

Gender bias and harassment — *Is there reason to be concerned?*



Gail H. Forsythe

Part of my role as Ombudsperson is to act as a mirror and reflect information to the profession — to raise awareness about the impact of discrimination cases.

Over the past two years, more than 100 individuals, of whom 49 were lawyers, have contacted me for Ombuds assistance to resolve a workplace discrimination concern. The assistance requested by lawyers ranged from: "I just need someone

to listen — there is no one that I can talk to ..." to "How can we, as partners, address another partner's behaviour without destroying our firm?"

The vast majority of lawyers (and staff) indicate that fear of retaliation from other lawyers inhibits them from making a formal complaint to the Law Society or an informal complaint within their firms. Fear for one's economic security and professional viability is the issue, not a lack of cases.

The value of the Ombuds service is illustrated by this sexual harassment case. The facts alleged by the female lawyer were not disputed by the male lawyer. But he disagreed that his conduct was unwelcome and that it had an adverse impact. The professional reputation and employment status of each lawyer was at stake. Management's ability to respond equitably was on the line. Both lawyers and the managing partner welcomed the opportunity for a private and confidential resolution in lieu of an internal employer investigation or a complaint to the Law Society.

Several private and joint mediation sessions occurred; legal counsel and management were involved. Resolution was achieved because each lawyer recognized the value of preserving the relationship rather than casting blame. The male lawyer realized why his professional status, power, authority and gender made it difficult for the female lawyer to state that his conduct was unwelcome. Both parties gained greater insight regarding the dynamics of sexual harassment and the substantive law.

The mediation of difficult cases can require energy, time and commitment from participants. Several meetings were required to resolve this matter. The male lawyer stated that the mediation process "was more demanding than any trial I have ever conducted."

In this case, both parties used their best efforts to turn a

potentially devastating allegation into a powerful example that harassment concerns can be resolved in a healthy manner. As a result, no firm resources were spent on potentially more damaging investigative processes.

Not all cases end on this note. Experience indicates that fear prevents lawyers from openly expressing and attempting to resolve their concerns. Ombuds statistics clearly indicate that sexual and personal harassment, gender bias and denial of equal opportunities due to family status are struggles that are faced overwhelmingly by women, rather than men, in the legal profession.

For example, the most common concern raised in 1996 relates to personal harassment. Female lawyers and staff express fear for their physical safety or emotional well-being. They describe ongoing, intense behaviours displayed primarily by male lawyers that include a combination of throwing physical objects or files at or near a person, uttering threats, calling names, shouting, using profanity and public humiliation. An instructor of legal secretaries stated: "For the first time in 15 years, I am hearing horrendous stories about mistreatment and abuse of staff in law firms from my students. I am concerned and worried about their future."

Women perceive that they are stereotyped, regarded as sexual objects or merely tolerated. They experience inequitable work allocation, salary or remuneration schemes, recognition or rotations within firms, access to support systems, supplies or services within firms, treatment during interview processes, presumptions regarding credibility and assessments about professional ability. Callers say the message that firms convey is that: **women must prove their merit and commitment — men are presumed competent and dedicated.**

Since most cases involve the alleged harassment or denial of opportunity to women, is there reason to be concerned about the treatment of women in the profession? What is the opportunity cost to the profession of dismissing these concerns as unimportant, unrepresentative or lacking merit? **On a different note, what is happening to lawyers in positions of power that cause others to see them as abusive, biased or lacking basic anger management skills?**

Economic pressure and lack of awareness about the impact of sexual harassment, personal harassment and gender bias have devastating and lasting effects on the profession as a whole. Awareness can change attitudes and deeply entrenched beliefs. For example, one partner

continued on page 11

Gender bias and harassment... *continued from page 10.*

concerned about another partner's behaviour stated that *"Until recently, I viewed the Law Society as a body to be avoided at all costs — due to its emphasis that goes on, ad nauseum, about discipline. My view about the Law Society changed after I realized that your services are independent, confidential and solution-oriented."*

Lawyers and staff are driven out of the profession because of harassment, bias or a lack of accommodation. Firms could suffer fewer financial losses due to these

costly but silent departures through education or an objective and confidential Ombuds analysis of their work environment.