



NOVA SCOTIA
BARRISTERS' SOCIETY

Report on Gender Discrimination and Harassment Survey

Gender Equity Committee and Equity & Access Office
NOVA SCOTIA BARRISTERS' SOCIETY | MAY 2022

Message from the Nova Scotia Barristers' Society Gender Equity Committee

The Gender Equity Committee has prepared the attached report to present details and data on information collected from the membership related to gender discrimination and harassment issues that face our profession.

Please note that this report contains descriptions of gender-based harassment which readers may find traumatic. We thank our membership for being candid in their responses and will continue to keep individual data confidential.

If anyone is triggered by the content of this report, please be aware that the Nova Scotia Lawyers Assistance Program (NSLAP) provides assistance to members experiencing trauma. NSLAP's services are available at www.nslap.ca or by phone at 1-866-299-1299.

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Acknowledgements

The Gender Equity Committee thanks the respondents to this survey for their candor, bravery, and trust in sharing their stories with us. You inspire us to work to make our profession better.

Introduction

Gender based discrimination and harassment is a problem for most employers. The legal profession is no exception and many studies have identified issues and barriers that are unique to female lawyers.

In October 2018, Forbes Magazine reported on a survey of lawyers carried out in the United States which found:

It's not just less pay and fewer promotions. According to a recent survey of 2,827 lawyers, female lawyers, and especially women of color, are more likely than their male counterparts to be interrupted, to be mistaken for non-lawyers, to do more office housework, and to have less access to prime job assignments.¹

The Society's seeks to ensure that *Nova Scotians will be served by a legal profession that is diverse, inclusive and culturally competent*. To advance this goal, the Society seeks to *identify and address barriers that affect the retention and advancement of members from diverse and equity-seeking groups in the profession*.²

As part of this work, the Society sought to learn more about how gender-based discrimination and harassment is affecting lawyers in practice in Nova Scotia today, and to understand how this may have changed over time.

The last time the Society explored this issue in depth was in 2008 through the Gender Equity Committee's *It Will Be Our Little Secret* postcard campaign. This project saw the Society distribute postcards to every member of the Society and invited them to return them with a story of a time they experienced gender-based discrimination or harassment. Over 50 postcards were returned, and many of these stories were published in a booklet that was distributed to the membership. The stories, which describe unwanted touching, sexist jokes, and uncaring leadership, likely read to many as though they could have been written recently.

¹ Female Lawyers Face Widespread Gender Bias, According to New Study" by Kim Elsesser, www.forbes.com/sites/kimelsesser/2018/10/01/female-lawyers-face-widespread-gender-bias-according-to-new-study/

² [20219-2023 Strategic Plan – Nova Scotia Barristers' Society](#)

To learn more about barriers resulting from gender-based discrimination and harassment in the present, the Society's Gender Equity Committee designed and distributed an online questionnaire to members in 2019. This report summarizes these findings and our next step is to research and consider what recommendations the Committee will make to Council and the Society to address the issues and what these results have uncovered.

About the Gender Discrimination and Harassment Survey

The Gender Equity Committee (GEC) of the Nova Scotia Barristers' Society completed this research. The GEC supports Council in the governance of the Society by monitoring and providing advice about matters that address issues of gender in the legal profession. This research aims to identify core issues that contribute to discrimination and harassment within legal settings and ways to address these issues in an equitable manner. A survey method was used to execute this research which was carried out via SurveyMonkey tool.

