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Sasha Borissenko: Removing alcohol from the workplace won't stop sexual harassment



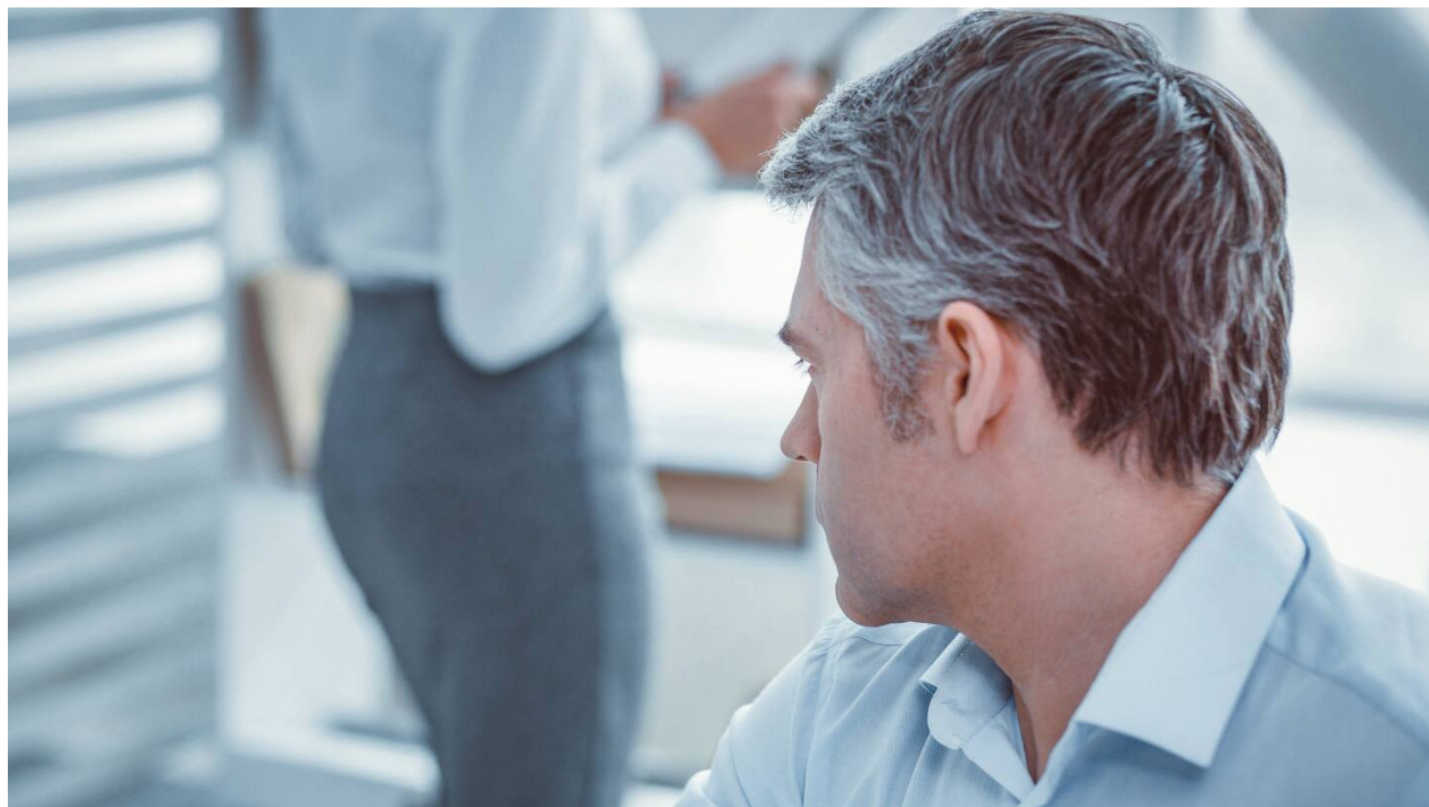
Opinion by

Sasha Borissenko

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Freelance journalist who has reported extensively on the law industry

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A Law Society report survey has found sexual harassers do more damage at work than at work-related social events.

OPINION

As Antarctica's US base tightens its alcohol rules as a response to sexual harassment claims, you have to wonder how employers can so incredibly miss the mark.

"But for" the alcohol, the sexual violations may not have occurred, or so the theory goes. I'd argue "but for" those sexual violators, the assaults wouldn't be an issue.

