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**Introduction**

I am delighted to be here with you today. My thanks go to IBA President Horacio Bernardes Neto for his opening remarks and kind introduction.

However, you might still be left wondering quite why a former Australian Prime Minister has turned up to speak. After all, it is more than two decades since I practised law.

The short factual answer is Baroness Helena Kennedy asked me to come and she is a very persuasive woman.

The longer answer is, in my current capacity as Chair of the Global Institute at King's College London, your profession is one we spend a great deal of time thinking about. Our goal is to contribute to creating a world in which being a woman is not a barrier to becoming a leader in any field, or a factor leading to negative perceptions of an individual's leadership. With men still dominating the senior echelons of the law, we are determined to gather better evidence and then mobilize it into action to assist in changing that picture.

So, a passion for gender equality has brought me here today. But so too has my desire to congratulate the IBA on having the courage to compile and release landmark research into bullying and sexual harassment in the legal profession.

While the evidence in *Us Too - Bullying and Sexual-Harassment in the Legal Profession* shows both men and women can be subjected to abuse, it confirms women are more likely to be targeted. Eradicating bully and harassment is morally right and will be beneficial for men and women. At the same time, it will clear one of the barriers that is disproportionately jeopardising the development and promotion of female talent in the law and preventing women coming through to leading positions.

Today, I want to explore how we can end up with a legal profession where sexual harassment and bullying have gone the way of ink pots and quills. In addition, I want to raise the profession's responsibility for broader advocacy on these issues.

## **The Human Cost**

But before doing either, I want to remind you of the very human cost of the kind of conduct into which the IBA research delves.

Hollywood has popularised the #metoo and it is to film I will turn for words to capture the damage done. In the recent series, *The Loudest Voice*, which is a drama based on the life of Roger Ailes, head of Fox News and a serial sexual harasser, the character based on Gretchen Carlson, the television presenter who was the first to publicly complain says:

*'You know, Roger always made me feel that I was wrong. How I looked was wrong. How I sounded, wrong. What I wanted, my ambition, my confidence my belief in myself, all wrong. And that gets in your head. And then you're criticized for being too careful, too self-conscious. Not myself enough. But how am I supposed to be myself when all I'm ever told, no matter what I do or achieve or try to believe about myself, is that I'm just plain wrong. And as for the physical part, it's hard to explain, but when I was a kid, I burned my arm very badly. I was taking a pan out of the oven, but I could feel that burn on my skin for months. And that's what it's like. Long after, you can still feel their hands where they touched you. And those words. Those eyes. That look. That feeling. It's still there. It doesn't go away.'*

Bullying and sexual harassment is not one horrible moment in time. It undermines a sense of self, corrodes confidence, can give rise to anxiety, depression, even suicidality.

Always remember that what the profession is being called on to address is conduct that causes on-going misery and is profoundly wrong.

## Solutions

Fortunately, the IBA Us Too report provides a very important series of recommendations for change.

I endorse each of them and seek to build on them, relying on a very useful and influential recent overview called [\*Sexual Harassment of Women: Climate, Culture, and Consequences\*](#) by the National Academies of Sciences, Engineering and Medicine in the USA.

Although the focus of the report is on women in academia it draws on much broader sources of information and I believe it has relevant insights.

Please note that while my comments will be mostly focussed on sexual harassment, the potential solutions I canvas also have efficacy to tackle bullying.

One piece of good news is that attitudes to what constitutes sexual harassment are changing over time and the direction of travel is the right way.

The U.S. Merit System Protection Board was one of the first organizations to study sexual harassment, with a focus on the federal workforce, which includes a variety of job types and workplace environments.

The Merit Board surveys, conducted in 1980, 1987, 1994, and 2016, asked scientifically selected samples of federal workers about their experiences of specific forms of sexual harassment at work in the past 24 months.

The results show that the percentage of men who believe that pressuring a female co-worker for sexual favours is sexual harassment rose from 65 percent in 1980 to 93 percent in 1994 and to 97 percent in 2016. Likewise, the percentage of men who perceived unwanted sexual remarks in the workplace as being sexual harassment rose from 42 percent in 1980 to 64 percent in 1994 and to 94 percent in 2016.

