provided in the agenda package. In Ms. Ahmad's view, the nomination process could be improved by withholding the names of any candidates put forward until the end of the nomination process.

Benchers discussed the suggestion to improve the nomination process that was put forward by Ms. Ahmad. It was also suggested that the inclusion of a statement encouraging Benchers of diverse backgrounds to consider leadership positions might be helpful.

Ms. Merrill indicated she had asked the Governance Committee to look at a more formalized process and that, for the upcoming nomination process for the 2020 second vice-president, the best course of action would be for candidate names not to be published until the end of the nominations period.

REPORTS

6. President's Report

Ms. Merrill reported that planning for the Benchers Retreat is on course.

She said the Futures Task Force has had its first meeting and its work will be divided into two parts; first, consideration of the future of the legal profession, and secondly, exploring the future of the regulation of the legal profession. The Licensed Paralegal Task Force would also be having its first meeting in May.

Ms. Merrill reported that the anti-money laundering ad hoc group, which consists of Ms. Merrill, Mr. Ferris, Ms. Cheema and Mr. Riddell, had met. The group has both prosecution and criminal expertise and was established by Past President Miriam Kresivo, QC. Ms. Merrill emphasized the importance of Benchers being seen to be actively involved on this topic.

Ms. Merrill discussed her attendance at various meetings and events, including with the Law Foundation, Trial Lawyers Association of BC, Judicial Council, and MLA for Nanaimo, Sheila Malcolmson. She also attended and spoke at the ceremony for the unveiling of the bust of

Beverley McLachlin, PC, CC and she would be attending a call ceremony in Victoria shortly. Later in May Ms. Merrill would be attending the International Bar Association meeting overseas.

Ms. Merrill encouraged Benchers to attend the Gillian Hadfield talk on May 14a and noted that the Vancouver Bar Association Judge's Luncheon would be held on May 21 and asked Benchers to contact staff if they wished to attend. She invited Benchers to put forward suggestions for her "unsung heroes" column, which is intended to showcase lawyers that go above and beyond.

Finally, Ms. Merrill provided a summary of the April 17 Executive Committee meeting.

7. CEO's Report

Mr. Avison brought five items to the attention of Benchers.

The first item was the First Nations Provincial Justice Forum that he attended along with Benchers and staff. He spoke about the Memorandum of Understanding signed in 2017 with regard to the development of an indigenous justice strategy, and said the core objective the strategy is to address the overrepresentation of indigenous peoples in the criminal justice and child welfare systems. The Attorney General and Solicitor General also attended, as well as federal ministers. Mr. Avison suggested that Benchers could invite Council Chair Douglas White to attend a future Bencher meeting to speak about this insights on the development of the strategy and work being done in that area.

Secondly, Mr. Avison reported on the Justice Summit that took place on April 26, 2019, which Ms. Merrill also attended. He said the forum focused on an examination of the summit process and that more information would be provided once the report on the summit has been made available.

Third, Mr. Avison spoke about the conference program for the Benchers Retreat in June and said the focus would be technology, artificial intelligence and the evolution of the practice of law. He provided an overview of the speakers for the conference portion of the retreat, which include Benjamin Alarie, Larry Alexander, Katie Sykes, Shannon Salter, and a panel of speakers in the afternoon. Members of the Futures Task Force will also be attending the retreat.

Fourth, Mr. Avison referred to the Cayton Report – a review of the College of Dental Surgeons and the Health Professions Act – and encouraged all Benchers to read the report.

Finally, Mr. Avison informed Benchers that the following week was Mental Health Week and mentioned that the Law Society had a number of awareness campaigns, activities and resources planned for the week.

GUEST PRESENTATION

8. Guest Presentation on Equity, Diversity and Inclusion in the Legal Profession

Dr. Lisa Gunderson provided a presentation on equity, diversity and inclusion in the legal profession. She began by defining equity as action to disrupt the status quo and that equity looks at how to change core structures and practices to be more equity focused. Dr. Gunderson discussed the origins of the legal profession and said it was not a system originally designed for a racialized person, for someone who is female or someone with a disability. She emphasized the importance of having conversations about what the system needs to change to be more inclusive.

Dr. Gunderson then led an interactive session inviting attendees to think about what privileges they each bring into their space and how people can effectively be allies to those without privilege. She then discussed trends in the legal profession in the United States and Canada, the impacts of explicit and implicit bias on people's actions and behavior, and distinguished between microassaults, microinsults and microinvalidations.

Finally, Dr. Gunderson made some suggestions for how the Law Society could do more in this area, including publishing information on its website, mentoring and sponsoring lawyers, and creating affinity groups within the Law Society.

DISCUSSION/DECISION

9. Law Society General Meeting Reform

Mr. McKoen spoke to the item and referenced the initial discussion that took place at the April 5 Bencher meeting. He reminded Benchers that the recommendation of the Governance Committee was to seek the membership's authority to proceed with the proposed general meeting reform and change the way the annual general meeting is conducted.

Ms. McKoen provided an overview of the recommendations in the report and asked Benchers to approve the recommendations and authorize a referendum. The Benchers unanimously agreed.

10. Anti-Money Laundering and Terrorist Financing: Cash Transactions and Trust Account Rules

Mr. Avison indicated staff had been working on possible solutions to the issue raised by Benchers at the April 5 meeting about the removal of the "court orders" exemption. He said the concern raised about ambiguity in the rules needs to be balanced with the need for a degree of consistency across the country with the model rules.

Benchers agreed to adjourn consideration of the matter until the July 12, 2019 Bencher meeting, at which time Mr. Avison will have attended the Federation Council meeting in June and be able to report back to Benchers on his efforts to communicate their concerns on a national scale.

11. Pro Bono Award

Ms. Stanford introduced the item and said the Access to Justice Advisory Committee supported the creation of a pro bono award to recognize the outstanding contributions of lawyers who have done pro bono work. She said the Committee also wanted to encourage and make members more aware of pro bono work in other ways and that the Committee would be discussing this further at its June meeting.

Benchers recognized the existence of other organizations with pro bono awards and indicated it would be important to encourage more nominations.

Benchers unanimously agreed to approve the creation of a pro bono award and delegate to the Executive Committee any edits to the criteria for the award.

UPDATES

12. Report on Outstanding Hearing & Review Decisions

There were no comments on the outstanding hearing and review decisions handout provided.

FOR INFORMATION

13. Correspondence from Attorney General dated April 11, 2019

There was no discussion on this item.

14. Three Month Bencher Calendar – May to July 2019

There was no discussion on this item.

KG
2019-05-03

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: Benchers
From: Executive Committee
Date: May 30, 2019
Subject: Appointment to the Legal Services Society Board

In accordance with Rule 1-51(j), providing that one of the duties of the Committee is to recommend to appointing bodies on Law Society appointments to outside bodies, at its May 15, 2019 meeting, the Executive Committee considered the appointment of a new member of the Legal Services Society (LSS) board to succeed Mr. Riddell, who resigned late last year.

This is a Benchers appointment.

In April, Celeste Haldane, QC, Chair of the LSS Board wrote to President Merrill, QC indicating that LSS had a pressing need for an individual with financial expertise, preferably a Chartered Professional Accountant (CPA). The LSS provided three candidates for consideration.

The Committee recognized that the request from LSS was very unusual, in that it asked the Law Society to appoint an accountant. But the Committee also understood that LSS had a need for the expertise requested and had been unable to obtain it through other appointments. As a result, the Committee considered the three candidates proposed and recommends that the Benchers appoint Karen Christiansen, CPA, FCA to the LSS Board for a term of three years.

Mr. Christiansen's CV is attached.

REDACTED MATERIALS



CEO's Report to the Benchers

June 8, 2019

Prepared for: Benchers

Prepared by: Don Avison

1. Release of the Phase Two Peter German Report and the Maloney Expert Panel Reports – May 9, 2019

Benchers will receive an update on both reports and Dr. German has very kindly agreed to attend the June 8 meeting of Benchers to provide additional background.

The Province of British Columbia has also announced that a public inquiry will also be convened to make further inquiries into the same subject matter. Mr. Justice Austin Cullen has been named as the Commissioner for the Inquiry.

2. Meetings with Provincial Officials

On May 29, 2019 the President and I had meetings in Victoria with the Attorney General, the Honourable David Eby. Deputy Minister Richard Fyfe, Associate Deputy Minister Douglas Scott, Assistant Deputy Minister Kurt Sandstrom and senior minister's office staff also attended.

Productive meetings also took place with the Honourable Carol James, Minister of Finance and with the Honourable Michael Farnworth, Solicitor General of B.C. who was joined by Deputy Minister Mark Sieben.

The focus of the discussions was on support for improvements to legal aid and on Law Society commitments associated with anti-money laundering initiatives. Further information on these discussions will be provided at the June 8 meeting of Benchers.

President Merrill and I have a number of other MLA meetings set for the coming weeks.

3. Standing Committee on Finance

The Law Society will appear before the Committee on June 10th in Colwood. Legal Aid support will be the central theme but the Law Society brief will likely focus on other priorities including the on-going commitment to Truth and Reconciliation.

4. The A.G.M. Referendum

Voting on the referendum is substantially complete and Benchers will have received notification of the results prior to the Retreat.

5. Mobility Agreement re: Federal Department of Justice Lawyers

The CEOs of British Columbia, Saskatchewan and Ontario have been asked to work with the Federation of Law Societies of Canada in meeting with Justice Canada regarding whether Justice lawyers will be required to be members of law societies in jurisdictions where they now live and work but where their “home” law society is another province or territory. Benchers will be provided with further background on this matter that has been outstanding for a number of years.

Don Avison
Chief Executive Officer

Memo

To: Benchers
From: Equity and Diversity Advisory Committee
Date: April 15, 2019
Subject: Name Change

This memo recommends changing the name of the Equity and Diversity Advisory Committee to the “Equity, Diversity, and Inclusion Committee,” and provides the rationale for doing so.

Background

The Equity and Diversity Advisory Committee would like to add “inclusion” to its name as a signal of its efforts to improve inclusivity within the Law Society and the legal profession. Inclusion is already part of the Committee’s terms of reference (see Appendix A, below). Adding “inclusion” into the Committee’s name would better reflect the terms of reference.

The following definitions of equity, diversity, and inclusion are based on language from the D5 Coalition, Racial Equity Tools Glossary, and UC Berkeley:

Equity is the fair treatment, access, opportunity, and advancement for all people, while at the same time striving to identify and eliminate barriers that have prevented the full participation of some groups. Improving equity involves increasing justice and fairness within the procedures and processes of institutions or systems, as well as in their distribution of resources. Tackling equity issues requires an understanding of the root causes of outcome disparities within our society.

Diversity includes all the ways in which people differ, encompassing the different characteristics that make one individual or group different from another. While diversity is often used in reference to race, ethnicity, and gender, we embrace a broader definition of diversity that also includes age, national origin, religion, disability, sexual orientation, socioeconomic status, education, marital status, language, and physical appearance. Our definition also includes diversity of thought: ideas, perspectives, and values. We also recognize that individuals affiliate with multiple identities.

Inclusion is the act of creating environments in which any individual or group can be and feel welcomed, respected, supported, and valued to fully participate. An inclusive and welcoming climate embraces differences and offers respect in words and actions for

all people. It's important to note that while an inclusive group is by definition diverse, *a diverse group isn't always inclusive*. Increasingly, recognition of unconscious or "implicit bias" helps organizations to be deliberate about addressing issues of inclusivity. (Emphasis added.)¹

Equity is about treating people fairly by removing barriers that cause inequities. Diversity is about respecting people's differences. Inclusion goes one step further than diversity by making all people feel supported to fully participate in an organization. Inclusiveness is a new paradigm that takes equity and diversity efforts to the next level. It is the next step in the continuum – from equity, diversity, to inclusion. Adding inclusion to the name is meant to be more affirmative and action-oriented.

Law Society's Equity, Diversity, and Inclusion Efforts

The Law Society is committed to fostering a more diverse and inclusive legal profession. It recognizes that public confidence and participation in the justice system are best served by a legal profession that reflects and respects the full range of human differences within civil society, including but not limited to race, ethnicity, gender, gender identity, sexual orientation, age, social class, physical ability or attributes, religious or ethical values, national origin and political beliefs.

The Law Society is actively encouraging diverse candidates to participate in Law Society governance. For example, the diversity statement reads:

The Benchers note that Indigenous lawyers, solicitors, racialized/visible minority lawyers, women lawyers, LGBTQ lawyers, lawyers with disabilities, and young lawyers continue to be underrepresented among elected Benchers. All lawyers who meet the qualifications for Bencher and want to contribute to the governance of the profession are encouraged to stand for election, but Indigenous lawyers, solicitors, visible minority lawyers, women lawyers, LGBTQ lawyers, lawyers with disabilities, and young lawyers are particularly encouraged to do so. The Benchers believe that the Law Society's mandate to protect the public interest in the administration of justice will be best served by leadership from diverse backgrounds and experience.

The Law Society's Appointments Policy states: "The Law Society promotes diversity in its internal and external appointments and should ensure adequate representation based on gender, Aboriginal identity, cultural diversity, disability, sexual orientation and gender identity."

The Law Society has been successful in encouraging diverse candidates to participate in Law Society governance. There are now more women (17) than men (14) at the Bencher table. There

¹ <https://independentsector.org/resource/why-diversity-equity-and-inclusion-matter/>.

is also more diversity at the Benchers table than ever before, including eight Benchers from racialized groups and two Benchers from Indigenous communities. In furtherance of inclusion, the Law Society must continually ensure that diverse representatives are fully engaged and empowered to make substantive contributions to the organization. Contributions from diverse representatives must be valued and respected.

The Equity and Diversity Advisory Committee has undertaken a number of initiatives to welcome, encourage, support, respect, and value diversity in the legal profession. Adding “inclusion” to the Committee’s name carries transformative potential. The name will help to ensure that the Committee continues to be proactive in its efforts to foster equity, diversity, and inclusion in the Law Society, and in the legal profession.

Recommendation

The Equity and Diversity Advisory Committee recommends that the name of the Committee be changed to the “Equity, Diversity, and Inclusion Committee.” Minor revisions to the Committee’s Terms of Reference will be required (see Appendix A).

Appendix A: Mandate and Terms of Reference

MANDATE

The Equity ~~and Diversity~~ and Inclusion-Advisory Committee monitors developments affecting equity and diversity in the legal profession and the justice system and promotes equity, diversity, and inclusion in the legal profession.

COMPOSITION

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The Committee must be chaired by a Bencher and must have at least one appointed Bencher.

MEETING PRACTICES

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets required.
3. Quorum consists of at least half of the members of the Committee. (Rule 1-16(1))

ACCOUNTABILITY

The Committee is accountable to the Benchers. If the Benchers assign specific tasks to the Committee, the Committee is responsible for discharging the work assigned. If a matter arises that the Committee believes requires immediate attention by the Benchers, the Committee will advise the Executive Committee.

REPORTING REQUIREMENTS

With respect to its general monitoring and advisory function, the Committee is to provide status reports to the Benchers twice a year.

DUTIES AND RESPONSIBILITIES

1. Monitor issues affecting equity, diversity, and inclusion in the legal profession in British Columbia;
2. At the request of the Benchers or Executive Committee:
 - a. develop recommendations, policy options, collaborations, and initiatives;
 - b. advise the Benchers on priority planning;
 - c. analyze policy implications of Law Society initiatives; and
 - d. attend to other matters referred to the Committee regarding equity, diversity, and inclusion in the legal profession in British Columbia.



Executive Committee Election Rules

Committee: Governance Committee

Steven R. McKoen, QC (Chair)

Pinder K. Cheema, QC (Vice-Chair)

Jasmin Z. Ahmad

Craig Ferris, QC

Claire Marshall

Linda I. Parsons, QC

Philip A. Riddell, QC

May 27, 2019

Prepared for: Benchers

Prepared by: Staff

Purpose: Discussion/Decision

Table of Contents

Table of Contents.....	2
Background.....	3
Rule 1- 41	3
The Development of the Current Rule	3
Issues	5
Rule 1-41(1).....	5
Election Methods	5
Nominations.....	5
Who Votes for Who.....	5
Recommendations	7

Background

Rule 1- 41

1. The Executive Committee is the only Law Society committee that is not populated by the President under Rule 1-49.
2. Rule 1-41 sets out a procedure for the election of three elected Benchers and a procedure for the election of one appointed Bencher to the Executive Committee.
3. For the three elected Benchers, the Rule provides that all persons elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected are eligible for election. Nominations for election to the Executive Committee must be in by November 22. If more than three Benchers are nominated, there must be an election and ballots must be returned by a date no later than December 6. All Benchers are entitled to participate in the election of the three elected Benchers.
4. For the appointed Bencher, the Rule provides that all appointed Benchers appointed for a term that includes all or part of the calendar year for which members of the Executive Committee are eligible for election. At the last regular meeting of the Benchers in each calendar year, the appointed Benchers must elect one appointed Bencher to serve as a member of the Executive Committee for the following calendar year. Only the appointed Benchers are entitled to vote in this election.

The Development of the Current Rule

5. The current Rule has its origins with the 1995 Report of the Committee on the Roles on the Executive Committee and the Treasurer's Committee (the "Role Committee").
6. That report recommended an annual election of four Benchers to the Executive Committee and that the Executive Committee be made up as follows:
 - a) the Treasurer, Deputy Treasurer and Assistant Deputy Treasurer,
 - b) the Assistant Deputy Treasurer-elect, if not otherwise a member of the Committee,
 - c) three Benchers elected by all the Benchers, and
 - d) one lay Bencher elected by the lay Benchers.
7. In support of the recommendations, the Role Committee noted that allowing all the Benchers to select the elected members of the Executive would give the Benchers more connection with the

Executive Committee and making the resulting elected Executive Committee more accountable to the Benchers as a whole.

8. The Role Committee did consider whether it was appropriate to allow the lay Bencher representative to be elected by all the Benchers, but concluded that it was more in keeping with the tradition of independence of the public input on the Benchers to allow the lay Benchers to make the choice alone. The Role Committee also suggested that the election of the Executive Committee occur at the first meeting of the Benchers in each calendar year. This would allow newly elected Benchers to participate in the process, but would allow for the establishment of a new Executive Committee early in the year. Finally, it recommended that the election be conducted by secret ballot.
9. As a result, then Rule 55 was proposed at the December 1995 Bencher meeting and adopted at the January and March 1996 Bencher meetings.
10. In 1997, it was noted that while the Rule provided that all Benchers were eligible for election, except the excluded Benchers, there was no Rule providing for the selection or nomination of candidates for election. The Rules were amended to provide that all elected Benchers were candidates in the election unless *“the Bencher has instructed the Secretary in writing to delete the Bencher’s name from the ballot.”* While this amendment declared all elected Benchers were candidates unless they said otherwise, it left the nomination or candidacy of the lay Benchers candidates indeterminate. The 1997 amendments also provided that a ballot must be rejected unless it contains votes for the same number of candidates as there are positions to be filled, and also defined a counting method such that the candidates with the most votes, up to the number of positions to be filled, were elected.
11. In November 1998, the Benchers again made a number of amendments to the Executive Committee election rule. A specific nominating process was implemented requiring nominations to be made at a last regular meeting of the Benchers in the year before the election and provided for a mail ballot in the event there were more than three nominations, which was to be returned no earlier than January 7. The amendments also provided for a resolution in the event of a tie vote.
12. The next amendments were made almost a decade later. In 2007, the Rules were amended to move the election into the year preceding the year in which the Executive Committee would serve, along with consequential changes to the nominating and voting process. The amendments also removed the specific reference to excluding the President, Vice-Presidents and lay Benchers from the election for the three Bencher members under subrule (1).
13. The next major amendment was in 2009. This reconciled the appointed Bencher election period with that for the elected Bencher positions on the Executive Committee.

Issues

Rule 1-41(1)

14. This subrule states that the Benchers must elect three Benchers to serve as members of the Executive Committee for each calendar year. As the Roles Committee recommended, there is actually an annual election of four Benchers to the Executive Committee and the Rule makes this so. While all the Benchers must elect three Benchers to serve on the Executive Committee, a subset of the Benchers must elect a fourth Bencher to serve on the Executive Committee. As a result, the subrule should say that the Benchers must elect four Benchers to serve as members of the Executive Committee.

Election Methods

15. The vote, if required, for the three elected Benchers is conducted by ballot, which must be returned no later than December 6. Although not expressly stated, the Rule contemplates that ballots will be made available to all Benchers sometime between November 22 and no later than December 6.
16. The vote, if required, for the appointed Bencher is also to be conducted by ballot but the vote must occur at the last regular meeting of the Benchers in each calendar year and appointed Benchers must be present at the meeting to participate.
17. The discrepancy in the voting methods is difficult to justify on a principled basis. While all Benchers in office on the date set for return of ballots are eligible to vote for up to close to two weeks, during which both elected and appointed Benchers have the opportunity to complete a ballot and return it, the vote for the appointed Bencher is limited to Benchers present at the last Bencher meeting of the year and must be completed on that day.

Nominations

18. The Rule 1-41(3) provides that nominations for election to the Executive Committee must be made by November 22. While stated broadly enough to encompass nominations for the appointed Bencher position as well as the elected Bencher positions, the placement of this subrule immediately following Rule 1-41(2) dealing with eligibility for election as an elected Bencher does tend to hide this fact.

Who Votes for Whom

19. The final consideration is the asymmetry in the voting. Under the Rule, all Benchers, elected and appointed, may vote for up to 3 candidates for the elected Bencher seats on the Executive Committee. However, only the appointed Benchers vote for the single appointed Bencher seat.

20. The Role Committee commented on their decision to recommend the asymmetry in voting.

It might also be appropriate to allow the lay Benchers representative to be elected by all the Benchers, but it is more in keeping with the tradition of independence of the public input on the Benchers to allow the lay Benchers to make the choice alone.

Three other Benchers would then be elected by all the Benchers, including the Treasurer's Committee and the lay Benchers. The inclusion of lay Benchers in this electorate would be consistent with section 6(3) of the Legal Profession Act which gives lay Benchers "all the rights and duties of an elected Benchers." Also, it might be perceived as inconsistent with the spirit of lay participation to deny the lay Benchers a say in the election of almost half of the Executive Committee.

21. At the Benchers meeting in December 1995, it was suggested that it should not appear that the lawyers among the Benchers were choosing the member of the public who participates at that level. The lay Benchers should make that decision themselves
22. The reference to section 6(3) of the Act¹ by the Roles Committee highlights the issue here. While some distinctions are made throughout the Act and Rules between elected and appointed Benchers, all Benchers have the same rights and duties.
23. In particular, section 4(2) does not say "*The **elected benchers** govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society.*" It says "*The **benchers** govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society.*" Given that broad statement of authority, drawing a distinction between the role of an elected Benchers and the role of an appointed Benchers should only be made if necessary to accomplish some particular end that requires making that distinction.
24. Rule 1-50(1) requires that the Executive Committee must have one appointed Benchers as a member. While the nomination for that appointed Benchers position is obviously limited to appointed Benchers, the original concern about limiting voting for that position to the appointed Benchers in keeping with the tradition of independence of the public input on the Benchers seems out of place in 2019.

¹ Now section 5(3)
DM2320220

Recommendations

25. The Committee makes the following recommendations regarding the Executive Committee election:

- a. Amend Rule 1-41(1) to recognize that there are four Benchers to be elected under the Rule.
- b. Reconcile the voting methods described in the Rule such that the voting for both the elected and appointed Bencher positions, if necessary, occurs in the manner provided for the elected Bencher positions.
- c. Clarify the processes for nominating elected and appointed Benchers such that they are consistent.
- d. While the elected and appointed Benchers would continue to nominate their respective candidates, if a vote for the elected Bencher and appointed Bencher positions on the Executive is required, all Benchers, elected and appointed, would be eligible to vote for all four positions.

Memo

To: Benchers
From: Governance Committee
Date: May 29, 2019
Subject: A Benchers Code of Conduct

Earlier this year, the Governance Committee was asked to look at developing a Benchers Code of Conduct. Over the course of three meetings, the Committee considered a number of matters that might reasonably fall within the ambit of a Code of Conduct for the Benchers and developed the attached proposed Code of Conduct.

The Committee noted that previous governance policies regarding conduct did not address all of the Benchers' roles equally or at all. Specifically, there was no recognition of the Benchers' role as legislators. It was also noted that previous policies failed to address the consequences that might flow from the failure to abide by them and did not provide, in some cases, nuanced actions in the face of the issues addressed. Finally, there was no adequate treatment of potential and actual conflicts of interest.

As a result, the Committee developed a proposed Code of Conduct based on consideration of the several roles that the Benchers fulfill, created conflict of interest guidelines that more comprehensively and specifically cover the conduct of Benchers and added guidelines for what the Benchers should expect when acting in their capacity as legislators. Finally, the Committee noted that the conduct of Benchers in their role as adjudicators is covered comprehensively in the Code of Professional and Ethical Responsibilities for Tribunal Adjudicators approved by the Benchers at their December 2017 meeting.

A copy of the proposed Code of Conduct is attached as Appendix A for the Benchers' consideration.

Appendix A

Benchers Code of Conduct

Benchers fulfill several roles

1. The first role is as a governor of the Law Society responsible for governing and administering the affairs of the Law Society and taking such action as they consider necessary for the promotion, protection, interest or welfare of the Law Society.¹
2. The second is as a legislator making Rules for the governing of the Law Society, lawyers, law firms, articulated students and applicants, and for the carrying out of the Legal Profession Act² and prescribing a Code of Professional Conduct that expresses the views of the Benchers about standards that British Columbia lawyers must meet in fulfilling their professional obligations.³
3. The third role is as participants in our regulatory decisions and as members of panels, conduct reviews and conduct meetings.⁴
4. The fourth role is as confidential advisors to members of the profession in relation to matters involving professional conduct or the practice of law.
5. In these several capacities, it is the Benchers' duty to abide by the Legal Profession Act, the Law Society Rules and the Code of Professional Conduct, and faithfully discharge their duties as Benchers, according to the best of their ability; and to uphold the objects of the Law Society and ensure that they are guided by the public interest in the performance of their duties.⁵

Conflicts of Interest

6. Benchers are expected to avoid conflicts of interest to assure the public and the profession that both policy and adjudicative decision-making are being made free from external or improper interest, favour or bias. However, from time to time Benchers may have a conflict between their various roles at the Law Society and

¹ Legal Profession Act, s. 4(2)

² Legal Profession Act, s.11(1)

³ Introduction to the Code of Profession Conduct

⁴ Credentials Committee, Rule 2-50, Practice Standards, Rule 3-15, Discipline Committee, Rule 4-2, Complainants' Review Committee, Rule 3-13, Hearing Panels, Rule 5-2, Conduct Reviews, Rule 4-11, Conduct Meetings, Rule 4-10. The separate Code of Professional and Ethical Responsibilities for Tribunal Adjudicators covers the duties of Benchers when participating in regulatory decisions.

⁵ Oath of Office, Rule 1-3

Appendix A

other interests. Managing conflicts fairly, effectively and transparently serves the public interest.

7. A Bencher may have a conflict of interest where the Bencher has a personal interest, either pecuniary or non-pecuniary, not shared by others in the outcome of a decision. Upon recognizing a conflict of interest exists, a Bencher should disclose the conflict of interest and refrain from voting on and not participate, by leaving the meeting, in the consideration or discussion in the decision giving rise to the conflict.
8. A Bencher may have a conflict of duty when that duty to the Law Society may conflict with duties to another organization. Benchers will often encounter this situation, as Benchers sit on other boards or are involved with other organizations from time to time. When a specific conflict of duty arises, the Bencher should disclose the conflict of duty and, subject to section 10, may still participate in any decision-making.
9. A Bencher should withdraw from a role with another organization or outside activity or resign as a Bencher where participation in an organization or outside activity places a Bencher in a substantial conflict between the Bencher's duties to the Law Society and the duties to another organization or the requirements of an outside activity,
10. A Bencher should take care to avoid the perception of a conflict of interest or a conflict of duty. When a perceived conflict of interest or duty may exist with respect to a decision, the Bencher should consider whether continued participation in any decision-making as a Bencher is consistent with the Bencher's duties to the Law Society and act accordingly.

Conduct as Governors

Transactions that may benefit a Bencher or a Bencher's firm

11. The Benchers recognize the importance of avoiding even the appearance of conflicts of interest. However, it is in the interests of the Law Society and the legal profession as a whole that the Law Society obtain competent and cost-effective legal services from practitioners whose skills, training and experience are appropriate to the task. The Law Society may retain the legal services of a member of a Bencher's firm, with the approval of the Executive Director or the Executive

Appendix A

Committee as provided in the Rules⁶. But a Benchers must not participate in any way in a decision to retain the services of a member of the Benchers's firm.

Benchers Staff Relations

12. The Benchers are responsible for governing the affairs of the Law Society and for promoting and protecting the interests and welfare of the Law Society. The Executive Director, management and staff are responsible for the day-to-day management and co-ordination of all aspects of the operation, administration, finance, organization, supervision and maintenance of Law Society activities. The relationship among Benchers, management and staff should be one of trust in each other, respect for the distinct roles of Benchers, management and staff, and recognition that everyone at the Law Society is engaged with and has a role in protecting the public interest in the administration of justice.
13. All authority and accountability of Law Society management and staff to the Benchers is through the authority and accountability of the Executive Director, who is accountable to the Benchers, and Benchers should take care not to compromise the Executive Director's authority and accountability in dealing with management and staff.

Conduct as Legislators

14. Benchers are given the authority under the Legal Profession Act to make rules for the governing of those persons who are subject to Act, and for the carrying out of the Act.⁷
15. As a result, the legislature has delegated to the Benchers the authority to govern the professional activities of those persons who are subject to the Act, as well as managing the Society and seeing the requirements of the Legal Profession Act are fulfilled. In enacting, rescinding or amending proposed rules, the Benchers must ensure they have:
 - a) a clear and comprehensive understanding, based on evidence and analysis, of the problem or issue and that intervention by the Law Society is needed to address the problem or issue;

⁶ Rules 1-48(1) and 1-51(a)

⁷ LPA, s.11(1). Section 11(5) provides that no approval other than that of the Benchers is required to enact, rescind or amend a rule.

Appendix A

- b) sufficient information demonstrating through evidence and analysis that a rule is the best means to address the problem or issue;
- c) evidence that, where appropriate, engagement and consultation with stakeholders has occurred and been considered;
- d) sufficient understanding of the potential positive and negative effects, including costs and benefits, of a proposed rule on the delivery of legal services, access to justice and the public interest in the administration of justice and the operations of the Society; and
- e) an effective method for evaluating whether the proposed rule successfully addressed the problem or issue.

Appearing as Counsel

- 16. A person must not appear as counsel for any party in a Law Society proceeding for three years after:
 - a. serving as a Benchers, or
 - b. the completion of a hearing in which the person was a member of the panel.
- 17. A member of a committee must not appear personally on behalf of a member or the Law Society in any proceeding that relate to the work of that committee.
- 18. Former Benchers should not be retained to represent the Law Society in discipline matters.
- 19. A Benchers must not appear before the courts on behalf of a member or the Law Society in a discipline, credentials or Special Compensation Fund matter.

Appearing as a Witness

- 20. A Benchers who gives evidence in court on a matter of legal ethics must make clear to all parties and to the court that the Benchers speaks to his or her own understanding of matters in issue and is not a spokesperson for the Law Society.

Appendix A

Conduct as Confidential Advisors

Confidentiality when giving practical or ethical advice

21. When Benchers and Life Benchers give practical or ethical advice in their capacity as Benchers, they have a discretion to keep confidential information that they would otherwise have to disclose or report under the Code of Professional Conduct, s.7.1-3, other than information about a shortage of trust funds.

Annual Disclosure

Annual Disclosure Requirement

22. Each Bencher must annually:

- a) review the Code of Conduct and agree to act in accordance with the letter and spirit of the Code; and
- b) disclose:
 - (1) any organization of which the Bencher is a director or the controlling mind,
or
 - (2) any activities in which the Bencher is engaged,
the objects or purpose of which substantially relates to provision of legal services in BC.



Mid-Year Report 2019

Committee: Legal Aid Advisory Committee

Nancy Merrill, QC (Chair)
Rick Peck, QC (Vice-Chair) (Life Bencher)
Christopher McPherson, QC
Phil Riddell, QC
Sarah Westwood
Gary Bass
Odette Dempsey-Caputo
Richard S. Fowler, QC

June 8, 2019

Prepared for: Benchers

Prepared by: Legal Aid Advisory Committee

Staff Support: Policy and Legal Services

Purpose: Information & Discussion

Table of Contents

Table of Contents.....	2
Introduction	3
Legal Aid Coalition	3
Consideration of Resolution No. 2 from the 2018 AGM	5
Economic Analysis of Legal Aid.....	6
Items to Remove from the Mandate	6
Looking Ahead	7

Introduction

1. The purpose of this report is to provide the Benchers with an update on the work of the Advisory Committee for the first half of 2019.
2. After the Benchers adopted the Law Society of British Columbia's Vision for Publicly Funded Legal Aid (the "Law Society Vision"), they struck the Legal Aid Advisory Committee to carry out the work necessary to advance the Law Society's Vision.
3. The Committee's work in 2019 builds on the feedback it received from the Second Legal Aid Colloquium, held in November 2018. At the Colloquium participants spoke of the importance of working collaboratively to advocate for appropriate funding of legal aid, and suggested forming a coalition to accomplish this objective.

Legal Aid Coalition

4. The Committee spent its first few meetings of 2019 discussing the purpose of a Law Society of BC Coalition. It considered that the Association of Legal Aid Lawyers was actively occupying part of the field with respect to lobbying for greater funding for legal aid, namely, the insufficiency of the tariff rate.¹ While acknowledging the importance of securing more funding for the tariff, the Committee recognized that a coalition would need to take a broader approach. This led to the determination that if the Law Society were to form a coalition, the coalition would need to align to the Law Society's Vision.
5. The Law Society's Vision differs from the current model of legal aid in several ways, and most significantly by introducing the concept of universal triage regardless of means, as well as expanding the categories of services where legal advice and representation would be permitted (subject to a means test).
6. The Law Society's Vision focuses on people who can face greater barriers to equality of justice, or who are particularly vulnerable. These include: Indigenous Peoples, people whose liberty or security of the person is at stake due to state action, children whose security of the person is at risk, people with mental or intellectual disabilities that impair their liberty, safety or access to government and community services, individuals whose physical, economic or emotional security is at risk in a family law dispute, people disadvantaged due to poverty, and immigrants and refugees.

¹ While the Association of Legal Aid Lawyers' submission to the Attorney General touches on more than the tariff rate, the pith and substance of the submission relates to the harmful impact decades of stagnant tariff rates of had on the legal aid bar and the legal aid system.

7. The Committee determined that the Coalition should involve representatives from pre-eminent groups that advocate for the rights of the classes of people captured in the Law Society's Vision. In addition, the Committee considered that the Coalition should be a relatively small group. Lastly, while the Coalition will involve lawyers the idea was to not simply assemble a group of "lawyer organizations". The key is to better understand the needs of the people who are struggling to get legal help, and find more compelling ways to advocate for a legal aid system that meets their needs, rather than focus on the needs of the lawyers who assist them.
8. At its May meeting, the Committee identified the following individuals / organizations to approach in order to determine if they were interested in joining the Coalition:
 - a. Doug White, Chair BC Aboriginal Justice Council;
 - b. Lissa Smith, Vice President (Metis Nation BC);
 - c. Stephen Thatcher, Assistant Commissioner, RCMP;
 - d. Lynn Pelletier, Vice President, Mental Health & Substance Use Services (BC Mental Health & Substance Use Services);
 - e. Shawn Bayes, Executive Director, Elizabeth Fry (Vancouver);
 - f. John McCormick, Executive Director, John Howard (Nanaimo);
 - g. Kasari Govender, Executive Director, West Coast LEAF;
 - h. Deb Bryant, CEO, YWCA;
 - i. Olga Stachova, CEO, MOSAIC;
 - j. Margaret Mereigh, President, CBA BC.
9. The Coalition will also include four members of the Committee, appointed by the Chair and Vice-chair.
10. While the Coalition does not have a fixed timeline, the Committee recognizes the importance of not leaving matters open-ended. In order to work towards tangible outcomes, the invitations to join the Coalition proposed a timeframe of up to two provincial budget cycles in order to determine whether the efforts of the Coalition have made a measurable difference in securing greater funding for legal aid.

Consideration of Resolution No. 2 from the 2018 AGM

11. At the 2018 Annual General Meeting (“AGM”) a majority of lawyers in attendance voted in favour of Resolution No. 2 (as amended), which reads: *Be it resolved that: a) the Benchers be directed to continue to advocate for the adequate funding of legal aid, to be administered by an organization independent from government. b) the Benchers be directed to take steps to encourage and reduce barriers to members to undertake legal aid and pro bono cases, within their field of expertise.*
12. At its April meeting the Committee commenced a preliminary analysis of the question of whether legal aid should be delivered independent of government. The discussion included consideration of whether independence is necessary in order for legal aid to be delivered in the public interest. The Committee considered possible *indicia* of dependence, such as board structure, the memorandum of understanding between government and the Legal Services Society, and the fact that approximately 96% of Legal Services Society funding comes from government.
13. With respect to the structure of the Legal Services Society board, the Committee recognized that British Columbia is something of an anomaly in Canada because most other provinces legal aid organizations have boards that are appointed solely by government.
14. With respect to funding, the Committee considered the question of whether advocating for legal aid to be administered independent of government is consistent with the Law Society Vision which is a vision for *publicly funded legal aid*. While the Committee did not delve into the concept of a publicly funded legal aid system that is not accountable to government for its expenditures, it did explore the philosophical question of whether government issuing directives for how funding is to be allocated hinders the independent operation of legal aid in a manner that is contrary to the public interest.
15. One matter for which the Committee had unanimity is the importance of government not interfering with, or being perceived to interfere with, the selection of legal aid counsel or their representation of clients. The independence of counsel is critical, especially as government is on the other side of most legal aid cases.
16. As of the time of submitting this report to the Benchers, the Committee has not determined whether legal aid should be administered independent of government or, in practical terms, what such independence would look like.

Economic Analysis of Legal Aid

17. In 2018 the Committee commissioned Professor Yvon Dandurand to provide a feasibility analysis of developing an economic analysis of legal aid. This involved identifying the data that exists and is readily accessible, the data that exists and is not accessible, as well as the data that would need to be collected in order to engage in an economic analysis of the legal aid system.
18. Professor Dandurand provided his assessment report to the Committee in late 2018, and the Committee reported to the Benchers regarding the finding in its 2018 Year-End Report. The Committee has not moved forward with this topic in 2019, chiefly for two reasons.
19. The first reason is that in order to engage in an effective economic analysis of legal aid, the first thing that has to happen is for government, Legal Services Society, and likely the courts, to collect better data about the costs and outcomes associated with engaging the justice system and legal aid.
20. The second reason flows from the first, in that the development of such a data architecture will take considerable time, effort, and alignment of resources and the Committee felt it could consume all of its time trying to move forward a concept, the ultimate success of which it could not control.
21. While the Committee has decided to move the concept to the back-burner, it does note that the idea of developing a data architecture that has been identified previously by the Committee and in Law Society publications is being echoed in other circles, and was noted most recently in Jamie Maclaren, QC's legal aid report *Roads to Revival*. At this stage, it may be sufficient that the concept of developing a data architecture to better measure the outcomes of legal aid and related justice systems and services form part of the Law Society's speaking notes with government and other justice system stakeholders where appropriate.

Items to Remove from the Mandate

22. Since its inception the Committee has worked through its mandate items and, in the process, identified a few matters that it is unable to advance further and/or believes no longer should form part of its mandate.
23. Mandate Item 2(b)(vi): *Working with government, the courts and the profession about ways to reduce the time and cost associated with mega-trials*. The Committee discussed mega-trials and how they are funded. Although mega-trials are a significant issue, both with respect to the demand they place on the justice system and the issues involved, the Committee is of the opinion such trials are not the proper focus of its work because of how

they are funded. The government pays for mega-trials separately from how it funds standard legal aid services. While such trials consume considerable resources, they do not consume the core funding that Legal Services Society is provided, nor does funding for such trials appear as vulnerable as is funding for matters covered in the Law Society's Vision for Publicly Funded Legal Aid. The Committee therefore recommends removing mandate item 2(b)(vi).

24. Mandate Item 2(b)(vii): *Working with the courts to determine how active case management might be used to support a more efficient and cost effective litigation system, thereby making legal aid more sustainable.* This concept has a history that dates back to the Law Society's submissions to the government regarding the consultations on the last revisions to the Rules of Court. The Committee determined that the effort associated with engaging the courts to reform its case management system would likely occupy significant resources without a reasonable assurance of achieving a result that would materially improve the delivery of legal aid in British Columbia, and consequently recommends that this mandate item be removed as well.

Looking Ahead

25. For the second half of 2019, the majority of the focus will be on advancing the work of the Coalition. The Committee will monitor the efforts of the Coalition and keep the Benchers apprised of its progress.
26. The Committee also hopes to set up a meeting with the Truth and Reconciliation Advisory Committee to discuss how best to advance improvements in legal aid services for Indigenous Peoples, in a manner consistent with the Law Society's Vision for Publicly Funded Legal Aid.
27. The Committee has been discussing a government relations campaign strategy and will continue to monitor those efforts with an eye to having the Law Society generate content and outreach to MLAs in support of the next provincial budget cycle.
28. The Committee is also discussing how various vignettes such as "a day in the life of a legal aid lawyer" and videos of people discussing the role of legal aid from the public user perspective might help build public support for legal aid.
29. With respect to finding ways to induce the next generation of lawyers to practise criminal and family legal aid, the Committee believes that a robust "shared articles registry" could assist. Very few criminal law articling positions exist, and a shared articles registry might help address that issue as well as the collateral concern about the lack of women lawyers practising criminal law. The Committee intends analyze the structure of the registry and to

examine past efforts to this end, and expects to make recommendations later this year regarding what steps the Law Society might take to revitalize a shared articles registry.

/DM&ML&AB

The Law Society
of British Columbia



Mid-Year Report 2019

Committee: Access to Legal Services Advisory Committee

Michelle D. Stanford, QC (Chair)
Claire Hunter, QC (Vice-Chair)
Jeffrey Campbell, QC
Lisa Hamilton, QC
Jacqueline McQueen
Karen Snowshoe
The Honourable Thomas Cromwell

June 8, 2019

Prepared for: Benchers

Prepared by: Policy and Legal Services

Purpose: Discussion

Table of Contents

Table of Contents.....2

Introduction3

Developing a Proof-of-Concept Model for a non-profit legal services delivery program3

Pro Bono6

Access to Justice Fund.....7

Conclusion8

Introduction

1. The purpose of this report is to provide the Benchers with an update on the topics the Committee is considering in 2019, and to seek the Benchers approval for the Committee to engage in external discussions regarding a topic it has been exploring for the past year and a half.
2. The Committee is an advisory committee. Its purpose is to monitor matters within its mandate that are relevant to the work of the Law Society and provide advice to the Benchers. The Committee can also carry out discrete tasks the Benchers assign it. The primary focus of the Committee is to recommend to the Benchers ways the Law Society, through its strategic objectives and regulatory processes, can better facilitate access to legal services and promote access to justice.

Developing a Proof-of-Concept Model for a non-profit legal services delivery program

3. On three occasions since the fall of 2017 the Committee updated the Benchers regarding a proof-of-concept for a non-profit “law firm.” The concept originated from discussions the Committee held with a number of large, national law firms which have offices in Vancouver. At a meeting with managing partners in the fall of 2017, the Committee explored what large firms are doing to foster greater access to legal services and access to justice, and explore what the firms might be willing to do. The managing partners expressed interest in exploring practical concepts for how the firms might promote greater access to justice, and asked the Committee to develop some concepts for future discussion.
4. In early 2018 the Committee decided to focus on whether large law firms, acting alone or together, might develop a not-for-profit law firm that operated on a cost-recovery basis to provide select legal services in the areas of immigration and family law. The idea was to develop a proof-of-concept that large firms could use as a template to create such a firm. Over time the Committee’s thinking has evolved to the point where the Law Society might provide the template to entities other than law firms as well, or simply publish it for anyone to use or modify. Key principles informing the Committee’s exploration of the topic are:
 - a. The Committee is developing a proof-of-concept model for law firms or other entities to take and modify to suit their needs. It is not a “Law Society project” in the sense that the Law Society would ever develop a non-profit firm, or be involved in setting it up or funding it directly, or “approving” such a firm.
 - b. Although the Committee calls the project a “non-profit law firm” that label is not meant to be prescriptive of what the model might become. In other words, it needn’t be a *law firm* in the traditional sense. It might, for example, be a pop-up

service co-located at a library, or clinic, or community centre, operating with support by various law firms and other justice system stakeholders. In order to maximize uptake, it is important not to be prescriptive as to the final form or delivery model.

- c. The Committee is developing the proof-of-concept with the idea that the services provided by the non-profit firm would supplement the existing market for legal services, or potentially expand the existing market, not duplicate it. The Committee is mindful not to develop a model that would harm existing services. Instead, the goal is to suggest ways in which lawyers can augment existing services or provide new services to people who need help, but are not getting it.
5. The 2018 Committee developed a subgroup to further refine the topic. The subgroup consisted of: Jeff Campbell, QC, (Chair), Claire Hunter (Vice-Chair), Nancy Merrill, QC, Michelle Stanford, QC and The Hon. Thomas Cromwell. In 2019 the Committee dissolved the subgroup and took the project back under its oversight.
 6. In 2018, the subgroup held several meetings to develop its thinking. In jurisdictions where the concept seems to be working (such as the DC Affordable Law Firm) several large firms work in partnership with an educational institution. The DC Affordable Law Firm targets people who live within a few hundred percent of the poverty line. Both the clients the DC Affordable Law Firm serves, and lawyers who traditionally serve lower income clients, review the initiative favourably. Models such as Aspire in Alberta, faced issues with volume of clients, and cost containment, to operate in a sustainable manner. The subcommittee attempted to better understand why some projects succeed while others fail.
 7. The subcommittee met with Bill Maclagan, QC to discuss theoretical models and explore concerns such as conflicts of interest and business conflicts, as well as practical issues such as how to manage expenses versus revenue so a model might be self-sustaining. The Committee also canvassed the concept when it met with Kim Hawkins, CEO of Rise Women's Legal Centre and Wayne Robertson, QC, Executive Director of the Law Foundation to learn more about Rise and also discuss the Law Society's access to justice fund.
 8. In order to round out the analysis, the subgroup spoke with Stacy Kuiack (former Appointed Benchers) who agreed to help draft a business plan for how firms (or other entities) might operate a non-profit firm work as a going concern. Work with Mr. Kuiack is ongoing. The Committee worked with Mr. Kuiack in 2019 to develop a series of questions to ask lawyers and justice system stakeholders in order to better identify the value proposition of lawyers participating in such a project, and to better identify the target market for such services in the areas of immigration and family law.

9. The idea is to consult with the lawyers and firms and justice system stakeholders such as the courts, Courthouse Libraries of BC and possibly CBA sections dedicated to family law and immigration. The Committee hopes to use the feedback from the consultation to develop a business plan. Once the Committee has refined the proof-of-concept plus the business plan, it intends to update the Benchers and seek approval to provide the final materials to the firms it initially met with, and possibly publish the materials for wider distribution.
10. Subject to Bencher approval, the Committee intends undertake interviews with the following caveats expressly stated to all participants:
 - a. The Law Society is trying to obtain better data to support a proof-of-concept for a non-profit delivery model that lawyers, law firms and other justice system stakeholders might develop to supplement the existing market for services in the area of family law and immigration;
 - b. Based on the information received, the Law Society will refine the model and develop a business plan, which can be used by interested parties as a template for creating a non-profit service delivery model;
 - c. The Benchers will need to approve the model and business plan prior to it being published;
 - d. Any individual or entity that develops a delivery system based on the material published by the Law Society, will need to do so in accordance with Law Society Rules and the *BC Code*, and the publication by the Law Society of the model and business plan will not constitute the endorsement of any particular service model that is created;
 - e. The Law Society is attempting to develop a tool to help others develop a non-profit delivery mode; the Law Society is not going to operate or fund such a service.
11. The Committee does not anticipate the consultations would involve out of the ordinary expenses, as Committee members would undertake the work in their communities and might ask Benchers in other communities to also conduct the consultations if they are amenable. The Committee is willing to bring any Bencher who is interested in participating in the consultation process in their community up to speed on the concept, and provide a list of stock questions for the purposes of consulting. We anticipate being ready to begin consulting following the July Bencher meeting.
12. **FOR DECISION:** The Committee seeks the Benchers authorization to consult with lawyers, firms and justice system stakeholders for the purposes of obtaining better information regarding the potential market for services in the area of family law and

immigration to people who struggle to access the existing services lawyers provide and which might usefully be provided via a non-profit “law firm” model. The consultation is a data-gathering exercise, and more analysis will be required before the Committee will ask the Benchers to consider whether the proof-of-concept model merits publication by the Law Society.

Pro Bono

13. In 2018 optional questions were added to the Annual Practice Declaration (“APD”) so the Law Society can get a better sense of the pro bono, low bono, legal aid and other access to justice work lawyers perform. In January 2019 the questions were amended to address potential ambiguity, and to soften some of the original language in response to feedback some Benchers received regarding the wording of the prior questions.
14. The Committee will consider data from the past year to see if there are any patterns that emerge regarding lawyers engagement in pro bono, low bono, legal aid and access to justice work outside those discrete areas. The hope is that better data will lead to better advice from the Committee to the Benchers regarding what the Law Society can do to foster greater access to lawyers by members of the public who, at present, might struggle to access the services of a lawyer.
15. In December 2018 the majority of lawyers voting at the Annual General Meeting voted in favour of Resolution No. 2, which reads, in part:

Be it resolved that:

A). ...[omitted]

B). the Benchers be directed to take steps to encourage and reduce barriers to members to undertake legal aid and pro-bono cases, within their field of expertise.
16. The Committee intends to use the information obtained in the optional APD questions to support its analysis of what the Law Society can do to encourage greater pro bono by lawyers, and to make recommendations to the Benchers in the fall. In addition to reviewing the data from the APD, the Committee is also considering policy opinions from staff since 2009 on the topic of encouraging pro bono, as well as a range of articles on the subject.
17. In April the Committee considered a referral from Nancy Merrill, QC asking that it provide an opinion to the Executive Committee regarding whether the Law Society should establish an award for outstanding contribution to pro bono work, to go along with the other awards the Law Society hands out on a biennial basis. Although the Committee supports the idea

of such an award, it reiterates its observation to the Executive Committee that such a step is not a sufficient response to the call for action in Resolution No. 2. Starting at its June meeting the Committee intends to canvass ideas to encourage greater lawyer participation in pro bono, and expects to spend several meetings exploring the issue.

