

Addressing Harassment and Discrimination
LawCast BC podcast
Law Society of British Columbia

Vinnie Yuen:

Welcome to LawCast BC, a podcast produced by the Law Society of British Columbia. If you're wondering about what the Law Society does, how we do it and how it impacts you, you've come to the right place. The Law Society regulates lawyers in BC. Our mandate is to protect the public. I'm Vinnie Yuen, your host and producer. In this episode, we'll be focusing on addressing bullying, discrimination and harassment including sexual harassment in the legal profession. Given the nature of this topic, the situations and content covered may be triggering for some listeners. Please take care when listening.

Discrimination and harassment including sexual harassment in the workplace are serious problems in society and the legal profession is not immune to it. A study conducted by the International Bar Association in 2019 found that one in three female legal professionals that responded to the survey had experienced sexual harassment in the workplace. We also know from a recent study examining mental health and wellness of Canadian legal professionals that women, Indigenous people, persons of colour, those in the LGBTQ2S+ community and persons with disabilities are more likely to experience discrimination. They're also more likely to experience things like incivility, violence, bullying and unsolicited sexual advances. We've also learned about Indigenous and Asian lawyers experiences with discrimination through the documentaries "But I was Wearing a Suit" and "But I Look Like a Lawyer". Discrimination, harassment and sexual harassment are explicitly prohibited in the Law Society's Code of Professional Conduct for British Columbia. Bullying, which is considered a form of harassment, is also addressed in the code. Last year, significant commentaries were added to the code including enhanced definitions and examples of what constitutes harassing or discriminatory behaviours. Today, I've invited Sarah Sharp, the Law Society's equity advisor and practice advisor, to chat about these changes. She will also speak to how she can help those who have experienced discrimination or harassment and what supports are available.

Hi Sarah, thanks so much for joining me today. Can you tell us a little bit about your role and what you do as equity advisor and practice advisor for the Law Society?

Sarah Sharp:

So again, I'm Sarah Sharp and I use the pronouns she and they. I joined the Law Society in early 2019 as a practice advisor and in the summer of 2023, I took over the role of equity advisor.

So practice advisors provide advice to lawyers and articulated students on matters of ethics and practice management. We provide assistance on a wide variety of topics including the Law Society rules, the Code of Professional Conduct for BC, ethics advice on things like confidentiality, conflicts, undertakings, when a lawyer leaves a firm, withdrawing from a file, things like practice advice involving billing, client files, space sharing, law office management and managing client relationships and relationships with other lawyers. It's important to note that while practice advisors are by no means counsellors, we are well versed in the language of mental health and the resources available through the Lawyer Wellbeing Hub on the Law Society's website. And we like to say call early, call often, that no question is silly or too small.

It's also important, though, to mention a couple of limits on our role. So we're advisors not deciders. We're here to help lawyers and articulated students to make decisions, not to tell them what to do. We bring up some considerations, direct them to resources, help create problem solving structures, and provide some practical coaching on soft skills but ultimately, they're the one to decide the path forward.

Vinnie Yuen:

So how do people reach you and the practice advice team?

Sarah Sharp:

So to contact practice advisors, we can be reached by phone, email or by scheduling an appointment in our advice decision making assistant which we call ADMA. We try to respond to queries on the same day, if not within two business days, and if the matter is urgent as immediately as possible. Also, I just have to put in a little plug here; ADMA is

an excellent compilation of our resources. There are over 110 pages of references to helpful materials on a wide variety of professional responsibility topics. It's available on the Law Society website 24/7 and again, it has an appointment booking function too. I have to say Vinnie, it's an absolute privilege to be a practice advisor and my equity advisor role compounds that tenfold.

Vinnie Yuen:

Yeah, can you tell us a little bit about your role when you're wearing your equity advisor hat?

Sarah Sharp:

Absolutely. So for a bit of history, some listeners might recall that the equity advisor position was previously the equity ombudsperson and I think the change of the title to equity advisor has helped to clarify the purpose and function of the role. So as equity advisor, I provide advice to lawyers, articulated students, law students and support staff of legal employers who are concerned about discrimination and harassment including sexual harassment. So as with practice advice, the service is free and confidential and of course voluntary. I do my best to take a trauma informed approach. Again, what I can do is help identify the issues and map a plan forward, canvas options, processes and resources that are available to the person. Again, I do not provide substantive legal advice in the role, however, I do try to connect folks to those who can when it's appropriate.

And it's probably a good time to mention how to contact me in that role. So there's an equity advisor page on the Law Society website that lists a dedicated phone line and people can email equity@lsbc.org.