It's not the first time alcohol has been used as a convenient scapegoat to solve systemic issues associated with power imbalances, inadequate complaint mechanisms, sexism, and valuing profit over people.

Sexual misconduct towards five summer clerks in 2015-2016 at Russell McVeagh prompted a review into its culture by Dame Margaret Bazley in 2018.

"First, I found that in the past, Russell McVeagh had a 'work hard, play hard' culture that involved excessive drinking and in some instances crude, drunken, and sexually inappropriate behaviour," the report read.

The events also gave rise to promises made by the Law Society to change the tide of a profession, releasing the first workplace survey shortly after the events made headlines.

2023 workplace survey results

Five years later, the Law Society released the first update to the 2018 survey last week, with 23 per cent of women lawyers saying they had experienced sexual harassment at work in their lifetime. In 2018, the number was 31, which could possibly be due to a change in what was classified as sexual assault, the report read.

For context, the Conduct and Client Care Rules 2008 defines sexual harassment as subjecting another person to unreasonable behaviour of a sexual nature that's likely to be unwelcome or offensive to that person.

It also includes requests of a sexual nature made that could be loaded with promises of preferential treatment or threats of detrimental treatment.

Within a five-year period, sexual harassment towards women lawyers declined from 40 per cent in 2018 to 29 per cent this year.

On a positive note, the greatest declines in sexual harassment were in sexually suggestive comments, intimidating staring/leering, and inappropriate physical contact.

Unwanted sexual attention could include intrusive questions around a person's private life and physical appearance, which was 15 per cent among the total legal community.

It's not the alcohol, it's the culture

Contrary to the "work hard/play hard" trope cited in the Bazley report, the vast majority of the harassment occurred at work - both today and in 2018 - at a rate of 70 per cent across the board. Just 40 per cent of harassment was experienced at social events or conferences in 2018, for example.

As we've seen in the case of Antarctica, there's been a rise in alcohol-restriction policies since the advent of the #MeToo movement. Yet, in the context of the legal profession, this year's report revealed 38 per cent of sexual harassment incidents occurred at a social event.

In other words, the numbers haven't changed and it's clearly not the alcohol. Gender split is clearly a factor, with the vast majority of harassers (80 per cent) in the legal community being men, this year's report revealed.

For women experiencing sexual harassment in the last five years, 90 per cent were men. For men experiencing harassment, both men (48 per cent) and women (42 per cent) were harassers.

Imbalance of power is still an issue, although the number of manager, supervisor, partner, or director harassers declined from 49 per cent to 31 per cent for law firms with four or more partners/directors.

Harassment in isolation

Just 17 per cent of the legal community sought support or advice following harassment in 2018. The rate hasn't changed, at 20 per cent as of 2023. The same goes for making a formal report or complaint (8 per cent in 2018 and 2023).

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The main barriers to seeking support included perceptions the harassment wasn't serious enough (53 per cent), fear of consequences (47 per cent) and distrusting the process (39 per cent). A total of 14 per cent said the harassment affected their job and career prospects.

With the rise of alcohol-free policies, we've also seen a rise in half-baked respectful "please don't harass people" policies. They're milk-at-room-temperature policies which often fail to mention a workplace's health and safety legal obligations and their ramifications.

These figures suggest legal workplaces still aren't suitably designed to deal with sexual harassment, which I'd argue is compounded by lack of transparency. If each harassment is dealt with privately and in isolation, there's no measure of what's considered unacceptable and the scale of the problem.

A case against non-disclosure or confidentiality agreements

Instead, the answer could be a widespread ban on confidentiality agreements between workplaces and complainants following investigations.

Although they're prefaced as being the result of a negotiation between equals, no victim of sexual harassment is equal against the financial machine of a business.

A ban is a three-pronged win - giving victims agency to speak if need be, deterring creeps from creeping, and ensuring there's better accountability for businesses.

Last year, US President Jo Biden signed the Speak Out Act, curbing the use of these agreements to silence sexual harassment victims speaking publicly. In the UK, the debate reached Parliament in September. No argument has crossed the lips of any New Zealand politician.

In 2019, the Law Society said no NDA could prevent a person making a complaint to the regulatory and representative body. But sadly, this didn't go far enough.

As the Law Society will soon be stripped of its regulatory function thanks to the five-year period between surveys that also saw an independent review of its functions, let's hope we see the revitalised advocacy group push for better change on the subject.

Sasha Borissenko is a freelance journalist who has reported extensively on the legal industry.