Access to Justice Fund

18. Each year the Law Society sends approximately \$340,000 to the Law Foundation of BC to support organized pro bono with a combination of funding and in-kind support. Approximately \$60,000 of the total supports an access to justice fund (the “Fund”) for matters other than pro bono.
19. The Benchers delegated to the Committee the role of meeting each year with representatives of the Law Foundation to discuss possible projects the Fund should support. While the Law Foundation has discretion as to where to direct the Fund, the concept is to encourage greater collaboration and dialogue around access to justice. In practice, where the Committee has recommended specific projects for funding – such as the creation of a roster of lawyers who are prepared to provide unbundled ILA to support family law mediation, or funding to help Rise Women’s Legal Centre expand its reach beyond the Lower Mainland – the Law Foundation has supported that recommendation.
20. In May the Committee met with Wayne Robertson, QC to discuss potential allocations of the Fund. The Committee considered three concepts Mr. Robertson recommended: 1) funding for Atira to continue its legal incubator project for another two years; 2) funding for a clinic to provide government identification to people living in poverty, or 3) a wills on Reserves program.
21. While each concept has merit, the Atira program was the most developed concept. Atira is a legal services incubator that provides full representation services to women in need, in particular where the case is likely to have precedential value. It strives to give the lawyer in the incubator the tools needed to develop a viable practice in public interest law, with an element of pro bono and legal aid work as part of the practice.
22. The Committee recommended that the Law Foundation support Atira, but also identified some suggestions for the Law Foundation to consider. First, the Committee thinks it is important to find ways for initiatives to have a broader reach than Vancouver. It recognizes the limits of what \$60,000 can do, but thinks it is important to think of access to justice a bit more globally. It also encouraged the Law Foundation to consider whether Atira might support an incubator for more than one student at a time. Secondly, the Committee reiterated the need for better access to justice data, and that projects like Atira might be required to collect better data regarding cost and overhead and outcomes, so other

justice system initiatives can learn what works and where pitfalls exist for making public interest services viable.

23. In closing, the Committee notes that since the inception of the Fund in 2013, Mr. Robertson has met with the Committee each year and provided ideas for worthwhile projects, and engaged in an open and constructive manner to advance the purposes of the Fund. As Mr. Robertson will be retiring from his role of Executive Director of the Law Foundation this year, the Committee wishes to formally acknowledge his dedication to finding ways to improve access to justice for British Columbians, and his commitment to making the Fund be something we can all be proud of.

Conclusion

24. In the second half of the year the Committee will continue to consider the pro bono aspect of Resolution No. 2 from the 2018 AGM. In addition, if the Benchers authorize it, the Committee will consult regarding the proof-of-concept for a non-profit delivery model it has been discussing, and hopes to report back to the Benchers by the end of the year with a model and business plan which, if approved by the Benchers, could be disseminated to the profession and broader public.

/DM



the global voice of
the legal profession®

Us Too?

Bullying and Sexual Harassment
in the Legal Profession



Kieran Pender
Legal Policy & Research Unit
International Bar Association

The International Bar Association (IBA), established in 1947, is the world's leading international organisation of legal practitioners, bar associations, law societies, law firms and in-house legal teams. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of more than 80,000 lawyers, 190 bar associations and law societies and 200 group member law firms, spanning over 170 countries. The IBA is headquartered in London, with offices in São Paulo, Seoul, The Hague and Washington, DC.

The IBA Legal Policy & Research Unit (LPRU) undertakes research and develops initiatives that are relevant to the rule of law, the legal profession and the broader global community. The LPRU engages with legal professionals, law firms, law societies and bar associations, governments, non-governmental organisations and international institutions to ensure innovative, collaborative and effective outcomes.

This report considers sensitive issues, which may cause distress among some readers.

Readers are encouraged to seek appropriate support. In many countries, free telephone and online counselling services are available.

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International Bar Association
Level 4, 10 St Bride Street
London EC4A 4AD
United Kingdom
LPRU@int-bar.org
www.ibanet.org

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Contents

Foreword	5
Letter from the IBA President	7
Executive Summary	11
Introduction	12
Methodology	21
Demographics	25
Bullying	32
Sexual Harassment	49
Policies and Training	68
Case Studies	86
Australia	86
Brazil	88
Costa Rica	89
Malaysia	91
Russia	92
South Africa	93
Sweden	94
United Kingdom	96
United States	97
Recommendations	99
Conclusion	112
Working Group	113
Acknowledgments	114
Appendix 1: Survey	115
Appendix 2: Regulatory Approaches Compared	123

Foreword

In the lead up to International Women's Day this year, research company IPSOS Mori, in collaboration with the Global Institute for Women's Leadership at King's College London, released the results of a ground-breaking survey on global attitudes towards gender.

People in 27 countries around the world were asked to nominate the top two or three issues facing women and girls in their nation. The most cited problem was sexual harassment, with sexual violence coming second and physical violence third. The fifth most cited was domestic abuse. Seventeen nations nominated one of these issues, which all go to different aspects of women being safe and having their sexual autonomy respected, as the most pressing problem.

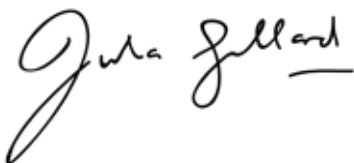
It is hard to read this data as anything other than a global cry for change, for a world in which women and girls do not fear rape, beatings or predatory conduct at work. As the #MeToo movement has shown, women are no longer prepared to be silent. The demands for deep-seated reform are insistent and determined. After all this activity, the world cannot lapse back into shameful silence.

The legal profession has a special, indeed privileged role, in advocating for and ushering in change. Around the world, it will be lawyers who are at the forefront of cases that test the efficacy of current laws. When existing systems are found wanting, legal skills will be needed to better legislation and improve courtroom procedures.

However, the legal profession can only step up to this role with integrity if it makes sure its own house is in order. This is challenging in a hierarchical profession where the most senior practitioners still tend to be disproportionately men and advancement is often as much about networks as measurable merit. But it can and must be done.

I do not underestimate the size of the challenge, but you are not alone. Around the world, women and men of goodwill are coming together – in this profession and others – to find the best ways forward. At the Global Institute for Women's Leadership, we are determined to bring to the table the best evidence about what works for gender equality in the legal profession, business, the news media, technology and civil society.

This important report is a clarion call for urgent action. I urge you to absorb its facts and findings and then make a difference.



Julia Gillard AC

27th Prime Minister of Australia

Chair, Global Institute for Women's Leadership, King's College London

Letter from the IBA President

Since there has been a legal profession, there have been requirements that its practitioners be of good character. Aristotle, speaking of the Athenian orators that laid the early foundation for the modern practice of law, identified the need for ‘good moral character’. In the fifth century, the Roman Theodosian Code demanded that advocates be of ‘suitable character’, with ‘praiseworthy’ past careers. A 1605 British statute required lawyers to be ‘skilful’ and ‘honest’. The importance of prospective lawyers demonstrating more than just technical competence manifests today in character obligations as a prerequisite for admission to legal practice in most jurisdictions globally.

These ancient values are at odds with what has long been suspected: that bullying and sexual harassment are widespread in legal workplaces. Some of us have experienced it ourselves. Many of us have witnessed it. Others have heard about it from colleagues. However, the plural of anecdote is not data. For the first time at a global level, this research provides quantitative confirmation that bullying and sexual harassment are endemic in the legal profession. It joins a number of diverse country-specific studies, from Ireland to New Zealand to South Korea, in forcing the profession to confront these insidious issues.

We must confront them. There are significant ethical and legal factors that should compel action. This research also highlights an important business case. Lawyers who are bullied or harassed are unlikely to perform at their best; this survey indicates that they leave their workplaces and, in some cases, the profession altogether. Following the global #MeToo movement, the legal profession has regularly been called upon to advise other sectors on these issues. Our ability to advise effectively and drive broader societal change is undermined if we do not address the risk of hypocrisy.

Legal professionals have long held an exalted status, as defenders of freedom, liberty and all else that flows from those fundamental values. ‘From a profession charged with such responsibilities,’ great Austrian-American jurist Felix Frankfurter once wrote, ‘there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as “moral character”.’

I implore the legal profession to heed this report’s recommendations. If the law is to remain in proper standing with the global community, its practitioners must be of good character. Addressing the widespread bullying and sexual harassment among us is an important step in safeguarding the long-term vitality of this essential profession.



Horacio Bernardes Neto

President, International Bar Association

Statistics: the largest-ever survey on bullying and sexual harassment in the legal profession

6,980
respondents

from
135
countries

Conducted in
6 languages:
English, French, Italian,
Portuguese, Russian, Spanish

Respondents were:



67% female **32% male** **0.2% non-binary/self-defined**

From across the spectrum of the legal profession: law firms, in-house, barristers' chambers, judiciary, government.



Bullying is rife in legal workplaces, affecting:

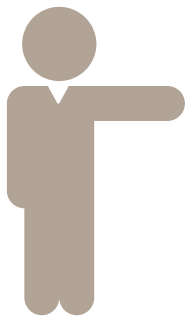
1 in 2 female respondents and 1 in 3 male respondents.



Sexual harassment is also common, with:

1 in 3 female respondents and 1 in 14 male respondents

having been sexually harassed in a work context.



More needs to be done. Of respondents' workplaces, 53% had policies and 22% undertook training to address bullying and sexual harassment.

Targets do not report. In:



57% of bullying cases and 75% of sexual harassment cases,
the incident is never reported.



Targets don't report due to:
the status of the perpetrator, fear of repercussions and the incident being endemic to the workplace.



Policies and training do not appear to be having the desired impact.
Respondents at workplaces with policies and training are just as likely to be bullied or sexually harassed as those at workplaces without.

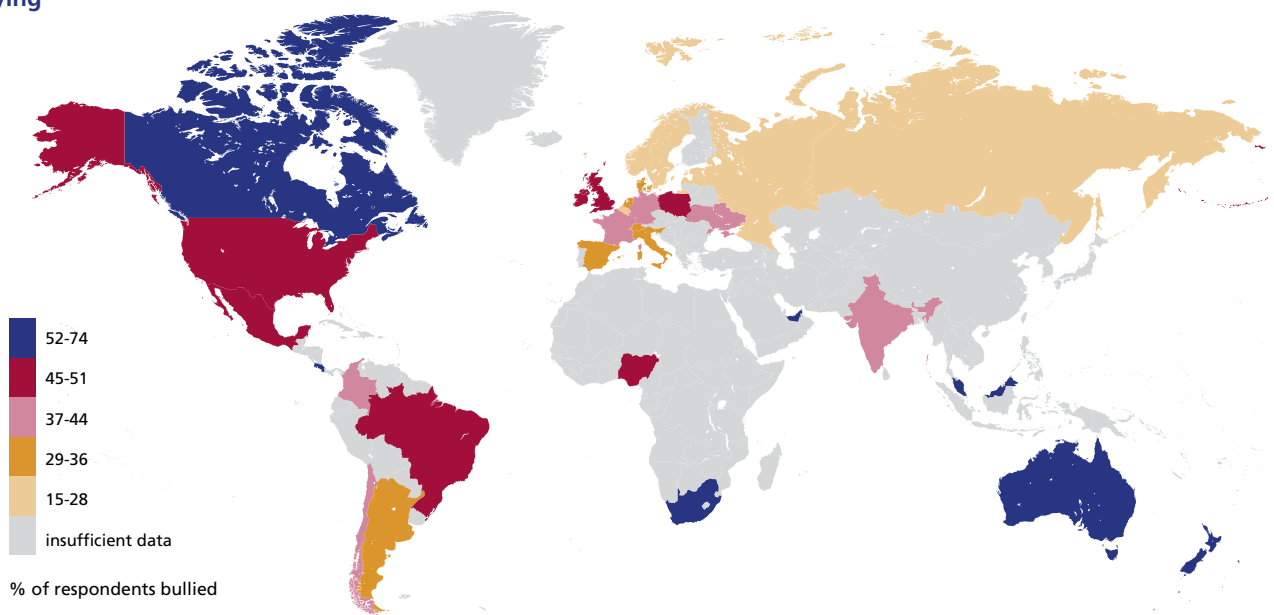
Targets are leaving unsupportive workplaces.

65% of respondents who have been bullied and 37% of respondents who have been sexually harassed left or are considering leaving their workplaces.

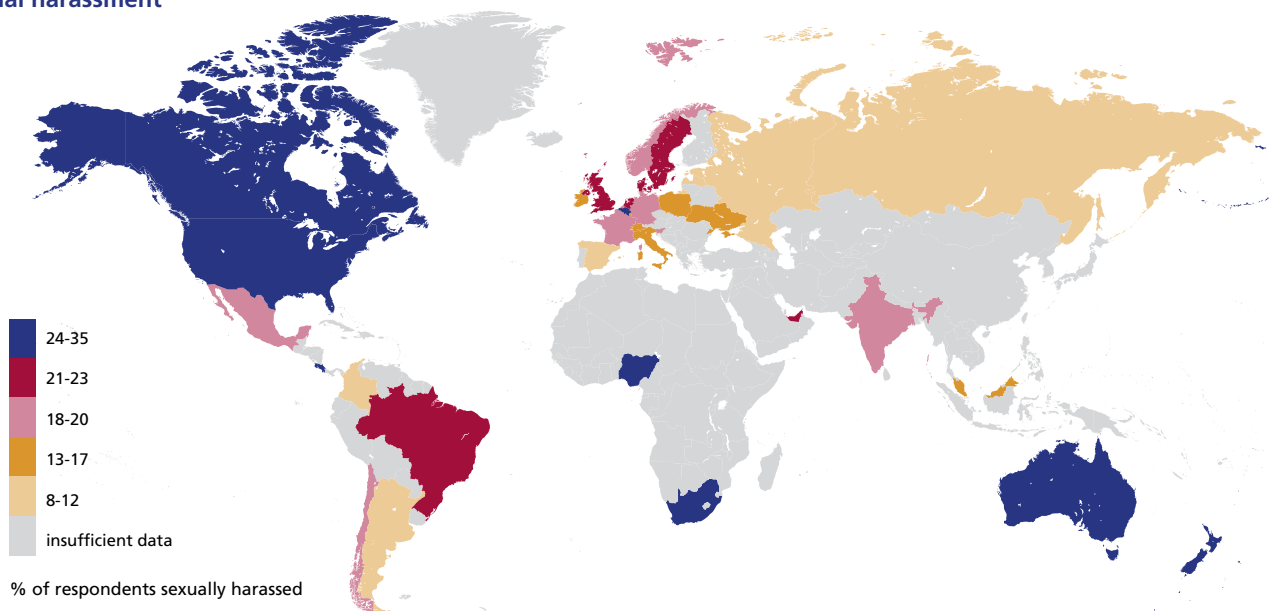


Bullying and sexual harassment by country*

Bullying



Sexual harassment



*Gender-weighted

Recommendations

1. Raise awareness

The legal profession has a problem. Spread the word – it is the first step towards achieving change.

2. Revise and implement policies and standards

Policies to address bullying and sexual harassment are under-utilised and not sufficiently effective. We need more effective policies and better implementation.

3. Introduce regular, customised training

Effective training can reduce the prevalence of workplace bullying and sexual harassment. Training must be the norm, not the exception.

4. Increase dialogue and best-practice sharing

A problem shared is a problem halved. Let's work together to address the scourge of bullying and sexual harassment in the profession, sharing what works and what doesn't.

5. Take ownership

This is everyone's problem. From senior leaders of the profession to incoming graduates, we all need to take ownership of the problem and work towards a more harmonious legal profession.

6. Gather data and improve transparency

Data about the nature, prevalence and impact of bullying and sexual harassment is important – we don't have enough. Once we have the data, we need to be open about it. Transparency will help us to address these issues.

7. Explore flexible reporting models

Legal professionals do not report bullying or sexual harassment often enough, at the time it happens or at all. We need to improve existing reporting channels and explore new ones, to make reporting a better experience for targets.

8. Engage with younger members of the profession

Younger legal professionals are disproportionately impacted by bullying and sexual harassment. They must be part of this conversation – they will play a major role in developing and implementing solutions and shaping workplace culture.

9. Appreciate the wider context

Bullying and sexual harassment do not occur in a vacuum. Mental health challenges, a lack of workplace satisfaction and insufficient diversity are all related issues. These dynamics need to be understood and addressed collectively.

10. Maintain momentum

Change is not inevitable. But it is possible, if individuals, workplaces and institutions work together to eradicate bullying and sexual harassment from the profession.

Executive Summary

The legal profession has a problem. In 2018, the International Bar Association (IBA) and market research company Acritas conducted the largest-ever global survey on bullying and sexual harassment in the profession. Nearly 7,000 individuals from 135 countries responded to the survey, from across the spectrum of legal workplaces: law firms, in-house, barristers' chambers, government and the judiciary. The results provide empirical confirmation that bullying and sexual harassment are rife in the legal profession. Approximately one in two female respondents and one in three male respondents had been bullied in connection with their employment. One in three female respondents had been sexually harassed in a workplace context, as had one in 14 male respondents. This report provides a succinct analysis of that data, to raise awareness about the nature, extent and impact of the problem and inform the development of solutions.

This report finds that these issues are ongoing, with a considerable proportion of cases occurring within the past 12 months. It identifies chronic underreporting of incidents, with 57% of bullying cases and 75% of sexual harassment cases not reported, for reasons including the profile of the perpetrator and the target's fear of repercussions. Even when targets report such incidents, workplaces are failing them – official responses are considered insufficient or negligible, perpetrators are rarely sanctioned and, in many cases, the situation is exacerbated. Bullying and sexual harassment hurt the profession. According to the survey data, targets often want to move workplaces, and some even wish to leave the sector entirely. Legal workplaces are not doing enough. This report finds that policies – while present in more than half of workplaces – are not having the desired effect. Although training does have some positive impact, only one in five legal workplaces are educating their staff to prevent and properly respond to bullying and sexual harassment.

Change is needed. This report provides ten recommendations to assist legal workplaces and the profession as a whole in addressing these issues. The recommendations are underpinned by the empirical findings of this survey, extensive secondary research and consultation with stakeholders. Change will not occur overnight, particularly as these issues are not unique to the legal profession but reflective of wider societal challenges. Yet there are compelling moral, ethical and commercial imperatives for the profession to act urgently. Individually and together, legal professionals and the legal profession must eliminate bullying and sexual harassment from our workplaces. It is hoped that this report can make a modest contribution towards genuine change.

Introduction

In 1983, lawyers at the Atlanta office of a major United States law firm decided they wanted to hold a ‘wet T-shirt’ competition for female summer interns. In the face of resistance from colleagues, the organisers instead held a ‘swimsuit’ competition. Several participants told *The Wall Street Journal* ‘that they felt humiliated and that they didn’t protest only because they were candidates for year-round jobs with the firm’. A student from Harvard Law School ‘won’ the competition, and was subsequently offered a job at the prestigious firm. ‘She has the body we’d like to see more of’, one partner quipped. Some lawyers defended the incident as an example of the ‘rollicking good fun’ characteristic of the firm’s social events. Other observers called it out for what it was: unacceptable.¹

Six years later, a survey of female lawyers from 250 US law firms found that 60% had been sexually harassed.² In 1992, the American Bar Association adopted Recommendation 117, recognising sexual harassment as a ‘serious problem’ in legal workplaces. In 1994, a San Francisco jury awarded a legal secretary US\$7.1m (£5.5m at the time – more than £10m in real terms) after she was groped by her supervisor, a senior partner with a major international firm. Although damages were halved on appeal, it was thought that the judgment would act as a ‘wake-up call’ for the profession.³ These incidents were by no means isolated to the US. Emerging research in Australia, Canada, the United Kingdom and elsewhere in the 1990s began to reveal sexual harassment and other unacceptable behaviour in legal workplaces.⁴ In one particular incident in London, a junior female lawyer was told to accompany a client to a strip club.⁵

Thirty-six years after the swimsuit competition generated concern, it appears that only limited progress has been made to eliminate sexual harassment, bullying and other unprofessional behaviour from the legal profession. While the nature of such conduct may have changed, it remains pervasive in workplaces. In 2017, the IBA undertook a survey of almost 6,000 legal professionals globally for its *Women in Commercial Legal Practice* report. This was undertaken to understand why, despite the achievement of entry-level gender-parity in many jurisdictions, women remain significantly underrepresented at senior levels in the profession. By June 2017, the results were available. Almost one in three female respondents reported being sexually harassed in their current workplace, while one in two female respondents and one in three male

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- 1 James Stewart, ‘Are Women Lawyers Discriminated Against at Large Law Firms?’ *Wall Street Journal* (New York, 20 December 1983) 1; Nina Burleigh and Stephanie B Goldberg, ‘Breaking the Silence: Sexual Harassment in Law Firms’ (1989) 75 *American Bar Association Journal* 46.
 - 2 Emily Couric, ‘Women in the Large Firms: A High Price of Admission?’ *National Law Journal* (Washington, DC, 11 December 1989) S2.
 - 3 Jane Gross, ‘When the Biggest Firm Faces Sexual Harassment Suit’ *The New York Times* (New York, 29 July 1994) B7.
 - 4 See, eg, Joan Brockman, ‘The Use of Self-Regulation to Curb Discrimination and Sexual Harassment in the Legal Profession’ (1997) 35 *Osgoode Hall Law Journal* 209; Terese Ching and Brian Kleiner, ‘Discrimination and Harassment in Law Firms’ (2001) 20 *Equal Opportunities International* 106; Hilary Sommerlad, ‘Women Solicitors in a Fractured Profession: Intersections of Gender and Professionalism in England and Wales’ (2002) 9 *International Journal of the Legal Profession* 213; Australian Law Reform Commission, *Equality Before the Law: Women’s Equality* (Report 69 Part 2, 1994); Patricia Easteal, *Less Than Equal: Women and the Australian Legal System* (Butterworths, 2001) ch 11.
 - 5 Robert Verkaik, ‘Law: “You Have to Fit in With the Laddish Mentality, or Lose Out”’, *The Independent* (London, 18 February 1998).

respondents had been bullied. When the subsequent report was two months from publication, the Harvey Weinstein scandal broke.⁶ As the #MeToo movement erupted globally, the legal profession was not immune.

In the following year and a half, some of the world's biggest law firms were rocked by the departures of senior partners following sexual harassment allegations. In the UK, the number of reports of sexual harassment to the Solicitors Regulation Authority rose considerably in 2017–18,⁷ while calls regarding bullying and sexual harassment to mental health hotline LawCare almost doubled.⁸ In a case currently before Britain's employment tribunal, a junior solicitor alleged she was forced to attend a sex show with a partner – and had her employment terminated after rebuffing his advances.⁹ In New Zealand, law students took to the streets to protest against rampant sexual harassment following an incident at one prominent firm.¹⁰ In South Korea, allegations of sexual harassment saw a senior prosecutor jailed and kick-started the country's 'own #MeToo movement'.¹¹ In India, a Bombay High Court judge criticised 'the archetypal, nauseating patriarchy of our legal profession'. Although sexual harassment within the profession 'is not discussed', Judge Gautam Patel said, 'it happens everywhere'.¹²

No part of the legal profession has been unaffected by these issues. No less a legal luminary than US Chief Justice John Roberts warned that 'the judicial branch is not immune'.¹³ Indeed, in 2017, an Israeli judge was convicted of sexual harassment offences, having 'cynically exploited his senior position against a young employee'.¹⁴ In Pakistan, the Chief Justice was criticised in 2018 for sexist public comments.¹⁵ Past research also indicated that, in those jurisdictions with a bifurcated bar,

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- 6 Jodi Kantor and Megan Twohey, 'Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades', *The New York Times* (New York, 5 October 2017) www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html accessed 5 April 2019.
 - 7 Suzi Ring and Aine Quinn, 'Sex Misconduct Claims Among UK Lawyers Hit Record After #MeToo', *Bloomberg* (New York, 14 June 2018) www.bloomberg.com/news/articles/2018-06-14/sex-misconduct-claims-among-u-k-lawyers-hit-record-after-metoo accessed 5 April 2019.
 - 8 Richard Simmons, 'Harassment-Related Calls to LawCare Surge in Wake of #MeToo Revelations', *The Lawyer* (London, 22 January 2019) www.thelawyer.com/lawcare-stats-2019-harassment-metoo accessed 5 April 2019.
 - 9 The partner has denied the incident. Zoie O'Brien, 'Married Millionaire, 49, "Constantly Groped" Solicitor, 27, Took Her to an Amsterdam Sex Show and Secretly Filmed Her on a Work Trip to Dubai Before Firing Her Two Hours After She Rebuffed His Sexual Advances, Tribunal Hears', *Daily Mail* (London, 25 February 2019) www.dailymail.co.uk/news/article-6742773/Married-millionaire-49-groped-solicitor-27-took-sex-secretly-filmed-her.html accessed 5 April 2019.
 - 10 Frances Cook, 'Law Students March for End to Sexual Harassment', *New Zealand Herald*, (Auckland, 15 March 2018) www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12012775 accessed 5 April 2019.
 - 11 Suyin Haynes and Aria Hangyu Chen, 'How #MeToo Is Taking on a Life of Its Own in Asia', *Time* (New York, 9 October 2018) <http://time.com/longform/me-too-asia-china-south-korea> accessed 5 April 2019; Choe Sang-Hun, 'Ex-Prosecutor in South Korea #MeToo Case Is Sentenced to 2 Years in Prison', *The New York Times* (New York, 23 January 2019) www.nytimes.com/2019/01/23/world/asia/south-korea-prosecutor-sexual-misconduct.html accessed 5 April 2019.
 - 12 'Judiciary Too Plagued By Rampant Sexism: Bombay HC Judge', *The Times of India* (Mumbai, 12 October 2018) <https://timesofindia.indiatimes.com/india/judiciary-too-plagued-by-rampant-sexism-bombay-hc-judge/articleshow/66189124.cms> accessed 5 April 2019.
 - 13 David Cohen, 'Roberts: Judicial Branch "Not Immune" From Sexual Harassment Issues', *Politico* (Arlington, 31 December 2017) www.politico.com/story/2017/12/31/roberts-judiciary-sexual-harassment-319826 accessed 5 April 2019.
 - 14 Sharon Pulver, 'Former President of Nazareth District Court Convicted of Sexual Harassment', *Haaretz* (Tel Aviv, 8 May 2017) www.haaretz.com/israel-news/premium-former-israeli-judge-convicted-of-sex-harassment-1.5469806 accessed 5 April 2019.
 - 15 'Pakistan's Chief Justice Saqib Nisar Faces Women's Ire On "Skirt" Analogy', *Financial Express* (Noida, 24 January 2018) www.financialexpress.com/world-news/pakistans-chief-justice-saqib-nisar-faces-womens-ire-on-skirt-analogy/1027623 accessed 5 April 2019.

many barristers suffer from bullying and sexual harassment within chambers and in courtrooms.¹⁶ In a lecture in late 2018, British barrister Jo Delahunty QC admitted that ‘what I had previously thought were problems of the past, are very much problems of our present ... We have a duty to change the culture that permits harassment at the Bar’.¹⁷

In some ways, it is not surprising that bullying and sexual harassment are widespread in the profession. Researchers have identified characteristics that increase the likelihood of negative workplace behaviours – these include ‘where leadership is male-dominated... where the power structure is hierarchical, where lower-level employees are largely dependent on superiors for advancement, and where power is highly concentrated in a single person’.¹⁸ These factors describe many, if not most legal workplaces. It may also be that cultural and structural features of the profession, including the pressure of billable hours and the adversarial nature of much legal work, exacerbate the risk of bullying and sexual harassment. Scholar Margaret Thornton has suggested that the ‘hypercompetitiveness’ brought about by the globalisation of the legal market ‘has resulted in increased levels of incivility’.¹⁹ Several bar associations and law societies have conducted jurisdiction-specific research that has demonstrated the prevalence of bullying and sexual harassment in their domestic legal sector.²⁰ In New Zealand, for example, a 2018 survey found that 52% of lawyers had been bullied and 18% of lawyers had been sexually harassed at some point in their working life.²¹ A 2017 report prepared by the Bar Council of England and Wales found that 21% of employed and 12% of self-employed respondent barristers had been bullied or harassed at work in the two years prior to the survey.²²

However, the scale of the problem on a global level remains unclear. Therefore, in early 2018, the IBA set out to undertake the largest-ever international survey on bullying and sexual harassment in the legal profession. It was hoped that the worldwide span of this survey would provide unparalleled insight into the nature, prevalence and impact of these phenomena. The anonymous survey sought to gather a range of quantitative and qualitative data to provide a comprehensive picture of bullying

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- 16 See, eg, Owen Bowcott, ‘Harassment Rife in Chambers and Courts, Barristers’ Group Says’, *The Guardian* (London, 24 May 2018) www.theguardian.com/law/2018/may/24/harassment-rife-chambers-courts-behind-gown-barristers-group-fight-abuse-power accessed 5 April 2019; Freya Michie, ‘Almost Two Thirds of Victoria’s Barristers Say They’re Bullied in the Courtroom’, *ABC* (Sydney, 18 October 2018) www.abc.net.au/news/2018-10-18/barristers-complain-of-bullying-judges-and-magistrates/10393470 accessed 5 April 2019.
 - 17 Jo Delahunty QC, ‘Sexual Harassment at the Bar’ (Speech delivered at Gresham College, London, 29 November 2018).
 - 18 Nancy Gertner, ‘Sexual Harassment and the Bench’ (2018) 71 *Stanford Law Review* 88, 94. See also Kimberly Schneider, John Pryor and Louise Fitzgerald, ‘Sexual Harassment Research in the United States’ in Ståle Einarsen and others (eds), *Bullying and Harassment in the Workplace: Developments in Theory, Research, and Practice* (2nd edn, CRC Press 2011) 245, 250–252; Skye Saunders and Patricia Easteal, ‘The Nature, Pervasiveness and Manifestations of Sexual Harassment in Rural Australia: Does “Masculinity” of Workplace Make a Difference?’ (2013) 40 *Women’s Studies International Forum* 121, 121; Maryam Omari and Megan Paull, ‘“Shut Up and Bill”: Workplace Bullying Challenges for the Legal Profession’ (2014) 20 *International Journal of the Legal Profession* 141, 142.
 - 19 Margaret Thornton, ‘Squeezing the Life Out of Lawyers: Legal Practice in the Market Embrace’ (2016) 25 *Griffith Law Review* 471, 471. See also Suzanne Le Mire and Rosemary Owens, ‘A Propitious Moment? Workplace Bullying and Regulation of the Legal Profession’ (2014) 37 *University of New South Wales Law Journal* 1030.
 - 20 See, eg, the Victorian Bar, ‘Quality of Working Life Survey: Final Report and Analysis’ (October 2018) 16; Colmar Brunton, ‘New Zealand Law Society: Workplace Environment Survey’ (May 2018); Bar Council, ‘Barristers’ Working Lives 2017: Barristers’ Experience of Harassment, Bullying & Discrimination’ (2018); Law Council of Australia, ‘National Attrition and Re-engagement Study’ (NARS) Report’ (2014); Lauren Stiller Rikleen, ‘Survey of Workplace Conduct and Behaviors in Law Firms’ (Women’s Bar Association of Massachusetts, 2018).
 - 21 See Colmar Brunton (n 20) 16, 33.
 - 22 See Bar Council (n 20) 8.

and sexual harassment in legal workplaces. While much contemporary debate has focused on private practice, the survey was designed to include in-house lawyers, advocates, government legal professionals and the judiciary. It is intended that the resulting data will be one small but formative step on the road towards meaningful change.

Sexual harassment

The prevalence of workplace sexual harassment began to be publicly recognised in the 1970s.²³ Sexual harassment is typically defined as involving unwanted sex-related behaviour. While there is ‘no universal definition’, most legal and sociological approaches have similar elements, ‘such as descriptions of the conduct as unwanted or unwelcome, and which has the purpose or effect of being intimidating, hostile, degrading, humiliating or offensive’.²⁴ To take one indicative example, from the Supreme Court of Canada: ‘Sexual harassment in the workplace is unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences... By requiring an employee, male or female, to contend with unwelcome sexual actions... sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being’.²⁵ While it takes many forms, sexual harassment is predominantly ‘a question of power and not sex’.²⁶ Today, the prevention of sexual harassment is a prominent international issue, and in a majority of jurisdictions globally, the conduct is legislatively prohibited. In the past decade alone, 35 countries introduced relevant laws.²⁷

Sexual harassment has profound effects. This conduct has direct professional, psychological and financial implications for individual targets.²⁸ It has been linked to reduced job satisfaction, commitment and productivity, as well as absenteeism, deteriorating relationships with colleagues and withdrawal from the workplace.²⁹ Sexual harassment can also cause depression, anxiety and other health issues.³⁰ At an organisational level, the consequences of sexual harassment include higher employee turnover, increased recruitment, training and development costs and possible litigation.³¹

23 Paula McDonald, ‘Workplace Sexual Harassment 30 Years on: A Review of the Literature’ (2011) 14 *International Journal of Management Reviews* 1, 2; Catharine MacKinnon, ‘Directions in Sexual Harassment Law’ (2007) 31 *Nova Law Review* 225, 226–227.

24 See McDonald (n 23) 2.

25 *Janzen v Platy Enterprises Ltd* (1989) 1 SCR 1252, 1253.

26 Law Council of Australia, ‘National Inquiry into Sexual Harassment in Australian Workplaces’ (Submission to Australian Human Rights Commission) 26 February 2019, 26.

27 World Bank Group, ‘Women, Business and the Law 2019: A Decade of Reform’ (2019). Note, however, that 68 countries still do not provide workplace-specific legislative prohibitions on sexual harassment: World Policy Analysis Center, ‘Preventing Gender-Based Workplace Discrimination and Sexual Harassment: New Data on 193 Countries’ (2017) 3.

28 See McDonald (n 23) 4. See also Jennifer Freyd, ‘When Sexual Assault Victims Speak Out, Their Institutions Often Betray Them’, *The Conversation* (London, 11 January 2018) <https://theconversation.com/when-sexual-assault-victims-speak-out-their-institutions-often-betray-them-87050> accessed 5 April 2019.

29 See McDonald (n 23) 4; Heather McLaughlin, Christopher Uggen and Amy Blackstone, ‘The Economic and Career Effects of Sexual Harassment on Working Women’ (2017) 31 *Gender & Society* 333, 335.

30 See Chelsea Willness, Piers Steel and Kibeom Lee, ‘A Meta-Analysis of the Antecedents and Consequences of Workplace Sexual Harassment’ (2007) 60 *Personnel Psychology* 127, 138–139; Morten Birkeland Nielsen and Ståle Einarsen, ‘Prospective Relationships Between Workplace Sexual Harassment and Psychological Distress’ (2012) 62 *Occupational Medicine* 226, 226–228.

31 See McDonald (n 23) 4.

In 2015, sexual harassment complaints filed in the US Equal Employment Opportunity Commission were estimated to have cost organisations US\$46m (£35m).³² Another study estimated that for each employee who experienced sexual harassment, the associated productivity loss costs their employer on average US\$22,500 (£17,000).³³ Alongside these direct costs, failure to take action to address a culture of sexual harassment can harm an organisation's reputation.³⁴

Bullying

Workplace bullying is typically understood as exposure to aggressive behaviour or incivility by supervisors, colleagues or third parties.³⁵ Like sexual harassment, cultural and legal recognition of workplace bullying is a relatively recent phenomenon. The first research into workplace bullying, referred to as 'mobbing', took place in Norway in 1973.³⁶ Today, regulatory responses to bullying and perceptions of acceptable office behaviour vary widely across jurisdictions.³⁷ In Australia, for example, if 'an individual or group of individuals repeatedly behaves unreasonably towards a worker or a group of workers at work' and that behaviour 'creates a risk to health and safety', employees are empowered to seek 'stop bullying' orders from a workplace tribunal.³⁸ However, in many jurisdictions, there are no standalone legal prohibitions against bullying. Cultural differences occur not only at a societal level but also between organisations and workplace culture has been shown to impact rates of bullying.³⁹ Factors including low job autonomy, high workload and role ambiguity are associated with higher rates of bullying.⁴⁰ Conversely, 'constructive leadership, perceived organisational support and organisational anti-bullying policies' can mitigate the effects of workplace bullying and reduce its prevalence.⁴¹

32 See McLaughlin, Uggen and Blackstone (n 29) 335.

33 See Willness, Steel and Lee (n 30) 127–162.

34 See McLaughlin, Uggen and Blackstone (n 29) 335; Serena Does, Seval Gundemir and Margaret Shih, 'Research: How Sexual Harassment Affects a Company's Public Image', *Harvard Business Review* (Brighton, 11 June 2018), <https://hbr.org/2018/06/research-how-sexual-harassment-affects-a-companys-public-image> accessed 5 April 2019.

35 Helge Hoel and Maarit Vartia, 'Bullying and Sexual Harassment at the Workplace, in Public Spaces, and in Political Life in the EU' (European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Women's Rights and Gender Equality (FEMM), March 2018) 12.

36 Chantal Gautier, 'Are You a Bully? Here's How to Tell', *The Conversation* (London, 1 November 2018) <https://theconversation.com/are-you-a-bully-heres-how-to-tell-105874> accessed 5 April 2019.

37 See, eg, Katherine Lippel, 'The Law of Workplace Bullying: An International Overview' (2010) 32 *Comparative Labor Law & Policy Journal* 1–14; Jacqueline Power and others, 'Acceptability of Workplace Bullying: A Comparative Study on Six Continents' (2013) 66 *Journal of Business Research* 374, 374–379.

38 Fair Work Act 2009 (Australia) s 789FD(1). The effectiveness of this mechanism has been questioned by Allison Ballard and Patricia Easteal, 'The Secret Silent Spaces of Workplace Violence: Focus on Bullying (and Harassment)' (2018) 7(35) *Laws* 1, 7.

39 Irena Pilch and Elżbieta Turska, 'Relationships Between Machiavellianism, Organizational Culture, and Workplace Bullying: Emotional Abuse from the Target's and the Perpetrator's Perspective' (2015) 128 *Journal of Business Ethics* 83, 85. See also Nathan Bowling and Terry Beehr, 'Workplace Harassment from the Victim's Perspective: A Theoretical Model and Meta-Analysis' (2006) 91 *Journal of Applied Psychology* 998, 999; Stig Berge Matthiesen and Ståle Einarsen, 'MMPI-2 Configurations Among Victims of Bullying at Work' (2001) 10 *European Journal of Work and Organizational Psychology* 467, 469; Mogens Agervold, 'The Significance of Organizational Factors for the Incidence of Bullying' (2009) 50 *Scandinavian Journal of Psychology* 267, 274.

40 M Sandy Hershcovis, Tara C Reich and Karen Niven, 'Workplace Bullying: Causes, Consequences, and Intervention Strategies' (Society for Industrial and Organizational Psychology White Paper Series, 2015) 8.

41 Vivien Kemp, 'Antecedents, Consequences and Interventions for Workplace Bullying' (2014) 27 *Current Opinion in Psychiatry* 364, 366, citing Helena Cooper-Thomas and others, 'Neutralizing Workplace Bullying: The Buffering Effects of Contextual Factors' (2013) 28 *Journal of Managerial Psychology* 384, 384–407.

Workplace bullying has substantial detrimental effects for targets, their colleagues and the workplace generally. For the target, bullying can have severe health implications and is associated with increased psychological stress, depression, anxiety and burnout.⁴² It has also been linked to a higher risk of cardiovascular health problems and sleep issues.⁴³ At an organisational level, bullying contributes to workplace dysfunction.⁴⁴ Research has shown that bullying affects productivity and profitability.⁴⁵ In 2015, the Advisory, Conciliation and Arbitration Service estimated that workplace bullying costs Britain's economy £18bn each year.⁴⁶

Distinct but related

The distinction between bullying and sexual harassment is not always clear.⁴⁷ The terms are often used interchangeably, especially when 'sexual' is omitted and the label 'harassment' is used more broadly. This carries risks: given the differences between bullying and sexual harassment, merged efforts to address them may prove ineffective. Feminist scholars have argued 'it is vital not to conflate types of harassment in a way which obscures distinctive dynamics'.⁴⁸ While this report has grouped the two forms of conduct for both conceptual and practical reasons (as have other significant pieces of research in the area),⁴⁹ it proceeds aware of their differences and the risk of conflation. It should also be noted that the concept of sexual harassment is not confined to overtly sexualised behaviour and includes sex-based harassment (such as sexist comments).⁵⁰

This report is conscious that gender and other individual characteristics – including race, age, sexual preference and physical ability – influence experiences of bullying and sexual harassment. Women are disproportionately affected by both bullying and sexual harassment.⁵¹ However, these are not 'women's issues'. One in three male respondents to the survey indicated that they had experienced bullying, and one in 14 male respondents had been sexually harassed. This report demonstrates that bullying and sexual harassment affect all genders, both directly (as targets) and indirectly because of the adverse

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- 42 See Kemp (n 41) 366; Margaret Hodgins, Sarah MacCurtain and Patricia Mannix McNamara, 'Workplace Bullying and Incivility: A Systematic Review of Interventions' (2014) 7 *International Journal of Workplace Health Management* 54, 55.
 - 43 Tianwei Xu and others, 'Workplace Bullying and Workplace Violence as Risk Factors for Cardiovascular Disease: A Multi-Cohort Study' (2019) *European Heart Journal* 1124–1134; Hershcovis, Reich and Niven (n 40) 9–10.
 - 44 See Kemp (n 41) 366; Steven Appelbaum, Gary Semerjian and Krishan Mohan, 'Workplace Bullying: Consequences, Causes and Controls (Part One)' (2012) 44 *Industrial and Commercial Training* 203, 205.
 - 45 See Kemp (n 41) 366.
 - 46 Acas, 'Acas Study Reveals that Workplace Bullying is on the Rise with Many People Too Afraid to Talk About It' (16 November 2015) www.acas.org.uk/index.aspx?articleid=5543 accessed 5 April 2019.
 - 47 Carol Jones, 'Drawing Boundaries: Exploring the Relationship Between Sexual Harassment, Gender and Bullying' (2006) 29 *Women's Studies International Forum* 147; Carlo Caponecchia and Anne Wyatt, 'Distinguishing Between Workplace Bullying, Harassment and Violence: A Risk Management Approach' (2009) 25 *Journal of Occupational Health and Safety, Australia and New Zealand* 439.
 - 48 Deborah Lee, 'Bully for Men' (2001) 42 *Trouble and Strife* 48, 51; Deborah Lee, '"He Didn't Sexually Harass Me, As in Harassed for Sex... He Was Just Horrible": Women's Definitions of Unwanted Male Sexual Conduct at Work' (2001) 24(1) *Women's Studies International Forum* 25.
 - 49 See Hoel and Vartia (n 35) 11–14.
 - 50 See generally Margaret Thornton, 'Sexual Harassment Losing Sight of Sex Discrimination' (2002) 26 *Melbourne University Law Review* 422; *O'Callaghan v Loder* [1983] 3 NSWLR 89 (Australia).
 - 51 As are non-binary members of the profession. Of the 14 survey respondents who identified as non-binary or self-defined, 71% had been bullied and 43% had been sexually harassed – albeit the small sample size means it is not possible to draw broader conclusions from these results.

workplace impacts. Comparative research in the education sector has found that ‘an environment of bullying drags everyone’s achievement down, not just that of the victims’.⁵²

Not alone

The legal profession is not atypical in facing these issues. A 2018 report of the European Parliament on bullying and sexual harassment found that, at any one time, five to ten per cent of the European workforce is subjected to bullying at work.⁵³ In 2018, the Australian Human Rights Commission found that 20% of Australian workers had been sexually harassed in the workplace within the past 12 months.⁵⁴ There is also increasing awareness of the problem internationally. For example, the International Labour Organization has engaged with the issue of violence and harassment at work and there have been calls for an international convention to ‘signal without ambiguity that violence and harassment is unacceptable and the antithesis of decent work and... demands serious and urgent attention’.⁵⁵

Industries including healthcare,⁵⁶ accounting,⁵⁷ finance,⁵⁸ engineering⁵⁹ and technology⁶⁰ have all been shaken by reports of workplace bullying and sexual harassment in recent years. The ‘Big Four’ accounting firms recently revealed that, over the past four years, dozens of partners resigned or were dismissed following allegations of inappropriate behaviour.⁶¹ In 2018, Google employees in offices

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- 52 Yekaterina Chzhen, ‘School Bullying Harms Everyone, Not Just the Victims’, United Nations International Children’s Emergency Fund (UNICEF), 12 November 2018, www.unicef-irc.org/blogposts/79 accessed 5 April 2019; UNICEF, ‘An Unfair Start: Inequality in Children’s Education in Rich Countries’ (Innocenti Report Card 15, 2018).
 - 53 See Hoel and Vartia (n 35) 8.
 - 54 Australian Human Rights Commission, ‘Everyone’s Business: Fourth National Survey on Sexual Harassment in Australian Workplaces’ (2018) 25.
 - 55 International Labour Office, ‘Ending Violence and Harassment Against Women and Men in the World of Work’ (1st edn, International Labour Organization, 107th session, 2018) 100; International Labour Office, ‘Ending Violence and Harassment Against Women and Men in the World of Work’ (2nd edn, International Labour Organization 107th session, 2018) 9.
 - 56 See, eg, Wendy Crebbin and others, ‘Prevalence of Bullying, Discrimination and Sexual Harassment in Surgery in Australasia’ (2015) 85 *ANZ Journal of Surgery* 905, 905–907; Paula Johnson, Sheila Widnall and Frazier Benya, *Sexual Harassment of Women: Climate, Culture and Consequences in Academic Sciences, Engineering, and Medicine* (Washington, DC, The National Academies Press 2018); Rhea Liang, Tim Dornan and Debra Nestel, ‘Why do Women Leave Surgical Training: A Qualitative and Feminist Study’ (2019) 393 *The Lancet* 541; Sarah Marsh, ‘Bullying and Sexual Harassment “Endemic” in NHS Hospitals’, *The Guardian* (London, 24 February 2019) www.theguardian.com/society/2019/feb/24/bullying-sexual-harassment-nhs-hospitals accessed 5 April 2019.
 - 57 See, eg, Madison Marriage, ‘Accounting Watchdog Criticised Over Stance on Sexual Harassment’, *Financial Times* (London, 13 December 2018) www.ft.com/content/0cd6827e-fe33-11e8-ac00-57a2a826423e accessed 5 April 2019.
 - 58 See, eg, Motoko Rich, ‘Top Finance Official in Japan Resigns Over Harassment Accusations’, *The New York Times* (London, 18 April 2018) www.nytimes.com/2018/04/18/world/asia/japan-sexual-harassment-junichi-fukuda.html accessed 5 April 2019; Jamie Smyth, ‘ANZ sacks banker over sexual harassment’, *Financial Times* (London, 29 November 2017) www.ft.com/content/91b77352-d4ba-11e7-8c9a-d9c0a5c8d5c9 accessed 5 April 2019.
 - 59 See, eg, Johnson, Widnall and Benya (n 56); Society of Women Engineers, ‘Report: Half of All Women in Engineering Schools Experience Sexual Harassment’, *Associated Press News* (New York, 19 October 2018) www.apnews.com/19d55b2579fd7421be5970840a3ba532 accessed 5 April 2019.
 - 60 See, eg, Julie Bort, ‘A LOT of Tech Workers Are Being Bullied at Work’, *Business Insider* (New York, 18 February 2015) www.businessinsider.com/it-pros-bullied-at-work-2015-2?r=US&IR=T accessed 5 April 2019; Brinda Sarkar, ‘#MeToo in Tech: 87% Women Would Opt Out of a Firm If Sexual Harassment Takes Place, Reveals Survey’, *The Economic Times* (Mumbai, 25 March 2019) <https://economictimes.indiatimes.com/magazines/panache/metoo-in-tech-87-women-would-opt-out-of-a-firm-if-sexual-harassment-takes-place-reveals-survey/articleshow/68558526.cms> accessed 5 April 2019.
 - 61 Kaya Burgess and Tabby Kinder, ‘Revealed: 37 Partners at Big Four Accounting Firms Leave Over Sex and Bullying Claims’, *The Times* (London, 11 December 2018) www.thetimes.co.uk/article/revealed-37-partners-at-big-four-accounting-firms-leave-over-sex-and-bullying-claims-cr2stzd0f accessed 5 April 2019.

all over the world staged a walkout, beginning in Singapore, to protest gender inequality and the company's reaction to workplace sexual harassment.⁶² In the same year, more than 20 intellectuals and media personalities were accused of sexual misconduct in China,⁶³ while in India, a high-profile billionaire resigned after an investigation into allegations of sexual harassment.⁶⁴ Movements like #MeToo have not been universal, though, and some jurisdictions have seen a significant backlash.⁶⁵

The prevalence of these issues in other professions indicates that workplace bullying and sexual harassment have societal and structural causes. That bigger picture should inform the legal profession's response and encourage us to collaborate with other sectors in addressing these issues. It is not an excuse. The New Zealand Law Society's President, Kathryn Beck, explained in an open letter in 2018: 'A natural response is to ask what happens in other businesses and professions. That would be to deflect from the real issue. We can't afford to do that'.⁶⁶ While the legal profession may not be unique in facing these challenges, this report is about the profession, and the profession alone has responsibility for addressing bullying and sexual harassment within our workplaces.

Structure and terminology

This report begins by explaining the research methodology adopted, before outlining survey demographics. It then proceeds with three primary sections: bullying; sexual harassment; and policies and training aimed at addressing and preventing this conduct. Each section draws extensively on survey data to provide a comprehensive examination of the nature, prevalence and impact of these forms of conduct within the profession. Throughout these sections, qualitative responses to the survey are included to add personal perspectives. Where necessary, these were edited to decrease the risk of the respondent or their workplace being identifiable. Next, the report assesses the data for nine jurisdictions – Australia, Brazil, Costa Rica, Malaysia, Russia, South Africa, Sweden, the UK and the US – to highlight regional trends and divergences. Finally, it articulates ten recommendations, informed by the literature, survey data and stakeholder engagement during this research, and outlines steps the IBA will take to advance each recommendation. For transparency, the survey questions are extracted

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- 62 'Google Staff Walk Out Over Harassment, Inequality', *The Straits Times* (Singapore, 2 November 2018) www.straitstimes.com/world/united-states/google-staff-walk-out-over-harassment-inequality accessed 5 April 2019; Matthew Weaver and others, 'Google Walkout: Global Protests After Sexual Misconduct Allegations', *The Guardian* (London, 1 November 2018) www.theguardian.com/technology/2018/nov/01/google-walkout-global-protests-employees-sexual-harassment-scandals accessed 5 April 2019.
- 63 Maria Repnikova and Weile Zhou, '#MeToo Movement in China: Powerful Yet Fragile', *Al Jazeera*, (Doha, 22 October 2018) www.aljazeera.com/indepth/opinion/metoo-movement-china-powerful-fragile-181022082126244.html accessed 5 April 2019; Lily Kuo, '#MeToo in China: Movement Gathers Pace Amid Wave of Accusations', *The Guardian* (London, 31 July 2018) www.theguardian.com/world/2018/jul/31/metoo-in-china-movement-gathers-pace-amid-wave-of-accusations accessed 5 April 2019.
- 64 Megha Bahree, 'Flipkart CEO Binny Bansal Resigns After Probe Into Personal Misconduct', *Forbes* (Jersey City, 13 November 2018) www.forbes.com/sites/meghabahree/2018/11/13/flipkart-ceo-binny-bansal-resigns-after-probe-into-personal-misconduct accessed 5 April 2019.
- 65 See, eg, Karla Adam and William Booth, 'A Year After it Began, Has #Metoo Become a Global Movement?' *The Washington Post* (Washington, DC, 5 October 2018) www.washingtonpost.com/world/a-year-after-it-began-has-metoo-become-a-global-movement/2018/10/05/1fc0929e-c71a-11e8-9c0f-2ffaf6d422aa_story.html accessed 5 April 2019; Lynsey Chutel, 'The #MeToo Movement Should Listen to the Silence of African Women', *Quartz Africa* (New York, 23 December 2018) <https://qz.com/africa/1501088/the-metoo-movement-should-listen-to-the-silence-of-african-women> accessed 5 April 2019; Repnikova and Zhou (n 63).
- 66 New Zealand Law Society, 'Letter from Kathryn Beck to All New Zealand Lawyers', 30 May 2018, www.lawsociety.org.nz/news-and-communications/latest-news/embracing-the-power-of-real-disruption accessed 5 April 2019.

in an appendix. A comparative summary of different approaches to regulating bullying and sexual harassment is also appended.