Research shows that across workplaces, five common characteristics emerge in relation to sexual harassment. First, women experience sexual harassment more often than men do. Second, gender harassment, which means behaviours that communicate women do not belong or do not merit respect, is by far the most common type of sexual harassment. When an environment is pervaded by gender harassment, unwanted sexual attention and sexual coercion become more likely to occur.

Third, men are more likely than women to commit sexual harassment. Fourth, co-workers and peers more often commit sexual harassment than do superiors.

Fifth and finally, sexually harassing behaviours are not typically isolated incidents; rather, they are a series or pattern of sometimes escalating incidents.

Research also shows that the two characteristics of environments most associated with higher rates of sexual harassment are male-dominated gender ratios and leadership and an organizational climate that communicates tolerance of sexual harassment, with bosses who fail to take complaints seriously, fail to sanction perpetrators, or fail to protect complainants from retaliation.

Organizational climate is, by far, the greatest predictor of the occurrence of sexual harassment, and ameliorating it can prevent people from sexually harassing others. A person prone to engaging in harassing behaviours is significantly less likely to do so in an environment that does not support such conduct and has strong, clear, transparent consequences for those who engage in it.

So how do we create the right organizational climate in the law firms, barristers' chambers, in house counsel workplaces, government bodies, courts and all of the other places that lawyers work?

Based on the National Academies' report, I can make the following suggestions to you.

We cannot deal with problems that are not visible so the first step to creating a new culture has to be to encourage reporting. Several American universities are making use of a specific online reporting tool, which provides users with three reporting options. They can lodge a secure, encrypted time-stamped record of their harassment which is inaccessible to any other party but preserves evidence in case they want to take future action. Alternatively, they can send the report they have created to begin an investigation or consultation.

Or they can choose to opt-in to a repeat perpetrator matching system. If another user names the same perpetrator then both are notified. This ensures that the victim has the option to report harassment as part of a group and research shows that those who have been sexually harassed are more likely to act if they are not alone. Think of the big public #me too scandals, like the Harvey Weinstein one. What made it impossible to ignore was the volume of complaints.

Of course, we would all hope that a single individual would feel that they would be believed and treated fairly if she or he complained. But I think we also all intuitively know that hard things are often best done with mutual support.

Creating a climate that is inimical to sexual harassment is actually about more than reporting and complaints mechanisms. It requires us to confront profound questions about why the law is not as diverse as it should be.

I am well aware that many legal workplaces have already done much to try and embrace more gender and ethnic diversity. At the Global Institute for Women's Leadership, I routinely meet partners of law firms, who are frustrated that the steps they have taken to date have encouraged more women to join the firm, but that there is still a major drop off in numbers before the partner track.

In response I point out that there are things we know and things we currently do not that are contributing to this problem. We certainly know that gender blind mechanisms of recruitment, objective metrics of promotion rather than a culture of visibly working long hours and family friendly flexibilities that are routinely used by both the men and women are part of the answer.

It increasingly appears that independence in marshalling together teams for work is also part of the answer. One law firm I talked to explained how they regularly handled high profile litigation cases. The junior lawyers who served and stood out on the teams that worked on these cases tended to be front of the queue for promotion. The firm's historic way of putting these teams together was for the partner leading the effort to choose who he wanted. I say 'he' advisedly.

Unconscious of any bias, partners tended to pick young lawyers who reminded them of what they were like at that stage of their career. A recipe of perpetuating the same lack of diversity in the hierarchy.

When the firm moved to having an independent non-lawyer assemble the teams based on potential and skill set the whole dynamic changed. This shows us that often the biggest barriers to diversity are the hardest to see.

I would recommend thinking about all of these kinds of changes to you. But I caution that there is much we do not know yet about what best supports diversity, which is why at the Global Institute we are focussed on deepening the evidence base. In those efforts, we look forward to deepening our collaboration with your industry.

In addition to getting reporting right and embracing diversity, there are cultural questions to be addressed. Neither will make a difference if the same old behaviours are tolerated; the high fee earner who routinely has tantrums, screaming at staff members and throwing things, or the Queen's Counsel viewed as a court room magician but who is known to prey on more junior women lawyers.

