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#Yesallwomen/#Notallmen: Sexual Harassment in the Legal Profession

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How do we understand bad things done to women by men? Through the few men who do them (#Notallmen)? Through misogyny in our culture as a whole? Through the experience of all women living with the risk that such bad things can happen (#Yesallwomen)? The ferocity of recent internet debate on this topic clouds the possibility that harm done by men to women should be understood as about all these things: the men who inflict it, the society in which it occurs and the lives of the women who live with the possibility of that threat.

In this post I explore the thought that sexual harassment and sexual discrimination in the legal profession must be understood with this sort of breadth of perspective: it is conduct reflecting the pathologies of the specific men who do it; it in no way reflects the conduct of all – or even that many – men in the profession; yet it is conduct that reflects aspects of our professional culture, aspects that we need to address to achieve gender equity and fairness.

I make my case through recounting a story from which I make some general observations, the story being my own experience of sexual harassment and assault (i.e., unconsented to sexual touching) by a senior lawyer early in my career. By doing so I will endeavor not to over claim. I know my story is only my own. It is necessarily a story that I tell from my own perspective. But the number of personal stories told publicly by women lawyers about sexual harassment is small; I am privileged to be senior enough and tenured enough and removed enough from the emotional turmoil of that time to take the risk of telling it. It may not be the best evidence, but it may nonetheless be evidence of something.

I began practicing law as an articling student in Calgary in 1996; I had graduated from the University of Toronto law school in 1994 but had gone on to complete my LLM at Yale and to clerk for Chief Justice Lamer. After my call to the bar I was working at a boutique litigation firm in the city; the firm did high end corporate-commercial cases, and was led by a very senior and eminent lawyer, “XY”, and a few much younger partners and associates whose work was primarily through him. Calgary was blessed by a number of very strong corporate-commercial litigators whose careers began in the 1960s – former Supreme Court justice Jack Major and current Alberta Court of Appeal justice Cliff O’Brien amongst them; XY was part of that group. He had a brilliant legal mind and a willingness to do whatever work was required to be fully prepared for his cases. He was a fierce advocate for his clients. XY was also generous with the pay and benefits that he offered to his partners and associates. The work he gave them was excellent.

Yet the conditions for doing that work were complicated by XY's remarkably volatile personality – his temper was legend, and I later learned that one of XY's opposing counsel said that he used to feel growing stress as he flew into Calgary for meetings or discoveries in which XY would be involved. When he shouted at me, XY would sometimes shake with rage.

As I discovered soon after joining the firm, XY was also willing to make derogatory comments about women, using the c-word in reference to a judge who had decided against his client, and commenting on the attractiveness – or not – of other women. He expressed surprise that a woman at his former firm did not have a boyfriend because she was very pretty, and wondered if she was a lesbian. He commented on how one of the legal assistants was “a little girl with big boobs” (this is a paraphrase based on my recollection). Eventually I became one of the people that he made comments about. I remember in particular one incident, where the topic of Princess Diana's 1997 Vanity Fair cover had come up, and I had observed that people sometimes said that I resembled her. He responded, “except for your boobs” and then followed with “but it's OK, you've got great legs” (again, a paraphrase).

I found this remarkably difficult to deal with. I did not feel like it would be remotely acceptable to say anything negative in response to his comments about other women. I very much wanted XY to think well of me; I wanted his approval and praise. And I did not know how to create a relationship with him where he would consider the quality of my professional work, without considering the quality of my appearance. I did not know how to discourage one sort of reaction while generating the other, and I generally just tried to be positive with him, even while feeling that this was almost certainly not helping the situation.

Things became much worse at firm social events when XY was drinking. At the firm dinner to celebrate my call to the bar, he put his hand on my leg under the table as we were eating. And at a firm retreat, as we sat around a campfire after dinner, he put his hand up the back of my shirt and undid my bra.

After that incident it was obvious that I had to do something – that the situation was out of hand. I spoke to the two male partners who worked on litigation with XY and to my husband (who had known about the earlier incidents as well); the more senior of the partners talked to XY, and XY apologized to me.