An explanation of terminology is required. Throughout this report, ‘target’ is used to refer to survey respondents who reported experiencing bullying or sexual harassment. Target is used rather than ‘victim’, in light of the pejorative connotations often associated with the latter term. ‘Perpetrator’ refers to those alleged to have bullied or sexually harassed – it is not intended to suggest a finding of civil, criminal or administrative liability. All percentages and decimals cited in this report have been rounded to the nearest whole number. Throughout the report, differences between figures are expressed in terms of percentages or percentage points. It is useful to clarify the difference between these phrases. Say, for example, that 10% of female respondents and 20% of male respondents had witnessed sexual harassment.⁶⁷ Female respondents would be 50% less likely than male respondents to have witnessed harassment (because twice as many male respondents had witnessed this conduct). However, female respondents would be only ten percentage points less likely to have witnessed harassment (20% minus 10%).

⁶⁷ These figures are examples only. For actual data, see the Sexual Harassment chapter.

Methodology

In late June 2018, the IBA – in conjunction with market research company Acritas – launched a global survey on bullying and sexual harassment in the legal profession. The online survey was available in six languages: English, French, Italian, Portuguese, Russian and Spanish. The survey, which is extracted in Appendix 1, began by asking for demographic data: gender; age; jurisdiction; and workplace type. For those who worked at law firms, additional questions were asked about size of firm, their role and length of employment. Respondents were asked about the prevalence of policies and training at their workplaces aimed at addressing bullying and sexual harassment. They were then asked whether they had experienced bullying and/or sexual harassment during their career. If they had, respondents could answer a range of further questions about the nature of different incidents of bullying or sexual harassment and their impact. If they had not, respondents were asked whether they had witnessed such conduct in the workplace. At various points, respondents were given an option to provide qualitative comments.

The survey was distributed widely: through emails to IBA members, social media posts and promotional material. The IBA also contacted every IBA member bar association, law society and group member law firm, asking them to raise awareness about the survey among their members and employees. The survey was open to all members of the profession – IBA membership was not a requirement. The survey was anonymous and no identifying information was sought. Neither the IBA nor Acritas is able to identify individual respondents or their workplaces. Internet Protocol (IP) addresses were captured to ensure survey integrity and prevent multiple completions by the same respondent. The survey closed in October 2018, having been open for approximately four months.

Two primary methods have been adopted by past surveys on bullying and sexual harassment.⁶⁸ The self-labelling method asks respondents to apply the label of bullying or sexual harassment to their own experiences, without providing detailed guidance about the meaning of those labels. The behavioural method, on the other hand, provides respondents with a list of behaviours and asks whether they have experienced those behaviours. The present survey combined these methods by first asking whether the respondent had experienced bullying or sexual harassment, and then providing a list of indicative behaviours (including an ‘other’ option). While a broad legal definition of harassment was provided at the start of the survey for guidance, the survey did not seek to only capture bullying or sexual harassment that might be legally actionable. Past research has found that questions predicated on a legal definition of such conduct can lead to underreporting.⁶⁹ It should be emphasised that the rates of bullying and sexual harassment highlighted by this report cannot be equated with the prevalence of conduct that could give rise to liability.

⁶⁸ See Hoel and Vartia (n 35) 15.

⁶⁹ Remus Ilies and others, ‘Reported Incidence Rates of Work-Related Sexual Harassment in the United States: Using Meta-Analysis to Explain Reported Rate Disparities’ (2003) 56(3) *Personnel Psychology* 607.

Survey research, like any method of inquiry, is subject to certain limitations, and researchers should be transparent about potential shortcomings.⁷⁰ Quantitative research is ‘very good at describing the problem, but not as good at explaining why or how the problem exists’.⁷¹ The findings of this report are predominantly descriptive and correlative – it is difficult with the present data to draw firm conclusions about causation. However, these limitations do not diminish this report’s significance. As early pioneers of quantitative legal research noted, the resulting statistics ‘are not an end in themselves but are intended to present a foundation for more detailed consideration’.⁷² Notwithstanding a number of important country-specific studies referred to above, there is an absence of global data concerning these phenomena. This report is therefore a necessary starting point.

Nonresponse bias

An additional limitation is the risk of nonresponse bias. Nonresponse bias is a recognised phenomenon in survey research, which occurs ‘when the likelihood of responding [to a survey] is correlated with the variable(s) being measured’.⁷³ In promotional material regarding the survey, it was made clear that responses were sought from all members of the profession, not only those who had suffered from bullying or sexual harassment. Nevertheless, some respondents expressed concern that targets would be more likely to respond to the survey than those who had not experienced bullying or sexual harassment.⁷⁴ The degree of nonresponse bias in a survey can be analysed in a number of ways, including through comparison of survey results with other data sources,⁷⁵ replication of the survey and ‘comparison of the sample and population’.⁷⁶ There is a lack of comprehensive demographic data about the global legal profession. Women responded to the survey at higher rates than men, which indicates a degree of nonresponse bias. Poststratification – weighting survey data to match demographics in the population surveyed – can decrease nonresponse bias.⁷⁷ At various points, where data varied significantly between genders, the report weights the data to reflect this. The IBA has compared the data from this survey with other data sources, including its 2017 *Women in Commercial Legal Practice* report.⁷⁸ The results of that survey, which did not have a specific bullying and sexual harassment focus, were broadly

70 See generally Kevin Wright, ‘Researching Internet-Based Populations: Advantages and Disadvantages of Online Survey Research, Online Questionnaire Authoring Software Packages, and Web Survey Services’ (2005) 10 *Journal of Computer-Mediated Communication*, available at <https://academic.oup.com/jcmc/article/10/3/JCMC1034/4614509> accessed 1 May 2019.

71 See Liang, Dornan and Nestel (n 56) 541.

72 Note, ‘The Supreme Court, 1948 Term’ (1949) 63 *Harvard Law Review* 119.

73 Daniel Merkle, ‘Nonresponse Bias’ in Paul Lavrakas (ed), *Encyclopedia of Survey Research Methods* (SAGE Publications 2008) 531.

74 This concern is not unique to the present survey. As *The Economist* explained of a recent survey of economists: ‘It is possible that the sample is biased, pushing up the apparent frequency of discrimination. The disgruntled may have been especially keen to have their say.’ However, this nonresponse bias might be balanced by a countervailing bias: ‘Against that, the survey may have struggled to reach those who had been so discouraged by their experience that they had left the profession altogether’: ‘A Dispiriting Survey of Women’s Lot in University Economics’, *The Economist* (London, 23 March 2019) www.economist.com/finance-and-economics/2019/03/23/a-dispiriting-survey-of-womens-lot-in-university-economics accessed 5 April 2019.

75 Timothy Johnson and Joseph Wislar, ‘Response Rates and Nonresponse Errors in Surveys’ (2012) 307 *Journal of the American Medical Association* 1805, 1805–1806 cited in Michael Davern, ‘Nonresponse Rates are a Problematic Indicator of Nonresponse Bias in Survey Research’ (2013) 48 *Health Services Research* 905, 909.

76 Jonathon Halbesleben and Marilyn Whitman, ‘Evaluating Survey Quality in Health Services Research: A Decision Framework for Assessing Nonresponse Bias’ (2013) 48 *Health Services Research* 913, 913–930.

77 See Merkle (n 73) 532.

78 Jane Ellis and Ashleigh Buckett, ‘Women in Commercial Legal Practice’ (International Bar Association, December 2017).

consistent with the findings of the current research; indicating that nonresponse bias did not have a material effect on the quality of this survey data.⁷⁹

Perception paradox

A theme that will emerge throughout this report is the notion of a ‘perception paradox’, whereby jurisdictions typically viewed as ‘progressive’ in addressing issues of bullying and sexual harassment have higher reported rates of such conduct than elsewhere. Cultural norms influence individual perceptions of bullying and sexual harassment, and this survey was undertaken on a subjective basis.⁸⁰ Accordingly, broad societal awareness of these issues and commonplace workplace utilisation of policies and training may have contributed to above-average reported rates in certain jurisdictions and workplace types. In other words, it is possible that the reported prevalence of bullying and sexual harassment in these places approximately aligns with the absolute or objective rate of such conduct (to the extent that such a concept is measurable), while in places with lower reported rates, there may be a disparity between perception and reality. Other research has found that ‘reports of bullying often rise following the introduction of a new [anti-bullying] intervention’, perhaps due to an increased awareness of what constitutes bullying.⁸¹ Similar trends have been observed in anti-corruption contexts, where the introduction of anti-corruption regulation has coincided with an increase in the perception of corruption. It has been suggested that this is not due to an absolute rise in corruption but because the introduction of the law increases societal awareness.⁸²

Figure 1 illustrates this trend. It plots the gender-weighted rates of bullying and sexual harassment for Australia, Norway and Russia, according to the survey data. These three jurisdictions were selected based on their varying performance on the United Nations Development Programme’s 2017 Gender Inequality Index as a proximate measure for societal gender equality. In light of research indicating that certain unacceptable workplace behaviour is more common in male-dominated workplaces, and this report’s findings that women are disproportionately affected by this conduct, it can be posited that there is a correlation between gender inequality and rates of sexual harassment and bullying.⁸³ Norway is one of the best performing countries globally – ranking fifth in the world for gender equality. Australia sits at 23rd and Russia is 53rd. Figure 1 suggests that Australian legal workplaces are rife with bullying and sexual harassment, while Norway and Russia have civil and respectful legal workplaces. This may be accurate. However, an alternative explanation is that each jurisdiction’s progress in addressing bullying and sexual harassment corresponds roughly with their Gender Inequality Index score, but that the perception paradox

79 *Ibid* 34.

80 One study examined the impact of culture on the acceptability of workplace bullying, finding that definitions of bullying and perceptions of acceptable behaviour vary globally: Power and others (n 37) 376. Similarly, research suggests that the extent to which employees identify incidents of sexual behaviour as sexual harassment is influenced by the existence/implementation of workplace policies addressing sexual harassment, political events, the extent to which public institutions support anti-discrimination legislation and other cultural factors: McDonald (n 23) 3.

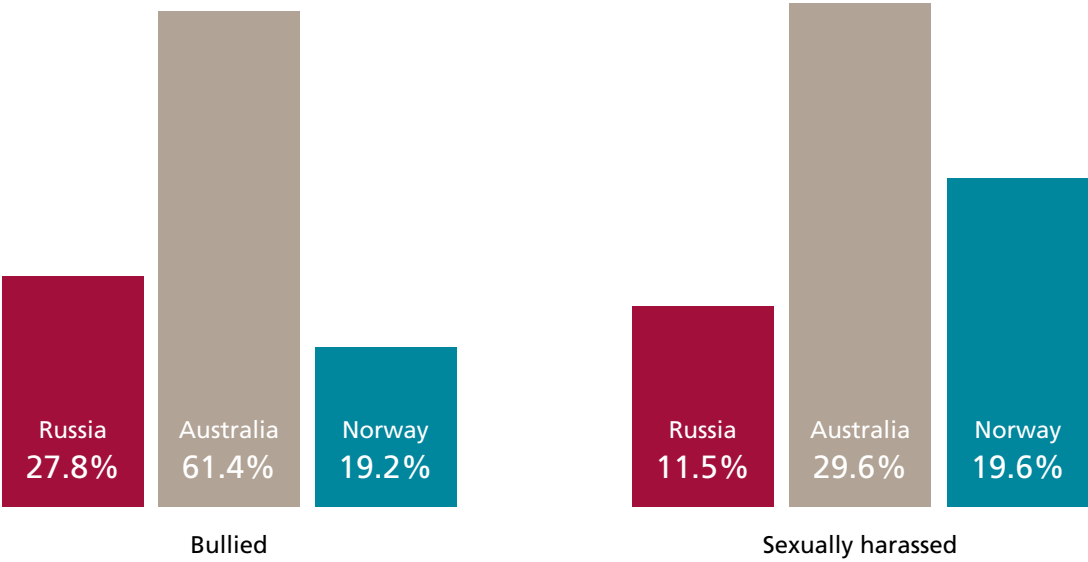
81 Patricia Gillen and others, ‘Interventions for Prevention of Bullying in the Workplace’ (2017) 1 Cochrane Database of Systematic Reviews 1, 8.

82 Analysis of corruption perception in the European Union has also found that particular political scandals often result in an increased perception of corruption: Jennifer Marek, ‘Evaluating Determinants of Perceptions of Corruption in the European Union’ (MA Thesis, University of North Carolina 2012) 41.

83 See Gertner (n 18) 94; McDonald (n 23) 3; Dieter Zapf and others, ‘Empirical Findings on Prevalence and Risk Groups of Bullying in the Workplace’ in Ståle Einarsen and others (eds), *Bullying and Harassment in the Workplace: Developments in Theory, Research, and Practice* (2nd edn, CRC Press 2011) 75, 80.

inhibits a clear visualisation via the data. It may be that the prevalence of such conduct in Russia is higher than the data suggests, while the Australian and Norwegian data is reflective of reality – with Norway performing much better in addressing these issues.

Figure 1: perception paradox*



*Gender-weighted

Demographics

Gender

A total of 6,980 respondents completed the survey. This is the largest survey by response rate ever conducted by the IBA. A total of 4,651 survey respondents were female, 2,261 were male, 54 preferred not to specify and 14 were non-binary or self-defined – see Figure 2. There are no available gender statistics for the entirety of the global legal profession. A 2013 study suggested that women accounted for 36% of lawyers globally, albeit the accuracy of the methodology adopted – critical mass theory – has been questioned.⁸⁴ This figure correlates with the most recent data from the American Bar Association.⁸⁵ However, in England and parts of Australia, more than 50% of practising lawyers are female.⁸⁶ Additionally, women are typically overrepresented in secretarial and business support roles.⁸⁷ Given the gendered aspect of some of the phenomena under consideration, and because of the overrepresentation of women as survey respondents, at various points this report adopts a gender-weighted average on the basis of a 1:1 ratio. The adoption of this assumption of gender parity in the profession is inexact, particularly as gender ratios vary widely by region. Notwithstanding that caveat, it provides a helpful proxy indicator for how these issues manifest in workplaces at a macro level.⁸⁸

Given the lack of data on non-binary/self-defined individuals in the profession, and the limited sample size in this survey, no allowances for this category were made in the gender-weighted calculation. This was done for pragmatic purposes and is not intended to discount the particular challenges faced by non-binary/self-defined individuals in relation to bullying and sexual harassment. Further research in this area is welcomed.

84 Ethan Michelson, 'Women in the Legal Profession, 1970–2010: A Study of the Global Supply of Lawyers' (2013) 20 *Indiana Journal of Global Legal Studies* 1083, 1119; Drude Dahlerup 'The Story of the Theory of Critical Mass' (2006) 2 *Politics & Gender* 511.

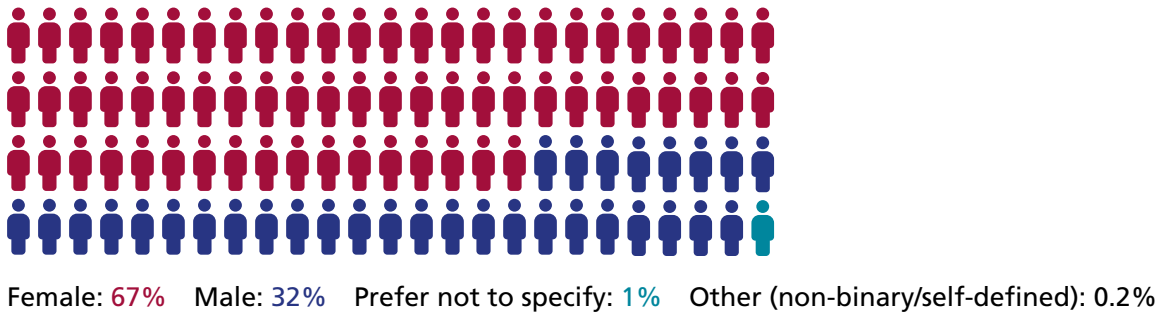
85 American Bar Association, 'ABA National Lawyer Population Survey: 10-Year Trend in Lawyer Demographics' (2018) www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Population_Demographics_2008-2018.pdf accessed 5 April 2019.

86 Law Society of England and Wales, *Annual Statistics Report 2017* (18 June 2018) www.lawsociety.org.uk/support-services/research-trends/annual-statistics-report-2017 accessed 5 April 2019; Law Society of New South Wales, 'Practising Solicitor Statistics' (31 December 2018) www.lawsociety.com.au/sites/default/files/2019-01/201812%20Practising%20Solicitor%20Statistics%20-%20Dec%202018.pdf accessed 5 April 2019.

87 See, eg, Office for National Statistics, *Understanding the Gender Pay Gap in the UK* (17 January 2018) www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/understandingthegenderpaygapintheuk/2018-01-17 accessed 5 April 2019.

88 As noted statistician George EP Box once observed, 'all models are wrong, but some are useful'.

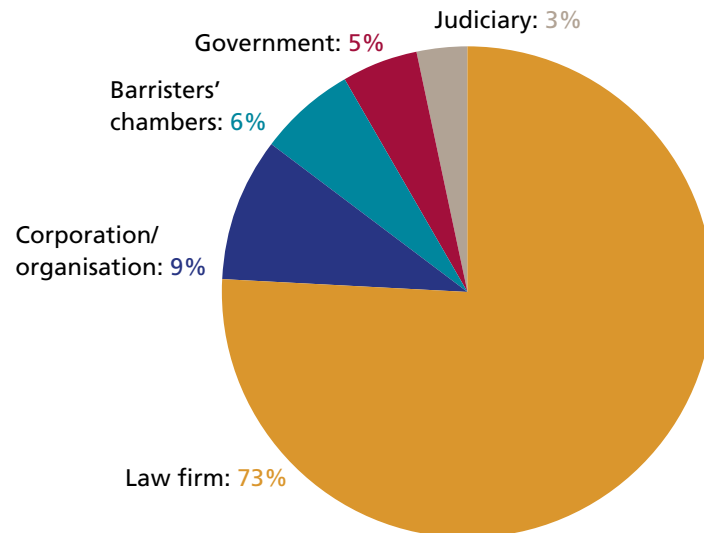
Figure 2: gender of survey respondents



Workplace

‘Law firm’ was the most common workplace (at 73% – see Figure 3). This reflects IBA membership demographics and is unsurprising, given the primary distribution channels. Response rates were lower from in-house lawyers and government lawyers (at 9% and 5% respectively). Although the legal profession is unified in many jurisdictions, a separate category (barristers’ chambers) was included. This was considered necessary given the qualitatively different nature of those workplaces from law firms in jurisdictions with a bifurcated bar. There were a small number of responses from the judiciary (‘including courts and tribunals’). This category did not distinguish between members of the judiciary and their administrative staff. Finally, there were a small number of respondents who selected ‘other’, including legal academics and those in other law-related fields that were not encapsulated by the five main options.

Figure 3: workplace of survey respondents



Language

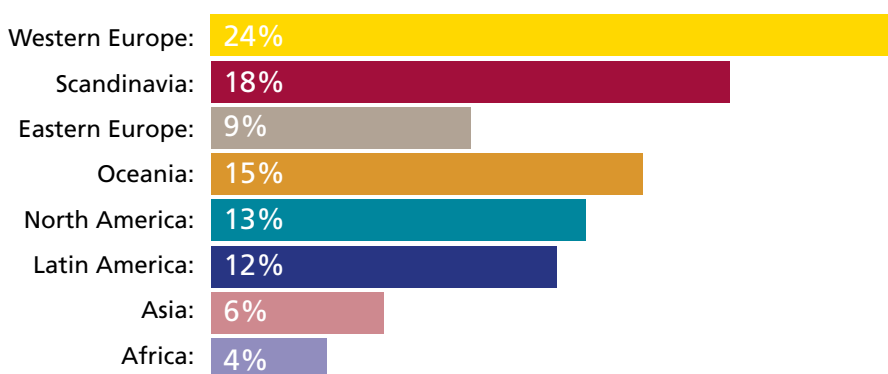
One limitation of the predecessor survey from the IBA's *Women in Commercial Legal Practice* report was that the questions were only available in English. To improve this survey's accessibility, it was available in six languages. Nevertheless, English remained the primary language of completion (see Figure 4) – reflecting the English-speaking nature of much of the IBA's membership and primary audiences of key distribution channels.

Figure 4: language		
Total surveys completed	6,980	
English	5,478	79%
Spanish	828	12%
Russian	240	3%
French	238	3%
Portuguese	119	2%
Italian	77	1%

Region

Half of the respondents to the survey were from Europe (see Figure 5), with significant proportions from Oceania (15%), North America (13%) and Latin America (12%). Numbers were lower from Asia (6%) and Africa (4%), which was likely to be caused by language barriers and lower IBA membership in those regions. While the overall data has considerable geographic diversity, there is a degree of Anglocentrism: almost 40% of survey respondents were located in Australia, Canada, New Zealand, the UK and the US.

Figure 5: region of survey respondents



Top countries

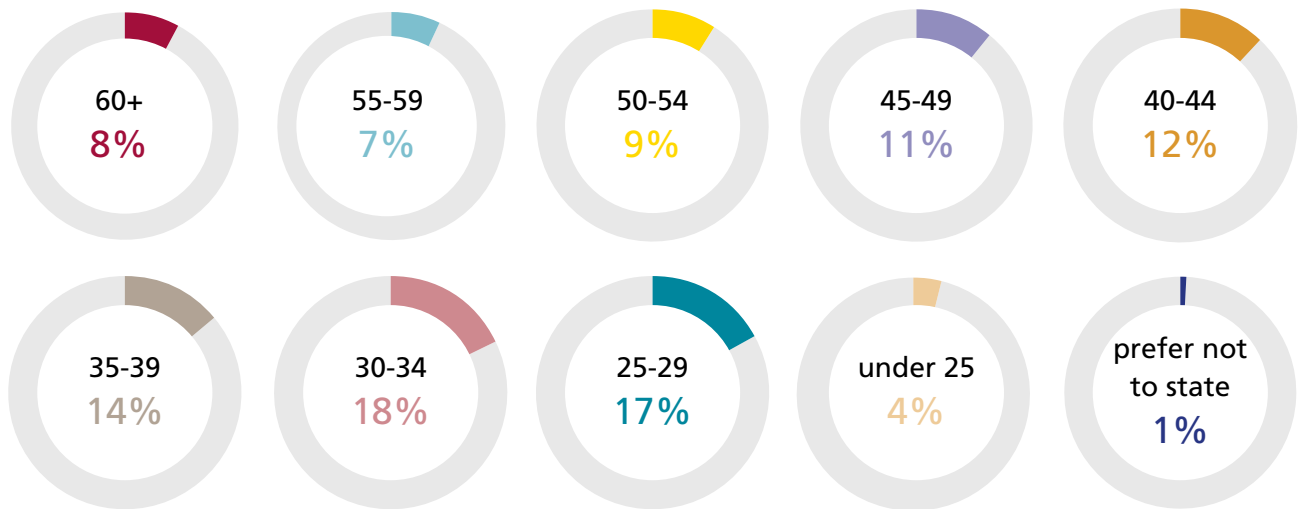
Countries with more than 100 respondents are considered to have sufficient data to make robust country-level findings. Fifteen countries across five continents reached this threshold (see Figure 6). High response rates from certain jurisdictions were driven by the efforts of bar associations, law societies and group member firms.

Figure 6: country		
Total surveys completed 6,980		
Australia	937	13%
United Kingdom	715	10%
Sweden	644	9%
Canada	571	8%
Norway	509	7%
United States	359	5%
Spain	208	3%
Costa Rica	165	2%
Chile	161	2%
Luxembourg	158	2%
Germany	155	2%
Brazil	129	2%
Latvia	127	2%
South Africa	126	2%
Russian Federation	120	2%

Age

The majority (53%) of respondents to the survey were under the age of 40 (see Figure 7), and more than three-quarters of respondents were under 50. There is a slight clumping towards younger age brackets, which is likely to indicate a heightened awareness of these issues among younger generations. Otherwise, the age distribution of respondents is spread evenly.

Figure 7: age of survey respondents



Law firms

Respondents who selected ‘law firm’ as their workplace were asked several additional demographic questions. Respondents were reasonably evenly spread across firms of differing sizes (see Figure 8) and in terms of length of service (see Figure 9). Partner was the most common position of law firm respondents (30% – see Figure 10), followed by solicitor/associate (27%).

Figure 8: firm size of survey respondents

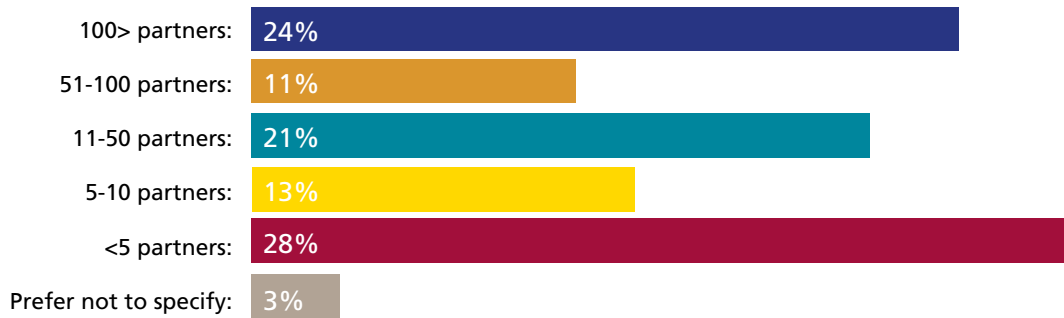


Figure 9: survey respondent's time at firm

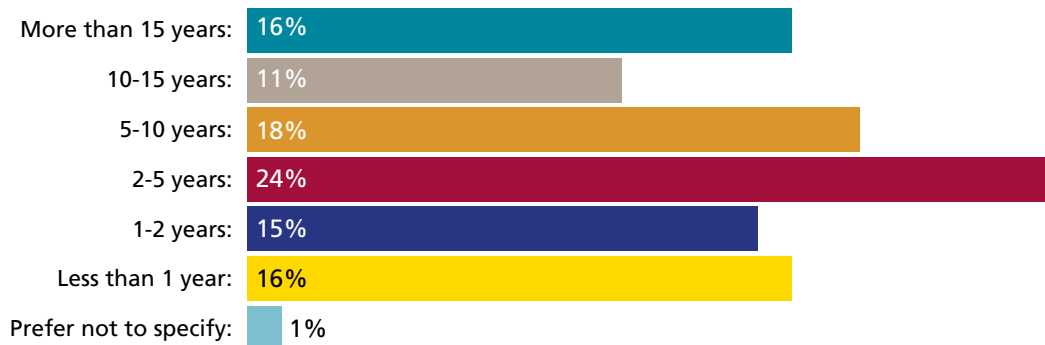
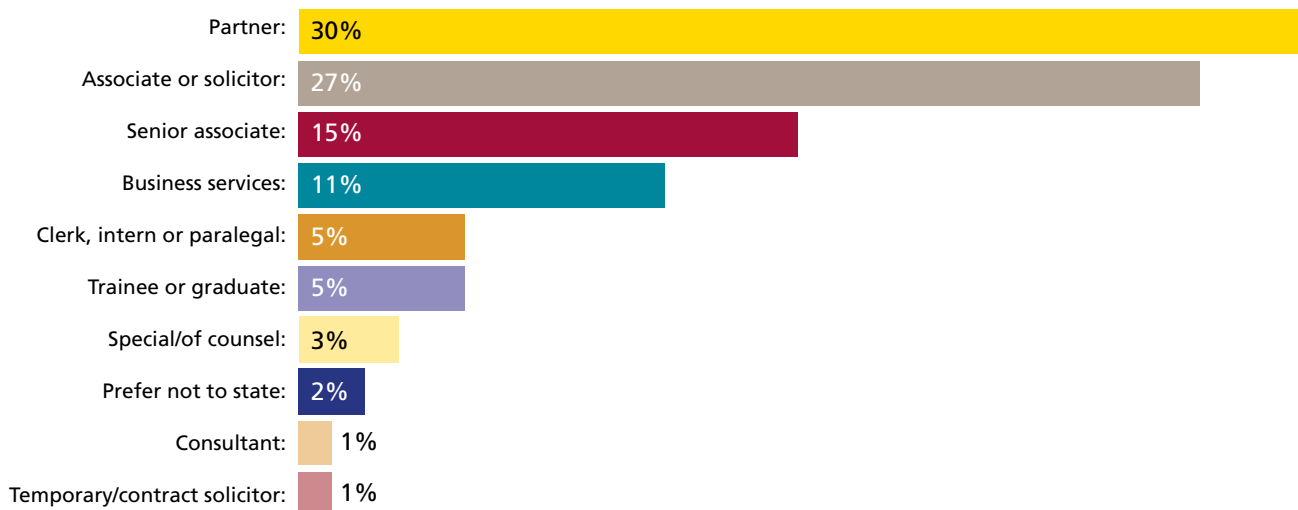


Figure 10: survey respondent's position



Individual characteristics

Given data protection restrictions in certain jurisdictions, this survey did not ask questions regarding personal characteristics, such as sexual preference, ethnicity, physical ability and parental responsibilities. This is regrettable – and indeed several respondents criticised the survey for this shortcoming. Following the publication of Kimberle Crenshaw’s landmark work in 1989, the concept of intersectionality has become central to understanding how interlocking notions of privilege operate to marginalise minority groups.⁸⁹ An intersectional analysis is particularly pertinent in the present context. As the Australian Human Rights Commission has observed: ‘sexual harassment discourse is currently heteronormative – LGBTI people experience sexual harassment in the same way and also in additional ways to heterosexual people’. Similarly, ‘the low representation of people with a disability in the workplace is a driver of sexual harassment and [unwelcome] paternalism’.⁹⁰ While the absence of data limits the ability of this report to undertake an integrated intersectional analysis, that is not to deny that a range of personal characteristics have distinct and overlapping impacts on experiences of bullying and sexual harassment.

In Their Own Words

// *I was told by the senior partner at a top tier firm that despite my work performance, the firm would not keep me on because I am a lesbian.*

Female, in-house, Canada

// *I applied for a promotion shortly after my daughter was born. When I was given feedback after my application was unsuccessful, I was told it was because I would not be in the office enough.*

Male, Australia

89 Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ [1989] University of Chicago Legal Forum 139.

90 Australian Human Rights Commission, ‘Email Newsletter – Everyone’s Business: National Workplace Sexual Harassment Inquiry’ (28 February 2018) <https://mailchi.mp/humanrights.gov.au/reminder-to-register-national-inquiry-into-workplace-sexual-harassment-hobart-consultation-267825?e=b8f7865e5d> accessed 5 April 2019; generally, see Lauren Stiller Rikleen, *The Shield of Silence: How Power Perpetuates a Culture of Harassment and Bullying in the Workplace* (Chicago, American Bar Association 2019) 75–79.

Bullying

In Their Own Words

// *I felt sick every day I went to work under this manager. He would have fits of rage – screaming at me, violently kicking filing cabinets while I cowered in the corner of my tiny office. I was frightened of him in those moments. He would go to lunch with the rest of the office and I was never invited.*

Female, law firm, Australia

Bullying is rampant in the legal profession. Almost half of the respondents to this survey have experienced bullying during their career. Bullying is particularly common in government legal workplaces and larger law firms. It occurs overwhelmingly in the physical workplace, perpetrated by line managers/supervisors and other senior colleagues. Bullying is very rarely reported, predominantly due to concerns surrounding the status of the perpetrator and fears of personal or professional repercussions. When the conduct is reported, workplaces are failing targets. Perpetrators are infrequently sanctioned and, in almost three-quarters of bullying cases, respondents perceive their workplace's response as negligible or insufficient. The adverse impact of this widespread bullying is considerable. Over half of bullying cases have led to targets leaving or considering leaving their workplace. A significant proportion have quit or are contemplating quitting the profession entirely. The legal profession has a chronic bullying problem.

Gender

The prevalence of bullying in legal workplaces has a significant gendered dimension – see Figure 11. More than half of female respondents indicated that they had been bullied during their career, while approximately one in three male respondents had experienced bullying. Almost three-quarters of non-binary/self-defined respondents had been bullied, although the low sample size for this category prevents statistically persuasive conclusions. On the basis of a 1:1 gender ratio, these respective rates would equate to a 43% gender-weighted prevalence of bullying in the legal profession.

Respondents who had not been bullied were asked whether they had witnessed workplace bullying: 40% of female respondents and 32% of male respondents said they had. This indicates a perception gap: the empirical prevalence of workplace bullying is significantly higher than that perceived by bystanders. This may be because bullying often takes place behind closed doors, or because perceptions of what constitutes bullying are heavily influenced by individual and cultural factors. The gendered dimension of the perception gap is also noteworthy, suggesting that women may be more perceptive to conduct that constitutes bullying.

Figure 11: bullying (gender)

Have you ever been bullied in the workplace?



Bullying (female)



Bullying (male)



Bullying (non-binary/self-defined)

In Their Own Words

// As a man being bullied by a woman in the workplace, I felt – in addition to angry and hurt – absurd. I believed, correctly, that no one would take my complaints seriously, and that people would simply fall back on societal stereotypes in order to somehow explain away the problem.

Male, in-house, Canada

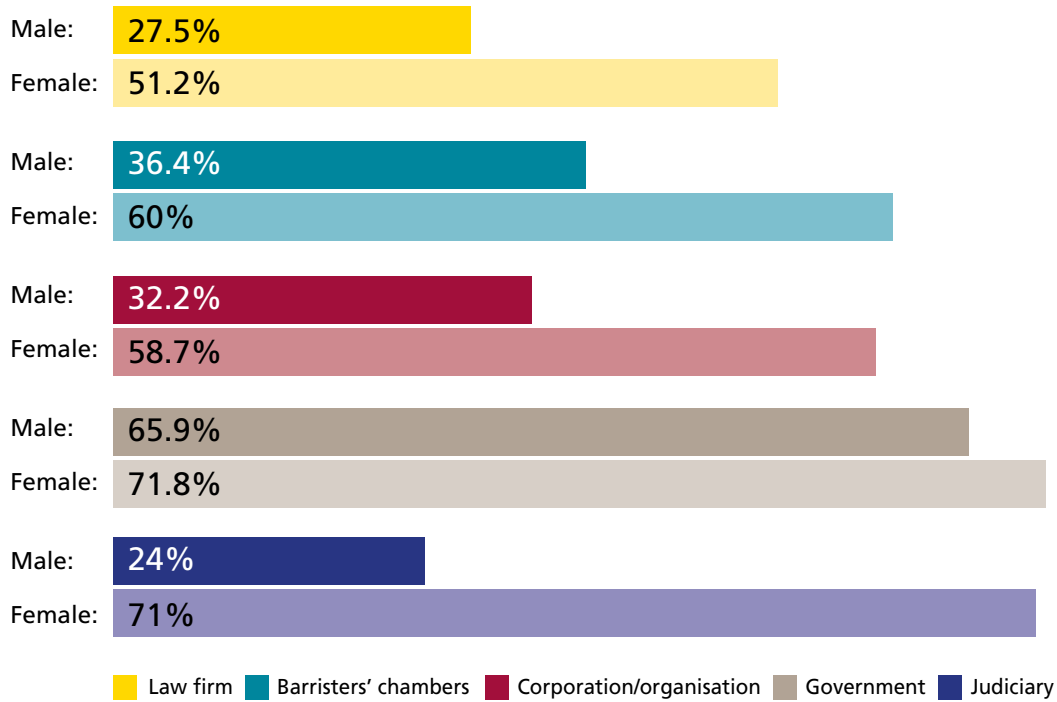
Workplace

The survey results indicate that government legal workplaces have the highest average gender-weighted prevalence of bullying, at 69% of respondents (see Figure 12). Law firms have the lowest rate, at 39%, while in-house workplaces (45%), judicial workplaces (46%) and barristers' chambers (48%) all sit just above the overall mean. Judicial workplaces had the largest gender gap, with a significant 47 percentage point difference between the rates of bullying experienced by female and male respondents, while government legal workplaces had the smallest gender gap. The startling rate of bullying in government legal workplaces is surprising. It may be that the widespread prevalence of anti-bullying policies and training at government legal workplaces – the highest rate in the profession – leads to greater awareness of what constitutes bullying. This, in turn, may contribute to the high rate of bullying identified in the survey, reflecting a perception paradox.⁹¹

91 See the Methodology section for further discussion of the perception paradox.

Figure 12: bullying prevalence by workplace

Have you ever been bullied in the workplace? Yes



Bullying is significantly more prevalent at large law firms – see Figure 13. There is little variation among firms of between one and 100 partners; however, respondents at firms with more than 100 partners were approximately ten percentage points more likely to experience bullying. This trend is mirrored across male and female respondents.

Figure 13: bullying prevalence by law firm size*

Have you ever been bullied in the workplace? Yes



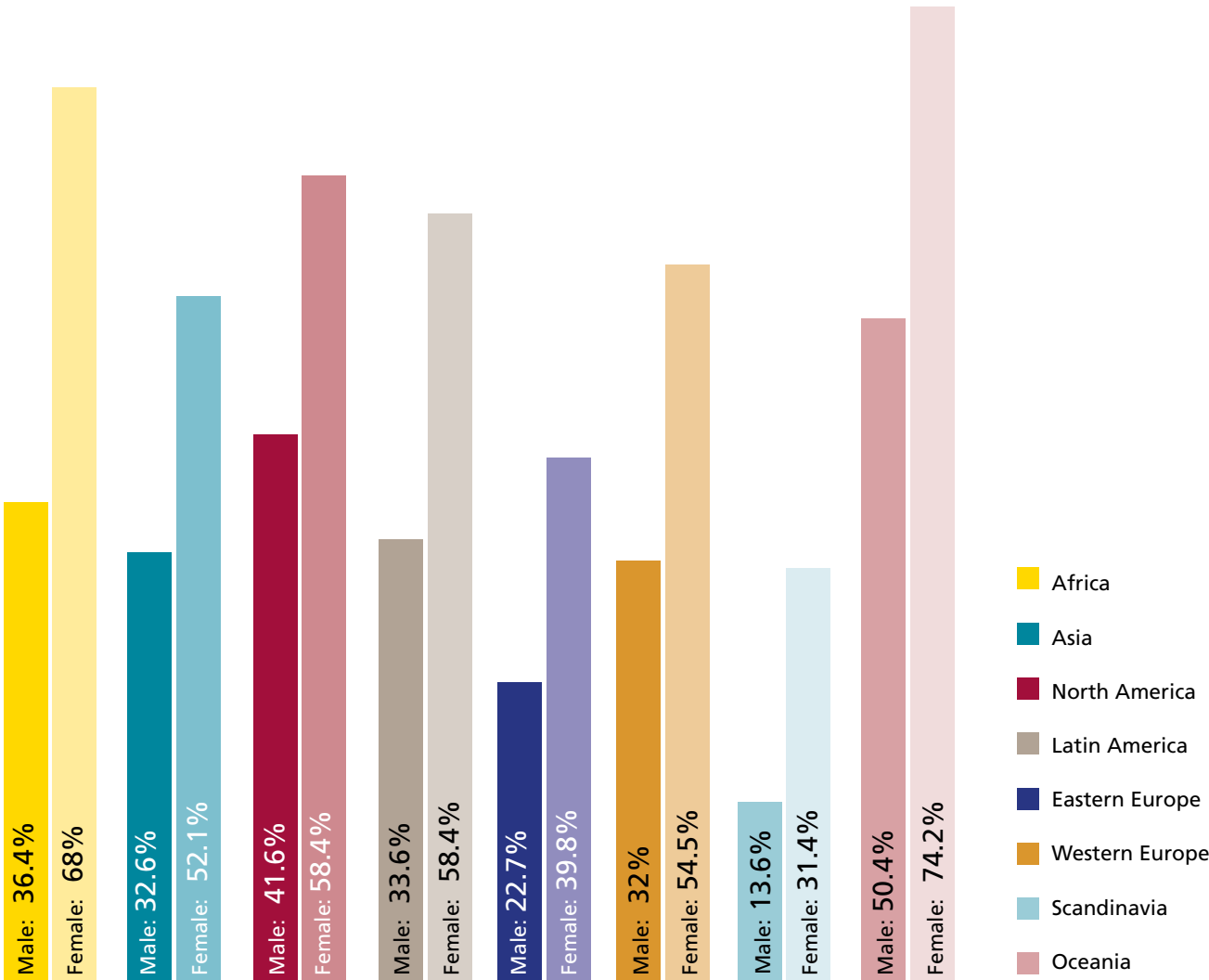
*Gender-weighted

Region

Legal professionals in Oceania experience the highest prevalence of bullying, at 62% on a gender-weighted basis. Africa (52%), North America (51%) and Latin America (46%) were all above the global average of 43%. Western Europe was on the average, while other regions were below average. Female respondents from Oceania experienced the highest prevalence of bullying (74%), while male respondents from Scandinavia experienced the lowest prevalence of bullying (14%). Africa had the largest gap between bullying prevalence among male and female respondents, while Eastern Europe had the smallest disparity – see Figure 14. Given the uneven spread of responses within regions and significant variations between jurisdictions within the same region, these trends should be read in conjunction with the country-specific case studies below.

Figure 14: bullying prevalence by region

Have you ever been bullied in the workplace? Yes

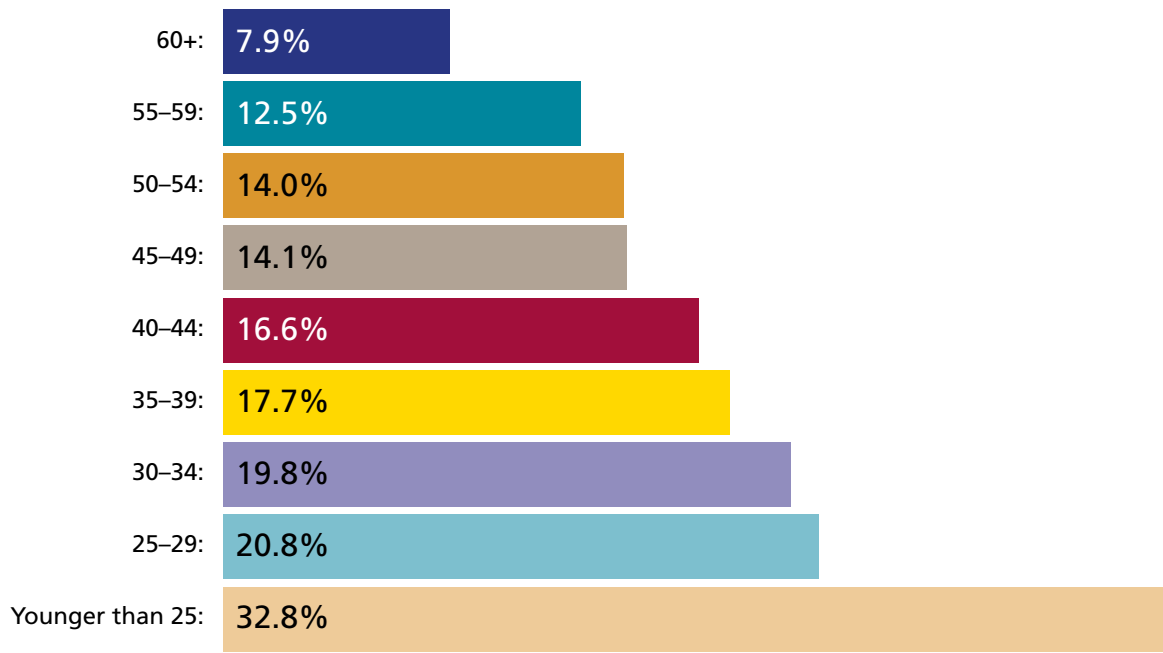


Age/position

Younger legal professionals are disproportionately impacted by bullying. This trend is demonstrated via an examination of respondents bullied within the past year – see Figure 15. The almost linear downwards progression of bullying prevalence provides stark evidence that young people are bullied at higher rates than their older colleagues.

Figure 15: recent bullying by age*

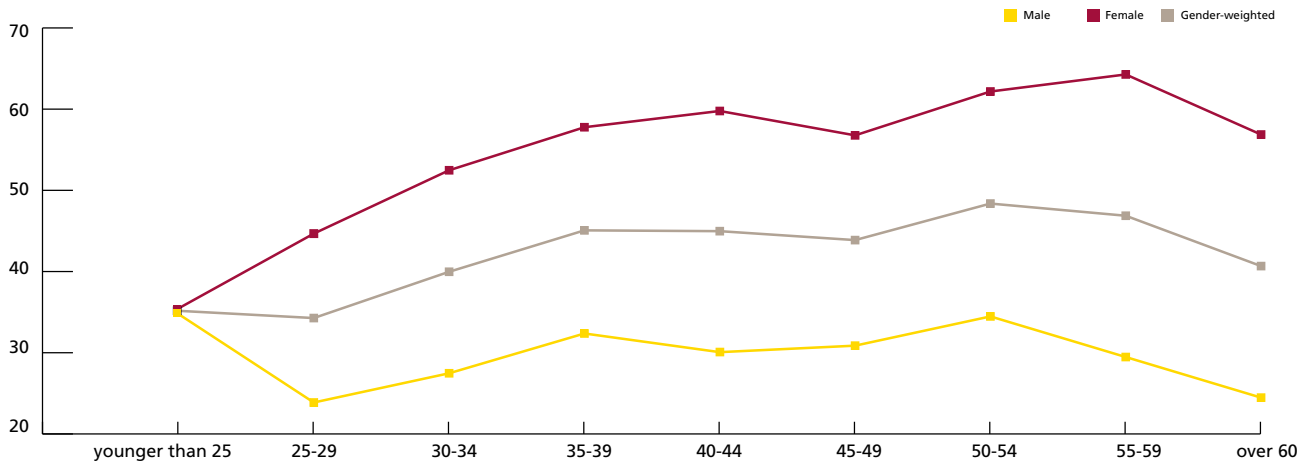
Bullied within the past year (% of total respondents)



*Gender-weighted

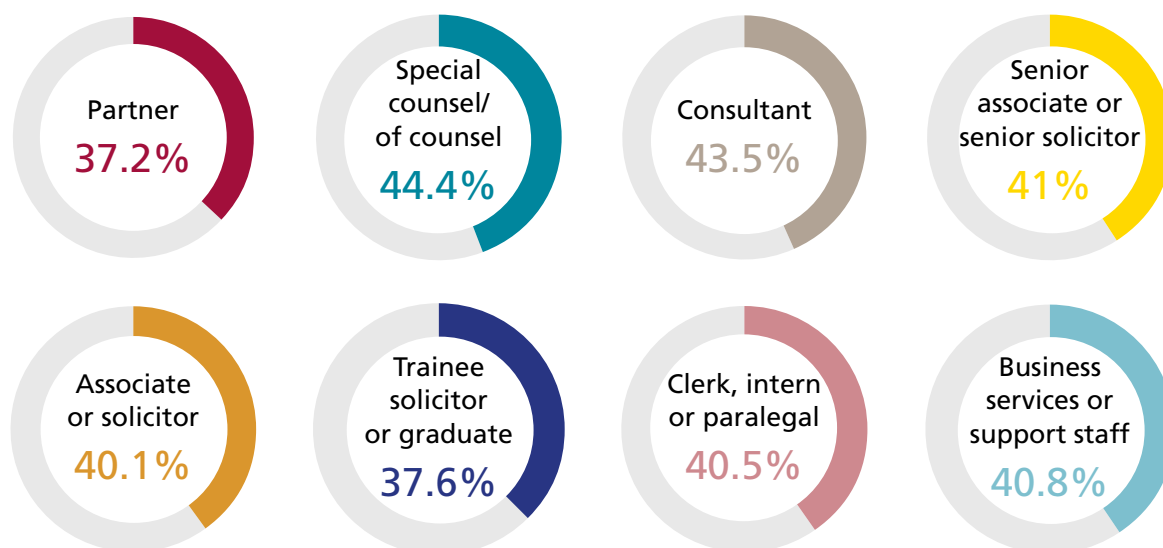
Plotting all incidents of bullying by age provides further evidence of the disproportionate impact on younger lawyers – see Figure 16. If incidents were evenly distributed across time (ie, if age had no impact), bullying would increase with age in a linear manner. Instead, total incidents of bullying by age plateau between 35–44, and then decline later in life. This decrease may reflect varied perceptions of what constitutes bullying in older age categories or an inability to recall earlier incidents.

Figure 16: all-time bullying by age



Rates of bullying suffered by business services/support staff, paralegals, associates/solicitors and senior associates/senior solicitors working at law firms are similar to the profession-wide average – see Figure 17. The gender-weighted prevalence rate rises slightly among consultants and special counsel/of counsel, possibly reflecting the increased average age of this respondent class and thus the greater temporal opportunity to have been bullied. Interestingly, this hypothesis does not hold true among partners – who as a class experienced 6% less bullying than the overall average. It may be that those in positions of power have collective difficulty recalling such experiences from earlier in their career, or those identified as having ‘partner potential’ may suffer less bullying as a result. Additionally, or alternatively, given the adverse consequences of bullying on career advancement (outlined below) and the disproportionate impact of bullying on junior members of the profession, it may be that targets of bullying are less likely to later become partners. Targets working at law firms were more likely than other respondents to leave their workplace as a result of bullying; indicating a higher level of career disruption caused by bullying in these workplaces, and supporting this broader hypothesis.