Part of creating a new approach requires us to move beyond the cult of the lone genius, whose toxicity is excused as mere eccentricity, and embrace habits of team work, co-operation and respect. Sexual harassment often takes place against a backdrop of incivility, or in other words, in an environment of generalized disrespect. A culture that values respect and civility is one that can support policies and procedures to prevent and punish sexual harassment, while a culture that does not will counteract efforts to address sexual harassment.

Changing and being seen to change are both valuable. Openness and transparency will nurture faith in the processes and encourage more people to come forward. It will also create a learning environment where best practice and areas for further thought and research can be identified.

Of course, all this needs to be balanced with the kind of confidentiality that is appropriate and desired by people raising complaints. I would recommend that at the very least there is annual reporting on how many and what type of policy violations have been reported, both informally and formally, how many reports are currently under investigation, and how many have been adjudicated, along with general descriptions of any disciplinary actions taken.

Of course, there is a conundrum here that your report *Us Too* lays bare. We all have to get into the right mindset to accept that things are likely to appear worse before improvements are evident. By that I mean that increased knowledge that sexual harassment and bullying are unacceptable and being addressed, more visibility of complaints procedures and greater transparency that raising a problem gets an effective solution, is likely to increase the volume of reports in the short to medium term.

It may well seem like we have moved from silence to epidemic. But as painful as this phase may feel, it is vital to stay the course. Ultimately, the new culture will grow deep roots and show the benefits.

As complex as all this might seem, to coin a phrase, it isn't rocket science. Yet we can learn a thing or two from NASA, which knows both about the complexities of rocket science and good ways to hold leaders accountable for change.

Within NASA, managers and supervisors are considered not only as receivers and decision makers on allegations of harassment, but also as leaders who take action to prevent harassment in the workplace and are accountable under the agency's annual performance review system.

Additionally, NASA produces an annual report on the functioning of its anti-harassment processes, which includes information on the number of cases addressed, the basis for each case, including sexual or nonsexual, the time required to process the case and the remedial actions taken. This reporting process provides a mechanism for the leadership to monitor how the anti-harassment processes are functioning and whether course corrections need to be made.

### **Advocacy**

The biblical injunction to not point to the speck in your companion's eye before dealing with the log in your own is seen as wise counsel by people of different faiths and those of no faith.

This principle holds true for advocacy by the legal profession on sexual harassment and bullying.

But I would urge that your advocacy not remain muted until legal workplaces all around the world are exemplars of best practice. Rather, even while you are still making genuine efforts to embrace a new approach, your voices and expertise are needed.

As you know, sexual harassment in the workplace can be addressed by several legal principles: as employment discrimination on the basis of sex, under labour law protections against unfair dismissal, under human rights law, under health and safety laws requiring provision of a safe working environment, under criminal law, especially for sexual assault, as a tort and under contract law, such as breach of contract against unfair dismissal.

97% of OECD high income countries have passed laws relating to sexual harassment in employment compared to 94% in 2009. However, in other regions the prevalence of such legislation is lower, although the increase since 2009 has been greater. For example, 70% of Sub-Saharan African countries have passed legislation in this area, up from 45% in 2009.

However, laws relating to sexual harassment in the workplace are much less prevalent in East Asia and the Pacific and the Middle East and North Africa. Some new laws have been passed in East Asia and the Pacific since 2009 while the Middle East/North Africa has seen little change.

Zooming out globally, we can say 35 economies implemented new laws on workplace sexual harassment in the past decade, yet 59 out of the 189 countries, which have been studied, had no specific legal provisions covering sexual harassment in employment.

There is clearly work here for the legal profession to do in advocating for laws to be adopted everywhere and for the legislation to be the best it can be. We all know that that words in an Act of Parliament will be meaningless if definitions of what conduct can be complained about are drawn narrowly, procedures are costly and cumbersome, burdens of proof are intolerably high, statutes of limitation impossibly short and penalties laughably light.

With the combined expertise in this room, a real contribution can be made to creating laws that will work. With the goodwill in this room, pro bono cases can be taken to establish the precedents that will set the standards of behaviour for the future.

## Conclusion

Let me conclude with some of the haunting words contained in your own report.

From a woman:

*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!'*

From a man:

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

From a woman:

*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.*

From a man:

*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.*

Instead, together we want to build a future where more people say words like this:

*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.*

I thank you for your kind attention.