Vinnie Yuen:

Yeah, you mentioned that you help lawyers, articulated students, support staff and others with equity concerns; so what should somebody do if they've experienced discrimination, harassment or bullying from another lawyer?

Sarah Sharp:

Well first, I encourage folks again to call early and to call often. I really want people to know that they don't have to go through this alone. So even if they can't put their finger

on it, if their gut says that something's off to reach out and chat it through. So personally, I think it's really important to respect that every person is going to have their own unique path and there's no one right answer on how to respond to these kinds of experiences. However, there are lots of options and what's most important to me is that the person who's experiencing the discrimination, harassment or bullying feels supported and that they feel empowered to make the choices that are right for them. So as equity advisor, I can be a sounding board to help someone work through what some of these options might be and what resources are available to them.

An important point to make off the top, because it relates to options, is that I don't approach these calls as a one and done kind of thing. We might have several calls over the course of weeks or months as someone goes through their process and works through the short term, midterm and long term issues. So for example, someone's financial security could be the first issue they need to address either because they've been terminated or because they've decided they can no longer remain in a particular work environment so in those kinds of situations, the focus might be on getting legal advice from an employment lawyer regarding their departure. They might want to consult a financial advisor or other financial resources. They might want to explore options such as employment, unemployment insurance, looking for a new job and I can point them to some resources in that respect including job boards and recruiters and mentor programs.

In other situations, somebody's emotional and mental health wellbeing is the priority. I mean it's always important but sometimes that's the most important thing for the person in that moment and I will try to help bridge them to some professional supports.

Sometimes these calls involve talking about the relevant provisions of the Code of Professional Conduct for BC and this can be in differing levels of depth. I might simply flag the rules and offer to talk about them later or if the person has the mental and emotional space, we can go into more detail. I really just try to meet the person where they are and sometimes I'm planting the seed and it's something we return to in a subsequent conversation once the dust has settled a bit.

Another piece that I sometimes cover with callers is the Law Society's specific process for complaints about sexual misconduct, harassment or discrimination.

Vinnie Yuen:

Can you just clarify what your role is with respect to complaints about sexual harassment, discrimination?

Sarah Sharp:

Yeah, absolutely. So the complaints process is completely different and separate process from both my roles as a practice advisor and as an equity advisor. Complaints are handled by the Law Society's Professional Conduct Department and they have a webpage that explains their process for complaints about sexual misconduct, harassment or discrimination. I make sure that callers understand this distinction because it's really important that they know that as equity advisor I'm not receiving any reports about a lawyer's conduct, that talking to me doesn't initiate any process and I'm not going to be taking any steps of the caller's behalf without their involvement and consent. And in case a complaint is something that they want to explore, I do my best to provide an overview of the key information and make sure that they know where to find out more. So in terms of the specific complaints process, what I can highlight now is that one, there is a dedicated email address and phone line for these complaints and they are handled by two dedicated senior lawyers in the Professional Conduct Department, both of whom are wonderful and I know that they take these complaints very seriously. The second item is that there's no timeline within which someone has to make a complaint. And third, I highlight that there are process options which can be explored in more detail by contact them. However, I know that they do include that a person could be a witness instead of a complainant. And often times, the key issue for callers seems to be that they don't have to deal with this piece immediately, like that reassurance as in they can put a pin in the question of whether or not to make a complaint and focus on the other pieces first, counselling, new employment, legal advice, all those things, and that they can come back to this later. So I would do my best to make sure that they have the information about the process if they want it and then leave the door open so that we can circle back at any time if they want to explore it further.

Vinnie Yuen:

You also mentioned that addressing emotional and mental wellbeing can be a priority for some people who experience discrimination and harassment; what types of resources do you usually direct them to?

Sarah Sharp:

We have a number of great resources that are available to anyone in the profession which I'll direct people to if it seems appropriate. So the Lawyer Wellbeing Hub that I mentioned earlier is a great compilation of resources and I know Claire Marchant and Rose Morgan talked about it on your previous podcast episode so I won't go too deep into it here, however, I do want to make sure that everyone is aware that the Lawyer Wellbeing Hub exists, it is the central access point for information about supports available to lawyers and their families. And one relatively new resource, just to mention, is LifeSpeak which is a digital wellness platform that offers anonymous access to a range of resources and content. LifeSpeak also has an ask an expert function that provides a forum featuring qualified mental health professionals responding live to anonymous questions. It's also worth just putting in a little note that LifeSpeak offers content that qualifies for free CPB and that's always a bonus.