Figure 17: bullying prevalence by law firm position*



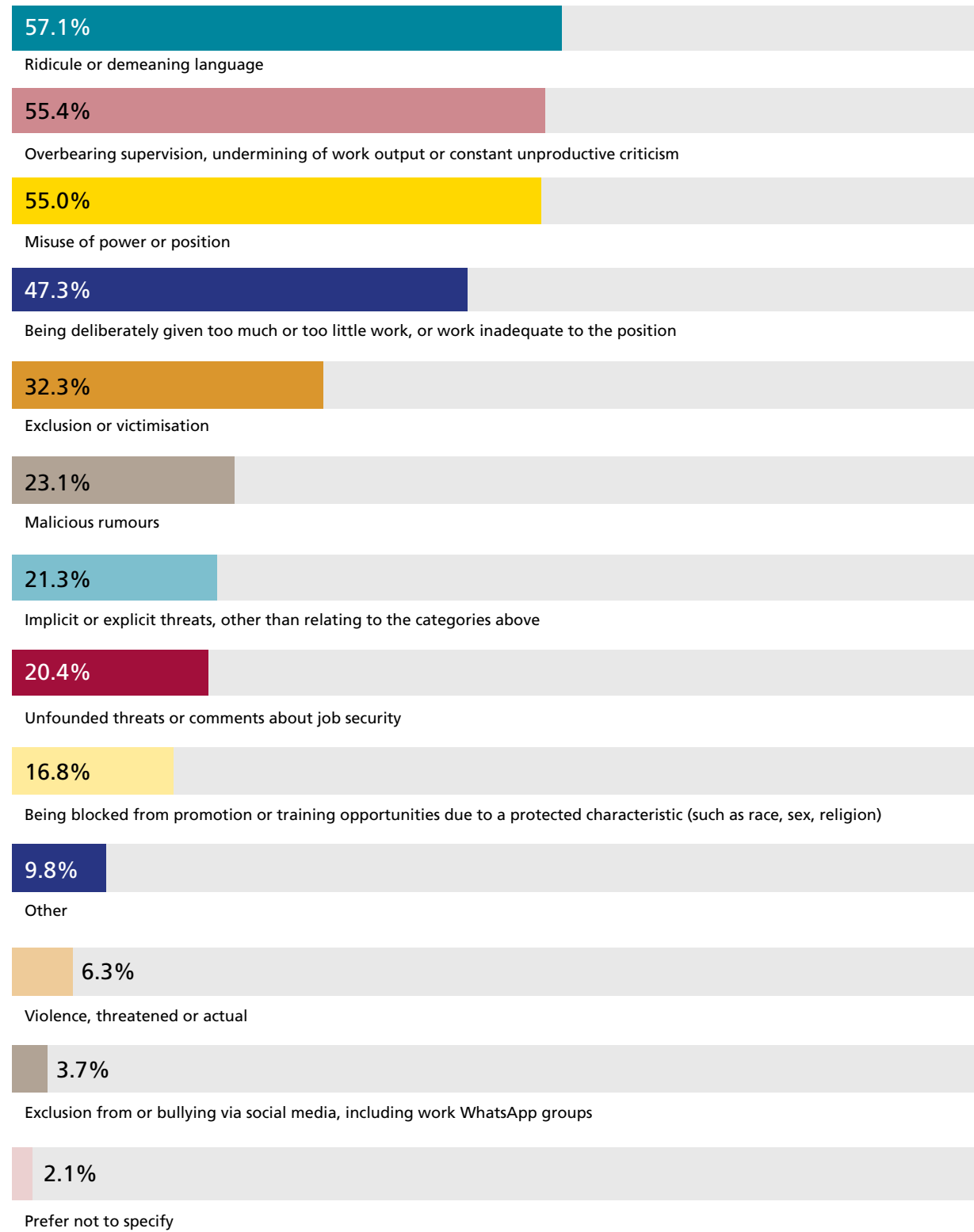
*Gender-weighted

Type

Respondents who had been bullied were asked about the nature of bullying they had experienced – see Figure 18. Respondents could select more than one type, hence the cumulative total exceeds 100%. Ridicule or demeaning language was the most common form of bullying, impacting more than half of bullied respondents. Two forms of supervision-related bullying – ‘overbearing supervision, undermining of work output or constant unproductive criticism’ and ‘being deliberately given too much or too little work, or work inadequate to the position’ – were also commonplace. The distinction between bullying and reasonable supervision is not always clear. As the survey captured the subjective perceptions of targets, it may be that some of this conduct did not, objectively, constitute bullying. This caveat should not detract from these findings. Almost one in two respondents to the survey identified concerns with the nature of the supervision/management they experienced in the legal profession. This broader message must be heard – regardless of the possibility that in some individual cases the allegation of bullying might not be substantiated.

There was broad consistency in the type of bullying experienced between genders. Female respondents were significantly more likely to have experienced too much or too little work, and to have been blocked from opportunities due to gender (or other characteristics). Ridicule or demeaning language was more common than average in barristers’ chambers, while respondents at government legal workplaces were more likely to experience exclusion/victimisation. On average, female targets were bullied in a greater variety of ways – with a ratio of 3.6 bullying types to each bullied female respondent, compared with 3.2 bullying types for each bullied male respondent.

Figure 18: bullying prevalence by type



In Their Own Words

// *[Misuse of power/position] is commonly considered normal or regular, tending to make you look more 'macho' and thereby better suited for the work.*

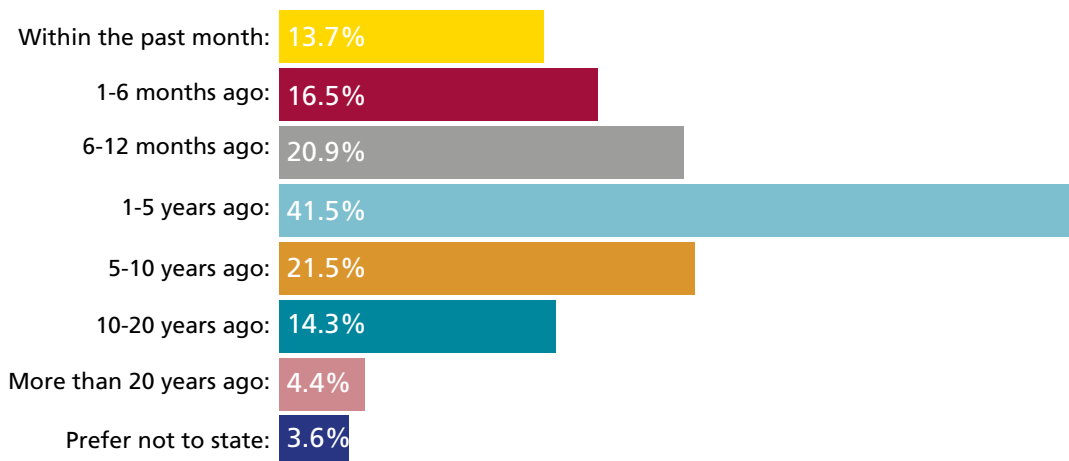
Male, law firm, Peru

Frequency and timing

Incidents of bullying are rarely isolated. Respondents who had been bullied were asked whether they had been bullied on more than one occasion: 90% responded affirmatively. There was no variation by gender, age or workplace type. Those respondents were then asked about the nature of the multiple incidents. Over half indicated the bullying was part of a course of conduct perpetrated by the same perpetrator, while 16% of respondents indicated that they had experienced multiple distinct incidents by different perpetrators. Respondents at law firms were more likely than average to experience ongoing, course of conduct bullying, while those at barristers' chambers were more likely to experience multiple, one-off incidents.

The incidents of bullying recorded by the survey are not solely historical: 38% of cases included one or more incidents that occurred a year or less before survey completion, while just 19% included an incident occurring ten or more years ago – see Figure 19. Respondents were able to select more than one option, hence the cumulative percentage exceeds 100%. Men were seven percentage points less likely to have been bullied within the past year, but six percentage points more likely to have been bullied more than ten years ago. The prevalence of cases within the past year was slightly higher than average at government workplaces and significantly below average at judicial workplaces.⁹² There was little variation in types of bullying over time.

Figure 19: bullying incidents over time

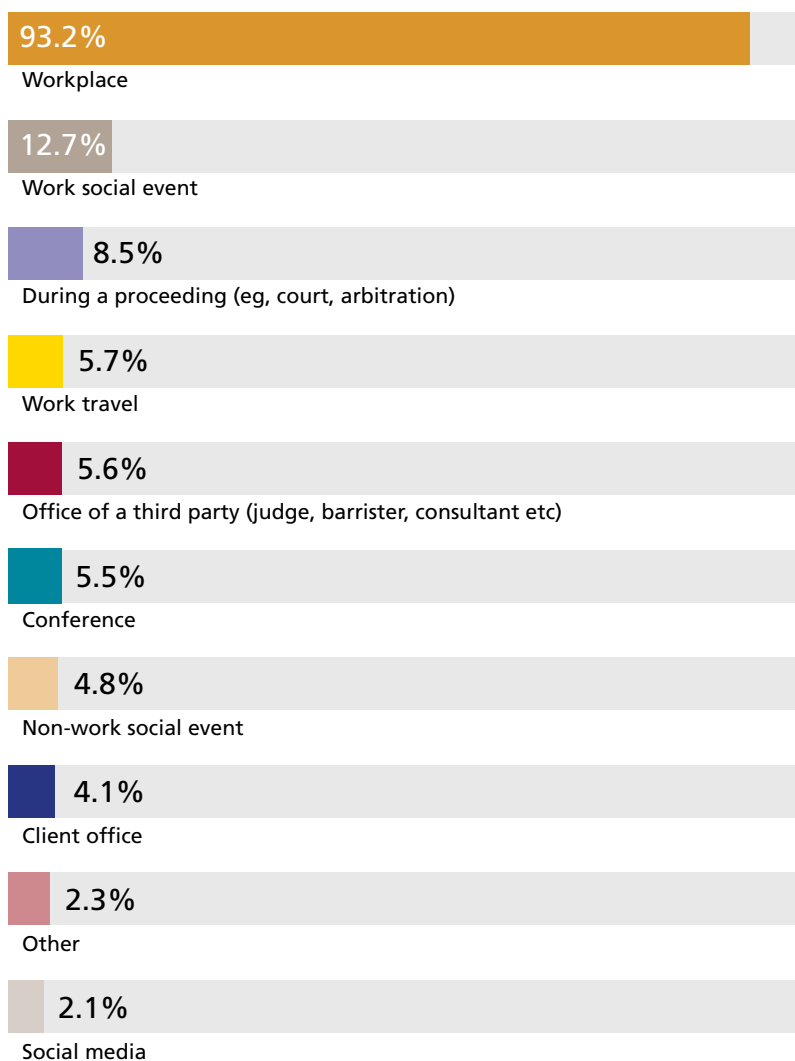


⁹² As the survey did not distinguish between judges and judicial assistants, associates, registrars, court staff, etc, and given that in many common law jurisdictions judges join the judiciary later in their professional life after a career elsewhere, it may be that data from the judiciary partly reflects historical incidents that occurred at other workplace types.

Location

Workplace-related bullying overwhelmingly takes place in the physical workplace. In the survey data, 93% of bullying cases included an incident that occurred in the workplace – see Figure 20. Work social events and courtrooms were the second and third most frequent locations of bullying, at 13% and 9%, respectively. Respondents were able to select more than one option per type of conduct, hence the cumulative percentage exceeds 100%. There was little variation by gender or age, although the likelihood of being bullied at the office of a third party or at a conference increased with age – reflecting the increased exposure to those environments with seniority. Younger respondents were several percentage points more likely to have endured workplace-related bullying on social media – and it might be speculated that the frequency of cyberbullying will only increase. Variation by workplace type was self-explanatory. There were above-average rates of bullying at the workplace in office-based environments, such as law firms (94%), government (95%) and in-house legal teams (98%). Those who worked at barristers' chambers were less likely to be bullied in the office (77%) and significantly more likely to be bullied during a proceeding or at the office of a third party – reflecting the higher frequency of external engagement among those at the bar.

Figure 20: location of bullying

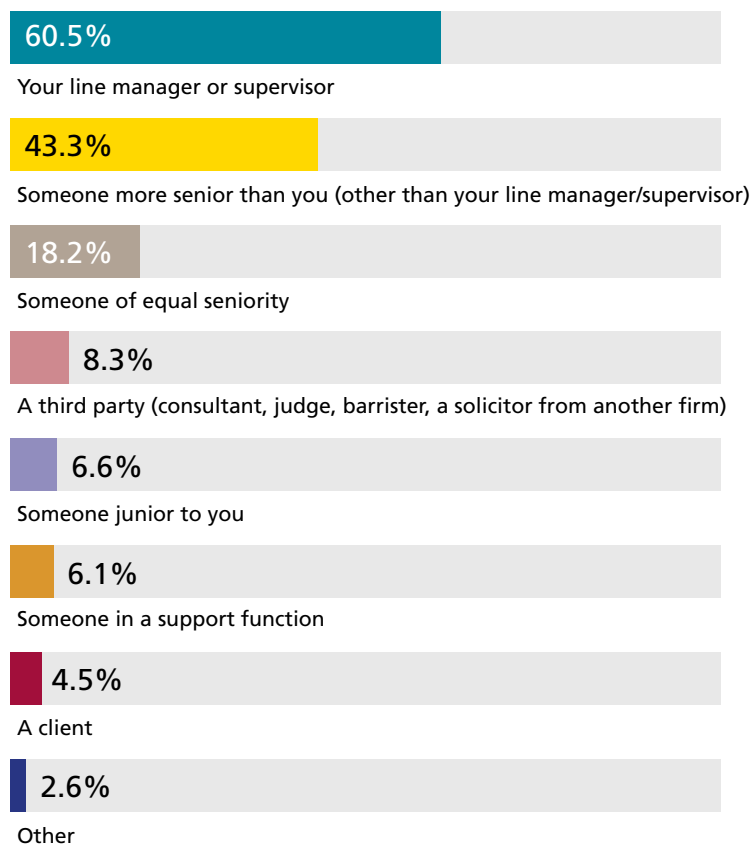


Perpetrator

Line managers/supervisors are the most frequent perpetrators of bullying, followed by other senior colleagues – see Figure 21. These findings emphasise the role of hierarchy and power imbalance in facilitating or exacerbating bullying. Respondents could select more than one option per type of conduct. Bullying by clients or support staff was exceedingly rare among respondents. There was no variation in perpetrator identity by target gender. The likelihood of bullying by a line manager/supervisor decreases with age, while bullying from a third party becomes more common with age. Rates of bullying by line managers/supervisors were below average in barristers’ chambers and judicial workplaces, and above average in in-house and government workplaces. Unsurprisingly, barristers experience far more bullying from third parties – almost 20 percentage points more than average. Line manager bullying decreases as law firm size increases, albeit there is a corresponding rise in bullying from non-supervisor senior colleagues.

There is significant variation in perpetrator identity averages among different forms of bullying conduct. For example, only 38% of workplace violence (threatened or actual) is perpetrated by a line manager/supervisor, while the same category of individuals is responsible (unsurprisingly) for 73% of overbearing supervision, undermining of work output or constant unproductive criticism. Malicious rumours are far more likely to be spread by someone of equal seniority (52%), while exclusion or victimisation is most commonly done by non-supervisor senior colleagues (51%).

Figure 21: perpetrator of bullying



In Their Own Words

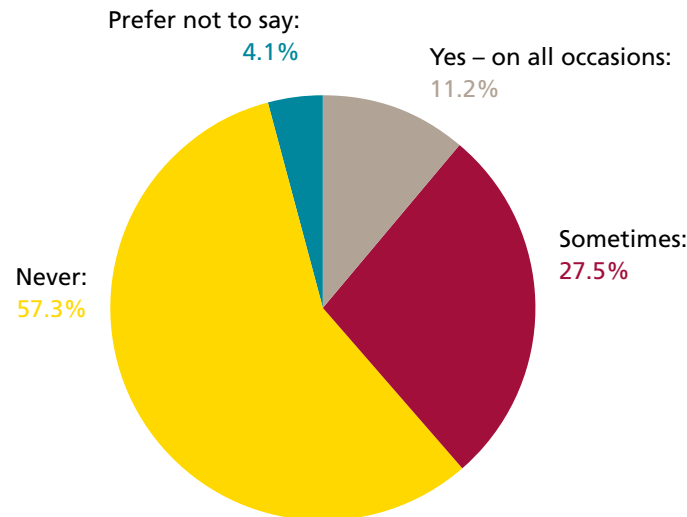
// *There should be absolutely no place in this profession, nor any other, for bullies or sexual harassers. At the very least, people deserve dignity and a safe, supportive environment in return for their work.*

Female, law firm, United Arab Emirates

Reporting

When bullying takes place in legal workplaces, it is rarely reported. Survey respondents were asked, for each category of bullying they had experienced, whether they had reported the conduct. Only 11% of respondents had on all occasions, while the majority had never reported any bullying – see Figure 22. Male respondents were seven percentage points more likely to never report bullying. The proportion of targets who reported bullying on all occasions increased slightly with age: from 8% among those aged 25–29 to 17% among those aged 55–59. This may, though, reflect forgetfulness regarding instances of non-reporting. Respondents at government or in-house legal workplaces were most likely to always or sometimes report, while respondents at judicial workplaces or barristers’ chambers were most likely to never report. While respondents at law firms report on all occasions at a similar rate regardless of firm size, the percentage of those reporting sometimes increases significantly at firms with more than 100 partners. This may indicate that an emphasis on policies and reporting protocols at major firms is having some positive impact on reporting rates.

Figure 22: reporting of bullying



Respondents who had reported bullying were asked who they reported to. An overwhelming number of respondents reported to their workplace, while a small number reported to external channels, including professional or public regulators and the police – see Figure 23. Male targets of bullying were four percentage points more likely to report to a regulator. ‘Other’ reporting channels listed by respondents included unions, doctors and informally to colleagues. Reporting channel usage is reasonably consistent across age and region, although there is somewhat less internal reporting in Asian jurisdictions. Internal reporting is more common in law firms (89% of cases) and government legal workplaces (92%), and significantly less common at barristers’ chambers (67%) and judicial workplaces (73%). Internal reporting increases with law firm size – from 80% at firms with fewer than five partners to 96% at firms with more than 100 partners. Conversely, legal professionals at smaller firms and at barristers’ chambers were far more likely to report to the professional body regulator.

Figure 23: reporting channels



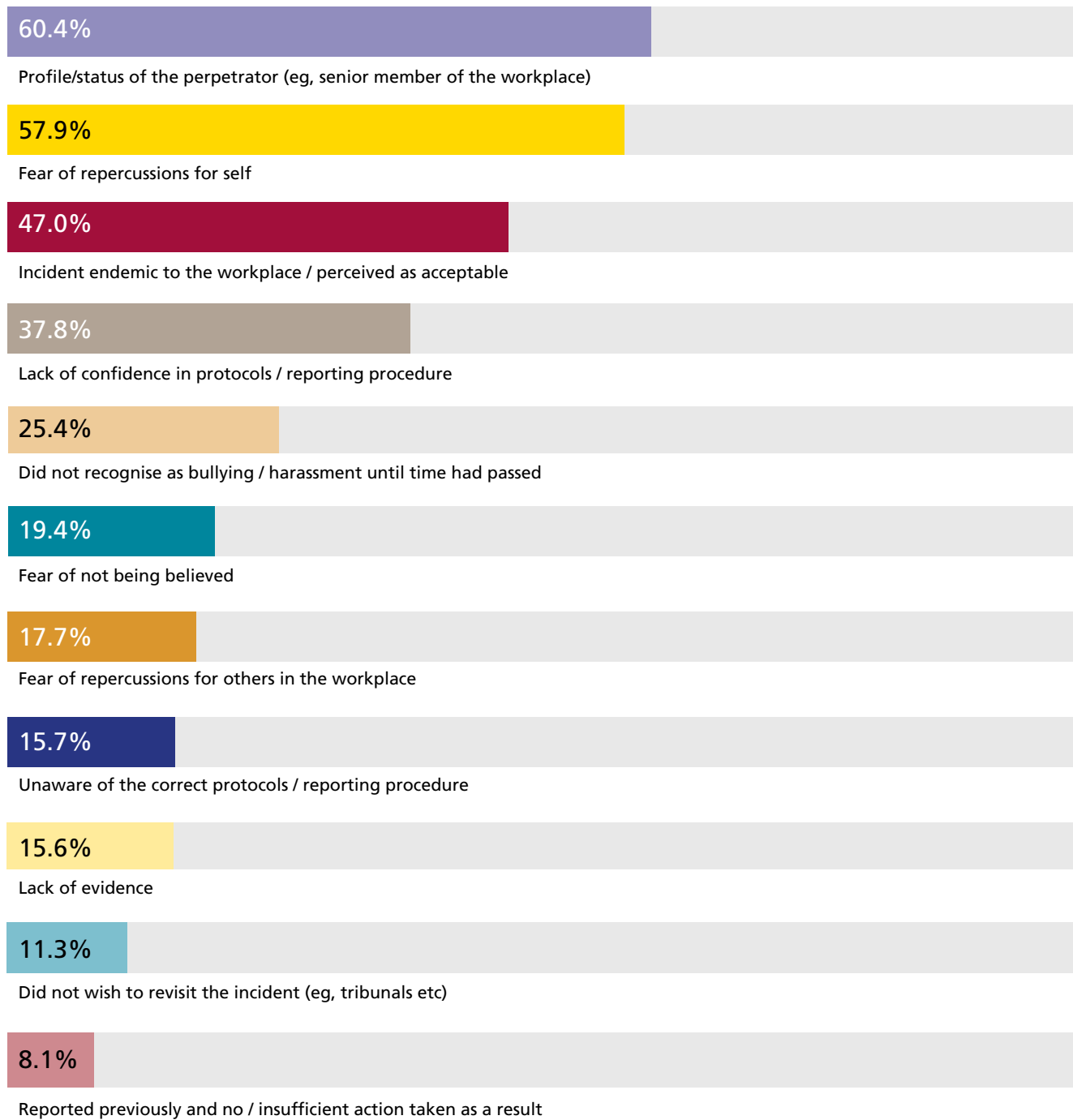
In Their Own Words

“ I was systematically bullied to the extent I considered, for the first time, taking my life. My confidence was shattered. I began to doubt myself in every aspect of my life, work and personal. The advice I received from the Law Society was appalling. It was, ‘just get on with it!’

Female, law firm

Respondents who had been bullied but did not report the incident were asked what factor or factors contributed to them not reporting. The profile or status of the perpetrator was the most common reason, followed by concerns about repercussions – see Figure 24. Female respondents were ten percentage points more likely to fear reprisal or other adverse personal consequences and thereby not report. Respondents at barristers’ chambers and judicial workplaces were less likely to be concerned by the status of the perpetrator. Those at government legal workplaces were significantly more likely to lack confidence in reporting procedures.

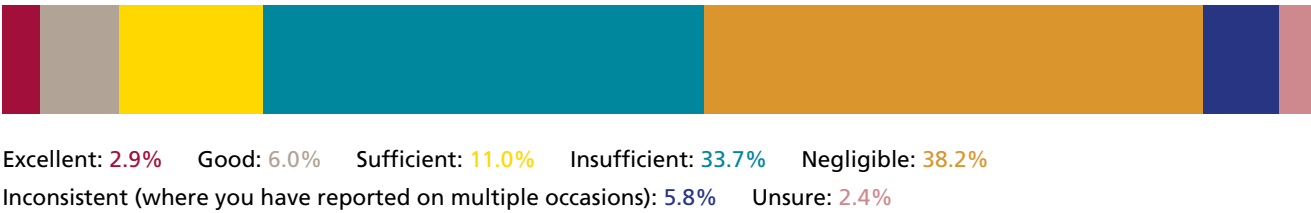
Figure 24: reasons for non-reporting of bullying



Workplace response

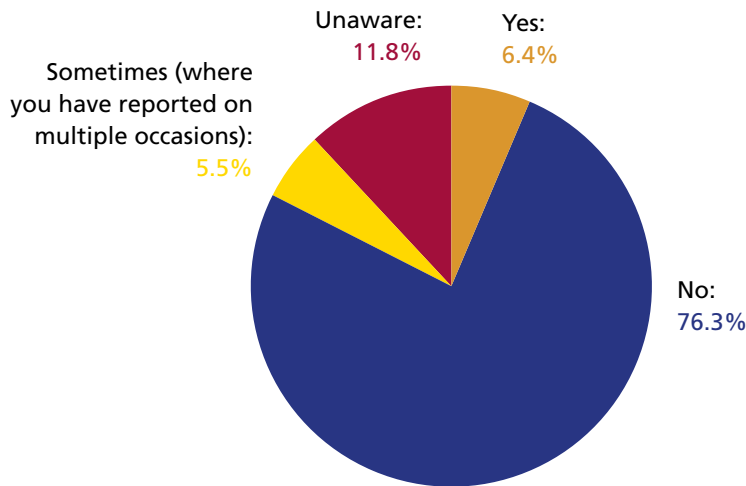
Respondents who had reported an incident of bullying were asked to provide an assessment of their workplace’s response. Less than 10% of respondents considered that their workplace’s response had been excellent or good, while over 70% rated the response as insufficient or negligible – see Figure 25. Male respondents were ten percentage points more likely to evaluate the workplace response as negligible. There were no significant variations by workplace type.

Figure 25: workplace response to reporting of bullying



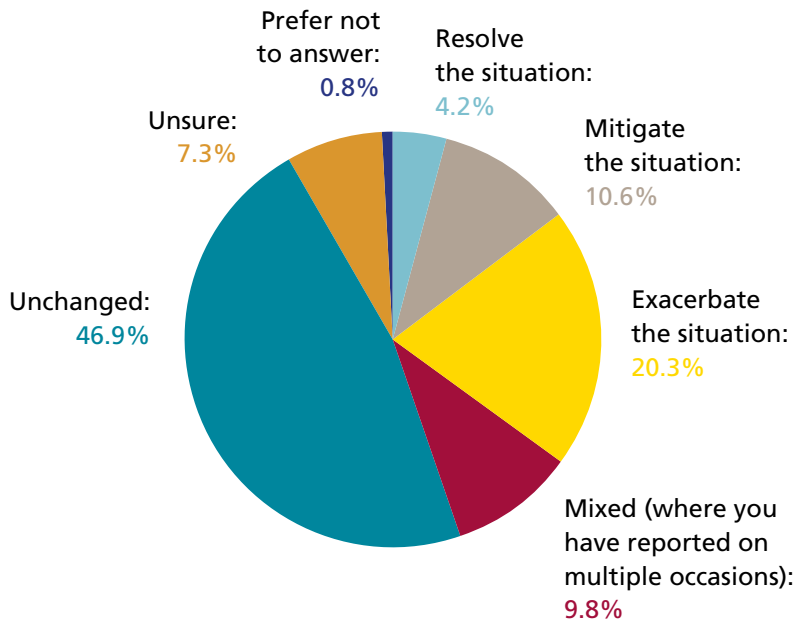
Respondents were asked if the perpetrator had been sanctioned. In three-quarters of cases, the perpetrator was not sanctioned – see Figure 26. There was very little variation by workplace type or region, although respondents in Oceania were more likely to report that the perpetrator had been sanctioned. Female respondents were more likely to be unaware of any sanctions. Interestingly, although targets of threatened or actual violence were almost 20% more likely than average to report this conduct, perpetrators were only slightly more likely to be sanctioned.

Figure 26: sanctioning bullies



Respondents were also asked whether their workplace’s intervention had resolved, mitigated or exacerbated the situation. In two-thirds of cases, the situation was unchanged or exacerbated following the intervention – see Figure 26A.

Figure 26A: outcome of workplace intervention



Impact

Finally, respondents who had been bullied were asked about the impact the conduct had on them – see Figure 27. More than half of bullied respondents have left, or are considering leaving, their workplace. One in seven bullied respondents have left, or are considering leaving, the profession entirely. These findings should be a cause for concern across the profession. In addition to the considerable adverse emotional and psychological consequences of bullying, the survey indicates that such conduct causes internal disruption, increases staff turnover and contributes to brain drain from the profession. Alongside the compelling moral, ethical and legal motives for addressing bullying, these findings demonstrate that there is also a strong business case for decreasing the prevalence of bullying in legal workplaces.

In Their Own Words



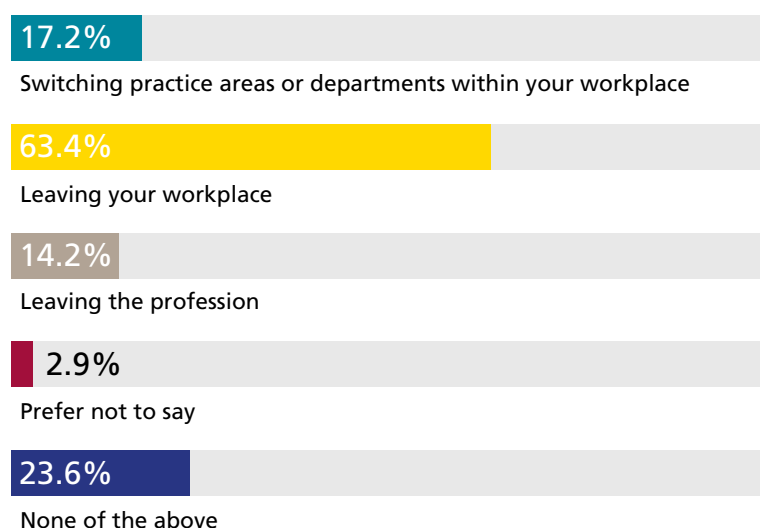
I left the workplace, considered changing careers and contemplated suicide.

Female, law firm, New Zealand

Female respondents were several percentage points more likely to indicate that the bullying had or would force them to transfer internally, change their workplace or leave the profession entirely. Male respondents, on the other hand, were six percentage points more likely to have experienced none of these impacts. Age has a significant influence on the impact of bullying. 71% of bullied respondents aged 34 or below indicated the bullying made them wish to leave their workplace, compared with 56% of those aged over 50. This younger grouping is five percentage points more likely than the older grouping to transfer internally as a result of bullying, and six percentage points more likely to leave the profession entirely. It may be that age heals old wounds – as those over 50 are far more likely to have reported historical incidents, the contemporary impact could have been forgotten with time. Alternatively, or additionally, it may be that age represents an impediment to mobility in spite of bullying, with targets believing that a change in workplace or career is more difficult given their age or duration in that workplace. Whatever the explanation, this age disparity is a consistent trend throughout the report.

Figure 27: impact of bullying**

Has (or will) this conduct contribute to you:



*Gender-weighted

*Respondents could select more than one option

In Their Own Words

// *Senior management talk a good story about bullying but when it is a big billing lawyer or senior partner involved then the real values show themselves. Until firms start living their values, what they are really saying is 'all staff are equal, but some are more equal than others!'*

Male, law firm, Italy

Sexual Harassment

In Their Own Words

// *Once, the managing partner left me alone with a senior lawyer the firm was courting, who ran his hands up my legs and tried to kiss me. I bumped into the managing partner as I was running from the restaurant, and he suggested I should consider a relationship with this man.*

Female, law firm, Canada

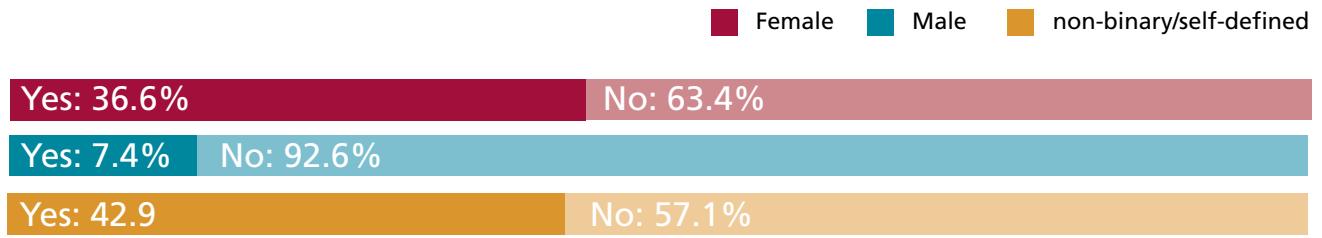
Sexual harassment is also alarmingly commonplace in the legal profession. Sexual harassment disproportionately, but not exclusively, affects female members of the profession. It is most prevalent in government legal workplaces and least prevalent in law firms, although it occurs in all workplace types with troubling frequency. Sexual harassment is most commonly perpetrated by a non-supervisor senior colleague and in the physical workplace. The conduct is also common at work-related social events, conferences and during work travel. Sexual harassment disproportionately impacts younger members of the profession – one in five respondents younger than 35 had been sexually harassed within the past year. Incidents are very rarely reported and, when they are, workplace responses are typically inadequate, with perpetrators infrequently sanctioned. Sexual harassment is having a considerable negative impact on the legal sector, with many sexually harassed respondents considering leaving their workplaces or the profession altogether.

Gender

Workplace sexual harassment has an unequal impact on female members of the legal profession: 37% of female respondents had experienced sexual harassment during their career – see Figure 28. 7% of male respondents had been sexually harassed, as had 43% of non-binary/self-defined individuals (albeit a low sample size limits the reliability of this statistic). On a gender-weighted basis, the survey indicates that sexual harassment impacts 22% – over one in five – members of the profession. Respondents who had not personally experienced such conduct were asked whether they had witnessed sexual harassment in work-related contexts: 23% of female respondents and 26% of male respondents had witnessed sexual harassment. Unlike bullying, there is not a significant gap between experiences of and perceptions of sexual harassment in the legal profession. That male respondents witness more sexual harassment is interesting and in contrast to perceptions of bullying. It may suggest that women have become desensitised to low-severity sexual harassment, or that perpetrators are more likely to sexually harass in the presence of male rather than female bystanders.

Figure 28: sexual harassment (proportion by gender)

Have you ever been sexually harassed in the workplace?

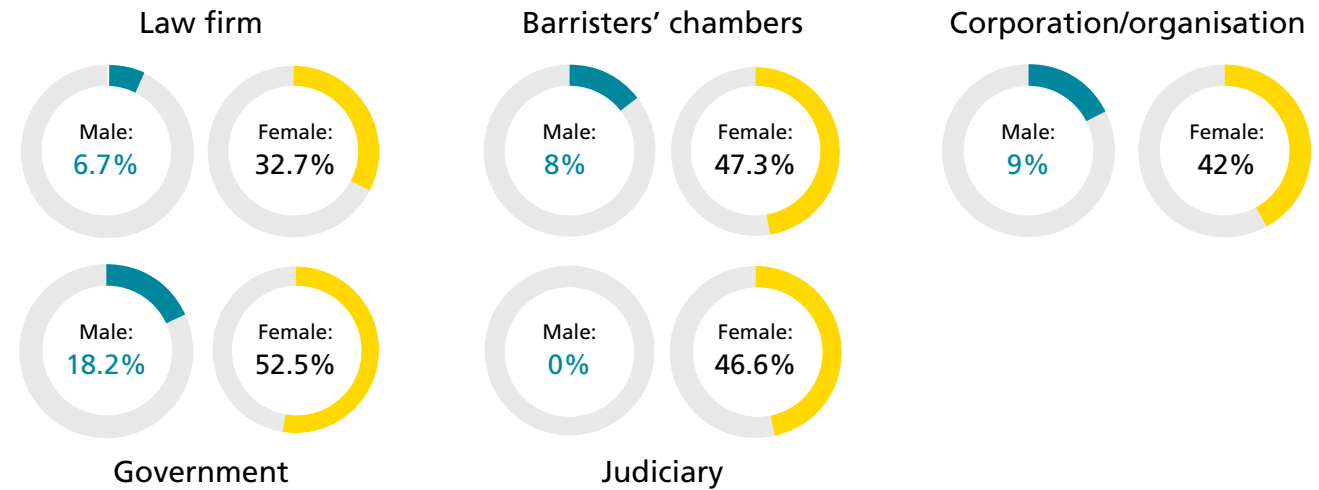


Workplace

Government legal workplaces have the highest average prevalence of sexual harassment on a gender-weighted basis, at 35% of respondents (see Figure 29). Law firms have the lowest rate, at 20%. Other workplace types sit slightly above the overall mean, with judicial workplaces at 23%,⁹³ in-house workplaces at 26% and barristers' chambers at 28%. These prevalence rankings correlate closely with bullying prevalence by workplace (see Figure 30), suggesting a degree of linkage between these forms of conduct and the factors that may encourage or mitigate them at different workplaces. Notably, male respondents at government legal workplaces were more than twice as likely to have been sexually harassed than the male average.

Figure 29: sexual harassment prevalence by workplace

Have you ever been sexually harassed in the workplace? Yes



93 The low male response rate in this category – not one of the 25 male respondents at judicial workplaces had been sexually harassed – means this data's statistical rigour is questionable.

Figure 30: prevalence rankings by workplace (most to least, gender weighted)	
Bullying	Sexual harassment
1. Government	1. Government
2. Barristers' chambers	2. Barristers' chambers
3. Judicial	3. In-house
4. In-house	4. Judicial
5. Law firms	5. Law firms

Firm size has no evident impact on the prevalence of sexual harassment – see Figure 31. This is puzzling, given the apparent influence of workplace factors on prevalence and given bullying was more prevalent at larger law firms.

Figure 31: sexual harassment prevalence by law firm size*



*Gender-weighted

In Their Own Words

After I was sexually assaulted, I feared that his rank and reputation made me vulnerable. My disgust at remembering this horrible event prevented me from reporting it to the bar association or police. He frequently harassed junior female colleagues. I should have stopped him.

Female, in-house, South Korea

Region

As with bullying, legal professionals in Oceania experience the highest prevalence of sexual harassment, at 30% on a gender-weighted basis. Africa (28%) and North America (28%) were both above the global mean of 22%, while Latin America (21%), Asia (20%), Scandinavia (20%) and Western Europe (19%) were all just below average. Eastern Europe had the lowest prevalence, at 13%. Female respondents from Africa had the highest prevalence (48%), just above female respondents from Oceania (47%) – see Figure 32. Among male respondents, those in Oceania and North America experienced the most sexual harassment (12%), while those in Western Europe experienced the least (4%). Consistent with bullying, Africa had the largest gender disparity while Eastern Europe had the smallest gap. The top four regions by sexual harassment prevalence are

identical to those by bullying prevalence – see Figure 33. This supports the conclusion that there is a relationship between the two forms of conduct and the factors that contribute to them.

Figure 32: sexual harassment prevalence by region

Have you ever been sexually harassed in the workplace? Yes

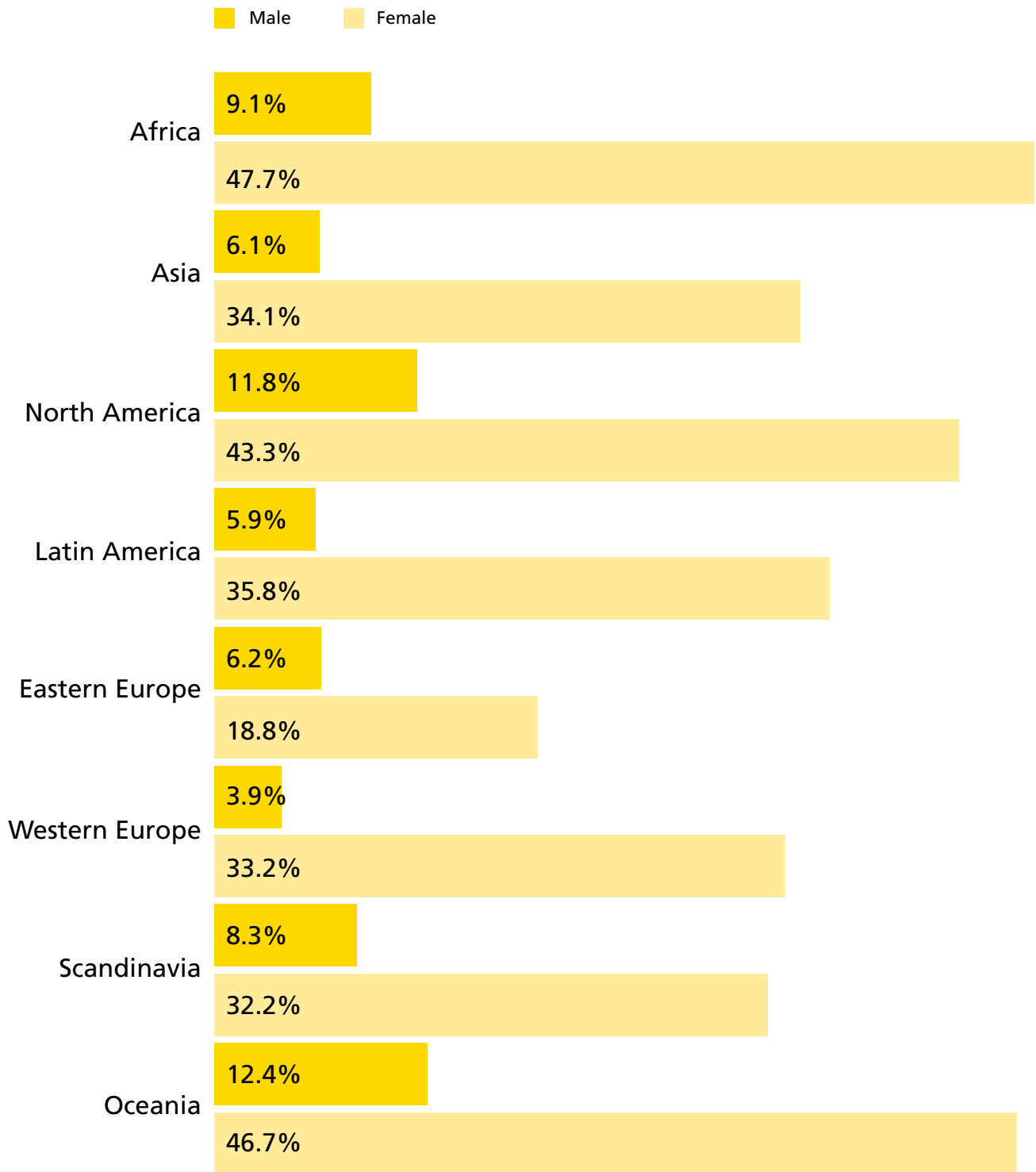
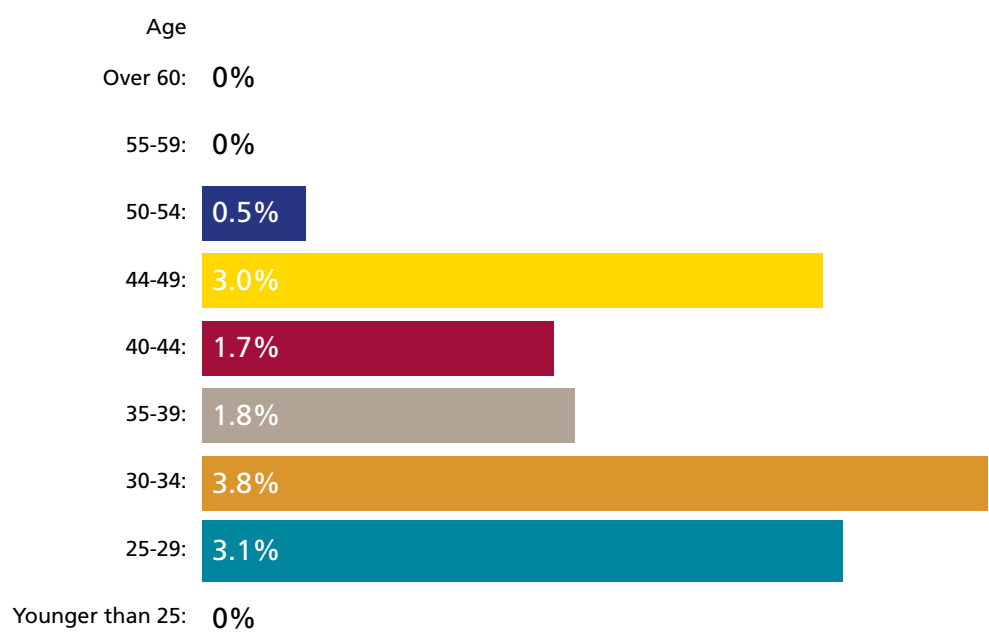


Figure 33: prevalence rankings by region (most to least, gender weighted)	
Bullying	Sexual harassment
1. Oceania	1. Oceania
2. Africa	2. Africa
3. North America	3. North America
4. Latin America	4. Latin America
5. Western Europe	5. Asia
6. Asia	6. Scandinavia
7. Eastern Europe	7. Western Europe
8. Scandinavia	8. Eastern Europe

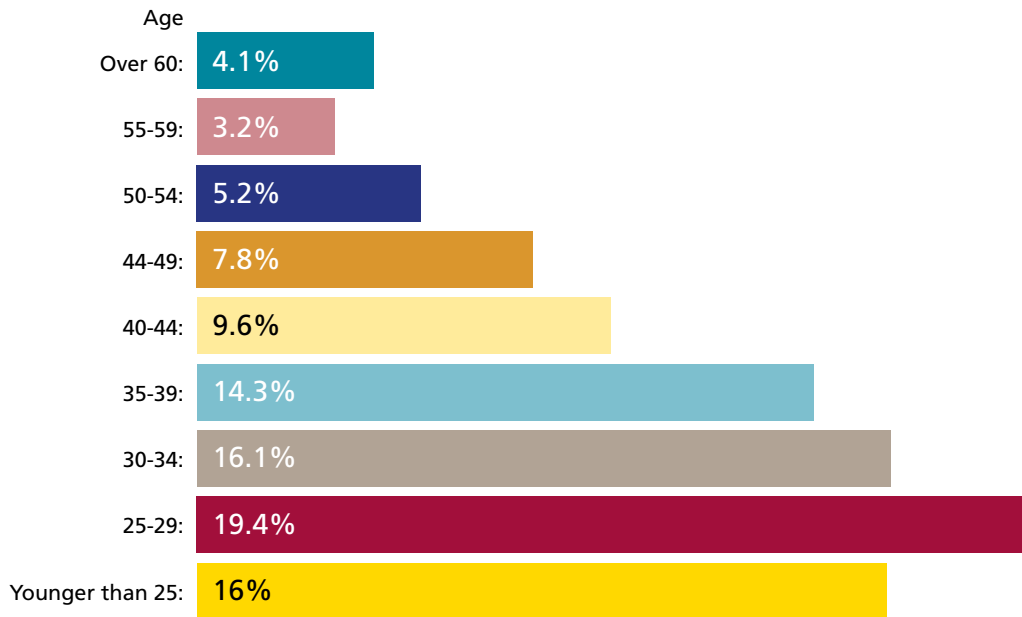
Age/position

Like bullying, sexual harassment disproportionately impacts younger members of the profession – see Figure 34. This trend is particularly evident among female respondents, while the impact of age on male experiences of sexual harassment is less clear. Experiencing sexual harassment within the past year is most common among female respondents aged 25–29 (29%), decreasing on an almost linear basis to 5% among female respondents aged 55 or above.

Figure 34: recent sexual harassment by age
Sexually harassed within the past year, male (% of total respondents)

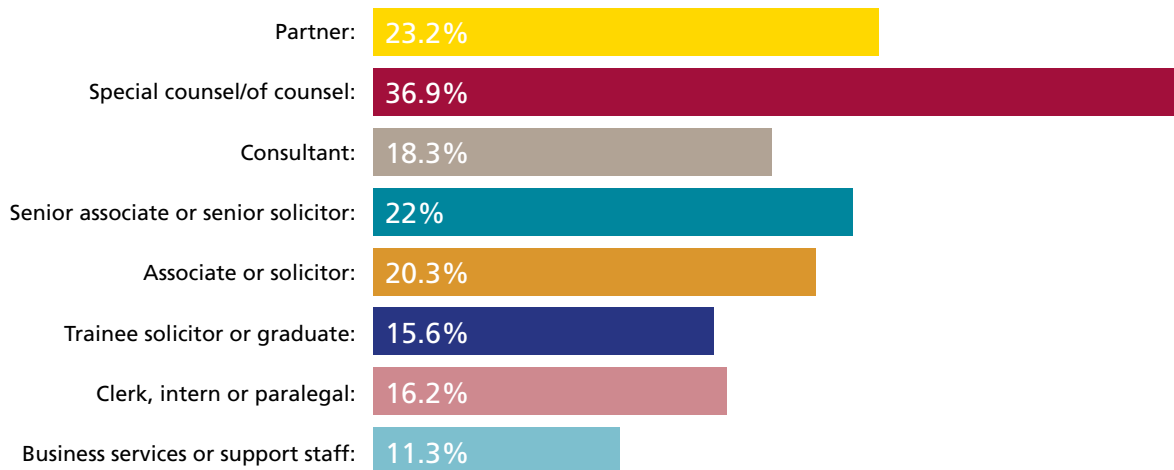


Sexually harassed within the past year, female (% of total respondents)



The prevalence of sexual harassment is relatively stable across positions within law firms. On a gender-weighted basis, 16% of trainees, 20% of solicitors/associates, 22% of senior associates/senior solicitors and 23% of partners have been sexually harassed – see Figure 35. Notwithstanding some outliers, possibly influenced by low response rates for particular categories, the minor rise in prevalence as seniority increases is likely to be attributable to the longer opportunity to have experienced sexual harassment. This data supports the finding regarding the disproportionate impact on younger respondents – if sexual harassment were evenly spread by age and position (which are strongly correlated), a more linear increase in prevalence would be expected as seniority increases.

Figure 35: sexual harassment prevalence by law firm position*



* Gender-weighted

In Their Own Words

One of the senior partners offered to help me get a training contract, if I went to casinos with him and agreed to 'get to know him better'. I never reported it because it would have meant exclusion from the project. Nothing happens to the partners.

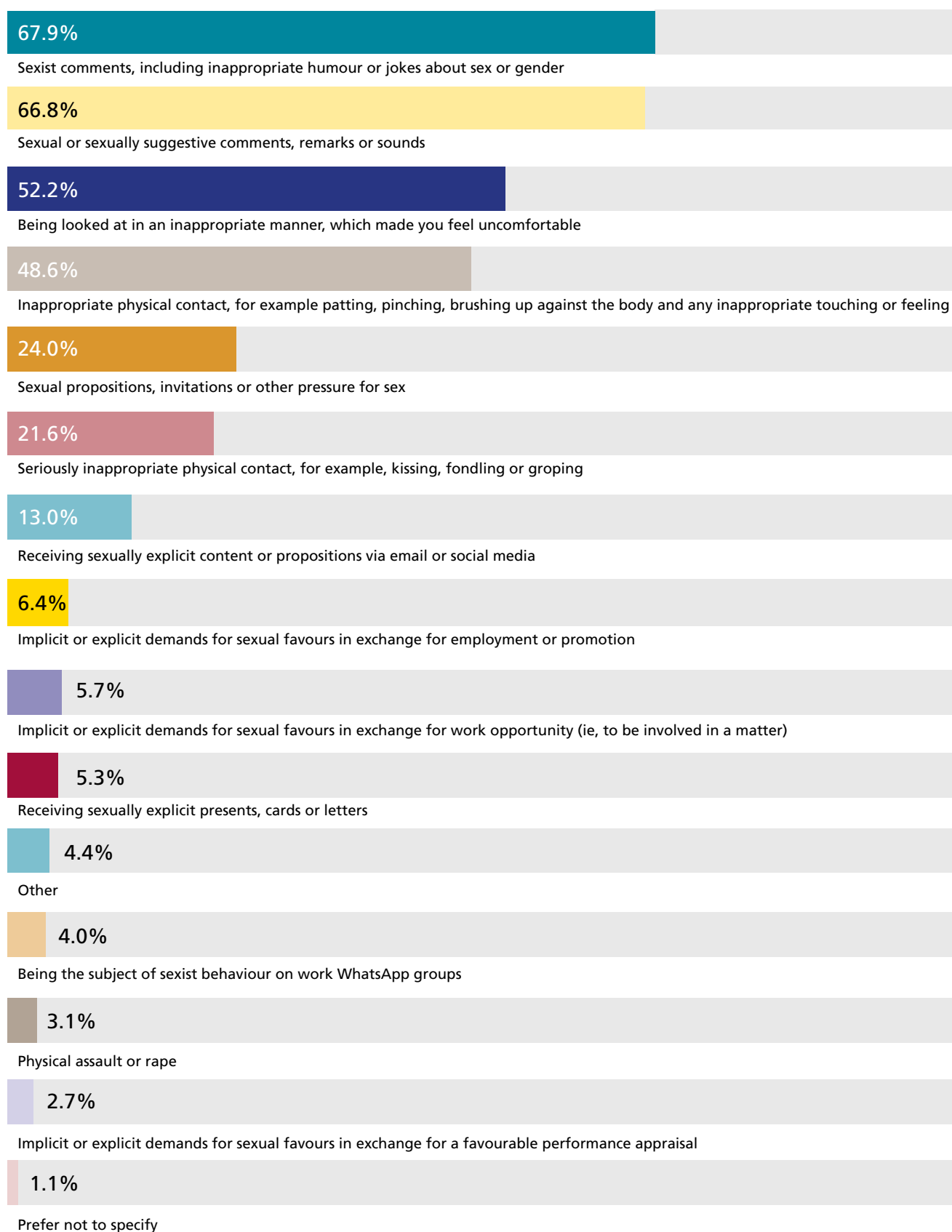
Female, law firm

Type

Respondents who had been sexually harassed were asked about the type or types of sexual harassment they had experienced – see Figure 36. Sexist, sexual and sexually suggestive comments were the most commonly experienced forms of sexual harassment, while inappropriate physical contact and sexual propositions were also common; 22% of sexually harassed respondents had been fondled, kissed or groped, while 3% had been sexually assaulted. Sexist comments were far less common among sexually harassed male respondents (31%), while sexually suggestive comments were higher in relative terms (at 55%, this was the most common form of sexual harassment experienced by male respondents, albeit still less prevalent than among female respondents). On average, female targets were harassed in a greater variety of ways – with a ratio of 3.4 sexual harassment types to each sexually harassed female respondent, compared with 2.4 types among sexually harassed male respondents.