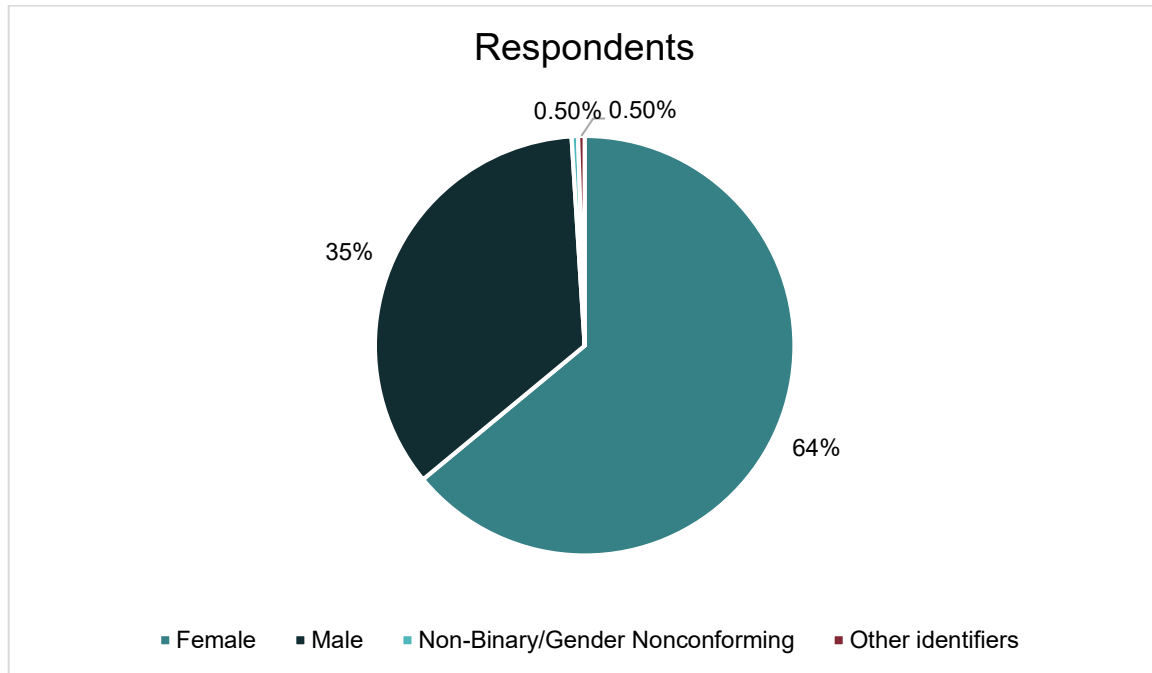
Although the survey's respondents were asked various questions about how they identify their sex/gender, the survey did not ask further questions about other aspects of their identity.³

³ The survey did not ask respondents about other aspects of their identity, such as race/ethnicity/Indigeneity, religion, sexual orientation, gender expression, whether they are transgender or cisgender, physical or mental disability, family status, or socioeconomic status, though provided space for respondents to volunteer this information. As this additional information was only provided in the form of comments, and only by a small proportion of respondents, it is not possible to analyze how these other aspects of identity impact respondents' experiences of gender-based harassment or discrimination. The authors of this report recognize that the intersection of these identities shape individuals' experiences (see: Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," *Stanford Law Review* 43(1241), 1991, at 1242). The concept of intersectionality recognizes that, for example, the gender-based harassment or discrimination experienced by a white, cisgender, able-bodied woman is different than that experienced by a Black, transgender woman with a disability. The Ontario Human Rights Commission explains that the intersection of protected grounds results in a "unique experience of discrimination or harassment," which must be acknowledged by courts and tribunals to properly address complainants' experiences of harm (*Policy on preventing sexual and gender-based harassment*, Ontario Human Rights Commission, online: <http://www.ohrc.on.ca/en/policy-preventing-sexual-and-gender-based-harassment/2-identifying-sexual-harassment>).

Respondent Demographics

As of 2019 there are 2069 practising members of the Society. The 2019 Annual Layer Report noted a further breakdown of 1081 members identifying as male, 830 members identifying as female, and 6 identifying as non-binary/gender non-conforming.⁴

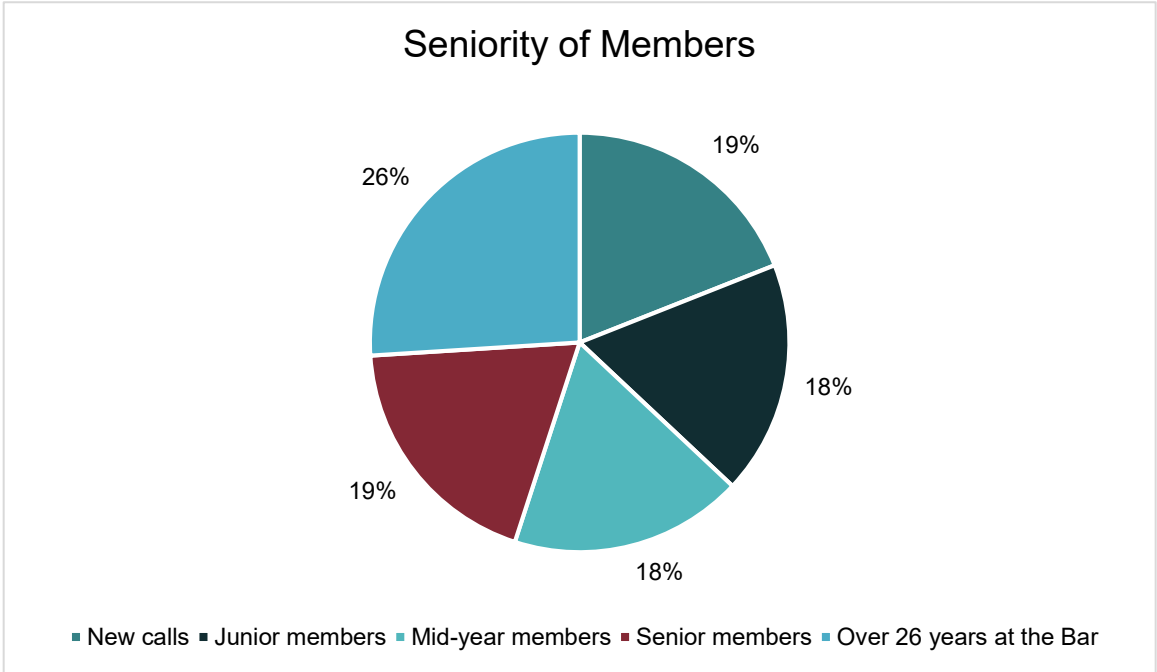
399⁵ members completed the survey.