After the apology XY did not sexually touch me again, and I do not remember him commenting on my appearance. But his outbursts and temper continued; they were not directed just at me, but for the next year I was the lawyer working most closely with him, and so internally to our firm I bore the brunt of it. I found that almost as difficult and upsetting as his sexual harassment, although in some ways it was difficult to separate the two experiences. They felt like different versions of the same behaviour. The two partners did what they could to protect me. One began working on the file I was on, and tried to create space for me from XY. When we were away for the arbitration, he made sure that I was able to go home for a break. I was also protected by the in-house lawyer at the client, who observed XY's behaviour and did what he could to ameliorate it, and to protect me from it.

Nonetheless, after a year, I had to leave. My departure was greatly assisted by the lawyer at the client, who worked to have his company consent to my joining a firm where there would otherwise have been a serious conflicts problem; I know he understood why I was leaving, and I know he had to make real efforts internally to get that result.

I never had another experience like that in legal practice, although I worked almost entirely with senior male lawyers over the next 5 years.

In the 16 years since, in thinking about what happened to me, it is obvious to me that XY's behaviour was very much reflective of his own personality and issues. In the words that I would use now as a parent, he seemed to me to lack self-regulation: if he wanted something he took it; if he felt something he expressed it. He had no grasp of the difference between professional and personal space, of the effect of his degrading comments about women on the women he worked with, of the effect of his angry outbursts on others.

It is also equally obvious to me that most male lawyers do not act as he did. Even the male lawyers at his own firm and who worked at his client did not follow XY's example or endorse his behaviour. In addition, incidents of sexual harassment would not normally include actual physical touching. His behaviour was – and is – the exception.

But it also seems to me that his actions are not divorced from the professional culture of lawyers – a culture I am part of. After all, his behaviour – at least his comments about women and his rage – was tolerated for over 30 years and had little real effect on his professional success (although it certainly had some). At the end of the day, I took no steps to derail that success. And while it was clearly not normal, XY's behaviour was also not entirely aberrational; excess drinking, angry outbursts and sexist comments are things that lawyers other than XY engage in, albeit to a lesser degree. I drank to excess at more than one firm event, and I've said sexist things. Even the harassment is something more than one of my friends experienced in legal practice (and once you have more than one close friend who something has happened to, the law of probabilities suggests that there are an awful lot of women it has happened to). Some general statistics on complaints about harassment and discrimination by Ontario lawyers, indicating 132 complaints about sexual harassment between 2003 and 2011, are [here](#). In Alberta, the most recent [Law Society survey](#) of lawyers leaving the profession reported that 47.3% of female respondents had experienced discrimination (at 19), and women also reported experiencing and witnessing abusive, harassing behaviour in the profession (at 25).

Yet even if I'm right, what to do about it is not obvious. Our professional culture reflects our broader society; the insistent requirement that women be sexually attractive even if professionally accomplished, the verbal and physical aggression directed at women, the blasé attitude towards derogatory discussion of women, are things that occur across Canada, not just across the legal profession.

I am also not inclined to think that sanctions or discipline are the answer. I never seriously considered complaining about XY's conduct to the law society – the personal exposure and costs of being a complainant to my career and life were not something I wanted to bear. My guess is that my reaction is the typical one. I also do not think post-facto reactions are the most effective tool in relation to any ethical issue.

Yet I cannot suggest that we give up – I *will not* suggest that. My niece is entering this profession and one day my daughter may do so. I never want them to experience what I did, or to live their professional lives making an effort to avoid it happening – going along with sexist banter in fear of being an outsider or a target. I refuse to believe that we cannot do better. If we can learn to call each other learned friends, and express our most hostile thoughts with respect,

then surely we can try to create a culture where the subject of our colleagues' "hotness" is not discussed, where we create appropriate separation between professional and sexual interactions, where senior lawyers embrace the limits on personal interactions that come with seniority and power, and where drinking much too much is not a normal condition of social interactions between lawyers.

That learning comes through acculturation. And I have told this story as much as anything in the hopes that it will begin productive conversations and – hopefully – further progress towards that kind of change.

This post originally appeared on [Slaw](#). It has been revised to include some statistics from Alberta.

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