Sexist and sexual comments had a higher prevalence in North America, while sexist behaviour in work-related group messaging was 300% more common in Latin America compared with the global average. Otherwise, there were few notable variations by region. Sexist and sexual comments, sexual propositions, seriously inappropriate physical contact and demands for sexual favours in return for work opportunity were all significantly more prevalent in barristers' chambers.

Figure 36: sexual harassment prevalence by type



In Their Own Words

// *I was advised by my mentors not to become the 'poster child for sexual assault in the workplace' as this would seriously handicap my career.*

Female, law firm, Hong Kong

// *The male bosses take advantage of young, temporary female employees, in need of work, and without professional experience, by demanding sexual favours in exchange for employment. You cannot report, or they do not renew your position.*

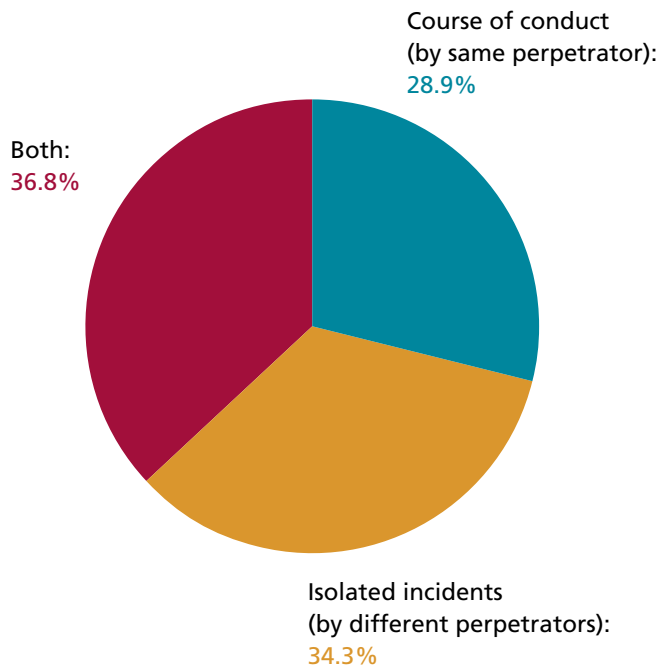
Female, government, Costa Rica

Frequency and timing

While incidents of sexual harassment are rarely isolated, it is more likely than bullying to occur by way of multiple, unrelated incidents and less likely to be a course of conduct by the same perpetrator. Respondents who had been sexually harassed were asked whether they had been harassed on more than one occasion: 84% said yes (compared with 90% of respondents to the same question for bullying). There were no significant variations by gender, age, region or workplace type, although barristers were more likely to have been sexually harassed more than once. Respondents were then asked about the nature of the multiple incidents – see Figure 37. Whereas more than half of bullied respondents indicated that ongoing bullying formed part of a course of conduct by the same perpetrator, repetitive sexual harassment is relatively more likely to be constituted by isolated incidents by different perpetrators (34% compared with 16% for bullying).

Much sexual harassment at the less severe end of the spectrum (eg, sexual or sexist comments) occurred within the past five years. Unsurprisingly, technology-based sexual harassment is most common in recent years. More serious sexual harassment – inappropriate and seriously inappropriate touching, sexual propositions and sexual assault – was spread relatively evenly over time, however, was less likely to have occurred within the past year. This may indicate a recent decrease in serious sexual harassment, although it might alternatively be that recent targets of serious sexual harassment are unwilling to recall those incidents in a survey. On a positive note, sexual demands in exchange for promotions or positive work appraisals occurred most commonly 10–20 years ago, and are significantly less commonplace today.

Figure 37: multiple incidents of sexual harassment



In Their Own Words

// *Sexist comments are endemic.*

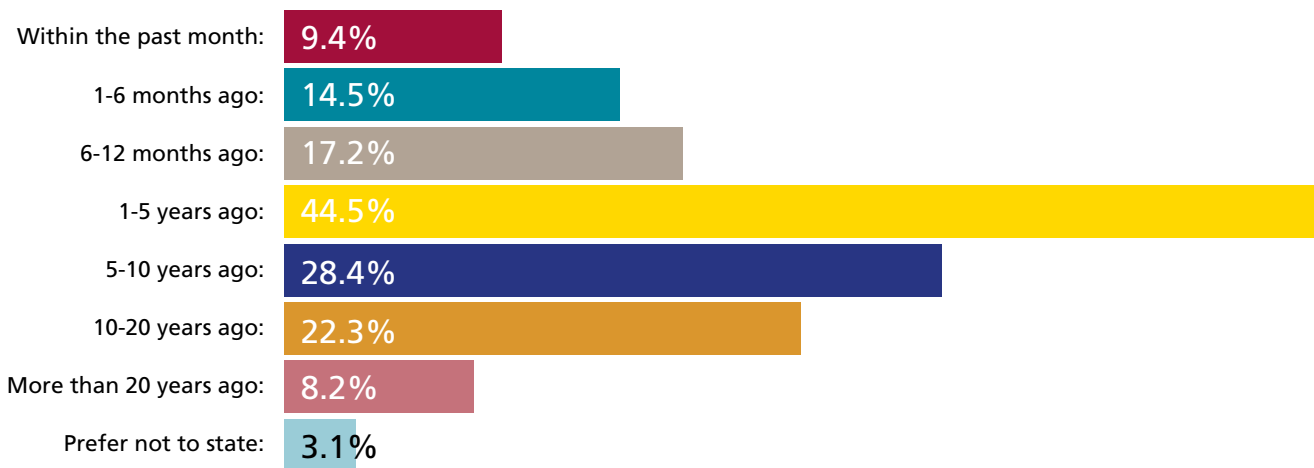
Female, law firm, Brazil

// *A client said I must see the view he had from his hotel room and after initially saying no I eventually popped into his room ‘just for a moment’. He then lunged. I moved away quickly and nothing terrible happened. I felt like an idiot. I thought his interest in me was professional. I felt horribly uncomfortable the next day in his team. I was worried it had ruined my career.*

Female, law firm, UK

Of sexual harassment cases, 29% included one or more incidents that had occurred within the year prior to survey completion – see Figure 38. Respondents were able to select more than one option, hence the cumulative percentage exceeds 100%. Male respondents and respondents at judicial workplaces were significantly less likely to have been sexually harassed within the past year, while those at barristers’ chambers were more likely to have been sexually harassed in the same period.

Figure 38: sexual harassment incidents over time

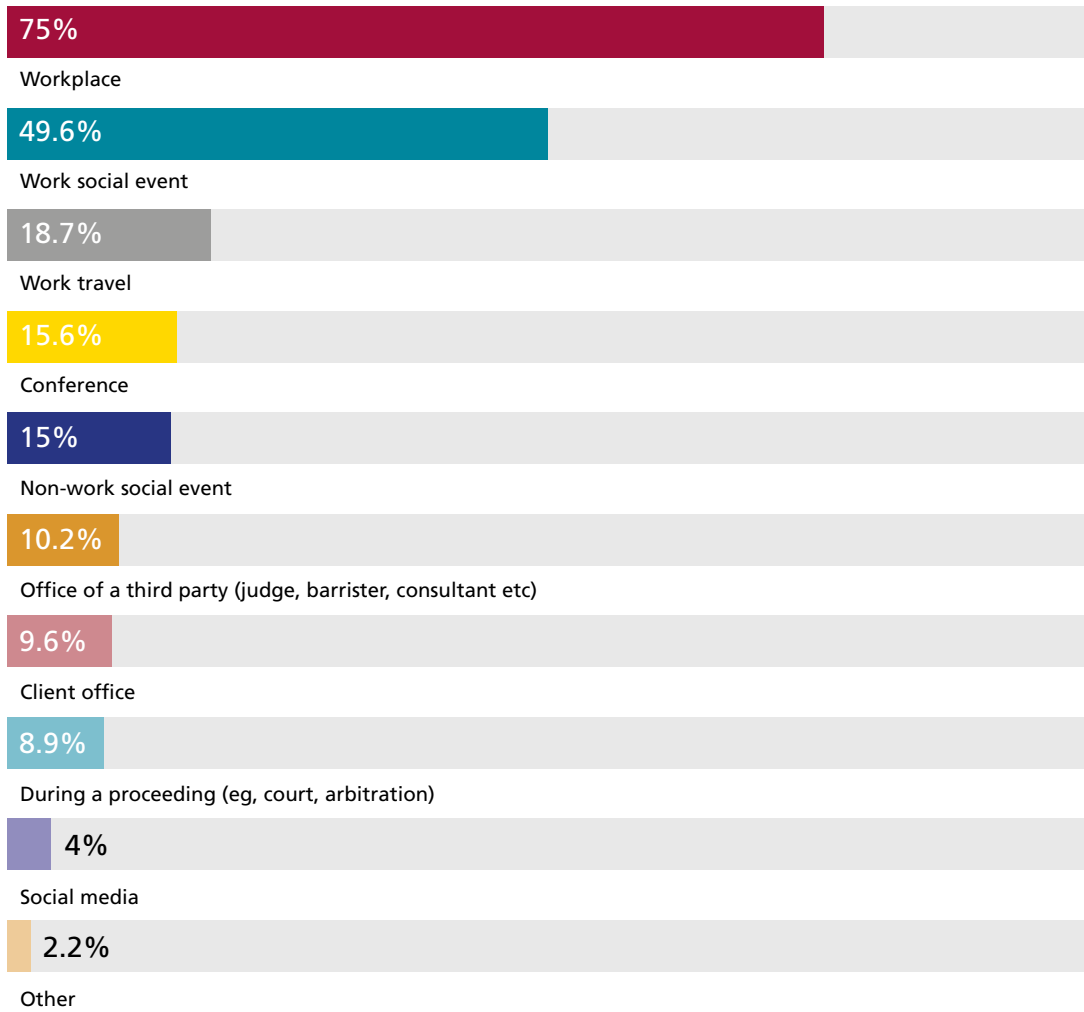


Location

Although sexual harassment most commonly takes place in the workplace, relative to bullying, it is significantly less workplace-centric: 75% of respondents who had experienced sexual harassment experienced it in the workplace, with work social events, work travel and conferences the other common sites of sexual harassment – see Figure 39. Respondents were able to select more than one option (for conduct that occurred across multiple locations), hence the cumulative percentage exceeds 100%. Sexual harassment at conferences is more likely among older respondents, possibly reflecting the fact that junior members of the profession are less frequently exposed to these environments. Younger respondents were more likely to have been sexually harassed on social media. Sexual harassment in the physical workplace is more common in Africa and Latin America and relatively less common in Scandinavia, where such incidents are more likely than the global average to occur at work social events.

Location variation by workplace type is largely self-explanatory: respondents at barristers' chambers were more likely than average to be sexually harassed during proceedings, while those in government were significantly less likely to be sexually harassed at work social events (possibly due to the lesser frequency of such events at government workplaces compared with law firms). Sexual harassment at social events is considerably higher among respondents at mid-sized to large law firms than at small firms. More severe forms of sexual harassment (eg, seriously inappropriate physical contact) were more likely to occur outside the office.

Figure 39: location of sexual harassment

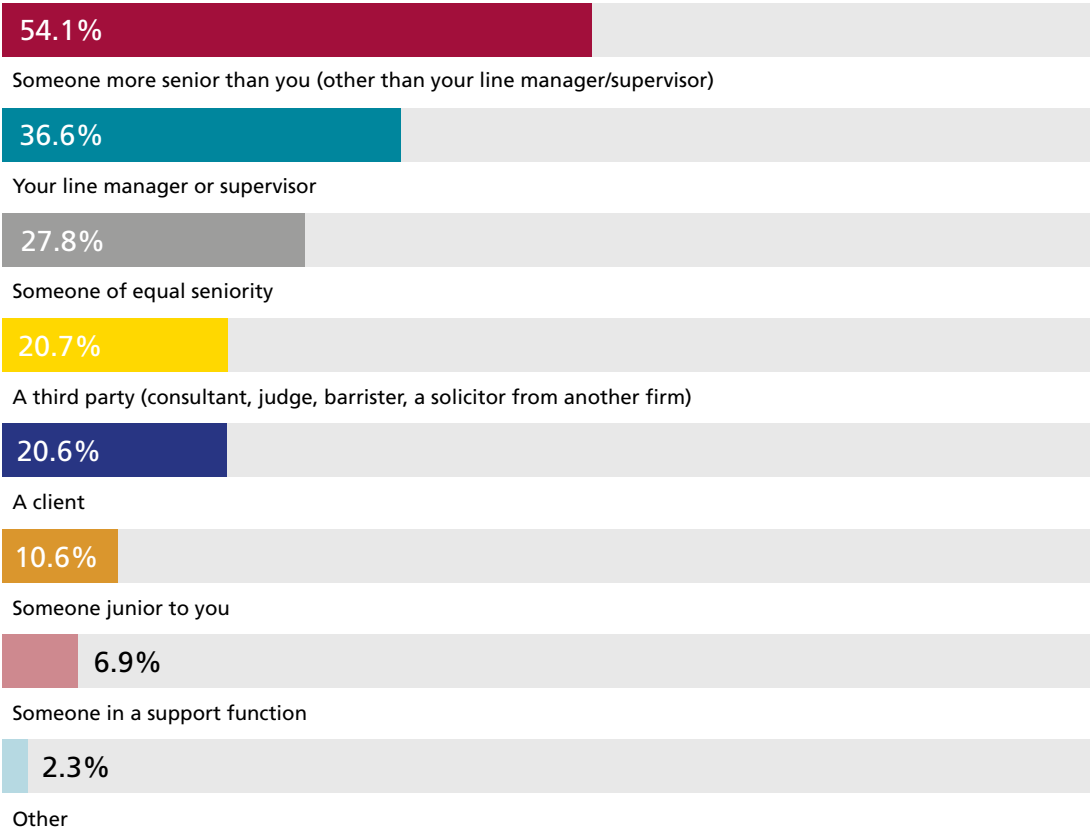


Perpetrator

More than half of reported incidents of sexual harassment in the survey were perpetrated by non-supervisor senior colleagues – see Figure 40. Supervisors/line managers were the second most common category of perpetrator, followed by colleagues of a similar level of seniority. These findings suggest that, unlike bullying, hierarchy and power imbalance play less of a role in sexual harassment incidents; relative to bullying, supervisors were significantly less likely, while equal and junior colleagues were significantly more likely, to be the perpetrator of sexual harassment. Clients and other third parties were more likely, in relative terms, to sexually harass than bully.

Among younger respondents, sexual harassment was more likely to be perpetrated by senior colleagues and less likely to be perpetrated by someone of equal seniority; whereas these trends invert among older respondents. Sexual harassment by clients was relatively more common in North America, while a third party (barrister, judge, other party's solicitor, etc) was relatively more likely to be the perpetrator in Oceania. Among law firms, sexual harassment by supervisors/line managers is significantly more common at smaller firms, while the prevalence of sexual harassment by non-supervisor senior colleagues increases with firm size. Unsurprisingly, supervisors/line managers were more likely to make implicit or explicit demands for sexual favours in exchange for work opportunities, reflecting the power imbalance. Sexual assault/rape was most commonly perpetrated by a third party.

Figure 40: perpetrator of sexual harassment



In Their Own Words

// I often received comments from my supervisor that she wanted to ‘fuck me’. Any conversation would seem to have a sexual reference in it.

Male, barristers’ chambers, UK

// The comments were about me being ‘sexy’ and the partner saying stuff like ‘I always look at you’. I find these comments highly inappropriate coming from a partner to a young associate. If another associate said the same thing it would be a lot easier to tell him/her off.

Female, law firm, Sweden

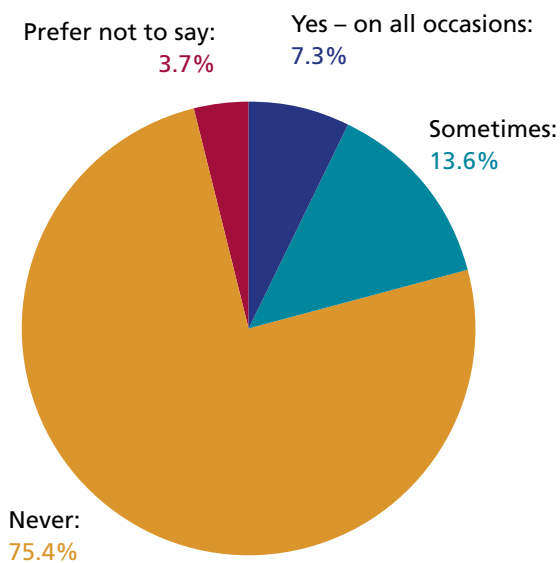
// My boss resolved it by refusing all work from the same client, which was a wonderful solution and I felt protected and heard, but at another workplace the perpetrator was a very influential person who would have had me fired. It contributed to me resigning not too long thereafter.

Female, judiciary, Namibia

Reporting

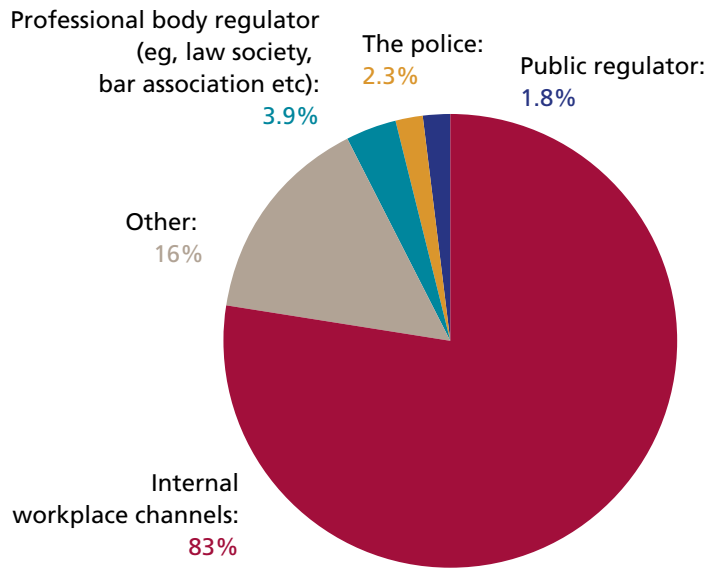
Sexual harassment is chronically underreported. In three-quarters of cases arising in the survey, the target did not report the incident – see Figure 41. Sexual harassment is reported even less often than bullying – in just 21% of cases, harassment was reported always or sometimes (when there were multiple incidents of the same type of conduct), compared with almost 40% for bullying. Male respondents were significantly less likely to report sexual harassment. There is remarkably little variation in reporting rates by age, region or workplace, suggesting that underreporting of sexual harassment is a profession-wide – and possibly societal-wide – problem. Reporting rates are highest at small firms (fewer than five partners) and large firms (more than 100 partners), with a dip among mid-sized firms.

Figure 41: reporting of sexual harassment



When respondents do report, they overwhelmingly report via internal workplace channels: see Figure 42. Reporting channel usage for sexual harassment is similar to bullying, although bullied respondents who report are even more likely to do so internally. Internal reporting of sexual harassment is more common among male respondents and among respondents at government workplaces, and less common at barristers' chambers and in the judiciary. Notably, the use of external reporting channels did not increase as the severity of the sexual harassment increased. There was little difference in reporting channel usage between sexual comments and seriously inappropriate physical conduct, for example, albeit police involvement was more common in instances of sexual assault.

Figure 42: reporting channels



In Their Own Words

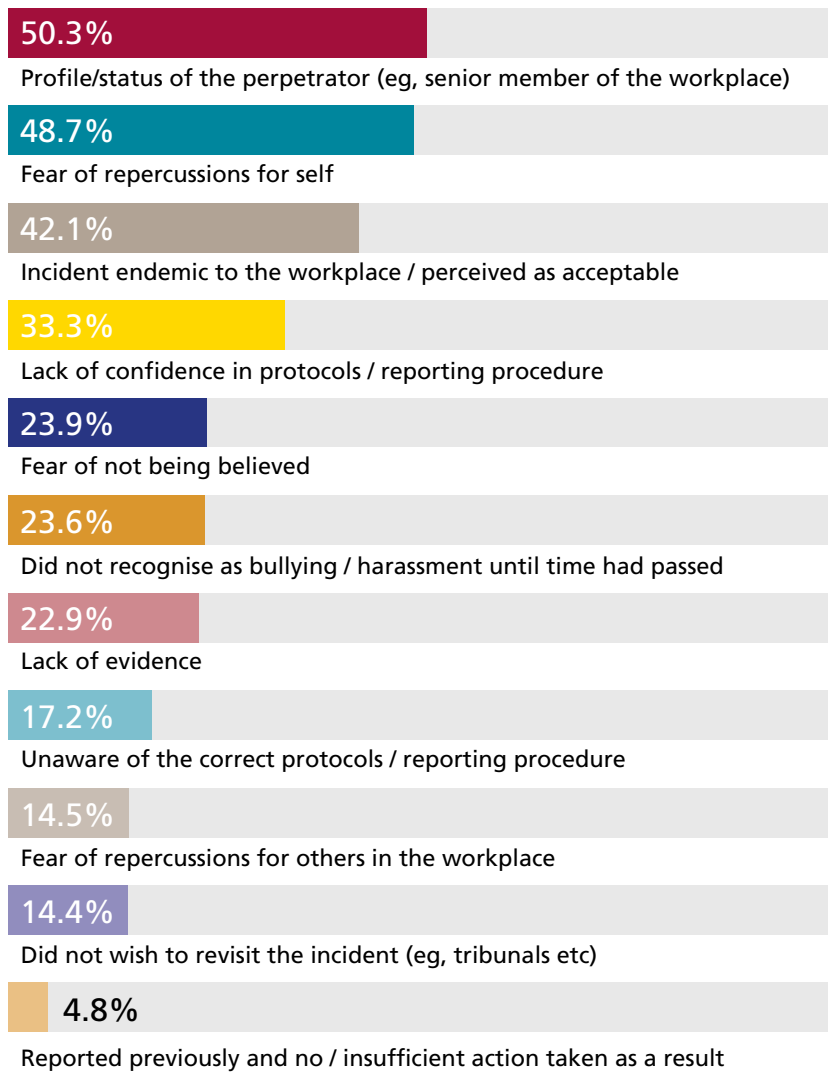


I didn't report because who believes that a man says no to sex?

Male, law firm, Sweden

Respondents who had been sexually harassed but did not report the incident were asked what factors contributed to them not reporting. The profile or status of the perpetrator was the most common reason, followed by concerns about repercussions – see Figure 43. These findings largely mirror the reasons inhibiting the reporting of bullying. Male respondents were significantly less likely to be deterred by the profile or status of the perpetrator, and significantly more likely to have not recognised the incident as sexual harassment at the time. Fear about the profile or status of the perpetrator decreases with age, while the perceived risk of repercussions was greater in judicial workplaces and less significant among in-house respondents.

Figure 43: reasons for non-reporting of sexual harassment



Among the qualitative data, there were numerous comments that indicated concern for the proportionality of a perpetrator's punishment. A number of respondents suggested that, for conduct of a low or medium level of severity, existing procedures felt disproportionate. This is troubling. If members of the profession feel that existing reporting channels are only appropriate in cases of serious sexual harassment, and there is an absence of alternative avenues, less severe forms of sexual harassment will continue to go unchecked.

In Their Own Words

// A fellow trainee solicitor groped me during a social event. He was drunk and had, up until that point, been someone I considered a friend. I thought about reporting him, but realised that there was a serious chance he would never qualify as a solicitor if I did. I told him that if I ever heard of or witnessed any inappropriate behaviour on his part, I would go to HR. I am still not entirely sure that I did the right thing, but I knew how hard everyone had worked to get to the point we were at. I was not prepared to ruin his future over this.

Female, law firm, UK

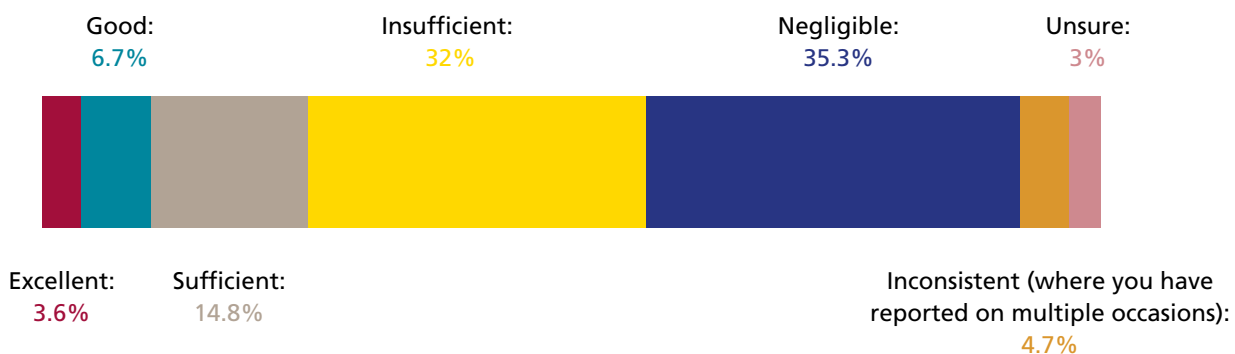
// You missed an option: I didn't want to report the behaviour. Why would I want to ruin [the perpetrator's] career and personal life over such a transgression? Are the consequences of reporting it proportionate to the infraction? I would never report sexual harassment or bullying unless it was extreme. The offences are too small to report but nonetheless very invasive and keep on cumulating. I desire to be respected for my intellect; not how my body looks in my dress.

Female, law firm, Curaçao

Workplace response

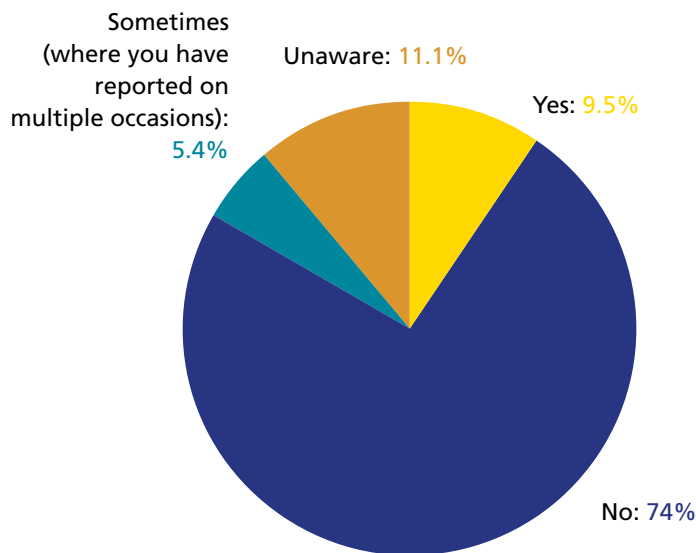
Respondents who had reported an incident of sexual harassment were asked to assess their workplace's response. One quarter of respondents considered the response sufficient or better, while two-thirds of respondents indicated the workplace's response was insufficient or negligible – see Figure 44. In-house workplaces received the worst assessments, with just 13% of respondents at a corporation or organisation indicating the response to a reported incidence was sufficient or better. Otherwise there were no significant variations by gender, age, region or workplace. One possible positive: legal workplaces respond better to sexual harassment reports than they do bullying. Respondents who had been sexually harassed were five percentage points more likely to assess their workplace's response as sufficient or above, compared with bullying.

Figure 44: workplace response



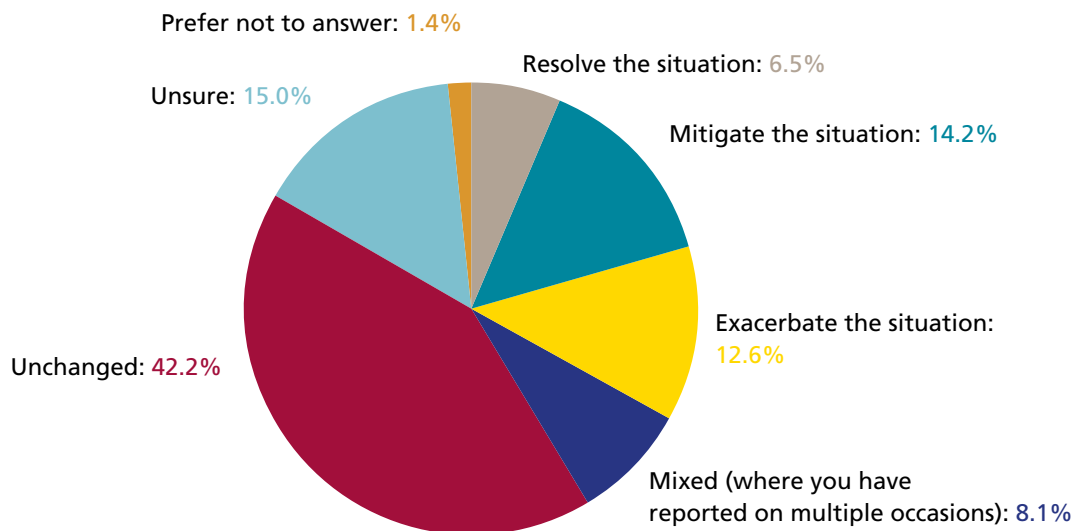
In three-quarters of sexual harassment cases, the perpetrator was not sanctioned – see Figure 45. There were no statistically significant variations by gender, age, regional or workplace. Sexual harassers were three percentage points more likely to be sanctioned than bullies.

Figure 45: sanctioning harassers



Respondents were asked whether their workplace's intervention had resolved, mitigated or exacerbated the situation. In more than half of cases, the situation was unchanged or deteriorated – see Figure 45A. However, intervention in cases of sexual harassment was viewed more favourably than those in bullying cases: in 21% of sexual harassment cases, the intervention resolved or mitigated the sexual harassment, compared with 15% in bullying cases.

Figure 45A: outcome of workplace intervention



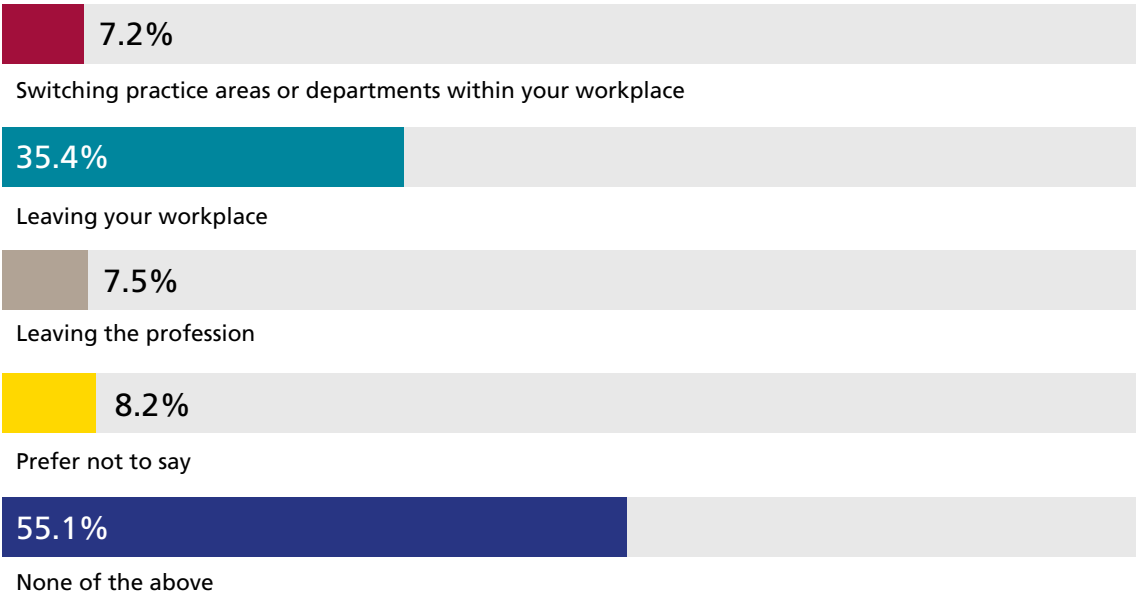
Impact

Respondents who had been sexually harassed were asked about the impact the conduct had on them – see Figure 46. Over one-third of sexually harassed respondents have left or are considering leaving their workplace. About one in ten have left or are considering leaving the profession entirely. As with similar findings regarding bullying, these statistics are troubling and demonstrate the urgent need for the profession to address sexual harassment. Female respondents were more

likely to report adverse outcomes following sexual harassment. Age has an inverse effect on the impact of sexual harassment, with those below 35 significantly more likely to have left or have considered leaving the workplace; the bullying data indicated similar trends. Sexually harassed respondents aged between 25 and 29 were approximately 50% more likely than the mean to have left or have considered leaving the profession. Sexual harassment was most likely to have some adverse impact in government legal workplaces and law firms.

Figure 46: impact of sexual harassment**

Has (or will) this conduct contribute to you:



*Gender-weighted

*Respondents could select more than one option

In Their Own Words

// *The [sexually suggestive comments] have contributed to my depression. They have made me very angry about being helpless to stop the behaviour. It has made me less trusting of colleagues and less willing to participate in professional and social events.*

Female, law firm, US

// *The partners closed ranks around the perpetrator [of seriously inappropriate physical contact]. The firm did nothing to sanction him and later promoted him into a more senior, but marginally less public position. They offered me no support or reassurances about my career. I felt I had no choice but to leave.*

Female, law firm, UK

Policies and Training

Policies and training are the most commonly adopted tools to address bullying and sexual harassment in workplaces across the globe.⁹⁴ The perceived importance of these tools for prevention and intervention have been underscored by surveys of human resource professionals and academic research.⁹⁵ Are they effective? Some prior research has found a correlation between the adoption of policies and lower levels of inappropriate workplace conduct. James Gruber, for example, determined that '[e]mployees in workplaces without policies report the highest levels of harassment'.⁹⁶ A second study concluded: 'organisational chaos as reflected in a lack of policies and procedures is another factor increasing the likelihood [of bullying and sexual harassment]'.⁹⁷ However, further research has highlighted that the process of developing and applying these policies is as significant as their contents.⁹⁸ Scholars have also suggested that poorly planned or superficial interventions can be harmful to certain employees' attitudes,⁹⁹ and that the mere introduction of a policy does not typically influence the willingness of relevant personnel to take action in response to complaints.¹⁰⁰

The efficacy of workplace training to address bullying and sexual harassment also remains contested in the academic literature. One study found that anti-bullying training for managers can reduce bullying,¹⁰¹ while another found that the impact of sexual harassment training depends on employee perceptions of an organisation's commitment to change.¹⁰² Other research concluded that there is no evidence that training affects the prevalence of workplace sexual harassment towards women.¹⁰³

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- 94 A recent study surveyed human resource professionals across 14 regions: Denise Salin and others, 'Prevention of and Interventions in Workplace Bullying: A Global Study of Human Resource Professionals' Reflections on Preferred Action' (2018) *International Journal of Human Resource Management* (advance) 1.
 - 95 *Ibid*; Denise Salin, 'The Prevention of Workplace Bullying as a Question of Resource Management: Measures Adopted and Underlying Organizational Factors' (2008) 24 *Scandinavian Journal of Management* 221, 223; Adrienne Hubert, 'To Prevent and Overcome Undesirable Interaction: A Systematic Approach Model' in Ståle Einarsen, Helge Hoel and Cary Cooper (eds), *Bullying and Emotional Abuse in the Workplace: International Perspectives in Research and Practice* (London, Taylor & Francis 2003).
 - 96 Chai Feldblum and Victoria Lipnic, 'Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs' (Equal Employment Opportunity Commission, June 2016) 38, citing James Gruber, 'The Impact of Male Work Environments and Organizational Policies on Women's Experiences of Sexual Harassment' (1998) 12 *Gender & Society* 301.
 - 97 See Hoel and Vartia (n 35) 25, citing Steven Lopez, Randy Hodson and Vincent Roscigno, 'Power, Status and Abuse at Work: General and Sexual Harassment Compared' (2009) 50 *Sociological Quarterly* 3, 3–27.
 - 98 Elfi Baillien, Inge Neyens and Hans De Witte, *Ongewenst Grensoverschrijdend Gedrag op Het Werk: Op Welke Manier Speelt de Organisatie een Rol? Een Kwantitatieve Studie van Risicofactoren op Niveau van Job, Team en Organisatie* (Onderzoeksgroep voor Stress, Gezondheid en Welzijn 2005); Bernardo Moreno-Jiménez and others, 'Antecedentes Organizacionales del Acoso Psicológico en el Trabajo: Un Estudio Exploratorio' (2005) 17 *Psicothema* 627, 627–632; Salin, 'The Prevention of Workplace Bullying' (n 95) 223–224.
 - 99 See, eg, Shereen Bingham and Lisa Scherer, 'The Unexpected Effects of a Sexual Harassment Education Program' (2001) 37 *Journal of Applied Behavioral Science* 125, 125–153, cited in Salin, 'The Prevention of Workplace Bullying' (n 95) 229.
 - 100 Denise Salin, 'Organisational Responses to Workplace Harassment: An Exploratory Study' (2008) 38 *Personnel Review* 26, 39.
 - 101 Chris Woodrow and David Guest, 'Leadership and Approaches to the Management of Workplace Bullying' (2017) 26 *European Journal of Work and Organizational Psychology* 221, 230.
 - 102 Ho Kwan Cheung and others, 'Are They True to the Cause? Beliefs About Organizational and Unit Commitment to Sexual Harassment Awareness Training' (2018) 43 *Group and Organization Management* 531, 537.
 - 103 Vicki Magley and others, 'Changing Sexual Harassment Within Organizations via Training Interventions: Suggestions and Empirical Data' in Ronald Burke and Cary Cooper (eds), *The Fulfilling Workplace: The Organization's Role in Achieving Individual and Organizational Health* (London, Routledge 2013) 225, cited in Feldblum and Lipnic (n 96), 48.

There are also considerable limitations with much of the extant research: ‘because it is difficult for researchers to gain access to workplaces to study... many researchers design experiments using student-volunteer samples or other small volunteer samples’.¹⁰⁴ While their findings remain valuable, these shortcomings must be acknowledged.

To consider these issues in the legal workplace context, survey respondents were asked whether their workplaces had policies and/or training directed at bullying and sexual harassment. They were then asked a series of follow-up questions about the frequency of awareness-enhancing efforts, levels of trust in the person(s) responsible for the policies, the adequacy of any training and, overall, how they perceived their workplace’s approach to bullying and sexual harassment. Two caveats should be highlighted. First, due to the need for brevity, these questions grouped bullying and sexual harassment together – which removes possible granularity in approaches adopted by legal workplaces in addressing these distinct, albeit related, forms of conduct. Second, perceptions are an imperfect proxy for reality: it may be that some respondents answered no when in fact their workplace does have relevant policies or offers training. However, this second limitation is mitigated by the broader purpose of this research – put simply, policies and training lose effectiveness if they are invisible in the workplace. If a respondent answered no when in fact the workplace does have a policy or offer training, this suggests the workplace’s implementation needs considerable improvement.

In Their Own Words

“ *There is no point in reporting. Everyone knows what goes on. The harassment occurs out in the open and no one does anything about it. The other partners just stand there and let it happen. If you say something, you get fired. We have a very small legal market. If they ruin your reputation, no one else will hire you.*

Female, law firm, Uruguay

104 See Feldblum and Lipnic (n 96) 46.

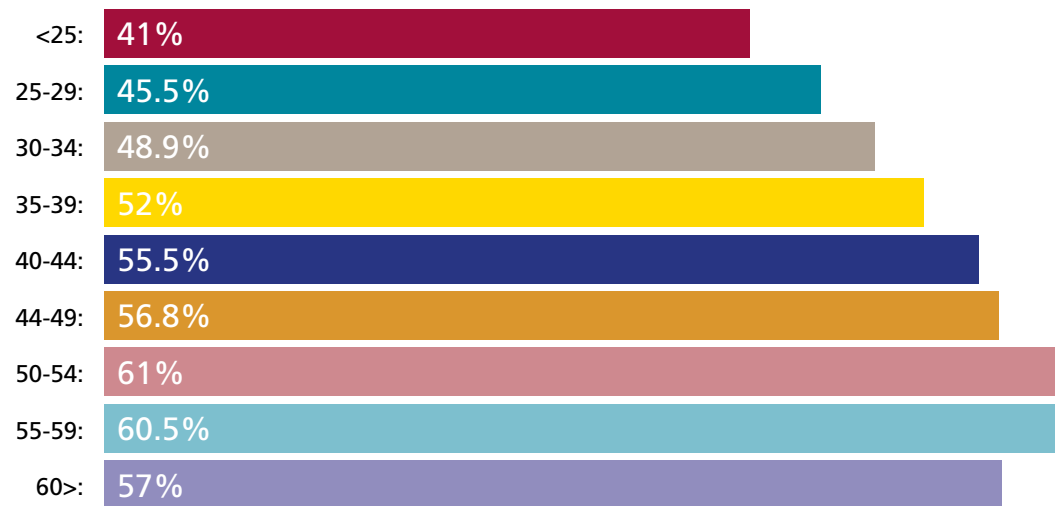
Policies

Prevalence – overview

Approximately one in two survey respondents indicated that their current workplace had a policy or policies in place that addressed bullying and sexual harassment. There was little variation in perception by gender. Across all genders, 31% of respondents’ workplaces did not have policies in place, and 17% of respondents were unsure. Accordingly, given that between 30% and 47% of respondents’ workplaces have not implemented relevant policies, there is considerable scope for legal workplaces to introduce policies to address bullying and sexual harassment. Those that do have policies in place should do more to increase awareness, understanding and adherence.

Perception of policy prevalence increases steadily with age – see Figure 47. Given that seniority in the legal profession has a strong correlation with age, this suggests that awareness of workplace policies is more common among those in senior positions – likely due to increased management responsibilities. This inference is supported by analysis of perception by position: 50% of law firm partners who responded to the survey indicated that their workplace had policies in place, compared with only 42% of associates/solicitors. Given that younger members of the profession are disproportionately affected by bullying and sexual harassment, workplaces need to place more emphasis on raising awareness about policies among that cohort. Unsurprisingly, for those at law firms, awareness of policies increases on an almost linear basis with length of time at the firm; from 45% yes and 30% unaware at less than one year to 58% yes and 6% unaware at more than 15 years.

Figure 47: policy prevalence by age



In Their Own Words

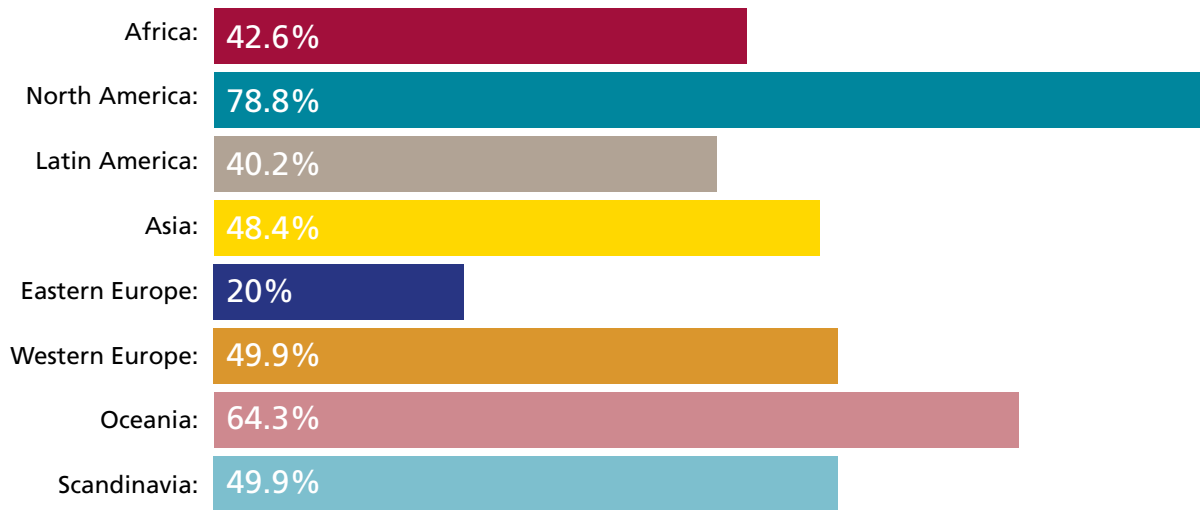
After requesting that a sexual harassment policy be implemented, I experienced a huge backlash. There was an immediate increase in sexist comments, jokes and derogatory comments personally directed at me.

Female, advocate, South Africa

Prevalence – by region

The prevalence of policies varies widely by country. In Canada, for example, 84% of respondents indicated that their workplace had bullying or sexual harassment policies, whereas in Latvia, just 8% of respondents answered affirmatively. Country-specific variation is explored in more detail in the Case Studies section below. Regionally, legal workplaces in North America and Oceania have the highest prevalence – see Figure 48.

Figure 48: policy prevalence by region



Prevalence – by workplace type

The prevalence of policies also varies widely by workplace type – see Figure 49. Government legal workplaces have the highest perceived prevalence, while barristers’ chambers have the lowest. There is a strong positive correlation between law firm size and the prevalence of policies – see Figure 50.

Figure 49: policy prevalence by workplace type

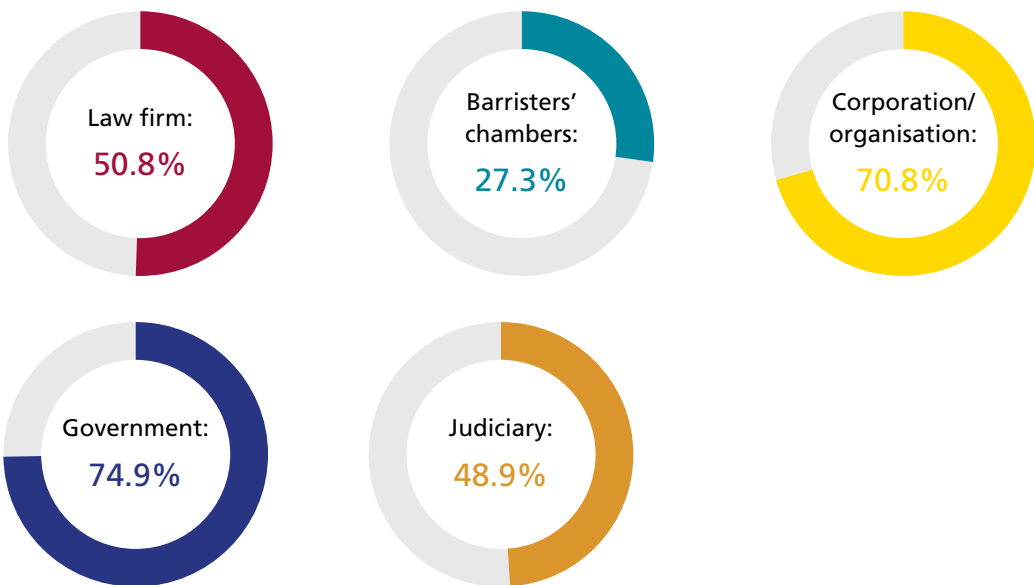


Figure 50: policy prevalence by law firm size

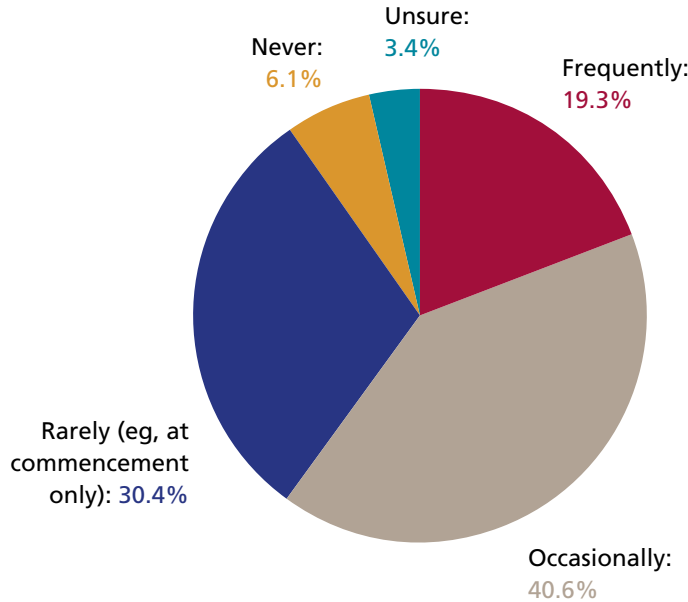


Awareness

Only one in five legal workplaces regularly inform staff of their rights and obligations under relevant policies – see Figure 51. Perceptions of the frequency of workplace efforts to draw attention to policies varies by age: 11% of legal professionals aged 25–29 thought their workplace frequently informed them of relevant policies, rising on an almost linear basis to 33% among those aged over 60. There is less variation by workplace, with law firm, corporate, government and judicial workplaces all within a few percentage points of the mean. Barristers’ chambers were the outlier – only 8% of respondents thought their chambers regularly advised them of their rights and obligations in this context.

Figure 51: policy awareness

Does your workplace inform you of your and others’ rights and obligations under such policies?



Process awareness

Respondents at workplaces with policies were asked if they knew who in their workplace was responsible for managing complaints made under the policy or policies. A significant majority answered in the affirmative – see Figure 52. There is again an age imbalance: 58% of legal professionals aged 25–29 knew who had responsibility for the policy, increasing steadily to 85% among those aged over 60. Law firm, government and judicial workplaces were around the mean, with in-house workplaces above average (80%) and barristers’ chambers below average (62%). Interestingly, while larger law firms have a higher policy prevalence, there is an inverse relationship between size of firm and the respondent knowing who is responsible for handling complaints – see Figure 53.

Figure 52: policy responsibility

Do you know who is responsible for managing complaints made under the policy or policies?