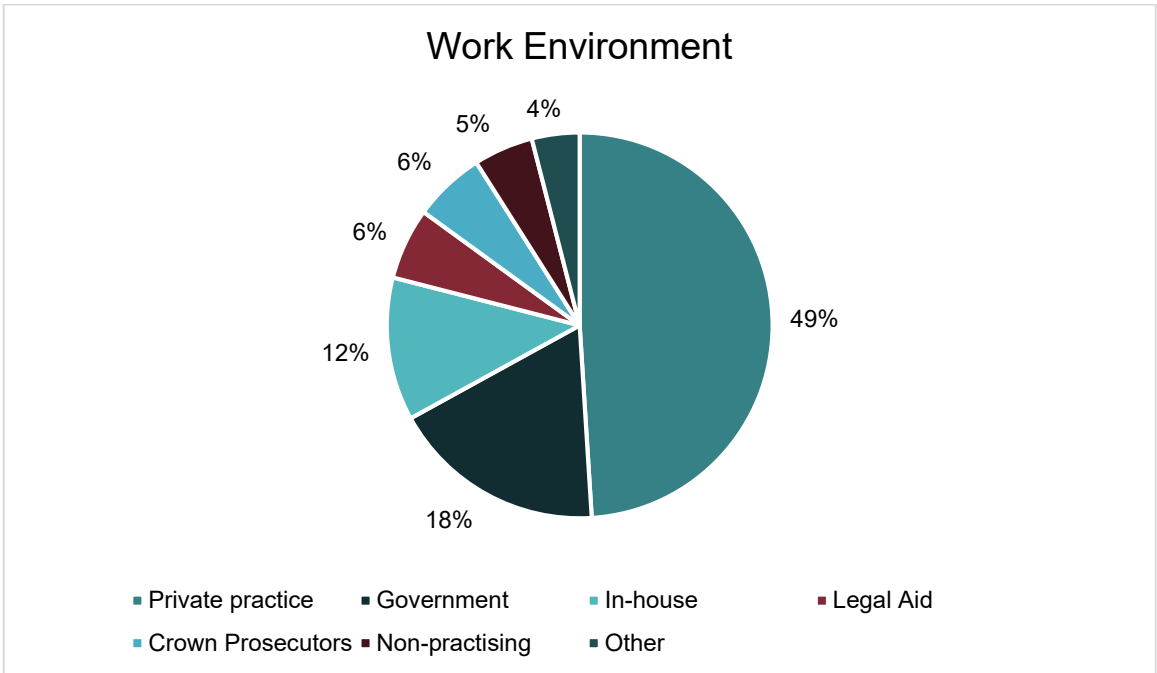
⁴ 123 members chose not to answer this Annual Lawyer Report question.

⁵ There was one participant who was excluded because the nature of their responses made it clear that they were making light of the survey

The seniority of members who responded was as follows:



It was interesting to note that some of the members were no longer practising but have worked in different settings in the past. The breakdown of “work environment” was as follows:



Additionally, it is significant to note that 80 responses were received from members who identify as “associates” while 82 responses were received from “partners.” A further 32 members responded as “other” and some of those noted being articling clerks, summer students or independent contractors who share space with other members. Not all members chose to answer this question.

Who faces gender-based harassment or discrimination in Nova Scotia legal workplaces?