Vinnie Yuen:

Yeah, so taking a step back, do we know how common harassment and discrimination is in the legal profession and what kinds of things are you seeing in your role?

Sarah Sharp:

Well Vinnie, we know that our colleagues in the profession are experiencing discrimination and harassment on a regular basis. I mean you spoke about this in your intro, that's why we're here talking about this today, and we need to keep talking about it and working for change. The International Bar Association conducted a study a few years ago that found high levels of sexual harassment within the profession globally. We know that a number of Canadian Law Societies have recently conducted surveys that reveal high levels of discrimination and harassment including during articling. The Law Society itself has issued a number of citations against lawyers involving complaints of harassment, discrimination and sexual harassment. We have their recent national study on

the psychological health determinants of legal professionals in Canada which found that individuals from equity deserving groups experience elevated levels of perceived discrimination, incivility and various forms of workplace violence including unsolicited sexual advances, threats of violence, physical violence and bullying.

Of course, it's also been the subject of much coverage in the news and in dialogues we're seeing on social media platforms. Earlier this year, the Toronto Star had that piece about sexual harassment and discrimination causing women lawyers to leave the profession and I think it's important to highlight that the article noted that the majority of those raising concerns about this treatment were racialized women or those with disabilities.

So in all of these studies and coverage, we also see a theme of underreporting and we'll talk more about the specific code rules in a bit, however, my understanding is that one of the key reasons driving the changes to the code was to give people the language to describe what they're experiencing because sometimes it can be really hard to see a situation that we're in or to see ourselves in something when we're in it. What might have become normal or normalized to us just isn't necessarily healthy or acceptable. So my hope is that as people learn more about my role and the code rule amendments that were made last year that they will feel moved to contact me so we can talk about what's going on.

Generally speaking, I've had a bit of everything come in so far, heard about bullying, discrimination, harassment and sexual harassment. Some of the concerning behaviour shared with me has been based on the person's gender, their gender identity, gender expression or sexual orientation. In other situations, the treatment that's been shared with me has been race based. I've heard from people who are being treated differently based on their age or based on their family status including those navigating parenting responsibilities. I've also had callers raise concerns about the lack of accommodation of their neurodiversity. Oftentimes, understandably, there's a power imbalance aspect. I certainly hear from articling students and junior lawyers, however, it's not exclusive to them. I hear from lawyers at all stages of their career.

And again, we know that there's this underreporting, this high level of underreporting. So for example, the International Bar Association study that I mentioned found that more than half of the targets of sexual harassment do not report this behaviour and the study found that the primary reasons folks did not report are due to the status of the perpetrator, fear of repercussions and the incident being endemic to the workplace. Another thing I've noticed is that I'm usually, not always but usually, hearing from the person who's being mistreated. And this is a really important issue for me. I think there are a lot of people out there who are witnessing conduct and not reaching out and I'd really like to build that bridge so people feel moved to contact me to talk about what they're seeing.

It reminds me, I was preparing for our chat today, I was listening to an excellent episode of your Rule of Law podcast from a few years ago and I think it was host Jon Festinger was joined by Dr. Carol Liao, who's an associate professor at UBC, and Andrea Hilland who was a policy lawyer here at the Law Society at that time. And one piece that they discuss at the end, which I think is relevant to this point about what I've been hearing so far as equity advisor and who've I've been hearing from and not hearing from, is that at the end they call on silent bystanders to step in and I really want to amplify that message and do what I can to make it easier for people to reach out to me so we can have conversations about what they're seeing in the profession. So here's a call out to everybody, if there's something that is making you feel uncomfortable, remember talking to me doesn't start a process, it's just a chat. I take it no further without you so to please call.

Vinnie Yuen

So you talked about power imbalances and a lot of articling students and young lawyers they can be especially vulnerable because of these power imbalances between them and senior lawyers or partners. When you're talking to them and they're in these situations, what sensitivities do you have to pay attention to in those cases where there are power imbalances?

Sarah Sharp:

As a starting point, again, anyone is welcome to call me if they are experiencing power imbalances at work and they want to talk it through. Certainly articling in particular is

such a unique and varied experience. A number of Canadian Law Societies have reported that when surveyed about their articling experiences, up to a third of articulated students have shared incidences of harassment, abuse, poor supervision or discrimination in their workplaces. So fortunately for articulated students, we do have some resources that they can draw on if they're struggling. They can, of course, talk to us and we can help with those sort of social navigation skills, the soft skills, navigating firm politics, those kinds of issues. We certainly talk with juniors about that quite often. And there's no one answer really, right, like there's so many different ways to approach those situations and it's going to be really personal in terms of what the person feels comfortable doing, the relationships if they have any particular allies in the firm, people who they can sort of maybe tuck under the wing of or turn to for some guidance on how to navigate a tricky situation.