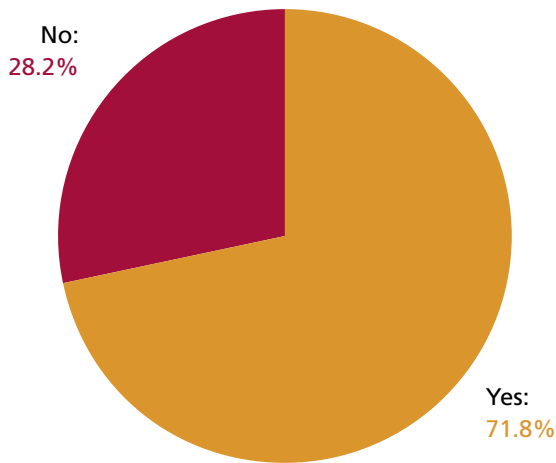


Figure 53: policy responsibility at law firms

Do you know who is responsible for managing complaints made under the policy or policies? Yes

Number of partners



Procedural confidence

Respondents who answered affirmatively were asked whether they had confidence that this person or these people would deal with concerns or complaints in a thorough, confidential and impartial manner. Male respondents were significantly more likely to express confidence, at 79% compared with 57% among female respondents – see Figures 54 and 55. Confidence increases steadily with age: from 53% among the 25–29 age group to 81% among those aged over 60. Confidence is highest in law firms (69%) and lowest in government legal workplaces (41%). In law firms, there is an inverse correlation between firm size and confidence: 84% of respondents at firms with fewer than five partners have confidence in the complaints process, declining steadily to 62% at firms with over 100 partners. This finding and those above pose a challenge for large law firms (and similar workplaces): despite having the highest prevalence of policies, their usage has not improved confidence in the procedural mechanisms for resolving complaints. It might be inferred that familiarity and close personal relationships at smaller firms have a significant positive impact on confidence in procedures and those responsible for them.

Figure 54: male confidence in complaints process

Are you confident that this person/people would deal with concerns or complaints in a thorough, confidential and impartial manner?

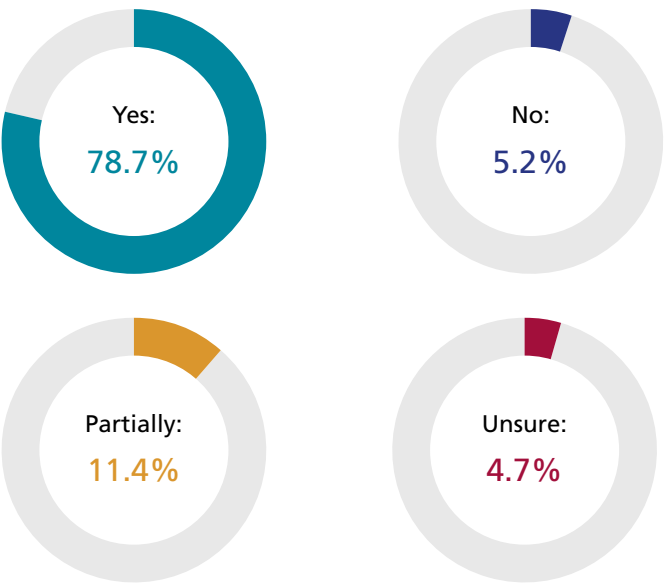
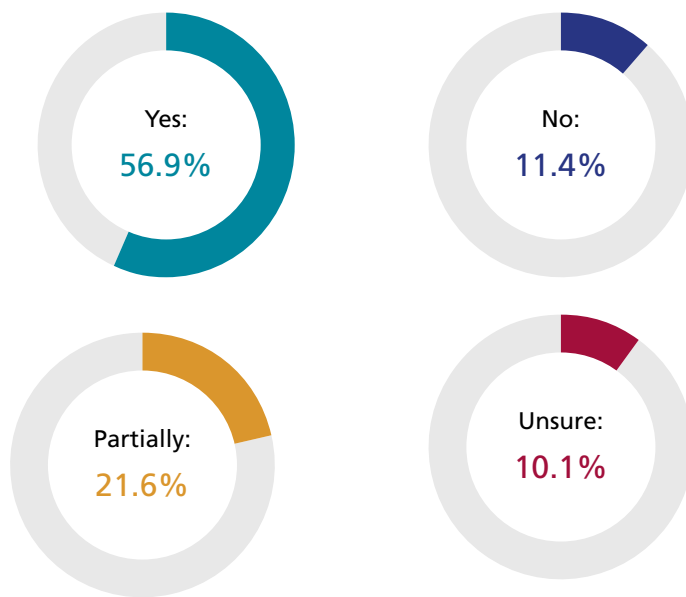


Figure 55: female confidence in complaints process

Are you confident that this person/people would deal with concerns or complaints in a thorough, confidential and impartial manner?



Impact on bullying

There is no statistically significant difference in the prevalence of bullying between legal workplaces with and without policies: 48% of respondents at legal workplaces with policies had been bullied, compared with 45% at workplaces without policies and 46% where the respondent was unsure about the existence of policies. Some of this bullying may be historical cases from prior workplaces, such that no inference could be drawn about the effectiveness of policies at present workplaces. However, this lack of effect is replicated in cases of bullying within the past year, where it is highly likely the incident occurred in the shadow of the policy in question. Accordingly, at the global level, workplace policies are not having the desired effect. There is regional variation and several jurisdictions do indicate a significant impact. In the UK, for example, 53% of respondents at legal workplaces with policies had been bullied, compared with 74% at those workplaces without policies.

Despite the absence of a positive macro impact, policies are having some discernible beneficial effects. Respondents at legal workplaces with policies were more likely to report incidents of bullying on some or all occasions (cumulatively 41% compared with 35% at workplaces without policies). The presence of policies also correlates with less likelihood that the perpetrator was the target's line manager or direct supervisor, a significant increase in the use of internal channels to report and fewer cases where the perpetrator avoided any sanction. Bullied respondents at law firms with policies were almost 10 percentage points less likely to want to leave the firm following an incident than those at firms without policies. However, there were no statistically significant differences in how respondents rated the adequacy of their workplace's response to a report of bullying between workplaces with and without policies.

Impact on sexual harassment

Analysis of the impact of policies on sexual harassment in the legal profession is similarly concerning: 28% of respondents at workplaces with policies had experienced sexual harassment, compared with 26% at workplaces without or where the respondent was unsure of the existence of policies. As with bullying, these trends are not universal and certain jurisdictions indicate different outcomes – in Canada, for example, respondents were 27 percentage points less likely to be sexually harassed if their workplace had policies in place. Globally, respondents at workplaces with policies were significantly less likely to have been sexually harassed within the past year, suggesting recent attention to this issue and a possible renewed emphasis on policies may be having a beneficial impact. The presence of workplace policies also correlates with less likelihood of sexual harassment by a respondent's line manager or supervisor. However, policies had little positive impact on reporting rates, the likelihood of the perpetrator being sanctioned or the respondent's assessment of their workplace's response to an incident. Accordingly, notwithstanding some positive effects, workplace policies are not effectively addressing sexual harassment in the legal profession.

In Their Own Words

// *My experience is that it does not matter whether there is a policy in place or not. If the individual is high achieving and productive, then management will not sanction or discipline that individual.*

Female, government, Canada

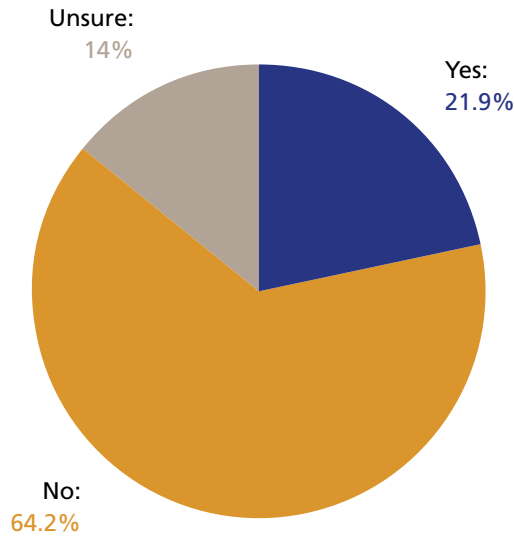
Training

Prevalence – overview

Only one in five legal workplaces conduct training to prevent and address bullying and sexual harassment – see Figure 56. Perception by age mirrored the policy findings: 15% of respondents aged under 25 thought their legal workplace ran training, rising on an almost linear basis to 32% for those over 60. Analogous trends exist on the basis of law firm position and time at firm. There is a significant overlap between the prevalence of policies and training: almost 40% of respondents at workplaces with policies indicated that they had received training, compared with just 3% at workplaces without policies.

Figure 56: training

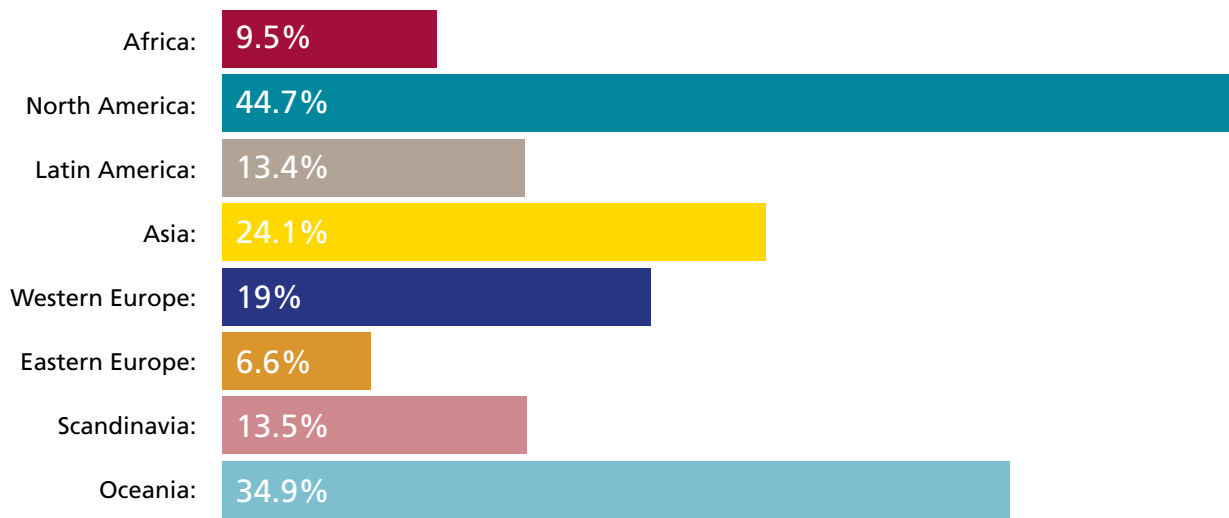
Does your workplace conduct training or information sessions relating to bullying and/or sexual harassment?



Prevalence – by region

As with policies, the prevalence of training varies widely by country. In the US, for example, 46% of respondents indicated that their workplace had bullying or sexual harassment training, whereas in Luxembourg just 3% of respondents answered affirmatively. Regionally, legal workplaces in North America and Oceania have the highest prevalence – see Figure 57. Regional trends broadly align with those for policies, albeit Europe has a disproportionately low training usage in light of the moderate policy prevalence in the region.

Figure 57: training prevalence by region



Prevalence – by workplace type

Government and in-house legal workplaces offer training at a significantly higher rate than law firms and judicial workplaces, which are around the mean – see Figure 58. Barristers’ chambers significantly underperform, with just 8% of respondents indicating that their chambers run training. There is a strong positive correlation between law firm size and the use of training – see Figure 59. Indeed, law firms with more than 100 partners have the highest training rate of all workplace types (43%).

Figure 58: training prevalence by workplace type

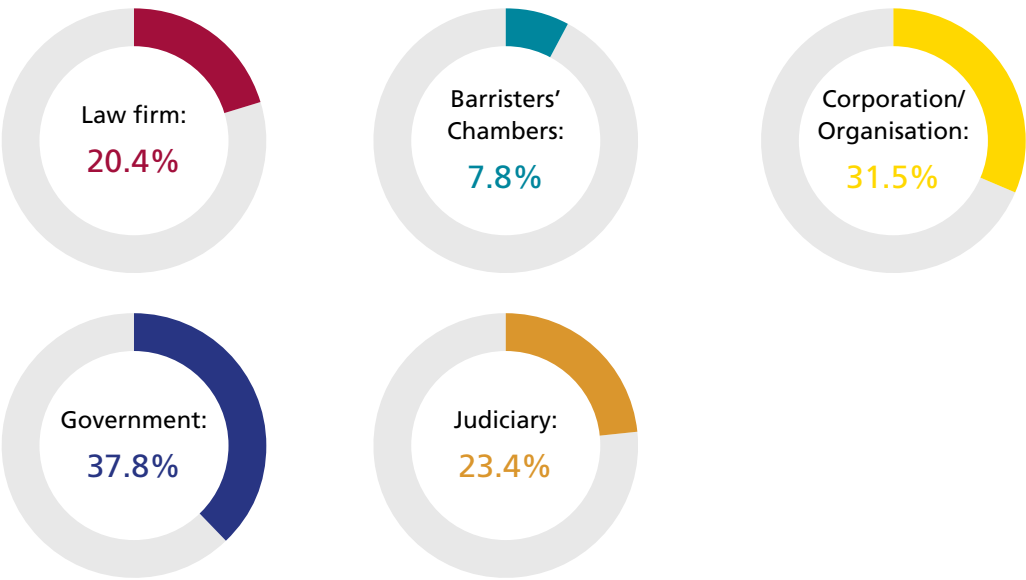
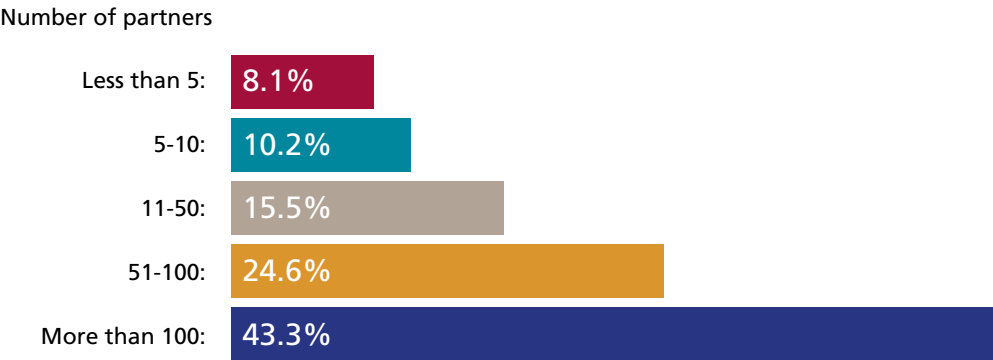


Figure 59: training prevalence by law firm size



In Their Own Words

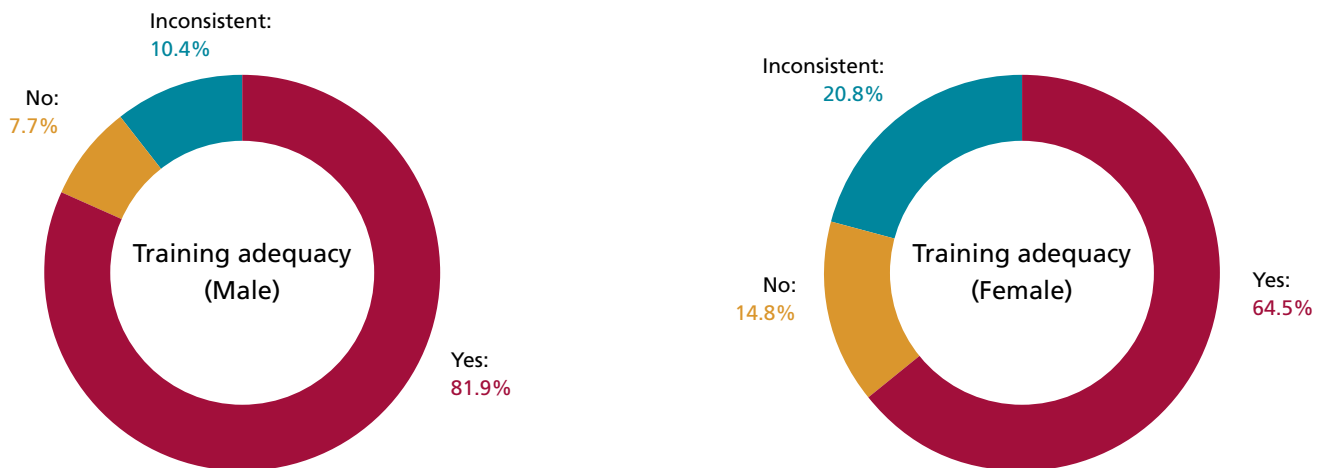
This is an epidemic in law firms and despite all the training, it just continues to occur. So many people leave because they are made to feel like it is their fault or they just can't handle the environment, but it is unprofessional. You should not have to put up with this.

Female, law firm, Australia

Adequacy

Respondents who had received training were asked to assess the adequacy of the training. The majority indicated that their training had been satisfactory, although there was a considerable gender divergence with women far more likely than men to rate their training as inadequate – see Figure 60. Training at law firms is viewed most favourably, with 75% of law firm respondents indicating that their training had been adequate, while training at government legal workplaces performed the worst at 52%.

Figure 60: training adequacy (by gender)



Training provider

Respondents were also asked who had provided the training – whether colleagues, an external provider or a mix of the two. Over half of respondents indicated that their training had been conducted internally – see Figure 61. In-house and judicial workplaces were more likely to conduct internal training, while government legal workplaces utilise more external training. The utilisation of both internal and external training correlated to the highest perception of the adequacy of the training, at 80% – see Figure 62. The exclusive use of external training had the worst perception of adequacy. This may indicate that existing external training options are insufficiently tailored to the cultural and procedural nuances of individual legal workplaces. This is consistent with 2016 research by the US Equal Employment Opportunity Commission, which found that effective training programmes are those ‘tailored to the specific realities of different workplaces’. The Commission observed: ‘Using examples and scenarios that realistically involve situations from the specific worksite, organization, and/or industry makes the compliance training work much better than if the examples are foreign to the workforce’.¹⁰⁵ Interestingly, among law firms, perceptions of the adequacy of internal training were highest at firms with fewer than five partners (86%), supporting the familiarity/interpersonal relationship hypothesis highlighted above.

¹⁰⁵ See Feldblum and Lipnic (n 96) v.

Figure 61: training provider

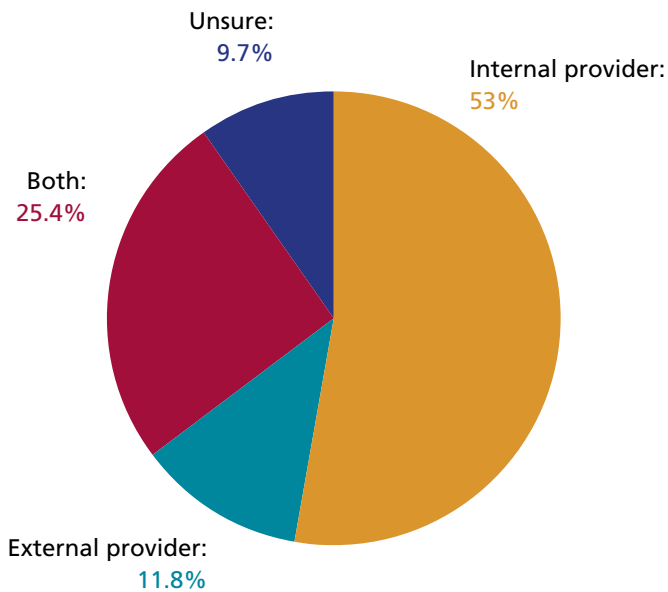


Figure 62: training adequacy by provider



Impact on bullying

As with workplace policies, training has no statistically significant impact on the prevalence of bullying among survey respondents: 46% of respondents at workplaces with training had been bullied, compared with 48% of respondents at workplaces without training. However, training did correlate with a range of improvements. Respondents at workplaces with training were almost ten percentage points less likely to have been bullied within the past year, suggesting the recent introduction of training may be having an effect. The same class of respondents were more likely to report the incident (46% reported sometimes or on all occasions, compared with 36% at workplaces without training) and more likely to use internal channels to do so. They were also more likely to rate their workplace's response to the report as 'excellent' and more likely to indicate that the report resulted in sanctions for the perpetrator. There is significant jurisdictional variation. In the UK, for example, respondents at workplaces without training were 25 percentage points more likely to have been bullied.

Impact on sexual harassment

The impact of training on sexual harassment follows similar trends. There is only half a percentage point difference in prevalence of sexual harassment at workplaces with and without training, suggesting that, when adopted, training is not significantly reducing incidents of sexual harassment. However, respondents at workplaces with training were significantly less likely to have been sexually harassed within the last year, less likely to have been sexually harassed by their supervisor and more likely to have reported an incident through internal channels. As with the above analysis, there are regional variations – in Canada, for example, respondents at workplaces with training were significantly less likely to have experienced sexual harassment.

In Their Own Words

// A number of male colleagues superior to me (including the partner I work for most) openly stare at my legs when I am wearing a skirt. It makes me feel uncomfortable and disrespected in my workplace. I have never reported this as I do not know how and fear it would not be taken seriously.

Female, law firm, Germany

Overall assessment of workplace approach

Finally, respondents were asked for an overall assessment of their workplace's policies, procedures and approach to preventing bullying and sexual harassment and responding to incidents. The results reveal a significant perception variation by gender – see Figure 63: 66% of male respondents thought their workplace's approach was sufficient or better compared with 45% of female respondents. Male respondents were two-times more likely to rate their workplace's approach as excellent, at 17%, compared with 8% of female respondents. Perception also varies considerably by age – see Figure 64. These trends were replicated on the basis of law firm position: almost one in two law firm partners considered their firm's approach to be good or excellent compared with just one in five solicitors/associates. Given bullying and sexual harassment disproportionately affect younger/more junior members of the profession, it might be hypothesised that there is an inverse relationship between direct familiarity with a workplace's approach (eg, as a result of reporting an incident) and perceptions of that approach. In other words, it is easy to think highly of policies and procedures with which one has no direct contact.

Figure 63: assessment of workplace approach by gender

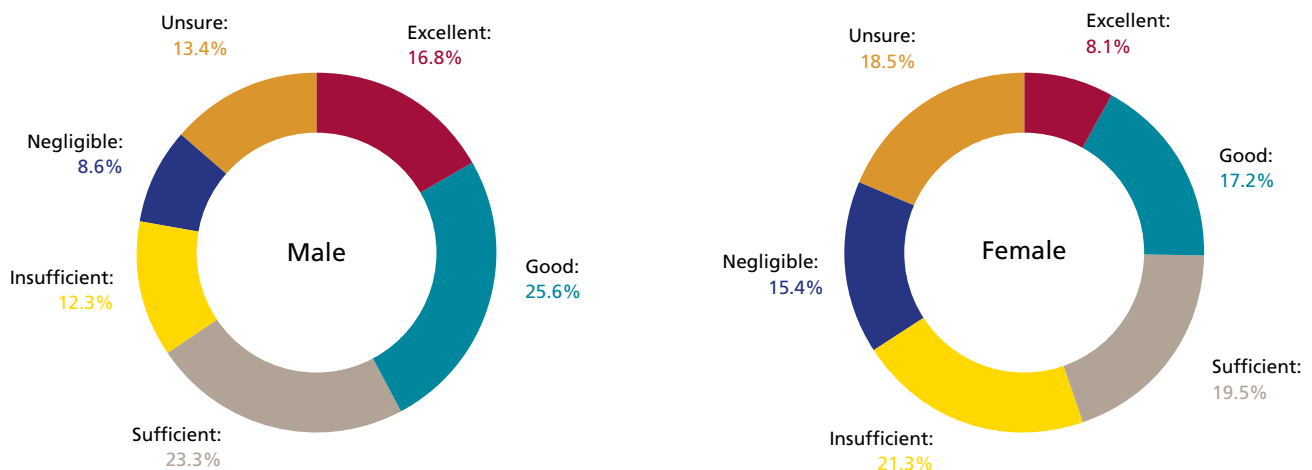
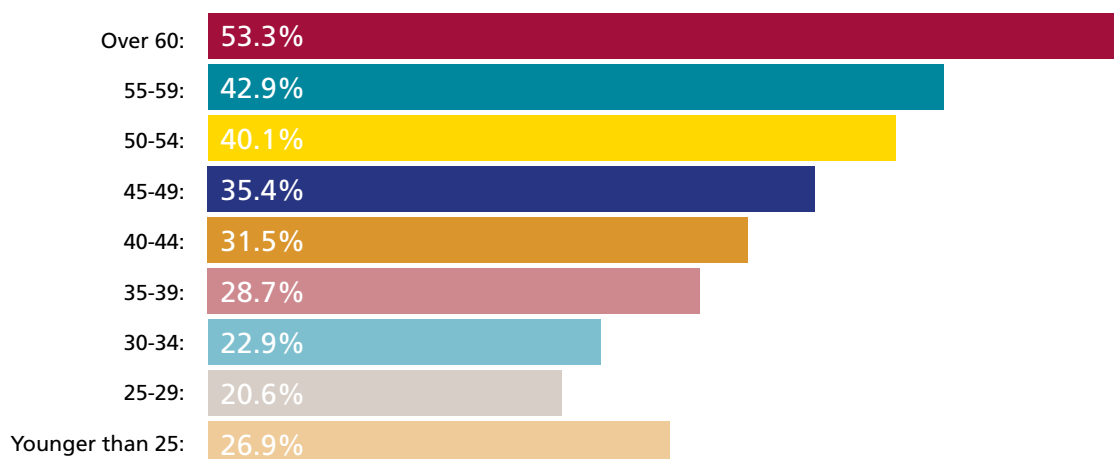


Figure 64: assessment of workplace approach by age

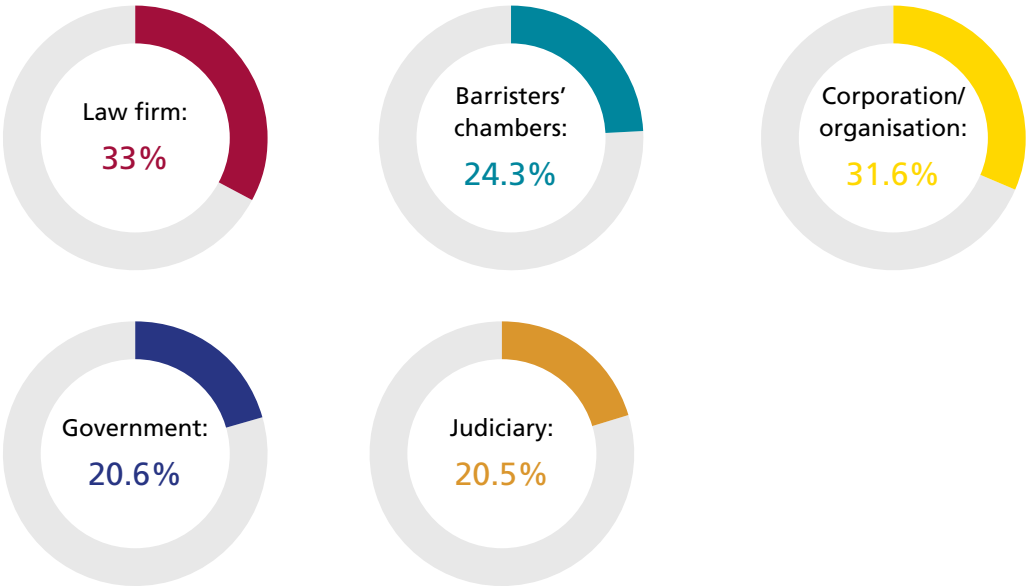
Rated workplace approach as 'good' or 'excellent'



Law firms and in-house legal workplaces had the best average ratings, while government and judicial legal workplaces performed poorly – see Figure 65. Law firm size had an inconsistent impact: almost 40% of respondents at firms with fewer than five partners or over 100 partners rated their workplace’s approach as good or excellent. But among mid-sized firms with between 11 and 50 partners, this percentage drops to 24%. It may be that small firms often have strong interpersonal relationships (a theme supported by some of the above findings), and major firms have the specialised resources to address these issues, while mid-sized firms benefit from neither. The presence of workplace policies and training had a significant positive impact. Just one in five respondents at workplaces with relevant policies, and one in seven respondents at workplaces with training, rated their workplaces’ approach as insufficient or negligible. At workplaces without policies or training, these percentages rose to 44% and 41%, respectively. Accordingly, notwithstanding the mixed findings above as to the efficacy of policies and training, both have a beneficial impact on overall perceptions of workplaces’ attempts to prevent and respond to bullying and sexual harassment.

Figure 65: assessment of workplace approach by workplace type

Rated workplace approach as ‘good’ or ‘excellent’



Improving efficacy

This survey has demonstrated that policies and training to address bullying and sexual harassment are: (1) not sufficiently widespread in the legal profession; and (2) not having the desired positive impact to the extent required. Recent research has suggested several possibilities for addressing the first of these barriers. In certain parts of the US, training is mandatory for employers above a particular size – those with more than 50 managerial employees in California and Connecticut, and just 15 in Maine.¹⁰⁶ Additionally, policies and/or training are often a requirement of consent decrees or conciliation agreements negotiated by employers with regulators or plaintiff lawyers.¹⁰⁷ In India, employers with more than ten employees are required to establish an Internal Complaints Committee, with at least one external member, to hear sexual harassment complaints.¹⁰⁸ The Internal Complaints Committee is also obligated to compile an annual report highlighting the number of complaints heard, the outcome of each complaint and all measures taken in the workplace to address harassment; this must be submitted to the employer and a local government office. At a workplace-wide level, legislatures might consider the efficacy of implementing such measures.

At a sector-specific level, professional regulators might consider whether it is appropriate to require legal workplaces to implement policies. In the UK, the Bar Standards Board requires barristers' chambers to have a written anti-harassment policy, which must state 'that harassment will not be tolerated' and set out procedures for dealing with complaints of harassment.¹⁰⁹ A New Zealand Law Society working group recently recommended that a similar obligation be imposed on law firms, with conduct rules further requiring individual lawyers to prevent bullying and sexual harassment.¹¹⁰ The same report recommended that continuing legal education requirements could be used to encourage relevant training, and urged law schools and other providers to include 'comprehensive training on harassment, bullying and discrimination issues' in their ethics courses.¹¹¹

While various 'carrot and stick' options are available to increase the prevalence of anti-bullying and sexual harassment policies and procedures,¹¹² improving the efficacy of policies and training once they are implemented is less straightforward. As two experts have quipped, 'one can have a terrific policy that does not make any difference in the workplace itself'.¹¹³ Another commentator,

106 Cal Gov't Code s 12950.1(a) (2016); Conn Gen Stat s 46a-54-204 (2016); Me Rev Stat 26, s 807(3) (2016).

107 See Feldblum and Lipnic (n 96) 44.

108 These and other requirements are contained within the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (India). This law was a somewhat belated response to the Supreme Court of India's landmark judgment in *Vishaka and others v State of Rajasthan* (1997) 6 SCC 241, which required employers to introduce mechanisms to address sexual harassment as a means of enforcing gender equality rights. Gratitude is owed to Seema Salwan for providing a comprehensive summary of these elements of Indian law.

109 Bar Standards Board (UK), *Handbook* (4th edn, 2019) 68.

110 New Zealand Law Society Working Group, 'Report of the New Zealand Law Society Working Group: To Enable Better Reporting, Prevention, Detection, and Support in Respect of Sexual Harassment, Bullying, Discrimination and Other Inappropriate Workplace Behaviour within the Legal Profession' (December 2018) 54–60.

111 *Ibid* 101.

112 Noting though that, in the memorable words of one attendee at the Thomson Reuters Transforming Women's Leadership in the Law anniversary event in February 2019, 'carrots and sticks might be good for donkeys, but they don't work so well with lawyers'.

113 Charlotte Rayner and Duncan Lewis, 'Managing Workplace Bullying: The Role of Policies' in Ståle Einarsen and others (eds) *Bullying and Harassment in the Workplace: Developments in Theory, Research, and Practice* (2nd edn, CRC Press 2011) 327, 327.

a former American judge, added: ‘training programs can be nothing more than kabuki rituals, in which the trainers intone the right words – the legally relevant words – without affecting behavior in the real world at all’.¹¹⁴

Common criticisms of policies include insufficient communication about their existence, a failure to properly incorporate policies into new staff induction procedures, no policy evaluation and revision protocol, and an absence of clarity regarding the manager responsible for handling complaints.¹¹⁵ Although there is no ‘golden bullet’, and research is ‘enormously challenging’ given the unique nature of each workplace and their policies,¹¹⁶ several steps may help. First, consistent and ongoing communication is essential in maximising the effectiveness of policies.¹¹⁷ The tone must be set from the top by executives and leadership teams, through role-modelling standards of conduct and championing policies and procedures. Intra-profession dialogue and best practice sharing – possibly facilitated by law societies and bar associations – may also be of assistance. Policies and training should also be assessed and revised from time to time: ‘Training is not enough without tests to see if the training is efficacious. The fact that a company has few formal complaints is not the measure of whether there is sexual harassment.’¹¹⁸

In Their Own Words

// *I did not report the incident for some time because I did not have faith in the firm to address the issue. There was not any transparency about how the incident would be handled and there were always rumours that people in a position of power would not be held accountable for their actions. However, once I finally reported the incident, it was dealt with swiftly and my anonymity was protected.*

Female, law firm, Australia

// *In the past 15 years, at least in my country, there has been an incredible advance (for the better) regarding workplace sexual harassment.*

Female, law firm, Chile

114 See Gertner (n 18) 94.

115 See Hoel and Vartia (n 35) 51.

116 See Rayner and Lewis (n 113) 328.

117 *Ibid* 336–337.

118 See Gertner (n 18) 94.

Case Studies

Because the nature of and response to bullying and sexual harassment are significantly influenced by localised cultural and workplace norms, global and regional data can only tell us so much. To better understand these phenomena, and inform a sophisticated response to eliminate bullying and sexual harassment across the profession, this section analyses nine country-specific case studies. The case study jurisdictions have been chosen to be geographically diverse (drawn from six continents), reflect a range of population sizes (from the US, the third most populous country, to Costa Rica, with under five million people) and include a mix of common and civil law systems.

Figure 66: prevalence of bullying and sexual harassment in case study jurisdictions (gender weighted)

Jurisdiction	% respondents bullied	% respondents sexually harassed
Global average	43	22
Costa Rica	65.7	34.8
United States	50.3	32.6
Australia	61.4	29.6
South Africa	57.5	27.5
United Kingdom	51	21.8
Brazil	45.2	21.4
Sweden	24.1	21
Malaysia	53.6	15.3
Russian Federation	27.8	11.5

Australia

Workplace bullying and sexual harassment are currently prominent topics in Australian society. In June 2018, the Australian Human Rights Commission commenced a national inquiry into sexual harassment in the workplace.¹¹⁹ There have been several high-profile cases of sexual harassment in the domestic legal profession, including the termination in March 2018 of one senior partner at a major firm for alleged misconduct.¹²⁰ The Australian legal profession has also begun to recognise the prevalence of bullying in legal workplaces. In 2018, the Victorian Bar Association released a report detailing high levels of bullying by judicial officers in court, while a 2014 study prompted

119 Australian Human Rights Commission, *National Inquiry into Sexual Harassment in Australian Workplaces* (12 September 2018) www.humanrights.gov.au/our-work/sex-discrimination/projects/national-inquiry-sexual-harassment-australian-workplaces accessed 5 April 2019; Law Council of Australia, Submission to Australian Human Rights Commission (n 26).

120 Edmund Tadros, 'Herbert Smith Freehills to dismiss senior partner over sexual harassment claims', *Australian Financial Review* (Sydney, 16 March 2018) www.afr.com/business/accounting/herbert-smith-freehills-to-dismiss-senior-partner-over-sexual-harassment-claims-20180315-h0xiwy accessed 5 April 2019.

discussion of whether lawyers are among Australia's worst bullies.¹²¹ Sexual harassment is prohibited in Australian workplaces via the Sex Discrimination Act 1984, which also provides vicarious liability for employers.¹²² Australia is unusual in additionally providing specific legal remedies for bullying, with the Fair Work Commission (an employment tribunal) possessing an anti-bullying jurisdiction.¹²³

Almost one-seventh of respondents to the survey were from Australia, the highest response rate by country. 58% of Australian respondents worked at law firms, with 13% from government, 12% from the bar, 9% in-house and a small percentage from the judiciary. Bullying and sexual harassment are rife in Australian legal workplaces: 73% of Australian female respondents and 50% of Australian male respondents had been bullied in connection with their employment. These rates are significantly higher than global averages, in which women and men are bullied at rates of 55% and 30%, respectively. Australian legal professionals also report a higher rate of sexual harassment than the global average: 47% of female respondents indicated they had been sexually harassed (compared with 37% globally) and 13% of male respondents (7% globally).

In Their Own Words

// *[The perpetrator] was allowed the opportunity to resign. He has gone on to a successful career at another firm whilst I am left with dealing with a lack of self-worth every day.*

Female, law firm, Australia

Policies targeted at bullying and sexual harassment are more widely used in Australian legal workplaces than globally, with 66% of Australian respondents reporting that their workplace has relevant policies compared with an international mean of 53%. On the other hand, only 58% of Australian respondents indicated confidence in those responsible for handling complaints under such policies (65% globally). Australian legal workplaces are ahead of the international average in utilising anti-bullying and sexual harassment training (37% of Australian respondents' workplaces, compared with 22% globally). Australian legal professionals at workplaces with training are less likely to have experienced bullying, albeit no less likely to have been sexually harassed. However, respondents at workplaces with training in place are more likely to have reported incidents of bullying, and more likely to have used internal workplace channels to do so.

121 Freya Michie, 'Almost Two Thirds of Victoria's Barristers Say They're Bullied in the Courtroom', *ABC News* (Sydney, 18 October 2018) www.abc.net.au/news/2018-10-18/barristers-complain-of-bullying-judges-and-magistrates/10393470 accessed 5 April 2019; Sophie Schroder, 'Lawyers Some of Australia's Worst Bullies?', *Australasian Lawyer* (Sydney, 8 October 2014) www.australasianlawyer.com.au/news/lawyers-some-of-australias-worst-bullies-192671.aspx accessed 5 April 2019. See also Grace Ormsby, '“Concerning” Workplace Data Spurs SA Working Group', *Lawyers Weekly* (Sydney, 24 October 2018) www.lawyersweekly.com.au/biglaw/24307-concerning-workplace-data-spurs-sa-working-group accessed 5 April 2019; 'Bullying “Pandemic” in Law Firms', *Lawyers Weekly* (Sydney, 5 March 2013) www.lawyersweekly.com.au/news/12295-bullying-pandemic-in-law-firms accessed 5 April 2019.

122 Sex Discrimination Act 1984 (Australia) div 3; Australian Human Rights Commission, 'Sexual Harassment' at www.humanrights.gov.au/quick-guide/12096 accessed 5 April 2019. See generally Margaret Thornton, *The Liberal Promise: Anti-Discrimination Legislation in Australia* (Oxford University Press 1990).

123 Fair Work Act 2009 (Australia) pt 6-4B; Law Council of Australia, 'Bullying and Harassment in the Workplace' at www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/equal-opportunities-in-the-law/bullying-and-harassment-in-the-workplace accessed 5 April 2019.

// Even if a company says all the right things, it's very easy to be branded someone who is a 'troublemaker', especially if the perpetrator has a record of long service at the firm or is a senior member of staff.

Male, in-house, Australia

Brazil

Brazilian workplaces are known for being informal and social. As researcher Ana Bon has observed, 'greater closeness [in the workplace is] a characteristic of our culture, our people'.¹²⁴ However, in recent years, Brazilian society has increasingly engaged with questions about appropriate office behaviour. Some have argued that change is necessary to eradicate sexual harassment and bullying in Brazilian workplaces.¹²⁵ Others fear that anti-harassment movements will stifle Brazilian culture, and have accused these movements of imposing new standards that undermine 'normal interactions [such as]... hugging, and kissing'.¹²⁶ From a legislative perspective, sexual harassment is a criminal offence in Brazil in cases where the perpetrator 'obtain[s] sexual advantage or favour using the authority inherent in [their] position'.¹²⁷ There are no specific protections against sexual harassment or bullying under Brazilian employment laws.¹²⁸ However, labour laws regulating discrimination in the workplace offer some protection to employees, and employers can be liable for damages in some cases.¹²⁹

A total of 129 survey responses were received from Brazilian legal professionals: 74% were female and 26% were male. Most worked in law firms. Brazilian female respondents were three percentage points more likely to have been bullied than the global average of 55%. Brazilian male respondents were also slightly more likely to have been bullied. Rates of sexual harassment in Brazil were similar to global levels. Interestingly, Brazilian respondents were 14 percentage points more likely to have been sexually harassed by a client than the global average.

124 Stephanie Nolen, 'Brazilians Are Pushing Back Against Sexual Harassment – But an Office Culture Littered With "Kisses" Makes It Tricky', *The Globe and Mail* (Toronto, 27 May 2018) www.theglobeandmail.com/world/article-brazilians-are-pushing-back-against-sexual-harassment-but-an-office accessed 5 April 2019.

125 *Ibid.* See also David Biller, 'This Famously Affectionate Country has a Serious #MeToo Problem', *Bloomberg* (New York, 8 March 2018) www.bloomberg.com/news/articles/2018-03-08/brazil-has-a-serious-metoo-problem accessed 5 April 2019.

126 See Nolen (n 124) citing a cover story in *Veja* magazine.

127 Mishell Parreno Taylor, 'A Look at the #MeToo Movement's Impact in the US, Brazil and the UK', *TLNT* (New York, 8 August 2018) www.tlnt.com/a-look-at-the-metoo-movements-impact-in-the-us-brazil-and-the-uk accessed 5 April 2019 citing The Penal Code 1940 (Brazil) Art 216-A; Biller (n 125).

128 Maria Fernanda de Medeiros Redi and others, 'Employment and Employee Benefits in Brazil: Overview' (1 December 2018) Thomson Reuters Practical Law at <https://uk.practicallaw.thomsonreuters.com/1-503-5032> accessed 5 April 2019; Alvaro Gonzalez-Schiaffino, Jorge De Presno Arizpe, José Antonio Valdez, Eduardo Viñales, Enrique Munita and José Carlos Wahle, *Legal Obligations Surrounding Sexual Harassment in the Workplace Across Latin America* (2017) Ius Laboris at <https://theword.iuslaboris.com/hrlaw/insights/legal-obligations-surrounding-sexual-harassment-in-the-workplace-across-latin-america> accessed 5 April 2019.

129 *Ibid.*

In Their Own Words

// Like many, I blamed myself for a long time after the incident, trying to figure out how I had allowed this to happen.

Female, judiciary, Brazil

Policies were significantly less common in Brazil than globally, with only 35% of Brazilian respondents reporting that their workplace has bullying/sexual harassment policies. There was no statistically significant difference between rates of bullying or sexual harassment in workplaces with and without policies. Brazilian workplaces were also slightly less likely to conduct training than global averages (18% compared with 22%). Encouragingly, 74% of respondents at workplaces with training considered this training to be adequate. Respondents at workplaces with training were less likely to be bullied or sexually harassed than those at workplaces without training. Overall, over half of Brazilian respondents considered their workplace's bullying/sexual harassment prevention initiatives to be insufficient or negligible.

Costa Rica

Workplace bullying and sexual harassment are gaining increasing public attention in Costa Rica. In recent years, harassment complaints have been levelled against several high-profile Costa Rican political figures.¹³⁰ In 2012, for example, Judge Priscila Quirós accused a fellow judge, Oscar González, of sexual harassment and rape.¹³¹ The government dismissed González in 2014 in response to these allegations, after which he was unsuccessfully prosecuted.¹³² Legislatively, workplace sexual harassment is regulated under the Law against Sexual Harassment in Employment and Teaching.¹³³

130 Cindy Regidor, “#MeToo” en Costa Rica: Tres Mujeres Denuncian Por Abuso al Expresidente y Nobel de Paz Óscar Arias, *France24* (Paris, 6 February 2019) www.france24.com/es/20190206-metoo-costa-rica-violacion-oscar-arias accessed 5 April 2019. See, most recently, complaints against former Costa Rican president and Nobel Peace Prize winner Óscar Arias.

131 Marcel Evans, ‘Judge Accuses Another of Sexual Workplace Harassment in Costa Rica’, *The Costa Rica Star* (San Jose, 27 October 2012) <https://news.co.cr/judge-accuses-another-of-sexual-workplace-harassment-in-costa-rica/17080> accessed 5 April 2019; Carlos Arguedas, ‘Tribunal Absuelve de Violación al Exmagistrado Óscar González Por Considerar Que Hay Dudas’, *La Nación* (Buenos Aires, 18 December 2017) www.nacion.com/sucesos/judiciales/tribunal-absuelve-al-exmagistrado-oscar-gonzalez/R44TM6QNPNFINEFBCUYVDHOWEY/story accessed 5 April 2019.

132 L Arias, ‘Costa Rican Lawmakers Remove Supreme Court Justice Accused of Rape’, *The Tico Times* (San José, 28 July 2014) www.ticotimes.net/2014/07/28/costa-rican-lawmakers-unanimously-remove-supreme-court-justice-accused-of-rape accessed 5 April 2019.

133 Ley No 7476 Ley Contra el Hostigamiento Sexual en el empleo y la docencia (Costa Rica). See also Carla Sánchez, ‘Acoso Sexual y Acoso Laboral’, *La República* (Lima, 11 September 2018) www.larepublica.net/noticia/acoso-sexual-y-acoso-laboral accessed 5 April 2019; UN Women, *From Commitment to Action: Policies to End Violence against Women in Latin America and the Caribbean* (UN Development Programme and UN Women, 2017) 19.

Costa Rica does not have targeted legislation regulating workplace bullying.¹³⁴ There are, however, provisions of the Labor Code that are capable of capturing this conduct.¹³⁵

A total of 165 legal professionals from Costa Rica completed the survey. The majority of respondents were female (65%) and most were employed by the government or law firms. Alarming, on a gender-weighted basis, almost two-thirds of Costa Rican respondents had been bullied (66%); more than 20 percentage points higher than the global average. Female respondents were 11 percentage points more likely to have been bullied than their male colleagues. Rates of sexual harassment were also significantly higher than the global average – 52% of female respondents and 17% of male respondents reported being sexually harassed in connection with their employment.

In Their Own Words

// *Even when the other partners didn't agree with [the bully's] behaviour they took no action, always saying 'he's also a partner and if it bothers you so much it would be better for you to look for other work'.*

Female, law firm, Costa Rica

Policies addressing bullying and sexual harassment are more prevalent in Costa Rica than globally. However, only half of Costa Rican respondents expressed confidence in those responsible for handling complaints under these policies (51%). Costa Rican respondents in workplaces with policies were no more likely to report bullying and sexual harassment than those in workplaces without policies. Training is slightly less common in Costa Rica than globally. Overall, Costa Rican respondents tended to perceive their workplace's anti-bullying/sexual harassment initiatives as insufficient or negligible. Only 5% rated their workplace's approach as excellent.

134 See Sánchez (n 133); Human Factor, '¿Por qué es Importante Conocer Sobre el Acoso Laboral?', *La República* (Lima, 29 October 2018) www.larepublica.net/noticia/por-que-es-importante-conocer-sobre-el-acoso-laboral accessed 5 April 2019; Elizarda Vargas Morúa, 'Acoso Laboral en Costa Rica' (2011) 2(1) *Revista Nacional de Administración* 75–90. See also María Ascensión Morales Ramírez, 'Aproximación al Acoso Laboral Desde la Legislación Comparada' (2016) 49 *Mexican Bulletin of Comparative Law* 71, 93–94.

135 See Sánchez (n 133); Morúa (n 134) 75–90; Luis Ramírez Salazar, 'Denuncias de Acoso en el Trabajo Pueden Llegar a Tramitarse Como Discriminación Con Reforma Procesal', *AmeliaRueda.com* (San José, 12 July 2017) www.ameliarueda.com/nota/acoso-laboral-podria-tramitarse-discriminacion-reforma-procesal-labora accessed 5 April 2019.

Malaysia

Sexual harassment is regulated in Malaysia via the Employment Act.¹³⁶ Under this legislation, an employer's failure to act upon a sexual harassment complaint promptly is an offence punishable by a fine.¹³⁷ The Federal Court has recently recognised a tort of sexual harassment.¹³⁸ However, some commentators believe that Malaysian sexual harassment laws do not go far enough. The president of the Association of Women Lawyers, for example, stated in 2018 that 'there is a real need for both legal reform and cultural change, to ensure sexual harassment is properly addressed [in Malaysia]'.¹³⁹ Malaysian labour laws do not afford distinct protection to targets of workplace bullying, although they do require employers to ensure 'the safety, health and welfare at work' of their employees.¹⁴⁰ Targets of bullying may also be able to bring a claim for constructive dismissal in certain circumstances.¹⁴¹

Eighty-seven Malaysian legal professionals responded to the survey: 81% of respondents were female. The vast majority worked in law firms. The results indicate that bullying and harassment are significant, ongoing problems in Malaysian legal workplaces: 57% of female respondents and 50% of male respondents had been bullied during their legal careers (higher than the global averages). 96% of targets had been bullied more than once and 61% had been bullied in the last year. Sexual harassment was less common than globally – 24% of Malaysian female respondents and 6% of Malaysian male respondents had been sexually harassed.

In Their Own Words



My colleagues were threatened with words synonymous to 'I pay you, so I own you'.

Female, law firm, Malaysia

Only 17% of respondents indicated that their workplace utilised policies to address bullying and sexual harassment, significantly below the global average. However, those employed in workplaces with policies expressed a high degree of confidence in them. Responses also indicated that policies are having a positive impact in Malaysia – respondents at workplaces with policies were ten percentage points less likely to be bullied and eight percentage points less likely to be sexually harassed, than those at workplaces without policies. Training programmes were even less common than policies (7%). Overall, Malaysia respondents

¹³⁶ Employment Act 1955 (Malaysia) ss 2, 81F.

¹³⁷ *Ibid* s 81F; Datuk Seri Ashgar Ali Ali Mohamed, 'Legal Aspect of Sexual Harassment', *New Straits Times* (Kuala Lumpur, 6 January 2018) www.nst.com.my/opinion/letters/2018/01/322115/legal-aspect-sexual-harassment accessed 5 April 2019.

¹³⁸ See Mohamed (n 137); National Human Resource Centre, 'Conceptualising Tort of Sexual Harassment in the Workplace' at www.nhrc.com.my/rss/-/asset_publisher/hCox5XdI5nGy/blog/id/3563985 accessed 5 April 2019.

¹³⁹ Victoria Brown, 'Groups Call for Sexual Harassment Act', *The Star* (Petaling Jaya, 27 January 2018) www.thestar.com.my/news/nation/2018/01/27/groups-call-for-sexual-harassment-act-there-is-a-real-need-for-legal-reform-and-change accessed 5 April 2019.

¹⁴⁰ Muzaffar Syah Mallow, 'Workplace Bullying: Say No to Job Yobs', *New Straits Times* (Kuala Lumpur, 12 August 2014) www.nst.com.my/news/2015/09/workplace-bullying-say-no-job-yobs accessed 5 April 2019.

¹⁴¹ *Ibid*; Azizi Ahmad, 'Membuli di Tempat Kerja', *FMT News* (online), (Petaling Jaya, 12 April 2016) www.freemalaysiatoday.com/category/opinion/2016/04/12/membuli-di-tempat-kerja accessed 5 April 2019; 'Saya Dibuli di Tempat Kerja', *MyMetro* (Kuala Lumpur, 5 May 2016) www.hmetro.com.my/node/135636 accessed 5 April 2019.

reported a low degree of satisfaction with their workplace's approach to preventing bullying and harassment – only 13% rated their workplace's approach as good or excellent, compared with 31% globally.