Perhaps one of the key questions that set the tone for the survey and for this report, was whether members had experienced gender-based harassment or discrimination:

- 38%⁶ of all respondents reported experiencing no harassment or discrimination.
- 34% reported experiencing “a little” harassment or discrimination
- 21% reported experiencing a moderate amount of harassment or discrimination
- 7% reported experiencing “a lot” of harassment or discrimination

Male respondents reported lower rates of gender-based discrimination and harassment:

- 1% of male respondents reported experiencing no harassment or discrimination
- 19% of male respondents reported experiencing “a little” harassment or discrimination
- 4% of male respondents reported experiencing a moderate amount of harassment or discrimination
- 1% of male respondents reported experiencing “a lot” of harassment or discrimination

Female respondents reported higher rates of gender-based discrimination and harassment:

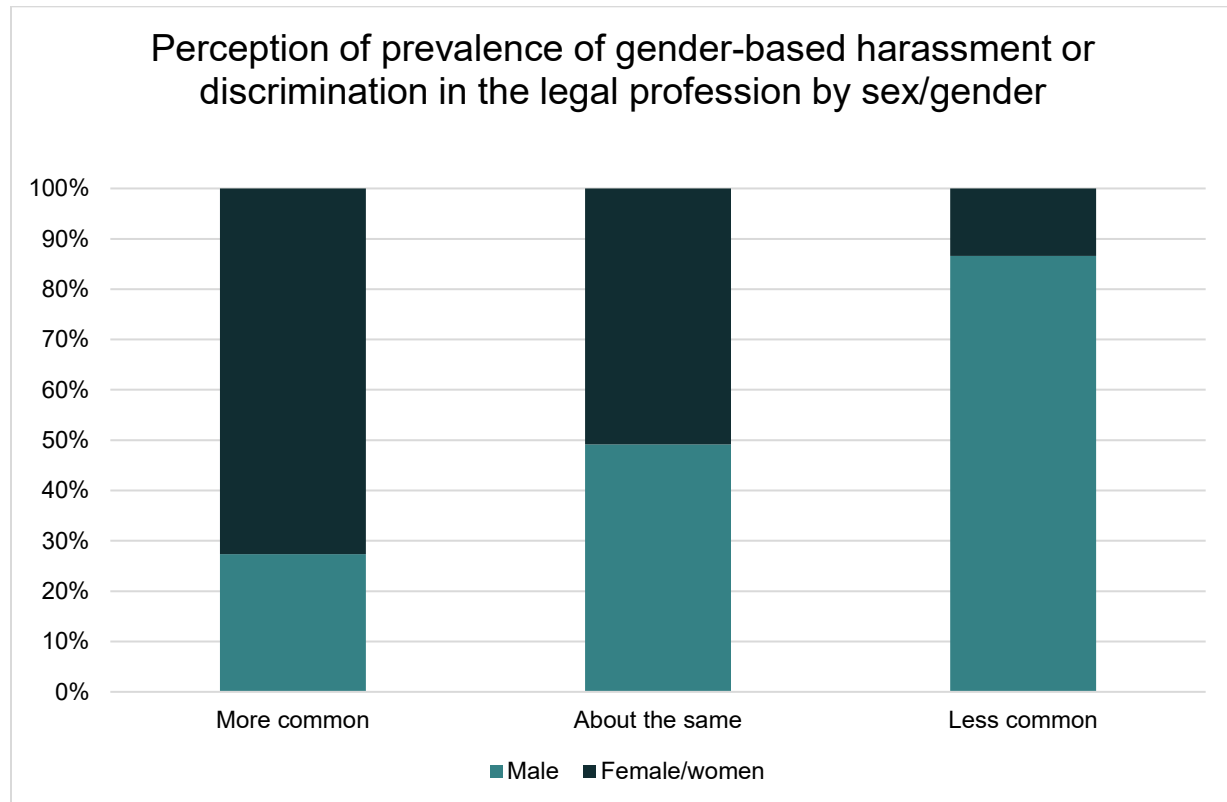
When the female responses are specifically analyzed alone, the breakdown became more skewed with the following percentages coming to the forefront:

- 17% reported experiencing no harassment or discrimination.
- 43% reported experiencing “a little” harassment or discrimination
- 31% reported experiencing a moderate amount of harassment or discrimination
- 10% reported experiencing “a lot” of harassment or discrimination

⁶ All numbers in percentages are rounded for ease of reading.

It is important to note that 1% of non-binary/gender-non-conforming or others participated in the survey, who have accounted for 50% experiences of harassment or discrimination.