Fortunately, we have a great team here at the Law Society for those who are navigating the articles process and the application process to become a lawyer. Another optimistic note is that the Benchers have approved a mandatory training program for articling principals that's in development and it's aimed to provide greater consistency in the training experience during the articling process and to just decrease the [inaudible 18:25] of some of these problems. Also, another plug for ADMA, we have some great content in that section. There's a heading called "Tackling Challenges in Practice". There's one question that is I am an articling student and I am having issues with my principal; what can I do? Great starting place. I think I've taken on too much and I'm feeling overwhelmed; how can I address this feeling? I'm dealing with a legal issue I've not considered before; what should I do? Again, there's answers there to help guide people in those initial questions available 24/7 and if it's not enough, book an appointment with a practice advisor.

Vinnie Yuen:

We talked about it earlier, amendments were made last year to the Code of Professional Conduct for British Columbia. The changes were made to the provisions on discrimination, harassment and sexual harassment; what were the changes and why were they made and how is this going to make an impact for lawyers?

Sarah Sharp:

Yeah, so these are very exciting changes. The changes to the BC Code were in response to growing awareness for the need for robust rules and commentary on discrimination, harassment and sexual harassment in the legal profession. And if it's okay with you Vinnie, I think it would be really good to provide an overview to kind of map them out and then highlight some important pieces.

Vinnie Yuen:

Uh-hmm.

Sarah Sharp:

So there's four rules in section 6.3. Sub 1 addresses discrimination, sub 2 addresses harassment, sub 3 addresses sexual harassment and sub 4 addresses reprisals. And each rule has quite detailed and expanded commentary that provide important context and guidance, definitions and examples of conduct which clearly set out what a lawyer should not do in regard to discrimination, harassment and sexual harassment, bullying and reprisals.

Vinnie Yuen:

Could you share a bit more about the new rule on reprisals?

Sarah Sharp:

This rule is really important because it buttresses or reinforces the other rules by providing protection against retaliation and this is a really good place to highlight that each of the preceding rules includes a commentary that speaks to the role of bystanders. That brings me back to one of the key themes that I really wanted to highlight today; if someone's out there and they're seeing or hearing something that has them concerned, please don't just look the other way. You can refer the person to me or you can contact me directly.

Vinnie Yuen:

Thank you so much Sarah. And for people who want to play a part in promoting an equitable and inclusive workplace, where can they access those resources and how can they learn more about how to do that?

Sarah Sharp:

Yeah, so one resource that we have is our relatively new guidance for lawyers on using inclusive language. It was released last year and it was developed in consultation and collaboration with legal professionals and stakeholders working in the area of equity, diversity and inclusion. And the guide can be found in our practice resources area on the Law Society's website. Another place to get some ideas was the Lawyer Wellbeing Mental Health Forum for Legal Professionals Part 2 and there was a panel in that called "Fostering a Culture of Wellbeing in your Organization and Beyond" and that was a good overview of examples of what different firms are doing to try and address mental health in the workplace and to create safe spaces for these kinds of conversations and promoting a culture of wellness in the profession. So I think that's a good place to start. There's certainly conversations happening out there in the profession and people who are looking to find ways to, to really create workspaces that people can thrive in.

Vinnie Yuen:

Thank you so much for sharing your thoughts and for coming on our podcast. I really appreciate all the wonderful things that you've shared with us today.

Sarah Sharp:

Thank you Vinnie, I really appreciate you having me here today. Again, even if people aren't sure what code rules are engaged or they're just feeling uncomfortable about something, talking it through might help. Please feel welcome to reach out and we can chat. They don't have to figure this out alone so I sincerely appreciate the opportunity to talk about this with you and to be on the show and to be part of this conversation so thanks.

Vinnie Yuen:

Thank you so much for listening. We'll be putting a list of resources in the show notes. If you're experiencing a concern about harassment, discrimination or bullying, please reach

out to equity advisor Sarah Sharp by email at equity@lsbc.org or give her a call at 604-605-5303. Lawyers, articled students, law students and support staff of legal employers are all free to contact the equity advisor. The service is voluntary and confidential. If you like this episode, please give us a five star rating and subscribe to LawCast BC on Spotify, Apple or wherever you get your podcasts.

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