Russia

Over the past decade, there has been increasing interest in sexual harassment and bullying in Russian workplaces, and a number of studies have explored Russian perspectives on these issues.¹⁴² One article found that many Russians do not believe that harassment and bullying are issues worthy of attention, and that approximately a quarter of respondents blamed targets for incidents of harassment, rather than perpetrators.¹⁴³ This is consistent with other research, which found that there is widespread belief that targets provoke harassers and that 'harassment and even violence is either a logical outcome or a fair punishment for this [provocation]'.¹⁴⁴ Legislatively, there are no specific laws regulating either workplace bullying or sexual harassment in Russia.¹⁴⁵ Criminal, anti-discrimination and employment laws do offer some protection to targets in certain circumstances. Nonetheless, Russia has been described as 'lack[ing] efficient legal machinery and effective application [to combat workplace bullying and harassment]'.¹⁴⁶

A total of 120 Russian legal professionals completed the survey: 72% of respondents were female, 26% were male and 2% were non-binary or preferred not to specify. 40% of Russian female respondents and 16% of Russian male respondents had experienced bullying. These rates are significantly lower than corresponding global averages. Rates of sexual harassment were also lower than the global average – 20% of Russian women reported being sexually harassed, and 3% of Russian men. It could be that there is relatively little bullying and sexual harassment in Russian legal workplaces. However, in light of the aforementioned research and qualitative survey responses, it may instead be that Russian respondents define these terms differently to respondents in other jurisdictions – giving rise to the perception paradox articulated in the Methodology section. Policies addressing bullying and sexual harassment are significantly less prevalent in Russia (18% of Russian workplaces, 53% globally). Law firms have the highest utilisation of policies at 37%. Just 6% of Russia-based legal professionals have undergone training to address bullying and sexual harassment.

In Their Own Words

// *I have not seen anything even close to bullying or sexual harassment in my country in the legal industry or business.*

Male, law firm, Russia

142 See Daria Chernyaeva, 'Legal Framework for Workplace Mobbing and Harassment Prevention in Russia: Problems and Prospects' (2013) 2(2) E-Journal of International and Comparative Labour Studies 1, 2.

143 *Ibid* 2.

144 *Ibid*.

145 *Ibid* 6–17. See also Oxana Pushkina, 'Harassment of Women in Russia Has to End (Op-ed)', *The Moscow Times*, (Moscow, 4 April 2018) www.themoscowtimes.com/2018/04/04/harassment-of-women-in-russia-has-to-end-op-ed-a60976 accessed 5 April 2019.

146 See Chernyaeva (n 142) 17. See also Deborah Erdos Knapp and others, 'Russian Workers' Experiences With and Perceptions of Sexual Harassment Severity' (2017) *International Journal of Human Resource Management* 1, 3: 'Because Russia lacks a governing body... to codify those behaviors that rise to the level of actionable [sexual harassment] and suffers from a paucity of developed case law, Russian women are particularly vulnerable to all forms of workplace [sexual harassment]'.

South Africa

The composition of the South African legal profession has changed in recent decades. During the apartheid era, white men dominated the profession.¹⁴⁷ While data released by the Commission for Gender Equality in 2018 demonstrates that progress has been made, the South African profession is a long way from achieving equality. Although white males no longer represent the majority of judges, just 35% of judges are female.¹⁴⁸ Women account for only 27% of advocates, and the majority of female advocates are white.¹⁴⁹ While most South African law societies report that they have more female than male members, and there is also greater representation of men of colour, white men still outnumber women in certain positions of authority.¹⁵⁰ There are a number of protections for targets of sexual harassment in South Africa.¹⁵¹ The Employment Equity Act prohibits unfair discrimination based on certain characteristics, including sex.¹⁵² The definition of unfair discrimination includes harassment,¹⁵³ thereby empowering targets to bring claims against perpetrators and employers.¹⁵⁴ Conversely, there is ‘uncertainty [regarding] existing legal remedies to deal with workplace bullying’.¹⁵⁵ Some consider harassment law capable of capturing this conduct,¹⁵⁶ however, other commentators claim that these provisions are not applicable because bullying ‘is not harassment on a listed ground’.¹⁵⁷

In Their Own Words

// *Most Bars are still male dominated and male controlled. The group retaliation against any women who call for an environment free from harassment is disgusting. It drives women from the Bar. There is solid wall, not a glass ceiling, and it is constantly reinforced by the men in charge.*

Female, advocate, South Africa

A total of 126 South African legal professionals completed the survey. Women accounted for the majority of respondents. Bullying is common in South African legal workplaces: 73% of South African female respondents had been bullied and 42% of male respondents. This is an ongoing issue; 55% of targets had been bullied within the past year. Like bullying, sexual harassment is more prevalent in South Africa than

147 Commission for Gender Equality, *Discussion Document on Gender Transformation in the Judiciary and the Legal Sector* (July 2018) 4.

148 *Ibid* 11.

149 *Ibid* 13.

150 *Ibid* 15, 16.

151 For discussion of sexual harassment protections in South Africa, see Constantine Ntsanyu Nana, ‘Sexual Harassment in the Workplace in South Africa: The Unlimited Vicarious Liability of Employers’ (2008) 52 *Journal of African Law* 245, 247–8.

152 Employment Equity Act 1998 (South Africa) s 6(1).

153 *Ibid* s 6(3).

154 Bradley Workman-Davies, ‘#METOOZA – Sexual Harassment in the Workplace in South Africa’, *Werksmans Attorneys*, (Johannesburg, 6 April 2018); Nana (n 151) 247–248.

155 *Shoprite Checkers (Pty) Ltd v Samka and Others* [2017] ZALCCT 64 [33] quoting Alan Rycroft, Rochelle Le Roux and Thandi Orleyn, *Harassment in the Workplace: Law, Policies and Processes* (Lexis Nexis 2010) 62–63. For discussion of workplace bullying regulation in South Africa, see Dina Smit, *Bullying in the Workplace: Towards a Uniform Approach in South African Labour Law* (LLD Thesis, University of the Free State, 2014) 102–140.

156 See Smit (n 155) 237.

157 See *Shoprite Checkers* (n 155) quoting Rycroft, Le Roux and Orleyn (n 155).

the global average: 43% of women reported being sexually harassed, as did 12% of men. This conduct has a significant negative effect: 25% of sexual harassment targets and 44% of bullying targets indicated that the conduct contributed to them leaving or considering leaving their workplace.

In Their Own Words

// *My self-esteem has drastically dropped. I didn't eat for two weeks after one incident. It has occasionally made me think of harming myself.*

Female, law firm, South Africa

The prevalence of policies addressing bullying and sexual harassment in South Africa sits at 48%, below the global average of 53%. Fewer than half of South African respondents expressed confidence in those responsible for handling complaints (42%). The data indicates that policies are having some impact, and rates of bullying and sexual harassment at South African workplaces with policies were lower than those at workplaces without policies. Only 7% of South African legal professionals had undergone relevant training, below the global average. Perceptions of the overall efficacy of workplace approaches to bullying and sexual harassment were poor.

Sweden

Sweden has a reputation for being a progressive and relatively gender-equal country with a high quality of life. In 2017, Sweden ranked above average in all areas of the Organisation for Economic Co-operation and Development's (OECD's) quality of life index, including work-life balance and life satisfaction.¹⁵⁸ Swedish law regulates both bullying and sexual harassment. Sexual harassment is regulated under the Discrimination Act,¹⁵⁹ which imposes obligations on employers to prevent and take action against this conduct.¹⁶⁰ In Sweden, it is also misconduct for a lawyer to engage in harassment or discrimination on the basis of certain characteristics.¹⁶¹ Under labour law, employers have a number of obligations regarding the prevention of bullying, including an obligation to ensure supervisors know how to prevent and respond to victimisation.¹⁶² This is not to say that bullying and sexual harassment do not occur in Swedish workplaces. In 2017, as part of the #MeToo movement, approximately 6,000 Swedish female lawyers signed a statement advocating for a zero-tolerance policy to sexual harassment and calling for an end

158 Better Life Index, 'Sweden' at www.oecdbetterlifeindex.org/countries/sweden accessed 5 April 2019. See also World Economic Forum, 'The Global Gender Gap Report 2018' (17 December 2018).

159 Discrimination Act 2008 (Sweden) ch 1 s 4, ch 2 s 3.

160 European Institute for Gender Equality, 'Sweden – Sexual Harassment' at <https://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu/sweden-sexual-harassment> accessed 5 April 2019.

161 IBA Human Rights Institute, 'Stakeholder Submission to the Special Rapporteur on the Independence of Judges and Lawyers on the Role, Composition and Functions of Bar Associations' (October 2018) 102–103.

162 Organisational and Social Work Environment Provisions (Sweden) s 6; Swedish Work Environment Authority, 'Bullying' (13 April 2017) www.av.se/en/health-and-safety/mental-ill-health-stress-threats-and-violence/bullying accessed 5 April 2019.

to the Swedish legal sector's 'culture of silence'.¹⁶³ This, alongside the below survey data, indicates that Swedish legal workplaces must continue to take action to eradicate bullying and sexual harassment.

A total of 644 Swedish legal professionals completed the survey: 54% of respondents were female, 45% were male and 1% were non-binary or preferred not to specify. The vast majority worked in law firms. Bullying is significantly less common in Sweden than globally – 35% of Swedish female respondents had been bullied and 13% of male respondents. Swedish female respondents were also slightly less likely to be sexually harassed (33%, compared to 37% of female respondents globally). Conversely, Swedish male respondents were slightly more likely to be sexually harassed (9% compared to 7% of male respondents globally). This higher number may reflect the fact that Swedish men are more aware that their experiences amount to sexual harassment, a conclusion supported by qualitative survey data.

In Their Own Words

“ *At an office party a female lawyer was intoxicated and approached me, touching me in a sensual way and suggesting that we go home together. I repeatedly told her 'no'. She ignored this and put her hand on my crotch. I would probably never have reflected on the incident as sexual harassment had it not been for women's testimonies of similar incidents as a result of #MeToo.*

Male, law firm, Sweden

Half of Swedish respondents indicated that their workplace has policies addressing bullying and sexual harassment, slightly below the global average. Promisingly, 80% of Swedish legal professionals expressed confidence in those responsible for handling complaints. Reflecting global trends, Swedish men expressed a higher degree of confidence in those responsible for handling complaints than Swedish women. Only 15% of Swedish respondents' workplaces offer training to address sexual harassment/bullying. Respondents in workplaces that provided training were slightly less likely to be bullied or sexually harassed. Perceptions of the efficacy of bullying/sexual harassment programmes were mixed (17% of Swedish respondents rated their workplace's programme as 'excellent', whereas 18% selected 'insufficient' or 'negligible').

In Their Own Words

“ *As I am now a partner at the law firm, it is my intention to create an environment where this kind of behaviour and language is not acceptable and everyone knows that. We are on the right path, but we are not there yet.*

Female, law firm, Sweden

163 '6,000 Female Lawyers Are Calling Out Sexual Abuse in the Swedish Legal Industry – and It's Just the Tip of the Iceberg', *Business Insider Nordic* (Stockholm, 16 November 2017) <https://nordic.businessinsider.com/6000-swedish-female-lawyers-are-calling-out-sexual-abuse-in-their-industry-and-its-just-the-tip-of-the-iceberg-2017-11> accessed 5 April 2019.

United Kingdom

Home to some of the largest international law firms, the UK's legal market has been at the forefront of debate on inappropriate in the legal profession. In 2018 and early 2019, reports of sexual harassment at major law firms in London appeared regularly in legal news.¹⁶⁴ Last year, the number of reports of bullying and harassment to a helpline for UK legal professionals rose considerably.¹⁶⁵ Sexual and other forms of harassment are regulated via the Equality Act 2010, which prohibits 'unwanted conduct... that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for this person'.¹⁶⁶ However, the prohibition is only applicable in cases involving a protected characteristic (including gender) or sexual harassment – bullying, without more, is not covered. Employers can be held vicariously liable for workplace harassment, except where they have taken reasonable steps to prevent the conduct.¹⁶⁷

A total of 715 legal professionals from the UK responded to the survey, overwhelmingly from within law firms. Levels of bullying are above average, with 62% of female respondents and 41% of male respondents reporting that they had been bullied in connection with their employment (compared with the international averages of 55% and 30% respectively). The frequency of sexual harassment is more closely aligned to the global mean, impacting 38% of female respondents and 6% of male respondents. Targets who report bullying have overwhelmingly negative experience: 82% said their workplace's response was insufficient or negligible. In 84% of cases, the perpetrator was not sanctioned. Respondents who experienced sexual harassment endured similar workplace indifference: 74% of cases are not reported and, in the cases that are reported, the response was insufficient or negligible 71% of the time.

Legal workplaces in the UK have been early adopters of anti-bullying and sexual harassment policies, with 79% of respondents indicating their workplaces had these policies in place (53% globally). However, consistent with the poor experiences detailed above, confidence in those responsible for the policies is below the international average (60% compared with 65% globally). British legal professionals at workplaces with policies in place experience considerably less bullying. There is also a link between workplaces running training and less bullying and sexual harassment occurring in those workplaces. While training does not appear to increase absolute reporting rates, and perceptions of efficacy are poor (8% said the training was excellent while 33% rated the programme as insufficient or negligible), those who have been trained are more likely to use internal workplace channels to report incidents.

164 See, eg, Abby Young-Powell, '“A Frat-Like Mentality”: Is the Legal Workplace Improving For Women?' *The Guardian* (London, 14 March 2019) www.theguardian.com/law/2019/mar/14/a-frat-like-mentality-is-the-legal-workplace-improving-for-women accessed 5 April 2019; Jack Hardy, 'Top Lawyer Brings #MeToo to Britain's Legal Profession with Stories of Sexual Harassment', *The Telegraph* (London, 30 November 2018) www.telegraph.co.uk/news/2018/11/30/top-lawyer-brings-metoo-britains-legal-profession-stories-sexual accessed 5 April 2019; Gabriella Kane, 'Clydes Dismisses Partner After “Inappropriate Behaviour” Investigation', *The Lawyer* (London, 12 October 2018) www.thelawyer.com/clydes-dismisses-partner-after-inappropriate-behaviour-investigation accessed 5 April 2019; Alex Taylor, 'Exclusive: Clifford Chance Launches Second Probe into Partner Sexual Misconduct', *The Lawyer* (London, 12 April 2018) www.thelawyer.com/exclusive-clifford-chance-launches-second-probe-into-partner-sexual-misconduct accessed 5 April 2019.

165 Frances Gibb and Jonathan Ames, 'Law Firm Bullying Culture in the Spotlight', *The Times* (London, 24 January 2019) www.thetimes.co.uk/article/law-firm-bullying-culture-in-the-spotlight-xmp8k9kg3 accessed 5 April 2019.

166 Equality Act 2010 (UK) s 26.

167 *Ibid* s 109; House of Commons Women and Equalities Committee, 'Sexual Harassment in the Workplace: Government Response to the Committee's Fifth Report of Session 2017–19' (5 December 2018) 6.

// I was advised by the (female) practice manager that if I showed a sexual interest in my principal, he would be nicer to me. This was after he had thrown a phone at my head.

Female, law firm, UK

United States

The epicentre of the #MeToo movement, workplace sexual harassment has gained unprecedented public attention in the US since late 2017.¹⁶⁸ As awareness of the nature and extent of this issue has grown, the legal profession has begun to grapple with unacceptable workplace behaviour. However, cultural characteristics continue to pose a barrier to preventing bullying and sexual harassment in American legal workplaces. One commentary observed, ‘some law firms and their membership ... diminish reports of misconduct, condone a hostile work environment, and penalize those who speak out about these wrongs. In effect, lawyers can become the antithesis of advocates when it comes to supporting and protecting the victims among them’.¹⁶⁹

From a legislative perspective, sexual harassment is classified as a type of discrimination and is prohibited under federal law where it results in a hostile or offensive work environment or where it is associated with adverse employment action.¹⁷⁰ Several states have also passed legislation addressing this issue.¹⁷¹ Unlike sexual harassment, there are no specific workplace anti-bullying laws at a federal or state level.¹⁷² Protections do apply if the conduct amounts to harassment on the basis of a protected characteristic.¹⁷³ There is also increasing public interest in this issue, and there has been some legislative movement at a state level.¹⁷⁴

168 At least 200 prominent men have left their jobs following allegations of sexual harassment: Audrey Carlsen and others, ‘#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women’, *The New York Times* (New York, 29 October 2018) www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html accessed 5 April 2019. The percentage of Americans who classified workplace sexual harassment as a serious problem rose more than 15 percentage points in 2017: Caitlin Gibson and Emily Guskin, ‘A Majority of Americans Now Say that Sexual Harassment is a Serious Problem’, *The Washington Post* (Washington, DC, 17 October 2017) www.washingtonpost.com/lifestyle/style/a-majority-of-americans-now-say-that-sexual-harassment-is-a-serious-problem/2017/10/16/707e6b74-b290-11e7-9e58-e6288544af98_story.html accessed 5 April 2019.

169 The Young Lawyer Editorial Board of *The American Lawyer*, ‘YL Board: This Is What Sexual Harassment in the Legal Industry Looks Like’, *The American Lawyer* (New York, 28 February 2018) www.law.com/americanelawyer/2018/02/28/yl-board-this-is-what-sexual-harassment-in-the-legal-industry-looks-like accessed 5 April 2019.

170 Title VII of the Civil Rights Act of 1964 (US); US Equal Employment Opportunity Commission, ‘Harassment’ at www.eeoc.gov/laws/types/harassment.cfm accessed 5 April 2019; US Equal Employment Opportunity Commission, ‘Sexual Harassment’ at www.eeoc.gov/laws/types/sexual_harassment.cfm accessed 5 April 2019.

171 See, eg, Kathleen Pender, ‘New California Harassment Laws Take Effect Jan. 1’, *San Francisco Chronicle* (San Francisco, 31 December 2018) www.sfchronicle.com/business/networth/article/New-California-harassment-laws-take-effect-Jan-1-13499089.php accessed 5 April 2019; Texas Workforce Commission, *Sex Discrimination* <https://twc.texas.gov/jobseekers/sex-discrimination> accessed 5 April 2019.

172 Rickey Richardson, ‘Workplace Bullying in the United States: An Analysis of State Court Cases’ (2016) 3 *Cogent Business & Management* (online) 1, 4.

173 Title VII of the Civil Rights Act of 1964 (US).

174 See Richardson (n 172) 4. For example, 31 legislatures have introduced the Healthy Workplace Bill, which would provide ‘an avenue for legal redress for health harming cruelty at work’: Healthy Workplace Bill, ‘State Activity’ <https://healthyworkplacebill.org/states> accessed 5 April 2019; Healthy Workplace Bill, ‘Quick Facts About the Healthy Workplace Bill’ at <https://healthyworkplacebill.org/bill> accessed 5 April 2019.

A total of 359 legal professionals from the US responded to the survey. Of these, the majority were female, and worked in law firms. US respondents reported higher rates of both bullying and sexual harassment than the global average: 63% of female respondents and 38% of male respondents reported that they had been bullied. Of those who had been bullied, 89% had been bullied more than once. Female targets were 16 percentage points more likely to have been bullied within the past year. Sexual harassment was also commonly experienced by US legal professionals: 54% of female respondents and 11% of male respondents had been sexually harassed (above global averages). Sexual harassment most commonly occurred at the physical workplace (79%) and at work social events (51%).¹⁷⁵

In Their Own Words

“ One senior partner would assign certain work for certain clients on the basis of looks ([client] likes blondes’). This same partner would routinely force you to sit in his office as he regaled you with stories of the sex acts he had engaged in with various women.

Female, law firm, US

Respondents in the US reported higher utilisation of policies than the global average – 71% reported that their workplace had a policy or policies addressing bullying and sexual harassment. Most were aware of who was responsible for handling complaints under the policy (78%) and expressed confidence in those people (63%). Respondents in workplaces with policies were less likely to be bullied or sexually harassed than those at workplaces without policies. Training was also significantly more common in the US than globally – 46% of respondent’s workplaces conducted training (over 20 percentage points higher than the global average); 66% of American respondents viewed their workplace’s training programme as adequate. Respondents at workplaces with training were slightly less likely to have been bullied, but no less likely to have been sexually harassed. Overall, 61% of respondents rated their workplaces’ prevention policy as sufficient or better.

In Their Own Words

“ He was an elected official and I didn’t think I would be believed. There were witnesses to the [seriously inappropriate physical contact], but I was afraid they would tell people that the act was consensual. No one stopped his behaviour at the time.

Female, government, US

¹⁷⁵ Respondents could select more than one location, hence the cumulative total exceeds 100%.

Recommendations

Informed by the above data, extensive secondary literature and dialogue with stakeholders from different spheres of the profession globally, the IBA Legal Policy & Research Unit (LPRU) has developed the following ten recommendations. We claim no monopoly on wisdom. These recommendations are starting points for ongoing discourse regarding how the legal profession can effectively and proactively address workplace bullying and sexual harassment. The voices of all stakeholders are welcome in this dialogue.

1. Raise awareness

Before a problem can be addressed, it must be known. As American jurist Louis Brandeis famously quipped: ‘Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best disinfectant; electric light the most efficient policeman.’¹⁷⁶ The driving purpose of this research is threefold: to gain an empirical understanding of the nature, prevalence and impact of bullying and sexual harassment; to inform the profession; and to provide a platform for efforts to achieve change. An awareness of this and similar research is essential for leaders of the profession, who are best placed to achieve change; for targets and future targets, to know that they are not alone and to help minimise stigma; and for all of us, to motivate individual and collective efforts to improve legal workplaces.

The profession should ensure that this report and similar research is widely distributed. Law firms and other legal workplaces should consider internal dissemination of this report (or a summary). Bar associations, law societies and legal regulators should consider holding events, possibly for continuing legal education credit, for the discussion of these issues among members. All stakeholders need to be involved in this discourse – as this research has shown, bullying and sexual harassment affect all parts of the profession. From trainees to partners, readers to Queen’s Counsel, junior government legal professionals to Attorney-Generals, entry-level in-house lawyers to general counsel, and judicial associates to Supreme Court judges, every member of the profession has a role in eliminating bullying and sexual harassment. Beyond official events and research distribution, these conversations need to continue in workplaces. Supervisors must take responsibility for discussing these issues with their teams on a regular basis.

The IBA will undertake a global engagement campaign to raise awareness about these issues and encourage dialogue among all stakeholders. Following the launch of the report on 15 May in London, the IBA will hold events across six continents in collaboration with member bar associations, law societies and group member law firms. At the time of writing, events are planned for Edinburgh, Budapest, Mexico City, Washington, DC, New York, Sydney, Melbourne, Canberra, Auckland, Santiago, Buenos Aires, São Paulo, Doha, Johannesburg, Addis Ababa, Madrid and Brussels. The campaign will culminate with a showcase session at the IBA Annual Conference in Seoul in September 2019. The report and its findings will also be promoted widely via social and traditional media channels.

¹⁷⁶ Louis Brandeis, *Other People’s Money: And How The Bankers Use It* (Frederick A Stokes Publishers 1914) 92.

2. Implement and revise policies and standards

As this report has found, policies are no panacea. But they are a necessary starting point. Articulating clear standards of workplace conduct, outlining the procedures to be followed in the event of a complaint and regularly reminding staff of the content of policies are important steps in addressing bullying and sexual harassment. Workplace-specific policies can also be reinforced by macro-level standards articulated by regulators, bar associations and law societies.

Given that this survey highlighted that almost half of respondents' workplaces lacked policies, legal workplaces without adverse behaviour policies should immediately investigate the adoption of such documents. Policies should be tailored to the individual workplace and properly implemented – not documents purchased 'off the shelf' and then left to 'gather dust'. Nor should the presence of policies induce complacency. One commentator has warned in a related context of the risk that 'employers and employees alike tend to equate the mere presence of these structures with legal compliance and become less aware of whether the structures actually promote legal ideals'.¹⁷⁷

Policies should be broadly framed and not constrained by strict legal definitions; as the Women's Bar Association of Massachusetts recommends, 'firms should not erect barriers that require a legal definition to be met before they can respond to behaviours that undermine a culture of civility and respect'.¹⁷⁸ This is necessary because, as the report found, much bullying and sexual harassment in the profession occurs at the lower end of the severity scale, which may not give rise to legal liability but has adverse individual and workplace consequences. Policies should also be alert to the variable work environments of legal professionals, which might include client offices, other legal workplaces, chambers, courts etc – all possible sites of bullying or sexual harassment. Workplaces must remain vigilant, habitually updating policies to incorporate internal and external developments. Workers should regularly be reminded of the policies' content and procedures – the survey found that just one in five respondents' legal workplaces frequently raised awareness about relevant policies. It is hoped that this report will be a timely reminder for all legal workplaces to review their bullying and sexual harassment policy arrangements.

The profession should collectively endeavour to introduce or revise policies. Regulators of the profession should consider the appropriateness and efficacy of introducing mandatory requirements for workplace policies to address bullying and sexual harassment, as has been done in some jurisdictions (whether via workplace-wide legislative obligations or profession-specific regulatory commitments). Regulators, bar associations and law societies should develop or update standards of conduct (whether mandatory or guiding), making it clear that bullying and sexual harassment have absolutely no place in the profession. The Law Society of England and Wales and the UK's Ministry of Justice, for example, are shortly releasing a Women in Law Pledge, which will see signatory organisations '[c]ommitting at senior level to tackle sex discrimination, bullying and sexual harassment in the workplace'. The Bar of Ireland, meanwhile, is amending its Code of Conduct

177 Lauren Edelman, *Working Law: Courts, Corporations, and Symbolic Civil Rights* (University of Chicago Press 2016) 12.

178 See Rikleen, 'Survey of Workplace Conduct' (n 20) 34.

to expressly prohibit bullying and sexual harassment.¹⁷⁹ This combination of micro and macro-level discourse will reinforce normative standards against bullying and sexual harassment.

The IBA will first review and revise its own workplace policies, including by undertaking a workplace culture survey to understand staff attitudes at its headquarters in London and regional offices. Second, the IBA will introduce a harassment policy addressed at conduct occurring at the 60 or so conferences it holds across the world each year. A short version of the policy will be included in all conference programmes, with the full version available online. Steps will be taken to raise awareness about the content of the policy at all IBA events. Third, on the occasion of the next revision of the IBA's *International Principles on Conduct for the Legal Profession*, it will be put to the IBA Council to consider amending the commentary to Principle 2 ('Honesty, integrity and fairness') to articulate that bullying and sexual harassment is incompatible with the duties of legal professionals.

3. Introduce regular, customised training

Notwithstanding the absence of a definitive correlation between workplace training and reduction in rates of bullying and sexual harassment, this report and other studies have highlighted the benefits of training to address such conduct.¹⁸⁰ Survey respondents at workplaces with training were significantly less likely to have been bullied or sexually harassed within the past year. They were also less likely to have been bullied or sexually harassed by their supervisor/line manager, and more likely to have reported via internal channels. Despite these positive effects, too few legal workplaces are conducting regular and tailored training. Only 22% of respondents' workplaces conducted training to address bullying and sexual harassment. Accordingly, there is considerable scope for the legal profession to increase the prevalence and reach of training.

Such training should be 'supported at an organization's highest levels, held regularly but in a varied and dynamic way, conducted... in an interactive manner, and regularly evaluated for efficacy'.¹⁸¹ This report found that a mix of internally and externally provided training appears to be the most effective approach; organisations that entirely outsourced their training received the worse adequacy ratings. This reflects that workplace-relevant examples, scenarios and procedures are essential elements of effective training. Training should be more than just compliance-orientated, aimed only at meeting strict legal definitions and providing a shield against liability. Training should target all forms of negative workplace behaviour, including those not prohibited by law: 'incivility often acts

179 See Aedamair Gallagher, 'Women's Issues? The Findings of a Recent Survey on Women at the Bar are Outlined' (2016) 21(2) Bar Review 50–53.

180 It should be reiterated that existing empirical research on training has significant limitations. As the US Equal Employment Opportunity Commission's landmark study observed, 'the results of [training] studies implicate only the effectiveness of the specific trainings that were evaluated. The data cannot be extrapolated to support general conclusions about the effectiveness of training. Indeed, our most important conclusion is that we need better empirical evidence on what types of training are effective and what components, beyond training, are needed to make the training itself most effective': Feldblum and Lipnic (n 96) 49.

181 Susan Bisom-Rapp, 'Sex Harassment Training Must Change: The Case for Legal Incentives for Transformative Education and Prevention' (2018) 71 Stanford Law Review 62, 71.

as a “gateway drug” to workplace harassment’, so training should attempt to ‘stop improper behavior before it ever rises to the level of illegal harassment’.¹⁸²

Workplaces should also consider specific training for managers on how to prevent and respond to incidents, and bystander intervention training – an area identified ‘as showing significant promise for preventing harassment in the workplace’.¹⁸³ Whatever the exact nature, training is unlikely to be impactful if undertaken in isolation; ‘effective training does not occur within a vacuum’.¹⁸⁴ Instead, it must be ‘part of a holistic effort undertaken by the employer to prevent harassment’,¹⁸⁵ including by pursuing several of the other recommendations articulated in this report.

The profession should make a concerted effort to improve the frequency and quality of training to address bullying and sexual harassment. Individual workplaces that do not currently undertake training should consider doing so on a regular and customised basis. Workplaces that do run training should review their methods and frequency. Bar associations and law societies should consider producing jurisdiction-specific training materials and offering training courses for continuing legal education credit.¹⁸⁶ Legislators and professional regulators should consider the appropriateness and efficacy of mandatory training requirements.

The IBA will create an online resource hub to serve as a clearing house for materials on effective training – including guidelines and best practice materials. As part of this hub, the IBA will create a series of videos explaining the findings and recommendations of this report, which will feature clear statements from senior officers of the IBA that bullying and sexual harassment is unacceptable. Workplaces might wish to incorporate these into their training programmes.

4. Increase dialogue and best practice sharing

This report demonstrates that bullying and sexual harassment affect all parts of the legal profession across the globe. Yet, despite the idiom that a problem shared is a problem halved, too often individual workplaces feel the need to address these challenges alone. While confidentiality obligations and defamation risk may inhibit the sharing of details of particular cases, members of the profession should come together to discuss challenges and trends and share ideas as to what works and what does not.

The profession should consider creating networks to discuss these issues and approaches to them, sharing best practice, insight and encouragement in efforts to address bullying and sexual harassment. These could be established informally or semi-formally at the initiative of several legal workplaces in a particular location, whether involving managing partners, staff partners or human resources managers (or their non-law firm equivalents), or formally via standing working groups or committees of bar associations and law societies. At the regional and global level, bar associations, law societies and professional regulators should engage more actively with their counterparts on these topics (the latter, perhaps, through fora such as the International Conference of Legal Regulators).

182 US Equal Employment Opportunity Commission, ‘EEOC Launches New Training Programme on Respectful Workplaces’ (Press Release, 4 October 2017) www1.eeoc.gov/eeoc/newsroom/release/10-4-17.cfm accessed 5 April 2019.

183 See Feldblum and Lipnic (n 96) 54.

184 *Ibid* 48.

185 *Ibid* 45.

186 See New Zealand Law Society Working Group (n 110) 99–101.

The IBA will encourage its divisions and committees to regularly include sessions on bullying and sexual harassment as part of the IBA Annual Conference and regional conferences. These efforts will commence with a showcase session in Seoul at the 2019 IBA Annual Conference in September. During the global engagement campaign to follow this report, outlined above, the IBA will seek to facilitate a frank discussion between different segments of the profession to encourage immediate and ongoing dialogue and best practice sharing. The IBA will also follow the lead of the American Economic Association in seeking to engage, collaborate and share information with professional bodies from other sectors, to ensure efforts to address these societal-wide issues are not undertaken in isolation.¹⁸⁷

5. Take ownership

Cultural change starts from the top. Both prior research and stakeholder engagement for this report indicated that workplace change is most effective when driven by senior leadership. Bullying and sexual harassment flourish in workplaces where employees perceive that such conduct is not taken seriously by management.¹⁸⁸ Conversely, workers are more likely to consider that addressing unacceptable behaviour is a high collective priority when leaders emphasise the need for change.¹⁸⁹ Senior leaders must be vocal about how bullying and sexual harassment cannot and will not be tolerated.

While culture may begin at the top, all layers of the profession can and must take responsibility for addressing these issues. As the US Equal Employment Opportunity Commission noted in its 2016 workplace harassment research, ‘reinforcing that culture can and must come from the bottom, middle, and everywhere else in between’.¹⁹⁰ Taking ownership of the problem extends to accepting responsibility for, and taking action to address, situations where the risks of misconduct are increased. This report found that work-related social events are the second most common location for sexual harassment to occur. Alcohol is often cited as a contributing factor to misconduct in such environments.

Taking ownership of the issue also requires members of the profession to draw attention to inappropriate conduct when it happens and respond accordingly. For too long, the onus has been on the target to initiate a formal complaint before any action is contemplated. Bystanders must take a more prominent role in preventing and addressing bullying and sexual harassment – they can no longer be silent. To borrow a phrase from an entirely different context, ‘if you see something, say something’.

The profession should, individually and collectively, vocalise the position that bullying and sexual harassment in the profession is unacceptable, and when necessary call out inappropriate conduct.

¹⁸⁷ American Economic Association, ‘A Message From the AEA Leadership on the Professional Climate in Economics’ (Press Release, 18 March 2019) www.aeaweb.org/news/member-announcements-mar-18-2019 accessed 5 April 2019.

¹⁸⁸ Chloe Hart, Alison Dahl Crossley and Shelley Correll, ‘Leader Messaging and Attitudes toward Sexual Violence’ (2018) 4 *Socius* 1, 2; Louise Fitzgerald, Suzanne Swan and Vicki Magley, ‘But Was It Really Sexual Harassment? Legal, Behavioral, and Psychological Definitions of the Workplace Victimization of Women’ in William O’Donohue (ed) *Sexual Harassment: Theory, Research and Treatment* (Allyn & Bacon 1997) 5; Theresa Glomb, ‘Ambient Sexual Harassment: An Integrated Model of Antecedents and Consequences’ (1997) 71 *Organizational Behavior and Human Decision Processes* 309; Cooper-Thomas and others (n 41) 384–407; Hoel and Vartia (n 35) 24.

¹⁸⁹ *Ibid* Fitzgerald, Swan and Magley (n 188) 9; Cooper-Thomas and others (n 41) 384–407.

¹⁹⁰ See Feldblum and Lipnic (n 96) 58.

Managing partners, senior barristers, general counsel, judges and other leaders of the profession should, within their workplaces and publicly, deliver this message and take actions available to them to achieve positive change. Senior leaders should be role models for expected standards of behaviour and be a visible presence in the committees, working groups and initiatives created to implement strategies for achieving change. Workplaces should encourage responsible drinking at social events and take steps to minimise excessive alcohol consumption, in light of the exacerbated risk of negative behaviour.

The IBA will, via its senior officers and President, take a public stance on the need to urgently address bullying and sexual harassment in the profession following the publication of this report. This message will consistently be delivered throughout the current presidential term (to December 2020), including during the President's addresses at the 2019 IBA Mid-Year Meetings in Budapest and the 2019 IBA Annual Conference in Seoul. The IBA will also seek to empower other leaders of the profession to be vocal on these issues, by developing publicly accessible talking points and guidance. As outlined above, the IBA has introduced a harassment policy for its conferences and is liaising with all organisations that hold side-events to make the IBA's expectations clear. The IBA is also reviewing the format of its social gatherings to reduce the risk of excessive drinking of alcohol.

6. Gather data and improve transparency

This report was predicated on the need for more and better data on bullying and sexual harassment in the legal profession. The IBA is not the only organisation to recognise the difficulties posed by a dearth of comprehensive data. The British House of Commons Women and Equalities Committee's 2018 inquiry into workplace sexual harassment noted: 'A recurrent theme of this inquiry has been a lack of awareness about the extent of sexual harassment... Without robust data about prevalence and outcomes, the Government cannot gauge whether policy interventions, legal changes and enforcement processes are effective in making workplaces safer.'¹⁹¹

While the absence of data may pose particular problems at the macro level, it also affects micro-level interventions. Given that a workplace's culture has a direct impact on experiences of bullying and sexual harassment, it is important that employers have access to data regarding the particular challenges in their workplaces. To this end, it is useful for workplaces to undertake 'internal self-assessment[s] to determine areas of particular change', such that interventions can be appropriately targeted to the specific workplace culture.¹⁹² Data collection should not be limited to bullying and sexual harassment, and should form part of broader initiatives to gather data about diversity, mental health and workplace satisfaction in legal workplaces.

Transparency is crucially important, both as a symbolic step and to aid efforts to address negative workplace behaviour. In several jurisdictions, professional regulators have publicly reiterated the need for legal workplaces to report incidents of bullying and sexual harassment in light of good character obligations and prohibitions on serious misconduct.¹⁹³ This is a necessary starting point,

¹⁹¹ See House of Commons Women and Equalities Committee (n 167) 46.

¹⁹² See Rikleen, 'Survey of Workplace Conduct' (n 20) 33. See Feldblum and Lipnic (n 96) 37.

¹⁹³ See, eg, New Zealand Law Society Working Group (n 110) 99–101.

but transparency should go beyond that. Legal workplaces should consider following the example of the ‘Big Four’ accounting firms, which released data regarding the number of partners who left their jobs in the past four years following allegations of inappropriate workplace behaviour.¹⁹⁴ In that instance, one firm led the way by publicly releasing its data, which prompted the other three to follow. It might be hoped that if several major law firms took similar steps, it may result in broader disclosure of these issues in the profession, with the attendant benefits of awareness and transparency.

The profession should, at an individual workplace level, commit greater resources to gathering and analysing data on internal bullying and sexual harassment, and related issues. Workplaces should consider undertaking regular workplace climate surveys, with distinct sections on bullying and sexual harassment. Data from complaints, outcomes and climate surveys should be used to measure progress and the efficacy of strategies adopted. While this will require financial and human capital investments, the benefits of increased productivity as a result of more harmonious workplaces should soon justify those outlays. Workplaces should also consider making summaries of annualised data publicly available. These are highly sensitive issues and there may be resistance to such radical transparency, but the profession would benefit from legal workplaces being open about the nature of the challenges they face. Law societies, bar associations and professional regulators should consider undertaking their own surveys or conducting other data-gathering activities, and doing so on a regular basis.¹⁹⁵ The Bar Council of England and Wales, for example, ran its Barrister’s Working Life survey in 2011, 2013 and 2017. Regulators should release annual data on complaints relating to bullying and sexual harassment, as well as relevant trends.

The IBA will seek to undertake a second version of this survey in 2024, to provide further data on bullying and sexual harassment within the legal profession, and enable comparisons with the data underlying this report. The IBA will also collate existing data-rich studies on this topic, many of which have been cited in this report, and include them in the online resource hub to enhance the visibility of their findings. A summary of this report will be translated into, at minimum, the six languages the survey was available in (English, French, Italian, Portuguese, Russian and Spanish), to ensure this data and recommendations are available to the largest possible audience.

¹⁹⁴ See Burgess and Kinder (n 61).

¹⁹⁵ A former Australian judge recently wrote: ‘A particular responsibility rests with those who hold positions of influence, such as those who control the Law Council of Australia, the Law Societies and the Bar Associations. Should they commission a prevalence study of sexual harassment within the profession, broadly comparable with the study undertaken for Universities Australia? With the benefit of the results of such a survey, they could seek expert advice about what, if anything, should be done next’: Catherine Branson, ‘Making the Law Safer for Women’ (2018) 144 Precedent 2.

7. Explore flexible reporting models

Effective reporting systems that empower targets of bullying and sexual harassment to report their experiences are ‘among the most critical elements’ of a strategy to address such conduct. Yet this report finds that the reporting mechanisms at many legal workplaces are failing: 75% of sexual harassed respondents and 57% of bullied respondents had never reported. Among the most commonly cited reasons for not reporting was fear of repercussions and a lack of confidence in reporting procedures. Elsewhere, psychological research has found that reporting can take a tremendous toll on those who do decide to report, worsening job, psychological and health outcomes for targets.¹⁹⁶

The profession should therefore urgently consider revising existing reporting models, both at individual workplaces and in external organisations that receive reports (a function often held by professional regulators or law societies and bar associations). Emphasis should be placed on flexibility: ‘[workplaces] should offer reporting procedures that are multi-faceted, offering a range of methods, multiple points-of-contact, and geographic and organizational diversity where possible, for an employee to report harassment’.¹⁹⁷ Targets should feel they can report incidents whatever the severity, and that incidents will be dealt with sensitively, proportionately and – to the extent necessary – confidentially.

Legal workplaces should seek to develop or consolidate office cultures that support, rather than distrust, reporting of incidents – both in the present context and more generally.¹⁹⁸ Workers must feel safe raising concerns: too often there is ‘clear pressure in the workplace to avoid being viewed as humorless or as not a team player’.¹⁹⁹ Workplaces should also consider whether independent reporting processes are appropriate to ensure that staff can report to persons separate from the workplace’s hierarchy.²⁰⁰ Improving flexible reporting models will not be a cure-all; the most common reason for not reporting was the profile or status of the perpetrator, and better reporting models will never overcome these concerns entirely. But by emphasising that workplaces are taking these issues seriously, are open to reports through various, flexible channels and are determined to prevent retaliation, even this most significant barrier to reporting can be eroded.

One possible model for consideration is the internal grievance process adopted in 2018 by the bar in Victoria, Australia. In addition to formal complaint channels available via the professional regulator and other institutional bodies, this policy empowers targets to lodge either a complaint ‘seeking investigation and response’ or a report ‘for the purpose of improving the implementation of the training and awareness objectives’ of the policy. Complaints are investigated, where possible conciliated by a trained, senior member of the bar, and, in some circumstances, referred to the

196 See, eg, Mindy Bergman and others, ‘The (Un)Reasonableness of Reporting: Antecedents and Consequences of Reporting Sexual Harassment’ (2002) 87 *Journal of Applied Psychology* 230–242; Matthew Hesson-McInnis and Louise Fitzgerald, ‘Sexual Harassment: A Preliminary Test of an Integrative Model’ (1997) 27 *Journal of Applied Social Psychology* 877, 896.

197 See Feldblum and Lipnic (n 96) 43.

198 See, eg, International Bar Association, ‘Whistleblower Protections: A Guide’ (April 2018).

199 See Rikleen, ‘Survey of Workplace Conduct’ (n 20) 8.

200 *Ibid*; House of Commons Women and Equalities Committee (n 167) 26–27.

professional regulator. Reports, on the other hand, are anonymised and used only for statistical purposes and to inform the Victorian Bar's initiatives to address bullying and sexual harassment. This model offers targets an avenue to have their voices heard in circumstances where they do not otherwise wish to formally proceed with a complaint and concomitant investigation.²⁰¹

Technology might offer other tools to enhance existing reporting models. Several major universities in the US have adopted a platform provided by Callisto, a non-profit organisation, which enables targets to save time-stamped written records of sexual assault.²⁰² Targets can then decide at a later date whether to report, and rely on that time-stamped record. Callisto also takes advantage of 'information escrow' technology, whereby targets can identify the perpetrator, but their report is only submitted to the appropriate authority if a second target makes an allegation through the platform against the same perpetrator. This minimises the significant 'first-mover disadvantage' facing a target who wishes to report. Technologies such as these offer significant promise: 'escrows hold the potential for mitigating the twin concerns of initial underreporting of truthful allegations and the subsequent over-reporting of false allegations'.²⁰³ But they also have drawbacks, and are unlikely to proliferate overnight.

Fostering mentoring relationships between junior and senior legal professionals, both within and beyond workplaces, may be another way to increase dialogue and empower junior legal professionals to informally share concerns regarding bullying and sexual harassment in their workplaces. However, as the Women's Bar Association of Massachusetts observed, 'commiseration is not a strategy'.²⁰⁴ These relationships should supplement but not supplant formal reporting channels: 'while it is important to be able to have trusted colleagues at work to whom one can speak confidentially about sensitive topics, this approach generally will not help the individual's circumstances, and will certainly not bring about any positive change'.²⁰⁵

The profession should review and revise existing reporting procedures, and seek to implement a flexible approach to encourage targets to report incidents. This should be undertaken both by individual workplaces and by external organisations with a regulatory or quasi-regulatory role. Workplaces should engage with their workforces, emphasising a positive approach to reporting and seeking feedback as to the failings with existing models. Workplaces should also investigate the potential utility of technological solutions, and strengthen formal and informal mentoring schemes.

The IBA will include information on best practice reporting models on its online resource hub. In addition, the IBA will monitor the implementation of its harassment policy for IBA conferences, with a view to ensuring the best practice is applied in that context. The IBA will also seek to foster discussion on these particular issues during the events it holds on bullying and sexual harassment as part of the engagement campaign to follow the publication of this report.

201 Available online: Victorian Bar, Internal Conduct Policies and Reports, 1 July 2018 at www.vicbar.com.au/public/about/governance/internal-conduct-policies-and-reports accessed 5 April 2019.

202 Ian Ayres, 'Meet Callisto, the Tinder-like platform that aims to fight sexual assault', *Washington Post* (Washington, DC, 9 October 2015) www.washingtonpost.com/opinions/using-game-theory-technology-to-fight-sexual-assault/2015/10/09/f8ebd44e-6e02-11e5-aa5b-f78a98956699_story.html accessed 5 April 2019.

203 Ian Ayres and Cait Unkovic, 'Information Escrows' (2012) 111 *Michigan Law Review* 145, 148.

204 See Rikleen, 'Survey of Workplace Conduct' (n 20) 35.

205 *Ibid.*

8. Engage with younger members of the profession

This report found that bullying and sexual harassment disproportionately affects younger members of the profession. This impact is multifaceted: younger respondents report experiencing more bullying and sexual harassment, and indicate less satisfaction with workplace approaches to addressing the conduct. These findings are not novel; a study conducted for the Law Society of Scotland in 2011 found ‘trainees and new solicitors are most impacted by bullying and harassment’.²⁰⁶ The New Zealand Law Society’s 2018 survey made similar findings.²⁰⁷

A recurring theme of stakeholder engagement during the report drafting process was the growing divergence between attitudes of older and young members of the profession. Young legal professionals today are not accepting of conduct that older legal professionals may have ‘tolerated’ in the past as a ‘fact of professional life’. This partly reflects changing societal perceptions of appropriate workplace conduct; in 2018 former Supreme Court of the UK President Lord Neuberger admitted he may have acted in a way that ‘would now be considered bullying’ when he was in practice.²⁰⁸ But it seems that change is most keenly felt among younger generations, and in hierarchical sectors such as the legal profession, there is a risk of a generational disconnect between the profession’s current and future leaders. To address this and mitigate potential consequences, the profession should engage with younger members on these issues – listening to their distinct perspective and ensuring those voices are involved in efforts to address bullying and sexual harassment.

The profession should take all necessary steps to engage with and raise awareness about these issues among younger members of the profession. Workplaces and regulators should consider specific training to form part of trainees’ entry into the profession; law schools should ensure that workplace bullying and sexual harassment are discussed in class. Workplaces should acknowledge that hierarchies and power imbalances may prevent younger legal professionals from actively advocating on these issues, and find ways to empower those voices (whether through workplace committee structures, informal dialogue or anonymous surveys). Finally, senior members of the profession should seek to engage with the perspectives of their junior colleagues to develop a greater appreciation of changing attitudes to workplace culture.

The IBA will collaborate with its Young Lawyers’ Committee on these issues, holding sessions on bullying and sexual harassment in the profession at several of its IBA Young Lawyers’ Training days (including alongside the 2019 IBA Annual Conference in Seoul). Throughout the IBA’s global engagement strategy across each continent, it will engage with young lawyer bodies in different jurisdictions; this engagement will include involving those bodies in primary events (typically held in conjunction with domestic bar associations and law societies) and through standalone events targeted at younger members of the profession. The IBA will also engage with law schools during its campaign to reach legal professionals of the future.

206 Law Society of Scotland, ‘Preventing Bullying and Harassment in the Profession’ (June 2011) Equality Works, 29.

207 See Colmar Brunton (n 20) 7. See also Rikleen, ‘Survey of Workplace Conduct’ (n 20) 33.

208 Max Walters, ‘Neuberger: I Suspect I Have Been Guilty of Bullying’, *Law Gazette* (London, 20 April 2018) www.lawgazette.co.uk/law/neuberger-i-suspect-i-have-been-guilty-of-bullying/5065774.article accessed 5 April 2019.

9. Appreciate the wider context

Workplace bullying and sexual harassment do not occur in a vacuum. There are a range of related factors, several of which are currently under the spotlight in the legal community. Mental health has a bidirectional relationship with negative workplace conduct: bullying and sexual harassment can have adverse mental health impacts, while lawyers who are experiencing mental health challenges might be more likely to see their standards of interpersonal conduct decline below acceptable levels. Research demonstrates that dysfunctional workplace behaviours have a direct negative effect on the wellbeing of targets, perpetrators and third parties.²⁰⁹ It is unlikely to be coincidental that bullying is so prevalent in a profession where highly pressured environments and associated stress are commonplace. In recent years, the profession has begun to realise that it is facing a ‘mental health crisis’.²¹⁰ Research has found that legal professionals are four times more likely than the general population to experience depression.²¹¹ The impact of bullying and sexual harassment ‘on an already vulnerable profession’ is thereby concerning.²¹² In 2018, the prevalence of mental health difficulties among lawyers was tragically highlighted when a partner at a major American firm committed suicide. In an open letter to the profession, the partner’s spouse was damning: ‘I keep going back to one thought: “Big Law” killed my husband’.²¹³

For some time, there has been concern about the workplace satisfaction and quality of life enjoyed by legal professionals. In 1996, the New York City Bar established a Task Force on Lawyers’ Quality of Life in response to concerns ‘that disturbing numbers of lawyers, particularly young lawyers, were growing dissatisfied with their professional lives’.²¹⁴ These concerns have only grown louder in subsequent decades as globalisation has spurred increased competition within the profession, with client expectations of ‘24/7 availability’ coinciding with the ‘ratcheting up of billable hours’.²¹⁵ Studies suggest that legal professionals experience lower levels of job satisfaction than other professionals, and are more likely to suffer from anxiety, substance abuse and heart disease.²¹⁶ As the American Bar Association stated, this is ‘incompatible with a sustainable legal profession and raise[s] troubling implications for many lawyers’ basic competence’.²¹⁷ In recent years, there have

209 Paula Baron, ‘The Elephant in the Room? Lawyer Wellbeing and the Impact of Unethical Behaviours’ (2015) 41 *Australian Feminist Law Journal* 87, 117.

210 Nicholas Alexiou, ‘The Legal Mental Health Crisis Hits Home’, *Above the Law* (New York, 16 November 2018) <https://abovethelaw.com/2018/11/the-legal-mental-health-crisis-hits-home> accessed 5 April 2019.

211 William Eaton and others, ‘Occupations and the Prevalence of Major Depressive Disorder’ (1990) 32 *Journal of Occupational Medicine* 1079, 1083.

212 See Law Council of Australia, Submission to Australian Human Rights Commission (n 26) 75.

213 Joanna Litt, ‘“Big Law Killed My Husband”: An Open Letter From a Sidley Partner’s Widow’, *The American Lawyer* (New York, 12 November 2018) www.law.com/americianlawyer/2018/11/12/big-law-killed-my-husband-an-open-letter-from-a-sidley-partners-widow accessed 5 April 2019.