In their totality, the responses paint a clear picture that despite the progress made in improving the cultures, policies and diversity of legal workplaces, gender-based harassment and discrimination still impacts the careers of too many lawyers in Nova Scotia. Also, the perception of how prevalent gender-based harassment or discrimination is in the legal profession does vary by gender.



What does gender-based discrimination and harassment in Nova Scotia legal workplaces look like?

One thing that makes gender-based discrimination and harassment in the workplace so insidious is the many forms it can take. It can be overt or subtle, individual, or systemic, out in the open or behind closed doors. When asked what kind of discrimination or harassment they faced, respondents' answers reflect this range of experiences:

- 50% - unwelcome or inappropriate questions about my personal life
- 51% - use of inappropriate sexualized comments or language
- 33% - unwelcome sexualized comments or advances directed at me
- 25% - unwelcome touching or invasion of my personal space
- 41% - barriers to advancement
- 48% - unequal opportunities for work experience
- 43% - social exclusion

- 8% - inappropriate or unwelcome social media or electronic communication
- 22% - other

Responses with respect to the kinds of discrimination and harassment they faced vary significantly as compared female respondents to male respondents.

Male:

- 38%- unwelcome or inappropriate questions about my personal life
- 31% - use of inappropriate sexualized comments or language
- 24% - unwelcome sexualized comments or advances directed at me
- 14% - unwelcome touching or invasion of my personal space
- 28% - barriers to advancement
- 34% - unequal opportunities for work experience
- 21% - social exclusion
- 3% - inappropriate or unwelcome social media or electronic communication
- 21% - other

Female:

- 52% - unwelcome or inappropriate questions about my personal life
- 54% - use of inappropriate sexualized comments or language
- 34% - unwelcome sexualized comments or advances directed at me
- 26% - unwelcome touching or invasion of my personal space
- 43% - barriers to advancement
- 50% - unequal opportunities for work experience
- 46% - social exclusion
- 8% - inappropriate or unwelcome social media or electronic communication
- 22% - other

Out of the 1% non-binary/non-conforming or others who participated in the survey accounted for 50% experiences of harassment or discrimination.

- 50%- unwelcome or inappropriate questions about my personal life
- 50% - use of inappropriate sexualized comments or language
- 50% - unwelcome sexualized comments or advances directed at me
- 50% - unwelcome touching or invasion of my personal space
- 50% - barriers to advancement
- 50% - unequal opportunities for work experience
- 50% - social exclusion
- 0% - inappropriate or unwelcome social media or electronic communication
- 50% - other

Specific examples included:

- Use of “little girl,” “young lady,” “honey” or “doll” to refer to female counsel

- Disproportionate assignment of non-billable work to women
- Comments regarding attire and/or weight/personal appearance
- The purchase of gifts by senior male lawyer to a junior female lawyer
- Pornographic images placed on a work computer
- Comments about a woman's emotional state
- Being told to "act more like a man"
- Several examples of women's opinions being discounted only to have the same opinion conveyed by a male colleague and have it adopted as an excellent idea
- Unwanted touching from male colleagues or clients placing their hands on female counsel's back, buttocks, breasts, legs, hands, shoulder, hair, and examples of unwanted hugging and kissing
- Various comments about a female lawyer's dating life, personal hobbies, interests
- Questions about family planning and women's intentions with respect to having children and taking parental leave
- Repercussions to employment for taking parental leave
- Unequal pay based on gender
- Certain files (those with likely court experience or those seen as more complex) being directed to male lawyers as opposed to female lawyers
- Being mistaken, repeatedly, as support staff as opposed to counsel
- Inappropriate and sexualized jokes
- Being told to "flirt with clients" and also "flirt with senior partners" in order to get ahead
- Being asked to get coffee or lunch for senior counsel and clients
- Being told to "man up"
- Men being told they cannot, under any circumstances, take a parental leave as it would be career suicide

In sharing their stories, respondents also revealed common sources of the harassment or discrimination to which they were subjected. From the responses:

- 61% reported experiencing such behavior from a senior lawyer in their own workplace;
- 54% of respondents reported experiencing such behavior from a client.
- 42% of respondents identified the behavior as "systemic" because of workplace culture.
- 54% of respondents identified experiencing discrimination and harassment from opposing counsel.
- 16% of respondents identified experiencing discrimination and harassment from another source. The most frequent "other" source specified were judges or members of the judiciary.

Male respondents reported lower rates of gender-based discrimination and harassment in a given circumstance:

- 28% reported experiencing such behavior from a senior lawyer in their own workplace.
- 41% of respondents reported experiencing such behavior from a client.
- 41% of respondents identified the behavior as "systemic" because of workplace culture.
- 24% of respondents identified experiencing discrimination and harassment from

opposing counsel.

- 17% of respondents identified experiencing discrimination and harassment from another source. The most frequent “other “source specified were judges or members of the judiciary.

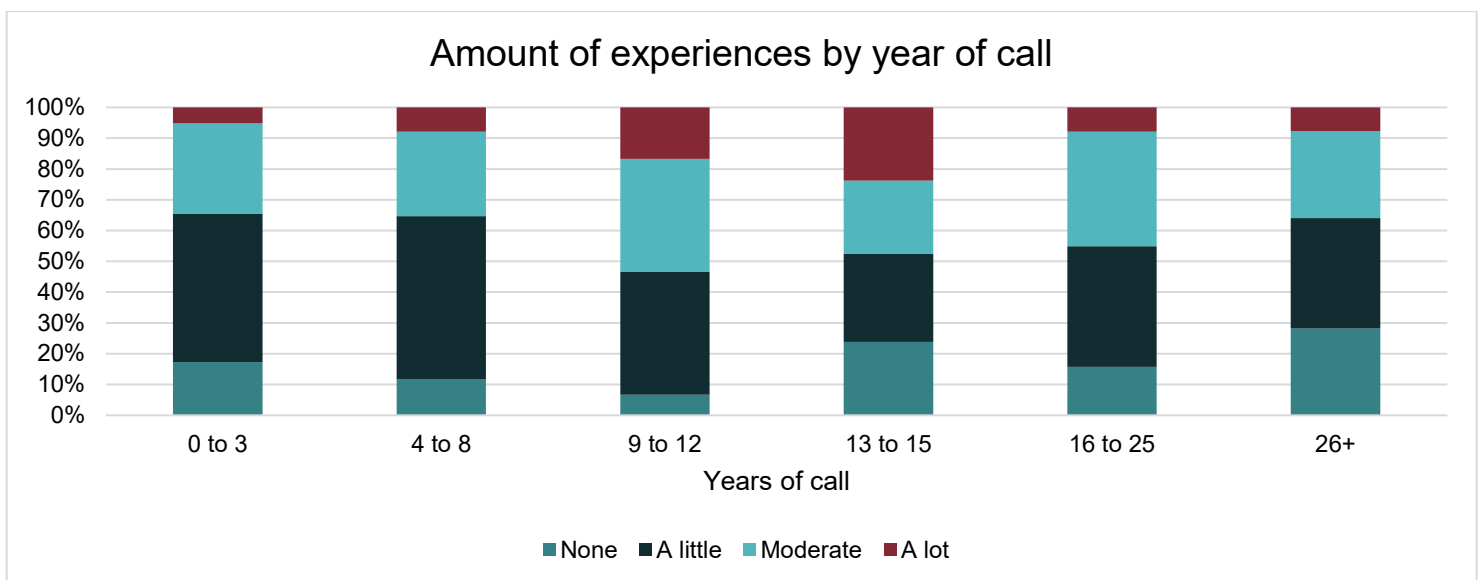
Female respondents reported higher rates of gender-based discrimination and harassment in each circumstance:

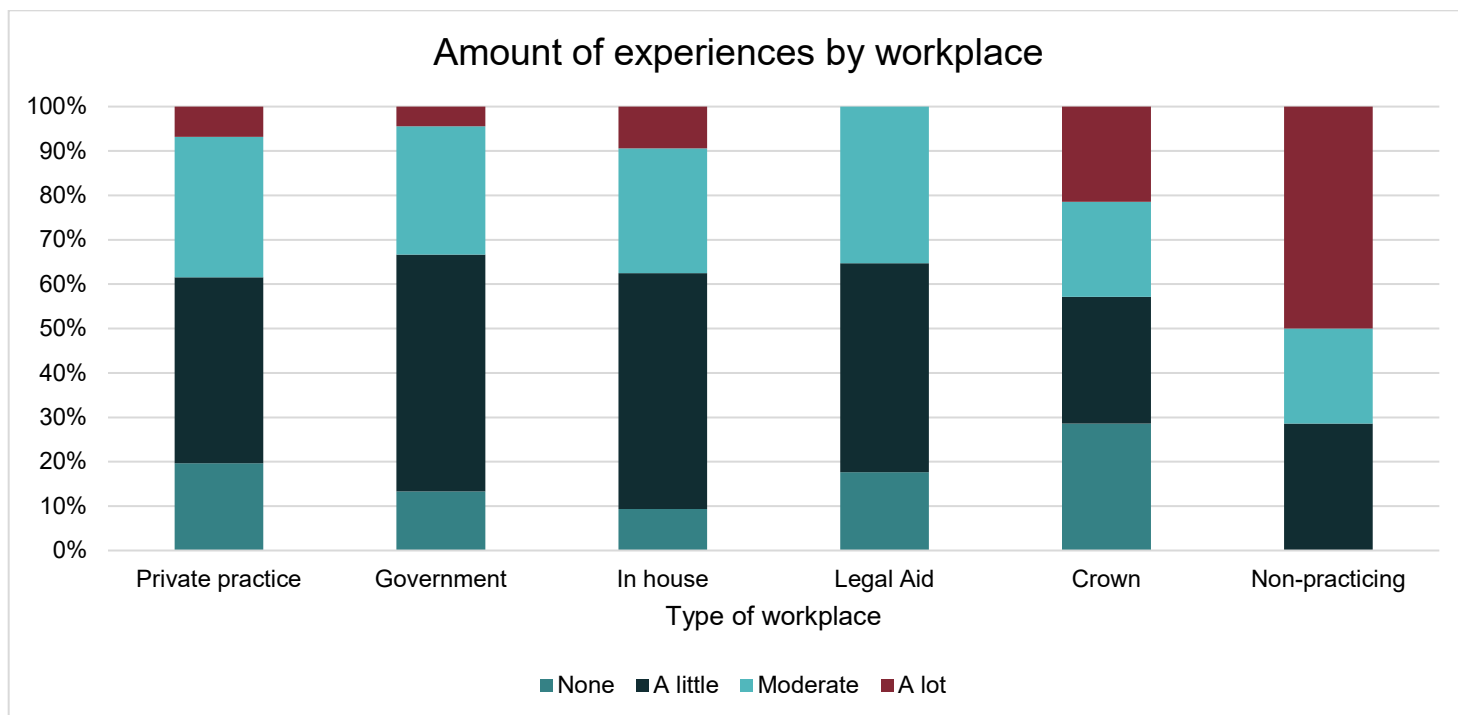
- 66% reported experiencing such behavior from a senior lawyer in their own workplace.
- 37% of respondents reported experiencing such behavior from a client.
- 57% of respondents identified the behavior as “systemic” because of workplace culture.
- 44% of respondents identified experiencing discrimination and harassment from opposing counsel.
- 59% of respondents identified experiencing discrimination and harassment from another source. The most frequent “other “source specified were judges or members of the judiciary.

Again, 1% non-binary/non-conforming or other respondents accounted for 50% experiences of harassment or discrimination in a given circumstance.

- 50% reported experiencing such behavior from a senior lawyer in their own workplace.
- 50% of respondents reported experiencing such behavior from a client.
- 0% of respondents identified the behavior as “systemic” because of workplace culture
- 50% of respondents identified experiencing discrimination and harassment from opposing counsel.
- 50% of respondents identified experiencing discrimination and harassment from another source. The most frequent “other “source specified were judges or members of the judiciary.

Further statistics on the breakdown of experiences by year of call and workplace are noted below:





Responses to gender-based discrimination and harassment in Nova Scotia legal workplaces:

Policies and workplace responses

- 63% of respondents confirmed their workplace had a policy to address these issues.
- Yet just 27% of respondents felt comfortable making a complaint or seeking a formal resolution of an experience of gender-based harassment or discrimination in the workplace.
- And only 18% of respondents confirmed they had in fact made a formal complaint while many respondents noted having quit a job because of issues of gender-based discrimination and harassment.
- Moreover, 43% of respondents noted feeling unsatisfied with the resolution of their complaint after having made either an informal or formal complaint of gender-based harassment or discrimination. Many noted being told that this was a “rite of passage” and that every woman went through the same thing.

Bystander responses

- 80% of respondents either agreed or strongly agreed that if they saw someone experiencing sexual harassment or discrimination in the legal profession, they would feel comfortable saying or doing something about it.
- Yet, 63% of respondents did not answer the question of how they think they can best support someone else who is experiencing gender-based harassment or discrimination.

Comparison to other professions

- 29% of respondents believed that, compared to other professional workplaces,

gender-based harassment and discrimination is more common in the legal profession.

- 57% believed it is about the same.
- 14% believed it is less common.