214 New York City Bar, ‘Report of the Task Force on Lawyer’s Quality of Life’ (July 2002).

215 Thornton, ‘Squeezing The Life Out of Lawyers’ (n 19) 471.

216 See, eg, Baron (n 209) 88–89; Eaton and others (n 211); Adele Bergin and Nerina Jimmieson, ‘Australian Lawyer Well-being : Workplace Demands, Resources and the Impact of Time-billing Targets’ (2014) 21(3) *Psychiatry, Psychology and Law* 427; Steve Mark, ‘Impaired Practitioners; Substance Abuse and Mental Illness in the Legal Profession’ (2007) 37 *Without Prejudice* 1; Rick B Allan, ‘Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial’ (1997) 31 *Creighton Law Review* 265.

217 National Task Force on Lawyer Well-being, ‘Creating a Movement To Improve Well-being in the Legal Profession’ (American Bar Association, 14 August 2017) 1.

been a number of initiatives to improve wellbeing in the profession.²¹⁸ Some of these initiatives focused on underlying factors that influence wellbeing, including bullying and sexual harassment.²¹⁹

More than a century since women were admitted as lawyers for the first time in some jurisdictions, senior leadership positions in the legal profession across the globe remain overwhelmingly male-dominated.²²⁰ In recent years, efforts to improve diversity have gained greater prominence; diversity advisers are employed by many large legal organisations, while users of legal services are beginning to include diversity requirements in tender processes. Like mental health, the relationship between diversity and bullying and sexual harassment is bidirectional. As this report's predecessor found, the widespread prevalence of bullying and sexual harassment is a major barrier to female progression within the profession. The overrepresentation of men in workplaces, particularly at senior level, has also been identified as a contributing factor to such conduct in non-legal studies. Of course, diversity goes beyond gender. A profession that is diverse and inclusive across gender, ethnicity, race, sexuality, physical ability, background and other individual characteristics will be a better one in many respects, including that it will be one where bullying and sexual harassment is less widespread.

The profession should acknowledge the relationship between mental health, quality of life, diversity and negative workplace conduct. Individual workplaces should place emphasis on addressing factors that contribute to adverse mental health outcomes, and supporting staff who suffer from mental health challenges. Bar associations and law societies should consider what symbolic and practical steps they can take to improve mental health and quality of life more generally within the profession. For example, in the UK and Ireland, LawCare is an independent charity funded by professional bodies and regulators that operates a mental health helpline for the profession. Efforts to increase diversity should be continued and expanded at both workplace and profession-wide levels. Stakeholders should adopt an intersectional approach to addressing bullying and sexual harassment, and promoting diversity, understanding that they are related and cannot be dealt with in an isolated manner.

The IBA will commit to fostering awareness and highlighting solutions to the mental health challenges facing the profession. A Presidential Task Force was recently established to address mental health and substance abuse in the profession and will report on its efforts at the IBA Annual Conference in Miami in 2020. The IBA will continue its thought leadership on diversity and inclusion in the profession; the area is currently a Presidential Priority. In 2017, the IBA established a Diversity and Inclusion Council to improve diversity and promote inclusivity across all parts of the IBA. In February 2019, the Council was given a formal constitutional role as a subcommittee of the IBA Management Board, and a Diversity and Inclusion Policy was adopted. Several initiatives are currently underway: the development of a diverse speaker bureau, unconscious bias training, and

218 See, eg, Robyn Ward, 'Other Supporters: New Campaign Urges Legal Profession to "Look Deeper"' (23 September 2015) R U OK? www.ruok.org.au/other-supporters-new-campaign-urges-legal-profession-to-look-deeper accessed 5 April 2019; 'Mental Health: Top Law Firms Commit to New Working Practices to Support Employees', Thomson Reuters Legal Insights Europe (London, 16 November 2018) <https://blogs.thomsonreuters.com/legal-uk/2018/11/16/mental-health-top-law-firms-commit-to-new-working-practices-to-support-employees> accessed 5 April 2019.

219 Suzanne Poynton and others, 'Assessing the Effectiveness of Wellbeing Initiatives for Lawyers and Support Staff' (2018) 41 University of New South Wales Law Journal 584, 589.

220 Generally, see Ellis and Buckett (n 78); Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Oxford University Press 1996).

a mentoring programme, in addition to formal and informal collaboration with efforts of other stakeholders, such as the Law Society of England and Wales' landmark Women in Law project.

10. Maintain momentum

Negative workplace behaviour is currently a prominent topic. This report will add to a growing body of literature produced over the past year on bullying and sexual harassment in the legal profession and beyond. In May 2019, the American Bar Association will publish *The Shield of Silence: How Power Perpetuates a Culture of Harassment and Bullying in the Workplace* by noted workplace expert Lauren Stiller Rikleen. Just before this report went to print, the American Economic Association announced a range of measures in response to a professional climate survey that revealed widespread harassment and discrimination within that sector.²²¹ On the same day in May, the New Zealand Law Society and the University of California, Berkeley will convene separate international symposiums on these issues. Spurred by the #MeToo movement and a broader push in support of workplace diversity and inclusion, it appears that there is both appetite for change and an active coalition of stakeholders working towards it.

Change is not inevitable. As the Introduction to this report highlighted, there have been #MeToo-like moments before. During stakeholder engagement, one eminent academic mused that it felt like she had been discussing these issues for her entire (lengthy) professional life. Thirty-six years after the swimsuit competition, 27 years after the American Bar Association's Recommendation 117 and 21 years after the London strip club incident, bullying and sexual harassment remain rife. As a profession, we cannot be complacent. Change will only occur through concerted, collective efforts. Otherwise, there is a risk that the #MeToo momentum will dissipate and a similar report will be written in another two decades, highlighting the same problems and again calling for change.

The legal profession should take steps to give a structural basis to efforts addressing bullying and sexual harassment, as a way of ensuring that action continues on these issues in the medium and longer term. Workplaces should consider establishing permanent committees with mandates for maintaining efforts to address bullying and sexual harassment, alongside improving visibility of these issues at senior leadership levels. As suggested above, bar associations and law societies should take similar action, creating standing working groups and other institutional actors to initiate and implement strategies to eliminate such conduct. Awareness-raising efforts should be continued and steps taken to harness those fora into ongoing, productive dialogues for change, rather than one-off initiatives.

The IBA will commit to keeping bullying and sexual harassment high on its policy agenda, through its LPRU and its Diversity and Inclusion Council. As indicated above, the IBA will seek to undertake a follow-up survey of a similar nature to maintain momentum and identify changing dynamics in five years' time. To secure high-profile symbolic commitment to addressing these issues, now and into the future, the IBA President will soon release an open letter highlighting the report's findings and calling for change. The open letter will be provided to every IBA constituent law society, bar association and group member law firm, and each will be given the opportunity to co-sign the letter.

²²¹ See American Economic Association (n 187).

Conclusion

The shoemaker's son, according to the proverb, often goes barefoot. And so it is that the legal profession – predicated on upholding the law, maintaining the highest ethical standards and advising other professions on doing the same – is rife with bullying and sexual harassment. Such conduct is illegal in many jurisdictions, contrary to professional obligations, and immoral. Yet, as highlighted by this global survey – the largest of its kind – bullying and sexual harassment affect a significant portion of the legal workforce. From overbearing supervision to physical violence, and from sexist slurs to sexual assault, the nature of the conduct varies widely. But these incidents are unified by a single factor: such conduct is unacceptable in the modern legal workplace.

It is hoped that this research serves as a wake-up call for the profession. The results will be unsurprising for many; anecdotes of bullying and sexual harassment in legal workplaces have long been commonplace. However, for too long, these incidents were dismissed as just that – anecdotes, representative of a few bad apples and not the profession as a whole. This survey provides empirical validation. Bullying and sexual harassment are widespread. They are chronically underreported. When incidents are reported, the workplaces' responses are inadequate and often exacerbate the situation. Such conduct is driving people away from their workplaces and the profession as a whole. These findings – drawn from almost 7,000 respondents across 135 countries – cannot be ignored.

Change is hard, but it is possible – and urgently necessary. For change to occur, the profession must work together. Bar associations and law societies must lead by example, while law firms and legal workplaces should ensure that they have appropriate policies and training in place and respond sensitively to allegations. Individual members of the profession should take steps to ensure their workplaces are free from bullying and sexual harassment. We should call out bad behaviour and support those who suffer as a result of it. It is incumbent on all members of the profession to work together to address these issues, because the findings of this research are damning upon us all. It has been said that 'the standard you walk past is the standard you accept'. For too long, the legal profession has looked the other way. No more. Every member of the legal profession has personal responsibility for eliminating bullying and sexual harassment from our workplaces. Together, we can achieve positive change.

Working Group

This project was developed in collaboration with a Working Group drawn from across the IBA's membership. The Working Group's significant contribution to this report is acknowledged with sincere thanks.

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Sidika Baysal *B+B Legal (European Regional Forum)*

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Patricia Menéndez Cambó *Greenberg Traurig (Women Lawyers' Interest Group)*

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Ken Murphy *Law Society of Ireland (Bar Issues Commission)*

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Finally, and most importantly, thanks to the 6,980 members of the legal profession who completed the survey. We know that for many respondents, sharing their experiences meant reliving harrowing past incidents of bullying and sexual harassment. Your bravery is admirable and we hope that this report does justice to your courage.

Appendix 1: Survey

As the survey used conditional branching and a mix of mandatory and optional questions, it is difficult to replicate in paper form. Nevertheless, for the purpose of transparency, the survey is extracted below.

The IBA Legal Policy & Research Unit (LPRU)'s 2017 *Women in Commercial Legal Practice* report revealed startling rates of bullying and sexual harassment in the profession. Subsequently, the IBA LPRU resolved to undertake a new survey to establish an empirical understanding of the nature and prevalence of such conduct. The findings of this survey will feature in a report providing recommendations for legal workplaces regarding their policies, training and incident response systems. It is hoped that the report will contribute to the broader cultural shift in workplace attitudes towards bullying and sexual harassment.

All responses are anonymous. Acritas Research Limited, an independent agency administering the survey, will process responses and pass aggregated results to the IBA LPRU. Acritas may capture IP addresses to ensure survey integrity. It will not capture any other personal information. Please see the IBA's privacy policy and Acritas' privacy policy.

The IBA LPRU appreciate that recollecting incidents of bullying and sexual harassment may be distressing, and encourage participants to seek appropriate support. The purpose of this survey is to obtain data – this is not a forum through which to report incidents.

The survey should take between 10–15 minutes to complete. Thank you for participating in this research – every response is valuable.

This survey draws on the definition of harassment found in the UK's Equality Act:

Harassment is unwanted conduct... which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

For the purpose of this survey, the term 'harassment' includes direct and indirect bullying and sexual harassment.

(d1) What is your gender?

- | | |
|--|--|
| <input type="checkbox"/> Female | <input type="checkbox"/> Male |
| <input type="checkbox"/> Other (non-binary/self-defined) | <input type="checkbox"/> Would prefer not to specify |

(d2) What is your age?

- | | | | |
|---------------------------------------|--|--------------------------------|--------------------------------|
| <input type="checkbox"/> Less than 25 | <input type="checkbox"/> 25–29 | <input type="checkbox"/> 30–34 | <input type="checkbox"/> 35–39 |
| <input type="checkbox"/> 40–44 | <input type="checkbox"/> 45–49 | <input type="checkbox"/> 50–54 | <input type="checkbox"/> 55–59 |
| <input type="checkbox"/> 60 and above | <input type="checkbox"/> Would prefer not to specify | | |

(d3) In what country do you usually work?

(d4) Which best describes your current workplace?

- ☐ Law firm
 ☐ Barristers' chambers
 ☐ Corporation/organisation
 ☐ Government
☐ Judiciary (including courts and tribunals)
 ☐ Other [Please specify]

(d5) What is your position? (Only ask to law firms)

- ☐ Partner
 ☐ Special counsel/of counsel
 ☐ Consultant
☐ Senior associate or senior solicitor
 ☐ Associate or solicitor
 ☐ Contract solicitor
☐ Trainee solicitor or graduate
 ☐ Clerk, intern or paralegal
 ☐ Business services or support staff
☐ Would prefer not to specify
 ☐ Other [Please specify]

(d6) What is the size of your law firm? (Only ask to law firms)

- ☐ Less than 5 partners
 ☐ 5–10 partners
 ☐ 11–50 partners
 ☐ 51–100 partners
☐ More than 100 partners
 ☐ Would prefer not to specify

(d7) How long have you been at your current firm? (Only ask to law firms)

- ☐ Less than 1 year
 ☐ 1–2 years
 ☐ 2–5 years
 ☐ 5–10 years
☐ 10–15 years
 ☐ More than 15 years
 ☐ Would prefer not to specify

Policies

(d7) Does your workplace have a policy or policies in place which address bullying and sexual harassment?

- ☐ Yes
 ☐ No
 ☐ Unaware

(d7a) (If yes) Does your workplace inform you of your and others' rights and obligations under such policies?

- ☐ Frequently
 ☐ Occasionally
 ☐ Rarely (eg, at commencement only)
☐ Never
 ☐ Unsure

(d7b) (If yes) Do you know who is responsible for managing complaints made under the policy or policies?

- ☐ Yes
 ☐ No

(d7bi) (If yes) Are you confident that this person/people would deal with concerns or complaints in a thorough, confidential and impartial manner?

- ☐ Yes
 ☐ No
 ☐ Partially
 ☐ Unsure

Training

(d8) Does your workplace conduct training or information sessions relating to bullying and/or sexual harassment?

☐ Yes ☐ No ☐ Unsure

(d8a) (If yes) Do you consider the level of training or information sessions to be adequate?

☐ Yes ☐ No ☐ Inconsistent

(d8b) (If yes) Was the training or information sessions conducted internally or by an external provider?

☐ Internally ☐ External provider ☐ Both ☐ Unsure

(d9) Generally, how would you assess your workplace's policies, procedures and approach to preventing bullying or sexual harassment and responding to incidents?

☐ Excellent ☐ Good ☐ Sufficient ☐ Insufficient
☐ Negligible ☐ Unsure

Conduct

The following questions will ask whether you experienced one or more types of bullying or sexual harassment at any time during the course of your legal career. Such conduct can occur in person, in written communications, via email, phone or social media.

The first set of questions will focus on any types of bullying you have experienced and the second set will focus on any types of sexual harassment you have experienced.

Bullying

For the following questions, please consider your experiences throughout your legal career.

(b1) Have you ever been bullied in the workplace?

☐ Yes ☐ No

(b2) (If yes) What form did this bullying take? (Please select all that are applicable)

- ☐ Being deliberately given too much or too little work, or work inadequate to the position
- ☐ Overbearing supervision, undermining of work output or constant unproductive criticism
- ☐ Misuse of power or position
- ☐ Ridicule or demeaning language
- ☐ Implicit or explicit threats, other than relating to the categories above
- ☐ Exclusion or victimisation
- ☐ Exclusion from or bullying via social media, including work WhatsApp groups
- ☐ Malicious rumours
- ☐ Being blocked from promotion or training opportunities due to a protected characteristic (such as race, sex, religion)
- ☐ Unfounded threats or comments about job security
- ☐ Violence, threatened or actual
- ☐ Other [Please specify]

☐ Prefer not to specify

(b3) (If no) Have you witnessed bullying in the workplace throughout your career working in the legal sector?

☐ Yes ☐ No

(b4) (If yes) What form did this bullying take? (Please select all that are applicable)

- ☐ Being deliberately given too much or too little work, or work inadequate to the position
- ☐ Overbearing supervision, undermining of work output or constant unproductive criticism
- ☐ Misuse of power or position
- ☐ Ridicule or demeaning language
- ☐ Implicit or explicit threats, other than relating to the categories above
- ☐ Exclusion or victimisation
- ☐ Exclusion from or bullying via social media, including work WhatsApp groups
- ☐ Malicious rumours
- ☐ Being blocked from promotion or training opportunities due to a protected characteristic (such as race, sex, religion)
- ☐ Unfounded threats or comments about job security
- ☐ Violence, threatened or actual
- ☐ Other [Please specify]

Sexual Harassment

You will now be asked questions about sexual harassment in the workplace. For these questions, please consider your experiences throughout your legal career.

(h1) Have you ever been sexually harassed in the workplace?

☐ Yes ☐ No

(h2) (If yes) What form did this sexual harassment take? (Please select all that are applicable)

- ☐ Being looked at in an inappropriate manner which made you feel uncomfortable
- ☐ Sexual or sexually suggestive comments, remarks or sounds
- ☐ Sexist comments, including inappropriate humour or jokes about sex or gender
- ☐ Receiving sexually explicit content or propositions via email or social media
- ☐ Being the subject of sexist behaviour on work WhatsApp groups
- ☐ Receiving sexually explicit presents, cards or letters
- ☐ Inappropriate physical contact, for example patting, pinching, brushing up against the body and any inappropriate touching or feeling
- ☐ Implicit or explicit demands for sexual favours in exchange for employment or promotion
- ☐ Implicit or explicit demands for sexual favours in exchange for a favourable performance appraisal
- ☐ Implicit or explicit demands for sexual favours in exchange for work opportunity (ie, to be involved in a matter)
- ☐ Sexual propositions, invitations or other pressure for sex
- ☐ Seriously inappropriate physical contact, for example kissing, fondling or groping

- ☐ Physical assault or rape
- ☐ Other [Please specify]
- ☐ Prefer not to specify

(h3) (If no) Have you witnessed sexual harassment in the workplace throughout your career working in the legal sector?

- ☐ Yes
- ☐ No

(h4) (If yes) What form(s) did the sexual harassment that you witnessed take? (Please select all that are applicable)

- ☐ Being looked at in an inappropriate manner which made you feel uncomfortable
- ☐ Sexual or sexually suggestive comments, remarks or sounds
- ☐ Sexist comments, including inappropriate humour or jokes about sex or gender
- ☐ Receiving sexually explicit content or propositions via email or social media
- ☐ Being the subject of sexist behaviour on work WhatsApp groups
- ☐ Receiving sexually explicit presents, cards or letters
- ☐ Inappropriate physical contact, for example patting, pinching, brushing up against the body and any inappropriate touching or feeling
- ☐ Implicit or explicit demands for sexual favours in exchange for employment or promotion
- ☐ Implicit or explicit demands for sexual favours in exchange for a favourable performance appraisal
- ☐ Implicit or explicit demands for sexual favours in exchange for work opportunity (ie, to be involved in a matter)
- ☐ Sexual propositions, invitations or other pressure for sex
- ☐ Seriously inappropriate physical contact, for example kissing, fondling or groping
- ☐ Physical assault or rape
- ☐ Other [Please specify]
- ☐ Prefer not to specify

For each type of conduct, the following sub-questions will be asked if the participant answers 'yes' for up to three categories:

You will now be asked some additional questions about the forms of [bullying/sexual harassment] you have experienced, which will help us understand these issues at an industry level. If you would prefer not to answer any questions please leave blank and click 'next'.

(b/h5) Has this happened on more than one occasion?

- ☐ Yes
- ☐ No

(b/h5a) (If yes) Has this incident happened:

- ☐ As part of a course of conduct (repeatedly by the same source/perpetrator)
- ☐ As a number of isolated incidents, from different sources or perpetrators
- ☐ Both of the above (ie, a course of conduct, as well as separate unrelated incident(s))

(b/h6) Where did this occur? (Select all that apply)

- ☐ Workplace
 ☐ Client office
 ☐ Office of a third party (judge, barrister, consultant, etc)
- ☐ During a proceeding (eg, court, arbitration)
 ☐ Work travel
 ☐ Social media
- ☐ Work social event
 ☐ Non-work social event
 ☐ Conference
 ☐ Other [Please specify]
- ☐ Prefer not to state

(b/h7) By whom? (Select all that apply)

- ☐ Your line manager or supervisor
 ☐ Someone more senior than you (other than your line manager/supervisor)
- ☐ Someone of equal seniority
 ☐ Someone junior to you
 ☐ Someone in a support function
- ☐ A client
 ☐ A third party (consultant, judge, barrister, a solicitor from another firm)
- ☐ Other [Please specify]
- ☐ Prefer not to state

(b/h8) When has this type of [bullying/sexual harassment] occurred? (Select all that apply)

- ☐ Within the last month
 ☐ 1–6 months ago
 ☐ 6–12 months ago
 ☐ 1–5 years ago
- ☐ 5–10 years ago
 ☐ 10–20 years ago
 ☐ Over 20 years ago
 ☐ Prefer not to state

(b/h9) Did you report the [bullying/sexual harassment]?

- ☐ Yes – on all occasions
 ☐ Sometimes
 ☐ Never
 ☐ Prefer not to say

(b/h9a) (If reported) Who did you report to? (Select all that apply)

- ☐ Internal workplace channels
 ☐ Professional body regulator (eg, The Law Society and bar association)
- ☐ Public regulator
 ☐ The police
 ☐ Other [Please specify]

(b/h10) (If not reported) Did any of the following factors contribute to you not reporting the [bullying/sexual harassment] you experienced? [Select all that apply or leave blank if none apply]

- ☐ Unaware of the correct protocols/reporting procedure
- ☐ Lack of confidence in protocols/reporting procedure
- ☐ Reported previously and no/insufficient action taken as a result
- ☐ Did not recognise as bullying/harassment until time had passed
- ☐ Incident endemic to the firm/perceived as acceptable
- ☐ Fear of not being believed
- ☐ Lack of evidence
- ☐ Profile/status of the perpetrator (eg, senior member of the firm)
- ☐ Fear of repercussions for self
- ☐ Fear of repercussions for others in the firm
- ☐ Did not wish to revisit the incident (eg, tribunals)
- ☐ Prefer not to state

(b/h11) (If reported) How would you assess your workplace's response to the reported conduct?

- ☐ Excellent
- ☐ Good
- ☐ Sufficient
- ☐ Insufficient
- ☐ Negligible
- ☐ Inconsistent (where you have reported on multiple occasions)
- ☐ Unsure

(b/h12) (If reported) Was the perpetrator sanctioned in any way?

- ☐ Yes
- ☐ No
- ☐ Sometimes (where you have reported on multiple occasions)
- ☐ Unaware

(b/h13) (If reported) In your opinion, what impact did your workplace's response have?

- ☐ Resolve the situation
- ☐ Mitigate the situation
- ☐ Exacerbate the situation
- ☐ Mixed (where you have reported on multiple occasions)
- ☐ Unchanged
- ☐ Unsure
- ☐ Prefer not to answer

(b/h14) Has (or will) this conduct contribute to you:

- ☐ Switching practice areas or departments within your workplace
- ☐ Leaving your workplace
- ☐ Leaving the profession
- ☐ Prefer not to say
- ☐ None of the above

(b/h15) Optional question: if you would like to provide any additional context about the incident, please do so below. All information will be treated as strictly confidential. Please do not include any information which identifies yourself or a third party.

General

If you have any additional comments on this survey, the IBA LPRU's Harassment in the Legal Profession Project or the issue generally, please use the text box below. Please do not include any information which identifies yourself or a third party.

Thank you for completing this survey. Your responses will be kept anonymous. The IBA LPRU recognise that recollection of incidents of harassment may be distressing, and encourage participants to seek appropriate support.



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Appendix 2: Regulatory Approaches Compared

Regulatory frameworks governing bullying and sexual harassment differ considerably between jurisdictions. These differences can affect cultural perceptions of acceptable workplace behaviour and the likelihood that targets will be able to access effective remedies.²²² During the preparation of this report, the IBA LPRU conducted extensive research into how workplace bullying and sexual harassment is legislated against. This section outlines some of the key approaches to regulating such conduct. To highlight similarities and divergences, it draws upon 11 jurisdictions (Australia, Canada, France, India, Japan, Russia, South Africa, Sweden, the United Kingdom,²²³ the United States and Uruguay).²²⁴ These jurisdictions were selected for their geographical, legal and cultural diversity.

Regulating sexual harassment

Regulators are increasingly recognising the importance of addressing workplace sexual harassment, and this conduct is legislated against in most jurisdictions globally.²²⁵ Reflecting this trend, all case study jurisdictions have introduced laws regulating sexual harassment in the workplace, with the exception of Russia.²²⁶ While there is no universal definition of sexual harassment, legal definitions are relatively consistent.²²⁷ In the jurisdictions examined, all definitions included two key elements: (1) unwanted behaviour of a sexual nature; (2) that has certain effects on the work environment or the target.²²⁸ Despite similar definitions, approaches to regulating sexual harassment differ and can be divided into two broad groups – those that regulate sexual harassment as a form of discrimination (the ‘anti-discrimination approach’) and those that regulate sexual harassment through the concept of personal dignity (the ‘dignity approach’).²²⁹ These differing approaches to sexual harassment legislation are associated with differing legal cultures and social values.

222 See, eg, Lippel (n 37) 12–13; Power and others (n 37) 378.

223 Strictly speaking England and Wales, noting the distinct legal systems of Scotland and Northern Ireland.

224 Note that while there is some overlap with the Case Study jurisdictions above, it is only partial – this exercise was undertaken separately and so the overlap is merely coincidental.

225 See World Bank Group (n 27) 15; World Policy Analysis Center (n 27) 3.

226 See, eg, Equality Act 2010 (United Kingdom); Labour Code (France); Penal Code (France); Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (India); Equal Employment Act (Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment) (Japan); Sex Discrimination Act (Australia); Discrimination Act 2008 (Sweden); Employment Equity Act 1998 (South Africa); Title VII of the Civil Rights Act of 1964 (US); Sexual Harassment Law (Law No. 18,561 of 11/09/2009) (Uruguay); Labour Code (Canada).

227 See McDonald (n 23) 2.

228 See also *ibid.*

229 For discussion of the equality approach to sexual harassment compared to the dignity approach, see Rosa Ehrenreich Brooks, ‘Dignity and Discrimination: Toward A Pluralistic Understanding of Workplace Harassment’ (1999) 88 Georgetown University Law Journal 1; Elizabeth Anderson, ‘Recent Thinking about Sexual Harassment: A Review Essay’ (2006) 34 Philosophy & Public Affairs 284; Vicki Schultz and others, ‘Global Perspectives on Workplace Harassment Law: Proceedings of the 2004 Annual Meeting, Association of American Law Schools Section on Labor Relations and Employment Law’ (Faculty Scholarship Series Paper No 4976, Yale Law School, 2004).

The anti-discrimination approach, which has been adopted in jurisdictions including Australia, Canada, Japan, South Africa and the US, conceptualises sexual harassment as a form of sex-based discrimination. For example, in South Africa, the Employment Equity Act prohibits unfair discrimination based on certain characteristics, including sex.²³⁰ As the definition of unfair discrimination includes harassment,²³¹ targets can use this legislation to seek recourse for sexual harassment.²³² However, some scholars have criticised the anti-discrimination approach.²³³ They claim that it excludes certain types of sexual behaviour – for instance, where the perpetrator harasses both men and women or is of the same sex as the target.²³⁴

In contrast, the dignity approach focuses on ensuring ‘the employee’s right to respectful treatment at work, rather than her right to equal treatment’.²³⁵ For example, in Sweden, sexual harassment is defined as ‘conduct of a sexual nature that violates someone’s dignity’.²³⁶ In France, the definition includes ‘[the] act of repeatedly subjecting a person to unwelcome verbal or physical conduct of a sexual nature when such conduct either compromises the victim’s dignity through demeaning or humiliating words or actions, or creates an intimidating, hostile or offensive environment for the victim’.²³⁷ This approach is popular in European jurisdictions, which may reflect a broader focus on safeguarding the dignity and autonomy of the individual in these legal cultures.²³⁸ However, while the dignity approach arguably offers broader protection, in some circumstances its focus on the individual may ‘fail ... to address the underlying structural problems that foster more generalized forms of harassment’.²³⁹

Regardless of which regulatory approach is adopted, the efficacy of sexual harassment legislation will depend on who protection is offered to and which entities can be held liable for incidents. All case study jurisdictions impose some obligations on employers, typically by extending liability for incidents of sexual harassment among employees to the employer, unless it can show that it took all reasonable measures to prevent the conduct.²⁴⁰ However, the restrictive scope of some laws mean that only targets with employee status are protected, which can leave contractors, freelancers, volunteers and other third parties without protection. To combat this issue, a number of jurisdictions have expanded the legislative definition of employee or worker for the purposes of sexual harassment provisions.²⁴¹

230 Employment Equity Act 1998 (South Africa) s 6(1).

231 *Ibid* s 6(3).

232 See Davies (n 154); Nana (n 151) 247.

233 Tristin K Green, ‘Was Sexual Harassment Law a Mistake? The Stories We Tell’ (2018) 128 *The Yale Law Journal Forum* 152.

234 See Brooks (n 229) 8–10.

235 See Schultz and others (n 229) 155.

236 Discrimination Act 2008 (Sweden) s 4.

237 Labour Code (France) art L1153–1.

238 See Schultz and others (n 229) 158. See also Uruguay’s approach to regulation of sexual harassment.

239 See Schultz and others (n 229) 191.

240 See McDonald (n 23) 2. See, eg, Equality Act 2010 (UK) s 109; Labour Code (France) art L4121-1; Labour Code (Russia) arts 2, 212; Civil Code (Japan) art 709; Sex Discrimination Act (Australia) s 106; *Grobler v Naspers Bpk en ‘n ander* [2004] All SA 160 (South Africa); Sexual Harassment Law (Law No. 18,561 of 11/09/2009) (Uruguay) art 4; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (India) art 19, 26; Discrimination Act 2008 (Sweden) ch 5 s 1.

241 See, eg, Sex Discrimination Act (Australia) s 28G; Code of Good Practice on the Handling of Sexual Harassment in the Workplace (South Africa) s 2; Discrimination Act 2008 (Sweden) ch 2 s 1; Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 (India) s2(f).

Additionally, several have drafted legislation to extend employers' liability to situations where a third party perpetrates the harassment, offering additional protection.²⁴²

Another factor that may impair the efficacy of sexual harassment regulation is the difficulty associated with proving that the conduct occurred.²⁴³ This may be exacerbated by the fact that sexual harassment often takes place behind closed doors. In 2002, France introduced a provision to combat this, shifting the burden of proof. Under the amended law, the target is only required to show a *prima facie* case, after which the evidential onus shifts to the alleged perpetrator to 'prove that his/her actions did not constitute such harassment and that his/her decision was justified by objective factors unrelated to any harassment'.²⁴⁴ This may be one way that the evidentiary difficulties associated with sexual harassment can be mitigated.

Regulating bullying

There is significantly less regulatory recognition of bullying than sexual harassment. This is reflected in the case study jurisdictions, only four of which have implemented specific anti-bullying legislation. There are two key approaches to regulating workplace bullying. In many jurisdictions, a 'vertical' regulatory model has been adopted, which conceptualises bullying as a less severe form of harassment and offers targets no special legal protections or remedies. The other, 'horizontal' model deals with bullying separately to sexual and other forms of harassment, offering specific protections and rights to targets.

Case study jurisdictions, including India, Japan, South Africa, the UK and the US, have adopted a vertical model. For example, in South Africa and the US, bullying targets may be able to access redress through harassment protections in anti-discrimination law, but only where they are bullied on the basis of a protected characteristic.²⁴⁵ This vertical approach has been criticised. Commentators have suggested that targeted legislation offers 'increased legitimacy ... to the issue [of bullying]', whereas legislative silence 'sends the wrong message to employers and society'.²⁴⁶ In the US, there is currently a grassroots campaign encouraging state legislatures to introduce a Healthy Workplace Bill to provide a targeted 'avenue for legal redress for health harming cruelty at work'.²⁴⁷ This legislation is viewed as necessary to ensure employers take the prevention of bullying seriously and implement '[anti-bullying] policies and procedures that apply to all employees'.²⁴⁸

Even among jurisdictions that have adopted a horizontal approach and have specific laws to address bullying, regulatory approaches vary. For example, Australia has a relatively broad definition of

242 In 2013 the UK repealed third-party harassment provisions, despite objections from various stakeholders.

243 See, eg, Yuki Noguchi, 'Sexual Harassment Cases Often Rejected By Courts', *NPR* (Washington, DC, 28 November 2017) www.npr.org/2017/11/28/565743374/sexual-harassment-cases-often-rejected-by-courts accessed 14 April 2019.

244 Laurent Guardelli and Caroline Habib, 'Burden of Proof in Sexual Harassment Cases: Towards a Presumption of Guilt?', *Lexology* (London, 28 February 2018) <https://www.lexology.com/library/detail.aspx?g=701e69e6-613c-426b-b8e4-810fe84aee37> accessed 14 April 2019.

245 See *Shoptite Checkers* (n 155); Title VII of the Civil Rights Act of 1964 (US).

246 See Lippel (n 37) 12–13.

247 See Healthy Workplace Bill (n 174)

248 *Ibid.*

bullying, defined as ‘an individual or group of individuals repeatedly behav[ing] unreasonably towards a worker ... creat[ing] a risk to health and safety’.²⁴⁹ French ‘moral harassment’ provisions are comparatively specific, regulating only ‘repeated action that intentionally or unintentionally deteriorate[s] ... [the target’s] working conditions and [is] likely to violate their rights and dignity, impair their physical or mental health, or jeopardise their professional future’.²⁵⁰ The common element in all definitions of bullying analysed is a requirement to demonstrate harm – that is, that the conduct has had a negative impact on working conditions and/or has caused injury to the physical or mental health of the target. Mirroring inconsistency in definitions of bullying, the remedies available to targets vary significantly between jurisdictions. In Sweden, for example, victimisation provisions offer protection from bullying but do not offer any legal remedy in the case of breach.²⁵¹ In contrast, targets of workplace bullying in France may receive up to €40,000.²⁵²

Other regulations

In addition to anti-bullying and sexual harassment regulation, targets may be able to obtain redress and compensation through other legal avenues. Many jurisdictions, including those analysed, offer protection against sexual harassment and bullying through employment, civil and criminal laws. In Russia, for example, while there is no bullying or sexual harassment legislation, targets may be able to seek redress through general anti-discrimination, criminal and labour laws.²⁵³ In all case study jurisdictions, employers owe their employees a duty of care, which can include certain obligations relating to protection from bullying and harassment.²⁵⁴ Contract law can also offer protection, while in some circumstances targets may be able to make personal injury or moral damage claims under civil law. Finally, some countries have criminal provisions that could be capable of capturing bullying and sexual harassment.²⁵⁵ The extent to which these more general regulations can offer protection to targets of bullying and sexual harassment varies significantly between jurisdictions; however, particularly in those jurisdictions without specific bullying or sexual harassment legislation, such indirect approaches will be crucial to protecting targets and offering routes for redress.

This Appendix was drafted by Sophia Collins, based on research undertaken by Sofya Cherkasova. The assistance of Peyton Watts is also gratefully acknowledged.

249 Fair Work Act 2009 (Australia) s 789FD.

250 Labour Code (France) art L1152-1.

251 Organisational and Social Work Environment Provisions (Sweden) s 6; Swedish Work Environment Authority (n 162).

252 ‘Vos Droits: Quelle Indemnisation Suite à un Harcèlement Moral et Physique au Travail?’, *ICI-C-NANCY.FR* (Nancy 22 April 2014) [www.ici-c-nancy.fr/vos-droits-vie-pratique/item/7247-vos-droits-quelle-indemnisation-suite-%C3%A0-un-harc%C3%A8lement-moral-et-physique-au-travail-?.html](http://www.ici-c-nancy.fr/vos-droits-vie-pratique/item/7247-vos-droits-quelle-indemnisation-suite-%C3%A0-un-harc%C3%A8lement-moral-et-physique-au-travail-?) accessed 14 April 2019.

253 See Chernyaeva (n 142); Erdos Knapp and others (n 146).

254 See, eg, *Waters v Commissioner of Police for Metropolis* [2000] 1 WLR 1607 (UK); Work Health and Safety Act 2011 (Australia) ss 31–3; *Media 24 Ltd & Another v Grobler* [2005] 7 BLLR 649 (South Africa).

255 See, eg, Malicious Communications Act 1988 (UK); Penal Code (France) art 222-33-2.



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May 21, 2019

Sent via email: mtsurumi@legalanalysis.ca

Nancy G. Merrill, QC
President

Office Telephone
604.605.5394
Office Email
president@lsbc.org

The Honourable Thomas A. Cromwell, CC (Chair)
c/o Maia Tsurumi, Commission Secretary
Borden Ladner Gervias LLP
Suite 1300 – 100 Queen Street
Ottawa, ON K1P 1J9

Dear Mr. Cromwell:

**Re: 2019 Judicial Compensation Commission –
Submissions from the Law Society of British Columbia**

Further to your letter of April 18, 2019, please find attached submissions from the Law Society of British Columbia to the 2019 Judicial Compensation Commission.

Yours truly,

A handwritten signature in blue ink, appearing to be "N. Merrill", written over a horizontal line.

Nancy G. Merrill, QC
President

Encls.

2019 Judicial Compensation Commission

Submission of the Law Society of British Columbia

Executive Summary

The Law Society believes that a well qualified and independent judiciary is an essential element of the administration of justice, which in turn protects the rights and freedoms of all persons. The Provincial Court judiciary is an integral part of the administration of justice in the Province, and discharges an essential role in the preservation and protection of the rights and freedoms of British Columbians.

The Judicial Compensation Commission is integral to judicial independence to ensure a process that addresses the tension that exists because judicial compensation must be paid from public funds, which fall within the general responsibility of the other two branches of government. In discharging this function, the Law Society submits that (1) judges must not be analogized to the civil service, (2) judicial independence must be maintained, which requires that judges be compensated adequately to protect the courts from political interference through economic manipulation, (3) the amount of remuneration be sufficient to ensure that qualified individuals can be attracted to serve as judges, and (4) while cost implications that the remuneration of judges has on government can be considered by the Commission, caution be given as to how determinative such considerations are, given the general statements on the subject in cases decided by the Supreme Court of Canada, discussed below.

Introduction

The Law Society is the governing body for lawyers in British Columbia, and in that capacity regulates the more than 14,000 lawyers in the Province. In addition, the Law Society's object and duties, as stated in s. 3 of the *Legal Profession Act*, extend to upholding and protecting the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons.

The Law Society believes that a well qualified and independent judiciary is an essential element of the administration of justice, which in turn protects the rights and freedoms of all persons. The Provincial Court judiciary is an integral part of the administration of

justice in the Province, and discharges an essential role in the preservation and protection of the rights and freedoms of British Columbians.

We are not, of course, in a position to make specific representations as to the specific amount of compensation that the Commission should recommend. That decision will be made by the Commission on the basis of materials and representations that it will receive during the course of its mandate. We will instead set out what we consider is the role of the Commission and nature of issues that it must consider in the course of its work.

Role of the Judicial Compensation Commission

The judiciary is one of the three branches of government. The other two branches, of course, are the legislative and executive branches. No single branch of government in a constitutional democracy can override another branch, and each branch must respect the other's particular constitutional obligations. Each branch must remain independent of the other.

The need to maintain this judicial independence requires a process that addresses the tension that exists because judicial compensation must be paid from public funds, which fall within the general responsibility of the other two branches of government. Courts have decided that constitutional convention requires the existence of an independent commission for the setting of judicial salaries starting with *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 SCR 3 (the “PEI reference”) where the Supreme Court of Canada held that the constitutional principle of judicial independence requires that an independent commission play a role in the determination of the remuneration of judges. In the PEI reference the Court referred to these commissions as “an institutional sieve, to prevent the setting or freezing of judicial remuneration from being used as a means to exert political pressure through the economic manipulation of the judiciary.” The importance of Commissions has been restated in many cases, including *The Association of Justices of the Peace of Ontario/L’Association des juges de paix de l’Ontario v. Ontario*, 2016 ONSC 6001, *Newfoundland and Labrador Association of Provincial Court Judges v. Newfoundland and Labrador*, 2018 NLSC 224 including, in this province, *Provincial Court Judges’ Association of British Columbia v. British Columbia (Attorney General)* 2015 BCCA 136

The Supreme Court described the role of the Commission in the *PEI Reference* at para 133:

“...any changes to or freezes in judicial remuneration require prior recourse to a special process, which is independent, effective, and

objective, for determining judicial remuneration, to avoid the possibility of, or the appearance of political interference through economic manipulation. What judicial independence requires is an independent body, along the lines of the bodies that exist in many provinces and at the federal level, to set or recommend the levels of judicial remuneration.”

Consequently, the role of the Commission is essential in a constitutional democracy, and it has a crucial role to play in ensuring and maintaining the confidence of British Columbians in the judicial process.

Judges are not civil servants

The Supreme Court of Canada made it clear that judges should not be analogized to the civil service in the *PEI Reference*:

“...the fact remains that Judges, although they must ultimately be paid from public monies, are not civil servants. Civil servants are part of the executive: Judges, by definition, are independent of the executive. The three core characteristics of judicial independence – security of tenure, financial security, and administrative independence – are a reflection of that fundamental distinction, because they provide a range of protections to members of the judiciary to which civil servants are not constitutionally entitled.”

Determining the compensation of judges must therefore be treated differently than the setting of compensation of others who are paid from public funds.

Judicial independence

One of the crucial purposes in the establishment of judicial compensation commissions is to maintain the independence of the judiciary.

Only when Judges are free from the influence of government can they be seen to be free to dispense, in an even-handed and unconstrained fashion, justice as between individuals or as between individuals and the state. The faith of litigants, particularly those in conflict with some level of government or other public body, depends on Judges maintaining both the reality and the appearance of being a disinterested adjudicator in any dispute. The public confidence in the administration of justice as a whole is similarly dependent on this reality and appearance.

The Supreme Court of Canada held, in the *PEI Reference*, that “independence contributes to the perception that justice will be done in individual cases.” Judicial independence is also necessary for the maintenance of the rule of law including “the constitutional principle that the exercise of all public power must find its ultimate source in a legal role.”

The three key characteristics of judicial independence are security of tenure, administrative independence, and financial security.

Financial security depends upon the proper remuneration for the compensation of judicial labour. As held by the Supreme Court of Canada in *Valente v. The Queen* [1985] 2 SCR 673 at 704:

“The second essential condition of judicial independence for the purposes of s. 11(d) of the Charter is... what may be referred to as financial security. That means security of salary or other remuneration, and where appropriate, security of pension. The essence of such security is that the right to salary and pension should be established by law and not be subject to arbitrary interference by the executive in a manner that could affect judicial independence.

Judicial independence also requires that Judges be compensated adequately. The integrity of the judicial system demands that there be no suggestion that Judges would have any interest in currying favour with government or accepting an inducement from anyone. A certain degree of financial independence goes a long way to dispelling any such impression. The 1992 British Columbia Compensation Advisory Committee quoted the Ontario Provincial Court’s Committee in part as follows:

“...[I]t is an emblem of a Judge’s independence that he or she be perceived by those within the larger community to be a person of means commensurate to his or her office. If a Judge is perceived to be in straitened or reduced circumstances, he or she is more likely to appear to the public to be susceptible to financial pressure or influence, whether or not that is really the case.

Consequently, the interests of the judicial system and the public that are served by the court require judicial independence and security.”

The amount of compensation as recommended by this Committee must therefore be set at a level that will ensure these fundamental constitutional principles are properly reflected and considered. The remuneration recommended by this Committee must be set to reflect the need for judicial independence, and be free from political representation or

considerations. The overall compensation must be adequate, [and be] commensurate with the status, dignity and responsibility of [the judges'] office (*PEI Reference*, para 194).

The role of the Commission is therefore crucial in setting judicial remuneration that protects the courts from political interference through economic manipulation. Consequently, the setting of the proper remuneration must also be void of political considerations.

Attracting and keeping a strong court

There is an obvious public interest in attracting the most qualified individuals to serve as Judges. Applicants for a judicial position must therefore not be asked to accept unreasonable financial or other sacrifices in order to serve the public in the judiciary.

The importance to the general public of the work done by the Provincial Court cannot be overstated. The Provincial Court hears and decides the vast majority of criminal, civil and child apprehension matters in this province. Many of its decisions have enormous impact on the lives of the litigants bringing the cases.

The interest of the public as a whole, as well as that of the individual litigants, therefore requires the most capable people possible dispensing justice at this level of court, as with any other.

Each level of court has unique demands on its Judges, and each court is at its strongest if the members of the court are best suited to its particular judicial work. The public interest is not well served if compensation of Provincial Court Judges falls significantly behind that of the Judges of the Superior Court, because potential judicial candidates who may be best suited (personally and/or professionally) to the Provincial Court may be persuaded for financial reasons to apply to Superior Courts rather than to the Provincial Court.

Public scrutiny of the administration of justice in the court system is often focused on the Provincial Court, which is the entry point for almost all criminal matters, and most family or other civil matters. Today, a Provincial Court judge may make a relatively straight-forward decision on a bail application and, after events intervene, find him or herself the focus of media attention for days or weeks.

The Provincial Court has jurisdiction to decide matters of utmost importance to the individuals directly concerned, and often the community as a whole. But Judges often do not have the opportunity to reserve and reflect on their decisions due to the volume of

cases they must hear. Judges in the Provincial Court must “get it right the first time” by giving reasons from the Bench. They often must do so without the benefit of law clerks, often on the move from community to community throughout the province, and with the added pressure of increasing case loads.

At the same time, the legal issues that the court must address are complex. This is particular true of criminal cases, including youth court cases, which commonly involve issues relating to the *Charter of Rights and Freedoms*, and increasingly complicated revisions of the *Criminal Code* and other statutory law. Civil and family law cases are similarly growing ever more complex. The need to attract highly motivated, conscientious, and energetic judges is more apparent than ever before.

We do not believe that it is sufficient merely to attract the strongest possible judicial appointments. We believe that it can no longer be assumed that, once appointed, Judges will remain on the Bench for the remainder of their careers. There are other options available to capable and experienced professional women and men on the Bench. While, for the most part, judges are truly devoted to the contribution they make as judges, judicial remuneration must be reasonably commensurate with that contribution in order that society can reasonably expect them to pass up other opportunities for which they are well suited.

In our submission, therefore, the remuneration and benefits paid to Provincial Court judges must be competitive so as to encourage the most qualified members of the Bar to consider appointment to the Court for which he or she is most suited. The Courts have clearly held that judges’ salaries must not fall below the basic minimum level of remuneration for the Office of Judge that is adequate, and is commensurate with the status, dignity, and responsibility of their Office.

Financial condition of the Government

The purpose of the Commission is to ensure that political considerations do not interfere with the proper setting of judicial compensation, which (as stated above) is necessary in order to achieve the constitutional imperative of judicial independence.

The constitutional guarantee of a minimum acceptable level of judicial remuneration does not shield judges from sharing the burden of difficult economic times (*Provincial Court Judges Association of British Columbia v. British Columbia (Attorney General)* 2015 BCCA 136). As we commented above, judges’ compensation must be set to preserve the constitutional imperatives of judicial independence.

The Commission's recommendations may have cost implications to government with respect to other groups. Those cost implications may, by virtue of s. 5(d) of the *Judicial Compensation Act* be considered by the Commission. However, caution must be given to how determinative those considerations must be, given the general judicial statements in the series of cases before the Supreme Court of Canada in *Provincial Court Judges' Association in New Brunswick v. the New Brunswick (Minister of Justice)*; *Ontario Judges' Association v. Ontario (Management Board)*; *Bodner v. Alberta*; *Conference des juges du Quebec v. Quebec (Attorney General)*; *Minc v. Quebec (Attorney General)* [2005] 2 SCR 286 at para. 160.

Conclusion

We are certain the Commission is well aware of the important role that it has to discharge and that the Commission is well versed with the nature of consideration it must give in order to reach the appropriate recommendation. As stated at the outset, our submissions cannot make recommendations as to actual figures with respect to the proper judicial remuneration. Rather, we have outlined what we believe are the essential principles that the Commission must consider in reaching its recommendations.

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Law Society of British Columbia Honor Roll



Bronze plaque between the
elevators on the ground
floor of the Law Society
building

Municipality/Province: Vancouver, BC**Memorial Number:** 59026-036**Type:** Plaque**Address:** 845 Cambie Street,
Vancouver, BC V6B 4Z9 V6B 4Z9**Location:** Between the elevators on
the ground floor of the Law Society
building**Contributor:** HLCol Roland Krueger**Photo Credit:** Shelly Krueger

On Nov 9, 2018 the Law Society of British Columbia rededicated a plaque honoring Law Society members and students who made the ultimate sacrifice serving our country in World Wars One and Two. The bronze "Honor Roll" plaque was originally commissioned in 1961 and lists each lawyer and student killed during the two wars. It was moved to it's present and more prominent location in Nov 2018.

Add or Update Memorial Information

Inscription found on memorial

(The Law Society of British Columbia Crest)

ODDS
AND HOW CAN MAN DIE BETTER, THAN FACING FEARFUL
GODS
FOR THE ASHES OF HIS FATHERS, AND THE TEMPLES OF HIS

WORLD WAR I

MEMBERS

Austin, John Henry Roberts Branks	Kitto, Alex John	Powell,
Buchanon, Leo George Devereux Basset	Knowling, Albert James	Scale,
Carss, Adair Lancelot Hull	Martin, John Joeseph	Sheffield,
Clark, Hebert Cameron Russell Richard Copland	Milligan, Alexander Wilson	Spinks,
Cook, John Hayes	Montgomery, Nevell	Sweet, John

Gwillim, Frank Llewellyn
Anthony

Mowatt, John MacDonald

Temple,

Hay, John Gillmour
Stuart Bruce

Hart-McHarg, William

Van Kleeck,

Jones, Elmer Watson
Robert Innys Baker

McKane, Robert

Warton,

Kennedy, John Keefer
Arthur Vincet

McMurrich, John Dewar

Wood,

STUDENTS

Ambery, George Edward Foster
Kennth Norman

Drost, John Woodsworth

McRae,

Atkens, Basil Elmo
Geroge Walter

Dunn, Eric George Johnston

Nation,

Boggs, Herberet Beaumont
Pilkington, William Frederick Longlay

Galliher, Frank Townsend

Bowser, William James
Oswald Koelle

Grant, James Henry

Peto,

Chaffery, Walter Frances
James Wylies

Hilton, Ronald Hume

Raeburn,

Clark, Ronald Arthur Ronaldson
Clifford Fraser

Lane, William Stanley

Risteen,

Corridon, Edmund Daniel Patrick
Rutherford, Maurice Colvin Montgomery

Margetson, Philip Reginald

Creighton, Arthur Ramsay
Cuthbert Farrar

Munro, David Henry C.

Savage,

Crummy, William Taylor
Frank Wendell

Munro, John MacKay

Stacey,

Daunt, Conrad O'Neill

Mutch, John Thomas

Wilson,

Joseph Harold		
Davidson, Freeman Alexander Geroge Richard Davidson	Myers, Kenneth	Wooler,
Davis, Irwin Frederick George	McDiarmid, Benjamin	Yardley,
Downer, Harry Albert	McDonald, John William	

WORLD WAR II

MEMBERS

Bull, Armour MacKenney Robinson, Arthur Leslie	Hyland, Thomas Vincent	
Hall, Francis Constant Leonard Leigh	Lane, Stuart Clark	Salter
Hutton, Walter Lloyd Vance, Thomas Cullen Brown	McMullen, James Edward Temple	

STUDENTS

Barrett-Lennard, Dacro Lowthor Morrison, Roy Gordon	Maitland, William John
Logan, John Elmo Murray McIntyre, Douglas Neil	Morrison, Roy Buckley

Note

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Date modified: 2019-03-25