Female respondents were more likely to say that gender-based harassment and discrimination is more common:

- 37% of women believed that, compared to other professional workplaces, gender-based discrimination and harassment is more common in the legal profession.
- 58% believed it is about the same.
- 5% believed that it is less common.

Male respondents were less likely to say that gender-based harassment and discrimination is more common:

- 14% of male respondents believed that, compared to other professional workplaces, gender-based harassment and discrimination is more common in the legal profession.
- 56% believed it is about the same.
- 30% believed it is less common.

Of the 1% non-binary/gender nonconforming and other respondents:

- 50% believed gender-based harassment and discrimination is about the same as other professions.
- 50% believed it is less common.

The Society's Role

- 80% of respondents believed that the Society should be taking steps to address systemic issues of gender-based harassment and discrimination in the legal profession.
10% of respondents believed that the Society should not be taking such steps.
- 10% of respondents neither agreed nor disagreed and provided reasoning ranging from rejecting the premise that such discrimination exists, not knowing how or believing that the Society could impact this issue or believing that it is not the role of the Society to intervene in the issue.

When asked whether the Society should be involved in addressing individual cases of gender-based discrimination and harassment in the legal profession:

- 65% of respondents agreed.
- 18% of respondents disagreed.
- 17% respondents neither agreed or disagreed and provided reasoning ranging from being unsure, that it would depend on the circumstances, or that they doubted/were uncertain as to whether the Society would be capable of responding appropriately.

Summary and Conclusion

The data collected through the NSBS Gender Discrimination and Harassment Survey shows the following:

- Most respondents have experienced some amount of gender-based harassment or discrimination in their legal practice.
- A drastically higher percentage of female/women respondents, as compared to male respondents, have experienced some amount of gender-based harassment or discrimination in their legal practice.
- Experiences of gender-based harassment or discrimination may also vary according to other factors, such as firm size and position in practice, though more data is needed to draw clear conclusions.
- Both female/women and male respondents have experienced gender-based harassment or discrimination in their legal practice in a variety of contexts and a variety of forms.
- Many examples provided of the specific harassment and discrimination experienced by respondents are overt and egregious, and many are systemic and insidious. This is particularly so for female/women respondents.
- Though a majority of respondents said they had experienced some amount of gender-based harassment or discrimination in their legal practice, a minority of respondents said they have reported such an experience, either formally or informally.
- While some respondents commented that they feel their workplace addresses gender-based harassment or discrimination well, through robust and consistently enforced policies, many respondents expressed that workplace policies are inadequate and are rarely followed, and that repercussions, such as damage to a potential complainant's career, act as strong deterrents to reporting.

As noted above, the Gender Equity Committee continues to research and analyze what could be done to address the issue of gender harassment and discrimination. However, the membership was given the opportunity to provide their thoughts on possible recommendations to Council and the Society as a whole.

Question 23 of the survey asked: "Please share any comment that you have about the current or potential future role of the Nova Scotia Barristers' Society in addressing issues of gender-based harassment and discrimination in the legal profession." Various individual responses were received in relation to the questions but the general themes, which will be analysed and kept top of mind as the Committee completes its research, are noted below:

- Investigate and evaluate its own past and current responses to gender-based harassment and discrimination.
- Publicly acknowledge and condemn the existence of gender-based harassment and discrimination in the legal profession.
- Develop a more robust rule regarding discrimination and harassment in the Code of Professional Conduct.
- Provide (mandatory) education and training to the bench and bar regarding gender-based

harassment and discrimination, both individual and systemic. Provide examples of gender-based harassment and discrimination that members of the bench and bar can use to reflect on their own conduct.

- Require law firms to develop and implement gender-based harassment and discrimination policies, and require law firms to provide training regarding their policies.
- Develop and make available model anti-harassment and discrimination policies to be adopted by firms.
- Require law firms to report to the Society all internal complaints of gender-based harassment and discrimination.
- Use the existing complaints process for complaints of gender-based harassment and discrimination to the Society.
- Create a separate process for complaints of gender-based harassment and discrimination to the Society.
- Create an optional, restorative justice-type approach for the resolution of individual complaints of gender-based harassment and discrimination to the Society.
- Develop strategies to support complainants, who may face repercussions in their professional careers.
- Work toward the diversification of the legal community, by supporting the advancement and education of women lawyers, and particularly in areas in which they are underrepresented.
- Mandate firms to make their maternity/parental leave policies publicly available.
- Advocate for anti-harassment legislation for all workplaces in Nova Scotia.

The Gender Equity Committee thanks the membership for their detailed attention to this issue and is grateful for the valuable feedback it received in response to this survey.